TRANSPORTATION LAW JOURNAL

Industry Leader in Multi-Modal Law, Economics & Policy

ARTICLES

The Mythology of Logo Liability: An Analysis of Competing Paradigms of Lease Liability for Motor Carriers

R. Clay Porter and Elenore Cotter Klingler

Competition in Air Transport - The Need for a Shift in Focus

Ruwantissa Abeyratne

Déjà Vu All Over Again: Transportation Security Regulations - The Emergence of Re-regulation and How to Deal With It

Eric L. Zalud

Competing Periods in Determining Laches in Demurrage Disputes

William P. Byrne

Third Party Logistics Companies and Legal Liability for Personal Injuries: Where Does the Injured Motorists' Road to Recovery Lead?

Jennifer Mullenbach

The Carmack Amendment and the American Rule: Is Arbitration a Necessary Prerequisite to an Award of Attorney's Fees?

Kelly A. Fischer

Judicial Review Under the Railway Labor Act: Are Due Process Claims Permissible?

Buck S. Beltzer and Stephen A. Wichern

Safety Among Dragons: East Asia and Maritime Security

Phil DeCaro

BOOK REVIEW

Aviation Law: Cases and Materials By Robert M. Jarvis, James T. Crouse, James R. Fox, and Gregory S. Walden

Rod D. Margo



TRANSPORTATION LAW JOURNAL TLANSPORTATION LAW JOURNAL TRANSPORTATION LAW JO

UNIVERSITY OF DENVER ~ STURM COLLEGE OF LAW Published by Digital Commons @ DU, 2005

UNIVERSITY OF DENVER COLLEGE OF LAW TRANSPORTATION LAW JOURNAL

The *Transportation Law Journal* is a major professional publication in the field of transportation law, and is dedicated to maintaining its position as a valuable working tool for the practicing bar, government, and the academic community. It addresses both domestic and international developments of legal, regulatory, economic and political interest in all modes of transportation—aviation/airports, motor, rail, maritime, aerospace, and pipelines, freight forwarders, and brokers.

The *Transportation Law Journal* is sponsored jointly by the Transportation Law Program of the University of Denver College of Law and the Transportation Lawyers Association, the largest bar association of its kind in the United States and Canada.

The *Transportation Law Journal* is published three times a year, summer, fall, and spring, by the students of the University of Denver College of Law. Fourth class postage paid at Lincoln, Nebraska, and at additional mailing offices.

Correspondence should be addressed to *Transportation Law Journal*, University of Denver College of Law, 2255 E. Evans Avenue, Room 448, Denver, Colorado 80208; (303) 871-6162. FAX: (303) 871-6165. E-mail: tlj@student.law.du.edu. Advertising rates are available on request.

Inquiries regarding submission of manuscripts for publication should be addressed to the Editor in Chief. All manuscripts are carefully considered by the Board of Editors, which reserves the right to make final publication decisions. Manuscript preparation instructions are available on request.

The opinions expressed herein do not necessarily reflect the views of the *Transportation Law Journal*, the University of Denver, or the Transportation Lawyers Association.

