Everything You Wanted To Know About FAAAAA Preemption But Were Afraid to Ask

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Why is F4A Preemption So Valuable?

• Provides Preemption in *Intra*-State Context
  – 49 U.S.C. § 14501 is entitled “Federal authority over *intrastate* transportation.”
• Provides Preemption to Carriers, Brokers, Private Fleets, etc.
• Provides an Exceptionally Broad Preemption
• Applicable in a Wide Variety of Contexts
What Is FAAAAA Preemption?

U.S. Congress enacted a statute (now codified at 49 U.S.C. § 14501(c)(1)) that controls over state and local law:

**General rule.**—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States 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 (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

Similar provision in 14501(b) focused exclusively on freight forwarders and brokers.
Elements to Consider:

• Is the Object of Regulation A Covered Entity?
• Is Some Form of “State Action” Implicated (i.e., “Enacting” or “Enforcing”)?
• Is The Subject of the “State Action” a “Price, Route, or Service”?
• Does the State Action “Relate To” That “Price, Route, or Service”?
• Do any Exceptions Apply?
A Little History

• 1978: Airline Deregulation Act (address inefficiency/costs)
  – Preempts “any law, regulation, or other provision having the effect of law related to a price, route, or service of an air carrier . . . .”

• August 23, 1994: FAAAA enacted / mirrors ADA
  – Codified at 49 U.S.C. § 11501(h)
  – Only addressed motor carriers

• December 29, 1995: ICCTA
  – Expanded protections to brokers and others
What Is the Role of the ADA With Respect to the F4A?

• Courts have universally recognized that, in order to understand the preemptive scope of the F4A, courts should first look to the ADA as an “analogical template”

• Specifically, the U.S. Supreme Court has held:
  – Congress intended ADA preemption to be very broad due in large part to the “relating to” phrase
    • Morales v. Trans World Airlines, 504 U.S. 374 (1992)
  – Congress did not intend to bar adjudication of routine breach of contract claims (i.e., hold parties to their contracts but do not enlarge or enhance bargain based on state laws or policies)

• ADA cases have involved freight claims, freight charge disputes, personal injuries, and a wide variety of other claims
How Robust Is F4A Caselaw?

- *Rowe v. New Hampshire Motor Transport Association*, 128 S.Ct. 989 (2008) (affirmed the broad, preemptive power of F4A by striking down a Maine statute that imposed burdens on motor carriers delivering cigarettes into the state)

- *ATA v. Port of Los Angeles* case pending before U.S. Supreme Court right now

- 265 cases that at least mention F4A in many different contexts
How About Freight Claims?

*Delta Leasing, LLC v. American Fast Freight, et al.,
Alaska Superior Court, Case No. 3AN-07-10226*

- Shipper sued broker, carrier, and others in connection with significant damage to a manufactured housing unit being transported intrastate in Alaska
- Shipper sued for breach of contract, promissory estoppel, intentional misrepresentation, negligent misrepresentation, negligence, and violation of Alaska’s Unfair Trade Practices and Consumer Protection Act
- Sought punitive damages, attorneys’ fees, etc.
Court’s Holding – Granted Motion for Judgment on the Pleadings:

“How About Freight Claims?

“Based on the ICCTA’s plain meaning and court’s [sic] broad interpretation of its preemptive scope, the court finds that [the shipper’s] claims relate to dissatisfaction with a shipping service provided by [broker]. Therefore, under the preemptive force of the ICCTA, [the shipper’s] claims, other than breach of contract, impermissibly seek to extend [the shipper’s] recovery beyond the terms of the contract and are preempted.”
How About Freight Claims?


- Court preempted shipper’s non-contractual claims that the broker failed to ensure that the motor carrier had adequate insurance coverage for the cargo and that the broker failed to share other “critical” information.


- Court dismissed shipper’s claims against broker as preempted by FAAAA
Ameriswiss Technology, LLC v. Midway Line of Illinois, Inc.

