No. 22-1805

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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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INTRODUCTION

Ying Ye's opening brief explained that the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1), does not preempt her negligent-hiring claim against GlobalTranz for two reasons: First, the claim is not preempted because it falls within the safety exception in 49 U.S.C. § 14501(c)(2)(A), which exempts from preemption "the safety regulatory authority of a State with respect to motor vehicles." Second, the claim is not preempted because it does not relate to broker prices, routes, or services, and therefore does not fall within the scope of § 14501(c)(1) in the first place.

In its response, GlobalTranz contends that the safety exception does not apply to Ms. Ye's claim because brokers do not own or operate motor vehicles. The relevant inquiry for the safety exception, however, is not whether the regulated entity owns or operates motor vehicles, but whether the safety regulatory authority at issue concerns motor vehicles. Here, where the state-law duty underlying Ms. Ye's claim concerns the safety of motor vehicles on the road, the claim invokes the state's "safety regulatory authority … with respect to motor vehicles" and falls within the safety exception.

GlobalTranz also argues that negligent-hiring claims against brokers relate to broker services. The term "service[s]" in the FAAAA, however, refers to the services that brokers provide their customers. Taking reasonable care not to hire a motor carrier that will place unsafe motor vehicles on the road with members of the public is not a "service" the broker provides its customers, and the duty to take such care affects the services the broker does provide its customers in no more than a "tenuous, remote, or peripheral … manner." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013) (citation omitted).[1]

ARGUMENT

I. Ms. Ye's negligent-hiring claim falls within the FAAAA's safety exception.

A. The safety exception provides that the preemption provision in 49 U.S.C. § 14501(c)(1) does not restrict the "safety regulatory authority of a State with respect to motor vehicles." As Ms. Ye explained in her opening brief, *see* Appellant Br. 12–21—and as the only court of appeals

[1] GlobalTranz asserts that Ms. Ye's statement of jurisdiction was "not complete and correct," Appellee Br. 1, but it does not identify any incomplete or incorrect information in that statement and does not contend either that the district court lacked diversity jurisdiction or that this Court lacks appellate jurisdiction.

and most other courts to have considered the issue have held, *see id.* at 12 n.3—the safety exception applies to negligent-hiring claims such as Ms. Ye's. "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, "where a State requires a broker to exercise ordinary care in selecting a motor carrier to safely operate [a] motor vehicle, the State's exercise of its safety regulatory authority occurs 'with respect to motor vehicles.'" Br. for United States as Amicus Curiae at 15, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425 (U.S., filed May 24, 2022) (hereafter "U.S. Br., *Miller*") (quoting 49 U.S.C. § 14501(c)(2)(A)).

GlobalTranz does not argue that common-law duties are not part of the state's "safety regulatory authority." Instead, it contends that the safety exception does not apply to Ms. Ye's claim because "GlobalTranz does not own or operate commercial motor vehicles and is not a motor carrier." Appellee Br. 14. A defendant does not need to own or operate motor vehicles itself, however, to have a state-law duty that "concern[s]" motor vehicles. *Dan's City*, 569 U.S. at 261 (equating "with respect to"

and "concern[s]"). Because brokers arrange for transportation by "a person providing motor vehicle transportation for compensation," 49 U.S.C. §§ 13102(2) & (14), a broker's "selection of a motor carrier to transport goods necessarily implicates the use of a motor vehicle," *Mata v. Allupick, Inc.*, No. 4:21-CV-00865-ACA, 2022 WL 1541294, at *5 (N.D. Ala. May 16, 2022). And the purpose of imposing a duty of care on brokers is to protect third parties from the dangers of unsafe motor vehicles. Because the state-law duty underlying Ms. Ye's claim "concerns motor vehicles and their safe operation," *Lopez v. Amazon Logistics, Inc.*, 458 F. Supp. 3d 505, 516 (N.D. Tex. 2020), and its purpose is to "prevent injuries caused by motor vehicles," *Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945-JCH-GJF, 2021 WL 5493076, at *14 (D.N.M. Nov. 23, 2021), it is part of the state's safety regulatory authority "with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)(A), and the safety exception applies.

