Fowler Hirtzel McNulty Spaulding

PHILADELPHIA
1717 Arch Street, Suite 1310
Philadelphia, PA 19103
(P) 215.789.4848 (F) 215.987.2269

ALLENTOWN
4949 Liberty Lane, Suite 330
Allentown, PA 18106
(P) 484.408.0300 (F) 484.550.7992

LANCASTER
1860 Charter Lane, Suite 201
Lancaster, PA 17601
(P) 717.553.2600 (F) 717.344.5560

NEW JERSEY
10000 Midlantic Drive, Suite 402W
Mount Laurel, NJ 08054
(P) 856.242.2130 (F) 856.861.6226

U.S. Supreme Court Shows Interest in FAAAA Preemption Case

Last week, the Supreme Court of the United States began its 2021 Term by issuing its usual flurry of Term-beginning orders. One order suggests that the Court is interested in a case about federal preemption of state tort lawsuits against freight brokers. The case is *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425.

Federal law, specifically the Federal Aviation Administration Amendments Act of 1994, Pub. L. No. 95-504, 92 Stat. 1705 ("FAAAA"), preempts certain state laws and regulations of the interstate trucking industry. The FAAAA completes the deregulation of that industry that Congress began in 1980. *See Dan's City Used Cars v. Pelkey*, 569 U.S. 251, 256 (2013). Because the federal government deregulated the trucking industry, the FAAAA prevents state and local governments from burdening it with inconsistent, patchwork laws, regulations, responsibilities, and liabilities. Modeled after a similar provision for the airline industry, the FAAAA's preemption provision invalidates state laws, regulations, or other provisions "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)(1). The FAAAA preempts only to state and local laws and regulations, but also private lawsuits brought under state common law. *See Nw., Inc. v. Ginsberg*, 572 U.S. 273, 281 (2014) (construing the similar preemption provision that applies to the airline industry). Relevant in *C.H. Robinson*, a "safety exception" exists for the "safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

C.H. Robinson arises out of a Nevada motor-vehicle accident. Costco hired C.H. Robinson, a large national freight broker, to arrange transportation of goods from Sacramento, California, to Salt Lake City, Utah. To transport the shipment, C.H. Robinson hired a federally licensed motor carrier, which in turn used one of its employees to operate the tractor trailer. The driver was involved in an accident in Nevada, resulting in serious injuries to the plaintiff. The plaintiff sued the driver, motor carrier, C.H. Robinson, Costco, and others in Nevada federal district court. The plaintiff alleged that C.H. Robinson was negligent for selecting an allegedly unsafe motor carrier. The district court granted C.H. Robinson's motion for judgment on the pleadings, ruling that the FAAAA preempted the plaintiff's claims against C.H. Robinson. *Miller v. C.H. Robinson*, No. 17-408, 2018 U.S. Dist. LEXIS 194453, 2018 WL 5981840 (D. Nev. Nov. 14, 2018). The plaintiff settled with the other defendants and appealed. The Ninth Circuit reversed in a split decision, holding that FAAAA preemption did not apply. *Miller v. C.H. Robinson*, 976 F.3d 1016 (9th Cir. 2020). The Ninth Circuit reasoned that the "safety exception" to preemption applied, and found that the plaintiff's claims against C.H. Robinson were connected with motor vehicles. Thus, the plaintiff could proceed with his negligent-retention claims against C.H. Robinson. The Ninth Circuit later denied reargument.

C.H. Robinson, filed a petition for writ of certiorari in the Supreme Court. C.H. Robinson is represented by Kannon Shanmugam, chair of Paul Weiss's Supreme Court practice group. Shanmugam is a prominent Supreme Court litigator with over 32 oral arguments before the Supreme Court, including 4 last Term. In its cert. petition, C.H. Robinson requests the Court to consider, ". . . whether a common-law negligence claim against a freight broker is preempted because it does not constitute an exercise of the 'safety regulatory authority of a State with respect to motor vehicles.'" Several industry, trade, and advocacy groups filed amici briefs supporting C.H. Robinson's petition, and requesting that the Court take the case.

The Supreme Court grants a very small percentage of cert petitions. Usually the cases it accepts involve a split in authority, invalidation of federal law or a case of exceeding public importance. The Court's actions in *C.H.*

Robinson suggest heightened interest in the case. First, though the plaintiff waived his right file an optional response opposing the cert. petition, the Court directed him to file one. Second, and more significantly, on October 4, 2021, the Court called for the views of the solicitor general ("CVSG"). The solicitor general is the federal government's chief lawyer in the Supreme Court. Historical, empirical statistics show that the Court tends to follow the solicitor general's recommendation about whether to take a case. If the solicitor general recommends that the Court take a case, the chances of it doing so increase substantially. That the Supreme Court asked the government for its reviews suggests that it is closely considering whether to grant C.H. Robinson's cert petition.

The Supreme Court does not give the solicitor general a deadline in which to file its brief, and the solicitor general usually files its brief within a few months. After that happens, the Supreme Court will list the case for conference to decide whether to grant the cert petition.

Fowler Hirtzel McNulty & Spaulding, LLP

Founding Partner

Joseph R. Fowler, Esquire
jfowler@fhmslaw.com
215-789-4840

Appellate Department

Matthew D. Vodzak, Esquire
mvodzak@fhmslaw.com
267-603-6006

Joseph R. Fowler *is a founding partner of Fowler Hirtzel McNulty and Spaulding. His practice focuses on the defense and investigation of commercial vehicle and construction accident cases for trucking companies, public transportation companies, and their insurers. He has directed the investigation and defense of catastrophic commercial vehicle accidents from the date of loss. For questions, Mr. Fowler can be reached at* ***215-789-4840****.*

Matthew D. Vodzak *is a partner in the firm's Appellate Department who specializes in complex legal matters including appeals and insurance coverage, with an emphasis on risk transfer. He has litigated cases on appeal in the Pennsylvania Superior, Commonwealth, and Supreme Courts as well as in the Delaware Supreme Court. For questions, please contact him directly at* ***267-603-6006.***