No. 123132

In the

Supreme Court of Illinois

SUSAN D. SPERL, Ind., etc., et al.,

Plaintiffs,

v.

C.H. ROBINSON WORLDWIDE, INC., et al.,

Defendants.

C.H. ROBINSON COMPANY, et al.,

Appellants,

v.

TOAD L. DRAGONFLY EXPRESS, INC.,

Appellee.

On Petition for Leave to Appeal from the Third Judicial District, No. 3-15-0097.
There Heard on Appeal from the Circuit Court of the Twelfth Judicial Circuit,
Will County, Illinois, Nos. 04 L 428, 05 L 812 and 09 L 05 (Consolidated).
The Honorable **John C. Anderson** and **Michael J. Powers**, Judges Presiding.

BRIEF AND APPENDIX OF APPELLANTS C.H. ROBINSON COMPANY, C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON INTERNATIONAL, INC. and C.H. ROBINSON WORLDWIDE LTL, INC.

DON R. SAMPEN (ARDC No. 2448351)
(dsampen@clausen.com)
THOMAS H.RYERSON (ARDC No. 2435918)
(tryerson@clausen.com)
EDWARD M. KAY (ARDC No. 3123415)
(ekay@clausen.com)
CLAUSEN MILLER, P.C.
10 South LaSalle Street
Chicago, Illinois 60603
(312) 855-1010

Attorneys for Appellants

ORAL ARGUMENT REQUESTED

COUNSEL PRESS · (866) 703-9373 PRINTED ON RECYCLED PAPER

POINTS AND AUTHORITIES

INTRODUCTORY PARAGRAPH

This is a contribution action arising from three consolidated underlying tort actions involving a massive traffic accident. The trial court, without a jury, entered a judgment for contribution, including post-judgment interest, in favor of the petitioner and against the respondent in the amount of $14,326,665.54. On appeal of the contribution judgment, the Third District Appellate Court reversed in a split decision. This Court granted a Petition for Leave to Appeal. No questions are raised on the pleadings.

STATEMENT OF ISSUES

Judgments in three consolidated traffic accident cases in the amount of $23,275,000 were entered against petitioner C.H. Robinson ("CHR")[1] and two other defendants in 2009. The other defendants were respondent Luann G. Whitner-Black doing business as Toad L. Dragonfly Express ("Dragonfly"), and the driver of the semi-truck involved in the accident, DeAn Henry ("Henry"). In 2011, following an appeal of the tort judgments, CHR paid off the judgments in full, including post-judgment interest, totaling more than $28 million. (A5-6, 7-8 ¶¶ 9, 14.)[2] CHR's counterclaim for contribution against Dragonfly had been severed from the main underlying action. (A5-6 ¶ 9.) When contribution proceedings concluded in 2015, the trial court awarded CHR half the amount it paid in 2011. (A10-11 ¶¶ 21-22.) Dragonfly appealed, and CHR cross appealed. Over dissent, the Third District reversed. It concluded that CHR was not entitled to any contribution.

The two issues on appeal are as follows:

---

[1] "CHR" is used herein to refer to the relevant related entities named as parties herein, including C.H. Robinson Company, C.H. Robinson Worldwide, Inc., C.H. Robinson International, Inc., and C.H. Robinson Worldwide LTL, Inc.

[2] "A__" refers to the accompanying Appendix.

(a) *Whether a right of contribution exists between vicariously-liable defendants*. Dragonfly argued, and the Third District found, that the basis of liability for both CHR and Dragonfly was vicarious, and not negligence or fault. (A14 ¶ 29.) If this finding was correct, is one vicariously-liable defendant, which has paid an entire damage judgment, entitled to contribution against another vicariously-liable defendant that has paid nothing?

(b) *Whether admissions of fault should be construed as admissions of vicarious liability for contribution purposes*. Dragonfly repeatedly admitted its negligence and fault during the tort trial. (A15 ¶¶ 31-33.) The Third District nonetheless construed the admissions as relating only to vicarious liability. Were Dragonfly's admissions of negligence and fault binding for purposes of contribution, such that CHR was entitled to contribution based on Dragonfly's fault?

STATEMENT OF JURISDICTION

The trial court entered its final judgment order on contribution on January 20, 2015. (R. C9865; A45.)[3] Dragonfly filed its notice of appeal within 30 days thereafter, on February 10, 2015. (R. C9818.) CHR filed its notice of cross appeal on February 18, 2015 (R. C9838) and an amended notice of cross appeal on February 19, 2015 (R. C9852). The Third District had jurisdiction pursuant to Illinois Supreme Court Rule 303. The Third District issued its decision on December 6, 2017. CHR filed its Petition for Leave to Appeal on January 9, 2018. That Petition was granted on March 21, 2018. This Court has jurisdiction pursuant to Illinois Supreme Court Rule 315.

[3] Unless indicated otherwise, all record references herein are to the record in the *Sanders* case, No. 2009 L 05, one of the three cases discussed below that were consolidated for trial and appellate purposes.

STATUTE INVOLVED

This appeal involves parts of section 2 and section 3 of the Joint Tortfeasor Contribution Act, as follows:

> § 2. Right of Contribution. (a) Except as otherwise provided in this Act, where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them, even though judgment has not been entered against any or all of them.
>
> (b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is liable to make contribution beyond his own pro rata share of the common liability.
>
> * * *
>
> § 3. Amount of Contribution. The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability. However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectable. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability.

740 ILCS 100/2, 3.

STATEMENT OF FACTS

Tort Trial Court Litigation

The Third District opinion captures most of the operative underlying facts. They arise from a multiple-car accident in 2004, giving rise to the three underlying lawsuits. The estates of two persons killed in the accident brought two lawsuits, and injured parties brought the third. (A5 ¶¶ 8-9.) The lawsuits, as consolidated for trial in 2009, were brought against defendants as follows:

Party Name	Role in Underlying Litigation	Status in Contribution Case
DeAn Henry	Driver of truck causing accident	Not sought
Dragonfly	Lessee of truck, federal motor carrier providing authority for Henry	Contribution defendant
CHR	Freight forwarder for shipment being transported	Contribution plaintiff

(*See* A4-5 ¶¶ 6-8.)

At trial, Dragonfly and Henry admitted their fault and culpability. (A5, 15 ¶¶ 9, 31.) Specific examples of their admissions include the following:

- The opening statements to the jury by Henry's and Dragonfly's joint counsel included the following admission of fault:

> [T]he position of my clients from the very start of this trial . . . was to come in and ***admit their negligence*** in being associated with this occurrence.
>
> Ladies and Gentlemen, just because ***my clients have admitted their negligence*** in that this accident had occurred, we ask that your service as jurors not end there, because there are still issues that remain to be decided.

(R946:9-19) (emphasis added). As indicated in the transcript, counsel drew no distinction between Henry and Dragonfly in the scope or substance of the admission and placed no limit on the extent of fault being admitted by either.

- Dragonfly, through its owner Ms. Black, admitted its negligence as part of the trial testimony and under oath, again without limitation:

> Q. Now, Ma'am, in this litigation we have heard from your counsel that ***you have conceded your negligence*** in this case, isn't that right?
>
> A. Yes.

(R1510:17-20) (emphasis added).

- During the course of the trial and outside the presence of the jury, an issue arose whether Dragonfly and Henry should be listed separately or together on the jury verdict forms for damages and liability purposes. Robinson took the position they should be listed separately. (R2531:5-2532:18). Counsel for Henry and Dragonfly, Ms. McAsey, however, argued that they should be listed together because they had the same level of negligence:

> I don't know why we would be listing them singly.
>
> * * *
>
> There's the ***same admission of negligence and liability as to both***.
>
> * * *
>
> What I'm saying is I don't think they should be listed singly. I said ***there's been a united negligence admission and liability***, and it's only through [Dragonfly] that Ms. Henry is even involved.

(R2531:10-11; 2531:13-14; 2531:20-23) (emphasis added). Counsel for Dragonfly ultimately prevailed, and Dragonfly and Henry were listed together as one on the same line of the verdict forms. (*See* R. C8563-67.)

- That Dragonfly was at fault was confirmed later in the argument before the Court when an issue arose concerning Robinson's contribution claim. The following exchange took place between the Court and Mr. Casey, another attorney for Dragonfly and Henry:

> The Court: You admitted liability. I'm missing the point. ***You admitted fault. You admitted all the negligence***.
>
> Mr. Casey: ***Yes, as to the plaintiffs' claim***.

(R2555:9-12) (emphasis added). Mr. Casey thus admitted "all the negligence . . . as to the plaintiffs' claim" on behalf of Dragonfly and Henry. No question thus exists that Dragonfly and Henry were "united" in their admission of all the fault or negligence relating to the plaintiffs' claimed injuries.

- Counsel for Dragonfly and Henry confirmed their fault when stating during closing argument:

> Trust me when I say that if my clients Luann Whitner-Black and DeAn Henry could turn back the hands of time and ***correct their omissions, their mistakes, their actions***, they would.

(R2715:5-8) (emphasis added).

- The trial judge's charge to the jury, read with the knowledge and consent of Dragonfly, included the following statement:

> The defendants, DeAn Henry and LuAnn Whitener-Black d/b/a, that is doing business as, ***Toad L. Dragonfly Express, have admitted they were negligent, and the negligence was a proximate cause of the injuries to the plaintiff***. There are other issues you will need to decide in this case.
>
> * * *
>
> The next instruction is DeAn Henry and LuAnn Whitener-Black, doing business as ***Toad L. Dragonfly Express, admit that they were negligent and that their negligence was a proximate cause of injuries to the plaintiffs***.

(R2814:22-2815:3, R2817:16-20 (emphasis added).)

Thus, the record establishes conclusively that the basis for liability against Dragonfly was its many admissions of negligence. So prominent were its admissions that the trial court removed the question of joint negligence as between Dragonfly and Henry from the jury. Hence, the only liability question going to the jury was whether CHR was vicariously liability for Henry's conduct. (*See* A5 ¶ 9.) The jury found that an agency

relationship existed between CHR and Henry and that CHR was vicariously responsible. (*Id*.) No liability findings were made of Dragonfly and Henry because of their admissions.

The jury thus returned a verdict in favor of the plaintiffs and against the three defendants, jointly and severally, for the adjusted amount of $23,275,000. (A5 ¶ 9.) CHR appealed, and the judgments were affirmed. (A5-6 ¶ 9.) *See also Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051 (3d Dist. 2011). Dragonfly also filed a notice of appeal but submitted no brief in the appellate court. Following affirmance, in 2011, CHR paid off the judgments in full, including post-judgment interest, in the amount of over $28 million. (A7-8 ¶ 14.) Dragonfly and Henry paid nothing.

Trial Court Contribution Litigation

As part of the underlying litigation, CHR brought a contribution claim against Dragonfly. (A5 ¶ 9.) That claim was severed prior to the case going to the jury. (*Id*.) Shortly following the issuance of the appellate court mandate in 2011, CHR amended its contribution counterclaim. The amended counterclaim ("Counterclaim") included the following counts:

Count I: CHR alleged that, lacking fault but having paid the entirety of the judgments, CHR paid more than its pro rata share of the judgments based on fault. CHR alleged it therefore was entitled to contribution from Dragonfly under § 2 of the Contribution Act, 740 ILCS 100/2. (A8 ¶ 15; R. C8601-05 ¶¶ 10-27.)

Count II: CHR alleged that Dragonfly, Henry and CHR were found jointly and severally liable for the full amount of the judgments, but that Henry's share was uncollectible. CHR alleged it therefore was

entitled to share with Dragonfly Henry's uncollectible portion, pursuant to § 3 of the Contribution Act. (A8 ¶ 16; R. C8605-07 ¶¶ 28-34.)

Count III: CHR alleged that, to the extent Dragonfly's liability was arguably vicarious, as Dragonfly claimed, CHR still had a right to contribution under Third District case law. (A9 ¶ 17; R. C8607 ¶¶ 35-38.)

The trial court ordered the submission of trial briefs to resolve the contribution issues based on the trial record, and CHR proceeded to prove up its claim. (A8-11 ¶¶ 15-21.) In 2014 the court found that Dragonfly and CHR "were equally at fault" and "should be equally responsible for damages." (A10-11 ¶ 21; R. C9863, C9864 ¶ 2 (A026, A027 ¶ 2).) It therefore allowed contribution under Count I of the Counterclaim, noting, however, that even if it were to reach Counts II and III, "the ultimate result would probably not be appreciably different." (A10-11 ¶ 21; R. C9863, C9864 ¶ 2 (A026, A027 ¶ 3).) In 2015, the trial court found that CHR was entitled to contribution from Dragonfly in the amount of half the payment made by CHR in 2011, or about $14.3 million. (A11 ¶ 22; C9866-67.)

Third District Decision

On appeal, two of the three justices found that CHR had no right to contribution and reversed. The panel majority made two principal points.

First, the panel majority stated that, despite Dragonfly's express admissions of fault and negligence, Dragonfly was not at fault in fact, but was merely vicariously liable, like CHR. (A14-17 ¶¶ 29-34.) Rather than pointing to anything affirmative in support, the panel relied upon the absence of evidence of Dragonfly's negligence during the tort trial.

(*See* A15-16 ¶ 32.) The trial judge in the tort case, however, had expressly relied on Dragonfly's admissions of fault in removing the issue from the jury, so further evidence would not appear to have been necessary.

This point is discussed further in Part II of the Argument below.

The panel majority's second point was that because CHR and Dragonfly were both vicariously liable, neither was at fault, and no basis therefore existed for contribution recovery under the Contribution Act. (A22, 25 ¶¶ 42, 46.) Curiously, the panel majority did not hold that one vicariously-liable principal is never entitled to contribution from another vicariously-liable principal. Rather, the panel majority said that no recovery is possible only where each principal's vicarious liability arises from the conduct of the same agent, in this case, Henry. (A22, 25-26 ¶¶ 42, 46-47.) The panel majority imposed such limitation to distinguish one of the Third District's own earlier cases where contribution was allowed against a vicariously-liable defendant. *Equistar Chemicals, L.P. v. BMW Constructors, Inc.*, 353 Ill. App. 3d 593 (3d Dist. 2004). (A21 ¶ 40.) Apart from distinguishing *Equistar*, the panel majority provided no justification for why, from a Contribution Act perspective, contribution rights between vicariously-liable defendants should vary depending on the source of the vicarious liability.

Justice Schmidt's dissent rejected the panel majority's reasoning in a simple and straightforward analysis:

> [T]here is no reason in a case such as this (where two principals share a common agent) that the two blameless principals should not share the common liability. As the majority points out, both principals are blameless when it comes to fault in fact. That makes them equally responsible for purposes of contribution. The theory is that as between two tortfeasors, the contribution is not a recovery for the tort but enforcement of an equitable duty to share liability for the wrong done. *Doyle v. Rhodes*, 101 Ill. 2d 1, 14 (1984). Neither equity nor common sense supports the refusal to apply

> that same principal to two vicarious tortfeasors (principals). Therefore, pursuant to the Act, CHR and Dragonfly have equal relative culpability; their pro rata shares are each 50%. The trial judge did not err in awarding judgment to CHR against Dragonfly for 50% of CHR's payment.
>
> * * *
>
> This interpretation of the Act serves its two primary policies: equitably enforcing damages among defendants and encouraging settlements. *BHI Corp. v. Litgen Concrete Cutting & Coring Co.*, 214 Ill. 2d 356, 365 (2005).

(A32-33 ¶¶ 68, 70.) Hence, the dissent, like the contribution trial court judge, agreed with CHR that, even if Dragonfly's liability could be construed as vicarious in nature, Dragonfly was obligated to pay 50% of the judgment in contribution pursuant to the Contribution Act.

The contribution issue based on vicarious liability is further discussed in Part I of the Argument, immediately below.

ARGUMENT

CHR has paid more than $28 million, including millions in post-judgment interest, to satisfy three judgments entered jointly and severally against it, Dragonfly and Henry arising out of the 2004 traffic collision. Despite repeatedly admitting that it was both liable for the injuries and deaths and culpable in causing them, Dragonfly has yet to pay its first dollar toward its acknowledged responsibility. As a matter of law and equity, CHR therefore is entitled to contribution.

