Transportation Safety and Insurance Law

Publication 82467 Release 18 June 2022

HIGHLIGHTS

In this Release:

• Release 18 covers recent developments in Transportation Safety and Insurance Law, including state and federal cases, state and federal legislation, and federal regulations.

• In addition, the Index, the Table of Cases, and the Table of Statutes have been fully updated in this release.

RECENT CASES AND DEVELOPMENTS:

Chapter 2 Sources of Indemnity and Contribution: Highway Agencies, Contractors, and Equipment Suppliers


Chapter 3 Commerce Clause and Federal Versus State Safety Regulation

BNSF Ry. v. Hiett, 2022 U.S. App. LEXIS 799 (10th Cir. 2022). State statutes on the matter of blocked crossings have been preempted under the ICC Termination Act.

Ind. R.R. v. Ill. Commerce Comm’n, 2021 U.S. Dist. LEXIS 243057 (N.D. Ill. 2021), The court held that the suggestion by the Special Court that purely safety regula-
tion on train size crew might be upheld was not persuasive and not binding precedent. An Illinois statute mandating a two-person crew was held to be preempted by the 3R Act. Note that a rulemaking proceeding that FRA attempted on train crew sizes was terminated because of procedural flaws. See Transp. Div. of the Int’l Ass’n of Sheet Metal, Air, & Transp. Workers v. FRA, 988 F.3d 1170 (9th Cir. 2021).

Chapter 8 Motor Carrier Enforcement Penalties and Proceedings

KP Trucking, LLC v. U.S. DOT, 850 Fed. Appx. 604 (10th Cir. 2021). In finding an entity to be a reincarnated carrier, the agency may also rely on other factors, such as the use of the same drivers, vehicles, shippers, telephone numbers, mailing addresses, and email addresses, common management, and physical proximity to each another.

Chapter 10 Drug and Alcohol Abuse

Ross v. Fedex Freight, 2021 U.S. Dist. LEXIS 179616 (S.D. Ind. 2021). A carrier’s discharge of a driver was upheld on summary judgment against a variety of ADA claims where he tested positive for prescription medication on a random drug test. He failed to subsequently present a safety concern matter from a treating physician and he was therefore terminated. The prescription for a narcotic pain medication had been issued in 2014 after a tooth extraction, and the random drug test occurred in 2019.


Chapter 11 Transporting Hazardous Materials

United States v. MultiStar Industries, 2022 U.S. Dist. LEXIS 15257 (E.D. Wash. 2022). In an action by the EPA, it was alleged that the storage of some hazardous substances at railcars located at a transloading site were in violation of the Clean Air Act and the Community Right to Know Act. The evidence revealed that railcars containing hazardous material were delivered to the consignees transloading facility. The railcars were then disconnected from motive power. The railcars acted as storage for the hazardous material pending the transloading into trucks. The court determined that further factual development was needed concerning the length of time in which the railcars were being used for static storage.

Chapter 12 Transportation Equipment

Lands v. Ward, 2021 Ala. LEXIS 62 (Sup. Ct. 2021). The Alabama Supreme Court upheld a negligence claim for personal injury of an employee against the owner of a truck leased with the driver to a motor carrier. If there had been a written lease, the duty to inspect and maintain the equipment might have been shifted to the lessee, but there was only an informal oral lease. Hence,
the continuing duty to inspect and maintain in accordance with the federal regulations and state statutes rendered the owner potentially liable for injury to an employee caused by the defective truck.

Chapter 14 Employee Qualifications, Hours of Service, and Records

Smith v. Lipari Foods, 2021 U.S. Dist. LEXIS 228378 (N.D. Ind. 2021). An employer is justified in relying on the registered examiner and refusing to consider contrary information provided by a driver’s treating physician. See also Cline v. Dart Transit Co., 2021 U.S. Dist. LEXIS 81902 (N.D. Ohio), dismissing a negligent entrustment claim against a carrier who had relied on the medical examiner’s recertification.

Frapanpina v. Garda CL Great Lakes, Inc., 2021 U.S. Dist. LEXIS 53366 (N.D. Ill. 2021). The Northern District of Illinois reviewed the decisions concerning the applicability of the FLSA motor carrier exemption to fleets containing a mixture of vehicles above and below the 10,001 pound threshold. It observed that decisions by the Third and Fourth Circuits have ruled that the exemption does not apply to drivers who are driving mixed fleets of motor vehicles. A class action involving a mixed fleet of armored cars was allowed to proceed. See also Riley v. SK United, 2021 U.S. Dist. LEXIS 110314 (E. Mich. 2021).

Green v. Lazer Spot, Inc., 2021 U.S. Dist. LEXIS 244483 (M.D. Penn. 2021). If the drivers who are engaged in spotting trailers at a terminal or plant site may from time to time haul over the public roads, then the entire group of spotters will fall within the FLSA exemption.

Fleury v. Union Pacific R.R. Co., 528 F. Supp. 3d 885 (N.D. Ill. 2021). Although railroads are required by regulations to maintain records concerning the employees in safety-sensitive positions, a state statute protecting the confidentiality of biometric identification data was not preempted by FRSA or ICTA.

Chapter 18 Accident and Incident Reporting

Lopez v. CSX Transportation, 2021 U.S. Dist. LEXIS 125535 (W.D. Penn. 2021). Grade crossing incident reports regarding signal activation failures or false activations, and any actions taken to correct the failures or false activations, may not be admitted into evidence in subsequent tort litigation arising out of railroad crossing incidents.

Chapter 19 Carrier Insurance

Artisan & Truckers Cas. Co. v. Neron Logistics LLC, 2021 U.S. Dist. LEXIS 27171 (S.D. Ill. 2021). By its terms, the endorsement provided insurance, regardless of whether the vehicle involved in an accident was described in the policy. The endorsement also required coverage even though the driver was not covered under the policy. However, the coverage under the endorsement did not carry an obligation to defend the suit. See also Chapter
20—Required Notices to Insurer
(There is a conflict among states as to whether the failure to give notice results in a loss of coverage.)
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