GlobalTranz contends that the absence of an explicit reference to brokers in the safety exception demonstrates that Congress did not intend the exception to apply to claims against brokers. Appellee Br. 32–33. But the safety exception also does not mention motor carriers, motor private carriers, or freight forwarders. That is, it does not mention *any* of

the entities whose "price[s], route[s], or service[s]" are referred to in § 14501(c)(1). Accordingly, if GlobalTranz were correct that the safety exception does not apply to laws regulating entities that are not named in the exception, the exception would not apply to *any* laws. That is not the case. Unlike the exception in the third clause of § 14501(c)(2)(A), which exempts from preemption the "authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization," the safety exception, which is in the first clause of § 14501(c)(2)(A), is not based on the nature of the entity being regulated. It is based on the nature of the state authority being invoked. Where, as here, a claim invokes the state's "safety regulatory authority … with respect to motor vehicles," the claim is exempt from preemption under § 14501(c)(1), regardless of whether the defendant is a broker, motor carrier, or other entity.

GlobalTranz notes that a *different* preemption provision, 49 U.S.C. § 14501(b), which preempts laws "relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker," does not include a safety exception. Importantly, GlobalTranz did not move to

dismiss based on § 14501(b), *see* D.E. 62, and it does not claim that § 14501(b) applies here, where the brokered transportation was *inter*state, not *intra*state.

Nonetheless, GlobalTranz contends that the fact that § 14501(b) lacks a safety exception "is clear textual evidence" that Congress intended the safety exception to preemption under § 14501(c)(1) to apply only to claims against "motor carriers and the motor vehicles they operate, and not to freight forwarders or brokers." Appellee Br. 33. Congress, however, specifically chose to treat laws related to *inter*state and *intra*state broker prices, routes, and services differently. Instead of addressing laws related to *inter*state broker prices, routes, and services alongside laws related to *intra*state broker prices, routes, and services in § 14501(b), which does not have an express safety exception, it chose to address those laws in § 14501(c)(1), which does have a safety exception. Rather than demonstrating an intent to exclude laws relating to the interstate prices, routes, and services of a broker from the safety exception, Congress's decision to address those laws in § 14501(c)(1), rather than in § 14501(b), indicates that Congress wanted the safety

exception to apply to them where, as here, the exception's conditions are met.

Contrary to GlobalTranz's arguments, neither the statutory requirement that motor carriers carry insurance for bodily injury or death, 49 U.S.C. § 13906(a)(1), nor the exception in the third clause of § 14501(c)(2)(A) preserving the state's authority to regulate motor carriers with regard to minimum insurance requirements, speaks to whether the safety exception applies to claims against brokers. Those provisions demonstrate that Congress was concerned about motor carriers' possible inability to pay personal-injury claims against them. That Congress did not consider brokers' inability to pay personal-injury claims a serious enough problem for it to mandate personal-injury insurance by law does not demonstrate an intent to immunize brokers from personal-injury claims by preempting them, let alone to exclude state laws regulating brokers from the safety exception.

For similar reasons, GlobalTranz errs in relying on a 1988 statement by the Interstate Commerce Commission that it was unnecessary to implement a self-insurance program for brokers similar to that for motor carriers. *See* Appellee Br. 35. That statement does not

concern preemption or the FAAAA, and it does not speak to whether, when Congress enacted the FAAAA six years later, it intended to preempt claims against brokers that face liability under state law for personal injury or wrongful death.

B. GlobalTranz insists that the "plain text of the FAAAA … does not include a general 'safety exception' applicable to brokers." Appellee Br. 39. Where a state law regulating brokers is genuinely responsive to safety concerns respecting motor vehicles, however, as the state common law at issue here is, it is part of the state's "safety regulatory authority … with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). It thus falls within the plain text of the safety exception, which lacks a carveout for claims against brokers.

