



The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

Benesch has been ranked in the First-Tier nationally in Transportation Law in the 2015 Edition of U.S. News & World Report/ Best Lawyers “Best Law Firms” ranking.

The U.S. News & World Report/Best Lawyers® “Best Law Firms” rankings are based on an evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in their field and review of additional information provided by law firms as part of the formal submission process. For more information on Best Lawyers, please visit www.bestlawyers.com.



FLASH NO. 47 BE ON GUARD: NORTH CAROLINA DECISION CONTINUES WORRISOME TREND

On March 17, 2015, in *Atiapo v. Goree Logistics, Inc.*, the North Carolina Court of Appeals affirmed an Industrial Commission Opinion and Award holding that Owen Thomas, Inc. (“Owen Thomas”), a *federally licensed transportation broker* based in Zephyrhills, Florida, was a “statutory employer” under N.C. Gen. Stat. § 97-19.1, and ordering Owen Thomas to pay Plaintiff temporary total disability compensation, all of Plaintiff’s medical expenses arising from injuries due to Plaintiff’s accident, and the costs of the hearing. There are at least two important takeaways from the Court’s decision.

In the course of arranging for the transportation of freight for its customer, Sunny Ridge Farms (“Sunny Ridge”), a grower, packer, and shipper of fresh berries with operations in Florida, Georgia, North Carolina, and Mexico, Owen Thomas, the broker, entered into a typical broker-carrier agreement with Goree Logistics, Inc. (“Goree”), a *federally licensed motor carrier* headquartered in Charlotte, North Carolina. The Court noted that the agreement provided that Goree would control the work to be performed in terms of the transportation of freight, and that Goree would be responsible for payment of all taxes, unemployment, workers’ compensation, and other fees. Plaintiff Frances Atiapo, a North Carolina resident who drove a truck pursuant to an independent contractor agreement with Goree, was injured in an accident in Colorado while transporting rejected goods from their intended destination in Wyoming. At the time of the accident, Goree did not have workers’ compensation insurance.

Atiapo filed a claim for workers’ compensation. Goree denied the claim on the grounds that Atiapo was an independent contractor, not an employee. Subsequently, Owen Thomas was added as a defendant in the proceeding before the Industrial Commission. In its Opinion and Award, the Industrial Commission concluded that Atiapo was an employee, and further found that Owen Thomas was a “principal contractor” under the North Carolina Workers’ Compensation Act, resulting in the order that Owen Thomas pay Atiapo temporary total disability compensation, medical expenses, and costs. Owen Thomas appealed.

On appeal, Owen Thomas argued that the Industrial Commission lacked jurisdiction for two reasons. First, Owen Thomas asserted that it was a freight broker, not a principal contractor. Second, Owen Thomas argued that it was exempt from the North Carolina statute on federal preemption grounds.

The Appeals Court rejected Owen Thomas’ first argument, reasoning that the Industrial Commission’s order was proper insofar as Owen Thomas was a “principal contractor” under the statute and Goree had no workers’ compensation insurance at the time of Atiapo’s accident. The Court of Appeals held that Owen Thomas’ use of the word broker was “a distinction without a difference.” Since Owen Thomas was, in the Court’s view, a principal contractor under the statute, and Owen Thomas “employed” Goree as a subcontractor without workers’ compensation insurance, liability was established under the Workers’ Compensation Act.

The Court also rejected Owen Thomas' federal preemption argument on two grounds. First, the Court reasoned that a state statute requiring workers' compensation insurance did not regulate prices, routes, or services as prohibited under 49 U.S.C. § 14501(c)(1) and, in any event, state regulations related to minimum insurance requirements were excepted under 49 U.S.C. § 14501(c)(2). Therefore, FAAAA preemption did not apply to the applicable provisions of the North Carolina Workers' Compensation Act.

Second, the Court rejected Owen Thomas' claim that the exception contained in 49 U.S.C. § 14501(c)(2) applied only to motor carriers, and not brokers. Chillingly, the Appeals Court held that Owen Thomas "went beyond its role as a broker" and "was, in effect, a motor carrier, despite the fact that the company itself owned no vehicles." Thus, at the time Owen Thomas was doing business with Goree it was subject to the statutory exception.

