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**ADVANCEMENTS IN
BROKER LIABILITY—
TWO STEPS FORWARD,
ONE STEP BACK?**

Speakers



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FAIR COMPENSATION FOR TRUCK CRASH VICTIMS ACT (Proposed)



Greater “Financial Responsibility”

“Increase minimum levels of financial responsibility for transporting property, and to index future increases to changes in inflation relating to medical care”

-H.R. 6884 – Fair Compensation for Truck Crash Victims Act

- Altering \$750,000 to **\$5,000,000**
- Adding the ability to alter minimum responsibility levels on a 5-year basis to adjust for medical care inflation
- Changes effective 1 year after enactment



History and Findings

- **Introduced December 22, 2023, to the House of Representatives**
- Minimum insurance levels are intended to maintain safety
 - Motor Carrier Act of 1980, Public Law 96-296
- Increasing financial responsibility will lead to proactive safety enhancements of equipment
 - House Report No. 96-1069
- \$1,000,000 minimum for a single occurrence was initially recommended in 1979 by The National Transportation Policy Study Commission
 - Advised to remain the minimum through the Year 2000
- **The amount of \$750,000 set in 1980 would be the equivalent of \$5,193,665.62 in 2020**
 - Inflation rate based on medical costs



Arguments

- **Owner-operators association and others oppose** the attempt to increase the minimum insurance citing, in part, a recent study suggesting that current minimum insurance levels adequately cover damages on all but 0.6% of cases.
- **Bill's sponsors states:**

“For too long truck crash victims and their families have been burdened by tremendous emotional and financial consequences, facing a mountain of medical debt and shattered lives.”

“The Fair Compensation for Truck Crash Victims Act is about justice, responsibility, and protecting our communities. It is time to ensure that trucking companies have adequate insurance to cover the true cost of their actions and prevent families from being financially destroyed by crashes they had no control over.”

-Congressmen Jesús “Chuy” García (IL-04) and Hank Johnson (GA-04): Dec. 22, 2023, Press Release



FEDERAL PREEMPTION AND THE FAAAA



FEDERAL PREEMPTION AND THE FAAAA

Federal Aviation Authorization Administration Act ("FAAAA"): 49 U.S.C. § 14501

Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law **related to a price, route, or service of any motor carrier** (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.



Why?

"Congress enacted the FAAAA's preemption provision in 1994 with the aim of eliminating the patchwork of state regulation of motor carriers that persisted fourteen years after it had first attempted to deregulate the trucking industry."

Nationwide Freight Sys., Inc. v. Ill. Commerce Comm'n, 784 F.3d 367, 373 (7th Cir 2015) (citations omitted).

"Congress enacted the FAAAA to lessen state regulation out of concern 'that state regulation impeded the free flow of trade, traffic, and transportation of interstate commerce.'"

Aegis Syndicate v. Fedex, 2021 WL 5014102 (S.D. Fla., Jun. 28, 2021) citing *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 263 (2013).



When?

Issue is always does the claim relate to price, route, or service of a motor carrier?



What type of claims are preempted?

- **Preemption applies to any tort action "where the subject matter of the action is related to the carrier's prices, routes, or services. . ." Although generally not applicable to personal injury claims, The FAAAA nonetheless necessarily preempts claims that are related to "prices, schedules, origins, destinations or the point-to-point transportation of passengers, cargo, or mail."**

- *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 119 L. Ed. 2d 157, 112 S. Ct. 2031 (1992); *Deerskin Trading Post, Inc. v. United Parcel Serv. of Am. Inc.*, 972 F. Supp. 665, 672 (N.D. Ga. 1997)

Delivery of a pipe bomb

- *Rockwell v. UPS*, No. 2:99-CV-57, 1999 U.S. Dist. LEXIS 22036 (D.C. Vt. July 7, 1999)

Negligence and conversion arising from lost consumer package

- *Vieira v. United Parcel Service, Inc.*, No. C-95-04697 CAL ARB, 1996 U.S. Dist. LEXIS 11223 (N.D. Cal. Aug 5, 1996)

Untimely delivery of medication

- *Eggleston v. UPS*, 834 S.E.2d 713 (S.C. Ct. App. 2019)



What about freight brokers and freight forwarders?