• Ameriswiss (Shipper) retains C.H. Robinson (Broker) to arrange for transportation of machinery from IL to NH
• C.H. Robinson hires Midway Line to perform transport
• Traffic accident results in $483,837 in damage to goods
• Ameriswiss sues Robinson and alleges:
  – Broker was negligent in selecting a carrier
  – Broker had breached contract by failing to ensure that transportation was protected by adequate insurance
  – Broker should be treated as carrier under Carmack Amendment
• **NEGLIGENCE**

• All non-contractual claims are preempted by FAAAA (49 U.S.C. 14501(c)(1))

  – “... it is worth bearing in mind that a plaintiff that loses its common-law claim against an entity such as a broker is not denied an avenue for recovery; such a plaintiff still has its Carmack Act claim against the carrier.”
BREACH OF CONTRACT

• “Morrison, IL > Holderness, NH $2,600 all inclusive”
  – Do the two words “all inclusive” communicate a promise by Robinson to warrant the safe delivery of Ameriswiss’s machines?
  – “They do not. Moreover, . . . Ameriswiss’ belief that the agreement included a warranty is irrelevant.”
  – No facts to support a promise to ensure ("all inclusive" is insufficient)
Shipper brought a suit against a motor carrier seeking damages for allegedly wrongful “re-billing charges” assessed by the motor carrier.

Shipper raised claims for, among other things, unjust enrichment, fraudulent misrepresentation, etc.

The court dismissed the entire complaint for failure to state a claim:

“The determination of whether such charges are unlawful or against public policy depends not on any term of the parties’ contract, but instead on the laws and public policies of the state of Missouri. . . . The remainder of plaintiff’s claims are also derived from the enactment or enforcement of state law. Count II states a claim for fraudulent misrepresentation while Count II and Count IV state claims for money had and received and fraudulent misrepresentation, respectively. . . . Finally, Count V of the amended complaint seeks contractual declaratory relief. . . .

All of plaintiff’s claims derive from the enactment or enforcement of state law.”
How About Class Actions?


- Plaintiff brought a putative class action suit for unjust enrichment, restitution, breach of contract and breach of the implied covenant of good faith and fair dealing, arising out of defendant's billing for packages which it did not ship.
- In construing the claims before it, the United States District Court for the Central District of California noted that "[t]he Supreme Court has held that these preemption provisions have a 'broad scope' and 'expansive sweep’" and held:

  “Therefore, Plaintiffs' state law claims relate to prices and/or services and (with the exception of the breach of contract and breach of implied covenant for good faith and fair dealing claims, see infra) are preempted under FAAAA.”
How About Personal Injury Cases?

Rockwell v. United Parcel Service, Inc.,
1999 WL 33100089 (D.Vt. 1999)

- Plaintiff (consumer shipper) sued a carrier under various state court tort claims for injuries arising out of a pipe bomb that the motor carrier unwittingly delivered.
- The carrier defended the action by seeking dismissal of the state court claims due to preemption under F4A.
- The court agreed that the shipper’s claims were not cognizable under Vermont law:
  
  “In the context of delivering packages, Ms. Rockwell’s complaint regarding UPS’s package intake and delivery protocol is, beyond purview, inherently a claim against UPS’s services which is also preempted. Trujilo v. American Airlines, Inc., 938 F.Supp. 392, 394 (N.D. Tex. 1995) (‘It is clear that the act [plaintiff] complains of—preparation of the Waybill . . . and delivery of the package—are services within the meaning of [49 U.S.C.] 41713(b)(1)’ and are therefore preempted); aff’d 98 F.3d 1338 (5th Cir. 1995). Tort claims regarding a carrier’s shipment of packages ‘would affect [its] provision of air shipment services’ and are thus preempted.”

- Consider availability in negligent selection cases
How about Independent Contractor / Employee Classification Disputes?

