IN THE

Indiana Supreme Court

Supreme Court Case No. 19S-CT-564

Paul Michael Wilkes,
Appellant,

–v–

Celadon Group, Inc., et al.,
Appellees.

Argued: November 26, 2019 | Decided: December 6, 2021

Appeal from the Marion County Superior Court 10
No. 49D10-1601-CT-3170
The Honorable David J. Dreyer, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 18A-CT-2011

Opinion by Justice Slaughter

Chief Justice Rush and Justice Massa concur.
Justice Goff concurs in part and dissents in part in a separate opinion, in which Justice David joins.

Slaughter, Justice.

A commercial truck driver sustained injuries when his cargo fell on him. The issue is whether liability for his injuries belongs to the carrier or the shipper. We adopt the Fourth Circuit's "*Savage* rule", which holds that carriers have the primary duty for loading and securing cargo. If the shipper assumes a legal duty of safe loading, it becomes liable for injuries resulting from any latent defect. But if a shipper's negligence is apparent, then the carrier remains liable for the injuries. Applying the *Savage* rule, we hold that the trial court was correct in granting summary judgment for the shipper and its agent and against the driver.

I

A

Paul Wilkes became a commercial truck driver in 2009. In 2014 his employer, Knight Transportation, Inc., assigned him to haul cargo from Indiana to North Carolina. The cargo belonged to Cummins, Inc., and consisted of empty, reusable, molded container trays—so-called "returnables"—that Cummins would use to house oily engine parts. After using the trays, Cummins would stack them at its own facility. Once enough of the trays accumulated, Cummins would contract with Celadon to pick them up, take them to a Celadon facility in Columbus, Indiana, and ship them to North Carolina for cleaning. Celadon, on Cummins's behalf, would use a third-party logistics provider to "find the cheapest carrier" to haul the trays to and from North Carolina.

Here, Celadon retained Knight as the carrier. Knight then dispatched Wilkes to the Celadon warehouse in Columbus to pick up a Knight trailer filled with the used, oily trays. Although Cummins owned the trays, Celadon directed and supervised their loading and shipping onto the Knight trailer. The Celadon employee who loaded Wilkes's trailer had no formal training in how to distribute loads. He merely stacked the Cummins container trays on top of each other and did not bind, strap, or shrink-wrap them. Wilkes was an experienced driver but had never carried these trays or been to Celadon's Columbus facility.

When Wilkes saw the trailer, he noticed that its rear doors were open. From the back of the loaded trailer, he looked inside and saw stacks of the trays rising nearly to the top of its 13-foot-six-inch ceiling. According to Wilkes, "you had two major pallets sitting up in there. In between the two, you could see the other ones going back in the back." Wilkes then closed the trailer doors, locked them, and affixed Knight's seal. On his way to North Carolina, Wilkes did not feel the load shift or the trailer make any sudden movements. Yet when he arrived in North Carolina and opened the doors, some of the trays fell and injured him. After Wilkes was injured, several employees of the North Carolina facility were deposed. One said that the trays would fall out about half of the time because they are not secured. Another added that one of Celadon's own drivers likewise had trays fall on him as he was opening his trailer's doors.

B

Wilkes sued Cummins, Celadon, and their affiliated companies for negligently packing, loading, and failing to secure the cargo in the trailer. His complaint alleged other claims, too, but they are waived because he did not raise them on appeal. Ind. Appellate Rule 46(A)(8)(a). Additionally, in his appellant's brief, Wilkes appears to argue that he is entitled to relief under sections 388 and 392 of the Restatement (Second) of Torts. These sections apply to product-liability claims. But Wilkes did not assert a product-liability claim in the trial court, so this claim also is waived on appeal. See *Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013).

Thus, the only claim properly before us is whether the defendants were negligent in packing, loading, and failing to secure the trailer's cargo. In three separate motions, defendants sought summary judgment, arguing they owed Wilkes no duty, and even if they did, they did not breach any duty. The trial court granted summary judgment on all three motions for the Celadon and Cummins entities, and Wilkes appealed. The court of appeals affirmed summary judgment for the Cummins defendants but reversed and remanded as to the Celadon defendants. *Wilkes v. Celadon Group, Inc.*, 121 N.E.3d 1095, 1104 (Ind. Ct. App. 2019).

