

## Can an Independent Contractor also be a Commercial Motor Carrier Employee?

By Scott Elliot Smith &  
Nick Owen

Consider a Commercial Motor Carrier retains the services of Independent Contractor #1 (IC) to perform aesthetic repair work on the Commercial Motor Carrier's tractors and trailers. IC #1 employs IC #2 who assists with the work performed by IC #1. One day, while working on a connected tractor and trailer at the loading dock, IC #2 enters the cab of the tractor, starts the engine, and proceeds to back the trailer several feet closer to the dock. While doing so, IC #1 is crushed against the dock and dies. Is IC #2 potentially covered under the Commercial Motor Carrier's policy for the death of IC #1?

The distinction between an "independent contractor" and an "employee," for purposes of trucking litigation, has been the subject of much analyzation. The FMCSRs are clear that an "employee" includes independent contractors "while in the course of operating a commercial motor vehicle, a mechanic, and a freight handler."<sup>1</sup> But can an independent contractor also be an "employee" based on a single act?

In *Pouliot v. Paul Arpin Van Lines, Inc.*,<sup>2</sup> a truck driver who was hired to deliver a trailer load of equipment was seriously injured while unloading that equipment. The District Court of Connecticut concluded that "independent contractors are deemed 'employees' while in the course of operating a commercial motor vehicle pursuant to 49 C.F.R. 390.5."<sup>3</sup> The Court reasoned:

Thus, the definition of "employee" in § 390.5 would apply to an independent contractor while the contractor is driving his commercial motor vehicle on any public or private road or highway. Under this reading of the law, all acts of an independent

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<sup>1</sup> 49 C.F.R. §390.5.

<sup>2</sup> *Pouliot v. Paul Arpin Van Lines, Inc.*, 292 F.Supp.2d 374, 376 (D. Conn. 2003).

<sup>3</sup> *Id* at 379.

contractor not involving the driving of a commercial motor vehicle (loading, unloading, moving equipment, taking inventories, etc.) would be beyond the scope of § 390.5.<sup>4</sup>

Simply put, while operating the commercial motor vehicle, the independent contractor is an “employee.” While doing anything else, the independent contractor is an independent contractor. Other Federal Courts have followed this reasoning.<sup>5</sup>

One purpose of the FMCSRs “is to protect members of the public from motor carriers' attempts to escape liability for the negligence of drivers by claiming their drivers were independent contractors.”<sup>6</sup>

The regulations govern the ownership and operation of commercial vehicles and the relationships between the carriers, drivers, other workers and the public at large, such as the requirement that a carrier leasing a truck have “exclusive possession, control, and use of the equipment for the duration of the lease . . . and assume complete responsibility for the operation of the equipment.”<sup>7</sup>

“Employer means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it . . . .”<sup>8</sup>

The “plain language interpretation of the regulations” requires a finding that a driver of a commercial truck, whether characterized as an independent contractor or not, is an employee of the carrier for purposes of liability.<sup>9</sup>

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<sup>4</sup> *Id.* at 380 (emphasis added).

<sup>5</sup> See *Great W. Cas. Co. v. Natl. Cas. Co.*, 53 F. Supp.3d 1154, 1181 (D.N.D. 2014); See also *Walker v. Transp. Internatl. Movers, Inc.*, D. Or. No. 06-3030-CL, 2007 U.S. Dist. LEXIS 86867, \*4 (Nov. 21, 2007).

<sup>6</sup> *Perry v. Harco Natl. Ins. Co.*, 129 F.3d 1072, 1074 (9th Cir. 1997); see also *Prestige Cas. Co. v. Michigan Mut. Ins. Co.*, 99 F.3d 1340, 1342-43 (6th Cir. 1996) (FMCSRs are designed to prevent motor carriers from escaping liability through leasing arrangements); *C.C. v. Roadrunner Trucking, Inc.*, 823 F. Supp. 913, 918 (D. Utah 1993) (“the purpose of the regulatory scheme governing truck leasing was to protect the public from irresponsible leasing arrangements”).

<sup>7</sup> 49 C.F.R. §376.12(c)(1).

<sup>8</sup> *Id.*

Applying this analysis to the hypothetical from the beginning of this article, when IC #2 began operating the commercial motor vehicle, he became an “employee” in that moment, while IC #1, who was struck and killed, remained an independent contractor because he was not operating the commercial motor vehicle. In this analysis, the “fellow servant” rule may be overcome, making the Commercial Motor Carrier potentially liable to the Decedent’s Estate.

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<sup>9</sup> *Perry*, 129 F.3d at 1074.