LUCOSKY BROOKMAN

Lucosky Brookman Trucking & Transportation Newsletter

August 2026 - Edition 11

lucbro.com

IN THIS EDITION

- Case Summaries
- Article of the Month
- About Us
- Meet the Team
- Connect with Us

CASE SUMMARIES

CASE SUMMARIES

Pennsylvania / Eastern District
Court allows punitive damages against commercial driver and employer to proceed following distracted-driving crash.

Seng Long Kim v. Pierre, 2026 U.S. Dist. LEXIS 183077 (E.D. Pa. Aug. 17, 2026)

The Court granted in part and denied in part defendants' motion for partial summary judgment in a trucking accident case arising from a collision on Interstate 95. The Court found sufficient evidence for a jury to consider punitive damages against the commercial driver, including allegations that he was distracted, failed to respond to stopped traffic and emergency vehicles, and struck plaintiffs' vehicle at approximately 45 mph despite having time to react. Because punitive damages may be imposed vicariously under Pennsylvania law, that claim also proceeds against the driver's employer. However, the Court dismissed direct negligent hiring, training, supervision, and entrustment claims against the employer, finding the alleged regulatory deficiencies were not sufficiently tied to the driver's conduct.

Rhode Island / District of Rhode Island
Court largely dismisses state-law cargo claims as preempted by Carmack Amendment and FAAAA.

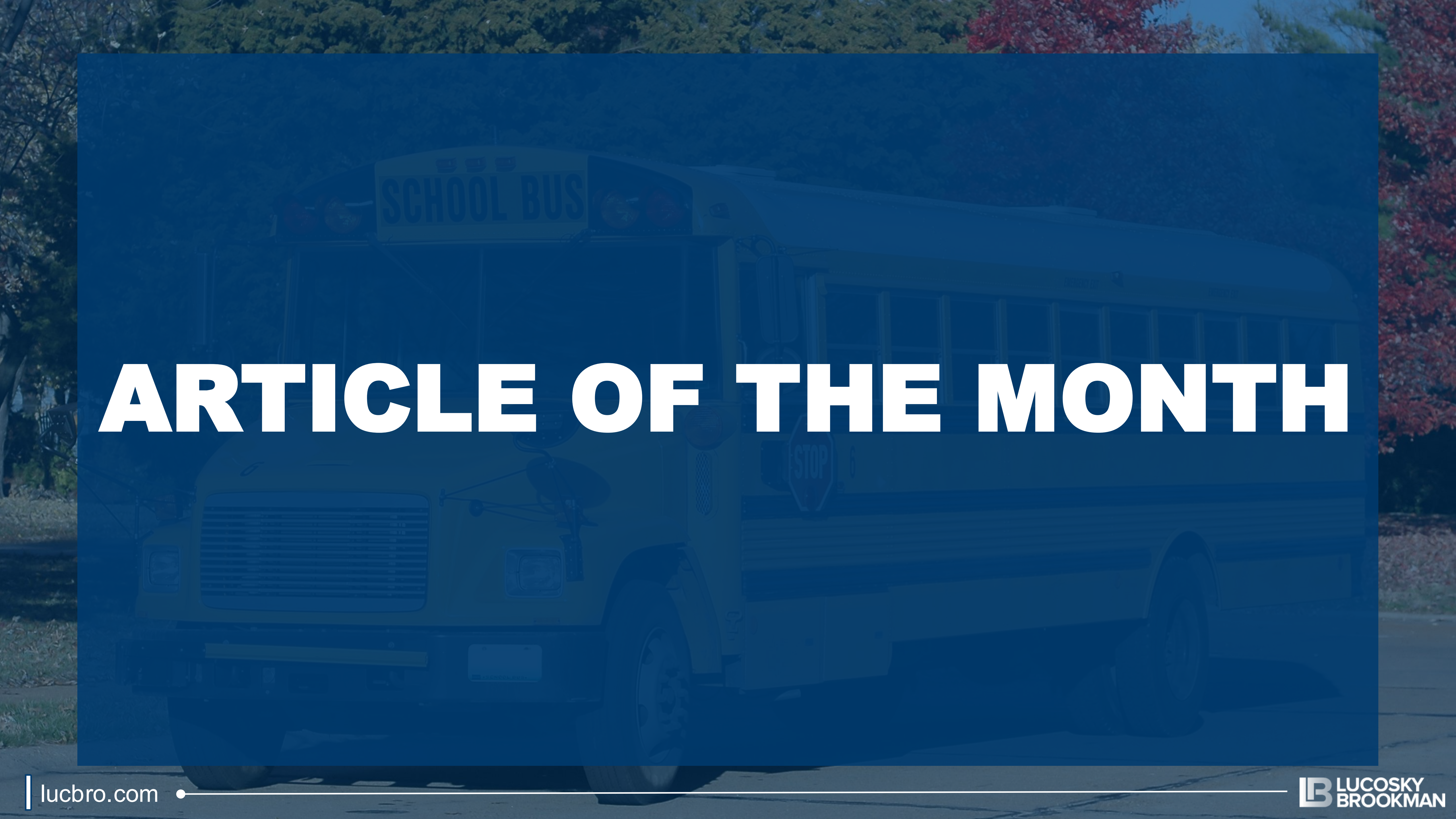
S.A.M. Pantaenius Monaco v. Save on Transp. Enters., LLC, 2026 U.S. Dist. LEXIS 182121 (D.R.I. Aug. 14, 2026)