We granted transfer, *Wilkes v. Celadon Group, Inc.*, 137 N.E.3d 918 (Ind. 2019), and heard oral argument. During argument, Wilkes's counsel acknowledged he is not challenging the entry of judgment for the Cummins defendants. Thus, we summarily affirm the court of appeals' ruling for Cummins. A few weeks after argument, some of the Celadon entities filed for bankruptcy in the District of Delaware. Wilkes asked us to stay proceedings until the bankruptcy court lifted the automatic stay under 11 U.S.C. § 362, and we agreed. That court eventually granted Wilkes relief from the automatic stay so he could prosecute his claims in our Court. We then lifted our stay and now affirm the trial court as to the Celadon defendants, too.

II

At issue is whether the trial court properly granted summary judgment to the Celadon defendants. We review summary-judgment decisions de novo. *Perkins v. Mem'l Hosp. of South Bend*, 141 N.E.3d 1231, 1234 (Ind. 2020). The moving party "bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law." *Gill v. Evansville Sheet Metal Works, Inc.*, 970 N.E.2d 633, 637 (Ind. 2012) (citing Ind. Trial Rule 56(C)). The burden then shifts to the non-moving party to come forward with contrary evidence showing "differing accounts of the truth", or that "the undisputed material facts support conflicting reasonable inferences". *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009). We draw all reasonable inferences in favor of the non-moving party and review only materials designated in the trial court. *Perkins*, 141 N.E.3d at 1234.

In Part II.A, we dispose of the summary-judgment motions for all but three of the Celadon defendants. And in Part II.B, we adopt the Fourth Circuit's *Savage* rule and find that while Celadon assumed a legal duty of safe loading, it designated evidence establishing that it did not breach its duty because any alleged defect in loading or securing cargo should have been apparent to Wilkes. Wilkes designated no contrary evidence to support finding a latent loading defect, and thus he failed to establish the existence of a genuine issue of material fact. We affirm the entry of

summary judgment for all Cummins and Celadon defendants and against Wilkes.

A

Before turning to the merits of Wilkes's lone claim for negligence, we first address the procedural question of which defendants remain. As noted, given Wilkes's stipulation during oral argument, we affirm the entry of judgment for all Cummins defendants and against Wilkes. In addition, the following five Celadon entities are parties on appeal: Celadon Group, Inc.; Celadon Logistics Services, Inc.; Celadon Trucking Services, Inc.; Celadon Trucking Services, Inc., f/k/a Panther Transportation Services; and Quality Equipment Leasing, LLC, f/k/a Quality Equipment Leasing, Inc., & f/k/a Quality Equipment Sales.

In the trial court, two of these entities—Celadon Trucking Services, Inc., f/k/a Panther Transportation Services and Quality Equipment Leasing—moved for summary judgment on the ground that they are improper parties. The trial court granted their motion, and Wilkes appealed. Wilkes says he is appealing the order granting summary judgment as to these two defendants, but his appellate brief does not argue why they are proper parties. In fact, he mentions these two parties only in his statement of the case. He then lumps all Celadon entities together, referring to them as Celadon throughout his brief.

To avoid waiver on appeal, a party must develop a cogent argument. App. R. 46(A)(8)(a); *Cooper v. State*, 854 N.E.2d 831, 835 n.1 (Ind. 2006). Wilkes, however, failed to develop any argument that Celadon Trucking Services, Inc., f/k/a Panther Transportation Services and Quality Equipment Leasing are proper parties. Thus, Wilkes has waived argument on appeal about these two defendants. That means the substantive legal issue before us, to which we now turn, concerns only three Celadon entities: Celadon Group, Inc.; Celadon Logistics Services, Inc.; and Celadon Trucking Services, Inc., which we refer to collectively as "Celadon". Neither side disputes that summary judgment for one requires summary judgment for all.

B

On the merits, we start with a question of first impression for our state courts: whether to adopt the longstanding federal common-law rule from *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 445 (4th Cir. 1953). *Savage* sets out the following two-part framework: first, under federal statutes and common law, the "primary duty" for safely loading cargo rests with the carrier; and, second, as a matter of federal common law, the shipper is liable if it takes responsibility for loading cargo, *ibid.*, but only if the defect is "latent" or "concealed", *ibid*. In other words, the liability for safe loading shifts to the shipper only if (1) the shipper takes responsibility for loading the cargo, and (2) the defect is latent or concealed. *Ibid*. Otherwise, liability remains with the carrier.

