Brokers Beware: Findings of Vicarious Liability May Nullify Ability to Seek Contribution

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Freight brokers have been on notice in Illinois since the *Sperl v. C.H. Robinson* decision came down in 2011 that they may be held liable for the actions of a motor carrier and its drivers. In *Sperl*, an Illinois Appellate Court upheld an eight figure judgment against a broker after determining that a principal-agent relationship existed between the broker and a truck driver as well as between the motor carrier and the truck driver. Courts are not reluctant to find multiple principal-agent relationships, especially in the search for the deepest pockets. Once a principal-agent relationship is established, a principal can be found vicariously liable for the negligent actions of their agent through the doctrine of *respondeat superior,* which simply means a principal/employer of a negligent agent/employee is also responsible for the agent's actions.

Fast-forward six years – the broker timely satisfies the eight figure judgment in full, including interest, and then seeks contribution from the other principal in the case: the motor carrier.

In its contribution action, the broker argued that it paid more than its *pro rata* share of the judgment. It asked the court to determine the level of fault of the motor carrier and to award contribution to the broker based on that determination. The broker also argued that because the share of the judgment entered against the truck driver was uncollectable, the motor carrier should share equally in the responsibility of paying the driver's share. The broker argued that fairness dictated that both principals, the motor carrier and the broker, split the cost of paying the judgment 50/50. The trial court found that the broker and the motor carrier were equally at fault for the accident and should be equally responsible for the damages awarded by the jury. This decision was appealed by the motor carrier.

In reversing the trial court, the Illinois Appellate Court (2017 IL App (3d) 150097) held that a principal who is vicariously liable for the negligent conduct of its agent may not seek contribution from another principal who is vicariously liable for the same conduct of the same agent where: (1) the agent is the only tortfeasor who is at fault in fact; and (2) there is no evidence that either of the principals was at fault in fact. The court reasoned that damages cannot be apportioned according to the parties' relative fault when there is only one

tortfeasor at fault in fact (here, the truck driver), and the other parties' (the broker and motor carrier) liability is entirely derivative. Because neither the broker nor the motor carrier was negligent in fact, there could be no contribution. Thus, there was no remedy for the broker and it was left on the hook for 100% of the judgment.

The broker appealed the decision, and in March 2018, the Illinois Supreme Court agreed to review the case. We await a decision.

The *Sperl* holding gave plaintiffs' lawyers a new theory of expanded liability to use against companies in the commercial transportation industry, including brokers, freight forwarders, shippers (3PLs), etc. The Appellate Court's ruling here ensures that the injured parties remain compensated in full.

The facts of *Sperl* are fairly specific; however, more and more brokers may find themselves in this situation as plaintiffs' lawyers will be working hard to prove multiple principal-agent relationships in commercial transportation negligence actions. The best defense here is avoidance. For 3PLs to avoid liability, structure your relationships with motor carriers and truck drivers as legally distant as possible. Remember, the more control a broker exerts over the driver, the higher the likelihood of a court finding a principal-agent relationship. Once a plaintiff's lawyer successfully opens the door to finding that principal-agent relationship, the ability to spread the cost of the judgment amongst other principals becomes difficult unless another principal is found to be directly negligent.