

**IN THE DISTRICT COURT OF APPEAL
STATE OF FLORIDA
THIRD DISTRICT**

APPEAL CASE NO.:

L.T. CASE NO. 2022-002251-CA-01

JOHN J. JERUE TRUCK
BROKER, INC., a Florida
Corporation,

Petitioner,

v.

ALEC PRIETO, as Personal
Representative of the Estate of
ALFRED PRIETO, deceased, for
the benefit of surviving children,
ALEC PRIETO and ROBERTO
PRIETO, JOSEPH IOVINE, as
Personal Representative of the
Estate of DANIELLE PRIETO,
deceased for the benefit of surviving
child, ROBERTO PRIETO, and
JOSEPH IOVINE, as Personal
Representative of the estate of
ANTONIO J. PRIETO, deceased,

Respondents.

_____ /

PETITION FOR WRIT OF PROHIBITION

Pursuant to Florida Rule of Appellate Procedure Rule 9.100, John J.
Jerue Truck Broker, Inc. (“Jerue Broker”), respectfully petitions the court for

a writ of prohibition restraining the Honorable David C. Miller, Circuit Court Judge of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, from asserting subject matter jurisdiction over the case below as to Jerue Broker, because the causes of action being asserted by the Plaintiffs' against it are expressly preempted pursuant to the United States Constitution, article VI, clause 2 and 49 U.S.C.A. § 14501(b)(1) and (c)(1).

I. **BASIS FOR INVOKING JURISDICTION**

This court has jurisdiction to issue a writ of prohibition under Article V, section 4(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(b)(3).

A writ of prohibition is an extraordinary remedy that “may only be granted when it is shown that a lower court is without jurisdiction or attempting to act in excess of jurisdiction.” *Sentry Public Adjusting, LLC v. Captiva Lakes Condominium Association, Inc.*, --- So. 3d ---. 2023 WL 5248070, at *4 (Fla. 3d DCA August 16, 2023); *see also, Katke v. Bersche*, 161 So. 3d 574, 576 (Fla. 5th DCA 2014) (“Prohibition is an extraordinary writ by which a superior court having appellate and supervisory jurisdiction over a lower court may prevent the lower court from exceeding its jurisdiction or usurping authority over matters not within its jurisdiction”).

“The defense of lack of jurisdiction of the subject matter may be raised at any time,” even on appeal. Fla. R Civ. P. 1.140(h)(2); *see also, Ruble v. Ruble*, 884 So.2d 150, 152 (Fla. 2d DCA 2004) (“The lack of subject matter jurisdiction can be raised as a defense at any time, even on appeal”). Where the trial court is without subject matter jurisdiction, it “is not only precluded from adjudicating the merits of the dispute, but also from entering orders regarding that dispute[.]” *AMS Staff Leasing, Inc. v. Ocha Engineering Corp.*, 139 So. 3d 452, 454 (Fla. 3d DCA 2014).

On April 24, 2024, the trial court entered the Order denying Jerue Broker’s Motion for Final Summary Judgment Regarding Preemption Pursuant to 49 U.S.C. § 14501(c)(1). “[T]he issue of federal preemption is a question of subject matter jurisdiction.” *Boca Burger, Inc. v. Forum*, 912 So.2d 561, 568 (Fla.2005). As such, an appellate court may grant a writ of prohibition where “the lower tribunal is poised to proceed without subject-matter jurisdiction.” *DHL Exp. (USA), Inc. v. State, ex rel. Grupp*, 60 So. 3d 426, 428 (Fla. DCA 2011) (citation omitted); *see also, Padron v. Padron*, 356 So. 3d 306, 307 (Fla. 3d DCA 2023) (The writ [of prohibition] is available to prevent the improper exercise ... of subject-matter jurisdiction”).

Because the application of federal preemption is a question of law, the standard of review is *de novo*. *See DHL Exp. (USA), Inc.*, 60 So. 3d at 428.

While “the trial court’s factual findings are reviewed for competent, substantial evidence.” *Sentry Public Adjusting, LLC*. 2023 WL 5248070, at *4.

II. STATEMENT OF THE FACTS

On January 8, 2022, co-Defendant Guillermo Monzon Campo (“Campo”) was operating a 2018 Kenworth T680 Tractor-Trailer driving southbound on Interstate 75 (“I-75”) when he allegedly:

attempted a sudden “U-Turn” across traffic and turned left (over the center median) into an “Official Use Only” turnaround area between the north and southbound lanes of [I-75], leaving the trailer blocking the inside lanes of [I-75].

(Appx. 1 - Amended Complaint at ¶¶ 2, 18, 19, 23, 25).

Alfredo Prieto (“Alfredo”), who was also driving southbound on I-75 in his 2020 Volvo XC60 (“Volvo”) crashed into the rear of the trailer. (Appx. 1 at ¶ 24). Alfredo and his passengers Danielle and Antonio Prieto died in the accident. (Appx. 1 at ¶ 24).

Campo was operating the tractor trailer in the course and scope of his employment with 24 Hours On Time Cargo, Inc. (“24 Hours”), to transport certain freight for Shamrock Produce & Brokerage, LLC (“Shamrock”) from Moxes, Washington to Miami, Florida. (Appx. 1 at ¶¶ 18, 19). Shamrock hired Jerue Broker as a *broker* to arrange for the transportation of this freight. (Appx. 2 - Deposition of Steven L. Gibson at Pg. 8, Ln. 16 – Pg. 9, Ln. 2; Pg.

12, Ln. 4 – 17; Pg. 18, Ln. 16 – Pg. 19, Ln. 3; Pg. 99, Ln. 11 – 17; Pg. 118, Ln. 7 - 21; Pg. 118, Ln. 24 – Pg. 119, Ln. 3; Pg. 120, Ln. 18 – Pg. 121, Ln. 6); (Appx. 3 – Deposition of John Zepada at Pg. 19, Ln. 1 – 15; Pg. 50, Ln. 6 – 9).

Jerue Broker is a registered freight broker operating under USDOT No.: 2216237 and MC-265774. (Appx. 1 at ¶ 9). Jerue Broker's executive vice president E. Luis Campano, explained, "[a]s a property broker, we don't really hire the motor carrier. We're an arranger of freight." (Appx. 4 at Deposition of E. Luis Campano at Pg. 50, Ln. 13 – 21). Jerue Broker, on behalf of its' customer Shamrock, arranged for 24 Hours, a motor carrier formerly operating under USDOT No.: 779189 and MC-348511, to transport the freight for Shamrock. (Appx. 1 at ¶ 16).

Although Shamrock listed Jerue Broker in its' Load Carrier Confirmation as a "carrier," Steven Gibson, one of Shamrock's owners and the individual who retained Jerue Broker, explained this discrepancy:

Q. In your particular document, [] the Shamrock Produce & Brokerage Sales, do you see there's a middle column that lists -- states "Carrier." Do you see that?

A. Yeah, I see it.

Q. Okay. And next to it says John J. Jerue Truck Broker; is that correct?

A. Correct.

Q. Okay. If Shamrock hired John J. Jerue Truck Broker as a broker, why are they listed next to "Carrier"?

A. Yeah. So the way that our system is, there's no ... space or a slot to put, you know, "carrier" or "broker" or anything of that nature. It just has the word "carrier" because that's the default of the software, of who we're going to be paying for the load, and that's how it sets up in our system. And so when that gets put in our system, we click on John J. Jerue Truck Brokers and that defaults through the form, nothing more than the fact that it falls under that word "carrier," but he was hired as a broker.

<...>

Q. [D]oes that in any way indicate any intention on the part of Shamrock Produce & Brokerage to have hired John J. Jerue Truck Broker as anything other than the broker?

A. Yeah, a hundred percent. I mean, we only hire him as a broker, that's it. John J. Jerue Truck Brokers is how we hired him, not as carrier.

Q. Not as a motor carrier?

A. Not as a motor carrier.

(Appx. 2 at Pg. 19, Ln. 4 – Pg. 20, Ln. 6 (cleaned up); Pg. 20., Ln. 12 – 23 (cleaned up); see *also, Id.* at Pg. 32, Ln. 2 – 8; Pg. 98, Ln. 5 – 10); (Appx. 5 - Load Carrier Confirmation).

As a result of the accident, Plaintiffs Alec Prieto, the personal representative of the estate of Alfredo Prieto, and Joseph Iovine, personal representative of the estates of Danielle and Antonio Prieto (collectively,

“Plaintiffs”), sued Jerue Broker for vicarious liability, negligence, and joint enterprise/joint venture (Counts II, V, VI and VII, respectively). (Appx. 1 at ¶¶ 45 – 52; 65 – 80).

The gravamen of the Complaint is that Jerue Broker “**failed to exercise reasonable care in its hiring and selection** of 24 Hours[.]” (Appx. 1 at ¶ 32) (emphasis added). According to the Complaint, Jerue Broker was vicariously liable (Count II) for the accident because it had the right to exercise control over Campo’s work and direct the manner in which the work was executed. (Appx. 1 at ¶ 47. Thus, it “**undertook the non-delegable duty to provide reasonably safe and competent transport** of the load and breached this duty.” (Appx. 1 at ¶ 48) (emphasis added). Jerue Broker was also directly negligent (Count V) for the accident because **it had a duty to select a competent contractor to transport the freight**, but failed in this duty by retaining “incompetent, unfit, or inexperienced contractors” to transport the load. (Appx. 1 at ¶¶ 68, 69). With respect to the cause of action for joint enterprise/joint venture (Counts VI and VII), Plaintiffs allege that Jerue Broker and 24 Hours are “jointly and severally” liable because they engaged in a joint enterprise or joint venture since there was an express or implied agreement to enter an undertaking, a community of interest to

accomplish that undertaking, and equal authority to control said undertaking. (Appx. 1 at 76 – 78).

