

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
 D/B/A ABOVE:
 ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
 P.O. BOX 1160
 COLUMBUS OH 43216-1160

ASSIGNED TO: Thomas Kjar
 STATUS: 1/1/1985 TBA
 DATE: 4/2/2007

Services, while he went through FHD's required training before he was allowed to drive for FHD. The claimant stated he never went to Kelly Services for temp work and never spoke with or was supervised by a Kelly Services representative (as far as he knew).

While the claimant was waiting for his route to become available (it took about a month and a half), he went through the required training classes held by FHD at the Windsor, CT terminal location. The classes consisted of watching training videos, a written exam, a driving exam and "ride-a longs" with either an FHD manager or FHD approved drivers. While in training, the claimant received weekly pay from Kelly Services as a temporary employee. At year-end, he also received a 2006 W-2 from Kelly Services for this pay (attached). FHD provided the claimant with funding sources for the purchase of a vehicle. The claimant used one of these sources (Stearns Bank, ~~IN 7450~~) "purchase" his vehicle, a new 2006 Freightliner MT45, from FedEx (see attached). This was a FHD-approved 18' box truck, owned by FHD. When the claimant was notified by FHD that his route was ready, he was instructed to pick up his vehicle (parked at the FHD terminal in Northborough, Ma) and attach the temporary license plates received when he purchased and registered the vehicle. When the claimant received his vehicle, it already had all the necessary FedEx identifying markings, paint, logos, decals, etc. on it, which made it FHD approved vehicle. The claimant stated his route was pre-determined by FHD and was a 12-ZIP Code area that included Union, Eastford, Woodstock, Thompson & Putnam. The claimant never purchased the route from FHD, it was given to him. The claimant was not able to deviate off the pre-determined route, without prior authorization from FHD. Because of FHD's desire for the claimant to begin his route right away, the claimant did not receive and sign his FedEx Standard Contractor Operating Agreement (copy attached) until he had worked two or three days. The claimant stated the only way to become an approved Delivery Driver with FHD, was as a contractor with a signed operating agreement.

When the claimant was notified by his terminal manager that his operating agreement was available for signature, he was brought into a room where the Terminal Manager went over the contract with him. Although the claimant stated he requested additional time to look over the contract, he felt management pressured him into signing it that day. As part of the claimant's operating agreement, the claimant elected to "participate" in the business support package (at a cost to the claimant of \$4.25 per day), which included: company decals, business cards, standard uniform, random drug testing, contractor assistance programs, annual DOT inspection, mapping software, lease of FHD scanner, vehicle washing service, etc. Claimant had a set Tuesday-Saturday work week (FHD does not provide service on Sundays or Mondays). The claimant was not given a copy of his signed operating agreement, but a few weeks later, was given an unsigned "version" of an agreement identified as his.

The claimant, who lives in Thompson, CT, needed to begin his work day at 4:45 AM to check vehicle, fuel up and drive to the Windsor, CT terminal. Upon arrival by 7:00 AM, claimant would then scan, load and drive back to Union, CT to begin his delivery route. Claimant needed to allow at least 3-3 1/2 hours of driving time to and from

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Reviewed: _____	Affidavit, employer contact letter, claimant backup info.			ETACU	_____
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the Windsor, CT terminal before a single stop on his route was made. Claimant regularly started deliveries on his route no earlier than 9:30 AM and regularly took until 6:00 PM-8:00 PM to successfully make all stops on his delivery route. Claimant was verbally told by then-FHD terminal Manager, Bruce Rodgers, his route would average 60-74 daily stops and during peak (Christmas), may reach up to 100 stops. However, most days throughout the year, the claimant stated that the number of daily stops would routinely exceed the average number quoted by Mr. Rodgers, making it difficult for him to complete his route without working an excessive number of hours. Packages not delivered that day "DNAs" were brought back to the terminal and re-issued the next day, along with that day's new load. The claimant stated the first few weeks went as expected, per what he was told and per his operating agreement, however, it was not long before the amount of daily stops he was expected to make began to dramatically exceed what he was told. This required him to work anywhere from 8-10 hours per day to 10-12 hours per day.

