UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

TEAMSTERS LOCAL 20 *Charged Party* and MIDWEST TERMINALS OF TOLEDO INTERNATIONAL, INC. *Employer* and INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1982 *Party-In-Interest*	:	**Case No. 8-CD-86589** **10(k) Hearing**

POST HEARING BRIEF OF THE EMPLOYER,
MIDWEST TERMINAL OF TOLEDO INTERNATIONAL, INC.

I. STATEMENT OF THE CASE

On October 24, 2012 the parties participated in a formal hearing pursuant to § 10(k) of the National Labor Relations Act (the "Act"). The hearing resulted from an unfair labor practice charge filed by Midwest Terminals of Toledo International, Inc. ("Company" or "MWTTI") on August 3, 2012. The Company alleged that Teamsters Local 20 ("Local 20") violated § 8(b)(4)(D) of the Act by engaging in proscribed activity with the object of forcing or requiring the Company to assign certain work to employees represented by Local 20 instead of employees represented by the International Longshoremen's Association, Local 1982 ("Local 1982") in connection with certain work at the Company's facility located in Toledo, Ohio. The Company strongly prefers that the work in dispute be awarded to the employees who are represented by

Local 20. Moreover, that various factors the Board weighs when making a determination under § 10(k) of the Act favor an award of the work in dispute to the employees represented by Local 20.

II. THE DISPUTE

A. Stipulated Facts

At the outset of the Hearing the parties reached a multitude of stipulations. The Company is on Ohio Corporation[1] with a place of business in at 3518 St. Lawrence Drive, Toledo, Ohio, 43605. (Transcript ["Tr."] p. 9.) The Company's official name is Midwest Terminals of Toledo International, Inc. (Tr. p. 10.) The Company is engaged in the business of providing stevedoring and warehouse services to shipping companies that are engaged in interstate and foreign commerce. (Id.) Furthermore, in the course and conduct of its business operations, the Company derives gross annual revenue in excess of $500,000. (Id.) Local 20 and Local 1982 are labor organizations within the meaning of §2(5) of the Act. (Id.)

The work in dispute set forth on the Notice of Hearing reads as follows: "[t]he loading, unloading, and movement of cargo and materials on the east dry side of the St. Lawrence Drive of the Company's facility located at 3518 St. Lawrence Drive, Toledo, Ohio." (Tr. p. 11.) Notwithstanding, the parties stipulated that the work in dispute is as follows: "[t]he loading, unloading and movement of cargo and materials [at] the Company's facility located at 3518 St. Lawrence Drive, Toledo, Ohio ("Work in Dispute"). (Tr. p. 12.)

The Company is not failing to conform to an order or certification of the Board determining the bargaining representative for the employees performing the work in dispute. (Tr. pp. 12-13.) Both Local 20 and Local 1982 claim the work in dispute. (Tr. p. 13). There is

[1] Company's state of incorporation is Ohio. (Tr. p. 9.)

no agreed upon method for the voluntary adjustment of the disputed work at issue which would bind all the parties.[2] (Tr. pp. 13-14.) Contrary to the Company and Local 20, Local 1982 refused to stipulate that there was reasonable cause for the hearing. (Tr. pp. 14 & 18.) Nonetheless, the parties did stipulate that Local 20 Business Agent Scott Klingler ("Klingler") sent a letter dated July 31, 2012 to Midwest's Human Resources Manager Chris Blakely ("Blakely") threatening to picket if the Company withdraws work from members of Local 20. The relevant portion of the letter reads:

> It has recently come to my attention that an affiliate of the International Longshoremen's Association is claiming work presently performed by members of Teamsters Local 20. In fact, it is my understanding that an arbitration proceeding will take place in the near future where at least one of the issues will be whether members of the International Longshoremen's Association are entitled to perform work presently performed by members of Teamsters Local 20.
>
> Please be advised that Teamsters Local 20 takes very seriously any threat to withdraw work from bargaining unit members. Specifically, in the event Midwest Terminals improperly withdraws work from the bargaining unit it currently represents based upon the actions of other labor organizations, Teamsters Local 20 will engage in any and all efforts to fight such a withdrawal of work, including, but not limited to picketing activities to protest the unlawful withdrawal of work from the members of Teamsters Local 20.

