CLIENT ALERTS & INSIGHTS

One Battle After Another: Freight Brokers in a Post-Montgomery World

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Key Takeaways

- The Supreme Court's decision in *Montgomery v. Caribe Transport II, LLC* allows negligence claims against freight brokers for hiring unsafe motor carriers to proceed under state law, ruling that such claims are not preempted by the Federal Aviation Administration Authorization Act due to its "safety exception."
- This ruling exposes freight brokers nationwide to increased litigation risk and potential liability for personal injuries linked to carrier selection, removing a key federal defense and likely driving up insurance costs and settlement values.
- Freight brokers can prepare by reviewing and strengthening their carrier selection policies, ensuring thorough documentation and staff training, and consulting with insurers and legal counsel to develop defensible practices for demonstrating reasonable care in hiring motor carriers.

On May 14, 2026, the Supreme Court of the United States issued its anticipated decision in *Montgomery v. Caribe Transport II, LLC*, sending shockwaves across the transportation industry. In *Montgomery*, the Court unanimously held that a claim brought against a freight broker for negligently hiring a motor carrier is not preempted by the Federal Aviation Administration Authorization Act ("FAAAA") because states retain authority to regulate safety "with respect to motor vehicles" under the FAAAA. Freight brokers and other stakeholders in the transportation industry are now wrestling with a number of questions about the decision. Below are answers to some of those questions.

I. What Were the Facts of the *Montgomery* Case?

In *Montgomery*, a customer retained a freight broker, C.H. Robinson Worldwide, Inc. ("CHR"), to arrange for the interstate transportation of a load of plastic pots. CHR contracted with a federally licensed motor carrier, Caribe Transport II, LLC ("Caribe"), to perform the transportation for the customer. After picking up the load in Ohio, Caribe's driver veered off the road while he was transporting the load through Illinois, colliding with a tractor-trailer that was stopped on the side of the road. The tractor-trailer was being driven by Shawn Montgomery, who was injured as a result of the collision.

Mr. Montgomery commenced litigation in federal district court in Illinois to recover for his injuries. He sued not only Caribe and Caribe's driver but also CHR and certain affiliates of CHR. Among other things, Mr. Montgomery alleged that CHR negligently selected Caribe to perform the transportation. Mr. Montgomery alleged that, just months before the crash, Caribe's driver had been involved in another crash and had been cited for operating his truck carelessly. Mr. Montgomery also claimed that Caribe had been involved in at least three reportable crashes between May and September 2017 despite having only nine trucks. Mr. Montgomery also argued that Caribe met the definition of a "high risk" carrier as defined by the Federal Motor Carrier Safety Administration ("FMCSA") and that the FMCSA had given Caribe a "conditional" safety rating, finding that Caribe was "deficient" with respect to "qualification of drivers," "hours of service of drivers," "inspection, repair and maintenance," and its "recordable crash rate," among other things. Mr. Montgomery argued that these "red flags" meant that CHR should not have retained Caribe to perform the transportation.

The district court granted summary judgment in favor of CHR on Mr. Montgomery's negligent hiring claims on the basis that such claims were preempted by the FAAAA. Mr. Montgomery appealed to the U.S. Court of Appeals for the Seventh Circuit, which affirmed the district court's dismissal of the negligent hiring claims. Despite having won in the lower courts, CHR joined Mr. Montgomery in asking the Supreme Court of the United States to review the case. The Court accepted the case for review but ultimately ruled against CHR and reversed the lower courts' holdings relating to the FAAAA.

II. What is the FAAAA?

In the late 1970's and early 1980's, Congress began to deregulate various types of interstate transportation services, culminating in the mid-1990's with the passage of the FAAAA and the Interstate Commerce Commission Termination Act ("ICCTA"). The FAAAA expressly preempted a wide variety of state and local regulations and state law claims affecting motor carriers. Among other things, the ICCTA also expanded federal preemption under the FAAAA to include preemption of claims not only against motor carriers but also against *freight brokers* in particular. The deregulatory goal of the FAAAA was to facilitate interstate commerce by eliminating the patchwork quilt of conflicting state laws and regulations hampering the operations of motor carriers and brokers.