The claimant stated, from the very beginning he became a contracted driver, FHD was interested in him getting a second route. The claimant expressed interest, but wanted to become familiar with his own route and develop an efficient routine, before taking a second route. FHD continued to push a second route on him, until he finally relented in early July '06. The claimant purchased his second vehicle (a repossessed 2005 Freightliner MT45) also having all the necessary FedEx identifying markings, paint, logos, decals, etc. already on it, which made it FHD approved vehicle. The claimant did not have to purchase this route (a 10-ZIP Code area, including Eastford, Pomfret, Killingly, Danielson, Sterling & Oneco). It was also, both pre-determined and given to him by FHD. The claimant wished to hire Emily Champagne as his second driver, however, she was denied by FHD, due to a driving record that was not acceptable to FHD, despite the claimant's contention that her driving record would have been "clean" by the time she would have been ready to take over the route. The claimant's alternate choice (Steve Desjardin) also went through FHD's required background check, drug screening and training. Again, the claimant did not have to pay the cost for Desjardin to become FedEx-approved and again, his second driver was also paid and reported as a Kelly Services temporary employee while going through the FHD approval process. Once approved by FHD, the second driver began his route July 11, 2006.

Both the claimant and Desjardin would regularly complain to management (first, Bruce Rodgers, then, Scott Hagar) about the high volume of their workloads, inconsistent with the workloads outlined in the operating agreements, and frequently would attempt to refuse extra packages, because it would either make their workday too long, or it would not be profitable enough to be worth the time and effort. Often, the claimant and the terminal manager would get into heated disagreements over the claimant's refusal to deliver all of the assigned daily loads. The claimant stated FHD management kept trying to get the claimant to hire extra drivers (at the claimant's expense) to help with the increased daily loads. The claimant would state his routes were not efficient enough to justify paying additional drivers, and would refuse.

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On occasion however, due to personal obligations or injury, the claimant needed to hire relief drivers. Any and all drivers hired by the claimant (P McGoldrick, P McCain & A Ewen) were pre-approved and provided by FHD. On 12/11/06, the claimant fell while beginning his route. He finished that day, but severely injured his left ankle. The claimant was able to continue driving, but could not efficiently run the packages, so was forced to hire helpers to both run packages and occasionally drive his route. Again, the claimant could only use and pay pre-approved individuals (C Sullivan & S Rudin) that were provided by FHD.

The claimant stated neither he, nor Desjardin ever acted in an unprofessional manner to management, however, he stated that Scott Hagar, often would confront them demanding they follow his instructions. Hagar often reminded the claimant of the emphasis on "helping FHD service the customer" and would threaten that "failure of service" under the operating agreement was grounds for termination. The claimant maintains he worked very hard, kept a clean driving record with no customer complaints, received many of the incentive bonuses and awards, and never violated his operating agreement. The claimant stated in the operating agreement FHD provided a "fuel supplement", which was designed to aid the contractors in offsetting the high cost of fuel. Also, as part of the claimant's "business support package", were Contractor Assistance Programs, which included a FedEx website (<https://extend.fedex.com>), designed to assist the claimant toward having a successful/profitable business. Among other availabilities on this website, the claimant was given the opportunity to acquire fuel cards for each of his vehicles. The claimant stated nowhere in either the contract, or the fuel card agreement on the website, is there language that specifies using the fuel card while also retaining the fuel supplement for a vehicle is considered fuel theft and grounds for termination of the operating agreement. The claimant maintained he was never told by management he was doing anything wrong, or was violating his operating agreement. The claimant continued to receive the fuel supplement as part of his pay, while activating and using one of his fuel cards (the claimant did activate, but never used the second fuel card). On 02/22/07, the claimant was brought in by management and security for a taped meeting (what the claimant deemed to be an interrogation). Once the claimant was told why he was being questioned, he refused to answer any additional questions without first consulting his attorney, and ended the meeting. The claimant received a letter, dated 03/02/07, from his Senior Terminal Manager, Scott Hagar, stating his operating agreement was up for termination review, based on a violation of Sec. 1.10(h) due to settlement theft. The claimant then received a generic letter, dated 03/09/07, from Hagar, stating his operating agreement was terminated, effective 03/10/07.

F/R attempted to contact the employer by letter (attached), however no response was received.

Two factors need to be addressed in order to make determinations on whether the claimant's 1099 pay from FedEx Ground, Inc. was covered employment and who the proper employer was for the claimant's temporary/training W-2

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wages (Kelly Services, Inc. or FedEx Ground, Inc.):

1st FACTOR

In order for an individual to be considered an independent contractor, an individual must meet all three parts of the test defined in Connecticut General Statutes Sec. 31-222(a)(1)(B), commonly known as the "ABC Test".

