



ACCUSED OF CROSSING THE RAILROAD? CLAIMS BY OR AGAINST RAILROADS

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For shippers and other users of rail services, receiving an unexpected claim for payment from a multinational company, let alone a railroad with the leverage that comes with having exclusive ownership of the rails and equipment, can be intimidating. **However, shippers and rail users have tools to support their position.**

Contracts for rail services are governed by contract or tariff. If by contract, shippers and users should look to the specific contract terms they agreed to, which should provide protection from unexpected claims. If there is no contract, as is usually the case, the users' relationship with the railroad will be governed by the railroad's publicly available tariff as well as federal law – the Interstate Commerce Commission Termination Act of 1995 and regulations issued by the United States Surface Transportation Board.

Federal law imposes certain obligations on railroads:

- to provide transportation services “on reasonable request”; and
- to establish “reasonable rates” and reasonable “rules and practices on matters related to that transportation or service.”

If railroads fail to meet these obligations, under 49 U.S.C. §§ 11704, they can not only lose their ability to seek payment for deficient rail service but also be liable to shippers and users for damages. Further, what constitutes “reasonable” – one of a lawyer's favorite words – is subject to interpretation, and a user of rail services can, after sufficient investigation, present a persuasive case that the railroad's services were not reasonable, and, as such, the railroad is not entitled to payment or even owes the user damages for its deficient service.

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If you are a shipper or other user of rail services and being unfairly treated by a railroad, federal law and regulations provide help. Contact Burke Warren attorneys **Aaron Stanton** (astanton@burkelaw.com, (312) 840-7078) or **Joshua Cauhorn** (jcauhorn@burkelaw.com, (312) 840-7055) for guidance.