No. 22-1805

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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YING YE, as Representative of the Estate of Shawn Lin, Deceased,
Plaintiff-Appellant,

v.

GLOBALTRANZ ENTERPRISES, INC.,
Defendant-Appellee.

---

Appeal from the United States District Court
for the Northern District of Illinois
No. 1:18-CV-01961
Hon. Elaine E. Bucklo, U.S.D.J.

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# APPELLANT'S BRIEF AND REQUIRED SHORT APPENDIX

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August 31, 2022

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## APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 22-1805

Short Caption: Ying Ye v. GlobalTranz Enterprises, Inc.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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Ying Ye, as representative of the estate of Shawn Lin, deceased

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Public Citizen Litigation Group; Cowen Rodriguez Peacock, P.C.; Levinson & Stefani

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

---

Attorney's Signature: /s/ Adina H. Rosenbaum Date: 8/31/22

Attorney's Printed Name: Adina H. Rosenbaum

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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N/A

---

Attorney's Signature: /s/ Scott L. Nelson Date: 8/31/22

Attorney's Printed Name: Scott L. Nelson

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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N/A

---

Attorney's Signature: /s/ Michael Cowen Date: 8/31/22

Attorney's Printed Name: Michael Cowen

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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## STATEMENT IN SUPPORT OF ORAL ARGUMENT

Plaintiff-Appellant Ying Ye respectfully requests oral argument. This case presents the question whether a freight broker can be held accountable when its negligent hiring of an unsafe motor carrier leads to the injury or death of another person on the road. The district court held, in conflict with the only court of appeals to have addressed the issue, as well as with a substantial majority of district courts, that a preemption provision in the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1), preempts personal-injury claims against freight brokers based on their negligent hiring of an unsafe motor carrier. This Court has not previously considered whether the FAAAA preempts such claims. Ms. Ye believes that oral argument will assist the Court in deciding the issue and resolving this case.

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## STATEMENT OF JURISDICTION

Ying Ye filed this action in the United States District Court for the Northern District of Illinois on March 19, 2018, asserting claims against defendant Global Sunrise, Inc. *See* D.E. 1.[1] On October 25, 2019, she filed an amended complaint, adding GlobalTranz Enterprises, Inc. as an additional defendant. *See* App. 20–31. Ms. Ye brought the case as a representative of the estate of her deceased husband, Shawn Lin, on her own behalf, and as next friend of her minor children. *Id.* at 20, ¶ 1.4. The claims against GlobalTranz were based on negligent hiring and vicarious liability.

The district court had diversity jurisdiction pursuant to 28 U.S.C § 1332. Ms. Ye is a Texas citizen, as was the decedent, Shawn Lin. App. 21, ¶ 2.1. Global Sunrise, Inc. is an Illinois corporation with its principal place of business in Illinois. *Id*. at 20, ¶ 1.5. GlobalTranz Enterprises, Inc. is a Delaware corporation with its principal place of business in Arizona. *Id*. at 21, ¶ 1.7. The amount in controversy is $10 million. *See id*., ¶ 2.1; *id*. at 19.

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[1] Citations to "D.E." refer to docket entries in the district court. Citations to "App." refer to the required short appendix attached to this brief.

On March 4, 2020, the district court dismissed Ms. Ye's negligent-hiring claim against GlobelTranz, *see id.* at 1–14, and on November 2, 2021, the district court granted summary judgment for GlobalTranz on Ms. Ye's vicarious liability claim against it, *see* D.E. 107, 108. On November 10, 2021, the district court granted Ms. Ye's motion for a default judgment as to Global Sunrise. *See* D.E. 113. On November 23, 2021, the district court ordered that judgment was entered in favor of GlobalTranz and against Ms. Ye. *See* App. 15. On April 5, 2022, the Court entered an order assessing damages against Global Sunrise. *See id.* at 16–19. The April 5, 2022, order was a final decision because it disposed of all remaining claims.

Ms. Ye timely filed her notice of appeal on May 5, 2022. *See* D.E. 120. This Court has jurisdiction under 28 U.S.C. § 1291.

## STATEMENT OF THE ISSUE

Whether the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1), preempts personal-injury and wrongful-death claims against a freight broker arising from the broker's negligent hiring of an unsafe motor carrier.

## STATEMENT OF THE CASE

### A. Statutory Background

The Airline Deregulation Act of 1978 (ADA), Pub. L. No. 95-504, 92 Stat. 1705, eliminated federal economic regulation of the airline industry. "In keeping with the statute's aim to achieve 'maximum reliance on competitive market forces,' … Congress sought to 'ensure that the States would not undo federal deregulation with regulation of their own.'" *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 255–56 (2013) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992)). Accordingly, the ADA includes a preemption provision that, as currently codified, prohibits states from enacting or enforcing laws "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1).

In 1980, Congress similarly deregulated the trucking industry, *see* Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793, but did not preempt state trucking regulation. In 1994, Congress determined that "certain aspects of the State regulatory process should be preempted," and enacted a provision regarding the "preemption of state economic regulation of motor carriers." FAAAA, Pub. L. No. 103-305, § 601(a), (c), 108 Stat. 1569, 1605, 1606 (1994). As later amended, that provision

preempts state laws "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).

At the same time that it enacted the preemption provision, Congress sought to "ensure that its preemption of States' economic authority over motor carriers of property" would "'not restrict' the preexisting and traditional state police power over safety." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 439 (2002) (quoting 49 U.S.C. § 14501(c)(2)(A)). Accordingly, Congress specified that the preemption provision "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). This exception from preemption is often called the "safety exception." *Ours Garage*, 536 U.S. at 435.

### B. Factual Background

Defendant-appellee GlobalTranz Enterprises, Inc., is a freight broker. App. 23, ¶ 4.11. On October 31, 2017, GlobalTranz entered into a contract for Global Sunrise, Inc., a motor carrier, to transport freight from Chicago, Illinois to Conroe, Texas. *Id.* at 23, 24, ¶¶ 4.13, 4.17. GlobalTranz selected Global Sunrise to transport the freight even though

public information, easily available on the website of the Federal Motor Carrier Safety Administration (FMCSA), revealed that the motor carrier had a history of violating federal motor carrier safety regulations. *Id.* at 24, ¶¶ 4.16–4.18. From November 18, 2016, until September 29, 2017, Global Sunrise's vehicles and/or drivers were subject to inspection 111 times and cited for 153 violations, including 30 violations related to driver hours of service and seven for unsafe driving. *Id.*, ¶ 4.19. In the two years prior to December 3, 2017, Global Sunrise's vehicles were placed out of service after inspection more than a quarter of the time—a rate above the national average—and its drivers were placed out of service after an inspection more than 12 percent of the time—a rate more than twice the national average. *Id.* at 25, ¶¶ 4.20–4.21.

In addition, Global Sunrise was what is known as a "chameleon" or "reincarnated" carrier. It was the continuation of two related businesses, operated under other names, that ceased operations due to multiple violations of FMCSA regulations and the imposition of a conditional safety rating by FMCSA. *Id.* at 22, ¶ 4.1; *see* 49 C.F.R. § 385.3 (explaining that a conditional safety rating means that "a motor carrier does not have adequate safety management controls in place to ensure compliance with

the [applicable] safety fitness standard"); *see also id.* § 385.1005 (forbidding motor carriers from using "common ownership, common management, common control, or common familial relationship … to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with [commercial motor vehicle safety] statutory or regulatory requirements"); U.S. Gov't Accountability Off., GAO-12-364, Motor Carrier Safety: New Applicant Reviews Should Expand to Identify Freight Carriers Evading Detection 17 (2012) (explaining that new applicants with attributes of chameleon carriers were "three times more likely than all other new applicant carriers to later be involved in a severe crash—one in which there was a fatality or injury").

On November 7, 2017, David Antoine Carty, a Global Sunrise driver, was operating a tractor-trailer on the frontage road of Interstate 45 in Conroe, Texas, while transporting the cargo brokered by GlobalTranz. App. 25, ¶ 4.22. Mr. Carty made a right turn from the third lane from the right, crossing two other lanes of travel. *Id.*, ¶ 4.24. Mr. Carty failed to use his mirrors and to ensure that there was no traffic coming before crossing the other lanes of traffic to make the turn. *Id.* at

28, ¶ 5.3. As a result of Mr. Carty's improper turn, the truck collided with a motorcycle ridden by Shawn Lin. *Id.* at 25, ¶ 4.25. Mr. Lin died from injuries sustained in the crash. *Id.*, ¶ 4.28.

### C. Procedural Background

On March 19, 2018, Mr. Lin's widow, Ying Ye, filed this action in the United States District Court for the Northern District of Illinois, alleging claims against Global Sunrise. *See* D.E.1. On October 25, 2019, she filed an amended complaint, adding GlobalTranz as an additional defendant. *See* App. 20–31. As relevant here, the amended complaint alleges that Defendant GlobalTranz was negligent in selecting Global Sunrise to transport freight because it knew or should have known that Global Sunrise was an unsafe company with a history of hours of service and unsafe driving violations. *See id*. at 28, ¶ 5.8.

On March 4, 2020, the district court granted GlobalTranz's motion to dismiss the negligent-hiring claim, holding that the claim is preempted by the FAAAA. *See* App. 5–11. The district court first held that the claim falls within the scope of the FAAAA's preemption provision, 49 U.S.C. § 14501(c)(1). *See* App. 7–9. The court then held that the claim does not fall within the scope of the safety exception, 49 U.S.C. § 14501(c)(2)(A).

*See* App. 9. Although the complaint alleges that GlobalTranz was negligent in selecting a motor carrier to provide motor vehicle transportation, resulting in a motor vehicle crash, the court stated that the negligent-hiring claim has only "an attenuated connection to motor vehicles." *Id*.

The district court held that the FAAAA did not preempt Ms. Ye's other claim against GlobalTranz, which was based on the theory that GlobalTranz was vicariously liable for Global Sunrise's and Mr. Carty's negligence. *Id*. at 12. On November 2, 2021, the district court granted summary judgment to GlobalTranz on that claim on the merits. *See* D.E. 107, 108. On November 10, 2021, the district court granted Ms. Ye's motion for a default judgment as to Global Sunrise, whose counsel had withdrawn in 2019 after Global Sunrise's insurer went into receivership. *See* D.E. 32, 113. On November 23, 2021, the district court ordered that judgment was entered in favor of GlobalTranz and against Ms. Ye. *See* App. 15. Last, on April 5, 2022, the Court entered an order assessing damages against Global Sunrise. *See* App. 16–19.

