Articles

The Mythology of Logo Liability: An Analysis of Competing Paradigms of Lease Liability for Motor Carriers

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I. INTRODUCTION

The late 1970s and early 1980s, it was a time when law students spent their evenings playing Pong, the Soviets were unbeatable at hockey, streaking swept college campuses, and Americans experienced gas lines for the first time since World War II. The best lawyers were defense lawyers, and advertising wasn't allowed. No one handling accident claims thought a life could ever be worth more than $100,000. It was during this time that an obscure doctrine called "logo liability" started becoming a topic of conversation in the inner circles of truck bodily injury claims.

From the start, logo liability was not well understood by plaintiffs, defense lawyers or truck claims specialists, much less by the courts. The lawyers who understood transportation at that time seldom ventured into the messy realm of bodily injury litigation. The defense of truck injury claims was assigned to insurance defense lawyers who had learned their trade on auto injury claims and occasional slip and fall cases. Many had no idea that drivers kept logs, much less that there was a complex body of regulations controlling the industry. State and national plaintiffs' lawyer

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organizations had not yet discovered trucks. A few well-informed plaintiff and defense lawyers became familiar with a United States Supreme Court case *Transamerican Freight Lines, Inc. v. Brada Miller Freight Systems, Inc.*[1] and 49 C.F.R. § 1057.4, an obscure interstate commerce commission regulation. *Transamerican*, which was not even about logo liability, had this to say about the use of independent contract or truck drivers:

It is apparent, therefore, that sound transportation services and the elimination of the problem of a transfer of operating authority, with its attendant difficulties of enforcing safety requirements and of fixing financial responsibility for damage and injuries to shippers and members of the public, were the significant aims and guideposts in the development of the comprehensive rules.[2]

The obscure lease regulation provides for the "exclusive possession, control, and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of said contract, lease or other arrangement . . . ."[3] Without a lot of thought about how or why the Supreme Court had commented about the use of independent contractors in trucking, the "exclusive possession, control, and use" regulation began to take hold in claims involving trucks leased with the driver. Over time, the lawyers on both sides of truck injury cases, as well as the claims handlers, came to accept the notion that the logo or placard on the side of the truck conferred some degree of responsibility on equipment leased with the driver.[4] Most firms refer to this concept of lease liability as "logo liability."[5] It has also been called "placard liability" and "statutory employment."[6] To the more sophisticated, it was referred to as "lease liability."[7]

By the end of the 1980s, the doctrine of logo liability had appeared in

1. Transam. Freight Lines, Inc. v. Brada Miller Freight Sys., Inc., 423 U.S. 28 (1975).

2. *Id.* at 234.

3. 49 C.F.R. § 1057.4 (1974).

4. *See, e.g.,* Rodriguez v. Ager, 705 F.2d 1229, 1236 (10th Cir. 1983) (reviewing case law and recognizing that 49 C.F.R. 1057.4 holds the lessee as well as the driver responsible in truck injury cases).

5. *E.g.,* Strawinski & Goldberg, L.L.P., Carrier Liability, Lease Liability, http://www.motorcarrierclaims.com/carrier.htm (last visited Oct. 26, 2005).

6. See *id.*, for a discussion of "placard liability." See *Rodriguez*, 705 F.2d at 1236, for a discussion of cases that have recognized the ICC placard as the equipment's authorization to be on the highway. See Wellman v. Liberty Mut. Ins. Co., 496 F.2d 131, 137 (8th Cir. 1974), for a discussion of cases that have extended liability coverage to the owner-operator as a "statutory employee" of the motor carrier.

7. *E.g.,* Strawinski & Goldberg, *supra* note 5; *see also* Johnson v. S.O.S. Transp., Inc., 926 F.2d 516, 521 (6th Cir. 1991) (recognizing that lessee carriers can be held vicariously liable "for injuries sustained by third parties resulting from the negligence of the drivers of the leased vehicles.").

many reported state and federal decisions.[8] Like many of the lawyers involved in these cases, the courts generally accepted the notion that injured members of the public were entitled to extra protection when it came to trucking companies using equipment leased with drivers.[9] Today, there are two primary schools of thought concerning lease liability. First, there exists the "strict agency liability" school of thought embodied by *Morris v. JTM Materials, Inc.*, which found that a motor carrier is liable as a matter of law for the negligence of its leased drivers regardless of whether they were under the control of the motor carrier at the time of the tort.[10] Second, there exists the "scope of employment" school of thought embodied by *Parker v. Erixon*, which held that the court should look to state employment law to determine whether the driver was acting within the scope of his agency with the motor carrier at the time of the tort.[11] The competing paradigms can lead to dramatically different outcomes for the motor carrier.

The concept of logo liability permeates the truck claims industry. It not only dominates owner-operator liability claims as previously demonstrated, but also dominates the determination and responsibility in the context of temporary leases between motor carriers, referred to as trip leases. Truck insurance claims analysis for these types of claims has become exceedingly complicated and often results in the arbitrary assignment of insurance liability. Unaccounted for are the claims funds paid because of fear of the doctrine, which remains misunderstood. In fact, nearly thirty years after the doctrine of logo liability began to develop, it has become a force of its own, often applied simply because it seems applicable. Behind the mythology of logo liability, there is legal foundation for the responsibility conferred upon trucking companies that utilize equipment leased with drivers. This responsibility is not unlimited. It is the purpose of this article to expose that foundation. Part II will examine the history and development of the logo and lease liability doctrines, Part III will compare the *Morris* and *Parker* approaches, and Part IV will conclude that while the law remains unsettled, the *Parker* approach provides the better analysis for applying liability through a lease.

II. History and Development of Logo and Lease Liability

Long before logo liability was a glimmer in a plaintiff's lawyer's eye, motor carriers and owner operators had perfected the independent contractor arrangement. Leasing equipment and drivers provides advantages

8. *See Rodriguez*, 705 F.2d at 1232.

9. *See id.*; *Wellman*, 496 F.2d at 139; Mellon Nat'l Bank & Trust Co. v. Sophie Lines, Inc., 289 F.2d 473, 475-76 (3d Cir. 1961).

10. Morris v. JTM Materials, Inc., 78 S.W.3d 28, 39 (Tex. App. 2002).

11. Parker v. Erixon, 473 S.E.2d 421, 426 (N.C. Ct. App. 1996).

to both the motor carrier and the driver. First, the motor carrier is relieved of the burden of holding, maintaining, and upgrading equipment to meet the needs of its drivers. Second, the motor carrier does not have to keep a large staff of employees on the books. Third, the driver benefits by earning a greater percentage of revenue per mile, having greater control over his schedule, and avoiding the high premiums of trucking insurance.

Liability imposed upon the motor carrier for the driver's conduct is relatively straightforward when the driver is an employee. While some states impose liability based on the use of the equipment alone under dangerous instrumentality or statutory owner liability,[12] liability is typically imposed through the respondeat superior doctrine.[13] In order to impose liability through respondeat superior, the plaintiff must demonstrate that the employee was on the business of the motor carrier at the time of the subject accident.[14] Generally, if the driver is using his truck on a frolic or detour, the liability for the driver's conduct will not be imputed to the motor carrier.[15]

When the driver is an independent contractor, however, the question of liability is more complicated. Typically, an employer would not be held liable for the conduct of an independent contractor unless that employer controlled the contractor's work.[16] In the case of owner-operator drivers, however, some motor carriers used the contractor relationship to avoid liability for accidents while the driver was transporting its freight.[17]

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12. For example, Florida law provides that motor vehicles are dangerous instrumentalities and, therefore, special liability is imposed upon the owner for the operation of such an instrumentality. Martin v. Lloyd Motor Co., 199 So.2d 413, 414 (Fla. Dist. Ct. App. 1960) (recognizing that Florida law provides that motor vehicles are dangerous instrumentalities). California, Iowa, Michigan, and New York have statutes concerning the liability of owners for the negligence of permissive users. CAL. VEH. CODE § 17150 (2005); IOWA CODE § 321.493 (2005); MICH. COMP. LAWS § 257.401 (2005); N.Y. VEH. & TRAF. § 388 (McKinney 2005).

13. *See* Gudgel v. S. Shippers, Inc., 387 F.2d 723 (7th Cir.1967); *see also* Perkins v. United States, 234 F. Supp. 2d 1, 3 (D. D.C. 2002).

14. *See* Steele v. Armour & Co., 583 F.2d 393, 396 (8th Cir. 1978).

15. Houston v. Liberty Mut. Fire Ins. Co., No. L-04-1161, 2005 WL 1926513, at *7 (Ohio Ct. App. Aug. 12, 2005).

16. Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730, 751-52 (1989).

> In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Id.

17. *See, e.g., Transam. Freight Lines*, 423 U.S. 28.

