UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE DETROIT INTERNATIONAL BRIDGE COMPANY, a Michigan Corporation, and the **CANADIAN TRANSIT COMPANY**, a Canadian Special Act Corporation,	Case No.
	Hon.
Plaintiffs,	Mag.
v.	
KIRK T. STEUDLE, in his official capacity as director of the Michigan Department of Transportation,	
Defendant.	

THE MIKE COX LAW FIRM PLLC
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COMPLAINT

Plaintiffs Detroit International Bridge Company, Inc., ("DIBC"), and the Canadian Transit Company, ("CTC"), by and through their attorneys, the Mike Cox Law Firm PLLC, state as follows for their complaint:

NATURE OF ACTION

1. This is an action for declaratory and injunctive relief against Michigan Department of Transportation ("MDOT") Director Kirk T. Steudle ("Director Steudle" or "Defendant"), in his official capacity for establishing Non-Radioactive Hazardous Materials ("NRHM")

routing designations over the privately-owned Ambassador Bridge, which connects Detroit, Michigan with Windsor, Ontario, Canada.

2. MDOT does not have jurisdiction over the Ambassador Bridge; thus, Director Steudle violated and continues to violate 49 U.S.C. § 5112 and 49 C.F.R. § 397.71. His illegal conduct is preempted under 49 U.S.C. § 5125, 49 C.F.R. § 397.69(b), and the Supremacy Clause of the United States Constitution.
3. DIBC and CTC ask this Court to: (1) declare Director Steudle does not have authority to establish NRHM routing designations on the privately-owned Ambassador Bridge; (2) declare the existing NRHM restrictions over the Ambassador Bridge void; and (3) enjoin Director Steudle or any successor from directing or otherwise authorizing MDOT or any other state agency from promulgating or enforcing NRHM restrictions over the Ambassador Bridge.
4. Under federal laws, 49 U.S.C. § 5112 and 49 C.F.R. § 397.71, which grant the State of Michigan authority to establish NRHM routing designations, MDOT may only establish NRHM routing designations within its jurisdiction.
5. Director Steudle supervises and directs MDOT's actions, including the NRHM routing designations.
6. MDOT's jurisdiction is limited to state trunkline highways and does not extend to private property. The Ambassador Bridge is privately-owned and is not a state trunkline highway.
7. MDOT admits on its website that it does not have jurisdiction over the Ambassador Bridge.
8. MDOT also does not finance or maintain the Ambassador Bridge, nor does MDOT assume tort liability for accidents on the Ambassador Bridge.
9. The illegal and preempted NRHM restrictions cause international NRHM haulers to avoid

the Ambassador Bridge and instead use its less-restrictive, state-owned, competing international bridges. As a result, the DIBC and the CTC have lost and continue to lose millions of dollars in revenue from decreased truck traffic.

PARTIES, JURISDICTION, AND VENUE

10. Plaintiff Detroit International Bridge Company, ("DIBC"), is a Michigan corporation with its principal place of business at 12225 Stephens Road, Warren, Michigan 48089.

11. Plaintiff Canadian Transit Company, ("CTC"), is a Canadian Special Act corporation with its principal place of business at 4285 Industrial Drive, Windsor, Ontario, N9C 3R9, Canada.

12. Plaintiffs DIBC and CTC, respectively, own the United States and Canadian sides of the Ambassador Bridge. They operate the Ambassador Bridge in cooperation with each other pursuant to a joint operation agreement.

13. Defendant Kirk T. Steudle is the Director of MDOT.

14. Mr. Steudle evaluates MDOT engineer recommendations and issues decisions regarding NRHM routing designations.

15. On January 31, 2014, Director Steudle rejected his own engineers' recommendation to lessen NRHM restrictions over the Ambassador Bridge and ordered MDOT's continued regulation of NRHM traveling over the United States side of the Ambassador Bridge.

16. This Court has personal jurisdiction over the Defendant.

17. This Court has subject matter over this action under 28 U.S.C. § 1331, 28 U.S.C. § 2201, and 49 U.S.C. § 5125(d)(3).

18. There is an actual case and controversy between the Plaintiffs and the Defendant.

19. Venue is proper in this District under 28 U.S.C. § 1391.

20. Defendant Steudle is being sued in his official capacity and is not entitled to governmental

immunity.

BACKGROUND OF NRHM REGULATION.

21. In 1994, Congress enacted 49 U.S.C. § 5112 to modernize and consolidate regulations regarding highway routing of hazardous material.

22. Hazardous materials are "a substance or material, including a hazardous substance, which has been determined by the [federal] Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property when transported in commerce, and which has been so designated." 49 C.F.R. § 397.65.

23. Hazardous materials consist of nine classes of hazardous substances, including explosives, gases, flammable liquids and solids, organics, poisons, and corrosives. 65 F.R. 75771-03, 2000 WL 1765307. NRHM includes all hazardous materials classes except class 7—"radioactive materials," which are regulated under a separate set of regulations.

