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May 17, 2010

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MAY 17 2010

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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Finance Docket No. 35110**
Florida Department of Transportation -- Acquisition
Exemption -- Certain Assets of CSX Transportation, Inc.

Dear Chief Brown:

Attached for filing in the above-captioned proceeding is the **Reply of Florida Department of Transportation to Comments of National Railroad Passenger Corporation and Brotherhood of Railroad Signalmen**, dated May 17, 2010.

A copy of the Reply has been served by electronic and overnight delivery on all parties of record in this proceeding.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Florida Department of Transportation

TJL:tl

Attachment

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35110

FLORIDA DEPARTMENT OF TRANSPORTATION
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

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**REPLY OF FLORIDA DEPARTMENT OF TRANSPORTATION TO
COMMENTS OF NATIONAL RAILROAD PASSENGER CORPORATION
AND BROTHERHOOD OF RAILROAD SIGNALMEN**

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**ATTORNEYS FOR FLORIDA
DEPARTMENT OF TRANSPORTATION**

Dated: May 17, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35110

FLORIDA DEPARTMENT OF TRANSPORTATION
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.

**REPLY OF FLORIDA DEPARTMENT OF TRANSPORTATION TO
COMMENTS OF NATIONAL RAILROAD PASSENGER CORPORATION
AND BROTHERHOOD OF RAILROAD SIGNALMEN**

Florida Department of Transportation ("FDOT") hereby replies to the comments of the National Railroad Passenger Corporation ("Amtrak") and the Brotherhood of Railroad Signalmen ("BRS") opposing FDOT's motion to dismiss its related notice of exemption in this proceeding.¹ FDOT proposes to acquire the physical assets of a CSX Transportation, Inc. ("CSXT") line extending through Orlando, Florida (the "Orlando Line") for the purpose of establishing a commuter rail service known as "SunRail," and seeks a Board determination pursuant to Maine DOT – Acq. Acq. Exempt. – Maine Central R. Co., 8 I.C.C.2d 835 (1991) ("Maine DOT") and its progeny that the proposed transaction is not subject to the Board's jurisdiction under 49 U.S.C. § 10901 and will not result in FDOT becoming a rail common carrier. Neither Amtrak nor BRS provide any persuasive reason why Maine DOT does not apply here or why FDOT's motion to dismiss should not be granted.

Amtrak insists that the Board must require FDOT to indemnify Amtrak for Amtrak's own negligence in conducting operations over the Orlando Line, on which Amtrak is a tenant. Amtrak's novel jurisdictional rationale for Board intervention in such a matter – that

¹ As discussed further below, Amtrak also seeks revocation of FDOT's exemption. The Board need not reach that issue if FDOT's motion to dismiss is granted.

serving as a host for Amtrak trains is a "common carrier" function regulated under Subtitle IV of Title 49 of the U.S. Code – is expressly contradicted by the applicable statute and relevant case law. Amtrak's equally novel policy rationale for Board intervention – that Amtrak will face debilitating liability exposure for SunRail's operations – misapprehends Florida state law, is belied by similar arrangements in Florida and elsewhere where Amtrak has operated successfully for years, and seeks backdoor remedies that Amtrak could not otherwise achieve under its governing federal statute. Amtrak may not have gotten what it wants in Florida, but that fact standing alone does not justify an assertion of jurisdiction by this Board where such jurisdiction plainly does not exist.²

BRS mounts a broadside attack on the continued validity of Maine DOT that repeats the arguments BRS had already made in several previous cases. Since the filing of BRS's comments here, the Board has rejected BRS's position and affirmed that Maine DOT governs in situations such as this. Massachusetts Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc., Finance Docket No. 35312 (STB served May 3, 2010) ("MassDOT"). MassDOT fully disposes of BRS's arguments here.

FDOT notes who is not present in this proceeding: any of the shippers on the Orlando Line, service to whom is the major focus of the Maine DOT analysis. A copy of FDOT's notice of exemption, motion to dismiss and the accompanying appendix (containing copies of the operative agreements between FDOT and CSXT) was served on all 57 known shippers on the Orlando Line. FDOT Motion to Dismiss at 21-22; FDOT certification letter filed April 20, 2009. The absence of any objections from those parties confirms (as FDOT explained at length in its motion to dismiss) that CSXT's exclusive retained freight easement on the

² Amtrak raises *no* operational issues with the intended upgrading and shared use of the Orlando Line, limiting its comments solely to matters of liability and indemnification.

Orlando Line allows CSXT fully to carry out its common carrier freight obligations on the line, without undue interference or control by FDOT. That is the core of the Maine DOT test, and neither Amtrak nor BRS offers any argument or evidence that it has not been satisfied here. FDOT's motion to dismiss should be granted.

I. AMTRAK

A. Protection of Amtrak's Operations on the Orlando Line Under the FDOT-CSXT Agreements

Although not acknowledged by Amtrak in its comments, FDOT and CSXT have made extensive provision in their transactional agreements to recognize and protect Amtrak's rights to operate over the Orlando Line under the current Amtrak-CSXT agreement. Thus the Contract for Sale and Purchase between FDOT and CSXT ("Sale Contract")³ states that CSXT's retained perpetual freight operating easement on the Orlando Line is "subject to the rights of the National Railroad Passenger Corporation (Amtrak) under the Agreement dated June 1, 1999 and all . . . permitted supplements thereto, such agreement and supplements being between CSXT and Amtrak (collectively, the 'Amtrak Agreement')" Sale Contract at 1-2. In addition, the conveyance of the physical assets of the Orlando Line itself to FDOT is specifically "subject to . . . (y) the rights of Amtrak under the Amtrak Agreement" Sale Contract, § 1.01(a). The proposed Deed for the transaction⁴ incorporates parallel language. E.g., Deed at 2 ("THE PROPERTY IS CONVEYED EXPRESSLY SUBJECT TO: . . . (b) the rights of Amtrak under the Amtrak Agreement . . .").

³ Provided at Tab 1 of the Appendix to FDOT's Motion to Dismiss ("FDOT Appendix"), filed April 3, 2009.

⁴ The Deed is Exhibit 4 to the Sale Contract, and was separately provided at Tab 4 of the FDOT Appendix.

The Central Florida Operating and Management Agreement between FDOT and

CSXT ("CFOMA")⁵ explicitly provides:

It is understood by the parties hereto that, under its management, direction and control, State [FDOT] shall furnish CSXT adequate facilities, including, without limitation, tracks and bridges, for . . .
(ii) CSXT's performance of its obligations to Amtrak under the Amtrak-CSXT Agreement or as provided by law

CFOMA, § 1(c). Until and unless FDOT and Amtrak enter into their own agreement governing Amtrak's operations, the parties also are clear that "CSXT may modify or amend the Amtrak-CSXT Agreement from time to time during the term of [the CFOMA] and may enter into new agreements with Amtrak pertaining to Intercity Rail Passenger Service, all without the consent of State, except as otherwise expressly provided below." CFOMA, § 3(l)(i). FDOT's consent, where required, cannot be unreasonably withheld, and is explicitly not required "in the event that such action [*i.e.*, an extension of the Amtrak-CSXT contract] is otherwise *required by law . . .*" *Id.* (emphasis added). The "otherwise required by law" language is plainly a reference to Amtrak's rights under Section 402(a) of the Rail Passenger Service Act of 1970 ("RPSA") (now codified at 49 U.S.C. § 24308(a)), under which the Board may compel railroads to allow Amtrak's use of their tracks. See also CFOMA, § 1(c), supra (FDOT must furnish adequate facilities for "CSXT's performance of its obligations to Amtrak . . . *as provided by law . . .*" (emphasis added)).

As Amtrak notes, CFOMA contemplates that eventually FDOT and Amtrak will enter into their own agreement, replacing the existing Amtrak-CSXT agreement and governing

⁵ An executed copy of CFOMA, dated as of November 30, 2007, was provided at Tab 2 of the FDOT Appendix. An amended CFOMA, dated as of March 29, 2010, was submitted as Exhibit 3 of FDOT's March 31, 2010 letter filing with the Board. References herein to CFOMA are to the amended version, although the section numbering of the agreement has not changed. FDOT's March 31, 2010 letter filing explains the relatively limited changes that were made in the amended CFOMA.

Amtrak's continuing operations over the Orlando Line. CFOMA, § 3(l)(ii). But there is nothing in CFOMA or the other agreements between FDOT and CSXT that *compels* such an agreement, and the language of CFOMA specifically contemplates that such an agreement may never be reached. See CFOMA, § 2(a)(ii) (certain compensation arrangements shall remain in place "until such time, *if ever*, as State and Amtrak enter into a separate agreement as contemplated in Subsection 3(l) of this Agreement . . .") (emphasis added); CFOMA, § 3(l)(ii) ("*In the event that* State and Amtrak enter into the Amtrak-State Agreement, then the terms and conditions of this [CFOMA] shall be amended to reflect the changes arising out of or resulting from such agreement.") (emphasis added). Whether the contemplated FDOT-Amtrak agreement is ever reached is obviously a matter within Amtrak's control; Amtrak's implication that it is being forced into an involuntary contractual relationship with FDOT is wrong. In the meantime, Amtrak will continue to have enforceable rights against CSXT pursuant to the existing Amtrak-CSXT agreement to operate on the Orlando Line, and retains its rights against CSXT under Section 402(a) of RPSA to compel its continued use of the Orlando Line in the event the existing Amtrak-CSXT agreement expires without renewal.⁶ As discussed above, FDOT has explicitly recognized and protected those contractual and statutory rights in its agreements with CSXT.

FDOT notes that the contemplation of an FDOT-Amtrak agreement covering the Orlando Line is neither surprising nor troublesome, since that is *exactly* the arrangement that FDOT and Amtrak reached in South Florida, where FDOT owns a rail line between West Palm

⁶ FDOT takes no position as to whether, once it acquires the physical assets of the Orlando Line, FDOT will be a "regional transportation authority" against which Amtrak could directly assert its Section 402(a) access rights under RPSA. See 49 U.S.C. § 24308(a). RPSA defines a "regional transportation authority" as "an entity established to provide passenger transportation in a region." 49 U.S.C. § 24102(10). It is not clear whether that definition would apply to FDOT. Regardless, Amtrak would retain Section 402(a) rights to access the Orlando Line via the retained perpetual operating easement held by CSXT.

