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Road Carrier & Freight Broker Liability







25 September 2026

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EXECUTIVE BRIEFING REPORT

Road Carrier & Freight Broker Liability

and the Prudential Insurance Framework in the Post-Montgomery Era

Carmack Amendment cargo liability · FAAAA preemption and the *Montgomery* ruling · Negligent-selection exposure · Nuclear verdicts and cargo crime · Insurance market repricing · Program architecture, wordings and carrier-selection governance

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Contents

Briefing at a Glance 3

1. Two Liability Regimes: A Map 4

2. Road Carrier Liability for Cargo: The Carmack Amendment 5

3. Freight Broker Exposure on Cargo 8

4. Montgomery v. Caribe Transport II: What Changed 9

5. The First 134 Days: Post-Montgomery Developments 11

6. Loss Environment: Nuclear Verdicts and Cargo Crime 12

7. The Insurance Market Response 14

8. The Prudential Insurance Framework 15

9. Carrier-Selection Governance: The Defensible Standard 17

10. Strategic Recommendations 18

11. Forward Watchlist: Q4 2026 – 2027 21

12. Glossary 22

13. Sources 23













Briefing at a Glance

9–0	$604M	$725M	50%–3×
Supreme Court vote in Montgomery (14 May 2026)	Dallas jury verdict, Lipe v. Lupus Superior (July 2026)	US cargo theft losses 2025 (+60%)	Reported broker liability renewal increases

The bottom line. Two legal regimes govern US road freight, and in 2026 only one of them moved. **Cargo loss** remains a federal, near-strict-liability, *actual-loss* regime under the Carmack Amendment (49 U.S.C. § 14706): stable, predictable, and still largely closed to brokers. **Third-party bodily injury** changed fundamentally: on 14 May 2026 a unanimous Supreme Court held in *Montgomery v. Caribe Transport II* that the FAAAA does not preempt state negligent-hiring claims against freight brokers. Within ten weeks a Dallas jury returned a $604 million verdict involving C.H. Robinson, and the broker liability market began repricing within weeks. Some carriers doubled or tripled premiums, cut limits and raised retentions, and at least two London-market underwriters were reported to be leaving the class.

For a Lloyd's broker this is both a risk and a market opening. Freight broker liability is being pushed out of standard lines into specialty and E&S markets, and the brokers who do well will be those who can show underwriters a **consistent, auditable, defensible** carrier-selection process. This briefing sets out the law, the market evidence, and a practical insurance framework for motor carriers, freight brokers and cargo owners.

Seven key messages

1. **Brokers can now be sued in every state for negligent carrier selection.** Federal registration (a USDOT number and operating authority) is a starting point for vetting, not a defense. [A1, A2]
2. **Montgomery removed a defense; it did not create automatic liability.** Plaintiffs must still prove duty, breach, causation and damages. The Kavanaugh concurrence warns against reading the decision as routine broker liability. [A1, A2]
3. **Vicarious liability is the bigger tail risk.** In *Lipe*, the jury reportedly found the driver was C.H. Robinson's "borrowed employee." Operational control, not carrier selection alone, can turn a broker into the effective motor carrier. [W2, W4]
4. **Cargo claims are a different track.** Carmack still does not apply to brokers, and FAAAA preemption remains largely available against state-law *cargo* claims, such as a theft claim framed as negligent selection. [A2, A11]
5. **The cargo exposure is severity-driven.** Theft incidents fell 26% in Q2 2026, but losses more than doubled to $304.6M, with an average loss of about $564,000 per event. Common $100,000 cargo limits are structurally inadequate. [W19, A15]
6. **Coverage form matters more than limit.** A contingent auto (CAL) policy may not respond to negligent selection the way a true Freight Broker Liability (FBL) form does. Contingent cargo that "follows" the carrier's limit can leave the insured with nothing to recover. [W13, A15]
7. **Prudential insurance now means a layered program plus documented governance.** That means primary FBL with defense outside limits, a meaningful excess tower, all-risks shipper's-interest cargo, crime and social-engineering cover, and a written vetting protocol that underwriters can audit.

1. Two Liability Regimes: A Map

Most confusion in this market comes from mixing up two separate bodies of law. The first governs **the freight itself**: loss, damage or delay to cargo. The second governs **everyone else on the road**: bodily injury and property damage to third parties. Each has its own defendants, standard of liability, preemption doctrine, and insurance line.

Dimension	Cargo loss, damage & delay	Third-party bodily injury / property damage
Governing law	Carmack Amendment, 49 U.S.C. § 14706 (motor), § 11706 (rail). Exclusive federal remedy.	State tort law (negligence, negligent hiring/selection, vicarious liability).
Who is liable	Receiving, delivering or any connecting motor carrier or surface freight forwarder. Not brokers.	Driver, motor carrier, and potentially broker and (in some states) shipper.
Standard	Near-strict liability. Shipper proves good-order tender, damaged or short delivery, and amount. Five narrow defenses.	Fault-based: duty, breach, causation, damages. Juries decide what counts as "reasonable care."
Measure of damages	"Actual loss or injury to the property": market value at destination, foreseeable consequential loss with notice. No punitive damages; no attorneys' fees (except household goods).	Uncapped compensatory and non-economic damages. Punitive damages possible. Nuclear-verdict dynamics apply.
Can liability be limited?	Yes: released rates or declared value (four-step test) or a § 14101(b) contract waiver.	No meaningful contractual limit against third parties. Only indemnity and insurance shift the loss.
Preemption status (Sept. 2026)	Carmack preempts state claims against carriers. FAAAA still broadly available to brokers against state-law cargo claims.	After Montgomery, the FAAAA safety exception saves negligent-hiring claims against brokers. Intrastate brokerage (§ 14501(b)(1)) remains unresolved.
Primary insurance line	Motor Truck Cargo Legal Liability (carrier); Contingent Cargo (broker); Shipper's-interest / open cargo (owner).	Primary Auto Liability (carrier); Contingent Auto / Freight Broker Liability (broker); Excess / Umbrella (all).

Why the distinction matters to underwriters

A broker program built for cargo exposure (contingent cargo plus a light CAL endorsement) was a reasonable answer to the pre-2026 world, when most negligent-selection suits were dismissed on preemption. It is not a reasonable answer to the post-Montgomery world, where the severity lies in third-party bodily injury. Placements should be rebuilt around that exposure.



