

7th Circuit Court of Appeals Hears Argument in FedEx Ground Drivers Contractor Misrepresentation Case

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In December 2010, a federal judge in Indiana placed an obstacle in the way of the drivers' lawsuits by finding in a number of cases that the drivers were contractors despite the more than 10,000 pages of testimony and documentary evidence the drivers had submitted in support of their claims. In the December 2010 decision, U.S. District Court Judge Robert Miller concluded, in a number of the class action cases, that the drivers were independent contractors and not employees. At the same time, Judge Miller found that the drivers in the states of Kentucky, Nevada and New Hampshire were employees for purposes of certain worker-protection statutes, just as the court had found some Illinois drivers to be employees in an earlier decision. The drivers filed appeals in each of the cases in which they were unsuccessful. After extensive briefing, the first of these appeals, centering on drivers who worked in the state of Kansas, were the subject of the January 12, 2012 argument before the Seventh Circuit Court of Appeals.

At issue in the appeals is whether Judge Miller should have sided with FedEx Ground or should have left the issue of the drivers' classification to a jury to decide. While the evidence showed that FedEx Ground required drivers to comply with policies that controlled their uniforms, trucks, how they maintain their vehicles, how they carry packages and how they interface with customers, in order to provide a uniform appearance to FedEx Ground's customers – most of whom have no clue that the drivers are not FedEx Ground employees, the court found that this was not enough to make the drivers employees based upon the unique circumstances of the consolidated class actions. The Court then found that FedEx Ground's myriad of rules were only "suggestions and best practices" or were based upon "results" and not how the drivers perform their work.

"FedEx Ground exercises absolute control over these drivers and its contract specifically retains for the company the right to that control," said Beth Ross of Leonard Carder, LLP of San Francisco, one of the lead attorneys for the drivers, and the attorney that argued the appeal. "The drivers know the difference between a 'suggestion' and an order. When a driver fails to follow the company's many directions, even on an issue such as how they carry the packages, he or she is threatened with termination and/or fired. Because of this pervasive control, the court should have found that the drivers are employees." Ross added, "At the very least, there was ample evidence of employment status that warranted a trial, especially given the broad definition of what is an employee under the Kansas statute."

The Plaintiffs' attorneys, many of whom attended the argument, expect that the Court will issue a decision in the next few months. Drivers should check the website or contact their local attorneys for updates.

Interested drivers may listen to the Seventh Circuit Court of Appeals' podcast of the argument at http://www.ca7.uscourts.gov/fdocs/docs.fwx?submit=showbr&shofile=10-3115_001.mp3.