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Dear Kim & Martin:

**Re: Mid-Continent Railway Historical Society, Inc. & Roland Lichter, et al.**

I have now come to a conclusion in the above referenced matter. Due to the length of time over which this matter has evolved I have attempted to explain my reasoning in some detail in the pages that follow.

**PREAMBLE:**

The background to the present Stipulation and Lease is a one year renewable lease dated 1984 on the basis of which Mid-Continent (M-C) operated the Saginaw #2 (#2) locomotive until 2000. No rent was paid for use of the engine, but M-C “*at its own cost and expense shall keep and maintain the equipment in like or better condition and working order consistent with the standards as set forth in the A.A.R. Manual of Standards and Recommended Practice*” and make “*all replacements, changes and additions to the equipment to the extent necessary or required from time to time by applicable laws and regulations of any state or governmental body.*”

A dispute arose between M-C and the representative of the owning group, Skip Lichter (Skip) over the proposed repair procedures, which led to litigation that was eventually resolved after intervention by the current arbitrator, William Parker, though the present Stipulation and Lease.

It is relevant that M-C had used #2 for 15 years rent free, and that M-C had some degree of obligation to return it to working order as a result.

## **Mid-Continent/Lichter Page 2**

The Stipulation stated, inter alia (selected for relevance and reference only):

*5. It is beneficial for both parties that the overhaul of the Saginaw #2 Engine occur as soon as possible and that defendant have a long-term lease to justify the cost of overhaul and/or to fulfil obligations that may exist under the existing lease.*

*6. Funding for the overhaul is dependent upon efforts by the defendant that cannot be set to a fixed schedule.*

And having regards to the current dispute:

*3. The parties shall jointly major overhaul Saginaw #2 Engine to proper working order according to Part 230 of the United States Federal Railroad Administration Regulations (FRA) and all other requirements of the FRA and other bodies with relevant jurisdiction over the locomotive. Terms of the major overhaul work are as follows:*

*A. Plaintiff shall prepare a Work Plan jointly with a representative or representatives of defendant describing in detail the work required to bring the Locomotive into working order....*

*B. Plaintiff will undertake the Major Overhaul Work to the Locomotive as specified in the Work Plan to a standard equal to or higher than the current standards of the Federal Railroad Administration, using plaintiff's own labor, that of other volunteer members of defendant's organization and contractors, as appropriate.*

*C. Defendant agrees to be responsible for costs of major overhaul of Saginaw #2 Engine up to \$200,000 subject to the following:*

*1) Plaintiff acknowledges that defendant is a non-profit corporation and will need to raise the funds necessary for the major overhaul work to Saginaw #2 in parallel to the existing commitments referred to below, potentially as part of a comprehensive Mid-Continent Steam Program, dedicated to raising funds specifically for the steam locomotives at Mid-Continent.*

*2) Plaintiff further acknowledges defendant has an existing commitment to major overhaul of another locomotive known as Montreal #1.*

*3) Plaintiff further acknowledges defendant has an existing commitment to major overhaul of CNW # 1385 for which significant funding has already been raised, all of which is restricted to the locomotive and has a sunset clause requiring performance.*

*4) Defendant shall immediately include the Saginaw # 2 Engine as part of the Mid-Continent Steam Program.....and shall review the requirements of Saginaw # 2 when funds are allocated.*

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The Stipulation anticipated that to make progress plaintiff (Skip) might incur expense in advance of defendant's (M-C's) ability to pay:

*7) Defendant will use its best efforts to repay such funds from funds raised for the Mid-Continent Steam Program as agreed in writing at the time the advance of funds was agreed.*

PERFORMANCE

What actually happened?

After the signing of the Stipulation in November 2003 WP acted as M-C's representative and prepared a draft work plan for the boiler. After WP ceased to be M-C's representative in November 2004 no other person was given that role, and communications between Skip and M-C were mostly conversations between Skip and the Manager, Don Meyer (Don), until he left in 2010, to be replaced as Manager by M-C's President, Jeff Bloohm (Jeff B).

