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[ADVERTISEMENT]

### **CSX/CONRAIL OVERLAPPING COMMUNITIES**

[Graphic: Box with map of Pennsylvania, Delaware, Maryland, Ohio, and parts of West Virginia, Michigan, Indiana, and Illinois with names of cities with major rail service only from CSX and Conrail]

### **WHERE WILL CONRAIL EMPLOYEES BE IF COMPETITION DIES?**

One look at this map shows why a combination with CSX isn't good for Conrail employees.

The 60-plus communities on it are those with major rail service only from CSX and Conrail. Indeed, CSX and Conrail run parallel from Ohio to Philadelphia and elsewhere. At the same time, Conrail's major Hollidaysburg and Altoona shops are within just 70 miles of CSX's facilities at Cumberland, Md. Redundancies like these could add up to lost jobs.

The sheer size of a CSX/Conrail combination would dominate rail transportation in the East, depriving shippers of the balanced competition that promotes safe and efficient service--service that encourages economic development and brings the marketplaces of the world to every shipper's doorstep. Lack of competition means lack of growth--lack of rail business, lack of train service, lack of maintenance: in short, fewer opportunities for employees.

With this in mind, Conrail employees have every reason to support a combination with Norfolk Southern. Norfolk Southern's system extends and complements Conrail's system, rather than duplicating it.

Conrail employees want to be part of a winning future. Norfolk Southern has the best employee safety record of any major carrier. The best operating ratio. A world-class infrastructure. A reputation for innovation and industrial development. It's why The Thorough-

bred has been called one of America's most admired companies.<sup>1</sup>

Norfolk Southern and Conrail can both boast overfunded, healthy pension funds, ensuring peace of mind for retirees. CSX's claim to fame is its recent recognition as one of the "Top 50 Companies with the Largest Underfunded Pension Liability".<sup>2</sup>

CSX hasn't said much about these issues. It does not want to remind Conrail employees that your system overlaps CSX. It doesn't want to remind you that CSX/Conrail would create a virtual "no-competition zone" from eastern Ohio to the Atlantic. And it certainly doesn't want to remind you that Conrail's pension money could be merged with CSX's woefully underfunded pension fund.

#### IT'S TIME TO ACT

If you're a Conrail employee, take action. Let your board of directors, management, labor leaders and lawmakers know that you support jobs, growth, opportunity, competition and a healthy pension fund.

If you own shares of Conrail, say **NO** to the CSX/Conrail deal by voting at the stockholders' meeting December 23. Vote your shares **AGAINST** Conrail's proposal to "opt out" of the fair value statute. If you are a participant in the Conrail ESOP, instruct the ESOP Trustee to vote your shares **AGAINST** the proposal.

ESOP participants should know that their votes are especially important because each allocated share represents both a financial and voting interest by the participants equivalent to at least five shares. This is because allocated ESOP shares control the voting of both unallocated ESOP shares and Employee Benefits Trust shares. And remember--your vote is strictly confidential.

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<sup>1</sup> FORTUNE, Annual Corporate Reputations Survey, March 4, 1996.

<sup>2</sup> Pension Benefit Guaranty Corporation: News Release 96-16, December 6, 1995.

Employees should also know that a number of senior Conrail executives have been selling Conrail shares not only pursuant to the CSX offer but also in the open market. Does this manifest a lack of confidence in the value and the chances of completion of CSX's proposed deal, which would have 75% of the remaining Conrail shares converted into CSX stock in the back-end merger?

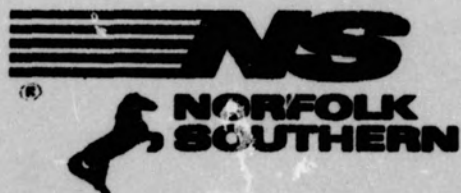
**[Norfolk Southern Logo]**

The Thoroughbred of Transportation

[Copyright] Norfolk Southern Corporation, Three Commercial Place,  
Norfolk, VA 23510-2191. <http://www.nscorp.com>



Confidential



# Norfolk Southern Corporation Shareholder Presentation

# Norfolk Southern is offering Conrail shareholders superior value

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## Norfolk Southern offer

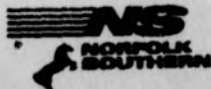
- Nominal value of \$110.00 per share
- \$8.0BN total value<sup>2</sup>
- No equity risk – all cash
- No regulatory risk – voting trust
- No synergy risk – all cash
- Immediate value

## CSX offer

- Nominal value of \$92.78 per share<sup>1</sup>
- \$6.7BN total value<sup>2</sup>
- Equity risk – no voting trust, 75% stock
- Regulatory risk for stock portion
- Synergy risk – 75% stock
- Timing of back-end exchange uncertain

<sup>1</sup> Based on 25% cash/75% stock, reflects CSX 12/2 closing price of \$46.875, represents discount of 15.7% to Norfolk Southern offer

<sup>2</sup> For remaining shares



# Norfolk Southern's offer is also superior for other constituencies

---

## Employees

### Safety:

Norfolk Southern has established itself as the safest railroad in terms of employee safety for the past seven years

### Better fit:

Norfolk Southern's rail system has less overlap and duplications, providing greater opportunity for maintaining employment

### Pension funds:

Norfolk Southern and Conrail have overfunded pension plans; CSX has an underfunded pension plan

## Shippers

### Safety:

Norfolk Southern has the lowest derailment ratio in the industry, resulting in superior service to customers

### Service:

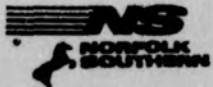
Norfolk Southern is the most efficient railroad, providing the highest level of service to its shippers

### Balanced competition:

Norfolk Southern/Conrail would create a more balanced competitive landscape in the Eastern U.S.

### Innovation:

Norfolk Southern created innovative ventures such as the Triple Crown Intermodal Network using RoadRailer® technology



## Conrail's Board can satisfy the remaining conditions to Norfolk Southern's offer

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Condition	Satisfied		Comment
	Yes	No	
Voting trust approval condition	✓		Satisfied 11/18 pursuant to informal nonbinding written opinion by STB
HSR condition	✓		Satisfied 11/18 pursuant to FTC Premerger Notification Office confirmation
Financing condition	✓		Satisfied 11/15; over \$20.1BN in commitments received
Subchapter F condition		✓	Conrail Board action required
Rights condition		✓	Conrail Board action required
CSX termination condition		✓	Conrail Board action required





## CSX's offer – much less value, really hostile to shareholders

---

### Much less value

Structure	Amount	Earliest receipt date
25% cash	\$110.00	Jan. 1997
75% equity (1.85619 shares)	\$87.01 <sup>1</sup>	Jan. 1998(?)
Blended value:	\$92.78	

### Really hostile

- Hostile approach – coercive bid
- Hostile structure – multi-tier, front-end loaded
- Hostile back-end – uncertain timing and value on 75% of the bid
- Hostile vote – 5:00pm the night before Christmas Eve

<sup>1</sup> Based on CSX 12/2 closing price of \$46.875



## **CSX's offer now exposes shareholders to downside risks for 75% of consideration**

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- **Regulatory risk**
  - STB does not approve transaction
  - STB imposes conditions unacceptable to CSX and Conrail
- **Timing risks**
- **Equity market risk**
- **Synergy risk**
  - Synergy realization (gross number)
  - Synergy realization (net number; STB "give-ups")



# Significant regulatory risk is borne by Conrail shareholders in the CSX proposal

"2-to-1" points comparison

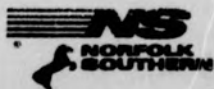
Cities with over 100,000 population

NS/CR			CSX/CR		
Cities	Population <sup>1</sup>	General merchandise sales <sup>1</sup> (\$ 000s)	Cities	Population <sup>1</sup>	General merchandise sales <sup>1</sup> (\$ 000s)
Erie, PA	280,600	\$396,696	Baltimore, MD	2,465,700	\$2,442,491
Fort Wayne, IN	470,400	545,487	Dayton, OH	957,100	1,471,145
			Grand Rapids, MI	990,400	1,738,886
			Indianapolis, IN	1,473,300	1,937,260
			Philadelphia, PA	4,958,300	4,551,065
			Pittsburgh, PA	2,399,600	2,526,381
			Youngstown, OH	603,600	797,138
<b>Totals</b>	<b>751,000</b>	<b>\$1,142,183</b>		<b>13,848,000</b>	<b>\$15,464,366</b>

"Shippers, ports, and Congress oppose Conrail sale to an unexpected extent. . . Opposition is likely to force the winning bidder into costly concessions, including selling assets and routes."

— *The Wall Street Journal*, November 27, 1996

<sup>1</sup> Source: Rand McNally, *Commercial Atlas & Marketing Guide*, 127th edition



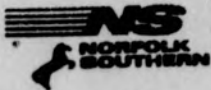
## CSX's offer – faulty synergy mathematics

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- **Equity risk:** value of 75% stock is highly dependent on synergies realized
- **Synergy risk:**

	CSX (year 2000)	NSC (year 2000)
1st time	\$550 million	\$660 million
2nd time	\$730 million	\$660 million
3rd time	?	\$660 million

- **STB risk:**
  - Market share dominance in CSX-Conrail transaction
  - Significant market overlap in CSX-Conrail transaction
  - Need for balanced competition
- Because we believe CSX must give up more track and revenue than NSC, it is unlikely to have more synergies
  - CSX will have more losses from enhanced competition and therefore less net revenue enhancements
  - CSX will have less track and revenue remaining and therefore less operating savings opportunities



# CSX's offer exposes shareholders to downside risks with significant value implications on backend

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## No completion of back-end

Back-end value \$71.00

Discount to NS  
all cash offer (35.0%)

## Assumptions

- CRR reverts back to pre-CSX announcement price of \$71.00
- STB fails to approve or approves on terms unacceptable to CSX

## Equity market risk

Back-end value \$73.96

Discount to NS  
all cash offer (32.8%)

## Assumptions

- Equity market (including CSX) drops 15% before completion of back-end exchange



# You must vote "No" on opt-out to protect the value of your shares

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## No vote

- Helps secure higher value for shares
- Sends important signal on shareholder rights
- Helps NS win
  - More immediate value
  - No up-front risk
  - No back-end risk
  - Superior transportation system
  - Superior equity investment opportunity

## Yes vote

- CSX wins despite
  - Delivering inferior value
  - Loading substantial risk on shareholders
  - Using coercive structure to squeeze out owners at a lower price

Every vote counts –

To realize the benefits available you must vote against opt-out





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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**SCHEDULE 14D-1**

(Amendment No. 15)

**Tender Offer Statement Pursuant to Section 14(d)(1)  
of the Securities Exchange Act of 1934**

---

**Conrail Inc.**

(Name of Subject Company)

**Norfolk Southern Corporation  
Atlantic Acquisition Corporation**

(Bidders)

**Common Stock, par value \$1.00 per share  
(Including the associated Common Stock Purchase Rights)  
(Title of Class of Securities)**

**208368 10 0**

(CUSIP Number of Class of Securities)

**Series A ESOP Convertible Junior  
Preferred Stock, without par value  
(Including the associated Common Stock Purchase Rights)  
(Title of Class of Securities)**

**Not Available**

(CUSIP Number of Class of Securities)

---

**James C. Bishop, Jr.  
Executive Vice President-Law  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone: (757) 629-2750**

(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications on Behalf of Bidder)

---

with a copy to:  
**Randall H. Doud, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 735-3000**

---

This Amendment No. 15 amends the Tender Offer Statement on Schedule 14D-1 filed on October 24, 1996, as amended (the "Schedule 14D-1"), by Norfolk Southern Corporation, a Virginia corporation ("Parent"), and its wholly owned subsidiary, Atlantic Acquisition Corporation, a Pennsylvania corporation ("Purchaser"), relating to Purchaser's offer to purchase all outstanding shares of (i) Common Stock, par value \$1.00 per share (the "Common Shares"), and (ii) Series A ESOP Convertible Junior Preferred Stock, without par value (the "ESOP Preferred Shares" and, together with the Common Shares, the "Shares"), of Conrail Inc. (the "Company"), including, in each case, the associated Common Stock Purchase Rights, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 24, 1996 (the "Offer to Purchase"), as amended and supplemented by the Supplement thereto, dated November 8, 1996 (the "Supplement"), and in the revised Letter of Transmittal (which, together with any amendments or supplements thereto, constitute the "Offer"). Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given such terms in the Offer to Purchase, the Supplement or the Schedule 14D-1.

**Item 5. Purpose of the Offer and Plans or Proposals of the Bidder.**

Item 5 is hereby amended and supplemented by the following:

On December 4, 1996, Parent issued a response to certain questions issued in writing by the Pennsylvania State Employees Retirement System, a Company shareholder, discussing, among other things, Parent's analysis of the perceived benefits of the Offer and the Proposed Merger to the Company's employees and to the Commonwealth of Pennsylvania as compared to the Proposed CSX Transaction. The text of Parent's response and attachments thereto are filed as an exhibit hereto.

**Item 11. Material to be Filed as Exhibits.**

Item 11 is hereby amended and supplemented by the following:

- (a)(50) Text of response by Parent to the Pennsylvania State Employees Retirement System sent on December 4, 1996 and attachments thereto.

## SIGNATURE

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: December 5, 1996

### NORFOLK SOUTHERN CORPORATION

By: /s/ JAMES C. BISHOP, JR.  
Name: James C. Bishop, Jr.  
Title: Executive Vice President-Law

### ATLANTIC ACQUISITION CORPORATION

By: /s/ JAMES C. BISHOP, JR.  
Name: James C. Bishop, Jr.  
Title: Vice President and General Counsel

## EXHIBIT INDEX

Exhibit  
Number

Description

Page

(a)(50)

Text of response by Parent to the Pennsylvania State Employees Retirement System sent on December 4, 1996 and attachments thereto.



PA SERS response to questions regarding an CR/NS merger

**Q. What are the job impact implications of the Norfolk Southern proposal?**

- The CSX and Conrail systems are duplicative (see enclosed rail maps) in many areas. This means redundancies, particularly in PA, MD, DE, and OH, and thus major job losses if CSX acquires Conrail. As the Conrail and Norfolk Southern rail systems complement each other, job losses will be less in the Norfolk Southern proposal.
- In the long term, Norfolk Southern expects the Norfolk Southern-Conrail combination to generate substantial new business and increased job security.

**Q. What are the potential implications of your proposal on PA state tax revenue (vs. a stand-alone Conrail)?**

Due to Norfolk Southern's limited presence in the State of Pennsylvania, if Norfolk Southern successfully merges with Conrail we project tax revenues in the State of Pennsylvania to increase. Income taxes should remain at Conrail's current level with an increase in taxes corresponding to an expected increase in operating income after the merger. Property taxes in Pennsylvania also are expected to increase a minimum of 15%. In addition, we project an increase in franchise taxes in Pennsylvania.

**Q. Are there any provisions in the Norfolk Southern plan which could enhance economic development at the Port of Philadelphia?**

- A new high-tech multimodal terminal is planned for the old Philadelphia Navy Yard, which has been discussed with the Mayor of Philadelphia.
- RoadRailer® trains, via the NS and CR bimodal subsidiary Triple Crown Services Co., will provide truck competitive service to midwest and southern destinations.
- A Norfolk Southern-Conrail combination will provide the only doublestack container service from the Port of Philadelphia to and from the southeast.
- Norfolk Southern brings superior intermodal experience to the Port of Philadelphia. NS intermodal growth more than doubles the growth of the industry average while Conrail reaches the mean and CSX lags far behind(since 1988).

**Q. Have job security issues been discussed under your plan?**

- As discussed, since the Norfolk Southern and Conrail systems complement each other, job losses are expected to be less than in a CSX-Conrail combination.
- Federal law mandates application of standard labor protection in rail mergers. These conditions protect rail employees against merger related adverse effects.
- As the pension plans of both Conrail and Norfolk Southern are overfunded, retirement security is ensured, while the CSX pension fund has been on the Pension Benefit Guarantee Corporation's list of "Top Fifty Companies with the Largest Underfunded Pension Liability." Conrail employees should not want their retirement plan commingled with CSX.

**Q. In the public media, CSX appears to be committed to the merged corporate headquarters in a Philadelphia location. Does your plan provide for a similar**



**framework as your rival bidder?**

- CSX's headquarters in Richmond, VA, employs under 200 people, and a Philadelphia headquarters under CSX ownership would require no more jobs and perhaps fewer. CSX has made no guarantees regarding the other Philadelphia-based Conrail jobs--they could go to Jacksonville, FL, where CSX's operations are centralized.
- In a letter to Conrail's board of directors (October 23, 1996), Norfolk Southern Chairman, President and CEO David R. Goode indicated that Norfolk Southern would be willing to consider the location of a merged corporate headquarters in Philadelphia. A copy of the letter is attached.

**Q. In addition to the valuation differences between the CSX and Norfolk Southern offers, what do you feel are the most compelling reasons for a Norfolk-Conrail vs. a CSX-Conrail combination?**

- A Norfolk Southern-Conrail combination encourages a balanced competitive structure for Eastern railroad service with two rail systems of comparable size and scope. It acknowledges that large markets must be served by more than one railroad; that ownership of major trunk lines and effective terminal access are required for true competition; and that competition is weakened when less than fair value is paid for assets (see enclosed Principles of Balanced Rail Competition).
- A Norfolk Southern-Conrail combination will create a stronger, more competitive eastern transportation market and a far more balanced freight rail system than the proposed CSX-Conrail merger. A combined CSX-Conrail will control almost 70% of the total of CSX, Conrail and NS rail freight, resulting in extreme market dominance. A Norfolk Southern-Conrail combination will not dominate eastern freight.
- Important markets, including New York, Northern New Jersey, Boston, Pittsburgh, Philadelphia, Wilmington and Youngstown, will only have one Class I carrier service in a CSX-Conrail combination (an effectual monopoly). A Conrail-Norfolk Southern combination will preserve (and possibly enhance) two carrier service in these and many other areas, allowing shippers a choice for rail service.
- Conrail customers will obtain better access to the Southeast and improved single system coverage in the East. Also, Conrail customers will benefit from a combination with Norfolk Southern, widely acclaimed as the safest, most efficient and best managed railroad.
- In addition to competitive pricing resulting from volume efficiencies, Norfolk Southern-Conrail will provide a level of service that only a broad network can provide. We will be able to undertake more initiatives such as our recent vehicle distribution agreement with Ford. We will be able to improve intermodal service between the Northeast and Southeast, making our intermodal network more competitive with alternative truck services.

[On the first page appears a map of the eastern half of the United States, entitled "NS and CR Systems," which shows the reach of Parent's and the Company's track systems.]

[On the second page appears a map of the eastern half of the United States, entitled "CSXT and CR Systems," which shows the reach of CSX's and the Company's track systems.]

[On the third page appears a map entitled "Pennsylvania" with details of certain locations in Pennsylvania served by tracks and stations of the Company, CSX, and Parent.]

## **Principles of Balanced Rail Competition**

### **Norfolk Southern's Commitment to NS/CR Customers**

#### **1. Competition Requires Rail Systems of Comparable Size and Scope**

Railroads compete with each other, not just trucks  
Balance between railroads must not be eliminated by mergers  
Customers demand full rail route networks  
Mergers should result in balance within regions, not dominance

#### **2. The Largest Markets Must be Served by (at least) Two Large Railroads**

Major markets require competitive service  
Rail mergers should not be an excuse to control a market  
Competition at ports is especially important  
Lack of competition has disadvantaged Northeastern markets  
Routes and terminals must be adequate to protect competition

#### **3. Owned Routes are Essential to Competition**

Railroads need to control their major trunk-line routes  
Route ownership enables competition on safety, price and service  
Competition on major corridors, such as New York/Philadelphia -Chicago, should be over owned routes  
Trackage rights do work for short-distance industrial access, and as shortcuts between owned lines

#### **4. Competition Depends on Effective Terminal Access**

The rail network is anchored by terminals and yards  
Terminals are just as important to competition as routes  
Competitors must have the right to buy or build their own terminal facilities

#### **5. Competition is Not Free**

Competitors must make a commitment to owning lines and terminals  
NS/CR will not subsidize its competitors  
Competitors must pay a fair portion of the overall purchase price

[On this page and for the three pages following appears a letter to all rail shippers from Parent, dated October 29, 1996. An identical version of this letter, except for a change of the date to October 28, was previously filed as exhibit (a) (12) to the Schedule 14D-1.]



[On this page and for the three pages following appears a letter from David R. Goode to the Board of Directors of the Company, dated October 23, 1996. An identical version of this letter was previously filed as part of exhibit (a)(7) to the Schedule 14D-1.]



[On this page and for the five pages following appears the text of a speech made to the Salomon Brothers Transportation Conference on November 12, 1996, by David R. Goode. The text of this speech was previously filed as exhibit (a)(38) to the Schedule 14D-1, and was also filed previously under Rule 14a-6(b) promulgated under the Securities Exchange Act of 1934, as amended, as soliciting materials of Parent in connection with a special meeting of shareholders of the Company.]

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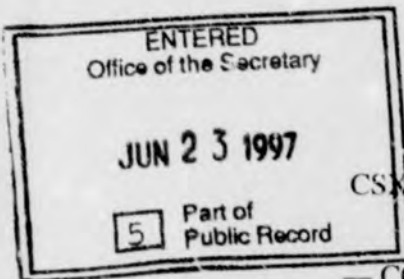
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

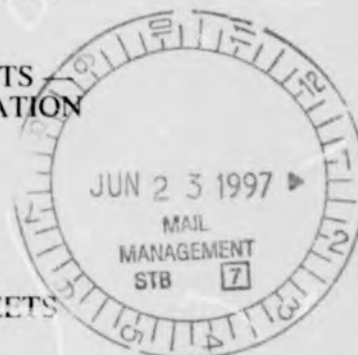
Finance Docket No. 33388

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

RAILROAD CONTROL APPLICATION

VOLUME 7E OF 8

FORM 10-Ks, FORM S-4s, FORM 14D-1s,  
ANNUAL REPORTS, AND CURRENT BALANCE SHEETS  
AND INCOME STATEMENTS  
(EXHIBITS 6, 7, 9, 20 AND 21)



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FILED

JUN 23 1997

SURFACE  
TRANSPORTATION BOARD

VOLUME 7

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**SCHEDULE 14D-1**

(Amendment No. 16)

Tender Offer Statement Pursuant to Section 14(d)(1)  
of the Securities Exchange Act of 1934

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**Conrail Inc.**

(Name of Subject Company)

**Norfolk Southern Corporation  
Atlantic Acquisition Corporation**

(Bidders)

Common Stock, par value \$1.00 per share  
(Including the associated Common Stock Purchase Rights)  
(Title of Class of Securities)

**208368 10 0**

(CUSIP Number of Class of Securities)

Series A ESOP Convertible Junior  
Preferred Stock, without par value  
(Including the associated Common Stock Purchase Rights)  
(Title of Class of Securities)

**Not Available**

(CUSIP Number of Class of Securities)

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**James C. Bishop, Jr.  
Executive Vice President-Law  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone: (757) 629-2750**

(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications on Behalf of Bidder)

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with a copy to:

**Randall H. Doud, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 735-3000**

This Amendment No. 16 amends the Tender Offer Statement on Schedule 14D-1 filed on October 24, 1996, as amended (the "Schedule 14D-1"), by Norfolk Southern Corporation, a Virginia corporation ("Parent"), and its wholly owned subsidiary, Atlantic Acquisition Corporation, a Pennsylvania corporation ("Purchaser"), relating to Purchaser's offer to purchase all outstanding shares of (i) Common Stock, par value \$1.00 per share (the "Common Shares"), and (ii) Series A ESOP Convertible Junior Preferred Stock, without par value (the "ESOP Preferred Shares" and, together with the Common Shares, the "Shares"), of Conrail Inc. (the "Company"), including, in each case, the associated Common Stock Purchase Rights, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 24, 1996 (the "Offer to Purchase"), as amended and supplemented by the Supplement thereto, dated November 8, 1996 (the "Supplement"), and in the revised Letter of Transmittal (which, together with any amendments or supplements thereto, constitute the "Offer"). Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given such terms in the Offer to Purchase, the Supplement or the Schedule 14D-1.

#### **Item 5. Purpose of the Tender Offer and Plans or Proposals of the Bidder.**

Item 5 is hereby amended and supplemented by the following:

(e) On December 6, 1996, CSX commenced a tender offer to purchase for cash an aggregate of up to 18,344,845 Shares of the Company at a price of \$110 in cash per Share.

#### **Item 10. Additional Information.**

Item 10 is hereby amended and supplemented by the following:

(e) On December 5, 1996, Defendants in the Pennsylvania Litigation filed their Answer and Defenses to Plaintiffs' Second Amended Complaint, generally denying, and asserting various defenses to, the allegations contained therein and requesting judgment on all claims and an award of costs and attorneys fees. The Company and CSX also filed a Counterclaim to Plaintiffs' Second Amended Complaint (the "Counterclaim"), naming Parent, Purchaser and Kathryn B. McQuade as counterclaim defendants, alleging that David R. Goode and Henry C. Wolf are co-conspirators/aiders and abettors, and purporting to state the following claims: tortious interference with current and prospective contractual relationships, intentional infliction of harm, unfair competition and civil conspiracy. Further, the Counterclaim alleges that Parent and certain of its executive officers have engaged in (i) dissemination of materially false and misleading information, (ii) promotion of an illusory tender offer, (iii) purportedly improper commencement of a lawsuit, (iv) false and misleading solicitation of proxies for the upcoming Company shareholder vote and (v) efforts to manipulate the market through unfair, tortious conduct, in violation of the federal securities laws. The Counterclaim requests a jury trial and an award of damages, punitive damages, costs and attorneys fees. Parent believes that the Counterclaim is without merit and intends to defend it vigorously.

**Item 11. Material to be Filed as Exhibits.**

Item 11 is hereby amended and supplemented by the following:

- (a)(51) Press Release issued by Parent on December 5, 1996.
- (g)(6) Answer and Defenses of Defendants to Plaintiff's Second Amended Complaint and the Counterclaim of the Company and CSX (dated December 5, 1996, United States District Court for the Eastern District of Pennsylvania).



SIGNATURE

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: December 6, 1996

NORFOLK SOUTHERN CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Executive Vice President-Law

ATLANTIC ACQUISITION CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Vice President and General Counsel

## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
(a)(51)	Press Release issued by Parent on December 5, 1996.
(g)(6)	Answer and Defenses of Defendants to Plaintiff's Second Amended Complaint and the Counterclaim of the Company and CSX (dated December 5, 1996, United States District Court for the Eastern District of Pennsylvania).

**FOR IMMEDIATE RELEASE**

**December 5, 1996**

Media Contact: Robert Fort  
(757) 629-2714

**NORFOLK SOUTHERN CALLS CONRAIL CLAIMS FRIVOLOUS**

NORFOLK, VA - Norfolk Southern Corporation issued the following statement in response to the counterclaims filed today in the U.S. District Court for the Eastern District of Pennsylvania by Conrail and CSX Corporation. The response is based on a joint statement issued by Conrail and CSX:

"The Conrail/CSX claims are frivolous -- an obvious attempt to divert attention away from the fact that the CSX/Conrail deal remains inferior to Norfolk Southern's better offer of \$110 a share in cash. If they really believe that Norfolk Southern is not serious about buying Conrail, as they have alleged, then they should remove the barriers they put up and we'll find out quickly that their claims are nothing more than total fabrication."

**###**

World Wide Web Site - <http://www.nscorp.com>

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

-----X  
NORFOLK SOUTHERN CORPORATION,  
a Virginia corporation,  
ATLANTIC ACQUISITION CORPORATION,  
a Pennsylvania corporation, and  
KATHRYN B. McQUADE, an individual,

Plaintiffs,

v.

C.A. No. 96-CV-7167

CONRAIL INC., a Pennsylvania corporation,  
DAVID M. LEVAN, an individual,  
H. FURLONG BALDWIN, an individual,

JURY TRIAL DEMANDED  
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DANIEL B. BURKE, an individual,  
ROGER S. HILLAS, an individual,  
CLAUDE S. BRINEGAR, an individual,  
KATHLEEN FOLEY FELDSTEIN, an  
individual, DAVID B. LEWIS, an individual,  
JOHN C. MAROUS, an individual,  
DAVID H. SWANSON, an individual,  
E. BRADLEY JONES, an individual,  
RAYMOND T. SCHULER, an individual,  
and CSX CORPORATION, a Virginia  
corporation,

Defendants.

-----X  
ANSWER AND DEFENSES OF CONRAIL, CSX AND THE  
INDIVIDUAL DEFENDANTS TO SECOND AMENDED  
COMPLAINT, AND COUNTERCLAIM OF CONRAIL AND CSX  
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ANSWER  
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Defendants Conrail Inc. ("Conrail"), CSX Corporation ("CSX") and  
the individual



Defendants (collectively "Defendants"), by their undersigned attorneys, answer as follows:

1. Denied. Defendants' actions are lawful and this Court found no evidence of any breach of fiduciary duty by the Board of Directors of Conrail.

2. The averments in paragraph 2 are conclusions of law which require no answer. To the extent an answer is deemed required, those averments are denied. After two days of hearings, this Court found no coercion, no violations of the Williams Act, no evidence of any breach of fiduciary duty by the Conrail Board, and denied Plaintiffs' request for injunctive relief.

3. It is admitted that the merger of Conrail and CSX is to be accomplished through a multi-tier structure requiring regulatory approvals, and that Conrail shareholders will have the opportunity to receive cash and stock. The remaining averments in paragraph 3 are denied.

4. The averments in paragraph 4 are denied, with the exception that on October 23, 1996, Norfolk Southern Corporation ("Norfolk Southern") announced its illusory tender offer and that the tender offer commenced on October 24, 1996.

5. Denied. Conrail and CSX have entered into a valid and binding merger agreement. After two days of hearings, this Court found that each of the contested provisions of the Conrail Shareholder Rights Plan and the Conrail/CSX strategic Merger Agreement, as amended, are authorized by the Pennsylvania Business Corporation Law ("BCL") including, without limitation, BCL ss.ss. 1502, 1712, 1715, 1721, 2513, Subchapter 25E and Subchapter 25F.

6. Denied. The averments in paragraph 6 also contain conclusions of law which

require no answer. To the extent an answer is deemed required, those averments are denied.

7-8. Admitted.

9. Defendants admit the averments in the first sentence of paragraph 9. Conrail is without knowledge or information sufficient to form a belief as to the truth of the averments in the second through fifth sentences of paragraph 9. The averments in the last sentence of paragraph 9 are denied, except that it is admitted that Norfolk Southern appears to have purchased 100 shares of Conrail common stock in street name after the merger agreement between Conrail and CSX was announced.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 10.

11. Denied as stated. It is denied that McQuade is or ever was a record owner of any Conrail stock at any relevant time. It is admitted that McQuade appears to be the beneficial owner of 50 shares of Conrail common stock.

12. Admitted.

13. The averments in the first and second sentences of paragraph 13 are admitted. The averments in the third sentence are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied as stated. The fiduciary duties owed by Conrail's directors are as set forth in the BCL.

14. Admitted.

15. Denied. By way of further answer, Norfolk Southern's tender offer is a writing which speaks for itself.

16. Denied as stated. The letter referred to in paragraph 16 is a writing which

speaks for itself.

17. Denied. By way of further answer, the merger agreement, as amended, between Conrail and CSX is a writing which speaks for itself.

18. Denied. This Court specifically found that CSX's offer is not coercive and that Conrail's shareholders have numerous options about which they have been fully informed.

19. The averments in the first sentence of paragraph 19 are admitted. The remaining averments in paragraph 19 are denied. Norfolk Southern failed to reach agreement with Conrail in 1994, and failed to reach agreement with CSX regarding a break-up of Conrail in 1995. In 1996, prior to the announcement of the Conrail/CSX Merger Agreement, Norfolk Southern still had no concrete proposal to present to Conrail's Board.

20. Admitted.

21. Denied as stated.

22-23. Denied.

24. The averments in the first three sentences in paragraph 24 are admitted. The remaining averments are denied.

25. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence of paragraph 25. The remaining averments are denied.

26. The averments in the first sentence of paragraph 26 are denied as stated. The remaining averments are denied.

27. Denied as stated.

28. Denied. By way of further answer, the Merger Agreement, as amended, between Conrail and CSX is a writing which speaks for itself.

29. Denied as stated. The excerpts cited by Plaintiffs are incomplete and out of context. The referenced newspaper reports are writings which speak for themselves.

30. Denied. This Court found no evidence that the Conrail Board had acted without good faith after reasonable investigation, and ruled that the actions of the Conrail Board were authorized by the BCL.

31. The averments in the first sentence of paragraph 31 are admitted. The remaining averments are denied.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the first two sentences of paragraph 32. The remaining averments are admitted.

33. The averments in the first sentence of paragraph 33 are denied. The remaining averments are denied as stated. The excerpts cited by Plaintiffs are incomplete and out of context. The referenced newspaper reports are writings which speak for themselves.

34. Denied. This Court has ruled that the CSX offer is not coercive and that the Conrail shareholders have numerous options about which they have been fully informed.

35. The averments in the first and third sentences of paragraph 35 are admitted. The remaining averments are denied. By way of further answer, Norfolk Southern initiated the meeting to devise the break-up of Conrail and to use the withdrawal of its offer as leverage to extort Conrail's routes and assets for itself.



36-37. Denied.

38. Denied, except that the movement of Conrail's stock price is admitted.

39. It is admitted that Norfolk Southern issued its own press release. The contents of that press release and the remaining averments in paragraph 39 are denied.

40. Denied, except that the closing price of Conrail stock is admitted.

41. Denied. In addition, the excerpts cited by Plaintiffs in paragraph 41 are incomplete and out of context. The referenced newspaper report is a writing which speaks for itself.

42. Denied as stated. The Conrail Shareholder Rights Plan is a writing which speaks for itself.

43. Denied. This Court held that actions of the Conrail directors in approving the provisions of the Conrail Shareholder Rights Plan were not a breach of fiduciary duty and were authorized by the BCL.

44. Denied, with the exception that it is admitted that the Court scheduled a hearing on the motion for noon on November 4, 1996.

