Exhib

VERIFIED STATEMENT OF

RICHARD B. OGILVIE

My name is Richard B. Ogilvie. I was appointed Trustee of the Milwaukee Road by the United States District Court supervising the reorganization by Order dated July 24, 1979 to oversee the operation of the Milwaukee Road during the balance of its reorganization proceedings and to direct the development and implementation of a final reorganization plan. My appointment as Trustee was ratified by the Commission effective August 22. As Trustee I will succeed Stanley E. G. Hillman, who for reasons of health resigned last June effective upon ratification of a successor. I have participated in the development of the Reorganization Plan for the Milwaukee. Exhibit 2 of the Plan is a brief description of my background and qualifications.

I am by no means a newcomer to the ongoing effort to successfully reorganize the Milwaukee Road. I had served as Counsel for the Trustee since Mr. Hillman's appointment in February, 1978. In June of this year when Mr. Hillman became ill, I became Attorney in Fact for the Trustee and served in that capacity until the Commission ratified my appointment. With my close association with Mr. Hillman and his officers dating back to the early months of bankruptcy, I am already well acquainted with many of the problems involved in reorganizing the Milwaukee Road. Under Mr. Hillman's capable leadership a new course has been charted for the Milwaukee, a course which I fully endorse. As I take the helm as Trustee, I am confident of the direction in which we must go and of the action which we must take.

It has been just over a year since Mr. Hillman announced on August 3, 1979 his determination that the Milwaukee Road can no longer afford to operate as a transcontinental carrier. Mr. Hillman indicated at that time that at some point in the future the Milwaukee would have to abandon its Pacific Coast Extension to preserve the Milwaukee's estate in the short run and to enhance the possibility of a successful reorganization in the long run. Our experiences in the intervening year have confirmed Mr. Hillman's decision.

The year 1979 will surely rank as one of the most difficult years in the Milwaukee Road's 125 year history. In the early months of the year in the midst of an orderly planning process, the Trustee was confronted with a crisis of frightening dimension. Reeling from the effects of the most severe winter in its history, the Milwaukee apart from its subsidiaries* lost $45 million in only the first quarter of 1979 on the basis as reported to the I.C.C. That loss came on the heels of an $82 million loss for calendar year 1978 and total losses of nearly $100 million for the three years prior to filing for reorganization. Projections for 1979 indicated continuing heavy losses at a rate approaching $10 million a month. Despite a major program to maintain and operate the railroad, deterioration of track and equipment continued at a truly alarming rate, accelerating the erosion of services, markets and revenues. In April, the Milwaukee's Vice President Finance estimated that total losses for the first two years of reorganization proceedings would approximate a quarter billion dollars if the present system were to be operated. Sources of funds with which to continue operations were rapidly being exhausted at the very time that the planning process initiated by the Trustee began to reveal that certain portions of the Milwaukee might be reorganizable. There was no time to plan an orderly

*Unless otherwise indicated, losses shown for the Milwaukee do not take in account the earnings of its subsidiaries.

transition. The cash crisis was immediate and demanded prompt and dramatic action.

In late April, Mr. Hillman concluded that the continuing cash crisis, and the developing determination that only part of the Milwaukee could be reorganized made continuing freight operation across the Debtor's entire system undesirable. He thereupon petitioned the Reorganization Court for authority to embargo freight operations over nearly 7400 miles of line, including the 2497.7 miles involved in this proceeding, outside what was then foreseen as the viable "core" of the railroad. At the same time, he sought authority to borrow an additional $15 million to maintain operations over the short term on the 2400 miles of "core" line around which reorganization might be possible.

Hearings were held in May. At these hearings, we heard advice of imminent Congressional action to save the Milwaukee. We heard demands that the usual full scale abandonment procedures of the I.C.C. be followed. We heard charges that no part of the Milwaukee could in fact be reorganized and that a total embargo should be ordered. To our great dismay, the U.S. Department of Transportation, the Executive planning agency and the advocate of private sector railroad restructuring, was not in a position to present its views to the Court at that time.

