

No: 123132

In the
Supreme Court of Illinois

SUSAN D. SPERL, Individually and as Executor of the Estate of
JOSEPH G. SPERL, Deceased, et al.

Plaintiff

v.

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

Defendants.

C.H. ROBINSON COMPANY,

Appellants,

v.

TOAD L. DRAGONFLY EXPRESS

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

**RESPONSE BRIEF OF APPELLEE
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6/19/2018 3:26 PM
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INTRODUCTION

The Appellate Court decision from which this appeal arises is based on a plain reading of the Joint Tortfeasor Contribution Act (“Act”), 740 ILCS 100/1 et seq., and long-standing decisions of this Court. Although the precise facts may not have been previously addressed, the statutory language and case law forming the basis of the Appellate Court decision is well-settled.

ISSUES PRESENTED FOR REVIEW

C.H. Robinson (“CHR”) misstates the two issues on appeal.

The first issue, contribution, is far more specific than CHR’s framing of it. Indeed, the Appellate Court expressly stated: “we are not holding that a vicariously liable defendant may never be liable for contribution.” *Sperl v. DeAn J. Henry*, 2017 IL App (3d) 150097, ¶ 47.

CHR’s framing of the second issue, the admission by Toad L. Dragonfly Express (“Dragonfly”), begs the question. CHR incorrectly assumes an admission of fault by Dragonfly, despite the Appellate Court finding an admission of only vicarious liability for the negligent conduct of its agent, DeAn Henry (“Henry”). *Id.* at ¶ 57.

The issues before this court are as follows:

- (a) Can one principal seek contribution under the Act against 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? *Id.* at ¶ 29.
- (b) Did the Appellate Court err in finding that Dragonfly never admitted that it committed any independent tortious act or omission that caused the plaintiffs’ injuries and was only vicariously liable for the negligent conduct of its agent, Henry? *Id.* at ¶¶ 31-34.

STATUTES INVOLVED

In addition to subsections (a) and (b) of Section 2 and Section 3 of the Act, Section 4 of the Act is relevant to this appeal. Section 4 of the Act provides:

§4. A plaintiff's right to recover the full amount of his judgment from any one or more defendants subject to liability in tort for the same injury to person or property, or for wrongful death, is not affected by the provisions of this Act.

740 ILCS 100/4.

STATEMENT OF FACTS

The facts relevant to this appeal can largely be gleaned from the three prior Appellate Court decisions: *Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051 (2011); *Sperl v. DeAn J. Henry*, 2017 IL App (3d) 150097 and *Carolina Cas. Ins. Co. v. Estate of Sperl*, 2015 IL App (3d) 130294.

On April 1, 2004, Henry was driving a tractor-trailer northbound on Interstate 55 near Plainfield, Illinois, when she noticed that the vehicles in front of her were not moving. *Sperl v. DeAn J. Henry*, 2017 IL App (3d) 150097, ¶ 8. Henry was unable to stop and collided with several vehicles. *Id.* As a result of the collision, Joseph Sperl and Thomas Sanders were killed and William Taluc sustained serious injuries. *Id.* Henry owned the tractor that she was driving and operated it under the federal motor carrier authority of Dragonfly. *Id.* CHR brokered the load Henry was hauling and controlled the manner of her work performance and payment. *Id.* at ¶ 10.

At the time of the accident, Dragonfly was covered by a commercial transportation insurance policy that had been issued to it by Carolina Casualty Insurance Company (“CCIC”). *Carolina Cas. Ins. Co. v. Estate of Sperl*, 2015 IL App (3d) 130294, ¶ 4. The policy contained a combined single liability limit of \$1,000,000 for bodily injury and property damage. (C001724), *Id.* at ¶ 4. In July 2004, CCIC filed a complaint for interpleader for its policy limit.¹ *Id.* at ¶ 5.

After the interpleader action was filed, wrongful death actions were brought on behalf of the estates of Joseph Sperl and Thomas Sanders, and a personal injury action was brought by William and Skye Taluc. *Sperl*, 2017 IL App (3d) 150097, ¶ 9. These

¹ CCIC’s interpleader action is presently pending in the Circuit Court of the 12th Judicial Circuit, Will County, Illinois, Circuit No. 04-CH-1195.

three separate actions, as consolidated for trial in 2009, were brought against Henry, CHR and Dragonfly as a result of Henry's negligence. *Id.* at ¶¶ 1, 9. Henry admitted negligence and liability, and Dragonfly admitted that it was only vicariously liable for Henry's negligent conduct, premised on the agency relationship imposed as a matter of law by the Federal Motor Carrier Safety Regulations.² *Id.* at ¶¶ 9, 29 n.4, 56-57. CHR denied liability and agency. *Id.* at ¶ 9.