GlobalTranz errs in contending that reading the safety exception to apply to negligent-hiring claims such as Ms. Ye's would cause the exception "to swallow the rule of preemption related to broker's services." Appellee Br. 36 (citation omitted). Many state-law claims relating to broker prices, routes, or services are not concerned with the safety of motor vehicles, and the safety exception does not apply. *See*, *e.g.*, *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, No. 3:21-CV-578-BJD-LLL, 2022

WL 806086 (M.D. Fla. Feb. 3, 2022) (holding that negligence claim against broker by shipper's insurance company relating to cargo loss, which did not arise from a motor vehicle accident or otherwise involve the safety of motor vehicles, did not fall within the safety exception). In contrast, claims such as Ms. Ye's invoke duties related to ensuring the safety of motor vehicles on the road, and the safety exception applies.

GlobalTranz likewise errs in contending that interpreting the safety exception to apply to Ms. Ye's claim would deprive the phrase "with respect to motor vehicles" of any "limiting effect," and cause it to be indistinguishable from the phrase "with respect to the transportation of property" in § 14501(c)(1). Appellee Br. 40. Many state laws that relate to motor carrier or broker prices, routes, or services and impose duties with respect to the transportation of property are not responsive to safety concerning motor vehicles, and the safety exception does not apply. In *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008), for example, the Supreme Court held that the FAAAA preempted laws regulating the delivery of tobacco. Although the laws related to public health, they did not concern the safety of motor vehicles, and the safety exception did not apply. *See id.* at 374 (noting that, although the FAAAA

"lists a set of exceptions," including one "governing motor vehicle safety," it "says nothing about public health"). Claims such as Ms. Ye's, however, which are based on duties that are intended to protect the public from unsafe motor vehicles, concern the safety of motor vehicles and fall within the scope of the safety exception.

C. GlobalTranz devotes considerable space to criticizing the Ninth Circuit's decision in *Miller*, 976 F.3d 1016, *see* Appellee Br. 41–44, but none of its criticisms undermines the correctness of *Miller*'s holding that the safety exception applies to negligent-hiring claims such as Ms. Ye's claim against GlobalTranz.

First, GlobalTranz castigates *Miller* for citing the presumption that Congress has not preempted the historic police powers of the state. *See* Appellee Br. 41. GlobalTranz notes that, in *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115, 125 (2016), the Supreme Court stated that, because the Bankruptcy Code contained an express preemption clause, the Court did not "invoke any presumption against pre-emption," but instead "focus[ed] on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *Miller*'s holding that the plaintiff's claim was sufficiently

connected to motor vehicles to fall within the safety exception, however, did not rest on the presumption against preemption, but on the meaning of the term "with respect to." *See* 876 F.3d at 1030–31. This Court likewise does not need to rely on the presumption against preemption to hold in favor of Ms. Ye here.

In any event, in *City of Columbus v. Ours Garage & Wrecker Service, Inc.*, the Supreme Court itself cited the presumption against preemption in interpreting the safety exception. *See* 536 U.S. 424, 432, 438 (2002). The Ninth Circuit did not err in following the Supreme Court's lead on how to interpret the provision at issue in this case. Post-*Franklin*, this Court, too, has cited the presumption against preemption when analyzing an express preemption provision to which the Supreme Court has previously applied that presumption. *See Laborers' Pension Fund v. Miscevic*, 880 F.3d 927, 933–34 (7th Cir. 2018) (relying on the presumption against preemption in an ERISA case).

Second, GlobalTranz criticizes the Ninth Circuit for stating, in the section of its decision concerning whether the term "safety regulatory authority" includes common-law claims, that it was interpreting the term "safety regulatory authority" with the "background in mind" that "courts

have construed the safety exception broadly." *Miller*, 976 F.3d at 1026; *see also*, *e.g.*, *VRC LLC v. City of Dallas*, 460 F.3d 607, 612 (5th Cir. 2006) (noting that case law both before and after *Ours Garage* "has on the whole given a broad construction to the safety regulation exception"). As GlobalTranz acknowledges, however, the Supreme Court explained in *Ours Garage* that it was not necessary to give the exception "the narrowest possible construction." 536 U.S. at 440. GlobalTranz objects to *Miller*'s citation of this statement, arguing that it does not call for the "broadest possible construction" of the exception, Appellee Br. 42, but *Miller* did not adopt the broadest possible construction of the safety exception: It interpreted the exception in line with its plain text to apply to a claim based on state law concerning the safety of motor vehicles.

