

The background of the newsletter cover is a blue-tinted photograph. On the right side, a white school bus is visible, with a 'STOP' sign and the number '6' on its side. On the left side, a long line of white commercial trucks is parked in a row. The text is overlaid on this background.

# **Lucosky Brookman Trucking & Transportation Newsletter**

**November 2025 - Edition 2**

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# CASE SUMMARY ALERTS

# CASE SUMMARIES

## Georgia

**Court grants partial summary judgment for trucking company, dismissing all direct-liability claims.**

**Taylor-Thomas v. Darar, 2025 U.S. Dist. LEXIS 200874 (N.D. Ga. Oct. 10, 2025)**

In this personal injury action stemming from a 2022 parking-lot collision, the Court granted partial summary judgment in favor of HJ Trucking, dismissing negligent hiring, entrustment, training, and supervision claims, as well as punitive damages against the company. The Court found no evidence that the driver was unqualified, reckless, or had any history of similar incidents; he held a valid CDL, completed safety training, and had only two minor unrelated citations. The plaintiff also failed to oppose the motion. The Court separately denied the plaintiff's motion to exclude two defense experts, finding the late-served reports caused no prejudice. Claims against the driver and vicarious liability against HJ Trucking proceed.

## Ohio

**Court declines to dismiss counterclaim in trucking broker dispute involving alleged verbal co-brokerage agreement.**

**Reliable Truckload & Brokerage LLC v. Staar Logistics, LLC, 2025 U.S. Dist. LEXIS 199037 (N.D. Ohio Oct. 8, 2025)**

This commercial dispute centers on a hazmat-load arrangement where Reliable, a broker, contracted with Eastern as the designated carrier, while Staar managed Eastern's operations and later claimed a separate verbal co-brokerage agreement with Reliable. Reliable moved for summary judgment on Staar's counterclaim, arguing Staar was bound only by the written agreement and that any verbal deal would be void as illegal double brokering. The Court found significant factual disputes regarding Staar's role, the existence and terms of any verbal agreement, Reliable's knowledge of third-party carriers, and whether Staar suffered damages. Veil-piercing arguments also failed on an undeveloped record. Staar's counterclaim moves forward.

## Pennsylvania

**Court remands trucking accident case after finding removal defective due to missing defendant consent.**

**Molinary v. Kosimov, 2025 U.S. Dist. LEXIS 215627 (E.D. Pa. Nov. 2, 2025)**

The Court granted the plaintiff's motion to remand after the defendants removed this state-court trucking accident suit without obtaining consent from co-defendant White Way. Defendants argued White Way was a nominal party with no real stake in the litigation, relying on an invoice suggesting Zeegot, not White Way, was the carrier for the shipment. The Court rejected this position, finding the invoice did not clearly relate to the load involved in the crash, the route described was nowhere near the accident location, and photos taken at the scene reflected shipment information pointing to White Way as the potential USDOT carrier. Because doubts must be resolved in favor of remand, the case returns to the Philadelphia Court of Common Pleas.

# CASE SUMMARIES

## Texas

**Court reverses negligent entrustment verdict, finding insufficient evidence that worn steer tire caused the collision.**

**Hou. Distrib. Co. v. Benson, 2025 Tex. App. LEXIS 7769 (Tex. App. Houston [1st Dist.] Oct. 9, 2025)**

The Court of Appeals reversed a \$300,000 jury verdict against Houston Distributing Company, holding that the evidence was legally insufficient to show a worn steer tire proximately caused the accident. Although a technician had noted the tire was at the federal minimum tread depth (4/32 inch) weeks before the crash, no evidence established that the tread condition contributed to the truck skidding on wet roads or prevented the driver from stopping. Testimony that low tread might affect braking “depending on the tire” was deemed mere speculation. Because the alleged defect only created a condition that made the collision possible, rather than serving as a substantial factor, the negligent entrustment claim failed. Judgment was rendered that the plaintiff take nothing.

## New Jersey / Third Circuit

**Court upholds revocation of CDL passenger endorsements issued in error to hearing-impaired driver.**

**Parker v. N.J. Motor Vehicle Comm’n, 2025 U.S. App. LEXIS 27889 (3d Cir. Oct. 24, 2025)**

The Third Circuit affirmed summary judgment against a hearing-impaired commercial driver whose P and S endorsements were revoked after the New Jersey MVC discovered she did not meet the mandatory federal hearing standards. Although Parker had a federal exemption allowing her to hold a CDL, that exemption expressly barred her from operating passenger vehicles. The MVC mistakenly issued the endorsements and revoked them without a pre-revocation hearing. The Court held Parker was not a “qualified individual” under the ADA, the Rehabilitation Act, or the LAD because she could not satisfy essential eligibility requirements. It also rejected her procedural due process claim, finding minimal risk of error and strong governmental safety interests supporting immediate revocation.



