United States Court of Appeals
For the Eighth Circuit

No. 25-1777

Pennsylvania Insurance Company, a New Mexico Corporation, as the Subrogee of John Breslow and Sonia Breslow,

Plaintiff - Appellant,

v.

Federal Express Corporation, a Delaware Corporation,

Defendant - Appellee.

No. 25-1891

Pennsylvania Insurance Company, a New Mexico Corporation, as the Subrogee of John Breslow and Sonia Breslow,

Plaintiff - Appellee,

v.

Federal Express Corporation, a Delaware Corporation,

Defendant - Appellant.

Appeals from United States District Court
for the District of Nebraska - Omaha

Submitted: February 10, 2026
Filed: September 3, 2026

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Before COLLOTON, Chief Judge, BENTON and KELLY, Circuit Judges.

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COLLOTON, Chief Judge.

This appeal arises out of a missing watch that Sonia Breslow purchased for her husband. Pennsylvania Insurance Company, as subrogee of the Breslows, sued Federal Express Corporation, alleging that the company failed to deliver the watch. The district court[*] dismissed several claims on the ground that they were preempted by federal law or failed as a matter of law. After a bench trial on a breach of contract claim, the court determined that the insurer has the right of subrogation, and that Federal Express breached the delivery contract. The court ruled that the limit of liability under the shipping contract was $100, and entered judgment for Pennsylvania Insurance in that amount. Both parties appeal, and we affirm the judgment.

I.

This appeal arises after a bench trial, so our recitation of the facts is drawn from the district court's findings. Sonia purchased a watch from Jacob & Company for $250,000. The watch was manufactured in Switzerland, and then delivered to the office of Jacob & Company in New York.

To avoid paying sales tax in Arizona, Sonia sought to have the watch delivered first to the Iron Horse Golf Club in Montana, and then shipped from Montana to her

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[*]The Honorable Susan M. Bazis, United States District Judge for the District of Nebraska.

in Arizona. Jacob & Company packaged the shipment. The shipment consisted of two boxes that were inside a yellow bag, and the bag was secured by a zip tie. One box contained a display case for the watch, and the other box contained the watch and various company-branded items. Jacob & Company hired a courier to deliver the shipment to the Club in Montana, and the courier did so on November 17, 2022.

Sonia instructed the staff at the Club to place the shipment in one box. Instead, the staff removed both boxes from the yellow bag, repackaged the contents in two different boxes, placed those boxes in the yellow bag, and then secured the top of the bag with a zip tie. Video footage from the Club captured that process, although an employee from Federal Express, Randy Kelley, testified that he could not "really tell what any of the contents are that [the employee from the Club] pulled out of those boxes."

Sonia instructed the Club to have the bag delivered to her in Arizona via Federal Express. Federal Express provides delivery services for customers who wish to transport packages. Federal Express maintains a fleet of aircraft and qualifies as an "air carrier" for purposes of federal aviation regulations. *See* 49 U.S.C. § 40102(a)(2).

The Club maintained an account with Federal Express. Staff from the Club created a shipping label online using that account, and instructed Federal Express to deliver the package "priority overnight" to a United Parcel Service location in Scottsdale, Arizona.

The Club's staff attached a shipping label to the outside of the yellow bag. When creating the shipping label, the Club did not declare a value on the package.

An employee from Federal Express picked up the bag from the Club and delivered it to an airplane at a Federal Express facility in Montana. The package traveled by plane to Memphis, by plane to Phoenix, and then by truck to a Federal Express facility in Scottsdale. Kelley from Federal Express testified that video footage from the Federal Express facility in Memphis shows that the bag was no longer secured by a zip tie, and that the zip tie "came off" at some point "between the watch package being picked up by [the] FedEx courier and Memphis."

Kelley testified that video footage from the facility in Scottsdale shows that an employee removed one box from the yellow bag, placed the box on the conveyor belt, and, after a few minutes, placed the bag on the belt. The bag and the box moved along the conveyor belt. A different employee picked up the box, looked at all six sides of the box in an attempt to scan a label on the box, but was unable to do so. The employee then placed the box back on the belt. An employee, however, was able to scan the shipping label on the outside of the yellow bag. The bag and the box eventually moved to a location on the belt where the facility did not record video.

