

# Is Your Driver an Employee or an Independent Contractor?

*Amundsen Davis Transportation Alert*  
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Because of the rather frequent use of “owner-operators” in the trucking industry, the topic of whether a driver is considered an employee or an independent contractor is a popular topic in both worker’s compensation cases and civil cases seeking alternate theories of liability. A court determination of a driver’s status can affect potential exposure, company structures and day to day business operations. Recently, this topic was addressed by the Illinois Appellate Court’s First District in *Salvador Esquinca v. The Illinois Workers’ Compensation, et al. (Romar Transportation Systems, Inc., Appellees)*, 2016 IL App (1<sup>st</sup>) 150706WC (Feb. 11, 2016).

In *Esquinca*, the claimant was injured in a motor vehicle accident while under the dispatch of Romar Transportation Systems, Inc., driving a tractor that he owned and pulling a trailer owned by Romar. The trucking company refused to pay worker’s compensation benefits though the driver claimed he was acting as an employee at the time of the accident.

The arbitrator found that Esquinca was an independent contractor and denied benefits. The Illinois Workers’ Compensation Commission and the Circuit Court of Cook County affirmed the arbitrator’s decision before the claimant appealed to the Illinois Appellate Court.

After weighing the facts, the appellate court acknowledged that there was evidence in the record that could suggest an employment relationship; however, the court ultimately upheld the Commission’s finding that Esquinca was an independent contractor.

Some of the relevant facts considered by the Commission, and ultimately the appellate court, that affirmed the driver was an independent contractor include:

- Romar did not have the right to control Esquinca’s work performance (did not dictate route, schedule, rest breaks, refueling, etc.);
- Claimant owned his tractor and was responsible for all operational expenses associated with it (including maintenance, repairs, citations, parking, liability and bobtail insurance);
- Esquinca was only required to display the Romar placard on his truck when driving for Romar, and no other modifications were required;

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- Romar and Esquinca entered into a contract which defined the relationship as that of an independent contractor;
- In insurance applications and medical records, Esquinca identified himself as an independent contractor and that his employer was "Esquinca Company;" and
- Esquinca received 1099 tax forms for each year rather than W2s.

As with other similar cases analyzing the employee versus independent contractor relationship, there is still no clear litmus test offered delineating what facts are necessary to establish one role over the other. This is just another example of why practical and prepared companies in the industry will review their practices when it comes to owner-operators.

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