Exhibit (g)(5)  
  
  
 MEMORANDUM OF UNDERSTANDING  
  
 This MEMORANDUM OF UNDERSTANDING is entered into as of March  
2, 1998 among the plaintiffs in the Actions (as defined herein), Illinois  
Central Corporation ("IC"), the members of IC's Board of Directors (the "IC  
Board"), Canadian National Railway Company ("CN") and Blackhawk Merger Sub, Inc.  
("Blackhawk"), by their undersigned attorneys. Except as otherwise stated in  
this Memorandum of Understanding, capitalized terms herein have the meaning  
given them in the Agreement and Plan of Merger dated as of February 10, 1998  
among CN, Blackhawk and IC (the "Merger Agreement").  
  
 WHEREAS, there are now pending three actions in the Court of  
Chancery of the State of Delaware, styled Spinner x. Xxxxx, Del. Ch., C.A. No.  
16184; Harris v. Illinois Xxxxxxx Xxxxxxxxxxx, Xxx. Xx., X.X. Xx. 00000; Xxxxx  
x. Xxxxx, Del. Ch., C.A. No. 16191 (the "Delaware Actions"), and one action  
pending in the Circuit Court of Xxxx County, Illinois, styled Xxxxx x. Xxxxx,  
Civ. Action No. 98-01972 (the "Illinois Action" and, together with the Delaware  
Actions, "the Actions"); and  
  
 WHEREAS, the Actions were filed as putative class actions on  
behalf of holders of IC common stock, relating to the proposed acquisition (the  
"Transaction") by CN through Blackhawk, an indirect subsidiary of CN, of IC, as  
set forth in the Merger Agreement; and  
  
 WHEREAS, the Actions name as defendants IC, the members of the  
IC Board, CN and Blackhawk; and  
  
 WHEREAS, the Actions seek declaratory and injunctive relief,  
monetary damages and/or rescission with respect to the Transaction based upon  
the allegation, inter alia, that the conduct of the members of the IC Board in  
connection with the Transaction constitutes a breach of their fiduciary duties,  
aided and abetted by CN and Blackhawk; and  
  
 WHEREAS, the defendants deny that they have committed or have  
attempted to commit any violation of law or breach of duty, including breach of  
any duty to IC stockholders, or have otherwise acted in any improper manner; and  
  
 WHEREAS, following negotiations between the parties, counsel  
for the parties have reached an agreement in principle providing for the  
proposed settlement of the Actions on the terms and conditions set forth below  
(the "Settlement"); and  
  
 WHEREAS, counsel for the parties believe that the proposed  
Settlement is in the best interests of the stockholders of IC;  
  
 NOW THEREFORE, IT IS HEREBY AGREED IN PRINCIPLE AS FOLLOWS:  
  
 1. Modification of Transaction. Upon Final Court Approval (as  
such term is defined in paragraph 5 below) and the satisfaction of the other  
conditions of the Settlement described herein, the terms of the Transaction will  
be modified as follows:  
  
 a. The final proviso in the definition of "CN Average  
 Closing Price" in Section 2.02(c) of the Merger Agreement shall be  
 amended to read as follows:  
  
 "provided that if such average closing price is less than  
 $41.50 then the CN Average Closing Price shall be $41.50 and  
 if such average closing price is greater than $64.50 then the  
 CN Average Closing Price shall be $64.50."  
  
 Except as expressly provided above, the rights of CN and Blackhawk  
 under the Merger Agreement, including the right to convert the terms of  
 the Offer to an all-cash offer pursuant to the Merger Agreement, shall  
 not be affected.  
   
 b. CN shall agree to distribute, or cause to be  
 distributed, to all IC stockholders who received payment for their  
 shares acquired in response to the Offer or who are record holders of  
 IC common stock at the Effective Time of the Merger their pro rata  
 share of an aggregate amount equal to one-third of any "Net Profits"  
 realized upon any disposition of IC shares by or out of the Voting  
 Trust in the event that the Surface Transportation Board of the United  
 States issues written notice disapproving the acquisition of control of  
 IC by CN, or advises CN of such a determination or imposes unacceptable  
 conditions upon such acquisition of control. The definition of the term  
 "Net Profits" is subject to definitive documentation, but such  
 definition shall provide, at a minimum, that "Net Profits" shall mean  
 the proceeds of a qualifying disposition of the IC shares after  
 deducting (i) the costs of such disposition (including fees of  
 attorneys, financial advisors, accountants and consultants, and  
 expenses for printing, mailing, etc.), (ii) the costs of carry between  
 the acquisition and disposition of such shares, (iii) the costs of  
 acquisition of such IC shares (including fees of attorneys, financial  
 advisors, accountants and consultants, and expenses for printing,  
 mailing, etc.) and (iv) taxes incurred by CN, Blackhawk, IC, any of  
 their respective affiliates or the Voting Trust in connection with the  
 ownership, acquisition and disposition of such shares.  
  
