

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

304873
ENTERED
Office of Proceedings
June 29, 2022
Part of
Public Record

Sanimax USA LLC,	)	
	)	DOCKET NO. NOR 42171
Complainant,	)	
	)	
v.	)	
	)	
Union Pacific Railroad Company,	)	
	)	
Defendant.	)	

**SANIMAX USA LLC'S REPLY
TO UNION PACIFIC RAILROAD COMPANY'S MOTION
FOR LEAVE TO FILE REPLY TO SANIMAX USA LLC'S OPPOSITION
TO UNION PACIFIC RAILROAD COMPANY'S MOTION TO DISMISS**

SANIMAX USA LLC

Complainant

Richard F. Riley, Jr.
David T. Ralston, Jr.
R. Nicholas Englund
William C. McCaughey

Foley & Lardner LLP
Washington Harbour
3000 K Street, N.W., Suite 600
Washington DC 20007-5109
Telephone 202.295.4712
Facsimile 202.672.5399
Email contact rriley@foley.com

Attorneys for Complainant

Dated: June 29, 2022

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Sanimax USA LLC,	)	
	)	DOCKET NO. NOR 42171
Complainant,	)	
	)	
v.	)	
	)	
Union Pacific Railroad Company,	)	
	)	
Defendant.	)	

**SANIMAX USA LLC’S REPLY
TO UNION PACIFIC RAILROAD COMPANY’S MOTION
FOR LEAVE TO FILE REPLY TO SANIMAX USA LLC’S OPPOSITION
TO UNION PACIFIC RAILROAD COMPANY’S MOTION TO DISMISS**

Complainant Sanimax USA LLC (“Sanimax”) defers to the Board’s discretion whether to grant the June 23, 2022 motion of defendant Union Pacific Railroad Company (“UP”) to file a surreply to Sanimax’s opposition to UP’s motion to dismiss on mootness grounds. That said, Sanimax notes that the surreply incorporated in UP’s motion adds nothing to the record. UP’s surreply merely recites UP’s disagreement with Sanimax’s arguments on mootness, which hardly justifies the need for a surreply that is otherwise disallowed under 49 C.F.R. § 1104.13(c).

Sanimax further notes that *CF Industries, Inc. v. Indiana & Ohio Railway, et al. – Petition for Declaratory Order*, FD No. 35517, slip op. at 4 (STB served June 21, 2013) (“*CF Industries*”), cited in UP’s motion, is consistent with the substance of Sanimax’s position. Contrary to UP’s description of that case, the Board in *CF Industries* explicitly stated that it “share[d] [the] concern” of the shipper that the railroad could readopt the challenged tariff once the case was dismissed. *Id.*

PUBLIC VERSION

Sanimax is similarly and reasonably concerned that UP [REDACTED]

[REDACTED], a concern that the Board should share just as it shared the shipper's concern in *CF Industries*. In addition, the issues of damages and the commodity exemption revocation remain to be resolved by the Board. For all these reasons, this case is not moot and dismissal as requested by UP is not appropriate.* The Board should proceed to a decision on the merits addressing the contours of the common carrier obligation, as Sanimax has urged.

Respectfully submitted,

Date filed: June 29, 2022

/s/ Richard F. Riley, Jr.

Richard F. Riley, Jr.
David T. Ralston, Jr.
R. Nicholas Englund
William C. McCaughey

Foley & Lardner LLP
Washington Harbour
3000 K Street, N.W., Suite 600
Washington DC 20007-5109
Telephone 202.295.4712
Facsimile 202.672.5399
Email contact rriley@foley.com

Attorneys for Complainant

* The Supreme Court has recently and unanimously reconfirmed Sanimax's argument on mootness. "A case is not moot, however, unless 'it is *impossible* for [us] to grant any effectual relief.' ... If there is money at stake, the case is not moot." *United States v. Washington*, No. 21-404, slip op. at 4 (U.S. June 21, 2022) (emphasis added) (quoting *Mission Product Holdings, Inc. v. Tempnology, LLC*, 587 U.S. ___, ___ (2019) (slip op. at 6)). Though mootness is the sole basis for UP's pending motion to dismiss, UP did not bring this unanimous new Supreme Court case on the issue to the Board's attention.

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2022, the foregoing Sanimax USA LLC's Reply to Union Pacific Railroad Company's Motion for Leave to File Reply to Sanimax USA LLC's Opposition to Union Pacific Railroad Company's Motion to Dismiss was served by email and first class mail on Union Pacific's attorneys and on the Association of American Railroads (Public version only) at the following addresses:

Raymond A. Atkins, Esq.
Matthew J. Warren, Esq.
Morgan B. Lindsay, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington DC 20005

ratkins @ sidley.com
mjwarren @ sidley.com
morgan.lindsay @ sidley.com

J. Frederick Miller Jr., Esq. (Public version only)
Association of American Railroads
425 3rd Street, S.W., Suite 1000
Washington DC 20024

fmler @ aar.org

/s/ Richard F. Riley, Jr.

Richard F. Riley, Jr.