However, Jerue Broker did not have any affiliation with Campo individually, and its' relationship with 24 Hours was "that of broker and motor carrier" (Appx. 6 – Defendant, John J. Jerue Truck Broker Inc.'s Responses to Plaintiffs First Set of Interrogatories Served July 20, 2023 at No.: 5). This is also reflected in the Broker-Motor Carrier Agreement between Jerue Broker and 24 Hours, which in pertinent part states:

2. CARRIER'S OBLIGATIONS.

- a. **CARRIER represents and warrants that it is duly and legally qualified to provide the transportation services contemplated herein, and CARRRIER agrees to comply with all federal, state, and local laws regarding the provision of such services. CARRIER further represents and warrants that it does not have an unsatisfactory safety rating, or a proposed safety rating change issued by the U.S. Department of Transportation ("DOT"), and further agrees to comply with all federal, state, and local laws regarding the provisions of the transportation services contemplated under this Agreement.**

<...>

3. **SPECIFIED SERVICES.** CARRIER's services under this Agreement are specifically designed to meet the distinct needs of BROKER under the specified rates and conditions set forth herein. **This Agreement does not grant CARRIER an exclusive right to perform the transportation related to services for BROKER or its customer.**

<...>

5. **CARRIER'S OPERATIONS AND EMPLOYEES.**

CARRIER shall, at its sole cost and expense:

- a. furnish all equipment necessary or required for the performance of its obligation hereunder and CARRIER hereby agrees that CARRIER will not supply any equipment that has been used to transport hazardous wastes whether solid or liquid (the "EQUIPMENT");
- b. pay all expenses related, in any way, with the use and operation of the Equipment;
- c. maintain the Equipment in good repair, mechanical condition, and appearance; and
- d. utilize only competent, able, and legally licensed personnel qualified to drive under applicable FMCSA regulations. **CARRIER shall have full control of such personnel and shall perform the services hereunder as an independent contractor** and shall assume complete responsibility for all state and federal taxes, assessments, insurance, and any other financial obligations arising out of the transportation performed hereunder. **It is the intention of the parties and acknowledged by the parties that neither the CARRIER nor any of its employees shall be deemed agents, servants, or employees of the BROKER or BROKER's customers for any purpose whatsoever, but the CARRIER is and shall be an independent contractor and is responsible to the BROKER as to the results to be accomplished and not as to the means and methods for accomplishing the results.**

(Appx. 7 – Broker-Motor Carrier Agreement at 2(a), 3, 5(a) – (d)) (emphasis added).

Based on the allegations of the Complaint (i.e., that Jerue Broker had a duty to provide reasonably safe transport) and the undisputed evidence that Jerue Broker’s only involvement in the matter was that of a federally licensed freight broker pursuant to 49 U.S.C. § 13102(2), it moved for summary judgment arguing that all of Plaintiffs state tort claims were preempted by 49 U.S.C. § 14501(b)(1) and (c)(1). (Appx. 8 - Defendant, John J. Jerue Truck Broker, Inc.’s Motion for Final Summary Judgment Regarding Preemption Pursuant to 49 U.S.C. § 14501(c)(1) at Pgs. 4, 9 – 26).

Plaintiffs, in turn, filed a response, arguing that section 14501(c)(1) “does not preempt personal injury and wrongful death claims for negligent selection of an unsafe trucking company or that the [its’] safety exception saves the claims from preemption.” (Appx. 9 – Plaintiffs’ Response to Defendant John J. Jerue Truck Broker, Inc.’s Motion for Summary Judgment at Pgs. 3, 5 – 22).

Thereafter, Jerue Broker filed a reply arguing Plaintiffs’ response failed to recognize that all three of the federal circuit court of appeals that have addressed the issue of preemption have determined that because the core service of a freight broker is to arrange for transportation by a motor carrier,

state common law tort claims against brokers are of the type that fall under preemption. *Ye v. GlobalTranz 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) determined that section 14501(c)(2)(A)'s "safety exception" to preemption does not apply to save state common law tort claims against brokers. (Appx. 10 – Defendant, John J. Jerue Truck Broker, Inc.'s Reply to Plaintiff's Response in Opposition to Defendant's Motion for Final Summary Judgment Regarding Preemption Pursuant to 49 U.S.C. § 14501(c)(1) at Pgs. 2, 3, 7 -16). And the one circuit court of appeals case that found that the safety exception applied and saved state law negligence claims against brokers from preemption, *Miller v. C.H. Robinson*, 976 F.3d 1016 (9th Cir. 2020), had a dissenting opinion, while the others did not. (Appx. 9 at Pgs. 2, 3, 7 -16). In addition, Jerue Broker pointed out that 3 Florida trial courts have found that claims against brokers are preempted by section 14501(C)(1) and are not saved by the statute's safety exception (*Simon, Lynn Joseph Jr v. Anheuser-Busch Companies LLC*, Case No.: 2018-CA-006676, 2023 WL 8468557 (Fla. Cir. Ct. Nov. 28, 2023), *Whitfield, Christopher v. C.H. Robinson, Co.*, 2020-CA-0228, (D.E. 272) (Fla. Cir. Ct. Oct. 28, 2023), and *Foster, Mark v. Landstar System Inc.*, 2023 CA 006489, (D.E. 108) (Fla. Cir. Ct. Jan. 2, 2024).(Appx. 9 at Pgs. 3 – 6).

The hearing on Jerue Broker's motion for summary judgment occurred on April 22, 2024 (Appx. 11 - Transcript of Hearing Proceedings). Notably, to side-step the preemption inuring to brokers under section 14501(c)(1), Plaintiffs argued that when the accident occurred, Jerue Broker was operating as a motor carrier, not a broker. (Appx. 11 at Pg. 42). In doing so, counsel for Plaintiff stated:

Well, here's what's funny: What's not in this case -- they attached the agreement between Jerue Broker and the carrier. Do you know what they didn't attach? The agreement that matters here: The agreement between the broker and the shipper because this is about what they were legally obligated to do or what they undertook to do. And there's more to that.

<...>

There is evidence here. I don't know if the Court wants me to mention the key piece of evidence; I don't mind doing it -- or could hear it at trial. If it makes the Court feel better to know that we have some evidence -- like you tell me. It's up to you. But we did not attach it to our summary judgment because we didn't think -- it's part of evidence in the case. They, you know, provided it to us, but I don't think we need to get into it because they haven't really opened -- their summary judgment never opened the door to this analysis. Not on the motor carrier.

<...>

The -- the shipping document -- the shipping document between the broker and the shipper, right -- and we can still call them the broker; that's not admitting anything; they have broker license -- so between Jerue and Shamrock, the shipper -- there's no contract between them, but there is a shipping document. And on that shipping document where it says "carrier," right next to it, it says "Jerue Broker," right. So I just want to note -- I'm just noting

the key piece of evidence. This is not an evidentiary hearing and it makes no sense to be talking about it when it didn't talk about it in our summary judgment.

(Appx. 11 at Pg. 49, 51, 52).

The “key piece of evidence” counsel for Plaintiffs was referring to is the Shamrock Load Carrier Confirmation identified above. (Appx. 5). But it was not part of the Plaintiff’s response, or the record, at all and should not have been considered by the trial court at the hearing for the first time. The only document on this issue in the evidentiary record was the Broker-Motor Carrier Agreement, which identifies Jerue Broker as the *broker* and 24 Hours as the *motor carrier*. (Appx. 7). But more importantly, counsel for Plaintiffs should never have cited nor argued this “key piece of evidence.” This is because Plaintiffs know full well that Shamrock retained Jerue broker as a *broker*, and not a *motor carrier*. (Appx. 2 at Pg. 19, Ln. 4 – Pg. 20, Ln. 6; Pg. 20., Ln. 12 – 23; Pg. 32, Ln. 2 – 8; Pg. 98, Ln. 5 – 10).

Unfortunately, the trial court glommed on to this non-record “evidence” in coming to its ruling, stating:

Listen, I'm going to deny the motion for summary judgment. There are two linchpins for my decision. Number one, and I'm not sure that [counsel for Jerue Broker] -- well, let's put it this way. I don't believe that the motion identified each claim or defense on which the summary judgment sought with the kind of specificity that the Rule 1.510, past, present -- past or present -- the way it was used, contemplates. The rule goes on to say that there has to be a showing that there's no genuine issue of material fact or

showing that the other -- or a claim that the other party cannot produce an ad- -- admissible evidence to support the fact. And really the motion did not get into whether or not the defendant was a -- acted as a motor carrier in addition to having a broker license. It really didn't go into that in any detail or make any argument relating to a motor carrier. The words "motor carrier" are not in there. I can appreciate the presumption that they were only acting as a broker. That was that line was -- it is in there, but there's no argument -- there's no statement that you cannot prove they're a motor carrier. And I think the rule contemplates that somebody opposing a summary judgment be put on notice of that particular argument. Clearly if that argument had been made -they're not a motor carrier -- the plaintiff was ready to put something else in the record that's already in the record arguably showing that -- that the defendant acted as a motor carrier in this case. I guess that's going to be one of the factual issues. I don't need to find it to be a factual issue because it's not a part of the motion, but I'll note that had the motion brought it up, there's apparently this factual issue that will be present during the trial.

<...>

I do believe that, but for the safety exception, preemption would apply. And so I'm going to take that away from the plaintiff at least.

(Appx. 11 at Pgs. 61 – 62).

On April 24, 2024, the trial court rendered its' order denying the summary judgment holding:

that the Federal Aviation Administration Authorization Act of 1994 (FAAAA) preempts the Plaintiffs' negligent selection claims, but the FAAAA's safety exception—the FAAAA “shall not restrict the safety regulatory authority of a State with respect to motor vehicles,” 49 U.S.C. § 14501(c)(2)(A)—saves the Plaintiffs' negligent selection claims from preemption.

(Appx. 12 – Order Denying Defendant John J. Jerue Truck Broker, Inc.’s Motion for Final Summary Judgment Regarding Preemption Pursuant to 49 U.S.C. § 14501(c)(1) at Pg. 1).

III. THE NATURE OF THE RELIEF SOUGHT

The nature of the relief sought by this petition is a writ of prohibition restraining the Honorable David C. Miller from asserting subject matter jurisdiction over the causes of action Plaintiff have alleged against Jerue Broker, as they are federally preempted by the United States Constitution, article VI, clause 2 and 49 U.S.C.A. § 14501(b)(1) and (c)(1).

IV. ARGUMENT

I. PLAINTIFFS’ CAUSES OF ACTION AGAINST JERUE BROKER ARE PREEMPTED BY THE FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT.

