TIA Member FAQ

Montgomery v. C.H. Robinson — Supreme Court Ruling

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The Montgomery Decision: What Happened

Q: What is the Montgomery v. C.H. Robinson decision?

A: The Supreme Court of the United States issued a unanimous decision in the Montgomery case, ruling against the freight brokerage industry. The Court held that negligent hiring claims against freight brokers are NOT preempted by the Federal Aviation Administration Authorization Act (F4A). This means injured parties can now sue freight brokers in state and federal court for negligently selecting a motor carrier — in every state, nationwide.

Q: What was the legal question before the Court?

A: The technical issue was not whether the F4A preempts negligence claims against brokers — it generally does — but whether the F4A's "safety exception" saves those claims from preemption. The safety exception states that the F4A does not restrict a state's safety regulatory authority "with respect to motor vehicles." The Court interpreted those three words broadly, finding they encompass broker negligence claims.

Q: What were the key facts of the underlying case?

A: C.H. Robinson arranged transportation of a load of plastic pots, contracting with Caribe Transport. While traveling through Illinois, Caribe's driver veered off the road and collided with a tractor-trailer driven by Sean Montgomery, who was injured. Plaintiffs alleged Caribe had been involved in at least three reportable crashes in 2017, its driver had a prior crash and careless operation citation, and the carrier met the definition of a "high-risk carrier" with a conditional safety rating.

Q: Is the F4A preemption defense completely dead?

A: No. The defense is destroyed in most personal injury cases, but F4A preemption still has relevance in certain circumstances — notably cargo claims (e.g., theft of high-value goods, which may not implicate the "safety" exception) and potentially intrastate transportation disputes. Brokers should not lose sight of the ways the F4A may still benefit them in specific situations.

Impact on Freight Brokers

Q: Does this ruling mean brokers are automatically liable whenever there is a trucking accident?

A: No. Justice Kavanaugh's concurring opinion (joined by Justice Alito) expressly states that the decision should not be read to mean brokers will routinely face state tort liability after truck accidents. An injured party still must prove each and every element of a negligence claim. Brokers have lost one powerful legal defense, but cases of alleged broker negligence remain defensible on the merits in many situations.

Q: Were brokers already exposed to this risk before the ruling?

A: Yes, in many jurisdictions. Following adverse decisions in the Ninth and Sixth Circuits, brokers were already exposed to negligence claims in federal court in states including Alaska, Arizona, California, Hawaii, Idaho, Kentucky, Michigan, Montana, Nevada, Ohio, Oregon, Tennessee, and Washington. The ruling now extends that exposure nationwide.

Q: What defenses do brokers have going forward?

A: Brokers retain several meaningful defenses: (1) Reasonable care — arguing they fulfilled the common law duty of care applicable in the given state; (2) Proximate cause — arguing that any alleged safety "red flags' were not the proximate cause of the accident; (3) Damages disputes — contesting the amount owed; and (4) Vicarious liability remains defensible on non-negligence grounds in many cases. The key battleground going forward will be expert witnesses on both sides.

Q: What happens to cases that were pending or stayed while the Court decided Montgomery?

A: Those cases are reactivating. Opposing counsel began contacting defense lawyers within hours of the ruling, seeking to dissolve stays and to demand withdrawal of dispositive motions based on F4A preemption. The industry should also anticipate an increase in new cases filed against freight brokers.

Q: Does this affect shippers as well?

A: Yes. Shippers are also losing any F4A preemption defense they may have had — to the extent they ever had it. Several shipper-focused groups filed amicus briefs supporting C.H. Robinson's position. With brokers commonly defending and indemnifying shipper customers under broker-shipper agreements, that exposure will continue and likely expand.

Carrier Selection & Vetting

Q: What is "reasonable care" in carrier selection, and how is it defined?

A: Honestly, no one knows yet. The Court did not define what constitutes reasonable care — it only held that negligence claims can proceed. Determining what reasonable care looks like will be left to individual state and federal courts on a case-by-case basis. Different judges and juries in the same jurisdiction can reach contradictory determinations even on similar facts. Consult legal counsel and your insurer to develop a defensible protocol for your business.

Q: Should brokers avoid using conditionally rated carriers?

A: Exercise significant caution. Conditionally rated carriers are authorized to operate on public roads, but using them creates issues of fact before a judge or jury that are difficult to defend. That said, it is not a categorical bar. If you need to use conditionally rated carriers, work with your legal counsel to develop a specific program that addresses the associated risks. Do not take this lightly. By contrast, unrated carriers and satisfactory-rated carriers remain generally acceptable options.

