

EMPLOYEE OR INDEPENDENT CONTRACTOR? MORE THAN JUST A NAME

Employment status in today's business world has been an ever evolving complexity under the workers' compensation act. In particular, employee and independent contractor arrangements in the transportation field oftentimes blur the line between employee and independent contractor. Because Independent Contractors don't fall under the workers' compensation act, there have been many "creative" arrangements made to avoid employee status. Whether the arrangements are actually effective is a frequently a complex legal question. Fortunately, the Pennsylvania Supreme court has addressed many, but not all of the uncertainties governing this issue. See Universal Am-Can, Ltd. v. WCAB (Minteer), 762 A.2d 328 (Pa. 2000).

The Three Core Principles of Universal Am-Can:

In Universal Am-Can, the Supreme Court enshrined three important principles with respect to the employee versus independent contractor debate:

-First, it endorsed the longstanding common law test centered on the master-servant relationship. Universal Am-Can, 762 A.2d at 333, (citing Hammermill Paper Co. v. Rust Eng'g Co., 243 A.2d 389, 392 (Pa. 1968).).

-Second, and significantly, it held that compliance with government regulations cannot be used to prove a master-servant relationship. Id. at 335, (citing North American Van Lines, Inc. v. NLRB, 869 F.2d 596 (D.C.Cir 1989).

-Third, it held that placing the motor carrier's logo on an operator's vehicle does not create an "irrebutable presumption" of a master-servant relationship. Id. at 332, (citing Kelly v. Walton, 6 293 A.2d 627, 629-31 (Pa. Cmlwth. 1972).)

The Background and Facts of the Case:

This case arose when an owner/operator, Minteer, sustained injuries while working for the defendant motor carrier, Universal. Minteer's relationship with Universal was governed by an Operator's Agreement which, among other things, required Minteer to lease his truck to Universal, comply with random inspections, adhere to a federally mandated safety program, and display the Universal placard/logo. After his injury, Minteer filed a Claim Petition, and Universal issued a denial, averring that Minteer was an independent contractor and, thus, not entitled to workers' compensation. See 77 P.S. § 21; 77 P.S. § 22; Cox v. Caeti, 279 A.2d 756, 757 (1971).

At the trial level, the WCJ concluded that Minteer met his burden of establishing an employment relationship, because the evidence demonstrated that Universal controlled Minteer's work. Universal

Am-Can, 762 A.2d at 330. This Decision was affirmed at both the WCAB and Commonwealth Court level. Id.

In its opinion, the Commonwealth Court cited two bases for finding an employment relationship. First, like the WCJ and WCAB, the Court examined the facts under the common law, master-servant relationship test; there, the Commonwealth Court found that Universal controlled the nature and manner of Minter's work, making Minter an employee. It based this determination largely on the requirements in the Operator Agreement, many of which overlapped with mandatory government regulations.

Second, the Commonwealth Court held that display of Universal's placard or logo created an employment relationship. The Commonwealth Court cited a Federal case, which held that a motor carrier's logo creates an "irrebuttal presumption" of an employment relationship with respect to determining insurance coverage. Carolina Casualty Insurance Company v. Insurance Company of North America, 595 F.2d 128, 137 n. 29 (3rd Cir.1979).

The Supreme Court reversed. In doing so, it confirmed that the common law test applied, but, in a split decision, found that Minter did not carry his burden. Additionally, it held that, the government, not Universal, was exercising control by requiring Claimant to comply with regulations. Finally, the Court rejected any contention of an "irrebuttal presumption" based on Universal's placard on Minter's truck.

These salient points are discussed in greater detail below.

The Master-Servant Relationship:

The first concept discussed in Universal Am-Can was already fairly well-settled under Pennsylvania law. Specifically, the Pennsylvania Courts have long held that several common law factors determine whether a worker is an employee or independent contractor. Hammermill Paper, 243 A.2d at 392. The Court highlighted the following indicia to be considered when determining employee/independent contractor status:

Control of manner work is to be done; responsibility for result only; terms of agreement between the parties; the nature of the work or occupation; skill required for performance; whether one is engaged in a distinct occupation or business; which party supplied the tools; whether payment is by the time or by the job; whether work is part of the regular business of the employer, and also the right to terminate the employment at any time.

Hammermill Paper, 243 A.2d at 392 (citations omitted).

