

# TRANSPORTATION

Vol. 32, no. 3: Table of Contents

# LAW JOURNAL

---

Industry Leader in Multi-Modal Law, Economics & Policy

---

## ARTICLES

Saving Preemption: A Conflict  
Preemption Quandary Resolved in  
*Geier v. American Honda Motor Co., Inc.*

*Jennifer L. Andrews*

State Supreme Courts and American  
Transportation Policy in the Jacksonian  
Decade

*Ronald L. Nelson*

The I-70 Mountain Corridor Expansion  
Project: Does the Department of  
Transportation Act of 1966 Apply?

*Megan A. Yahr*

TxDOT Dispute Resolution Process for  
Construction Contract Claims Settlements

*Yetkin Yildirim*



Transportation Lawyers Association



---

UNIVERSITY OF DENVER ~ STURM COLLEGE OF LAW

Published by Digital Commons @ DU, 2004

VOLUME 32

NUMBER 3

SUMMER 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](mailto: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 32

2005

No. 3

Copyright © 2005 by the Transportation Law Journal

## TABLE OF CONTENTS

### ARTICLES

Saving Preemption: A Conflict Preemption Quandary Resolved in <i>Geier v. American Honda Motor Co., Inc.</i> <i>Jennifer L. Andrews</i> .....	221
State Supreme Courts and American Transportation Policy in the Jacksonian Decade <i>Ronald L. Nelson</i> .....	285
The I-70 Mountain Corridor Expansion Project: Does the Department of Transportation Act of 1966 Apply? <i>Megan A. Yahr</i> .....	313
TxDOT Dispute Resolution Process for Construction Contract Claims Settlements <i>Yetkin Yildirim</i> .....	351

Dear Reader,

On behalf of all members of the 2005-2006 Transportation Law Journal ("TLJ"), I am pleased to introduce Volume 32:3, the second publication of our scholastic year. The student members of our organization once again put aside their many personal and academic obligations to invest a tremendous amount of time and effort into this issue's production, maintaining the Journal's high standards of quality and integrity. I am particularly appreciative of the Journal's Executive Board, whose tireless devotion to the many demanding tasks required for successful TLJ publications has been inspirational. It is truly an honor to work with such fine individuals.

The Journal also extends a sincere thank you to the authors of this issue's insightful articles. First, Jennifer Andrews's note on the resolution of a difficult conflict preemption question offers sage and timely advice to automobile manufacturers and, indeed, any commercial enterprise that is subject to significant federal regulation.

Professor Nelson's piece highlighting the judicial development of transportation policy in the Jacksonian decade provides a fascinating historical perspective on the significant role of the judiciary in forming our nation's transportation framework.

Megan Yahr wrote an intriguing note on the statutory implications of the proposed expansion of the I-70 corridor in Western Colorado. Her comments are especially interesting to Denver residents, such as myself, who enjoy excursions to the Colorado Rockies and are all too familiar with I-70's traffic woes. While the highway's improvement will greatly benefit the entire region, Megan reminds us that important environmental concerns must first be addressed.

Finally, Yetkin Yildirim's article highlights the dispute resolution procedures adopted by the Texas Department of Transportation. Along with Ms. Yahr's note, his piece underscores the importance of the interaction between construction and transportation. Gaining an understanding of the demands placed on state agencies in improving and expanding transportation networks can be beneficial to all members of the transportation community in leading to a greater appreciation for our current system.

I hope you enjoy these articles and find them of practical value. If you have any questions, comments, or suggestions, on this issue or any other, I would be honored to hear from you. Please feel free to contact me by e-mail 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*  
ERIK DULLEA  
ALISON FOLEY  
LISA HERBST  
MATTHEW LINTON  
VIRGINIA WILKS

