No.

Supreme Court of the United States

SHAWN MONTGOMERY,

Petitioner,

v.

CARIBE TRANSPORT II, LLC,
YOSNIEL VARELA-MOJENA,
C.H. ROBINSON WORLDWIDE, INC.,
C.H. ROBINSON COMPANY,
C.H. ROBINSON COMPANY, INC.,
C.H. ROBINSON INTERNATIONAL, INC.,
and CARIBE TRANSPORT, LLC,

Respondents.

On petition for a writ of certiorari to the
United States Court of Appeals for the Seventh Circuit

Petition for a Writ of Certiorari

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QUESTION PRESENTED

The common law permits a cause of action for negligent selection. For example, a person injured in a truck crash has a cause of action against someone that negligently selected the truck driver to transport property.

A federal statute expressly preempts state laws "related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). The statute has a safety exception, providing that the statute "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." *Id.* § 14501(c)(2)(A).

The question presented is:

Does § 14501(c) preempt a state common-law claim against a broker for negligently selecting a motor carrier or driver?

RELATED PROCEEDINGS

U.S. District Court for the Southern District of Illinois:

Montgomery v. Caribe Transport II, LLC
No. 3:19-cv-1300
Judgment entered January 11, 2024

U.S. Court of Appeals for the Seventh Circuit:

Montgomery v. Caribe Transport II, LLC
No. 24-1192
Judgment entered January 3, 2025

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INTRODUCTION

Petitioner was injured in a truck crash in Illinois. He sued the driver of the truck and the motor carrier that employed the driver. He also sued C.H. Robinson, a freight broker, for negligently selecting the carrier and driver to transport property.

Like most (if not all) states, Illinois permits an action for negligent selection. *E.g.*, *Gomien v. Wear-Ever Aluminum, Inc.*, 276 N.E.2d 336 (Ill. 1971). Negligent selection is a longstanding cause of action under the common law. *See generally* Restatement (First) of Torts § 411 (1934).

A federal statute expressly preempts state laws "related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). The statute has a safety exception, providing that the statute "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." *Id.* § 14501(c)(2)(A).

The Ninth Circuit has held that a negligent-selection claim against a freight broker is not preempted by the statute. *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020). By contrast, the Seventh and Eleventh Circuits have held that such a claim is preempted. *Ye v. GlobalTranz Enters.*, 74 F.4th 453 (7th Cir. 2023); *Aspen Am. Ins. v. Landstar Ranger, Inc.*, 65 F.4th 1261 (11th Cir. 2023).

Below, the district court was bound by the Seventh Circuit's decision and ruled that Petitioner's claim was preempted. The Seventh Circuit affirmed.

This Court should grant this petition for a writ of certiorari to resolve the circuit split.

The question is important. Under the Seventh and Eleventh Circuits' holdings, a broker who *knowingly* selects a dangerous motor carrier or driver is immune from civil liability. No matter how dangerous the carrier or driver is, and no matter if the broker has actual knowledge of the danger, negligent-selection claims against brokers cannot proceed in the Seventh and Eleventh Circuits. As the Eleventh Circuit put it, "*[a]ny* claim that a broker negligently selected a driver to haul a load of property" is preempted. *Gauthier v. Hard to Stop LLC*, No. 22-10774, 2024 WL 3338944, at *2 (11th Cir. July 9, 2024) (unpublished) (emphasis added).

The Seventh and Eleventh Circuits are wrong. A negligent-selection claim is not "related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). And even if it were, the claim would fall under the safety exception because it is part of the "safety regulatory authority of a State with respect to motor vehicles." *Id.* § 14501(c)(2)(A).

Indeed, the Seventh and Eleventh Circuits did not dispute that a negligent-selection claim is part of the "safety regulatory authority of a State." *Aspen*, 65 F.4th at 1268; *Ye*, 74 F.4th at 460. They held only that a negligent-selection claim against a broker is not "with respect to motor vehicles" because, in their view, such a claim does not have a "direct" link to motor vehicles. *Aspen*, 65 F.4th at 1271; *Ye*, 74 F.4th at 460. Yet, the phrase "with respect to" does not require a direct link. And even if it did, a negligent-selection claim against a broker has a "direct" link because there is no proximate cause unless the broker's negligence directly caused the underlying truck crash.

OPINIONS BELOW

The Seventh Circuit's decision is reported at 124 F.4th 1053 and is reproduced in the appendix at 1a. The district court's decision is unreported, but is available at 2024 WL 129181, and is reproduced in the appendix at 11a.

JURISDICTION

The Seventh Circuit entered judgment on January 3, 2025, and no petition for rehearing was filed. Justice Barrett granted an application to extend the time to file a petition for a writ of certiorari to June 2, 2025. No. 24A846. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

(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;

. . . .

49 U.S.C. § 14501(c).

STATEMENT OF THE CASE

I. Legal background

A. History of § 14501(c)

States started regulating commercial motor transportation in the early 20th century. *See* John J. George, *Motor Carrier Regulation in the United States* 5 (1929). Much of this was economically motivated, as motor carriers were profiting from the use of roads constructed and maintained by states. *See id.* at 6. Railroads and existing motor carriers were also concerned about competition. *Id.* at 7.

The ability of states to regulate interstate motor transportation was curtailed in the late 1920s, when this Court held that certain regulation violated the Commerce Clause. *See Buck v. Kuykendall*, 267 U.S. 307 (1925). Although this Court recognized that states could seek "to promote safety upon the highways," it invalidated laws that sought "the prohibition of competition." *Id.* at 315; *see also George W. Bush & Sons Co. v. Maloy*, 267 U.S. 317 (1925).

No federal regulation existed at the time. George, *supra*, at 216. So, with state regulation curtailed, interstate motor transportation had "an immunity from effective regulation." *Id.* Seeking to fill this vacuum, in 1935, Congress gave the Interstate Commerce Commission authority to regulate motor transportation. Motor Carrier Act of 1935, ch. 498, 49 Stat. 543.

"Destructive competition abated, and during the half century which followed, motor carrier service was ubiquitously available throughout the nation at a price which was 'just and reasonable.'" Paul Stephen Dempsey, *Interstate Trucking: The Collision of Textbook Theory and Empirical Reality*, 20 Transp. L.J.

185, 187 (1992). "Nearly a half century later, the fire kindled in a movement which found economic regulation wasteful and hateful, and deregulation was advanced as the means to achieving a more efficient and productive economy." *Id.*

Notably, Congress passed the Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705. Congress similarly deregulated the trucking industry. Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793. In doing so, Congress found that the then-existing regulatory structure had "tended in certain circumstances to inhibit market entry" and that "protective regulation ha[d] resulted in some operating inefficiencies and some anticompetitive pricing." *Id.* § 3.

