2014 IL App (1st) 122793-U

SECOND DIVISION
June 3, 2014

Nos. 1-12-2793 & 1-12-2854 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NANCY HOFFMAN and MARK HOFFMAN, Individually and as Parent and Next Friend of KAREN HOFFMAN, a Minor Plaintiffs-Appellees, v. DORLAN CRANE, ILLINOIS STATE MOTOR SERVICE, INC., an Illinois Corporation, and JOSEPH T. RYERSON & SON, INC., d/b/a RYERSON TULL COIL PROCESSING DIVISION, Defendants-Appellants (3pL Corp., Defendant).	)	Appeal from the Circuit Court of Cook County No. 07 L 11406 Honorable Patrick F. Lustig Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Liu concurred in the judgment.

O R D E R

¶ 1 *Held*: Plaintiffs presented evidence sufficient to demonstrate that Crane was an agent of Ryerson and acting within the scope of that agency when the accident occurred and that the jury's verdict and answers to the special interrogatories are not against the manifest weight of the evidence thereby precluding Ryerson's motion for judgment *n.o.v.* The court did not err by denying the posttrial motion for a new trial jointly filed by Crane and Illinois State because Illinois State admitted that Crane was acting as its agent when the

accident occurred and, in addition, the high/low agreement between plaintiffs and 3pL did not affect Illinois State's liability as plaintiffs were not seeking to hold Illinois State vicariously liable for injuries caused by 3pL's conduct. Ryerson forfeited its claim that it was entitled to contribution from Illinois State because Crane's negligence was attributable to Illinois State by failing to raise that argument in a posttrial motion. The jury's award to Karen Hoffman for pain and suffering was not excessive because it is supported by the evidence presented at trial.

¶ 2 Defendants, Dorlan Crane, Illinois State Motor Service, Inc. (Illinois State), and Joseph T. Ryerson & Son Inc. (Ryerson), appeal from orders of the Circuit Court of Cook County entering judgment against them and in favor of plaintiffs, Nancy Hoffman, Mark Hoffman, and Karen Hoffman, and denying their posttrial motions. On appeal, Ryerson contends that the court erred by denying its motion for judgment *n.o.v.* or a new trial and dismissing its counterclaim for contribution against Crane and Illinois State and that the amount of damages awarded to Karen Hoffman for pain and suffering was excessive. Crane and Illinois State contend that this court should reverse the judgment entered against them because Illinois State was engaged in a joint venture with 3pL Corp. (3pL) and Illinois State's liability was extinguished when 3pL reached a high/low agreement with plaintiffs releasing it from liability. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On July 12, 2002, plaintiffs filed a complaint against Crane and Illinois State with regard to a vehicular accident that occurred on June 21, 2002, in Cedar County, Iowa, involving a semi tractor-trailer driven by Crane and an automobile driven by Nancy Hoffman in which her daughter, Karen, was riding as a passenger. Plaintiffs alleged that Crane was acting as an agent of Illinois State, a trucking company, at the time of the accident. On June 30, 2003, plaintiffs filed a second amended complaint in which they added Ryerson, a producer of steel coils whose product was being hauled by Crane at the time of the accident, as a defendant and alleged that

Crane was acting as an agent of Ryerson when the accident occurred.

¶ 5 Ryerson filed a counterclaim against Crane and Illinois State under the Joint Tortfeasor Contribution Act (740 ILCS 100/0.01 *et seq.* (West 2004)), alleging that Crane was negligent in his maintenance and operation of the tractor-trailer and that Illinois State failed to properly train Crane, negligently hired Crane, failed to properly maintain the tractor-trailer, and was otherwise careless and negligent. Ryerson asserted that, in the event it was required to pay more than its *pro rata* share of any common liability to plaintiffs, it was entitled to contribution from Crane and Illinois State for any amount in excess of its *pro rata* share.

¶ 6 On December 27, 2011, plaintiffs filed a four-count sixth amended complaint. In count one Nancy and Karen Hoffman alleged a negligence claim against Illinois State by and through its agent, Crane and, in count two, Mark Hoffman alleged a loss of consortium claim against Illinois State. In counts three and four plaintiffs alleged those same claims against Illinois State, 3pL, and Ryerson, asserting that they were engaged in a joint venture and that Crane was acting as their agent at the time of the accident. On January 12, 2012, Crane and Illinois State filed an answer and affirmative defenses to the sixth amended complaint in which they admitted that Crane was acting as an agent of Illinois State when the accident occurred; that Ryerson, 3pL, and Illinois State were engaged in a joint venture; and that Crane was acting as an agent of Illinois State, 3pL, and Ryerson.

