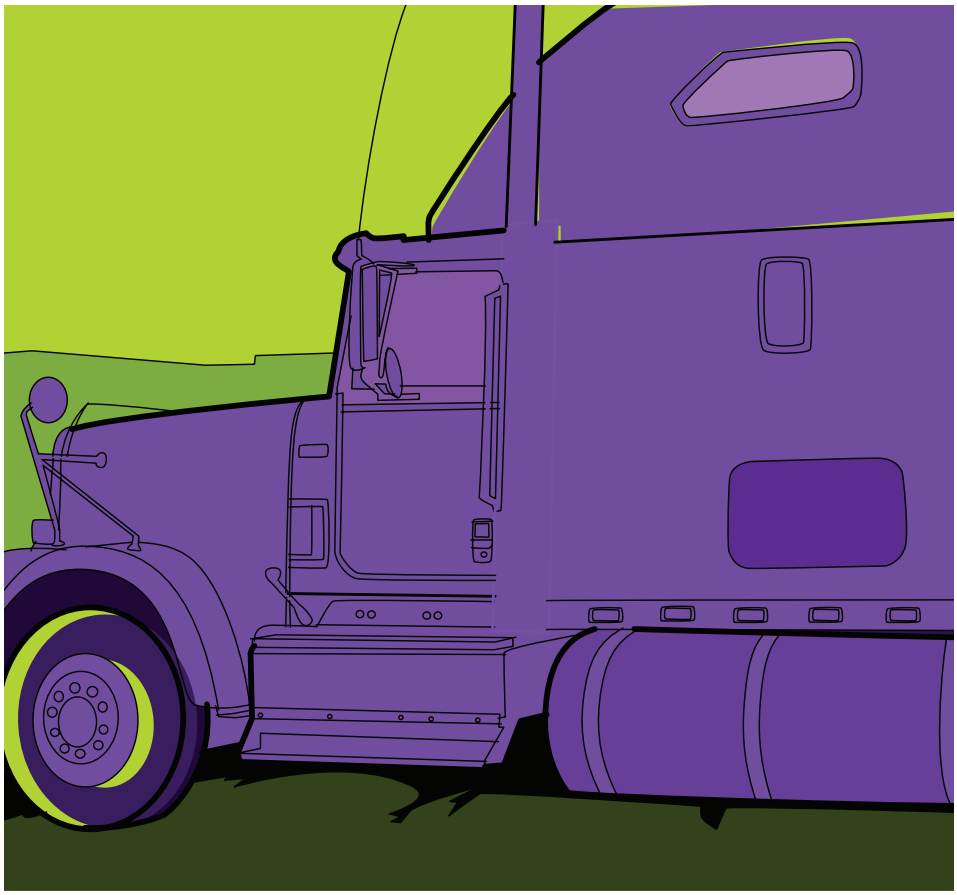
An Issue of Control

Review of Broker Liability

By Matthew S. Hefflefinger and Brad W. Keller

In addition to a claim contending that the carrier acted as the agent, many brokers also face a claim involving negligent hiring or selection.

In today's tort arena, plaintiffs' lawyers seek to name as many defendants as possible, which include freight brokers in trucking litigation. The $27.3 million verdict in the *Sperl* case highlights the potential exposure of freight brokers.



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Plaintiffs generally use two theories of liability to hold brokers liable. Under the more traditional theory, they argue that an agency relationship exists between the freight broker and a carrier or the carrier's driver or between the freight broker and both a carrier and the carrier's driver. Under this approach, plaintiffs must establish the traditional elements of agency to invoke vicarious liability successfully. Beyond agency, plaintiffs assert negligent hiring, retention, or selection, specifically that a broker failed to investigate a carrier's safety record, claims history, and insurance status. This article discusses the liability of freight brokers and analyzes how the Restatements of Agency, both the Third and the Second, and much of the case law treat these liability theories.

Vicarious Liability Under Agency

The most recent version of the Restatement of Agency, the Restatement (Third), defines agency in its very first provision. Section 1.01 defines agency as "the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." Thus, from the very beginning, control is at the forefront of agency law. This plays out in the case law, discussed more below.

