

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DENNIS R. ALBERS, et al.,

Plaintiffs,

v.

FREDDIE N. SIMPSON, et al.,

Defendants.

Case No. 4:21-cv-11834

Hon. Matthew F. Leitman

**FIRST AMENDED VERIFIED COMPLAINT**

## **TABLE OF CONTENTS**

First Amended Verified Complaint .....	1
Introduction.....	1
Jurisdiction and Venue .....	5
Parties .....	6
The Defendants .....	6
The Plaintiffs.....	8
BMWED-IBT Current and Historical Structure .....	18
The 2004 Merger Agreement .....	18
The Three-Segment Structure of the BMWED-IBT and its Predecessor, the BMWED.....	21
The BMWED-IBT National Division and National Division Officers .....	24
BMWED-IBT System Federation and Divisions.....	27
The Local/Subordinate Lodges.....	36
The Individually Named Defendants’ Machinations to Control the Upcoming BMWED-IBT Quadrennial Convention and its Outcome, and Reprisals Against the Plaintiffs and the Members they Represent .....	37
Defendants’ Claim of Authority to Effectuate Defendant Simpson’s Forced Consolidation Scheme is False and Made in Bad Faith.....	66
Injury and Irreparable Harm to Plaintiffs and all BMWED-IBT Members Caused by the Unlawful Actions and Political Reprise of the Defendants .....	92

The Individually Named Defendants’ Conduct in Furtherance of Defendant Simpson’s Forced Consolidation Scheme is Ultra Vires and their Void Ab Initio .....	102
Count 1 - Against All Defendants – Breach of Contracts in Violation of 29 U.S.C. § 185 .....	102
Count 2 - Against All Defendants – Breach of Plaintiff Federations’ and Defendants’ Bylaws in Violation of Michigan Law .....	107
Count 3 – Against All Individually Named Defendants – Violation of LMRDA Section 101(a)(1), 29 U.S.C. § 411(a)(1).....	109
Count 4 – Against All Individually Named Defendants – Violation of LMRDA Section 101(a)(2), 29 U.S.C. § 411(a)(2).....	111
Count 5 – Against All Individually Named Defendants – Violation of LMRDA Title V – Breach of Fiduciary Duty, 29 U.S.C. § 501(b).....	114
Count 6 – Against All Individually Named Defendants – Violation of Michigan Law – Breach of Fiduciary Duty.....	116
Relief Requested.....	118

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**INTRODUCTION**

1. Plaintiffs, Dennis R. Albers, Allied Federation, BMWED-IBT, Dale E. Bogart, Jr., Northeastern System Federation, BMWED-IBT, Tony D. Cardwell, Unified System Division, BMWED-IBT, Jeffery L. Fry, Atchison, Topeka & Santa Fe Frisco System Federation, BMWED-IBT, Staci R. Moody-Gilbert, Burlington System Division, BMWED-IBT, Jason E. Graham, Alliance System Federation, Patrick A. Charters, Chicago & Eastern Illinois System Division, BMWED-IBT, Michael A. Barrett, Commuter Railroad System Division, BMWED-IBT, Rolando Del Muro, Joliet and Eastern System Division, BMWED-IBT, Samuel J. Alexander, Southern System Division, BMWED-IBT, Joe Letizia, Wisconsin Central System Division, BMWED-IBT, Matthew Neis, and Bessemer & Lake Eire System

Division, BMWED-IBT, by their undersigned attorneys, file this First Amended Verified Complaint against Defendants Freddie N. Simpson, David D. Joynt, Bruce G. Glover, Roger D. Sanchez, Louis R. Below, Jed Dodd, Jack E. David and David L. Carroll, individually and in their official capacities as officers of the remaining Defendant, BMWED-IBT.

2. The above-named individually named Plaintiffs in this action constitute twelve (12) of the fourteen (14) principal officers/General Chairpersons, respectively, of twelve (12) of the fourteen (14) affiliated system federations and system divisions of the Defendant BMWED-IBT. Collectively, the Plaintiffs represent approximately 85% of the membership of Defendant BMWED-IBT. Each of these twelve (12) BMWED system federations and divisions are Plaintiffs in this action. For convenience, the individually named Plaintiffs and the Plaintiff BMWED-IBT system federations and divisions that they lead as elected General Chairpersons are set forth in the following chart:

<b>Plaintiff Chairpersons</b>	<b>Plaintiff BMED-IBT System Federations and Divisions</b>
Dennis R. Albers	Allied Federation, BMWED-IBT
Dale E. Bogart	Northeastern System Federation, BMWED-IBT
Tony D. Cardwell	Unified System Division, BMWED-IBT
Jeffery L. Fry	Atchison, Topeka & Santa Fe Frisco System Federation, BMWED-IBT
Staci R. Moody-Gilbert	Burlington System Division, BMWED-IBT
Jason E. Graham	Alliance System Division, BMWED-IBT
Patrick A. Charters	Chicago & Eastern Illinois System Division, BMWED- IBT

Michael A. Barrett	Commuter Railroad System Division, BMWED-IBT
Rolando Del Muro	Joliet and Eastern System Division, BMWED-IBT
Samuel J. Alexander	Southern System Division, BMWED-IBT
Joe Letizia	Wisconsin Central System Division, BMWED-IBT
Matthew Neis	Bessemer & Lake Erie System Division, BMWED-IBT

3. Plaintiffs bring this action seeking damages, as well as temporary and preliminary injunctive relief and permanent injunctive relief against the Defendants Simpson, Joynt, Glover, Sanchez, Below, Dodd, David, and Carroll (the “Individually Named Defendants”) for violations of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 (“LMRDA”), *et al*, including deprivations of the Bill of Rights for Members and breaches of fiduciary duty, as proscribed by Titles I and V, respectively, of that statute, as well as breaches of contract in violation of Section 301 of the Labor Management Relations Act of 1947, *as amended*, 29 U.S.C. § 185, and violations of Michigan common law relating to breach of contract and breach of fiduciary duty.

4. As set forth herein, Plaintiffs seek redress, including emergency and permanent injunctive relief, to prevent the Individually Named Defendants from executing a scheme to consolidate all fourteen (14) BMWED-IBT affiliated federations and divisions by unilaterally and forcibly transferring those system federations’ and divisions’ members, their affiliated Local Lodges, and their dues, assets and other property to new system federations and divisions that Defendant Simpson has ordered be established at special “founding conventions in September

and October, 2021 and which will become operative on January 1, 2022,” just six months prior to Defendant BMWED-IBT’s required quadrennial National Division Convention, where the Convention delegates from the Lodges affiliated with the BMWED-IBT federations and divisions elect the BMEWD-IBT National Division officers.

5. The Individually Named Defendants’ actions in developing this consolidation scheme were taken in secret, and are being executed without authority under, and in breach of, the BMWED-IBT’s governing National Division Bylaws, a true and correct copy of which is attached hereto as **Plaintiffs Exhibit 1**. Their actions are also in breach of the 2004 merger agreement between the International Brotherhood of Teamsters and BMWED-IBT’s predecessor, the Brotherhood of Maintenance of Way Employees (the “2004 Merger Agreement”). A true and correct copy of the 2004 Merger Agreement is attached hereto as **Plaintiffs Exhibit 2**. The BMWED-IBT members, including Plaintiffs, and as well as the BMWED-IBT’s Local Lodges and their affiliated existing system federations and divisions are third-party beneficiaries of the Merger Agreement, and the BMWED-IBT National Division Bylaws are expressly incorporated by reference in the 2004 Merger Agreement. The Individually Named Defendants’ actions are also in violation of Plaintiffs’ federally protected Bill of Rights under the Landrum Griffin Act, 29 U.S.C. §§ 401 *et seq.*, including Sections 101(a)(1) and (2) of the Landrum Griffin

Act, 29 U.S.C. § 411(a)(1), and (a)(2).

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the claimed breaches of the BMWED-IBT Bylaws and the 2004 Merger Agreement by Defendant Simpson and each of the Individually Named Defendants, as well as Defendant BMWED-IBT, and venue is proper in this Court for it to adjudicate such claimed breaches, pursuant to Section 301 of the NLRA, as amended by the Labor Management Relations Act, 29 U.S.C. § 185 (“LMRA”), as well as under general federal question pursuant to 28 U.S.C. § 1331.

7. This Court has jurisdiction over the claimed violations by Defendant Simpson and each of the Individually Named Defendants and Defendant BMWED-IBT of Plaintiffs’ federally protected rights under Title I of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 411, *et seq.* (“LMRDA”), and venue is proper in this Court for it to adjudicate for such claimed violations, pursuant to 29 U.S.C. § 412.

8. This Court has jurisdiction over the claimed breaches of fiduciary duty owed to the Plaintiffs by Defendant Simpson and each of the Individually Named Defendants under Title V of the LMRDA, 29 U.S.C. § 501, *et seq.*, and venue is proper in this Court for it to adjudicate for such claimed violations, pursuant to 29 U.S.C. § 501(b).



9. Pursuant to 28 U.S.C. § 1367, and to the extent not preempted by LMRA Section 301, 29 U.S.C. § 185, this Court has supplemental jurisdiction pursuant to Michigan law with respect to the claimed breaches of contract. Additionally, pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction pursuant to Michigan law relating to the claimed breaches of fiduciary duty owed to Plaintiffs by Defendant Simpson and each of the Individually Named Defendants. With respect to the supplemental claims relating to breach of fiduciary duty, Plaintiffs note that, any such supplemental claims are preserved and provided in 29 U.S.C. § 413.

## **PARTIES**

### **THE DEFENDANTS**

10. **Defendant BMWED-IBT** is an unincorporated labor association that maintains its headquarters in Novi, Michigan. In 2004, the BMW and the International Brotherhood of Teamsters (“IBT”) entered into the 2004 Merger Agreement referenced in Paragraph 5, above, whereby the BMW became a largely autonomous division of the IBT and is now known as the BMWED-IBT. The merger became effective on January 1, 2005.

11. **Defendant Freddie N. Simpson** is the National Division President of Defendant BMWED-IBT and, as such, is a National Division officer of that organization. He has served in that capacity since 2004.

12. **Defendant David D. Joynt** is the Secretary-Treasurer of Defendant BMWED-IBT and, as such, is a National Division officer of that organization.

13. **Defendant Jed Dodd** is the Vice President At-Large of Defendant BMWED-IBT and, as such, is a National Division officer of that organization.

14. **Defendant Roger D. Sanchez** is the Vice President, Southern Region of Defendant BMWED-IBT and, as such, is a National Division officer of that organization.

15. **Defendant Bruce G. Glover** is the Vice President, Northwest Region of Defendant BMWED-IBT and, as such, is a National Division officer of that organization.

16. **Defendant Louis R. Below** is the Vice President, Western Region of Defendant BMWED-IBT and, as such, is a National Division officer of that organization.

17. **Defendant Jack E. David** is a National Division Executive Board of Defendant BMWED-IBT and, as such is a National Division officer of that organization.

18. **Defendant David L. Carroll** is a National Division Executive Board Member of Defendant BMWED-IBT and as, such, is a National Division Officer of Defendant BMWED-IBT.

**THE PLAINTIFFS**

19. **Plaintiff Dennis R Albers** is a member of the BMWED-IBT. He has been a member of the BMWED-IBT and its predecessor, the BMWE, for the past forty-nine (49) years. He is also a member of the six-person BMWED-IBT National Division Executive Board and, as such, is one of thirteen (13) BMWED-IBT national officers. He has served as a BMWED National Division officer in various positions since 2008, when he was elected to serve as a member of the BMWED-IBT National Executive Board. He is also the duly elected General Chairman of Plaintiff Allied Federation and, having been re-elected to that position in 2020, is now serving his third four-year term.

20. **Plaintiff Allied Federation** is a system federation affiliated with the BMWED-IBT. Currently, it has approximately 6,300 members who work on several Class I national railroads, including CSX, KCS and UP. A true and correct copy of its Bylaws is attached hereto as **Plaintiffs Exhibit 3**.

21. **Plaintiff Dale E. Bogart** is a member of the BMWED-IBT. He has been a member of the BMWED-IBT and its predecessor, the BMWE, for twenty-two (22) years. He currently serves as the elected principal officer/General Chairman of Plaintiff Northeastern System Federation and he is now beginning his third four-year term on November 1, 2021 in that capacity, having just been reelected in June 2021. Plaintiff Bogart served as a Local Lodge officer from 2003-2006 and then

served as elected Vice Chairman of the Northeastern Federation between 2006 and 2012. Plaintiff. Bogart also currently serves as a BMWED-IBT National Division officer, having been elected as one of the six (6) members of the BMWED-IBT's National Division Executive Board in 2018.

22. **Plaintiff Northeastern System Federation** is an affiliate of the BMWED-IBT. As noted above, Plaintiff Bogart is the elected principal officer/General Chairman of the Northeast System Division. The Northeast System Division represents approximately 500 members, many of whom work on the Class I railroads encompassed within Defendant Simpson's scheme, including Amtrak, Canadian Pacific ("CP") and Norfolk Southern ("NS"). A true and correct copy of its bylaws is attached hereto as **Plaintiffs Exhibit 4**.

23. **Plaintiff Tony D. Cardwell** is a member of the BMWED-IBT. He has been a member of the BMWED-IBT and its predecessor, the BMWE for the past twenty-one (21) years. He is the elected General Chairman of the Unified System Division, having been elected in 2018. During the period from 2010 to 2018, he served as the elected Vice Chairman of Region 3 of the Unified System Division. He was also the elected Chairman of his Local Lodge in 2006.

24. **Plaintiff Unified System Division** is an affiliate of the BMWED-IBT. The Unified System Division currently represents approximately 5,600 members. In 1994, the BMWED-IBT in 1994, assigned the Unified System Division to represent

the bargaining unit employees working at a non-railroad employer named Voestapline Nortrak, Inc. (“Nortrak”) after winning a representation election conducted by the National Labor Relations Board (“NLRB”) and being certified by the NLRB to serve as the exclusive bargaining agent of that bargaining unit pursuant to Section 9(a) of the NLRA, 29 U.S.C. § 159(a), on April 23, 2004. The Unified System Division continues to represent the Nortrak bargaining unit on behalf of the BMWED-IBT. As noted above, Plaintiff Cardwell is the elected principal officer/General Chairman of the Unified System Division. A true and correct copy of its bylaws is attached hereto as **Plaintiffs Exhibit 5**.

25. **Plaintiff Jeffery L. Fry** is a member of the BMWED-IBT. He has been a member of the BMWED-IBT and its predecessor, BMWF, for approximately twenty-three (23) years. He was first elected as General Chairman of the BMWED-IBT’s affiliate, Atchison, Topeka & Santa Fe Frisco System Federation (“ATSFF”) in 2017, and he was re-elected to a second four-year term as General Chairman approximately two (2) months ago, in June 2021. Plaintiff Fry previously held elected positions as Assistant General Chairman and Vice Chairman/Secretary Treasurer of ATSFF from 2012 until 2017, at which time he was elected General Chairman. Additionally, following a BMWED-IBT National Division election in 2018, Plaintiff Fry became, and remains, one of six (6) BMWED-IBT National Division Executive Board members and, as such, is a BMWED-IBT National

Division officer. By letter dated July 15, 2021, following Plaintiff Fry's re-election as General Chairman of the ATSFF, Defendant Simpson, in his capacity as BMWED-IBT National Division President, congratulated Plaintiff Fry on his reelection. Defendant Simpson wrote that Plaintiff Fry's re-election "indicates that you have strived to attain a high degree of excellence, which is evidenced by the representation achieved for your membership." A true and correct copy of Defendant Simpson's July 15, 2021 letter to Plaintiff Fry is attached hereto as **Plaintiffs Exhibit 6**.

26. **Plaintiff Atchison, Topeka & Santa Fe Frisco System Federation**, also referred to herein as "ATSFF," is an affiliate of the BMWED-IBT. The ATSFF represents approximately 2,800 members, virtually all of whom work on the nation's largest Class I railroad, BNSF, and its regional subsidiaries and connecting short-line railroads such as the C&W Railway in Pueblo, Colorado. As noted above, Plaintiff Fry is the duly elected principal office/General Chairman of the ATSFF. A true and correct copy of its bylaws is attached hereto as **Plaintiffs Exhibit 7**.

27. **Plaintiff Staci R. Moody-Gilbert** is a member of the BMWED-IBT. She been a member of the BMWED-IBT and its predecessor, BMWE, for the past approximately twenty-eight (28) years. She was first elected General Chairperson of BMWED-IBT affiliate Burlington System Division in 2012. She was elected to a second four-year term as General Chairperson of the Burlington System Division in

2016, and she was recently reelected to a third term in 2020. Additionally, she is an elected BMWED-IBT National Division Executive Board member, having first been elected to that four-year position in 2014 and reelected in 2018. In her capacity as a BMWED-IBT National Division Executive Board member, she is also a BMWED-IBT National Division officer.

28. **Plaintiff Burlington System Division** is an affiliate of the BMWED-IBT. The Burlington System Division represents approximately 2,000 members, most of whom work for Canadian Pacific Railroad (“CP”) or BNSF, both of which are large, Class I national railroads. The Burlington System Division also represents maintenance of way employees who work on regional and short-line freight and commuter railroads, including the Chicago Metropolitan area’s METRA Railroad, the Iowa Interstate, NICTD, and Lake Superior & Ishpeming. The Burlington System Division is also negotiating a first contract for the newly organized Illinois Railway. As noted above, Plaintiff Moody-Gilbert is the elected principal officer/General Chairperson of the Burlington System Division. A true and correct copy of the Burlington System Division’s bylaws is attached hereto as **Plaintiffs Exhibit 8**.

29. **Plaintiff Jason E. Graham** is a member of the BMWED-IBT. He became a member approximately sixteen (16) years ago, in 2005. He is the elected principal officer/General Chairman of Plaintiff Alliance System Federation. Plaintiff

Graham's term of office as ASF General Chairman runs through 2023.

30. **Plaintiff Alliance System Federation**, also referred to herein as "ASF," is an affiliate of the BMWED-IBT. The Alliance System Federation represents approximately 2,800 members. Nearly all of them work on large national Class I railroads, including CN, CSX and Norfolk Southern, as well as Amtrak. As noted above, Plaintiff Graham is the elected principal officer/General Chairman of the Alliance System Federation. A true and correct copy of ASF's bylaws is attached hereto as **Plaintiffs Exhibit 9**.

31. **Plaintiff Patrick A. Charters** is a member of the BMWED-IBT. He has been a member of the BMWED-IBT and its predecessor, BMWE, for approximately nineteen (19) years, since 2002. He joined a Local Lodge in Villa Grove, Illinois and became its Secretary/Treasurer in 2007. Plaintiff Charters was appointed Vice-Chairman of Plaintiff Chicago and Eastern Illinois System Federation in 2013 and was appointed General Chairman in 2017 after a retirement. Plaintiff Charters was elected principal officer and General Chairman in September, 2017, and will sit for re-election in September, 2021. He and his fellow officers of the Chicago and Eastern Illinois System Federation are "working officers," meaning they still work full-time for their carrier, Union Pacific, where Plaintiff Charters works as a "machine operator."



