

2024 TLA Annual Conference & CTLA Mid-Year Meeting

May 1 – 4, 2024

Wyndham Grand Rio Mar Puerto Rico
Golf and Beach Resort
Rio Grande, Puerto Rico



Transportation Lawyers
Association

CTLA





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Multimodal Panel (Road) Agenda

- Broker Liability
- Worker Classification
- Environmental Emissions
- Regulatory “Guidance”



FAAAA – A Little History

U.S. Congress enacted a statute (now codified at 49 U.S.C. § 14501(c)(1)) that controls over state and local law:

General rule.—*Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.*

- Was aimed at creating uniformity for the transportation industry
- Exception: “safety regulatory authority of a State with respect to motor vehicles”



FAAAA – A Little History

Three Approaches

- Courts that find the FAAAA does not preempt negligence claims
- Courts that find the FAAAA preempts negligence claims but that the so-called “safety exception” saves negligence claims from preemption
- Courts that find the FAAAA preempts negligence claims and that the “safety exception” does not save such claims from preemption



Miller v. C.H. Robinson Worldwide, Inc., 2020 U.S. App. LEXIS 30751 (9th Cir. 2020)

9th Circuit reversed and remanded with a split decision and dissent

- All 3 Judges found that the claim is “related to” CHR’s broker services, but 2 found that the safety exception governs because a “connection” exists with respect to “motor vehicles”
- However, dissent focuses on application of the safety exception:
“... [A]void[ing] preemption **would inevitably conscript brokers into a parallel regulatory regime** that requires them to evaluate and screen motor carriers (which are already subject to federal registration requirements as well as state and local regulations) according to the varied common law mandates of myriad states. **It could even require brokers to effectively eliminate some motor carriers from the transportation market altogether.**”
- U.S. Supreme Court declined review in July 2022



Aspen American Insurance Company v. Landstar Ranger, Inc.

65 F.4th 1261 (11th Cir. 2023) -- April 13, 2023

- Tesco (shipper) hires Landstar (broker) to arrange transportation of cargo
- Landstar tenders load to an imposter carrier who steals the load
- Tesco makes insurance claim to Aspen, and Aspen subrogates against Landstar
 - Theory: Negligent Selection
- Landstar moves to dismiss under FAAAA
- Trial Court dismisses action as preempted and rejects safety exception
- 11th Circuit affirms



Aspen American Insurance Company v. Landstar Ranger, Inc.

65 F.4th 1261 (11th Cir. 2023) -- April 13, 2023

“Indeed, Aspen itself acknowledges that ‘the broker has but a single job – to select a reputable carrier for the transportation of the shipment. *That’s all.*’ And this is precisely the brokerage service that Aspen’s negligence claims challenge—Landstar’s allegedly inadequate selection of a motor carrier to transport Tessco’s shipment.”

“ . . . the phrase ‘with respect to the transportation of property’ in the statute’s immediately preceding subsection ‘massively limits’ the scope of that provision.”

“ . . . the phrase ‘with respect to motor vehicles’ has an operative effect only by requiring a direct connection between the state law and motor vehicles.”

“ . . . a mere indirect connection between state regulations and motor vehicles will not invoke the FAAAA’s safety exception.”



Aspen American Insurance Company v. Landstar Ranger, Inc.

65 F.4th 1261 (11th Cir. 2023) -- April 13, 2023

“The specifics of Aspen’s complaint make us even more confident that Aspen’s claims are not ‘with respect to motor vehicles’ within the meaning of the safety exception. Aspen’s complaint **says nothing at all about motor vehicles**. It explains how carriers register with Landstar, Landstar’s protocol for verifying a carrier’s contact information prior to dispatch, and how Landstar allegedly neglected this protocol when dispatching Tessco’s shipment to ‘James.’ And Aspen’s negligence and gross negligence counts challenge only Landstar’s ‘selection **of the motor carrier**.’”