Restatement (Third) of Agency

Comment c to Section 1.01 of the Restatement (Third) of Agency considers the elements of agency in detail. It explains that the "concept of agency posits a consensual relationship in which one person, to one degree or another or respect or another, acts as a representative of or otherwise acts on behalf of another person with power to affect the legal rights and duties of the other person." Importantly, the person represented "has a right to control the actions of the agent." Control is supremely important. Comment c explains that "[a] principal's right to control the agent is a constant across relationships of agency."

The Restatement (Third) continues on to explain situations in which an agency relationship can lead to liability. Section 7.03(2)(a) and Section 7.07(1) explain that a principal is subject to vicarious liability to third parties for a tort committed by its agent acting within the scope of agency. The language of Section 7.03(2)(a) and Section 7.07(1) actually states that a principal is subject to vicarious liability for its "employee's" acts, but Section 7.07(3)(a) goes on to explain that an "employee" is considered to be "an agent whose principal controls or has the right to control the manner and means of the agent's performance of work."

The crucial issue in vicarious liability cases is obviously whether a person or entity is acting as an agent or an employee of a principal or whether the relationship is that of an independent contractor, which generally does not subject the principal to liability. The former version of the Restatement, the Restatement (Second) of Agency, contained Section 220, which listed 10 criteria to use to make that determination. No such section exists in the Restatement (Third) of Agency. Under the Restatement (Second) of Agency Section 220(2), which used the terms "master" and "servant," the following factors informed that determination:

- The extent of control which, by the agreement, the master exercised over the details of the work;
- Whether or not the one employed was engaged in a distinct occupation or business;
- The kind of occupation, and whether, in the locality, someone usually did the work under the direction of the employer or whether a specialist did it without supervision;
- The skill required in the occupation;
- Who supplied the instrumentalities, tools, and place of work for the person doing the work;
- The length of time for which the person was employed to complete the work;
- The method determining payment, whether by time or by job;
- Whether the work was a part of the regular business of the employer;
- Whether the parties believed that they created the relation of master and servant; and
- Whether the principal was or was not in business.
- While no such section exists in the Restatement (Third) of Agency, case law considering agency to evaluate broker liability concentrates on the criteria above and most specifically on the right to control held by the broker over a party transporting the freight at issue.

Review of Agency Case Law

The case law below reviews some state and federal court decisions that address vicarious liability and agency issues in broker liability cases. As a whole, it appears that the state courts can be more liberal in finding an agency relationship, while the federal courts generally are more conservative in evaluating the issue.

State Court Cases

The following five cases examine how different jurisdictions handle these agency issues.

***Titan Transp., Inc. v. O.K. Foods, Inc.*, 2013 Ark. App. 3**

Titan, a broker, agreed that it would handle a shipment of frozen poultry for O.K. Foods. O.K. Foods prepared a confirmation specifying the date, carrier (named Titan), pick-up location, delivery location, and restrictions regarding the temperature of the load. Titan then contracted with Southwind Transportation to act as the carrier. Titan failed to alert O.K. Foods that it was merely a broker and failed to disclose the agreement with Southwind. Upon delivery, the goods were refused because the shipment was the wrong temperature. O.K. Foods obtained a judgment against both Titan and Southwind. In considering whether Titan was vicariously liable for Southwind's negligence, the appellate court emphasized that Titan had advertised itself as a carrier and had not disclosed the actual carrier or that it was merely a brokerage firm. It found an agency relationship between Titan and Southwind because Titan had the right of control and had acted on behalf of an undisclosed principal.

***King v. Young*, 107 So.2d 751 (Fla. Dist. Ct. App. 1958)**

This case involved a highway collision of two tractor-trailers that killed both drivers. King, owner of one vehicle, initiated a lawsuit against Young, the owner of the other vehicle, which John G. Young drove, and against J.W. Brown, the freight broker, alleging that John G. Young was the agent

of Brown. The trial court granted summary judgment for Brown, finding no agency relationship. Brown had been contacted by a vegetable grower to haul green beans. Brown then contacted Young to transport the beans. Young was to furnish his own gas and bear all expenses. Brown did not tell Young which route to take. Based on these facts, the court found no agency and thus no vicarious liability. It reasoned that Brown was merely the intermediary in the transaction between the shipper and the carrier. It was important to the court that Young had control over his choice of routes and acted completely independent of Brown after the load was arranged.

