Federal law preempts states for negligent trucker selection

Legal Ease

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As members of the maritime industry are aware, the risks associated with the ocean transportation of cargo do not begin or end with the loading or discharge at our marine terminals. Stakeholders must consider their potential liabilities during the inland portion of the transportation as well as the ocean carriage.

In the Summer 2015 issue of *The Beacon*, I discussed the growing number of injury and death claims against shippers, brokers, forwarders, and steamship lines following motor vehicle accidents involving commercial trucks draying containers or otherwise transporting cargo to or from point of origin or inland destination. Of course, the motor carrier bears primary responsibility for an accident, but many small and mid-size trucking companies carry only $1 million in auto liability coverage, an amount insufficient to satisfy the wrongful death or catastrophic injuries suffered by third-party motorists. A car or SUV is simply no match for an 80,000-pound truck.

So we now see plaintiffs' attorneys suing just about everyone else in the transportation chain. The target defendant is generally the party responsible for the inland transportation, although a logistics provider or other intermediary may also be sued on the theory that it negligently selected an unsafe motor carrier. In either case, the potential jury verdicts can run into the millions, and even tens of millions in some cases.

Our 2015 article focused on best practices to avoid such liability when hiring motor carriers. In the intervening years, developing case law suggests a purely legal avenue of defense against such claims — federal preemption.

At the risk of oversimplifying a very complex legal concept, the Supremacy Clause of the Constitution provides that state legislators and courts may not enact or enforce laws that are contrary to federal law. In the event of a direct conflict, federal law will usually prevail.

For our purposes, the focus is on a federal transportation statute that prohibits state and local governments from enforcing any law relating to "a price, route, or service of any motor carrier . . . broker or freight forwarder with respect to the transportation of property." Brokers and others facing negligent hiring claims have invoked this statute as a complete defense with increasing success in the federal courts.

Although the statute is commonly known as the Federal Aviation Authorization Administration Act (FAAAA), it has been applied to the interstate movement of property via all forms of transportation. Attorneys for brokers and shippers argue that the imposition of a state-law duty to select a competent and "safe" motor carrier directly conflicts with the FAAAA mandate against the state's interference with the transportation of cargo in interstate commerce.

In the last two years, at least four federal trial courts have ruled that negligent hiring/selection claims are preempted by the statute, and two decisions are pending appeal in the appellate courts of the 9th and 6th circuits.

Several other district courts have made contrary rulings and allowed the claims to proceed to trial. They reason that 1) negligent selection claims are not sufficiently related to the prices or services of a broker or forwarder and/or 2) that such claims fall within the safety exception of the FAAAA, which specifically provides that "the safety regulatory authority of a State with respect to motor vehicles" is not restricted by the preemption provision of the statute.

Although the lower federal courts are currently divided on the issue, the current trend seems to favor preemption. At least two cases are now on appeal in the federal circuit courts, and

we expect the Supreme Court may ultimately take up the issue in the years to come.

The federal preemption defense applies only to state law claims and should have no impact on claims for damaged cargo shipped under a through bill of lading.

The bottom line is that those hiring motor carriers to perform inland cargo transportation must continue to establish (and follow) vetting procedures in order to avoid liability on state negligent selection claims. Most importantly, you may want to consider insuring against this potential liability exposure.

For a copy of the 2015 article, "Hiring motor carriers? Don't get caught between a rock and a hard place" *contact the author at reeves@lawofsea.com.*