



## Freight Issues

On behalf of private entities, trade groups, local governments, and states nationwide, we draw upon our experience in the representation of freight railroads to provide advice, counsel, and representation in litigation on issues that span the full range of freight rail regulation.

### 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 obtain operating rights to a railbanked line despite the lack of any property interest in the line and no demonstrated demand for service or financial capacity to reactivate service)

*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)

*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)

*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) (successfully represented New York City in attempt by shipper to claim benefits of federal preemption even though it is not a rail carrier providing transportation subject to the jurisdiction of the STB)

*The New York City Economic Development Corp.—Petition for Declaratory Order*, STB Docket No. FD 34429 (Service Date Jul. 15, 2004) (successfully represented New York 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) (successfully represented New York City in securing direct competitive freight rail alternative on line serving east side of Hudson River where merger proponents had sought to have only one carrier serving that segment of the market)



## Representative Experience

- Counseled municipalities in connection with the regulation of freight and hazardous material transloading facilities.
- Represented municipal client in federal rulemaking governing the technical and operating standards for trains transporting hazardous flammable materials.
- Negotiated and litigated a dispute on behalf of a municipal client over occupancy of a rail yard owned by the city.
- Conducted administrative and appellate litigation concerning the scope of federal preemption of state and local authority to regulate freight rail operations.
- Negotiated and drafted agreements between passenger rail providers and freight railroads to establish shared use, maintenance, and dispatching protocols.
- Negotiated and drafted agreements and coordination of regulatory proceedings to relocate active rail lines to accommodate expansion of the client's facility.
- Advised shipper industry group on the potential impact of revised freight compensation regulations and potential strategic approaches.
- Advised shippers on formation of proprietary short line railroad companies to facilitate the companies' ability to exercise more control over in-plant rail operations and to increase efficiency in interaction with larger rail carriers that serve those facilities.