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The California Court of Appeal Determines Independent Contractor Status With Deference To The Purposes of the Workers' Compensation Act.

JKH Enterprises, Inc. v. Department of Industrial Relations (August 22, 2006) 06 C.D.O.S. 8522

By Jason A. Geller and Beth A. Trittipio

The Department of Industrial Relations determined that drivers employed by JKH Enterprises, Inc. were not independent contractors, as JKH claimed, but were in fact employees. Because the drivers were employees, JKH was obligated to procure workers' compensation insurance for their benefit. JKH failed to procure such insurance, in violation of California Labor Code section 3700, resulting in a stop work order and the imposition of a \$15,000 penalty.

JKH contested the "Stop Order – Penalty Assessment" and requested a hearing before the Department. Applying the factors set forth in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 1288, the hearing office upheld the assessment. JKH petitioned the trial court for a writ of administrative mandate and sought a stay of the stop work order. After a hearing, the trial court issued an order denying JKH's petition for writ of mandate and granting a preliminary injunction enforcing the stop work order

as requested by the Department.

Specifically, the trial court held that there was substantial evidence to support the Department's determination that the drivers were employees. From that decision, JKH appealed.

Affirming the decision of the trial court, the Court of Appeal distinguished those cases relied upon by JKH in support of its argument that the drivers were independent contractors. Discussing the *Borello* decision, the court remarked:

First, the court made clear that while the common law emphasis on the hirer's degree of control over the details of the work in the determination of an employment relationship remains significant, it is not the only factor to be considered in the workers' compensation context. This is because the question of a hiree's status must be considered in light of the remedial and social purposes of the Workers' Compensation Act.

These purposes included ensuring that the cost of industrial injuries would be

part of the cost of goods, rather than a burden on society; to guarantee prompt, limited compensation for an employee's work injuries, regardless of fault, as an inevitable cost of production; to spur increased industrial safety; and to insulate the employer from tort liability for his employee's injuries. Most importantly, the Court noted that a presumption in favor of a finding of employee status furthered the goal of the Workers' Compensation system "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered employee."

Thus, in *Borello*, the Court concluded that workers were employees and not independent contractors despite the fact that the employer did not exercise significant control over the details of the work. The degree of control was not dispositive because the work did not require a high degree of skill and "it was an integral part of the employer's business." The court determined that the employer was therefore exercising all *necessary* control over the operation as a whole.

Applying the *Borello* test to the facts in JKH's case, the Court reasoned that the drivers' occupations did not require a high degree of skill, and that their functions constituted the integral heart of JKH's courier service business. Consequently, JKH exercised all necessary control over the drivers' work. The Court rejected JKH's contention that its lack of control over the details of the work, the drivers' use of their own cars, and the drivers' completion of "Independent Contractor Profiles," compelled a finding that the drivers were not employees.

The Court also noted that JKH was formed in response to a prior stop work order issued to VIP Courier – JKH's predecessor-in-interest. The Court found that JKH operated its delivery services in the same fashion as VIP Courier, adding further weight to the Department's contention that a stop work order was appropriate.

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