Commercial Transportation Litigation Committee

FRACKING CREATES UNIQUE OPPORTUNITY AND RISK FOR HAULERS

By: Scott T. Winstead and Laken N. Davis

Fracking is booming across the country, and although controversial, the boom is expected to continue. A study commissioned by the United States Chamber of Commerce’s Institute for 21st Century Energy found that fracking has caused an employment boom even in states that do not have shale deposits, with the creation of 1.7 million jobs by late 2012.1 This number is expected to grow to 2.5 million by 2015; 3 million by 2020; and 3.5 million by 2035.2 A survey released in January 2013 by Benesch, Attorneys at Law, a Cleveland-based transportation law firm, the National Tank Truck Carriers, and the Ohio Trucking Association, provided that ninety-seven percent (97%) of trucking industry respondents think the fracking boom will have a positive impact on the trucking industry.3 Forty-five percent (45%) said they expected to increase their workforce between five and fifteen percent.4

On a small scale, for fracking at one well site, trucks haul in water, sand, and piping material and haul out oil, gas, and used water. On a larger scale, to implement and support the entire fracking process, trucks haul in the

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2 Id.
4 Id.
Letter From The Chair

This Summer edition marks the fourth publication of the CTLC Newsletter for the 2012-2013 ABA calendar year, and we may have saved the best for last. The articles featured in this publication address the hot topic of fracking, the continued liability challenges facing freight brokers, and an exceptional discussion on the effects of whistleblowers on the transportation industry. I believe these substantive topics are a prime example of the relevant and informative materials that the committee takes pride in delivering to its members.

Thank you to those who joined us in San Francisco for the ABA’s annual conference, and specifically, our committee’s business meeting on Saturday, August 10th. We also scheduled a successful committee dinner for that night at Le Colonial, a Union Square landmark. If you did not make it to San Francisco, I hope that you will be able to join us in Minneapolis, MN for the ABA’s Fall Leadership Conference, where we will be presenting a two-hour CLE entitled “Commercial Transportation: Four Hot Subjects For The Trucking Lawyer” on October 9th at 1:30 P.M. I would also like to encourage everyone to contribute to the committee through sharing relevant verdicts, case law, and articles on our website or LinkedIn page, writing articles for one of our publications, or volunteering to take part in a webinar.

This newsletter and the upcoming annual conference in San Francisco marks the end of my term as Chair of this committee, and I would like to thank Chair-Elect Jeremy Taylor for his significant contributions to the committee’s success over the past year, as well as a number of our Vice-Chairs who have consistently stepped in to ensure that the committee continues its tradition of delivering outstanding value to its members (you know who you are!). My term as Chair of the committee has been very rewarding from both a professional and personal standpoint, and in that regard, I would like to thank Gene Beckham, Hall McKinley, Roy Cohen, and Chad Marchand for their leadership and guidance. With the leadership track the committee has in place and the continued leadership from past chairs such as the aforementioned gentlemen, the committee is in very good hands for years to come.

Warmest Regards,
Jeffrey D. Stupp
FOLLOWING THE MONEY: FREIGHT BROKERS CONTINUE TO BE IN THE CROSS HAIRS OF THE PLAINTIFFS’ BAR

By: William S. Walton

Confronted by a lawyer and told that he was being held responsible for the actions of another person (over whom he had no control), Charles Dickens’ character in Oliver Twist, Mr. Bumble, does not mince words: “if the law supposes that, [then] the law is an ass—an idiot.” Depending upon one’s perspective, many in the transportation industry have been left scratching their heads and agreeing with Mr. Bumble after reviewing recent judicial decisions imposing liability on transportation freight brokers for accidents involving truck drivers whom they did not know, hire, or train and who were operating equipment which the broker did not own or maintain at the time of an accident.

Those who have tried to operate a freight brokerage business1 profitably since the 2004 Maryland decision in Schramm v. Foster2 have learned the hard way that the plaintiffs’ bar always “follows the money.” After exhausting insurance available to a trucking company involved with a catastrophic accident, plaintiffs’ lawyers, aided by broad federal administrative regulations and jurisprudence who have been willing to expansively interpret such regulations, have increasingly (and successfully) aimed at freight brokers as their new “deep pocket.”

The “theories” advanced against freight brokers have centered in several primary categories. First, plaintiffs have maintained that the motor carrier acted as the “agent” of the freight broker and therefore argued that the freight broker should be held vicariously liable for the actions of the motor carrier in causing an accident. The latter theory presents unique, although not insurmountable, problems in demonstrating that the broker exercised a requisite degree of control over the motor carrier. A second theory of liability which has also been recently mined successfully by plaintiffs’ lawyers is the theory that the freight broker “negligently hired” the motor carrier and therefore should be held liable for the actions of the motor carrier.

In July, 2013, the federal district court for the Western District of Pennsylvania recently reinforced the potential liability of a freight broker pursuant to a negligent hiring theory by denying summary judgment to the broker in Shrosphire v. TQL, Inc. et. al.3 Shrosphire involved a wrongful death action following a tractor trailer crash. As commonly is the case, the tractor-trailer involved in the accident was leased (with an option to purchase) to another defendant. That defendant entered into an Owner Operator Lease Agreement with yet another defendant, Euro Trans. Euro Trans then entered into an agreement with TQL, a broker, to transport municipal waste. Euro Trans was identified as an independent contractor in its agreement with the broker.

The plaintiff in Shrosphire argued that since Euro Trans only maintained a “Conditional” rating with the Department of Transportation (“DOT”) at the time it was retained by the broker, TQL, TQL had a duty to inquire further regarding the Euro Trans safety management program. TQL retained the right (but was not required) to terminate its agreement with Euro Trans if Euro Trans maintained any DOT rating less than “Satisfactory.” Denying TQL’s motion seeking to dismiss the negligent hiring claim, the Pennsylvania court observed that, “if TQL had completed its due diligence and terminated the Agreement with Euro Trans because of its ‘Conditional’ DOT safety rating, [the driver] would not have been driving the route brokered through TQL and prescribed by Euro Trans.” As a result, once again, a broker faces a trial involving an accident over which it had no direct control.

