

FILE

12-BH-RR-CSS 12

**RAY A. COX**  
ATTORNEY AT LAW  
MEDIATOR

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LICENSED AND ADMITTED  
IN OHIO AND INDIANA

TELEPHONE 937 291-3119  
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ray.a.cox@sbcglobal.net

April 26, 2012

PUCO  
180 East Broad Street  
Columbus, OH 43215-3793

Attn: Docketing Division

Re: *Mary J. Bailar, Gary E. Bailar, Alan L. Bailar, and Kurt F. Bailar*  
-vs- *RailAmerica and Indiana and Ohio Railway Company*

Dear Docketing Division:

Enclosed please find original and two copies of:

*Complaint Pursuant to 4959.01 O.R.C., 4907.08 O.R.C. and Adm. Rule 4901-5-03*

Please send back one copy, along with the assigned case number, in the enclosed self-address stamped envelope provided for your convenience.

Very truly yours,



Ray A. Cox, Esq.

Enclosure

RAC/pk

Cc: Leah Thomas Dalton, Chief of Rail Division

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician du Date Processed APR 27 2012

RECEIVED-DOCKETING DIV  
2012 APR 27 PM 12:21  
PUCO

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**MARY J. BAILAR**  
10567 West SR 29  
DeGraff, Ohio 43318

\*

\*

and

**GARY E. BAILAR**  
741 N. Heck Hill Rd.  
St. Paris, Ohio 43072

\*

**CASE NUMBER** \_\_\_\_\_

\*

and

**ALAN L. BAILAR**  
2881 Walnut Ridge Dr.  
Troy, Ohio 45373

\*

\*

and

**KURT F. BAILAR**  
11126 Shanley Rd.  
Quincy, Ohio 43343

\*

**COMPLAINANTS**

\*

vs.

**RAILAMERICA**  
7411 Fullerton Street, Suite 300  
Johnsonville, FL 32251

\*

and

\*

**INDIANA AND OHIO RAILWAY COMPANY** \*  
2856 Cypress Way  
Cincinnati, Ohio 45212

**RESPONDENTS**

\*

**PUCO**

**2012 APR 27 PM 12:21**

**RECEIVED-COCKETING DIV**

**COMPLAINT PURSUANT TO 4959.01 O.R.C., 4907.08 O.R.C. AND  
ADM. RULE 4901-5-05**

RAY A. COX

ATTORNEY AT LAW

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1. The Public Utilities Commission (Commission) has jurisdiction herein pursuant to 4907.08 O.R.C.
2. Complainants are owners of certain farmland located in Adams Township, Champaign County, Ohio (Attachment A), consisting of 137.8 acres, (property), of which approximately 25 acres are involved herein.
3. Said "property" is used for growing crops.
4. Respondents are the owners/ lessees/ operators track/ of railroad embankment which affects the "property".
5. Said track/ embankment interferes with the natural flow of water from Complainants' field tile system in violation of 4959.01 O.R.C.
6. Said interference has caused flooding of Complainants' "property", rendering portions unsuitable for farming purposes.
7. Reasonable but unsuccessful efforts have been made by Complainants to reach an amicable resolution of the dispute, but Respondents refuse to respond or in any way participate in a resolution herein, (Attachment B, C, D, & E).
8. As a result of flooding caused by Respondents' failure to keep open ditches and drains as required by 4959.01 O.R.C., Complainants' have losses from crop input, costs, and revenue in the amount of \$58,837.28 along with further crop loss from planting delays caused by Respondents' negligence and failure to act (Attachment F).

Complainants request the Commission:

- a) to serve copies of its Complaint upon both Respondents;

RAY A. COX

ATTORNEY AT LAW

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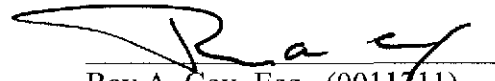
DAYTON, OHIO 45475-1292

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- b) inquire as to whether the laws of the state have been neglected or violated as required by 4907.08 O.R.C.;
- c) issue an order to show cause if violations of any Revised Code or Administrator Code is found to exist;
- d) order reimbursement of \$58,837.28 plus any additional proven loss suffered by Complainants;
- e) order compliance of 4959.01 O.R.C. at Respondents' sole cost; and,
- f) grant any other remedy or action available under Ohio law.