Third, GlobalTranz objects to the Ninth Circuit's explanation that the safety exception saves from preemption safety regulations that have a connection with motor vehicles "whether directly or indirectly." *Id.* (quoting *Miller*, 976 F.3d at 1030). GlobalTranz does not even attempt to explain why the broad term "with respect to motor vehicles" should be interpreted to mean "*directly* connected to motor vehicles." Instead, GlobalTranz attempts to distinguish the prior Ninth Circuit case *Miller*

cited, *California Tow Truck Ass'n v. City & County of San Francisco*, 807 F.3d 1008 (9th Cir. 2015), on the ground that the tow-truck permitting regulations at issue there "directly regulated the tow truck operators (motor carriers) and drivers that operate and drive tow trucks," while "[b]rokers like GlobalTranz do not operate motor vehicles." Appellee Br. 43. *California Tow Truck Association*'s recognition that the exception applies to safety regulations that are directly applicable to motor carriers, however, in no way suggests that it applies *only* to such exercises of safety regulatory authority.

GlobalTranz's attempt to distinguish *California Tow Truck Ass'n* highlights a misunderstanding that pervades its brief: The relevant inquiry under the safety exception is not about the relationship between the *regulated entity* and motor vehicles, but the relationship between the *safety regulatory authority* and motor vehicles. Where, as here, the state-law duty at issue is concerned with protecting the public from unsafe motor vehicles, that safety regulatory authority concerns motor vehicles and is preserved by the safety exception.

Finally, GlobalTranz objects to *Miller*'s explanation that, although neither the law at issue there nor the requirements at issue in *California*

Tow Truck Ass'n "directly regulates motor vehicles, … both promote safety on the road." 976 F.3d at 1030. Fighting a straw man, GlobalTranz asserts that it is insufficient that a claim "might conceivably, in the chain of causation, have the effect of reducing motor vehicle accidents" when the claim "operates with respect to a broker['s] services … which are only 'tangentially' related to" motor vehicles. Appellee Br. 43–44. The duty at issue here, however, is *aimed* at protecting the public from motor vehicle accidents; its connection to motor vehicles is much more than "tangential." As the United States recently explained to the Supreme Court, the "safe operation of a vehicle is necessarily connected to the vehicle's operator, *i.e.*, the motor carrier providing the motor vehicle transportation. The selection of a safe motor carrier therefore is logically a meaningful component of commercial motor-vehicle safety." U.S. Br., *Miller*, at 17; *see also id.* (noting that "no statutory text limits Section 14501(c)'s safety exception to the 'use' of vehicles").

In short, as the Ninth Circuit and most district courts to have considered the issue have held, claims such as Ms. Ye's invoke the state's safety regulatory authority "with respect to motor vehicles." Such claims

fall within the safety exception in § 14501(c)(2)(A) and are not preempted by § 14501(c)(1).

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

A. Ms. Ye's negligent-hiring claim is not preempted for the additional reason that it is not "related to" broker prices, routes, or services, and therefore does not fall within the scope of § 14501(c)(1) in the first place. The term "service" in the FAAAA refers to the service a motor carrier or broker "offers its customers." *Dan's City*, 569 U.S. at 263; *see also Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1055 (7th Cir. 2016). It reflects a "concern with the contractual arrangement between the [motor carrier or broker] and the user of the service." *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1433 (7th Cir. 1996) (quoting *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir. 1995) (en banc)). A broker's state-law duty to exercise reasonable care to ensure that it is not hiring a motor carrier that will place unsafe motor vehicles on the road with members of the public is not part of the "contractual arrangement" between the broker and its customer—the shipper. Meeting that duty to the public is not a "service" the broker provides the shipper, and that duty has no more than a "tenuous, remote, or