Congress attempted to put a stop to the practice in 1956.[18]

A. The Leasing Regulations and the Requirement of Responsibility

In considering regulations issued by the Interstate Commerce Commission ("ICC"),[19] the United States Supreme Court discussed some of the testimony concerning abuses of some companies' use of owner-operators and leased equipment in *American Trucking Ass'ns v. United States*.[20] In particular, the Court noted that the ICC was concerned that companies were not enforcing the safety requirements for drivers or for equipment, and that the owner-operators themselves were driving beyond their limits to maximize their income.[21] The Court upheld the Commission's authority to promulgate leasing regulations, stating, "The purpose of the rules is to protect the industry from practices detrimental to the maintenance of sound transportation services consistent with the regulatory system."[22] In 1956, Congress enacted enabling statutes that permitted the ICC to more closely regulate the lease of equipment. The statute now provides in pertinent part:

> The Secretary may require a motor carrier providing transportation . . . that uses motor vehicles not owned by it to transport property under an arrangement with another party to— . . . (4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.[23]

Based upon the enabling statute, the ICC promulgated leasing regulations, which require, among other things, that leases be in writing.[24] 49 C.F.R. § 1507.4(a)(4) required the lease to "provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of

18. 49 U.S.C. § 14102 (2000) (formerly codified at 49 U.S.C. § 11107 (1994) and 49 U.S.C. § 304 (1956)). The wording of the statute has changed slightly since its original drafting, but still requires that leased equipment be treated like owned equipment.

19. ICC Termination Act of 1995, Pub. L. No. 104-88, § 101, 109 Stat. 803, 804 (1995) (abolishing the ICC). Now, regulated by the Federal Motor Carrier Safety Administration ("FMCSA").

20. Am. Trucking Ass'n v. United States, 344 U.S. 298, 305-06 (1953).

21. *Id.* The Court acknowledged, however, that the safety differences between owned and leased equipment may not have been as great as was speculated. The Court stated, "A road check examination conducted by the Bureau did not indicate any significant difference in the number of safety violations between leased and owned vehicles." *Id.* at 305 n.7.

22. *Id.* at 310.

23. 49 U.S.C. § 14102(a)(4) (formerly codified at 49 U.S.C. § 11107 (1995) and 49 U.S.C. § 304 (1956)) The wording of the statute has changed slightly since its original drafting, but still requires that leased equipment be treated like owned equipment.

24. *Id.* § 14102(a)(1).

said contract, lease or other arrangement . . . ."[25] One of the purposes of the enabling statute was to require motor carriers to treat leased equipment like owned equipment.[26] The ICC put that into practice by promulgating a strongly worded regulation, which required motor carriers to assume complete responsibility for the equipment.[27]

In order for motor carriers to use leased equipment, they are required to provide the lessor with a placard for the motor carrier.[28] The placard, usually affixed to the door of the tractor, identifies the motor carrier for whom the equipment is being operated.[29] The pre-1986 regulations made it the motor carrier's responsibility to retrieve the placards when terminating a lease.[30] Because the placard could be evidence of the existence of a lease, it was a relatively easy leap in logic to equate the placard itself with the leasing regulations requiring the "complete assumption of responsibility" for the equipment.

B. The Rise and Fall of "Logo" Liability

From the leasing regulations, courts created the doctrine of logo liability. The purpose of the regulations was to prevent motor carriers from circumventing the responsibility for drivers through the owner-operator relationship. Motor carriers were required to treat leased equipment like owned equipment.[31] The analysis for imposing liability for owned equipment requires an examination as to whether the driver was acting within the course and scope of his employment at the time of the subject accident. Some courts, however, interpreted the ICC regulations as expressing an intent for motor carriers to assume greater liability for leased equipment than it did for owned equipment.[32] The text of 49 C.F.R. § 1057.4, after all, did not mention anything about course and scope of employment.[33] Instead, it simply stated that the lease had to require the "complete assumption of responsibility" for equipment.[34] In some courts, however, the shortcut of using the logo to demonstrate a lease

25. 49 C.F.R. § 1057.4(a)(4).
26. *See* 49 U.S.C. § 14102(a)(4).
27. *Id.*
28. *See* 49 C.F.R. § 390.21 (2005) (providing the requirements for the contents of the placard). The placard must display the legal name of the operating carrier, the carrier's DOT number issued by the FMCSA, when the transport is done by another carrier than shown on the placard, the statement "operated by" and the name of the carrier must be displayed., and the placard must be on both sides of the tractor. *Id.*
29. *Id.* § 390.21(a)(3).
30. *Id.* § 1057.4(d)(1).
31. 49 U.S.C. § 14102(a)(4).
32. *See, e.g., Mellon*, 289 F.2d at 478.
33. *See* 49 C.F.R. § 1057.4.
34. *Id.* § 1057.4(a)(4).

itself became evidence of a relationship between the driver and motor carrier.

For example, one of the earliest decisions to impute liability on the existence of placards came from the Third Circuit Court of Appeals in *Mellon National Bank & Trust Co. v. Sophie Lines, Inc.*[35] In that case, a truck was owned by Sophie Lines and leased to Turner Transfer, Inc.[36] Turner dispatched the driver to the Sophie Lines terminal with a load and instructed the driver to remove the Turner placards because no return load was available.[37] Without Turner's knowledge, Sophie arranged for the driver to transport a return load on behalf of another carrier.[38] The accident occurred on the return trip and it was found that the driver had not removed Turner's placards from the truck.[39]

The Third Circuit Court of Appeals upheld the trial court's determination that Turner was liable as a matter of law for the accident, in part, because it had failed to retrieve the placards and obtain a receipt as required by the leasing regulations.[40] The court reasoned that because the placards were still on the truck, the lease was still in effect and the motor carrier was liable.[41] The court's analysis ended with the existence of the placards, but tacitly the court held that a motor carrier would be liable as long as the lease was in effect regardless of whether the driver was acting within the scope of his agency.[42]

The Eighth Circuit Court of Appeals adopted the reasoning of *Mellon* in *Wellman v. Liberty Mutual Insurance Co.* in a decision concerning insurance coverage.[43] In that case, the truck driver leased his truck to Morgan Drive-Away, Inc. but was carrying a load for IMT, Inc. at the time of an accident with the plaintiff.[44] The truck was displaying Morgan placards.[45] The court acknowledged that the display of the placards would impose liability to the plaintiff on the part of Morgan for the driver's negligence, but denied that the driver was an employee for insur-

35. *Mellon*, 289 F.2d 473.

36. *Id.* at 474-75.

37. *Id.* at 475.

38. *Id.* The stipulated facts acknowledged that although Turner did not have knowledge of this trip, it was aware that Sophie had arranged similar trips in the past. *Id.*

39. *Id.* at 476.

40. *Id.*

41. *Id.* at 476-77.

42. *See id.* at 477; *see also* Carolina Cas. Ins. Co. v. Ins. Co. of N. Am., 595 F.2d 128, 137 (3d Cir. 1979) ("In furtherance of the policy of protecting the public and providing it with an identifiable and financially accountable source of compensation for injuries caused by leased tractor-trailers, federal law in effect creates an irrebuttable presumption of an employment relationship between a driver and the lessee whose placards identify the vehicle.").

43. *Wellman*, 496 F.2d at 136.

44. *Id.* at 132.

45. *Id.* at 134.

ance coverage purposes.[46] The court stated that the driver "was using the vehicle for Morgan in a general way because of the existence of the vehicle lease and display of permit number."[47]

The Tenth Circuit Court of Appeals decision, *Rodriguez v. Ager*,[48] demonstrated the potential for absurdity in the doctrine of logo liability. In *Rodriguez*, the truck in question was owned by the driver's brother, David Ager, and had been leased to Sammons Trucking Company on August 3, 1977.[49] On December 11, 1978, Ager signed the documents sent by Sammons Trucking to terminate his lease.[50] Ager arranged the transportation of a load of wool from South Dakota to Wyoming, and his brother was driving the truck for that purpose when he was involved in a head-on collision with the Rodriguez family, killing Salvador Rodriguez and three of his children.[51] Sammons' placards were still on the vehicle at the time of the accident.[52] The jury found that a lease was in effect between Ager and Sammons but did not attribute any liability to Sammons for Rodriguez's death.[53] The Tenth Circuit Court of Appeals reversed the verdict because it held that the trial court failed to find as a matter of law that Sammons was liable for Ager's actions.[54] This is a "worst case scenario" for motor carriers, in which the motor carrier is taking reasonable steps to cancel the lease, but liability or a high exposure accident is charged to it solely because the placards remain attached.[55]

Not all courts upheld the "strict agency liability" interpretation of logo liability. The Sixth Circuit Court of Appeals, in *Wilcox v. Transamerican Freight Lines, Inc.*, affirmed the trial court's grant of summary judgment, recognizing that the motor carrier, whose leased driver was not within the scope of his agency at the time of an accident, was not vicariously liable under the ICC regulations for the driver's conduct.[56] In fact, the *Wilcox* court reached the novel conclusion that the use of leased equipment should not impose greater liability than would the use of

46. *Id.* at 136-37.

47. *Id.* at 137.

48. *Rodriguez*, 705 F.2d 1229.

