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Supreme Court Decision Likely to Increase Broker Litigation and Insurance Costs

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The Supreme Court held that freight brokers no longer can use the Federal Aviation Administration Authorization Act (49 U.S.C. 14501, FAAAA) as a defense against personal injury lawsuits, increasing broker exposure to liability and driving up both premiums and litigation costs. In this case, the Plaintiff and Petitioner, Shawn Montgomery, sustained severe injuries after his tractor-trailer was struck by a motor carrier, Caribe Transport II, LLC. C.H. Robinson Worldwide, Inc. brokered the load. Montgomery filed suit against Caribe Transportation, C.H. Robinson, and the driver of the vehicle, averring claims of negligent hiring against C.H. Robinson.

Montgomery claimed that C.H. Robinson negligently retained Caribe Transport, as it should have known that Caribe Transports poor safety rating made it reasonably likely that its drivers could cause injury. Caribe Transport had a conditional safety rating from the Federal Motor Carrier Safety Administration (FMCSA), and the FMCSA had previously found Caribe Transport to be deficient in several areas, including driver qualification, hours of service, inspection, repair and maintenance, and recordable crash rate. In response, C.H. Robinson claimed that the FAAAA prevented Montgomery from bringing a state court claim.

Congress passed the FAAAA in 1994 to promote uniformity and involve the regulation of motor carrier transport. Congress reasoned that by passing a law pre-empting state 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, carriers and brokers could operate more cheaply. The FAAAA also contained a safety exception, allowing states to regulate safety with respect to motor vehicles. The act minimized costs by mostly unifying the patchwork of state laws and minimizing forum shopping should litigation arise.

C.H. Robinson argued that the FAAAA pre-empted the state-law-based negligent hiring claim, arguing that negligent hiring did not fall under the safety exception. C.H. Robinson reasoned that negligent hiring directly involves the price, route, or service of a motor carrier and therefore cannot be brought because of the FAAAAs preemption. Montgomery countered that the negligent hiring claim fell under the safety exception, as negligent hiring involved safety on the road. But, C.H. Robinson countered that allowing Montgomerys case and others to move forward under the safety exception would, in essence, negate the FAAAs preemption, as any state could frame any new motor vehicle regulation as tied to safety. So, the FAAAA would lose its original purpose, permitting states to pass more individualized regulations and reviving the patchwork pre-FAAAA.

The Supreme Court unanimously sided with Montgomery. Justice Barrett, writing the opinion, reasoned that negligent hiring claims fall under the safety exception. She stated that requiring C.H. Robinson to exercise ordinary care in selecting a carrier directly concerns the safety of motor vehicles. As the negligent hiring fell under the safety exception, Montgomerys negligent hiring claims could proceed. Although the ruling was unanimous, Justice Kavanaugh, in a concurrence, clarified that this case is closer than the unanimity would suggest. Kavanaugh agreed that C.H. Robinsons fear of patchwork regulation and increased costs would arise, acknowledging that the arguments were legitimate and weighty. But he still agreed that negligent hiring claims would fall under the safety exception.

Regardless, in the short-term, the 9-0 opinion will be a basis for claimants to continue joining brokers to most trucking accident suits. Although Montgomerys counsel claimed that a broker is not going to have a problem if its asking the hard questions of the carrier, even Kavanaugh called this statement nave but failed to any uniform standard that Brokers can use to mitigate such claims. Brokers will be joined in cases in which Plaintiffs desire additional sources of recovery beyond the insurance limits of the carriers transporting the loads.

With brokers being less likely to succeed with Motions to Dismiss under the FAAAA, other parties to the suit could be entitled to discovery related to the allegedly negligent hiring practice. This includes communications related to the retention of the carrier, the investigation performed into the carrier, and the brokers overall retention practices.

With the increase in suits and discovery, legal costs and insurance premiums will almost certainly rise in the coming years. In the next decade, states will likely begin to push the bounds of the FAAAAs preemption, passing additional regulations related to rates or routes, claiming that they involve safety, thereby undermining the uniformity and predictability associated with national standards Congress intended.

If you have any questions, contact one of Flaster Greenbergs transportation law attorneys.

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