TRANSPORTATION LAW JOURNAL

Volume 33

2005/2006

No. 1-2

Copyright © 2005/2006 by the Transportation Law Journal

TABLE OF CONTENTS

ARTICLES

The Mythology of Logo Liability: A of Lease Liability for Motor Ca	n Analysis of Competing Paradigms	
anyon with cut, annual, the make the	R. Clay Porter and	
	Elenore Cotter Klingler	10001
Competition in Air Transport Th	o Nacid Co. City of St.	
Competition in Air Transport — Th	Ruwantissa Abeyratne	29
Déjà Vu All Over Again: Transports Emergence of Re-regulation and	d How to Deal With It	
	Eric L. Zalud	111
Competing Periods in Detarmining	on anamos sal bluow I stickly	
Competing Periods in Determining I	Lacnes in Demurrage Disputes	
	William P. Byrne	135
Third Party Logistics Companies and Injuries: Where Does the Injure Recovery Lead?	l Legal Liability for Personal d Motorists' Road to	
YES SYAS BOY II ANISY TO PROSE MAIN	Jennifer Mullenbach	145
	Superinger interestion	143
The Carmack Amendment and the A Necessary Prerequisite to an Aw	American Rule: Is Arbitration a	
	Kelly A. Fischer	163
Judicial Review Under the Railway I Claims Permissible?	Labor Act: Are Due Process	
	Buck S. Beltzer and	
	Stephen A. Wichern	197
Safety Among Dragons: East Asia ar	nd Maritime Security	
	Phil DeCaro	227
BOOK REVIEW		
Aviation Law: Cases and Materials		
By Robert M. Jarvis, James T. C and Gregory S. Walden	rouse, James R. Fox,	
	Rod D. Margo	249

Dear Reader,

On behalf of all members of the 2005-2006 Transportation Law Journal ("TLJ"), I am pleased to introduce Volume 33:1-2, the final publication of this year's Board. This double issue represents the culmination of a tremendous effort on the part of our student members throughout the spring semester. I am extremely proud of their accomplishment.

The success of this year's TLJ would not have been possible without the tireless devotion of the Journal's Executive Board. Kelly Fischer and Lindsey Sabec, Executive Articles Editors, continually went far above the call of duty to ensure the quality and integrity of our publications. Naomi Perera, Associate Articles Editor, stepped in at a crucial point in this year's editing schedule and performed an extremely difficult task with astounding determination. Phillip DeCaro was instrumental in attracting articles for publication and maintaining communication with our authors. Cecila Reyna accomplished her tasks as Business Editor with great skill and proficiency. It has been an honor to work with such fine individuals.

I would also like to thank the TLA for their continued support. The TLJ provides students at the University of Denver Sturm College of Law an opportunity to interact with professionals in the growing field of transportation law, to contribute to the school's academic environment, and refine their research and writing skills. We are greatly appreciative to the TLA for their assistance in making this possible.

Finally, I would like to thank the many fine individuals who graciously contributed to this publication as authors. We were fortunate to receive insightful and informative pieces from distinguished attorneys and experts in the area of transportation law (including the review of an exciting new Aviation Law case book). In addition, many student authors volunteered to explore relevant areas of transportation law on behalf of the TLJ. Thank you for your contribution!

I hope you enjoy these articles and find them of value. If you have any questions, comments, or suggestions, on this issue or any other, please email me at swichern06@law.du.edu.

Respectfully,

Stephen Wichern Editor in Chief Transportation Law Journal University of Denver Sturm College of Law

TRANSPORTATION LAW JOURNAL 2005 - 2006

University of Denver Sturm College of Law

Editor in Chief STEPHEN A. WICHERN

Executive Articles Editor
Kelly A. Fischer

Executive Articles Editor
LINDSEY SABEC

Business Editor CECILA REYNA

Managing Editor
PHILLIP DECARO

Associates Articles Editor
NAOMI PERERA

Technical Editors
STEPHANIE BERBERICH
ERIK DULLEA
ALISON FOLEY
LISA HERBST
ELLIOT MILLER
VIRGINIA WILKS

Alena Amundson
Mary Barham
Ryan Behrman
Stephanie Berberich
Angie Birky
Kenneth Boyd
Kami Boyt-Mirc
Alissa Brodie
Jennifer Brown
Jessica Collier
Michael Davis

Staff Editors
FERNANDO DEJUAN
JAMES DOWNING
MATTHIAS EDRICH
JEFFERSON EXIL
NICHOLAS FARBER
RICK FEGER
SHANE GARMAN
AMY GOSCHA
LINDA KNIGHT
MATHEW KOREN
CHRIS LINDER
PRISCILLA J. LOEW

Faculty Advisor Robert Hardaway MICHAEL MAHON
ELLIOT MILLER
STEVE O'DORISIO
MIKE PIMENTEL
ATHENA ROE
CHRISTINA ROY
STEVE SIGSBURY
JUSTIN TUCKER
RANDY WEINSTEIN
MATTHEW WHITE
SUSANNE WITT