49. *Id.* at 1230.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 1230-31.

54. *Id.* at 1237. It is worth noting that the trial court instructed the jury that Sammons could only be held liable on the basis of respondeat superior. *Id.* at 1231.

55. The tragic nature of the accident may have also influenced the court's decision. It stated, "To fail to uphold the ICC Regulations would result in injustice. Trucking equipment such as that here present has a capability for bringing about terrible injuries and damages to life. This is a typical illustration." *Id.* at 1236.

56. *See* Wilcox v. Transam. Freight Lines, Inc., 371 F.2d 403, 404 (6th Cir. 1967).

owned equipment.[57] The Seventh Circuit Court of Appeals reached a similar decision the same year in *Gudgel v. Southern Shippers*.[58] In *Gudgel*, the lease between Southern Shippers and the owner of the truck was cancelled prior to the accident and the driver was carrying a load for another entity.[59] The court acknowledged that the ICC regulations would impose liability if the accident took place while the driver was operating by authority of the motor carrier's ICC certificate and carrying its placards.[60] However, the court held that the jury could not have reasonably found that the driver was on the business of Southern Shippers at the time of the accident.[61]

In spite of the few favorable courts, decisions like *Mellon*, *Wellman*, and *Rodriguez* left motor carriers at the mercy of drivers to return placards when the relationship ended. Under this line of analysis, a driver could be terminated for failing to pick up a load and never return to the terminal to return the motor carrier's placards. These cases indicate that so long as the placards were in place, the motor carrier would be found liable for the driver's conduct. It is difficult to find any justification for this in the federal enabling statute.[62]

In 1986, the ICC changed the regulations to clarify its intent. The ICC amended the regulations to delete the requirement that the motor carrier obtain a receipt from the driver when the driver returned the placard.[63] Instead, the terms of the lease were permitted to control the exchange.[64] Also and more significantly, instead of the motor carrier being

57. *Id.* at 404. The court's statement regarding the regulations, however, was without analysis. The court simply held, "In our opinion, the I.C.C. Regulations do not impose a liability on a carrier using leased equipment greater than that when operating its own equipment." *Id.*

58. *Gudgel*, 387 F.2d 723.

59. *Id.* at 726-27.

60. *Id.* at 725-26 (citing, among other cases, Mellon Nat'l Bank & Trust v. Sophie Lines, Inc., 289 F.2d 473 (3d Cir. 1961)).

61. *Id.* at 726. The court's decision is puzzling in that if it had actually followed the *Mellon* holding as cited it would have found that the lease was in effect and the motor carrier was liable, regardless of whether the driver was on the business of the carrier at the time of the accident. The court apparently relied more on state agency law than the *Mellon*-view of the regulations.

62. 49 U.S.C. § 14102(a)(4) (formerly codified at 49 U.S.C. § 11107 (1994) and 49 U.S.C. § 304 (1956)).

63. *See* Lease and Interchange of Vehicles (Identification Devices), 3 I.C.C.2d 92, 95 (1986) [hereinafter *Identification Devices*]. Prior to 1986, the ICC regulations mandated that the authorized carrier remove the placards on the truck and to obtain a receipt specifically identifying any returned equipment in order to terminate the lease. Graham v. Malone Freight Lines, Inc., 948 F. Supp. 1124, 1133 n.14 (D. Mass. 1996) (citing 49 C.F.R. § 1057.4(d) (1985)). However, this requirement was deleted in the 1986 amendments. *See id.* (providing that in the notes to the amendments that "the ICC emphasized that liability should not be assigned on the existence of placards alone.").

64. *See Identification Devices*, 3 I.C.C.2d at 96; *see also* 49 C.F.R. § 1057.12(e) (1986) (currently codified at 49 C.F.R. § 376.12(e) (2005)). The new regulation provided as follows:

(e) Items specified in lease. The lease shall clearly specify the responsibility of each

responsible for retrieving its placards from the driver, the terms of the lease could control whose responsibility it was.[65] This change protected motor carriers from rogue drivers who refused to return placards and subjected the motor carrier to potential liability. The ICC further commented at the time of the amendment:

> As noted by the comments, certain courts have relied on Commission regulations in holding carriers liable for the acts of equipment owners who continue to display the carrier's identification on equipment after termination of the lease contract. We prefer that courts decide suits of this nature by applying the ordinary principles of state tort, contract and agency law. The Commission did not intend that its leasing regulations would supersede otherwise applicable principles of state tort, contract and agency law and create carrier liability where none would otherwise exist. Our regulation should have no bearing on this subject. Application of state law will provide appropriate results.[66]

The change in the regulation, however, failed to correct the misapplication of the regulation by some courts to equate the existence of a placard to the existence of a lease and to impose liability on that basis. Without analysis or acknowledgement of the change in regulation, some courts continue to apply the doctrine of logo liability.[67] Other courts, however, have changed their analysis in light of the change in regulations. For instance, in *Graham v. Malone Freight Lines*, Malone Freight terminated the lease with the driver approximately one month before an acci-

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party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and license, and any unused portions of such items. The lease shall clearly specify who is responsible for loading and unloading the property onto and from the motor vehicle, and the compensation, if any, to be paid for this service.

49 C.F.R. § 376.12(e).

65. *See Identification Devices*, 3 I.C.C.2d at 96; *see also* 49 C.F.R. § 1057.12(e).

66. *Identification Devices*, 3 I.C.C.2d at 93 (emphasis added).

67. *See, e.g.*, Guar. Nat'l Ins. Co. v. Dallas Moser Transporters, Inc., 596 N.E.2d 966, 969 (Ind. Ct. App. 1992) (holding that "[w]here the leased vehicle is involved in an accident during the term of the lease while carrying the ICC number of the common carrier with operating authority, the carrier is liable as a matter of law." (citations omitted)); Detrick v. Midwest Pipe & Steel, 598 N.E.2d 1074, 1080 (Ind. Ct. App. 1992) (recognizing that the carrier is liable as a matter of law when a leased vehicle is involved in an accident while under lease and carrying the ICC number of the carrier); J. Miller Express, Inc. v. Pentz, 667 N.E.2d 1018, 1021 (Ohio Ct. App. 1995) (relying on the ICC regulations in order to hold the motor carrier liable); Reliance Nat'l Ins. Co. v. Royal Indem. Co., No. 99 Civ. 10920 NRB, 2001 WL 984737, at *7 to *8 (S.D.N.Y. Aug. 24, 2001) (mem.) (determining that the motor carrier was vicariously liable for the driver's negligence because the truck was still under lease and bore the motor carrier's logo); Gilstorff v. Top Line Express, Inc., 910 F. Supp. 355, 359 (N.D. Ohio 1995) (relying on the ICC regulations, which make a carrier liable for the acts of the driver who displays its placards and identification numbers while under lease, in holding the motor carrier vicariously liable), *rev'd on other grounds*, 106 F.3d 400, 1997 WL 14378 (6th Cir. 1997) (unpublished table disposition).

dent occurred.[68] At the time of the accident, the driver was carrying a load without interstate authority for a broker, not the motor carrier, but was still displaying Malone Freight's placards.[69] The District Court for the District of Massachusetts analyzed the ICC regulations in place at the time and recognized that the existence of the placards alone did not impose liability on the motor carrier.[70] In the Fifth and Sixth circuits in particular, logo liability has been disavowed. In *Jackson v. O'Shields*, the driver refused to sign a cancellation receipt indicating the termination of the lease and refused to remove the motor carrier's placards from his truck.[71] The Fifth Circuit Court of Appeals held that after the 1986 amendment, the motor carrier should no longer be held liable on the basis of placards alone.[72] The court stated, "In the aftermath of the ICC amendments, the continued vitality of decisions in other circuits holding that a lease cannot be effectively terminated until a carrier removes its placard and obtains a receipt is at best questionable."[73] In *Ross v. Wall Street Systems*, the motor carrier sent a letter to the truck's owner terminating the lease, but Wall Street Systems' placards were still on the truck a month later when the accident occurred.[74] The court held, relying on *Graham* and *Jackson*, that the lease had been terminated and the presence of a placard alone did not impose liability on the motor carrier.[75]

The recognition that the regulations were not intended to impose liability based on the logo on the truck has been a positive change.

68. Graham v. Malone Freight Lines, 948 F. Supp. 1124, 1129 (D. Mass. 1996) (mem.).

69. *Id.* at 1128.

70. *Id.* at 1133 & n.14; *see also* Williamson v. Steco Sales, Inc., 530 N.W.2d 412, 419 (Wis. Ct. App. 1995) (determining that because of the 1986 amendments, liability should not be imposed on the motor carrier based solely on the existence of placards); Tartaglione v. Shaw's Express, Inc., 790 F. Supp. 438, 441-42 (S.D.N.Y. 1992) (granting summary judgment after recognizing that the motor carrier was not liable because the lease was terminated and the placards were not removed due to the fault of the driver); Newman v. M & S Trucking Co., 12 F.3d 1101, 1993 WL 540600, at *5 (7th Cir. 1993) (unpublished table disposition) (providing that no liability exists in the absence of a lease).

