



The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

FLASH NO. 17

AN IC WIN FOR THE PORT OF LA & BEYOND

The motor carrier won a significant victory in late September when a court ruled that the Port of Los Angeles could not force motor carriers to convert to the use of all employee drivers operating at the Port. Continued use of owner-operators, however, both at the Port and by all other motor carriers, will still require that motor carriers keep a close eye on their owner-operator agreements.

The Port of Los Angeles introduced its Clean Truck Program in 2008, requiring motor carriers to enter into concession agreements to operate drayage trucks at the Port, which involved, in part, phasing out older drayage trucks with new, lower-emission models as part of an anti-pollution initiative. Most motor carriers licensed to operate at the Port contracted with independent owner-operators to provide these drayage operations. Claiming concern that owner-operators could not afford to buy or maintain their trucks, the Port required that over a 5-year period, motor carriers would transition from independent owner-operators to 100% employee drivers for drayage operations. The American Trucking Associations, Inc. ("ATA") filed suit (*American Trucking Associations v. Los Angeles*) to challenge if five separate provisions of the concession agreement, including the ban on owner-operators, were preempted under federal law. The district court held that none of the provisions were preempted, and the ATA appealed to the 9th Circuit Court of Appeals.

Four of the five provisions were upheld by the Appeals Court but are not directly related to independent contractors so an analysis of that ruling is beyond our scope here. Last week, the ATA voted to

authorize an appeal of the other four provisions to the U.S. Supreme Court. However, the fifth provision requiring owner-operators for drayage operations was struck down by the Appeals Court, which called the requirement that drayage operations be performed by employees "tantamount to regulation". The Port claimed the employee driver requirement was meant to ensure there were plenty of drayage drivers available at the Port, believing motor carriers would pay their employee drivers higher wages than owner-operators and thus drivers would always be attracted to the job. The Court scolded that the Port cannot obtain staffing stability by inserting itself into the motor carriers' and drivers' contractual relationship, with which it has no connection. The Port may dictate conditions under which motor carriers must operate at the Port. However, since the Port does not pay drivers' salaries or benefits, it cannot interfere with drivers' employment relationships and contracts. Whether or not the ATA prevails on its appeal of the decision to the U.S. Supreme Court, the determination regarding "regulation" and "preemption" should go a long way in helping all motor carriers, and particularly those in Washington and New Jersey where battle lines have already been drawn.

The bottom line becomes the contractual relationship between motor carrier and owner-operator. As we have discussed many times here, crafting a strong contract between the motor carrier and the owner-operator that is customized to the carrier's actual operations, adheres to all requirements of the Federal Leasing Regs, lays out customer requirements (like those specific to operating at the Port) without the carrier's indicia of control over the

means and methods of operation, and discloses all terms and conditions, is the first step in the process. However, the next and ongoing step is ensuring that actual conduct of the parties under the agreement matches exactly with contract provisions. The independent contractor model continues to be highly scrutinized on many fronts, but strict adherence to the Federal Leasing Regs, lack of control over means and method by the motor carrier, adequate disclosures, and conduct matching the contract can keep motor carriers from running afoul. If we at Benesch can be of help in reviewing and possibly improving your IC program, please give us a call.

Additional Information

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