

FILED

UNITED STATES COURT OF APPEALS

JAN 27 2014

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MICKEY LEE DILTS; et al.,  
  
Plaintiffs - Appellants,  
  
v.  
  
PENSKE LOGISTICS LLC; et al.,  
  
Defendants - Appellees.

No. 12-55705

D.C. No. 3:08-cv-00318-CAB-BLM  
Southern District of California,  
San Diego

ORDER

The court invites the views of the United States on the issues presented in this appeal.

In particular, this case presents two issues on which the Secretary of Transportation's views would assist us. First, what is the Agency's current position on whether the Federal Aviation Administration Authorization Act of 1994 ("FAAAA") preempts California's meal and rest break laws as applied to motor carriers? Second, what level of deference do we owe to (a) the Department of Transportation's published *Notice of Rejection of Petition for Preemption*, 73 Fed. Reg. 72,204, 79,206 (Dec. 24, 2008), which held that the FAAAA does not preempt California's meal and rest break laws; and (b) the position that the Agency takes in any brief submitted in response to this order?

Because these issues require us to interpret the preemption provision of the FAAAA, we invite the input of the United States. Our phrasing of the issues does not prevent the United States from reformulating the issues. Nor does it restrict the United States from considering any other issues presented by the parties' briefing.

If the United States wishes to file a brief as amicus curiae, the brief should be filed within 21 days from the filed date of this order and comply with the page or type-volume limitations set forth in Federal Rules of Appellate Procedure 29(d) and 32(a)(7). Parties who are registered for ECF must file the supplemental brief electronically without submission of paper copies. Parties who are not registered ECF filers must file the original supplemental brief plus four paper copies.

The parties' briefs and excerpts of record are available to the United States in electronic form on the court's ECF system.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Allison Fung  
Deputy Clerk