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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September 9, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 24-3599 Case Name: Robert Cox v. Total Quality Logistics, Inc

Name of counsel: Adina H. Rosenbaum

Pursuant to 6th Cir. R. 26.1, Robert Cox
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on September 9, 2024 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Adina H. Rosenbaum

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Plaintiff-Appellant Robert Cox 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 to provide motor vehicle transportation leads to a motor vehicle crash that injures or kills someone. The Federal Aviation Administration Authorization Act (FAAAA) preempts state laws related to motor carrier and broker prices, routes, and services, 49 U.S.C. § 14501(c)(1), but contains an exception from preemption—known as the safety exception—for the state's "safety regulatory authority … with respect to motor vehicles," *id.* § 14501(c)(2)(A). The district court held that personal injury and wrongful death claims against freight brokers based on their negligent hiring of an unsafe motor carrier to provide motor vehicle transportation are not sufficiently related to motor vehicles to fall within the safety exception and are preempted by the FAAAA. This Court has not previously considered whether such claims fall within the safety exception—an issue over which the courts of appeals are divided. Mr. Cox believes that oral argument will assist the Court in deciding the issue and resolving this case.

STATEMENT OF JURISDICTION

On January 13, 2022, Robert Cox and Robert Brion Ragland filed this action against Total Quality Logistics, Inc. and Total Quality Logistics, LLC (collectively, TQL) in the United States District Court for the Southern District of Ohio. Complaint, RE 1, Page ID #1. Mr. Cox brought this case both on his own behalf and as a representative of the estate of his deceased wife, Greta Cox. *Id.*, Page ID #1–2.

The district court had diversity jurisdiction pursuant to 28 U.S.C § 1332. Mr. Cox and Mr. Ragland reside in New Mexico, and Greta Cox's estate was opened in New Mexico. Complaint, RE 1, Page ID #2. Total Quality Logistics, Inc. and Total Quality Logistics, LLC are Ohio companies with principal places of business in Ohio. *Id*. The amount in controversy is greater than $75,000. *Id.*, Page ID #12.

On June 12, 2024, the district court dismissed the plaintiffs' complaint with prejudice. Judgment, RE 30, Page ID #617. The June 12, 2024, judgment disposed of all claims of all parties.

Mr. Cox filed a timely notice of appeal on July 10, 2024. Plaintiff's Notice of Appeal, RE 31, Page ID #618. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether Mr. Cox's negligent-hiring claim, which is based on TQL's hiring of an unsafe motor carrier to provide motor vehicle transportation, resulting in a motor vehicle crash, invokes the state's safety regulatory authority "with respect to motor vehicles" and thus falls within the FAAAA's safety exception to preemption, 49 U.S.C. § 14501(c)(2)(A).

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) (internal quotation marks and citations omitted). 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, concerned that state economic regulation of motor carriers was anti-competitive and advantaged air carriers over motor carriers, Congress enacted two preemption provisions. The first provision preempted 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 (whether or not such property has had or will have a prior or subsequent air movement)." FAAAA, Pub. L. No. 103-305, § 601(b), 108 Stat. 1569, 1605 (1994), codified at 49 U.S.C. § 41713(b)(4)(A). The second provision preempted state laws "related to a price, route, or service of any motor carrier … or any motor private carrier with respect to the transportation of property." FAAAA § 601(c), 108 Stat. 1606, codified, as amended, at 49 U.S.C. § 14501(c)(1).

At the same time that it enacted these preemption provisions, Congress sought to "ensure that its preemption of States' economic authority" 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 included exceptions to both preemption provisions providing that the provisions "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A); 49 U.S.C. § 41713(b)(4)(B)(i). This exception from preemption is often called the "safety exception." *Ours Garage*, 536 U.S. at 435.

In 1995, Congress enacted provisions related to preemption of state laws concerning freight brokers. *See* ICC Termination Act, Pub. L. No. 104-88, § 103, 109 Stat. 803, 899 (1995). In particular, Congress enacted a provision preempting state laws related to "intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker." 49 U.S.C § 14501(b)(1). That provision does not have a safety exception. Congress, however, did not include laws relating to *interstate* prices, routes, and services of freight brokers and forwarders in that preemption provision. Instead, Congress added freight brokers and forwarders to the FAAAA's provision on motor carriers, 49 U.S.C. § 14501(c)(1), which does have a safety exception. Thus, as amended, 49 U.S.C. § 14501(c)(1) 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," and is subject to the safety exception providing that the preemption provision "shall not restrict the safety regulatory authority of a State with respect to motor vehicles," *id.* § 14501(c)(2)(A).