No further formal work plans were prepared, jointly or otherwise. However Skip commissioned an engineering report on the boiler from Steam Operations Corporation in February 2005 which was the basis for the Bensman-led boiler repair and subsequent FRA Form 4 calculations.

In June 2010 Don Meyer commissioned a report from Steam Operations Corporation on the running gear of the locomotive, which was intended to be the basis for the work to be done on it. Skip took this into account in the subsequent restoration of the running gear, but his work has not been supervised or inspected by M-C representatives.

Skip worked on the overhaul himself and with others, employing and paying for all contractors and materials, and reporting the expenses to M-C, which duly recorded them. As the work proceeded these costs equalled and now exceed the \$200,000 anticipated in the Stipulation. None of these costs have been reimbursed by M-C.

In June 2015 Skip and his son Dan, anticipating completion of the locomotive, prepared a written Restoration Update for presentation to the M-C board of directors. Subsequent to this the board set up a Saginaw #2 Committee chaired by Jeff Huttenburg (Jeff H) to deal with the #2 issues. In November 2015 the committee raised the issue of "new terms for the lease of the engine" and there was one meeting between the Committee and Skip and Dan on December 12, 2015.

On January 2016 Jeff H wrote to Skip quoting wording from the Stipulation and essentially stating that M-C had no 'legal requirement' to reimburse the expenses incurred in the restoration of #2. It further stated that *"no work will be done on the infrastructure and capabilities to sustain steam at the Museum until we have an enforceable executed lease agreement that both parties agree to regarding the operation of the Saginaw #2"*.

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An email from Saginaw #2 Committee Member Colin O'Brien dated June 22, 2016 refers to the decision not to use the new tender tank, and then that *"As Jeff Huttenberg pointed out at our last meeting, the current lease puts the museum in a position where not running the engine may be the safest course of action from the museum's perspective.....Consider an annual or 18 month lease so that we can all re-enter steam operations in a position that allows us all to benefit."*

Then on June 27, 2016 M-C's lawyers wrote to me in my capacity as arbitrator requesting that I approve that *"the Lease be terminated at this time and the Saginaw be removed from Mid-Continent's property."*

I agreed to act as arbitrator, and after considerable correspondence with the two parties' attorneys, spent five days at Mid-Continent, from Thursday August 25 to Monday August 29. During this time I met and discussed the matter with Jeff Bloohm, Don Meyer, Skip & Dan Lichter and Rick Peters, and had telephone conversations with Jeff Huttenberg, Gary Bensman and Dennis Daugherty. Everyone to whom I spoke was extremely co-operative and answered questions freely and without reservations.

Unfortunately I was unaware of the existence of the Saginaw #2 Committee until I met Jeff B on Friday, and none of its members were available to meet. The Committee was responsible for the dealings with Skip for the twelve months or so leading up to M-C demanding that the Lease be terminated and the locomotive removed from their property. I was able to talk to the Committee Chairman Jeff H by telephone on Monday after noon. Committee Member Colin O'Brien did not return my calls.

**DEMAND FOR ARBITRATION**

The letter from M-C's lawyers commences with a Fact Summary. This states that "*Both the parties' Stipulation and Lease were based on the mutual assumption that the Saginaw would be fully overhauled in proper working order, approved by the FRA for use on the Museum's track, within a comparatively short period of time after these documents were executed in 2003, and that Mid-Continent would be able to operate the Saginaw and earn money from its operation to assist in paying for the restoration efforts thereafter during the remainder of the Lease term*".

I could not find any evidence to support the "*comparatively short period of time*". Jeff B, who signed the Stipulation and Lease on M-C's behalf, can recall Skip saying that it could be overhauled "*in two or three years*" back before the litigation, but that that was before the extent of the work was known, when he was thinking that only minimal repairs would be needed.

Neither Skip nor Don recall any expectation that #2 would be fully overhauled *within a comparatively short period of time* – indeed if anything quite the opposite. Jeff H was not involved at that time, and thus knew nothing of this. It is certainly not my understanding.