45. The averments in the first sentence of paragraph 45 are denied. The remaining averments are admitted.

46. Admitted that the Conrail Board met on November 5, 1996, and that on November 6, 1996, Conrail announced that it had considered and approved an amended tender offer by CSX. The remaining averments in paragraph 46 are denied as stated.

47. Admitted.

48. The averments in the first sentence of paragraph 48 are admitted. The

remaining averments in paragraph 48 are denied as stated.

49. Denied. This Court has ruled that the CSX offer is not coercive and that Conrail's shareholders have numerous options about which they have been fully informed.

50. Denied. The excerpts cited by Plaintiffs in paragraph 50 are incomplete and out of context. The referenced newspaper report is a writing which speaks for itself.

51. Denied as stated. The excerpt cited in paragraph 51 is incomplete and out of context. Schedule 14D-9 is a writing which speaks for itself.

52. Denied, except that it is admitted that Conrail and CSX issued a joint press release on November 6, 1996.

53. Denied. Further, the press release, the Lazard Freres and Morgan Stanley fairness opinion letters, and CSX's Schedule 14D-9, are writings which speak for themselves.

54. Denied. The excerpts cited in paragraph 54 are incomplete and out of context. Further, the press release is a writing which speaks for itself.

55. The first sentence in paragraph 55 is admitted. The remaining averments in paragraph 55 are denied.

56. The first sentence in paragraph 56 is admitted. The remaining averments in paragraph 56 are denied as stated.

57-58. Denied.

59. Denied as stated. The Merger Agreement, as amended, between Conrail and CSX and the Conrail Shareholder Rights Plan are writings which speak for themselves.

60. Denied.

61. Denied as stated. The Conrail Shareholder Rights Plan is a writing which speaks for itself.

62. The averments in paragraph 62 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied.

63-69. The averments in paragraphs 63-69 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied. By way of further answer, the Conrail Shareholder Rights Plan is a writing which speaks for itself.

70. Denied, except that it is admitted that the Conrail Board met on November 4, 1996, extended the distribution date, and the Court denied Plaintiffs' motion.

71-75. The averments in paragraphs 71-75 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied. By way of further answer, the Merger Agreement, as amended, between Conrail and CSX is a writing which speaks for itself.

76. Denied. This Court found no evidence that the Conrail Board breached its fiduciary duties and held that each of the contested provisions of the Merger Agreement, as amended, are authorized by the BCL.

77. Admitted to the extent not inconsistent with the Merger Agreement, as amended, between Conrail and CSX, which is a writing and which speaks for itself.

78. The averments in paragraph 78 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied. By way of further answer, the Merger Agreement, as amended, between Conrail and CSX and the preliminary

proxy materials are writings which speak for themselves.

79. Denied.

80-81. Denied as stated. Conrail's preliminary proxy materials are writings which speak for themselves. The excerpts cited in paragraphs 80-81 are incomplete and out of context. By way of further answer, those preliminary proxy materials were never disseminated by Conrail to Conrail's shareholders.

82. The averments in paragraph 82 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied. By way of further answer, the Merger Agreement, as amended, between Conrail and CSX is a writing which speaks for itself.

83. Denied.

84-86. Denied as stated. The Stock Option Agreement and the Merger Agreement, as amended, between Conrail and CSX are writings which speak for themselves.

87. The averments in paragraph 87 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied. By way of further answer, the Stock Option Agreement and the Merger Agreement, as amended, between Conrail and CSX are writings which speak for themselves.

88. Denied. This Court has held that the contested provisions of the Merger Agreement, as amended, between Conrail and CSX, including without limitation, the break-up fee provisions and Stock Option Agreement, and the actions of the Conrail Board in relation thereto, are valid and authorized under Pennsylvania law, and that the Conrail directors did not breach their fiduciary duties.



89. Denied. This Court has held that the contested provisions of the Merger Agreement, as amended, between Conrail and CSX, and the actions of the Conrail Board in relation thereto, are valid and authorized under Pennsylvania law, and that the Conrail directors did not breach their fiduciary duties.

90. The averments in paragraph 90 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied, with the exception that it is admitted that Pennsylvania law does not require directors to amend or redeem poison pill rights or to take action rendering anti-takeover provisions inapplicable.

91. Denied. This Court has ruled that the actions of the Conrail Board in relation to the Merger Agreement, as amended, between Conrail and CSX are valid and authorized under Pennsylvania law, and that the Conrail directors did not breach their fiduciary duties.

92. It is denied that Mr. LeVan's Employment Agreement is an integral part of the CSX transaction. The remaining averments in paragraph 92 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied. By way of further answer, Mr. LeVan's Employment Agreement and the Merger Agreement, as amended, between Conrail and CSX are writings which speak for themselves.

93-94. Denied as stated. Mr. LeVan's Employment Agreement and the Merger Agreement, as amended, between Conrail and CSX are writings which speak for themselves.

95. The averments in the first and second sentences of paragraph 95 are admitted. The averments in the third sentence are denied.

96(a)-(b). Denied. Conrail's Preliminary Proxy Statement is a writing which

speaks for itself.

97(a)-(c). Denied. CSX's Schedule 14D-1 is a writing which speaks for itself.

98. Denied. Conrail's Schedule 14D-9 is a writing which speaks for itself.

99(a)-(u). Denied. Conrail's Preliminary Proxy Statement, CSX's Schedule 14D-1, and Conrail's Schedule 14D-9 are each writings which speak for themselves.

100(a)-(d). Denied. The referenced press release, CSX's Schedule 14D-1 Amendment No. 4, Conrail's Schedule 14D-9 with respect to the Norfolk Southern offer, and Conrail's Schedule 14D-9 Amendment No. 4 with respect to the CSX offer are each writings which speak for themselves.

101. Denied.

102. Admitted.

103. Denied. Conrail's Shareholders Right Plan, including its continuing director provisions, is a writing which speaks for itself.

104-105. Denied as stated. Conrail's Shareholder Rights Plan is a writing which speaks for itself.

106. Denied.

107-108. The averments in paragraphs 107-108 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied.

109-110. Denied.

111. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence of paragraph 111. The averments in the second sentence of paragraph 111 are denied as stated; Conrail's April 3, 1996 Proxy

Statement is a writing which speaks for itself.

112. Denied.

113. Denied as stated. Conrail's By-Laws is a writing which speaks for itself.

114. Admitted.

115. The averments in paragraph 115 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied. Conrail's Articles of Incorporation is a writing which speaks for itself.

116. The averments in paragraph 116 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied.

117-118. Denied.

119. The averments in paragraph 119 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied.

120. (a) - (h). Denied, with the exception that it is admitted that no demand has been made on Conrail's Board.

121. It is admitted that Norfolk Southern and McQuade appear to be beneficial owners of Conrail common stock. The remaining averments are denied.

122. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 122.

COUNT ONE

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123. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

124. Denied as stated. The duties of the Defendant Directors are as set forth in the

BCL.

125. The averments in the first sentence of paragraph 125 are admitted. The remaining averments are denied.

126. Denied as stated.

127-128. Denied.

COUNT TWO

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129. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

130. Denied as stated.

131. Admitted.

132. Denied as stated.

133-134. Denied.

COUNT THREE

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135. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

136. The averments in paragraph 136 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied as stated.

137-138 Denied.

COUNT FOUR

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139. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

140. The averments in paragraph 140 are legal conclusions which require no



answer. To the extent an answer is deemed required, those averments are denied. By way of further answer, the Merger Agreement, as amended, between Conrail and CSX is a writing which speaks for itself.

141. The averments in paragraph 141 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied except that it is admitted that Conrail is not a statutory close corporation.

142. Denied, with the exception that the averments in the second sentence of paragraph 142 are denied as stated.

143. Denied.

COUNT FIVE

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144. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

145-148. Denied.

COUNT SIX

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149. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

150-151. Denied.

152. Denied, except that it is admitted that Conrail is not a statutory close corporation.

153. Denied, with the exception that the averments in the second sentence of paragraph 153 are denied as stated. The Merger Agreement, as amended, between Conrail and CSX is a writing which speaks for itself.

154-155. Denied.

COUNT SEVEN  
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156. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

157-159. Denied.

COUNT EIGHT  
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160. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

161. Denied as stated. The Merger Agreement, as amended, between Conrail and CSX is a writing which speaks for itself.

162-164. Denied.

COUNT NINE  
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165. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

166-167. The averments in paragraphs 166-167 are legal conclusions which require no answer.

168. Denied, with the exception that the averments in the second sentence of paragraph 168 are denied as stated.

169. Denied. The Conrail Shareholder Rights Plan, including its continuing director provisions, is a writing which speaks for itself.

170. It is admitted that Plaintiffs seek such a declaration, but it is denied that they are entitled to it.

171. Denied.

COUNT TEN  
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172. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

173. Admitted.

174. The averments in paragraph 174 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied. By way of further answer, the Conrail Shareholder Rights Plan and Conrail's By-Laws are both writings which speak for themselves.

175. Denied. Conrail's Shareholder Rights Plan, including its continuing director provisions, and Conrail's By-Laws are writings which speak for themselves.

176. Denied. Conrail's Shareholder Rights Plan, including its continuing director provisions, its Articles of Incorporation and its By-Laws are writings which speak for themselves.

177. Denied.

COUNT ELEVEN  
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178. Defendants repeat and reallege each of the foregoing as if fully set forth in this paragraph.

179. Denied.

180. Denied. Conrail's Shareholder Rights Plan, including its continuing director provisions, is a writing which speaks for itself.

181. It is admitted that Plaintiffs seek such a declaration, but it is denied that they

are entitled to it.

182. Denied.

COUNT TWELVE  
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183. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

184. The averments in paragraph 184 are legal conclusions which require no answer. To the extent an answer is deemed required, it is admitted that the Director Defendants owe fiduciary duties to Conrail and their actions are governed by the BCL.

185-186. Admitted.

187-191. Denied.

COUNT THIRTEEN  
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192. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

193-195. Denied.

COUNT FOURTEEN  
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196. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

197. The averments in paragraph 197 are legal conclusions which require no answer. Section 14(a) of the Exchange Act speaks for itself.

198. The averments in paragraph 198 are legal conclusions which require no answer. Rule 14a-9 speaks for itself.

199-203. Denied.



COUNT FIFTEEN  
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204. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

205. The averments in paragraph 205 are legal conclusions which require no answer. Section 14(d) of The Exchange Act speaks for itself.

206. Admitted.

207. Denied. CSX's Schedule 14D-1, including Amendment No. 4, is a writing which speaks for itself.

208-209. Denied.

COUNT SIXTEEN  
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210. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

211. The averments in paragraph 211 are legal conclusions which require no answer. Section 14(d)(4) and Rule 14d-9 of The Exchange Act speak for themselves.

212. Admitted.

213-215. Denied.

COUNT SEVENTEEN  
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216. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

217. The averments in paragraph 217 are legal conclusions which require no answer. Section 14(e) of The Exchange Act speaks for itself.

218-219. The averments in paragraphs 218 and 219 are legal conclusions which

attorney's fees, and grant any further relief that is right and just.

#### DEFENSES

##### First Defense

Plaintiffs have failed, in whole or in part, to state a claim upon which relief can be granted.

##### Second Defense

Plaintiffs are barred from proceeding with their claims by the doctrine of law of the case.

##### Third Defense

Plaintiffs' claims are barred by the doctrine of unclean hands.

##### Fourth Defense

Plaintiffs' claims are barred by their fraudulent and deceitful conduct.

##### Fifth Defense

Plaintiffs' state law claims are barred by the Pennsylvania Business Corporation Law of 1990, as amended, which authorizes the contested conduct of the Conrail Board.

##### Sixth Defense

Plaintiffs' state law claims are barred because the actions of the Conrail Board were carried out in the exercise of their fiduciary duties to the corporation, in good faith after reasonable investigation, and in the best interests of Conrail.

##### Seventh Defense

Plaintiffs' claims for injunctive relief are barred because of the absence of fraud or fundamental unfairness.

require no answer. To the extent an answer is deemed required, those averments are denied. By way of further answer, CSX's Schedule 14D-1 and Conrail's Schedule 140-9 and Proxy Statement are writings which speak for themselves.

220. Denied. Defendants also incorporate their answers to paragraphs 97, 99 and 100 (a)-(b) above.

221. Denied. Defendants also incorporate by reference their answers to paragraphs 98, 99 and 100 (a), (c) and (d) above.

222. Denied. Defendants also incorporate by reference their answer to paragraphs 96, 99 above.

223-226. Denied.

COUNT EIGHTEEN  
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227. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

228. Denied. Defendants also incorporate by reference their answers to paragraphs 95 through 101 above.

229. Denied.

COUNT NINETEEN  
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230. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

231-238. Denied.

COUNT TWENTY  
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239. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

240. Denied.

241. Admitted.

242. Denied as stated. The proxy materials are writings which speak for themselves.

243. The averments to paragraph 243 are legal conclusions which require no answer. To the extent that an answer is deemed necessary, these averments are denied.

244-246. Denied.

COUNT TWENTY-ONE  
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247. Defendants repeat and reallege each of the foregoing answers as if fully set forth in this paragraph.

248. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 248.

249. The averments in paragraph 249 are legal conclusions which require no answer. To the extent an answer is deemed required, those averments are denied.

250. It is admitted that Plaintiffs seek such a declaration, but it is denied that they are entitled to it.

251. Denied.

WHEREFORE, Defendants respectfully request that this Court enter judgment in their favor and against all Plaintiffs on all claims and award to Defendants all their costs and

Eighth Defense  
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Plaintiffs' claims are barred for failure to satisfy the requirements of Federal Rule of Civil Procedure 23.1, including without limitation, the requirement that Plaintiffs be adequate representatives of the interests of Conrail's shareholders.

Ninth Defense  
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Plaintiffs' federal securities law claims should be dismissed as moot.

Tenth Defense  
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Plaintiffs lack standing to pursue their state law claims because they are not suing in their capacity as shareholders, as such, as required by BCL ss. 1717.

Eleventh Defense  
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Plaintiffs' claims are barred for failure to comply with the requirements precedent to maintenance of a shareholder derivative action, including without limitation, their unjustified failure to make a pre-suit demand upon the Conrail Board.

Twelfth Defense  
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Plaintiffs' claims are barred, in whole or in part, because Conrail and CSX are entitled to recoupment and/or an offset for the amounts claimed as damages in the Counterclaim which is incorporated herein by reference.

Thirteenth Defense  
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Defendants hereby deny, to the extent not previously denied, any and all allegations previously made by Plaintiffs, including, but not limited to, those made in Plaintiffs' original Complaint and their First Amended Complaint.

WHEREFORE, Defendants respectfully request that this Court enter judgment in their



favor and against all Plaintiffs on all claims and award to Defendants all their costs and attorney's fees and grant any further relief that is right and just.

#### COUNTERCLAIM

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Counterclaim-Plaintiffs, Conrail and CSX, by their undersigned counsel, allege upon knowledge with respect to themselves and their acts, and upon information and belief as to all other matters, as follows:

#### INTRODUCTION

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1. Their plans frustrated by the sound business judgment of the Conrail Board that a strategic merger of equals between Conrail and CSX -- rather than a sale of Conrail to Norfolk Southern--is in the best interests of Conrail and its constituencies, Norfolk Southern and certain of its executive officers have engaged in a sustained and systematic effort to cause the breach, frustration or termination of Conrail/CSX merger agreement ("Merger Agreement") or to otherwise prevent the contemplated Conrail/CSX merger. This attack on the merger has been implemented through the broad dissemination of materially false and misleading information and the announcement and promotion of an illusory tender offer; the commencement and prosecution of a lawsuit premised upon false allegations of fact, deceptive characterizations, and a blatant misapplication of Pennsylvania law; the false and misleading solicitation of proxies for the upcoming Conrail shareholder votes; and other efforts to manipulate the market through conduct that is unfair, tortious, and in violation of the federal securities laws.

2. As set forth in detail in this Counterclaim, Norfolk Southern has announced

and promoted an illusory, hostile tender offer for Conrail's stock, which includes as its linchpin the unlawful and unachievable condition that the Conrail/CSX Merger Agreement end, either by breach of the agreement by Conrail or by termination of the agreement by Conrail and CSX. That tender offer is also conditioned upon the Conrail Board adopting a strategic direction for Conrail that it had already rejected.

3. Norfolk Southern has been continuously and intentionally misleading the market, and Conrail's shareholders, by failing to tell them that a tender by Conrail shareholders of their shares to Norfolk Southern would be futile, because payment of the current \$110 per share price cannot occur on the scheduled expiration of the offer unless a breach of the Merger Agreement occurs. That the tender offer was merely a tactical ploy was made clear when, barely a week after it was announced, David R. Goode ("Goode"), the Chief Executive Officer of Norfolk Southern, arranged a meeting with the Chief Executive Officer of CSX and offered to drop the Norfolk Southern tender offer in return for obtaining the Conrail assets that Norfolk Southern covets.

4. Norfolk Southern has extended its tender offer to December 16, 1996, but it is still expressly conditioned on the same unachievable and unlawful conditions. Norfolk Southern continues its offer so as to continue to confuse, mislead and manipulate shareholders of Conrail, to tortiously interfere with the Conrail/CSX strategic merger, to injure Conrail and CSX, and to induce a breach of the Conrail/CSX merger agreement.

5. By these tactics, Norfolk Southern hopes it can: (a) induce or coerce a breach or termination of the merger agreement; (b) blackmail Conrail and CSX into allowing

Norfolk Southern to "cherry pick" the routes and assets of Conrail which Norfolk Southern has been overtly and covertly seeking to acquire over the past several years; and/or (c) disrupt the merged entity's relationships with prospective business partners, customers and employees.

6. Norfolk Southern's lawsuit is meritless and a sham. On November 19, 1996, after two days of hearings, the Court rejected Norfolk Southern's demand to enjoin the CSX tender offer. The Court found that "directors have every right to favor one competing bid over another and particularly have the right to resist hostile takeovers . . . ." The Court further found "absolutely" no evidence of any lack of good faith or reasonable investigation by the Conrail Board of Directors.

7. In this action, Conrail and CSX seek to obtain money damages for the economic injuries and damage inflicted upon, and to be inflicted upon, them by Counterclaim-Defendants' continuing tortious interference with the Merger Agreement, which damages include loss of Conrail's bargain and potential bargain and the resultant consequential and incidental damages; increased costs and burdens in connection with the Merger Agreement; and attorneys' fees, consultant fees, expert fees, court costs and other expenses incurred in defending against the illegal and improper actions of Counterclaim-Defendants. Further, because Counterclaim-Defendants' wrongdoing is and has been malicious, intentional and outrageous, punitive damages are hereby requested.

## THE PARTIES

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8. Counterclaim-Plaintiff Conrail is a Pennsylvania corporation with its principal office at Two Commerce Square, 2001 Market Street, Philadelphia County, Philadelphia, PA 19101. Conrail's rail service subsidiary provides rail freight transportation service over approximately 17,700 route miles in the Midwest and Northeast. Conrail is a publicly held company whose stock is traded on the New York and Philadelphia Stock Exchanges.

9. Counterclaim-Plaintiff CSX is a Virginia corporation with its principal office at One James Center, 901 East Carey Street, Richmond, VA 23219. CSX is a transportation company providing rail, intermodal, ocean container-shipping, barging, trucking and contract logistic services. CSX's rail transportation operations serve the Southeastern and Mid-Western United States. CSX is a publicly held company whose stock is traded on the New York Stock Exchange.

10. Counterclaim-Defendant Norfolk Southern is a Virginia corporation with its principal office located at Three Commercial Place, Norfolk, VA 23510-2191. Norfolk Southern is a holding company for Norfolk Southern Railway Company and its subsidiaries, which operate rail and motor transportation services. Norfolk Southern is the owner of and/or controls, directly or indirectly, Counterclaim-Defendant Atlantic Acquisition Corporation. Norfolk Southern is a publicly held company whose stock is traded on the New York Stock Exchange.

11. Counterclaim-Defendant Kathryn B. McQuade ("McQuade") is an individual residing at 5114 Hunting Hills Drive, Roanoke, VA 24014. McQuade is Vice President-

Internal Audit of Norfolk Southern. At all times relevant herein, McQuade is alleged to have acted individually in her own behalf, and she has conspired with Norfolk Southern to engage in some of the acts alleged herein.

#### JURISDICTION AND VENUE

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12. This Court has jurisdiction over this counterclaim pursuant to 28 U.S.C. section 1367.

Venue is proper in this district pursuant to 28 U.S.C. \_section 1391.

#### FACTUAL BACKGROUND

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##### Norfolk Southern's Prior Attempts To Acquire Conrail

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14. Conrail is one of the great corporate success stories of recent years. Originally a government-created enterprise that emerged from the collapse of Penn Central and other bankrupt Northeastern railroads, Conrail is now a strong, cost-efficient, financially stable Northeastern-Midwest railroad that provides competitive transportation over lines stretching from Boston and New York West to St. Louis and Chicago.

15. Norfolk Southern has coveted the lines and assets of Conrail for many years. Norfolk Southern first sought vigorously to acquire Conrail's assets from the Federal Government, but was rebuffed by Congress, which ordered Conrail's privatization by way of a public offering of its stock in 1987.

16. Commencing in the Spring of 1994, Norfolk Southern again attempted to purchase Conrail. Conrail's Board considered the Norfolk Southern proposal, but found it



not to be in the best interests of the corporation for various reasons. Conrail did offer to consider a transaction with Norfolk Southern with an exchange ratio of 1.1 shares of Norfolk Southern stock for 1 share of Conrail stock, which Norfolk Southern through Goode refused. At then-current market prices, the premium offered by Norfolk Southern for Conrail shares would have been less than 20% or a value of about \$65 per share. In addition, Norfolk Southern was unwilling to consider placing the shares in a voting trust, pending regulatory approval of the proposed purchase.

Undeterred by the failure of these direct talks with Conrail, Norfolk Southern then had discussions with CSX during the Summer and Fall of 1995 to develop a plan whereby Norfolk Southern would acquire Conrail and then carve it up by selling substantial Conrail assets to CSX. Norfolk Southern and CSX could not reach agreement between themselves on the terms of the carve up and talks between them ceased.

18. During the winter of 1995-96, Norfolk Southern and Goode then considered a hostile takeover of Conrail, a course of conduct that Goode implied to David LeVan, Conrail's President, Chairman and CEO ("LeVan") in a meeting with LeVan in October 1995. No such offer was forthcoming. While Norfolk Southern publicly stated it was dropping the idea of a hostile takeover, it in fact continued to hold the intention of somehow acquiring the Conrail lines most valuable to Norfolk Southern.

## The Railroad Industry Consolidation

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19. During this same general time period, the mergers of other railroads were changing the structure of the railroad industry. In June of 1994, Burlington Northern ("BN") and the Atchison, Topeka and Sante Fe railroads ("SF") announced a far-reaching consolidation of their Western and Midwestern rail lines.

20. In August 1995, Union Pacific ("UP")--which had just acquired the Chicago and North Western Railroad--and Southern Pacific ("SP") agreed to join their extensive rail holdings. Only days after the UP/SP announcement, the Interstate Commerce Commission ("ICC") (subsequently abolished and replaced by the Surface Transportation Board ("STB")) rendered its final approval of the 1994 BN/SF merger. In both the BN/SF and the UP/SP decisions, the ICC and STB reaffirmed long-standing ICC views that rail mergers produce significant service, cost savings and efficiency benefits.

21. After the mid-1995 announcement of the UP/SP merger agreement, Conrail attempted to acquire the eastern lines of SP in order to expand Conrail's network in the Southeast as far as the Gulf of Mexico, ultimately offering a price of \$1.9 billion. The STB's subsequent approval of the UP/SP merger foreclosed Conrail's attempt to purchase the SP lines.

## Conrail's Search for a Strategic Partner

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22. The STB decision in the UP/SP case was perceived to clarify and confirm the types of merger benefits and efficiencies which the STB would find to be in the public interest and the types of remedies for competitive concerns that the STB would consider appropriate. In addition, changes in the time limits for STB merger reviews were made in the governing statute and in STB procedures, significantly reducing the time period for completion of the merger review process. These developments were believed to provide opportunities to Conrail to expand its rail operations through a strategic alliance with another railroad. At the same time, they generated a risk of a hostile tender offer and also raised fears that Conrail might be left behind if further consolidation occurred without Conrail.

23. In light of these developments, Conrail continued to analyze its strategic alternatives, including consolidations with other railroads. Conrail devoted substantial time and energy in 1995 and 1996 to determining what strategic alternative would offer the greatest opportunities to its constituencies, including its shareholders, customers and the public.

At no time did the Conrail Board elect to put Conrail on the auction block for sale to the highest bidder.

The September 25-26, 1996 Conrail Board Retreat  
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25. The results of Conrail's analyses were put before the Conrail Board on September 25 and 26, 1996, during the Board's retreat in Ligonier, Pennsylvania. Presentations were made concerning possible strategic partnerships, the state of the industry, and the economic priorities of Conrail. Management recommended to the Board that a combination with CSX was Conrail's most attractive opportunity. A strategic combination with CSX was predicted to yield \$150 million per year in greater benefits than those obtainable in a combination with Norfolk Southern. These benefits included enhanced revenue opportunities by joining CSX's steam coal and phosphate fertilizer producers with Conrail's generating plant and farm consumers; expansion of Conrail's service area throughout Florida (where Norfolk Southern had little reach); tremendous enlargement of Conrail's single-line service; and greater opportunity for improved profitability through reduced operating ratios and enhanced management and operating efficiencies.

26. During the presentation, the Board also considered Norfolk Southern's ongoing interest in acquiring Conrail, and LeVan apprised the Board of his recent contacts with Goode, in which Goode had expressed Norfolk Southern's interest in purchasing Conrail.

27. After duly considering all of these factors over the course of the two-day retreat, Conrail's Board reaffirmed that Conrail was not for sale, and authorized Conrail management to initiate negotiations with CSX to explore the possibility of a strategic combination with CSX.

Pursuant to the Board's directions, Conrail management and its legal and financial

advisors participated in early October in frequent and intensive negotiations with CSX to hammer out the terms of a possible merger agreement. LeVan established early on Conrail's requirements for any such agreement, including a full and fair price for Conrail's shareholders and a true merger-of-equals in which the management and Boards of Directors of both CSX and Conrail would play an instrumental role in the combined entity's operation and development.

29. In pursuing negotiations with CSX, Conrail and its Board also rejected any notion of putting Conrail up for public auction, because an auction approach carried a substantial risk that, given the small number of potential bidders, one bidder might collude with another competitor and purchase Conrail for a lower price. Such collusive bidding would, thus, risk losing CSX as a partner and deny Conrail's shareholders higher share value. In fact, as further set forth herein, CSX and Norfolk Southern had considered a joint bid in the recent past; therefore, an auction approach would have been detrimental to achieving the best transaction for Conrail, its shareholders and its other constituencies.

30. Conrail initially pursued a stock-for-stock exchange with CSX, but ultimately considered other structures because of the potential for dilution of CSX's stock. Conrail also continued to reject an all-cash merger because Conrail's shareholders would not have continuing participation in the combined company and because the merger would become a taxable transaction. The companies finally agreed upon a structure of 40% cash and 60% stock, which yielded an efficient transaction in light of CSX's existing capital structure.

The "price" ultimately negotiated with CSX was at the high end of prices paid in



other railroad mergers. At the then-current prices, the merger reflected over a 30% premium for Conrail shareholders, and a premium of over 40% if the Conrail trading price was adjusted for price distortion due to recent take-over speculation. The relative values were dramatically superior to the premium that Goode had rejected in 1994.

32. The governance terms of the agreement negotiated were also important and favorable to Conrail and ensured that Conrail's various constituencies would be treated fairly and favorably by, and would be full participants in, the combined entity:

- (a) The new entity's headquarters would be located in Philadelphia;

- (b) LeVan would be President of the railroad operations initially and succeed CSX's Chairman and Chief Executive Officer, John W. Snow ("Snow"), as Chief Executive Officer of the holding company in two years;

- (c) Half of the board seats and committees of the combined entity would be filled by Conrail directors; and

- (d) Shareholders would maintain a significant continuing equity interest in the combined entity.

33. These management discussions with CSX were reported to the Conrail Board at a meeting on October 10, 1996.

The October 14, 1996 Conrail Board Meeting  
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34. On October 14, 1996, the Conrail Board gave final consideration to the proposed Conrail/CSX strategic merger. The Board was presented with a detailed analysis of the relative benefits of a Conrail/CSX strategic merger, which included, among other things, high potential growth, high synergistic potential, a diversified customer base, expanded service partnerships with utilities, coal producers, and other customers, greater single-line service and other benefits for customers, operating savings, the benefit of the similar operating and commercial visions that pervaded the two companies and good strategic placement for Conrail in ongoing industry-wide consolidation. In addition, the Board was presented with a comparison of the structure of the CSX and Norfolk Southern operations and analyses of the fairness of CSX's purchase price.

35. After determining that the merger was in the best interests of Conrail, the Board unanimously agreed, and in a separate vote the outside directors unanimously agreed, to approve the Conrail/CSX strategic merger and enter into a merger agreement.

The Merger Agreement  
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36. That same day, October 14, 1996, Conrail and CSX executed the Merger Agreement. The Merger Agreement includes the following terms:

(a) A tender offer (the "Initial Tender") for up to 19.9% of Conrail's shares at a price of \$92.50 per share.

(b) A Special Shareholders Meeting ("First Shareholders Meeting") currently scheduled for December 23, 1996, to consider an amendment to Conrail's Articles of Incorporation to opt-out of Chapter 25, Subchapter E of the BCL (the "Articles Amendment").

(c) If Conrail shareholders approve the Articles Amendment, a second tender offer for up to an additional 20.1% of Conrail shares at a price of \$92.50 per share, representing a premium of more than 30% over Conrail's October 15, 1996 stock price ("Second CSX Tender Offer").

(d) A Special Shareholders Meeting (the "Second Shareholders Meeting") at which Conrail shareholders will have the opportunity to approve or reject the strategic merger.

If approved at the Second Shareholders Meeting, a merger with Conrail under which Conrail shareholders will receive 1.85619 shares of CSX stock for each share of Conrail common stock.

(f) A provision that the board of directors of the surviving corporation will be divided equally between directors selected by Conrail and directors selected by CSX.

(g) Location of the corporate headquarters of the combined entity in Philadelphia, PA, with LeVan as the immediate President and Chief Operating Officer of the combined entity, his selection as the Chief Executive Officer of the combined entity in two years, and his selection as Chairman of the combined entity in four years.

A copy of the Merger Agreement is not attached hereto because it is extremely lengthy and because it is already in the possession of Counterclaim-Defendants.

37. On October 15, 1996, Conrail publicly announced that it had agreed to a strategic merger with CSX. In accordance with the Merger Agreement, on October 16, 1996, CSX commenced the Initial Tender to purchase up to 19.9% of the shares of stock of Conrail at a price of \$92.50 per share. Conrail concurrently filed a Schedule 14D-9 with the Securities and Exchange Commission ("SEC") and recommended the Initial Tender to Conrail shareholders.

38. The Conrail/CSX strategic merger met with immediate praise from the financial community.

Norfolk Southern's Scheme to  
Sabotage the Conrail/CSX Strategic Merger  
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39. In its Complaint, Norfolk Southern has alleged that at a meeting of the Norfolk Southern Board on September 24, 1996, Goode was directed by his Board to contact LeVan and present LeVan with a concrete proposal for a combination of Norfolk Southern and Conrail.

40. Goode has misrepresented that he called LeVan after the Norfolk Southern Board meeting on September 24 and before Conrail's strategic meetings on September 25 and 26, 1996, in Ligonier. In fact, Goode did not make this call to LeVan, and he never told LeVan that he had a concrete proposal or that he wanted to make a presentation to the Board. Moreover, at that time no concrete proposal had been formulated by Norfolk Southern.

41. Upon learning of the Conrail/CSX strategic merger announcement, and knowing that he had failed to carry out the recently expressed wishes of his Board, Goode and others on behalf of Norfolk Southern immediately began formulating a scheme to destroy the merger, take over Conrail or certain of its key assets, damage financially the merged Conrail/CSX company and reduce its ability to compete with Norfolk Southern, and/or disrupt the merged entity's relationships with current and prospective business partners, customers and employees.

- (1) Norfolk Southern's Hostile Tender Offer and its False and Misleading Public Statements About the Offer and the Conrail/CSX Merger Agreement

42. Norfolk Southern announced an illusory and unlawfully conditioned hostile tender offer (and initiated a media campaign concerning the offer) specifically designed to: (1) deceive Conrail shareholders into tendering their shares to Norfolk Southern and not to CSX and/or vote against the steps necessary to consummate the merger; (2) induce Conrail or CSX to breach and/or terminate the Merger Agreement; and/or (3) deny Conrail and its shareholders the future benefits of the strategic merger and future prospective business relations arising from the merger.

43. On October 23, 1996, Norfolk Southern announced that it would launch an unsolicited tender offer for 100% of Conrail's shares at \$100 per share, conditioned, among other things, upon: (a) sufficient financing for the tender offer; (b) affirmative action by the Board or shareholders of Conrail to render Chapter 25, Subchapter F of the BCL inapplicable to the offer; (c) termination of the Merger Agreement "according to its terms or otherwise"; and (d) the inapplicability or invalidity of Conrail's Shareholder Rights Plan.

44. Norfolk Southern's offer contained material conditions that it must have known could not and would not be satisfied by its expiration date -- in particular, termination or breach of the Conrail/CSX Merger Agreement. Given the conditions imposed by Norfolk Southern its offer was aptly described by Norfolk Southern's own expert witness as a "pie in the sky." Hearing, Nov. 18, 1996, Tr. 85.

45. The entire tender offer was an attempt to coerce and induce a breach of the



Merger Agreement and to mislead and manipulate the Conrail shareholders and the investing public.

46. Even prior to the opening of trading on October 23, 1996, senior executives of Norfolk Southern met with securities analysts to announce that Norfolk Southern was making an offer to purchase Conrail shares at \$100 per share. At this meeting, Norfolk Southern intentionally made material misstatements by failing to inform these analysts that: (1) the Conrail Board had no duty whatsoever to auction Conrail; (2) that Conrail had informed Norfolk Southern that Conrail was not for sale; and (3) that the tender offer could not be consummated pursuant to its terms.

