

Preemption, Conversion and Limitation (of Liability)-Oh My! Eighth Circuit Affirms \$100 Liability Limit for FedEx's Loss of \$250,000 Watch: Key Takeaways for Shippers and Carriers

Pennsylvania Insurance Co. v. Federal Express Corp., Nos. 25-1777 & 25-1891 (8th Cir. Sept. 3, 2026)

OCTOBER 14, 2026

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In a decision filed on September 3, 2026, the United States Court of Appeals for the Eighth Circuit addressed several issues of recurring importance to participants in the transportation and logistics industry-including the preemptive scope of the Airline Deregulation Act (ADA), the conversion exception to the released value doctrine, and the enforceability of a carrier's contractual limitation of liability. While the court acknowledged that the issues presented were well established in the law, the opinion serves as a useful refresher on principles that shippers, carriers and intermediaries routinely encounter in practice.

Background

The case arose from the loss of a luxury watch valued at \$250,000 during transit by Federal Express. Sonia Breslow purchased the watch from Jacob & Company, which was manufactured in Switzerland and delivered to Jacob & Company's New York office. The watch was shipped via courier to the Iron Horse Golf Club in Montana, and the Club was then tasked with forwarding the shipment to Breslow in Arizona via FedEx Priority Overnight service.

The Club maintained a FedEx account and created a shipping label online, but did not declare a value for the package. During transit, the package traveled by air from Montana to Memphis, then to Phoenix, and finally by truck to a FedEx facility in Scottsdale. Video evidence showed that at the Scottsdale facility, a FedEx employee removed one box from the yellow shipping bag and placed it on a conveyor belt. The box and bag then moved to an area not covered by video surveillance. When Breslow ultimately received the package, the watch was missing.

Pennsylvania Insurance Company, as subrogee of the Breslows after paying a \$250,000 insurance claim, sued FedEx alleging negligence, conversion, unjust enrichment, breach of contract and civil theft. The district court dismissed several claims as preempted or failing as a matter of law, and after a bench trial on the breach of contract claim, entered judgment in favor of the insurer in the amount of just \$100. Both parties appealed, and the Eighth Circuit affirmed.

Preemption of State Law Claims Under the Airline Deregulation Act

The ADA's express preemption clause provides that a state "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 an air carrier." [49 U.S.C. § 41713(b)(1).] The key phrase "related to" has been interpreted broadly to encompass state laws "having a connection with or reference to airline 'rates, routes, or services.'" [(*Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992)).] The clause preempts not only laws specifically addressed to the airline industry but also laws of general applicability that indirectly affect an air carrier's rates, routes or services.

The Eighth Circuit adopted a broad construction of the term "service," joining the First, Second, Fifth and Sixth Circuits in defining it as the "bargained-for or anticipated provision of labor from one party to another" and the "contractual arrangement between the airline and the user of the service." This resolved a question the court had previously left open in *Watson v. Air Methods Corp.*, 870 F.3d 812 (8th Cir. 2017) (en banc), where the court had merely assumed that broader definition for the sake of analysis.

Applying this standard, the court held that Pennsylvania Insurance's claims of negligence, unjust enrichment and civil theft were preempted. The court reasoned that the insurer's claims centered on FedEx's handling and transportation of packages-core services of the company-and that requiring FedEx to modify its package handling procedures based on varying state-law duties of care would have a "significant impact" on the company's services. As the court observed, such a result "would create the very patchwork of state-based regulations that ADA preemption is meant to preclude."

Takeaway: Shippers and their insurers should be aware that state common law tort claims against air carriers arising from lost or damaged shipments are likely preempted by the ADA. Breach of contract remains the primary viable cause of action, but as discussed below, recovery may be severely limited by the carrier's contractual terms.

The Conversion Exception to the Released Value Doctrine

Under the federal common law "released value" doctrine, an air carrier may limit its liability for lost shipments. However, the "conversion exception" provides that if a carrier has "converted" the property-that is, "appropriated the property for its own use or gain"-public policy bars the carrier from limiting its liability.

Pennsylvania Insurance argued that FedEx converted the watch when a FedEx employee allegedly stole it at the Scottsdale facility. The Eighth Circuit rejected this argument, holding that even assuming a FedEx employee stole the watch, there was no evidence that "FedEx appropriated the property itself, or profited from its conversion." The court relied on

Kemper Insurance Cos. v. Federal Express Corp., 252 F.3d 509 (1st Cir. 2001), which held that “willful blindness to the activity of third parties (even employees) does not qualify” for the conversion exception. As the Ninth Circuit has stated, a carrier “may properly limit its liability where the conversion is by third parties or even by its own employees.”

Takeaway: The conversion exception to the released value doctrine is exceedingly narrow. Theft by individual employees, even if proven, will not trigger the exception unless the shipper can demonstrate that the carrier itself appropriated the property for its own use or gain. This is a high evidentiary burden.

Enforceability of Carrier Limitation of Liability

A carrier’s limitation of liability is enforceable if the carrier (1) gave the shipper reasonable notice of the limitation and (2) presented the shipper with a fair opportunity to purchase greater liability coverage.

The court found that FedEx satisfied both requirements. The Club had entered into a “Pricing Agreement” with FedEx, which incorporated the terms of the FedEx Service Guide. The Service Guide stated that “unless a higher value is declared and paid for, our liability . . . is limited to US\$100.” When the Club created the shipping label, the online interface included a checkbox offering the option to “[p]urchase a higher limit of liability from FedEx.” At the final step of the label creation process, the Club clicked “Finalize,” next to which appeared a notice accepting the FedEx Service Guide terms. The Club had negotiated the pricing agreement, maintained an account, and had used FedEx’s services on multiple occasions.

The court concluded that FedEx provided the Club with “ample notice,” and that the \$100 limitation of liability was enforceable. In so holding, the court emphasized that the shipper bore responsibility for declaring the value of the shipment to obtain higher coverage.

Takeaway: This holding underscores the critical importance for shippers of declaring the full value of high-value shipments and purchasing additional liability coverage when available. Carriers should ensure their service guides, online shipping portals, and account agreements clearly present the limitation of liability and the option to purchase greater coverage, as these mechanisms were central to the court’s analysis.

Conclusion

While the Eighth Circuit characterized the issues in *Pennsylvania Insurance Co. v. Federal Express Corp.* as well established, the opinion offers a valuable and comprehensive refresher on several principles that are critical to the day-to-day operations of shippers, carriers and logistics intermediaries. In particular, the decision reinforces that (1) state common law claims against air carriers for lost shipments are broadly preempted by the ADA; (2) the conversion exception to the released value doctrine is narrow and difficult to invoke; and (3) carriers can enforce contractual liability limitations so long as they provide fair notice and an opportunity to purchase greater coverage.

Companies involved in the transportation and logistics industry should review their shipping agreements, declared-value procedures and liability coverage in light of this decision to ensure adequate protections are in place.

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