

The Preemption Provisions of 49 U.S.C.A. § 14501: AN UNDERUTILIZED DEFENSE TO TORT CLAIMS AGAINST MOTOR CARRIERS?



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The Federal Aviation Administration Authorization Act of 1994 ("FAAAA") may have significant, but unrecognized, ramifications on the ability of plaintiffs to maintain tort claims against truck drivers and trucking companies for personal injuries received in motor vehicle accidents. The preemption provisions of the FAAAA, codified in 49 U.S.C.A. § 14501, could provide a dispositive defense to some tort claims made against motor carriers. The objective of this article is to explore the possibility that § 14501 could be used to preempt state tort claims against truck drivers for the negligent operation of a motor vehicle and claims against trucking companies for negligent hiring, training, supervision and retention of drivers. The latter, especially, causes significant litigation expense and liability exposure for what are often insignificant technical violations unrelated to the true culpability of a driver or trucking company in causing or contributing to a motor vehicle accident.

Relevant Provisions of 49 U.S.C.A. § 14501

The preemption provision of 49 U.S.C.A. § 14501(c) is relatively short and provides, in pertinent part:

1. 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 ... or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.¹

The statute enumerates three express exceptions to the preemption rule: 1) it does not restrict a state's safety regulatory authority concerning motor vehicles, state action concerning route controls, size and weight limitations, hazardous cargo or minimum financial responsibility requirements;² 2) it does not apply to the intrastate transportation of household goods;³ and 3) it does not apply to the authority of a state to enact provisions relating to the price of for-hire motor vehicle transportation by a tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.⁴

Legislative Intent

One Circuit Court's survey of the legislative history of § 14501 found that Congress "intended to divorce the motor carrier industry from state and local economic regulation in order to provide motor carriers such as United Parcel Service the same competitive advantages enjoyed by air carriers like Federal Express. See, e.g., H.R. CONF. REP. No. 103-677,

at 87, reprinted in 1994 U.S.C.C.A.N. at 1759 ('State economic regulation of motor carrier operations causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets... . The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business.') The United States Supreme Court later described "Congress' overarching goal as helping assure transportation rates, routes, and services that reflect 'maximum reliance on competitive market forces,' thereby stimulating 'efficiency, innovation, and low prices,' as well as 'variety' and 'quality.'"⁶

Constitutionality

The preemption provisions of § 14501 have been found to be within Congress' authority under the Commerce Clause.⁷ This issue was discussed extensively by the Tenth Circuit in *Kelley v. United States*,⁸ wherein the attorneys general of Michigan and Kansas, the International Brotherhood of Teamsters, and several other organizations filed an action for declaratory and injunctive relief, arguing that § 14501(c) was unconstitutional.⁹ One of their arguments was that the statute violated the Commerce Clause.¹⁰ The *Kelley* court recognized that the United States Supreme Court, in *United States v. Lopez*,¹¹ identified three broad categories of activity that Congress may regulate under the Commerce Clause: (1) 'the use of channels of interstate commerce'; (2) 'the instrumentalities

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of interstate commerce or persons or things in interstate commerce; and (3) 'activities that substantially affect interstate commerce.'¹² With respect to the third category of activity, the *Lopez* court emphasized it had repeatedly 'upheld a wide variety of congressional Acts regulating intrastate economic activity where [it had] concluded that the activity substantially affected interstate commerce.'¹³ The Tenth Circuit in *Kelley*, after first noting Congress made express findings in § 14501(a) that state regulation of intrastate motor carrier activities substantially affects interstate commerce,¹⁴ held:

Granted, there are undoubtedly various state regulations that affect and pertain only to purely intrastate motor carrier activities, and have little or no effect on interstate commerce. Nonetheless, Congress rationally determined the regulation of intrastate motor carrier activities, considered as a whole, does in fact impact and impede interstate commerce.¹⁵

This view of the FAAAA preemption provision being within the Congress' Commerce Clause power was described with more clarity by the Ninth Circuit in *Tocher v. City of Santa Ana*:¹⁶

Section 14501 preempts state or local regulation of motor carriers. This court has previously recognized automobiles to be instrumentalities of commerce even when used solely for intrastate purposes. See *United States v. Randolph*, 93 F.3d 656, 660 (9th Cir.1996). That view seems to be shared universally among federal courts. See, e.g., *United States v. Cisneros*, 203 F.3d 333, 340 n. 4 (5th Cir.2000) (cataloging federal case law on whether an automobile is an instrumentality of commerce). Because a motor

carrier is defined under the FAAA as "a person providing motor vehicle transportation for compensation," see 49 U.S.C. § 13102(12) (emphasis added), § 14501 is within Congress' Commerce power because it regulates an instrumentality of commerce.¹⁷