47. Completion of the Norfolk Southern tender offer was never possible because, as Norfolk Southern well knew or should have known when it announced its tender offer, the Merger Agreement specifically precluded Conrail until April 13, 1997 (or, if earlier, the date on which the Merger Agreement is terminated for any other reason, such as the failure by Conrail's shareholders to approve the merger at a meeting duly called to vote thereon) from: (i) withdrawing or modifying, or publicly proposing to withdraw or modify, its approval or recommendation of the CSX tender offer and the merger in a manner adverse to CSX; (ii) approving or recommending, or publicly proposing to approve or recommend, any competing proposal (such as the Norfolk Southern tender offer); or (iii) causing Conrail to enter into any agreement related to any such competing proposal. Indeed, Norfolk Southern knew that the Conrail Board was under no obligation ever to recommend the Norfolk Southern offer.

48. To bolster their scheme to disrupt the Merger Agreement and strategic merger, Norfolk Southern and its subsidiaries omitted material information from the Schedule 14D-1 filed with the SEC on October 24, 1996, regarding the impossibility of Norfolk Southern paying to Conrail shareholders the \$100 per share in its tender offer, including the fact that the Norfolk Southern offer could close only if Conrail and CSX agreed to terminate the Merger Agreement or if the Merger Agreement were breached by Conrail, with the resulting potential damages and other legal consequences.

In addition, Norfolk Southern and its subsidiaries omitted material information from the definitive proxy statement filed on November 4, 1996, regarding Norfolk Southern's inability to pay Conrail shareholders \$100 per share in accordance with its offer and falsely insinuated that Norfolk Southern could force the Conrail Board to apply auction rules to a strategic merger of equals transaction where they do not apply.

50. Norfolk Southern also launched an aggressive and misleading media campaign, including full page ads in the Wall Street Journal, New York Times, and Philadelphia Inquirer in an effort to dissuade Conrail's shareholders from voting to opt out of Subchapter 25E of the BCL and also to persuade them to make a futile tender of their shares to Norfolk Southern. The advertisements again misleadingly omitted material facts regarding the timing of Norfolk Southern's purchase of shares (i.e., that the Conrail shareholders could not successfully tender their shares to Norfolk Southern because Norfolk Southern's tender offer was conditioned upon termination or breach of the Conrail/CSX Merger Agreement), perpetuated the illusion of an offer that could result in the payment to Conrail shareholders

\$100 per share, and falsely insinuated that Norfolk Southern could force the Conrail Board to apply auction rules to a strategic merger of equals transaction.

51. Norfolk Southern's campaign of deceit and misinformation succeeded in illegally manipulating the market. Numerous investors accepted Norfolk Southern's \$100 offer on its face without discounting the offer's value based upon Norfolk Southern's inability to actually consummate the tender offer within 180 days (it could never take place without the approval of the Conrail Board). Some analysts and investors also incorrectly inferred that Conrail was being auctioned.

(2) Norfolk Southern's Vexatious and Deceptive Lawsuit  
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On October 23, 1996 -- the same day Norfolk Southern announced its tender offer -- Counterclaim-Defendant Norfolk Southern and Kathryn B. McQuade ("McQuade") (Vice President-Internal Audit of Norfolk Southern) filed the Complaint in this action. The Complaint, the proposed First Amended Complaint, and the Second Amended Complaint were verified by Henry C. Wolf, Executive Vice President-Finance of Norfolk Southern.

53. The lawsuit constitutes part of Norfolk Southern's scheme of unfair and unlawful interference with the Merger Agreement and the merger by, among other things, seeking to enjoin: (a) a meeting of Conrail's shareholders, thus preventing Conrail's shareholder's from having the opportunity to approve or reject the proposed amendments to Conrail's Articles of Incorporation; and (b) any steps toward consummation of the Merger Agreement.

54. Norfolk Southern knew or in the exercise of reasonable judgment should have

known that it lacked standing to sue Conrail, its Board or CSX. Desperate to interfere with the Merger Agreement, however, Norfolk Southern hurriedly acquired 100 shares of Conrail stock in someone else's name and recruited Counterclaim-Defendant McQuade to join the suit as a shareholder in an effort to disguise its deficient "shareholder" derivative lawsuit.

55. Central to the lawsuit are allegations that Norfolk Southern offered Conrail a 1.1 to 1 exchange ratio in 1994, that Norfolk Southern had a concrete proposal for combining with Conrail in September 1996, and that therefore Conrail somehow has an obligation to negotiate with Norfolk Southern concerning a possible merger. Norfolk Southern intentionally made these false and materially misleading allegations even though Norfolk Southern and Goode knew, or in the exercise of reasonable judgment should have known that: (a) it was Norfolk Southern that walked away from a 1.1 to 1 exchange with Conrail; (b) Goode had no concrete proposal to make to Conrail in September 1996; and (c) Conrail had no obligation to negotiate with Norfolk Southern at any time and had contractual obligations not to do so beginning in October 1996.

56. This groundless and deceptive lawsuit was used by Norfolk Southern as a basis for publicizing the false allegations and misleading characterizations that are the heart of Counterclaim-Defendants' improper, unlawful and unfair scheme to undermine the Merger Agreement, prevent the merger, and impair Conrail's and CSX's future business relations.

57. On November 19, 1996, following a two-day evidentiary hearing, the Court denied Norfolk Southern's request for preliminary injunctive relief on the grounds that Plaintiffs were not likely to succeed on the merits of their claim, but this decision only came

after Conrail and CSX were forced to spend substantial amounts in legal fees, consultant fees, expert witness fees, and other costs and expenses related to that groundless litigation.

(3) Norfolk Southern's Attempted Intimidation of the Officers and Directors of Conrail and CSX and Solicitation of a Breach of the Merger Agreement

58. Norfolk Southern and Goode have publicly and privately attempted to intimidate the officers and directors of Conrail and CSX, in an effort to induce a breach or termination of the Merger Agreement. These efforts at intimidation include statements by Goode that, among other things, Norfolk Southern will take a "scorched earth" approach, will "stop at nothing" to halt the strategic merger, and will "destroy" the deal, because Norfolk Southern's corporate pride is at stake. A Norfolk Southern spokesman told The Boston Globe on November 5, 1996, that "{w}e are pursuing this with a vengeance."

Norfolk Southern and Goode have also publicly and falsely alleged that the Conrail/CSX strategic merger is being orchestrated by LeVan for his personal aggrandizement and to increase his pay. Norfolk Southern made these statements with the intent to deceive the market and to cause a breach of the Merger Agreement. Norfolk Southern has the temerity to make these charges despite the fact that it knows full well, or in the exercise of reasonable judgment should have known, that provisions for corporate successors are common in merger agreements and that LeVan is currently under-compensated by industry standards. In fact, the Court specifically found as follows:

There have been allegations suggesting that the whole CSX-Conrail merger is being motivated by Mr. LeVan or because it would assure him by contract of certain higher personal income. I see nothing wrong with the merger agreement providing who will be the main executive officers for the



first few years after the completion of the merger, and I think the witnesses who testified explained very clearly why it was really important that they have this assurance in order that the merger should succeed.

I can see why the directors of Conrail might very well want to be sure that their existing top executive officer would continue in top management in the merged corporation, and that the first board of directors at least will consist equally of former CSX and former Conrail board members.

60. Norfolk Southern and Goode have also actively solicited CSX to breach its Merger Agreement with Conrail. Over the weekend of November 2, 1996, Goode, who knew of Conrail's agreement with CSX, met with Snow in Williamsburg, Virginia. At that meeting, Goode produced a map and proposed, with the intention to cause CSX to breach or circumvent the intent of the Merger Agreement with Conrail, that Conrail's assets and rail lines be divided between CSX and Norfolk Southern. In return, Norfolk Southern stated that it would drop its tender offer.

This solicitation was an attempt by Norfolk Southern to re-institute the talks which Norfolk Southern had held with CSX in 1995, wherein Norfolk Southern would have carved- up Conrail.

- (4) Norfolk Southern's Public Relations Effort to Falsely Portray the Merger Agreement to the Investing Public in Further Support of its Wrongful Scheme

62. Norfolk Southern has launched an extensive public relations effort designed to mislead the investing public and sow doubt and confusion among Conrail's shareholders and institutional investors concerning the economic viability of the merger, to publicly disparage the business methods and judgments of Conrail's and CSX's Boards of Directors, and to falsely suggest that the Conrail/CSX strategic merger was being undertaken by Conrail to benefit the senior management of Conrail rather than the company and its constituencies. Norfolk Southern has, among many other examples, made the following false public statements knowing them to be false, with the intent to deceive the market, and to pressure Conrail and CSX into breaching or terminating the Merger Agreement:

(a) In proxy solicitation materials dated November 8, 1996, Norfolk Southern stated that Conrail shareholders have "nothing to gain from approving the amendment proposal." This statement is false. Approval of the amendment proposal would create immediate potential shareholder benefits, including a second tender offer by CSX for Conrail shares, and would take a further step toward realizing the benefits of the Conrail/CSX merger.

(b) In a November 9, 1996 statement in the Dow Jones Commodities Service,

(b) Norfolk Southern said it would purchase the shares in a manner that would provide an immediate cash payment to Conrail Shareholders,

adding that Conrail Shareholders may have to wait longer to receive the total value of the CSX offer.

In addition, just yesterday, on December 4, 1996, Norfolk Southern stated in a shareholder presentation that Norfolk Southern's offer entails "immediate value" for Conrail shareholders, and that a vote against the Subchapter 25E opt out would help "NS win" and would lead to "higher" and "more immediate value" for Conrail shareholders.

These statements are false. Norfolk Southern currently cannot implement its offer to pay any Conrail shareholders cash for their shares at the scheduled expiration date of its offer.

(c) In an advertisement in the Wall Street Journal dated November 11, 1996, Norfolk Southern made the following false and misleading statements:

- "1. The value of the back-end stock will fluctuate with price of CSX stock, and there is no downside protection."

This statement is misleading because it only tells part of the story -- shareholders will also share in any upside (a matter which the Court has found).

- "2. Exactly the kind of two-tiered, coercive offer that the Pennsylvania Fair Value Statute was intended to address."

This statement is false. First, the Pennsylvania Fair Value Statute was intended to protect against hostile tender offers that a board of directors has not approved or determined are in the best interests of the corporation. The CSX merger is a friendly transaction approved and recommended by the Conrail Board because it is in the best interest of the corporation, considering all of its constituencies. Second,

the CSX offer is neither coercive nor unlawful, and the Court agreed: Fluctuation of the CSX stock price, "as I see it, does not make the matter inherently unfair, unlawful or coercive."

"3. Does not maximize shareholder value."

This is false and misleading. In denying Norfolk Southern a preliminary injunction, the Court stated:

Until the merger actually goes through, if it does, the actual amount or valuation of the backend cannot be accurately determined. CSX stock has apparently -- may advance or it may decline in the open market prior to the time that the exchange actually takes place. And we really have no way of knowing what that is.

Moreover, the testimony revealed that CSX's internal projections indicate a per share value for the stock portion of the CSX offer higher than the current market price, which would significantly exceed Norfolk Southern's \$110 per share offer.

(d) In a November 11, 1996 advertisement in the New York Times, Norfolk Southern stated that up to 100% of Conrail's shares can be purchased by Norfolk Southern through a voting trust in the near term. This is misleading. Norfolk Southern either knew or in the exercise of reasonable judgment should have known, that without Conrail breaching or terminating its agreement with CSX, Norfolk Southern could not purchase shares pursuant to its offer prior to mid-April, 1997.

(e) In Amendment No. 10 to Schedule 14D-1, Exhibit (a) (45), filed on November 18, 1996 (and appearing in the New York Times) Norfolk Southern stated:

Norfolk Southern and Conrail can both boast overfunded pension funds, ensuring peace of mind for retirees. CSX's claim to fame is its recent recognition as one of the "Top 50 Companies with the Largest Underfunded Pension Liability" {footnote omitted}. CSX could merge its anemic fund with Conrail's, thereby using money accumulated for Conrail employees to fund CSX's promises to its own employees.

In addition, in Amendment No. 7 to Schedule 14D-1, Exhibit (a) (38), filed on November 12, 1996, Norfolk Southern included remarks by Goode at a transportation conference which state:

At the same time, I'd be concerned about my retirement. I'd want my overfunded Conrail pension fund to be combined with Norfolk Southern's overfunded pension fund. I would not want it anywhere close to CSX's, which had been on the Pension Benefit Guarantee Corporation's list of Ten Most Underfunded Pension Plans.

This is an attempt to mislead Conrail's retiree-shareholders into believing that the merger with CSX would jeopardize their retirement pensions by creating a plan that was underfunded. In fact, simple arithmetic based on Conrail's and CSX's most recent annual reports demonstrates that the post-merger pension fund would be overfunded.

(f) In a press release dated November 19, 1996, Norfolk Southern stated that:

Throughout two days of testimony before the District Court, there was no dispute that Norfolk Southern's offer was financially superior to CSX's.

This statement is false. The future value of the Merger back-end is unknown,



but it may substantially increase to a value in excess of Norfolk Southern's "offer". In fact, the Court found at the hearing, based upon the testimony presented, that the relative value of the offers was uncertain:

Until the merger actually goes through, if it does, the actual amount of valuation of the back end cannot be accurately determined. CSX stock has apparently -- may advance or it may decline in the open market prior to the time the exchange actually takes place. And we really have no way of knowing what that is.

In Amendment No. 13 to Schedule 14D-1, Exhibit (a)(47), filed on November 21, 1996, Counterclaim-Defendants stated that "the only major conditions that remain to be satisfied are those requiring actions by Conrail's board of directors". This statement is materially misleading in that it suggests that the Conrail Board could freely chose to satisfy the condition. The statement does not disclose that Norfolk Southern's remaining conditions would require Conrail to "act" by breaching its Agreement with CSX or that, if the Merger Agreement is to be terminated, the consent of CSX is necessary.

(h) On December 4, 1996, Norfolk Southern ran a full page advertisement in the Philadelphia Inquirer and the Pittsburgh Post Gazette aimed at Conrail's shareholders, employees and retirees that again makes false and materially misleading statements regarding the effect of the Conrail/CSX merger on the jobs and pensions of Conrail's employees. Norfolk Southern also made the following statement:

Employees should also know that a number of senior Conrail executives have been selling Conrail shares not only pursuant to the CSX offer but also in the open market. Does this manifest a lack of confidence in the value and the chances of completion of CSX's proposed deal, which would have 75% of the remaining Conrail shares converted into CSX stock in the back-end merger?

This statement is false and misleading. As disclosed in Amendment No. 7 to Conrail's Schedule 14D-9, Item 6, certain of Conrail's executives exercised stock options for the purpose of tendering to CSX, and they continue to hold their remaining Conrail shares, thus demonstrating their confidence in the Conrail/CSX merger. These executives were only selling their shares for the purpose of covering the exercise price. Norfolk Southern's statements are a deliberate attempt to scare and mislead Conrail's employee-shareholders and retiree-shareholders. Finally, Norfolk Southern's statement that "Conrail Board action {is} required" to satisfy the Norfolk Southern offer conditions is materially misleading for reasons already explained in this paragraph 62.

(i) Finally, Counterclaim-Defendants intentionally and falsely (for the reasons explained above) stated in advertisements filed with the SEC that the merger was a "sweetheart deal" (Amendment No. 5 to Schedule 14D-1, Exhibit (a)(28) and Amendment No. 8 to Schedule 14D-1, Exhibit (a)(41)); that the Board was "self-serving" (Amendment No. 8 to Schedule 14D-1, Exhibit (a)(42)); was "putting its own interests ahead of everyone else's" (Amendment No. 10 to Schedule 14D-1, Exhibit (a)(45)) and was "acting for the personal interests of Conrail's officers and directors". (Amendment No. 2 to Schedule 14D-1, Exhibit (a)(12)).

63. The conduct of Norfolk Southern set forth in paragraphs 39 through 62 is outrageous, wanton, malicious and oppressive, by reason of which Conrail and CSX are entitled to significant damages, including punitive damages.

#### The Conrail Board's Judgment with Respect to Subsequent Events

-----

On November 5, 1996, CSX increased its tender for 19.9% of Conrail's shares from \$92.5 to \$110.

65. On November 5, 1996, the Conrail Board met to consider Norfolk Southern's and CSX's proposals. The Board also addressed meetings that occurred between CSX and Norfolk Southern on November 2 and 3, 1996, in which CSX and Norfolk Southern discussed the division between them of material assets of Conrail. The Board expressed concern that Norfolk Southern and CSX might decide to join together and carve up Conrail.

66. In light of these and other events, Conrail demanded that a provision be added to the Merger Agreement by which Conrail and CSX would agree not to separately discuss,

or enter into any agreement, with any railroad regarding the assets or securities of Conrail. For its part, CSX agreed to increase its tender offer to \$110 per share, an increase of over \$600 million from CSX's previous offer, and demanded an extension of the 180-day no-solicitation provision to 270 days.

67. After considering all relevant factors, the Conrail Board decided to reject Norfolk Southern's unsolicited bid and affirm the newly enhanced Merger Agreement with CSX. The Board found that the Conrail/CSX strategic merger continued to provide the greatest overall benefit to Conrail and its various constituencies.

68. On November 7, 1996, Norfolk Southern raised its hostile, unlawfully conditioned takeover bid for Conrail to \$110 per share. The Conrail Board recommended on November 13, 1996 that shareholders not tender their shares pursuant to the revised Norfolk Southern tender offer, because, among other things, shares tendered into the Norfolk Southern offer, which was to expire on November 22, could not be accepted for payment under the terms of that offer. The Norfolk Southern tender offer has now been extended to December 16, 1996. Conrail's Board also recommended that shareholders who desire to receive cash now for a portion of their shares tender to the offer of CSX, which expired on November 20.

The Conrail Board Exercised its Proper Business Judgment Under the BCL

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69. The Conrail Board's decision to pursue, approve, enter into, and recommend the Merger Agreement with CSX was the result of a careful and deliberate analyses of the strategic alternatives available to Conrail. That analysis led to a reasoned decision that brings to all of Conrail's constituents the unique benefits of this strategic merger of equals.

70. This deliberative process was recognized in the Court's decision:

Section 1716 reiterates that in considering the effects of any action, directors may consider the effects on stockholders, employees, suppliers, customers and the communities in which the officers and/or facilities are located and all pertinent factors, and that no factor need be predominant.

In this case there has not been shown any type of lack of good faith after a reasonable investigation by any director so far as I have been able to determine from the evidence that has been presented, including any of the exhibits that have been presented, and clearly if there is any evidence at all of such of which I say I find absolutely none on the present record, it has not been proven by clear and convincing evidence. . . .

For this reason alone, the grant of preliminary injunction as I see it may not be granted. Basically it seems to me that the plaintiffs are contending that the sole or at least the primary consideration by a board of directors in considering a competing offer by potential acquirers of the control of a corporation should be which competitor offers the best short-range price or profit for shareholders. Clearly Pennsylvania statutory law is expressly against such a contention.

(Emphasis added).



MONETARY DAMAGES CAUSED OR THREATENED BY  
-----  
NORFOLK SOUTHERN'S CONDUCT  
-----

71. As a direct and proximate result of the acts and omissions of the Counterclaim-Defendants, as set forth in this Counterclaim, Conrail and CSX have suffered, will continue to suffer, and are further threatened with, severe economic injuries and damages including, among other things, loss of the bargain negotiated between Conrail and CSX, the loss of present and prospective business relations and other economic benefits as a result of the strategic merger, and the resultant consequential and incidental damages from Norfolk Southern's conduct, and attorneys' fees, consultant fees, expert fees, court costs and other expenses incurred in defending against the illegal and improper actions of Norfolk Southern.

REQUEST FOR PUNITIVE DAMAGES  
-----

72. The conduct of Counterclaim-Defendants Norfolk Southern, Atlantic Acquisition and McQuade, and of co-conspirators/aiders and abettors Goode and Wolf, is and has been intentional, malicious, and of such a nature to warrant the imposition by this Court of substantial punitive damages.

COUNT ONE  
-----

Norfolk Southern's Tortious Interference With  
Conrail's and CSX's Contractual Relationships  
-----

Paragraphs 1 through 72 are incorporated by reference as if fully set forth herein.

74. In its ongoing campaign to destroy the Merger Agreement and the Conrail/CSX strategic merger and to induce Conrail and/or CSX to breach the Merger

Agreement, Norfolk Southern made false statements of material fact, and omitted material facts that were and are necessary to make other of their statements not false or misleading in Norfolk Southern's proxy and tender materials pursuant to Schedule 14A and Schedule 14D-1 and/or the amendments thereto, in continuing violation of Sections 9, 10(b), 14(a), (d), and (e) of the Exchange Act of 1934, 15 U.S.C. ss.ss. 78i, 78j(b), 78n(a), 78n(d)(1), 78n(e), and the rules and regulations promulgated thereunder.

In connection with their stated intention to purchase shares of Conrail stock and in order to give the false impression that it was ready, willing, and able to make a truly competitive and deliverable offer, Norfolk Southern has, with an intent to deceive, manipulate and defraud, made false and misleading statements or omissions of material facts upon which Conrail's shareholders or other past or prospective purchasers or sellers would and did rely in tendering and in deciding whether and at what price to tender their shares to Norfolk Southern and/or CSX, and may rely in casting their votes at critical junctures in the consummation of the merger, and have otherwise used and employed manipulative and deceptive devices and contrivances as alleged above, in continuing violation of Sections 9 and 10(b) of the Exchange Act of 1934, 15 U.S.C. ss.ss. 78i, 78j(b), and the rules and regulations promulgated thereunder.

76. Norfolk Southern, through the illegal, improper, unprivileged and unfair conduct described above, and with the intent to harm Conrail and CSX, has intentionally, wrongfully, and tortiously interfered, and continues to do so, through illegal and improper means with the Merger Agreement between Conrail and CSX and the contractual relations

between Conrail and CSX and between Conrail and its shareholders.

77. Counterclaim-Defendant McQuade, as well as Goode and Wolf, conspired with, and aided and abetted Norfolk Southern's deliberate course of tortious interference with contractual relations as set forth above.

COUNT TWO  
-----

Norfolk Southern's Tortious Interference With  
Conrail's and CSX's Prospective Contractual Relationships  
-----

Paragraphs 1 through 77 are incorporated by reference as if fully set forth herein.

Norfolk Southern, through the illegal, improper, unprivileged and unfair conduct described above, and with the intent to harm Conrail and CSX, has intentionally, wrongfully, and tortiously interfered, and continues to do so, through illegal and improper means with the prospective business relations of Conrail and CSX by threatening and disrupting: consummation of Conrail's strategic merger with CSX; orderly consideration of the strategic merger by Conrail's shareholders; the merged entity's relationships with prospective business partners, customers and employees; and other prospective business relationships of Conrail and the combined entity.

80. Counterclaim-Defendant McQuade, as well as Goode and Wolf, conspired with, and aided and abetted Norfolk Southern's deliberate course of tortious interference with prospective contractual relations as set forth above.

COUNT THREE  
-----

Norfolk Southern's Intentional Infliction of Harm on Conrail and CSX  
-----

Paragraphs 1 through 80 are incorporated by reference as if fully set forth herein.

82. Norfolk Southern, through the illegal, improper, unprivileged, unfair, and unjustified conduct described above, and with the intent to harm Conrail and CSX, has and continues to injure the legally protected interests of Conrail and CSX. Those interests include, but are not limited to: the right to consummate Conrail's strategic merger with CSX; the right to have that merger considered in an orderly fashion by Conrail's shareholders; the right of the merged entity to enjoy unfettered relationships with its prospective business partners, customers and employees; and the right to be free from the tortious, defamatory campaign of deceit being waged by Norfolk Southern.

This conduct, together with the conduct more fully set out above and the other counts alleged herein, is tortious and is causing significant and intentional damage to Conrail and CSX.

84. Counterclaim Defendant McQuade, as well as Goode and Wolf, conspired with, and aided and abetted Norfolk Southern's deliberate course of intentional, unjustified culpable conduct set forth above.

COUNT FOUR  
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Norfolk Southern's Unfair Competition  
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Paragraph 1 through 84 are incorporated by reference or if fully set forth herein.

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86. Norfolk Southern's campaign of deceit and misrepresentation designed to confuse and mislead Conrail shareholders, and disparage the conduct of the Conrail Board, together with the other tactics and schemes set forth above, constitute unfair competition that is contrary to honest commercial practices and falls below any minimum standards of fair dealing and legitimate competitive conduct.

87. Counterclaim Defendant McQuade, as well as Goode and Wolf, conspired with, and aided and abetted Norfolk Southern's deliberate course of intentional deceit, misinformation and disparagement set forth above.

#### COUNT FIVE

#### Civil Conspiracy

88. Paragraphs 1 through 87 are incorporated by reference as if fully set forth herein.

89. Norfolk Southern has conspired with, among others, Goode, Wolf and McQuade to commit many of the actions described above, including, without limitation, the institution of a groundless, deceptive lawsuit and the dissemination of false and misleading statements.

90. On information and belief, Counterclaim-Defendant Norfolk Southern combined and conspired with Goode, Wolf and McQuade with a common purpose to undertake to do an unlawful act and/or to do a lawful act by unlawful means or for an unlawful purpose, and took acts in furtherance of the conspiracy, as set forth above.

PRAYER FOR RELIEF

-----

WHEREFORE, Conrail and CSX request that this Honorable Court:

1. Enter a judgment in favor of Conrail and against Counterclaim-Defendants, individually, jointly and severally, in an amount in excess of \$50,000, exclusive of interest and costs, together with an appropriate award of punitive damages. Conrail further requests that this Court award Conrail the costs of this action and its reasonable attorney's fees.

2. Enter a judgment in favor of CSX and against Counterclaim-Defendants, individually, jointly and severally, in an amount in excess of \$50,000, exclusive of interest and costs, together with an appropriate award of punitive damages. CSX further requests that this Court award CSX the costs of this action and its reasonable attorney's fees.

3. Grant such other and further relief as may be necessary or appropriate.

JURY TRIAL DEMAND

-----

Conrail and CSX hereby demand a trial by jury on all issues raised in the foregoing Counterclaim.

Dated: December 5, 1996

BALLARD SPAHR ANDREWS &  
INGERSOLL

Respectfully submitted,

BUCHANAN INGERSOLL  
PROFESSIONAL CORPORATION

-----  
David H. Pittinsky, Esquire  
PA ID #04552

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(215) 665-8500

and

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Raymond McGarry, Esquire  
PA ID #56520  
Sheila Smith DiNardo, Esquire  
PA ID #62994

and

John Beerbower, Esquire  
Gerald Ford, Esquire  
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Cravath, Swaine & Moore  
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New York, NY 10019

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and the Individual Defendants  
David M. LeVar, H. Furlong Baldwin,  
Daniel B. Burke, Roger S. Hillas,  
Claude S. Brinegar, Kathleen Foley  
Feldstein, David B. Lewis,  
John C. Marous, David H. Swanson, E.  
Bradley Jones and Raymond T. Schuler.

CERTIFICATE OF SERVICE  
-----

The undersigned hereby certifies that on this 5th day of December, 1996, true and correct copies of the foregoing Answer and Defenses of Conrail, CSX and the Individual Defendants to Second Amended Complaint and Counterclaim of Conrail and CSX were served via fax and first class United States Mail, postage prepaid, as follows:  
Mary A. McLaughlin, Esquire DECHERT, PRICE & RHODES 4000 Bell Atlantic Tower 1717 Arch Street Philadelphia, PA 19103

Steven J. Rothschild, Esquire  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM  
One Rodney Square  
P.O. Box 636  
Wilmington, DE 19899

Stuart H. Savett, Esquire  
SAVETT, FRUTKIN, PODELL & RYAN, P.C.  
Walnut Place  
In Society Hill, Suite 5080  
320 Walnut Street  
Philadelphia, PA 19106

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**SCHEDULE 14D-1**

(Amendment No. 17)

**Tender Offer Statement Pursuant to Section 14(d)(1)  
of the Securities Exchange Act of 1934**

---

**Conrail Inc.**

(Name of Subject Company)

**Norfolk Southern Corporation  
Atlantic Acquisition Corporation**

(Bidders)

**Common Stock, par value \$1.00 per share  
(including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**208368 10 0**

(CUSIP Number of Class of Securities)

**Series A ESOP Convertible Junior  
Preferred Stock, without par value  
(Including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**Not Available**

(CUSIP Number of Class of Securities)

---

**James C. Bishop, Jr.  
Executive Vice President-Law  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone: (757) 629-2750**

(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications on Behalf of Bidder)

---

with a copy to:  
**Randall H. Doud, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 735-3000**

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This Amendment No. 17 amends the Tender Offer Statement on Schedule 14D-1 filed on October 24, 1996, as amended (the "Schedule 14D-1"), by Norfolk Southern Corporation, a Virginia corporation ("Parent"), and its wholly owned subsidiary, Atlantic Acquisition Corporation, a Pennsylvania corporation ("Purchaser"), relating to Purchaser's offer to purchase all outstanding shares of (i) Common Stock, par value \$1.00 per share (the "Common Shares"), and (ii) Series A ESOP Convertible Junior Preferred Stock, without par value (the "ESOP Preferred Shares" and, together with the Common Shares, the "Shares"), of Conrail Inc. (the "Company"), including, in each case, the associated Common Stock Purchase Rights, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 24, 1996 (the "Offer to Purchase"), as amended and supplemented by the Supplement thereto, dated November 8, 1996 (the "Supplement"), and in the revised Letter of Transmittal (which, together with any amendments or supplements thereto, constitute the "Offer"). Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given such terms in the Offer to Purchase, the Supplement or the Schedule 14D-1.

**Item 11. Material to be Filed as Exhibits.**

Item 11 is hereby amended and supplemented by the following:

- (a)(52) Press Release issued by Parent on December 8, 1996.
- (a)(53) Parent's Proxy Statement Supplement, including attached letter to the Company's shareholders, mailed to the Company's shareholders commencing December 9, 1996.

SIGNATURE

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: December 9, 1996

NORFOLK SOUTHERN CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Executive Vice President-Law

ATLANTIC ACQUISITION CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Vice President and General Counsel

## EXHIBIT INDEX

Exhibit  
Number

Description

- |         |   |
|---------|---|
| (a)(52) | Press Release issued by Parent on December 8, 1996.   |
| (a)(53) | Parent's Proxy Statement Supplement, including attached letter to the Company's shareholders, mailed to the Company's shareholders commencing December 9, 1996. |

**FOR IMMEDIATE RELEASE**

**December 8, 1996**

Media Contact: Robert Fort  
757 629-2714

**NS ISSUES PLEDGE TO CR SHAREHOLDERS**

NORFOLK, VA -- Norfolk Southern today confirmed its commitment to Conrail shareholders by pledging that it will not be a party to any agreement with CSX or Conrail that delivers anything less to Conrail shareholders than \$110 a share in cash, for all shares, promptly into a voting trust. The pledge is contained in a letter from David R. Goode, NS chairman, president and chief executive officer, that will be sent to Conrail shareholders on Monday.

"The only way Conrail shareholders are going to see our superior, all cash offer is if they force their management to honor shareholder wishes," Goode said. "As things now stand, Conrail management is denying its own shareholders the benefits of our \$110, all cash offer for all shares, which is nearly 19 percent higher than the part cash, part stock CSX offer."

Conrail has called for a shareholder vote at a meeting set for 5 p.m. on December 23. However, it has already declared that it won't convene the meeting unless it has enough votes to assure approval of its proposal to opt out of the Pennsylvania Fair Value Statute, and to adjourn the special meeting. It said that it will continue to set new shareholder meetings until Conrail shareholders approve its proposal.

"This arrogant denial of basic shareholder rights is an outrage," Goode said.

Goode stressed that the NS pledge also contained an important message for both CSX management and CSX shareholders. "CSX management should have no doubt as to our determination to acquire Conrail and our willingness to use any and all appropriate financial means to accomplish that objective," the NS chairman said.

"For CSX shareholders, we repeat our willingness to create today with CSX and Conrail a structure for Eastern railroad service that will enable both of our companies to prosper in a competitive environment," Goode noted, "but this will be accomplished only pursuant to a \$110 all cash offer for all shares into a voting trust. Such an offer would benefit the shareholders of all three companies.

"However, Conrail shareholders must vote 'no' in order to make this happen," Goode said.

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World Wide Web Site - <http://www.nscorp.com>

December 9, 1996

Dear Conrail Shareholder:

On November 4, Norfolk Southern began soliciting your vote **AGAINST** a proposal by Conrail's Board of Directors to amend the Conrail charter to "opt out" of Subchapter E of Chapter 25 of the Pennsylvania Business Corporation Law. On November 8, we increased the amount payable in our cash tender offer for Conrail shares from \$100 per share to \$110 per share.

Today we make the following Pledge to you and all Conrail Shareholders:

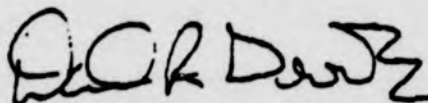
**NORFOLK SOUTHERN WILL NOT BE A PARTY TO ANY AGREEMENT WITH CSX OR CONRAIL THAT DELIVERS ANYTHING LESS TO CONRAIL SHAREHOLDERS THAN A \$110 ALL-CASH, ALL-SHARES OFFER WITH PROMPT PAYMENT THROUGH USE OF A VOTING TRUST SO LONG AS CONRAIL SHAREHOLDERS REJECT THE MANEUVERING BY CSX AND CONRAIL'S MANAGEMENT TO PAY YOU LESS THAN YOU DESERVE FOR YOUR SHARES** — which you can do by voting now on Norfolk Southern's **GOLD** proxy card **AGAINST** Conrail's proposals to "opt out" of Pennsylvania's Fair Value Statute and to adjourn the special meeting.

That's the only way to stop Conrail's management and CSX from denying you the benefits of Norfolk Southern's superior all-cash offer for all shares which is worth almost 19% more than CSX's part cash, part stock offer.<sup>1</sup>

#### **The Future Value of Your Conrail Investment Is in Your Hands**

**Don't be coerced into accepting less than full value for your Conrail shares. Vote today on the GOLD proxy card AGAINST Conrail's proposals to "opt out" of Pennsylvania's Fair Value Statute and to adjourn the special meeting.** Even if you have tendered your shares into CSX's new offer or voted earlier, you can still vote those shares against the "opt out" amendment by signing and returning the **GOLD** proxy card. You must act now to protect the value of your Conrail investment.