The conclusion by the Shrosphire court echoes the trend by other courts to hold freight brokers to an increasingly high standard of due diligence in its selection (and retention) of motor carriers. The Pennsylvania court’s decision in Shrosphire is similar to an earlier holding by a Virginia federal court in Jones v. Robison.4 The broker in Jones, like the broker in Shrosphire, had the right to terminate its agreement with the motor carrier if the motor carrier’s rating was less than “Satisfactory” but failed to exercise the right of termination. The motor carrier in Jones also maintained less than a “Satisfactory” safety rating.

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1 A freight broker is defined by Federal Regulations as “a person who, for compensation, arranges or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers...are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.” 49 C.F.R. § 371.2
DEFENDING TRANSPORTATION BROKERS
IN CARGO LOSS & DAMAGE CLAIMS

New Case Supporting Important Defenses

By: Andrew Fay and Eric Martignetti

The recent case of *Ameriswiss Tech., LLC v. Midway Line of Ill., Inc.* equips transportation brokers and their counsel with persuasive authority supporting two important defenses to cargo loss and damage claims. First, *Ameriswiss* furnishes strong precedent for the applicability of both implied (under the Carmack Amendment) and express (under the ICCTA) preemption defenses to transportation brokers. Further, *Ameriswiss* provides solid support for the principle that, in the absence of a specific promise by the broker, breach of warranty and breach of contract claims against transportation brokers are susceptible to early dismissal.

**The Facts**

In September of 2010, Ameriswiss purchased eleven Escomatic machines and two other machines, all of which were located in Illinois. Ameriswiss paid $44,800 for the thirteen machines. Ameriswiss contracted with C.H. Robinson Worldwide, Inc. (“Robinson”) to have the machines shipped from Illinois to New Hampshire. The parties agreed that the terms of their contract were expressed in an e-mail from Robinson to Ameriswiss that states, in full: “Morrrison, IL > Holderness, NH $2600 all inclusive.” Robinson in turn hired Midway Line of Illinois, Inc. (“Midway”) to haul the machines. En route to New Hampshire, the machines were destroyed when Midway’s truck was involved in a single-vehicle accident in New York. Ameriswiss sued Robinson for negligence, alleging that Robinson failed to select a competent carrier to transport the machines, and for breach of warranty and breach of contract, alleging that Robinson failed to safely transport the machines and failed to procure adequate insurance for the machines. Robinson moved for summary judgment, arguing that Ameriswiss’ negligence claims were pre-empted by federal law and that its claims for breach of contract and breach of warranty should be dismissed as a matter of law.

**Two Theories of Preemption Are Available To Brokers**

In considering Robinson’s argument that the negligence claims asserted by Ameriswiss were preempted by federal law the court noted that “[t]he preemptive effect of the Carmack Amendment over state law governing damages for the loss or damage of goods has been reiterated by the Supreme Court in many cases and is well established.” Judge Landya McCafferty reasoned that “[i]f Robinson was a carrier rather than a broker . . . then Ameriswiss’ negligence claim would certainly be barred by the implied preemptive effect of the Carmack Amendment.” The court held that Ameriswiss’ tort law claims against the broker, Robinson, were impliedly preempted since the Carmack Amendment broadly “defines covered transportation services as being ‘services related to that movement, including arranging for . . . .’” The movement of “property.” Finding the decision in *York v. Day Transfer Co.* compelling, the court held that “[b]ased on the persuasive reasoning of *York*, this court has little difficulty concluding that [the negligence claims] are all impliedly preempted by the Carmack Amendment, notwithstanding Robinson’s role as a broker.”

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alarmingly for transportation employers, becoming one of the largest growth areas in transportation litigation. A number of federal laws currently provide protection to employees in the transportation industry. Nowhere, however, do these federal whistleblower protection laws intersect more closely with each other than in the case of employees working in the intermodal transportation industry.

This article will address two such laws. The Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20109, protects employees of railroads and their contractors who report safety violations or personal injuries. The Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, protects truck drivers and other employees who refuse to violate regulations governing the safety of commercial motor vehicles. These two statutes overlap in several ways, exposing transportation industry employers beyond simply railroads and trucking companies to liability. This can include, for example, terminal operators in intermodal facilities, as well as companies which contract with railroads to provide mechanical repair services to railroad and trucking equipment within such facilities.

While the extent to which liability can co-exist under the two statutes is not yet clear, transportation defense attorneys who have protected clients by educating them regarding the impact of one of the statutes should recognize that there is another significant area in which companies working in the intermodal transportation industry may be implicated.


2 This investigation must be conducted by a regulatory or law enforcement agency, a member or committee of Congress, a person with supervisory authority over the employee, or a person who has the authority to investigate, discovery or terminate the misconduct.

3 This investigation must be conducted by the Secretary of Transportation, the Secretary of Homeland Security or the National Transportation Safety Board.

4 This information must be furnished to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or a regulatory or law enforcement agency.

WHISTLEBLOWER LAWS’ EFFECT ON THE TRANSPORTATION INDUSTRY

By: Mary Louise Kandyba and Cherie Getchell

THE FEDERAL RAILROAD SAFETY ACT

The FRSA Whistleblower provision prohibits a railroad carrier, its officers or employees, or its contractors or subcontractors, from discharging, demoting, suspending, reprimanding or discriminating against an employee who has engaged in specified protected activity. 49 U.S.C. § 20109(a). Protected conduct includes:

(a) providing information or assisting in an investigation regarding conduct which the employee reasonably believes constitutes a violation of the law, or relates to railroad safety or security, or gross fraud, waste or abuse of public funds;

(b) refusing to violate a law relating to railroad safety or security;

(c) filing a complaint or testifying in a proceeding relating to enforcement of the FRSA, the safe transportation of hazardous materials, or the safe transportation and inspection of food;

(d) notifying the carrier or the Secretary of Transportation of a work-related personal injury or illness;

(e) cooperating with a safety or security investigation;

(f) furnishing information relating to any accident or incident resulting in injury, death or damage to property occurring in connection with railroad transportation;

(g) accurately reporting hours on duty.