TRANSPORTATION LAWYERS ASSOCIATION

EXECUTIVE COMMITTEE MEMBERS 2005-2006

OFFICERS

President	Brian J. Smith
President-Elect	
First Vice President	Donald J. Vogel
Second Vice President	Eric L. Zalud
Secretary-Treasurer	Gordon D. McAuley
Immediate Past President	Kathleen C. Jeffries

Representatives-at-Large

Eric R. Benton Stephen L. Day Shaun M. McCaffrey Katharine C. Weber James A. Calderwood David L. Dephtereos Carlos Sesma, Jr. Richard A. Westley

Past Presidents

Edward S. Brashears Perry R. Moore James W. Wrape Franklin J. Van Osdel August W. Heckman Carll V. Kretsinger Harris J. Klein Truman A. Stockton, Jr. Glenn W. Stephens Harold G. Hernly Donald A. Morken Lee Reeder Marion F. Jones Regan Sayers S. Harrison Kahn Franklin R. Overmyer Louis Tarlowski Louis E. Smith Robert E. Powell Jack B. Josselson George S. Dixon

Wentworth E. Griffin Howell Ellis Edwin C. Reminger Ewell H. Muse, Jr. Phineas Stevens Beverley S. Simms John L. Bruemmer John E. Jandera Lerov Hallman Walter N. Bieneman Alvin J. Meiklejohn James W. Hagar William J. Lippman Thomas E. James Bertram S. Silver John A. Vuono Charles Ephraim James C. Hardman Robert D. Schuler James M. Doherty John S. Fessenden

Harold D. Miller, Jr. Wilmer B. Hill Frank W. Taylor, Jr. A. Charles Tell Richard H. Champlin Michael J. Ogborn Kim D. Mann Richard P. Kissinger David R. Parker Mark J. Andrews Edward J. Kiley Alex M. Lewandowski William D. Taylor David B. Schneider James F. Flint Ann M. Pougiales W. Robert Alderson Kenneth R. Hoffman Fritz R. Damm Robert E. McFarland Catherine A. Pawluch Kathleen C. Jeffries

* Francis E. Barrett Sr., Honorary















TRACK A MOVING TARGET

Today's law of transportation, trade, distribution, e-commerce and logistics is ever-changing and ever more complex.

Today's TRANSPORTATION LAWYERS ASSOCIATION is as dynamic as the field it follows — and leads.

KEEP UP with the changes by JOINING our lively network of professionals located almost everywhere in North America.

GAIN from our unique partnership with the University of Denver's award-winning Transportation Law Program.

PROFIT from a rich array of membership benefits including:

- Cutting-edge CLE programs with active input from the Sturm College of Law at the University of Denver.
- Free subscriptions to the Transportation Law Journal, as well as our own publication, The Transportation Lawyer.
- Reduced rate subscriptions to certain CCH© transportation publications.
- Direct access to the latest in disputeresolution programs through our affiliated Transportation ADR Council, Inc.
- Close ties with our counterparts in the Canadian Transport Lawyers' Association.
- A deeply-rooted tradition of collegiality and civility in the practice of law.

All This Is Yours for Annual Dues of \$185, or \$25 for Law Students.

To learn more, visit our Web site at < www.translaw.org > or contact our executive director at the address below.

