



Legal Hot Topics

JEFF MENT



Failure of Suppliers and Partners





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What to do (if anything!)

Managing supplier failures is very difficult. We are obligated to stay abreast of industry news and we need to be nimble enough to switch if we learn information that a failure is imminent.

Watch out for signs:

- Change of payment terms;
- Key staff/management changeover;
- Inadequate staffing;
- Program cancellations



New Zealand volcano eruption: Why were tourists on White Island after volcanic activity increased?



Tour Operator Criminal & Civil Liability

A police investigation is underway after an [eruption on a volcanic island in New Zealand](#) killed at least six people, left eight other presumed dead and injured many more.

Police said Tuesday they were investigating the deaths on behalf of the coroner after questions were raised over why tourists were allowed on White Island after it had seen increased seismic activity in the weeks leading up to the eruption.

Those killed, missing or injured came from around the globe to visit the island when tragedy struck Monday afternoon as steam and ash blanketed the popular tourist destination.

Could there be liability?

That's the question police will be investigating after increases in seismic activity had been recorded on White Island for weeks.

"These questions must be asked and they must be answered," Prime Minister Jacinda Ardern said in Parliament.

GeoNet, which tracks New Zealand's seismic and volcanic activity, raised its alert level on the island in November after increasing sulfur dioxide gas. Volcanic tremor also increased, and the agency wrote at the time that the island "may be entering a period where eruptive activity is more likely than normal."

Handling the Tragedy – Royal Caribbean

Royal Caribbean confirmed to the Associated Press that several passengers from the Ovation of the Seas were touring White Island on Monday.

In a statement provided to USA TODAY Monday by Royal Caribbean's Director of Communications Melissa Charbonneau, the cruise line said it is "devastated by today's events."

"Our hearts go out to all those affected by this tragedy," the statement continued. "We are working together with local authorities, and we are providing all the help and care we can to our guests and their families, including offering medical resources and counseling. We are also sending staff members from both our ship and our Sydney and Auckland offices to assist family members however possible."

A SYTA Case Study

We will now look at an actual case to analyze what we need to do after an incident.

This is a very sensitive and confidential matter that Apryl and Corey Black have agreed to share with you so that we can all learn from their unfortunate personal experience.

The following slides deal with a very tough topic.

Thank you, in advance, to Apryl and Corey for sharing this with all of us.

Green Light Group Tours – Bus Accident

A motor coach accident in Alabama this morning has caused injuries to passengers who were traveling on a Green Light Group Tours trip from Orlando to Houston. The bus was carrying band students from Channelview High School in Houston.

We offer our deepest condolences to the families of everyone involved and are grateful to the local authorities for acting so quickly to care for those who were injured.

We are devastated that this happened. Two directors of Green Light Group Tours are on their way to the area of the accident to give their support and assistance. Additionally, we are working closely with local authorities to understand what happened and will be cooperating fully with law enforcement officials to aid their investigation.

For more information please call this emergency hotline number: 251-972-6807





What will you need to quickly produce

Passenger Lists

Contracts with bus company

Contracts with school

Insurance related information – COI of bus company

Terms and Conditions

Staff contact information

The slow process begins...

First “lawyer” letter was received 10 days after accident.

Demanded:

Insurance Information

Statements or Photographs of their client

Evidence Preservation

How should you respond? **DO NOT RESPOND YOURSELF**

It's hard to believe what is alleged

1. We provided inadequate supervision of the children;
2. We failed to intervene and assist with any safety issues before or after the wreck;
3. We failed to ensure the trip would be “completely safe” as represented in printed materials;
4. We failed to properly screen First Class Tours and its driver before hiring, retaining and/or recommending them for the trip;
5. We failed to enforce our own rules, policies, and procedures;
6. We failed to satisfy our contractual obligations.

Some good news (finally!)

I am writing in response to your email below. The Protective policy contains an endorsement that makes RJR Leasing, LLC a Named Insured under the Protective policy as well as First Class Tours, Inc. As a Certificate of Insurance holder, Green Light Tours is an 'additional insured' under the policy to the extent of the named insured's negligence. Inasmuch, Protective will conditionally accept your request for a defense and indemnity. Please note that this acceptance is wholly subject to the terms, conditions, and limits/limitations provided by the policy/policies. I am unaware of any independent acts of negligence being alleged on the part of Green Light Tours, however, in the event that any independent acts of negligence are alleged, Protective reserves the right to revisit this issue.

NTSB INVESTIGATION

WASHINGTON, D.C. — A recent report from the National Transportation Safety Board (NTSB) has revealed that a fatal charter bus crash in Alabama in 2018 was caused by the driver suffering from a medical event.