71. Jackson v. O'Shields, 101 F.3d 1083, 1085 (5th Cir. 1996).

72. *Id.* at 1087 (citing Atlantic Truck Lines, Inc. v. Kersey, 387 So.2d 411, 416 (Fla. Dist. Ct. App. 1980)).

73. *Id.* at 1087. The court distinguished, rather than overruled, its prior decisions Simmons v. King, 478 F.2d 857, 867 (5th Cir.1973) and Price v. Westmoreland, 727 F.2d 494, 497 (5th Cir.1984), which recognized that if the truck bears the carrier's ICC placard, then the driver constitutes a statutory employee and, thus, the carrier will be held vicariously liable for the injuries, and which applied the *Simmons* reasoning.

74. Ross v. Wall St. Sys., 400 F.3d 478, 479 (6th Cir. 2005).

75. *Id.* at 480. The court went even further than *Jackson* in declaring the death of logo liability. "In the past, some courts followed a doctrine of 'logo liability,' under which the presence of a carrier's government-issued placard created an irrebuttable presumption that the lease continued in effect. However, the underlying ICC regulations have changed, and this rule is no longer in effect." *Id.* at 479-80 (citing Jackson v. O'Shields, 101 F.3d 1083 (5th Cir. 1996) and Graham v. Malone Freight Lines, 948 F. Supp. 1124 (D. Mass. 1996)) (internal citations omitted).

Though some courts have not yet overturned decisions made under the pre-1986 amendment analysis, it is probably safe to say that the persuasive authority rests with those courts, which have disavowed the doctrine of logo liability. Nevertheless, the pre-1986 cases continue to be cited to support the assertion of lease liability against motor carriers. Strict agency liability, or the imposition of liability against a motor carrier for the driver's negligence whenever a lease is in effect, has taken the place of logo liability in the courts.

C. Lease Liability as the New Logo Liability

By providing in the ICC amendments that liability should not be assigned on the existence of placards alone, it can be inferred that the regulations intended for the motor carrier's vicarious liability to flow through the lease, not through the placard. The majority of courts have interpreted the regulations to impose liability whenever a lease is in effect, with no consideration given to whether the driver was acting within the scope of his agency at the time of an accident.[76] Even the *Graham* court, which had properly interpreted the regulations to disavow logo liability, acknowledged that the majority of courts hold that an irrebuttable presumption of statutory employment existed as a result of a valid lease.[77]

76. *See, e.g.*, Kreider Truck Serv., Inc. v. Augustine, 394 N.E.2d 1179, 1181 (Ill. 1979) ("The multiple use of these trucks in both interstate and intrastate commerce by both the owner and the lessee made it difficult to determine who had control or possession of a truck at any given time for the purpose of determining liability for injury and damages arising from accidents."); Price v. Westmoreland, 727 F.2d 494, 496 (5th Cir. 1974) ("In order to protect the public from the tortious conduct of judgment-proof operators of interstate motor carrier vehicles, Congress in 1956 amended the Interstate Common Carrier Act to require a motor carrier to assume full direction and control of leased vehicles."); Roberts v. Xtra Lease, Inc., No. 98 CV 7559(ILG), 2001 WL 984872, at *8 (E.D.N.Y. June 25, 2001) ("Negligence per se is only available where the motor carrier against whom this form of liability is sought has control of the vehicle but fails to comply with specific regulations [concerning lease liability]." (citations omitted)); Lung v. Manning Servs., Inc., 8 F. Supp. 2d 1155, 1157 (E.D. Ark. 1998) ("The federal regulations and 'logo liability' case law in this circuit make it clear that if [the driver] was driving under [the motor carrier's] logo with its consent, [the motor carrier] is liable for [the driver's] negligence."); Shackelford v. Roe, No. 83-2136, 1985 U.S. Dist. LEXIS 22300, at *10 to *11 (W.D. Penn. Feb. 26, 1985) ("[I]n an action against a lessee by a person injured by the leased truck, that the lessee was responsible as a matter of law for the driver's negligence."). *See also* Smith v. Johnson, 862 F. Supp. 1287, 1291 (M.D. Pa. 1994) ("The ICC is empowered to promulgate regulations concerning the exclusive control and responsibility of leased vehicles, pursuant to § 11107. It has done so in the form of § 1057.12(c)(1), among others. Common law principles which are inconsistent with the regulations are preempted by the regulations."); A.C. v. Roadrunner Trucking, Inc., 823 F. Supp. 913, 918 (D. Utah 1993) ("The purpose of the regulatory scheme governing truck leasing was to protect the public from irresponsible leasing arrangements. Prior to amendment of the Interstate Commerce Acts there were widespread violations and evasions of regulatory authority by carriers leasing or borrowing equipment not subject to the Act.").

77. *Graham*, 948 F. Supp. at 1132 (citations omitted).

Lease liability, as opposed to logo liability, existed as a doctrine in the courts even before the 1986 amendment. In 1973, the Fifth Circuit Court of Appeals, in *Simmons v. King*, implied liability on the basis of the existence of a lease itself, not a placard as proxy for a lease.[78] In *Simmons*, a truck permanently leased to Ace Freight Lines and trip-leased to Dubose Trucking rear-ended another truck.[79] The trial court directed the jury to find that either Ace or Dubose was liable in addition to the driver; the jury attributed liability to Ace.[80] The Fifth Circuit Court of Appeals found that Dubose had complied with the lease regulations and, thus, a lease was in effect at the time of the collision.[81] It noted that Dubose had accepted "full responsibility" for the truck in its lease and was accordingly liable for the driver's negligence.[82] A year later, the Fourth Circuit Court of Appeals, in *Proctor v. Colonial Refrigerated Transportation Inc.*, held flatly that the ICC regulations had eliminated the independent contractor arrangement from the trucking industry.[83] It stated that "[a]ny language to the contrary in the lease agreement would be violative of the spirit and letter of the federal regulations and therefore unenforceable."[84]

The court did not consider whether the regulations imposed liability regardless of whether the driver was on the business of the motor carrier, likely because the driver in that case was under dispatch at the time of the accident.[85] After the 1986 amendment, in *Johnson v. S.O.S. Transport, Inc.*, the Sixth Circuit Court of Appeals considered whether a driver was a statutory employee under the regulations.[86] In holding that the driver

78. *Simmons*, 478 F.2d at 867.

79. *Id.* at 859 n.4 & 862-63.

80. *Id.* at 859.

81. *See id.* at 867 (citing Cox v. Bond Transp., Inc., 249 A.2d 579 (N.J. 1969)). The court found irrelevant the fact that Dubose's representative had not actually signed the lease. *Id.* at 863 n.14.

82. *Id.* at 867. In this case, unlike some others, the driver was actually acting with this scope of his agency at the time of the accident.

83. Proctor v. Colonial Refrigerated Transp., Inc., 494 F.2d 89, 92 (4th Cir. 1974).

84. *Id.* The court's determination of the "spirit and letter" of the regulations came in part from the discussion in *American Trucking Associations v. United States* concerning "widespread abuses" in the trucking industry involving leased drivers. As noted earlier, the United States Supreme Court acknowledged that the abuses were speculative. *Am. Trucking Ass'ns*, 344 U.S. at 305 n.7.

85. *See Proctor*, 494 F.2d at 90-91.

86. *Johnson*, 926 F.2d at 520. The court acknowledged that third parties could make use of the doctrine, but considered whether the regulations were intended to protect only members of "the general public." In holding that the regulations were not intended to protect only the general public, the court looked to the reasoning of *Proctor* and dismissed the reasoning of White v. Excalibur, 599 F.2d 50 (5th Cir. 1979). *Id.* at 522-23 ("In reaching our result in this case, we find the reasoning of the Fourth Circuit in *Proctor* to be more persuasive. The Fifth Circuit's opinion in *White* assumes – incorrectly, we believe – that the driver of a leased vehicle is not an intended beneficiary of the federal regulatory scheme with which the lessee-carrier is required to comply in using nonowned equipment.").

was a statutory employee, the court accepted, without question, the majority understanding that the leasing regulations render "lessee carriers vicariously liable, notwithstanding traditional principles of agency, for injuries sustained by third parties resulting from the negligence of the drivers of leased vehicles."[87]

The reasoning behind the courts' assumptions that the leasing regulations were intended to strictly impose vicarious liability upon motor carriers is best seen in *A.C. v. Roadrunner Trucking, Inc.*[88] In that case, the driver sexually assaulted the plaintiff in equipment owned by the motor carrier.[89] The plaintiff sought to extend the rationale of *Rodriguez* and *Mellon* to apply to instances of owned equipment.[90] Though *Rodriguez* and *Mellon* concerned logo, not lease liability, the court cited them for the purpose of discussing lease liability.[91] In rejecting the plaintiff's attempt to extend the doctrine, the court explained that it may be more difficult to identify the responsible party when the equipment was leased.[92] The *Roadrunner* court quoted the court in *Rediehs Express, Inc. v. Maple.*[93]