Beach and Miami (the "South Florida Line") over which (as is contemplated on the Orlando Line): 1) commuter operations are conducted; 2) CSXT provides freight service pursuant to an exclusive retained freight easement; and 3) Amtrak operates intercity passenger trains. See FDOT Motion to Dismiss at 2, n.1. From FDOT's acquisition of the South Florida Line from CSXT in 1988⁷ until 1997, Amtrak's operations on the line continued pursuant to Amtrak's existing agreement with CSXT – just as is contemplated on the Orlando Line. See Agreement Between Amtrak and FDOT, dated as of May 1, 1997 (the "South Florida Agreement"), excerpts attached hereto as Exhibit 1, at 1 (recognizing that, "subsequent to the acquisition of the [West Palm Beach-Miami] Corridor by FDOT, Amtrak has continued to operate on the Corridor pursuant to the RPSA and its agreement with CSXT."). In 1997 – nine years after FDOT purchased the corridor from CSXT – Amtrak and FDOT entered into their own agreement covering operations in South Florida, and that agreement remains in effect today. See Exhibit 1. As discussed further below, the South Florida Agreement includes the "fault-based" liability provisions (and absence of state indemnification) that Amtrak protests so vigorously now.⁸

⁷ Amtrak argues in a footnote that FDOT's long-standing ownership of the South Florida Line renders it a rail carrier, such that Maine DOT would not apply to FDOT's acquisition of the Orlando Line here. Amtrak Comments at 2 n.1. As FDOT has explained (FDOT Motion to Dismiss at 3 n.3), FDOT's acquisition of the South Florida Line from CSXT – subject to a permanent, exclusive retained freight easement held by CSXT – predated the issuance of Maine DOT by several years, and was the subject of informal consultation with Interstate Commerce Commission staff at that time. Apparently neither the Commission nor FDOT concluded that further agency action was required to confirm FDOT's non-carrier status on the South Florida Line, and the absence of a Maine DOT-type finding does not itself cause common carrier status to vest. It is also not the case, as Amtrak claims, that Maine DOT could not be applied to transactions that would otherwise be governed by 49 U.S.C. §§ 10902 or 11323. See, e.g., State of Vermont – Acquisition Exemption – Certain Assets of Boston and Maine Corporation, Finance Docket No. 33830 (STB served June 8, 2000) at 2.

⁸ FDOT has offered to enter into an agreement with Amtrak on the Orlando Line that would simply incorporate the terms of the existing Amtrak-FDOT agreement in South Florida, to no avail. See Exhibit 2 (FDOT April 23, 2009 letter to Amtrak and excerpts of tendered agreement).

Whatever the reason for Amtrak's change of heart, it hardly seems unreasonable in light of the South Florida Agreement for FDOT and CSXT to have contemplated that a similar agreement might eventually be reached on the Orlando Line. In any event, until and unless Amtrak decides that it wishes to enter into such an agreement with FDOT, Amtrak's rights on the Orlando Line under its existing Amtrak-CSXT agreement are fully protected.

B. Amtrak's Novel and Unsupported Assertion of STB Jurisdiction Over the Proposed Transaction

Amtrak latches on to a contemplated future FDOT-Amtrak agreement to argue that, because conceivably FDOT might some day assume hosting responsibility for Amtrak's trains on the Orlando Line from CSXT, a "common carrier" interest is being passed from CSXT to FDOT that removes this case from the scope of Maine DOT. Indeed, this is the *sole* predicate for Amtrak's jurisdictional argument. See, e.g., Amtrak Comments at 6 (Maine DOT does not apply because the proposed transaction "would both transfer and materially impair CSX's common carrier-based obligations to Amtrak."); Amtrak Comments at 11 ("CSXT's proposed line sale to FDOT would imperil the Amtrak passenger service which CSXT has a common-carrier-based obligation to support."); Amtrak Comments at 11-12 ("CSXT appears to be assigning to FDOT its common-carrier-based responsibility under the RPSA to provide services and facilities to Amtrak. . . . This assignment of responsibility to FDOT is fundamentally at odds with the *State of Maine* requirement that all common carrier responsibilities must continue to reside unabated with the railroad seller of the line"). As discussed above, Amtrak's assumption that FDOT will necessarily take over Amtrak hosting duties on the Orlando Line from CSXT is flawed. More fundamentally, however, its invention of a "common carrier" obligation to host Amtrak trains is baseless.

To sustain its argument, Amtrak attempts to draw a link between former Section 401(a) of RPSA⁹ and Section 402(a) of RPSA.¹⁰ Amtrak Comments at 10. Section 401(a) provided for rail carriers to turn their remaining passenger trains (along with a payment) over to Amtrak, while Section 402(a) gives Amtrak "a statutory right of access to freight railroad lines" *Id.* According to Amtrak, this was essentially a common carrier quid pro quo: railroads could escape their common carrier obligation to operate passenger trains themselves (through Section 401(a)), but assumed a common carrier obligation to host Amtrak trains (through Section 402(a)). Amtrak's sole support for this proposition is a citation to dicta in a footnote in a Supreme Court decision. Amtrak Comments at 10-11.

Unfortunately for Amtrak, the governing statute and precedent are directly to the contrary. Section 401(a) was explicit:

Upon its entering into a valid contract [for transfer of passenger trains to Amtrak], the railroad shall be relieved of *all its responsibilities as a common carrier of passengers by rail in intercity rail passenger service under subtitle IV of Title 49* or any State or other law relating to the provision of intercity passenger service.

45 U.S.C. § 561(a)(1) (1982) (repealed). Amtrak now wishes to claim that CSXT and other freight railroads have a remaining common carrier obligation under Subtitle IV of Title 49 to host Amtrak passenger trains, such that a transfer of that obligation would be regulated by the Board under 49 U.S.C. § 10901. How that squares with a statute providing just the opposite is left unexplained by Amtrak.

⁹ Originally codified at 45 U.S.C. § 561(a); repealed, Pub. L. No. 103-272, § 7(b), 108 Stat. 1379 (1994).

¹⁰ Originally codified at 45 U.S.C. § 562(a); later recodified at 49 U.S.C. § 24308(a).

The disparity between Amtrak's position and established precedent is similarly stark:

The argument that sections 401 and 402(a) are interdependent and that section 402(a) applies only to carriers that terminated service pursuant to section 401 is similarly lacking in merit. The two sections function separately and serve different purposes.

Metropolitan Transp. Auth. v. ICC, 792 F.2d 287, 294 (2nd Cir. 1986), crt. denied, 479 U.S. 1017 (1987) ("MTA").

The Commission has long held that sections 401 and 402 operate independently of one another. In *Penn Central-Compensation for Passenger Service*, 342 I.C.C. 765, 767-768 (1973), Amtrak urged the Commission to consider the economic benefit that the rail carrier enjoyed when Amtrak relieved it of its obligation to provide intercity rail passenger service under section 401 in every section 402(a) application to set trackage right fees. The Commission rejected Amtrak's argument, however, finding that the rail carrier's payment to Amtrak required under section 401 provided *the entire consideration for being relieved of its common carrier obligation*. Contrary to Metro's contentions, sections 401 and 402(a) are not interdependent.

National Rail Pass. Corp. Applic. Under Section 402(a), 1 I.C.C.2d 243, 246 (1984) (emphasis added), aff'd sub nom. MTA, supra.

There is thus simply no basis to assert that Amtrak's access powers under Section 402(a), or the Board's setting of terms and compensation for Amtrak access pursuant to that section, arise under the Interstate Commerce Act or implicate a common carrier responsibility regulated by the Board. "It bears repeating that the Commission, when called upon to fix compensation pursuant to section 402(a), acts in a significantly different capacity than when called upon to regulate common carrier activity in the first instance." National R. Passenger Corp. v. ICC, 610 F.2d 865, 879 (D.C. Cir. 1979).

As discussed above, of course, Amtrak retains its Section 402(a) access rights with respect to the Orlando Line; that is, in the event of expiration of the current Amtrak-CSXT agreement without a replacement (either with CSXT or FDOT), Amtrak could seek to have the Board set terms and compensation for Amtrak's continued use of the Orlando Line pursuant to RPSA. Amtrak does not mention that remedy in its Comments, for what may be an obvious reason: the liability provisions that the Board would impose in such a proceeding are far from the "no-fault" arrangement to which Amtrak insists it is entitled, and indeed not even as favorable as the "fault-based" provision that Amtrak and FDOT currently have in the South Florida Agreement and that FDOT has offered Amtrak on the Orlando Line. National R.R. Passenger Corp. – Applic. – 49 U.S.C. 24308(a), 3 S.T.B. 157, 158-162 (1998) ("Amtrak/Guilford") (requiring Amtrak to assume liability for all damages not arising from gross negligence or willful or wanton misconduct of host railroad; "[w]e conclude that the liability for residual damages arising out of Amtrak operations is an incremental cost for which Guilford is entitled to compensation."). Dissatisfied with the remedy available under the governing and applicable statute, Amtrak instead seeks to invent Board jurisdiction under 49 U.S.C. § 10901 to argue that the Board can impose Amtrak's preferred liability terms through its conditioning authority. Amtrak Comments at 14, n.21. That is not a relevant or permissible basis on which to distinguish Maine DOT, and the Board should grant FDOT's motion to dismiss.

C. The Exaggerated Nature of Amtrak's Claims Regarding Liability and Indemnification

Amtrak insists here – as it has insisted in its recent negotiations with FDOT – that Amtrak must have a "no-fault" liability indemnification from FDOT for Amtrak's operations over the Orlando Line, or else "the viability of Amtrak's intercity passenger service is fundamentally threatened by the transaction." Amtrak Comments at 11. Amtrak raises the

spectre that "Amtrak becomes a 'deep-pocket' target for any claimant which would pursue a claim against FDOT but for its sovereign immunity protection, and hence looks to recover from Amtrak damages that appropriately should be borne by FDOT." Amtrak Comments at 13. In reality, what Amtrak seeks is indemnification for its own negligence, and its doomsday claim that it can't operate without such indemnity is belied by those instances where it does just that today.

