



The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

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FLASH NO. 61 REGARDLESS OF STATUS (BROKER/MOTOR CARRIER): CONTRACT & CONTROL STILL MATTER

Courts continue to review the circumstances surrounding the degree of control exercised over transportation service providers. This has held true in several different segments of the transportation industry whether it is home delivery, parcel service or last mile and without regard for the fact that such service providers were operating as legal entities on behalf of duly licensed motor carriers and/or brokers.

As recently reported in Benesch *Flash No. 59*, the Massachusetts Supreme Court considered the relationship between drivers and a motor carrier that was a provider of “last mile” delivery services for retail furniture companies in *Chambers v. RDI Logistics, Inc.*¹ The court once again analyzed the amount of control a motor carrier exercised over service providers (and its drivers) even though motor carrier only conducted business with corporate entities (i.e. not individuals) by applying Massachusetts Independent Contractor Law, Mass. Gen. Laws ch. 149, §148B (the “Massachusetts ‘ABC’ Test”).²

In its opinion, the court reversed the trial court’s judgment in favor of RDI on the grounds that Prongs A(1) and C(3) of the Massachusetts ‘ABC’ Test were not preempted under the Federal Aviation and Administration Authorization Act of 1994 (“FAAAA”) and that issues of material fact existed as to whether plaintiffs had standing as individuals to assert their misclassification claims.

Recently, the U.S. District Court of Massachusetts reviewed the nature of the relationship with a federally licensed property broker and a motor carrier (and its drivers) and the issue of preemption under FAAAA in *Vargas vs. Spirit Delivery & Distrib. Servs.*³

Spirit Delivery (Spirit) was a duly licensed property broker which provided warehousing and end to end logistics services, including in-home delivery and installation of appliances and electronics. Spirit utilized its own employees for the warehousing operations but entered into written contracts with unaffiliated third party motor carriers such as Plaintiffs, Civil Delivery, LLC (Civil) to provide trucks and labor for deliveries to its customers.

Civil was a duly registered limited liability company which held U.S. DOT motor carrier operating authority⁴; leased or purchased three trucks; and hired seven individual drivers or helpers to provide the services required under its contract with Spirit.

Upon consideration of Spirit’s Motion for Summary Judgment, the court applied Massachusetts ‘ABC’ Test to Spirit’s assertion that Civil was an independent contractor and not an employee(s) subject to employment benefits under the Massachusetts Wage Act (“MWA”).

The court went into great depth analyzing the degree of “actual” control Spirit exercised over Civil (and its drivers) in applying Prongs 1 and 3, even though Spirit was a duly licensed property broker and Civil was a duly licensed motor carrier.

Spirit required motor carriers, such as Civil, to sign a Settlement Carrier Contract (Contract) which outlined certain requirements for delivery receipts, on-time delivery, customer rates/charges, freight damage and Spirit’s right to disqualify any helper/driver if it determined them unsafe, disqualified or unfit. Furthermore, the Contract provided Spirit the right to terminate the Contract if Civil failed to comply with customer performance metrics or if Civil utilized the services of any brokers or subcontractors without the prior written consent of Spirit.

The court reviewed facts such as Spirit deducting truck lease payments from Civil on behalf of third parties, inspecting each truck for particular size, color and age, and prohibition of Civil from placing its own company logo on the truck. The court further assessed the degree of control Spirit imposed on Civil’s individual drivers by analyzing Spirit’s instructions relative to routes, services and customer requirements.

Spirit argued that Prongs 1 and 3 of “Massachusetts ‘ABC’ Test” were preempted under FAAAA, as compliance with such Prongs, like Prong 2 previously, would have a significant impact on its business model. The application of Prongs 1 and 3 to Spirit would require Spirit to employ drivers and provide motor carrier services (even though it’s a broker and not licensed to provide such services), significantly impacting pricing and the delivery service industry.

The court rejected Spirit’s FAAAA preemption argument holding that ‘conclusory allegations that a finding that Civil and other drivers are employees for purpose of MWA would have a significant impact on it process, routes or services’ are too tenuous and not sufficient to preempt Prongs 1 and 3.