Sixth Circuit – Likely preempted

- Negligence claims brought against a shipper and broker "fall[] squarely within the preemption of the FAAAA."
 - *Creagan v. Wal-Mart Transp., LLC*, 354 F. Supp. 3d 808, 813 (N.D. Ohio 2018)
- "Safety exception" exempts from preemption "the safety regulatory authority of a State with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)(A) but excluding accident claims would make preemption pointless.
 - *McCarter v. Ziyar Express, Inc.*, 2023 U.S. Dist. LEXIS 4552, *2 (N.D. Ohio Jan. 10, 2023).



What about freight brokers and freight forwarders?

Seventh Circuit – Preempted

- “Simply put, I remain dubious that Congress, in its mission to unencumber the interstate trucking industry from a patchwork of state tariffs, price controls, and similar economic regulations, also aimed to completely unyoke trucking companies and freight brokers from commonsense standards of care enforced through private tort actions.”
 - *Wardingley v. Ecovyst Catalyst Techs., LLC*, 639 F. Supp. 3d 803, 810, 2022 U.S. Dist. LEXIS 201265 (N.D. Ind. Nov. 4, 2022).
- Negligent hiring against broker preempted because (1) claim had a direct relationship to broker services under the Act and subjecting such decisions to a common-law negligence standard would have significant economic effects ; and (2) safety exception did not preclude preemption because Congress required motor carriers—not brokers—to bear responsibility for motor vehicle accidents.
 - *Ye v. GlobalTranz Enters.*, 74 F.4th 453 (7th Cir. 2023)



What about freight brokers and freight forwarders?

SCOTUS denied certiorari in *Ye v. GlobalTranz Enters.*, 74 F.4th 453 (7th Cir. 2023) on January 9, 2024.



What about freight brokers and freight forwarders?

Ninth Circuit – Preempted

- “[A] claim that imposes an obligation on brokers at the point at which they arrange for transportation by motor carrier has a 'connection with' broker services.”
 - *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1024 (9th Cir. 2020)

Eleventh Circuit – Preempted

- “[T]he [Act] makes plain that [the plaintiff's] negligence claims relate to a broker's services.”
 - *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1267 (11th Cir. 2023)



What about freight brokers and freight forwarders?

Fourth Circuit – Likely preempted

- “Of the three Courts of Appeals that have considered this question, all have found these claims to be preempted by the FAAAA. The Court agrees with the reasoning in these Circuit opinions and finds that negligence and negligent hiring claims are preempted under the FAAAA . . .”
- *Mays v. Uber Freight, LLC*, No. 5:23-CV-00073 , 2024 U.S. Dist. LEXIS 15434, *8 (W.D. NC Jan. 29, 2024).



Summary Judgment & Preemption

- Trial courts may not be satisfied with the broker and/or freight forwarders' operating authority, alone, to rule on preemption.
 - Brokers with dual authority must be especially aware
- Trial courts may deny summary judgment if it finds there's a question of fact whether the broker/freight forwarder was "acting more like a motor carrier."
- Some state courts have borrowed the "broker vs. motor carrier" analysis applicable under the Carmack Amendment to find that brokers may have been acting as motor carriers, and deny summary judgment.



Removal?

Gulley v. Hansen & Adkins Auto Transport, Inc., 2023 WL 4494186 (M.D. Ala., Jul. 12, 2023)

- Claim arose from an Alabama truck accident – suit originally filed Butler County, Alabama
 - Plaintiff did not raise any federal questions on the face of the complaint.
- Defendant removed based on federal question jurisdiction and supplemental jurisdiction alleging the Plaintiff’s claims against it were completely preempted by section 14501 (c) (1) of the F4A.
- Plaintiff argued that even if the claims were subject to “ordinary” preemption, ordinary preemption does not confer federal question jurisdiction.
- The Court determined there were doubts as to whether Congress intended to the F4A to completely preempt State law negligent hiring claims against freight brokers, thereby determining that there was no complete preemption and therefore no federal question upon which to base federal question jurisdiction.



