

STB FD-33388 (SUB 91) 6-23-00 J CITY

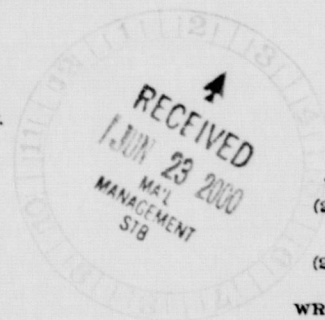
**SLOVER & LOFTUS**

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER  
C. MICHAEL LOFTUS  
DONALD G. AVERY  
JOHN H. LE SEUR  
KELVIN J. DOWD  
ROBERT D. ROSENBERG  
CHRISTOPHER A. MILLS  
FRANK J. PERGOLIZZI  
ANDREW B. KOLESAR III  
PETER A. PFOHL  
DANIEL M. JAFFE



TELEPHONE:  
(202) 347-7170

FAX:  
(202) 347-3619

WRITER'S E-MAIL:

pap@sloverandloftus.com

June 23, 2000

VIA FACSIMILE AND HAND DELIVERY

Richard A. Allen, Esq.  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Suite 600  
Washington, D.C. 20006-3939

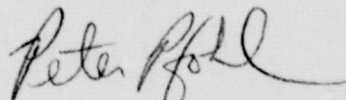
Re: Finance Docket No. 33388 (Sub-No. 91), CSX Corp.  
et al. -- Control and Operating Leases/Agreements --  
Conrail et al. (General Oversight)

Dear Mr. Allen:

Enclosed please find the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, the "Four City Consortium") Discovery Requests to Norfolk Southern Railway Company in the above-referenced proceeding.

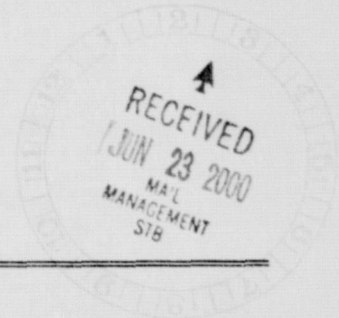
As indicated in the Discovery Requests, we are prepared to work with you in obtaining the information requested on an informal basis rather than through a formal discovery response (if that is what NS would prefer), or to discuss steps that might otherwise expedite a response to the requests. As indicated in the Discovery Requests, responses should be provided to us within seven (7) days of today's date, or June 30, 2000.

Sincerely,

  
Peter A. Pfohl

cc: Hon. Vernon L. Williams

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY - CONTROL AND OPERATING LEASES/AGREEMENTS - CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION (GENERAL OVERSIGHT)	)	Finance Docket No. 33388 (Sub-No. 91)
--	---	--

**FOUR CITY CONSORTIUM DISCOVERY REQUESTS  
TO NORFOLK SOUTHERN RAILWAY COMPANY**

Pursuant to 49 C.F.R. §§ 1114.21-1114.31, the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, the "Four City Consortium") hereby directs the following discovery requests to Norfolk Southern Railway Company ("NS"). The purpose of these requests is to elicit information necessary to enable the Consortium to meaningfully review and evaluate the issues that are the subject of this proceeding: i.e., the implementation of the Conrail transaction and of the workings of the various conditions established by the Board in its Decision No. 89 in the lead docket approving the application of CSX Corporation and CSX Transportation, Inc. (collectively "CSX") and Norfolk Southern Corporation and NS for control and division of the assets of Conrail Inc. and Consolidated Rail Corporation.

The Consortium on June 13, 2000 requested NS's 100% traffic waybill tapes for purposes of preparing an analysis of



the effects of the implementation of the Conrail control transaction on the Four Cities' region. These tapes were produced on June 16, 2000 and an initial review of the tapes has been conducted by the Consortium. This review has revealed that the types of data contained on the tapes is insufficient to allow the Four Cities to conduct a reasonable analysis to be able to respond to NS's June 1 Report and the Board's request in Decision No. 1 for meaningful "comments respecting the progress of implementation . . . and the workings of the various conditions . . . imposed." In particular the tapes do not contain the type of individual line segment data of the nature requested herein, and which was contained in the Application and relied on by the Board and the parties in the lead docket to evaluate the transaction's safety and environmental impacts on the Four Cities.