Sincerely,



David R. Goode  
Chairman, President and  
Chief Executive Officer

#### **IMPORTANT**

If you have any questions, please call our solicitor:

**GEORGESON  
& COMPANY INC.**

Call Toll Free: 800-223-2064

Banks and Brokers call: 212-440-9800

<sup>1</sup> Based on the closing price of CSX common stock on December 6, 1996.



SPECIAL MEETING OF SHAREHOLDERS  
of  
CONRAIL INC.

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PROXY STATEMENT SUPPLEMENT  
of  
NORFOLK SOUTHERN CORPORATION

---

SOLICITATION OF PROXIES  
IN OPPOSITION TO THE PROPOSED AMENDMENT TO THE  
ARTICLES OF INCORPORATION OF CONRAIL INC.

**INTRODUCTION**

This Proxy Statement Supplement (this "Supplement") is furnished by Norfolk Southern Corporation ("Norfolk Southern") and relates to a Special Meeting of Shareholders of Conrail Inc. ("Conrail" or the "Company") to vote upon Conrail's proposal (the "Amendment Proposal") to amend its Articles of Incorporation to "opt out" of Subchapter E (the "Fair Value Statute") of Chapter 25 of the Pennsylvania Business Corporation Law of 1988, as amended, and to any adjournments, postponements or reschedulings thereof (the "Special Meeting"). This Supplement amends and supplements, to the extent set forth herein, the Proxy Statement of Norfolk Southern, dated November 4, 1996, which was first mailed to Conrail Shareholders on or about November 4, 1996 and which was subsequently amended and supplemented by a proxy supplement dated November 8, 1996 (as amended to date, the "Proxy Statement"). Capitalized terms used in this Supplement and not otherwise defined in this Supplement shall have the respective meanings assigned to such terms in the Proxy Statement. This Supplement is first being mailed to Conrail Shareholders on or about December 9, 1996.

**RECENT DEVELOPMENTS**

**The Special Meeting**

On November 25, 1996, Conrail publicly announced that the Special Meeting had now been scheduled for December 23, 1996, and would be held at The Academy of Music Hall, 1420 Locust Street, Philadelphia, Pennsylvania, at 5:00 p.m. Eastern Standard Time. According to Conrail's proxy statement, the Record Date for the Special Meeting is December 5, 1996. Norfolk Southern is soliciting proxies from Conrail Shareholders to vote **AGAINST** both (i) the Amendment Proposal and (ii) Conrail's proposal to adjourn (the "Adjournment Proposal") the Special Meeting, if necessary, to permit Conrail to further solicit proxies in the event that there are not sufficient votes at the time of the Special Meeting to approve the Amendment Proposal.

The proxy cards previously furnished to you by Norfolk Southern remain valid for Shareholders entitled to vote at the Special Meeting. Nonetheless, new **GOLD** proxy cards are being provided to you with this Supplement to vote **AGAINST** both the Amendment Proposal and the Adjournment Proposal. ESOP Participants can instruct the ESOP Trustee to vote their ESOP shares **AGAINST** the Amendment Proposal on the enclosed **GREEN** instruction card. In addition, if you have already voted Conrail's white proxy card (or **GREEN** instruction card) in favor of the Amendment Proposal, you may revoke that vote by completing and returning the **GOLD** proxy (or **GREEN** instruction card) and indicating your vote **AGAINST** the Amendment Proposal. It is the latest dated proxy which will be counted.

PLEASE SIGN AND DATE THE ENCLOSED **GOLD** PROXY CARD OR **GREEN** INSTRUCTION CARD TODAY AND VOTE **AGAINST** THE "OPT OUT" AMENDMENT.

## SUMMARY OF THE CSX SECOND TENDER OFFER

On December 6, 1996, CSX announced the commencement of a second tender offer for 18,344,845 Shares (representing approximately 20% of the outstanding Shares) at a price of \$110 per Share (the "CSX Second Offer"). The CSX Second Offer is scheduled to expire on January 6, 1997. CSX has conditioned the CSX Second Offer on, among other things, Shareholder approval of the Amendment Proposal.

### SPECIAL NOTICE TO ESOP PARTICIPANTS

#### Voting of ESOP Unallocated Shares

Based upon publicly available information, the ESOP Trust currently holds approximately 7.3 million ESOP Preferred Shares and, prior to the completion of the first CSX Tender Offer, approximately 2.1 million ESOP Preferred Shares were allocated to individual shareholder-participants' ("ESOP Participants") accounts pursuant to the ESOP. Assuming that all such allocated ESOP Preferred Shares were tendered to CSX and approximately 490,871 were accepted for payment by CSX, Norfolk Southern estimates that approximately 1.6 million ESOP Preferred Shares are currently allocated to ESOP Participants' accounts. The remaining shares are held in an ESOP suspense account (the "Unallocated ESOP Shares"). In accordance with the ESOP trust agreement between Consolidated Rail Corporation and Fidelity Management Trust Company, as trustee (the "Trustee") of the ESOP Preferred Shares, the Trustee is obligated, except under certain circumstances, to vote the ESOP Preferred Shares credited to ESOP Participants' accounts in accordance with their instructions, and will vote the ESOP Preferred Shares credited to the ESOP Participants' accounts for which it does not receive timely instructions and the Unallocated Shares in the same proportion as the ESOP Preferred Shares for which valid instruction are received from ESOP Participants. **In effect, each ESOP Preferred Share could direct the voting of more than 4.5 ESOP Preferred Shares by the Trustee in accordance with the instructions given. In addition, because it is likely that not all ESOP Participants will give voting instructions, the ESOP Participants who do vote will be directing the voting of an even greater number of Shares. As a result of this "super-voting" ability, it is especially important for each holder of ESOP Preferred Shares to properly instruct the Trustee as to how the ESOP Participant wants ESOP Preferred Shares allocated to his or her account to be voted.**

Holders of ESOP Preferred Shares cannot instruct the Trustee how to vote those shares by completing the gold proxy card — they can only instruct the Trustee as to how to vote their ESOP Preferred Shares by completing the GREEN INSTRUCTION card provided with this Supplement. **Voting instructions will be treated confidentially by the Trustee.**

#### Voting of Employee Benefits Trust

Based upon publicly available information, Norfolk Southern estimates that approximately 4.3 million Common Shares are held in the Conrail Employee Benefits Trust (the "EBT"). Based on the terms of the trust agreement, the trustee of the EBT must follow the directions of the ESOP Participants with respect to the manner of voting the Common Shares held in the Employee Benefits Trust on each matter pending before an annual or special meeting of Shareholders. Consequently, not only will each ESOP Preferred Share voted direct the vote of more than 4.5 ESOP Preferred Shares, but it will also direct the vote of more than 2.5 additional Common Shares held in the EBT.

#### Pass Through Voting Procedure For Non-Voting Shares

As discussed above, all ESOP Preferred Shares that have been allocated to ESOP Participants' accounts but as to which no voting instructions have been received by the Trustee will be voted in the same proportion as are the ESOP Preferred Shares for which valid instructions have been received. This means that if an ESOP Participant does not instruct the Trustee regarding the voting of his or her allocated ESOP Preferred Shares, those allocated ESOP Preferred Shares will be voted based upon the voting percentages of other ESOP Participants who have timely provided the Trustee with their voting instructions.

As a result of the aggregate effect of the EBT, the pass through voting of unallocated ESOP Preferred Shares and the likelihood that some allocated ESOP Preferred Shares will not be voted, ESOP Participants who do vote will direct the voting of at least 7, and possibly more Shares. Accordingly, we encourage ESOP Participants to vote the GREEN INSTRUCTION card provided with this Supplement today **AGAINST** the Amendment Proposal and the Adjournment Proposal.

## CERTAIN LITIGATION—RECENT DEVELOPMENTS

On November 15, 1996, Norfolk Southern filed a Motion for Leave to Supplement and Amend the Complaint, previously filed in the District Court for the Eastern District of Pennsylvania (the "District Court"), in which Norfolk Southern requests permission to file its Second Amended Complaint for Declaratory and Injunctive Relief (the "Second Amended Complaint"). The Second Amended Complaint updates the description of counts contained in the earlier complaints and adds certain additional allegations of disclosure and fiduciary duty violations relating to such updated description of events. Among other allegations, the Second Amended Complaint includes allegations regarding the coercive front-end loaded, two-tier structure of the CSX Acquisition Proposal (and the fundamental unfairness thereof), and allegations concerning material misrepresentations and omissions by Conrail and its Board members in connection with the supplement to the CSX Offer to Purchase and with Conrail's Schedule 14D-9 statements relating to the CSX Acquisition Proposal and the Norfolk Southern Offer to Purchase and the Proposed Norfolk Southern/Conrail Merger.

On November 18 and 19, 1996, a hearing was held before the Honorable Donald W. VanArtsdalen, United States District Court Judge for the Eastern District of Pennsylvania, on Norfolk Southern's motion for a preliminary injunction against Conrail. Norfolk Southern was seeking to enjoin the CSX Tender Offer from expiring on November 20, 1996 and to enjoin CSX from acquiring Shares pursuant to the CSX Tender Offer.

On November 19, 1996 Judge VanArtsdalen issued an oral ruling denying Norfolk Southern's motion for a preliminary injunction. After the ruling, Norfolk Southern asked the District Court for an injunction pending appeal. The District Court denied this motion. On the same date, Norfolk Southern filed an emergency motion for an injunction pending appeal and a motion seeking an expedited appeal with the United States Court of Appeals for the Third Circuit (the "Third Circuit").

On November 20, 1996 the Third Circuit denied Norfolk Southern's motion for an injunction pending appeal. Accordingly, the CSX Tender Offer expired on November 20, 1996. On November 21, 1996, Norfolk Southern announced that no purpose would be served by seeking expedited review of the decision not to enjoin CSX's purchase, since CSX had completed its purchase of 19.9% of the Conrail Shares, and therefore Norfolk Southern would withdraw that motion. However, Norfolk Southern continues to pursue on the merits its lawsuit against Conrail and CSX.

On December 5, 1996, Defendants in the Pennsylvania litigation filed their Answer and Defenses to Plaintiffs' Second Amended Complaint, generally denying, and asserting various defenses to, the allegations contained therein and requesting judgment on all claims and an award of costs and attorneys fees. Conrail and CSX also filed a Counterclaim to Plaintiffs' Second Amended Complaint (the "Counterclaim"), naming Norfolk Southern, Atlantic Acquisition Corporation and Kathryn B. McQuade as counterclaim defendants, alleging that David R. Goode and Henry C. Wolf are co-conspirators/aiders and abettors, and purporting to state the following claims: tortious interference with current and prospective contractual relationships, intentional infliction of harm, unfair competition and civil conspiracy. Further, the Counterclaim alleges that Norfolk Southern and certain of its executive officers have engaged in (i) dissemination of materially false and misleading information, (ii) promotion of an illusory tender offer, (iii) purportedly improper commencement of a lawsuit, (iv) false and misleading solicitation of proxies for the upcoming Conrail shareholder vote and (v) efforts to manipulate the market through unfair, tortious conduct, in violation of the federal securities laws. The Counterclaim requests a jury trial and an award of damages, punitive damages, costs and attorneys fees. Norfolk Southern believes that the Counterclaim is without merit and intends to defend it vigorously.

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NORFOLK SOUTHERN CORPORATION

Dated: December 9, 1996



#### **ADDITIONAL INFORMATION**

If your Shares are held in the name of a bank or broker, only your bank or broker can vote your Shares and only upon receipt of your specific instructions. Please instruct your bank or broker to vote **AGAINST** the Amendment Proposal and the Adjournment Proposal by executing the **GOLD** proxy card today. If you have any questions or require any assistance in voting your Shares, please call:

**GEORGESON  
& COMPANY INC**

Wall Street Plaza  
New York, New York 10005

Call Toll Free: 800-223-2064

Banks and Brokers call: 212-440-9800

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**SCHEDULE 14D-1**

(Amendment No. 18)

**Tender Offer Statement Pursuant to Section 14(d)(1)  
of the Securities Exchange Act of 1934**

---

**Conrail Inc.**

(Name of Subject Company)

**Norfolk Southern Corporation  
Atlantic Acquisition Corporation**

(bidders)

**Common Stock, par value \$1.00 per share  
(Including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**208368 10 0**  
(CUSIP Number of Class of Securities)

**Series A ESOP Convertible Junior  
Preferred Stock, without par value  
(Including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**Not Available**  
(CUSIP Number of Class of Securities)

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**James C. Bishop, Jr.  
Executive Vice President-Law  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone: (757) 629-2750**

(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications on Behalf of Bidder)

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with a copy to:  
**Randall H. Doud, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 735-3000**



This Amendment No. 18 amends the Tender Offer Statement on Schedule 14D-1 filed on October 24, 1996, as amended (the "Schedule 14D-1"), by Norfolk Southern Corporation, a Virginia corporation ("Parent"), and its wholly owned subsidiary, Atlantic Acquisition Corporation, a Pennsylvania corporation ("Purchaser"), relating to Purchaser's offer to purchase all outstanding shares of (i) Common Stock, par value \$1.00 per share (the "Common Shares"), and (ii) Series A ESOP Convertible Junior Preferred Stock, without par value (the "ESOP Preferred Shares" and, together with the Common Shares, the "Shares"), of Conrail Inc. (the "Company"), including, in each case, the associated Common Stock Purchase Rights, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 24, 1996 (the "Offer to Purchase"), as amended and supplemented by the Supplement thereto, dated November 8, 1996 (the "Supplement"), and in the revised Letter of Transmittal (which, together with any amendments or supplements thereto, constitute the "Offer"). Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given such terms in the Offer to Purchase, the Supplement or the Schedule 14D-1.

**Item 11. Material to be Filed as Exhibits.**

Item 11 is hereby amended and supplemented by the following:

- (a)(54) Text of Advertisement appearing in newspapers commencing December 10, 1996.

SIGNATURE

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: December 10, 1996

NORFOLK SOUTHERN CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Executive Vice President-Law

ATLANTIC ACQUISITION CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Vice President and General Counsel

## EXHIBIT INDEX

Exhibit  
Number

Description

(a)(54)	Text of Advertisement appearing in newspapers commencing December 10, 1996.
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[Advertisement]

TO CONRAIL SHAREHOLDERS:

Conrail wants you to think resistance is futile.

# Your vote can prove them dead wrong.

[Graphic: Box with checkmark above the words "VOTE NO"]

Conrail's management has made it clear that shareholder rights have no place on their agenda. You already know that they want to coerce you into accepting a part cash, part stock CSX offer. Norfolk Southern's \$110 all-cash offer is nearly 19% higher than CSX's inferior offer.\*

To get away with that, Conrail needs a shareholder vote to "opt out" of the Pennsylvania Fair Value Statute that is one of the few protections you have left. Conrail has called for a vote at a meeting set for 5 p.m. on December 23.

## **Conrail's Plans for a Phony Vote**

However, Conrail's management has blatantly announced that they won't convene the meeting *unless they know ahead of time that they have enough votes to assure approval of their proposal*. And they have said that they will continue to set new shareholder meetings until shareholders approve the proposal. In other words, vote their way or your vote won't count.

It's hard to imagine a more arrogant denial of basic shareholder rights. And Norfolk Southern has no intention of letting Conrail get away with it.

## **A Better Offer From a Better Railroad**

Norfolk Southern will continue the fight to deliver to Conrail shareholders our all-cash \$110 offer for all shares, with prompt payment through use of a voting trust.

As the safest and most efficient major railroad in the country, Norfolk Southern has the ability to pay a full and fair \$110 per share, in cash.

### **A Pledge to Conrail Shareholders**

CSX and Conrail should have no doubt as to our determination to acquire Conrail, and our willingness to use any and all appropriate financial means to accomplish that objective.

**Here is the Norfolk Southern Pledge: Norfolk Southern will not be a party to any agreement with CSX or Conrail that delivers anything less to Conrail shareholders than a \$110 all-cash, all-shares offer -- with prompt payment through use of a voting trust -- so long as Conrail shareholders reject the maneuvering by CSX and Conrail's management to pay you less than you deserve for your shares.**

**But to succeed, we need your help by voting "AGAINST" Conrail's proposals.**

**Defend the value of your shares.**

**Vote now on Norfolk Southern's GOLD proxy card "AGAINST" Conrail's proposals to "opt out" of Pennsylvania's Fair Value Statute and to adjourn the special meeting. Be sure Norfolk Southern receives your proxy before December 23.**

[Norfolk Southern Logo]

**Important: If you have any questions, please call our solicitor, Georgeson & Company Inc. toll free at 1-800-223-2064. Banks and brokers call 212-440-9800.**

**\*Based on the closing price of CSX common stock on December 6, 1996.**

**December 10, 1996**



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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**SCHEDULE 14D-1**

(Amendment No. 19)

Tender Offer Statement Pursuant to Section 14(d)(1)  
of the Securities Exchange Act of 1934

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**Conrail Inc.**

(Name of Subject Company)

**Norfolk Southern Corporation  
Atlantic Acquisition Corporation**

(Bidders)

Common Stock, par value \$1.00 per share  
(Including the associated Common Stock Purchase Rights)  
(Title of Class of Securities)

208368 10 0  
(CUSIP Number of Class of Securities)

Series A ESOP Convertible Junior  
Preferred Stock, without par value  
(Including the associated Common Stock Purchase Rights)  
(Title of Class of Securities)

Not Available  
(CUSIP Number of Class of Securities)

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**James C. Bishop, Jr.  
Executive Vice President-Law  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone: (757) 429-2750**

(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications on Behalf of Bidder)

---

with a copy to:  
**Randall H. Doud, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 735-3000**

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This Amendment No. 19 amends the Tender Offer Statement on Schedule 14D-1 filed on October 24, 1996, as amended (the "Schedule 14D-1"), by Norfolk Southern Corporation, a Virginia corporation ("Parent"), and its wholly owned subsidiary, Atlantic Acquisition Corporation, a Pennsylvania corporation ("Purchaser"), relating to Purchaser's offer to purchase all outstanding shares of (i) Common Stock, par value \$1.00 per share (the "Common Shares"), and (ii) Series A ESOP Convertible Junior Preferred Stock, without par value (the "ESOP Preferred Shares" and, together with the Common Shares, the "Shares"), of Conrail Inc. (the "Company"), including, in each case, the associated Common Stock Purchase Rights, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 24, 1996 (the "Offer to Purchase"), as amended and supplemented by the Supplement thereto, dated November 8, 1996 (the "Supplement"), and in the revised Letter of Transmittal (which, together with any amendments or supplements thereto, constitute the "Offer"). Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given such terms in the Offer to Purchase, the Supplement or the Schedule 14D-1.

### **Item 3. Past Contacts, Transactions or Negotiations With the Subject Company.**

Item 3 is hereby amended and supplemented by the following:

(b) On December 11, 1996, Parent sent a letter to the Company Board. In the letter, Parent offered to formalize in a written agreement with the Company, on behalf of the Company's shareholders, Parent's pledge made earlier this week that it will not be a party to any agreement with CSX or the Company that delivers anything less to the Company's shareholders than a \$110 all-cash, all-Shares offer - with prompt payment through use of a voting trust - so long as the Company's shareholders reject the maneuvering by CSX and the Company's management to pay shareholders less than they deserve for their Shares. Parent is awaiting a response from the Company. Such letter is filed as exhibit (a)(56) hereto and is incorporated herein by reference.

### **Item 10. Additional Information.**

Item 10 is hereby amended and supplemented by the following:

(b) On November 27, 1996, the STB issued a proposed schedule pursuant to which the STB would issue a final order 300 days from the filing of the application (the "STB Application") by Parent seeking approval of the Proposed Merger. Parent has not yet filed the STB Application. The STB is required by statute to enter a final order with respect to the STB Application within approximately 16 months after it is filed. The STB's proposed schedule is subject to a public comment process with written comments due no later than December 13, 1996 and Parent's reply due by December 23, 1996, after which the STB is then expected to issue a final schedule which may or may not be identical to the proposed schedule. Regardless of the final scheduling order, there can be no assurance that the STB will issue a final decision any sooner than the approximately 16-month period permitted by law, or that the decision, when issued, will be favorable to the Proposed Merger.

(f) On December 11, 1996, Parent and Purchaser announced that they were extending the expiration date of the Offer to 12:00 midnight, New York City time, on Friday, January

10, 1997, unless the Offer is further extended. As of the morning of December 11, 1996, approximately 2.4 million Shares had been tendered and not withdrawn pursuant to the Offer.

**Item 11. Material to be Filed as Exhibits.**

Item 11 is hereby amended and supplemented by the following:

- (a)(55) Press Release issued by Parent on December 11, 1996.
- (a)(56) Text of letter sent by Parent to the Company Board on December 11, 1996.

SIGNATURE

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: December 11, 1996

NORFOLK SOUTHERN CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Executive Vice President-Law

ATLANTIC ACQUISITION CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Vice President and General Counsel

## EXHIBIT INDEX

Exhibit  
Number

Description

- |         |   |
|---------|---|
| (a)(55) | Press Release issued by Parent on December 11, 1996.                        |
| (a)(56) | Text of letter sent by Parent to the Company Board<br>on December 11, 1996. |



[Norfolk Southern Logo]

FOR IMMEDIATE RELEASE  
December 11, 1996

Media Contact: Robert Fort  
757 629-2714

#### NS OFFERS TO CR BOARD TO FORMALIZE NS PLEDGE

NORFOLK, VA -- In a letter sent today to the Board of Directors of Conrail, Norfolk Southern offered to formalize in a written agreement with Conrail, on behalf of Conrail's shareholders, Norfolk Southern's pledge made earlier this week that it will not be a party to any agreement with CSX or Conrail that delivers anything less to Conrail shareholders than a \$110 all-cash, all-shares offer - with prompt payment through use of a voting trust - so long as Conrail shareholders reject the maneuvering by CSX and Conrail's management to pay shareholders less than they deserve for their shares. Norfolk Southern is awaiting a response from Conrail.

Norfolk Southern also announced that, in order to underscore its commitment to continue the fight to deliver to Conrail shareholders \$110 in cash per share, it has extended its previously announced \$110 all cash, all shares tender offer through 12:00 midnight, New York, City time, on January 10, 1997. According to the depositary for the Norfolk Southern tender offer, approximately 2.4 million Conrail shares had been tendered and not withdrawn pursuant to Norfolk Southern's offer as of this morning.

###

World Wide Web Site - <http://www.nscorp.com>

[Norfolk Southern Letterhead]

December 11, 1996

BY FAX

Board of Directors  
Conrail Inc.  
2001 Market Street  
Two Commerce Square  
Philadelphia, Pennsylvania 19101  
Attn: Chairman

Gentlemen:

As you know, both in a press release and in newspaper advertisements earlier this week, Norfolk Southern issued the following pledge to Conrail shareholders:

"Norfolk Southern will not be a party to any agreement with CSX or Conrail that delivers anything less to Conrail shareholders than a \$110 all-cash, all-shares offer - with prompt payment through use of a voting trust - so long as Conrail shareholders reject the maneuvering by CSX and Conrail's management to pay you less than you deserve for your shares."

I am writing to underscore the seriousness of Norfolk Southern's pledge. We intend that the foregoing pledge be treated as a binding commitment to the Conrail shareholders. However, should you deem it necessary or otherwise appropriate, Norfolk Southern stands ready to enter into a written agreement with Conrail, on behalf of the Conrail shareholders, confirming this pledge.

Our attorneys are available to work with your attorneys to promptly work out the language of such an agreement. We look forward to your response.

Very truly yours,

David R. Goode

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20540

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**SCHEDULE 14D-1**

(Amendment No. 20)

**Tender Offer Statement Pursuant to Section 14(d)(1)  
of the Securities Exchange Act of 1934**

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**Conrail Inc.**

(Name of Subject Company)

**Norfolk Southern Corporation  
Atlantic Acquisition Corporation**

(Bidders)

**Common Stock, par value \$1.00 per share  
(Including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**208368 10 0**

(CUSIP Number of Class of Securities)

**Series A ESOP Convertible Junior  
Preferred Stock, without par value  
(Including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**Not Available**

(CUSIP Number of Class of Securities)

---

**James C. Bishop, Jr.  
Executive Vice President-Law  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone: (757) 629-2750**

(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications on Behalf of Bidder)

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with a copy to:  
**Randall H. Doud, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 735-3000**

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This Amendment No. 20 amends the Tender Offer Statement on Schedule 14D-1 filed on October 24, 1996, as amended (the "Schedule 14D-1"), by Norfolk Southern Corporation, a Virginia corporation ("Parent"), and its wholly owned subsidiary, Atlantic Acquisition Corporation, a Pennsylvania corporation ("Purchaser"), relating to Purchaser's offer to purchase all outstanding shares of (i) Common Stock, par value \$1.00 per share (the "Common Shares"), and (ii) Series A ESOP Convertible Junior Preferred Stock, without par value (the "ESOP Preferred Shares" and, together with the Common Shares, the "Shares"), of Conrail Inc. (the "Company"), including, in each case, the associated Common Stock Purchase Rights, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 24, 1996 (the "Offer to Purchase"), as amended and supplemented by the Supplement thereto, dated November 8, 1996 (the "Supplement"), and in the revised Letter of Transmittal (which, together with any amendments or supplements thereto, constitute the "Offer"). Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given such terms in the Offer to Purchase, the Supplement or the Schedule 14D-1.

**Item 11. Material to be Filed as Exhibits.**

Item 11 is hereby amended and supplemented by the following:

- (a)(57) Text of letter sent to the Company's shareholders commencing December 12, 1996.

SIGNATURE

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: December 12, 1996

NORFOLK SOUTHERN CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Executive Vice President-Law

ATLANTIC ACQUISITION CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Vice President and General Counsel



## EXHIBIT INDEX

Exhibit  
Number

Description

(a)(57)

Text of letter sent to the Company's shareholders  
commencing December 12, 1996.

December 11, 1996

Dear Conrail Shareholder:

### **NOW IS THE TIME TO ACT!**

As you know, at Conrail's December 23rd Special Meeting, you will have the opportunity to vote **AGAINST** the proposal to "opt out" of the Pennsylvania Fair Value Statute and the proposal to adjourn the Special Meeting if Conrail does not have enough votes to carry its proposals. I want to take this opportunity to stress the importance of your vote. This is a crucial time for Conrail. It may be your only opportunity to ensure that Norfolk Southern's superior \$110 all-cash, all-shares offer — with prompt payment through use of a voting trust — will remain available to you.

I urge all Conrail shareholders to vote **AGAINST** the amendment proposal and **AGAINST** the adjournment proposal. Please either:

- sign, date and return the enclosed **GOLD** proxy card today;
- or, if you are an ESOP Participant,
- mark the enclosed GREEN instruction card **AGAINST**, and sign, date and return it today.

### **IMPORTANT INFORMATION FOR ESOP PARTICIPANTS**

If you are an ESOP Participant, it is especially important that you mark your GREEN instruction card **AGAINST**, because each ESOP share that is allocated to your account represents a significantly greater voting interest — by our calculation, as much as seven votes. This is because your instructions to the Trustee also direct the voting of unallocated and unvoted ESOP shares, as well as shares held in the Employee Benefits Trust. Therefore, it is very important that you vote and be heard. **REMEMBER, THE ESOP TRUSTEE IS REQUIRED BY LAW TO KEEP YOUR VOTE CONFIDENTIAL.**

Why should you instruct the ESOP Trustee to vote **AGAINST** the "opt out" proposal? Here are six reasons:

- There is substantially more overlap with a CSX/Conrail system than there is with a Norfolk Southern/Conrail system. A merger between CSX and Conrail would eliminate competitive service in 64 cities, including Philadelphia, Baltimore, Youngstown and Pittsburgh. Conrail's Hollidaysburg and Altoona shops are within 70 miles of CSX's facilities at Cumberland, MD. Redundancies like these could add up to lost jobs.
- Our managers are valuable to us and are treated as such. We have avoided massive layoffs and involuntary separations. Since the formation of Norfolk Southern in June 1982, we have matched people to needs through attrition, voluntary separation and early retirements.

- Norfolk Southern and Conrail both can boast fully funded, healthy pension funds, ensuring peace of mind for both employees and retirees. CSX, on the other hand, has been listed as one of the "Top 50 Companies with the Largest Underfunded Pension Liability."<sup>1</sup> Why let CSX reap the benefit of the protective surplus your hard work has built up?
- Norfolk Southern is committed to maintaining a major operating presence in Philadelphia as we have done in Roanoke, Virginia and Atlanta, Georgia — major operating centers for Norfolk Southern's two predecessor railroads. Norfolk Southern also has made public plans for a multimodal rail-highway facility at the dormant Philadelphia Navy base.
- Norfolk Southern's \$110 all-cash offer for Conrail shares is the superior offer. CSX's proposal for the remaining Conrail stock is currently valued at approximately \$92 per share (based on a CSX closing stock price on December 10 of \$46<sup>3</sup>/<sub>8</sub>). Unlike the Norfolk Southern offer, the second-step stock portion of the CSX offer is contingent on Surface Transportation Board approval. The earliest CSX expects to receive any such approval is early 1998. This means you have no assurance if and when CSX will acquire the remaining 75% of Conrail stock.
- You should know that a number of senior Conrail executives have been selling Conrail shares recently, not only pursuant to the first CSX offer but also on the open market. Ask yourself if this indicates a lack of confidence in the value and chances of completion of CSX's proposed deal.

Many of you have worked with Norfolk Southern people for many years and are familiar with our values and beliefs. You know us. Together, we can form an even better railroad — a process that you can help. Say "NO" to the CSX/Conrail merger by voting today. Instruct the ESOP Trustee to vote your shares **AGAINST** Conrail's amendment proposal and adjournment proposal.

Your vote is important to us. If you have already sent a Trustee instruction card in response to the Conrail solicitation, you may revoke it and vote **AGAINST** the proposal by signing and dating the enclosed green instruction card and mailing it in the enclosed postage paid return envelope to the Trustee. **It's the latest dated instruction card that counts.** Remember — the Trustee is required by law to keep your vote confidential. **Why let others decide your destiny when you can cast a vote for your future?**

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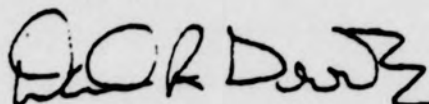
<sup>1</sup> Pension Benefits Guaranty Corporation:  
News Release 96-19, December 6, 1995.

**CONRAIL SHAREHOLDERS: THE FUTURE OF  
YOUR INVESTMENT IS AT STAKE**

**TAKE A STAND FOR YOUR SHAREHOLDER RIGHTS, INCLUDING YOUR RIGHT TO RECEIVE FAIR VALUE FOR YOUR SHARES. VOTE AGAINST THE AMENDMENT PROPOSAL AND AGAINST THE ADJOURNMENT PROPOSAL BY SIGNING, DATING AND RETURNING THE GOLD PROXY CARD TODAY (OR THE GREEN INSTRUCTION CARD FOR ESOP PARTICIPANTS). DO NOT TENDER YOUR SHARES INTO CSX'S INFERIOR OFFER.**

We hope this letter assists you in better understanding the issues at stake at the Special Meeting. We will keep you apprised of continuing developments and are firmly committed to making a Norfolk Southern/Conrail combination a reality. We believe that this combination is clearly in the best interests of Conrail and its employees, shareholders, customers and other constituencies.

Sincerely,



David R. Goode  
Chairman, President and  
Chief Executive Officer

**IMPORTANT**

If you have any questions, please call our solicitor:

**GEORGESON**  
**& COMPANY INC.**

**Call Toll Free: 800-223-2064**

**Banks and Brokers call: 212-440-9800**

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**SCHEDULE 14D-1**

(Amendment No. 21)

**Tender Offer Statement Pursuant to Section 14(d)(1)  
of the Securities Exchange Act of 1934**

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**Conrail Inc.**

(Name of Subject Company)

**Norfolk Southern Corporation  
Atlantic Acquisition Corporation**

(Bidders)

**Common Stock, par value \$1.00 per share  
(Including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**208368 10 0**

(CUSIP Number of Class of Securities)

**Series A ESOP Convertible Junior  
Preferred Stock, without par value  
(Including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**Not Available**

(CUSIP Number of Class of Securities)

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**James C. Bishop, Jr.  
Executive Vice President-Law  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone: (757) 629-2750**

(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications on Behalf of Bidder)

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with a copy to:  
**Randall H. Doud, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 735-3000**

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This Amendment No. 21 amends the Tender Offer Statement on Schedule 14D-1 filed on October 24, 1996, as amended (the "Schedule 14D-1"), by Norfolk Southern Corporation, a Virginia corporation ("Parent"), and its wholly owned subsidiary, Atlantic Acquisition Corporation, a Pennsylvania corporation ("Purchaser"), relating to Purchaser's offer to purchase all outstanding shares of (i) Common Stock, par value \$1.00 per share (the "Common Shares"), and (ii) Series A ESOP Convertible Junior Preferred Stock, without par value (the "ESOP Preferred Shares" and, together with the Common Shares, the "Shares"), of Conrail Inc. (the "Company"), including, in each case, the associated Common Stock Purchase Rights, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 24, 1996 (the "Offer to Purchase"), as amended and supplemented by the Supplement thereto, dated November 8, 1996 (the "Supplement"), and in the revised Letter of Transmittal (which, together with any amendments or supplements thereto, constitute the "Offer"). Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given such terms in the Offer to Purchase, the Supplement or the Schedule 14D-1.