24. MDOT designates NRHM routes in Michigan. MDOT evaluates and establishes NRHM routing designations under the direction and supervision of its director, Kirk T. Steudle.

25. Director Steudle makes the final decision on NRHM routing designations in Michigan.

26. Pursuant to federal authority delegated in 49 U.S.C. § 5112 and 49 C.F.R. § 397, Michigan enacted Public Act 265 of 1995, Mich. Comp. Laws § 480.11a that adopted the federal standards for establishing NRHM routes.

27. Under its prior director's supervision and authority, MDOT established Non-Radioactive Hazardous Materials ("NRHM") routing designations in Michigan.

28. In Wayne County, MDOT established four NRHM routing designations, one of which restricts NRHM transport over the United States side of the Ambassador Bridge.

29. Under orders of Director Steudle, Michigan State Police troopers have detained NRHM

haulers and issued citations after those trucks have exited from the Ambassador Bridge.

30. The NRHM haulers received citations for allegedly violating MDOT's NRHM routing designations, even when the NRHM haulers had permission from the DIBC and CTC to cross the Bridge.

31. Under orders of Director Steudle, MDOT also posted signs on state trunkline highways that lead to the Ambassador Bridge, warning NRHM haulers that MDOT purports to prohibit certain classes of NRHM over the Ambassador Bridge.

MDOT'S ENGINEERS RECOMMENDED EASING RESTRICTIONS ON THE AMBASSADOR BRIDGE, BUT DIRECTOR STEUDLE REVERSES MDOT's ENGINEERS.

32. In 2008, DIBC requested MDOT and Director Steudle review the current NRHM routing designations and lessen the restrictions applied to the Ambassador Bridge.

33. In 2012, the professional engineering staff at MDOT issued a Routing Synopsis report that analyzed DIBC's proposal regarding the Ambassador Bridge. This preliminary Routing Synopsis supported the DIBC's requested amendments and recommended permitting previously prohibited NRHM haulers to travel over the Ambassador Bridge.

34. On January 31, 2014, Director Steudle reversed the recommendations of his professional engineering staff and issued MDOT's final decision, which: (1) maintained the existing routing restrictions on the Ambassador Bridge, and (2) then added a *new* restriction for class 6.2 (infectious substances) that was not proposed by MDOT's staff.

35. MDOT now purports to prohibit the following NRHM classes on the Ambassador Bridge: 1 (explosives), 3 (flammable liquid), 6.2 (infectious substances), 7 (radioactive materials), and 8 (corrosives).

36. MDOT, however, imposes fewer NRHM restrictions on the state-owned, bridges in the State

of Michigan.

37. MDOT and state-owned bridges collect tolls from trucks carrying NRHM.

38. Director Steudle's decisions result in more NRHM traffic on the state-owned bridges and thus more toll-revenue for MDOT and the State of Michigan; and, consequently, less revenue for the Plaintiffs.

MDOT ADMITS IT DOES NOT HAVE JURISDICTION OVER THE AMBASSADOR BRIDGE.

39. MDOT expressly states on its website that "The Ambassador Bridge is privately owned and operated and *not under the jurisdiction of the Michigan Department of Transportation.*" (emphasis added) (MDOT—Ambassador Bridge, available at http://www.michigan.gov/mdot/0,1607,7-151-9618_11088---,00.html), (attached as **Ex. 1**.)

40. Director Steudle authorizes and approves MDOT's statements on its website.

41. MDOT's website statement is a party admission under Fed. R. Evid. 801(d)(2).

MDOT DOES NOT HAVE JURISDICTION OVER PRIVATE PROPERTY, NOR THE PRIVATELY-OWNED AMBASSADOR BRIDGE.

42. Under Michigan law, MDOT has jurisdiction over state trunkline highways.

43. Under Michigan law, MDOT does not have jurisdiction over private roads or private property.

44. The Ambassador Bridge is a privately-owned and operated international bridge.

45. MDOT derives its authority to establish NRHM routing designations from 49 U.S.C. § 5112 and 49 C.F.R. § 397, which were adopted by the Michigan Legislature in Mich. Comp. Laws § 480.11a.

46. MDOT is a "routing agency" under 49 C.F.R. § 397.201(c).

47. Among other federal regulations, Mich. Comp. Laws § 480.11a adopted 49 C.F.R. §

397.71(b)(8).

48. MDOT "shall ensure that all NRHM routing designations *in its jurisdiction* comply with the Federal standards in this section." 49 C.F.R. § 397.71(b)(8) (emphasis added).

49. MDOT does not have authority to establish NRHM routing designations over routes that are not in its jurisdiction.

50. MDOT does not have authority to establish NRHM routing designations over private property.

51. Accordingly, MDOT does not have authority to establish NRHM routing designations on the privately-owned Ambassador Bridge.

