

YLDNews

The newsletter of the Illinois State Bar Association's Young Lawyers Division

Lawyer and Gamer: A Trip to Gen Con 2023

BY CODY N. FOLLIS

On August 3, thousands of gamers and nerds amassed at the Indianapolis Convention Center in downtown Indy for the first day of Gen Con, the largest tabletop gaming convention in North America. Indianapolis has been home to Gen Con for the last 20 years, and will remain its home at least through 2030.¹ Said extension was to be expected considering Gen Con's record 2023 attendance of 70,000 individual attendees.² I was one of them. The short trip from

Springfield, Illinois to Indianapolis, Indiana was worth the effort. Any opportunity to escape the office and engage with one of my favored hobbies is going to be worth the effort.

Whether I'm playing in hours long sessions of role-playing games on the weekend, or sneaking in short card games on weeknights, gaming serves as a fantastic complement to my life as an attorney. With rules often more

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In Wake of Seventh Circuit Ruling, Freight Brokers Sleep Easier

BY NICHOLAS A. SANDOWSKI & ROBERT M. BURKE

The Seventh Circuit Court of Appeals recently issued an opinion with profound implications for freight brokers facing tort litigation. The opinion issued in the case of *Ying Ye v. GlobalTranz Enterprises, Inc.*¹, recognizes the preemptive effect of the Federal Aviation Administration Authorization Act (FAAAA) concerning freight broker liability in regard to the

hiring of motor carriers.

Congress enacted the FAAAA in 1994, which has since provided freight brokers with substantial protection from tort liability. In relevant part, the FAAAA provides that states may not enforce laws "having the force and effect of law related to" the services of a freight broker.² There

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complicated than the law I work with on a daily basis, gaming allows me to flex my creative and analytical muscles without the worry of real consequences should I fail. Despite the fantastical and fictional themes of the games I play, the games keep me grounded. Given the struggles our profession faces with stress management, gaming is an amazing outlet.

With that mindset, I stepped into the main vendor hall of Gen Con in search of new games to try, and quite possibly, buy. Looking for a new adventure to run with your favorite role-playing game? They have them. Want to sit down with friends and work through a homicide investigation? You can do it. Would you prefer a board game based on your favorite childhood video game? Just look around.

Even though I was out of the office and trying to step away from my role as “lawyer”, Gen Con had other plans for me. I read with incredible interest when the news broke that a pair of unidentified men had gained access to the convention behind the scenes and stolen a pallet of approximately \$300,000 worth of *Magic: The Gathering* game cards.³ The case continues to make the news now that the two suspects are formally charged.

Card theft aside, Paizo, publisher of the popular role-playing game *Pathfinder*, recently released a new publishing license after Wizards of the Coast (publisher of *Dungeons and Dragons* and the aforementioned *Magic: The Gathering*) bungled an attempted implementation of a new version of the license they publish under.⁴ The goal of the license created by Paizo is to keep role-playing game development as open and available as possible while providing legal protections for an individual creator’s intellectual property rights.

While I spent a significant amount of time at Gen Con with these legal issues on my mind, the enjoyment I was looking for was still found. I bought a few new games and accessories. I had positive interactions

with quite of a few of my fellow nerds. Most importantly, I returned to work the following week feeling refreshed and ready to conquer my work.

I cannot understate the importance of leisure and entertainment. Have you found that mindfulness and meditation just doesn’t do anything for you? Are you still struggling to de-stress after speaking with your counselor? Is hitting the gym just not doing it for you anymore? Try picking up a game, getting some friends together, and just playing that game without talking about work. Whether your game involves imagining a fight against a gigantic dragon, or playing a simple card game, just get playing.

Looking for a game recommendation? Please feel free to reach out. ■

Cody N. Follis is an assistant state’s attorney in the felony division of the Sangamon County State’s Attorney’s Office.

1. <https://www.wthr.com/article/money/business/gen-con-breaks-attendance-record-extends-indy-contract-through-2030-tickets-schedule-event-2024/531-dc397b52-db22-4123-aced-8a477112366b>.
2. <https://www.gencon.com/press/2023-post-show>.
3. <https://www.wrtv.com/news/local-news/crime/impd-seeking-publics-help-in-identifying-2-people-of-interest-who-stole-300-000-worth-of-gaming-cards>.
4. <https://paizo.com/community/blog/v5748dyo6sico>

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OFFICE

ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS

Nichol Marie Benson
Cody Nicholas Follis

PUBLICATIONS MANAGER

Sara Anderson
✉ sanderson@isba.org

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has been substantial disagreement between courts whether direct tort actions filed against freight brokers regarding their selection of motor carriers are preempted by the express preemption provisions of the FAAAA.

