CLIENT ALERTS & INSIGHTS

Two Out Of Three Ain't Bad: The Seventh Circuit Enters a Huge Win for the Freight Brokerage Industry

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The freight brokerage industry began humming Meat Loaf's 1977 power ballad earlier today when the U.S. Court of Appeals for the Seventh Circuit became the third federal appellate court to consider the extent to which negligence claims against freight brokers are preempted by federal law. The Seventh Circuit entered a long-anticipated and highly-favorable, unanimous decision in favor of the freight brokerage industry, holding that negligence claims against freight brokers are preempted. The Seventh Circuit joined the Eleventh Circuit in a proper reading of the scope of federal preemption, thereby making the Ninth Circuit's unfortunate decision in Miller v. C.H. Robinson now a minority position. While the Seventh Circuit's decision only governs federal courts in Illinois, Indiana, and Wisconsin, the Court's well-reasoned decision naturally provides highly persuasive authority for courts elsewhere across the country.

Factual and Procedural Background

In *Ying Ye v. GlobalTranz Enterprises, Inc.*, a shipper tendered a load to GlobalTranz Enterprises, Inc. ("GlobalTranz"), a freight broker, requesting that GlobalTranz arrange for the transportation of the load from Illinois to Texas. GlobalTranz retained an unrelated motor carrier, Global Sunrise ("Sunrise") to perform the actual transportation. While transporting the load, Sunrise was involved in a highway accident that resulted in the death of Mr. Shawn Lin. Mr. Lin's surviving spouse, Ying Ye ("Plaintiff") sued various parties, including, GlobalTranz, for wrongful death in federal district court in Illinois.

Plaintiff sued GlobalTranz under two theories. First, Plaintiff alleged that GlobalTranz was negligent in selecting and using Sunrise as the motor carrier for this load because Sunrise allegedly had "an extensive history of safety violations." Second, Plaintiff alleged that GlobalTranz was vicariously liable for Sunrise's negligence because it supposedly exercised too much control over the motor carrier.

The district court entered summary judgment in favor of GlobalTranz with respect to the vicarious liability claim, finding that Plaintiff could not establish a genuine issue of material fact with respect to the alleged "control" that GlobalTranz had supposedly exercised over Sunrise. The district court also entered judgment on the pleadings in favor of GlobalTranz with respect to Plaintiff's claim for direct negligence against GlobalTranz, finding that the claim was preempted by the Federal Aviation Administration Authorization Act (the "FAAAA").

Plaintiff appealed to the Seventh Circuit Court of Appeals with respect to the dismissal of the negligence claim only. The thrust of Plaintiff's argument on appeal was that the so-called "safety exception" to the FAAAA saves Plaintiff's negligence claim from preemption. Today, July 18, 2023,

the Seventh Circuit unanimously rejected Plaintiff's argument and affirmed the district court's decision.

The FAAAA

In 1994, as part of deregulating the motor carrier industry, Congress enacted the FAAAA. In 1995, Congress extended and expanded to freight brokers the protections created under the FAAAA. The FAAAA currently provides that a state "may not enact or enforce any law, regulation, or other provision having the force and effect of law related to a price, route, or service of any . . . broker . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). In essence, this means that federal law preempts any state's efforts to regulate a freight broker's prices or services. However, Congress also carved out certain exceptions to the scope of this broad preemption. One of these exceptions, referred to as the so-called "safety exception" provides that preemption does not apply to "the safety regulatory authority of a State with respect to motor vehicles."

In affirming the district court's dismissal of the negligence claim against GlobalTranz, the Seventh Circuit provides a comprehensive and intellectually impressive analysis of the scope of FAAAA preemption. Among many other things, the Court notes that:

- Carrier selection is at the heart of a freight broker's services. ("By its terms, [Plaintiff]'s claim strikes at the core of GlobalTranz's broker services by challenging the adequacy of care the company took-or failed to take-in hiring [] Sunrise to provide shipping services."). Therefore, Congress plainly intended to preempt claims governing a freight broker's services.
- Allowing a negligence claim against freight brokers would have a significant economic effect on the services that brokers provide. ("To avoid these costly damages payouts, GlobalTranz and other brokers would change how they conduct their services-for instance, by incurring new costs to evaluate motor carriers. Then, by changing their hiring processes, brokers would likely hire different motor carriers than they would have otherwise hired without the state negligence standards. Indeed, that is the centerpiece of [Plaintiff's] claim: that GlobalTranz should not have hired [] Sunrise.")
- The so-called "safety exception" does not save a plaintiff's negligence claim against a broker. ("In short, a common law negligence claim enforced against a broker is not a law that is 'with respect to motor vehicles.'")
- Congress' use of the term "motor vehicles" without a reference to "brokers," coupled with the absence of any reference to brokers or broker services in the various other statutory exceptions to FAAAA preemption, indicates that the "safety exception" does not apply to brokers.
- Congress failed even to reference any kind of "safety exception" in 49 U.S.C. 14501(b)(1), which expressly governs "Freight Forwarders and Brokers," again indicating that the "safety exception" does not apply to brokers.
- Congress drafted the FAAAA in such a way that Congress clearly views motor carrier safety regulation as distinct from regulation of freight brokers.

- Congress' regulation of the motor carrier industry generally uses the term "motor vehicle safety" without any reference whatsoever to brokers or broker services since, naturally, brokers do not operate vehicles or perform actual transportation.
- Federal regulation of freight brokers-to the extent that it exists-is focused on economic and commercial issues rather than safety issues. ("Its regulation of brokers instead seems to address the financial aspects of broker services, not safety.")

Finally, the Court noted that its decision "squarely aligns" with the Eleventh Circuit's recent decision in *Aspen American Insurance Co. v. Landstar Ranger, Inc*. and noted that the only other federal circuit court to consider the matter was the Ninth Circuit in *Miller v. C.H. Robinson,* which follows a near-identical fact pattern as *Ying Ye*. The Seventh Circuit provided an exemplary analysis of why the *Miller* court's reasoning was faulty.

Two out of three of the federal appellate courts that have considered the issue have now reached the proper conclusion in favor of the nation's vital freight brokerage industry. While freight brokers around the nation should celebrate the Seventh Circuit's decision, the battle over the scope of preemption and the application of the so-called "safety exception" will continue to play out across the country until the U.S. Supreme Court is ultimately presented-again-with the opportunity to resolve the matter definitively.

For more information on the topics above, please refer to this article or reach out to Marc S. Blubaugh at mblubaugh@beneschlaw.com or 614.223.9382