Finally on June 1, 1979, the Court issued its decision acknowledging the dimensions of the crisis and that a partial embargo would be in the public interest, but concluding that the Court lacked jurisdiction to approve such an embargo since the Trustee wasn't truly "cashless" and could continue to borrow and to apply for additional ERSA funds to maintain operations over the entire system. To be sure, $15 million (and later another $20 million) in loans were authorized to keep the railroad going for the time being but plans for an embargo and directed service were quietly put away.

My only point in recalling these painful events of last Spring is to stress that the Court's attempt to allow Congress or the ICC time to take action accomplished nothing, except to force the railroad to incur an additional $35 million of debt. The deterioration of the Milwaukee's track and equipment continues due to the acute shortage of funds for proper maintenance and necessary rehabilitation. Revenue and market opportunities continue to slip away as our resources are spread too thin to take advantage of them. The Milwaukee lost $64 million in the first half of 1979 alone. Losses in excess of $130 million are still projected for the entire year. The denial of the requested embargo and the injection of additional funds did not solve any of the Milwaukee's fundamental problems. It merely postponed the day of reckoning, a day which is coming fast upon us. The fair weather days of summer are almost over. As described by Mr. Nugent, the last $20 million received under ERSA will be exhausted sometime in October. Despite great fanfare, Congress has failed to enact a single bill to provide appropriate financial assistance to the Milwaukee. No one can fairly act surprised that the Milwaukee returned to the Court and sought an embargo once again.

While the hard economic and physical problems of the Milwaukee remain unresolved, the planning process at least has achieved substantial progress over the past several months both at the railroad and the Federal Government level. That process generated several major contributions to the record before the Court that sharply distinguish the present record from that before the Court last May. Three recent major developments are outstanding:

On July 31, 1979, the Acting Secretary of the United States Department of Transportation (DOT) transmitted to Congress the results of certain DOT studies and analyses pertaining to the Milwaukee's "western lines". From these studies and analyses, DOT reached three major conclusions:

1. The western lines of the Milwaukee Road are not likely to become self sustaining, either independently or as part of a reorganized Milwaukee Road system.
2. The concept of an "Employee Stock Ownership Plan" for the western lines of the Milwaukee does not appear to be practical.
3. The most responsible course of action appears to be to preserve selected Milwaukee western line services through the transfer of those services and necessary facilities to other railroads to the maximum extent possible.

These conclusions have impelled DOT to make the ultimate determination: any future ERSA assistance to the Milwaukee Road may be used only for those portions of the system which are reorganizable. The effect of this determination on the ability to finance continued operations over the entire system is unmistakable. We also believe the special role of the Secretary of Transportation as the architect and financier of national transportation policy must be considered by the Commission in deciding whether to defer action or to direct the abandonment which the public interest requires. After the exhaustion of the previously authorized ERSA funds emergency government assistance will no longer be available to us to sustain operations over the entire Milwaukee system.

The second major development since Spring, is the filing with the Interstate Commerce Commission on August [illegible], 1979 of the Trustee's formal application to abandon all Milwaukee Road lines west of Miles City, Montana. By setting this matter for expedited handling, the Commission has acknowledged that swift action is required in the public interest. Unfortunately, the Interstate Commerce Act contains provisions which may result in months of delay after a Commission decision. What is certain is that Commission authority has been formally invoked and the administrative process to abandon the Milwaukee's western lines has begun. As Trustee I will follow that process for other lines which are not within Milwaukee II. The Commission will thus have a full opportunity to apply its expertise before lines are ultimately removed or sold.

The third development is, of course, the filing with the Court on August 10, 1979 of the Trustee's Preliminary Plan of Reorganization, submitted jointly by Mr. Hillman and myself, culminating more than a year of intensive investigation and analysis of the reorganizability of the Milwaukee Road. It is the blueprint that details how we believe the Milwaukee Road can be reorganized on an income basis. It is the comprehensive framework which the Court previously found to be lacking.

The Plan recognizes that unlike in reorganizations of railroads 40 years ago, today's economic and competitive environment demands a physical as well as a financial restructuring. We believe that the Plan represents the fairest balance reasonably attainable between the interests of the public in continued rail service and the constitutionally protected rights of the railroad's creditors.