The court believed that the agency determination depended on "the right to control the time, manner, and method of executing the work as distinguished from the right merely to require certain definite results in conformity to the contract."

***McLaine v. McLeod*, 291 Ga. App. 335, 661 S.E.2d 695 (Ga. Ct. App. 2008)**

A tractor-trailer driven by Moody struck a pick-up driven by McLaine, forcing it into a tractor driven by Bradford Register. The collision caused multiple deaths and injuries. Kight Trucking Company provided tractor-trailers and drivers to ship products for cargo brokers, and Moody was one of its drivers. Container South was a cargo broker that arranged for the shipment of agricultural goods of third parties. Kight and Container South had a contract that stated that Container South would not instruct Kight which drivers, trucks, or routes to use or how to load, unload, and drive. The contract stated that Kight Trucking was an independent contractor, which warranted that its drivers were competent and licensed. Kight had hired Moody, paid his salary, and owned the tractor-trailer involved. The court believed that the agency determination depended on "the right to control the time, manner, and method of executing the work as distinguished from the right merely to require certain definite results in conformity to the contract." Based on these facts, the court held that there was no error in determining that Kight was an independent contractor and that there was thus no vicarious liability.

***Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051, 946 N.E.2d 463 (Ill. App. Ct. 2011)**

Henry, a driver for Dragonfly, caused an accident while delivering potatoes that resulted in the death and injuries of multiple individuals. Henry was delivering a load for C.H. Robinson (CHR), a logistics company that provided a variety of transportation-related services. Dragonfly and CHR had an agreement under which Dragonfly would provide carrier services and warrant that it would use competent drivers and would pay the drivers' salaries, acting as an independent contractor. Henry was a driver for Dragonfly, but she owned the semi-tractor involved, and she leased it to Dragonfly, which gave Henry permission to use its carrier authority to book and to deliver loads on her own. Henry had booked the load with CHR herself. CHR required a certain size and type of trailer, gave special instructions to Henry as the driver, imposed a strict system of fines for not following those instructions, and required Henry to stay in constant contact with the CHR dispatch. CHR controlled the method of payment and provided the materials for delivery. On the appeal, the court upheld the jury verdict against CHR, finding an agency relationship because of the control that CHR had exerted.

Subsequent to *Sperl*, another Illinois case determined that a shipper of steel was not vicariously liable for the driver of a tractor trailer that collided with a train causing injury to railroad passengers. The court in the case found that the shipper did not control the manner in which the driver hauled the steel because the driver chose his own route, controlled his own hours, used and maintained his own equipment, was paid directly by his trucking company, which also paid his liability and cargo insurance, and performed his job duties as directed and required by his employer. Further, the shipper had no authority to discharge him. *Dowe v. Birmingham Steel Corporation,* 2011 IL App (1st) 091997, 963 N.E 2d 344 (Ill. App. Ct. 2011). *See also Shoemaker v. Elmhurst-Chicago Stone Co.,* 273 Ill. App. 3d 916, 652 N.E.2d 1037 (Ill. App. Ct. 1995) (truck driver was not shipper's agent where the shipper only instructed the truck driver where to deliver the load; shipper did not control manner in which the job was to be done, shipper did not pay the driver and could not fire the driver).

***Leonard v. Kreider*, 128 Ohio St. 267, 190 N.E. 634 (Ohio 1934)**

In this case a plaintiff collided with the rear end of a truck parked without lights on the side of the road. The plaintiff claimed that Leonard, a freight broker, was vicariously liable for the driver's negligence. Leonard owned no trucks but had solicited Akron, Ohio, shippers who had freight for Buffalo, New York, and then contacted truck owners to ship the load. The truck owner who took the load was free to choose his route, except that he had to stop at a particular gas station. Each truck owner supplied the gas, oil, tires, and repairs to him- or herself. Leonard paid truck owners a fixed price per mile. The truck in this accident was owned by a man named Hixson and was driven by Hixson's son. The bill of lading designated Hixson as the agent of Leonard, and Leonard provided Hixson with an identification card identifying Hixson as a truck operator for Leonard's company. Based on these facts, the court concluded that an agency relationship existed and thus vicarious liability.

