

Chairman Martin J. Oberman

NORTH AMERICAN RAIL SHIPPERS ASSOCIATION ANNUAL MEETING  
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**Corrections:**

In the following speech given by Chairman Oberman, the section starting on page 11 of the speech should have read, "...railroad rates have fallen only by 27 percent since 1985. In the period from 1985 to 2004 ...."

In addition, the section starting on page 18 should have read, "Since 2010, all 7 class I's have paid out \$136 BB (\$146 BB in inflation adjusted dollars) in stock buybacks and cash distributions by BNSF to its owner. On top of that, the class I's have paid \$47 BB (\$50 BB in inflation adjusted dollars) in dividends during the same period. Thus, since 2010, the RR's owners have taken home more than **an astounding \$183 BB** (\$196 BB in inflation adjusted dollars) in buybacks and dividends, far more than the \$138BB (\$150 BB in inflation adjusted dollars) spent on the RR's infrastructure." The reference to total carrier buybacks and dividends that immediately follows this section should be adjusted accordingly.

Good morning

Much appreciate the opportunity to be here today and share some of my views about our industry and the STB's role in it

I regret once again having to attend virtually and like many of you I haven't really gotten used to it and don't intend to

Which makes it worth underscoring the tremendous service during this pandemic of the men and women who run the railroads and

their customers and the gratitude we should all express to them

At the outset, let me say that I'm aware that some observers have fallen under the impression that I tend to be outspoken and available to the public

That's good because in my view, public officials should always be as transparent as possible—

taking into account the limitations of their office---and most importantly should be held accountable

As stakeholders in an industry which can be much affected by the actions of our agency, it is only fair that I share with you my observations about those things that are going well and those things which are not going well

So with that in mind, I'm going to say a few things which all of you undoubtedly know well--

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but which I'd like you to know what I know, as well, as a result of my first 2 ½ years of service on the board and my efforts to do as much homework over time as time allows

At the outset, bear in mind that I am speaking for myself

I am only one vote on a five member board. My four colleagues are an outstanding group of smart, thoughtful and very independent people And we are all fortunate they have chosen to serve

First, let's remember that despite the passage of the Staggers act 40 years ago, and the lavish deregulation rhetoric which accompanied it and emanates to this day from some sources,

Railroads remain a regulated industry

Since the 1887 creation of the ICC, the Congress has recognized that

firms like the railroads,

firms in a highly concentrated industry with

high fixed costs and entry barriers, low marginal costs – firms that have natural monopoly characteristics –

can earn profits not only by providing attractive goods and services,

but also by behaving as monopolists, that is, by restricting supply and raising prices.

And it is to avoid this outcome that the United States, long ago, decided that **the public interest requires** that government be in a position to ensure some balance between the railroads' legitimate private interest in operating as profit making businesses

and the public's interest.

This is true not only because railroads in many parts of the country have a natural concentration of market power, but because **the health of your industry** is so essential to the

well being of our nation's economy and therefore to the well being of every US citizen and resident

As the railroads are fond of reminding us, depending on how you measure it,

well over a third of our economy rises or falls based on having a healthy national rail network

I can assure you that I and the STB as a whole, Board members and staff,

wake up every morning knowing that a key part of our mission is to ensure that that network remains healthy

Nevertheless, and although it shouldn't need to be said, it bears repeating that 2021 is not 1980

And responding to the STB's current role in the system by merely invoking the Staggers act does not advance the discussion

The railroad industry of today is a far cry from the railroad industry of 1980

Of course, the STB is charged with assuring that railroads maintain their ability to **operate at a profit** and earn **sufficient funds to provide a return on investment** and make the necessary capital expenditures on their all important infrastructure

But it is also essential that the STB recognize the **economic reality of today's transportation landscape** and apply our statutory mandates accordingly

As I look at the Board's charge from Congress,

I have focused on the railroad industry's being upheld on a four legged stool:

1. The s/h's or owners of the railroad
2. The RR's customers
3. The RR's workforce
4. The public

Each of these constituents of the RR industry finds its foundation in the statutes---indeed, even in the Staggers act language which has survived until today

For example, for shippers, the statute tells us to to foster sound economic conditions in transportation and to ensure effective competition and

to prohibit predatory pricing and practices, to avoid undue concentrations of market power,

49 U.S.C.A. § 10101 (West)

For labor, the statute tells us to encourage fair wages and safe and suitable working conditions

49 U.S.C.A. § 10101 (West)

And for the owners, we are required to insure revenues that provide a reasonable and economic profit or return (or both) on capital employed in the business.

49 U.S.C.A. § 10704 (West)

And equally important is the public interest. The statute is replete with directions and admonitions that the STB focus on the public interest.

For example, We are told to ensure the development and continuation of a sound rail transportation system with effective competition . . . **to meet the needs of the**



**public and the national defense;**

**And that railroads operate without detriment to the public health and safety**

49 U.S.C.A. § 10101 (West)

And for terminal and reciprocal switching arrangements, we are told to approve such arrangements if they are practicable and in the public interest

And the Board is mandated to approve RR acquisitions only when it finds a transaction is consistent with the public interest.