## SUMMARY OF ARGUMENT

The FAAAA, 49 U.S.C. § 14501(c)(1), does not preempt personal-injury and wrongful-death claims (hereafter collectively referred to as "personal-injury claims") against freight brokers based on their negligent hiring of an unsafe motor carrier for two independent reasons.

First, such claims invoke "the safety regulatory authority of a State with respect to motor vehicles," and therefore fall within the scope of the safety exception to preemption in 49 U.S.C. § 14501(c)(2)(A). As the only court of appeals to have addressed the issue explained, the "'safety regulatory authority of a State' encompasses common-law tort claims," which are an "important component of the States' power over safety." *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1026 (9th Cir. 2020), *cert. denied*, 142 S. Ct. 2866 (2022). Moreover, a claim alleging that a broker breached its duty to exercise care to ensure that the motor carrier it hired would not place unsafe motor vehicles on the road has the "requisite 'connection with' motor vehicles" to fall within the exception's scope. 976 F.3d at 1020. Thus, as the Solicitor General of the United States explained when invited by the Supreme Court to file a brief addressing the petition for a writ of certiorari in the *Miller* case, the

"exception exempts from preemption a State's regulatory authority over safety when the State exercises its authority through reliance on traditional common law, including when the State imposes a common-law duty of care on freight brokers with respect to their selection of a motor carrier to provide safe motor vehicle transportation." Br. for U.S. as Amicus Curiae at 7, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425 (U.S., filed May 24, 2022) (hereafter "U.S. Br., *Miller*").[2] Because personal-injury claims against freight brokers based on the negligent hiring of an unsafe motor carrier fall within the safety exception, the FAAAA does not preempt them, regardless of whether they would otherwise fall within the scope of § 14501(c)(1).

Second, such claims are not preempted because they do not "relate[] to" broker prices, routes, or services and therefore fall outside the scope of § 14501(c)(1). "Services" in the FAAAA refers to the services a motor carrier or broker "offers its customers." *Dan's City*, 569 U.S. at 263. The duty underlying a negligent-hiring claim such as Ms. Ye's, however, is one the broker owes to members of the public, not to its customer, the

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[2] Available at https://www.supremecourt.gov/DocketPDF/20/20-1425/226161/20220524152825488_20-1425%20CH%20Robinson--US%20Invitation%20Br.pdf.

shipper. The efforts a broker takes to ensure that it is not placing unsafe motor carriers on the road with other passengers and drivers are not a "service" a broker provides to the shipper, and those efforts do not have a significant economic effect on the service the broker does provide its customer: arranging for the transportation of the customers' goods. Because the duty underlying Ms. Ye's negligent-hiring claim has no more than a "tenuous, remote, or peripheral" connection to broker prices, routes, or services, *Dan's City*, 569 U.S. at 261 (citation omitted), as well as because it falls within the safety exception, 49 U.S.C. § 14501(c)(2)(A), the FAAAA does not preempt it.

## STANDARD OF REVIEW

This Court reviews do novo a district court's ruling on a motion to dismiss or motion for judgment on the pleadings. *See Trujillo v. Rockledge Furniture LLC,* 926 F.3d 395, 397 (7th Cir. 2019); *Landmark Am. Ins. Co. v. Hilger*, 838 F.3d 821, 824 (7th Cir. 2016). In doing so, it "accept[s] all well-pleaded facts as true and draw[s] all reasonable inferences in plaintiff's favor." *Trujillo*, 926 F.3d at 397.

## ARGUMENT

### I. Ms. Ye's negligent-hiring claim falls within the safety exception to preemption.

The FAAAA's safety exception provides an exception to preemption under § 14501(c)(1) for claims that invoke "the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). The FAAAA does not preempt such claims, regardless of whether they would otherwise fall within the scope of § 14501(c)(1).

As recognized by numerous federal courts, including the only court of appeals to address the issue, personal-injury claims against brokers based on their negligent selection of an unsafe motor carrier invoke the state's "safety regulatory authority … with respect to motor vehicles," *id.* § 14501(c)(2)(A), and, therefore, are not preempted.[3]

[3] *See Miller*, 976 F.3d at 1020; *Mata v. Allupick, Inc.*, No. 4:21-CV-00865-ACA, 2022 WL 1541294, at *6 (N.D. Ala. May 16, 2022); *Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945-JCH-GJF, 2021 WL 5493076, at *14 (D.N.M. Nov. 23, 2021); *Taylor v. Sethmar Transp., Inc.*, No. 2:19-CV-00770, 2021 WL 4751419, at *16 (S.D.W. Va. Oct. 12, 2021); *Crouch v. Taylor Logistics Co.*, 563 F. Supp. 3d 868, 876 (S.D. Ill. 2021); *Gerred v. FedEx Ground Packaging Sys., Inc.*, No. 4:21-CV-1026-P, 2021 WL 4398033, at *3 (N.D. Tex. Sept. 23, 2021); *Montgomery v. Caribe Transp. II, LLC*, No. 19-CV-1300-SMY, 2021 WL 4129327, at *2 (S.D. Ill. Sept. 9, 2021); *Bertram v. Progressive Se. Ins. Co.*, No. 2:19-CV-01478, 2021 WL 2955740, at *6 (W.D. La. July 14, 2021); *Reyes v. Martinez*, No. EP-21-
(continued…)

### A. The "safety regulatory authority of a State" encompasses common-law claims.

In the district court, GlobalTranz conceded that the safety exception can encompass negligence claims. *See* D.E. 67, at 13 (stating that "[c]laims for negligent operation, maintenance, or use of a motor vehicle against a motor carrier or operator" fall within the safety exception). The district court likewise recognized that common-law claims can fall within the safety exception. *See* App. 10–11 (stating that the safety exception indicates that motor carriers "may be liable for

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CV-00069-DCG, 2021 WL 2177252, at *6 (W.D. Tex. May 28, 2021); *Popal v. Reliable Cargo Delivery*, No. P:20-CV-00039-DC, 2021 WL 1100097, at *4 (W.D. Tex. Mar. 10, 2021); *Grant v. Lowe's Home Ctrs., LLC*, No. CV 5:20-02278-MGL, 2021 WL 288372, at *4 (D.S.C. Jan. 28, 2021); *Mendoza v. BSB Transp., Inc.*, No. 4:20 CV 270 CDP, 2020 WL 6270743, at *4 (E.D. Mo. Oct. 26, 2020); *Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, 321 (D. Mass. 2020); *Uhrhan v. B&B Cargo, Inc.*, No. 4:17-CV-02720-JAR, 2020 WL 4501104, at *5 (E.D. Mo. Aug. 5, 2020); *Lopez v. Amazon Logistics, Inc.*, 458 F. Supp. 3d 505, 515 (N.D. Tex. 2020); *Gilley v. C.H. Robinson Worldwide, Inc.*, No. CV 1:18-00536, 2019 WL 1410902, at *5 (S.D.W. Va. Mar. 28, 2019); *Huffman v. Evans Transp. Servs., Inc.*, No. CV H-19-0705, 2019 WL 4143896, at *4 (S.D. Tex. Aug. 12, 2019), report and recommendation adopted, No. 4:19-CV-705, 2019 WL 4142685 (S.D. Tex. Aug. 28, 2019); *Finley v. Dyer*, No. 3:18-CV-78-DMB-JMV, 2018 WL 5284616, at *6 (N.D. Miss. Oct. 24, 2018); *Mann v. C.H. Robinson Worldwide, Inc.*, No. 7:16-CV-00102, 2017 WL 3191516, at *8 (W.D. Va. July 27, 2017); *Morales v. Redco Transp. Ltd.*, No. 5:14-CV-129, 2015 WL 9274068, at *3 (S.D. Tex. Dec. 21, 2015); *Owens v. Anthony*, No. 2-11-0033, 2011 WL 6056409, at *4 (M.D. Tenn. Dec. 6, 2011).

personal-injury negligence actions despite the FAAAA's preemption provision"); *id.* at 12 (relying on the safety exception in rejecting the argument that the FAAAA preempted Ms. Ye's claim based on GlobalTranz's vicarious liability for Global Sunrise's and Mr. Carty's negligence). GlobalTranz's concession, and the district court's opinion, were correct on this point: The text, purpose, and statutory context of the safety exception all support the conclusion that the "safety regulatory authority of a State" encompasses common-law damages claims, such as claims for negligence.

First, the term "safety regulatory authority of a State" comfortably and logically includes common-law damages claims. State courts' ability to develop and enforce common-law duties is part of the "authority of [the] State." The Supreme Court has recognized that "state regulation can be ... effectively exerted through an award of damages." *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (internal quotation marks and citation omitted)); *see also* U.S. Br., *Miller*, at 8 (noting that the Supreme Court "has repeatedly recognized in its pre-emption jurisprudence that a State's common law of torts is a manifestation of a State's 'regulatory' authority"). And common-law duties, such as those at

issue here, can be "genuinely responsive to safety concerns." *Ours Garage*, 536 U.S. at 442.

Second, the evident purpose of the safety exception confirms that the "safety regulatory authority of a State" encompasses common-law duties. *See* Antonin Scalia & Bryan A. Garner, Reading Law 20 (2012) ("The evident purpose of what a text seeks to achieve is an essential element of context that gives meaning to words."). As the Supreme Court explained in *Ours Garage*, "Congress' clear purpose in § 14501(c)(2)(A) is to ensure that its preemption of States' economic authority over motor carriers of property, § 14501(c)(1), 'not restrict' the preexisting and traditional state police power over safety." 536 U.S. at 439. Common-law claims fall squarely within the traditional state police power that Congress sought to preserve in enacting the safety exception. *See*, *e.g.*, U.S. Br., *Miller*, at 11 (explaining that a state may exercise its "'police power' … through the application of [either] state common law or state statutory law").