1. Amtrak Faces No Liability to Third Parties For Negligent Acts of FDOT

Fairly read, Amtrak's comments give the impression that Amtrak faces huge liability exposures for FDOT's (or its operator's) negligent operation of commuter trains on the Orlando Line that collide with Amtrak trains. Amtrak Comments at 13 (Amtrak would be "deep pocket" for claimants unable to recover from FDOT); *Id.* (Amtrak would be required to "subsidize FDOT with respect to the latter's liability exposure growing out of its own commuter rail operations."). This simply ignores the fact that Florida has *abolished* the doctrine of joint and several liability. Section 768.81(3) of the Florida Statutes provides:

Apportionment of damages.—In cases to which this section applies [negligence cases], the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.

Fla. Stat. § 768.81(3). Amtrak thus faces liability only to the extent of its own fault, and cannot be required to pay damages that are allocable to FDOT's or another party's negligence, even if that party is unable to pay the damages allocated to it.

Under Amtrak's preferred "no-fault" arrangement, it appears that Amtrak would be responsible for Amtrak's own passengers in any event, regardless of who is at fault. See Amtrak Comments at 3 (Amtrak seeks indemnity arrangement with FDOT comparable to

existing agreement with CSXT, "with Amtrak bearing responsibility for injuries to Amtrak passengers.").¹¹ Combined with the absence of any joint and several liability against Amtrak for the negligent acts of others, what Amtrak actually seeks in this proceeding is a Board mandate that FDOT must be required to indemnify Amtrak against Amtrak's *own* negligence with respect to SunRail commuters. As noted above, such a requirement would be inconsistent with the liability terms imposed by the Board in a Section 402(a) – the proper forum for considering such matters. Beyond that, it is difficult to imagine how allowing Amtrak to remain responsible for its own negligence is inconsistent (as Amtrak claims) with the public interest or with the "Board's statutory obligations to support safe operations." Amtrak Comments at 14 & nn.19-20.

Ultimately, Amtrak's complaint seems to be that the mere operation of commuter trains on the Orlando Line increases the possibility that Amtrak's negligent operations may harm a larger number of people. Taken to its logical extreme, that rationale would mean that, once Amtrak starts to operate on a line, the owner or other parties with operational rights on the line are prohibited from increasing their operations without the consent of Amtrak or the satisfaction of whatever liability and indemnification provisions Amtrak seeks to impose. That turns the concept of Amtrak's statutory responsibility for the incremental costs of its operations on its head – instead of Amtrak's operations being a compensable burden on the host, the host's operations are considered a compensable burden on Amtrak. Amtrak apparently believes that is an issue that needs Congressional attention, see Amtrak February 26, 2010 letter to Congressional leaders attached hereto as Exhibit 3, but it forms no basis for an assertion of STB jurisdiction under the Interstate Commerce Act.

¹¹ Amtrak's assumption of liability for its own employees, passengers and equipment seems to be the uniform practice nationwide. See Amtrak/Guilford, 3 S.T.B. at 158-159.

2. Amtrak Has Existing Arrangements Without the Liability and Indemnification Terms It Demands Here

While Amtrak insists that "the viability of Amtrak's intercity passenger service" over the Orlando Line is "fundamentally threatened" in the absence of the "no-fault" liability and indemnification terms that Amtrak demands, Amtrak has operated over FDOT's South Florida Line for the past thirteen years pursuant to the Amtrak-FDOT South Florida Agreement that has no indemnification terms and contains the following fault-based liability provision:

Risk of Liability. Except as provided in the last sentence of this paragraph, to the extent permitted by law, FDOT shall be responsible for any damage or liability arising from the Tri-Rail [commuter] operations. Except as provided in the next sentence, Amtrak shall be responsible for any damage or liability arising from the Amtrak operations on the [West Palm Beach-Miami] Corridor. In the event of an accident involving operations of both parties, each party (i.e. Amtrak on the one hand and FDOT and Tri-Rail on the other hand) shall bear the share of damage or liability caused by its negligence as determined by a court of appropriate jurisdiction.

South Florida Agreement, § 7.1 (attached as Exhibit 1). Prior to entering into the South Florida Agreement with FDOT, Amtrak had operated on the South Florida Line for nine years (1988-1997) pursuant to its existing agreement with CSXT, without separate terms governing liability and indemnification with FDOT. As discussed above, Amtrak has the carefully-preserved right to similarly operate on the Orlando Line under the existing Amtrak-CSXT agreement, until and unless Amtrak and FDOT enter into their own agreement. And FDOT has offered to enter into such an agreement with Amtrak on essentially the same terms as the South Florida Agreement. See Exhibit 2 hereto. The South Florida arrangements have not "fundamentally threatened" Amtrak's service on the South Florida Line, which has continued uninterrupted – and without significant incident – for more than two decades since FDOT acquired the line's physical assets. Amtrak has now apparently decided that what was acceptable to it in the recent past is no longer

so. But that is not a "crisis" that jeopardizes rail passenger service or requires or warrants Board intervention.

A recent report by the U.S. Government Accountability Office reviewed liability and indemnification arrangements relating to commuter rail operations across the nation, including such arrangements between Amtrak and commuter agencies. *COMMUTER RAIL – Many Factors Influence Liability and Indemnity Provisions, and Options Exist to Facilitate Negotiations*, GAO-09-282 (February 2009) ("GAO Report"). The GAO Report confirms several other instances in which Amtrak has liability provisions with commuters that are different than the "no-fault" indemnification arrangement that Amtrak insists it must have on the Orlando Line. GAO Report at 51-52, Appendix III (showing Amtrak's fault-based arrangement with the New Mexico Department of Transportation and "combination" of no fault and fault-based provisions with the Chicago-area commuter authority). Indeed, "[s]overeign immunity laws in New Mexico have also resulted in Amtrak's assumption of more liability than it assumes under some agreements with other commuter rail agencies." GAO Report at 29. Thus, the Florida situation is not unique even as to the sovereign immunity laws which Amtrak now strains to attack. And while Amtrak operates on commuter-owned lines in the Boston area under a "no fault" arrangement, *Amtrak* covers all liability under that arrangement. GAO Report at 51, Appendix III.

The GAO Report in its very title confirms that "many factors influence liability and indemnity provisions" on the country's commuter rail systems.¹² Amtrak's situation on the

¹² The GAO specifically notes that "the freight railroads' business perspective influences the negotiation's starting position between commuter rail agencies and freight railroads." GAO Report at 6; see also GAO Report at 39 ("As owners of most of the rail infrastructure in the United States, freight railroads determine whether to allow commuter rail operations on their infrastructure and set the terms and conditions, including the liability and indemnity

Orlando Line is common to other shared lines in the nation, including commuter rail start-ups dating as recently as 2006. See New Mexico Department of Transportation – Acquisition Exemption – Certain Asscts of BNSF Railway Company, Finance Docket No. 34793 (STB served February 6, 2006). Amtrak operates successfully on those lines today, and will be able to do so on the Orlando Line as well.

3. Amtrak Mischaracterizes the Nature of Florida State Law and Sovereign Immunity

Amtrak apparently believes that a state agency subject to its own state constitution's sovereign immunity provisions is not qualified to be a commuter rail operator, and that it is the Board that should make and enforce such determinations. Amtrak Comments at 14. Such a policy conclusion would have widespread ramifications for a number of existing commuter authorities in the nation. As discussed above, where Amtrak would not be liable for the negligent actions of the commuter agency in any event (as in Florida, where joint and several liability is not applicable), there is no plausible rationale for Board interference in the internal workings of the laws of a sovereign state.

Beyond that, however, Amtrak's pleading gives the false impression that passengers injured by potential FDOT negligence on the Orlando Line would be left utterly unprotected under Florida's sovereign immunity laws. That is far from a fair characterization of Florida law or the actual FDOT experience on the South Florida Line.

As Amtrak notes, Florida law allows for a limited exception to a state agency's sovereign immunity for tort liability, up to \$100,000 per individual or \$200,000 per occurrence.

provisions, of this access."). Amtrak's repeated refrain that, as a tenant on the Orlando Line, it should be awarded the same liability and indemnification terms that CSXT – the owner of the line – was able to negotiate as a condition of the sale of the line to FDOT simply ignores this reality.

Fla. Stat. § 768.28(5). As a result of action in the most recent session of the Florida Legislature, those limits will rise to \$200,000 and \$300,000, respectively, effective October 1, 2011. Chapter 2010-26, Laws of Florida (2010) (amending Fla. Stat. § 768.28(5)). This provision only limits the judicial enforcement of judgments exceeding the statutory caps, not the obtaining of such judgments in the first instance. Thus, "[t]he state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment." Fla Stat. § 768.28(5). Where such a judgment exceeds the statutory limits, there are two processes that are available and in fact utilized to address valid claims.

