Filing # 233034207 E-Filed 10/06/2025 03:54:39 PM

IN THE DISTRICT COURT OF APPEAL
STATE OF FLORIDA, FOURTH DISTRICT

CASE NO. 4D2024-3251
L.T. CASE NO. 502023-CA-015048

BRENDA BORER, individually
and as the administrator of the
Estate of Robert A. Borer,

Appellant,

v.

CARRIER GLOBAL CORPORATION,
et. al.,

Appellee.
_________________________________ /

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF APPELLEE

On Appeal from the Circuit Court of the Fifteenth Judicial Circuit,
In and For Palm Beach County, Florida

Sasha Brigante
Florida Bar No. 1065736
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
(305) 459-6500
sasha.brigante@hoganlovells.com

Katherine B. Wellington*
HOGAN LOVELLS US LLP
125 High Street, Suite 2010
Boston, MA 02110
(617) 371-1000
katherine.wellington@hoganlovells.com

**Pro Hac Vice pending*

Counsel for Amici Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES:

<u>**TABLE OF AUTHORITIES**</u>
(Continued)

TABLE OF AUTHORITIES
(Continued)

Page(s)

TABLE OF AUTHORITIES
(Continued)

Page(s)

INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America (the Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

Amici represent a range of companies that rely on commercial trucks to transport goods across the country. These companies may contract with motor carriers directly, or they may rely on the services of freight brokers to arrange for that transportation. *Amici* are concerned that imposition of tort liability on shippers will raise costs for businesses and consumers alike, without providing any meaningful improvement to highway safety.

INTRODUCTION AND SUMMARY OF ARGUMENT

Carrier Global Corporation (Carrier) is one of more than 239,000 manufacturers in the United States. *See* Nat'l Ass'n of Mfrs., *Manufacturing In the United States*, https://nam.org/mfgdata (last visited Oct. 6, 2025). Like thousands of other manufacturers, when it seeks to ship its products from one location to another—such as from a factory to a warehouse, or from a warehouse to a customer—it contacts a freight broker, who in turn arranges for a motor carrier to transport those goods. Carrier is the shipper; it does not operate the truck, nor does it set safety standards for the truck or driver. Yet Plaintiff nevertheless seeks to impose state tort liability on Carrier because a truck containing Carrier's goods was involved in an accident.

As the circuit court correctly held, the Federal Aviation Administration Authorization Act (FAAAA) bars Plaintiff's claims. The FAAAA preempts state laws "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). Plaintiff's state-tort action alleges negligent selection of a motor carrier and that Carrier is jointly and vicariously liable for the motor carrier's negligence. Under the plain text of Section 14501(c)(1), Plaintiff's state-law claims are "related to" the "service of [a] motor carrier" and, accordingly, preempted by the FAAAA. This conclusion is consistent with rulings from the Eleventh and Seventh Circuits, which have held similar claims preempted. *See Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1266-68 (11th Cir. 2023); *Ye v. Globaltranz Enters., Inc.*, 74 F.4th 453, 458-459 (7th Cir. 2023).

Plaintiff nevertheless contends that she may proceed against Carrier because Section 14501(c)(1) does not refer specifically to shippers. But Congress preempted all lawsuits "related to" the "service of any motor carrier," regardless of the identity of the defendant. Plaintiff also contends that her lawsuit is preserved by the safety exception to the FAAAA's preemption provision, which maintains state regulatory authority over laws "with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). This lawsuit, however, is not "with respect to motor vehicles." It is against a shipper, which is at least two steps removed from the motor vehicle operated by the truck driver. *See Aspen*, 65 F.4th at 1272 (holding that suit against a broker did not fall within the safety exception because it was "one step removed from a 'motor vehicle'").

Congress passed the FAAAA to remove unreasonable burdens on "free trade, interstate commerce, and American consumers." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 256 (2013). Affirming the decision below upholds that fundamental goal. There is no effective way for a shipper such as Carrier to evaluate the safety profile of each of 580,000 active motor carriers in the United States, much less 3.58 million truck drivers. Am. Trucking Ass'n, *Economics and Industry Data*, https://www.trucking.org/economics-and-industry-data (last visited Oct. 6, 2025). Imposing tort liability in these circumstances would increase costs to businesses—including U.S. manufacturers—without any corresponding safety benefit, ultimately hurting consumers through increased prices.

