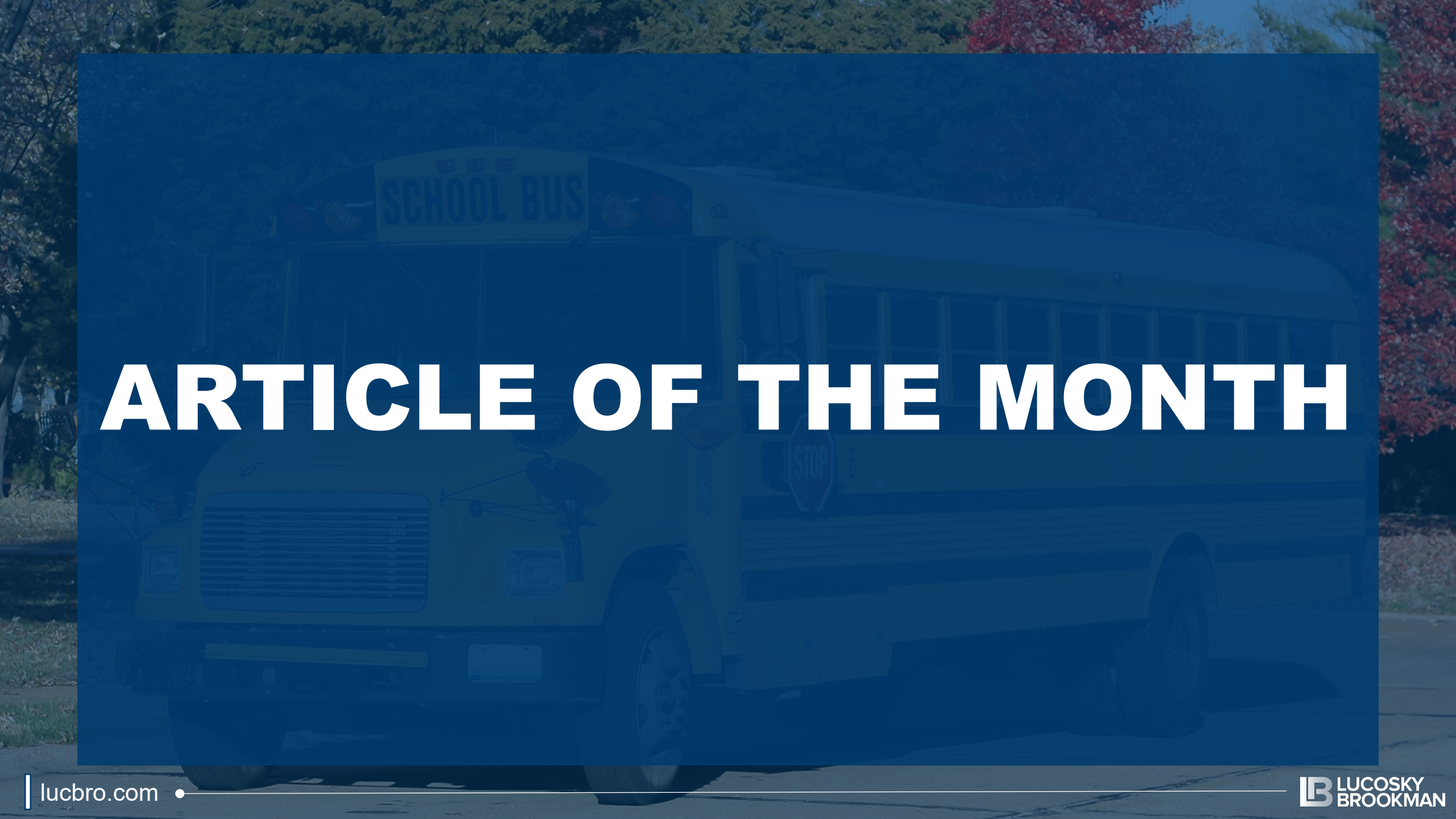

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Supreme Court Hears Argument on Broker Liability Issue in Montgomery v. Caribe.

By: Steven Saal, Partner

On Wednesday, March 5, 2026, the United States Supreme Court heard oral arguments in the matter of Montgomery v. Caribe Transport II, LLC et al, Docket 24-1192. This issue previously came to a head while the petition for a Writ of Certiorari, filed on June 2, 2025, was pending before the Court when the Sixth Circuit Court of Appeals' July 8, 2025 decision in Cox v. Total Quality Logistics, Inc. held that "where a negligent hiring claim against a broker substantively concerns motor vehicles and motor vehicle safety, that claim is within "the safety regulatory authority of a State with respect to motor vehicles."

