BENESCH
Attorneys at Law

October 2012

The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

FLASH NO. 28

TO ARBITRATE OR NOT TO ARBITRATE, THAT IS THE QUESTION

Just because you have included a well-crafted arbitration clause in your contracts does not necessarily mean that all disputes will be decided by an arbitration panel. So says a California Court of Appeals in an October 17 decision with implications for trucking firms.

The case, *Elijahjuan v. Superior Court*, was filed by four drivers who drove for Mike Campbell & Associates. The drivers alleged that they were employees and not independent contractors, claiming violations of California Labor Code, among other violations. Mike Campbell moved to compel arbitration, citing an arbitration clause in the IC agreements which each driver had signed. This arbitration clause stated that arbitration applied to any dispute that arose under the contract "with regard to its application or interpretation", and that arbitration awards must be based on contractual terms, federal transportation law, and the Federal Arbitration Act. The trial court granted the motion to compel arbitration and the drivers appealed.

The question the Appeals Court focused on was, did the worker misclassification claim arise under the contract, requiring the arbitration clause's "application or interpretation" of the contract? The drivers argued that it did not, claiming that this negated the arbitration requirement. The drivers were seeking to enforce rights under the California Labor Code which is state law, NOT under the contract. As such, the Appeals Court found that the case did not involve the interpretation or application of the contract, and therefore the arbitration clause did not apply. Rather, the Appeals Court preferred an examination of the drivers' actual work, not the application or interpretation of the contract. Things such as skills needed, place of work, tools supplied, length of time of performance of services, payment by job or hour, and whether the work is part of the company's regular business, were the relevant inquiries.

The Appeals Court harkened back to our old friend, *Narayan v. EGL*, which we told you about in our September 2010 Flash. Narayan drew a distinction between worker rights under regulations such as the Labor Code and under the contract terms themselves. The Appeals Court said that, although the contract itself may be relevant to help prove or disprove worker misclassification, the critical factor is really whether drivers were employees or independent contractors under the Labor Code. The contract's arbitration clause limited the arbitrator to the use and application of specific laws, which did NOT included the California Labor Code. Because of this, the Appeals Court believed that the only relevant law to a worker misclassification dispute was excluded from use in arbitration.

If you have an arbitration clause in your IC agreements, you may benefit from reviewing your current language in light of this decision. Crafting a broader, more inclusive arbitration clause could make the difference between having a dispute decided in arbitration or in court. And as we have seen time and again, disputes over worker misclassification often come down to an examination of both contract terms and actual behavior under the agreements. Ensuring that your contract terms solidly display independent contractor status, and then making sure your behavior mirrors these terms will put you in the best possible position to defend your IC program, no matter if it is ultimately decided in arbitration or in court. We here at Benesch are always available to assist with your analysis of your IC program or agreement terms. Please give us a call if we can help.

Additional Information

For additional information, please contact any of the following attorneys:

Transportation & Logistics Practice Group

Marc S. Blubaugh at 614.223.9382 or mblubaugh@beneschlaw.com

Wendy D. Brewer at 317.685.6160 or wbrewer@beneschlaw.com

J. Allen Jones III at 614.223.9323 ajones@beneschlaw.com

Thomas Kern at 614.223.9369 or tkern@beneschlaw.com

Martha Payne at 541.764.2859 or mpayne@beneschlaw.com

Richard A. Plewacki at .216.363.4159 or rplewacki@beneschlaw.com

Teresa E. Purtiman at 614.223.9380 or tpurtiman@beneschlaw.com

Sarah R. Stafford at 302.442.7007 or sstafford@beneschlaw.com

Eric L. Zalud at 216.363.4178 or ezalud@beneschlaw.com

Labor & Employment Practice Group

Maynard Buck at 216.363.4694 or mbuck@beneschlaw.com

Joseph N. Gross at 216.363.4163 or jgross@beneschlaw.com

Peter N. Kirsanow at 216.363.4481 or pkirsanow@beneschlaw.com

Katie Tesner at 614.223.9359 or ktesner@beneschlaw.com

www.beneschlaw.com