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June 7, 2007

VIA OVERNIGHT COURIER

Mr Vernon A Williams
Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20423-0001



Re **Finance Docket No. 35037**
Mark Lange – Petition for Declaratory Order

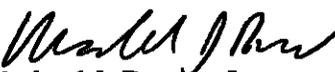
Dear Secretary Williams

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Reply of Wisconsin Central Ltd.**

I have included an extra copy of this transmittal letter and would request that you date-stamp this to show receipt of this filing and return it to me in the envelope provided.

Please feel free to contact me should any questions arise regarding this filing
Thank you for your assistance on this matter

Respectfully submitted,


Michael J Barron, Jr.

MJB arw

Enclosures

cc Brian D Hamill

ENTERED
Office of Proceedings

JUN 8 - 2007

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35037

MARK LANGE – PETITION FOR DECLARATORY ORDER

REPLY OF WISCONSIN CENTRAL LTD.

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Public Record

Michael J. Barron, Jr
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEY FOR
WISCONSIN CENTRAL LTD.

Date: June 7, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35037

MARK LANGE – PETITION FOR DECLARATORY ORDER

REPLY OF WISCONSIN CENTRAL LTD.

INTRODUCTION

Wisconsin Central Ltd (“WCL”) hereby files this Reply to the Petition for Declaratory Order filed by Mark Lange (“Lange”).

Lange initiated the underlying litigation by filing a trespass suit against WCL and Canadian National Railway Company in Winnebago County, Wisconsin, Circuit Court¹ (“Lawsuit”). The court dismissed Canadian National Railway Company from the Lawsuit with prejudice, leaving WCL as the only defendant in the Lawsuit. Lange’s references in his Petition in this finance docket to “Canadian” or “Canadian National” are incorrect. The only defendant in the Lawsuit and the proper respondent in this finance docket is WCL. In response to a Motion to Dismiss filed by WCL based on ICCTA subject matter jurisdiction, the Court also ordered Lange to file a petition with the Surface Transportation Board (“STB”) concerning the issue of subject matter jurisdiction, which Lange has now done.

In the Lawsuit, Lange seeks to dispossess WCL of property used and necessary for the operation of trains in interstate commerce. Therefore, this property and the activities that will be impacted by the Lawsuit are under the exclusive jurisdiction of the STB pursuant to 49 U.S.C. § 10501(b). WCL seeks a ruling from the STB that the activities conducted on the property by

¹ That case is docketed as Mark R. Lange v. Canadian National Railroad, Inc. and Wisconsin Central Limited

WCL are activities conducted as an element of interstate railroad operations and therefore are governed exclusively by the STB's jurisdiction pursuant to 49 U.S.C § 10501(b).

Additionally, Lange's request for expedited consideration is belied by his conduct in filing this petition. The court's order directing Lange to file a petition with the Board concerning subject matter jurisdiction is dated September 6, 2006. Only now, over eight months later, has Lange filed a petition with the STB in response to the court's order. Expedited consideration is simply not warranted.

FACTS

The Lawsuit involved property that runs immediately adjacent to and parallel with WCL tracks in Neenah, Wisconsin. As demonstrated by the affidavits of Greg Guthrie, a recently retired employee of WCL, that were submitted in the Lawsuit as part of WCL's Motion to Dismiss (copies of the affidavits are attached and incorporated herein as Exhibit A), WCL uses the property at issue in the Lawsuit for the following activities.

- a) Access for railroad personnel to switching lead tracks so that those tracks and associated hydraulic switches may be maintained
- b) Access to rail facilities for snow removal from those facilities as well as access to the walking surfaces for train crews so that WCL can maintain good walking surfaces for train crews involved in switching
- c) Use as a walkway for conductors while walking alongside trains in the performance of their switching duties.

As Mr Guthrie's unrefuted affidavits make clear, the property has been used for various railroad purposes since at least 1978,² and no one else has used the property other than WCL and its predecessor railroad since that time other than to sporadically trespass. Furthermore, according to Mr. Guthrie, without the use of the subject property, WCL could no longer safely use the tracks that adjoin the property for switching. Neither could WCL access the adjoining tracks in order to properly maintain them and their associated hydraulic switches, nor safely conduct snow removal alongside the tracks in order to maintain safe walking surfaces for crews that are switching.

Lange has asserted an ownership interest in the property by virtue of a quitclaim deed and a survey, both from 2005. Lange has not produced any documentation or chain of title that underwrite his claim.

WCL is not trespassing. It is conducting activities in support of interstate rail services on the property and has been doing that for at least 29 years; 27 years before Lange asserted a claim.

