

Jury Finds in Favor of B&G Client in Employee vs. Independent Contractor Dispute

The plaintiff in the case sustained significant injuries in a trucking accident. The issue in the case was whether the driver/contractor of the vehicle that injured plaintiff was either an employee or independent contractor of our client, a truck broker. If he was an employee, our client would have been liable for plaintiff's injuries under a theory of vicarious liability. One of our founding partners, Tom Gmelich, Esq. and one of our senior associates, Jaimee Wellerstein, Esq. tried the case last month in Los Angeles County Superior Court, Van Nuys. Because we were able to prove the driver was an independent contractor, our client avoided significant liability. After a hard-fought trial, the jury returned a defense verdict in our client's favor.

Q&A with Tom Gmelich and a Lesson for Employers

Bradley & Gmelich is starting a series of "Q&A" with our attorneys in an effort to impart important information to our clients based on lessons learned from real cases we have handled. Our first Q&A is with Tom Gmelich about some of the lessons that our business clients can glean from the issues that arose at his recent jury trial.

Q. How were you able to convince the jury that your client had established an independent contractor relationship with the truck driver?

A. In this case, we had a written contract but, in some ways, it hurt us as it did not clearly set forth the independent contractor status of the driver. In fact, the written contract actually made it seem as if our client had more control over the "manner and means" of how the work was accomplished than it really did. Therefore, we focused the jury, through the testimony of not only the driver involved in the accident, but other drivers who had the same business relationship with our client, on the specific actions and conduct of the drivers to evidence "no control."



Q. What was the most challenging part about the case?

A. We knew that our client had intended to establish an independent contractor relationship with the truck driver, but the law in this area is very tricky. There is a presumption that the relationship is that of employer/employee, not independent contractor. We knew the jury would have a difficult time understanding the legal concepts and applying the facts to the law. This is the thing that most business owners don't understand. Even with a good contract and the right facts, juries can be unpredictable. This is why it is so important to put the proper agreement and procedures in place to avoid a case like this getting to trial in the first place.

The fact that the parties had a written contract and that the contractor was paid on a 1099 basis was not enough. The law states that if a principal has simply the right to exercise control over the manner and means of an independent contractor's work, not the actual exercise of control, then the independent contractor would be found to be an agent or employee. We had to demonstrate, through testimony of multiple witnesses and documentary evidence, that the truck broker did not have the right to exercise control and did not exercise control over the driver. The question of "control" is always more complex than it appears.

Q. So, considering the problems with the contract, how did you overcome the presumption?

A. We spent a lot of time during the trial focusing on the flexibility the truck driver had in carrying out his duties. For example, we spent a lot of time breaking down the minute tasks of his job duties and the autonomy that he had to overcome the misconception as to the amount of control our client had over him.

Q. What advice would you give to companies and contractors to avoid this problem in the future?

A. First and foremost, take some time to prepare a written agreement that clearly shows that the contractor has full and complete control about how the work is done. Clarity is the key here. It is very important that the contract specify and the conduct of the parties confirms that the contractor/driver supplies his own tools/equipment, pays his own taxes and insurance, sets his own hours, has the appropriate licenses, is free to work for other companies, etc. and controls his own work. The company hiring the contractor/driver also has to ensure that it does not exercise control over the manner and means of how the work is completed.