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No Immunity for Negligent Hiring of Outside Trucker

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New Jersey Law Journal
06-02-2006

While there is generally no vicarious liability for independent contractors' acts, a principal may be liable in New Jersey for negligent hiring if it fails to make sure a truck it engages is registered, inspected, insured and driven properly, the New Jersey Supreme Court ruled last week.

The justices, in *Puckrein v. ATI Transport Inc.*, A-117-04, held that Browning-Ferris Industries of New York Inc., a provider of waste management, recycling and sanitation services, may be held liable for the deaths of a Somerset County, N.J., couple in a collision with a waste-hauling truck it had hired.

"[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," Justice Virginia Long wrote for the court.

"At a minimum, BFI-NY was required to inquire whether its haulers had proper insurance and registration because without those items the hauler had no right to be on the road. Just as BFI-NY itself could not have transported products in unregistered and uninsured trucks, it was not free to engage an independent contractor that did so," she continued.

The court unanimously reversed lower court rulings that dismissed BFI-NY on summary judgment, saying the courts had misread a precedential ruling that sets out the "incompetent contractor" exception to the general immunity rule.

Paul Brandes, the lawyer for the estates of Kevin and Alecia Puckrein, says the court closed a loophole that had allowed companies to insulate themselves. "The ruling says that big companies can't just hire gypsy truckers to carry their goods," says Brandes, of Marlton, N.J.'s Villari, Brandes & Kline. "It's one of the first, if not the first, ruling that codifies

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the common law on this issue of liability."

BFI-NY's lawyer, Christopher Mauro, of New York's Camacho Mauro Mulholland, declines comment.

The Puckreins were killed on June 22, 1998, in North Plainfield, N.J., when their car was struck by a tractor-trailer containing crushed glass, with a gross weight of 79,000 pounds, which went through a red light. A state police engineer later determined that the truck had at most 54 percent of the required braking capacity.

The tractor-trailer was owned by ATI Transport Inc., a New York subsidiary of World Carting Co., also of New York. BFI-NY had retained World Carting to transport waste from New York City to a Newark incinerator, American Ref-Fuel.

The tractor-trailer was uninsured and unregistered. The driver, Gaizka Idoeta, was issued numerous tickets and was charged with manslaughter, for which he was acquitted. The owner of World Carting and ATI Transport, John Stangle, pleaded guilty to a charge of creating a risk of widespread injury or damage.

A wrongful death suit against multiple defendants followed in Somerset County, but Superior Court Judge Yolanda Ciccone granted summary judgment dismissing BFI-NY as a party, and the rest of the defendants defaulted before the case came to a verdict. The \$1.7 million judgment was thus rendered uncollectible.

Ciccone, and the Appellate Division panel that affirmed, relied on *Mavrikidis v. Petulo*, 153 N.J. 117 (1998), in which the court said that "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."

But Long said that the lower courts had read *Mavrikidis* too narrowly. In that case, the principal hired a subcontractor to pave a road. The plaintiff was not injured during the paving job but during the transport of equipment and products to the job site, which was peripheral to the paving function. Hence, there was no evidence from which the principal should have concluded that the subcontractor was incompetent to do the work for which it was hired, Long observed.

"By contrast, the very job that BFI-NY hired World Carting/ATI to do was to haul waste and recyclables across state lines," Long wrote. "Unlike *Mavrikidis*, transportation was not peripheral to the BFI-NY/World Carting contract, it was the contract. Had that been the case in *Mavrikidis*, we have no doubt that the result would have been different."

Long added, "Unlike the claims in *Mavrikidis*, licensing, registration, and insurance are, under our law, the sine qua non to the transport of goods on the roadways."

Thus, the only question was "whether BFI-NY violated its duty to use reasonable care in selecting a trucker and whether it knew or should have known of World Carting's incompetence," and BFI-NY was not entitled to summary judgment, Long said. "At the very least, the reasonableness of its inquiry to World Carting was a jury issue," she wrote. "Even if it could be proved that BFI-NY made reasonable inquiry of World Carting at the time of its original retention, its duty did not end there."

Plaintiffs lawyer Brandes says he will seek compensatory and punitive damages from Allied Waste Inc. of Scottsdale, Ariz., the country's second-largest waste-hauler, which bought Browning-Ferris in 1999.