No. _____

In The
Supreme Court of the United States

NATIONWIDE FREIGHT SYSTEMS, INC.,
LEADER U.S. MESSENGER, INC., AND
STOTT CONTRACTING, LLC,

Petitioners,

v.

ILLINOIS COMMERCE COMMISSION,
THOMAS BAUDINO, CRAIG BANER AND
LATRICE KIRKLAND-MONTAGUE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

KURT E. VRAGEL, JR.
KURT E. VRAGEL, JR., P.C.
1701 East Lake Ave., Suite 170
Glenview, Illinois 60025
(847) 657-8551
kurt@kevtrucks.com

Attorney for Petitioners

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

A federal preemption statute, 49 U.S.C. § 14501(c), states that – with certain exceptions – no state or political subdivision thereof shall enact or enforce any law, rule, regulation, or other provision having the force and effect of law related to a price, route or service of any motor carrier.

The Illinois Commerce Commission instituted investigations into the operations of the three motor carrier petitioners and demanded production of documents which relate to the prices, routes and services of those motor carriers. Those investigations were instituted to determine whether the motor carriers were operating without having an operating license ("public carrier certificate") from the Illinois Commerce Commission.

The primary issue in this case is whether the Illinois Commerce Commission's investigations and demands for documents were preempted by 49 U.S.C. § 14501(c).

The Seventh Circuit Court of Appeals answered that question in the negative, finding that petitioners had failed to provide sufficient evidence that the actions of the Illinois Commerce Commission would have a material effect on their rates, routes or services.

The Seventh Circuit's decision conflicts with decisions of the First Circuit Court of Appeals which applied the preemption statute in 49 U.S.C. § 14501(c)

QUESTIONS PRESENTED – Continued

to state actions involving motor carriers. In particular, in those decisions the First Circuit Court of Appeals determined that 49 U.S.C. § 14501(c) preempts a state statute if it either expressly references *or* has a significant impact on the carrier's prices, routes or services.

The question presented in this case is whether a party challenging a state action under 49 U.S.C. § 14501(c) may satisfy the requirements of that statute by showing that the state's activity *relates to* the motor carrier's rates, routes or services (First Circuit view), or whether the motor carrier must present evidence of a substantial economic effect on the carrier's rates, routes or services in order to be subject to preemption (Seventh Circuit view).

Petitioners' request for a writ of certiorari should be granted to resolve that conflict.

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Nationwide Freight Systems, Inc., is an Illinois corporation.

Leader U.S. Messenger, Inc., is an Illinois corporation.

Stott Contracting, LLC, is an Illinois limited liability company.

In each case, the entities are privately-held, and no parent corporations or publicly held corporations have any interest in any of those entities.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at *Nationwide Freight Systems, Inc. v. Illinois Commerce Commission*, 784 F.3d 367, 2015 U.S. App. LEXIS 6730 (7th Cir. 2015). That opinion was issued on April 23, 2015.

The Seventh Circuit's opinion affirmed the decision of the United States District Court for the Northern District of Illinois in *Nationwide Freight Systems, Inc. v. Illinois Commerce Commission*, 2013 U.S. Dist. LEXIS 135449 (N.D. Ill. 2013), which was issued on September 23, 2013.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The Seventh Circuit's opinion was rendered on April 23, 2015.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article VI. Miscellaneous Provisions, Clause 2

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the

Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

28 U.S.C. § 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

49 U.S.C. § 14501(c) Motor Carriers of Property. –

(1) General rule. – Except as provided in paragraph[ ] (2) . . . , 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 . . . 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 . . . with regard to minimum amounts of financial responsibility relating to insurance requirements. . . .

STATEMENT OF THE CASE

Petitioners are motor carriers as defined by federal law. 49 U.S.C. § 13102(14).

The Illinois Commerce Commission, an agency of the State of Illinois, requires each motor carrier operating within that state to get a public carrier certificate before it transports goods within that state.

Each petitioner was the subject of an investigation by the Illinois Commerce Commission as to whether the carrier was operating without a public carrier certificate in violation of the Illinois Commercial Transportation Law at 625 ILCS 5/18c-4101(1)(a).

As part of its investigations, the Illinois Commerce Commission demanded that petitioners produce documents which related to their transportation operations: bills of lading; invoices; logs; and the like.

Petitioners objected to the commission's request for documents on the grounds that the requests were preempted by 49 U.S.C. § 14501(c). Following hearings, the Illinois Commerce Commission administrative law judge found each motor carrier guilty of the violations of the Illinois Commercial Transportation Law and ordered each of them to pay a fine.

Petitioners filed their lawsuit in the United States District Court for the Northern District of Illinois claiming that federal preemption barred the Illinois Commerce Commission from investigating anything but safety and insurance matters.

As relevant to this petition, the district court found that the Illinois Commerce Commission had admitted that "[t]he information sought included bills

of lading, driver logs, invoices, pick-up tickets, and similar information concerning the origin and destination of cargo, dates of transportation, description of the cargo transported, and revenues generated by the transportation."

The Illinois Commerce Commission argued, successfully, that their enforcement actions were not "related to" plaintiffs' prices, routes or services, and, therefore, that the state agency's enforcement actions were not preempted by the preemption statute.

The district court relied on the Seventh Circuit's decision in *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1432 (7th Cir. 1996) in making its decision. The district court found that the petitioners had shown that the Illinois Commerce Commission had requested transportation-related documents. The court stated that although on their face the Illinois statutes did not expressly refer to the rates, routes, or services of motor carriers, the Illinois Commerce Commission's enforcement of Illinois law could be considered "related to" plaintiffs' rates, routes, or services in the sense that the enforcement actions have "a connection with" plaintiffs' rates, routes, or services.

Ultimately, however, the district court found that there was no evidence that defendants' actions affected plaintiffs' rates, routes or services in any way or that the Illinois statutes and their enforcement by defendants were "an attempt to substitute Illinois'

own governmental commands for competitive market forces."

That holding was upheld by the Seventh Circuit.

In the alternative, the district court found that the Illinois Commerce Commission's enforcement of the public carrier certificate requirement was not preempted because, in summary, those enforcement actions qualify for the exemption from preemption stated in § 14501(c)(2)(A), which provides that the preemption statute

> [s]hall not restrict the safety regulatory authority of a State with respect to motor vehicles . . . 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.

Because the issuance of a public carrier certificate by the Illinois Commerce Commission is dependent, in part, on the motor carrier providing proof of insurance to the Illinois Commerce Commission, the district court found, and the Seventh Circuit affirmed, that the public carrier certificate is valid evidence of the existence of the motor carrier's insurance.

The holdings of both of the courts in that respect is somewhat ironic because the Illinois Commerce

Commission never asked for any information about insurance coverage, insurance policies, or insurance filings from any of the motor carriers.

The Seventh Circuit affirmed the district court's statement of the law in these words:

> State regulatory action is not preempted where its relationship with carrier rates, routes, or services is "tenuous, remote, or peripheral. . . . Rather, state action must have a substantial economic effect on carrier rates, routes, or services in order to be subject to preemption."

ARGUMENT

REVIEW IS WARRANTED TO RESOLVE A CONFLICT BETWEEN THE FIRST CIRCUIT AND THE SEVENTH CIRCUIT AS TO WHETHER A MOTOR CARRIER MUST SHOW A SUBSTANTIAL ECONOMIC EFFECT IN ORDER TO BE SUBJECT TO PREEMPTION

The text of the preemption statute is a sweeping statement of Congress' intent that motor carriers be freed from economic regulation. See, for example, *Rowe v. New Hampshire Motor Transport Association*, 552 U.S. 364 (2008), at 367-368.

Citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992), at 384, the district court concluded that the Illinois Commerce Commission agents' enforcement of Illinois law can be considered "related

to" plaintiffs' rates, routes or services in the sense that the enforcement actions have a "connection with" plaintiffs, rates, routes or services.

In this respect, the district court's findings were correct.

In *Morales*, airlines challenged the application of state advertising regulations under the airline preemption statute, which is virtually the same as the motor carrier preemption statute.

Although the advertising regulations did not directly affect the rates (prices), routes or services of the airlines, the United States Supreme Court found that "the key phrase, obviously, is 'relating to.' The ordinary meaning of these words is a broad one – 'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with,' Black's Law Dictionary 1158 (5th ed. 1979) – and the words thus express a broad preemptive purpose."

Referring to a similarly-worded preemption provision of the Employee Retirement Income Security Act of 1974 (ERISA), which also preempts state laws, the Supreme Court declared in *Morales*, 504 U.S. at 385:

> . . . [W]e think it appropriate to adopt the same standard here: State enforcement actions having a connection with *or reference to*, airline rates, routes and services are preempted under 49 U.S.C. App. § 1305(a)(1). [Emphasis supplied.]

The Supreme Court found that the advertising regulations were *related to* airline rates, routes and services, even though they did not *directly affect* those rates, routes and services. 504 U.S. at 386-392.

In *Travel All Over the World v. Saudi Arabian Airlines*, 73 F.3d 1423 (7th Cir. 1996), the Seventh Circuit Court of Appeals applied the holding in *Morales* to authorize contract claims against an airline carrier but not to intentional tort claims filed against that air carrier.

Summarizing *Morales* at 73 F.3d 1423, the Seventh Circuit said:

> The [Supreme] Court found it irrelevant that the consumer protection laws were not specifically directed at the airline industry . . . Instead, the Court reasoned that, because the guidelines expressly referred to air fares, "one cannot avoid the conclusion that . . . the guidelines 'relate to' airline rates. . . ." Alternatively, *Morales* found that even if the guidelines were considered to refer to the advertising of fares, and not directly to fares, such restrictions on advertising would "have the forbidden significant [economic] effect upon fares." . . . Thus, the Court found that "compelling or restricting" price advertising surely "relates to" price. [Citations omitted.]

