



Independent Contractor Shell Game

by John D. Whitaker

Well, it looks as if British Petroleum would have relinquished its reputation for safety, if it had a reputation for safety in the first place. When the top brass of BP, Transocean and Halliburton were hauled before a Senate committee to explain the disastrous oil spill in the Gulf of Mexico I couldn't help but think that I have seen this movie before. Something terrible happens and then the people involved all deny fault. There is a legal concept, which allows these companies to deny fault, and they use it all the time. In fact, they use it

right here in Wyoming. The concept I am talking about is the old "independent contractor" ploy. Big companies have been using this legal fiction for years to operate without any accountability when something goes wrong and someone gets hurt. The legislature tried to fix it last session but the attempt failed. I believe it died because it was not in the best interest of the big companies who do business in Wyoming.

Here is how it works. A Big Company has some oil leases they want to drill. They hire a drilling contractor to drill the well. They enter into a contract with the drilling contractor, which says that the drilling company is an independent contractor. Under Wyoming law, Big Company is not responsible for injuries to the drilling contractors' employees unless Big Company retains the right to exercise control over the drilling operations. The contract they sign says Big Company does not have the right to control operations, but regardless of what the contract says, Big Company usually calls all the shots on the operation. They usually have a company man on site that is the real boss. The drilling contractor knows that if they object to Big Company's control of the operation Big Company will never hire them again. So, when Big Company has the driller do something stupid and it results in someone getting hurt or killed, everyone pretends that Big Company did not control the work so that they are not legally responsible. This works for the drilling contractor too because the injured employee of the drilling company cannot sue his own employer because it is immune under



the Wyoming Workers' Compensation Law. If the employee is killed his family will only be permitted benefits under the Workers' Compensation system. These benefits would likely be far less than available in a wrongful death lawsuit. Big Company gets to come into Wyoming and pretend that they are not in control so that when they injure or kill one of our workers, they get to hide behind the independent contractor status to avoid having to pay for the mistake they made.

In a 60 Minutes interview about the Gulf oil spill, one of the Transocean employees described a meeting between BP and

Transocean right before the rig blew up. In the meeting there was a spirited disagreement between the two as to how Transocean was going to finish the well. The Transocean guy said he wanted to do a number of things that would have made the process safer but the BP guy objected because those things would also make the well cost more. The experts who evaluated the case on the 60 Minutes broadcast said that the BP plan for finishing the well was unreasonably dangerous. Ultimately, the BP guy won the argument, and Transocean did what it was told. Then the well blew up killing 11 people and destroying the Gulf ecosystem.

The independent contractor status is still a valid distinction to make where there really is no control by the owner. For example, if I hire an electrician to come in and install an electrical service in my house, I don't tell him how to do it because I would not have a clue about how it should be done. If one of his employees gets hurt doing it, I would not be liable for the injuries. But the problem here is that this distinction is being abused by some of the Big Companies who come to Wyoming to do business. They draft the contracts to make it look like they have no control over the contractors, but that is pure fiction. If the idea is to make our job sites safer, making everyone responsible for the operation immune from lawsuits is a stupid idea and it is not fair to the Wyoming employees who do the work. If the Big Companies were all responsible for safety on their work sites, I bet Wyoming would be a much safer place to work.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jdwtl@mac.com or by calling his office at 307 265-6204. Past Legal Brief columns can be found at Wyoinjury.com