The Plan is divided into essentially seven major parts, plus a Conclusion. Other witnesses will be able to discuss in detail those specific areas of the Plan identified in their statements. I shall only attempt to briefly summarize the contents of the Plan here.

Part I, the Introduction, briefly reviews the reorganization proceedings and the financial results that precipitated the need for filing of the Plan relatively early in the reorganization proceeding.

Part II focuses on the present status of the Milwaukee, its present lines of railroad, the condition and rehabilitation requirements of its track and equipment, its ongoing branch line abandonment program, its current labor force and financial condition and its prospects for reorganization.

Part II underscores the magnitude of the Milwaukee's deteriorated condition and the staggering sums of money that would be needed to rehabilitate that system. Based on the findings of the Booz, Allen & Hamilton report, the total track rehabilitation requirements for the entire system approaches $540 million in 1977 dollars, the total investment commitment for the rehabilitation and acquisition of freight cars approaches $627 million and for locomotives $105 million in 1977 dollars. We have no ability to even begin funding this rehabilitation internally. Net results for 1979 for the Milwaukee apart from its subsidiaries, are projected at a loss of about $138 million. If operation of the entire system is to be maintained into the early part of 1980, additional borrowings of $40 to $50 million will be required this year.

There does not appear to exist any available source for the almost three quarters of a billion dollars in track and equipment rehabilitation and acquisition funds that would be required to create a viable operation. Even with such a massive investment, only a relatively small Net Railway Operating Income (NROI) level can be projected which would be totally insufficient to support debt service on the new funds required for track and equipment rehabilitation. Due to the historically weak competitive condition of the Milwaukee in the transcontinental market, it is unlikely that even that small NROI could actually be achieved. Mr. Hillman and I conclude that the Milwaukee system as an entirety cannot be reorganized as a viable entity. It is our view that a physical restructuring of the Milwaukee Road is mandatory if it is to be successfully reorganized at all.

Part III of the Plan, Physical Restructuring Plan, identifies the lines around which we believe the Milwaukee Road can be reorganized, referred to in the Plan as "Milwaukee II". In essence, we propose to reorganize an operating railroad of 3200 route miles providing service to Louisville, Chicago, Kansas City, Milwaukee, the Twin Cities and Duluth with a western terminus at Miles City, Montana. The Milwaukee Land Company and the Milwaukee Motor Transportation Company will be included as subsidiaries of Milwaukee II. The underlying Booz, Allen & Hamilton analysis which led to creation of the Milwaukee II configuration and the reasons for including the Miles City line and the Kansas City line in Milwaukee II are covered in detail in the Plan.

23,000 freight cars and 355 locomotives will be needed to operate Milwaukee II long term. All of the locomotives and all but 3700 of the required freight cars will come from the current fleet. Car rehabilitation will require about $36 million and locomotive rehabilitation will cost about $38 million in 1977 dollars. Total track rehabilitation requirements for Milwaukee II are projected at $141 million in 1977 dollars. We believe that all of these rehabilitation projects can be financed through internal and external sources of funds, without new federal funding legislation.

Reorganizing Milwaukee II would save most of the Milwaukee's jobs. Including persons engaged in rehabilitation work, the Milwaukee II work force is projected to range from 6300 to 6700 persons for the period 1980 through 1984. Opportunities are available in the industry for the remaining employees. We ask the help of our employees to achieve a successful reorganization. Ten specific areas are identified where work rule changes could result in savings to Milwaukee II of more than $11 million annually.

The earning potential of Milwaukee II is presented in the form of a five year forecast. Assuming for purposes of financial calculations, a start up date of January 1, 1980, we believe a positive NROI of $18.6 million can be achieved by 1984. The key underlying assumptions used in preparing the forecast along with criteria for evaluating the performance of Milwaukee II are provided in the Plan.

With over 6400 route miles of the present Milwaukee Road outside of Milwaukee II, the disposition of these properties for maximum value is an important concern. Every possible effort is being made to sell as operating lines, portions of the lines of Milwaukee which cannot be included in Milwaukee II. We believe that it will be possible to sell a total of about 1,660 route miles for use by others in railroad operations. The segments that we believe can be sold and the list of prospective purchasers are identified in the Plan.

