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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 State¹ to carry workers' compensation insurance for its employees.² The Code extends mandatory coverage to include certain "statutory employees."³ Even when an employee cannot make a claim under the "statutory employer" provisions for failure to follow procedure,⁴ the Georgia Supreme Court has nonetheless found an employee relationship to exist for workers' compensation purposes by looking to master-servant principles of law.⁵ If there is an employee relationship and the employer is subject to

1. O.C.G.A. § 34-9-2(a) (1988).

2. O.C.G.A. § 34-9-120 (1988). *See also* O.C.G.A. § 34-9-7 (1988) (presumption that contracts for service between an employer and employee are subject to the Workers' Compensation Act).

3. O.C.G.A. § 34-9-8 (1988) provides for liability to principal, intermediate, or subcontractors for those employed by subcontractors. This Code section was enacted to ensure that injured employees would be able to recover workers' compensation benefits from some responsible party. Ann Bishop Conn, *Statutory Employment in Georgia 1* (Mar. 24, 1988) (unpublished manuscript, available in the Georgia State University College of Law Library) (relying on *Manning v. Georgia Power Co.*, 314 S.E.2d 432 (Ga. 1984) and *Wright Associates v. Rieder*, 277 S.E.2d 41 (Ga. 1981)).

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(c) (1988).

5. *See Farmer v. Ryder Truck Lines*, 266 S.E.2d 922 (Ga. 1980), *cert. denied*, 449 U.S. 885 (1980).

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.⁶

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).

8. See *Transamerican Freight Lines v. Brada Miller Freight Systems*, 423 U.S. 28, 35-36 (1975).

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.

11. O.C.G.A. § 34-9-1(2) (Supp. 1991). An owner-operator is defined as "an equipment lessor who leases his vehicular equipment with a driver to a carrier." O.C.G.A. § 40-2-87(19) (Supp. 1990).

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.¹⁴ 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.¹⁵ The change to the Code, however, only specifies that owner-operators are now independent contractors and mentions nothing about their employee-drivers.¹⁶

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.¹⁷ However, the Georgia Supreme Court has interpreted the identical language of section 34-9-11 as referring only to workers' compensation insurers.¹⁸ 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.¹⁹ 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

party tortfeasor." *Id.* Since one side of the "quid pro quo" is now gone (the possible liability for workers' compensation benefits), it is only logical that the tort immunity is gone also. *See Conn, supra* note 3, at 6-11 (discussing the rationale of tort immunity for employers and its inapplicability to mere owners).

14. *See* O.C.G.A. § 34-9-8 (1988). Under prior case law, carriers were considered the statutory employers of these drivers. *See Farmer v. Ryder Truck Lines*, 266 S.E.2d 922 (Ga. 1980).

15. *See supra* note 13.

16. O.C.G.A. § 34-9-1(2) (Supp. 1991).

17. O.C.G.A. § 34-9-1(3) (Supp. 1990).

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.

19. O.C.G.A. § 34-9-2(a) (1988).

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'

20. In *Dove v. Nat'l Freight*, 225 S.E.2d 477 (Ga. Ct. App. 1976), the court stated the federal "statute clearly eliminates the individual contractor concept from any such lease arrangements." *Id.* at 480. In *White v. Excalibur Ins.*, 599 F.2d 50 (5th Cir. 1979), the court stated:

[T]he effort of the carrier and the vehicle lessor to create by contract an independent contractor relationship cannot operate to frustrate the federal design to impose responsibility on the carrier for acts of those who might otherwise be independent contractors. Because Congress has created the statutory employee status, and, as we have concluded, the carrier-lessee is deemed an "employer" for purposes of Georgia Workmen's Compensation Law, the Georgia cases dealing with independent contractors are not applicable.

Id. at 54.

See also *Heaton v. Home Transp.*, 659 F. Supp 27, 31-32 (N.D. Ga. 1986) ("[s]tatutory employer/employee relationship is a mandatory rule unalterable by contract"); *Wilson v. Riley*, 701 P.2d 575, 579 (Ariz. Ct. App. 1984) ("federal law creates an irrebuttable presumption that the lessor is the employee of the motor carrier"); and *Farmer v. Ryder Truck Lines*, 266 S.E.2d 922 (Ga. 1980) (relying on *White* in determining that leased driver was an employee of the carrier). Although *Dove* and *Wilson* both concerned lawsuits filed by a third party member of the public and thus could be distinguished, *White*, *Heaton*, and *Farmer* were lawsuits initiated by a driver or her estate. In *Judy v. Tri-State Motor Transit*, 844 F.2d 1496 (11th Cir. 1988), however, the court concluded that "*White* does not mandate the conclusion that federal law is binding on a determination of employment under state workers' compensation law." *Id.* at 1502. The court reasoned that

federal law creates a statutory employment relationship between interstate carriers and the drivers of the trucks leased to them, but we believe that whether that statutory employment relationship is sufficient to constitute an employer/employee relationship for the purposes of workers' compensation is a question of state law.

Id. at 1501. (since *Judy* was a Florida workers' compensation case, the court did not cite *Garrett* or *Farmer*). See also *Toomer v. United Resin Adhesive*, 652 F. Supp. 219, 228-29 (N.D. Ill. 1986) (an owner-operator is an "employee of the carrier-lessee vis-a-vis the public and shippers. . . . No shippers and no members of the public are involved" when an owner-operator attempts to recover damages for his own injuries); *Tretter v. Dart*, 135 N.W.2d 484 (Minn. 1965) (owner-operator of leased tractor was independent contractor for workmens' compensation purposes). In *Farmer* the Georgia Supreme Court declined to follow *Tretter*, distinguishing it on the basis of the driver's status as lessor-owner. *Farmer*, 266 S.E.2d at 926. The court in *Farmer* also stated that the *Tretter* court "acknowledged that the ICC regulations, as drawn, do not mandate that a driver" be an employee. *Id.* However, *Tretter* was decided in 1965 prior to the ICC reforms.

21. See *Conn*, *supra* note 3. Ms. *Conn* questioned whether attorneys were best serving their clients if "winning the workers' compensation action opens the door to a costly liability suit." *Id.* at 16. She pointed out that, occasionally, employers argue that they are a statutory employer while the employee argues they are not. *Id.*

compensation coverage by negotiating an indemnification clause for the coverage in their contract with the owner-operators.²²

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22. In *Transamerican Freight Lines v. Brada Miller Freight Systems*, 423 U.S. 28 (1975), the Supreme Court upheld an indemnification clause that reimbursed the lessee-carrier for damages caused by the lessor-driver. *See also Mustang Transp. v. Ryder Truck Lines*, 523 F. Supp. 1097 (E.D. Pa. 1981), *aff'd*, 688 F.2d 283 (3rd Cir. 1982), *cert. denied*, 459 U.S. 1127 (1983) (upholding indemnity clause that relieved lessee-carrier of all losses sustained by lessee, even if caused by lessee's own negligence).