Lange filed the Lawsuit, and WCL moved to dismiss based on the fact that, under 49 U.S.C § 10501(b), the property and the activities conducted thereon were part of rail transportation and are therefore subject to the exclusive jurisdiction of the STB. On September 6, 2007, the Winnebago County Circuit Court, in response to WCL's motions, directed Lange to petition the STB regarding the issue of subject matter jurisdiction. The court also set the case for status on February 23, 2007. A copy of the order is attached and incorporated herein as Exhibit B. As of the status conference on February 23, 2007, Lange had not filed a petition with the STB. The judge responded by saying Lange had ninety days to get something on file with the

² It is probable that the evidence will show that WCL's predecessor railroads used the property for decades prior to 1978 as well.

STB, or else he would grant WCL's motions to dismiss. On May 21, 2007, Lange filed the petition in this finance docket.

ARGUMENT

I. 49 U.S.C. § 10501(b) preempts the subject matter jurisdiction of the court in the Lawsuit because if Lange prevails, WCL will lose property that is used in, and necessary for, the operation of trains in interstate commerce.

For reasons set forth below, 49 U.S.C. § 10501(b) preempts the court's subject matter jurisdiction in the Lawsuit because if the court granted the relief that Lange seeks it would be regulating rail operations and the property on which operations are conducted. The plain language of the statute and a long line of court and agency decisions mandate this conclusion.

A. 49 U.S.C. § 10501(b) applies to the property at issue in the Lawsuit.

49 U.S.C. § 10501(b) states

The jurisdiction of the Board over transportation by rail carriers, and the remedies provided in this part with respect to practices, ... and facilities of such carriers, and the operation or discontinuance of switching tracks... is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. § 10102(9) defines transportation as including a

yard, property, facility, of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use...

In light of these statutory enactments, it is clear that the property at issue in the Lawsuit falls under the preemptive umbrella of 49 U.S.C. § 10501(b). As Greg Guthrie's unrefuted affidavits attest to, WCL uses the property in order to conduct and support rail operations, including things such as conductors walking the property while engaged in switching and

maintenance activities WCL and its predecessor have used the property to conduct these rail operations since at least 1978.

B. Case law makes it clear that, if the court granted Lange's relief in the Lawsuit, it would be regulation of rail transportation.

Turning again to the language of Section 10501(b), Congress clearly stated that it intended to preempt state "regulation of rail transportation." This language is extremely (and intentionally) broad, so as to create a national uniformity in rail regulation. Indeed, as one court stated, "It is difficult to imagine a broader statement of Congress' intent to preempt state regulatory authority over railroad operations." CSX Transp. Inc v Georgia Public Service Comm., 944 F Supp 1573, 1581 (N.D. Ga 1996). *See also*, Wisconsin Central Ltd. v. City of Marshfield, 160 F Supp.2d 1009, 1013 (W.D. Wis. 2000) (where Judge Shabaz found the language in Section 10501(b) to be "clear and broad" and concluded "[i]t is clear that the ICCTA has preempted all state efforts to regulate rail transportation."), Burlington Northern Santa Fe Corp. v. Anderson, 959 F Supp. 1288, 1295 (D. Mont. 1997) (The language of "[t]he Act reserves no area of regulation for the individual states"), City of Seattle v. Burlington Northern R. Co., 105 Wash App 832, 836, 22 P.3rd 260, 262 (Wash. App 2001), *aff'd*, 145 Wash.2d 661, 41 P.3d 1169 (Wash. 2002), ("This language is clear, broad and unqualified" and "evidence[es] Congress' intent to preempt state regulatory authority over railroad operations"); Georgia Public Serv Comm v CSX Transp., Inc., 484 S.E 2d 799, 801 (Ga App 1997) ("This express delineation of the breadth of the law's preemptive reach is 'clear and manifest'").

In this case, the issue is whether the granting of the relief that Lange seeks is "regulation of rail transportation." The answer is clearly "yes."

While ICCTA does not define “regulation,” it is certainly a commonly used term that has been defined by the courts. For example, as the court said in Wisconsin Central Ltd. v. City of Marshfield, 160 F.Supp 2d 1009, 1013 (W.D. Wis 2000), regulation “is the ‘act or process of controlling by rule or restriction ’” (quoting from Black’s Law Dictionary 1289 (7th Ed. 1999)). As applied here the relief sought by Plaintiff clearly amounts to “regulation” since it seeks to control how WCL conducts its rail operations on its property, including its property through Neenah and in particular the manner by which WCL conducts switching operations in Neenah.

