



Expanding Exposure for Brokers in Trucking Accidents: What Brokers Need to Know After *Montgomery v. Caribe Transport II, LLC, et al*

In a unanimous decision, the U.S. Supreme Court held negligent hiring / selection claims arising under state law fall within the safety exception to preemption provision of Federal Aviation Administration Authorization Act (FAAAA). Therefore, brokers may face increased defense and liability exposure for injuries caused by motor carriers they select and/or contract with to transport freight in interstate commerce.

Historically, brokers operated under limited federal regulation, with existing oversight focused primarily on economic and financial matters rather than safety. This, along with brokered arrangements accounting for approximately a third of freight transported in the U.S., sets the stage for the Court's decision. Specifically, the Court recognized the general preemptive nature of 49 U.S.C. § 14501(c)(1) yet relied upon what the Court referred to as the safety exception found in 49 U.S.C. § 14501(c)(2)(A) – preemption “shall not restrict the safety regulatory authority of a State with respect to motor vehicles.” The Court reasoned that negligence, including common law duties and standard of care, are a part of the authority of a state to regulate safety. Thus, a state law cause of action for negligent hiring / selection falls within the safety exception of the FAAAA, and therefore, is not preempted.

What does this mean? Succinctly put by Associate Justice Brett Kavanaugh in his concurring opinion, “federal law does not preempt state tort liability against brokers for negligent selection of trucking companies.” Moving forward, broker liability for trucking accidents will be based upon and subject to state statute, regulation, and common law. State law will determine if and to what extent a broker may be liable for negligent hiring / selection when a motor carrier it contracts with for interstate

transportation is in an accident and injures a third party.

Leaving decisions to each state's highest court could inevitably lead to disparate standards, holdings and exposures across the U.S. As brokers are increasingly named in negligence actions, states will continue shaping the legal framework governing broker liability over the next decade. In the meantime, brokers should review their contracts with shippers and motor carriers with an eye towards risk allocation using insurance requirements and indemnification provisions, which also is likely to vary from state to state. The decision also underscores the importance of brokers ensuring insurance coverage is consistent with potential exposure arising from state law negligence claims that previously fell under FAAAA preemption.

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