The trial court resolved the contribution issues before it based on the record from the underlying tort trial and the parties' paper submissions. Fact findings by the trial judge are subject to the manifest-weight-of-the-evidence test on review. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 72 (2007). Mixed questions of law and fact are subject to a de novo review. *Arthur v. Catour*, 216 Ill. 2d 72, 78 (2005) ("If the facts are

uncontroverted and the issue is the trial court's application of the law to the facts, a court of review may determine the correctness of the ruling independently of the trial court's judgment"). Rulings on questions of law by the trial court are also subject to a de novo standard. *Eyechaner v. Gross*, 202 Ill. 2d 228, 252 (2002).

I. UNDER THE CONTRIBUTION ACT AND AS A MATTER OF EQUITY, A VICARIOUSLY-LIABLE DEFENDANT IS ENTITLED TO CONTRIBUTION FROM ANOTHER SUCH DEFENDANT

This Court has not addressed the right of one vicariously-liable defendant to obtain contribution from another vicariously-liable defendant. As noted above, the Third District itself, despite its holding in the instant case, touched on the issue in *Equistar* when holding that a vicariously-liable defendant is not necessarily immune from contribution. *Equistar Chemicals*, 353 Ill App. 3d at 598, 603 (stating that an employer "whose liability is solely vicarious cannot be relieved from a contribution claim" because the contribution claimant would be forced "to pay more than its share for [the employee's] injuries," which would be "in contravention of the Contribution Act"). *See also Ramsey v. Morrison*, 175 Ill. 2d 218, 230-31 (1997) ("By pursuing a contribution action against the [vicariously-liable] employer, the third party is thereby able to recover some contribution premised on the coemployee's negligence").

Neither *Equistar* nor *Ramsey*, however, directly explored contribution rights as between two vicariously-liable defendants. Three reasons nonetheless exist why CHR, whose liability was solely vicarious, should be entitled to contribution from Dragonfly, even if, as found by the Third District, Dragonfly also incurred vicarious liability. The three reasons are set forth in sub-parts A, B, and C below. The amount of contribution under these circumstances is the amount awarded by the trial court and found by Justice

Schmidt, $14,326,665.54. That amount consists of half of the underlying damages awards and post-judgment interest paid by CHR. The Third District agreed that post-judgment interest should be included in any amount of contribution award. (A27 ¶¶ 51-53.)

A. Section 2 of the Contribution Act Permits CHR to Obtain Contribution

The first reason supporting contribution is the language of the Contribution Act itself. (A31-32 ¶ 65.) Subsections (a) and (b) of section 2 state as follows:

> (a) Except as otherwise provided in this Act, ***where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them***, even though judgment has not been entered against any or all of them.
>
> (b) The right of contribution exists only in favor of a tortfeasor ***who has paid more than his pro rata share of the common liability***, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is liable to make contribution beyond his own pro rata share of the common liability.

740 ILCS 100/2 (emphasis added). Subsection 2(a) thus establishes "a right to contribution among" jointly liable defendants. Since Dragonfly and CHR were jointly liable for the judgments in the three underlying cases, subsection 2(a) presumptively establishes CHR's right to contribution. Subsection 2(b) establishes the right of contribution in favor of the defendant "who has paid more than his pro rata share of the common liability." It does not define how that "pro rata share" is determined. For that, one must turn to section 3. That section states:

> ***The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability.*** However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectable. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability.

740 ILCS 100/3 (emphasis added). This language makes a defendant's "pro rata share" a function of "his relative culpability."

Here, the panel majority found that the "relative culpability" of CHR and Dragonfly was equal, because they were "equally at fault," "equally contributed to the accident," and stood "in the identical position." (A10-11 ¶ 21; A14 ¶ 29.) CHR disagrees that it was equally at fault with Dragonfly for the reasons discussed below in Part II. Nevertheless, the "pro rata share of the common liability" for any two defendants is identical when they have equal culpability. CHR, moreover, relative to Dragonfly, paid in excess of its pro rata share, and Dragonfly, relative to CHR, paid less than its pro rata share. Dragonfly therefore is liable for contribution in an amount that, once the contribution is paid, makes the ultimate liability of these two defendants equal. Obviously, the pro rata share under these circumstances comes to 50% of the trial court judgments, including post-judgment interest, as found both by the trial court and Justice Schmidt. (A32-33 ¶ 68.)

The panel majority nonetheless took the position that the Contribution Act should not apply. It reasoned that the Act speaks in terms of "tortfeasors" who are "at fault," while CHR and Dragonfly, by incurring vicarious liability, were not "at fault in fact" and were blameless. (A12-14 ¶¶ 27-29.)

Several responses are in order. To begin, the Act does not apply solely to "tortfeasors" in any technical sense. Subsection 2(a) itself states to whom the Act applies, namely, to two or more persons who "are subject to liability in tort arising out of the same injury . . . ." The language just quoted constitutes the definition of "tortfeasor" for purposes of subsection 2(b). Such a definition is consistent with the broad parameters of the Act's

applicability as recognized by this Court in *Vroegh v. J&M Forklift*, 165 Ill. 2d 523 (1995), and quoted by Justice Schmidt:

> All that is required is that the persons seeking contribution and the persons from whom contribution is sought be potentially capable of being held liable to the plaintiff in a court of law or equity.

Id. at 529; (A31-32 ¶ 65). *See also People ex rel. DOL v.Valdivia*, 2011 IL App (2d) 100998 ¶ 11 (stating that persons seeking contribution need only be subject to liability in tort); *Patel v. Trueblood, Inc.*, 281 Ill. App. 3d 197, 201 (1st Dist. 1996) (similar). Both CHR and Dragonfly were "potentially capable of being held liable to [the underlying plaintiffs] in a court of law or equity." They therefore qualify as persons, respectively, on behalf of whom, and from whom, contribution could be sought. In the words of Justice Schmidt, they were "vicarious tortfeasors." (A32 ¶ 66.)

The broad parameters of the Act, moreover, are implicitly recognized in the further provision in subsection 2(a) that makes the Act applicable "even though judgment has not been entered against" the person seeking relief. CHR was alleged by the underlying plaintiffs not just to have incurred vicarious liability, but also, itself, to have been a negligent wrongdoer in the complaints they filed in the trial court. (*See* R. C3806 ¶ 12; C3856 ¶ 8; C3866 ¶ 6.)[4] The plaintiffs ultimately decided to pursue only their vicarious liability theory against CHR. But under subsection 2(a), the mere fact that judgment was never entered against CHR based on negligence does not mean that CHR is barred from pursuing contribution. Indeed, contribution is available even where the person seeking it has not been sued at all. *Ewanic v. Pepper Construction Co.*, 305 Ill. App. 3d 564, 568

[4] These citations to the three underlying complaints are from the *Taluc* record, No. 2005 L 812.

(1st Dist. 1999) (stating that all that is required for contribution is that the person seeking it have paid "in reasonable anticipation of liability"). In addition, contribution liability is determined as of the time of the injury. It is not determined at some later point when, for example, the tort plaintiff decides, for strategic purposes, to abandon one tort liability theory in favor of another. *See Rakowski v. Lucente*, 104 Ill. 2d 317, 322 (1984) (stating that liability under the Act "is determined at the time of the injury out of which the right to contribution arises"). If CHR was potentially liable for negligent wrongdoing, then it is entitled to contribution, even if the liability actually found was vicarious-based.

This Court further recognized the potential for applying the Contribution Act to vicariously-liable principals in *American National Bank & Trust Co. v. Columbus-Cuneo-Cabrini Medical Center*, 154 Ill. 2d 347 (1992). Differing views regarding *American National Bank* played an important role in the disagreement between the panel majority and Justice Schmidt's dissent in the instant case. (*Compare* A23-25 ¶¶ 43-46 *with* A31-33 ¶¶ 64, 69.) *American National Bank* primarily addressed the continuing viability of implied indemnity in quasi-contractual relationships – for example, between a principal and agent – in the wake of the Contribution Act. 154 Ill. 2d at 353-54. In the process, however, the Court commented that a settlement between a "blameless principal" and the underlying plaintiff' creates "an interest indistinguishable from the contribution interests of the 'other tortfeasors' at fault in fact." *Id*. at 355. In those situations, said this Court, "[t]he Contribution Act should . . . apply." *Id*.

American National Bank did not provide specifics on how the Contribution Act would apply to the blameless principal. Hence, the importance of the Court's statement is its acknowledgement that where the principal's interests are similar to those of other

tortfeasors, the Contribution Act should apply. Such a situation occurs where the principal has paid an amount in excess of its share of the liability relative to another vicariously-liable defendant.

The panel majority therefore erred in finding the Contribution Act not applicable to CHR's claim.

B. Section 3 of the Act Provides a Substitute for Determining Pro Rata Shares, if One Is Needed

The second basis for CHR's contribution recovery is section 3 of the Contribution Act. Section 3 addresses the panel majority's objection that damages cannot be apportioned based on relative fault "when there is only one tortfeasor at fault in fact." (A22 ¶ 42.)

The second and third sentences of section 3 state that if the liability obligation of any one tortfeasor "is uncollectable," the remaining tortfeasors "shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability." In this case, the parties stipulated that Henry's share of the common liability was uncollectable. (R.C9313; *see also* A30 ¶ 58.) Robinson and Dragonfly, moreover, had equal "pro rata liability" (***not*** "pro rata culpability"): as a result of the jury's verdicts, each was found to be jointly and severally liable for the full amount of the judgments in favor of the underlying plaintiffs. The final sentence of section 3 therefore is triggered. In addition, according to the panel majority, Henry bore 100% of the fault. (*See* A14 ¶ 29.) Section 3 thus requires CHR and Dragonfly each to pay half of Henry's 100% share of liability based on her fault.

The panel majority rejected application of section 3 on the theory that Henry's share of the common liability was not "uncollectible" – contrary to the undisputed evidence –

but was rather "nonexistent" once CHR paid the judgments. (A30 ¶ 59.) The panel majority said this was so because "CHR was entirely liable for Henry's obligation by operation of the law of agency." Of course, any jointly-and-severally-liable defendant's share of liability is "nonexistent," at least vis-à-vis the plaintiff, after another such defendant satisfies the judgment. That does not mean however, that Henry had no liability to CHR. *See American National Bank*, 154 Ill. 2d at 353-54 (recognizing principal's right of common law implied indemnity against agent). These circumstances present one of the very situations where, in the words of *American National Bank*, CHR had "an interest indistinguishable from the contribution interests of the 'other tortfeasors' at fault in fact. . . . The Contribution Act should therefore apply." *Id*. at 355. Yes, it should.

Section 3, in any event, does not distinguish between a judgment-proof defendant whose conduct caused another defendant to incur liability "by operation of the law of agency," and one whose conduct did not. So long as no recovery is possible against the judgment-proof defendant, section 3 requires the other defendants to share in the liability.

C. Contribution Also Should Be Allowed for Equitable and Settlement Reasons

The third reason for recognizing CHR's right to contribution is equity and settlement considerations. This Court has frequently recognized the "encouragement of settlements and the equitable apportionment of damages among tortfeasors" as the two public policy purposes of the Contribution Act. *Antonicelli v. Rodriguez*, 2018 IL 121943 ¶ 13 (2018); *Johnson v. United Airlines*, 203 Ill. 2d 121, 133 (2003). Justice Schmidt observed these purposes when stating:

> This interpretation of the Act serves its two primary policies: equitably enforcing damages among defendants and encouraging settlements. *BHI Corp. v, Litgen Concrete Cutting & Coring Co.*, 214 Ill. 2d 356, 365 (2005).

> Furthermore, the majority's rule reduces the incentive in cases like this for one of the principals to step up and quickly pay a judgment or, for that matter, settle a case before the trial court enters judgment.

(A33 ¶ 70.) *See also* A32 ¶ 68 (pointing out that contribution recognizes the "equitable duty to share liability for the wrong done," citing *Doyle v. Rhodes*, 101 111. 2d 1, 14 (1984)).

Justice Schmidt's concerns do not require extensive analysis to demonstrate that he is correct. At the most fundamental level, the panel majority's position results in the shifting of the payment burden from two defendants to just one. The shifting occurs, moreover, based not on any meritorious conduct engaged in by the non-paying defendant, but rather on the non-paying defendant's delay in meeting, or, more likely, the outright refusal to meet, its payment obligations. As a consequence, one defendant, CHR, ends up paying some $23 million, plus another $5 million in post-judgment interest. And the other defendant, Dragonfly, goes scot-free. What principle of equity could possibly exist that would justify such a shifting of the payment burden? The answer is: none.

In addition, while this case involves satisfaction of a judgment, the same basic factual scenario could occur pre-judgment. Consider, for example, a potentially vicariously-liable defendant that may be considering settlement of the entire case prior to trial, but that wishes to preserve its contribution rights. *See Dixon v. Chicago & Northwestern Transportation Co.*, 151 Ill. 2d 108, 116 (1992) (stating that contribution is available to settling defendant against other parties "whose liability was extinguished by that same settlement"); A26 ¶ 49. The question arises whether such a defendant would be more motivated, or less motivated, to settle the case if it knows that it would have no opportunity to recover contribution from a second vicariously-liable defendant. The answer is obvious: of course, it would be less motivated.

In short, the panel majority's interpretation of the Contribution Act cuts against its two important purposes, as recognized by this Court. Such an interpretation provides an independent basis for reversal.

II. DRAGONFLY'S ADMISSIONS OF FAULT WERE JUDICIAL ADMISSIONS THAT PROVIDE A SEPARATE BASIS FOR CONTRIBUTION

A. Dragonfly Was At Fault

As discussed above, the appellate court panel majority found that CHR was not entitled to contribution against Dragonfly because of the court's presumption that both defendants' liability was vicariously based. Such a presumption contradicts the record.

It contradicts the record because Dragonfly repeatedly admitted its culpability and negligence on the record in open court during the trial, and at no time did it characterize its liability as merely vicarious. (*See* pp. 4-6, *supra*; A15 ¶ 31.) The admissions included testimony by Dragonfly's owner on cross examination during the trial, during which she "conceded [her] negligence," and a concession by counsel for Dragonfly and Henry that he had admitted "fault" and "all the negligence" on their behalf. (*Id.*) The trial judge in the tort trial himself recognized Dragonfly's many admissions of culpability by so instructing the jury, with Dragonfly's consent, as follows:

> The defendants, DeAn Henry and LuAnn Whitener-Black d/b/a, that is doing business as, ***Toad L. Dragonfly Express, have admitted they were negligent, and the negligence was a proximate cause of the injuries to the plaintiff***. There are other issues you will need to decide in this case.
>
> * * *
>
> The next instruction is DeAn Henry and LuAnn Whitener-Black, doing business as ***Toad L. Dragonfly Express, admit that they were negligent and that their negligence was a proximate cause of injuries to the plaintiffs***.

(A15 ¶ 31; R2814:22-2815:3, R2817:16-20 (emphasis added).)

These were judicial admissions by Dragonfly. *In re Estate of Rennick*, 181 Ill. 2d 395, 406-07 (1998) ("Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge"). They could not be controverted, either in the trial court or, more importantly, here on appeal. *Id*. ("Where made, a judicial admission may not be contradicted in a motion for summary or at trial" (citations omitted)). *See also Dremco, Inc. v. Hartz Const. Co.*, 261 Ill. App. 3d 531, 536 (1st Dist. 1994) ("Judicial admissions are formal acts of a party or its attorney in court, dispensing with proof of a fact claimed to be true, and are used as a substitute for legal evidence at trial. Judicial admissions include admissions in pleadings, as well as admissions in open court, stipulations, and admissions made pursuant to requests to admit" (citations omitted)).