Because the protections referred to above extend to the employees of railroad contractors and subcontractors,
these provisions potentially implicate any railroad contractor doing business at an intermodal facility, as well as any trucking company that contracts with railroads for the transportation of containers and which transports containers to and from intermodal yards.\footnote{The FRSA also protects employees who refuse to work because of hazardous safety or security conditions in § 20109(b), but by its terms, that provision is applicable only to railroads and therefore will not be addressed herein.}

The FRSA also prohibits a rail carrier “or person covered under this section” from failing to provide medical care to an injured employee when requested, and from interfering with an employee’s medical treatment related to an on-duty injury. \footnote{Because the STAA does not specifically provide for an extension of coverage to contractors or subcontractors of commercial motor carriers, railroads cannot apparently have liability under the whistleblower provisions of the Act.} By its terms, however, the statute would appear to extend protection to a mechanic employed by a company which provides repair services to commercial motor vehicles in a railroad intermodal yard, or an employee of a terminal services company involved in loading and unloading containers onto and from commercial motor vehicles in such a yard.\footnote{Santiago v. Metro North, ARB No. 10-147, July 25, 2012, at p. 10.}

In construing statutory language, courts must presume that the statute says what it means and means what it says.\footnote{See Memorandum of Agreement between the Federal Railroad Administration and the Occupational Safety and Health Administration (July 16, 2012) available at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=MOU&p_id=1125.} Applying this logic, a “person covered under this section” should include a contractor or subcontractor of the railroad, as the statute specifically states that its coverage extends to those entities. There does not seem to be any good reason, therefore, to exclude them.

The current anti-retaliation provisions of the FRSA were enacted in 2007, and enforcement of these provisions was transferred to OSHA at that time. Previously, enforcement power had existed in the National Railroad Adjustment Board or a board of adjustment created under the Railway Labor Act, \footnote{45 U.S.C. § 151 (1996).} Because of the recency of these provisions, there are few court cases which interpret the statute or provide guidance to employers or their attorneys regarding the scope of its provisions. There are rulings of arbitrators following administrative hearings held for claims made under the Act, but these primarily assess whether retaliation has occurred under the facts of a particular case, rather than interpret the scope of the FRSA in this area.

Because the FRSA is remedial in nature, however, it is likely that, consistent with the decisions of a number of federal courts, it will be given a broad construction and a liberal interpretation in order to further the remedial, beneficial, and humanitarian purposes behind the Act. \footnote{See, e.g., Atchison, Topeka & Santa Fe Ry. Co. v. Buell, 480 U.S. 557, 562, 107 S.Ct. 1410, 94 L.Ed.2d 563 (1987); Consolidated Rail Corp. v. Gottschall, 512 U.S. 532, 543, 114 S.Ct. 2396, 129 L.Ed.2d 427 (1994).} In the absence of case law interpreting the FRSA, courts can “look to case law applying provisions of other federal whistleblower statutes for guidance.” \footnote{Collins v. Beazer Homes USA, Inc., 334 F.Supp.2d 1365, 1374 (N.D. Ga. 2004).}

**THE SURFACE TRANSPORTATION ASSISTANCE ACT**

The STAA provides protection to transportation industry employees, defined to include:

1. a driver of a commercial motor vehicle (including an independent contractor while in the course of personally operating a commercial motor vehicle);
2. a mechanic;
3. a freight handler; or,
4. any individual other than an employer (a) who is employed by a commercial motor carrier; and (b) whose employment directly affects commercial motor vehicle safety.\footnote{563 (1987)}

Because the STAA does not specifically provide for an extension of coverage to contractors or subcontractors of commercial motor carriers, railroads cannot apparently have liability under the whistleblower provisions of the Act.\footnote{5} By its terms, however, the statute would appear to extend protection to a mechanic employed by a company which provides repair services to commercial motor vehicles in a railroad intermodal yard, or an employee of a terminal services company involved in loading and unloading containers onto and from commercial motor vehicles in such a yard.
Protected conduct under the STAA includes:

(a) Filing a complaint, beginning a proceeding relating to the violation of a commercial motor vehicle safety or security regulation, standard, or order, or testifying or planning to testify in such a proceeding;

(b) Refusing to operate a vehicle because the operation violates a regulation standard, or order of the United States related to commercial motor vehicle safety, health, or security;

(c) Having a reasonable apprehension of serious injury to the employee or the public because of the vehicle’s hazardous safety or security condition;

(d) Accurately reporting hours on duty;

(e) Cooperating or being perceived to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(f) Furnishing or being perceived to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual, or damage to property occurring in connection with commercial motor vehicle transportation.

Concerning the protected activity set forth in paragraph (a), the complainant need not explicitly state the commercial motor vehicle safety standard that is violated in order for the activity to be considered protected. The Secretary of Labor has stated that so long as the complaint raises safety concerns, the person making the complaint will not be expected to cite standards or rules like a trained lawyer. The statute requires however that the complaint relate to the violation of a commercial motor vehicle safety standard. Other safety concerns which, however legitimate, fail to relate to a violation of a commercial motor vehicle safety standard are not entitled to protection under this section. Notably, a complaint under the STAA relating to a safety violation will be protected even if the complaint is deemed meritless. The employee’s complaint must only be based upon a reasonable belief that a violation is occurring in order for the STAA’s protections to apply.

On the other hand, with regard to the conduct outlined above in paragraph (b), an employee’s subjective opinion will not win protection under the STAA. Rather, the employee must prove that his assessment is correct. Here too, the violation must be of a federal nature, and not merely the employee’s own subjective notion. Moreover, there is no requirement in the statute that the violation must immediately occur. It may occur prospectively.

With regard to the protected conduct set forth in paragraph (c), the standard is only that the employee have a reasonable apprehension of injury of such a nature that a reasonable person, under the same circumstances confronting the employee, would conclude that there is a real danger of accident, injury or serious impairment to health. The STAA does not require that the hazardous condition later be confirmed or even exist. The employee must, however, sufficiently and clearly communicate or attempt to communicate his or her concerns to the employer and be unable to obtain any correction of these concerns.

AN OVERALL VIEW OF THE TWO STATUTES

The FRSA and the STAA share similarities with regard to the conduct they protect, the test which is employed to determine whether the employee should prevail, and most of the remedies awarded if the employee prevails. Both the FRSA and STAA employ the “contributing factor” test. This means that a preponderance of the evidence must indicate only that the protected activity was a contributing factor in the adverse action. Also, both the STAA and the FRSA contain similar remedies should the employee prevail, including reinstatement with the same seniority and benefits; payments of back pay with interest; compensatory damages, including, where appropriate, special damages; expert witness and reasonable attorney’s fees; and punitive damages not to exceed $250,000 in certain cases.