2nd FACTOR

The common law rules of direction and control found in Sec. 31-222(a)(1)(B)(ii)(I) are used to determine who the proper employer is.

Based on an analysis of the above two factors, I conclude the claimant failed to meet all parts of the ABC test, was never an employee of Kelly Services, Inc. and was always an employee of FedEx Ground, Inc., as follows:

- A -

INSTRUCTIONS: During the hiring process, the claimant attended a presentation put on by FHD, where the claimant was required to sign an Independent Contractor Agreement before being brought on. Despite requesting additional time to review the lengthy contract, the claimant was pressured by FHD into signing the contract agreement at the presentation. The claimant did not negotiate any terms of the contract. At the presentation, the claimant was also issued a brochure, called The Entrepreneurial Spirit, a "crash course" in becoming a FHD independent contractor. Included in the brochure was an outline of specific contractor responsibilities, which included FHD standards for service reliability, image, business commitment & vehicle maintenance. The claimant was also, verbally given three leads by FHD on where to purchase/lease vehicles. The claimant then purchased his first FedEx vehicle from one of these leads. The vehicle was required to be of a certain size and appearance. It had to be white and marked with certain colors, logos, numbers and insignias that would identify the vehicle as a part of the FHD system. The claimant's operating agreement states the claimant agrees to mark the vehicle in this way, however, when the claimant purchased both FedEx vehicles, they were presented to him already permanently marked with the features identifying them as part of the FHD system. Before being allowed in any pre-authorized FHD vehicle, the claimant (and any drivers/helpers the claimant used) were required to submit to a criminal background check run by FHD, were required to take a physical examination arranged by FHD, and were required to complete FHD's week-long driver training program in Windsor, CT. FHD allowed the claimant, per the operating agreement, to hire drivers and/or helpers, as needed to assist him in the successful delivery of packages, however, no one was allowed in a pre-approved FHD vehicle without prior FHD approval. That approval included the claimant (and any drivers/helpers the claimant hired), to participate in a one week "ride-along" with either FHD management, or other FHD approved representatives. The claimant (and any drivers/helpers the claimant hired) were required to wear the authorized FHD uniform & ID badge and was required to adhere to a strict code of dress and appearance. FHD prohibited the claimant (and any drivers/helpers the claimant hired) from having long hair (for males), earrings (for

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males) and visible tattoos. As part of FHD's "Business Support Package", the claimant was provided a scanner used to scan packages they delivered. The claimant's operating agreement did not specifically require the claimant to purchase this scanner, however, per language in the operating agreement, the scanner was vital toward meeting FHD's standards of successful customer service. The claimant did not have to purchase this package scanner and software from FHD, however, the scanner had to be compatible with FHD's computer system. The claimant stated any scanner/software purchased from a 3rd party would have cost in the thousands of dollars, therefore, the claimant "purchased" this equipment directly from FHD, who amortized the total cost over a period of time and deducted a portion of this cost from the claimant's weekly pay as part of his "Business Support Package". The claimant was allowed to use the vehicles for his own personal use (or non-FHD service), however, when performing services for FHD, the claimant could not concurrently use the vehicles for any other purpose. Also, if the claimant used the vehicles for any non-FHD service, he was required to cover up, or remove any and all markings identifying the vehicles as part of the FHD system. Finally, also included as part of FHD's "Business Support Package", the claimant was required to wash all of his vehicles weekly (every Saturday). This was done at the terminal, with FHD-provided individuals, at a cost pre-determined by FHD, deducted from the claimant's pay.

TRAINING: The claimant stated he was never had a Driver/Delivery business for himself and FHD did not require any individuals (including the claimant) to have either driving, or business experience. However, because FHD requires all drivers and/or helpers to be qualified and approved by FHD, the claimant (and any drivers/helpers the claimant used) was required to participate in FHD's week-long driver training program in Windsor, CT. Because the claimant did not have any business experience, he took advantage of multiple resources provided by FHD, including the initial FHD presentation, FHD available brochures ("The Entrepreneurial Spirit", "Independent Times" & "How to Incorporate Your Business or Form A Limited Liability Company"), and FHD websites (<https://extend.fedex.com>). All were provided to assist the claimant in lowering costs and achieving a greater efficiency of service.