At issue in this appeal is whether the Federal Aviation Administration Authorization Act (“FAAAA”) preempts Plaintiffs claims for negligent selection of a motor carrier, vicarious liability, and joint enterprise/joint venture. (II, V, VI and VII, respectively). Pursuant to the supremacy clause of the United States Constitution, a state cannot assert jurisdiction over a field of law that Congress intended to preempt. See U.S. Const. art. VI, cl. 2; see also, *State v. Harden*, 938 So.2d 480, 486 (Fla. 2006) (“A state cannot assert jurisdiction where Congress clearly intended to preempt a field of law”)

(citation omitted). In other words, “the Supremacy Clause precludes courts from giv[ing] effect to state laws that conflict with federal laws.” *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453, 457 (7th Cir. 2023) (quotation marks and citation omitted, alteration in original); *see also, Aspen American Insurance Company*, 65 F.4th at 1266 (“The Supremacy Clause of the United States Constitution preempts—that is, invalidates—state laws that interfere with, or are contrary to federal law”) (quotation marks and citation omitted). Among the federal laws that *expressly* preempt state law is the Federal Aviation Administration Authorization Act (FAAAA), which dictates what “states may and may not do with respect to” brokers. *Ye*, 74 F.4th at 457 (citation omitted). And when a federal statute contains an express pre-emption clause, such as the one at issue here, neither the trial nor reviewing court may “invoke any presumption against pre-emption but instead [must] focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.” *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115, 125, (2016) (quotation marks and internal citation omitted); *see also, Aspen American Insurance Company*, 65 F.4th at 1266.

Under the (“FAAAA”) “[n]o State or political subdivision thereof and no intrastate agency or other political agency ... shall enact or enforce any law,

rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.” 49 U.S.C. §14501(b)(1); see also, *DHL Exp. (USA), Inc.*, 60 So.3d at 428. Such a “pre-emption provision ... displace[s] all state laws that fall within its sphere.” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 387 (1992) (alterations in original, citations omitted). Indeed, “[t]he United States Supreme Court has found a sweeping reach in the preemption clauses of ... the FAAAA.” *DHL Exp. (USA), Inc.*, 60 So.3d at 428 (citing *Morales*, 504 U.S. at 384).

Some courts have recognized a “safety exception” to FAAAA preemption under 49 U.S.C. § 14501(c)(2)(A). See *Ye*, 74 F.4th 457 – 58; *Aspen American Insurance Company*, 65 F.4th at 1267. This exception, which is found in the subsection of 49 U.S.C. § 14501 dealing with “motor carriers,” and provides that a state:

shall not restrict the safety regulatory authority of a State with respect to motor vehicles, 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, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization[.]

49 U.S.C. § 14501(c)(2)(A).

“[T]he overarching statutory structure of FAAAA preemption is to broadly disallow[] state laws that impede [congress’s] deregulatory goals,” but with “a **specific carveout for laws** within a state’s ‘safety regulatory authority ... **with respect to motor vehicles,**’ even though such laws may burden interstate commerce.” *Ye*, 74 F.4th 457 – 58 (emphasis added).

As touched upon above, the question of preemption is one of statutory intent. The reviewing Court must “begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” *Morales*, 504 U.S. at 383 (quoting *FMC Corp. v. Holliday*, 498 U.S. 52, 56-57 (1990)) (citations omitted). To that end, the United States Supreme Court has construed the “force and effect of law” language of section 14501(b)(1) to “connote[] official, government-imposed **policies**” prescribing “binding **standards of conduct.**” *American Trucking Associations, Inc. v. City of Los Angeles, Cal.*, 569 U.S. 641, 648-50 (2013) (quoting *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 229 n 5 (1995)) (emphasis added). While the phrase “relating to” means “to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with, and the words thus express[es] a broad pre-emptive purpose.” *Morales*, 504 U.S. at 383 (internal citation omitted); *see also, Aspen American Insurance Company*, 65 F.4th at 1266.

Thus, “[t]o be ‘related to’ broker services, the state law in question need only have a ‘connection with, or reference to’ these services.” *Ye*, 74 F.4th at 458 (citing *Rowe v. New Hampshire Motor Transp. Ass’n*, 552 U.S. 364, 370 (2008)). This is true even if the connection to the state law is only indirect. *Aspen American Insurance Company*, 65 F.4th at 1267.

And “[w]hile the term ‘services’ is not expressly defined, the term “transportation” is defined to include “services related to [the movement of passengers or property], including arranging for, receipt, delivery, ... and interchange of passengers and property.” *Gauthier v. Hard To Stop LLC*, Case No.: 6:20-cv-93, 2022 WL 344557, at *7 (S.D. Ga. February 4, 2022) (quoting 49 U.S.C. § 13102(23)(B)). Services also means “a bargained-for or anticipated provision of labor from one party to another.” *Id.* (citation omitted). While “brokerage” or “brokerage service” means “the arranging of transportation or the physical movement of a motor vehicle or of property.” 49 C.F.R. § 371.2(c).

Where Congress regulates motor vehicle safety in Title 49, it addresses motor vehicle ownership, operation, and maintenance—but not broker services. *Ye*, 74 F.4th at 462. As a result, after an exhaustive review of Title 49 of the United States Code, the *Ye* Court found “no evidence ... that Congress sees a direct relationship between broker services and motor

vehicles.” *Id.* at 463. But what it did find was that under Title 49 the regulation of brokers “seem[ed] to address the financial aspects of broker services, not safety.” *Id.* (citing 49 U.S.C. § 13906(b)(1)(A), (2)(A)). “Where brokers need only secure against a failure to perform logistics services, motor carriers must obtain liability insurance that covers “final judgment against the [motor carrier] for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles.” *Id.* (citing 49 U.S.C. § 13906(a)(1)). Similarly, where brokers are required “to maintain records of their transactions, abide by certain advertising standards, and avoid conflicts of interest with shippers,” there is no indication of any imposition of “safety standards on broker hiring or otherwise recognizes a relationship between brokers and motor vehicles *Id.* (citing 49 C.F.R. §§ 371.3, 371.7, 371.9). Simply put, under the FAAAA, it is the motor carriers, and not brokers that bear responsibility for motor vehicle accidents. *Id.*

Accordingly, because Congress's references to motor vehicle safety does not impose any obligations on brokers, “when it comes to interpreting the Act's safety exception, only those laws with a direct link to motor vehicles fall within a state's safety regulatory authority ... with respect to motor vehicles.” *Id.* at 463 – 64 (quotation marks and citation omitted). But since “[b]rokers are noticeably absent from motor vehicle safety regulations

throughout the statutory scheme, just as they are absent from the ambit of the safety exception,” section “14501(c)(2)(A) requires state laws to have a direct link to motor vehicles to be saved from the preemption.” *Id.*

Therefore, as to the “safety exception,” “the phrase ‘with respect to motor vehicles’ limits the safety exception’s application to state laws that have a *direct* relationship to motor vehicles.” *Aspen American Insurance Company*, 65 F.4th at 1271 (emphasis in original). This “massively limits the scope” of the FAAAA’s safety exception. See *Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013) (quoting *City of Columbus v. Ours Garage and Wrecker Service, Inc.*, 536 U.S. 424, 449 (2002) (Scalia, J., dissenting)); see also, *Aspen American Insurance Company*, 65 F.4th at 1271 (“we read the phrase ‘with respect to motor vehicles’ to impose a meaningful limit on the exception to the preemption provision”). For this reason, “a mere indirect connection between state regulations and motor vehicles will not invoke the FAAAA’s safety exception.” *Id.* at 1272. And an indirect connection is all that exists in a broker-negligence claim and motor vehicles. *Id.* Indeed, “a claim against a broker is necessarily one step removed from a ‘motor vehicle’ because the ‘definitions make clear that ... a broker ... and the services it provides have no direct connection to motor vehicles.” *Id.* (citation omitted); *Mays v. Uber Freight, LLC*, Case No.: 5:23-

CV-00073, 5:23-CV-00074, 2024 WL 332917, at *4 (W.D. NC January 29, 2024) (citation omitted) (“the relationship between brokers and motor vehicle safety will [generally] be indirect, at most”). Thus, while the FAAAA preemption provision applies broadly to any “law, regulation, or other provision having the force and effect of law,” the safety exception carve-out provision applies more narrowly to the “safety regulatory authority” of a state “with respect to motor vehicles.” *Gillum v. High Standard, LLC*, 2020 WL 444371, *5 (W.D. Tex. Jan. 27, 2020); *see also, c.f.*, 49 U.S.C. § 14501(b)(1) *with* 49 U.S.C. § 14501(c)(2)(A). Thus, the reason so many courts find the safety exception inapplicable to state tort claims against brokers. *See Gillum*, 2020 WL 444371, *5.

Congress’s intentional omissions of state law claims from the safety exception indicates that the scope of the safety exception was intended to be limited to state regulations *only*. Several courts have found the safety exceptions inapplicable to a negligence claim like Plaintiffs’ claim here on such grounds. *See Lee v. Werner Enters, Inc.*, Case No.: 3:22 CV 91, 2022 WL 16695207, at *5 (N.D. Ohio Nov. 3, 2022) (“The plain meaning of the words ‘safety regulatory authority of a State’ does not support the inclusion of private tort claims.”); *Gillum*, 2020 WL 444371, *4 (“[c]ase law interpreting § 14501(c)(2)(A) refers solely to the ability of the several states to define

safety standards and insurance requirements ... The exception is not read to permit a private right of action”).

With these definitions set, “[t]o determine whether the FAAAA preempts a plaintiff’s claims, courts look to the allegations in the plaintiff’s complaint, especially the specific causes of action asserted and the role alleged to have been played by the defendant in the shipping transaction in question.” *Bailey v. Bell-Rich Transportation, LLC*, No. 3:19-cv-461, 2020 WL 3440585, *6 (M.D. Fla. June 23, 2020). And based on these definitions the party seeking to establish preemption must show that (1) “a state enacted or attempted to enforce a law;” and (2) that “state law relates to broker rates, routes, or services ‘either by expressly referring to them, or by having a significant economic effect on them.” *Ye*, 74 F.4th at 458 (quotation marks and citations omitted); *Lee v. Golf Transportation, Inc.*, Case No.: 3:21-CV-01948, 2023 WL 7329523, at *6 – 7 (M.D. Pa. November 07, 2023) (citation omitted).

With respect to the first element, “[c]ommon law tort claims ‘fall comfortably within the language of the [] preemption provision’ that, by its terms, ‘applies to state law[s], regulation[s], or other provision[s] having the force and effect of law.’” *Ye*, 74 F.4th at 459 (quoting *Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 281 – 82 (2014) (alterations in original); *see also*,

Aspen American Insurance Company, 65 F.4th at 1266 (“There is no dispute that [the plaintiff’s] state-law negligence claims seek to enforce a ‘provision having the force and effect of law’ subject to FAAAAA preemption”); *United Airlines, Inc. v. Mesa Airlines, Inc.*, 219 F.3d 605, 607 (7th Cir. 2000) (citations omitted) (“State common law counts as an “other provision having the force and effect of law”). Therefore, state law tort claims are attempts by a state to enforce a law.

