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Ninth Circuit Applies California Law Despite Choice-Of-Law Clause in Independent Contractor Agreement

In *Narayan v. EGL, Inc.*, the employer, EGL, Inc. ("EGL"), is a global transportation company that provides "air and ocean freight forwarding, customs brokerage, [and] local pickup and delivery service." EGL is incorporated and headquartered in Texas, but it operates through a network of over 400 facilities in 100 countries. The case was brought by three drivers who were engaged to provide freight pick-up and delivery services for EGL in California. All three drivers had entered into "Leased Equipment and Independent Contractor Services Agreements" (the "Agreements") with EGL that were employer-drafted pre-printed form contracts. The Agreements contained acknowledgments by the drivers that they were independent contractors and choice-of-law clauses providing that the Agreements shall be interpreted in accordance with Texas law.

The drivers sued claiming that EGL had violated provisions of the California Labor Code by failing to pay overtime wages, business expenses and meal compensation and unlawfully taking deductions from their wages. EGL argued that the drivers were independent contractors, not employees. EGL also argued that the issue of whether the drivers are independent contractors or employees must be decided under Texas law pursuant to the choice-of-law clause in the Agreements.

The Ninth Circuit held that California law applied, despite the contract terms. Because the case involves claims for benefits under the California Labor Code, the Court found that the claims do not arise out of the Agreements or involve the interpretation of the Agreements. Instead, liability depends on the definition of the term "employee" under the California Labor Code. As a result, the Court held that "California law should apply to define the boundaries of liability under [the California regulatory] scheme."

Applying California law, the Ninth Circuit found that the acknowledgment of independent contractor status by the drivers "is simply not significant under California's test of employment." Instead, under California law, a multi-factor test is applied by the trier of fact to determine whether an employer-employee relationship exists. Upon reviewing the multi-factor test, the Court noted that several indicia of an employment relationship existed, but held that the ultimate determination of whether such a relationship existed is reserved for the trier of fact. As a result, the case was sent back for a trial.

The lesson from this case is that employers cannot rely on choice-of-law provisions contained in their independent contractor agreements in order to avoid the requirements of the California

Labor Code. The determination of whether an individual is an independent contractor or an employee is a question which arises under the California Labor Code itself and, therefore, it is outside the scope of a contract between the individual and an employer. Accordingly, California's multi-factor test for employment will apply to determine whether an employer-employee relationship exists for purposes of claims under the California Labor Code. Furthermore, this case also reinforces the point that the existence of an express acknowledgment of an independent contractor relationship is not controlling under California law. In other words, an employer cannot circumvent the multi-factor employment test by adding a declaration of independent contractor status to its agreements.