First, an agency "may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature" Fla. Stat. § 768.28(5).¹³ FDOT has long-standing statutory authority to purchase insurance and to self-insure in anticipation of potential claims, judgments or legislative claims bills arising from FDOT's own negligence. Fla. Stat. § 768.28(16)(a). Florida's recent comprehensive rail legislation allowing the SunRail project to proceed specifically confirms FDOT's authority to purchase insurance and self-insure for rail corridor liabilities up to \$200,000,000. Chapter 2009-271, Section 6, Laws of Florida (2009) (adding new Fla. Stat. § 341.302(17)(b)). Under CFOMA, FDOT is contractually required to purchase and maintain in force not less than \$200,000,000 liability insurance coverage. CFOMA, § 21(b). Thus, the

¹³ Obtaining insurance does not itself waive the sovereign immunity defense or increase the \$100,000/\$200,000 statutory limit of liability thresholds. *Id.* It does, however, provide the agency with the ability to pay claims or judgments above the thresholds where the circumstances warrant. As shown *infra*, at p. 17, that is exactly what FDOT has done.

agency has the ability to settle tort claims made or judgment rendered against it based on negligence up to that amount.¹⁴

How FDOT exercises that authority is demonstrated by the experience on the South Florida Line, where FDOT has had self-retained and purchased insurance coverage totaling \$125,000,000¹⁵ and has settled a number of rail corridor-related tort claims over the \$100,000 limit. See Exhibit 4 hereto (summarizing railroad incident settlements on the South Florida Line of \$100,000 and over). Further, in 20 years of commuter rail operations on the South Florida Line, with joint track usage by Amtrak and CSXT, there has never been a tort claim or judgment involving FDOT or the commuter operator that has exceeded FDOT's self-retention liability coverage limits of \$5 million. Nor has there ever been any instance in that same period where Amtrak has raised any issue as to FDOT's investigation or resolution of tort claims in the corridor.

Second, any portion of a judgment in excess of the \$100,000/\$200,000 statutory limitation not otherwise settled by FDOT in the process described above may be reported by the injured party directly to the Florida Legislature for payment in whole or in part by legislative passage of a claims bill. Fla. Stat. § 768.28(5). Attached as Exhibit 5 is a summary of all claims bills passed by the legislature during the past twelve years, as well as claims bills relating directly to FDOT during that same period. As shown there, the legislative claims process has provided substantial relief to parties allegedly injured by the negligence of state agencies.

¹⁴ As Amtrak certainly knows, the Amtrak Reform and Accountability Act of 1997 limits overall damages from passenger claims in a single incident or accident to a similar \$200 million cap. 49 U.S.C. § 28103(a)(2).

¹⁵ Pending changes in the CSXT-FDOT agreement governing the South Florida Line will increase this insurance level in phases to \$200 million.

Ultimately, FDOT understands the self-evident reality that the development and continued success of passenger rail service in Florida requires that passengers have an ongoing confidence in the safety of the state's commuter operations, a vital component of which must be reasonably ensuring timely investigation and prompt payment of just and fair commuter rail passenger injury or property damage claims. How states and state agencies accommodate that reality within the context of their own constitutional sovereign immunity provisions is a process outside of the Board's jurisdiction, and one entitled to deference even if Board jurisdiction were to exist. Amtrak, certainly, has no cause to be concerned about FDOT's continued good faith application of the Florida sovereign immunity regime, where other state law protects Amtrak from liability for FDOT's negligence in any event. There is no basis for granting Amtrak the relief it seeks in this proceeding.

II. BRS

BRS opposes FDOT's motion to dismiss on the basis that Maine DOT was wrongly decided and should be reversed. In its recent MassDOT decision, the Board considered such arguments at length and confirmed the continued vitality of the Maine DOT line of precedent. The Board found that Maine DOT was based on a permissible reading of 49 U.S.C. § 10901, had been consistently followed for nearly twenty years, and was supported by important policy considerations. MassDOT at 4-8. The Board also rejected arguments that Maine DOT is inconsistent with the judicial decision in Staten Island Rapid Transit Operating Auth. v. ICC, 718 F.2d 533 (2nd Cir. 1983) ("SIRTOA"):

In contrast with the situation in SIRTOA, MassDOT will not acquire any common carrier duty – either latent or patent – to furnish freight service on any of the lines at issue, because it is not buying all of CSXT's property interests in the lines. Rather, MassDOT is acquiring the line's physical assets only; CSXT is retaining a permanent rail freight easement and with it, the full

duty to provide common carrier freight service on the lines. Consequently, although MassDOT will assume responsibility for maintaining the lines at a standard that would permit both freight and passenger service, MassDOT would not have any duty to furnish the freight service. For that reason, the SIRTOA case is distinguishable, and the ICC's and Board's interpretation of the Act in State of Maine has been consistent.

MassDOT at 11-12.

BRS was one of the opposing parties in MassDOT, and its arguments here are identical to those it made in MassDOT (which was decided only days after BRS submitted its comments herein). The factual parameters of the SunRail project and the permanent freight operating easement to be retained by CSXT are similar in all material respects to the project and easement in MassDOT. Because BRS opposes Maine DOT in general, rather than its specific application to this case, MassDOT fully disposes of BRS's arguments and warrants the granting of FDOT's motion to dismiss.

Finally, while not directly relevant to the Maine DOT analysis, FDOT rejects any argument that the eight (8) BRS-represented CSXT signalmen currently working on the Orlando Line have not been offered ample protection in this transaction. As FDOT explained in its motion to dismiss, CSXT offered New York Dock-type protections to all of its potentially affected employees on the Orlando Line. FDOT Motion to Dismiss, Gibson V.S. at 5; see Exhibit 6 hereto (proposed CSXT-BRS agreement). All but two of CSXT's unions accepted that offer; BRS did not.¹⁶ CSXT later offered BRS workers "flow-back" rights, which would have allowed the employees to return to CSXT with their former level of seniority within 12 months of accepting employment with FDOT's contract operator. See Exhibit 7 hereto (CSXT November 24, 2008 letter to BRS with proposed agreement). BRS rejected that offer as well.

¹⁶ The American Train Dispatchers Association also did not accept CSXT's offer. That union has not participated in this proceeding.

In November and December, 2009, during legislative consideration of the SunRail project, FDOT met with Florida legislative leaders regarding the possibility of further accommodations for the subject CSXT signalmen. Those discussions led to FDOT's commitment, expressed directly to the legislative leadership, to 1) remove the signal work from the scope of the current SunRail design-build-maintain contract, 2) bid the signal work separately, and 3) require that bidders for such signal work be "rail employers" under applicable federal law, such that the signalmen would be afforded "the federal protections they seek in the SunRail corridor." See December 8, 2009 letter from Stephanie C. Kopelousos, FDOT Secretary, to the Hon. Jeff Atwater, Florida Senate President, attached hereto as Exhibit 8. BRS obliquely recognizes this commitment in its pleading, BRS Comments at 6 n.3, but fails to indicate that rail labor *accepted* this compromise and *withdrew* its opposition to the SunRail legislation. See BRS Comments, Demott Declaration, Exhibit 1 (December 9, 2009 article from *St. Petersburg Times* indicating that "[w]ith the letter . . . the union withdrew its opposition to the rail legislation Tuesday afternoon."). In light of those actions, BRS's opposing presence in this Board proceeding is curious, as is its claim that "a prime motivation (if not the prime motivation) for the motion for dismissal is so that FDOT can purchase a line that is part of the interstate rail system in a way that FDOT and its contractors can escape coverage under laws that otherwise apply to workers on rail lines that are used for interstate rail transportation." BRS Comments at 38. That, of course, is exactly the opposite of the understanding expressed in FDOT's December 8, 2009 letter with respect to the eight BRS signalmen on the Orlando Line.

As BRS notes, FDOT and BRS are in discussions regarding the implementation of the December 8, 2009 letter (BRS Comments at 6 n.3), and FDOT is committed to pursuing those discussions to conclusion. As BRS also indicates, BRS is now seeking commitments

beyond the eight existing CSXT signalmen on the Orlando Line to encompass anyone else performing signal upgrade construction work on the line – upgrades that would not be undertaken (and employment that would not be available) but for the SunRail project. BRS Comments at 5 and 6 n.3. BRS's concerns have thus migrated away from the protection of its existing signalmen on the Orlando Line to the protection of BRS's own organizational interests in other contract employees who may work on the SunRail project. BRS is free, of course, to pursue its efforts under relevant federal labor law.¹⁷ That is not the purpose, however, of Maine DOT and the Board's authority to regulate transactions under 49 U.S.C. § 10901.

WHEREFORE, FDOT respectfully requests that the Board dismiss FDOT's notice of exemption in this docket as not proposing a transaction within the Board's jurisdiction.

Respectfully submitted,

By:



William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR FLORIDA
DEPARTMENT OF TRANSPORTATION**

Dated: May 17, 2010

¹⁷ Florida is a right to work state, and thus any attempt to force a BRS-representation condition on FDOT contracts for work on the Sunrail project would conflict with Florida law. Fla. Const., Art. I, Sec. 6. FDOT rejects BRS's claim that Florida is anti-union: that same constitutional provision provides that "[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." Id.

EXHIBIT 1

AGREEMENT

BETWEEN

NATIONAL RAILROAD PASSENGER CORPORATION

AND

THE FLORIDA DEPARTMENT OF TRANSPORTATION

Dated: May 1, 1997

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- Appendix I - Maximum Passenger Train Speeds**
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- Appendix VI - Train Dispatching and Priority**

THIS AGREEMENT is between the National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act (hereafter referred to as the "RPSA"), and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002 (hereafter referred to as "Amtrak"), and the Florida Department of Transportation; having offices at 3400 West Commercial Boulevard, Fort Lauderdale, Florida 33309-3421 (hereafter referred to as "FDOT").