As the facts establish, WCL’s use of the property is integral to its provision of rail transportation service. Any ruling by the court to dispossess WCL of the property used in those operations clearly amounts to “regulation of rail transportation” which is expressly preempted by Section 10501(b). Such disposition of rail operating property would violate the law because only the STB has jurisdiction over this property pursuant to 49 U.S.C. §10501(b).

This conclusion is buttressed by looking at the statutory framework of the ICCTA. In enacting the ICCTA with its broad preemption provision, Congress granted to the STB exclusive jurisdiction over “transportation by rail carriers.” 49 U.S.C. § 10501(b)(1). As WCL noted above, Congress broadly defined “transportation” to include the property and other facilities used by a rail carrier, such as WCL, in providing its rail transportation service. As a consequence, the STB was to have exclusive jurisdiction over those facilities and property. That exclusive jurisdiction precludes a court from attempting to assert jurisdiction over a carrier’s property and facilities in a case such as the Lawsuit.

Moreover, wholly aside from that grant to the STB of exclusive jurisdiction generally over “transportation by rail carriers,” 49 U.S.C. § 10501(b)(2) specifically grants the STB exclusive jurisdiction over “the construction...[or] operation.. of side tracks even if the tracks

are located, or intended to be located, entirely on one State ” It is difficult to imagine a clearer statement of Congressional intent that if there was to be any regulation of the use that a railroad makes of its tracks, that regulation is to be by the STB, not by the states *See, e.g., CSX Transp., Inc v Georgia Public Service Comm.*, 944 F.Supp 1573, 1584 (N D Ga. 1996) (“With the extension of exclusive federal jurisdiction over wholly intrastate tracks, the ICC Termination Act evinces an intent by Congress to assume complete jurisdiction, to the exclusion of the states, over the regulation of railroad operations.”) *Wisconsin Central Ltd v. City of Marshfield*, 160 F Supp 2d 1009, 1013 (W.D. Wis 2000) (“The preemption provision makes all ICCTA remedies exclusive and explicitly preempts all other Federal and State remedies”). *Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp.*, 163 N.J. 446, 462, 750 A.2d 57, 67 (2000) (ICCTA gives the STB “exclusive jurisdiction over the location and operation of railroad facilities ”)

In *Wisconsin Central Ltd v the City of Marshfield*, 160 F.Supp 2d 1009 (W D Wis 2000), the City of Marshfield attempted to condemn a passing track operated by WCL to make room for a highway improvement project. WCL sought declaratory relief holding that the City could not exercise condemnation authority on WCL’s passing track because it was rail operating property, and thus ICCTA preempted the City’s condemnation authority. *Marshfield*, 160 F Supp 2d at 1011 The court ruled for WCL, holding that the City, in trying to condemn WCL’s passing track, was intruding in an area that Congress had preempted *Id.*, at 1013-1015

In *Marshfield*, the City attempted to assert that what it was doing was not “regulation” of rail transportation, but a “relocation” of WCL’s passing track “in the interest providing for highway safety.” *Id.*, at 1013 The court expressly disagreed, holding that regulation is an act of controlling by rule or restriction, and that condemnation is the most extreme type of control over

railroad operations Id., at 1013. The court held that the ICCTA expressly preempted more than just state laws specifically designed to regulate rail transportation Id., at 1014. Finally, the court held that in attempting to apply Wisconsin's condemnation law to WCL's passing track, the City "has entered the field occupied exclusively by Congress." Therefore, the City had no ability to act because Congress had preempted the field. Id., at 1014. *See also*, Buffalo Southern R.R. Inc v Village of Croton-on-Hudson, et al., 434 F Supp.2d 241, 249 (S D N Y. 2006) (ICCTA preempts Village's attempt to condemn tentative site that railroad sought to use as a transloading site), and Guckenberg et al v. Wisconsin Central Ltd., et al., 178 F.Supp 2d 954 (E.D Wis. 2001) (ICCTA also preempted state law nuisance claim for damages where plaintiffs asserted that operation of railroad sidetrack created a common law nuisance interfering with the enjoyment of their home located across the street from that sidetrack).

In State of Louisiana v Illinois Central Railroad Company, et al., 928 So.2d 60 (La. App 1 Cir. 2005) the State of Louisiana filed an action in state court claiming it was the owner of certain property in Baton Rouge, Louisiana on which Illinois Central had active tracks and seeking in addition to recover various monetary awards for trespass and environmental damages. Illinois Central moved to have the case dismissed because ICCTA took away the court's subject matter jurisdiction, as there were active rail operations on the property State of Louisiana, 928 So 2d at 62-64. The Louisiana Court of Appeals found for the railroad, holding that regardless of whether the railroad had a valid interest in the land, it had operated on the line for over a century, Id., at 70, and therefore ICCTA preempted the subject matter of the state's claims. Id., at 72-73.