The panel majority cited several reasons for not recognizing these admissions as binding. They included CHR's failure to "identif[y] any evidence of such conduct . . . at trial"; the absence of a "special verdict making any such finding" by the jury; and the absence of "any finding of independent 'fault' or negligence by Dragonfly." (A15-17 ¶¶ 32, 33, 34 n.6.) All these reasons are for naught, for a simple reason. With Dragonfly's many judicial admissions of record, the issue of its culpability was beyond dispute and had been removed from the case as an issue, as the trial court itself acknowledged. *See Rath v. Carbondale Nursing & Rehabilitation Center, Inc.*, 374 Ill. App. 3d 536, 538-39 (5th Dist. 2007) (stating that a judicial admissions "have the effect of withdrawing a fact from contention" (quoting case)). CHR had no need to introduce further evidence on the topic or to request a special verdict. Dragonfly was already bound by its admissions.

When the Court gives recognition to Dragonfly's admissions of culpability, the major underpinning of the panel majority's decision dissipates. The case, in other words, no longer involves a vicariously-liable defendant seeking contribution from another vicariously-liable defendant of equal culpability. Rather the case involves a vicariously-liable defendant, which is blameless, seeking contribution from another defendant that has admitted fault and negligence.

Because of the obvious difference in culpability levels as between CHR and Dragonfly, CHR's right of contribution can no longer be rejected, which is what the panel majority did. Nor should CHR's right of recovery be pegged at only 50%, which Justice Schmidt would have allowed. Based on Dragonfly's admissions, CHR believes that the record most strongly supports a determination that Dragonfly is liable for 100% contribution, as set forth in sub-part B below. Without waiving its position for 100% contribution, CHR sets forth alternative reasons in sub-part C below why 75% contribution should be awarded, and, at minimum in sub-part D why 50% contribution should be allowed.

B. CHR Is Entitled to 100% Contribution Based on Dragonfly's Admitted Culpability

The record supports attributing 100% of the culpability to Dragonfly for contribution purposes, for three reasons.

The first is the nature of Dragonfly's admissions. It went so far as to admit that the "same admission of negligence and liability" applied to both Dragonfly and Henry, that "there's been a united negligence admission and liability," and that they "admitted all the negligence" with respect to the underlying plaintiffs' claims. (R2531:10-11; 2531:13-14; 2531:20-23; 2555:9-12). Based on such repeated and unqualified admissions of

negligence, Dragonfly should be deemed 100% at fault and required to reimburse CHR in full for satisfying the judgments.

Second, because CHR had no fault, any amount it paid toward satisfaction of the judgment was paid in excess of its "pro rata share" under section 3 of the Contribution Act, in relation to Dragonfly. Hence, the entire $28 million-plus CHR paid to satisfy the judgments and post-judgment interest should become recoverable from Dragonfly in the form of contribution. *See Lard v. AM/FM Ohio, Inc.*, 387 Ill. App. 3d 915, 923 (1st Dist. 2009) (stating that right of contribution exists in favor of defendants "who have paid more than their pro rata share of the common liability" and "is limited to the amount they have paid in excess").

Third, Dragonfly was the interstate carrier under whose federal authority Henry was operating and to whom Henry had leased her vehicle. (R1398:10-16; R1403:3-7). Federal regulations mandated that, as lessee, Dragonfly have "exclusive possession, control and use" of the vehicle being driven by Henry:

> (c) *Exclusive possession and responsibilities*. (1) The lease shall provide that the authorized carrier lessee shall have ***exclusive possession, control, and use*** of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee ***shall assume complete responsibility for the operation of the equipment for the duration of the lease***.

49 C.F.R. § 376.12(c)(1) (2004) (emphasis added). The courts have consistently interpreted the federal regulation as written. *Roberson v. Indus. Comm'n*, 225 Ill. 2d 159, 176-78 (2007); *Kreider Truck Serv., Inc. v. Augustine*, 76 Ill. 2d 535, 540-41 (1979); *Dolter v. Keene's Transfer, Inc.*, Case No. 3:08-cv-262-JPG/DGW, 2008 WL 3010062, at *3 (S.D. Ill. Aug. 5, 2008) (unpublished disposition). These regulations have the force of law, and the law in effect at the time a contract becomes part of the parties' understanding. *In re*

Estate of Dierkes, 191 Ill. 2d 326, 337 (2000); *LaThrop v. Bell Fed. Sav. & Loan Ass'n*, 68 Ill. 2d 375, 387-93 (1977).

Accordingly, under federal law, Dragonfly had "exclusive possession, control, and use" of the truck being driven by Henry and "complete responsibility" for its operation. These requirements go beyond just indirect or vicarious liability. Indeed, if the purpose of the regulation was simply to impose vicarious liability upon Dragonfly, the applicable language would have said "vicarious" or otherwise would merely have indicated Dragonfly's general "responsibility" for the operation of vehicles under its authority. Instead, the language goes further and states that Dragonfly is deemed to have had "***exclusive*** possession, control and use." When combined with Dragonfly's admissions at the tort trial – particularly the "united negligence admission" and admission of "all the negligence" – the regulation supports the conclusion that Dragonfly may once again be deemed to be 100% culpable with respect the plaintiffs' deaths and injuries.

In sum, based on CHR's lack of fault, and the 100% culpability attributable to Dragonfly, CHR asks this Court to enter judgment in favor of CHR and against Dragonfly for contribution in the amount of $28,653,331.08.

C. In the Alternative, Dragonfly Is Responsible for 50% of the Culpability Plus Half of Henry's Uncollectible 50% Share, for a Total of 75%

As set forth above, CHR believes that 100% of culpability should be attributable to Dragonfly. At minimum, however, based on Dragonfly's insistence that it be treated the same as Henry, the total culpability for the traffic disaster giving rise to damages should be divided equally between Dragonfly and Henry at 50% each. Such a division would make Dragonfly and Henry responsible for the total judgments and post-judgment interest of $28,653,331.08, divided equally in the amount of $14,326,665.54 each.

Having divided culpability equally between Dragonfly and Henry, this Court then should order contribution in favor of Robinson and against Dragonfly for (a) Dragonfly's full share, plus (b) one half of Henry's share pursuant to the last sentence of section 3 of the Contribution Act. *See* pp. 16-17, *supra*. *See also Ill. Tool Works, Inc. v. Indep. Machine Corp.*, 345 Ill. App. 3d 645, 650, 658-59 (1st Dist. 2003) (requiring the sharing between two tortfeasors of a portion of an employer's pro rata share, because such portion was "uncollectible" due to the "*Kotecki* cap"). The computations may be reflected as follows:

Dragonfly's direct contribution liability based on 50% pro rata share:		$14,326,665.54
Henry's liability based on 50% pro rata share:	$14,326,665.54	
Amount of uncollectible obligation of Henry:	$14,326,665.54	
One half of Henry's uncollectible share to be paid by Dragonfly:		$7,163,332.77
Total contribution liability of Dragonfly:		$21,489,998.31

Thus, if this Court finds that culpability should be divided equally between Dragonfly and Henry, CHR asks that this Court find that Dragonfly is liable for contribution in the amount $21,489,998.31.

D. As a Further Alternative, Dragonfly Remains Liable for at Least 50% Contribution, Based on the Uncollectibility of Henry's Share

The panel majority said that Henry was the only party "shown to be at fault in fact." (A14 ¶ 29.) CHR disagrees based on Dragonfly's many admissions of record. Despite those admissions, this Court may nonetheless conclude – for the reason cited by the panel majority or otherwise – that no allocation of culpability should be made to Dragonfly for

contribution purposes. If this Court so concludes, then CHR asks the Court to require Dragonfly to pay contribution pursuant to the last sentence of section 3 of the Contribution Act. Under that sentence, once again, CHR and Dragonfly are required to share in Henry's uncollectible obligation. Hence, if this Court finds that no separate allocation can be made to Dragonfly, Dragonfly should be required to pay half of the 100% allocation to Henry, or $14,326,665.54, for the reasons previously discussed.

CONCLUSION

Having admitted its negligence and liability in the trial court, Dragonfly is not entitled to escape liability for the mayhem it caused the underlying plaintiffs. The arguments for reversing the trial court's contribution judgment in favor of CHR have no substance. As set forth in Part I of the Argument, if this Court finds that both CHR and Dragonfly were vicariously liable, the Court should affirm the trial court's judgment in favor of CHR in the amount of $14,326,665.54. As indicated in Part II, however, 100% culpability should rightfully be attributed to Dragonfly, making it responsible for 100% of the judgments and post-judgment interest by way of contribution, in the amount of $28,653,331.08. Alternatively, if 50% culpability is attributed each to Dragonfly and Henry based on their admissions, Dragonfly's contribution liability becomes $21,489,998.31. If the Court finds that no allocation of culpability to Dragonfly can be made, it should still award CHR 50% contribution, or $14,326,665.54, based on the uncollectibility of Henry's share.

The upshot of the panel majority's decision is that a vicariously-liable defendant (CHR), which has no fault, stands in a worse position to recover contribution than a defendant found culpable by a jury. That cannot be the law of Illinois. CHR asks this

Court to clarify Illinois law and determine that, in the circumstances reflected here, a vicariously-liable defendant has just as great, if not greater, contribution rights as a defendant who has admitted negligence.

Dated: May 16, 2018

Respectfully Submitted By:

/s/ Don R. Sampen
Don R. Sampen
One of the attorneys for petitioners

Don R. Sampen
Thomas H. Ryerson
Edward M. Kay
CLAUSEN MILLER, P.C.
10 S. LaSalle St., 16th Floor
Chicago, IL 60603
312-606-7803

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a)(and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 26 pages.

Dated: May 16, 2018

/s/ Don R. Sampen
Don R. Sampen

APPENDIX

TABLE OF CONTENTS TO APPENDIX

2017 IL App (3d) 150097

Opinion filed December 6, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

SUSAN D. SPERL, Individually and as Executor of the Estate of Joseph D. Sperl, Deceased, Plaintiff, v. DeAN J. HENRY; TOAD L. DRAGONFLY EXPRESS, INC.; C.H. ROBINSON COMPANY, INC., d/b/a C.H. Robinson Transportation Company, Inc.; C.H. ROBINSON INTERNATIONAL, INC.; PBX, INC., d/b/a Tyson Food Logistics, a Foreign Corporation; TYSON FRESH MEATS, INC., a Foreign Corporation; and MICHAEL R. SMITH, Defendants.	Appeal from the Circuit Court of the 12th Judicial Circuit Will County, Illinois Appeal No. 3-15-0097 Circuit Nos. 04-L-428, 05-L-812, and 09-L-5 (cons.) Honorable John Anderson and Michael J. Powers, Judges, Presiding.
WILLIAM TALUC and SKYE TALUC, Plaintiffs, v. C.H. ROBINSON COMPANY; C.H. ROBINSON COMPANY, INC.; C.H. ROBINSON WORLDWIDE, INC.; C.H. ROBINSON INTERNATIONAL, INC.; C.H. ROBINSON WORLDWIDE-LTL, INC.; DeAN HENRY, Individually and d/b/a DJ	

Transport; MICHAEL R. SMITH, Individually and d/b/a Toad L. Dragonfly Express; and LUANN G. WHITENER-BLACK, Deceased, Individually and d/b/a Toad L. Dragonfly Express,

Defendants.

ANNETTE SANDERS, Individually and as Administrator of the Estate of Thomas S. Sanders, Deceased,

Plaintiff,

v.

C.H. ROBINSON INTERNATIONAL, INC.; C.H. ROBINSON COMPANY; C.H. ROBINSON WORLDWIDE, INC.; C.H. ROBINSON COMPANY, LP; C.H. ROBINSON COMPANY, INC.;C.H. ROBINSON WORLDWIDE FOUNDATION; DeAN J. HENRY; LUANN G. WHITENER-BLACK, Deceased; and MICHAEL R. SMITH, Individually and d/b/a Toad L. Dragonfly Express,

Defendants.

(C.H. Robinson Company, C.H. Robinson Worldwide, Inc., C.H. Robinson International, Inc., and C.H. Robinson Worldwide-LTL, Inc., Defendants, Cross-Plaintiffs-Appellees, and Cross-Appellants; Toad L. Dragonfly Express, Inc., Defendant, Cross-Defendant-Appellant and Cross-Appellee.)

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court, with opinion.
Justice McDade concurred in the judgment and opinion.
Justice Schmidt dissented, with opinion.

OPINION

¶ 1 Defendant Toad L. Dragonfly Express, Inc. (Dragonfly), appeals an award of contribution entered against it and in favor of defendant C.H. Robinson Worldwide, Inc., and other related corporate entities (collectively, CHR). After a jury trial, judgments totaling $23,225,000 were entered, jointly and severally, against Dragonfly and its owner, Luann G. Whitener-Black (Black) (now deceased), DeAn Henry (Henry), and CHR in three consolidated tort actions stemming from a fatal automobile accident. Henry was the driver of a semi-tractor involved in the accident. Dragonfly is a federally licensed motor carrier that had leased Henry's semi-tractor at the time of the accident, and CHR was the broker of the load Henry was carrying at the time.

¶ 2 After CHR fully satisfied the tort judgments (including postjudgment interest), CHR sought contribution from Dragonfly under the Joint Tortfeasor Contribution Act (Act) (740 ILCS 100/0.01 *et seq.* (West 2014)). The trial court granted CHR contribution against Dragonfly for 50% of the jury's total award in the underlying tort actions, including postjudgment interest. Dragonfly now appeals the trial court's order granting contribution to CHR. Dragonfly argues that CHR is not entitled to contribution from Dragonfly because the Act creates a right of contribution based upon comparative fault and neither CHR nor Dragonfly were at fault in this case. Rather, each party was a blameless principal that was vicariously liable for the fault of the same agent (Henry). Dragonfly also argues that section 2(e) of the Act bars CHR from seeking contribution from Dragonfly because (1) section 2(e) provides that a tortfeasor who settles with a claimant "is not entitled to recover contribution from another tortfeasor whose liability is not extinguished by the settlement" (740 ILCS 100/2(e) (West 2014)) and (2) the three plaintiffs each settled with CHR without expressly releasing Dragonfly from liability. In the alternative, Dragonfly argues that, even if CHR was entitled to contribution, the trial court erred in awarding

postjudgment interest as part of the contribution award because such interest is not collectable under the Act.

¶ 3 CHR argues that the trial court's judgment should be affirmed because Dragonfly admitted both negligence and fault at trial, thereby acknowledging that it was directly liable for its own negligence, not merely vicariously for Henry's negligence. Moreover, CHR maintains that, even if Dragonfly were liable only vicariously, contribution would still be available against Dragonfly under our appellate court's reasoning in *Equistar Chemicals, L.P. v. BMW Constructors, Inc.*, 353 Ill. App. 3d 593 (2004).

¶ 4 CHR also cross-appeals the trial court's contribution judgment. In its cross-appeal, CHR argues that the trial court should have granted contribution against Dragonfly for 100% of the tort judgments (instead of the 50% awarded by the trial court) because Dragonfly's admissions of fault and governing federal regulations made Dragonfly 100% responsible for the judgments. In the alternative, CHR contends that, because Henry's portion of the common liability is "uncollectable," section 3 of the Act (740 ILCS 100/3 (West 2014)) required Dragonfly to pay contribution to CHR for Dragonfly's own liability based on fault plus one half of any share of fault attributable to Henry, including applicable postjudgment interest already paid by CHR.

¶ 5 FACTS

¶ 6 CHR is a logistics company and a federally licensed freight broker that provides a variety of transportation-related services. CHR sells its services to shippers or other customers that need to transport goods and then contracts with licensed motor carriers to transport the goods. In 2004, Jewel Food Stores (Jewel) entered into a delivery contract with CHR under which CHR purchased produce for Jewel, stored it, and then arranged for transportation to Jewel's various grocery stores.

¶ 7 At that time, Henry owned her own semi-tractor and leased it to Dragonfly, a federally licensed motor carrier. Dragonfly gave Henry permission to use Dragonfly's carrier authority to book and deliver loads on her own. On March 29, 2004, Henry contacted CHR and agreed to deliver a load of potatoes from Idaho to CHR's warehouse in Bolingbrook, Illinois, where they would be repackaged and then shipped to various Jewel grocery stores.

¶ 8 On the morning of April 1, 2004, Henry was driving a tractor-trailer containing CHR's potatoes northbound on Interstate 55 en route to Bolingbrook. As she approached Plainfield, Henry noticed that the vehicles ahead of her were not moving. Henry was unable to stop her truck and ran over several vehicles, causing a multiple-car accident. Joseph Sperl and Thomas Sanders died in the collision, and William Taluc sustained serious injuries.