Both the district court and the Seventh Circuit found that the Illinois Commerce Commission defendants' enforcement of Illinois law can therefore be

considered "related to" petitioners rates, routes, or services in the sense that the enforcement actions have a "connection with" petitioners' rates, routes, or services.

Both the district court and the Seventh Circuit should have concluded that the Illinois Commerce Commission investigations were preempted.

They did not do so, finding, instead, that petitioners had failed to produce sufficient evidence of economic effect of the Illinois Commerce Commission's actions.

The application of the preemption statute in the present case is contrary to the application of that statute by the First Circuit Court of Appeals.

In *Massachusetts Delivery Association v. Coakley*, 769 F.3d 11, 2014 U.S. App. LEXIS 18703 (1st Cir. 2014), that court affirmed that an activity of a state agency is preempted if it relates to the rates, routes or services of a motor carrier. That court concluded, unequivocally, at 769 F.3d 22, 2014 U.S. App. LEXIS 18703 [**23]:

> The FAAAA [Federal Aviation Administration Authorization Act of 1994] preempts state laws that "relate to" the prices, routes, or services of a motor carrier "with respect to the transportation of property."

In reaching that conclusion, the First Circuit quoted *Dan's City Used Cars, Inc. v. Pelkey*, 133 S.Ct. 1769,

2013 U.S. LEXIS 3520 (2013) and *Morales*, 504 U.S. 374, 388, for the proposition that "to trigger preemption under the FAAAA, a state law must relate to a price, route or service of a motor carrier. 49 U.S.C. § 14501(c)(1). The phrase 'related to' embraces state laws having a connection with *or* reference to carrier rates, routes or services, whether directly or indirectly. Under this rubric, a state statute is preempted if it expressly references *or* has a significant impact on, carrier's prices routes or services." 769 F.3d 11, 17, 2014 U.S. App. LEXIS 18703 [*10]. [Most internal punctuation omitted; emphasis supplied.]

The First Circuit rejected the Massachusetts district court's narrow reading of the *Dan's City* case, 769 F.3d 22, 2014 U.S. App. LEXIS 18703 [**24]:

> The district court's rule misreads the import of *Dan's City*. While *Dan's City* stated only that the law must "concern" a motor carrier's transportation of property, the district court required the law to "regulate" the motor carrier's transportation of property.

The First Circuit affirmed its conclusions with respect to the "relating to" language in the preemption statute in *Overka v. American Airlines, Inc.*, 2015 U.S. App. LEXIS 9870 (1st Cir. 2015), at [*12]:

> *Massachusetts Delivery Association* did not announce a categorical rule that an airline always needs a record on the effect of the plaintiffs' claim on its prices or services in order to defeat preemption under the FAAAA. . . . Rather, in deciding the preemption

> question, Massachusetts Delivery Association explicitly reaffirmed our previous holding "allow[ing] courts to 'look[ ]' to the logical effect that a particular scheme has on the delivery of services or the setting of rates."

The principles espoused by the First Circuit should have been applied by the Seventh Circuit to find that the petitioners had shown that the actions of the Illinois Commerce Commission were sufficiently related to the rates, routes and services of the motor carriers (in particular, the abilities of the motor carriers to provide transportation services under the Illinois Commerce Commission's public carrier certificate regulations) to apply the preemption statute to the agency's actions.

CONCLUSION

For the reasons stated above, petitioners ask that the Supreme Court grant review of this matter.

Respectfully submitted,

KURT E. VRAGEL, JR.
KURT E. VRAGEL, JR., P.C.
1701 East Lake Ave., Suite 170
Glenview, Illinois 60025
(847) 657-8551
kurt@kevtrucks.com

Attorney for Petitioners

Dated: July 21, 2015

In the
United States Court of Appeals
for the Seventh Circuit

No. 13-3316

NATIONWIDE FREIGHT SYSTEMS, INC., *et al.*,

Plaintiffs-Appellants,

v.

ILLINOIS COMMERCE COMMISSION, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 12 C 2486 – **James F. Holderman**, *Judge.*

ARGUED DECEMBER 12, 2014 – DECIDED APRIL 23, 2015

Before ROVNER, WILLIAMS, and TINDER, *Circuit Judges*.

ROVNER, *Circuit Judge*. The appellants in this case are three motor carriers that were cited for engaging in intrastate operations in Illinois without a license from the Illinois Commerce Commission (the "ICC" or "Commission"). When the ICC conducted a follow-up investigation of the carriers and requested

documents relating to their operations in Illinois, the carriers refused to comply, reasoning that because the documents sought by the ICC would reveal their rates, routes, and services, the requests were "related to" those rates, routes, and services and therefore were preempted by the Federal Aviation Administration Authorization Act of 1994 (the "FAAAA"), 49 U.S.C. § 14501(c). The ICC rejected the carriers' argument and fined them for their failure to comply with the document requests, prompting the carriers to file suit seeking a judgment declaring the ICC's enforcement efforts preempted. The district court granted summary judgment to the ICC, concluding that the document requests, although they might reveal the carriers' rates, routes, and services, had no significant economic impact on them. Alternatively, the court found that the ICC's efforts to enforce its licensing requirement, which serves as a means of verifying a carrier's insurance coverage, is exempted from federal preemption. *Nationwide Freight Sys., Inc. v. Baudino*, No. 12 C 2486, 2013 WL 5346450 (N.D. Ill. Sep. 23, 2013). We agree on both points and affirm.

I.

Since 1953, Illinois has prohibited motor carriers of property from conducting intrastate operations without first procuring a license from the ICC. *See* 1953 Ill. Laws 933, 937-38; 625 ILCS 5/18c-4104(1)(a). Section 4104 of the Illinois Commercial Transportation Law currently deems it unlawful to "[o]perate as

an intrastate motor carrier of property without a license from the Commission; or as an interstate motor carrier of property without a registration from the Commission." 625 ILCS 5/18c-4104(1)(a). Obtaining a license for intrastate operations in turn requires a carrier to carry appropriate insurance or surety coverage. 625 ILCS 5/18c-4901 & 4402(2)(b). Procedurally, a carrier complies with the licensing requirement by completing an application and submitting proof of its insurance or bond coverage along with an administrative fee. *See id.*; 92 Ill. Admin. Code § 1301.30(a). A carrier is then issued a public carrier certificate which states, *inter alia*, that "[t]he holder of this license certifies to the Commission that it will perform transportation activities only with the lawful amount of liability insurance in accordance with 92 Ill. Admin. Code 1425." R. 49 at 11. *See also* Ill. Admin. Code § 1425.10 ("A license or registration issued by the [ICC] to a motor carrier of property has force and effect only while the carrier is in compliance with requirements for the filing of proof of insurance or bond coverage."). Drivers must have a copy of the carrier's license with them at all times. *See* 625 ILCS 5/18c-4104(c). It is a Class C misdemeanor offense, punishable by imprisonment for up to 30 days and a fine of up to $1,500, for an operator not to produce proof of registration upon request (*id.*; 625 ILCS 5/18c-1704(1); 730 ILCS 5/5-4.5-65); and the ICC also has the authority to impose a civil penalty of between $100 and $1,000 per offense (625 ILCS 5/18c-1704(2)). Each day of continuous operation in violation of the

licensing requirement constitutes a separate offense. 625 ILCS 5/18-1701.

Each of the three appellants is a motor carrier engaged in the intrastate transportation of property in Illinois that was cited by the ICC police force for conducting such activity without a license. Nationwide Freight Systems, Inc. and Stott Contracting, Inc. were cited in May of 2010 and were each fined $750. Leader U.S. Messenger, Inc., which previously had obtained a license but had allowed it to lapse, was cited in March of 2011 and was subjected to a civil penalty of $200.[1] After those penalties were paid, the ICC opened investigations into each carrier in order to determine the extent to which the operator may have committed additional violations by conducting unlicensed, intrastate operations for hire prior to the occasion on which the operator was cited. Toward that end, each carrier was asked to produce, for a period of five or six months preceding the violation, documents (including, but not limited to, bills of lading,[2] driver logs, and invoices from any owner/operators leased to the carrier) that would show the

[1] Of the three appellants, only Nationwide thereafter corrected the deficiency for which it was cited by obtaining a license.

[2] Bills of lading typically both acknowledge the receipt of goods by the carrier for shipment and recite the terms of the parties' agreement. *See Ill. Match Co. v. Chicago, R.I. & P. Ry. Co.*, 95 N.E. 492, 493-94 (Ill. 1911); *Marx Transp., Inc. v. Air Exp. Int'l Corp.*, 882 N.E.2d 1281, 1286-87 (Ill. App. Ct. 2008); BLACK'S LAW DICTIONARY 198-99 (10th ed. 2014).

dates of transport, a description of the cargo carried, the origin and destination of that cargo, and the revenues generated from the transportation provided. The authorization for these requests is supplied by section 1703 of the Illinois Commercial Transportation Law: "Authorized employees of the Commission shall have the power at any and all times to examine, audit, or demand production of all accounts, books, memoranda, and other papers in the possession or control of a license or registration holder, its employees, or agents." 625 ILCS 5/18c-1703(2)(b).[3] All three carriers refused to comply with the ICC's demand for such documents and were issued administrative citations for their refusals. *See* 625 ILCS 5/18c-4401(k).

The carriers filed motions to dismiss these citations with the ICC. They argued that the document requests were preempted by the FAAAA because they sought records that would reveal the rates, routes, or service of each carrier. "To the extent that the commerce commission's minions are asking for information about such things as bills of lading, owner-operator contracts, and any other documents concerning the origins or destinations of cargo, they are running afoul of clearly-stated federal law," they

[3] There is no dispute here that the Commission's power extends to motor carriers of property that should be, but are not, licensed to conduct operations in Illinois. We note that the Commission also has the power under section 1703 to subpoena information from persons other than license holders in furtherance of its inquiry into potential violations. *See* § 18c-1703(2)(b).

argued. "Their conduct should be barred and sanctioned." *See* R. 1-1 at 6-7 (Stott); R. 44-4 at 5-6 (Nationwide).

