

Looking Ahead to 2026: Freight Brokers, Motor Carrier Casualty Claims and the United States Supreme Court

Claim | Freight | Litigation | Litigation & Dispute Resolution | Transportation and Logistics

2 January 2026

The United States Supreme Court does not usually rule on transportation cases. A case currently being “briefed” (that is, legal arguments are being filed) is now before the United States Supreme Court which will be of critical interest to freight brokers and their insurers. The case will explore and better frame the liability that freight brokers face when their dispatched motor carriers are involved in accidents that injure or result in the death of third parties.

The “briefing” is expected to be completed in January of 2026. Those watching the Court docket have reported that the hearing of the legal arguments will likely take place in the first half of 2026.

The court case in question – *Montgomery v. Caribe Transport II LLC* – will have a huge impact on freight brokers and their insurers. This impact will reach far past United States freight brokers. It will also directly impact those Canadian freight brokers who dispatch motor carriers to haul freight in the United States and their liability insurers.

To set the stage for our local Canadian “audience”: Canadian based freight brokers and their insurers simply must be “alive” to the discussion in this article. The liability of Canadian based freight brokers for injury or death to third parties arising from motor vehicles accidents occurring in the United States – as well as Canadian based motor carriers and shippers of goods – will be determined by the laws of the jurisdiction where the negligent conduct occurred. *Translation:* the laws of the place where the accident occurs will apply as a general rule determine liability.

Accordingly, it follows that the freight broker who is based in Canada but who hires a carrier to haul freight in the United States may well be as much at risk of falling prey to the famous US jury “nuclear verdict” as a US based freight broker. The Canadian freight broker accordingly has serious “skin in the game” in terms of the outcome of the *Montgomery* decision.

The Current Context: Pre-Montgomery v. Caribe Transport II, LLC

Freight brokers in the United States and Canada arrange the carriage of goods by third party trucking companies on behalf of the brokers’ shipper customers. The brokers “buy and sell space” on trucks for shippers. Invariably, this involves an element of selection by the broker as to which carrier to “choose” to haul freight. At minimum, in the selection of a carrier, the broker will consider the lanes serviced by the carrier, its freight rates, and the time frame that the carrier can perform the delivery of the cargo to its destination. In the normal course of events, as long as cargo arrives intact and on time, the system is seen to have “worked”.

Typically, the freight broker’s business model involves a “high volume – low profit margin” business model. The system is about efficiency and keeping cargo moving. The freight broker will generally charge its shipper customer a low markup (which will be incorporated into the performing motor carriers freight bill). For what might simply be a minor \$200 markup (or something in that range), the freight broker may however face (albeit, statistically, remote) significant liability exposure, if the carrier that it dispatches is involved in a motor vehicle accident resulting in injury or death to third parties. This is particularly the case in the

United States, where (unlike Canada) monetary damage awards for plaintiffs are often meant to be punitive and to act as a deterrent to the rest of the public to not engage in the same reckless behavior as the defendant. In Canada, by contrast, damages for “pain and suffering” for plaintiffs are built on the desire to compensate the victim, rather than making a public example of the negligent party. This is, as a general proposition, why we do not have “nuclear verdicts” - or at least verdicts of the same magnitude - in Canada.

The search for big verdicts has evolved over time to the now prevalent practice in United States motor carrier accident litigation of plaintiffs and their attorneys “moving up the supply chain” and not only suing the transport driver and the carrier in question, but also seeking damages from the “upstream” freight brokers and even shippers who had some role in “putting the negligent carrier on the road”.

Various legal theories have evolved whereby liability may be imposed against the freight broker or the shipper. This is despite their employees “not being at the wheel” or having managed the carrier fleet. The argument is essentially that there was a lack of due diligence or care exercised in the broker’s or shipper’s selection of the motor carrier that caused the accident.

As a general rule, freight brokers are more often pursued than shippers, no doubt on the basis that they tend to hold out a specific service in carrier selection, and they earn revenue (even if a little mark-up) in the process. Shippers also tend to be one further step removed when they engage freight brokers who in turn select carriers to haul freight.

The above theories, which continue to evolve in United States trucking injury litigation, often assert the following arguments (or variations of same) *that are based on or emanate from the laws of the state where the accident occurred*.

1. The freight broker was essentially in business with the responsible motor carrier responsible for the accident, or the carrier was acting as the freight brokers’ agent in performing the carriage of the goods, as a result of which the freight broker should be regarded as being “vicariously” liable for the negligent operation of the truck by the carrier.
2. The freight broker was negligent in its selection and dispatch of the negligent motor carrier, having “given the load” to an unsafe or un reputable carrier.

The above sets the table for the importance of the *Montgomery v. Caribe Transport II Inc.* decision: various states in the United States provide a case law or statutory foundation for the above “evolving arguments” against brokers and shippers whereas the evolving theories for freight broker liability do not exist under federal law. The latter simply does not contemplate any such evolving theories of freight broker liability.