The second element turns on whether the proposed enforcement of the common law claim “ha[s] a significant economic effect on broker services.” *Ye*, 74 F.4th at 458; *see also*, *Gauthier*, 2022 WL 344557, at *7. Furthermore, “a claim that imposes an obligation on brokers at the point at which they arrange for transportation by motor carrier has a ‘connection with’ broker services.” *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1024 (9th Cir. 2020), *abrogated by R.J. Reynolds Tobacco Company v. County of Los Angeles*, 29 Fla. 4th 542, 553 n 6 (9th Cir. 2022); *see also*, *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1267 (11th Cir. 2023). As noted above, the “FAAAAA and its implementing regulations [] define the ‘service’ of a ‘broker’ ... as arranging for the transportation of property by a motor carrier.” *Aspen American Insurance Company*, 65 F.4th at 1267. And a “core’ part” of this service is “selecting the motor carrier who

will do the transporting.” *Id.* (“the broker has but a single job – to select a reputable carrier for the transportation of the shipment. *That’s all*”) (emphasis in original); see also, *Gauthier*, 2022 WL 344557, at *7 (holding that negligence claims against brokers are preempted by Section 14501(c)(1) when they significantly impact a brokers’ core bargained-for services: arranging for the transportation of property).

Consequently, allegations relating to the core service provided by a broker—the hiring motor carriers to transport shipments—have a connection to broker services, as well an economic impact on those services. And when common law state tort claims affect this service or have an economic impact on these services they are expressly preempted under section 14501 because they are based entirely upon the broker’s decision to select the motor carrier” *Gauthier*, 2022 WL 344557, at *7; see also, *Aspen American Insurance Company*, 65 F.4th at 1268; *Mays*, 2024 WL 332917, at *4; *Georgia Nut Company v. C.H. Robinson Co.*, Case No. 17 C 3018, 2017 WL 4864857, at *3 (N.D. Ill. October 26, 2017) (“[S]ervices of a freight broker ... are focused on arranging how others will transport the property; these services, therefore, fall within the scope of the FAAAA preemption”). Otherwise, “[t]he application of the negligence standard would regulate brokers, not “in their capacity as members of the public,” but in the

performance of their core transportation-related services.” *Aspen American Insurance Company*, 65 F.4th at 1268; *Mays*, 2024 WL 332917, at *4 (citation omitted).

But beyond negligent selection of a motor carrier claims, enforcing laws upon a broker for vicarious liability and for joint venture also have a significant “impact upon the services rendered by a broker and hinder the objectives of the FAAAA,” and are therefore, also preempted. *Lee*, 2023 WL 7329523, at *13; *see also, Dan’s City Used Cars, Inc.*, 569 U.S. at 262 (holding that preemption applies to services “with respect to the transportation of property”); *Lee*, 2022 WL 16695207, at *5 (finding that the plaintiffs’ claims against the broker for vicarious liability for the negligence of the motor carrier driver were preempted because they were connected to the broker’s arranging for the transportation of the subject load); *Creagan v. Wal-Mart Transportation, LLC*, 354 F.Supp.3d 808, 814 n 7 (N.D. Ohio 2018) (finding that FAAAA preempted the vicarious liability claim against the broker for negligence of the driver selected to haul shipment under similar circumstances).

The FAAAA’s safety exception does not save these claims, because to fall “within the safety exception, (1) the negligence standard must constitute an exercise of Florida’s “safety regulatory authority,” and (2) that

authority must have been exercised “**with respect to motor vehicles.**” *American Insurance Company*, 65 F.4th at 1268 (emphasis added). The key phrase is “with respect to motor vehicles.” Claims are “exempt only if [they] concern[] or [are] genuinely responsive to motor vehicle safety.” *Gauthier*, 2022 WL 344557, at *10; see also, *Flanagan v. BNSF Railway Company*, Case No.: 1:21-cv-00014-RGE-HCA, 2021 WL 9667999, at *7 (S.D. Iowa November 19, 2021) (For the safety exception to apply the law must concern the regulation of motor vehicle safety”). State regulations that are not genuinely responsive to safety concerns with respect to motor vehicles “garner[] no exemption from [section] 14501(c)(1)’s preemption rule.” *Id.* And negligence claims, especially the ones at issue here, “at most relate to safety writ large, not safety specifically with regard to motor vehicles.” *Mays*, 2024 WL 332917, at *4. “[T]o find that negligent hiring or negligence *per se* falls into the safety exception – which would likely be the consequence of finding that any tangential connection to ‘safety’ triggers the exception – would swallow the preemption provision whole.” *Id.*

But more pointedly, “common law negligence claim enforced against a broker is not a law that is ‘with respect to motor vehicles.’” *Lee*, 2023 WL 7329523, at *14; *Flanagan*, 2021 WL 9667999, at *7 (“Plaintiffs’ claim for negligent selection of a shipping broker does not concern the regulation of

motor vehicle safety”). This is because [t]he plain language of the exception does not mention common law tort claims or brokers' services in selecting motor carriers, whereas the words ‘law’ and ‘broker’ are expressly included in the general preemption provision.” *Id.* at *16. Similarly, “[t]he plain meaning of the words “safety regulatory authority of a State” does not support the inclusion of private tort claims.” *Lee*, 2022 WL 16695207, at *5; see also, *Gauthier*, 2022 WL 344557, at *10 (holding that negligent selection claims are “too tenuously connected to motor vehicle safety to fall within Section 14501(c)(2)(A)”); *Volkova v. C.H. Robinson Co.*, Case No.: 16 C 1883, 2018 WL 741441, at *3 (N.D. Ill. February 7, 2018) (negligent hiring claim did not fall within the safety exception because it did not constitute safety regulation of motor vehicle). After all, the FAAAA’s preemption provision is designed to protect brokers who do not have direct involvement in the accident that injures a plaintiff and do not own or operate motor vehicles. See *Lee*, 2022 WL 16695207, at *5. *Flanagan*, 2021 WL 9667999, at *7. “Moreover, were the Court to hold that a negligence claim asserted against a broker for personal injuries stemming from an accident involving their chosen motor carrier was “with respect to motor vehicles,” the public safety exception would “swallow [section 14501(c)(1)'s broad] rule of preemption related to brokers' services.” *Gauthier*, 2022 WL 344557, at *10 (quoting *Loyd v.*

Salazar, 416 F. Supp. 3d 1290, 1299 (W.D. Okla. 2019)); see also, *Lee*, 2023 WL 7329523, at *14 (“[t]he FAAAA’s text ‘makes clear that Congress views motor vehicle safety regulations separately and apart from those provisions imposing obligations on brokers, such that the connection between a broker hiring standard and motor vehicles is too attenuated to be saved under § 14501(c)(2)(A)’”) (quotation marks and citation omitted).

‘While the vehicle involved in the collision would certainly be subject to the State’s safety regulatory authority, [the] broker, does not own or operate that motor vehicle.’ *Flanagan*, 2021 WL 9667999, at *7. Thus, the nature of such claims supports the finding that the safety regulatory exception does not apply. *Id.* As the *Flanagan* Court explained:

the safety regulatory exception has a narrower application than the broader preemption provision. Where the preemption provision applies to motor carriers and brokers, the exception applies specifically to the “safety regulatory authority” of a State as it pertains to motor vehicles, including the State’s authority to regulate “motor carriers with regard to ... insurance requirements. The safety regulatory exception’s narrower language indicates a more limited application of the exception to motor carriers and motor vehicle safety.

Id. (internal citations omitted).

Ye, although only persuasive, is directly on point. *Ye*, 74 F.4th at 456. In that case, the plaintiff sued a freight broker for an accident that occurred between the decedent driver and the motor carrier it had allegedly negligently

hired to transport cargo because it knew or should have known that the motor carrier it arranged to transport the goods was unsafe with a history of hours of service and unsafe driving violations. The trial court granted the broker's motion for judgment on the pleadings on the negligent hiring claim finding it was barred by the FAAAA and not saved by the safety exceptions. See *Id.* at 456 – 57.

On appeal, the *Ye* Court focused “on whether [the plaintiff's] proposed enforcement of Illinois's common law of negligence would have a significant economic effect on broker services.” *Id.* at 459. The seventh circuit court of appeals, like the trial court, concluded that the state tort claim did have a significant economic effect on the broker's services. In doing so, the *Ye* Court noted that:

[The plaintiff] alleges [the defendant] was negligent in selecting Global Sunrise Inc. to transport freight on its behalf. As a broker, [the defendant] offers services in the form of selling, providing, or arranging for, transportation by motor carrier for compensation. By its terms, [the plaintiff's] claim strikes at the core of [the defendant's] broker services by challenging the adequacy of care the company took—or failed to take—in hiring [the motor carrier] to provide shipping services.

In our view, enforcement of such a claim—and the accompanying imposition of liability—would have a significant economic effect on broker services. By recognizing common-law negligence claims, courts would impose in the name of state law a new and clear duty of care on brokers, the breach of which would result in a monetary judgment. This is exactly what [the

plaintiff] seeks here against [the defendant] To avoid these costly damages payouts, [the defendant] and other brokers would change how they conduct their services—for instance, by incurring new costs to evaluate motor carriers. Then, by changing their hiring processes, brokers would likely hire different motor carriers than they would have otherwise hired without the state negligence standards. Indeed, that is the centerpiece of [the plaintiff's claim: that [the defendant's] should not have hired [the motor carrier].

In our view, then, [the plaintiff's] negligent hiring claim has much more than a tenuous, remote, or peripheral relationship to broker services. The relationship is direct, and subjecting a broker's hiring decisions to a common-law negligence standard would have significant economic effects. So [the plaintiff's] claim is expressly preempted by § 14501(c)(1).

Id. (quotation marks and internal citation omitted).

The rationale behind this was that “the purpose of Illinois tort law—whether aimed at a broker's duty to the public or to private actors—has no bearing on the significant economic effects that will result by imposing state negligence standards on brokers. And these significant effects are what matter in determining that § 14501(c)(1) expressly preempts [the plaintiff's] Illinois tort claim rooted in a theory of negligent hiring.” *Id.* at 460.