49 U.S.C.A. § 11324 (West)

These statutes are not an exhaustive list of all the statutory directives but they are sufficient to give you the flavor of what, in my view, must

guide the board in its decisions and its initiatives

To get somewhat of a guide to how the board thinks about the public interest, I encourage you all to read –and to read carefully-- the decision we issued last week which discusses the subject in some detail

More than that I cannot say because the case remains pending

Taking all of the above into account, then, what are the issues facing the RR industry which I believe the Board should address

The trends in recent years --- if they continue on in the direction and at the pace of the past 5 or 6 years--- have raised particular concerns, especially as they relate to the long term health of both the industry and the country's economy,

And these trends have not boded well for the the three legs of the stool other than the owners,

That is the rail customers, the workers, and the public

The RR's like to broadcast that freight rates have diminished by 44% since 1980. However, the Board's calculations have found that railroad rates have fallen only by 27 percent during the twenty-years from 1985 to 2004.

In that period, railroad rates fell in both nominal and inflation-adjusted terms as the benefits of improved railroad productivity largely flowed to shippers in the form of enhanced service and lower rates.

But that happy combination came to an end beginning roughly in 2004

Our studies show that since 2004 railroad rates have risen by 30 percent in inflation-adjusted terms. And traffic peaked on the railroad network – in terms of carloads and tonnages –in 2006.

To underscore the point: In the last 15 years since 2006, our economy has grown by more than 50 percent, nearly 8 trillion dollars of enhanced economic activity, and yet railroads are carrying less freight today than they were in 2006 while rates have gone up. There just might be a connection.

Not counting coal – and we know coal was and is an important commodity, and that railroads have lost significant coal volumes in recent years, thanks to fracking and the increased domestic production of natural gas,

Not counting coal, railroads market share of tons (vis a vis trucks) **peaked in 2002**. And total railroad volumes peaked in 2006.

Think about that – for the past 15-20 years, railroads have lost market share both in absolute and relative terms.

WHAT ARE THE CONSEQUENCES?

we know that for every 1% of freight lost by the RR's to trucks, an extra 5MM tons of co2 is dumped into the atmosphere

Yet, since 2002, RR's have lost nearly 2% of freight market share to trucks. (Again this is not counting coal). If RR's had just managed to

keep the same share of the market they had in 2002,

there would be nearly 1MM fewer trucks on the highways each year in just the lost growth that means an extra 8.2 MM tons of co2 pumped into the atmosphere annually from this lost growth

---an additional **123 MM tons** of global warming CO2 in pumped into our atmosphere since 2002 just because the RR's chose not to maintain their market share as compared to trucks

Imagine how much better off we'd be as a country and a planet if RR's had not only not lost ground to trucks, but had actually outgrown trucks in picking up more of this remarkable growth in our economy---and there would have been an even greater cut in CO2 emissions

## **This pattern cannot continue**

Much of what I have learned about the current direction of the railroads business strategy and the forces that have brought us there, has come from rail executives who may well prefer that their RR's focus on growth and improved service and on time performance.

But, Instead of growth, it is apparent that over the last 6-7 years, through ever increasing pressure from Wall St---the owners of the RR's--the RR's emphasis has not been on growth

Rather the emphasis has been on cutting in pursuit of the almighty OR down below 60%

In order to reach these startlingly low OR's, RR's have cut their workforce by around 25%

Depending on how one counts, 40-50K people who worked on RR's have lost their jobs in recent years

Operating the railroads with that many fewer employees, makes it difficult to avoid cuts in service, provide more reliable service, and reduce poor on time performance that does not compete well with trucks

It is clear, that as a whole, RR's have foregone many kinds of carloads that they could carry profitably---only not at OR's as low as 55%--- and focused on only the most profitable traffic. No one is asking the RR's to focus on traffic that could only be carried at a loss.

But surely it is not asking too much to urge RR's to actively seek profitable traffic even if not as profitable as others.

The statistic that shows the dramatic impact of this kind of business strategy:

Leaving aside intermodal and coal, nearly 85% of all tons and carloads are carried between just the top 20% of origins and destinations



smaller profitable shipments from other origins and destinations are being ignored or actively demarketed----

As a result, that freight is on the highways contributing to global warming and highway deterioration

As I have observed previously, the strategies pursued by the RR industry as a whole---and it is not the same across all of the Class I's---have serious implications for whether the common carrier mandate is being carried out as intended--- a subject that may warrant further exploration by the STB.

