No. 22-10774-AA

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

KATIA GAUTHIER,
Plaintiff-Appellant,

v.

TOTAL QUALITY LOGISTICS, LLC,
Defendant-Appellee.

On Appeal from the U.S. District Court for the
Southern District of Georgia
No. 6:20-cv-93-RSB-CLR

PETITION FOR REHEARING EN BANC

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July 29, 2024

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rules 26.1-1 through 26.1-3, Appellant provides the following list of the known persons and entities that have or may have an interest in the outcome of this appeal. Pursuant to Eleventh Circuit Rule 26.1-2(d), this list incorporates all persons and entities listed on all CIPs previously filed in this appeal.

Baker, Judge R. Stan

Berman Fink Van Horn, PC

Dearing, Lea C.

Franklin, Jimmy

Franklin Law LLC

G., D. (a minor) represented by natural guardian Katia Gauthier

G., N. (a minor) represented by natural guardian Katia Gauthier

Gauthier, Katia

Gauthier, Estate of Peter

Godfrey, Yvonne

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Kahn, Jeremy L.

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KMB Holdings, LLC

Longley, Colby E.

Lowry, Stephen G.

Manton, Jed D.

McCorkle, Johnson & McCoy LLP

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Ray, Magistrate Judge Christopher L.

Rosenbaum, Adina H.

Total Quality Logistics, LLC

Zieve, Allison M.

Undersigned counsel for Appellant certifies that, to the best of her knowledge and belief, no publicly traded company or corporation has an interest in the outcome of the case or appeal.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

RULE 35-5(c) STATEMENT

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves a question of exceptional importance: whether the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1), preempts personal injury claims against freight brokers arising from the broker's negligent hiring of an unsafe motor carrier to provide motor vehicle transportation.

/s/ Adina H. Rosenbaum
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Attorney of Record for Appellant
Katia Gauthier

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INTRODUCTION

Plaintiff-Appellant Katia Gauthier's husband, Peter Gauthier, was killed in a motor vehicle crash that resulted from defendant-appellee Total Quality Logistic, LLC's decision to hire a motor carrier with a history of safety violations. Ms. Gauthier filed this suit, alleging that Total Quality Logistics negligently hired the unsafe motor carrier.

A panel of this Court held that the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1), preempts Ms. Gauthier's negligent-hiring claim. In so holding, the panel stated that it was bound by a prior decision holding that the FAAAA preempts negligent-hiring claims against brokers—a decision that involved neither a personal injury claim nor the hiring of an unsafe motor carrier. The panel's decision is one of the first court of appeals decisions on the issue and conflicts with the substantial majority of district court opinions on the scope of preemption in cases involving the hiring of an unsafe motor carrier.

The panel's decision will have broad impacts on road safety. If brokers cannot be held accountable for negligently hiring unsafe motor carriers, they will have reduced incentives to ensure that they are not

hiring motor carriers that will place unsafe motor vehicles on the road. The reduction in safety will come at the expense of other drivers and passengers, who are placed at risk of being injured or killed by motor vehicles when brokers negligently hire unsafe motor carriers to provide motor vehicle transportation.

STATEMENT OF THE ISSUE

Whether the FAAAA, 49 U.S.C. § 14501(c)(1), preempts personal injury claims against freight brokers arising from the broker's negligent hiring of an unsafe motor carrier to provide motor vehicle transportation.

STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

On August 20, 2020, Plaintiff-Appellant Katia Gauthier filed this case in Georgia state court. Defendants Hard to Stop LLC and Ronald Shingles removed the case to federal court. On February 19, 2021, Ms. Gauthier filed an amended complaint, adding Total Quality Logistics as a defendant. Doc. 27. Total Quality Logistics then moved to dismiss. While that motion was pending, Ms. Gauthier resolved her claims against the other defendants in the case. On February 4, 2022, the district court granted Total Quality Logistics' motion to dismiss, holding,

as relevant here, that the FAAAA preempts Ms. Gauthier's negligent-hiring claim against Total Quality Logistics. Doc. 69.

Ms. Gauthier appealed to this Court. On July 12, 2022, the Court remanded to the district court for the limited purpose of determining the parties' citizenship to establish whether diversity jurisdiction existed. On September 27, 2023, the district court determined that the parties were completely diverse and that diversity jurisdiction had existed when the case was removed. Doc. 87.