These requests are narrowly focused, and seek the type of information, and certain limited other safety information, that could not be ascertained through the traffic tapes or through the informal exchange of information between NS and the Consortium, and which is necessary for the Consortium to analyze post-acquisition operations by NS in the Four Cities.

Unless otherwise agreed, responses to the Consortium's discovery requests should be delivered to the offices of Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036. Because of the very limited time available before comments from parties in this docket are due, the Consortium requests that responses be made as soon as possible, and no later than seven



(7) days from the date hereof. Additionally, the Consortium is prepared to discuss with NS the possibility of producing responses to its requests on an informal basis, if that is what NS would prefer.

I.

DEFINITIONS

The following terms used herein are defined as follows:

1. "NS" means Norfolk Southern Railway Company, its parent, affiliates, and any of its or their present or former employees, agents, counsel, officers, directors, consultants, or any other person(s) acting on its or their behalf.

2. "NS line segments" means, collectively, the following line segments in Indiana (and, where applicable, Illinois), owned, controlled, and/or operated by NS, including the Indiana Harbor Belt Railroad Company, (see Decision No. 7 in the lead docket) as identified and defined in the Conrail Transaction Application<sup>1</sup>:

- a. Hobart to Hammond (N-469)
- b. Porter to CP 501 (N-308)
- c. Indiana Harbor to South Chicago (N-047)
- d. Indiana Harbor to Kankakee (N-311)
- e. CP 501 to Indiana Harbor (N-042)

---

<sup>1</sup> These line segments were summarized, among other places, in the Board's May 29, 1998 Final Environmental Impact Statement, at App. N, N-119 and Vol. 2, 4-154 and 4-155.

3. "Four Cities" means East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana individually and collectively participating as parties to this proceeding.

4. "Identify," when referring to a type of information, means to list and produce documents containing the specified information.

## **II.**

### **INSTRUCTIONS**

1. Each paragraph below shall operate and be construed independently, and each discovery request should be answered separately and fully in writing.

## **III.**

### **INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS**

1. Provide the following information with respect to each of the NS Line Segments:
  - a. the daily average number of trains traveling in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000;
  - b. the daily average train speed for trains traveling in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000;

- c. the average number of loaded cars and empty cars in trains moving in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000;
  - d. the average number of locomotives on trains moving in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000; and
  - e. the average train length, expressed in the number of cars, for trains moving in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000.
- 2. Please provide the date and location of any (i) grade crossing accidents and (ii) grade crossing fatalities occurring on NS in the Four Cities' city limits during the period December 1998 and May 2000 (inclusive).
  - 3. For each incident of a grade crossing accident/fatality identified in response to Request Number 2 above, please identify the number of persons injured and the number of fatalities.
  - 4. For each incident of a grade crossing accident/fatality identified in response to Request Number 2 above, please identify and produce any documents prepared internally



and/or documents/reports provided to any local, state or federal government agency.

Respectfully submitted,

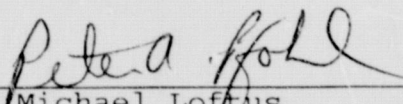
THE CITY OF EAST CHICAGO,  
INDIANA  
THE CITY OF HAMMOND, INDIANA  
THE CITY OF GARY, INDIANA  
THE CITY OF WHITING, INDIANA  
COLLECTIVELY THE FOUR CITY  
CONSORTIUM

OF COUNSEL:

Slover & Loftus  
1224 Seventeenth St., N.W.  
Washington, D.C. 20036

Dated: June 23, 2000

By:

  
C. Michael Loftus  
Christopher A. Mills  
Peter A. Pfohl  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

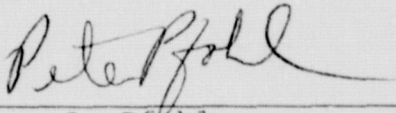
CERTIFICATE OF SERVICE

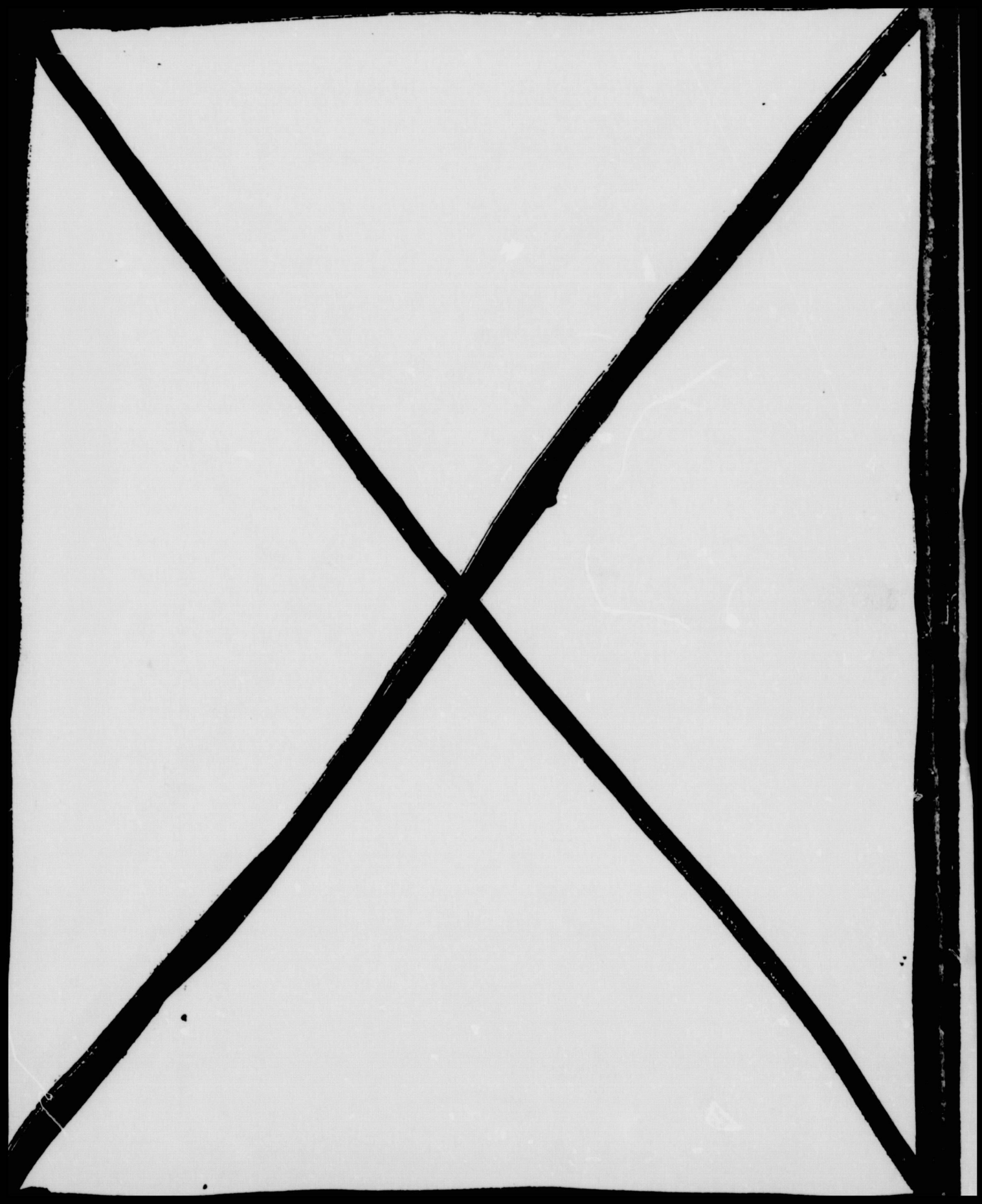
I hereby certify that copies of the foregoing Discovery Requests were served this 23rd day of June, 2000, by facsimile and hand delivery upon:

Richard A. Allen, Esq. (Counsel for NS)  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Suite 600  
Washington, D.C. 20006-3939

Dennis G. Lyons, Esq. (Counsel for CSX)  
Arnold & Porter  
555 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-1202

The Board has not yet issued publicly a service list for this General Oversight Proceeding, and the Four Cities are unaware of any other parties of record at this time.