The FAAAA not only preempts positive laws enacted by states but also other forms of state action (*i.e.*, court judgments and jury verdicts based upon state tort law) that have the effect of regulating the services of freight brokers. This latter form of state regulation often presents an existential risk to the freight brokerage industry. After all, personal injury lawsuits against motor carriers and freight brokers can end with multimillion-dollar "nuclear" verdicts. In recent years, the number of lawsuits against brokers has increased, causing insurance premiums to skyrocket and leaving brokers

confounded about what level of "due diligence" they should be applying when selecting the motor carriers that haul their customers' goods.

III. What Was the Precise Legal Issue Before the Court?

The legal issue before the Court was technically *not* whether the FAAAA preempts negligence claims against brokers. Rather, the key legal issue before the Court was whether the so-called "safety exception" in the FAAAA saves negligence claims against brokers from being preempted. The F AAAA provides:

Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more 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 any** motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, **broker**, or freight forwarder with respect to the transportation of property.

49 U.S.C § 14501(c)(1) (emphasis added). While courts have broadly agreed that this language in subsection (c)(1) preempts claims against brokers as a general rule, lower courts disagreed about the meaning of one of the statutory *exceptions* in the FAAAA.

Specifically, the Court was asked to determine the meaning of the so-called "safety exception," a savings clause that provides that the FAAAA does not "restrict the safety regulatory authority of a State **with respect to motor vehicles**." *Id.* § 14501(c)(2)(A) (emphasis added).

In short, the Court was not asked to evaluate whether subsection (c)(1) preempted negligence claims against brokers but, rather, whether the exception in subsection (c)(2) applied such that negligence claims can proceed against brokers. Some lower courts had concluded that this exception saves negligence claims from preemption whereas other courts concluded that the exception was inapplicable. Unfortunately, the Court held that the exception does in fact save negligence claims against brokers from preemption.

IV. What Was the Court's Rationale for its Decision?

The Court's analysis is rather straightforward and essentially turned on its construction of the three words "with respect to" in the phrase "with respect to motor vehicles." CHR had argued that "with respect to motor vehicles" should narrowly limit the scope of the exception based on a prior decision of the Court under the FAAAA. The Court disagreed and held that "with respect to" should be given the ordinary meaning that it has in everyday life. The Court turned to the dictionary and found that "with respect to" had a broad meaning that was synonymous with terms such as "concerning," "referring to," or "regarding." Applying this broad definition, the Court found that the obligation to use ordinary care in selecting a motor carrier "obviously" concerns motor vehicles since motor vehicles will transport the goods tendered by a broker's customer. In the course two pages, the Court then reviewed and rejected each of CHR's various other textual counterarguments.

V. Does the Court's Decision Mean that Freight Brokers Are Now Inevitably Liable for Personal Injuries Whenever a Motor Carrier is Involved in an Accident?

No. Justice Kavanaugh's concurring opinion (joined by Justice Alito) expressly states that "the Court's decision today should not be read to mean that brokers will routinely be subject to state tort liability in the wake of truck accidents." As in any case, an injured party must still prove each and every element of a tort claim brought against a broker. The Court's decision simply means that brokers that are defendants in such cases have lost one legal defense. While it was a powerful defense in the jurisdictions that recognized it, cases of alleged broker negligence are still defensible.

After all, federal and state courts in many jurisdictions had *already* rejected FAAAA preemption as a defense or had not yet issued a decision one way or the other. For example, by virtue of adverse decisions in the U.S. Courts of Appeals for the Ninth and Sixth Circuits, freight brokers were already exposed (in federal court) to negligence claims in Alaska, Arizona, California, Hawaii, Idaho, Kentucky, Michigan, Montana, Nevada, Ohio, Oregon, Tennessee, and Washington. Virtually all freight brokers in today's marketplace have in fact been arranging for the transportation of loads to, from or through at least some of those jurisdictions notwithstanding the unavailability of FAAAA preemption in those jurisdictions. In short, brokers today simply face the same risk nationwide that they were already unequivocally facing in those jurisdictions.

