NEWSLETTERS

InterConnect FLASH! No. 71 – Independent Contractor/Owner-Operators: Exempt From Arbitration for Dispute Resolution

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On January 15, 2019, in a very disappointing decision for the trucking industry regarding the application of arbitration provisions in motor carrier-independent contractor service agreements, the U.S. Supreme Court unanimously determined that independent contractor/owner-operators are "transportation workers" engaged in interstate commerce and thus are exempt from the Federal Arbitration Act ("FAA"). *New Prime, Inc. v. Oliveira* [1]

Section 1 of the FAA exempts the use of arbitration as a dispute resolution mechanism for "contracts of employment" of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. Mr. Oliveira, as an individual, was a party to an independent contractor/owner-operator service agreement with New Prime, a motor carrier, and personally provided the services under the agreement. At some point in the relationship, he sought to challenge, in court, his classification as an independent contractor claiming he was actually an employee of New Prime. The agreement between Mr. Oliveira and New Prime contained an arbitration provision as the dispute resolution mechanism between the parties. Thus, after several years of litigation, two specific questions were presented and decided by the Court: (1) whether a dispute over the applicability of the Section 1 exemption must be resolved by an arbitrator or by a court and (2) whether the Section 1 exemption covers motor carrier-independent contractor/owner-operator service agreements.[2]

To the disappointment of the trucking industry, the Court unanimously held that courts should first determine whether the parties' contract falls within the FAA's scope or whether the Section 1 exemption applies, and as a result Mr. Oliveira may pursue his worker misclassification claim in the courts.[3] The Court relied upon a very broad interpretation of the words contained in Section 1 of the FAA while reflecting on the intent of Congress in 1925 when the FAA was enacted, and determined that the exemption in the FAA for interstate transportation workers applies to all such workers whether they are classified as employees or independent contractors.

In explaining its decision, the Court indicated that when the FAA was enacted in 1925 a "contract of employment" meant nothing more than an agreement to perform work. The Court then concluded that, as a result, most people would have understood Section 1 to exclude not only agreements between employers and employees but also agreements that also require independent contractors to perform work. The Court also noted that use of the term "workers" in Section 1 and not "employees" or "servants" supports the Court's broad interpretation. Thus, the Court's position is that legal disputes between motor carriers and independent contractors cannot be forced into

arbitration under federal law even if the independent contractor's operating agreement includes an arbitration clause.

This conclusion was generally unexpected by the industry and has significant, far-reaching consequences for motor carriers that operate an independent contractor model and rely on arbitration, on an individual basis, for dispute resolution. Certain segments of the motor carrier industry that rely the most heavily on independent contractors, such as intermodal drayage carriers, will be acutely affected.

Fortunately, the Court did leave open the possibility that arbitration agreements could be enforceable under other "potential avenues" apart from the FAA. For instance, most states have enacted laws that favor enforcement of arbitration agreements. Moreover, these state laws do not necessarily contain the same broad exemption for transportation "workers" that exists under the FAA. Consequently, motor carriers that seek to use arbitration agreements as part of their independent contractor program should closely examine applicable state law.

In any event, this decision reflects a seeming trend in the legal landscape of court decisions that are affecting independent contractor programs where there is a one-on-one relationship between a motor carrier and an independent contractor/owner-operator who performs services personally. Earlier this year we saw the *Dynamex* decision (which also involved a one-on-one relationship between an individual and the motor carrier) produce a "sea change" for purposes of determining proper worker classification, and that line of cases has taken on a life of its own.[4]In the *Oliveira* decision, where there was an individual independent contractor/owner-operator contracting with the motor carrier, the Supreme Court had little problem in finding that this putative self-employed business individual was a mere transportation worker under the FAA. Thus, motor carriers operating with independent contractor relationships would be well served to review such relationships and take the requisite steps to "elevate" them to bona fide arms-length business-to-business relationships.

The Benesch Transportation and Logistics group is well positioned to assist motor carriers who might be inclined to revisit their relationships with independent contractors and work toward a goal of avoiding not only the pitfalls of the *Oliveira* decision, but also the *Dynamex* cloud that is hovering over the landscape.

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[1] *New Prime, Inc. v. Oliveira*, No. 17-340, 586 U.S. ___, (Jan. 15, 2019) https://www.supremecourt.gov/opinions/18pdf/17-340_o7kq.pdf.

[2] Interestingly, the Supreme Court did not rule on the substantive worker misclassification issue as it merely focused on the procedural issue.

[3] The vote was 8-0 as Justice Kavanagh had not been appointed at the time of oral argument and, notably, Justice Ginsburg filed a concurring opinion.

[4] *Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County*, 4 Cal. 5th 903 (2018) (In choosing which standard should apply to determine the proper classification of workers in the Wage Order context, the California Supreme Court favored the bright-line "ABC Test" over the long recognized multifactor test. For more detail on this decision see: "The *Dynamex* Decision: Will It Be a Catalyst or Will it Be Contained?" InterConnect, www.beneschlaw.com (2018) https://www.beneschlaw.com/Files/Publication/aa046948-9444-48b8-96b8-a477cb15c189/Presentation/Pu
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