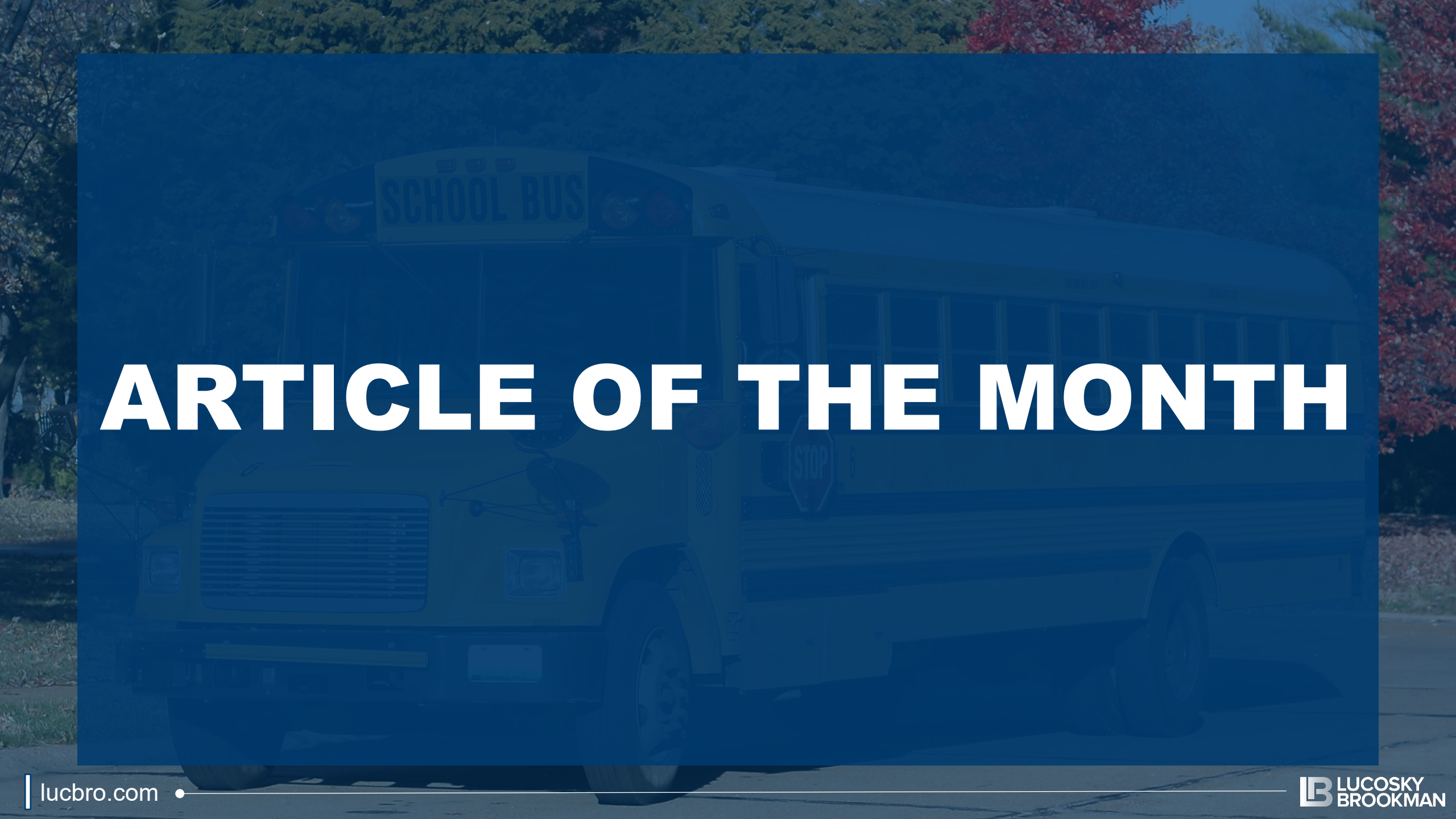

ARTICLE OF THE MONTH

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Supreme Court Strikes Down Federal Preemption Protection for Freight Broker Liability

By: Steven Saal, Partner

Over the past twenty-four (24) months, the United States Supreme Court has overturned decades of precedent, resulting in significant upheaval in both social and economic arenas. This new reality of activism and disruption continued on May 14, 2026, when the Court stated that freight brokers could be held liable in tort under state law for negligent hiring claims when contracting with freight transportation companies. This liability exposure is no longer preempted by the Federal Aviation Administration Authorization Act ("FAAAA").