**Item 10. Additional Information.**

Item 10 is hereby amended and supplemented by the following:

(e) On December 13, 1996, Plaintiffs in the Pennsylvania Litigation filed a Motion for Leave to File their Third Amended Complaint (the "Third Amended Complaint") and a Motion for Preliminary Injunction. The Third Amended Complaint would withdraw two counts relating to the originally scheduled November 14, 1996 special meeting of the Company's shareholders as moot, and would add the following additional claims: (i) that Defendants' stated intention not to convene the special meeting of the Company's shareholders scheduled for December 23, 1996 constitutes a breach of fiduciary duty; (ii) that Defendants' stated intention to successively postpone the vote of the Company's shareholders scheduled for December 23, 1996 until such shareholders submit to Defendants' will constitutes fraudulent and fundamentally unfair conduct; (iii) that Section 5.1(b) of the CSX Merger Agreement, as amended by the Amendment, constitutes a breach of fiduciary duty in that it purports to delegate the Company directors' fiduciary responsibilities relating to the processes of corporate democracy, and, alternatively, that Section 5.1(b) is void and ultra vires; (iv) that consummation of the CSX Offer caused a "control transaction" to occur with respect to the Company pursuant to Subchapter 25E of the PBCL, thus obligating the group consisting of CSX, the Company directors and certain executive officers of the Company to pay to each demanding Company shareholder at least \$110 cash per share; and (v) that Defendants' public statements suggesting that the CSX merger consideration might be improved is misleading and constitutes a violation of the federal securities laws. Plaintiffs' Motion for Preliminary Injunction seeks an order barring Defendants from postponing the vote of the Company's shareholders scheduled for December 23, 1996.

**Item 11. Material to be Filed as Exhibits.**

Item 11 is hereby amended and supplemented by the following:

- (a)(58)           Text of Advertisement appearing in newspapers commencing December 13, 1996.

- (a)(59) Text of Advertisement appearing in newspapers  
commencing December 13, 1996.
- (a)(60) Press Release issued by Parent on December 13, 1996.

SIGNATURE

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: December 13, 1996

NORFOLK SOUTHERN CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Executive Vice President-Law

ATLANTIC ACQUISITION CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Vice President and General Counsel

## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
(a)(58)	Text of Advertisement appearing in newspapers commencing December 13, 1996.
(a)(59)	Text of Advertisement appearing in newspapers commencing December 13, 1996.
(a)(69)	Press Release issued by Parent on December 13, 1996.

[Advertisement]

**TO CONRAIL SHAREHOLDERS:**

**Give Conrail  
a vote they can't ignore:**

**AGAINST**

[Graphic: Box with checkmark with the words "Vote Against" directly below the box.] Vote **AGAINST** Conrail's proposal to "opt out" of Pennsylvania's Fair Value Statute.

[Graphic: Box with checkmark with the words "Vote Against" directly below the box.] Vote **AGAINST** Conrail's proposal to adjourn the special meeting if the vote isn't going Conrail's way.

**Norfolk Southern's offer is worth fighting for.**

Your vote against Conrail's proposals will help preserve the benefits of Norfolk Southern's \$110 per share, all-cash offer. Norfolk Southern's offer is worth 22% more than CSX's problematic part-cash, part-shares offer.\* CSX's offer requires you to wait for regulatory approval before CSX can acquire the 75% of Conrail stock remaining in the hands of shareholders. And there's no downside protection at all if CSX stock declines in price.

**Norfolk Southern's offer won't go away.**

CSX and Conrail wish we'd go away. They want you to think we won't be there. But we're going to stick this one out. Conrail shareholders can help support us by voting **AGAINST** Conrail's proposals.

Tell the Conrail Board that you want Norfolk Southern's superior \$110 per share, all-cash offer -- with prompt payment into a voting trust. Tell them to stop trying to force the inferior CSX deal on Conrail shareholders.



**Defend the value of your shares.**  
**Vote now on Norfolk Southern's GOLD proxy card AGAINST**  
**Conrail's proposals to "opt out" of Pennsylvania's Fair Value Statute**  
**and to adjourn the special meeting. Be sure Norfolk Southern**  
**receives your proxy before December 23.**

[Norfolk Southern Logo]

**Important:** If you have any questions, please call our solicitor, Georgeson &  
Company Inc. toll free at **1-800-223-2064**. Banks and brokers call **212-440-9800**.

\* Based on the closing price of CSX common stock on December 12, 1996.

December 13, 1996

[Advertisement]

**TO PARTICIPANTS IN CONRAIL'S ESOP**

*An Open Letter To Conrail ESOP Participants From  
Norfolk Southern Corporation*

[Norfolk Southern Logo]

Dear ESOP Participant:

Now is the time to act.

You now have the opportunity to say "NO" to the CSX/Conrail deal at the shareholders' meeting scheduled for December 23 by voting **AGAINST** Conrail's proposal to "opt out" of the Pennsylvania Fair Value Statute. As a participant in the Conrail ESOP, you can instruct the ESOP Trustee to vote your shares **AGAINST** this proposal to amend Conrail's Articles of Incorporation and the adjournment proposal.

You should know that your ESOP votes are very important because each share you have in your ESOP account represents a voting interest, by our calculations, equal to at least seven shares. This is because your shares direct the voting of 1) ESOP shares allocated your account, 2) ESOP shares not yet allocated to your account, 3) any ESOP shares that are not voted, and 4) Employee Benefits Trust shares. Therefore, it is very important that you vote and be heard. Remember, the ESOP Trustee is required by law to keep your vote confidential.

Why should you instruct the ESOP Trustee to vote **AGAINST** the "opt out" proposal? Here are six reasons:

1. There is substantially more overlap with a CSX/Conrail system than there is with a Norfolk Southern/Conrail system. A merger between CSX and Conrail would eliminate competitive service in 64 cities, including Philadelphia, Baltimore, Youngstown and Pittsburgh. Conrail's Hollidaysburg and Altoona shops are within

70 miles of CSX's facilities at Cumberland, MD. Redundancies like these could add up to lost jobs.

2. Our managers are valuable to us and are treated as such. We have avoided massive layoffs and involuntary separations. Since the formation of Norfolk Southern in June 1982, we have matched people to needs through attrition, voluntary separation and early retirements.
3. Norfolk Southern and Conrail both can boast fully funded, healthy pension funds, ensuring peace of mind for both employees and retirees. CSX, on the other hand, has been listed as one of the "Top 50 Companies with the Largest Underfunded Pension Liability" by the Pension Benefits Guaranty Corporation. Why let CSX reap the benefit of the protective surplus your hard work has built up?
4. Norfolk Southern is committed to maintaining a major operating presence in Philadelphia as we have done in Roanoke, Virginia and Atlanta, Georgia -- major operating centers for Norfolk Southern's two predecessor railroads. Norfolk Southern also has made public plans for a multimodal rail-highway facility at the dormant Philadelphia Navy base.
5. Norfolk Southern's \$110 all-cash offer for Conrail shares is the superior offer. CSX's proposal for the remaining Conrail stock is currently valued at approximately \$92 per share.\* Unlike the Norfolk Southern offer, the second-step stock portion of the CSX offer is contingent on Surface Transportation Board approval. The earliest CSX expects to receive such approval is early 1998. This means you have no assurance if and when CSX will acquire the remaining 75% of Conrail stock.
6. You should know that a number of senior Conrail executives have been selling Conrail shares recently, not only pursuant to the first CSX offer but also on the open market. Ask yourself if this indicates a lack of confidence in the value and chances of completion of CSX's proposed deal.

Many of you have worked with Norfolk Southern people for many years and are familiar with our values and beliefs. You know us. Together, we can form an even better railroad -- a process that you can help. Say "NO" to the CSX/Conrail merger by voting today. Instruct the ESOP Trustee to vote your shares "AGAINST" Conrail's amendment proposal and the adjournment proposal.

Your vote is important to us. If you have already sent a Trustee instruction card in response to the Conrail solicitation, you may revoke it and vote "AGAINST" the proposal by signing and dating the enclosed green instruction card previously sent to you and mailing it to the Trustee. It's the latest dated instruction card that counts. The Trustee's deadline for receiving your instructions is Thursday, December 19. Why let others decide your destiny when you can cast a vote for your future?

Sincerely,

NORFOLK SOUTHERN CORPORATION

[Norfolk Southern Logo]

Important: If you have any questions, please call our solicitor, Georgeson & Company Inc. toll free at 1-800-223-2064. Banks and brokers call 212-440-9800.

\* Based on the closing price of CSX common stock on December 12, 1996.

December 13, 1996

0161948.01-01S4a

**FOR IMMEDIATE RELEASE**

December 13, 1996

Media Contact: Robert C. Fort  
(757) 629-2714

**NS Seeks Injunction To Stop Postponement of Conrail Shareholder Vote**

NORFOLK, VA -- Norfolk Southern Corporation today filed a motion in U.S. District Court in Philadelphia to block Conrail, Inc. from postponing a scheduled December 23 meeting at which shareholders are to vote on whether to "opt out" of Pennsylvania's Fair Value statute.

In its motion for a preliminary injunction, Norfolk Southern said Conrail and CSX Corporation are "subverting the processes of corporate democracy" by announcing they will refuse to allow the vote to proceed unless they are assured of victory. The motion alleges that this represents "fundamentally unfair conduct directed at Conrail's shareholders' most fundamental right - the right to vote." Norfolk Southern said Conrail and CSX are allowing shareholders no choice on December 23, effectively denying them the right to vote against the proposed amendment to Conrail's charter.

"Permitting defendants to disenfranchise those shareholders who refuse to opt out of the statute designed to protect them against coercive, two-tiered front-end loaded tender offers like the CSX transaction defeats the purpose and intent" of the Pennsylvania law and "contravenes the public policy concern for credible corporate democracy," Norfolk Southern said in its motion.

Norfolk Southern has offered \$110 a share in cash for all Conrail shares, a \$10 billion offer worth at least \$1.3 billion more than CSX's proposal.

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World Wide Web Site - <http://www.nscorp.com>



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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**SCHEDULE 14D-1**

(Amendment No. 22)

**Tender Offer Statement Pursuant to Section 14(d)(1)  
of the Securities Exchange Act of 1934**

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**Conrail Inc.**

(Name of Subject Company)

**Norfolk Southern Corporation  
Atlantic Acquisition Corporation**

(Bidders)

**Common Stock, par value \$1.00 per share  
(Including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**208368 10 0**

(CUSIP Number of Class of Securities)

**Series A ESOP Convertible Junior  
Preferred Stock, without par value  
(Including the associated Common Stock Purchase Rights)**  
(Title of Class of Securities)

**Not Available**

(CUSIP Number of Class of Securities)

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**James C. Bishop, Jr.**

**Executive Vice President-Law**

**Norfolk Southern Corporation**

**Three Commercial Place**

**Norfolk, Virginia 23510-2191**

**Telephone: (757) 629-2750**

(Name, Address and Telephone Number of Person Authorized  
to Receive Notices and Communications on Behalf of Bidder)

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with a copy to:

**Randall H. Doud, Esq.**

**Skadden, Arps, Slate, Meagher & Flom LLP**

**919 Third Avenue**

**New York, New York 10022**

**Telephone: (212) 735-3000**

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This Amendment No. 22 amends the Tender Offer Statement on Schedule 14D-1 filed on October 24, 1996, as amended (the "Schedule 14D-1"), by Norfolk Southern Corporation, a Virginia corporation ("Parent"), and its wholly owned subsidiary, Atlantic Acquisition Corporation, a Pennsylvania corporation ("Purchaser"), relating to Purchaser's offer to purchase all outstanding shares of (i) Common Stock, par value \$1.00 per share (the "Common Shares"), and (ii) Series A ESOP Convertible Junior Preferred Stock, without par value (the "ESOP Preferred Shares" and, together with the Common Shares, the "Shares"), of Conrail Inc. (the "Company"), including, in each case, the associated Common Stock Purchase Rights, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 24, 1996 (the "Offer to Purchase"), as amended and supplemented by the Supplement thereto, dated November 8, 1996 (the "Supplement"), and in the revised Letter of Transmittal (which, together with any amendments or supplements thereto, constitute the "Offer"). Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given such terms in the Offer to Purchase, the Supplement or the Schedule 14D-1.

**Item 11. Material to be Filed as Exhibits.**

Item 11 is hereby amended and supplemented by the following:

- (a)(61) Text of information sent to certain Company shareholders commencing December 13, 1996.
- (g)(7) Motion for Leave to Supplement and Amend the Complaint, including as an exhibit thereto, Plaintiffs' Third Amended Complaint, filed by Parent, Purchaser and Kathryn B. McQuade against the Company, CSX *et. al.* (dated December 13, 1996, United States District Court for the Eastern District of Pennsylvania).
- (g)(8) Preliminary Injunction Motion and related brief and proposed form of Order filed by Parent, Purchaser and Kathryn B. McQuade (dated December 13, 1996, United District Court for the Eastern District of Pennsylvania).

SIGNATURE

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: December 16, 1996

NORFOLK SOUTHERN CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Executive Vice President-Law

ATLANTIC ACQUISITION CORPORATION

By: /s/ JAMES C. BISHOP, JR.

Name: James C. Bishop, Jr.

Title: Vice President and General Counsel

## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
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(g)(8)	Preliminary Injunction Motion and related brief and proposed form of Order filed by Parent, Purchaser and Kathryn B. McQuade (dated December 13, 1996, United District Court for the Eastern District of Pennsylvania).

## NEWS RELEASE

### CSX/CONRAIL MERGER DISRUPTED

#### ISS RECOMMENDS AGAINST "OPT OUT" PROVISION

FOR IMMEDIATE RELEASE

Contact: Marcy J. Markowitz/(301)215-9507  
mmarkowitz@cda.com

Bethesda, MD - In a December 12 analysis, Institutional Shareholder Services (ISS) has recommended AGAINST a proposal by Conrail Corp. to opt out of a Pennsylvania fair price provision which would allow CSX Corp. to complete a merger with Conrail. Norfolk Southern Corp., (NS) seeks to tender for Conrail shares at a higher price.

In his report, Senior Analyst Peter R. Gleason states, "...CSX's front-end loaded, two-tiered takeover does not treat all Conrail shareholders fairly, and the lock-ups contained in the agreement have denied Conrail's shareholders the possibility of accepting a higher payment for their shares."

Mr. Gleason met with both Conrail and NS executives before making his recommendation. His analysis, which recounts these discussions, is attached. Also attached is a summary of the analysis, written for The ISS Friday Report by Mr. Gleason.

#### *Timeline:*

October 31 - Conrail sent notices to shareholders that it would hold a special meeting of shareholders on November 14, 1996, to amend its articles of incorporation to opt out of Subchapter E of Chapter 25 of the Pennsylvania Business Corporation Law of 1988. The provision is Pennsylvania's fair price provision which would inhibit Conrail's proposed merger with CSX Corp.

October 23 - Norfolk Southern Corp. announced a tender offer for all outstanding Conrail shares at \$100.00 per share.

November 19 - The U.S. District Court for the Eastern District of Pennsylvania issued a ruling denying the Norfolk Southern motion to block competition of the CSX tender for 19.9 percent of Conrail's common stock. The decision allowed CSX to continue with its tender offer, which expired at midnight Wednesday, November 20, 1996. Norfolk Southern immediately appealed the decision.

November 20 - The U.S. Third Court of Appeals in Philadelphia rejected Norfolk Southern's emergency injunction request and cleared the path for CSX Corp. to acquire



19.9 percent of Conrail's outstanding common stock in a tender offer valued at \$110 per share. CSX completed the tender offer, which ended at midnight November 20, 1996, with approximately 85 percent of Conrail shareholders tendering their shares.

November 26 - Conrail filed definitive proxy materials with the SEC and set a meeting date of December 23, 1996, for its shareholder vote to opt out of Pennsylvania's fair price provision. Norfolk Southern has extended its previously announced tender offer for Conrail share until Monday, December 16, 1996.

*Peter R. Gleason, Senior Analyst*

email: pgleason@cda.com

Peter Gleason is a Senior Analyst responsible for analyses regarding proxy contests, mergers, acquisitions, and corporate restructurings. He earned a B.A. from Dartmouth College in 1988, and is a candidate for an M.B.A. in finance and marketing from Virginia Tech. Peter started at ISS in 1990 as an Account Representative in the Sales & Marketing Department and joined the Domestic Proxy Advisory Service in 1991. In addition to his work in research, he oversees several consulting projects for ISS clients. Prior to joining ISS, Peter was a commercial leasing broker for Cushman & Wakefield, Inc. in New York and interned on the Government Securities Trading Desk at Smith Barney Harris Upham, also in New York.

#### *About ISS*

Located in Bethesda, MD, Institutional Shareholder Services (ISS) is the world's leading provider of proxy voting and corporate governance services. Serving close to 400 institutional clients -- as well as trustees, custodians and corporations throughout North America, Europe and Australia -- ISS analyzes proxy issues and recommends votes for approximately 10,000 shareholder meetings around the world each year.

ISS's main institutional services include Proxy Advisory and Voting Agent Services, U.S. and Global. Proprietary software products include ProxyMaster, an electronic proxy voting and research management tool, and ProxyRecord, a recordkeeping and reporting package. ProxyReporter, another ISS software product, is used to provide consolidated reporting packages to plan sponsors who delegate voting to their managers. In addition, ISS's corporate governance consulting services are used by a number of leading corporations, regulatory and self-regulatory organizations around the world.

Founded in 1985, ISS is unit of CDA Investment Technologies, a division of Thomson Financial Services.

For more information on ISS, call Marcy J. Markowitz at (301)215-9507.

###

FYI: I thought you would be interested in two developments Thursday in the battle for Conrail:

- Institutional Shareholder Services, a Bethesda, Md., shareholder consulting firm, recommended that Conrail shareholders vote against a proposal to "opt out" of Pennsylvania's takeover law. ISS said CSX's "front-end loaded, two-tiered takeover does not treat all Conrail shareholders fairly" and that lock-ups in the agreement have denied them "the possibility of accepting a higher payment for their shares." (Please see attached press release issued by ISS.)
- The Port Authority of New York said it would urge federal regulators to break up Conrail's rail monopoly at the port as a condition for approving any sale of the railroad. (Please see story on Page B-4 in the Eastern Edition of today's *Wall Street Journal*.)

Deborah Noxon  
Norfolk Southern Corporation  
757-629-2861

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NORFOLK SOUTHERN CORPORATION, a :  
Virginia Corporation, ATLANTIC :  
ACQUISITION CORPORATION, A :  
Pennsylvania corporation AND :  
KATHRYN B. McQUADE, :  
Plaintiffs, :

v. :

C.A. No. 96-CV-7167\_\_\_\_\_

CONRAIL INC. a Pennsylvania :  
corporation, DAVID M. LEVAN, H. :  
FURLONG BALDWIN, DANIEL B. :  
BURKE, ROGER S. HILLAS, CLAUDE :  
S. BRINEGAR, KATHLEEN FOLEY :  
FELDSTEIN, DAVID B. LEWIS, JOHN :  
C. MAROUS, DAVID H. SWANSON, E. :  
BRADLEY JONES, AND RAYMOND T. :  
SCHULER AND CSX CORPORATION, :  
Defendants, :

PLAINTIFFS' MOTION FOR LEAVE  
TO FILE THEIR THIRD AMENDED COMPLAINT

Pursuant to Rules 15(a) of the Federal Rules of Civil  
Procedure, plaintiffs, by and through their attorneys,  
respectfully move for leave of Court to file a Third Amended  
Complaint.

In support of their motion, plaintiffs rely upon the

accompanying memorandum of law.

Respectfully Submitted:

---

Mary A. McLaughlin  
I.D. No. 24923  
George G. Gordon  
I.D. No. 63072  
Dechert, Price & Rhoads  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
(215) 994-4000  
Attorneys for Plaintiffs

Of Counsel:

Steven J. Rothschild  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM  
One Rodney Square  
P.O. Box 636  
Wilmington, DE 19899  
(302) 651-3000

DATED: December 16, 1996

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

-----	X	
NORFOLK SOUTHERN CORPORATION,	:	
a Virginia corporation,	:	
ATLANTIC ACQUISITION CORPORATION,	:	
a Pennsylvania corporation, and	:	
KATHRYN B. McQUADE,	:	
	:	
Plaintiffs,	:	
	:	C.A. No. 96-CV-7167
-against-	:	
	:	
CONRAIL INC.,	:	
a Pennsylvania corporation,	:	
DAVID M. LEVAN, H. FURLONG BALDWIN,	:	
DANIEL B. BURKE, ROGER S. HILLAS,	:	
CLAUDE S. BRINEGAR, KATHLEEN FOLEY	:	
FELDSTEIN, DAVID B. LEWIS, JOHN C.	:	
MAROUS, DAVID H. SWANSON, E.	:	
BRADLEY JONES, RAYMOND T.	:	
SCHULER and CSX CORPORATION,	:	
	:	
Defendants.	:	
-----	X	

**THIRD AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, by their undersigned attorneys, as and for their Third Amended Complaint, allege upon knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters, as follows:

Nature of the Action

1. This action arises from the attempt by defendants Conrail Inc. ("Conrail"), its directors (the "Director Defendants"), and CSX Corporation ("CSX") to coerce, mislead and fraudulently manipulate Conrail's shareholders to swiftly deliver control of Conrail to CSX and to forestall



any competing higher bid for Conrail by plaintiff Norfolk Southern Corporation ("NS"). Although defendants have attempted to create the impression that NS's superior \$110 per share all-cash offer for all of Conrail's stock is a "non-bid" or a "phantom offer," in reality the only obstacles to the availability of the \$110 per share offered by NS are illegal actions and ultra vires agreements by defendants. The ultimate purpose of this action is to establish the illegality of such actions and agreements so that NS may proceed to provide superior value to Conrail's shareholders and a superior transaction to Conrail and all of its constituencies.

2. Additionally, plaintiffs have sought and will seek interim injunctive relief to maintain the status quo and ensure that Conrail shareholders will not be coerced, misled and fraudulently manipulated by defendants' illegal conduct to deliver control over Conrail to CSX before the Court can finally determine the issues raised in this action.

3. The event that set this controversy in motion was the unexpected announcement that CSX would take over Conrail. In a surprise move on October 15, 1996, defendants Conrail and CSX announced a deal to rapidly transfer control of Conrail to CSX and foreclose any other bids for Conrail (the "CSX Transaction"). The CSX Transaction is to be accomplished through a complicated multi-tier structure involving two coercive front-end loaded cash tender offers, a lock-up stock option and, following required regulatory approvals or exemptions, a back-end merger in which Conrail shareholders will receive stock and, under certain circumstances, cash. The original CSX Transaction had a blended value of slightly more than \$85 per Conrail share as of October 29, 1996. The currently proposed CSX Transaction has a blended value of approximately \$89.80 per Conrail share, over \$20 per share less than the NS Proposal. The NS Proposal has a value of at least \$1.3 billion more than the CSX Transaction. Integral to the inferior CSX Transaction are executive succession and compensation guarantees for Conrail management and board composition covenants effectively ensuring Conrail directors of continued board seats.

4. Because plaintiff NS believes that a business combination between Conrail and NS would yield benefits to both companies and their constituencies far superior to any benefits offered by the proposed Conrail/CSX combination, NS on October 23, 1996 announced its intention to commence, through its wholly-owned subsidiary, plaintiff Atlantic Acquisition Corporation ("AAC") a cash tender offer (the "NS Offer") for all shares of Conrail stock at \$100 per share, to be followed by a cash merger at the same price (the "Proposed Merger," and together with the NS Offer, the "NS Proposal"). The following day, on October 24, 1996, the NS Offer commenced. On November 8, 1996, NS increased its offer to \$110 in cash per Conrail share.

5. At the heart of this controversy is the assertion by defendants, both expressly and through their conduct, that the Director Defendants, as directors of a Pennsylvania corporation, have virtually no fiduciary duties. While it is true that Pennsylvania statutory law provides directors of Pennsylvania corporations with wide discretion in responding to acquisition proposals, defendants here have gone far beyond what even Pennsylvania law permits. As a result, this battle for control of Conrail presents the most audacious array of lock-up devices ever attempted:

- The Poison Pill Lock-In. The CSX Merger Agreement exempts the CSX Transaction from Conrail's Poison Pill Plan, and purports to prohibit the Conrail Board from redeeming, amending or otherwise taking any further action with respect to the Plan. Under the terms of the Poison Pill Plan, the Conrail directors would have lost their power to make the poison pill inapplicable to any acquisition transaction other than the CSX Transaction on November 7, unless CSX agreed to let them postpone that date. Thus, the Poison Pill Lock-In threatened to lock-up Conrail, even from friendly transactions, until the year 2005, when the poison pill rights expire. Put simply, the CSX Merger Agreement purported to require Conrail to swallow its own poison pill. Only after plaintiffs applied for a temporary restraining order did the Conrail board request CSX's permission to postpone the Distribution Date. Although it had no obligation to do so, CSX permitted the postponement. Adoption of this provision placed Conrail in serious jeopardy and at the mercy of CSX, which had no obligation to act in Conrail's best interests. Conrail remains at CSX's mercy due to the Poison Pill Lock-In. The Poison Pill Lock-in is ultra vires under Pennsylvania law and constitutes a complete abdication and breach of the Conrail directors' duties of loyalty and care.

- The 270-Day Lock-Out. The CSX Merger Agreement audaciously and unashamedly purported to prohibit Conrail's directors from withdrawing their recommendation that Conrail's shareholders accept and approve the CSX Transaction and from terminating the CSX Merger Agreement, even if their fiduciary duties require them to do so, for a period of 180 days from execution of the agreement. On November 6, Conrail and CSX announced that they had agreed to extend the lock-out period from 180 days to 270 days. Put simply, Conrail's directors have agreed to take a nine-month leave of absence during what may be the most critical six months in Conrail's history. Moreover, while the 270 Day Lock-Out originally permitted Conrail to provide information to and negotiate with an unsolicited competing bidder, the completion of the CSX Offer on November 20 changed that: now Conrail purportedly cannot even provide information or negotiate prior to July, 1997. The 270-Day Lock-Out is ultra vires under Pennsylvania law and constitutes a complete abdication and breach of the Conrail directors' duties of loyalty and care.
- The Stock Option Lock-Up And The \$300 Million Break-Up Fee. The CSX Merger Agreement provides, in essence, that Conrail must pay CSX a \$300 million windfall if the CSX Merger Agreement is terminated and Conrail is acquired by another company. Further, a Stock Option Agreement granted by Conrail to CSX threatens over \$275 million in dilution costs to any competing bidder for Conrail. This lock-up option is particularly onerous because the higher the competing bid, the greater the dilution it threatens.
- The Continuing Director Amendments To Conrail's Poison Pill Plan. Recognizing that Pennsylvania law permits shareholders of Pennsylvania corporations to elect a new board of directors if they disagree with an incumbent board's decisions concerning acquisition offers, the Conrail Board altered the Conrail Poison Pill Plan in September 1995 to deprive Conrail's shareholders of the ability to elect new directors fully empowered to act to render the poison pill ineffective or inapplicable to a transaction they deem to be in the corporation's best interests. This amendment to the Conrail Poison Pill Plan is ultra vires under Pennsylvania law and Conrail's Charter and By-Laws, and constitutes an impermissible interference in the stockholder franchise and a breach of the Conrail directors' duty of loyalty.
- The Rolling Special Meeting. On November 25, defendants announced that the special meeting of Conrail's shareholders to vote on a proposal to amend Conrail's Articles of Incorporation to opt-out of the protections of subchapter 25E of the PBCL, (the "Charter Amendment"), scheduled for December 23, would not be convened at all unless defendants had sufficient proxies in hand to assure approval of the Charter Amendment, and that such meeting may be successively postponed until Conrail's shareholders submit to the defendants' will. Further, the Conrail directors have in section 5.1(b) of the amended CSX Merger Agreement improperly delegated their responsibilities with respect to the processes of corporate democracy by purporting to contractually limit their actions pertaining to the special meeting to those to which CSX consents. Defendants' conduct strikes at the heart of corporate democracy and is

fundamentally unfair. Such conduct constitutes a breach of the Director Defendants' fiduciary duties, aided and abetted by CSX.

At bottom, what defendants have attempted here is to litter the playing field with illegal, ultra vires apparent impediments to competing acquisition proposals, and then coerce Conrail shareholders to swiftly deliver control of Conrail to CSX before the illegality of such impediments can be determined and revealed.

6. Accordingly, by this action, plaintiffs NS, AAC, and Kathryn B. McQuade, a Conrail shareholder, seek emergency relief against defendants' illegal attempt to lock-up the rapid sale of control of Conrail to CSX through their scheme of coercion, deception and fraudulent manipulation, in violation of the federal securities laws, Pennsylvania statutory law, and the fiduciary duties of the Director Defendants. In addition, to facilitate the NS Proposal, plaintiffs seek certain declaratory relief with respect to replacement of Conrail's Board of Directors at Conrail's next annual meeting of shareholders.

#### Jurisdiction and Venue

7. This Court has jurisdiction over this complaint pursuant to 28 U.S.C. §§ 1331 and 1367.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

#### The Parties

9. Plaintiff NS is a Virginia corporation with its principal place of business in Norfolk, Virginia. NS is a holding company operating rail and motor transportation services through its subsidiaries. As of December 31, 1995, NS's railroads operated more than 14,500 miles of road in the states of Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia, and the Province of Ontario, Canada. The lines of NS's railroads reach most of the larger industrial and trading centers in the Southeast and Midwest, with



the exception of those in Central and Southern Florida. In the fiscal year ended December 31, 1995, NS had net income of \$712.7 million on total transportation operating revenues of \$4.668 billion. According to the New York Times, NS "is considered by many analysts to be the nation's best-run railroad." NS is the beneficial owner of 100 shares of common stock of Conrail.

10. Plaintiff AAC is a Pennsylvania corporation. The entire equity interest in AAC is owned by NS. AAC was organized by NS for the purpose of acquiring the entire equity interest in Conrail.

11. Plaintiff Kathryn B. McQuade is and has been, at all times relevant to this action, the owner of Conrail common stock.

12. Defendant Conrail is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. Conrail is the major freight railroad serving America's Northeast-Midwest region, operating over a rail network of approximately 11,000 route miles. Conrail's common stock is widely held and trades on the New York Stock Exchange. During the year ended December 31, 1995, Conrail had net income of \$264 million on revenues of \$3.68 billion. On the day prior to announcement of the CSX Transaction, the closing per share price of Conrail common stock was \$71.

13. Defendant David M. LeVan is President, Chief Executive Officer, and Chairman of Conrail's Board of Directors. Defendants H. Furlong Baldwin, Daniel B. Burke, Roger S. Hillas, Claude S. Brinegar, Kathleen Foley Feldstein, David B. Lewis, John C. Marous, David H. Swanson, E. Bradley Jones, and Raymond T. Schuler are the remaining directors of Conrail. The foregoing individual directors of Conrail owe fiduciary duties to Conrail and its stockholders, including plaintiffs.

14. Defendant CSX is a Virginia corporation with its principal place of business in Richmond, Virginia. CSX is a transportation company providing rail, intermodal, ocean container-



shipping, barging, trucking and contract logistic services. CSX's rail transportation operations serve the southeastern and midwestern United States.

### Factual Background

#### The Offer

15. In response to the surprise October 15 announcement of the CSX Transaction, on October 23, 1996, NS announced its intention to commence a public tender offer for all shares of Conrail common stock at a price of \$100 cash per share. NS further announced that it intends, as soon as practicable following the closing of the NS Offer, to acquire the entire equity interest in Conrail by causing it to merge with AAC in the Proposed Merger. In the Proposed Merger as originally proposed, Conrail common stock not tendered and accepted in the NS Offer would have been converted into the right to receive \$100 in cash per share. On October 24, 1996, NS, through AAC, commenced the NS Offer. The NS Offer and the Proposed Merger represented a 40.8% premium over the closing market price of Conrail stock on October 14, 1996, the day prior to announcement of the CSX Transaction.

16. In a letter delivered on October 23, 1996 to the Defendant Directors, NS stated that it was flexible as to all aspects of the NS Proposal and expressed its eagerness to negotiate a friendly merger with Conrail. The letter indicated, in particular, that while the NS Proposal is a proposal to acquire the entire equity interest in Conrail for cash, NS is willing to discuss, if the Conrail board so desires, including a substantial equity component to the consideration to be paid in a negotiated transaction so that current Conrail shareholders could have a continuing interest in the combined NS/Conrail enterprise.

The Current Crisis: In a Surprise Move Intended To Foreclose Competing Bids, Conrail and CSX Announce On October 15 That Conrail Has Essentially Granted CSX A Lock-Up Over Control Of The Company

17. After many months of maintaining that Conrail was not for sale, on October 16, 1996, the Conrail Board announced an abrupt about-face: Conrail would be sold to CSX in a multiple-step transaction designed to swiftly transfer effective, if not absolute, voting control over Conrail to a voting trustee who would be contractually required to vote to approve CSX's acquisition of the entire equity interest in Conrail through a follow-up stock merger.

18. This Court denied plaintiffs' motion for a preliminary injunction barring the consummation of CSX's highly coercive front-end loaded tender offer for up to 19.9% of Conrail's shares. As a result, CSX and Conrail succeeded through this classic hostile takeover tactic in coercing Conrail's shareholders to cede nearly 20% of Conrail's voting power to CSX, gaining an overwhelming advantage in the vote of Conrail's shareholders on the Charter Amendment, now slated for December 23, 1996. This Court's ruling on plaintiffs' motion for preliminary injunction, and CSX's right to vote the shares it acquired in the completed CSX offer are currently subject to appeal.

19. The current crisis arises due to the imminent December 23, 1996 special meeting of Conrail's shareholders, scheduled for the purpose of conducting a shareholder vote on the Charter Amendment. Defendants have stated that this meeting will not be convened unless they hold sufficient proxies to assure their victory. Defendants have also stated that this special meeting may be successively postponed until Conrail's shareholders submit to their will. Thus defendants are attempting to manipulate the processes of corporate democracy to coerce approval of the Charter Amendment and to prevent the true wishes of Conrail's shareholders from being expressed and given effect. Plaintiffs accordingly seek a preliminary injunction against any postponement of the shareholder vote scheduled for December 23.

Defendants Were Well Aware That A Superior Competing  
Acquisition Proposal By NS was Inevitable

20. For a number of years, certain members of senior management of NS, including David R. Goode, Chairman and Chief Executive Officer of NS, have spoken numerous times with senior management of Conrail, including former Conrail Chairman and Chief Executive Officer, James A. Hagen, and current Conrail Chairman and Chief Executive Officer, defendant David W. LeVan, concerning a possible business combination between NS and Conrail. Ultimately, Conrail management encouraged such discussions prior to Mr. Hagen's retirement as Chief Executive Officer of Conrail. Conrail discontinued such discussions in September 1994, when the Conrail Board elected Mr. LeVan as Conrail's President and Chief Operating Officer as a step toward ultimately installing him as Chief Executive Officer and Chairman upon Mr. Hagen's departure.

