Ag Transportation and Antitrust

The 'Smoking Gun' in the High Plains: Antitrust Law Meets Rural Rail

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Overview

A recent lawsuit filed in Kansas federal district court[1] represents a significant antitrust challenge in the agricultural transportation sector. At its core, the case examines whether dominant rail carriers can use contractual "paper barriers" and interchange fees to effectively decommission a competitor's infrastructure.

Core Claims

The plaintiffs, 13 farming/ranching operations and two corporate entities (a smaller railroad and a grain elevator)[2] allege that Union Pacific (U.P.) Railroad and Kansas & Oklahoma (K&O) Railroad conspired to stifle competition from the newly rehabilitated Towner Line, a rail corridor owned by CXR (a former Missouri Pacific Railroad route in eastern Colorado) that provides a direct westward route for grain. More specifically, the lawsuit alleges that U.P. and the K&O Railroad conspired to stifle competition by implementing a "paper barrier" – a high interchange fee (reportedly over $500 per car) by amending a 1997 lease agreement.[3] The plaintiffs argue this fee makes it economically impossible to use the rehabilitated Towner Line to ship grain west, forcing farmers to ship grain 140 miles east before it can be routed back toward West Coast ports. This had the effect of artificially inflating costs and protecting U.P.'s monopoly on westward shipments.

Merits of the Case

The plaintiffs' arguments lean on established antitrust principles under Sections 1 and 2 of the Sherman Act. The most compelling evidence for the plaintiffs is the "zero traffic" metric. Despite the Towner Line being fully rehabilitated and operational for six years, the complaint alleges that *not a single railcar* has moved westward over it since the fee was enacted. This provides a strong prima facie case that the fee is not a legitimate service charge but a barrier to entry. The 13 farmer plaintiffs can provide testimony on "basis" (the difference between the local cash price and the futures price). They argue that the lack of competition has depressed the prices they receive at the elevator while increasing shipping costs. If the plaintiffs can prove the lease amendment was a "conspiracy" between a Class I railroad (UP) and a short-line (K&O) to divide markets, it could be viewed as a per se violation of antitrust law.

Note: The timing of the lawsuit is critical. On January 7, 2026, the STB unanimously proposed a major rule change (repealing 49 C.F.R. Part 1144) that directly targets the defendants' potential defense. Under the old rules (from 1985), shippers had to prove specific "anticompetitive conduct" to get relief from a bottleneck. The new 2026 proposal seeks to remove this high burden, allowing the STB to grant competitive access simply if it is in the "public interest."[4]

The plaintiffs' strongest argument is the "zero carload" result. If a fee is so high that it results in 0 percent utilization of a rehabilitated line over six years, it provides no incentive for efficiency – only an incentive to avoid the route entirely. This aligns with the STB's 2026 push to "embrace market forces" over artificial regulatory barriers.

The Position of U.P. and K&O

The defendants, particularly U.P., have indicated they will fight the case on both jurisdictional and substantive grounds. A primary defense will likely be that this dispute belongs before the Surface Transportation Board (STB) rather than a federal district court. Rail rates and interchange practices are heavily regulated and U.P. will argue that the "reasonableness" of an interchange fee is a regulatory matter under the STB's exclusive jurisdiction. Also, because K&O operates on tracks leased from UP. The defendants will argue that the 1997 lease and its subsequent amendments are private contractual matters intended to protect the lessor's investment and are standard industry practice. In addition, to succeed on a Sherman Section 2 (Monopoly) claim, the plaintiffs must strictly define the "relevant market." The defendants can be expected to argue that the market is broader than the specific counties named, and that alternative transportation (trucking or other rail spurs) provides sufficient competition.

Union Pacific will likely argue that the $500 fee is a standard accessorial charge or interchange fee, which is usually within their rights to set. The STB has recently clarified (through *EP 757*) that accessorial charges are only "reasonable" if they provide an incentive for efficiency.

Observation: The railroads will likely argue that the court should pause the case until the STB finishes its 2026 rulemaking. However, the plaintiffs are using Antitrust Law, which provides for triple damages – something the STB cannot award. This makes the federal court a much more dangerous venue for U.P. than the STB.