"Although the circumstances of the crash are consistent with sudden driver incapacitation due to a medical event, the exact cause of the driver's incapacitation could not be determined from the available evidence," the report states.

Sage advice from Apryl Black

- Be real and honest. It's OK to say, "I am so sorry this happened!"
- Help the victims in whatever way you are able. We were not allowed to visit anyone but the band director in the hospital (we were treated like the bad guys, which I understand). So we arranged hotel rooms, food, blankets, gas cards, whatever might be helpful.
- Go to the scene of the accident if people are still there. Your presence shows you care.
- Have all the medical forms with emergency contact information and a list of who is on each bus available from any device. (Group Collect is a good tool.)
- Communicate with the school district and ask if you or they will be the parents' primary contact. There should only be one parent contact to avoid confusion.
- Assign the least emotional person in your office to be the crisis leader and dictate who does what. Or better yet, dictate who does what before the incident happens.
- Hire Jeff Ment.

Crisis Management: Tour Guide Response

- When the original crisis is over STAY CALM and TAKE CONTROL
- Check for Injuries and Reassure while NOT ADMITTING FAULT
- Implement the Evacuation Plan if Necessary
- Take guest statements as soon as practicable
- Contact the Operator ASAP to inform them of the Emergency
- Take specific note of the scene and how the crisis occurred and WRITE A SUMMARY.

Independent Contractors

WHERE ARE WE NOW?



California and the ABC Test

Dynamex Operations West, Inc. v. Superior Court

A hiring entity classifying an individual as an independent contractor now bears the burden of establishing that such a classification is proper under the “ABC test.” To do so, the entity must prove each of the following three factors:

- (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- (B) that the worker performs work that is outside the usual course of the hiring entity’s business; and
- (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

The 7 Criteria Exemption

Category 1: Specific occupations.

Category 2: Certain contracts for "professional services." This exemption includes travel agents,

Category 3: Certain real estate licensees and repossession agencies.

Category 4: Certain bona fide business-to-business contracting relationships.

Category 5: Certain relationships between contractors and individuals working under a subcontract in the construction industry.

Category 6: Certain relationships between referral agencies and service providers.

Category 7: Certain relationships related to motor club services.

Category 2: In Depth

Category 2: Certain contracts for "professional services." This exemption includes certain contractual services related to marketing, human resources, travel agents, graphic design, grant writers, fine artists, agents practicing before the Internal Revenue Service, payment processing agents, still photographers, photojournalists, freelance writers, editors, newspaper cartoonists, estheticians, electrologists, manicurists, barbers and cosmetologists. It is crucial to note that the majority these listed professional services contain specific qualifiers. In addition to those qualifiers, the exemption for this category will apply only if the hiring entity demonstrates that all of the following six conditions are satisfied:

- a. the individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity's business location; nothing in this subdivision prohibits an individual from choosing to perform services at the location of the hiring entity
- b. if work is performed more than six months after the Jan. 1, 2020, effective date of this section, the individual must have a business license, in addition to any required professional licenses or permits for the individual to practice in their profession
- c. the individual has the ability to set or negotiate their own rates for the services performed
- d. outside of project completion dates and reasonable business hours, the individual has the ability to set the individual's own hours
- e. the individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work
- f. the individual customarily and regularly exercises discretion and independent judgment in the performance of the services

Criteria for Exempt Occupations

Applicable Law: *S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations (Borello)*, 48 Cal. 3d 341 (1989), the primary test of an employment relationship, known as the "right to control" test, is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired. In addition to the primary "right to control" test, courts considered numerous secondary factors:

- the right to discharge at will, without cause
- whether the one performing the services is engaged in a distinct occupation or business
- the kind of occupation, with reference to whether in the locality the work is usually done under the direction of the principal or by a specialist without supervision
- the skill required in the particular occupation
- whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work
- the length of time for which the services are to be performed
- method of payment, whether by the time or by the job
- whether or not the work is part of the regular business of the principal
- whether or not the parties believe they are creating the relationship of employer-employee

New York Could Be Next

Proposed Legislation Senate Bill S6699A would declare someone an employee, and not an independent contractor, unless the individual met all of the following conditions:

- 1) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- 2) The individual performs work that is outside the usual course of the hiring entity's business.
- 3) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

New York Could Be Next

Like the California Law, before the travel industry's successful lobby, this bill is a threat to independent travel advisors. The problem area, like the original California bill is part 2:

2) The individual performs work that is outside the usual course of the hiring entity's business.

Like the California Law the industry must fight for an exemption or independent travel advisors are in danger of being classified as employees.