The differences between the FRSA and the STAA begin with what each classifies as protected activity. The STAA does not extend the same protections as the FRSA for notifying the carrier or the Secretary of Transportation of a work-related personal injury or illness. In that regard, employers in the trucking industry and in particular, intermodal terminal operators, may face exposure for injuries of their own employees if that
injury or illness occurred while working as a contractor or subcontractor of a railroad carrier.

Further, while the FRSA specifically contains an election of remedies provision barring recovery under the FRSA and another statute, for the same allegedly unlawful act of the railroad carrier, the STAA does not. The possibility of recovering under both the STAA and another whistleblower provision, such as an 11(c) complaint under OSHA, is specifically discussed in 29 CFR 1978.103, paragraph (e). That regulation provides that a “complaint filed under STAA that alleges facts that would also constitute a violation of section 11(c) of the Occupational Safety and Health Act (29 U.S.C. 660(c)), will be deemed to be a complaint under both the STAA and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would also constitute a violation of STAA will be deemed to be a complaint filed under both STAA and section 11(c). Normal procedures and timeliness requirements under the respective statutes and regulations will be followed.” 29 C.F.R. § 1978.103.

An example given by OSHA in the interim final rules, in explaining dual recovery under the STAA and 11(c) of the OSH Act, was that of a freight handler, loading cargo onto a commercial motor vehicle, who may complain about both the overloading of that vehicle (a safety complaint protected by the STAA) and also about an unsafe forklift (a safety complaint covered by the OSH Act). OSHA’s practice would be to investigate whether either or both of these protected activities caused the adverse action. The FRSA does not, on the other hand, contain any provision concerning a dual FRSA and 11(c) action. Given that railroad safety issues have been traditionally enforced by the Federal Railroad Administration rather than OSHA, at least until the delegation of authority to OSHA of enforcement of the whistleblower protections, this is not surprising.

The STAA also differs from the FRSA in that it permits a preliminary order of abatement after a complaint is filed, including reinstatement if the employee has been discharged, if the preliminary investigation finds reasonable cause to believe that the complaint has merit. The FRSA does not contain any such provision.

While it appears that the STAA is in many areas a more generous statute to employees, the FRSA’s protections relating to the reporting of a work-related personal injury or illness provide significant exposure to employers in the trucking industry who are also working for contractors or subcontractors of railroads. If you are a trucking employer who is performing work for a rail carrier pursuant to a contract, your liability exposure will be greater under the FRSA’s whistleblower provisions.

Ms. Getchell is a trial attorney who represents self-insured companies in casualty and commercial litigation, including employment matters, and municipalities and their employees in civil rights disputes. Ms. Getchell joined Daley Mohan Groble in 2012 from a boutique law firm specializing in the defense of police officers in civil rights claims, where she gained significant litigation experience, including dismissals of claims through motion practice at the pleading and summary judgment stages, and as a member of trial teams that obtained defense verdicts in federal jury trials. She graduated from The John Marshall Law School in 2009. Ms. Getchell volunteers as a Guardian ad litem with Chicago Volunteer Legal Services and is a member of the American Bar Association, the Chicago Bar Association, the Illinois State Bar Association, and the Asian American Bar Association.

An experienced litigator, Mary Louise Kandyba currently represents a number of short line railroads, intermodal terminal service companies, and local and interstate trucking companies, along with other closely held corporations, on various litigated matters. She also handles a wide assortment of employment litigation, which has recently expanded substantially into the whistleblower areas, particularly cases brought under the Federal Railroad Safety Act. Mary Louise graduated Magna Cum Laude from the University of Illinois with a Bachelor of Science in Journalism and attended DePaul University’s College of Law, where she graduated with honors in the top 5% of her graduating class. Since 2005, she has been a partner at Daley Mohan Groble PC in Chicago. Mary Louise is currently a member of the American Bar Association, including the Commercial Transportation Section of the ABA, the Illinois State Bar Association, the South Suburban Bar Association, the National Association of Railroad Trial Counsel, and the Association of Transportation Law Professionals.

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10 “An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the railroad carrier.” 49 U.S.C. 20109 (f).
FRACKING CREATES…  

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equipment used in the process, building materials for water and gas pipelines, building materials for structures on drilling sites, building materials for waste processing facilities, and building materials for roadways and housing projects to be used by the many individuals working the wells.

HYDRAULIC FRACTURING (“FRACKING”)

For many years, oil and gas wells were drilled solely vertically. In the late 1940s, a method was developed so that wells could be drilled horizontally, into the rock layer surrounding vertical wells. Hydraulic fracturing, dubbed by some as “fracking,” is a process whereby specially treated water and sand is injected at high pressure into horizontal wells. The pressure of the water and sand fractures the rock layer surrounding the well. Chemicals contained in the specially treated water cause petroleum and natural gas deposits to be released from the rock layer. The injected water then seeps up to the surface of the well site where it is collected, stored, processed, and either reused or disposed. This water has been dubbed “dirty” or “produced” water.

CONTROVERSY CONCERNING CHEMICALS

The water injected into the wells is chemically treated prior to injection. The chemicals used include hydrochloric acid, ammonium chloride, sodium chloride, magnesium peroxide, isopropanol, methanol, boric acid, and some radioactive materials. Many of the chemicals are carcinogenic and, or, toxic.

Currently, the exact chemical formulas are considered protected proprietary information, i.e., a trade secret. A provision of the Energy Policy Act of 2005, referred to as the “Halliburton Loophole,” exempts the oil and gas industry from the disclosure requirements of the Safe Drinking Water Act. In 2009, 2011, and again in May 2013, the United States Congress proposed the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act, which would require the disclosure of the chemicals, but not the formulas, used in the fracking process. This proposed Act also includes a provision requiring manufacturers to disclose the proprietary chemical formulas to treating physicians, nurses, or a State’s Administrator in emergency situations, such as a spill during a trucking accident or a spill or leak at a well site, when the information is needed to provide appropriate medical treatment. The Act has not yet passed, and disclosure is not required at this time. Thus, drivers and haulers often do not know the chemical makeup of the water they are transporting.