Other states and federal circuits have followed *Savage*. Maine adopted the rule in *Decker v. New England Public Warehouse, Inc.*, 749 A.2d 762, 766–67 (Me. 2000), and noted that "[m]ost courts now accept the rationale of *Savage*". In adopting *Savage*, the Maine supreme court looked to the practice and understanding of the trucking industry, as well as federal regulations, which "reflect that carriers logically should have the final responsibility for the loads they haul." *Id.* at 766. Thus, *Decker* found that the *Savage* rule "simply extends the industry's reasonable understanding to negligence suits involving carriers and shippers." *Id.* at 766–67. See also *Vargo-Schaper v. Weyerhaeuser Co.*, 619 F.3d 845, 848 (8th Cir. 2010) (presuming *Savage* applies under Minnesota law); *Missouri Pac. Railroad Co. v. Elmore & Stahl*, 368 S.W.2d 99, 101 (Tex. 1963) (holding identical rule applies under Texas common law); *Spence v. ESAB Group, Inc.*, 623 F.3d 212, 216, 221 (3d Cir. 2010) (presuming *Savage* applies under Pennsylvania law). Like these courts, we hold that the policy and rationale of *Savage* are well founded.

In addition, we hold that the *Savage* rule is consistent with Indiana law. By statute, Indiana incorporated the Federal Motor Carrier Safety Regulations, which provide regulatory standards for those operating commercial vehicles in interstate commerce in Indiana. See Ind. Code § 8-2.1-24-18(a). These standards require carriers and their drivers to make certain determinations before a driver may operate a motor vehicle. One

such determination is that the cargo has been "properly distributed and adequately secured". 49 C.F.R. § 392.9(a)(1). Another is that drivers must ensure they have complied with applicable regulations before operating their vehicles. See *id*. at § 392.9(b)(1). But drivers are relieved of their duty to inspect the cargo if, among other things, the commercial motor vehicle "has been loaded in a manner that makes inspection of its cargo impracticable". *Id*. § 392.9(b)(4). This regulatory framework—incorporated into Indiana law—is consistent with the common-law rule set forth in *Savage*. Under the *Savage* rule, carriers have a primary duty of safe loading, but shippers may also assume a legal duty of safe loading if they take responsibility for loading the cargo. To resolve these competing duties, *Savage* holds a shipper liable only for latent defects in loading that a carrier could not observe even if the carrier successfully discharged its duty. Given both the rule's sound policy and its consistency with Indiana law, we formally adopt the *Savage* rule.

Here, Wilkes challenges on appeal the trial court's order granting summary judgment to Celadon on his negligence claim. Having adopted the *Savage* rule, we apply it to this record and consider, first, whether Celadon assumed a legal duty of safe loading. We conclude it did. Second, we consider whether any alleged defect in loading was latent. On this record, we conclude it was not and should have been apparent to Wilkes through a reasonable inspection.

1

The first inquiry under the *Savage* rule is whether the shipper owed a duty of safe loading. The clearest way for the shipper to assume this legal duty is to load the trailer itself without any help from the carrier. See *Savage*, 209 F.2d at 443-44 (shipper loaded and secured airplane engines into trucks); *Franklin Stainless Corp. v. Marlo Transp. Corp.*, 748 F.2d 865, 866 (4th Cir. 1984) (shipper loaded steel coils but did not secure them). In contrast, the shipper does not assume a legal duty if it merely assists with loading while the carrier retains "full control and responsibility for loading and securing" the cargo. *Texas Specialty Trailers, Inc. v. Jackson & Simmen Drilling Co.*, No. 2-07-228-CV, 2009 WL 2462530, at *7 (Tex. App. Aug. 13, 2009); see also *Whiteside v. United States*, No. 1:11-CV-154, 2013

WL 2355522, at *7-*9 (E.D. Tex. May 28, 2013) (holding that government did not assume a legal duty of safe loading because it did not load the cargo but merely watched it being loaded).

Some jurisdictions consider not only the shipper's acts but also its statements when deciding if it assumed a legal duty. See *Spence*, 623 F.3d at 219 (holding genuine issue of material fact as to whether shipper owed a duty of care when shipper loaded the cargo, selected the securing device, and assured carrier the securement method was safe). But we need not decide today whether a shipper's statements may be relevant to the assumption-of-duty analysis because, under such circumstances, a shipper's lone actions to take on that responsibility speak louder than any contrary words disclaiming it. Therefore, we hold that if a shipper alone loads the cargo, that is sufficient under the *Savage* rule to find the shipper assumed a legal duty of safe loading.