In Cedarapids, Inc v. Chicago, Central & Pacific Railroad Company, 265 F Supp.2d 1005 (N.D. Iowa 2003), a railroad attempted to reactivate dormant tracks that ran adjacent to the

plaintiff's property. The plaintiff filed suit in Iowa state court claiming among other things, that the railroad had no right to operate on the tracks and that the land underneath the tracks had reverted to the plaintiff pursuant to Iowa law. The defendant railroad removed the case to federal court and then moved to dismiss the plaintiff's claims because they were preempted by ICCTA. Cedarapids, Inc., 265 F.Supp.2d at 1007-1008

The plaintiff deemed that the tracks at issue were spur tracks and that they fell outside of the abandonment authority of the Surface Transportation Board, and that therefore ICCTA preemption did not apply. Id., at 1013. The court disagreed, holding that the ICCTA made it exclusively clear that the STB's jurisdiction extended to wholly intrastate spur and side tracks. Id., at 1013. In arriving at this conclusion, the court emphasized that the term "transportation" in ICCTA's preemption section is broadly defined. Id., at 1012. The court held therefore that ICCTA preempted the plaintiff's attempts to use state law to force the railroad to abandon the use of its track even though it had been dormant for years, as that issue would fall within the exclusive jurisdiction of the STB. Id., at 1014-1015

Similar to these cases, Lange is trying to exercise state law property actions on rail operating property. The plaintiff is attempting to use state law to force WCL off rail operating property. This would have the same effect as if a public entity were trying to condemn WCL off rail operating property. This is the same extreme type of regulation that the court found preempted in Marshfield. It is an even stronger case on its facts in support of preemption than the Cedarapids case because, unlike in Cedarapids where the rail facilities were dormant, WCL and its predecessor have continuously used and will continue to use the property at issue in this case for rail operations. Finally, because of this constant use, just like in the State of Louisiana

case, the fact that Lange alleges that WCL does not have a valid property interest in the property at issue does not take away jurisdiction of the STB over this property

STB case law in this area is consistent with these court decisions. In Finance Docket No 34425, City of Lincoln-Petition for Declaratory Order, STB served August 11, 2004, *petition for review denied*, City of Lincoln v. Surface Transportation Board, United States of America, 414 F.3d 858 (8th Cir. 2005), the City of Lincoln sought a determination that acquisition under eminent domain of a 20-foot wide strip of right-of-way on a railroad's property would not be preempted. The railroad claimed that it was using the full width of its current right-of-way for moving freight, storing lumber, unloading rail cars, and staging unloaded freight for further movement to shipper facilities. The effect of the condemnation would have been that the railroad would have had 20-feet less of right-of-way width it could use for rail purposes once the trail was installed. City of Lincoln, at p. 4. The STB held that these activities were part of "transportation" by rail under 49 U.S.C. § 10102(9). City of Lincoln, at p. 4. Therefore, the STB decided that it would not hold as the City requested that preemption did not apply. City of Lincoln, at p. 5

C. Applying the law to the present facts, it is clear that 49 U.S.C. § 10501(b) preempts the court from granting the relief Lange seeks in the Lawsuit.

It is clear that WCL's activities on the property involved in the Lawsuit, such as switching and maintenance access, are part of rail transportation. The relief Lange seeks in the Lawsuit amounts to the most extreme regulation of rail transportation because, as held in Marshfield, WCL would no longer be able to use the property for any purpose, let alone rail transportation purposes

Lange alleges that the activities that WCL conducts on the property are “remote to the operation of the switch and would not result in the regulating or shipping of railroad activity” However, Lange has not provided any evidentiary support in the Lawsuit nor to the STB to support these allegations. In addition, Lange’s conclusion is simply wrong What would be regulated, by being eliminated, are the conductors doing their switching and maintenance crews accessing facilities to perform maintenance

Lange further alleges that WCL owns property on the other side of the railroad tracks running along the property, and says it may be possible to relocate the existing railroad activities Again, Lange had not provided any evidentiary support for this claim³ Furthermore, as held in Marshfield, relocation of the activity is no less a form of regulation than condemnation. Marshfield, 160 F Supp.2d at 1013