WHEREAS, as of April 16, 1971, CSXT's predecessors entered into an Agreement with Amtrak, pursuant to Section 401(a) of the RPSA, with respect to the provision of services and facilities for intercity rail passenger operations, which Agreement has subsequently been amended and consolidated; and

WHEREAS, pursuant to that certain Contracts for Installment, Purchase and Sale dated May 11, 1988, FDOT acquired from CSX Transportation, Inc. (CSXT), the rail lines and related facilities between West Palm Beach and Miami, Florida (hereinafter referred to as "Corridor") which Agreement specifically excluded certain rights and obligations including a retained freight easement and their existing agreement between CSXT and Amtrak; and

WHEREAS, subsequent to the acquisition of the Corridor by FDOT, Amtrak has continued to operate on the Corridor pursuant to the RPSA and its agreement with CSXT; and

WHEREAS, in accordance with the terms and conditions of the Contracts for Installation Purchase and Sale between FDOT and CSXT, FDOT assumed responsibility to negotiate an agreement with Amtrak for continued Amtrak operation; and

WHEREAS, FDOT owns the Corridor subject to CSXT's retained easement for freight service, and has granted operating rights over the Corridor to Tri-County Commuter Rail Authority for local commuter passenger service, and has also contracted with CSXT to provide for train dispatching and maintenance of the Corridor and operation of bridges on a continuing basis, and FDOT does not directly perform any operations or maintenance services with respect to operation of the Corridor; and

WHEREAS, the parties desire to provide for continued Amtrak operation on FDOT's Corridor;

NOW, THEREFORE, effective May 1, 1997, the parties agree as follows:

ARTICLE I

DEFINITIONS

- 1.1 Amtrak. "Amtrak" means the National Railroad Passenger Corporation.
- 1.2 FDOT. "FDOT" means the Florida Department of Transportation, its designee, to which FDOT has assigned responsibility to perform services on the Corridor.
- 1.3 TCRA. "TCRA" means the Tri-County Commuter Rail Authority.
- 1.4 CSXT. "CSXT" means CSX Transportation, Inc.
- 1.5 Passenger Train. "Passenger Train" means an Intercity passenger train

operated over the Corridor for the account of Amtrak.

1.6 Corridor. "Corridor" means the Rail Line and adjacent facilities owned by FDOT extending from West Palm Beach to Miami, FL that Amtrak is granted access to under the terms of this Agreement as further described in Article II.

1.7 RPSA. "RPSA" means the Rail Passenger Service Act (49 USC 24101 et. seq.), including amendments that may be made during the term of this Agreement.

1.8 Freight Service. "Freight Service" means rail freight service operated by CSXT or any other railroad on the Corridor.

1.9 Commuter Service. "Commuter Service" means commuter rail passenger service operated by TCRA on the Corridor.

1.10 Intercity Rail Passenger Service. "Intercity Rail Passenger Service" means rail passenger service operated by Amtrak on the Corridor under the terms of this Agreement.

ARTICLE II

DESCRIPTION OF CORRIDOR

The Corridor consists of the rail line, structures, signals, signal systems, switches, crossovers, interlocking devices and related rail facilities, including stations owned by FDOT extending from West Palm Beach to Miami, FL, from Mile Post 965 to Mile Post 1040.1. CSXT currently dispatches trains, maintains track and signals and communications and operates and maintains bridges used in the operation of commuter, intercity and freight rail service over the Corridor. TCRA has been delegated by FDOT the responsibilities of operating commuter services over the

arising of such controversy, unless the arbitrators shall make a preliminary ruling to the contrary.

Section 6.4. Cost of Arbitration. Each party to the dispute shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by it, and both parties shall share equally in the costs and expenses attributable to the services of the third arbitrator.

Section 6.5. Enforcement. Upon failure of a party to comply with an arbitration award issued pursuant to this Article, the other party may refer the matter to a court of competent jurisdiction for enforcement of the said award.

ARTICLE VII

RISK OF LIABILITY

Section 7.1. Risk of Liability. Except as provided in the last sentence of this paragraph, to the extent permitted by law, FDOT shall be responsible for any damage or liability arising from the Tri-Rail operations. Except as provided in the next sentence, Amtrak shall be responsible for any damage or liability arising from the Amtrak operations on the Corridor. In the event of an accident involving operations of both parties, each party (i.e. Amtrak on the one hand and FDOT and Tri-Rail on the other hand) shall bear the share of damage or liability caused by its negligence as determined by a court of appropriate jurisdiction.

EXHIBIT 2



Florida Department of Transportation

CHARLIE CRIST
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

STEPHANIE C. KOPELOUSOS
SECRETARY

April 23, 2009

Joseph H. Boardman
President and Chief Executive Officer
Amtrak
60 Massachusetts Avenue, Northeast
Washington, DC 20002

Subject: Central Florida Rail Agreement

Dear Mr. Boardman,

I am writing to apologize for missing our teleconference this past Monday. We are in the last weeks of our legislative session and my presence was required at the Capitol. Because I appreciate the need to move forward and achieve an agreement on the SunRail corridor, I asked my executive team, including Assistant Secretary Kevin Thibault and General Counsel Alexis Yarbrough to attend in my absence. I was disappointed to hear that you refused to speak with them.

When I last spoke with your team, Amtrak demanded that we provide no fault indemnification in the Central Florida Corridor (SunRail) "just like Amtrak has in South Florida on TriRail." We explained to your team that Amtrak does not have indemnity in South Florida and read the contract language to them over the phone. We further explained that the Department is not legally authorized to give Amtrak indemnification and that the Legislature has no appetite for any broader indemnity authorization beyond existing freight railroad owners. We then asked to be advised quickly whether the indemnification was a deal breaker so preparations could be made to use another yard if we could not reach agreement. Your team said they would check with the board and get back to us.

To date, we still have no response from Amtrak. As such, I am enclosing an executed agreement which includes not only the exact same liability language we agreed to in South Florida, but also includes substantially the same terms on most other material issues present in the two corridors. I am hopeful that Amtrak will see the wisdom in moving forward on this agreement and execute same. We look forward to working with you.

Sincerely,

Stephanie C. Kopelousos
Secretary

Enclosures

AGREEMENT

BETWEEN

NATIONAL RAILROAD PASSENGER CORPORATION

AND

THE FLORIDA DEPARTMENT OF TRANSPORTATION

Dated:

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THIS AGREEMENT (hereafter referred to as "Agreement") is between the National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act now codified at Title 49 US Code Section 24101 et seq. (hereafter referred to as the "RPSA"), and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002 (hereafter referred to as "Amtrak"), and the Florida Department of Transportation, having offices at 719 South Woodland Boulevard, Deland, Florida 32720 (hereafter referred to as "FDOT").

WHEREAS, FDOT intends to purchase from CSX Transportation, Inc. ("CSXT"), the rail lines and related facilities between Deland and Poinciana, Florida (hereinafter referred to as "Corridor") pursuant to an agreement under which CSXT retains a freight easement; and

WHEREAS, as of June 1, 1999, CSXT entered into an agreement with Amtrak, pursuant to the Rail Passenger Service Act (49 USC 24101 et seq.), including amendments that may be made during the term of this Agreement (hereafter referred to as "RPSA"), with respect to the provision of services and facilities for intercity rail passenger operations by Amtrak (hereafter referred to as "Intercity Rail Passenger Service"), including such operations on the Corridor, which agreement has subsequently been amended and is also retained by CSXT in the purchase agreement with FDOT; and

WHEREAS, CSXT, in its agreements with FDOT, has acknowledged that FDOT may negotiate an agreement with Amtrak for operation of Intercity Rail Passenger Service over the Corridor, following execution of which Amtrak's said CSXT agreement relating to such service over the Corridor would expire; and

WHEREAS, FDOT intends to operate commuter rail passenger service on the Corridor (hereinafter referred to as "Commuter Rail Service"); and

WHEREAS, Amtrak's service on the Corridor remains subject to the requirements of the RPSA; and

WHEREAS, the parties acknowledge that, for the Transition Period following Closing, FDOT will be engaging in infrastructure projects on the Corridor; and

WHEREAS, the parties further acknowledge that, during the Transition Period, there will be delays in train operations as well as cancellations of Amtrak service; and

WHEREAS the parties have negotiated this Agreement to provide for continued Amtrak operation of Intercity Rail Passenger Service on the Corridor;

NOW, THEREFORE, effective upon FDOT's ownership of the Corridor ("Closing"), the parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 Amtrak. "Amtrak" means the National Railroad Passenger Corporation, its successors and assigns.

1.2 FDOT. "FDOT" means the Florida Department of Transportation and/or FDOT's successor to which FDOT has assigned responsibility to perform Commuter Rail Services on the Corridor. Successor, as used herein, includes the Commission.

1.3 Commission. "Commission" means the Central Florida Commuter Rail Commission created pursuant to Section 163.01, Florida Statutes.

1.4 CSXT. "CSXT" means CSX Transportation, Inc., a Virginia corporation.

1.5 Amtrak Train. "Amtrak Train," which includes Amtrak's Intercity Rail Passenger Service operated on the Corridor, means an intercity passenger train operated over the Corridor by or for the account of Amtrak.

1.6 Corridor. "Corridor" means the rail line and related facilities, described in Article II below, between Deland and Poinciana, Florida.

otherwise resolved. The decision of a majority of the arbitrators shall be final and conclusive between the parties.

Section 6.3. Pending Resolution.

Unless otherwise specifically provided in other sections of this Agreement, while such arbitration proceeding is pending, the business, the operations to be conducted, the physical plant to be used and the compensation under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrators shall make a preliminary ruling to the contrary.

Section 6.4. Cost of Arbitration.

Each party to the dispute shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by or for it, and both parties shall share equally in all other costs and expenses, including those attributable to the services of the third arbitrator.

Section 6.5. Enforcement.

Upon failure of a party to comply with an arbitration award issued pursuant to this Article, the other party may refer the matter to a court of competent jurisdiction for enforcement of the said award.

ARTICLE VII

RISK OF LIABILITY

Section 7.1. Risk of Liability.

Except as provided in the last sentence of this paragraph, to the extent permitted by law, FDOT shall be responsible for any damage or liability arising from the Commuter Rail Service. Except as provided in the next sentence, Amtrak shall be responsible for any damage or liability

arising from the Amtrak operations on the Corridor. In the event of an accident involving operations of both parties, each party (i.e. Amtrak on the one hand and FDOT on the other hand) shall bear the share of damage or liability caused by its negligence as determined by a court of appropriate jurisdiction.

ARTICLE VIII

GENERAL

Section 8.1. Information.

Either party to this Agreement shall have the right to inspect the books and records of the other party pertaining to the performance of this Agreement in accordance with Section 5.6 hereof. Amtrak shall have the right upon reasonable conditions and notice to examine all or any part of the Corridor at its own expense. Amtrak and FDOT shall make available any existing reports pertaining to the operation and maintenance of the Corridor that are necessary for the administration and application of the provisions of this Agreement.

Section 8.2. Contract Administration.

