

TRANSPORTATION LAW JOURNAL

INDUSTRY LEADER IN MULTI-MODAL LAW, ECONOMICS & POLICY

UNIVERSITY OF DENVER • COLLEGE OF LAW

ARTICLES

The *New* Single Process Initiative Threatens to Erode the *Boyle* Military Contractor Defense

Robert F. Hedrick

The Preemption of Tort and Other Common Causes of Action Against Air, Motor, and Rail Carriers

Robert E. McFarland

GARA's Achilles: The Problematic Application of the Knowing Misrepresentation Exception

Todd R. Steggerda

BOOKNOTES

Transportation Planning on Trial: The Clean Air Act and Travel Forecasting: Mark Garrett and Martin Wachs

Thomas H. McConnell

VOLUME 24 • NUMBER 2 • WINTER 1997





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, 7039 East 18th Avenue, Denver, Colorado 80220; (303) 871-6162. FAX: (303) 871-6165. E-mail: transplj@mercury.cair.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 24

1997

No. 2

Copyright © 1996 by the Transportation Law Journal

TABLE OF CONTENTS

ARTICLES

- The *New Single Process Initiative* Threatens to Erode the *Boyle Military Contractor Defense*
Robert F. Hedrick 129
- The Preemption of Tort and Other Common Causes of Action Against Air, Motor, and Rail Carriers
Robert E. McFarland 155
- GARA's Achilles: The Problematic Application of the Knowing Misrepresentation Exception
Todd R. Steggerda 191

BOOKNOTES

- Transportation Planning on Trial: The Clean Air Act and Travel Forecasting: Mark Garrett and Martin Wachs
Thomas H. McConnell 237

RECEIVED

APR 12 1997

UNIVERSITY OF DENVER
LAW LIBRARY



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*
JAMES R. GRIESEMER, D.P.M., *Vice Chancellor for Financial Affairs/Treasurer*
JOSEPH SANDERS, M.A., *Vice Chancellor for Communication*
DENNIS O. LYNCH, B.A., J.D., LL.M., J.D.S., *Dean, College of Law*
ARTHUR BEST, A.B., J.D., *Associate Dean for Academic Affairs*
GARY L. ALEXANDER, B.A., M.L.L., J.D., *Interim Director, Westminster Law Library*
MARY ROBERTS-BAILEY, B.A., M.S.W., J.D., *Assistant Dean for Student Affairs*

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., *Associate Professor of Law*
PENELOPE BRYAN, B.S., J.D., M.A., *Assistant 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*
CECELIA M. ESPENOZA, B.A., J.D., *Assistant Professor of Law*
ROBERT M. HARDAWAY, B.A., J.D., *Professor of Law*
KEITH M. HARRISON, B.A., J.D., *Assistant Professor of Law*
JEFFREY H. HARTJE, B.A., J.D., *Associate Professor of Law*
SHEILA K. HYATT, B.A., J.D., *Professor of Law and Associate Dean for Academic Affairs*
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 and Director, Master of Science in Legal Administration Program*
NEIL O. LITTLEFIELD, B.S., LL.B., LL.M., S.J.D., *Professor of Law*
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*
ROBERT B. SMITH, B.A., J.D., LL.M., *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*
LAWRENCE P. TIFFANY, A.B., LL.B., S.J.D., *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*
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.*
CYNTHIA A. SAVAGE, 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

- WILLIAM T. DISS, B.S., J.D., *Adjunct Professor of Law*
DANIEL W. EDWARDS, B.A., J.D., *Adjunct Professor of Law*
RICHARD D. GREENGARD, B.A., J.D., *Adjunct Professor of Law*
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*
WILLIAM O'QUINN, B.S., J.D., *Adjunct Professor of Law*
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