INTEGRATION: The employer is in the business of providing package delivery services to both businesses and residential customers. The claimant was employed to perform both the Driving and successful Delivery of these packages. The employer relies on these Drivers to successfully deliver packages to the end-user, in order to realize a profit-margin. Without the driving/delivery services that the claimant provided, the employer would generate no income.

SERVICES RENDERED PERSONALLY: The claimant personally performed driving/delivery services for his specified route. The claimant could not "assign" his route to any other individual, or relief driver, at his discretion, without prior authorization from and notification to FHD. It was strict FHD policy that non-approved FHD individuals were never allowed in the vehicles.

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HIRING, SUPERVISING & PAYING ASSISTANTS: While the claimant could hire & pay someone to help him make deliveries and hire & pay additional drivers for additional routes he obtained, FHD directed whom he could hire (by pre-determining who he could not hire) through background and training requirements FHD insisted upon. Claimant attempted to hire various individuals in the past and, due to FHD not accepting the driving record for one and failure by FHD to schedule training for the other, neither were accepted by FHD and ultimately, the claimant could not hire them. All other helpers/drivers the claimant did hire and pay, were done so only after FHD gave its consent. Therefore the claimant was not free to hire his own workers.

CONTINUING RELATIONSHIP: The claimant regularly experienced a 70+ hour work-week, from March 2006 through March 2007. If the claimant failed to work for the employer, it was only due to injury, illness, or problems with the truck.

SET HOURS OF WORK: The claimant was given a set schedule of Tuesday-Saturday and (although per contract, retained some flexibility over an exact arrival time) was expected to show up at the Windsor, CT terminal location by 7:00 AM each day to load, scan and deliver packages in order to meet FHD's delivery commitments, which were never completed before 4:30 PM.

FULL TIME REQUIRED: In order to meet FHD's daily delivery commitments, the claimant needed to regularly devote 12 hours per day and in many instances, in excess of 15 hours per day. Claimant began his day at 4:45 AM to check vehicle, fuel up and drive to Windsor, CT terminal. Upon arrival by 7:00 AM, claimant would then scan, load and drive back to Union, CT to begin his delivery route. Claimant needed to allow at least 3-3 1/2 hours of driving time to and from the Windsor, CT terminal before a single stop on his route was made. Claimant regularly started deliveries on his route no earlier than 9:30 AM and regularly took until 6:00 PM - 8:00 PM to successfully make all stops on his delivery route. Claimant was verbally told his route would average 60 - 74 daily stops and during peak (Christmas), may reach up to 100 stops. However, most days throughout the year, the claimant stated daily stops would routinely exceed the average number quoted by FHD, making it difficult for him to complete his route without working an excessive number of hours to successfully deliver all packages that day. Packages not delivered that day "DNAs" were brought back to the terminal and re-issued the next day, along with that day's new load.

DOING WORK ON THE PREMISES: The claimant had to report to FHD's terminal each morning to load/scan packages for that day's delivery. He then delivered the packages within a delivery route that was pre-determined by FHD. The claimant could not deviate off the route and deliver packages outside the pre-determined area without FHD's permission. FHD also required the claimant to upload and provide delivery data, along with the return of undelivered packages by certain deadlines each day.

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ORDER OR SEQUENCE SET: FHD determined the number of packages the claimant would deliver each day. While the claimant had some flexibility as to the order in which he could deliver the packages and the course he could follow within his route, as a practical matter, FHD determined the order and course, based on their software that "mapped" out the most efficient order and course for delivering the packages.

ORAL OR WRITTEN REPORTS: FHD required claimant to upload and provide delivery data each day. This upload generated a daily "Delivery Settlement Report" that FHD required the claimant to sign each subsequent morning. FHD required the claimant to file monthly vehicle maintenance reports and an annual report listing any traffic tickets the claimant received. In addition, the claimant had to participate in regular monthly meetings held at the terminal in the morning (7:00 AM). These meetings were conducted by the Terminal Manager. There was a sign-in sheet and it was understood that attendance to these meetings was necessary, or he would risk violation of the operating agreement and possible termination.