> Absent such a policy, when innocent people are hurt or killed, there will be, as here, a round robin of finger pointing by carriers, lessors, owners and drivers, cargo owners, and insurers raising issues of independent contractor, frolic and detour, whose cargo was being carried, what instructions the driver had, agency and the like in their attempt to evade responsibility for the carnage wrecked [sic] upon innocent motorists. The plaintiff encounters much difficulty in fixing responsibility, for only the carrier and his lessor really know their arrangements. A plaintiff should not be required to bear this burden nor should he be required to settle for a financially irresponsible defendant fathered by the carrier. The carrier must, at his peril, exert care in his leasing arrangements and avoid leasing from "gypsies" or fly-by-night, irresponsible truckers. The regulations and cases make the carrier police its lessors as it is policed by the ICC.[94]

The court further reasoned that, without the lease, the equipment had no independent ICC authority and was therefore not authorized to be on the road.[95] Only the lease stood between regulated, safe, inspected

87. *Id.* at 521, 524 (citations omitted).
88. *Roadrunner*, 823 F. Supp. 913.
89. *Id.* at 916.
90. *Id.* at 917.
91. *Id.*
92. *Id.* at 919.
93. *Id.*
94. *Id.* (quoting Rediehs Express, Inc. v. Maple, 491 N.E.2d 1006, 1012 (Ind. Ct. App. 1986)).
95. *Id.* (citing Rediehs Express, Inc. v. Maple, 491 N.E.2d 1006, 1012 (Ind. Ct. App. 1986), Mellon Nat'l Bank & Trust Co. v. Sophie Lines, Inc., 289 F.2d 473, 476 (3d Cir. 1961), and Am. Trucking Ass'ns v. United States, 344 U.S. 298, 302 (1953)).

equipment and "fly-by-night" truckers.[96] The court stated that the rationale did not apply to owned equipment because it was easy to identify the employer and the doctrine of respondeat superior would protect the public.[97]

In 1992, the leasing regulations were again amended, this time to specifically acknowledge the independent contractor relationship flatly rejected in *Proctor*.[98] 49 C.F.R. § 376.12(c)(4) was added to the regulations,[99] which provided that

> [n]othing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. An independent contractor relationship may exist when a carrier lessee complies with 49 U.S.C. § 14102 and attendant administrative requirements.[100]

Thus, independent contractor relationships became explicitly authorized by the regulations. Such a change appears directed to the problem of *Roadrunner*; namely, that the leasing regulations impose strict vicarious liability no matter the nature of the relationship between the driver and the motor carrier.[101] Recognition of the independent contractor relationship suggests that courts should look more closely to the actual work being performed by the driver at the time of the accident. This interpretation is further supported by the ICC's comments at the time of the 1992 amendment. The ICC stated,

> While most courts have correctly interpreted the appropriate scope of the control regulation and have held that the type of control required by the regulation does not affect "employment" status, it has been shown here that some courts and State workers' compensation and employment agencies have relied on our current control regulation and have held the language to be prima facie evidence of an employer-employee relationship . . . . By presenting a clear statement of the neutrality of the regulation, we hope to bring a halt to erroneous assertions about the effect and intent of the control regulation, saving both the [factfinders'] and the [carriers'] time and

96. *See id.* (quoting Rediehs Express, Inc. v. Maple, 491 N.E.2d 1006, 1012 (Ind. Ct. App. 1986)).

97. *Id.* This rationale fails to consider the result when the driver is not acting within the scope of his employment. It is ironic that the motor carrier in this case received summary judgment because the driver was not acting within the scope. Under the court's own reasoning, this would not have been the case had the equipment been leased.

98. *Proctor*, 494 F.2d at 92.

99. Petition to Amend Lease and Interchange of Vehicle Regulations, 8 I.C.C.2d 669 (1992) [hereinafter *Petition to Amend*].

100. 49 C.F.R. § 376.12(c)(4).

101. *See id.* "At all relevant times, defendants . . . were employees of Roadrunner and did not act as independent contractors." *Roadrunner*, 823 F. Supp. at 916. The ICC was also addressing the developing trend of using the statutory employment doctrine in workers' compensation cases to award workers' compensation when none would otherwise have been available.

expense.[102]

This, combined with the ICC's 1986 comment that the regulations were not intended to impose liability where none existed,[103] suggests that the "majority" view imposing strict vicarious liability may not have been intended by the regulations.

Though it has been over ten years since the regulations were amended to recognize independent contractor relationships, the "majority" view imposing strict agency liability continues to prevail in most places.[104] Most courts, in fact, continue to analyze questions of statutory employment under the pre-1992 paradigms of *Mellon* and *Rodriguez*.[105] A few courts have analyzed the question of lease liability under the post-1992 framework and reached entirely different conclusions.[106] After re-

102. *Petition to Amend*, 8 I.C.C.2d at 671.

103. *Identification Devices*, 3 I.C.C.2d at 93.

104. *E.g.*, *Reliance*, 2001 WL 984737, at *8 ("[C]ourts have ruled that '[t]he statute and regulatory pattern clearly eliminates the independent contractor concept from such lease arrangements and . . . [a]ny language to the contrary in the lease agreement would be violative of the spirit and letter of the federal regulations and therefore unenforceable.' The majority of authority holds that 49 C.F.R. § 376.12(c) creates a carrier's liability for a leased truck's negligence as a matter of law." (quoting Proctor v. Colonial Refrigerated Transp., Inc., 494 F.2d 89, 92 (4th Cir. 1974) (citations omitted)); *Gilstorff*, 910 F. Supp. at 359 ("Federal law makes a carrier liable for the acts of any driver who displays its ICC placard and identification numbers while a lease is in effect, regardless of whether the driver embarks on an undertaking of his own." (citations omitted)); *Guar. Nat'l Ins. Co.*, 596 N.E.2d at 969 ("[T]he employer of an independent contractor – one who controls the method and details of his own task – is generally not liable for the torts of the contractor. However this independent contractor – master/servant distinction has been eliminated for lease arrangements under ICC regulations." (citations omitted)).

105. *E.g.*, Conn. Indem. Co. v. Stringfellow, 956 F. Supp. 553, 556 (M.D. Pa. 1997) (relying on *Mellon* in holding that federal law controls the issue of carrier liability and further holding that the carrier is responsible for the "actions of a driver of a leased tractor without regard to issues concerning course or scope of employment or whether the driver was performing his duties under the contract at the time of the accident."); Meyers v. Norton Ramsey Motor Lines, Inc., No. 4:96CV324-D-B, 1997 WL 170308, at *3 (N.D. Miss. Apr. 3, 1997) ("When a statutory employee relationship is created under the terms of the ICC regulations, the carrier becomes 'vicariously liable as a matter of law for the negligence of the driver.'" (quoting Price v. Westmoreland, 727 F.2d 494, 496 (5th Cir. 1984))); Baker v. Roberts Express, Inc., 800 F. Supp. 1571, 1574 (S.D. Ohio 1992) (finding that the "ICC regulations enacted pursuant to the Interstate Commerce Carrier Act create an irrebuttable presumption of an employment relationship between a driver of a leased vehicle furnished by a contractor-lessor and a carrier-lessee."); Holliday v. Epperson, No. 1:02-CV-1030-T, 2003 WL 23407496, at *5 (W.D. Tenn. Aug. 26, 2003) (ruling that the lease agreement made motor carrier the statutory employer of the owner-operator driving the truck).

106. *E.g.*, *Parker*, 473 S.E.2d at 426 (determining that the ICC regulations "were not intended to impose upon carriers using leased equipment or the services of independent contractors greater liability than that imposed when a carrier uses its own equipment or employees." Under the principle of respondeat superior, "the employer is held vicariously liable for the negligent actions of his employee 'if the negligent conduct occurred while the employee was acting within the course and scope of his employment.' This same rule should apply to carriers who

viewing the regulations, one court upheld the strict vicarious liability,[107] and the other held that the question should be analyzed under state tort and agency law.[108] These competing paradigms are the cutting edge of the law on lease liability.

III. A Comparative Analysis of the Post-1992 Paradigms

The doctrine of logo liability has generally transitioned to the more analytically precise doctrine of lease liability. The cases that developed logo liability, however, continue to be cited to support the imposition of lease liability on motor carriers. Those cases are typically cited without analysis of their holdings, and are instead used to support the general notion that motor carriers are vicariously liable for the negligence of their leased drivers. Those courts are not so much considering the founding cases of lease liability as they are referring to a conception of it in general. The two primary schools of thought regarding lease liability demonstrate that the mythology of logo liability has consumed its analytical foundation.

