

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

CITY OF OZARK, ARKANSAS, a municipal corporation	)	
	)	
Plaintiff,	)	
	)	
	)	
vs.	)	
	)	
	)	
UNION PACIFIC RAILROAD COMPANY, the ARKANSAS STATE HIGHWAY & TRANSPORTATION DEPARTMENT (an Agency of) The State of Arkansas, TLB AND THE ARKANSAS STATE HIGHWAY COMMISSION	)	
	)	
	)	
Defendants,	)	

CIVIL ACTION NO:2:14-CV-02196-

**PLAINTIFF'S MOTION FOR LEAVE TO FILE A DECLARATORY JUDGMENT WITH
THE SURFACE AND TRANSPORTATION BOARD**

Comes now the Plaintiff, the City of Ozark, Arkansas, a municipal corporation by and through its undersigned counsel, Christopher D. Brockett of Robertson, Beasley, Shipley, & Robinson, PLLC, and for its Motion for Leave to File a Declaratory Judgment with the Surface Transportation Board and in support of this Motion the Plaintiff states as follows:

FACTS

1. On December 10, 2015, this Honorable Court issued a Memorandum Opinion and Order (the "Order") that found the Oliver St. Crossing was ". . . a public crossing committed to public use until such time that it was closed by Union Pacific in 2001." See Page 10 of the Order.

2. Further, the Court found the Interstate Commerce Commission Termination Act ("ICCTA") did not expressly preempt Arkansas State law as the public crossing was removed in violation of Arkansas State law. .

3. The Defendant, Union Pacific Railroad Company appealed the Court's Order regarding the preemption ruling and the United States Court of Appeals for the Eighth Circuit reviewed this decision *de novo*.

4. On December 19, 2016, the United States Court of Appeals for the Eighth Circuit issued an Opinion finding that the ICCTA's express preemption provision, 49 U.S.C. § 10501(b) applies to this dispute.

5. The Opinion further provided this Court should dismiss the Plaintiff's Amended Complaint unless the Plaintiff obtains a ruling from the Surface Transportation Board that it lacks or declines exclusive jurisdiction over this dispute.

6. On January 11, 2017, the United States Court of Appeals for the Eighth Circuit issued a formal mandate pursuant to Federal Rule of Appellate Procedure 41(a).

7. This Court issued an Order dated January 11, 2017 requiring the Plaintiff to submit a Motion for Leave to File the Declaratory Judgment Action with the Surface Transportation Board on or before January 31, 2017, or the case would be dismissed.

8. Pursuant to the December 19, 2016 Opinion and the January 11, 2017 formal Mandate issued by the United States Court of Appeals for the Eighth Circuit, and this Court's Order dated January 11, 2017, the Plaintiff formal seeks leave of this Honorable Court to file a Declaratory Judgment with the Surface Transportation Board to obtain a ruling regarding jurisdiction in this case and any other relief sought by the Plaintiff.

WHEREFORE Plaintiff, the City of Ozark, prays that this Honorable Court will issue an Order granting the Plaintiff leave to file a Declaratory Judgment with the Surface Transportation Board to obtain a ruling regarding jurisdiction in this case.

Respectfully submitted:

By: /s/ Christopher D. Brockett
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ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

I, Christopher D. Brockett, hereby certify that a copy of the foregoing Motion was filed with the Clerk of the Court using the Cm/ECF Filing system on this 12th day of January 2017 and said Clerk shall serve an electronic copy of the same upon the following counsel of record:

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