

February 3, 2011

## Appellate Court Reverses Favorable Summary Judgment Ruling Regarding Independent Contractor Status

Authors: [Esra Hudson](#) | [Jessica Shpall Rosen](#)

**In *Azrate v. Bridge Terminal Transport, Inc.*, decided on January 31, 2011, the Court of Appeal considered whether the defendant company established, as a matter of law, that plaintiff truck drivers were independent contractors and therefore not entitled to unpaid wages under the Labor Code. The appellate court reversed the trial court's grant of summary judgment in favor of the company because it found that a trier of fact could reasonably conclude that the drivers were employees.**

The defendant, Bridge Terminal Transport, Inc. ("Bridge Terminal"), was in the business of arranging transportation for cargo between ports and its customers' facilities. The plaintiffs were members of the Teamsters Union who owned their own trucks – which they "leased" to Bridge Terminal – and were paid to transport cargo.

In its opinion, the appellate court noted that, to determine whether an employment relationship exists, the appellate court noted that courts generally ask "whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." Although this "right to control" test is central to the analysis, the

Court of Appeal noted that a company's ability to discharge an individual at-will and without cause strongly suggests the existence of an employment relationship. Other factors noted by the Court of Appeal include (a) whether the individual performing services has a separate occupation or business; (b) whether the work is done under the direction of the company or by a specialist without supervision; (c) the degree of skill required for the work; (d) whether the company supplies the tools, instrumentalities, and work space; (e) the length of the relationship between the company and the individual; (f) the measure of payment (by time or by job); (g) whether the individual's work is related to regular company business; and (h) whether the parties subjectively believe they have an employment relationship.

Applying these standards, the Court of Appeal found a triable issue of fact existed as to the drivers' employment status. Although Bridge Terminal established that it did not control the manner in which the drivers carried out the work of hauling cargo, and although the drivers enjoyed relative independence (driving their own trucks, paying related expenses, deciding when to take meal and rest breaks, and being free to lease additional trucks to Bridge Terminal), the appellate court held that the remaining factors suggested that the drivers were not independent contractors.

First, the plaintiffs and Bridge Terminal were parties to a collective bargaining agreement that treated the drivers as employees. Second, Bridge Terminal issued W-2 forms, withheld taxes, and paid for drivers' health benefits. Third, Bridge Terminal paid drivers for non-billable time, such as while they were in meetings and waiting for work. Fourth, Bridge Terminal could terminate the lease agreements on 24 hours' notice, similar to an at-will relationship. Fifth, the truck drivers' duties of hauling cargo were closely aligned with Bridge Terminal's business as a common carrier of property. Therefore, the appellate court held that a trier of fact could reasonably conclude that the plaintiffs were employees, and summary judgment was inappropriate.

## **Implications for Employers**

Litigation questioning classification of independent contractors is on the rise, and courts are reviewing these relationships with closer scrutiny. Employers are encouraged to examine worker classifications and consult with counsel if any questions arise.