It has become somewhat of a nationwide joke how liberal the California Courts and juries can be in commercial transportation cases. At national conferences such as the DRI Trucking Law Seminar held this past April, speakers discussing important transportation issues as they impact litigation throughout the country often end their point with the disclaimer, "except if you are in California." That is why we will take the recent victory in *Hill Brothers Chemical Co. v. Superior Court of Los Angeles* (2004) DJDAR 13414, as limited as it may be.

Factual Background

Hill Brothers is chemical company that has a fleet of trucks used to deliver its products to its consumers. The vehicles qualify as "commercial motor vehicles" within the meaning of the Motor Carriers of Property Permit Act (MCPPA). Hill Brothers is a "private carrier" as that term is used in the MCPPA and operates under a motor carrier permit issued by the California Department of Motor Vehicles (DMV).

In November 2002, Hill Brothers hired MJF Equipment, an independent contractor, to transport materials from one of its suppliers to its processing plant. MJR is a "for-hire motor carrier," and operates under a permit issued by the DMV to transport goods for compensation.

During the course of MJF's delivery for Hill Brothers, its tractor-trailer collided with a vehicle driven by Jimmie Lorentsen, who died as a result of the collision. Lorentsen's heirs filed a wrongful death action against MJF, the MJF driver, and Hill Brothers on the theory that as a motor carrier of property operating under a permit issued by the DMV, Hill Brothers had a nondelegable duty to the public, and was therefore vicariously liable for the negligent acts of MJF and the MJF driver.

Hill Brothers moved for summary judgment on the ground that it owed no duty to Lorentsen because no exception could be established to the general rule of nonliability for the negligent conduct of an independent contractor. The trial court disagreed and held that Hill Brothers owed nondelegable duty, and was therefore vicariously liable for the negligent acts of MJF.

Legislative Discussion

Hill Brothers appealed the ruling contending that as a "private carrier" rather than a "for-hire carrier," it could not be held liable for the negligent acts of the independent contractor. The Lorentsen heirs did not dispute the "private carrier" classification but argued that because Hill Brothers operated under a permit issued by the DMV and is regulated under the MCPPA, it could not delegate its duties to the independent contractor to escape liability.

***Hill Brothers* Licensing Under the MCPPA**

When the MCPPA was adopted in 1996, responsibility for the regulation of motor carriers of property in California was transferred from the Public Utilities Commission (PUC) to the DMV and the California Highway Patrol (CHP). The DMV now develops and enforces the MCPPA and promulgates necessary regulations, while the CHP is responsible for motor vehicle safety regulations. (Vehicle Code §§34601, 34604, 34623.)

Vehicle Code §34601 (MCPPA) provides that "any person who operates any commercial vehicle" is classified as a "motor carrier of property." Motor carriers of property are divided into two categories: "for-hire motor carriers of property" and "private carriers." A "for-hire motor carrier of property" is defined as a motor carrier "who transports property for compensation." (Vehicle Code §34601(b).) A "private carrier" is defined as a motor carrier "who transports only his or her own property, including, but not limited to, the delivery of goods sold by that carrier." (Vehicle Code §34601(d).) Hill Brothers is licensed as a "private carrier" under the MCPPA.

The Lorensten heirs argued that because the MCPPA classifies all carriers as motor carriers of property, and because "private carriers" are subject to regulatory and permit requirements under the MCPPA, it is clear that the legislature intended all carriers be treated alike with respect to their responsibilities to the public. However, even before the passage of the MCPPA in 1996, companies transporting their own property were specifically excluded from the definition of "highway carrier," and the term "private carrier" was separately defined as a "not-for-hire" motor carrier. Before the MCPPA, the PUC regulated trucking companies under the Public Utilities Act. Subject to certain exceptions, "highway carrier" was defined as a person or corporation engaged in transportation of property for compensation or hire as a business over any public highway by means of a motor vehicle.

Under the MCPPA, "for-hire" and "private" carriers continue to be separately defined. In further legislation passed in 1997 and in 2000 the legislative intent concerning the difference between "for-hire" and "private" carriers was expressly stated. The intent behind the "private carrier" distinction being a carrier who does not transport goods or property for compensation. Further, the MCPPA sought to define private carriers in positive language, and to clarify that delivery of merchandise is a private carriage, or private property if the motor carrier sells the merchandise to the receiver.