peripheral" effect on the service the broker *does* provide the shipper: arranging for the transportation of property. *Dan's City*, 569 U.S. at 261 (citation omitted); *see*, *e.g.*, *Reyes v. Martinez*, No. EP-21-CV-00069-DCG, 2021 WL 2177252, at *5 (W.D. Tex. May 28, 2021) (holding that negligence claims "affect brokers' prices, routes, and services 'in only a tenuous, remote, or peripheral ... manner'" (quoting *Dan's City*, 569 U.S. at 261)); *Ciotola v. Star Transp. & Trucking, LLC*, 481 F. Supp. 3d 375, 390 (M.D. Pa. 2020) (explaining that law underlying negligent-hiring claim "does not directly reference prices, routes, or services of a broker or motor carrier, and does not place a significant financial impact on a broker or motor carrier's prices, routes, or services").

GlobalTranz asserts that Ms. Ye's claim is preempted because it "is based entirely upon the service it provided as a broker." Appellee Br. 21. But Ms. Ye's claim is *not* based on anything about the service GlobalTranz provided its customer, the shipper; it is based on a violation of a duty it owed to members of the public. GlobalTranz also contends that claims such as Ms. Ye's are an "attempt to reshape how brokers perform [their] service" and "have a significant economic impact on that service." *Id.* at 17, 21. But a broker can provide its customer with the

same service of arranging for the transportation of property, including selecting a motor carrier to provide that transportation, while also abiding by its state-law duty of care. And to the extent GlobalTranz is arguing that the law is preempted because complying with it may cost money, which may prompt it to raise its prices, this Court explained in *S.C. Johnson & Son, Inc. v. Transport Corp. of America*, 697 F.3d 544, 558 (7th Cir. 2012), that laws are not necessarily preempted just because they may raise a broker's costs. Like the "background laws" listed in *S.C. Johnson*, the state-law duty at issue here provides a "backdrop to private ordering," rather than seeking "to change the bargain" that the broker and customer reached. *Id*. It "set[s] basic rules for a civil society" and its effect on prices "is too remote" for it to be preempted by the FAAAA. *Id*. (internal quotation marks and citation omitted).

B. Contrary to GlobalTranz's claims, recognizing that the FAAAA does not preempt Ms. Ye's claim would not "thwart the deregulatory objective of the FAAAA." Appellee Br. 22. The FAAAA seeks to avoid "a State's direct substitution of its own governmental commands for 'competitive market forces' in determining (to a significant degree) the services that motor carriers [or brokers] will provide." *Rowe*, 552 U.S. at

372 (citation omitted). The state-law duty underlying Ms. Ye's claim, however, does not seek to "substitute a state policy … for the agreements that the parties had reached," *S.C. Johnson*, 697 F.3d at 557, or otherwise determine the services that brokers provide to their customers. It leaves the relationship between brokers and their customers to competitive market forces. *See*, *e.g.*, *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1258 (11th Cir. 2003) (explaining that because "airlines do not compete on the basis of likelihood of personal injury, i.e., onboard safety, … it does not undermine the pro-competitive purpose" of the Airline Deregulation Act (ADA) "to permit states to regulate this aspect of air carrier operations").