A. The Decisions

In 1996, the North Carolina Court of Appeals held in *Parker v. Erixon* that state agency law, not the leasing regulations, should determine the relationship between a motor carrier and driver.[109] In that case, the driver, Harold Erixon, leased his truck to Chemical Leaman Tank Lines, Inc. and operated under its authority.[110] After delivering a load for Chemical Leaman, Erixon went off duty and took his truck to visit his son.[111] On the way, he was involved in a head-on collision with the plaintiff, James Parker.[112] The trial court denied Chemical Leaman's motion for summary judgment on the basis that there was an "irrebuttable presumption of agency" between Chemical Leaman and Erixon.[113] Chemical Leaman appealed.[114] The state court of appeals noted that there were "two lines" of authority on the driver's relationship with the motor carrier.[115] One line recognizes a rebuttable presumption of agency,[116] which

have leased equipment or arranged for the services of an independent contractor." (quoting McNair v. Lend Lease Trucks, Inc., 62 F.3d 651, 654 (4th Cir. 1995))).

107. *Morris*, 78 S.W.3d at 43.
108. *Parker*, 473 S.E.2d at 426.
109. *Id.*
110. *Id.* at 422.
111. *Id.*
112. *Id.*
113. *Id.* at 423.
114. *Id.*
115. *Id.*
116. *Id.*

is embodied by the *Wilcox.* case.[117] The other line recognizes an irrebuttable presumption,[118] which is embodied by the *Rodriguez* case.[119] The court noted that, in 1974, the Fourth Circuit in *Proctor* held that the independent contract relationship was not authorized, but reasoned that the *Proctor* decision had been undermined by the 1992 amendments authorizing the relationship.[120] Relying largely on the 1992 and 1986 comments from the ICC and a 1993 decision from the Eastern District of Pennsylvania, the court concluded,

> The ICC regulations were not intended to impose upon carriers using leased equipment or the services of independent contractors greater liability than that imposed when a carrier uses its own equipment or employees . . . . Under this principle, the employer is held vicariously liable for the negligent actions of his employee 'if the negligent conduct occurred while the employee was acting within the course and scope of his employment.' . . . This same rule should apply to carriers who have lease equipment or arranged for the services of an independent contractor.[121]

In the instant case, the *Parker* court held that the driver was not within the scope of his agency at the time of the accident and reversed the trial court's denial of Chemical Leaman's motion for summary judgment.[122]

In direct contrast to the *Parker* decision, in 2002, a Texas state court of appeals held in *Morris* that motor carriers are liable as a matter of law for the negligence of their leased drivers.[123] In that case, the plaintiff was injured when he was involved in an accident with a leased truck.[124] The truck was owned by Hammer Trucking, Inc. and leased to JTM Materials, Inc.[125] At the time of the accident, the driver, Jerry Largent, was intoxi-

117. *See id.* (citing Wilcox v. Transam. Freight Lines, Inc., 371 F.2d 403, 404 (6th Cir. 1967)).

118. *Id.*

119. *See id.* (citing Rodriguez v. Ager, 705 F.2d 1229, 1235-36 (10th Cir. 1983)).

120. *Id.* at 424 (citing Proctor v. Colonial Refrigerated Transp., Inc., 494 F.2d 89, 90 (4th Cir. 1974) and Ryder Truck Rental Co., Inc. v. UTF Carriers, Inc., 719 F. Supp. 455, 457-58 (W.D. Va. 1989)).

121. *Id.* at 424-26. The court cited Penn v. Virginia International Terminals, Inc., 819 F. Supp. 514 (E.D. Va. 1993). That case considered whether a contract driver was eligible for workers' compensation as a statutory employee. *Penn*, 819 F. Supp. at 515. The court held that the driver was not a statutory employee, rejecting those cases finding that the ICC regulations mandated such a relationship when a lease was in effect. *Id.* at 523, 526. The court stated,

> Those cases find that an employer-employee relationship between lessee-lessor is mandated by the provision of 49 C.F.R. § 1057.12(c)(1), which places exclusive possession, control, use and operation of the leased equipment under the lessor. This Court believes that is a misinterpretation of the regulation, especially with the hindsight provided by the 1992 amendment to 49 C.F.R. § 1057.12(c).

Id. at 523 (footnote omitted).

122. *Parker*, 473 S.E.2d at 427.

123. *Morris*, 78 S.W.3d at 35.

124. *Id.*

125. *Id.*

cated and off duty.[126] JTM's motion for summary judgment was granted by the trial court.[127] The appellate court reviewed the text of the leasing regulations and the cases interpreting them and found that the purpose of the regulations was to "ensure that interstate motor carriers would be fully responsible for the maintenance and operation of the leased equipment . . . ."[128] On that basis, the court held that

> 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.[129]

The court found that the driver was the statutory employee of JTM and reversed the trial court's grant of summary judgment.[130] The court outright rejected JTM's argument that it should only be held liable if the driver was acting within the course and scope of his duties at the time of the accident.[131]

B. The Paradigms

The *Morris* and *Parker* cases take different approaches to reach their opposite conclusions. The *Morris* decision relied on prior precedent regarding the obligations of motor carriers and the intent of the ICC regulations.[132] In particular, the court looked to *Price v. Westmoreland* and *Planet Ins. Co. v. Transport Indemnity Co.* to support its assertion that the "FMCSR preempt state law in tort actions in which a member of the public is injured by the negligence of a motor carrier's employee while operating an interstate carrier vehicle."[133] *Price* is a Fifth Circuit case from 1984, and its statement that the ICC regulations preempt state tort law came from its holding in *Simmons v. King*, in 1973.[134] *Planet* is a Ninth Circuit case from 1987, and its holding largely concerns the applicability of an endorsement for insurance coverage purposes.[135] With the

126. *Id.*

127. *Id.* at 36.

128. *Id.* at 37-38.

129. *Id.* at 39 (citations omitted).

130. *Id.* at 45. The court did not review either *Parker* or *Penn* in its review of authority. *See id.* at 34-45.

131. *Id.* at 43.

132. *Id.* at 37-43.

133. *Id.* at 39 (citing Price v. Westmoreland, 727 F.2d at 496, 494 (5th Cir. 1984), Planet Ins. Co. v. Transport Indem. Co., 823 F.2d 285, 288 (9th Cir. 1987), and Simmons v. King, 478 F.2d 857, 866 (5th Cir. 1973)).

134. *Price*, 727 F.2d at 496.

135. Planet Ins. Co. v. Transport Indem. Co., 823 F.2d 285, 288 (9th Cir. 1987).

exception of one state case[136] and a Fifth Circuit case that does not discuss the 1992 amendments,[137] every case the *Morris* court cites in support of the proposition that "an interstate carrier is vicariously liable as a matter of law under the FMCSR for the negligence of its statutory employee drivers" was decided before the 1992 amendments to the regulations.[138] Though the *Morris* court looks to the regulations to demonstrate that they were put into place to protect the public, it does not discuss the legislative history or comments of the ICC regarding its purpose in implementing the regulations.[139] In contrast, *Parker* does not look extensively to case law on the question of statutory employment; it confines itself largely to the conflict between *Proctor* and *Penn v. Virginia International Terminals*.[140] Instead, *Parker* finds support for its holding in the ICC's comments on the 1986 and 1992 amendments to the regulations.[141] Both courts, however, are seeking the intent of the ICC, now the FMCSA.[142]

The *Morris* understanding of the FMCSA's intent comes through case law, which, if one winds through its analytical support, ultimately rests upon two bases, the pre-regulation testimony of the ICC and the text of the regulation itself.[143] The first basis for the *Morris* line of analysis is the United States Supreme Court's statement in *American Trucking Association* that the leasing regulations were put into place to avoid widespread abuses of the trucking industry.[144] The language "widespread abuses" has almost taken on a mythology of its own, simply being cited for that fact without discussion of the statement's context.[145] That basis is somewhat undercut by the Supreme Court's acknowledgement that such

136. N. Am. Van Lines, Inc. v. Emmons, 50 S.W.3d 103 (Tex. App. 2001).

137. *See Jackson*, 101 F.3d at 1087.

138. *Morris*, 78 S.W.3d at 39 (citations omitted).

139. *See id.* at 37-39.

140. *Parker*, 473 S.E.2d at 424.

141. *Id.* at 425-26.

142. *See Morris*, 78 S.W.3d at 38-40; *see also Parker*, 473 S.E.2d at 423-27.

143. *See Morris*, 78 S.W.3d at 37-39.

144. *Id.* at 37-38 (citing Am. Trucking Ass'n v. United States, 344 U.S. 298, 304-305 (1953)).

