

COMMONWEALTH OF KENTUCKY  
MCCRACKEN CIRCUIT COURT  
DIVISION II  
CASE NO. 23-CI-00476

KAHL FRUGE

PLAINTIFF

v.

INTEGRITY EXPRESS LOGISTICS, LLC,  
AKAL CARGO, INC.,  
RICARDO CASTANEDA  
and AMERICAN FUJI SEAL, INC.

DEFENDANTS

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**ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS**

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This matter is before the Court on motion by Defendant Integrity Express Logistics, LLC. for judgment on the pleadings. After considering the pleadings and argument of counsel, the Court GRANTS the motion.

The purpose of a motion for judgment on the pleadings is “to expedite the termination of a controversy where the ultimate and controlling facts are not in dispute.” *City of Pioneer Village v. Bullitt County ex rel. Bullitt Fiscal Court*, 104 S.W.3d 757, 759 (Ky. 2003). Plaintiff argues that there are facts which are still in dispute that are necessary for the Court to rule on Integrity Express’ motion for judgment on the pleadings, but there are no material facts seriously in dispute.

**INTEGRITY EXPRESS ACTED AS A BROKER AT THE TIME OF ACCIDENT**

The Court must first decide whether there is a genuine factual dispute regarding whether Integrity Express was acting as a freight broker with respect to the shipment of goods being transported by Akal Cargo and Castaneda at the time of the accident. Plaintiff argues that Integrity Express was acting as a carrier at the time of the accident based on

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two allegations in his complaint: first, that the bill of lading in this case identifies Integrity Express as the motor carrier, and second that Integrity Express is registered with the Federal Motor Carrier Safety Administration as both a broker and a motor carrier [Plaintiff's Response at p. 6].

A "broker" is defined by federal law as a person or entity who holds itself out as "selling, providing, or arranging for, transportation by motor carrier for compensation." 49 U.S.C. § 13102(2). A "motor carrier" is a person or entity "providing motor vehicle transportation for compensation." 49 U.S.C. § 13102(14). Whether a party acts as a broker or a carrier depends on whether they arranged for the transportation by a carrier (in which case they were a broker), or whether they actually transported the goods (in which case they were the carrier). "Under federal law, a person may only provide transportation as a motor carrier or services as a broker (subject to 49 U.S.C. § 13501) if that person is registered to provide such transportation or services." *Ortiz v. Ben Strong Trucking, Inc.*, 624 F.Supp.3d 567, 578-79 (citing 49 U.S.C. § 13901(a)).

"A defendant may be either a motor carrier or a broker, but it cannot be both in the same transaction." *Id.* at 579. Plaintiff argues that Integrity Express acted as a carrier with respect to the load in question because the bill of lading lists "Integrity Express Logistics" next to the heading "Carrier Name." Plaintiff alleges in the very next paragraph that Integrity Express "'brokered' the same load to Akal Cargo through a rate confirmation sheet[.]" [Complaint at ¶ 17]. Plaintiff's Complaint incorporates a screen shot of this Rate Confirmation showing that Integrity Express brokered the shipment of the load in question to Akal Cargo, who is identified as the motor carrier for the shipment. The Rate Confirmation Agreement expressly states that Akal Cargo is to pick up the load on August

11, 2022 at the address of the Defendant, American Fuji Seal, Inc. (hereinafter “American Fuji”), in Bardstown, Kentucky, and is to transport the load in question from American Fuji to its destination where it is to be delivered by Akal Cargo on August 15, 2022. It is clear that Akal Cargo and Castaneda were acting as the motor carrier, and Integrity Express, by arranging for Akal Cargo and Castaneda to transport the load, was acting as the broker.

Although Plaintiff argues that Integrity Express acted as a carrier with respect to this load because it is registered as both a broker and a carrier with the FMCSA, the facts demonstrate that Integrity Express was acting as a broker with respect to this particular shipment. It is undisputed that Akal Cargo, Inc. was the company charged with picking up and delivering the cargo which was being hauled **at the time of the accident**. The case of an entity is only to be considered a motor carrier with respect to a particular shipment “when it was operating as a for-hire motor carrier at the time of the accident.” *Lagrange v. Boone*, 337 So.3d 921, 927 (La. App. 3 Cir. 4/6/22), quoting *Herrod v. Wilshire Ins. Co.*, 499 Fed.Appx. 753, 759 (10th Cir. 2012). Although this Court cites to a Louisiana case, there is no reason to believe that the law in Kentucky should be any different.