“it makes little sense for the safety exception to turn on whether a plaintiff seeks damages for **property loss or bodily injury**—the common law negligence standard is the same no matter the damages a breach has caused.”



Ying Ye v. Global Sunrise, **74 F.4th 453 (7th Cir. 2023) – July 18, 2023**

- Shipper tenders load to GTZ to arrange for transportation from IL to TX
- GTZ retains Global Sunrise to perform the actual motor carriage
- Global Sunrise's driver is involved in a highway accident and kills Shawn Lin
- Estate sues for wrongful death
 - Negligence in selecting Global Sunrise (unsafe to its "extensive history of safety violations")
 - Vicariously liable due to level of control over Global Sunrise
 - directly communicated with driver about the load and set the dates and times for pickup and delivery
 - Required the use of a specific trailer, daily tracking and driver location reports, calls from driver to be dispatched and before entering detention, immediate notification if the shipper's instructions did not match the rate confirmation, verification that the bill of lading matched the temperature on the load confirmation, and a two-hour pickup and delivery ETA.
 - bill of lading identified GTZ, not Global Sunrise, as the carrier and made no mention of Global Sunrise



Ying Ye v. Global Sunrise, **74 F.4th 453 (7th Cir. 2023) – July 18, 2023**

- Trial Court: FAAAA preempts Plaintiff's claims against GTZ
 - “Similarly, to avoid liability for a negligent hiring claim like plaintiff's, brokers would need to examine each prospective motor carrier's safety history and determine whether any prior issues or violations would be permissible under the common law of one or more states. Enforcing such a claim would have a significant economic impact on GlobalTranz's broker services. Furthermore, such an imposition on brokers would thwart the deregulatory objective of the FAAAA.”
- Trial Court: AND the Safety Exception Does Not Apply:
 - “Even if I assume that plaintiff's claim can be considered a safety regulation, that claim has an attenuated connection to motor vehicles. GlobalTranz is not alleged to directly own, operate, or maintain motor vehicles. Plaintiff's expansive reading of the safety regulatory exception seeks ‘an unwarranted extension of the exception to encompass a safety regulation concerning motor carriers rather than one concerning motor vehicles.’”
- Trial Court: No vicarious liability -- alleged “control” was mere “incidental details”



Ying Ye v. Global Sunrise, 74 F.4th 453 (7th Cir. 2023) – July 18, 2023

COURT’S HOLDING

- July 18, 2023: Seventh Circuit Affirmed
 - “By its terms, [Ye]’s claim **strikes at the core of GlobalTranz’s broker services** by challenging the adequacy of care the company took — or failed to take — in hiring Sunrise to provide shipping services.”
 - “**To avoid these costly damages payouts, GlobalTranz and other brokers would change how they conduct their services** — for instance, by incurring new costs to evaluate motor carriers. Then, by changing their hiring processes, brokers would likely hire different motor carriers than they would have otherwise hired without the state negligence standards. Indeed, that is the centerpiece of [Ye’s] claim: that GlobalTranz should not have hired Sunrise.”
- January 8, 2024: US Supreme Court Declined Review



***Minder, LLC v. Real International SCM
Corporation, et al.***
**(Central District of California Case No. 23-cv-3292 –
November 17, 2023)**

- High value load transported from Hong Kong to California
- Shipper sues numerous parties, including Steam Logistics, a freight broker
 - Carmack Amendment, breach of contract, negligence, negligent hiring, breach bailment
- Steam moves to dismiss under Carmack and FAAAA
- Shipper alleges that the “safety exception” under *Miller* saves its claims
- Court rejects shipper’s argument



***Minder, LLC v. Real International SCM
Corporation, et al.***
**(Central District of California Case No. 23-cv-3292 –
November 17, 2023)**

