

EMPLOYER STATUS DETERMINATION**Hilco SP Rail, LLC**

This is a determination of the Railroad Retirement Board concerning the status of Hilco SP Rail, LLC (HSPR) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA).

In Surface Transportation Board decision dated April 26, 2013 (Docket No. FD 35734), HSPR, a noncarrier, filed a verified notice of exemption to acquire from RG Steel Railroad Holding, LLC (RGS), and operate as a common carrier over an approximately 12-mile line of railroad in Sparrows Point, Baltimore County, Maryland (Sparrow Line). HSPR stated that MCM Rail Services, LLC (MCM) (B.A. No. 4415) will serve as the operator of the rail line and that MCM will interchange with CSX Transportation, Inc. (CSXT) (B.A. No. 1524) and Norfolk Southern, (NS) (B.A. No. 1525), covered railroad employers under the Acts.

Information regarding HSPR was provided by Mr. Louis E. Gitomer, legal counsel for HSPR. RG Steel Sparrows Point, LLC and RG Steel Railroad Holdings, LLC (RGS) were the former owners of the Sparrow Line. RGS provided rail operations on the Sparrow Line. Pursuant to an Asset Purchase Agreement (APA) dated August 7, 2012, the Purchasers, Environmental Liability Transfer, Inc., a Missouri Corporation (ELT), Commercial Development Company, Inc., a Missouri Corporation (CDC), and Sparrows Point, LLC, a Missouri Limited Liability Company (SPLLC) purchased the Sparrow Line. In Section 1.8 of the APA, it was agreed that the Purchasers could designate HRE Sparrows Point LLC (HRESP) as the acquirer of certain purchased assets. The APA also granted HRESP the exclusive right to possession of the land, railroad track and all other assets formerly owned by RGS Railroad.¹ After the sale was closed on September 14, 2012, HRESP assigned all of its rights and interests in the railroad assets to its affiliate HSPR, and therefore, HSPR acquired the exclusive right to operate the Sparrow Line. HSPR is owned equally by Hilco Industrial, LLC and Hilco Real Estate, LLC. Mr. Gitomer explained that pursuant to a Railroad Service Agreement between HSPR and MCM Rail Services, LLC, d/b/a/ Baltimore Industrial Railroad (MCM), MCM would provide exclusive railroad service over the Sparrow

¹ According to Mr. Gitomer, the sale of assets pursuant to the APA was authorized and approved by the U.S. Bankruptcy Court, District of Delaware on August 21, 2012 (Case No. 12-11661 (KJC)). The Court also authorized the designation of the acquisition of certain assets, exclusive license to the land, and to operate the railroad assets upon closing to HRESP.

Line and make payments to HSPR for the use of the rail property. The payments are based on the revenues MCM generates. However, HSPR retains a residual common carrier obligation to operate over the Sparrow Line as well as additional spur, industrial, team switching, and side track as a common carrier railroad. On September 14, 2012, MCM began operations of the Sparrow Line. HSPR does not reportedly have any employees. Employees of MCM will operate the freight service.

Section 1(a) (1) of the RRA defines the term “employer” to include:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of Title 49;

Section 1 of the RUIA contains essentially the same definition.

Where a line of railroad is owned by one entity but operated as a rail carrier by a second, unrelated entity, the RRA, the RUIA and the Railroad Retirement Board’s regulations do not directly address the status under the Acts of the lessor company as an employer. In November 2000, the Board defined the circumstances under which it would consider that the lessor-owner of a rail line leased to another would be a railroad carrier employer under the Acts. See, Board Coverage Decision 00-47, *Railroad Ventures, Inc.*, (reconsideration decision). Pursuant to that decision, the Board will determine the lessor of a rail line to be an employer unless:

- (1) the lessor does not have as a primary purpose to profit from railroad activities;
- (2) the lessor does not operate or retain the capacity to operate the rail line; and
- (3) the operator of the rail line is already a covered employer under the RRA and RUIA. See, Board Coverage Decision 04-11, *Sierra Pacific Industries, Inc.*

The Board determines that HSPR does not meet each criteria. MCM, pursuant to a Railroad Service Agreement, pays HSPR for the use of the Sparrow Line and its property. Thus, HSPR profits from the railroad activities of the Sparrow Line. With respect to the second criteria, Mr. Gitomer advised that HSPR retains residual common

carrier obligations. Last, MCM, a covered employer under the Acts, conducts the freight operations.

The Board therefore finds that HSPR became a rail carrier employer under section 1(a)(1)(i) of the RRA and the corresponding sections of the RUIA beginning September 14, 2012, the date rail operations began.

Original signed by:

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