### VICARIOUS LIABILITY

Under Kentucky law, the question of whether one is an agent or an independent contractor is a question of law for the court. See *Clark v. Young*, 692 S.W.2d 285 (Ky. App. 1985). Integrity Express argues that it is entitled to Judgment on the Pleadings with respect to both of Plaintiff’s claims for vicarious liability because Kentucky law states that “[a] principal may be held vicariously liable for the negligent acts of his or her agent, but generally is not held liable for the conduct of an independent contractor.” *Nazar v.*

*Branham*, 291 S.W.3d 599, 606 (Ky. 2009). In Kentucky, “[a]n individual is the agent of another if the principal has the power or responsibility to control the method, manner, and details of the agent’s work.” *Id.* at 606. “If, however, an individual is free to determine how work is done and the principal cares only about the end result, then that individual is an independent contractor.” *Id.* at 607. “The right to control is considered the most critical element in determining whether an agency relationship exists.” *Id.* at 609. Plaintiff argues that there is a genuine factual dispute over whether Akal Cargo and Castaneda were agents or independent contractors of Integrity Express, based solely on the allegation in his complaint that Integrity Express “exercised control over the manner and means of Akal Cargo’s and Castaneda’s performance of work.” [Plaintiff’s Response at p. 8]. That bare assertion, unsupported by any specific factual allegations, does not entitle Plaintiff to maintain an action against Integrity Express based on vicarious liability when Plaintiff’s Complaint alleges that Integrity Express brokered the transportation of the load in question to Akal Cargo and Integrity Express pursuant to a Rate Confirmation Agreement between Integrity Express and Akal Cargo. [Complaint at ¶ 17].

Plaintiff incorporated a portion of the Rate Confirmation Agreement between Integrity Express and Akal Cargo into his Complaint. [Complaint at ¶ 17]. The portion of the Rate Confirmation Agreement that Plaintiff made a part of his complaint specifies simply that Akal Cargo was to pick up a load of food grade packaging materials at American Fuji Seal on August 11, 2022 at the time of “9a-11p.” Nowhere does the Rate Confirmation Agreement give Integrity Express the power or right to control the method, manner, or means by which Akal Cargo or Castaneda transport the load in question. Furthermore, Integrity Express also incorporated as part of its Answer to the Complaint

the Broker-Carrier Agreement between Integrity Express and Akal Cargo. [See Exhibit D to Integrity Express' Answer to the Complaint]. This Broker Carrier Agreement specifically sets forth in a binding contract between the parties the duties, responsibilities, and rights of each. The Agreement specifically states that Akal Cargo is an independent contractor and makes clear by its terms that Integrity Express does not have the right (and in fact shall not) control the method, manner, or means by which Akal Cargo and its drivers transport loads. Integrity Express is not vicariously liable for the actions of Akal Cargo and its Akal Cargo's drivers.

### **FAAAA PREEMPTION**

Plaintiff next argues that even if Integrity Express is a broker, his claims against Integrity Express for negligence and negligent hiring are not preempted by the FAAAA because the FAAAA was "not intended to intrude upon the states' tradition power over public health and safety." [Plaintiff's Response at p. 9]. As authority for Plaintiff's position, Plaintiff cites to this Court's opinion and order denying a motion to dismiss made by a defendant freight broker on preemption grounds, in an ongoing case that is currently pending before the Court – Wren v. New Prime, Inc., Case No. 21-CI-00886.