The enactment of the FAAAA extended the 1978 preemption of state regulation of air carriers to motor carriers. Pursuant to the FAAAA's preemption provision, neither a state nor its political subdivision may enact or enforce laws "*related to* a price, route, or service of any motor carrier . . . with respect to the transportation of property. 49 U.S.C. § 14501(c)(1) (emphasis ours). The provision also contains a number of exceptions. As relevant here, the act specifies that the preemption provision does not displace "the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements or self-insurance authorization." § 14501(c)(2)(A).

The ICC's chief administrative law judge ("ALJ"), Latrice Kirkland-Montague, denied the carriers' motions to dismiss, found each in violation of its obligation to comply with the Commission's document requests, and ordered each of them to pay fines of $500 for the failure to comply. The carriers filed a consolidated petition for rehearing with the ICC, and Judge Kirkland-Montague issued a memorandum to the ICC's commissioners explaining why, in her view, the petition should be denied. First, the carriers had made no showing that the document requests might have anything more than an indirect, remote, or tenuous effect on their rates, routes, or services. The Commission had only asked the carriers to produce

records already in their possession. Second, the statute exempts from preemption the state's power to regulate carriers with respect to minimum insurance requirements. Without the ability to demand the types of records that the ICC had sought from the carriers, Kirkland-Montague asserted, the state would be unable to ascertain whether a carrier was or is operating without a license or without the insurance coverage necessary to obtain a license. R. 44-3 at 45-46. The Commission denied the carriers' petition for rehearing.

The carriers turned to federal court, where they filed suit against the ICC and three of its officers and agents in their official capacities. (The ICC was dismissed from the suit on Eleventh Amendment grounds, and that decision is not challenged here.) The carriers sought a declaratory judgment deeming the ICC's document requests and its investigations preempted by the FAAAA to the extent they implicated the carriers' rates, routes, or services. "The fact is," the carriers alleged, "that the Interstate Commerce Commission is attempting to regulate – by investigating – a motor carrier's rates, routes, or services for purposes which are preempted by 49 U.S.C. § 14501. That it cannot do." R. 1 at 7 ¶ 27. They also sought an injunction barring the ICC from assessing penalties for their refusal to comply with the document requests and from making any further inquiry into any aspect of their operations other than their compliance with the ICC's insurance requirements or demonstrated safety issues.

The parties filed cross-motions for summary judgment. In connection with those motions, acting ICC police chief Craig Baner submitted a declaration in which he represented that the ICC typically opens an investigation when a commercial motor carrier is discovered to be operating without a public carrier certificate. The purpose of that investigation is to determine how long the carrier has been conducting operations without such a certificate in the time period preceding that violation, and also to determine whether the carrier had the requisite insurance coverage (and had proof of such coverage on file with the ICC) during that same time period. In seeking a carrier's business records, Baner averred, the ICC has no interest in regulating a carrier's prices, routes, or services. Its sole purpose in seeking the types of documents demanded of the carriers in this case is to enforce the certification and insurance requirements imposed on the carriers by Illinois law, and to determine the nature of any additional penalties the ICC may impose on the carrier for violations of those requirements. R 44-9 at 3 ¶¶ 3-5. For their part, the plaintiff carriers were somewhat vague as to how the document requests might affect their rates, routes, or services. They suggested that the practical result of the ICC's investigation might be to require a carrier and its customers to prepare particular forms responsive to the ICC's demands for information and thereby incur additional costs or, alternatively, face additional penalties if they did not. R. 42 at 5.

The district court granted summary judgment in the ICC's favor. To the extent that the document requests could be construed "[a]t a broad level" to relate to a carrier's rates, routes, or services in the sense of having some connection with them, 2013 WL 5346450, at *6, this alone was insufficient to trigger preemption, the court reasoned. Rather, the challenged conduct must "have 'a *significant* impact on carrier rates, routes, or services'" to be preempted. *Id.*, at * 7 (quoting *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 375, 128 S. Ct. 989, 997 (2008) (emphasis in *Rowe*)). The court had been presented with no evidence that the document requests affected the plaintiffs' rates, routes, or services in any way, and the plaintiffs did not claim that they did. *Id.* The carriers could do no more than speculate that the ICC's document requests might force them to create new forms in order to supply the sort of information that the ICC demanded; but that speculation was not supported by the record. *Id.* Consequently, the carriers had no basis for claiming that the ICC's effort to obtain the challenged documents from the plaintiffs was preempted.

Alternatively, the ICC's pursuit of documents was covered by the statutory exemption for activities aimed at enforcing carrier financial responsibility. *Id.*, at *8. Baner's declaration indicated that the ICC sought the documents in order to determine how long each carrier had been operating without the requisite certificate, whether the carrier had the requisite insurance coverage during that time, and, if so, whether

the carrier had proof of its coverage on file with the ICC during that time. There was no indication that Baner's explanation for the document requests was false. *Id.* The carriers' argument that the document requests were not, in fact, focused on insurance or safety issues was unpersuasive in light of the information actually sought by the request – including the origin, nature, and destination of cargo transported, the dates of transportation, and so forth – and Baner's explanation that this information was sought in order to ascertain how long the carriers may have been operating without a license and, in turn, the requisite insurance. "As a matter of common sense, this type of information is relevant to ascertaining whether a motor carrier is properly licensed and insured." *Id.*

II.

We are presented on appeal with essentially the same two issues presented to the district court. First, we must consider whether the ICC's investigation "relate[s] to" the plaintiff carriers' rates, routes, and services, and is therefore preempted by the FAAAA, because the Commission has demanded documents which will disclose those rates, routes, and services, absent any additional indication that the Commission's investigation will have a significant economic impact on the carriers' rates, routes, and services. Second, we must consider whether the Commission's document requests fall within the FAAAA's exception for state insurance requirements, given that the

requests are not confined to documents reflecting whether and when the carriers were insured and had proof of their insurance on file with the ICC. We review the district court's resolution of these issues on summary judgment *de novo. E.g.*, *Hotel 71 Mezz Lender LLC v. Nat'l Retirement Fund*, 778 F.3d 593, 601 (7th Cir. 2015); *see also Mass. Delivery Ass'n v. Coakley*, 769 F.3d 11, 17 (1st Cir. 2014) ("Since federal preemption is a question of statutory construction, we review these issues de novo.").

A. Connection Between the ICC's Document Requests and the Carriers' Rates, Routes, and Services

The plaintiff carriers contend that the FAAAA bars an investigation into the operations of a motor carrier whenever that investigation, however incidentally, touches upon a carrier's rates, routes, or services with respect to the transportation of property. In the exercise of its audit authority, the ICC has sought documents which will disclose a carrier's rates, routes, and services with respect to the transportation of property; and to that extent, the ICC's investigation arguably "relates to" those rates, routes, and services, as the district court acknowledged. 2013 WL 5346450, at *6. This, in the carriers' view, is enough to demonstrate that the Commission's investigation (including, in particular, the document requests) is preempted, notwithstanding the ICC's unchallenged representation that it seeks these documents solely for purposes of determining how long each carrier

may have been operating without the requisite license (and potentially without the insurance coverage needed to obtain such a license) and determining appropriate penalties, and not with any intent to regulate a carrier's rates, routes, or services. They argue:

> When coupled with the Illinois Commerce Commission's demands for transportation-related documents, the admission by the commission that it was seeking information about how long the motor carriers were operating (that is, providing services) without licenses is as clear an indication as any that the commission was investigating the rates, routes and services of motor carriers.

Appellants' Br. 16. This is an exceedingly broad view of preemption principles that finds no support in case law.

The Supremacy Clause of the Constitution establishes a rule of decision precluding courts from "giv[ing] effect to state laws that conflict with federal laws." *Armstrong v. Exceptional Child Ctr., Inc.*, 2015 WL 1419423, at *3 (U.S. Mar. 31, 2015); *see* U.S. Const. Art. VI, cl. 2. Of the three recognized types of preemption, *see, e.g.*, *Wigod v. Wells Fargo Bank, N.A*, 673 F.3d 547, 576 (7th Cir. 2012), it is express preemption that is at issue in this case, as the FAAAA states explicitly what states may and may not do with respect to motor carriers of property. Our inquiry into whether the FAAAA preempts the ICC's investigation and document requests consequently begins with the language of the statute, "which necessarily contains

the best evidence of Congress' pre-emptive intent." *Dan's City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1778 (2013) (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664, 113 S. Ct. 1732, 1737 (1993)).

Congress enacted the FAAAA's preemption provision in 1994 with the aim of eliminating the patchwork of state regulation of motor carriers that persisted fourteen years after it had first attempted to deregulate the trucking industry. *See Dan's City*, 133 S. Ct. at 1775 (citing *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 440, 122 S. Ct. 2226, 2236 (2002)); *S.C. Johnson & Son, Inc. v. Transp. Corp. of Am., Inc.*, 697 F.3d 544, 548-49 (7th Cir. 2012). Borrowing language from the 1978 legislation deregulating the airline industry, *see Dan's City*, 133 S. Ct. at 1775, Congress precluded any state or its political subdivision from "enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any private motor carrier . . . with respect to the transportation of property." 42 U.S.C. § 14501(c)(1).