Freight brokers operating in those jurisdictions have been defending negligent selection claims on the merits when sued. For instance, brokers in such jurisdictions have been arguing that they fulfilled whatever common law duty of "reasonable care" the law imposes in a given state. Likewise, brokers may argue that a given accident was not proximately caused by whatever "red flags" are associated with a given motor carrier's safety profile. Similarly, brokers often dispute the amount of damages owed to a given plaintiff.

In addition, whether the FAAAA preempts claims *other than* negligence was still largely an open question even in jurisdictions that rejected application of the so-called safety exception. For instance, even in jurisdictions that dismissed negligence claims under FAAAA preemption, plaintiffs were sometimes allowed to proceed against freight brokers on alternative theories, such as those based on vicarious liability or joint venture. (Only a minority of courts had applied FAAAA preemption to such claims.) Therefore, brokers will continue to defend against those claims on the merits just as they have been doing so for years. Indeed, the trial court in *Montgomery* entered summary judgment in favor of CHR on Mr. Montgomery's vicarious liability claim without any reliance on FAAAA preemption at all.

Of course, these defenses are often fact-specific, meaning that they are less susceptible to early disposition on a motion to dismiss or motion for summary judgment, thereby driving up defense costs and settlement value. In turn, this will naturally drive up insurance premiums for brokers.

VI. Did the Court Find that the FAAAA Would Definitely Have Preempted Negligence Claims Against Brokers *But For* the So-Called Safety Exception?

No. The Court observed in a footnote that, because it found that the safety exception applied, it could "assume without deciding" that the FAAAA would have otherwise preempted Mr. Montgomery's negligent hiring claim. However, all four of the lower circuit courts to have considered the issue (and the vast majority of other federal and state courts) agree that the FAAAA would preempt claims against brokers for alleged negligent selection of motor carriers. The only question was whether or not the safety exception "saved" such claims from preemption.

VII. Why Does that Matter? Didn't the Court's Decision Mean that FAAAA Preemption is Dead?

No. While the Court's decision destroys the defense of FAAAA preemption in the majority of personal injury cases, FAAAA preemption will still be relevant in certain types of cases against freight brokers. After all, the Court's decision addresses only the narrow question of whether the so-called "safety exception" applies in personal injury cases arising out of interstate transportation. The Court's holding itself notes that the safety exception only saves "a subset of preempted claims."

The defense of FAAAA preemption should still be largely available to freight brokers in cargo claims. For example, a customer's claim against a freight broker arising from the theft of high value cargo does not implicate the so-called safety exception even when the customer alleges that the broker was negligent in choosing a given motor carrier. Certain courts have agreed that cargo security is distinct from safety and that, therefore, the so-called safety exception does not "save" from preemption extra-contractual claims arising out of the theft of cargo. The same could hold true in a wide variety of other cargo claims.

Likewise, the scope of FAAAA preemption will still be relevant in personal injury disputes arising out of *intrastate* shipments. The Court acknowledged a conspicuous anomaly between two parts of the statute. As noted above, subsection (c)(1) of the statute is recognized as preempting claims relating to interstate brokerage. However, subsection (b)(1) of the FAAAA preempts claims relating to the "intrastate services" of brokers. Unlike subsection (c), subsection (b) does not contain a safety exception. While the Court was unable to resolve this anomaly, the Court concluded that it was "[b]etter to live with the mystery than to rewrite the statute." Therefore, freight brokers defending claims arising from intrastate transportation should rely on the "mystery" and raise FAAAA preemption as a defense.