¶ 9 William and Skye Taluc and the estates of Sperl and Sanders sued Henry, Dragonfly, and CHR for wrongful death and personal injuries sustained as a result of Henry's negligence. At trial, Henry admitted negligence and liability, and Dragonfly admitted liability and a "united" negligence with Henry. CHR denied liability and sought contribution from Henry and Dragonfly for any judgment entered against it. The trial court severed CHR's claim for contribution. The principal issue litigated at trial was whether the evidence was sufficient to establish an agency relationship between CHR and Henry, thereby rendering CHR vicariously liable for Henry's negligence under the doctrine of *respondeat superior*. During the instruction conference, CHR submitted a proposed verdict form that would have asked the jury to allocate fault between Henry, Dragonfly, and CHR under section 2-1117 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1117 (West 2008)). The trial court rejected CHR's proposed verdict form. The jury subsequently found that an agency relationship existed between CHR and Henry and entered verdicts in the three consolidated actions totaling $23,775,000, jointly and severally, against

Henry, Dragonfly, and CHR. The trial court subsequently reduced these verdicts by $500,000 in a posttrial order because it found that the plaintiffs had failed to prove conscious pain and suffering of the decedents.

¶ 10 CHR appealed. Our appellate court upheld the jury's finding of an agency relationship between Henry and CHR because the evidence established that CHR had controlled the manner of Henry's work performance in the delivery of the loads it brokered and had also controlled the manner of payment. *Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051, 1056-60 (2011). Our appellate court therefore affirmed the jury's verdicts, as modified, and affirmed the judgment against CHR. *Id.* at 1060-61.

¶ 11 Our appellate court also affirmed the trial court's denial of CHR's proposed verdict form which would have asked the jury to allocate fault between Henry, Dragonfly, and CHR under section 2-1117 of the Code. *Id.* Our appellate court noted that section 2-1117 applies only if the tortfeasors' liability is capable of being legally apportioned. *Id.* at 1060. It held that liability could not be apportioned between CHR and Henry because CHR's liability was premised on the doctrine of *respondeat superior*, not upon any independent act of negligence by CHR. *Id.* In other words, CHR's liability was entirely derivative of Henry's liability; CHR was liable only because its agent (Henry) had acted negligently and caused harm to the plaintiffs and their decedents. As our appellate court explained:

> " 'When an action is brought against a master based on allegedly negligent acts of the servant and no independent wrong is charged on behalf of the master, liability is entirely derivative, being founded upon the doctrine of *respondeat superior*.' [Citation.] A principal found to be vicariously liable is not found to be at fault but, rather, only liable by application of the doctrine of *respondeat superior*. [Citation.] In such cases, there is

only a basis for indemnity, not for apportionment of damages between the principal and the agent. [Citation.]

*** [T]he finding of an agency relationship between CHR and Henry eliminates the possibility of comparing conduct for purposes of apportioning liability. Henry admitted negligence, and the jury found that she was acting as CHR's agent when the accident occurred. CHR was only found liable by application of the doctrine of *respondeat superior*. Since CHR's liability is exclusively derivative, it is not entitled to an allocation or comparison of fault under section 2-1117 of the Code." *Id.* at 1060.

¶ 12 Our appellate court also rejected CHR's argument that the jury should have been instructed to apportion liability between CHR and Dragonfly. Our appellate court found that CHR's argument "ignore[d] the jury's finding of an agency between CHR and Henry." It noted that, once an agency relationship was established, "CHR became entirely liable for Henry's negligent conduct, which was the proximate cause of the accident." Accordingly, our appellate court concluded that "Dragonfly's relationship with Henry *** d[id] not reduce CHR's liability for plaintiffs' damages." Our appellate court noted in passing that Dragonfly's relationship with Henry "may" allow CHR to seek contribution from Dragonfly. Our appellate court said nothing further about contribution, presumably because that issue was not raised on appeal. (As noted above, CHR's contribution claim against Dragonfly had been severed by the trial court and had not been decided by the jury at trial.)

¶ 13 CHR filed a petition for leave to appeal our appellate court's judgment in the Illinois Supreme Court. On September 28, 2011, our supreme court denied CHR's petition.

¶ 14 In October 2011, CHR paid more than $28 million to the three plaintiffs in satisfaction of the judgments entered in favor of each plaintiff, including all of the postjudgment interest that

had accrued on those judgments at that time. Specifically, CHR paid $7 million plus interest to plaintiff Susan Sperl, $8.5 million plus interest to plaintiff Annette Sanders, and $7.775 million plus interest to plaintiffs William and Skye Taluc.[1] Each plaintiff subsequently executed and filed a "Satisfaction of Judgement" stating that the plaintiff had "received full satisfaction and payment from [CHR]" for the judgment entered against CHR and in favor of the plaintiff "plus accrued interest at the lawful rate and costs" and directing the clerk of court to "cancel and discharge the judgment as to CHR."[2]

¶ 15 Thereafter, upon obtaining leave of the trial court, CHR filed an amended consolidated cross-claim (cross-claim) for contribution against Dragonfly. In count I of CHR's cross-claim, CHR alleged that, because CHR had paid the judgments entered against all three of the defendants and was not at fault, CHR had paid more than its *pro rata* share of the judgments and was therefore entitled to contribution from Dragonfly under section 2 of the Act. CHR alleged that Dragonfly was negligent in several respects, including its failure to direct, supervise, and control Henry's driving; its failure to adequately train Henry with respect to speed, braking, maintaining a proper lookout, and other aspects of her driving; and its failure to communicate with Henry regularly during the trip. CHR asked the trial court to determine the level of Dragonfly's fault and to award CHR contribution against Dragonfly accordingly, plus interest.

¶ 16 In count II of its cross-claim, CHR alleged that Dragonfly, Henry, and CHR were found jointly and severally liable for the full amount of the judgments, but that Henry's share was uncollectable. Accordingly, CHR maintained that it was entitled to share with Dragonfly Henry's

---

[1]These amounts reflected the full verdicts as subsequently reduced by the trial court for the plaintiffs' failure to prove damages for conscious pain and suffering of the decedents.

[2]The "Satisfaction of Judgment" filed by plaintiff Susan Sperl directed the clerk to "cancel and discharge the judgment as to [CHR] only" and stated that "[t]his does not release or satisfy the judgment as to DeAn Henry or Luann Whitner-Black[*sic*] d/b/a Toad L. Dragonfly Express."

uncollectable portion pursuant to section 3 of the Act. (740 ILCS 100/3 (West 2010)). CHR asked the trial court to (1) determine the level of Henry's fault and the uncollectable share of her liability based on such fault; and (2) award CHR contribution against Dragonfly accordingly, "based on Dragonfly's vicarious liability and equal share of responsibility, including post judgment interest."

¶ 17 In count III of its cross-claim, CHR alleged that, to the extent Dragonfly's liability was vicarious, CHR still had a right to contribution under Illinois case law. CHR contended that, unless the court ordered contribution from Dragonfly to CHR, "a serious injustice will occur inasmuch as [CHR] will have paid the entire judgments *** and Dragonfly will have paid nothing, despite the fact that both Dragonfly and [CHR] were found to be equally responsible and liable." CHR asked the trial court to determine whether Dragonfly's liability was vicarious and to award CHR contribution accordingly, plus interest.

¶ 18 Dragonfly moved to dismiss CHR's counterclaim. In its motion, Dragonfly argued, *inter alia*, that CHR had failed to state a claim for contribution under the Act because (1) liability and fault could not be apportioned between CHR and Dragonfly under the Act as both defendants were liable only vicariously by virtue of their employment or agency relationship with Henry and both had acted in concert with Henry, rendering each of them entirely liable for Henry's negligence and for the judgments entered against all the defendants, and (2) CHR had "settled" with each of the plaintiffs without obtaining a release in favor of Dragonfly as required by section 2(e) of the Act (740 ILCS 100/2(e) (West 2012)), thereby precluding CHR from obtaining contribution from Dragonfly.

¶ 19 On September 12, 2014, the trial court issued a written order denying Dragonfly's motion to dismiss. In its order, the trial court expressly found that CHR's payment to the plaintiffs "was a satisfaction of the outstanding judgment[s] and not a settlement."

¶ 20 CHR asked the trial court to reassemble and re-empanel the jury to consider the contribution issues raised in its cross-claim. The trial court denied this request for several reasons, including CHR's failure to object to the dismissal of the jury after the trial and its failure to "adequately bring to [the trial court's] attention the need to keep the jury for consideration of the contribution claim."[3] Thereafter, the parties agreed to submit trial briefs on the contribution issues containing references to the trial record so that the trial court could conduct a bench trial on those issues. The court agreed with the parties' conclusion that a trial on the briefs, using the record and transcripts from the underlying trial, "was the best of several imperfect alternatives." However, the trial court cautioned that its inability to observe live witnesses would make credibility determinations more difficult.

¶ 21 After reviewing the parties' written submissions and all of the transcripts from the underlying trial, the trial court issued an order on September 12, 2014. In that order, the trial court rejected Dragonfly's argument that CHR was foreclosed from bringing its claims for contribution and ruled that our appellate court's prior ruling in the case "did not bar the contribution claim." The trial court also ruled that "both CHR and Dragonfly engaged in conduct that equally contributed to the accident at issue." For example, the court noted that, "among other things, CHR exercised significant control over *** Henry and the manner in which she operated her truck" and that Henry, "while acting (at least in part) as Dragonfly's agent, operated the truck

[3]The trial court also found that the jury would "probably not remember the evidence sufficient to consider the contribution claim" given that more than four years had passed since the verdicts were entered. It also noted that the case had received media attention and that the jurors had likely discussed the case with others. Further, after the discussing the matter with its administrative staff, the court opined that at least some of the original jurors "would likely be unavailable to participate for various reasons."

in such a way that led to the death of two people and the catastrophic injury of another." Accordingly, on count I of CHR's cross-claim, the trial court found that Dragonfly and CHR were "equally at fault" for the accident and "should be equally responsible for the damages awarded by the jury." Based on this ruling, the trial court found it unnecessary to reach counts II or III of CHR's cross-claim. However, the court noted that, "even if [it] were to reach those claims, the ultimate result would probably not be appreciably different."

¶ 22 On January 20, 2015, the trial court issued a written "Final Judgment Order" which incorporated the September 12, 2014, order by reference and entered judgment in favor of CHR and against Dragonfly on count I of CHR's cross-claim for contribution in the amount of $14,326,665.54. That amount constituted one half of the judgments paid by CHR to the three plaintiffs, including one half of the accumulated postjudgment interest.

¶ 23 This appeal followed.

¶ 24 ANALYSIS

¶ 25 I. The Availability of Contribution

¶ 26 On appeal, Dragonfly argues that the trial court erred as a matter of law in granting contribution in favor of CHR. Dragonfly maintains that contribution is available under the Act only where there is a basis for comparing fault among joint tortfeasors and where one tortfeasor has paid more than its *pro rata* share of the judgment based upon its relative culpability. Dragonfly argues that, because CHR and Dragonfly were found liable only vicariously (*i.e.*, each was found liable based entirely upon its agency relationship with Henry rather than on any independent negligent conduct of its own), neither party was "at fault," and there is no basis for comparing the relative fault of the parties. Dragonfly further contends that, because Henry's negligent conduct caused the accident and CHR and Dragonfly were each 100% liable for

Henry's negligence, CHR did not pay more than its *pro rata* share of common liability even though it paid the entire judgment. We will uphold the trial court's findings of fact unless they are against the manifest weight of the evidence (*Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 72 (2006)), but we review the trial court's construction of the Act and its ruling on other questions of law *de novo* (*Bueker v. Madison County*, 2016 IL 120024, ¶ 13; *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002)).

¶ 27 Section 2(a) of the Act provides, in relevant part: "[W]here 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them, even though judgment has not been entered against any or all of them." 740 ILCS 100/2(a) (West 2014). However, the next subsection of the Act clarifies that "[t]he right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share." 740 ILCS 100/2(b) (West 2014). "The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability." 740 ILCS 100/3 (West 2014). In other words, a party's "*pro rata* share of the common liability" is "measured by the extent to which his acts or omissions, whatever their nature, proximately caused the injury." *Heinrich v. Peabody International Corp.*, 99 Ill. 2d 344, 349 (1984); see also *American National Bank & Trust Co. v. Columbus-Cuneo-Cabrini Medical Center*, 154 Ill. 2d 347, 354 (1992) ("the Contribution Act is addressed only to the relative culpability of tortfeasors at fault in fact"); *Kerschner v. Weiss & Co.*, 282 Ill. App. 3d 497, 502 (1996) ("Contribution contemplates the distribution of liability for a loss among joint tortfeasors according to each tortfeasor's percentage of relative fault.").

¶ 28 When a principal is held vicariously liable for its agent's conduct (for example, when an employer is held liable for its employee's negligence under the doctrine of *respondeat superior*), the principal is not "at fault in fact." *American National Bank*, 154 Ill. 2d at 354. The principal has not committed any independent tortious act that harmed the plaintiff and that renders the employer directly liable for such harm. Rather, liability for the agent's negligent conduct is imposed upon the principle as a matter of policy based solely upon the principal's relationship with the agent. See, *e.g.*, *Bean v. Missouri Pacific R.R. Co.*, 171 Ill. App. 3d 620, 625 (1988). In such cases, "[o]nly the agent is at fault in fact for the plaintiff's injuries" (*American National Bank*, 154 Ill. 2d at 354); the principal is "blameless" (*id.*). Thus, while the doctrine of vicarious liability may render a principal liable to injured third parties as a matter of policy, the principal "is not thereby considered a wrongdoer and would not be a 'tortfeasor' for purposes of the Contribution Act." *Bean*, 171 Ill. App. 3d at 625; see also *Bristow v. Griffitts Construction Co.*, 140 Ill. App. 3d 191, 194 (1986) ("Under the doctrine of vicarious liability, an employer is held liable to a third party even when the employer is free from all fault. *** [T]he employer is held liable as a matter of policy, but he is not a wrongdoer" or a tortfeasor.). Because the principal's liability is entirely derivative upon the agent's conduct, there is no basis for comparing the principal's "fault" to the agent's fault; the principal is liable to the exact same extent that the agent is liable even though only the agent is at fault in fact. See *Bristow*, 140 Ill. App. 3d at 194 ("The liability of the master and servant for the acts of the servant is deemed that of one tortfeasor and is a consolidated or unified one."); see also *Bean*, 171 Ill. App. 3d at 625. Accordingly, although a vicariously liable principal who pays a judgment may seek *indemnification* from its agent, it may not seek *contribution* from the agent. *American National Bank*, 154 Ill. 2d at 354.

¶29 In this case, CHR, paid the judgments and subsequently sought contribution from Dragonfly. However, like CHR, Dragonfly was found liable for Henry's negligent conduct only vicariously and was not found to be at fault in fact.[4] Thus, Dragonfly stands in the identical position as CHR. Both entities are 100% liable for Henry's negligence by operation of law, but neither party is at fault in fact. The only party shown to be at fault in fact was Henry. (Henry was the only party found to have committed acts or omissions that proximately caused the plaintiffs' injuries.) Thus, for contribution purposes, both Dragonfly and CHR are "blameless" and there is no basis to compare their respective "fault" as required by the Act. Moreover, because Dragonfly and CHR are each 100% liable for the damages caused by Henry, neither would pay more than its *pro rata* share of the common liability even if it paid the entire judgment. Accordingly, under the unique facts presented in this case, (*i.e.*, one principal seeking contribution from another principal where both principals are liable only vicariously for the actions of the same agent who was the sole cause in fact of the accident), the Act provides no remedy.