Federal Court Cases

The following nine federal court cases explore how federal courts have handled these liability issues.

***Graham v. Malone Freight Lines*, 43 F. Supp. 2d 77 (D. Mass. 1997)**

Graham and Washington were involved in an auto accident. Washington was transporting a load of cucumbers, which had been arranged by East Coast Transport

(ECT), a freight broker. The court, applying New Jersey law, found that ECT was Washington's independent contractor. So ECT could not be held liable for Washington's negligence. The court found that ECT exercised virtually no control over Washington. ECT only told Washington the location for pick-up and drop-off and the timetable and did not tell him the route to take, perform inspections, or monitor his progress.

***Toledo v. Van Waters & Rogers, Inc.*, 92 F. Supp.2d 44 (D. R.I. 2000)**

The plaintiff, a truck driver for C&E Transportation, was transporting chemical barrels. One of the barrels was improperly sealed, causing the plaintiff to be overcome by toxic fumes upon opening the door. Van Waters had contracted with CRST, a freight broker, for the transportation of the chemicals. CRST then contracted with D&S, with D&S contracting with C&E to transport the chemicals. The plaintiff attempted to hold CRST vicariously liable for the actions of D&S and C&E. In considering agency, the court explained that there must be "a manifestation by the principal that the agent will act for him; acceptance by the agent of the undertaking; and an agreement between the parties that the principal will be in control of the undertaking." The court found no agency in this case, emphasizing that there was no evidence that CRST had control in choosing the route, manner, or means used. The contract also stated that the relationship was that of an independent contractor.

***Tartaglione v. Shaw's Express, Inc.*, 790 F. Supp. 438 (S.D.N.Y. 1992)**

The plaintiff in this case was operating a motor vehicle when he collided with a truck owned by Kish and operated by McFane. Shaw's Express, Inc., was the licensed broker that arranged for the shipment of goods carried by the Kish-McFane truck. The plaintiff sought to hold Shaw's Express liable under a principal-agent relationship. The court rejected this argument, finding no agency. It did not believe that the plaintiff had presented sufficient evidence to show that Shaw exercised control over the manner in which Kish and McFane transported the cargo. Further, the court explained that although Shaw controlled the location of pickup and drop-off, those facts did not establish agency because such control only involved the result of the work and not the manner in which it was undertaken.

***Schramm v. Foster*, 341 F. Supp. 2d 536 (D. Md. 2004)**

Foster, while operating a tractor-trailer, ran a stop sign and collided with a pickup truck driven by Schramm. Foster had been transporting a load of soy milk from the warehouse of Jasper Products, LLC. Jasper requested C.H. Robinson (CHR) to arrange for the transportation. CHR contacted Ronald Groff of Groff Brothers, with whom CHR had a contract carrier agreement. Groff Brothers accepted the assignment and then assigned the job to Foster, one of its drivers. The court considered whether Foster was an agent of CHR making CHR vicariously liable for Foster's and thus Jasper's actions.

The contract expressly provided that the relationship between CHR and Groff Brothers was that of an independent contractor. Moreover, Groff Brothers was to pay Foster's salary and all expenses and provide the fuel and equipment necessary. Groff Brothers and CHR understood that Groff Brothers was to maintain control of the means and method of transportation. There was also no evidence that CHR controlled Foster's actual performance. Therefore, the court determined that Foster and Groff Brothers were independent contractors. The court determined that CHR's desire that Foster call periodically to check in, CHR's driving directions, and CHR's special loading instructions were not enough control to destroy the independent contractor relationship. It stated that CHR would not be vicariously liable unless it controlled Foster's driving time and the condition in which he drove.

