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The Supreme Court's Ginsberg Decision Could Significantly Affect the Outcome of Motor Carrier Preemption Cases

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In a unanimous decision, the U.S. Supreme Court recently held that the Airline Deregulation Act (ADA) can preempt even common law claims for breach of the implied covenant of good faith and fair dealing if such claims relate to airline prices, routes or services. See *Northwest, Inc., et. al. v. Ginsberg* 2014 U.S. LEXIS 2392 (U.S. Apr. 2, 2014). Moreover, because the trucking deregulation statute, known as the Federal Aviation Authority Authorization Act of 1994 (FAAAA), has the same preemption provisions as the ADA, the decision could be even more significant for the motor carrier industry, as numerous trucking companies have recently been the subjects of state wage-and-hour class actions.

1. District Courts Have Struggled with Federal Preemption as applied to Wage-And-Hour Laws Affecting the Motor Carrier Industry.

Motor carriers have often used preemption under the FAAAA to defend against state wage-and-hour class actions. Like the ADA, the FAAAA provides that "no State ... shall enact or enforce any law ... relating to rates, routes, or services" of a motor carrier. The Supreme Court has long held that the ADA and the FAAAA preempt such laws, even if the state law's effect on prices, routes or services "is only indirect." But if a state law need only indirectly "relate to" prices, routes and services to be preempted, where should courts draw the line for purposes of preemption?

While the Supreme Court has held that there will be no preemption of state laws affecting a carrier's prices, routes and services in only a "tenuous, remote, or peripheral" manner, it has never discussed where it would be appropriate to draw the line in such a "borderline" situation. Yet, most state laws being challenged are not laws that were specifically *directed* at carriers' prices, routes and services – these are clearly preempted – but to laws of general application that carriers contend nonetheless have a significant impact on them. Without any clear standards for such "borderline" cases concerning laws of general application, courts have been divided over whether the FAAAA or the ADA preempts state meal and rest break laws, state independent contractor laws, and state minimum wage or prevailing wage laws.

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2. The Ninth Circuit Held that Implied Covenant Claims are Too Tenuous to be Preempted.

The Ninth Circuit formulated a test for preemption in "borderline" cases concerning laws of general application, which was challenged in the *Ginsberg* case. In that case, the plaintiff sued Defendant Northwest, Inc. (the Airline) for revoking his membership in the Airline's frequent flyer program. Although the program provided the Airline with sole discretion to terminate such memberships, the plaintiff claimed the Airline violated its duty of good faith and fair dealing. The district court in San Diego held that the ADA preempted plaintiff's claim, as the Airline's program was related to a carrier's prices, routes or services.

In reversing the district court, the Ninth Circuit held that a claim for breach of the implied covenant is "too tenuously connected to airline regulation to trigger" ADA preemption because it does not interfere with the ADA's "deregulatory mandate." Moreover, nothing in the plaintiff's implied covenant claim would "force the Airlines to adopt or change their prices, routes or services – the prerequisite for ... preemption." The Ninth Circuit further found that the claim was not preempted "because it does not have a 'direct effect' on either 'prices' or 'services.'"

3. The Supreme Court Holds that the Test for Preemption of State Laws is Not the "Form" of the Law but its "Effect."

The Supreme Court reversed and remanded. The Court first held that the ADA preempts not only statutes and regulations but also state common-law rules that have the force and effect of law. It noted that the "central purpose" of the ADA was to eliminate the previous federal regulation of airline rates, routes and services so that they could instead be set by market forces, and that the ADA's "preemption provision was included to prevent the States from undoing what the [ADA] was meant to accomplish." More importantly, the Court held that "[w]hat is important … is the *effect* of a state law, regulation or provision, *not its form*, and the ADA's regulatory aim can be undermined just as surely by a state common-law rule as it can by a state statute or regulation."

Having decided that a common law claim *could* be preempted, the Court then had to determine whether the plaintiff's implied covenant claim was preempted because it had a "connection with, or reference to" airline rates, routes and services. The Court held that the plaintiff's claim *clearly* has such a connection insofar as the very purpose of the plaintiff seeking reinstatement into the Airline's frequent flyer program was to obtain reduced rates and enhanced services.

Finally, the Court decided whether the plaintiff's implied covenant claim is based on a state-imposed obligation or simply one that the parties voluntarily undertook. The Court held that because Minnesota law (which governed the contract) does not allow a party to contract out of the covenant, it must be regarded as a state-imposed obligation. Consequently, because the plaintiff's implied covenant claim under Minnesota law sought to enlarge the contractual obligation, it is preempted.

4. *Ginsberg* Could Move the Focus of Preemption in the Motor Carrier Industry Back to the "Effect" of the Challenged Law.

It is hard to imagine a law of more general applicability than a claim for breach of the implied covenant of good faith and fair dealing. As noted above, under Ninth Circuit law, preemption could take place only if the carrier could show that the challenged law would force it to adopt or change its prices, routes or services. In this regard, the significance of the Supreme Court's decision can be seen in what the carrier was *not* required to do in *Ginsberg* to establish preemption. For instance, the Airline was not required to assemble a mountain of evidence to demonstrate that it would suffer a significant economic impact if the plaintiff's breach of the implied covenant claim were not preempted. Likewise, the Airline was not required to prove that the plaintiff's claim would have caused it to raise the price of any ticket, or alter any route, or modify any service.

Instead, the Airline had only to show that the plaintiff's claim had "a connection with" rates, routes and services, and the Court found it "clearly" did because the plaintiff sought to obtain reduced rates and enhanced services. Thus, regardless of the *form* of the law, e.g., whether it is a "borderline" case challenging a law of general application, preemption can be established if the intended *effect* of the claim has a *connection with* rates, routes and services. Given the expanded scope of preemption articulated in the *Ginsberg* decision, its effect on the various Circuits considering the preemption cases before them could be significant, particularly for the motor carrier industry.

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