

COMMUTER RAIL UPDATE

Charles A. Spitulnik
Kaplan, Kirsch & Rockwell LLP
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DEVELOPMENTS

- Preemption – Glendale and the FRA's NPRM
- State legislation affecting allocation of liability
- Federal legislation – The Safety Act
- Federal legislation – Amtrak Reauthorization



PREEMPTION

- When last we spoke.....
 - Trial Court Ruling
 - Appeal Followed
- California Court of Appeal to trial court:



Preemption – con'td

- ARE YOU KIDDING?
- *SCRRA v. Superior Court of Los Angeles County*, 77 Cal Rptr. 3rd 765 (Cal. Ct. App. 2008)



Preemption – cont'd

- EO 20 and other FRA regulations govern design and operation of equipment used in push-pull operations
- Important: regulations govern construction AND operation of equipment
- FRA NPRM helped convince the court –
72 Fed.Reg. 42016 (Aug. 1, 2007)



Preemption – cont'd

- Issues remain in litigation –
 - Did SCRRRA comply with federal rules and with its own internal rules
 - Was it negligent in allowing persons or objects to be placed on tracks
- Bottom line: Huge sigh of relief for commuter rail operators



State Legislation

- Last year: Minnesota, Colorado
- This year: New Hampshire
- Next stop: Florida



Safety Act Revisions

- Focus here: Hours of Service Revisions
- Unique features of commuter rail operations
 - No long distance trains – no “away from home” stays
 - Regular hours, regular assignments
 - Split shifts



Safety Act Revisions – cont'd

- Commuters seeking study and special rules to govern commuter operations
- Position: Changes in limbo time, required rest between shifts and the cap on hours on duty over multi-day period:
 - Not necessary in view of unique operating characteristics
 - Increase costs, reduce service offerings



Amtrak Reauthorization

- Good news, bad news for commuters
- Good news:
 - Amtrak will continue
 - Project congestion grants



Amtrak Reauthorization – cont'd

Bad news:

Allocated cost: Changes the scheme that's been in place since Ex Parte 417 (367 ICC 192 (1983)):

Commuters have paid avoidable cost for use of NEC



Amtrak Reauthorization – cont'd

- New system:
 - Commuters pay allocated cost
 - But liability allocation in most agreements with commuters remains “but for” – i.e., avoidable
 - Amtrak still only pays avoidable cost to host railroads
- Is that fair?



QUESTIONS?

Charles A. Spitulnik
Kaplan Kirsch & Rockwell LLP
Washington, DC
(202) 955-5600
cspitulnik@kaplankirsch.com

