



1955

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George D. Schrader
University of Kentucky

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Recommended Citation

Schrader, George D. (1955) "Agency--Liability of National Oil Companies for Torts of Service Station Operators," *Kentucky Law Journal*: Vol. 43 : Iss. 4 , Article 8.

Available at: <https://uknowledge.uky.edu/klj/vol43/iss4/8>

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AGENCY—LIABILITY OF NATIONAL OIL COMPANIES FOR
TORTS OF SERVICE STATION OPERATORS

The National Oil Companies have experimented with various methods of retailing during the past half century. Under one such method the company owns the station and directly employs attendants to operate it. A second method is an arrangement whereby the company owns the station or leases it and in turn leases or sub-leases it to an independent operator. A third method is one by which the owner of the station contracts with the company to market the latter's products. All three of these situations, regardless of any difference in the legal or contractual relation between the companies and the dealers or operators, present a picture of uniformity to the average motorist. When he purchases his gasoline at various filling stations he is usually unaware that a variety of contractual relationships exist between the several dealers with whom he does business and the national oil companies whose products he actually uses, because modern methods of uniform retailing and advertising have destroyed the individualistic character of the present day gasoline filling station. The institution of national credit card systems, national advertising, uniform station designing, construction and exterior decoration, plus the fact that many service station attendants wear uniforms representing the national oil companies have caused the motorist of today to feel that he is purchasing products directly from the national company which he patronizes. No longer does the average motorist, when traveling along the highway, feel that he is doing business with Tom Jones as an independent filling station operator but with the X Oil Company whose stations he finds throughout his travels, whose maps he uses and through whose national credit card system he charges his purchases.

The courts have been forced to go behind the uniform marketing systems of national oil companies in order to find the true relationship between them and the dealers who operate the corner filling stations. This discussion is not concerned with the company owned and operated station, but rather with those stations which are operated by lessees or independent parties who are not directly employed by the national oil companies.¹ It will be helpful to examine first the relation between the station operator and the national oil company.²

¹ For a discussion of this and related topics see: *Mechem*, *OUTLINES OF THE LAW OF AGENCY* sec. 440-45 (4th ed. 1952); 38 *MICH. L. REV.* 1063 (1940); 1 *OKLA. L. REV.* 277 (1948); 20 *TEX. L. REV.* 385 (1941); 3 *VAND. L. REV.* 597 (1950).

² See 3 *VAND. L. REV.* 597 (1950).

The contracts or leases which are used by the national oil companies vary from company to company, but as a general rule they include clauses concerning the following elements: (1) delivery of the products; (2) prices; (3) discounts; (4) taxes; and (5) regulations as to who may sign agreements in the future.³ The contractual relationship is very important as it is the court's interpretation of the contract which determines whether the national oil company is liable for the torts of the service station operator.⁴ The liability of the national oil companies depends primarily on whether or not the court can construe the contract to establish a master-servant or principal-agent relationship,⁵ and this interpretation depends on the element of control which is involved. If the court fails to find a sufficient element of control involved in the contract the operator is considered to be an independent contractor, thus relieving the national oil company of liability.

The cases and their interpretations of the contracts indicate a split of authority. One line of decisions holds that if the contract in question, read in light of the conduct of the parties, grants to the national oil company the *general* power or right to exercise control over its filling station operators, the relationship of master-servant exists,⁶ while another line of decisions comes to the conclusion that the national oil company must have the right or actually exercise the right of control over the specific detail of the business in issue in order to be held liable.⁷

*Green v. Spinning*⁸ is a typical case in accord with the first line of decisions. An injured third party was granted an injunction against the operator of the station and his co-defendant, the Mid-Continent Petroleum Corporation, on the ground that the filling station near his home was a nuisance. The court talked in great detail about the contract between the defendants and the elements contained therein, stating:

³ *Joiner v. Sinclair Refining Co.*, 48 Ga. App. 365, 172 S.E. 754 (1934); *Shell Petroleum Corp. v. Linham*, 163 So. 2d 839 (Miss. 1948); *Texas Co. v. Wheat*, 140 Tex. 468, 168 S.W. 2d 632 (1943); *Texas Co. v. Mills*, 177 Miss. 231, 156 So. 866 (1934); *Greene v. Spinning*, 48 S.W. 2d 51 (Mo. 1931).

⁴ For a collection of cases on this general topic, see 116 A.L.R. 449, at 470.

⁵ RESTATEMENT, AGENCY sec. 220 (1933), sets out various elements to be considered when determining whether one acting for another is a servant or an independent contractor.

⁶ *Joiner v. Sinclair Refining Co.*, 48 Ga. App. 365, 172 S.E. 754 (1934); *Green v. Spinning*, *supra* note 3.

⁷ *Cities Service Oil Co. v. Kindt*, 190 P. 2d 1007 (Okla. 1948); *Texas Co. v. Wheat*, *supra* note 3.

⁸ 48 S.W. 2d 51 (Mo. 1931).

