THE STATUTORY EMPLOYEE DOCTRINE IN TRUCKING CASES

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I. INTRODUCTION

A. Trucking Industry Abuse

Prior to 1956, interstate motor carriers attempted to immunize themselves from liability for negligent drivers by leasing trucks and classifying drivers as independent contractors. Carriers evaded the Interstate Commerce Commission's (ICC) safety regulations and avoided liability for injuries caused by the unsafe operation of the trucks. Under these circumstances, injured third parties had to navigate legal mazes to determine who was responsible to compensate them for their damages, thus delaying their recovery. And usually, their efforts revealed that only an insolvent independent contractor was liable, and the solvent interstate carrier was not. *See, e.g., Transamerican Freight Lines, Inc. v. Brada Miller Freight Sys., Inc*., 423 U.S. 28, 36-38 (1975); *American Trucking Ass'ns v. United States*, 344 U.S. 298, 303-305 (1953); *White v. Excalibur Ins. Co.*, 599 F.2d 50, 52-53 (5th Cir.), *cert denied*, 444 U.S. 965 (1979); *Alford v. Major*, 470 F.2d 132, 134 (7th Cir. 1972); *Kreider Truck Serv., Inc. v. Augustine*, 394 N.E.2d 1179, 1181-1182 (Ill. 1979); *Rediehs Express, Inc. v. Maple*, 491 N.E.2d 1006, 1011 (Ind. Ct. App. 1986), *cert. denied*, 480 U.S. 932 (1987); *Cox v. Bond Transp., Inc*., 249 A.2d 579, 584-586 (N.J. 1969), *cert. denied*, 395 U.S. 935 (1969); *Cincinnati Ins. Co. v. Haack*, 708 N.E.2d 214, 219-223 (Ohio Ct. App. 1997).

B. Purpose of the 1956 Amendments

Congress investigated these abuses and enacted a law enabling the Interstate Commerce Commission to adopt regulations holding motor carriers using leased trucks responsible for them just as if they owned them. *See* 49 U.S.C. § 14102(a)(4) (2001); 49 C.F.R. § 376.12(c)(1)).

In 1956, Congress amended the Interstate Common Carrier Act to require interstate motor carriers to assume full direction and control of the vehicles that they leased as if they were the owners of such vehicles. The purpose of the amendments to the Act was to ensure that interstate motor carriers would be fully responsible for the maintenance and operation of the leased equipment and the supervision of the drivers. The amendments sought to prevent interstate carriers from evading liability through leasing and independent contractor arrangements.

C. Public Policy

The law was designed to correct trucking industry abuses, thereby:

- Protecting the motoring public from insolvent independent contractors by assuring that financially solvent interstate motor carriers were liable for injuries caused by leased trucks. *See, e.g., Transamerican*, 423 U.S. at 37; *Price v. Westmoreland*, 727 F.2d 494, 496 (5th Cir. 1984); *Rodriguez v. Ager*, 705 F.2d 1229, 1233 (10th Cir. 1983); *White*, 599 F.2d at 52; *Rediehs,* 491 N.E.2d at 1011; *Empire Fire and Marine Ins. Co. v. Liberty Mut. Ins. Co.*, 699 A.2d 482, 501 (Md. Ct. Spec. App.), *cert. denied*, 703 A.2d 148 (1997); *Matkins v. Zero Refrigerated Lines, Inc*., 602 P.2d 195, 200 (N.M. Ct. App. 1979).

- Ensuring compliance with the ICC's safety regulations. *See, e.g., Transamerican*, 423 U.S. at 41; *American Trucking*, 344 U.S. at 305 and 310; *Prestige Cas. Co. v. Michigan Mut. Ins. Co.*, 99 F.3d 1340,1342 (6th Cir. 1996); *Rodriguez*, 705 F.2d at 1232; *Carolina Cas. Ins. Co. v. Insurance Co. of N. Am.*, 595 F.2d 128, 137 (3rd Cir. 1979); *Mellon Nat'l Bank & Trust Co. v. Sophie Lines, Inc*., 289 F.2d 473, 477 (3rd Cir. 1961); *Reliance Nat'l Ins. Co. v. Royal Indem. Co.*, No. 99 Civ. 10920 NRB, 2001 WL 984737 at *7 (S.D.N.Y. Aug. 24, 2001); *Rediehs*, 491 N.E.2d at 1010; *Empire Fire v. Liberty Mut.*, 699 A.2d at 501; *Denver Midwest Motor Freight, Inc. v. Busboom Truck, Inc*., 207 N.W.2d 368, 370 (Neb. 1973). This includes those relating to the drivers' physical condition. *See Cox*, 249 A.2d at 588. It also

includes familiarity with the federal motor carrier safety regulations. *See American Trucking*, 344 U.S. at 308; *Alford*, 470 F.2d at 134.

- Eliminating confusion over who is financially responsible for compensating injured motorists by fixing that responsibility on the interstate carrier. *See, e.g., Transamerican*, 423 U.S. at 37; *Prestige Cas*., 99 F.3d at 1342*; Carolina Cas*., 595 F.2d at 137; *Reliance Nat'l*, 2001 WL 984737 at *7; *Kreider*, 394 N.E.2d at 1181; *Rediehs*, 491 N.E.2d at 1011; *Denver Midwest*, 207 N.W.2d at 370; and,

- Ensuring that interstate motor carriers would oversee the operation of their leased vehicles, including driver supervision and equipment maintenance. *See, e.g., Transamerican*, 423 U.S. at 41; *Prestige Cas*., 99 F.3d at 1343; *Proctor v. Colonial Refrigerated Transp., Inc*., 494 F.2d 89, 92 (4th Cir. 1974); *Simmons v. King*, 478 F.2d 857, 867 (5th Cir. 1973) ("One way to assure responsibility was to impose on the certified carrier the full responsibility for the entire operation of temporarily leased equipment . . .."); *Alford*, 470 F.2d at 135; *Reliance Nat'l*, 2001 WL 984737 at * 7; *Baker v. Roberts Express, Inc*., 800 F. Supp. 1571, 1574 (S.D. Ohio 1992); *Denver Midwest*, 207 N.W.2d at 370; *Matkins*, 602 P.2d at 200.