32. **Plaintiff Chicago & Eastern Illinois System Division Federation**, also referred to herein as “C&EI,” is an affiliate of the BMWED-IBT. Chicago & Eastern Illinois System Division Federation is among the smallest of the BMWED-IBT system federations and divisions. It represents approximately 120 members. The C&EI’s membership work for Union Pacific Railroad and are based primarily in Illinois. Although the C&EI is among the smallest of the BMWED-IBT’s system federations and divisions, it has remained financially sound and responsive to its membership. A true and correct copy of the Chicago & Eastern Illinois System Division Federation bylaws is attached hereto as **Plaintiffs Exhibit 10**.<sup>1</sup>

33. **Plaintiff Michael A. Barrett** is a member of the BMWED-IBT. He has been a member of the BMWED-IBT and its predecessor, BMWED, for approximately thirty (30) years since 1992. He was elected as a Local Lodge officer in 1999 and then, from 2009 to 2014, as Vice Chairman with Plaintiff Commuter Railroad System Division. In 2014 he was voted by the CRSD Joint Protective Board to be principal officer/General Chairperson to fill the vacancy left by the BMWED-IBT Vice President Defendant Sean Gerie, who became a Vice-President of the BMWED-IBT Northeast Region. Plaintiff Barrett was voted for a full term as principal officer/General Chairperson in 2017 and again to a second full term for the

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<sup>1</sup> Exhibits appended to the First Amended Verified Complaint will begin following the last exhibit appended to the original Verified Complaint.

Commuter Railroad System Division that begins on September 1, 2021 and runs through 2025.

34. **Plaintiff Commuter Railroad System Division**, also referred to herein as the “CRSD,” is an affiliate of the BMWED-IBT. CRSD represents approximately 520 active members working for the Southeastern Pennsylvania Transportation Authority (SEPTA) and the New Jersey Transit Rail Operations (NJTRO). The CRSD was created in 1983 when, through federal legislation, Conrail spun off its commuter rail business to separate public authorities known as SEPTA and NJTRO. A true and correct copy of CRSD’s bylaws is attached hereto as **Plaintiffs’ Exhibit 11**.

35. **Plaintiff Rolando Del Muro** is a member of the BMWED-IBT. He has been a member of the BMWED-IBT for approximately sixteen (16) years. Plaintiff Del Muro was elected as the General Chairperson of Plaintiff Elgin, Joliet and Eastern System Division shortly after the Elgin, Joliet and Eastern Railroad was purchased by the Canadian National Railroad (“CN”) in 2011. He was reelected in 2015 and 2019 and is a “working officer,” working full-time in the field for the railroad he works on, CN.

36. **Plaintiff EJ&E, i.e., Elgin, Joliet and Eastern System Division**, also referred to herein as the “EJ&E” is an affiliate of the BMWED-IBT. The EJ&E is among the smallest of the BMWED-IBT system federations and divisions. It

represents approximately 135 members working primarily for the CN, *i.e.*, Canadian National Railroad, on a branch of CN's property previously owned by the Elgin, Joliet and Eastern Railroad. As noted above, Plaintiff Del Muro is the elected principal officer/General Chairman of the Elgin, Joliet and Eastern System Division. A true and correct copy of EJ&E's Bylaws is attached as **Plaintiffs' Exhibit 12**.

37. **Plaintiff Samuel J. Alexander** is a member of the BMWED-IBT. He has been a member of BMWED-IBT and its predecessor BMWWE for approximately forty-one (41) years. Plaintiff Alexander was elected as a Local Lodge Chairperson in 1985 and began work as an officer of Plaintiff Southern System Division in 1990. He was elected to a four-year term as principal officer/General Chairperson of the SSD in 2011, and was reelected to new four-year terms as principal officer/General Chairperson in 2015 and 2019.

38. **Plaintiff Southern System Division**, also referred to herein as the "SSD," is an affiliate of the BMWED-IBT. The SSD represents approximately 1,075 members working on the original Southern Railway Property, which is now operated by now run by the Norfolk Southern Railway ("NS"). As noted above, Plaintiff Alexander is the elected principal officer/General Chairman of the Southern System Division. A true and correct copy of the SSD's Bylaws is attached as **Plaintiffs Exhibit 13**.

39. **Plaintiff Joe Letizia** is a member of the BMWED-IBT. He has been a

member of the BMWED-IBT and its predecessor, BMW, for approximately twenty-three years ago since 1998, when the Wisconsin Central Railroad was purchased by the Canadian National Railroad. He became a Local Lodge President in 2005 and an elected member of the Wisconsin Central System Division Joint Protective Board in 2006. He was also elected as Vice-Chairman/Secretary-Treasurer of Plaintiff Wisconsin Central System Division that year. Three weeks after beginning his term, he was appointed principal officer/General Chairman to fill a vacancy in that position. Plaintiff Letizia was reelected as principal officer/General Chairman of the Wisconsin Central System Division in 2010, 2014 and 2018. His current term runs through 2022.

40. **Plaintiff Wisconsin Central System Division**, also referred to herein as the “WCSD,” is an affiliate of the BMWED-IBT. The Wisconsin Central System Division represents approximately 500 members. A true and correct copy of the WCSD’s Bylaws are attached hereto as **Plaintiffs Exhibit 14**.

41. Plaintiff Matthew Nies is a member of the BMWED-IBT. He has been a member of the BMWED-IBT for approximately sixteen (16) years, since 2005. He was elected Vice Chairman the Bessemer & Lake Erie System Division, in 2010, and subsequently was elected principal officer/General Chairman of that division in 2014. He continues to serve in that role.

42. **Plaintiff Bessemer and Lake Erie System Division**, also referred to herein as the “B&LE,” is an affiliate of the BMWED-IBT. With less than one hundred (100) members and only one Local Lodge affiliated with it, Plaintiff B&LE is the smallest BMWED system federation/division. A true and correct copy of the B&LE Bylaws are attached hereto as **Plaintiffs Exhibit 15**.

### **BMWED-IBT CURRENT AND HISTORICAL STRUCTURE**

43. While the current structure of the BMWED-IBT was created by the 2004 Merger Agreement, the 2004 Merger agreement preserved the structure of the BMWED-IBT’s predecessor, the BMWED, and simply placed the organization under an IBT umbrella organization called the IBT rail conference, while renaming the BMWED a division of the IBT.

### **THE 2004 MERGER AGREEMENT**

44. In 2004, the BMWED and the International Brotherhood of Teamsters (“IBT”) entered into the 2004 Merger Agreement referenced in Paragraph 5, above. As set forth in the 2004 Merger Agreement, the BMWED became a largely autonomous division of the IBT and is now known as the BMWED-IBT. The merger became effective on January 1, 2005. The stated purpose of the 2004 Merger Agreement, is to:

provide for the merger of the BMWED and the IBT; to maintain for the BMWED, its subordinate bodies and its members, the autonomy available within the structure established by this Merger Agreement, the IBT Constitution and the

Rail Conference bylaws; to gain for the BMWWE and its members the strength and resources available both from the International Brotherhood of Teamsters and from cooperation and coordination with IBT Local Unions and other affiliates throughout the United States, Canada and Puerto Rico; to enable BMWWE to better serve and represent its members and to secure stronger contracts for its members; to join the IBT Rail Conference; and to allow the BMWWE to expand its jurisdiction and membership to include, but not be limited to, all maintenance of way workers, contractors, suppliers and manufacturers within the Rail and related industries.

**Plaintiffs Exhibit 2**, Section 1.1. The mechanics and resulting structure of the merger are outlined in the 2004 Merger Agreement, and provide that:

On the effective date of the Merger, the BMWWE and its subordinate bodies in the United States will become known as the Brotherhood of Maintenance of Way Employees Division (BMWED) and will become affiliated with the IBT Rail Conference as a Craft Division. The BMWED and its subordinate bodies will maintain the same control over their assets, contracts and affairs that they have prior to the merger, limited only by the provisions of this Merger Agreement. All officers of all BMWWE bodies (Grand Lodge, System Federations and Divisions, Local Lodges and State Legislative Boards) holding office immediately before the effective date of the merger will maintain those offices in accord with the applicable bylaws, and elections in each body will be conducted as currently scheduled, provided that the first BMWED Convention and the first elections of BMWED national officers will be held in June 2006 and every four years thereafter. The IBT Rail Conference is an umbrella organization designed to coordinate activities on behalf of members within the Rail Industry in the United States including all members of the BMWED and the Brotherhood of Locomotive Engineers and Trainmen (BLET) in the United States and any rail union with independent jurisdiction that may merge with the IBT in the future. The BMWED will initially designate four representatives to serve as members of the policy committee of the IBT Rail Conference. The Merger Agreement also provides a transition with respect to certain governing provisions of the IBT Constitution, with respect to the payment of per capita by BMWED to the IBT, and with respect to the assumption by IBT of certain BMWWE administrative and other functions. The Merger Agreement guarantees the parties the right to withdraw from the merger during a two-year period following approval through the

procedures set forth in paragraph 4.28, below.

*Id.* at Section 1.2.

45. With respect to the preservation of BMWED-IBT's autonomy, the 2004 Merger Agreement specifies a hierarchy of controlling documents in the event of any conflict or inconsistency with respect to them. Specifically, Section 1.4 of the 2004 Merger Agreement provides as follows:

In the event of any conflict or inconsistency, this Merger Agreement shall govern over the BMWED Bylaws, all subordinate BMWED affiliate bylaws, the IBT Constitution and the IBT Rail Conference Bylaws; and the Merger Agreement and the BMWED Bylaws shall govern over the IBT Constitution and the IBT Rail Conference Bylaws.

**Plaintiffs Exhibit 2**, Section 1.4. The 2004 Merger Agreement also guarantees the autonomy of the BMWED's affiliated bodies by protecting them from involuntary or forced mergers, disbandments and similar transactions. Specifically, the Merger Agreement provides that:

Notwithstanding any provision of the IBT Constitution, there will be no mergers, disbandments or consolidations of any System Federations/Divisions or Local Lodges within the BMWED except as provided in the applicable BMWED or System Federation/Division Bylaws.

*Id.*, Section 4.24.

46. In 2004 the BMWED-IBT also became the certified bargaining representative of bargaining unit employees employed by one or more employers covered by the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* ("NLRA"),

including Voestapline Nortrak, see Paragraph 24. As such, and by virtue of representing workers who are employees within the meaning of Section 2(2) of the NLRA, 29 U.S.C. § 152(2), Defendant BMWED-IBT is a “labor organization” within the meaning of Section 2(5) and Section 301 of the NLRA, as amended, 29 U.S.C. §§ 152(2)(5), 185. In light of the BMWWE’s decision to expand its membership to include cover employees employed by employers covered by the NLRA, Section 3.2 of the 2004 Merger Agreement between the BMWWE and IBT, **Plaintiffs Exhibit 2**, contains an express description of the BMWED-IBT’s jurisdiction that not only preserves the BMWWE’s historical jurisdiction also enables it to expand its jurisdiction to “any other employees that may be organized by BMWED specifically including maintenance of way and track structures personnel who are not direct employees of a common carrier by rail.” The addition of the above-quoted language enabled BMWED-IBT to retain jurisdiction over bargaining unit employees employed by employers that are not common carriers by rail and are instead “employers” within the meaning of Section 2(5) of the NLRA. 29 U.S.C. § 152(2).

**THE THREE-SEGMENT STRUCTURE OF THE BMWED-IBT AND ITS  
PREDECESSOR, THE BMWWE**

47. Just like its predecessor, the BMWWE, the BMWED-IBT is not a unitary body. It instead has three structural components, each of which is vested with its own authority. Specifically, those components consist of three separate bodies: (1)



a National Division; (2) System Federations or Divisions; and (3) Local Lodges, which are associated within specific System Federations or Districts. As explained by former BMW Grand Lodge President T. C. Carroll in the Introduction to the BMW-financed and written history of the BMW in 1955:

In organizational set-up, our Brotherhood is composed of three divisions: the Grand Lodge, the System Division or System Federation, and the Subordinate Lodge. Although the Grand Lodge is the supreme body of the Brotherhood, the System Division and the Subordinate Lodge are in many respects self-governing within the framework of our constitution.

D.W. Hertel and T.C. Carroll, History of the Brotherhood of Maintenance of Way Employees: Its Birth and Growth, 1887 – 1955, Ransdell Inc., publ., 1955, (hereafter, referenced as “BMW History, at \_\_\_\_”), at XIII. A true and correct of the excerpts quoted herein is attached as **Plaintiffs Exhibit 16**.<sup>2</sup> Former Grand Lodge President Carroll further explained that the national officers of the BMW Grand lodge are elected by delegates who are themselves elected by the members of their Subordinate Lodges. *Id.* at XIV. Specifically, he explained as follows:

Each subordinate lodge is entitled to send a delegate to these conventions, who casts the numerical vote of his lodge membership in the election of Grand Lodge officers or in deciding questions affecting the policies, activities, or government of the Brotherhood. All matters properly brought before the convention are thoroughly discussed and decided by majority vote of the assembled delegates. The Grand Lodge convention adopts the Constitution and Bylaws for the general government of the Brotherhood.

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<sup>2</sup> The BMW History is contained on the BMEWD-IBT official web site, and can be accessed at [https://www.bmwe.org/cms/file/01172018\\_131338\\_brotherhood\\_book2018.pdf](https://www.bmwe.org/cms/file/01172018_131338_brotherhood_book2018.pdf).

*Id.* at XIV. Carroll also explained that:

the Grand Lodge President exercises supervision over all affairs of the Brotherhood, presides at all sessions of the Grand Lodge, enforces the provisions of the Constitution and By-Laws, and works for the general welfare of the Brotherhood.

*Id.* Carroll further explained that:

The Grand Lodge Executive Board supervises the general welfare of the Brotherhood. One of its duties is to audit the accounts of the Grand Lodge each quarter. A certified public accountant is employed by the Board for this purpose. Three members of the Grand Lodge Executive Board act as Trustees for the Brotherhood, and all real estate owned by the Brotherhood is held in the names of these Trustees.

*Id.* With respect to the second unit of the BMWE, namely, the Protective Department,” Carroll explained as follows:

The Protective department functions on each railroad system, or group of federated railroad systems, with which our Brotherhood holds contracts, under the joint direct supervision of the Grand Lodge and the subordinate lodges under the jurisdiction of the particular system division or federation.

Whenever the Brotherhood secures representation rights on a particular system, a Joint Protective Board is elected by delegates from subordinate lodges on that system. . . . The Protective Department on each system or group of federated systems negotiates and maintains agreements covering wages and working conditions on the individual railroad systems, handles claims or grievances that may arise over the application of the agreement rules, and generally works to promote the welfare of railroad maintenance of way workers under its jurisdiction.

*Id.* at XVI-XVII. Carroll further explained that the third unit of the BMWE, namely, the “Subordinate or Local Lodges:

form the direct link between the individual member and his Brotherhood. They are actually the grass-roots segment of the organization.

*Id.* at XIX. Carroll lauded the tri-partite structure of the BMW, writing that:

It will be seen from the foregoing that the Brotherhood in all its activities strives to maintain and perpetuate the principle that the majority vote of the individual members, or the representatives they have selected to speak and act for them, shall govern. It is, I believe, an organization founded, operated, and controlled the basis of true democracy.

*Id.* at XXI.

48. The organizational and governing structure described in Paragraph 47, above, has not changed in any manner relevant to this case. Moreover, as noted in Paragraph 47, above, the BMW's three-segment structure as it existed immediately prior its merger with the IBT in 2004 remained intact.

#### **THE BMWED-IBT NATIONAL DIVISION AND NATIONAL DIVISION OFFICERS**

49. The first component of the BMWED-IBT is the National Division. The National Division's equivalent structural segment under the BMW was the "Grand Lodge."

50. The BMWED-IBT National Division is governed by a thirteen (13) member board of National Officers, namely, a National Division President, a National Division Secretary-Treasurer, five (5) National Division Vice Presidents, and six (6) National Division Executive Board members.

51. Consistent with the autonomy guaranteed to the BMWED-IBT in the 2004 Merger Agreement, the National Division has jurisdiction over all matters pertaining to the National Division not otherwise referable to the IBT pursuant to the terms of the Merger Agreement. *See* **Plaintiffs Exhibit 1**, Art. I, Section 2. Article II, Section 1 of the BMWED-IBT National Division Bylaws thus grants the BMWED-IBT National Division general supervision and control over BMWED-IBT system federations and divisions and Federations, Local Lodges, and the membership. The autonomy of the system federations and divisions is also expressly recognized and preserved, however. Specifically, Article II, Section 1 provides as follows:

The National Division shall exercise general supervision and control over all System Divisions and Federations, Local Lodges, Officers and the entire membership of the BMWED, as well as all subjects pertaining to the same. While the autonomy of System Divisions and Federations is duly recognized, and they may adopt Bylaws establishing procedures for the conduct of their internal affairs and business, none of the provisions of such Bylaws shall be in conflict with any of the provisions of these Bylaws subject to the terms of the Merger Agreement. Prior to becoming effective, all System Division or Federation Constitutions and Bylaws and any amendments thereto must be approved by the National Division President and the IBT General President.

*See* Plaintiffs Exhibit 1, Art. II, Section 1. The Bylaws of each of the Plaintiff BMWED-IBT federations and divisions have all been approved by the BMWED-IBT National President and the IBT General President and, by such approval, have been confirmed to not be in conflict with the BMWED-IBT National Division

Bylaws subject to the terms of the Merger Agreement. Moreover, the BMWED-IBT National Division Bylaws state that “[b]etween Conventions of the National Division all administrative, executive and judicial power and authority of the Division is “vested in the National Division Officers as provided in these Bylaws, except for matters referable to the IBT pursuant to the terms of the Merger Agreement.” *Id.* at Art. I, Section 3.

52. The National Division and its National Division Officers are bound by and required to adhere to the National Division Bylaws and policies adopted by majority votes of the National Division’s quadrennial convention. The National Division President, for instance, is required to exercise authority and perform such other duties as are additionally prescribed in these Bylaws or other governing laws of the BMWED or which may be delegated or assigned to him by the National Division Convention or which may be imposed upon him by the IBT Constitution, the Merger Agreement or applicable law. *Id.* at Art. I, Section 17.

53. In 2005, shortly after he was elected, Defendant Simpson spoke at the quadrennial convention of Plaintiff Northeastern System Federation. Defendant Simpson emphasized the critical importance of all of the BMWED-IBT National Division’s officers performing their elected responsibilities working as a functional multi-person governing body rather than as individuals acting unilaterally based on their individual notions of what they themselves feel are good and bad policy

choices. In this regard, at page 17 of his speech, Defendant Simpson stated:

The [BMW-IBT] National Division officers that you've elected at the last convention are a group of hard working general chairmen, just like Stuart. And just the comment about those guys, they're great, they discuss, they do the same thing you do, they debate, they argue, and we come out the other end with a process we want to go forward with. But the reason I mention them is that Brother Geller and I don't, we're elected president and secretary-treasurer, but the National Division officers are the policy making group between conventions for this union. And that group of 13 or 14 guys runs this union, based on what the general chairmen [of the BMW-IBT system federations and divisions] and the members tell them they want. So it's not one guy. I'm not smart enough to make this union work good, it takes more than me. It takes more than one person. I don't care who the president is, we don't have anybody smart enough to run this union by themselves. So it takes the members, it takes the structure, and that's what we've got to protect, the ability to have a union, the ability to come together, and worry about our individual liberties as well as our collective liberties, we've got to keep both of these in our mind as we talk about it. [Emphasis supplied].

