



An Electronic Newsletter for the Transportation Industry

Volume XVII, Issue 8

Copyright © 2012

September 2012

INDEPENDENT CONTRACTORS, LLC MEMBER LIABILITY, AND MOUNTAIN CLIMBING REDUX

The use of independent contractors is prevalent throughout the country, especially in the trucking industry. Many carriers use "leased" drivers in their fleet, where the tractor owners, also referred to as owner operators, lease their equipment to the carrier and operate under the carrier's authority, with the carrier's name, USDOT and MC #s stated on the tractor cab.

Some states are pushing to turn these owner operators into statutory employees, since some laws do not apply to them. Meanwhile, various branches of the federal government use different tests, as do the various states, in determining whether the owner operator qualifies as an independent contractor.

Carriers and their owner operators who want to maintain their independent contractor relationship need to assure that their agreements comply with the right to control standards found in the various tests.

LLCs v. Corps: Member liability

People utilize legal entities, such as corporations and limited liability companies, in order to shield themselves from exposure to large personal liability claims. That is an accepted practice in Oregon and around the country.

For years, a corporation was the entity utilized to shield oneself from liability. Then along came LLCs, and Oregon joined the trend in 1994 (I filed Articles of Organizations for one

of the first Oregon LLCs on behalf of a transportation client).

Most people, including attorneys, have believed that LLCs provide the same protections as do corporations (tax issues aside). However, the Oregon Court of Appeals recently threw cold water on that long held belief.

An employee of an LLC was injured while operating a forklift owned by the LLC. Normally, employees can only file worker comp claims against their employers, such claim being the exclusive remedy allowed by Oregon law. As such, the employee cannot file negligence claims against their employers or against fellow employees.

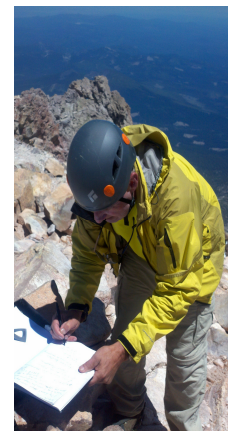
The employee also filed a claim against the sole member of the LLC. The appellate court ruled that the member was indeed subject to personal liability. The court distinguished corporations which have a different structure, namely the owners who are shareholders, the managers who are the directors, and then the officers who are in charge of getting the work done. Contrast that with LLCs, where members frequently both manage and operate.

Where you get form over substance is in the small corps, where the owner is likewise doing most everything. The legal distinction is that the corp owner still performs different actions wearing different hats, as an officer and as a director, which doesn't happen with LLCs.

Undoubtedly, there will be attempts to address this anomaly in the next legislature. Meanwhile, there is exposure for some LLC members.

Mountain Climbing Revisited: Brass rings

Last year I reported (Sept. 2011) on my climb with my daughter up Mt. Adams, where I fell 700' short of getting to the top (12276). This year I got in better shape, and we summited Mt. Shasta (14179) in early July on a one day climb. Signing of the summit register below (gotta have the evidence!).



We decided to go for the brass ring, Mt. Whitney, the tallest mountain (14,505) in the lower 48. So last month, following my wife's family reunion in San Diego, we drove north 300 miles to Whitney, which we also summited on a one day climb. This was a granite climb whereas the others were volcanos. There's a long saddle near the top so much of our time was spent above 13,000. Shear drops at times with narrow passages. 2:30 am start, 22 miles round trip, 5:00 pm finish. Brutal but great day.

Now I need to go back to Adams and complete that deal.

That's it for now. Until next time, keep the cargo rollin'!

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

Larry R. Davidson

Attorney at Law

121 S.W. Morrison Street, Suite 1020

Portland, Oregon 97204

503-229-0199 (telephone) · 503-229-0644 (fax)

larry@rollin-on.com www.rollin-on.com

Short Bio

Admitted to the state bars of Oregon, Alaska and Florida. Practicing law for over 30 years and emphasizing transportation law, business law and related litigation.