The ICC regulations adopted pursuant to this law are to be liberally construed to accomplish these remedial purposes. *Reliance Nat'l*, 2001 WL 984737 at * 4; *Cox*, 249 A.2d at 588.

II. FEDERAL MOTOR CARRIER SAFETY REGULATIONS

As a result of the regulatory authority granted in the Act, the Interstate Commerce Commission issued regulations that require a certificated interstate carrier who leases equipment to enter into a written lease with the equipment owner providing that the carrier-lessee shall have exclusive possession, control, and use of the equipment, and shall assume complete responsibility for the operation of the equipment, for the duration of the lease. 49 C.F.R. 376.11-.12. These regulations are a part of the Federal Motor Carrier Safety Regulations. 49 C.F.R. subch. B.

A. 49 U.S.C. § 14102

49 U.S.C. Section 14102(a)(4) provides:

> The Secretary may require a motor carrier providing transportation subject to jurisdiction under Subchapter I of Chapter 135 that uses motor vehicles not owned by it to transfer property under an arrangement with another party to . . . have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operation and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

B. 49 C.F.R. §376.12

49 C.F.R. Section 376.12(c)(1) states:

> 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.

C. Exclusive Possession, Control, and Use; Complete Responsibility

The regulations limit neither the *actors* nor the *activities* for which the carrier is vicariously liable. Instead, they make the carrier liable for all damages caused by *the operation of the truck*. *See* 49 C.F.R. §376.12(c) (emphasis added); *Simmons*, 478 F.2d at 867 (regulations impose upon the

carrier "full responsibility for the *entire operation*" of leased trucks (emphasis added)).

That means *all the operations* relating to the truck, including maintenance, *see American Gen Fire and Cas. Co. v. Truck Ins. Exch.*, 660 F. Supp. 557, 561 (D. Kan. 1987); *Empire Fire & Marine Ins. Co. v. Ins. Co. of the State of Pennsylvania*, 638 So.2d 102, 104 (Fla. Ct. App.), *cert. denied*, 513 U.S. 1051 (1994); *Rediehs*, 491 N.E.2d at 1012. *See also* 49 C.F.R. § 396.3 (1995) (requiring carriers to systematically inspect, repair and maintain vehicles subject to their control). *Compare Rainbow Express*, 780 S.W.2d at 432 (interpreting Texas statute), driver oversight, qualifications, training, and the like, (as well as the driver's driving the truck) no matter who performs them. *See Transamerican*, 423 U.S. at 38 (purpose of regulations is for carrier to be "in actual charge of the operation" and to have "full operational control and responsibility"); *Prestige Cas*., 99 F.3d at 1342 (ICC regulations govern "all aspects of the non-owned equipment"); *Morey*, 968 F.2d at 498 n. 7 (phrase "operation of equipment" as used in ICC regulations includes more than just driving of the truck; it includes all actions "putting trucks effectively into use."); *Johnson v. S.O.S. Transport, Inc.*, 926 F.2d 516, 523 (6th Cir. 1991) ("The statute mandates that the lessee carrier assume control over the vehicle, and bear responsibility, as it would were it the owner, for any defects in the vehicle or negligence in its operation."); *Price*, 727 F.2d at 496 ("the ICC carrier's liability *for equipment* and drivers covered by leasing arrangements is not governed by the traditional common law doctrine of master-servant relationships and *respondeat superior*." (emphasis added))" *Proctor*, 494 F.2d at 92 ("the intent of the regulations was to make sure that licensed carriers would be responsible in fact, as well as in law, for the maintenance of leased equipment and the supervision of borrowed drivers."); *Simmons*, 478 F.2d at 867 (same as *Price*); *Alford*, 470 F.2d at 135 (same as *Proctor*); *American Gen*., 660 F. Supp. at 561; *Rediehs*, 491 N.E.2d at 1012. *Compare Rainbow Express*, 780 S.W.2d at 432 (interpreting Texas statute).

Accordingly, ICC rules require carriers to inspect the trucks when they take possession, test the drivers' familiarity with the Motor Carrier Safety Regulations, keep accurate records of leased vehicles, *see American Truckin Ass'ns*, 344 U.S. at 308; *Alford*, 470 F.2d at 134, ensure that leased vehicles comply with the ICC's equipment maintenance standards, *see Johnson v. S.O.S. Transport*, 926 F.2d at 521 n.12, and maintain insurance to pay any judgment "resulting from the negligent *operation, maintenance, or use* of [leased] motor vehicles." *See Prestige Cas*., 99 F.3d at 1343 (citing 49 C.F.R. § 1043.1 (a) (1995)) (emphasis added); *Hartford Ins. Co.*, 908 F.2d at 237.