2. Road Carrier Liability for Cargo: The Carmack Amendment

2.1 Scope and purpose

Enacted in 1906 and now part of the ICC Termination Act of 1995, Carmack created "a nationally uniform policy governing interstate carriers' liability for property loss" (*New York, N.H. & H.R. Co. v. Nothnagle*, 1953). It spares the shipper from having to find which of several carriers caused the loss, and lets carriers predict and price their exposure. [A10, A13] Carmack reaches motor transportation between states, within a state via another state, and on the US leg of cross-border moves. Whether a move is interstate depends on the **shipper's intent**, not the physical route, so a truck that overturns before crossing the state line can still be under Carmack. [A9, A11]

Carmack does **not** apply to: genuinely intrastate moves; commercial-zone transportation; exempt commodities (largely agricultural, livestock, fish); private carriage; moves under a written § 14101(b) contract that expressly waives it; and, in some cases, the inland leg of an intermodal ocean through bill of lading. [A11, A13] Brokers are expressly outside it: "a Carmack claim may not be brought against a broker" (*Wise Recycling v. M2 Logistics*, N.D. Tex. 2013). [A10]

2.2 The liability standard

The shipper's prima facie case has three elements:

(1) delivery to the carrier in good condition,

(2) arrival in damaged or short condition (or non-delivery), and

(3) the amount of damages.

A clean "apparent good order" bill of lading is evidence of good condition, but only for what was visible. The burden then shifts to the carrier to prove **both** that it was free from negligence **and** that the loss was caused solely by one of five excepted causes (*Missouri Pacific R.R. v. Elmore & Stahl*, 1964). [A10, A13]

Carrier defense	Scope and practical limits
Act of God	Natural phenomena of unanticipated force (hurricane, flood, tornado). Fails if reasonable precautions could have avoided or reduced the loss.
Public enemy	Hostile acts of military forces at war with the United States. Criminal theft is not a public-enemy event.
Act or default of the shipper	Loss caused solely by the shipper, e.g. mis-description or latent loading defects. The carrier must still use reasonable care even when following faulty instructions.
Public authority	Seizure or quarantine by government action.
Inherent vice	Natural deterioration of the goods (produce, cheese, tobacco). The carrier must apportion if only part of the damage is attributable.

2.3 Limitation of liability: the most-litigated question

Carmack liability is for full actual loss **unless the carrier takes affirmative steps to limit it**. Under § 14706(c)(1)(A), liability may be limited "to a value established by written or electronic declaration of the shipper or by written agreement … reasonable under the circumstances." Courts apply a four-part test. The carrier must: **(1)** maintain (and on request provide) its rate schedule or tariff; **(2)** give the shipper a reasonable opportunity to choose between two or more levels of liability; **(3)** obtain the shipper's agreement to its choice; and **(4)** issue a receipt or bill of lading reflecting that agreement **before** the move. [A7, A9, A15]

Case	Facts and outcome	Lesson
ABB Inc. v. CSX Transportation, 721 F.3d 135 (4th Cir. 2013)	$1.38M transformer damaged (>$550k). Carrier relied on a $25,000 cap in "Price List 4605." Shipper-drafted BOL left "rate authority" blank and stated product value. Full liability imposed.	Generic "tariff/classification" boilerplate is not enough. The BOL must specifically reference the limiting price list, classification or rate code, even if the shipper drafted it. [A7, A8]
Siren, Inc. v. Estes Express Lines, 249 F.3d 1268 (11th Cir. 2001)	BOL twice referenced "Class 85," an industry term limiting liability per pound. Limitation upheld.	A precise, identifiable reference binds the shipper even without actual knowledge. [A7]
E.D.N.Y. cell-phone case (cited by IADC, 2025)	Partial loss of cell phones valued at $153 under a tariff limiting liability to the lower of $0.50/lb per package or $10,000 per incident.	Properly executed limitations are strictly enforced, so high-value shippers must buy their own cover. [A11]

Correcting three market misconceptions

"Carmack caps liability at $X per pound." There is no statutory cap; the default is full actual loss. One attached vendor article states a "$50 per pound" maximum, which is incorrect. Per-pound figures come only from a carrier's properly incorporated tariff or contract. [A16 vs. A17]

"My liability is limited to my cargo insurance." Carrier liability is not tied to its insurance limit. Carriers routinely carry the market-standard $100,000 per load while facing unlimited Carmack exposure. [A15]

"FMCSA requires cargo insurance." Only household-goods carriers and forwarders must file cargo coverage. General-freight carriers need only $750,000 BI/PD auto liability, which does **not** cover the cargo on the truck. [A11]

2.4 Claims procedure, damages and forum

- **Time bars:** carriers may not set less than **nine months** to file a written claim or less than **two years** from written disallowance to sue (§ 14706(e)). A claim must identify the shipment, assert liability, and demand a **specified or determinable amount** (49 C.F.R. § 370.3). A claim received after the deadline fails, even if it was mailed in time. [A13, A17]

- **Damages:** market value at destination (or contract price, or replacement cost), plus freight and related costs. Consequential loss is recoverable only if foreseeable or notified. Delay is measured by the decline in market value. **No punitive damages; no attorneys' fees** outside household goods (§ 14708). Prejudgment interest is available. [A10, A12, A13]

- **Preemption:** Carmack "completely preempts" state claims (negligence, fraud, conversion, bailment, consumer-protection, bad-faith claims handling), and artfully pleaded state claims are treated as federal. [A9, A12]

- **Forum:** concurrent state and federal jurisdiction. Removable where the property-damage component exceeds **$10,000** (28 U.S.C. § 1445(b)), within 30 days of a removable pleading. Venue lies where the loss occurred or wherever the carrier operates. [A9, A11]

- **Temperature and food claims:** courts increasingly infer damage from carriage conditions (e.g. reefer logs showing 10+ hours out of temperature) without product testing. [A11]


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3. Freight Broker Exposure on Cargo

Brokers are not Carmack carriers, so their cargo liability rests on state law and, above all, on **contract** and **commercial pressure**. The attached sources describe three routes by which cargo loss reaches the broker despite the statute.

