

Litigation Update Drivers and the Independent Contractor Model in California

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The *UBER* Case: When is \$100 million not enough?



- ▶ *O'Connor v. Uber Technologies, Inc.*, (U.S. District Ct., Northern District of California)
- ▶ Class Action by Drivers (about 250,000)
- ▶ Allege misclassification as IC
- ▶ If employees, all benefits of Labor Code

Claimed Damages:

- ▶ Unreimbursed expenses for fuel, insurance, etc.
- ▶ Uber withheld “tips” (ads said tips included in fare)
- ▶ No protection from “deactivation”
- ▶ No right to organize
- ▶ PAGA –Private Attorney General Act—penalties

Damage Claim: @ \$850 Million



Defense by Uber: IC

- ▶ minimal control
- ▶ drivers set their own hours, days
- ▶ No direct supervision, no uniforms, drivers supply their own car, etc.
- ▶ multiple factors, jury question
- ▶ same factors across multiple industries

Parties settle.

Proposed settlement:

- ▶ No change status
 - ▶ Change method of “deactivation”
 - ▶ Tips
 - ▶ Pay up to \$100 million
 - ▶ PAGA
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- ▶ August 2016: Held, not enough!
 - Reasons: really only \$84 million, 10 % of claim
 - Covers multiple suits in other states
 - Not enough given to state (PAGA)



Cotter v. Lyft

- ▶ Class action for all former Lyft drivers.
- ▶ Misclassification again
- ▶ Claims for minimum wage, w.comp, overtime, etc.)
- ▶ About 150,000 drivers
- ▶ Claim about \$64 million (court estimated \$126 million)
- ▶ Same analysis as Uber case

Settlement: \$12.7 million

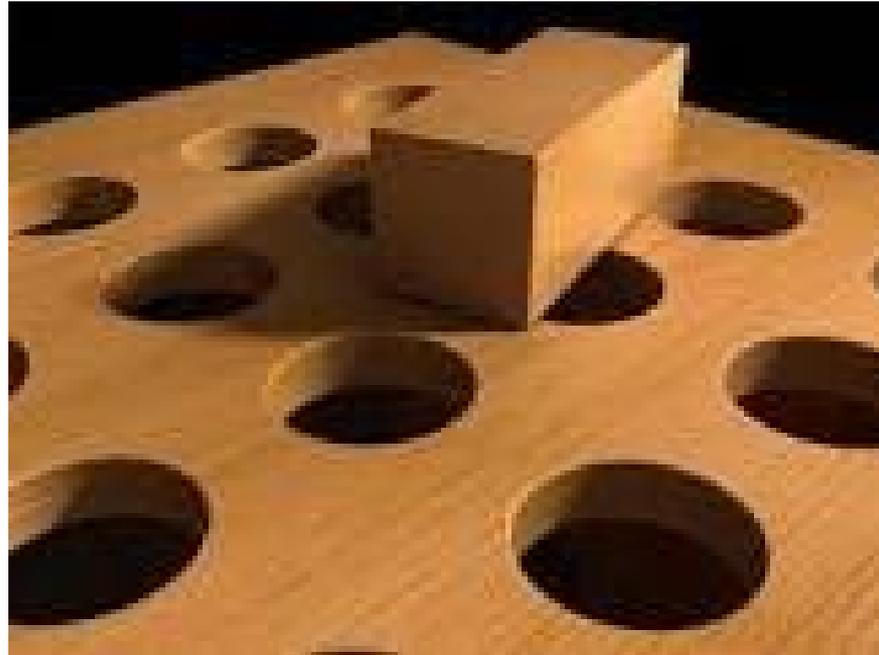
- ▶ Similar terms as Uber—keep IC model
 - ▶ \$1 mil to PAGA
 - ▶ Protections for tips, labor organizing
-
- ▶ April 2016—Court held, not enough!

Final Settlement: \$27 million– approved June 2016



Court telegraphs Sacramento:

“As should now be clear, the jury in this case will be handed a square peg and asked to choose between two round holes. . . .absent legislative intervention, California's outmoded test for classifying workers will apply in cases like this.



Industry epidemic

- ▶ Amazon drivers file nationwide misclassification action (Rittman v Amazon (W.D. Wash)—pending
- ▶ Fed Ex--\$500 million and counting
- ▶ Uber Rush and Uber Eats
 - NYC bike couriers -pending

Closer to home:

- ▶ Talavera v QTS, Inc. (Cal. Superior Ct., L.A. County)
- ▶ Port truckers settle class action misclassification suit
- ▶ Wage and hour violations
- ▶ 400 truckers
- ▶ \$5 million

- ▶ Villapando v. Excel Direct (N.D. Dist Cal)
- ▶ Logistics company serving Home Depot, JC Penny
- ▶ 386 drivers misclassified
- ▶ \$13.5 million

Common claims in Trucker IC Misclassification lawsuits

- ▶ Class Action
- ▶ Unpaid Overtime (Federal exemption)
- ▶ Failure to provide meal and rest breaks (no preemption)
- ▶ Unpaid rest breaks
- ▶ Unreimbursed expenses (phones, insurance, licensing, etc.)
- ▶ PAGA
- ▶ (cont'd)

The list goes on . . .

- ▶ Derivative claims:
 - Inaccurate wage statements
 - Failure to timely pay wages due
 - Failure to pay minimum wages
 - Penalties
 - Interest

The tail that wags the dog: Attorney Fees awarded to successful plaintiff, but not a successful defendant unless bad faith

Questions

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