

District Court Recognizes that State Common Law Claims against Shippers and Freight Brokers are Preempted by the FAAAA

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PRACTICE AREAS

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The liability that attaches to commercial freight brokers is a contentious topic in trucking and commercial transportation law. Injured parties often attempt to assert state law negligence claims against freight brokers to “deepen the pot” of available insurance funds in claims involving severe injuries/death. However, in *Lee v. Werner Enterprises, Inc.*, (N.D. Ohio 2022), the district court recently determined state common law claims are preempted under the Federal Aviation Authorization Administration Act (“FAAAA”) and must be dismissed as a result.

The FAAAA broadly preempts any “[state] law, regulation, or other provision” that is “related to a price, route, or service of any motor carrier * * * or * * * broker.” 49 U.S.C. 14501(c)(1). Despite the clear and unequivocal preemption, many injured parties attempt to argue state common law claims fall within the “safety exception” of the FAAAA; therefore, preemption does not apply. The “safety exception” provides that the preemption provision does not “restrict” the “safety regulatory authority of a State with respect to motor vehicles.” 49 U.S.C. 14501(c)(2)(A).

In *Lee*, Plaintiff Sherry Lee sustained severe personal injuries as a result of a trucking accident. Following the accident, Mr. and Mrs. Lee asserted a variety of state law claims (including negligence, vicarious liability, and loss of consortium) against multiple parties, including Dorin Braga (the truck driver), Hot Shot Expedited, Inc. (Braga’s employer and owner of the truck), Werner Enterprises, Inc., (the owner of the truck’s trailer), Target Corporation (shipper of the goods carried on the truck), and Lipsey Logistics Worldwide, LLC (the shipping broker which arranged the goods’ transport).

Both Lipsey Logistics Worldwide and Target moved for dismissal on the basis that all of the Lees’ claims were preempted under the FAAAA. The Lees argued their claims were not preempted by the FAAAA and, even if they were, said claims fell within the bounds of the “safety exception” such that the preemption

did not apply. Along that line, the Lees argued the preemption provisions of the FAAAA do not apply to state common law claims. They also argued their claims were not sufficiently “related to a price, route, or service” as is required by the preemption provision. The court summarily rejected the Lee's position, holding that the preemption provisions of the FAAAA apply to state common law claims and that the claims asserted by the Lees arises directly from Lipsey and Target's services. On this basis, the court held the Lee's claims “fall squarely within the preemption of the FAAAA.”

The court went on to hold that the “safety exception” did not apply to save the Lees' claims from preemption. In so holding, the court recognized the plain meaning of “safety and regulatory authority of a State” does not support the inclusion of private tort claims. Likewise, if the safety exception preserved all claims related to motor vehicles as the Lees advocated, all preempted claims would then be “saved” by the exception. Importantly, the court recognized that the FAAAA's preemption provision protects precisely parties such as shippers and brokers, who did not have direct involvement in the accident at issue.

Ultimately, the court determined all of the Lees' claims against Lipsey and Target were preempted by the FAAAA and not protected by the safety exception. On this basis, all claims against both parties were dismissed.

Notably, this decision contradicts the 2020 decision from the 9th Circuit Court of Appeals in the case of *Miller v. C. H. Robinson Worldwide, Inc.* In *Miller*, the court recognized that claims against a broker fall within the preemption provisions of the FAAAA, but determined the safety exception applied such that the claims could proceed.

If you would like a copy of this decision or have any other questions with respect to trucking & commercial liability, please contact one of our Trucking Liability Practice Group lawyers.