(Joint Exhibit ["Jt. Ex."] 6.) Finally, the parties stipulated that there are no court proceedings pending between the parties seeking an injunction in this matter. (Tr. 13-14.)

B. Background and Facts of the Dispute

1. The Company's Operations/Facility

The Company provides stevedoring services (loading/offloading of vessels, trucks and trains) for interstate and foreign commerce. (Tr. pp. 33-34.) The Company also provides

[2] The Company and Local 1982 did attempt to obtain Local 20's consent to mediate this dispute in August 2012. However, Local 20 declined. (Tr. pp. 84 & 113.)

warehousing services. (Id.) The Company's facility is approximately 125 acres. (Tr. p. 35.) The facility is divided by St. Lawrence Drive. (Tr. p. 38 & Jt. Ex. 5-B.) The west side of St. Lawrence Drive is referred to as the "water side" and the east side of St. Lawrence Drive is referred to as the "dry side." (Tr. pp. 36-37.) The Company employs members of both Local 20 and Local 1982, Local 1982 on the water side and Local 20 on the dry side. (Tr. p. 44).

There are a total of seven warehouses at the Company's facility, one of which is being disassembled -- warehouse A on the water side. (Tr. pp. 36, 41 & Jt. Ex. 5-B.) One of the warehouses is certified for storing cargo/commodities in the Federal Trade Zone ("FTZ"). (Tr. p. 34.) The cargo/commodities stored in FTZ warehouse is regulated by the Government. (Tr. p. 35.) The FTZ warehouse is located on the dry side of the facility. (Tr. p. 36 & Jt. Ex. 5-B). Five of the warehouses are certified by the London Metal Exchange ("LME"). (Tr. p. 42.) Customs regulates everything that is to be stored in the LME warehouses and only certain metals can be stored in these warehouses. (Id.) There are 3 LME warehouses on the dry side and 2 LME warehouse on the waterside.[3] Prior to 2009, there were no LME certified warehouses on the water side and, as such, all cargo required to be stored in an LME certified warehouse was stored on the dry side. (Tr. pp. 43-44.)

Once the cargo is offloaded the vessel by Local 1982, it will either be stored on the water side or the dry side. (Tr. p. 47). The Company's decision as to where the cargo will be stored is dictated by customer demand and the amount of available dock space. (Tr. pp. 47-48). If the Company decides to store the cargo on the dry side, it is transported by truck. (Tr. p. 48). In these situations, Local 1982 offloads the vessel and proceeds to load the product onto trucks. (Id.) The trucks, operated by a third party independent contractor, are driven across St.

[3] As noted earlier, warehouse A which is LME certified is being disassembled.

Lawrence Drive to the dry side where Local 20 unloads the product and subsequently stores it in the appropriate location or warehouse on the dry side. (Tr. pp. 48-49.) This process is extremely inefficient and expensive for the Company, costing it nearly $10,300 per vessel and roughly $200,000 per year. (Tr. pp. 49-51). In essence, the product is being offloaded and loaded multiple times.

3. Teamsters Local 20

Local 20 has represented employees at the Company's facility since the 1950's and the Company is currently a signatory to a collective bargaining agreement with Local 20. (Tr. pp. 44-45, 80-81, 103 & Jt. Ex. 1). Currently, six of the Company's employees are represented by Local 20. (Tr. p. 99.) Employees represented by Local 20 have customarily performed work on the dry side of the Company's facility moving product in and out of warehouses and around the facility using forklifts and front end loaders. (Tr. pp. 44, 63 & 104-105). Past agreements with Local 20 covered the same work. (Tr. p. 44-45.)

4. International Longshoremen Local 1982

The Longshoremen have represented employees at the Company's facility since the 1970's. Local 1982 represents employees on the water side of the facility. (Tr. pp. 45-46). The Company hires gangs of Longshoremen workers (hatch foreman, laborers in the hatch, crane operators and anybody else that has anything to do with offloading vessels) to offload vessels on the wet side of the facility. (Tr. p. 46.) The Company generally employees eleven Local 1982 members. (Tr. p. 99.) However, the number could climb to as many as fifteen members depending upon the number of vessels coming in. (Id.) The contract with Local 1982 expired on December 31, 2010, but the parties are still operating under the terms of that agreement. (Tr. p.