These lines bear a gross liquidation value of about $110 million in current dollars although it is impossible to determine at this time whether this entire amount will be realized from the sales. Most importantly, we believe that through these controlled transfers of lines, rail services will continue to be available for more than 94% of current Milwaukee shipments when the physical restructuring plan is completed. Of current Milwaukee shipments handled west of Miles City, rail services will continue for approximately 90%.

The remaining 4,940 route miles will be abandoned and sold to recover their salvage values. Although the exact value of proceeds that may be recovered from salvage of these lines and from sales of other real estate properties is impossible to estimate, approximately $140 million appears likely over the long term.

Part V, Labor Force with Continuing Employment, deals with the extent to which present employees who cannot be employed by Milwaukee II may be hired by other rail carriers purchasing lines as operating railroad properties or may be employed to wind up the business of the Milwaukee outside of Milwaukee II or may be able to take advantage of available positions with other railroads in the country.

Part VI of the Plan, deals with the classical issue of financial restructuring. Set forth in the Plan are the interim cash requirements of Milwaukee II, the treatment of claims in the consummated plan, the proposed Tender Offer program, the extent and impact on Milwaukee II of labor protection, the proposed labor protection settlement program and the long term ability of Milwaukee II to meet fixed charges.

We believe that the cash requirements of Milwaukee II to finance operating losses, track and equipment rehabilitation, and possible labor protection in the interim between consummation of the Plan and 1984 can be met through the use of additional ERSA funds, borrowing from the property sales proceeds account and 4-R Act rehabilitation and restructuring funding. Initial estimates of the amounts needed from each specific source are set forth in the Plan. Most importantly, such funding can be accomplished under existing funding programs as extended. No new legislation need be enacted.

The Plan provides for the treatment of 14 categories of claims outstanding against the Debtor's estate. As a means of settling as many secured claims as possible before consummation of the Plan, we have proposed a "Tender Offer Program" for the present mortgage bondholders wherein newly created Milwaukee Land Company mortgage bonds would be offered by the Milwaukee Land Company in exchange for the existing mortgage bonds of the Milwaukee Road at exchange rates specified in the Plan. Acceptance of the Tender Offer would afford the bondholders an immediate interest paying bond in exchange for an uncertain recovery at the conclusion of the reorganization proceedings. It would also greatly improve the balance sheet of the Milwaukee and facilitate securing additional funding for track and equipment rehabilitation projects.

Perhaps the largest unknown financial factor is the extent of labor protection claims for severed employees. While the size of such potential labor protection claims cannot be calculated with any degree of certainty for a variety of reasons, a reasonable estimate would be in the vicinity of $325 million. Calculation of this estimate is described in the Plan. The Plan makes it clear that a request that this level of claims be paid immediately or at any time in cash would prevent reorganization of any portion of the Milwaukee and could only result in further job losses. On the other hand delaying payments could work a hardship for employees.

A practical solution is to establish a labor protection settlement fund from which severed employees could recover at the time of severance prompt and certain payment of a smaller amount of money than would otherwise be the case.

The ability of Milwaukee II to meet fixed charges including debt service for principal and interest of new 4-R Act §511 obligations together with the current funding of future dividends and redemption payments for the redeemable preference shares and dividends on preferred stock are described in the Plan. These obligations will require $16.5 million in 1985 and subsequent years.

Although Mr. Hillman and I are confident that Milwaukee II can succeed if given a proper chance, we cannot guarantee its success. That will depend on many factors some of which are beyond our control. In Part VII of the Plan, we have set forth those factors we consider to be particularly important in achieving a successful reorganization of Milwaukee II. These include a commitment from management to streamline its operations and improve its effectiveness, improvements in labor productivity and availability of capital sufficient to finance the necessary rehabilitation of track and equipment.

