

## Rail and Transit Litigation

When disputes involving rail and transit clients cannot be resolved by negotiation, the case goes before the Surface Transportation Board (STB), federal or state courts, and or other administrative tribunals (including the Federal Railroad Administration or the Railroad Retirement Board).

Kaplan Kirsch & Rockwell has handled the full range of proceedings before the STB, including petitions for declaratory orders, exemptions, and offers of financial assistance; National Trails Act matters; operating and track access matters; and abandonment (both affirmative and adverse) cases. When disputes require litigation in federal or state courts, our attorneys apply their litigation experience in combination with their practiced familiarity with rail and transit law to provide principled, zealous, and creative advocacy tailored to the needs and goals of our rail and transit clients. We frequently litigate cases of first impression or cases in which obtaining a positive outcome is mission-critical for our client. Whether before a court or the STB, our deep knowledge of the substantive law and litigation savvy enables us to present the best case for our clients.

### Representative Cases

- *Fillmore & Western Freight Service, LLC—Emergency Petition for Declaratory Order*, STB Docket No. FD 35813 (Service Date March 10, 2015) (obtained dismissal of action seeking to block ability of the owner of the right-of-way to terminate leases with railroad based on non-performance)
- *Ballard Terminal Railroad Company, L.L.C.—Acquisition and Operation Exemption—Woodinville Subdivision*, STB Docket No. FD 35731 (Service Date Dec. 30, 2014) (obtained dismissal of action in which a short-line freight operator attempted to gain operating rights to a railbanked line despite the lack of any property interest in the Line and an absence of demonstrated demand for service or financial capacity to reactivate service)
- *New Jersey Association of Railroad Passengers and National Association of Railroad Passengers—Petition for Declaratory Order*, Docket No. FD 35745 (Service Date July 25, 2014) (obtained dismissal of action to block relocation of commuter rail station facilities and associated property exchange to facilitate development of university arts complex)
- *Holloway, et al. v. South Florida Regional Transportation Authority*, FMCS 14-53032-3 Section 13(c) Claims' Grievances (2014) (arbitrator's decision denying claim for benefits under Section 13(c) of the Federal Transit Act)
- *Maryland Transit Admin. v. Surface Transp. Bd.*, 700 F.3d 139 (4th Cir. 2012) (represented Maryland Transit Administration in challenge to STB's indemnity requirements for trail sponsors under the National Trails Act based on sovereign immunity grounds)
- *GNP Rly, Inc.—Acquisition and Operation Exemption—Redmond Spur and Woodinville Subdivision*, STB Docket No. FD 35407 (Service Date June 15, 2011) (obtained dismissal of action by a start-up entity seeking to reactivate service on the line despite not having any property rights in the line, the absence of existing demand for service, and the lack of financial capacity to reactivate the line)
- *Brotherhood of Locomotive Engineers and Trainmen v. Southern California Regional Railroad Authority*, Case No. BC424287 (L.A. County Sup. Ct. June 1, 2011) (obtained dismissal of lawsuit by train engineers' union challenging the use of inward-facing cameras in commuter locomotive cabs on privacy and due process grounds)
- *Brotherhood of Locomotive Engineers and Trainmen v. Southern California Regional Railroad Authority*, Case No. CV 09-8286 PA (C.D. Cal. June 30, 2010), *appeal dismissed*, Case No. 10-56197 (9th Cir. Jan. 2012) (obtained dismissal on the pleadings of lawsuit by train engineers' union challenging the use of inward-facing cameras in commuter locomotive cabs on preemption and civil rights grounds)