It was understood that the museum had existing commitments to the two other engines which would restrict the flow of funds for some years, and at the time neither I nor anyone else had any idea that Skip would be able to finance the work himself.

Indeed it could be argued that #2 has been overhauled in a comparatively short period of time when compared to the other two locomotives to which M-C had a commitment. Each has had hundreds of thousands of dollars spent on them with the entire resources of M-C at their disposal but their overhauls are far from complete even today. The expectation at the time was that one or both of these would have been finished before #2 and indeed it was definitely assumed that #1 would be. Instead in August 2016 1385 is waiting for a new boiler to be ordered and #1 has not been worked on since 2008.

The Fact Summary then states that "*for the past thirteen years, Lichter has worked on the overhaul of the Saginaw, but it is still not complete.*" While that is literally true, it is substantially complete, despite Skip having funded it single-handed, while neither 1385 or #1 are anywhere near complete.

The Fact Summary then states that "*Plaintiffs have not submitted a final Work Plan for approval by Mid-Continent.*" While that is true, Jeff B confirmed that since I ceased to be M-C's representative dealing with Skip in 2004 M-C has not appointed anyone to jointly prepare such a work plan, as required by the *Stipulation*.

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Certainly since Don left Skip has had limited contact with M-C's management. Left entirely without supervision Skip proceeded to overhaul the locomotive as best he could.

At the time of the Stipulation I was well aware of Skip's previous problems with the museum, which as well as criticisms of a personal nature extended to his being "a gravel pit mechanic" incapable of or unwilling to do work of the standard required for the overhaul.

Skip has been involved with M-C for a very long time, and I believe was President at one point. It is clear that the differences between him and some of the members, past and present, must have some justification. Feelings run extremely deep on both sides. However, at the time the Stipulation and Lease were signed both parties were aware of the past history and both resolved to work together to get #2 overhauled.

While Skip really was a mechanic at a stone quarry, as owner of the locomotive he had considerable experience of steam locomotive operation and repair, and understood the issues as well as anyone at M-C. Although his experience is in keeping things running rather than in major overhauls he was certainly capable of following the advice of those who knew more, as evidenced by the work done with Gary Bensman.

The wording of Clause 4 of the Stipulation was intended to enable M-C to ensure that Skip did the work to a suitable standard, but that required a joint effort on both sides. The two parties were to work together in the best interests of the locomotive, and thus by extension in the best interests of M-C's Steam Program. By failing to appoint a representative to work with Skip, for whatever reason, M-C left Skip with no choice but to carry on the work unassisted and unsupervised, if he was to achieve his goal of overhauling the engine.

The Fact Summary then makes reference to the Museum's not having the opportunity to approve contractors in advance. Again in the absence of a competent M-C representative with whom to discuss the project and seek such approval, it is understandable that this rarely happened. Certainly M-C's approval was sought for the selection of Gary Bensman as boiler overhaul contractor and Milwaukee Boiler as the place to carry out the work, this being the most significant portion of the overhaul.

Furthermore both Skip and Don confirmed that they would discuss progress from time to time while Don was Manager, but Don makes no claim to be an engineer. There appears to be no documentation of M-C asking Skip to perform as the agreement required, although Don reported that he regularly discussed this with Skip and his partner, Linda. Clearly Don as Manager intended that the Scott Lindsay report be used to determine the scope of the work required of the overhaul, but after his departure this did not happen.

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The Fact Summary states that *“the work on the Saginaw is still not complete and the locomotive is not railworthy”*, and further that *“it is Mid-Continent’s understanding that the FRA has not yet determined the Saginaw is in proper working order or that it is safe to haul passengers”*. Again that is literally true but not really relevant, since the FRA inspector orally confirmed on May 8, 2016 that the loco was fit to operate for up to 30 days prior to submission of the final Form 4 document and confirmed this by email on June 29. *“You have passed my inspections but I would like a heads up 2-3 weeks for when you plan to fire up the engine and haul any coaches for your break-in period.”*

This is consistent with #2 having been completed sufficient to operate on a trial basis. Following conversations with Gary Bensman and Dennis Daugherty, both nationally respected experts on steam operations, I can confirm that in these circumstances a break-in period is absolutely to be expected.