A true and correct copy of Defendant Simpson's 2005 speech is attached hereto as

**Plaintiffs Exhibit 17.**

**BMWED-IBT SYSTEM FEDERATIONS AND DIVISIONS**

54. The second component of the BMWED-IBT consists of the organization's system federations and divisions. As discussed in Paragraph 44, above, for decades, and indeed since, 1898, *see* BMW History at 35-6, the BMWED-IBT (and its predecessor, the BMW, has represented its railroad members through system federations and system divisions that represent members who are connected to one another by virtue of the rail systems they work on. Historically, when the BMW was first founded more than 130 years ago, those

systems were controlled by robber barons who owned or controlled several railroad systems. After the railroad industry was deregulated in the early 1980s, many railroads went out of business or were acquired by larger ones. Today, there are seven (7) large national freight railroads, and they are classified by the federal government as Class I freight railroads. These Class I freight railroads control railway systems whose rails stretch across multiple states and across the continent, spanning thousands and even tens of thousands of miles. The largest Class I freight railroad, BNSF, for example, operates approximately 32,500 miles of rail in twenty-eight (28) states. The second largest Class I freight railroad, Union Pacific operates over approximately 31,800 miles of rail in twenty-three (23) states. The third largest Class I railroad, CSXT, operates approximately 21,000 miles of rail in twenty-three (23) states. The BMWED-IBT system federations and divisions represent members based primarily upon the railroad systems their members work on, as well as the geographic areas over which those systems or branches of such systems operate. As a result, existing BMWED-IBT federations and divisions represent employees who work on railway systems operated by multiple Class I freight, as well as national passenger railroads (Amtrak), regional freight railroads, small, “short-line” railroads, and commuter railroads such as Metra, Keolis, etc. Thus, for example, four (4) of the fourteen (14) existing BMWED-IBT federations/divisions collectively represent 6,700 members who work on the BNSF railroad system and three (3) of

the fourteen (14) existing federations and divisions collectively represent approximately 7,700 members who work on the Union Pacific railroad system as well as short lines and commuter lines described above. Those federations/divisions work collaboratively with one another in the performance of their representative duties owed to their members.

55. As they were prior to the 2004 merger between the BMW and IBT, BMWED-IBT system federations and divisions are self-governing, autonomous labor organizations that provide day-to-day representation as well as collective bargaining and contract administration and enforcement on behalf of the Local Lodges associated with them and their rank-and-file members. They file their own annual reports with the United States Department of Labor, make and maintain their own governing documents, hold their own conventions, elect their own executive board officers, set their own dues structures, retain their own legal counsel, create their own benefit funds, and are governed by their own governing councils, called joint protective boards.

56. The self-governing autonomy of the BMW system federations and system divisions has remained intact since they were established by the delegates to the 1898 BMW Convention. The BMW's 1902 Constitution and Bylaws for Subordinate Lodges, for example, contained chapter entitled, "Laws Governing the Protective Department of the International Brotherhood of Maintenance-of-Way



Employees that provided in in pertinent part that:

Sec. 9. The Joint Protective Board shall have the power to adopt and issue such by-laws for its government and for the regulation of its system affairs as it may deem based suited to its interests, not in conflict with the Constitution of the Brotherhood and subject to approval of the Grand President.

A true and correct copy of the BMWWE's 1902 Constitution and Bylaws is attached hereto as **Plaintiffs Exhibit 18**.

57. Over the decades, the delegates to the BMWWE Convention occasionally modified the descriptive language guaranteeing that self-governing autonomy of the system federations and system divisions, but they have always preserved the principle of self-governing autonomy itself. That guarantee, moreover, is continues to be preserved in the current Bylaws of the BMWED-IBT. *See, e.g.*, Plaintiffs Exhibit 1, Art. II, Art. III, Sections 16 and 17; Section, Art. XIX, Section 3. Indeed, prior to secretly developing his forced consolidation scheme, Defendant Simpson previously acknowledged the self-governing, autonomous structure of the system federations and divisions. For example, in an October 31, 2011 letter to the General Chairman and Executive Board Chairman of the then existing Illinois Central Gulf Federation, Defendant Simpson wrote that:

System divisions and federations are affiliated, self-governing organizations under our Bylaws. The National Division does not exercise day-to-day oversight or direction over their affairs. Consistent with respect or system division or federation autonomy, the National Division does not ordinarily interfere in an affiliate's operations and actions, in the absence of an appeal

pursuant to Article III of our Bylaws.

A true and correct copy of Defendant Simpson's October 31, 2011 letter is attached hereto as **Plaintiffs Exhibit 19**.

58. Article XIX, Section 22, of the BMWED-IBT National Division Bylaws vests the system federations and divisions are vested with the exclusive authority, responsibility and discretion to affiliate with one or more other system federations or divisions. Article XIX, Section 22, provides as follows:

Consolidation of System Divisions or Federations. When two or more System Divisions or Federations are consolidated and operated as one unit, the Joint Protective Boards on such System Divisions or Federations may consolidate or federate in order to facilitate to representation of the members thereon, in the following manner.

When two or more System Divisions or Federations of approximately equal milage and importance are consolidated, the Joint Protective Boards on such Systems may meet in joint session. At such joint session, existing Constitutions and/or Bylaws shall be suspended and all Officers' positions declared vacant, and a new Constitution and/or Bylaws suitable for the government of the Consolidated System Division or Federation shall be adopted and new Officers elected.

Where a small System Division or Federation is being consolidated or absorbed by a large System Division or Federation, the System Organization on such small absorbed System may become affiliated with the System Organization on the large absorbing System and shall be governed by be Constitution and/or Bylaws in effect on the larger System Division or Federation with respect to representation and otherwise.

In all cases of consolidations of two (2) or more System Divisions or Federations, the funds of those which consolidate shall revert to the System Division or Federation in which they are consolidated; however, all records shall become the property of and be returned to the National Division for such

distribution as may be appropriate.

In all cases of abandonment of a System Division or Federation, the funds and records shall be returned to the National Division in accordance with the procedure provided in Article XVIII, Section 2, for dissolution of Local Lodges.

**Plaintiffs Exhibit 1**, Art. XIX, Section 22. Moreover, all system federation and division bylaws specify that such affiliation decisions are reserved to the respective governing boards of those system federations and divisions. Thus, when two or more system federations/divisions approve an affiliation with one another, the newly merged/affiliated federation/division's General Chairperson is then vested with the responsibility to effectuate the merger/affiliation, as well as obtaining approval by the BMWED-IBT National Division President of the merger/affiliation conditions, including the merged/affiliated entity's revised bylaws. Every such consolidation and merger, however, must be initiated and undertaken by the elected officials of the involved federations and divisions and cannot be forced system federations and divisions without the consent of their governing joint protective boards.

59. Many of the BMWED-IBT system federations and divisions and those of the BMWED-IBT's predecessor, the BMWE, system federations and divisions have been involved in affiliation transactions with other BMWED-IBT and BMWED system federations and divisions that resulted in the consolidation and merger of the involved entities. In every such transaction, all of the involved

federations and systems adhered to the same affiliation rules as are set forth in each of their bylaws, such that their elected leaders negotiated the terms and conditions of the transaction, their respective joint protective boards approved them, and the resulting general chairpersons of the merged/affiliated entity secured approval of the conditions of affiliation/merger from the BMWED-IBT National Division President and or BMWE Grand Lodge President. For example:

A. Plaintiff Allied Federation is the product of several mergers with other BMWED-IBT and BMWE system federations and divisions, including the 2007 merger between the Allied Eastern Federation and the Missouri-Pacific Federation that gave rise to the Allied Federation's current name. Subsequently, in 2008, the Allied Federation merged with the Southern Pacific Atlantic Federation, the latter of which was folded into the Allied Federation. All the mergers involving Plaintiff Allied Federation were accomplished by the elected officers of the involved federations, and none of them were forced upon them or otherwise dictated by order of the National Division President of the BMWED-IBT or its predecessor, the Grand Lodge President of the BMWE.

B. The Northeastern System Federation is the product of several mergers with other BMWED-IBT (and its predecessor BMWE's) affiliated system federations and divisions. Those mergers were accomplished by the elected officers of the involved federations and divisions, and none of them were forced upon them

or otherwise dictated by order of the National Division President of the BMWED-IBT or its predecessor, the Grand Lodge President of the BMWE.

C. The Unified System Federation is the product of, and was established upon, the 2006 merger between the BMWED-IBT's Union Pacific System Division and the Chicago & North Western System Federation. Thereafter, in 2010, the BMWED-IBT's Pacific Federation merged with the Unified System Division. In the 2010 merger between the Unified System Division and the former Pacific Federation, Defendant Below led the merger negotiations on behalf of the Pacific Federation in his then capacity as General Chairman of that federation. Just recently, in 2020, the BMWED-IBT's Illinois Central Gulf Federation merged with the Unified System Division. The Unified System Division currently represents approximately 5,600 members. All the mergers involving the Unified System Division were accomplished by the elected officers of the involved federations and divisions, and none of them were forced upon them or otherwise dictated by order of the National Division President of the BMWED-IBT or its predecessor, the Grand Lodge President of the BMWE.

D. Plaintiff ATSFF was established as the result of a 2009 merger between two BMWED-IBT affiliates, the AT&SF and another BMWED-IBT federation named the Frisco System Federation. That merger was accomplished by the elected officers of the two involved federations, and it was not forced upon them

or otherwise dictated by order of the National Division President of the BMWED-IBT.

E. ASF was established in 2020, upon the completion of the 2019 merger of two former BMWED-IBT affiliated federations, the Consolidated Rail System Federation CRSF, and the Affiliated System Federation. Plaintiff Graham was the elected principal officer/General Secretary of the CRSF at the time, and Defendant Jack David was the principal officer/General Chairman of the Affiliated System Federation at that time. In their capacities as elected principal officers/General Chairmen of their respective system federations, Plaintiff Graham and Defendant Jack led the merger negotiations. During the 2019 Affiliated System Federation Joint Protective Board's ratification meeting concerning merger, Defendant David informed the officers of that System Division's joint protective board that he had initiated the merger discussions with the CRSF in 2017 by writing a letter to his counterpart, the General Chairman of the CRSF, formally requesting that the two organizations enter in merger discussions. Defendant David further explained that after the General Chairman of the CRSF responded in writing and agreeing to enter into such merger talks, the two organizations commenced merger negotiations and reached a merger agreement that required ratification by both organization's governing bodies, *i.e.*, their joint protective boards. Defendant David spoke in favor of the merger, stating that:

both federations know that this is the most perfect fit in the nation. The two federations, the way we're mapped out, the railroads that we represent, everything that comes together, these two fit like a puzzle piece. That's why I have been talking and I asked your permission at [the Allied System Federation] convention as we introduce [Plaintiff] Jason [Graham] and his crew to pursue this issue. We're here today to discuss it and make a vote. You will be voting on the merger, with system bylaws, with merger system bylaws, and laws as represented, and we can correct any typographical errors, but we can't make changes to those bylaws. We vote up or down, and then there's a merger agreement that takes care of the issues also, so we'll put that all in one package.

A true and correct copy of the minutes of the Affiliated System Federation Joint Protective Board's merger ratification meeting and the accompanying Merger Agreement Between the Affiliated System Federation and the Consolidated Rail System Federation attached hereto as **Plaintiffs Exhibit 20**.

#### **THE LOCAL / SUBORDINATE LODGES**

60. As had been the case prior the 2004 merger between the BMW and IBT, the third component of the BMW-IBT consists of its Local Lodges. The Local Lodges provide the grassroots link between the BMW-IBT membership and the organization. Regular meetings are held by most Lodges at which information is passed onto the membership and the affairs of the Brotherhood are discussed and acted upon.

61. The members of the Lodges elect their own officers as well as the delegates who will represent them at National Division and System Division/Federation Conventions to determine policies, adopt laws to govern

activities, and elect National Division and System Officers and State Legislative Directors. The Local Lodges are governed according to the bylaws of their respective system federation or division.

**THE INDIVIDUALLY NAMED DEFENDANTS' MACHINATIONS TO  
CONTROL THE UPCOMING BMWED-IBT QUADRENNIAL  
CONVENTION AND ITS OUTCOME, AND REPRISALS AGAINST THE  
PLAINTIFFS AND THE MEMBERS THEY REPRESENT**

62. As noted above, the Individually Named Defendants are National Division officers of Defendant BMWED-IBT. Defendant Simpson is the National President of the BMWED-IBT. The Individually Named Defendants as well as Peter E. Kennedy, BMWED-IBT's appointed Director of Strategic Coordination and Research and Defendant Simpson's Executive Assistant, are closely aligned with Defendant Simpson.

63. The BMWED-IBT elects its national officers at its June, 2022 quadrennial convention by means of a secret-ballot vote of the BMWED-IBT delegates elected by the approximately 28,000 BMWED-IBT members. The next convention is scheduled to take place in less than one year. In the spring of 2021, Plaintiff Albers formed a slate of candidates to run for BMWED-IBT National Division office. Plaintiff Albers established a slate of candidates to run for office in the 2022 election for BMWED-IBT National Division election of National Division officers.



64. Defendant Simpson has publicly stated that he intends to retire in September 2022, but he and other named Individually Defendants have manipulated the Plaintiffs to control the political outcome of the June 2022 National Division election. For instance, National Division Secretary-Treasurer David Joynt has openly supported certain of his and Defendant Simpson's closely aligned allies, including Peter E. Kennedy, BMWED-IBT Director of Strategic Coordination and Research, as a candidate for BMWED-IBT National Division President. Plaintiff Albers and the other named Plaintiffs declined to support Kennedy for that role.

65. Other Individually Named Defendants have also attempted to join or promote allies to run in lieu of the Plaintiffs Albers, Bogart, Cardwell, Fry, Moody-Gilbert, and Graham's slate ("Albers Slate") for the 2022 National Division officer election, but their efforts were all declined. One or more of them, including Defendants Simpson, Joynt, Dodd and David, have expressed their frustration and displeasure or attempted to interfere with the individually named Plaintiffs in forming a slate because, presumably, they or their allies were not included on the Albers slate. For example:

A. Defendant Simpson learned soon after Plaintiff Albers decided to run for National Division President and publicly question Plaintiff Albers at an audit committee luncheon with other National Division Officers. He then told two of the officers, Plaintiffs Fry and Moody-Gilbert, that he heard Plaintiff Albers had

not included them in the slate. Defendant Simpson knew or should have known that this erroneous information would have and did cause discord between Plaintiff Albers and Plaintiffs Fry and Moody-Gilbert.

B. Defendant Simpson also told Plaintiff Albers that he expected him to take care of his “kids,” referring to young staff people Simpson had hired.

C. Defendant Jed Dodd began lobbying Plaintiff Cardwell last November, 2020 to run on a slate of candidates for BMWED-IBT National Division officers positions and expressed his desire to run for his current National Division officer position. He also offered to be the “slate manager.” In April 2021 Plaintiff Cardwell informed Defendant Dodd that a slate of candidates for National Division officers was formed and, therefore, declined to run on a slate with Defendant Dodd.

D. After Defendant Dodd was informed he would not be a part of the Albers slate and shortly before he and the other Named Defendants unveiled their secret plan described herein he sent a cryptic email to some of the individually named Plaintiffs as well as numerous officers of the named Plaintiff system federations and divisions with the subject “ageism” and a Wikipedia definition of the term. When asked to clarify the “purpose” of the email by Plaintiff Cardwell, Defendant Dodd responded four minutes later to the group “You are a smart man, you can figure it out.” A true and correct copy of the Dodd email thread is attached hereto as **Plaintiffs Exhibit 21**.

E. Defendant David likewise sought a South Vice President position and an At-Large Executive Board position for his friends and close allies Johnny Long and Justin Blankenship. Plaintiff Jason Graham, however, was added to the Albers slate and is running for one of the positions that Defendant David wanted for his friends and close allies. In the spring of 2021, following a meeting of the BMWED-IBT National Division Executive Board, Defendant David approached Plaintiff Graham and informed him that Defendant Simpson had entered the meeting of the National Division Executive Board, of which Plaintiff Albers is the Chairman and Plaintiffs Moody-Gilbert, Fry and Bogart are members, as are Defendants David and Carroll, and told them he knew Plaintiff Albers was creating a slate. In what turned into a tense exchange and interrogation, Defendant David told Graham that Defendant Simpson confronted Plaintiff Albers, telling him that he was aware that Albers was running for National Division President with a slate of candidates. At that meeting Defendant David learned that Plaintiff Graham was running as a candidate for National Division Vice President. Defendant David confronted Plaintiff Graham, seeking confirmation. Plaintiff Graham confirmed to Defendant David that he was running for a position of National Division Vice President on the Albers slate, Defendant David told Plaintiff Graham that he did not have any right to run for that position because he had not secured permission from Defendant Simpson to do so. Plaintiff Graham told Defendant David that he did not need

permission from Defendant Simpson to run for office. Defendant David responded that Plaintiff Graham would “have egg on his face,” that as a member of the National Division Executive Board, he (Defendant David) has a say in all BMWED-IBT politics and that Defendant Simpson “would not be happy.”

66. Having failed in their attempts as described in Paragraph 65, above, Defendants Simpson, Dodd, David, and the remaining Individually Named Defendants have undertaken a reckless, and illegal scorched-earth attack aimed to control the outcome of next year’s BMWED-IBT Convention and election of National Division officers and to wreck and dismantle the robust BMWED-IBT’s democratic representative structure. In this regard, shortly after the efforts to manipulate and control the establishment of national officer candidates for the upcoming BMWED-IBT National Division Convention, and with the active support of the other Individually Named Defendants and Kennedy, Defendant Simpson and the other Individually Named Defendants embarked on a secret scheme to forcibly transfer the members, affiliated Local Lodges, and the dues assets and other properties from the existing BMWED-IBT system federations and divisions, including those that are Plaintiffs in this action, to new system federations and divisions that Defendant Simpson ordered to be established in “founding conventions” to be conducted this September and October, 2012. Now, by Order of the Court, those “founding conventions” are scheduled for dates not earlier than

October 25, 2021.

67. On June 10, 2021, BMWED-IBT Director of Strategic Coordination and Research and Defendant Simpson's Executive Assistant, Peter E. Kennedy, sent an email to the BMWED-IBT National Division officers regarding the "Establishment of Single Employer Systems." Kennedy attached two letters that he claimed were confidential, neither of which is now confidential, as they both subsequently were sent to the BMWED-IBT members by Defendant Simpson and the other Individually Named Defendants. Kennedy stated that the "first attached letter ('General Membership Letter') is a letter that President Simpson will be sending out to the Membership late next week, and it regards the actions he intends to carry out in restructuring the BMWED's Joint Protective Board structure/organization." Kennedy further stated that the "second attached letter ('NDO in Support') will be mailed with the General Membership letter, and is to be an expression of support from those National Division Officers that support the restructuring to be carried out under President Simpson's authority." Prior to receiving the email, Plaintiffs Albers, Moody-Gilbert, Fry and Bogart, all of whom are BMWED-IBT National Division officers by virtue of their elected positions as BMWED-IBT National Executive Board members, had not been consulted or even informed about Defendant Simpson's intention to "restructure[e]the BMWED-IBT's Joint Protective Board structure/organization." A true and correct copy of

Kennedy's June 10, 2021 email and accompany attachments is attached hereto as **Plaintiffs Exhibit 22.**

68. In a June 14, 2021 email and follow-on registered letter, Plaintiff Albers, Moody-Gilbert, Bogart, and Fry, in their capacities as duly elected BMWED-IBT National Division Executive Board members, directed Defendant Simpson not to expend any National Division funds on "founding conventions" as outlined in [his] recent correspondence disbursed via a June 11[sic], 2021 email by Mr. P. Kennedy, or any other post correspondence." Plaintiffs Albers, Moody-Gilbert, Bogart, and Fry further stated:

We refuse to approve the disbursement of funds because your proposal was performed in secret outside any National Division meeting, and because your proposal would severely damage the welfare of the Brotherhood of Maintenance of Way Employees Division – IBT. If you move forward with any expenditures related to this issue, such action will be seen as unauthorized use of funds and appropriate action will be taken.

Article III of the BMWED National Division Bylaws requires the National Division President to submit a message setting forth the affairs of the BMWED during his term of office and suggestions for legislations and changes in Bylaws for the best interest of the BMWED. He is also to set forth other suggestions and recommendations as he may deem advantageous to the BMWED and its members. Since your reelection at the 2018 National Division Convention, you have never indicated to a National Division body that you were even remotely thinking about the drastic plan you have recently proposed. Thus, expending funds without first outlining your plans does not comport with Article III, Section 1 of the Bylaws and thus it would be wholly improper to approve any expenditures in connection with your plan.