¶30 CHR argues that the trial court correctly found that contribution was available against Dragonfly because (1) during the underlying trial, Dragonfly repeatedly admitted its own negligence (not merely its vicariously liability for Henry's negligence), (2) our appellate court's statement in its decision affirming the jury's verdict that Dragonfly's relationship with Henry "may allow CHR to seek contribution from Dragonfly" is "law of the case," and (3) in *Equistar*

[4]As shown in greater detail below, Dragonfly admitted liability and a "unified" negligence with Henry based upon its agency relationship with Henry. CHR has not identified any admissions or evidence presented at trial suggesting that Dragonfly was also directly liable for its own independent acts of negligence. Moreover, in its order granting contribution to CHR, the trial court held that Dragonfly had "engaged in conduct that equally contributed to the cause of the accident at issue" because "Henry, while acting (at least in part) as Dragonfly's agent, operated the truck in such a way that led to the death too people and the catastrophic injury of another." Thus, although the trial court imputed Henry's conduct to Dragonfly under the law of agency, it did hold that Dragonfly had engaged in any negligent conduct that contributed to the accident apart from Henry's conduct. Thus, both the jury in the underlying action and the trial court in the contribution action found Dragonfly liable vicariously, not directly.

Chemicals, 353 Ill. App. 3d 593, our appellate court held that a vicariously liable defendant may be held responsible for contribution. We address these arguments in turn.

¶ 31 First, although Dragonfly admitted to "negligence" during the trial, it never admitted that it committed any independent tortious act or omission that caused the plaintiffs' injuries. For example: (1) during her opening statement, Henry's and Dragonfly's counsel stated, "my clients have admitted their negligence," (2) during cross-examination, defendant Black, Dragonfly's owner, acknowledged that she had "conceded [her] negligence," (3) outside of the presence of the jury, counsel for Henry and Dragonfly counsel argued that Henry and Dragonfly should be listed together on the jury verdict forms, rather than separately as two individual defendants, because there had been a "united" admission of negligence and liability and "the same admission of negligence and liability" had been made as to both defendants. (Dragonfly's counsel ultimately prevailed in this argument, and Henry and Dragonfly were listed together on the verdict forms), (4) subsequently, in an argument before the court regarding CHR's contribution claim, counsel for Henry and Dragonfly acknowledged that she had admitted "fault" and "all the negligence" as to the plaintiffs' claim on behalf of Dragonfly and Henry, (5) during closing argument, counsel for Henry and Dragonfly stated that "if my clients [Black] and ** Henry could turn back the hands of time and correct their omissions, their mistakes, their actions, they would." After closing arguments, the trial court instructed the jury that Henry and Black, "doing business as Toad L. Dragonfly Express, have admitted they were negligent, and the negligence was a proximate cause of [the] injuries to the plaintiffs."

¶ 32 These admissions of the "united" negligence of Henry and Dragonfly merely acknowledge that Dragonfly was negligent to the same extent that Henry was. Neither Black nor Dragonfly admitted to performing any negligent acts or omissions, aside from Henry's negligent

driving, that causally contributed to the accident.[5] CHR has not identified any evidence of such conduct that was presented at trial. Counsel for Henry and Dragonfly argued successfully that Henry and Dragonfly should be listed together on the jury verdict forms as "DeAn Henry and Luann Whitner [*sic*] Black d/b/a/ [*sic*] Toad L. Dragonfly Express" because there had been a "united" admission of negligence and liability and "the same admission of negligence and liability" had been made as to both defendants. This admission of a "unified" negligence of Henry and Dragonfly is consistent with an admission of vicarious liability. See *Bristow*, 140 Ill. App. 3d at 194 ("The liability of the master and servant for the acts of the servant is deemed that of one tortfeasor and is a consolidated or unified one."); see also *Bean*, 171 Ill. App. 3d at 625.

¶ 33 Moreover, the jury instructions simply stated that Henry and Black, "doing business as Toad L. Dragonfly Express, have admitted they were negligent, and the negligence was a proximate cause of [the] injuries to the plaintiffs." The jury was not instructed to find Dragonfly negligent if it found that Dragonfly had committed some negligent conduct separate and apart from Henry's negligent driving. Moreover, the jury did not issue a special verdict making any such finding; rather, it merely issued a general verdict against CHR and "DeAn Henry and Luann Whitner [*sic*] Black d/b/a/ [*sic*] Toad L. Dragonfly Express." Similarly, the trial court's ruling on CHR's contribution claim is not based on any finding of independent "fault" or negligence by Dragonfly aside from Henry's fault, which was ascribed to Dragonfly. Although the trial court stated that CHR and Dragonfly "engaged in conduct that equally contributed to the cause of the

[5]CHR argues that Dragonfly admitted to such actions or omissions when it failed to answer the final amended complaints filed by the plaintiffs, which contained allegations of independent negligence by Dragonfly. However, the final versions of the Sanders and Taluc complaints alleged that Dragonfly was liable for Henry's conduct under an agency theory and did not allege any independent negligent conduct by Dragonfly. The final version of Sperl's complaint ("Sperl's Fourth Amended Complaint") did allege independent negligent acts or omissions by Dragonfly. However, Dragonfly filed an Answer to that complaint that explicitly denied those allegations. CHR does not point to any specific allegations of negligent conduct by Dragonfly in any of the plaintiffs' operative complaints that were not denied by Dragonfly.

accident," it did not identify any independent acts of negligence by Dragonfly. The only example the court provided of any conduct by Dragonfly that "contributed to the cause of the accident" was Henry's operation of the truck while acting as Dragonfly's agent. Thus the trial court, like the jury, appeared to predicate Dragonfly's "fault" and liability entirely upon Henry's conduct under a theory of vicarious liability.

¶ 34 In sum, despite its many admissions of "united negligence" with Henry, Dragonfly never admitted that it was at fault in fact for the accident, and neither the jury nor the trial court so held.[6]

¶ 35 CHR also argues that the availability of contribution from Dragonfly was established as "law of the case" in our appellate court's previous decision affirming the jury's verdict against CHR. We disagree. "[T]he law of the case doctrine bars relitigation of an issue previously decided in the same case." *Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006); see also *First Chicago Insurance Co. v. Molda*, 2015 IL App (1st) 140548, ¶ 34. However, the issue of whether CHR could seek contribution from Dragonfly was not decided in the prior appeal. That appeal addressed only two issues: (1) whether the jury had properly found that Henry was acting as CHR's agent at the time of the accident and (2) whether the trial court had properly rejected CHR's proposed verdict form which would have asked the jury to allocate fault between Henry, Dragonfly, and CHR under section 2-1117 of the Code. The issue of contribution was not raised in the prior appeal because it had not been decided during the trial proceedings that were the subject of the appeal. As noted, the trial court had severed CHR's contribution claim prior to trial and CHR did not object when the jury was dismissed without deciding CHR's contribution

[6]Assuming *arguendo* that the trial court's contribution judgment included a finding that Dragonfly was at fault in fact for the accident, such a finding would be against the manifest weight of the evidence. The contribution action was based entirely upon the evidence presented during the underlying trial, and CHR identifies no evidence presented at trial of any independent acts of negligence by Dragonfly.

claim. CHR's contribution claim was litigated and decided by the trial court only after our appellate court issued its prior decision in this case. Thus, our appellate court did not and could not have decided the contribution issue during the prior appeal. Although our appellate court's prior decision noted in passing that Dragonfly's relationship with Henry "may" allow CHR to seek contribution from Dragonfly, that statement was merely *obiter dictum* that cannot serve as law of the case.

¶ 36 CHR also argues that, in *Equistar Chemicals*, our appellate court "reject[ed] *** [the] argument that a vicariously liable defendant cannot be held responsible for contribution." In *Equistar Chemicals*, the plaintiff was injured while working at defendant Equistar's premises when he was struck by a truck driven by one of the plaintiff's coworkers (Bromberek). The plaintiff sued both Bromberek and Equistar for negligence. The plaintiff alleged that Bromberek was negligent in his driving and that Equistar was negligent "in connection with the condition of the premises on which the injuries occurred." *Equistar Chemicals*, 353 Ill. App. 3d at 595. Equistar filed a third-party claim for contribution against Bromberek and BMW Constructors, Inc. (BMW), Bromberek's and the plaintiff's employer. *Id.* Equistar's complaint alleged that BMW was both directly liable for its own alleged negligence and vicariously liable for Bromberek's alleged negligence. Bromberek moved to dismiss Equistar's complaint because the complaint alleged that Bromberek and the plaintiff were both employees of BMW at the time of the accident and the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2002)) provides the exclusive remedy for workplace negligence actions filed against coemployees. *Equistar Chemicals*, 353 Ill. App. 3d at 595. Before the trial court ruled on Bromberek's motion, Bromberek settled with the plaintiff for $5000 in exchange for a full and complete release of Bromberek and his insurer. The settlement agreement did not release BMW. Thereafter, BMW

moved for summary judgment as to Equistar's contribution claim, arguing (*inter alia*) that the plaintiff's settlement with Bromberek extinguished BMW's purported vicarious liability for Bromberek's negligence. *Id.* at 596.The trial court granted BMW's motion.

¶ 37 Our appellate court reversed. Our appellate court began its analysis by noting that section 2(c) of the Act provides that a settlement between a plaintiff and one of several joint tortfeasors " 'does not discharge any of the other tortfeasors from liability *** unless its terms so provide.' " *Id.* at 600 (quoting 740 ILCS 100/2(c) (West 1994)). Our appellate court noted that the settlement between the plaintiff and Bromberek did not purport to release BMW. Although our appellate court acknowledged that prior supreme court and appellate court precedent held that a settlement with an agent extinguishes the principal's vicarious liability (see, *e.g.*, *American National Bank*, 154 Ill. 2d at 355; *Bristow*, 140 Ill. App. 3d at 191-92), it ruled that the settlement at issue should not be construed as releasing BMW for several reasons. First, our appellate court found *American National Bank* and *Bristow* distinguishable because each of those cases involved a direct action against a principal in quasi-contract (*i.e.*, a claim for implied indemnification) rather than a contribution claim brought by a third-party plaintiff. *Equistar Chemicals*, 353 Ill. App. 3d at 603. Thus, in *American National Bank* and *Bristow*, the dismissal of the principal upon the settlement with the agent "would affect only the plaintiff's own recovery, potentially limiting it to the amount of the settlement." *Id.* By contrast, in Equistar's case, treating the plaintiff's settlement with Bromberek as extinguishing BMW's vicarious liability would bar Equistar's contribution claim and force Equistar to pay more than its fair share for the plaintiff's injuries. *Id.* Our appellate court held that this would "contraven[e] *** the Contribution Act," which seeks to "eliminat[e] inequity between joint tortfeasors." (Internal quotation marks omitted.) *Id.*

¶ 38 Second, our appellate court held that the "significant" and "dispositive" difference between Equistar's case and *American National Bank* and *Bristow* was the application of the Workers' Compensation Act in Equistar's case. *Equistar Chemicals*, 353 Ill. App. 3d at 597-98, 603-04. The Workers' Compensation Act "subsume[s] the negligence of a coworker into the [workers'] compensation claim against the employer" and "permit[s] only one simplified recovery of prescribed damages payable to the injured employee without consideration of fault." *Id.* at 598. The Workers' Compensation Act bars actions by a worker injured on the job against an allegedly negligent coworker acting within the scope of his employment. *Id.* The Workers' Compensation Act also bars contribution claims by any party against allegedly negligent co-workers. *Id.* Accordingly, there was "no legal basis on which any claim of negligence could be maintained against Bromberek by either [the plaintiff] or Equistar." *Id.* For that reason, our appellate court concluded that allowing the plaintiff's settlement with Bromberek to release the employer [BMW] would "do[ ] an end run around the Workers' Compensation Act." *Id.* Our appellate court noted that these "dispositive" considerations were not implicated in *American National Bank* or *Bristow* because the plaintiffs in those cases "were neither employed by the principal nor coworkers of the person(s) whose actions formed the basis for the vicarious liability claim." *Id.* at 603-04. Accordingly, there was "no need to factor the Workers' Compensation Act into the analysis" in deciding those cases. *Id.* at 604. Our appellate court found that the "interplay" between the Workers' Compensation Act and the Act is what distinguished the case before it from *American National Bank* and *Bristow*. *Id.* at 597.

¶ 39 *Equistar Chemicals* is distinguishable from the case at bar in several material respects. First, this case does not require the application of the Workers' Compensation Act. The plaintiffs in the underlying tort actions were neither employees of Dragonfly nor coworkers of the person

whose actions formed the basis of the vicarious liability claim against Dragonfly (*i.e.*, Henry). Thus the issue that our appellate court identified as "dispositive" in *Equistar Chemicals* is wholly absent here. Second, as explained in greater detail below, this case does not involve the construction and application of a settlement agreement under the Act, as did *Equistar Chemicals*.

¶ 40 Third, *Equistar Chemicals* involved a contribution action brought by a tortfeasor (Equistar) against a principal (BMW) who was vicariously liable for the negligence of *a separate, independent tortfeasor* (Bromberek). Equistar owned the premises where the accident occurred, and it was alleged to have engaged in negligent conduct "in connection with the condition of the premises." Bromberek, on the other hand, was alleged to have acted negligently while driving the truck that struck the plaintiff. Equistar's negligent conduct was therefore entirely separate and distinct from Bromberek's negligent conduct, which formed the basis for BMW's vicariously liability. Accordingly, by seeking contribution from BMW, Equistar was seeking contribution for the fault of a separate tortfeasor (Bromberek) who played a role in causing the plaintiff's injuries that was separate and distinct from the role played by Equistar. In the instant case, by contrast, there is only one tortfeasor who is at fault in fact (Henry), and CHR and Dragonfly are both vicariously liable for that same tortfeasor's negligent conduct. Thus, by seeking contribution against Dragonfly, CHR is seeking contribution for conduct for which it is entirely responsible. In effect, CHR is seeking contribution for the fault or relative culpability of its own agent. The Act does not authorize such a claim. See *American National Bank*, 154 Ill. 2d at 354. Moreover, because its agent was 100% responsible for the accident, CHR would not be required to pay more than its fair share of liability if its contribution claim were barred.[7]

[7]Equistar, by contrast, was not 100% at fault for the harm caused to the plaintiff in *Equistar Chemicals*. Bromberek was also at fault in fact. Thus, unlike CHR, Equistar would have been forced to pay more than its fair share of the common liability if its contribution claim were barred.

¶ 41 Our appellate court expressly limited its decision in *Equistar Chemicals* to the particular facts presented in that case, which included: (1) a settlement with an agent that did not expressly release the agent's principal from liability, (2) an employment relationship between the plaintiff and one of the defendants, which required the court to apply the Workers' Compensation Act, and (3) a third party tortfeasor seeking contribution for the independent negligent acts of a separate tortfeasor. *Equistar Chemicals*, 353 Ill. App. 3d at 597. None of those facts are presented in this case. Accordingly, *Equistar Chemicals* is inapposite and does not support CHR's argument.[8]

¶ 42 In sum, we hold that a principal who is vicariously liable for the negligent conduct of its agent may not seek contribution under the Act against 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. One of the main purposes of the Act is to allocate the plaintiff's damages among the parties fairly "based upon their relative degree of fault." *Corley v. James McHugh Construction Co.*, 266 Ill. App. 3d 618, 624 (1994); see also *Orejel v. York International Corp.*, 287 Ill. App. 3d 592, 599 (1997) (ruling that the Act was enacted to encourage settlements and "allow[ ] for an equitable sharing of damages among tortfeasors according to their relative culpability"). Damages cannot be apportioned according to the parties' relative fault when there is only one torfeasor at fault in fact. In this case, Henry was the only tortfeasor whose negligent acts or omissions caused the plaintiffs' damages. Neither CHR nor Dragonfly were at fault in fact, and both CHR's and

[8] *Ramsey v. Morrison*, 175 Ill. 2d 218 (1997), another case upon which CHR relies, also involved an employment relationship between the underlying plaintiff and the contribution defendant. Moreover, as in *Equistar Chemicals*, the contribution claim was brought by a third party tortfeasor against the plaintiff's employer, which would have been vicariously liable for the alleged negligent driving of the plaintiff's coworker. Thus, in *Ramsey*, as in *Equistar Chemicals* (and unlike this case), the fault of the party seeking contribution was separate and distinct from the fault of the agent, and both parties separately contributed to the plaintiff's injuries.