The *Hill Brothers* Court of Appeal held there was a clear intent to maintain a distinction between private carriers and for-hire carriers. The court therefore rejected the Lorentsen heirs' argument that simply because private carriers are subject to regulatory and permit requirements, they should be subject to the nondelegable duty rule.

No Case Law Extension of the Nondelegable Duty Rule where a "private carrier" is concerned.

The general rule in California is that one is not liable for the negligent acts of an independent contractor one hires. The California Supreme Court began finding exceptions to this rule in *Taylor v. Oakland Scavenger Co.* (1941) 17 Cal. 2nd 594. The Court, relying on Section 428 of the *Restatement of Torts* held that if an individual or corporation undertakes an activity involving possible danger to the public under a license or franchise granted by public authority subject to certain obligations or liabilities imposed by the public authority, these liabilities may not be evaded by delegating performance to an independent contactor.

The California Supreme Court held this rule of nondelegable duty applicable to a highway common carrier in *Eli v. Murphy* (1952) 39 Cal. 2nd 598. The Court ruled that under both common law and certain regulations of the PUC, a highway common carrier could not delegate its duties to an independent contractor so as to escape liability for their negligent performance. The Court reasoned that a highway common carrier is engaged in a business with a very considerable risk, and the legislature has subjected it and similar carriers to the regulatory power of the PUC to protect the safety of the public. The effectiveness of safety regulations is necessarily impaired if a carrier conducts its business by engaging independent contractors over whom it exercises no control, and through whom it has no liability exposure to protect the public and to strengthen safety regulations, the Court treated carriers' duties as nondelegable. The Court in *Eli* did however make the distinction between a carrier licensed as a public utility and one that operated under a permit, noting that any trucking company upon becoming a public utility under the Public Utilities Act should be expected to exhibit a high degree of performance in the field of safety and should expect to be required to observe rigid safety rules and regulations.

The California Court of Appeal further extended the nondelegable duty rule when one PUC-licensed highway common carrier hired another PUC-licensed highway common carrier as a an independent contractor to sub haul freight. In *Serra v. Pettey Leach Trucking, Inc.* (2003) 110 Cal. App. 4th 1475, 1486, the court held an interstate carrier (licensed by the Surface Transportation Board) to have a nondelegable duty to the public, and was therefore found to have vicarious liability for the negligent acts of another interstate carrier it hired as an independent contractor to transport a load it had been hired to haul. The court, citing the holdings in *Eli* and *Taylor,* noted that the situation involved a carrier undertaking an activity which could be lawfully carried only under a public franchise or authority, and which involved possible danger to the public.

The California Courts have not applied the rule of nondelegability to every highway carrier. In *Gaskill v. Calaveras Cement Co.* (1951) 102 Cal. App. 2nd 120, the California Court of Appeal did not extend the *Taylor* rule to a contract carrier who was operating under a permit rather than a franchise. The *Gaskill* court distinguished the circumstances from those in *Taylor* and under Section 428 of the Restatement of Torts, finding that the activity of hauling a trailer and a semitrailer by tractor did not involve any unreasonable risk of harm to others. In *Gilbert v. Rogers* (1953) 117 Cal. App. 2nd 712, although the Court of Appeal felt that the *Eli* rationale should be applicable to the radial common carriers because the rigs used by them and by contract carriers to haul freight were

similar to those used by highway common carriers (and all classes of carriers were licensed to transport freight on the public highways by the PUC), the court nevertheless found it was bound by the distinction set forth in *Eli,* because both the carrier and the sub hauler operated pursuant to permits, not franchises. (*Id.* At 716-717.)

In looking at this line of cases, the *Hill Brothers* court ultimately held that a private carrier is not vicariously liable for the negligent acts of its independent contractor. The court noted that all of the cases in which a nondelegable duty has been imposed on a carrier have involved a "for-hire" carrier rather than a private carrier such as Hill Brothers. The court accepted Hill Brothers' argument that there is a critical difference between those who use the public highways as a business and those who use the highways only to transport their own products incidental to their business, and that the latter constitutes private carriage as a matter of right which is not subject to the same level of regulation as that of for-hire carriage. The court therefore directed the trial court to vacate its order denying the Motion for Summary Judgment in favor of Hill Brothers, and to enter a new order granting the motion.

Conclusion

While the majority of the cases handled by many of us involve for-hire motor carriers for which a nondelegable duty exists for the negligent acts of independent contractors hired to haul freight, at least there is a distinction in the case involving a "private carrier." In California it may be a small victory, but a victory nonetheless.