45 & Jt. Ex. 3.) The Company is also party to a Master Agreement with the Longshoremen (Tr. p. 81 & Jt. Ex. 2.)

5. The Company's Preferred Modification in Operation

As noted earlier, the Company believes the current process of transferring product from the water side of the facility to the dry side is grossly inefficient. Not only is the process inefficient, it comes at a significant cost to the Company. Local 20 Steward Charlie Erichson ("Erichson") testified that there are times when hourly employees represented by Local 20 are waiting one to two hours a day for the product to be transferred from the water side to the dry side. (Tr. pp. 132.) Yet another added cost to the Company is the fact that Members of Local 20 are paid even when they are simply sitting and waiting for the product. (Tr. pp. 132-133.) Accordingly, the Company prefers to assign all warehousing work –loading, unloading, and movement of cargo and materials – at its facility (both the dry side and wet side) to those employees represented by Local 20. (Tr. pp. 59, 63-64 & 242). This would also include the sponge coke located on the dry side as members of Local 20 are qualified to operate the small Libra (a material handler) and front end loaders can also be used. (Tr. p. 242.)

Local 20 is qualified to perform this work whether it is to be performed on the dry side or water side and, more importantly, they perform it in an efficient manner. (Tr. pp. 58, 119-120, 127 & 130.) Members of Local 20 have all the required skills and/or certifications necessary to perform the work. (Tr. pp. 73-76, 107, 119, 120, 127 & 134-135.) The Company's Operations Manager, Terry Leach ("Leach")[4] described Local 20's skills, qualifications and the Company's preference for members of Local 20 to perform the Work in Dispute as follows:

[4] Leach has been the Company's Operations Manager since July 2007. (Tr. p. 33.)

Q. Are the employees represented by Teamsters Local 20 qualified to do this work?

A. Oh, yeah, they're -- they're efficient in what they do.

Q. In your experience as director of operations would the Company's efficiency suffer if the employees represented by the Teamsters were prohibited from performing this work?

A. We'd shut the port down if we didn't have the Teamsters.

Q. And why is that?

A. They're a self-directed workforce. They're very good at what they do. Their attention to detail, their skills and abilities surpass anything that I've ever experienced.

Q. Does the Company have a preference as to which employees perform warehouse work on the dry side of St. Lawrence Drive?

A. Well, as I alluded to earlier, I mean, their efficiency, their safe operation, their ability to actually inventory, attention to detail. It's insurmountable.

Q. In your -- excuse me. I didn't mean to cut you off. Go ahead.

A. And -- and like I say, you know, it's just something that -- that they're very, very good at what they do because they're warehousemen. They -- they do this with their eyes closed.

Q. In your experience as the director of operations, is there -- is there another alternative for the Company to be even more efficient in what it does?

A. Well, efficiency would be the Teamsters actually, I know it was said earlier, would actually be taking over all the warehousing.

Q. And what --

A. It'd be the most efficient, most economical way of providing the service that they are so qualified to do. And, also, you know, I could foresee even more business at that port if we could just, you know, eliminate all the double and triple handling of product and, you know, it just -- it's such a waste.

Q. And when you say all the work, are you referencing work on the waterside of St. Lawrence Drive, as well?

A. Correct.

(Tr. pp. 58-59.)

The industry standard is to assign warehousing work to Teamsters and offloading/loading vessels to Longshoremen. (Id.) Lastly, the Company, at one time, assigned work to members of Local 20 on the water side as members of Local 20 used to drive the transfer trucks. (Tr. pp. 64-66.) It was standard practice until the Company hired a third party to drive the transfer trucks. (Tr. pp. 64-65 & 129-130.)

