NEWSLETTERS

InterConnect FLASH! No. 34 – Summer Winds Down While IC News Heats Up

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The Summer of 2013 was a fairly quiet time for developments in the independent contractor realm. There is now a chill of autumn in the air, and with it, new and welcome news in the world of independent contractor issues, this time out of the Razorback state.

Joe Watkins was a long-haul truck driver in Arkansas. While delivering a load of tires, he suffered a back injury and filed for workers' compensation benefits, claiming that he was an employee of USA Trucking, Inc. rather than an independent contractor. USA Trucking denied that he was an employee and the Arkansas Workers' Compensation Commission agreed. Watkins appealed the decision to the Arkansas Court of Appeals.

The Appeals Court considered a host of factors to determine if Watkins was an employee or independent contractor. After reviewing the "Contractor Operating Agreement" signed between the parties, the Appeals Court determined that there were factors that favored each category but that the majority of the factors favored IC status. Among the factors that swayed the Court toward an independent contractor conclusion were many of the usual suspects, including the extent of control over the work, the distinctness of the business, the skills required, who supplies the equipment, length of service, method of payment, and whether the parties believed it was an employer/employee relationship. Interestingly enough, the driver's ownership of his truck / tractor was the determining factor that pushed the Appeals Court toward an independent contractor conclusion. The Court reasoned that Watkins was an experienced driver who owned his own truck, operated his own business, and had a sophisticated understanding of the IC agreement due to his experience of entering into prior agreements (and terminating the unprofitable or unfair ones).

The driver's argument was that ownership of his truck should not be the determinative factor but rather the right of control should prevail. He cited examples of control which he felt were beyond the control mandated by DOT regulations, including lack of freedom to control his own driving or pull for other carriers, dispatch and loading by USA Trucking, Qualcomm monitoring, issuance of a fuel card, and use of the USA Trucking logo.

The Appeals Court rejected the driver's argument, emphatically stating that the Workers' Compensation Commission ultimately determines the weight to be given the various factors in deciding between employee or IC status, be they control or truck ownership. The Court went further, pointing out that the agreement between USA Trucking and the driver was ultimately a legitimate business deal between two competent parties who both benefited. The driver knew how to take advantage of his experience and truck ownership, allowing him to either earn a profit with USA Trucking or terminate the relationship and contract with another carrier with more favorable terms.

The Court in this case independently analyzed the situation in light of all the factors, understanding that many owner-operators are sophisticated business owners who can and will go elsewhere if their profit disappears. You may want to review your own IC agreements to determine if such a factor analysis would yield the same conclusion for your owner operators. Control over the means and manner of the work is but one factor. Be sure to look at all other elements, including the opportunities you provide your ICs to not only make a profit for themselves but equally important to be exposed to the risk of financial loss based on the business decisions they make. Please let us know if we here at Benesch can be of help in assisting you with any such analysis.

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