145. *See, e.g., Johnson*, 926 F.2d at 523 n.17 ("We note that the 'control and responsibility' regulations were initially prompted by concerns that certified carriers were evading federal safety requirements by using equipment leased from owner-operators who were exempt from the limitations placed upon certified carriers." (citations omitted)); *Proctor*, 494 F.2d at 91-92 ("These regulations were promulgated by the Commission to correct widespread abuses incident to the use of leased equipment by the carriers . . . ." (citing Am. Trucking Ass'ns v. United States, 344 U.S. 298, 303 (1953))); *Reliance*, 2001 WL 984737, at *7 ("However, in the past, unscrupulous ICC-licensed carriers would lease unlicensed vehicles in an effort to avoid safety regulations governing drivers and equipment . . . ." (citations omitted)); Cosmopolitan Mut. Ins. Co. v. White, 336 F. Supp. 92, 97 (D. Del. 1972) ("The reasons behind the implementation of the ICC regulations regarding augmenting equipment through leases like the one involved here with requirements of insurance coverage, exclusive possession in the lessee, etc., have been frequently enumerated and examined.").

abuses were more speculative than documented, a footnote never cited by the *Morris* antecedents.[146] The second basis, the text of the regulation, is stronger. The text of the regulation appears relatively straightforward. The motor carrier must assume "complete responsibility" for the operation of the truck while the lease is in effect.[147] There does not appear to be room in the text of the regulation for the argument that responsibility is complete only while the driver is on the business of the motor carrier. A logical reading of the regulation would impose liability the way *Morris* did.[148] In support of this argument is the fact that, though the ICC amended the regulations in 1986 and again in 1992, it never changed the fundamental requirement of "complete responsibility."[149]

The *Parker* understanding of the FMCSA's intent comes largely from the agency itself.[150] The 1986 statement that "[t]he Commission did not intend that its leasing regulations would supersede otherwise applicable principles of State tort, contract and agency law and create carrier liability where none would otherwise exist"[151] contradicts *Morris*' assertion, which was based largely on pre-1986 law, that the regulations supersede state law.[152] The 1992 statement objecting to the practice of holding "the language to be prima facie evidence of an employer-employee relationship"[153] undercuts the text of the regulation basis for the *Morris* paradigm. The United States Supreme Court has held that an administrative agency's interpretation of its enabling statutes should be afforded deference.[154] In the case of the leasing regulations, however, it is not the interpretation of the statute which is in question, but the interpretation of the regulation itself. In such a situation, the agency's own comments regarding its intent should be given great deference.[155] In *Bowles v. Seminole Rock & Sand Co.*, the United States Supreme Court held that

> [s]ince this involves an interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if

146. *Am. Trucking Ass'ns*, 344 U.S. at 305 n.7.

147. 49 C.F.R. § 376.12(c). This is a slightly different phrasing than was found in the prior version of this regulation, but the change is in form only.

148. *See Morris*, 78 S.W.3d at 42-43.

149. 49 C.F.R. § 376.12(c); *see generally Identification Devices*, 3 I.C.C.2d 92; *Petition to Amend*, 8 I.C.C.2d 669.

150. *See Parker*, 473 S.E.2d at 424-27.

151. *Identification Devices*, 3 I.C.C.2d at 93.

152. *Parker*, 473 S.E.2d at 424 (agreeing with the court in *Penn.* that "ICC regulations have eliminated the independent contractor concept and therefore traditional common law doctrines of employer-employee and *respondeat superior* do not determine ICC carrier liability." (citing Penn v. Va. Int'l Terminals, Inc., 819 F. Supp. 514, 521-22 (E.D. Va. 1989)).

153. *Petition to Amend*, 8 I.C.C.2d at 671.

154. *E.g.*, Chevron U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 844 (1984); Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).

155. *See, e.g., Chevron*, 467 U.S. at 844.

> the meaning of the words used is in doubt. The intention of Congress or the principles of the Constitution in some situations may be relevant in the first instance in choosing between various constructions. But the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.[156]

In *Bowles*, the Supreme Court upheld the Administrator of the Office of Price Administration's interpretation of Maximum Price Regulation No. 188 as expressed in bulletins issued by the Administrator to the industry.[157] In the case of the leasing regulations, the divergent case law has demonstrated that the meaning of the words of the leasing regulations is in doubt.[158] The 1986 and 1992 comments from ICC speak directly to the interpretation of the agency to its own regulations. Though the language of the regulation remains ambiguous, the ICC's interpretations do not appear to be clearly erroneous or inconsistent with the regulation.

Neither the *Morris* case nor the *Parker* case has been extensively cited by other courts.[159] The *Morris* case has been primarily cited within the state of Texas.[160] The *Parker* case has been cited for its holding on only two occasions, by the Middle District of North Carolina in *Shinn v. Greenness*[161] and by the Middle District of Georgia in *Clark v. Roberson Management Corp.*[162]

In *Shinn*, the defendant motor carrier was contesting personal jurisdiction claiming that the defendant driver was not its agent at the time of the accident.[163] The plaintiff had the burden of establishing a prima facie

156. Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 413-14 (1945).

157. *Id.* at 417-18.

158. *Compare, e.g.*, *Parker*, 473 S.E.2d at 391 (determining that North Carolina "follows the rebuttable presumption of agency."), *with Morris*, 78 S.W.3d at 43 (holding that, "if JTM is an interstate carrier, it is vicariously liable as a matter of law for the driver's negligence in the driving the vehicle).

159. The *Morris* decision has only been examined by one court, the Fifth Circuit Court of Appeals. Minter v. Great Am. Ins. Co. of N.Y., 423 F.3d 460, 461-63 (5th Cir. 2005). Likewise, the *Parker* decision has only been examined by one court, the United States District Court for the Middle District of North Carolina. Shinn v. Greeness, 218 F.R.D. 478, 485-86 (M.D.N.C. 2003).

160. In addition to Texas state courts, *Morris* has been cited by the Fifth Circuit Court of Appeals in *Minter v. Great American Insurance Co. of New York*; however, it should be noted that *Morris* was cited in *Minter* because the *Morris* decision gave rise the insurance claim at issue in *Minter*. *Minter*, 423 F.3d at 461-63. *Morris* has also been cited by the California Court of Appeals in Stewart v. Four Seasons Coach Leasing, No. B166695, 2004 WL 2526415, at *3 to *4 (Cal. Ct. App. Nov. 9, 2004) and by the United States District Court for the Western District of Kentucky in Estate of Presley v. CCS of Conway, No. 3:03CV-117-H, 2004 WL 1179448, at *5 to *6 (W.D. Ky. May 18, 2004).

161. *Shinn*, 218 F.R.D. at 485.

162. Clark v. Roberson Mgmt. Corp., No. 5:03CV274-DF, at 5 (M.D. Ga. January 11, 2005) (unpublished order).

163. *Shinn*, 218 F.R.D. at 484.

case for agency in order to defeat the defendant's motion.[164] The court looked to *Parker* and determined that the *Parker* court had interpreted the regulations to create a rebuttable presumption of agency, which could be defeated if the motor carrier showed that the driver was not on the business of the motor carrier at the time of the accident.[165] The court held that the plaintiff's complaint, which pled that the driver was the agent of the motor carrier, established a prima facie case for agency and denied the defendant's motion to dismiss for lack of personal jurisdiction.[166]

In *Clark*, the plaintiff sued the motor carrier for the injury and death of her husband, Robert Clark, who fell from a truck while assisting the driver with repairs.[167] At the time of the accident, the driver, Joe Roberts, was off duty, and the motor carrier moved for summary judgment.[168] The trial court considered the plaintiff's argument regarding statutory employment, specifically referencing the decision in *Simmons*, upholding lease liability,[169] but concluded that the 1992 amendment to the leasing regulations eliminated the doctrine of statutory employment altogether.[170] The court stated,

> It seems evident that the "statutory employee" interpretation of the regulation relied upon by Plaintiff has been rendered a nullity in light of the 1992 amendment and the administrative agency's express and unambiguous intention. . . . Like the court in *Penn*, this Court finds that the "statutory employee" argument is contrary to the express intention of the Surface Transportation Board.[171]

Like the *Parker* court, the *Clark* court then looked to state agency law to determine whether the driver was acting within the scope of his employment at the time of the accident and granted the defendant's motion for summary judgment.[172]

Like the courts, commentators have reached divided opinions on the question of logo and lease liability. In a well-researched article detailing the history of the leasing regulations, author Patrick Phillips concluded in 1999 that what he termed the "common law" approach to statutory em-

164. *Id.*

165. *Id.* at 485 (citing Parker v. Erixon, 473 S.E.2d 421, 426-27 (N.C. Ct. App. 1996)).

166. *Id.* at 486. This holding suggests that a motor carrier may be found to be subject to the personal jurisdiction of a court wherever it has a driver and whenever the plaintiff alleges agency in its complaint.

167. *Clark*, No. 5:03CV274-DF, at 1-2.

168. *Id.*

169. *Simmons*, 478 F.2d at 867.

170. *Clark*, No. 5:03CV274-DF, at 4-6.

171. *Id.* at 6-7. The court referenced the *Parker* and *Penn* cases, but did not refer to the *Morris* case in its decision. *See id.* at 1-11.