This Court should affirm the decision below.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY HELD THAT THE FAAAA PREEMPTS PLAINTIFF'S STATE TORT SUIT.

The FAAAA "expressly prohibits a state to 'enact or enforce: a "law, regulation, or other provision having the force and effect of law" if it is related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.'" R. 645 (quoting 49 U.S.C. § 14501(c)(1)). Here, Plaintiff's tort suit seeks to impose liability on Carrier for its allegedly negligent selection of a motor carrier and for the motor carrier's actions under a theory of joint and vicarious liability. *See* R. 130-134. Under the plain text of the FAAAA, this suit is "related to" the "service of [a] motor carrier," and is thus preempted by federal law. In addition, the FAAAA's narrow safety exception does not apply to shippers such as Carrier.[1]

A. Plaintiff's suit is preempted because it is "related to" the service of a motor carrier.

The Constitution, and federal law enacted pursuant to it, is the "supreme Law of the Land." U.S. Const. art. VI, cl. 2. The Supremacy Clause precludes courts from giving effect to "state laws that 'interfere with, or are contrary to[,]' federal law." *Aspen*, 65 F.4th at 1266 (quoting *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824)); *see Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015). Because the FAAAA "states explicitly what states may and may not do," it expressly preempts state law. *See Nationwide Freight Sys., Inc. v. Illinois Com. Comm'n*, 784 F.3d 367, 373 (2015).

---

[1] The U.S. Supreme Court granted certiorari on October 3, 2025, in *Montgomery v. Caribe Transport II, LLC*, No. 24-1238, to decide whether 49 U.S.C. § 14501(c) preempts "a state common-law claim against a broker for negligently selecting a motor carrier or driver." Cert. Pet. i. The Supreme Court's decision in *Montgomery* could be relevant to the statutory-interpretation questions presented in this appeal.

To determine the scope of preemption, "the task of statutory construction must in the first instance focus on the plain wording of the clause." *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993); *see Aspen*, 65 F.4th at 1266. Here, the FAAAA expressly prohibits a state from enacting or enforcing "a law, regulation, or other provision having the force and effect of law" if it is "*related to* a price, route, or service of any motor carrier . . . or any . . . broker, . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1) (emphasis added).

In the preemption context, the Supreme Court has held that "'[t]he ordinary meaning" of "the phrase 'related to'" "is a broad one . . . and the words thus express a broad pre-emptive purpose.'" *Aspen*, 65 F.4th at 1266 (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992)); *see Ye*, 74 F.4th at 458. A state law is "'related to' rates, routes, or services if the law has 'a connection with, or reference to' them." *Aspen*, 65 F.4th at 1267 (quoting *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008)). A state law may be preempted even if the connection "is only indirect," as long as the connection is not "too tenuous, remote, or peripheral." *Id.* (quoting *Rowe*, 552 U.S. at 370).

Plaintiff's claims are "related to" the "service of [a] motor carrier," and thus preempted, because she does not sue Carrier in its "capacity as [a] member[] of the public," but instead for its role in hiring a carrier to provide "transportation-related services." *Id.* at 1268 (citation omitted). Plaintiff "assert[s] specific allegations of negligence" against Carrier for its alleged involvement in the "selection of a motor carrier to transport property in interstate commerce." *Id.* This claim is connected to the services of a motor carrier because it is based on Carrier's allegedly negligent evaluation *of the motor carrier's services*, and in particular its evaluation (or lack thereof) of whether those services would be conducted safely. Plaintiff also alleges that Carrier is jointly and vicariously liable for the motor carrier's actions. In other words, Plaintiff seeks to hold Carrier responsible for the allegedly negligent *services of the motor carrier*. Plaintiff's claims are thus "related to" the "service of [a] motor carrier."

