

only if HLI was a common carrier. Since the Court had already determined that there was genuine issue of material fact as to whether HLI was a freight forwarder or broker, the question of whether HLI was a common carrier also remained open and summary judgment was not appropriate.

Accordingly, the Court denied both of Chartis's motions for summary judgment and its motion for sanctions. The Court also denied HLI/FMMC's motion for summary judgment.

Jon Stuebner

Corr v. Metro. Wash. Airports Auth., 740 F.3d 295 (4th Cir. 2014). (Holding that the Virginia General Assembly may delegate certain fundraising powers to a private body under the Virginia Constitution, and that the toll levied by the MWAA amounted to a user fee and not an unlawful tax under Virginia Common Law.)

Under grant of authority from the State of Virginia, the Metropolitan Washington Airports Authority ("MWAA") obtained the authority to set tolls on the Dulles Toll Road ("Toll Road") and apply the revenues towards transportation improvements within the Dulles Corridor. Specifically, MWAA sought to expand the Washington Metrorail to link Washington Dulles International Airport ("Dulles") with the greater DC metropolitan area. Toll Road users John Corr and John Grigsby ("Appellants"), challenged this toll as an illegal tax, seeking a refund of excess tolls collected and to enjoin the MWAA from using toll revenues to repay bonds issued for the Metrorail project.

The Virginia Department of Transportation in 1984 received an easement to the right-of-way between Interstate 495 and Dulles, and constructed the Toll Road to serve non-airport traffic between Washington, DC ("DC") and Fairfax County, Virginia. Virginia and DC then adopted proposed legislation to form the regional airport authority that would become the MWAA, possessing powers delegated to it by Virginia and DC. Congress then granted the MWAA the power "to levy fees or other charges." Congress leased Dulles and Ronald Reagan International Airport to the MWAA, although the Virginia Commonwealth Transportation Board ("CTB") retained control of the Toll Road.

Having approved CTB funding resolutions for mass transportation initiatives over the following two decades, the Virginia General Assembly transferred control of the Toll Road to MWAA in 2006, along with authority to set tolls. Under the transfer, all revenue would be directed

exclusively to transportation improvements within the Dulles Corridor. This formed the basis of Appellants' challenge.

The District Court dismissed Appellants' initial action for injunctive and specific relief for lack of standing. On appeal, the Fourth Circuit disagreed, pointing to Appellants' concrete harm of having paid, in their view, inflated tolls, and Appellants' desire for particularized relief: getting their money back. The court concluded that their grievance was not so attenuated that the claim amounted to a generalized and impermissible taxpayers' claim.

The court next considered what fund-raising powers the General Assembly could delegate to the MWAA under Virginia Constitutional law, which defines a "tax" as a government-imposed enforced contribution for governmental purposes or public needs. The standard asks whether a given exaction is a bona fide fee-for-service or an invalid revenue-generating device. Under *Elizabeth River Crossings*, tolls are considered user fees and not taxes when they are an authorized charge for the use of a special facility. *Elizabeth River Crossings, OpCo, LLC v. Meeks*, 749 S.E.2d 176, 183 (Va. 2013). Additionally, *Tidewater* requires only a "reasonable correlation between the benefits of the service provided and burdens of the fee paid." *Tidewater Ass'n of Homebuilders, Inc. v. City of Virginia Beach*, 400 S.E.2d 523, 527 (Va. 1991). Here, the court affirmed that the toll was a permissible user fee under the three-element *Elizabeth River Crossings* standard.

First, Toll Road users must pay the tolls in exchange for a particularized benefit not shared by the general public. Here, Toll Road users could benefit from easier access to Dulles and reduced traffic congestion throughout the Dulles Corridor.

Second, the government must not compel drivers to pay the tolls or accept the benefits. Here, the fee was voluntarily paid and the resulting benefits were voluntarily received. *Elizabeth River Crossings* distinguishes taxes from user fees where the purchased government services benefit every citizen in the community, whether a citizen has asked for the benefit or not. Nobody was forced to drive on the Toll Road – an objecting motorist could take another route. The resulting funds benefit only those using the Corridor, thus receipt of the benefit was voluntary.

Third, the tolls must be collected solely to fund the project. Relying on evidence that the Toll Road and the Metrorail expansion ran as one project through the same transit corridor, and that toll revenue would not flow outside of the project, the court held that those tolls were not transformed into taxes.

Accordingly, the court affirmed Virginia General Assembly authority to may delegate certain fundraising powers to a private body under the Virginia Constitution, and that the toll levied by the MWAA

amounted to a user fee and not an unlawful tax under Virginia Common Law.

Jonathan Wynne

GoJet Airlines, LLC v. Fed. Aviation Admin., 743 F.3d 1168 (8th Cir. 2014) (Holding that GoJet operated an unairworthy aircraft, and operated an aircraft in a careless or reckless manner so as to endanger the life or property of another. The Court also held that it could review the FAA’s unilateral decision to terminate its VDRP process and commence a civil penalty action against GoJet, but found that the FAA did not abuse its discretion when it terminated its VDRP process and commenced a civil penalty action against GoJet).

While mechanics were replacing a brake assembly on an airplane operated by GoJet Airlines, LLC (“GoJet”), the mechanics neglected to remove a gear pin used to lock the assembly in place during the repairs. The mechanics failed to make an entry in a logbook that they needed to remove gear pins before flight, that they used during their repair. Therefore, on the plane’s next flight, the pilots were forced to return to the departure airport after a warning light alerted them that the plane’s landing gear would not retract.

After this incident, GoJet immediately disclosed this gear pin error to the Federal Aviation Administration (“FAA”). GoJet invoked the FAA’s Voluntary Disclosure Reporting Program (“VDRP”), which grants an air carrier protection from civil penalty actions if the carrier “voluntarily discloses regulatory violations and satisfies VDRP compliance requirements.” One such requirement is that the carrier must develop and execute a “comprehensive fix,” which is an action plan proposed by the carrier and accepted by the FAA to “preclude recurrence of the apparent violation that has been voluntarily disclosed.”

Subsequent to GoJet’s disclosure of the gear pin error, the FAA accepted the VDRP notification, and GoJet submitted its proposed comprehensive fix plan. However, FAA Inspector Gary Cooper (“Cooper”) rejected the proposal, finding that GoJet’s proposal did not preclude the recurrence of its violation, and GoJet failed to propose an “acceptable alternative” prior to Cooper’s deadline. Therefore, the FAA “commenced this civil penalty enforcement action.”

At an administrative hearing in front of an administrative law judge, the FAA Administrator ruled that GoJet “violated FAA regulations when it failed to make the logbook entry and to remove the gear pin.”