The following individuals are appointed by FDOT and Amtrak as Contract Administrators. The Contract Administrators will be responsible for coordinating activities between FDOT and Amtrak and for ensuring the performance by FDOT and Amtrak, respectively, of their obligations under this Agreement:

FOR FDOT: Alan Hyman, Director of Transportation Operations, 719 S. Woodland
Boulevard, DeLand, Florida 32720, (386) 943-5477

FOR AMTRAK:

Notification of any change in the Contract Administrator for either party shall be made in accordance with Section 8.7.

Section 8.9. Term.

This Agreement shall become effective on the Closing and remain in effect for a period of five (5) years, and shall continue in effect thereafter unless terminated by either party by providing twelve (12) months written notice.

Section 8.10. Rights Reserved.

Subject to the terms of this Agreement, FDOT specifically reserves all powers and rights with respect to the Corridor as it would have if Amtrak were not operating on the Corridor.

Section 8.11. Relationship of Parties.

In rendering any service or in furnishing any equipment, materials or supplies hereunder, FDOT is acting solely pursuant to this Agreement with Amtrak and not in any other capacity.

IN WITNESS WHEREOF, Amtrak and FDOT have caused this Agreement to be duly executed by their respective officers thereunto duly authorized.

NATIONAL RAILROAD PASSENGER CORPORATION

FLORIDA DEPARTMENT OF TRANSPORTATION

By _____

By Noranne Downs 

Noranne Downs, District Five Secretary

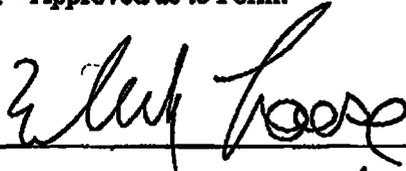
Date _____

Date 4/22/07

Amtrak - Approved as to Form:

FDOT - Approved as to Form:

By: _____

By: Fredrick Loose 

NAME: _____

NAME: Fredrick Loose

TITLE: _____

TITLE: Attorney

EXHIBIT 3



Joseph H. Boardman
President and Chief Executive Officer

February 26, 2010

Honorable John D. Rockefeller, IV
Chair
Committee on Commerce, Science
and Transportation
United States Senate
254 Russell Senate Office Building
Washington, DC 20510

Honorable James L. Oberstar
Chair
Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science
and Transportation
United States Senate
560 Dirksen Senate Office Building
Washington, DC 20510

Honorable John L. Mica
Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
2163 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Rockefeller and Oberstar and Ranking Members Hutchison and Mica:

I am writing in my capacity as President and Chief Executive Officer of Amtrak to bring to your attention a set of problems that is emerging as a significant obstacle to the improvement of existing passenger rail service and the development of new, including high speed and intercity corridor, passenger rail service in the United States: the ability of railroad owners and passenger rail service operators--categories which increasingly include states, local or regional public authorities--to come to reasonable, fair, efficient, and fiscally responsible risk or liability allocation agreements sufficient to protect the traveling public.

The core of the problem is the unwillingness or inability of a growing number of entities, including states and other public bodies, to enter into the kind of agreements for risk allocation described above and/or to purchase insurance at all or at sufficient levels in many cases because of sovereign immunity and/or related state law limitations on such actions by public agencies. Those difficult and to a great extent structural obstacles combined with a reluctance on behalf of railroad operators to abandon their longstanding liability arrangements with other operators on their lines make it nearly impossible to come to rational and fair agreements that protect the interests of the traveling public.



Honorable John D. Rockefeller, IV

Honorable James L. Oberstar

Honorable Kay Bailey Hutcheon

Honorable John L. Mica

February 26, 2010

Page 2

Moreover, the attitude from a number of private parties and state entities alike seems to be that Amtrak, in significant part because of its federal funding, should assume the greater share of risk or liability. If that approach were permitted, Amtrak would bear liability risks and associated costs attributable to an individual state's commuter rail operations, and be forced to pass such liability costs on to the federal taxpayers and other states that fund Amtrak's state-supported services. Moreover, Amtrak's federal appropriations are not nearly sufficient to establish what would essentially be an insurance risk pool for railroad operations over which it has no control.

Nothing clarifies the policy issues here better than the current difficulty we face as the State of Florida seeks to purchase a CSX rail line in Central Florida and begin operation of its new Sunrail commuter service. We are seeking the same protection from the State of Florida and any state-sponsored operator of commuter service on this 61-mile line that we have when we operate on a private railroad line and that we enjoy on this line now while owned by CSX. If Amtrak continues to operate service on this 61-mile rail line after Florida closes on its purchase from CSX, it exposes the citizens of California, Washington, and New York to paying for personal injury claims by Sunrail commuter passengers. In effect the State of Florida is seeking to transfer liability exposure to Amtrak, and its other state and federal partners, for the liability costs associated with Florida's new commuter service.

These issues are not new, but they are growing in dimension with the appearance of new entities, including states and other public entities referred to above, as railroad owners and rail service operators, and they threaten the improved and new national rail service program envisioned by the Passenger Rail Investment and Improvement Act of 2008, accelerated by the Recovery Act funding of the PRIIA grant programs.

Nor are these problems unfamiliar to Congress. The concern of Members over liability allocation issues in the proposed sale of a freight line in Massachusetts to the state's transportation authority and similar proposed transactions and problems elsewhere led Congress to direct the GAO to examine and report on these issues involving commuter rail. The GAO's report of February 2009 about this set of issues — entitled "Commuter Rail — Many Factors Influence Liability and Indemnity Provisions, and Options Exist to Facilitate Negotiations" — illustrates the complexities and challenges of risk allocation among railroad owners and rail passenger service operators generally.



*Honorable John D. Rockefeller, IV
Honorable James L. Oberstar
Honorable Kay Bailey Hutchison
Honorable John J. Mica
February 26, 2010
Page 3*

Historically, all passenger rail services in the United States were provided by privately-owned railroads that operated over rail lines they owned, maintained, and dispatched. In the event of an accident attributable to negligence in the operation of trains or maintenance of tracks, injured passengers could seek compensation in court. Since the track owner and train operator were almost always the same railroad, and that railroad was a private corporation, there was generally little doubt about who was at fault, and no statutory impediment to requiring the railroad to compensate injured parties.

The creation of Amtrak, which assumed the private railroads' responsibility for intercity passenger rail service in 1971, did not materially change that equation. Since the Rail Passenger Service Act specified that Amtrak was not an agency of the federal government, Amtrak did not have sovereign immunity that limited or precluded its payment of compensation to passengers or others injured as result of its operations. Amtrak and nearly all of the "host railroads" that provide tracks and services for its trains entered into "no fault" liability apportionment/ indemnity agreements, still in effect today, that specify which party is responsible for paying various types of claims, and require the party responsible for a particular claim to indemnify the other party.

The growing role of states and other third parties in commuter and intercity passenger rail service has created liability issues that have been more difficult to resolve. Vis-a-vis Amtrak, the problem is framed up in the context of the authority Congress explicitly gave it in the Amtrak Reform and Accountability Act of 1997, 49 U.S.C. sec. 28103 (b) "[a] provider of railroad transportation may enter into contracts that allocate financial responsibility for claims." Legislative history demonstrates that this provision was to make clear that Amtrak—then the only non-commuter passenger rail provider—could enter into risk allocation agreements to limit its liability and also eliminate much litigation and, thus, transaction costs over responsibility. Ironically, states that have sought to provide rail transportation have run into those same roadblocks to reaching agreement with Amtrak with the result that Amtrak's liability exposure, and thus federal tax dollars may be hugely increased. But even where Amtrak is not in the picture, these liability issues, many of which are associated with states' sovereign immunity, constitute both a major problem for rail passenger protection and a major impediment to the development and expansion of passenger rail service contemplated by the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), as states acquiring rail lines play a much greater future role in the development of intercity and high-speed rail service.



Honorable John D. Rockefeller, IV

Honorable James L. Oberstar

Honorable Kay Bailey Hutchison

Honorable John L. Mica

February 26, 2010

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State ownership of rail lines and state operation (directly or through contractors) of passenger rail services means that states are increasingly becoming responsible for rail line maintenance, dispatching and train operations formerly performed by private corporations. The result is that accidents involving state-operated or public agency-operated trains and accidents that occur on state-owned rail lines will often be caused by factors within the state's control.

However, states--unlike private corporations and Amtrak--have sovereign immunity that is derived from both federal and state law. State sovereign immunity laws limit--and in some cases, may preclude entirely--rail passengers from obtaining compensation from a state for injuries or deaths resulting from negligence by the state or its rail contractor. These laws have also prompted assertions by some states that they cannot enter into agreements allocating liability among rail line users--such as the no-fault arrangements incorporated in nearly all Amtrak-host railroad agreements, or agreements regarding liability for their operations over Amtrak's Northeast Corridor--and that liability apportionment agreements with Amtrak to which they are already parties cannot be enforced against them. Uncertainty regarding who will be responsible for compensating injured parties is exacerbated by the facts that sovereign immunity laws are different in every state, and that a state agency can declare--after a rail accident occurs--that the liability apportionment provisions in an agreement, under which it has operated under for many years, are unenforceable.

Clearly this issue is complicated and a solution is not obvious. For example, I do not think it is generally known that the host railroads and Amtrak have contractual "no-fault" indemnity agreements under which they indemnify each other in the event of an accident. With that historical background for allocating liability and its costs, we now see public entities, such as the State of Florida, refusing to enter into or honor such agreements based on their claims of sovereign immunity, even though they are assuming a historically private role by purchasing and operating a rail line.

To date, these challenges to reasonable liability allocation agreements have had the following consequences: (i) litigation in court or before regulatory agencies; (ii) in a few cases, amendment or reform of state constitutional or statutory prohibitions or limitations; and in a number of instances, a complete impasse to a passenger rail service program moving forward. These resources--or lack of same--are unacceptable in terms of both time and cost. Parties simply cannot litigate, conduct years long negotiations efforts in state houses across the country or fail. If PRIA is indeed to serve as the launching platform for the development of new intercity passenger rail corridor programs and to introduce high-



Honorable John D. Rockefeller, IV

Honorable James L. Oberstar

Honorable Kay Bailey Hutchison

Honorable John L. Mica

February 26, 2010

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speed rail beyond the NEC, we must develop a rational global approach to liability allocation that can be molded to every context and arrangement.