6. The Completing Claims to Work and Local 20's Threat of Prohibited Activity

Per the parties' stipulation, the Work in Dispute is as follows: "[t]he loading, unloading and movement of cargo and materials [at] the Company's facility located at 3518 St. Lawrence Drive, Toledo, Ohio. (Tr. p. 12.) Both Local 20 and Local 1982 claim the work in dispute. (Tr. p. 13). The Company first became aware of the dispute in October 2010. (Tr. p. 51.) At that time the Company received a shipment of pig iron that was offloaded by members of Local 1982 and immediately transferred to the dry side due to the fact that two other vessels were coming in. (Tr. p. 52.) Soon thereafter, Local 1982 Steward Miguel Rizo ("Rizo") crossed over to the dry side, without any authorization from the Company and proceeded to load pig iron onto a truck. (Id.) Consequently, Leach instructed Rizo to stop, as the dry side is where members of Local 20 load and unload trucks. (Id.) Subsequently, Leach held a meeting with Rizo and Teamster Steward Erichson regarding this incident. (Tr. p. 53.) During the meeting Rizo claimed the Work in Dispute and noted that he was "testing the waters." (Tr. p. 53 & 124.) Leach issued a verbal warning to Rizo for insubordination and violating Local 20's designated work area by operating his equipment in said work area without the Company's permission. (Tr. pp. 53-54 & Employer's Exhibit ["Er. Ex."] 1.) Rizo has not since performed work on the dry side nor has any other member of Local 1982. (Tr. pp. 55 & 124.)

Local 1982 continued to claim the Work in Dispute by filing of numerous grievances on a regular basis. (Tr. pp. 55, 84 & J. Ex. 4.) Specifically, Local 1982 is asserting that they should be performing the Work in Dispute. (Tr. pp. 66, & 95-96). Additionally, during conversations which occurred during contract negotiations[5] and grievance meetings, Andre Joseph ("Joseph"), Vice President of the Atlantic Coast District Council of the ILA informed Blakely, the Company's Human Resources that once Local 1982 touched the cargo, it was their work until it reached its final resting spot. (Tr. pp. 89, 92, 94, 168 & 175.) Joseph also told Blakely that the Teamsters would not even be operating at the facility beginning in 2013. (Tr. 89-90 & 92.) Local 20 Steward Erichson was the recipient of a similar statement from Local 1982 member Ralph Libey. (Tr. pp. 125-126.) Likewise, since August 2012, Local 1982 President Otis Brown ("Brown") and Steward Mark Lockett ("Locket") assert that their members should be performing the Work in Dispute during weekly conversations with Leach, the Company's Operations Manager. (Tr. pp. 68-69.) Lastly, Local 1982 continued to claim all work at the Company's facility and Joseph testified that Local 1982 would continue to file grievances claiming the Work in Dispute. (Tr. 171 & 206-207.)

After having learned of the grievances filed by Local 1982, Local 20 Business Representative Klingler instructed Blakely, the Company's Human Resources Manager, that the Work in Dispute belonged to the Teamsters. (Tr. p. 86.) This conversation took place in July 2012. Subsequent to this conversation, Klingler sent a letter to Blakely threatening to picket, among other things, if the Work in Dispute was assigned to members of Local 1982. (Tr. pp. 85,

[5] The Company and Local 1982 were in negotiations for a local agreement. However, the parties never reached an Agreement due in part to language regarding unfunded liability. (Tr. p. 90.) The Company wanted to retain the current contract language and Local 1982 did not. (Id.) Andre Joseph, Vice President of the Atlantic Coast District Council of the ILA said he would never sign an agreement with that language and it would be a dereliction of duty if he did so. (Tr. pp. 90-91 & 140.)

107 & Jt. Ex. 6.) Consequently, the Company filed an unfair labor practice charge against Local 20.[6] (Tr. p. 87.) During the Hearing, Klingler maintained that Local 20 was still claiming the Work in Dispute and would engage in picket or strike activity in order to protect its work jurisdiction. (Tr. pp. 107-108.)

III. LAW AND ARGUMENT

A. Applicability of Statute

The Board may proceed with a determination of a dispute under § 10(k) of the Act only if there is reasonable cause to believe that § 8(b)(4)(D) of the Act has been violated. See, *Seafarers Int'l Union*, 355 NLRB 302, 303 (2010). This requires a finding that there is reasonable cause to believe that there are competing claims for disputed work among rival groups of employees and that the party has used proscribed means to enforce its claim. Id. Furthermore, the Board will not proceed under § 10(k) of the Act if there is an agreed upon method in which to voluntarily adjust the dispute. Id.

