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Prepared for employees by the
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DELAYED ISSUE

October 16, 1984

To All Milwaukee Road Employees:

You have previously been advised that Trustee Ogilvie recommended acceptance of the North Western's modified purchase offer to acquire the Milwaukee's operating assets.

Substantially, here's the text of his formal statement to the reorganization court.

Since becoming Trustee in August, 1979, my personal goal has been to be the last trustee the Milwaukee will ever need; to assure that the current reorganization of Milwaukee, its third this century, will result in a reorganization of the Milwaukee rail lines that will never again require the protection of federal bankruptcy laws. I am gratified to observe that, as the final chapter of this reorganization is about to be written, these goals are about to be accomplished.

Pursuant to the terms of Order No. 772, I am filing this statement of recommendation to the Court with respect to the proposed Section 5(b) Asset Purchase Agreement of the Soo Line Railroad Company and Chicago and North Western Transportation Company and its subsidiary, Mid America Rail Properties, Inc., respectively, and the Plan of Reorganization as reported to the Court in the decision of the Interstate Commerce Commission as served September 26, 1984. My recommendations are being made on the basis of the ICC Decision, the evidence submitted to the ICC during the course of the proceedings in Finance Docket No. 28640, the proposed modifications and other statements filed with this Court on October 9, 1984, and more generally the record in the proceedings before this Court and my experience as Trustee.

The Court has before it for consideration the Section 5(b) APA of the Soo and a Plan of Reorganization, both of which were approved by the ICC, and both of which contemplate an acquisition by the Soo of the Milwaukee operating assets. The ICC, by majority of 3-1, indicated that the Soo was the preferred carrier to purchase these assets. The Court also has before it, by virtue of no action having been taken by the ICC, the APA of the CNW and the October 9 proposal for substantial modifications to the CNW APA. All other plans of reorganization and Section 5(b) proposals were expressly rejected by the ICC and, therefore, are not now before the Court for approval.*

My recommendations are the result of balancing a variety of different and, at times, conflicting interests. The interests balanced by a railroad reorganization trustee are both public and private. He must attempt to achieve a reorganization which at the same time is in the best interests of the estate and

* I understand that on October 9, 1984, both the GTC and CMC appealed the ICC Decision denying their respective proposals to this Court under Section 5(b) of the Milwaukee Railroad Restructuring Act.

consistent with public interest. Accordingly, I have considered the interests of the public in maintenance of the rail service now being provided by the Milwaukee and the competitive function it serves, the interests of the employees in continued rail employment and protection from adverse impacts of reorganization, the interests of all creditors in fair and equitable treatment and, finally, the interest of shareholders in the preservation of the value of the estate.

It has been my prior testimony before the ICC that both the Soo and the CNW satisfied the public interest in preservation of rail service and competition. It also was my prior testimony that the April 6, 1984, APA's of the Soo and the CNW afforded fair, and, in certain respects, unprecedented protections to the employees of the Milwaukee. I also testified before the ICC that either a Soo or CNW purchase, as then proposed under terms of the April 6, 1984, APA's would permit me to fairly and equitably satisfy the estate's obligations to all creditors and, finally, that the consideration represented the then fair market value for the assets being sold.

I believe the ICC Decision generally confirmed my opinion in each respect. The ICC did find, however, that there would be impermissible diminution in competition in three markets should the CNW purchase the Milwaukee lines. In these three markets - Chicago to Milwaukee; Chicago to Green Bay; and Twin Cities to Kansas City - the ICC specified conditions which, if imposed on the CNW, would eliminate the impermissible competitive impacts. The CNW agreed to accept those conditions.

On April 13, 1984, when I filed my written statement with the ICC I stated that I was not prepared to say that of the Soo and CNW proposals, one was so superior that it should be preferred. Since the ICC Decision and pursuant to this Court's Order No. 772, the CNW has proposed a modification to its April 6, 1984, APA which distinguishes it from the Soo APA in a fashion that cannot, under any test of a Trustee's responsibilities, be overlooked. It is clear now that the CNW proposal is substantially superior to that of the Soo and that the CNW modified APA should be approved.

