

# Federal preemption of claims for negligent brokering of truck loads

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# **FEDERAL PREEMPTION OF CLAIMS FOR NEGLIGENT BROKERING OF TRUCK LOADS**

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# Definitions

**Shipper** Any person who is the shipper, consignor, or consignee of a household goods shipment identified as such in the bill of lading contract. The individual shipper owns the goods being transported and pays the transportation charges

# Definitions

## **Broker:**

A person who, for compensation, arranges or offers to arrange, the transportation of cargo by an authorized carrier. A broker does not provide the actual truck transportation. A broker does not assume responsibility for the cargo and usually does not take possession of the cargo

# Definitions

## **Freight Forwarder:**

A company that arranges for truck transportation of cargo belonging to others, utilizing for-hire carriers to provide the actual truck transportation. A freight forwarder assumes responsibility for the cargo from origin to destination and usually takes possession of the cargo at some point during the transportation. Freight forwarders typically assemble and consolidate less-than-truckload shipments into truckload shipments at origin, and disassemble and deliver shipments at destination.

# Definitions

## Motor Carrier

A company that provides truck transportation.

Either a **Private Carrier**, that transports its own cargo, or a **For-Hire Carrier**, a trucking company that is paid to transport cargo belonging to others.



# Negligent Hiring of Motor Carrier by Broker

Courts have generally recognized a duty to use reasonable care in the selection of a motor carrier, and a claim for negligent hiring, and a claim for negligent hiring based on a breach of that duty. These claims frequently rely on factors such as the motor carrier's poor CSA (Compliance, Safety, Accountability) scores, accident history, deficiencies in the Driver Qualification file for the involved driver and/or even fleet-wide, inadequate safety training programs, poor fleet maintenance practices, insurance non-renewals, inexperience, willingness to conduct business at cut rates, etc.

# The Federal Aviation Administration Authorization Act (“FAAAA”), 49 U.S.C. §14502: A little history

In 1978, Congress significantly deregulated the airline industry based on its determination that greater competition would favor better service and lower fares. It enacted the Airline Deregulation Act of 1978 in order to ensure that the States would not undo its deregulatory efforts through their own legislation. The statute provided that , “no State .. Shall enforce any law ... relating to rates, routes or services of any air carrier”. See, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed. 2d 157 (1992) .



# The Federal Aviation Administration Authorization Act (“FAAAA”), 49 U.S.C. §14502: A little history

Congress similarly deregulated trucking in 1980 in the Motor Carrier Act of 1980. In 1994, it protected its deregulatory efforts against State action in the Federal Aviation Administration Authorization Act of 1994. Mirroring the Airline Deregulation Act, the FAAAA provided that “A State ... may not enact or enforce a law... related to a price, route or service of any motor carrier ... with respect to the transportation of property”.

# The Federal Aviation Administration Authorization Act (“FAAAA”), 49 U.S.C. §14502(c)(1)

## Motor Carriers of Property.-

(1) General rule.- 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.

# Explicit statutory exceptions to preemption

1. Highway route controls
2. Limitations on size and weight of motor vehicles
3. Limitations and restrictions based on hazardous nature of cargo
4. State minimum financial responsibility requirements for motor vehicles
5. Transportation of household goods
6. Regulation of tow trucks operating without the owners' authorization or consent
7. Not applicable in the State of Hawaii

# Explicit statutory exceptions to preemption

And the big exception ... The  
FAAAA,

“...shall not restrict the safety  
authority of a State with respect  
to motor vehicles”



# The Safety Exception : 9th Circuit view

*Miller v. C.H. Robinson Worldwide, Inc.*, 976 F. 3d 1016 (9<sup>th</sup> Cir. 2020). “Historically, common law liability has formed the bedrock of State regulation, and common-law tort claims have been described as ‘a critical component of the States’ traditional ability to protect the health and safety of its citizens.” *Id.* At 1026, citing, *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 544, 112 S.Ct. 2608. 120 L.Ed.2d 407 (1992).

# The 7<sup>th</sup> and 11<sup>th</sup> Circuits Views on Preemption

- Is there direct link between the State law and motor vehicle safety?
- In *Aspen Amer. Inc. Co.v. Landstar Ranger, Inc.* , 65 F. 4<sup>th</sup> 1261 (11<sup>th</sup> Cir. 2023) , the Court found the “Safety Exception” did not apply to theft of cargo by impersonation.
- The thief posed as a vetted motor carrier from the defendant broker’s approved list. The broker failed to follow its own protocols verifying identity. However, such negligence did not affect the use and operation of motor vehicles on the roadways, and thus did not fall within the Safety Exception

# *Ye v. GlobalTranz Enterprises, Inc.*, 74 F. 4<sup>th</sup> 453 (7<sup>th</sup> Cir. 2023)

Wrongful death claim against a broker for negligence in its selection of the motor carrier had no “direct link” with motor vehicle safety, and thus was not within the Safety Exception.

