: Vol. 26, no. 2: Table of Contents

TRANSPORTATION LAW JOURNAL

INDUSTRY LEADER IN MULTI-MODAL LAW, ECONOMICS & POLICY

UNIVERSITY OF DENVER • COLLEGE OF LAW

ARTICLES

Shipping Conference Legislation in Canada, the European Economic Community, and the United States: Background, Emerging Developments, Trends and a Few Major Issues

Joseph Monteiro Gerald Robertson

Ocean Shipping Deregulation and Maritime Ports: Lessons Learned from Airline Deregulation

Christopher Clott Gary S. Wilson

Testing the Limits of Federal Tolerance: Strategic Alliances in the Airline Industry

Michael J. AuBuchon

Divide and Conquer: Resolution of the 1996 Dispute Between American Airlines and the Colombian Civil Aviation Authority

Erika P. Schultz Albert Schultz

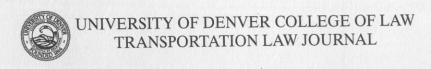
COMMENT

The IATA Intercarrier Agreement: Finally, Justice for the Victims of International Air Disasters?

Richard Spilde, Jr.

VOLUME 26 • NUMBER 2 • SPRING 1999





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 Líncoln, nebraska, and at additional mailing offices.

Correspondence should be addressed to *Transportation Law Journal*, University of Denver College of Law, 7039 East 18th Avenue, Denver, Colorado 80220; (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.

Cover design by Lee Corbin

TRANSPORTATION LAW JOURNAL

Volume 26

1999

No. 2

Copyright © 1998 by the Transportation Law Journal

TABLE OF CONTENTS

ARTICLES

	Background, Emerging	141
Ocean Shipping Deregulation and Maritin Airline Deregulation		
	Christopher ClottGary S. Wilson	205
Testing the Limits of Federal Tolerance: Strategic Alliances in the Airline Industry		
	Michael J. AuBuchon	219
Divide and Conquer: Resolution of the 1996 Dispute Between American Airlines and the Colombian Civil Aviation Authority Erika P. Schultz		247
-	Albert Schultz	
COMMENT		
The IATA Intercarrier Agreement: Finall International Air Disasters?	ly, Justice for the Victims of	
1	Richard Spilde, Jr	275



UNIVERSITY OF DENVER COLLEGE OF LAW

ADMINISTRATIVE OFFICERS

DANIEL L. RITCHIE, M.A., M.B.A., Chancellor
WILLIAM F. ZARANKA, Ph.D., Provost, Dean of Faculty
NELL JESSUP NEWTON, B.A., J.D., Dean, College of Law
CRAIG WOODY, Vice Chancellor for Financial Affairs/Treasurer
CAROL FARNSWORTH, Vice Chancellor for Communication
KEITH M. HARRISON, B.A., J.D., Associate Dean for Academic Affairs
GARY L. ALEXANDER, B.A., M.L.L., J.D., Director, Westminster Law Library
ANNE STARK WALKER, J.D., Director of Career Services