The CNW has valued its proposed modifications as being approximately \$210 million above its April 6 APA. I estimated that the CNW's April 6 proposal had a value to the estate of approximately \$569.3 million in comparison to the Soo's value of approximately \$570.6 million. While my officers have not completed a final valuation of the CNW modifications, it is clear that the proposal represents an increase of over \$200 million more value to the estate than available under the Soo APA.

Additionally, the CNW has proposed to modify the APA in certain important respects to provide even greater protection to the Milwaukee employees in connection with the transaction, and to resolve favorably to the estate certain real estate issues that were outstanding.

The Soo on October 9 proposed modifications which satisfactorily dealt with the same employee issues and real estate issues as the CNW. The Soo, however, proposed no modification with respect to the consideration to be paid the estate, asserting that the final date for all such modifications had been April 6, 1984. I believe the Soo's claim in this respect is contrary to this Court's explicit rulings and statements, and is simply wrong.

In making my recommendation to this Court, I have also considered the substantial public benefits which the CNW proposal will generate. The ICC Decision found that these benefits, in the form of such efficiencies as the elimination of duplication in main line, yard and terminal facilities, amount to approximately \$123 million in annual savings. The magnitude of these public benefits are substantially greater than any in recent mergers, including the BN-Frisco, CSX, Norfolk-Southern, and Union Pacific-Missouri Pacific merger cases. By contrast, the public benefits flowing from a Soo acquisition of the Milwaukee would be \$35 million annually.

The CNW also made a convincing case before the ICC that the acquisition of the Milwaukee lines will result in overall public benefits from improved service to shippers with reduced transit times, reduced inventory costs, more dependable transportation and improvements in local service.

Under these circumstances, I believe it is in the best interests of the estate, and the overall orderly and timely conclusion of these reorganization proceedings, for this Court to enter an order granting preliminary approval to the APA of the CNW, as modified on October 9, 1984. Because the CNW modification includes a substantial change in price and includes other elements that require prior ICC approval (i.e., authorization to use proceeds of its mortgage bond issue to acquire Milwaukee assets, approval of certain exemption requests), the modification needs to be referred back to the ICC for its review and approval of these matters. Accordingly, I recommend that this Court grant preliminary approval to the CNW under Section 5(b)(3), refer the preliminarily approved CNW modified APA to the ICC for review with direction that the ICC report back to the Court within 45 days of receipt of the referral.

The brief accompanying my statements sets forth in greater detail the reasons why this Court should properly grant preliminary approval to the CNW.

Pending the ICC review of CNW's modified APA, I also recommend that this Court stay any decision with respect to approval of the Soo 5(b), the Plan of Reorganization and appeals from the ICC Decision. Pursuant to Order No. 772, briefing on these matters will be completed by October 22, 1984; during the pendency of the ICC review of the CNW's modified APA, this Court can be reviewing those briefs. However, the anticipated favorable action by the ICC on the CNW's modified APA would moot many of the issues involved in those matters. In the interests of judicial economy, it is best first to receive the report of the ICC in response to this Court's preliminary approval of the modified CNW APA before making decisions on other matters.

In making this recommendation, I have given particular attention to the various concerns raised by the States of Wisconsin, Minnesota and Iowa, by employees of the Milwaukee and Milwaukee shippers over a CNW acquisition of the Milwaukee assets. I am very conscious of the fact that in the minds of many, CNW ownership of the Milwaukee lines does not present an acceptable, let alone preferred, alternative. However, the sale of assets, in a reorganization or outside a reorganization, depends not only upon preferences but upon legal rights. If there is no legal impediment to a CNW acquisition (and it has been and continues to be my opinion that nothing in the Interstate Commerce Act or any antitrust law prevents a CNW acquisition), then the estate has a legal right to sell to the CNW. Accompanying the estate's right to sell to the CNW, is the fundamental right of shareholders of the debtor to the substantially better price being