The only issue litigated at the trial, other than damages, was whether was whether Henry was the agent of CHR. *Id.* at ¶ 9 During its case-in-chief, CHR voluntarily dismissed with prejudice its claims for implied indemnity against Henry and contractual indemnity against Dragonfly, and preserved only its contribution claim against Dragonfly. (R.2140:23-2141:5), *Id.* at ¶ 9.³ After the close of the evidence and during the jury instruction conference, the trial court severed the contribution claim. (R.2613:19-2617:23), *Id.* at ¶ 9. The trial court also rejected CHR's 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 (735 ILCS 5/2-1117). *Id.* at ¶ 9. The jury subsequently found CHR vicariously liable for Henry's negligent conduct based on agency and issued a joint and several verdict against Henry, Dragonfly, and CHR. *Id.*

CHR appealed, contesting the jury's finding that an agency relationship existed between CHR and Henry and the trial court's denial of CHR's proposed verdict form that would have asked the jury to allocate fault between Henry, Dragonfly, and CHR under section 2-1117 of the Code. *Id.* at ¶¶ 10-11. The Appellate Court upheld the jury's

² 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).

³ CHR moved for leave to file a cross-claim for contribution against Henry, but the trial court denied its motion. (R.2608:23-2612:16).

finding of an agency relationship between CHR and Henry. *Id.* at ¶ 10. The Appellate Court also affirmed the trial court's denial of CHR's proposed verdict form, citing to this Court's decision in *Woods v. Cole*, 181 Ill. 2d 512 (1998) for the proposition that a tortfeasors' liability must be capable of being legally apportioned before there can be an allocation of fault under section 2-1117 of the Code. *Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051, 1060 (2011). The Appellate Court found that "[t]he finding of an agency relationship between CHR and Henry eliminated the possibility of comparing conduct for purposes of apportioning liability. [Citation.]" *Sperl*, 2017 IL App (3d) 150097, ¶ 11. It noted that, once an agency relationship between CHR and Henry was established, CHR became entirely liable for Henry's negligent conduct. *Id.* at ¶ 12.

After the Appellate Court's order affirming the trial court and this Court's denial of CHR's petition for leave to appeal, CHR satisfied the judgments. *Id.* at ¶ 13.

On January 24, 2012, the trial court, over Dragonfly's objection, granted CHR leave to amend its contribution claim against Dragonfly, which it filed on January 30, 2012. (C0005097, C0005102-C0005111).⁴ On March 6, 2012, Dragonfly moved to dismiss CHR's contribution claim. (C0005152-C0005221). The trial court denied Dragonfly's motion to dismiss on June 7, 2012, and subsequently denied Dragonfly's motion for interlocutory appeal of that decision. (C0005290, C0005496). Thereafter, CHR requested that the trial court reopen discovery. (C005496). The trial court denied this request. (C005496). CHR then asked the trial court to reassemble and re-impanel the jury to consider the contribution issues. (C007603-C007606). The trial court also denied

⁴ All record references are to the *Sanders* common law record unless otherwise noted.

this request for several reasons, including CHR's failure to object to the dismissal of the jury after the trial. (C008114).

The trial court conducted a trial on the briefs using the records and transcripts from the trial in the underlying tort action. *Sperl*, 2017 IL App (3d) 150097, at ¶ 20. On September 12, 2014, the trial court issued an order denying Dragonfly's renewed argument that the Appellate Court's prior ruling in the underlying tort action that CHR is not entitled to an allocation or comparison of fault barred its contribution claim. *Id.* at ¶¶ 11, 21. Thereafter, on January 20, 2015, the trial court entered a judgment in 50% of the amounts paid by CHR to the three plaintiffs, including 50% of the accumulated post judgment interest. *Id.* at ¶22.