***Jones v. C.H. Robinson Worldwide, Inc.*, 558 F. Supp. 2d 630 (W.D. Va. 2008)**

Arciszewski was driving a tractor-trailer owned by AKJ when Arciszewski crossed the median and struck the plaintiff. AKJ and C.H. Robinson Worldwide (CHR) had a contract that provided that AKJ was an independent contractor responsible for its own drivers and equipment. CHR arranged the dates and times for pickup and delivery, obtained the addresses, communicated specific limitations and directions, communicated time sensitivity, and communicated other special instructions. CHR also required drivers to call CHR when dispatched, when the driver arrived, when the trailer was loaded, for status updates, and when the driver arrived at the destination. The West Virginia federal court believed that CHR did not exercise a sufficient degree of control over AKJ to convert the relationship to one of agency. While CHR had placed restrictions on AKJ, all of CHR's activities were directed "toward the incidental details required to accomplish the ultimate purpose for which Robinson had been hired by its shippers-delivery of a load to its proper destination in a timely fashion."

While the Restatement (Third) of Agency places liability only in the realm of the principal-agent, an increasing amount of case law considers whether liability exists for negligent hiring, retention, or selection of an independent contractor even without the agency relationship.

***Professional Communications, Inc. v. Contract Freighters, Inc.*, 171 F. Supp. 2d 546 (D. Md. 2001)**

Professional Communications, Inc. (PCI) purchased cellular phones and retained Eagle USA Airfreight to ship them. Eagle contacted Covenant to coordinate the shipment. For some of the crates, Covenant acted as a broker and arranged for Contract Freighters to be the actual carrier of the shipment. Upon shipment, it was noted that some crates were missing and that a few had been damaged. PCI sought to hold Covenant, the broker, liable for the actions of Contract Freighters, its alleged

agent. In granting a summary judgment for Covenant, the court held that PCI had not produced any evidence of agency. The court explained that a mere contract to ship goods did not establish an agency relationship, nor did instructions from Covenant to Contract Freighters' drivers requiring them to notify Covenant if there was a delay.

The court held that the duty to use reasonable care in the selection of carriers included the duty to check the safety statistics and evaluations of the carriers with whom it contracts.

***Smith v. Spring Hill Integrated Logistics Mgmt., Inc.*, No. 1:04 CV 13, 2005 WL 2469689 (N.D. Ohio Oct. 6, 2005)**
Ashford, who fell asleep, caused a multi-car accident with several fatalities while employed by Pro Drivers, a temporary truck driver leasing company. Pro Drivers had leased Ashford to Chieftain, an independent contractor hired by Spring Hill to act as the carrier. It was undisputed that Chieftain was an independent contractor and that Chieftain was wholly responsible for providing trained drivers to fulfill routes designed by Spring Hill. Accordingly, the plaintiff was unable to hold Spring Hill liable for the actions of Chieftain.

***Estate of Knox v. Wheeler*, No. 2:05-CV-19-PRC, 2005 WL 2043787 (N.D. Ind. Aug. 25, 2005)**
Knox was driving his truck when it collided with the flatbed trailer that Wheeler's tractor pulled. Wheeler and TL Express, a broker, had entered into a "Contract for Transportation of Property," an agreement for the transportation of property tendered by TL Express to Wheeler. Under the agreement and facts involved, TL had no right to control the actions of Wheeler, did not advise Wheeler of the route, did not have the right to control the loading and operation, and did not have the right to determine the amount of property placed on Wheeler's truck. Because of this, the court held that TL Express was an independent contractor, and given that no exceptions to the general rule that a principal is not liable for the torts of an independent contractor applied, the court granted summary judgment for TL.

***Brown v. Temain*, No. 2:09-CV-81-TLS, 2010 WL 5391578 (N.D. Ind. Dec. 22, 2010)**
The plaintiff here was driving a tractor trailer when he collided with another tractor trailer driven by Temain. The plaintiff attempted to hold CDN Logistic, Inc., vicariously liable, but a summary judgment was granted. CDN had been contacted to broker a load that needed to be shipped. CDN contacted Sunny Express, which accepted and assigned its driver Temain to haul the load. After the load was transported, CDN was to pay Sunny Express, which was then to pay Temain. CDN provided the trailer containing the freight, but Temain used his own tractor. CDN had no contact with Temain. CDN relied on the 10-factor test in the Restatement (Second) of Agency to determine if Temain was an independent contractor, but the court held that the test did not even apply because Temain had no relationship with CDN. The court explained that the evidence showed that Temain was working under contract with Sunny. Moreover, there was no evidence that Temain had a contract with CDN, communicated with CDN, answered to CDN, or otherwise considered himself to be CDN's employee or independent contractor.