Of course, the contours of subsection (b)(1)'s intrastate preemption will play out in subsequent court cases. For example, plaintiffs may claim that the subsection is unconstitutional, particularly since the Court stated in a footnote that it was not opining on that question. Likewise, parties will litigate over whether a given claim arises from intrastate brokerage or interstate brokerage. What constitutes intrastate transportation versus interstate transportation is not always as clear as one might think. Indeed, another case currently pending before the Court (*Flowers Foods v. Brock*) involves the extent to which "final mile" delivery drivers who do not cross state lines and locally transport goods that originated out-of-state are transportation workers engaged in interstate commerce under an entirely different statute-the Federal Arbitration Act.

While plaintiffs will continue to dispute that the FAAAA reaches negligence claims against brokers, the great weight of authority favors freight brokers. In other words, as disappointing and as

sweeping as the Court's decision is, freight brokers should not lose sight of the ways that FAAAA preemption may still benefit them in various contexts.

VIII. Did the Court's Decision Explain What a Broker Must Do In Order to Avoid Liability for Negligence?

No. The decision simply allows negligence claims arising from personal injuries in interstate transportation to proceed against freight brokers. As noted above, a plaintiff pursuing a negligence claim must demonstrate that the freight broker failed to exercise reasonable care in choosing a given motor carrier. However, while the Court did *not* define what reasonable care is in this context, Justice Kavanaugh's concurring opinion offers some clues.

First, Justice Kavanaugh observed that brokers may "sometimes become aware that a particular carrier operates unsafe trucks or hires unfit drivers." Not surprisingly, a broker with *actual* knowledge that a motor carrier is unsafe should not use that motor carrier.

Second, and more importantly, Justice Kavanaugh properly acknowledged that "brokers may not always (or even often) be in a good position to objectively assess the relative safety of different trucking companies." In doing so, Justice Kavanaugh pointed to the brief of the Transportation Intermediaries Association ("TIA"), which outlined a variety of practical problems that preclude freight brokers from evaluating any given motor carrier's safety profile. This suggests that, in general, freight brokers should not be held to an unattainable standard of care. Indeed, Justice Kavanaugh noted that, during oral arguments, Mr. Montgomery's counsel attempted to downplay just how rigorous a freight broker must be in evaluating a given motor carrier: "In plaintiff's counsel's words, the brokers 'just have to hire carriers that actually have a reasonable policy,' and 'the broker is not going to have a problem if it's asking the hard questions of the carrier.'"

Fortunately, Justice Kavanaugh also noted that "the brokers rightly caution against naiveté" when it comes to evaluating motor carrier safety. For example, while Justice Kavanaugh seemingly accepted Mr. Montgomery's counsel's glib assurance that freight brokers can easily meet the applicable standard of care, the freight brokerage industry knows full well from experience that the plaintiffs' personal injury bar never takes a firm position about what exactly a freight broker should do in order to ensure that a motor carrier has a "reasonable policy" governing safety in place. Likewise, the plaintiffs' personal injury bar does not speak with one voice and has never outlined precisely what the "hard questions" are that a freight broker should be asking. Instead, plaintiffs' attorneys always take the position that whatever a freight broker did in a given case was simply not enough.

IX. So, What Does a Freight Broker Need to Do in Order to Establish that it Exercised "Reasonable Care" in Tendering a Load to a Given Motor Carrier?

The honest answer is that no one knows. At present, whether or not a freight broker used "reasonable care" in selecting a given motor carrier will turn on the idiosyncratic determinations of a particular judge or jury on any given day in any given jurisdiction. Even judges and juries in the same jurisdiction may reach contradictory determinations on facts that are substantially similar. Nevertheless, freight brokers should keep the following guideposts in mind post-*Montgomery*.

First, every broker should have a written policy or protocol in place that governs how a broker onboards and monitors the ongoing eligibility of any given motor carrier to be part of the broker's motor carrier pool. Fortunately, most brokers have a policy of some kind in place.