This most recent decision underscores that no matter if you are a motor carrier and/or broker, or which segment of transportation you are operating within, courts will continue to look at the elements of control exercised by one party over the other. While it would appear on the surface that the structure of Spirit’s business model (a broker-carrier relationship) was sound and its contractual relationship arguably reasonable, it was the conduct that provided a bad result.

Well drafted written agreements between the parties are certainly a requirement for such relationships but ultimately the actual day-to-day interactions between such parties will determine the validity of independent contractor status in the minds of the courts.

For more information, contact:

Richard A. Plewacki at rplewacki@beneschlaw.com or (216) 363-4159

Richard is a partner with the firm’s Litigation and Transportation & Logistics Practice Groups. He has been in the transportation and logistics industry, both as a businessman and an attorney, for over 40 years during which he has been heavily involved with the IC model within the trucking industry. His practice also includes advising and representing motor carriers, leasing companies, third party logistics providers, national shippers, large private fleets and water carriers in the domestic, non-contiguous trade lanes.

Matthew J. Selby at mjelby@beneschlaw.com or (216) 363-4458

Matt Selby is Of Counsel in the firm’s Transportation & Logistics Practice Group. He currently advises and represents a variety of transportation based organizations including motor carriers, leasing companies, third party logistics providers, regional and national shippers, large private fleets and both domestically and internationally. He has experience with independent contractor issues/owner-operator issues, shipper/carrier matters, industry specific litigation, transportation related service agreements, freight claims, mergers and acquisitions, insurance, licensing and permitting.

Please contact us if you have questions or concerns about the nature of your relationship with your ICs as Benesch’s Transportation & Logistics Practice Group has the experience and capability to answer all your questions pertaining to your independent contractor program, contractually and operationally.

¹ *Flash No. 59* is available [here](#).

² The Massachusetts “ABC” Test provides that a worker is properly classified as an independent contractor if the employer can show that: (A) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and (B) the service is performed outside the usual course of the business of the employer, and (C) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

³ *Vargas v. Spirit Delivery & Distribution Servs., Inc.*, No. CV 13-12635-TSH, 2017 WL 1115163 (D. Mass. Mar. 24, 2017).

⁴ U.S. DOT #2167668; MC#753079.

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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
Kevin M. Capuzzi at (302) 442-7063 or kcapuzzi@beneschlaw.com
Matthew D. Gurbach at (216) 363-4413 or mgurbach@beneschlaw.com
Jennifer R. Hoover at (302) 442-7006 or jhoover@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
Andi M. Metzel at (317) 685-6159 or ametzel@beneschlaw.com
Michael J. Mozes at (614) 223-9376 or [mmozes@beneschlaw.com](mailto:mmoz@beneschlaw.com)
Kelly E. Mulrane at (614) 223-9318 or kmulrane@beneschlaw.com
Lianzhong Pan at (86 21) 3222-0388 or [lpan@beneschlaw.com](mailto:lp@beneschlaw.com)
Martha J. Payne at (541) 764-2859 or mpayne@beneschlaw.com
Stephanie S. Penninger at (317) 685-6188 or spenninger@beneschlaw.com
Joel R. Pentz at (216) 363-4618 or jpentz@beneschlaw.com
Richard A. Plewacki at (216) 363-4159 or rplewacki@beneschlaw.com
Matthew J. Selby at (216) 363-4458 or [mselby@beneschlaw.com](mailto:mjelby@beneschlaw.com)
Peter K. Shelton at (216) 363-4169 or pshelton@beneschlaw.com
Verlyn Suderman at (312) 212-4962 or vsuderman@beneschlaw.com
Clare R. Taft at (216) 363-4435 or ctaft@beneschlaw.com
Jonathan Todd at (216) 363-4658 or jtodd@beneschlaw.com
Joseph P. Yonadi, Jr. at (216) 363-4493 or jyonadi@beneschlaw.com
Eric L. Zalud at (216) 363-4178 or ezalud@beneschlaw.com

Labor & Employment Practice Group

W. Eric Baisden at (216) 363-4676 or ebaisden@beneschlaw.com
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
Peter Kirsanow at (216) 363-4481 or pkirsanow@beneschlaw.com

www.beneschlaw.com