

NEWSLETTERS**Oregon Court Decisions Address Carrier And Independent Contractor Relationships**

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On July 20, 2016, the Oregon Court of Appeals issued four decisions favorable to motor carriers faced with challenges to the independent contractor status of owner-operators. These cases reflect an understanding of the transportation industry which is not always evidenced by court decisions, and highlight the need for careful drafting of lease agreements with owner-operators.

In *Delta Logistics, Inc. v. Employment Department Tax Section*, 279 Or. App. 498, 370 P.3d 783 (2016), an interstate motor carrier challenged assessments of unemployment insurance taxes based on payments made to owner-operator truck drivers. The carrier leased trucks from independent owner-operators, as allowed by federal regulations. An administrative law judge (ALJ) determined that payments made to the drivers were wages subject to unemployment tax. At issue in the case was whether the Oregon “for-hire” carrier exemption from employment applied. The appeals court extensively reviewed the lease provisions, applicable Oregon law, and relevant federal law. The ALJ’s findings were reversed because the exemption applied. The Court also addressed whether the exemption applied to owner-operators who hired drivers. This group of drivers was also determined to be covered by the exemption. The Court focused on the services performed in operating the vehicle, rather than whether the owner of the truck personally performed the services, and also reversed the ALJ’s findings on this issue.

In *Market Transport, Ltd. v. Employment Department*, 279 Or. App. 515, 379 P.3d 608 (2016), the Court reversed a finding by an ALJ that payments made to drivers were subject to payroll tax. The drivers either owned their trucks or leased them from third parties, and in turn leased the trucks to the carrier. The drivers were paid based on mileage and a series of incentives. Reviewing legislative history and federal regulations, the Court determined that the “for-hire” carrier exemption was intended to apply to drivers who lease their trucks to carriers for operation in compliance with federal law.

May Trucking Company v. Employment Department, 279 Or. App. 530, 379 P.3d 602 (2016), involved a challenge to an assessment of unemployment compensation taxes. An ALJ found that a carrier operating in interstate commerce was an employer of drivers who owned trucks and leased them to the carrier under federal regulations, and drivers who leased trucks from the carrier under a lease-purchase agreement and then leased them back to the carrier. The Court affirmed the ALJ’s finding that Oregon was the “base of operations” for the drivers at issue because the drivers received instructions and began work in Oregon. But that did

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not end the inquiry as to drivers who owned their trucks. The Court extensively reviewed the terms of the lease, and determined that the Oregon “for-hire” carrier exemption from employment applied to these drivers.

In *May Trucking*, the exemption did not apply to drivers subject to lease-purchase agreements, as those agreements stated that the transfer of physical possession of the truck created a “bailment only” and the driver would not acquire title or an ownership interest until the purchase price was paid in full. This underscores the need for careful drafting of lease-purchase agreements.

CEVA Freight, LLC v. Employment Department, 279 Or. App. 570, 379 P.3d 776 (2016), also involved an assessment of unemployment compensation taxes on compensation paid by a carrier to owner-operators. An ALJ’s finding that the services provided constituted “employment” rather than exempt services was reversed, based on the appeals court’s determination that the owner-operators were independent contractors. In a detailed analysis, the Court discussed federal leasing regulations, the driver application process, and the terms of the lease agreement. The ALJ found that the owner-operators were not independent contractors because they did not have their own operating authority, but the Court disagreed. Contrary to the ALJ’s view, the drivers were operating under CEVA’s operating authority, not performing services for the general public. The Court also rejected the ALJ’s conclusion that CEVA exercised control over the means of providing services. Though CEVA provided operating authority and required compliance with safety requirements consistent with federal law, “the owner-operators provided the fundamental means of carrying out the services: their vehicles, drivers and other labor, maintenance, liability and workers’ compensation insurance, and fuel.” Finally, based on the owner-operators’ investment in their trucks, bearing of the risk of loss in their business, and their authority to hire other persons to assist with providing services, the Court disagreed with the ALJ’s determination that the owner-operators were not engaged in an independent trade or business. Because all of the services were exempt from employment, the ALJ was reversed and the carrier prevailed.

While all cases are fact-specific and these four cases involve specific aspects of Oregon law, the analysis employed by the Court may be persuasive in other jurisdictions because of their insightful analysis of how the transportation industry works.

Timothy J. Abeska, a co-chair of the Firm’s Logistics and Transportation Practice Group, is a partner in the South Bend office who is admitted to practice in Indiana and Michigan. He represents shippers of goods, carriers, and brokers in contract negotiations, and in litigation. Tim is a member of the Transportation Lawyers Association and the Association of Transportation Law Professionals. If you have any questions about the cases discussed in this article, Tim can be reached at (574) 237-1119 or tim.abeska@btlaw.com.

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