Until recently, the ninth circuit opinion in *Miller v. C.H. Robinson Worldwide, Inc.*³ stood alone at the federal appellate level. In that case, the Court recognized that negligent hiring and selection claims against freight brokers are covered by the express preemption provisions of the FAAAA but found that the Safety Regulatory Authority Exception overcame the preemptive effect of the Act. The exception provides that the FAAAA “shall not restrict the safety regulatory authority of a State with respect to motor vehicles.”⁴

The ninth circuit held that preempting state law tort actions would hinder a state’s ability to regulate motor vehicle safety, contending that potential tort liability incentivizes brokers to select safer carriers, thereby reducing trucking accidents. Consequently, precluding tort claims restricts a state’s regulatory authority. The U.S. Supreme Court’s decision not to review the ninth circuit opinion on June 27, 2022, solidified *Miller* as persuasive authority. However, the reasoning of the *Miller* Court was squarely rejected in a subsequent opinion by the ninth circuit explaining that the *Miller* Court decision was at odds with a United States Supreme Court opinion. In *R.J. Reynolds Tobacco Company v. County of Los Angeles*⁵, the ninth circuit repudiated the reasoning of the *Miller* Court and its incorrect statement that “[t]he scope of a preemption clause is also tempered by ‘the presumption that Congress does not intend to supplant state law, particularly in areas of traditional state regulation.’” The *R.J. Reynolds* Court correctly pointed out that where Congress has specifically included an express preemption clause in legislation, the focus is on the meaning of the text of the legislation without any presumption against preemption.⁶ The Court explained

that the United States Supreme Court has already determined that if a “statute contained an expressed pre-emption clause, we do not invoke any presumption against pre-emption but instead focus on the plain wording of the clause, which necessarily contains the best evidence of Congress pre-emptive intent.”⁷

Subsequent to the ninth circuit decision, the eleventh circuit, in *Aspen American Insurance Co. v. Landstar Ranger, Inc.*⁸, reached a different conclusion and found that the negligent hiring and selection claims were expressly preempted and the Safety Regulatory Authority Exception did not overcome the intent of Congress to preempt state tort claims for negligent hiring or selection of motor carriers by brokers.

The newly issued seventh circuit opinion in *Ying Ye v. GlobalTranz Enterprises, Inc.* solidifies the preemptive effect of the FAAAA prohibiting freight broker liability for negligent hiring and selection claims. The *Global Transport* suit, like the *Miller* case, arose from a collision between a commercial motor vehicle and a non-commercial vehicle. The fatal trucking collision in *Global Transport* involved a motorcyclist and a motor carrier retained by the defendant freight broker. The primary issue on appeal was whether the Safety Regulatory Authority Exception applied to plaintiff’s negligent hiring claim against the defendant freight broker.

In contrast to the ninth circuit, the seventh circuit, like the eleventh circuit, interpreted the exception narrowly, holding that a direct negligence claim brought against a freight broker is not a law “with respect to motor vehicles.” And therefore, the FAAAA’s preemptive effect does not restrict a state’s ability to regulate safety in that regard. While the ninth circuit required merely an indirect link between tort liability and motor vehicle safety – incentivizing safer motor carrier selection – the seventh circuit deemed this connection too tenuous. Instead, it interpreted the Safety Regulatory

Authority Exception as requiring a direct connection between a state’s law and motor vehicle safety. And it found negligent hiring claims provide no such connection.

In conclusion, the recent seventh circuit opinion in *Ying Ye v. GlobalTranz Enterprises, Inc.*, in conjunction with the eleventh circuit decision in the *Aspen American Insurance Co.* case offers much-needed clarity on freight broker liability. The vital ruling reaffirms the preemptive effect of the FAAAA as it pertains to negligent hiring and selection claims brought against freight brokers. ■

Nick is an associate with Johnson & Bell, Ltd., practicing within its Chicago office. Nick focuses his practice on transportation and business litigation. He has experience handling cases involving breach of contract, legal malpractice, violations of the Illinois Trade Secrets Act, personal injury, wrongful death, and real estate transactions and taxation matters.

Robert M. Burke, is President and shareholder of Johnson & Bell, Ltd. He works extensively in transportation litigation, including trucking and railroad. Mr. Burke also focuses on products liability, general negligence, premises liability and retail liability. He is a member of the Illinois State Bar Association.

1. No. 22-1805 (N.D. Ill. July 18, 2023).

2. 49 U.S.C. § 14501(c)(1).

3. 976 F.3d 1016 (2020).

4. 49 U.S.C. § 14501(c)(2)(A).

5. 29 F.4th 542, 553 n.6 (9th Cir. 2022).

6. *Id.* at 552-53.

