THE RAILROAD WEEK IN REVIEW
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"There's reticence on the part of potential investors to participate given the government's activist role in undoing contracts and taxing bonus payments." -- *Liz Ann Sonders, Charles Schwab & Co.*

That got me thinking -- can Congress pass laws to undo contracts some special interest group dislikes? If so, can CURE pressure Congress into passing a law taxing Class I railroads retroactively on the benefits they received by putting paper barriers on line sales? I put the questions to a number of attorneys both in and out of the railroad industry.

The short form of my responses is that the sheer chutzpah of the House legislation goes against the constitution's prohibition against Bills of Attainder ("A legislative act pronouncing a person guilty of a crime, usually treason, without trial and subjecting that person to capital punishment and attainder" -- West Encyclopedia of American Law) and which, writes one respondent, "have been construed by the Supreme Court to include punitive fines and confiscatory laws."

As for impacts on short lines, one of my particularly eloquent friends writes, " Arguably, a law disallowing certain traffic might be seen as an unconstitutional taking." Another writer suggests that "if we continue down the road of bills of attainder paper barriers will be the least of our worries." It's tough to disagree with that, and I don't seem to be alone. UBS' Art Cashin writes that shortly after the market closed Friday Mar 20 "the TV screens were filled with images of our elected officials announcing they would retroactively tax back any money owed under contract by any organization that had received bailout money.

"The 'retroactivity report' seemed to stun the market. Would players opt out of any, or all, future government programs? Why would I accept help if there are hidden, unknown future penalties? Why would I even partner with you to help a failing firm? The 'look back' or ex post facto seemed to frighten markets, taking the S&P below support at 780."

David Kotok of Cumberland Advisors writes in his March 21 note, "Lynch Mob," that in passing this law the House committed three acts of questionable legality: The Members "licensed the abrogation of contracts," they "passed retroactive taxation" and "they made the tax punitive." In other words, the Members decreed that whatever laws they pass today may be changed tomorrow, there is no consistency or reliability in the tax code and they left the door open for the states to tax away the remaining 10% of bonuses.

Thus, writes, Kotok, "the law passed without giving anyone the chance to testify in public hearings and without allowing comment on the draft legislation. When the law originally went through the Congress, the House leadership suppressed amendments. This Barney Frank and Nancy Pelosi-led House is especially guilty of ignoring the rule of law. They are now guilty of encouraging the rule of lynch mob."

(On Wednesday, a panel of market-watchers on CNBC agreed that the House must have voted for the bonus tax bill without reading the thing fully. A panelist then quoted a House Member as saying the Members voted "without a solid knowledge base." Seems par for the course. Look at the havoc Congress is about to wreak on the railroad system "without a solid knowledge base." Let's hope the Members improve their knowledge base if only by reading their notes from the Railroad Day on the Hill and watching the NS video.)

On the economy, Schwab's Sonders cautions, "Consumers are retrenching as a consequence of massive destruction of consumer wealth and are saving more to reduce debt, rebuild their retirement accounts and increase their emergency savings while facing a deteriorating job market. After years of decline, the personal savings rate increased to 5.0% in January 2009-the highest rate in the past five years." (John Merrick of the W&M Mason School of Business recently told an alumni group that the savings rate -- what's left over after living expenses as a percentage of household income -- needs to be two or three times that." -- WIR 3/13)

Sonders continues, "Businesses have slashed prices in an effort to stimulate sales. Capacity utilization continues to fall, and was 70.9% in February. This increases the risk of a deflationary spiral (where declining demand precipitates downward prices), and keeps downward pressure on demand. Corporations, suffering from falling revenue and profits, must cut expenditures and jobs.

"Businesses tend to wait for confirmation of lower demand before furloughing workers, and the unemployment rate tends to lag economic activity by about seven months. The unemployment rate will continue to rise, and while we were hoping it would peak in the single digits, that's looking less likely the longer the economic decline continues and the feedback loop becomes further entrenched into consumer and business behavior."

Lowered demand drives lowered inventory and less need to move inventory around to keep supply chains full, ergo less demand for transportation. And since the majority of short lines are volume--dependent, fewer carloads against a high fixed-cost base lowers margins and cash flows. which means, more than ever, the key to keeping your short line out of financial trouble still boils down to the basics: conservative financial management, a strong focus on the customer and relentless innovation.