Negligent Hiring, Selection, and Retention

While the Restatement (Third) of Agency places liability only in the realm of the principal-agent, an increasing amount of case law considers whether liability exists for negligent hiring, retention, or selection of an independent contractor even without the agency relationship.

Restatement (Third) of Agency

The Restatement (Third) of Agency discusses when a party can hold a principal liable for negligence in selecting an agent. Section 7.05(1) of the Restatement (Third) of Agency states that "(a) principal who conducts an activity through an agent is subject to liability for harm to a third party caused by the agent's conduct if the harm was caused by the principal's negligence in selecting, training, retaining, supervising, or otherwise controlling the agent."

Review of Case Law

Below is a review of some relevant case law addressing negligent hiring, selection, or retention in broker liability cases. Even when the law does not hold a broker *vicariously* liable, it may still hold the broker liable. This is not an exhaustive discussion.

***McLaine v. McLeod*, 291 Ga. App. 335, 661 S.E.2d 695 (Ga. Ct. App. 2008)**
The plaintiffs argued that the defendant broker, Container South, negligently hired the carrier, Kight, and the driver, Moody, involved in the scenario that led to the lawsuit. The court rejected the plaintiffs' theory. It first rejected that Container South had failed to investigate the driver's safety history properly, explaining that the carrier had warranted to Container South that its drivers were competent and licensed and that the plaintiffs had not cited authority establishing that Container South, which was neither the driver's employer nor the potential employer, could have access to his driving records. The court then rejected that Container South negligently selected the carrier, explaining that nothing in the law supported the plaintiffs' claims that the act of driving a tractor-trailer was inherently dangerous or any evidence establishing that Container South should have known that the carrier had hired an incompetent driver.

***Schramm v. Foster*, 341 F. Supp. 2d 536 (D. Md. 2004)**
Despite CHR obtaining summary judgment on the plaintiff's other claims, the court permitted a claim for negligent hiring of an independent contractor to go to the jury. The court explained that CHR's self-appointed status "as a 'third party logistics company' providing 'one point of contact' service to its shipper clients" was sufficient under Maryland law to require the company to use reasonable care in selecting the truckers whom it maintained in its stable of carriers. The

court held that the duty to use reasonable care in the selection of carriers included the duty to check the safety statistics and evaluations of the carriers with whom it contracts, publicly available on databases maintained by the Federal Motor Carrier Safety Administration (FMCSA, and to maintain internal records of those with whom it contracts to assure that there was no manipulation of those safety ratings. The court defended the duty of reasonable care in selecting carriers by citing the critical federal interest in protecting drivers and passengers on the country's highways.

***Jones v. C.H. Robinson Worldwide, Inc.*, 558 F. Supp. 2d 630 (W.D. Va. 2008)**

In *Jones*, the court denied C.H. Robinson's motion for summary judgment based on a negligent hiring claim. The court considered whether C.H. Robinson (CHR) had complied with the duty of reasonable care in hiring the carrier in the case, AKJ, ultimately finding factual issues that a jury should evaluate. Important factors considered were that AKJ only carried a conditional safety rating, CHR's own information regarding problems with loads carried in the past by AKJ, and AKJ had certain deficient safety scores. The court also noted that it was undisputed that CHR did not investigate AKJ's safety and fitness beyond ascertaining that it was insured, AKJ had a conditional safety rating, and it had valid operating authority from the FMCSA. Based on these facts, the court believed that a jury should consider whether CHR had complied with the duty of reasonable care, a duty, the court said, that CHR had voluntarily assumed. The court notably looked to several cases analyzing shipper liability from foreign jurisdictions, including *L. B. Foster Co., Inc. v. Hurnblad,* 418 F.2d 727 (9th Cir. 1969); *Hudgens v. Cook Indus., Inc.,* 521 P.2d 813 (Okla. 1973), and *Puckrein v. ATI Transport, Inc.,* 186 N.J. 563, 897 A.2d 1034 (N.J. 2006).

