LEGAL UPDATES

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Supreme Court Asked to Resolve Circuit Split on Broker Liability Under FAAAA Safety Exception

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Freight broker liability under the Federal Aviation Administration Authorization Act (FAAAA) is once again before the U.S. Supreme Court, with two new petitions for certiorari—*Total Quality Logistics (TQL) v. Cox and Montgomery v. Caribe II*—seeking clarity on whether negligent hiring claims against brokers are preempted by federal law or preserved by the FAAAA's "safety exception." The issue is critical for the transportation industry, as conflicting appellate decisions have produced a patchwork of legal standards nationwide.

The FAAAA generally preempts state laws relating to the "price, route, or service" of brokers and motor carriers but includes a safety exception for the "safety regulatory authority of a state with respect to motor vehicles." Courts are divided on whether this exception permits state-law negligence claims against freight brokers for hiring unsafe motor carriers. The Eleventh and Seventh Circuits ruled that such claims are preempted, reasoning that broker activities are not sufficiently connected to "motor vehicles" to trigger the exception. In contrast, the Ninth and Sixth Circuits allowed these claims, finding that broker selection of carriers directly impacts road safety and thus falls within the exception.

In *TQL v. Cox*, plaintiff Robert Cox filed suit against TQL, a freight broker, after he was seriously injured in a motor vehicle accident involving a truck that TQL arranged to transport cargo. Cox alleged that TQL was negligent in hiring the motor carrier, claiming TQL should have known the carrier had a history of safety violations and was unfit to operate on public roads. The trial court sided with TQL, dismissing the case on the grounds that Cox's state-law negligent hiring claim was preempted by the FAAAA. On appeal, the Sixth

Circuit reversed, holding that Cox's claim could proceed because the FAAAA's "safety exception" preserves state authority to regulate safety "with respect to motor vehicles" and that negligent hiring claims against brokers fall within this exception. TQL then petitioned the U.S. Supreme Court for review, arguing that the Sixth Circuit's decision conflicts with other appellate courts and exacerbates an ongoing circuit split over the scope of the FAAAA's safety exception as it applies to broker liability.

The Supreme Court previously declined to resolve the split, denying certiorari in *Gauthier v. TQL*, *Ye v. GlobalTranz*, and *Miller v. C.H. Robinson*. Notably, both plaintiffs and victorious brokers have urged Supreme Court review, underscoring the issue's significance for the industry.

The entrenched 2-2 circuit split means that broker liability exposure varies dramatically by jurisdiction. In some regions, brokers may face state-law negligence suits for hiring unsafe carriers; in others, such claims are barred. This legal uncertainty complicates risk management, insurance, and operational planning for brokers and shippers operating across state lines.

With two new cases before the Supreme Court, there is renewed hope for a definitive ruling. However, until the court acts, or Congress intervenes, the fragmented legal landscape persists, and freight brokers must continue to navigate differing standards depending on where litigation arises.

Contact us

If you have questions relating to the FAAAA's safety exception or the relevance of pending litigation, contact Julie Maurer, Aaron Schepler, Alyssa Goehring, or your Husch Blackwell attorney.