Route to the broker	How it happens	Mitigation
Contractual assumption	Shipper agreements define the broker as a "motor carrier" or require it to accept Carmack-equivalent liability. [A15]	Negotiate a capped, value-declared liability clause. Never accept a carrier definition. Mirror terms in the carrier contract.
Dominant-shipper pressure	"The broker is responsible to make them whole," or the account is lost. With a judgment-proof carrier, the broker pays with no recourse. [A15]	Contingent cargo with real limits. Shipper's-interest cargo sold to the customer. Value disclosure at tender.
State-law tort theories	Negligent selection of an under-insured or fraudulent carrier; conversion; breach of bailment.	FAAAA preemption remains largely available for cargo claims post-Montgomery, since cargo security is not motor-vehicle safety. [A2]

3.1 The broker's recovery problem: standing

On 27 May 2026 the Central District of California granted summary judgment for motor carrier Continuum Transportation against broker Quaker Transportation, which had sued under Carmack after a rollover damaged a yarn load. A broker is not a "person entitled to recover under the receipt or bill of lading" merely because it may be liable to the shipper. Standing requires a **formal assignment** or **payment giving subrogation rights**, supported by documents (applying *OneBeacon v. Haas*, 9th Cir. 2011). [A6] **Implication:** broker contracts and claims practice should make assignment of the shipper's Carmack rights a standard step when the broker pays or advances a claim.

3.2 The contingent-cargo "follow-form" trap

Deeley describes a total loss of a load worth more than $400,000. The carrier's cargo insurer paid its $100,000 limit even though the carrier was out of business. The broker's $100,000 contingent cargo policy "followed" the carrier's limit and valued the load at $100,000. Since that sum had already been paid, the insurer found no uninsured loss. **The shipper absorbed a net $300,000 loss.** [A15] The lesson for program design is that contingent cargo must respond on the **shipper's actual loss**, subject to its own limit, and not on the carrier's valuation. Where the customer's values exceed any realistic contingent limit, the answer is a **shipper's-interest all-risks** policy in the cargo owner's name.

3.3 Contractual liability management

Congress gave the industry freedom of contract. Section 14101(b) lets carriers and shippers expressly waive Carmack rights and remedies (except for household goods), and shipper-broker contracts can allocate and cap liability for both the broker and the carriers it engages. [A13, A15] Contracts should therefore be seen as the first layer of the risk-transfer program, ahead of insurance.

4. Montgomery v. Caribe Transport II: What Changed

4.1 The case

C.H. Robinson (CHR) arranged for a load of plastic pots to move from Ohio. It tendered the load to Caribe Transport II, a licensed nine-truck carrier with an FMCSA **Conditional** safety rating. That rating reflected deficiencies in driver qualification, hours of service, inspection and maintenance, and recordable crash rate. Caribe reportedly had at least three reportable crashes in May–September 2017, and its driver had a recent careless-driving citation. In Illinois the driver left the road and struck Shawn Montgomery's stopped tractor-trailer. Montgomery lost a leg. [A2, A3] The district court and the Seventh Circuit held the negligent-hiring claim preempted by the FAAAA. Unusually, CHR joined the petition for certiorari. The Supreme Court reversed on **14 May 2026, 9–0, per Justice Barrett**. [A1, A2]

4.2 The holding and its reasoning

The holding

"A claim that one company negligently hired another to transport goods is not preempted by the FAAAA because States retain authority to regulate safety 'with respect to motor vehicles.'" [A1]

The Court read "with respect to" in its ordinary sense ("concerning," "regarding"). The duty of care in selecting a motor carrier "obviously" concerns the motor vehicles that will carry the goods. Every CHR textual counter-argument was rejected in about two pages. [A1, A2]

What Montgomery decided	What it did not decide
Negligent-hiring/selection claims against brokers arising from interstate personal-injury crashes fall within the § 14501(c)(2)(A) safety exception.	Whether § 14501(c)(1) would otherwise preempt them (footnote 2: the Court "assume[d] without deciding").
The decision applies to pending cases, and stayed cases were reactivated on decision day. [A2, A3]	Intrastate brokerage: § 14501(b)(1) has no safety exception. The Court declined to resolve the anomaly: "Better to live with the mystery than to rewrite the statute." [A1]
Brokers everywhere now face the exposure they already had in the Ninth and Sixth Circuit states (AK, AZ, CA, HI, ID, KY, MI, MT, NV, OH, OR, TN, WA). [A2]	Cargo claims: preemption of state-law cargo and theft claims against brokers remains largely intact. [A2]
Shippers have also lost any FAAAA defense they might have had. [A2]	The standard of care: what a "reasonable" broker must do is left to state law and juries. [A2]

4.3 The Kavanaugh concurrence: the defense playbook

Justice Kavanaugh (joined by Justice Alito) wrote that the decision "should not be read to mean that brokers will routinely be subject to state tort liability in the wake of truck accidents." He also noted that brokers "may not always (or even often) be in a good position to objectively assess the relative safety of different trucking companies." He cited plaintiff's counsel's concession at argument that brokers "just have to hire carriers that actually have a reasonable policy" and ask "the hard questions." [A2] Defense counsel will use this language to argue for a **reasonable, not perfect**, standard. Plaintiffs will argue that a publicly available red flag which was ignored is a breach. Benesch expects cases to become a "battle of the experts." [A2]

4.4 How the law got here

Date	Decision	Effect
1994–95	FAAAA and ICC Termination Act	Preempted state regulation of carrier and broker "prices, routes, and services," but preserved state safety authority over motor vehicles.
2020	*Miller v. C.H. Robinson* (9th Cir.)	Safety exception saves negligent-selection claims. Certiorari denied in 2021.
2023	*Aspen v. Landstar* (11th Cir.); *Ye v. GlobalTranz* (7th Cir.)	Claims preempted, giving near-immunity for brokers in the Southeast and parts of the Midwest.
2024	*Cox v. Total Quality Logistics* (6th Cir.)	Sided with the Ninth Circuit; circuit split deepens.
22 Oct 2025	*Simon v. Coyote Logistics* (Fla. 2d DCA)	Double-brokered load, unlit trailer, fatal crash. Summary judgment for the broker reversed.
14 May 2026	*Montgomery v. Caribe Transport II* (U.S.)	9–0: the safety exception saves negligent-hiring claims nationwide.
15 May 2026	*In re Home Depot U.S.A.* (Tex.)	A passive shipper owes no duty to the motoring public when it hires a federally regulated carrier for ordinary goods. [W5, W6]
July 2026	*Lipe v. Lupus Superior* (Dallas County)	$604M verdict. Broker found negligent, and the driver found to be the broker's borrowed employee. Appeal announced. [W1–W4]

Sources: A1–A3, W1–W6. The Seventh and Eleventh Circuit case names are supplied from the public record; the attached sources refer to those circuits generically.