Plaintiff argues that the FAAAA's preemption provision does not apply to shippers because shippers are not expressly mentioned in the statute's text. *See* IB 16-17. But the FAAAA's preemption provision does not depend on whether the defendant is a broker, a shipper, or any other entity. Rather, it applies whenever a law is "related to" the *service* of a motor carrier. 49 U.S.C. § 14501(c)(1). That requirement is met here, where Plaintiff seeks to impose liability on Carrier for selecting a motor carrier and to impose joint and vicarious liability based on the alleged actions of the motor carrier.

The cases Plaintiff relies on fail to meaningfully analyze the plain text of Section 14501(c)(1). For example, in *Adames v. May Furniture, Inc.*—an unpublished Pennsylvania decision—the court concluded in a footnote that the FAAAA's preemption provision applies to only "three groups," none of which were shippers. *Adames v. May Furniture, Inc.*, No. 1:17-CV-00652, 2019 WL 8937042, at *9 n.2 (M.D. Pa. Nov. 26, 2019); *see also Krauss v. IRIS USA, Inc.*, No. 17-778, 2018 WL 2063839, at *10 (E.D. Pa. May 3, 2018) (similar). Section 14501(c)(1), however, says nothing of the sort. FAAAA preemption applies any time a state law is "related to" the service of a motor carrier. *See Rowe*, 552 U.S. at 372 (concluding FAAAA's preemption provision applied to law that "tells *shippers* what to choose rather than *carriers* what to do"); *HMD Am., Inc. v. Q1, LLC*, No. 23-21865, 2024 WL 167374, at *3 (S.D. Fla. Jan. 16, 2024) (concluding claim against shipper "relates to" selection of motor carrier and is thus preempted).

B. The FAAAA's safety exception does not save Plaintiff's claims.

The circuit court also correctly concluded that the FAAAA's safety exception does not apply here. The safety exception provides that the Act "shall not restrict the safety regulatory authority of a State *with respect to* motor vehicles." 49 U.S.C. § 14501(c)(2)(A) (emphasis added). To avoid preemption under this exception, (1) a state law must constitute an exercise of Florida's "safety regulatory authority," and (2) that authority must have been exercised "with respect to motor vehicles." Plaintiff's claims against Carrier do not meet the second requirement and thus are not saved from preemption.

The phrase "with respect to" is narrower than the phrase "related to." The FAAAA's history and purpose confirm this. Congress enacted the FAAAA in part because "state governance of intrastate transportation of property had become unreasonably burdensome to free trade, interstate commerce, and American consumers." *Dan's City*, 569 U.S. at 256 (cleaned up). In other words, Congress enacted the FAAAA to remove state-law burdens on interstate transportation, not add to them. In *Dan's City*, the Supreme Court accordingly concluded that the phrase "'with respect to the transportation of property' . . . massively limit[ed] the scope of" the FAAAA provision at issue in that case. *Id.* at 261 (quotation marks omitted).[2] This Court should likewise interpret the language "with respect to motor vehicles"

---

[2] The FAAAA provision at issue in *Dan's City* (Section 14501(c)(1)) is a preemption provision, so the phrase "with respect to the transportation of property" limited the scope of preemption. Because the phrase "with respect to motor vehicles" in Section 14501(c)(2)(A) is an exception to preemption, it limits the scope of the exception. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012) (explaining that "[a] word or phrase is presumed to bear the same meaning throughout a text").

to “massively” limit the scope of the safety exception and hold that it does not apply to shippers such as Carrier. *See id.*

Indeed, whereas the FAAAA’s use of “related to” requires only an *indirect* connection to rates, routes, or services of a motor carrier, *see supra* pp. 6-7, the Eleventh Circuit has construed the phrase “with respect to motor vehicles” to “limit[] the safety exception’s application to state laws that have a *direct* relationship to motor vehicles.” *Aspen*, 65 F.4th at 1271; *see also In re Appling*, 848 F.3d 953, 958 (11th Cir. 2017) (explaining that the “Supreme Court has interpreted ‘with respect to’ in a statute to mean ‘*direct* relation to, or impact on’” (emphasis added) (quoting *Presley v. Etowah Cnty. Comm’n*, 502 U.S. 491, 506 (1992)).[3] The court in *Aspen* therefore held that state-law negligence claims against a broker did not fall within the safety exception because brokers necessarily are “one step removed from a ‘motor vehicle.’” *Aspen*, 65 F.4th at 1272.