- ANGELA R. ARKIN, B.A., J.D.
MARK H. BOSCOE, B.A., J.D.
PATRICIA S. BANGERT, B.A., J.D.
WILLIAM P. BETHKE, B.A., J.D.
THOMAS C. FOLSOM, B.S., J.D.
HAROLD GOLZ, B.A., J.D.
SETH A. GROB, B.A., J.D.
NED HEPPENSTALL, B.A., J.D.
DAVID A. LANE, B.A., M.B.A.
RICHARD W. LAUGENSEN, B.A., J.D.
RICK LEAMAN, B.A., M.B.A.
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.
GLENN W. MERRICK, B.A., J.D.
ROBERT D. MILLER, B.S., M.D., Ph.D.
MICHAEL S. QUINN, B.A., J.D.
GILBERT M. ROMAN, B.A., J.D.
DONALD SALCITO, B.A., J.D.
JAMES SERVEN, B.A., B.S., M.B.A., 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.
GAYLORD A. VIRDEN, B.A., M.A., J.D.
JOHN F. WELBORN, B.A., J.D.
ROBERT A. ZUPKUS, A.B., 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.
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.

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.
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.

ADMINISTRATIVE STAFF

- GARY L. ALEXANDER, B.A., M.L.L., J.D., *Interim Director of Library*
SUSAN EWING BARBER, B.A., *Director, Institute of Advanced Legal Studies*
KARL CHWE, A.B., J.D., *Director of Computing Services*
DONNA S. ELLIS, B.S., *Financial Aid Director*
SALLY FRY, B.A., *Administrator, Budget*
SHEILA GREEN, B.A., M.A., *Reference Librarian*
TANYA HAYNES, *Publications and Planning Coordinator*
JOHANNA E. KELLY, A.B., *Director of Development, Major Gifts*

SUSAN K. MADISON, B.A., M.A.L.S., *Head, Bibliographic Services*
CHUCK MILLER-HUEY, B.S., M.L.S., *Circulation Director*
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*
SALLY J. MARESH, B.A., M.A., J.D., *Chief Operating Officer*
ANN POLUMBUS, B.A., M.A.T., *Director of Alumni Relations*

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*

ROBIN A. RICKER, B.S., *Program Coordinator, Graduate Tax Program*
NANCY ROPER, *Manager, Faculty Support Manager*
EMITA C. SAMUELS, B.A., *Registrar*
CLAUDIA L. TOMLIN, B.A., *Director of Admissions*
MARY KATHLEEN WILDER, B.A., M.A., J.D., *Director of Legal Writing Program*
PETER VAN TYLE, *Director of Career Services*

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	<i>David B. Schneider</i>
President-Elect	<i>James F. Flint</i>
First Vice President	<i>Ann M. Pougiales</i>
Second Vice President	<i>W. Robert Alderson</i>
Secretary-Treasurer	<i>Kenneth R. Hoffman</i>
Immediate Past President	<i>William D. Taylor</i>

Representatives-at-Large

Steven B. Belgrade
Wesley S. Chused
Norman R. Garvin
Paul D. Keenan
Martha J. Payne
Richard A. Plewacki
Dean Saul
Brian J. Smith

Past Presidents

<i>Mark J. Andrews</i>	<i>John A. Vuono</i>
<i>Franklin Van Osdel</i>	<i>Charles Ephraim</i>
<i>August W. Heckman</i>	<i>James C. Hardman</i>
<i>Carll V. Kretsinger</i>	<i>Robert D. Schuler</i>
<i>Truman A. Stockton, Jr.</i>	<i>James M. Doherty</i>
<i>Harold G. Hernly</i>	<i>Harold D. Miller, Jr.</i>
<i>Jack B. Josselson</i>	<i>Wilmer B. Hill</i>
<i>Ewell H. Muse, Jr.</i>	<i>A. Charles Tell</i>
<i>Phineas Stevens</i>	<i>Frank W. Taylor, Jr.</i>
<i>John L. Bruemmer</i>	<i>Richard H. Champlin</i>
<i>John E. Jandera</i>	<i>Michael J. Ogborn</i>
<i>Leroy Hallman</i>	<i>Kim D. Mann</i>
<i>Walter N. Bieneman</i>	<i>Richard P. Kissinger</i>
<i>Alvin J. Meiklejohn, Jr.</i>	<i>David R. Parker</i>
<i>James W. Hagar</i>	<i>Bertram S. Silver</i>
<i>Edward J. Kiley</i>	<i>John S. Fessenden</i>
<i>William J. Lippman</i>	<i>Alex M. Lewandowski</i>
<i>Thomas E. James</i>	<i>William D. Taylor</i>