¶ 7 The evidence presented at trial established that the accident occurred while Crane was driving home after having delivered steel coils from Ryerson's facility in Chicago to a customer located in Amana, Iowa, and was caused by Crane's failure to maintain control of his tractor-

trailer. The evidence also established that: 1) 3pL, a freight brokerage company, provided Ryerson with motor carrier transportation services pursuant to a property brokerage agreement; 2) Illinois State provided 3pL with transportation services pursuant to a transportation agreement; and 3) Crane made deliveries for Illinois State pursuant to an independent contractor agreement.

¶ 8 The record includes the property brokerage agreement between Ryerson and 3pL, which was signed by Gary Alvord, the president of 3pL, and Kyle Chown, a vice president of Ryerson, and under which 3pL agreed to provide Ryerson with motor carrier transportation services as an independent contractor. 3pL agreed to provide Ryerson with various services, such as electronic upload of orders and route optimization, assignment of carriers, daily transmission of data and bill of lading information, notification of carrier pickup and delivery, proof of delivery, carrier rate negotiation, payment to carrier, and management of a network of service carriers. 3pL had exclusive control over the manner in which its employees and/or subcontractors performed those services, could employ or subcontract with individuals or carriers as it deemed necessary, took full responsibility for the acts and omissions of its subcontractors, and retained sole authority to discharge, discipline, and control its employees and subcontractors. Ryerson, however, retained the right to disallow a carrier "based on carrier non-performance including but not limited to late deliveries, services failures, excessive freight claims, or customer complaints." In exchange, Ryerson agreed to pay 3pL a fixed weekly fee and the parties agreed that, if circumstances arose which significantly impacted the volume of services provided by 3pL, either party could request an adjustment to the fee. In addition, Ryerson agreed to pay 3pL 25% of all savings in excess of

$1,000,000 generated by 3pL's transportation services pursuant to a gain share formula set forth in the agreement.

¶ 9 The transportation agreement between 3pL and Illinois State, which was signed by Peter Dugan, a vice president of 3pL, and Charles Sawall, the president of Illinois State, provided that Illinois State would supply 3pL with accurate delivery information and abide by any rules and regulations set forth by 3pL's customers. In exchange, 3pL agreed to pay Illinois State pursuant to a rate schedule attached to the agreement. Illinois State agreed to furnish all the equipment necessary to perform its obligations, pay all expenses associated with the use and operation of such equipment, keep the equipment in good repair, and only use competent and legally licensed personnel. Illinois State maintained full control over its personnel and agreed to operate as an independent contractor of 3pL. The agreement also provided that, in the event Illinois State violated the terms of the agreement or the rules of engagement outlined in 3pL's carrier manual, 3pL reserved the right to alter payment terms and reduce the number of loads tendered to Illinois State.

¶ 10 Sawall signed a document acknowledging that he had reviewed a copy of 3pL's carrier manual with a 3pL representative and accepted the conditions set forth therein. In the manual, 3pL laid out specific working requirements, including expectations regarding professionalism and carrier management, continuous improvement, safety, dispatch, rate, and billing processes. Regarding professionalism, 3pL required that all drivers maintain a well-kept appearance and perform their duties in a safe, courteous, and professional manner. As to carrier management, 3pL would issue a nonconformance notice for any incident which disrupted service, including a

missed load, a lack of communication between the carrier and 3pL regarding a late delivery, or a driver's disruptive behavior while at Ryerson's facility or in front of a customer. The manual included safety requirements that drivers were required to follow while at Ryerson's facility and set forth various "rules of engagement," including that 3pL would provide the carrier with a load number that must be presented to Ryerson upon arrival at its facility and that the carrier must notify 3pL if it cannot meet a pickup time or delivery time, notify 3pL if any delays arise during delivery, provide 3pL with delivery information within two hours of the appointed delivery time, and comply with the safety requirements while at Ryerson's facility.

