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Hauler Vicariously Liable for Transporter

Trash hauler must use reasonable care in the hiring of an independent trucker

The New Jersey Supreme Court recently held a trash hauler had a duty to ensure the safety of trucks used by an independent contractor. In *Puckrein v. ATI Transport, Inc.*, 186 N.J. 563 (2006), Justice Virginia Long, writing for a unanimous Court, reinstated the complaint filed by a family struck by the trash hauler's for-hire tractor-trailer.

The trash hauler, Browning-Ferris Industries of New York (BFI-NY), used for-hire motor carriers to transport recyclables and solid waste across state lines. In July 1997, BFI-NY contracted with World Carting to haul glass residue and/or solid waste to Morgantown, Pennsylvania and to American Ref-Fuel in Newark, New Jersey. World Carting also agreed to maintain required insurance, to furnish BFI-NY with proof of insurance, and to indemnify BFI-NY for "injuries to or death of persons...caused by, resulting from, growing out of, or incidental to the work performed under [the] Agreement." World Carting's auto liability insurance expired two months before the accident. BFI-NY had no updated information on file indicating that the insurance had been

renewed.

Kevin and Alecia Puckrein were killed and Alecia Puckrein's mother, Jean Greaves, was seriously injured in 1998 when their automobile was struck by an unregistered and uninsured tractor-trailer with defective brakes. The tractor-trailer was owned by ATI Transport (ATI). The driver of the tractor-trailer, Gaizka Idoeta, was issued several summonses, including reckless driving, operation of an unsafe vehicle and operation of an uninsured vehicle. ATI was issued summonses for operation of a vehicle with a suspended registration, operation of an unsafe vehicle, and operation of an uninsured vehicle. Idoeta was also charged with manslaughter and was acquitted. John Stangle, the owner of ATI and World Carting, was also charged with manslaughter. After his trial resulted in a hung jury, Stangle pled guilty to a fourth-degree offense, creating a risk of wide-spread injury or damage, and to the motor vehicle offenses of suspended registration, unsafe vehicle and uninsured vehicle. In entering the guilty pleas, Stangle admitted that he knew that at least one of the brake drums on the truck that killed the Puckreins was completely missing. An automotive engineer 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. Also, Stangle admitted that he knew that the truck was unregistered and uninsured on the day of the accident.

The Transportation Manager of BFI-NY, Jeff Randazzo, "oversaw all of the

material going outbound from the [BFI-NY] facility." Despite BFI-NY's contract with World Carting, Randazzo testified that ATI trucks "show[ed] up for World Carting," leading him to believe that "they were the same company." Although Randazzo claimed that in order to haul for BFI-NY, a hauler had to have an inspected and registered tractor and trailer along with insurance, he admitted that nobody at BFI-NY checked to determine if ATI's registration, insurance and other licenses were in order. Other BFI-NY employees contended that it was the hauler, not BFI-NY, who was responsible to ensure compliance with federal regulations.

The plaintiffs sued a series of defendants, including Idoeta, ATI, World Carting, Stangle and BFI-NY. The trial judge dismissed the case against BFI-NY on summary judgment, reasoning that the plaintiffs had not proven that BFI-NY was negligent or that Idoeta was an employee of BFI-NY. Idoeta, Stangle, ATI and World Carting defaulted. The plaintiffs appealed from the grant of summary judgment in favor of BFI-NY and the Appellate Division affirmed. In doing so, the court rejected the plaintiffs' claims that BFI-NY was ATI's employer and BFI-NY was liable for ATI's negligence. Despite having been granted summary judgment, BFI-NY continued to participate in the trial against the remaining defendants, who were judgment-proof and would not be appearing. Following the trial, the jury returned verdicts against Idoeta, Stangle, ATI and World Carting.

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The estate of Kevin Puckrein was awarded \$424,624.50, the estate of Alecia Puckrein \$119,613, and Jean Greaves \$175,000. The jury also awarded \$1 million in punitive damages against Stangle.

Ordinarily, an employer that hires an independent contractor is not liable for the negligent acts of the contractor in the performance of the contract. *Bahrle v. Exxon Corp.*, 145 N.J. 144 (1996). There are, however, three exceptions to the general rule that principals are not liable for the actions of independent contractors: 1) where the principal retains control of the manner and means of doing the work subject to the contract; 2) where the principal engages an incompetent contractor; or 3) where the activity constitutes a nuisance *per se*. *Majestic Realty Associates v. Toti Contracting Co.*, 30 N.J. 425 (1959). Only the second exception — the incompetent-contractor exception — is at issue in *Puckrein*. To prevail against the principal for hiring an independent contractor, the Court held that a plaintiff must show that the contractor was, in fact, incompetent or unskilled to perform the job for which he was hired, that the harm that resulted arose out of that incompetence and that the principal knew or should have known of the incompetence. *Mavrikidis v. Petullo*, 153 N.J. 117 (1998).