FACULTY

DAVID W. BARNES, A.B., M.A., Ph.D., J.D., Professor of Law Arthur Best, A.B., J.D., Professor of Law 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 BROWN, JR., B.A., M.A., Ph.D., J.D., Professor of Law PENELOPE BRYAN, B.S., J.D., M.A., 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 ROBERTO L. CORRADA, B.A., J.D., Professor of Law 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 Director, Transportation Law Program NANCY S. EHRENREICH, B.A., J.D., LL.M., Assistant Professor of Law MARTHA M. ERTMAN, A.B., J.D., Assistant Professor of Law ROBERT M. HARDAWAY, B.A., J.D., Professor of Law KEITH M. HARRISON, B.A., J.D., Associate Professor of Law and Associate Dean for Academic Affairs JEFFREY H. HARTJE, B.A., J.D., Associate Professor of Law SHEILA K. HYATT, B.A., J.D., Professor of Law FRANCIS W. JAMISON, B.A., J.D., Professor of Law and Internship/Externship Coordinator 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., Professor of Judicial Administration Emeritus NEIL O. LITTLEFIELD, B.S., LL.B., LL.M., S.J.D., Professor of Law Emeritus LUCY A. MARSH, B.A., J.D., Professor of Law VED P. NANDA, B.A., M.A., LL.B., LL.M., Thompson G. Marsh Professor of Law and Director of the International Legal Studies Program
JULIE A. NICE, B.S., B.S., J.D., Assistant Professor of Law
STEPHEN L. PEPPER, A.B., J.D., Professor of Law GEORGE W. PRING, B.A., J.D., Professor of Law JOHN H. REESE, B.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 JOHN T. SOMA, B.A., M.A., J.D., Ph.D., Professor of Law JOYCE S. STERLING, B.A., M.A., Ph.D., Professor of Law CELIA R. TAYLOR, B.A., J.D., Assistant Professor of Law 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., Professor of Law 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

LAW LIBRARY

EDWARD H. ZIEGLER, JR., B.A., J.D., LL.M., Professor of Law

SPECIAL ADJUNCT FACULTY

J. WADINE GEHRKE, B.A., J.D., Adjunct Professor of Clinical Law and Internship Liaison. JACQUELINE St. JOAN, B.A., J.D., Clinical Visiting Professor and Director, Mediation Arbitration Center.

ROBERTA J. STEINHARDT, B.A., J.D., Clinical Visiting Professor.

MARGARET E. WALKER, B.S., M.Ed., J.D., Adjunct Professor of Clinical Law and Director, Student Law Office Civil Clinical Project.

ADJUNCT FACULTY

HAROLD O. BLOOMENTHAL, B.S., J.D., J.S.D., Adjunct Professor of Law. WALTER C. BRAUER III, B.S., A.M., J.D., Adjunct Professor of Law. WILLIAM T. DISS, B.S., J.D., Adjunct Professor of Law

THE HONORABLE WILLIAM F. DRESSEL, B.A., J.D., Adjunct Professor of Law and Judge, 8th Judicial District Court, Colorado.

DANIEL W. EDWARDS, B.A., J.D., Adjunct Professor of Law THE HONORABLE DAVID M. EBEL, B.A., J.D., Adjunct Professor of Law and Judge, Tenth Circuit Court of Appeals.

RICHARD D. GREENGARD, B.A., J.D., Adjunct Professor of Law THE HONORABLE JOHN L. KANE, B.A., J.D., Adjunct Professor of Law and Senior Judge, United States District Court, Colorado.

DAVID S. KAPLAN, B.A., J.D., Adjunct Professor of Law

THE HONORABLE HOWARD M. KIRSHBAUM, Justice, Supreme Court of Colorado & Adjunct Professor of Law

BRUCE MARKS, B.S., J.D., Adjunct Professor of Law

THE HONORABLE DONALD W. MARSHALL, B.S., M.S.J.A., J.D., Adjunct Professor and Judge, 17th Judicial District Court, Colorado.

STEPHEN L. PEVAR, A.B., J.D., Adjunct Professor of Law

THOMAS RAGONETTI, A.B., M.R.P., J.D., Adjunct Professor of Law KAREN STEINHAUSER, B.A., J.D., Adjunct Professor of Law

THE HONORABLE DANA U. WAKEFIELD, B.A., J.D., Judge, Denver Juvenile Court & Adjunct Professor of Law

MICHAEL O. WIRTH, B.S., M.A., Ph.D., Chair, Mass Communications, University of Denver & Professor

BROOKE WUNNICKE, B.A., LL.B., Adjunct Professor of Law

LECTURERS IN LAW

STEPHEN D. ALFERS, B.A., J.D.