¶ 11 The independent contractor agreement between Crane and Illinois State, which was signed by Crane and Sawall, provided that Crane would lease his tractor-trailer to Illinois State and operate that equipment to transport, load, and unload freight made available by Illinois State. In exchange, Illinois State agreed to pay Crane 75% of the amount Illinois State billed the customer within 15 days of the date on which Crane provided Illinois State with the documents necessary to receive payment from the customer. Crane agreed to remove all identification and business papers related to Illinois State from the tractor-trailer when he used the equipment to perform services for another party or for personal reasons. The parties also agreed that their relationship was that of carrier and independent contractor, and not employer and employee, and that Crane's services under the agreement ended upon completion of the final delivery of the day.

¶ 12 At trial, Nancy Spenny testified that she was a transportation manager at Ryerson from 1996 to April 2001. In early 2001, Ryerson decided to outsource its logistics program to save money and selected 3pL to be its logistics provider. Ryerson produced steel coils in a facility on

the south side of Chicago and 3pL assigned the loads to various carriers that hauled the steel to Ryerson's customers. Based on custom and practice, Spenny believed that Chown reviewed the carrier manual before 3pL distributed it to its carriers. On cross-examination, Spenny stated that she had reviewed drafts of the contract proposals between Ryerson and 3pL and that the parties intended for 3pL to be an independent contractor of Ryerson.

¶ 13 Alvord testified that 3pL delivered between 50,000 and 60,000 loads for Ryerson per year and that Ryerson could disallow a carrier from delivering its products based on the carrier's performance and could direct that a "preferred" carrier be used for a specific route. Alvord also testified that, shortly after 3pL and Ryerson had entered into their agreement, a couple of 3pL's employees spent a considerable amount of time receiving training at Ryerson's facility. Alvord further testified that all carriers, including Illinois State, which hauled Ryerson's products, were required to comply with the rules of engagement set forth in the carrier manual.

¶ 14 On cross-examination, Alvord stated that, as a non-asset based freight brokerage, 3pL did not own any trucks and arranged freight delivery for shippers, including Ryerson, by retaining trucking companies to haul the shipper's freight. By the time of the accident, 3pL had entered into transportation contracts with hundreds of trucking companies and brokerage agreements with eight to ten shippers other than Ryerson and was employing 20 to 25 people, eight to ten of whom worked on the Ryerson account. Alvord stated that 3pL no longer had any control over Crane after he completed the delivery on the day of the accident and that 3pL did not have a right to control the manner in which a driver operated his vehicle or the route a driver took during a delivery, did not provide the drivers with any equipment, and could not hire or fire any drivers.

Alvord also stated that the carrier manual did not contain any information regarding the manner in which a truck must be operated, including what route a driver must take in making a delivery. Alvord further stated that 3pL intended to be an independent contractor of Ryerson and that Illinois State was an independent contractor of 3pL.

¶ 15 On redirect examination, Alvord testified that the carrier manual included a disciplinary system for the benefit of Ryerson which required that carriers ensure that their drivers operate in a safe, courteous, and professional manner. Alvord also testified that 3pL sometimes asked the carrier about the location of a load if it was going to be late so 3pL could inform Ryerson that the delivery would be late.

¶ 16 Plaintiffs called Julie Wigg, an operations manager for 3pL, as an adverse witness, and Wigg testified that she drafted the carrier manual and that the nonconformance policy in the manual provided 3pL with a method by which it could discipline Illinois State and ensure that Illinois State provided service in accordance with the manual's requirements. If a driver did not follow the manual's requirements, 3pL, on behalf of Ryerson, could tell the carrier that it did not want that driver to make any more deliveries for Ryerson. Prior to a delivery, Ryerson would provide 3pL with information, including pickup and delivery times and the distance between the pickup and delivery locations, and 3pL would then communicate that information to the carrier. Wigg also testified that Crane no longer had any obligations to 3pL after he had completed the delivery on the day of the accident and that 3pL did not have the right to control the manner in which a driver operated his vehicle or the route a driver took to make a delivery, did not provide the drivers with any equipment, and could not hire or fire drivers.

¶ 17 Plaintiffs called Leonard Rau, a project manager at Ryerson, as an adverse witness. Rau testified that a carrier would not be allowed to deliver loads for 3pL if it did not sign the carrier manual, Ryerson had the ability to suggest changes to the carrier manual before 3pL distributed it to the carriers, and carriers had full control over the conduct of their drivers.