Congress later passed the Federal Aviation Administration Authorization Act of 1994 (FAAAA), Pub. L. No. 103-305, 108 Stat. 1569. In section 601 of the act, Congress found that the regulation of transportation by the states was hurting the economy and "certain aspects of the State regulatory process should be preempted." *See id.* § 601(a). For example, states were imposing "tariff filing and price regulation" as well as regulation that stifled competition. H.R. Rep. No. 103–677, at 86–87 (1994) (Conf. Rep.).

Congress therefore enacted two adjoining, similarly worded preemption provisions, both of which were subjected to identically worded exceptions for safety laws "with respect to motor vehicles." FAAAA § 601(b). The first provision was titled "Preemption of State Economic Regulation of Motor Carriers," and the second provision governed when air carriers or their "affiliate[s]" are "transporting property by aircraft or by motor vehicle." *Id.* The first provision was then amended and codified as 49 U.S.C. § 14501(c)—the statute at issue in this case. *See* ICC Termination

Act of 1995, Pub. L. No. 104-88, § 103, 109 Stat. 803, 899.

In short, the statute preempts state laws "related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). But, in relevant part, it does not preempt "the safety regulatory authority of a State with respect to motor vehicles." *Id.* § 14501(c)(2)(A). Congress included this safety exception "to ensure that its preemption of States' economic authority over motor carriers of property, § 14501(c)(1), 'not restrict' the preexisting and traditional state police power over safety." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 426 (2002).

B. This Court's decisions on § 14501(c)

This Court has cited § 14501(c) in four decisions. Those decisions are summarized below.

First is *City of Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424 (2002). The question presented was "whether the state power preserved in § 14501(c)(2)(A) may be delegated to municipalities, permitting them to exercise safety regulatory authority over local tow-truck operations." *Id.* at 428. This Court held that "§ 14501(c) does not bar a State from delegating to municipalities and other local units the State's authority to establish safety regulations governing motor carriers of property, including tow trucks." *Id.*

Second is *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364 (2008). The question presented was whether § 14501(c) preempted "two provisions of a Maine tobacco law, which regulate[d] the delivery of tobacco to customers within the State."

Id. at 367. This Court held that the provisions were preempted under paragraph (c)(1). *Id.* This Court did not interpret the safety exception in subparagraph (c)(2)(A). *Id.* at 367–77.

Third is *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251 (2013). The question presented was whether § 14501(c) preempted New Hampshire laws governing the disposal of abandoned vehicles by a towing company. *Id.* at 254. This Court held that "state-law claims stemming from the storage and disposal of a car, once towing has ended, are not sufficiently connected to a motor carrier's service *with respect to the transportation of property* to warrant preemption under § 14501(c)(1)." *Id.* Again, this Court did not interpret the safety exception in (c)(2)(A). *Id.* at 254–66.

Fourth is *American Trucking Ass'ns v. City of Los Angeles*, 569 U.S. 641 (2013). The question presented was whether § 14501(c) preempted certain provisions of an agreement that trucking companies were required to sign before they could transport cargo at the Port of Los Angeles. *Id.* at 644. This Court held that the provisions were preempted. *Id.* Once again, this Court did not interpret the safety exception in (c)(2)(A). *Id.* at 644–55.

C. The circuit split

Three circuit courts of appeal have decided whether § 14501(c) preempts negligent-selection claims against freight brokers.[1] Those decisions are summarized below.

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[1] A decision is expected from a fourth court of appeal—the Sixth Circuit—which held oral argument on January 29, 2025. *See Cox v. Total Quality Logistics, Inc.*, No. 24-3599 (6th Cir.).

First is *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020). There, C.H. Robinson was sued for negligently selecting the motor carrier that crashed into the plaintiff. *Id.* at 1020. The Ninth Circuit determined that the claim was "related to" broker services because it sought to hold C.H. Robinson liable for its selection of a motor carrier, which the plaintiff agreed "is one of the core services of brokers." *Id.* at 1024. The court therefore concluded that the claim fell under § 14501(c)(1). *See id.* at 1021–25.

The Ninth Circuit then turned to the safety exception in (c)(2)(A). *Id.* at 1025–31. For multiple reasons, the court concluded that "[t]he 'safety regulatory authority of a State' encompasses common-law tort claims." *Id.* at 1026–29. The court also concluded that the negligent-selection claim was "with respect to motor vehicles." *Id.* at 1030–31. Specifically, the court concluded that the phrase "with respect to" requires "a connection with"—whether direct or indirect. *Id.* The court determined that the negligent-selection claim "ha[d] the requisite 'connection with' motor vehicles because it ar[ose] out of a motor vehicle accident." *Id.* at 1020. Thus, the Ninth Circuit held that the claim was not preempted. *Id.* at 1020.

Judge Fernandez disagreed that the claim was "with respect to motor vehicles." *Id.* at 1031 (Fernandez, J., concurring in part and dissenting in part). He reasoned that, "as a broker, C.H. Robinson and the services it provides have no direct connection to motor vehicles" and any connection is "merely indirect." *Id.* at 1031. Relying on policy reasons, Judge Fernandez determined that "there comes a point at which the series must end as a legal matter." *Id.* at 1032.

Second is *Aspen American Insurance v. Landstar Ranger, Inc.*, 65 F.4th 1261 (11th Cir. 2023). There,

the plaintiff sued a broker for negligently selecting a motor carrier that stole a shipment. *Id.* at 1264. The Eleventh Circuit agreed with the Ninth Circuit that the claim was "related to" broker services because it sought to hold the broker liable for its selection of a motor carrier. *Id.* at 1267. The court therefore concluded that the claim fell under § 14501(c)(1). *Id.* at 1266–68.

The Eleventh Circuit then turned to the safety exception in (c)(2)(A). *Id.* at 1268. The court agreed with the Ninth Circuit that the claim was within the state's "safety regulatory authority." *Id.* at 1268–70. But it disagreed with the Ninth Circuit that the claim was "with respect to motor vehicles." *Id.* at 1270–72. Namely, the Eleventh Circuit reasoned that the phrase "with respect to" requires a "direct" link, and the court concluded that the negligent-selection claim did not have a direct link to motor vehicles. *Id.* Thus, the Eleventh Circuit held that the claim was preempted. *Id.* at 1272.

In a later decision involving a negligent-selection claim arising from a truck crash, the plaintiff argued that "cases arising from traffic accidents . . . should be treated differently than cases arising from property loss (like *Aspen*)." *Gauthier*, 2024 WL 3338944 at *2 (unpublished). The Eleventh Circuit disagreed, explaining that "[*a*]*ny* claim that a broker negligently selected a driver to haul a load of property" is preempted. *Id.* (emphasis added).