B. Factual Background

TQL is a freight broker—a company hired by shippers to arrange for the transportation of property by a motor carrier. *See* Complaint, RE 1, Page ID #3. In May 2019, TQL arranged for Golden Transit Inc. to transport a load of goods over an interstate route, from Minooka, Illinois to Perris, California. *Id.*, Page ID #4. TQL selected Golden Transit to transport the load even though public information, easily available on the website of the Federal Motor Carrier Safety Administration (FMCSA), revealed that the motor carrier was an unsafe carrier with a history of safety violations. *Id.* Golden Transit's percentage of driver out-of-service violations—that is, the percentage of inspections that led to the driver being prohibited from continuing to operate the motor vehicle—was five times the national average. *Id.* In the year before TQL selected Golden

Transit to transport the load, more than 7 out of every 10 of Golden Transit's trucks were not legally allowed to be on the roadway. *Id.*

On May 7, 2019, a Golden Transit driver, Amarjit Singh Khaira, picked up the load. *Id.*, Page ID #5. The following day, Greta Cox and her grandson, Robert Brion Ragland, were driving through Oklahoma as part of a road trip they were taking together following Mr. Ragland's completion of his freshman year of college. *Id.* Near mile marker 48 on Interstate 40, there was a well-marked construction work zone. *Id.*, Page ID #6. The construction work closed the left lane of the highway, and all traffic was directed to move to the right lane, with a reduced speed limit. *Id.* Ms. Cox drove carefully and safely in the right lane. In front of her, a C.R. England truck slowed to nearly a complete stop, and Ms. Cox likewise slowed down. *Id.*

At approximately 2:56 p.m., Ms. Cox saw the truck brokered by TQL and driven by Mr. Khaira barreling toward her in her rear-view mirror. *Id.* Ms. Cox attempted to get out of the way of the truck but was unable to escape. *Id.* The truck smashed into the car at a speed exceeding 60 mph. *Id.* Mr. Khaira did not attempt to brake or slow down before crashing into Ms. Cox's car, which was crushed to less than half of its

true size. *Id.* As a result of the crash, and although witnesses and emergency personnel tried to save her, Ms. Cox died on the highway. *Id.*, Page ID #7. Mr. Ragland also incurred physical injuries. *Id.*, Page ID #8. Mr. Khaira was subsequently indicted for vehicular manslaughter. *Id.*, Page ID #7.

C. Procedural Background

On January 13, 2022, Ms. Cox's widower Robert Cox and Mr. Ragland filed this case against TQL in the Southern District of Ohio. Complaint, RE 1, Page ID #1. Mr. Cox brought the case both individually and as the personal representative and special administrator of Ms. Cox's estate. *Id.* As relevant here, the complaint alleges that TQL was negligent in selecting Golden Transit to transport the load, given Golden Transit's egregious safety record. *Id.*, Page ID #10–11.

On June 12, 2024, the district court granted TQL's motion to dismiss, holding that the negligent-hiring claim is preempted by the FAAAA. *See* Opinion and Order, RE 29, Page ID #602–616. 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* Opinion and Order, RE 29, Page ID #608–612. 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* Opinion and Order, RE 29, Page ID #612–615. Although the complaint alleges that TQL 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 was "not a law that is 'with respect to motor vehicles.'" *Id.*, Page ID #608.

SUMMARY OF ARGUMENT

Mr. Cox's negligent-hiring claim falls within the FAAAA's safety exception, 49 U.S.C. § 14501(c)(2)(A). That exception saves from preemption "the safety regulatory authority of a State with respect to motor vehicles." *Id.* The state-law requirement underlying Mr. Cox's claim—a requirement to exercise reasonable care to select a safe motor carrier to provide motor vehicle transportation—is part of the state's safety regulatory authority, and that safety authority concerns motor vehicles. Indeed, the purpose of the state-law requirement is to protect the public from the safety risks posed by dangerous motor vehicles. Because Mr. Cox's negligent-hiring claim falls within the safety exception, it is not preempted by the FAAAA.