The Seventh Circuit likewise has concluded that negligent-hiring claims against a broker are not directly linked to “motor vehicle safety”—in

---

[3] If a court were to read the safety exception broadly, it would render meaningless the FAAAA provision preserving “the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo.” *Aspen*, 65 F.4th at 1271-72 (citation omitted). That specific carveout to FAAAA preemption would be superfluous if the safety exception encompassed all state laws with even an “*indirect* connection to motor vehicles.” *Id.*

part because the term "broker" is not mentioned in either the safety exception or in Congress's definition of motor vehicles—and therefore do not fall within the safety exception. *Ye*, 74 F.4th at 460-462. The court explained that Congress repeatedly "declined to expressly mention brokers" in reference "to states' safety authority" and, accordingly, did not read "broker services into parts of the statute where Congress declined to expressly name them." *Id.*

The same analysis applies here, where Plaintiff seeks to recover against Carrier, a shipper. Like brokers, shippers are not mentioned in the safety exception or Congress's definition of motor vehicles. *See id.* at 460; 49 U.S.C. § 13102(16) (defining motor vehicle). In fact, shippers such as Carrier are even *further* removed from motor-vehicle safety than the brokers in *Aspen* and *Ye*. Carrier did not operate the truck involved in the accident. Nor did it hire the motor carrier or truck driver. It instead contracted with a broker, which hired the motor carrier, which in turn assigned a truck driver to transport the freight. AB 1 n.1. Accordingly, the connection here between Carrier and motor vehicle safety is even more tenuous than the connection between a broker and motor-vehicle safety, and the claims against Carrier do not avoid preemption under the FAAAA's safety exception.

II. PERMITTING SHIPPER LIABILITY FOR ITS ROLE IN ALLEGEDLY NEGLIGENTLY HIRING A MOTOR CARRIER WOULD IMPOSE ENOROMOUS COSTS ON BUSINESSES AND CONSUMERS WITHOUT A CORRESPONDING SAFETY BENEFIT.

Shippers such as Carrier seek to transport goods from one destination to another. Their role is to pay for the "transportation charges." 49 U.S.C. § 13102(13). They do not own the trucks, employ the drivers, or set the safety policies. That is done by motor carriers. In addition, motor carriers (and the drivers that operate each vehicle) already are subject to extensive federal and state regulations. Imposing state tort liability on shippers in these circumstances would not improve safety because shippers have no effective way to monitor the safety practices of motor carriers, much less of individual truck drivers. Rather, it would serve only to increase costs to businesses, ultimately hurting consumers through increased prices.

A. Extensive federal and state laws safeguard the nation's roadways.

Imposing state tort liability on shippers will not enhance motor-carrier safety, given the extensive federal laws that already regulate the safety of the trucking industry. The Federal Motor Carrier Safety Administration (FMCSA), a component of the U.S. Department of Transportation, possesses primary authority to promulgate regulations governing the operation of motor carriers. 49 C.F.R. § 1.87(a). The Federal Motor Carrier

Safety Regulations (FMCSR) span over 700 pages in the Code of Federal Regulations. 49 C.F.R. parts 300-399. These rules govern everything from hours of service for drivers, 49 C.F.R. part 395, to requirements for headlights, *id.* § 393.24, to brake performance, *id.* § 393.52, to window construction, *id.* §§ 393.60, 393.61. A truck and driver traveling from Florida to Ohio, for example, is thus governed by a uniform set of standards.

Florida has adopted FMCSR standards for intrastate motor carriers, including standards for drug and alcohol testing programs (49 C.F.R. part 382); commercial driver's licenses (49 C.F.R. part 383); driver eligibility and training (49 C.F.R. part 391); driving safety, including the transport of hazardous materials (49 C.F.R. parts 392 and 397); and vehicle inspections, repair, and maintenance (49 C.F.R part 396). Fla. Stat. § 316.302.[4] Ohio, where the accident underlying this litigation occurred, has likewise adopted federal standards for interstate motor carriers. *See* Ohio Pub. Utils. Comm'n, *The Motor Carrier Safety Guidebook* 2 (rev. May 2019), *available at* https://perma.cc/99AM-YARK.

