



# A Comprehensive Review Of The Grubhub Trial Closing Arguments

Insights

11.01.17

After a five-hour closing argument session in a California federal court on Monday, the gig economy is waiting with bated breath and trying to hazard their best guesses about how the judge will rule in the high-stakes *Lawson v. Grubhub* misclassification trial. Will Judge Jacqueline Scott Corley determine that former driver Raef Lawson was properly characterized as an independent contractor, dashing his hopes of a larger recovery and giving the gig economy in general a much-needed legal boost? Or will she determine that he was an employee all along, sending ripples of panic through the headquarters of gig economy companies across the country?

Although your author was not in the courtroom on October 30, we have collected five excellent summaries from reporters who were there, and have condensed them all for you here so you have an opportunity to make your own best guesses.

## Judge's General Comments On Legal Standards

Cara Bayles from Employment Law 360 reported that Judge Corley said what we've long figured: that answering 21st-century misclassification questions for gig economy companies using 20th-century legal standards isn't easy. "The tricky part is trying to fit in this gig economy to existing labor rules," she said. "It's a unique situation that's hard to figure out."

## A Question Of Credibility

As a stark reminder that this case is comprised of actual people and not just a stale analysis of legal regulations and case law, one of the key issues that emerged during the trial and was rehashed during closing arguments centered on the plaintiff's credibility – or lack thereof. According to TechCrunch's Megan Rose Dickey, evidence received at trial showed that Lawson lied on his resume about attending a three-year program, which he did not complete. "It also came up that Lawson applied to work for GrubHub during the litigation, but under a different name," Dickey said, and that he said no when asked if he had driven for GrubHub before during the application process. Courthouse News reporter Nicholas Iovino reported that Grubhub's attorney, Michelle Maryott, concluded by saying "It's clear Mr. Lawson will lie and say anything to get what he wants."

The judge was apparently not impressed with Lawson's truthfulness. "So I know he's willing to not tell the truth," Judge Corley said, "so I do have an issue with his credibility." According to Ars Technica's Joe Mullin, the judge interrupted Shannon Liss-Riordan, Lawson's lawyer, to point out that her client was untruthful, not only because he produced a "fabricated resume," but because

he lied on his GrubHub application submitted after filing the lawsuit. Mullin reports that the judge indicated that her decision would reflect the fact that Lawson was not credible.

Lawson's attorneys did their best to salvage the situation. According to Mullin, Liss-Riordan said that "GrubHub didn't really rebut the facts. Their focus seemed to be on trying to undermine the plaintiff, and his credibility – trying to claim that he was a bad worker. That made for good news headlines for GrubHub but I'm not sure how that helped prove its case."

How this will all shake out is unclear. According to TechCrunch's Dickey, Judge Corley said the issue may not be determinative in the end. "If he's an employee," the judge said, "it doesn't matter if he was lying or not."

### **The Critical "Control" Factor**

As with all independent contractor misclassification disputes, the resolution usually lies in determining whether the business exerted sufficient control over the worker. And that appears to be the case here, as well. As we reported in last week's summary of the legal briefing in the case, the parties agreed that the controlling case regarding this issue is the 1989 California case of *Borello & Sons v. Department of Industrial Relations*. That case created a multi-factored, common law test for determining whether a relationship is an employee-employer relationship or an independent contractor arrangement; the most critical factor is whether the company to whom the service is rendered "has the right to control the manner and means of accomplishing the result desired."

"If you look at the facts, frankly, I don't think there is very much question" that GrubHub has failed to prove the burden that Lawson was an independent contractor, said Shannon Liss-Riordan, Lawson's lawyer, according to TechCrunch's Dickey. According to Dickey, the plaintiff's attorney also said she thinks it's a pretty "straight-forward case." She pointed to the priority scheduling system for drivers and how the dispatchers had their favorite drivers who would receive more orders, concluding that "those are the types of things employers do."

EL360's Bayles reported on the defense attorney's response to these arguments. Maryott reportedly noted that "Lawson could sign on and off when he wanted, only took on shifts voluntarily, faced no restrictions on his methods for delivery, chose the region where he worked, and could even use the apps of food delivery competitors while driving for Grubhub." According to Bayles, Maryott's argued that Lawson "called the shots. He controlled whether and when to work. It was all up to him."