21. Prior to 1994, senior management of NS and Conrail discussed, from time to time, opportunities for business cooperation between the companies, and, in some of those discussions, the general concept of a business combination. While the companies determined to proceed with certain business cooperation opportunities including the Triple Crown Services joint venture, no decisions were reached concerning a business combination at that time.

22. In March of 1994, Mr. Hagen approached Mr. Goode to suggest that under the current regulatory environment, Conrail management now believed that a business combination between Conrail and NS could be accomplished, and that the companies should commence discussion of such a transaction. Mr. Goode agreed to schedule a meeting between legal counsel for NS and Conrail for the purpose of discussing regulatory issues. Following that meeting, Mr. Goode met with Mr. Hagen to discuss in general terms an acquisition of Conrail by NS. Thereafter, during the period from April through August 1994, management and senior financial advisors of the respective companies met on numerous occasions to negotiate the terms of a combination of Conrail and NS. The parties entered into a confidentiality agreement on August 17, 1994. During these discussions, Mr.

Hagen and other representatives of Conrail pressed for a premium price to reflect the acquisition of control over Conrail by NS. Initially, NS pressed instead for a stock-for-stock merger of equals in which no control premium would be paid to Conrail shareholders. Conrail management insisted on a control premium, however, and ultimately the negotiations turned toward a premium stock-for-stock acquisition of Conrail.

23. By early September 1994, the negotiations were in an advanced stage. NS had proposed an exchange ratio of 1-to-1, but Conrail management was still pressing for a higher premium. In a meeting in Philadelphia on September 23, 1994, Mr. Goode increased the proposed exchange ratio to 1.1-to-1, and left the door open to an even higher ratio. Mr. Hagen then told Mr. Goode that they could not reach agreement because the Conrail board had determined to remain independent and to pursue a stand-alone policy. The meeting then concluded.

24. The 1.1-to-1 exchange ratio proposed by Mr. Goode in September of 1994 reflected a substantial premium over the market price of Conrail stock at that time. If one applies that ratio to NS's stock price on October 14, 1996 -- the day the Conrail Board approved the CSX Transaction -- it implies a per share acquisition price for Conrail of over \$101. Thus, there can be no question that Mr. LeVan, if not Conrail's Board, was well aware that NS would likely be willing and able to offer more -- to Conrail's shareholders, rather than management, that is -- than CSX could offer for an acquisition of Conrail.

Defendant LeVan Actively Misleads NS Management In Order  
To Permit Him To Lock Up The Sale of Conrail to CSX

25. During the period following September of 1994, Mr. Goode from time to time had conversations with Mr. LeVan. During virtually all of these conversations, Mr. Goode expressed NS's strong interest in negotiating an acquisition of Conrail. Mr. LeVan responded that Conrail wished to remain independent. Nonetheless, Mr. Goode was led to believe that if and when the

Conrail Board determined to pursue a sale of the company, it would do so through a process in which NS would have an opportunity to bid.

26. At its September 24, 1996 meeting, the NS Board reviewed its strategic alternatives and determined that NS should press for an acquisition of Conrail. Accordingly, Mr. Goode again contacted Mr. LeVan to (i) reiterate NS's strong interest in acquiring Conrail and (ii) request a meeting at which he could present a concrete proposal. Mr. LeVan responded that the Conrail board would be holding a strategic planning meeting that month and that he and Mr. Goode would be back in contact after that meeting. Mr. Goode emphasized that he wished to communicate NS's position so that Conrail's Board would be aware of it during the strategic planning meeting. Mr. LeVan stated that it was unnecessary for Mr. Goode to do so. At that point, the conversation concluded.

27. Following September 24, Mr. LeVan did not contact Mr. Goode. Finally, on Friday, October 4, 1996, Mr. Goode telephoned Mr. LeVan. Mr. Goode again reiterated NS's strong interest in making a proposal to acquire Conrail. Mr. LeVan responded that the Conrail Board would be meeting on October 16, 1996, and assumed that he and Mr. Hagen would contact Mr. Goode following that meeting. Mr. Goode again stated that NS wanted to make a proposal so that the Conrail Board would be aware of it. Mr. LeVan stated that it was unnecessary to do so.

#### CSX's Chairman Snow Contributes To LeVan's Deception

28. Several days prior to October 15, CSX's Chairman, John W. Snow, publicly stated that he did not expect to see any major business combinations in the railroad industry for several years. On October 16, 1996, the New York Times reported that "less than a week ago, Mr. Snow told Wall Street analysts that he did not expect another big merger in the industry (in the next few years)."



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On the Day Before the Purportedly Scheduled Meeting of  
Conrail's Board, Defendants Announce the CSX Transaction

29. To NS's surprise and dismay, on October 15, 1996, Conrail and CSX announced that they had entered into a definitive merger agreement (the "CSX Merger Agreement") pursuant to which control of Conrail would be swiftly sold to CSX and then a merger would be consummated following required regulatory approvals. As of the close of business on October 29, 1996, the blended value of the original CSX Transaction was slightly more than \$85 per Conrail share. The CSX Transaction includes a break-up fee of \$300 million and a lock-up stock option agreement threatening substantial dilution to any rival bidder for control of Conrail. Integral to the CSX Transaction are covenants substantially increasing Mr. LeVan's compensation and guaranteeing that he will succeed John W. Snow, CSX's Chairman and Chief Executive Officer, as the combined company's CEO and Chairman.

CSX Admits That The Conrail Board Approved The CSX Transaction Rapidly.

30. On October 16, 1996, the New York Times reported that CSX's Snow on October 15, 1996, had stated that the multi-billion dollar sale of Conrail in the CSX Transaction "came together rapidly in the last two weeks." The Wall Street Journal reported on October 16 that Mr. Snow stated that negotiations concerning the CSX Transaction had gone "very quickly," and "much faster than he and Mr. LeVan had anticipated." On October 24, 1996, the Wall Street Journal observed that "[i]n reaching its agreement with CSX, Conrail didn't solicit other bids ... and appeared to complete the accord at breakneck speed."

31. Thus, Conrail's board approved the CSX Transaction rapidly without a good faith and reasonable investigation. Given the nature of the CSX Transaction, with its draconian and preclusive lock-up mechanisms, the Conrail Board's rapid approval of the deal constitutes reckless and grossly negligent conduct.

CSX's Snow Implies That the CSX Transaction Is a Fait Accompli  
and States That Conrail's Directors Have Almost No Fiduciary Duties

32. On October 16, 1996, Mr. Goode met in Washington, D.C. with Mr. Snow to discuss the CSX Transaction and certain regulatory issues that its consummation would raise. Mr. Snow advised Mr. Goode during that meeting that Conrail's counsel and investment bankers had ensured that the CSX Transaction would be "bulletproof," implying that the sale of control of Conrail to CSX is now a fait accompli. Mr. Snow added that the "Pennsylvania statute," referring to Pennsylvania's Business Corporation Law, was "great" and that Conrail's directors have almost no fiduciary duties. Mr. Snow's comments were intended to discourage NS from making a competing offer for control of Conrail and to suggest that NS had no choice but to negotiate with CSX for access to such portions of Conrail's rail system as would be necessary to address the regulatory concerns that would be raised by consummation of the CSX Transaction. After Mr. Snow told Mr. Goode what CSX was willing to offer to NS in this regard, the meeting concluded.

NS Responds With A Superior Offer For Conrail

33. On October 22, the NS Board met to review its strategic options in light of the announcement of the CSX Transaction. Because the NS Board believes that a combination of NS and Conrail would offer compelling benefits to both companies, their shareholders and their other constituencies, it determined that NS should make a competing bid for Conrail. On October 23, 1996, NS publicly announced its intention to commence a cash tender offer for all shares of Conrail stock for \$100 per share, to be followed, after required regulatory approvals, by a cash merger at the same price. On October 24, 1996, NS, through AAC, commenced the NS Offer.

CSX Tells The Market That NS's Superior Proposal To Acquire Conrail Is Not Real

34. CSX responded to the NS Proposal by attempting to lead the market to believe that the superior NS Proposal does not represent a real, viable and actually available alternative to the CSX Transaction. On October 24, 1996, the Wall Street Journal reported:

CSX issued a harshly worded statement last night that called Norfolk's move a "nonbid" that would face inevitable delays and be subject to numerous conditions. It said the Norfolk bid couldn't be approved without Conrail's board, and notes that the merger pact [with CSX] prohibited Conrail from terminating its pact until mid-April. It said the present value of the Norfolk bid was under \$90 a share because of the minimum six-month delay....

On the same day, the New York Times reported that "a source close to CSX" characterized the NS Proposal as "a phantom offer."

35. These statements are an integral part of defendants' scheme to coerce, mislead and manipulate Conrail's shareholders to rapidly deliver control of Conrail to CSX by creating the false impression that the NS Proposal is not a viable and actually available alternative.

CSX Lures NS Into Settlement Discussions, Then Falsely Claims That NS Initiated The Talks In Order to Destabilize The Market For Conrail Shares

36. During the weekend of November 2 and November 3, representatives of NS and CSX met. The meetings were held at the suggestion of CSX, ostensibly for the purpose of exploring a settlement of the litigation between NS and CSX and a resolution of issues raised by their respective offers to acquire Conrail. CSX represented to NS that Conrail was aware of these meetings. NS participated in the meetings consistent with its announced position favoring a balanced competition structure for Eastern railroad service.

37. On the morning of November 4, 1996, however, CSX issued a false and misleading press release in which it claimed (i) that NS had initiated the discussions and (2) that the subject matter of the discussions was which pieces of Conrail NS would purchase from CSX once CSX had purchased Conrail in its entirety. In fact, CSX had initiated the talks, as stated above, and the talks involved both an acquisition by NS of Conrail and an acquisition by CSX of Conrail, and what assets the non-acquiring party would ultimately receive.

38. CSX, with Conrail's knowing participation, issued its false and misleading press release for the purpose of manipulating and destabilizing the market for Conrail stock by creating the false perception that NS was not committed to its \$100 per share bid to acquire Conrail.

39. The CSX press release had its intended effect. On the morning of November 4, Conrail's stock price dived from \$95 1/4 to as low as \$87 per share on heavy volume.

40. Later that morning, NS issued its own press release, explaining that it was CSX that initiated the talks with NS, that NS remained committed to its offer to acquire Conrail for \$100 per share, and that the financing condition to its offer had been satisfied.

41. Following NS's announcement, Conrail's stock price returned to levels at which it had traded prior to CSX's false and misleading press release. Conrail stock closed the day down \$1-5/8, at \$93-5/8.

42. CSX's manipulative tactics are not surprising, given CSX's previous willingness to employ disinformation against the financial markets. As noted above, CSX's Snow had told analysts days prior to announcement of the CSX Transaction that he believed that a major rail merger was unlikely in the near future. On November 6, the Wall Street Journal reported:

[S]ome...analysts think they will have trouble trusting CSX in the future. Two weeks before the announcement of a CSX-Conrail combination, Mr. Snow told analysts that further rail mergers may be inevitable, but not imminent, citing the backlash against Union Pacific Corp's \$3.9 billion takeover of Southern Rail Corp.

"I took that to mean that CSX certainly wouldn't be leading an acquisition attempt soon, and that was a sensible plan of action" said Anthony Hatch, an analyst at Norwest Securities Corp. "I found their subsequent merger announcement to be startling to say the least."

#### Defendants Are Forced To Amend The Conrail Poison Pill To Avert A Near Disaster.

43. As noted above and explained more fully below, the Poison Pill Lock-In feature of the CSX Merger Agreement purports to prevent the Conrail board from taking action with respect to the Conrail Poison Pill without CSX's consent. Yet, due to commencement of the NS



Offer, such action was required in order to prevent a "Distribution Date" from occurring on November 7, 1996. If the Distribution Date had been permitted to occur, then Conrail would have been incapable of engaging in a business combination other than the CSX Transaction as originally agreed to on November 14, 1996, until the year 2005.

44. Conrail's directors had thus placed Conrail in grave strategic jeopardy by agreeing to the Poison Pill Lock-In provision. Essentially, the Conrail board had placed itself at CSX's mercy, with CSX having no obligation to act other than in its own best interests. What is worse, the Conrail directors were completely unaware that they had done so until NS pointed the problem out to counsel for Conrail and Conrail was forced to call a special board meeting to address the matter. Thus, in their haste to approve and lock up the CSX Transaction, Conrail's directors acted with extreme recklessness.

45. Because Conrail refused to give assurances to plaintiffs that its Board would take action to postpone the Distribution Date (which it could do only with CSX's consent), NS was forced to file a motion for a temporary restraining order. The Court scheduled a hearing on the motion for noon on November 4, 1996.

46. Just hours prior to the scheduled hearing, the Conrail directors met for the purpose of attempting to extricate Conrail from the grave jeopardy into which their reckless conduct had placed it. The Conrail directors adopted a resolution postponing the "Distribution Date" of the Conrail Poison Pill until the tenth business day following the date on which any person acquired 10% or more of Conrail's stock. Although it had no obligation to do so, CSX assented to this postponement. As a result, the Court denied NS's application for a temporary restraining order as moot.

Defendants Announce That They Have Restructured The CSX Transaction  
By Substantially Front-End Loading The Cash Tender Offers In Order To  
Stampede Shareholders Into Effectively Foreclosing The NS Proposal

47. On November 5, 1996, the Conrail board met. The results of that meeting were announced on November 6, 1996. In that announcement, defendants disclosed that the cash tender offers contemplated by the CSX Transaction had been substantially front-end loaded. That is, the cash price offered to Conrail shareholders in the initial CSX cash tender offers was increased from \$92.50 per share to \$110 per share, while the stock consideration to be paid in the follow-up merger remains the same 1.85619 shares of CSX stock for each Conrail share. Based upon the closing sale price of CSX stock on November 7, 1996, 1.85619 shares were worth approximately \$82.14.

48. Defendants also announced that the timing of the steps toward completion of the CSX Transaction had been changed. The special meeting of Conrail shareholders for the purpose of voting on the Charter Amendment, originally scheduled for November 14, was postponed until a date that defendants stated would likely fall in December 1996, and that has now been set at December 23, 1996. Further, the expiration date of the CSX Offer was extended from midnight on November 15 to midnight of November 20, 1996.

49. Accordingly, defendants planned to close a first tender offer for 19.9% of Conrail's shares on November 20, prior to the vote on the Charter Amendment. If the Charter Amendment is approved, defendants planned to proceed with a second front-end loaded tender offer, after which CSX will have acquired 40% of Conrail's stock, constituting effective control and foreclosing the NS Proposal as an alternative for Conrail's shareholders.

50. Both the front-end loaded structure of the CSX Offers and the perceived risk that the NS Proposal will not be consummated due to the draconian defensive measures adopted by the defendants exerted and continue to exert tremendous coercive pressure upon Conrail shareholders to tender their shares to CSX.

51. A November 10, 1996 Philadelphia Inquirer article summed up the coercive situation created by defendants succinctly:

[Conrail shareholders] face a daunting dilemma, which was deliberately constructed for them by CSX's attorneys and investment bankers. They can either tender their stock to CSX -- that is, offer it up to CSX for sale -- by Nov. 20, or hold back and risk getting a lower price if [CSX] ends up the successful bidder for Conrail.

52. In their Schedule 14D-9 disclosures, defendants admitted the coercive design and effect of the revised CSX Transaction:

Shareholders should also be aware that shareholders may decide to tender their Shares to CSX in the CSX Offer and the Second CSX Offer, if applicable (even if they believe that the Proposed Norfolk Transactions, if they could be effected, would have a higher value to shareholders than the CSX Transactions), because shareholders may conclude that sufficient Shares will be tendered by other shareholders and that failure to tender will result in the non-tendering shareholders receiving only CSX shares which, based on current market prices, have a per Share value that is significantly less than the \$110 per Share being offered in the CSX Offer and the Second CSX Offer, if applicable, may succeed regardless of the perceived relative values of the CSX Transactions and the Proposed Norfolk Transactions.

53. CSX and Conrail issued a joint press release on November 6 to announce the revised CSX Transaction. In that press release, defendants made several false and misleading statements calculated to affect the decision making of investors with respect to the CSX Offers and the NS Offer.

54. For instance, defendants stated in the press release that Conrail's "board of directors carefully considered the relative merits of a merger with Norfolk Southern rather than with CSX." However, review of the fairness opinion letters from Lazard Freres & Co. and Morgan Stanley attached to Amendment No. 4 to Conrail's Schedule 14D-9 with respect to the CSX Offer reveals that this representation is false. Both Lazard Freres and Morgan Stanley included a specific caveat to their letters to Conrail's board:

[A]t your request, in rendering our opinion, we did not address the relative merits of the [CSX Transaction], the [NS Offer] and any alternative potential transactions.

Even were shareholders to discover this caveat, the stark contrast between it and the contrary statement in the joint press release will no doubt leave shareholders wondering just what the truth is.

55. The joint press release also quotes CSX Chairman Snow as claiming that CSX and Conrail have conveniently discovered an additional \$180 million of synergies that "will be realized through the" CSX Transaction, over and above the \$550 million in anticipated savings originally claimed. This claim of "newly discovered" synergies is material to investors' decisions with respect to the CSX Offer and the NS Offer because the claim bears directly upon the value of the follow-up stock merger consideration offered by CSX. The sudden discovery of such additional synergies is highly suspect, since the announcement coincides with an increase in the cash offered in the front end of the CSX Transaction, which increase would otherwise be expected to negatively impact the value of the back end merger. Making matters worse, defendants have failed to disclose any details of or support for these claimed "newly discovered" synergies.

NS Raises Its All Cash Offer For All of Conrail's Shares to \$110 Per Share

56. On November 8, 1996, NS announced that it had raised its offer to acquire all of Conrail's outstanding shares to \$110 cash per share. This represented, on a per share basis, a nearly \$17 per share margin over the November 8 blended value of the CSX Transaction of approximately \$93 per share. In the aggregate, CSX's offer amounts to approximately \$8.5 billion, while NS's Proposal is \$10 billion cash on the barrel. Thus, the challenged conduct of defendants threatens a massive \$1.5 billion loss to Conrail's shareholders.

Unable To Persuade CSX To Improve The Financial Terms Of The CSX Transaction, The Conrail Board Is Forced To Reaffirm Its Support For The Inferior CSX Deal And To Reject NS's Improved Superior Bid

57. On November 12, 1996, the Conrail Board met. Upon information and belief, the topics discussed by the Conrail board at that meeting were (i) whether a revision of the

CSX Transaction could be negotiated that would improve its financial terms for Conrail shareholders and (ii) what response should be made to NS's improved offer of \$110 per Conrail share.

58. Apparently, Conrail was unable to negotiate an improvement in the financial consideration offered to Conrail shareholders in the CSX Transaction. Nevertheless, because of the 270-day lockout provision in the CSX Merger Agreement, the Conrail board was forced to maintain its recommendation that shareholders tender their shares to CSX and support the CSX Transaction and to recommend that shareholders reject the superior NS bid of \$110 per share.

Defendants Represent That The CSX Transaction Might Be Improved

59. In a joint press release dated November 13, 1996, Conrail and CSX stated that "CSX and Conrail also stated that they have been having, and continue to have, discussions relating to an increase in the value of the consideration payable upon consummation of the CSX-Conrail merger. There can be no assurance as to when or if any such modifications will be made."

The Preliminary Injunction Hearing

60. On November 18 and 19, this court heard the parties' presentations on plaintiffs' motion for a preliminary injunction.

61. During the hearing, defendants contended, contrary to plaintiffs' position that Conrail shareholders are being illegally coerced to tender shares to CSX, that Conrail shareholders have a choice of whether to or not accept the CSX Transaction since they would be asked to vote on the Charter Amendment:

(a) Conrail Director Furlong Baldwin testified that "No one has taken the shareholder's vote away from he or she. No one has taken it away. To get this thing done, it requires a shareholder's vote."



(b) Counsel for CSX represented to the Court as follows: "Here, of course, this transaction [the CSX Transaction] isn't going to go forward at all unless there's the opt out in December."

(c) CSX's counsel further represented to the Court that "Well, no one was suggesting that the directors can take away a vote that shareholders are entitled to under the statute, that's not happening here."

(d) Finally, CSX's counsel told the Court that "[T]here's going to be a proxy fight between now and the December meeting. And at that meeting, the shareholders will decide whether or not to opt out." (emphasis added).

These representations by defendants were not lost upon the Court. In its oral ruling, the Court observed "[A]ll or a majority of the shareholders could vote against the proposed opt-out of subchapter E."

62. Also during the hearing, defendants repeatedly suggested that the terms of the CSX Transaction might be improved:

(a) Conrail director E. Bradley Jones emphasized during his cross examination on November 19 that, "I think the process is still continuing. The situation as it sits today is one that hopefully is going to be represented in continuing discussions, as I believe we indicated in a press release between our corporation and CSX, and I am hopeful that we're going to be recognizing improved values."

(b) Jones conceded that as of that date, CSX still had made no commitment to improve the value of the consideration being proposed in the CSX Merger. Further, he testified that his only basis for believing the terms of the CSX Merger might be improved was that "[CSX] would recognize that if the

Conrail shareholders vote against the opt-out they'll have 19.9 percent of our stock and the value of their stock is liable to decline appreciably if they lose."

(c) Although Jones testified that "[the Conrail Board was] hopeful that that process is going to continue and that that will not be a speculation in the future," he conceded that the Conrail stockholders are being forced to bear the risk of no increase in the CSX Merger consideration: "I think that is a risk that they're taking."

(d) Similar statements were made by CSX's Chairman, John Snow, during his cross examination on November 19, 1996. For example, Snow testified that "we're in discussions about some enhancement of value or protection of value on the back end of the transaction."

These statements were intended to further coerce and mislead the Conrail stockholders to believe that the terms of the CSX Merger, then valued at only \$82.37 as of November 15, 1996, would be improved, so that the Conrail shareholders would tender into the first step tender offer that was set to close on November 20, 1996.

63. This Court issued its ruling denying plaintiffs' motion for a preliminary injunction from the bench on the evening of November 19. In its ruling, the Court held that it had not been established that plaintiffs were likely to succeed on the merits of their claims.

64. Plaintiffs immediately filed a notice of appeal and motions for injunction pending appeal and for expedited treatment of the appeal.

65. The following afternoon, on November 20, the United States Court of Appeals for the Third Circuit denied plaintiffs' motion for an injunction pending appeal.

Defendants Succeed In Coercing Conrail's Shareholders  
Into Vastly Oversubscribing The CSX Offer

66. The CSX Offer expired at midnight on November 20. CSX promptly accepted for payment the entire 19.9% of Conrail's shares that it had offered to purchase. Because approximately 85% of Conrail's shares were tendered, CSX was required to accept the tendered shares on a prorata basis.

67. As a result of consummation of the first CSX Offer, defendants gained a substantial leg up in the vote on the Charter Amendment scheduled for December 23. Also, consummation of the first CSX Offer purportedly bars Conrail, under Section 4.2 of the Revised Merger Agreement, from providing information to, and negotiating with a competing bidder, even if the fiduciary duties of its directors require such actions. Finally, upon information and belief, consummation of the first CSX tender offer caused a "control transaction" to occur with respect to Conrail under subchapter 25E of the PBCL. See Count Twenty-Five, infra.

68. Despite consummation of the first CSX Offer, plaintiffs continue their appeal of this Court's preliminary injunction ruling. Until the shareholder vote on the Charter Amendment is held, CSX's power to vote the shares acquired will be subject to the equity power of the Court, and even thereafter, if the vote is held and thereafter found to have been tainted by the vote of CSX's illegally acquired shares, the Court could declare the vote invalid.

The New Special Meeting: Defendants Attempt to Convince  
Conrail's Shareholders That Resistance is Futile

69. On November 25, 1996, Conrail issued a Notice of Special Meeting of Shareholders and a definitive proxy statement. This special meeting (the "New Special Meeting"), to be held for the purpose of conducting a vote of Conrail's shareholders on the Charter Amendment, is scheduled to be convened on December 23, 1996.

70. However, while defendants have contended before this Court that Conrail's shareholders will have a choice with respect to the CSX Transaction since they will vote on whether the Charter Amendment will be adopted or not, in fact defendants have determined to leave them no choice. Put simply, unless and until Conrail management has received sufficient proxies to assure approval of the Charter Amendment, no shareholder votes will be counted at all. In its proxy statement, Conrail states:

Under the Merger Agreement, Conrail has agreed not to convene, adjourn or postpone the Special Meeting without the prior consent of CSX, which consent will not be unreasonably withheld. As a result, it is expected that the special meeting will not be convened if Conrail has not received sufficient proxies to assure approval of the Proposal. Under the Merger Agreement, either CSX or Conrail can require that additional special meetings be held for the purpose of considering the Proposal, and a new record date could be set for any such special meeting (a new record date would be required if such meeting is held after February 3, 1997).

71. The Philadelphia Inquirer on November 28, 1996 captured the essence of what defendants are attempting to do succinctly:

As elections go, this one might have been devised in the old Kremlin: Conrail shareholders are scheduled to vote December 23 on a proposal that will likely decide the Philadelphia railroad's future. If they approve the management-endorsed proposal, Conrail's planned \$8.5 billion merger with CSX Corp. will move forward. If the shareholders don't approve ... they won't vote.

\* \* \* \*

In other words, count ballots first, then hold the vote -- after we've won.

72. Thus, defendants are telling Conrail shareholders that the only vote that they will count as effective is a "for" vote. Defendants are essentially saying that "against" votes are futile, since there is no scenario in which the New Special Meeting will result in a vote rejecting the Charter Amendment, and, by implication, rejecting the CSX Transaction.

73. Moreover, by further announcing that successive additional special meetings may be held for the purpose of voting upon the Charter Amendment, defendants are attempting to discourage opposition and coerce approval. The intended message is plain: Resistance is futile.

74. Conrail and its directors are in control of the electoral processes by which Conrail's shareholders may express their will regarding the business and affairs of Conrail. By entering into the Revised Merger Agreement, which includes a covenant subjecting the Conrail Board's actions regarding the voting process to CSX's consent, the Conrail directors have once again improperly delegated their managerial responsibilities. Moreover, acting in concert with CSX, the Conrail directors are manipulating the processes of corporate democracy by scheduling the New Special Meeting, announcing that they will permit the vote to proceed only if they are assured of victory, and further announcing that they may pursue successive special meetings until the shareholders submit. Defendants' conduct constitutes a breach of the Conrail directors' fiduciary duties, aided and abetted by CSX, as well as fraudulent, coercive, and fundamentally unfair conduct.

#### The Second Front-End Loaded CSX Offer

75. On December 6, 1996, CSX commenced a second front-end loaded tender offer to purchase up to an aggregate of 18,344,845 Conrail shares at \$110 each per share (the "Second CSX Offer"). The Second CSX Offer is conditioned on, among other things, approval by Conrail's shareholders of the Charter Amendment.



76. The Second CSX Offer is coercive in precisely the same manner as was the first. In their Definitive Proxy Statement, the Conrail defendants admit:

"Shareholders should be aware that if the [Charter Amendment] is approved and CSX is therefore in a position to consummate the Second CSX Tender Offer for approximately 20.1% of the fully diluted Shares, shareholders may decide to tender their Shares to CSX (even if they believe that the Norfolk Offer (as defined below), if it could be effected, has a higher value) because shareholders may conclude that sufficient Shares will be tendered by other shareholders and that failure to tender will result in the non-tendering shareholders receiving only CSX shares pursuant to the Merger which, based on current market prices, have a per Share value that is less than the amount to be offered in the Second CSX Tender Offer. Therefore, if the Proposal is approved, the Second CSX Tender Offer may succeed regardless of the perceived relative values of such offer and the Norfolk Offer.

#### The CSX Transaction

77. Consistent with Mr. Snow's remarks, discussed above, that Conrail's advisers had ensured that the CSX Transaction is "bullet-proof" and that Conrail's directors have almost no fiduciary duties, the CSX Merger Agreement contains draconian "lock-up" provisions which are unprecedented. These provisions are designed to foreclose success by any competing bidder for Conrail and to protect the lucrative compensation increase and executive succession deal promised to defendant LeVan by CSX.

#### The Poison Pill Lock-In

78. The CSX Merger Agreement purports to bind the Conrail board not to take any action with respect to the Conrail Poison Pill to facilitate any offer to acquire Conrail other than the CSX Transaction. At the same time, the Conrail board has amended the Conrail Poison Pill to facilitate the CSX Transaction.

79. Because of certain unusual provisions to the Conrail Poison Pill Plan -- which provisions, as noted below, not only were not disclosed in the Schedule 14D-1 filed with the

Securities and Exchange Commission or in the Offer to Purchase circulated to Conrail's stockholders by CSX, or in the Schedule 14D-9 circulated to Conrail's shareholders by Conrail, but were in fact affirmatively misdescribed in CSX's Schedule 14D-1 and Offer to Purchase -- the provision in the CSX Merger Agreement barring the Conrail Board from taking action with respect to the Conrail Poison Pill threatened grave, imminent and irreparable harm to Conrail and all of its constituencies.

80. The problem was that on November 7, 1996, a "Distribution Date", as that term is defined in the Conrail Poison Pill Plan, would have occurred. Once that were to happen, the "Rights" issued under the Plan would no longer be redeemable by the Conrail Board, and the Plan would no longer be capable of amendment to facilitate any takeover or merger proposal. Put simply, once the Distribution Date occurs, Conrail's directors would have no control over the Conrail Poison Pill's dilutive effect on an acquiror. Because of the draconian effects of the poison pill dilution on a takeover bidder, no bidder other than CSX would be able to acquire Conrail until the poison pill rights expire in the year 2005, regardless of whether such other bidder offers a transaction that is better for Conrail and its legitimate constituencies than the CSX Transaction. Further, not even CSX would be able to acquire Conrail in a transaction other than the CSX Transaction. In other words, if Conrail were not acquired by CSX in the CSX Transaction for the level of cash and stock originally offered by CSX, then it appears that Conrail would not have been capable of being acquired until at least 2005. In essence, as a result of the Poison Pill Lock-In, Conrail was about to swallow its own poison pill.

81. Poison Pills -- typically referred to as "shareholders rights plans" by the corporations which adopt them -- are normally designed to make an unsolicited acquisition prohibitively expensive to an acquiror by diluting the value and proportional voting power of the shares acquired.

82. Under such a plan, stockholders receive a dividend of originally uncertificated, unexercisable rights. The rights become exercisable and certificated on the so-called "Distribution Date," which under the Conrail Poison Pill Plan was until recently defined as the earlier of 10 days following public announcement that a person or group has acquired beneficial ownership of 10% or more of Conrail's stock or 10 days following the commencement of a tender offer that would result in 10% or greater ownership of Conrail stock by the bidder. On the Distribution Date, the corporation would issue certificates evidencing the rights, each of which would allow the holder to purchase a share of stock at a set price. Initially, the exercise price of poison pill rights is set very substantially above market to ensure that the rights will not be exercised. Once rights certificates were issued, the rights could trade separately from the associated shares of stock.

83. The provisions of a poison pill plan that cause the dilution to an acquiror's position in the corporation are called the "flip-in" and "flip-over" provisions. Poison pill rights typically "flip in" when, among other things, a person or group obtains some specified percentage of the corporation's stock; in the Conrail Poison Pill plan, 10% is the "flip in" level. Upon "flipping in," each right would entitle the holder to receive common stock of Conrail having a value of twice the exercise price of the right. That is, each right would permit the holder to purchase newly issued common stock of Conrail at half price (specifically, \$410 worth of Conrail stock for \$205). The person or group acquiring the 10% or greater ownership, however, would be ineligible to exercise such rights. In this way, a poison pill plan dilutes the acquiror's equity and voting position. Poison pill rights "flip over" if the corporation engages in a merger in which it is not the surviving entity. Holders of rights, other than the acquiror, would then have the right to buy stock of the surviving entity at half price, again diluting the acquiror's position. The Conrail Poison Pill Plan contains both a "flip-in" provision and a "flip-over" provision.

84. So long as corporate directors retain the power ultimately to eliminate the anti-takeover effects of a poison pill plan in the event that they conclude that a particular acquisition would be in the best interests of the corporation, a poison pill plan can be used to promote legitimate corporate interests. Thus, typical poison pill plans reserve power in a corporation's board of directors to redeem the rights in toto for a nominal payment, or to amend the poison pill plan, for instance, to exempt a particular transaction or acquiror from the dilutive effects of the plan.

85. The Conrail Poison Pill Plan contains provisions for redemption and amendment. However, an unusual aspect of the Conrail Poison Pill Plan is that the power of Conrail's directors to redeem the rights or amend the plan to exempt a particular transaction or bidder terminates on the Distribution Date. While the Conrail Poison Pill Plan gives Conrail directors the power to effectively postpone the Distribution Date, the CSX Merger Agreement purports to bind them contractually not to do so. Thus, the Distribution Date under Conrail's Poison Pill Plan would have occurred on November 7, 1996 -- ten business days after the date when NS commenced the Offer -- and Conrail's directors had entered into an agreement which purports to tie their hands so that they could do nothing to prevent it.

86. Ironically, the specific provisions of the CSX Merger Agreement which purport to prevent the Conrail directors from postponing the Distribution Date are the very same sections which require Conrail to exempt the CSX Transaction from the Conrail Poison Pill -- Sections 3.1(n) and 5.13. Section 3.1(n) provides, in pertinent part:

Green Rights Agreement and Bv-laws. (A) The Green Rights Agreement has been amended (the "Green Rights Plan Amendment") to (i) render the Green Rights Agreement inapplicable to the Offer, the Merger and the other transactions contemplated by this Agreement and the Option Agreements and (ii) ensure that (y) neither White nor any of its wholly owned subsidiaries is an Acquiring Person (as defined in the Green Rights Agreement) pursuant to the Green Rights Agreement and (z) a Shares Acquisition Date, Distribution Date or Trigger Event (in each case as defined in the Green Rights Agreement) does not occur by reason of the

approval, execution or delivery of this Agreement, and the Green Stock Option Agreement, the consummation of the Offer, the Merger or the consummation of the other transactions contemplated by this Agreement and the Green Stock Option Agreement, and the Green Rights Agreement may not be further amended by Green without the prior consent of White in its sole discretion. (emphasis added)

Section 5.13 provides, in pertinent part:

The Board of Directors of Green shall take all further action (in addition to that referred to in Section 3.1(n)) reasonably requested in writing by White (including redeeming the Green Rights immediately prior to the Effective Time or amending the Green Rights Agreement) in order to render the Green Rights inapplicable to the Offer, the Merger and the other transactions contemplated by this Agreement and the Green Stock Option Agreement. Except as provided above with respect to the Offer, the Merger and the other transactions contemplated by this Agreement and the Green Stock Option Agreement, the Board of Directors of Green shall not (a) amend the Green Rights Agreement or (b) take any action with respect to, or make any determination under, the Green Rights Agreement, including a redemption of the Green Rights or any action to facilitate a Takeover Proposal in respect of Green.