II. Lange is not entitled expedited relief from the STB.

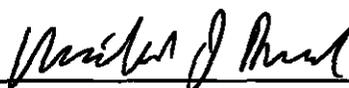
As WCL has established, it and its predecessor have been conducting rail operations on the property at issue in the Lawsuit for at least 29 years Lange allegedly acquired the property in August, 2005 and instituted the Lawsuit in November, 2005. The court ordered Lange to file a petition for relief on September 6, 2006, but he waited until May 21, 2007 to file a petition with the STB. Given WCL’s evidentiary support regarding the history of use of the property and Lange’s delay in bringing this matter to the STB, expedited consideration is not necessary

³ If the STB opens a proceeding, WCL is prepared to show that the property in dispute is east of and adjoins multiple tracks at the northerly end of WCL’s yard in Neenah, and that there is not enough property west of the westerly most track at that location to conduct the activities described in Greg Guthrie’s affidavits, as WCL’s property line is very close to the westerly most track

CONCLUSION

WCL respectfully requests that the STB declare that 49 U.S.C. § 10501(b) preempts the court from granting the relief sought by Lange in the Lawsuit, and that the STB deny Lange's request for expedited consideration

Respectfully Submitted,



Michael J. Barron, Jr
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
Phone: (312) 252-1500
Fax (312) 252-2400

**ATTORNEY FOR
WISCONSIN CENTRAL LTD.**

Dated June 7, 2007

County of Cook)
)
State of Illinois)

**AFFIDAVIT OF
GREGORY J. GUTHRIE**

I, Gregory J Guthrie, being duly sworn, depose and state as follows

1 Since 2001, I have been Senior Manager-Technical Services, for Wisconsin Central Ltd ("WCL")

2 In that capacity, I am in charge of overseeing humerous track and public works construction projects for WCL.

3 Prior to my current position, I was Chief Engineer-Maintenance for WCL from 1987 to 2001

4 In 1987, WCL purchased its rail lines in Wisconsin from the Soo Line Railroad ("Soo Line"), which had previously operated those lines for many decades.

5. From 1978 to 1987, I was Assistant Region Engineer and Division Engineer for the Soo Line, responsible for track maintenance on Soo Line's rail lines in Wisconsin.

6. I have read the Amended Complaint filed by Mark Lange in Winnebago County Circuit Court in Case No 05 CV 1365 (the "Lange Complaint")

7 I have reviewed the copy of the survey attached as part of Exhibit A to the Lange Complaint. A copy of that survey is attached to this affidavit as Exhibit 1.

8 The Lange Complaint focuses on a particular piece of property shown on Exhibit 1 bounded by Tyler Street on the South, a fence line to the east, a line alleged to be WCL's property line on the west, and an endpoint in Lot 1 to the north. The area at issue is highlighted in yellow on Exhibit 1 and I will refer to it herein as the "Property"

9 I have been familiar with the Property since 1978

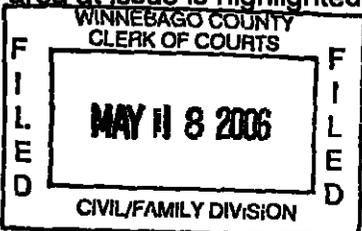


EXHIBIT A
Page 1 of 9

10 The Property has been part of my area of responsibility for the Soo Line and the WCL since 1978

11 Since 1978, the Soo Line and then WCL have used the Property for the following activities in support of rail operations

a Access for railroad personnel to the switching lead tracks so that they can maintain those tracks and associated hydraulic switches

b Access to the rail facilities for snow removal from these facilities as well as access to the walking surfaces for train crews so that WCL can maintain good walking surfaces for train crews involved in switching

c Use as a walkway for conductors while walking alongside trains in the performance of their switching duties

12 First Soo Line and then WCL have continuously used the Property for those purposes since at least 1978.

13 To the best of my knowledge after inquiry, no one other than Soo Line and then WCL has used the Property since 1978, other than to sporadically trespass on such Property

14. WCL put up the fence on the eastern boundary line of the Property in 1994 to prevent trespassing

15 After WCL put up the fence on the eastern boundary line of the Property, to the best of my knowledge after inquiry, no one used the Property other than WCL for any purpose whatsoever other than for an occasional, periodic trespass. Such trespassers, to the best of my knowledge, made no changes or improvements to the Property

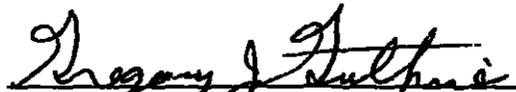
16 Without the Property, WCL would be hampered in performing switching operations in its yard in Neenah

17 WCL needs the Property to perform switching operations in its yard in Neenah

18 The photographs attached as Exhibit 2, incorporated herein, show the Property to which I have testified herein and illustrate the area as well as the fence to which I have testified herein

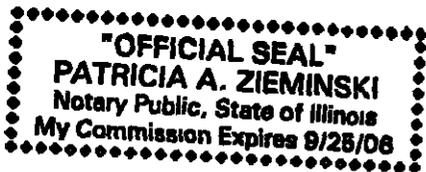
19 WCL does business under the name "CN" However, Canadian National Railway Company has no interest in and does not operate on the Property.