Here, the parties have already stipulated that the work is in dispute and that there is no agreed upon method for a voluntary adjustment of the dispute. Additionally, the numerous grievances filed by Local 1982 constitute a claim for the work in dispute. See, *Plumbers District Council 16* (*L & M Plumbing*), 301 NLRB 1203-1204 (1991) (union's grievance asserting Company violated CBA by subcontracting work to non-union employees was a demand for the work). Accordingly, the sole issue which could prohibit the Board from proceeding is Local

[6] The Company and Local 20 did not conspire to use the NLRB proceedings as a means to deprive members of Local 1982 its work jurisdiction. (Tr. p. 97.)

1982's refusal to stipulate that reasonable cause exists that § 8(b)(4)(D) of the Act has been violated.[7]

1. Reasonable Cause Exists That Section 8(b)(4)(D) Has Been Violated

Reasonable cause exists that § 8(b)(4)(D) of the Act has been violated. Section 8(b)(4)(D) provides:

> It shall be an unfair labor practice for a labor organization or its agents –
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is –
>
> (D) forcing or requiring any Company to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such Company is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

In its July 31, 2012 letter to the Company, Local 20 threatened to "engage in any and all efforts to fight such a withdrawal of work, including, but not limited to picketing activities to protest the unlawful withdrawal of work …" Jt. Ex. 6.

Board precedent clearly holds that Local 20's threat is reasonable cause to believe the Act has been violated. See, *Local 7, Empire State Reg'l Council of Carpenters,* 344 NLRB. 910, 911 (2005) ("a threat to take employees off of the job or to engage in a sit-down strike if the work assignment is changed is sufficient to establish reasonable cause to believe that § 8(b)(4)(D) has been violated."); *Lancaster Typographical Union No.* 70 *(G.J.S. Lancaster),* 325 NLRB 449, 450-51 (1998) (finding a threat when the union stated that it would "take such action as

[7] See, Board's Exhibit 2 (Local 1982's Motion to Dismiss.)

necessary including but not limited to refusing to perform certain tasks ..."); *Plumbers Local* 24 *(E. L. &* S. *Contracting Co.),* 231 NLRB 158, 159 (1977) (threat to "take his men off the job" establishes reasonable cause to believe § 8(b)(4)(D) has been violated); *Operating Engineers Local 2 (PVO International),* 209 NLRB 673, 674-75 (1974) (finding a threat when union's attorney stated that the union "contemplated taking action, including picketing and cessation of work").

Local 1982 asserts that there is no reasonable cause because the Company never threatened to remove the work from Local 20. As plainly set forth above, Local 1982's assertion is contrary to established Board precedent. Moreover, it is well established that so long as the Union's statement, on its face, constitutes a threat to take proscribed action, the Board will find reasonable cause to believe § 8(b)(4)(D) has been violated. See, *Lancaster Typographical Union No.* 70 325 NLRB at 450-451, citing Teamsters Local 6 (Anheuser-Busch), 270 NLRB 219, 220 (1984). Additionally, the Board need not find that violation did, in fact occur, but only that a reasonable cause exists that such a violation occurred. See, *Local 7, Empire State Regional Council of Carpenters*, at 911, citing *Bricklayers Local 15* (*Fusco Corp.*) 278 NLRB 967, 968 (1986). Accordingly, this dispute is properly before the Board for a determination pursuant to § 10(k) of the Act and Local 1982's Motion to Dismiss should be denied.[8]

B. Merits of the Dispute

Section 10(k) of the Act compels the Board to make an affirmative award of disputed work after having considered various factors. See, *Seafarers Int'l Union*, 355 NLRB at 305, citing *NLRB v. Electrical Workers IBEW Local 1212* (*Columbia Broadcasting*), 364 U.S. 573, 577, 81 S. Ct. 330, 5 L. Ed. 2d 302 (1961). The Board has held that its determination in a

[8] See, Board's Exhibit 2.

jurisdictional dispute is an act of judgment based upon common sense and experience, reached by balancing the factors involved in a specific case. Id., citing *Machinists, Lodge 1743* (*J.A. Jones Construction*), 135 NLRB 1402 (1962). The following factors are relevant in making a determination in this particular case: collective bargaining agreements, Company preference and past practice, industry standards, relative skills and training and economy and efficiency of operations.

