

NEWSLETTERS

Whose Rules Apply? Indiana And Massachusetts High Courts Tackle Federal Preemption

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Somewhat like a parent choosing which child is the favorite, courts often wrangle with questions of whether state or federal law applies to a dispute. Two notable state court decisions, one from the Indiana Supreme Court and one from the Supreme Judicial Court of Massachusetts, address whose laws apply.

The Indiana Supreme Court examined whether the Interstate Commerce Commission Termination Act (ICCTA) preempted a state statute of limitations, and Massachusetts court addressed the extent to which the Federal Aviation Administration Authorization Act of 1994 preempted a state independent contractor statute. In addition, the Michigan Court of Appeals issued a decision in 2017 addressing whether ICCTA precludes a state-based action for breach of contract.”

We will start in Indiana with *Kennedy Tank & Mfg. Co, Inc. v. Emmert Industrial Corporation*, 63 N.E.3d 125 (2017), which arose from transporting a massive process tower vessel from Indianapolis, Indiana, to Clarksville, Tennessee. Kennedy hired Emmert, a heavy-haul transporter based in Oregon, to move the vessel under a contract governed by Indiana law. Kennedy agreed to pay \$197,650 plus additional unforeseen costs for the transportation work. Even though “construction delays, road closures, permit applications, safety escorts, and bureaucratic delays cost Emmert an additional \$691,301.03,” the vessel was delivered in November 2011. Emmert attempted to collect these additional costs. The parties attempted to resolve the matter and discussed alternative dispute resolution, but Kennedy ultimately refused to pay. Kennedy asserted that the federal statute of limitations, which requires actions for freight charge collection to be brought within 18 months of the claim, had expired. Emmert then filed suit under the alternative theories of breach of contract and unjust enrichment.

Kennedy moved to dismiss, relying on the federal statute of limitations. Emmert argued the dismissal was inappropriate because Indiana’s 10-year statute of limitations, IND. CODE § 34-11-2-11, applied. The trial court rejected that argument and denied the motion to dismiss. Kennedy then joined the consignee who received the vessel as a party to the case and filed an interlocutory appeal. The Indiana Court of Appeals found that the federal statute preempted Indiana’s statute of limitations and reversed. The Indiana Supreme Court affirmed the trial court’s decision and allowed the case to proceed.

Analysis of preemption

The Supreme Court began its analysis with a discussion of the standard

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principles of federal preemption, which can involve 1.) express preemption (when Congress states a statute's preemptive effect), 2.) field preemption (which applies when Congress creates "exclusive federal regulation of the area"), and 3.) conflict preemption (which preempts a state law that conflicts with federal law). The case at issue involved conflict preemption, which voids a state law) when it is "physically impossible" to comply with both the state and federal laws, and when the state law does "major damage" to the federal law's purpose.

Here, Kennedy and the consignee of the shipment relied on the second type of conflict preemption, but the court rejected the argument that the Indiana statute of limitation does "major damage" to congressional purpose. First, it noted the purpose of the federal statute was not to create a uniform national standard. Second, state collection lawsuits are unlikely candidates for federal regulation because there is no uniformity that is vital to national interests.

In this regard, the court focused on the ICCTA, passed in 1995, which voided filed tariffs and allowed shippers to privately contract with carriers. The act does not provide a federal cause of action when carriers sue shippers for unpaid freight charges due under a private contract. In addition, collection cases are not within the scope of exclusive federal regulation simply because they involve interstate transportation. There is a coexisting system of state and federal regulations for interstate transportation, such that the federal statute does not preempt Indiana's 10-year statute of limitations.

Moving on to Massachusetts

The Massachusetts case, *Chambers v. RDI Logistics, Inc.*, 476 Mass. 95, 65 N.E.3d 1 (2016), involved a class action brought by furniture delivery drivers under the Massachusetts independent contractor statute. RDI argued that the statute was preempted by the Federal Aviation Administration Authorization Act of 1994 (FAAAA), 49 U.S.C § 14501(c).

The plaintiffs formed small corporations for purposes of providing services as furniture delivery drivers. They delivered furniture full-time for RDI for several years, typically working 60 hours per week over five or six days. The contracts included nonsolicitation and noncompetition clauses, which prevented the plaintiffs from providing services to RDI's competitors. Indeed, RDI management told plaintiffs that their contracts would be terminated if they worked for other companies. Plaintiffs were also required to wear uniforms and display the logos of RDI or its customers on their delivery trucks.

After various disputes arose between RDI and some of the plaintiffs, a suit was filed alleging that the drivers were misclassified as independent contractors. Under the Massachusetts independent contractor statute, an employer must prove three things to establish that a presumptive employee is actually an independent contractor:

1. The individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact.
2. The service is performed outside the usual course of the business of the employer.
3. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same

nature as that involved in the service performed.

In evaluating the FAAAA preemption issue, the Supreme Judicial Court of Massachusetts noted that Congress's intent to preempt state law was explicit, but the scope was not.

The second prong of the three-part test "draws the independent contractor statute into the gravitational pull of the FAAAA's preemption," the court said. The court went on to say that prong provides an impossible standard for motor carriers who want to use independent contractors in their business operations, because a delivery driver will necessarily be performing services within the usual course of the employer's business. For this reason, RDI argued that the independent contractor statute was preempted. RDI also argued that the second prong cannot be severed from the rest of the statute with its three inseparably intertwined prongs.

After completing an analysis, the court agreed that the second prong is preempted by the FAAAA. The question then became whether the statute as severed would frustrate the legislative purpose of the independent contractor statute, which is "to protect workers by classifying them as employees, and thereby grant them the benefits and rights of employment, where the circumstances indicate that they are, in fact, employees." The court determined that the statute, as severed such that only the first and third prongs are applied, does not have a significant impact related to the preemption objectives of Congress; it does not target or restrict motor carriers in any way. The court described the first and third prongs as having an effect on motor carriers that is too "indirect, remote, and tenuous" to trigger FAAAA preemption.

Ultimately, the court reversed an entry of summary judgment in favor of the delivery drivers because material facts are in dispute as to their claims under the statute as severed.

As a final note on ICCTA preemption, in April 2017, the Michigan Court of Appeals issued a decision which confirms that, "the ICCTA does not preclude a state-based action for breach of contract or render bills of lading unenforceable." *Top Worldwide LLC v. Midwest Molding, Inc.*, 2017 WL 1422841 at *4.

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