

# FLETCHER & SIPPEL ALERT

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## **PRESIDENT BUSH SIGNS LAW AMENDING FRSA PREEMPTION PROVISIONS**

On August 3, President Bush signed into law the "Implementing Recommendations of the 9/11 Commission Act of 2007." The Act contains a new amendment changing the current FRSA preemption language found in 49 U.S.C. Sec. 20106. The intent of the amendment is to supersede recent court rulings growing out of the 2002 Minot derailment holding that an injured individual had no private right of action to sue a railroad for violations of FRSA regulations. The amendment is retroactive to January 18, 2002.

The amendment is entitled "Railroad Preemption Clarification" and adds a new section to 49 U.S.C. Sec. 20106. The new section provides that federal preemption may not be used to preempt an individual from bringing an action under state law for damages alleging that a railroad failed to comply with either:

1. a federal standard of care established by a regulation issued by the DOT(FRA) or Homeland Security relating to rail safety or security matters, or
2. the railroad's own plan, rule or standard created pursuant to regulations issued by DOT(FRA) or Homeland Security.

The amendment also states that the section does not create a federal cause of action and does not give rise to federal question jurisdiction.

Please contact [Michael J. Barron, Jr.](mailto:Michael J. Barron, Jr.) at (312) 252-1511 if you have any questions.