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IN THIS ISSUE

Federal law and Congress' intent for uniformity may supersede state laws. As a transportation lawyer the constitutionally empowered doctrine of "preemption" can oftentimes work to benefit your client by eliminating conflicting state laws and common law theories in your case. This article discusses a spectrum of issues surrounding ground rules for invoking federal preemption.

A Primer on Preemption

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As a transportation trial lawyer an important legal principle to be aware of, because it may work to the benefit of your clients, is the federal law of “preemption”. Federal law preempts state law in those situations where Congress has determined the area of law to be unique in that the application of law should be standard across the entire country. For example, preemption came into issue when the Carmack Amendment was developed, because Congress believed it was necessary for all the states to impose the same law as to freight damages that occur during interstate commerce. The Carmack Amendment is the sole and exclusive remedy to shippers for damages to goods transported through interstate commerce. The preemption doctrine also applies to cases filed under state law legal theories, when that area of the law is subject only to federal law and regulation. Preemption has been employed to establish federal question jurisdiction for purposes of removal. In Desiree Luccio and Reed Frerichs v. UPS Co., 2017 WL 412126 (S. D. Fla. January 31, 2017) defendant UPS removed this state law case to federal court claiming that it was preempted under the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"). There plaintiff shipped cryo-preserved embryos “intrastate” that were allegedly mishandled and damaged during their transportation to a storage facility. The court permitted removal based on FAAAA and preempted the plaintiff's

negligence claims to support federal jurisdiction. Remand was denied on the basis that the FAAAA applies to both intra- and interstate shipments.¹ Preemption has been applied even in personal injury cases. For example in Centouri v. United Parcel Service, Inc., 2017 WL 1194497 (W. D. Wash. March 30, 2017) a homeowner brought a negligence action against UPS for personal injuries incurred moving 3 packages misdelivered to his home. One of his theories of negligence called for UPS to secure his consent and the court refused this on the basis that it would dramatically alter delivery services to and from various markets at various times. That theory of negligence was preempted while recognizing “the compensatory purpose of tort law does not conflict with Congress’ intent to preempt state trucking regulation.”² The decision in the Southern District of Florida in Sanchez v. UPS, 2019 U.S. Dist., LEXIS 195140, expanded Carmack preemption. The plaintiff ordered a glass lamp that was transported and delivered through interstate commerce, and suffered a hand laceration from broken glass while opening the package. The court stated that it did not make any difference whether Sanchez alleged a bodily injury rather than an injury to goods, all claimed injuries occurred due to damage to the goods and therefore the plaintiff's state law claims were held by the court to be preempted by the Carmack Amendment. Keep in mind that many courts, however,

¹ But see: Cathie RAAF v. UPS Ground Freight, Inc., 2018 WL 4609935 (D. Oregon September 25, 2018) (FAAAA does not preempt all state law negligence claims for damage to goods; removal denied.)

² But see: Muzzarelli v. UPS, 2017 WL 2786456 (C.D. Illinois, June 27, 2017) (both FAAAA and Carmack preemption was denied where Plaintiff tripped over package and sued in negligence).

have found that traditional tort law and personal injury claims tend to be “to tenuously related to price, route or service” which is required to trigger preemption.

More recently interstate truckers have been subject to state regulatory schemes covering a number of issues. Interstate motor carriers may need to comply with varying regulations imposed by states such that each time a trucker crosses a state line he is imposed with new regulations. States have legislated efforts to regulate workplace standards, driver classifications, meal and rest break requirements and many others. For example California politicians with the backing of unions have passed legislation commonly referred to as AB5 which sets forth a test for determining whether truckers are employees or independent contractors. This legislation essentially requires that the truckers are presumed employees unless they meet a very strict test. The net result is that companies complain that they will be prohibited from contracting with independent truckers, unless the driver was performing “work outside the usual course of the hiring entity’s business.” See: California Trucking Association v. Becerra, 2020 WL 248993 (C.D. Cal. January 16, 2020) and 2020 WL 620287 (S.D. Cal. February 10, 2020) As of the date of this paper a preliminary injunction was granted in favor of the California Trucking Association and independent truckers, arguing that California has encroached on Congress's territory by eliminating a motor carrier's choice to use independent contractor drivers which as we all know in the transportation industry, is a choice at the

