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February 19, 2010

**BY ELECTRONIC FILING**

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

ENTERED  
Office of Proceedings  
FEB 19 2010  
Part of  
Public Record

**RE: STB Docket No. AB-1036 The City of Chicago, Illinois-Application for Adverse Abandonment-Chicago Terminal Railroad in Chicago, Illinois**

Dear Ms. Brown:

Enclosed for electronic filing in the above captioned proceeding is the Chicago Terminal Railroad's motion to strike the verified statements of the City of Chicago's witnesses Paul Zalmezak and Joseph B. Alonzo.

Please contact me if you have any questions regarding this filing. On behalf of our client, thank you for your time and consideration.

Respectfully submitted,  
John D. Heffner, PLLC

  
By: James H. M. Savage  
Of Counsel

*Attorneys for Chicago Terminal  
Railroad*

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1036

THE CITY OF CHICAGO, ILLINOIS  
-APPLICATION FOR ADVERSE ABANDONMENT-  
CHICAGO TERMINAL RAILROAD IN CHICAGO, ILLINOIS

**CHICAGO TERMINAL RAILROAD'S MOTION TO STRIKE VERIFIED  
STATEMENTS OF CITY OF CHICAGO WITNESSES  
PAUL ZALMEZAK AND JOSEPH B. ALONZO**

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Dated: February 19, 2010

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THE CITY OF CHICAGO, ILLINOIS  
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PAUL ZALMEZAK AND JOSEPH B. ALONZO**

Pursuant to 49 C.F.R. Parts 1104 and 1114, Chicago Terminal Railroad Company ("CTM") files this Motion to Strike ("Motion") the Verified Statements of the City of Chicago, Illinois ("City") witnesses Paul Zalmezak ("Zalmezak VS") and Joseph B. Alonzo ("Alonzo VS") in support of the City's Application for Adverse Abandonment authority filed on February 1, 2010.

The Zalmezak VS should be stricken as an improper attempt to offer inadmissible lay opinion testimony on matters calling for specialized knowledge,

skill, training and experience, contrary to the requirements of the Board's General Rules for the Admissibility of Evidence, 49 C.F.R. 1114.1, the Board's Rule authorizing the striking of objectionable material, 49 C.F.R. 1104.8, and the Federal Rules of Evidence ("F.R.E.") concerning lay opinion testimony, F.R.E. 701, as well as setting forth the necessary qualifications for offering expert opinion testimony, F.R.E. 702.

The Alonzo VS should likewise be stricken as an improper attempt to offer irrelevant and immaterial evidence contrary to the requirements of 49 C.F.R. 1104.8 and 1114.1, as well as inadmissible opinion testimony contrary to the requirements of F.R.E. 701 and 702.

### BACKGROUND

On February 1, 2010 the City filed a Petition for Authority to Adversely Abandon two segments of CTM's Line of Railroad in the City of Chicago, IL. The segments form part of the "C&E Line", which term refers to the rail property conveyed on or about December 21, 2006 by Soo Line Railroad Company d/b/a Canadian Pacific Railway ("Soo Line") to Iowa Pacific Holdings by Quit Claim Deed (See, Application Appendix CP-7), said rail property being one and the same rail property acquired by CTM pursuant to a notice of exemption taking effect on December 22, 2006 in STB Finance Docket No. 34968 Chicago Terminal

Railroad-Acquisition and Operation Exemption-Soo Line Railroad Co. d/b/a Canadian Pacific Railway (STB Served Dec. 22, 2006) and comprising approximately 4.5 miles of track known as the “C&E Line” situated in the City of Chicago, Cook County, IL including the line segments referred to herein as the Kingsbury Segment and the Lakewood Segment.

In support of the Application, the City supplied two Verified Statements, the December 14, 2009 Alonzo VS and the January 14, 2010 Zalmezak VS. For the following reasons, neither statement is admissible and each should be stricken in its entirety.

#### ZALMEZAK VS

Contrary to the requirements of FRE 702, the Zalmezak VS fails to state whether the witness qualifies as an expert by knowledge, skill, experience, training or education in the specialized fields of railroad marketing, railroad operations, or railroad valuation.<sup>1</sup> Mr. Zalmezak has been employed by the City for a mere two (2) years in the Department of Community Development as a “coordination planner”. His background is in municipal planning and development, and his job requires his familiarity with “conditions affecting planning and development”. Zalmezak VS at

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<sup>1</sup> On February 12, 2010, CTM served demands for discovery upon the City including but not limited to seeking copies of Paul Zalmezak and Jospch B. Alonzo’s *curricula vitae*. To date, no responses have been received. CTM requests leave to amend and supplement this motion with discovery material received in response to the aforesaid demands.

1. In the absence of proper qualifications, Mr. Zalmezak's testimony is limited by FRE 701 to opinions or inferences "rationally based on the perception of the witness...not based on scientific, technical or other specialized knowledge." None of Mr. Zalmezak's statements meet this requirement, and his verified statement should be stricken.