So the majority rule holds the carrier responsible for *all* damages caused by the wreck, whether attributable to the driver or the company that employs him. *See Johnson v. S.O.S. Transport*, 926 F.2d at 523 (ICC regulations make carrier vicariously liable to statutory-employee driver for owner-lessor's negligent maintenance of vehicle); *Rodriguez*, 705 F.2d at 1230 and 1237 (ICC regulations make carrier responsible for the damages assessed against owner-lessor and his employee driver); *Carolina Cas*., 595 F.2d at 133 (carrier responsible for lessor company's percentage of responsibility, though driver was exonerated); *Mellon*, 289 F.2d at 477 (the carrier is held responsible for the operation of leased vehicles "by independent contractors of such certificate holders, their servants and agents."); *Reliance Nat'l*, 2001 WL 984737 at *8 (holding carrier vicariously liable under ICC regulations for negligence of both the owner-lessor and his employee-driver); *Baker*, 800 F. Supp. at 1575 (same as *Reliance Nat'l*); *Toomer v. United Resin Adhesives, Inc*., 652 F. Supp. 219, 228-229 (N.D. Ill. 1986) (explaining that in a "typical case," ICC regulations make carrier vicariously liable for negligence of owner-lessor and his employee driver); *Cosmopolitan*, 336 F. Supp. at 100-101 (due to ICC regulations, carrier's insurance had to pay judgment rendered against owner-lessor or his employee-driver); *Phillips*, 565 So.2d at 67 and 71 (holding that carrier is liable for damages assessed against owner-lessor and his employee-driver if lease was in effect); *Transport v. Carolina Cas.*, 652 P.2d at 135 and 145 (holding carrier's insurance primarily liable for damages assessed in action against owner-lessor and his employee-driver); *Empire Fire v. Truck Ins. Exch.*, 462 So.2d at 79 (during existence of lease, carrier is "deemed to be in possession of the equipment and responsible for the torts of the owner and his agents and employees."); *Holbrooks*, 371 S.E.2d

at 253 (under ICC regulations, carrier is "vicariously liable for the actions of [owner-lessor] and driver . . .."); *Kreider*, 394 N.E.2d at 1181 (lessee vicariously liable for negligence of *company* that owned the trucks); *Rediehs*, 491 N.E.2d at 1012 (holding carrier liable for negligence of owner-lessor and his employee-driver); *Weeks*, 377 A.2d at 447 (holding that owner-lessor may seek indemnification from carrier for amount it paid to settle claims against itself and its employee-driver); *Bankers & Shippers*, 224 S.E.2d at 315 (carrier's insurance responsible to cover claims against owner-lessor and his employee-driver).

Thus, the ICC carrier is not just vicariously liable for the driver's driving the truck; it is liable for all the operations, including maintenance, *see Carolina Cas*., 595 F.2d at 132 (failure to maintain operative brakes); *Empire Fire v. Ins. Co. of the State of Pennsylvania*, 638 So.2d at 104, securing the load, *See Leary*, 549 P.2d at 815 and 818, and driver familiarity and compliance with safety regulations, *See Ronish v. St. Louis*, 621 F.2d 949, 950 (9th Cir. 1980); *Alford*, 470 F.2d at 134, no matter who performs them.

III. THE STATUTORY EMPLOYEE DOCTRINE

Because interstate motor carriers have both a legal right and duty to control leased vehicles operated for their benefit under the FMCSR, the regulations create a statutory employee relationship between the employees of the owner-lessors and the lessee-carriers.

It has been through the application of these laws and regulations that courts have developed and applied a "statutory employee" principle.

A. Principle

The statutory employee principle holds a motor carrier vicariously liable for injuries resulting from a driver's negligent operation of the truck, when three factors are present:

1. the carrier does not own the vehicle;

2. the carrier operates the vehicle, under an arrangement with the owner, to provide transportation subject to the Commission's jurisdiction; and,

3. the carrier does not literally employ the driver.

Mata v. Andrews Transport, Inc., 900 S.W.2d 363, 366 (Tex. App.–Houston [14th Dist.] 1995, no writ); *Barbour Trucking Co. v. State*, 758 S.W.2d 684, 688 (Tex. App.–Austin 1988, writ denied).

IV. ABSOLUTE LIABILITY

The "crushing weight of authority" has held that the regulations impose *absolute* liability upon an interstate motor carrier when the negligent operation of one of its leased vehicles injures a member of the motoring public. *See Harvey v. F-B Truck Line Co.*, 767 P.2d 254, 260 (Idaho 1987).

The doctrine is simple: as long as the injury occurs during the duration of the lease, the carrier is liable as a matter of law. *See, e.g., Price*, 727 F.2d at 496; *Rodriguez*, 705 F.2d at 1231and 1237 (solitary finding that the lease remained in effect established carrier's liability); *Graham*, 948 F. Supp. at 1132; *Johnson v. Pacific Intermountain*, 662 S.W.2d at 242 and 245 (findings that wreck occurred during duration of the lease, that truck was hauling regulated cargo, and that truck bore carrier's ICC insignia establishes liability).

This interpretation was necessitated by the public policy behind the regulations: promoting safety and ensuring that those injured by the negligent operation of motor vehicles get compensated fully, quickly and easily. *See, e.g., Jackson v. O'Shields*, 101 F.3d 1083, 1086 (5th Cir. 1996); *Rodriguez*, 705 F.2d at 1233-1236; *Mellon*, 289 F.2d at 477; *C.C. v. Roadrunner Trucking, Inc*., 823 F. Supp. 913, 918 (D. Utah 1993); *Cosmopolitan*, 336 F. Supp. at 99; *Kreider*, 394 N.E.2d at 1181-1182; *Rediehs*, 491 N.E.2d at 1012; *Wycoff*, 569 N.E.2d at 1053; *Haack*, 708 N.E.2d at 222-223; *Williamson*, 530 N.W.2d at 416-417.