STANDARD OF REVIEW

This Court "review[s] a grant of a motion to dismiss de novo." *Linden v. City of Southfield,* 75 F.4th 597, 601 (6th Cir. 2023).

ARGUMENT

I. Mr. Cox's negligent-hiring claim falls within the safety exception.

Mr. Cox's negligent-hiring claim is based on TQL's breach of the state-law requirement to exercise reasonable care in hiring a safe motor carrier. *See Albain v. Flower Hosp.*, 553 N.E.2d 1038, 1045 (Ohio 1990) ("[I]t is well-established that an employer must exercise reasonable care in the selection of a competent and careful independent contractor.") (citing Restatement (Second) of Torts § 411 (1965)), overruled on other grounds by *Clark v. Southview Hosp. & Fam. Health Ctr.*, 628 N.E.2d 46 (Ohio 1994); Restatement (Second) of Torts § 411 ("An employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor … to do work which will involve a risk of physical harm unless it is skillfully and carefully done[.]"). That state-law requirement is part of the state's

"safety regulatory authority … with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)(A), and thus falls within the safety exception.

First, the state-law requirement is part of the "safety regulatory authority of a State." State courts' ability to develop and enforce common-law duties and standards 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) (cleaned up), making the requirement part of the state's "regulatory authority." *See id.* (holding that a statute that preempted the field of "regulating locomotive equipment" preempted "state common-law duties and standards of care"); Br. for the U.S. as Amicus Curiae, *C.H. Robinson Worldwide, Inc. v. Miller*, 142 S. Ct. 2866 (2022) (Mem.) (No. 20-1425) (hereafter, "U.S. Br., *Miller*")[1] (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 the state-law requirement is "genuinely responsive to safety concerns," *Ours Garage*, 536 U.S. at

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

442—specifically, the risk of physical harm if the broker selects a motor carrier that will place dangerous motor vehicles on the road—making the requirement part of the state's "safety regulatory authority."

Second, that safety regulatory authority is "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. As the United States explained in a brief to the Supreme Court addressing this issue, a "state requirement that a broker exercise ordinary care in selecting a motor carrier to safely operate a motor vehicle when providing motor vehicle transportation on public roads is a requirement that 'concerns' motor vehicles." U.S. Br., *Miller*, at 16; *see also*, *e.g.*, *Lopez v. Amazon Logistics, Inc.*, 458 F. Supp. 3d 505, 516 (N.D. Tex. 2020) ("[A] claim seeking damages for personal injury against a broker for negligently placing an unsafe carrier on the highways is a claim that concerns motor vehicles and their safe operation."); *Finley v. Dyer*, No. 3:18-CV-78-DMB-JMV, 2018 WL 5284616, at *6 (N.D. Miss. Oct. 24, 2018) ("[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."). The purpose of imposing a requirement on

brokers to exercise reasonable care to hire a safe motor carrier is to protect third parties from the dangers posed by unsafe motor vehicles. And because 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 "is logically a meaningful component of commercial motor-vehicle safety." U.S. Br., *Miller*, at 17.

Unsurprisingly, given the strong connection between motor vehicles and state-law requirements that freight brokers exercise care to hire safe motor carriers to transport property by motor vehicle, the majority of federal courts to consider the issue have held that personal injury and wrongful death claims against brokers based on their negligent selection of an unsafe motor carrier fall within the safety exception.[2] This Court should likewise hold that the safety exception applies to Mr. Cox's claim.