20 If called before a Court to testify, I would testify as I have stated in this affidavit
Further affiant sayeth not


Gregory J. Guthrie

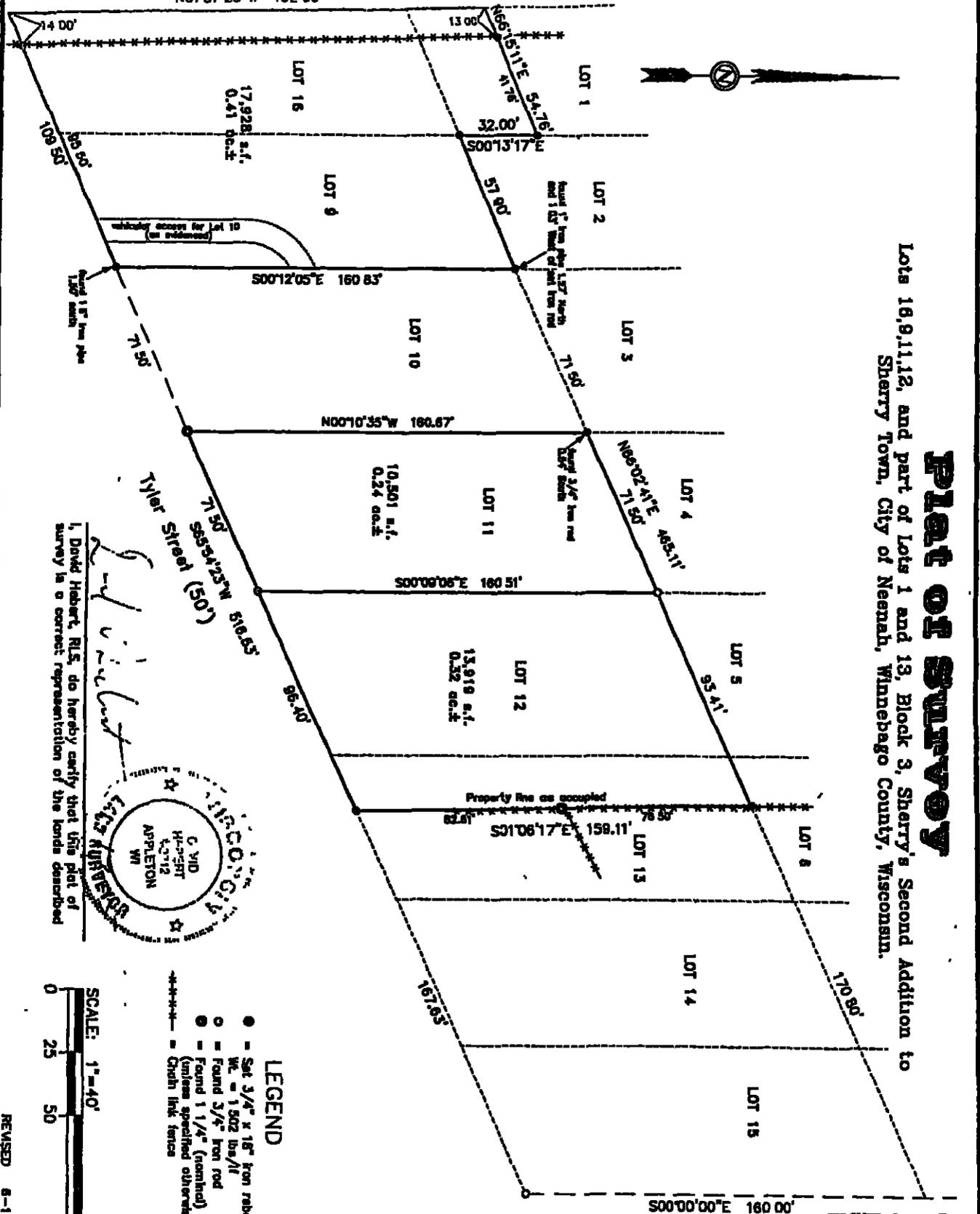
Subscribed to and sworn to
before me this 6th day of
March, 2006


Notary Public



Wisconsin Central LTD Railroad

N01°07'28"W 192.00'

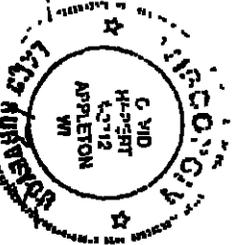


Lots 16, 9, 11, 12, and part of Lots 1 and 13, Block 3, Sherry's Second Addition to Sherry Town, City of Neenah, Winnebago County, Wisconsin.