Once that is accomplished, the carrier can seek reimbursement from other parties based on contractual or common-law principles. *See, e.g., Transamerican,* 423 U.S. at 40; *Hartford Ins. Co.*,

908 F.2d at 238; *Carolina Cas*., 595 F.2d at 138; *Transport v. Carolina Cas.*, 652 P.2d at 144-145; *Riss Int'l Corp. v. Sullivan Lines, Inc*., 684 S.W.2d 33, 37 (Mo. Ct. App. 1984); *Wycoff*, 569 N.E.2d at 1053; *Haack*, 708 N.E.2d at 222-223. This prioritization is fair, since the trucks are only on the road in the first place because the carrier has provided the lessor with its operating authority, which it obtained by promising to (a) exercise complete control and responsibility over leased drivers and trucks and ensure that they meet all the ICC's rules and regulations and (b) maintain insurance to pay for damages caused by leased vehicles. *See, e.g., Prestige Cas*., 99 F.3d at 1342-1343; *Carolina Cas*., 595 F.2d at 135-136; *Mellon*, 289 F.2d at 476; *Roadrunner Trucking*, 823 F. Supp. at 918-919; *Cosmopolitan*, 336 F. Supp. at 96-97; *Phillips*, 565 So.2d at 70-71; *Empire v. Truck Ins. Exch.*, 462 So.2d at 79; *Nationwide Mut. Ins. Co. v. Holbrooks*, 371 S.E.2d 252, 256-257 (Ga. Ct. App. 1988); *Kreider*, 394 N.E2d at 1182; *Rediehs*, 491 N.E.2d at 1011-1012; *Johnson v. Pacific Intermountain*, 662 S.W.2d at 245. And the carrier, who has complete control over and profits from the use of leased drivers and vehicles, is in a better position than the innocent victim to prevent unsafe practices in the first place and bear the burden of obtaining reimbursement from other tortfeasors if injuries do occur. *See Rodriguez*, 705 F.2d at 1236*; Cosmopolitan*, 336 F. Supp. at 96-97; *Transport v. Carolina Cas.*, 652 P.2d at 144; *Rediehs*, 491 N.E.2d at 1012. So holding the carrier absolutely liable promotes scrupulous enforcement of safety standards and quick and complete compensation of victims of trucking negligence. *See Wycoff*, 569 N.E.2d at 1053.

A. Independent Contractor Outside Course and Scope of Agency

The regulations apply even when the person or company operating the equipment was an independent contractor and was not operating the truck in the course and scope of his agency. *See, e.g., Prestige Cas*., 99 F.3d at 1344 (6th Cir.); *Hartford Ins. Co. v. Occidental Fire & Cas. Co.*, 908 F.2d 235, 237 (7th Cir. 1990); *Judy v. Tri-State Motor Transit Co.*, 844 F.2d 1496, 1500-1501 (11th Cir. 1988); *Planet Ins. Co. v. Transport Indem. Co.*, 823 F.2d 285, 288 (9th Cir. 1987); *Price*, 727 F.2d at 497 (5th Cir.); *Rodriguez*, 705 F.2d at 1236 (10th Cir.); *Wellman v. Liberty Mut. Ins. Co.*, 496 F.2d 131, 136 (8th Cir. 1974); *Proctor*, 494 F.2d at 92 (4th Cir.); *Mellon*, 289 F.2d at 477 (3rd Cir.); *Reliance Nat'l*, 2001 WL 984737 at *8 (S.D.N.Y.); *Graham v. Malone Freight Lines*, 948 F. Supp. 1124, 1132 (D. Mass. 1996), *aff'd*, 201 F.3d 427 (7th Cir. 1999); *Cosmopolitan Mut. Ins. Co. v. White*, 336 F. Supp. 92, 99 (D. Del. 1972); *Phillips v. J.H. Transport, Inc*., 565 So.2d 66, 70 (Ala. 1990); *Transport Indem. Co. v. Carolina Cas. Co.*, 652 P.2d 134, 136 (Ariz. 1982) (though the particular haul in this case was within the course and scope of the lessor's employment for the carrier, the court recognized that "federal law creates an *irrebutable* presumption that the lessor's driver is the employee of the lessee" (emphasis added)); *Empire Fire and Marine Ins. Co. v. Truck Ins. Exch.*, 462 So.2d 76, 79-80 (Fla. Ct. App. 1985); *AXA Global Risks v. Empire Fire & Marine Ins. Co.*, No. A01A1314, 2001 WL 1045840 (Ga. Ct. App. Sept. 13, 2001); *Harvey*, 767 P.2d at 260 (Idaho); *Kreider*, 394 N.E.2d at 1181-1182 (Illinois); *Rediehs*, 491 N.E.2d at 1011 (Indiana); *Weeks v. Kelley*, 377 A.2d 444, 448 (Me. 1977) (though the lessor was operating within the course and scope, court recognized that regulations imposed liability as a matter of law, not because of traditional concepts of master-servant relationships); *Nolt v. United States Fidelity and Guar. Co.*, 617 A.2d 578, 584 (Md. 1993) (carrier's insurance liable though haul was for another company); *Empire Fire v. Liberty Mut.*, 699 A.2d at 502; *Johnson v. Pacific Intermountain Express Co.*, 662 S.W.2d 237, 245 (Mo. 1983), *cert. denied*, 466 U.S. 973 (1984); *Cox*, 249 A.2d at 588 (New Jersey); *Matkins*, 602 P.2d at 200-201 (New Mexico) (though this case did not involve a course-and-scope question, the court adopted the holding of *Proctor* and held that the carrier "is responsible *as a matter of law* for the negligence of [lessor's] employees in the performance of the lease agreement." (emphasis added)); *Planet Ins. Co. v. Gunther*, 608 N.Y.S.2d 763, 769 (N.Y. Sup. Ct. 1993) (carrier's insurance liable though haul for another company); *McLean Trucking Co. v. Occidental Fire & Cas. Co.*, 324 S.E.2d 633, 636 (N.C. Ct. App.), *review denied*, 330 S.E.2d 611 (1985); *Wycoff Trucking, Inc. v. Marsh Bros. Serv., Inc*., 569 N.E.2d 1049, 1053 (Ohio 1991); *National Trailer Convoy, Inc. v. Saul*, 375 P.2d 922, 926-927 (Okla. 1962); *Wilkerson v. Allied Van Lines, Inc*., 521 A.2d 25, 28 (Pa. Super. Ct. 1987), *cert. denied*, 488 U.S.