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[2] *See Miller v. C.H. Robinson Worldwide, Inc.,* 976 F.3d 1016, 1030 (9th Cir. 2020); *Hawkins v. Milan Express, Inc.*, No. 3:22-CV-51, 2024 WL 2559728, at *5 (E.D. Tenn. May 24, 2024); *Meek v. Toor*, No. 2:21-CV-0324-RSP, 2024 WL 943931, at *3 (E.D. Tex. Mar. 5, 2024); *Crawford v. Move Freight Trucking, LLC*, No. 7:23-CV-433, 2024 WL 762377, at *8 (W.D. Va. Feb. 20, 2024); *Milne v. Move Freight Trucking, LLC*, No. 7:23-

(continued…)

CV-432, 2024 WL 762373, at *8 (W.D. Va. Feb. 20, 2024); *Johnson v. Herbert*, 699 F. Supp. 3d 523, 534 (E.D. Tex. Oct. 20, 2023); *Ruff v. Reliant Transp., Inc.*, 674 F. Supp. 3d 631, 635 (D. Neb. 2023); *Wardingley v. Ecovyst Catalyst Techs., LLC*, 639 F. Supp. 3d 803, 810 (N.D. Ind. 2022); *Carter v. Khayrullaev*, No. 4:20-CV-00670-AGF, 2022 WL 9922419, at *4 (E.D. Mo. Oct. 17, 2022); *Ortiz v. Ben Strong Trucking, Inc.*, 624 F. Supp. 3d 567, 584 (D. Md. 2022); *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-CV-00069-DCG, 2021 WL 2177252, at *6 (W.D. Tex. May 28, 2021); *Popal v. Reliable Cargo Delivery, Inc.*, 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*, 458 F. Supp. 3d at 516; *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*, 2019 WL 4142685 (S.D. Tex. Aug. 28, 2019); *Gilley v. C.H. Robinson Worldwide, Inc.*, No. CV 1:18-00536, 2019 WL 1410902, at *5 (S.D.W. Va. Mar. 28, 2019); *Finley*, 2018 WL 5284616, at *6; *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); *but see, e.g.*, *Ye v. GlobalTranz Enters., Inc.*, 74 F.4th 453, 460 (7th Cir. 2023).

II. The district court's reasoning was flawed.

The district court did not question that Mr. Cox's negligent-hiring claim invokes the "safety regulatory authority of a State." Nonetheless, the court held that the claim does not fall within the scope of the safety exception because, in its view, "a common law negligence claim enforced against a broker is not a law that is 'with respect to motor vehicles.'" Opinion and Order, RE 29, Page ID #608 (quoting 49 U.S.C. § 14501(c)(2)(A)). The district court's reasoning and conclusion were incorrect.

The district court based its decision largely on the fact that the safety exception does not expressly reference brokers. *Id.*, Page ID #613–614. According to the district court, "this omission … indicates that Congress intended claims concerning brokers to be outside the scope of the safety exception." *Id.*, Page ID #613. The safety exception, however, also does not mention motor carriers, motor private carriers, or freight forwarders—that is, any of the entities whose "price[s], route[s], or service[s]" are referenced in 49 U.S.C. § 14501(c)(1)—or any other regulated entity or person. Accordingly, if the safety exception did not apply to laws regulating entities or people that are not expressly

mentioned in the exception, the exception would not apply to any laws at all.

Application of the safety exception is not based on the nature of the entity or person being regulated. The exception's text reflects that its application depends on the nature of the state authority being invoked: Where a claim invokes the state's "safety regulatory authority … with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)(A), as the claim here does, the claim is exempt from preemption under 49 U.S.C. § 14501(c)(1), regardless of whether the defendant is a broker, motor carrier, or other entity or person.

For similar reasons, and contrary to the district court's reasoning, it is irrelevant that brokers are not mentioned in the statutory definition of "motor vehicle" in 49 U.S.C. § 13102(16). *See* Opinion and Order, RE 29, Page ID #613. Entities do not themselves need to be motor vehicles for state laws regulating them to concern the safety of motor vehicles. And, like the safety exception, the definition of motor vehicle does not mention any regulated entities or people, so if the safety exception only applied to a law when the entity regulated by the law was included in the definition of motor vehicle, the safety exception would never apply at all.

Likewise, it is irrelevant that brokers are not included "in § 14501(c)(2)'s two other saving provisions for 'intrastate transportation of household goods' and 'tow truck operations.'" Opinion and Order, RE 29, Page ID #613 (quoting 49 U.S.C. § 14501(c)(2)(B)–(C)). That Congress did not mention brokers in two narrowly focused exceptions does not speak to whether claims against brokers can fall within the scope of the safety exception, which applies more broadly to the state's "safety regulatory authority … with respect to motor vehicles." It would be nonsensical to read the safety exception as limited to carriers of household goods and tow trucks simply because Congress crafted different exceptions for those specific entities.