On July 9, 2024, a panel of this Court affirmed the district court's dismissal of Ms. Gauthier's negligent-hiring claim against Total Quality Logistics.

STATEMENT OF FACTS

A. The Airline Deregulation Act of 1978 (ADA), Pub. L. No. 95-504, 92 Stat. 1705, eliminated federal economic regulation of the airline industry. "To ensure that the States would not undo federal deregulation with regulation of their own," *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992), the ADA included a preemption provision "designed to promote maximum reliance on competitive market forces," *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 230 (1995) (internal quotation

marks and citation omitted). That provision 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. By 1994, many states regulated "intrastate prices, routes and services of motor carriers." H.R. No. 103-677, at 86 (1994) (Conf. Rep.), *reprinted in* 1994 U.S.C.C.A.N. 1715. Concerned that state controls were anti-competitive and advantaged airlines over motor carriers, Congress enacted a provision regarding the "preemption of state economic regulation of motor carriers." FAAAA, Pub. L. No. 103-305, § 601(c), 108 Stat. 1569, 1606 (1994). As later amended, that provision preempts state laws "related to a price, route, or service of any motor carrier … or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1).

At the same time that it enacted the preemption provision, Congress sought to "ensure that its preemption of States' economic authority over motor carriers of property" would "'not restrict' the

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

B. This case presents the question whether the FAAAA preempts personal injury claims against freight brokers based on their negligent hiring of an unsafe motor carrier. Defendant-appellee Total Quality Logistics is a freight broker that selected Hard to Stop LLC, a motor carrier, and/or Ronald Bernard Shingles, one of Hard to Stop's employees/agents, to transport a product from a poultry plant on Georgia State Route 73 to a customer. Doc. 27 ¶¶ 14–17. Mr. Shingles drove to pick up the product in a truck owned by Hard to Stop. *Id*. ¶ 5. Distracted, and driving a truck with improperly maintained brakes, Mr. Shingles missed his turn into the plant. *Id*. ¶ 19. He then attempted to make an illegal U-turn on the highway and ended up blocking multiple lanes of the road. *Id*. ¶¶ 20–22. Peter Gauthier, who was driving on the highway

at the time, was unable to avoid hitting the truck. Mr. Gauthier died as a result of the injuries that he suffered during the collision. *Id.* ¶¶ 25–26.

Katia Gauthier brought this case on behalf of herself, Peter's estate, and their minor daughters. *Id.* ¶ 1. Among other things, Ms. Gauthier alleges that Total Quality Logistics was negligent in hiring and retaining Mr. Shingles and/or Hard to Stop because it knew or should have known of prior wrecks, dangerous behavior, and traffic violations by Mr. Shingles, including multiple speeding tickets, driving with a suspended license on multiple occasions, battery, and constructive possession of controlled substances, and knew or should have known that Hard to Stop had a history of lack of proper licensing, improper maintenance of its vehicles, and a lack of the federally-mandated minimum insurance for motor carriers. *Id.* ¶¶ 51–53. As stated above, the district court granted Total Quality Logistics' motion to dismiss the negligent-hiring claim, holding that the FAAAA preempts the claim. *See* Doc. 69.

While this appeal was pending, a panel of this Court held in *Aspen American Insurance Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261 (11th Cir. 2023), that the FAAAA preempted a negligent-hiring claim brought by a shipper's insurer against a broker who gave the shipment to a thief.

The Court first held that claims against brokers based on their negligent selection of a motor carrier are related to a broker's services and therefore fall within the scope of the FAAAA's preemption provision. *Id.* at 1267–68. The Court then decided that the FAAAA's safety exception does not apply to such claims because they do not seek to enforce standards "with respect to motor vehicles." *Id.* at 1270 (quoting 49 U.S.C. § 14501(c)(2)(A)). The decision states that the safety exception applies only to "state laws that have a *direct* relationship to motor vehicles," *id.* at 1271, and cannot save any claims against brokers because "a broker and the services it provides have no direct connection to motor vehicles," *id.* at 1272 (cleaned up).

On July 9, 2024, a panel of this Court affirmed the district court's dismissal of Ms. Gauthier's negligent-hiring claim against Total Quality Logistics, stating that the claim was "foreclosed by [the Court's] holding in *Aspen*." Slip op. 4.

