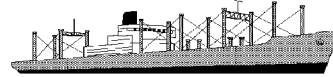




Rollin' On [®]



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AIR SQUEEZE, BASEBALL AND THE GREAT PUMPKIN

Tight in Flight

I recently attended the annual Transportation Law Institute, held this year in Denver. It's a chance to hear what's developing on the legal side, plus it provides an opportunity to see people with whom I have cases. Since transportation law is generally based on federal law, many of my cases cross state lines, and some of the attorneys also attend the TLI.

When Congress deregulates an issue, that usually takes it out of the states' hands through preemption, and throws it into the federal arena, whether by statute or common law. In a sense, it's a form of re-regulation as opposed to deregulation.

On my return flight, I was faced with a situation that, although it was not a first occurrence for me, my reaction to it was a first. It's a delicate subject that someday will need to be addressed by Congress and/or by the courts.

Since I wanted to observe the country, I elected to choose a window seat, contrary to my usual aisle seat preference. Two very large gentlemen sat next to me. The fellow on the aisle needed an extension for his seat belt. At 6'1" and with a 36" waist, I was the tiny guy in the picture. This is a delicate subject since most of us have friends or family members or co-workers who are large persons. These are people who we know and like. This situation of being in close quarters does happen.

Anyway, the seat dividers could not go down, since there was no room. After a few minutes, I experienced shortness of breath and had to get out of my seat. I became claustrophobic which was new to me. I went to the

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rear of the plane and stood there for the next two hours. There were no empty seats.

When the plane started its descent, I returned and took the middle seat, since the middle guy had scooted over. I was never so happy to sit in a middle seat, or what was left of it. I was able to lean forward, and I was much closer to the aisle, or at least so it seemed. The scooting gentleman later told me that at times he would move back to the middle seat since the window seat fan didn't work well. I was glad to hear that since I also thought it wasn't working, so at least I wasn't paranoid.

Legally, there's a lot of tension with various laws. For a person in my situation, the argument is that I paid for a whole seat, not part of a seat, and getting into that space constitutes a breach of contract on the part of the airline. Also, in that situation, the airline could arguably cause someone pain and anxiety, or some other "tort".

But we all know the law against prohibiting against impaired persons (ADA), and how does the airline deal with that? Some persons are large due to disorders beyond their control. Also, is the airline going to weigh people, or measure their waist line? Maybe the airline will require the person to purchase a second seat, at a reduced rate, which I understand at least one major carrier does. But what if the airline doesn't know the situation until flight time, and the plane is completely full? The airlines could install oversize seats, but that would reduce the seating capacity, and will cost some \$\$ over a period of time.

The ironic thing in my case is that I had the day's newspaper in my hand, which contained a report stating that the % of overweight Americans will continue to grow. Thus, this problem of accommodating persons of various sizes will not go away. The scope of the current air law is in dispute.

Antitrust at its worst - Baseball: Formerly America's #1 Sport

This is the first World Series that many people skipped for the first time. The sport has been ruined by the player's union, which will not allow restrictions on salaries, and by the rich teams such as the Yankees, who I used to root for, and the Atlanta Braves. These teams have almost automatic berths in the playoffs due to their payroll. There is no parity. Sure, sometimes a small city team succeeds, but the odds are against them. It must be nice to have antitrust protection so that they don't have to account to anyone. But someday they may if no one attends the games.

The Great Pumpkin: OSU Class Act

As many of you know, Dee Andros, the coach of the OSU coach of the 1967 Giantkillers team, recently died. He earned his name by virtue of his great girth. Andros said that "the Ducks make my stomach hurt, and when my stomach hurts, I hurt all over". His team beat No. 2 Purdue on the road, then tied then-No. 2 UCLA on the road. He loved the rushing game, and on a cold day in the late fall of 1967 (I was there), his Beavers rushed over the mighty then-No. 1 USC and O.J. Simpson, and won 3-0. Fittingly, his memorial service is on Halloween.

That's all 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.

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 25 years and emphasizing transportation law, business law and related litigation.