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The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

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FLASH NO. 68
TRUTH-IN-LEASING REGULATIONS DERAIL MOTOR CARRIER'S MOTION TO DISMISS

As we are on the cusp of another football season throughout the country, where two-a-day practices and training camps are winding down, and final preparations are being made for the actual season, it may be worthwhile to visit some business basics.

As with all the practices on whatever level—high school, college, NFL—the practices and training camps address the fundamentals of playing the game correctly and new techniques to improve athletes' performances. The same is true with motor carriers, whether small, medium size or large. It makes sense to ensure basic blocking and tackling when dealing with independent contractor/owner-operators ("ICs") in your business.

The following is a reminder of what sloppy play and inattention to the basics can produce.

Recently, the U.S. District Court for the Northern District of Illinois reminded motor carriers about the importance of ensuring compliance with the 'Truth-in-Leasing' regulations when contracting with ICs.

In *Yata v. BDJ Trucking Co.*,[1] Plaintiffs Yata and Zukancic ("Plaintiffs"), owner-operators, alleged on behalf of a putative class that they were employees of motor carrier Defendant, BDJ Trucking Co. ("BDJ"), and in violation of the Truth-in-Leasing Act[2] and the Wage Act.[3]

Plaintiffs entered into a Service Agreement ("Agreement")[4] with BDJ for use of their equipment under BDJ's operating authority. The Agreement outlined terms for payment, insurance, possession of equipment as well as a few other standard contract terms. However, the Agreement failed to identify terms for escrow, authorized deductions and several other standard provisions necessary to comply with the 'Truth-in-Leasing' regulations.[5] Despite the absence of these terms in the Agreement, BDJ proceeded to deduct from Plaintiffs' compensation certain amounts for escrow (without paying interest), traffic tickets, safety violations, and occupational accident insurance.

In addition to the punitive Agreement, BDJ mandated that Plaintiffs follow BDJ's written 'Company Rules and Procedures'. Such Rules and Procedures on their face, provided numerous items of control over Plaintiffs including 'Work Schedule Rules' requiring the Plaintiffs to follow the direction of dispatch coupled with a $750 fine per any service failure. Furthermore, it provided that if "Plaintiffs failed to follow the weekly run schedule they would be fined $750 and result in suspension."

(continued)

As is often the case, the primary issue was whether BDJ's exercise of control over Plaintiffs made them de facto "employees" and brought them within the scope of various statutory protections. Plaintiffs alleged that BDJ controlled them through the terms of Agreement and the Company Rules and Procedures as outlined above. Unsuccessfully, BDJ argued that Plaintiffs were 'agents' of BDJ and thus were excluded from the protections of the 'Truth-in-Leasing' regulations. The court rejected this argument and stated that "owner-operator drivers such as the Plaintiffs in this case are precisely the intended beneficiaries of the protection in the 'Truth-in-Leasing' regulations."

The court further denied Defendant's Motion to Dismiss claims under the Wage Act determining that Plaintiffs merely needed to allege that: "(1) they had an employment agreement with the employer that required the payment of wages or final compensation; and (2) that the defendants were employers under the Wage Act." BDJ argued that, because Plaintiffs did not perform a sufficient amount of work in Illinois, they were not covered by the Wage Act. The court rejected this argument and held that Plaintiffs' allegation that they performed any amount of work in Illinois was sufficient to survive a motion to dismiss.

As we all know, 'bad facts make bad law' and the court's decision is not surprising based upon the facts alleged in the Complaint, the terms of Agreement and BDJ's own 'Company Rules and Procedures'. These types of preliminary facts don't allow much chance for success by a motor carrier attempting to preempt a class action suit. This case highlights the importance of reviewing the service agreement in place with your ICs and any other documents intended to memorialize the relationship between a motor carrier and its ICs. Simple, basic compliance with the 'Truth-in-Leasing' regulations could have allowed BDJ a chance to persuade the court for an early dismissal of the case.

[1] No. 17 cv 3503, 2018 U.S. Dist. LEXIS 111726 (N.D. Ill. July 5, 2018).

[2] 49 U.S.C. § 14704(a)(2).

[3] 820 ILCS 115/9.

[4] The Service Agreement was attached to the Complaint which Benesch is glad to provide upon request.

[5] *See generally* 49 C.F.R. § 376, *et seq.*

As always, the skilled transportation team at Benesch is here to help you navigate your way through such pitfalls.

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