MDOT MUST MAINTAIN AND REPAIR HIGHWAYS WITHIN ITS JURISDICTION. MDOT DOES NOT MAINTAIN OR REPAIR THE AMBASSADOR BRIDGE.

52. Mich. Comp. Laws § 691.1402(1) requires that "each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair."

53. MDOT is liable for failing to "keep a *highway* under its *jurisdiction* in reasonable repair, and in condition reasonably safe and fit for travel." *Killeen v Dept of Transp*, 432 Mich 1, 3-4; 438 NW2d 233, 234 (1989) (emphasis added); *see also* Mich. Comp. Laws § 691.1402(1).

54. MDOT does fund or keep the Ambassador Bridge "in reasonable repair, and in condition reasonably safe and fit for travel." Mich. Comp. Laws § 691.1402(1).

55. MDOT is thus not liable for failing to keep the Ambassador Bridge in "reasonable repair, and in condition reasonably safe and fit for travel" under the public roadways exception to governmental immunity in Mich. Comp. Laws § 691.1402.

56. MDOT does not have jurisdiction over the Ambassador Bridge.

COUNT I – STATUTORY PREEMPTION

57. Plaintiffs restate and incorporate by reference the preceding allegations as if fully set out here.49 C.F.R. §397.69(b) expressly preempts any state regulation that does not "comply with the highway routing standards set forth in § 397.71 of this subpart."

58. 49 C.F.R. § 397.71(b)(8) requires MDOT to "ensure that all NRHM routing designations *in its jurisdiction* comply with the Federal standards in this section." (emphasis added). Thus, MDOT can only establish NRHM routing designations over those highways that are under MDOT's jurisdiction.

59. MDOT does not have jurisdiction over the privately-owned and operated Ambassador Bridge.

60. Director Steudle approved and authorized the NRHM routing restrictions over the privately-owned and operated Ambassador Bridge.

61. Director Steudle ordered the Michigan State Police to enforce those restrictions by ticketing NRHM carriers exiting the Ambassador Bridge.

62. Director Steudle also directed and approved MDOT posting signs on state trunkline highways that lead to the Ambassador Bridge, warning NRHM haulers that MDOT prohibits certain classes of NRHM over the Ambassador Bridge.

63. Director Stuedle's direction and MDOT's enactment and continued enforcement of the invalid NRHM regulations violate 49 U.S.C. § 5112, 49 C.F.R. §397.71(b)(8) and are therefore preempted under 49 U.S.C. § 5125 and 49 C.F.R. §397.69(b).

WHEREFORE, Plaintiffs DIBC and CTC request this Court:

A. **DECLARE** that the current NRHM routing designations over the Ambassador Bridge are preempted by 49 U.S.C. § 5125 and 49 C.F.R. §397.69(b);

B. **AWARD** Plaintiffs DIBC and CTC their costs and attorney fees incurred in this action; and

C. **GRANT** Plaintiffs DIBC and CTC such other and further relief that the Court deems equitable and just.

COUNT II – DECLARATORY JUDGMENT

64. Plaintiffs restate and incorporate by reference the preceding allegations as if fully set out here.

65. Under 49 U.S.C. § 5112 and 49 C.F.R. §397.71(b)(8), MDOT may only establish NRHM routing designations over those highways that are under MDOT's jurisdiction.

66. MDOT does not have jurisdiction over the privately-owned and operated Ambassador Bridge.

67. MDOT promulgated NRHM routing restrictions over the Ambassador Bridge and continues to enforce those routing restrictions.

68. As a result, NRHM haulers avoid the Ambassador Bridge which results in less truck volume at the Ambassador Bridge and millions of dollars in lost revenue for DIBC and CTC.

69. These monetary losses are ongoing, and an actual controversy exists between the Plaintiffs and the Defendants.

70. MDOT's promulgation and enforcement of the invalid NRHM regulations violate 49 U.S.C. § 5112 and 49 C.F.R. §397.71(b)(8), and the NRHM regulations are preempted under 49 U.S.C. § 5125, 49 C.F.R. §397.69(b), and the Supremacy Clause of the United States Constitution.

71. Pursuant to 28 U.S.C. § 2201 and 49 U.S.C. § 5125(d)(3), Plaintiffs request this Court declare that Director Steudle's and MDOT's NRHM routing designations over the privately-owned and operated Ambassador Bridge violate federal law and are therefore preempted.