Alarmingly, haulers often unknowingly transport radioactive materials in the waste water. In one instance, a truck carrying a load of fracking drilling waste, mostly from the Marcellus Shale field in Pennsylvania, was sent away from the MAX Environmental Technologies hazardous materials landfill in Pennsylvania after it set off radioactivity alarms. Landfill officials sent the truck, which was also owned by MAX Environmental Technologies, back to the drilling site where it originated, in Greene County, Pennsylvania. The materials in the truck measured ninety-six (96) microrem. The limit for radioactive material at the MAX landfill is ten (10) microrem. It was determined that radium 226 was responsible for causing the radiation alert. What is a hauler to do with materials being hauled if this situation occurs?

Many of the risks associated with hauling materials and equipment used in the fracking process are parallel to the risks associated with hauling any other material, even hazardous material. It is unclear whether all, or any, “dirty” or “produced” water is classified by the U.S. Department of Transportation as a hazardous material. However, hauling water used in the fracking process can present even more risk than that associated with hauling traditional hazardous materials. Not knowing the chemical makeup of the material could render emergency situations, such as an automobile accident, difficult because the authorities who are called to investigate the situation do not know what chemicals are involved. This type of emergency situation may

6 See David Spence, “Fracking Regulations: Is Federal Hydraulic Fracturing Regulation Around the Corner?”
7 See National Geographic, “The New Oil Landscape,” March 2013; see also David Spence, “Fracking Regulations: Is Federal Hydraulic Fracturing Regulation Around the Corner?”
9 Id.
11 Id.
12 Id.
13 Id.
14 Id.
present a risk of environmental contamination; potential for explosion; and serious personal injury to individuals exposed to the waste water and its fumes. Liability related to delay in identification of the toxins should be attributed to the chemical manufacturer or the drilling company, not the trucking company hauling the material. Trucking companies can reduce risk exposure by requiring that a Material Safety Data Sheet be included with all materials hauled.

SUPPLY AND DEMAND FOR HAULERS – MORE HAULERS, MORE ACCIDENTS

The fracking process demands haulers, and the trucking industry has responded. The sheer volume of materials required for fracking demands a large number of haulers. One well may require between two and eight million gallons of water and up to one million pounds of sand. When one considers that the Cline Shale formation in Texas, alone, is expected to have more than 100,000 wells, the true impact on trucking is remarkable.

Fracking requires far more truck trips than traditional drilling. The New York State Department of Environmental Conservation estimates that high-pressure fracking in a horizontal well requires 3,950 truck trips per well during early development. This is two to three times greater than that required for conventional vertical wells. Roughly 500 to 1,500 of these truck trips are required just to haul the millions of gallons of water used. Roughly 175 truck trips are required for hauling equipment.

Further, fracking sites are located all across the country. North Dakota contains the Bakken Oilfield; Texas contains the Cline Shale, the Barnett Shale, and the Eagle Ford Shale; Utah contains the Uintah Basin; and several states, including New York, Ohio, Pennsylvania, Maryland, and West Virginia contain the Marcellus Shale. The high volume of materials required for the process and the vast span of wells creates a unique opportunity for haulers. Small haulers are racing to expand business by earning jobs created by the fracking industry. Larger haulers are expanding by acquiring smaller ones. However, fracking creates unique risks that small haulers may not be prepared to handle when an accident occurs. An increase in the number of trucks and trailers on the road inevitably leads to an increase in the number of accidents involving haulers. Acquisition by a larger operation may prevent major negative consequences to small operations as the bigger companies are likely better able to deal with and absorb a catastrophic loss.

UNIQUE RISK EXPOSURE TO HAULERS

Haulers involved in the fracking industry should be prepared for workers’ compensation cases involving drivers’ exposure to fumes from chemically treated water and exposure to silica dust.

As discussed supra, the water injected into the wells is chemically treated prior to injection. The water can be treated on site, or it can be treated elsewhere and hauled to the site. While the water is pumped into or out of a hauler’s tank, drivers face the possibility of exposure to fumes rising from chemically treated, and potentially toxic, water. The threat is more severe if the water has been stagnant for a long period of time. Exposure to fumes rising off “produced” water can cause damage to drivers’ internal organs, potentially leading to workers’ compensation claims. To reduce the risk, drivers should review Material Safety Data Sheets, if available, and avoid inhaling fumes from the chemically treated water by wearing noxious gas detectors.

The National Institute for Occupational Safety and Health has conducted field studies indicating that individuals involved in fracking operations may be exposed to dust with high levels of respirable crystalline silica during the fracking process. Large quantities of silica sand are used in the fracking process. The sand is delivered by truck and unloaded onto smaller vehicles that transport the sand around the fracking sites. Transporting, moving, and refilling sand can release dusts containing silica into the air. Breathing silica can result in silicosis, a lung disease causing inflammation.
and scarring of the lung tissues and reducing the lungs’ ability to take in oxygen. The risk of contracting silicosis can be limited by utilizing engineering controls and respiratory protection to minimize exposure to silica. Work should be performed up wind of the sand, individuals should wear filtering face pieces and respirators, and drivers should keep their truck cabs closed and use air conditioning filtration systems. Haulers can reduce risk of workers’ compensation claims by requiring regular medical monitoring for drivers who are exposed to silica.

**UNIQUE LOGISTICS FOR HAULERS**

The fracking industry creates unique logistic issues for trucking companies including access to well sites; new tank implementations; and accounting for time required to fill and empty tanks. Many well sites are located in small, rural areas not accessible by highways or interstates. Rather, they are accessible only by narrow, winding, rural roads not suited for heavy trucks. Rural roads have a high fatality rate, even before adding the trucking traffic required by the fracking process. Some of the roads are unable to handle the increased weight and frequency of truck traffic created by the fracking industry. Drillers have met small town opposition to the upheaval caused by the influx of trucks in small towns. Some states and municipalities have threatened to close road use altogether if dangers are presented by poor roadway conditions. Trucking companies must ensure driver compliance with various state and municipality regulations.

Concerning logistics and equipment, reaching well sites often requires off road driving. In those situations, smaller trucks are often used. Hauling companies are utilizing multiple types of truck configurations including straight trucks; pups; semis; and other straight truck-pup configurations. Further, activity at well sites is continuous, requiring trucks to be available at all times. Some companies have implemented new dispatching systems that are precisely timed to the demand schedule of the wells. Savage Services contracted with drillers at the Uintah Basin in Utah to provide water removal services. The contract called for Savage to manage the transportation of more than 460 million gallons of wastewater at 2,000 well sites each year. The company acquired 32 specialized vacuum-transfer rigs to comply with the contract.