The issue at dispute was that of liability for brokers engaged in movement of property and freight under the Interstate Commerce Commission Termination Act ("ICCTA") and Federal Aviation Administration Authorization Act ("FAAAA"), which, in part, currently protects brokers from liability at common law pursuant to 49 USC § 14501(c)(1). Whether states can enact and enforce laws under the guise of safety provisions is preempted by the federal statute is now before the United States Supreme Court with a decision expected in June of this year.

The oral argument focused on competing sections of the statute, ambiguity in defined terms such as 'motor vehicle,' and the question of why Congress would explicitly create a safety exception in the arena of interstate commerce but exclude the exception from intrastate commerce.

Justice Brett Kavanaugh focused a portion of his questioning to petitioner as to why Congress would enact insurance requirements on carriers and not brokers if Congress wanted brokers to be exposed to similar liability. It appeared Justice Kavanaugh may have been channeling his own time in the Solicitor General's Office and White House Counsel's Office under George W. Bush, commenting that Congress did not create these insurance requirements for brokers because it did not contemplate broker liability. Justice Ketanji Brown Jackson inquired to petitioner on the definition of a motor vehicle. Petitioner attempted to sidestep this issue, but the question raises a key point – brokers are not engaged in motor vehicle operation. Petitioner pivoted this back to state safety regulation, but the issue was clearly present for Justice Jackson.

The petitioners clearly sought to appeal to a practical interpretation that if brokers want to be protected, they should inquire as to the safety standards of their vendors. Petitioner also noted that the broker here, C.H. Robinson, failed to follow its own internal guidelines – a salient point for all trucking and transportation companies that if you set a standard, it is imperative that you meet it or you risk exposure.

When respondent C.H. Robinson's counsel appeared before the Court, much of the pushback, specifically from Justice Elena Kagan, was on this notion of separating brokers from motor vehicle operation. Respondent's counsel was focused on the argument that brokers must rely upon – there are government authorities and standards – such as the FMCSA – that brokers should be entitled to rely on and that states cannot impose a duty to pick the 'best' company. The Solicitor General's Office participated in this argument as well in support of the respondent's position, commenting that there was not much 'daylight' between their arguments. He did, however, concede that Congress could have been more clear, and it was actually Justice Amy Coney Barrett who raised scenarios where those inconsistencies create conflict, appearing somewhat warm to the arguments made by petitioner. Questions continued throughout on the issue of defining a motor vehicle versus the responsibility of a broker, but no justice appeared to interpret an unambiguous view of the law that clearly separates brokers from the vendors and their motor vehicle operations.

Chief Justice John Roberts also weighed in on the discussion, commenting on the ambiguity created by how 49 USC § 14501(b), which specifically speaks to freight forwarders and brokers, does not include the "safety exception" that exists in 49 USC § 14501(c). The petitioners argue that you cannot apply the same standards to sections (b) and (c) when section (b) explicitly lacks the safety exception petitioners are seeking to impose against the brokers. Chief Justice Roberts noted the justices' not understanding why section (b) even exists in its current form given the existence of section (c). While this may just be conjecture, the arguable contradictions and conflicts between the statute and the current state of the industry suggest that the current apparatus of nationwide freight, and now passenger, brokers, is a newer, more recent industry evolution. The statute appears ill-equipped to clearly answer these questions in its current form.

It is difficult to anticipate what the Court may decide. Justices Kavanaugh and Jackson's inquiries appeared to side more with the broker side of the dispute, while justices Kagan and Barrett appeared sympathetic and possibly aligned with the petitioner's thought process. But there is a seeming consistency that the statute itself is ambiguous, convoluted, and requires clear interpretation. The Court's decision may ultimately not be as black and white as protecting or eliminating federal preemption. Whatever the Court's decision on the present action, it would not be surprising to see the Court urge Congress to update and address the statute and its current form.

Commentary on this issue through the industry is in agreement on one point, however: brokers and interstate shippers require a clear federal standard and guideline. Ambiguity and uncertainty across jurisdictions is the most concerning outcome. We again note that these issues still are being solely addressed relative to the movement of property and not common carriers or the passenger motor carrier industries. Pending the Supreme Court's ultimate resolution of this question, common carriers will likely want to pursue clarification through legislation on their exposure or potential federal protection under this statute. The argument that these brokers are in the business of 'technology, 'computers,' and 'communication,' while inherently logical, is seeing push back even at the Supreme Court level. To keep or obtain these protections, federal legislation might ultimately be the only remaining route.