Federal Express delivered the yellow bag to the UPS store in Scottsdale, and Sonia picked up the package. When Sonia opened the bag, she found only one box, and the watch was not inside that box. Sonia filed an insurance claim for the loss of the watch, and Pennsylvania Insurance issued a check to the Breslows for $250,000.

Pennsylvania Insurance, as subrogee of the Breslows, sued Federal Express in Nebraska state court, alleging that the company's actions constituted negligence, conversion, unjust enrichment, breach of contract, and civil theft. Federal Express removed the case to federal court based on diversity of citizenship. *See* 28 U.S.C. § 1332.

The district court concluded that the Airline Deregulation Act pre-empted Pennsylvania Insurance's state law claims of negligence, unjust enrichment, and civil theft. *See* 49 U.S.C. § 41713(b)(1). The court determined that the company's conversion claim was not pre-empted, but dismissed the claim on the ground that there was insufficient evidence to show that Federal Express converted the watch. The court concluded that the company's breach of contract claim was not pre-empted, but that Federal Express's liability was limited to $100 under the terms of the shipping contract. The case proceeded to a bench trial on the contract claim.

After trial, the district court stated its findings of fact and conclusions of law under Federal Rule of Civil Procedure 52(a). The court said that it had "carefully reviewed each video submitted as evidence during the trial, but none capture the moment the FedEx employee reached into the yellow bag." The court observed, however, that the parties do not dispute "that a FedEx employee did remove one box from the yellow bag," and that the bag and the box eventually moved to a location on the conveyor belt where the facility did not record video. With respect to Kelley's testimony about video from the facility in Scottsdale, the court explained that "the footage described by Mr. Kelley was just not included in the exhibits offered at trial."

The court found that a contract existed between the Iron Horse Golf Club and Federal Express, and that "[t]he principal term of that contract was to deliver the shipment tendered to FedEx in Montana to the UPS store in Scottsdale." The court determined that Sonia was entitled to enforce the contract as a third-party beneficiary, and that Pennsylvania Insurance could enforce the contract as Sonia's subrogee. The court found that an employee from Federal Express "reached inside the open yellow bag and removed one of those boxes before placing it on a conveyor belt," and that "the box that was removed contained the watch and was never delivered to Sonia." The court concluded that Federal Express breached the shipping contract, and entered judgment in favor of Pennsylvania Insurance in the amount of $100.

II.

On appeal, Pennsylvania Insurance argues that the district court erred by concluding that several of its claims are pre-empted. The Airline Deregulation Act contains an express pre-emption clause as follows:

> [A] State, political subdivision of a State, or political authority of at least 2 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 an air carrier* that may provide air transportation under this subpart.

49 U.S.C. § 41713(b)(1) (emphasis added).

The key phrase "related to" expresses a broad pre-emptive purpose, *Nw., Inc. v. Ginsberg*, 572 U.S. 273, 280 (2014), and the provision covers state laws "having a connection with or reference to airline 'rates, routes, or services.'" *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). The clause pre-empts both state laws specifically addressed to the airline industry and laws of general applicability that indirectly affect air carriers' rates, routes, or services. *Id*. at 386. Some state regulation, however, may affect the rates, routes, or services of an air carrier "in too tenuous, remote, or peripheral a manner to have pre-emptive effect." *Id.* at 390 (internal quotation omitted). The "state laws whose 'effect' is 'forbidden' under federal law are those with a '*significant* impact' on carrier rates, routes, or services." *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 375 (2008) (quoting *Morales*, 504 U.S. at 388, 390) (emphasis added in *Rowe*).

