NEWSLETTERS

InterConnect FLASH! No. 66 – Fleet Model Withstands Misclassification Challenge in Massachusetts

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Recently, the U.S. District Court for the District of Massachusetts dismissed misclassification claims presented by an owner and his company holding that the Plaintiffs did not qualify as an 'individual' under Massachusetts Independent Contractor Law, Mass. Gen. Laws ch. 149, §148B (commonly referred to as the "Massachusetts 'ABC' Test").[1]

The Court's conclusion may seem simple and reflect common sense, but based on the factual allegations in the Complaint it appeared to be anything but simple. The bottom line is that the applicable statute of limitations drove the decision and seems to reflect favorably on the use of the Fleet Owner Model and the Master Contractor Model when utilizing independent contractors in operating a motor carrier.

Plaintiffs, GCC Moving, LLC ("GCC Moving") and Gary Cook d/b/a GCC Moving ("Cook"), filed suit against Defendants Estes Express Line Corp. and Big E Transportation, LLC ("Big E") for recovery of insurance, payroll taxes and other business expenses as a result of Defendants' misclassification of Plaintiffs as independent contractors.

In March, 2012, Cook, as a "sole proprietorship" and doing business under the fictitious name of "GCC Moving" entered into an Independent Contractor Operating Agreement ("ICOA") with Big E. The ICOA required Cook to provide truck driving transportation services and to recruit/provide other licensed professional truck drivers. Also, according to the Complaint, the ICOA appears to contain the myriad of provisions one would expect to find in such an agreement and those required by the Federal Leasing Regulations.[2] The ICOA was renewed in September 2013.

Originally, Cook leased and personally operated a truck from Big E, prior to bringing on two additional trucks/drivers in 2012 and then further expanding to eight trucks/drivers in 2013.

Thereafter, Cook limited his personal driving so that he could "run and over-see GCC Moving". During this period, GCC Moving was operating thirteen trucks out of seven terminals in four states while employing over twenty different drivers. GCC Moving hired a payroll company, an accountant and paid Cook profits from the proceeds of such business. [3]

Plaintiffs' claims stemmed from an injury sustained in September 2013 by a driver for GCC Moving while on the 'job'. GCC Moving had procured Occupational Accident Insurance pursuant to the requirements of the ICOA intended to cover medical expenses for job related injuries of its drivers. Ultimately, the insurance provider denied the driver's claim under the premise that the driver was an employee (presumably of GCC Moving) and not an independent contractor of Big E.

Subsequently, Plaintiffs began paying the driver's medical expenses and secured a Workers' Compensation Policy. Plaintiffs claimed that Big E promised to reimburse Plaintiffs for the driver's medical expenses but upon such demand for payment, Big E began to reduce Plaintiffs' opportunities to provide such services before completely terminating the relationship with Plaintiffs.

The case was filed in July 2016. The Complaint contained a litany of allegations regarding provisions in the ICOA relating to the right of control; described many examples of overreaching conduct by Big E on the operational side of the relationship; and asserted collusion and bad faith dealings between and among, Big E, its workplace accident insurer and Plaintiffs. A three year statute of limitation applied to the causes of action contained in the Complaint.[4]

Ultimately, the court granted the Defendants' Motion for Summary Judgment based upon the premise that Cook operated GCC Moving as a business during the three year limitation period and therefore Plaintiffs' did not provide services in an individual capacity under Prongs (1) and (3) of Section 148(B).[5]

The court relied upon the decision in *Debnam*[6] in determining that "the undisputed factual record in the this case shows that the work performed under [GCC Moving]'s contract with Big E involved far more than [Cook's] personal services" notwithstanding that Cook was a sole proprietor when the injury occurred to one of his drivers in September 2013. Thus, as in *Debnam,* the court was persuaded by Cook's extensive and entrepreneurial activities precluding the application of Section 148 (B).

This decision further solidifies the importance of motor carriers establishing 'business-to-business' relationships when utilizing the independent contractor model when possible. Despite the numerous allegations in the Complaint that the Defendants exercised control over Plaintiffs, the court was swayed by the use of an actual entity with real business like activities. To the Defendants' benefit, the court did not even address such elements of control in rendering its decision.

As always, Benesch's experienced and skilled transportation team would be glad to assist you with properly structuring such relationships to help ensure 'business-to-business' interactions when utilizing independent contractor drivers either directly or through a Fleet Owner Model or a Master Contractor Model.

If you have any questions on this topic, please contact a member of the firm's Transportation & Logistics Practice Group.

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[1] *Cook v. Estes Express Lines, Corp.*, 1:16-cv-11538-RGS, 2018 WL 1773742 (D. Mass. April 12, 2018)

[2] C.F.R. § T. 49, Subt. B, Ch. III, Subch. B, Pt. 376.

[3] GCC Moving, LLC was formally incorporated in November 2014.

[4] Please contact us if you would like to receive a copy of the Complaint.

[5] Prong 2 was preempted by federal law as was previously reported in Flash #54.

[6] *Debnam v. Fedex Home Delivery*, No. 10-11025-GAO, 2013 WL 5434142 (D. Mass. Sept 27, 2013).