827 (1988); *Rankin v. Fischer*, 441 A.2d 426, 429 (Pa. Super. Ct. 1982); *Bankers & Shippers Ins. Co. v. United States Fire Ins. Co.*, 224 S.E.2d 312, 314-315 (Va. 1976); *Williamson v. Stetco Sales, Inc.*, 530 N.W.2d 412, 417 (Wis. Ct. App.), *review denied*, 537 N.W.2d 571 (1995). *But see Schell v. Navajo Freight Lines, Inc.*, 693 P.2d 382, 385 (Colo. Ct. App. 1984); *Paul v. Bogle*, 484 N.W.2d 728, 733 (Mich. Ct. App. 1992); *Gackstetter v. Dart Transit Co.*, 130 N.W.2d 326, 330 (Minn. 1964); *Parker v. Erixon*, 473 S.E.2d 421, 426 (N.C. Ct. App. 1996); *Zimprich v. Broekel*, 519 N.W.2d 588, 591 (N.D. 1994).

B. Interstate Carrier and Purely Intrastate Haul

Absolute liability also applies even though the particular haul in question was purely intrastate. *See Reliance Nat'l*, 2001 WL 984737 at *5 (since lease enables truck to be used in interstate commerce and gives carrier exclusive possession and control over truck, truck is always subject to ICC regulations, even when truck is not being used in interstate commerce); *Kreider*, 394 N.E.2d at 1181-1182 (public policy behind ICC regulations mandate that they apply to truck under interstate lease, even when truck is not being used in interstate carriage); *Cox*, 249 A.2d at 202-204.

C. *Respondeat Superior* Preempted

The regulations preempt state law of *respondeat superior*. *See Price*, 727 F.2d at 496; *Simmons*, 478 F.2d at 865-867; *Smith v. Johnson*, 862 F. Supp. 1287, 1291 (E.D. Pa. 1994); *Baker*, 800 F. Supp. at 1574; *Ryder Truck Rental Co., Inc. v. UTF Carriers, Inc.*, 719 F. Supp. 455, 458 (W.D. Va. 1989), *aff'd*, 907 F.2d 34 (4th Cir. 1990); *Weeks*, 377 A.2d at 447; *Empire v. Liberty Mut.*, 699 A.2d at 501.

In establishing an interstate motor carrier's vicarious liability, traditional common-law principles of the master-servant relationship and the doctrine of *respondeat superior* do not apply. *Price,* 727 F.2d at 496; *Morris*, 2002 WL 535439 at *4. Thus, it is no defense that an employee was acting outside the course and scope of his employment. *See Morris v. JTM Materials, Inc. and DCV, Inc.*, 2002 WL 535349 (Tex. App.–Fort Worth, April 11, 2002, no pet.); *Empire Indem. Ins. Co. v. Carolina Cas. Ins. Co.,* 838 F.2d 1428, 1433 (5th Cir.1988); *Planet Ins. Co. v. Transport Indem. Co.,* 823 F.2d 285, 288 (9th Cir. 1987); *Price v. Westmoreland,* 727 F.2d 494, 496 (5th Cir. 1984); *Grinnell Mut. Reinsurance Co. v. Empire Fire & Marine Ins. Co.,* 722 F.2d 1400, 1404 (8th Cir.1983), *cert. denied,* 466 U.S. 951 (1984); *Rodriguez v. Ager,* 705 F.2d 1229, 1233-36 (10th Cir.1983); *Simmons v. King,* 478 F.2d 857, 867 (5th Cir. 1973); *Mellon Nat'l Bank & Trust Co. v. Sophie Lines, Inc.,* 289 F.2d 473, 476-77 (3rd Cir.1961); *see also N. Am. Van Lines, Inc. v. Emmons,* 50 S.W.3d 103, 114 (Tex. App.–Beaumont 2001, pet. filed) (holding that interstate motor carrier was statutory employer of employees of moving company from whom carrier leased equipment and owed a duty of care directly to driving public) (citing *White v. Excalibur Ins. Co.,* 599 F.2d 50, 50 (5th Cir. 1979). Interstate motor carriers are vicariously liable for negligence even when the leased equipment is being used by an employee for personal use or when the equipment is not being used for their business or benefit. *Id.* at 497 n.6 (and cases cited therein); *See, e.g., Planet Ins. Co.,* 823 F.2d at 286-88 (holding carrier liable, even though accident occurred while driver was en route to pick up load and before driver had affixed carrier's signs to its doors, because federal scheme did not require that loss occur while driver was in course and scope of employment or acting under common-law principles of vicarious liability); *Rodriguez,* 705 F.2d at 1230-31, 1236 (holding that interstate carrier who had leased equipment was liable for the driver's negligence, even though driver was transporting goods for equipment owner-lessor, without carrier's knowledge, when the accident occurred); *Mellon,* 289 F.2d at 475, 478 (holding that interstate carrier who had leased equipment was liable for driver's negligence, even though driver was trip-leasing for equipment owner-lessor and not carrier, without carrier's specific knowledge, where carrier knew that it was owner-lessor's practice to use equipment to trip-lease for other companies when equipment was not being used by carrier); *see also Jackson v. O'Shields,* 101 F.3d 1083, 1089 (5th Cir.1996) (holding that, if equipment lease agreement had not expired, under *Price* and *Simmons* interstate motor carrier would be liable for injuries to third parties caused by driver's negligence, regardless of whether trip was on carrier's behalf); *Price,* 727 F.2d at 497 n. 6 (citing *Rodriguez* and *Mellon* with approval); *Wellman,* 496 F.2d at 132, 137 (holding that