- “The crux of the issue in this motion is whether common law claims against freight brokers arising out of the theft of the contracted cargo itself ‘have a connection with’ the *safety* of motor vehicles.”
- “Plaintiff fails to provide any explanation for why state common law claims arising out of the theft of cargo is connected to safety concerns.”
- “These issues are much more obviously connected with safety concerns than stopping the theft of cargo. ‘Safety,’ in this context, implies freedom from physical or psychological harm to person or property.”
- “While it is likely difficult to define the exact contours of what common law claims might be ‘connected with’ the safety of motor vehicles, the Court is confident that **claims arising out of the mere theft of cargo from a motor vehicle do not qualify.**”



Lee v. Golf Transportation, Inc., No. 3:21-CV-01948, 2023 WL 7329523, at *16 (M.D. Pa. Nov. 7, 2023)

- UNFI (shipper) retains Coyote (broker) to arrange for transportation of a load of soup
- Coyote retains Golf Transportation to transport the load
- Golf retained O'Connor Trucking to transport the load
- Golf acknowledges that it sometimes retained other motor carriers without Coyote's knowledge
- Greg Leksowksi, an IC, picks up load on behalf of O'Connor and transports it
- Leksowksi involved in an accident; two people were killed
- Plaintiffs allege that Coyote was (1) negligent in hiring, supervising, retaining, and selecting Leksowski, (2) negligent in entrusting O'Connor to transport freight, (3) part of a joint venture with the other defendants



Lee v. Golf Transportation, Inc., No. 3:21-CV-01948, 2023 WL 7329523, at *16 (M.D. Pa. Nov. 7, 2023)

- Trial Court grants summary judgment in favor of Coyote
- “. . . the Court finds that Plaintiffs’ state law negligence claims . . . are preempted because imposing Pennsylvania’s common-law negligence liability upon Coyote **would directly target and significantly impact the broker’s services.**”
- “Therefore, the Court finds that enforcing laws upon a broker for vicarious liability, for negligent hiring / supervision / retention / selection / entrustment of a driver, **and for joint venture** would have a significant direct impact upon the services rendered by a broker and hinder the objectives of the FAAAA.”



Lee v. Golf Transportation, Inc., No. 3:21-CV-01948, 2023 WL 7329523, at *16 (M.D. Pa. Nov. 7, 2023)

- “First, unlike an industry input, such as labor, capital, and technology, which may impact prices charges and services provided to customers, Plaintiffs’ claims directly focus on Coyote’s **output**—to arrange for transportation by hiring a motor carrier to transport shipments. Plaintiffs’ claims focus on the **core service** provided by Coyote because they are **based entirely upon Coyote’s decision to select Golf** as the motor carrier to transport the Subject Load.”
- “Second, Plaintiffs’ claims have a significant impact on Coyote’s service with respect to the transportation of property because the claims seek to enforce a duty of care related to how Coyote, the broker, arranges for a motor carrier to transport shipments, the service. . . . Application of the negligence law would require Coyote to perform additional services, such as **hiring, retaining, and supervising a qualified driver** in driving a commercial motor vehicle, which would in turn subject Coyote to a patchwork of laws throughout the county; impose compliance with new regulations; carry a substantial financial consequence; and expose brokers to additional liability.”



Lee v. Golf Transportation, Inc., No. 3:21-CV-01948, 2023 WL 7329523, at *16 (M.D. Pa. Nov. 7, 2023)

- Trial Court rejects application of the “safety exception” -- adopts Ye and Aspen
- “The Court finds that Plaintiffs’ claims are not saved from FAAAA preemption by the safety exception. The **plain language** of the exception does not mention common law tort claims or brokers’ services in selecting motor carriers, whereas the words ‘law’ and ‘broker’ are expressly included in the general preemption provision.”
- “Considering the connection between Coyote as a broker and motor vehicle safety requirements **necessitates an additional ‘link’** to connect the alleged chain of events: Coyote’s negligent hiring of Golf resulted in Golf’s double brokering of the Subject Load to O’Connor, which resulted in O’Connor’s negligent entrustment of a motor vehicle to a negligent driver, Leksowski, who, in turn, caused a collision that resulted in Lee’s and Bastone’s deathsThis **additional step prevents** Plaintiffs’ negligence claims against Coyote from falling within the FAAAA’s safety exception in § 14501(c)(2)(A)
- Regulations governing motor carriers are distinct from regulations governing brokers



