Date: November 27, 1995

To: Paul D. Pierce, Chief Investigator
Patricia E. Ryan, Executive Director

From: John E. Carnes, Commission Counsel J.E.C.

RE: [redacted] v. [redacted]

At the October 30th Commission Meeting the Commissioners requested that I review Respondent's legal argument regarding the preemption issue in the above-entitled case, and advise you as to whether the Investigator's Report should be changed in anyway.

The facts relevant to the issue are summarized as follows: Mr. [redacted] has Type I diabetes Mellitus. He injects insulin twice a day. He is under no medical restrictions relating to work.

[redacted] (and its subsidiaries) manufactures [redacted] The food products are produced in Minnesota, Kansas, Kentucky, California, South Dakota, Texas and Florida. [redacted] long-haul tractor/trailer drivers deliver the products to company depots in 48 of the 50 states. At the temporary depots the product is transferred to delivery route trucks, whose drivers deliver the product to the ultimate wholesale and retail customers within the state. The delivery route trucks weigh between 12,000 and 27,000 pounds.

Mr. [redacted] applied to be a delivery route truck driver.

Analysis

Companies which engage in interstate commerce must comply with Federal Motor Carrier Safety Regulations ("FMCSR").

The FMCSR at Section 391.41 state that a person is not physically qualified to drive a motor vehicle in interstate commerce if the person has an "established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control." [1]

The State of Maine allows people with diabetes who take insulin to obtain a Class II license.

The question at this point is whether [redacted], which transports its products through forty-eight states but also employs drivers who drive only within Maine, is engaged in interstate commerce. [redacted] posed this question to U.S. Department of Transportation, Federal Highway Administration. The FHWA considered [redacted] intention that its goods remain in interstate commerce from origin to final destination and the fact that the depots in Maine serve only as temporary storage. Accordingly, the FHWA concluded that "such storage does not break the continuity of the interstate movement of the goods or change the character of the shipments to intrastate commerce. Therefore, [redacted] is subject to the jurisdiction of the FHWA and must comply with the Federal Motor Carrier Safety Regulations."

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[1] This requirement has been questioned and the Federal Highway Administration ("FHWA") has been conducting a pilot waiver program to test whether the current absolute disqualification should be modified. The results of this pilot program have not yet been published. At the present time the disqualification remains in effect.

Federal law may preempt state law when Congress explicitly preempts the area of regulation, or when Congress indicates, short of explicit preemption, an intent to occupy an entire field of regulation, or, in areas where the federal and state governments may both regulate, when state law conflicts with federal law. Rozanski v. A-P-A Transport, Inc., 47 FEP 179, 181 (Me. 1986).

In this case, the federal government views [redacted] operation as interstate commerce regardless of the fact that the final delivery of product is accomplished by drivers who drive only in Maine. If the company were to allow Mr. [redacted] to drive [redacted] trucks in Maine it would be violating federal law. Because it is impossible for [redacted] to be in compliance with both state and federal law at the same time, the state law is preempted.

I do note that Section 391.41 of FMCSR applies only to trucks weighing over 10,000 pounds. See: Sarsycki v. United Parcel Service, 3 A D Cases 1039, 1043 (W.D. Okla. 1994). Unfortunately for Mr. [redacted] the [redacted] trucks he would be driving weigh between 12,000 and 27,000 pounds.

Conclusion

I recommend that the Investigator's Report be changed to recommend a no reasonable grounds finding due to federal preemption of state law.

If you have any questions I would be pleased to discuss them.