interstate carrier who had leased equipment would have been liable for negligence of driver, who was also owner-lessor, even though driver was trip-leasing for another company when accident occurred, if carrier had not been non-suited from case); *Schedler v. Rowley Interstate Transp.,* 368 N.E.2d 1287, 1289 (1977) (holding that interstate carrier was liable for owner-driver's negligence where accident occurred while driver was driving leased equipment to his home after hauling initial load for carrier and then another load for a third party); *Rediehs Express, Inc. v. Maple,* 491 N.E.2d 1006, 1012 (Ind. Ct. App.1986) (holding that carrier was liable for driver's negligence, despite evidence that driver may have been on a personal enterprise, without carrier's knowledge or consent), *cert. denied,* 480 U.S. 932 (1987).

D. Non-Delegable Duty

The regulations impose a non-delegable duty upon the carrier to safely operate the leased vehicle. *See Morey v. Western Am. Specialized Transp. Serv., Inc.*, 968 F.2d 494, 499 (5th Cir. 1992); *Rediehs*, 491 N.E.2d at 1011; *Leary v. Kelly Pipe Co.*, 549 P.2d 813, 818 (Mont. 1976); *Cox*, 249 A.2d at 592; *Saul*, 375 P.2d at 926; *Leotta v. Plessinger*, 171 N.E.2d 454, 458 (N.Y. 1960). *Compare Rainbow Express, Inc. v. Unkenholz*, 780 S.W.2d 427, 432 (Tex. App.—Texarkana 1989, writ denied) (interpreting virtually identical Texas statute requiring leased vehicle to be under lessee's "full and complete control" as imposing nondelgable duty on carrier to maintain vehicle and supervise drivers).

E. View of Minority Jurisdiction

A small minority of jurisdictions hold that the regulations create an employment relationship between the carrier and the independent contractors operating its leased trucks, but liability is imposed under state law, so the carrier is only liable if the truck was being operated in the course and scope of the carrier's business. *See Paul*, 484 N.W.2d at 733.

Though two Texas cases have apparently followed this approach, *See Mata v. Andrews Transport, Inc.*, 900 S.W.2d 363, 366 (Tex. App.—Houston [14th Dist. 1995, no writ); *John B. Barbour Trucking Co. v. State*, 758 S.W.2d 684, 688 (Tex. App.—Austin 1988, writ denied), they are demonstrably wrong, since they both cite as authority for their holdings cases adopting the *majority* view. *See Mata*, 900 S.W.2d at 366 (citing *Price v. Westmoreland*); *Barbour*, 758 S.W.2d at 688 (citing *Price* and *Simmons v. King*).

The minority view frustrates the purpose of the regulations. Requiring the injured party to prove course and scope resurrects the very legal obstacle course the regulations were drafted to destroy. *See Kreider*, 394 N.E.2d at 1181-1182; *Rediehs*, 491 N.E.2d at 1012. In addition, prior to the adoption of the regulations, courts had already developed common-law rules for holding carriers liable when their independent contractors negligently operated leased vehicles in the course of the carriers' business. *See Haack*, 708 N.E.2d at 219-220 (explaining that some courts held motor carriers vicariously liable for their independent contractors' negligent operation of leased vehicles under the "inherently dangerous activity" rule, while others held the carriers liable under the rule that one operating under a certificate of public authority cannot escape liability for its operation thereunder by operating through independent contractors).

Congress deemed the ICC regulations necessary over and above these common-law rules because injured parties still suffered from interminable delay due to the difficulty of establishing in whose service the truck was being operated at the time of the wreck. *See Kreider*, 394 N.E.2d at 1181. Since one of the primary purposes of the ICC regulations was to eliminate this delay, which was a direct result of the common law defenses available to carriers, it follows that Congress intended to eliminate those defenses by adopting the regulations. *See, e.g., Transamerican*, 423 U.S. at 37; *Prestige Cas*., 99 F.3d at 1342*; Carolina Cas*., 595 F.2d at 137; *Reliance Nat'l*, 2001 WL 984737 at *7; *Kreider*, 394 N.E.2d at 1181; *Rediehs*, 491 N.E.2d at 1011; *Denver Midwest*, 207 N.W.2d at 370.