As Ms. Ye explained in her opening brief, Appellant Br. 26–28, *Rowe* does not support preemption here. In *Rowe*, the Supreme Court held that the FAAAA preempted two provisions: The first required retailers who shipped tobacco to use a "delivery service" that followed specific procedures. 552 U.S. at 368. The second forbade any person from knowingly transporting tobacco unless either the sender or receiver had a license, and it provided that a person was deemed to know that a package contained a tobacco product either if it contained certain

markings or if it was received from someone whose name was on a list of unlicensed tobacco retailers. *See id.* at 368–69. Both provisions "focuse[d] on trucking and other motor carrier services." *Id.* at 371. And both concerned the relationship between the motor carrier and the shipper: the first provision by requiring shippers to use only motor carriers that followed certain procedures, and the second by requiring motor carriers to examine every package given to them by a shipper to determine whether the shipper was on a list of unlicensed tobacco retailers, in which case the motor carrier could not transport the package unless the recipient had a license. Here, in contrast, the duty underlying Ms. Ye's claim is a background state law that is not focused on motor carriers or brokers, and the duty does not concern the relationship between the broker and its customer.[2]

C. GlobalTranz fails in its attempts to distinguish *Hodges*, *Costello*, *S.C. Johnson*, and *Travel All Over the World*, and to rebut the fact that

[2] Although GlobalTranz asserts that the state-law duty at issue is "specifically directed at brokers," Appellee Br. 28, the state-law duty to exercise ordinary care not to hire someone whom the hirer knows or should know has "a particular unfitness for the position so as to create a danger of harm to third persons" is a generally applicable duty that is not limited to brokers or other hirers of motor carriers. *Doe v. Coe*, 135 N.E.3d 1, 13 (Ill. 2019) (citation omitted).

"service" refers to the service a broker "renders its customers." *Dan's City*, 569 U.S. at 263.

In *Hodges*, 44 F.3d 334, the Fifth Circuit, sitting en banc, held that the ADA's provision preempting state laws related to the price, route, or service of an air carrier did not preempt a "state law tort claim for physical injury based on alleged negligent operation of [an] aircraft." *Id.* at 335. The court explained that "'services' generally represent a bargained-for or anticipated provision of labor from one party to another" and that it was the "contractual features of air transportation" that Congress intended to deregulate in the ADA. *Id.* at 336 (cleaned up). Because the "enforcement of tort remedies for personal physical injury ordinarily has no 'express reference'" to the contractual features of air transportation, and "normally will not have the 'forbidden significant effect'" on such features, claims for physical injury based on the negligent operation of an airplane are not preempted. *Id.* at 336, 339 (citation omitted); *see also*, *e.g.*, *Day v. SkyWest Airlines*, 45 F.4th 1181, 1182 (10th Cir. 2022) (holding that "personal-injury claims arising out of an airline employee's failure to exercise due care are not 'related to' a deregulated price, route, or service"); *Branche*, 342 F.3d at 1258 (explaining that

"services" refers to the "*bargained-for* aspects of airline operations over which carriers compete" and that "state law personal injury claims are not pre-empted").[3]

As discussed above, Ms. Ye's personal-injury claim neither expressly references nor has a forbidden significant effect on the contractual features of broker operations. Accordingly, under the reasoning of *Hodges*, it does not relate to "services" and is not preempted.

GlobalTranz attempts to distinguish *Hodges* by stating that "GlobalTranz, as a broker, does not operate trucks, and cannot be equated to an air carrier." Appellee Br. 26. To the extent that there are differences between the claim in *Hodges* and the claim here, however, those differences make the claim here *less* related to "services" than the claim in *Hodges*. In *Hodges*, the person to whom the air carrier owed its tort duty was its customer, who had bought the airline's services and who was injured while she was flying on the air carrier's plane—that is, while she was using the services she bought. In contrast, here, GlobalTranz

[3] Because courts interpret the phrase "related to … a price, route, or service" to have the same meaning in the ADA and FAAAA, *see Costello*, 810 F.3d at 1051, any decision about the scope of the term here will affect interpretation of that term in the ADA, which lacks an express safety exception.

owed its tort duty to members of the public who are not part of the marketplace for broker services.

GlobalTranz also attempts to distinguish *Hodges* on the ground that federal law requires air carriers to carry personal-injury insurance, but does not contain a similar requirement for brokers. As GlobalTranz acknowledges, however, "Congress borrowed the 'related to a price, route, or service' language from the ADA, and the construction of that language in the ADA applies to the FAAAA." Appellee Br. 12 n.2. While the requirement that air carriers carry personal-injury insurance sheds light on the scope of the term "related to … a service" in the ADA (and therefore, in the FAAAA), the absence of a requirement that brokers carry insurance does not give that phrase a different meaning in the FAAAA.