The Assigned Judge

The case has been assigned to Judge Julie A. Robinson who is known for a meticulous, "by-the-book" approach to complex litigation. In the context of the case, her track record suggests she will be particularly focused on the tension between federal regulation and private antitrust claims. She will likely not be quick to dismiss the case if there is a plausible "factual bridge" to the harm alleged. She generally prefers to let a record develop rather than shutting down litigation early. This suggests she may be skeptical of a quick "blanket dismissal" by the railroads, likely requiring them to prove why the STB must take the case before she agrees to relinquish jurisdiction.

As applied in this case, the biggest threat to the plaintiffs is the STB. Railroads frequently argue that the Interstate Commerce Commission Termination Act (ICCTA) "preempts" (overrides) state and federal antitrust laws. Historically, Judge Robinson has shown respect for federal administrative frameworks but balances them against the right to a jury trial for clear economic injury.

Observation: There is a significant national shift toward examining "federal preemption" in transportation. The legal "energy" in 2026 is trending toward defining the limits of these federal shields.

Judge Robinson's history demonstrates that she is rigorous about the Sherman Act requirement that a plaintiff must show harm to competition, not just harm to their own pocketbook. Thus, if the railroads can show that the $500 fee is a standard "accessorial charge" applied elsewhere in the country, Judge Robinson may view this as a regulatory rate dispute rather than a "conspiracy. "The fact that zero cars have moved west in six years is exactly the kind of "stark statistical reality" that tends to move her court. She often looks for "real-world bottlenecks" when evaluating whether a defendant has stifled a market.

Conclusion

This case is a "David vs. Goliath" battle that could set a precedent for how "paper barriers" are treated in the modern rail era. If the court allows the case to proceed to discovery, the internal communications regarding the lease amendments will likely be the "smoking gun" that determines whether the fee was a strategic business move or an unlawful conspiracy to monopolize.

The resolution of the case carries profound weight for the agricultural sector, particularly for producers in the High Plains. For the 13 farmer plaintiffs, a victory could mean a direct correction of the "basis." By removing the 140-mile eastward detour, local grain elevators could offer more competitive cash prices to farmers, reflecting the lower costs of a direct westward route to Pacific ports.

Ultimately, the case tests the real-world value of private investments in rail. If "paper barriers" can effectively mothball a fully rehabilitated line like the Towner Line, it disincentivizes private entities from investing in rural infrastructure, fearing that dominant carriers will simply price them out of the market. A ruling against U.P. would signal to Class I railroads that the era of "captive shipping" through contractual bottlenecks is closing. It would empower smaller short-line railroads and agricultural cooperatives to negotiate more equitable interchange agreements, knowing that "zero traffic" metrics will be scrutinized by courts.

Finally, the alignment between this lawsuit and the STB's 2026 rulemaking suggests a systemic change. For the broader agricultural industry, this represents a move that could dismantle legacy regulatory shields, leading to a more fluid, market-driven transportation grid that prioritizes moving crops efficiently over protecting historic rail monopolies.

Notes:

[1] WesKan Grain LLC, et al. v. Kansas & Oklahoma Railroad, LLC et al., No. 2:26-cv-02053-JAR-GEB, (D. Kan. filed, Jan. 27, 2026).

[2] The corporate entities are owned by Stefan Soloviev, the 15th largest private landholder in the United States, who owns 617,000 acres in Colorado, Kansas, Texas, New Mexico and New York. Soloviev is the Chairman of Soloviev Group, the parent company of Crossroads Agriculture, the Colorado Pacific Railroad, Weskan Grain, and related business entities.

[3] A "paper barrier" is a regulatory term for contractual provisions (usually in a lease or sale agreement) that restrict a short-line railroad from interchanging traffic with a competitor of the "owning" Class I railroad (in this case, U.P.). Historically, the STB has tolerated these barriers to encourage Class I railroads to sell/lease underutilized lines to short-lines. However, the STB's Railroad Industry Agreement (RIA) guidelines state that a waiver of such barriers should be granted if the large railroad cannot offer a competitive transportation package.

[4] This regulatory shift creates a "pincer movement." While the plaintiffs fight in federal court using the Sherman Act, the STB is simultaneously lowering the bar for what constitutes an illegal restriction on competition.