

# Driver, Owner, Broker

## When Does A Freight Broker Become Responsible for a Driver's Conduct?

By Joseph Pappalardo and Samuel Hufstedler

In a recent court decision, *Sperl v C.H. Robinson Worldwide, Inc.*, in the Illinois Third District Court of Appeals, the freight broker and owner of the load was found liable for a multi-vehicle accident that involved a tractor trailer hauling a load of potatoes. The accident resulted in two fatalities and serious injuries. The driver, DeAn Henry, and the lessee of the motor vehicle, Dragonfly Express, admitted liability. The broker, CHR, was held accountable for more than \$23 million.

Freight brokers are licensed by the Federal Motor Carrier Safety Administration (FMCSA), but regulations make it clear that a broker is not a motor carrier. However, this is true only if the broker's actions are limited to arranging or offering to arrange for the transportation of shipments. A motor carrier that enters into a lease of a commercial vehicle is in exclusive possession and control of "the operation of the equipment for the duration of the lease." Thus, in the *Sperl* case clearly lessee Dragonfly was responsible for the actions of Henry, the driver.

CHR denied responsibility for Henry's actions. CHR claimed that its legal liability was defined by its Contract Carrier Agreement with Dragonfly. Such agreements are standard since brokers do not own tractor trailers nor do they employ drivers. Instead, CHR sells its services to shippers needing to transport goods and then contracts with motor carriers to provide transportation.

The agreement in *Sperl* made it clear that the Dragonfly's and CHR's relationship was solely that of an independent contractor and that the motor carrier would employ or lease all drivers. Dragonfly represented that transportation would be provided, that it would use competent drivers and that CHR and its customers were not responsible for driver salaries or workers' compensation.

### TIPS FOR AVOIDING BROKER LIABILITY

- The regulations say that a broker is not a motor carrier – don't act like one.
- Don't control dispatch.
- Don't regulate hours of service of the driver – and never require a driver to violate federal regulations.
- For motor carriers with brokerage operations, keep them separate by way of corporate formalities and corporate structure.
- The broker should never possess or control the freight.
- The contract between the broker and motor carrier should not be specific as to the motor carrier's safety rating, driver qualifications or other safety issues beyond a commitment that the motor carrier will comply with applicable regulations.
- Don't dictate route design unless it has been vetted through a fatigue or other qualified expert.
- Don't make representations on your website or in promotional materials regarding the safety of motor carriers or drivers.

The arrangement set forth in the Agreement should have insulated the broker from any responsibility for the actions of the driver. The parties intended that the motor carrier and the driver would be independent contractors and that CHR would act as a liaison between the shipper and the motor carrier. However, evidence was presented that CHR went beyond a mere facilitator role. It was alleged that CHR exercised a level of control over the shipment and the driver such that CHR became responsible for Henry's actions. Not only did CHR store the freight, but CHR actually owned it. Additionally, CHR assigned a transportation manager to the load in question. The manager sent the motor carrier a load confirmation sheet, which imposed upon the driver numerous specific requirements such as daily check calls, verification of pallet count, degrees of fines for being late, the requirement to stay in constant communication and maintaining the temperature of the load within a two degree range.

CHR directly retained and dispatched the driver. The driver testified that she felt pressure from CHR to violate hours of service regulations. CHR sent the driver a fuel advance and agreed to pay her directly upon delivery of the load.

The jury specifically found that Henry was an agent of CHR, making it vicariously liable for plaintiffs' injuries. The Appellate Court acknowledged that the contract stated that Dragonfly was an independent contractor. However, the Court looked beyond the contract and considered the actual conduct of the parties. It concluded that CHR exercised a degree of control over Henry that created an agency relationship. [LM](#)

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