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Air Preemption, Life Beyond Transportation, & Justice Roberts' Tax and Commerce Clause Edicts

As most transportation people know, federal law preempts much of state transportation law pertaining to motor carriers. The same is true for travel by air.

A New York federal court recently had a case where the passengers were stuck in a plane on the tarmac for seven hours, during which time the conditions on board became quite bad, to put it mildly. Some passengers sued the airline for state law claims such as false imprisonment, negligence and negligent infliction of emotional distress. The federal court denied the claims.

Maybe the passengers should have claimed the plane by adverse possession, due to their lengthy tenure on board. They could have parted it out. Dibs on the pilot seats.

Life Beyond Transportation: There is another world out there.

Although my main deal involves transportation law, my clients also take me in other directions, which I enjoy as some diversity is always welcome. It also helps me keep more nimble and, in a roundabout way, circles back and helps my transportation practice as other real world experiences provide insight as to how people are wired.

I am currently involved in the administration of an estate where the decedent had no heirs, or none known as of this time, which includes not only the normal immediate family of children, parents and siblings, but

also uncles and aunts and their offspring (through "representation"). So this decedent left bequests to a long list of friends, and the remainder of her estate, which appears sizable, to various charities.

She also left through her will, now a public record as it is filed with the court, a good chunk of change for the care of her two cats, who don't get along. We read about those things in the paper and see them on TV, and here is another example, front and center.

There are also other aspects of this matter which I cannot disclose at this time, other than to say that there is some sleuthing involved.

They call probate the "dead do not complain department". It is a motivator to have your affairs in order before you check out since your post-planet Earth business will be taken care of by others.

Roberts and Obama Care Sellout – Really?

Conservatives are bemoaning the fact that Chief Justice Roberts sided with the liberals, and in fact wrote the majority opinion, in upholding Obama Care. In the short term, that is true.

But Roberts did so by stating that the health care legislation carried a tax analogy. President Obama will now be tagged as the tax – and spend – president.

Tax is a nasty word. It permeates through all social classes, an equal opportunity warrior. It will rally the troops for a full bore frontal attack, starting with the November election. The supporters will defend on their heels. It takes more energy to defend than to attack. Just ask any football

guys who make their living in the trenches.

President Obama might have won the battle, but the war is clearly undecided. Justice Roberts' tax label, which will have clear staying power, may play a decisive role.

Now, the rest of the story:

(As Paul Harvey would say). Meanwhile, somewhat lost in the hoopla is that the Supremes, with Justice Roberts also in the majority with the other group – he was the pivotal vote on both votes, some would say a chameleon changing its colors - is that the court, with Justice Roberts leading the way, would not uphold the law based upon the Commerce Clause. For approximately two hundred years Congress has passed laws based upon its powers to regulate interstate commerce. It has found that diminimus activity by a single small wheat farmer can be regulated due to the cumulative impact of the activity by many others similarly situated. By refusing to uphold Obama Care based upon the Commerce Clause, Roberts et. al. have put into question the validity of several laws currently on the books.

For its notoriety, the court's decision will be remembered for upholding Obama Care. But for its long term impact, its Commerce Clause pronouncement will have a larger impact on the way Congress does business (when it actually does business, as opposed to the current group which is doing nothing except making noise and headlines, and collecting paychecks). What a life.

That's it for now. Until next time, keep the cargo rollin'!

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

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Short Bio

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