Thus, as is typical in preemption cases, this appeal focuses on whether the Commission's attempt to enforce the Illinois licensing requirement reasonably can be said to "relate[ ] to" the plaintiff motor carriers' rates, routes, or services. *See, e.g., Dan's City*, 133 S. Ct. at 1778; *S.C. Johnson*, 697 F.3d at 549. "The ordinary meaning of these words is a broad one – 'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with,' – and the words thus

express a broad pre-emptive purpose." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383, 112 S. Ct. 2031, 2037 (1992) (citation omitted); *see also Dan's City*, 133 S. Ct. at 1778; *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 370, 128 S. Ct. 989, 994-95 (2008). The universe of state regulatory efforts preempted by the FAAAA thus includes laws or actions having some type of connection with or reference to a carrier's rates, routes, or services, whether direct or indirect. *Dan's City*, 133 S. Ct. at 1778 (citing *Rowe*, 552 U.S. at 370, 128 S. Ct. at 995); *see also Morales*, 504 U.S. at 384, 112 S. Ct. at 2037). But "the sky is [not] the limit." *Dan's City*, 133 S. Ct. at 1778. A state's regulatory action is not preempted where its relationship with carrier rates, routes, or services is "tenuous, remote, or peripheral." *Id.* (citing *Rowe*, 552 U.S. at 371, 128 S. Ct. at 995); *see also Morales*, 504 U.S. at 390, 112 S. Ct. at 2040). Rather, state action must have a substantial economic effect on carrier rates, routes, or services in order to be subject to preemption. *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1431 (7th Cir. 1996); *see also Rowe*, 552 U.S. at 375, 128 S. Ct. at 997 ("we have written that the state laws whose 'effect' is 'forbidden' under federal law are those with a '*significant* impact' on carrier rates, routes, or services") (quoting *Morales*, 504 U.S. at 388, 390, 112 S. Ct. at 2039, 2040) (emphasis in *Rowe*).

We have thus articulated two requirements for preemption. First, a state must have enacted or attempted to enforce a law. Second, that law must

relate to carrier rates, routes, or services "either by expressly referring to them, or by having a significant economic effect on them." *Travel All Over the World*, 73 F.3d at 1432 (citing *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 228-29, 115 S. Ct. 817, 823-24 (1995)); *S.C. Johnson*, 697 F.3d at 553; *see Morales*, 504 U.S. at 388, 112 S. Ct. at 2039; *see also*, *e.g.*, *Mass. Delivery Ass'n*, 769 F.3d at 17-18; *Parise v. Delta Airlines, Inc.*, 141 F.3d 1463, 1465-66 (11th Cir. 1998).

Without doubt, the state's regulatory efforts satisfy the first of these two criteria. The licensing requirement imposed by section 4104 of the Illinois Commercial Transportation Law, which the ICC was attempting to enforce by way of the document request promulgated pursuant to section 1703 of the statute, applies to motor carriers of property. But does the Commission's enforcement effort meaningfully "relate to" carrier rates, routes, or services? We agree with the district court that it does not, as the economic impact of the document requests on rates, routes, or services is, if anything, insignificant.

The Illinois statute does not expressly refer to rates, routes, or services, nor does it betray an effort to regulate their operations in any way. It simply imposes a licensing requirement on all motor carriers transporting property within the state and subjects a carrier to penalties for failure to comply with that requirement.

Nor, for that matter, do the challenged document requests expressly refer to rates, routes, or services. It is undisputed that the aim of those requests was to obtain documents that would establish how many times the plaintiff carriers had conducted unlicensed – and potentially uninsured – operations during the time period preceding their citations for operating without the required certificate. The only sense in which the requests implicate rates, routes, or services is that the business records sought (for example, invoices) will necessarily disclose information about the transportation services that a carrier has provided to its customer and the prices charged for those services. It is by no means unusual for one type of record to disclose a variety of information; for that matter, one piece of data can be informative and relevant in any number of ways. Documents which illuminate how many times a carrier engaged in unlicensed operations, how many miles of Illinois roads it used in those operations, and so forth will necessarily touch upon and overlap with the carrier's rates, routes, and services, yes, but the Commission was not interested in the plaintiffs' rates, routes, and services as such.

The district court accepted the notion that the document requests could be said to relate to the carriers' rates, routes, and services in the limited sense that they call for production of records that will disclose their prices, routes, and services. But in the absence of evidence that the ICC's investigation would have any meaningful impact on the carriers'

rates, routes, or services, the court concluded that *Travel All Over the World*'s second criterion – that the enforcement effort have a significant economic effect on rates, routes, or services – had not been met.

Indeed, the carriers have never been able to demonstrate how the ICC's document requests might meaningfully affect their rates, routes, or services. As below, they can only speculate that the need to document their compliance with the ICC's registration and insurance requirements might compel the carriers and their customers to generate extra paperwork and thereby increase costs by some indefinite amount. But the ICC has not demanded that the carriers create any particular type of form; the Commission has asked the carriers to produce the types of documents that one would expect to be found among any motor carriers' existing business records. The notion that compliance with the document requests would require the carriers to modify and expand their record-keeping is pure speculation, and is certainly insufficient to demonstrate a significant economic impact on the carriers' operations.[4]

---

[4] At points in their briefs and arguments to this court, the carriers have suggested that the test for preemption is whether the challenged state action relates to or has a significant impact on carrier rates, routes and services. *See* Reply Br. at 4; Oral Argument at 4:29 ("There's two prongs to this statute: to relate to, or to have an effect on."). Actually, "related to" is the single, broad statutory standard, which this court (among others) has deemed to preclude a state from enacting or enforcing a law that: (1) expressly references rates, routes, and services, or (2) has a

(Continued on following page)

The carriers are thus left with the contention that *any* nexus between the challenged state action and their rates, routes, and services – including investigatory actions which would result in the disclosure of their rates, routes, and services – is sufficient to trigger preemption, however minimal the connection might be, and that our own decision in *Travel All Over the World* erred in requiring a showing of a *significant* economic impact. But the Supreme Court has never indicated that a *de minimis* impact on rates, routes, or services suffices for purposes of preemption, and we believe *Travel All Over the World* is in fact consistent with the high Court's cases on this point.

The Supreme Court's preemption precedents are clear that not any relationship between state law and carrier rates, routes, and services, no matter how insignificant, will necessarily result in preemption. The cases do acknowledge that a state statute or effort to enforce that statute need not expressly cite a carrier's rates, routes, or services, and that state

---

significant economic impact on rates, routes, and services. *See Travel All Over the World,* 73 F.3d at 1432; *see also Morales,* 504 U.S. at 388, 112 S. Ct. at 2039; *Mass. Delivery Ass'n*, 769 F.3d at 17-18. The carriers seem to be attempting to create a third category of preempted state laws or enforcement actions which *implicitly* reference, without significantly affecting, rates, routes, or services. Our cases do not recognize such a third category. Moreover, as we explain below, neither the Supreme Court's jurisprudence nor our own support the notion that an implicit reference to or connection with carrier rates, routes, or services is alone sufficient to trigger preemption.

regulatory action may be preempted as long as it affects a carrier's rates, routes, and services, even if the effect is indirect. *E.g.*, *Dan's City*, 133 S. Ct. at 1778; *Rowe*, 552 U.S. at 370-71, 128 S. Ct. at 995; *Morales*, 504 U.S. at 386, 112 S. Ct. at 2038. Even so, *Dan's City* observes that, notwithstanding the broad preemptive reach of the FAAAA's "related to" clause, "the sky is [not] the limit," and a "tenuous, remote, or peripheral" impact will not trigger preemption. 133 S. Ct. at 1778. The plain import of this qualifying language is that the challenged statute or regulatory action must have a meaningful impact in order to be preempted. To be fair, the Supreme Court has not yet had occasion to identify precisely what types of effects will be too insignificant to trigger preemption, because the cases that the Court has decided under the airline and motor carrier preemption statutes have not been close to the line, wherever that line may be. *See S.C. Johnson*, 697 F.3d at 552 (citing *Rowe*, 552 U.S. at 371, 128 S. Ct. at 995). But whatever room this may leave for the plaintiff carriers to argue that the mere disclosure of their rates, routes, and services is enough of an effect to trigger preemption of the ICC's document requests, *Travel All Over the World* all but closes the door on such a contention. *Travel All Over the World* draws the line to exclude from preemption actions which may have some nominal, incidental connection with carrier rates, routes, or services but do not have a meaningful economic impact on them. 73 F.3d at 1432. We can find nothing in the Supreme Court's cases that is inconsistent with our holding on that point. Indeed, we cannot help but

wonder why the Court would continue to caution that a "tenuous, remote, or peripheral" relationship between state regulation and a carrier's rates, routes, or services does not trigger preemption if it did not mean to imply exactly what our decision in *Travel All Over the World* recognizes: that the challenged state action must have a discernible and substantial impact on a carrier's rates, routes, or services in order to be deemed preempted. *Rowe* itself states that "the state laws whose 'effect' is 'forbidden' are those with a '*significant* impact' on carrier rates, routes, or services." 552 U.S. at 375, 128 S. Ct. at 997 (quoting *Morales*, 504 U.S. at 388, 390, 112 S. Ct. at 2039, 2040) (emphasis in *Rowe*); *see also*, *e.g.*, *Mass. Delivery Ass'n*, 769 F.3d at 18 ("[C]ountless state laws have *some* relation to the operations of [motor carriers] and thus *some* potential effect on the prices charged or services provided. State laws whose effect is only tenuous, remote, or peripheral are not preempted.") (internal quotation marks and citations omitted) (emphasis in original). And we are confident that wherever the Supreme Court may ultimately draw the line between preempted and non-preempted effects, this case falls on the nonpreempted side of the line.

All that the carriers have shown, in the end, is that the Commission's document requests will require them, incidentally, to disclose information regarding their rates, routes, and services, not that the aim or the result of the investigation will be to affect those aspects of their operations. The carriers' speculation concerning extra paperwork at best suggests a *de*

minimis (potential) economic effect on their operations in the form of unspecified paperwork. And despite the carriers' insinuation that if the ICC is requesting documents that will reveal their rates, routes, and services, the Commission must have an agenda to influence those aspects of their operations, there is no indication that the Commission is interested in their rates, routes, or services as such, let alone that it intends to (or necessarily will) regulate or otherwise affect them.

