

**STATE OF MINNESOTA  
IN THE COURT OF APPEALS**

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Advanced Delivery Systems, Inc. and  
TransGuard Insurance Company of  
America,

Case No.: A08-2239

Petitioner,

**APPELLANTS' INFORMAL REPLY  
BRIEF**

vs.

Alfredo Jaime,

Respondent.

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**ARGUMENT**

**I. THE DISTRICT COURT ERRED IN DEFERRING JURISDICTION OVER APPELLANTS' DECLARATORY JUDGMENT ACTION.**

Respondent continues to rely on an unpublished decision of the Minnesota Court of Appeals, which is neither precedential nor persuasive, and flawed arguments with regard to judicial efficiency and legislative intent. The Minnesota Supreme Court has already addressed the issues presented in this case, and Respondent's efforts to distinguish that case are ineffective. Jurisdiction on this matter was properly before the District Court, and in accordance with Minnesota Statutes, § 555.06, the Court could refuse to enter a declaratory judgment only if that judgment "would not terminate the uncertainty or controversy giving rise to the proceeding." There has been no argument that a decision by the District Court would not have resolved this particular controversy in its entirety, and therefore, jurisdiction should have been retained.

Respondent initially challenges the applicability of the Minnesota Supreme Court's decision in *Minnesota Chippewa Tribe v. State*, 339 N.W.2d 55 (Minn. 1983).

Respondent claims that the Court “only allowed the declaratory judgment issue to move forward because the Indian Tribe’s sovereign immunity raised an issue as to whether the tribe (as employer) would be subject to the Worker’s Compensation Act in the first place.” (Respondent’s Informal Brief, p. 6)

At the outset, the *Minnesota Chippewa Tribe* decision does not include such a holding. Most importantly, however, Respondent refuses to recognize that Appellants’ declaratory judgment action is based upon precisely the same premise as the action brought by the tribe - the issue in both cases is whether the workers’ compensation act applies to the respective claims. In this case, if it is determined that Respondent is an independent contractor, jurisdiction does not rest with the Minnesota Department of Labor & Industry and the Office of Administrative Hearings. See Minnesota Statutes, § 176.014, subd. 1(1) (Excludes “persons who are independent contractors as defined by rules adopted by the commissioner.”) Because the trial court in the *Minnesota Chippewa Tribe* case was dealing with a threshold issue, as is present in this case, the Minnesota Supreme Court held that “judicial economy would dictate that the proceedings under the compensation act would await outcome of the declaratory judgment action.” *Minnesota Chippewa Tribe*, 339 N.W.2d at 56.

Respondent’s Informal Brief also emphasizes legislative intent and judicial economy when arguing that jurisdiction over this matter properly rests with the Office of Administrative Hearings. As was held in *Minnesota Chippewa Tribe*, the Minnesota Supreme Court has already held that the interests of judicial economy weigh *in favor of* a declaratory judgment action rather than against one. A declaratory judgment action

allows for a quicker resolution of threshold issues, and may provide an efficient alternative to a full-blown workers' compensation proceeding. With regard to legislative intent, there can be no argument that it was the intent of the legislature to allow for the speedy and efficient delivery of benefits. However, it was also the intent of the legislature to exclude certain classes of individuals from coverage. When such a controversy exists, a declaratory judgment proceedings satisfies the goals of both the Declaratory Judgment Act and the Workers' Compensation Act. In this case, the District Court improperly deferred jurisdiction over Appellants' declaratory judgment action and should be reversed.

**II. RESPONDENT'S MISSTATEMENT OF THE FACTS DOES NOT CREATE A GENUINE ISSUE OF MATERIAL FACT. RESPONDENT IS AN INDEPENDENT CONTRACTOR AND SHOULD BE EXCLUDED FROM COVERAGE.**

During his deposition, Respondent testified as follows:

- Although he did not recall signing a lease agreement similar to the document in Appellants' Appendix, he was leasing the truck he was driving while working with Advanced Delivery Systems. (Dep. of Alfredo Jaime, pp. 44, 51, 92-93)
- He was the person responsible for employing assistants. (*Id.* at 44)
- He was the person responsible for maintenance and operating expenses. (*Id.* at pp. 44-45)
- He was the person responsible for the operation of the truck and direction of the means of performance of the delivery work. (*Id.*)
- He was responsible for purchasing workers' compensation insurance and employer's liability insurance. (*Id.* at p. 46)

- His earnings were based on the loads delivered and not the number of hours he worked. (*Id.* at pp. 28, 30)

Respondent also confirmed that he signed an Independent Truckman's Contract with full knowledge of what those provisions meant. (*Id.* at pp. 41, 43-44) In addition to Respondent's sworn testimony, Appellants' filed supporting documentation as to many of the above-referenced admissions.