Finally, the Fact Summary states that *“In the thirteen year interval since the parties’ settlement was reached, Lichter has been allowed to store and repair the Saginaw rent-free on Mid-Continent’s property gaining full benefit from the Lease while Mid-Continent has obtained no beneficial use of the Saginaw whatsoever.”*

For sixteen years, from 1984 to 2000, M-C used #2 to haul revenue-earning passenger trains on their railroad, for which they paid \$0 in the form of hire fee or rental. After a hiatus to 2003, Skip spent a further 13 years overhauling it, towards which M-C has so far contributed \$0, for the sole purpose of again hauling revenue-earning passenger trains on M-C for which he will be paid \$0. The necessity for the Stipulation and Lease was M-C’s failure to repair #2 after using it for so long without payment.

Furthermore, during the same time that Skip has been working on #2, mostly outside in all weathers, another privately-owned locomotive, Western Coal and Coke #1, has been occupying the M-C workshop, which has thus not been available for #2. Although #1 is privately owned M-C has spent ‘in excess of’ \$200,000 on it over the same period that Skip has spent a similar or greater sum on #2 but entirely from his own resources.

The owner of #1 has a similarly long past history with M-C, and I understand continues to play a valued part, much less controversially than Skip. It is understandable that M-C may favour one party over another but in the context of the Stipulation and this particular issue it would have been better for the overhaul of #2’s running gear to be done inside the workshop rather than outside.



**DISCUSSION**

*I) Plaintiffs Have Materially Breached the Stipulation*

It is clear that Skip has not complied with all of the requirements of the Stipulation. However it was impossible for him to carry out some of them, as there was no representative of M-C with whom to work. Skip has worked openly to restore #2 since the signing of the documents in 2003 and no serious attempt appears to have been made since 2004 to ask him for the relevant information or to ensure he undertook these obligations.

Since he has worked to the draft work plan initially prepared, has preserved records and specifications of materials used, and has continually communicated in some form or another with M-C, while undertaking the work on their property in full view of everyone, I do not consider that his breaches of the agreement are sufficient to annul it. I have not seen evidence that he has refused any formal request from M-C.

*II) Plaintiffs have Frustrated the Purpose of the Lease and Mid-Continent Should be Discharged of its Duties as a Result.*

This is based on the unsupported assertion that the overhaul would be complete ‘as soon as possible’, and as such fails. But it further implies an obligation on Skip to overhaul the engine without any contribution from M-C, and that they were doing him a favour in letting him overhaul the engine ‘rent free’, whereas Skip was carrying out an overhaul to which M-C was obligated, intended solely to allow it to operate again to the advantage of M-C.

*III) The Stipulation and Order and Lease were Executed Under Mutual Mistake, Necessitating Termination of the Lease.*

Clearly neither party had any idea how long the major overhaul of #2 would take at the time the Stipulation and Lease were signed. However it is legitimate to assume that if either party had been aware that M-C would make no payments whatsoever towards the cost of the overhaul they would not have expected it to be done in as short a time as 13 years, if indeed ever. It never occurred to me that Skip would be able to fund the entire overhaul himself when I was negotiating and writing the Stipulation and Lease.

Locomotive overhauls take a long time. Both the 1385 and #1 are nowhere near complete – their overhauls will have taken at least 15 or 20 years. They are directly comparable to #2 – they both ran on M-C until they couldn’t run any more.

Unfortunately there has been an inverse relationship between the amount of effort and money put into the locomotives by M-C and the results – the locomotive they have contributed to the least is the first to be ready. The reasons for this are readily apparent but go beyond the scope of this report.