The additional attack on the constitutionality of § 14501(c) in *Kelley* was that it violated the Tenth Amendment which provides "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."¹⁸ This argument was likewise unsuccessful. The *Kelley* court cited the United States Supreme Court ruling that "[i]n a case . . . involving the division of authority between federal and state governments," the inquiries under the Commerce Clause and the Tenth Amendment "are mirror images of each other."¹⁹ Therefore, even if § 14501(c) intrudes upon a domain traditionally left to the states, it is constitutional as long as it falls within the commerce power.²⁰

Broad Scope of § 14501 Preemption

The United States Supreme Court has frequently enunciated the general rule regarding federal preemption of state laws:

As is always the case in our pre-emption jurisprudence, where "federal law is said to bar state action in fields of traditional state regulation, . . . we have worked on the 'assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'"²¹

Despite this general rule, the Supreme Court concluded, in *Rowe v. New Hampshire Motor Transp. Ass'n*,²² that preemption under § 14501(c)(1) is broad and far-reaching.²³ In *Rowe*,

trade associations of air and motor carriers of property challenged certain provisions of Maine's Tobacco Delivery Law, claiming federal law preempts several sections of Maine's statute.²⁴ The United States District Court for the District of Maine granted summary judgment for the associations, ruling that the provisions at issue were preempted by the FAAAA.²⁵ The First Circuit affirmed that ruling,²⁶ and Certiorari was granted.²⁷

In affirming the First Circuit, the *Rowe* court relied on its previous ruling in *Morales v. Trans World Airlines, Inc.*,²⁸ a decision interpreting identical preemption language from the Airline Deregulation Act of 1978, 49 U.S.C.A. §§ 1302(a)(4) and 1302(a)(9).²⁹ In explaining the scope of preemption of § 1302, the *Morales* court determined that: 1) "[s]tate enforcement actions having a connection with, or reference to" carrier "'rates, routes, or services' are pre-empted;"³⁰ 2) such preemption may occur even if a state law's effect on rates, routes or services "is only indirect;"³¹ 3), in respect to preemption, it makes no difference whether a state law is "consistent" or "inconsistent" with federal regulation;³² and 4) preemption occurs at least where state laws have a "significant impact" related to Congress' deregulatory and pre-emption-related objectives.³³

The *Rowe* court noted that the Congress that wrote the language of § 14501 copied the language of § 1302 and did so "fully aware" of the *Morales* court's interpretation of § 1302³⁴ and then applied Supreme Court precedent that "when judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its judicial interpretations as well."³⁵

The "Safety Regulation Authority" Exception

A common argument against FAAAA preemption is that a state

action falls within a state's "safety regulatory authority" allowable under § 14501(c)(2)(A). This exception was analyzed in detail by the United States Supreme Court in *City of Columbus v. Ours Garage and Wrecker Service, Inc.*³⁶ The court stated Congress' clear purpose when it enacted § 14501 and the exception of § 14501(c)(2)(A) was to ensure its preemption of states' "economic regulation" of motor carriers of property but not restrict the preexisting and traditional state police power over "safety regulation."³⁷ A detailed discussion of a case-by-case application of this rule is beyond the scope of this article,³⁸ but the Second Circuit, in *Loyal Tire & Auto Center, Inc. v. Town of Woodbury*,³⁹ enunciated a test to be applied when determining whether a state law or action falls under its safety regulatory authority:

Following *Ours Garage*, we no longer consider simply whether a regulation is reasonably related to safety but must determine whether, in light of the legislative body's purpose and intent, the regulation is "genuinely responsive" to safety concerns. See *Tillison v. City of San Diego*, 406 F.3d 1126, 1129 (9th Cir.2005) ("[T]he Supreme Court tells us that our focus in a preemption case like this one is whether the purpose and intent of the body passing the law at issue, whether state or municipality, was truly safety.")⁴⁰

State Tort Claim Deemed a State Enforcement Action

In *Deerskin Trading Post, Inc. v. United Parcel Service of America, Inc.*,⁴¹ the District Court for the Northern District of Georgia examined applicable case law concerning preemption of state tort claims under the Airline Deregulation Act (ADA)⁴² in determining the corresponding effect of § 14501 on state tort claims. That court noted the Circuit Courts, applying

