



KAPLAN KIRSCH ROCKWELL

STB Hears Oral Argument in Challenge to Safe Harbor for Certain Rail Acquisitions

01.26.10

The Surface Transportation Board (STB) heard an oral argument in a case challenging the validity of a mechanism used for nearly 20 years by public transit and commuter operator agencies to acquire active freight rail corridors free of STB oversight. Since 1991, the Board has authorized agencies operating passenger service to acquire the real estate and physical assets in a rail corridor without taking on the associated common carrier obligation as long as another party remains responsible for conducting freight service on the line. A group of unions has argued that the Interstate Commerce Act and Interstate Commerce Commission Termination Act do not create separate interests in the operating rights and physical plant of a line of railroad, and that acquisition of the physical assets therefore is subject to STB jurisdiction. If the Board adopts the unions' arguments and limits or reverses its existing approach, the impact on future transactions by passenger rail agencies to acquire active freight rail lines will be significant.