GARRY R. APPEL, B.A., J.D. ANGELA R. ARKIN, B.A., J.D. STEVE ARMSTRONG, B.S., J.D. PATRICIA S. BANGERT, B.A., J.D. SETH J. BENEZRA, B.A., J.D. WILLIAM P. BETHKE, B.A., J.D. THEODORE A. BORRILLO, B.B.A., J.D., J.S.D. MARK H. BOSCOE, B.A., J.D. CONSTANCE E. BROOKS, B.A., J.D. LAIRD CAMPBELL, A.B., LL.B. THOMAS E. CARBONNEAU, B.A., M.A., J.D. PHILIP A. CHERNER, B.S., J.D.
WILLIAM M. COHEN, B.S.M.E., J.D., LL.M. DAVID COX, B.S.B.A., M.S.B.A., J.D. DAVID R. DEMIRO, A.B., J.D. LINDA DONNELLY, B.A., J.D. JOSEPH M. EPSTEIN, B.A., J.D. THOMAS C. FOLSOM, B.S., J.D. ALAN J. GILBERT, ScB., J.D. MONICA S. GLICKMAN, B.A., J.D. HAROLD GOLZ, B.A., J.D. SETH A. GROB, B.A., J.D.
J. SCOTT HAMILTON, B.A., J.D., LL.M. CAROL J. HARMON, B.A., M.A., J.D. ROBERT G. HEISERMAN, JR., B.A., J.D. NED HEPPENSTALL, B.A., J.D. GREGORY B. KANAN, B.A., J.D. ROBERT R. KEATINGE, B.A., J.D., LL.M.

EUGENE KOZLOWSKI, B.A., M.A., PH.D. SCOTTY P. KROB, B.A., J.D. DAVID A. LANE, B.A., M.B.A. RICHARD W. LAUGESEN, B.A., J.D. RICK LEAMAN, B.A., M.B.A HERRICK K. LIDSTONE, JR., A.B., J.D. DAVID LOCKWOOD, B.A., J.D. J. TRIPLETT MACKINTOSH, B.A., M.A., J.D. THE HONORABLE LAWRENCE A.
MANZANARES, B.A., J.D., Judge, Denver County Court DAVID MAZZARELLA, B.S., M.A., J.D., LL.M. JOAN H. McWilliams, B.S., M.S.J.A., J.D. GLENN W. MERRICK, B.A., J.D. ROBERT D. MILLER, B.S., M.D., PH.D. RICHARD L. NATHAN, B.A., J.D. MYRON H. NORDQUIST, B.S., J.D., J.S.D. TERRY O'NEILL, B.A., J.D. WILLIAM O'QUINN, B.S., J.D. LARRY S. POZNER, B.S., J.D. MICHAEL S. QUINN, B.A., J.D. GERALD J. RAFFERTY, B.S., J.D. MARCELINA RIVERA, B.A., J.D. GILBERT M. ROMAN, B.A., J.D. DONALD SALCITO, B.A., J.D. GORDON E. SCHIEMAN, B.S., B.A., J.D., JAMES SERVEN, B.A., B.S., M.B.A., J.D. J. ALISON SHELTON, B.A., J.D. JOHN F. SHEPHERD, A.B., J.D. SHARI SHINK, B.S., J.D.

GLENN E. KELLER, JR., B.S., J.D.

James W. Spensley, B.S., J.D. John D. Sternberg, B.A., J.D. Barry J. Swanson, B.A., Ph.D., J.D. Craig L. Truman, B.A., J.D.

LECTURERS IN LEGAL ADMINISTRATION CYNTHIA L. ACREE, B.A., M.S.J.A. TERI P. CAMPBELL, B.B.A., M.S.J.A. KIMBERLY L. CURTIS, B.S., M.S.J.A.

EMERITUS LAW FACULTY

WILLIAM A. ALTONIN, A.B., J.D., LL.M. WILLIAM M. BEANEY, A.B., LL.B., PH.D. MURRAY BLUMENTHAL, B.M.E., M.A., PH.D.

