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Commercial Truck Driver Cases

Dismantling the Fiction of the Independent Contractor and Maximizing Liability Coverage

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Careless driving by those operating commercial vehicles, principally tractor-trailers, can cause devastating accidents — 20 or even 30 vehicles involved, multiple deaths and many severe injuries. These accidents occur on roads throughout the country, but particularly in states like Pennsylvania, which has a network of crisscrossing interstate highways and therefore higher than average truck traffic on congested roadways. Satisfying results in cases with severe injuries, deaths or multiple claimants requires insurance coverage with a high limit, and while major national trucking firms typically carry such insurance, most small to midsized trucking companies that use independent owner-operators to haul their goods do not. When these commercial drivers cause accidents, the initial layer of coverage may not be enough to satisfy the claims for the injured and dead victims. Therefore, vicarious liability is an important issue in commercial truck driver cases.

CARELESS DRIVING AND THE OWNER-OPERATOR

In the typical scenario, a trucking company will hire a driver who owns a tractor-trailer to use his vehicle to transport the company's goods through interstate commerce. The driver is referred to as the "owner-operator." Federal statutes and regulations governing interstate commerce make the trucking company that hires the owner-operator vicariously liable for his conduct.

Oftentimes, however, the original trucking company will then loan that owner-operator

to a second trucking company pursuant to a contract that provides drivers and trailers for the exclusive use of the second company. In the event that the owner-operator drives carelessly and causes an accident, who is responsible? More importantly, which liability policy will provide coverage for that driver? Will it be the policy maintained by Trucking Company One or Trucking Company Two? Will both companies' policies be responsible?

In these situations the deposition testimony of the driver will often be useless in answering these questions. The driver will testify that he was "working for" the second trucking company because he was required to report to that company's facility to pick up or drop off loads, and that company's dispatcher provided him with instructions concerning his duties. Both the contract between the owner-operator and the first trucking company and the contract between the trucking companies, however, contain provisions that purportedly address the issue of control of the owner-operator. A typical contract may provide as follows:

"Shipments will be hauled under the auspices of Trucking Company Two. Trucking Company Two will exercise that degree of oversight necessary to comply with state, local and federal requirements, but, in all other respects, the methods and means of operating are at the discretion of the contractor when hauling freight for Trucking Company Two."

This language is intended to make the owner-operator an independent contractor of Trucking Company One (the company loaning the driver), insulating it from responsibility for his actions. Several questions arise from these arrangements: Can the owner-operator

be considered an independent contractor under any circumstances? How does the court determine who is vicariously liable for the owner-operator? Can an owner-operator actually have two masters, both of which are vicariously responsible for the owner-operator's conduct? Once you establish that there are two "masters," will additional liability coverage or exposure to assets follow? There are several paths to follow to get the answers to these questions.

PA. LAW AND THE INDEPENDENT CONTRACTOR RELATIONSHIP

Pennsylvania law defining the requirements for an independent contractor relationship is well established: The law relies on basic master-servant principles, as laid out in *Bojarski v. Howlett Inc.*: "An independent contractor is a person employed to perform work on the terms that he is to be free from the control of the employer as respects the manner in which the details of the work are to be executed." When distinguishing an independent contractor from a master-servant relationship, the question is: "Was the act in the business in which the master is in control as a proprietor, so that he can at any time stop or continue it, and determine the way in which it shall be done, not merely in reference to the result reached, but in reference to the method of reaching the result?" as noted in *Byrne v. Hitner's Sons Co.*

The issue is always who exercised control over the methods employed in performing the work. A hired or borrowed worker may still be an independent contractor even though some supervision is reserved to the hirer for the purpose of seeing that a desired result is

reached. The retention of the power to fix the time or place of doing the work, or its quantity of work performed alone is not sufficient to create a master-servant relationship so long as the person employed to perform the service is not deprived of proceeding to reach the desired end according to his own initiative, as noted in *Festi v. Proctor & Schwartz* cited with approval in *Dougherty v. Proctor & Schwartz Inc.*