Third is *Ye v. GlobalTranz Enterprises*, 74 F.4th 453 (7th Cir. 2023). There, the plaintiff sued a broker for negligently selecting the motor carrier that crashed into the plaintiff's husband and killed him. *Id.* at 456. The Seventh Circuit agreed with the Ninth and Eleventh Circuits that the claim was "related to"

broker services because it sought to hold the broker liable for its selection of a motor carrier. *Id.* at 459. The court therefore concluded that the claim fell under § 14501(c)(1). *Id.* at 458–61.

The Seventh Circuit then turned to the safety exception in (c)(2)(A). *Id.* at 460. The court did not decide whether the claim was within the state's "safety regulatory authority," although it acknowledged "[t]here is much to say in support of this argument." *Id.* Instead, the court disagreed with the Ninth Circuit that the claim was "with respect to motor vehicles." *Id.* at 460–66. Like the Eleventh Circuit, the Seventh Circuit reasoned that the phrase "with respect to" requires a "direct" link, and the court concluded that the negligent-selection claim did not have a direct link to motor vehicles. *Id.* Thus, the Seventh Circuit held that the claim was preempted. *Id.* at 466.

II. Factual and procedural background[2]

Petitioner, Shawn Montgomery, was severely injured when he was hit by a truck in Illinois. Pet. App. 1a. He sued the truck driver, the motor carrier that employed the driver, and C.H. Robinson—the freight broker that arranged delivery of the shipment.[3] *See id.* In relevant part, he claimed that C.H. Robinson negligently selected the driver and carrier. *See id.*

The district court dismissed the negligent-selection claims because of the Seventh Circuit's decision

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[2] This section includes facts and procedural history recited in the circuit court's opinion below.

[3] The suit was filed in federal court based on diversity jurisdiction under 28 U.S.C. § 1332(a) because there was complete diversity of citizenship between Petitioner and the defendants and the amount in controversy exceeded $75,000. *See* Pet. App. 2a.

in *Ye v. GlobalTranz Enterprises*, 74 F.4th 453 (7th Cir. 2023). Pet. App. 13a. The Seventh Circuit affirmed, declining to reconsider *Ye*. Pet. App. 9a–10a.

ARGUMENT

I. There is a circuit split on an important matter.

A conflict between circuit courts of appeal on the same important matter is a compelling reason to grant certiorari. Sup. Ct. R. 10(a). Here, there is a circuit split on whether a federal statute—49 U.S.C. § 14501(c)—preempts a state common-law claim against a broker for negligently selecting a motor carrier or driver.

Specifically, the Ninth Circuit has held that such a claim is not preempted. *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020).[4]

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[4] Federal district courts across the country have also ruled that negligent-selection claims against brokers are not preempted. *E.g.*, *Hawkins v. Milan Express, Inc.*, 735 F. Supp. 3d 933, 937–40 (E.D. Tenn. 2024); *Meek v. Toor*, No. 2:21-cv-0324, 2024 WL 943931, at *2–3 (E.D. Tex. Mar. 5, 2024); *Crawford v. Move Freight Trucking, LLC*, No. 7:23-cv-433, 2024 WL 762377, at *6–8 (W.D. Va. Feb. 20, 2024); *Wardingley v. Ecovyst Catalyst Techs., LLC*, 639 F. Supp. 3d 803, 806–12 (N.D. Ind. 2022); *Ortiz v. Ben Strong Trucking, Inc.*, 624 F. Supp. 3d 567, 583–84 (D. Md. 2022); *Mata v. Allupick, Inc.*, No. 4:21-cv-00865, 2022 WL 1541294, at *1–6 (N.D. Ala. May 16, 2022); *Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945, 2021 WL 5493076, at *9–14 (D.N.M. Nov. 23, 2021); *Taylor v. Sethmar Transp.*, No. 2:19-cv-00770, 2021 WL 4751419, at *12–16 (S.D.W. Va. Oct. 12, 2021); *Bertram v. Progressive S. Ins.*, No. 19-CV-01478, 2021 WL 2955740, at *2–6 (W.D. La. July 14, 2021); *Ciotola v. Star Transp. & Trucking, LLC*, 481 F. Supp. 3d 375, 384–90 (M.D. Pa. 2020); *Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, 320–22 (D. Mass. Aug. 14, 2020); *Gilley v. C.H. Robinson Worldwide, Inc.*,

(*Footnote continued*)

By contrast, the Seventh and Eleventh Circuits have held that such a claim is preempted. *Ye v. Global-Tranz Enters.*, 74 F.4th 453 (7th Cir. 2023); *Aspen Am. Ins. v. Landstar Ranger, Inc.*, 65 F.4th 1261 (11th Cir. 2023).

The question is important. Under the Seventh and Eleventh Circuits' holdings, a broker who *knowingly* selects a dangerous motor carrier or driver is immune from civil liability. No matter how dangerous the carrier or driver is, and no matter if the broker has actual knowledge of the danger, negligent-selection claims against brokers cannot proceed in the Seventh and Eleventh Circuits. As the Eleventh Circuit put it, "*[a]ny* claim that a broker negligently selected a driver to haul a load of property" is preempted. *Gauthier*, 2024 WL 3338944 at *2 (unpublished) (emphasis added).

Truck crashes are a serious problem. In 2021, there were about 500,000 police-reported crashes involving large trucks. DOT, *Large Truck and Bus Crash Facts*

No. 1:18-00536, 2019 WL 1410902, at *3–5 (S.D.W. Va. Mar. 28, 2019); *Mann v. C.H. Robinson Worldwide, Inc.*, No. 7:16-cv-00102, 2017 WL 3191516, at *5–8 (W.D. Va. Jul. 27, 2017); *Nyswaner v. C.H. Robinson Worldwide Inc.*, 353 F. Supp. 3d 892, 894–97 (D. Ariz. 2019); *Finley v. Dyer*, No. 3:18-cv-78, 2018 WL 5284616, at *2–6 (N.D. Miss. Oct. 24, 2018); *Morales v. Redco Transp. Ltd.*, No. 5:14-cv-129, 2015 WL 9274068, at *1–3 (S.D. Tex. Dec. 21, 2015); *Owens v. Anthony*, No. 2-11-0033, 2011 WL 6056409, at *2–4 (M.D. Tenn. Dec. 6, 2011).

Two state appellate courts have likewise held that such claims are not preempted. *Lagrange v. Boone*, 337 So. 3d 921, 928–30 (La. Ct. App. 2022); *Quinones v. Ladejo*, 174 N.E.3d 407, 496–501 (Ohio Ct. App. 2021).