MID-CONTINENT STATEMENT OF ISSUES AND REQUESTS FOR RELIEF

Subsequent to the initial Demand For Arbitration, a further document was received on August 25 entitled as above, and thus to be considered carefully. Proceeding through the document:

The statement that “*representations made by Lichter at the time the lease was entered into led the Museum to understand that the Locomotive would be operational in two to three years, or by no later than 2006*” is not supported by the evidence, as previously discussed.

The statement that “*The Museum has gotten no beneficial use of the Locomotive and, thus, no income generated from operation of the Locomotive*” is not supported by the evidence, as previously discussed.

The discussion of raising funds for the overhaul of #2 omits reference to the statement in C. 1) of the Stipulation that “*defendant...will need to raise the funds necessary for the major overhaul work to Saginaw #2 **in parallel to** the existing commitments referred to below* (my emphasis). Unaudited figures given to me by M-C show that since 2004 M-C has raised approximately \$995,000 for the 1385, \$157,000 for #1, and \$9,000 for #2. As less than 1% of fund raising has gone to #2, I must conclude that fund-raising has not been conducted in parallel at all. There was certainly no ‘guarantee’ that Mid-Continent would repay the restoration costs, but certainly an expectation that all parties would act in good faith.

In response to the specific requests stated for the lease to be ‘reformed’ I comment as follows:

1) I do not understand why M-C would want to shorten the lease, as it provides for it to use the locomotive at no rent, paying only the annual insurance and any repairs needed, plus setting aside \$100 each time it is used into a fund to carry out repairs. If M-C does not want to use it they do not have to.

Jeff H, chairman of the M-C Saginaw #2 committee, explained that it was his understanding that the existing Lease required M-C to overhaul #2 for a second time, and that if that was not the case then his objection to the Lease might be withdrawn.

3.2 of the Lease states (with my emphasis added):

*Should Lessee (M-C) wish to overhaul the Locomotive for a further period of operation extending beyond the initial term of this Lease on terms generally identical to those of this Lease, it may do so entirely at its own cost and responsibility using the major repair fund below, subject to submitting the proposals for the work required to Lessor for approval, such approval not to be unreasonably withheld. **Lessor is not committed to any further work or effort beyond that of the initial major overhaul.***

This last sentence was written to ensure that there was no ambiguity whatsoever.

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2) The suggestion that Skip should be responsible for any financial losses because #2 was not available for use by M-C is illogical.

3) The locomotive when restored in working order is worth a minimum of \$300,000, which is hardly surprising as approximately \$250,000 will have been spent overhauling it by the time the job is complete. Any insurance needs to recognise that fact. It may be that a sum of insurance less than the market value of the locomotive is appropriate, but this goes beyond the scope of this arbitration as a figure has already been determined.

4) In light of M-C's failure to set aside any money for #2's overhaul during the 15 years it previously operated, presumably using the 'rent' that it was not paying the owner for other purposes, such a change is clearly inappropriate. The clause is necessary to prevent M-C from doing the same thing again.

5) The fund referred to is set aside for repairs to #2. Effectively this will not be M-C's money, it will be the locomotive's. Thus logically it should run with the locomotive, if only to avoid the perverse incentive of M-C getting a financial windfall if #2, which they are operating and maintaining, becomes beyond economic or physical repair.

6) I refer to point 1 above.

## DISCUSSION

Despite the mutual agreement of the parties in 2003 to “*publicly and jointly confirm their enthusiasm for the new arrangement*” and co-operate it is clear that Skip has remained a controversial figure at Mid-Continent, and that the parties have not collaborated as had been hoped. The means provided in the Stipulation to ensure the quality of the work have not been deployed, although Skip has worked tirelessly to restore the locomotive, the principal purpose of the agreement, with little assistance from M-C. It is probably fair to say that #2 is the most important thing in Skip’s life and it is certainly true that he is totally committed to restoring and seeing ‘his’ engine operate.

This is evidenced by the fact that not only did Skip allow #2 to be operated by M-C for 15 years rent-free, but his response to M-C’s failure to overhaul thereafter was to undertake to overhaul it himself, providing his labor for free, and then leasing it to M-C for free. I negotiated this with him and it was clear that he was prepared to accept terms that were extremely favourable to M-C in order to see it running there again.