Third, reading the safety exception in light of other provisions in the statute further confirms that the exception encompasses common-law claims. "While Congress deliberately and repeatedly used the word

'regulation' in other provisions of chapter 14501, it used 'regulatory authority' in the safety exception." *Lopez*, 458 F. Supp. 3d at 515 (comparing 49 U.S.C. §§ 14501(b) & (c)(1) with 49 U.S.C. § 14501(c)(2)(A)); *see also Dixon*, 2021 WL 5493076, at *12. Congress's choice to reserve all of a state's safety regulatory authority, rather than limiting the exception to safety regulations, indicates its intent to preserve more than just the state's power to enact positive regulations. "The divergence from surrounding provisions suggests this choice was deliberate, and to read 'regulatory authority' as 'regulations' narrows the safety exception where there is not 'clear and manifest' congressional intent to do so." *Lopez*, 458 F. Supp. 3d at 515.

Finally, if the state's "safety regulatory authority" were interpreted to exclude common-law damages claims, the safety exception would be "inapplicable not only to common-law tort actions against freight brokers, but also to common-law tort actions against the motor carriers directly responsible for motor-vehicle accidents." U.S. Brief, *Miller*, at 14. Accordingly, if common-law negligence claims against motor carriers "relate[] to" a motor carrier's price, route, or service—and it is hard to see why they would not under the district court's reading of 49 U.S.C.

§ 14501(c)(1), *see* App. 6–9—such an interpretation of the safety exception "would eliminate common-law negligence actions against motor carriers as well as brokers." U.S. Brief, *Miller*, at 14. This "substantial change in the law governing commercial motor-vehicle accidents … highlights why [such an interpretation] is unsound." *Id.* And, indeed, GlobalTranz agrees that the safety exception applies to claims against motor carriers based on their negligent use of a motor vehicle. D.E. 67, at 13.

In sum, in enacting the safety exception, "Congress intended to preserve the States' broad power over safety, a power that includes the ability to regulate conduct not only through legislative and administrative enactments, but also though common-law damages awards." *Miller*, 976 F.3d at 1020. The language Congress enacted achieves that purpose, and the safety exception encompasses common-law damages actions.[4]

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[4] Westlaw incorrectly indicates that *Miller* has been abrogated, citing *R.J. Reynolds Tobacco Co. v. County of Los Angeles*, 29 F.4th 542 (9th Cir. 2022). In *R.J. Reynolds*, the Ninth Circuit held that the Family Smoking Prevention and Tobacco Control Act (TCA) does not preempt a Los Angeles County ban on the sale of flavored tobacco products. In dicta in a footnote, the court stated that it was interpreting the TCA without (continued…)

### B. Personal-injury claims based on a broker's negligent hiring of a motor carrier invoke the state's safety regulatory authority "with respect to motor vehicles."

Although the district court properly recognized that the safety exception can apply to common-law claims, it erred in concluding that Ms. Ye's negligent-hiring claim did not invoke the state's safety regulatory authority "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

A state law is "with respect to" a topic when it "concern[s]" that topic. *Dan's City*, 569 U.S. at 261. A "claim seeking damages for personal injury against a broker for negligently placing an unsafe carrier on the

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applying a presumption against preemption, relying on the Supreme Court's decision in *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115, 125 (2016). *R.J. Reynolds*, 29 F.4th at 553 n.6. In doing so, the court rejected the county's argument that *Miller* supported the application of a presumption against preemption, because the parties in *Miller* had not addressed *Franklin*. *Id. R.J. Reynolds* did not discuss *Miller* outside the context of whether it supported applying a presumption against preemption in interpreting the TCA, and it did not address the fact the Supreme Court itself has applied such a presumption in interpreting the safety exception. *See Ours Garage*, 536 U.S. at 432, 438. Moreover, although *Miller* cited the presumption against preemption, its conclusion that personal-injury claims against brokers arising out of motor vehicle accidents fall within the safety exception did not rest on that presumption. *See Miller*, 976 F.3d at 1025–31. In any event, as a panel decision that does not rely on any intervening Supreme Court or en banc authority, *R.J. Reynolds* cannot abrogate a prior Ninth Circuit decision.

highways is a claim that concerns motor vehicles and their safe operation." *Lopez*, 458 F. Supp. 3d at 516. Such claims "incentivize[] brokers to select safe and competent motor carriers to drive motor vehicles in the state," *Taylor*, 2021 WL 4751419, at *16, and "help to protect citizens from injuries caused by motor vehicles," *Skowron*, 480 F. Supp. 3d at 321. Because they invoke state laws that are concerned with safety and motor vehicles, seeking to protect the public from motor vehicles that are not being operated safely, such claims fall within the scope of the safety exception. *See Finley*, 2018 WL 5284616, at *6 ("[S]uch claims, which are centered on a defendant's efforts to place trailers on the highways, concern motor vehicles so as to fall under the exemption provision.").

Below, the district court held that Ms. Ye's claim does not fall within the safety exception because "GlobalTranz is not alleged to directly own, operate, or maintain motor vehicles." App. 9. According to the district court, Ms. Ye's claim thus relies on a "safety regulation concerning motor carriers rather than one concerning motor vehicles." *Id.* (citation omitted). A motor carrier, however, is "a person providing motor vehicle transportation for compensation." 49 U.S.C. § 13102(14).

Accordingly, "the selection of a motor carrier to transport goods necessarily implicates the use of a motor vehicle." *Mata*, 2022 WL 1541294, at *5. Moreover, the safety with which the state law being invoked is concerned is the safety of motor vehicles. The claim here is not that GlobalTranz selected a carrier that operated its office or its terminals in an unsafe manner, but that it put unsafe trucks and drivers on the highways.

State laws do not need to directly regulate motor vehicles to concern motor vehicles and their safe operation. *See*, *e.g.*, *Miller*, 976 F.3d at 1030 (noting that "the FAAAA's safety exception exempts from preemption safety regulations that have a connection with motor vehicles, whether directly or indirectly") (citation omitted and cleaned up); *United Motorcoach Ass'n v. City of Austin*, 851 F.3d 489, 495 (5th Cir. 2017) (explaining that the "referred-to authority is not merely as to the mechanical safety of motor vehicles themselves"); *Morales v. Redco Transp. Ltd.*, 2015 WL 9274068, at *2 ("[T]he FAAAA does not restrict the safety exemption only to those with some control over motor vehicles."). State laws can also address the safety of motor vehicles by holding liable brokers who negligently hire unsafe motor carriers to

"provid[e] motor vehicle transportation." 49 U.S.C. § 13102(14); *see*, *e.g.*, *Montgomery*, 2021 WL 4129327, at *3 (explaining that negligence claims against brokers serve Illinois's "interest in regulating the safety of drivers on the road"). As the Solicitor General has explained, because "[t]he safe operation of a vehicle is necessarily connected to the vehicle's operator, *i.e.*, the motor carrier providing the motor vehicle transportation[,] [t]he selection of a safe motor carrier … is logically a meaningful component of commercial motor-vehicle safety." U.S. Brief, *Miller*, at 17.

In short, "where a State requires a broker to exercise ordinary care in selecting a motor carrier to safely operate the motor vehicle, the State's exercise of its safety regulatory authority occurs 'with respect to motor vehicles.'" *Id*. at 16 (quoting 49 U.S.C. § 14501(c)(2)(A)). Because Ms. Ye's claim invokes the safety regulatory authority of a state with respect to motor vehicles, it falls within the FAAAA's safety exception to preemption and is not preempted.

## II. Ms. Ye's negligent-hiring claim does not relate to broker prices, routes, or services.

Ms. Ye's negligent-hiring claim is also not preempted because it does not fall within the scope of the FAAAA's preemption provision, 49

U.S.C. § 14501(c)(1), in the first place. Subject to exceptions, § 14501(c)(1) preempts state laws "related to a price, route, or service of any motor carrier … [or] broker … with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). A state law "relate[s] to" motor carrier or broker prices, routes, or services if it either "expressly refer[s] to them, or [has] a significant economic effect on them." *Nationwide Freight Sys., Inc. v. Ill. Com. Comm'n*, 784 F.3d 367, 374 (7th Cir. 2015) (quoting *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1432 (7th Cir. 1996)). It does not "relate[] to" motor carrier or broker prices, routes, or services if it affects them "in only a tenuous, remote, or peripheral manner." *Dan's City*, 569 U.S. at 260 (citation omitted and cleaned up). Moreover, the Supreme Court has stressed that the "state laws whose 'effect' is 'forbidden' under federal law are those with a '*significant* impact' on carrier rates, routes, or services." *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 375 (2008) (quoting *Morales*, 504 U.S. at 388, 390).

Here, the Illinois common law underlying Ms. Ye's negligent-hiring claim does not "relate to" broker prices, routes, or services. As the district court acknowledged, *see* App. 8, the underlying state law does not expressly reference broker prices, routes, or services. Accordingly, it

would only relate to broker prices, routes, or services if its enforcement had a "significant economic effect" on them. *Travel All Over the World*, 73 F.3d at 1432.

The Illinois law does not have such an effect. The word "service" in the FAAAA refers to the service a motor carrier or broker "renders its customers." *Dan's City*, 569 U.S. at 262; *see Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1055 (7th Cir. 2016) (explaining that where a state law is not "specifically directed to motor carriers," the Court's task "is to determine whether the [law] will have a significant impact on the prices, routes, and services that [the motor carrier] offers to its customers"). The FAAAA is concerned with the broker or carrier's "relationship *with its consumers*," *Costello*, 810 F.3d at 1054, seeking to prevent states from "substitut[ing] a state policy (embodied in law) for the agreements that the parties had reached." *S.C. Johnson & Son, Inc. v. Transp. Corp. of Am.*, 697 F.3d 544, 557 (7th Cir. 2012). The common-law duties underlying Ms. Ye's negligent-hiring claim, however, are ones that GlobalTranz owed to members of the public, not to its customer—the shipper—and they do not affect the "contractual arrangement" between the broker and the shipper. *Travel All Over the World*, 73 F.3d at 1433 (quoting *Hodges v. Delta*

*Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir.1995) (en banc)). Although brokers and shippers may bargain and contract over the steps the broker will take to ensure that the shipment will successfully arrive at its destination without being harmed, they do not bargain and contract over whether the broker will fulfill its duty to members of the public to ensure that it is not putting unsafe motor carriers on the road with them. Because the efforts a broker takes to ensure that it is not placing unsafe motor vehicles on the road with other drivers and passengers are not part of the "bargained-for or anticipated provision of labor" between the broker and its customer, *id.* (quoting *Hodges*, 44 F.3d at 336), and do not affect the "particular terms of trade between parties to a transaction," *S.C. Johnson*, 697 F.3d at 558, they are not a "service" within the meaning of the FAAAA, and state laws are not preempted because they affect those efforts. *See Hodges*, 44 F.3d at 336 (holding that personal-injury claim based on the operation of an airplane was not related to airline prices, routes, and services, where it did not relate to the contractual features of air transportation); *see also S.C. Johnson*, 697 F.3d at 560 (explaining that wire and mail fraud offenses based on fraudulent invoices sent by motor carriers to shipper "relate[d] at most

tangentially to rates, routes, and services" where the focus of the mail and wire fraud statutes was "the harm done to the intermediary financial institution," not to the shipper).