There is disagreement about the meaning of the term "service." *See Watson v. Air Methods Corp.*, 870 F.3d 812, 817 (8th Cir. 2017) (en banc). Some courts say that it refers only to "such things as the frequency and scheduling of transportation, and to the selection of markets to or from which transportation is provided." *Charas* *v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1265-66 (9th Cir. 1998) (en banc). Other courts construe the term more broadly to mean the "bargained-for or anticipated provision of labor from one party to another," and the "contractual arrangement between the airline and the user of the service." *Headstream Techs., LLC v. FedEx Corp.*, No. 22-1410, 2023 WL 1434054, at *3 (6th Cir. Feb. 1, 2023) (internal quotation omitted); *Tobin v. Fed. Express Corp.*, 775 F.3d 448, 453-54 (1st Cir. 2014); *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir. 1995) (en banc); *Air Transp. Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218, 223 (2d Cir. 2008) (per curiam).

In *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995), the Supreme Court held that the plaintiffs' state-law claims alleging breach of contract and consumer fraud arising from changes in a frequent flyer program related to certain "services" of American Airlines—namely, "access to flights and class-of-service upgrades"—and were thus preempted by the Airline Deregulation Act. *Id.* at 226-27. In *Watson*, citing *Wolens*, we assumed for the sake of analysis that the term "service" refers to the "contractual arrangement between the air carrier and the user of the service." 870 F.3d at 818. We now conclude that the view assumed in *Watson* is the better understanding of the statute, and we join the First, Second, Fifth, and Sixth Circuits in following that approach.

The district court determined that the Airline Deregulation Act expressly pre-empted Pennsylvania Insurance's claims of negligence, unjust enrichment, and civil theft. We see no error in this conclusion. Pennsylvania Insurance's state common law claims are "provisions" that have "the force and effect of law," and "fall comfortably within the language of the ADA pre-emption provision." *See Ginsberg*, 572 U.S. at 281-82.

Pennsylvania Insurance's claims are also "related to a price, route, or service" of Federal Express. 49 U.S.C. § 41713(b)(1). The complaint alleged that Federal Express became liable "by not delivering the Bugatti Watch." Pennsylvania

Insurance argues that Federal Express was negligent when it "failed to properly track the package or return it to the Iron Horse Golf Club when issues involving the package arose." Pennsylvania Insurance also contends that Federal Express is liable based on "the overall treatment of the package when it was apparently repackaged at the FedEx Scottsdale facility." Package handling and transportation "plainly concern the contractual arrangement between FedEx and the users of its services (those who send packages)." *Tobin*, 775 F.3d at 454.

For Pennsylvania Insurance to prevail on the common law claims at issue, the company would have to prove that Federal Express's procedures were inadequate for the purpose of delivery, or that those procedures, if adequate, were carried out unlawfully by Federal Express's employees. *See id.* at 455. If Federal Express's procedures were found inadequate, then the company would be required to modify its current procedures for package handling and transportation. That effect would not be "tenuous, remote, or peripheral," but rather a "significant impact" on the company's core services. And "a finding that the actions of FedEx's employees breached a state-law duty of care would . . . . create the very patchwork of state-based regulations that ADA preemption is meant to preclude." *Id.*

Pennsylvania Insurance argues that its claims against FedEx are too far removed from Congress's deregulation purpose to warrant preemption. The insurer compares its claims to personal injury claims, but the claims at issue are distinguishable. The Airline Deregulation Act does not pre-empt all state law claims for personal injury. *See Wolens*, 513 U.S. at 231 n.7; *Watson*, 870 F.3d at 819; *Hodges*, 44 F.3d at 338. The Act does, however, preclude variations in state law insofar as they relate to a price, route, or service of an air carrier. *See Watson*, 870 F.3d at 819. Pennsylvania Insurance's claims are centered around Federal Express's handling and transportation of packages—core services of the company—and they are thus preempted.

III.

Pennsylvania Insurance next argues that the district court erred by granting summary judgment for Federal Express on the insurance company's claim alleging conversion of the watch. The insurer argues that Federal Express converted the watch, and that the carrier therefore may not limit its liability under the shipping contract. Under the federal common law that governs such contractual clauses, the "released value" doctrine allows an air carrier to limit its liability for lost shipments. *See Kemper Ins. Cos. v. Fed. Express Corp.*, 252 F.3d 509, 512 (1st Cir. 2001). Under the "conversion exception to the released value doctrine," however, "'[i]f the property has been converted by the carrier, it would be against public policy to permit the carrier to limit its liability and thus to profit from its own misconduct.'" *Id.* at 515 (quoting *Glickfeld v. Howard Van Lines*, 213 F.2d 723, 727 (9th Cir. 1954)).