\* \* \*

You are directed not to expend any National Division Funds on mailers, material, equipment, attorneys, consultants, or any other expenditure in connection with this plan until the Executive Board has a chance to meet to vote on whether to approve funds.

Furthermore, Plaintiffs Albers, Moody-Gilbert, Bogart, and Fry, who collectively constitute a majority of the six-person BMWED-IBT National Division Executive Board, and acting pursuant to their authority under Article VI, Section 6 of the BMWED-IBT National Division Bylaws, requested that, “in order to address this serious issue,” Defendant Simpson participate in a special meeting in conjunction with a BMWED-IBT National Division Association meeting that previously had been scheduled for October, 2021. A true and correct copy of Plaintiff Albers’s, Moody-Gilbert’s, Bogart’s and Fry’s June 14, email/letter is attached hereto as **Plaintiffs Exhibit 23.**

69. By letter dated June 21, 2021 addressed to Defendant Dodd (who had just recently been declined a position on Plaintiffs’ slate for the 2022 National Division officer election), Defendant Simpson informed Dodd that, “effective immediately, I am hereby designating you as the Chairman of the founding of the National Railroad Passenger Corporation (Amtrak) Employer Joint Protective Board Convention, pursuant to the provisions of Article XIX, Section 1 of the Brotherhood of Maintenance of Way National Division Bylaws.” Defendant Simpson further informed Defendant Dodd that:

[a]s Chairman, you are authorized and responsible for conducting the founding Convention of The National Railroad Passenger Corporation (Amtrak) Employer Joint Protective Board, to be held on September 1 & 2, which includes the formation and selection of Bylaws and Rules Committees Members and Advisors. . . . Please contact Executive Assistant to the President, Peter Kennedy, should you require any assistance in coordinating Committee meetings, etc.

A true and correct copy of Defendant Simpson's June 21, 2021 letter to Defendant Dodd is attached hereto as **Plaintiffs Exhibit 24**.

70. On June 22, 2021, Defendant Simpson sent the BMWED-IBT members a nearly identical letter that Director of Strategic Coordination and Research and Defendant Simpson's Executive Assistant, Peter E. Kennedy had sent to the BMWED-IBT National Division officers by email on June 10, 2021 (*see Plaintiffs Exhibit 13*). As he had written in the June 10, 2021 draft, Defendant Simpson stated his opinion that "[t]he current structure of our Union weakens the voice and strength of the rank and file membership. The current composition of our Union is a century old and no longer comports to the current rail industry, and it does not deliver the best and most efficient representation our membership deserves." Defendant Simpson continued:

The multiple General Chairpersons operating in this system may think it should continue but I do not believe that this would be in the best interest of the membership. Correcting this problem will improve the representation of the membership by our Union.

Therefore I am going to exercise my authority under Article XIX, Section 1 of the Bylaws of the Brotherhood of Maintenance of Way Employees Division



of the International Brotherhood of Teamsters and call a founding Convention of all the Local Lodges on the following railroads: Amtrak, Norfolk Southern, CSXT, BNSF, UP, CP and CN. These Local Lodges will form a new single system to represent BMWED members on each of these railroads. At these founding Conventions, the delegates from the Local Lodges on each railroad will elect new officers and adopt new bylaws to organize all BMWED workers on one employer under a single banner. This will result in a more efficient use of dues and more strength when dealing with management. Dues money currently in the accounts of current systems to which the members currently belong will be transferred to the accounts of the new system on a per capita basis.

Defendant Simpson also advised that under his plan, he would transfer the members, of “smaller properties” “that cannot support their own system based upon membership levels” to the new systems. He did not explain how those “smaller property” assignments would be done and did not identify all of the “smaller properties” that would be affected, although he did state that they would not be divided into multiple systems. Simpson also neglected to point out that the “smaller properties” are separate railroads from the large carriers whose employee/members that he intends to assign to the “new single system[s].” In this regard, despite publicly justifying his forced consolidation scheme as one that will result in better representation through “single carrier” system federations and divisions, Defendant Simpson has not explained that when the second phase of his forced consolidation scheme is implemented, the newly established “single-carrier” system federations and divisions into which the “smaller properties” and their associated system federations and divisions and Local Lodges will be transferred will become “multi-

carrier and employer” system federations and divisions. And, having failed to explain that fact, Defendant Simpson has failed to point out when both phases of forced consolidation scheme are implemented, one or more of the newly created system federations and divisions will be structured just like the existing multi-carrier and employer system federations and divisions that he and the other Individually Named Defendants have set out to eliminate or mortally wound. Defendant Simpson likewise alluded to, but did not expressly acknowledge that his plan will effectively cripple, if not totally dissolve the BMWED-IBT’s existing system federations and divisions, result in the removal of many elected system federation and division officers from their elected offices, and will result in the seizure of dues monies paid by BMWED-IBT members to current system federations and divisions and reallocation of those monies to the new single system federations and divisions that he is mandating be established. Simpson wrote:

Smaller properties like Conrail Metra, Keolis, NICTD, KCS, York Rail, to name a few, and which cannot support their own system based upon membership levels, will be assigned to the new systems in accordance with National Division Bylaws. However, we will ensure that these properties are not divided up into different systems and will be assigned in a way that will maximize their unity in dealing with railroad management.

Simpson further advised in his letter that:

We will hold these founding Conventions during the months of September and October of this year. The new Federations will not be effective until January 1, 2022. This will provide time for an orderly transfer of funds and ensure any work in progress is completed. It will also ensure that the changes

do not interfere with the current election of International Teamsters officers. Simpson further neglected to mention that the members working on those “smaller properties,” including the members employed by class I railroad KCS, are excluded from participating in the upcoming “founding conventions” of the new federations/systems, and that they will therefore not have a voice in the establishment of the new federations/divisions that Simpson will forcibly assign them. They will not have any say or vote in the election of the officers of those new system federations and divisions who will be responsible for representing them. Simpson concluded his letter stressing that the “founding conventions” were very important; warning that a Lodge’s non-participation in those founding conventions would neither hinder the conduct of those conventions nor prevent the establishment of the new federations and divisions; informing them that they would still be assigned to the those new federations or divisions whether they wanted to be or not; and by “damning with faint praise” the efforts of the elected officers of the BMWED-IBT existing federations and divisions who will be removed from their offices upon the implementation of his consolidation plan. Specifically, Simpson wrote:

. . . This is obviously a very important meeting which will formally establish the officers and bylaws for the new System Division or Federation; however, if a delegate is not elected by a Local Lodge, that Local Lodge will not be represented when the new System Division or Federation is formed, but will be governed by the System or Federation.

Please do not consider this as a criticism of the current System Federation officers representing BMWED workers. It has been my experience that all of them are dedicated to their work and work very hard to serve the membership. Our current structure impedes any elected officer in performing his or her job in the most effective way possible for the membership. I would expect that many of the current officers will be running for office in the new System Division or Federation on these merits. However, the current design of the Systems is inefficient, unwieldy, confusing to the rank and file and does not provide the most effective representation possible. The purpose of establishing this new single System Division or Federation for each large employer is to correct a flaw that has festered for a long time and is not the fault of any single individual. None of us are blameless in creating and sustaining this system; nevertheless, it is far past time to fix the problem and move our Union forward for the benefit of the rank and file membership.

A true and correct copy of Defendant Simpson's June 22, 2021 letter to the BMWED-IBT membership is attached hereto as **Plaintiffs Exhibit 25**.

71. Defendant Simpson's June 22, 2021 letter to the membership informing them of his forced consolidation scheme was accompanied by a second letter to the membership, also dated June 22, 2021, signed by Defendants Joynt, Below, Glover, Sanchez, David, Dodd, and Carroll. In their letter, Defendants Joynt, Below, Glover, Sanchez, David, Dodd, and Carroll supported Defendant Simpson's forced consolidation. Their letter, which is the same as the draft that BMWED-IBT Director of Strategic Coordination and Research and Defendant Simpson's Executive Assistant, Peter E. Kennedy, had shared with the BMWED-IBT National Division officers on June 10, 2021, reveals a purported basis attempting to justify Defendant Simpson's forced consolidation scheme. In this regard, they acknowledged that

during his 17-year tenure as BMWED-IBT President, Defendant Simpson had never previously exercised the authority to implement his consolidation scheme he has now decreed that he is going to exercise, but then stated, that Defendant Simpson had such authority “all the while.” They then argued, however, that Defendant Simpson had not exercised such authority because he had hoped for the last seventeen (17) years of his tenure as BMWED-IBT National Division President that “the needs and interest of the membership” would prevail. Specifically, Defendants Joynt, Below, Glover, Sanchez, David, Dodd, and Carroll wrote:

The railroads have spent the last 30 years consolidating to form larger, stronger and more profitable railroad systems with centralized power structures. The most effective way to combat this is to fight each employer with a centralized voice. But our current organization of having multiple System Divisions and/or Federations on an individual Railroad allows the railroads to divide and conquer us. It also allows them to pit our internal competing interests against each other. For many years, President Simpson strongly encouraged the System Division and/or Federations to merge and consolidate for the purpose of building a more centralized representation structure that would ultimately build unity and strength at the bargaining table for members working for the same railroad.

All the while, he was urging voluntary realignment; President Simpson held the authority to carry out such changes through the BMWED National Division Bylaws. However, it was not his desire to exercise such authority. Rather, it was his hope that the needs and interests of the membership would drive the rationalization of their System Divisions and Federation on each railroad employer. To the credit of previous and current System Division and Federation officers; there have been changes to the System Divisions and Federations, but these changes were inadequate for reaching the level necessary to achieve real transformation for our Union.

\* \* \*

Therefore, we stand united in support of President Simpson establishing a System Division and/or Federation for each major freight railroad and Amtrak, and we look forward to the strength, unity and power it will bring to the BMWED on each railroad employer.

A true and correct copy of the June 22, 2021 letter of support signed by Defendants Below, Dodd, Glover, Sanchez, Carroll, David, and Joynt is attached hereto as **Plaintiffs Exhibit 26**.

72. By letter dated June 24, 2021, Defendant Simpson responded to the June 14, 2021 letter from Plaintiffs Albers, Moody-Gilbert, Bogart, and Fry requesting that he attend a special meeting of the BMWED-IBT National Executive Board in October, 2021 to discuss his forced consolidation scheme, and directing that he not expend BMWED-IBT National Division assets in furtherance of that plan. *See* Paragraph 68; **Plaintiffs Exhibit 23**. In his responsive letter, Defendant Simpson rejected Plaintiffs Albers, Moody-Gilbert, Bogart, and Fry's meeting request, writing that "[c]onducting such a meeting would be costly and a wasteful use of the Members' dues dollars." In rejecting the meeting request, Defendant Simpson also noted that he had conducted an electronic meeting with all the BMWED-IBT National Division officers, including the other Individually Named Defendants, system federation and division General Chairpersons and several Vice Chairpersons. Defendant Simpson stated that with respect to that electronic meeting:

The participants had more than adequate time to take part in that meeting and

nothing substantive was presented during the meeting – or subsequent thereto – that would prohibit me from exercising the express authority granted to the BMWED National Division President per Article XIX, Section 1 in establishing employer specific Joint Protective Boards.

Defendant Simpson also rejected Plaintiffs Albers, Moody-Gilberts, Bogarts, and Fry's directive not to expend union assets to support his forced consolidation scheme. Defendant Simpson wrote that their instruction was "simply a frantic attempt to distract from the facts and distort reality[,]” and was based upon “simply uniformed and uneducated assertions that are neither rooted in fact nor practicality and historical practice.” He continued:

Article XIX, Section 1 permits the BMWED National Division President to establish employer specific Joint Protective Boards when he/she sees fit in his/her judgement. It is my judgment as BMWED National Division President that the BNSF, Canadian National, Canadian Pacific, CSX, Norfolk Southern, Union Pacific and Amtrak employees have each reached a level of organization to warrant the establishment of a Joint Protective Board specifically for each respective employer. There is no express exception with said Article that prohibits the President from establishing such employer specific Protective Boards accordingly.

Defendant Simpson also brushed aside Plaintiffs Albers, Moody-Gilbert, Bogart, and Fry's claims that he lacks the authority under the BMWED-IBT National Division Bylaws to forcibly consolidate existing federations and divisions. In this regard, Defendant Simpson repeatedly placed the burden on them to convince him otherwise. He wrote:

- None of you have expressed a valid reason yet as to why I should not proceed under Article XIX, Section 1.

- You have not asserted that the BMWED National Division President does not have the authority to establish employer specific Protective Boards in accordance with Article XIX, Section 1 of the BMWED National Division Bylaws. Instead, your allegations are that I am not approved to carry out the establishment of the employer specific Joint Protective Boards because I have not received approval from such expenditures by the National Division Executive Board through their adoption of the National Division's Annual Budget, which inadequacies I will address in further detail below. Nevertheless, your failure to assert that the National Division President does not have the authority to establish employer specific Joint Protective Boards is a clear acknowledgement that my interpretation of the Bylaws is correct and accurate, and that I do indeed have the authority to proceed.
- In this regard, during our June 15<sup>th</sup> Zoom meeting, **National Division Executive Board Member and Chairman, Dennis Albers stated, 'You've (President Simpson) been saying that you were going to do this for years, that it has been your dream but we did not take your seriously.'** [Emphasis in original]. Brother Albers's statement is entirely correct, as I have raised this subject repeatedly at various junctures during my Presidency, and I have repeatedly asserted that Article XIX, Section 1 grants the BMWED President the authority to establish such employer specific Joint Protective Board. As Brother Albers clearly stated, it is apparent that all of you did not take me seriously, because despite my repeated assertions, none of you have ever properly contested the authority granted to the BMWED President under the Bylaws by requesting an interpretation of Article XIX, Section 1. Furthermore, none of you have ever proposed to amend Article XIX, Section 1 in accordance with Article XX, Section 1 of the Bylaws.
- Aside, the facts are that all of you have known of my intentions for numerous years, that you have each had ample opportunities in your respective capacities to voluntarily restructure and rationalize the Membership's representation structure, and that you have each had the opportunities and influence given your capacities to Amend Article XIX, Section 1 of the Bylaws in order to restrict the authority of the BMWED National Division President. Yet, all of you have utterly



failed to take the appropriate action to do such. Your pretending otherwise is baseless, dishonest, and clearly divorced from reality.

A true and correct copy of Defendant Simpson's June 24, 2021 letter is attached hereto as **Plaintiffs Exhibit 27**.

73. In an email also dated June 24, 2021, Defendant Simpson singled out Plaintiffs Albers, Moody-Gilbert, Fry and Bogart in an email where he accused them of "sedition" and questioned whether they were in "dereliction of your duties as National Division Officers." He then demanded the four Plaintiffs turn over minutes from their respective system federations and divisions that are also named Plaintiffs in this matter. A true and correct copy of Defendant Simpson's June 24, 2021 email is attached hereto as **Plaintiffs Exhibit 28**.

74. The following day, June 25, 2021 Defendant Simpson sent an email to the Plaintiffs Albers, Moody-Gilbert, Fry and Bogart and asked "[h]ave you guys really thought this through[?]" He then threatened that he "plan[ned] to start a member campaign that may not be pleasant for some of you." His reference was, in part, to direct mailings to the thousands of members of the named Plaintiffs explaining his scheme to eliminate the existing system federations and divisions and to create new ones which would cost the National Division thousands of dollars and which the four named Plaintiff executive board officers specifically told him he was not authorized to spend (see paragraph 40 above). A true and correct copy of

Defendant Simpson's June 25, 2021 email is attached hereto as **Plaintiffs Exhibit 29**.

75. On July 2, 2021, Defendant Simpson sent seven notices of "convention call to establish single joint protective board" to the BMWED-IBT members working for Amtrak, BNSF, CN, CP, CSXT, Norfolk Southern and UP. In each of the letters, Defendant Simpson stated that he was exercising his authority under Article XIX, Section 1 of the BMWED-IBT National Division Bylaws to call for a founding convention of all the Local Lodges whose members work for those seven (7) railroads to form new, single system federations, elect new officers, and adopt new bylaws. He also informed the members that their dues monies currently in their existing system federations' and divisions' accounts would be transferred to the accounts of the newly established federations and divisions on a per capita basis. As he had written in his June 22, 2021 letter to the membership, Defendant Simpson asked the membership to "not consider this a criticism of the current System Federation Officers," and that he "would expect many of the current officers would be running for office in the new System Federation[.]" He further wrote that:

The purpose of establishing this new single system for [Amtrak, BNSF, CN, CP, CSXT, Norfolk Southern and UP] is to correct a flaw in our structure that has festered for a long time and is not the fault of any single individual. It does however need to be fixed without further delay.

True and correct copies of the July 2, 2021 notices relating to the establishment of

the new federations/divisions relating to Amtrak, BNSF, CN, CP, CSXT, Norfolk Southern, and Union Pacific are attached hereto as **Plaintiffs Exhibits 30 through 36**, respectively. The identities of each of the seven (7) new single system federations/division, as well as the dates and locations of their “founding conventions” as originally scheduled prior to this Court’s order that they not commence earlier than October 25, 2021, the number of affected BMWED-IBT members, and the number of federations/divisions that currently represent members on those systems and whose elected officers will be removed from their offices and whose dues monies will be seized and paid over to the new federations/divisions are as follows:

<b>INVOLVED RAILROAD</b>	<b>FOUNDING CONV. DATES</b>	<b>CONV. LOCATION</b>	<b># OF AFFECTED MEMBERS</b>	<b># OF AFFECTED FEDS/DIVISIO NS</b>
<b>Amtrak</b>	Sept 1-2, 2021	Newark, NJ	2,400	4
<b>BNSF</b>	Oct 6-7, 2021	Denver, CO	6,700	4
<b>CN</b>	Sept 22, 2021	Rosemont, IL	1,500	5
<b>CP</b>	Sept 23, 2021	Rosemont, IL	700	3
<b>CSXT</b>	Sept 15-16, 2021	Hebron, KY	4,600	3
<b>NS</b>	Sept 8-9, 2021	Hebron, KY	3,500	4
<b>UP</b>	Sept 29-30, 2021	Denver, CO	7,700	3

76. In late June or early July, 2021, the General Chairpersons from twelve (12) out of the fourteen (14) existing BMWED-IBT federations and divisions invited

Defendant Simpson to meet with them in an attempt to resolve their dispute regarding Defendant Simpson's claimed authority to force consolidation of the existing federations and divisions into new single system federations and divisions and his recently announced plan to move forward with those forced consolidations. Defendant Simpson accepted the invitation and, on July 8, 2021 in Hendersonville, Tennessee, met with the twelve (12) General Chairpersons of Plaintiff Allied Federation, Plaintiff Alliance Federation, Plaintiff Atchison Topeka Santa Fe Frisco System Federation, Plaintiff Burlington System Division, Plaintiff Chicago Eastern Illinois System Federation, Plaintiff Commuter Railroad System Division, Plaintiff Northeastern System Division, Pennsylvania Federation, Plaintiff Southern System Division, Plaintiff Unified System Division, Burlington Northern System Federation, and Plaintiff Elgin Joliet & Eastern Division.

A. The twelve federations and divisions present at the meeting constitute approximately *ninety-five percent (95%)* of the BMWED-IBT membership. The twelve General Chairpersons explained their opposition to Defendant Simpson's plan to forcibly consolidate the existing federations and divisions into newly created federations and divisions and repeated their position that Defendant Simpson lacks the authority to implement such a plan, explaining that consolidations and mergers are done consensually by the involved federations and divisions and their governing joint protective boards.