TRANSPORTATION LAW JOURNAL

1996/1997

Editor in Chief
SAMUEL SCINTA

Business Editor
PETER G. VANO

Managing Editor
JANET S. BOUFFARD

Articles Editors
DARELL D. COLLETT
KEITH A. ROBINSON

Notes & Comments Editor
DYLAN G. LEWIS

Technical Editor
ROBERT V. AGHAZARIAN

General Editors
MICHELE HILTBRUNNER
RICHARD P. MUSMAKER
GEORGE E. TILLMAN III
JENNIFER READ

Associate Editors
RENEÉ A. CASANOVA
B. BEN DACHEPALLI
JANE E. HERSHEY
SHERI STRAILY

Staff Members

JEN ARTHUR	MARK BERUMEN	PAMELA JUNE TAYLOR
HAYLEY L. BELT	SUSAN KNOX	MEGAN WATSON
SHIRLEY BELVILLE	JOSEPH LICO	BRIAN DAVID ZALL
	JOHN JAY ROBERTS	

Faculty Advisor
PAUL STEPHEN DEMPSEY



UNIVERSITY of DENVER

College of Law
Transportation Law Journal

Dear Subscriber:

Of all the industries which comprise the international economy, few have a closer relationship with government than transportation. In the United States, although large segments of the transportation industry have been deregulated over the past three decades, this sector still relies on the government for much of its oversight. As we move into the next millennium, some commentators are calling for a return to the previous regulatory regime, where most, if not all aspects, of the transportation industry were vested in the federal government; others insist that deregulation did not go far enough. The articles in this issue examine this on-going relationship between federal regulation and the transportation sector.

In the first piece, Robert Hedrick explores the "Single Process Initiative" and its effect on military contractors, as established through the Supreme Court case of *Boyle v. United Technologies Corp.* Next, Robert McFarland examines the still-controversial effect of federal preemption on state common law claims in transportation. Finally, Todd Steggerda investigates the history and weaknesses of the General Aviation Revitalization Act of 1994.

Beginning with this issue, we have changed the Fall issue to a Winter issue, which allows us to better insure that the Transportation Law Journal continues to bring our subscribers the best in intermodal transportation articles. This Spring, we are planning a symposium issue on Airline Safety, and will be accepting article submissions through March 15. If you are interested in participating in the symposium, or would like to publish a piece in the future, please feel free to contact me.

We hope that you enjoy this issue.

Sincerely,

Samuel J. Scinta

Editor-in-Chief

7039 E. 18th Ave., Denver, Colorado 80220 303-871-6162

The University of Denver is an equal opportunity/affirmative action institution.

TRANSPORTATION LAW JOURNAL

Volume 24

1997

No. 2

Copyright © 1996 by the Transportation Law Journal

TABLE OF CONTENTS

ARTICLES

- The *New* Single Process Initiative Threatens to Erode the *Boyle* Military Contractor Defense
Robert F. Hedrick 129
- The Preemption of Tort and Other Common Causes of Action Against Air, Motor, and Rail Carriers
Robert E. McFarland 155
- GARA's Achilles: The Problematic Application of the Knowing Misrepresentation Exception
Todd R. Steggerda 191

BOOKNOTES

- Transportation Planning on Trial: The Clean Air Act and Travel Forecasting: Mark Garrett and Martin Wachs
Thomas H. McConnell 237