THE Logistics Journal

A Publication of the Transportation Intermediaries Association April 2014

Federal Preemption of State Law Claims Against Brokers

*Nathaniel Saylor, Scopelitis, Garvin, Light, Hanson & Feary, P.C. and Paul Root, Scopelitis, Garvin, Light, Hanson & Feary, P.C.**

During the past several years, it has become commonplace for motor carriers to argue that federal law preempts myriad state law causes of action ranging from personal injury claims to claims under state wage and hour laws. In effect, preemption means that a state law cause of action cannot be maintained because the state law providing the cause of action is "trumped" by federal law. Depending on the type of claim involved, the preemption defense is often successful, and the same standard relied upon by motor carriers to argue preemption is also available to property brokers and freight forwarders. This article provides an overview as to how preemption has been argued to apply in cases involving property brokers, as well as some thoughts as to whether preemption might be a viable defense in a case seeking to hold a broker or freight forwarder liable for a highway accident. For purposes of convenience, the remainder of this article will only reference brokers and not freight forwarders, but again, the standard is the same.

The primary basis for federal preemption relied upon by both motor carriers and property brokers is the Federal Aviation Administration Authorization Act ("FAAAA").

> [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 any motor carrier . . . or any motor private carrier, *broker*, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 145019(c)(1) (emphasis added). Traditionally, brokers have been liable for cargo loss and damage to the extent caused by the broker's negligence, which is a state law cause of action, and of course, in recent years, the trend has been to argue that brokers are liable for highway accidents either because the broker negligently selected the motor carrier transporting the shipment in question, or because the broker was somehow directly liable for the conduct of the motor carrier. As explained below, and perhaps a bit surprisingly, some courts have held that the FAAAA preempts negligence claims against brokers in the cargo claim context. Under that logic, it is possible, and should at least be argued, that a negligent selection claim against a broker, or a claim seeking to impose vicarious liability on a broker for

Continued on page 3

Inside

TIA® Transportation Intermediaries Association

Federal Preemption of State Law Claims Against Brokers *Continued from page 1*

the underlying carrier's conduct, is likewise preempted. What follows is an overview of some existing preemption cases as well as some thoughts as to how they might be expanded to defend claims related to accident liability.

In May of 2010, the United States District Court for the Southern District of Texas, in a case where goods were stolen in transit, dismissed negligence claims against the broker under federal preemption, stating, "49 U.S.C. § 14501 broadly preempts state law claims that would regulate interstate transportation of goods." *Huntington Operating Corp. v. Sybonney Exp., Inc.*, No. H-08-781, 2010 WL 1930087 (S.D. Tex. May 11, 2010). Just a few months later, the United States District Court for the Northern District of Texas followed the reasoning in *Huntington* and dismissed negligence claims against a broker due to federal preemption. *Chatelaine, Inc. v. Twin Modal, Inc.*, 737 F. Supp. 2d 638 (N.D. Tex. 2010). These cases were somewhat surprising in that they appeared to leave the cargo claimant no recourse except a breach of contract action, which is an expansive reading of the FAAAA.

> While no published case has yet held that a personal injury negligent selection claims against a broker are preempted by the FAAAA, one court seemed open to the idea.

A number of courts have followed *Huntington* and *Chatelaine* and dismissed negligence claims—as well as negligent selection claims (in the cargo claim context)—against brokers. In *Wise Recycling, LLC v. M2 Logistics*, a shipper sued M2 Logistics for negligence in its role as broker after a load was stolen in transit. No. 3:12-CV-4781-P, 2013 WL 1870424 (N.D. Tex. Apr. 26, 2013). The court did not analyze in great depth whether the negligence claim would impact M2 Logistics' routes, rates, and services, but instead simply cited to *Huntington* and *Chatelaine* for the proposition that such state law claims are broadly preempted by the FAAAA. In another case involving a stolen load, *Non Typical, Inc. v. Transglobal Logistics Grp. Inc.*, the Plaintiff asserted a negligence claim against the broker, Schneider Logistics International, and the court held that the claim was preempted by the FAAAA. NO. 10-C-1058, 2012 WL 1910076 (E.D. Wis. May 28, 2012). The *Non Typical* court addressed why, in its opinion, the state law claims would affect Schneider's routes, rates, and services. According to the court, the millions of dollars at stake in the negligence claims would "plainly have an economic effect on the rates [Schneider] charges and how it provides its transportation brokerage services" (quoting Schneider's brief). Finally, in *Ameriswiss Tech., LLC v. Midway Line of Illinois, Inc.*, the Plaintiff alleged a negligent selection claim against C.H. Robinson Worldwide, Inc. after a highway accident destroyed Ameriswiss' valuable cargo. 888 F. Supp. 2d 197 (D.N.H. 2012). Citing to *Huntington* and *Chatelaine*, the court held that the negligent selection claim for loss of the cargo was expressly preempted by the FAAAA without providing much analysis as to how such a claim would affect C.H. Robinson's routes, rates, and services.