  
\_\_\_\_\_  
Peter A. Pfohl





STB

FD-33388

(SUB 91)

9-22-00

J

STATE LEG



Office of the Chairman

**Surface Transportation Board**  
Washington, D.C. 20423-0001

FILE IN DOCKET

FD-33388  
(Sub-M 91)

September 22, 2000

The Honorable Earl L. Harris  
State of Indiana House of Representatives  
State House, Third Floor  
Indianapolis, IN 46204

Dear Representative Harris:

I appreciated your letter of August 24, 2000, regarding rail congestion in the Gary, East Chicago, Hammond and Whiting (Four Cities Consortium) area. I certainly understand the concerns that you have raised.

Throughout the proceeding in connection with the acquisition of Conrail by CSX Transportation, Inc. (CSXT) and Norfolk Southern Corporation (NS), the Board has been responsive to environmental and public safety issues that affect communities involved in the restructuring of this portion of the national rail system. In approving the Conrail transaction, we imposed a variety of conditions to address environmental and public safety concerns, and we have actively encouraged CSXT and NS to work closely with affected communities to reach mutually agreeable solutions to related problems. We continue to monitor the implementation of the conditions we imposed and the operations of the carriers.

In resolving problems, the Board believes that privately negotiated solutions are generally preferable to governmentally imposed ones, as more can be achieved privately as a general matter than government has the authority to direct. In this regard, we understand that negotiations are actively underway between CSXT and the Four Cities Consortium on a new settlement agreement, and, while there are still several outstanding issues, we are hopeful that the parties will be able to reach a mutually acceptable agreement in the near future.

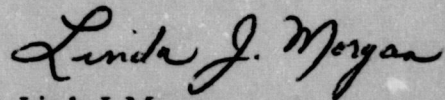
Additionally, it is our understanding that rail operating conditions in the Four Cities Consortium area have improved in recent months, and we expect this trend to continue as several new capital projects in the region are completed. These include the new third main line at Barr Yard, the state line interlocking project, the bi-directional signaling in the area, and the consolidation of the CSXT and IHB dispatching offices in Calumet City. These projects and initiatives, in conjunction with improved operations on the part of both CSX and NS, should help to further resolve the congestion and crossing problems that have concerned you.

The Honorable Earl L. Harris, Page 2.

As you note, the Four Cities Consortium has recently filed formal comments with us in the Conrail acquisition oversight proceeding and, while we hope that the parties will be able to resolve privately the issues in dispute, we will closely review the comments and take appropriate steps to help resolve any continuing implementation issues. I appreciate your interest in this important matter, and I will make your letter and my response a part of the public docket in the oversight proceeding.

I hope that the above information will be helpful to you and that you will not hesitate to contact me if we can be helpful in the future.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan". The signature is written in dark ink and is positioned above the printed name.

Linda J. Morgan





**STATE OF INDIANA**  
**HOUSE OF REPRESENTATIVES**  
THIRD FLOOR STATE HOUSE  
INDIANAPOLIS, INDIANA 46204

EARL L. HARRIS  
4114 BUTTERNUT STREET  
EAST CHICAGO, IN 46312  
COMMITTEES:  
WAYS AND MEANS, VICE CHAIRMAN

FILE IN DOCKET

August 24, 2000

The Honorable Linda J. Morgan  
Chairman, Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Dear Chairman Morgan:

As an elected representative of the citizens of northwest Indiana in the Indiana General Assembly, I am writing to respectfully request that you thoroughly review and address train congestion issues that continue to plague the region and, in particular, the Cities of Gary, East Chicago, Hammond, and Whiting (the Four City Consortium).