Additionally, companies hauling fracking water require tanks that can hold chemically treated water. To avoid corrosion, stainless steel is often preferred. Stainless tanks often cost more, but they are more durable. Haulers are also implementing electronic roll stability controls, which lead to less spills, and ground-mounted controls, which prevent drivers from having to climb onto tanks and also lighten tanks by removing the need for ladders and walkways. Lighter tanks mean less weight and more freight.

Other companies have innovated and invented equipment specifically for use by the fracking industry. A small, family-owned company called Cliffhanger, Inc. has developed a prototype large-scale hot oil truck to heat the water that is injected into the wells. Heating the water is said to make the process more efficient. The company designed a 53-foot truck that is claimed to be twice as big and one-third more efficient and safer than other trucks used to heat fracking water. The United States Department of Transportation awarded funding for a trucking study that focused on retrofitting five-axle trucks with a sixth axle. This would allow trucks to accommodate more weight and also maintain better gas mileage. It would decrease fuel consumption and preserve infrastructure, thus reducing transportation costs.

Concerning time, drivers spend considerable time waiting while water and sand are loaded at supply sites and unloaded at well sites. This time counts toward the maximum 14 hours a driver can work per day. Many trucking companies and drivers desire to extend their daily on-duty hours by using an exemption targeted for

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26 Id.
27 See Ryan Delaney, “Fracking Will Bring Heavy Truck Traffic, but Towns are Ready.”
29 Id.
30 Id.
31 Id.
32 Id.
34 Id.
35 Id.
special “oil field service” equipment. The exemption is detailed in Title 49 of the Code of Federal Regulations, Part 395.1(d)(2). However, the Federal Department of Transportation issued regulatory guidance in June 2012 explaining that drivers of typical commercial motor vehicles that transport water and sand in and out of well sites cannot use the “oil field service” exemption. The Department of Transportation provided:

Operators of CMVs that are used to transport supplies, equipment, and materials such as sand and water to and from the well sites do not qualify for the “waiting time exception” even if there have been some modifications to the vehicle to transport, load, or unload the materials, and the driver required some minimal additional training in the operation of the vehicle, such as running pumps or controlling the unloading and loading process. It is recognized that these operators may encounter delays caused by logistical or operational situations, just as other motor carriers experience delays at shipping and receiving facilities.

The exemption may be used by operators of commercial motor vehicles that are specially constructed for use at oil and gas well sites and where operators have undergone extensive training in the operation of complex equipment and spend little time actually driving the vehicles.

If companies and drivers cannot use the exemption, companies must hire more drivers, purchase more trucks, and place more trucks on the road. This leads to increased costs to the hauler and possibly more accidents.

**AUTOMOBILE INSURANCE REQUIREMENTS**

Vehicles must be properly insured for hauling materials associated with the fracking industry. Most will need commercial automobile liability, perhaps an excess policy, and, or, pollution liability. The United States Department of Transportation’s Safety Rating of the fracking industry may cause higher insurance deductibles for trucking operations. In July 2012, the Associated Press reported on an internal memorandum from Nationwide Mutual Insurance Company detailing underwriting guidelines regarding fracking. The memorandum was posted on websites of groups in upstate New York opposed to fracking. The Associated Press quoted the memorandum as follows:

> After months of research and discussion, we have determined that the exposures presented by hydraulic fracturing are too great to ignore. Risks involved with hydraulic fracturing are now prohibited for General Liability, Commercial Auto, Motor Truck Cargo, Auto Physical Damage and Public Auto (insurance) coverage.

The Associated Press stated a spokesperson for Nationwide confirmed the memorandum was genuine, but not intended for public dissemination. Nationwide, in a press release dated July 13, 2012, provided that fracking-related losses were never a covered loss under personal or commercial lines policies. Therefore, haulers should pay special attention to insurance requirements concerning hauling materials associated with fracking, to ensure coverage.

**CONCLUSION**

Overall, the fracking industry has increased business for haulers, and this is a positive development. However, it has also increased risk. Haulers should ensure they thoroughly investigate the risks associated with hauling fracking materials before becoming involved in the industry. Once involved, haulers must be vigilant with their risk management practices. Many issues concerning hauling materials used in the fracking process remain unresolved in the regulatory framework. Therefore, haulers should constantly monitor developments in order to ensure compliance and to minimize risk.

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38 Id.
40 Id.
41 Id.
43 Id.
44 Id.
FOLLOWING THE MONEY: ...
Continued from page 5

Despite expert testimony offered by the broker in Jones that a freight broker had no duty to further investigate the motor carrier’s Safety Status Measurement System score (commonly referred to as “SafeStat” score) during the carrier selection process, the Jones court overruled the broker’s motion for summary judgment and allowed the plaintiff’s negligent hiring claims to move forward.

The proposition that freight brokers should use reasonable care in selecting motor carriers to haul freight is not new, and was initially highlighted in the well-known case of Schramm v. Foster. Schramm involved a federal lawsuit for the negligent hiring of a motor carrier involved with a catastrophic accident. In discharging its duty to select competent carriers, the federal court in Schramm indicated that the broker should be able to demonstrate that it checked the SafeStat scores and cautioned that brokers should be able to demonstrate that the motor carrier which the broker selected had not manipulated its business practices to avoid unsatisfactory SafeStat ratings.

The Federal Motor Carrier Safety Administration (“FMCSA”) implemented the SafeStat scoring system in 2001 to identify commercial carriers for potential enforcement actions by FMCSA. In December 2010, the FMCSA replaced SafeStat with the Compliance Safety Accountability Safety Management System (often referred to as “CSA/SMS” system). As a general proposition, the CSA/SMS system gathers random information from roadside inspections and other sources, compiles the data and compares it with the safety records of carriers and drivers. The system assigns a score (now called a BASIC score) to the carrier. The methodology employed by the system to “score” a carrier has undergone several ruminations and continues to be a “moving target.” Nonetheless, as demonstrated by the Jones decision, the scoring system also continues to be a fertile field for the plaintiffs’ bar to establish negligent hiring claims.