¶ 18 Plaintiffs called Charles Sawall, the president of Illinois State, as an adverse witness. Sawall testified that Crane had been driving for Illinois State for about four or five years prior to the accident and that, at the time of the accident, the majority of Crane's loads were for Ryerson. Illinois State had been hauling loads for Ryerson for a long time before Ryerson hired 3pL to be its logistics provider and, at the time of the accident, 60% of Illinois State's business came from hauling Ryerson's products. Sawall believed that he had to sign the transportation agreement with 3pL in order to continue hauling steel for Ryerson and that the carrier manual set forth rules which carriers were required to follow. Sawall also believed that, although the carrier manual was authored by 3pL, its content was provided by Ryerson and any noncompliance would result in refusal of payment by 3pL and the denial of further loads.

¶ 19 In addition, Sawall testified that, at the time of the accident, Illinois State had hundreds of customers other than Ryerson and worked with logistics companies other than 3pL. Sawall also testified that the carrier manual provided by 3pL did not address the manner in which a driver was required to drive his or her truck and that Illinois State was responsible for ensuring that its drivers drove safely. Illinois State never signed a contract with Ryerson, and the final decision as to whether to haul a specific load was left to the driver. Under Crane's contract with Illinois State, Crane was free to haul loads for other carriers and, in fact, Crane had contracts with other

carriers at the time of the accident. Sawall further testified that Illinois State was an independent contractor of 3pL, Crane was an independent contractor of Illinois State, and driving decisions, including the route to be taken during a delivery, were left to the driver.

¶ 20 Crane testified that, at the time of the accident, 90% of the work he performed consisted of hauling Ryerson's steel coils for Illinois State. Ryerson determined the manner in which the coils were loaded onto Crane's trailer and Ryerson would sometimes provide Crane with sheeting to put between the coils and the tarp that covered them to avoid rust. The day of the accident, Crane contacted Illinois State after he delivered the load to inform Illinois State that the delivery had been completed. Crane believed that he was still on duty at the time of the accident because he had an Illinois State placard on his truck. Crane also testified that Ryerson had the right to deny a driver a load, stop a delivery during a shipment, and require a driver to follow a specific route during a delivery and that he believed Ryerson could require him to get a haircut.

¶ 21 On cross-examination, Crane stated that he would call 3pL, then Illinois State, after he completed a delivery and that nobody had authority to tell him how to drive. Crane also stated that he could haul for companies other than 3pL and Ryerson, could refuse a load from Ryerson, and was not in contact with Ryerson during a delivery. Crane further stated that Ryerson never directed him as to the route to be taken during a delivery and that, if Ryerson had done so, he was not required to follow that direction.

¶ 22 Plaintiffs also presented the videotaped testimony of Richard Leidolf, an operations manager at Ryerson, who testified that Illinois State was the preferred carrier for a couple of delivery lanes, including the lane Crane was driving on the day of the accident. 3pL evaluated

carriers using a rating system that was based on factors such as on-time deliveries and Ryerson could "strongly suggest" to 3pL that a different carrier be used if the carrier consistently received a low rating. On cross-examination, Leidolf stated that Ryerson did not have contact with a driver after the driver left Ryerson's facility and that Ryerson never attempted to control the manner in which a truck was driven and did not have any control over the hiring or firing of drivers.

¶ 23 The parties stipulated to the admission of deposition testimony given by Jon Gustason, a carrier manager for 3pL, who worked exclusively on the Ryerson account. Gustason testified that Ryerson would notify 3pL if it was aware of a carrier's noncompliance and that Ryerson and 3pL had the ability to prohibit a driver from hauling Ryerson's products.

¶ 24 Karen Hoffman testified that she temporarily blacked out as a result of the impact of the automobile her mother was driving and the tractor-trailer driven by Crane and that her mother was unconscious, bleeding, and badly hurt when Karen was removed from the vehicle and taken to the hospital in an ambulance. Karen hit her head on the windshield during the accident and suffered a bump on her head that lasted for about a week. Karen also testified that she now becomes nervous and jittery when she is in an automobile that is near a truck.

¶ 25 Based on this evidence, the court entered a directed verdict in favor of Crane and Illinois State on Ryerson's contribution counterclaim, finding that the counterclaim was not supported by any evidence. Following closing arguments, the jury entered a verdict in favor of plaintiffs and against Crane, Illinois State, 3pL, and Ryerson. The jury awarded $24,550,000 in damages to Nancy Hoffman, $2,319,203 in damages to Mark Hoffman, and $802,949.15 to Karen Hoffman,

$800,000 of which was for pain and suffering. The jury also answered a number of special interrogatories, finding that Illinois State, 3pL, and Ryerson were engaged in a joint venture at the time of the accident and that Crane was an agent of the joint venture. The jury also found that Crane was acting within the scope of his authority as an agent of the joint venture at the time of the accident, that Crane was an agent of both 3pL and Ryerson, and that Crane was acting within the scope of his authority as an agent of 3pL and Ryerson at the time of the accident. The court then entered an order granting judgment in favor of plaintiffs as set forth in the jury's verdict.