Kelley from Federal Express testified that the video footage from the Scottsdale facility shows that an employee removed one box from the yellow bag, placed it on the conveyor belt, and then placed the yellow bag on the belt. Pennsylvania Insurance argues that after the box and the bag moved to a location on the belt that was not under video surveillance, an employee removed the watch from the box and stole the watch.

Even if Pennsylvania Insurance is correct about what happened, we agree with the district court that "there is no evidence presented that true conversion by Defendant has occurred." In the context of employee theft, "'the conversion doctrine is pertinent only when there has been a true conversion, i.e., where the carrier has appropriated the property for its own use or gain.'" *Kemper*, 252 F.3d at 515 (quoting *Glickfeld*, 213 F.2d at 727). In *Kemper*, the plaintiff alleged that "FedEx had been aware of, and ignored, the repeated theft of valuable shipped goods by employees." *Id.* at 512. The court determined that even if the allegations were true, "willful blindness to the activity of third parties (even employees) does not qualify" for the "conversion exception." *Id.* at 516. Here, Pennsylvania Insurance alleges that, in an area not under video surveillance, a single employee removed the watch from the box. Pennsylvania Insurance has not presented evidence to support a finding that "FedEx appropriated the property *itself*, or profited from its conversion." *Id.* A carrier "may properly limit its liability where the conversion is by third parties or even by its own employees." *Glickfeld*, 213 F.2d at 727. The district court did not err in granting summary judgment on the conversion claim.

IV.

Pennsylvania Insurance contends that even if Federal Express did not convert the watch, the district court erred in ruling that the terms of the delivery contract limited the carrier's liability on the breach of contract claim to $100. The Iron Horse Golf Club is bound by the limitation on liability if Federal Express gave the Club reasonable notice of limited liability, and presented the Club with a fair opportunity to purchase greater liability coverage. *See Husman Constr. Co. v. Purolator Courier Corp.*, 832 F.2d 459, 461 (8th Cir. 1987); *Kemper*, 252 F.3d at 512; *Kesel v. United Parcel Serv., Inc.*, 339 F.3d 849, 852 (9th Cir. 2003).

We see no error in the district court's conclusion that Federal Express's liability was limited to $100. The evidence established that the Club entered into a "Pricing Agreement" with Federal Express in 2009. The pricing agreement provides that the terms of the "FedEx Service Guide" are incorporated into the pricing agreement. The service guide contains a limited liability provision, which states that "[t]he declared value of any package represents our maximum liability in connection with a shipment of that package." The guide further provides that "unless a higher value is declared and paid for, our liability . . . is limited to US$100." At the last step of creating the shipping label, the Club clicked "Finalize." Next to the "Finalize" option was a notice that stated, "By clicking 'Finalize,' I accept the Terms of Use of the FedEx website and the FedEx Service Guide."

Pennsylvania Insurance argues that Federal Express did not provide the Iron Horse Golf Club with adequate notice "of a choice of liabilities and rates," but we are not persuaded. The service guide provides that shipments containing jewelry are limited to a maximum declared value of $1,000. The guide provides information on prices that a customer would pay if the customer declares a value exceeding $100. The price varies depending "on whether (1) the shipper is a FedEx account holder and (2) the shipper has discounts applied to his or her account." When the Club created a shipping label, the staff was presented with a checkbox that stated that the Club can "[p]urchase a higher limit of liability from FedEx." The Club negotiated its pricing agreement with Federal Express, and had used the company's services on several occasions. Federal Express thus provided the Club with ample notice, and there was no error in concluding that the limit of liability on these facts is $100.

V.

On cross-appeal, Federal Express challenges the district court's determination that the company breached the delivery contract. Federal Express argues first that there was "no evidence at trial of any contract that FedEx supposedly breached." To create a contract, there must be both an offer and an acceptance; there must be a meeting of the minds between the parties as to the essential terms and conditions of the proposed contract. *Gibbons Ranches, L.L.C. v. Bailey*, 857 N.W.2d 808, 812-13 (Neb. 2015). Under Nebraska law, whether a contract exists is a question of fact. *GGNSC Omaha Oak Grove, LLC v. Payich*, 708 F.3d 1024, 1027 (8th Cir. 2013); *see Gerhold Concrete Co. v. St. Paul Fire & Marine Ins. Co.*, 695 N.W.2d 665, 670 (Neb. 2005).