# ARTICLE OF THE MONTH

# ARTICLE OF THE MONTH

## The Power of Arbitration Clauses and 'Terms of Service'

By: Steven Saal, Partner

Eastern District of Pennsylvania reaffirms the ability of large transportation companies, and specifically common carriers, to establish procedures that could preclude costly in-court litigation.

“How can we reduce our litigation costs and close claims earlier?”

This is a common and entirely justifiable inquiry we receive from clients on a regular basis. It is terrific to settle a claim for well under its potential value due to victories within the litigation itself, but this often comes after months and years and tens of thousands of dollars at the least. Clients understandably want to further reduce costs – after all, while spending \$75,000 to settle a case for \$100,000, if you could have resolved it for \$125,000 before litigation. Early resolution is the financially savvy strategy and a better result. The question is how?

Arbitrations are generally far more cost-effective than in-court litigation. Pre-empting a case entirely with Terms of Service Agreements to preclude claims is even better. These clauses need to be crafted shrewdly and logically – none of our clients want the public relations kerfuffle that arose when Disney sought to use the arbitration clause in its streaming service to prelude a wrongful-death litigation. But in a world where brokered services, whether it be for freight and shipping or commercial transportation, are more ubiquitous than ever, these clauses can help insulate our clients from claims and litigations that are unrelated to our clients' actual conduct.

This issue was considered last month by the Eastern District of Pennsylvania in a decision that considered whether such agreements in a contract could be enforced after the specific performance that was the subject of the contract was already concluded – the Court decided that the answer was “yes.” In *Rideway Express, Inc. v. Hawkeye Transp. Servs., Inc.*, 2025 U.S. Dist. LEXIS 199918 (E.D. Pa. Oct. 9, 2025), the Court addressed a dispute that arose following the conclusion of a Broker-Carrier Agreement (“Agreement”) between Rideway and Hawkeye (“HTS”). HTS had enlisted Rideway to broker the shipment and, after the shipment was completed, accused Rideway – erroneously, according to Rideway – of double-brokering the trip and publicly posting the same on two platforms used by logistics companies. Rideway provided documentation that the accusation was unfounded and demanded that HTS take down the comment. Rideway ultimately filed suit and the operative amended Complaint maintained the tort defamation and disparagement claims as well as false advertising under the Langham Act. HTS moved to dismiss, asserting the Court lacked jurisdiction pursuant to the arbitration provision of the Agreement.

HTS contended that, even though the alleged ‘defamatory’ conduct occurred after conclusion of the Agreement, the claims were still subject to the arbitration since the claims derive from conduct under the Agreement. HTS further argued that the action violated the venue provision of the Agreement and that Rideway failed to state a cause of action. Rideway contended that, since they withdrew the breach of contract, the remaining claims were not subject to the specific terms of the Agreement. The Court ultimately agreed with HTS. The Court focused specifically on the underlying “valid agreement” to arbitrate. *Id.* at \*20. There was nothing in the record that would serve to invalidate the agreement and the Court relied on clear precedent that, with regard to “arbitration provision[s] cover[ing] ‘a dispute arising out of this Agreement’ . . . [o]ur courts consider such language expansive and inclusive of a broad range of disputes – even those that arise from the agreement’s ‘demise.’” *Id.* at \*21 (internal citations omitted). The Court repeated the Third Circuit’s clear directive that “allegedly defamatory statements made after the termination of an agreement fall under the arbitration provision contained within that agreement.” *Id.* at \*22. The holding here reaffirmed the strength of these arbitration provisions.

Though Rideway Express focused on a full contractual agreement, the New York State Court of Appeals for example has already confirmed the effect of these clauses in 'click through' Terms of Service Agreements that people are presented with every day. Last year, in *Wu v. Uber Tech., Inc.*, 2024 Ny Slip Op 05869 (2024), New York's highest court affirmed lower court rulings validating the 'clickwrap process' Uber used to create a valid arbitration agreement.

This strategy requires diligence. These agreements must meet standards relative to required review, acknowledgment of the terms, sending out full copies of the terms to the agreeing party, etc. A quick hit, you clicked it, and agreed that the apparatus will invite more judicial scrutiny. But a comprehensive "clickwrap" mechanism utilized by Uber and discussed in the Wu case can serve as a model for strategies that can insulate large transportation and logistics companies from an onslaught of litigation costs. If these tools are skillfully-utilized, it could be a strategy to save exponentially on future litigation and claim costs.



# Industry Insights

# INDUSTRY INSIGHTS

## The Underused Potential of the Offer to Compromise in New York

By: Scott Taffet, Partner

In litigation, settlement tools are as essential as trial strategies. One of those tools includes the Offer to Compromise, which is widely used in certain jurisdictions, most notably by plaintiffs' counsel in states like California, Connecticut, and Massachusetts. Yet, it remains a rarity in New York. When it is used here, it is typically deployed by defendants. The underutilization of an Offer to Compromise is striking because when used thoughtfully, it can fundamentally alter the negotiation dynamic and push both sides towards a resolution.