offered by the CNW for the assets which, in final analysis, are the shareholders' property. A railroad reorganization, even with all its public interest considerations, cannot deprive shareholders of the debtor of a substantially better and legally available alternative sale. In the exercise of his fiduciary responsibility to the estate and to the debtor's shareholders, no trustee could properly reject a sale proposal with a value of over \$200 million in excess of the nearest alternative sale. Nor could a court ever sanction such a rejection.

I recognize that arguments are being made that the CNW is not a legally available alternative. For the reasons I have previously articulated before the ICC and that are detailed in the accompanying brief, I believe those arguments, made at length before the ICC but, not accepted, are wrong. CNW acquisition of the Milwaukee lines offers substantial public benefits, detailed in the ICC Decision, not otherwise available. Any question concerning adverse effect on competition has been put to rest by CNW's acceptance of all the conditions specified in the ICC Decision.

I would like to add additional comments about the clearly expressed opinion of many of the Milwaukee employees that they prefer to become a part of the Soo. In many of the communications from the employees there has been a common theme that they have made extraordinary sacrifices in personal and economic terms to effect the remarkable turn around of the Milwaukee and that they now fear that a CNW acquisition would be prejudicial to their continued employment opportunities.

I have repeatedly recognized the crucial role Milwaukee employees have played in this unprecedented reorganization of the Milwaukee Road. I wish to emphasize to this Court the importance to the reorganization of the dedication and sacrifices of union and exempt personnel. I am also keenly aware of their concerns for the future. I have received personal assurances from James Wolfe, president and chief executive officer of the CNW, and the management of the CNW that Milwaukee employees will be fairly treated in all respects. Moreover, the CNW has given unprecedented written commitments in its modified APA to back up those representations. No group of railroad employees facing a merger has ever faced it with greater benefits and written assurances that are being provided to the Milwaukee employees.

It was with the contributions of the Milwaukee employees in mind that I negotiated for and sought agreements that guaranteed full repayment of 1980-81 deferred wages and afforded unprecedented guarantees of fairness and continued employment opportunities. Moreover, if the CNW proposed modifications are approved, the employees will receive back 100% of the amount by which wages were reduced from 1982-1984. Under the prior APA's, only 84% of the amount by which wages were reduced would be repaid.

In summary, I am very pleased that the conclusion of the Milwaukee reorganization is in sight and that the placement of the Milwaukee lines will be on terms very clearly beneficial to the estate and protective of the employees. The combination of the Milwaukee/CNW, a long sought after and frequently proposed combination, will unquestionably well serve the interests of shipping in the Midwest by creating a new system of sufficient strength and flexibility to withstand the rigors of future competition and provide efficient and reliable service.

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To Chicagoland Employees:

I am encouraged to note that over the years that Milwaukee Road employees are people who have shown they care about helping others. I'd like us to continue the warm generosity that has been displayed in the past. I ask you to join me this year in celebrating the spirit of caring by giving to the United Way/Crusade of Mercy campaign.

It's always a great feeling knowing that someone cares about us. That's what your contribution to the United Way means - that you care about people and the well-being of our community. It also means that you care about yourself and your family - because your contribution helps make services available that you may one day need.

What you give to the United Way is only part of what it takes to provide health and human care services to hundreds of people each day. Yet, to those in need, it makes a big difference. To them it shows that someone really cares.

People helping people. The United Way campaign helps keep this spirit alive in Chicagoland; and it's people who care that have made the United Way work for 50 years.

You're invited to join your fellow employees at the United Way/Crusade of Mercy meetings being held next week in Union Station and the following week in Bensenville.

Let's do our fair share in making sure the United Way continues to work for all of us. Please give your Fair Share - because you care.



W. L. Smith
President

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