The district court did not clearly err in finding that a contract existed between the Club and Federal Express, and that the "principal term of that contract was to deliver the shipment tendered to FedEx in Montana to the UPS store in Scottsdale." The evidence included an invoice from Federal Express dated November 23, 2022.

The invoice lists the Club's "Account Number," and provides details on several transactions, including the shipment at issue. The invoice lists the Club as the "Sender" of the package, and Sonia Breslow as the "Recipient" of the package. The invoice established that the Club instructed Federal Express to deliver the package "FedEx Priority Overnight" to the UPS store in Scottsdale, and that the "Ship Date" was November 17, 2022. The invoice shows that Federal Express charged the Club $127.69 for that delivery. The invoice thus established the essential terms and conditions of the contract. *Cf. J.V. & Sons Trucking, Inc. v. Asset Vision Logistics, LLC*, 121 F.4th 690, 699-700 (8th Cir. 2024); *In re Driggs Corp.*, 55 F. App'x 618, 620 (4th Cir. 2003) (per curiam).

The evidence also established an offer and acceptance by the Club and Federal Express. Testimony received without objection established that Sonia instructed an employee at the Club to "[m]ake sure the FedEx label" was on the package, and that the Club created the shipping label using the account that it maintained with Federal Express. Testimony also established that an employee from Federal Express picked up the yellow bag from the Club. There was no error in the court's finding that a contract existed.

Federal Express argues next that the district court erred in concluding that the company breached the contract. The company contends that "there was no evidence FedEx was ever given the Watch to ship to Breslow in Arizona." The district court found that when the employee from Federal Express picked up the yellow bag from the Club, the bag "contained two boxes—one with the watch inside." The court also found "that the box that was removed [at the Scottsdale facility] contained the watch and was never delivered to Sonia." The court determined that "FedEx breached its duty to deliver the *entire* shipment to Sonia in Arizona."

The district court's findings that the Club received the watch, and that the watch was tendered to an employee from Federal Express are not clearly erroneous.

Sonia testified that she attended an event where Jacob & Company showed samples of the watch, and that she paid the full purchase price of the watch in installments via credit card before the watch was manufactured. Testimony received without objection established that "Jacob packaged . . . the display case for the watch" in one box, and "gifts from Jacob & Company" and the watch in the second box. Kelley testified that he watched video footage of employees at the Club "handling the package" that was "received from Jacob & Company." The court received without objection Sonia's testimony that she instructed an employee at the Club to "[m]ake sure the FedEx label's on [the package]." Kelley's testimony established that an employee from Federal Express picked up the yellow bag from the Club, and that the bag arrived at the Scottsdale facility.

The district court's finding that "the box that was removed [at the Scottsdale facility] contained the watch and was never delivered to Sonia" is not clearly erroneous. Kelley testified that the video footage from the facility shows an employee taking out one box from the yellow bag. Testimony established that the yellow bag was delivered to the UPS store where Sonia sought to have it delivered. Sonia testified that she opened the yellow bag, that only one box was in it, that the "watch case" was in that box, and that the watch was not in the box. Thus, the district court did not clearly err in finding that Federal Express failed to "deliver the *entire* shipment to Sonia in Arizona," as required under the contract.

Federal Express argues that the district court erred in relying on Sonia's testimony because she was not credible. When reviewing the district court's findings of fact, this court "must give due regard to the trial court's opportunity to judge the witnesses' credibility." Fed. R. Civ. P. 52(a)(6). We decline on this record to "second-guess the bench-trial court's credibility assessments." *Krist v. Kolombos Rest. Inc.*, 688 F.3d 89, 95 (2d Cir. 2012); *see Anderson v. City of Bessemer City*, 470 U.S. 564, 574-75 (1985).