***Professional Communications, Inc. v. Contract Freighters, Inc.*, 171 F. Supp. 2d 546 (D. Md. 2001)**

In this cargo damage case, two claims asserted by the plaintiff were that the broker had failed to maintain a sealed log and had failed to employ honest drivers. The court rejected the plaintiff's duty arguments because even if it assumed that the broker had a duty, the plaintiff failed to present evidence that the broker had failed to investigate the carrier's shipping procedures or shipping history. Further, even assuming that the broker had breached a duty, the plaintiff had not produced any evidence that the broker's hiring of the carrier caused the loss at issue.

***Smith v. Spring Hill Integrated Logistics Mgmt.,* Inc., 2005 WL 2469689 (N.D. Ohio Oct. 6, 2005)**

The court in this case considered the plaintiff's theory that the broker was negligent in selecting or training the carrier. The Northern District of Ohio rejected the argument, finding that Chieftain was duly licensed, certified, and qualified to provide motor carrier services. It maintained a "satisfactory" safety rating, carried necessary insurance coverage, and had driver hiring and training programs that had been certified by an independent organization.

***Jones v. Beker*, 260 Ill. App. 3d 481, 632 N.E.2d 273 (Ill. App. Ct. 1994)**

This interesting case does not specifically cover the broker-carrier relationship, but it provides some additional insight regarding the theory of negligent selection. The plaintiff was struck by an automobile driven by an employee of Condor Recovery. Condor Recovery had repossessed the car on behalf Beck's Auto Sales and had previously repossessed six or seven cars for Beck's. In granting summary judgment for Beck's, the Illinois court explained that a principal is generally not liable for the acts of its independent contractor unless the act was committed at the direction of the principal or unless the principal negligently hired the contractor. To establish that an employer failed to exercise reasonable care in the selection of an independent contractor, a plaintiff must show that the employer hired an independent contractor that it knew or should have known was unfit for the job to create a danger of harm to the plaintiff *and* that a connection existed between the particular unfitness and the independent contractor's negligent act.

Conclusion and Recommendations

In today's world, plaintiffs seek as many pockets as they can when filing lawsuits. As a result, broker liability has become a more popular theory of liability in trucking litigation. Despite the adverse result in *Sperl,* the decision appears to be an anomaly. The issue ultimately becomes the amount of control exercised by the freight broker. In addition to a claim contending that the carrier acted as the agent, many brokers also face a claim involving negligent hiring or selection.

With regard to agency, it is important that brokers attempt to vest almost exclusive control in a carrier. Given the importance of the right to control in determining agency relationships, this may be the single most important thing that a broker can do to avoid liability. Among other things, the authors recommend that a broker does not insist on certain drivers; does not set routes that drivers must follow; ensures that the broker is not listed as a carrier on the bill of lading; avoids any reference to having control over all operations, such as penalties or fines; and avoids scheduling specific pick-up and delivery times, if possible. Should a plaintiff file a lawsuit, a broker wants to be in a position to argue that it has placed very few restrictions upon the carrier. In the end, a broker is in the best position if the broker merely selected the carrier and did what is minimally necessary so that the carrier is able to transport the load.

With respect to negligent hiring or selection, the evidence will focus on the carrier's safeness and the specific activities that the broker engaged in to determine whether the carrier was unfit for service. Accordingly, brokers, as a practical matter, need to do business with reputable, qualified motor carriers. Brokers must make every effort to investigate and internally to monitor the safety status of a selected carrier, ensure that the carrier is appropriately licensed and certified, and require a "satisfactory" safety rating in broker contracts.

Broker liability currently presents a unique challenge in trucking litigation. A practitioner needs to know that liability can arise vicariously or through a negligent hiring or selection claim. Removal to a federal court should always be evaluated carefully. It is imperative that a practitioner understand the applicable law with an eye towards analyzing issues in light of the various factors identified and discussed in this article. FD