2021 45 (Nov. 2023).[5] These crashes killed almost 6,000 people and injured about 155,000 people. *Id.* at 7, 13.

Suppose you are injured in a motor-vehicle crash with a truck. To recover for your injuries, you could sue the driver or motor carrier. But they often have little to no assets. In 2022, over 54% of carriers operated just one truck. DOT, *2023 Pocket Guide to Large Truck and Bus Statistics* 13 (Dec. 2023).[6] Carriers can reduce their assets even further by "leas[ing] their terminals and equipment or otherwise leverage[ing] their operations." *See* Truck Safety Coalition, *Minimum Insurance Levels for Motor Carriers*.[7]

Take *Ye* for example. There, the decedent "broke several bones in the accident, including in his pelvis, cervical spine, sacrum, tailbone, and ribs, and he also suffered from traumatic cardiac arrest, respiratory failure, and anoxic brain injury." *Ye v. Global Sunrise, Inc.*, No. 18-cv-01961, Doc. 119 at 2 (N.D. Ill. Apr. 5, 2022).[8] He languished in a hospital for nearly two weeks before he died. *See id.*

The district court found that the decedent's widow was entitled to $10 million in damages from the motor carrier, Global Sunrise Inc. *Id.* at 4. But by that time

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[5] https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2023-12/LTBCF%202021-FINAL%20508_0.pdf

[6] https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2024-04/FMCSA%20Pocket%20Guide%202023-FINAL%20508%20-%20April%202024.pdf

[7] https://trucksafety.org/minimum-insurance-levels-motor-carriers/

[8] https://storage.courtlistener.com/recap/gov.uscourts.ilnd.350478/gov.uscourts.ilnd.350478.119.0.pdf

the carrier had dissolved.[9] The only asset it likely had was the $750,000 liability policy it was required to carry by law. *See* 49 U.S.C. § 31139(b)(2); 49 C.F.R. § 387.9. This amount—set forty-five years ago[10]—is insufficient to compensate for the severe injuries or death caused by truck crashes.

According to industry research, more than twenty percent of truck shipments are run through brokers.[11] Yet no federal law prohibits brokers from selecting dangerous carriers or drivers. And, in the Seventh and Eleventh Circuits, any state law governing a broker's selection of a motor carrier or driver is preempted. So if you're injured in a truck crash next time you visit Chicago or Miami, you're effectively on your own.

Finally, Petitioner recognizes that the circuit courts are split only on whether the safety exception in (c)(2)(A) applies—not whether a negligent-selection claim against a broker is preempted under (c)(1). Nevertheless, district courts across the country are split on whether (c)(1) preempts such claims.[12]

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[9] *See* https://apps.ilsos.gov/businessentitysearch/ (file number 69710042).

[10] The Motor Carrier Act of 1980 set the minimum amount of liability insurance for motor carriers at $750,000. Pub. L. No. 96-296 § 30. It has not changed since then. You would need $2.9 million in today's dollars to equal the $750,000 amount in 1980.

[11] XPOLogistics, *Investor Presentation* 34 (May 2021), https://www.sec.gov/Archives/edgar/data/1166003/000110465921060226/tm2114975d2_ex99-2.htm

[12] *Compare, e.g.*, *Wardingley v. Ecovyst Catalyst Techs., LLC*, 639 F. Supp. 3d 803, 808–10 (N.D. Ind. 2022) (ruling that (c)(1) does not apply); *Covenant Imaging, LLC v. Viking Rigging & Logistics, Inc.*, No. 3:20-CV-00593, 2021 WL 973385, at *5–6 (D. Conn. Mar. 16, 2021) (same); *Ciotola v. Star Transp. &*

(*Footnote continued*)

II. This case is a good vehicle to resolve the split.

Sometimes a case presents an important issue but is a poor vehicle to decide it. For example, there might be problems with standing, mootness, or alternative grounds for affirmance. There are no such problems here.

The procedural history is clean. The district court dismissed the negligent-selection claim solely because of the Seventh Circuit's decision in *Ye*. Pet. App. 13a. The Seventh Circuit affirmed solely because it declined to reconsider *Ye*. Pet. App. 9a–10a. And the Seventh Circuit expressly noted that Petitioner's argument challenging *Ye* "is preserved for further review." Pet. App. 10a.

Petitioner recognizes that, early this year, this Court denied a petition for a writ of certiorari concerning § 14501(c). *Gauthier v. Total Quality Logistics, LLC*, No. 24-592, 145 S. Ct. 1062 (Jan. 13, 2025). However, there is a critical difference between this petition and the petition in *Gauthier*. Specifically, the petition in *Gauthier* presented only the question of whether the safety-exception in subparagraph (c)(2)(A) applied; it did not present the question of whether a negligent-selection claim is preempted by paragraph

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Trucking, LLC, 481 F. Supp. 3d 375, 384–90 (M.D. Pa. 2020) (same); *Gilley v. C.H. Robinson Worldwide, Inc.*, No. 1:18-00536, 2019 WL 1410902, at *3–5 (S.D.W. Va. Mar. 28, 2019) (same); *with Dixon v. Stone Truck Line, Inc.*, No. 2:19-cv-000945, 2021 WL 5493076, at *10–11 (D.N.M. Nov. 23, 2021) (ruling that (c)(1) applies); *Taylor v. Sethmar Transp., Inc.*, No. 2:19-cv-00770, 2021 WL 4751419, at *12–15 (S.D.W. Va. Oct. 12, 2021) (same); *Bertram v. Progressive Se. Ins.*, No. 2:19-cv-01478, 2021 WL 2955740, at *2–5 (W.D. La. July 14, 2021) (same); *Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, 320–21 (D. Mass. 2020) (same).

(c)(1). 2024 WL 4981153, at *i. Here, by contrast, this petition presents *both* questions, giving this Court an efficient opportunity to address § 14501(c) as a whole.

Finally, the respondent in *Gauthier* consented to this Court granting certiorari. Based on representations of counsel, Petitioner expects C.H. Robinson to do the same here.

III. The Seventh and Eleventh Circuits are wrong.

For multiple reasons, the Seventh and Eleventh Circuits erred by holding that a negligent-selection claim is preempted by § 14501(c).

First, a negligent-selection claim against a broker is not "related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). This Court has held that the statute "does not pre-empt state laws that affect rates, routes, or services in 'too tenuous, remote, or peripheral a manner.'" *Rowe*, 552 U.S. 375 (citation omitted). Instead, only those laws with a "'*significant* impact' on . . . rates, routes, or services" are deemed "related to." *Id.* (citation omitted). A negligent-selection claim does not have such an impact.