Brokers do, of course, provide a "service" to shippers: the service of "selling, providing, or arranging for[] transportation by motor carrier for compensation," 49 U.S.C. § 13102(2) (defining "broker"). The state-law duties underlying Ms. Ye's negligent-hiring claim do not affect that service. A broker can arrange transportation of a shipper's cargo by motor carrier while also conducting a reasonable investigation into motor carriers' safety histories. To be sure, the investigations might result in the broker hiring a different motor carrier to transport a particular load of goods than it might have otherwise, but the identity of the motor carrier that is hired does not change the service that the customer receives from the broker. *Cf. Day v. SkyWest Airlines*, __ F.4th __, 2022 WL 3581541, at *6 (10th Cir. Aug. 22, 2022) (in holding that ADA does not preempt claim based on airline's "allegedly negligent infliction of personal injuries on [the plaintiff] during its beverage service," explaining that the claim "would not force [the airline] to remove, add, or modify any of its prices, routes, or services; it would simply hold [the

airline] to the same general obligations of due care … that apply to other companies”).

This Court has recognized that, whereas laws “that affect the way a carrier interacts with its customers fall squarely within the scope of FAAAA preemption,” laws “that merely govern a carrier’s relationship with its workforce … are often too tenuously connected to the carrier’s relationship *with its consumers* to warrant preemption.” *Costello*, 810 F.3d at 1054. The law underlying Ms. Ye’s negligent-hiring claim is similar to the laws affecting the workforce discussed in *Costello*, providing a “backdrop for private ordering” between the broker and the shipper. *S.C. Johnson*, 697 F.3d at 558. Although it may affect which motor carrier a broker hires, it has no more than a tenuous connection to the broker’s relationship with its customer. *See*, *e.g.*, *Reyes*, 2021 WL 2177252, at *5–6 (explaining that negligent-hiring personal-injury claim affected broker services in too tenuous, remote, or peripheral a manner to be preempted); *Huffman*, 2019 WL 4143896, at *3 (same); *Gilley*, 2019 WL 1410902, at *5 (same); *Mann*, 2017 WL 3191516, at *7 (same).

Contrary to the district court’s reasoning, *Rowe* does not support preemption here. In *Rowe*, the Supreme Court held that the FAAAA

preempted sections of a Maine law that "regulat[ed] the delivery of tobacco to customers within the State." 552 U.S. at 367. One of those sections forbade any person from knowingly transporting a tobacco product to a person in Maine unless either the sender or receiver had a state license, and provided that a person was deemed to know that a package contained a tobacco product if it either was marked as containing tobacco and displayed the name and license number of a Maine-licensed tobacco retailer or if the person received the package from someone whose name was on a list of unlicensed tobacco retailers. *Id.* at 369. In holding that the "deemed to know" provision was preempted, the Court noted that it imposed "civil liability upon the carrier … for the carrier's *failure sufficiently to examine every package*." *Id.* at 373. The Court explained that the provision "require[d] the carrier to check each shipment for certain markings and to compare it against the Maine attorney general's list of proscribed shippers," thereby "directly regulat[ing] a significant aspect of the motor carrier's package pickup and delivery service." *Id.*

The district court analogized the duties underlying Ms. Ye's claim to the "deemed to know" provision in *Rowe*, noting that, like that provision, it requires a motor carrier or broker to conduct an examination

to avoid liability. But the mere fact that a law requires a motor carrier or broker to examine something does not mean that the law relates to the services the motor carrier or broker provides to its customers. The "deemed to know" provision in *Rowe* applied directly to motor carriers and related to the relationship between the motor carrier and retailer, requiring the motor carrier to inspect each shipment given to it by the retailer to determine, among other things, whether the retailer was an un-licensed tobacco retailer. Here, in contrast, the state law at issue is a generally applicable law, and the examination the broker is required to undertake is of motor carriers, not the shipper or the goods being shipped—that is, it does not concern the relationship between the broker and the shipper. *See Mann*, 2017 WL 3191516, at *7 (noting the "stark contrast" between the state law at issue in *Rowe*, which "was a direct regulation of [motor carriers] and dictated the specific manner in which they had to deliver tobacco products," and a state law "aimed at all persons within the [state's] jurisdiction that requires persons to act with reasonable care in making hiring decisions").

The district court also stated that enforcing a negligent-hiring claim such as Ms. Ye's "would have a significant economic impact on

GlobalTranz's broker services." App. 8. Information about motor carriers' safety histories, however, is easily available to brokers and the public on FMCSA's website. *See id*. at 23–24, ¶¶ 4.15–4.16. And the mere fact that a law might raise a motor carrier's or broker's costs does not cause it to "relate[] to" motor carrier or broker prices, routes, or services. As this Court has explained, changes to many background laws, such as minimum wage laws, worker-safety laws, anti-discrimination laws, pension regulations, banking laws, securities laws, tax laws, and intellectual property laws "will ultimately affect the costs of these inputs … [y]et no one thinks that the ADA or the FAAAA preempts these and the many comparable state laws … because their effect on price is 'too remote.'" *S.C. Johnson*, 697 F.3d at 558 (citation omitted). Such laws "operate one or more steps away from the moment at which the firm offers its customer a service for a particular price" and "set basic rules for a civil society, rather than particular terms of trade between parties to a transaction." *Id*. Likewise, here, the common-law duty underlying the negligent-hiring claim is removed from the moment the broker offers to arrange transportation for the shipper at a particular price; it sets basic rules for a civil society; and it is too remote from broker prices to be

preempted. *See Reyes*, 2021 WL 2177252, at *5 ("At best, the effect of common law negligence on a broker's prices, routes or services [is] merely incidental." (internal quotation marks and citation omitted)); *Ciotola v. Star Transp. & Trucking, LLC*, 481 F. Supp. 3d 375, 390 (M.D. Pa. 2020) (explaining that although the law underlying a negligent-hiring claim "may have some negative financial consequences for a broker or carrier" it is "part of the backdrop of laws that all businesses must follow" and "does not place a significant financial impact on a broker or motor carrier's prices, routes, or services").

Finally, contrary to the district court's reasoning, "nothing about imposing a duty of care on brokers … would undermine Congress's goal of economic deregulation through the FAAAA." *Reyes*, 2021 WL 2177252, at *6. The FAAAA is "concern[ed] with the contractual arrangement between the [carrier or broker] and the user of the service," seeking to leave that arrangement to competitive market forces. *Travel All Over the World*, 73 F.3d at 1433 (quoting *Hodges*, 44 F.3d at 336). Ms. Ye's negligent-hiring claim, however, does not concern the contractual relationship between a broker and its customer, but the duty brokers owe to members of the public, such as Mr. Lin, who are not part of the

marketplace for broker services and therefore have no ability to bargain with brokers to ensure that the brokers are taking reasonable efforts not to place dangerous motor carriers on the road. That state-law duty does not relate to broker prices, routes, and services, and Ms. Ye's negligent-hiring claim does not fall within the scope of § 14501(c)(1).

## III. The district court's decision undermines safety without furthering the FAAAA's purposes.

In enacting the FAAAA, "Congress resolved to displace '*certain* aspects of the State regulatory process.'" *Dan's City*, 569 U.S. at 263 (quoting FAAAA § 601(a)(2); emphasis in *Dan's City*). Specifically, it sought to reduce "state economic regulation of motor carriers." FAAAA § 601(c). At the same time, however, Congress made clear that it did not want to preempt certain other aspects of the regulatory process. It limited the preemption provision to laws related to the "price, route, or service" a motor carrier or broker offers its customer, 49 U.S.C. § 14501(c)(1), and it explicitly preserved the "the safety regulatory authority of a State with respect to motor vehicles," *id*. § 14501(c)(2)(A).

Personal-injury claims against brokers exemplify why Congress needed to include these limitations on FAAAA preemption. Although "competitive market forces" may further "efficiency, innovation, and low

prices" in the market for airline services, *Rowe*, 552 U.S. at 371 (citation omitted), those forces do not promote safety in the broker/motor carrier market. To the contrary, if brokers were immunized against liability for negligently hiring unsafe motor carriers, they would have little incentive to choose motor carriers that operate safely. Instead, there would be a race to the bottom, in which motor carriers would be incentivized to cut safety corners to compete for brokers' business. The accompanying reduction in safety would come at the expense of people who drive on America's highways—people like Mr. Lin, who have no effect on the marketplace for broker services, but who pay a heavy price when brokers like GlobalTranz fail to exercise reasonable care.

If the FAAAA preempted personal-injury claims against freight brokers, brokers would have *no* duty of care in hiring motor carriers to provide motor vehicle transportation. A broker would not be able to be held accountable even if it hired a motor carrier that lacked federal operating authority, either because the motor carrier never had such authority or because FMCSA revoked it, or if it hired a motor carrier that it affirmatively knew posed a serious risk to other drivers and passengers on the road.

Recognizing that the FAAAA does not require this result, the Ninth Circuit held in *Miller* that the FAAAA does not preempt negligence claims against brokers arising out of motor vehicle accidents. *See Miller*, 976 F.3d at 1031. This court should do the same and hold that the FAAAA does not preempt personal-injury claims against freight brokers arising from their negligent hiring of an unsafe motor carrier.

