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COZEN O'CONNOR

Bill Introduced to Congress Which Establishes National Hiring Standards for Motor Carriers

The recent introduction of H.R. 4727 in the House of Representatives marks the first step toward insulating freight brokers and third-party logistics providers (3PLs) from claims by plaintiffs who seek an alternate source for recovery when a motor truck carrier's insurance is insufficient to cover the damages that are alleged.

Since the ruling in *Schramm v. Foster*, 341 F. Supp. 2d 536 (D. Md. 2004), 3PLs and freight brokers have been potential targets in serious cases, usually involving death and/or catastrophic injuries, that arise out of accidents involving federally licensed motor carriers while transporting cargo arranged through the freight broker or 3PL. Until the *Schramm* decision, a broker's duty was one of reasonable care that was usually satisfied if the broker confirmed the motor truck carrier it hired was (1) authorized by the Federal Motor Carrier Safety Administration (FMCSA); (2) carried the regulatory mandated minimum insurance coverage; and (3) the broker knew, or with reasonable care could ascertain, that the carrier was competent. However, the *Schramm* decision looked to Maryland state law, which allowed an employer to be held liable in the "selecting, instructing or supervising" of a contractor. The court went on to find that the 3PL in that case, C.H. Robinson (CHR), held itself out as providing "one point of contact" service to its shipper clients, and that this was sufficient under Maryland law to require CHR to use reasonable care in selecting the truckers it engages. The court also found that imposing a common law duty upon 3PLs to use reasonable care in selecting carriers furthers a critical federal interest, i.e., protecting drivers and passengers on the nation's highways. The court went on to hold that this obligation included "subsidiary" duties, including (1) checking the safety statistics and evaluations of the carriers available on the SafeStat Database maintained by the FMCSA, and (2) maintaining internal records of the persons/entities with whom it contracts to assure that they are not manipulating their business practices in order to avoid unsatisfactory SafeStat ratings.

The potentially serious ramifications that could flow from application of the principles articulated in *Schramm* were made clear in subsequent cases. One such example is *Sperl v. Henry, et al*, 408 Ill.App.3d 1051, 946 N.E.2d 463 (3rd. Dist. 2011), another case in which CHR was the freight broker. In that case, the Illinois Appellate Court upheld a $23.7 million damages award against CHR for a multivehicle accident caused by the driver of a tractor trailer who lost control of her truck and rear-ended multiple vehicles, causing the deaths of two individuals and serious injuries to another. The motor carrier and truck driver admitted liability but had limited insurance coverage, leaving CHR as the primary defendant. In rejecting its claim that the trucker was an independent contractor for which CHR was not responsible, the trial court found that an agency existed because CHR dispatched the driver, the driver had constant communication with CHR, and the driver knew that CHR would impose fines for missed calls and late deliveries. The case was affirmed on appeal, primarily because the court found that CHR controlled the driver's performance.

H.R. 4727, which bears the moniker "To Enhance Interstate Commerce by Creating a National Hiring Standard for Motor Carriers," was introduced in the House of Representatives on May 22, 2014. The bill purports to establish national hiring standards for motor carriers and, if these standards are followed, place limitations on the availability of state law to impose liability on the broker or 3PL that hired the carrier. The bill provides, in part, that "a state may not enforce a law or impose liability on an entity that hires a motor carrier for the transportation of property or household goods if such liability arises from a claim or cause of action related to the negligent selection of such motor carrier under common law, statutory law, or any rule, regulation, standard or provision having a force of law, for personal injury, death, or damage caused to cargo or other property by such motor carrier."

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If the proposed legislation becomes law, an entity hiring a motor carrier could avail itself of this protection if not more than “35 days before the pick-up of a shipment by the hired motor carrier,” it verifies that the motor carrier, at the time of verification: (1) is registered with and authorized by the FMCSA to operate as a motor carrier or carrier of household goods; (2) has the minimum insurance coverage mandated by federal regulations; and (3) does not have an unsatisfactory safety rating issued by the FMCSA at the time of the verification.

H.R. 4727 has the support of the Transportation Intermediaries Association. Although it is intended primarily to protect forwarders and 3PLs, as written it does not appear to be sufficiently broad to afford similar protection to ocean carriers that hire motor carriers to perform the inland leg of intermodal movements.

However, as the bill is in a nascent stage, it remains to be seen how H.R. 4727 will be received by the House.