



Litigation

TRANSPORTATION

Van Ness Feldman represents railroad customers and other entities who deal with the railroads in commercial contract matters, negotiations, litigation, and arbitration. The firm also represents a number of industry associations on federal regulation, legislation and policy development relating to the railroad industry's exercise of monopoly power.

The firm's leading practitioners in this area are Bob Szabo and Michael McBride. Bob helped form and has served since 1984 as Executive Director of Consumers United for Rail Equity (CURE), an umbrella organization of large trade associations that represent more than 3,500 electric, utility, chemical, manufacturing and forest and paper companies and their customers. CURE advocates for modifications to federal railroad laws that will address railroad abuse of market power and anticompetitive practices.

Michael McBride maintains an extensive contract negotiation and litigation practice relating to Surface Transportation Board (STB) regulation of the rail industry. Michael STB practice began in 1975 before the predecessor Interstate Commerce Commission. Michael has twice been President of the ICC/STB bar association, the Association of Transportation Law Professionals, in 1994-95 and 2004-05. He is the only person ever to have been ATLP's President twice.

Throughout his career, Michael has participated many times in nearly every type of proceeding conducted by the ICC or STB. For example:

Rail Merger Proceedings

Michael participated actively in most of the major rail merger proceedings in the 1990s. He represented eight clients in the *Conrail* acquisition proceeding, securing relief for several of them. He represented the Western Shippers Coalition in the *Union Pacific-Southern Pacific* merger proceeding, most of whose members obtained favorable settlements. He also participated in support of the *Canadian National-Illinois Central* merger, after obtaining a favorable settlement for his client.

ICC Proceedings and Rulemakings

Michael's earliest ICC proceedings involved the refusal of the Eastern railroads to carry radioactive materials, and the insistence of the Southern and Western railroads that they would only carry such materials in "special trains" at astronomical rates. Through 15 years of litigation, Michael assisted those clients in establishing the principles underlying the "common carrier obligation" that still apply today, as well as to establish useful precedents with respect to ratemaking and relief for wasteful and unnecessary railroad practices.

As a result of that experience, Michael was involved in the two-year legislative process leading to the enactment of the Staggers Rail Act of 1980, on behalf of the Edison Electric Institute. Michael wrote much of the electric utility industry's testimony, accompanied the lead witness for his testimony, and assisted in drafting legislation and legislative history. He was similarly involved in the process that led to the enactment of the Interstate Commerce Commission Termination Act in 1995.

Michael has participated in most of the major railroad-related rulemakings at the STB and ICC over the last 30 years, and in several instances took the lead for the shipping community in arguing for them, either at the agency or in the Court of Appeals. For example, Michael argued successfully for the adoption of "productivity adjustment" to the Rail Cost Adjustment Factor at the ICC, and then successfully defended it in the Court of Appeals.

Rate and Certificate Proceedings, including Appellate Litigation

Michael has had many rate proceedings before the ICC and STB, including the first "small-shipment" rate complaint, for BP Amoco Chemical Company against Norfolk Southern, which was settled satisfactorily within one month of filing. Michael also has litigated many coal and radioactive materials railroad rate and service disputes for electric utility clients.

In addition, Michael has participated in various certificate proceedings, such as supporting the successful effort of the Dakota, Minnesota & Eastern to obtain authority to build a new line into the Powder River Basin in Wyoming, and then arguing in defense thereof in the Court of Appeals. Earlier, Michael testified with respect to that Project before the House Transportation and Infrastructure Committee. Also, Michael has represented various railroad customers with respect to "build-out" authority from the STB, and he successfully litigated one such matter that was vigorously opposed by the incumbent railroad.

Michael has on many occasions filed briefs in the U.S. Courts of Appeals or in the U.S. Supreme Court in ICC and STB cases. From time to time, he does so on behalf of clients who are not directly involved, but who are asked to provide their views as *amici curiae*. In many such cases, Michael has appeared on behalf of the Edison Electric Institute, which he has represented for 29 years with respect to railroad transportation. He also has been Special Assistant Attorney General of the Commonwealth of Massachusetts with respect to ICC-related matters.