Simon v. Anheuser-Busch Companies LLC, et al., No. 2018-CA-006676 NC at p. 8 (Fla.Cir.Ct. Nov. 28, 2023)

- Anheuser-Busch retains Coyote to arrange for transportation of a load of beer
- Coyote selected Anepha Transport to transport the load
- Anepha Transport retains to Faisan Transport to perform the transportation (factual dispute)
- Fernando Rivera was driving on behalf of Faisan
- Mr. Rivera involved in a fiery crash with Matt Simon on I-75 before dawn
- Simon Estate claims that Rivera was driving less than 30 mph in a 70 mph zone with unsafe tractor-trailer
- Claims against Coyote: (1) negligent selection, (2) vicarious liability, (3) joint venture (dropped)
- Coyote seeks summary judgment due to: (1) FAAAA and (2) merits



Simon v. Anheuser-Busch Companies LLC, et al., **No. 2018-CA-006676 NC at p. 8** **(Fla.Cir.Ct. Nov. 28, 2023)**

- Court grants summary judgment in favor of Coyote
- Denies under 14501(b)(1) due to dispute over interstate/intrastate
- But “The Court aligns itself with the analysis in *Ye v. GlobalTranz Enterprises, Inc.* . . . concerning the proper interpretation of both the scope of preemption under section 14501(c)(1) and the safety exception in paragraph (c)(2)(A).”
- “The text of the safety exception does not reference brokers. At all.”
- “A review of the Act as a whole leads to the unmistakable conclusion that Congress did not intent for the safety exception to apply to claims against brokers.”
- Distinguishes Kaipust (Illinois state court)



Foster v. Landstar System, Inc., et al., **No. 2023-CA-006489 (Fla. Cir.Ct. Jan.2, 2024)**

- Shipper retains CHR to arrange for transportation of a load
- CHR retains Landstar to perform the transportation
- Nicholas Alvarez drives on behalf of Landstar
- Alvarez involved in traffic accident and kills Aaron Foster
- Foster Estate sues all involved (Landstar, Alvarez, owner of truck, and CHR)
- Claim again CHR: Negligent selection
 - CHR did not investigate motor carrier safety performance and driver qualification as a prudent broker would
 - CHR enlisted motor carrier services under circumstances that a reasonable broker would deem unsafe
- CHR moves to dismiss Second Amended Complaint on basis of FAAAAA preemption
- Court agrees and dismisses the Second Amended Complaint against CHR



Foster v. Landstar System, Inc., et al., **No. 2023-CA-006489 (Fla. Cir.Ct. Jan.2, 2024)**

- “While Federal district courts are divided on the issue of whether the FAAAA preempts negligence claims against broker dealers, recent federal courts have asserted **similar rational** [sic] to the Eleventh and Seventh Circuits in dismissing such claims.”
- “Following the Seventh Circuit in *Ying Ye* and Judge Jordan’s concurring opinion in *Aspen*, the Court chooses not to address whether the negligent standard at issue in this case constitutes an exercise of Florida’s ‘safety regulatory authority,’ because the Court finds that Plaintiffs’ negligent selection claim fails to satisfy the second requirement because **the claim is not seeking to enforce a negligence standard ‘with respect to motor vehicles.’**”
- “As with those cases, the SAC alleges a claim that seeks to **enforce a standard of care** on a freight broker with respect to the broker’s duties **as a freight broker.**”
- “Ultimately, because a broker’s **core service** is selecting a motor carrier, allowing claims against a broker for safety issues related to a motor carrier, as opposed to a motor vehicle, effectively leaves the broker’s core service unprotected from preemption.”



