



FAAAA Preemption: Lessons from Recent Cases

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Overview

- What is FAAAAA preemption?
- Why is it important?
- Lessons from recent cases:
 - How can you use FAAAAA preemption to avoid liability?
 - How can you protect your claims from FAAAAA preemption?

*Example contract language in this presentation is for illustration purposes only.

Preemption 101

- Preemption is a legal doctrine under which **valid federal law displaces contrary state law.**
 - Federal law “shall be the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” Constitution Art. VI, cl. 3.
- How do you know what is preempted? Congressional intent.
 - Express statutory language preempting state law.
 - Implicit preemption based on statute’s purpose and structure.

FAAAA Preemption

- Under the Federal Aviation Administration Act (FAAAA), **states generally cannot impose a duty related to prices, routes, or services of carriers, brokers, or freight forwarders with respect to transportation.**
 - “[A] State . . . may not enact or enforce a 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. § 14501(c).
 - Similar provision for brokers and freight forwarders at 49 U.S.C. § 14501(b)(1).
 - Caveat: there are limited exceptions to FAAAA preemption (e.g., Hawaii intrastate authority; safety authority, etc.).
- Congressional Intent: To assure that transportation rates, routes, and services reflect **maximum reliance on competitive market forces**, thereby stimulating efficiency, innovation, variety, quality, and low prices.

Elements of FAAAA Preemption

- **State law;**
- Law is related to **prices, routes, or services of a broker, freight forwarder, or motor carrier;**
- Prices, routes, and services pertain to **transportation of property;**
- Law must have **significant impact** on whether prices, routes, or services reflect competitive market forces; and
- **No exceptions** apply.

Why is FAAAA Preemption important to you?

It **shields** brokers/carriers/freight forwarders **from liability**.

- It can leave shippers/brokers/carriers/freight forwarders **without a remedy**.
- If a broker/carrier/freight forwarder gets it wrong, it might face **unexpected damages**.

Oh, nuts, preemption!

Georgia Nut Co. v. C.H. Robinson, 2017 U.S. Dist. LEXIS 177269 (N.D. Ill. 2017)

- Georgia Nut hired CHR (broker) to arrange transportation of 42,000 lbs of almonds from California to Illinois.
- Georgia Nut directed CHR to ship the almonds directly from California to Illinois without any detours.
- No written contract.
- Motor carrier routed the shipment through Georgia.
- Seal on the trailer did not match the bill of lading, making nuts unfit for human consumption.
- Georgia Nut filed claim paperwork with CHR in July 2016 to be forwarded to insurer; CHR provided no information until Feb. 2017.
- Motor carrier went out of business in Dec. 2016.

Negligence Claims

- Negligent hiring and supervision claims are **preempted**.
 - Common-law negligence standard is a form of state law (i.e., it sets a state-imposed duty).
 - Negligent hiring and supervision claims have **significant impact on broker services**.
 - Court notes that it could impose these claims if they arose under the the parties' agreement.
- Negligent performance in submitting cargo claim to insurer is **not preempted**.
 - Court says it was **not** shown to be a service **related to transportation**, since it was not a cargo claim and occurred after delivery.

Lessons from *Georgia Nut*

- Shippers: Have a contract with your transportation provider.
 - Address hiring standards (e.g., “Broker shall select safe and qualified carriers.”).
 - Address special instructions (e.g., “The carrier shall transport the shipment directly to the destination with minimal detours.”).
 - Ideally, make the broker responsible for its carriers.
- Brokers/Carriers/FFs: Use contracts
 - Address duties concerning non-transportation services.
 - The law defines transportation services to include the following, when related to a movement: arranging for transportation, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.
 - E.g., Upon receipt of an insurance claim from Shipper, Broker will file the claim within 12 months.
 - Be wary of agreeing to a duty of care concerning transportation services, especially ambiguous duties (e.g., “Broker will select carriers with FMCSA authority” is better than “Broker will select safe and qualified carriers”).

Imposter!

Factory Mut. Ins. Co. v. One Source Logistics, LLC, 2017 U.S. Dist. LEXIS 215317 (C.D. Cal. 2017)

- Broker agreed to arrange a shipment of women's clothing valued at approx. \$371,000.
- Broker awarded the shipment to GC Logistics, a licensed and reputable carrier.
- Imposter GC Logistics picked up the shipment.
- Shipment not delivered.
- Insurer asserts negligent selection claim; Broker raises preemption defense.

Negligent Selection—Not Preempted

- Connection to prices, routes, or services is insufficient.
 - Relation to prices, routes, or services **must be more than tenuous, remote, or peripheral**.
 - **Congress did not intend to preempt generally applicable rules** that do not otherwise regulate prices, routes, or services.
 - **Duty of reasonable care** does not apply specifically to trucking industry—it **is generally applicable** to the public.
 - Although negligence claims may affect rates and services, they are **several steps removed** from prices, routes, or services.
- If preempted, **no remedy** would be available.
 - Carmack does not apply to the broker and the motor carrier is unknown.

Lessons from *Factory Mutual*

- Don't assume negligence claims will be preempted.
 - Courts may be reluctant to find preemption if that will leave the plaintiff with **no other remedy**.
- Brokers—items to address in your contract:
 - Limit responsibility for selection (e.g., Broker's responsibility for selecting a carrier will not extend beyond verifying).
 - Be wary of negligence-based exceptions to your liability limits.
 - “Brokers shall not be liable for freight loss and damage.”
 - “Broker shall not be liable . . . , except to the extent it arises from Broker's negligence in its physical handling of the freight.”
 - “Broker shall not be liable . . . , except to the extent it arises from Broker's negligence.” (Least desirable.)