In spite of all of this, Respondent now claims that Appellants' argument on this matter is a "red herring," misstating many of the facts and making claims that are directly contradictory to his own sworn testimony. Respondent also submits documentation that is not part of the record on appeal and is not properly before the court.<sup>1</sup> The evidence properly before this Court demonstrates as a matter of law that Respondent was an independent contractor.

At the outset, Respondent makes repeated references to the "limited discovery" conducted on the declaratory judgment action. Respondent appears to be implying that Appellants rushed this matter to a summary judgment hearing without allowing significant discovery. The declaratory judgment action was commenced in April 2008 and Appellants' motion for summary judgment was not filed until July 22, 2008. (See Complaint and Memorandum of Law in Support of Motion for Summary Judgment) Respondent had ample opportunity to conduct discovery and for whatever reason, chose not to. Having made that decision, he cannot now fall back on the argument that insufficient discovery was conducted.

Respondent also itemizes the elements of Rule 5224.0290 and alleges that they are not substantially present in the instant case. In doing so, however, Respondent misstates the facts and makes allegations that are directly contradictory to his own sworn testimony and to undisputed documentary evidence. As to the elements of Rule 5224.0290, the evidence demonstrates as follows:

**A. Ownership or Lease of Equipment**

As set forth above, Respondent did not recall executing the specific lease identified in Appellants' Appendix. However, on three separate occasions, Respondent confirmed that he leased the truck pursuant to his agreement with ADS. He originally testified as follows:

Q. . . . at the time of the accident, was it your understanding that you were leasing the truck that you were driving?

A. Yes.

(Dep. of Alfredo Jaime, p. 51) Respondent testified as follows on a second occasion:

Q. When you signed [the Independent Truckman Contract], were you aware that you would be delivering furniture for ADS in a truck that was leased or purchased by you?

A. Yes.

(*Id.* at p. 44) On the third occasion, Respondent reaffirmed that he leased the delivery truck that he was using for his work. (*Id.* at p. 92-93) In addition to Respondent's

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<sup>1</sup> See Appellants' Motion to Strike filed contemporaneously with Appellants' Informal Reply Brief

testimony, his earnings statements specifically include a deduction for a “Truck Lease Payment.” (Appellants’ Appendix, A7-A10)

**B. Responsibility for Maintenance of the Equipment**

Respondent alleges that “Appellants have introduced no evidence that Mr. Jaime was responsible for the maintenance of either his truck or the equipment provided by ADS.” (Respondent’s Informal Brief, p. 11) Respondent testified as follows at his deposition:

Q. And you talked about the fact that you would be responsible for fuel, maintenance, tires, equipment, insurance, and the other expenses of running the truck. Correct?

A. Yes, I knew that all the time.

Q. And you knew that when you signed [the Independent Truckman Contract]?

A. Yes.

(Dep. of Alfredo Jaime, pp. 44-45)

**C. Responsibility for Operating Costs**

As set forth above, Respondent admitted under oath that he was responsible for the operating costs of his truck. Respondent also cites deductions from his earnings for “fuels and repairs,” but Respondent’s earnings statements reflect no such deductions. (Appellants’ Appendix, A7-A10)

**D. Responsibility for Supplying Necessary Personal Services to Operate the Equipment**

During his deposition, Respondent also addressed his responsibility for supplying personal services for operating the truck. He testified as follows with regard to his understanding of the Independent Truckman Contract:

Q. When you signed [the Independent Truckman Contract], were you aware that you would be delivering furniture for ADS in a truck that was leased or purchased by you?