Mays v. Uber Freight, LLC, et al.

Case No. 5:23-CV-00073 (W.D. N.C. – 1/29/24)

- Coca-Cola retains Uber Freight to arrange for the transportation of products from VA to NC
- Uber contracts with Oleg Polishchuk d/b/a POP Trucking to perform the transportation
- Polishchuk collided with the Mays family's passenger vehicle on I-77 when Polishchuk failed to reduce his speed and rear-ended the Mays' vehicle, which had stopped for traffic
- Patrick Mays died; Rebecca Mays and a minor suffered severe, permanent injuries
- Plaintiffs sued Uber, claiming state law claims of negligence, negligent hiring, negligent training and supervision, negligent retention, wrongful deal
- Uber moves to dismiss on the basis of FAAAAA preemption
- Court grants Uber's motion and dismisses Complaint



Mays v. Uber Freight, LLC, et al. **Case No. 5:23-CV-00073 (W.D. N.C. – 1/29/24)**

- “. . . the allegations in the Complaint are sufficiently related to Uber’s rates, prices, or services so as to be preempted . . . Of the three Courts of Appeals that have considered this question, all have found these claims to be preempted by the FAAAA.”
- Rejects the safety exception:
 - “Regarding the negligent hiring claim, the safety exception falls under the preemption provision for motor carriers of property. However, as the Court has found above, Uber is a broker and the statutory preemption provision applicable to brokers does not have a safety exception.”
 - “As for the negligence claim, the exception for motor carriers could apply through vicarious liability. . . the Court does not find that vicarious liability has been established, again because Uber is only a broker, not a principal of the truckdriver/owner acting as its agent.”
 - Rejects vicarious liability due to a lack of any factual allegations regarding control



Crawford v. Move Freight Trucking, LLC

2024 WL 762377 (W.D. Va. – 2/20/24)

- Shipper tenders a load to a party (FedEx Ground or Western Express) who brokers it to a motor carrier, Move Freight Trucking
- Motor carrier assigns Joshua Flores to drive the load
- Flores temporarily stops on the shoulder of I-81
- Jose Lopez was driving a Ford Explorer with passenger Vanessa Alvarez-Lopez
- Jose Lopez falls asleep while driving and crashes into Flores' parked vehicle, killing Alvarez-Lopez
- Estate sues everyone, including FedEx and Western Express – vicarious liability and negligence
- FedEx and Western Express move to dismiss based on, among other things, FAAAAA preemption – Court denies the motion



Crawford v. Move Freight Trucking, LLC

2024 WL 762377 (W.D. Va. – 2/20/24)

- “The Fourth Circuit has not opined on this issue, but district courts therein have found that [§ 14501\(c\)\(1\)](#) does not preempt state law negligence claims against brokers”
 - Relies upon Mann v. CHR
- “District courts across the Fourth Circuit have followed Mann in concluding that negligence claims against brokers based on personal injuries are outside the scope of the preemption provision or shielded by the safety exclusion.”
- “This court agrees that, regardless of whether the preemption provision covers Crawford’s negligence claims against FedEx Ground and Western Express, the safety exclusion shields such claims from preemption because they fall squarely within the “safety regulatory authority of a State with respect to motor vehicles.” [49 U.S.C. § 14501\(c\)\(2\)\(A\)](#). **State law recognizes these tort claims in part to incentivize safe practices in the trucking industry. To preempt such claims would undercut an important tool in the states’ efforts to maintain reasonably safe roadways, a practice expressly shielded by the safety exclusion.**”



Meek v. Toor and Keystone Logistics, Inc. 2024 WL 943931(E.D. Texas – 3/5/24)