MOTOR CARRIER SAFETY SELECTION STANDARD ACT OF 2023 (Proposed)



Proposed Carrier Selection Standard - Senate

- (b) Selection standard.—
 - (1) IN GENERAL.—For any claim of negligent selection of a motor carrier against a covered entity with respect to the covered entity contracting with a covered motor carrier for the shipment of goods or household goods, **the covered entity shall be considered reasonable and prudent** in the selection of that covered motor carrier if, not later than the date of shipment and not earlier than 45 days before that date, the covered entity **verifies that the covered motor carrier**—



Proposed carrier Selection Standard - Senate

- (A) is **registered** under section 13902 of title 49, United States Code, as a motor carrier or a household goods motor carrier;
 - (B) has **at least the minimum insurance coverage required by Federal and State law;** and
 - (C) has been confirmed by the Federal Motor Carrier Safety Administration, including through a public confirmation described in subsection (c)(1), to be **in compliance with all required Federal Motor Carrier Safety Administration safety standards to operate as a motor carrier.**
-
- (2) SUNSET.—Paragraph (1) shall cease to be effective on the effective date of a regulation promulgated under subsection (d)(1).



Proposed Carrier selection Standard - Senate

- (c) Public confirmation.—The public confirmation described in paragraph (1)(C) shall include 1 of the following statements, depending on the status of the motor carrier:
- (1) “This motor carrier is confirmed to meet all operating requirements of the Federal Motor Carrier Safety Administration (FMCSA) and is authorized to operate on the nation’s roadways.”
- (2) “This motor carrier is not confirmed to operate on the nation’s roadways and fails to meet 1 or more requirements of the Federal Motor Carrier Safety Administration (FMCSA) to operate as a motor carrier.”



Proposed Carrier Selection Standard - House

- (1) SELECTION STANDARD.—For any applicable legal requirement with respect to a covered entity contracting with a covered motor carrier for the shipment of goods or household goods, the **covered entity shall be considered reasonable and prudent** in the selection of such motor carrier if the covered entity verifies, not later than the date of shipment and not earlier than 45 days before the date of shipment, **that the covered motor carrier—**



Proposed Carrier Selection Standard - House

- (A) is **registered** under section 13902 of title 49, United States Code, as a motor carrier or household goods motor carrier;
 - (B) has at least the **minimum insurance coverage required by Federal and State law**; and
 - (C) is not determined unfit to operate safely commercial motor vehicles under section 31144 of title 49, United States Code, or otherwise ordered to discontinue operations **by the Federal Motor Carrier Safety Administration (including not renewing a Department of Transportation registration number) or a State, for intrastate commerce.**
-
- (2) SUNSET.—The standard established under paragraph (1) shall sunset on the effective date of a regulation issued pursuant to subsection (c).



“PREEMPTION” OF DIRECT NEGLIGENCE CLAIMS AGAINST MOTOR CARRIERS



Direct Negligence Claims & Double Dipping

- **Vicarious Liability**
 - Employer/employee
 - Principal/agent
- **Direct (but derivative) Negligence**
 - Negligent hiring
 - Negligent training
 - Negligent supervision
 - Negligent retention
 - Negligent entrustment
 - Negligent maintenance



Direct Negligence & Double Dipping: Preemption Rule

- **“Preemption Rule”**
 - If employer/principal admits vicarious liability/course and scope, then direct negligence claims are duplicative
 - Would “be a waste of time and inflame the jury”
 - “the employer, although guilty of a separate tort, is only liable to the plaintiff for those damages caused by the employee’s negligence”
 - The employer’s liability is **indivisible** from the employee’s liability.
 - Affirmative Defense? Better description than “Preemption Rule”?
- **Exceptions:**
 - Claims for punitive damages, but must be well pleaded



Federal Courts: Partial Survey

Agree:

Tennessee: *Rector v. Owens*, 2023 WL 9891204 (E.D. Tenn., Oct. 24, 2023)

Texas: *Frazier v. U.S. Xpress, Inc.*, 2020 WL 4353175 (W.D. Tx., Jul. 29, 2020)

Colorado: *Trujillo v. May Trucking*, 2019 WL 5684213 (Co., Nov. 1, 2019)

Florida: *Tereskun-Arce v. KW International, Inc.*, 2019 WL 13245751 (M.D. Fla., Nov. 25, 2019)

New York: *Saleh v. Savage*, 2015 WL 1608839 (W.D. NY, Apr. 10, 2015)

Disagree:

Georgia: *Roberts v. AAA Cooper Transportation, Inc.*, 2021 WL 9031118 (N.D. Ga, Oct. 12, 2021)

Wyoming: *Cahalan v. May Trucking Co.*, 2013 WL 12168764 (Wy. May 13, 2013)



If you have any
questions, please contact
one of the presenters
THANK YOU!