very heart of interstate trucking for those who operate their own independent business as owner operators. See and contrast: Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), Valdez v. CSX Intermodal Terminals, Inc., 2019 WL 1975460 (N.D. Cal. March 15, 2019); Bedoya v. American Eagle Express, Inc., 914 F.3d 812 (3rd Cir. 2019) (class action claiming misapplication of New Jersey Wage and Hour Law). In addition to attacking the truckers’ rights as independent contractors, states have enacted legislation that affect meal and rest rules. Industry advocates opine that compliance with these state regulations would have a detrimental impact on independent truckers and trucking companies resulting in delayed response times, increased costs, a complexity of diverse rules and that the costs associated would be ultimately pushed to the consumer. State governments and unions promote these laws as “worker protection laws”. See: Dilts v. Penske Logistics, LLC, 769 F.3d 637 (9th Cir. 2014) (holding California’s meal and rest break laws were not preempted by the FAAAA).

Having laid out a spectrum of issues involving this principle, the following are ground rules for invoking federal preemption on behalf of your transportation clients.

The Supremacy Clause found in Article VI, clause 2 of the U.S. Constitution forms the basis for preemption of state law:

This Constitution, and the Laws of the United States which shall be made in

Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Preemption of state law occurs when Congress, in enacting a federal statute, (1) expresses a clear intent to pre-empt state law, (2) when there is outright or actual conflict between federal and state law, (3) when there is implicit in federal law a barrier to state regulation, (4) where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, or (5) where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. Louisiana Public Service Com'n v. F.C.C., 476 U.S. 355, 368-69 (1986).

The FAAAA prevents a State from enacting or enforcing “a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.” 49 U.S.C. § 14501(c)(1). When creating this federal preemption, Congress determined that “maximum reliance on competitive market forces” would best further “efficiency, innovation, and low prices” as well as “variety [and] quality.” Therefore, Congress wanted to ensure that States would not undo federal deregulation with regulation of

their own. Morales v. Trans World Airlines, Inc. 504 U.S. 374, 378 (1992).

The only exceptions to the preemptive force of the FAAAA are the following: the FAAAA shall not (1) “restrict the safety regulatory authority of a State with respect to motor vehicles,” (2) “the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo,” or (3) “the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.” Id. at § 14501(c)(2)(A). The exceptions also include the intrastate transportation of household goods, the regulation of tow truck operations, and uniform cargo rules/antitrust immunity. Id. at § 14501(c)(2)(B)-(C),(c)(3).

Congress' overarching goal in passing the FAAAA was to “ensure transportation rates, routes, and services that reflect ‘maximum reliance on competitive market forces,’ thereby stimulating ‘efficiency, innovation, and low prices,’ as well as ‘variety’ and ‘quality.’” Rowe v. New Hampshire Motor Transport Ass'n, 552 U.S. 364, 371 (2008).

Congress took the exact same preemption language from the Airline Deregulation Act (ADA) of 1978 and placed it in the FAAAA. Id. at 370. “[W]hen judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its

judicial interpretations as well.” Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 85 (2006). The key phrase in determining whether a state law is preempted by the ADA and now the FAAAA is “relating to” and its ordinary meaning “is a broad one” and thus “express[es] a broad pre-emptive purpose.” Morales, 504 U.S. at 383.