## CONCLUSION

For the foregoing reasons, this Court should reverse the district court's dismissal of the negligent-hiring claim.

Respectfully submitted,

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August 31, 2022

## CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(B)

I hereby certify that the foregoing brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Circuit Rule 32(c). As calculated by my word processing software (Microsoft Word 2016), the brief contains 6,871 words.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

## CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), I hereby certify that all materials required by Circuit Rule 30(a) and (b) are included in the attached appendix.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---|---|---|
| YING YE, as Representative of the Estate of Shawn Lin, Deceased, | ) | |
| Plaintiff, | ) | |
| v. | ) | No. 1:18-CV-01961 |
| GLOBAL SUNRISE, INC., and GLOBALTRANZ ENTERPRISES, INC., | ) | |
| Defendants. | ) | |

MEMORANDUM OPINION AND ORDER

Defendant GlobalTranz Enterprises, Inc. ("GlobalTranz"), seeks to dismiss plaintiff Ying Ye's claims against it pursuant to Federal Rules of Civil Procedure Rule 12(b)(6) because they are preempted by the Federal Aviation Administration Authorization Act of 1994 (the "FAAAA"), 49 U.S.C. § 14501(c)(1). Dkt. No. 62. For the reasons that follow, GlobalTranz's motion is granted in part and denied in part.

I.

Plaintiff sues GlobalTranz and Global Sunrise, Inc. ("Global Sunrise"), seeking damages for the death of her spouse, Shawn Lin. According to the Amended Complaint, Dkt. No. 55, GlobalTranz, a freight broker that provides third-party logistics services, contracted with Global Sunrise, a motor carrier, to transport freight from Illinois to Texas. Lin died

in a motor-vehicle accident caused by a Global Sunrise driver, David Antoine Carty, who was carrying a load on behalf of GlobalTranz.

Plaintiff's allegations against GlobalTranz invoke two theories of liability. First, plaintiff alleges that GlobalTranz acted negligently in selecting Global Sunrise to transport freight. For example, GlobalTranz knew or should have known that Global Sunrise operated in an unsafe manner due to its extensive history of safety violations, which is available on the Federal Motor Carrier Safety Administration website. Second, plaintiff alleges that GlobalTranz had sufficient control over Global Sunrise and Carty to make it vicariously liable for Lin's death. Specifically, GlobalTranz directly communicated with Carty about the load, set the dates and times for pickup and delivery, and required the following from Carty or Global Sunrise: the use of a specific trailer, daily tracking and driver location reports, calls from Carty to be dispatched and before entering detention, immediate notification if the shipper's instructions did not match the rate confirmation, verification that the bill of lading matched the temperature on the load confirmation, and a two-hour pickup and delivery ETA. Also, the bill of lading for Carty's load identified GlobalTranz, not Global Sunrise, as the carrier and made no mention of Global Sunrise.

II.

To survive a motion to dismiss under Rule 12(b)(6), plaintiff must allege "a short and plain statement of the claim showing that [she] is entitled to relief." Fed. R. Civ. P. 8(a)(2). That is, she must state a claim "that is plausible on its face" after I disregard conclusory allegations. *W. Bend Mut. Ins. Co. v. Schumacher*, 844 F.3d 670, 675 (7th Cir. 2016) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In resolving a motion to dismiss under Rule 12(b)(6), I accept plaintiff's well-pled factual allegations as true and draw all reasonable inferences in her favor. *Id.*

III.

To reach the merits of GlobalTranz's motion, I must first address a procedural misstep. "Preemption is an affirmative defense" which a pleading need not anticipate. *Bausch v. Stryker Corp.*, 630 F.3d 546, 561 (7th Cir. 2010) (citations omitted). GlobalTranz should have filed an answer and moved for judgment on the pleadings under Rule 12(c). *See id.* at 561-62. However, this error "is of no consequence" where a court has before it all it needs to rule on the defense and the plaintiff does not complain of the error. *Carr v. Tillery*, 591 F.3d 909, 913 (7th Cir. 2010). That is the situation here. Moreover, a Rule 12(c) motion is governed by the same standard that is used for a Rule

12(b)(6) motion. *Adams v. City of Indianapolis*, 742 F.3d 720, 728 (7th Cir. 2014).

Turning to GlobalTranz's motion, the issue before me is whether plaintiff's claims against GlobalTranz—negligent hiring and vicarious liability—fall within the FAAAA's preemption rule, 49 U.S.C. § 14501(c). Congress enacted the preemption provision of the FAAAA "with the aim of eliminating the patchwork of state regulation of motor carriers that persisted fourteen years after it had first attempted to deregulate the trucking industry." *Nationwide Freight Sys., Inc. v. Illinois Commerce Comm'n*, 784 F.3d 367, 373 (7th Cir. 2015) (citing *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013); *S.C. Johnson & Son, Inc. v. Transp. Corp. of Am., Inc.*, 697 F.3d 544, 548-49 (7th Cir. 2012)). In the relevant provision, the FAAAA provides:

> a State . . . 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.

49 U.S.C. § 14501(c)(1). The term "transportation" includes:

> (A) a motor vehicle, . . . property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and
>
> (B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation,

> storage, handling, packing, unpacking, and interchange of passengers and property.

49 U.S.C. § 13102(23).

The FAAAA's preemptive scope is broad and includes "laws and actions having some type of connection with or reference to a [broker's] rates, routes, or services, whether direct or indirect." *Nationwide Freight,* 784 F.3d at 373. However, when a state law has only a "tenuous, remote, or peripheral" relationship with such rates, routes, or services, it is not preempted. *Id.* (quoting *Dan's City*, 569 U.S. at 261). To determine that the FAAAA preempts a state law claim, two requirements must be met: (1) "a state must have enacted or attempted to enforce a law" and (2) that law must relate to a broker's "rates, routes, or services 'either by expressly referring to them, or by having a significant economic effect on them.'" *Id.* at 373-74 (quoting *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1432 (7th Cir. 1996)).

A.

I first address plaintiff's claim that GlobalTranz acted negligently in hiring Global Sunrise to transport freight. As the parties recognize, no federal appellate court has determined whether the FAAAA preempts personal injury claims alleging a broker negligently selected a motor carrier for the transportation of property and district courts are "sharply

divided" on that question. *Loyd v. Salazar*, No. CIV-17-977-D, 2019 WL 4577108, at *4 (W.D. Okla. Sept. 20, 2019) (DeGiusti, J.); compare *Volkova v. C.H. Robinson Co.*, No. 16 C 1883, 2018 WL 741441, at *4 (N.D. Ill. Feb. 7, 2018) (Guzmán, J.) (dismissing negligent hiring claim against a broker as preempted by the FAAAA) with *Mann v. C.H. Robinson Worldwide, Inc.*, Nos. 16 C 102, 16 C 104 & 16 C 140, 2017 WL 3191516, at *7-8 (W.D. Va. July 27, 2017) (Dillon, J.) (determining that the FAAAA does not preempt a personal injury claim against a broker alleging negligent hiring of a carrier).

To succeed on her negligent hiring claim, plaintiff must show that GlobalTranz selected Global Sunrise as an independent contractor when it knew or should have known that Global Sunrise was "unfit for the required contracted job so as to create a danger of harm to other third parties." *Hayward v. C.H. Robinson Co.*, 24 N.E.3d 48, 55 (Ill. App. Ct. 2014).[1] Negligence claims under state common law fulfill the first requirement for FAAAA

[1] The parties argue under the premise that Illinois law governs the substance of plaintiff's tort claims against GlobalTranz. I agree. As this case is before me under diversity jurisdiction, I apply the choice of law principles of the forum state: Illinois. *Tanner v. Jupiter Realty Corp.*, 433 F.3d 913, 915 (7th Cir. 2006). "For tort actions, Illinois instructs the court to ascertain the forum with the 'most significant relationship' to the case." *Id.* at 915-16 (quoting *Esser v. McIntyre,* 661 N.E.2d 1138, 1141 (Ill. 1996)). Here, while the accident allegedly occurred in Texas, GlobalTranz's conduct is alleged to have occurred in Illinois, where it and Global Sunrise are allegedly domiciled.

preemption. *See United Airlines, Inc. v. Mesa Airlines, Inc.*, 219 F.3d 605, 607 (7th Cir. 2000) (state common-law actions are an "other provision having the force and effect of law" for purposes of the Airline Deregulation Act's preemption provision). The issue then becomes whether plaintiff's negligent hiring claim relates to GlobalTranz's broker services by either expressly referring to those services or by having a significant economic effect on them.

The heart of plaintiff's negligent hiring claim is that GlobalTranz failed to exercise reasonable care in arranging for a motor carrier, that is, its service as a freight broker. As used in the FAAAA, a "broker" is:

> a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

49 U.S.C. § 13102(3). Plaintiff alleges that GlobalTranz provided "third-party logistics services and acts as a freight broker," marketed "itself to both shippers and motor carriers," contracted with Global Sunrise, a motor carrier, to transport freight from Illinois to Texas, and knew or should have known of Global Sunrise's history of unsafe operations. Dkt. No. 55, Am. Compl. at ¶¶ 2.5, 2.6, 4.13, 4.12, 4.37. These allegations implicate a freight broker's services regarding the

transportation of property. *See, e.g., Georgia Nut Co. v. C.H. Robinson Co.*, No. 17 C 3018, 2017 WL 4864857, at *3 (N.D. Ill. Oct. 26, 2017) (Ellis, J.) ("While the services of a freight broker do not include the actual transportation of property, they are focused on arranging how others will transport the property; these services, therefore, fall within the scope of the FAAAA preemption.") (citation omitted).

While state common law does not expressly reference freight brokers, plaintiff's negligent hiring claim seeks to shape how freight brokers perform their services. For example, in *Rowe v. N.H. Motor Transp. Ass'n*, the Supreme Court determined that the FAAAA preempted a Maine law that established requirements on tobacco deliveries, in part, because it imposed liability for a motor carrier's "*failure to sufficiently examine every package*" for unlicensed tobacco. 552 U.S. 364, 372-73 (2008) (emphasis in original). Similarly, to avoid liability for a negligent hiring claim like plaintiff's, brokers would need to examine each prospective motor carrier's safety history and determine whether any prior issues or violations would be permissible under the common law of one or more states. Enforcing such a claim would have a significant economic impact on GlobalTranz's broker services. *Volkova*, 2018 WL 741441, at *3. Furthermore, such an imposition on brokers would thwart the deregulatory objective of the FAAAA. *See Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1051

(7th Cir. 2016). Accordingly, plaintiff's negligent hiring claim is preempted.