PLAT OF SURVEY

I, David Hebert, R.L.S. do hereby certify that this plat of survey is a correct representation of the lands described

David Hebert
 David Hebert
 R.L.S.



LEGEND

- - Set 3/4" x 18" iron rebar
- - 1 5/8" iron pipe
- - Found 3/4" iron rod
- - Found 1 1/4" (found) iron pipe (unless specified otherwise)
- - Chain link fence



REVISED 8-17-05

EXHIBIT 1

Henry Street (50')

EXHIBIT A

Page 4 of 9

DATE 06-08-05
 DRAWN BY TS
 SCALE 1"=40'
 SHEET # 1 of 1
 DRAWING NUMBER 05047B01

HA Hebert Associates, Inc.
 Land Surveying • Soil Testing • Engineering Systems
 1110 W Wisconsin Ave
 Appleton, WI 54914
 920-734-8373
 Fax: 920-734-3988

A survey for
 Mark Lange
 1108 Hewit St.
 Neenah, WI 54956

EXHIBIT 2

WBEN

EXHIBIT A
Page 5 of 9



EXHIBIT A
Page 6 of 9

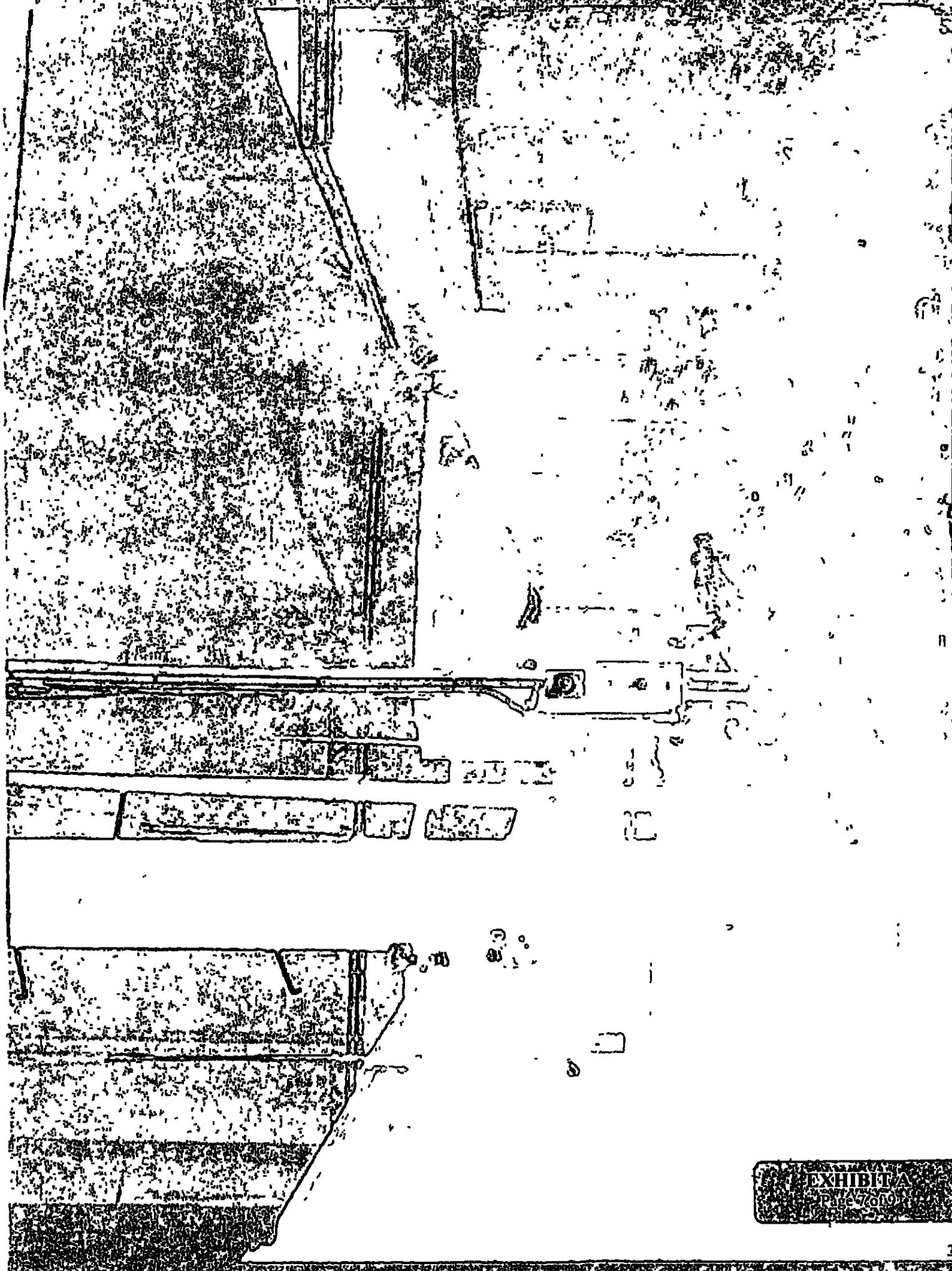


EXHIBIT A
Page 7000



EXHIBIT A
Page 8 of 9

County of Cook)
)
State of Illinois)

**SUPPLEMENTARY AFFIDAVIT OF
GREGORY J. GUTHRIE**

I, Gregory J. Guthrie, being duly sworn, depose and state as follows.

1. I submit this affidavit to supplement the affidavit I swore to on March 6, 2006.
 2. In my previous affidavit, I described how WCL uses the property at issue in the Lange Complaint (Winnebago County Circuit Court, Case No. 05 CV 1365).
 3. If WCL no longer could use the property at issue in the Lange Complaint, it could not safely use the tracks that adjoin the property for switching.
 4. In addition, without use of the subject property, WCL could not access the tracks that adjoin the subject property in order to properly maintain the tracks and associated hydraulic switches, nor safely conduct snow removal along side the track in order to maintain safe walking surfaces for crews when they are switching.