Here, there is no dispute that a Celadon employee loaded the trailer without any help from Wilkes or another agent of the carrier. The designated evidence shows that when Wilkes arrived at the facility, a trailer was already loaded with the trays. The fact that Celadon loaded the trailer without any participation from Wilkes is sufficient to hold Celadon assumed the legal duty for loading the trailer. Because Celadon assumed this duty, it had a duty to load safely, meaning without latent defect. Under *Savage*, even if the shipper assumes a legal duty to load without latent defect, the carrier retains its primary duty to inspect for apparent defect. See *Savage*, 209 F.2d at 445. To determine whether Celadon is liable for Wilkes's injury, i.e., whether it breached its duty of safe loading, we turn next to whether the loading was defective and, if so, whether that defect was latent.

2

The second inquiry under *Savage* is whether the shipper breached its legal duty of safe loading by loading with a latent or nonobvious defect. In other words, for the shipper to be liable, its loading must be defective and the defect one that "cannot be discerned by ordinary observation by the agents of the carrier". *Ibid*. Whether a defect is latent also depends on the driver's experience and any assurances the shipper makes about the load's

safety. Here, Celadon designated evidence showing any alleged defect in loading was apparent, thus meeting its initial burden to make a prima facie case showing no genuine issue of material fact as to breach of duty. The burden then shifted to Wilkes to designate contrary evidence showing "differing accounts of the truth" or that "the undisputed material facts support[] conflicting reasonable inferences". *Williams*, 914 N.E.2d at 761. On this record, Wilkes failed to meet his burden because he designated no contrary evidence supporting a reasonable inference that the defect was latent. Thus, we agree with Celadon and hold it is entitled to summary judgment.

Under Indiana law, a latent defect is one not discoverable through a reasonable inspection. *Barnes v. Mac Brown & Co.*, 264 Ind. 227, 229, 342 N.E.2d 619, 621 (1976). A reasonable inspection does not demand "abnormal scrutiny", *Decker*, 749 A.2d at 767, and an inadequate inspection will not "force liability" onto a shipper, *id.* at 768. Here, the undisputed evidence shows that Wilkes both observed and inspected the cargo. When he first approached the trailer, Wilkes noticed the doors were open, and he looked inside and saw nothing "outlandish". Nothing inhibited his view of the cargo. In fact, he could see in between two stacks of pallets and "see the other ones going back in the back." He then closed the doors, locked them, and affixed Knight's seal. Wilkes's hasty inspection was akin to that in *Decker*, where the driver performed only a cursory review of his load because it appeared to be loaded safely. *Ibid.* In rejecting the driver's claim, the court reiterated that an inadequate inspection does not turn an apparent defect into a latent one. *Ibid*. Here, the designated evidence shows that Wilkes was able to see into the trailer and observe how the trays were loaded. For this reason, any defect in loading or securing the cargo should have been apparent to him.

Moreover, Wilkes does not even argue, much less designate any evidence, that the lack of securing devices was not apparent or that the trays should have been loaded in a different configuration. Instead, he argues that the nature of the cargo itself – oily, greasy trays – created a latent defect. He argues that an ordinary inspection would not reveal the risk that the unsecured trays presented because he could not see the trays were covered in oil and grease. But Wilkes does not point to any evidence

that these trays presented any more of a risk due to the oil and grease than any other type of unsecured cargo. Nor does he cite any legal authority that supports finding a latent loading defect based solely on the nature of the cargo being shipped. We could speculate about whether the oil and grease created a latent defect, but speculation is not sufficient to create a genuine issue for trial. See *Griffin v. Menard, Inc.*, 175 N.E.3d 811, 814 (Ind. 2021).

The combination of Wilkes's observation and inspection, along with the conspicuous absence of any securing device, establishes that any defect was, or should have been, apparent to him through a reasonable inspection. See *Morris v. Ford Motor Co.*, No. 2:10CV504, 2012 WL 5947753, at *10, *12 (N.D. Ind. Nov. 28, 2012) (observing both that the driver had "multiple opportunities to inspect the load" and that "the absence of devices used to secure the cargo from rearward movement . . . cannot be said to be latent"); *Savage*, 209 F.2d at 446 (attributing fault to the carrier when the driver inspected the load and concluded it had been fastened inadequately); *Aragon v. Wal-Mart Stores East, LP*, 735 F.3d 807, 810 (8th Cir. 2013) (declining to find a latent defect when, among other things, the driver had an opportunity to view and inspect his cargo and noticed it was not secured).