B. In an effort to avoid a public escalation of their dispute where it could adversely impact the BMWED-IBT and the membership, especially while they remained engaged in national multi-employer collective bargaining with the railroads, they proposed a compromise solution entailing the consolidation of various federations and divisions through the transfer of various Local Lodges and members working on the same railroad to a single federation or division as well as various mergers of system federations and divisions, all of which would be accomplished by the involved system federations and divisions in accordance with, and as required by, Article XIX, Section 22 of the BMWED-IBT National Division Bylaws and the respective bylaws of the affected system federations and divisions. Their proposed compromise would enable Defendant Simpson to achieve most of the stated objectives he has publicly identified as his reason for engaging in his forced consolidation plan, but would be done in a manner that in compliance with the process required by Article XIX, Section 22 of the BMWED-IBT National Bylaws and the respective bylaws of the affected system federations and divisions.

C. Defendant Simpson refused to entertain a written compromise proposal from the General Chairpersons, claiming that the dispute was out of his hands. He informed them that he would have to consult with the BMWED-IBT National Division Vice Presidents, and other National Division officers, seven (7) of whom are Individually Named Defendants in this action. Defendant Simpson

requested that the General Chairpersons send their compromise proposal to him electronically and that he would discuss it with the other BMWED-IBT National Officers. The General Chairpersons sent their compromise proposal to Defendant Simpson later that day. A true and correct copy of that July 8, 2021 compromise proposal is attached hereto as **Plaintiffs Exhibit 37**.

77. Rather than respond to the General Chairpersons' July 8, 2021 compromise proposal, Defendant Simpson ignored it. He has instead continued to move forward with his forced consolidation scheme. This has included the development of draft bylaws for the new federations and divisions, including bylaws for the new federation that is supposed to represent the BMWED-IBT members working for Norfolk Southern. As set forth in those bylaws, the new federation lists its "covered railroads" and the "former" federations from which they arrived. A true and correct copy of the draft bylaws covering the soon-to-be established Norfolk Southern federation is attached hereto as **Plaintiffs Exhibit 38**. The designation of the existing BMWED-IBT federations and divisions as "former federations and divisions" signals Defendant Simpson's intent to disband and dismantle those currently existing system federations and divisions.

78. Defendant Dodd, whom Defendant Simpson has named to serve as Chairperson presiding over the Amtrack federation's "founding convention," is developing bylaws establishing six regional districts. The largest five districts are

being gerrymandered to include Pennsylvania Federation district Local Lodges, so that Defendant Dodd, who was the long-time General Chairman of the Pennsylvania Federation, can better control the new federation by stacking five of the six districts with his allies.

79. Defendant Dodd is not the only one of the Individually Named Defendants appointed to serve as Chairmen of new federations/divisions’ “founding conventions.” Defendant Simpson has named himself and all the other Individually Named Defendants to chair and preside over those “founding conventions,” and, where he has appointed co-chairmen to preside over certain of those “founding conventions,” he has also exclusively named only Individually Named Defendants to fill those appointments. Specifically, as noted above, Defendant Simpson has appointed Defendant Dodd to chair and preside over the Amtrak “founding convention.” Defendant Simpson has appointed Defendant Jack David to chair and preside over the NS “founding convention,” and he has also appointed Defendant Roger Sanchez to serve as co-chairman of the proceeding. Defendant Simpson has appointed himself to chair and preside over the CSXT “founding convention” and has appointed Defendant Roger Sanchez to serve as co-chairman of that proceeding. Defendant Simpson has appointed Defendant Bruce Glover to chair and preside over the CN, CP and BNSF “founding conventions.” Defendant Simpson has appointed Defendant David Joynt to co-chair the BNSF “founding convention.” And finally,

Defendant Simpson has appointed Defendant Louis Below to chair and preside over the UP “founding convention,” and has appointed Defendant Roger Sanchez to co-chair that proceeding.

80. Notably, before this Court entered an Order directing that none of the “founding conventions” take place earlier than October 25, 2021, the CP founding convention originally was scheduled to take place on September 23, 2021 in Rosemont, Illinois, just one day after the Northeastern System Federation’s quadrennial convention that had been previously announced and scheduled to take place on September 22, 2021 in Saratoga Springs, New York. NESF’s convention date was published and announced on April 19, 2021 – well in advance of the notice of founding convention call that was sent out on July 2, 2021. A true and correct copy of NESF’s Save-the-Date announcement notifying NESF delegates and National Division officer Defendants of the NESF convention date is attached hereto as **Plaintiffs Exhibit 39**. Defendant officers, including Defendant Sanchez, were all well aware of the NESF convention date and all knew that the CP “founding convention” included a large number of NESF affiliated Local Lodges whose members work for CP. A true and correct copy of Defendant Sanchez’s correspondence notifying Plaintiff Bogart of his intent to attend the NESF convention is attached hereto as **Plaintiffs Exhibit 40**. As a result of the effective conflict between the CP founding convention and NESF convention dates, NESF



members who work for CP were put in the untenable position of having to choose whether to attend the CP founding convention or the NESF convention, which would have had what likely was Defendants' intent to reduce participation and representation from delegates elected by the NESF Lodges at the CP founding convention.

81. On or about July 30, 2021, Defendant Simpson caused Defendant BMWED-IBT to post a video update to the membership regarding his forced consolidation scheme. In the video, Defendant Simpson claims that his consolidation plan is better than the BMWED-IBT's existing representation structure. Departing from BMWED-IBT's 130-year tradition of union democracy and transparency, Defendant Simpson, asserts that his reason for implementing his forced consolidation scheme is that he is retiring and therefore is the only person with the political will, ability and desire to effectuate his plan. Specifically, he stated:

this is my last term as National Union President, my last term as any union officer. I will certainly stay around, hopefully, if one, if someone asks me for advice, I will be happy to share. But I will not be running for office in 2022, and if I don't do it, I don't think there is anyone in the Brotherhood following me that would take the job and have the political will, the ability, and desire to do what needs to be done. S I will get it done this year, and hopefully folks finally accept it and we move on[.]

82. Defendant Simpson falsely asserts to the membership in his July 30, 2021 video that he has the authority to unilaterally implement his plan. In this regard, and as did in his June 22, 2021 letter to the membership, Defendant Simpson claims

that Article XIX, Section 1 of the BMWED-IBT National Division Bylaws, gives him the authority as National Division President unilaterally to consolidate existing BMWED-IBT federations and divisions by transferring their members, affiliated Local Lodges, dues, and other assets and properties to the new federations and divisions that he has ordered be created to replace the representative functions of the existing ones. As discussed herein, Article XIX, Section 1 does not give him such authority.

83. Additionally, also on or about July 30, 2021, President Simpson caused Defendant BMWED-IBT to publish a memorandum on its website, captioned, “Questions and Answers About Employer System Federations.” Among the questions and answers posted are the following:

Q1. How can you do this (establish Single Employer System Federations)?

A1. Article XIX, Section 1 of the BMWED National Division Bylaws grants the BMWED President the authority to establish Single Employer System Federation(s). This bylaw provision has existed for decades.

Q.2. Why are you doing this now?

A.2. I have remained committed to building unity within the industry and within our own Union throughout my career. I have also attempted to do that without harming the lives of the Members as well as their Union Representatives while working through processes that rationalize the representation structure of our Union. It is clear to me that the current system of officers are neither situated in their careers nor have the will to carry out this restructuring. I am at the end of my career and I am not running for Union office again, and Employer System Federations

make sense for the Members. Therefore, I am doing this in accordance with Article XIX, Section 1 of the BMWED National Division Bylaws before I retire, to better situate the BMWED Members in their representation for the future.

\* \* \*

Q.8. What will happen to the current System Officer(s)?

A.8. All Members, including current System Officer(s) that satisfy eligibility requirements are eligible to run for Union office at the founding employer system convention where they hold seniority.

A true and correct copy of the above-described and quoted “Questions and Answers About Employer System Federations” is attached hereto as **Plaintiffs Exhibit 41**.

84. Defendant Simpson is rushing to complete his forced consolidation scheme because, as he stated in the July 30, 2021 video, he is retiring, and he believes the elected officers of the BMWED-IBT Federations and Division lack the “political will, ability and desire” to carry out and effectuate his objective of consolidating those organizations. Defendant Simpson’s statements evidence his frustration with the democratic process by which the BMWED-IBT federations and divisions, as autonomous affiliates of the BMWED-IBT, must be consolidated, as those processes are clearly and unequivocally expressed in Article XIX, Section 22 of the BMWED-IBT National Division Bylaws, **Plaintiffs Exhibit 1**, and Section 4.24 of the 2004 Merger Agreement, **Plaintiffs Exhibit 2**. His frustration with those processes has caused him deliberately and unlawfully to circumvent them and to pursue his own

personal agenda to restructure the entire BMWED-IBT representative structure in a manner that satisfies his personal agenda and provides a political/organizational platform more conducive for his cronies to control the BMWED-IBT following his retirement - and perhaps retain him in a non-elected capacity following his retirement from elected office. By actively engaging to dismantle the existing BMWED-IBT system federations and divisions; remove those system federations' and divisions' elected officers; forcibly effect the transfer members of, and Local Lodges affiliated with, those existing system federations and divisions to new federations and divisions; and seize the dues, and other funds and assets of the existing federations and divisions and allocate them to the new federations and divisions, Defendant Simpson, along with the other Individually Named Defendants who are actively supporting and assisting Defendant Simpson are: (1) violating the BMWED-IBT National Division Bylaws; (2) violating the existing BMWED-IBT federations' and divisions' Bylaws; (3) violating the 2004 Merger Agreement; (4) unlawfully retaliating against the individually named Plaintiffs and the union members who, in exercising their own rights, elected those Plaintiffs to represent them; and (5) breaching their fiduciary responsibilities owed to the Plaintiffs and all of the BMWED-IBT members.

**DEFENDANTS' CLAIM OF AUTHORITY TO EFFECTUATE EFENDANT  
SIMPSON'S FORCED CONSOLIDATION SCHEME IS FALSE AND  
MADE IN BAD FAITH**

85. Defendant Simpson claimed in his July 30, 2021 video to that Article XIX, Section 1 of the BMWED-IBT Bylaw gives his him the exclusive and unilateral authority to effect his forced consolidation scheme. He claims that that authority has been in existence for decades prior to his forty-five years as a BMW member and, while has never actually been used to unilaterally and forcibly consolidate existing BMWED-IBT federations and divisions, those who oppose his consolidation scheme now should have challenged his latent authority years ago. His and the Individually Named Defendants' assertion that a latent authority contained in Article XIX, Section 1 of the BMWED-IBT National Division Bylaws and its virtually identical provision as previously set forth in Article XXIII, Section 1 of the BMW Constitution and Bylaws that Defendant Simpson now claims to have activated, however, is false and made in bad faith. In this regard, their assertion is directly at odds with the clear and unequivocal provisions set forth in the BMWED-IBT National Division Bylaws, as well as the BMW's Bylaws prior to its 2004 merger with the IBT, and the 2004 Merger Agreement. It is also directly at odds with rulings and decisions from the BMW's last Grand Lodge president and those of the of a majority of the delegates who have, on numerous occasions in several Grand Lodge and BMWED-IBT conventions, foreclosed any such claim of authority by

BMWED-IBT national presidents. Defendant Simpson's retort is as frivolous as his consolidation scheme is illegal.

86. Defendant Simpson's assertion that, as BMWED-IBT National President, he has the authority to effectuate his forced consolidation scheme is belied by his own actions and inactions over the last seventeen (17) years he served as BMWED-IBT National President. During his long tenure as National Division President, Defendant Simpson never previously exercised the alleged authority to force consolidations of existing system federations and divisions that he now claims he has. Defendant Simpson had numerous opportunities to express and act upon his now-claimed authority in this regard, as there have been numerous consolidations of system federations and divisions during his tenure as National Division President. Although he claims that he did express such authority at a National Division meeting several years ago, he backed down from that assertion after a majority of the national officers opposed him. Every consolidation and merger of system federations and divisions has previously been initiated, executed and implemented by the elected officials of the involved federations and divisions. That process is expressly required by Article XIX, Section 22 of the BMWED-IBT National Division Bylaws and its predecessor provision, Article XXIII, Section 22 of the BMWED Constitution and Bylaws, and the limiting provisions of Article XIX Section 1 of the BMWED-IBT Bylaws, and its predecessor, Article XXIII, Section 1 do **not** allow the forced process

Defendant Simpson now claims he has under Article XIX, Section 1.

87. Article XIX, Section 1 of the BMWED-IBT National Division Bylaws was, as noted above, previously contained in Article XXIII, Section 1 of the BMW Constitution and Bylaws. As discussed below, BMW Grand Lodge President Fleming determined in 1995 and confirmed again in 1997 that Article XIX, Section 1, then contained in Article XXIII, Section 1 of the BMW Constitution and Bylaws, only authorizes the BMWED-IBT National President to establish first “Joint Protective Boards.” Joint Protective Boards are the governing councils of officers of System Federations or Divisions and were first established by the delegates to the 1898 BMW Convention. When the BMWED-IBT National President determines that a railroad’s railway system, a large branch of that system, or, bargaining units employed by employers covered by the NLRA (as opposed to railroad “carriers,” as such term is used in the Railway Labor Act, 45 U.S.C. § 151 first) warrants the establishment of a Joint Protective Board, he is authorized to direct the delegates of the affected Local Lodges to form a first Joint Protective Board. In turn, the Joint Protective Board establishes the System Federation or Division over which it will then preside. Thus, Article XIX, Section 1 states in pertinent part as follows:

When, in the judgment of the National Division President, a Railway System or a large branch of a Railway System, or employer has reached a state of organization to warrant the establishment of a Joint Protective Board, he shall either direct or, through the one of his authorized agents, call in a duly elected delegate from each Local Lodge property instituted on such System for the

purpose of the formation of the first Joint Protective Board. Said Joint Protective Board shall be composed of as many members as are determined by said Board, and there must be, so far as is consistent, an equal number of Board Members from each Department.

If it is determined by the National Division President that a newly organized property does not warrant the establishment of its own independent Joint Protective Board, he shall assign the newly organized members to an existing System Division or Federation. Any appeal of the National Division President's decision shall be submitted to the National Division Executive Board.

Thus, while Article XIX, Section 1 of the BMWED-IBT National Division Bylaws (as did its predecessor provision, Article XXIII, Section 1 of the BMW Constitution and Bylaws) authorizes the National Division President to call for the formation of first Joint Protective Boards, but, as discussed below, Grand Lodge President Fleming determined, and as confirmed by the duly elected delegates to at least three (3) BMW and BMEWD-IBT Conventions, it does **not** grant him the authority to consolidate those entities and their affiliated system federations and divisions after they have been duly established. That authority is granted to the involved federations' and divisions' Joint Protective Boards and their elected officers, as provided in Article XIX, Section 22 of the BMWED-IBT-National Division Bylaws and the affiliation/merger provisions of all the existing BMWED-IBT system federations and divisions.

88. Article XIX, Section 22 (as did its predecessor, Article XXIII, Section 22 of the BMW Constitution and Bylaws) states as follows:



Consolidation of System Divisions or Federations. When two or more System Divisions or Federations are consolidated and operated as one unit, the Joint Protective Boards on such System Divisions or Federations may consolidate or federate in order to facilitate to representation of the members thereon, in the following manner.

When two or more System Divisions or Federations of approximately equal milage and importance are consolidated, the Joint Protective Boards on such Systems may meet in joint session. At such joint session, existing Constitutions and/or Bylaws shall be suspended and all Officers' positions declared vacant, and a new Constitution and/or Bylaws suitable for the government of the Consolidated System Division or Federation shall be adopted and new Officers elected.

Where a small System Division or Federation is being consolidated or absorbed by a large System Division or Federation, the System Organization on such small absorbed System may become affiliated with the System Organization on the large absorbing System and shall be governed by be Constitution and/or Bylaws in effect on the larger System Division or Federation with respect to representation and otherwise.

In all cases of consolidations of two (2) or more System Divisions or Federations, the funds of those which consolidate shall revert to the System Division or Federation in which they are consolidated; however, all records shall become the property of and be returned to the National Division for such distribution as may be appropriate.

In all cases of abandonment of a System Division or Federation, the funds and records shall be returned to the National Division in accordance with the procedure provided in Article XVIII, Section 2, for dissolution of Local Lodges.

*See Plaintiffs Exhibit 1*, Art. XIX, Section 22.<sup>3</sup>

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<sup>3</sup> As noted above, Article XXIII, Section 22 of the pre-2004 Merger Agreement BMW Constitution and Bylaws referenced the systems "of railroads." That clause was administratively removed from the post-2004 Merger Agreement BMWED-IBT Bylaws without notice or comment by the BMW, and the absence of that clause

89. As provided in Article XVII, Section 2 of the BMWED-IBT National Division Bylaws and based on prior determinations regarding that same provision by Defendant Simpson's immediate predecessor, Grand Lodge President Mac Fleming, the Defendants lack the authority to transfer BMW members from one Local Lodge within/covered by one system federation or division to a separate system or division. *See Id.*, Art. XVII, Section 2.

90. Because the Defendants lack the authority to force the consolidation system federations and divisions after they have already been established and likewise lack the authority to effect inter-federation/division system transfers of members, the Defendants lack the authority under the BMWED-IBT National Division Bylaws to seize the dues and other funds and assets of existing system federations and divisions and allocate those dues, funds and assets up to the new system federations and divisions they intend to establish.

91. Efforts to consolidate BMWED-IBT federations and mergers have been raised several times in the past. When they were, they were addressed by the elected delegates to the BMW conventions in the form of amendments to the BMW bylaws, debated by the delegates, and, after a democratic vote of those delegates, repeatedly rejected. At no time did the BMW Grand Lodge President or any

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does not change the meaning and application of the Section as it reads today, in the current BMWED-IBT National Division Bylaws at Article XIX, Section 22.

convention delegate, including Defendants Simpson and Dodd, ever claim that the President had the authority under existing bylaws to consolidate and merge federations and divisions. Indeed, had they believed that such authority already existed, the various amendments to grant such authority would not have been necessary. The amendments and their rejection by the Convention delegates, therefore, as well as the rulings and determinations regarding such actions, as made by Grand Lodge President Mac Fleming, Defendant Simpson's immediate predecessor, demonstrate that Defendant Simpson lacks the authority to forcibly consolidate federations and divisions.

A. During the 1994 BMW Convention, the elected convention delegates addressed, debated, and rejected an amendment proposed by Defendant Dodd's Pennsylvania Federation that would have authorized the Grand Lodge President to order a merger of system federations and divisions upon a cumulative majority vote of the members of the affected federations and divisions voting in a merger referendum. The chairman of the bylaws committee explained to the convention delegates that the committee recommended rejection of the amendment because:

This proposal promotes the idea of hostile takeovers of small systems by larger systems which ignore the basic concept of the present bylaws to base mergers on the desires of the parties involved.

The proposal indicates that if a majority of those voting support the merger, the Grand Lodge President shall order a merger. The committee felt that this was inappropriate, and instead, the determination should be made by a majority vote of the membership of each system, as opposed to a majority of those voting. The proposal does not address a system that represents less than 20 percent of a common maintenance seniority roster. It was also felt that the proposal gave the President too much power, with all due respect.

Finally, the proposal suggests that a merger must be ordered to eliminate an inherent problem for members who are involved in a common maintenance seniority when that simply may not be the case.

After rigorous debate, the convention delegates voted to reject the proposed amendment. A true and correct copy of the proposed amendment, captioned 1994 Proposal No. 58, as well as the transcript of the convention debate on that amendment, is attached hereto as **Plaintiffs Exhibit 42**.

B. In 1995, approximately one year after the completion of the BMW 1994 Convention, the Chairman of a Local Lodge affiliated with the Illinois Central Gulf Federation, a former BMW affiliated system federation that subsequently merged with what is now the Plaintiff Unified System Division, wrote letters to Defendant Simpson's immediate predecessor, Grand Lodge President Mac A. Fleming, expressing concerns regarding the representation of members employed by the same rail carrier whose Local Lodges are affiliated with separate BMW system federations and divisions. A true and correct copy of one of those letters, dated July 19, 1995, are attached hereto as **Plaintiffs Exhibit 43**.