PAYMENT BY THE HOUR, WEEK, MONTH: FHD paid the claimant a piece rate, on a weekly basis, based on the number of stops and packages handled, a contractor van/vehicle settlement fee, a fuel/mileage fee, and additional fees for special or expedited services the claimant provided. The van/vehicle settlement fee was \$25/day for vehicles 7 years old or less & \$10/day for vehicles 8 years old or more. Certain piece rates (daily mileage settlement) and the van/vehicle settlement fee did not apply to supplemental vehicles. The fuel/mileage fee did apply to supplemental vehicles. The contract also provided for FHD to pay the claimant various bonuses, including a holiday van availability bonus (not subject to supplemental vehicles) and a performance related bonus, based on, among other factors, the claimant having no verified customer complaints against him or his drivers. All fees/bonuses were included in the claimant's operating agreement, were set by FHD, and not negotiated by the claimant.

PAYMENT OF BUSINESS OR TRAVELING EXPENSES: Many of the usual, day-to-day expenses that one would expect to be associated with a Driver/Delivery business (insurance, supplies, fuel, drivers/helpers, uniforms, vehicle cleaning, scanning equipment, software, etc.), were provided to the claimant by FHD, either directly (vehicle cleaning, drivers/helpers, fuel supplement, insurance, uniforms, scanner, software), or indirectly (fuel card, drivers/helpers). Other than the drivers/helpers (which were directly paid by the claimant), many of these expense items either had a cost that was pre-determined by FHD, then deducted from the claimant's weekly pay, such as insurance (where the claimant was "piggy-backed" on FHD's policy) and vehicle cleanings, logos, scanner, software, uniforms, etc. (which were included as part of FHD's "business support package"), or were supplemented by FHD, such as fuel (through a fuel supplement and/or the use of a fuel card, which allowed the claimant to purchase fuel at a discounted rate). The claimant did not have direct negotiations that were separate and apart from FHD on the cost vs. value of these items; as would be expected with a bona fide independent contractor's Delivery business.

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FURNISHING OF TOOLS AND MATERIALS: Although the claimant paid for both vehicles used for the delivery work, the vehicles were owned by FedEx and FHD issued leads to the claimant on where to "purchase" the vehicles and, not only did FHD specify the color, size and appearance of the vehicles, but also issued the claimant these vehicles with the FHD pre-determined identifying markings already on them. In addition, FHD technically allowed the claimant to provide his own scanner on the open market. However, given the software requirements and software updates needed to stay compatible with FHD's computer system, as a practical matter the claimant had to and did use the scanner furnished him by FHD. Finally, the scanner and other materials supplied by FHD (uniforms & ID badges) were forwarded as part of FHD's "business support package" at pre-determined cost, deducted from the claimant's pay.

SIGNIFICANT INVESTMENT: Although the claimant had a substantial investment in delivery vehicles, which were purchased in his own name, they were "purchased" from FedEx and he had little or no other invested capital. Virtually all other assets the claimant used (insurance, equipment, software, supplies, uniforms, fuel, etc.) were either "purchased", "rented", or "supplemented" through FHD and/or their cost was deducted from the claimant's pay. While technically the claimant had the right to sell or assign his contractual rights to another individual, FHD had to approve that individual. The claimant received nothing when FHD terminated his contract, but was still obligated to pay for the "purchase" of the FedEx vehicles. Essentially, the claimant had no assets he could sell as an on-going Delivery business on the open market.

WORKING FOR MORE THAN ONE FIRM AT A TIME: The claimant regularly experienced a 70+ hour work-week for FHD that averaged 12+ hours per day. It is specifically stated in the claimant's operating agreement, when equipment is in the service of FHD, it shall be used by the contractor exclusively for the carriage of goods of FHD, and for no other purpose. This precluded the claimant (and any other drivers/helpers the claimant used) from working for a number of persons/firms at the same time, a common indicator of a true independent contractor.

MAKING SERVICES AVAILABLE TO THE GENERAL PUBLIC: Per the operating agreement, the claimant (and any driver/helper the claimant used) were required to maintain an image and adhere to specific standards of service, set forth by FHD in sections 1.5, 1.10 & 1.12 of the agreement. These standards included: wearing a specific FHD uniform & ID badge, FHD guidelines for clothing & dress, using only FHD-approved equipment identified with specific colors & Logos. Also, per section 1.4 of the operating agreement, it was forbidden to use the equipment for any other purpose, while it was in the service of FHD. This resulted in the claimant (and any drivers/helpers the claimant used) being de-facto representatives of FHD, making it impossible to provide services to the general public as an independent contractor.