87. Thus, although under the Conrail Poison Pill Plan the Conrail Board is empowered to "determine[] by action ... prior to such time as any person becomes an Acquiring Person" that the Distribution Date will occur on a date later than November 7, the Conrail board had contractually purported to bind itself not to do so.

88. If the Distribution Date had been permitted to occur, Conrail, its shareholders, and its other constituents would have faced catastrophic irreparable injury. If the Distribution Date occurs and then the CSX Transaction does not occur for any number of reasons -- for instance, because (i) the Conrail shareholders do not tender sufficient shares in the CSX offer, (ii) the Conrail shareholders do not approve the CSX merger, (iii) the merger does not receive required regulatory approvals, or (iv) CSX exercises one of the conditions to its obligation to complete its offer -- Conrail would be essentially incapable of being acquired or engaging in a business combination until 2005. This would be so regardless of the benefits and strategic advantages of any business combination which might otherwise be available to Conrail. In the



present environment of consolidation in the railroad industry, such a disability would plainly be a serious irremediable disadvantage to Conrail, its shareholders and all of its constituencies.

89. As a result of plaintiffs' demand that the Distribution Date be postponed and of their motion for a temporary restraining order, the Conrail board met on November 4, hours prior to the scheduled hearing on plaintiffs' motion, and, with the required permission of CSX, extended the Distribution Date until ten days after any person acquires 10% or more of Conrail's shares. As a result, the Court denied plaintiffs' motion as moot.

#### The 270-Day Lock-Out

90. Setting aside the Poison Pill Lock-In, the CSX Merger Agreement also contains an unprecedented provision purporting to bind Conrail's directors not to terminate the CSX Merger Agreement for 270 days regardless of whether their fiduciary duties require them to do so. The pertinent provisions appear in Section 4.2 of the CSX Merger Agreement. Under that section, Conrail covenants not to solicit, initiate or encourage other takeover proposals, or to provide information to any party interested in making a takeover proposal. The CSX Merger Agreement builds in an exception to this prohibition -- it provides that prior to the earlier of the closing of the first CSX Offer and Conrail shareholder approval of the CSX Merger, or after 270 days from the date of the CSX Merger Agreement, if the Conrail board determines upon advice of counsel that its fiduciary duties require it to do so, Conrail may provide information to and engage in negotiations with another bidder. Consummation of the first CSX offer resulted, under this provision, in barring Conrail from providing information to or negotiating with a competing bidder until after expiration of the 270-Day Lock-Out. However, inclusion of the "fiduciary out" language in Section 4.2 plainly indicated that the drafters of the CSX Merger Agreement -- no doubt counsel for Conrail and CSX -- recognize that there are circumstances in which Conrail's directors would be required by their fiduciary duties to consider a competing acquisition bid.

91. However, despite the recognition in the CSX Merger Agreement that the fiduciary duties of the Conrail Board may require it to do so, Section 4.2(b) of the agreement (the "270-Day Lock-Out") purports to prohibit the Conrail Board from withdrawing its recommendations that Conrail shareholders tender their shares in the CSX Offer and approve the CSX Merger for a period of 270 days from the date of the CSX Merger Agreement. Likewise, it prohibits the Conrail Board from terminating the CSX Merger Agreement, even if the Conrail Board's fiduciary duties require it to do so, for the same 270-day period.

92. Thus, despite the plain contemplation of circumstances under which the Conrail Board's fiduciary duties would require it to entertain competing offers and act to protect Conrail and its constituencies by (i) withdrawing its recommendation that Conrail shareholders approve the CSX Transaction and (ii) terminating the CSX Merger Agreement, Conrail's Board has seen fit to disable itself contractually from doing so.

93. As with the Poison Pill Lock-In, this "270-Day Lock-Out" provision amounts to a complete abdication of the duty of Conrail's directors to act in the best interests of the corporation. With the 270-day Lock-Out, the Conrail directors have determined to take a nine-month leave of absence despite their apparent recognition that their fiduciary duties could require them to act during this critical time.

94. The effect of this provision is to lock out competing superior proposals to acquire Conrail for at least nine months, thus giving the CSX Transaction an unfair time value advantage over other offers and adding to the coercive effects of the CSX Transaction.

95. Because it purports to restrict or limit the exercise of the fiduciary duties of the Conrail directors, the 270-Day Lock-Out provision of the CSX Merger Agreement is ultra vires, void and unenforceable. Further, by agreeing to the 270-Day Lock-Out as part of the CSX Merger Agreement, the Conrail directors breached their fiduciary duties of loyalty and care.

### Rapid Transfer of Control

96. The CSX Transaction is structured to include (i) the now-completed first-step cash tender offer for up to 19.9% of Conrail's stock, (ii) an amendment to Conrail's charter to opt out of coverage under Subchapter 25E of Pennsylvania's Business Corporation Law (the "Charter Amendment"), which requires any person acquiring control of over 20% or more of the corporation's voting power to acquire all other shares of the corporation for a "fair price," as defined in the statute, in cash, (iii) following such amendment, an acquisition of additional shares which, in combination with other shares already acquired, would constitute at least 40% and up to approximately 50% of Conrail's stock, and (iv) following required regulatory approvals, consummation of a follow-up stock-for-stock merger.

97. Thus, once the Charter Amendment is approved, CSX will be in a position to acquire either effective or absolute control over Conrail. Conrail admits that the CSX Transaction contemplates a sale of control of Conrail. In its preliminary proxy materials filed with the Securities and Exchange Commission, Conrail stated that if CSX acquires 40% of Conrail's stock, approval of the merger will be "virtually certain." CSX could do so either by increasing the number of shares it will purchase by tender offer, or, if tenders are insufficient, by accepting all tendered shares and exercising the Stock Option. CSX could obtain "approximately 50 percent" of Conrail's shares by purchasing 40% pursuant to tender offer and by exercising the Stock Option, in which event shareholder approval of the CSX Merger will be, according to Conrail's preliminary proxy statement, "certain."

98. The swiftness with which the CSX Transaction is designed to transfer control over Conrail to CSX can only be viewed as an attempt to lock up the CSX Transaction and benefits it provides to Conrail management, despite the fact that a better deal, financially and otherwise, is available for Conrail, its shareholders, and its other legitimate constituencies.

### The Charter Amendment

99. Conrail's Definitive Proxy Materials for the December 23, 1996 Special Meeting set forth the resolution to be voted upon by Conrail's shareholders as follows:

An amendment of the Articles of Incorporation of Conrail is hereby approved and adopted, by which, upon the effectiveness of such amendment, Article Ten thereof will be amended and restated in its entirety as follows: Subchapter E, Subchapter G and Subchapter H of Chapter 25 of the Pennsylvania Business Corporation Law of 1988, as amended, shall not be applicable to the Corporation.

### The \$300 Million Breakup Fee

100. The CSX Merger Agreement provides for a \$300 million break-up fee. This fee would be triggered if the CSX Merger Agreement were terminated following a competing takeover proposal.

101. This breakup fee is disproportionately large, constituting over 3.5% of the aggregate value of the CSX Transaction. The breakup fee unreasonably tilts the playing field in favor of the CSX Transaction -- a transaction that the defendant directors knew, or reasonably should have known, at the time they approved the CSX Transaction, provided less value and other benefits to Conrail and its constituencies than would a transaction with NS.

### The Lock-Up Stock Option

102. Concurrently with the CSX Merger Agreement, Conrail and CSX entered into an option agreement (the "Stock Option Agreement") pursuant to which Conrail granted to CSX an option, exercisable in certain events, to purchase 15,955,477 shares of Conrail common stock at an exercise price of \$92.50 per share, subject to adjustment.

103. If, during the time that the option under the Stock Option Agreement is exercisable, Conrail enters into an agreement pursuant to which all of its outstanding common shares are to be purchased for or converted into, in whole or in part, cash, in exchange for cancellation of the Option, CSX shall receive an amount in cash equal to the difference (if positive)

between the closing market price per Conrail common share on the day immediately prior to the consummation of such transaction and the purchase price. In the event (i) Conrail enters into an agreement to consolidate with, merge into, or sell substantially all of its assets to any person, other than CSX or a direct or indirect subsidiary thereof, and Conrail is not the surviving corporation, or (ii) Conrail allows any person, other than CSX or a direct or indirect subsidiary thereof, to merge into or consolidate with Conrail in a series of transactions in which the Conrail common shares or other securities of Conrail represent less than 50% of the outstanding voting securities of the merged corporation, then the option will be adjusted, exchanged, or converted into options with identical terms as those described in the Stock Option Agreement, appropriately adjusted for such transaction.

104. CSX and Conrail also entered into a similar option agreement, pursuant to which CSX granted to Conrail an option, exercisable only in certain events, to purchase 43,090,773 shares of CSX Common Stock at an exercise price of \$64.82 per share.

105. The exercise price of the option under the Stock Option Agreement is \$92.50 per share. The Stock Option Agreement contemplates that 15,955,477 authorized but unissued Conrail shares would be issued upon its exercise. Thus, for each dollar above \$92.50 that is offered by a competing bidder for Conrail, such as NS, the competing acquiror would suffer \$15,955,477 in dilution. Moreover, there is no cap to the potential dilution. At NS's original offer of \$100 per share, the dilution attributable to the Stock Option would have been \$119,666,077.50. At a hypothetical offering price of \$101 per share, the dilution would total \$135,621,554.50. At NS's current bid of \$110 per share, the dilution would total \$279,220,847.50. Thus, NS's 10% increase in its offer resulted in a more than doubling of such dilution costs. This lock-up structure serves no legitimate corporate purpose, as it imposes increasingly severe dilution penalties the higher the competing bid!



106. At the current \$110 per share level of NS's bid, the sum of the \$300 million break-up fee and Stock Option dilution of \$279,220,847.50 constitutes nearly 6.8% of the CSX Transaction's \$8.5 billion value. This is an unreasonable impediment to NS's offer. Moreover, because these provisions were not necessary to induce an offer that is in Conrail's best interests, but rather were adopted to lock up a deal providing Conrail's management with personal benefits while selling Conrail to the low bidder, their adoption constituted a plain breach of the Director Defendants' fiduciary duty of loyalty.

Selective Discriminatory Treatment of Competing Bids

107. Finally, the Conrail board has breached its fiduciary duties by selectively (i) rendering Conrail's Poison Pill Plan inapplicable to the original CSX Transaction, (ii) approving the CSX Transaction and thus exempting it from the 5-year merger moratorium under Pennsylvania's Business Combination Statute, and (iii), as noted above, purporting to approve the Charter Amendment in favor of CSX only.

108. While Pennsylvania law does not require directors to amend or redeem poison pill rights or to take action rendering anti-takeover provisions inapplicable, the law is silent with respect to the duties of directors once they have determined to do so. Once directors have determined to render poison pill rights and anti-takeover statutes inapplicable to a change of control transaction, their fundamental fiduciary duties of care and loyalty require them to take such actions fairly and equitably, in good faith, after due investigation and deliberation, and only for the purpose of fostering the best interests of the corporation, and not to protect selfish personal interests of management.

109. Thus, Conrail's directors are required to act evenhandedly, redeeming the poison pill rights and rendering anti-takeover statutes inapplicable only to permit the best competing control transaction to prevail. Directors cannot take such selective and discriminatory

defensive action to favor corporate executives' personal interests over those of the corporation, its shareholders, and other legitimate constituencies.

#### LeVan's Deal

110. As an integral part of the CSX Transaction, CSX, Conrail and defendant LeVan have entered into an employment agreement dated as of October 14, 1996 (the "LeVan Employment Agreement"), covering a period of five-years from the effective date of any merger between CSX and Conrail. The LeVan Employment Agreement provides that Mr. LeVan will serve as Chief Operating Officer and President of the combined CSX/Conrail company, and as Chief Executive Officer and President of the railroad businesses of Conrail and CSX, for two years from the effective date of a merger between CSX and Conrail (the "First Employment Segment"). Additionally, Mr. LeVan will serve as Chief Executive Officer of the combined CSX/Conrail company for a period of two years beginning immediately after the First Employment Segment (the "Second Employment Segment"). During the period commencing immediately after the Second Employment Segment, or, if earlier, upon the termination of Mr. Snow's status as Chairman of the Board (the "Third Employment Segment"), Mr. LeVan will additionally serve as Chairman of the Board of the combined CSX/Conrail company.

111. Defendant LeVan received a base salary from Conrail of \$514,519 and a bonus of \$24,759 during 1995. The LeVan Employment Agreement ensures substantially enhanced compensation for defendant LeVan. It provides that during the First Employment Segment, Mr. LeVan shall receive annual base compensation at least equal to 90% of the amount received by the Chief Executive Officer of CSX, but not less than \$810,000, together with bonus and other incentive compensation at least equal to 90% of the amount received by the Chief Executive Officer of CSX. During 1995, Mr. Snow received a base salary of \$895,698 and a bonus having a cash value of \$1,687,500. Thus, if Mr. Snow's salary and bonus were to equal Mr. Snow's 1995

salary and bonus, the LeVan Employment Agreement would provide LeVan with a salary of \$810,000 and a bonus of \$1,518,750 in the First Employment Period. During the Second and Third Employment Segments, Mr. LeVan will receive compensation in an amount no less than that received by the Chief Executive Officer during the First Employment Segment, but not less than \$900,000.

112. If CSX terminates Mr. LeVan's employment for a reason other than cause or disability or Mr. LeVan terminates employment for good reason (as those terms are defined in the LeVan Employment Agreement), Mr. LeVan will be entitled to significant lump sum cash payments based on his compensation during the five year term of the employment agreement, continued employee welfare benefits for the longer of three years or the number of years remaining in the employment agreement; and the immediate vesting of outstanding stock-based awards.

Improper Delegation of Responsibility Regarding  
The Processes of Corporate Democracy

113. In connection with amending the CSX Merger Agreement, the Conrail Board has contracted away and improperly delegated its responsibilities relating to its ability to convene, adjourn or postpone the December 23, 1996 Shareholders Meeting. Pursuant to the terms of the amended CSX Merger Agreement, Conrail now must have the prior consent of CSX in order to convene, adjourn or postpone the Shareholders Meeting on the proposed Charter Amendment.

114. Section 5.1(b) of the amended CSX Merger Agreement provides in this regard that:

Green [Conrail] shall not convene, adjourn or postpone the Green Pennsylvania Shareholders Meeting without the prior consent of White [CSX], which consent shall not be unreasonably withheld.

115. In addition to this improper delegation of power to CSX, the Conrail Board has purported to give to CSX a right to call a special meeting in violation of the provisions of the PBCL which provide that a shareholder of a registered corporation has no right to call a special meeting, regardless of the size of its holdings, except in certain limited situations not applicable here.

116. Section 5.1(b) of the amended Merger Agreement provides in this regard that:

In the event that the matters to be considered at the Green Merger Shareholders Meeting are not approved at a meeting called for such purpose, from time to time Green may, and shall at the request of White, duly call, give notice of, convene and hold one or more meeting(s) of shareholders thereafter for the purpose of obtaining the Green Merger Shareholder Approval, in which case all obligations hereunder respecting the Green Merger Shareholders Meeting shall apply in respect of such other meeting(s), subject in any event to either party's right to terminate this Agreement pursuant to Section 7.1(b)(ii) or (iii). Subject to the foregoing, Green shall convene each such meeting(s) as soon as practicable after receipt of any request to do so by White (and in the case of the initial Green Pennsylvania Shareholders Meeting, as soon as practicable after December 5, 1996). The foregoing shall not affect White's obligations to make the Amended Offer, and, if the conditions therefor in Section 1.1(d) are satisfied, the Second Offer, whether or not the Green Merger Shareholder Approval has been received or any such Green Merger Shareholders Meeting(s) have been called or held.

117. Under Section 5.1(b), CSX, in effect, purports to have the right to call a special meeting of stockholders as the Conrail Board has no discretion not to call a special meeting if CSX so demands.

118. This provision of the amended CSX Merger Agreement is a deliberate attempt to circumvent Section 2521 of the PBCL.

119. Section 2521(a) of the PBCL provides that, "the shareholders of a registered corporation shall not be entitled by statute to call a special meeting of shareholders." Section 2521(b) states that subsection (a) "shall not apply to the call of a special meeting by an interested shareholder (as defined in section 2553 (relating to interested shareholders) for the purpose of approving a business combination under section 2555(3) or (4) (relating to requirements relating to certain business combinations.) Under section 2553, an "interested shareholder" is the beneficial holder of at least 20% of the votes entitled to be cast in an election of directors. Section 2555, in Subchapter F, relates to the five-year moratorium provision.

120. Section 2501(c) provides, in effect, that section 2521 will not apply only if Conrail chose in its articles of incorporation to grant to its stockholders a right to call a special meeting.

121. Because Conrail has no such provision in its Articles of Incorporation, section 2521 applies and CSX cannot call a special meeting of Conrail's stockholders. Thus, section 5.1(b) of the amended CSX Merger Agreement is illegal, ultra vires, and void, and its adoption constituted a breach of the Director Defendants' fiduciary duties, aided and abetted by CSX.

#### Defendants' Campaign Of Misinformation

122. On October 15, 1996, Conrail and CSX issued press releases announcing the CSX Transaction, and Conrail published and filed preliminary proxy materials with the SEC. On October 16, 1996, CSX filed and published its Schedule 14D-1 Tender Offer Statement and Conrail filed its Schedule 14D-9 Solicitation/Recommendation Statement. These communications to Conrail's shareholders reflect a scheme by defendants to coerce, mislead and fraudulently manipulate such shareholders to swiftly deliver control of Conrail to CSX and effectively frustrate any competing higher bid.



123. Conrail's Preliminary Proxy Statement contains the following misrepresentations of fact:

(a) Conrail states that "certain provisions of Pennsylvania law effectively preclude ... CSX from purchasing 20% or more" of Conrail's shares in the CSX Offer "or in any other manner (except the [CSX] Merger." This statement is false. The provisions of Pennsylvania law to which Conrail is referring are those of Subchapter 25E of the Pennsylvania Business Corporation Law. This law does not "effectively preclude" CSX from purchasing 20% or more of Conrail's stock other than through the CSX Merger. Rather, it simply requires a purchaser of 20% or more of Conrail's voting stock to pay a fair price in cash, on demand, to the holders of the remaining 80% of the shares. The real reason that CSX will not purchase 20% or more of Conrail's voting stock absent the Charter Amendment is that, unlike NS, CSX is unable or unwilling to pay a fair price in cash for 100% of Conrail's stock.

(b) Conrail states that its "Board of Directors believes that Conrail shareholders should have the opportunity to receive cash in the near-term for 40% of [Conrail's] shares," and that "[t]he Board of Directors believes it is in the best interests of shareholders that they have the opportunity to receive cash for 40% of their shares in the near term." These statements are false. First of all, the Conrail Board believes that Conrail shareholders should have the opportunity to receive cash in the near-term for 40% of Conrail's shares only if such transaction will swiftly deliver effective control of Conrail to CSX. Second, the Conrail Board of Directors does not believe that such swift transfer of control to CSX is in the best interests of Conrail shareholders; rather, the Conrail Board of Directors believes

that swift transfer of effective control over Conrail to CSX through the CSX Offer will lock up the CSX Transaction and preclude Conrail shareholders from any opportunity to receive the highest reasonably available price in a sale of control of Conrail.

124. CSX's Schedule 14D-1 contains the following misrepresentations of fact:

(a) CSX states that:

At any time prior to the announcement by [Conrail] or an Acquiring Person that an Acquiring Person has become such, [Conrail] may redeem the [Conrail Poison Pill Plan] rights ....

This statement is false. In fact, the Conrail Poison Pill rights are redeemable any time prior to the Distribution Date. After the Distribution Date, they cannot be redeemed. CSX further states that:

The terms of the [Conrail Poison Pill] rights may be amended by the [Conrail Board] without the consent of the holders of the Rights ... to make any other provision with respect to the Rights which [Conrail] may deem desirable; provided that from and after such time as Acquiring Person becomes such, the Rights may not be amended in any manner which would adversely affect the interests of holders of Rights.

This statement is also false. The Conrail Board's power to freely amend the poison pill rights terminates on the Distribution Date, not the date when someone becomes an Acquiring Person.

(b) CSX states that the "purpose of the [CSX] Offer is for [CSX] . . . to acquire a significant equity interest in [Conrail] as the first step in a business combination of [CSX] and [Conrail]." This statement is false. The purpose of the CSX Offer is to swiftly transfer effective control over Conrail to CSX in order to lock up the CSX Transaction and foreclose the acquisition of Conrail by any competing higher bidder.

(c) CSX states that "the Pennsylvania Control Transaction Law effectively precludes [CSX, through its acquisition subsidiary] from purchasing 20% or more of Conrail's shares pursuant to the [CSX] Offer." This statement is false. The provisions of Pennsylvania law to which Conrail is referring are those of Subchapter 25E of the Pennsylvania Business Corporation Law. This law does not "effectively preclude" CSX from purchasing 20% or more of Conrail's stock other than through the CSX Merger. Rather, it simply requires a purchaser of 20% or more of Conrail's voting stock to pay a fair price in cash, on demand, to the holders of the remaining 80% of the shares. The real reason that CSX will not purchase 20% or more of Conrail's voting stock absent the Charter Amendment is that, unlike NS, CSX is unable or unwilling to pay a fair price in cash for 100% of Conrail's stock.

125. Conrail's Schedule 14D-9 states that "the [CSX Transaction] . . . is being structured as a true merger-of-equals transaction." This statement is false. The CSX Transaction is being structured as a rapid, locked-up sale of control of Conrail to CSX involving a significant, albeit inadequate, control premium.

126. Each of the Conrail Preliminary Proxy Statement, the CSX Schedule 14D-1 and the Conrail Schedule 14D-9 omit to disclose the following material facts, the disclosure of which are necessary to make the statements made in such documents not misleading:

(a) That the Conrail Board will lose its power to redeem or freely amend the Conrail Poison Pill Plan rights on the "Distribution Date."

(b) That both Conrail (and its senior management) and CSX (and its senior management) knew (i) that NS was keenly interested in acquiring Conrail, (ii) that NS has the financial capacity and resources to pay a higher price for

Conrail than CSX could, and (iii) that a financially superior competing bid for Conrail by NS was inevitable.

(c) That Conrail management led NS to believe that if and when the Conrail Board determined to sell Conrail, it would do so through a process in which NS would be given the opportunity to bid, and that in the several weeks prior to the announcement of the CSX Transaction, defendant LeVan on two occasions prevented Mr. Goode from presenting an acquisition proposal to Conrail by stating to him that making such a proposal would be unnecessary and that Mr. LeVan would contact Mr. Goode concerning NS's interest in acquiring Conrail following (i) the Conrail Board's strategic planning meeting scheduled for September 1996 and (ii) a meeting of the Conrail Board purportedly scheduled for October 16, 1996.

(d) That in September of 1994, NS had proposed a stock-for-stock acquisition of Conrail at an exchange ratio of 1.1 shares of NS stock for each share of Conrail stock, which ratio, if applied to the price of NS stock on the day before announcement of the CSX Transaction, October 14, 1996, implied a bid by NS worth over \$101 per Conrail share.

(e) That the CSX Transaction was structured to swiftly transfer effective, if not absolute voting control over Conrail to CSX, and to prevent any other bidders from acquiring Conrail for a higher price.

(f) That although Conrail obtained opinions from Morgan Stanley and Lazard Freres that the consideration to be received by Conrail stockholders in the CSX Transaction was "fair" to such shareholders from a financial point of view, Conrail's Board did not ask its investment bankers whether the CSX Transaction

consideration was adequate, from a financial point of view, in the context of a sale of control of Conrail such as the CSX Transaction.

(g) That although in arriving at their "fairness" opinions, both Morgan Stanley and Lazard Freres purport to have considered the level of consideration paid in comparable transactions, both investment bankers failed to consider the most closely comparable transaction -- NS's September 1994 merger proposal, which as noted above, would imply a price per Conrail share in excess of \$101.

(h) That, if asked to do so, Conrail's investment bankers would be unable to opine in good faith that the consideration offered in the CSX Transaction is adequate to Conrail's shareholders from a financial point of view.

(i) That Conrail's Board failed to seek a fairness opinion from its investment bankers concerning the \$300 million breakup fee included in the CSX Transaction.

(j) That Conrail's Board failed to seek a fairness opinion from its investment bankers concerning the Stock Option Agreement granted by Conrail to CSX in connection with the CSX Transaction.

(k) That the Stock Option Agreement is structured so as to impose increasingly severe dilution costs on a competing bidder for control of Conrail for progressively higher acquisition bids.

(l) That the Conrail Board intends to withhold the filing of the Charter Amendment following its approval by Conrail's stockholders if the effectiveness of such amendment would facilitate any bid for Conrail other than the CSX Transaction.



(m) That the Charter Amendment and/or its submission to a vote of the Conrail shareholders is illegal and ultra vires under Pennsylvania law.

(n) That the Conrail Board's discriminatory (i) use of the Charter Amendment, (ii) amendment of the Conrail Poison Pill and (iii) action exempting the CSX Transaction from Pennsylvania's Business Combination Statute, all to facilitate the CSX Transaction and to preclude competing financially superior offers for control of Conrail, constitute a breach of the Director Defendants' fiduciary duty of loyalty.

(o) That Conrail's Board failed to conduct a reasonable, good faith investigation of all reasonably available material information prior to approving the CSX transaction and related agreements, including the lock-up Stock Option Agreement.

(p) That in recommending that Conrail's shareholders tender their shares to CSX in the CSX Offer, Conrail's Board did not conclude that doing so would be in the best interests of Conrail's shareholders.

(q) That in recommending that Conrail's shareholders approve the Charter Amendment, the Conrail Board did not conclude that doing so would be in the best interests of Conrail's shareholders.

(r) That in recommending that Conrail shareholders tender their shares to CSX in the CSX Offer, primary weight was given by the Conrail Board to interests of persons and/or groups other than Conrail's shareholders.

(s) That in recommending that Conrail shareholders tender their shares to CSX in the CSX Offer, primary weight was given to the personal interests of

defendant LeVan in increasing his compensation and succeeding Mr. Snow as Chairman and Chief Executive Officer of the combined CSX/Conrail company.

(t) That the Continuing Director Requirement in Conrail's Poison Pill (described below in paragraphs 80 through 88), adopted by Conrail's board in September 1995 and publicly disclosed at that time, is illegal and ultra vires under Pennsylvania law and therefore is void and unenforceable.

127. In connection with the defendants' announcement of the Revised CSX Transaction on November 6, 1996 and the Conrail Board's Schedule 14D-9 recommendation against the NS Offer, defendants issued several false and misleading statements:

(a) In their joint press release dated November 6, 1996, defendants:

(i) stated that the Conrail Board carefully considered the relative merits of the CSX Transaction and the NS Proposal, when in fact they specifically directed their financial advisors not to do so in rendering their fairness opinions; and

(ii) claim that they have discovered additional synergies of \$180 million that "will be realized" in connection with the CSX Transaction, yet omitted disclosure in the press release or in any disclosure materials of any support or explanation of how and why these claimed additional synergies were suddenly discovered at or about the time of announcement of the increase in the cash component of the CSX Transaction.

(b) In CSX's Schedule 14D-1, Amendment No. 4, defendant CSX, with Conrail's knowing and active participation:

(i) states that the NS Proposal is a "nonbid," when in fact it is a bona fide superior offer that is available to Conrail shareholders if the Conrail

board were to properly observe its fiduciary duties and recognize that the purported contractual prohibitions against doing so contained in the CSX Merger Agreement are illegal and unenforceable;

(ii) states falsely that Norfolk Southern initiated discussions with CSX during the weekend of November 2 and 3, when in fact CSX initiated those talks;

(iii) states that the November 2 and 3 talks concerned sales of Conrail assets to NS after an acquisition of Conrail by CSX, while in fact such discussions also included scenarios in which NS would acquire Conrail and then sell certain Conrail assets to CSX;

(iv) state that the Conrail board "carefully considered" the relative merits of a merger with Norfolk Southern rather than with CSX, while in fact Conrail's financial advisors were instructed not to do so in rendering their fairness opinions;

(v) fails to disclose the basis for and analysis, if any, underlying the "discovery" of an additional \$180 million in CSX/Conrail merger synergies.

(c) In Conrail's Schedule 14D-9 with respect to the NS Offer, defendant Conrail, with CSX's knowing and active participation:

(i) stated that Conrail's board of directors "unanimously recommends" that Conrail shareholders not tender their shares into the NS Offer while failing to disclose that the directors were bound by contract, under the CSX Merger Agreement, to make such recommendation, that such contractual obligation is void under Pennsylvania law, and what effect the unenforceability of such con-

tractual obligation, if considered by the Conrail board, would have upon their recommendation;

(ii) stated that Conrail's board of directors "unanimously recommends" that Conrail shareholders who desire to receive cash for their shares tender their shares in the CSX Offer, while failing to disclose that the CSX Merger Agreement bound the directors contractually to make such recommendation, that such contractual obligation is void under Pennsylvania law, and what effect the unenforceability of such contractual obligation, if considered by the Conrail board, would have upon their recommendation;

(iii) failed to disclose that in negotiating the revised terms of the CSX Transaction, Conrail could have demanded, in consideration for agreeing to the revised terms, that its board of directors be released from the poison pill lock-in and 180-day lock-out provisions, that Conrail management and Conrail's advisors failed to so inform the Conrail board, and that instead, management unilaterally determined to negotiate an increase in the lock-out provision from 180 days to 270 days;

(iv) failed to disclose the basis for and analysis underlying the defendants "discovery" of \$180 million in new CSX/Conrail merger synergies.

(d) In Conrail's Schedule 14D-9, Amendment No. 4, with respect to the CSX Offer, defendant Conrail, with CSX's knowing and active participation:

(i) stated that Conrail's board of directors "unanimously recommends" that Conrail shareholders not tender their shares into the NS Offer while failing to disclose that the directors were bound by contract, under the CSX Merger Agreement, to make such recommendation, that such contractual obligation

is void under Pennsylvania law, and what effect the unenforceability of such contractual obligation, if considered by the Conrail board, would have upon their recommendation;

(ii) stated that Conrail's board of directors "unanimously recommends" that Conrail shareholders who desire to receive cash for their shares tender their shares in the CSX Offer, while failing to disclose that the CSX Merger Agreement bound the directors contractually to make such recommendation, that such contractual obligation is void under Pennsylvania law, and what effect the unenforceability of such contractual obligation, if considered by the Conrail board, would have upon their recommendation;

(iii) failed to disclose that in negotiating the revised terms of the CSX Transaction, Conrail could have demanded, in consideration for agreeing to the revised terms, that its board of directors be released from the poison pill lock-in and 180-day lock-out provisions, that Conrail management and Conrail's advisors failed to so inform the Conrail board, and that instead, management unilaterally determined to negotiate an increase in the lock-out provision from 180 days to 270 days;

(iv) failed to disclose the basis for and analysis, if any, underlying the defendants "discovery" of \$180 million in new CSX/Conrail merger synergies.

128. Each of the misrepresentations and omitted facts detailed above are material to the decisions of Conrail's shareholders concerning whether to vote in favor of the Charter Amendment and whether, in response to the CSX Offer, to hold, sell to the market, or tender their shares, because such misrepresentations and omitted facts bear upon (i) the good faith of the Conrail directors in recommending that Conrail shareholders approve the Charter Amendment and



tender their shares in the CSX Offer, (ii) whether taking such actions are in the best interests of Conrail shareholders, (iii) whether the CSX Offer represents financially adequate consideration for the sale of control of Conrail and/or (iv) whether the economically superior NS Proposal is a viable, available alternative to the CSX Transaction. Absent adequate corrective disclosure by the defendants, these material misrepresentations and omissions threaten to coerce, mislead, and fraudulently manipulate Conrail shareholders to approve the Charter Amendment and deliver control of Conrail to CSX in the CSX Offer, in the belief that the NS Proposal is not an available alternative.

Defendants Continue Their Campaign of Misinformation By Publicly Suggesting, Although Never Committing To, An Improvement To The CSX Transaction.

129. Following the closing of the first step tender offer, CSX and Conrail have continued to make public statements to the effect that the merger consideration offered in the CSX Merger might be improved. Again, these statements are intended to mislead the Conrail shareholders into approving the proposed Charter Amendment.

130. For example in its definitive Proxy Statement dated November 25, 1996, Conrail continues to make these highly misleading statements. For example, Conrail states that:

Conrail and CSX have announced that they have been having, and continue to have, discussions relating to an increase in the value of the consideration payable upon consummation of the Merger, but that there can be no assurance as to when or if any such modifications will be made. In addition, Conrail also reaffirmed in this announcement that the Merger is in Conrail's best interests and is the superior strategic combination for Conrail, and both parties stated that they continue to be fully committed to the Merger.

Proxy Statement at 6.

131. To date, CSX and Conrail have provided no assurance that any such increase in the CSX Merger consideration will be forthcoming.

132. While Conrail and CSX continue to tout the CSX Transaction as being "superior" to the Norfolk Southern Offer, their continued efforts to mislead the Conrail shareholders into believing that the terms of that transaction might be improved are an admission that the CSX Transaction is inferior.

133. The defendants are engaging in a classic "bait and switch" tactic that is highly misleading and is designed solely for the purpose of getting the shareholders of Conrail to approve the next step in their multi-tiered front-end loaded highly coercive transaction. The defendants are engaging in a process designed to put themselves in a position where they will not have to increase the CSX merger consideration.