Respectfully submitted,



Ray A. Cox, Esq. (0011/11)  
265 Regency Ridge Drive  
Dayton, OH 45459  
Telephone: 937 291-3119  
Facsimile: 937 291-3229  
[ray.a.cox@sbcglobal.net](mailto:ray.a.cox@sbcglobal.net)  
*Attorney for Complainants*

Cc: Leah Thomas Dalton, Chief of Rail Division

RAY A COX

ATTORNEY AT LAW

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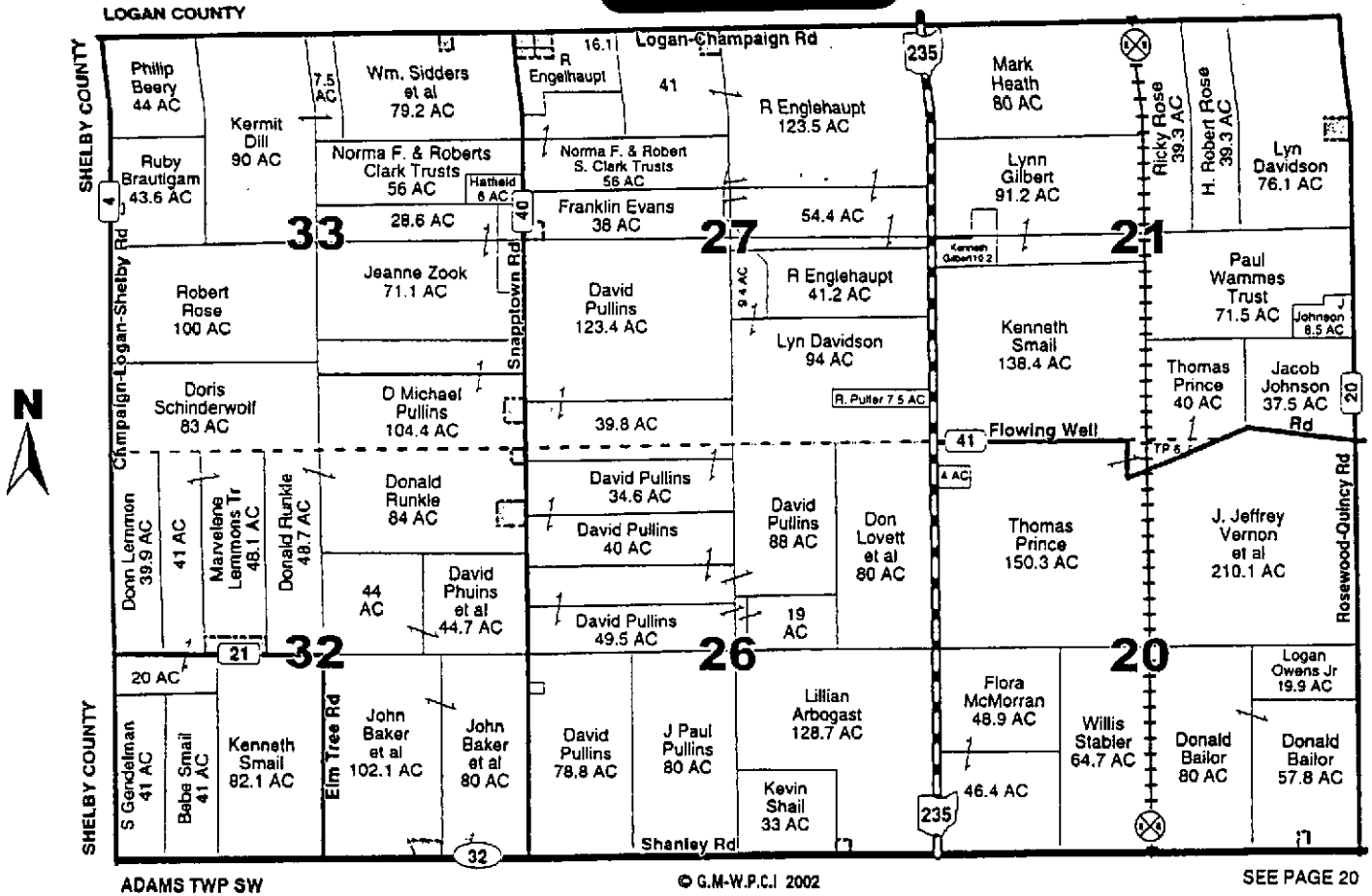
# ADAMS TWP -- NW

CHAMPAIGN COUNTY, OHIO

## ATTACHMENT

A

0 SCALE OF MILES 1/2 1  
0 660 1320 1980 2640 SCALE OF FEET 5280



*Complete County Plat  
Directory Listings For...*

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Mississippi,  
Ohio & Pennsylvania

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QUINCY

TO BELLEFONTAINE

CHAMPAIGN COUNTY'S RAILROAD HISTORY

THE ILLINOIS CAR & EQUIPMENT COMPANY MANUFACTURED  
AND REPAIRED FREIGHT AND PASSENGER CARS

THE JOHNSON MANUFACTURING COMPANY AND  
PRODUCED TINWARE AND OIL CANS FOR THE RAILROADS  
LINCOLN'S FUNERAL TRAIN TRAVELED THROUGH WOODSTOCK,  
CABLE, URBANA AND ST. PARIS

PRIOR TO 1985, OHIO'S SECOND STEEPEST RAILROAD  
CUT WAS IN FRONT OF GRAHAM HIGH SCHOOL

LOGAN/CHAMPAIGN COUNTY LINE

WEST LIBERTY

MAD RIVER

ABANDONED  
AFTER 1926

WEST LIBERTY  
-SALEM HS

NORTH  
LEWISBURG

ROSEWOOD

Lippincott  
Mill

Lippincott Rd.

