

NEW RISK ALERT: (NSC)

Norfolk Southern Waits Nearly 3 Years to Disclose CSX Conspiracy Lawsuit

Disclosure in latest 10-K is light on details and signals the railroad may be liable for monopolistic behavior.

Published February 5, 2021

This alert compares the language used in the company's latest filing with the period before. [Research](#) suggests changes in language, particularly in the risk factor section, is a powerful indicator of future performance. Companies that change filing language, according to research, underperform those that don't by 30-50 basis points per month for the following year.

Federal Antitrust Suit Disclosed Nearly 3 Years After It Was Filed

It took nearly three years, but Norfolk Southern has finally disclosed a lawsuit filed against it in 2018. The disclosure was made in Norfolk's 2020 [10-K](#). Initially, we suspected the lack of disclosure in the prior year's 10-K was an oversight. So we scanned the 2018 10-K and each of Norfolk's 10-Qs over the past two years.

No mention of the suit is made anywhere until now.

The disclosure— which doesn't even provide investors with the name of the plaintiff— reads as if NSC is attempting to obscure the suit's details and the identities of those involved:

"In 2018, a lawsuit was filed against one of our subsidiaries by the minority owner in a jointly-owned terminal railroad company in which our subsidiary has the majority ownership. The lawsuit alleged violations of various state laws and federal antitrust laws."

If we've correctly identified the suit to which Norfolk is referring, it's understandable why they'd rather investors not know the details. The [lawsuit](#), filed by rival CSX, alleges Norfolk Southern [conspired to monopolize](#) an international terminal in Virginia by blocking CSX from the terminal which it jointly owns with Norfolk. Norfolk executives are named in the suit and accused of hiring ex-Norfolk employees to staff the terminal and make it cost prohibitive for CSX to use.

Timing of Disclosure May Indicate Norfolk Expects to Lose

The disclosure was made approximately two years and five months after the suit was filed. It begs the question— why now? The disclosure offers a clue and suggests Norfolk expects to lose or settle the case despite claiming it's likely to win:

***"It is reasonably possible that we could incur a loss in the case;** however, we intend to vigorously defend the case and believe that we will prevail. The potential range of loss cannot be estimated at this time."*

CSX Warned Shareholders About Norfolk Southern

In its 2019 [10-K](#), CSX warned investors that CSXT— the entity in the lawsuit that has allegedly been harmed— competes primarily with Norfolk Southern. Norfolk operates throughout much of CSX's territory which, according to CSX, may have negative consequences:

"Depending on the specific market, competing railroads and deregulated motor carriers may exert pressure on price and service levels."

The Norfolk, VA terminal is not the only partnership CSX has with Norfolk Southern. The two own Conrail, a railroad, via a limited liability company divided up as such:

"CSX has a 42% economic interest and 50% voting interest in the jointly-owned entity, and NS has the remainder of the economic and voting interests."

The Winkler Group has contacted Norfolk Southern to confirm the lawsuit referenced in the filing is in fact the CSX matter related to the terminal in Norfolk. We've also asked the company why it waited nearly three years to disclose the suit and for an estimate of the potential loss should Norfolk not prevail. We'll update subscribers when we have new information.

Investors might keep an eye peeled in the event Norfolk's customers take legal action against the railroad. In the event Norfolk loses or settles the CSX suit, Norfolk's customers may argue the lack of competition at the Virginia terminal artificially raised prices.