Second, the thorniest question facing the industry right now is what the *content* of that carrier selection policy should be in order to allow a broker to operate as a practical matter in the marketplace while also putting itself in a strong and defensible position in the event of litigation. Of course, the foundation for any carrier selection protocol is the use of federally licensed motor carriers having active operating authority. Reasonable people may (and likely will) disagree about what other criteria, if any, should be considered. Defense attorneys, safety and risk consultants, technology companies, and other stakeholders will all have their respective reactions and recommendations. And, while most stakeholders will be well-intended, some will also be opportunistic. Brokers should be thoughtful as they react to and evaluate the wide variety of products and services that are already in (or will quickly emerge in) the marketplace with the appealing promise that they will help a broker establish that it exercised reasonable care. Radical change is not necessarily warranted in all circumstances.

Sensible brokers will start by having a discussion with the broker's contingent auto liability or truck broker liability policy underwriter regarding what criteria they should be using when determining to onboard a given motor carrier. After all, the insurer is underwriting the key risk in question. Some underwriters may require a broker to adopt a particular carrier selection policy in order to be eligible for coverage. Other underwriters may require modifications to existing policies and procedures or may offer premium relief if a broker adopts certain practices or uses certain tools. These discussions will address the advisability (or not) or relying on factors such as safety ratings, months in operation, data from FMCSA's Safety Measurement System and the like. Of course, a collaborative approach involving a freight broker's counsel or other trusted advisors is prudent in light of the possibility of large, self-insured retentions as well as exposure to verdicts in excess of insurance coverage.

Finally, every broker should ensure that its personnel who have responsibility for onboarding and monitoring motor carriers are trained to understand and follow the broker's policy. The only practice worse than not having a policy in place is having a policy and routinely violating that policy. In short, policies need to be operationalized to avoid deviations. Technology solutions often help in this regard.

X. What Does the Decision Mean for Shippers?

A few cases around the country had favorably applied the FAAAA to dismiss negligence claims against shippers. For this and other reasons, a number of shippers and shipper-focused interest groups filed amicus briefs in support of CHR's position before the Court. However, during oral arguments, several of the Justices expressed skepticism that the FAAAA extended to shippers. Moreover, the Deputy Solicitor General himself acknowledged that the United States was not taking a position on that issue.

Regardless, the decision in *Montgomery* means that-just like freight brokers-shippers have now lost the defense of FAAAA preemption (to the extent that they ever had it in the first place). While plaintiffs who pursue shippers for alleged negligence in selecting a broker that in turn was allegedly negligent in selecting a motor carrier must overcome substantial evidentiary and proximate cause

arguments, brokers often find themselves defending and indemnifying their shipper customers under the terms of a shipper-broker agreement. This phenomenon will continue and may escalate.

XI. How Does the *Montgomery* Decision Affect Litigation Strategy in These Cases?

Many freight broker liability cases around the country were stayed (either formally or informally) pending the outcome of *Montgomery*. The day that the *Montgomery* decision issued, plaintiffs began efforts to reactive their cases. And, undoubtedly, the industry will see an upswing in the number of new cases being filed against freight brokers.

Going forward, the key question in much of this litigation will be whether the broker in question used reasonable care in tendering a load to a given motor carrier. More often than not, the answer to that question will play out in a "battle of the experts." On the one hand, plaintiffs' personal injury lawyers will rely upon a coterie of experts who will, in any given case, testify that the broker failed to exercise reasonable care. On the other hand, the defense bar will continue to rely on a variety of expert witnesses who will testify that the broker did in fact exercise reasonable care. Ultimately, a judge or jury will determine which expert-the plaintiff's expert or the defendant's expert-is more credible and persuasive.

In short, having a strong expert witness is going to be more important than ever in freight brokerage litigation from this point forward.

XII. Conclusion

The decision in *Montgomery* is highly disappointing to the freight brokerage industry and will have repercussions throughout the supply chain. Nevertheless, the industry will continue to perform its valuable services, which remain vital for the United States economy. Freight brokers care deeply about public safety, and freight broker liability cases are often highly defensible on the merits even when the defense of federal preemption is unavailable. Nevertheless, the freight brokerage industry should gird itself for the ongoing battles that lie ahead.

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