OLD BIG FOUR  
OPERATED BY THE  
INDIANA AND OHIO RR

KISER LAKE  
ST PARK

ST RT 29

OLD DTI RR

TRESTLE RD

WARD RD

ST RT 560

ST RT 29

WEST  
SALEM  
Herr Rd.

ST RT 296

URBANA

KINGS CREEK

ABANDONED ERIE LACKAWANNA RR

CABLE ABANDONED PENNSYLVANIA RR

WOODSTOCK

US 36

ST. PARIS

GRAHAM HS

WESTVILLE

US 36

ABANDONED PENNSYLVANIA RR

RUNKLE RD

TROY-URBANA RD

DARNELL

ST RT 55

THACKERY

COFFIN STATION

ST RT 55

Woodburn Rd.

UPPER VALLEY PK

Dallas Rd.

Hickory Grove Rd.

OLD BIG FOUR

OPERATED BY THE

INDIANA AND OHIO RR

SIMON KENTON TRAIL

MECHANICSBURG

ST. RT. 54

ST. RT. 56

CLARK/CHAMPAIGN COUNTY LINE

County Line Rd.

St. Rt. 334

SIMON KENTON TRAIL

ST RT 235



OLD DETROIT TOLEDO AND IRONTON RAILROAD  
ALSO KNOWN AS HERRI FORDS RAILROAD  
TODAY OPERATED BY THE INDIANA & OHIO RAILROAD

TREMONT CITY

Eagle City Rd.

ST RT 41

OLD ERIE LACKAWANNA RR  
TODAY OPERATED BY THE  
INDIANA AND OHIO RAILROAD

SPRINGFIELD

MAITLAND

OLD BIG 4 RR WEST  
OPERATED BY THE WEST  
OHIO PORT AUTHORITY

CLARENCE J. BROWN  
RESOVOIR

ST RT 41

SOUTH CHARLESTON

← To Dayton

**RAY A. COX**  
ATTORNEY AT LAW  
MEDIATOR

**ATTACHMENT  
B**

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LICENSED AND ADMITTED  
IN OHIO AND INDIANA

TELEPHONE 937 291-3119  
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ray.a.cox@sbcglobal.net

December 27, 2011

Donna Killingsworth  
Cable and Pipeline Transportation Manager  
RAILAMERICA, INC.  
7411 Fullerton Street, Suite 300  
Johnsonville, FL 32251

Re: Bailar Brothers – Indiana and Ohio Railway Co.

Dear Donna:

I've had a chance to review the facts of this matter, along with your proposed documents and insurance requirements. My understanding is this:

Clients maintain a field tile system which naturally flows toward the Indiana and Ohio maintained roadbed in Champaign County, Ohio. The system is not draining properly due to a faulty outlet under your roadbed embankment. Without your roadbed, the surface water would naturally flow away from clients' field(s).

Clients approached I & O to discuss a mutually convenient fix. Absent good drainage, I & O's tracks are at risk of washout which could cause a dangerous condition to employees and passengers.

Since both clients and I & O have much to gain by a new outlet under your roadbed, clients anticipated a joint and co-operative fix. Instead, I & O has responded by placing the entire, and substantial, burden upon my clients; ignoring its own responsibility and its benefit of any fix.

4959.01 O.R.C. clearly places the responsibility for handling water accumulation to:

*(who)*  
“... the company or person operating the railroad/shall make and keep open ditches or drains along such roadbed of depth, width, and grade sufficient to conduct water accumulation at the sides of the roadbed from the building or operation of the railroad to some proper outlet.” 4959.01 O.R.C.

Also see, Henicle, et al. v. The Pennsylvania Rd. Co., 49 Ohio App. 447; 2. Ohio Op. 14; and Twinsberry Farm v. Consolidated Rail Corporation, 11 Ohio App. 3d 182, 1983 Ohio App. LEXIS 11271.

We believe it would be less expensive to replace the drain outlet than have I & O, at its sole cost, excavate to carry clients' surface water to "some proper outlet".