GlobalTranz next attempts to distinguish *Costello*, 810 F.3d at 1045, in which this Court explained "that there is a relevant distinction for purposes of FAAAA preemption between generally applicable state laws that affect the carrier's relationship with its customers and those that affect the carrier's relationship with its workforce." 810 F.3d at 1054. While "[l]aws that affect the way a carrier interacts with its customers

fall squarely within the scope of FAAAA preemption," "[l]aws 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." *Id.* As Ms. Ye explained in her opening brief, Appellant Br. 26, the state-law duty at issue here is similar to the laws affecting the workforce discussed in *Costello*: Although it may affect whom the broker hires, it does not affect the way the broker interacts with its customers, and it is too tenuously connected to that relationship to be preempted.

GlobalTranz points to a sentence in *Costello* stating that a "state law that requires carriers to offer particular services to its customers was precisely the result that the FAAAA was designed to prevent." Appellee Br. 29 (quoting *Costello*, 810 F.3d at 1052). That statement, however, is inapplicable here, because the state-law duty underlying Ms. Ye's claim does not require a broker to offers any "services *to its customers*." 810 F.3d at 1052 (emphasis added). As Ms. Ye has explained, the duty is one the broker owes to the public, not to its customer, and a broker's efforts to comply with the duty are not a service it offers its customers.

GlobalTranz's attempts to distinguish *S.C. Johnson* fare no better. GlobalTranz contends that the "fact that *S.C. Johnson* involved a claim asserted against transportation companies with which S.C. Johnson did business does not lead to the conclusion that the FAAAA only preempts claims between a broker and its customer." Appellee Br. 30. That point is true, but Ms. Ye does not rely on *S.C. Johnson* for the proposition that the FAAAA only preempts claims between a broker and its customer (nor, indeed, does she make that argument at all). And GlobalTranz has no response to the points for which Ms. Ye *does* cite *S.C. Johnson*, such as that "background laws" that "operate one or more steps away from the moment at which the firm offers its customer a service for a particular price," and that set "basic rules for a civil society, rather than particular terms of trade between parties to a transaction," have too "remote" an effect on price to be preempted. *S.C. Johnson*, 697 F.3d at 558.

Finally, GlobalTranz attempts to distinguish *Travel All Over the World*, 73 F.3d at 1433, in which this Court explained that statements made by an airline about a travel agent were "not 'services' within the meaning of the ADA," because they were not "part of any contractual arrangement" between the airline and the travel agent or its clients.

GlobalTranz argues that *Travel All Over the World* does not require state laws to relate to "contractual arrangements" between brokers and their customers to be preempted. Appellee Br. 30. However, in *Travel All Over the World*, this Court "adopt[ed] the following … definition of 'services'":

> 'Services' generally represent a bargained-for or anticipated provision of labor from one party to another.... [This] leads to a concern with the contractual arrangement between the airline and the user of the service. Elements of the air carrier service bargain include items such as ticketing, boarding procedures, provision of food and drink, and baggage handling, in addition to the transportation itself.

73 F.3d at 1433 (quoting *Hodges*, 44 F.3d at 336). Here, where the state-law duty at issue does not reference or have a significant economic effect on the "the bargained-for or anticipated provision of labor" from the broker to its customer, or the "contractual arrangement" between the two, the duty does not relate to the broker's prices, routes, or services, and does not fall within the scope of § 14501(c)(1).