Amtrak recognizes that there are no easy solutions to the increasingly difficult liability issues associated with expanded passenger rail operations, and the increased involvement of states that triggers sovereign immunity issues. Nor is there a single answer that will solve the multiple issues involved, which include sovereign immunity; uncertainty about the enforceability of liability apportionment agreements; and increased jury awards that have raised liability exposure and the costs of purchasing insurance. However, unless solutions are developed, the expansion of passenger rail service that both Congress and the Administration have decreed as an important policy directive will be delayed; will be more expensive because of expenditures for litigation, insurance, and other costs that produce no public benefits; and may ultimately be thwarted.

The 2009 GAO report identified a number of potential solutions to some of these issues. They include the approach, incorporated in the Price-Anderson Act (42 U.S.C. 2210) that governs liability for nuclear power plants, of requiring all passenger rail operators to maintain specified levels of insurance coupled with a process under which the federal government could provide funding should claims exceed the required insurance coverage. Another alternative would be legislation requiring that rail line sales to state agencies, and grants to states for capital investments in commuter, passenger and high-speed rail, or which become operators of any such service, be conditioned upon the state's assumption of appropriate liability and indemnification obligations, and any waivers or modifications of state laws needed to make those obligations enforceable.

Amtrak stands ready to work with Congress and other stakeholders to develop approaches to address these critical liability related issues. We are currently engaged in efforts to identify potential solutions and will share our recommendations with your committees as they are developed.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Boardman", written over a horizontal line.

Joseph H. Boardman
President and Chief Executive Officer

EXHIBIT 4

All Railroad Incident Claims \$100,000.00 and Over

ID# Name	SER#	Date/ Incident	Date Reported	Notification Date/Method	Classification	Status	Amount Claimed	Settlement	Amount Settled
548 Cole	17-07	10/1/2007			Slip and Fall	Closed	\$100,000.00	972 W. 79th	\$15,000.00
544 Sodano	12-07	6/17/2007			Closed	Closed	\$100,000.00	Opaloka Sta	\$45,000.00
542 Alvarez	01-06	12/15/2006			Closed	Closed	\$185,000.00	Mangonia P	\$50,000.00
535 Piget	18-06	12/31/2005			Closed	Closed	\$100,000.00	Broward Trl	\$22,000.00
475 Sherman	38-05	12/13/2005			Incident Report	Closed	\$100,000.00	Boynton Bek	\$58,000.00
422 Sherman	38-05	12/13/2005			Slip and Fall	Closed	\$100,000.00	Boynton Bek	\$58,000.00
424 Houston	40-05	11/24/2005			Door Closure	Closed	\$100,000.00	Boynton Bek	\$40,000.00
472 Pouyes	27-05	10/6/2005			Slip & Fall	Closed	\$100,000.00	P-683	\$35,000.00
411 Pouyes	27-05	10/6/2005			Letter	Closed	\$100,000.00	Lake Worth	\$35,000.00
393 Johnson	08-05	10/6/2005			Slip & fall	Closed	\$100,000.00	P-672	\$35,000.00
450 Gardner	29-05	3/9/2005			Slip & Fall	Closed	\$100,000.00	P-813	\$75,000.00
		9/26/2003			Employee Injur	Closed	\$132,345.87	45th Street	\$132,345.87

Number of Records: 11

All Railroad Incident Settlements \$100,000.00 and Over

ID# Name	SER#	Date/ Incident	Date Reported	Notification Date/Method	Classification	Status	Amount Claimed	Settlement	Amount Settled
348 Jesner	2008-04	2/12/2004	2/23/2004	file	Pers Injury	Pending		Michab Road	\$150,000.00
450 Gardner	29-05	9/28/2003	9/28/2003	file	Employee Injur.	Closed	\$132,345.87	45th Street	\$132,345.87
240 Walkes	01-11b	4/4/2001	4/4/2001	04/05/01 file	Fatality	Closed		Snake Ck	\$500,000.00
239 Smith	01-11a	4/4/2001	4/4/2001	04/05/01 file	Fatality	Closed		Snake Ck	\$500,000.00
216 Martinez	00-33	9/21/2000	9/21/2000	09/21/00 File	Fatality	Closed		MP 974.6	\$250,000.00
122 Nori	98-08	12/27/1997	2/25/1998	02/26/98 file/let	Pers Injury	Closed		Hollywood	\$100,000.00
61 Lockwood	97-02	12/19/1996	1/7/1997	01/07/97 file/let	Pers Injury	Closed		M.P. 994.5	\$100,000.00
58 Reynoso	96-62	9/16/1996	1/2/1997	01/02/97 file/let	Train/Crane	Closed		Oakland Pk	\$300,000.00
17 Glass	96-23	7/13/1996	7/13/1996	07/13/96 file/let	Train/Vehicle	Closed		Linton Blvd	\$144,799.36

Number of Records: 9

EXHIBIT 5

**SUMMARY OF CLAIMS BILLS
FLORIDA LEGISLATURE
1998 - 2010**

Year	No. Filed	No. Paid	Amt. Paid				
2010	32	6	\$3,242,186				
2009	31	5	9,150,000	(950,000 x 9 more years)			
2008	34	10	14,500,825				
2007	36	13	23,667,882				
2006	30	0	0				
2005	22	0	0				
2004	26	5	9,374,937				
2003	32	12	5,088,410				
2002	42	23	25,870,884	(1 vetoed; 760,000 x 9 more years)			
2001	45	2	5,555,347				
2000	19	9	17,002,500				
1999	28	13	13,909,784				
1998	35	27	28,844,468				

**SUMMARY OF CLAIMS BILLS
FLORIDA LEGISLATURE
FLORIDA DEPARTMENT OF TRANSPORTATION
1998-2010**

Year	Bill No.	Plaintiff	Defendant	Amount Paid	Type of Claim
2010	S12	Hall, Stephen	FDOT	\$388,000	Automobile accident
2002	S82	Avendano, Alba Luz	FDOT	800,000	Automobile accident
2002	S16	Baucco, Patsy	FDOT	550,000	Automobile accident
2002	S14	McIntire, Billie Jo	FDOT	1,000,000	Automobile accident
1999	S14	Alls, Trey Anthony	FDOT	1,775,000	Negligent design bridge grating
1999	S20	Baker, Patricia D.	FDOT	443,224	No security at rest areas
1998	S2	Kelly, Alto, Estate	FDOT	1,400,000	Automobile accident
1998	S28	Roster, Frank	FDOT	4,600,000	Negligent design of roadway

EXHIBIT 6

Agreement 15-048-06**Agreement Between
CSX Transportation, Inc.****and****Its Employees Represented by the
Brotherhood of Railroad Signalmen
(Former SCL)**

WHEREAS, CSX Transportation, Inc. intends to sell to the State of Florida its line of railroad between Deland, Florida (at or near milepost A749.7) and Poinciana, Florida (at or near milepost A814.1) to become a rail commuter corridor for Central Florida;

WHEREAS, the State may also purchase CSXT's line of railroad between Hialeah, Florida (at or near milepost SXH 36.7) and Homestead, Florida (at or near milepost SHX 67.0) for commuter operations;

WHEREAS, CSXT previously sold to the State its line of railroad between West Palm Beach and Miami, Florida for use as a rail commuter corridor;

WHEREAS, CSXT has or will retain an easement for the provision of rail freight service over lines purchased or to be purchased by the State;

WHEREAS, the State plans to assume responsibility for the maintenance of and dispatching of trains over lines of railroad it has acquired or will acquire from CSXT;

WHEREAS, as a result of the acquisition by the State of the line between Deland and Poinciana and the line between Hialeah and Homestead and the assumption by the State of the responsibility for maintenance and dispatching on its line between West Palm Beach and Miami (hereinafter the "Transactions"), CSXT will abolish positions and establish new positions;

WHEREAS, CSXT gave notice of the Transactions to the Organization;

WHEREAS, CSXT and the Organization (hereinafter "Parties") desire to reach an agreement addressing these Transactions and the effects, if any, on employees represented by the Organization from the Transactions.

NOW, THEREFORE, IT IS AGREED THAT THE PARTIES HAVE REACHED THE FOLLOWING UNDERSTANDINGS REGARDING THE TRANSACTIONS.

1. The Parties agree that economic protective benefits equivalent to those contained in Article I of the New York Dock employee protective conditions will be provided to any employee who was working on the line on the day of the Transaction, which applied to that line, and who is determined to be displaced or dismissed as a result of that Transaction. In addition, such employee protective benefits will be provided to any employee who was working on the line on the day of the Transaction and who was displaced by the Transaction. The Parties further agree that the equivalent economic protective benefits provided by this Agreement are limited to those contained in the standard New York Dock conditions as imposed and interpreted by the Surface Transportation Board and supersede prior course of dealings, interpretations or prior agreements regarding the application of the Condition on CSXT.
2. In order that the provisions of the first proviso set forth in Article I, Section 3 of the New York Dock conditions may be properly administered, each employee determined to be a "displaced employee" or "dismissed employee" within the meaning of the New York Dock conditions, which definitions are incorporated into this Agreement, who is also otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within thirty (30) days after having established "displaced" or "dismissed" status, elect between the benefits under such other arrangement and this Agreement.
3. This Agreement shall fulfill the requirements for effects bargaining under the Railway Labor Act relating to these Transactions. This Agreement also permits CSXT to abolish and/or establish positions and/or transfer employees to effect these Transactions. Further, this Agreement also fulfills the requirements, if any, for an agreement governing the implementation and effects or impacts of the Transactions upon employees represented by the Organization, whether such requirements arise under the ICC Termination Act or any other law; regulations or decisions of the Surface Transportation Board, Department of Labor, or any other agency; or any applicable collective bargaining agreement.
4. The Organization agrees that it will not oppose nor raise any objection to any of the Transactions in any way or in any forum, including, without limitation, by filing or progressing a claim or grievance under any collective bargaining agreement, threatening or engaging in a work stoppage of any kind against CSXT, or seeking to enjoin any of the Transactions. The Parties recognize that a breach of this provision would cause irreparable injury to CSXT and further agree to its enforcement of this provision by emergency injunctive relief upon application by CSXT.
5. This Agreement is intended to address the Transactions and the effects, if any, on employees from the Transactions and to be a full and final settlement. The Parties

therefore agree that neither will serve a Section 6 notice or other bargaining proposal seeking to amend or change the terms of this Agreement. The Parties further agree that any outstanding Section 6 notice or bargaining proposal which could relate to any of the Transactions is withdrawn, but only as to these Transactions.