We stand ready to share the cost of the fix, although 4945.01 O.R.C. would suggest that I & O has the sole responsibility to handle our field drainage. After all, it is I & O's roadbed embankment which inhibits our drainage system. The Ohio Public Utility Commission has the power to investigate any neglect or violation of law. 4907.08 O.R.C.

Kindly consider and respond.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ray A. Cox', with a stylized flourish at the end.

Ray A. Cox, Esq.

RAC/pk

Cc: Alan Bailar

Cc: Kurt Bailar

Cc: Allen Maurice, Esq.



**RAY A. COX**  
ATTORNEY AT LAW  
MEDIATOR

**ATTACHMENT**  
**C**

LICENSED AND ADMITTED  
IN OHIO AND INDIANA

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ray.a.cox@sbcglobal.net

January 19, 2012


Donna Killingsworth  
Cable and Pipeline Transportation Manager  
RAILAMERICA, INC.  
7411 Fullerton Street, Suite 300  
Johnsonville, FL 32251

Re: Bailar Brothers – Indiana and Ohio Railway Co.

Dear Donna:

On December 27, 2011, I sent you the attached letter. Kindly advise if you are going to respond, or it will be necessary for me to notify the Ohio Public Utility Commission of this situation.

Very truly yours,



Ray A. Cox, Esq.

Enclosure

RAC/pk

Cc: Alan Bailar  
Cc: Kurt Bailar  
Cc: Allen Maurice, Esq.

Ray A. Cox

From: Killingsworth, Donna (GPRK) [Donna.Killingsworth@railamerica.com]  
Sent: Monday, January 23, 2012 3:12 PM  
To: ray.a.cox@sbcglobal.net  
Subject: DTI 110224 - Bailar Brothers

Mr. Cox

Please be advised your letter has been forwarded to upper management for review. A response will be forwarded to you asap.

*Thank You*

*Donna Killingsworth, MBA*

*Cable & Pipeline Transaction Manager*

*Railamerica, Inc.*

*7411 Fullerton St., Suite 300*

*Jacksonville, FL 32256*

*Ph 904-538-6365*

*Fx 904-256-1428*

*donna.killingsworth@railamerica.com*

*New applications and insurance requirements can be obtained by visiting our website at www.railamerica.com*

Ray A. Cox

**From:** Killingsworth, Donna (GPRK) [Donna.Killingsworth@railamerica.com]  
**Sent:** Friday, February 03, 2012 9:56 AM  
**To:** ray.a.cox@sbcglobal.net  
**Subject:** RE: DTI 110224 - Bailar Brothers

I will follow up with upper management today to see if I can pin them down on an answer.

*Thank You*  
*Donna Killingsworth, MBA*  
*Cable & Pipeline Transaction Manager*  
*Railamerica, Inc.*  
*7411 Fullerton St., Suite 300*  
*Jacksonville, FL 32256*  
*Ph 904-538-6365*  
*Fx 904-256-1428*  
*[donna.killingsworth@railamerica.com](mailto:donna.killingsworth@railamerica.com)*

*New applications and insurance requirements can be obtained by visiting our website at [www.railamerica.com](http://www.railamerica.com)*

**From:** Ray A. Cox [<mailto:ray.a.cox@sbcglobal.net>]  
**Sent:** Friday, February 03, 2012 9:44 AM  
**To:** Killingsworth, Donna (GPRK)  
**Cc:** [kurtandpattibailar@yahoo.com](mailto:kurtandpattibailar@yahoo.com); [wmdlaw@ctcn.net](mailto:wmdlaw@ctcn.net)  
**Subject:** RE: DTI 110224 - Bailar Brothers

Donna,  
It's been over a month since I wrote you concerning my offer of a mutual fix. Kindly advise when I will receive a response.  
Thank you,  
Ray Cox

**From:** Killingsworth, Donna (GPRK) [<mailto:Donna.Killingsworth@railamerica.com>]  
**Sent:** Monday, January 23, 2012 3:12 PM  
**To:** [ray.a.cox@sbcglobal.net](mailto:ray.a.cox@sbcglobal.net)  
**Subject:** DTI 110224 - Bailar Brothers

Mr. Cox

## Bailor Brothers

### Input Costs Incurred and Loss of Revenue for Fields Affected by Railroad Negligence

Crop Year	Seed Cost	Chemicals & Application	Total Farm Expenses Incurred for Crop Year	Total Loss Revenue for Crop Year	Total Predicted Loss Revenue for Crop Year
2010	\$542.41	\$1,028.53	\$1,570.94	\$4,265.61	
2011		\$1,490.20	1,490.20	\$20,991.81	
2012		\$1,500.00	\$1,500.00		\$25,000.00
TOTALS	\$542.41	\$4,018.73	\$4,561.14	\$25,257.42	\$25,000.00
GRAND TOTAL LOSS	\$58,837.29				