By contrast M-C has had various people come and go in management and involved in the mechanical area, and it seems with nobody at board level having a good understanding of steam locomotives. This has led to an erratic performance of the Steam Program – in 2009 I noted that a design for a new boiler for the 1385 had been prepared by Centec, a Minneapolis firm, then estimated to cost \$800,000. Seven years later no new boiler has been ordered.

In 2009 I wrote, at Don’s request for an assessment of the situation with #1:

*The steam program has suffered from a number of crippling problems, including;*

*a) No ‘ownership’ of understanding of steam engines or steam engine overhauls at Board or Director level, resulting in an evident unwillingness to recognize, understand or grapple with the problems, which have been apparent at least since 2004.*

*b) Insufficient steam locomotive repair experience of the engineering management. There is no substitute for experience in dealing with steam locomotives, even if the situation is confused by relatively recent technical rule changes. In this case due to internal ‘political’ divisions within M-C, many of the older members with ‘hands-on’ steam experience either opted out or were not invited in to assist, in particular with the overhaul of #2. Thus those responsible found themselves too often ‘learning on the job’.*

*c) Inadequate facilities at North Freedom. While it is technically possible to repair the (#1) boiler in its present situation, the absence of a proper crane or natural light and generally the cramped and poor working conditions, together with a workshop comprised mainly of older and inefficient machinery, are simply not good enough.*



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Little appears to have changed today – the work on the 1385 has been moved to a shop near Madison and the work on #1 set aside. Skip has worked on alone, and largely unsupervised, with the result that #2 is now the functioning ‘Steam Program’ at Mid-Continent.

This situation is reflected in the present situation. Don commissioned an inspection of the running gear and tender of #2 in June 2010, which would have been the ideal basis of working jointly with Skip to complete the overhaul. However there is no evidence of any subsequent active participation by M-C in this process.

Indeed M-C seems to have been caught by surprise when Skip and Dan produced the clear and positive Restoration Update for the M-C Board of Directors in June 2015, summarising the work done and the requirements for future operation of #2.

The Board set up a ‘Saginaw #2 Committee’, consisting of five board members. The letter to Skip written by its chairman, Jeff H, on January 18, 2016, following the Committee’s only meeting with Skip and Dan on December 12, 2015, appears to renege on both the spirit and the letter of the Stipulation, by ignoring the facts that:

- a) the Stipulation was the result of a genuine obligation that M-C had to #2’s owner.
- b) the Stipulation required funds to be raised in parallel to the pre-existing commitments.
- c) Skip had mostly achieved the Stipulation’s goal, despite lack of support from M-C.
- d) there was an enforceable executed Lease in place that both parties had signed.

It is difficult to avoid the conclusion that M-C was attempting to escape responsibilities for which it was clearly liable. It appears that the committee was either unaware of the history of the Stipulation and Lease or chose to ignore it. They were certainly unaware of at least one key detail in the lease.

Evidenced by the correspondence there was no attempt to properly negotiate with or justify to Skip why the Stipulation and Lease, on the basis of which he had put in so much time and effort, should be changed.

Indeed the tone and contents of the Response dated January 18 are negative. It is suggested strongly that M-C need not to pay anything to Skip at all if it doesn’t want to, and it is explicitly stated that it will do *“no work on the infrastructure and capabilities to sustain steam at the museum”* unless he agrees to accept new lease terms. In other words he will not see his engine run unless he accepts their terms.

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For one party to a contract, a non-profit museum, which has scarcely honoured its obligations, to treat the other party, a private individual who has gone beyond any reasonable expectation to largely fulfil his obligations, is surprising. The only reasonable explanation can be that M-C is doing whatever it takes to avoid fulfilling its obligations.

This is not to suggest that #2 is in excellent condition. There have clearly been compromises reflecting the points already referred to, and work remains to be done – most obviously on the valve gear and on overhauling the tender. But this is a working steam engine, nearly ready to operate in revenue service, and should be seen as such. It bears no comparison to the other two engines in the Steam Program as it can be hauling trains in months, not years.

