No. 24-3599

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT COX,
Plaintiff-Appellant,

v.

TOTAL QUALITY LOGISTICS, INC. and TOTAL QUALITY LOGISTICS, LLC,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Ohio, No. 1:22-cv-00026
Hon. Jeffery P. Hopkins, United States District Judge

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INTRODUCTION

Robert Cox's negligent-hiring claim against freight broker Total Quality Logistics (TQL) arises from TQL's hiring of an unsafe motor carrier to provide motor vehicle transportation, resulting in a motor vehicle crash, and is based on a state-law requirement aimed at protecting the public from the dangers of motor vehicles. As Mr. Cox explained in his opening brief, this claim is an exercise of the state's safety regulatory authority "with respect to motor vehicles," and thus falls within the safety exception to preemption in the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(2)(A).

In response, TQL doubles down on the argument that because the safety exception does not expressly mention brokers, it does not apply to claims against brokers. In so doing, however, it ignores the explanation in Mr. Cox's opening brief that the absence of an express reference to brokers in the safety exception is irrelevant because the exception is focused on the nature of the underlying state law, not the nature of the defendant. TQL also makes numerous inaccurate statements about other federal court cases, the FAAAA, and Mr. Cox's arguments. Nothing in TQL's brief alters the fact that the state-law requirement underlying Mr.

Cox's claim is responsive to safety concerns respecting motor vehicles, and therefore falls within the safety exception.

ARGUMENT

I. Mr. Cox's negligent-hiring claim falls within the plain text of the safety exception, which is based on the nature of the state law at issue, not the nature of the defendant.

The FAAAA's safety exception applies to the state's "safety regulatory authority … with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). TQL does not question that Mr. Cox's negligent-hiring claim invokes the "safety regulatory authority of a State." *See* TQL Br. 19. Thus, the question here is whether that safety authority is "with respect to motor vehicles." It plainly is.

"With respect to" in the FAAAA means "concern[s]." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013). The state-law requirement to exercise reasonable care in selecting a safe motor carrier to provide motor vehicle transportation clearly concerns motor vehicles. *See*, *e.g.*, *Johnson v. Herbert*, 699 F. Supp. 3d 523, 534 (E.D. Tex. 2023) ("A claim seeking damages for negligently placing an unsafe carrier on a highway is a claim that concerns motor vehicles and their safe operation." (cleaned up)); *Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, 321

(D. Mass. 2020) (explaining that negligent-hiring claims against brokers "are genuinely responsive to safety concerns respecting motor vehicles"). Indeed, the purpose of such a requirement is to protect the public from unsafe motor vehicles.

TQL does not explain why the state safety regulatory authority underlying Mr. Cox's claim does not concern motor vehicles. Instead, TQL primarily argues that the safety exception does not cover claims against brokers because the exception does not expressly mention brokers. *See* TQL Br. 16–17, 23. As Mr. Cox's opening brief explains (at 15–16), however, the safety exception also does not mention motor carriers, motor private carriers, or any other regulated entity. Thus, if TQL were correct that the exception does not apply to laws regulating entities that are not expressly mentioned in the exception, the exception would not apply to any laws at all. Although Mr. Cox pointed this out in his opening brief, TQL offers no response. And fortunately, TQL is not correct: whether the safety exception applies does not depend on whether the type of defendant at issue is mentioned in the exception, but on whether the claim invokes the state's safety regulatory authority concerning motor

vehicles. Where, as here, the claim invokes that authority, it falls within the safety exception, irrespective of the nature of the defendant.