When Conrail was acquired by CSX Transportation Inc. (CSX) and Norfolk Southern Railway Corporation (NS), the railroads promised northwest Indiana communities that new traffic patterns and infrastructure improvements would ameliorate the already severe congestion impacts caused by the movement of over 150 daily freight trains traversing the over 400 at-grade highway/rail crossings. Unfortunately, the promised improvements have yet to be realized. Instead, the railroads appear to be continuing to pursue operating and infrastructure improvement policies favoring east-west through traffic without sufficient consideration given to mitigating that traffic's local environmental and safety impacts. Meanwhile, the region remains among the top areas of the country in terms of personal accidents and fatalities caused by train collisions.

I understand that the Surface Transportation Board conditioned approval of the Conrail acquisition on the representations from NS and CSX that certain track, infrastructure, and operating improvements would improve railroad congestion related problems in northwest Indiana. Apparently, CSX and NS have not lived up to those conditions. In particular, I am aware that the railroads have refused to abide by conditions that they reroute train traffic as much as practicable off critical congested rail line segments, not stop trains in positions where they would block major highway/rail at-grade crossings, and help develop a grade-separated truck route in East Chicago. Even the issuance of thousands of train traffic tickets by the Four Cities resulting from the constant illegal at-grade crossing blockages has failed to get the railroad's attention.

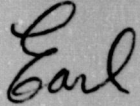
I respectfully submit that additional assistance is needed at this time, especially with regard to those conditions referenced above. I understand that the Four City Consortium has submitted formal comments with you on this subject. I strongly urge you closely consider and take

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
SEP 5 3 19 PM '00  
OFFICE OF  
CHAIRMAN MORGAN

appropriate actions to mitigate the continuing train congestion problems plaguing northwest Indiana, as recommended by the Four City Consortium.

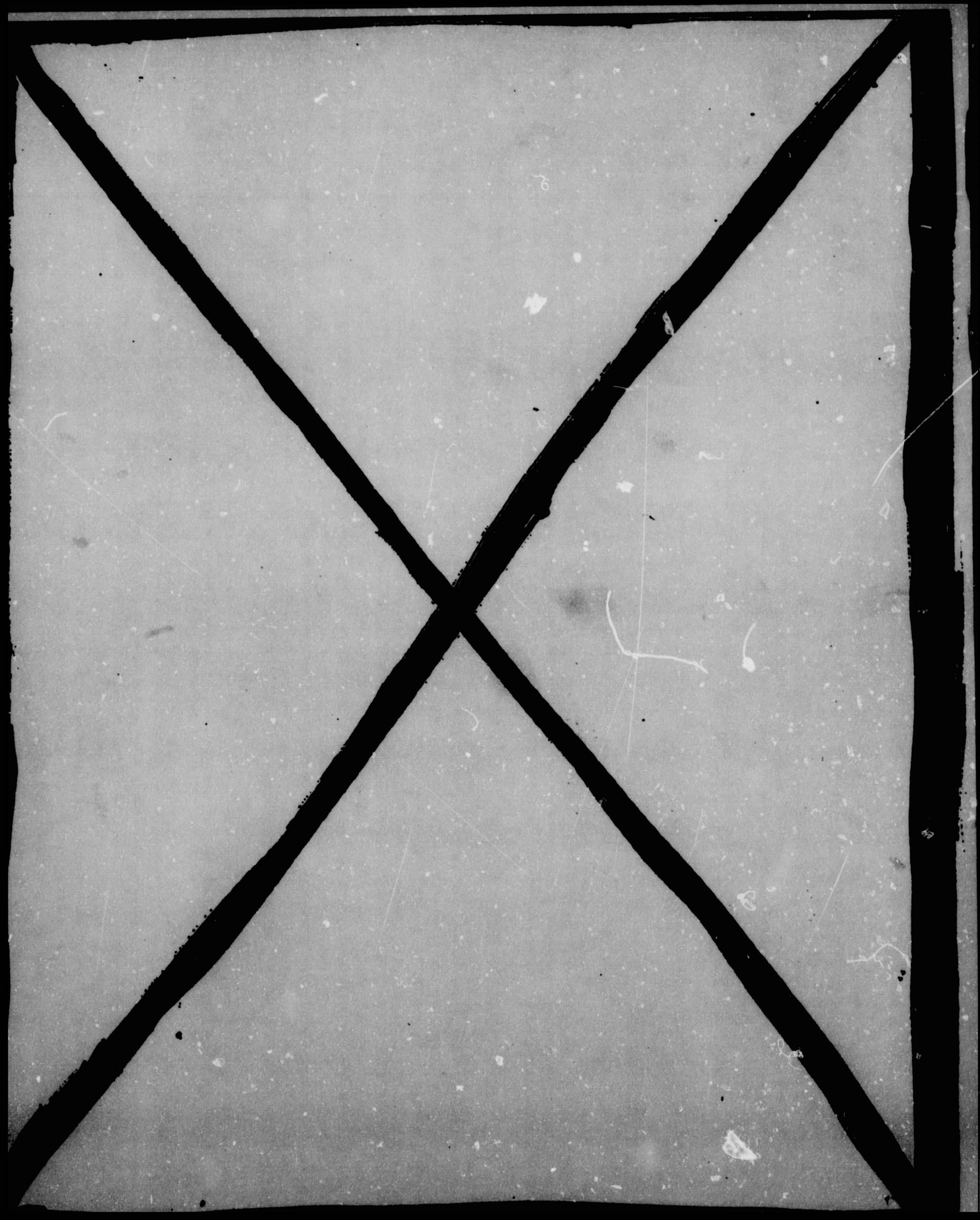
I appreciate your consideration of my views and the importance of this issue for the citizens of northwest Indiana.