The Ye Court also found that the “safety exception” did not apply to save the plaintiff's tort claim because while a state's tort law *might* be part of its safety regulatory authority, “a common law negligence claim enforced against a broker is not a law that is ‘with respect to motor vehicles.’” *Id.* The

safety exception requires a direct link between the state's tort law and motor vehicle safety, but there is “no such direct link between negligent hiring claims against brokers and motor vehicle safety.” *Id.* At best, a common law negligence claim’s relationship with broker services is “tenuous, remote, or peripheral” to such services. *Id.* at 459. To hold otherwise, would defeat Congress’ intent for preemption, and the district court properly entered judgment on the pleadings on the negligent hiring claim.

Although not a personal injury case, *Aspen American Insurance Company*, is still highly instructive. *Aspen American Insurance Company*, 65 F.4th at 1264. There, the plaintiff hired the broker to transport cargo. However, the broker mistakenly turned the shipment over to a thief posing as one of its’ registered carriers. The plaintiff sued the broker claiming that it was negligent under Florida law in selecting the carrier. The district court dismissed the negligence claim concluding that it was expressly preempted by the FAAAA, and that the statute's safety exception was inapplicable to negligence claims against brokers. *See Id.* at 1264 – 65.

The *Aspen American Insurance Company* Court affirmed, noting that the plaintiff’s negligent hiring claim did:

not present us with the “general” universe of common-law tort claims that could arise within the domestic supply chain. They assert specific allegations of negligence and gross negligence against a transportation broker for its selection of a motor carrier

to transport property in interstate commerce. This application of the negligence standard would regulate brokers, not in their capacity as members of the public, but in the performance of their core transportation-related services. Consequently, the FAAAA expressly preempts [the plaintiff's] claims unless they fall within one of the Act's preemption exceptions.

Id. at 1268 (internal citation omitted).

But just as the *Ye* Court found, the *Aspen American Insurance Company* Court held that the plaintiff's negligent hiring claims did not directly implicate "motor vehicle safety." *Id.* at 1269. The Eleventh Circuit Court of Appeals went on to explain that:

it makes little sense for the safety exception to turn on whether a plaintiff seeks damages for property loss or bodily injury—the common law negligence standard is the same no matter the damages a breach has caused. [The plaintiff] simply alleges that, [a]s a transportation broker, [the defendant] owed a duty to [the plaintiff] to retain a reputable motor carrier for the transportation of the subject shipment; [the defendant] breached this duty by ignoring its own protocols and the information readily available in its system in selecting the carrier; and [a]s a direct result, [the plaintiff] was damaged. It is [the defendant's] alleged unreasonableness in selecting a carrier to transport [the] shipment that [the plaintiff] claims violates Florida law, irrespective of the type of damages [the plaintiff] sustained as a result.

Id. (emphasis added).

And because the "mere indirect connection between state regulations and motor vehicles will not invoke the FAAAA's safety exception," and "an indirect connection is all that exists between [the plaintiff's] broker-

negligence claims and motor vehicles” the “negligence claims are not ‘with respect to motor vehicles’ under the FAAAA’s safety exception.” *Id.* at 1272. Consequently, the plaintiff’s negligence claims were barred by section 14501’s express preemption provision.

Further, in *Volkova*, the Court dismissed a negligent-hiring claim against a freight broker in a wrongful death action arising out a motor-vehicle accident involving a tractor-trailer. The plaintiff alleged that the broker failed to review carrier safety information before hiring the motor carrier, failed to request the motor carriers provide safety reports or data, and failed to require the motor carrier provide information confirming that their drivers were competent and capable of safely transporting shipments. *Volkova*, 2018 WL 741441, at * 1. The *Volkova* Court granted the motion to dismiss reasoning that a faithful application of the “straightforward preemption analysis as laid out by the [United States] Supreme court ... in *Rowe v. New Hampshire Transportation Association*, 552 U.S. 364 (2008),” mandated a finding of preemption even though the plaintiff’s claims against the broker were seeking personal injury damages. *Id.* at *4. The district court noted that a forthright “reading of [the Estate’s] allegations [against Robinson] demonstrates that the negligent hiring claims related to the core service provided by [the broker] hiring motor carriers” *Id.* at *3. The district court also

reasoned that “in alleging that [the broker] had failed to adequately and properly perform its primary service, the negligent hiring claim directly implicates how [the broker] performs its central function of hiring motor carriers, which involves the transportation of property.” *Id.* Accordingly, because enforcement of the plaintiff’s claim would have a significant economic impact on the services the broker provides, the claims were expressly preempted by the FAAAA. *Id.* The court went on to hold that, “while the services of a freight broker do not include the actual transportation of property, they are focused on arranging how others will transport the property; these services, therefore, fall within the scope of FAAAA preemption.” *Id.*

While in *Zamorano v. Zyna LLC*, the district court dismissed a negligence claim by a plaintiff who was injured in a motor vehicle accident against the broker who arranged the transport. Case No.: SA-20-CV-00151-XR, 2020 WL 2316061, at *1 (W.D. Tex. May 11, 2020). In that case, the plaintiff sought “to enforce a duty of care related to how [the broker] arranged for the transportation of property by the [] motor carrier, which are the very ‘services’ [the broker] provides as a federally licensed freight broker.” *Id.* at *3. Noting that under the FAAAA, a broker is a person that “sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or

otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation,” but “does not transport property nor does it assume responsibility for the property. *Id.* at *4 (citing 49 U.S.C. § 13102). And because the record showed that the brokers’ only role in the collision was to serve as a broker, the plaintiff could not allege a claim against it that was not preempted. *Id.* The court then went on to further note that plaintiff impermissibly sought to hold the broker to a higher standard of care than is required by federal law, by imposing a duty on a freight broker to investigate its motor carriers and drivers before hiring them. *Id.* at *5. Therefore, plaintiff’s claims against the broker had to be dismissed on preemption grounds. *Id.*

Lastly, in *Tischauser v. Donnelly Transportation, Inc.*, the plaintiff sued the broker for negligent hiring, vicarious liability, and joint enterprise/venture because of personal injuries suffered in a motor vehicle accident. Case Nos.: 20-C-1291, 20-C-1917, 21-C-220, 21-C-965, 23-C-538, 23-C-539, and 23-C-556, 2023 WL 8436321 (E.D. Wis. December 5, 2023). Applying *Ye*, the district court held that these claims were all preempted by the FAAAA. The *Donnelly* Court observed that while *Ye* involved just one common law tort claim (negligent hiring) against a broker, “nothing in *Ye* suggests that either the jurisdictional provenance of a plaintiff’s tort claims, or the precise nature

of those claims should alter the outcome.” *Id.* at*4. This was because “all common law claims have the force and effect of law,” and “each of [the] [p]laintiffs’ claims here ‘would have a significant economic effect on broker services,” just as the negligent hiring claim in *Ye* would have.” *Id.* at 15. The court then pointed out that the Seventh Circuit had clarified that the “preemption inquiry properly focused on whether the state law that plaintiff is attempting to enforce ‘would have a significant economic effect on broker services” and had not otherwise made “a distinction based on the tort’s jurisdictional origins or what specific tort it is.” *Id.* at 15 – 16. Moreover, “all the reasons” that the Seventh Circuit “gave for why the safety exception does not apply to brokers straightforwardly” applied in *Donnelly* as well. *Id.* at 15. Accordingly, the *Donnelly* court dismissed the negligent hiring, vicarious liability, and joint enterprise/venture claims against the broker were preempted by FAAAA.

No Florida appellate court case has determined whether FAAAA preempts negligence claims against brokers. And while there is a split in authority as to whether preemption applies or not, the above cases are by no means outliers. See, e.g., *Quality One Wireless, LC v. MPR Assembly and Logistics Services, LLC*, Case No.: 6:22-cv-1212-RBD-LHP, 2023 WL 9062903, at *2 (M.D. Fla. January 18, 2023) (dismissing with prejudice

plaintiff's negligent selection of motor carrier claim because it was preempted by the FAAAA); *McCarter v. Ziyar Express, Inc.*, Case No.: 3:21 CV 2390, 2023 WL 144844, at *3 (N.D. Ohio January 10, 2023) (dismissing with prejudice motor vehicle accident complaint alleging causes of action for negligent selection of motor carrier and vicarious liability against broker because the claims were preempted by the FAAA); *Aegis Syndicate 1225 at Lloyds of London v. Fedex Custom Critical, Inc.*, No. 20-23722-CIV-DIMITROULEAS, 2021 WL 5014102, at *5 (S.D. Fla. June 28, 2021) ("This Court finds that [the] [p]laintiff's negligence claim is aimed at the core of [the broker's] services, arranging for the movement of goods, and that it more than tenuously relates to the transportation of goods. As such, [the] [p]laintiff's negligence claim against [the broker] [are] preempted by the FAAAA"); *Zamorano v. Zyna LLC, et al.*, Case No.: SA-20-CV-00151-XR, 2020 WL 2316061, at *4 (W.D. Tex. May 11, 2020) ("Because the record is clear that [the broker's] only role in the collision was as a broker, [the] [p]laintiff cannot plausibly allege a cause of action against [the broker] that is not preempted by 49 U.S.C. § 14501"); *Krauss v. IRIS USA, Inc.*, Case No.: 17-778, 2018 WL 2063839, at *5 (E.D. Pa. May 3, 2018) ("Given that the [personal injury] claim[s] relate[] to [the broker's] core service as a broker, the Court concludes that it is preempted"); *Nature's One Inc. v Spring Hill*

Jersey Cheese Inc., Case No.: 2:15-cv-2820, 2017 WL 4349065, at *2 (S.D. Ohio September 29, 2017) (The law is clear that negligence claims against brokers are preempted under the FAAAA, “because all of [the plaintiff’s] claims against [the broker] allege negligence in [the] performance of its transportation services, all of [the plaintiff’s] claims against it are preempted under the FAAAA”); *Desiree Luccio & Reed Frerichs v. UPS Co.*, 2017 WL 412126, at *1 (S.D. Fla. January 31, 2017) (finding that “negligence claims are preempted by the FAAAA” against brokers); *Total Quality Logistics, LLC v. Red Chamber Co.*, 92 N.E.3d 62, 68 (2017) (“holding a broker liable for a negligence claim is subject to express preemption”); *Zumba Fitness, LLC v. ABF Logistics, Inc.*, CASE NO. 2:15-cv-02151, 2016 WL 11478172, at *5 (W.D. Ar. November 11, 2016) (Given the robust body of case law interpreting the FAAAA’s pre-emption clause broadly and its saving clause narrowly, and, more specifically, finding negligence claims against brokers to be pre-empted by § 14501(c)(1), the Court has little difficulty finding merit in [the broker’s] Motion for Partial Summary Judgment); *Federal Insurance Co. v. Nolan Transportation Group, Inc.*, Case No. 1:15-CV-00344-CC, 2016 WL 9000042, at *3 (N.D. Ga. October 12, 2016) (“[T]he Court finds that Plaintiff’s negligence claim falls squarely within the scope of [Section 14501(c)(1) preemption] and is due to be dismissed with prejudice”); *Marx*

