

The Criteria to Establish an Employment Relationship is Revisited

In an unreported decision by the Superior Court of New Jersey Appellate Division, the Court affirmed the findings of the Workers' Compensation Judge (WCJ) and finding an employment relationship between the employee and one of the respondent employers, Capone Transportation, LLC (Transportation). In Hopkins v. Capone Transportation (decided April 16, 2018), the court was faced with the appellate issue of whether the employee was employed by one of a number of companies. The significance of the decision is that the court focused on the control test and the relative nature of the work test and did not rely upon the 2015 case of Kotsovska v. Liedman which rolled out for the first time a convoluted 12-part test to establish an employment relationship. It appears that the court has already steered away from the more cumbersome test in Kotsovska and reverted back to the control and relative nature of the work tests.

In this matter, the employee was hired to perform demolition work by an individual named Leonard Capone, Jr. Mr. Capone formed two different companies, Transportation and Capone Scrap Iron & Metal. Transportation had workers' compensation coverage. As part of a contract to demolish a structure, Capone entered into a contract with a client, Lehigh Hanson, and in the contract stated that they would not transfer the responsibility for the demolition without Lehigh's express written consent. Despite this agreement in the contract, Mr. Capone did transfer the responsibility to his transportation company which was insured by NJM. The court was not distracted at all by this variance to the contract and felt this issue was between the parties. The key was that the employee was hired by Transportation, paid by Transportation and all the trucks at the jobsite have Transportation logos.

The employee was under the impression he was employed by Transportation which, of course, was also run by Mr. Capone. The employee was injured and sought workers' compensation benefits from Transportation. NJM denied an employment relationship, but rather felt that Scrap, an uninsured entity, was responsible for the benefits. The court had no problem dismissing the argument stating that the employee was clearly employed by Transportation and that the NJM policy was in force and effect. They reviewed first the control tests noting that employee's duties were certainly controlled by Mr. Capone and his transportation company. Further, under the relative nature of the work tests, the employee's job duties were certainly an integral part of the demolition duties of Transportation. The employee had previously performed demolition duties on behalf of Transportation. He was economically dependent upon the relationship as he had been unemployed at the time transportation reached out and hired him based upon their prior experience.

Comment: The case is interesting since there was concern that the employment relationship issue that is often litigated between the parties would be governed by the Kotsovska decision which introduced a cumbersome test. For decades, the control test and the relative nature of the work test were all that were necessary for the court to make a decision regarding employment and the court appears to have reverted back to these longstanding tests rather than revisit the Kotsovska decision and apply that standard. We do not believe the result would have been different but matters may be simplified for parties in the future.

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