5. The First 134 Days: Post-Montgomery Developments

5.1 Lipe v. Lupus Superior: the $604 million verdict

On 25 March 2021 a Lupus Superior tractor-trailer, driven by Gorgonio Gonzalez on a load brokered by CHR, struck stopped traffic on I-20 in Mississippi. The resulting fire killed three motorists and the driver. In late July 2026 a Dallas County jury returned a **$604 million** verdict. Reported fault allocation: driver 45%, carrier 32%, **CHR 23%**. [W2] Two features make this the reference case for underwriters:

- **Borrowed-employee finding.** The jury found the driver to be CHR's employee for liability purposes. [W4] Under that theory the broker may answer for the driver's negligence, not only for its own share, which undermines assumptions about how fault will be allocated.
- **A "Satisfactory" carrier.** Lupus Superior held a Satisfactory FMCSA rating and had completed nearly 270 loads for CHR customers. But FMCSA had flagged unsafe-driving alerts for more than a year, and the carrier exceeded intervention thresholds in two SMS categories. Evidence also addressed the dispatcher's report that the driver was ill. [W3, W4] *A safety rating alone is not a defense.*

CHR says it "should not be held liable and did not act negligently" and is appealing. It has called on Congress to set a federal standard: "We want accountability. Give us a standard." [W1, W16] The verdict is not final. The appeal, possible remittitur, and the application of Texas law to a Mississippi crash are all open.

Scale check for the excess market

TD Cowen analysis reported by FreightWaves puts CHR's auto liability tower at about **$135 million with a $10 million per-claim retention**. [W9] That is one of the largest programs in the brokerage sector, and a single verdict of $604 million exceeds it several times over. Most of the roughly 28,000 licensed US brokers carry a small fraction of that. [W10] This is the core of the "capacity issue" reported by RPS. [W11]

5.2 Legislative and regulatory front

Initiative	Status (Sept. 2026)	Significance
Motor Carrier Safety Selection Standard Act (H.R. 5337, 119th Cong.)	Pending. Bipartisan lineage since 2023 (Moulton–Gallagher). Backed by CHR and brokerage stakeholders post-Montgomery. [W16, W17]	Would set a federal standard of care: carrier registered, authorised and insured (with an interim standard pending a DOT Safety Fitness Determination). A potential safe harbor, but not yet law.
Fair Compensation for Truck Crash Victims Act	Reintroduced 9 April 2026. [W10]	Would raise the carrier minimum from $750,000 (unchanged since 1980) to $5 million, indexed. Major repricing of primary auto if enacted.
FAIR Trucking Act	Introduced September 2025. [W10]	Federal-court jurisdiction for large interstate crash cases, aimed at nuclear-verdict venues.
FMCSA Broker & Freight Forwarder Financial Responsibility Rule	In force 16 January 2026. [W22, W23]	$75,000 BMC-84/85 must be fully available. Trusts limited to cash or equivalents liquid within 7 days. Authority suspended if not restored within 7 business days. Near-real-time surety notification.

Initiative	Status (Sept. 2026)	Significance
FMCSA registration modernisation	Rolling out: USDOT number becomes sole identifier (MC numbers phased out); identity and business verification; re-verification of 800,000+ registrants. [W24]	Targets chameleon carriers and identity fraud, but vetting systems must be re-keyed to USDOT.
Industry requests	CHR and TIA ask FMCSA for standardised high-risk carrier lists and national selection criteria. [W4]	Would give brokers an objective benchmark to evidence reasonable care.

5.3 Safety ratings are not pass/fail

Dakota Group's analysis for carriers and brokers is a useful underwriting reference. **Unsatisfactory** is a major hazard flag. **Conditional** calls for heightened, documented scrutiny. **Satisfactory** is a historical data point, possibly years old. **Unrated** means no rated review has occurred, so it neither condemns nor clears the carrier. "A No Rating should not end the review. It should begin a more detailed review." Vetting should rest on live operating data: authority and insurance status, MCS-150 currency, inspection and out-of-service trends, crash history, BASIC trends, Clearinghouse compliance, and authority age. [A4] *Lipe* shows why: a Satisfactory label did not prevent liability. [W3]

6. Loss Environment: Nuclear Verdicts and Cargo Crime

6.1 Third-party severity

Marathon Strategies counted 12 trucking nuclear verdicts ($10M+) in 2025 totalling **$3.4 billion**, against 15 totalling $1.4 billion in 2024: fewer cases, much larger awards. Across all industries, about 200 verdicts of $10M+ totalled $25.6 billion (+40.7%). [W21] Brokers now sit inside this severity environment. The federal minimum for motor carriers is still $750,000, and brokers have no federal liability-insurance requirement at all. [W10]

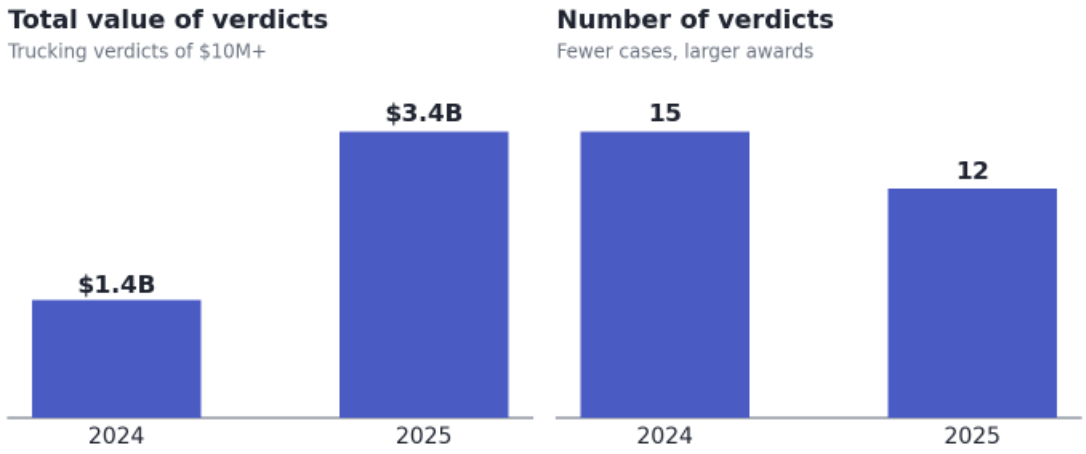


Figure 1. Trucking nuclear verdicts, 2024 vs 2025.

