

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

<b>DAVID PAYNE,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil No. <b>09-559-GPM</b>
<b>SCHNEIDER NATIONAL CARRIERS,</b>	)	
<b>INC., et al.,</b>	)	
	)	
Defendants.	)	

**ORDER**

**PROUD, Magistrate Judge:**

Before the Court is plaintiff’s Motion to Strike Schneider National Carriers, Inc.’s Affirmative Defenses. **(Doc. 18)**. Defendant filed a response in opposition at **Doc. 20**.

In its responsive pleading, Doc. 12, Schneider National Carriers, Inc., raised affirmative defenses of contributory negligence, negligence of parties other than defendant, and several (as opposed to joint) liability pursuant to 735 ILCS5/2-1117. Plaintiff contends that these matters are mere legal conclusions or mere considerations as to the allocation of damages in a comparative fault scheme.

These defenses are not insufficient on their face. Their validity depends on the development of disputed facts. Therefore, they should not be stricken. *See, U.S. v. 416.81 Acres of Land, 514 F.2d 627 (7<sup>th</sup> Cir. 1975)*.

Plaintiff’s Motion to Strike Schneider National Carriers, Inc.’s Affirmative Defenses **(Doc. 18)** is **DENIED**.

**IT IS SO ORDERED.**

**DATED: December 17, 2009.**

s/ Clifford J. Proud  
**CLIFFORD J. PROUD**  
**UNITED STATES MAGISTRATE JUDGE**