Plaintiff argues that her negligent hiring claim falls within a statutory exception that provides the FAAAA's preemption rule "shall not restrict the safety regulatory authority of a State with respect to motor vehicles . . . ." 49 U.S.C. § 14501(c)(2)(A). Even if I assume that plaintiff's claim can be considered a safety regulation, that claim has an attenuated connection to motor vehicles. GlobalTranz is not alleged to directly own, operate, or maintain motor vehicles. Plaintiff's expansive reading of the safety regulatory exception seeks "an unwarranted extension of the exception to encompass a safety regulation concerning motor carriers rather than one concerning motor vehicles." *Loyd*, 2019 WL 4577108, at *7; *see also Gillum v. High Standard*, LLC, No. SA-19-CV-1378-XR, 2020 WL 444371, at *5 (W.D. Tex. Jan. 27, 2020).

Nor am I convinced by plaintiff's argument that cases interpreting the analogous preemption provision of the Airline Deregulation Act ("ADA") merit the conclusion that the FAAAA does not preempt any personal injury negligence claims. The negligent hiring claim against GlobalTranz is not a "run-of-the-mill" personal injury claim seeking damages for premises liability. *Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1261, 1266 (9th Cir. 1998), *opinion amended on denial of*

*reh'g*, 169 F.3d 594 (9th Cir. 1999) (In the context of the ADA, the "service" of an airline "does not refer to the pushing of beverage carts, keeping the aisles clear of stumbling blocks, the safe handling and storage of luggage, assistance to passengers in need, or like functions."). And, the Seventh Circuit has rejected the development of "broad rules concerning whether certain types of common-law claims are preempted by the ADA." *Travel All Over the World*, 73 F.3d at 1433 ("Instead, we must examine the underlying facts of each case to determine whether the particular claims at issue 'relate to' airline rates, routes or services.") (discussing *Morales v. Trans World Airlines,* 504 U.S. 374, 378 (1992)).

Plaintiff is also mistaken that the preemption of her negligent hiring claim leaves her without a remedy. Federal law mandates that motor carriers must maintain an insurance policy, bond, or other security in an amount "sufficient to pay . . . for each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property . . . or both." 49 U.S.C. § 13906(a)(1). There is no such mandate for brokers. *Cf.* 49 U.S.C. §§ 13906(b)(1)(A), 13906(b)(2)(A). This provision, and the safety regulatory exception discussed above, indicate that Congress intended that a motor carrier, in this case Global Sunrise, may

be liable for personal-injury negligence actions despite the FAAAA's preemption provision.

B.

I next address plaintiff's claim that GlobalTranz is vicariously liable for Global Sunrise and Carty's negligence. To succeed on that claim, plaintiff must establish a principal-agent relationship between GlobalTranz and Global Sunrise and Carty. *See Sperl v. C.H. Robinson Worldwide, Inc.*, 946 N.E.2d 463, 470 (Ill. App. Ct. 3rd Dist. 2011) ("A principal is vicariously liable for the conduct of its agent but not for the conduct of an independent contractor.") (citation omitted). In an agency relationship, "a principal has the right to control an agent's conduct and an agent has the power to affect a principal's legal relations" whereas "an independent contractor undertakes to produce a given result but, in the actual execution of the work, is not under the order or control of the person for whom he does the work." *Id.* (citations omitted); *see also Lang v. Silva*, 715 N.E.2d 708, 716 (Ill. App. Ct. 1st Dist. 1999).

As discussed, common-law tort claims, like plaintiff's vicarious liability claim, meet the first requirement for FAAAA preemption. *See Mesa Airlines, Inc.*, 219 F.3d at 607. GlobalTranz argues that this claim meets the second requirement for FAAAA preemption for the same reasons as plaintiff's

negligent hiring claim—GlobalTranz's alleged communications with Global Sunrise and Carty relate to the services GlobalTranz provides as a freight broker. GlobalTranz also argues that these alleged communications do not constitute sufficient control over Carty or Global Sunrise to impose vicarious liability.

GlobalTranz's arguments are unconvincing. Unlike plaintiff's negligent hiring claim, which seeks to hold GlobalTranz liable for its own actions, her vicarious liability claim seeks to hold GlobalTranz liable for the actions of Carty and Global Sunrise. GlobalTranz admits that the safety regulatory exception to FAAAA preemption, 49 U.S.C. § 14501(c)(2)(A), applies "to the motor carrier that actually operates the vehicle." Dkt. No. 67, Reply Br. at 14. As Congress excluded such conduct from the FAAAA's preemption rule, it follows that a principal can be held liable for its agents' negligent operation of a motor vehicle. Furthermore, GlobalTranz's argument that plaintiff's allegations pertain only to its broker services asks me to conclude that its alleged communications with Carty and Global Sunrise are purely "incidental details required to accomplish" those broker services rather than a principal's exercise of control over its agents. Dkt. No. 62 at 14. However, at this stage, I am required to draw all reasonable inferences in plaintiff's favor, not that of GlobalTranz.

The issue then becomes whether plaintiff has alleged facts that give rise to an inference that GlobalTranz had the right to control the manner in which Global Sunrise and Carty operated motor vehicles. Here, plaintiff alleges GlobalTranz communicated directly with Carty about the load, required that Carty call it to be dispatched, required the use of a specific trailer, and required communications at multiple points in the transport of the load as well as daily tracking updates and location reports. Also, GlobalTranz, not Global Sunrise, is alleged to be the carrier listed on the bill of lading. These facts are sufficient to raise an inference that GlobalTranz controlled the manner in which Carty and Global Sunrise carried out their work of transporting a load in a motor vehicle. *See, e.g.*, *Sperl*, 946 N.E.2d at 473 (affirming jury determination that driver was agent of freight broker where broker communicated directly with the driver, set type of trailer to be used, required a dispatch call and constant communication from the driver, and used fines to encourage timely delivery of a load). Whether that is actually the case remains to be decided. *See Thakkar v. Ocwen Loan Servicing, LLC*, No. 15-CV-10109, 2017 WL 3895596, at *4 (N.D. Ill. Sept. 6, 2017) ("The existence and scope of an agency relationship are questions of fact.") (citation omitted). Plaintiff may proceed with her vicarious liability claim against GlobalTranz.

IV.

GlobalTranz's motion to dismiss is granted with respect to plaintiff's negligent hiring claim and is denied with respect to plaintiff's vicarious liability claim.

**ENTER ORDER:**

**Elaine E. Bucklo**
United States District Judge

Dated: March 4, 2020

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | | |
|---|---|---|
| Ying Ye, as Representative of the Estate of Shawn Lin, Deceased, | ) | |
| | ) | |
| Plaintiff, | ) | |
| v. | ) | Case No.: 18-cv-01961 |
| | ) | |
| Global Sunrise, Inc. and Global Tranz Enterprises, Inc., | ) | Honorable Elaine E. Bucklo |
| | ) | |
| Defendants. | ) | |

**JUDGMENT ORDER**

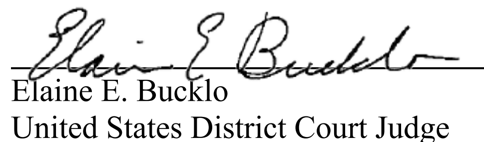
This case coming on to be heard on Defendant GlobalTranz Enterprises, Inc.'s Motion for Entry of Judgment Pursuant to Rule 58(d) of the Federal Rules of Civil Procedure, the Court having previously granted Defendant's motion to dismiss Plaintiff's claim based on negligent hiring [Doc. 74] and granted Defendant's motion for summary judgment as to Plaintiff's vicarious liability claim [Doc. 108], and all claims being resolved in favor of Defendant GlobalTranz Enterprises:

**IT IS HEREBY ORDERED:**

1. Judgment is entered in favor of Defendant GlobalTranz Enterprises, Inc. and against Plaintiff Ying Ye, as Representative of the Estate of Shawn Lin, Deceased, and

2. The Clerk of the Court is directed to enter judgment in favor of Defendant GlobalTranz Enterprises, Inc. and against Plaintiff Ying Ye, as Representative of the Estate of Shawn Lin, Deceased, in a separate document as set forth in Rule 58(a).

**Enter Order:**



Elaine E. Bucklo
United States District Court Judge

Dated: November 23, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---|---|---|
| Ying Ye, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | No. 18-cv-1961 |
| | ) | |
| | ) | |
| Global Sunrise, Inc. | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

## Order

On November 7, 2017, Shawn Lin's motorcycle collided with a tractor trailer that was being operated by David Carty, an employee of Defendant Global Sunrise, Inc. ("Global Sunrise"). Mr. Lin died as a result of his injuries. Ying Ye, Mr. Lin's widow, sued Global Sunrise on the theory that it was vicariously liable for Mr. Carty's negligent driving. In November 2021, I granted default judgment against Global Sunrise. ECF No. 113. Ms. Ye has now submitted statements and exhibits in support of her claimed damages of $10 million. *See* ECF Nos. 114, 117-18. For the reasons that follow, I award Ms. Ye the damages she seeks.

Ms. Ye claims damages in two categories: survival damages and wrongful-death damages. ECF No. 55 at 10. Survival damages are damages that "resulted from the []negligence . . . of the

defendant during the period between the time of the decedent's injuries and the time of decedent's death." *Ill. Pattern Jury Instructions--Civ.* § 31.10; *see also Kasongo v. United States*, 523 F. Supp. 2d 759, 810 (N.D. Ill. 2007). They include medical expenses and conscious pain and suffering. *Ill. Pattern Jury Instructions--Civ.* § 31.10 cmt. (citing *Murphy v. Martin Oil Co.*, 308 N.E.2d 583, 587 (Ill. 1974)). Wrongful-death damages, in contrast, represent the "amount of money which will reasonably and fairly compensate the . . . next of kin . . . of the decedent" for their pecuniary loss, which includes both the value of the decedent's likely contributions to his family if the decedent had lived and damages for loss of society. *Ill. Pattern Jury Instructions--Civ.* § 31.04; *Kasongo*, 523 F. Supp. 2d at 803.

