

The Square Peg and the Round Hole – W2 Driver or IC? Let the Judge (as the Jury) Finally Decide!

Insights

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GrubHub, the food delivery app, has been in a legal battle with a former delivery driver over the driver's classification as an independent contractor since 2015. Initially filed as a class action in state court in San Francisco, the case was removed to federal court where U.S. Magistrate Judge Jacqueline Corley of the Northern District of California ruled in 2016 that the case would not proceed as a class action. In the most recent news from the case, Judge Corley indicated that the case will proceed to a bench trial on the key issue of whether the driver was properly treated as an independent contractor or whether the driver should have been a W2 employee. Like Lyft and Uber, GrubHub utilizes on demand workers – who are treated as independent contractors – through smartphone apps. So a trial decision in the GrubHub case would certainly have a major impact on these and other gig-economy companies.

We recently announced the news about this impending trial on our blog, but here are some more details that provide more context to the situation. With a nod to the other more high profile cases against Uber and Lyft, Judge Corley said that “[t]here actually hasn’t been a judgment yet ... on applying the new economy to ... the square peg and the round hole.” Judge Corley attributed the square peg/round hole reference to District Court Judge Vince Chhabria, who presided over a high profile Lyft case that ultimately settled.

Perhaps not surprisingly, the GrubHub former driver is represented by Boston attorney Shannon Liss-Riordan. Ms. Liss- Riordan has pursued litigation against Lyft (\$27 million settlement approved in June 2016) and Uber (\$84 million negotiated settlement rejected by the presiding judge in August 2016). Ms. Liss-Riordan also has a class action against GrubHub filed in Chicago federal court.

The GrubHub case in California is headed to a bench trial before Magistrate Judge Corley that is scheduled to begin on September 5, 2017. So stay tuned to see whether the case is resolved prior to the trial or whether we finally see a gig battle decided at trial.

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Joseph P. Shelton
Regional Managing Partner
615.488.2901
Email