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Only one law firm per practice area in the U.S. is receiving this recognition, making this award a particularly significant achievement. This honor would not have been possible without the support of our clients, who both enable and challenge us every day, and the fine attorneys of our Transportation & Logistics Practice Group.

*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](http://www.bestlawyers.com).*



## The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

### FLASH NO. 55 DISRUPTORS CONTINUE TO CREATE CHALLENGES FOR THE INDEPENDENT CONTRACTOR BUSINESS MODEL

Our increasingly on-demand, technology-driven economy has been a petri dish for disruptive business models that are responsible for many recent challenges to the mainstream trucking industry's use of independent contractors in its operations. Companies like Uber, Lyft, and, most recently, Grubhub, that operationally toe, cross, or altogether ignore the line between employees and independent contractors, unfairly taint the perspective of judges, juries, and the public as a whole. Motor carriers fully-engaged in the typical movement of goods, whether on-demand courier, package parcel, LTL, truckload, or expedited, for example, that engage independent contractors in their operations, are unjustly viewed to be just as aggressive as disruptive enterprises when faced with legal challenges. As a result, the legal attacks on delivery disruptors, like Grubhub, are essential to strategic decision-making.

Late last month, several former drivers for the food delivery service Grubhub filed a class action complaint in the United States District Court for the Northern District of Illinois (*Souran, et al. v. Grubhub Holdings, Inc., et al.*). According to its website, Grubhub is the "nation's leading online and mobile food ordering company." Founded in 2004, Grubhub processes more than 267,000 orders each day in over 1,000 U.S. cities and London.<sup>1</sup> The Complaint alleges that Grubhub misclassified a purported class of drivers as independent contractors and, as a result, violated wage and hour provisions in the Fair Labor Standards Act ("FLSA") and various wage and hour laws in, among other states, Illinois, Oregon, Pennsylvania, New York, and Connecticut.

Not surprisingly, the Complaint is vaguely drafted and entirely one-sided in its presentation of the facts. Plaintiffs allege that Grubhub's customers use Grubhub's website or mobile application to request delivery, and an on-demand dispatch system alerts drivers to travel to the requested restaurant, pick-up the customer's order, and deliver the order to the customer at its home or place of business. However, Grubhub also apparently

"directs drivers' work in detail, instructing drivers where to report for their shifts, how to dress, and where to go to pick up or await deliveries. Drivers are required to follow requirements imposed on them by GrubHub [sic] regarding handling of the food and timeliness of the deliveries. GrubHub [sic] retains the right to terminate the drivers at will."

The Complaint states that drivers are paid a flat fee for each delivery, plus gratuities. Drivers work in shifts of 2.5, 3, or 4 hours. When they are working, drivers are allegedly compelled to stay within assigned areas, and are subject to discipline, including termination, if they refuse dispatch. Drivers are responsible for their own expenses, such as fuel, vehicles and vehicle maintenance, and cellular data costs. As a result, the Complaint alleges that resulting weekly pay rates are often below federal and state minimum wage levels.

A few months earlier, in California, another purported class of Grubhub drivers filed suit (*Tan, et al. v. Grubhub Holdings, Inc., et al.*). In fact, the Illinois district court complaint is nearly identical to the Second Amended Complaint filed in April in the Northern District of California. Again, this is not surprising considering the same San Francisco law firm and lawyers are acting as Plaintiffs' counsel in both cases.

While the Illinois federal case is too new for Grubhub to be required to respond to the allegations in the Complaint, Grubhub's response to the California case suggests it will vigorously defend, likely moving to dismiss the Complaint and to deny class certification. In support of its motion to deny class certification in the California action, Grubhub offered the Declaration of Stan Chia, Grubhub's Vice President of Operations. In his Declaration, Mr. Chia explains that each "Independent Delivery Partner," like the purported class members, enter into Delivery Service Provider Agreements ("DSPA") with Grubhub, a fact omitted from the California and Illinois complaints. The DSPAs expressly provide that Grubhub's Independent Delivery Partners are independent contractors, not employees. Each Independent Delivery Partner acknowledges their understanding of this relationship. In addition, the DSPAs contain an arbitration provision and class action waiver, but Independent Service Providers can choose to opt-out of these provisions.

Lawsuits like these are not positive for mainstream transporters of goods in any segment of the industry. The publicity received by these cases, even though it may be determined that Grubhub acted appropriately and did not misclassify its delivery drivers, tarnishes the tireless efforts of numerous motor carriers that faithfully observe the distinctions between independent contractors and employees in their business operations. Of course, these cases, and cases like them, also reinforce the importance of customized independent contractor service agreements, regular owner-operator fleet assessments, and careful attention to the distinctions between independent contractors and employees. We will continue to monitor developments in both cases. In the meantime, if you have any questions regarding your independent contractor operations, or how the Grubhub cases might affect those operations, do not hesitate to contact Benesch's Transportation & Logistics Team. We have the skills and experience to assist in a meaningful value-added way.

<sup>1</sup> <http://about.grubhub.com/about-us/what-is-grubhub/default.aspx>.

### For more information, contact:

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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.

Allen is a partner with Benesch's Transportation & Logistics Practice Group. He focuses his practice on the representation of companies located throughout the country in virtually all segments of the transportation industry, including, among others, truckload carriers, overweight/over-dimensional carriers, bulk and tank carriers, dray carriers, and third-party logistics providers in matters involving, among other things, independent contractor/owner-operator issues, lost, damaged or stolen freight, freight charge collection, and transportation related service agreements.

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