Recently, when determining if an Offer to Compromise would be appropriate in one of our cases, we were reminded of its strategic value. After careful consideration, we concluded that making an Offer to Compromise was the right decision. That process reinforced a broader point: New York litigators should consider this tool. In the right circumstances, it can be not only appropriate but decisive.

### What Is an Offer to Compromise?

An Offer to Compromise is a procedural method that allows either party, plaintiff or defendant, to make a formal written settlement proposal before trial. If the offer is rejected and the rejecting party fails to obtain a more favorable outcome at trial, the rules governing this procedure may impose financial consequences. In effect, it transforms a standard settlement proposal into a rule-driven process with real monetary implications.

When it comes to cost-shifting and fee recovery, the specifics vary by jurisdiction. In some states, the offering party may recover taxable costs, such as filing fees, deposition expenses, and expert witness fees, and in limited instances, post-offer attorneys' fees. New York's framework is narrower; attorneys' fees are generally not recoverable unless a statute or contract expressly allows it. However, New York law permits the recovery of certain litigation costs and statutory interest from the date the offer was made, which can still create financial pressure and encourage a timely settlement.

Ultimately, understanding the mechanics of the Offer to Compromise allows New York practitioners to use it more confidently and strategically. Even within New York's narrower cost-shifting rules, it can serve as a practical tool to control litigation expenses, promote fairness, and nudge parties toward resolution before trial.

### **How Other Jurisdictions Use Offer to Compromise**

Offer to Compromise is a well-established settlement method used across multiple jurisdictions, but its frequency and strategic application vary significantly from state to state. In places like California, Connecticut, and Massachusetts, it is a familiar and frequently used tool, most often by plaintiffs' counsel seeking to apply pressure on defendants. However, the logic is simple: accept a reasonable settlement now, or risk facing cost-shifting consequences if the verdict equals or exceeds the offer.

But in New York, the picture is very different. Offer to Compromise exists, but it's often not used, and when it is, it's typically employed by defendants rather than plaintiffs. This contrast raises important questions about practice and perception. Why do New York litigators hesitate to use a tool that their counterparts elsewhere have embraced? Are they overlooking a valuable strategic opportunity as a result?

## Why is an Offer to Compromise Underutilized in New York

Several reasons contribute to why an Offer to Compromise remains underutilized in New York:

- Lack of awareness or familiarity, as many practitioners do not consider it part of their standard settlement toolbox.
- Perception of limited effectiveness because some assume that judges or opposing counsel will view the tactic as hollow or unlikely to shift settlement dynamics.
- In New York litigation culture, there is often a reluctance to deploy methods that appear unconventional, even when the law provides for them.

These factors combined create a self-reinforcing cycle: because Offers to Compromise are not often used, they are not often considered and therefore remain overlooked.

## A Practical Example in Action

In a recent matter, our team carefully evaluated whether an Offer to Compromise would be an effective settlement method. The case involved a damages claim where the plaintiff firmly maintained a demand of \$300,000, showing minimal willingness to negotiate downward despite ongoing discussions. After assessing the facts, the litigation posture, and the potential trial exposure, we elected to make a formal Offer to Compromise at \$180,000.

While the case ultimately settled for \$250,000, an amount higher than the offer, we believe that making the offer was a decisive turning point in the negotiations. It helped reset expectations, signaled confidence in our position, and made the plaintiff more flexible in settlement discussions. In short, even though the settlement did not land precisely at the offered amount, the Offer to Compromise served its intended purpose: it catalyzed productive dialogue and led to resolution.

## **Strategic Advantages and Practical Applications in New York**

Despite being underutilized, the Offer to Compromise provides several meaningful advantages when deployed thoughtfully in New York litigation. It can shorten the lifespan and cost of protracted disputes, bringing parties to the table sooner and creating the right kind of pressure for resolution. By formally presenting a reasonable settlement number, counsel signals confidence in their position and forces the opposition to evaluate trial exposure more realistically.

Beyond negotiation dynamics, the method also aligns judicial goals by encouraging settlement and reducing docket congestion, something courts universally value.

That said, not every case is suited to this approach. The Offer to Compromise is particularly effective in matters with clear liability but disputed damages, or where opposing counsel has been unwilling to engage meaningfully in settlement discussions. It's also a thoughtful consideration when the projected cost of litigation outweighs the potential benefit of trial. Timing and precision are crucial. An offer that is carefully calibrated, neither too low to be dismissed nor so high as to seem unrealistic, can maximize impact. Likewise, introducing it at the right stage, once both sides have a more accurate sense of risk and exposure, can make it a decisive factor in achieving resolution.

## **Conclusion**

The Offer to Compromise is not a new concept, but in New York, it is a largely untapped one. As other jurisdictions have shown, it can be an effective and efficient settlement tool, changing the trajectory of litigation and minimizing unnecessary costs.

New York practitioners should reconsider this underused mechanism and recognize it for what it is: a powerful tool that, when used strategically, can deliver meaningful results. By embracing the Offer to Compromise more frequently, litigators can sharpen their settlement strategies and better serve their clients' interests.

# 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.



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