That thread was writ large at the recent *Railway Age* "Creating Capacity" conference in Chicago. Speakers from Conrail President Ron Batory to Miner's Bob Pokorski to yours truly spoke on the need to measure performance, select the right hardware/software combos to keep the railroad fluid, and encourage customers to turn equipment faster by managing inventory flows more efficiently.

I thought Walter Schuchmann of R. L. Banks was particularly insightful with his examples of aligning ownership of railroad infrastructure and the cash value of benefits flowing from capacity expansion. Shortline applications that came immediately to mind include the NS and CP rights on Pennsylvania's Reading & Northern and the DMUs running on the Austin & Western in Texas. Speaking with Walter during the break I came away thinking the joint venture model used in the Meridian Speedway and Pan Am Southern may have merit elsewhere.

Batory's handout, "Maximizing use of Capacity and Enhancing the Service Product," is a remarkable resource for short lines. He showed how better safety performance, sharper operating practices and keeping the assets fully engaged add capacity to any operation. For me, the big take-away was Ron's exhortation to "maintain a surprise-free environment." This entails operating to plan so you don't eat up scarce resources to fix things that go wrong.

It was good to see senior capacity-planning staffers from four of the Big Six Class Is in the audience. Their questions during the presentations and comments during the breaks were worth the price of admission. I'm hopeful that next time the good folks at *Railway Age* run this conference we see six of Six plus KCS, GWR and some shortliners in attendance or even on the program. I'd like to hear, for example, Watco's Rick Webb talk about enhancing capacity by measuring consumables or how Andy Fox manages capacity on the Pacific Harbor Line.

For a good example of how paying attention to the basics pays off, The Indiana Rail Road has signed an agreement with Peabody Energy to construct a 5.2-mile rail spur to Peabody's new Bear Run Mine in Sullivan County, Ind., which it says is the largest surface coal mine in the eastern U.S. Construction will proceed once approval is granted by the Surface Transportation Board. Rail officials expect to have the new line completed by early 2010.

Peabody already has announced its plan to invest up to $500 million to develop the coal site, and expects to produce 8 million tons of coal annually after 2010. Indiana Rail Road initially will invest $17 million, with at least $5 million in additional improvements planned thereafter to accommodate increased traffic volume generated by the facility, the largest single new business opportunity ever awarded to the railroad. INRD projects that coal loading will increase by a third.

Hail and Farewell at Norfolk Southern. Effective April 1, Marta Stewart becomes VP and Treasurer succeeding Bill Romig who is retiring. Succeeding Marta as Controller is Jake Allison, also named a VP. Marta, like EVP Admin John Rathbone, CP's ex-NS Kathryn McQuade, recently retired NS CFO Hank Wolf, a host of others VP and up and a certain Philadelphia-based railroad newsletter writer, is a graduate of the College of William and Mary. Jake went to VPI, but we'll forgive him for that.

Also effective April 1, Mark Manion becomes EVP and Chief Operating Officer, succeeding Steve Tobias, who is retiring after forty years on NS and its predecessor roads. I've know Steve for maybe half those years and Mark for maybe half that. Both are superb operating guys and I'm sure Mark will carry the baton forward as ably as Steve. Congratulations to those taking on the new responsibilities and, as a long-time shareholder of NS (I bought my first N&W shares fifty years ago), let me send a heartfelt thanks to Bill and Steve for their contributions.

To end on a sad note, one of the guiding lights of the shortline family has gone out. Dick Webb, founder of Watco Companies and father of Watco President Rick Webb, lost his battle with lung cancer last Saturday. He was seventy years old.

Dick was a true shortline pioneer. Starting from his kitchen table in 1983 with eight employees, Dick did the first shortline transaction ever with the Union Pacific, the 104-mile ex-MKT main between Coffeyville Kansa and Nevada (pronounced ne-VAY-da), Missouri, according to an ex-UP friend who was there at the time. By now Watco has assembled properties in 26 states including 20 short lines with more than 3,900 route-miles of track, 20 contract switching locations, 14 mechanical shops, 18 mobile mechanical repair locations, and eleven transload and intermodal locations.

Burial will be in Pittsburg, Kansas, today. In lieu of flowers, the family has asked that memorial contributions may be made to the Community Foundation of Southeast Kansas c/o Dick Webb Memorial Fund, P.O. Box 1115, Pittsburg, KS 66762-1115, phone: 620/231-8897; your contact is Kimberly Clark , Executive Director

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