6.2 Cargo crime: fewer thefts, bigger losses

Verisk CargoNet recorded 3,594 supply-chain crime events in 2025 (flat on 2024), but estimated losses rose **60% to about $725 million**, and the average theft rose 36% to $273,990.

Metals (+77%, led by copper) and food and beverage (+47%) led the increases, with enterprise computing and crypto-mining hardware as priority targets.

[W18] Q2 2026 extended the trend: **677 incidents (−26% YoY) but $304.6 million in losses**, up from $135.7 million, an average of about $564,000.

There were 158 fictitious-pickup events, and business email compromise was the main access point. “The groups driving the largest losses are not necessarily trying to steal more freight; they are trying to identify the right shipment” (Keith Lewis, CargoNet). [W19, W20]



Figure 2. Cargo theft severity. The 2024 annual figure is derived from the reported 60% increase.

Underwriting read-across

Fictitious pickups and identity theft blur the line between cargo theft, crime/social-engineering fraud and cyber (BEC). Many motor truck cargo forms exclude or sub-limit “voluntary parting,” fraudulent pickup and unattended-vehicle losses. Programs must place this peril deliberately and not assume it is covered.

Severity per event now exceeds the market-standard $100,000 cargo limit five times over on an average Q2 2026 theft. Declared-value discipline and shipper’s-interest cover are the only reliable remedies. [A15, W19]


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7. The Insurance Market Response

Before Montgomery, freight broker liability was priced for a world in which most negligent-selection claims were dismissed on preemption. TD Cowen estimated that 3PLs spent roughly $0.10 on insurance for every $1 spent by asset-based carriers, with brokerages historically spending 1–3% of revenue. [W9] That pricing gap is now closing fast.

Indicator	Reported evidence	Source
Primary FBL / CAL (first $5M)	"Middle" double-digit increases. Small brokers ($30–40M revenue) moving from about $10,000 to $30,000–40,000 a year.	W7
Excess liability	+50% to triple-digit increases. One large brokerage cut its tower from $20M to $15M, then sought $40–50M after *Lipe*.	W7
Terms and conditions	One renewal: limit cut from $10M to $5M, deductible doubled, $5M made a total aggregate. Another client's premium tripled one week after Montgomery.	W8
Capacity	Two London-market underwriters reported to be exiting. RPS describes a "capacity issue" for contingent liabilities. Exposure moving from admitted to specialty and E&S markets.	W7, W11, W12
Market tone	"The word to use is it's a total frenzy right now" (Thom Albrecht, SONAR).	W7
Underwriting data	Evidence of carrier-selection criteria, SMS and out-of-service review, crash history, exception governance, and audit trails. Governance "narratives" increasingly influence pricing.	W13, W15
Capacity effect on freight	6–7% of truck capacity is estimated to be Conditional-rated carriers. Mid- to high-single digits of capacity could be removed by stricter broker selection.	W9

Three structural consequences follow. First, **form differentiation**: the market is separating true Freight Broker Liability forms (which expressly cover negligent selection, and ideally vicarious and joint-venture theories) from bare Contingent Auto Liability, which may respond only if the carrier's own coverage fails. [W13, W14] Second, **two-layer underwriting**: insurers must price both the traditional contingent scenario (carrier coverage lapsed or denied) and the new excess scenario (carrier primary exhausted by a negligent-hiring verdict). [W14] Third, **governance-based pricing**: brokers with consistent, auditable vetting should earn materially better terms, which gives an incentive that should improve road safety over time. [W14, W15]

Opportunity for a Lloyd's broker

As standard markets withdraw, Lloyd's and London company capacity, Cover-Holder facilities, and specialty MGAs become the natural home for broker liability, excess towers and high-value cargo. A broker that can package **risk data** (carrier-network quality, vetting evidence, loss history, telematics) will get capacity and terms that others cannot.

8. The Prudential Insurance Framework

A prudent program treats contract, governance and insurance as one integrated system. The framework below sets out the core and recommended lines for each of the three principal insureds. Limits must be set by exposure analysis (revenue, lanes, commodity values, venue mix and verdict benchmarks), not by legacy or contract minimums.

8.1 Coverage architecture by insured

Coverage line	Motor carrier	Freight broker / 3PL	Shipper / cargo owner
Primary Auto Liability (BI/PD)	Core. $750k federal floor; $1M market norm; higher for hazmat and premium shippers.	n/a (non-owned auto if staff drive)	n/a
Freight Broker Liability (negligent selection) incl. Contingent Auto	n/a	Core. True FBL form; negligent selection expressly covered; defense outside limits.	Consider contingent auto if the shipper controls carrier selection.
Excess / Umbrella	Core. Follow-form over auto.	Core. Follow-form over FBL; tower sized to venue and verdict benchmarks.	Recommended.
Motor Truck Cargo Legal Liability	Core. Limit matched to commodity values, not the $100k norm.	n/a	n/a
Contingent Cargo	n/a	Core. Responds to the shipper's actual loss, not the carrier's limit.	n/a
Shipper's-interest / open cargo (all risks, warehouse-to-warehouse)	Can be offered to customers	Recommended as a sold product; closes the Carmack-limitation gap.	Core for high-value, theft-target or time-sensitive freight.
Broker / Logistics E&O (professional)	Recommended	Core. Misrouting, failure to insure, clerical and contract errors.	n/a
Crime / Social Engineering / Fictitious Pickup	Recommended	Core. Fraudulent carrier, identity theft, payment diversion.	Recommended.
Cyber (BEC, systems)	Recommended	Core. BEC is the leading theft vector.	Recommended.
General Liability, Trailer Interchange, Physical Damage	Core as applicable	GL core	GL core
Surety: BMC-84 / BMC-85	n/a	Mandatory $75,000; fully available at all times.	n/a