The Court largely granted motions to dismiss state-law claims arising from the failed overland transport of a catamaran from Rhode Island to California. After the original carrier allegedly re-brokered the shipment, another carrier loaded the vessel, abandoned it roadside following a payment dispute, and the vessel was later destroyed by fire. The Court held that most claims against the carriers were preempted by the Carmack Amendment, rejecting arguments that transportation had ended merely because the vessel was temporarily stationary. It also rejected efforts to avoid preemption through conversion theories. Claims against brokerage entities were separately analyzed under the FAAAA, reinforcing the broad preemptive reach of federal transportation law in cargo-loss disputes.

Fifth Circuit / Texas
Court revives statutory-employer and broker negligent-hiring claims in fatal multi-carrier trucking accident.

Crane v. Penske Transp. Mgmt., L.L.C., 2026 U.S. App. LEXIS 23567 (5th Cir. Aug. 4, 2026)

The Fifth Circuit reversed summary judgment for Penske entities in a wrongful-death action arising from a tractor-trailer collision involving a shipment passed through multiple carriers. Although Penske did not hire the driver or own his truck, the Court held Penske Logistics could qualify as his statutory employer because its carrier-to-carrier arrangement triggered federal regulations requiring it to assume control and responsibility for the equipment. The Court also revived a negligent-hiring claim against Penske Transportation Management, relying on the Supreme Court's recent *Montgomery* decision holding that the FAAAA does not preempt broker negligent-hiring claims. The case was remanded for further proceedings on both theories of liability.



ARTICLE OF THE MONTH

ARTICLE OF THE MONTH

Fifth Circuit Re-Instates Negligent Selection Claims Dismissed on Pre-Emption Grounds Following Supreme Court Decision in *Montgomery*

By: Steven Saal, Partner

In May of this year, the Supreme Court's Decision in *Montgomery v. Caribe Transport II, LLC et al, Docket 24-1192,* ended the Federal Aviation Administration Authorization Act ("FAAAA")'s federal preemption of state tort law claims against freight brokers by finding that state tort law fell within the statute's safety exception. This decision exposed freight brokers to potential liability under state tort law for negligent hiring, vetting, or selection claims when contracting with freight transportation companies. There is no longer the clear bar to liability that large freight broker and logistics companies can enjoy when the underlying accident does not involve their direct vehicles or employees.

One of the first tests of this change in the law took place in the Fifth Circuit Court of Appeals in *Crane v. Penske Transportation Management, L.L.C.*, No. 25-40012 (5th Cir. Aug. 4, 2026), where the Circuit Court reversed summary judgment in favor of Penske for negligent selection claims previously granted pursuant to the federal preemption of 49 USC § 14501. It is important to note that the Court did not speak to the soundness or sufficiency of the claims itself but has instead reinstated the claims and returned the matter to the District Court, as the basis for the prior dismissal is no longer applicable under *Montgomery*.