 2. Additional Disclosure by IC. As a result of discussions  
among the parties, and although IC maintains that it is not legally required to  
do so, IC agrees that it will promptly amend the Schedule 14D-9 dated February  
13, 1998 to provide further disclosure regarding the analyses performed by its  
financial advisors concerning the fairness of the Transaction to IC  
stockholders, and will use its reasonable best efforts to mail such amendment to  
IC stockholders as soon as practicable.  
  
 3. Dismissal of the Illinois Action. As soon as practicable  
after the execution of this Memorandum of Understanding, counsel to plaintiff in  
the Illinois Action shall obtain the dismissal of the Illinois Action. The  
parties will cooperate in the preparation and filing of the appropriate  
documentation required to obtain the dismissal of the Illinois Action.  
Plaintiff's counsel in the Illinois Action agrees that the defendants' time to  
answer or otherwise move in response to the complaint in that action is extended  
without date and that counsel shall prepare, execute and submit such  
documentation as shall be necessary to implement this agreement.  
  
 4. Stipulation in Delaware Actions. The parties to the  
Delaware Actions will attempt in good faith to agree upon and execute an  
appropriate Stipulation of Settlement (the "Stipulation") and such other  
documentation as may be required in order to obtain Final Court Approval (as  
defined in paragraph 5) of the Settlement and the dismissal of the Delaware  
Actions upon the terms set forth in this Memorandum of Understanding  
(collectively, the "Settlement Documents"). The Stipulation will expressly  
provide, inter alia, for certification of a non-opt out settlement class  
pursuant to Delaware Court of Chancery Rules 23(b)(1) and (b)(2) of IC  
stockholders from February 5, 1998 through and including the later of (a) the  
date of Final Court Approval or (b) the Effective Time (the "Class"); for entry  
of a judgment dismissing the Delaware Actions "with prejudice"; for a complete  
release and settlement of all claims, whether asserted directly, derivatively or  
otherwise, against defendants and their predecessors, successors, parents,  
subsidiaries, affiliates and agents (including, without limitation, any  
investment bankers or attorneys and any past, present or future officers,  
directors or employees of defendants and their predecessors, successors,  
parents, subsidiaries, affiliates and agents) which have been, or could have  
been, asserted relating to the Transaction, the actions of CN, Blackhawk, IC and  
the IC Board of Directors (including each member of the IC Board of Directors)  
relating to the Transaction, the related disclosure materials (including the  
Offer to Purchase, the Schedule 14D-1, the Schedule 14D-9 and any proxy  
statement, consent statement or prospectus), disclosures, facts and allegations  
that are or could (insofar as such transactions, disclosures, facts and  
allegations relate to, or occurred in connection with, the subject matter of the  
Actions) be the subject of the Actions; that defendants have denied and continue  
to deny that they have committed or attempted to commit any violations of law or  
breaches of duty of any kind; that defendants are entering into the Stipulation  
solely because the proposed Settlement as described above would eliminate the  
burden, risk and expense of further litigation, and is in the best interests of  
IC and all its stockholders; and that any of the defendants shall have the right  
to withdraw from the proposed Settlement in the event that (x) the Illinois  
Action shall not have been dismissed on terms satisfactory to such defendant or  
(y) any claims related to the Transaction or the subject matter of the Actions  
(whether direct, derivative or otherwise) are commenced against any person in  
any court prior to Final Court Approval of the Settlement, and such claims are  
not dismissed or stayed in contemplation of dismissal. The parties agree to use  
their good faith efforts to obtain the dismissal or stay in contemplation of  
dismissal of any action covered by the foregoing subparagraph 4(y) and further  
agree that the defendants shall have the right to withdraw from this Memorandum  
of Understanding if such efforts do not result in the dismissal or stay in  
contemplation of dismissal of such an action.  
  
 5. Notice and Court Approval. Subject to prior Court approval  
of the Stipulation and the form of the Settlement Documents, the parties to the  
respective Delaware Actions will present the Settlement Documents to the  
Delaware Court of Chancery for approval as soon as practicable following  
appropriate notice of the proposed Settlement to the IC stockholders as to all  
claims asserted in the Actions as against the named plaintiffs and the  
stockholders of IC on whose behalf the Actions were brought, with no right to  
opt-out of the Settlement and without costs to any party except as provided  
herein. IC shall pay the costs and expenses related to providing notice of the  
Settlement to the IC stockholders. As used herein, "Final Court Approval" of the  
Settlement means that the Delaware Court of Chancery has entered an order  
approving the Settlement and that such order is finally affirmed on appeal or is  
no longer subject to appeal and the time for any petition for reargument, appeal  
or review, by certiorari or otherwise, has expired. Plaintiffs' counsel intend  
to apply to the Delaware Court of Chancery for an award of attorneys' fees and  
reasonable out-of-pocket disbursements. Subject to the terms and conditions of  
this Memorandum of Understanding and the contemplated Stipulation of Settlement,  
plaintiffs' counsel will apply for an award of fees in an amount not exceeding  
$925,000 and expenses in an amount not exceeding $25,000, which the defendants  
and other releasees will not oppose, to be paid by IC.  
  