“Absent unusual circumstances, the relationship between brokers and motor vehicle safety will be indirect, at most. No better example than Ye's complaint. She alleged that GlobalTranz was "negligent in selecting Global Sunrise" as the motor carrier and that Global Sunrise was the one "negligent in its entrustment of a tractor-trailer" to an unsafe driver. Ye's allegations mirror practical realities: GlobalTranz does not own or operate motor vehicles like Global Sunrise does. Seeing the connection between GlobalTranz as a broker and motor vehicle safety requires an extra link to connect the alleged chain of events: GlobalTranz's negligent hiring of Global Sunrise resulted in Global Sunrise's negligent entrustment of a motor vehicle to a negligent driver who, in turn, caused a collision that resulted in Shawn Lin's death.

In our view, this additional link goes a bridge too far to bring Ye's negligent hiring claim against GlobalTranz within the Act's safety exception in [§ 14501\(c\)\(2\)\(A\)](#).”

# Other Parties Protected by Preemption

**Shippers:** See *Creagan v. Wal-Mart Transp. LLC*, (N.D. OH, 2018):

“Although Wal-Mart is a shipper rather than a broker, the negligent hiring claim against Wal-Mart stems entirely from Kirsch's broker services. Because the claim against Wal-Mart indirectly attempts to regulate broker services, it must be preempted as well. ”



# Recent Cases Upholding Preemption

## 4<sup>th</sup> Circuit

*Fueling v. S&J Logistics LLC*, 2024 U.S. Dist. LEXIS 207892 (D.S.C., Nov. 15, 2024)

*PC Wireless LLC v. Capacity Sols*, 2024 U.S. Dist. LEXIS 105480 (W.D.N.C. June 13, 2024)

*Mays v. Uber Freight LLC*, 2024 U.S. Dist. LEXIS 15434 (W.D. N.C. , January 27, 2024)

## 5<sup>th</sup> Circuit

*Hambrey v. Wilson*, 2024 U.S. Dist. LEXIS 15434 (E.D. TX.)

*Morales v. OK Trans Inc.*, 2024 U.S. Dist. LEXIS (S.D. TX. )

*Gauthier v. Hard to Stop LLC*, 2022 U.S. Dist. LEXIS (S.D. GA.)

# Recent Cases Upholding Preemption

## 6<sup>th</sup> Circuit

*Cox v. Total Quality Logistics, Inc.*, 2024 U.S. Dist. LEXIS 104456 (W.D. OH).

*Creagan v. Walmart Transp.*, 354 F. Supp. 3d 808(M.D. OH. 2018).

## 10<sup>th</sup> Cir.

*Schriner v. Gerard*, 2024 U.S. Dist. LEXIS 145154 (W.D. OK).

## Third Circuit - Unsettled

*Lee v. Golf Transp., Inc.*, 2023 U.S. Dist. LEXIS 200143 (M.D. PA)( finding preemption)

But see also :

*Ciotola v. Star Transp. & Trucking LLC*, 481 F. Supp. 3d 375 (M.D. PA 2020)(rejecting preemption based on the safety exception)

# Shippers

See also *HMD Am, Inc. v. Q1*, 2024 U.S. Dist. LEXIS 7369 (S.D. FL.); *Lee v. Werner Enterprises, Inc.*, 2022 U.S. Dist. LEXIS 200848 (W.D. OH).

Contra, *Adames v. May Furniture, Inc.*, 2019 U.S. Dist. LEXIS 206068 (M.D. PA)(Magistrate Judge's recommendation)

To the extent that other courts have interpreted the FAAAA's preemption provisions to apply to shippers, *Creagan v. Wal-Mart Transp., LLC*, 354 F. Supp. 3d 808, 813 n. 6 (N.D. Ohio 2018), we disagree. We note that the FAAAA is explicit in the entities covered by preemption. While the Supreme Court has dictated that the FAAAA's provisions should be construed broadly, we reiterate the notion that "the breadth of the words 'related to' does not mean the sky is the limit." *Krauss v. IRIS USA, Inc.*, 2018 U.S. Dist. LEXIS 74922, (E.D. Pa. 2018) (quoting *Dan's City Used Cars, Inc.*, 569 U.S. at 260) (quotation marks omitted). We base our discussion on the language of the FAAAA itself, which applies to a group of three discreet and clearly defined groups—motor carriers, brokers, and freight forwarders. 49 U.S.C. § 14501(c)(1). Reading the FAAAA's clear directive that these three groups are the only entities eligible for preemption under the statute, we conclude that May Furniture's status as a shipper renders it ineligible for the statute's preemption provisions. May Furniture was simply too far removed from this transaction to have any effect on the "price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1).

# Best Practices

1. Identify the theory of liability.
2. Be prepared to confront different descriptions of the broker in various documents of carriage such as the Bill of Lading.
3. Remove to U.S. District Court based on Subject Matter Jurisdiction over a question of Federal law.
4. Motion to Dismiss under F.R.C.P. 12(b)(6)?
5. If no 12(b)(6) motion, assert Preemption as an affirmative defense.
6. Posture for Summary Judgment

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# Questions?

