

Rail Facilities

State and local governments are facing increased pressure to find new and creative ways of addressing issues created by traffic congestion and the associated environmental consequences. Kaplan Kirsch & Rockwell counsels numerous clients in connection with the construction, redevelopment, leasing, and operation of rail facilities, including passenger stations, freight yards, and maintenance depots.

Rail facilities frequently involve a complex mix of transactional considerations, such as issues relating to financing; permitting and federal oversight; federal requirements governing the construction, such as the Americans With Disabilities Act and federal procurement requirements; maintenance and operation of passenger facilities; and threatened or actual litigation. We are skilled at promoting our clients' interests simultaneously in multiple contexts and venues.

Representative Cases

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 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 seeking and securing a 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

- Negotiated purchase and sale agreements, leases, operating agreements, and access licenses in connection with passenger and freight operations.
- Negotiated agreement with proposed private operator of intercity high speed rail service for expansion of commuter rail service that currently operates on a nearby corridor to that high speed corridor, requiring resolution of issues related to operation of freight, commuter, and high speed intercity service on the same corridor.
- Negotiated terms for acquisition of rail yard from freight carrier for use by commuter agency for maintenance and storage of commuter equipment.
- Negotiated and drafted multi-party agreements for the rehabilitation and occupancy of passenger rail facilities for a regional public transportation provider initiating commuter rail service.



KAPLAN KIRSCH ROCKWELL

- Prosecuted simultaneous regulatory and judicial actions relating to the unauthorized occupancy of a rail yard owned by a client public agency.
- Advised state public transportation agency on the allocation of responsibility for improvements to passenger station facilities to meet revised Americans With Disabilities Act requirements.