¶ 26 Immediately following the announcement of the verdict, counsel for 3pL informed the court that plaintiffs and 3pL had reached a high/low agreement shortly before the verdict was announced whereby 3pL agreed to pay plaintiffs $1,000,000 if the jury entered a verdict against 3pL of $1,000,000 or greater, to pay $825,000 if the jury entered a verdict of $825,000 or less, to pay the amount of the verdict if it was between $825,000 and $1,000,000, and to pay $912,500 if the trial resulted in a hung jury, deadlocked jury, or mistrial. The agreement also provided that 3pL would pay plaintiffs $1,000,000 if the jury determined by special interrogatory either that Crane was an agent of 3pL at the time of the accident or that 3pL was engaged in a joint venture with the other defendants and that Crane was acting within the scope of his agency of that joint venture at the time of the accident.

¶ 27 Ryerson filed a posttrial motion asking the court to enter judgment *n.o.v.* in its favor or conduct a new trial, asserting that the evidence overwhelmingly showed that it was not engaged in a joint venture with Illinois State and 3pL and that Crane was not its agent. Ryerson also

asserted that the verdict was against the manifest weight of the evidence and the amount of damages awarded to Karen Hoffman for pain and suffering was excessive. Crane and Illinois State filed a posttrial motion, asserting that the joint venture claim against Illinois State should be dismissed because it was in a joint venture with 3pL and the high/low agreement between plaintiffs and 3pL and the resulting release of 3pL from liability extinguished Illinois State's liability on the joint venture claim. The court denied the posttrial motions, finding that there was ample evidence to support the jury's verdict and that the high/low agreement between plaintiffs and 3pL did not relieve Illinois State of liability.

¶ 28 ANALYSIS

¶ 29 I. Judgment *n.o.v.*/New Trial

¶ 30 On appeal, Ryerson contends that it was entitled to judgment *n.o.v.* because Crane was not its agent and it did not enter into a joint venture with Illinois State or 3pL. Ryerson also contends that the court erred by denying its motion for a new trial because the jury's verdict was against the manifest weight of the evidence. Plaintiffs respond that this court should affirm the judgment entered against Ryerson because the jury found that Crane was an agent of Ryerson and Ryerson was, therefore, vicariously liable for Crane's negligence.

¶ 31 A court may only enter judgment *n.o.v.* when all the evidence, viewed in the light most favorable to the nonmovant, so overwhelmingly favors the movant that no contrary verdict could stand. *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 178 (2006). A motion for judgment *n.o.v.* presents a question of law as to whether there was a total failure to present evidence to prove a necessary element of the plaintiff’s case, and this court reviews the

ruling on such a motion *de novo*. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 37. A reviewing court may not reverse a jury verdict unless it is against the manifest weight of the evidence, and a verdict is not against the manifest weight of the evidence unless the opposite conclusion is clearly evident or the jury's findings "are unreasonable, arbitrary, and not based upon any of the evidence." *Snelson v. Kamm*, 204 Ill. 2d 1, 35 (2003).

¶ 32 An agency relationship exists when a principal has the right to control its agent's conduct and the agent has the power to affect the legal relationships of the principal. *Uesco Industries, Inc. v. Poolman of Wisconsin, Inc.*, 2013 IL App (1st) 112566, ¶ 61. An independent contractor is a person who is retained by the principal to produce a given result, but has discretion as to the actual execution of the work. *Lawlor*, 2012 IL 112530, ¶ 43. Under the doctrine of *respondeat superior*, a principal may be held vicariously liable for injuries caused by its agent's tortious acts, but generally may not be held liable for injuries caused by an independent contractor. *Id.*, ¶ 42. However, vicarious liability may be imposed upon a principal for the actions of its independent contractor when an agency relationship is established under the doctrine of implied authority so as to negate the person's status as an independent contractor. *Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17, 31 (1999).