ARGUMENT

I. The issue presented should not be determined by *Aspen*, which did not involve the hiring of an unsafe motor carrier.

The panel stated that its decision in this case was determined by *Aspen*, which broadly states that allegations of negligence against a

broker for its selection of a motor carrier fall within the FAAAA's preemption provision and that claims against brokers do not fall within the safety exception. This case, however, involves a different state-law requirement than was at issue in *Aspen*: While the claim in *Aspen* rested on a duty owed to the shipper to take reasonable care not to give property to a thief, Ms. Gauthier's claim rests on a duty owed to the public to take reasonable care not to hire unsafe motor carriers. This difference matters both to whether the claims at issue fall within the scope of the FAAAA's preemption provision and to whether they fall within the scope of the safety exception.

With respect to the preemption provision, this Court has explained that the term "service" refers to the "*bargained-for* aspects" of operations. *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1258 (11th Cir. 2003) (interpreting "service" in the ADA); *see Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008) (relying on ADA precedent to interpret the FAAAA). Although brokers and their customers may bargain over the broker's efforts to ensure that it is hiring a motor carrier that will successfully deliver the goods, they do not bargain over whether the

broker will fulfill its duty to members of the public to ensure that it is not putting unsafe motor carriers on the road with them.

With respect to the safety exception, the relevant question is whether enforcement of the state-law requirement is an exercise in state safety regulatory authority "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). The state-law requirement in *Aspen* was not concerned with the safety of motor vehicles, but with the successful delivery of goods. In contrast, the state-law requirement at issue here—the requirement to exercise care not to hire a motor carrier that will place unsafe motor vehicles on the road—is directly responsive to concerns about the safety risks posed by motor vehicles. *See Ours Garage*, 536 U.S. at 442.

Because of the different state-law requirements at issue in this case and *Aspen*, although Ms. Gauthier's negligent-hiring claim falls within some of the broad language used in *Aspen*, the outcome of this case should be different from the outcome in *Aspen*. This Court should grant rehearing so it can consider the issue presented in this case apart from the broad statements on preemption made in *Aspen*.

II. The panel's decision is contrary to a large majority of court decisions on the issue.

The panel's opinion is contrary to a large majority of district court decisions on the issue.[1] It is also contrary to the views of the United

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[1] *See Meek v. Toor*, No. 2:21-CV-0324-RSP, 2024 WL 943931, at *3 (E.D. Tex. Mar. 5, 2024); *Milne v. Move Freight Trucking, LLC*, No. 7:23-CV-432, 2024 WL 762373, at *8 (W.D. Va. Feb. 20, 2024); *Johnson v. Herbert*, __ F. Supp. 3d __, 2023 WL 9503459, at *7 (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 *5 (W.D. Tex. May 28, 2021); *Popal v. Reliable Cargo Delivery*, No. P:20-CV-00039-DC, 2021 WL 1100097, at *4 (W.D. Tex. Mar. 10, 2021); *Grant v. Lowe's Home Ctrs., LLC*, No. CV 5:20-02278-MGL, 2021 WL 288372, at *4 (D.S.C. Jan. 28, 2021); *Mendoza v. BSB Transp., Inc.*, No. 4:20 CV 270 CDP, 2020 WL 6270743, at *4 (E.D. Mo. Oct. 26, 2020); *Ciotola v. Star Transp. & Trucking, LLC*, 481 F. Supp. 3d 375, 390 (M.D. Pa. 2020); *Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, 321 (D. Mass. 2020); *Uhrhan v. B&B Cargo, Inc.*, No. 4:17-CV-02720-JAR, 2020 WL 4501104, at *5 (E.D. Mo. Aug. 5, 2020); *Lopez v. Amazon Logistics, Inc.*, 458 F. (continued)

States, which filed a brief in the Supreme Court explaining that the FAAAA does not preempt a State's "imposition of common-law duties … imposing safety requirements on freight brokers in the selection of motor carriers." Brief for the United States as Amicus Curiae at 6, *C.H. Robinson Worldwide, Inc. v. Miller*, 142 S. Ct. 2866 (2022) (Mem.) (No. 20-1425) [hereinafter, "U.S. Br., *Miller*"], https://www.supremecourt.gov/DocketPDF/20/20-1425/226161/20220524152825488_20-1425%20CH%20Robinson--US%20Invitation%20Br.pdf.