Federal Express contends next that Pennsylvania Insurance did not have standing to bring the breach of contract claim. Federal Express contends that the district court erred in concluding that Pennsylvania Insurance has the right of subrogation to assume Sonia's position. The right of subrogation is established "where a party is compelled to pay the debt of a third person to protect his own rights or interest." *Cagle, Inc. v. Sammons*, 254 N.W.2d 398, 403 (Neb. 1977). The district court determined that "Sonia was a third-party beneficiary entitled to enforce the contract between FedEx and the Iron Horse Golf Club," and that Pennsylvania Insurance established that it was "entitled to enforce the contract" as Sonia's "subrogated insurer."

The district court did not err in determining that Sonia was entitled to enforce the contract as a third-party beneficiary. "In order for those not named as parties to recover under a contract as third-party beneficiaries, it must appear by express stipulation or by reasonable intendment that the rights and interest of such unnamed parties were contemplated and that provision was being made for them." *Podraza v. New Century Physicians of Neb., LLC*, 789 N.W.2d 260, 267 (Neb. 2010). The evidence established that Sonia was the "recipient" of the package that Federal Express was required to deliver pursuant to the contract. The Club, by naming Sonia as the recipient, evidenced its intent to give Sonia "the benefit of FedEx's promised performance," thus making her a third-party beneficiary who could enforce the contract. *See Aretakis v. Fed. Express Corp.*, No. 10 Civ. 1696, 2011 WL 1226278, at *6 (S.D.N.Y. Feb. 28, 2011).

The district court did not err in determining that Pennsylvania Insurance has the right of subrogation. The district court cited two documents sent by Treadwell Fine Art & Collections Underwriters. One document is an invoice. The invoice shows that Treadwell charged a premium to the Breslows for the issuance of a "Private Collections" policy, that "Pennsylvania Insurance Co" was a "Carrier" of that policy, and that the policy was issued on November 9, 2022. The second document is a letter sent on November 28 that concerns a "Jewelry Claim" filed by the Breslows. The letter lists the same policy number as the policy number from the invoice. The letter states that although "the watch was not yet added to the policy," there "is a newly acquired overage clause which extends coverage for 90 days."

The parties do not dispute that Pennsylvania Insurance issued a check to the Breslows in the amount of $250,000, which matches the purchase price of the watch. On this record, the district court did not clearly err in finding that Pennsylvania Insurance "paid the Breslows under the private collections policy for the loss of the watch." Pennsylvania Insurance thus established that it has standing. By paying the Breslows pursuant to the collections policy, the company succeeded to Sonia's right to recover under the contract. *See Ehlers v. Perry*, 494 N.W.2d 325, 334-35 (Neb. 1993).

Federal Express argues that the district court erred when it refused to consider a letter "from Maximum Subrogation and Recovery Services as an impeachment exhibit for the limited purpose of showing [Pennsylvania Insurance] did not issue a policy covering the Watch but some other carrier may have." We review the district court's exclusion of the letter for abuse of discretion. *See Sellers v. Mineta*, 350 F.3d 706, 711 (8th Cir. 2003).

The local rules of the district court provide that "documents and objects expected to be introduced as exhibits must be physically numbered and inspected" before the final pretrial conference. Neb. Civ. R. 16.2(a)(1). A complete list of the exhibits prepared under Rule 16.2(a)(1) must be attached to the "jointly prepared" proposed final pretrial order. Neb. Civ. R. 16.2(a)(2)(A). Here, the district court refused to receive the letter as an exhibit, because Federal Express "didn't produce this, nor was it part of the pretrial order."

Federal Express argues that the court erred by excluding the letter because it was offered for impeachment purposes only. Although a letter that is expected to be used solely for impeachment purposes need not be disclosed under the pretrial order, Neb. Civ. R. 16.2(a)(1), Federal Express asserted at trial that it was "not offering it for impeachment." T. Tr. at 135. Thus, the district court did not abuse its discretion, because "[t]he power of the trial court to exclude exhibits and witnesses not disclosed in compliance with its discovery and pretrial orders is essential to the judge's control over the case." *Sellers*, 350 F.3d at 711 (internal quotation omitted).

The judgment of the district court is affirmed.