TQL's misunderstanding of the safety exception may rest in part on its misreading of the FAAAA's preemption provision, 49 U.S.C. § 14501(c)(1). TQL states that "Section 14501(c)(1) references both 'brokers' and 'motor vehicles' in the express preemption provision, but Section 14501(c)(2)(A) only references 'motor vehicles.'" TQL Br. 16. That statement is incorrect: Section 14501(c)(1) does *not* reference brokers and motor *vehicles*; it references brokers and motor *carriers* (along with freight forwarders and motor private carriers). *See* 49 U.S.C. § 14501(c)(1) (preempting 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"). That is, Section 14501(c)(1) references entities that provide transportation services. The safety exception, in contrast, does not reference any such entities. As explained above, its application is not based on the nature of the regulated entity—whether it is a motor carrier, motor private carrier, broker, or freight forwarder—but on whether the state safety regulatory authority at issue concerns motor vehicles. Here, where the state-law

requirement underlying Mr. Cox's negligent-hiring claim is concerned with the safety risks posed by motor vehicles, it is part of the state's safety regulatory authority with respect to motor vehicles. The claim therefore falls within the safety exception, and the district court's dismissal of the claim should be reversed.[1]

II. TQL's arguments are meritless.

TQL's additional arguments are likewise unavailing.[2] First, TQL states, incorrectly, that "'the Supreme Court has determined [that the phrase 'with respect to motor vehicles'] 'massively limits the scope' of the safety exception.'" TQL Br. 16–17 (quoting *Ye*, 74 F.4th at 460 (quoting *Dan's City*, 569 U.S. at 261)); *see id*. at 19. The Supreme Court statement to which TQL is referring, however, does not concern the phrase "with

[1] Because the district court dismissed Mr. Cox's punitive-damages claim on the grounds that it was derivative of his other claims, *see* Opinion and Order, RE 29, Page ID #615, the reversal of the dismissal of the negligent-hiring claim should also lead to reversal of the dismissal of the punitive-damages claim.

[2] The circuits are currently split on the issue presented by this case. *Compare Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020), *with Ye v. GlobalTranz Enters., Inc.*, 74 F.4th 453 (7th Cir. 2023), and *Gauthier v. Hard to Stop LLC*, No. 22-10774, 2024 WL 3338944 (11th Cir. July 9, 2024). TQL makes most of these arguments through block quotes from *Ye*, 74 F.4th 453, which is on one side of the circuit split.

respect to motor vehicles" in the safety exception; it addresses the phrase "with respect to the transportation of property" in the preemption provision. *See Dan's City*, 569 U.S. at 261. And as the United States explained in a brief to the Supreme Court, "the limitation to which the Court referred was not in the meaning of the phrase 'with respect to,' … but in the object of that phrase, 'the transportation of property.'" Br. for the U.S. as Amicus Curiae at 17 n.4, *C.H. Robinson Worldwide, Inc. v. Miller*, 142 S. Ct. 2866 (2022) (Mem.) (No. 20-1425) (hereafter, "U.S. Br., *Miller*").[3] "That limitation ensures that Section 14501(c)(1) preempts only state law concerning motor carriers of property (not passengers) and only regarding the movement of property (not its storage or handling before transportation or after delivery)." *Id*. (internal citations and quotation

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

The United States filed its brief at the Supreme Court's invitation in response to a petition seeking review of *Miller*, 976 F.3d 1016, which held that the safety exception applied to a personal injury claim against a freight broker based on the negligent hiring of an unsafe motor carrier. As TQL notes (at 20), the United States' brief took the position that review of *Miller* was not warranted, in part because, at the time, *Miller* was the only court of appeals decision on the issue. TQL ignores, however, that the United States also explained that *Miller* "correctly applied the FAAAA's safety exception." U.S. Br., *Miller*, at 7 (capitalizations removed).

marks omitted). Because the object of the phrase "with respect to motor vehicles" is different from the object of the phrase "with respect to the transportation of property," the clauses' effects are also different.