We confronted a similar line of argument when S.C. Johnson & Son sued motor carriers that had allegedly bribed the company's transportation director to contract with them to provide transportation services to the company. S.C. Johnson had alleged, among other things, that the bribery had injured it by increasing the company's transportation costs – *i.e.*, the price it had paid to the carriers for their services. The carriers cited this allegation as "the smoking gun that proves that S.C. Johnson's claims are 'really' just about rates and services." 697 F.3d at 559. We rejected the argument as to S.C. Johnson's bribery and racketeering claims, reasoning that although the injury that S.C. Johnson experienced as a result of the defendants' alleged criminal acts might have some relation to the carriers' rates or services, the relationship was too tangential to warrant preemption. *Id.* at 560. Our decision in that case makes clear that simply because a carrier can show some link between the state action it challenges and its rates, routes, or services does not invariably mean that the

challenged action is preempted as one "related to" those rates, routes, or services. The nexus must be significant, and in this case the carriers have no evidence to show that it is.

Finally, it should be noted that the records the ICC has asked the carriers to produce are of a type that might be sought in any number of civil and criminal settings. A customer suing a motor carrier for theft, for example, might ask for these same records, perhaps to establish a pattern of wrongdoing (and other potential victims), to identify the errant driver responsible for the theft(s), or to trace the path the victim's property took after it was stolen. The state itself might seek to subpoena such records, and for similar purposes, in the course of investigating potential criminal charges of theft, bribery, racketeering, or tax evasion in connection with a carrier's operations. To say that the ICC's requests are preempted simply because the documents they seek will disclose the carriers' rates, routes, and services would call into question any number of legitimate requests for a motor carrier's business records, even when those records are being sought for purposes entirely unrelated to the deregulatory purposes of the FAAAA. Motor carriers, as members of the public, *see S.C. Johnson*, 697 F.3d at 558 (citing *Rowe*, 552 U.S. at 375, 128 S. Ct. at 997), remain subject to the civil and criminal constraints that "set basic rules for a civil society," *id.* at 558. But, as a practical matter, those rules would be unenforceable against motor carriers if such carriers were deemed exempt even from

routine investigatory efforts that would result in incidental disclosures of their rates, routes, or services, notwithstanding the absence of any purpose to interfere with the competitive forces of the free market. This is the unmistakable import of the carriers' reply brief, which flatly argues that any effort to document and fine a carrier based on the number of days it has conducted unlicensed operations is preempted by the FAAAA. Reply Br. at 6.

B. Safety and Insurance Exception

Even if it could be said that the ICC's investigation meaningfully relates to the carriers' rates, routes and services, the district court correctly determined that the Commission's enforcement actions fall within the exception to preemption set forth in the insurance provision of the FAAAA. The statute provides that the general rule of preemption set forth in section 14501(c)(1) "shall not restrict the safety regulatory authority of a State with respect to motor vehicles . . . 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." § 14501(c)(2)(A). As the district court recognized, "[t]his exception preserves 'the preexisting and traditional state police power over safety,' and state laws that are 'genuinely responsive to safety [or insurance] concerns' are included within the exception." 2013 WL 5346450, at *8 (quoting *Ours Garage*, 536 U.S. at 439, 442, 122 S. Ct. S. Ct. [sic] at 2236, 2237). Because it is fair to

say that the ICC's investigation was aimed at enforcing Illinois' requirement that carriers maintain specified insurance coverage, the Commission's investigation is covered by this exception.[5]

It is undisputed that the one substantive requirement that a motor carrier must satisfy in order to obtain the requisite license from the ICC is to show that it has appropriate insurance or bond coverage; beyond that, it is simply a matter of completing paperwork and submitting a fee.[6] Requiring a license is thus a means of confirming that motor carriers are properly insured. Indeed, as we noted earlier, the public carrier certificate issued to an intrastate motor carrier memorializes the license holder's certification

---

[5] The carriers devote significant attention in their briefs to contesting the notion that the ICC's investigation was motivated by safety concerns. Among other things, they point out that the ICC's former responsibilities for conducting safety inspections of the vehicles used by motor carriers have been transferred to the Illinois Department of Transportation. *See* 20 ILCS 2705/2705-125. But setting safety concerns aside, there nonetheless remains the express exemption for regulation of "motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements." § 14501(c)(2)(A); *see Cal. Tow Truck Ass'n v. City & Cnty. of San Francisco*, 693 F.3d 847, 857-58 (9th Cir. 2012) (identifying these as separate exceptions). It is this statutory exception on which the ICC relies, and on which we shall focus our attention.

[6] The minimum amounts and types of insurance coverage are specified by the Illinois Administrative Code. *See* 92 Ill. Admin. Code §§ 1425.30-1425.50; *see also id.* § 1425.120 (specifying minimum net worth requirements for carrier to qualify for self-insurance).

"that it will perform transportation activities only with the lawful amount of liability insurance in accordance with 92 Ill. Admin. Code 1425." R. 49 at 11. And penalizing a carrier for conducting unlicensed operations (and conducting an investigation to determine the extent of such operations for purposes of determining the appropriate penalty) likewise furthers the insurance requirement. Thus, the ICC's investigation fits comfortably within section 14501(2)(A)'s exception for imposing and enforcing insurance requirements vis-à-vis commercial motor carriers of property. *Cf. Ace Auto Body & Towing, Ltd. v. City of New York*, 171 F.3d 765, 776 (2d Cir. 1999) (remarking, with respect to municipal regulations as to "licensing, display of information, reporting, record-keeping, criminal history, insurance, posting of bond, and maintenance of storage and repair facilities" of tow-truck operators: "Most of these requirements are so directly related to safety or financial responsibility and impose so peripheral and incidental an economic burden that no detailed analysis is necessary to conclude that they fall within the § 14501(c)(2)(A) exemptions.").

The carriers suggest that if the Commission were truly interested in insurance, it would simply ask the carriers about their coverage and leave it at that. But when a carrier has been cited for operating without a license, as each of these carriers was – presenting the possibility that the carrier was also operating without appropriate insurance coverage – the Commission is not required to take the carrier at its word for how

long it may have been out of compliance with the ICC's requirements. It may legitimately seek to establish, independently, to what extent the carrier has engaged in unlicensed operations – *i.e.*, how many operations it has conducted over Illinois roads without a license. This is the obvious point of the ICC's document requests, and we are given no reason to believe that its requests were a subterfuge for something else, including in particular an effort to affect the carrier's rates, routes or services.

On this point, it bears emphasizing that the carriers have consistently refused to acknowledge the stated purpose for which the ICC has sought the requested documents, which is to document the *extent* of the carriers' intrastate operations in violation of Illinois' licensing and insurance requirements. The carriers seem to assume that the Commission has no need to know anything beyond the fact that a particular carrier was or was not licensed and insured. But, as the ICC has argued without contradiction, the extent of a carrier's unlicensed and potentially uninsured operations factors into the magnitude of the penalty that the Commission will impose for such operations. Recall that each day of continuous operation in violation of the licensing requirement constitutes a separate violation of the Illinois Commercial Transportation Law. 625 ILCS 5/18c-1701. And the Commission's regulations state expressly that the extent of a carrier's violative conduct affecting the public interest is a factor bearing on the civil penalties that the Commission may impose. *See* 92 Ill.

Admin. Code § 1440.10(d). The records sought by the ICC thus have an obvious relevance to what additional penalties ought to be imposed on the carriers for their unlicensed operations.[7] To assert, as the carriers do implicitly, that the Commission does not need to know how many trips a carrier has made or how much cargo it has transported while it was unlicensed and/or without appropriate insurance coverage is to suggest that all delinquent carriers should be treated alike; that a carrier which has conducted only five unauthorized trips in a particular time period should be assessed the same penalty as a carrier which has conducted hundreds of such unauthorized trips, for example. This defies common sense, and is inconsistent with the state statutory scheme.

The carriers go so far as to suggest that any inquiry attempting to ascertain the total number of unlicensed operations they conducted in Illinois represents the very "kind of economic regulation that Congress intended to bar when it passed the FAAAA" and that treating each day of unlicensed operation as a separate violation of Illinois law "is nothing more than economic regulation." Reply Br. at 5-6. Why they

---

[7] *Cf. Nussbaum Trucking, Inc. v. Ill. Commerce Com'n*, 425 N.E.2d 1229, 1233-34 (Ill. App. Ct. 1981) (in ICC proceeding on petition to approve purchase of motor carrier of property, abstracts of representative shipments were competent and admissible to establish that carrier's operations had not been abandoned, suspended, discontinued, or left dormant).

believe this is so is not clear. We are aware of no case holding that a state may not require a motor carrier of property doing business within its borders to be licensed by that state, particularly when licensing is the state's means of ensuring that the carrier is appropriately insured. Nor are we convinced that a system of penalties proportionate to the extent of a motor carrier's unauthorized operations could have anything more than a tangential effect on the carrier's rates, routes, or services. The services a carrier has provided while unlicensed will inform whatever penalty the ICC later chooses to impose, but that penalty logically would not restrain, influence, or otherwise affect the carrier's choice of rates, routes, or services thereafter. Once the penalty is paid and a license is secured, the carrier is free to provide whatever services it wishes, at the rates it believes appropriate and over the routes of its choosing.[8] A proportionate penalty surely will discourage the carrier from ignoring the licensing requirement in the

[8] A hefty fine certainly could put a dent in a carrier's finances, and perhaps the carrier might seek to charge its customers more (the market permitting), or otherwise modify its rates, routes, or services in an effort to repair the damage to its balance sheet. We very much doubt that this could be characterized as anything more than a tangential effect on the carrier's rates, routes, and services for purposes of the preemption analysis. *Cf. S.C. Johnson*, 697 F.3d at 559-60 (alleged bribery conspiracy's effect on rates customer was charged for carrier's services insufficient to show customer's bribery and racketeering claims were preempted). In any event, the carriers do not make this particular argument.

future, but if the licensing requirement itself is permissible, as we are certain it is, then so too is this salutary effect.

