

Vol. 32, no. 1: Table of Contents

# TRANSPORTATION LAW JOURNAL

---

Industry Leader in Multi-Modal Law, Economics & Policy

---

FAA Approves IATA's Operational Safety  
Audit (IOSA) Program: A Historical  
Review and Future Implications for the  
Airline Industry

*Lindsey Sabec*

You Are Not a Lawyer: Does  
Representation of Carriers by Non-  
Lawyers in Federal Motor Carrier Safety  
Administration Enforcement Cases  
Constitute the Unauthorized Practice  
of Law?

*Osman E. Nawaz*

Protecting Design-Build Owners Through  
Design Liability Coverage, Independent  
Construction Managers, and Quality  
Control Procedures

*Stephen Wichern*

The Preempt Bill: On Track Toward  
Addressing Rail-related Terrorism?

*R. Michael Pimentel*

Doomed to Repeat the Past: How the  
TSA Is Picking Up Where the FAA  
Left Off

*Gregory Robert Schroer*

UNCITRAL's Proposed Instrument on the  
International Marine Carriage of Goods

*Nicholas de la Garza*

R.S. 2477-A Federal Statute Granting  
Rights-of-Way to State and Local  
Governments: Don't Be Fooled;  
It May Not Eliminate Federal  
Government Involvement

*Cecila Reyna*



Transportation Lawyers Association





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

2004

No. 1

Copyright © 2004 by the Transportation Law Journal

## TABLE OF CONTENTS

### ARTICLES

- FAA Approves IATA's Operational Safety Audit (IOSA) Program: A  
Historical Review and Future Implications for the Airline Industry  
*Lindsey Sabec* ..... 1
- You Are Not a Lawyer: Does Representation of Carriers by Non-  
Lawyers in Federal Motor Carrier Safety Administration  
Enforcement Cases Constitute the Unauthorized Practice of Law?  
*Osman E. Nawaz* ..... 21
- Protecting Design-Build Owners Through Design Liability Coverage,  
Independent Construction Managers, and Quality Control  
Procedures  
*Stephen Wichern* ..... 35
- The Preempt Bill: On Track Toward Addressing Rail-related Terrorism?  
*R. Michael Pimentel* ..... 57
- Doomed to Repeat the Past: How the TSA Is Picking Up Where the  
FAA Left Off  
*Gregory Robert Schroer* ..... 73
- UNCITRAL's Proposed Instrument on the International Marine  
Carriage of Goods  
*Nicholas de la Garza* ..... 95
- R.S. 2477—A Federal Statute Granting Rights-of-Way to State and  
Local Governments: Don't Be Fooled; It May Not Eliminate  
Federal Government Involvement  
*Cecila Reyna* ..... 109

Dear Reader:

Volume 32: Issue 1 is our student note issue. This is the first all student written issue published in which our student authors were able to take advantage of the new committee set up in the Transportation Lawyers Association to work with the Transportation Law Journal. This committee, headed by Mr. Jim Hardman, gave our student authors the opportunity to utilize the expertise of the attorneys that volunteered to mentor our student authors throughout the writing process and, in some cases, help structure note topics for the student authors. As you will soon discover through reading Volume 32: Issue 1, the collaboration between the student authors and the attorneys of the Transportation Lawyers Association created one of our best student issues to date, and we at the Transportation Law Journal look forward to utilizing this tremendous resource in this coming year's student note issue.

Our lead article, written by Lindsey Sabec, discusses the history and future of safety programs related to the aviation industry, specifically the program developed by the International Air Transport Association. Osman E. Nawaz explores the legality of the representation of motor carriers by non-lawyers in Federal Motor Carrier Safety Administration cases in his article. The third article, written Stephen Wichern, writes about the protection mechanisms of design liability coverage, quality control procedures, and the use of independent contractors for state transportation agencies through the concept of design-build ownership. PREEMPT, a railroad security bill designed to prevent terrorist attacks, is explored in an article written by Michael Pimentel. Gregory Schroer analyzes the effectiveness of the Transportation Security Administration since its inception after the September 11, 2001 terrorist attacks. Nicholas de la Garza examines the UNCITRAL's proposed instrument related to the international marine carriage of goods, specifically the port-to-port provision. In the final article, Cecilia Reyna explores the relationship between Federal, State, and local rights and responsibilities in R.S. 2477, a Federal rights-of-way statute.

On a personal note, I would like to take this opportunity to thank the members of the Transportation Law Journal. Specifically, I would like to thank board members Tony Ryan and Jennifer Mullenbach for the tremendous amount of work they put in this year. This year's Journal staff went above and beyond what is typically required during an academic year to catch up our backlog of publications. This Issue is our 8th issue of the year and with our forthcoming 9th publication we will have completely caught up to date. For this accomplishment, I commend the tremendous group of people that made up the 2004-2005 Transportation Law Journal. With that being said, enjoy our all student-authored publication, Volume 32: Issue 1.