Turning first to survival damages, Mr. Lin's pre-death pain and suffering was likely significant. Per his hospital records, he broke several bones in the accident, including in his pelvis, cervical spine, sacrum, tailbone, and ribs, and he also suffered from traumatic cardiac arrest, respiratory failure, and anoxic brain injury. ECF No. 114-14. He survived for nearly two weeks before he passed away. *Id.* During his stay in the hospital, he did not have "any upper cortical function, nor did he ever respond to pain or have any movement." *Id.* However, "[t]he fact that a decedent [may have] suffered for only a short period of time is not a bar to a claim for pain and suffering." *Glover v. City of*

*Chicago*, 436 N.E.2d 623, 628 (Ill. App. Ct. 1982). Ms. Ye also submits medical and funeral bills totaling in excess of $500,000. *See* ECF No. 117 ¶¶ 4-5. Ms. Ye is entitled to survival damages as compensation for her husband's pain and suffering and the expenses surrounding his death.

Wrongful-death damages are also appropriate. Mr. Lin is survived by his wife, Ying Ye, and two children, Audrey and Aiden, who were five and two years old at the time of Mr. Lin's death. ECF No. 118 ¶ 1. "In a wrongful death action brought by a surviving spouse or for lineal next of kin, 'the law presumes substantial pecuniary damages arising from the relationship alone[.]'" *Kasongo*, 523 F. Supp. 2d at 803, 809 (quoting *Dotson v. Sears, Roebuck & Co.*, 510 N.E.2d 1208, 1218 (Ill. App. Ct. 1987)) (awarding loss of society damages in the amount of $3.5 million where decedent was survived by husband and three minor children). Mr. Lin was 39 years old and in good health at the time of his death. ECF No. 118 ¶ 5. He provided the majority of the household's income through his job as an information-technology professor at Lone Star College and, secondarily, through a convenience store he owned in Houston, Texas. *Id.* ¶¶ 2-3. Ms. Ye was unable to manage the store in Mr. Lin's absence, so was forced to sell it. *Id.* ¶ 3. Mr. Lin was also actively involved in his children's lives, contributing significantly to the household's childcare. *Id.* ¶ 4. He additionally performed yardwork and

maintenance around the house, and Ms. Lin has been forced to hire a handyman to assist with those tasks since Mr. Lin's death. *Id.* ¶ 6.

It is appropriate to consider comparable damages awards. *See Kasongo*, 523 F. Supp. 2d at 804 (citing *Jutzi-Johnson v. United States*, 263 F.3d 753, 758-59 (7th Cir. 2001)). Ms. Ye's attorney points to *Volkova v. C.H. Robinson Co.*, No. 16-cv-1883 (N.D. Ill.). There, as here, a widow brought suit for negligence after her husband died in a motor accident involving a truck. *See Volkova*, No. 16-cv-1883, ECF No. 191 (N.D. Ill. Nov. 20, 2017). After a trial, the jury awarded damages in the amount of $18,600,000. *Volkova*, No. 16-cv-1883, ECF No. 324 (N.D. Ill. May 16, 2019).

In light of the forgoing, and incorporating both wrongful-death and survival damages, I find Ms. Ye's claimed damages of $10,000,000 to be fair and reasonable compensation in this case. Damages are awarded in that amount.

**ENTER ORDER:**

**Elaine E. Bucklo**
United States District Judge

Dated: April 5, 2022

**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**CHICAGO DIVISION**

| | |
|---|---|
| **YING YE, AS REPRESENTATIVE OF THE ESTATE OF SHAWN LIN, DECEASED** | |
| **VS.** | **C.A. No.: 1:18-cv-01961** |
| **GLOBAL SUNRISE INC.** | |

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Ying Ye, as Representative of the Estate of Shawn Lin, Deceased, files this Plaintiff's First Amended Complaint, complaining of Defendants Global Sunrise Inc. and GlobalTranz Enterprises, Inc. For cause of action, Plaintiff would show the Honorable Court as follows:

**1.0**

**PARTIES**

1.1 Plaintiff Ying Ye is an individual residing in Texas.

1.2 Ying Ye is the widow of Shawn Lin. She was married to Shawn Lin at the time of his death.

1.3 Ying Ye and Shawn Lin had two children, A.L. and A.L. They are both minors.

1.4 Ying Ye brings this case as Representative of the Estate of Shawn Lin. She also brings the case on her own behalf as Shawn Lin's widow, and as next friend of her minor children.

1.5 Defendant Global Sunrise Inc. is an Illinois corporation headquartered within the Northern District of Illinois.

1.6 Defendant Global Sunrise Inc. appointed Truck Process Agents of America, Inc. as its agent for service of process under the Motor Carrier Act. It may be served through the Illinois representative of Truck Process Agents of America, Inc., Linda Blisset, 932 S. Spring Street, Springfield, Illinois 62704**.** Defendant has already answered and appeared in this case, so no service is necessary at this time.

1.7 Defendant GlobalTranz Enterprises, Inc. is a Delaware corporation headquartered in Scottsdale, Arizona and doing business in Illinois. It may be served through its agent for service of process in Illinois. It may be served through Illinois Corporation Service Co., 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

**2.0**

**JURISDICTION**

2.1 This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1331(a). Plaintiff and decedent are Texas citizens. Defendant Global Sunrise Inc. is a citizen of Illinois. The amount in controversy exceeds $75,001, exclusive of interest and costs.

2.2 This Court has personal jurisdiction over Defendant Global Sunrise Inc. Defendant Global Sunrise Inc. is incorporated and headquartered in Illinois and is thus subject to general jurisdiction in the state. Defendant GlobalTranz Enterprises, Inc. maintains an office in Illinois and an agent for service of process and is thus subject to jurisdiction in the state.

2.3 This Court has personal jurisdiction over Defendant GlobalTranz Enterprises, Inc. GlobalTranz Enterprises, Inc. has purposefully availed itself of the benefits of doing business in Illinois. As such, it has sufficient contacts with the forum that it is subject to personal jurisdiction in this Court. The claims in this lawsuit arise out of these Illinois contacts.

2.4 Defendant GlobalTranz Enterprises, Inc. maintain offices, and has employees, in Chicago, Illinois and Niles, Illinois.

2.5 Defendant GlobalTranz Enterprises, Inc. brokers thousands of loads each year that either originate or terminate in Illinois.

2.6 Defendant GlobalTranz Enterprises, Inc. markets itself to both shippers and motor carriers in Illinois.

2.7 Defendant GlobalTranz Enterprises, Inc. does millions of dollars in business each year with shippers in Illinois.

2.8 Defendant GlobalTranz Enterprises, Inc. does millions of dollars in business each year with

motor carriers in Illinois.

2.9 In October 2017, Defendant GlobalTranz Enterprises, Inc. brokered a load to Defendant Global Sunrise Inc., an Illinois motor carrier. This load was to be picked up in Chicago, Illinois. This lawsuit arises out of a crash that occurred during the delivery of this load.

**3.0**

**VENUE**

3.1 Venue is proper in the Northern District of Illinois because Defendants Global Sunrise Inc. and GlobalTranz Enterprises, Inc. are both deemed to reside in the District. 28 U.S.C. § 1391(b)(1). Defendant Global Sunrise Inc. has its headquarters in the district and thus is subject to personal jurisdiction in the District. 28 U.S.C. § 1391(d). For the reasons set out in paragraphs 2.3 to 2.9 of this Complaint, Defendant GlobalTranz Enterprises, Inc. has sufficient contacts with the Northern District of Illinois to subject it to personal jurisdiction if that district were a separate state. Thus, Defendant GlobalTranz Enterprises, Inc. is deemed to be a resident of the Northern District for venue purposes. 28 U.S.C. § 1391(d).

**4.0**

**FACTS**

4.1 Defendant Global Sunrise Inc. was a "chameleon carrier." That is, it is the continuation of two related businesses operated under other names. Each of these two prior business ceased operations due to multiple violations of the Federal Motor Carrier Safety Regulations and the imposition of a conditional safety rating by the Federal Motor Carrier Safety Administration.

4.2 Viktorija Suisinskas and her husband, Aleksandras Siusinskas, owned and operated a motor carrier named DSV Express Inc.

4.3 DSV Express Inc. was listed as being owned solely by Aleksandras Siusinskas.

4.4 DSV Express Inc. received numerous citations for violations of the Federal Motor Carrier Safety Regulations.

4.5 DSV Express Inc. received a conditional safety rating after a safety audit conducted by the

Federal Motor Carrier Safety Administration.

4.6 Viktorija Suisinskas and Aleksandras Siusinskas then created a new company, DSV Services Corp. They claimed that DSV Services Corp. was solely owned by Viktorija Suisinskas.

4.7 Viktorija Suisinskas and Aleksandras Siusinskas operated DSV Services Corp. in the same unsafe manner in which they operated DSV Express Inc. As a result, DSV Services Corp. received numerous citations for violations of the Federal Motor Carrier Safety Regulations and a conditional safety rating after a safety audit conducted by the Federal Motor Carrier Safety Administration.

4.8 Viktorija Suisinskas and Aleksandras Siusinskas then opened a new company, Global Sunrise Inc.

4.9 Viktorija Suisinskas and Aleksandras Siusinskas placed Global Sunrise Inc. under the name of an associate, Nicholas Borzhevski, but remained active in the management and operations of Global Sunrise Inc.

4.10 During all times relevant to this lawsuit, Global Sunrise Inc. did not own trucks or trailers. Instead, it "leased" trucks and trailers from DSV Services Corp. There was no written lease, and Global Sunrise Inc. did not pay anything to DSV Services Corp. in exchange for leasing the equipment.

4.11 Defendant GlobalTranz Enterprises, Inc. provides third-party logistics services and acts as a freight broker.

4.12 Defendant Global Sunrise Inc. is a motor carrier licensed by and registered with the Federal Motor Carrier Safety Administration.

4.13 GlobalTranz Enterprises, Inc. entered into a contract for Global Sunrise Inc. to transport freight from Chicago, Illinois to Conroe, Texas.

