

7th Circuit Again Upholds Preemption of Negligent Hiring Claims Against a Freight Broker

Article

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The Seventh Circuit Court of Appeals recently issued another important ruling for brokers, upholding that a claim for negligent hiring against a freight broker was preempted by the Federal Aviation Administration Authorization Act (FAAAA).

This ruling in *Montgomery v. Caribe Transport II* is in accordance with a 2023 decision by circuit judges Brennan, Scudder, and St. Eve, which held that the negligent hiring claims of the plaintiff against a freight broker were preempted by the FAAAA and not saved by the “safety exception” of the act.

In *Montgomery*, Montgomery, sued the driver; the motor carrier, Caribe; and the freight broker, C.H. Robinson Worldwide, Inc., after suffering injuries in an accident. The plaintiff alleged that C.H. Robinson negligently hired the driver and motor carrier for the load at issue and was vicariously liable for the accident. C.H. Robinson filed a motion for summary judgment on the negligent hiring claims, which was granted on the basis of *Ye v. GlobalTranz Enterprises, Inc.* The plaintiff then appealed.

On appeal the plaintiff offered two arguments: (1) that the driver and motor carrier were agents of C.H. Robinson and not independent contractors; and (2) that *Ye* was wrongly decided and should be overturned.

Turning to the first argument, the court went through the numerous factors that have previously been outlined to determine whether a freight broker retained the right to control the manner of delivery of a load to determine whether an agency relationship existed. Additional factors include:

- The right to make hiring decisions;
- The right to discharge or otherwise terminate the relationship;
- The method of payment and whether taxes are deducted;
- The provision of equipment;

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- The level of skill required;
- The relative nature of the work; and
- Supervision between the parties.

Here, the court was not persuaded by any of the plaintiff's arguments that C.H. Robinson controlled the manner of delivery of the load. The ultimate consideration for the court was whether C.H. Robinson controlled the subject load at the time of the accident, and the court found that C.H. Robinson did not.

As to plaintiff's second argument, the court was not persuaded by the plaintiff's request to overrule its precedent, noting specifically that the cases on which the plaintiff was relying for this argument pre-dated the *Ye* ruling or were out-of-circuit decisions.

Thus, the Seventh Circuit continues to disagree with other cases throughout the country, including the analysis of the Ninth Circuit Court of Appeals in *Miller v. C. H. Robinson Worldwide, Inc.*

Ultimately, this decision bodes well for freight brokers to defend common law state tort claims in the Seventh Circuit as it continues to cement that negligent hiring claims are preempted by the FAAAA in this Circuit, but challenges defeating a straight agency claim continue to exist.

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