The CSA/SMS system includes a specific disclaimer indicating that one should not draw conclusions about a motor carrier’s overall safety condition based upon such scores. To the contrary, FMCSA advises that, unless a motor carrier has received an “Unsatisfactory” rating safety rating under FMCSA’s completely different Safety Fitness Procedure (“SFP”) program, or unless the carrier has otherwise been directed to cease operations by the FMCSA, the motor carrier is authorized by the federal government to operate on the nation’s roadways. In other words, the FMCSA specifically advises that, absent an “Unsatisfactory” rating under the SFP program, no conclusion may be (or should be) drawn from a motor carrier’s BASIC data. In Jones, despite the disagreement as to the interpretation of such data, the Virginia federal court suggested that the SafeStat data (and by implication, subsequent BASIC data) may be admissible in a negligent hiring action against a freight broker where motor carrier had been provided with a less than “Satisfactory” rating under the SFP program.

Admission of such data against the motor carrier and a freight broker is not without its critics. Some courts have concluded that the federal government’s own disclaimer, as well as the unreliability of the underlying data, establish that such scores are unduly prejudicial and should not be introduced into evidence. For example, in FCCI Ins. Group v. Rodgers Metal Craft, a Georgia federal district court refused to take judicial notice of a motor carrier’s SafeStat scores because the underlying data was not the type of reliable or scientific evidence contemplated by Rule 201, Fed. R. Evid. As Jones and other decisions indicate, other courts have reached the opposite conclusion and permitted introduction of various safety data from the FMCSA (including SafeStat data), to show that the carrier regularly violated hour of service rules or otherwise violated other regulations.

In addition to facing increasing claims for negligent hiring due to its selection of motor carriers, freight brokers also face increasing liability exposure based upon

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6 The BASIC scores range from 1-100 in each assigned categories, which 100 being the “worst” score for that category. Categories in the past have included Unsafe Driving, Fatigued Driving, Driver Fitness, Controlled Substances and Alcohol, Vehicle Maintenance Cargo Related and Crash.
7 49 C.F.R. Part 385.
8 The FMCSA SMA Disclaimer language has also been a subject of debate. The recent disclaimer claim contained on the FMCSA website reflect that the “the SMS results displayed on the SMS website are not intended to imply any federal safety rating of the carrier pursuant to 49 U.S.C. § 31144. Readers should not draw conclusions about a carrier’s overall safety condition simply based on data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 C.F.R. Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation’s highways,” cited by J. Tucker, Testimony Before U.S. Representatives Committee on Small Business, July 11, 2012.
agency theories. The potential for substantial liability against a freight broker based upon an agency theory is best highlighted by the recent decision of the Illinois Court of Appeals in *Sperl v. Robinson*. In *Sperl*, an Illinois jury returned (and the appellate court affirmed) a $23.7 million verdict against a freight broker, C.H. Robinson determining that Robinson was vicariously liable for the actions of a motor carrier based upon an agency theory. The Illinois appellate court observed that the existence of an agency relationship was determined based upon “all of the surrounding circumstances.” Emphasizing that the “right of control” was important in such determinations, the *Sperl* court noted that the broker retained control concerning a number of aspects of the load as well as the motor carrier’s journey and affirmed the multi-million dollar award against the broker.

Clearly, the landscape for potential liability against freight brokers, whether under theories of agency or negligent hiring of motor carriers, is expanding. As recent decisions in *Shrosphire, Jones* and *Sperl* demonstrate, freight brokers hoping for judicial relief will likely have a very long wait.

Jeffrey Tucker, then Chairman of the Transportation Intermediaries Association Carrier Selection Framework Committee, addressed the business concerns of the industry about the ever-expanding liability exposure of freight brokers last year on July 11, 2012 in testimony before the U.S. House of Representatives Small Business Committee. Mr. Tucker noted the increasing prevalence of “crippling lawsuits,” based upon expanded (and strained theories) of an “agency relationship” between freight brokers and motor carriers, as well as the increase of litigation based upon “negligent hiring theories.” As noted by Mr. Tucker: “…these succeeding cases build upon the *Schramm* case [and an] aberrant precedent that contends that brokers and shippers should second guess the FMCSA’s decision on which carriers are safe to operate by examining the safety record of each carrier before use. Doing something less may be deemed by certain courts in certain districts, or in certain states as ‘negligent entrustment’ or ‘negligent hiring.’ This second guessing scenario is why the relative scores of CSA and SMS are so dangerous.”

However, until legislative action curtails the use of FMCSA safety data or otherwise limits the scope of the duties imposed upon freight brokers to select motor carriers, freight brokers will continue to be in the cross hairs of the plaintiffs’ bar.

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13 C.H. Robinson is a federally-licensed freight broker in the business of arranging for transportation of freight on behalf of its customers. It is not a motor carrier and it does not hire drivers. Rather, like most freight brokers, its services are limited to brokering freight on behalf of other companies.
DEFENDING TRANSPORTATION...

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Thus, Judge McCafferty observed, “...there are two potential theories of preemption available in this area of the law. The first is based on implied preemption and the Carmack Amendment. The second is based on express preemption and the ICCTA.”

Given that two avenues of preemption were available to Robinson, the Court concluded that it did not matter whether Robinson was a carrier or a broker because Ameriswiss’s negligence claim against Robinson was preempted in either case:

If Robinson was a carrier rather than a broker, as Ameriswiss appears to contend, then Ameriswiss’s negligence claim would certainly be barred by the implied preemptive effect of the Carmack Amendment. Thus, Ameriswiss’s argument that Robinson was a carrier would seem to undermine its argument that its negligence claim against Robinson is not preempted. Be that as it may, the court need not determine whether Robinson was a carrier or a broker because even if Robinson was a broker, Ameriswiss’s negligence claim...[is] impliedly preempted by the Carmack Amendment and expressly preempted by the ICCTA.

Key Distinction from Chubb

Relying on Chubb, Ameriswiss argued that its negligence claims against Robinson were not impliedly preempted by the Carmack Amendment because the Carmack Amendment does not cover brokers. In Chubb, the court ruled:

The Carmack Amendment governs “motor carriers” and “freight forwarders.” The statute absolutely preempts all state common law claims against such carriers and freight forwarders. However, the Carmack Amendment does not apply to brokers. Consequently, most courts hold that brokers may be held liable under state tort or contract law in connection with shipments.