In Rowe, the U.S. Supreme Court held that the FAAAA preempts state law when (1) state enforcement actions have a connection with, or reference to, carrier rates, routes, or services; (2) pre-emption may occur even if a state law’s effect on rates, routes, or services is only indirect; (3) in respect to pre-emption, it makes no difference whether a state law is consistent or inconsistent with federal regulation; and (4) pre-emption occurs at least where states laws have a significant impact related to Congress’ deregulatory and pre-emption-related objectives. Rowe, 552 U.S. at 370-71. The pre-emption test to be applied is whether the state law rule or regulation directly or indirectly effects or relates to rates, routes or service. The U.S. Supreme Court severely limited the application of state laws only if the law has a “tenuous, remote, or peripheral” effect. Id. at 371. The intent of preemption under the FAAAA is to avoid a “patchwork of state service-determining laws, rules, and regulations” inconsistent with Congress’ major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace. Id. at 373.

State law is preempted if it has “the force and effect of law related to a price, route, or service of any motor carrier.” 49 U.S.C. § 14501(c)(1). A “deviation” of a motor carrier’s route for meal and rest breaks for example may have an effect on the route of a motor carrier because it directly relates to and interferes with the frequency and scheduling of transportation. This interference arguably affects the competitive market forces in the industry which directly conflicts with Congress’ intent in enacting the FAAAA to promote a competitive marketplace.

The broad language of the FAAAA occupies the entire field of the regulation of motor carriers with respect to the transportation of property while providing only limited exceptions to the States. Louisiana Public Service Com’n, 476 U.S. at 368-69; Morales, 504 U.S. at 383-84 ; 49 U.S.C. § 14501(c).

If multiple interpretations of the FAAAA are allowed to stand, motor carriers or independent truckers would then need to know the separate rules and regulatory laws of every State on their routes before crossing state lines in order to comply with state law. A direct interference in the free flow of goods along our state highways. If lower courts are allowed to interpret the FAAAA a certain way depending on the individual state law, every State will be able to seek an interpretation of its own state law as it applies to the FAAAA. This is contrary to the purpose and intent of the U.S. Congress.

Multiple interpretations of the FAAAA would open up a floodgate of lawsuits against the

trucking industry as individual motor carriers will be subject to several interpretations of the FAAAA and thus exposed to multiple violations of individual state laws all depending on which state lines have been crossed on a particular route. A patchwork of state laws amounts to an obstacle to the accomplishment and execution of the full objectives of Congress in passing the FAAAA. See Louisiana Public Service Com'n, 476 U.S. at 368-69; Rowe, 552 U.S. at 370-71; U.S.C. § 14501(c). Inconsistent applications of the FAAAA on a state by state basis directly affects the price, routes, and services of the trucking industry by imposing longer travel times because an individual trucker would have to stop to comply with, for example, meal and rest break laws along the way. Motor carriers can be subject to increased risks that a driver is unable to timely take mandatory breaks for example due to route conditions because there may not be a safe place to stop or pull over thereby exposing the motor carrier to liability.

Finally, given the COVID-19 pandemic and the risks associated with its spread, there are Carmack Amendment preemption cases where shippers have claimed personal injury due to transmission of infection. York v. Day Transfer Company, 525 F. Supp. 2d 289 (D.C. R.I. 2007), (negligence claims for physical pain and suffering due to mold ingestion from delivered household goods); Glass v. Crimmins Transfer Co., 299 F. Supp. 2d 878 (C.D. Ill. 2004) (alleged ingestion of mold, mildew and fungus); Tayloe v. Kachina Moving & Storage, Inc., 16 F. Supp. 2d 1123 (D. Ariz. 1998) (personal injury due to mold contamination). Preemption and dismissals

of state common law personal injury claims for damages were granted. Carmack preemption covers “nearly all damages arising out of the transportation and claims process” regardless of whether the alleged harm is to the person or property.” York at note 20.

CONCLUSION

The legal effect of the application of the principle of “preemption” is dismissal of common law or state law claims and treatment based upon any applicable federal statute or federal law standards. Federal preemption should be employed for the protection of your transportation clients’ rights by means of the ADA, FAAAA and Carmack Amendment.

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