  
  – Motor Carrier claims that Section 148B (contractor’s service must be “outside the usual course of business for which service is performed”) is preempted.
  
  – Court agrees that statute is preempted because it “relates to” or has a “connection with” the motor carrier’s prices, routes, and services because “it (1) dictates the employment relationship carriers must utilize in its operations, thereby affecting carriers’ rates and services, (2) significantly increases carriers’ costs such as to have a significant effect upon carriers’ prices, routes and services, and (3) materially alters the common law test for independent contractor status, leading to a patchwork of varying state laws and resulting liability . . . .”

• Contrast with *Martins v. 3PD*, 2013 LEXIS 45753.
What Are The Primary Ways An Opponent Avoids F4A Preemption?

1. Morales’ statement that preemption does not arise when the action in question has an impact that is “tenuous, remote, or peripheral.”

2. An overly restrictive construction of what it means to “relate to” a service “with respect to the transportation of property.”

3. “Market Participant” and Statutory Exceptions
What is the Market Participant Exception?

American Trucking Associations, Inc. v. City Los Angeles, California (U.S. Supreme Court Docket No. 11-798)

Oral Argument: April 16, 2013

- Arises from “Clean Ports Program”
  - Progressive Truck Ban (pre-1989 trucks)
  - Concession Agreements
  - Container Fee
The Concession Agreements

• Remain licensed and in good standing
• Enter, verify, update identifying information for drivers and trucks
• Equip trucks with RFID
• **Transition from Owner-Operators to Employee Drivers over course of 5 years**
• Provide off-street parking outside the Port
• Submit a maintenance and parking plan for each truck
• Comply with other state and federal law
The Ninth Circuit Held:

“We hold that when an independent State entity manages access to its facilities, and imposes conditions similar to those that would be imposed by a private landlord in the State’s position, the State may claim the market participant doctrine. Here, the Port leases its facilities to terminal operators, and permits drayage trucks to access its facilities, for the purpose of moving cargo through the Port and increasing Port revenues. The Port has a financial interest in ensuring that drayage services are provided in a manner that is safe, reliable, and consistent with the Port’s overall goals for facilities management.”
The Ninth Circuit then went on to uphold all of the above provisions of the Concession Agreement under the “market participant” doctrine except the employee-driver condition:

“. . . the employee driver provision seeks to impact third party behavior unrelated to the performance of the concessionaire’s obligations to the Port. One of the Port’s primary motives in adopting the employee driver provision was to increase stability in Port drayage by ensuring that drivers were paid higher wages. As a facilities provider, the Port has an interest in continued provision of drayage services, but it may not obtain that stability by unilaterally inserting itself into the contractual relationship between motor carriers and drivers.”
What are the Statutory Exceptions?

**F4A does NOT preempt:**

- Safety regulatory authority of a State with respect to motor vehicles
- A State’s ability to impose highway route controls / size or weight limits / hazardous cargo controls, etc.
- A State’s ability to require minimum amounts of financial responsibility
- Intrastate transportation of household goods
- Regulations relating to price of for-hire motor vehicle transportation by tow truck if without consent of owner of vehicle
What are the Statutory Exceptions?

**F4A does NOT preempt:**

- “State Standard Transportation Practices” Uniform cargo liability rules
  - Uniform Bills of Lading
  - Uniform Cargo Credit Rules
  - Antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling;
  - Antitrust immunity for agent-van line operations
- IF the state law is no more burdensome than a federal equivalent AND the law only applies to a carrier upon request of a carrier AND you are not in Hawaii
SUMMARY

• FAAAAA is an underutilized tool (sword and shield)
• FAAAAA is available to a broad range of parties (brokers, private fleet owners, freight forwarders) in the transportation continuum
• FAAAAA applies not only to government statutes, regulations, ordinances but also to private claims raised in lawsuits, including freight claims
• FAAAAA does not preempt contractual claims
• FAAAAA is subject to certain exceptions
THANK YOU

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