Q: How should brokers balance careful carrier vetting with the risk of being characterized as a carrier (vicarious liability)?

A: This is a genuine tension — going too deep into a carrier's operations and individual driver details can enhance arguments that you exercised control over the carrier, supporting vicarious liability claims. The right balance will vary by broker and situation. Work with legal counsel to define the line for your specific operation.

Q: Are brokers expected to vet individual drivers, not just carriers?

A: This is a serious concern. The underlying case focused on a specific driver's history. However, brokers do not hire drivers and face practical and legal barriers to evaluating individual driver competency. Brokers cannot access the Federal Drug and Alcohol Clearinghouse (reserved for employers), and federal law (49 CFR §391.23(k) requires motor carriers to keep driver screening information confidential. These limitations will need to be argued in litigation.

Q: Is using a third-party carrier onboarding service sufficient for demonstrating reasonable care?

A: Third-party onboarding services can be a useful part of a broader vetting program, but it is not clear that using one alone will be deemed sufficient. What matters is that you have a reasonable written policy, that it is operationalized consistently, and that you can document adherence to it in any given transaction.

Q: What should a carrier vetting policy include?

A: At minimum, the foundation should be use of federally licensed motor carriers with active operating authority. Beyond that, the content will depend on your operation, insurer requirements, and counsel's advice. Several attendees noted that a monthly cadence to review and remove inactive or non-compliant carriers from your network is good practice, as is a re-vetting process for carriers being reactivated. TIA's in-house legal committee is actively evaluating what additional guidance to offer the industry.

Q: What records and documentation should brokers keep?

A: You need a written carrier vetting policy. Beyond that, maintain documentation showing that you followed your protocol in each transaction. The specific documentation will depend on your TMS and operational systems. Technology solutions may assist with recordkeeping, but the key principle is this: having a policy and not following it is worse than having no policy at all.

Insurance Considerations

Q: What insurance coverage should freight brokers review or add?

A: Consult with your insurance broker immediately. Third-party liability / truck broker liability coverage is broader than contingent auto liability and is recommended by multiple advisors. Errors & Omissions (E&O) coverage is also strongly recommended — if you don't already have it, get it. Discuss your carrier onboarding criteria with your contingent auto and truck broker liability underwriters, as these discussions may surface requirements or incentives related to your vetting protocol.

Q: Should we contact our insurer about the Montgomery decision?

A: Yes. Proactively engaging your insurer is one of the four key guideposts recommended during this session. Your underwriters are pricing the risk and may have specific expectations about your carrier selection practices. Engage your legal counsel in those discussions as well, given the potential for large self-insured retentions and excess verdict exposure.

Legislative & Regulatory Outlook

Q: Is TIA pursuing legislative or regulatory relief?

A: Yes. TIA is actively exploring both legislative and regulatory paths to address the situation. This includes potential federal legislation to establish a clear carrier selection standard — which multiple attendees and speakers identified as the most durable long-term solution, as it would provide uniform guidance across jurisdictions rather than a patchwork of court-by-court determinations.

Q: Will FMCSA establish a clearer standard for using CSA scores to assess carrier safety?

A: The industry hopes so. The hope is that FMCSA will review the decision and consider promulgating a standard — a "red light / green light" approach — that gives brokers predictability (whether or not based upon CSA scores). There appears to be some genuine interest from federal regulators, but nothing is definitive at this time.

Q: Is there a statute of limitations on claims against brokers?

A: Statutes of limitations are governed by state law and vary by jurisdiction. In the vast majority of states you are likely looking at a two-year limitations period for negligence claims, but some jurisdictions allow up to four

or five years. There is no broker-specific limitations period; the general negligence statute applies. Consult legal counsel for the states most relevant to your operations.

Immediate Action Steps

Q: Sho Where's theuld we make radical changes to our business immediately?

A: No — remain calm. Do not overreact. The cost of doing business has changed, but freight brokers will continue performing vital services. Radical change is not always warranted; it depends on your current steady state. Be thoughtful about adopting new products and services that promise to establish reasonable care — some will be well-intentioned but hastily designed or empirically unsupported. Work methodically with counsel and insurers rather than reacting to every emerging recommendation.

Q: What are the four key things every broker should do now?

A: 1. Written policy: Ensure you have a documented carrier onboarding and ongoing monitoring protocol. If you don't, this is the most urgent priority. 2. Policy content: Review the content of your policy with counsel and your insurer to ensure it is both operationally practical and legally defensible. 3. Talk to your insurer: Have a proactive conversation about coverage and what your underwriter expects. 4. Train your people: Ensure staff responsible for carrier onboarding and monitoring are trained to follow and operationalize the policy consistently.

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