

## Transit and Commuter Rail

Kaplan Kirsch & Rockwell advises clients at every phase of transit and commuter rail project development. Our experience in rail passenger projects is both broad and deep. We have counseled a significant proportion of the nation's public transit agencies on issues ranging from the initial planning of their systems, to the acquisition of rail corridors and construction of facilities, and to the implementation and operation of service, including negotiation of third-party contracts for operation, maintenance, and dispatching. Our attorneys also address labor relations issues that arise in changing contractors and represent a variety of state and regional transportation entities in negotiations with Amtrak and freight railroads to support the participation of states in providing intercity passenger rail service.

Many of our clients are state or regional commuter rail or transit agencies that must negotiate with railroads to acquire the right to operate passenger service. Every transaction is unique, and we assist our clients in obtaining outright ownership of rights-of-way, easements, leases, or licenses as the particular situation demands.

In any of those transactions, we are frequently called upon to negotiate the right of one or more freight or other passenger railroads to also conduct freight operations on the line. We regularly counsel transit agencies in connection with the negotiation of agreements for the shared use of rail corridors and related facilities, including passenger terminals. These transactions typically involve the negotiation agreements and easements with the freight railroads to permit shared freight and passenger use of corridors, agreements regarding allocation of responsibility for maintenance of rights-of-way and signals, and agreements with Amtrak for the operation of intercity passenger rail service over lines owned by the client agency. In some circumstances, the shared use involves operation of traditional "heavy rail" (freight and commuter or intercity passenger operations) and "light rail" (other transit operations) that requires carefully choreograph arrangements to ensure safety of operations and compliance with federal safety regulations.

### Representative Cases

*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)

*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)

*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)



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(confirmed that state agency's previous acquisition of ownership of rail corridor remaining subject to freight operating easement did not trigger regulatory review requirements and state agency did not become a common carrier providing transportation subject to the STB's jurisdiction)

*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)

### Representative Experience

- Counseled client on the assembly of a corridor for transit, public recreational trail, and park development, including compliance with federal grant compliance requirements, negotiations with freight railroads for property acquisition, and representation in regulatory proceedings to permit client to pursue expedited property acquisitions.
- Assisted clients in structuring and conducting environmental reviews for proposed projects.
- Counseled public transportation agency clients on the interaction of federal, state, and local regulations, including federal preemption issues.
- Advised regional transportation district on transactions to establish new commuter rail service over extensive network of freight lines, including negotiations for acquisition of property rights, regulatory procedures to establish authority to purchase freight rail property, and negotiations for shared use of the corridors.
- Assisted clients in labor and employment issues, including implications of federal labor protection arrangements arising under authority of the Surface Transportation Board and under Section 13(c) of the Federal Transit Act.
- Assisted clients in transaction and organizational structures that will allow the agency to achieve an appropriate level of interaction with the federal rail labor regime (Railway Labor Act, Railroad Retirement Act, and Railroad Unemployment Insurance Act) and other federal statutes governing the rail industry.
- Assisted regional commuter rail operator in soliciting proposals and selecting contractors to operate passenger service and maintain rail facilities.
- Advised municipal client on federal regulatory requirements relating to implementation of new streetcar service.