The Road to the U.S. Supreme Court: *Montgomery v. Caribe Transport II, LLC*

Shawn Montgomery was severely injured when his truck, which was stopped on the side of the road, was hit by a tractor-trailer that veered off the road onto the shoulder of an Illinois highway. Mr. Montgomery sued the driver of the tractor-trailer as well as the motor carrier, Caribe Transport II, LLC (“Caribe”), and the freight broker, C.H. Robinson Worldwide, Inc. (“Robinson”). Mr. Montgomery claimed that the freight broker, Robinson, had i) negligently hired the driver and the motor carrier, Caribe and was ii) vicariously liable for the driver’s torts (in other words, directly and automatically liable as a matter of law for the negligent operation of the motor vehicle).

Regarding the “vicarious liability claim”, the trial court in first instance (the United States District Court) granted summary judgment in favor of Robinson, ruling Robinson was not vicariously liable for the driver’s negligence in respect of the accident because the carrier, Caribe, and its driver/employee were independent contractors of Robinson (Summary judgment involves a preliminary ruling by the court, prior to a conventional, disposing of a part of the case).

This left the “negligent hiring” claim whereby Robinson was said to have failed to meet the necessary degree of diligence in the selection of Caribe as the carrier. This was not “cut and dry” so as to be “thrown out” or dealt with on summary judgment. Being more intricate in nature, this basis of claim proceeded to trial. The trial court ruled that the negligent hiring claim against Robinson must fail on the application of rather intricate U.S. federal statutory law; prescribing that U.S. federal law preempts, or displaces, state law.

The Court’s reasoning came down to the following:

1. Mr. Montgomery’s negligent hiring claim against Robinson rested on the “preemption” provision of the *Federal Aviation Administration Authorization Act* (“FAAAA”), 49 U.S.C. § 14501(c)(1) which provides:

*(1) General rule.— 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 * * **



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

(my bold emphasis is added)

The District Court ruled that the above express provision preempted the application of state law which Montgomery was relying on, the same being “preempted” by the above federal law. Accordingly, the “negligent hiring” argument, based on state law, effectively evaporated for Mr. Montgomery.

2. The District Court also addressed the following provision in the same statute:

*(A) shall not restrict the **safety regulatory authority** of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;*

(my bold emphasis is added)

The District Court held that the sum total of the above statutory language barred state law based claims against freight brokers for the negligent hiring of motor carriers and their drivers, notwithstanding the “carve out” of the stated “safety exception” in (c)(2)(A) above. That is, state law may frame theories of liability against freight brokers in intra-state carriage situations. This would, however, offend the above provision where they are purported to apply to the interstate (or international cross-border) activity of freight brokers.

Mr. Montgomery appealed the dismissal of his “negligent hiring” claim to the applicable appellate court – the Seventh Circuit – which upheld the trial level decision, noting the “significant economic effects that would result from imposing state negligence standards on brokers”. The Court found that negligent hiring claims on the part of freight brokers do not trigger the “safety exception” (that I have emphasized in bold above) on the basis that a negligent hiring claim against a broker is not a law that is “*with respect to motor vehicles*”. In effect, the federal law was held to trump the “plaintiff friendly” state law that created the “negligent hiring” claim. There being no basis for such a claim in the US federal law, Mr. Montgomery was unsuccessful on his “negligent hiring” claim.

Being unsuccessful at the Seventh Circuit Court of Appeals, Mr. Montgomery has now taken his appeal to the United States Supreme Court.

The United States Supreme Court has agreed to hear the appeal, noting that other District Courts in the United States have ruled differently than the ruling from which Mr. Montgomery was appealing from (these other courts finding that the above “safety exception” *does*, in fact, expose freight brokers to state based negligent claims).

Other policy interests and stakeholders have made compelling arguments for the United States Supreme Court to hear the Montgomery appeal:

1. Robinson – and others on the freight broker side – argue that in enacting the above legislation, (1) Congress intended to preempt state regulation of freight broker services; and (2) state based claims for negligent hiring are not part of the safety exception under that regime.
2. It is further argued by the freight broker perspective that permitting the application of negligence claims based on state law as a “safety exception” would allow each state to enact different standards, which would disrupt the efficiency of the interstate supply chain and deregulate the marketplace. In other words, in rejecting the application of the “safety exception”, there would be reduced risk to state-level litigation and the preservation of marketplace competition, allowing for legal certainty for the trucking industry including brokers and their insurers.
3. On the other side of the fence there is a very robust appeal “front”. Several states have filed briefs in the case, arguing that federal law should not override state rules on holding freight brokers accountable for the careless hiring of carriers in the trucking industry. Rather, traditional state laws should be permitted to apply to freight brokers where their negligence has caused harm to innocent victims.
4. As stated in one of the filed briefs on the case, “Now is the time for this Court to provide certainty to the industry by resolving the conflict between the various United States court circuits on the question of the application of the savings clause’s safety exception to state common-law or statutory negligent hiring claims against freight brokers.”

All eyes now remain firmly fixed on the United States Supreme Court. If the Montgomery decision is affirmed, then freight brokers should see a significant reduction in the scope of their potential liability arising from motor carrier casualty litigation. A PDF version is available for download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



M. Gordon Hearn

Partner and Co-Chair, Transportation and Logistics Group

416.203.9503

ghearn@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com