But, in our view, the most critical factor in achieving a successful reorganization of Milwaukee II is the prevention of a total collapse of all of the Milwaukee's operations. Total shutdown would put an end to Milwaukee II before it ever had a chance to begin. All of the careful planning that has gone into this Plan would be for naught. The resulting loss of service to the public, the loss of jobs, the loss of an organization to rebuild the Milwaukee and the chaos that would inevitably ensue would benefit no one. We are facing such a collapse, however, due to both a shortage of cash and the catastrophic condition of substantial portions of our physical plant. To begin with the cash situation, a collapse cannot be avoided if the railroad runs out of cash and is unable to meet its payroll and other current expenses. Without a further injection of funds the railroad's cash will be exhausted sometime in October. The fact is, that borrowings of at least $40 million would be necessary to maintain the operation of the entire Milwaukee into the first several months of 1980 and an additional $150 million would be needed to sustain operation through the entire year. No such funds are available. The fact is, that with all our financial needs there are virtually no remaining sources of cash available to continue operations through the Fall. The only cash presently available to maintain operations after use of the ERSA funds is a sum of less than $15 million in the property sale accounts and the Milwaukee Land Company. For the first time, Federal emergency assistance under ERSA is no longer available to sustain operations across the entire system. The DOT has determined that any further ERSA money must be used only for those portions of the system which are reorganizable. Thus, we cannot fall back on federal assistance to pull the entire system through as we did earlier this year.

The fact is that the physical condition is nearly as bad. The condition of the Milwaukee's track continues to deteriorate and slow orders continue to mount. Mr. Cruikshank's and Mr. Williamson's testimony show that substantial portions of our track, including lines west of Miles City, fail to comply with even the minimum 10 mph track safety standards of the FRA. Much of the cash that is available in the escrow account and the Land Company would be needed just to restore the non-Milwaukee II segments to the minimum standards, let alone to competitive operation.

I fully recognize that we cannot rely on the usual administrative processes to quickly confine operations to the lines of Milwaukee II. Even under highly expedited procedures, it is unlikely that those portions of the Milwaukee which are not within Milwaukee II can be completely abandoned before the end of 1980. The reasons why this is necessarily so are discussed at pages 58-59 of the Plan.

It is critical, nonetheless, that the Commission act promptly and favorably on our application to abandon the Pacific Coast Extension. Should the Reorganization Court deny our pending embargo request the inevitable collapse of the Milwaukee will require that the trackage west of Miles City be abandoned and our major markets transferred to other railroads. Should the reorganization court approve the embargo request, directed service will provide eight months for permanent solutions to be found. In this context expedited review of this application and of petitions to sell segments to other railroads is clearly required.

Until these lines are abandoned, shippers throughout our system will continue to endure deteriorating service. They will continue to be unable to make long term transportation decisions because of uncertainty over the very future of our service. Not until we abandon these lines can we turn over all but 10% of our shipments in the territory to solvent railroads. The long list of shippers appearing in this proceeding in favor of abandonment attests to the importance of prompt and favorable action on the part of the Commission.

Short of new legislation authorizing massive subsidies that would not somehow crush Milwaukee II under an unbearable load of additional debt, abandonment is a necessary step toward a permanent solution. The alternative under present circumstances is simply collapse and inevitably chaos leading to a massive loss of rail service, of jobs and of any chance to reorganize the Milwaukee Road. We must not let that happen.

I wish only to impress upon this Commission, upon labor, the creditors, the shippers, the stockholders, the government agencies and the public that the time has come to face the hard issues, to swallow hard and to do what must be done or there will shortly be no Milwaukee Road left to reorganize.

In my opinion with the advice of the United States Department of Transportation, this Commission has the opportunity to achieve a private sector solution to the problems of the Milwaukee within the framework of existing law. Under the circumstances, I believe I would be derelict in my duty if I failed to recommend such a solution.

VERIFICATION

STATE OF ILLINOIS)
)SS
COUNTY OF C O O K)

RICHARD B. OGILVIE being duly sworn deposes and says that the foregoing statement is true and correct to the best of my knowledge and belief.

[signature]
(Signature)

Subscribed and sworn to before me a notary public in and for the State and County above named, this 30th day of August, 1979.

Joanne H. Caston
Notary Public

My commission expires: July 24, 1982