TRANSPORTATION LAWYERS
ASSOCIATION



P.O. Box 15122 • Lenexa, Kansas 66285-5122 • 913-541-9077 Phone • 913-599-5340 Fax





University of Denver Sturm College of Law

ADMINISTRATIVE OFFICERS

Sheila Green, B.A., M.A.L.S., Reference Librarian

., International Law Librarian Robin A. Ricker, B.S., Program Coordinator, Graduate Tax Program

Robert Coombe, B.S., M.S., Ph.D., Chancellor Gregg Kvistad, Ph.D., Interim Provost Craig Woody, B.A., Vice Chancellor for Financial Affairs/Treasurer Carol Farnsworth, B.A., B.S., Vice Chancellor for Communications Jim Moran, B.A., M.S., Ph.D, Vice Provost for Graduate Studies Paul Chan, B.A., J.D., University General Counsel Mary Ricketson, B.A., J.D., Dean of the College of Law John Reese, B.A., LL.B., LL.M., S.J.D., Associate Dean for Academic Affairs and Professor of Christine Cimini, B.A., J.D., Interim Director of Clinical Programs and Associate Professor of Law, Clinical Programs Gary L. Alexander, B.A., M.L.L., J.D., Asst. Dean of Information Services and Library Director Stephen Favreau, B.A., M.A., Asst. Dean of Operations Keryn Goldstein, B.A., M.B.A., Chief Financial Officer Forrest Stanford, B.A., J.D., Associate Dean Dan Vigil, B.A., J.D., Asst. Dean for Student Affairs Kirk Baughan, B.S., Executive Director of Alumni & Development Iain Davis, M.S., Asst. Dean of Financial Management and Admissions Julie Gordon, Registrar Tim Henderson, B.A., M.S., J.D., Asst. Dean of Career Services Lauri A. Mlinar, Director of Events

FACULTY

Sergio Stone

Rachel S. Arnow-Richman, B.A., J.D., LL.M, Assistant Professor of Law Robert Anderson, B.A., J.D., Visiting Lawyering Process Lecturer Debra Austin, Library Instruction Coordinator and Law Adjunct Tanya Bartholomew, B.A., J.D., Lawyering Process Lecturer Arthur Best, A.B., J.D., Professor of Law Andrea Bloom, B.A., J.D., Lawyering Process Lecturer Jerome Borison, B.S., J.D., LL.M., Associate Professor of Law Burton F. Brody, B.S.C., JJ.D., LL.M., Professor of Law J. Robert "Jay" Brown, Jr., B.A., M.A., Ph.D., J.D., Professor of Law Theresa Bruce, B.A., J.D., Advanced Legal Writing Professor Penelope Bryan, B.S., M.A., J.D., Professor of Law Kristen A. Carpenter, B.A., J.D., Assistant Professor of Law Phoenix Cai, B.A., M.A., J.D., Assistant Professor of Law John A. Carver, Jr., A.B., LL.B., LL.D., Emeritus Professor of Law Federico Cheever, B.A., M.A., J.D., Professor of Law Alan K. Chen, B.A., J.D., Professor of Law Christine Cimini, B.A., J.D., Associate Professor of Law, Clinical Programs Alfred J. Coco, B.A., J.D., M.L.L., Emeritus Professor of Law Robin Cooley, B.A., J.D., Attorney, Environmental Law Clinical Partnership Roberto L. Corrada, B.A., J.D., Professor of Law Edward A. Dauer, A.B., LL.B., Dean Emeritus and Professor of Law Jerilyn DeCoteau, B.A., M.A., J.D., Visiting Lecturer in Law Kate Duba, B.A., J.D., Lawyering Process Lecturer Wendy Duong, B.S., J.D., LL.M., Assistant Professor of Law K.K. DuVivier, B.A., J.D., Assistant Professor and Director, Lawyering Process Program Nancy S. Ehrenreich, B.A., J.D., LL.M., Professor of Law David Engel, A.B., M.A., J.D., Sturm Distinguished Visiting Professor of Law Christopher Gehring, B.A., J.D., Lawyering Process Lecturer J. Wadine Gehrke, B.A., J.D., Assistant Professor of Law, Clinical Programs