(i) In his letters, the Local Lodge Chairman, Timothy Petty, raised specific concerns regarding the BMW's multi-federation/division representation of members working for the Chicago, Illinois commuter railroad named the Northeast Illinois Regional Commuter Railroad Corp., commonly referred to as "METRA." Local Lodge Chairman Petty made three separate proposals to address his concerns. First, he proposed that a new single-carrier federation be established to represent the members working for METRA. Second, he proposed that the system federations that represented METRA be consolidated or merged into one federation. Third, he proposed the transfer of METRA-employed members between system federations and divisions, and that the members of all federations and divisions representing METRA-employed members be afforded the opportunity to elect an assistant General Chairman to represent all the METRA-employed members regardless of which system federation or division they were affiliated with.

(ii) Grand Lodge President Fleming responded Local Lodge Chairman Petty in a letter dated September 26, 1995. A true and correct copy of that letter is included as an attachment to a December 15, 1997 letter sent by Grand Lodge President Fleming to BMW officer General Chairmen. A true and correct copy of which is attached hereto as **Plaintiffs Exhibit 44**. As set forth in his September 26, 1995 letter, Grand Lodge President Fleming addressed each of the

three proposals that had been made by Local Lodge Chairman Petty. With respect to the first proposal as described above, namely, the formation of a METRA-only federation, Fleming responded as follows:

Article XXII, of the Grand Lodge Constitution and Bylaws, provide [now renumbered as Article XIX of the current BMWED-IBT National Division Bylaws] provides for the formation of a new system or federation, following the establishment of a joint protective board, only, on a newly-organized railway system, which has reached a stage or organization warranting the establishment of a joint protective board. [Emphasis in original]. **As such, the Grand Lodge Constitution and Bylaws do not allow for the removal or transfer of members from an existing system or federation for the purpose of establishing a new system or federation. Thus, while the Grand Lodge Constitution and Bylaws provide for the establishment of an independent joint protective board on a newly-organized property, members within the jurisdiction of an existing system or federation are required to participate in that respective protective department, subject to the provisions of its constitution and bylaws and those of the Grand Lodge Constitution and Bylaws.** [*Emphasis supplied*].

With respect to Local Lodge Chairman Petty's second proposal, namely, to consolidate or merge existing system federations or divisions into one system or division, Grand Lodge President Fleming responded as follows:

Consolidations or mergers of system federations may only be effected as provided within the Grand Lodge Constitution and Bylaws. In this regard, Article XXIII, Section 22 [now Article XIX, Section 22 of the current BMWED-IBT National Division Bylaws], establishes the procedures to implement such a consolidation or merger. Accordingly, it has been determined, through previous interpretations, that the joint protective boards considering consolidation adhere to these procedures and undertake thorough deliberations prior to a merger. Such preliminary deliberations are intended to facilitate the most effective implementation of consolidation, maximizing each system division/federation resources in order to achieve a consolidation or merger most beneficial to the systems and their membership.

Notwithstanding the foregoing, the delegates of the 42<sup>nd</sup> Grand Lodge Convention, held July 11-15, 1994, addressed and rejected a similar proposal which would have revised our constitution and bylaws to provide a means of mandatory consolidation similar to what you have suggested. **Given the clear provisions of the constitution and bylaws and the majority decision of the delegates to the 42<sup>nd</sup> Grand Lodge Convention concerning this matter, I cannot, as Grand Lodge President, accede to your request and consolidate the federations on METRA property; nor, for that matter, on any other property in the United States or Canada. Thus, any consolidation or merger of systems must necessarily be initiated, approved and implemented by the respective systems in accordance with the provisions of the Grand Lodge Constitution and By-Laws.** [*Emphasis supplied*].

With respect to the Local Lodge Chairman Petty's third proposal, *i.e.*, permitting inter-federation transfers of members and the election of an assistant General Chairman to represent all system federations whose respective affiliated Local Lodges represent METRA-employed BMW members, Grand Lodge President Fleming responded as follows:

Article XXI, Section 2 [now Article XVII, Section 2 of the current BMWED-IBT National Division Bylaws] states, in pertinent part:

Sec. 2. Assignment of Members. All members shall be assigned to the Subordinate Lodge nearest their point of residence on the System on which employed, and under whose jurisdiction the member is working. Members from any Subordinate Lodge's jurisdiction may be assigned to a System Lodge upon the approval of the General Chairman, the jurisdiction of the Subordinate and System Lodges to be defined and designated by the General Chairman. [*Emphasis in original*]

Clearly, the foregoing provides that members shall only be assigned to a subordinate lodge within the 'system,' or federation on which they are employed and under whose jurisdiction the member is working. In fact, prior

interpretations of the Grand Lodge Constitution and Bylaws have determined that the term ‘system,’ as it is used within Article XXI, Section 2 [now Art. XVII, Section 2 of the BMWED-IBT National Division Bylaws], refers specifically to the system division or federation under whose jurisdiction the member is working. Thus, there can be no question that the term ‘system’ has reference only to a specific system division or federation and a member may only be transferred from one subordinate lodge to another under the jurisdiction of that same system division or federation, dependent upon residency. Accordingly, the Grand Lodge Constitution and Bylaws preclude inter-federation transfers as you have proposed.

Finally, the Grand Lodge Constitution and Bylaws do not provide for separate systems or federations to elect an inter-system/federation representative such as an assistant General Chairman as you have proposed. Each respective system division or federation constitution and bylaws provides for the election and designation of officers for that system or federation, but as with the Grand Lodge Constitution and Bylaws, have no provision for elections or designations of inter-system representatives.

The same BMWED Constitution/Bylaws provisions interpreted by Grand Lodge President Fleming in his September 26, 1995 letter are contained in the current BMWED-IBT National Division Bylaws.

(iii) Upon receipt of additional correspondence from Local Lodge Chairman Petty, Grand Lodge President Fleming sent Petty a second letter, September 23, 1997. Fleming noted in his letter that Petty’s subsequent correspondence “presents the very same concerns raised by you in a previous letter dated August 17, 1995, which was thoroughly addressed in my response thereto, dated September 26, 1995.” Fleming further noted that:

In my response, dated September 26, 1995, copy enclosed for your ready reference and review, I not only addressed each of your proposals, I outlined



and discussed the applicable bylaws provisions with respect to your request, stating that I am not at liberty to change an of the provisions thereof nor the decisions adopted by the convention delegates. Under the circumstances, and in response to your letter dated July 29, 1997, I can only reaffirm the position set forth in my initial response to you dated September 26, 1995 and trust this matter closed from any further review save that which may be provided in our bylaws.

A true and correct copy of Grand President Fleming's September 23, 1997 letter is attached as **Plaintiffs Exhibit 45**.

(iv) In a letter Dated December 4, 1997, Local Lodge Chairman Petty responded to Grand Lodge President Fleming's September 23, 1997 letter. Petty wrote that:

We believe Article XXIII, Section 1 addresses our concerns and grants the Grand Lodge President sufficient authority to establish a System Federation for our Brothers who work for Metra. We are interpreting your letter as a denial of our organized effort to establish our own Federation and are now appealing your decision to the Grand Lodge Executive Board as outlined in Article XIII, Section 1.

A true and correct copy of Petty's December 4, 1997 letter is contained as an attachment in **Plaintiffs Exhibit 46**. Grand Lodge President Fleming sent Petty's letter, along with the prior 1995 and 1997 correspondence relating to Petty's request and proposals to BMW officers and General Chairman, asking for their input and comments. *Id.* In a January 7, 1998 letter responding to Grand Lodge President Fleming, Haywood Granier, the General Chairman of the BMW's then-existing Illinois Central Gulf Federation, wrote in pertinent part as follows:

Respectfully allow me to add, that not only did the delegates of the 42<sup>nd</sup> Grand Lodge Convention, held July 11-15, 1994, address and reject proposals that would have revised our constitution and bylaws to provide a means of mandatory consolidation and/or formation of federations to what the brothers of [Local Lodge Chairman Tim Petty's] Local 469 are requesting, but that the delegates of the 41<sup>st</sup>, 40<sup>th</sup> and 39<sup>th</sup> Grand Lodge Conventions, addressed and rejected similar proposals. Unless that has been a major change in the thought processes [of] our brothers within the United States and Canada, at this time no majority exists that would be willing to modify the current constitution and bylaws that would allow the mandatory consolidation and/or formation of new federations drawn from the membership of existing federations. Given that the Grand Lodge Constitution and Bylaws contain no provisions that allow for the removal or transfer of members from an existing system or federation to establish a new system or federation, neither you as President, nor the Executive Board could act arbitrarily against those provisions.

A true and correct copy of Granier's January 7, 1998 letter is attached hereto as **Plaintiffs Exhibit 47**. By letter dated March 5, 1998, the BMW E responded to Local Lodge Chairman Petty's December 4, 1997 appeal letter. After having afforded Petty an opportunity to present his appeal regarding the formation of a new joint protective board on METRA, Grand Lodge President Fleming determined that the BMW E Executive Board lacked jurisdiction to rule on the appeal. The BMW E also informed Petty that because the BMW E Executive Board lacked jurisdiction to rule on his appeal, any further appeal would have to be addressed to the 1998 Convention. A true a correct copy of the March 5, 1998 letter is attached hereto as **Plaintiffs Exhibit 48**.

C. In a letter dated December 27, 1997, Allan F. Scott, a Local Lodge Chairman, representing BMW E members working for METRA, wrote a letter

to Grand Lodge President Fleming. In his letter, Allan informed Fleming that while they did not agree with Local Lodge Petty's circulation of petitions seeking to decertify the BMWF if the BMWF did not remove the METRA members from their existing federations and divisions and transfer/assign them to a new system federation specifically for them, he nevertheless asked that Fleming "engage in talks with General Chairmen's of Brothers working under METRA to formulate talks in creation of a METRA Federation or merge under one Federation." Allan continued, "[a]ll I can say Brother Fleming is we do want a federation but I think we have to form a committee to discuss how to form one and to find out if it economically viable." BMWF Grand Lodge President Fleming responded to Allen by letter dated January 9, 1998. Fleming wrote in pertinent part that:

At the outset, please be advised that this issue has been included on the agenda for discussion at the next Grand Lodge Executive Board meeting presently scheduled for February 1998. Subsequently, you will be advised further as to the results of those discussions.

As a matter of information, however, you should note that Article XXIII, of the Grand Lodge Constitution and Bylaws, provides for the formation of a new system or federation, following the establishment of a joint protective board, only, on a newly organized railway system, or a large branch of a railway system, which has reached the stage of organization warranting the establishment of a joint protective board. As such, the Grand Lodge Constitution and Bylaws do not allow for the removal, transfer or commingling of members from existing systems or federations for the purpose of establishing a new system or federation. Thus, while the Grand Lodge Constitution and Bylaws provide for the establishment of an independent joint protective board on a newly organized property, members within the jurisdiction of an existing system or federation are required to participate in

that respective protective department, subject to the provisions of its constitution and bylaws, and those of the Grand Lodge Constitution and Bylaws.

In addition, consolidations or mergers of system federations may only be effected as provided within the Grand Lodge Constitution and Bylaws. In this regard, Article XXIII, Section 22, establishes the procedures to implement such a consolidation or merger. Accordingly, it has been determined through previous interpretations, that the joint protective boards considering consolidation adhere to these procedures and undertake thorough deliberations prior to a merger. Such preliminary deliberations are intended to facilitate the most effective implementation of consolidation, maximizing each system division/federation's resources in order to achieve a consolidation or merger most beneficial to the systems and their membership. Thus, any consolidation or merger of systems must necessarily be initiated, approved and implemented by the respective systems in accordance with the provisions of the Grand Lodge Constitution and By-Laws.

A true and correct copy of both Local Lodge Chairman Allan's January 9, 1998 letter and BMW Grand Lodge President Fleming's January 7, 1998 letter are attached hereto as **Plaintiffs Exhibits 49 and 50**, respectively.

D. In the 1998 BMW National Convention, the duly elected convention delegates considered a proposed amendment introduced by Defendant Dodd that as, Defendant Dodd explained from the convention floor, "deals with a method to merge and consolidate systems." Like the 1994 Proposed Amendment No. 58 discussed above, and as Defendant Dodd further explained, Defendant Dodd's proposal intentionally left the existing bylaws provision pertaining to the consolidation of system federations and divisions intact. Those existing provisions, which were then contained in Article XXIII, Section 22 of the bylaws in effect at

that time, remain unchanged, except for the technical and non-substantive removal of the clause “of Railways,” in Article XIX, Section 22 of the current BMWED-IBT National Division Bylaws. By leaving those provisions “as is,” the proposed amendment recognized that the merger and consolidation of federations and divisions is and must be accomplished by the elected officers of the joint protective boards of the involved federations and divisions. The proposed amendment sought to establish a second method by which such mergers and consolidations could be effectuated, based on petitions signed by thirty percent (30%) of the members of each involved federation and division and then submitted to the Grand Lodge President (the predecessor position of the BMWED-IBT National Division President) who would then initiate a secret ballot vote of the involved members to determine whether the merger or consolidation would be effectuated. After vigorous debate, the amendment was rejected by a majority of the convention delegates. A true and correct copy of the proposed 1998 Amendment, captioned “1998 Proposal No. 24,” as well as the transcript of the floor debate regarding such amendment, is attached hereto as **Plaintiffs Exhibit 51**.

E. Also at the 1998 BMW National Convention, the duly elected convention delegates considered a proposed amendment that purported to give the head of the BMW organizing department, who is appointed by and answers directly to the BMW Grand Lodge President, the authority to “perform any other work

pertaining to the interest of the Brotherhood as directed by the President, which may include consolidating realigning, System, Federation, or Subordinate Lodges as deemed necessary.” [Emphasis in original]. The chairman of the bylaws committee reported that the committee recommended rejection of the amendment -

because it was not a proper issue to be handled in this fashion. We prefer for it to be handed through the democratic process through the elected representatives.

Another delegate stood in opposition to the proposal, stating:

[t]his is federation business, not Grand Lodge or the Organizing Committee’s business, and any kind of realignment or mergers is up to the members of that local or federation.

Upon a vote of the convention, delegates, the proposed amendment was defeated overwhelmingly. A true and correct copy of the proposed amendment, captioned 1998 Proposal No. 15,” as well as the transcript of the accompanying floor debate, is attached hereto as **Plaintiffs Exhibit 52**.

F. The 1998 BMW Convention delegates considered several other bylaws amendments that sought to eliminate system federations and divisions and to reorganize the BMW. As set forth in a comprehensive packet prepared by Defendant Dodd in June 1998 and distributed to the elected officers of the federation of which he was the elected General Chairman, namely, the Pennsylvania Federation, as well as the delegates and alternate delegates elected from the Local Lodges affiliated with that federation, at least one such amendment was introduced

by Defendant Dodd and his Local Lodge. That proposed amendment sought to “eliminate federations and restructure[] the organizations by geographic regions.” In his report, Defendant Dodd identifies other proposed bylaws amendments that similarly sought to consolidate, realign and dissolve federations and divisions. As noted in his report, the 1998 bylaws committee, of which he was a member, rejected each of those proposed amendments. Thus, in addition to the rejection of proposed amendments discussed in this Paragraph 91, Sections A and B, above (proposed amendments 24 and 15, respectively), the following proposed amendments were rejected:

- Proposed Amendment No. 74, which, “[e]liminates federations and restructures the organization by geographic regions;”
- Proposed Amendment No. 75, which “[d]issolve[s] system divisions/federations into regional divisions of the Grand Lodge;” and
- Proposed Amendment No 16, which “[m]andates consolidation of systems division/federations in the event of railway mergers and requires rank-and-file nomination and election of officers.”

A true and correct copy of Defendant Dodd’s report, as well as proposed Amendment No. 74 and the floor debate concerning that amendment, is attached hereto as **Plaintiffs Exhibit 53**.

92. Current National Division President Simpson, who served as BMW Secretary-Treasurer while Grand Lodge President Fleming was still in office and

then, upon Fleming's retirement, became the acting BMW Grand Lodge President, knew, or should have known of the facts set forth in Paragraph 91, above, including:

- (1) the existence of BMW Grand Lodge President Fleming's interpretation of the BMWED Constitution/Bylaws provisions discussed therein, including what is now Article XIX, Sections 1 and 22 of the BMEWE-IBT National Division Bylaws; and
- (2) the numerous efforts to change those same operative bylaw provisions were rejected by majority decisions of the duly elected delegates to the 1998, and 1994 and earlier BMW Conventions as well as the 2014 BMWED-IBT Convention. The other Individually Named Defendants likewise knew or should have known too. Nevertheless, Defendant Simpson and his closely aligned allies, including the other Individually Named Defendants deliberately and secretly developed Defendant Simpson's forced consolidation scheme, and are rushing to implement it prior to the 2022 BMWED-IBT National Division Convention, the required forum where, after being afforded the right to "thoroughly discuss[] and decide[] by a majority vote of the assembled delegates," the duly elected Convention delegates are tasked with the authority and responsibility to "decid[e] questions affecting the policies, activities and government of the Brotherhood." *See* Complaint, Paragraph 47, above; BMW History at XIV. In so doing, and in furtherance of their own personal and political agendas, and to the detriment of the Plaintiffs and the members of the BMWED, they are acting in bad faith and total disregard of the democratic principles upon



which the BMWED-IBT and BMWF were established and collectively have adhered to for more than one-hundred-and-thirty (130) years.

93. The affirmations of Defendants David, Dodd, Carroll, and Below supporting Defendant Simpson's June 22, 2021 forced consolidation scheme differ from those Defendants' prior positions regarding such schemes.

A. As noted in Paragraph 59E, above, Defendant David, on behalf of the BMWED-IBT federation that he then represented as its General Chairman not only initiated a merger of that federation with another one, but he also led the merger negotiations on behalf of his federation, signed the resulting merger agreement between the two federations and then advocated for its ratification by the elected officers who served on his federation's joint protective board. He characterized the merger as "the most perfect fit in the nation," stating the merging federations "fit like a piece of puzzle." *See, id.; see also Plaintiffs Exhibit 12*).

B. During the 2014 BMWED-IBT National Division Convention, a Local Lodge introduced a resolution, namely "Proposed Resolution No. 66," that was modified by the Resolutions Committee and brought to the floor for ratification. Defendant Dodd chaired the Resolutions Committee. The resolution that went to the floor for ratification authorized the National Division President, i.e., Defendant Simpson, to take steps to secure the consolidation of federations and divisions so as to obtain one system federation or division for each of the major federally regulated

Class I railroads and a separate passenger rail federation for the BMWED-IBT members working for Amtrak and other passenger railroads. Specifically, the resolution urged the National Division President, *i.e.*, Defendant Simpson, to:

explore all steps to establish a Passenger Rail Federation to represent the passenger rail workers in this National Division and in conjunction with the support of the federations, to establish one federation for each of the major Class 1 railroads in the United States.

(i) Defendant Simpson rose in favor of the resolution. In so doing, he opined that, as National Division President he had had the authority “to establish joint protective boards without the influence of any of the officers in that resolution,” but he stressed that “moving forward, we’ve done these mergers and things voluntarily for twenty years, and we’re going to continue doing that. This resolution, in my mind, simply pushes us a little farther down the road and gives us some impetus to get more things done.”

(ii) Immediately thereafter, a Convention delegate moved to amend the resolution by striking the instructive language regarding the establishment of one federation for each of the major Class I railroads in the United States, but leaving intact the instructive language regarding the establishment of a passenger rail federation. He argued that the language he had moved to strike from the original resolution was inappropriate because it allowed for forced mergers of federations rather than voluntary mergers and that forced mergers should not be allowed.