*Staff Editors*

ALENA AMUNDSON	JAMES DOWNING	MICHAEL MAHON
MARY BARHAM	RICK FEGER	ELLIOT MILLER
RYAN BEHRMAN	SHANE GARMAN	MIKE PIMENTEL
STEPHANIE BERBERICH	JESSICA GOLDSTEIN	ATHENA ROE
KENNETH BOYD	CRYSTAL GORDON	CHRISTINA ROY
KAMI BOYT-MIRC	LINDA KNIGHT	STEVE SIGSBURY
JENNIFER BROWN	MATHEW KOREN	JUSTIN TUCKER
JESSICA COLLIER	PRISCILLA J. LOEW	RANDY WEINSTEIN
FERNANDO DEJUAN		MATTHEW WHITE

*Faculty Advisor*  
ROBERT HARDAWAY

Dear Reader,

On behalf of all members of the 2005-2006 Transportation Law Journal ("TLJ"), I am pleased to introduce Volume 32:3, the second publication of our scholastic year. The student members of our organization once again put aside their many personal and academic obligations to invest a tremendous amount of time and effort into this issue's production, maintaining the Journal's high standards of quality and integrity. I am particularly appreciative of the Journal's Executive Board, whose tireless devotion to the many demanding tasks required for successful TLJ publications has been inspirational. It is truly an honor to work with such fine individuals.

The Journal also extends a sincere thank you to the authors of this issue's insightful articles. First, Jennifer Andrews's note on the resolution of a difficult conflict preemption question offers sage and timely advice to automobile manufacturers and, indeed, any commercial enterprise that is subject to significant federal regulation.

Professor Nelson's piece highlighting the judicial development of transportation policy in the Jacksonian decade provides a fascinating historical perspective on the significant role of the judiciary in forming our nation's transportation framework.

Megan Yahr wrote an intriguing note on the statutory implications of the proposed expansion of the I-70 corridor in Western Colorado. Her comments are especially interesting to Denver residents, such as myself, who enjoy excursions to the Colorado Rockies and are all too familiar with I-70's traffic woes. While the highway's improvement will greatly benefit the entire region, Megan reminds us that important environmental concerns must first be addressed.

Finally, Yetkin Yildirim's article highlights the dispute resolution procedures adopted by the Texas Department of Transportation. Along with Ms. Yahr's note, his piece underscores the importance of the interaction between construction and transportation. Gaining an understanding of the demands placed on state agencies in improving and expanding transportation networks can be beneficial to all members of the transportation community in leading to a greater appreciation for our current system.

I hope you enjoy these articles and find them of practical value. If you have any questions, comments, or suggestions, on this issue or any other, I would be honored to hear from you. Please feel free to contact me by e-mail 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*

ERIK DULLEA

ALISON FOLEY

LISA HERBST

MATTHEW LINTON

VIRGINIA WILKS

*Staff Editors*

ALENA AMUNDSON  
MARY BARHAM  
RYAN BEHRMAN  
STEPHANIE BERBERICH  
KENNETH BOYD  
KAMI BOYT-MIRC  
JENNIFER BROWN  
JESSICA COLLIER  
FERNANDO DEJUAN

JAMES DOWNING  
RICK FEGER  
SHANE GARMAN  
JESSICA GOLDSTEIN  
CRYSTAL GORDON  
LINDA KNIGHT  
MATHEW KOREN  
PRISCILLA J. LOEW

MICHAEL MAHON  
ELLIOT MILLER  
MIKE PIMENTEL  
ATHENA ROE  
CHRISTINA ROY  
STEVE SIGSBURY  
JUSTIN TUCKER  
RANDY WEINSTEIN  
MATTHEW WHITE

*Faculty Advisor*

ROBERT HARDAWAY

## TRANSPORTATION LAWYERS ASSOCIATION

EXECUTIVE COMMITTEE MEMBERS 2005-2006

### OFFICERS

President .....	<i>Brian J. Smith</i>
President-Elect .....	<i>Greg E. Summy</i>
First Vice President .....	<i>Donald J. Vogel</i>
Second Vice President .....	<i>Eric L. Zalud</i>
Secretary-Treasurer .....	<i>Gordon D. McAuley</i>
Immediate Past President .....	<i>Kathleen C. Jeffries</i>