Sincerely,

A handwritten signature in cursive script, appearing to read "Earl".

Earl Harris  
State Representative  
House District 2







STB FD-33388 (SUB 91) 6-14-00 J BUSINESS

**SLOVER & LOFTUS**

**THIS IS A CONFIRMATION  
COPY OF A DOCUMENT  
PREVIOUSLY TRANSMITTED  
TO YOU BY FAX**

# SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036

WILLIAM L. SLOVER  
C. MICHAEL LOFTUS  
DONALD G. AVERY  
JOHN H. LE SEUR  
KELVIN J. DOWD  
ROBERT D. ROSENBERG  
CHRISTOPHER A. MILLS  
FRANK J. PERGOLIZZI  
ANDREW B. KOLESAR III  
PETER A. PFOHL  
DANIEL M. JAFFE

TELEPHONE:  
(202) 347-7170

FAX:  
(202) 347-3619

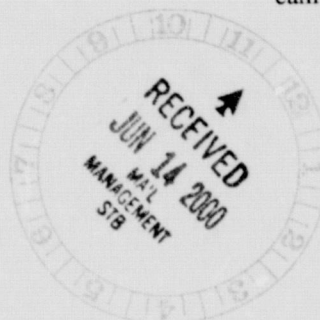
WRITER'S E-MAIL:

June 13, 2000

cam@sloverandloftus.com

## VIA FACSIMILE

Richard A. Allen, Esq.  
Zuckert, Scutt & Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Suite 600  
Washington, D.C. 20006-3939



Re: Finance Docket No. 33388 (Sub-No. 91)  
Conrail Control-General Oversight Proceeding

Dear Dick:

In response to your letter dated today transmitting copies of various documents related to the transfer of Conrail's trackage rights over the NS line between Keensburg, IL and PSI Energy's Gibson plant near Carol, IN to CSXT, we will treat these documents as you have requested under the protective order in Finance Docket No. 33388.

Given NS's voluntary production of these documents, PSI Energy hereby withdraws its May 12, 2000 discovery requests to NS in their entirety.