By incorporating these federal standards into state regulations, state officials can enforce federal standards, conduct inspections for compliance

[4] Florida exempts intrastate transportation from some requirements of the FMCSR. Fla. Stat. § 316.302(2)(a)-(i).

with those standards, and ensure that trucks meet a uniform national standard for safe operation. *See* David Randall Peterman, Cong. Rsch. Serv., R44792, *Commercial Truck Safety: Overview* 1 (2017), https://sgp.fas.org/crs/misc/R44792.pdf. In Florida, the Department of Highway Safety and Motor Vehicles, Florida Highway Patrol, and authorized local law enforcement officers are responsible for ensuring compliance with these rules. Fla. Stat. § 316.302(6)-(7), (9), (11). These agencies wield a variety of enforcement tools, including "motor carrier and shipper compliance reviews," "inspection of the vehicle or the driver's records," and issuance of traffic citations and other criminal penalties. *Id.* § 316.302(6), (9), (11)-(12).

The Commercial Vehicle Safety Alliance (CVSA) further ensures uniform enforcement of trucking safety standards. The CVSA is a nonprofit association made up of local, state, territorial, and federal commercial motor vehicle safety officials and industry representatives. CVSA, *About the Alliance*, https://www.cvsa.org/about-cvsa/about-the-alliance (last visited Oct. 6, 2025). The Alliance's "Out-of-Service Criteria" dictate when a vehicle or driver must be removed from service because they present an "imminent hazard" to safety. CVSA, *CVSA's 2025 Out-of-Service Criteria Now in Effect* (Apr. 1, 2025), https://cvsa.org/news/2025-oosc. The Out-of-Service Criteria allow inspectors in different states to assess when a vehicle or driver presents an imminent hazard under a uniform set of guidelines.

These extensive laws and regulations governing motor carriers demonstrate why this Court need not expand the safety exception to shippers such as Carrier. Congress was aware of the need to regulate motor carrier safety, and it created uniform national standards and an agency to enforce those standards. Florida likewise has adopted extensive safety standards and empowered state officials to enforce them. To the extent Plaintiff disagrees with the standards set by Congress and the FMCSA, or by Florida, the proper course is to seek legislative change—not to sue in tort.

B. Shippers have no effective way to monitor motor carriers.

Tort law is "designed to encourage socially beneficial conduct and deter wrongful conduct." *Jews For Jesus, Inc. v. Rapp*, 997 So.2d 1098, 1105 (Fla. 2008) (citing Restatement (Second) of Torts, § 901(c) (1979)). Imposing tort liability on shippers in cases like this does not meet that basic goal because shippers have no effective way to screen motor carriers, much less investigate each driver who may transport their goods.

The FMCSA has developed a Compliance, Safety, Accountability (CSA) program, but CSA is a law-enforcement tool used to identify the worst carriers before subjecting them to increased scrutiny or putting them out of service entirely. It is not a reliable tool that is available to shippers. The CSA program has three core components: (1) the Safety Measurement System (SMS) allows the FMCSA to collect data about carriers; (2) the FMCSA uses that data to inform decisions about how to address dangerous carriers; and (3) the FMCSA can assign a carrier a rating pursuant to the Safety Fitness Determination (SFD) rating system.

The SMS uses information from roadside inspections, crash reports, and other investigative data to identify high-risk motor carriers for intervention by the FMCSA and state partners. FMCSA, *The Safety Measurement System (SMS)*, https://csa.fmcsa.dot.gov/about/Measure (last visited Oct. 6, 2025). The SMS data is organized into seven Behavior Analysis and Safety Improvement Categories (BASICs) that each pertain to a different safety attribute. *Id.* The SMS uses the performance data to rank carriers by percentile within each BASIC. These percentile scores are used "to prioritize [carriers] for interventions." *Id.* The FMCSA has a variety of intervention tools at its disposal, including warning letters, roadside inspections, investigations, fines and penalties, and termination of a carrier's right to operate.