Dragonfly appealed, arguing that the trial court erred as a matter of law in granting contribution in favor of CHR. *Sperl*, 2017 IL App (3d) 150097, ¶ 26. The Appellate Court agreed. *Id.* at ¶ 61. The Appellate Court found that there is no basis to compare fault or assign relative culpability between Dragonfly and CHR, because both were found only vicariously liable for Henry's negligent conduct and neither is at fault in fact. *Id.* at ¶¶ 29, 46. It found that "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." *Id.* at ¶ 29. Accordingly, the Act provides no remedy. *Id.*

The Appellate Court also rejected CHR's argument that Dragonfly admitted its own negligence, not merely vicarious liability for Henry's negligence at the trial in the underlying tort action. *Id.* at ¶30. It found that "Dragonfly never admitted that it was at fault in fact for the accident, and neither the jury nor the trial court so held." *Id.* at ¶ 34. It

also found that “CHR never identified any admissions or evidence presented at the trial suggesting that Dragonfly was also directly liable for its own independent acts of negligence.” *Id.* at ¶ 29 n.4. It then noted that 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. Additionally, although the final version of Sperl’s complaint did allege such conduct, Dragonfly explicitly denied those allegations in its Answer to that complaint. *Id.* at ¶ 32 n.5.

In sum, the Appellate Court held that “a principal 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.” *Id.* at ¶ 42.

ARGUMENT

I. CONTRIBUTION IS NOT AVAILABLE WHERE LIABILITY CANNOT BE APPORTIONED AMONG DEFENDANTS.

A. *Standard of Review.*

The Appellate Court correctly observed that the availability of contribution is a question of law as raised in this case. *Sperl*, 2017 IL App (3d) 150097, ¶ 26. As such, this court should apply a *de novo* standard. *Eyechaner v. Gross*, 202 Ill.2d 228 (2002); *Lawler v. University of Chicago Medical Center*, 2017 IL 120745. On the second issue, the Appellate Court found that that Dragonfly never made an admission of fault in fact. *Sperl*, 2017 IL App (3d) 150097, ¶ 29. The trial court did not make a finding regarding CHR’s contention that Dragonfly admitted fault in fact. *Id.* at ¶ 34. An abuse of discretion standard applies when reviewing a trial court’s treatment of judicial admissions. *Dremco*,

Inc. v Hartz Construction, 261 Ill. App. 3d 531 (1st Dist.1994). Given that the Appellate Court was the first court to make findings on this issue, the abuse of discretion standard should apply to its findings.

B. *The Appellate Court correctly applied the Act to the facts.*

Although CHR claims the Third District's decision in *Sperl*, 2017 IL App (3d) 150097 is a "matter of first impression," this is not true. The Third District simply applied well settled law to facts. The decision was based on the well-settled concept that a party vicariously liable for the acts of another is not "at fault in fact." *Sperl*, 2017 IL App (3d) 150097, ¶ 28 citing *American National Bank & Trust Co. v. Columbus-Cuneo Cabrini Medical Center*, 154 Ill. 2d 347, 354 (1992). The Contribution Act requires that more than one party be at fault in fact. *Id.* Where only one party is at fault in fact, and two or more parties are vicariously liable for that single party's fault in fact, there is no contribution, as liability cannot be apportioned. *Id.* at ¶¶ 42, 45. The vicariously liable principals and the single at fault in fact agent are all 100% liable. *Id.* As such, there is no right to contribution. Pursuant to Section 4 of the Act, the plaintiff is free to collect the judgment from any of them.

Before the trial court and on appeal, Dragonfly argued that where two defendants are only vicariously liable for the conduct of the same agent, fault cannot be apportioned and each of them is entirely liable for the judgments. *Sperl*, 2017 IL App (3d) 150097, ¶ 18. The Appellate Court ultimately agreed, *Id.* at ¶ 61, and found that both Dragonfly and CHR were 100% liable for Henry's negligence by operation of law, that neither party was at fault in fact, that Henry was the only party shown to be at fault in fact, and that since

Dragonfly and CHR were each 100% liable for the judgment, neither could ever pay more than its *pro rata* share of the common liability. *Id.* at ¶ 29.

The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 216 (2008). The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning. *Id.* The statute should be evaluated as a whole, with each provision construed in connection with every other section. *Id.* The rules of statutory construction require that the court first look at the statutory language itself as the best indication of the intent of the drafters, and where the intent can be ascertained from the statute's language, it will be given effect without resorting to other aids for construction. *Henry v. St. John's Hosp.*, 138 Ill.2d 533, 542 (1990).