Respectfully,

Berry White  
Editor-in-Chief  
Transportation Law Journal  
University of Denver, Sturm College of Law

# TRANSPORTATION LAW JOURNAL

2004-2005

*Editor in Chief*

H. BERRY WHITE, IV

*Business Editor*

VACANT

*Managing Editor*

ANTHONY M. RYAN

*Senior Articles Editor*

JENNIFER MULLENBACH

*Technical Editors*

PHIL DeCARO  
ERIK M. DULLEA  
OSMAN NAWAZ  
CECILA REYNA  
LINDSEY SABEC

*Staff Editors*

BUCK BELTZER  
JONATHAN REED BRITT  
JAMES E. DOWNING  
KELLY FISCHER  
ALISON K. FOLEY  
JESSICA GOLDSTEIN  
CRYSTAL GORDON

LISA M. HERBST  
MATTHEW LINTON  
PRISCILLA J. LOEW  
ELLIOT F.J. MILLER  
NAOMI PERERA  
MELISSA E. PETER  
R. MICHAEL PIMENTEL  
JAY L. RAFTERY, JR

ATHENA M. ROE  
ROBB SCHROER  
JUSTIN TUCKER  
STEPHEN WICHERN  
GINNY WILKS  
BRIAN WILSON  
RANDY WEINSTEIN

*Faculty Advisor*

ROBERT HARDAWAY

## TRANSPORTATION LAWYERS ASSOCIATION

### EXECUTIVE COMMITTEE MEMBERS 2004-2005

#### OFFICERS

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

#### Representatives-at-Large

<i>Patricia O'Connell Alvarez</i>	<i>Frank C. Botta</i>
<i>Peter A. McLauchlan</i>	<i>Carlos Sesma</i>
<i>Steven W. Block</i>	<i>Gordon D. McAuley</i>
<i>Christopher C. McNatt, Jr.</i>	<i>John S. Hunter</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 Osde</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>Beverley 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>* Francis E. Barrett Sr.,</i>	
	<i>Honorary</i>	



## UNIVERSITY OF DENVER COLLEGE OF LAW

### ADMINISTRATIVE OFFICERS

Daniel L. Ritchie, A.B., M.B.A., Chancellor  
Robert Coombes, Ph.D., Provost  
Craig Woody, B.A., Vice Chancellor for Financial Affairs/Treasurer  
Carol Farmsworth, 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, Masters, 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  
Julie Field and Robert Yegge, Co-Directors, Clinical Programs, Assoc. Professor of Law  
Forrest Stanford, B.A., J.D., Director of Admissions  
Tim Henderson, B.A., M.S., J.D., Director of Career Services

### FACULTY

Thomas A. Barnes, Jr., B.A., J.D., Lecturer  
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., Lecturer  
Jerome Borison, B.S., J.D., LL.M., Associate Professor of Law  
Burton F. Brody, B.S.C., J.D., LL.M., Professor of Law  
J. Robert "Jay" Brown, Jr., B.A., M.A., Ph.D., J.D., Associate Professor of Law  
Penelope Bryan, B.S., 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., Assistant Professor of Law  
Alan K. Chen, B.A., J.D., Assistant 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., Assistant Professor of Law  
Tami D. Cowden, B.A., J.D., Lecturer  
Edward A. Dauer, A.B., LL.B., Dean Emeritus and Professor of Law  
Paul Stephen Dempsey, A.B.J., J.D., LL.M., D.C.L. Professor of Law and Former Director,  
Transportation Law Program  
Kate Duba, B.A., J.D., Lecturer  
K.K. DuVivier, B.A., J.D., Assistant Professor & Director of Lawyering Process Program  
Nancy S. Ehrenreich, B.A., J.D., LL.M., Assistant Professor of Law  
Martha M. Ertman, A.B., J.D., Visiting Assistant Professor of Law  
Robert M. Hardaway, B.A., J.D., Professor of Law  
Christopher Gehring, B.A., J.D., Lecturer  
J. Wadine Gehrke, B.A., J.D., Assistant Professor of Clinical Programs  
Jeffrey H. Hartje, B.A., J.D., Associate Professor of Law  
Timothy M. Hurley, B.A., J.D., Lecturer  
Sheila K. Hyatt, B.A., J.D., Professor of Law and Associate Dean for Academic Affairs  
Sam Kamin, B.A., J.D., Ph.D., Assistant Professor of Law  
Martin Katz, A.B., J.D., Assistant Professor of Law  
Stephen Kropp, B.A., J.D., LL.M. Visiting Associate Professor, New Director, Transportation  
Law Program  
Francis W. Jamison, B.A., J.D., Professor of Law  
Jan G. Laitos, B.A., J.D., S.J.D., Professor of Law and Director of Natural Resources Program

Harry O. Lawson, B.A., M.S., Professor of Judicial Administrations and Director, Master of Science in Legal Administration Program  
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., Lecturer  
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., Assistant Professor of Law  
Stephen L. Pepper, A.B., J.D., Professor of Law  
Deana Pollard  
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  
Edward J. Roche, Jr., B.B.A., J.D., Professor of Law  
Howard I. Rosenberg, B.A., LL.B., Professor of Law  
Thomas Russell, B.A., M.A., J.D., Ph.D., Professor of Law  
Ann Scales  
John T. Soma, B.A., M.A., J.F.D., Ph.D., Professor of Law  
Mary A. Steefel, B.A., J.S., LL. M., Lecturer  
Joyce S. Sterling, B.A., M.A., Ph.D., Professor of Law  
Celia R. Taylor, B.A., J.D., Assistant Professor of Law  
Dan Vigil  
Mark A. Vogel, B.B.A., J.D., LL.M., Associate Professor of Law and Director, Graduate Tax Program  
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  
Tony Waters  
James L. Winokur, B.A., LL.B., Professor of Law  
Robert B. Yegge, A.B., M.A., J.D., Dean Emeritus and Professor of Law  
Edward H. Ziegler, Jr., B.A., J.D., LL.M., Professor of Law