1. Collective Bargaining Agreements

The collective bargaining agreements favor a determination that the Work in Dispute be awarded to those employees represented by Local 20. There is no evidence of any Board certifications related to the employees involved in this dispute. Furthermore, Local 20's Agreement expressly covers forklift operators and warehousemen at the Company's facility whereas the expired Local 1982 Agreement does not expressly cover this work.

2. Company Preference and Past Practice

The Company's preference and past practice favor a determination that the Work in Dispute be awarded to those employees represented by Local 20. As noted above, the Company strongly prefers that the Work in Dispute be awarded to members of Local 20 due to their work ethic, their skills, their ability and their qualifications. Additionally, the Company's operations would become much more efficient in that the multiple handling of the same cargo would be eliminated. Moreover, Local 20 used to perform the Work in Dispute on the water side when they operated the transfer trucks currently being operated by third party. Lastly, Local 1982 members have not performed the Work in Dispute on the dry side in years[9], save for the October

[9] Tr. pp. 123-124, 202-203 & 243-244.

2010 incident in which Rizo was disciplined. Rizo has not since performed work on the dry side nor has any other member of Local 1982.

3. Industry Standards

Industry standards favor a determination that the Work in Dispute be awarded to those employees represented by Local 20. Leach, the Company's Operations Manager, testified that the area industry standard is to assign warehousing work to Teamsters and the loading/offloading of vessels to Longshoremen. Conversely, Joseph, Vice President of the Atlantic District Council of the ILA claimed that the Industry Practice was only the Longshoreman were in ports and no other unions worked inside the port. (Tr. p. 158.) Yet, on cross examination, he admitted that operating engineers operated the cranes in the Port of Indiana, where his home local is located. (Tr. p. 160.) Accordingly, this factor favors an award of the Work in Dispute to the employees represented by Local 20.

4. Relative Skills and Training

The relative skills and training favor a determination that the Work in Dispute be awarded to those employees represented by Local 20. As noted previously, members of Local 20 have the skills and proper training/certification necessary to perform the Work in Dispute. Specifically, the Company's Operations Manager testified that the Company would have to shut down the port if Local 20 were prohibited from performing this work. He praised their attention to detail, their skills and their ability to perform the Work in Dispute, including the sponge coke.

5. Economy and Efficiency of Operations

The economy and efficiency of operations favor a determination that the Work in Dispute be awarded to those employees represented by Local 20. When cargo is required to be stored on the dry side, it is transported by Truck. Local 1982 offloads the vessel and then loads the

product onto trucks. The trucks, operated by an independent contractor are then driven across St. Lawrence Drive to the dry side, where Local 20 unloads the product and subsequently stores the product in the appropriate location or warehouse on the dry side. Not only is this process extremely inefficient, it cost the Company it nearly $10,300 per vessel and approximately $200,000 per year. In essence, the product is being offloaded twice and loaded twice. By assigning the work to Local 20, the transfer trucks can be eliminated entirely. Members of Local 20 could simply drive their forklifts and front end loaders to the dry side and transfer the cargo eliminating any down time they previously encountered while waiting on the transfer trucks. Additionally, the process would be simplified in that the cargo would be loaded/offloaded once, as opposed to multiple times while being handled by two separate groups of employees.

IV. CONCLUSION

For all the reasons noted above, the Board should award the Work in Dispute to those employees who are represented by Local 20.

Dated this 14th day of November, at Dublin, Ohio

Respectfully submitted,

/s/ Ronald L. Mason

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 14, 2012, an electronic original of Midwest Terminal of Toledo International, Inc.'s, Post Hearing Brief was transmitted the National Labor Relations Board, Executive Secretary, via the Department Of Labor, National Labor Relations Board electronic filing system and, further, that copies of the foregoing Brief were transmitted to the following individuals by electronic mail:

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