8.2 Wording checklist: where programs fail

Issue	What to require
Negligent selection trigger	Explicit cover for negligent hiring, selection, retention and supervision of motor carriers. Avoid forms that respond only when the carrier's insurance fails.
Vicarious and alternative theories	Cover for vicarious liability, borrowed-servant, joint-venture and agency allegations, the *Lipe* exposure. Remove "insured acting as motor carrier" exclusions or tightly define them.
Defense costs	Defense outside limits. Six-figure defense spend before trial is common in high-severity negligent-selection cases. [W13]
Limits structure	Per-occurrence limits with an adequate aggregate. Watch mid-term conversion of limits to a single aggregate. [W8]
Excess follow-form	Confirm excess follows the FBL form (not just auto) and that the attachment point matches the underlying.
Carrier-list conditions	Warranties requiring a vetting protocol must mirror the insured's actual written policy. Deviation-based denials are the new coverage battleground.
Double-brokering and unauthorised re-tender	Avoid absolute exclusions. Seek cover for loss where the broker neither knew nor consented.
Cargo valuation and follow-form	Contingent cargo valued on the shipper's invoice or actual loss, not the carrier's policy limit or tariff. [A15]
Theft perils	Specify cover for fictitious pickup, identity theft, voluntary parting, unattended-vehicle and high-value commodities. Clarify crime vs cargo vs cyber allocation.
Intrastate and cross-border	Territory and form must address intrastate brokerage (preemption "mystery") and US legs of cross-border moves.
Contractual liability	"Insured contract" coverage for indemnities given to shippers. Brokers increasingly defend and indemnify shipper customers. [A2]


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9. Carrier-Selection Governance: The Defensible Standard

No court has defined reasonable care for brokers, and it will be decided "by the idiosyncratic determinations of a particular judge or jury." [A2] The best available position is a written, consistently applied, auditable protocol developed with the broker's underwriter and counsel. "The only practice worse than not having a policy in place is having a policy and routinely violating that policy." [A2] We recommend the market's emerging CAD principle: **consistent, auditable, defensible**. [W7]

Gate	Minimum checks	Escalation triggers
1. Identity and authority	Active USDOT (sole identifier as MC numbers phase out) and operating authority; identity and business verification; MCS-150 currency; authority age.	New authority under ~18 months; address or phone shared with other carriers; recent ownership or contact changes; chameleon indicators.
2. Insurance	Active BI/PD and cargo filings; certificate direct from agent; limits vs load value; named-driver and scheduled-unit exclusions.	Cargo limit below declared value; recent cancellations; unknown insurers.
3. Safety performance	Safety rating plus SMS/BASIC trends, out-of-service rates, crash history, inspection trends, Clearinghouse compliance.	Unsatisfactory = decline. Conditional or over-threshold BASICs = documented senior review with a written rationale.
4. Fraud and double brokering	Tender only to vetted entity; ELD/GPS or VIN verification at pickup; no-rebrokering clause; payee verification.	Load re-tender attempts; mismatched truck or driver; payment-detail change requests.
5. Continuous monitoring	Automated monitoring of authority, insurance and safety changes between loads; periodic re-vetting.	Mid-relationship downgrades; alerts sustained over time (the *Lipe* lesson).
6. Operational control boundary	Dispatch communications avoid directing the driver's methods or hours; driver-fitness or illness reports escalated to the carrier and logged.	Any instruction that looks like control of the driver (borrowed-servant risk).
7. Records and training	Litigation-ready retention of vetting evidence per load; exception log; staff training and attestations.	Missing records. Absence of evidence is treated like evidence of absence.

9.1 Contract architecture

- **Shipper–broker:** broker acts as arranger, not carrier. Liability capped and value-declared. Cargo value disclosed at tender (the fear of theft through disclosure is outweighed by the certainty of mispriced loss). [A15] Mutual indemnities sized to insurance. Carmack-waiver or limitation terms stated precisely.
- **Broker–carrier:** carrier accepts Carmack liability to the shipper. Prohibition on re-brokering and interlining without consent. Insurance minimums (including cargo limit by commodity). Assignment of claims and cooperation. Indemnity and additional-insured status where available. [A6]
- **Bills of lading:** after *ABB*, any intended limitation must cite the specific tariff, price list or classification on the face of the BOL. The declared-value box must never be left blank, and shipper-drafted BOLs deserve extra care. [A7]


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10. Strategic Recommendations

The recommendations below are addressed to the three parties that together decide who drives the truck: **(1) business corporates** that appoint transporters, 3PL companies or freight brokers, **(2) road transporters, carriers and 3PL companies**, and **(3) freight brokers**. Each set covers governance, contracts and insurance, followed by a timed action plan. They reflect the law and market conditions as of September 2026 and should be applied with advice from counsel and your insurance broker.

10.1 Business corporates appointing transporters, 3PL companies or freight brokers

Corporate shippers face two exposures. The first is **their own cargo**: under Carmack their recovery is limited to what the carrier can be made to pay, and brokers are largely outside the statute. Where a 3PL manages the freight, the corporate's rights depend on the capacity in which the 3PL acted on each move: carrier, freight forwarder, broker or warehouse operator. The second is **third-party liability**: after *Montgomery* the FAAAA defense is gone for shippers too, and whether they owe a duty to the public depends on state law and on how much control they exercise. [A2, W5]