- Shipper tenders a load of cabbage to Keystone Logistics
- Keystone Logistics retains Avnoor Transport to transport the load
- Avnoor's driver, Alajmjit Toor, is involved in an accident and injures plaintiff
- Plaintiff sues all involved and alleges "negligent hiring" against Keystone
- Keystone moves for summary judgment based upon FAAAAA preemption and focuses on *Rowe*
- Court denies Keystone's motion



Meek v. Toor and Keystone Logistics, Inc. 2024 WL 943931(E.D. Texas – 3/5/24)

- “The Court is not convinced by the rationale that hiring and oversight of transportation companies is so central to the services of freight brokers that negligent hiring claims would significantly impact the services of a freight broker.”
- “The Court does not find hiring and oversight of transportations companies has such particular relevance to the services of a freight broker that any tort happening to touch that process is preempted here.”
- “However, even if negligent hiring fell under the purview of the preemption clause, it would also fall under the safety regulation exception.”



Cornejo v. Dakota Lines, Inc., **1st Appellate District of Illinois** **(September 27, 2023)**

- Gustavo Cornejo, severely injured when standing near family vehicle on shoulder and was struck by 18-wheel tractor-trailer
- Mother brought negligence suit on behalf of her son against defendants Lewis, the truck driver; his employer the carrier Dakota Lines, & Alliance Shippers, the broker
- Jury found that Lewis, Dakota, and Alliance were liable to plaintiff and awarded plaintiff \$18,150,750
- Alliance appealed (judgment *n.o.v.*). As a matter of law, Dakota was an independent contractor and neither Lewis nor Dakota were agents of Alliance
- Court of Appeals reverses judgment against Alliance



Cornejo v. Dakota Lines, Inc., 1st Appellate District of Illinois (September 27, 2023)

- Court: “Seventh Circuit’s treatment of Illinois law has also been consistent with the cases we have cited here concerning the lack of agency relationship.”
- Fact that Dakota was required to insure Alliance as additional insured and indemnify simply showed parties’ intent to keep risk of loss with Dakota and its liability insurer
- Plaintiff’s references to Alliance’s marketing and advertising did not support agency relationship between Alliance and Dakota
- Alliance exercised little, if any control over Dakota’s and its drivers’ performance of the transportation work, as opposed to control *over the result* of the assigned task or matters ancillary to the work to be performed
- Dakota had no authority to bind Alliance contractually to a third party because the contract between Alliance and Dakota forbade Dakota from subcontracting any of Alliance’s work
- All the evidence, viewed in the light most favorable to plaintiff, overwhelmingly favors the conclusion that Lewis and Dakota were not Alliance’s agents



Broker Liability

Practical Commercial Take-Aways

- Insure for litigation in 9th Circuit in particular
 - Adopt carrier selection dictated by insurer if insurer will defend
 - Adopt carrier selection dictated by customer if customer agrees to defend/indemnify and has the wherewithal to do so
- Otherwise, apply principle of “fit to operate = fit to use”
 - Operating authority
 - No Safety Rating or “Satisfactory” Safety Rating
 - Any Non-Safety Commercial Considerations



What is California AB5?

- 2019: California passes AB5 governing worker classification, effective 1/1/20
- TEST: A person providing labor or services for remuneration shall be considered an employee rather than an independent contractor **unless** the hiring entity demonstrates that **all** of the following conditions are satisfied:
 - (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact
 - (B) The person performs work **that is outside the usual course of the hiring entity's business** (key element)
 - (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed



What Has Happened Since SCOTUS Declined Review?

- November 11, 2023: District Court “Trial”
- March 15, 2024: District Court denies motion and dismisses action
 - Express F4A Preemption
 - Dormant Commerce Clause Preemption
 - Implied Preemption
 - Violation of Equal Protection
- Further challenges to AB5 should probably be made on a “soap box” or at the “ballot box” as opposed to in the “jury box.”



What Does Enforcement Mean for Motor Carriers?

