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California Supreme Court and Court of Appeal have decided a trilogy of new cases dealing with the status of independent contractors, as discussed below:

Bowman v. Wyatt (2010 WL 2613079)

Plaintiff Bowman suffered devastating injury when his motorcycle collided with a dump truck operated by defendant Wyatt, who was under contract to the City of Los Angeles to deliver asphalt to work sites as needed. At trial, the jury found that Wyatt was a City employee, and that the City breached a duty to inspect and maintain the truck's brakes and that the work in which Wyatt was engaged at the time of the accident involved a special risk of harm. The jury returned a verdict of \$15 million based in part on a jury instruction that the City "controlled" Wyatt at the time of the incident. The City appealed.

In its opinion, the Court of Appeal held that the disputed instruction, CACI 3704, did not correctly state the law because it instructed the jury that the right of control, by itself, is dispositive. The right to control is important, but is not the only factor to consider. Others include: whether the worker is engaged in a distinct occupation, the skill required, whether the employer or the worker supplies the tools and the place of work, the length of time for which the services are to be performed, whether the worker is paid by time or by the job, whether a work is part of the regular business of the employer, and the kind of relationship the parties believe they are creating. Taking all factors into account, a properly-instructed jury could have concluded that Wyatt was an independent contractor, not an employee.

The Court also found that the "peculiar risk" doctrine (see below) did not apply. Since Wyatt had left the job site after unloading asphalt, there was no direct relationship between any risk inherent in hauling asphalt and the accident, and that Wyatt's negligence in running a stop sign was nothing more than ordinary failure to exercise due care in operating a motor vehicle.

Based on this analysis, the Court found that the City was not directly liable and that the only issue to be presented to a jury on retrial is whether the City was vicariously liable for Wyatt's negligence.

Narayan, et al. v. EGL, Inc. (DJDA 10844)

The Ninth Circuit Court of Appeals has sided with California delivery drivers working for a Texas-based company, who claimed they were misclassified as independent contractors.

Narayan and two other plaintiffs sued EGL, Inc., a global transportation and delivery services provider and one of its subsidiaries, Eagle Freight Services, Inc. on the ground that they were deprived of benefits under the California Labor Code. EGL, however, argued that since the workers signed agreements with the company acknowledging that they were independent contractors and that Texas law applied to all contracts disputes, since they were independent contractors under controlling Texas law. After the U.S. District Court for the Northern District of California dismissed plaintiff's claims, they appealed to the Ninth Circuit, which reversed.

In its opinion, the Ninth Circuit found that California law, not contracts between workers and their employers, governs whether workers in California are independent contractors or employees. Even if the company is headquartered outside the state, as long as workers perform their job in California, California law controls. The Court also found sufficient indication that the plaintiffs were in fact employees, and that the plaintiffs having signed contracts expressly acknowledging their independent contractor status was "simply not significant" under California's test of employment. Thus, an employer cannot use a sympathetic foreign state law as the rule of decision if its workers are actually working in California.

Tverberg v. Fillner Construction, Inc. (2010 WL 2557558)

This is a California Supreme Court decision dealing with the issue of whether an independent contractor can hold a general contractor vicariously liable under the doctrine of "peculiar risk." Under this doctrine, a hirer's liability is vicarious, i.e., the hirer incurs liability for the hired contractor's act or omission in failing to use reasonable care in performing the hired work.

In Tverberg, the plaintiff, an independent contractor working for a subcontractor, was injured when he fell into an uncovered hole, four feet wide and four feet deep, next to an area where another independent contractor was to erect a metal canopy. He then sued both the contractor whose negligence caused his injuries and the general contractor. The trial court granted summary judgment for the general contractor under the Privette doctrine. (Privette v. Sup. Ct. (1993) 5 Cal.4th 689.) Privette holds that the hirer of an independent contractor is not vicariously liable to the contractor's employee who sustains on-the-job injuries resulting from a peculiar risk inherent in the work. An appellate court then reversed.

The Supreme Court held that since the peculiar risk doctrine does not make a hiring party liable for workplace injuries of an independent contractor, the appellate court's ruling should be reversed. The Court reasoned that, unlike an employee, an independent contractor, by virtue of the contract, has authority to determine the manner in which inherently dangerous construction work is to be performed. Therefore, the contractor assumes legal responsibility for carrying out the work, including the taking of workplace safety precautions. Once he assumes responsibility for workplace safety, an independent contractor can't hold the general vicariously liable for injuries resulting from his own failure to guard against the risks inherent in the work. Here, the independent contractor had been granted control over the hired work through a chain of delegation from the general through the subcontractor that hired him. Since plaintiff was not an innocent third party, the general contractor was not liable.