Promoting financial responsibility by requiring that motor carriers operating within a state's borders maintain appropriate insurance is an area that Congress has expressly reserved to the states; and a licensing regime akin to the one Illinois has established is an obvious and logical way to enforce its insurance requirements. The type of document requests that the ICC has issued to the carriers is also precisely the sort of discovery in which one would expect an agency to engage in order to assess the extent and gravity of a carrier's noncompliance with the licensing requirement and to assess a proportionate penalty. We are satisfied that the challenged requests fall within the scope of the exception that Congress has established.

III.

For the foregoing reasons, we AFFIRM the grant of summary judgment in favor of the defendants-appellees.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[SEAL]

Everett McKinley Dirksen
United States Courthouse
Room 2722 –
219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

April 23, 2015

Before:

ILANA DIAMOND ROVNER, Circuit Judge

ANN CLAIRE WILLIAMS, Circuit Judge

JOHN DANIEL TINDER, Circuit Judge

No. 13-3316	NATIONWIDE FREIGHT SYSTEMS, INC., et al., Plaintiffs-Appellants v. ILLINOIS COMMERCE COMMISSION, et al., Defendants-Appellees
Originating Case Information:	
District Court No: 1:12-cv-02486 Northern District of Illinois, Eastern Division District Judge James F. Holderman	

The grant of summary judgment in favor of the defendants-appellees is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NATIONWIDE FREIGHT SYSTEMS, INC., LEADER U.S. MESSENGER, INC., and STOTT CONTRACTING, LLC,	)	
Plaintiffs,	)	
v.	)	No. 12 C 2486
THOMAS BAUDINO, CRAIG BANER, and LATRICE KIRKLAND-MONTAGUE,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

(Filed Sep. 23, 2013)

JAMES F. HOLDERMAN, District Judge.

Plaintiffs Nationwide Freight Systems, Inc. ("Nationwide"), Leader U.S. Messenger, Inc. ("Leader"), and Stott Contracting, LLC ("Stott") (collectively "Plaintiffs") are motor carriers that have been separately investigated and charged by the Illinois Commerce Commission ("ICC"). (Dkt. No. 41 ("Pls.' SMF") ¶ 2.) Plaintiffs are seeking declaratory and injunctive relief, and allege that document requests made by ICC agents Thomas Baudino ("Baudino") and Craig

Baner[1] ("Baner"), later upheld by ICC Chief Administrative Law Judge Latrice Kirkland-Montague[2] ("Kirkland-Montague") (collectively "Defendants"), are preempted by 49 U.S.C. § 14501(c). The court's jurisdiction over Plaintiffs' claims is provided by 28 U.S.C. § 1331. (*See* 11/26/12 Order at 6.) Now before the court are Plaintiffs' Motion for Summary Judgment (Dkt. No. 43) and Defendants' Motion for Summary Judgment (Dkt. No 40). For the reasons set forth below, Defendants' motion for summary judgment is granted and Plaintiffs' motion for summary judgment is denied.

BACKGROUND

Plaintiffs are motor carriers, as defined by federal law. (Pls.' SMF ¶ 21; *see also* 49 U.S.C. § 13102(14).) It is undisputed that each plaintiff was "the subject of an investigation, hearing, and determination by the [ICC]," and that "[t]he pleadings and orders were

---

[1] As previously recognized by the court, Craig Baner has been substituted for Odie Carpenter in his official capacity as a defendant in this lawsuit. (Dkt. No. 30 ("11/26/12 Order") at 1, n.1.)

[2] Defendants have not pleaded or argued that Kirkland-Montague is protected by the doctrine of judicial immunity, thereby waiving this defense. *See Boyd v. Carroll*, 624 F.2d 730, 733-34 (5th Cir. 1980) ("The failure to plead judicial immunity waived the affirmative defense."); *cf. Henry v. Jefferson County Personnel Bd.*, 519 F. Supp. 2d 1171, 1181, n.10 (N.D. Ala. 2007) ("Defendant's explicit assertion of the judicial immunity defense in a Rule 56 pre-trial motion is sufficient to avoid wavier.").

essentially the same in each case." (*Id.* ¶¶ 2, 8.) This common sequence of events is detailed below.

Initially, ICC Police Officers[3] issued each plaintiff a citation for "operat[ing] as an intrastate motor carrier of property without a license from the Commission," in violation of 625 ILCS 5/18c-4104(1)(a). (Dkt. No. 45 ("Defs.' SMF") ¶¶ 4, 8, 12.) The ICC then began investigating each plaintiff's operations. (Pls.' SMF ¶ 9.) ICC Police Officers first requested that Plaintiffs produce certain records under 625 ILCS 5/18c-1703(2)(b),[4] followed by a formal demand for records from the ICC Chief of Police seeking production of various documents "concerning the operations of those motor carriers." (Pls.' SMF ¶ 10.) Specifically, the formal demand provided to Leader required Leader to "produce documents and records regarding your company's transportation operations within Illinois (for example, bills of lading, driver

[3] The citations issued to Stott and Nationwide appear to have been issued by Officer Baudino. (*See* Defs.' Ex. A at ICC:00043 ("Stott Initial Citation"); Defs.' Ex. B at ICC:00199 ("Nationwide Initial Citation").) The citation issued to Leader appears to have been issued by a different officer. (*See* Defs.' Ex. C at ICC:00360 ("Leader Initial Citation").)

[4] Section 1703(2)(b) states, in relevant part:

> Authorized employees of the [ICC] shall have the power at any and all times to examine, audit, *or demand production of* all accounts, books, records, memoranda, and other papers in the possession or control of a license or registration holder, its employees or agents.

625 ILCS 5/18c-1703(2)(b) (emphasis added).

logs, invoices, pick-up tickets, etc.)" for the six-month time period preceding the initial citation. (Defs.' Ex. C at ICC:00362 ("Leader Formal Demand").) The formal demand provided to Stott and Nationwide only generally directed these motor carriers to "produce [their] books and records" for the relevant six-month time period. (Defs.' Ex. A at ICC:00026 ("Stott Formal Demand"); Defs.' Ex. B at ICC:00182 ("Nationwide Formal Demand").)

Plaintiffs objected to the ICC's requests for documents, partly on the grounds that the requests were preempted by 49 U.S.C. 14501(c). (Pls.' SMF ¶ 11; Defs.' SMF ¶¶ 7, 11, 15.) In response to Plaintiffs' objections, the ICC submitted letters to Stott and Nationwide "renew[ing]" and clarifying its previous requests for documents:

> The Commission formally requests [Stott or Nationwide] to produce the following documents related to its intrastate, for-hire transportation operations within Illinois for the [specified] time period . . . :
>
> a. Bills of lading;
>
> b. Driver logs;
>
> c. Invoices from any owner-operators leased on to [Stott or Nationwide]; and
>
> d. Any other documents containing the origin and destination of cargo, the date(s) of the transportation, a description of the cargo transported, and the revenues generated by the transportation.

(Defs.' Ex. A at ICC:00030 ("Stott Clarification"); Defs.' Ex. B at ICC:00186 ("Nationwide Clarification").) When Plaintiffs persisted in objecting to the ICC's document requests, Plaintiffs were cited with violating 625 ILCS 5/18c-4104(1)(k),[5] because of their alleged "fail[ure] to provide Records on demand." (Defs.' Ex. A at ICC:00015 ("Stott 2d Citation"); Defs.' Ex. B at ICC:00175 ("Nationwide 2d Citation"); Defs.' Ex. C at ICC:00333 ("Leader 2d Citation").) In each case, the ALJ found the motor carrier guilty of the violations charged in the second citations, and ordered each plaintiff to pay a $500 civil penalty for failure to produce the requested records. (Defs.' Ex. A at ICC:00129 ("Stott ALJ Decision"); Defs.' Ex. B at ICC:00275 ("Nationwide ALJ Decision"); Defs.' Ex. C at ICC:00381 ("Leader ALJ Decision").) Plaintiffs' combined petition for rehearing was summarily denied by the ICC on March 21, 2012. (Pls.' SMF at ¶¶ 14-15; *see also* Defs.' Ex. A at ICC:00149 ("Tr. 3/21/12 ICC Bench Session").)

Plaintiffs filed this lawsuit two weeks later, on April 4, 2012, claiming that federal preemption barred the ICC from investigations of Plaintiffs that concerned "anything other than compliance with insurance requirements or demonstrated safety issues."

---

[5] Section 4104(1)(k) states, in relevant part, that it "shall be unlawful for any person to . . . [o]therwise operate as a motor carrier of property in violation of any provision of this Chapter, Commission regulations and orders, or any other law of this State." 625 ILCS 5/18c-4104(1)(k).

(Compl. at 8 ("Request for Relief") at (b), (e).) Plaintiffs and Defendants have now both submitted cross motions for summary judgment, which have been fully briefed before this court.

LEGAL STANDARD

1. Summary Judgment

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party seeking summary judgment bears the initial responsibility of identifying materials in the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also* Fed. R. Civ. P. 56(c)(1). If the moving party adequately challenges the elements of the nonmoving party's claim, it then becomes the nonmoving party's burden "to identify specific facts in the record that demonstrate[ ] a genuine issue for trial." *Crawford v. Countrywide Home Loans, Inc.*, 647 F.3d 642, 647 (7th Cir. 2011). "A factual dispute is 'material' only if the dispute's resolution might change the outcome of the suit under the governing law." *Spivey v. Adaptive Mktg. LLC*, 622 F.3d 816, 822 (7th Cir. 2010). "And a factual issue is 'genuine' only 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

When ruling on a motion for summary judgment, the court "construe[s] all facts and draw[s] all reasonable inferences in a light most favorable to the nonmoving party." *Rosenbaum v. White*, 692 F.3d 593, 599 (7th Cir. 2012). This same standard applies when parties have filed cross motions for summary judgment, and the court "construe[s] all inferences in favor of the party against whom the motion under consideration is made." *Id.* (citations omitted); *accord Parker v. Franklin Cnty. Cmty. Sch. Corp.*, 667 F.3d 910, 915 (7th Cir. 2012) (the court "treat[s] the motions separately in determining whether judgment should be entered in accordance with Rule 56").