Next, TQL notes that brokers are not mentioned in the statutory definition of motor vehicle, 49 U.S.C. § 13102(16), or in the FAAAA exceptions for certain tow truck operations and for the intrastate transportation of household goods, *id.* § 14501(c)(2)(B)–(C). TQL Br. 17. As Mr. Cox explained in his opening brief (at 16), however, an entity does not need to be a motor vehicle for a state law regulating that entity to concern motor vehicles, as does the state law at issue here. Moreover, if the safety exception did not apply to laws regulating entities that are not included in the definition of motor vehicle, it also would not apply to laws regulating motor carriers (or motor private carriers or freight forwarders), which are also not mentioned in the definition of motor vehicles. And the fact that brokers are not referenced in exceptions that have different language, purposes, and scope than the safety exception does not speak to the meaning of the safety exception. In any event, that those exceptions do not expressly mention brokers does not mean that a

claim against a broker would not be covered by those exceptions if it otherwise fell within the scope of the exceptions.

Likewise, it is irrelevant that Section 14501(c) is titled "motor carriers of property." As the preemption provision in Section 14501(c)(1) demonstrates, despite that title, the contents of the subsection can apply to laws regulating brokers, as well as to those regulating motor carriers. Section 14501(c)(1) preempts state laws related to the prices, routes, or services of motor carriers or brokers. The safety exception then preserves the state's safety regulatory authority with respect to motor vehicles, regardless of whether that authority relates to motor carrier prices, routes, or services or to broker prices, routes, or services.

TQL contends that the "'separateness'" between motor vehicle safety regulations and regulations imposing obligations on brokers "'counsels a reading of 'with respect to motor vehicles' that requires a direct connection between the potentially exempted state law and motor vehicles,'" and that the connection between "'a broker hiring standard and motor vehicles … is too attenuated.'" TQL Br. 17 (quoting *Ye*, 74 F.4th at 462). This argument is flawed in many respects. First, it makes no sense to determine the relationship between state laws and motor

vehicles that is necessary for a law to be "with respect to motor vehicles" within the meaning of the safety exception—which is not limited to laws concerning brokers—by looking at the relationship between brokers and motor vehicles. Under that reasoning, parties in future cases involving the safety exception would have to meet a standard developed based on the relationship between brokers and motor vehicles, even if those cases do not involve brokers. Instead, courts considering whether a claim falls within the safety exception should first determine the relationship between a state law and motor vehicles necessary for that law to be "with respect to motor vehicles," and then determine whether the state-law requirement underlying the claim has the requisite relationship. As discussed above, the necessary relationship is that the state-law requirement "concern" motor vehicles. *Dan's City*, 569 U.S. at 261. And the state-law requirement that brokers exercise reasonable care to select a motor carrier that will not put dangerous motor vehicles on the road is a requirement that concerns motor vehicles.

Second, the "separateness" between motor vehicle safety regulations and regulations imposing obligations on brokers is irrelevant to the safety exception. That Congress did not itself impose safety-related

obligations on brokers does not show that Congress intended to preempt safety-related obligations that are imposed on brokers by the states. Indeed, Congress sought, through the safety exception, to preserve the states' "preexisting and traditional state police power over safety." *Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 439 (2002). The requirement that brokers exercise reasonable care to hire safe motor carriers is part of that preexisting state power.[4]

Third, by its plain language, the safety exception does not require a "direct" connection between the state law and motor vehicles. Rather, the exception "more broadly extends to state safety regulatory authority 'with respect to motor vehicles.'" U.S. Br., *Miller*, at 17.

Contrary to the reasoning in *Aspen American Insurance Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261 (11th Cir. 2023), in which the Eleventh Circuit held that the FAAAA preempted a negligent-hiring claim brought by a shipper's insurer against a broker who gave the

[4] For similar reasons, the statutory requirement that motor carriers carry insurance for bodily injury or death, *see* TQL Br. 25, is irrelevant. That Congress did not consider brokers' inability to pay personal injury claims a serious enough problem for it to mandate personal injury insurance does not demonstrate an intent to immunize brokers from liability for violating state law.

shipment to a thief, a direct connection between a state law and motor vehicles is not necessary to give the phrase "with respect to motor vehicles" "operative effect." *Id.* at 1271. Many state laws that relate to motor carrier or broker prices, routes, or services with respect to the transportation of property are not responsive to safety concerns respecting 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. Likewise, in *Aspen*, the state-law requirement to exercise reasonable care not to give the shipment to a thief was not responsive to safety concerns respecting motor vehicles, and the Eleventh Circuit correctly held (albeit with faulty reasoning) that the claim did not fall within the safety exception.