Second, the Seventh and Eleventh Circuits interpreted the phrase "with respect to" in the safety exception to mean that there must be a "direct" link between the claims and motor vehicles. *Aspen*, 65 F.4th at 1271; *Ye*, 74 F.4th at 460. This was wrong. Citing multiple dictionaries, this Court has explained that "[a]s a matter of ordinary usage, 'respecting' means 'in view of: considering; with regard or relation to: regarding; concerning.'" *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 716 (2018) (citation omitted). This Court rejected the argument that "respecting" has a

"more limited scope" than the phrase "related to." *Id.* at 716–17. Accordingly, the phrase "with respect to" merely requires some relationship—not a direct relationship. *See id.*

Third, the Eleventh Circuit concluded that "if an indirect connection between a state law and a motor vehicle satisfied the safety exception, then the phrase 'with respect to motor vehicles' would have no meaningful operative effect." *Aspen*, 65 F.4th at 1271. Specifically, the court noted that "[t]he safety exception comes into play only when a state law is covered by the preemption provision because that law is 'related to a price, route, or service of any motor carrier . . . , broker, or freight forwarder with respect to the transportation of property.'" *Id.* (quoting 49 U.S.C. § 14501(c)(1)). The court reasoned that "every state law" that falls under the language of (c)(1) "will have at least an indirect relationship to motor vehicles—motor vehicles are how motor carriers move property from one place to another." *Id.* (emphasis omitted).

The last part of the Eleventh Circuit's reasoning is wrong. The court assumed that paragraph (c)(1) pertains only to motor-vehicle transportation. But the statute is not so limited; the term "transportation" is broadly defined to include all modes of transportation:

> (23) TRANSPORTATION.—The term "transportation" includes—
>
> (A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

> (B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

49 U.S.C. § 13102(23).

Simply put, paragraph (c)(1) does not pertain only to motor-vehicle transportation. Thus, contrary to the Eleventh Circuit's reasoning, not "every state law" that falls under the language of (c)(1) will have at least an indirect relationship to motor vehicles. The safety exception in subparagraph (c)(2)(A) therefore serves a purpose by saving only those safety laws with respect to motor vehicles—as opposed to other modes of transportation.

Fourth, the Eleventh Circuit noted that in addition to excluding from preemption "the safety regulatory authority of a State with respect to motor vehicles," subparagraph (c)(2)(A) also preserves "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." *Aspen*, 65 F.4th at 1271–72 (quoting 49 U.S.C. § 14501(c)(2)(A)). The court reasoned that "[i]f an indirect connection to motor vehicles made a state law 'with respect to motor vehicles' for the purposes of the safety exception, then Congress's inclusion of a separate exception to allow states to impose highway route controls and cargo limits would almost certainly be redundant because such controls and limits are indirectly related to motor vehicle safety, too." *Id.*

The Eleventh Circuit failed to consider that the safety exception in subparagraph (c)(2)(A) saves only

"safety" laws. Not every form of highway route control or size or weight limit is related to safety. For example, a state law could impose size or weight limits based on the amount of a fee paid or a route control that checks whether the fee has been paid.[13] Such a law would not be saved by the safety exception in subparagraph (c)(2)(A) because the law would not be related to safety.

Fifth, the Seventh Circuit emphasized that the safety exception in subparagraph (c)(2)(A) does not refer to brokers. *Ye*, 74 F.4th at 460–61. But the safety exception does not refer to any *persons* at all. It does not even refer to motor carriers or drivers, 49 U.S.C. § 14501(c)(2)(A), and even the defendant in *Ye* conceded that a claim against a motor carrier would fall under the safety exception, *Ye v. Global Sunrise, Inc.*, No. 1:18-cv-01961, 2020 WL 1042047, at *4 (N.D. Ill. Mar. 4, 2020). The reason why the safety exception refers to "motor vehicles" is to distinguish that *mode of transportation* from other modes of transportation (like vessels, warehouses, and wharfs)—not to distinguish from other *classes of persons*. *Supra* pp. 18–19.

Sixth, the Seventh Circuit believed that this Court held in *Dan's City* that the phrase "with respect to motor vehicles" in subparagraph (c)(2)(A) "'massively limits the scope' of the safety exception." *Ye*, 74 F.4th at 460 (quoting *Dan's City*, 569 U.S. at 261). Not so.

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[13] For example, until earlier this year, the Pennsylvania Turnpike charged a toll based on vehicle weight. *See* www.paturnpike.com/news/details/2025/01/02/pa-turnpike-ready-to-flip-the-switch-to-open-road-tolling. Similarly, Idaho charges a fee for a special permit to operate a vehicle over certain weights or sizes. Idaho Code § 49-1004(2).

In *Dan's City*, this Court did not address the safety exception in (c)(2)(A). 569 U.S. at 254–66. Instead, this Court interpreted the preemption provision in (c)(1). *Id.* And although both provisions include the phrase "with respect to," that is not the language this Court focused on in *Dan's City*. Rather, as the Solicitor General has explained, "the limitation to which the Court referred was not in the meaning of the phrase 'with respect to' but in the object of that phrase, 'the transportation of property.'" Brief for the United States as Amicus Curiae, *C.H. Robinson Worldwide, Inc., v. Miller* (No. 20-1425), 2020 WL 524946 at *16 n.4.

Finally, even if the Seventh and Eleventh Circuits were correct that a direct relationship is required, a negligent-selection claim necessarily satisfies the requirement. A person injured in a truck crash cannot sue a broker for negligent selection unless that broker's negligence "caused" the injuries. *See* Restatement (First) of Torts § 411 (1934). Both in Illinois and Florida (the jurisdictions at issue in *Aspen* and *Ye*)—and presumably all states—this requires a showing of proximate cause, which requires a direct connection. *See, e.g.*, *Brettman v. M&G Truck Brokerage, Inc.*, 127 N.E.3d 880, 892 (Ill. App. Ct. 2019); *Trembath v. Beach Club, Inc.*, 860 So. 2d 512, 515 (Fla. Dist. Ct. App. 2003); *see generally* Dan B. Dobbs et al., *The Law of Torts* §§ 198–215 (2d ed. April 2025 update).

In other words, the proximate-cause element for a negligent-selection claim requires that there be a direct link between the defendant's negligence and the underlying crash. The Seventh and Eleventh Circuits did not consider the elements of a negligent-selection claim—much less recognize that proximate cause requires a direct link.

CONCLUSION

This case is a good vehicle to resolve a circuit split on an important issue of statutory interpretation. This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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June 2025

APPENDIX

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Appendix A

In the

United States Court of Appeals

For the Seventh Circuit

No. 24-1192

SHAWN MONTGOMERY,

Plaintiff-Appellant,

v.

