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Featured Articles

Let the Broker Beware: Illinois Appellate Court Affirms \$23.8 Million Verdict Against Freight Broker

by Michael Reda and Michael P. Murphy



In a recent decision that could dramatically impact trucking litigation in Illinois and nationwide, an Illinois appellate court affirmed a \$23,775,000 jury verdict against a freight broker on the grounds that

a negligent truck driver was an agent of the broker. The court upheld a jury finding that a principal-agent relationship existed between the truck driver and the broker when a rear-end accident on Interstate 55 resulted in the deaths of two people. *Sperl v. C.H. Robinson Worldwide, Inc.*, 946 N.E.2d 463 (Ill. App. Ct. 2011). The truck driver and her employing trucking company admitted negligence prior to trial and, therefore, the broker was liable for all damages proximately caused by the driver upon the finding of an agency relationship by the jury.

A Will County, Illinois jury found that C.H. Robinson Worldwide, Inc., a logistics company and federally licensed freight broker that had escaped findings of agency in prior cases, exercised sufficient control over the conduct of a truck driver to be vicariously liable for the truck driver's negligence. All brokers exercise some control over their loads, but in the *Sperl* decision, handed down on March 30, 2011, the Illinois Appellate Court for the Third District ruled that C.H. Robinson's special instructions were extensive enough to justify the jury's finding of a principal-agent relationship.

In *Sperl*, the court considered typical factors in analyzing the role of the broker given the type of load being transported. The broker dispatched the driver and required the driver to pick up and deliver the load at a specified time, make daily check calls to the broker, and stay in constant contact with the broker's dispatchers. The load in question was refrigerated, and the driver was required to continuously measure the temperature and immediately notify the broker if it did not measure a certain temperature. The driver testified at trial that she called the

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Let the Broker Beware: Illinois Appellate Court Affirms \$23.8 Million Verdict Against Freight Broker

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broker at least five times during her trip.

The broker's role may have deviated from the usual relationship when the broker enforced its instructions through a series of fines. For example, the broker imposed a \$500 fine for being a full day late, a \$250 fine for being late for an appointment time, and a \$50 fine for failing to make certain check calls to the broker. The broker imposed fines as an incentive to drivers to get loads delivered on time; however, the evidence showed that the driver could not possibly have made her delivery on time, thus avoiding fines, while simultaneously complying with federal regulations regarding drive time. A C.H. Robinson witness admitted at trial that he "was not surprised" the driver "would not make any money on the trip if she followed federal regulations." *Sperl*, 946 N.E.2d at 469.

The court found that the broker's extensive requirements and fine system directed the driver's conduct throughout the entire transportation process. Such direction supported a finding that the broker had the right to control, and did control, the manner in which the driver performed her job. Other factors also supported the jury's finding of agency. First, the broker's business is closely aligned with the driver's services in that the broker's business necessarily requires the services of truck drivers. Second, the broker controlled the method of payment by directly depositing payment into the driver's bank account. Finally, although the driver owned her tractor and leased her trailer from her employing trucking company, the broker owned and provided the materials for delivery.

C.H. Robinson attempted to avoid the agency finding by citing two federal district court cases in which the court granted it summary judgment on the ground that the truck driver was an independent contractor rather than an agent. In *Schramm v. Foster*, 341 F. Supp. 2d 536 (D. Md. 2004), the court found the driver to be an independent contractor even though the broker directly dispatched the driver, instructed the driver to pick up and deliver the load at a certain time, gave the driver directions to the delivery destination, and required to driver to call the broker during the trip. Similarly, in *Jones v. C.H. Robinson Worldwide, Inc.*, 558 F. Supp. 2d 630 (W.D. Va. 2008), no agency relationship was found despite the broker arranging the pick up time and date, communicated information from the shipper regarding loading and unloading the cargo, and required the driver to make daily calls regarding the status of the load.

The appellate court held that critical facts were present in *Sperl* that were not present in *Schramm* or *Jones*. First, in *Sperl*, C.H. Robinson owned the product being transported and the load was being delivered to a C.H. Robinson warehouse. Second, C.H. Robinson's special instructions in *Sperl*, intended to ensure the driver stayed on the broker's schedule, included the potential for multiple fines and forced



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the driver to violate federal regulations to avoid paying fines. The court found that these additional facts supported the inference that the broker controlled the details of the driver's operations, schedule, and compensation. Accordingly, the court affirmed the jury's finding of an agency relationship between the broker and driver.

In addition, the appellate court in *Sperl* affirmed the trial court's refusal of a jury instruction that would have required the jury to apportion fault among the broker, the driver, and the driver's employer. The court held that the broker's liability was entirely derivative, being based on the doctrine of *respondeat superior*. Since an agency relationship was established, the broker was entirely liable for the driver's conduct, eliminating the possibility of comparing conduct for purposes of apportioning liability. In other words, there was no reason for the jury to apportion damages between principal and agent because the principal was liable for all damages caused by the agent. As to the trucking company that employed the driver, the court held that while the broker could seek contribution from the trucking company, the broker remained liable for all of the plaintiffs' damages under Illinois' joint and several liability statute because its agent-driver proximately caused all such damages.

The decision in *Sperl* calls into question brokers' use of a system of fines as an incentive for drivers to make timely deliveries. Fines pertaining to a driver's conduct throughout the entire course of transporting a load suggest control over the entire shipping process. Even if a system of fines is used, a broker should ensure that drivers are not compelled to violate federal regulations regarding driving hours to avoid a fine. Where a broker's instructions to a driver force the driver to choose between receiving full compensation and complying with federal regulations, a court will likely deny summary judgment and a jury may easily find the broker to have retained sufficient control over the conduct of the driver to establish an agency relationship.

Avoiding this level of control is critical because once the broker is found to be the principal of the driver, the broker is vicariously liable for the driver's negligence. A vicariously liable broker is entirely liable for all damages caused by the driver and loses the ability to shift blame to a negligent driver. In *Sperl*, the broker exerted too much control over the driver's conduct and was ultimately responsible for over \$23 million in damages.

A petition for leave to appeal is currently pending before the Supreme Court of Illinois. Supreme Court of Illinois docket no. 112218.

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