Moreover, as Mr. Cox explained in his opening brief (at 4), Congress enacted *two* preemption provisions in the FAAAA: the one at issue here, and a preemption provision preempting state laws related to the "price, route, or service of an air carrier or carrier affiliated with a direct air

carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle." FAAAA, Pub. L. No. 103-305, § 601(b), 108 Stat. 1569, 1605 (1994), codified at 49 U.S.C. § 41713(b)(4)(A). Congress attached the safety exception to both preemption provisions. *See* 49 U.S.C. §§ 14501(c)(2)(A) & 41713(b)(4)(B)(i). The "with respect to motor vehicles" language limits the safety exception to the state's safety regulatory authority concerning motor vehicles, not its safety regulatory authority concerning aircraft.[5]

Fourth, the relationship between the state law underlying Mr. Cox's claim and motor vehicles is far from attenuated. As discussed above, the purpose of imposing a requirement that brokers exercise reasonable care to hire safe motor carriers to provide motor vehicle transportation is to protect the public from the dangers of *motor vehicles*. And as the United States explained in *Miller*, "[t]he safe operation of a

[5] *Aspen* also erred in stating that a direct connection between state laws and motor vehicles is necessary to keep the FAAAA's exception for "the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo," 49 U.S.C. § 14501(c)(2)(A), from being redundant. *See* 65 F.4th at 1271–72. The laws preserved by that exception directly relate to motor vehicles and are thus no more redundant under Mr. Cox's reading of the safety provision than under TQL's.

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 Ruff v. Reliant Transp., Inc.*, 674 F. Supp. 3d 631, 635 (D. Neb. 2023) ("DOT authorized brokers *exist* to arrange for the carriage of goods *by motor vehicle*—to put motor vehicles on the roads. A direct connection to motor vehicles, which seems to ask more than the statute does, appearing on the face of the relationship, the exception applies.").

III. TQL makes numerous incorrect statements about the caselaw.

Mr. Cox's opening brief notes that the majority of federal courts that have considered the issue have held that personal injury claims against freight brokers based on the negligent hiring of an unsafe motor carrier fall within the safety exception and cites dozens of cases so holding. *See* Appellant's Br. at 13 & n.2. TQL's claim that this statement is inaccurate is incorrect—and largely relies on inaccuracies by TQL itself.

For example, TQL contends that Mr. Cox's opening brief "does not cite a single district court case from within this Circuit" and asserts that

all such cases support its position. TQL Br. 23. To the contrary, the brief cites two cases from within this Circuit—*Hawkins v. Milan Express, Inc.*, No. 3:22-CV-51, 2024 WL 2559728, at *5 (E.D. Tenn. May 24, 2024), and *Owens v. Anthony*, No. 2-11-0033, 2011 WL 6056409, at *4 (M.D. Tenn. Dec. 6, 2011)—and those cases support Mr. Cox's position, not that of TQL.