CARIBE TRANSPORT II, LLC, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Illinois
No. 19-cv-1300-SMY — **Staci M. Yandle**, *Judge*.

ARGUED OCTOBER 30, 2024 — DECIDED JANUARY 3, 2025

Before SCUDDER, ST. EVE, and KIRSCH, *Circuit Judges*.

KIRSCH, *Circuit Judge*. Shawn Montgomery was severely injured when his truck was hit by a tractor-trailer on the shoulder of an Illinois highway. Montgomery sued the driver, along with the carrier and freight broker that arranged delivery of the shipment. Montgomery claimed that the freight broker, C.H. Robinson Worldwide, Inc., had negligently hired the driver and carrier and was also vicariously liable for their torts. The district court concluded that Robinson was not

vicariously liable and granted partial summary judgment in its favor. The court later entered judgment for Robinson on the negligent hiring claims based on our decision in *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453 (7th Cir. 2023). Because the driver and carrier were Robinson's independent contractors, and *Ye* bars Montgomery's negligent hiring claims, we affirm.

I

Yosniel Varela-Mojena was hauling a load of plastic pots through Illinois when he veered off the road and into Shawn Montgomery's tractor-trailer where it was stopped on the side of the road, injuring Montgomery. Varela-Mojena was driving for his employer, motor carrier Caribe Transport II, LLC, at the time of the accident.* The shipment had been co- ordinated by C.H. Robinson Worldwide, Inc. Robinson is a freight broker, meaning it arranges for transportation be- tween motor carriers such as Caribe and shippers of goods. Robinson had brokered this shipment, like many others, pursuant to a standing Broker/Carrier Agreement with Caribe. This nonexclusive agreement provided that Caribe was Robinson's independent contractor and retained exclusive control over the manner of performance of transportation services, as well as the equipment and personnel it used to perform them.

Montgomery sued Varela-Mojena and Caribe in federal court under diversity jurisdiction for the injuries he sustained from the collision. Montgomery also sued Robinson (and several of its sister companies, all of which we refer to as

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* Montgomery sued both Caribe Transport II, LLC and Caribe Transport, LLC. The distinction between these entities is not significant for this appeal, so we collectively refer to both as Caribe.

Robinson). He alleged that Robinson negligently hired Varela-Mojena and Caribe and was vicariously liable for their torts. Robinson moved for summary judgment on the vicarious liability claim, which the district court granted after finding that Varela-Mojena and Caribe were Robinson's independent contractors, not its agents. Shortly after, we issued our decision in *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453 (7th Cir. 2023). There, we held that the preemption provision of the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1), bars state law claims against freight brokers for the negligent hiring of motor carriers and their drivers. *Id.* at 464–66. Citing *Ye*, the district court granted judgment for Robinson on the negligent hiring claims. The district court then entered final judgment in favor of Robinson on the vicarious liability claim to facilitate Montgomery's appeal. This appeal followed, while Montgomery's claims against Varela-Mojena and Caribe are stayed in the district court pending its resolution.

II

On appeal, Montgomery argues that several aspects of Caribe's relationship with Robinson support finding an agency relationship. Conceding that *Ye* forecloses his negligent hiring claims, Montgomery also asks us to overrule *Ye* and reinstate them. Our review is de novo. *Miller v. Chi. Transit Auth.*, 20 F.4th 1148, 1155 (7th Cir. 2021) (summary judgment); *Hanover Ins. v. R.W. Dunteman Co.*, 51 F.4th 779, 785 (7th Cir. 2022) (judgment on the pleadings). Because his vicarious liability claim was resolved on summary judgment, we view the facts in the light most favorable to Montgomery and draw all reasonable inferences regarding the agency relationship in his favor. *Miller*, 20 F.4th at 1155. Regarding

judgment on Montgomery's negligent hiring claims, we ask whether the well-pleaded factual allegations viewed in his favor state a facially plausible claim for relief. *Hanover Ins.*, 51 F.4th at 785.

A

We turn first to the vicarious liability claim. In Illinois, a "principal is vicariously liable for the conduct of its agent but not for the conduct of an independent contractor." *Sperl v. C.H. Robinson Worldwide, Inc.*, 946 N.E.2d 463, 470 (Ill. App. Ct. 2011). With respect to the broker/carrier relationship, "courts applying Illinois law consistently have declined to find an agency relationship when a company hires an independent driver to deliver a load to designated persons at designated times but does not reserve the right to control the manner of delivery." *Cornejo v. Dakota Lines, Inc.*, 229 N.E.3d 546, 556 (Ill. App. Ct. 2023); accord *Kolchinsky v. W. Dairy Transp., LLC*, 949 F.3d 1010, 1014 (7th Cir. 2020). Instead, courts typically find that the motor carrier and driver are merely the freight broker's independent contractors. See *Cornejo*, 229 N.E.3d at 556–58.

When determining whether the broker/carrier relation- ship has stepped outside this norm, the "cardinal consideration" is whether the broker retained the right to control the manner of delivery, rather than its "mere result." *Id.* at 553. Other factors include the right to make hiring decisions, the right to discharge or otherwise terminate the relationship, the method of payment and whether taxes are deducted, the provision of equipment, the level of skill required, and the relative nature of the work and supervision between the parties. *Id.*; *Sperl*, 946 N.E.2d at 1058. The labels the parties assign themselves in a written agreement do not decide their agency

status, though they "cannot be ignored." *Cornejo*, 229 N.E.3d at 555.

According to Montgomery, there are significant indicators that Caribe and Robinson deviated from the typical broker/carrier relationship such that Robinson was not just assigning transportation but controlling the performance of the transportation services. We agree with the district court that, as a matter of law, none establish an agency relationship.

First, Montgomery says Robinson controlled communications with the shipper and recipient of the loads and arranged all pickup and delivery times. In his view, this equates Robinson to a dispatcher controlling all matters leading up to and during the delivery. Illinois courts, however, have held that these delivery instructions pertain to "ancillary aspects of the transportation itself" and are merely specifications of "the particular hauling task." *Id.* at 557, 559. They do nothing to control how the job is done and therefore fail to demonstrate agency. *Id.* Montgomery also points to status updates that Robinson expected from Caribe and Varela-Mojena during a delivery. These were typical status calls required by every broker; Robinson did not give instructions or directions during them. Montgomery emphasizes, however, that Robinson had drivers enable a program called MacroPoint on their cell phones while hauling a load and that this gave Robinson additional control over the deliveries. But the record makes clear that MacroPoint is a passive tracking technology without two-way communication, not a platform for Robinson to provide instructions or directives to drivers. Contrary to Montgomery's argument, a broker does not dictate how a driver performs a delivery when it uses software applications or check-in calls to monitor its status. *Id.* at 554, 559.