WHEREFORE, Plaintiffs DIBC and CTC request that this Court:

A. ENTER a declaratory judgment pursuant to 28 U.S.C. § 2201 and 49 U.S.C. § 5125(d)(3) in favor of Plaintiffs DIBC and CTC and against Defendant Kirk Steudle;

B. DECLARE MDOT does not have jurisdiction over the Ambassador Bridge.;

C. DECLARE that MDOT's Director Kirk Steudle is without authority to authorize or approve MDOT enforcement of NRHM routing designations on the Ambassador Bridge;

D. DECLARE the current NRHM routing designations over the Ambassador Bridge are preempted and invalid under 49 C.F.R. §397.69(b) and the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2;

E. DECLARE that MDOT's Director Kirk Steudle or any successor is without authority to promulgate further NRHM routing designations over the Ambassador Bridge;

F. AWARD Plaintiffs DIBC and CTC their costs and attorney fees incurred in this action; and

G. GRANT Plaintiffs DIBC and CTC such other and further relief that the Court deems equitable and just.

COUNT III – INJUNCTIVE RELIEF

72. Plaintiffs restate and incorporate by reference the preceding allegations as if fully set out here.

73. MDOT does not have jurisdiction over the privately-owned and operated Ambassador Bridge.

74. Defendant Steudle has directed and continues to direct NRHM routing designations and regulations over the Ambassador Bridge.

75. Director Steudle approved and authorized the NRHM routing designations over the Ambassador Bridge.

76. Defendant Steudle's continued direction of MDOT's and the Michigan State Police's enforcement of the invalid NRHM regulations violate 49 U.S.C. § 5112 and 49 C.F.R. §397.71(b)(8), and the NRHM regulations are preempted under 49 U.S.C. § 5125, 49 C.F.R. §397.69(b), and the Supremacy Clause of the United States Constitution. Accordingly, Plaintiffs are substantially likely to prevail on the merits.

77. Plaintiffs' injury from the illegal NRHM regulations and their enforcement is irreparable.

Plaintiffs do not have an adequate remedy at law because damages from Director Steudle's efforts to enact and enforce illegal NRHM regulations over their private property are difficult to calculate and ascertain.

78. Director Steudle will suffer no injury or harm from the injunction because Director Steudle has no legitimate interest in acting outside the scope of his jurisdiction, enacting regulations that he has no authority to promulgate, and promulgating NRHM restrictions that violate 49 U.S.C. § 5112 and 49 C.F.R. §397.71(b)(8) and his acts are preempted under 49 U.S.C. § 5125, 49 C.F.R. §397.69(b), and the Supremacy Clause of the United States Constitution.

79. The public interest favors enjoining a state official, Director Steudle, from exceeding the scope of his jurisdiction and acting contrary to federal regulations. "It is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc v Metro Govt of Nashville & Davidson Co, Tennessee*, 274 F3d 377, 400 (CA 6 2001).

WHEREFORE, Plaintiffs DIBC and CTC request this Court:

A. **ENJOIN** Director Steudle from directing MDOT to enforce NRHM routing designations over the Ambassador Bridge;

B. **ENJOIN** Director Steudle or any successor from promulgating any further NRHM routing designations over the Ambassador Bridge;

C. **ENJOIN** Director Steudle or any successor from enforcing or directing any other agency to enforce NRHM routing designations over the Ambassador Bridge;

D. **AWARD** Plaintiffs DIBC and CTC their costs and attorney fees incurred in this action; and

E. **GRANT** Plaintiffs DIBC and CTC such other and further relief that the Court deems equitable and just.

Respectfully submitted,

The Mike Cox Law Firm, PLLC

By: /s/ Michael A. Cox

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Dated: February 21, 2017

EXHIBIT

1

Ambassador Bridge

The Ambassador Bridge is North America's #1 international border crossing. It spans the Detroit River, connecting Detroit, Michigan with Windsor, Canada. Approval for the Ambassador Bridge was granted by acts of both the Congress of the United States and Canada's Parliament. At the time of its completion in November of 1929, the Ambassador Bridge was the longest suspension bridge in the world, exceeding by 100 feet the Philadelphia-Camden Bridge completed in 1926. For more information, visit the Ambassador Bridge website.

Note: The Ambassador Bridge is privately owned and operated and is not under the jurisdiction of the Michigan Department of Transportation. The Ambassador Bridge has sole responsibility for the contents of its website.

Effective June 1, 2009, U.S. citizens returning to the United States from Canada, Mexico, the Caribbean or Bermuda, by land or sea, will be required to present an approved travel document to be admitted to the United States.

For a complete list of Western Hemisphere Travel Initiative-compliant documents, visit the United States Department of Homeland Security.

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PROOF OF SERVICE (E-FILE)

I hereby certify that on February 21, 2017, I electronically filed the foregoing document(s) with the Clerk of the Court using the ECF System, which will provide electronic notice and copies of such filing of the following to the parties: Plaintiffs Complaint.

Respectfully submitted,

The Mike Cox Law Firm, PLLC

By: /s/ Michael A. Cox

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Dated: February 21, 2017