

InterConnect FLASH! No. 33 – Bad Facts May Still Be Educational Tools

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Stranger things have happened but an unusual series of events involving the services of a towing company may provide the transportation industry some insight into the breadth of the F4A preemption. In *Dan's City Used Cars, Inc. v. Pelkey*, the U.S. Supreme Court picked apart the pieces and parts of the law to determine what exactly would constitute preemption, which may give state and federal judges some guidance in pending cases.

Pelkey's car was legally towed from his apartment lot, but he was unaware of the towing due to illness and hospitalization. The towing company notified Pelkey that it had towed and stored his car, but the notification was returned so an auction was scheduled. Before the auction, Pelkey attempted to pay all charges owed and reclaim the car. However, the towing company proceeded with the sale and when it received no bids, it traded the car to a third party. Pelkey sued, alleging, among other charges, violations of New Hampshire's requirements for disposal of stored vehicles. The New Hampshire Superior Court ruled that Pelkey's claims were preempted by F4A, but the state Supreme Court reversed. The case was then appealed to the U.S. Supreme Court, which, quite interestingly, accepted the case for review.

The U.S. Supreme Court focused on F4A's language which preempts state laws related to a motor carrier's "price, route, or service" concerning the "transportation of property."

The Court opined that "transportation" does include various services which relate to the movement of property such as handling and temporary storage en route to a final destination. However, in this case Pelkey's claims did not concern the movement of his vehicle but rather actions which occurred after the movement, when the car was delivered and stored. Therefore, it reasoned that the towing company's storage is unrelated to "transportation" and the claim falls outside the F4A preemption. Nor did the Court find that the towing company's "services" as a motor carrier fall into the preemption. Their "service" was the towing of Pelkey's car, which did involve the movement of property but was completed many months before the disposal of his car, upon which Pelkey's claims are based.

The Court's careful parsing of the meaning of "transportation" and "services" under F4A may give some guidance to Judge Casper in the Massachusetts Delivery Association case ("MDA Case") concerning the F4A/Section 148B issue we discussed in the April 2013 Flash. And California courts can look to the Court's piece-part approach for guidance on issues such as meal rest breaks and worker classification as they relate to "transportation" or "services" of a motor carrier and movement of property.

This may also provide signals as to the Court's upcoming ruling on

American Trucking Associations, Inc. v. Los Angeles (“ATA Case”). The Market Participant Exemption and other arguments set forth in the April 16 oral arguments before the Court are beyond the scope of this Flash. However, we may be able to catch a glimpse of the Court’s internal deliberations from the *Pelkey* ruling’s treatment of services it considered to fall outside of the definition of “services” of the motor carrier and “transportation” in the movement of property. It will be quite interesting to see how this line of thinking translates to the Port’s concession agreements which include truck maintenance, off-street parking and placards.

We will be carefully watching both the MDA Case and ATA Case in the months ahead to see if and how these rulings dovetail with or differ from the *Pelkey* decision. Stay tuned and we will bring you more insight as the cases unfold. And of course, should you have questions on how this may affect your business, give us a call at Benesch and we would be happy to assist.

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