At the same time that numerous district courts have addressed the issue, this Court is one of the first federal courts of appeals to consider whether the FAAAA preempts a personal injury claim against a broker

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Supp. 3d 505, 516 (N.D. Tex. 2020); *Huffman v. Evans Transp. Servs., Inc.*, No. 4:19-CV-705, 2019 WL 4142685, at *1 (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); *Scott v. Milosevic*, 372 F. Supp. 3d 758, 770 (N.D. Iowa 2019); *Nyswaner v. C.H. Robinson Worldwide, Inc.*, 353 F. Supp. 3d 892, 896 (D. Ariz. 2019); *Finley v. Dyer*, No. 3:18-CV-78-DMB-JMV, 2018 WL 5284616, at *6 (N.D. Miss. Oct. 24, 2018); *Mann v. C.H. Robinson Worldwide, Inc.*, No. 7:16-CV-00102, 2017 WL 3191516, at *8 (W.D. Va. July 27, 2017); *Morales v. Redco Transp. Ltd.*, No. 5:14-CV-129, 2015 WL 9274068, at *3 (S.D. Tex. Dec. 21, 2015); *Montes de Oca v. El Paso-Los Angeles Limousine Exp., Inc.*, No. CV 14-9230 RSWL MANX, 2015 WL 1250139, at *2 (C.D. Cal. Mar. 17, 2015); *Owens v. Anthony*, No. 2-11-0033, 2011 WL 6056409, at *4 (M.D. Tenn. Dec. 6, 2011).

based on its negligent hiring of an unsafe motor carrier, and the only two other circuits that have considered the issue are split. *See Ye v. GlobalTranz Enters., Inc.*, 74 F.4th 453 (7th Cir. 2023); *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020). The recurring nature of the issue presented and the lack of extensive circuit precedent on the issue make this Court's resolution of the issue particularly important.

III. The panel's decision incorrectly interprets the FAAAA's preemption provision and safety exception.

The panel erred both in holding that personal injury claims against brokers based on the negligent hiring of an unsafe motor carrier fall within the scope of the FAAAA's preemption provision and in holding that such claims are insufficiently connected to motor vehicles to fall within the safety exception.

A. The panel stated that "[a]ny claim that a broker negligently selected a driver to haul a load of property" falls within the FAAAA's preemption provision because "that claim seeks to regulate the broker's 'performance of [its] core transportation-related services.'" Slip op. 5 (quoting *Aspen*, 65 F.4th at 1268). In *Branche*, however, this Court held that the term "service" in the ADA (and, thus, the FAAAA, *see Rowe*, 552

U.S. at 370), is "limited to the *bargained-for* aspects of airline operations over which carriers compete." *Branche*, 342 F.3d at 1258. Noting that "airlines do not compete on the basis of likelihood of personal injury," the Court stated that "state law personal injury claims are not pre-empted." *Id*.

Likewise, here, brokers do not compete on the likelihood that the motor carriers they hire will cause personal injury or death to other people on the road. Because personal injury claims brought against brokers by people injured or the families of people killed in motor vehicle accidents do not relate to elements of broker operations that are "bargained-for by [brokers] and their [customers]," *id*., they do not "relate[] to … [broker] service[s]," 49 U.S.C. § 14501(c)(1), and the panel erred in holding that they fall within the scope of the FAAAA's preemption provision.

B. The panel also erred in holding that such claims do not fall within the safety exception. The exception applies to the state's safety regulatory authority "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). A state law is "with respect to" a topic when it "concern[s]" that topic. *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251,

261 (2013). As the United States explained when invited by the Supreme Court to file a brief 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. The purpose of imposing such a requirement on brokers 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." *Id*. at 17.

In holding that Ms. Gauthier's claim was not "with respect to motor vehicles," the panel stated that "negligent-selection-of-broker claims *necessarily* lack a direct relationship [to motor vehicles] because 'the services [a broker] provides have no direct connection to motor vehicles.'" Slip op. 6 (quoting *Aspen*, 65 F.4th at 1272). Under the plain text of the safety exception, however, the relevant inquiry is not into the relationship between *broker services* and motor vehicles, but between the *state law* and motor vehicles. Here, where the state-law requirement is

aimed at protecting the public from the dangers posed by motor vehicles, it is part of the state's safety regulatory authority "with respect to motor vehicles," and the panel should have held that claims enforcing that requirement fall within the safety exception.

