Ever-Changing Effects of *Sperl*

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Sperl v. C. H. Robinson is back on our radar, this time addressing apportionment of fault and contribution in an interesting manner. **It was only earlier this year that we reported on the Illinois Appellate Court's ruling in *Sperl*.** Freight brokers have been on notice in Illinois since the original *Sperl* decision in 2011 held that brokers may be deemed liable for the actions of a motor carrier and its drivers.

In 2011, 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 deep pockets.

Fast-forward to 2017 – the broker satisfied the eight figure judgment in full and then sought contribution from the other principal in the case: the motor carrier, which had minimal insurance coverage. The broker asked the Court to actually determine the level of fault of the motor carrier, as the jury had not been presented with a verdict form allowing it to do so, and award contribution to the broker based on that determination. The broker argued that fairness dictated that both principals - the motor carrier and the broker - split the cost of paying the judgment. The trial court found the broker and the motor carrier equally at fault for the accident and responsible for the damages awarded.

On appeal, the Illinois Appellate Court (2017 IL App (3d) 150097) reversed the trial court, holding 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 were 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 (in *Sperl*, the driver), and the other parties' liability is entirely derivative. The broker and the carrier were each 100% liable for the conduct of the driver, and it was left on the hook for 100% of the judgment.

The broker appealed, and in an opinion filed on November 29, 2018 (2018 L 123132), the Illinois Supreme Court considered whether a vicariously liable defendant has a right of contribution against another vicariously liable defendant when their common liability arises from the negligent conduct of the

same agent. In reversing the appellate court's decision, the Illinois Supreme Court held that the Illinois Joint Tortfeasor Contribution Act (740 ILCS 100/0.01 et seq.) provides a right of contribution under the circumstances presented in *Sperl*.

In a fact-specific opinion, the court held that the Contribution Act provides for a right of contribution when a defendant has paid more than its pro rata share of a common liability, provides that each tortfeasor's pro rata share is determined by his relative culpability, and a comparison of fault between the two tortfeasors is required. The trial court found the broker and motor carrier equally at fault and the appellate court agreed as both parties stood in identical positions. Under those circumstances, the Supreme Court determined that the pro rata share of common liability for the broker and motor carrier was 50% for the acts of their common agent.

The Supreme Court determined that the trial court did not err in awarding the broker contribution against the motor carrier for half of the total amount of the judgment, including post-judgment interest, totaling over $14 million. Whether that will ultimately be collectible is a different question entirely.

The Appellate Court's ruling suggested to us that courts would continue to rule based on where the money lies. For the protection of the public, that may still be true. Here, however, the story changes a bit as the injured parties had been compensated and it was the broker attempting to collect in contribution from the motor carrier. We will never know if that had an effect on the Supreme Court's decision to reverse the Appellate Court.

Again, the Supreme Court based its ruling on the specific set of circumstances presented in the *Sperl* case and did not broaden its ruling beyond that. The overarching theme for brokers should continue to be risk avoidance. Brokers must attempt to avoid liability by structuring the relationships with motor carrier and truck drivers as legally distant as possible. The more control a broker exerts over the driver, the higher the likelihood of a court finding a principal-agent relationship. One agent may have multiple principals, and the right of one to collect from another in circumstances such as those in *Sperl* has been decided. But, ultimately, the party with deeper pockets will be left trying to collect.