The right of contribution is not unfettered. Section 2 of the Act states: "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." 740 ILCS 100/2(b). Section 3 of the Act provides that *pro rata* share is "determined in accordance with relative culpability." 740 ILCS 100/3. Section 4 of the Act provides that "[a] plaintiff's right to recover the full amount of his judgment from any one or more defendants subject to liability in tort for the same injury to person or property, or for wrongful death, is not affected by the provisions of this Act." 740 ILCS 100/4; *Henry*, 138 Ill. 2d at 542.

The legislature's use of the terms "liability" in Section 2 and "culpability" in Section 3 of the Act is significant. Generally, a person injured by the tortious action of another must seek his or her remedy from the person who caused the injury. The

principal-agent relationship is an exception to this general rule. Under the doctrine of *respondeat superior* a principal may be held liable for the tortious actions of its agent, even if the principal does not engage in any conduct which causes the plaintiff's injury. *Lawlor v. N. Am. Corp. of Ill.*, 2012 IL 112530; *Woods v. Cole*, 181 Ill. 2d 512, 517 (1998).

On the other hand, "culpability" for purposes of determining a party's *pro rata* share is fault based. *Heinrich v. Peabody International Corp.*, 99 Ill. 2d 344, 349 (1984) *see also American National Bank & Trust Co.*, 154 Ill. 2d at 354. In *Heinrich*, this Court held that a party's *pro rata* share is determined by "the extent to which his acts or omissions" caused the injury. 99 Ill. 2d at 349. In *American National Bank & Trust Co.*, this Court ruled that the Contribution Act is addressed only to the relative culpability of tortfeasors at fault in fact. 154 Ill. 2d at 354. In cases of vicarious liability in the quasi-contractual context, as here, the principal cannot be one of the "other tortfeasors" to which section 3 refers; the principal is blameless. *Sperl*, 2017 IL App (3d) 150097, ¶ 27.

In *Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051, 1060-1061 (3rd Dist. 2011), the Appellate Court found that liability among the defendants could not be apportioned. It also found that it is impossible to allocate fault between principal and agent. As a result, CHR was 100% liable for the verdicts. Similarly, by admitting agency, Dragonfly was 100% liable for verdicts. The share of each is identical. This Court rejected CHR's petition for leave to appeal those findings. *Sperl*, 2017 IL App (3d) 150097, ¶ 13.

Before the trial court and on appeal of this matter, Dragonfly has argued that where two defendants are only vicariously liable for the conduct of the same agent, fault cannot be apportioned and each of them is entirely liable for the judgments. *Sperl*, 2017

IL App (3d) 150097, ¶18. The Appellate Court ultimately again agreed, *Id.* at ¶ 61, and found that both Dragonfly and CHR were 100% liable for Henry's negligence by operation of law, that neither party was at fault in fact, that Henry was the only party shown to be at fault in fact, and that since Dragonfly and CHR were each 100% liable for the judgment, neither could ever pay more than its *pro rata* share of the common liability. *Id.* at ¶ 29.

Therefore, it is well settled law that a principal may be liable for the acts of the agent, but the principal is not "at fault in fact." *See American National Bank & Trust Co.*, 154 Ill. 2d at 354, *Sperl*, 2017 IL App (3d) 150097, ¶ 28. While these precise facts may have not previously been addressed, the principles governing the court's decision are clear and well established for more than 20 years.

1. *Equistar* and *Ramsey* involved multiple parties at fault in fact and are easily distinguishable.

CHR's reliance on *Equistar Chemicals L.P. v. BMW Constructors, Inc.*, 353 Ill. App. 3d 593 (3rd Dist. 2004) and *Ramsey v. Morrison*, 175 Ill. 2d 218 (1997) is misplaced. Indeed, the Appellate Court found both *Equistar Chemicals* and *Ramsey* easily distinguishable from the instant case in several material respects. Most significantly, both cases involved two separate, unrelated parties that were at fault in fact. *See Sperl*, 2017 IL App (3d) 150097, ¶¶ 36-40 n.7, 41 n.8.