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Field Rep.:	UC1A <input type="checkbox"/>	UC1NP <input type="checkbox"/>	UCQ8 <input type="checkbox"/>	Status	_____
Thomas Kjar	UC2 <input type="checkbox"/>	UC405 <input checked="" type="checkbox"/>	Check <input type="checkbox"/>	Cashier	_____
	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Affidavit, employer contact letter, claimant backup info.			ETACU	_____
				FAU	_____

06/25/2007 15:0

REG. NO.: 92-271-15
TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS OH 43216-1160

ASSIGNED TO:
Thomas Kjar
STATUS: 1/1/1985 TBA
DATE: 4/2/2007

RIGHT TO DISCHARGE: The claimant would report to Scott Hagar, Senior Terminal Manager of the Windsor, CT location, who worked with the claimant and all the contracted drivers to make certain that the packages were loaded at the beginning of each workday, the packages got delivered that day, and that FHD's customers were satisfied. The claimant stated he always met FHD's standards of service and delivery results, per the guidelines in the operating agreement, and received bonuses and awards accordingly. On many occasions, however, the claimant (and Steve Desjardins, the claimant's other route driver) would be engaged in heated discussions with Hagar over various issues, such as the load volume, route & delivery inefficiencies, customer complaints, paperwork, etc. Many of these occasions would end with Hagar threatening to terminate the claimant's contract per violation of section 1.10 of the operating agreement, forcing the claimant and/or Desjardins to obey his demands. The claimant stated in the operating agreement FHD provided a "fuel supplement", which was designed to aid the contractors in offsetting the high cost of fuel. Also, as part of the claimant's "business support package", were Contractor Assistance Programs, which included a FedEx website (<https://extend.fedex.com>), designed to assist the claimant toward having a successful/profitable business. Among other availabilities on this website, the claimant was given the opportunity to acquire fuel cards for each of his vehicles. The claimant stated nowhere in either the contract, or the fuel card agreement on the website, is there language that specifies using the fuel card while also retaining the fuel supplement for a vehicle is considered fuel theft and grounds for termination of the operating agreement. The claimant maintained he was never told by management he was doing anything wrong, or was violating his operating agreement. The claimant continued to receive the fuel supplement as part of his pay, while activating and using one of his fuel cards (the claimant did activate, but never used the second fuel card). On 02/22/07, the claimant was brought in by management and security for a taped meeting (what the claimant deemed to be an interrogation). Once the claimant was told why he was being questioned, he refused to answer any additional questions without first consulting his attorney, and ended the meeting. The claimant received a letter, dated 03/02/07, from his Senior Terminal Manager, Scott Hagar, stating his operating agreement was up for termination review, based on a violation of Sec. 1.10(h) due to settlement theft. The claimant then received a generic letter, dated 03/09/07, from Hagar, stating his operating agreement was terminated, effective 03/10/07. The claimant was not terminated due his failure to produce the desired results (successful delivery of packages to meet the needs of the customer) he was originally hired for. The right to discharge is a significant element of FHD's control of forcing the claimant to obey their specific instructions, which is consistent with an employer/employee relationship.

Based on the above, it is clear that the claimant was not free from FHD's direction and control both under his contract of hire and in fact. Therefore the claimant did not meet test A.

- B -

From their website (www.fedex.com/us), FedEx Ground states they specialize in cost-effective, small package

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	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
Reviewed: _____	Affidavit, employer contact letter, claimant backup info.			ETACU	_____
				FAU	_____

06/25/2007

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
P.O. BOX 1160
COLUMBUS

ASSIGNED TO:
Thomas Kjar
STATUS: 1/1/1985
DATE: 4/2/2007

TBA

OH 43216-1160

shipping, offering dependable business-to-business delivery or convenient residential service through FedEx Home Delivery and FedEx SmartPost. The claimant's duties of Driving/Delivery were within the normal course of the employer's business. The claimant also performed all of his services at the employer's places of business. The claimant had no business location separate from the FedEx terminal location in Windsor, CT. The claimant drove a vehicle "purchased" from FedEx, was expected to report to the employer's terminal location by 7:00 AM to load and scan packages, then was required to make FHD customer deliveries within a route that was pre-determined by FHD (an extension of the employer's location) all day, until he was finished. If a residential customer was not available for signature of a package delivery, the claimant would have to leave a FedEx door tag (attached) that only listed FedEx contact information on it, demonstrating FedEx attempted the service, not the claimant. Any specific comments or complaints by a customer, regarding the claimant or his service, were always addressed to FedEx then relayed to the claimant by FedEx. The claimant never dealt with customers directly, but only as a representative of FedEx. It is important to note that the claimant delivered packages to customers of FHD. It was FHD who contracted with these customers to deliver their packages. The claimant did not contract with any individual customers to deliver packages; those individuals were not his customers but rather were FHD customers. The claimant provided services directly at FHD's business location (the terminal in Windsor) and at FHD's customers locations, which are an extension of FHD's business location; the place where the business is customarily performed.