I was surprised to see M-C refusing to undertake anything to facilitate the return of steam for the reasons expressed. It is generally accepted, although untested, that without steam a railway museum operation loses its Unique Selling Point, and this has been reflected in falling visitor numbers since steam ceased at M-C – not that this can be automatically assumed to be cause and effect. But as the Museum's mission statement involves recreating the "Golden Years" of railroading from the Civil War until the Second World War, which was dominated by steam haulage, this position is all the more extraordinary.

The following quotation is from the Museum's website:

### ***Mission Statement***

*Our mission is to educate the public by recreating as accurately as possible the Golden Years of Railroads, from the Civil War days until after World War II, by operating a living railroad with vintage equipment from those times.*

*We will collect, preserve, restore, and operate artifacts from those times so as to inform the public about the development of railroading from wooden equipment to steel, and from steam power to internal combustion. We will give our visitors a firsthand experience on this equipment. We will do our best to accurately portray this Golden Age.*

### ***Mid-Continent History***

*Mid-Continent is a not-for-profit, membership society. Its members have been the driving force behind its establishment and growth since its inception. **Founded in 1959 as the Railway Historical Society of Milwaukee, its sole purpose has been to perpetuate the heritage of steam railroads through the operation and display of authentic railroad equipment.** (my emphasis) The first attempt to fulfill this mission took place at Hillsboro, Wisconsin, in 1962. But the rules of the rail line owner required the fledgling group to pull its coaches with gas power and leave the steamers for display only.*





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*In 1963 the society purchased 4.2 miles of track from the Chicago & North Western Railroad and moved its operations to North Freedom, Wisconsin. That year society members offered steam train rides under their new name, the Mid-Continent Railway Historical Society, Inc. Each year, nearly 20,000 visitors enjoy the sights and sounds of railroading as it was done in the early part of the century.*

M-C was prepared to move from Hillsboro to North Freedom so that it could offer steam, rather than 'gas-powered', train rides. Now, 53 years later, it gives the appearance of doing whatever it takes to avoid using steam power because that steam power is Skip's.

Another incongruity is that the #2 was designed for service similar to that at M-C. Its weight is spread over six axles, reducing stress on the lightweight track. Its leading and trailing trucks take some of the weight off the drive axles and 'lead' #2 into corners – critically in both directions, since logging railroads rarely had turning facilities.

By contrast 1385 is much heavier and both it and #1 are designed to run in one direction only, forwards. Finally #2 burns oil, and is thus much easier to operate than the coal-fired engines. This may or may not be more economical, as coal prices and the availability of different oils have varied, but it is much more difficult to fire a coal-burner.

Chicago and North Western 1385 is a wonderful engine and the 'signature' of the railroad, but it is quite large for the line, expensive to operate, not designed to run in reverse and requires skilled coal firing. Work on #1 has virtually been abandoned – previous work done to the boiler in the past made it worse and the running gear still needs work despite considerable expenditure on contractors. Nothing has been done for 8 years, since the flood, and there are no plans to start on it anytime soon.

Circumstances have, of course, changed since the Stipulation and Lease were entered into. However, if anything it could be argued that #2 is more deserving of funds than the other two locomotives, since it is almost ideal for operation on the lightly-laid, sharply-curved M-C line, and is available now to return steam to M-C and fill the one glaring omission in the Museum's vision.

**CONCLUSION**

As described above, I have been able to obtain sufficient information to come to a conclusion in the matter.

I conclude that there is no justification for Mid-Continent's position. While both parties have been deficient in various respects relating to the Stipulation, and while the individuals concerned may have acted in good faith, by bringing this action it appears that as an institution Mid-Continent has not acted in good faith towards the party with whom it jointly undertook to overhaul the Saginaw #2.

I request written responses from the two parties before deciding what actions are appropriate next.

Respectfully submitted,

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William A. Parker