In *Equistar Chemicals*, 353 Ill. App. 3d at 595, the plaintiff employee was struck by a truck driven by a co-employee while working at defendant's premises. He brought a negligence action against his co-employee in connection with his driving and defendant, the premises owner, in connection with the condition of the premises. The premises owner brought a third party claim for contribution against the co-employee and the

employer. Both the co-employee and premises owner were found to be at fault in fact, and the employer was vicariously liable for its driver's negligence. *Id.* at 595-596, 600.

Similarly, in *Ramsey*, 175 Ill. 2d at 220-222, the plaintiff employee was a passenger in a truck driven by a co-employee. He brought a negligence action against defendant, the driver of the car that collided with the co-employee's truck; the driver brought a third party contribution claim against the co-employee and the employer. Both the co-employee driver and the other driver at fault in fact, and the employer was vicariously liable for the driver's negligence. *Id.* at 221-222, 242.

Clearly, this case is not akin to *Equistar Chemicals* or *Ramsey*. The Appellate Court found that "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." *Id.* at 41 n.8 (emphasis added). In this case, the Appellate Court, citing to *American National Bank*, 154 Ill. 2d at 354, correctly held that under the facts presented (*i.e.*, only one tortfeasor (Henry) at fault in fact), CHR and Dragonfly are both vicariously liable for that same tortfeasor's negligent conduct. Therefore, the Act does not authorize a claim for contribution. *Sperl*, 2017 IL App (3d) 150097, ¶ 40.

2. CHR's analysis of Section 3 of the Act is incorrect.

CHR argues that Section 3 of the Act provides a substitute for determining *pro rata* shares. *See* Appellant's Br. at p. 16-17. The only case CHR cites in support of this novel proposition is *American National Bank & Trust Co.*, 154 Ill. 2d at 353-355. However, that case stands for the proposition that the principal has a right of common law implied indemnity against the agent at fault in fact. *Id.* at 354. Here, there are no

implied indemnity or contribution claims pending against Henry. Dragonfly is the sole counterdefendant; contribution is the sole theory of recovery.

Furthermore, this Court also held in *American National Bank & Trust Co.*, 154 Ill. 2d at 353-354, that “[t]he statutory contribution scheme is premised on fault-based considerations” and “the Contribution Act is addressed only to the relative culpability of tortfeasors at fault in fact.” Notably, this Court added that in a case of vicarious liability, “the principal simply cannot be one of the ‘other tortfeasors’ to which Section 3 of the Contribution Act refers. [Citation.] The principal is blameless.” *Id.* at 354.

In the instant case, the Appellate Court correctly rejected CHR’s Section 3 argument, stating that “[a]s CHR’s agent, Henry had no contribution liability to CHR.” *Sperl*, 2017 IL App (3d) 150097, ¶ 59 citing *American National Bank & Trust Co.*, 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). It concluded: “Thus, Henry’s share of common liability was not uncollectible, it was nonexistent.” *Id.* As such, Section 3 of the Act does not apply.

Additionally, as discussed below, the judgment was equally uncollectible against Dragonfly as against Henry. The sole asset available to both Dragonfly and Henry was the CCIC insurance policy that was interplead in Will County less than four months after the accident. *Carolina Cas. Ins. Co.*, 2015 IL App (3d) 130294, ¶¶ 4-5.

3. The dissent and CHR attempt to rewrite the statute.

The dissent concedes that the majority applied the law exactly as it is written. *Sperl*, 2017 IL App (3d) 150097, ¶ 64. While the dissent claimed that the application was “hyper-technical,” the role of the court is to accurately apply the law to the facts

presented. *Id.* The dissenting opinion establishes that the majority opinion was correct. *Id.* Rather than “hyper-technical,” the majority’s decision accurately interprets the statute and the prior decisions on the topic.

Courts interpret the law as written. The dissent prefers that the law be different, and argues that the court should base its opinion on something other than the case law and statutory language. *Id.* at ¶ 68. The dissent seeks to impose liability based on an “equitable duty.” *Id.* Imposing a purportedly equitable solution is not the role of the court when faced with a clear statute. The dissent prefers an improper exercise of judicial authority in place of a clear, unambiguous statute that it considers unfair. However, it is not the role of the Court to rewrite a clear and unambiguous statute.