III. The panel's decision will negatively impact the safety of roads within this Circuit.

The panel's decision will make the roads less safe. The freight broker industry has grown dramatically over the past few decades. As of 2021, over 28,000 brokers were registered with the Federal Motor Carrier Safety Administration. *See* Federal Motor Carrier Safety Administration, *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 panel's decision, these brokers have no duty to exercise care to hire safe motor carriers. Plaintiffs will not be able to hold a broker liable for its negligent hiring of an unsafe motor carrier even when the broker *knew* that the motor carrier would place dangerous motor vehicles on the road.

If brokers are immunized against liability for negligently hiring unsafe motor carriers—as they are under the panel's decision—they will have little incentive to prioritize hiring motor carriers that operate

safely. Instead, in a race to the bottom, motor carriers will be incentivized to cut safety corners to offer their services to brokers at the lowest possible prices. The accompanying reduction in safety will come at the expense of people who drive and ride on the highways—people like Peter Gauthier, who are not part of the market for broker or motor carrier services, but who pay a heavy price when brokers like Total Quality Logistics fail to exercise reasonable care.

In enacting the FAAAA, "Congress resolved to displace '*certain* aspects of the State regulatory process,'" *Dan's City*, 569 U.S. at 263 (quoting FAAAA § 601(a)(2); emphasis in *Dan's City*), but it also made clear that it did not want to preempt certain other aspects of the regulatory process. It limited the preemption provision to laws related to "the bargained-for aspects" of motor carrier and broker services, *Branche*, 342 F.3d at 1255, 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 Ms. Gauthier's, which do not relate to the bargained-for aspects of broker services, and which invoke state laws that are responsive to concerns about the safety risks posed by motor vehicles, involve the aspects of the regulatory process that Congress

sought to preserve when it enacted the FAAAA. This Court should grant en banc review and hold that the FAAAA does not preempt personal injury claims against brokers based on their negligent hiring of an unsafe motor carrier to provide motor vehicle transportation.

CONCLUSION

The Court should grant rehearing en banc.

Respectfully submitted,

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July 29, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing petition complies with the word limit of Federal Rule of Appellate Procedure 35(b)(2)(A). Excluding the parts of the brief exempted by Eleventh Circuit Rule 35-1, the petition contains 3,512 words. The petition 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 petition is composed in a 14-point proportional typeface, Century Schoolbook.

/s/ Adina H. Rosenbaum

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-10774

KATIA GAUTHIER,
Individually and as Administrator of the Estate of
Peter Gauthier, and as Parent and Natural Guardian
of minors, D.G. and N.G.,

Plaintiff-Appellant,

versus

HARD TO STOP LLC, et al.,

Defendants,

TOTAL QUALITY LOGISTICS, LLC,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 6:20-cv-00093-RSB-CLR

Before WILLIAM PRYOR, Chief Judge, and JILL PRYOR and BRASHER, Circuit Judges.

PER CURIAM:

Peter Gauthier died when his car collided with a tractor trailer that was blocking traffic while its driver attempted a U-turn on a state highway at night. The driver of that tractor trailer was defendant Ronald Bernard Shingles; the owner of that tractor trailer was defendant Hard to Stop LLC. Katia Gauthier, Peter's widow and administrator of his estate, also named as a defendant Total Quality Logistics, LLC, the shipping broker that arranged for Shingles and Hard to Stop to haul a load that evening. Gauthier alleged that Total Quality Logistics, LLC was liable for Peter's death because under Georgia negligence law, Total Quality Logistics, LLC had a duty to "ensure that the motor carriers with whom it arranged transportation of goods were reasonably safe."

The district court concluded that Gauthier's negligent selection claim against Total Quality Logistics, LLC is preempted by a federal statute, the Federal Aviation Administration Authorization Act ("the Act"). The Act generally prohibits states from enacting or enforcing any law "related to a price, route, or service of any . . .

broker . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). The Act does preserve states' ability to exercise "safety regulatory authority . . . with respect to motor vehicles," however. *Id.* § 14501(c)(2)(A). The district court concluded that state common law negligence claims predicated upon a broker's selection of a shipping company or driver necessarily relate to a service of a broker and thus fall within the general preemption provision. The district court also concluded that although such claims arise from a state's safety regulatory authority, they do not relate to "motor vehicles," specifically, and therefore are not excepted from preemption.