What all this means is that **under enormous pressure** from Wall st.,

Only one leg of that four legged stool is fully supported---that is the interests of the owners/h's---

the other 3 legs---shippers, workers, and the public--- are being left behind

STB data shows that since 2010 the 7 Class I RR's have spent \$138 BB on capital; most of that is spent on the regular upkeep of the RR which is essential

Relatively little is spent on infrastructure needed to expand service and improve service

At the same time, while public policy requires that RRs have enough revenue to fund their capital needs,

In recent years, RR's have clearly exceeded those needs

Since 2010, the 5 US based class I's have paid out \$114 BB in stock buybacks and cash distributions by BNSF to its owner

On top of that, the US railroads have paid \$77 BB in dividends during the same period

Thus, not even including the Canadian RR's, over the last 10 years,

the RR's owners have taken home an astounding \$191 BB in buybacks and dividends, far more than the \$138BB spent on the RR's infrastructure

That's well and good for the owners

But where would rail customers, rail workers, and the public be if a meaningful portion of that \$191 billion had been reinvested in expanding service and making service more predictable, reliable and on time

Clearly, we would have more freight moved MORE quickly and at lower rates,

We would have more employment with better working conditions

And the public would be better served with a boost to the economy, lower consumer prices, and far cleaner air and safer and better conditioned highways

And all of this could be accomplished with the RR owners continuing to receive a healthy return on their investments

On top of these general trends in recent years which would be less than optimal even if the world weren't facing new crises,

The Covid pandemic has shown us what happens when resources in any industry are stripped down to a bare minimum

With work forces and equipment at historically low levels, when Covid infections and quarantines hit the RR's, service is lost and the economy suffers

As I said a few weeks ago, a professional football team would not send it's players on to the field without a back up quarterback---or back ups at every position for that matter

And when RR's try to run their massive operations without a cushion of trained employees

ready to show up for work,

the RR's cannot do their jobs

In sum, it's time for all of us---those in this room who are RR's and those who are shippers--the stockholders and the workers---and the general public to realize that we are all in this together

As we move forward as a community to weather the pandemic and eventually to return to what we all hope will approximate normal life,

I hope that the RR's and shippers will work together creatively to figure out how best to move more freight on the RR's and less freight on the highway

And all must work towards reliable and predictable on time delivery if RR's are going to earn their meaningful share of freight

Some RR representatives regularly tell me—publicly and privately—that the Staggers act means the STB should stay out of it

But the Staggers act did not say the STB should confine itself to making sure that all other federal and state regulation of the RR's is preempted

And then should sit back and do nothing

As I outlined at the beginning, the statutes continue to mandate that the STB consider the best interests of the shippers, the work force,

and most importantly the public---as well as the RR's owners

I can assure you that the STB as well as the RR's would prefer to regulate as little as necessary

But the best way for that to be accomplished is for the RR's to de-emphasize their focus on the pursuit of ever lower OR's and instead work with the shipping community, the unions, and the STB to provide the service they are capable of providing at reasonable prices

I am confident in the competence and expertise of the RR community to be able to accomplish these goals once they prioritize improving and increasing service.

Indeed, in my visits with rail executives since joining the board I have met many with creative ideas for increasing and improving rail service and who would undoubtedly move their RR's in that direction but for the immense pressures

from Wall St to continue the push for cost reductions.

I would like to see the RR's incentivizing their sales and marketing teams by not basing their compensation on bringing in low OR traffic

But rather by rewarding them for being creative in figuring out how to get more traffic out of trucks and onto rail---by taking more pro-active steps to educate shippers on how to better utilize RR resources

including using box cars in place of some intermodal settings which would reduce use of a truck movements at each end

At least one of the Class I's showed me just last week its relatively new efforts to work with



shippers to move less than a full carload of freight onto the rails and I congratulate them for their creativity

To state the obvious, if the goals I have focused on today could be accomplished by private action, there would be far less impetus for public action

Especially as we tackle the problems facing our country and the global economy from the significant backlogs and bottlenecks in the international shipping world

the RR's need to work with all other parts of the international supply chain to use technology which exists today to maximize transparency and enable better on time performance

While RR's are only a part of that supply chain, I am counting on RR's and shippers to keep their

vision on the big picture and to actively participate in efforts to ameliorate those problems not only for the immediate crisis

But for the long term in fixing the holes in the international supply chain that the pandemic has revealed.

Finally, I want to mention two upcoming matters at the STB as immediate mechanisms for all rail stakeholders to work constructively together

As you know, last week the Board issued a request for information and comments on an issue that has been front and center for some time and certainly during the entire time I've been on the board

And that is how and whether to measure first mile last mile service----which is of central importance if RR's are going to be able to compete with trucks

I can't comment on the specifics of the decision because it's a pending matter

But I hope and encourage all concerned to respond by providing us with your best constructive suggestions so that this can be part of an effort to improve our rail network and its service

Likewise, as I have mentioned recently, the Board has been seriously considering the request by several RR's that the Board institute a voluntary arbitration program for rate disputes in lieu of the pending Board proposal to institute a final offer rate review program

You can expect to see some action on these matters in the near future and as I have said, these proposals are clearly inter-related and I expect the Board will treat them as such,

During the process to consider these proposals, again, I hope and urge that all stakeholders will

give us your best constructive input and will work together to achieve the best result

**it does no good to simply be against moving forward**

To me, both of these initiatives are a part of the effort to ever improve our national rail network, a goal I am sure is shared by all in this room

Thank you