Since the minority view renders the regulations a mere codification of preexisting common law, it does not advance any of Congress's public-policy purposes for adopting the regulations in the first place. Victims are no more likely to be compensated, as the solvent carrier is liable only when the preexisting common law would have held it liable anyway. And carriers have no more

incentive to police their leased vehicles at all times, since they are absolved of liability any time the vehicles are not under their dispatch. The minority view simply emasculates the regulations.

V. SEMINAL TEXAS CASES

A. *Morris v. JTM Materials, Inc.*

In *Morris v. JTM Materials, Inc.*, 78 S.W.3d 28 (Tex. App.–Fort Worth 2002, pet. filed), the Court held that an interstate motor carrier is vicariously liable as a matter of law for the statutory employee driver's negligence under the Federal Motor Carrier Safety Regulations.

The Court further opined that the driver's status as a statutory employee under the Federal Motor Carrier Safety Regulations is not determined by whether the driver was performing work for the statutory employer (lessee-carrier) when the collision occurred. Rather, the driver was a statutory employee if the lessee-carrier was an interstate motor carrier who had entered into an equipment lease agreement with the lessor-owner.

Thus, an interstate motor carrier's liability for equipment and drivers covered by leasing arrangements is not governed by the traditional common-law doctrines of the master-servant relationship and *respondeat superior*. Instead, an interstate carrier is vicariously liable as a matter of law under the FMCSR for the negligence of its statutory employee drivers.

In November 1996, Morris was injured when his vehicle was involved in a collision with a tractor-trailer operated by Jerry Lee Largent. The collision occurred at 11:40 p.m. on a Saturday night. At the time of the collision, Largent was intoxicated. He later pleaded guilty to the offense of driving while intoxicated.

The vehicle that Largent was driving at the time of the collision was owned by Hammer Trucking, Inc. Several months before the collision, in June 1996, Hammer Trucking and JTM Materials, Inc. had entered into an equipment lease agreement under which JTM leased the tractor-trailer from Hammer Trucking. Hammer Trucking used the tractor-trailer exclusively for JTM.

After the agreement was signed, JTM's safety director conducted a background check on Largent, who had applied to drive the leased equipment for JTM. Largent was also administered a drug screening, which he passed. Based on the background check and drug screening results, JTM determined that Largent was qualified to drive the tractor-trailer for JTM. However, under the equipment lease agreement, Hammer Trucking was responsible for paying Largent.

After the collision occurred, Morris sued JTM for negligent hiring, retention, and supervision of Largent, negligent entrustment, negligent failure to restrict Largent's access to the tractor-trailer after ordinary business hours, and negligent failure to prevent Largent from driving the truck after ordinary business hours. Morris also contended that Largent was JTM's statutory, actual, constructive, or borrowed employee and sought to recover from JTM under the Federal Motor Carrier Safety Regulations, *respondeat superior*, and borrowed servant doctrines. Morris also sought recovery under joint enterprise, civil conspiracy, and vicarious liability theories.

JTM moved for a no-evidence motion for summary judgment on Morris's respondeat superior, joint venture, joint enterprise, and civil conspiracy claims and filed a traditional motion for summary judgment on Morris's direct and vicarious liability claims. The trial court granted a general summary judgment for JTM.

The Court of Appeals reversed the trial court's judgment granting JTM summary judgment on Morris's vicarious liability, negligent hiring, retention, and supervision, and negligent entrustment claims and remanded those to the trial court. The Court of Appeals affirmed JTM's summary judgment on *respondeat superior*, civil conspiracy, joint venture, and joint enterprise.

B. *North American Van Lines, Inc. v. Emmons*

In *North American Van Lines, Inc. v. Emmons*, 50 S.W.3d 103 (Tex. App.–Beaumont 2001, pet. denied), the Court held that an interstate motor carrier was the statutory employer of employees of the moving company from whom the carrier leased equipment and owed a duty of care directly to the driving public.

On May 31, 1996, Edwin Cartagena was driving a moving van from Lufkin, Texas to Port Arthur, Texas. The moving van was owned by Lufkin Moving and Storage Company (Lufkin Moving) and it was being leased to North American Van Lines (NAVL). NAVL was an interstate motor carrier. The van was being used for an intrastate shipment for North American Van Lines of Texas, Inc. (NaTex) under the operating authority of NAVL. NaTex was an intrastate carrier and a subsidiary of NAVL.

Charles Emmons was paralyzed from the chest down when the moving van driven by Cartagena rear-ended a vehicle in which Emmons was a passenger. Cartagena did not have a commercial driver's license because he could not meet the vision requirements. Cartagena had also failed the written exam for a commercial driver's license twice.

The lease provided that NAVL had complete control over — and assumed total responsibility for — the truck while it was being operated "by or for" NAVL. At the time of the wreck, the truck bore NAVL's ICC number and logo, and the driver was wearing a NAVL uniform. NAVL received the profits from the haul and the truck was being operated "by or for" NAVL whenever it was used on a NaTex run. NAVL's agency contract with LMS also required LMS to display NAVL's logo on the truck during its intrastate runs.

The jury found that the truck was being operated "by or for" NAVL at the time of the wreck. The jury also found that the wreck occurred during the duration of the lease. The jury inferred that NAVL, NaTex, LMS and Cartagena had tacitly conspired to operate commercial motor vehicles in an unsafe manner in violation of law.

NAVL, NaTex, and LMS mutually controlled the household-goods moving business in which they were engaged. Though each had certain responsibilities that the others delegated to it, each also had a voice in the operation that the others were not free to ignore. In particular, LMS was an independent contractor, with the authority to control the day-to-day operations of the business, purchase its own equipment, and hire and direct its own employees, including Cartagena.