After the district court's decision, we adopted the same reading of the Act in *Aspen American Insurance Company v. Landstar Ranger, Inc.* and held that the Act preempts state law claims against "a transportation broker" who was allegedly "negligent . . . in its selection of [a] carrier." 65 F.4th 1261, 1264 (11th Cir. 2023). There, the broker unwittingly selected "a thief posing as a [broker]-registered carrier" to haul an expensive load of cargo. *Id.* The shipper-client's insurance company sued the broker under a state common law theory of negligent selection. We first decided that such allegations fall within the scope of the Act's preemption provision because they are "related to a . . . service of [a] . . . broker . . . with respect to the transportation of property." *Id.* at 1266–68 (citation omitted). We then held that such claims are not preserved by the Act's exception allowing claims arising from "the safety regulatory authority of a State with respect to motor vehicles." *Id.* at 1268–72 (citation omitted). We acknowledged that common law negligence

claims are generally within a state's "safety regulatory authority." *Id.* at 1268–70 (citation omitted). But, we continued, "the phrase 'with respect to motor vehicles' limits the safety exception's application to state laws that have a *direct* relationship to motor vehicles." *Id.* at 1271. And, we concluded, "a claim against a broker is necessarily one step removed from a 'motor vehicle' because . . . 'a broker . . . and the services it provides have no direct connection to motor vehicles.'" *Id.* at 1272 (quoting *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1031 (9th Cir. 2020) (Fernandez, J., concurring in part and dissenting in part)). "Because [a] negligent [selection] claim seeks to impose a duty on the service of the broker rather than regulate motor vehicles . . . the exception does not apply." *Id.* (quoting *Creagan v. Wal-Mart Transp., LLC*, 354 F. Supp. 3d 808, 814 (N.D. Ohio 2018)).

Gauthier's negligent selection claim is foreclosed by our holding in *Aspen*, which the district court's reasoning in this case presaged. Her allegations—that Total Quality Logistics, LLC failed to exercise due care under state law when it assigned the shipment to Shingles and Hard to Stop—are materially indistinguishable from the claim in *Aspen*. *See* 65 F.4th at 1264, 1266–68. Gauthier's claim thus falls within the Act's preemptive scope. *See id.* at 1266–68; 49 U.S.C. § 14501(c)(1). Likewise, her claim "against a broker" is "necessarily one step removed from a 'motor vehicle,'" *Aspen*, 65 F.4th at 1272, and thus not preserved from preemption by Section 14501(c)(2)(A).

Gauthier resists this outcome. She first argues that her claim here does not implicate the "service of any . . . broker . . . with respect to the transportation of property," 49 U.S.C. § 14501(c)(1), because the Georgia common law is "applicable to the general public." Appellant's Supp. Br. 4–5. We acknowledged in *Aspen* that the Act "does not preempt 'general' state laws (like a 'prohibition on smoking in certain public places') that regulate brokers 'only in their capacity as members of the public.'" 65 F.4th at 1268 (quoting *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 375 (2008)). Although Georgia common law, broadly speaking, is generally applicable, her specific claim here is certainly not. Members of the public do not arrange for the motor transportation of property; brokers do. By regulating that specific activity, Gauthier's common law claim is aimed solely at "the performance of [brokers'] core transportation-related services." *Id.*

Gauthier also contends that cases arising from traffic accidents (like this one) should be treated differently than cases arising from property loss (like *Aspen*). But the nature of the injury is not what matters for purposes of the Act's preemption provision. Any claim that a broker negligently selected a driver to haul a load of property clearly falls within Section 14501(c)(1) because, as just noted, that claim seeks to regulate the broker's "performance of [its] core transportation-related services." *Id.* And such claims do not arise from an exercise of "the safety regulatory authority of a State with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)(A), which requires that the relevant state law "have a *direct* relationship to motor vehicles," *Aspen*, 65 F.4th at 1271. We made that clear in

Aspen by holding that negligent-selection-of-broker claims *necessarily* lack a direct relationship because "the services [a broker] provides have no direct connection to motor vehicles." *Id.* at 1272 (quoting *Miller*, 976 F.3d at 1031 (Fernandez, J., concurring in part and dissenting in part)). Our holding in *Aspen* that a challenge to a broker's front-end selection of a motor carrier is preempted in no way turned on the back-end injury suffered as a result of the allegedly negligent selection.

Finally, Gauthier argues that *Aspen* was wrongly decided. She says that we erred in concluding that the Act requires a "direct" connection between the relevant state law and motor vehicles. But, as Gauthier correctly notes, *Aspen* is binding. *See United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024) ("[A] prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*." (citation omitted)). We, therefore, must follow it here.

The judgment of the district court is **AFFIRMED**.