- Application of all California labor laws
- Misclassification exposure for unemployment insurance
- Misclassification for workers' compensation purposes
- Retaliation claims
- Civil Penalties for willful misclassification (\$5,000 - \$25,000 per violation)
- BUT some of this exposure is mitigated on other grounds (i.e., FMCSA's preemption of meal and rest break rules, federal overtime exemption benefiting motor carriers under FLSA, etc.)
- Unionization



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What Are Motor Carriers Doing to Comply?

- Nothing
- “Strategic Dispatching”
- Broker-Carrier Model
- Business-to-Business Exemption
- Two-Check System
- Employee Model



Environmental Emissions Risks

- California (CARB) – Advanced Clean Fleet Regulations approved in April 2023
 - All medium- and heavy-duty vehicles operating in CA meet ZEV standards by model year 2042
 - Rolling deadlines for fleet conversion based on the type of operation
 - Drayage were not to add any non-ZEVs to their fleets beginning on 1/1/24
 - “High priority” fleets – those with \$50 million in revenue or 50 trucks – are subject to similar rules, although they have the option of adding diesel trucks to their fleets provided they achieve certain milestones for the percentage of ZEVs in fleet
 - December 28, 2023: CARB issued an Enforcement Notice -- not enforcing as to high-priority and drayage fleet reporting requirements until EPA grants a preemption waiver (months to a year)
 - CARB may restrict combustion-powered vehicles added into service after December 31, 2023 if the EPA grant California a waiver or determine that no waiver is required
- Other states adopting CARB’s ACF Regulations (roughly 13 states auto-adopt); CT pushed back; IL exploring adopting



Environmental Emissions Risks

- March 29, 2024: EPA's Phase 3 GHG rule for heavy-duty trucks
 - Lower ZEV rates for model years 2027-2029, but rapidly moving to 100% ZEV and requiring greater sales of ZEV later
- Examples:
 - 30% of "heavy-heavy-duty vocational" trucks would need to be zero-emission by 2032
 - 40% of shorthaul day cabs would need to be zero-emission battery-electric or hydrogen vehicles by 2032
- Limits choice and forces manufacturers to sell a certain number of ZEV vehicles



Environmental Emissions Risks

Practical Commercial Take-Aways

- Submit comments to EPA regarding propriety of waiver (during notice and comment period)
- Assess potential compliance operations during this window
- Avoid adding vehicles with internal combustion engines to CA drayage/high priority fleets
 - Minimize Risk of Restriction/"De-Registering" of vehicles once EPA makes decision on waiver
- Consider Sourcing Challenges in obtaining ZEVs
- Explore Financial Assistance and CARB's "free" training/guidance



FMCSA's "Guidance" on Intermediaries – 6/16/23

- Infrastructure Investment and Jobs Act -- What is Regulatory "Guidance"?
- What is a "Broker"?
 - Existing Definition Adequate BUT handling money exchanged between shippers and motor carriers is one strong, but non-essential factor, that suggests the need for broker authority
- What is a "Bona Fide Agent"?
 - Persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others
- What is a "Dispatch Service"?
 - No Congressional authority, but identifies 9 informative factors (written contact, paid by carrier, etc.)
- Are "Load Boards" Regulated? No



FMCSA's "Guidance" on Intermediaries – 6/16/23

Practical Commercial Take-Aways

- Understand what role you (or your vendor) may be performing in the eyes of the law
- Pay close attention to how you are positioning yourself in the marketplace
 - Handling of Payments, Sales Documentation, RFPs, Website, Verbal Representations, etc.
- Do not create any evidence that an opponent can use to assert that you held yourself out as a motor carrier if you are not in fact the motor carrier
 - Do not let name appear on bills of lading as a "carrier"
 - Be careful about advertising. 49 CFR 371.7(b) states that a broker "shall not, directly or indirectly, represent its operations to be that of a carrier" and that "[a]ny advertising shall show the broker status of the operation."



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QUESTIONS?

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