Based on the above, it is clear that the claimant provided services within the usual course of FHD's business and provided services within the places that FHD operates its business. Therefore, the claimant did not meet test B.

- C -

The claimant stated he never had his own Driver/Delivery business and never worked as an independent contractor prior to or subsequent to his work for FHD. Although the claimant paid for the FedEx vehicle used on his route, he did so in order to obtain work for FedEx and not because he wished to conduct an independently established business (see BYRNE TRUCKING, INC. vs. EMPLOYMENT DIVISION, OREGON SUPREME COURT, 12/5/78). FHD issued leads to the claimant on where to "purchase" their (FedEx's) vehicles and, not only did FHD specify the color, size and appearance of the vans, but also issued the claimant these vehicles with the FHD pre-determined identifying markings already on them. Also, the claimant never obtained his own insurance. Instead, FHD pre-arranged the details, with the claimant listed under FedEx's existing policy (see attached FHD's on-line enrollment for Protective Insurance), with the pre-determined cost deducted from the claimant's pay. In addition, although FHD technically allowed the claimant to provide his own scanner on the open market, given the software requirements and software updates needed to stay compatible with FHD's computer system, as a practical matter the claimant had to and did use the scanner furnished him by FHD. This scanner and other "assets" supplied by FHD (uniforms & ID badges) were forwarded as part of FHD's "business support package" at a pre-determined cost, again, deducted from the claimant's

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	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc. _____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec. _____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W. _____
Reviewed: _____	Affidavit, employer contact letter, claimant backup info.			ETACU _____
				FAU _____

06/25/2007 15:00
 REG. NO. 92-277-75
 TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
 D/B/A ABOVE:
 ADDRESS: C/O TALX EMPLOYER SERVICES, LLC
 P.O. BOX 1160
 COLUMBUS

ASSIGNED TO:
 Thomas Kjar
 STATUS: 1/1/1985 TBA
 DATE: 4/2/2007

OH 43216-1160

pay. The claimant's service of both the driving and successful delivery of packages to businesses and residential customers was an integral part of the employer's business and required the claimant to regularly devote 12-15 hours per day to complete his route. The claimant regularly experienced a 70+ hour work-week for FHD. It is specifically stated in section 1.4 of the claimant's operating agreement, when equipment is in the service of FHD, it shall be used by the contractor exclusively for the carriage of goods of FHD, and for no other purpose. While servicing the routes, the claimant (and any driver/helper the claimant used) was required to maintain an image and adhere to specific standards of service, set forth by FHD in sections 1.5, 1.10 & 1.12 of the agreement. These standards included: wearing a specific FHD uniform & ID badge, FHD guidelines for clothing & dress, using only FHD-approved equipment identified with specific colors & Logos, rendering the claimant (and any drivers/helpers the claimant used) a de-facto representative of FHD, making it impossible to provide services to either the general public, or for a number of firms at the same time. The claimant had to report to FHD's terminal each morning to load/scan packages for that day's delivery. He then delivered the packages within a delivery route that was pre-determined by FHD. The claimant could not deviate off the route and deliver packages outside the pre-determined area without FHD's permission. FHD also required the claimant to upload and provide delivery data, along with the return of undelivered packages by certain deadlines each day. While the claimant could hire & pay others to help him make deliveries and hire & pay additional drivers for additional routes he obtained, FHD directed whom he could hire (by pre-determining who he could not hire) through background and training requirements FHD insisted upon. Claimant attempted to hire various individuals in the past and, due to FHD not accepting the driving record for one and failure by FHD to schedule training for the other, neither were accepted by FHD and ultimately, the claimant could not hire them. All other helpers/drivers the claimant did hire and pay, were done so only after FHD gave its consent.