Perhaps the most eye-opening aspect of this decision is the reinstatement of these claims against and potential liability against Penske despite a significantly attenuated link between Penske and the subject driver. In this matter, not only did Penske not employ the driver and contract with a third-party company, the third-party company Penske contracted with hired *another* company itself. Penske contracted with Liberty Lane, which then contracted with a third company, OK Trans, which then in turn hired the driver. This highlights the new reality created by the elimination of federal preemption under *Montgomery*: a logistics company such as Penske could be held responsible for injuries caused by the alleged conduct of drivers that were not even hired by the initial independent contractor. This creates a line of analysis where a jury may determine whether Penske was negligent in selecting Liberty Lane because of Liberty lane's alleged negligent selection of OK Trans. This theoretically could require large freight brokers to ensure whatever definition exists of sufficient vetting for the entire corporate shipping chain.

Following *Montgomery*, we discussed Justice Brett Kavanaugh's adoption of the petitioner/plaintiff's words that brokers "just have to hire carriers that actually have a reasonable policy." Now it appears that brokers have to hire carriers who hire other carriers with reasonable policies. The slippery slope is evident on its face. It was former Supreme Court Justice Benjamin Cardozo when he sat as the Chief Judge for the New York State Court of Appeals spoke of the danger of "enlargement of the zone of duty" noting that "[e]very one making a promise having the quality of a contract will be under a duty to the promisee by virtue of the promise, but under another duty, apart from contract, to an indefinite number of potential beneficiaries when performance has begun. The assumption of one relation will mean the involuntary assumption of a series of new relations, inescapably hooked together. Again we may say in the words of the Supreme Court of the United States, 'The law does not spread its protection so far'." H.R. Moch Co. v. Rensselaer Water Co., 247 N.Y. 160 (1928). Unfortunately it appears contractors can no long enjoy the same peace of mind that jurisprudence considered relatively sacrosanct a century ago.

In *Crane*, the District Court previously dismissed the claim that Penske was negligent for selecting Liberty, which of course, in-turn, hired OK Trans and the driver. In reversing this dismissal, the Fifth Circuit, citing to *Montgomery*'s holding that the claim falls within the FAAAA's safety exception, further noted that while it was not holding that Penske had a duty to plaintiff under Texas law that it was *not* addressing that issue since the issue was not addressed by the District Court. This does leave open the issue as to whether under Texas state law plaintiff can establish that Penske had a duty to the plaintiff when it retained Liberty Lane, which then hired OK Trans.

This however, only creates liability if it is proven that Penske was negligent in its retention of Liberty Lane. Perhaps more impactful was the Fifth Circuit's reversal of the District Court's finding that Penske could not be considered the driver's statutory employer because Penske had no direct agreement with OK Trans. The Fifth Circuit disposed of this issue, finding that because Penske assumed control and responsibility of the OK Trans vehicle as interpreted under 49 CFR § 376.22 that Penske could be considered the driver's statutory employer. *This now creates the potential for strict vicarious liability to logistics companies for the negligence of the driver regardless of the degrees of separation between the logistics company and the driver.* This shift may be more damaging than *Montgomery*. If Penske and other freight brokers can be held vicariously liable for the driver's conduct, potential liability for negligent vetting or selection will pale in comparison to the imposition of vicarious liability for the conduct of a driver the freight broker does not employ.

The question now is what can the transportation and freight broker industry do to combat wildly increasing personal injury exposure as the courts continue to expand the theories under which these companies can be held liable. Plaintiff lawyers are always going to pursue the *reptile* and twist the meaning of even the best policies, procedures, and training. Strong defense, indemnification, and additional insured protection in all contractual agreements with sufficient coverage is going to be the best way for companies to protect themselves. The issue this presents is that smaller companies, i.e. an OK Trans, may not be able to secure coverage that will insulate larger companies from high seven-figure and eight-figure exposure. This could have an increasingly damaging impact on the industry itself if smaller transportation companies are unable to procure and afford insurance. The courts at large, unfortunately, seem blind to the practical, real-life, and economic impact, as even the Supreme Court believes companies can protect themselves by having sound policies. In a world where plaintiff attorneys are holding weekly Continuing Legal Education seminars on how to sue freight brokers, sound policies and adequately vetting independent contractors is only a small part of the equation.