III. GlobalTranz's emphasis on the federal regulatory scheme is misplaced.

GlobalTranz devotes significant space throughout its brief to discussing federal regulations governing motor carriers and brokers. Those regulations, however, are irrelevant to the preemption question in this appeal. By law, the Secretary of Transportation's role is to establish

"*minimum* safety standards for commercial motor vehicles." 49 U.S.C. § 31136(a) (emphasis added). The Federal Motor Carrier Safety Administration (FMCSA) recognizes that these standards—which include 49 C.F.R. Parts 371 and 385, the regulations relied on by GlobalTranz—are "not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto." 49 C.F.R. § 390.9. That is, despite GlobalTranz's arguments that the federal government is solely responsible for ensuring that unsafe motor carriers are not placed on the road, the federal regulatory scheme allows states to impose additional or stricter laws regarding safety. *See* U.S. Br., *Miller*, at 20 (explaining that it is "incorrect[to] suggest[] … that Congress intended regulation by the Department of Transportation … to provide a uniform national system of motor-carrier safety regulation"). And the safety exception further confirms that the federal government's role in furthering motor vehicle safety is not exclusive. It operates in conjunction with state laws.

GlobalTranz misunderstands the distinction between the roles of federal and state law in arguing that "Nothing in the FAAAA supports

the imposition of [a duty not to hire unsafe motor carriers] on brokers." Appellee Br. 46. Federal law does not determine whether state law imposes a particular duty on brokers or other entities; it determines only whether federal law preempts that state-law duty. As explained above, the FAAAA does not preempt the state-law duty at issue here.

GlobalTranz argues that it "should be presumptively reasonable" for a broker to hire a motor carrier as long as that motor carrier has federal authorization. *Id*. at. 8. Whether a broker "presumptively" acted reasonably in satisfaction of its duty under state law, however, is a question for the merits, not a question concerning preemption.[4]

Attempting to downplay the safety effects of its position, GlobalTranz suggests that, under its theory, claims against a broker that hired a motor carrier that lacked operating authority would not be

[4] GlobalTranz also blurs the lines between preemption and the merits in its argument in its statement of facts that the Court should "disregard" "conclusory allegations" in the complaint. Appellee Br. 12. None of the specific facts concerning why GlobalTranz should have known of Global Sunrise's unfitness are necessary to decide the preemption question, and GlobalTranz did not move to dismiss on any ground besides preemption. *See* D.E. 62. Moreover, Ms. Ye's allegations that GlobalTranz knew or should have known that Global Sunrise was unfit are not conclusory. *See*, *e.g.*, App. 23–24, ¶¶ 4.15–4.18 (describing information about Global Sunrise readily available to GlobalTranz on FMCSA's website).

preempted. Appellee Br. 45. This is so, according to GlobalTranz, because a broker who hired such a motor carrier would not meet the definition of a broker in 49 C.F.R § 371.2, which defines a broker as "a person who, for compensation, arranges, or offers to arrange, the transportation of property by an *authorized* motor carrier." (emphasis added). The statutory definition of a broker, however, is a "person … [that] offers for sale, negotiates for, or holds itself out … as selling, providing, or arranging for, transportation by motor carrier for compensation," without limiting the definition to entities that arrange for transportation by authorized motor carriers. 49 U.S.C. § 13102(2). In any event, regardless of whether GlobalTranz's theory would immunize brokers who hire motor carriers without operating authority, it would reduce brokers' incentives to ensure that they do not hire unsafe motor carriers, to the detriment of the safety of other drivers and passengers on the nation's roads.

Finally, GlobalTranz errs in contending that Ms. Ye's "claim attempts to hold GlobalTranz liable for the actions of the motor carrier and driver." Appellee Br. 46. Ms. Ye is not seeking to hold GlobalTranz liable for the motor carrier's or driver's negligence, but for GlobalTranz's own negligence in hiring a motor carrier that it knew or should have

known was so unfit as to create an unreasonable danger of harm to other drivers and passengers on the road. The FAAAA does not preempt the state-law duty underlying that claim, both because the duty does not relate to a service a broker provides its customer, and because it is part of the state's "safety regulatory authority … with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

CONCLUSION

This Court should reverse the district court's dismissal of the negligent-hiring claim.

Respectfully submitted,

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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 5,974 words.

/s/ Adina H. Rosenbaum
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