7. *Id.* at 553, footnote 6, citing *Puerto Rico v. Franklin California Tax-Free Tr.*, 579 U.S. 115, 125 (2016).

8. 65 F. 4th 1261 (11th Cir. 2023).

(Re)Gain Control of Your Personal Finances

BY KASSANDRA R. MORFIN

With federal student loan interest resuming in September 2023 and loan payments resuming in October 2023, it's the perfect time to (re)gain control of your personal finances. Identify and organize your finances with these six steps:

1. Identify and Contact your Loan Servicer. Find your servicer via [StudentAid.gov](https://studentaid.gov), and inquire about your balance, when payments will resume, and what payment plans are available to you.
- Standard Repayment Plan: Pay the same amount each month over 10 years or less.
- Saving on a Valuable Education (SAVE) Plan: Monthly payments are calculated between 5-10 percent of your discretionary income based on your income and family size.
- Pay As You Earn (PAYE) Repayment Plan: Monthly payments are calculated to equal about 10 percent of your discretionary income, but never more than the 10-year standard repayment plan amount.
- Income-Based Repayment (IBR) Plan: Monthly payments are calculated to equal about 10 percent of your discretionary income if you're a new borrower on or after July 1, 2014*, but never more than the 10-year standard repayment plan amount. (*15 percent if you're not a new borrower on or after July 1, 2014, but never more than the 10-year standard repayment plan amount.)
- Income-Contingent Repayment (ICR) Plan: The lesser of the following:
 - 20 percent of your discretionary income; or
 - What you would pay on a repayment plan with a fixed payment over the course of 12 years.
- Income-Sensitive Repayment (ISR)

Plan: Loan term is increased to 15 years, and your monthly payments are recalculated annually based on your income

- Deferment: If you qualify for deferment, you will not be required to make payments during the specific time period. You can qualify under the following circumstances: unemployment, enrollment in school at least part-time, active military duty, or financial hardship.

For more information about eligibility and plan information, review the Federal Student Aid website here:

<https://studentaid.gov/manage-loans/repayment/plans/income-driven>

2. **Make a list.** Jot down a list of all your income, expenses, debts, and assets. Refer to a financial affidavit (standard State form used in domestic relations cases), which itemizes your monthly gross income and monthly expenses, and gives you a snapshot of your overall financial condition.
 - Types of assets: bank accounts, retirement/pension/401(k) accounts, certificates of deposit, cash on hand, vehicles, real estate, rental income, jewelry, instruments, collectibles, military allowances, stocks, or bonds
 - Types of living expenses: rent/ mortgage, personal loans, student loans, medical bills, credit cards, child support, child(ren)'s expenses, maintenance support, pet care, trade, or professional association dues

The financial affidavit can be downloaded here: <https://www.illinoiscourts.gov/forms/approved-forms/forms-approved-forms-circuit-court/financial-affidavit/>

3. **Set realistic financial goals.** Write out your goals and set (a) time frame(s) for yourself. Calculate how

much money is needed and how much money you've already saved. Most importantly: write down your plan for achieving your goal (ex. work overtime, get a second job, cut entertainment costs, etc.)

- Tips to save \$1,000: In one month, set aside \$33 a day or \$250 a week. In three months, set aside \$11 a day or \$83 a week.
4. **50-30-20 Rule.** This rule consists of allotting 50 percent of your money toward needs, 30 percent toward wants, and 20 percent toward savings.
 - Needs: housing, groceries, transportation, vehicle payments/ insurance, bills and utilities, health insurance
 - Wants: travel, entertainment, restaurants, shopping, hobbies, memberships
 - Savings: retirement, investments, debt payments, emergency fund
 5. **Limit your credit card debt.** First, beware of monthly/annual interest fees. Rule of thumb is to use less than 30 percent of your credit limit, especially if you want to improve your credit score. Make your monthly payments on time, and try to pay more than just the minimum payment. If you can, pay off the entire statement each month.
 6. **(Re)consider your banking institution.** Compare banking institution costs such as monthly fees, ATM access and withdrawal fees, overdraft protection/fees, online banking options/banking apps, and new account holder deals. ■

NextGen Bar Exam Builds on Strengths of Current Attorney Assessments

BY PROF. TIMOTHY DAVIS

Law students are officially back on campus, and this year's entering 1L class will be among the first to have the opportunity to take the [NextGen bar exam](#), which will be administered for the first time in July 2026.

Attorneys and members of the judiciary who anticipate working with these new graduates may wonder what impact the change will have. They can rest assured that this new exam will be as rigorous as the current exam in assessing doctrine: it will continue to test essential black-letter law, as well as fundamental tenets of professional responsibility in applied contexts.