In a creative maneuver, Grubhub's attorneys used Lawson's credibility problems against him when it came to the control argument. Ars Technica's Mullin reported that Maryott argued that Lawson was able to defraud the company because of the company's lack of oversight, pointing out that the evidence regarding his frequent actions of claiming to be working while actually toggled off the system was "evidence of lack of monitoring and supervision." As EL360's Bayles reported regarding the alleged fraudulent activities, Maryott concluded by pointing out that "Mr. Lawson did this for many, many days and no one was contacting him saying, 'Hey, where are you?' It never happened."

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The judge made some comments that seemed to signal she was sympathetic to Grubhub's position. According to Dickey, she noted how if Lawson woke up in the morning and didn't want to make deliveries, he didn't have to. The right to control when someone work is "sort of the big distinction there," Judge Corley reportedly said. Also, according to Courthouse News's Iovino, the judge was impressed with the fact that Lawson signed up to work for Grubhub in August 2015 but did not sign up for a shift or make his first delivery until two and a half months later. She said that supports Grubhub's argument that Lawson made his own schedule and that the company did not levy sufficient control over him to deem him an employee.

### **Contractor Or At-Will Employee?**

That being said, there were apparently plenty of statements made by the judge that could lead the plaintiff to conclude she would rule in his favor. According to The Recorder's Ben Hancock, Grubhub had the right to end the relationship at will, "a factor she said California law gives heavy weight to in determining an employment relationship." Judge Corley said to Grubhub attorneys, "it's one factor, but it's of inordinate importance, so I think you have that heavy burden."

Grubhub replied by arguing that the employment agreement's termination provision was mutual, according to TechCrunch's Dickey, which therefore would weigh in favor of independent contractor status. That didn't sit well with Judge Corley, however, according to The Recorder's Hancock, who said: "Any at-will employee can always quit because of the 13th Amendment to the United States Constitution," referring to the amendment that abolished slavery.

### **The Written Agreement**

The written agreement between the two parties, which had been digitally accepted by Lawson at least three times, also came front and center during the closing arguments, and the judge's statements did not give Grubhub any comfort. Although the company pointed out the agreement demonstrated Lawson's digital acknowledgement that he was an independent contractor, The Recorder's Hancock said the document was an unenforceable "contract of adhesion" that he had no choice but to sign. In fact, as reported by Courthouse News's Iovino, the judge said a party's own belief about whether he or she is a contractor is the "least important" of the factors that are examined in determining whether someone is misclassified.

### **What Business Is Grubhub In?**

Another factor seemed to fall against Grubhub in the judge's eyes. As we pointed out in our summary of the legal briefing, Grubhub argued that food deliveries are not the core of its business, which would mean the drivers do not carry out the most essential function of the company. Instead, Grubhub says it is an online take-out marketplace, marketing restaurants to a broad audience of consumers and offering a singular digital destination to browse for dining options. If the consumer chooses to place an order to have the food they have viewed online then delivered to their residence or place of business, it says, that is a secondary function of the business and the app. But according to Courthouse News's Iovino, "Judge Corley did not appear to buy that argument."

“I’d like to have Grubhub stand up and make that argument to their investors,” the judge reportedly said. As [The Recorder’s Hancock](#) reported, the judge indicated she “doubted that very much,” seemingly agreeing with Lawson’s attorneys that delivery was more than ancillary to Grubhub’s business. “I don’t believe it,” she reportedly said, shutting down debate over that topic.

### **Working For Competitors**

A factor that certainly weighs in favor of Grubhub’s case, however, is that Lawson worked for several other gig companies, including several of Grubhub’s direct competitors. Apparently Lawson’s attorneys tried to argue that Lawson was terminated from Grubhub’s platform for moonlighting with other companies, but [The Recorder’s Hancock](#) said that the judge rejected that argument. “I don’t think the evidence supports that,” Judge Corley said.

### **When Will We Know The Outcome?**

At the conclusion of the oral argument session, Judge Corley thanked both sides and predicted that her ruling would not end the dispute about whether typical gig economy workers are misclassified or not. “I doubt I will be the last word,” she said, according to [Courthouse News’s Iovino](#). Still, although hers might not be the final word, her decision will be monumental and thus is highly anticipated.

According to [TechCrunch’s Dickey](#), “Judge Corley is expected to rule soon(ish).” Judge Corley no doubt knows that her decision will be one day scrutinized by an appeals court, so she’ll want to spend some time to draft up a solid decision. However, for all we know she might have already made up her mind, and could have spent the better part of the last seven weeks working on a final order. In other words, we might see a final ruling on the case in a matter of days or weeks; although if I were a betting man, I would expect to see this first stage of the proceedings completed by Thanksgiving.

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