Transportation Law Journal, Vol. 33 [2005], Iss. 1, Art. 1

Rashmi Goel, B.A., LL.B., J.S.M., J.S.D, Assistant Professor of Law Robert M. Hardaway, B.A., J.D., Professor of Law Jeffrey H. Hartje, B.A., J.D., Associate Professor of Law Mark Hughes, A.B., J.D., Visiting Lecturer in Law Timothy M. Hurley, B.A., J.D., Lawyering Process Lecturer and Director, Advanced Legal Writing Program and the Federal Appellate Clinic Sheila K. Hyatt, B.A., J.D., Professor of Law Francis W. Jamison, B.A., J.D., Emeritus Professor of Law Sam Kamin, B.A., J.D., Ph.D., Associate Professor of Law Dori Kaplan, B.A., J.D., Lawyering Process Lecturer Martin Katz, A.B., J.D., Assistant Professor of Law Tamara L. Kuennen, B.A., J.D., LL.M, Assistant Professor of Law, Clinic Programs Jan G. Laitos, B.A., J.D., S.J.D., Professor of Law and Director, Natural Resources Program Harry O. Lawson, B.A., M.S., Emeritus Professor of Law Neil O. Littlefield, B.S., LL.B., LL.M., S.J.D., Emeritus Professor of Law Lucy A. Marsh, B.A., J.D., Professor of Law Michael G. Massey, B.A., J.D., Lawyering Process Lecturer G. Kristian Miccio, B.A., M.A., J.D., LL. M., J.S.D., Assistant Professor of Law Michael Mireles, B.S., J.D., LL.M, Assistant Professor of Law Viva Moffatt, B.A., M.A., J.D., Assistant Professor of Law Ved P. Nanda, B.A., M.A., LL.B., LL.M, Thompson G. Marsh Professor of Law and Director, International Legal Studies Program Julie A. Nice, B.A., J.D., Charles W. Delaney Professor of Law Jim Otto, B.S., J.D., M.S., Director, Advanced Degree Programs in Natural Resources and Environmental Law Stephen L. Pepper, A.B., J.D., Professor of Law Bruce M. Price, B.A., M.A., J.D., Ph.D., Assistant Professor of Law George W. "Rock" Pring, B.A., J.D. Professor of Law John H. Reese, B.A., LL.B., LL.M., S.J.D., Professor of Law Paula R. Rhodes, B.A., J.D., Associate Professor of Law and Director, LL.M. in American and Comparative Law Program Edward J. Roche, Jr., B.B.A., J.D., Professor of Law Howard I. Rosenberg, B.A., LL.B., Professor of Law Laura L. Rovner, B.A., J.D., LL.M., Assistant Professor of Law, Clinical Programs Thomas Russell, B.A., M.A., J.D., Ph.D., Professor of Law Nantiya Ruan, B.A., J.D., Lawyering Process Lecturer Ann C. Scales, B.A., J.D. Associate Professor of Law Catherine E. Smith, B.A., M.P.A., J.D., Assistant Professor of Law John T. Soma, B.A., M.A., J.F.D., Ph.D., Professor of Law Karen Steinhauser, B.A., J.D., Internship Coordinator and Visiting Adjunct Professor of Law Joyce S. Sterling, B.A., M.A., Ph.D., Professor of Law Celia R. Taylor, B.A., J.D., Associate Professor of Law David Thomson, B.A., J.D., Lawyering Process Lecturer Jay Tuchton, B.A., J.D., Attorney, Environmental Law Clinical Partnership Mark A. Vogel, B.B.A., J.D., LL.M., Associate Professor of Law and Director, Graduate Tax Program Eli Wald, B.A., LL.B., LL.M., S.J.D., Assistant Professor of Law Timothy B. Walker, A.B., M.A., J.D., Emeritus Professor of Law James E. Wallace, A.B., LL.B., B.D., Ph.D., Emeritus Professor of Law Annecoos Wiersema, B.A., LL.B., LL.M., S.J.D., Visiting Lecturer in Law James L. Winokur, B.A., LL.B., Emeritus Professor of Law Robert B. Yegge, A.B., M.A., J.D., Dean Emeritus, Professor of Law, and Director, Masters in Legal Administration Program

Edward H. Ziegler, Jr., B.A., J.D., LL.M., Professor of Law