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The Indemnity Minefield Hidden in Post-Montgomery Transportation Contracts

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JUNE 4, 2026

The Big Picture

Montgomery v. Caribe Transport II, LLC didn't just hand plaintiffs a new target, it handed brokers and shippers a new reflex: *make the trucking company pay.*

In the wake of the Supreme Court's decision confirming broker liability exposure for negligent carrier selection, every risk manager and outside counsel for a shipper or broker in America is reviewing their transportation contracts. The instinct is predictable and immediate: demand indemnification from the carrier.

What they may not realize, and what you need to understand before you sign anything, is that this seemingly simple contractual play runs into a four-layer legal minefield that can blow up in everyone's face.

Why It Matters

The indemnification reflex is understandable. A broker faces a $20 million verdict for negligently selecting your company. Of course they want you to hold them harmless.

But the gap between what a broker wants in a contract and what is legally enforceable, and insured, is potentially enormous. Miss one of these four layers, and the contract either doesn't protect the broker, doesn't bind the carrier as intended, or creates an uninsured liability that blindsides everyone at the worst possible moment.

The Four Layers

1. The Language Itself

What exactly are you agreeing to indemnify? The spectrum runs from broad form (indemnify for *anything*, including the broker's own negligence) to limited/comparative form (each party bears its proportionate fault). Post-*Montgomery* pressure will push brokers toward broad form language; broad form language is precisely what triggers anti-indemnity statutes in more than 46 states. The harder the grab, the less they hold.

2. State Anti-Indemnity Law

Forty-six states have enacted anti-indemnification statutes protecting motor carriers from being forced to assume liability for another party's negligence. In some states, an overly aggressive indemnification clause isn't reformed or limited, it may be void. The broker ends up with nothing.

3. Choice of Law

Absent a choice of law provision, determining which state's anti-indemnity law applies becomes a genuine legal puzzle: Where was the contract formed? Where was the load picked up and delivered? Watch for post-*Montgomery* contracts selecting one of the four remaining states without anti-indemnity statutes (Delaware, Mississippi, New Hampshire, Vermont), even where that state has no relationship to the transaction. If your contract has no choice of law clause, you don't know what law governs your indemnification obligation until a court tells you.

4. Does Your Insurance Cover It?

This is where carriers get genuinely blindsided. Assuming an indemnification obligation in a contract does not automatically mean your insurance policy covers that obligation. The 2013 ISO revisions to additional insured endorsements specifically limited coverage to "the extent permitted by law", meaning if the underlying indemnification obligation is void under a state anti-indemnity statute, the insurance coverage tied to it may also evaporate. You need to know before you sign whether what you're assuming is an insured contract under your policy.

The Bottom Line

Montgomery changed what plaintiffs can target. Don't let your contract change who actually pays.

Before signing any post-Montgomery transportation contract with indemnification language:

- Have counsel review the specific provision language
- Identify the controlling state anti-indemnity statute
- Confirm or negotiate a choice of law clause
- Tender the contract to your insurer before signing

If you or your company have questions about indemnity agreements in your contracts, please contact me or any member of the Saxton & Stump Trucking and Commercial Transportation Group.

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