

InterConnect FLASH! No. 9 – Control (Or Lack Thereof) Isn't Everything

The InterConnect FLASH! Practical Bursts of Information Regarding Critical Independent Contractor Relationships

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A recent California decision shows that the right to control or actual control aren't everything when establishing an independent contractor relationship. In *Arzate v. Bridge Terminal Transport, Inc.*, Teamsters Union owner-operators brought a class action lawsuit on behalf of drivers paid by Bridge Terminal Transport to move freight between ports and customer facilities, alleging they were employees, not independent contractors. The trial court granted Bridge Terminal's summary judgment motion, but this was reversed on appeal.

Bridge Terminal owns no trucks so it relies completely on owner operators to move its customers' freight. They entered into independent contractor agreements and leases with drivers, which could be terminated with one days' notice. Bridge Terminal had exclusive control of the trucks and operational responsibility for public liability purposes, but the drivers actually controlled the operation's manner, method and means. One unique aspect was that Bridge Terminal also had a collective bargaining agreement (CBA) with the Teamsters Union which governed intermodal traffic at ports and the use of owner-operators at those ports. Two categories of owner-operators were described in the CBA: "Employee Owner/Operators" who worked exclusively for one motor carrier who determined the manner, means and details of work, or "Independent Contractor Owner Operators" who worked for various motor carriers. The drivers here were considered "Employee Owner/Operators", so by CBA terms, they were to work exclusively for Bridge Terminal. Bridge Terminal claims this wasn't enforced but drivers argued they were never told this.

The right to control the work was the Court of Appeal's first test and they found significant evidence to support independent contractor status. Drivers drove their own trucks or could hire others to drive, didn't wear uniforms, paid their own expenses, could decline dispatches, and determined routes, rest and meal breaks. If the Court's inquiry had stopped here, Bridge Terminal would have won the day.

But the control test doesn't exist in a vacuum, and there are many secondary factors to be considered, like the right to discharge at will, method of payment, who supplies tools, and if the work is a part of the principal's regular business. The Court found that these other factors pointed to an employer-employee relationship. Blatantly, the CBA itself represented the drivers as "employees", but this was just the tip of the iceberg. Bridge Terminal issued W-2s to drivers, withheld taxes from pay, offered health benefits, paying 70% of the cost, paid hourly rates for some

services, and had lease termination rights with 24 hours' notice. The Court also found that the drivers' work was "a part of the regular business of the principal".

Individual factors which contribute to the determination of an independent contractor relationship don't exist separately but must be considered together. Lack of control over the manner and means by which a driver hauls loads is one factor that must appear in both contract language and actual daily behavior. However, carriers should diligently avoid the wealth of other factors which could strongly indicate an employment relationship or else those multiple factors may morph together to create one big problem for the carrier.

Benesch can assist your business in reviewing your independent contractor programs to consider all factors. Please call if you have questions or if we can be of further assistance.

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