 6. Other Conditions. The consummation of the Settlement is  
subject to: (a) 50.1% of the outstanding shares of the IC common stock on a  
fully diluted basis having been acquired by CN and placed into the Voting Trust;  
(b) the drafting and execution of the Settlement Documents and the other  
agreements necessary to effectuate the terms of the proposed Settlement; (c) the  
completion by plaintiffs of appropriate discovery in the Actions reasonably  
satisfactory to plaintiffs' counsel; and (d) Final Court Approval (as defined in  
paragraph 5 above) of the Settlement and dismissal of the Actions with prejudice  
and without awarding costs to any party, except as provided herein. This  
Memorandum of Understanding shall be null and void and of no force and effect if  
(i) any of these conditions are not met or (ii) plaintiffs' counsel in the  
Actions determine that the Settlement is not fair and reasonable. In such event,  
this Memorandum of Understanding shall not be deemed to prejudice in any way the  
positions of the parties with respect to the Actions, shall be subject to Rule  
408 of the Delaware Rules of Evidence, and shall not entitle any party to  
recover any costs or expenses incurred in connection with the implementation of  
this Memorandum of Understanding.  
  
 7. Interim Stay of the Delaware Actions. The parties to the  
Delaware Actions agree that except as expressly provided herein, each of the  
Delaware Actions shall be stayed pending submission of the proposed Settlement  
to the Court for its consideration. Plaintiffs' counsel in each of the Delaware  
Actions agrees that the defendants' time to answer or otherwise move with  
respect to the complaints in each of those actions is extended without date.  
Counsel shall enter into such documentation as shall be required to effectuate  
the foregoing agreements.  
  
 8. Miscellaneous. (a) This Memorandum of Understanding may be  
executed in counterparts by any of the signatories hereto and as so executed  
shall constitute one agreement; (b) this Memorandum of Understanding and the  
Settlement contemplated by it shall be governed by and construed in accordance  
with the laws of the State of Delaware without regard to that State's rules  
concerning conflict of laws; (c) this Memorandum of Understanding shall be  
binding upon and inure to the benefit of the parties and their respective  
agents, executors, heirs, successors and assigns, subject to the conditions set  
forth herein; and (d) plaintiffs and their counsel represent and warrant that  
none of the claims or causes of action asserted in the Actions have been  
assigned, encumbered or in any manner transferred, in whole or in part.  
  
 XXXXXXXXX XXXXXXXX & LIFSHITZ  
  
  
  
 By: /s/ Xxxxxxx Xxxxxxxxx  
 ---------------------------  
 000 Xxxxxxx Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 (000) 000-0000  
  
  
  
 CHIMICLES, XXXXXXXX & TIKELLIS  
  
  
  
 By: /s/ Xxxxx X. Xxxxx  
 ---------------------------  
 Xxx Xxxxxx Xxxxxx  
 X.X. Xxx 0000  
 Xxxxxxxxxx, XX 00000  
 (000) 000-0000  
  
  
 ROSENTHAL, MONHAIT, GROSS  
 & GODDESS, P.A.  
  
  
  
 By: /s/ Xxxxxx Xxxxxxxxx  
 ---------------------------  
 Suite 1401, Mellon Bank Center  
 X.X. Xxx 0000  
 Xxxxxxxxxx, XX 00000-0000  
 (000) 000-0000  
  
  
 LAW OFFICES OF XXXX XXXXXXX  
  
  
  
 By: /s/ Xxxx Xxxxxxx  
 ---------------------------  
 000 Xxxxx Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 (000) 000-0000  
  
  
  
 LAW OFFICES OF XXXXXXXX XXXXXXX  
  
  
  
 By: /s/ Xxxxxxxx Xxxxxxx  
 ---------------------------  
 000 X. XxXxxxx Xxxxxx  
 Xxxxx 0000  
 Xxxxxxx, Xxxxxxxx 00000  
 (000) 000-0000  
  
  
 XXXXXXX XXXXXXX & XXXXXXXX  
  
  
  
 By: /s/ Xxxxx X. Xxxx  
 ---------------------------  
 000 Xxxxxxxxx Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 (000) 000-0000  
  
  
 XXXXX XXXX & XXXXXXXX  
  
  
  
 By: /s/ Xxxxxx X. Xxxxxx  
 ---------------------------  
 000 Xxxxxxxxx Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 (000) 000-0000