The overarching theme of Justice Amy Coney Barrett's and Justice Brett Kavanaugh's respective Opinion of the Court and Concurrence is that the statute lacks clarity and the Court could not read into the statute the interpretation sought by C.H. Robinson and the amicus proponents of preemption. The decision is vague in and of itself, with how the Court reached its ultimate conclusion. Justice Barrett relied on generalities such as the Second Restatement's definition of "negligent hiring" and "ordinary definitions" of what constitutes relation to a motor vehicle in determining that the safety exception applies and permits the tort claims against C.H. Robinson to proceed. The crux of the decision and how the Court ultimately reached this conclusion is that Congress explicitly included the "safety exception" for states to exercise a police power over safety regulations in 49 USC § 14501(c), which governs interstate commerce, and excluded the same exception in 49 USC § 14501(b)'s regulation of intrastate commerce. The judges would not parse this difference, which meant that their conclusion would rely on whether or not a broker's vetting and hiring of a smaller freight transportation company constituted "safety" issues as contemplated in the statute. The Court determined it does.

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This is where the Court has seemingly taken a significant leap in adopting the petitioner/plaintiff's almost reptilian and attenuated logic that if C.H. Robinson had further investigated and evaluated Caribe Transport II, LLC ("Caribe"), then C.H. Robinson would have discovered that Caribe was prone to accidents and therefore C.H. Robinson can be liable for contracting with Caribe. This leap by the Court is concerning and far-reaching, as we will explore more in Justice Kavanaugh's concurrence. Justice Barrett and the Court, without terribly deep analysis, merely connect the dots between a vehicle being "used on a highway in transportation" and that, because C.H. Robinson is hiring a company engaging in that activity, allegations as to C.H. Robinson can be required to "exercise ordinary care" in selection of these carriers. Therefore, because the petitioner/plaintiff "alleges that C.H. Robinson failed to exercise reasonable care when it hired Caribe Transport, which had a subpar safety rating from federal regulators, to transport goods via truck," C.H. Robinson can be found liable.

During oral arguments, Justice Kavanaugh delved into most of the practical and real-world implications of what the Court's consideration of this issue would mean. He then focused in his concurrence on issues such as why Congress would enact insurance requirements on carriers and not brokers if Congress wanted brokers to be exposed to similar liability. His concurrence also made an effort to consider in more detail these issues, such as insurance, as well as the applicability and impact of the Federal Motor Carrier Safety Administration's ("FMCSA") role. Kavanaugh opined that, since the states have this power to regulate safety issues, it would not 'make sense' for only the trucking companies to be liable and immunize brokers if this power exists to keep unsafe trucks off the road. This rationale, however, is confusing given Justice Kavanaugh's following reference to FMCSA and its minimal oversight. He ultimately, in so many words, suggests that it is up to private companies to do what the FMCSA does not, rather than brokers operating in what he calls a "black hole."

Justice Kavanaugh tries to walk this back, arguing that it will not open the door to unfettered liability in a paragraph that just exudes a lack of familiarity with the everyday experiences for commercial transportation companies and defense attorneys in both state and federal courts. The justices accept the reptilian framing of the petitioner/plaintiff – if the brokers act reasonably, they will not be exposed to suits. This simply ignores the practical reality that this will be exploited by the plaintiff's bar to create liability in situations where broker entities were not negligent or proximately responsible in any way, but all a plaintiff attorney needs to do is convince a handful of regular people on a jury otherwise. This is a reality the Court fails to consider.

Ultimately, this is not a practical decision. The Court creates unrest in a massively important supply chain industry at a time when this country is dealing with a myriad of inflationary pressures. The Court, at numerous points, does 'dog whistle' Congress, and certainly Congress could amend the statute to overturn the Court's actions. But an impractical decision overturning how an industry has functioned for decades without first providing Congress the opportunity to clarify or cure the issue, while also bypassing the longstanding practice of deferral to the statutory interpretations of the Solicitor General, is unfortunately keeping in current practice with the recent disruption created by the Supreme Court in overturning Chevron and other highly impactful shifts away from precedent.

The next shift is what commercial transportation companies do next. The industry and we as a defense bar cannot escape reality – this will increase liability, exposure, and the sheer number of lawsuits that will need defense. But Justice Kavanaugh did appear to leave the door slightly cracked open for a little ray of hope to shine through when he adopted the petitioner/plaintiff's words that brokers "just have to hire carriers that actually have a reasonable policy." This itself will create disruption. But large commercial transportation companies do have extensive handbooks, rulebooks, and operational guidelines. The reality is that many 'mom and pop' operations do not, but the industry may need to work with and assist these companies in that endeavor while at the same time maintaining necessary separation. The industry can lead these smaller partners to water, but cannot be directly involved in rule-making and policy-making, or that will open the door to a different liability theory entirely.

This area of the law has changed for the time being. There is a faint hope that Congress will close this loophole, but that remains to be seen. Thankfully, there are actions the industry can take in the meantime, and the legislative process could limit the impact of this decision in the future.