Even if they do not operate or reside in North Carolina, motor carriers and freight brokers should note the *Atiapo* decision for two reasons. First, the decision evidences the continuing trend among the states to identify different, albeit illogical, means to fill their coffers and attack well-established, reasonable, efficient, and economically-sound ways of transacting business. For motor carriers utilizing an independent contractor/owner-operator business model, the language used by the Industrial Commission and the Court of Appeals strongly suggests preconceived misconceptions about the transportation industry, on the one hand, and does not suggest a business friendly environment, on the other.

Second, freight brokers must be diligent in following motor carrier selection protocols that ensure compliance with duties and obligations contained within broker-carrier agreements. If your broker-carrier agreement requires motor carriers to maintain certain insurances, it is a best practice to make certain the motor carriers with which you transact business have the coverages required under the agreement. Diligence in this regard would, in all likelihood, have protected Owen Thomas from an expensive judgment.

The Benesch Transportation & Logistics Practice Group certainly has a very experienced team that is well versed in these areas of the law and can provide any assistance that may be needed or desired.

For more information

Contact **J. Allen Jones, III** at ajones@beneschlaw.com or (614) 223-9323

Mr. Jones is a partner with the firm's Litigation Practice Group as well as with the Transportation & Logistics Group. He focuses his practice on transportation and logistics, commercial and contract disputes, real estate disputes and foreclosures, replevins, the long-term care industry, and construction litigation. Mr. Jones has represented clients in disputes before numerous state and federal courts, the American Arbitration Association, the Ohio Civil Rights Commission, and in alternative dispute resolution. Although Mr. Jones primarily focuses his practice on commercial litigation matters, he has significant experience in bankruptcy and bankruptcy litigation matters, including creditor representation, and prosecuting and defending preference litigation.

Additional Information

For additional information, please contact:

Transportation & Logistics Practice Group

Michael J. Barrie at (302) 442-7068 or mbarrie@beneschlaw.com
Marc S. Blubaugh at (614) 223-9382 or mblubaugh@beneschlaw.com
Tamar Gontovnik at (216) 363-4658 or tgontovnik@beneschlaw.com
Matthew D. Gurbach at (216) 363-4413 or mgurbach@beneschlaw.com
James M. Hill at (216) 363-4444 or jhill@beneschlaw.com
Jennifer R. Hoover at (302) 442-7006 or jhoover@beneschlaw.com
J. Allen Jones III at (614) 223-9323 or ajones@beneschlaw.com
Thomas B. Kern at (614) 223-9369 or tkern@beneschlaw.com
Peter N. Kirsanow at (216) 363-4481 or pkirsanow@beneschlaw.com
David M. Krueger at (216) 363-4683 or dkrueger@beneschlaw.com
Christopher J. Lalak at (216) 363-4557 or clalak@beneschlaw.com
Tamara L. Maynard at (614) 223-9378 or tmaynard@beneschlaw.com
Andi M. Metzel at (317) 685-6159 or ametzal@beneschlaw.com
Kelly E. Mulrane at (614) 223-9318 or kmulrane@beneschlaw.com
Lianzhong Pan at (86 21) 3222-0388 or lpn@beneschlaw.com
Martha J. Payne at (541) 764-2859 or mpayne@beneschlaw.com
Stephanie S. Penninger at (317) 685-6188 or spenninger@beneschlaw.com
Richard A. Plewacki at (216) 363-4159 or rplewacki@beneschlaw.com
Peter K. Shelton at (216) 363-4169 or pshelton@beneschlaw.com
Clare R. Taft at (216) 363-4435 or ctaft@beneschlaw.com
Katie Tesner at (614) 223-9359 or ktesner@beneschlaw.com
Eric L. Zalud at (216) 363-4178 or ezalud@beneschlaw.com

Labor & Employment Practice Group

Maynard Buck at (216) 363-4694 or mbuck@beneschlaw.com
Joseph Gross at (216) 363-4163 or jgross@beneschlaw.com
Rick Hepp at (216) 363-4657 or rhepp@beneschlaw.com
Christopher J. Lalak at (216) 363-4557 or clalak@beneschlaw.com
Peter Kirsanow at (216) 363-4481 or pkirsanow@beneschlaw.com
Katie Tesner at (614) 223-9359 or ktesner@beneschlaw.com

www.beneschlaw.com

As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.

UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT, UNLESS EXPRESSLY STATED OTHERWISE, ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (i) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.