

**FAX**

**COPY**

Date 1-7-03

Number of pages including cover sheet 10

TO: John Kelliher

FROM: PAT FOSTER  
Illinois Commerce Commission

Phone  
Fax Phone

Phone  
Fax Phone 217-524-8928

CC:

REMARKS:  Urgent  For your review  Reply ASAP  Please Comment

*Kathy -  
Please docket as  
part of case  
T 01-0039*

*Thanks!  
KC*

**RECEIVED**  
JAN 7 2003

Illinois Commerce Commission  
RAIL SAFETY SECTION

**DOCKETED**

NOTE: When the print dialogue box appears, be sure to uncheck the Annotations option.

AO 398 (Rev. 05/00)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

NOTICE OF LAWSUIT AND REQUEST FOR  
WAIVER OF SERVICE OF SUMMONS

TO: (A)

as (B)

of (C)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Northern District of Illinois and has been assigned docket number (D)

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (E) days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this \_\_\_\_\_ day of  
January, 2003  
(Month) (Year)

  
Signature of Plaintiff's Attorney  
or Unrepresented Plaintiff

- A—Name of individual defendant (or name of officer or agent of corporate defendant)
- B—Title, or other relationship of individual to corporate defendant
- C—Name of corporate defendant, if any
- D—Docket number of action
- E—Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

NOTE: When the print dialogue box appears, be sure to uncheck the Annotations option.

AO 399 (Rev. 05/00)

# UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

## Waiver of Service of Summons

TO: James A. Fletcher  
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Mary Frances Squires, acknowledge receipt of your request  
(DEFENDANT NAME)

that I waive service of summons in the action of Wisconsin Central Ltd. v. City of Des Plaines, et al  
(CAPTION OF ACTION)

which is case number 03 C 00060 in the United States District Court  
(DOCKET NUMBER)

for the Northern District of Illinois.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after 01/03/03,  
(DATE REQUEST WAS SENT)  
or within 90 days after that date if the request was sent outside the United States.

\_\_\_\_\_  
(DATE) (SIGNATURE)

Printed/Typed Name: Mary Frances Squires

As \_\_\_\_\_ of \_\_\_\_\_  
(TITLE) (CORPORATE DEFENDANT)

### Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

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AO 399 (Rev. 05/00)

# UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

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\_\_\_\_\_  
(DATE) (SIGNATURE)

Printed/Typed Name: Mary Frances Squires

As \_\_\_\_\_ of \_\_\_\_\_  
(TITLE) (CORPORATE DEFENDANT)

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RECEIVED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JAN 03 2003

MICHAEL J. ... IS  
CLERK, U.S. DISTRICT COURT

WISCONSIN CENTRAL LTD., )  
an Illinois corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THE CITY OF DES PLAINES, an Illinois )  
municipal corporation, KEVIN K. WRIGHT, )  
RUTH K. KRETSCHMER, TERRY S. )  
HARVILL, EDWARD C. HURLEY and )  
MARY FRANCES SQUIRES, in their )  
capacity as Commissioners of the Illinois )  
Commerce Commission, )  
 )  
Defendants. )

Case No. 03C00060

JUDGE ZAGEL

MAGISTRATE JUDGE  
GERALDINE SOAT BROWN

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Wisconsin Central Ltd. ("WCL"), by its attorneys and for its complaint against defendants City of Des Plaines ("Des Plaines"), Kevin K. Wright, Ruth K. Kretschmer, Terry S. Harvill, Edward C. Hurley and Mary Frances Squires, states as follows:

Parties

1. Plaintiff WCL is a corporation organized under the laws of the State of Illinois with its principal place of business in Rosemont, Illinois. WCL is engaged in the business of providing interstate rail freight service. WCL owns track, right-of-way and other property and operates as a rail carrier in the State of Illinois.
2. Defendant Des Plaines is a municipal corporation organized under the laws of the State of Illinois and located in Cook County, Illinois.

3. Defendants Wright, Kretschmer, Harvill, Hurley and Squires are the duly-appointed commissioners of the Illinois Commerce Commission ("ICC") and are being sued in that capacity. The ICC is an administrative agency established pursuant to 220 ILCS § 5/2-101, et seq. As commissioners of the ICC, Wright, Kretschmer, Harvill, Hurley and Squires are charged with carrying out the ICC's duties and responsibilities and enforcing various statutes relating to, inter alia, rail carriers operating in the State of Illinois. One of the statutes which the ICC has responsibility for enforcing is 625 ILCS § 5/18c-7401, which provides in pertinent part that the ICC has the authority to require the "reconstruction . . . of any railroad across any highway . . . whether such crossing be at grade or by overhead structure or by subways." In other words, the ICC is given the authority, inter alia, to require a railroad to reconstruct a bridge or viaduct owned by the railroad and used to carry the railroad's track over a highway. The ICC is also given the authority to require that the railroad pay part or all of the cost of the reconstruction even where the reconstruction is not necessary for safe railroad operations.

#### Jurisdiction and Venue

4. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 in that it involves an action arising under the Constitution and laws of the United States. The Court also has jurisdiction over this case pursuant to 28 U.S.C. § 1337 in that it involves an action arising under an Act of Congress regulating commerce, specifically, the ICC Termination Act of 1995 ("ICCTA"), Pub. L. 104-88, 109 Stat. 806.

5. Venue over this case is proper in this district pursuant to 28 U.S.C. § 1391(b) since a substantial portion of the events giving rise to WCL's claim occurred in this district and the property that is the subject of this action is situated in this district.

