

Supreme Court Decision Raises Carrier-Selection Risk for Wholesale Distributors

In *Montgomery v. Caribe Transport II, LLC*, the United States Supreme Court held that the Federal Aviation Administration Authorization Act (“FAAAA”), does not preempt state-law negligent-hiring claims against a transportation broker that allegedly selected an unsafe motor carrier. The plaintiff alleged that the broker arranged transportation with a carrier that had a conditional federal safety rating and known safety deficiencies, and that this negligent selection contributed to a serious truck crash. The Court concluded that even if the FAAAA preemption provision otherwise applied, the claim fell within the Act’s safety exception because negligent carrier selection concerns motor-vehicle safety.

Practical Implications for Wholesale Distributors

The decision is not limited in practical importance to freight brokers. Wholesale distributors that occasionally hire third-party trucking companies to deliver their own products may also face state-law negligent-selection or negligent-hiring claims after an accident involving a carrier they selected. A distributor is usually not acting as a broker when it hires a carrier to move its own goods, but that distinction does not necessarily reduce exposure. If anything, plaintiffs may argue that a distributor that selected the trucking company and placed the load into transportation should exercise reasonable care when choosing the carrier.

The decision does not impose strict liability, but it does close a preemption argument that has benefited companies that have used third-party delivery carriers. A distributor is not automatically responsible for every accident involving an independent trucking company they hire. That will be reserved for state courts, and it will bear watching to see how they determine liability in what is likely to be a wave to suits that include this additional cause of action. The central issue will be whether the distributor used a reasonable, documented process and avoided carriers with obvious safety red flags, such as lapsed operating authority, inadequate insurance, an out-of-service order, a final unsatisfactory safety rating, or known serious safety concerns.

Top 5 Best Practices to Minimize Negligent-Hiring Exposure

1. **Adopt a written carrier-vetting policy.** Require confirmation of active operating authority, USDOT/MC information, insurance, safety-rating status, and absence of an active out-of-service order before using a new carrier.
2. **Document the selection process.** Retain dated screenshots or records from FMCSA/SAFER or equivalent sources, insurance certificates, carrier agreements, approval notes, and any follow-up communications regarding safety concerns.
3. **Evaluate existing insurance policies.** Review your existing insurance policies to confirm that your business is covered for any potential negligence claims that could arise from using third-party carries. Many policies will exclude claims that arise from vehicles that are not owned by the policy holder and coverage decisions may hinge on whether the loss arises from the accident or the negligent hiring.
4. **Strengthen carrier agreements.** Require the carrier to represent that it is properly authorized, insured, and compliant with motor-carrier safety laws; prohibit unauthorized subcontracting; require prompt notice of safety-rating, insurance, or authority changes; and include defense, indemnity, and insurance provisions. If possible, get confirmation that your company will be considered an “additional insured” under the carrier’s policy.

5. **Avoid exercising operational control.** Do not direct route selection, hours of service, equipment maintenance, or unsafe delivery timing. Aside from timing windows that your customer may require, delivery instructions should expressly remain subject to all safety laws, weather conditions, and driver-safety determinations.

Takeaway

Wholesale distributors should treat carrier selection as a documented safety-sensitive vendor process, not as a purely administrative purchasing decision. The best defense after *Montgomery* is a consistent record showing that the distributor selected reputable, authorized, insured carriers and did not ignore known safety risks.