A. Yes.

Q. And that you would have the aid of a helper that was employed – employed by you?

A. Yes.

(Dep. of Alfredo Jaime, p. 44) Respondent reaffirmed this testimony later in the deposition:

Q. We kind of talked about before that you were the person who leased the truck that you would use. Correct?

A. Yes.

Q. And you were the person responsible for the maintenance and the operating costs for the truck.

A. Correct.

Q. And you would supply the services necessary to operate the truck.

A. True.

(*Id.* at pp. 92-93)

**E. Compensation Based on Work Performed and Not Hours Worked**

Respondent concedes that his earnings were based on a percentage of his deliveries and not on an hourly basis. However, citing his deposition testimony, Respondent goes on to allege that he was paid in the same fashion prior to signing the Independent Truckman Contract. Unfortunately, Respondent's deposition testimony does not support this conclusion. Prior to the following exchange, Respondent was discussing his work as an employee of ADS prior to executing the Independent Truckman Contract. He then testified as follows:

Q. The earnings records that you have there [Appellants' Appendix, A7-A10], do you have any reason to believe that those aren't accurate as far as the amount that you were paid?

A. I would have to compare them to the deliveries that I would make in those days. Because I would get paid per delivery. It wasn't an hourly wage.

(Dep. of Alfredo Jaime, p. 30) Respondent is referring to his earnings records as an independent contractor, but there is no indication that he is referring to his earlier work when he references getting paid per delivery. The testimony is ambiguous, at best, and certainly is not sufficient to overcome the overwhelming evidence of Respondent's compensation while an independent contractor – all of which was confirmed under oath by the Respondent.

**F. Responsibility for Determining Means of Performance**

As is conceded by Respondent, the only element of his work that he did not control was the route he used to deliver furniture. He testified that he was not required to work a "set schedule." (Dep. of Alfredo Jaime, p. 24) He also testified that he would generally work 40 hours per week, but that he would sometimes work a little more and sometimes a little less. (*Id.* at 25)

**G. Contract Identifying the Person as an Independent Contractor**

There is no argument that Respondent executed the Independent Truckman Contract, and his deposition testimony confirmed that he had full knowledge of the terms of that contract when the document was signed.

**III. RESPONDENT HAS PRESENTED NO EVIDENCE THAT HE WAS AN EMPLOYEE, AS DEFINED BY THE WORKERS' COMPENSATION RULES.**

The evidence set forth above demonstrates that Respondent was an independent contractor at the time of his accident. Additionally, Respondent has presented no evidence demonstrating that he was an employee, as defined by Rule 5224.0290. Specifically, the rule addresses being paid an hourly wage, receipt of fringe benefits, working defined hours, and the inability to retain alternative drivers. Respondent concedes that he was not paid an hourly wage, and there is no evidence of "fringe benefits" being provided to Respondent. Respondent testified that he had no "set schedule," and his agreement with ADS specifically allowed him to retain employees for the purposes of operating the delivery truck. Taking all of the evidence into consideration, there are no genuine issues of material fact as to Respondent's relationship

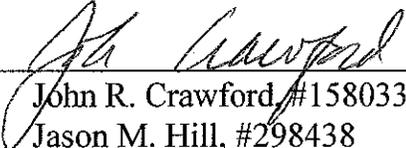
with ADS. Additionally, Respondent has presented no evidence showing a genuine triable issue, and therefore, Appellants' are entitled to summary judgment.

### CONCLUSION

Based on the foregoing, Appellants respectfully request that the District Court's Order Denying Summary Judgment be reversed and that judgment be entered in favor of Appellants, declaring that Respondent was an independent contractor and not an employee of ADS and that therefore, the Minnesota Department of Labor & Industry and the Minnesota Office of Administrative Hearing do not have subject matter jurisdiction over Respondent's claims against Appellants.

**JOHNSON & LINDBERG, P.A.**

Dated: April 30, 2009

By: 

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STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

**AFFIDAVIT OF SERVICE BY MAIL**

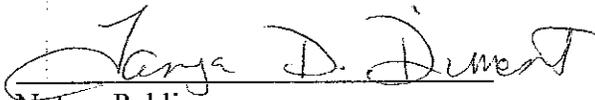
Pattie Jo Diamond, being first duly sworn on oath deposes and states that she did on the 30<sup>th</sup> day of April, 2009, deposit in the United States Mail with the correct amount of postage prepaid thereon an envelope addressed to:

Mr. B. J. Robichaud  
**ROBICHAUD & ANDERSON, P.A.**  
211 Washington Avenue North  
Minneapolis, MN 55401

in which was contained a true and correct copy of **Appellants' Informal Reply Brief** in *In Re Advanced Delivery Systems, Inc. and TransGuard Insurance Company of America v. Alfredo Jaime* (Appeal File: A08-2238).

  
Pattie Jo Diamond

Subscribed and sworn to before me  
this 30<sup>th</sup> day of April, 2009.

  
Notary Public