For its part, TQL argued below that, if the safety exception applied to the negligent hiring claim at issue here, "all … preempted claims would be saved by the exception." TQL Reply in Supp. of Mot. to Dismiss, RE 9, Page ID #259. That is not the case. 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 to those claims. For example, in *Heliene, Inc. v. Total Quality Logistics, LLC*, No. 1:18-CV-799, 2019 WL 4737753 (S.D. Ohio Sept. 27, 2019), a shipper sued TQL

for fraud after it failed to transport trucks over the border from Canada to the United States by an agreed-upon date and then falsely told the shipper that it had met the deadline. The shipper's fraud claim did not concern the safety of motor vehicles, and, accordingly, the court held that it was preempted by the FAAAA without discussing the safety exception. *See also, e.g.*, *Lotte Ins. Co. v. R.E. Smith Enters., Inc.*, __ F. Supp. 3d __, 2024 WL 2024051, at *8 (E.D. Va. May 7, 2024) (holding that the safety exception did not apply to property damage claim against broker "predicated on the allegedly negligent storage of [cargo] in a dilapidated warehouse"); *Belnick, Inc. v. TBB Glob. Logistics, Inc.*, 106 F. Supp. 3d 551, 561 (M.D. Pa. 2015) (without mentioning safety exception, holding that the FAAAA preempted claims that broker tortiously interfered with shipper's ability to contract with other brokers and carriers, fraudulently induced shipper to continue under its contract with the broker, and breached its fiduciary obligations to the shipper).

In contrast to those cases, the state-law requirement underlying Mr. Cox's claim is genuinely responsive to safety concerns respecting motor vehicles. Accordingly, it is part of the "safety regulatory authority

of a State with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)(A), and falls within the safety exception.

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), 108 Stat. 1605; emphasis in *Dan's City*). Specifically, it sought to reduce "state economic regulation of motor carriers." FAAAA § 601(c), 108 Stat. 1606. At the same time, Congress made clear that it did not want to preempt certain other aspects of the regulatory process, and it explicitly preserved "the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A).

Claims such as the one at issue here exemplify why Congress needed to include this limitation on FAAAA preemption. Although "competitive market forces" may further "efficiency, innovation, and low prices" in the market for airline services, *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 371 (2008) (citation omitted), those forces do not promote safety in the broker/motor carrier market. Brokers profit from the difference between the amount the broker charges its customer and

the amount the broker pays a carrier to move the customer's load. If brokers cannot be held liable for negligently hiring unsafe motor carriers, they will be incentivized to hire the cheapest motor carriers possible, rather than to prioritize safety. Carriers, in turn, will be incentivized to compromise safety to reduce operating costs to remain competitive. The ensuing reduction in safety will come at the expense of other drivers and passengers—people like Greta Cox, who are not part of the market for broker or motor carrier services, but who pay a heavy price when brokers fail to exercise reasonable care.

As of 2021, more than 28,000 brokers were registered with the FMCSA. *See* FMCSA, *Regulatory Evaluation of Broker and Freight Forwarder Financial Responsibility Notice of Proposed Rulemaking* 14 (Jan. 2023), https://www.regulations.gov/document/FMCSA-2016-0102-0132. Under the district court's decision, those brokers have no duty to exercise care to hire safe motor carriers. Indeed, under the district court's decision, a broker cannot be held liable for the harm caused by its negligent hiring of an unsafe motor carrier even if the broker *knew* that the motor carrier would place dangerous motor vehicles on the road.

Fortunately, the FAAAA does not require such a result: It contains the safety exception exempting the state's "safety regulatory authority … with respect to motor vehicles" from preemption. 49 U.S.C. § 14501(c)(2)(A). Personal injury and wrongful death claims against freight brokers arising from their negligent hiring of an unsafe motor carrier to provide motor vehicle transportation invoke that state safety regulatory authority and are not preempted by the FAAAA.

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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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 4,117 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 September 9, 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.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

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