JOHN A. CARVER, JR., A.B., LL.B., LL.D. ALFRED J. COCO, B.A., J.D., M.L.L. DANIEL S. HOFFMAN, B.A., LL.B. JOHN PHILLIP LINN, A.B., M.A., J.D.

ADMINISTRATIVE STAFF

Barbara Allen, B.A., M.L.S.
Donna S. Ellis, B.S., Financial Aid Director
Margaret Faiver, Office Administrator,
Student Services

Andrea Forrest, B.A., Career Counselor Sally Fry, B.A., Chief Financial Officer Sheila Green, B.A., M.A., Reference Librarian

TANYA HAYNES, Publications and Planning Coordinator

Stephanie Heaps, Computer Center Supervisor

Helen Jacobson, B.A., Career Counselor Johanna E. Kelly, A.B., Director of Development, Major Gifts

Susan K. Madison, B.A., M.A.L.S., Head, Bibliographic Services Sally J. Maresh, B.A., M.A., J.D., Chief

Operating Officer STAFF AMICI UNIVERSITATIS

PHILIP E. GAUTHIER, Director of Alumni and Public Relations, University of Denver College of Law, 1972-91.

VELVIN GUIET, Bookstore Manager, University of Denver College of Law, 1974-88 Gaylord A. Virden, B.A., M.A., J.D. Arnold C. Wegher, B.M.E., LL.B., LL.M. John F. Welborn, B.A., J.D. Robert A. Zupkus, A.B., J.D.

Suzanne B. O'Neill, B.A., J.D., LL.M. Ronald L. Seigneur, B.A., M.B.A. Thaddeus J. Spack, B.A., M.A., M.S.J.A.

Thompson G. Marsh, A.B., LL.B., M.A., LL.M., J.S.D.
CHRISTOPHER MUNCH, B.S., J.D.
EDWARD E. PRINGLE, J.D., LL.D.
THE HONORABLE GREGORY KELLAM SCOTT, B.S., ED.M., J.D., Justice Colorado Supreme Court
JAMES E. WALLACE, A.B., LL.B., B.D., Ph.D.

LAURI A. MLINAR, Director of Events
NANCY P. NONES, B.A., Administrator, International Legal Studies

CATHERINE PABLICH, B.A., M.L.S., Head of User Services

JOANNA PATRICK, B.A., Manager of Library
Operations
ANN POLYMPHYS RAM MAT Director of

Ann Polumbus, B.A., M.A.T., Director of Alumni Relations Robin A. Ricker, B.S., Program Coordina-

tor, Graduate Tax Program

NANCY ROPER, Manager, Faculty Support

Manager
CLAUDIA L. TOMLIN, B.A., Director of Admissions

Mary Kathleen Wilder, B.A., M.A., J.D., Director of Legal Writing Program

CHARLIEN E. RYAN, Assistant to Associate Dean, 1977-1991

IRMGARD K. VRAGEL, B.A., 1965, Registrar, University of Denver College of Law, 1981-87

TRANSPORTATION LAWYERS ASSOCIATION

EXECUTIVE COMMITTEE MEMBERS

OFFICERS

President	Ann M. Pougiales
President-Elect	W. Robert Alderson
First Vice President	Kenneth R. Hoffman
Second Vice President	Fritz R. Damm
Secretary-Treasurer	Robert E. McFarland
Immediate Past President	James F. Flint

Representatives-at-Large

William D. Bierman
Peter R. Corbin
Francis A. Courtenay, Jr.
William E. Davis
Kathleen C. Jeffries
Stephen T. Rudman
John R. Ruhl
Carolyn B. Witherspoon

Past Presidents

Mark J. Andrews Franklin Van Osdel August W. Heckman Carll V. Kretsinger Truman A. Stockton, Jr. Harold G. Hernly Jack B. Josselson Ewell H. Muse, Jr. Phineas Stevens John E. Jandera Lerov Hallman Walter N. Bieneman Alvin J. Meiklejohn, Jr. James W. Hagar Edward J. Kiley William J. Lippman Thomas E. James John A. Vuono Charles Ephraim