Companies, LLC v. Western Trans Logistics, Inc., No. 14-751, 2015 WL 260914, at *4 (D.N.J. January 21, 2015) (“[the] [p]laintiff’s negligence claims based on the duty that the defendant would act in accordance with the standards of a professional freight brokers [sic],” and “a duty that defendant would retain only competent, honest and reliable motor carriers to transport plaintiff’s goods n are preempted in the instant case. The claims undoubtedly relate to the service of the broker and, as set forth in the cases cited above, are therefore expressly preempted by § 14501. Consequently, [the] [d]efendant’s motion is granted as to [the] [p]laintiff’s negligence claims”); *ASARCO LLC v. Eng. Logistics Inc.*, 71 F.Supp.3d 990, 1006–07 (D. Ariz. 2014) (finding that holding a broker liable for negligence “would certainly have more than a tenuous, remote or peripheral effect on rates and services” and thus the plaintiff’s negligence claims against the broker are pre-empted under § 14501”); *AIG Eur. Ltd. v. General Sys., Inc.*, Case No.: RDB–13–0216.2014 WL 3671566, *4 (D.Md.2014) (July 22, 2014) (finding that the FAAA expressly preempts negligence claim against broker who allegedly failed to select a carrier with sufficient insurance, as the “claim clearly relates to the service provided by a broker”).

Here there is no dispute that Jerue Broker was acting as broker. (Appx. 2 - Deposition of Steven L. Gibson at Pg. 8, Ln. 16 – Pg. 9, Ln. 2; Pg. 12, Ln.

4 – 17; Pg. 18, Ln. 16 – Pg. 20, Ln. 6; Pg. 20., Ln. 12 – 23; Pg. 32, Ln. 2 – 8; Pg. 98, Ln. 5 – 10; Pg. 99, Ln. 11 – 17; Pg. 118, Ln. 7 - 21; Pg. 118, Ln. 24 – Pg. 119, Ln. 3; Pg. 120, Ln. 18 – Pg. 121, Ln. 6); (Appx. 3 – Deposition of John Zepada at Pg. 19, Ln. 1 – 15; Pg. 50, Ln. 6 – 9); (Appx. 4 at Deposition of E. Luis Campano at Pg. 50, Ln. 13 – 21); (Appx. 6 – Broker-Motor Carrier Agreement at 2(a), 3, 5(a) – (d)).

It is also undisputed that Plaintiffs claims against Jerue Broker for vicarious liability, negligence, and joint enterprise/joint venture all arise out of its' purported duty to provide reasonably safe and competent transport. (Appx. 1 at ¶¶ 32, 48, 68, 69). Stated another way, the state law tort claims seek to impose vicarious liability on brokers for the negligence of the drivers employed by the motor carriers with which a broker arranged transportation and seeks to impose liability on brokers based on an alleged duty to exercise reasonable care in the hiring, training, supervision, and retention of drivers employed by such motor carriers. But as was the case in *Ye*, by recognizing these “common law negligence claims, courts would impose in the name of state law a new and clear duty of care on brokers, the breach of which would result in a monetary judgment. *Ye*, 74 F.4th at 459. “[T]he enforcement of such [] claim[s] - and the accompanying imposition of liability - would have a significant economic impact on broker services.” *Id.*

There is no doubt that Plaintiffs causes of action under Florida law fall within the scope of section 14501 preemption as law, rules, regulations, standards, or other provisions having the force of law relating to broker services. See *Northwest, Inc.*, 572 U.S. at 281 – 82; *Ye*, 74 F.4th at 459; *Aspen American Insurance Company*, 65 F.4th at 1266; *United Airlines, Inc.*, 219 F.3d at 607.

So, the issue becomes whether the services are connected to broker services, and if they are, whether the enforcement of these claims would have a significant economic effect on Jerue Broker's brokerage business. This, as the circuit courts of appeals in *Ye* and *Aspen American Insurance Company*, as well as several district courts around the country have found is a resounding yes to both. See *Ye*, 74 F.4th at 458. *Aspen Am. Ins. Co.*, 65 F.4th at 1267; *Gauthier*, 2022 WL 344557, at *7. First, as noted above, the core business of a broker is to arrange transport of cargo between shippers and motor carriers. See *Aspen American Insurance Company*, 65 F.4th at 1267; *Gauthier*, 2022 WL 344557, at *7. And when a plaintiff's claims directly implicate this core service—the hiring of a motor carrier to transport a shipment, those claims are expressly preempted under section 14501 since they are based entirely upon the broker's decision in selecting the motor

carrier. See *Gauthier*, 2022 WL 344557, at *7; *Georgia Nut Company*, 2017 WL 4864857, at *3.

The significant economic effect on broker services is abundantly clear because Plaintiffs are seeking to impose the duties and obligations of a motor carrier on Jerue Broker, which it does not owe under federal law and regulations. In this regard, the Department of Transportation provides for both motor carrier authority and broker authority, which are separate and distinct. These two distinct types of authority carry with them quite different sets of obligations under the Federal Motor Carrier Safety Regulations (“FMCSRs”). The obligations of a broker are minimal under the FMCSR. The obligations of a motor carrier, on the other hand, are substantial and are governed by hundreds of regulations. See *generally*, 49 C.F.R. §§ 350 – 399. Under the FMCSR, the motor carrier is responsible for ensuring that only a qualified driver is driving a commercial motor vehicle. See 49 C.F.R. § 391.15(a). See *also* *Ye*, 74 4th at 462 0 63 (observing that “[a] clear conclusion emerged from this broader review of Title 49 and the regulatory landscape: Congress’s reference to motor vehicle do not impose obligations on brokers”).

The enforcement of negligence claims like those asserted by Plaintiffs would effectively dictate through state common law that a broker now has a

duty to perform the services of a motor carrier and ensure that a third-party motor carrier's driver is a safe driver. This would explicitly impose new services upon a broker, which do not have to be performed under the FMCSR. Moreover, imposing vicarious liability on brokers and a duty of care for brokers to hire, supervise, retain, and select the drivers would compel a change in the process by which Jerue Broker "and other brokers would change how they conduct their services" and force them to incur "new costs." *Ye* at 459. For example, brokers like Jerue Broker would be forced to vet third-party motor carriers' employee drivers and otherwise screen and monitor their hiring practices and activities. *Id.* at 459. In short, the enforcement of such claims would compel brokers to offer a service that they do not provide and do not wish to provide, now and in the future, thereby producing the very effect the FAAAA sought to avoid. See *Rowe*, 552 U.S. at 372. This will inevitably result in "a patchwork of state service-determining" common law rules that is "inconsistent with Congress' major legislative effort to leave such decisions, were federally unregulated, to the marketplace." *Id.* at 373. For this reason, in *Lee*, which was decided in the wake of *Ye*, the court determined that the common law negligence claims asserted against a broker, were preempted by the FAAAA:

The [p]laintiffs' claims have a significant impact on [the defendant/broker's] service with respect to the transportation of

property because the claims seek to enforce a duty of care related to how [] the broker, arranges for a motor carrier to transport shipments, the service. Application of the negligence law would require [the defendant/broker] to perform additional services, such as hiring, retaining, and supervising a qualified driver in driving a commercial motor vehicle, which would in turn subject [the defendant/broker] to a patchwork of laws throughout the country; impose compliance with new regulations; carry a substantial financial consequence; and expose brokers to additional liability. Therefore, the Court finds that enforcing laws upon a broker for vicarious liability, for negligent [selection] of a driver, and for joint venture would have a significant direct impact upon the services rendered by a broker and hinder the objectives of the FAAAA. Accordingly, the Court finds that Plaintiffs' claims against Coyote are preempted under the FAAAA.

Lee, 2023 WL 7329523, at *13 (internal citations omitted).

The “safety exception” provides Plaintiffs with no succor because their claims in no way have a direct connection to motor vehicles. Instead, as noted above, the claims relate to Jerue Broker hiring 24 Hours. See *Aspen American Insurance Company*, 65 F.4th at 1271. At best, Plaintiffs claims for vicarious liability, negligent selection, and joint enterprise/joint venture have an indirect connection between state regulations and motor vehicles. See *Aspen American Insurance Company*, 65 F.4th at 1272; *Lee*, 2023 WL 7329523, at *13; *Lee*, 2022 WL 16695207, at *5; *Creagan v. Wal-Mart Transportation, LLC*, 354 F.Supp.3d 808, 814 n 7 (N.D. Ohio 2018). However, this is not enough to invoke the FAAAA's safety exception.” See *Id.*; *Mays*, 2024 WL 332917, at *4. These claims are simply not responsive

to motor vehicle safety, but rather implicate the hiring process. See *Mays*, 2024 WL 332917, at *4; *Lee*, 2023 WL 7329523, at *14; *Gauthier*, 2022 WL 344557, at *10; *Flanagan*, 2021 WL 9667999, at *7. This is especially true when the broker does not have a direct involvement in the accident and does not own or operate that motor vehicle. See *Lee*, 2022 WL 16695207, at *5. *Flanagan*, 2021 WL 9667999, at *7.

As in *Ye, Aspen American Insurance Company, and Volkova*, Plaintiffs in the case are seeking to impose liability upon Jerue Broker for allegedly failing to provide reasonably safe transport. And as in *Ye, Aspen American Insurance Company, and Volkova*, these claims strike at the very core of a brokers' services by challenging the adequacy of the care Jerue Broker took in hiring 24 Hours to provide shipping services. And as in *Ye, Aspen American Insurance Company, and Volkova*, the enforcement of Plaintiffs claims, and any accompanying imposition of liability will have a significant economic effect on Jerue Brokers' services. Therefore, as in *Ye, Aspen American Insurance Company, and Volkova*, Plaintiffs' common-law negligence claims are expressly preempted by § 14501(c)(1). And because these common law claims are not laws with respect to motor vehicles, and there is no direct link between negligent hiring claims against brokers and motor vehicle safety, the safety exception does not apply.