¶ 33 The classification of a person as an agent or an independent contractor rests upon the facts and circumstances of each case, and the cardinal consideration is whether the alleged agent retained the right to control the manner in which the work at issue was performed. *Id.* at 42, 46. When the principal controls not only the result, but also the means by which the result is to be accomplished, then the person performing the work is an agent and, when the principal retains no

control over the manner in which the result is to be accomplished, then the person performing the work is an independent contractor. 2A C.J.S. *Agency* § 17 (2003). Additional factors for a court to consider are: "(1) the question of hiring; (2) the right to discharge; (3) the manner of direction of the servant; (4) the right to terminate the relationship; and (5) the character of the supervision of the work done." *Lawlor*, 2012 IL 112530, ¶ 44.

¶ 34 Ryerson, citing this court's decisions in *Dowe v. Birmingham Steel Corp.*, 2011 IL App (1st) 091997, and *Shoemaker v. Elmhurst-Chicago Stone Co., Inc.*, 273 Ill. App. 3d 916 (1994), asserts that the evidence presented at trial established, as a matter of law, that Crane was not its agent at the time of the accident because it did not have any right to control the manner in which Crane drove his trailer. Plaintiffs, citing *Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051 (2011), respond that the evidence showed that Ryerson exercised sufficient control over Crane to support the jury's finding that he was Ryerson's agent.

¶ 35 In *Dowe*, 2011 IL App (1st) 091997, ¶¶ 31-33, this court held that the driver was not the shipper's agent because the shipper did not have the right to control the manner in which the driver hauled its goods, as the driver chose his own route, controlled his own hours, provided and maintained his own equipment, was directly paid by the carrier, paid his own liability and cargo insurance, and performed his job pursuant to rules he received from the carrier. In *Shoemaker*, 273 Ill. App. 3d at 921, this court held that the driver was not an agent of the shipper because the shipper did not have the right to control the manner in which the driver performed his job, as the shipper only assisted the driver in loading his truck and instructed the driver as to where to haul its goods and did not pay the driver or have the right to hire or fire the driver. In *Sperl*, 408 Ill.

App. 3d at 1058, this court held that the driver was the agent of a logistics company because the company could control the manner in which the driver performed her job by enforcing its special instructions through a system of fines.

¶ 36 In this case, the carrier manual set forth various requirements, including that all drivers maintain a well-kept appearance and perform their duties in a safe, courteous, and professional manner. Sawall testified that he believed Ryerson provided 3pL with the manual's content, Rau testified that Ryerson could suggest changes to the manual before it was distributed, and Spenny testified that she believed that Chown, a vice president of Ryerson, reviewed the manual before it was distributed by 3pL. In addition, Wigg testified that Ryerson and 3pL could direct a carrier not to use a driver if the driver did not follow the manual's requirements and Gustason testified that Ryerson and 3pL could prohibit a driver from hauling Ryerson's products even though the transportation agreement provided that Illinois State maintained full control over its drivers. Thus, plaintiffs presented evidence from which the jury could have found that Ryerson had the right to control the manner in which Crane made deliveries because it could enforce the rules it put in the carrier manual regarding driver professionalism by prohibiting any driver who did not follow those requirements from delivering its products. Also, Crane's testimony that Ryerson had the right to deny a driver a load, stop a delivery during a shipment, and require a driver to follow a specific route during a delivery and that he believed Ryerson could require him to get a haircut further support a finding that Ryerson had the right to control the manner in which Crane made deliveries.

¶ 37 Viewing the evidence in the light most favorable to plaintiffs, we determine that this case

more closely resembles *Sperl*, in which this court affirmed the jury's agency finding, than *Dowe* or *Shoemaker*. As in *Sperl*, where the logistics company could enforce its instructions regarding the driver's job performance through a system of fines, here Ryerson had the ability enforce the rules set forth in the carrier manual by denying loads to Crane if he did not comply with those requirements. Unlike *Dowe*, where the driver chose his own delivery route and performed his job pursuant to the carrier's rules, here Crane testified that Ryerson could require a driver to follow a specific route during a delivery, stop a delivery during a shipment, and get a haircut. Unlike *Shoemaker*, where the shipper only provided instruction regarding where its goods should be delivered, here Crane was required to follow the professionalism requirements in the carrier manual and Ryerson's control over Crane extended beyond directing him as to where to deliver a load. Thus, plaintiffs presented sufficient evidence at trial to support a finding that Ryerson had the right to control the manner in which Crane hauled its steel.

