BuchalterNemer
A Professional Law Corporation

Client Alert

August 2013

# California Trucking and Shipping Companies Must Evaluate Owner-Operator Relationships in Light of Los Angeles Superior Court Ruling

Joshua Mizrahi, Esq.

Trucking companies that operate in California and also utilize independent contractor "owner-operators" to ship goods throughout the country must re-evaluate whether or not the contractors are misclassified in light of the Los Angeles Superior Court's ruling in *Garcia v. SeaconLogix, Inc*.

In *Seacon*, four Port of Long Beach truck drivers for Seacon Logix, Inc., a southern California shipping company, filed a claim with the Division of Labor Standards Enforcement, also known as the California Labor Commissioner ("DLSE"), against Seacon claiming that they should have been classified as employees. They sought reimbursement of business expenses and fees, including fuel, repair costs, registration, truck rental payments, and insurance costs after working for Seacon for a short time (four to eight months). The DLSE ruled in favor of the drivers, finding that they should have been classified as employees of Seacon, not independent contractors, and were therefore entitled to damages, penalties and interest in the amount of $105,089.15.

Seacon appealed the ruling of the DLSE to the Los Angeles Superior Court. After a four-day bench trial, the Superior Court issued a decision agreeing with the DLSE. The Superior Court found that Seacon exerted sufficient control over the drivers such that the drivers were Seacon's employees and that Seacon had to reimburse the drivers for their business expenses and insurance costs, in the amount of $107,802.16, including penalties and interest. Seacon is in the process of appealing the decision of the Superior Court. In the interim, trucking companies who operate in Southern California should analyze whether they are misclassifying their owner-operators by comparing the allegations in the *Seacon* case to their own situations. The drivers alleged the following to support their argument that they were misclassified:

- As a condition to work for Seacon, each driver was required to enter into a contractual arrangement requiring the drivers to lease a truck from Seacon (in light of the Port of Long Beach's Clean Truck Program) and obtain insurance. The lease agreements were characterized as "lease-to-own" agreements, whereby each driver purportedly agreed to pay a truck rental fee deducted from each paycheck every week, and at the end of 260 weeks, the drivers would own the trucks.
- The drivers were required to maintain and pay for liability insurance for their trucks. The insurance policy was arranged, purchased and provided by Seacon and also deducted from the drivers' weekly paycheck.
- Neither the truck rental nor insurance fees were negotiated by the drivers as Seacon set the rates on a "take-it-or-leave-it" basis.
- Seacon charged all of its drivers who leased trucks the same amounts for the lease and insurance of each truck.
- The trucks were registered in the name of Seacon and also had the Seacon logo affixed to the front cab door. Seacon required that each of its trucks carry the Seacon logo on its door so that it was visible as a Seacon truck.
- The drivers were paid by the load hauled based on a set price that was based largely on the distance traveled to deliver each load. The rates were determined and set by Seacon.
- The drivers could not turn down a job without facing the risk of discipline (i.e., not getting future work from Seacon).
- The jobs were assigned by a Seacon dispatcher and the dispatcher was in constant communication with the drivers while driving loads. Seacon provided some drivers with a phone to be able to communicate with the dispatcher.
- Despite having a "Sub-Haul" (independent contractor) agreement, Seacon scheduled and expected the drivers to arrive at Seacon every day, Monday through Friday. If they failed to come in, they would be subject to having the relationship terminated by Seacon.

This alert is published as a service to our clients and friends. The material contained here is provided for informational purposes only and is not intended to constitute advertising, solicitation or legal advice. For more information, visit www.buchalter.com.

- The drivers were not able to subcontract loads to other drivers or companies. The drivers did not hire any other drivers to drive the trucks, and they did not operate multiple trucks.

- The drivers were required to provide notice to Seacon when they were not available to carry loads on "scheduled" work days.

- The drivers were required to park the trucks on Seacon's lot and each truck was inspected daily by a Seacon employee.

- The drivers filled out an I-9 form and employment application when they first provided services to Seacon.

- The drivers also alleged that Seacon prohibited or "highly discouraged" them from using their trucks in any capacity other than in making deliveries for Seacon.

The drivers argued that Seacon classified them as independent contractors to avoid paying unemployment insurance, workers' compensation insurance, and social security taxes. In short, the drivers alleged that they had to absorb many of Seacon's business expenses and risk, therefore subsidizing Seacon's business.

The most important factor that a court (or the DLSE, Employment Development Department, Department of Labor or the Internal Revenue Service) considers in determining the appropriate classification of a worker, is the level of the company's right to control the manner and means of the worker's performance.

In *Seacon*, the four drivers contended that Seacon had the "right" to control every critical aspect of their daily delivery operations. Seacon allegedly provided the customer, the haul and the locations where the driver would deliver the haul. Seacon allegedly set the rates and collected those rates directly from Seacon's customers. The drivers were purportedly required to be at the warehouse early in the morning to effectively receive a route for the day. If they did not show up early, they would not receive work. The drivers also alleged that Seacon prohibited or highly discouraged them from using their trucks in any capacity other than in making deliveries for Seacon.

The ruling is not surprising in view of the fact that courts and government agencies are cracking down on misclassification of employees as independent contractors. Also, it is important to note that, although the four drivers in *Seacon* requested damages for reimbursement of business expenses under Labor Code section 2802, there are extensive additional potential repercussions for misclassifying employees as independent contractors. For example, companies that are found to misclassify employees as independent contractors may face the following consequences:

- Stop orders and penalty assessments pursuant to Labor Code section 3710.1;

- Liability for overtime premium[1], meal and rest period pay, and other remedies available to employees under the Labor Code and Orders of the Industrial Welfare Commission, including penalties and payment of attorney's fees;

- Exposure for tort liability for injuries suffered by employees when workers compensation insurance is not secured (Labor Code section 3706);

- Exposure for unfair business practices (Business and Professions Code section 17200);

- Tax liability and penalties (IRS and EDD sanctions for misclassification include penalties, fines, interest and imprisonment for up to a year; the IRS can also recoup taxes directly from a company that misclassifies an employee as an independent contractor where the worker fails to pay his/her own taxes);

- Criminal liability (Labor Code section 3700.5); and

- In addition to any other penalties or fines permitted by law, employers who misclassify an employee may be subject to civil penalties of $5,000.00–$15,000.00 per violation under Labor Code section 226.8 (this may be

[1] Some truck drivers are exempt from overtime if their hours are regulated by the United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13 or Title 13 of the California Code or Regulations, subchapter 6.5, Section 1200 et seq.

This alert is published as a service to our clients and friends. The material contained here is provided for informational purposes only and is not intended to constitute advertising, solicitation or legal advice. For more information, visit www.buchalter.com.

increased to $10,000.00–$25,000.00 per violation if an established pattern or practice of misclassification is found).

The foregoing is not an exhaustive list of potential penalties and fines a company may face in the event it is determined that it misclassified an employee. Therefore, if your company utilizes independent contractor owner-operators to ship goods, it is critical that an analysis be performed under the protection of the attorney-client privilege to determine whether your company is at risk.

Joshua Mizrahi is an Associate in the Labor and Employment and Litigation Practice Groups in the Firm's Los Angeles office. He can be reached at 213.891.5258 or jmizrahi@buchalter.com

This alert is published as a service to our clients and friends. The material contained here is provided for informational purposes only and is not intended to constitute advertising, solicitation or legal advice. For more information, visit www.buchalter.com.