1. **Insure the cargo in your own name.** Buy an all-risks, warehouse-to-warehouse shipper's-interest (open cargo) policy for domestic road moves, not only for international transit. It pays on your actual loss regardless of Carmack limitations, released rates, carrier insolvency, or a broker's contingent-cargo terms. The case for this is strongest on metals, electronics, food and pharmaceuticals, where the average theft in Q2 2026 was about $564,000. [A15, W19]
2. **Stay a passive shipper, or insure the control you exercise.** Texas's *Home Depot* decision protects shippers that simply hire a federally regulated carrier for ordinary goods. It does not protect those that direct drivers, set unsafe schedules, or take on operational control. Keep instructions to the "what and when," not the "how," and route any safety-related decision through the carrier or broker. [W5, W6]
3. **Choose brokers on their governance, not only their rate.** Ask each broker for its written carrier-selection protocol, evidence that it is applied load by load, and its certificates for Freight Broker Liability (not only contingent auto), excess liability, contingent cargo and crime. A broker with thin coverage and ad-hoc vetting is a counterparty risk: it may not be able to pay your claim or defend you.
4. **Pin down the 3PL's role on every move.** Many 3PLs hold motor-carrier, broker and forwarder authority at once, and their liability differs in each capacity. As carrier or surface freight forwarder, they are Carmack-liable for full actual loss. As broker, they generally are not. As warehouse operator, they are usually liable only for failing to use reasonable care, and often under a per-pound limit in their warehouse terms. The logistics agreement should state the capacity for each service, the liability regime and limits, and the insurance that backs them. Your own cargo policy should cover goods at the 3PL's warehouse and in transit. [A11, A13]
5. **Rewrite transportation contracts.** Name the provider as broker or carrier correctly and do not rely on labels. State declared values and liability limits clearly. Require indemnities backed by named insurance limits and additional-insured status. Prohibit re-brokering without written consent. Keep the right to audit carrier-vetting records. Any Carmack waiver under § 14101(b) must be express and precise. [A13, A15]
6. **Disclose values and control the paperwork.** Declare the shipment value at tender so limits and insurance can be matched to it; the risk from mispriced exposure outweighs the theft risk of disclosure.

On shipper-drafted bills of lading, complete the declared-value and rate-authority fields deliberately. After *ABB v. CSX*, blank fields cut both ways. [A7, A15]

7. **Protect the claim.** Inspect on delivery, note exceptions on the delivery receipt, photograph damage and keep the packaging. File a written claim for a specified amount well inside the nine-month minimum, and diary the two-year suit deadline from any written disallowance. [A13, A14]
8. **Harden against theft and fraud.** Verify the carrier and driver at pickup (USDOT, truck and trailer, driver ID matched to the tender). Use secure, pre-agreed communications to defeat business email compromise. Apply extra security to high-value lanes and weekend dwell. [W19]

10.2 Road transporters, carriers and 3PL companies

Carriers carry the primary exposure on both tracks: near-strict Carmack liability for cargo, and first-party auto liability for crashes. After *Montgomery* they also face a commercial test. Brokers and shippers will now screen carriers harder, and carriers with weak records will lose freight or pay more for it. [A4, A5, W9] 3PL companies face these exposures and more. Whenever they move freight on their own trucks or as a surface freight forwarder, they carry Carmack liability. Whenever they arrange capacity, they carry the broker's negligent-selection exposure. Their warehouses add a separate stored-goods liability. [A2, A13]

1. **Treat your public safety record as a sales document.** Keep USDOT, authority, insurance filings, the MCS-150 and the SAFER profile current and accurate. Deal with BASIC alerts and out-of-service trends before they become the story, and document the corrective action. A Satisfactory rating is only a snapshot: in *Lipe*, sustained SMS alerts carried more weight than the rating. [A4, W3]
2. **Size cargo cover to the freight you actually haul.** The market-standard $100,000 per load does not cap Carmack liability, which is full actual value unless you limit it properly. Ask for load values at tender, decline or re-price loads above your limit, and buy higher limits or commodity endorsements for high-value freight. [A15, A17]
3. **Limit liability properly, or not at all.** If you rely on released rates, keep a current tariff or rules document and provide it on request. Offer the shipper a real choice of liability levels, get its agreement, and reference the exact tariff, item or classification on the face of the bill of lading before the move. Generic "subject to tariff" language failed in *ABB*; a specific "Class 85" reference succeeded in *Siren*. [A7, A8]
4. **Build the auto program for today's verdicts.** The $750,000 federal minimum has not changed since 1980, and trucking nuclear verdicts totalled $3.4 billion in 2025. Carry at least $1 million primary with meaningful excess, and watch the proposal to raise the minimum to $5 million. [W10, W21]
5. **Close the theft and fraud gaps in your cargo policy.** Check exclusions for unattended vehicles, fictitious pickups, voluntary parting and specific commodities. Add crime and cyber cover for business email compromise and payment diversion. [W19]
6. **Never re-broker or subcontract loads without written consent.** Double brokering breaks the broker's vetting chain, can void coverage, and was central to the fatal *Simon v. Coyote Logistics* crash. [A3]
7. **Run a claims discipline that preserves defenses.** Record cargo condition and seals at pickup, keep ELD and reefer data, respond to claims under 49 C.F.R. Part 370, and issue clear written disallowances that start the two-year suit clock. [A13, A14]
8. **3PLs: declare the capacity and keep the functions separate.** Show on each rate confirmation and bill of lading whether the move is performed as carrier, forwarder or broker, and keep asset and brokerage operations apart in systems, contracts and dispatch. A 3PL that controls drivers on brokered loads

invites the "borrowed-employee" finding seen in *Lipe*. A 3PL that issues its own bill of lading or consolidates freight may be treated as a Carmack-liable forwarder. [A13, W4]

9. **3PLs: insure every hat you wear.** Buy auto liability and motor truck cargo for the asset fleet, and Freight Broker Liability with contingent auto and contingent cargo for brokered freight. Add warehouse legal liability with limits set against peak inventory values, logistics E&O for errors in routing, documents or insurance arrangements, and excess liability that follows every one of these underlying forms. Confirm that no policy excludes the others' activities, so there is no gap when a move changes capacity mid-stream. [W13]
10. **3PLs: align contracts with the insurance.** Use logistics service agreements with separate liability schedules for transport, brokerage and warehousing. Include per-pound or per-unit limits with a declared-value option, and indemnities capped at insured amounts. Pass Carmack liability and insurance requirements down to subcontracted carriers, and take an assignment of claims whenever you pay a customer's loss. [A6, A15]

10.3 Freight brokers

Brokers moved from near-immunity to full exposure in most of the country. They must now evidence reasonable care in carrier selection, avoid conduct that makes them the carrier's effective employer, and buy insurance that actually responds to negligent-selection and vicarious claims, in a market that is repricing and losing capacity. [A1, A2, W7]

