

InterConnect FLASH! No. 28 – To Arbitrate or Not To Arbitrate, That is the Question

The InterConnect FLASH! Practical Bursts of Information Regarding Critical Independent Contractor Relationships

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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 include 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.