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The Gap Between Law and Reality in Post-Montgomery Broker Liability

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The Big Picture

Transport Topics (TT) recently reported that the Montgomery ruling “may be less harsh than feared” for freight brokers. Analysts point to the concurring opinion’s language suggesting plaintiffs face real hurdles in proving negligent carrier selection, and argue the ruling is narrower than the headline suggests.

They may be right about the law. They are wrong about the reality.

There is a significant difference between what the legal standard requires and how the plaintiff's bar actually deploys that standard. The analysts are looking at the courtroom. Plaintiffs' lawyers are looking at the settlement table. Those are not the same place.

Why It Matters

The "brokers can defend" argument assumes the battlefield is a jury deciding negligence. That's the wrong battlefield. The real fight happens before trial, in demand letters, mediations, and settlement negotiations, where the legal standard is only one of several factors driving the number.

Three realities that the "less harsh" analysis misses:

1. Plaintiffs Don't Need to Win. They Need Leverage.

The moment a broker is a named defendant with a colorable negligence theory, the settlement calculus changes. The broker's own defense costs, its reputational exposure, and the tail risk of a nuclear verdict all go into that number. None of that requires the plaintiff to actually prove negligence at trial; it just requires the threat to be credible enough to survive a motion to dismiss.

And post-Montgomery, the threat is credible.

2. The Insurance Gap Is the Real Story.

Suppose the carrier has $1 million in coverage. The damages are $8 million. Even if the broker's exposure under a narrow negligence standard is limited, the plaintiff's lawyer knows the full recovery has to come from somewhere. The broker, with its own insurance and its own balance sheet, becomes the target source for the gap.

This isn't a legal theory. It's math. It's reality.

> *The insurance gap between carrier limits and actual damages is where broker exposure lives, regardless of what the negligence standard requires.*

3. "Ordinary Care in Carrier Selection" Is a Discovery Invitation.

The safety carve-out framing sounds limiting. "Ordinary care" sounds like a manageable standard. But "ordinary care in selecting a carrier" is exactly the kind of standard that generates massive discovery into broker vetting practices, internal carrier qualification software, override decisions, and the human judgment calls behind them.

Even if the broker ultimately prevails at trial, the discovery exposure alone is enormous pressure to settle. Few carriers, and fewer brokers, want their internal vetting processes litigated in public.

The Bottom Line

The TT analysts are correct that the legal standard creates real hurdles for plaintiffs at trial. They are incorrect that this limits broker exposure in practice.

Before Montgomery, the Federal Aviation Administration Authorization Act wall made it easy to dispose of broker claims early. That wall now has a door. Once the plaintiff is inside, the litigation economics do the rest, regardless of what the jury instructions ultimately say.

What brokers and carriers should actually be doing right now:

- Document carrier vetting processes as if every selection decision will be scrutinized by a plaintiff's attorney
- Review transportation contracts for indemnification language before the next claim
- Confirm insurance programs cover broker-facing liability post-Montgomery
- Treat every pre-suit demand involving a broker as a Montgomery claim in waiting

If you or your company have questions about this liability landscape, please contact me or any member of the Saxton & Stump Trucking and Commercial Transportation Group.

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