But Judge McCafferty scrutinized the Chubb decision and determined that it did not support Ameriswiss’s argument against preemption:

Here is the problem with Ameriswiss’s reliance on Chubb. In Chubb, Judge Matz relied on the same rule that Judge Lindsay relied on in Chatelaine, i.e., the Carmack Amendment does not impliedly preempt state-law claims brought against brokers because brokers are not covered by the Carmack Amendment. But, there is no indication in the Chubb order that the broker in that case ever argued, as Robinson does here, that the shipper’s claim was expressly preempted by 49 U.S.C. § 14501(c)(1). The same holds true for Intercargo, Professional Communications, Independent Machinery, and Adelman. Thus, the conclusion that is most appropriately drawn from Chubb is not that “most courts hold that brokers may be held liable under state tort...law in connection with shipments,” 243 F. Supp. 2d at 1069, but, rather, that most courts hold that state tort claims against brokers are not impliedly preempted by the Carmack Amendment.

The court concludes by acknowledging that preemption does have a different effect on claims against motor carriers than it has on claims against the other entities listed in 49 U.S.C. 14501(c)(1). When a state common-law claim against a motor carrier arising out of damage to cargo in interstate transportation is preempted, a plaintiff still has a claim against the carrier under the Carmack Amendment. But, because the Carmack Amendment creates a federal statutory remedy against motor carriers only,

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8 Id. at *13 (internal citations omitted).
9 Id. at *13–14 (citation omitted).
10 Id. at *18.
11 Id. (quoting Chubb, 243 F. Supp. 2d at 1068–69)(citations and footnotes omitted).
when a state common-law claim against . . . a broker is preempted by 49 U.S.C. § 14501(c)(1), a plaintiff is left with no claim at all against a defendant who has successfully invoked preemption. While that may seem to be an anomalous result of the interplay between the ICCTA preemption provision and the Carmack Amendment, there is no good basis for arguing that Congress did not intend that result, given its interest in standardizing and simplifying the adjudication of claims arising in the context of interstate shipping. Moreover, the ICCTA preemption provision was enacted long after the Carmack Amendment, and, presumably, was enacted with the Carmack Amendment in mind.12

Accordingly, Judge McCafferty held that Ameriswiss’s negligence claim against Robinson was impliedly preempted by the Carmack Amendment and expressly preempted by ICCTA.

Breach of Warranty and Breach of Contract Claims

The Court then considered Ameriswiss’s claim that Robinson breached its agreement with Ameriswiss by failing to transport the machines safely and by failing to ensure that the transportation of the machines was protected by appropriate insurance.13 Robinson argued that summary judgment should be granted to it on the failure to safely transport claim because it promised only to arrange for transportation of the machines and did not warrant their safe delivery.14 Ameriswiss argued that the term “all inclusive” in the parties’ agreement was a warranty of safe delivery.15 The Court granted summary judgment to Robinson, finding that there was no evidence in the record that Robinson made a promise to warrant safe delivery of the machines and that the term “all inclusive” was not a warranty of safe delivery. The Court easily disposed of the failure to insure claim, finding that “[t]he complaint . . . alleges no facts concerning any promise by Robinson to ensure the procurement of insurance in an amount satisfactory to Ameriswiss.”16

Conclusion

Ameriswiss outfits transportation brokers and their counsel with two important defenses. First, Ameriswiss supplies a solid basis to argue for early dismissal of state-law tort claims brought against a broker. In a motion to dismiss or motion for summary judgment, defense counsel should assert both implied preemption under the Carmack Amendment and express preemption under the ICCTA as reasons for dismissal of the plaintiff’s negligence claims against a broker. Second, although the plaintiff may also assert a claim for breach of warranty or breach of contract against a broker,17 Ameriswiss holds that a plaintiff asserting such claims cannot survive dismissal or summary judgment with threadbare allegations that a broker failed to transport the cargo safely or failed to procure adequate insurance. Rather, the plaintiff must allege and point to evidence in the record of a specific promise. In the absence of allegations or evidence of a specific promise, defense counsel has a strong argument for early dismissal of a breach of warranty or breach of contract claim.18

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Andrew J. Fay is a Shareholder at LeClair Ryan in Boston. Mr. Fay focuses his practice in the defense of catastrophic trucking and transportation matters and represents transportation companies and their insurers.

12 Id. at *19–20 (internal citations omitted).
13 Id. at *22.
14 Id. at *24.
15 Id.
16 Id. at 27.
17 See, e.g., Cerdant, Inc. v. DHL Express (USA), Inc., No. 2:08-C-186, 2009 WL 723148, at *7 (S.D. Ohio March 16, 2009). Importantly, in a breach of contract claim, the plaintiff is limited to “‘the parties’ bargain, with no enlargement or enhancement based on state laws or policies external to the agreement.’” Id. (quoting Am. Airlines, Inc. v. Polens, 513 U.S. 219, 233 (1995)).
## 2013-2014 TIPS CALENDAR

### September 2013
- **17** Using Excel in Complex Insurance Claims  
  Audio Webinar  
  Contact: Ninah F. Moore – 312/988-5498

### October 2013
- **8-13** TIPS Fall Leadership Meeting  
  Minneapolis Marriott Hotel  
  Minneapolis, MN  
  Contact: Felisha A. Stewart – 312/988-5672  
  Speaker Contact: Donald Quarles – 312/988-5708
- **13** Symposium: Animal Shelter and Rescue Law  
  Hyatt Regency Jacksonville  
  Jacksonville, FL  
  Contact: Ninah F. Moore – 312/988-5498
- **17-18** Aviation Litigation Fall Meeting  
  Ritz-Carlton, Washington, DC  
  Washington, DC  
  Contact: Donald Quarles – 312/988-5708

### November 2013
- **6-8** Fidelity & Surety Committee Fall Meeting  
  The Fairmont Copley Plaza  
  Boston, MA  
  Contact: Donald Quarles – 312/988-5708

### January 2014
- **16-18** 40th Annual Midwinter Symposium on Insurance Employee Benefits  
  The Driskoll Austin, TX  
  Contact: Ninah F. Moore – 312/988-5498
- **21-25** Fidelity & Surety Committee Midwinter Meeting  
  Waldorf-Astoria Hotel New York, NY  
  Contact: Felisha A. Stewart – 312/988-5672  
  Speaker Contact: Donald Quarles – 312/988-5708

### February 2014
- **5-11** ABA Midyear Meeting  
  Swissotel Chicago  
  Chicago, IL  
  Contact: Felisha A. Stewart – 312/988-5672  
  Speaker Contact: Donald Quarles – 312/988-5708