The FMCSA also can assign a carrier one of three safety ratings: "satisfactory," "conditional," or "unsatisfactory." A carrier is identified as “unsatisfactory” when the FMCSA determines that the carrier is unfit to continue operating. 49 C.F.R. § 385.11(d). If the carrier does not make improvements, it can be placed out of service and its operating authority revoked. *Id.* § 385.13. Nevertheless, the CSA system has limited value for comparing the relative safety of carriers because more than 94% of interstate freight carriers have no safety rating whatsoever. That is because carriers can receive a rating only after FMCSA has conducted a compliance review or comprehensive onsite investigation. FMCSA, *2023 Pocket Guide to Large Truck and Bus Statistics* 27 (Dec. 2023), *available at* https://perma.cc/G8VV-YW7F. And such reviews or investigations typically follow a troubling BASIC SMS score or major event like a fatal truck crash.

The FMCSA has signaled its intention to make modest changes to the SMS system. The proposed changes include changing the term “BASICs” to “Compliance Categories” and reorganizing the categories. *See* Enhanced Carrier Safety Measurement System (SMS), 89 Fed. Reg. 91,874 (Nov. 20, 2024). They also include converting the percentile scale to a bimodal “1 or 2” system for assessing the severity of safety issues and prioritizing recent violations when calculating scores for the Compliance Categories. *Id.* at 91,877.

The proposed changes, however, are unlikely to convert the system from a law-enforcement tool for weeding out the worst offenders into a mechanism that shippers confidently can use to compare carriers. Indeed, a comment submitted by twelve different trade groups emphasized that the new changes would generate neither "a significant increase in the annual number of carriers receiving safety ratings" nor "a more effective targeting of carriers needing safety interventions by FMCSA." *Comments from Air & Expedited Motor Carriers Association, Airforwarders Association, et al.* 2-3 (May 16, 2023), *available at* https://www.regulations.gov/comment/FMCSA-2022-0066-0176. If anything, the FMCSA's move to a bimodal severity rating system will only further obscure the comparative safety of carriers.

Indeed, various authorities—including the Government Accountability Office (GAO) and Congress itself—have voiced concern about the nature, scope, and accuracy of the data produced by SMS, further counseling against using it as a yardstick for a negligence claim. The GAO has observed that "[t]he relationship between violation of most regulations FMCSA included in the SMS methodology and crash risk is unclear, potentially limiting the effectiveness of SMS in identifying carriers that are likely to crash." U.S. Gov't Accountability Off., GAO-14-114, *Federal Motor Carrier Safety: Modifying the Compliance, Safety, Accountability Program Would*

Improve the Ability to Identify High Risk Carriers 15 (2014). And in the Fixing America's Surface Transportation (FAST) Act, Congress required the FMCSA website to provide the following warning about the SMS data:

> Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier has received an "UNSATISFACTORY" safety rating under part 385 of title 49, Code of Federal Regulations, or has otherwise been ordered to discontinue operations by the Federal Motor Carrier Safety Administration, it is authorized to operate on the Nation's roadways.

FAST Act, Pub. L. No. 114-94, § 5223(d)(2), 129 Stat. 1312, 1542 (2015).

In sum, the SMS thus does not provide a reliable method for shippers to evaluate the safety performance of carriers, apart from the small minority of carriers with an "UNSATISFACTORY" rating.

C. Imposing state-law tort liability on shippers frustrates the FAAAA's purpose.

Businesses across the country rely on carriers to move their goods to warehouses, retailers, and customers. Subjecting these businesses to potential tort liability any time a vehicle transporting their products is involved in an accident would impose enormous costs on businesses, slow the transportation of goods, and increase prices for consumers. The impact would be felt by large and small businesses alike, but it would be particularly acute for small businesses. These are exactly the kinds of harms the FAAAA was enacted to prevent.

