NEWSLETTERS

“It Was A Very Good Year” (For Freight Brokers)

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Frank Sinatra certainly was not thinking about freight brokers when singing this Grammy-winning song back in 1966. However, the title of the song definitely resonates for freight brokers in 2018. In addition to capitalizing on the robust 2018 economy, freight brokers now also have the benefit of two powerful court decisions issued in 2018 that use federal law to turn the tables on aggressive plaintiffs’ personal injury lawyers.

First, in *Volkova v. C.H. Robinson Company*,[1] a freight broker retained a motor carrier that made a U-turn in the middle of a highway, causing a catastrophic, fatal accident with the driver of another tractor-trailer on the highway. The plaintiff commenced a wrongful death action against the freight broker, alleging that the broker had negligently hired the motor carrier and its driver. The freight broker defended the action by arguing that a federal law known as the Federal Aviation Administration Authorization Act (F4A) preempted the plaintiff’s claim for negligent selection.

The district court judge agreed with the freight broker that the F4A preempted the plaintiff’s wrongful death claim as a matter of law, explaining:

A straightforward reading of Plaintiff’s allegations demonstrates that the negligent hiring claims relate to the core service provided by [the broker]-hiring motor carriers to transport shipments. Further, in alleging that [the broker] has failed to adequately and properly perform its primary service, the negligent hiring claim directly implicates how [the broker] performs its central function of hiring motor carriers, which involves the transportation of property. Therefore, because enforcement of the claim would have a significant economic impact on the services [the broker] provides, it is preempted.

Id. at *3 (internal citations omitted). In essence, the federal court agreed that state negligence laws that would have a direct and substantial impact on the way in which freight brokers hire and oversee motor carriers would hinder the primary objective of the F4A.

Similarly, only a few months after the decision in *Volkova*, another federal district court reached the same conclusion in a personal injury action brought against a transportation broker in Pennsylvania. In *Kraus v. Iris USA, Inc.*,[2] a shipper sold a load of Legos to a charitable organization and retained a freight broker to arrange for the transportation of the load to the buyer. The freight broker, in turn, retained a motor carrier to transport the load. During unloading at destination, a pallet cracked and injured a volunteer for the charity.

The volunteer sued the freight broker for negligence. Specifically, the plaintiff alleged that the freight broker was negligent in vetting the motor carrier in question and should have used a “heightened

and elaborate" process for selecting appropriate motor carriers. The freight broker, in response, argued that the F4A preempted the plaintiff's personal injury claim. The federal court agreed with the freight broker and held that the F4A preempted all personal injury claims for negligence brought against freight brokers because such claims "go to the core of what it means to be a careful broker." The court observed that its conclusion was a matter of common sense:

Indeed, carefully selecting a freight carrier is not simply 'close' to [the broker's] core service. It *is* the core service.

(emphasis in original). Accordingly, the court found that requiring a heightened selection process would necessarily impact directly upon the broker's services and prices and, therefore, the plaintiff's personal injury claims were entirely preempted by the F4A.

Recent, well-reasoned decisions like *Volkova* and *Kraus* apply the F4A to personal injury claims in the very same way that other courts have long applied the F4A to claims for loss of or damage to freight. After all, a negligent selection claim against a broker for a personal injury encroaches on the broker's service in the very same way that a claim for injury to freight encroaches upon a broker's service. See, e.g., *Georgia Nut Company v. C.H Robinson Company*[3](finding that common law negligent hiring claim against broker was preempted because such claim would interfere with preemption-related objectives of the F4A), *Alpine Fresh, Inc. v. Jala Trucking Corp.*[4]("[T]he Court concludes that the express prohibition against state regulation of 'intrastate services of any ... broker,' and 'related to a price, route or serve of any ... broker,' precludes the claims at issue here . . . ."); *Delta Leasing, LLC v. American Fast Freight*[5](preempting state law negligence claims against a freight broker).

The F4A is fundamentally aimed at ensuring that freight brokers are able to perform their services without undue interference from state or local governments. The freight broker industry cannot thrive if it is subject to an inconsistent array of common-law mandates imposed by 50 different states (or judges within those states) dictating, shaping and constraining in a multitude of ways the services that freight brokers provide. Permitting such actions, and even permitting the mere threat of such actions, has the very real effect of compelling brokers to provide costly and time-consuming (not to mention wholly impractical) additional investigative and vetting services as part of their principal business of selecting motor carriers. Inevitably, doing so also increases a broker's prices.

In short, although freight brokers have been tagged with multimillion-dollar judgments in personal injury lawsuits in recent years, they can now take some solace that courts in 2018 have increasingly recognized that state-law negligent-hiring claims plainly and significantly frustrate the federal objectives of the F4A. Hopefully, this encouraging trend will continue in 2019.

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[1] Case No. 16 C 1883, 2018 WL 741441 (D.C. N.D. Ill. 2018).

[2] Case No. 17-778 (E.D. Pa. 2018).

[3] Case No. 17 C 3018, 2017 WL 4864857, at *4 (N.D. Ill. Oct. 26, 2017).

[4] 181 F. Supp. 3d 250, 257 (D.N.J. 2016).

[5] Alaska Superior Court, Case No. 3AN-07-10226 (2007).