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First Circuit Questions Whether FAAAA Preempts Massachusetts Wage Act

In *Massachusetts Delivery Association v Coakley* (issued September 30, 2014), the First Circuit Court of Appeals reversed a district court in Massachusetts that had ruled the FAAAA (the federal law that reserves to Congress the regulation of "prices, routes and services" of the transportation of property) does not preempt the "B Prong" of the ABC test (that prong asks whether the contractor is in the same trade, profession, or occupation as the motor carrier and, if so, the contractor is an employee of the motor carrier). The district court's reasoning was that the Massachusetts ABC independent contractor test (148B) is "a generally applicable wage law" and that to find that the FAAAA preempts it "amounts to an invitation to immunize trucking from all state economic regulation." The First Circuit found that the district court "made several critical errors," including that "the district court did not sufficiently credit the broad language and legislative history of the FAAAA's express preemption provision." The First Circuit held that the FAAAA provides "Congress' directive to immunize motor carriers from state regulations that threaten to unravel Congress' purposeful deregulation in this area." The First Circuit found that 148B "clearly concerns a motor carrier's "transportation of property" and remanded to the district court to determine whether the effect of 148B was sufficient to require preemption.

The First Circuit held that the district court: (1) read the second phrase of the FAAAA "with respect to the transportation of property" too narrowly in finding that the Massachusetts harsh ABC test-based Independent Contractor Statute did not sufficiently relate to the transportation of property and (2) based on its misinterpretation of the second phrase, failed to adequately address the question of whether the statute "related to" the prices, routes, or services of the motor carrier. Importantly, the Court reached no decision on the merits of the FAAAA preemption argument, but remanded the case back to the district court to determine whether, "consistent with the principles elucidated in this opinion," the statute satisfies the broad preemption test based on the record.

Of particular note, the Court refused to accept the Massachusetts Attorney General's "sensible rubric" to exclude "background state statutes … generally applicable and not directed to a particular area of federal authority" (e.g., state labor laws) from the preemptive scope of the FAAAA. In doing so, the Court noted its disagreement with the Ninth Circuit which reached the opposite conclusion in *Dilts v. Penske Logistics, LLC* (9th Circuit). The First Circuit reasoned that the Supreme Court, in cases like *Morales v. Trans. World Airlines, Inc.* (an ADA case), has found the "related to" test to be "purposefully expansive." Accordingly, the Court noted that it "must engage with the real and logical effects of the state statute, rather than simply assigning it a label" to determine whether a state's law is preempted.

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