*Morales v. Trans World Airlines, Inc.*⁴³ and *American Airlines, Inc. v. Wolens*,⁴⁴ had construed the ADA's preemption provision broadly, and, for the most part, had "preempted state law tort actions where the subject matter of the action related to the price, route, or service of an airline."⁴⁵ Consequently, the district court held a "state law tort action against a carrier, where the subject matter of the action is related to the carrier's prices, routes or services, is a state enforcement action having a connection with or reference to a price, route, or service of any motor carrier . . ." and is therefore preempted by § 14501.⁴⁶

This ruling was subsequently followed by the District Court of Maryland in *Mastercraft Interiors, Ltd. v. ABF Freight Systems, Inc.*⁴⁷ and the Southern District of Ohio in *Cerdant, Inc. v. DHL Express (USA), Inc.*⁴⁸ The preemption provisions of § 14501 have further been held to preclude equitable claims.⁴⁹

Preemption of Tort Actions For Personal Injuries

Opinions from various jurisdictions hold that the FAAAA preempts state claims for negligence against a motor carrier, generally. For example, in *Deerskin*, above, the District Court for the Northern District of Georgia held a shipper's state claims against a motor carrier for common law fraud, statutory fraud, negligence, and gross negligence were preempted by the FAAAA because those state law tort actions were "state enforcement actions" having connection with or reference to the price, route or service of a motor carrier.⁵⁰ Although *Deerskin* stands for the proposition that a state negligence action is a preempted state action, it is based on the factual finding that, at the core of each claim, was the allegation the carrier inappropriately charged shipper prices based on dimensional weight of various packages when the carrier should have charged shipper prices based on actual weight of packages.⁵¹ Thus, *Deerskin*

does not provide specific authority concerning whether the FAAAA preempts state law claims for the negligent operation of a motor vehicle and claims against trucking companies for negligent hiring, training, supervision and retention of drivers.

In *Rockwell v. United Parcel Service, Inc.*,⁵² plaintiff's son was killed when he opened a package containing a pipe bomb and plaintiff was seriously injured. The package containing the bomb was sent via UPS. Neither the plaintiff nor her son had any reason to believe the package contained a bomb.⁵³ The complaint sought to impose liability on UPS and its employee who delivered the package through various state tort claims. One of the bases for the motion to dismiss filed by UPS and the employee was that plaintiff's claims were preempted under § 14501(c)(1).⁵⁴ The United States District Court found the plaintiff's claims were preempted because the complaint regarding UPS's package intake and delivery protocol was inherently a claim against UPS's services.⁵⁵

The Alabama Supreme Court addressed the issue of FAAAA preemption of state tort claims in 2010 in *Weatherspoon v. Tillery Body Shop*,⁵⁶ where an owner of a vehicle deemed abandoned brought an action against a towing company which towed and auctioned his vehicle, alleging negligence and wantonness, statutory deprivation of possession, recovery of chattel in specie, conversion, negligent and wanton supervision, and fraudulent suppression.⁵⁷ In affirming the trial court's dismissal of the owner's claims, the Alabama Supreme Court held the claims were preempted because they related specifically to the company's handling of the vehicles it towed, and expressly sought the enforcement of state laws related to duties owed stemming from the transportation of property.⁵⁸ Again, while *Weatherspoon* holds that the FAAAA can preempt state tort actions based on negligence, it does not expressly

address whether those preempted negligence actions include claims for the negligent operation of a motor vehicle or negligent hiring, training, supervision and retention of drivers.

The only opinion the author has found discussing the interplay between § 14501 and automobile negligence claims is the very recent decision of the United States District Court for the Middle District of Tennessee in *Owens v. Anthony*,⁵⁹ a case which arose from a motor vehicle accident in which a tractor-trailer collided with a vehicle driven by Owens, causing him severe personal injuries.⁶⁰ Defendant C. H. Robinson Worldwide, Inc. moved to dismiss Owens' claims against it, arguing that his common law negligence claims were preempted by the FAAAA.⁶¹ The district court rejected Robinson's argument, but its reasoning is disjointed. The court first articulated the issues it was to decide:

Here, the Court must determine whether Plaintiffs' common law negligence claims are "related to" (that is, have a connection with) a price, route or service of Robinson with respect to the transportation of property. Even if Plaintiffs' claims have such a connection, the Court must determine whether such claims are "saved" under the safety regulatory authority exception. In other words, the Court must decide whether personal injury negligence claims are preempted by the FAAAA under these circumstances.⁶²

However, the court never made a specific finding that an automobile negligence claim did not relate to a Robinson service. Rather, it made the blanket statement: "The Court agrees with the numerous courts which have found that personal injury negligence claims are not preempted by the FAAAA."⁶³ The court relied primarily on *Jimenez-Ruiz v. Spirit Airlines, Inc.*⁶⁴ and its survey of federal

opinions discussing how various courts interpret the term "service" because "[t]he ADA does not define the term 'service,' nor has the Supreme Court interpreted it."⁶⁵ All of the opinions cited in *Jimenez-Ruiz* involve the well-developed case law concerning tort claims against airlines and the effect of the ADA's preemption provisions. None of them discuss the FAAAA and its preemption of tort claims against motor carriers or drivers.⁶⁶

The district court in *Owens* took a restrictive view of the definition of "service" and cited those opinions in *Jimenez-Ruiz* which supported its conclusion. The court did not discuss those circuits, namely the Second, Fourth, Fifth, Seventh and Eleventh, which have adopted a much broader definition.⁶⁷ Further, the court in *Owens* found the FAAAA did not preempt state tort claims because "the negligence issues presented here involve highway safety which has been expressly exempted from the preemption statute."⁶⁸ Yet the court cites no authority for that finding and makes no mention whatsoever of the analysis to be applied in determining whether a state action is truly done under the "safety regulatory authority" exception mandated by *Owens Garage* and *Loyal Tire*, above.

Practical Considerations in Asserting § 14501 Preemption

Preemption, in general, should be specifically pleaded as an affirmative defense.⁶⁹ Failure to plead it as an affirmative defense may result in its waiver, but courts have held if the failure to assert an affirmative defense does not result in surprise or unfair prejudice to the opponent, the failure will not be fatal.⁷⁰ The party claiming FAAAA preemption has the burden of proof initially but, once a party establishes that a general preemption does apply, the burden of proving the action falls within an exception to the FAAAA preemption shifts to the opposing party.⁷¹ State courts as well as federal have the jurisdiction

to find a state action is preempted.⁷² § 14501 does not create a separate cause of action and cannot be enforced through 42 U.S.C.A. § 1983.⁷³

Conclusion

As established above in *Deerskin*, *Mastercraft* and *Cerdant*, the prosecution of a state tort action can be considered as much a "state enforcement action" as the adoption of a statute or regulation. Case law is replete with opinions that have ruled state tort actions such as negligence, gross negligence and fraud can be preempted by § 14501, and some jurisdictions have even preempted equitable actions as well. However, until *Owens*, above, it does not appear the issue of preemption of state tort actions for the negligent operation of a motor vehicle or negligent hiring, training, supervision and retention of drivers has been discussed.

In any determination of whether such motor vehicle accident tort claims are preempted by § 14501, the obvious inquiry is whether the tort claims relate to "price, route or service" of a motor carrier. Using this template, it would seem difficult to convince a court that a general claim against a truck driver for the negligent operation of a motor vehicle would be preempted. Despite the policy that FAAAA preemption is to be broad in scope, a valid argument can be made that such tort claims are not related to a motor carrier's service, but are rather the adjudication of duties and responsibilities every driver of a motor vehicle has to others lawfully using the roadways. The fact that the vast majority of motor vehicle negligence claims do not involve motor carriers indicates the purpose of an automobile negligence lawsuit does not "relate" to a motor carrier's service.


A much stronger argument can be made that tort claims against motor carriers for negligent hiring, training, supervision and retention of drivers do indeed relate to a motor carrier's service. Such claims typically involve a

torturous examination of existing federal and state statutes and regulations affecting motor carriers in plaintiffs' hopes of finding some technical violation to use as evidence supporting their claims. In essence, in defending negligent hiring, training, supervision and retention claims, a motor carrier is defending its compliance with existing statutes and regulations. This is the very definition of "relating to a service." Furthermore, despite originating in common law, the objective behind negligent hiring, training, supervision and retention claims is to influence and modify the behavior of motor carriers in the management of their drivers. They seek to impose standards on a motor carrier of which drivers to hire, how it is to train its drivers, how it is to monitor their behavior, and when it should terminate a driver.