TQL also asserts that "many of the cases in the string cite have nothing to do with FAAAA preemption," citing in particular *Carter v. Khayrullaev*, No. 4:20-CV-00670-AGF, 2022 WL 9922419 (E.D. Mo. Oct. 17, 2022); *Ortiz v. Ben Strong Trucking, Inc.*, 624 F. Supp. 3d 567 (D. Md. 2022); *Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945-JCH-GJF, 2021 WL 5493076 (D.N.M. Nov. 23, 2021); and *Montgomery v. Caribe Transp. II, LLC*, No. 19-CV-1300-SMY, 2021 WL 4129327 (S.D. Ill. Sept. 9, 2021). In fact, each of those cases held that personal injury claims against brokers based on the negligent selection of an unsafe motor carrier fell within the safety exception. *See Carter*, 2022 WL 9922419, at *4 ("[T]he Court finds that Plaintiff's claim for negligent selection of [the motor carrier] is not preempted by the [FAAAA], as it falls squarely within the statute's safety exception to its preemption clause."); *Ortiz*,

624 F. Supp. 3d at 584 ("Even assuming … that a negligent hiring claim's effect on broker services is significant enough to be covered by § 14501(c)(1), the paragraph (c)(2)(A) safety regulatory exception applies to save the claim."); *Dixon*, 2021 WL 5493076, at *14 ("Plaintiff's negligent hiring claim against [the broker] falls within the safety regulatory authority of the State with respect to motor vehicles and is therefore not preempted by the FAAAA."); *Montgomery*, 2021 WL 4129327, at *2 ("The undersigned finds the *Miller* Court's analysis persuasive[.]").

TQL also insists that the Ninth Circuit's decision in *Miller* is "not good law" and that "Circuit Court authority is now uniformly" on its side. TQL Br. 21 n.8 & 22. That is not the case. TQL's assertion is based on *R.J. Reynolds Tobacco Co. v. County of Los Angeles*, 29 F.4th 542 (9th Cir. 2022), in which 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 applying a presumption against preemption, and it rejected the argument that *Miller* supported application of such a presumption. *Id.* at

553 n.6. *R.J. Reynolds* did not overturn *Miller* or in any way cast doubt on *Miller*'s conclusion that negligent-hiring claims against brokers arising out of motor vehicle accidents have a sufficient connection with motor vehicles to fall within the safety exception—a conclusion that did not rest on the presumption against preemption. *See Miller*, 976 F.3d at 1030–31.

Additionally, TQL contends that Mr. Cox's opening brief inaccurately cites *Ours Garage*, 536 U.S. 424, on pages 11–12. TQL Br. 20 n.7. TQL does not make clear what it believes is inaccurate, and there is no inaccuracy. The opening brief does not claim that *Ours Garage* addressed the issue presented in this case; rather, it directly quotes language from *Ours Garage* stating that, to fall within the safety exception, laws must be "genuinely responsive to safety concerns." 536 U.S. at 442. Here, the state-law requirement at issue is genuinely responsive to safety concerns respecting motor vehicles, and Mr. Cox's claim falls within the safety exception.

IV. Adopting TQL's position would have a negative effect on road safety.

Mr. Cox's opening brief explains (at 19–20) that adopting TQL's position would decrease safety on the roads. If brokers cannot be held

liable for negligently hiring unsafe motor carriers to operate motor vehicles, they will be incentivized to hire the cheapest motor carriers, rather than to prioritize safety. In turn, motor carriers will be incentivized to cut safety corners to reduce costs to be competitive.

TQL does not respond to the point that adopting its position would decrease safety. Instead, TQL states that "Congress made specific policy choices in enacting the FAAAA." TQL Br. 24. But Congress did *not* make the policy choice to increase competition at the expense of safety. To the contrary, Congress enacted the safety exception "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." *Ours Garage*, 536 U.S. at 439. The state-law requirement underlying Mr. Cox's negligent-hiring claim is part of the preexisting and traditional state police power that Congress sought to preserve through the safety exception. The claim falls squarely within both the text and purpose of the safety exception, and it is not preempted by the FAAAA.

CONCLUSION

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

Respectfully submitted,

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October 29, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). As calculated by my word processing software (Microsoft Word for Office 365), the brief contains 3,606 words, not counting the parts of the brief excluded by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b)(1). The brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief is composed in a 14-point proportional typeface, Century Schoolbook.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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