The trend in favor of dismissing negligence claims against brokers on preemption grounds is not unanimous. In *Works v. Landstar Ranger*, a federal court in California held that a negligent hiring claim was not preempted by the FAAAA. No. CV 10-1383 DSF OPX, 2011 WL 9206170 (C.D. Cal. Apr. 13, 2011). After cargo was allegedly damaged in transit, the Plaintiff sued Landstar Ranger, Inc., the broker, for negligent selection and fraud in allegedly covering up the motor carrier's negligence. The court held that Plaintiff's claims were not sufficiently related to the broker's rates, routes, or services to be preempted by the FAAAA, stating, "Plaintiff's negligence and fraud claims merely seek to enforce a normal duty of care and a duty not to defraud one's customers. This has nothing to do with the service offerings-i.e., its schedules, origins, or destinations—by Landstar or the carriers with which it contracts."

While no published case has yet held that a *personal injury* negligent selection claims against a broker are preempted by the FAAAA, one court seemed open to the idea. In *Durkee v. C.H. Robinson Worldwide, Inc.*, 2010 WL 3069836 (2010), a personal injury plaintiff argued that C.H. Robinson in its role as broker "should hire only carriers who do not allow text messaging." C.H. Robinson argued that this theory of negligence should be preempted because it "seeks to force C.H. Robinson to alter the manner in which it selects carriers by imposing a state law requirement on C.H. Robinson that is not found in federal law, thereby impacting its services." *Durkee*, at *3. The court denied C.H. Robinson's motion to dismiss in this case due to a lack of a properly

developed factual record, but implied that federal preemption might apply after discovery. Regarding broker preemption, the court stated that it "need[ed] to understand how the bringing of tort claims under North Carolina law against a motor carrier and/or broker interferes or frustrates federal regulation of interstate transport of goods."

At least one court has found that negligent selection claims arising from highway accidents are not preempted. In *Owens v. Anthony*, Plaintiffs sued C.H. Robinson Worldwide, Inc. on a negligent selection theory after a highway accident with a motor carrier brokered by C.H. Robinson. No. 2-11-0033, 2011 WL 6056409 (M.D. Tenn. Dec. 6, 2011). Plaintiffs alleged that C.H. Robinson was negligent in failing to reasonably investigate the driver and transportation company involved, and C.H. Robinson argued that such claims were preempted under the FAAAA. In holding that the personal injury claims were not preempted, the court relied on an exception in the FAAAA stating that § 14501(c)(1) "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2). The court held that the negligent selection personal injury claims against C.H. Robinson "involve[d] highway safety issues" and were therefore "expressly exempted from the preemption statute." Owens, 2011 WL 6056409 at *4.

What does this all mean for broker liability? To start, a growing number of courts appear willing to consider federal preemption as a defense for brokers in the context of cargo claims. Brokers now have a line of cases to cite for the proposition that negligence claims against them should be preempted if cargo is lost, damaged, or stolen. While not all courts agree, there is ample authority supporting the position and brokers should make the argument.

However, perhaps even more important to brokers is the fact that there is now at least an argument that negligent selection claims for personal injury are likewise preempted under the FAAAA. Technically speaking, a negligent selection claim is just a state law negligence claim and as such, if negligence claims are preempted, so too should negligent selection claims. However, negligent selection claims will typically involve high damage amounts that exceed available insurance. As such, courts might be less inclined to hold such claims preempted, which could ultimately lead to a reversal of the favorable trend finding negligence claims for cargo damage preempted (this possibility is bolstered by the fact that negligence claims against motor carriers in the highway accident context are not typically held to be preempted by the FAAAA). Still, based on existing case law, brokers faced with such claims should at least consider making the argument. Lastly, it is important to point out that the FAAAA is not typically held to preempt breach of contract claims. Thus, to the extent that claims are based on alleged breach of contract (for instance, a broker's promise to indemnify against the conduct of the underlying motor carrier), the FAAAA may not provide relief.

The authors can be reached at (317) 637-1777 or at nsaylor@scopelitis.com.

FREIGHT PAYMENT INDEX

* •	TIA CS-DTP	Non TIA CS-DTP	Shippers CS-DTP
'13			
Mar.	98.3 – 29.5	96.3 – 30.2	80.4 – 38.6
Apr.	98.3 – 29.4	96.6 – 29.7	80.5 – 38.2
May	98.4 – 28.6	97.2 – 29.1	82.1 – 32.4
Jun.	98.4 – 29.4	96.6 – 29.7	79.3 – 38.4
July	98.4 – 29.4	96.5 – 29.7	79.1 – 38.0
Aug.	98.4 – 29.5	96.4 – 29.6	79.0 – 38.2
Sep.	98.3 – 29.7	96.5 – 29.7	78.1 – 38.5
Oct.	98.3 – 29.8	96.5 – 29.7	77.6 – 37.6
Nov.	98.4 – 29.6	96.5 – 29.6	76.5 – 37.4
Dec.	98.2 – 29.7	96.7 – 29.5	76.4 – 37.3
'14			
Jan.	98.1 – 29.9	96.7 – 29.6	76.2 – 37.5
Feb.	98.1 – 29.9	96.8 – 39.7	76.9 – 37.1

* TIA = Members, Non TIA = Non Member Intermediaries

• CS = Credit Score, DTP = Days-To-Pay

Since 1987, TransCredit has produced credit reports exclusive to the trucking industry. Compiling data on how freight bills are paid, they offer a widely accepted Credit Score and Days-To-Pay ™ trends that are posted on most load boards throughout the USA and Canada.