Negligent hiring, training, supervision and retention claims do not merely "relate" to a motor carrier's service; by their very nature they are inextricably linked with how a motor carrier conducts its business.

The *Owens* opinion, in which the District Court for the Middle District of Tennessee found that automobile negligence actions were not preempted by the FAAAA, has some analytical flaws which affect the strength of its ruling. Specifically, the court: 1) relied upon airline tort cases that applied the preemption provisions of the ADA; 2) ignored the findings of those circuits which applied a broad interpretation of the definition of "service;" 3) did not apply the broad scope of FAAAA preemption as espoused in *Rowe*; and 4) failed to apply the analysis of *Ours Garage* and *Loyal Tire* in determining

that the claims fell under the "safety regulatory authority" exception. It is interesting to note that the district court in *Owens* could find no opinions that define "service" in the context of the FAAAA and motor carriers, and necessarily relied upon analogous airline tort cases which can be factually distinguished from claims against motor carriers.

Given the lack of meaningful authority to the contrary, it behooves motor carriers, when factually and jurisdictionally appropriate, to pursue dismissal of state tort claims through § 14501, especially those for negligent hiring, training, supervision and retention of drivers. Given the broad scope of FAAAA preemption, the logic is there. The old adage applies: "You will never know if you don't ask." 

Endnotes

1. 49 U.S.C.A. § 14501(c)(1).
2. 49 U.S.C.A. § 14501(c)(2)(A).
3. 49 U.S.C.A. § 14501(c)(2)(B).
4. 49 U.S.C.A. § 14501(c)(2)(C).
5. *Cole v. City of Dallas*, 314 F.3d 730, 734 (5th Cir. 2002).
6. *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 371, 128 S. Ct. 989, 995, 169 L.Ed.2d 933 (2008) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992))(internal quotation marks omitted).
7. U.S.C.A. Const. Art. 1, § 8, cl. 3.
8. 69 F.3d 1503 (10th Cir.1995).
9. 69 F.3d at 1505.
10. *Id.* at 1508.
11. 514 U.S. 549, 115 S. Ct. 1624, 131 L.Ed.2d 626 (1995).
12. 514 U.S. at 558-59, 115 S. Ct. at 1629-30.
13. 514 U.S. at 559, 115 S. Ct. at 1630.
14. 69 F.3d at 1507.
15. 69 F.3d at 1507-08.
16. 219 F.3d 1040 (9th Cir. 2000), cert. denied 531 U.S. 1146, 121 S. Ct. 1085, 148 L. Ed. 2d 960 (2001)(abrogated on other grounds, *Tillison v. City of San Diego*, 406 F.3d 1126 (9th Cir. 2005)).
17. *Id.* at 1052 (footnote omitted).
18. U.S.C.A. Const. Amend. 10.
19. *Kelley*, 69 F.3d at 1509 (quoting *New York v. United States*, 505 U.S. 144, 155-56, 112 S. Ct. 2408, 2417, 120 L.Ed.2d 120 (1992)).
20. *Id.* (citing *Gregory v. Ashcroft*, 501 U.S. 452, 460, 111 S. Ct. 2395, 2400-01, 115 L.Ed.2d 410 (1991)).
21. *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 325, 117 S. Ct. 832, 136 L.Ed.2d 791 (1997) (quoting *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655, 115 S. Ct. 1671, 131 L.Ed.2d 695 (1995), quoting in turn *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S. Ct. 1146, 91 L. Ed. 1447 (1947)).
22. 552 U.S. 364, 128 S. Ct. 989, 169 L.Ed.2d 933 (2008).
23. 552 U.S. at 370-71, 128 S. Ct. at 995.
24. *New Hampshire Motor Transport Ass'n. v Rowe*, 377 F.Supp.2d 197 (D. Me. 2005).
25. *Id.*
26. *New Hampshire Motor Transport Ass'n. v Rowe*, 448 F.3d 66 (1st Cir. 2006).
27. *Rowe v. New Hampshire Motor Transp. Ass'n*, 551 U.S. 1144, 127 S. Ct. 3037, ___L.Ed.2d___ (2007).
28. 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992)(holding federal law pre-empts States from enforcing their consumer-fraud statutes against deceptive airline-fare advertisements).

