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LABOR AND INDUSTRIAL RELATIONS

Workers’ Compensation: Owner-Operators of Vehicles Leased to Carriers Become Independent Contractors for Workers’ Compensation Purposes

CODE SECTION: O.C.G.A. § 34-9-1 (amended)
BILL NUMBER: HB 773
ACT NUMBER: 580
SUMMARY: The Act provides that an owner-operator, which is an equipment lessor who leases her vehicular equipment with driver to a carrier, is deemed an independent contractor for purposes of workers’ compensation.
EFFECTIVE DATE: July 1, 1991

History

Georgia law requires employers having three or more employees in the same business within the State to carry workers’ compensation insurance for its employees. The Code extends mandatory coverage to include certain "statutory employees." Even when an employee cannot make a claim under the "statutory employer" provisions for failure to follow procedure, the Georgia Supreme Court has nonetheless found an employee relationship to exist for workers’ compensation purposes by looking to master-servant principles of law. If there is an employee relationship and the employer is subject to

4. In order to claim against a statutory insurer, a claimant must first make a claim against the immediate employer. O.C.G.A. § 34-9-8(e) (1988).
the Workers' Compensation Act, then the employee is barred from suing the employer or statutory employer in tort for injuries received within the scope of the employee's job.5

Carriers7 may frequently lease transportation vehicles with drivers from other companies.8 Under prior law, it had been well established by judicial decisions that when carriers lease vehicles with drivers, these drivers, even if owner-operators, were employees for workers' compensation purposes.9 Therefore, if the driver was injured or killed during the course of pickup, transfer, or delivery of the goods for the carrier, then the carrier was immune from tort liability.10

HB 773

This Act reverses prior case law that deemed owner-operators of vehicles leased to carriers as employees, and now statutorily defines them as independent contractors.11 Since these owner-operators are now designated as independent contractors, they are relieved from providing workers' compensation insurance,12 but must assume the risk of tort suits.13

6. If a person is an "employee" and the employer is subject to the Act, workers' compensation is the exclusive remedy with respect to recovery against the employer, but recovery can still be obtained against third party tortfeasors. O.C.G.A. § 34-9-11(a) (Supp. 1990). Injury is defined as an accident that occurs within the scope of employment. O.C.G.A. 34-9-1(a) (Supp. 1990). Potential workers' compensation liability under Code section 34-9-8 creates tort liability. Conn, supra note 3, at 6 (quoting Wright Associates v. Rieder, 277 S.E.2d 41, 44 (Ga. 1981) ("The quid pro quo for the statutory employers [sic] potential liability is immunity from tort liability."). See also Farmer, 266 S.E.2d at 922; Garrett v. Superior Trucking, 290 S.E.2d 528 (Ga. Ct. App. 1982) and cases cited within (all denying tort liability because of claimant's status as an employee).

7. Carriers are defined as companies that transport goods or persons for others for a fee. O.C.G.A. § 46-1-1(i) (1981).


9. See Farmer, 266 S.E.2d at 922 and Garrett, 290 S.E.2d at 528. In Garrett the court found that the parties had "intended to create a carrier-independent contractor relationship and not an employer-employee relationship." Garrett, 290 S.E.2d at 528. The court held, however, that Garrett was an "employee" of Superior and was therefore barred from suing Superior in tort. Id. at 529.

10. See cases cited supra note 6.


12. Only employers subject to the Act are required to carry workers' compensation coverage. O.C.G.A. § 34-9-190 (1988).

13. O.C.G.A. § 34-9-11(a) (Supp. 1990) creates the exclusive remedy for employees vis-a-vis employers, but specifically retains employee's rights against third parties. "[N]o employee shall be deprived of any right to bring an action against any third
The Act creates uncertainty as to whether employee-drivers of owner-operators are still statutory employees of carriers for workers’ compensation purposes. The issue is whether the independent contractor status of the owner-operator severs the statutory employment relationship between the employee-driver and the carrier. If so, carriers do not have to provide workers’ compensation insurance for these drivers, but may be subject to tort liability. The change to the Code, however, only specifies that owner-operators are now independent contractors and mentions nothing about their employee-drivers.

The Act also leaves open the question of whether a carrier and an owner-operator can contractually agree to workers’ compensation. Code section 34-9-1(3) defines an employer as someone who agrees to provide workers’ compensation benefits even though no actual employment contract exists. However, the Georgia Supreme Court has interpreted the identical language of section 34-9-11 as referring only to workers’ compensation insurers. The Code specifically allows employees and employers who are not bound by the Act (because they have less than three employees) to elect to be bound by the Workers’ Compensation Act. The Act does not include such a provision for owner-operators and carriers. Another issue arises as to whether the employee-drivers must consent to an agreement between the owner-operator and the carrier to be bound by the Workers’ Compensation Act for the agreement to be valid. If the courts decide the new statutory independent contractor status of owner-operators severs the employee relationship between carriers and employee-drivers, then an agreement between carriers and owner-operators to be bound by workers’ compensation could affect the legal rights of employee-drivers.

There is a further question as to whether the General Assembly could legislate an independent contractor status or if federal law

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15. See supra note 13.


18. George v. Ashland-Warren, 326 S.E.2d 744, 745-46 (Ga. 1985). See also Conn, supra note 3. Ashland-Warren can be distinguished from the carrier-driver situation. The defendant Ashland-Warren was only reimbursing the employer for benefits the employer had provided to the injured employee, rather than actually providing the benefits when not required to do so. Ashland-Warren, 326 S.E.2d at 745.

preempts such legislation.20 Even if the General Assembly is not preempted in this area, the issue remains whether they have really helped carriers or created a bigger problem for them in possible tort liability.21 Before the Act, carriers could avoid the cost of workers'...
compensation coverage by negotiating an indemnification clause for the coverage in their contract with the owner-operators.\textsuperscript{22}

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