Additionally, the NextGen exam will test an expanded range of foundational lawyering skills, making it a powerful tool to assist state supreme courts in determining who is competent to practice in today's legal profession.

The consensus of practicing attorneys, members of the judiciary, and bar examiners is that candidates should possess both fundamental lawyering skills and foundational legal knowledge to be considered minimally competent to begin practice. Law schools are already preparing their students to be practice ready from the start with programs like law clinics and field placements. Through enhanced skills testing, the NextGen bar exam will recognize the work being done by law schools to prepare graduates to competently represent their clients.

The addition of more robust skills testing to the NextGen exam does not, however, mean that the new exam has stopped testing the important legal knowledge that every new lawyer should have, as is evident in the sample questions and content scope outlines for the new exam that were released recently by the National Conference of Bar Examiners. Rather, it reflects agreement across the profession that knowledge and skills are essentially interconnected in the work that new attorneys must be prepared

to perform.

The NextGen exam will include some question types that will already be familiar, building on the strengths of the current exam:

- Longer writing tasks modeled on the current Multistate Performance Test (MPT), in which examinees are asked to draft legal documents such as memoranda in response to a set of provided materials. Longer tasks are a powerful tool for testing skills that cannot easily be assessed using short questions alone. These tasks will make up approximately one-quarter of the new exam and will continue to feature assignments that lend themselves to IRAC-style written analysis.
- Multiple-choice questions, including:
 - a new type of question designed to assess examinees' application of legal skills to doctrine, recognizing that competence in skills such as issue-spotting is crucial in its own right; and
 - Multistate Bar Examination (MBE)-type questions that require examinees to apply fundamental legal principles and legal reasoning to analyze given fact patterns.

Multiple-choice questions provide a time-tested method of efficiently gathering a large amount of evidence about examinee competence. Multiple-choice questions, including those contained within integrated question sets (described below), will comprise approximately half of the new exam.

Additionally, the exam will include a new type of question that will test both legal doctrine and skills in a format consistent with the types of cases examinees will likely see within the first three years of their

practice:

- Integrated question sets, which require examinees to respond to a series of questions testing both knowledge and skills in response to a provided client scenario. Integrated question sets are expected to take up just under one-third of the total exam time and will also include questions that require examinees to apply IRAC-style legal reasoning.

Of the three types of questions, two (multiple-choice questions and integrated question sets) will integrate knowledge of black-letter law with skills testing to provide a complete picture of readiness to practice. The performance tasks, like the current MPT, will focus on skills testing within a "closed universe" in which legal source materials are provided.

One thing that won't change with the advent of the new exam is the score portability offered by the current Uniform Bar Exam, or UBE. Candidates who take the NextGen exam will be able to transfer their qualifying scores to any other jurisdiction that uses the exam, eliminating the need to retake the bar exam in additional jurisdictions. Since 2011, when the UBE debuted, over 50,000 examinees have transferred their scores to other UBE jurisdictions. Last year alone, over 5,600 UBE scores were transferred. As with the current UBE, jurisdictions that adopt the NextGen exam will have the option to include a jurisdiction-specific law component in their exams, requiring examinees to also demonstrate knowledge of local law.

NextGen exam scores will continue to have the reliability and stability that NCBE's exam materials have always been known for. A new score scale will be developed to account for the addition of new types of questions and other changes to the exam,

and each jurisdiction will determine the appropriate NextGen passing score for its own examinees, reflecting the standards in both knowledge and skill that it deems appropriate to new members of its bar.

NCBE has already received valuable feedback on the published content scope outlines and sample questions; more opportunities for conversation about the new exam will be available as additional sample questions and other exam details are released in the months ahead. Additionally, extensive pretesting and statistical analysis of all NextGen exam questions prior to the 2026 launch will ensure that the exam does what it is designed to do: help jurisdiction supreme courts determine which examinees possess the knowledge and skills to begin legal practice. ■

Professor Timothy Davis (Bess and Walter Williams Professor of Law) teaches contracts, sale of goods, sports law, and NCAA rules compliance and enforcement at Wake Forest University School of Law. Prof. Davis is one of the country's best known sports law scholars. He has co-authored Sports Law and Regulation: Cases, Materials, and Problems (Wolters Kluwer) and The Business of Sports Agents (Univ. of Pennsylvania Press), is the author of numerous law review articles, and frequently presents papers and lectures at academic conferences. He serves on the Board of Directors of the United States Anti-Doping Agency and is a member of the Board of Advisors for the National Sports Law Institute. In June 2022, Prof. Davis was appointed to the Board of Trustees of the National Conference of Bar Examiners. Prior to teaching at Wake Forest, Prof. Davis taught at Southern Methodist University. Following a federal district court clerkship, Prof. Davis practiced commercial litigation in Denver, Colorado.



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