Relationship Troubles

CRST Dedicated Servs. v. Ingersoll-Rand Co., 194 F. Supp. 3d 426 (W.D.N.C. 2016)

- CRST and Club Car enter contract for dedicated services.
 - CRST managed and operated Club Car equipment.
- Relationship sours.
 - Club Car provides notice to terminate giving 4 months to cure issues.
 - Approx. 2 months later Club Car provides notice accelerating termination to within 30 days.
 - Club Car provides notice to setoff damages from amounts due CRST.
 - CRST immediately stops service, moves Club Car's equipment to undisclosed locations, and demands acceptance of payment and transition terms.
- CRST brings claim for unpaid amounts due.
- Club Car asserts trespass to chattel and violation of NC unfair and deceptive practices law.

Trespass and Trade Practices Claims—Preempted

- Related to price or service pertaining to transportation of property.
 - Trespass claim concerns stopping transportation service for Club Car's property.
 - Unfair and deceptive practices concerns negotiation of prices for transportation of property.
- CRST's practices reflect market forces that Congress intended to deregulate.
 - Enforcement of claims would curtail CRST's ability to negotiate.

Lessons from *CRST*

Shippers—items to address in your contracts:

- **Service standards.** Here, the court noted that Club Car still had viable *breach of contract* claims.
- **Property rights.** Include a provision requiring release of property on demand (e.g., Carrier shall release Shipper’s property immediately upon demand.).
- **Brokers/FFs/Carriers**
 - Courts probably will not interfere with strong-arm negotiation related to transportation prices, routes, or services.
 - But, don’t breach your contract.
 - Clear service standards are helpful when altering your services.

Food Fight

Mrs. Ressler's Food Prods. V. KZY Logistics, LLC, 2017 U.S. Dist. LEXIS 143255 (D.N.J. 2017)

- Mrs. Ressler's Food Products (deli food manufacturer) retained Blue Grace Logistics (a broker) to ship food from Pennsylvania to California.
- Blue Grace brokered the load to Longitude Logistics (motor carrier), who gave the load to KZY Logistics (motor carrier).
- No contract between Blue Grace and KZY, but contract between Blue Grace and Longitude had a no subcontracting clause.
- Product arrived over the proper temperature and was rejected.
- KZY was not paid.

Breach of Contract Claims

- Ressler (shipper) asserts breach-of-contract claims against both carriers (Longitude and KZY) for cargo loss.
- **Not Preempted by FAAAA.**
 - Breach-of-contract claims enforce a party's own undertakings, **not state-imposed** obligations.
- **But, preempted by Carmack.**
 - Carmack generally preempts state breach-of-contract and negligence claims *against carriers* for cargo loss and damage.

Implied Contract Claim—Preempted

- KZY asserts that Blue Grace was unjustly enriched by receiving the transportation without paying KZY.
 - Unjust enrichment: Occurs where there is no contract and a party retains a benefit given by another party without compensation, where compensation is reasonably expected. Courts will imply that a contract exists so that compensation can be awarded.
- **Preemption applies**
 - Blue Grace brokered the shipment to Longitude with a “no subcontracting” clause.
 - An implied obligation to pay KZY would **enlarge Blue Grace’s agreement** with Longitude based on state law (i.e., it is not a self-imposed obligation).

But . . .

Implied Contract Claim—Not Preempted

Solo v. UPS, 819 F.3d 788 (6th Cir. 2016)

- Class action by shippers against UPS alleging overcharges related to declared value liability coverage.
- Unjust enrichment claim **not preempted** because it does not impose an involuntary obligation.
 - Gives effect to the parties intentions or reasonable expectations.
 - Can be avoided through a contrary contract.
- *Why did the court come out differently than the Mrs. Ressler Court?*
 - In Mrs. Ressler, unjust enrichment would have imposed an involuntary obligation because there was a contrary agreement.
 - Here, unjust enrichment does not impose an involuntary obligation because the court would be carrying out the reasonable expectations of the parties.

Lessons from *Mrs. Ressler and Solo*

- Shippers and Brokers: Contract with your brokers/carriers.
 - Address subcontracting (e.g., Carrier shall not use subcontractors in performing the services).
 - Address non-payment of subcontractors (e.g., Broker shall not be liable for payment of Carrier's subcontractors related to services performed in connection with this Contract.).
 - Shippers should seek Broker liability for cargo loss and damage.
 - Brokers should be wary of agreeing to be liable for cargo claims.
- Carriers: Contract with any hiring Broker or Carrier
 - Carrier or broker is not your agent for purpose of collecting freight.
 - Representation that your services will not be provided in contravention of any no-subcontracting clause.

Observations

- FAAAAA preemption does not just apply to shipper claims.
 - Claims by brokers/carriers/FFs against each other can be preempted.
- Use contracts!
 - Carrier selection requirements.
 - Service standards for transportation and non-transportation services.
 - Subcontracting.
 - For shippers, duty to release property immediately on demand.
 - Cargo liability of brokers.
- But, brokers/carriers/FFs beware of scope of your contract obligations.
 - Clauses limiting your liability except where you are negligent.
 - Ambiguous service standards.
 - Brokers assuming liability for cargo loss and damage.
 - Preemption does not apply to your breach.
- Don't assume preemption applies, especially if no other remedy available.



Questions?

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