LMS's exercise of these rights were subject to NAVL's and NaTex's mutual rights of control, so that any one of these parties had the absolute right to prevent Cartagena from driving the truck. If LMS had refused to place Cartagena in the truck, neither NAVL nor NaTex could have forced it to. Because of this mutual right of control, the jury found that NAVL, NaTex and LMS were engaged in a joint enterprise.

The jury found that NAVL, NaTex, LMS and Cartagena were all negligent, and assessed responsibility for the wreck as follows: NAVL — 40%; NaTex — 35%; LMS — 20%; Cartagena — 5%. The jury also found that NAVL, NaTex and Cartagena all acted with malice, and awarded punitive damages against NAVL and NaTex. Based on the jury's findings, the trial court signed a judgment holding all four Defendants jointly and severally liable for the entire judgment.

However, the court of appeals reversed in part, holding that the evidence did not support the joint-enterprise, alter ego, conspiracy, or malice findings. The court of appeals refused to hold NAVL responsible for the percentage of negligence attributed to LMS and NaTex pursuant to the ICC regulations governing the lease, though it did hold NAVL liable for the 5% of the responsibility assessed against Cartagena under the regulations. The court also refused to hold NAVL and NaTex jointly and severally liable under the Texas proportionate responsibility statute, even though the jury assessed 75% of the responsibility for the wreck against the NAVL/NaTex single business enterprise.

The court affirmed in part, holding NAVL and NaTex vicariously liable for each other's percentage of responsibility because of the single-business-enterprise finding.

C. *Greyhound Van Lines, Inc. v. Bellamy*

In *Greyhound Van Lines, Inc. v. Bellamy*, 502 S.W.2d 586 (Tex. Civ. App.–Waco 1973, no writ), the Waco Court of Appeals held that an intrastate motor carrier who had agreed in the equipment lease agreement that it would have "full and complete control and supervision" over the operation of the leased vehicle was liable to a third party injured by the driver of the vehicle. *Id.*

at 588. Furthermore, the Texas Transportation Code provides that "the duties and liabilities of a carrier in this state and the remedies against the carrier are the same as prescribed by the common law" unless otherwise provided by the transportation code or other law. TEX. TRANSP. CODE § 5.001(a)(1).

D. *Mata v. Andrews Transport, Inc.*

In *Mata v. Andrews Transport, Inc.*, 900 S.W.2d 363 (Tex. App.–Houston [14th Dist.] 1995, no writ), the Court held that the statutory employee principle is not one of strict liability and the carrier may raise any defense available to an employer under state law, such as course and scope.

Mata sued Andrews Transport for personal injuries suffered when a truck bearing Andrews Transport's insignia collided with Mata's vehicle. Andrews Transport was a commercial carrier who leased the truck involved in the collision. Mata also sued the lessor/owner and driver of the truck, Stephen Joe Henry.

The collision occurred while Henry was commuting (in the leased vehicle) from his home in Austin to the interstate motor carrier's shipping yard in Houston.

Andrews Transport contended that Henry was not acting in the course and scope of his employment when he collided with Mata's vehicle. Mata contended that the ICC regulations imposed liability on the employer even if there would be no liability under state law and that the regulations preempt state law regarding course and scope.

The Court noted the presumption that an employee is within the course and scope of employment while traveling to and from work if the employer owns the vehicle and regularly employs the driver. But, the Court held that this presumption was inapplicable because the interstate carrier did not own the truck involved in the collision. The Court affirmed the trial court's summary judgment for Andrews Transport.

Morris v. JTM clearly disagreed with *Mata*. The *Morris* Court stated "[w]e decline to follow this reasoning in light of the plain statutory language that the motor carrier's control of and responsibility for the leased equipment is, under section 14102, 'as if the motor vehicles were owned by the motor carrier.'" Morris, 78 S.W.3d at 41 (citing 49 U.S.C.A. § 14102(a)(4)).

E. *Barbour Trucking Co. v. State*

In *Barbour Trucking Co. v. State*, 758 S.W.2d 684 (Tex. App.–Austin 1988, writ denied), the Court stated that the statutory employee principle holds that a carrier is vicariously liable for injury, caused by the driver's negligent operation of a vehicle, when three factors coincide: (1) the carrier does not own the vehicle; (2) the carrier operates the vehicle, under an "arrangement" with the owner, to provide transportation subject to the Commission's jurisdiction; and, (3) the carrier does not literally employ the driver.

In these circumstances, the driver is held to be the constructive or statutory employee of the carrier; and, in consequence of this fiction, the doctrine of respondeat superior imposes upon the carrier a vicarious liability for the negligence of its "employee" the driver.

Because the "statutory employee" principle imposes liability upon the carrier "as if" it actually or literally employed the negligent driver, the carrier is permitted to raise any defenses available to such an employer under state law. Id. at 688 (citing *White v. Excalibur Ins. Co.*, 599 F.2d 50, 53-54 (5th Cir. 1979)). That is to say, the statutory employee principle is not one of strict liability.

It is important to note that *Morris v. JTM* also disagreed with *Barbour*. *Barbour* is clearly distinguishable as it relies directly on White for the proposition that the interstate motor carrier is permitted to raise any defenses available to an employer under state law. *White*, however, is limited to situations involving injuries to a co-employee of the driver. Furthermore, *White* involved an equipment interchange agreement as opposed to an equipment lease agreement.