

# The FAAAA Preempts the Mass Independent Contractor Laws As Applied to Motor Carriers Like FedEx

By Robert T. Ferguson, Jr, Hinckley, Allen & Snyder, LLP

In a pair of February 5, 2015 decisions likely to garner wide interest, Judge Stearns has held that, as applied to freight and package delivery motor carriers, the Massachusetts Independent Contractor Law is preempted by the Federal Aviation Administration Authorization Act ("FAAAA"). See *Schwann, et al. v. FedEx Ground Package System, Inc.*, 11-11094, Docket No. 149 (Feb. 5, 2015); *Remington, et al., v. J.B. Hunt Transport, Inc.*, 15-100100, Docket No. 20 (Feb. 5, 2015). In so holding, Judge Stearns resolved a question left open by the First Circuit's recent decision in *Massachusetts Delivery Ass'n v. Coakley*, 769 F.3d 11 (1st Cir. 2014).

The decisions are traceable to Judge Stearns' July 3, 2013 summary judgment decision in *Schwann*. In that case, the truck-driver plaintiffs claimed that FedEx had misclassified them as independent contractors – rather than employees – in violation of the Massachusetts Independent Contractor Law, M.G.L. c. 149, § 148B. FedEx moved for summary judgment on grounds that § 148B is preempted by the FAAAA, which forbids states from enacting or enforcing laws "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." According to FedEx, the Massachusetts statute imposes a significant impact on FedEx's rates, routes, and services. Therefore, enforcement of § 148B would prevent FedEx from carrying out its business decision to use independent contractors for package pick-up and delivery in violation of the FAAAA.

Judge Stearns denied FedEx's motion on grounds that, as a statute of general applicability, any impact that § 148B might have on motor carriers like FedEx is too attenuated to trigger preemption. Judge Stearns went on to conclude that the drivers were FedEx employees and granted their summary judgment motion on the misclassification claim.

Later, in a September 2014 opinion in a separate case, the First Circuit in *Massachusetts Delivery Ass'n v. Coakley* rejected the notion that § 148B could not be preempted by FAAAA simply because it is a statute of general applicability. Even generally applicable state laws must be carefully evaluated to determine whether they have an impermissible effect on a carrier's prices, routes, and services. In the First Circuit's view, because § 148B governs the classification of couriers for delivery services, the law clearly concerns a motor

carrier's "transportation of property" and "potentially impacts the services the delivery company provides, the prices charged for the delivery of property, and the routes taken during this delivery." But the Court did not decide this question, instead remanding the case for a determination whether the effect of the Massachusetts statute rises to the requisite level for FAAAA preemption.

Reversing course in light of *Massachusetts Delivery Ass'n v. Coakley*, Judge Stearns has now decided that it does. Revisiting his earlier *Schwann* decision, Judge Stearns stated that § 148B "would unquestionably" have an impact on carrier's prices, routes and services "by in effect proscribing the carrier's preferred business model." That is, compliance with the Independent Contractor Law would fundamentally alter the carrier's business model – a result the FAAAA was designed to prevent. As a result, Judge Stearns concluded that "the entire statute must be treated as preempted," withdrew his prior ruling on this issue, and entered summary judgment in favor of FedEx on the misclassification claim.

Judge Stearns reached the same conclusion in a different case, only on a motion to dismiss. Using the same logic employed in *Schwann*, Judge Stearns in *Remington* dismissed the truck drivers' misclassification claims with prejudice and directed the clerk to close the case. Just as § 148B is preempted as applied to FedEx in *Schwann*, it is also preempted as applied to J.B. Hunt in *Remington*.

*Schwann* has already been appealed, and Judge Stearns denied reconsideration of his *Remington* decision in light of the *Schwann* appeal. Meanwhile, the *Massachusetts Delivery Ass'n v. Coakley* case remains pending on remand. Stay tuned.

Interested in contributing  
to the Newsletter?

Contact Christopher Hart at  
[chart@foleyhoag.com](mailto:chart@foleyhoag.com).