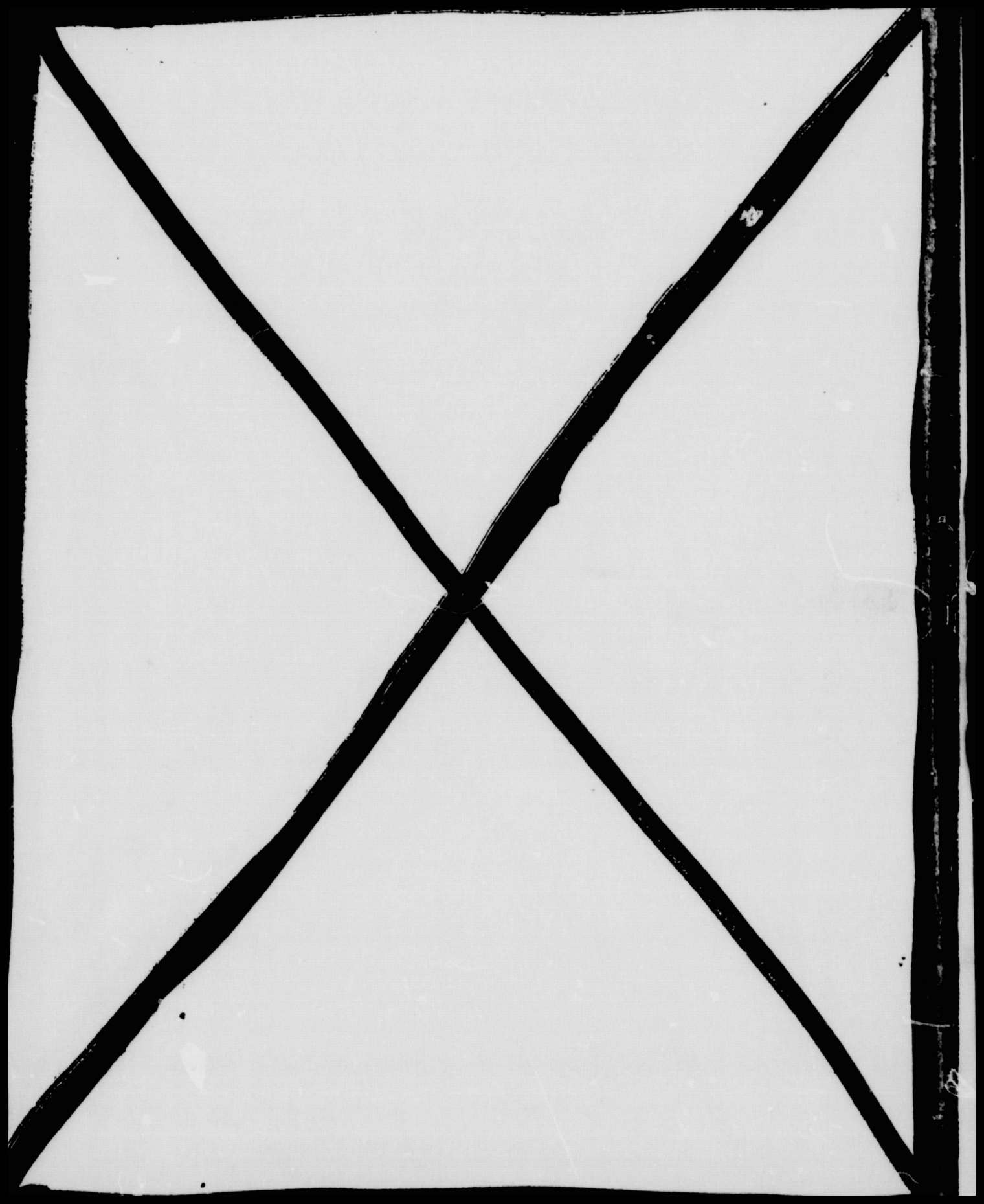
Sincerely,

Christopher A. Mills

CAM/mfw

cc: Hon. Vernon L. Williams  
Dennis G. Lyons, Esq.