172. *Parker*, 473 S.E.2d at 390-91; *Clark*, No. 5:03CV274-DF, at 7-9, 11.

ployment, relying on state agency law rather than the regulations, was more equitable.[173] Phillips acknowledged that the majority of courts continued to impose strict agency liability on motor carriers in spite of the amendments to the regulations.[174] A more recent article by Ethan Vessels proposed a statute which would make motor carriers "irrebuttably presumed responsible" for their drivers' actions under lease.[175] Vessels argued that the minority position of *Parker* would leave plaintiffs without financial compensation when drivers were not within the scope of their employment and, accordingly, violated the intent of the regulations.[176] An annually updated treatise on motor carrier liability, on the other hand, argued that leased equipment should be treated like owned equipment for liability purposes.[177]

Though both *Morris* and *Parker* are state appellate cases with limited precedential weight, the cases embody two distinct lines of analysis regarding the motor carrier's liability for its leased drivers' conduct. The *Morris* case is the capstone of prior holdings on the issues of logo and lease liability and endorses that philosophy for future cases notwithstanding the 1992 amendment to the regulations.[178] The *Parker* case, on the other hand, rejects prior holdings and bases its analysis on the amendments and the regulators' comments regarding those amendments.[179] Courts approaching the question of lease liability face uncertainty as to the proper analysis.

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173. Patrick Phillips, Note, *Common Law Respondeat Superior Versus Federal Regulation of Motor Carrier Leases: Court Interpretation of the Interstate Commerce Commission Regulations of Motor Carrier Lease Requirements*, 24 OKLA. CITY U. L. REV. 383, 411-12 (1999).

174. *Id.* The *Morris* case, which was decided in 1992, had not yet been decided when Phillips wrote his article.

175. Ethan T. Vessels, *The Lessor of Two Evils*: Presumption of Responsibility for Motor Carrier Lessees or Common Law Respondeat Superior, 30 TRANSP. L. J. 213, 233-234 (2003).

176. *See id.* at 230-231. Vessels' analysis relies heavily on *Cincinnati Insurance Co. v. Haack*, a declaratory judgment action in Ohio. Cincinnati Ins. Co. v. Haack, 708 N.E.2d 214, 223, 225-226 (Ohio Ct. App. 1997). The *Haack* court, based upon Wycoff Trucking, Inc. v. Marsh Brothers Trucking Service, Inc., 569 N.E.2d 1049 (Ohio 1991), determined that a motor carrier's insurance company had coverage for an underlying injury because it declared the driver to be the statutory employee of the motor carrier. *Id.* at 224. The court consequently held that the non-trucking exclusion in the motor carrier's insurance policy was inapplicable. *Id.* at 225-26. This decision not only failed to consider the 1992 amendments to the regulations or the comments of the ICC, but conflated the distinct issues of non-trucking coverage and lease liability. *See generally id.* Because the *Haack* court failed to demonstrate a complete grasp of the law and the issues surrounding lease liability, so too did Vessels' article. Vessels' article did not reference the 1992 amendment to the regulations or the ICC's commentary. *See generally* Vessels, *supra* note 176.

177. DENNIS, CORRY, PORTER & SMITH, L.L.P., MOTOR CARRIER LIABILITY ¶ 611 (CCH Inc. ed., 2005). The two authors of this article are contributing editors to the treatise.

178. *See Morris*, 78 S.W.3d at 38-39, 42.

179. *See Parker*, 473 S.E.2d at 423-25.

C. Resolving the Uncertainty

A court deciding a case involving lease liability today has the opportunity to independently analyze the issues and reach its own conclusion regarding the intent of Congress and the FMCSR. Because so few courts have considered lease liability in light of the 1992 amendments, most of the historically leading cases on the issue are persuasive, rather than controlling, authority. As discussed above, the text of the enabling statute itself says nothing about employment relationships; rather, it provides only that leased equipment be treated "as if the motor vehicles were owned by the motor carrier."[180] With a few exceptions, liability is generally not imputed on the owner of equipment for its use.[181] The ICC took Congress' directive and promulgated the leasing regulations, which provide that the lessee of commercial motor vehicles "shall assume complete responsibility for the operation of the equipment for the duration of the lease."[182] From those regulations, a few cases were decided which created a mythology of logo liability that later courts have accepted without considering the law beneath the myth.[183]

The difference between the *Morris* and *Parker* positions is demonstrated by the following example. Two trucks are traveling the highway side by side, one owned equipment, and one leased equipment. Both drivers are off duty on a personal errand, and the two vehicles jointly cause an accident injuring a fellow motorist. A court using the *Morris* paradigm would hold, as a matter of law, that the motor carrier using leased equipment was vicariously liable for the driver's negligence.[184] The motor carrier using the owned equipment, on the other hand, would not be liable because the driver was not acting within the scope of his

180. 49 U.S.C. § 14102 (a)(4).

181. *E.g.*, S. Cotton Oil Co. v. Anderson, 80 So. 629, 638 (Fla. 1920) ("It is the province of the courts to determine whether an instrumentality of known qualities is so peculiarly dangerous in its operation as to invoke the principle of law that the owner thereof is liable for injuries to third persons proximately resulting from the negligent operation of such instrumentality by any one using it with the authority of the owner.").

182. 49 C.F.R. § 376.12(c).

183. *See Mellon*, 289 F.2d at 476 ("[A]t the time and place of the accident the truck was under the lease which put exclusive possession, use and control during the thirty day period in [the lessee]. . . . [The lessee's] decals were on the cab together with the [lessee] ICC permit number and no receipt showing termination of the lease had been given by [the lessor to the lessee]. In those circumstances, . . . [t]he truck at the time was under a properly ICC authorized lease to [the lessee] with the latter assuming full responsibility for its operation to the public, the shippers, and the ICC."); *see also Rodriguez*, 705 F.2d at 1232 ("Inasmuch as the lease was still in effect the trucking company . . . is responsible until such time as the lease was terminated and after the removal of the insignia of [the lessee] and delivery of the insignia into the hands of [the lessee]. At the time of the collision that produced the deaths [the lessee's] insignia, the authority to drive the truck on the highways, remained on the truck.").

184. *See Morris*, 78 S.W.3d at 34-35 ("[W]e hold that an interstate motor carrier is vicariously liable as a matter of law for the driver's negligence . . . .").

employment at the time of the accident.[185] A court using the *Parker* paradigm, however, would find that neither motor carrier was liable because the drivers were not within the course and scope of their employment.[186]

If a court approaching lease liability today were to begin its analysis with the lease regulations, which provide that motor carriers must be completely responsible for their leased equipment,[187] that court would arrive at the *Morris* position. On the other hand, if the court looked first to the enabling statute, [188] it would then have to consider how the leasing regulations have interpreted Congress' intent. Does Congress' edict that owned and leased equipment be treated the same mean that, for liability purposes, motor carriers are to be liable for their leased driver's negligence when they would not be for their owned driver's negligence? Based on the ICC's directives, did the ICC intend that "complete responsibility" be interpreted to create strict agency liability? Essentially, the *Parker* decision looks to the enabling statute and interprets owned and leased equipment to mean that employee and non-employee drivers should be treated alike.[189] Respondeat superior will impose liability upon the motor carrier, but only if the driver was within the scope of his employment.[190] If a court approaching lease liability today were to consider the entire package, from enabling statute, to regulation, to directive, to the fundamental equities of the situation, then it would arrive at the *Parker* position.

The body of law on this matter is unresolved. Any court could embrace either the *Morris* or the *Parker* analysis to reach entirely opposite results. To complicate issues, underlying the entire matter is the tacit belief that people injured by trucks should be compensated. Courts are reluctant to leave an injured plaintiff to recover damages only against a driver's limited assets, even when the driver has no connection to a motor carrier at the time of the accident.[191] Barring a decision by the United States Supreme Court, reaching consensus through the courts is likely to be a long process which will result in even more discordance than already exists. Though the *Parker* analysis appears stronger than the *Morris* analysis, courts will continue to reach contradictory opinions.

185. *See id.* at 39.

186. *Parker*, 473 S.E.2d at 426 ("Under North Carolina law, liability of an owner of a motor vehicle for acts of his employee is governed by the principle of *respondeat superior*." (citing McNair v. Lend Lease Trucks, Inc., 62 F.3d 651, 654 (4th Cir. 1995)).

187. 49 C.F.R. § 376.12(c).

188. 49 U.S.C. § 14102.

189. *See Parker*, 473 S.E.2d at 423-426.

190. *Id.* at 423 (citations omitted).

191. *See, e.g.*, Rediehs Express, Inc. v. Maple, 491 N.E.2d 1006, 1012 (Ind. Ct. App. 1986).

IV. Conclusion

For nearly fifty years, the leasing regulations have required that leased equipment be treated like owned equipment. From those regulations, courts created logo liability, which was eventually overtaken by lease liability. After the 1992 amendment to the regulations, two schools of analysis have developed to apply lease liability to motor carriers in very different ways.[192] The conflict between the *Morris* and *Parker* paradigms must be resolved. Based upon the text of the enabling statute and the deference which should be granted to the agency's interpretation of its own regulations, it appears that the *Parker* model is the better choice. Until a consensus is reached, however, courts must take it upon themselves to look beyond the mythology of logo liability to the legal foundations of the doctrine and independently decide what the regulations intend.

192. *Parker*, 473 S.E.2d at 423.