### Representatives-at-Large

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

### Past Presidents

<i>Edward S. Brashears</i>	<i>Wentworth E. Griffin</i>	<i>Harold D. Miller, Jr.</i>
<i>Perry R. Moore</i>	<i>Howell Ellis</i>	<i>Wilmer B. Hill</i>
<i>James W. Wrape</i>	<i>Edwin C. Reminger</i>	<i>Frank W. Taylor, Jr.</i>
<i>Franklin J. Van Osdal</i>	<i>Ewell H. Muse, Jr.</i>	<i>A. Charles Tell</i>
<i>August W. Heckman</i>	<i>Phineas Stevens</i>	<i>Richard H. Champlin</i>
<i>Carl V. Kretsinger</i>	<i>Beverly S. Simms</i>	<i>Michael J. Ogborn</i>
<i>Harris J. Klein</i>	<i>John L. Bruemmer</i>	<i>Kim D. Mann</i>
<i>Truman A. Stockton, Jr.</i>	<i>John E. Jandera</i>	<i>Richard P. Kissinger</i>
<i>Glenn W. Stephens</i>	<i>Leroy Hallman</i>	<i>David R. Parker</i>
<i>Harold G. Hernly</i>	<i>Walter N. Bieneman</i>	<i>Mark J. Andrews</i>
<i>Donald A. Morken</i>	<i>Alvin J. Meiklejohn</i>	<i>Edward J. Kiley</i>
<i>Lee Reeder</i>	<i>James W. Hagar</i>	<i>Alex M. Lewandowski</i>
<i>Marion F. Jones</i>	<i>William J. Lippman</i>	<i>William D. Taylor</i>
<i>Regan Sayers</i>	<i>Thomas E. James</i>	<i>David B. Schneider</i>
<i>S. Harrison Kahn</i>	<i>Bertram S. Silver</i>	<i>James F. Flint</i>
<i>Franklin R. Overmyer</i>	<i>John A. Vuono</i>	<i>Ann M. Pougiales</i>
<i>Louis Tarlowski</i>	<i>Charles Ephraim</i>	<i>W. Robert Alderson</i>
<i>Louis E. Smith</i>	<i>James C. Hardman</i>	<i>Kenneth R. Hoffman</i>
<i>Robert E. Powell</i>	<i>Robert D. Schuler</i>	<i>Fritz R. Damm</i>
<i>Jack B. Josselson</i>	<i>James M. Doherty</i>	<i>Robert E. McFarland</i>
<i>George S. Dixon</i>	<i>John S. Fessenden</i>	<i>Catherine A. Pawluch</i>
		<i>Kathleen C. Jeffries</i>

\* *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 dispute-resolution 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](http://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 COLLEGE OF LAW

### ADMINISTRATIVE OFFICERS

Daniel L. Ritchie, A.B., M.B.A., Chancellor  
Robert Coombe, Ph.D., Provost  
Craig Woody, B.A., Vice Chancellor for Financial Affairs/Treasurer  
Carol Farnsworth, M.A., Vice Chancellor for Communications  
Mary Ricketson, B.A., J.D., Dean of the College of Law  
J. Robert "Jay" Brown, B.A., M.A., Ph.D., J.D., Associate Dean for Academic Affairs  
Gary L. Alexander, B.A., M.L.L., J.D., Asst. Dean of Information Services and Library  
Director  
David Ricciardi, B.S., Registrar  
Iain Davis, B.A., Financial Aid Director  
Keryn Goldstein, B.A., Chief Financial Officer  
Sheila Green, B.A., M.A.L.S., Reference Librarian  
Martha Keister, A.B., M.A., M.L.S., International Law Librarian  
Stephen Favreau, M.S., B.A., Asst. Dean of Administration  
Lauri A. Mlinar, Director of Events  
Nancy P. Nones, B.A., Administrator, International Legal Studies  
Laura Dean, B.A., Director of Alumni Relations  
Robin A. Ricker, B.S., Program Coordinator, Graduate Tax Program  
Patty Powell, B.A., J.D., Dean of Student Services  
Forrest Stanford, B.A., J.D., Director of Admissions  
Tim Henderson, B.A., M.S., J.D., Director of Career Services  
Shane Seymour, B.A., M.A., Executive Director of Development  
Robert Yegge, A.B., M.A., J.D., Dean Emeritus Professor of Law, Director, Legal  
Administration Program, Co-Director, Clinical Programs