 5. If called before a Court to testify, I would testify as I have stated in this affidavit
- Further affiant Sayeth not.

Gregory J. Guthrie
Gregory J. Guthrie

Subscribed and sworn to
Before me this 10th day of
July, 2006

Kristine Bailey
Notary Public

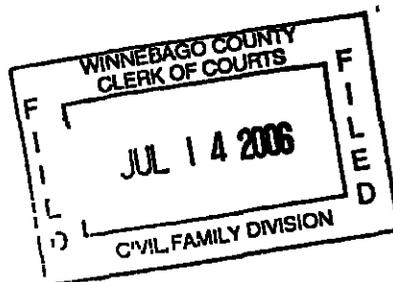


EXHIBIT A
Page 9 of 9

STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY

MARK R. LANGE
1108 Hewitt Street
Neenah, WI 54956

Plaintiff,

Classification No 30405

Case No. 05 CV 1365

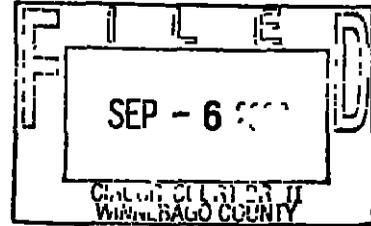
v.

CANADIAN NATIONAL RAILROAD, INC.
455 North City Front Plaza Drive
Chicago, IL 60611-5504

and

WISCONSIN CENTRAL LIMITED
17641 S Ashland
Homewood, IL 60430

Defendants.



ORDER

This matter coming before the Court on a motion for summary judgment by Wisconsin Central Ltd , with due notice given to the parties and the Court being fully advised;

IT IS ORDERED.

1. This case is set for status by telephone conference at 8.15 a.m on February 23, 2007, and
- 2 The plaintiff is directed to bring a petition to the Surface Transportation Board regarding the issue of subject matter jurisdiction.

The Honorable Scott C Woldt

Date: 9-6-06

EXHIBIT B

Page 1 of 1

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Reply of Wisconsin Central Ltd to Mark Lange's Petition for Declaratory Order was served upon the address listed below by placing with an overnight commercial courier at Chicago, Illinois this 7th day of June, 2007.

Mr Brian D Hamill
Dempsey, Williamson, Young, Kelly & Hertel, LLP
One Pearl Avenue
Suite 302
Oshkosh, Wisconsin 54901



Michael J Barron, Jr

Michael J Barron, Jr.
Attorney for Wisconsin Central Ltd.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
Phone. (312) 252-1500
Fax: (312) 252-2400