Regulatory Action and Litigation Addressing Truck Driver Misclassification at the Ports of Los Angeles and Long Beach

Port truck drivers in Los Angeles and Long Beach are challenging illegal misclassification and organizing to improve their lives. In addition to disruptive work stoppages, port drivers are engaging in the large-scale, collective use of legal remedies to secure their rights as employees. They are petitioning federal, state, and local agencies to remedy their misclassification, in addition to filing numerous private wage and hour lawsuits. Our data shows that every federal and state governmental agency that has conducted investigations on the matter has consistently determined that port drivers have an employee relationship with the trucking companies for which they work. The National Employment Law Project (NELP) estimates that port trucking companies in California are annually liable for wage and hour violations of between $780 million and $998 million *each year*

Due to drivers' collective legal actions, breaking the law for profit has become very expensive for port trucking companies. As the consequences for illegal misclassification become increasingly clear, drayage companies seem to be taking two paths: either they embrace the employee model—putting an end to the misclassification that drivers have been subjected to—or they continue to break the law and go bankrupt rather than comply with labor and employment laws.

Among the companies that have chosen to reform their business models to recognize their drivers as employees are Hub Group Trucking and Shippers Transport Express. Hub Group Trucking, a large national firm, after deciding to settle a class-action misclassification suit – and facing another similar suit –converted all of its California drayage drivers into company employees in September 9, 2014.

Most recently, on January 1, 2015, Shippers Transport Express – a subsidiary of SSA Marine, which operates a major terminal at the Port of Long Beach – reclassified all of its drivers as employees. This transformation took place following an investigation by the US Department of Labor and after Shippers settled a class action misclassification lawsuit. As of January 9, 2015, its drivers chose to be represented by the Teamsters. A month later, Shippers Transport Express drivers voted on a one-year contract that increased their hourly wages from $18 to $21 per hour. The new contract also includes full medical insurance, paid leave, and overtime after 40 hours.

For companies that have not reformed their business practices, misclassification continues to have a high cost. Among the companies that have filed for bankruptcy instead of choosing to comply with labor and employment laws are QTS, Inc. and Green Fleet Systems, LLC (GFS), two of the striking companies. For further details in these companies, please see below.

The following summary outlines the liability created by misclassification, and agency decisions findings for each of the companies on strike today.

Pacific 9 Transportation (Pac 9)

Pacific 9 Transportation (Pac 9) is one of the top ten port trucking company serving the Ports of Los Angeles and Long Beach and is owned by Chris Vu Hong, Le Gia Phan, and Alan Ta. There are around 140 drivers working at Pac 9.

- In December 2014, the DLSE determined that four Pac 9 drivers were misclassified and ordered Pac 9 to pay a total of $ 254,627.12 in back wages and penalties.

- The total estimated liability the company would face for all 43 remaining claims is over $6.25 million. If every driver at the company were to file a claim, the company would face an additional liability of at least $12 million. In addition, Pac 9 is facing two class actions lawsuits for alleged wage theft and illegal misclassification of its drivers.

- A regional office of the National Labor Relations Board (NLRB) has made a merit determination that Pac 9 misclassified its workers as “independent contractors” and they were, in fact, employees. The NLRB Regional Office began its investigation in November 2013, when drivers filed an unfair labor practices (ULP) charge with the NLRB, alleging that Pacific 9 had restrained, coerced, and retaliated against union supporters.
    - Though this ULP was originally settled on March 19, 2014, the company soon after violated the terms of the settlement. As part of the settlement, Pac 9 was required to post a notice stating the workers’ right to form a union. Soon after the posting, Pac 9 management sent its drivers a memo telling them that the notice didn’t apply to them because they weren’t employees.
    - As a result, the NLRB has revoked the settlement and issued a new complaint against Pac 9 for the original charges. A hearing is set for May 11, 2015.

- Another government agency, the California Employment Development Department (EDD), has also determined that Pac 9 misclassified its employees and failed to pay unemployment and state disability taxes for its truck driver workforce, as is required by law. Pac 9 has appealed the agency’s decision. The California EDD has also concluded that several individual Pac 9 drivers are employees in making benefit determinations.

- Pac 9 drivers have gone on strike four times over the past year and a half to protest unfair labor practices. Despite the multiple agency determinations that its drivers are employees, the company has refused to address the underlying condition of misclassification. Instead, company management has shifted even more burdensome costs onto its drivers, many of whom have faced weeks of negative paychecks after management deducted costly repairs for Pac 9’s trucks from their weekly pay.

Pac 9 Key Customers: Walmart, Forever 21, Louis Vuitton, CVS, Macy’s, and Family Dollar.

XPO Logistics

XPO Logistics, operating through subsidiaries Pacer Cartage ("Pacer") and Harbor Rail Transport ("HRT"), is among the top five trucking companies servicing the Ports of LA and Long Beach as well as intermodal rail yards in the area. HRT is the company within the XPO Logistics group that specializes in moving goods to and from the ports, while Pacer Cartage specializes in moving goods to the rail yards. There are about 280 misclassified drivers working in both companies in their LA area locations and 90 additional drivers in Pacer Cartage's San Diego location.

For the year 2013, Pacer International, XPO's predecessor, generated a total revenue of $980 million.[1] Pacer's intermodal segment, which includes the drayage service, generated $759.1 million, approximately 77% of the company's total revenues.

XPO Logistics' subsidiaries are facing several legal actions related to misclassification that create great liability for the company:

- In March 2014, the California Division of Labor Standards Enforcement (DLSE) issued findings in the wage claims of seven individual drivers from Pacer San Diego, all of whom it found to be employees who had been illegally misclassified as independent contractors. The DLSE awarded these drivers a combined $2.2 million. Pacer appealed these seven awards to the California Superior Court, San Diego and the court has filed a tentative ruling upholding the DLSE's decision.
- Pacer Cartage is also facing a class action lawsuit due to the company's alleged willful misclassification of employees. This lawsuit involves about 662 drivers and the estimated liability amounts to over $5 million.
- Additionally, three misclassification lawsuits that name 150 drivers as plaintiffs have been filed against XPO Logistics' companies. All of these cases remain pending

  Pacer Key Customers: Procter and Gamble, Walmart, Toyota, and Costco

Intermodal Bridge Transport, Inc.

Intermodal Bridge Transport (IBT), a subsidiary of COSCO Group, which is owned by the Chinese Government, specializes in the movement of containers and trailers from major ports and inland railroad hubs to customers. The company began its operations in Wilmington, CA, and now it has expanded nationally, including to New Jersey and Savannah. In the port of LA, IBT is among the top 20 companies, and the company seems to be growing. There are about 105 misclassified drivers working at IBT in its Wilmington location.

IBT is facing several legal actions related to misclassification that create great liability for the company:

[1] Pacer 10 K, February 2014. After factoring the total cost of purchased transportation and services, which amounts to $753.9 million, Pacer's total net revenue for 2013 was $226.7 million.

- IBT has been named the defendant in two class action lawsuits due to the company's alleged willful misclassification of employees.
- Additionally, one misclassification lawsuit that names 16 drivers as plaintiffs have been filed against IBT.
- All of these cases remain pending.

<u>IBT's Customers:</u> Toyota, General Electric, Target, and JC Penny