Conrail's Directors Attempt To Override Fundamental Principles  
of Corporate Democracy By Imposing A Continuing Directors  
Requirement in Conrail's Poison Pill

134. As noted above, Conrail's directors have long known that it was an attractive business combination candidate to other railroad companies, including NS.

135. Neither Conrail management nor its Board, however, had any intention to give up their control over Conrail, unless the acquiror was willing to enter into board composition, executive succession, and compensation and benefit arrangements satisfying the personal interests of Conrail management and the defendant directors, such as the arrangements provided for in the CSX Transaction. They were aware, however, that through a proxy contest, they could be replaced by directors who would be receptive to a change in control of Conrail regardless of defendants' personal interests. Accordingly, on September 20, 1995, the Conrail directors attempted to eliminate the threat to their continued incumbency posed by the free exercise of Conrail's stockholders' franchise. They drastically altered Conrail's existing Poison Pill Plan, by adopting a "Continuing Director" limitation to the Board's power to redeem the rights issued pursuant to the Rights Plan (the "Continuing Director Requirement").

136. Prior to adoption of the Continuing Director Requirement, the Conrail Poison Pill Plan was a typical "flip-in, flip-over" plan, designed to make an unsolicited acquisition of Conrail prohibitively expensive to an acquiror, and reserving power in Conrail's duly elected board of directors to render the dilative effects of the rights ineffective by redeeming or amending them.

137. The September 20, 1995 adoption of the Continuing Director Requirement changed this reservation of power. It added an additional requirement for amendment of the plan or redemption of the rights. For such action to be effective, at least two members of the Board must be "Continuing Directors," and the action must be approved by a majority of such "Continuing Directors." "Continuing Directors" are defined as members of the Conrail Board as of September 20, 1995, i.e., the incumbents, or their hand-picked successors.

138. By adopting the Continuing Director Requirement, the Director Defendants intentionally and deliberately have attempted to destroy the right of stockholders of Conrail to replace them with new directors who would have the power to redeem the rights or amend the Rights Agreement in the event that such new directors deemed such action to be in the best interests of the company. That is, instead of vesting the power to accept or reject an acquisition in the duly elected Board of Directors of Conrail, the Rights Plan, as amended, destroys the power of a duly elected Board to act in connection with acquisition offers, unless such Board happens to consist of the current incumbents or their hand-picked successors. Thus, the Continuing Director Requirement is the ultimate entrenchment device.

139. The Continuing Director Requirement is invalid per se under Pennsylvania statutory law, in that it purports to limit the discretion of future Boards of Conrail. Pennsylvania law requires that any such limitation on Board discretion be set forth in a By-Law adopted by the

stockholders. See Pa. BCL § 1721. Thus, the Director Defendants were without power to adopt such a provision unilaterally by amending the Rights Agreement.

140. Additionally, the Continuing Director Requirement is invalid under Conrail's By-Laws and Articles of Incorporation. Under Section 3.5 of Conrail's By-Laws, the power to direct the management of the business and affairs of Conrail is broadly vested in its duly elected board of directors. Insofar as the Continuing Director Requirement purports to restrict the power of Conrail's duly elected board of directors to redeem the rights or amend the plan, it conflicts with Section 3.5 of Conrail's By-Laws and is therefore of no force or effect. Article Eleven of Conrail's Articles of Incorporation permits Conrail's entire board to be removed without cause by stockholder vote. Read together with Section 3.5 of Conrail's By-Laws, Article Eleven enables Conrail's stockholders to replace the entire incumbent board with a new board fully empowered to direct the management of Conrail's business and affairs, and, specifically, to redeem the rights or amend the plan. Insofar as the Continuing Director Requirement purports to render such action impossible, it conflicts with Conrail's Articles of Incorporation and is therefore of no force or effect.

141. Furthermore, the adoption of the Continuing Director Requirement constituted a breach of the Director Defendants' fiduciary duty of loyalty. There existed no justification for the directors to attempt to negate the right of stockholders to elect a new Board in the event the stockholders disagree with the incumbent Board's policies, including their response to an acquisition proposal.

142. Moreover, while the Director Defendants disclosed the adoption of the Continuing Director Requirement, they have failed to disclose its illegality and the illegality of their conduct in adopting it. If they are not required to make corrective disclosures, defendants will permit the disclosure of the Continuing Director Requirement's adoption to distort stockholder

choice in connection with the CSX Offer, the Special Meeting, and (if they have not successfully locked up voting control of Conrail by then) in the next annual election of directors. The Director Defendants' conduct is thus fraudulent, in that they have failed to act fairly and honestly toward the Conrail stockholders, and intended to preserve their incumbency and that of current management, to the detriment of Conrail's stockholders and other constituencies. Accordingly, such action should be declared void and of no force or effect. Furthermore, adequate corrective disclosure should be required.

Conrail's Charter Permits The Removal and Replacement of Its  
Entire Board of Directors At Its Next Annual Meeting

143. As noted above, plaintiff NS intends to facilitate the NS Proposal, if necessary, by replacing the Conrail board at Conrail's next annual meeting. Conrail's next annual meeting is scheduled to be held on May 21, 1997 (according to Conrail's April 3, 1996 Proxy Statement, as filed with the Securities and Exchange Commission).

144. The Director Defendants adopted the Continuing Director Requirement in part because they recognized that under Conrail's Articles, its entire Board, even though staggered, may be removed without cause at Conrail's next annual meeting.

145. Section 3.1 of Conrail's By-Laws provides that the Conrail Board shall consist of 13 directors, but presently there are only 11. The Conrail Board is classified into three classes. Each class of directors serves for a term of three years, which terms are staggered.

146. Article 11 of Conrail's Articles of Incorporation provides that:

The entire Board of Directors, or a class of the Board where the Board is classified with respect to the power to elect directors, or any individual director may be removed from office without assigning any cause by vote of stockholders entitled to cast at least a majority of the votes which all stockholders would be entitled to cast at any annual election of directors or of such class of directors.

147. Under the plain language of Article 11, the entire Conrail Board, or any one or more of Conrail's directors, may be removed without cause by a majority vote of the



Conrail stockholders entitled to vote at the annual meeting. Plaintiffs anticipate, however, that defendants will argue that under Article 11, only one class may be removed at each annual meeting. Accordingly, plaintiffs seek a declaratory judgment that pursuant to Article 11, the entire Conrail Board, or any one or more of Conrail's directors, may be removed without cause at Conrail's next annual meeting.

#### Declaratory Relief

148. The Court may grant the declaratory relief sought herein pursuant to 28 U.S.C. § 2201. The Director Defendants' adoption of the CSX Transaction (with its discriminatory Charter Amendment poison pill, and state anti-takeover statute treatment and draconian lock-up provisions) as well as their earlier adoption of the Continuing Director Requirement, clearly demonstrate their bad faith entrenchment motivation and, in light of the NS Proposal, that there is a substantial controversy between the parties. Indeed, given the NS Proposal, the adverse legal interests of the parties are real and immediate. Defendants can be expected to vigorously oppose each judicial declaration sought by plaintiffs, in order to maintain their incumbency and defeat the NS Proposal -- despite the benefits it would provide to Conrail's stockholders and other constituencies.

149. The granting of the requested declaratory relief will serve the public interest by affording relief from uncertainty and by avoiding delay and will conserve judicial resources by avoiding piecemeal litigation.

#### Irreparable Injury

150. The Director Defendants' adoption of the CSX Transaction (with its discriminatory Charter Amendment, poison pill and state antitakeover statute treatment and draconian lock-up provisions), their adoption of the revised CSX Transaction with its highly coercive, multi-tier, front end loaded structure, as well as their earlier adoption of the Continuing

Director Requirement threaten to deny Conrail's stockholders of their right to exercise their corporate franchise without manipulation, coercion or false and misleading disclosures and to deprive them of a unique opportunity to receive maximum value for their stock. The resulting injury to plaintiffs and all of Conrail's stockholders would not be adequately compensable in money damages and would constitute irreparable harm.

#### Derivative Allegations

151. Plaintiffs bring each of the causes of action reflected in Counts One through Seven and Fourteen and Fifteen below individually and directly. Alternatively, to the extent required by law, plaintiffs bring such causes of action derivatively on behalf of Conrail.

152. No demand has been made on Conrail's Board of Directors to prosecute the claims set forth herein since, for the reasons set forth below, any such demand would have been a vain and useless act since the Director Defendants constitute the entire Board of Directors of Conrail and have engaged in fraudulent conduct to further their personal interests in entrenchment and have ratified defendant LeVan's self-dealing conduct:

(a) The Director Defendants have acted fraudulently by pursuing defendants' campaign of misinformation, described above, in order to coerce, mislead, and manipulate Conrail shareholders to swiftly deliver control of Conrail to the low bidder.

(b) The form of resolution by which the shareholders are being asked to approve the Charter Amendment is illegal and ultra vires in that it purports to authorize the Conrail Board to discriminatorily withhold filing the certificate of amendment even after shareholder approval. Thus, its submission to the shareholders is illegal and ultra vires and, therefore, not subject to the protections of the business judgment rule.

(c) The Conrail directors' selective amendment of the Conrail poison pill and discriminatory preferential treatment of the CSX Transaction under the Pennsylvania Business Combination Statute were motivated by their personal interest in entrenchment, constituting a breach of their fiduciary duty of loyalty and rendering the business judgment rule inapplicable.

(d) The Director Defendants' adoption of the breakup fee and stock option lock-ups in favor of CSX was motivated by their personal interest in entrenchment, constituting a breach of their duty of loyalty and rendering the business judgment rule inapplicable.

(e) The Continuing Director Requirement is illegal and ultra vires under Pennsylvania statutory law and under Conrail's charter and by-laws, rendering the business judgment rule inapplicable to its adoption by the Director Defendants.

(f) In adopting the Continuing Director Requirement, each of the Defendant Directors has failed to act fairly and honestly toward Conrail and its stockholders, insofar as by doing so the Defendant Directors, to preserve their own incumbency, have purported to eliminate the stockholders' fundamental franchise right to elect directors who would be receptive to a sale of control of Conrail to the highest bidder. There is no reason to think that, having adopted this ultimate in entrenchment devices, the Director Defendants would take action that would eliminate it.

(g) Additionally, the Director Defendants have acted fraudulently, in that they intentionally have failed to disclose the plain illegality of their conduct.

(h) There exists no reasonable prospect that the Director Defendants would take action to invalidate the Continuing Director Requirement. First, pursuant to Pennsylvania statute, their fiduciary duties purportedly do not require them to amend the Rights Plan in any way. Second, given their dishonest and fraudulent entrenchment motivation, the Director Defendants would certainly not commence legal proceedings to invalidate the Continuing Director Requirement.

153. Plaintiffs are currently beneficial owners of Conrail common stock. Plaintiffs' challenge to the CSX Transaction (including the coercive front end loaded tender offer, the illegal Charter Amendment, discriminatory treatment, and lock-ups) and to the Continuing Director Requirement presents a strong prima facie case, insofar as the Director Defendants have deliberately and intentionally, without justification, acted to foreclose free choice by Conrail's shareholders. If this action were not maintained, serious injustice would result, in that defendants would be permitted illegally and in pursuit of personal, rather than proper corporate interests to deprive Conrail stockholders of free choice and a unique opportunity to maximize the value of their investments through the NS Proposal, and to deprive plaintiff NS of a unique acquisition opportunity.

154. This action is not a collusive one to confer jurisdiction on a Court of the United States that it would not otherwise have.

COUNT ONE

(Breach of Fiduciary Duty with  
Respect to the Charter Amendment)

155. Plaintiffs withdraw Count One as moot.

COUNT TWO

(Breach of Fiduciary Duty  
With Respect to the Poison Pill)

156. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

157. The Conrail board of directors adopted its Poison Pill Plan with the ostensible purpose of protecting its shareholders against the consummation of unfair acquisition proposals that may fail to maximize shareholder value.

158. The Conrail Board has announced its intention to merge with CSX, and the Conrail Board has also sought to exempt CSX from the provisions of the Poison Pill.

159. Additionally, the Conrail Board has committed itself to not pursue any competing offer for the Company.

160. By selectively and discriminately determining to exempt CSX, and only CSX, from the Poison Pill provisions, to the detriment to Conrail's shareholders, the Conrail directors have breached their fiduciary duties of care and loyalty.

161. Plaintiffs have no adequate remedy at law.

COUNT THREE  
(Breach of Fiduciary Duty  
with Respect to the Pennsylvania  
Business Combinations Statute)

162. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

163. By approving the CSX Offer prior to its consummation, the Director Defendants have rendered the Pennsylvania Business Combinations Statute, subchapter 25F of the Pennsylvania Business Corporation Law, and, particularly, its five-year ban on mergers with substantial stockholders, inapplicable to the CSX Transaction, while it remains as an impediment to competing higher acquisition offers such as the NS Proposal.

164. By selectively and discriminately exempting the CSX Transaction from the five-year merger ban, for the purpose of facilitating a transaction that will provide substantial



personal benefits to Conrail management while delivering Conrail to the low bidder, the Director Defendants have breached their fiduciary duties of care and loyalty.

165. Plaintiffs have no adequate remedy at law.

COUNT FOUR

(Declaratory Judgment Against All  
Defendants that the Poison Pill  
Lock-In is Void Under Pennsylvania Law)

166. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

167. By purporting to bind Conrail and its directors not to amend or take any action with respect to the Conrail Poison Pill Plan without CSX's consent, the CSX Merger Agreement purports to restrict the managerial discretion of Conrail's directors.

168. Under Pennsylvania law, agreements restricting the managerial discretion of the board of directors are permissible only in statutory close corporations. Conrail is not a statutory close corporation.

169. No statute countenances Conrail's and the Director Defendants' adoption of the Poison Pill Lock-In terms of the CSX Merger Agreement. No Conrail By-Law adopted by the Conrail shareholders provides that Conrail's directors may contractually abdicate their fiduciary duties and managerial powers and responsibilities with respect to the Conrail Poison Pill Plan.

170. Plaintiffs have no adequate remedy at law.

COUNT FIVE

(Against the Defendant Directors  
for Breach of Fiduciary Duty with  
Respect to the Poison Pill Lock-In)

171. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

172. By entering into the Poison Pill Lock-In provisions of the CSX Merger Agreement, the Director Defendants purported to relinquish their power to act in the best interests of Conrail in connection with proposed acquisitions of Conrail.

173. Thus, by entering into the CSX Transaction with its poison pill lock-in provisions, the Director Defendants have intentionally, in violation of their duty of loyalty, completely abdicated their fiduciary duties and responsibilities.

174. Absent prompt injunctive relief, plaintiffs, as well as Conrail and all of its legitimate constituencies, face imminent irreparable harm.

175. Plaintiffs have no adequate remedy at law.

**COUNT SIX**  
(Declaratory Judgment Against All  
Defendants That the 270-Day Lock-Out  
is Void Under Pennsylvania Law)

176. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

177. By purporting to bind Conrail and its directors from acting to protect the interests of Conrail, its shareholders and its other legitimate constituencies by withdrawing its recommendation that Conrail's shareholders accept the CSX Offer and approve the CSX Merger even when the fiduciary duties of Conrail's directors would require them to do so, the 270-Day Lock-Out provision of the CSX Merger Agreement purports to restrict the managerial discretion of Conrail's directors.

178. By purporting to prohibit Conrail's directors from terminating the CSX Merger Agreement when their fiduciary duties would require them to do so, the 270-Day Lock-Out provision of the CSX Merger Agreement purports to restrict the managerial discretion of Conrail's directors.

179. Under Pennsylvania law, agreements restricting the managerial discretion of the board of directors are permissible only in statutory close corporations. Conrail is not a statutory close corporation.

180. No statute countenances Conrail's and the Director Defendants' adoption of the 270-Day Lock-Out terms of the CSX Merger Agreement. No Conrail By-Law adopted by the Conrail shareholders provides that Conrail's directors may contractually abdicate their fiduciary duties and managerial powers and responsibilities.

181. Unless the 270-Day Lock-Out provision is declared ultra vires and void and defendants are enjoined from taking any action enforcing it, Conrail and its legitimate constituencies face irreparable harm.

182. Plaintiffs have no adequate remedy at law.

**COUNT SEVEN**  
(Against the Defendant Directors  
for Breach of Fiduciary Duty with  
Respect to the 270-Day Lock-Out)

183. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

184. By entering into the 270-Day Lock-Out provision of the CSX Merger Agreement, the Director Defendants purported to relinquish their power to act in the best interest of Conrail in connection with proposed acquisitions of Conrail.

185. Thus, by entering into the 270-Day Lock-Out provision, the Conrail directors have abdicated their fiduciary duties, in violation of their duties of loyalty and care.

186. Plaintiffs have no adequate remedy at law.

COUNT EIGHT  
(Breach of Fiduciary Duty with  
Respect to the Lock-Up Provisions)

187. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

188. In conjunction with the CSX Merger Agreement, the Conrail Board has agreed to termination fees of \$300 million and to the lock-up Stock Option Agreement.

189. These provisions confer no benefit upon Conrail's shareholders and in fact operate and are intended to operate to impede or foreclose further bidding for Conrail.

190. The Conrail directors have adopted these provisions without regard to what is in the best interest of the Company and its shareholders, in violation of their fiduciary duties.

191. Plaintiffs have no adequate remedy at law.

COUNT NINE  
(Declaratory Relief Against  
Conrail and Director Defendants That  
The Continuing Director Requirement  
Is Void Under Pennsylvania Law)

192. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

193. Under Pennsylvania law, the business and affairs of a Pennsylvania corporation are to be managed under the direction of the Board of Directors unless otherwise provided by statute or in a By-Law adopted by the stockholders. Pa. BCL § 1721.

194. Under Pennsylvania law, agreements restricting the managerial discretion of directors are permissible only in statutory close corporations.

195. No statute countenances Conrail's and the current Board's adoption of the Continuing Director Requirement. No Conrail By-Law adopted by the Conrail stockholders

provides that the current Board may limit a future Board's management and direction of Conrail. Conrail is not a statutory close corporation.

196. Adoption of the Continuing Director Requirement constitutes an unlawful attempt by the Director Defendants to limit the discretion of a future Board of Directors with respect to the management of Conrail. In particular, under the Continuing Director Requirement, a duly elected Board of Directors that includes less than two continuing directors would be unable to redeem or modify Conrail's Poison Pill even upon determining that to do so would be in Conrail's best interests.

197. Plaintiffs seek a declaration that the Continuing Director Requirement is contrary to Pennsylvania statute and, therefore, null and void.

198. Plaintiffs have no adequate remedy at law.

#### COUNT TEN

(Declaratory Relief Against Conrail  
and The Director Defendants That  
The Continuing Director Requirement  
Is Void Under Conrail's Articles  
of Incorporation And By-Laws)

199. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

200. Under Section 3.5 of Conrail's By-Laws,

The business and affairs of the Corporation shall be managed under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Articles or by these By-Laws directed or required to be exercised and done by the shareholders.

201. Pursuant to Section 1505 of the Pennsylvania Business Corporation Law, the By-Laws of a Pennsylvania corporation operate as regulations among the shareholders and affect contracts and other dealings between the corporation and the stockholders and among the



stockholders as they relate to the corporation. Accordingly, the Rights Plan and the rights issued thereunder are subject to and affected by Conrail's By-Laws.

202. Insofar as it purports to remove from the duly elected board of Conrail the power to redeem the rights or amend the Rights Plan, the Continuing Director Requirement directly conflicts with Section 3.5 of Conrail's By-Laws, and is therefore void and unenforceable.

203. Article Eleven of Conrail's Articles of Incorporation provides that Conrail's entire board may be removed without cause by vote of a majority of the stockholders who would be entitled to vote in the election of directors. Read together with Section 3.5 of Conrail's By-Laws, Article Eleven enables the stockholders to replace the entire incumbent board with a new board with all powers of the incumbent board, including the power to redeem the rights or to amend the Rights Agreement. The Continuing Director Requirement purports to prevent the stockholders from doing so, and is therefore void and unenforceable.

204. Plaintiffs have no adequate remedy at law.

#### COUNT ELEVEN

(Declaratory Relief Against Conrail  
and The Director Defendants That Adoption  
of the Continuing Director Requirement  
Constituted A Breach of the Duty of Loyalty)

205. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

206. Adoption of the Continuing Director Requirement constituted a breach of the duty of loyalty on the part of the Director Defendants. Such adoption was the result of bad faith entrenchment motivation rather than a belief that the action was in the best interests of Conrail. In adopting the Continuing Director Requirement, the Director Defendants have purported to circumvent the Conrail stockholders' fundamental franchise rights, and thus have failed to act honestly and fairly toward Conrail and its stockholders. Moreover, the Director

Defendants adopted the Continuing Director Requirement without first conducting a reasonable investigation.

207. The Continuing Director Requirement not only impedes acquisition of Conrail stock in the NS Offer, it also impedes any proxy solicitation in support of the NS Proposal because Conrail stockholders will, unless the provision is invalidated, believe that the nominees of plaintiffs will be powerless to redeem the Poison Pill rights in the event they conclude that redemption is in the best interests of the corporation. Thus, stockholders may believe that voting in favor of plaintiffs' nominees would be futile. The Director Defendants intended their actions to cause Conrail's stockholders to hold such belief.

208. Plaintiffs seek a declaration that the Director Defendants' adoption of the Continuing Director Requirement was in violation of their fiduciary duties and, thus, null, void and unenforceable.

209. Plaintiffs have no adequate remedy at law.

**COUNT TWELVE**  
(Against Conrail And The Director  
Defendants For Actionable Coercion)

210. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

211. The Director Defendants owe fiduciary duties of care and loyalty to Conrail. Furthermore, Conrail and the Director Defendants, insofar as they undertake to seek and recommend action by Conrail's shareholders, for example with respect to the Charter Amendment, the CSX Offer or the NS Offer, stand in a relationship of trust and confidence vis a vis Conrail's shareholders, and accordingly have a fiduciary obligation of good faith and fairness to such shareholders in seeking or recommending such action. Furthermore, shareholders are entitled to injunctive relief against fundamental unfairness pursuant to PBCL § 1105.

212. Conrail and its directors are seeking the approval by Conrail's shareholders of the Charter Amendment and are recommending such approval.

213. Conrail and its directors are seeking the tender by Conrail's shareholders of their shares into the CSX Offer and are recommending such tender.

214. In seeking such action and making such recommendations, Conrail and its directors have sought to create the impression among the Conrail shareholders that the NS Proposal is not a financially superior, viable, and actually available alternative to the CSX Transaction. This impression, however, is false. The only obstacles to the NS Proposal are the ultra vires, illegal impediments constructed by defendants, including the Poison Pill Lock-In, the 270-Day Lock-Out, and the continuing director provisions of the Conrail Poison Pill Plan.

215. The purpose for which defendants' seek to create this impression is to coerce Conrail shareholders into delivering control over Conrail swiftly to CSX. Furthermore, the effect of this false impression is to coerce Conrail shareholders into delivering control over Conrail to CSX.

216. This coercion of the Conrail shareholders constitutes a breach of the fiduciary relation of trust and confidence owed by the Corporation and its directors to shareholders from whom they seek action and to whom they recommend the action sought. Moreover, this coercion, as well as the intense structural coercion imposed by the revised CSX Transaction's highly front end loaded first step tender offer, constitutes fundamental unfairness to Conrail shareholders.

217. The conduct of defendants Conrail and its directors is designed to, and will, if not enjoined, wrongfully induce Conrail's shareholders to sell their shares to CSX in the CSX Offer not for reasons related to the economic merits of the sale, but rather because the illegal conduct of defendants has created the appearance that the financially (and otherwise) superior NS

Proposal is not available to them, and that the CSX Transaction is the only opportunity available to them to realize premium value on their investment in Conrail.

218. Plaintiffs have no adequate remedy at law.

COUNT THIRTEEN  
(Against CSX For Aiding And Abetting)

219. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

220. Defendant CSX, through its agents, was aware of and knowingly and actively participated in the illegal conduct and breaches of fiduciary duty committed by Conrail and the Director Defendants and set forth in Counts One through Eight, Twelve and Twenty-Two through Twenty-Four of this complaint.

221. CSX's knowing and active participation in such conduct has harmed plaintiffs and threatens irreparable harm to plaintiffs if not enjoined.

222. Plaintiffs have no adequate remedy at law.

COUNT FOURTEEN  
(Declaratory and Injunctive Relief Against  
Conrail and the Director Defendants for  
Violation of Section 14(a) of the Exchange Act  
and Rule 14a-9 Promulgated Thereunder)

223. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

224. Section 14(a) of the Exchange Act provides that it is unlawful to use the mails or any means or instrumentality of interstate commerce to solicit proxies in contravention of any rule promulgated by the SEC. 15 U.S.C. § 78n(a).

225. Rule 14a-9 provides in pertinent part: "No solicitation subject to this regulation shall be made by means of any ... communication, written or oral, containing any

statement which, at the time, and in light of the circumstances under which it is made, is false and misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading...." 17 C.F.R. § 240.14a-9.

226. Conrail's Preliminary Proxy Statement contains the misrepresentations detailed in paragraph 123 above. It also omits to disclose the material facts detailed in paragraph 126 above.

227. Further, Conrail's press releases, public filings, and November 25, 1996 Definitive Proxy Statement detailed in paragraphs 59, 62, and 129 to 133 above, are misleading as set forth in such paragraphs.

228. Moreover, each of the false and misleading statements and omissions made by defendants and alleged in this Complaint were made under circumstances that should be expected to result in the granting or withholding of proxies in the vote on the Charter Amendment, and was intended to have such result.

229. Unless defendants are required by this Court to make corrective disclosures, Conrail's stockholders will be deprived of their federal right to exercise meaningfully their voting franchise.

230. The defendants' false and misleading statements and omissions described above are essential links in defendants' effort to deprive Conrail's shareholders of their ability to exercise choice concerning their investment in Conrail and their voting franchise.

231. Plaintiffs have no adequate remedy at law.



COUNT FIFTEEN  
(Against Defendant CSX For Violation  
Of Section 14(d) Of The Exchange Act  
And Rules Promulgated Thereunder)

232. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

233. Section 14(d) provides in pertinent part: "It shall be unlawful for any person, directly or indirectly by use of the mails or by any means or instrumentality of interstate commerce ... to make a tender offer for ... any class of any equity security which is registered pursuant to section 78j of this title, ... if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless at the time copies of the offer, request or invitation are first published, sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 78m(d) of this title, and such additional information as the Commission may by rules and regulations prosecute ...." 15 U.S.C. § 78n(d).

234. On October 16, 1996, defendant CSX filed with the SEC its Schedule 14D-1 pursuant to Section 14(d).

235. CSX's Schedule 14D-1 contains each of the false and misleading material misrepresentations of fact detailed in paragraph 124 above. Furthermore, CSX's Schedule 14D-1 omits disclosure of the material facts detailed in paragraph 126 above. Additionally, CSX's Amendment No. 4 to its Schedule 14D-1 contains the misstatements and/or omissions alleged in paragraphs 127(a) and (d) above. As a consequence of the foregoing, CSX has violated, and unless enjoined will continue to violate, Section 14(d) of the Exchange Act and the rules and regulations promulgated thereunder.

236. CSX made the material misrepresentations and omissions described above intentionally and knowingly, for the purpose of fraudulently coercing, misleading and manipulating Conrail's shareholders to tender their shares into the CSX Offer.

237. Plaintiffs have no adequate remedy at law.

COUNT SIXTEEN

(Against Defendant Conrail For Violation  
Of Section 14(d) Of The Exchange Act  
And Rules Promulgated Thereunder)

238. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

239. Section 14(d)(4) provides in pertinent part: "Any solicitation or recommendation to the holders of [securities for which a tender offer has been made] to accept or reject a tender offer or request or invitation for tender shall be made in accordance with such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest of investors." Rule 14d-9 provides in pertinent part: "No solicitation or recommendation to security holders shall be made by [the subject company] with respect to a tender offer for such securities unless as soon as practicable on the date such solicitation or recommendation is first published or sent or given to security holders such person ... file[s] with the [SEC] eight copies of a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9."

240. On October 16, 1996, Conrail (i) published its board of directors' recommendation that Conrail shareholders tender their shares in the CSX Offer and (ii) filed with the SEC its Schedule 14D-9.

241. Conrail's Schedule 14D-9 contains each of the false and misleading material misrepresentations detailed in paragraph 125 above. Further, Conrail's Schedule 14D-9 omits disclosure of the material facts detailed in paragraph 126 above. Additionally, Conrail's

Amendment No. 4 to its Schedule 14D-9 with respect to the CSX Offer and its Schedule 14D-9 with respect to the NS Offer contain the misstatements and/or omissions alleged in paragraphs 127 (a), (c) and (d) above. As a consequence of the foregoing, Conrail has violated, and unless enjoined will continue to violate, Section 14(d) of the Exchange Act and the rules and regulations promulgated thereunder.

242. Conrail made the material misrepresentations and omissions described above intentionally and knowingly, for the purpose of fraudulently coercing, misleading and manipulating Conrail's shareholders to tender their shares into the CSX Offer.

243. Plaintiffs have no adequate remedy at law.

COUNT SEVENTEEN  
(Against Conrail and CSX for Violation  
of Section 14(e) of the Exchange Act  
and Rules Promulgated Thereunder)

244. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

245. Section 14(e) provides in pertinent part: "It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices in connection with any tender offer . . . or any solicitation of security holders in opposition to or in favor of any such offer . . . ." Defendants have violated and threaten to continue to violate Section 14(e).

246. The CSX Schedule 14D-1 constitutes a communication made under circumstances reasonably calculated to result in the procurement of tenders from Conrail shareholders in favor of the CSX Offer.

247. The Conrail Schedule 14D-9 and Proxy Statement constitute communications made under circumstances reasonably calculated to result in the procurement of tenders from Conrail shareholders in favor of the CSX Offer.

248. The CSX Schedule 14D-1 contains the false and misleading material misrepresentations detailed in paragraph 124 above. The CSX Schedule 14D-1 omits disclosure of the material facts detailed in paragraph 126 above. Additionally, Amendment No. 4 to such Schedule contains the misstatements and/or omissions alleged in paragraphs 127(a) and (b) above.

249. The Conrail Schedule 14D-9 contains the false and misleading material misrepresentations detailed in paragraph 125 above. The Conrail Schedule 14D-9 omits disclosure of the material facts detailed in paragraph 126 above. Additionally, Amendment No. 4 to such Schedule contains the misstatements and/or omissions alleged in paragraphs 127(a) and (d) above. Also, Conrail's Schedule 14D-9 with respect to the NS Offer contains the misstatements and/or omissions alleged in paragraphs 127(a) and (c) above.

250. The Conrail Preliminary Proxy Statement contains the false and misleading material misrepresentations detailed in paragraph 124 above. The Conrail Proxy Statement omits disclosure of the material facts detailed in paragraph 126 above.

251. These omitted facts are material to the decisions of Conrail shareholders to hold, sell to market, or tender their shares in the CSX tender offer.

252. The defendants intentionally and knowingly made the material misrepresentations and omissions described above, for the purpose of coercing, misleading, and manipulating Conrail shareholders to swiftly transfer control over Conrail to CSX by tendering their shares in the CSX Tender Offer.

253. Absent declaratory and injunctive relief requiring adequate corrective disclosure, plaintiffs, as well as all of Conrail's shareholders, will be irreparably harmed. Conrail

shareholders will be coerced by defendants' fraudulent and manipulative conduct to sell Conrail to the low bidder. Plaintiffs NS and AAC will be deprived of the unique opportunity to acquire and combine businesses with Conrail.

254. Plaintiffs have no adequate remedy at law.

COUNT EIGHTEEN  
(Against Defendants Conrail and CSX  
For Civil Conspiracy To Violate  
Section 14 Of The Exchange Act  
And Rules Promulgated Thereunder)

255. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

256. Defendants Conrail and CSX conspired and agreed to conduct the campaign of misinformation described in paragraphs 95 through 101 above for the purpose of coercing, misleading and manipulating Conrail shareholders to swiftly transfer control over Conrail to CSX. As set forth in Counts Fourteen through Seventeen above, which are incorporated by reference herein, the defendants' campaign of misinformation is violative of Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

257. Plaintiffs have no adequate remedy at law.

COUNT NINETEEN  
(Against Conrail for  
Estoppel/Detrimental Reliance)

258. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth in this paragraph.

259. By his actions, silence and statements during the period from September 1994 to October 15, 1996, and particularly by his statements to Mr. Goode in September and October of 1996 (as detailed above in paragraphs 24 through 26, defendant LeVan, purporting to



act on behalf of Conrail and its Board of Directors and with apparent authority to so act, led Mr. Goode to believe that Conrail's Board was not interested in a sale of the company and that if and when the Conrail Board decided to pursue such a sale, it would let NS know and give NS an opportunity to bid.

260. Prior to October 15, 1996, NS had justifiably relied on Mr. LeVan's false statements and representations in refraining from making a proposal to Conrail's Board or initiating a tender offer of its own for Conrail shares.

261. Mr. LeVan and Conrail knew or should have known that their actions, silence, statements and representations to NS would induce NS to believe that Conrail's board was not interested in selling the company and that NS would be given an opportunity to bid if Conrail's Board decided that Conrail would be sold.

262. Mr. LeVan and Conrail knew or should have known that NS would rely upon their actions, silence, statements and representations to its detriment in refraining from making a proposal to Conrail's Board or initiating a tender offer of its own for Conrail shares.

263. NS did in fact rely upon LeVan's and Conrail's actions, silence, statements and representations to its detriment in refraining from making a proposal to Conrail's Board or initiating a tender offer of its own for Conrail shares.

264. Conrail and its Board are estopped from effectuating a sale of the company without giving NS an adequate opportunity to present its competing tender offer to the Conrail Board of Directors and Conrail shareholders. Similarly, any provision in the CSX Merger Agreement that would impede directors' or shareholders' ability to approve a competing tender offer or takeover proposal, such as that made by NS, is null and void.

265. By virtue of NS's justifiable reliance on Conrail's and Mr. LeVan's actions, silence and statements, it has suffered and will continue to suffer irreparable harm.