Montgomery presses on, saying that Caribe was required to provide Robinson with information about who was hauling a load, their hours of service, and the location of trucks. But this argument highlights a lack of control: Caribe, not Robinson, assigned drivers and set their hours of service. Cf. *Kolchinsky*, 949 F.3d at 1012. Robinson needed this information to estimate a load's delivery time and coordinate its delivery, not to exercise control. Although Robinson could request that a different driver transport a load, this is not evidence that Robinson controlled how the load was hauled. *Cornejo*, 229 N.E.3d at 555.

Next, Montgomery points to language in the load confirmation that the rate was "contingent upon successful and on- time completion" and that anything short of this could "jeopardize … future business opportunities" with Robinson. He equates this to *Sperl v. C.H. Robinson Worldwide, Inc.*, where the broker (also Robinson) had imposed such an impossible fine-enforced schedule on the driver that she was forced to violate federal hours-of-service regulations to deliver the load on time and avoid fines. 946 N.E.2d at 469, 472. The court viewed this fine system as one way Robinson could control the entire transportation process. *Id.* at 472. By contrast, there was no testimony by Varela-Mojena that he knew of any fine system or that the threat of a fee reduction influenced his driving. The so-called fines available to Robinson here are standard rate adjustments, which pertain to billing for transportation services and do not control the transportation itself. *Cornejo*, 229 N.E.3d at 554, 559 (fees for late or damaged goods are ancillary aspects of the transportation and do not establish an agency relationship). The fact that Robinson tracked the percentage of Caribe's on-time deliveries and assigned it a performance score also fails to establish agency. *Id.* at 559

("Evidence regarding performance metrics scoring delivery drivers has also been rejected as legally insufficient to establish agency."). It is immaterial that Robinson could choose not to use Caribe in the future. *Id.* at 554, 559 (performance scores that could jeopardize future freight orders do not show the requisite degree of control over the work performed).

Furthermore, Robinson did not provide any equipment to Caribe or Varela-Mojena and did not pay for maintenance or related expenses. While a fuel surcharge was included in the rate Robinson paid, this is not the provision of equipment Montgomery makes it out to be. See *id.* at 559 ("[F]uel surcharges relate to billing for transportation services and do not dictate control over the transportation itself."). Though the load confirmation specified what equipment the customer re- quired for the delivery and could include other basic instructions, these generalized instructions only served to specify the contours of the hauling task, not to control the manner in which it was accomplished. See *id.* at 550–51, 557–58. Montgomery compares simple instructions Robinson gave Caribe in prior, unrelated loads (for instance, that the driver had to re-stack tipped product or keep the inside of the trailer a certain temperature) to *Sperl*. But Robinson also owned the shipment in *Sperl*, and in its capacity as owner required the driver to continuously measure the internal temperature of the product itself to ensure it maintained its prescribed temperature range. 946 N.E.2d at 468, 471. *Sperl* thus involved a far more domineering dynamic than these previous loads. Regardless, any agency relationship Robinson might have had with Caribe during a prior delivery is irrelevant. Our inquiry is whether Robinson controlled the subject load at the time of the accident. *Brettman v. M & G Truck Brokerage, Inc.*, 127 N.E.3d 880, 887 (Ill. App. Ct. 2019) (agency relationship must

exist at the time negligence occurs, even if one existed previously). For this same reason, Montgomery's undeveloped argument that Robinson was more involved than Caribe after the crash is immaterial to its control during the accident. And frankly, any independent arrangements Robinson may have made regarding the cargo after the accident say nothing about Robinson's control over Caribe or Varela-Mojena.

The remaining facts Montgomery marshals do not support finding an agency relationship. That the bills of lading listed Robinson, not Caribe, as the carrier might help Montgomery in an apparent agency claim, see *Kolchinsky*, 949 F.3d at 1014– 15, but it says nothing about Robinson's control over the de- livery. As Robinson explained, many shippers create the bills of lading before a carrier is assigned, so they list the broker for convenience. Montgomery also argues that the job de- scription of a Robinson carrier account manager is proof that Robinson controlled carriers such as Caribe. However, corporate jargon about "impactful capacity solutions" and "operational execution" is irrelevant to establishing an agency relationship between Robinson and Caribe. Last, the opinion of Montgomery's trucking expert, Dr. Thomas Corsi, that Robinson exerted extensive control over Caribe's operations is similarly unhelpful. Dr. Corsi's expert report just relays the same facts which we have already concluded do not establish an agency relationship. Cf. *Cornejo*, 229 N.E.3d at 556.

At best, any requirements Robinson imposed demonstrate control over the result of the work performed or matters ancillary to it. Cf. *id.* Robinson exercised little, if any, control over Caribe and its drivers. Robinson did not provide or maintain their equipment. It did not choose the driver, route, hours of service, or locations of rest and fuel stops, including

for the subject load. Varela-Mojena drove under Caribe's insurance at all times. Robinson did not make hiring or firing decisions for Caribe. Robinson did not pay drivers or even Caribe directly for the loads, and did not withhold taxes or benefits from these payments. Either party could terminate the relationship at any time. Robinson did not provide drivers with any training, instruction manuals, or uniforms. And, importantly, Caribe was prohibited from subcontracting or delegating work given to it by Robinson or otherwise contracting on its behalf. Courts decline to find an agency relationship under these circumstances. *Id.* at 550, 554–55, 559–60; *Kolchinsky*, 949 F.3d at 1012–14.

Finally, Robinson and Caribe adhered to their Broker/Carrier Agreement, which specified that Caribe was to be Robin- son's independent contractor, not agent. These labels "cannot be ignored." *Cornejo*, 229 N.E.3d at 555. Ultimately, the undisputed evidence shows that Caribe and Varela-Mojena were not Robinson's agents and vicarious liability does not attach. Summary judgment was proper.

B

As to his negligent hiring claims, Montgomery asks us to reconsider our court's decision in *Ye v. GlobalTranz Enterprises, Inc.* In *Ye*, we determined that the FAAAA preempts state law claims that a freight broker negligently hired a motor carrier. 74 F.4th at 466. Montgomery's only argument on appeal is that *Ye* was wrongly decided and should be overturned, which would permit his negligent hiring claims to move forward. "'We do not take lightly suggestions to overrule circuit precedent,' and therefore 'require a compelling reason to do so.'" *Int'l Union of Operating Eng'rs Loc. 139 v. Schimel*, 863 F.3d 674, 677 (7th Cir. 2017) (quotations omitted). Montgomery

points only to pre-*Ye* or out-of-circuit decisions and a statement by the Solicitor General for support. These are not compelling reasons to revisit a case we decided only one year ago. *Santos v. United States*, 461 F.3d 886, 893 (7th Cir. 2006) ("[S]imply showing that a point is debatable is not enough to meet the compelling-reasons standard for overturning circuit precedent."). We decline to overrule *Ye*, though Montgomery's argument is preserved for further review should he seek it.