¶ 38 In addition, plaintiffs presented evidence showing that Ryerson had the right to terminate its relationship with Crane by denying him loads if he did not comply with its requirements and, based on Crane's testimony that 90% of his work came from hauling Ryerson's products, the jury could have found that Ryerson had the practical ability to fire Crane by denying him those loads. Although Crane completed the delivery before the accident occurred, he testified that he believed he was still on duty at the time and, in *St. Paul Fire & Marine Insurance Co. v. Frankart*, 69 Ill. 2d 209, 219 (1977), our supreme court held that a driver who is driving home his empty trailer after having made a delivery is still engaged in the carrier's business at that time.

¶ 39 Thus, we conclude that plaintiffs presented sufficient evidence showing that Crane was

an agent of Ryerson and acting within the scope of that agency when the accident occurred to establish that Ryerson is not entitled to judgment *n.o.v.* and that the jury's verdict and special interrogatory answers to that effect are not against the manifest weight of the evidence. Having done so, we need not consider whether the jury's findings that Ryerson, 3pL, and Illinois State were engaged in a joint venture and that Crane was acting within the scope of his authority as an agent of the joint venture when the accident occurred are against the manifest weight of the evidence.

¶ 40 II. High/Low Agreement

¶ 41 Crane and Illinois State contend that this court should reverse the judgment entered against them because plaintiffs' high/low agreement with 3pL extinguished the liability of all parties to the joint venture. Plaintiffs respond that even if the high/low agreement extinguished Illinois State's liability under their theory of recovery based on the existence of a joint venture, this court should affirm the judgment against Crane and Illinois State pursuant to the general verdict rule, as Crane and Illinois State admitted in their answer to the sixth amended complaint that Crane was acting as an agent of Illinois State when the accident occurred.

¶ 42 "If several grounds of recovery are pleaded in support of the same claim, whether in the same or different counts, an entire verdict rendered for that claim shall not be set aside or reversed for the reason that any ground is defective, if one or more of the grounds is sufficient to sustain the verdict." 735 ILCS 5/2-1201(d) (West 2010). Thus, when the jury returns a general verdict and more than one theory of recovery has been presented, the verdict will be upheld if there was sufficient evidence to sustain any of the theories and the complaining party failed to

request special interrogatories. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 101 (2010).

¶ 43 Crane and Illinois State maintain that the general verdict rule does not apply in this case because the jury answered special interrogatories. However, although the jury answered special interrogatories regarding the existence of a joint venture and whether Crane was acting as an agent of the joint venture, 3pL, and Ryerson when the accident occurred, the jury did not answer any special interrogatories regarding whether Crane was acting as an agent of Illinois State when the accident occurred. Regardless, Crane and Illinois State admitted in their answer to the sixth amended complaint that Crane was acting as Illinois State's agent when the accident occurred. A judicial admission is binding and has the effect of withdrawing that fact from controversy such that is unnecessary for the opposing party to present evidence to establish that fact. *Freedberg v. Ohio National Insurance Co.*, 2012 IL App (1st) 110938, ¶ 31. Thus, Crane and Illinois State are bound by their admission that Crane was acting as Illinois State's agent when the accident occurred and would be liable under plaintiff's agency theory regardless of whether Illinois State's liability under the joint venture theory was extinguished by the high/low agreement.

¶ 44 Moreover, the high/low agreement between plaintiffs and 3pL has no effect on Illinois State's liability because plaintiffs did not allege that Illinois State was vicariously liable for any injuries caused by 3pL. When a plaintiff alleges vicarious liability against a principal for injuries caused by its agent and reaches a settlement agreement with the agent, the principal's vicarious liability is extinguished by the settlement. *American National Bank & Trust Co. v. Columbus-Cuneo-Cabrini Medical Center*, 154 Ill. 2d 347, 354 (1992). This rule encourages the settlement of disputes because, if a principal's liability was not extinguished by a settlement between the

agent and the plaintiff, the agent would not receive the benefit of its bargain as the agent would remain liable to the principal for indemnification. *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 528-29 (1993).

¶ 45 Crane and Illinois State assert that 3pL was an agent of Illinois State because members of a joint venture are agents of one another and the high/low agreement between plaintiffs and 3pL, Illinois State's agent as a member of the joint venture, extinguished Illinois State's liability. Crane and Illinois State assert that, because 3pL is Illinois State's agent, Illinois State could bring an implied indemnity claim against 3pL and 3pL would then be deprived of the benefit of its agreement with plaintiffs. The doctrine of implied indemnity allows a blameless principal held to be vicariously liable for the conduct of its agent to shift its liability to the party responsible for the injury. *American National Bank*, 154 Ill. 2d at 351, 354; *Dixon v. Chicago & North Western Transportation Co.*, 151 Ill. 2d 108, 119 (1992).

