COMMUTER RAIL UPDATE

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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
Preemption – cont’d

- Issues remain in litigation –
  - Did SCRRA 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
Commuter Rail Update

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
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
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?

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