Dragonfly's liability was entirely derivative of Henry's conduct. Thus, CHR is not entitled to contribution from Dragonfly under the Act.

¶ 43 The dissent suggests that *American National Bank* supports a contrary conclusion. *Infra* ¶ 64. As the dissent notes, near the end of its opinion in *American National Bank*, our supreme court observed, "[p]arenthetically," that the Act should apply to settlements between a principal and a third-party plaintiff because "[s]uch a settlement has the effect of creating, in the blameless principal, an interest indistinguishable from the contribution interests of the 'other tortfeasors' at fault in fact." *American National Bank*, 154 Ill. 2d at 355. In my view, however, the dissent takes this statement out of context and misinterprets it.

¶ 44 As an initial matter, because *American National Bank* addressed the effect of a settlement between an *agent* and a plaintiff, the supreme court's passing, "parenthetical" statement regarding the potential effect of a settlement between a *principal* and a plaintiff is merely *obiter dictum* that is not binding law.

¶ 45 Moreover, when read in its proper context, the statement at issue does not suggest that contribution should be available in the case at bar. Immediately before making the statement at issue, the supreme court had adopted the *Bristow* rule that "any settlement between the agent and the plaintiff must also extinguish the principal's vicarious liability," regardless of whether the settlement had explicitly released the principal. *Id.* The supreme court adopted this rule as "means to rationally reconcile concerns regarding the effect of settlements in the quasi-contractual [*i.e.*, vicarious liability] context given [the] viability of implied indemnity." *Id.* Specifically, the supreme court was concerned that, "if implied indemnity against an agent is not barred by a plaintiff's settlement with the agent, there is little to encourage the agent's desire to settle. [Citation.] Yet, if implied indemnity is precluded by such a settlement in which the

plaintiff retains all legal claims against the principal, the settlement defeats the purpose of retaining implied indemnity." *Id.* at 354. These concerns do not arise when a *principal* settles with the agent. Accordingly, the supreme court stated that, where a principal settles with a plaintiff, the Act's rule governing settlements (rather than the *Bristow* rule) should apply, *i.e.*, "[t]he release of the agent from liability to the plaintiff, as well as preservation of the principal's implied indemnity claim, depends *** on the agent's being named in the settlement." *Id.* at 355; see also 740 ILCS 100/2(e) (West 2014). Thus, when our supreme court stated that "the Contribution Act should *** apply" in such circumstances, it was referring to the Act's rule regarding the effect of *settlements*, and the application of that rule to a settling principal's indemnification claim against its agent. Our supreme court was *not* suggesting that, where a blameless principal settles with a plaintiff, the principal should be able to obtain contribution from the agent. Any such suggestion would contradict the primary bases for the court's holding in *American National Bank*, namely that (1) "the Contribution Act is addressed only to the relative culpability of tortfeasors at fault in fact" and is therefore "ill-suited to the task of addressing quasi-contractual relationships" like those of principal and agent; and (2) "[i]n cases of vicarious liability, there is only a basis for indemnity, not for apportionment of damages [or comparison of fault] as between the principal and agent." (Internal quotation marks omitted.) *American National Bank*, 154 Ill. 2d at 354. *American National Bank* clearly suggests that contribution should not be available under the facts presented in this case (two principals, both of whom are entirely vicariously liable for the negligence of the same agent, where the agent was the only tortfeasor at fault in fact) because there is no basis to compare fault or apportion damages between the parties. See *id.* at 353-55; see also *Bean*, 171 Ill. App. 3d at 625; *Bristow*, 140 Ill. App. 3d at 194.

¶ 46 The dissent also suggests that our holding in this case is "unjust" and undermines the Act's goals of "equitably enforcing damages among defendants and encouraging settlements." *Infra* ¶¶ 64, 70. However, as our supreme court has made clear, the Act promotes the equitable sharing of damages *among tortfeasors at fault in fact according to their relative culpability*. *Heinrich*, 99 Ill. 2d at 349; *American National Bank*, 154 Ill. 2d at 354. As noted, there is no basis to compare fault or assign relative culpability between CHR and Dragonfly in this case; neither party is at fault in fact, and each is entirely vicariously liable for Henry's negligence. Thus, the Act cannot apply. Although it might seem unjust to hold CHR entirely liable for all the damages caused by Henry, we are bound by the text of the Act and by our supreme court cases interpreting it. It is up to the legislature to create a right of contribution among two or more defendants who are each vicariously liable for the acts or omissions of the same agent. As currently written, the Act provides no such remedy because it explicitly predicates the right of contribution on the comparison of fault among separate tortfeasors, each of whom causally contribute to the plaintiffs' injuries. 740 ILCS 100/3 (West 2014); see also *Heinrich*, 99 Ill. 2d at 349; *American National Bank*, 154 Ill. 2d at 354.[9] We cannot contravene the Act's plain language and our supreme court's construction of the Act in order to advance our own sense of fairness or to promote the policy of encouraging settlements among tortfeasors.

¶ 47 By rejecting CHR's contribution claim in this case, we are not holding that a vicariously liable defendant may never be held liable for contribution. To the contrary, a joint tortfeasor may obtain contribution against a defendant who is vicariously liable for the negligence of its agent so

[9]Our research has uncovered two Restatement sections that authorize contribution among two or more blameless principals who are each vicariously responsible for the conduct of a common agent. See Restatement (First) of Restitution § 99 (1037), and Restatement (Second) of Agency § 317(A)(1) (1958). However, no Illinois court has adopted either of these Restatement provisions, and the legislature did not enact a similar provision in the Act. To the contrary, our supreme court's decision in *American National Bank* and decisions issued by our supreme court and our appellate court in other cases appear to be incompatible with these Restatement sections.

long as the tortfeasor and the agent are both at fault in fact (*i.e.*, so long as the tortfeasor seeking contribution is independently at fault and is not merely vicariously liable for the same agent's negligence).

¶ 48 2. Whether CHR and the Plaintiffs Executed a "Settlement" That Barred Contribution

¶ 49 Because we reverse the trial court's contribution award for the reasons stated above, we do not need to address Dragonfly's alternative argument that CHR was barred from seeking contribution from Dragonfly pursuant to section 2(e) of the Act. However, if we were to address that argument, we would reject it. Section 2(e) provides that "[a] tortfeasor who settles with a claimant pursuant to paragraph (c) is not entitled to recover contribution from another tortfeasor whose liability is not extinguished by the settlement." 740 ILCS 100/2(e) (West 2014). Accordingly, a joint tortfeasor who wishes to settle with the plaintiff must secure the plaintiff's release of the other tortfeasor in order to preserve its contribution rights against that tortfeasor. *State Farm Fire & Casualty Co. v. Jones*, 329 Ill. App. 3d 219, 222 (2002); see also *Dixon v. Chicago & North Western Transportation Co.*, 151 Ill. 2d 108, 116 (1992) (holding that a defendant who settled with the plaintiff was barred from seeking contribution from other defendants who were not parties to the settlement agreement, and ruling that "[a] party that settles may seek contribution only from parties whose liability was extinguished by that same settlement"). Dragonfly argues that CHR was barred from seeking contribution against Dragonfly under section 2(e) because CHR entered into "settlements" with the plaintiffs that did not release CHR from liability.

¶ 50 Dragonfly's argument fails for a simple reason: CHR did not "settle" with any of the plaintiffs. Rather, it entered into satisfactions of judgment with each of the plaintiffs by fully paying the judgments entered in favor of each plaintiff. Each of the documents at issue was

entitled a "Satisfaction of Judgment," and the trial court acknowledged them to be satisfactions, not settlements. They could not have been settlements because they were executed after the judgments were entered and because CHR paid the judgments in full and did not condition payment upon the plaintiffs offering any consideration aside from discharging the judgments. Thus, section 2(e) did not apply, and CHR was not required to secure the plaintiffs' express release of Dragonfly in order to preserve its contribution rights against Dragonfly. In any event, the satisfactions obtained by CHR in exchange for its full payment of the judgments extinguished any potential liability of Dragonfly to the plaintiffs, as contemplated by section 2(e). See *Solimini v. Thomas*, 293 Ill. App. 3d 430, 436 (1997).[10]

¶ 51 3. Whether Postjudgment Interest is Awardable under the Act

¶ 52 Dragonfly also argues that the trial court erred by including in its contribution award the interest that CHR paid on the underlying judgment. Dragonfly maintains that the Act "limits contribution to tort liability," whereas a party's liability for interest "does not arise out of tort, but rather is statutory, and arises out of the judgment." For this reason, Dragonfly contends that interest is not a "common liability" awardable under the Act.

¶ 53 Because we reverse the trial court's contribution award in its entirety, we do not need to address Dragonfly's argument on this issue. However, even if we were to address it, we would reject it. Postjudgment interest accrued on the damages is awarded under the interest on judgment provision of the Code of Civil Procedure as a matter of law. 735 ILCS 5/2-1303 (West 2010); see also *Certain Underwriters at Lloyd's, London v. Abbott Laboratories*, 2014 IL App

[10]Although the "Satisfaction of Judgment" filed by plaintiff Susan Sperl directed the clerk to "cancel and discharge the judgment as to [CHR] only" and stated that it did "not release or satisfy the judgment as to DeAn Henry of Luann Whitner-Black [*sic*] d/b/a Toad L. Dragonfly Express," this does not change the fact that CHR and Sperl executed a satisfaction rather than a settlement. As a matter of law, the full satisfaction provided by CHR discharged all of the defendants' liability to Sperl, including Dragonfly's. See *Solimini*, 293 Ill. App. 3d at 436.

(1st) 132020, ¶ 62 (ruling that "the imposition of statutory interest from the date the final judgment was entered is mandatory"). Statutory interest is " 'made a part of the judgment' " under section 2-1303. *Travelers Insurance Co. v. Robert R. Anderson Co.*, 112 Ill. App. 3d 812, 816 (1983). The jury verdicts were entered against the defendants jointly and severally. Accordingly, if CHR were entitled to contribution, it would be entitled to collect any amount that it paid in excess of its *pro rata* share of the judgment based on its relative culpability, plus any postjudgment interest that had accrued on any such amount from the time the underlying judgment was entered until CHR satisfied the judgment.

¶ 54 4. CHR's Cross-Appeal

¶ 55 In its cross-appeal, CHR argues that trial court's contribution award should have been larger. First, CHR argues that the trial court should have awarded CHR the entire amount of the judgments and interest that CHR paid because (1) our appellate court previously found that CHR was not at fault, whereas Dragonfly admitted fault during the trial court proceedings, and (2) governing federal regulations rendered Dragonfly directly (and not merely vicariously) liable for 100% of the damages caused by Henry. In the alternative, CHR maintains that because Henry's portion of the common liability is "uncollectable," Dragonfly is liable for "its own liability based on fault, plus one half of any share of fault attributable to Henry, including applicable post-judgment interest already paid by [CHR]."

¶ 56 We do not find these arguments to be persuasive. As noted above, Dragonfly did not admit its own independent "fault" at trial; it merely admitted that it was fully responsible for Henry's negligence as a matter of law. Neither CHR nor Dragonfly was at fault in fact. Therefore, their "fault" cannot be compared for purposes of allocating responsibility for damages under the Act.

¶ 57 Moreover, contrary to CHR's contention, the governing federal regulations do not make Dragonfly directly liable for Henry's negligent conduct. Leases between tractor-trailer owners like Henry and federally licensed motor carriers lessees like Dragonfly are governed by 49 C.F.R. § 376.12(c)(1) (2004). That regulation provides, in relevant part, that leases between authorized motor carriers and vehicle owners "shall provide that the *** carrier lessee shall have *exclusive possession, control, and use* of the [leased] equipment for the duration of the lease," and that the carrier lessee "*shall assume complete responsibility for the operation of the equipment for the duration of the lease*." (Emphasis added.) *Id.* Moreover, another governing regulation defines "employee" broadly as "a driver of a commercial motor vehicle (*including an independent contractor while in the course of operating a commercial motor vehicle*), a mechanic, and a freight handler." (Emphasis added.) 49 C.F.R. § 390.5 (2004). Courts have interpreted these provisions as rendering the lessee motor carrier *vicariously* liable for any injuries caused to a third party by the operation of the leased vehicle.[11] However, our research has not uncovered any case holding or implying that a motor carrier lessee is *directly* liable for such injuries. As noted above, Dragonfly admitted that it was 100% vicariously liable for the injuries and deaths caused by Henry's negligent operation of the leased vehicle. Accordingly, the

[11] *Jackson v. O'Shields*, 101 F.3d 1083, 1086 (5th Cir. 1996) (ruling that, if there is an existing lease between an ICC-authorized carrier and an owner of leased equipment and the equipment bears the carrier's ICC placard, then the driver of the equipment will be deemed to be the carrier's "statutory employee" and the carrier will be held "vicariously liable for injuries resulting from the use of the leased equipment"). See also *Morris v. JTM Materials, Inc.*, 78 S.W.3d 28, 38-39 (Tex. App. 2002) ("Because under the [Federal Motor Carrier Safety Regulations] interstate motor carriers have both a legal right and duty to control leased vehicles operated for their benefit, the regulations create a statutory employee relationship between the employees of the owner-lessors and the lessee-carriers," and "an interstate [motor] carrier is vicariously liable as a matter of law" under the governing federal regulations for the negligence of its statutory employee drivers); *Castro v. Budget Rent-A-Car System, Inc.*, 65 Cal. Rptr. 3d 430, 436 (Ct. App. 2007) ("The control and responsibility requirements under federal law render lessee carriers vicariously liable, notwithstanding traditional principles of agency, for injuries sustained by third parties resulting from the negligence of the drivers of leased vehicles." (Internal quotation marks omitted); *Aequicap Insurance Co. v. Canal Insurance Co.*, 693 S.E.2d 863, 866-67 (Ga. Ct. App. 2010).

federal regulation at issue does not change our analysis as to CHR's contribution claim against Dragonfly.

¶ 58 We also reject CHR's argument that it is entitled to contribution from Dragonfly for Henry's purportedly "uncollectable" share of the contribution liability. As CHR notes, section 3 of the Act provides that, if the obligation of one of the joint tortfeasors is uncollectable (*i.e.*, if one of the joint tortfeasors is unable to pay his *pro rata* share of the common liability based upon his or her relative culpability), "the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability." 740 ILCS 100/3 (West 2014). Applying this provision, CHR argues that, because CHR and Dragonfly stipulated that Henry had no personal assets from which any judgment against her could be collected, CHR and Dragonfly should have shared Henry's portion of the common liability, which was "uncollectable."

¶ 59 We disagree. As noted above, CHR is not entitled to contribution because Henry was the only party at fault in fact, and CHR was 100 vicariously liable for Henry's negligent conduct. When CHR paid the damages caused by Henry's negligence, it fully discharged Henry's liability to the plaintiffs based upon Henry's relative culpability (100%). As CHR's agent, Henry had no contribution liability to CHR. See *American National Bank*, 154 Ill. 2d at 354 (ruling that a party that is vicariously liable for the negligent conduct of its agent may not obtain contribution from the agent). Thus, Henry's share of common liability was not "uncollectable"; it was nonexistent. Put another way, for purposes of contribution, Henry was not a separate tortfeasor from CHR. CHR was entirely liable for Henry's obligation by operation of the law of agency. Thus, when CHR fully satisfied the judgment, no portion of the judgment remained "uncollectable" or subject to contribution.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, we reverse the judgment of the circuit court of Will County awarding contribution to CHR, and we remand the case to the circuit court for further proceedings.

¶ 62 Reversed; cause remanded.

¶ 63 JUSTICE SCHMIDT, dissenting.

¶ 64 I agree with the majority's analyses on all issues except the dispositive one: CHR's right to contribution from Dragonfly. The majority's hyper-technical construction of the Act leads to an absurd and unjust result certainly not intended by the legislature. To a large extent, the majority hangs its hat on *American National Bank*, 154 Ill. 2d 347. *Supra* ¶ 27. The issue in *American National Bank* was whether the Act effectively abolished actions for common law implied indemnity for situations involving vicarious liability. The supreme court concluded it did not. *Id.* at 348. The supreme court no doubt stated that reconciliation of certain concerns begins with recognition that the Act is addressed only to the relevance of culpability of tortfeasors at fault in fact. *Id.* at 354. However, the supreme court went on to note: "Parenthetically, we also agree with those commentators that settlements between the principal and the plaintiff merit different consideration. [Citation.] Such a settlement has the effect of creating, in the blameless principal, an interest indistinguishable from the contribution interests of the 'other tortfeasors' at fault in fact. [Citation.] The Contribution Act should therefore apply." *Id.* at 355.