(iii) Defendant Dodd rose next to support the proposed amendment. He pointed out that he was a member of the Local Lodge that had submitted the resolution in its original form, and that the language the prior delegate had moved to strike from the resolution had been added by the Resolutions Committee. With that added language now proposed to be stricken, he noted, the resulting proposed amended resolution was “remarkably similar” to what his Local Lodge had originally proposed, namely, to seek the establishment of a single passenger rail federation. Because the proposed amended resolution preserved what he and his Local Lodge were seeking, he stated that he would support the amendment to strike the forced consolidation of freight federations and divisions.

(iv) Shortly thereafter, Defendant Carroll spoke in opposition to proposed amendment but focused his argument on his opposition to **all** forced mergers of BMW-IBT affiliated entities.

(v) Defendant Below also rose in opposition not to the proposed amendment to the resolution but instead to the resolution itself. He argued that having multiple federations and divisions representing members working on the same railroad “actually works very well.” He also criticized the resolution’s justification that single-system federations and divisions were necessary to keep up with the numerous railroad consolidations and mergers. He argued,

I just can’t for the life of me see the logic in having one general chairman

speak for everybody on the Union Pacific Railroad. And sure as hell, as soon as you align yourselves with the railroads, they're going to change. UP may become one big railroad, or three railroads become two or two become four. Then what are you going to do? Are you going to align yourselves again with the rest of the railroads? We shouldn't be changing our structure just to align ourselves with the Class Is and the passenger rails.

After further debate the proposed amended resolution and the resolution that originally was brought to the floor were soundly defeated, with just Defendant Simpson and only one other delegate in favor of resolution, while Defendant Dodd spoke opportunistically in favor of establishing a single passenger rail federation but against the forced consolidation of Class I freight federations. A true and correct copy of the transcript of the 2014 BMWED-IBT National Division Convention debate regarding Proposed Resolution 66, is attached hereto as **Plaintiffs Exhibit 54**.

94. In its June/July/August 2014 edition, the BMWED-IBT Journal to the membership published excerpts of Defendant Simpson's keynote address to the 2014 BMWED-IBT Convention delegates. Defendant Simpson referenced the failed Proposed Resolution No. 66 in his keynote address. As stated therein, President Simpson informed the Convention delegates that "[v]oluntary mergers and affiliations continue to be a priority for my Administration." In this regard, he offered his perspective that:

A changed railroad industry structure has required us to look internally at our own union structure and find ways to adjust to the new realities of a

consolidated and powerful U.S. rail system. At the beginning of my presidency in 2004, there were 28 BMWED System Federations and Divisions. Today, there are 16 Federations and Divisions: larger, stronger, more cost effective and united. This consolidation has come about through a series of voluntary mergers and affiliations since 2004.

Voluntary mergers and affiliations continue to be a priority of my Administration. My goal as President is to have each of the ‘Big Four’ railroads under single property agreements with the best work rules and highest rates of pay preserved for our members on each individual property.

A true and correct copy of the excerpts from Defendant Simpson’s keynote address to the Delegates of the BMWED-IBT National Division’s 2014 Convention, as published in the June/July/August BMWED-IBT Journal, is attached hereto as **Plaintiffs Exhibit 55.**

95. Defendant Simpson’s recently expressed desire to construct “single-employer” federations and divisions is likewise contrary to his prior actions as National Division President. In 2013, Defendant Simpson chose not to practice what he now claims he has consistently preached regarding consolidations and mergers to obtain single system federations and divisions. At that time, he assigned the CP-owned DM&E railroad’s newly organized BMWED-IBT represented personnel to become members of Plaintiff Unified System Division, rather than to either of the two federations that at that time already represented CP personnel. Plaintiff Unified System Division did not represent any CP personnel that time. Defendant Simpson’s decision, therefore, caused an **increase** in the number of federations with

responsibility to represent CP employees.

96. Defendant Simpson took no steps to force consolidations and mergers to obtain single system federations during the entire period of his four-year term as National Division President that ended in 2018. Indeed, Defendant Simpson took no steps even to advocate for such results at the last BMWED-IBT National Division Convention in 2018. Likewise, he took no such steps do so during his current, soon-ending term of office until this past June, when he announced his forced consolidation scheme after secretly having developed it with closely aligned allies and shortly after learning that none of his closely aligned allies would be included on to the Albers slate of BMWED-IBT National Division officers candidates running for office in next year's convention. Defendant Simpson intentionally excluded the individually named Plaintiffs, all of whom are BMWED-IBT National Division officers, from his secretive plotting efforts, and he solicited no input from the membership. Simply put, the forced consolidation scheme developed by Defendant Simpson and his allies excluded the open and democratic involvement and deliberations to which BMW and BMWED-IBT have historically been accustomed and faithfully adhered – all so that Defendant Simpson can complete a “rush job” prior to his retirement from office and provide his non-retiring political cronies with a newly established structure by which they can control the affairs of the BMWED-IBT.

**INJURY AND IRREPARABLE HARM TO PLAINTIFFS AND ALL  
BMWED-IBT MEMBERS CAUSED BY THE UNLAWFUL ACTIONS AND  
POLITICAL REPRISAL BY THE DEFENDANTS**

97. If Defendants scheme to create new system federations and system divisions succeeds, it will cause severe, immediate and irreparable injury to the Plaintiffs. Each of the seven soon-to-be established system federations and divisions will have sizeable numbers of members, and entire Local Lodges will be transferred to them from the existing System Federations and Divisions. The existing System Federations and Divisions in turn, will be stripped of dues, funds and other assets and dramatically reduced in size and to such an extent that many of them will not have the resources or membership levels to survive and will therefore be disbanded/dissolved or involuntarily merged into one of the new federations or divisions that Defendant Simpson is forcing to be established to supplant them. The effect of these forced consolidations will be to wreak havoc on the BMWED-IBT membership and ability to participate freely and fully in the affairs of their union and to secure the representative services for which the members voted and authorized to provide those services.

A. As applied to the Allied Federation, if Defendant Simpson succeeds in his forced consolidation scheme to strip the Allied Federation of its CSX and UP members and thereafter its KCS members, the Allied Federation's membership will be depleted by approximately 6,300 members, effectively

eliminating the Allied Federation, and thereby force the Allied Federation to dissolve or merge with one of the newly created federations or divisions.

B. If Defendant Simpson succeeds in his forced consolidation scheme to strip the Northeastern System Federation of its members who work on those two Class I railroads and Amtrak, the Northeastern Federation will be reduced in size to less than 100 members, leaving it with insufficient assets and resources to survive, thereby forcing it to dissolve or merge into one of the Defendant Simpson's newly created Federations.

C. Most of the Unified System Division's approximately 5,600 members work on the Class I railroads encompassed within Defendant Simpson's consolidation scheme, including the Union Pacific Railroad. If Defendant Simpson succeeds in his scheme to strip the Unified System Federation of those Class I railroad members, it will be reduced in size and assets and may have to dissolve or seek a merger with one of the federations or divisions that Defendant Simpson has decreed must be established.

D. If Defendant Simpson succeeds in his consolidation scheme to strip the ATSF Class I railroad members, it will be reduced in size to approximately nearly zero (0) and will be forced to dissolve or merge with one of Simpson's newly created federations or divisions.

E. If Defendant Simpson succeeds in his consolidation scheme to



strip the Burlington System Division of its Class I railroad members, it will be reduced in size to less than 100, thereby forcing the Burlington System Division to dissolve or merge with one of Defendant Simpson's newly created federations or divisions.

F. Nearly all of Plaintiff Alliance System Federations' approximately 2,800 members work on large national Class I railroads, including CN, CSX and Norfolk Southern, as well as Amtrak. All three of those Class I railroads' BMWED-IBT represented maintenance of way employees, as well as those who are employed by Amtrak, are encompassed in Defendant Simpson's forced consolidation scheme to create new federations and divisions to represent the employees working for those railroads. If Defendant Simpson succeeds in his consolidation scheme to strip the Alliance System Federation of its Class I railroad and Amtrak members, it will be dramatically reduced in size and may be forced to dissolve or merge with one of Defendant Simpson's newly created federations or divisions.

G. The C&EI, through its joint protective board, has rejected two mergers in the past eight years and is proud of its autonomy. In both cases where Plaintiff C&EI, through its joint protective board, rejected mergers with other system federations and divisions, the BMWED-IBT/BMWE honored those decisions and did not seek to forcibly merge or consolidate C&EI with another system federation

or division. If Defendant Simpson's forced consolidation scheme is implemented, Plaintiff C&EI will be extinguished and its Local Lodges and members will be transferred to a newly established system federation or division.

H. Plaintiff CRSD and its members are not involved in what is the first phase of Defendant Simpson's forced consolidation scheme. Due to their small size, however, Defendant Simpson has expressly indicated that he will unilaterally assign the "smaller properties," i.e., the smaller system federations and system divisions to the new system federations and divisions that he has decreed must be established. Those smaller system federations and divisions will be extinguished when, during the second-phase of Defendant Simpson's forced consolidation scheme, they are folded into a new system federation or system division. Neither the affected existing smaller system federations and divisions, nor their members, including Plaintiff CRSD and its members, will not have any voice or vote in the forced assignment/consolidation. Furthermore, the railroad carriers (and employers) whose employees are members represented by these "smaller" system federations and system divisions. As a result, when the second-phase of Defendant Simpson's forced consolidation is implemented, the newly established system federations and system divisions into which the CRSD and other affected "smaller properties" and their associated Local Lodges are assigned will cease to function as a new, "single-carrier" representative organization and will instead become new, multi-

carrier/employer representative organizations just like the existing BMEWE-IBT system federations and divisions that Defendant Simpson and the other Individually Named Defendants have decided to eliminate or mortally weaken.

I. If Defendant Simpson's forced consolidation scheme is implemented, Plaintiff EJ&E will be eliminated and its Local Lodges and members will be forcibly transferred to a newly established system federation or division.

J. If Defendant Simpson's forced consolidation scheme is implemented, Plaintiff SSD will be eliminated and its Local Lodges and members will be transferred to a newly established system federation or division.

K. If Defendant Simpson's forced consolidation scheme is implemented, Plaintiff WCSD will be eliminated and its Local Lodges and members will be transferred to a newly established system federation or division.

L. If Defendant Simpson's forced consolidation scheme is implemented, Plaintiff B&LE will be eliminated and it will be merged into a newly established system federation or division.

98. Defendant Simpson's forced consolidation scheme was developed in secret with his closely aligned compatriots, including the Individually Named Defendants and his Executive Assistant, Peter Kennedy. Defendant Simpson's scheme is being used to retaliate against and remove elected union officers who exercised their membership rights to run for union office. The scheme will result in

the elimination and effective removal of many or all of the currently elected system federation/division officers from multiple system federations/divisions who hold seniority with the same large carrier whose employees and Local Lodges Simpson is now consolidating into one new federation/division. Inasmuch as nearly every existing system federation/division's elected officers and their members are openly opposed to Simpson's scheme, Defendant Simpson's forced consolidation scheme will eliminate and remove a substantial number of elected officers whom he and the other Individually Named Defendants consider threats to their desire and intent to control the outcome of next year's BMWED-IBT Convention, where new National Division officers will be elected. At the same time, by realigning the membership structure into new federations and divisions, Defendant Simpson's newly established Federations and Divisions will not only serve as institutional platforms from which some or all of the Individually Named Defendants who are aligned with and supported by Defendant Simpson may run for National Division office, but will also provide significant numbers of convention delegates based on the consolidation of membership by carriers where he and the other Individually Named Defendants with whom he is aligned and whom he supports have the greatest level of support. The result of these machinations is to disadvantage the rights of elected officers/members in seeking to run for union office, including the individually named Plaintiffs who are running for office on the Albers slate, and to penalize those

Plaintiff officers who have openly refused to change their slate when confronted by Defendant Simpson and other Individually Named Defendants. Thus, in advance of the 2022 BMWED-IBT Convention, Defendant Simpson is engineering the wholesale removal of elected officials whom he perceives to be obstacles to the achievement of his political goals. In so doing, Defendant Simpson is depriving the members of their federally protected “right to be represented by officers they choose.” Defendant Simpson’s actions in furtherance of his impermissible forced consolidation scheme will have a similarly, and indeed exponentially greater, chilling effect on the BMWED-IBT members’ exercise of their Title I rights as was present in the 2015 Kilgallon removal case that he held was improper. Defendant Simpson himself previously declared that such removals are impermissible without cause and due process under the LMRDA. In this regard, in or about August 6, 2015 Defendant Simpson ruled that First Vice Chairman Paul Kilgallon could not be removed from his position as an elected official because it was done within temporal proximity to Kilgallon’s opposition to a merger with another system federation and because, as Simpson held, such an action would violate Title I of the LMRDA. Defendant Simpson wrote:

While the Supreme Court of the United States has recognized that *appointed* business agents could be removed from employment without offending the protections embodied in Section 101(a)(2) of the LMRDA, the Court reached a very different outcome with respect to the removal of an *elected* union officer. In *Sheet Metal Workers Union*

*v. Lynn*, 488 U.S. 347 (1989), an elected officer was removed within five days of his outspoken opposition to a proposed dues increase. One authority summarized that holding: “Although his ‘member’ right was not denied to him, it was interfered with because he could only exercise it at the risk of losing employment. Further, the removal of an elected official denies members the right to be represented by officers they choose and has a chilling effect on their own exercise of Title I rights.” *Quoting* “Labor Union Law and Regulation,” Osborne, W., Editor-in-Chief, Committee on Union Administration and Structure, Section of Labor and Employment Law, American Bar Association, 2003.

A true and correct copy of the August 6, 2015 Kilgallon letter is attached hereto as **Plaintiffs Exhibit 56**. Now, six years later, Simpson is ignoring his own prior decision prohibiting the removal of elected officials on account of their exercise of federally protected rights. Through his forced consolidation scheme, prompted for reasons of political reprisal against the individually named Plaintiffs running on the Albers slate and to create a new representative structure to enable his political allies to control the BMWED-IBT after he retires in 2022.

99. Defendant Simpson’s forced consolidation plan is replete with conclusory pronouncements that he has authority to do what he is doing and that what he is doing is the right thing to do, it is lacking in detail necessary to enable the delegates at the founding conventions to understand the history and settled interpretation the BMWED-IBT National Division Bylaws provision upon which is relying, as determined by past BMW Grand Lodge residents and the duly elected delegates to the BMW and BMWED-IBT Conventions. Defendant Simpson and

the other Individually Named Defendants, moreover, do not explain how the new structure will work and, are therefore depriving the members of the opportunity to evaluate from their viewpoints rather than that of Defendant Simpson and his cronies whether the new federations and divisions will benefit or harm them in terms of their representation. Such unanswered and unaddressed details also include details relating to who their individual representatives will be, how accessible they will be in their areas, and how far they will have to travel to attend new system federation and division meetings. Furthermore, inasmuch as each system federation and division provides paid legal services to its members through single-designated law firms that specialize in work-related injuries arising under the Federal Employees Liability Act, questions concerning those members' access to and continued representation by those firms after they are transferred to Defendant Simpson's new federations and divisions also have not been addressed. With respect to the elected officials who will be affected by Defendant Simpson's forced consolidation scheme, neither Defendant Simpson, the other Individually Named Defendants, nor the BMWED-IBT have explained whether elected federation and division officials whose seniority rests with one of the seven (7) railroads for which the new federations and divisions are being created must transfer their membership to those new federations and divisions and their Local Lodges and whether they must vacate their elected positions at their existing system federations and divisions.

Furthermore, neither Defendant Simpson, the other Individually Named Defendants, nor the BMWED-IBT have explained what the affected members' dues will be.

100. Additionally, several of the existing BMWED-IBT System Federations and Divisions maintain disability and other welfare benefit funds for the benefit of their respective members and which are financed by special dues assessments approved under the bylaws of respective system federation and division and paid by those members. Defendant Simpson's scheme does not account for those assessment monies any more than it accounts for the continuation of the underlying disability and other welfare benefit trusts maintained by the current System Federations and Divisions. The implementation of Simpson's scheme will, or likely will, result in the termination of those benefit trusts and the loss of disability and other welfare benefit coverage by the affected System Federation and Division members.

101. Defendants' forced consolidation scheme decimates the financial stability of Local Lodges. The vast majority of Local Lodges maintain, at most, a few thousand dollars in their local treasuries. The Individually Named Defendants' demand that the Local Lodges elect and send delegates to a "founding convention" less than a year before their quadrennial convention requires the Local Lodges to incur costs not once, but twice, in less than one year, for the payment of lost time and travel expenses for the delegates. Those additional costs that will severely, if not completely, deplete many of their accounts, or in many cases require them to secure



loans from the National Division to cover their unexpected expenses. Forcing the Local Lodges to expend resources in this way will make the Local Lodges vulnerable to forced mergers or dissolution under the BMWED-IBT Bylaw Article XIX, which is permitted in cases of financial insolvency. Defendants' forced consolidation scheme will also impede Local Lodges from fully participating in the quadrennial convention in 2022 which will decide the leadership of the BMWED-IBT National Division after Defendant Simpson retires.

102. In the absence of preliminary equitable relief enjoining the Defendants from implementing Defendant Simpson's forced consolidation scheme, it will be exceedingly unlikely, if not impossible, to undo the forced consolidations that will occur, resuscitate the system federations and divisions and Local Lodges that will be dissolved or merged, and restore the democratic rights afforded to the BMWE members, including the individually named Plaintiffs, and guaranteed to them by the BMWED-IBT National Division Bylaws, their applicable system federation and division bylaws, the 2004 Merger Agreement and federal law, including Title I of the LMRDA.

**THE INDIVIDUALLY NAMED DEFENDANTS' CONDUCT IN  
FURTHERANCE OF DEFENDANT SIMPSON'S FORCED  
CONSOLIDATION SCHEME IS ULTRA VIRES AND VOID AB INITIO.**

103. Defendant Simpson's forced consolidation scheme and actively supported by the other Individually Named Defendants, and all the actions and steps

taken by Defendant Simpson and the Individually Named Defendants, are being implemented by them without authority under, and in violation of, the BMWED-IBT National Division Bylaws, the Plaintiff federations' and divisions' bylaws, and the 2004 Merger Agreement. By undertaking these actions, Defendant Simpson and the other Individually Named Defendants have also violated the BMWED-IBT National Division Bylaws and their fiduciary duties under both the LMRDA and Michigan law.

104. The conduct and actions of Defendant Simpson and the other Individually Named Defendants relating to Defendant Simpson's forced consolidation scheme, including the results of such conduct and actions, are *void ab initio*.

**COUNT 1**  
**Against All Defendants**  
**Breach of Contracts in Violation of 29 U.S.C. § 185**

105. Plaintiffs incorporate by reference by reference as if fully set forth herein each and every allegation of Paragraphs 1 through 104.

106. The BMWED-IBT National Division Bylaws constitute an "agreement" between the BMWED-IBT and its affiliated bodies, including the BMWED-IBT System Federations and Divisions, within the meaning LMRA Section 301, 29 U.S.C. § 185.

107. Defendant Simpson's forced consolidation scheme is not authorized

nor otherwise allowed under the BMWED-IBT National Division Bylaws. Any such forced consolidation requires that such Bylaws be amended in order to allow for such a transaction. Article XX, Section 1 of the BMWED-IBT National Division Bylaws requires that such amendments be made by a majority vote of the delegates present at the BMWED-IBT National Division Convention. Specifically, Article XX, Section 1 provides:

These Bylaws may be altered, amended or repealed in its entity by a majority vote of the delegates present at the National Division Convention after written notice of proposed amendments, which shall specify the Articles and Sections intended to be changed, which have been timely submitted for publication in the official trade journal of the BMWED in advance of the National Division Convention; provided, however the last such notice is printed thirty (30) days before said National Division Convention; and provided, further, that if, in the usual course of any regular Convention of the National Division, three-fourths of the delegates present, shall agree on the proposed alterations or amendments to these Bylaws or the repeal in its entirety thereof, such changes may be made without recourse to the above required notice.