Following the dissent’s lead, CHR also argues that “equity and settlement considerations” support its position. *See* Appellant’s Br. at pp. 17-18. While it is true that the equitable apportionment of damages and encouragement of settlement are two primary policies of the Act, it is also a reality that in claims involving multiple tortfeasors, there is frequently disparity in their abilities to satisfy a judgment. *See, Antinocelli v. Rodriguez*, 2018 IL 121943. Here, it was stipulated that Henry had no personal assets to satisfy the judgment. The sole asset of Henry and Dragonfly is the \$1 million insurance policy issued by CCIC, which was interplead in Will County in July 2004, and tendered to the plaintiffs in the underlying tort action on multiple occasions. *Carolina Cas. Ins. Co.*, 2015 IL App (3d) 130294, ¶¶ 4-5, 10. The bulk of judgment is therefore uncollectible against both Henry and Dragonfly.

These facts have long been known to CHR, a party to the interpleader action. CHR’s statement in its Brief regarding “the nonpaying defendant’s delay in meeting, or

more likely the outright refusal to meet, its payment obligations” is patently false and misleading. *See* Appellant’s Br. at pp. 17-18. The interpleader action was filed in July 2004, within months of the occurrence. *Id.* at ¶ 5. The basis of the interpleader was that because of the severity of the damages caused, the liability limits of the policy were insufficient to satisfy all of the claims of the potential claimants. *Id.* The reality from day one was that only CHR had the financial wherewithal to settle this case, and refused to do so.

In *Henry*, 138 Ill. 2d at 543, this Court held that the plain meaning of the Contribution Act does not affect the plaintiff’s common law right to collect the full amount of a judgment from any individual tortfeasor who is jointly and severally liable for the plaintiff’s injuries. The plaintiff’s common law right to collect the full judgment from any tortfeasor existed long before the Contribution Act. CHR was aware of that right, aware of this Court’s ruling in *American National Bank & Trust Co.*, and aware that it was the only “deep pocket” defendant, but nonetheless refused to settle the case. CHR is therefore in no position to argue for equity.

II. DRAGONFLY ADMITTED ONLY VICARIOUS LIABILITY, NOT FAULT IN FACT, AND MADE NO CLEAR, UNEQUIVOCAL ADMISSION OF A CONCRETE FACT AT TRIAL.

A. *There are no admissions or evidence of fault in fact by Dragonfly.*

Left with the fact that the Appellate Court has twice found that liability among CHR, Henry and Dragonfly cannot be apportioned, thus making contribution unavailable, CHR claims that Dragonfly admitted fault in fact. *See* Appellant’s Br. at p. 19. In its Brief, CHR lists several alleged “admissions,” all substantially similar, and asserts that these statements are judicial admissions by Dragonfly establishing its “culpability.” *Id.*

For example, in opening statement, counsel said “my clients have admitted their negligence.” (R. 946:9-19).

Judicial admissions are “deliberate, clear, unequivocal statements by a party about a **concrete fact** within that party’s knowledge.” (Emphasis added) *Furniss v. Rennick (In re Estate of Rennick)*, 181 Ill.2d 395, 406-407 (1998); *J.P. Morgan Chase Bank, N.A. v Earth Foods, Inc.*, 238 Ill.2d 455, 475 (2010) (finding that that the defendant repeatedly referring to himself as a guarantor in the pleadings did not constitute a judicial admission in determining whether he was a guarantor or surety). Such admissions must be given meaning consistent with its context and considered in relation to the testimony of other witnesses and their opportunity to observe the facts testified to. *McCormack v. Haan*, 20 Ill.2d 75, 78-79 (1960). Furthermore, “[a] party is not bound by admissions regarding conclusions of law because the courts determine the legal effect of the facts adduced.” *Better Gov’t Ass’n v. Ill. High Sch. Ass’n*, 2017 IL 121124, ¶ 47 citing *J.P. Morgan Chase Bank, N.A.*, 238 Ill.2d at 475.

CHR cannot point to any admission of fault or evidence of any independent acts of negligence by Dragonfly. *Sperl*, 2017 IL App (3d) 150097, ¶¶ 29 n.4, 32 n.5, 34 n.6. The Appellate Court correctly found that “Dragonfly never admitted that it committed any independent tortious act or omission that caused the plaintiffs’ injuries.” *Sperl 2*, ¶31. It noted that “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.” *Id.* at ¶ 32n.5.