Whether a defect is latent also depends on the extent of the driver's experience and "the presence or absence of any assurances by the shipper regarding the security of the load" upon which the driver reasonably relied. *Ibid.* "[D]rivers with more experience are more capable of detecting loading defects than those without experience." *Vargo-Schaper*, 619 F.3d at 849. But inexperience alone will not absolve a driver of his duty to inspect his load and ensure it is secured. *Aragon*, 735 F.3d at 811. An otherwise open and obvious loading defect will be rendered latent only if the inexperienced driver asks about the security of the load, receives assurances from the shipper that it is secure, and reasonably relies on such assurances. *Ibid.*

In *Franklin Stainless Corporation*, the driver had never hauled the material before, so he asked the shipper if it was loaded properly. 748 F.2d at 866. In response, the shipper assured the driver that it had used "the

standard loading method and that there would be no trouble with the load." *Ibid.* The court found that the driver reasonably relied on the shipper's assurance in part because of the driver's inexperience. *Ibid.* And in *Spence*, a driver complained that he was not comfortable with the shipper's method of securing the cargo, and the shipper told the driver that it had "never had a problem with any of its loads." 623 F.3d at 213–14. The court used the shipper's statement in finding enough evidence of reasonable assurance to preclude summary judgment. See *id.* at 221–22. In both *Franklin* and *Spence*, the shippers made affirmative statements regarding the safety of the loads in response to the driver inquiries.

Here, in contrast, the designated evidence shows that Wilkes did not ask about the safety or security of the load, and Celadon made no assurances about the load's safety or security. Wilkes argues that the Celadon dispatcher assured him the cargo was safely loaded and properly secured, thus rendering the defect latent. But the designated evidence does not show that Wilkes asked about the load's security or that any Celadon employee assured him about the load's security. Wilkes relies on excerpts from his own deposition where he says that a Celadon dispatcher told him his trailer was "loaded and ready to go". But this excerpt is not designated evidence. Wilkes failed to designate his own deposition as evidence in his response to the summary-judgment motion. Even though Wilkes later sought permission from the trial court to designate his deposition belatedly, the trial court did not rule on the motion. Because Wilkes did not designate this excerpt, we may not rely on it for summary-judgment purposes. See *Perkins*, 141 N.E.3d at 1234. Further, in his response briefs in the trial court, Wilkes argued neither that the Celadon dispatcher provided reasonable assurances nor that he relied on such assurances. He raises this assurance-reliance argument for the first time on appeal, and for this reason, it is waived. App. R. 46(A)(8)(a).

Even had Wilkes properly designated his own deposition as evidence and raised the assurance-reliance argument in the trial court, we would reject it. Wilkes had five years' experience operating commercial motor vehicles when he picked up the trailer at Celadon. Despite his lack of experience with these trays or this type of cargo, he did not ask Celadon if the load was secure. The comment "loaded and ready to go", especially

when not in response to a question about the load's security, pronounces only that the loading is complete, not that its contents were loaded properly or securely. And, in fact, Wilkes admits that no one at Celadon told him the trays were "properly loaded". Thus, Celadon's statement is not the kind of assurance upon which Wilkes was entitled to rely.

We thus hold that Celadon met its burden to establish no genuine issue of material fact as to the lack of a latent loading defect, and Wilkes failed to meet his burden to designate contrary evidence upon which a jury could conclude that any alleged defect in loading was latent. Wilkes did not inquire into the safety of the loading. Celadon did not provide any affirmative assurances that it loaded the trays safely. And any defect in loading or securing the cargo should have been apparent to Wilkes through a reasonable inspection.

* * *

For these reasons, we expressly adopt the *Savage* framework, meaning that Knight Transportation, as carrier, was presumptively responsible for the injuries that its driver, Wilkes, sustained when the cargo fell on him. Celadon, as the shipper's agent, assumed responsibility for loading the trays onto the trailer, but Celadon is not liable for the injuries because on this record any alleged defect in loading the trailer should have been apparent. We affirm the trial court's entry of judgment for the Celadon and Cummins defendants and against Wilkes.

Rush, C.J., and Massa, J., concur.
Goff, J., concurs in part and dissents in part with separate opinion, in which David, J., joins.

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Goff, J., concurring in part and dissenting in part.

I respectfully dissent from the Court's decision as to Celadon[1] and would find the designated evidence sufficient to create a genuine issue of material fact as to whether there was a loading defect and whether that defect was latent. And because resolution of this single fact-sensitive case doesn't require adopting a rule that could likely impact the entire trucking industry, I would decline to adopt the *Savage* rule at this time.

