News on industry developments and transportation projects from the Transportation and Logistics Law Group at Dean & Fulkerson

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ROAD REPORT

■ **SLOPPY RECORDS MAKE TRUCKING COMPANY OWNER LIABLE** When a judgment was entered against a trucking company, the court extended the judgment to cover the individual assets of the company's owners because there were no corporate minutes, no assets retained to cover liabilities, and the owners commingled corporate and personal funds.

Semmaterials, L.P. v Alliance Asphalt (D. Idaho 2008)

■ **SLEEPER BERTH – "ON DUTY" FOR WORKERS COMP** In husband-wife team driving operation, wife sues husband and employer for driving accident while wife was in sleeper berth. Result: even though "off duty" for HOS purposes, wife still was "employee" for workers comp purposes. Only remedy: workers comp.

Amerisure v Carey Transportation Michigan Court of Appeals, 2007

■ **DRIVER TAX "EXPERT" SENT TO SLAMMER** A tax preparer who specialized in truck driver tax returns was sent to prison for advising drivers to take large deductions based on formulas rather than on the drivers' actual expenses. His sentence was increased because he claimed expertise in the trucking industry and used a promotional video advertising his ability to get high refunds for truck drivers.

U.S. v Daulton (6th Cir 2008)

■ **BILL OF LADING SIGNATURE – CARRIER CAN SUE SHIPPER, AVOID BROKER** Broker hires carrier, gets paid

ON THE DOCK

■ **TRUCK SAFETY EXPO** Make plans to attend the 2008 Michigan Truck Exposition and Safety Symposium Wednesday, February 20, at the Lansing Sheraton Hotel. D&F will be presenting seminars on trucking contracts and documents, employment issues involving health-challenged drivers, and environmental issues for truck terminals. Stop by our booth for more information.

D&F Attorneys: John Bryant, Ian Hunter, Jim O'Brien, Neill Riddell

■ **FIGHTING MIOSHA** D&F attorneys are assisting a client's presentation of a defense to a Michigan Occupational Safety and Health Administration (MIOSHA) "hazard claim" relating to a tractor trailer. D&F is arguing that all issues are controlled by federal motor carrier safety statutes.

D&F Attorney: Neill Riddell

■ **SERVICE GUIDE OVERHAUL** D&F recently completed a review and rewriting of a tariff and service guide for a truckload carrier client. Goals: add liability protection, protect against shipper chargebacks, clarify late delivery standards.

D&F Attorney: John Bryant

FEATURE:
HIRING THE CURRENTLY EMPLOYED MICHIGAN DRIVER

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FEATURE ARTICLE

HIRING THE CURRENTLY EMPLOYED MICHIGAN DRIVER

Who's on the Hook for Unemployment if it Doesn't Work Out?

By Neill Riddell

Quiz time. Here are your facts:

Bob Smith has been an employee-driver for Old Job Cartage for a couple of years. One day, however, he hears about New Job Cartage which is offering better pay and benefits. So, he checks it out, receives a New Job offer, and quits Old Job.

Six weeks later New Job Cartage realizes that its labor costs are too high and lays off several drivers, including Bob who then files for unemployment.

Now the question: is Bob eligible for unemployment benefits and, if so, which employer's account, if any, will be charged?

Some of you are saying to yourselves that this is easy – he does not get any benefits. He quit one employer and failed to satisfy a requalification with the other.

If that is your answer then ask yourself this: is it ever that easy?

Of course it isn't. These same facts were recently presented to two Administrative Law Judges in two separate cases. One judge concluded that Bob is not disqualified, and that Old Job is chargeable for his benefits. The other judge concluded there was no disqualification and that New Job is chargeable.

As it turns out, although the ALJs disagreed on the issue of who is chargeable, they were both right on the issue of disqualification.

Typically, a voluntary quit is the kiss of death for an unemployment claim as the Michigan statute makes clear that an individual is disqualified from receiving benefits if he or she leaves work voluntarily without good cause attributable to the employer or employing unit. Indeed, Michigan presumes that any quitting is for reasons other than those attributable to the employer and shifts the burden of proof to the quitting employee to prove otherwise.

There is an exception to this general rule, however, and that exception is at the heart of driver Bob's case. Although a voluntary quit for reasons unattributable to the employer is usually disqualifying, this is not the case when an individual leaves work to accept permanent full-time work with another employer and performs services for that employer. So, an employee can quit a good job with a good employer, take another job and, if laid off or terminated for non-disqualifying reasons before requalifying, still collect unemployment.

But back to the question which perplexed our two Law Judges: from whom?

Equity and fairness suggests that it should be New Job because, after all, driver Bob would likely have still had a job to this day if he had not quit Old Job and, thus, it would seem unfair to penalize Old Job.

And, indeed, under the statute, the answer appears to be New Job. Although Bob had not worked a full qualifying period with New Job (which was the factor apparently bothering one of the two ALJs), it is not necessary that he do so. Rather, the Michigan statute expressly states:

"Wages earned with the employer whom the individual last left ..., for the purpose of computing and charging benefits, are wages earned from the employer with whom the individual accepted work ..., and benefits paid based upon those wages shall be charged to that employer."

Although not altogether clear from the orders issued by the ALJs, the divergence in the two cases may instead arise out of differing interpretations of "that employer," with one ALJ relating the term to the former while the other related it to the subsequent employer.

Nevertheless, employers in the position of both Old Job and New Job should be mindful of this exception to the "voluntary quit" doctrine when assessing the potential associated costs of certain employment actions.

ROAD REPORT

by shipper, skips with the money. Carrier allowed to collect from shipper because shipper signed carrier bill of lading and contract documents didn't bar carrier suit. "Why pay twice?" defense doesn't work.

Oak Harbor Freight Lines v Sears
(9th Cir 2008)

■ **BILL OF LADING SIGNATURE – CARRIER CAN'T SUE SHIPPER, AVOID BROKER** On virtually the same facts as the Oak Harbor case, a different court ruled that a carrier could not sue a shipper directly when a broker had failed to pay the carrier. Important factors: (1) broker promised to pay carrier even if not paid by shipper, and (2) broker indemnified shipper against carrier suits.

USA Motor Express, Inc.
(N.D. Ala. 2007)

ON THE DOCK

■ **WITHDRAWAL LIABILITY** D&F continues to advise clients on reducing risks associated with assessments for withdrawal liability from multi-employer pension plans. Recent projects: determining impact of client bankruptcy filing on withdrawal liability of client and related controlled group, working with client to negotiate withdrawal to facilitate sale of client business, and evaluation of withdrawal liability assessment for compliance with ERISA.

D&F Attorney: Janet Lanyon

■ **YARD SWITCHING INJURY** A yard switcher driver was injured while opening the doors on the trailer of a D&F client. When the switcher's worker comp carrier sued for reimbursement, D&F used the Michigan No Fault Statute to obtain a summary judgment dismissing the claim.

D&F Attorney: Jerry Swift

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