Describing the Kingsbury and Lakewood Segments as if they were not integral parts of the C&E Line, which itself displays Mr. Zalmezak's total ignorance of railroad operations, Mr. Zalmezak states, "without question, rail operations are no longer compatible with existing land uses in the area that encompasses the segments." Zalmezak VS at 2. This statement is internally inconsistent with Mr. Zalmezak's description of CTM's active rail operations on the C&E Line, a 4.5mile line railroad, including the two segments for which adverse abandonment authority is being sought, beginning and ending at CTM's connection to UP's North Avenue Yard. Zalmezak VS at 3-5. Mr. Zalmezak's self-contradictory lay opinions about the viability of continued rail operations on the C&E Line segments in question should be stricken from the record.

Mr. Zalmezak next dons a lawyer/economist's mantle in raising a legal argument concerning valuation of CTM's interest in the subject line segments. Zalmezak VS at 5-6. Interpreting the law is within the Board's exclusive purview, and the witness' reference to the supposed implications upon this proceeding of the

Milwaukee Road bankruptcy decision should be stricken as improper lay opinion testimony. Additionally, property valuation issues are not relevant to the Board's determining the public convenience and necessity in an adverse abandonment application, rendering Mr. Zalmezak's testimony in this regard irrelevant and immaterial. The Board has the authority to strike materials of an "objectionable nature," as defined by 49 C.F.R. § 1104.8. Specifically, the Board may order that redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document. Accordingly, Mr. Zalmezak's statements regarding property valuation should be stricken as contrary to the requirements of §1104.8.

Mr. Zalmezak next veers back into the disciplines of railroad marketing and operations, alleging the proposed abandonment will have no effect on CTM's ability to serve its customers or store railcars. Zalmezak VS at 6-10. Once again, his arguments are premised upon knowledge and expertise he is wholly lacking. These statements should be stricken as unfounded lay opinion testimony.

Mr. Zalmezak next states his opinion of the non-viability of developing new rail shipping or transloading facilities on the subject segments. Zalmezak VS at 10-16. The witness provides no basis, other than his lay *ipse dixit*, for treating these segments as if they were unconnected to the C&E Line as a whole. These statements should be stricken as unfounded and, frankly, illogical lay opinion testimony.

Moreover, 49 C.F.R 1114.1 requires any and all evidence submitted to the

Board be admissible, specifically, that it be "sufficiently reliable." Thus, without verification from a party with personal knowledge of the facts contained therein, the statement represents a string of unreliable and inaccurate statements, which should not be admitted into evidence.

### ALONZO VS

Contrary to the requirements of FRE 702, the Alonzo VS fails to state whether the witness qualifies as an expert by knowledge, skill, experience, training or education in the specialized disciplines of accounting, civil engineering, road construction or public safety.

In his statement, Joseph Alonzo discusses savings which would allegedly inure to the City were Application granted, as well as public safety issues arising from the continuing presence of railroad tracks along the subject segments. Alonzo VS at 1-2. These statements regarding projected savings are undocumented, unsupported and therefore inadmissible lay opinion testimony contrary to the requirements of FRE 701.

The safety issues raised by Mr. Alonzo concerning pedestrians, motorists and cyclists (Alonzo VS at 2-3) likewise require expert testimony. Lay witness testimony is governed by Rule 701, which limits opinions to those "rationally based on the perception of the witness." Rule 702, on the other hand, governs admission of expert opinion testimony concerning "specialized knowledge." The mere

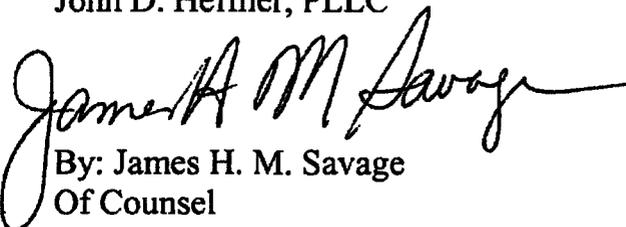
percipience of a witness to the facts on which he wishes to tender an opinion does not trump Rule 702. Otherwise, a layperson witnessing the removal of a bullet from a heart during an autopsy could opine as to the cause of the decedent's death. United States v. Figueroa-Lopez, 125 F.3d 1241, 1246 (9th Cir. Cal. 1997).

Where, as here, the witnesses opinion testimony is neither based on firsthand knowledge as required by Rule 701, nor based on specialized knowledge as required by Rue 702, the opinion testimony should be stricken as inadmissible.

CONCLUSION

For the above stated reasons and based upon the above cited authorities, the Board should grant CTM's motion to strike the Verified Statements of Paul Zalmezak and Joseph B. Alonzo .

Respectfully submitted,  
John D. Heffner, PLLC

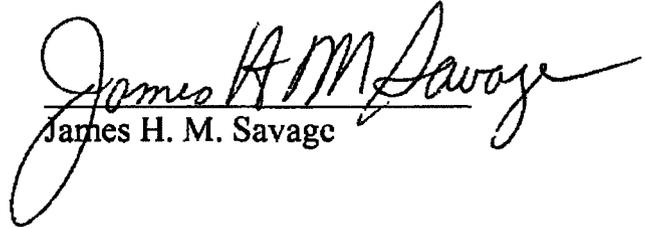
  
By: James H. M. Savage  
Of Counsel

*Attorneys for Chicago Terminal  
Railroad Company*

Dated: February 19, 2010

**CERTIFICATION OF SERVICE**

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this day by electronic mail a true copy of the within pleading upon Thomas McFarland, counsel for the City of Chicago, Illinois.

  
James H. M. Savage

Dated: February 19, 2010