One of the main criterions, if not the chief one, as to whether the relationship of respondeat superior exists, is the right to control, and it is not a question as to whether that control is actually assumed but whether it exists.⁹

The court, in concluding their discussion of the contract between the operator "Spinning" and the Mid-Continent Petroleum Corporation, further stated:

In our opinion these writings attempt to obligate Spinning 'in the most binding way possible' in every important respect in relation to the operation of the filling station. These writings have too many provisions, conferring on the. . . Company rights that only a principal ordinarily enjoys, strongly indicative as to what legal effect these writings should have when the rights of third persons are involved; that the relationship of principal and agent is present in this case, we have no doubt.¹⁰

Thus there is imbedded in this problem a theory that the respondeat superior relationship exists when the right to control is an element of the contract regardless of whether or not it is exercised.

The other view is expressed in the case of *Texas Co. v. Wheat*,¹¹ which involved a suit against the Texas Company for damages for personal injuries sustained by the plaintiff as a result of a fall in front of a service station which the defendant had leased to one Gossen. It was found that some oil had been negligently washed across the sidewalk in front of the service station, and the plaintiff, who was walking by, slipped on the oil and fell. The plaintiff contended that the relation of master-servant existed between Gossen and the Texas Company, thus making the latter liable for the injuries resulting from the negligent act. The court discussed at great length the relation that existed between Gossen and the Texas Company, pointing out various extra services, such as training schools on better ways to run the service station business, which were afforded the filling station operator although not appearing in the written contract. However, the court found the Texas Company not liable, stating:

Whether or not the relation of master and servant existed between the Texas Company and Gossen so as to make the doctrine of respondeat superior applicable, depends on whether the Texas Company had the right to control Gossen in the details of the work to be performed in the operation of the service station.¹²

Thus the Texas court has set up a narrow rule when it says the doctrine of respondeat superior applies only when the company has

⁹ *Supra* note 8, at 57.

¹⁰ *Supra* note 8, at 58.

¹¹ 140 Tex. 468, 168 S.W. 2d 632 (1943).

¹² *Id.* 168 S.W. 2d 632, at 635.

the right to control “. . . in the details of the work to be performed in the operation of the service station.” The court further stated with regard to the fact that the injury occurred as a result of cleaning the service station:

We think it clear from the evidence that the company did not have the right nor did it undertake to exercise the right to control Gossen and his employees in the details to be followed by them in keeping the service station clean. They were free to perform such work as they saw fit. They were therefore not acting as the employees of the company in cleaning the service station—the act out of which this injury grew—and consequently the company is not liable for the negligence of such employees.¹³

This last phase leaves a doubt in one's mind as to whether or not the Texas Company would have been liable if an injury had occurred because of Gossen's failure to keep the rest room within the minimum standards of cleanliness set up by the company. This thought is raised because Gossen displayed a sign advertising a “Texaco Registered Rest Room” which the company provided only where the station's rest rooms were kept up to certain standards. The company also had their own personnel check such “Registered Rest Rooms,” and if they were not maintained in the proper manner the sign was removed. Thus, does the fact that in order to keep this sign the dealer was required to meet certain standards set up by the company constitute the company's exercising control over the details of a certain phase of the operation of the station? If it does, then the Texas Company may have been liable if the injury occurred in the rest room because of Gossen's failure to comply with the company standards. Under the view taken in this case it would seem that the Texas court divided the operation of a filling station into various segments, and if the accident had occurred in the rest room because of failure to meet company regulations, the company might be held liable. However, as the accident resulted from the cleaning of the station, an operation over which the court said the company had no control, they were not held liable.

Thus it would seem that under the first line of decisions discussed, the courts look at the contractual relationship in its entirety, while in the second line of decisions they limit themselves to looking at each clause individually in order to fix liability. There is also a third theory which should be mentioned. Mechem, in his *Outlines of the Law of Agency* states the theory as follows:

¹³ *Ibid.*

. . . where the injury arises from negligence in the sale of the company's products, it is surprising that the element of estoppel is not more relied on. One who has the family kerosene can filled from a big truck labeled 'Gulf' and receives a receipt bearing the same name, might not unnaturally suppose that she was dealing with the Gulf Company and she could rely on them in case the transaction miscarried. As pointed out above liability has been imposed on such a basis in the case of an apparent ownership of stores, beauty parlors and the like. There seems to be no evidence, however, that this theory of liability has yet been applied to tank or service stations.¹⁴

It is rather amazing to learn that in 1952, when the above quotation first appeared, there was as yet not a single case adopting the theory of estoppel with regard to this problem. One would think that, with the uniform retailing and advertising carried on by national oil companies, plus the fact that service stations have lost their individualistic character in the eye of the average motorist, the courts when faced with this problem would adopt the theory of estoppel rather than become entangled in an interpretation of the various contracts and leases which are involved.

Thus it would seem that this phase of the law has been resolved into two lines of decisions based on the interpretation of the contracts involved. One line holds that in determining if the respondeat superior relationship exists the general right of control is the governing principle and whether or not control is exercised is immaterial, while the other advances the theory that the national oil company is not liable for the torts of the station operators unless they have the right to control or actually do exercise control over the details of the operation which are in issue.

GEORGE D. SCHRADER

¹⁴ Sec. 442. See also Secs. 440-45 (4th Ed. 1952).