Because preemption applies, the trial court does not have subject matter jurisdiction over Plaintiffs claims against Jerue Broker.

Plaintiffs rely heavily on *Miller*. In *Miller*, a broker hired a motor carrier to transport cargo. While delivering the cargo, the motor carrier's driver collided with a car driven by the plaintiff, who sued the broker alleging negligent hiring under Nevada common law. *Miller*, 976 F.3d at 1020 – 21. Although the Ninth Circuit in *Miller* held that a claim for negligent hiring falls within the scope of the express preemption provision of section 14501, the safety exception saved the claim from preemption. *Id.* at 1024 – 25. The *Miller* Court focused on whether the state “safety regulatory authority” preserved by the safety exception includes a common-law claim for negligent hiring against a freight broker. *Id.* at 1026 – 29. Construing the safety exception “broadly,” in part based on the presumption against preemption, the Ninth Circuit determined that the answer was yes. *Id.* at 1028. The Ninth Circuit then addressed whether such a claim involved the exercise of state regulatory authority “with respect to motor vehicles,” concluding that there was a sufficient connection between a broker’s allegedly negligent hiring and motor vehicles to satisfy the safety exception. *See Id.* at 1030 -31. The court, relying on its’ own precedent, found that the phrase “with respect to” in the safety exception is “synonymous” with the phrase “relating to” in the

preemption provision. *See Id.* at 1030. Accordingly, the court treated the exception as saving any state safety regulation bearing “a connection with motor vehicles, whether directly or indirectly.” *See Id.* at 1030 (citation omitted). In doing so, the *Miller* Court noted that it had previously extended the safety exception to cover criminal-history disclosure requirements for tow truck drivers, and if those requirements had the requisite connection with motor vehicles, “then negligence claims against brokers that arise out of motor vehicle accidents must as well,” given that “both promote safety on the road.” *Id.*

Notably, Judge Fernandez concurred in part and dissented in part, in which he joined the portions of the majority's opinion concluding that the plaintiff's claims fell within the scope of the preemption provision in section 14501(c) and that common-law tort claims form part of the state safety regulatory authority preserved by the safety exception. *See Id.* at 1031 – 32. However, he dissented from the majority's position that the safety exception saved Plaintiff's claim against the broker. Judge Fernandez concluded that the negligence claim against the freight broker did not have a sufficient connection to motor vehicles to satisfy the exception. *See Id.* In his view, claims against a freight brokers-as opposed to motor carriers do not operate “with respect to motor vehicles.” *Id.* This is because the connection between

a broker's actions and the “actual operational safety of motor vehicles” is “too remote.” *Id.* at 1031. A contrary conclusion, he warned, would “conscript brokers” into a “parallel regulatory regime,” requiring that they “evaluate and screen motor carriers” according to the “varied common law mandates of myriad states.” *Id.* at 1032.

Since *Miller* was decided several courts have criticized its holding, including the Ninth Circuit itself who recognized that in coming to its decision it failed to take into consideration that when a “statute contains an express pre-emption clause, we do not invoke any presumption against pre-emption but instead focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent,” thus casting doubt on the entire decision. *R. J. Reynolds Tobacco Company*, 29 F.4th at 553 (quoting *Puerto Rico v.*, 579 U.S. at 125); *See also Ye*, 74 F.4th at 465 (“First, in our view, the Ninth Circuit unduly emphasized Congress's stated deregulatory purpose in passing the Act at the expense of the insights that come from an analysis of the broader statutory scheme ... A second difference is the Ninth Circuit's reliance on a presumption against preemption to resolve any ambiguity in the breadth of the safety exception's scope ... In a later Ninth Circuit case, however, the court acknowledged that its reliance on the presumption against preemption—in *Miller* [] specifically—stood in

direct conflict with the Supreme Court's instruction to 'focus on the plain wording of the clause' instead of 'invok[ing] any presumption against preemption ... Finally, we disagree with the Ninth Circuit's conclusion that the phrase "with respect to" in § 14501(c)(2)(A) is 'synonymous' with "relating to"); *Gilley v. C.H. Robinson Worldwide, Inc.*, Case No.: 1:18-00536, 2021 WL 3824686, at *2 (S.D. W.V. August 26, 2021) ("The court respectfully disagrees with the opinion of the United States Court of Appeals for the Ninth Circuit in *Miller* [] insofar as that court found in a similar case that the preemption argument did not fail at step one").

Unlike the Ninth Circuit in *Miller*, the Seventh and Eleventh Circuits correctly held that the safety exception does not apply to negligent-hiring claims against freight brokers related to physical injuries caused by the motor carrier's driver. This is because the safety exception creates a carve-out from the express preemption provision in section 14501(c)(1) for state safety regulatory authority "with respect to motor vehicles." 49 U.S.C. 14501(c)(2)(A). Both *Ye* and *Aspen American Insurance Company's* holdings follows directly from the statutory text.

As the *Ye* Court noted, in reaching a contrary conclusion, the *Miller* Court made numerous analytical errors. *Ye*, at 465. For example, instead of asking what meaning the phrase "safety regulatory authority" conveys, the

Ninth Circuit asked whether common-law claims fall within a State's broad "power over safety." *Miller*, 976 F.3d at 1026. To reframe the question that way is to answer it: of course, a common-law negligence claim has something to do with a State's interest in safety. The Ninth Circuit also interpreted the safety exception "broadly," in part based on a presumption against preemption. See *Id.* at 1026, 28. The usual rule is that an "exception" to a "general statement of policy" should be read "narrowly." *Maracich v. Spears*, 570 U.S. 48, 60 (2013) (citation omitted). And in *Puerto Rico*, this Court declined to invoke any presumption against preemption where the relevant statute "contain[ed] an express pre-emption clause. *Puerto Rico*, 579 U.S. at 125 (citation omitted). Under the appropriate analysis, the "safety regulatory authority of a State" does not encompass common-law negligent-hiring claims against freight brokers.

Before moving on to the next section, Plaintiffs' argument that Jerue Broker acted as the motor carrier must be addressed. First, the evidentiary record proves that there is no genuine issue of fact as to Jerue Broker's status as a broker, not a motor carrier. Plaintiffs' reliance on Shamrock's Load Carrier Confirmation listing Jerue Broker as a carrier as proof that it was acting in such a capacity is of no moment. Not only was it explained away by the owner of Shamrock, the identification of Jerue Broker:

as the 'carrier' on the bill of lading does not prove that [it] was in fact this transaction's carrier and had merely contracted (rather than brokered) the shipment. This is because a bill of lading is generally prepared by a third party, rather than the broker, and it 'is common for shippers to insert the broker's name if the carrier is unknown at the time the load is arranged.' There is no indication that [Jerue Broker] actually held itself out as a carrier or that it exercised control over [24 Hours] other than Plaintiffs' conclusory allegations in the Complaint.

Mays, 2024 WL 332917, at *3 (citation omitted).

Moreover, a defendant is either a broker or a motor carrier, but it cannot be both in the same transaction. *Ripley v. Long Distance Relocation Services, LLC*, Case No.: CCB-19-373, 2019 WL 5538343, at *5 n 8 (D. Md. October 25, 2019). "[T]here is no overlap in the statute between 'carriers' and 'brokers[.]'" *5K Logistics, Inc. v. Daily Exp., Inc.*, 659 F.3d 331, 335 (4th Cir. 2011); see also, 49 U.S.C. § 13904(d)(1) ("A broker for transportation may not provide transportation as a motor carrier"); *Transportation Revenue Management, Inc. v. First NH Inv. Services Corp.*, 886 F. Supp. 884, 886 n 2 (D. D.C. 1995) (citing 49 U.S.C. § 10102(1) ("A property broker arranges the transportation of property by n authorized motor carrier but is not permitted to act as a carrier").

Lastly in this regard, the party moving for summary under Florida Rule of Civil Procedure 1.510, has the initial burden of demonstrating the absence of a genuine issue of material fact. Fla. R. Civ. P. 1.510(a); *Roger v. Yellow*

Freight Systems, Inc., 21 F.3d 146, 148 (7th Cir. 1994). The movant can satisfy this initial burden “in either of two ways: ‘[I]f the nonmoving party must prove X to prevail [at trial], the moving party at summary judgment can either produce evidence that X is not so or point out that the nonmoving party lacks the evidence to prove X.’” *In re Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d 72, 75 (Fla. 2020) (quoting *Bedford v. Doe*, 880 F.3d 993, 996 – 97 (8th Cir. 2018)); see also, *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). With respect to the latter method of satisfying the initial summary judgment burden, the moving party “need not set forth evidence when the nonmovant bears the burden of persuasion at trial.” *Wease v. Ocwen Loan Servicing, L.L.C.*, 915 F.3d 987, 997 (5th Cir. 2019); *Lavergne v. Jefferson County*, 164 F.R.D. 441, 443 (E.D. Tex. 1995). This initial burden is not “onerous,” *Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir. 2013), or “stringent,” and as the Florida Supreme Court observed when adopting the federal summary judgment standard “can be ‘regularly discharged with ease.’” *In re Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d at 77 (quoting *Bedford*, 880 F.3d at 996).

Once this showing is made, “the burden shifts to the nonmovant to come forward with competent summary judgment proof showing that the existence of a genuine fact issue.” *Lavergne*, 164 F.R.D. at 443; see also,

Modrowski, 712 F.3d at 1168 (quotation marks and citation omitted); *Glacier Optical, Inc. v. Optique Du Monde, Ltd.*, 816 F.Supp. 646, 650 (D. Or. 1993). This requires the nonmoving party, in this case Plaintiffs, to go beyond the pleadings and point to evidence in the record upon which a jury could properly return a verdict in her favor. *Id.* at 1168 - 1169 (citation omitted); *Roger*, 21 F.3d at 148. And if “the non-movant does not come forward with evidence that would reasonably permit the finder of fact to find in her favor on a material question, then the court *must* enter summary judgment against her.” *Waldrige v. American Hoechst Corp.*, 24 F.3d 918, 920 (7th Cir.1994) (citations omitted) (emphasis in original).

