BROKER DODGES LIABILITY IN ACCIDENT CASE

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Dragna, et al. v. A&Z Transportation, Inc., Great West Casualty Company, and Robel Abdll, 2015 US Dist. Lexis 19766, US Dist. Ct., Middle Dist. LA, February 2015. This case arises out of a motor vehicle accident in Louisiana involving a motor vehicle driven by Plaintiff Dragna, and a tractor trailer driven by Robel, a truck driver employed by A&Z Transportation. At the time of the accident, Robel was enroute to collect a load of freight from BASF, pursuant to KLLM Logistics and A&Z's Broker/Carrier Agreement. Robel was cited for failure to yield while making a left turn. Dragna was not cited for any traffic violations. The extent of the injuries suffered by the Plaintiff Dragna is not set forth in the opinion. KLLM Transport Services, a motor carrier, was unable to furnish equipment to transport the load and, therefore, its broker division, KLLM Logistics Services, hired the motor carrier, A&Z Transportation. Plaintiffs in summary judgment motions argued that KLLM (Broker) was liable on three grounds: (1) Joint venture liability as A&Z's partner, (2) vicariously liable for A&Z's driver's fault, and (3) directly liable for negligently hiring A&Z.

Analyzing the Issue of Vicarious Liability: The Court relied on the Broker/Carrier Agreement between KLLM and A&Z which specifically provided that A&Z would be an independent for-hire contract carrier and shall not act as an agent or employee of KLLM. In addition, the contract provided that A&Z had to provide equipment at its own expense, assume and pay all costs and expenses of transportation, and provide its own equipment and drivers. The Court opined that "in large measure the relationship was determined by the terms of the contract itself." The Court goes on to state that operational control exists only if the principal has direct supervision over the step-by-step process of accomplishing the work such that the contractor is not entirely free to do the work its own way. The record disclosed that KLLM did not employ, discipline, fire, pay or compensate A&Z drivers, was not involved in training them, qualifying, or instructing them how to perform their jobs. Plaintiffs argued that since A&Z drivers had to make check calls, call in the event of an emergency or be subjected to fines, was tantamount to operational control. The Court found that the KLLM check calls requirement did not constitute the exercise of operational control over to A&Z and KLLM was therefore not liable on the basis of vicarious liability.

Analyzing the Existence of a Joint Venture: The Court found that there was no joint venture because there was no contractual arrangement whereby there was a showing of any intent to share profits, share risks or losses, and in fact the contract specifically provided that the

entities intended to create an independent contractor relationship and nothing more. Thus, the Court found that there was no joint venture.

Analyzing Liability for KLLM for Negligent Hiring: Under Louisiana law, the Plaintiff had to prove that KLLM had knowledge, at the time of hiring the carrier, that the carrier was "irresponsible". Evidence showed that when KLLM hired A&Z, it reviewed the Carrier 411 Internet site, checking for fraud prevention, roadside inspections, SMS basic scores, FMCSA carrier safety ratings, and FMCSA insurance requirements and policy coverage. In addition, a representative of KLLM testified that she had checked the Certificate of Liability Insurance, that KLLM complied with its own internal motor carrier selection policy, that A&Z had a current valid motor carrier authorization from the FMCSA, an "unrated" carrier safety rating, basic scores, and had no fraudulent activity or negative reports. Plaintiff argued that: KLLM hiring A&Z when it knew that A&Z had an "unrated" safety rating, with three above threshold basic scores without conducting more research, fell below the reasonable care standard required of brokers; because A&Z was "unrated", and that KLLM knew that three basic scores were above threshold level in the following categories, unsafe driving, 83.9; fatigue driving, 82.1; and vehicle maintenance, 94.8, and knowing those three basic scores showed that KLLM had direct knowledge of A&Z's poor above threshold performance and therefore KLLM should have conducted further investigation into A&Z's safety; and had KLLM complied with its own internal policies, it would not have hired A&Z. The Court rejected Plaintiff's claims stating that it was undisputed that federal regulations did not prohibit motor carriers from hiring carriers that are "unrated", and the fact that A&Z had such a rating was not evidence that A&Z was an "irresponsible" motor carrier under Louisiana law. Furthermore, the record did not show any evidence demonstrating that KLLM knew of any history of A&Z that would show it was "irresponsible". The Court stated that had KLLM Logistics conducted a more in-depth review of A&Z's basic scores, the ultimate outcome of the selection would not have been any different. Most importantly, the Court indicated that the record evidence established that the basic scores were not indicative of motor carrier safety. Thus, KLLM was not held liable under the theory of negligent hiring.

The reason for reporting this case, and the most important "take away" in view of all the controversy in the trade concerning CSA scores, is the Court's statement that "the Basic scores are not indicative of motor carrier safety." It is important to bear in mind that the Court's

opinion did not occur in a vacuum, and that with no evidence produced by Plaintiff of A&Z being an unsafe carrier, the significance of the CSA scores, standing alone, were of little significance.

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