1. **Adopt a written, consistent, auditable carrier-selection protocol and follow it every time.** Use the seven gates in Section 9: identity and authority, insurance, safety performance, fraud controls, continuous monitoring, the operational-control boundary, and records. Agree it with your underwriter and counsel. A policy that is routinely bypassed is worse than having no policy. [A2, W7]
2. **Define the exception process.** Unsatisfactory-rated carriers are declined. Conditional-rated carriers, or those over SMS thresholds, need documented senior sign-off and a written rationale. Newly authorised carriers get enhanced checks. Log every exception.
3. **Manage the vicarious-liability line.** Dispatch staff should not direct how drivers drive, their routes or their hours. Escalate driver-fitness or illness reports to the carrier, and log them along with the carrier's response. *Lipe*'s borrowed-employee finding is the tail risk that careful carrier selection alone does not remove. [W4]
4. **Rebuild the insurance program around the new exposure.** Buy a true Freight Broker Liability form that expressly covers negligent selection and vicarious or joint-venture theories, with defense outside limits and per-occurrence limits. Excess should follow that form. Contingent cargo should pay on the shipper's actual loss, not the carrier's limit. Add E&O, crime and social engineering, and cyber. Start renewals early and expect 50% to triple-digit increases on excess. [W7, W8, W13]
5. **Re-paper both sides of the relationship.** With shippers: act as arranger, never as "motor carrier"; cap and value-declare liability; limit indemnities to insured amounts. With carriers: the carrier accepts Carmack liability; re-brokering is prohibited; set insurance minimums by commodity; include indemnity, cooperation and assignment of claims. Take a formal assignment whenever you pay a shipper's claim, or you may lose the right to recover from the carrier (*Quaker v. Continuum*). [A6, A15]
6. **Stay compliant with the $75,000 financial-responsibility rule.** Since 16 January 2026 the bond or trust must be fully available at all times, and authority is suspended if a shortfall is not cured within seven business days. Re-key vetting systems to the USDOT number as MC numbers are phased out. [W22, W24]

7. **Keep litigation-ready records and preserve available defenses.** Retain vetting evidence per load, the exception log and training attestations. Raise FAAAA preemption against state-law cargo claims and in intrastate-brokerage cases, where it remains available. [A2]

10.4 Action plan by timeframe

Party	Immediate (0–90 days)	Structural (6–12 months)
Business corporates (appointing transporters, 3PLs or brokers)	Place shipper's-interest cargo cover on high-value lanes; request broker governance evidence and certificates; audit contract terms and confirm each 3PL's capacity per service; declare values at tender.	Keep a passive-shipper posture (or insure control); run a carrier and broker panel with annual governance review; set pickup verification and anti-BEC protocols.
Road transporters, carriers & 3PLs	Clean SAFER and MCS-150 data; clear BASIC alerts; match cargo limits to load values; complete BOL limitation fields; 3PLs map every service to its capacity and policy.	Invest in safety management and telematics; formal tariff or limitation program; excess tower sized to lanes and venues; theft and fraud cover; 3PLs separate asset, brokerage and warehouse operations and re-paper logistics agreements.
Freight brokers	Confirm the FBL form covers negligent selection and vicarious theories; stop ad-hoc exceptions; document vetting on every load; check bond compliance.	Written protocol agreed with the underwriter; continuous monitoring; excess tower sized to post-*Lipe* severity; contract re-papering; operational-control training.

11. Forward Watchlist: Q4 2026 – 2027

Item	Why it matters	Signal to watch
***Lipe* appeal (Texas)**	Borrowed-employee theory and the size of the verdict; possible remittitur.	Post-trial motions and appellate briefing; settlement.
Federal carrier-selection standard (H.R. 5337 or successor)	A statutory safe harbor would sharply reduce FBL severity.	Committee markup; attachment to surface-transportation reauthorization.
Intrastate preemption (§ 14501(b)(1))	The Court's unresolved "mystery"; constitutional challenges expected.	First appellate rulings on intrastate broker claims.
Shipper liability divergence	Texas protects passive shippers; other states may not.	Copycat *Home Depot* rulings vs contrary state decisions.
Carrier minimum limits	A move from $750k toward $5M would reprice primary auto and the attachment points of broker programs.	Progress of the Fair Compensation for Truck Crash Victims Act.
FMCSA registration overhaul and FR rule enforcement	Fewer fraudulent entities, but broker failures and consolidation as bond enforcement bites.	Suspension counts; surety claims; MC-to-USDOT migration.
Cargo theft Q3–Q4 2026	Severity trend in metals, electronics and food; peak-season fictitious pickups.	CargoNet quarterly data; average loss per event.
Broker liability capacity	Whether London and E&S capacity stabilises or keeps contracting.	Renewal pricing at 1/1 2027; new facilities and MGAs.

Disclaimer

This briefing is for general information and market-intelligence purposes. It is not legal advice and does not create an attorney–client relationship. Case outcomes, legislation and market conditions are changing quickly; verdicts cited may be altered on appeal. Readers should obtain advice from licensed counsel in the relevant jurisdiction and review actual policy wordings before relying on any coverage position.

12. Glossary

Term	Meaning
Carmack Amendment	49 U.S.C. § 14706: federal cargo-liability regime for interstate motor carriers and freight forwarders.
FAAAA	Federal Aviation Administration Authorization Act of 1994: preempts state laws "related to a price, route, or service" of carriers and brokers, subject to a safety exception (§ 14501(c)(2)(A)).
FBL / CAL	Freight Broker Liability (broad form, incl. negligent selection) / Contingent Auto Liability (responds when the carrier's auto coverage fails).
Released rate / declared value	Carrier liability limited by the shipper's choice among liability levels, reflected in the BOL before shipment.
SMS / BASIC	FMCSA Safety Measurement System and its Behavior Analysis and Safety Improvement Categories.
Double brokering	Unauthorised re-tender of a load by a carrier (or fake carrier) to another carrier that the original broker never vetted.
Fictitious pickup	Theft by deception in which criminals impersonate a legitimate carrier to collect a load.
Nuclear verdict	A jury award of $10 million or more.
BMC-84 / BMC-85	Broker surety bond / trust fund evidencing the $75,000 federal financial-responsibility requirement.

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460

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