Manufacturers rely on motor carriers—and the brokers that arrange for their services—to transport raw materials and component parts, move finished goods to warehouses, and deliver products to customers. Trucking is the dominant mode of freight transportation in the United States. There are almost 580,000 active motor carriers in the United States. Am. Trucking Ass'n, *Economics and Industry Data*, *supra*. Of those carriers, 91.5% operate 10 or fewer trucks, and 99.3% operate 100 or fewer trucks. *Id.* There are 3.58 *million* individual truck drivers. *Id.* Measured by weight, trucks transport 72.7% of the country's freight. And in 2024, trucks moved 11.27 billion tons of freight, at a cost of $906 billion. *Id.*

Asking companies to individually assess the safety profile of each of 580,000 active motor carriers and 3.58 million truck drivers is an impossible task. Yet that is what Plaintiff's suit seeks to do: require businesses to analyze, *for each shipment of its products*, whether the individual motor carrier and driver meet over 700 pages of federal safety standards, in addition to numerous standards imposed by state law. If businesses were required to conduct such an analysis every time they sought to ship a product, it would impose enormous costs. Those costs would be felt most acutely by U.S. manufacturers, which are already facing increasing cost pressures, and by small businesses, which lack the resources to even attempt to conduct such an analysis.

Moreover, requiring each business to individually analyze the safety profile of each motor carrier prior to each shipment of its product would impose significant delays on the vital process of shipping goods across the country. It could also lead manufacturers to avoid small motor carriers, which currently make up over 90% of motor carrier businesses, because it would be harder to screen such carriers, negatively impacting the ability of small carriers to obtain business.

CONCLUSION

Shippers move over 11 billion tons of freight across the United States each year. Imposing state tort liability on shippers would not improve safety—shippers are not in the trucking business and do not set or evaluate safety standards for motor carriers. Instead, it would burden small and large businesses across the country, which already face rising costs. Those costs could be passed on to consumers in the form of higher prices, affecting nearly every sector of the economy. Congress intended to prevent exactly this result when it enacted the FAAAA. The trial court was correct to dismiss

Plaintiff's claims against Carrier as preempted, and this Court should affirm that ruling.

Respectfully submitted,

Katherine B. Wellington*
HOGAN LOVELLS US LLP
125 High Street, Suite 2010
Boston, MA 02110
(617) 371-1000
katherine.wellington@hoganlovells.com

**Pro Hac Vice pending*

Sasha Brigante
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
(305) 459-6500
sasha.brigante@hoganlovells.com

By: /s/ Sasha Brigante
Sasha Brigante
Florida Bar No. 1065736
sasha.brigante@hoganlovells.com

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court on October 6, 2025 via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to:

Bryan S. Gowdy
Dimitrios A. Peteves
865 May Street
Jacksonville, FL 32204
bgowdy@appellate-firm.com
dpeteves@appellate-firm.com

Michael J. Leizerman
Rena M. Leizerman (*pro hac vice*)
THE LAW FIRM FOR TRUCK SAFETY, LLP
3232 Executive Parkway
Suite 106
Toledo, OH 43606
michael@truckaccidents.com
rena@truckaccidents.com

Counsel for Appellant

Donna M. Krusbe
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
515 North Flagler Drive
Suite 350
West Palm Beach, FL 33401
Donna.Krusbe@wilsonelser.com

Beata Shapiro (*pro hac vice*)
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
260 Franklin Street
14th Floor Boston, MA 02110
Beata.Shapiro@wilsonelser.com

Diana N. Evans
Christopher C. Lam
BRADLEY ARANT BOULT CUMMINGS, LLP
100 North Tampa Street
Suite 2200
Tampa, FL 33602
dnevans@bradley.com
tabenneeft@bradley.com
clam@bradley.com

Counsel for Appellee

By: /s/ Sasha Brigante
Sasha Brigante

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing document:

1. Complies with the type-volume limitation of Fla. R. App. P. 9.370(b) because it contains 4,643 words, exclusive of those items listed in Fla. R. App. P. 9.210(a)(2)(E).

2. This document complies with line spacing, typeface and type size requirements of Fla. R. App. P. 9.045(b) because it has been prepared in proportionally spaced typeface using Microsoft Word in Arial 14-point font.

By: /s/ Sasha Brigante
Sasha Brigante