

RENTAL EQUIPMENT RISKS: BLINDSIDED BY THE BORROWED SERVANT DOCTRINE

*By: Jeffrey J. Nix
jeff.nix@troutmansanders.com • 404.885.3306*

*Laura B. Rosselli
laura.rosselli@troutmansanders.com • 404.885.3346*

Contractors face significant risks everyday but few would anticipate being held responsible for the negligence of an equipment operator employed by a third-party rental company. Yet, a recent decision by the Georgia Supreme Court applied an antiquated theory of law – the borrowed servant doctrine – to hold a general contractor liable for damages under just such circumstances. The Court imposed liability based upon a boilerplate provision on the backside of a rental agreement accepted by the contractor's field personnel and interpreted to provide that the crane operator was the "borrowed servant" of the contractor. Consequently, the contractor was held financially responsible for the negligent acts of the crane company employee. Contractors in other jurisdictions may face similar risks.

The Borrowed Servant Doctrine

A "borrowed servant" is a person who, although employed by one company, is temporarily lent to another company for a limited purpose. For example, when a contractor rents a crane for use on a construction project, the rental company typically requires the use of its employee to operate the crane. The rental contract often is accepted or signed by the contractor's field personnel and almost always renders the operator a "borrowed servant" of the contractor. Under the borrowed servant doctrine, the contractor is the "special master," the crane operator is the "borrowed servant," and the crane company is the "general master." Georgia law provides the "special master" is responsible for personal injury or property damage caused by the "borrowed servant," even though such borrowed servant is employed by the "general master."



**TROUTMAN
SANDERS**
ATTORNEYS AT LAW

The Tim's Crane Case

In the case of Tim's Crane & Rigging, Inc. v. Gibson, 278 Ga. 796 (2004), the Georgia Supreme Court ruled that where a contractor accepted supervision and control over a crane operator under a rental agreement, the operator was considered a "borrowed servant" of the contractor. In that case, Pinkerton & Laws, a general contractor, leased a crane and a certified crane operator from Tim's Crane pursuant to a rental agreement accepted by the contractor's field personnel. The agreement provided in pertinent part:

The equipment and all persons operating the equipment including [Tim's Crane] employees are under the exclusive jurisdiction, supervision and control of [Pinkerton & Laws] under this lease. It shall be the duty of [Pinkerton & Laws] to give specific instructions and directions to all persons operating the leased equipment. [Pinkerton & Laws] specifically agrees that there is complete surrender by [Tim's Crane] of control with regard to the aforementioned personnel and equipment and not simply a division of control. This lease is conditional upon the agreement of the parties that no personnel will be replaced or substituted by [Tim's Crane] except at the direction and with the approval of [Pinkerton & Laws] and that [Pinkerton & Laws] shall have the right to control and shall to have exercised that control and shall have exercised that right as to all details or operation of the equipment and personnel furnished.

Gibson v. Tim's Crane & Rigging, Inc., 266 Ga. App. 42, 43 (2004), *rev'd in part, aff'd in part, Tim's Crane, supra*, 278 Ga. App. 796. In reality, Pinkerton & Laws neither supervised nor controlled the crane operator supplied by Tim's Crane.

A laborer employed by Pinkerton & Laws was injured when the crane operator, who was guiding a load of rebar to the ground, passed too close to a power line causing an electrical current to injure the laborer. The laborer brought suit against Tim's Crane, alleging the negligence of the crane operator caused his injuries.

Tim's Crane contended that the rental agreement provided the crane operator was not a Tim's Crane employee, but rather a "borrowed servant" and therefore Pinkerton & Laws was liable for the crane operator's negligence.

The Georgia Supreme Court agreed with Tim's Crane and found that the rental agreement controlled as to responsibility for the crane operator's negligence. Under the terms of the rental agreement, the Court found Pinkerton & Laws had accepted the status of the crane operator's employer by agreeing to accept the right to control or supervise the operator. Even though Pinkerton & Laws never assumed control over the crane operator, it had the right to do so and, therefore, accepted full responsibility for the

operator employed by Tim's Crane. As a result, the Court held that the crane operator was a "borrowed servant" and that Pinkerton & Laws – not Tim's Crane – was liable for the crane operator's negligence.

Lessons to Be Learned

Equipment rental agreements typically contain boilerplate language that renders the operator a "borrowed servant" of the contractor or subcontractor renting the equipment. Regardless of whether a contractor actually controls or directs the operator, the contractor often accepts the status of "employer" under the rental agreement, rendering it liable for any negligence by the operator. Although the Tim's Crane case dealt with the lease of a crane and crane operator, the borrowed servant doctrine is equally applicable to the rental of any equipment or machinery accompanied by an operator. Contractors must be aware that they could be liable for any personal injury or property damage caused by equipment operators employed by third-party rental companies, even though the operator is certified, licensed or otherwise qualified to perform such work.