The Appellate Court also correctly found that “[t]he 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.” *Id.* ¶ 34n.6. The record is devoid of any specific factual admissions, or evidence of any independent tortious act or omission by Dragonfly that serve as a basis for liability. Indeed, Dragonfly did nothing other than admit that it was only vicariously liable for Henry’s negligent conduct, premised on the agency relationship imposed as a matter of law by the Federal Motor Carrier Safety Regulations. *Id.* at ¶ 57.

1. CHR failed to present evidence when given the opportunity.

CHR laments that at the trial in the underlying tort action it relied on the alleged “admissions,” of Dragonfly, and therefore presented no evidence on Dragonfly’s fault. *See* Appellant’s Br. at p. 20. However, CHR was free to present such evidence. *See Rath v. Carbondale Nursing & Rehab. Ctr., Inc.*, 374 Ill. App. 3d 536, 542 (5th Dist. 2007). It elected not to. CHR’s trial strategy was to focus exclusively on the issue of agency, a strategy that backfired.

CHR cannot overcome its strategic error of voluntarily dismissing with prejudice its claims for indemnity by misapplying the Act. In rejecting CHR’s argument that it is entitled to contribution under the Act, the Appellate Court correctly found that there was never an admission of fault or evidence of any independent acts of negligence by any party other than Henry. *Id.* at ¶¶ 29 n.4, 32 n.5, 34 n.6. Contrary to CHR’s assertion, the Appellate Court determined that there is an admission of fault by Henry, an admission of agency by Dragonfly, and a jury finding of agency against CHR. *Id.* ¶ 9.

The Appellate Court reiterated the holding from its earlier decision in *Sperl*, 408 Ill. App. 3d at 1060: “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*.” *Sperl*, 2017

IL App (3d) 150097, ¶ 11. The Appellate Court further stated: “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.” *Id.* at ¶ 29. The Appellate Court therefore concluded that the Act provides CHR no remedy. *Id.*

2. CHR’s approach is bad policy.

CHR’s argument boils down to the suggestion that by admitting that it was vicariously liable for Henry’s negligent conduct, Dragonfly is more at fault than CHR, which demanded a trial. CHR’s preferred system would cause parties to be reluctant to admit liability, and instead to go to trial over issues not truly contested. Dragonfly was liable for negligence under an agency theory. So was CHR. The only difference was that Dragonfly saved the court and jury the time of making that determination, while CHR demanded pleadings, a trial and an appeal on the issue of agency. For both, however, the outcome was identical. Indeed, both were vicariously liable for the negligent driving of Henry under a theory of common law negligence. Accordingly, there is no basis at law for CHR’s position and it is simply bad policy.

B. *The governing federal regulations make Dragonfly only vicariously liable for Henry’s negligent conduct.*

In its brief, CHR attempts to argue that the Federal Motor Carrier Safety Regulations make Dragonfly directly liable for Henry’s negligent conduct.⁵ *See* Appellant’s Br. at p. 22. Tellingly, CHR has failed to cite any case holding or implying that federally licensed motor carrier lessees like Dragonfly are directly liable for the negligence of tractor-trailer owners like Henry. *Id.* The Appellate Court resoundingly

⁵ 49 C.F.R. § 376.12(c)(1) (2004).

rejected this argument, commenting that “our research has not uncovered any case holding or implying that a motor carrier lessee is directly liable for [injuries caused to a third party by the operation of the leased vehicle].” *Sperl*, 2017 IL App (3d) 150097, ¶ 57.

The Appellate Court correctly held that the governing federal regulations do not make Dragonfly directly liable for Henry’s negligent conduct, noting that courts of other jurisdictions have also long held that federally licensed motor carriers lessees are *vicariously* liable for the negligence of tractor-trailer owners under the governing federal regulations. *Id.* at ¶ 57 n.11. *See Morris v. JTM Materials, Inc.*, 78 S.W. 3d 28, 35 (Tex. App. 2002) (“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.*, 154 Cal. App. 4th 1162, 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)). *See also Schedler v. Rowley Interstate*, 68 Ill. 2d 7, 13 (1977) (finding the carrier-lessee be vicariously responsible to the public for the negligent operation of the leased vehicle).

Clearly the governing federal regulations do not change anything, and the courts that have reviewed this issue have consistently so held. Dragonfly admitted that it was only vicariously liable for Henry’s negligent conduct, premised on the agency relationship imposed as a matter of law by the Federal Motor Carrier Safety Regulations. *Id.* at ¶ 57. Accordingly, there is no basis for CHR’s assertion.