All these factors clearly show the claimant did not render services in the capacity of an entrepreneur. No evidence has been submitted to support the contention that the claimant established a package delivery business independent of his connection with FHD, as is required by statute. No evidence has been submitted to support the contention that the claimant was customarily engaged in an independently established package delivery business at the same time he performed services for FedEx, as is required by statute (see DIONNE vs. NELSON FREIGHTWAYS No. 691-BR-89). FedEx failed to provide evidence the claimant held himself out to the public as an independently established business of the same nature as the service performed. The claimant did not operate a delivery business at a separate business location, or in a separate designated area in his home. The claimant did no advertising for any delivery business, had no separate phone line or listing, and did not use his own business cards. The claimant further stated all 2006 income earned as a subcontractor was from delivery work he performed for FHD. F.A.S. INTERNATIONAL vs. REILLY 179 Conn. 507, 427 A. 2d 392 (1980) states that a contractor must have one or more enterprises which exist apart from their relationship with the employer in question, which will survive the termination of that relationship. It continues by stating the mere ability to engage in other activities is not sufficient. F.A.S. INTERNATIONAL also states that a worker is an employee until the party claiming the exemption proves

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Reviewed: _____	Affidavit, employer contact letter, claimant backup info.			ETACU	_____
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06/25/2007
REG. NO.:

92-271-15

ASSIGNED TO:

Thomas Kjar

STATUS: 1/1/1985

TBA

DATE: 4/2/2007

TRADE NAME: FEDEX GROUND PACKAGE SYSTEM INC
D/B/A ABOVE:
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otherwise. The claimant signed the FedEx Standard Contractor Operating Agreement, because it was one of the conditions to getting the job. BROWN vs. THE CLEANING CREW No. 16-BR-89 (3-23-89) states that language in a contract which characterizes an individual as a contractor is not a controlling factor. The primary concern is what is done, not what a contract says. In addition, the claimant's signed operating agreement is invalid per Sec. 31-272 of the CT General Statutes, which states: "No agreement by an employee to waive, release or commute his rights to benefits or any other rights under this chapter shall be valid..."

Based on the above, it is clear that the claimant did not establish a package delivery business independent of his relationship with FHD. In addition, he was not customarily engaged in an independently established package delivery business, providing services for others while performing services for FHD. Therefore, the claimant did not meet test C.

In conclusion, the facts clearly demonstrate that FedEx has failed to show the claimant, a multiple-route contractor, met any parts of the ABC test (see FEDEX GROUND vs. OREGON EMPLOYMENT DEPARTMENT (2006)). In fact, LATIMER vs. ADMIN. 216 Conn. 237 252 (1990) states that an employer must satisfy all three parts of the ABC test. In addition, the claimant was never an employee of Kelly Services, Inc. (90-152-80). The claimant never had the intention for working for Kelly Services as a temporary employee, never set foot in a Kelly Services employment office, and never dealt with a Kelly Services supervisor. ESA vs. ADMINISTRATOR No. 180-BR-89 (2-23-89) states that an employer/employee relationship is not established merely through a contract of hire between two parties, only an analysis of the common test for a master and servant relationship found in Sec. 31-222(a)(1)(B) (ii)(I) can be used to determine who the proper employer is. As it was clearly demonstrated above, because all services were performed for FHD, and all direction and control was provided by FHD, the claimant was only an employee of FHD and all remuneration, regardless of the source, should be reported under FedEx Ground, Inc.

All payment information from both Kelly Services, Inc. and FedEx Ground, Inc. was forwarded from the claimant. Because FedEx has not responded to my letter, I am passing the claimant's wages per the attached signed affidavit. See attached copy of UC-767 for the claimant's base period and ABP.

Field Audit, please issue a 21-day letter with appeal rights. Also, due to the employer's size and nature of the employer's business, there are many other suspected misclassified single-vehicle contractors, multiple-vehicle contractors, temporary drivers, and temporary helpers, along with possible misclassified contractor-paid drivers/helpers performing services for FedEx Ground, Inc. Therefore, please issue a FERAT Audit of the above employer.

See related report on 90-152-80.

	Enclosures:			Distribution:	
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	UC853 <input type="checkbox"/>	UC767 <input checked="" type="checkbox"/>	UC918 <input type="checkbox"/>	Del. Acc.	_____
	UC5a <input type="checkbox"/>	UC5b <input type="checkbox"/>	UC536 <input checked="" type="checkbox"/>	WG Rec.	_____
	UC142 <input type="checkbox"/>	Other <input checked="" type="checkbox"/>		C.E./C.W.	_____
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				FAU	_____