AFFIRMED

Appendix B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

SHAWN MONTGOMERY, Plaintiff, v. CARIBE TRANSPORT II, LLC, et al, Defendants.	Case No. 19-CV-1300-SMY

MEMORANDUM AND ORDER

This matter initially came before the Court on the Motion for Judgment on the Pleadings pursuant to Rule 12(c) by Defendants C.H. Robinson Company, C.H. Robinson Company, Inc., C.H. Robinson International, Inc. and C.H. Robinson Worldwide, Inc. ("Robinson Defendants") (Doc. 121). While the Motion for Judgment on the Pleadings was pending, the parties filed uncontested motions for entry of (partial) judgment under Rule 54(b) (Docs. 150, 151) and a joint motion to stay or continue the trial set for January 2024 (Doc. 152).

BACKGROUND

Plaintiff Shawn Montgomery sustained serious injuries when he was struck by a tractor and trailer driven by Defendant Varela-Mojena. At that time, the Robinson Defendants were "operating as an interstate motor carrier broker" who provided their "customers with motor carriers for the shipment of goods" (Doc. 1, p. 4 at ¶ 19). The Robinson Defendants had hired Defendant Caribe Transport II, LLC to transport the goods, and Defendant Varela-Mojena worked as a driver for the Caribe Transport.

Plaintiff asserted claims against the Robinson Defendants for negligent hiring of Caribe (Count V) and Varela-Mojena (Count VI). The Robinson Defendants moved to dismiss Plaintiff's negligent hiring claims, arguing they were expressly preempted by the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501(c)(1) (Doc. 25). This Court denied the motion because at the time, the Seventh Circuit Court of Appeals had not addressed whether state law negligence claims are preempted by the FAAAA, and this Court found persuasive the reasoning of the Ninth Circuit Court of Appeals that they were not (Doc. 58).

On July 18, 2023, the Seventh Circuit Court of Appeals took up the issue of whether Illinois common law negligent hiring was preempted by the FAAAA, and clarified that, "The [FAAAA's] express preemption provision . . . bars [negligent hiring] claim and that the Act's safety exception in § 14501(c)(2)(A) does not save the claim." *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453, 456 (7th Cir. 2023).

On November 3, 2023, the Court granted the Robinson Defendants motion for summary judgment with respect to Plaintiff's vicarious liability claim

(Count IV) – the only remaining claim against them (Doc. 140). On January 8, 2024, the U.S. Supreme Court denied the petition for writ of *certiorari*, making *Ye* the settled law of this Circuit (Doc. 156-1).

DISCUSSION

Motion for Judgment on the Pleadings (Doc. 121)

"After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." Fed.R.Civ.P. 12(c). The pleadings for purposes of a Rule 12(c) motion include the complaint, the answer, and any written instruments attached to the pleadings as exhibits. *Northern Ind. Gun & Outdoor Shows, Inc. v. City of South Bend,* 163 F.3d 449, 452- 53 (7th Cir. 1998). A court may "grant a Rule 12(c) motion only if 'it appears beyond doubt that the plaintiff cannot prove any facts that would support his claim for relief.'" *Northern Ind. Gun & Outdoor Shows,* 163 F.3d at 452, quoting *Craigs, Inc. v. General Elec. Capital Corp.*, 12 F.3d 686, 688 (7th Cir. 1993).

Pursuant to the Seventh Circuit's decision in *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453 (7th Cir. 2023), the FAAAA preempts Plaintiff's negligent hiring claims asserted in Counts V and VI. (Doc. 121). Now that the Supreme Court has denied review of the Seventh Circuit's decision, it is evident that the Robinson Defendants are entitled to judgment with respect to those claims. Accordingly, the Motion for Judgment on the Pleadings pursuant to Rule 12(c) is **GRANTED**; Counts V and VI are **dismissed with prejudice**.

Motion for Entry of Final Judgment Pursuant to Rule 54(b) (Docs. 150, 151)

"When a case involves more than one claim, Rule 54(b) allows a federal court to direct entry of a final judgment on 'one or more, but fewer than all, claims,' provided there is no just reason for delay." *Peerless Network, Inc. v. MCI Commc'ns Servs., Inc.*, 917 F.3d 538, 543 (7th Cir. 2019) (quoting Fed. R. Civ. P. 54(b)). "A proper Rule 54(b) order requires the district court to make two determinations: (1) that the order in question was truly a 'final judgment,' and (2) that there is no just reason to delay the appeal of the claim that was 'finally' decided." *Gen. Ins. Co. of Am. v. Clark Mall Corp.*, 644 F.3d 375, 379 (7th Cir. 2011), quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 435-37 (1956). A final judgment entered under Rule 54(b) is immediately appealable though the rest of the case remains pending in the district court. *VDF FutureCeuticals, Inc. v. Stiefel Labs., Inc.*, 792 F.3d 842, 845 (7th Cir. 2015).

The Court's grant of summary judgment on the vicarious liability claim was essentially a final judgment. Moreover, given the fact that Defendants Caribe and Varela-Mojena have tendered their liability insurance policy limits, and Plaintiff's assertion that they are insufficient to satisfy a potential judgment due to the nature and extent of Plaintiff's injuries, the Court finds that good cause exists for entry of partial final judgment, and that there is no reason to delay Plaintiff's appeal of that Order. Accordingly, the Motions for Entry of Final Judgment Pursuant to Rule 54(b) (Docs. 150, 151) are **GRANTED**. The Clerk of Court is **DIRECTED** to enter judgment in favor of the Robinson Defendants

and against Plaintiff **but not to close this matter** until further order of the Court.

Joint Motion to Stay or Continue Trial (Doc. 152)

In light of the Court's ruling on Plaintiff's Motion for Entry of Final Judgment Pursuant to Rule 54(b), the Joint Motion to Stay or Continue Trial (Doc. 152) is **GRANTED**. The current final pretrial conference and trial settings are **VACATED** and all proceedings herein are **STAYED** pending the Seventh Circuit's resolution of Plaintiff's appeal of the aforementioned grant of summary judgment on his vicarious liability claim against the Robinson Defendants. **Plaintiff shall file a report within 60 days as to the status of the appeal and any further developments.** The pending final pretrial motions (Docs. 129, 130, 131) are **TERMINATED as MOOT**, and may be refiled if the case is reset for trial.

IT IS SO ORDERED.
DATED: January 11, 2024

STACI M. YANDLE
United States District Judge