C. *CHR is not entitled to contribution from Dragonfly for Henry's purportedly uncollectable share of the contribution liability.*

The Appellate Court correctly rejected CHR's argument that Section 3 of the Act entitles it to contribution from Dragonfly for Henry's purportedly "uncollectable" share of the contribution liability, which CHR inexplicably argues is either 75% or 50%. *Id.* at ¶¶ 58-59. Notably, CHR's argument ignores that by virtue of its agency relationship with Henry, "CHR was 100[%] vicariously liable for Henry's negligent conduct." *Id.* at ¶ 59. Relying on *American National Bank*, 154 Ill. 2d at 354, the Appellate Court held that a party vicariously liable for the negligent conduct of its agent may not obtain contribution from the agent. *Id.* As CHR's agent, Henry had no contribution liability to CHR because Henry's share of the contribution liability was not "uncollectable;" it was nonexistent. *Id.* Thus, when CHR fully satisfied the judgment, no portion of the judgment remained "uncollectable" or subject to contribution. *Id.* Parenthetically, CHR may have been able to claim indemnity from Henry, but at trial it voluntarily dismissed its indemnity claim with prejudice. (R.2140:23-2141:5), *Id.* at ¶ 45.

The Appellate Court has twice found that the liability of the three defendants is joint and several and not subject to apportionment of damages or comparison of fault. *See Sperl*, 408 Ill. App. 3d at 1060-1061; *Sperl*, 2017 IL App (3d) 150097, ¶ 42. CHR attempts to get around that reality by misconstruing Section 3. This Court should reject that approach for the reasons previously stated by the Appellate Court.

CONCLUSION

CHR laments that as a result of the Appellate court decision, the vicariously liable CHR "stands in a worse position to recover contribution than a defendant found culpable by the jury." *See* Appellant's Br. at p. 25. This statement ignores reality. The jury found

Dragonfly liable, not culpable. Other than assessing damages, the jury made no specific findings regarding Dragonfly. CHR's statement is therefore incorrect.

In reality, CHR painted itself into a corner with its trial strategy. First, it filed contribution counterclaims containing no specific allegations of independent negligent acts or omissions on the part of Dragonfly. Second, it presented no evidence at trial of any independent acts or omissions of Dragonfly that would render it at fault in fact. Third, it voluntarily dismissed with prejudice, a potentially viable contractual indemnity claim against Dragonfly and a clearly viable implied indemnity claim against DeAn Henry. Fourth, after the verdict, it failed to bring to the trial court's attention the need to keep the jury for consideration of the contribution claim.

Having made all of these mistakes, CHR now asks this court to rewrite the Contribution Act and contradict established precedent regarding the Act, joint and several liability and judicial admissions. There is no inequity here. Rather, there are the consequences of bad decisions. The Appellate Court's well-reasoned decision should be affirmed.

WHEREFORE, Defendant-Appellee, Toad L Dragonfly Express, by and through its attorneys, respectfully requests that this Court affirm the Appellate Court's December 6, 2017 opinion reversing the January 20, 2015 judgment of the Circuit Court of Will County. This Defendant further requests any other or additional relief that this Court deems just, equitable or appropriate in the premises.

Respectfully submitted this 20th day of
June, 2018



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CERTIFICATION PURSUANT TO RULES 341(a) and (b)

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 23 pages.



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In the
Supreme Court of Illinois

SUSAN D. SPERL, Individually and as Executor of the Estate of
JOSEPH G. SPERL, Deceased, et al.

Plaintiff

v.

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

Defendants.

C.H. ROBINSON COMPANY,

Appellants,

v.

TOAD L. DRAGONFLY EXPRESS

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

NOTICE OF FILING

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PLEASE TAKE NOTICE that on the 19th day of June, 2018, I submitted for electronic filing **Response Brief of Appellee Toad L. Dragonfly Express** to the Office of the Clerk of the Supreme Court of Illinois and delivered a copy of same to the above named via electronic mail prior to 5:00 p.m. from 175 W. Jackson Blvd, Suite 1600, Chicago, IL 60604.

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PROOF OF SERVICE

Under penalties as provide 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.

DATE:

6/19/18

BY:



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