The question raised by the *Puckrein* appeal is whether BFI-NY violated its duty to use reasonable care in selecting a for-hire motor carrier and whether it knew or should have known of World Carting's incompetence. The Supreme Court concluded that 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 whether its haulers had registered and insured vehicles. Basic competency, wrote Justice Long, included, at a minimum, a valid driver's license, a valid registration certificate and a valid liability insurance identification card; without those items, the hauler had no right to be on the road. N.J.S.A. 39:3-29.

Taking one step further, though, the Supreme Court held that BFI-NY's duty did not end even if it could have been proven that BFI-NY made a reasonable inquiry of World Carting at the time of its

hiring. World Carting's insurance coverage expired two months prior to the accident. The Supreme Court concluded that summary judgment in BFI-NY's favor should not have been granted because BFI-NY continued to load World Carting and ATI trucks without evidence that they were competent to transport its products. Finally, the Supreme Court rejected the contention that BFI-NY could not be vicariously liable for the acts of ATI because BFI-NY had no contractual relationship to ATI. The question of BFI-NY's relationship with ATI could not have been decided in BFI-NY's favor on summary judgment because World Carting and ATI were the same company, with Stangle serving as the President and owner of World Carting and ATI.

Now that the New Jersey Supreme Court has opened the flood gates to litigation against those who engage for-hire motor carriers, the question is whether a claim of negligent hiring will be covered by liability insurance. This issue was addressed in *Bastek v. Commerce & Industry Insurance Company*, Docket No. A-3286-04 (App. Div. Feb. 22, 2006), *cert. denied* 186 N.J. 607 (2006). Dr. Bastek was killed on May 22, 1998, when the vehicle in which he and other passengers were riding was struck by a tractor-trailer. The tractor was owned and driven by Isam Sabeil, who had been hired by and was operating under dispatch for Inter-Coast Express. At the time of the accident, Inter-Coast had two insurance policies issued to it by Commerce & Industry Insurance Company (CIIC). The policies were a trucker's commercial motor vehicle policy (the auto policy) and a commercial general liability policy (the CGL policy). Following trial, the jury returned a verdict in favor of the plaintiffs against Sabeil and Inter-Coast in excess of the auto policy limit. After the entry of judgment, CIIC paid \$982,000 to the plaintiffs, representing the \$1 million limit of the auto policy, less storage and towing fees of \$18,000.

The plaintiffs filed a complaint against CIIC, seeking a declaration that the CGL policy also provided coverage for the losses represented by the jury verdict and demanded that the \$1 million limit of that policy also be paid over to the plaintiffs. The plaintiffs argued that the CGL policy

should have afforded coverage for Inter-Coast's negligent hiring or supervision of Sabeil. In support thereof, the plaintiffs stressed that the jury in the underlying litigation found, as a matter of fact, that Inter-Coast was negligent in its hiring and supervision of Sabeil. The plaintiffs' assertion that the CGL policy afforded coverage for Inter-Coast's negligent hiring of Sabeil was summarily rejected by the Appellate Division, citing *Scarfi v. Aetna Casualty & Surety*, 233 N.J. Super. 509 (App. Div. 1989). In *Scarfi*, the Aetna CGL policy excluded any coverage for bodily injury "arising out of the ownership, maintenance, use or entrustment to others of any...auto...owned or operated or rented or loaned to any insured."

To defend against a negligent-hiring claim, the company that engages the independent contractor must prove that they exercised reasonable care in the selection of the motor carrier in order to help absolve them from liability. The focus of attention must be on their due diligence in confirming adequate liability coverage and the safety record of the for-hire motor carrier. The Federal Motor Carrier Safety Administration (FMCSA) provides access to licensing and insurance carrier information at <http://li-public.fmcsa.dot.gov>. Also, the FMCSA provides information regarding motor carriers' safety performance at <http://safer.fmcsa.dot.gov>. This information includes "Safestat," which reports on and rates carriers' safety performance. "Safety Evaluation Area" values used on this site range from 0 (best) to 100 (worst). According to Safestat, only SEA ratings of 75 or higher are deemed to be deficient. There are other safety management tools that can be employed to demonstrate due diligence, such as obtaining Driver Qualification files from the for-hire motor carriers. Motor carriers are required to maintain a Driver Qualification file on each driver it employs. 49 CFR § 391.51.

The sum and substance of the *Puckrein* decision by the New Jersey Supreme Court is obvious — perform a due-diligence investigation on the for-hire motor carrier, document the investigation, and systematically re-investigate the for-hire motor carrier on an interval basis. ■