### Material Facts

6. WCL owns and operates a rail line ("WCL Line") consisting of one track that runs through Des Plaines primarily in a north-south direction.

*WCL line  
crosses  
UP line*

7. While running through Des Plaines, the WCL Line crosses at-grade a rail line consisting of two tracks owned by the Union Pacific Railroad Company ("UP"), also an interstate rail carrier. The rail line of the UP will be referred to as the "UP Line."

8. This crossing of the UP Line and WCL Line is located at what is commonly known as a diamond (for the shape created by the crossing of the tracks). The diamond sits on top of a viaduct or bridge ("the Bridge") which runs over U.S. Route 14 in Des Plaines. U.S. Route 14 is a roadway under the jurisdiction of the Illinois Department of Transportation ("IDOT").

9. UP and WCL own the Bfidge. UP regularly maintains the Bridge, with WCL and UP sharing the cost of maintenance.

10. On May 21, 2001, Des Plaines instituted an action before the ICC requesting that UP and WCL construct minor "alterations" to the Bridge to prevent debris from falling onto U.S. Route 14. This proceeding was docketed as Case No. T01-0039 before the ICC.

11. In response to Des Plaines' petition before the ICC, UP, with the support of WCL, has performed a significant amount of work on the Bridge in an effort to prevent debris from falling onto U.S. Route 14. In addition, in order to resolve the concerns that prompted Des Plaines to institute its action at the ICC; UP and WCL have agreed with Des Plaines to perform additional work at their expense that will prevent debris from falling onto U.S. Route 14 in the future.

12. On October 30, 2002, at a meeting unrelated to the pending proceeding before the ICC, IDOT presented a proposal to Des Plaines, UP, and others that called for a realignment of U.S. Route 14 and the replacement of the Bridge with two new bridges to carry rail traffic over the realigned U.S. Route 14. The proposal was part of a plan developed by IDOT to make improvements to U.S. Route 14 so as to improve the flow of traffic on the highway for the benefit of motorists using the highway.

13. In its proposal, IDOT called for IDOT to pay one-third of the cost and UP and WCL to pay two-thirds of the cost of replacing the Bridge with the two new bridges.

14. On December 10, 2002, UP sent a letter to IDOT, with a copy to numerous other parties, including Des Plaines, rejecting IDOT's proposal. UP explained that since the proposal was primarily a highway project with little, if any, benefit to UP and WCL, the proposed cost division was unacceptable. UP also informed IDOT that the Bridge has, at a minimum, a twenty-year life remaining and does not need to be replaced for purposes of safe railroad operations.

15. After receiving UP's letter, Des Plaines informed UP and WCL that UP's position was unacceptable and demanded that the railroads agree to replacement of the Bridge. Des Plaines has now proposed to amend its petition in Docket TO1-0039 to ask that the ICC order UP and WCL, at their sole expense, to replace the Bridge with two new bridges as proposed by IDOT.

16. The ICCTA became law on January 1, 1996. Among other things, the ICCTA amended and recodified the Interstate Commerce Act, 49 U.S.C. § 10101, et seq. As amended by the ICTA, 49 U.S.C. § 10501(b) gives the Surface Transportation Board ("STB") exclusive jurisdiction over transportation by rail carriers, such as WCL, and the facilities of such

carriers, including the Bridge. Section 10501(b), as amended by the ICCTA, contains an express preemption provision that provides that state regulation of interstate rail carriers such as WCL is preempted.

Claim for Relief

17. As a result of Des Plaines' threat to amend its petition in Docket T01-0039 and seek an order directing UP and WCL to replace the Bridge as proposed by IDOT at their sole expense, there is a case of actual controversy between WCL, on the one hand, and Des Plaines and Wright, Kretschmer, Harvill, Hurley and Squires, on the other hand, that is appropriate for the Court to resolve by declaratory judgment pursuant to 28 U.S.C. § 2201.

18. WCL is entitled to a declaratory judgment in its favor determining that the authority granted to the ICC by 625 ILCS § 5/18c-7401 has been preempted by 49 U.S.C. § 10501(b), as amended by the ICCTA, to the extent that that authority may be used to require WCL to replace the Bridge as proposed by IDOT and Des Plaines.

19. Unless enjoined by the Court, Des Plaines will begin a proceeding at the ICC pursuant to 625 ILCS § 5/18c-7401 and the ICC, acting through Wright, Kretschmer, Harvill, Hurley and Squires, will proceed to determine whether to order WCL to replace the Bridge with two new railroad bridges at WCL's expense. WCL will sustain injury to its property as a result of such actions.

20. WCL lacks an adequate remedy at law.

WHEREFORE, WCL prays that the Court enter judgment in its favor and against defendants Des Plaines, Wright, Kretschmer, Harvill, Hurley and Squires:

1. Declaring that 49 U.S.C. § 10501(b), as amended by the ICCTA, preempts the authority granted to the ICC under 625 ILCS § 5/18c-7401 to the extent such authority is used to require WCL at its expense to replace the Bridge as proposed by IDOT and Des Plaines.

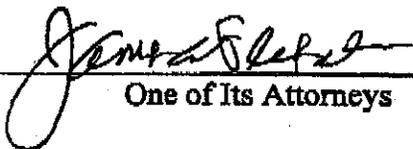
2. Enjoining defendants from taking any action that would require WCL to replace the Bridge with two new railroad bridges;

3. Awarding WCL its costs in bringing this action; and

4. Awarding WCL such further relief as may be deemed appropriate by the Court.

Dated: January 3, 2003

WISCONSIN CENTRAL LTD.

By:   
One of Its Attorneys

Of Counsel

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