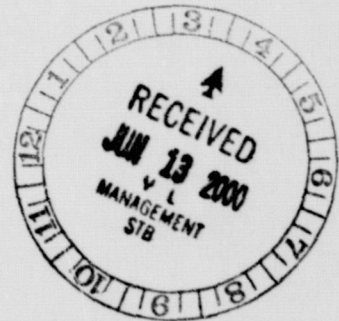




SUB FD-33388 (SUB 91) 6-13-00 J BUSINESS

SLOVER & LOFTUS  
1224 SEVENTEENTH STREET, N.W.  
WASHINGTON, D.C. 20036  
(202) 347-7170  
FACSIMILE: (202) 347-3619 or (202) 347-8292

## TELECOPIER COVER SHEET



DATE:

6/13/00

TO:

Richard Allen  
Vernon Williams  
Dennis Lyons

FROM:

Christopher A. Mills

COMMENTS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NUMBER OF PAGES (including cover sheet): 2

If you experience any problems with this transmission, please contact:

Operator: Mary

## CONFIDENTIALITY NOTICE:

THIS FACSIMILE TRANSMISSION AND THE DOCUMENTS ATTACHED TO IT CONTAIN PROPRIETARY MATERIAL WHICH IS CONFIDENTIAL AND PRIVILEGED. THIS DOCUMENT AND ALL ATTACHMENTS ARE INTENDED SOLELY FOR THE USE OF THE RECIPIENT IDENTIFIED. ANY DISCLOSURE, DUPLICATION, DISSEMINATION OR OTHER USE OF THIS DOCUMENT AND ITS ATTACHMENTS BY ANYONE OTHER THAN THE IDENTIFIED RECIPIENT, OR HIS OR HER AGENT, IS STRICTLY PROHIBITED. IF YOU ARE NOT THE IDENTIFIED RECIPIENT, THESE MATERIALS HAVE BEEN TRANSMITTED TO YOU IN ERROR. PLEASE CALL US IMMEDIATELY TO ARRANGE FOR OUR RETRIEVAL OF THESE DOCUMENTS, AT NO EXPENSE TO YOU.



**SLOVER & LOFTUS**

ATTORNEYS AT LAW

1234 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

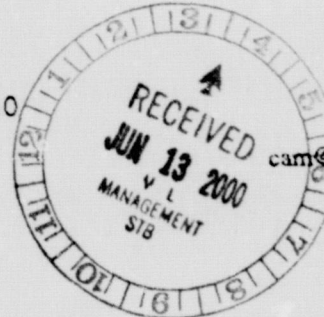
WILLIAM L. SLOVER  
C. MICHAEL LOFTUS  
DONALD G. AVERY  
JOHN H. LE SEUR  
KELVIN J. DOWD  
ROBERT D. ROSENBERG  
CHRISTOPHER A. MILLS  
FRANK J. PERGOLIZZI  
ANDREW B. KOLESAR III  
PETER A. PFOHL  
DANIEL M. JAFFE

TELEPHONE:  
(202) 347-7170

FAX:  
(202) 347-3619

WRITER'S E-MAIL:

June 13, 2000



cam@sloverandloftus.com

VIA FACSIMILE

Richard A. Allen, Esq.  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Suite 600  
Washington, D.C. 20006-3939

Re: Finance Docket No. 33388 (Sub-No. 91)  
Conrail Control-General Oversight Proceeding

Dear Dick:

In response to your letter dated today transmitting copies of various documents related to the transfer of Conrail's trackage rights over the NS line between Keensburg, IL and PSI Energy's Gibson plant near Carol, IN to CSXT, we will treat these documents as you have requested under the protective order in Finance Docket No. 33388.

Given NS's voluntary production of these documents, PSI Energy hereby withdraws its May 12, 2000 discovery requests to NS in their entirety.

Sincerely,

A handwritten signature in dark ink, appearing to read "Chris Mills".

Christopher A. Mills

CAM/mfw

cc: Hon. Vernon L. Williams  
Dennis G. Lyons, Esq.