6. Any dispute concerning the application of this Agreement is a minor dispute and is subject to the exclusive dispute resolution procedures of the Railway Labor Act.

Signed at _____, this ____ day of _____, 2006

**BROTHERHOOD OF RAILROAD
SIGNALMEN:**

CSX TRANSPORTATION, INC.:

R. G. Demott, General Chairman

Jim H. Wilson, Director
Labor Relations

Approved
F. E. Mason, Vice President

EXHIBIT 7



Labor Relations Department
500 Water Street, J-455
Jacksonville, FL 32202

N. V. Nihoul, Director
904.359.1208

Certified Mail Return Receipt Request No. 7006 2760 0001 2183 2452

November 24, 2008

File: 1423
Central Florida Transaction

Mr. R. G. Demott, General Chairman
Brotherhood of Railroad Signalmen
P. O. Box 888
Clinton, South Carolina 29325

Mr. Demott:

On Friday, August 29, 2008 Ken Mason, Floyd Mason, you and I met to discuss the sale, to the State of Florida, of CSXT's line of railroad between Deland, Florida (at or near milepost A749.7) and Poinciana, Florida (at or near milepost A814.1).

During our August meeting, I orally offered to modify the protection agreement that CSXT previously proposed with respect to the effects of this line sale, as well as the previous sold line between West Palm Beach and Miami, and the potential sale of the line of road between Hialeah and Homestead. My suggestion included providing certain limited flow back rights to any BRS represented signal employee of CSXT whose position is abolished as a result of a transaction and who is offered and accepts employment with the State's operator once the transaction has been completed.

Attached is a modified protection agreement that reduces my flow back offer to writing, for affected employees for one (1) year from the date of hire by the State or its operator. Please advise me of your available dates to discuss this proposal.

Very truly yours,

A handwritten signature in black ink, appearing to read "N. V. Nihoul", written over a horizontal line.

Director - Labor Relations

Attachment

cc: Mr. F. E. Mason, Vice President BRS

CSXT Labor Agreement No. 15-048-06
Page 1 of 3

Agreement Between

CSX Transportation, Inc.

and

its Employees Represented by the

**Brotherhood of Railroad Signalmen
(former SCL)**

WHEREAS, CSX Transportation, Inc. intends to sell to the State of Florida its line of railroad between Deland, Florida (at or near milepost A749.7) and Poinciana, Florida (at or near milepost A814.1) to become a rail commuter corridor for Central Florida;

WHEREAS, the State may also purchase CSXT's line of railroad between Hialeah, Florida (at or near milepost SXH 36.7) and Homestead, Florida (at or near milepost SHX 67.0) for commuter operations;

WHEREAS, CSXT previously sold to the State its line of railroad between West Palm Beach and Miami, Florida for use as a rail commuter corridor;

WHEREAS, CSXT has or will retain an easement for the provision of rail freight service over lines purchased or to be purchased by the State;

WHEREAS, the State plans to assume responsibility for the maintenance of and dispatching of trains over lines of railroad it has acquired or will acquire from CSXT;

WHEREAS, as a result of the acquisition by the State of the line between Deland and Poinciana and, the line between Hialeah and Homestead and the assumption by the State of the responsibility for maintenance and dispatching on its line between West Palm Beach and Miami (hereinafter the "Transactions"), CSXT will abolish positions and establish new positions;

WHEREAS, CSXT gave notice of the Transactions to the Organization;

WHEREAS, CSXT and the Organization (hereinafter "Parties") desire to reach an agreement addressing these Transactions and the effects, if any, on employees represented by the Organization from the Transactions;

NOW, THEREFORE, IT IS AGREED THAT THE PARTIES HAVE REACHED THE FOLLOWING UNDERSTANDINGS REGARDING THE TRANSACTIONS.

CSXT Labor Agreement No. 15-048-06

Page 2 of 3

1. The Parties agree that economic protective benefits equivalent to those contained in Article I of the New York Dock employee protective conditions will be provided to any employee who was working on the line on the day of the Transaction, which applied to that line, and who is determined to be displaced or dismissed as a result of that Transaction. In addition, such employee protective benefits will be provided to any employee who was working on the line on the day of the Transaction and who was displaced by the Transaction. The Parties further agree that the equivalent economic protective benefits provided by this Agreement are limited to those contained in the standard New York Dock conditions as imposed and interpreted by the Surface Transportation Board and supersede prior course of dealings, interpretations or prior agreements regarding the application of the Condition on CSXT.
2. In order that the provisions of the first proviso set forth in Article I, Section 3 of the New York Dock conditions may be properly administered, each employee determined to be a "displaced employee" or "dismissed employee" within the meaning of the New York Dock conditions, which definitions are incorporated into this Agreement, who is also otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within thirty (30) days after having established "displaced" or "dismissed" status, elect between the benefits under such other arrangement and this Agreement.
3. Any CSXT Signal Department employee who occupies a headquartered position on the date(s) of the Transaction(s), whose position is abolished as a result of one or more of the Transactions, and who is offered and accepts employment with the State or its operator, will retain seniority on the former SCL property for a period of 12 months from the effective date of the Transaction that resulted in the abolishment of that employee's position. On or before the first (1st) anniversary of such Transaction, such employee will be allowed to return to CSXT by bidding on and being assigned a position in accordance with the requirements of the Schedule Agreement. Any such employee who does not return on or before the first (1st) anniversary of the transaction forfeits all seniority on CSXT.
4. This Agreement shall fulfill the requirements for effects bargaining under the Railway Labor Act relating to these Transactions. This Agreement also permits CSXT to abolish and/or establish positions and/or transfer employees to effect these Transactions. Further, this Agreement also fulfills the requirements, if any, for an agreement governing the implementation and effects or impacts of the Transactions upon employees represented by the Organization, whether such requirements arise under the ICC Termination Act or any other law; regulations or decisions of the Surface Transportation Board, Department of Labor, or any other agency; or any applicable collective bargaining agreement.
5. The Organization agrees that it will not oppose nor raise any objection to any of the Transactions in any way or in any forum, including, without limitation, by filing

CSXT Labor Agreement No. 15-048-06
Page 3 of 3

or progressing a claim or grievance under any collective bargaining agreement, threatening or engaging in a work stoppage of any kind against CSXT, or seeking to enjoin any of the Transactions. The Parties recognize that a breach of this provision would cause irreparable injury to CSXT and further agree to its enforcement of this provision by emergency injunctive relief upon application by CSXT.

6. This Agreement is intended to address the Transactions and the effects, if any, on employees from the Transactions and to be a full and final settlement. The Parties therefore agree that neither will serve a Section 6 notice or other bargaining proposal seeking to amend or change the terms of this Agreement. The Parties further agree that any outstanding Section 6 notice or bargaining proposal which could relate to any of the Transactions is withdrawn, but only as to these Transactions.

7. Any dispute concerning the application of this Agreement is a minor dispute and is subject to the exclusive dispute resolution procedures of the Railway Labor Act.

Signed at _____, this ____ day of _____, 2008

**BROTHERHOOD OF RAILROAD
SIGNALMEN:**

CSX TRANSPORTATION, INC.:

R. G. Demott, General Chairman

N. V. Nihoul, Director Labor Relations

Approved

F. E. Mason, Vice President

EXHIBIT 8



Florida Department of Transportation

CHARLIE CRIST
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

STEPHANIE C. KOPELOUSOS
SECRETARY

December 8, 2009

The Honorable Jeff Atwater
President, The Florida Senate
404 S. Monroe Street, Room 409 (Capitol)
Tallahassee, FL 32399-1100

Dear Mr. President:

I am writing pursuant to your request that the Department address the concerns of the eight (8) signalmen who work in the SunRail corridor. As requested, we have reached out to our contractor and discussed removing signal services from the scope of the contract so that the Department can separately procure the signal work and require that the bidders be rail employers under the Federal Railroad Retirement Tax Act. Our contractor is agreeable to the amendment in scope. Therefore, the Department commits to you that it will (1) eliminate the signal work from the scope of its current contract, (2) separately procure the signal work, and (3) require that the bidders for the signal work be "rail employers" under the Federal Railroad Retirement Tax Act. This should afford the signalmen the federal protections they seek in the SunRail corridor.

Sincerely,

Stephanie C. Kopelousos
Secretary

cc: The Honorable Larry Cretul, Speaker of the Florida House
The Honorable Al Lawson, Senate Democratic Leader

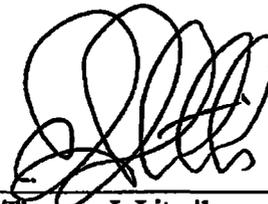
CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2010, a copy of the foregoing Reply of Florida Department of Transportation to Comments of National Railroad Passenger Corporation and Brotherhood of Railroad Signalmen was served by electronic mail and overnight delivery upon:

George W. Mayo, Jr., Esq.
Hogan & Hartson LLP
555 Thirteenth Street, N.W.
Washington, DC 20004-1109

Jared I. Roberts, Esq.
Senior Associate General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, DC 20002

Richard S. Edelman, Esq.
O'Donnell, Schwartz & Anderson, P.C.
1300 L Street, N.W.
Suite 1200
Washington, DC 20005



Thomas J. Litwiler