First, summary judgment is improper under either our traditional negligence analysis or the *Savage* rule. There is no question that Celadon assumed the duty to load the trays which ultimately caused Wilkes' injury. The issue is whether it **breached** that duty by loading the trays in a defective manner, thereby causing the injury (or, under the *Savage* rule, in a defective manner, thereby causing the injury when the defect was latent). Whichever test we apply, I find the designated evidence leaves open a genuine issue of material fact as to this issue. Celadon told Wilkes the trays were "loaded and ready to go," the trays at issue were covered in an industrial lubricant (a fact that may not have been apparent and that might have made the load particularly susceptible to shifting), the trays were loaded nearly to the top of the thirteen-foot-high trailer (a fact that may have made closer inspection particularly difficult), and Wilkes had no experience with the type of cargo at issue. Taken together, I believe these facts, and the reasonable inferences from them, are more than sufficient to defeat summary judgment as to Celadon. I would, therefore, hold as my colleagues on the Court of Appeals did and deny summary judgment.

Second, regardless of the merits of the *Savage* rule, I see no need to adopt it in this case. Under either test, Wilkes designated sufficient evidence to survive summary judgment. And because adoption of a new

[1] I concur with the Court's holding that summary judgment was proper as to Cummins.

rule—a rule followed in only nine states[2]—is unnecessary to resolve the case before us, I would refrain from doing it today.[3] In my view, unnecessarily adopting such rules impedes the ability of courts to do what they are intended to do: decide individual controversies on a case-by-case basis.

Because I disagree with both the Court's resolution of this case and its decision to unnecessarily adopt a rule that will affect all similarly situated parties, I respectfully dissent in part.

David, J., joins.

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[2] My research indicates that the rule, or a variation of the rule, has been adopted by appellate courts in Arizona, California, Maine, Michigan, New Hampshire, New York, Louisiana, Ohio, Texas, Wisconsin. *See, respectively*, *Moro v. Thomas*, No. 1 CA-CV 10-0353, 2011 Ariz. App. Unpub. LEXIS 582, at *10 (Ct. App. Feb. 24, 2011); *BBD Transp. Co. v. Buller*, 49 Cal. App. 3d 124, 132 (1975); *Decker v. New England Pub. Warehouse, Inc.*, 749 A.2d 762, 767 (Me. 2000); *McMaster v. DTE Energy Co.*, No. 339271, 2020 Mich. App. LEXIS 4181, at *10 (Ct. App. July 2, 2020); *Smart v. Am. Welding & Tank Co.*, 826 A.2d 570, 574 (N.H. 2003); *Instrument Sys. Corp. v. Associated Rigging & Hauling Corp.*, 70 A.D.2d 529, 530 (N.Y. App. Div. 1979); *Stroder v. Hilcorp Energy Co.*, 242 So. 3d 1240, 1245 (La. App. 2018); *Romig v. Baker Hi-Way Express, Inc.*, 2012 WL 258563, at *1 (Ohio Ct. App. Jan. 27, 2012); *Tex. Specialty Trailers, Inc. v. Jackson & Simmen Drilling Co.*, No. 2-07-228-CV, 2009 Tex. App. LEXIS 6318, at *26 (Tex. App. Aug. 13, 2009); *Allis-Chalmers Mfg. Co. v. Eagle Motor Lines, Inc.*, 198 N.W.2d 162, 165 (Wis. 1972).

[3] Trucking "has emerged as one of the most acute bottlenecks in a supply chain" that's currently in turmoil. Ari Hawkins, *A Trucking Crisis Has the U.S. Looking for More Drivers Abroad*, Bloomberg (Aug. 2, 2021), https://www.bloomberg.com/news/articles/2021-08-02/a-trucking-crisis-has-the-u-s-looking-for-more-drivers-abroad [https://perma.cc/S9DT-BSJK]. Because "[c]arriers routinely are not allowed on loading docks at shipping facilities, receiving no opportunity to inspect cargo before the trailer doors are sealed," I would not place additional demands on carriers at this time. *See* Jackson G. O'Brien, Note, *Your Shipment Has Been Delayed: Liability of Shippers and Carriers for Loading and Securing Cargo in Iowa*, 67 Drake L. Rev. 283, 289 (citing Terry Morgan, *Loading and Unloading, Who Is Responsible?*, N. Am. Transp. Ass'n).