James C. Hardman Robert D. Schuler James M. Doherty Harold D. Miller, Jr. Wilmer B. Hill A. Charles Tell Frank W. Taylor, Jr. Richard H. Champlin Michael J. Ogborn Kim D. Mann Richard P. Kissinger David R. Parker Bertram S. Silver John S. Fessenden Alex M. Lewandowski William D. Taylor David B. Schneider James F. Flint

TRANSPORTATION LAW JOURNAL

Spring 1999

Editor in Chief Kevin P. Ahearn

Managing Editor
MICHAEL P. DULIN

Business Editor
AUDREY M. SIMON

Articles Editors
Ken Michael Barker
Christian J. Schmidt

General Editor
Cynthia J. McNabb

Staff
K. SEAN ALLEN
KRISTIN R. ANDERSON
MELINDA B. BARTON
KEIRSTEN BECK
KATHRYN A. CHANDLER
BRETT D. CHARDAVOYNE
BRIAN K. FURGASON
JOSEPH A. GUERRIERO
MATTHEW J. KAVANAGH
MICHAEL J. SCHROEDER
VLADIMIR SHIFRIN
RICHARD SPILDE, JR.

Faculty Advisor
PAUL STEPHEN DEMPSEY



College of Law Transportation Law Program

To Prospective Law Students:

Transportation is an enormously important industry, an essential part of the nation's infrastructure of travel, communications and commerce.

Transportation is a vast industry, accounting for 16% of the Gross National Product, with networks of airlines, railroads, trucking companies, busses, pipelines, barge lines and ocean vessels linking the far corners of the nation and the world.

The evolution of public policy in transportation, moving from regulation to deregulation, has made the practice of transportation law a dynamic, challenging arena, integrating principles of law and economics. The transformation of the regulatory landscape creates new opportunities for lawyers as transportation firms transform themselves into lean and aggressive market driven companies.

Few industries offer a young lawyer such a dynamic landscape of shifting law and policy, one filled with challenge and opportunity. The pages of the *Transportation Law Journal* reflects these dynamics.

The University of Denver's Transportation Law Program is the premiere such program in the United States. If transportation law is what you want to do, the University of Denver is the place to do it. If you are a prospective law student, write me, and ask for our catalog.

Sincerely

Paul Stephen Dempse

Professor of Law, and

Director, Transportation Law Program

1900 Olive Street, Denver, Colorado 80220 303*871-6269
The University of Denver is an equal opportunity/affirmative action institution



College of Law Transportation Law Journal

Dear Subscriber:

Today, the transportation industry faces many uncertainties from a legal standpoint. Until resolved, these uncertainties may prove unsettling for the actual professionals in the transportation field. However, these uncertainties provide ample material for scholarly debate. This issue explores some of the uncertainties in the field of transportation law in relation to shipping and aviation.

Uncertainty is explored in the context of the shipping industry regarding the recent deregulation of that industry. Comparisons are made to deregulation of the airline industry more than 20 years ago. In addition, shipping legislation is analyzed on an international basis, comparing such legislation in the United States, Canada, and the European Economic Community.

The aviation industry also faces many unanswered questions. The articles in this issue focus on the viability of strategic alliances and lessons learned from resolving international disputes. This issue concludes with a comment from one of our staff members, Richard Spilde, Jr., regarding the recent ambiguity surrounding damages for international aviation disasters.

As always, we try to bring you insightful articles exploring cutting-edge transportation law issues. We believe that this collection of articles meets this goal, and we hope that you enjoy this issue. We will again move forward in our next issue, with a symposium on the state of the law in the railroad industry.

Thank you for your continued support of the Transportation Law Journal!

Sincerely,

Kevin P. Ahearn Editor-in-Chief

7039 E. 18th Ave., Denver, Colorado 80220 303-871-6162
The University of Denver is an equal opportunity/affirmative action institution.