In the trucking industry, much of the control revolves around dispatch and delivery, that is, the time and place of doing the work. The method, which is the driving, is left up to the driver. So can there be circumstances where a master-servant relationship can be proven in commercial truck cases? As always, the answer is in the details. The question of a servant's status is for the jury. As stated in *Dunmire v. Fitzgerald*, "Where, as here, it is not entirely clear who was the controlling master of the borrowed employee, and different inferences in that regard can fairly be drawn from the evidence, it is for the jury, not the court, to determine the question of agency."

ESTABLISHING VICARIOUS LIABILITY

There are several effective paths plaintiff's counsel can take to establish vicarious liability for the owner-operator's conduct.

- If it walks like a duck. Present the jury with evidence so they can determine if the so-called "independent" contractor is actually not so independent, but is subject to the direction of the person who is ostensibly not the employer. In this case, that would be Trucking Company One, the original company with which the owner-operator had a relationship before being loaned to Trucking Company Two, to which he reports for work and from whose dispatcher he receives instructions.

Regardless of who pays the owner-operator's paycheck or what a contract between the trucking companies provides, the test is always whether, in the particular

service for which the driver was loaned (delivery of goods), he was subject to the direction and control of the general employer (Trucking Company One) or became subject to the control of the party to which he was lent (Trucking Company Two), not merely for the result of the work (delivery), but as to the way it should be performed. Discovery about dispatch policies, delivery times, who is enforcing regulations, checking in with the employer and other questions regarding the manner of doing the job set the foundation for defeating the argument that the owner-operator is independent of Trucking Company One. If it walks like a duck and quacks like a duck, it is likely a duck. If it looks like supervision and control, it probably is.

- He really is my boss. In addition to who actually controls the driver's manner of work, vicarious liability can rest on who has the right of control, as noted in *Dunmire*. It is important therefore to be sure that you obtain all contract or lease documents and examine them carefully to see if the loaning employer (Trucking Company One) retained rights of control. Often discovery will reveal that the right to hire, fire and discipline the driver is retained by Trucking Company One. Be sure to look at the contracts to see who really is the boss.

- One can serve two masters. Despite Matthew's admonition in the New Testament that "no man can serve two masters," under Pennsylvania law, a commercial driver certainly can — and plaintiff's counsel can establish that fact. In some circumstances, both the lender (Trucking Company One) and borrower (Trucking Company Two) of a servant may have the right of control or may exercise control to effect a common purpose, so that the owner-operator's working for the borrower does not involve abandonment of the service to the lender. (See *Kissell v. Motor Age Transit Lines*.) Both masters can be liable for the conduct of the servant under those circumstances, as noted in *Mineo v.*

Tancini. Information about how revenue is shared between the trucking companies and the regular use of borrowed employees may reveal a common purpose.

- Let the Feds help. Under regulations promulgated pursuant to 49 USC Section 14102, lease arrangements in commercial trucking require a written lease, and the terms of that lease must include an express acceptance by the lessee of complete responsibility for the operation of the equipment during the term of the lease, as shown at 49 Code of Federal Regulations 376.12 (See *Wilson v. Riley Whittle Inc.*) While the regulations require the lessee to assume responsibility, it is not exclusive and the lessor can also remain responsible, as noted in *Johnson v. Motors Dispatch Inc.*

Commercial truck accident cases require plaintiff's counsel to not only have a knowledge of accident reconstruction and engineering principles but also an understanding of the intricacies of the leasing arrangements between independent owner-operators and the trucking firms that hire those operators to transport goods through interstate commerce. Knowledge of those leasing arrangements — and the federal regulations that have been adopted to protect the public from the devastation that commercial trucks can cause — enable counsel to find the coverage necessary to fully compensate all the victims of these accidents. •

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