In determining whether a state law is preempted by the FAAAA, there are two questions that the Court must decide: (1) whether the FAAAA's preemption provision expressly preempt the state law in question; and (2) if the state law is expressly preempted, whether the "safety exception" to the preemption provision saves such claims from preemption. Plaintiff's chief argument is not that the FAAAA preemption provision does not preempt state common law negligence or negligent hiring claims against freight brokers, but rather that such claims are saved by the FAAAA's safety exception. Since

this court’s decision in *Wren*, both the 7th Circuit Court of Appeals and 11th Circuit Court of Appeals have held that the FAAAA preemption safety exception does not save state common law negligence claims against freight brokers. See *Ye v. Global Tranz Enterprises, Inc.*, 74 F.4th 453 (7th Cir. 2023) and *Aspen American Insurance Company v. Landstar Ranger, Inc.*, 65 F.4th 1261 (11th Cir. 2023). In *Ye*, the 7th Circuit Court of Appeals stated that while a state’s tort law may be part of its safety regulatory authority, “we do not need to reach this issue because we conclude that *Ye*’s claim fails to satisfy the second half of the safety exception’s text. In short, a common law negligence claim enforced against a broker is not a law that is ‘with respect to motor vehicles.’” *Ye*, 74 F.4th at 460. The 7th Circuit Court reasoned that Congress specifically limited the excepted laws to those that concern “motor vehicles.” The Court went on to state:

The Supreme Court has broadly interpreted “with respect to” to mean “concern[s].” See *Dan’s City Used Cars*, 569 U.S. at 261, 133 S.Ct. 1769. But more crucial to our analysis is Congress’s specification limiting the excepted laws to those that concern “motor vehicles.” Our focus, then, is on the entire phrase “with respect to motor vehicles”—language the Supreme Court has determined “massively limits the scope” of the safety exception. *Id.* [citations omitted]. We must decide whether *Ye*’s negligent hiring claim is one “with respect to motor vehicles.” We conclude it is not because, in our view, the exception requires a direct link between a state’s law and motor vehicle safety. And we see no such direct link between negligent hiring claims against brokers and motor vehicle safety. *Id.*

The Court in *Ye* found that although common law negligence claims against brokers may very well be part of a state’s safety regulatory authority, it not need to rule on that because such regulatory authority was not “with respect to motor vehicles”. Neither this Court nor the two United States District Courts relied upon by this Court had the benefit of these United States Circuit Courts’ decisions when considering this question. See *Moyer v. SimBad, LLC*, 2012 WL 1215818 (S.D. Ohio, Jan. 12, 2021); and

*White v. Scott's Contracting & Stone, LLC, et al.*, 2022 WL 4588417 (W.D. Ky. Sept. 29, 2022). Had the decisions in *Ye* and *Aspen* been available for consideration, this Court would most likely have decided *Wren* differently.

As in *Ye*, in *Aspen*, the 11th Circuit Court of Appeals also held that common law negligence claims against a freight broker were not saved by the FAAAA's safety exception. The Court stated that in order to fall within the Safety Exception, "(1) the negligence standard constitute an exercise of [the state's] 'safety regulatory authority,' and (2) that authority must have been exercised 'with respect to motor vehicles.'" *Id.* at 1268. Like the Court in *Ye*, the Court in *Aspen* held that while the plaintiff's negligence claims against the broker constituted an exercise of the state's safety regulatory authority, it was not with respect to motor vehicles, and therefore not saved by the Safety Exception. *Id.*

### CONCLUSION

There is no genuine dispute in the pleadings over whether Integrity Express was acting as a broker at the time of the collision in this case, and there is also no genuine dispute in the pleadings over whether Akal Cargo and Castaneda were acting as independent contractors at the time of the collision. Furthermore, because Integrity Express was acting as a broker at the time of the collision, all of Plaintiff's claims asserted herein against Integrity Express are preempted by the FAAAA's preemption provision set forth at 49 U.S.C. 14501(c)(1).

**IT IS HEREBY ORDERED** that Integrity Express' Motion for Judgment on the Pleadings is **GRANTED**.

**ENTERED** this \_\_\_\_\_ day of February, 2024.



W. A. KITCHEN, JUDGE  
McCRACKEN CIRCUIT COURT  
DIVISION II

CLERK'S CERTIFICATE

The foregoing Order was entered this \_\_\_\_ day of February 2024 and copies were mailed to the following:

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