¶ 65 This is such a case that "merit[s] different consideration." *Id.* Additionally, the Act states: "[W]here 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them." 740 ILCS 100/2(a) (West 2014). Both CHR and Dragonfly qualify as persons subject to liability in tort

arising out of the same injury to persons or property, et cetera. Because contribution addresses payment of a common debt, the Act requires only that "the persons seeking contribution and the persons from whom contribution is sought be potentially capable of being held liable to the plaintiff in a court of law or equity." *Vroegh v. J&M Forklift*, 165 Ill. 2d 523, 529 (1995).

¶ 66 If the Act applies only to tortfeasors, CHR and Dragonfly are vicarious tortfeasors. Their tort liability stems from the legal maxim, *qui facit per alium facit per se*, meaning "he who acts through another does the act himself." See 1 William Blackstone, Commentaries *429-30. Although Henry drove the semi that caused this accident, her principals are liable for her tort as if they were driving. Both principals shared a common debt which CHR discharged to Dragonfly's benefit.

¶ 67 With respect to relative culpability under the Act, I believe the majority confuses principals of joint and several liability with the concept of *pro rata* share under the Act. The majority says the Act provides no remedy to blameless principals in cases such as this. This is so, says the majority, because the blameless principal has no relative culpability. *Supra* ¶¶ 28-29.

¶ 68 Henry, CHR, and Dragonfly, under principles of joint and several liability, were each 100% liable to pay the judgment in this case. That does not mean that we have a 300% pie to slice up when talking about *pro rata* shares. While the law is crystal clear that the principal has no right of contribution against his agent, there is no reason in a case such as this (where two principals share a common agent) that the two blameless principals should not share the common liability. As the majority points out, both principals are blameless when it comes to fault in fact. That makes them equally responsible for purposes of contribution. The theory is that as between two tortfeasors, the contribution is not a recovery for the tort but enforcement of an equitable duty to share liability for the wrong done. *Doyle v. Rhodes*, 101 Ill. 2d 1, 14 (1984). Neither

equity nor common sense supports the refusal to apply that same principal to two vicarious tortfeasors (principals). Therefore, pursuant to the Act, CHR and Dragonfly have equal relative culpability; their *pro rata* shares are each 50%. The trial judge did not err in awarding judgment to CHR against Dragonfly for 50% of CHR's payment.

¶ 69 In addressing this dissent, the majority observes that our supreme court "was not suggesting that, where a blameless principal settles with a plaintiff, the principal should be able to obtain contribution from the agent." (Emphasis omitted.) *Supra* ¶ 45. I never said it was. The case before us involves the issue of contribution between two blameless, yet equally liable, principals.

¶ 70 This interpretation of the Act serves its two primary policies: equitably enforcing damages among defendants and encouraging settlements. *BHI Corp. v. Litgen Concrete Cutting & Coring Co.*, 214 Ill. 2d 356, 365 (2005). Furthermore, the majority's rule reduces the incentive in cases like this for one of the principals to step up and quickly pay a judgment or, for that matter, settle a case before the trial court enters judgment. Under the majority's rule, the paying principal would not be entitled to any rights or remedies against a coprincipal that the Act provides.

¶ 71 For these reasons, I respectfully dissent and would affirm the trial court's judgment.

3-15-0097

APPEAL TO THE ILLINOIS APPELLATE COURT, THIRD JUDICAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

SUSAN D. SPERL, Individually and as Executor of the Estate of JOSEPH D. SPERL, Deceased,
Plaintiff,

v.

C.H. ROBINSON WORLDWIDE, INC., C. H. ROBINSON, INC. d/b/a C.H. ROBINSON INTERNATIONAL., C.H. ROBINSON WORLDWIDE – LTL. INC., DeANN HENRY, Individually and d/b/a DH TRANSPORT, MICHAEL SMITH, Individually and d/b/a/ TOAD L. DRAGONFLY EXPRESS, LUANN G. WHITNER-BLACK, Individually and d/b/a TOAD L. DRAGONFLY EXPRESS,
Defendants.

ANNETTE SANDERS, Individually and As Administrator of the Estate of THOMAS S. SANDERS, Deceased,
Plaintiff,

v.

C.H. ROBINSON WORLDWIDE, INC., C. H. ROBINSON, INC. d/b/a C.H. ROBINSON INTERNATIONAL., C.H ROBINSON, INC. C.H. ROBINSON COMPANY, INC., C.H.ROBINSON LP, C.H. ROBINSON WORLDWIDE FOUNDATION, DeAN J. HENRY, LUANN G. WHITNER-BLACK and MICHAEL SMITH, Individually and d/b/a/ TOAD L. DRAGONFLY EXPRESS

Defendants.

C.H. ROBINSON COMPANY, C.H.

Nos. 09 L 05, 04 L 428 and 05 L 512 (Cons)

John C. Anderson, Circuit Judge Presiding

EXHIBIT
1

ROBINSON WORLDWIDE, INC., C.H. ROBINSON INTERNATIONAL, INC. And C.H. ROBINSON WORLDWIDE, LTL, INC.,
Defendants/Counter-Plaintiffs/ Appellees,

v.

TOAD L. DRAGONFLY EXPRESS, INC.
Defendant/Counter-Defendant/ Appellant.

NOTICE OF APPEAL

Defendant/Counter-Defendant/Appellant TOAD L. DRAGONFLY, EXPRESS, INC., by its attorneys, QUERREY & HARROW, LTD., hereby appeals to the Illinois Appellate Court, Third District, from the Final Judgment Order entered on January 20, 2015 (attached hereto as Exhibit A), as well as orders entered on June 7, 2012 (attached here as Exhibit B), May 6, 2013 (attached hereto as Exhibit C), October 8, 2013 (attached hereto as Exhibit D), and September 12, 2014 (attached hereto as Exhibit E), together with any and all interlocutory orders leading to the January 20, 2015 judgment order.

By this Appeal, Defendant/Counter-Defendant/Appellant prays that this Court reverse the judgment order and enter judgment on the Counterclaim in favor of TOAD L. DRAGONFLY EXPRESS, Inc., and to grant such additional relief as the Appellate Court deems appropriate.

Respectfully Submitted,

David M. Lewin

Thomas P. Burke
David M. Lewin
Querrey & Harrow, Ltd.
175 W. Jackson, Suite 1600
Chicago IL 60604
dlewin@querrey.com
Tel: (312) 540-7556
Fax: (312) 540-0578
dlewin@querrey.com
Attorneys for Dean Henry and Luann Whitner Black d/b/a Toad L. Dragonfly Express

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

Susan D. Sperl, Individually and as Executor of the Estate of JOSEPH D. SPERL, Deceased, Plaintiff, vs. C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON, INC., d/b/a C.H. ROBINSON WORLDWIDE-LTL. INC., DeANN HENRY, Individually and d/b/a DH TRANSPORT, MICHAEL SMITH, Individually and d/b/a TOAD L. DRAGONFLY EXPRESS, LUANN G. WHITNER-BLACK, Individually and d/b/a TOAD L. DRAGONFLY EXPRESS, Defendants	No. 2004 L 428 The Honorable John C. Anderson and Michael J. Powers, Judges Presiding
ANNETTE SANDERS, Individually and as Administrator of the Estate of THOMAS S. SANDERS, Deceased, Plaintiff vs. C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON, INC., d/b/a C.H. ROBINSON INTERNATIONAL, C.H. ROBINSON, INC., C.H. ROBINSON COMPANY, INC., C.H. ROBINSON LP, C.H. ROBINSON WORLDWIDE FOUNDATION, DeAN J. HENRY, LUANN G. WHITNER-BLACK and MICHAEL SMITH, Individually and d/b/a TOAD L. DRAGONFLY EXPRESS, Defendants	09 L 05 John C. Anderson and Michael J. Powers, Judges Presiding

1522461.1

WILLIAM TALUC, SKYE TALUC Plaintiffs, vs. C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON COMPANY, (both referred to as C.H. Robinson Worldwide) Defendants, and C.H. ROBINSON COMPANY, INC., C.H. ROBINSON INTERNATIONAL, INC., C.H. ROBINSON WORLDWIDE-LTL, INC., Defendants, and DEAN HENRY, Individually and d/b/a DJ TRANSPORT, MICHAEL R. SMITH, individually and d/b/a TOAD L. DRAGON FLY EXPRESS, LUANN G. WHITENER-BLACK, individually and d/b/a TOAD L. DRAGONFLY EXPRESS, INC., Defendants, C.H. ROBINSON COMPANY, C.H. ROBINSON WORLDWID, INC., C.H. ROBINSON INTERNATIONAL, INC., and C.H. ROBINSON WORLDWIDE LTL, INC., Defendants/Counter-Plaintiffs/Appellees/Cross-Appellants, vs. TOAD L. DRAGONFLY EXPRESS, INC., Defendant/Counter-Defendant/Appellant/Cross-Appellee	)	09 L 812 John C. Anderson and Michael J. Powers, Judges Presiding

NOTICE OF CROSS-APPEAL

PLEASE TAKE NOTICE that Defendants/Counter-Plaintiffs/Appellees/Cross-Appellants C.H. ROBINSON COMPANY, C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON INTERNATIONAL, INC., and C.H. ROBINSON WORLDWIDE LTL, INC. (collectively "Robinson"), by their attorneys, CLAUSEN MILLER P.C., pursuant to Illinois Supreme Court Rule 303(a)(3), hereby cross-appeal to the Appellate Court of Illinois, Third Judicial District, from the order of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, the Honorable John C. Anderson presiding, dated September 12, 2014 (attached hereto as Exhibit A), as made final by the judgment order entered January 20, 2015 (attached hereto as Exhibit B), insofar as it (1) found Robinson and Defendants/Counter-Defendants/Appellants/ Cross-Appellees Toad L. Dragon Fly Express, Inc. and Luann Whitener-Black, individually and d/b/a Toad L. Dragon Fly Express, equally at fault for the underlying traffic collision in Robinson's contribution action; (2) determined that Robinson was not entitled to recover pre-judgment interest in its contribution action; and (3) entered a monetary judgment in favor of Robinson reflecting 50% of claimed damages based on the court's findings of equal fault.

Robinson further cross appeals from the an order of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, the Honorable Michael J. Powers presiding, dated June 7, 2012 (attached hereto as Exhibit C), as made final by the judgment order entered January 20, 2015 (Exhibit B), the Honorable John C. Anderson presiding, striking Robinson's request for an award of prejudgment interest.

Robinson further cross appeals from the an order of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, the Honorable Michael J. Powers presiding, dated January 24, 2012 (attached hereto as Exhibit D), as made final by the judgment order entered January 20,

2015 (Exhibit B), the Honorable John C. Anderson presiding, denying Robinson leave to file Count IV of its proposed Amended Consolidated Crossclaim.

BY THIS CROSS-APPEAL, Robinson will ask the Appellate Court of Illinois, Third Judicial District, to vacate those portions of the orders identified in the preceding paragraphs herein; enter judgment in Robinson's favor for $28,653,331.08, plus pre-judgment interest, plus statutory interest, and for such other and further relief to which Robinson is entitled on appeal as the Appellate Court deems just.

February 18, 2015

Respectfully submitted,

CLAUSEN MILLER P.C.

EDWARD M. KAY
THOMAS H. RYERSON
DON R. SAMPEN
SCOTT R. SHINKAN
MARK J. SOBCZAK (ARDC NO. 6300918)
CLAUSEN MILLER P.C.
10 South LaSalle Street
Chicago, Illinois 60603
(312) 855-1010

Attorneys for Defendants/Counter-Plaintiffs/Appellees/Cross-Appellants

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

Susan D. Sperl, Individually and as Executor of the Estate of JOSEPH D. SPERL, Deceased, Plaintiff, vs. C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON, INC., d/b/a C.H. ROBINSON WORLDWIDE-LTL. INC., DeANN HENRY, Individually and d/b/a DH TRANSPORT, MICHAEL SMITH, Individually and d/b/a TOAD L. DRAGONFLY EXPRESS, LUANN G. WHITNER-BLACK, Individually and d/b/a TOAD L. DRAGONFLY EXPRESS, Defendants	)	No. 2004 L 428 The Honorable John C. Anderson and Michael J. Powers, Judges Presiding
ANNETTE SANDERS, Individually and as Administrator of the Estate of THOMAS S. SANDERS, Deceased, Plaintiff vs. C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON, INC., d/b/a C.H. ROBINSON INTERNATIONAL, C.H. ROBINSON, INC., C.H. ROBINSON COMPANY, INC., C.H. ROBINSON LP, C.H. ROBINSON WORLDWIDE FOUNDATION, DeAN J. HENRY, LUANN G. WHITNER-BLACK and MICHAEL SMITH, Individually and d/b/a TOAD L. DRAGONFLY EXPRESS, Defendants	)	09 L 05 John C. Anderson and Michael J. Powers, Judges Presiding

WILLIAM TALUC, SKYE TALUC Plaintiffs, vs. C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON COMPANY, (both referred to as C.H. Robinson Worldwide) Defendants, and C.H. ROBINSON COMPANY, INC., C.H. ROBINSON INTERNATIONAL, INC., C.H. ROBINSON WORLDWIDE-LTL, INC., Defendants, and DEAN HENRY, Individually and d/b/a DJ TRANSPORT, MICHAEL R. SMITH, individually and d/b/a TOAD L. DRAGON FLY EXPRESS, LUANN G. WHITENER-BLACK, individually and d/b/a TOAD L. DRAGONFLY EXPRESS, INC., Defendants,	)	05 L 812 John C. Anderson and Michael J. Powers, Judges Presiding
C.H. ROBINSON COMPANY, C.H. ROBINSON WORLDWID, INC., C.H. ROBINSON INTERNATIONAL, INC., and C.H. ROBINSON WORLDWIDE LTL, INC., Defendants/Counter-Plaintiffs/Appellees/Cross-Appellants, vs. TOAD L. DRAGONFLY EXPRESS, INC., Defendant/Counter-Defendant/Appellant/Cross-Appellee	)	

AMENDED NOTICE OF CROSS-APPEAL

PLEASE TAKE NOTICE that Defendants/Counter-Plaintiffs/Appellees/Cross-Appellants C.H. ROBINSON COMPANY, C.H. ROBINSON WORLDWIDE, INC., C.H. ROBINSON INTERNATIONAL, INC., and C.H. ROBINSON WORLDWIDE LTL, INC. (collectively "Robinson"), by their attorneys, CLAUSEN MILLER P.C., pursuant to Illinois Supreme Court Rules 303(a)(3) and 303(b)(5), hereby cross-appeal to the Appellate Court of Illinois, Third Judicial District, from the order of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, the Honorable John C. Anderson presiding, dated September 12, 2014 (attached hereto as Exhibit A), as made final by the judgment order entered January 20, 2015 (attached hereto as Exhibit B), insofar as it (1) found Robinson and Defendants/Counter-Defendants/Appellants/ Cross-Appellees Toad L. Dragon Fly Express, Inc. and Luann Whitener-Black, individually and d/b/a Toad L. Dragon Fly Express, equally at fault for the underlying traffic collision in Robinson's contribution action; (2) determined that Robinson was not entitled to recover pre-judgment interest in its contribution action; and (3) entered a monetary judgment in favor of Robinson reflecting 50% of claimed damages based on the court's findings of equal fault.

Robinson further cross appeals from the an order of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, the Honorable Michael J. Powers presiding, dated June 7, 2012 (attached hereto as Exhibit C), as made final by the judgment order entered January 20, 2015 (Exhibit B), the Honorable John C. Anderson presiding, striking Robinson's request for an award of prejudgment interest.