29. *Id.*
30. 504 U.S. at 384, 112 S. Ct. 2031 (emphasis added).
31. *Id.* at 386, 112 S. Ct. 2031 (internal quotation marks omitted).
32. *Id.* at 386-387, 112 S. Ct. 2031 (emphasis deleted).
33. *Id.* at 390, 112 S. Ct. 2031.
34. 552 U.S. at 370, 128 S. Ct. at 994 (citations omitted).
35. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85, 126 S. Ct. 1503, 164 L.Ed.2d 179 (2006) (internal quotation marks and alteration omitted).
36. 536 U.S. 424, 122 S. Ct. 2226, 153 L.Ed.2d 430 (2002).
37. 536 U.S. at 440-41, 122 S. Ct. at 2236 (emphasis supplied in the original).
38. James Lockhart, in 29 A.L.R. Fed. 2d 563, provides an excellent and exhaustive study of all aspects of § 14501 preemption.
39. 445 F.3d 136 (2d Cir. 2006).
40. 445 F.3d at 145.
41. 972 F. Supp. 665 (N.D. Ga. 1997).
42. 49 U.S.C.A. § 1305(a)(1).
43. 504 U.S. 374, 112 S. Ct. 2031, 119 L.Ed.2d 157 (1992).
44. 513 U.S. 219, 115 S. Ct. 817, 130 L.Ed.2d 715 (1995).
45. 972 F. Supp. at 671.
46. *Id.* at 672.
47. 284 F. Supp.2d 284 (D. Md. 2003)(holding that Interstate Commerce Commission Termination Act preempted customer's tort claims).
48. 2009 WL 723149 (S.D. Ohio, Mar 16, 2009)(holding FAAAA preempted all plaintiffs' non-contract claims).
49. *See, e.g., Barber Auto Sales v. United Parcel Serv., Inc.*, 494 F.Supp.2d 1290, 1294 (N.D. Ala. 2007)(dismissing equitable claims for injunctive relief and rescission of the contract because such claims are preempted by the FAAAA); *Yellow Transp., Inc. v. DM Transp. Mgmt. Servs., Inc.*, 2006 WL 2871745, at *4 (E.D. Pa., July 14, 2006) (dismissing claims for unjust enrichment, quantum meruit, and fraud because such claims are preempted by the FAAAA, but breach of contract claim survives); *Thermal Techs., Inc. v. United Parcel Serv., Inc.*, 2008 WL 4838681, at *9 (N.D. Okla., Nov.5, 2008) (dismissing unjust enrichment claim because it is preempted by the FAAAA); *All World Prof'l Travel Servs., Inc. v. Am. Airlines, Inc.*, 282 F.Supp.2d 1161, 1169 (C.D.Cal.2003)(finding that claims for unjust enrichment and declaratory and injunctive relief are preempted if the claims relate to prices or services).
50. 972 F. Supp. at 673.
51. *Id.*
52. 1999 WL 33100089 (D. Vt. July 7, 1999).
53. *Id.* at *1.
54. *Id.*
55. *Id.* at *2; however, contrast with *Kuehne v. United Parcel Service, Inc.*, 868 N.E. 2d 870 (Ind. Ct. App. 2007)(as a matter of first impression, court held homeowner's negligence claim against UPS was not preempted by FAAAA because once a package is delivered, subsequent occurrences stemming from the alleged negligence of an employee do not necessarily amount to a service of UPS).
56. 44 So.3d 447 (Ala. 2010).
57. *Id.* at 448-49.
58. *Id.* at 458.
59. 2011 WL 6056409 (M.D. Tenn., Dec. 6, 2011).
60. *Id.* at *1.
61. *Id.*
62. *Id.* at *2.
63. *Id.* at *3.
64. 794 F. Supp. 2d 344 (D. Puerto Rico 2011).
65. *Id.* at 347.
66. *Id.* at 347-49
67. *Id.* at 347-48.
68. 2011 WL 6056409 at *3.
69. *Williams v. Ashland Engineering Co., Inc.*, 45 F.3d 588 (1st Cir.1995).
70. *Cerdant, Inc. v. DHL Express (USA), Inc.*, 2009 WL 723149 (S.D. Ohio, March 16, 2009).
71. *Helmrich Transp. Systems, Inc. v. City of Philadelphia*, 2004 WL 2278534 (E.D. Pa., October 08, 2004).
72. *Worldwide Moving & Storage, Inc. v. District of Columbia*, 445 F.3d 422 (D.C. Cir. 2006).
73. *Loyal Tire & Auto Center, Inc. v. Town of Woodbury*, 445 F.3d 136 (2d Cir. 2006).

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