We often discuss the importance of immediate investigation and response to all claims, accidents, etc. because so much information and evidence, whether it be video, text communication, or electronic vehicle data, is quickly lost if not retained. However, when combatting broker liability claims and seeking to preclude a vicarious liability finding as to a non-employee, the defense process could start years before any claim in the form of continued oversight of vendors and contractors, updating of training and guidelines, and establishing systems and redundancies to ensure that these smaller transportation companies are managing their fleet and drivers as legally required. Email and document retention policies, so that the aforementioned information can be accessible possibly years down the road, will be equally integral.

This may be a watershed moment for the industry. For the immediate future and time-being, diligently ensuring any entity transporting goods on your company's behalf has sound policies and is properly vetting, screening, and training their own drivers is non-negotiable. Meticulous contract drafting and verification that companies are procuring the required insurance is another must. In a time when the cost of living and inflation are part of our everyday discourse, the only answer may be articulating to elected officials and the public that the increased costs in the shipping and logistics industry will only find their way downstream into grocery, department, and warehouse stores and the Targets and Wal-Marts of the world. These issues do not exist in a vacuum. The much-reported $600 million dollar verdict against C.H. Robinson out of Dallas, Texas, in *Lipe v. Lupus Superior LLC & C.H. Robinson Company, Inc.* may only be the beginning of this new reality for freight brokers and the shipping and logistics industries.

ABOUT US

Lucosky Brookman's Transportation Practice Group, a specialized division within our Insurance Defense and Coverage Practice Area, represents clients and their carriers in complex tort and coverage litigation across the transportation industry. Our team of experienced attorneys handles cases in state and federal courts throughout New York, New Jersey, Kansas, Pennsylvania, and Texas.

Our practice combines deep industry knowledge with litigation expertise to provide exceptional legal representation to transportation companies facing increasingly complex regulatory requirements and litigation challenges. We understand that transportation businesses operate in a unique legal landscape where federal regulations, state laws, and local ordinances create a multifaceted compliance environment, and we tailor our approach accordingly.

We provide comprehensive legal representation to a diverse range of transportation clients, including interstate trucking fleets, railroads, school bus companies, waste hauling companies, taxicab operators, shuttle and bus services, rental vehicle fleets, and ambulance providers. Our attorneys have extensive experience addressing personal injury claims, cargo disputes, environmental issues, hazardous materials incidents, indemnification matters, and insurance coverage challenges. We also maintain strategic partnerships with preeminent local, regional, and national agencies, allowing us to stay ahead of regulatory developments, collaborate on proactive risk mitigation strategies, and deliver a truly integrated defense in complex transportation matters.

Meet The Team

Harold Moroknek
Partner & Chair of Trucking & Transportation Practice Group
hmoroknek@lucbro.com

Scott Taffet
Partner
staffet@lucbro.com

Steven Saal
Partner
ssaal@lucbro.com

Meet The Team

Patrick James
Partner
pjames@lucbro.com

Brian Webb
Partner
bwebb@lucbro.com

Alan Levy
Partner
alevy@lucbro.com

Meet The Team

Agustin Blanco
Senior Associate
ablanco@lucbro.com

John Caruso
Senior Associate
jcaruso@lucbro.com

Thomas McGovern
Associate
tmcgovern@lucbro.com

Meet The Team

Mia Conroy
Associate
mconroy@lucbro.com

Olivia Jones
Associate
ojones@lucbro.com

PJ Benasillo
Associate
pbenasillo@lucbro.com

CONNECT WITH US

914-392-9006

info@lucbro.com

www.lucbro.com

2 Depot Plaza, Bedford Hills, NY 10507

SCAN ME

Relationship Focused. Results Driven.

THANK YOU

lucbro.com