### FACULTY

Tanya Bartholomew, B.A., J.D., Legal Writing Professor  
William M. Beaney, A.B., LL.B., Ph.D., Emeritus Professor of Law  
Arthur Best, A.B., J.D., Professor of Law  
Andrea Bloom, B.A., J.D., Legal Writing Professor  
Jerome Borison, B.S., J.D., LL.M., Associate Professor of Law, Director, Student Federal Tax  
Advocacy Clinic  
Burton F. Brody, B.S., J.D., LL.M., Professor of Law  
J. Robert "Jay" Brown, Jr., B.A., M.A., Ph.D., J.D., Associate Dean of Academic Affairs,  
Professor of Law  
Penelope Bryan, B.S., M.A., J.D., Associate 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., Associate Professor of Law  
Alan K. Chen, B.A., J.D., Associate Professor of Law  
Christine Cimini, B.A., J.D., Assistant Professor of Clinical Programs  
Alfred J. Coco, B.A., J.D., M.L.L., Emeritus Professor of Law  
Roberto L. Corrada, B.A., J.D., Associate Professor of Law  
Tami D. Cowden, B.A., J.D., Legal Writing Professor  
Edward A. Dauer, A.B., LL.B., Dean Emeritus and Professor of Law  
Kate Duba, B.A., J.D., Legal Writing Professor  
Wendy Duong, B.S., J.D., LL.M., Assistant Professor of Law  
K.K. DuVivier, B.A., J.D., Assistant Professor of Law, Director of Lawyering Process Program  
Nancy S. Ehrenreich, B.A., J.D., LL.M., Professor of Law  
Christopher Gehring, B.A., J.D., Legal Writing Professor  
J. Wadine Gehrke, B.A., J.D., Assistant Professor of Clinical Programs  
Rashmi Goel, B.A., LL.B., J.S.M., 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  
Timothy M. Hurley, B.A., J.D., Legal Writing Professor  
Sheila K. Hyatt, B.A., J.D., Professor of Law  
Sam Kamin, B.A., J.D., Ph.D., Assistant Professor of Law  
Martin Katz, A.B., J.D., Assistant Professor of Law  
Francis W. Jamison, B.A., J.D., Emeritus Professor of Law

Jan G. Laitos, B.A., J.D., S.J.D., John A. Carver, Jr. Professor of Law, Director of 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  
Esteban Martinez, B.A., M.A., J.D., Legal Writing Professor  
Michael G. Massey, B.A., J.D., Legal Writing Professor  
G. Kristian Miccio, B.A., M.A., J.D., LL.M., J.S.D., Assistant Professor of Law  
Ved P. Nanda, B.A., M.A., LL.B., LL.M., LL.M., LL.D. (Hon.), Vice Provost for Internationalization, Evans University Professor, Thompson G. Marsh Chair, Director, International Legal Studies Program  
Julie A. Nice, B.A., J.D., Professor of Law, Delaney Chair  
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  
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, 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  
Thomas D. Russell, B.A., M.A., J.D., Ph.D., Professor of Law  
John T. Soma, B.A., M.A., J.D., Ph.D., Professor of Law  
Mary A. Steefel, B.A., J.D., LL.M., Legal Writing Professor  
Celia R. Taylor, B.A., J.D., Associate Professor of Law  
Mark A. Vogel, B.B.A., J.D., LL.M., Professor of Law, 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  
James L. Winokur, B.A., LL.B., Professor of Law  
Robert B. Yegge, A.B., M.A., J.D., Dean Emeritus, Professor of Law, Director, Legal Administration Program, Co-Director, Clinical Programs  
Edward H. Ziegler, Jr., B.A., J.D., LL.M., Professor of Law