2. FAAAA Preemption

Plaintiffs argue that Defendants' enforcement of 625 ILCS 5/18c-1703(2)(b) and 625 ILCS 5/18c-4104(1)(k) is preempted by the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"). (Dkt. No. 42 ("Pls.' Mem.") ¶¶ 12, 22.) This argument is implicitly grounded in the Supremacy Clause of the U.S. Constitution, which states, in relevant part, "[the] Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land." U.S. Const. art. VI. The Supreme Court has interpreted the Supremacy Clause to allow for federal preemption of state law either expressly or implicitly, or in cases where there is a conflict between state and federal law. *See New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654

(1995) (citations omitted). As explained in detail below, the FAAAA contains an express preemption clause, and it is this preemption clause that forms the basis of Plaintiffs' claims.

ANALYSIS

1. No Genuine Dispute of Material Fact

The material facts of this case are not contested. Defendants admit "that the [ICC] sought documentary information, as part of its enforcement activities under Illinois law, concerning [Plaintiffs'] operations in Illinois, after [Plaintiffs] were cited for violating Illinois law." (Dkt. No. 31 ("Defs.' Ans.") ¶ 18.) Defendants further admit that "[t]he information sought included bills of lading, driver logs, invoices, pick-up tickets, and similar information concerning the origin and destination of cargo, dates of transportation, description of the cargo transported, and revenues generated by the transportation." (*Id.*) Plaintiffs admit that the ICC sought the business records in question "to determine how long [each] company was operating without the required certificate, and to determine if the company had evidence of the required liability insurance coverage on file with the Commissioner during the period it was operating in the State of Illinois." (Defs.' SMF ¶ 17; *see also* Dkt. No. 48 ("Pls.' Resp. to Defs.' SMF") ¶ 1.)[6]

[6] Plaintiffs allege in their Complaint that the ICC Police Officer testifying at the Stott hearing "indicated that the Illinois

(Continued on following page)

The parties dispute the legal significance of these undisputed facts, and whether Defendants' actions were permissible under federal law. (*See* Defs.' SMF ¶ 18; Pls.' Resp. to Defs.' SMF ¶ 1.)

2. FAAAA's Express Preemption Clause

The FAAAA contains an express preemption clause which states, in relevant part:

> (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,

---

Commerce Commission was NOT looking for any information on the carrier's Insurance." (Compl. ¶ 16 (emphasis in original).) Plaintiffs admit in their summary judgment briefing that the only evidence they have in support of this assertion is "a note made by [Plaintiffs' counsel] at the hearing." (Dkt. No. 53 ("Pls.' SMF Reply") ¶ 1).) Counsel's notes of the Stott hearing, which have been submitted as part of the record, include the statement "nothing relative to insurance" among other handwritten words and phrases. (*Id.*, Ex. 1 (bottom of page).) Plaintiffs have supplied no affidavit or declaration from counsel explaining this notation, or the context in which it was made. The court does not know the identity of the testifying officer, the pending question to which the officer was responding, or whether counsel's notation reflects the officer's exact words or counsel's impression of the testimony. Without more, even viewing this evidence in the light most favorable to Plaintiffs, the court finds that counsel's notation is inadequate to establish a genuine question of fact on this evidentiary point.

> route, or service of any motor carrier . . . with respect to the transportation of property.

49 U.S.C. § 14501(c)(1).[7]

Plaintiffs argue that Defendants sought records "related to" Plaintiffs' "price[s], route[s], or service[s]," and Defendants' enforcement of 625 ILCS 5/18c-1703(2)(b) and 625 ILCS 5/18c-4104(1)(k) was therefore preempted based on the plain language of the FAAAA. Defendants contend that their enforcement actions were not "related to" Plaintiffs' "price[s], route[s], or service[s]" as that phrase has been interpreted by the U.S. Supreme Court and other federal courts, and that Defendants' enforcement actions are therefore not preempted by the FAAAA's express preemption clause.

The language of the FAAAA's express preemption clause is borrowed from the Airline Deregulation Act of 1978 ("ADA"), which contains a nearly identical provision for air carriers. *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008) (citing 49 U.S.C. § 41713(b)(4)(A)). Courts have generally treated the preemption clauses of the FAAAA and the ADA as though they are interchangeable,[8] and have

---

[7] Paragraph 2, the only relevant exception to the express preemption clause, is discussed in Section 3, *infra*.

[8] As originally enacted, the ADA referred to "rates, routes, or services." 49 U.S.C. App. § 1305(a)(1). In 1994, the ADA was reenacted and revised to refer to "a price, route, or service." *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 223 n.1 (1995) (citing 49 U.S.C. § 41713(b)(1)); *see also* 49 U.S.C. § 41713(b)(4)(A)

(Continued on following page)

attributed to Congress an intent to incorporate judicial interpretations of the ADA's preemption provision into the FAAAA. *Id.* (citing *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006)); *see also S.C. Johnson & Son, Inc. v. Transport Corp. of Am.*, 697 F.3d 544, 548 (7th Cir. 2012) ("the Supreme Court has generally taken the position that the statutes deregulating the airline industry and those deregulating the trucking industry should be construed consistently with one another"). The purpose of both provisions is "[t]o ensure that States would not undo federal deregulation with regulation of their own." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992).

In *Morales*, the Supreme Court addressed whether a state attorney general's threat to enforce a set of "detailed standards governing the content and format of airline advertising" through state law consumer protection statutes was preempted under the ADA. *Morales*, 504 U.S. at 379. Borrowing from ERISA cases to interpret the ADA's express preemption clause, the Court held that "State enforcement actions *having a connection with or reference to* airline 'rates, routes, or services' are pre-empted." *Id.* at 384 (emphasis added). The Court noted that the state law

---

(applying same language to all carriers "affiliated with a direct air carrier"). This court finds no material difference between "price" and "rate" for purposes of its preemption analysis. *Wolens*, 513 U.S. at 223 n.1 (noting "Congress intended the revision to make no substantive change").

at issue need not be "specifically addressed to the airline industry" and can be preempted even if the effect of the state law is "only indirect." *Id.* at 386. At the same time, however, the Court cautioned that some state laws or enforcement actions could affect rates, routes, or services "in too tenuous, remote, or peripheral a manner" to qualify for preemption. *Id.* at 390 (quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95 (1983)) (internal quotations omitted). On the specific facts in *Morales*, the Court concluded that the threatened enforcement action was preempted under the ADA because, "[a]ll in all, the obligations imposed by the guidelines would have a significant impact upon the airlines' ability to market their product, and hence a significant impact upon the fares they charge." *Id.*

Three years later, in *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995), the Supreme Court addressed the ADA preemption provision as a defense to a class of plaintiff claims brought under the Illinois Consumer Fraud and Deceptive Business Practices Act and Illinois common law for breach of contract, alleging that the defendant airline engaged in cutbacks on the utility or value of pre-earned frequent flyer miles. The Court in *Wolens* began by noting that "[t]he *Morales* opinion presented much more" than an interpretation of the phrase "relating to," and that the Court in *Morales* also focused on the ADA's "deregulatory purpose" and the strength of the state laws' impact on airline rates, routes, or services. *Id.* at 223-24. On the facts presented in *Wolens*, the

Court easily concluded that the plaintiffs' claims related to airline rates and services. *Id.* at 226 ("We need not dwell on the question whether plaintiffs' complaints state claims 'relating to [air carrier] rates, routes, or services.' "). Because the Illinois Consumer Fraud Act inherently permitted, though [sic] private litigation, "intrusive regulation of airline business practices" such as the marketing of rates and services, the Court deemed plaintiffs' attempts to enforce the Illinois Consumer Fraud Act against the airline to be preempted under the ADA. *Id.* at 227-28. With respect to the common law breach of contract claims, on the other hand, the Court found no similar "state-imposed obligations" and thus no preemption. *Id.* at 228-29. As the Court noted in both *Morales* and *Wolens*, the ADA was designed to promote "maximum reliance on competitive market forces." *Id.* at 230 (quoting 49 U.S.C. App. § 1302(a)(4)); *Morales*, 504 U.S. at 378 (same). State law claims based solely on an airline's "own, self-imposed undertakings" and its "privately ordered obligations," such as breach of contract claims, are not preempted because they promote "[m]arket efficiency" rather than hindering it. *Wolens*, 513 U.S. at 228-30.

In *Rowe v. New Hampshire Motor Transport Association*, the Court addressed whether the State of Maine was preempted under the FAAAA from enforcing a state statute regulating the delivery of tobacco products to minors. *Rowe v. N.H. Motor Trans. Ass'n*, 552 U.S. 364 (2008). Because the state law at issue would "require carriers to offer a system of services

that the market does not now provide," the Court held that the statute had both "a direct 'connection with' motor carrier services" and "a 'significant' and adverse 'impact' in respect to the FAAAA's ability to achieve its preemption-related objectives." *Id.* at 371-72 (citing *Morales*, 504 U.S. at 384, 390). The Court identified the main preemption objective of the FAAAA as "avoid[ing] . . . a State's direct substitution of its own governmental commands for 'competitive market forces.'" *Id.* at 372 (quoting *Morales*, 504 U.S. at 378). In response to the state's argument that it nevertheless retained the ability to "protect its citizens' public health," the Court noted in dicta that "state regulation that broadly prohibits certain forms of conduct and affects, say, truckdrivers, only in their capacity as members of the public (*e.g.*, a prohibition on smoking in certain public places)" would not qualify for preemption, because such laws affect "rates, routes, or services in 'too tenuous, remote, or peripheral a manner.'" *Id.* at 375 (quoting *Morales*, 504 U.S. at 390). The Court emphasized "the state laws whose 'effect' is 'forbidden' under federal law are those with a '*significant* impact' on carrier rates, routes, or services." *Id.* at 375 (emphasis in original) (quoting *Morales*, 504 U.S. at 388, 390). The Court concluded that "Maine's efforts directly to regulate carrier services" were preempted under this standard. *Id.* at 377.