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- *Norfolk Southern Ry. Co v. City of Alexandria, Virginia*, 608 F.3d 150 (4th Cir. 2010) (represented the City of Alexandria in defending city ordinances regulating truck traffic from an ethanol transloading facility)
- *BNSF Ry. Co.—Abandonment Exemption—In King County, WA*, STB Docket No. AB-6 (Sub-No. 465X) (Service Date Nov. 28, 2008); *BNSF Ry. Co.—Acquisition Exemption—In King County, WA*, STB No. FD 35148 (Service Date Sept. 18, 2009) (negotiated a series of multi-party agreements and extensive administrative and court litigation to realize a phased project involving the accommodation of continued freight rail service, establishment of a public use trail, and preservation of a 26-mile-long rail corridor for potential public transit use (need to insert cites for the proceedings involving King County’s acquisition of reactivation right, as part of the BNSF abandonment and Port of Seattle’s acquisition of rights in the line)
- *Maryland Transit Administration—Petition for Declaratory Order*, STB Docket No. FD 34975 (Service Date Oct. 9, 2007), *aff’d on reconsideration*, STB Docket No. FD 34975 (Service Date Sept. 19, 2008) (confirmed that state agency’s previous acquisition of ownership of rail corridor that remained subject to freight operating easement did not trigger regulatory review requirements and that the state agency did not become a common carrier providing transportation subject to the STB’s jurisdiction)
- *Tri-State Brick and Stone of N.Y., Inc., et al.—Petition for Declaratory Order*, STB Docket No. FD 34824 (Service Date Aug. 11, 2006), *petition to reopen denied*, STB Docket No. FD 34824 (Service Date Dec. 11, 2007) (successful representation of New York City in attempt by shipper to claim benefits of federal preemption despite not being a rail carrier that provides transportation subject to the jurisdiction of the STB)
- *Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation’s West 30th Street Secondary Track in New York, NY*, STB Docket No. AB-167 (Sub-No. 1094), *et al.* (Service Date June 13, 2005) (represented the City of New York in the acquisition, negotiation, and successful administrative proceedings to acquire and establish the High Line, an elevated rail structure running 1.2 miles along the west side of Manhattan)
- *The New York City Economic Development Corp.—Petition for Declaratory Order*, STB Docket No. FD 34429 (Service Date Jul. 15, 2004) (successful representation of City agency in action seeking determination that federal regulatory scheme preempts state environmental and zoning regulations)
- *CSX Corporation, et al.—Control and Operating Leases/Agreements—Conrail, Inc., et al.*, STB Docket No. FD 33388, 3 S.T.B. 196 (Service Date Jul. 23, 1998) (sought and secured direct competitive freight rail alternative on line serving east side of Hudson River on behalf of the City of New York where merger proponents had sought to have only one carrier serving that segment of the market; also secured negotiated resolution of issues relating to potential adverse environmental impacts of proposed transactions on the City of Cleveland’s neighborhoods)
- *Southern Pacific Transportation Company—Abandonment Exemption—Los Angeles County, CA*, 9 I.C.C. 2d 386 (1993); *Southern California Regional Rail Authority*, B.C.D. 09-4 (RRB Feb. 18, 2009); *Southern California Regional Rail Authority*, B.C.D. 02-12 (RRB Feb. 12, 2002); *Southern California Regional Rail Authority*, B.C.D. 94-116 (RRB Dec. 14, 1994); *Los Angeles County Metropolitan Transportation Authority*, B.C.D. 94-48 (RRB) (1994); *Orange County Transportation Authority*, *Riverside County Transportation Commission*, B.C.D. 94-47 (RRB) (1994); *San Bernardino Associated Governments*, B.C.D. 94-101 (1994); *Ventura County Transportation Commission*, B.C.D. 94-100 (RRB) (1994) (obtained approvals for acquisition by Los Angeles County MTA and surrounding counties of lines of railroad from Southern Pacific Transportation Company for use in development of Southern California Regional Rail Authority (Metrolink) commuter rail system; secured determinations over a number of years that public transit agencies did not become subject to Railroad Retirement Act tax when acquiring lines of railroad from freight carriers; subsequently secured “segregation” ruling for SCRRRA allowing SCRRRA to “segregate” the unit of dispatchers to permit them to be covered under Railroad Retirement while preserving the non-covered status of the remainder of the agency’s employees)



## KAPLAN KIRSCH ROCKWELL

- *Maryland Transit Administration James Riffin Matters*: Represented the Maryland Transit Administration in extensive STB proceedings and litigation in the D.C. and Fourth Circuits to attempts by an individual to obtain ownership or the right to acquire residual property interests in property owned by MTA.