Here, once Jerue Broker established that it was operating as broker, it was incumbent upon Plaintiffs to bring forth actual record evidence to rebut this fact. They did not. Instead, they relied on a document that was not before the court, in the record, or addressed in any fashion in their response to the motion for summary judgment pursuant to Florida Rule of Civil Procedure 1.510(b), (c)(1)(A), (c)(1)(B), (c)(2). The trial court should never have considered Shamrock’s Load Carrier Confirmation when coming to its decision, as Plaintiff’s failure to dispute the issue in their response deprived the Defendant of the opportunity to reply to this point.

II. THE SAFETY EXCEPTION OF SECTION 49 U.S.C. § 14501(c)(2)(A) DOES NOT APPLY TO BROKERS.

The United States Supreme Court has determined that the phrase “with respect to motor vehicles” in section 14501 “massively limits the scope” of the FAAAA’s safety exception. *Dan’s City Used Cars, Inc.*, 569 U.S. at 261 (quoting *City of Columbus v. Ours Garage and Wrecker Service, Inc.*, 536 U.S. 424, 449 (2002) (Scalia, J., dissenting)); see also, *Aspen American Insurance Company*, 65 F.4th at 1271.

Because of this, for the safety exception to apply there must be “a direct link between a state’s law and motor vehicle safety.” *Ye*, 74 F.4th at 460. “By limiting the safety exception to apply to state laws ‘with respect to motor vehicles,’ Congress narrowed the scope of the exception to those laws concerning a “vehicle, machine, tractor, trailer, or semitrailer ... used on a highway in transportation.” *Id.* (quoting 49 U.S.C. § 13102(16)). But more importantly, there is “no mention of brokers in the safety exception itself or in Congress’s definition of motor vehicles, which suggests that such claims may be outside the scope of the exception’s plain text. *Id.* (citing *Dan’s City Used Cars*, 569 U.S. at 261). Rather, while 49 U.S.C. § 14501 with respect to brokers provides extant:

(b) Freight forwarders and brokers.—

(1) General rule.--Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.

(2) Continuation of Hawaii's authority.--Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.

49 U.S.C. § 14501(b)(1) & (b)(2), the section regarding motor carriers provides in full:

(c) Motor carriers of property.—

(1) General rule.--Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

(2) Matters not covered.--Paragraph (1)—

(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, 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, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

(B) does not apply to the intrastate transportation of household goods; and

(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the regulation of tow truck operations performed without the prior consent or authorization of the owner or operator of the motor vehicle.

49 U.S.C. § 14501(c)(1) & (c)(2)(A) – (C).

“Under the canon of statutory construction *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another.” *State v. Hearn*, 961 So.2d 211, 219 (Fla.2007) (holding that had the “legislature intended to include all types of battery as forcible felonies [for purposes of section 776.08, Florida Statutes], it would have listed simply ‘battery’ rather than only the specific types enumerated”); *see also*, *State v. Miller*, 227 So. 3d 562, 564 – 65 (Fla. 2017). (“Where the Legislature enumerates items to the exclusion of others, the canon of construction *expressio unius est exclusio alterius* encourages the interpretation that the Legislature purposefully excluded items not mentioned”). Yet another rule of statutory construction is “that when a law expressly describes a particular situation where something should apply, an inference must be drawn that what is not included by specific reference was intended to be omitted or excluded.” *City of Miami v. Valdez*, 847 So.2d 1005, 1008 (Fla. 3d DCA 2003) (finding that “had the legislature intended that any amounts procured by means of claims

bills be applied to exhaust the per person/per incident waiver of immunity, the legislature would have included such a provision”). This is especially true where “Congress has shown that it knows how to adopt the omitted language or provision.” *Rotkiske v. Klemm*, 140 S. Ct. 355, 361 (2019). Moreover, the “legislative use of different terms in different portions of the same statute is strong evidence that different meanings were intended.” *Driver v. State*, 288 So. 3d 715, 720 – 21 (Fla. 4th DCA 2020). Courts are also not at liberty to add words to a statute that the legislature itself did not use in drafting that statute. *Id.* at 720; *see also*, *Rotkiske*, 140 S. Ct. at 360 – 61 (“It is a fundamental principle of statutory interpretation that ‘absent provision[s] cannot be supplied by the courts.’ (citation omitted); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013) (“Congress’ choice of words is presumed to be deliberate, so too are its structural choices.”)).

Based on these principles of statutory construction the fact that the subsection pertaining to brokers did not contain a safety exception, while the subsection referring to motor carriers does, is evidence that congress did not intend the safety exception to apply to brokers. *Ye*, 74 F.4th at 460; *Mays*, 2024 WL 332917, at *4 (“[the defendant] is a broker and the statutory preemption provision applicable to brokers does not have a safety exception”); *Flanagan*, 2021 WL 9667999, at *4 (finding that “the FAAAA’s

safety regulatory authority exception to preemption does not apply to common law tort claims against a broker”).

Such an omission was not lost on the Ye Court:

what is missing from § 14501(c)(2)(A)—any reference to brokers or broker services. While it listed broker services in § 14501(c)(1)’s express preemption provision, Congress declined to expressly mention brokers again in reference to states’ safety authority. Reading further, we see the same omission of brokers from § 14501(c)(2)’s other savings provisions for intrastate transportation of household goods and tow truck operations.

Remember, too, that § 14501(c) sets forth federal authority over Motor Carriers of Property—not brokers—so Congress’s inclusion of brokers in one subsection and exclusion in another suggests that the omission was intentional. Congress could have chosen to save state safety laws enforced with respect to motor carriers and brokers, but it did not. We hesitate to read broker services into parts of the statute where Congress declined to expressly name them, especially when it contemplated them elsewhere within the same statutory scheme.

Congress’s omission of brokers from the exceptions to § 14501(c)(1)’s preemptive sweep is even more pronounced when we take a step back and examine other provisions within § 14501. What most stands out is § 14501(b), titled “Freight Forwarders and Brokers.” In § 14501(b)(1) Congress directly addressed state regulation of brokers by prohibiting states from enacting or enforcing laws “relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker. Following this broad preemption provision, however, Congress did not include a safety exception—another telling omission given that Congress included safety exceptions to the parallel preemption provisions for motor carriers of property (at issue here) and motor carriers of passengers. Here, too, Congress’s decision not to write a safety exception for the broker-specific preemption provision indicates a purposeful separation between brokers and motor vehicle safety.

Ye, 74 F.4th at 460.

Such a reading makes sense when reviewing the definition of broker under Title 49. A “broker” is defined as “a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation. 49 U.S.C. § 13102(2); 49 C.F.R. § 371.2(a) (“Broker means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier”). This is contrast to a “motor carrier” who is “a person providing motor vehicle transportation for compensation.” 49 U.S.C. § 13102(14). A “broker,” by definition, cannot provide motor vehicle transportation for compensation; only a “motor carrier” can perform that task. 49 U.S.C. § 13102(14); *see also*, 49 C.F.R. § 371.2(a) (“Motor carriers ... are not brokers within the meaning of this section when they arrange ... the transportation of shipments which they ... have accepted ... to transport”). And it is the motor carrier, not the broker that “is responsible to ensure that only a qualified driver is driving a commercial motor vehicle[.]” *Lee*, 2023 WL 7329523, at *13. “Thus, an entity is a motor carrier only when it “was operating as a for-hire motor carrier at

the time of the accident.” *Herrod v. Wilshire Ins. Co.*, 499 Fed. Appx. 753, 759 (10th Cir. 2012).

Because Congress did not insert a safety exception to preemption for brokers in section 14501 but did so for motor carriers is not only evidence that Congress intended to treat brokers differently from motor carriers, but it is also evidence that the safety exception was never meant to apply to brokers. As such, the trial erred by applying the safety exception applicable to motor carriers to brokers. And in so doing, found that it saved Plaintiffs’ claims against Jerue Broker. And by doing this is now impermissibly exerting subject matter jurisdiction over claims that are expressly preempted by section 14501.

CONCLUSION

For these reasons, Jerue Broker respectfully submits that the Honorable Judge David C. Miller does not have subject matter jurisdiction over the claims Plaintiffs have asserted against it. Because Judge Miller continues to exercise authority over the case unlawfully, this court should issue a writ of prohibition.

Certificate of Service

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Electronic Mail to all counsel, as shown on the attached Service List, on this 27th day of April 2024.

**LUKS, SANTANIELLO, PETRILLO,
COHEN & PETERFRIEND**

Attorneys for Appellant/Defendant
150 W. Flagler Street, Suite 2600
Miami, FL 33130
Telephone: (305) 377-8900
Facsimile: (305) 377-8901

By: /s/ Edgardo Ferreyra

EDGARDO FERREYRA, JR.

Florida Bar No.: 685623

LUIS MENENDEZ-APONTE

Florida Bar No.: 772771

LuksMia-Pleadings@LS-Law.com

SERVICE LIST

Attorneys for Plaintiff

Todd D. Rosen, Esq.
The Law Office of Todd D. Rosen, P.A.
2 So. Biscayne Blvd., Suite 2450
Miami, FL 33131
Pleadings@toddrosenlaw.com

Matthew E. Wright, Esq.
The Law Firm for Truck Safety, LLP
840 Crescent Drive, Suite 310
Franklin, TN 37067
matt@truckaccidents.com
traci@truckaccidents.com

Joshua Leizman, Esq.
The Law Firm for Truck Safety, LLP
3232 Executive Parkway, Suite 106
Toledo, OH 43606
Joshua@truckaccidents.com

*Attorneys for 24 Hour on Time
Cargo, Guillermo Monzan Campo,
and Zonia Guerra Hernandez*
Christopher Wadsworth, Esq.
Wadsworth Magrey & Dixon, LLP
261 N.E. 1st Street, 5th Floor
Miami, FL 33132
Pleadings@WMD-Law.com
CW@WMD-Law.com
TCarter@WMD-Law.com

And, in compliance with Rule 2.330(d), Fla. R. Jud. Admin., a true and correct copy hereof has been served via electronic mail this 27th day of April 2024, on The Honorable David C. Miller, Circuit Judge of the 11th Judicial Circuit, In and For Miami-Dade County, Florida, as follows:

The Honorable David C. Miller
Circuit Judge, 11th Judicial Circuit
In and For Miami-Dade County, Florida
73 West Flagler Street – DCC 626
Miami, Florida 33130
E-Mail: Bgener@jud11.flcourts.org