The Seventh Circuit has interpreted the relevant Supreme Court precedent as setting forth "two distinct requirements" for preemption under the ADA/FAAAA framework. *Travel All Over the World, Inc. v.*

Kingdom of Saudi Arabia, 73 F.3d 1423, 1432 (7th Cir. 1996). First, a state must "enact or enforce" a law. *Id.* This requirement is satisfied by all sources of state law, including plaintiffs' efforts to enforce state laws of general applicability and common law torts. *United Airlines, Inc. v. Mesa Airlines, Inc.*, 219 F.3d 605, 607-08 (7th Cir. 2000). Second, as applied in the context of specific cases, the state law at issue must relate to carrier rates, routes, or services "either by expressly referring to them or by having a significant economic effect upon them." *Travel All Over the World*, 73 F.3d at 1432. Laws that have "a generalized effect on transactions in the economy as a whole" and that "provide the backdrop for private ordering," such as embezzlement, bribery, and racketeering statutes, are considered "too tenuously related to the regulation of the rates, routes, and services in the trucking industry to fall within the FAAAA's preemption rule." *S.C. Johnson & Son, Inc. v. Transport Corp. of Am., Inc.*, 697 F.3d 544, 558-59 (7th Cir. 2012). Thus, "an effect on price may be necessary for preemption, but it is not sufficient." *Id.* at 558-59. On the other hand, laws of general application that have an "industry-wide effect on prices and services," such as consumer fraud laws, are generally preempted under the FAAAA to the extent they affect rates, routes, or services. *Id.* at 559; *see also Mesa Airlines*, 219 F.3d at 611 (claims of tortious interference with contract, breach of fiduciary duty, and fraudulent inducement preempted under the ADA because, as alleged by regional airlines against a major air carrier, these claims "would have a significant effect on" the major

air carrier's rates, routes, or services). As a general rule, any law or claim that "seeks to substitute a state policy . . . for the agreements that the parties had reached" is preempted. *S.C. Johnson*, 697 F.3d at 557.

In this case, there is no question that Illinois has enacted and enforced 625 ILCS 5/18c-1703(2)(b) and 625 ILCS 5/18c-4104(1)(k), and that these laws are specific to motor carriers. On their face, the Illinois statutes do not expressly refer to the rates, routes, or services of motor carriers. In enforcing Section 1703(2)(b), however, Defendants sought "bills of lading, driver logs, invoices, pick-up tickets, and similar information concerning the origin and destination of cargo, dates of transportation, description of the cargo transported, and revenues generated by the transportation." (Defs.' Ans. ¶ 18.) At a broad level, viewing this evidence in the light most favorable to Plaintiffs, as the court must do at this stage of the litigation, the court finds that Defendants' requests for documents could be reasonably construed as requests for Plaintiffs to produce information about their rates, routes, or services. (*See* Dkt. No. 50 ("Defs.' Resp.") at 2 ("There is no dispute the Commission sought documents *about* cargo and prices, driver logs, etc.") (emphasis in original).) Defendants' enforcement of Illinois law can therefore be considered "related to" Plaintiffs' rates, routes, or services in the sense that the enforcement actions have "a connection with" Plaintiffs' rates, routes, or services. *Morales*, 504 U.S. at 384.

Even under *Morales*, however, "the breadth of the words 'related to' does not mean the sky is the limit." *Dan's City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1778 (2013). This court must also consider the deregulatory purpose of the FAAAA, and wither [sic] the statutes at issue have "a *significant* impact on carrier rates, routes, or services." *Rowe*, 553 U.S. at 375 (emphasis in original) (internal quotation marks omitted); *see also Travel All Over the World*, 73 F.3d at 1430 ("The Congressional intent to preempt state law should be the ultimate touchstone in our preemption analysis."). In this case, there is no evidence that Defendants' actions affected Plaintiffs' rates, routes, or services in any way, or that the Illinois statutes and their enforcement by Defendants are an attempt to substitute Illinois's "own governmental commands for 'competitive market forces.'" *Rowe*, 553 U.S. at 372 (quoting *Morales*, 504 U.S. at 378). Pursuant to the state statute at issue, Defendants sought "production of all accounts, books, records, memoranda, and other papers *in the possession or control of*" Plaintiffs. 625 ILCS 5/18c-1703(2)(b) (emphasis added). Plaintiffs were not required to maintain any particular records or forms, other than those already maintained in the ordinary course of their businesses, nor were Plaintiffs required to charge certain rates, take specific routes, or offer any special services. Plaintiffs do not actually claim any effect on rates, routes, or services in this case, instead taking the position "it is impossible at this time to articulate the particular effect which those investigations may have on the actual rates, followed routes, or offered services which

the motor carriers may offer." (Dkt. No. 42 ("Pls.' Mem.") ¶ 21.) Plaintiffs' speculation that the ICC might prescribe special forms or punish motor carriers for not providing specific information, (*id.*), is entirely speculative and is not supported by the record. Additionally, Plaintiffs' argument that "[i]f a state law or enforcement activity relates *in any way* to motor carrier rates, routes or service, that state law and that enforcement activity are preempted," (*id.* ¶ 19 (emphasis added)), is not supported by the Supreme Court and Seventh Circuit case law set forth above. *See S.C. Johnson*, 697 F.3d at 558-59 (describing an "effect on price [or routes, or services]" as a condition "necessary for preemption").

As the Seventh Circuit has noted, "the broad applicability of the preemption statutes should be understood in light of their deregulatory purpose." *S.C. Johnson*, 697 F.3d at 559. Because the Illinois statutes at issue on their face do not attempt to regulate motor carrier rates, routes, or services, and, as enforced, do not impact Plaintiffs' rates, routes, or services in any way, the court finds no preemption under the FAAAA's express preemption clause.

3. Safety Regulatory Authority and Insurance Exception

In the alternative, even if Defendants' enforcement of 625 ILCS 5/18c-1703(2)(b) and 625 ILCS 5/18c-4104(1)(k) is properly considered to be preempted under Paragraph 1 of the FAAAA's express

preemption clause, the court finds that Defendants qualify for the exception set forth in Paragraph 2. The relevant exception states:

> [The FAAA's general rule regarding preemption] shall not restrict the safety regulatory authority of a State with respect to motor vehicles . . . or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

49 U.S.C. § 14501(c)(2)(A). This exception preserves "the preexisting and traditional state police power over safety," and state laws that are "genuinely responsive to safety [or insurance] concerns" are included within the exception. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 339, 442 (2002).

It is undisputed that Illinois law requires motor carriers to have proof of liability insurance coverage on file with the ICC. *See* 625 ILCS 5/18c-4901; 625 ILCS 5/18c-4904. It is also undisputed that motor carriers may not operate in Illinois without first obtaining a license from the ICC. *See* 625 ILCS 5/18c-4104(1)(a). Defendant Baner states in his sworn declaration that the purpose of seeking the requested documents from motor carriers is two-fold: "to determine how long the commercial motor carrier has been operating in Illinois without a certificate . . . [and] to determine if it had the required insurance coverage and that this insurance coverage was on file with the

Illinois Commerce Commission for this period." (Dkt. No. 44-9, Defs.' Ex. F ("Baner Decl.") ¶ 4.) There is no evidence in the record suggesting that Baner's explanation is untrue, or that Defendants were not genuinely attempting to ascertain Plaintiffs' compliance with Illinois' licensing and insurance requirements by issuing their requests for documents. Plaintiffs' argument that "[n]othing in those documents concern insurance or safety matters," (Pls.' Mem. ¶ 13), is unpersuasive in light of the undisputed fact that Defendants requested "information concerning the origin and destination of cargo, dates of transportation, description of the cargo transported, and revenues generated by the transportation." (Defs.' Ans. ¶ 18.) As a matter of common sense, this type of information is relevant to ascertaining whether a motor carrier is properly licensed and insured.

Because the enforcement actions at issue in this case fall squarely within the exception set forth in Paragraph 2, the court grants summary judgment in favor of Defendants on this alternative basis, as well.

CONCLUSION

For the reasons set forth above, Plaintiffs' motion for summary judgment (Dkt. No. 40) is denied and Defendants' motion for summary judgment (Dkt. No.

43) is granted. Judgment is entered in favor of Defendants pursuant to Federal Rule of Civil Procedure 56. Civil case terminated.

ENTER:

/s/ James F. Holderman
JAMES F. HOLDERMAN
District Judge, United
States District Court

Date: September 23, 2013

UNITED STATES DISTRICT COURT
for the
Northern District of Illinois

Nationwide Freight System, Inc. et al *Plaintiff* v. Illinois Commerce et al *Defendant*	)	Civil Action No. 12 C 2486

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____

recover from the defendant *(name)* _____

the amount of _____ dollars

($ _____), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____

☒ Other:

Judgment is entered in favor of Defendants and against Plaintiffs' [sic] pursuant to Federal Rule of Civil Procedure 56

This action was *(check one)*:

☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision was reached.

☒ decided by Judge James F. Holderman on a motion for summary judgment.

Date: Sep 23, 2012 [sic]

Thomas Bruton,
Clerk of Court

/s/ Nicole Fratto