The Court further elaborated that, "Whether some or all of these factors exist in any given situation is not controlling." J. Miller Co. v. Mixter, 277 A.2d 867 (Pa. Cmwlth. 1971). Further, while each factor is relevant, control over the work to be completed and the manner in which it is to be performed are the primary factors in determining employee status." Hammermill Paper, 243 A.2d at 392 (citations

omitted). Moreover, it is the existence of the right to control that is significant, irrespective of whether the control is actually exercised. See Johnson v. WCAB (Dubois Courier Express), 631 A.2d 693 (PA. Cmwlth. 1993).

Requiring Compliance with Law is not Proof of Control:

Interstate motor carriers in Pennsylvania are required to operate under permits issued by the ICC and PennDOT. Ultimately, the motor carrier is responsible for ensuring that its drivers comply with the attendant regulations, such as safety inspection, driver rest times, and display of a company placard, among other things. In Universal Am-Can, the Operator Agreement required Minter to comply with these various regulations. This was later used to prove Universal's control of Minter for the purposes of the Hammermill Paper test.

First, the Supreme Court cited a regulation that was not discussed at the Commonwealth Court level, 49 C.F.R. § 376.12(c)(4). Universal Am-Can, 762 A.2d at 331. That regulation provides that:

Nothing in the provisions of paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. An independent contractor relationship may exist when a carrier complies with 49 U.S.C. 11107 and the attendant administrative requirements.

49 C.F.R. § 376.12(c)(4).

Noting that the regulations do not mandate an employment relationship, the Supreme Court took their analysis a step further and held that regulatory requirements cannot even factor into the discussion. Universal Am-Can, 762 A.2d at 334. In making this finding, the majority opinion notes the following:

Because a motor carrier has no ability to negotiate aspects of the operation of leased equipment that are regulated, ***these factors may not be considered in resolving whether an owner-operator is an independent contractor or employee.***

In applying the traditional test for determining whether a workers' compensation claimant is an independent contractor or employee, we must consider control over the work to be completed and means of performance. ***Factors which demonstrate compliance with government regulations do not assist in the application of the test.*** The existence of the regulations precludes a motor carrier and an owner-operator of leased equipment from negotiating any terms subject to the regulations. ***Neither party has bargaining power, or the ability to control the work to be done, when dealing with matters subject to regulation.***

Id. 762 A.2d at 334-35 (emphasis added).

A Logo does not an Employee Make:

Finally, the Supreme Court rejected the Commonwealth Court's contention that Carolina Casualty created the presumption of an employment relationship due Universal's placard on Minter's truck. He Court noted that Carolina Casualty did not involve a claim for workers' compensation benefit, but, rather, a dispute between insurance carriers who were allegedly responsible for the payment of damages to an injured plaintiff as a result of an accident. Universal Am-Can, 762 A.2d at 332. The Supreme Court held that the ruling in Carolina Casualty was inapposite since it dealt with separate subject matter. Accordingly, it held that, "The presence of a carrier's insignia on the outside of a rig is merely one of the many factors to be considered when determining employee/independent contractor status and does not command a conclusion of employee status." Id.

Impact and Practical Application:

Several practice tips can be taken away from this case.

Foremost, the Hammermill Paper test is very factually dependent. The Courts have repeated stated that there are numerous factors which could indicate control or an employment relationship, which can be interpreted differently depending on the court hearing the case. Put simply, there is no bright line. In fact, Universal Am-Can, was a 4-3 split Court, with a strong dissent highlighting why Minter satisfied the common law test, regardless of the regulatory argument.

Especially given the recent elections and resignation of Justice Eakin, it is unclear whether the current Supreme Court would have reached the same conclusion under the same facts, and they very well could reach a different conclusion under similar facts in the future. Consequently, Universal Am-Can, while clarifying the applicable law, does not remove the need for case-by-case factual analysis. This is something that must be kept in mind when analyzing the merits of a case.

Additionally, when applying the Hammermill Paper test to a case involving trucker, an attorney should familiarize themselves with the appropriate ICC and PennDOT regulations. Claimant's counsel should avoid relying solely on government imposed requirements or the presence of a company logo to establish control of a driver's work and look to other proofs of an employment relationship. Conversely, Employer's counsel can argue that the government, not their client, is actually controlling the driver's work.

Finally, another factor that could complicate the question is the recently enacted Construction Workplace Misclassification Act (CWMA). 43 P.S. §§ 933.1-933.17. This extends employee status to "individual(s) who performs services in the construction industry for remuneration." Obviously, this would not apply to a vast majority of truck drivers; however, it could potentially affect some. For example, it is unclear whether the transportation of bulk construction items, such as heavy equipment or prefabricated buildings would bring the driver under the aegis of the CWMA.