DE-RISKATHON

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SESSION SUMMARY – OCTOBER 27, 2026

The New Age of Freight Broker Liability

PRESENTED BY



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WATCH THE SESSION REPLAY

SESSION AT A GLANCE

In this session, the presenters discussed how nuclear verdicts now far exceed the $750,000 federal minimum (49 C.F.R. § 387.9) and the $1M most carriers carry, and how plaintiffs' attorneys are turning to freight brokers — and increasingly shippers — to close the gap. Chris Mueller of Asero Insurance Services, Acrisure's Managing General Agent (MGA), and trial attorney Todd Gray of Lewis Brisbois walked through the court decisions reshaping that exposure and how brokers, shippers, and truckers can respond.

THE CASES RESHAPING BROKER LIABILITY

Sperl v. C.H. Robinson
ILLINOIS APP. CT., 2011

A $27.3M verdict. The broker's control over the carrier and driver created an agency relationship.

Montgomery v. Caribe
U.S. SUPREME COURT, MAY 2026

Unanimous: negligent-selection claims against brokers are not preempted by the FAAAA.

Lipe v. Lupus Superior
DALLAS COUNTY, TX, 2026

A $604M verdict. The jury found the driver was C.H. Robinson's "borrowed employee."

In re Home Depot
TEXAS SUPREME COURT, MAY 2026

A "passive shipper" owes no duty to the public for a carrier's crash.

KEY TAKEAWAYS

1. **Brokers are the next source of recovery.** Verdicts outpace carrier limits, and brokers usually carry more insurance. Broker cases have grown from under 5% of Todd's caseload to about a third.
2. **Plaintiffs attack from both sides.** Brokers are accused of doing too little to vet a carrier (negligent selection) or too much to control it (agency) — the catch-22.
3. **The preemption defense is gone.** After Montgomery, negligent-selection claims reach juries under 50 different state standards, with no defined vetting standard.
4. **Less control is more.** Don't pick drivers, set routes, fine drivers, or dictate appointment times. Ideally: "Take it from point A to point B by Tuesday."
5. **Consistency beats perfection.** Set reasonable criteria you can follow every time, document every decision, and keep exceptions rare.

WHAT IT MEANS FOR EACH PARTY

Brokers

Closer scrutiny of how you vet and document carrier selection. After a crash on a brokered load, Todd puts the odds of the broker being sued at about 90%.

Shippers

Home Depot shields passive shippers in Texas, but controlling the shipment or hiring an unauthorized carrier removes that protection — and other states may differ.

Truckers

Brokers are screening on safety ratings, BASIC alerts, and ISS scores again. With 20–25% of freight moving through brokers, safety affects access to loads.

SELECT CARRIERS YOU CAN DEFEND

- **Verify active Federal Motor Carrier Safety Administration (FMCSA) authority** with no out-of-service orders
- **Accept only Satisfactory or Unrated carriers** — avoid Conditional or Unsatisfactory
- **Require at least $1M auto liability** from insurers rated A- or better, and recheck before every dispatch
- **Use Transportation Management System (TMS) alerts** for expired agreements, lapsed insurance, and rating changes
- **Watch for chameleon carriers** reusing a shut-down carrier's name, address, or phone number

AVOID THE APPEARANCE OF CONTROL

- **Use an executed broker-carrier agreement** that leaves control with the carrier
- **Avoid listing the broker as carrier** on bills of lading or rate confirmations
- **Avoid fines and penalty language** for late deliveries
- **Keep driver contact minimal.** Drivers should raise operational issues with their own carrier
- **Shippers: pass down only the requirements you need** — each one can look like control

A caution on Behavior Analysis and Safety Improvement Categories (BASIC) and Inspection Selection System (ISS) data: some brokers now screen on these scores. If you add them to your criteria, apply them every time — a standard you set and don't follow can be used against you.

KEEP A QUALIFICATION FILE ON EVERY CARRIER

- ☐ Operating authority and safety rating
- ☐ BASIC review and ISS score
- ☐ Insurance, with the named insured matching authority records and no pending cancellations
- ☐ Executed broker-carrier agreement
- ☐ Approval date and reviewer name
- ☐ Any exceptions, with the reason, compensating factors, approver, and duration

AFTER A CRASH ON A BROKERED LOAD

1 Call counsel first
Create privilege before anyone investigates or discusses the crash

▶

2 Preserve the record
TMS data, rate confirmation, bill of lading, BCA, shipper agreement, and dispatch texts

▶

3 Lay low
Keep internal talk minimal, and limit corporate witnesses to one or two

Reviewing your carrier vetting process?

Acrisure's transportation team can help you assess your broker liability exposure, review your contracts, and evaluate your insurance program.

HAVE A RISK QUESTION? REACH OUT TO OUR TEAM

RiskResources@acrisure.com

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