¶ 46 In this case, Illinois State's vicarious liability arises from the negligent conduct of Crane, and not 3pL. Thus, even if 3pL was Illinois State's agent, Illinois State could not seek implied indemnity from 3pL because Illinois State was not being held vicariously liable for the conduct of 3pL. As such, the rule requiring that "any settlement between the agent and the plaintiff must also extinguish the principal's vicarious liability" does not apply in this case. *American National Bank*, 154 Ill. 2d at 355.

¶ 47 III. Contribution

¶ 48 Ryerson contends that the court erred by entering a directed verdict in favor of Crane and Illinois State on its counterclaim for contribution. A circuit court's decision to enter a directed

verdict is reviewed *de novo*. *Lawlor*, 2012 IL 112530, ¶ 37. A directed verdict is warranted when the evidence, viewed in the light most favorable to the party against whom the directed verdict is entered, so overwhelmingly favors the opposing party that no contrary verdict could stand. *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992).

¶ 49 Ryerson asserts that Illinois State, as a carrier and lessee of Crane's trailer, had exclusive possession, control, and use of the trailer pursuant to the relevant federal regulations and that it is entitled to contribution from Illinois State because Crane's negligence in operating the trailer is attributable to Illinois State. Crane and Illinois State respond that Ryerson has forfeited its claim because it did not raise the argument that Illinois State's negligence was established by Crane's negligence in its posttrial motion.

¶ 50 A party must include a claim in a written posttrial motion to preserve that issue for appeal (*Thornton v. Garcini*, 237 Ill. 2d 100, 106 (2009)) and may not urge as error "any point, ground, or relief not specified in the motion" (Ill. S. Ct. R. 366(b)(2)(iii) (eff. Feb. 1, 1994)). The claim must be set forth with sufficient specificity in the posttrial motion so as to allow the circuit court judge to review his or her decision, allow the reviewing court to determine whether the circuit court has had an opportunity to assess the allegedly erroneous ruling, and prevent a litigant from stating general objections in its motion and then raising issues on appeal which the circuit court judge did not have an opportunity to consider. *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶ 111.

¶ 51 Ryerson asserted in its posttrial motion that the court erred by dismissing its contribution counterclaim because the evidence presented at trial showed that Illinois State breached its duty

to ensure that Crane drove the tractor-trailer in a safe manner by failing to supervise Crane's driving. On appeal, Ryerson does not assert that it is entitled to contribution because Illinois State failed to properly supervise Crane but, instead, maintains that it is entitled to contribution because Crane's negligence was attributable to Illinois State due to Illinois State's status as the lessee of Crane's trailer. Thus, the circuit court was never given the opportunity to consider whether it erred by entering a directed verdict on Ryerson's counterclaim for the reasons set forth by Ryerson on appeal. As Ryerson is prohibited from raising issues on appeal which the circuit court did not have an opportunity to consider, we conclude that Ryerson has failed to preserve this claim for appellate review.

¶ 52 IV. Pain and Suffering

¶ 53 Ryerson contends that the $800,000 in damages awarded to Karen Hoffman for pain and suffering is excessive because her physical injuries were minimal and any mental or emotional pain and suffering arising from the accident was caused by her mother's injuries, rather than her injuries. The amount of damages to be awarded is a question reserved to the trier of fact, and a reviewing court will not substitute its opinion for that of the jury without evidence "that the jury failed to follow some rule of law or considered some erroneous evidence, or that the verdict was the obvious result of passion or prejudice." *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 247 (2006).

¶ 54 In this case, Karen Hoffman testified that she could see that her mother was unconscious, bleeding, and badly hurt when she regained consciousness after the accident had occurred and that she now becomes very nervous when she is in an automobile that is near a truck. Thus,

plaintiffs presented evidence showing that Karen experienced past and continuing mental and emotional suffering as a result of the accident. As such, the jury's award for pain and suffering is not bereft of evidentiary support and we will not substitute our opinion for that of the jury on this matter.

¶ 55 CONCLUSION

¶ 56 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 57 Affirmed.