4.14 On its website, Defendant GlobalTranz Enterprises, Inc. promises, "GlobalTranz works with only the most qualified carriers, thoroughly vetting each with the highest safety standards."

4.15 At all times relevant to this lawsuit, the Federal Motor Carrier Safety Administration

(FMCSA) published information regarding motor carriers on the internet that GlobalTranz Enterprises, Inc. could freely access to determine the fitness of motor carriers.

4.16 The easily available information available to GlobalTranz Enterprises, Inc. on the internet for vetting motor carriers included violation histories and Behavior Analysis Safety Improvement Categories (BASIC) scores.

4.17 The publicly-available information showed numerous violations of the Federal Motor Carrier Safety Regulations by Global Sunrise Inc. and it's drivers prior to the October 31, 2017, contract.

4.18 The violation history readily available to GlobalTranz Enterprises, Inc. on the Federal Motor Carrier Safety Administration's website from just the month before the October 31, 2017, contract included:

- October 26, 2017: Unsafe driving, specifically unlawfully parking and/or leaving vehicle in the roadway in violation of FMCSA 392.2PK
- October 26, 2017: Vehicle maintenance violation, specifically an inoperable tail lamp in violation of FMCSA 393.9T
- October 26, 2017: Driver hours of service violation, specifically a false report of drivers record of duty status in violation of FMCSA 395.8(e)
- October 10, 2017: Driver fitness violation, specifically operating a CMV without a CDL in violation of FMCSA 383.23(a)(2)
- October 10, 2017: Vehicle maintenance violation, specifically a flat tire and/or audible air leak in violation of FMCSA 393.75(a)(3)
- October 5, 2017: Vehicle maintenance violation, specifically a violation related to brake tubing and hose adequacy in violation of FMCSA 393.45PC
- October 5, 2017: Driver hours of service violation, specifically driving beyond the 8-hour limit since the end of the driver's last off duty or sleeper period of at least 30 minuted in violation of FMSCA 395.3(a)(3)(ii)

4.19 In addition to the violations from the month of October 2017, the FMSCA's website shows that from November 18, 2016, until September 29, 2017, which coincides with the time in which Global Sunrise Inc. operated as a motor carrier, it's vehicles and/or drivers were subject to inspection 111 times and cited for a total of 153 BASIC violations including 30 violations related to drivers' hours of service and seven for unsafe driving.

4.20 SAFER statistics from the FMCSA show that in the 24 months prior to December 3, 2017, Global Sunrise Inc.'s vehicles were placed out of service after inspection more than a quarter of the time, which is over the national average.

4.21 SAFER statistics for Global Sunrise Inc.'s drivers are even more telling with drivers placed out of service in the same time period in excess of 12-percent of the time, more than double the national average.

4.22 On November 7, 2017, David Antoine Carty was operating a Global Sunrise Inc. tractor-trailer on the frontage road of Interstate 45 in Conroe, Texas while transporting the cargo on behalf of GlobalTranz Enterprises, Inc.

4.23 The frontage road had four lanes.

4.24 David Antoine Carty made a right turn from the third lane from the right, crossing two other lanes of travel.

4.25 As a result of David Antoine Carty's improper right turn, there was a collision between a motorcycle operated by Shawn Lin and the tractor trailer.

4.26 Shawn Lin was injured as a result of the collision.

4.27 Shawn Lin suffered conscious pain and suffering because of the injuries.

4.28 Shawn Lin died as a result of the injuries.

4.29 On November 8, 2017, the Federal Motor Carrier Safety Administration (FMCSA) conducted an onsite compliance review and evaluation of Defendant Global Sunrise Inc.'s safety fitness.

4.30 The FMCSA issued a conditional safety rating as a result of that review and evaluation.

4.31 A conditional rating means that the FMCSA found that Global Sunrise Inc. did not have adequate safety management controls in place to ensure compliance with the safety fitness standard.

4.32 During the November 8, 2017, compliance review and evaluation, the FMCSA found that Global Sunrise Inc.'s operation was deficient with respect to the qualifications of drivers, the hours of service of drivers, the inspection, repair, and maintenance of vehicles, controlled substance and alcohol use and testing, and the inspection out of service rate.

4.33 Based on the circumstances of the crash and evidence obtained through discovery, coupled with Global Sunrise Inc.'s documented history of hours of service violations, it appears David Antoine Carty was fatigued and operating in violation of the hours of service regulations.

4.34 Global Sunrise Inc. hired, qualified, and retained David Antoine Carty as a truck driver.

4.35 GlobalTranz Enterprises, Inc. hired Global Sunrise Inc. to transport freight on it's behalf.

4.36 GlobalTranz Enterprises, Inc. knew, or should have known, that Global Sunrise Inc. was a chameleon carrier.

4.37 GlobalTranz Enterprises, Inc. knew, or should have known, that Global Sunrise Inc. was operated in an unsafe manner and should not have been entrusted with freight loads on public roadways.

4.38 At all times relevant to this lawsuit, David Antoine Carty was acting in the course and scope of his actual and/or statutory employment with Defendant Global Sunrise Inc. and transporting freight on behalf of Defendant GlobalTranz Enterprises, Inc.

4.39 Defendant GlobalTranz Enterprises, Inc. exercised substantial control over the details of the work conducted by Global Sunrise Inc. and David Antoine Carty.

4.40 GlobalTranz Enterprises, Inc. communicated directly with David Antoine Carty regarding the load.

4.41 GlobalTranz Enterprises, Inc. required that a specific trailer be used: a "53' swing door, dry

van with air ride."

4.42 GlobalTranz Enterprises, Inc. specified the pickup date and time, as well as the delivery date and time.

4.43 GlobalTranz Enterprises, Inc. required that the driver, David Antoine Carty, call GlobalTranz to be dispatched.

4.44 GlobalTranz Enterprises, Inc. required that either David Antoine Carty or Global Sunrise Inc.'s dispatch call GlobalTranz Enterprises, Inc. each day to provide a tracking update and driver location report.

4.45 GlobalTranz Enterprises, Inc. required that the driver call GlobalTranz Enterprises, Inc. prior to entering detention.

4.46 GlobalTranz Enterprises, Inc. required Global Sunrise Inc. to immediately notify GlobalTranz Enterprises, Inc. if the shipper's instructions did not match the GlobalTranz Enterprises, Inc. rate confirmation.

4.47 GlobalTranz Enterprises, Inc. required daily, accurate tracking updates.

4.48 GlobalTranz Enterprises, Inc. required that the driver verify at the time of pickup that the Bill of Lading matched the temperature on the load confirmation.

4.49 GlobalTranz Enterprises, Inc. required Global Sunrise Inc. to relay a 2-hour pickup and deliver ETA to GlobalTranz Enterprises, Inc.

4.50 The bill of lading (number 95346749) identified GlobalTranz Enterprises, Inc. as the carrier; the bill of lading did not reference Global Sunrise Inc.

4.51 The Federal Motor Carrier Safety Administration revoked Global Sunrise Inc.'s motor carrier authority due to continuing violations of the Federal Motor Carrier Safety Regulations.

**5.0**

**CAUSE OF ACTION**

5.1 David Antoine Carty was negligent in the operation of the tractor-trailer.

5.2 David Antoine Carty improperly made a right turn from the third lane from the right.

This improper turn constituted negligence.

5.3 David Antoine Carty failed to use his mirrors and look to ensure that there was no traffic coming before crossing other lanes to make a right turn. This failure constituted negligence.

5.4 Upon information and belief, David Antoine Carty was negligent and negligent per se in driving while fatigued and while in violation of the hours-of-service regulations.

5.5 Defendant Global Sunrise Inc. is vicariously liable for the negligence of David Antoine Carty under the doctrine of respondeat superior.

5.6 Upon information and belief, Defendant Global Sunrise Inc. was negligent in its entrustment of a tractor-trailer to David Antoine Carty, and in the qualification, hiring, training, supervision, and retention of David Antoine Carty. This negligence was a proximate cause of Shawn Lin's injuries and subsequent death.

5.7 By systematically failing to comply with the Federal Motor Carrier Safety Regulations and failing to have an adequate safety management system in place, Defendant Global Sunrise Inc. was grossly negligent and acted with a reckless and outrageous indifference to a highly unreasonable risk of harm and with a conscious indifference to the rights and safety of others.

5.8 Defendant GlobalTranz Enterprises, Inc. was negligent in selecting Global Sunrise Inc. to transport freight on it's behalf as they knew, or should have known, that Global Sunrise Inc. was an unsafe company with a history of hours of service and unsafe driving violations that would've alerted a reasonably prudent person to the same.

5.9 The negligence of GlobalTranz Enterprises, Inc. in hiring Global Sunrise Inc. was a proximate cause of Plaintiffs' injuries and damages.

5.10 GlobalTranz Enterprises, Inc. had and/or exercised sufficient control over Global Sunrise Inc. and David Antoine Carty such that Global Sunrise Inc. and David Antoine Carty were acting as its agents. As such, GlobalTranz Enterprises, Inc. is vicariously liable for

the negligence of Global Sunrise Inc. and David Antoine Carty.

**6.0**

**DAMAGES**

6.1 Plaintiff seeks to recover the following elements of damages, which were proximately caused by Defendants' negligence:

A. Pecuniary loss, including the loss of money, benefits, goods, services, society, and relations suffered by Shawn Lin's widow and lineal next of kin, as well as the grief, sorrow, and mental suffering of Ying Ye and her children;

B. Medical bills incurred by Shawn Lin prior to his death;

C. Physical pain, emotional distress, and mental anguish sustained by Shawn Lin prior to his death.

6.2 Plaintiff also seeks to recover punitive damages.

6.3 Plaintiff also seeks to recover prejudgment interest, post-judgment interest, and court costs.

6.4 Plaintiff's damages exceed the Court's jurisdictional minimum and exceed $75,001.00.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that citation be issued and Defendant be served, and upon trial on the merits the Court enter judgment for Plaintiff and against Defendant for compensatory and punitive damages, together with prejudgment interest, postjudgment interest, and court costs.

Respectfully submitted,

/s/ S. Dylan Pearcy
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been delivered, in the required manner, to all counsel of record in accordance the applicable Rules of Civil Procedure on October 16, 2019.

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***/s/ S. Dylan Pearcy***
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