When changes in our National Division Bylaws are required to comply with Federal laws, the National Division President and the National Division Secretary-Treasurer, with the approval of the National Division Officers, will be authorized to make the required changes during the interim between National Division Conventions. Such change(s) must comply with the IBT Constitution, subject to the to the terms of the Merger Agreement.

*See **Plaintiffs Exhibit 1***, Art. XX, Section 1. Defendant Simpson and the other Individually Named Defendants have not proposed to amend the BMWED-IBT National Division Bylaws to secure the authorization of the National Division President to force the consolidation of existing BMWED-IBT system federations

and divisions without the consent of the elected officers of the involved system federations.

108. The BMWED-IBT System Federation and Division Bylaws are also an “agreement” between the BMWED-IBT and its affiliated bodies, including the BMWED-IBT System Federations and Divisions, within the meaning LMRA Section 301, 29 U.S.C. § 185.

109. The 2004 Merger Agreement, which incorporates the BMWED-IBT National Division Bylaws by reference, is an “agreement” within the meaning of LMRA Section 301, 29 U.S.C. § 185.

110. Additionally, Section 3.7.1 of the 2004 Merger Agreement, **Plaintiffs Exhibit 2**, provides that “[a]ll BMWED subordinated bodies shall retain and maintain control of their respective predecessor BMWED subordinate bodies’ assets and funds. Furthermore, as noted above, Paragraph 10.B, Section 4.24 of the 2004 Merger Agreement provides that:

Notwithstanding any provision of the IBT Constitution, there will be no mergers, disbandments or consolidations of any System Federations/Divisions or Local Lodges within the BMWED except as provided in the applicable BMWED or System Federation/Division Bylaws.

Finally, as also noted above, Paragraph 10.A, Section 1.4 of the Merger Agreement states:

In the event of any conflict or inconsistency, this Merger Agreement shall govern over the BMWED Bylaws, all subordinate BMWED affiliate bylaws,

the IBT Constitution and the IBT Rail Conference Bylaws; and the Merger Agreement and the BMWED Bylaws shall govern over the IBT Constitution and the IBT Rail Conference Bylaws.

**Plaintiffs Exhibit 2.**

111. By the acts set forth above relating to and in furtherance of Defendant Simpson's forced consolidation scheme, Defendant Simpson and the other Individually Named Defendants willfully and intentionally are acting *ultra vires* and are violating the BMWED-IBT National Division Bylaws, including Article XIX, Section 1, Article XIX, Section 22 and Article XX, and, through their control of the BMWED-IBT National Division, are causing the BMWED-IBT to be in breach of the BMWED-IBT National Division Bylaws, including Article XIX, Section 1, Article XIX, Section 22, Article XX and Article XVII, Section 2.

112. By the acts set forth above relating to and in furtherance of Defendant Simpson's forced consolidation scheme, Defendant Simpson and the other Individually Named Defendants willfully and intentionally are acting *ultra vires* and are violating Plaintiffs' System Federation and Division Bylaws, including the provisions set forth therein regarding the affiliation and consolidation of system federations and divisions, and, through their control of the BMWED-IBT National Division, are causing the BMWED-IBT to be in breach of those System Federation and Division Bylaws, including those provisions set forth therein regarding the affiliation and consolidation of system federations and divisions.

113. By the acts set forth above relating to and in furtherance of Defendant Simpson's forced consolidation scheme, Defendant Simpson and the other Individually Named Defendants willfully and intentionally are acting *ultra vires* and are violating the 2004 Merger Agreement, including Section 4.24.

114. Plaintiffs and the members they and their respective BMWED-IBT System Federations and Divisions represent have been, and continue to be, harmed as a result of the unlawful acts described above.

115 To the extent Plaintiffs would otherwise be required to exhaust internal union appeal, such appeal would be futile because the Individually Named Defendants in this action constitute a majority of the appeals board to which an such appeals would be decided.

**COUNT 2**  
**Against All Defendants**  
**Breach of Plaintiff Federations' and Defendants' Bylaws**  
**In Violation of Michigan Law**

116 Plaintiffs incorporate by reference each and every allegation of Paragraphs 1 through 115.

117. By the acts set forth above relating to and in furtherance of Defendant Simpson's forced consolidation scheme, Defendant Simpson and the other Individually Named Defendants willfully and intentionally are acting *ultra vires* and are violating the BMWED-IBT National Division Bylaws, including Article XIX,

Section 1, Article XIX, Section 22 and Article XX, and, through their control of the BMWED-IBT National Division, are causing the BMWED-IBT to be in breach of the BMWED-IBT National Division Bylaws, including Article XIX, Section 1, Article XIX, Section 22 and Article XX, in violation of Michigan law.

118. By the acts set forth above relating to and in furtherance of Defendant Simpson's forced consolidation scheme, Defendant Simpson and the other Individually Named Defendants willfully and intentionally are acting *ultra vires* and are violating Plaintiffs' System Federation and Division Bylaws, including the provisions set forth therein regarding the affiliation and consolidation of system federations and divisions, and, through their control of the BMWED-IBT National Division, are causing the BMWED-IBT to be in breach of those System Federation and Division Bylaws, including those provisions set forth therein regarding the affiliation and consolidation of system federations and divisions, in violation of Michigan law.

119. By the acts set forth above relating to and in furtherance of Defendant Simpson's forced consolidation scheme, Defendant Simpson and the other Individually Named Defendants willfully and intentionally are acting *ultra vires* and are violating the 2004 Merger Agreement, including Section 4.24.

120. Plaintiffs and the members they and their respective BMWED-IBT System Federations and Divisions represent have been, and continue to be, harmed

as a result of the unlawful acts described above.

**COUNT 3**  
**Against All Individually Named Defendants**  
**Violation of LMRDA Section 101(a)(1), 29 U.S.C. § 411(a)(1)**

121 Plaintiffs incorporate by reference as if fully set forth herein each and every allegation of Paragraphs 1 through 120.

122. LMRDA Section 101(a)(1), 29 U.S.C. § 411(a)(1), guarantees equal rights in voting to all members of labor organization. Specifically, Section 101(a)(1) states:

Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws

29 U.S.C. § 411(a)(1).

123. LMRDA Section 101(a)(1) requires that in order to ensure an equal vote, union members must also have a meaningful vote. The Sixth Circuit Court of Appeals requires "full disclosure of the terms of all proposals submitted to the membership for a referendum in order to ensure that the vote is meaningful, and that the membership has fully participated in the decision making process." *See Corea v. Welo*, 939 F.2d 1140 (6<sup>th</sup> Cir. 1990); *Blanchard v. Johnson*, 532 F.2d 1074 (6<sup>th</sup> Cir. 1976).



124. The Individually Named Defendants have not provided, nor have they caused the BMWED-IBT to provide, sufficient details and information to the BMWED-IBT membership regarding the Defendant Simpson's forced consolidation scheme. To the extent they have provided any information to the members, the Individually Named Defendants have misrepresented certain material facts concerning the scheme, and have withheld other material facts from the members. The Individually Named Defendants are forcing the members to vote on the effective dissolution of their existing system federations and divisions, the removal of their elected officers and representatives from their existing federations and divisions, and on the establishment of new federations and systems in an informational vacuum. Based upon the deficiencies described above, the votes that are being rushed through special "founding conventions" will neither be fair nor democratic, and the outcome of those votes may not be said to reflect the members' informed sentiments. The Individually Named Defendants likewise are rushing the conduct of the "founding conventions" so as to deprive the members of their right to become informed, to discuss and debate the merits of the proposed forced consolidation of system federations and divisions, and to cast enlightened or informed ballots in the votes that will be taken at those "founding conventions."

125 By posting information on the BMWED-IBT website regarding Defendant Simpson's forced consolidation scheme, the Individually Named

Defendants are discriminating unlawfully against those members who do not own computers, or who are not internet savvy, or who do not regularly peruse the BMWED-IBT website.

126. By their actions and inactions described above, the Individually Named Defendants are in violation of LMRDA Section 101(a)(1), 29 U.S.C. § 411(a)(1).

127. By scheduling the “founding conventions” within 120 days of the time notice of such meetings was scheduled, appointing the Individually named Defendants to chair those founding conventions, excluding Plaintiff officers from chairing any of the founding conventions, and by virtue of the fact that the Individually Named Defendants constitute a majority of the BMWED-IBT National Division officers to whom all internal appeals would be decided, exhaustion of internal union remedies otherwise required by LMRDA Section 101(a)(4), 29 U.S.C. § 101(a)(4) would be futile.

**COUNT 4**  
**Against All Individually Named Defendants**  
**Violation of LMRDA Section 101(a)(2), 29 U.S.C. § 411(a)(2)**

128. Plaintiffs incorporate by reference as if fully set forth herein each and every allegation of Paragraphs 1 through 127.

129. LMRDA Section 101(a)(2) states:

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments and opinions; and to express at meetings of the labor organization his views, upon

candidates in an election of the labor organization, or upon any business properly before the meeting, subject to organization's established and reasonable rules pertaining to the conduct of meetings: Provided, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to be the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. § 411(a)(2).

130. Shortly after learning that the individually named Plaintiffs are running for BMWED-IBT National Division office in next year's 2022 election without having secured Defendant Simpson's permission, and shortly after they learned that Plaintiff Albers and the other individually named Plaintiffs had declined to include any of Defendant Simpson's closely aligned colleagues on their election slate, Defendant Simpson and the other Individually Named Defendants have embarked on Defendant Simpson's forced consolidation scheme. That scheme and their actions taken in furtherance of it are part of a purposeful and deliberate attempt to retaliate against and suppress dissent within the union. By acting without authority in circumventing the lawful process by which system federations and divisions may be consolidated, and by rushing to force the establishment of new federations and divisions to supplant the existing BMWED-IBT System Federations and Divisions, Defendant Simpson and the other Individually Named Defendants are also engaging in a purposeful and deliberate attempt to stifle the democratic processes of the

BMWED-IBT. The actions being taken by Defendant Simpson and the other Individually Named Defendants have the effect of chilling the rights guaranteed to the BMWED-IBT members, including the individually named Plaintiffs, in the exercise of their rights guaranteed to them by LMRDA Section 101(a)(2), 28 U.S.C. § 411(a)(2). Two emails from Defendant Dodd on August 15 and 16, 2021, reflect Defendant Simpson's and the other Individually Named Defendants' unlawful retaliatory actions. In those emails, first to the hotel that Defendants had booked to hold the "Amtrak Single System meeting" and then forwarded to the General Chairman of the BMWED Pennsylvania Federation, the system federation that he had previously served as General Chairman, Defendant Dodd referred to the Individually Named Plaintiffs, all of whom are elected General Chairpersons of the Plaintiff System Federations and Divisions, as "dissidents," a term reserved for political opposition. "Dissident" is defined as "disagreeing especially with an established religious or political system, organization or belief." A true and correct copy of the August 15 and 16, 2021 emails are attached hereto as **Plaintiffs Exhibit 57**.

131. By scheduling the "founding conventions" within 120 days of the time notice of such meetings was scheduled, appointing the Individually named Defendants to chair those founding conventions, excluding Plaintiff officers from chairing any of the founding conventions, and by virtue of the fact that the Individually Named Defendants constitute a majority of the BMWED-IBT National

Division officers to whom all internal appeals would be decided, exhaustion of internal union remedies otherwise required by LMRDA Section 101(a)(4), 29 U.S.C. § 101(a)(4) would be futile.

**COUNT 5**  
**Against All Individually Named Defendants**  
**Violation of LMRDA Title V- Breach of Fiduciary Duty, 29 U.S.C. § 501(b)**

132. Plaintiffs incorporate by reference as if fully set forth herein each and every allegation of Paragraphs 1 through 131.

133. Section 501(a) of the LMRDA provides that:

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

29 U.S.C. § 501(a).

134. This Court, like many others, holds that LMRDA Section 501(1)(a) must be interpreted broadly and have refused to limit its remedies to instances of

embezzlement or other unlawful appropriation of union funds. *See Wade v. Teamsters Local 247*, 527 F. Supp. 1169, 1177-78 (E.D. Mich. 1981) (holding that union officers violate LMRDA Section 501 when they take actions causing union members to suffer “an invaluable and irreparable loss of democratic rights.”) The Sixth Circuit adopted this Court’s approach. *See Corea v. Welo*, 937 F.2d 1132, 1144 (6th Cir. 1991) (noting also that violations by union officers of their union’s governing documents are actionable under LMRDA Section 501).

135. Each of the Individually named Defendants is an officer, agent and representative of the BMWED-IBT and is subject to the fiduciary duties set forth in LMRDA Section 501, 29 U.S.C. § 501.

136. Defendant Simpson’s forced consolidation scheme and actively supported by the other Individually Named Defendants, and all the actions and steps taken by Defendant Simpson and the Individually Named Defendants, are being implemented by them without authority under, and in violation of, the BMWED-IBT National Division Bylaws, and the 2004 Merger Agreement. By undertaking these actions, Defendant Simpson and the other Individually Named Defendants have violated the BMWED-IBT National Division Bylaws and their fiduciary duties under the LMRDA.

137. By the acts set forth above, including the deliberate and purposeful acts described in Paragraphs 107, 111, 112, 113, 117, 118, 119, 124, 125, 126, 130 and

136, above, Defendants Simpson and the other Individually Named Defendants are acting in conflict with the interests of the BMWED-IBT and its members and are causing union members to suffer an invaluable and irreparable loss of democratic rights and constitute breaches by Defendants Simpson and the other Individually Named Defendants of their fiduciary duties in violation of LMRDA Section 501, 29 U.S.C. § 501.

138. By refusing to abide by a majority of the BMWED-IBT National Division Executive Board's June 14, 2021 directive not to expend union funds in furtherance of his forced consolidation scheme, and by continuing to spend, and allow the expenditure of, BMWED-IBT assets and to force the expenditure of Local Lodge resources in furtherance of Defendant Simpson's forced consolidation scheme as described above, Defendant Simpson and the other Individually Named Defendants are breaching their fiduciary duties and under LMRDA Section 501, 29 U.S.C. § 501.

**COUNT 6**  
**Against All Individually Named Defendants**  
**Violation of Michigan Law - Breach of Fiduciary Duty**

139. Plaintiffs incorporate by reference as if fully set forth herein each and every allegation of Paragraphs 1 through 138.

140. Defendant Simpson's forced consolidation scheme and actively supported by the other Individually Named Defendants, and all the actions and steps

taken by Defendant Simpson and the Individually Named Defendants, are being implemented by them without authority under, and in violation of, the BMWED-IBT National Division Bylaws, and the 2004 Merger Agreement. By undertaking these actions, Defendant Simpson and the other Individually Named Defendants have violated the BMWED-IBT National Division Bylaws and their fiduciary duties under Michigan law.

141. By the acts set forth above, including the deliberate and purposeful acts described in Paragraphs 107, 111, 112, 113, 117, 118, 119, 124, 125, 126, 130, 136, 137 and 138, above, Defendants Simpson and the other Individually Named Defendants are acting in conflict with the interests of the BMWED-IBT and its members and are causing union members to suffer an invaluable and irreparable loss of democratic rights and constitute breaches by Defendants Simpson and the other Individually Named Defendants of their fiduciary duties in violation of Michigan law.

142. Plaintiffs have repeatedly demanded that Defendant Simpson, in his capacity as BMWED-IBT National Division President, cease from taking and from directing or allowing the BMWED-IBT and its officers, agents and representative, from taking, any steps related to his forced consolidation scheme as discussed hereto. Defendant Simpson has repeatedly refused Plaintiffs requests. Inasmuch as Defendant Simpson and the other Individually Named Defendants constitute a majority of the



national officers of the BMWED-IBT National Division, any further demands upon Defendants at this point would be futile.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Issue temporary, preliminary and permanent injunctive relief ordering that the Defendants cease and desist from taking further actions to forcibly consolidate BMWED-IBT System Federations and Divisions by any means, including by means of Defendant Simpson's forced consolidation scheme as outlined herein;

B. Issue appropriate injunctive relief to prevent the Defendants from further actions which infringe on the BMWED-IBT members' (including those of the individually named Plaintiffs) rights guaranteed to them by Title I of the LMRDA;

C. Order an accounting, of the BMWED-IBT's books and records by an outside accounting firm in order to determine the amount of funds wrongfully expended by the Defendants;

D. Order that the Individually Named Defendants be jointly and severally liable for the payment of the accounting ordered in Paragraph C, above;

E. Order the Defendants to take all appropriate remedial action to recover the wrongfully expended funds, and that the costs of all such action be jointly and

severally borne by the Individually Named Defendants;

F. Order that the Individually Named Defendants reimburse the legal fees, costs, and expenses incurred and to be incurred by the Plaintiffs and Defendant BMWED-IBT with respect to this action, pursuant to 29 U.S.C. § 501(b); and

G. Grant such other and further relief as the Court deems just and proper under the circumstances.

Dated: August 25, 2021

Respectfully submitted,

BRANSTETTER, STRANCH & JENNINGS, PLLC

By: /s/ Edward M. Gleason, Jr.  
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*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2021, the foregoing was filed with the Clerk of the Court using the ECF system which will send notification of such filing to all parties of record.

/s/Edward M. Gleason, Jr.

**VERIFICATION**

I, Dennis R. Albers, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

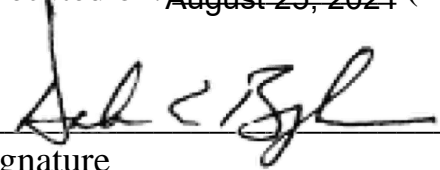
Executed on: 8/25/2021 (Date)

Dennis R. Albers  
Signature

**VERIFICATION**

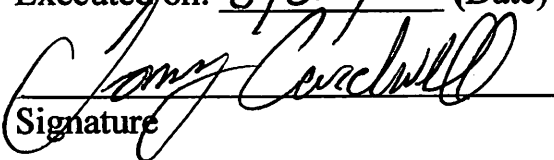
I, Dale E. Bogart, Jr., pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: ~~August 25, 2021~~ (Date)

  
\_\_\_\_\_  
Signature

**VERIFICATION**

I, Tony D. Cardwell, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 8/25/2021 (Date)  
  
Signature

**VERIFICATION**

I, Jeffrey L. Fry, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 8/25/2021 (Date)

Signature Jeffrey L. Fry

**VERIFICATION**

I, Staci R. Moody-Gilbert, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 08/25/2021 (Date)

Staci R. Moody-Gilbert  
Signature



**VERIFICATION**

I, Jason E. Graham, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 8-25-21 (Date)

Jason E. Graham  
Signature

**VERIFICATION**

I, Patrick A. Charters, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 8-25-2021 (Date)

PA Charters  
Signature

**VERIFICATION**

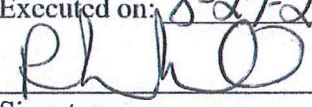
I, Michael A. Barrett, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 8-27-2021 (Date)

Michael A Barrett  
Signature

**VERIFICATION**

I, Rolando Del Muro, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 8-22-21 (Date)  
  
\_\_\_\_\_  
Signature

**VERIFICATION**

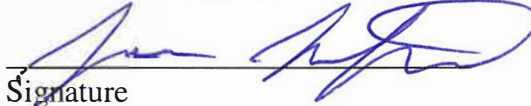
I, Samuel J. Alexander, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 8-27-2021 (Date)

Samuel J. Alexander  
Signature

**VERIFICATION**

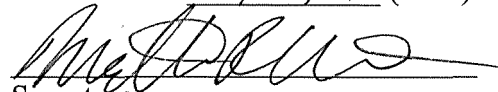
I, Joe Letizia, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 8-25-21 (Date)  
  
Signature

**VERIFICATION**

I, Matthew Nies, pursuant to 28 U.S.C. § 1746, hereby verify under penalty of perjury that the forgoing is true and correct.

Executed on: 8/15/21 (Date)

  
Signature