Robinson further cross appeals from the an order of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, the Honorable Michael J. Powers presiding, dated January 24, 2012 (attached hereto as Exhibit D), as made final by the judgment order entered January 20,

2015 (Exhibit B), the Honorable John C. Anderson presiding, denying Robinson leave to file Count IV of its proposed Amended Consolidated Crossclaim.

BY THIS CROSS-APPEAL, Robinson will ask the Appellate Court of Illinois, Third Judicial District, to vacate those portions of the orders identified in the preceding paragraphs herein; enter judgment in Robinson's favor for $28,653,331.08, plus pre-judgment interest, plus statutory interest, and for such other and further relief to which Robinson is entitled on appeal as the Appellate Court deems just.

DATED: February 19, 2015

Respectfully submitted,

CLAUSEN MILLER P.C.

EDWARD M. KAY
THOMAS H. RYERSON
DON R. SAMPEN
SCOTT R. SHINKAN
MARK J. SOBCZAK (ARDC NO. 6300918)
CLAUSEN MILLER P.C.
10 South LaSalle Street
Chicago, Illinois 60603
(312) 855-1010

Attorneys for Defendants/Counter-Plaintiffs/Appellees/Cross-Appellants

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

ANNETTE SANDERS, Plaintiff, vs. DEAN HENRY, et al. Defendants.	No. 09 L 05 Transferred from LaSalle County (No. 2004 L 107) Consolidated
SUSAN D. SPERL, Individually and as executor of the ESTATE OF JOSEPH G. SPERL, Deceased, Plaintiff, vs. DEAN HENRY, et al. Defendants.	No. 2004 L 428 Consolidated
WILLIAM TALUC, Plaintiff, vs. DEAN HENRY, et al. Defendants.	No. 2005 L 812

FINAL JUDGMENT ORDER

This matter coming to be heard for entry of judgment on the Amended Consolidated Crossclaim of Defendants/Counter-Plaintiffs C.H. Robinson Company, C.H. Robinson Worldwide, Inc., C.H. Robinson International, Inc., and C.H. Robinson Worldwide LTL, Inc. (collectively "Robinson"), following bench trial and in accordance with the Court's

memorandum order dated September 12, 2014, which is expressly incorporated and adopted as if fully set forth herein, the Court being fully advised in the premises, finds as follows:

1. Whereas Robinson's Amended Consolidated Crossclaim is in three counts, seeking, respectively, relief in the amount of $28,653,331.08 (Count I); in the alternative, $21,489,998.31 (Count II); and, in the alternative, $14,326,665.54 (Count III);

2. Whereas the Court, in its September 12, 2014 memorandum order determined that, pursuant to Count I of Robinson's Amended Consolidated Crossclaim, Robinson was equally at fault with the crossclaim defendants for the April 1, 2004 accident and equally responsible for damages;

3. Whereas the Court declined to reach Counts II and III of Robinson's Amended Consolidated Crossclaim in its September 12, 2014 memorandum order on grounds that it was unnecessary to do so;

IT IS HEREBY ORDERED:

(a) Judgment is entered on Count I of Robinson's Amended Consolidated Crossclaim in favor of Robinson and against Toad L. Dragonfly Express, Inc. and Luann Whitener-Black, individually and d/b/a Toad L. Dragonfly Express, for the sum total of fourteen million, three hundred twenty-six thousand, six hundred sixty-five dollars and fifty-four cents ($14,326,665.54), such amount being composed as follows:

(i) 50% of the $8,617,000.00 paid by Robinson on October 28, 2011 to the Estate of Joseph Sperl ($7,000,000.00 verdict plus $1,617,000.00 post-judgment interest);

(ii) 50% of the $10,465,945.20 paid by Robinson on October 28, 2011 to the Estate of Thomas Sanders ($8,500,000.00 plus $1,965,945.20 in post-judgment interest);

(iii) 50% of the $9,570,385.88 paid by Robinson on October 28, 2011 to William and Skye Taluc ($7,775,000.00 plus $1,795,385.88 in post-judgment interest).

(b) The amounts set forth in the preceding paragraph do not include pre-contribution judgment interest incurred between the time of Robinson's payments as specified in subparagraphs (i) though (iii) in the preceding paragraph and entry of this Order. Robinson's request for an award of such interest was stricken with prejudice pursuant to the order of this Court dated June 7, 2012. Nothing herein in this order shall be construed as a waiver or forfeiture of Robinson's right or ability to challenge the propriety of the June 7, 2012 order, either before this Court or on appeal. Even notwithstanding the June 2012 order, the Court would find that the request for pre-contribution judgment interest is otherwise improper.

(c) All other relief sought by Robinson is denied per the September 12, 2014 memorandum order.

(d) With all claims having been disposed of as to all parties, this Order represents the final judgment of the Court in this cause.

ENTERED:

1-20-15

Hon. John C. Anderson Date

Order Prepared by:
THOMAS H. RYERSON
DON R. SAMPEN

MARK J. SOBCZAK (ARDC NO. 6300918)
CLAUSEN MILLER P.C.
10 South LaSalle Street
Chicago, Illinois 60603
(312) 855-1010
Attorneys for C.H. Robinson Defendants

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

Annette Sanders, Plaintiff, v. Dean Henry, et al., Defendants.	)	Nos. 09-L-05; 04-L-428 05-L-812 (Cons.)
Susan D. Sperl, Plaintiff, v. Dean Henry, et al., Defendants.	)	
William Taluc, Plaintiff, v. Dean Henry, et al., Defendants.	)	John C. Anderson Circuit Judge
C.H. Robinson Company, et. al., Defendants/Counter-Plaintiffs, v. Toad L. Dragonfly Express, Inc., Defendant/Counter-Defendant.	)	

ORDER

This matter is before the Court for ruling on the contribution claim (pursuant to 740 ILCS 100/0.01 *et seq.*) asserted by CH Robinson and its affiliated entities (collectively, "CHR"), against Luann Whitener Black d/b/a Toad L. Dragonfly Express (collectively, "Dragonfly"). The parties are well aware of the factual background of the case, so the Court will dispense with the necessity of a lengthy discussion. Two procedural points should be revisited, however.

First, when the underlying case was tried before Judge Garrison, he determined, for whatever reason, that it would be appropriate to sever the contribution claim. The jury thus rendered its verdict in the underlying case but was discharged before it could consider the

contribution claim. Eventually, following an appeal (*see Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051 (3d Dist. 2011)), CHR requested that this Court reassemble and re-empanel the jury to consider the question of contribution. On August 20, 2013, the Court denied that request based on several factors including: (1) the absence of any clear and authoritative statute or case law that would squarely address the issue at hand; (2) CHR's failure to object, during the underlying trial, to the discharge of the jury, and its failure to adequately bring to Judge Garrison's attention the need to keep the jury for consideration of the contribution claim; (3) the practical reality that the March 2009 jury would probably not remember the evidence sufficient to consider the contribution claim; (4) the likelihood that the jurors discussed the case with others, combined with the media attention the case received; and (5) the Court's discussions with its administrative staff and its understanding that at least some of the jurors participating in the March 2009 trial would likely be unavailable to participate for various reasons.

Second, and relatedly, the parties agreed that (notwithstanding CHR's request to re-empanel the original jury) the best remaining option for a determination on the contribution issue would be for the parties to submit trial briefs, with references to the record; the Court would then review the briefs and the record, and make a determination regarding allocation of fault and liability. Other options discussed (both in chambers and in open court) included picking a new jury and having the underlying transcripts read to the new jury, putting on an altogether new trial before a new jury, putting on a new bench trial, etc., all of which the parties agreed they did not want to do. The Court agreed with the parties' conclusion that a trial on the briefs, using the record and transcripts from the underlying trial, was the best of

several imperfect alternatives, but cautioned that the inability to observe live witnesses would make credibility determinations more difficult. The parties acknowledged this difficulty but still requested that the Court proceed.

The Court has reviewed the parties' written submissions, including all cited cases and references to evidence adduced at the underlying trial. Further, the Court has reviewed the transcripts from the underlying trial in their entirety. And, while credibility determinations are indeed more difficult to make from a transcript rather than a live witness, the Court still notes that credibility determinations are not completely impossible under such circumstances (similar to the use of evidence depositions at trial) and, indeed, the testimony of some witnesses in the case appeared to be more credible than others in terms of consistency, foundation, and qualifications as a witness.

The Court concludes that both CHR and Dragonfly engaged in conduct that equally contributed to the cause of the accident at issue. For example, and among other things, CHR exercised significant control over Dean Henry and the manner in which she operated her truck. On the other hand, Ms. Henry, while acting as (at least in part) Dragonfly's agent, operated the truck in such a way that led to the death of two people and the catastrophic injury of another.

Accordingly, IT IS ORDERED:

1. The Court rejects Dragonfly's argument that CHR is foreclosed from bringing its claims for contribution. The Court further finds that the appellate court's prior ruling in this case did not bar the contribution claim.

2. On Count I of CHR's Amended Consolidated Counterclaim, the Court finds that Dragonfly and CHR were equally at fault for the April 1, 2004 accident, and should be equally responsible for damages awarded by the jury on March 20, 2009.

3. Based on the Court's ruling on Count I of the Amended Consolidated Counterclaim, the Court need not reach Counts II and III. However, even if the Court were to reach those claims, the ultimate result would probably not be appreciably different.

4. Notwithstanding the foregoing, the Court does not enter final judgment on this date because, given the age of the case and the substantial nature of the underlying award, the Court wishes to make certain that the final judgment contains correct and updated amounts including those relating to costs, interest, etc. Accordingly, the parties are directed to confer in an effort to identify or stipulate to those figures. This matter is continued to September 29, 2014, at 9 a.m., at which time the Court hopes to enter a final judgment consistent with this Order.

Dated: September 12, 2014

ENTERED:

COPY

John C. Anderson
Circuit Court Judge

C1

TRIAL COURT RECORD 2231 (Rev.01/09)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF WILL

APPEAL TO THE THIRD DISTRICT APPELLATE COURT FROM THE TWELFTH JUDICIAL COURT

ANNETTE SANDERS, individually &
as Administrator of the Estate of
Thomas Sanders, Deceased
Plaintiff - Appellee
VS.
DEAN HENRY, Luann Whitner D/B/A
Toad L. Dragonfly Express
Defendant - Appellant

CASE NO. 2009L000005

TRIAL JUDGE JOHN C. ANDERSON

VOLUME 1 OF 40

TRIAL COURT RECORD

THIRD DISTRICT APPELLATE COURT

No. 3-15-0097

PAMELA J MCGUIRE
Clerk of the Circuit Court

C1

Table of Contents

STATE OF ILLINOIS | UNITED STATES OF AMERICA | COUNTY OF WILL

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT

ANNETTE SANDERS, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF THOMAS S. SANDERS, DECEASED
VS.
DEAN HENRY, LUANN WHITNER D/B/A TOAD L. DRAGONFLY EXPRESS, ET AL.

Case Number 2009L000005

TABLE OF CONTENTS

Table of Contents

Table of Contents

Table of Contents

Table of Contents

Table of Contents

Table of Contents

C0000001

PLACITA

2222 (Rev. 01/11)

STATE OF ILLINOIS

UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT

COUNTY OF WILL

PLEAS BEFORE THE HONORABLE JOHN C. ANDERSON one of the Judges of the Twelfth Judicial Circuit Court, WILL County, Illinois at a session of said court begun and held at the WILL County Judicial Center, 14 W JEFFERSON ST in the City of JOLIET, County of WILL and State of Illinois, on the JANUARY 20TH in the year of Our Lord Two Thousand FIFTEEN and of the Independence of the United States of America the Two Hundredth and THIRTY EIGHT and the Admission of Illinois to Statehood the One Hundredth and EIGHTY SIX

PRESENT:

Honorable RICHARD SCHOENSTEDT Judge of the 12th Judicial Circuit Court
PAMELA J MCGUIRE Clerk of the Circuit Court
JAMES GLASGOW State's Attorney
MIKE KELLEY Sheriff

ATTEST:

PAMELA J MCGUIRE Clerk of the Circuit Court

PROCLAMATION having been made by the Sheriff of WILL County, that the Twelfth Judicial Circuit was now in session;

BE IT REMEMBERED, that afterward, to wit; the following among other proceedings were had and entered of record in said Court in the words and figures as follows:

PAMELA J MCGUIRE , CLERK OF THE 12th JUDICIAL CIRCUIT COURT ©
JOLIET , ILLINOIS 60432

C0000001

C1

TRIAL COURT RECORD 2231 (Rev.01/09)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF WILL

APPEAL TO THE
THIRD DISTRICT APPELLATE COURT
FROM THE
TWELFTH JUDICIAL COURT

123132

SUSAN D. SPERL, Individually and as Executor of the Estate of Joseph D. Sperl, Deceased.
Plaintiff - Appellee
vs.
C.H. ROBINSON WORLDWIDE
Defendant - Appellant

CASE NO. 2004L000428

TRIAL JUDGE JOHN C ANDERSON

VOLUME 1 OF 43

TRIAL COURT RECORD

THIRD DISTRICT APPELLATE COURT

No. 3-15-0097

PAMELA J MCGUIRE
Clerk of the Circuit Court

C1

Table of Contents

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF WILL
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT

SUSAN D. SPERL, INDIVIDUALLY AND AS THE EXECUTOR OF THE ESTATE OF JOSEPH D. SPERL, DECEASED
VS
DEAN J HENRY, LUANN WHITNER D/B/A TOAD L. DRAGONFLY EXPRESS, ET AL.

Case Number 2004L000428

TABLE OF CONTENTS

Table of Contents

Table of Contents

Table of Contents

Table of Contents

Table of Contents

C1

TRIAL COURT RECORD 2231 (Rev.01/09)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF WILL

APPEAL TO THE
THIRD DISTRICT APPELLATE COURT
FROM THE
TWELFTH JUDICIAL COURT

WILLIAM TALUC & SKYE TALUC
Plaintiff - Appellee

VS
DEAN HENRY, Luann Whitner
D/B/A Toad L. Dragonfly Express
Defendant - Appellant

CASE NO. 2005L000812

TRIAL JUDGE JOHN C. ANDERSON

VOLUME 1 OF 19

TRIAL COURT RECORD

THIRD DISTRICT APPELLATE COURT

No. 3-15-0097

PAMELA J MCGUIRE
Clerk of the Circuit Court

C1

Table of Contents

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF WILL
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT

WILLIAM TALUC & SKYE TALUC
VS
DEAN HENRY, LUANN WHITNER D/B/A TOAD L. DRAGONFLY EXPRESS, ET AL.

Case Number 2005L000812

TABLE OF CONTENTS

Table of Contents

Table of Contents

Table of Contents

Table of Contents

CLERK'S CERTIFICATION OF TRIAL COURT RECORD

PAMELA J MCGUIRE, CLERK OF THE 12th JUDICIAL CIRCUIT COURT ©
JOLIET, ILLINOIS 60432

TABLE OF CONTENTS TO TRIAL TRANSCRIPTS

VOLUME I

VOLUME II

VOLUME III

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

SUSAN D. SPERL, Ind., etc., et al., *Plaintiffs,* v. C.H. ROBINSON WORLDWIDE, INC., et al., *Defendants.*	)	No. 123132
C H. ROBINSON COMPANY, et al., *Appellants,* v. TOAD L. DRAGONFLY EXPRESS, INC., *Appellee.*	)	

The undersigned, being first duly sworn, deposes and states that on May 16, 2018, there was electronically filed and served upon the Clerk of the above court the Brief of Appellants and that on the same day, a pdf of same was e-mailed to the following counsel of record:

Thomas P. Burke
(tburke@querrey.com)
QUERREY & HARROW, LTD.
175 West Jackson Boulevard
Suite 1600
Chicago, Illinois 60604

David M. Lewin
(dmlewin@lewinlg.com)
LEWIN LAW GROUP, PC
175 West Jackson Boulevard
Suite 1600
Chicago, Illinois 60604

Within five days of acceptance by the Court, the undersigned states that he will send to the above court thirteen copies of the Brief bearing the court's file-stamp.

/s/ Don R. Sampen
Don R. Sampen

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Don R. Sampen
Don R. Sampen