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How Well Do You Know Your Independent Trucker?

When you or your business hire an independent contractor to perform some service for a fee, normally the law protects you against liability for the negligent acts of the contractor in the performance of the contract. This immunity from liability for contractor-caused accidents or injuries rests upon the distinction between a contractor and an employee. The public policy behind this important legal distinction is based upon the fact that one who hires an independent contractor has no right of control over the manner in which the work is to be done; it is to be regarded as the contractor's own enterprise; and that the contractor, not the person hiring the contractor (called the principal), is in the best position to control risks and prevent injuries.

Thus, normally, there is no legal duty on the principal hiring an independent contractor to check or verify things such as:

- Is the contractor licensed?
 - His past work or accident history;
- or
- Whether the contractor is incompetent.

These generalities in the law apply to contractors from plumbers to lawyers to construction firms. However, there are at least three exceptions:

1) The principal retains control of the manner and means of doing the

work subject to the contract;

2) The principal engages an incompetent contractor; or

3) The activity constitutes a nuisance per se (i.e. an inherently dangerous activity requiring special precautions, thus warranting the imposition of a nondelegable duty on the principal to assure the safe transport of its goods on the public highways).

Trucking transport of inherently dangerous items such as explosives or high-degree toxics over public highways might fall within the third exception above, but normally hauling material by truck is not an inherently dangerous activity.

Enter the New Jersey Supreme Court in a case decided May 22, 2006, *Puckrein v. ATI Transport, Inc., et al.*

The facts: On June 22, 1998, the Puckreins were killed and Alecia Puckrein's mother, Jean Graeves, was seriously injured when a tractor-trailer from ATI Transport, Inc. with faulty brakes drove through a red light and struck the automobile in which they were riding. At the time, the tractor-trailer contained glass residue produced in the glass-crushing process and had a gross weight of 79,000 lb. After transporting the residue, because the hydraulic system on the truck was not operating, the trucker was not able to drop off the load and was asked to leave. He was on his way back to ATI when the accident occurred. An automotive engi-

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neer retained by the state police determined that at the time of the accident, a “maximum of 54 percent of the required braking existed” on the truck. According to a police report, the truck had markings identifying it as “ATI transport.”

The truck driver was issued summonses for reckless driving, failure to observe a traffic signal, operation of an unsafe vehicle and operation of an uninsured vehicle. ATI, as the owner of the tractor-trailer, received summonses for allowing operation of a vehicle with a suspended registration, allowing operation of an unsafe vehicle and allowing operation of an uninsured vehicle. At least one of the brake drums on the truck was completely missing. The truck had neither registration nor insurance on the day of the accident.

Troubled by an appearance of a loophole in the law which might be viewed as allowing companies to insulate themselves (under the independent contractor rule) by hiring unsafe truckers with uninsured, unregistered, unsafe trucks to transport their goods over public highways, the State Supreme Court held that a principal may be held liable in New Jersey if it fails to ensure a truck it contracts with is registered, inspected, insured and driven properly.

The court described this duty for hiring truckers this way:

“To prevail against the principal for hiring an incompetent contractor, a plaintiff must show that the contractor was, in fact, incompetent or unskilled to perform the job for which he/she was hired, that the harm that resulted arose out of that incompetence and that the principal knew or should have known of the incompetence.

“Under New Jersey law, the hauler’s basic competency included, at a minimum, a valid driver’s license, a valid registration certificate and a valid liability insurance identification card.

“A company whose core purpose is the collection and transportation of materials on the highways, has a duty to

use reasonable care in the hiring of an independent trucker, including a duty to make an inquiry into that trucker’s ability to travel legally on the highways. At a minimum, principals in New Jersey now are required to inquire whether their haulers had proper insurance and

registration because without those items the hauler had no right to be on the road. Just as the principal itself could not have transported products in unregistered and uninsured trucks, it was not free to engage an independent contractor that did so.” **MF**