CSX
TRANSPORTATION

Increased Railroad Protective Liability Insurance Limits.

It has been over 30 years since the Federal Highway Administration (FHWA), in 1980, established the reimbursement eligibility of basic RPL coverage with limits of $2,000,000 million per occurrence, $6,000,000 million aggregate on FHWA-funded projects. Recognizing that railroads' operating costs have increased dramatically since 1980, FHWA has implemented many new and revised regulatory provisions that have expanded the scope and raised the levels of reimbursable costs under Federal regulations and, specifically, Title 23. Nevertheless, FHWA has to date not increased the basic RPL limits to account for equally dramatic increases in railroads' risk exposure over this same period.

An adjustment to the basic RPL limits for FHWA-funded projects is currently permissible under 23 C.F.R. 646.111(b) which states, in part, "...In cases involving real and demonstrable danger of appreciably higher risks, higher dollar amounts of coverage for which premiums will be reimbursed from Federal funds shall be allowed." Further FHWA guidance provides that in determining whether higher coverage limits are necessary, consideration should be given to the size of the project, the amount and type of railroad traffic passing through the project area, and the volume of traffic generated by the contractor's activities.

This project involves the GDOT contractor using heavy equipment on or near railroad right of way and adjacent to active railroad tracks. This line segment moves all types of freight and there are no restrictions on the movement of hazardous material via this route.

The proposed activities at this project work site have a real and demonstrable danger of appreciably higher risks as a result of an event. These risks include, but are not limited to an event causing derailment of a train, damage to one or more locomotives, damage to one or more railroad cars and their cargo, damages to private or public property, damage to contractor equipment, the project work, construction material, and damage to private or public property. In addition to the potential for damage to property an event could cause injury or death to one or more railroad employees, contractor employees, state employees and the general public.

The following factors directly influence the potential cost of an incident involving railroad property or operations on a construction project, and illustrate the dramatic increase in risk exposure since FHWA established the basic RPL limits:

- The value of goods typically carried by railroads generally mirrors the state of the national economy as reflected in the Consumer Price Index (CPI), which has increased nearly 300 percent since 1980.
- The Railroad Cost Recovery Index (RCR), which measures railroad inflation in much the same manner as the CPI (i.e. by measuring changes in the price levels of inputs to railroad operations such as wages, fuel, materials and other operating expenses) has increased almost 340% since 1980.
- The railroad industry's actual operating expenses tripled between 1975 and 2011.
- The average cost of a railroad freight car in 1975 was $17,163. By 2010, that cost had more than quadrupled to $75,422.
- The average cost of a new diesel locomotive in 1975 was $250,000. The cost today is over $2,000,000 per locomotive. A new GenSet locomotive is approximately six times more expensive than the cost of a traditional diesel locomotive in rebuilt condition.
- The average railroad worker earned $15,324 in 1975. As of 2011, that figure had risen to $76,667.
- Virtually all rail lines carry or, over the course of a project's construction, will carry some sort of cargo that is deemed to be "hazardous".

As is evident from this data, the dollar amount of damages from possible events could be $5,000,000 or higher for a single event and therefore it is appropriate for CSXT to require RPL insurance with dollar amounts of at least $5,000,000 per occurrence and $10,000,000 aggregate. Without adequate RPL coverage levels, CSXT will routinely be exposed to substantial economic losses resulting from construction projects or other actions undertaken by outside parties or agencies and involving work on, over, beneath or near CSXT property that generally is of no direct benefit to CSXT.

Consequently and in light of the facts set forth above, as well as supporting documentation that is routinely available within the insurance industry further substantiating the need for increased levels of RPL coverage, CSXT remains firm in its position that increased levels of RPL are justified and permissible under the provisions of 23 C.F.R. 646.111(b).