

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

In re FEDEX GROUND PACKAGE  
SYSTEM, INC., EMPLOYMENT  
PRACTICES LITIGATION II

No. 03:05-MD-527 RM  
(MDL 1700)

**STATEMENT OF FACTS AND CRITICAL FACTUAL & LEGAL ISSUES**

**I. INTRODUCTION.**

In 1985, a handful of transportation industry veterans formed Roadway Package System, or RPS, to compete in the small package pick-up and delivery business. They were convinced that the skillful use of technology, including bar-coding systems, computers and information management, could revolutionize the industry and enable them to compete head-to-head against the industry leaders. As committed as they were to cutting-edge technology, they were convinced that a critical element of the Company should be founded on one of the mainstays of the trucking and transportation industries for more than sixty years: delegating the pick-up, carriage, and delivery of customer packages to independent contractors. Doing so would create a motivated, entrepreneurial group of drivers who could provide a commitment to the growth of both their businesses and RPS's, and a level of customer service that the Company's competitors, who tended to rely on hourly employees and civil servants, would not be able to match.

Almost immediately, the founders' instincts were proven right. Within ten years, the annual volume of business exceeded \$1 billion. Several thousand pick-up and delivery routes (or "work areas"), with nation-wide coverage, were being serviced by contractors who owned their

trucks and vans, hired and fired their own drivers, and effectively ran their own businesses. These contractors agreed that, even though they would bear the risk of financial loss if they failed, this model would reward them for their skill and hard work in ways that an employer-employee relationship would not.

In 1998, FedEx Corporation, the parent of the Federal Express overnight package service, also took notice of the success of this business and acquired the company. In 2000, FedEx Corporation extended the “FedEx” brand by renaming the package company “FedEx Ground.” Later that year, FedEx Ground launched FedEx Home Delivery to help catalog and online retailers reach their residential customers. From those modest beginnings twenty years ago, independent contractors are now servicing more than 18,000 FedEx Ground routes across North America. Given this large number of routes, naturally there are wide differences within the contractor population. Most independent contractors are attracted to the personal and scheduling freedom that owning a business can afford. Some operate just one route, while others operate multiple routes—farming out the driving and delivery functions to their employees—and generate substantial, six-figure revenues. Some contractors have recognized additional advantages by incorporating their business. Routes are often bought and sold for significant amounts on secondary markets, including eBay, and Internet sites have sprung up to meet the contractors’ business and other needs.

Over the years, inquiries have been made, and proceedings conducted, to confirm that FedEx Ground is adhering to the legal requirements related to its independent contractor business model. Individual contractors—in many cases, those who were not successful in operating their businesses—have sought “employee” status, for example, to sue the Company for employment discrimination. Although there have been some exceptions, the Equal Employment

Opportunity Commission and other federal and state agencies have repeatedly determined that FedEx Ground contractors are not employees.

In addition, ten years ago the Internal Revenue Service conducted a comprehensive review of the Company's independent contractor agreements and concluded in January 1995 that: "We have reviewed the 1994 [Operating] Agreement and based upon a thorough consideration of all the representations made by you and your counsel, we conclude that operations conducted in accordance with the terms of the 1994 Agreement are not inconsistent with an independent contractor relationship with the Owner-Operator." As a result of the IRS determination, the Company agreed to treat the contractors as self-employed persons for purposes of federal employment taxes. Overall, in more than 100 administrative and civil proceedings, FedEx Ground's operations and contractor relationships have been reviewed and upheld as satisfying applicable tests for determining that those who service FedEx Ground routes are independent contractors and not employees.

Against that backdrop, the cases before this Court have been filed by a tiny fraction of contractors who apparently desire the fixed compensation and comparative lack of flexibility afforded to employees rather than the opportunities, flexibility, and ownership afforded to independent contractors. There are a total of 84 named plaintiffs in the presently-coordinated cases. Only fourteen of them are current FedEx Ground contractors. Indeed, the majority of current FedEx Ground contractors have a strong interest in continuing to operate with the independent contractor model. These contractors take pride in their businesses and want to preserve their right to maintain and grow them, not only for the near-term benefit of increased revenues and profits, but to enhance the equity value of their routes over the long-term. These

lawsuits challenge the rights of those contractors to do so—and at the same time threaten FedEx Ground’s rights to operate and expand the business for the parties’ mutual advantage.

**II. THE TRANSPORTATION INDUSTRY’S RELIANCE ON AN INDEPENDENT CONTRACTOR MODEL IS LONG-STANDING AND LAWFUL.**

The issue of the status of owner-operators in the trucking industry is not new. In 1947, the United States Supreme Court decided two landmark companion cases, *Harrison v. Greyvan Lines* and *United States v. Silk*, 331 U.S. 714 (1977). In *Greyvan Lines*, the government argued that the owner-operators were employees based on many of the same factors that plaintiffs argue here. Like plaintiffs here, the government argued that the Greyvan owner-operators should be classified as employees because they could be required to follow a manual of instructions, had to wear a uniform, had to paint “Greyvan Lines” on the sides of their trucks, and had to take a short course in the company’s method of doing business. In *Silk*, the company claimed that owner-operators of coal trucks used for local deliveries were contractors because they furnished their own equipment, worked largely on their own schedules, and were free from the company’s direction and control. The Supreme Court found that the owner-operators in both cases were independent contractors. Critically, the Supreme Court found that the contractors’ investment in their own equipment and opportunity for profit and loss outweighed the alleged elements of “control.” Since then, many courts have found that owner-operators in the trucking business were independent contractors, not employees. *E.g., Merchants Home Delivery Services, Inc. v. NLRB*, 580 F.2d 966 (9th Cir. 1987) (finding independent contractor status for local deliverymen based on entrepreneurial characteristics, investment in own equipment, responsibility to maintain equipment, right to hire assistants, and fact that two of six operators owned more than one vehicle, despite contractors not having proprietary interest in their territories). *See also North American Van Lines v. NLRB*, 869 F.2d 596 (D.C. Cir. 1989) (finding independent contractor

status based on factors including drivers' equity interest in vehicles, entrepreneurial risk assumed by drivers, lack of withholding of driver taxes, and payment based on the job performed and not the amount of time worked) and *Lerma v. United States* 716 F. Supp. 1294 (N.D. Cal. 1988) (finding independent contractor status based on factors including contractor's ownership of vehicles and lack of withholding of taxes).

### **III. THE PRESENT LITIGATION, AND ITS CATALYST: *ESTRADA V. RPS*.**

As would be expected in any delivery network of the size and scope of FedEx Ground, not every independent contractor has succeeded. The varying levels of business skill and experience of those who have come into the FedEx Ground environment have led to some disappointments. In 1999, three California ex-contractors sued RPS, claiming that, although they had signed contracts with the Company that defined their responsibilities and created an independent contractor relationship, the Company exercised a level of control over their day-to-day activities sufficient to require their reclassification as employees for California law purposes. The case is known as *Estrada v. FedEx Ground Package System, Inc.* (Los Angeles County Superior Court Case BC 210130). Plaintiffs sought class action status for their claim to reimbursement of job-related expenses under California Labor Code section 2802. In 2001, that single claim was certified for class treatment on behalf of full-time, single work area ("SWA") contractors. The trial court ruled that those who operated multiple routes were not potential employees and would be excluded from the class. In 2004 the case proceeded to a bench trial on the issue of whether the SWA contractors who chose to participate in the case (less than half of those eligible did) were independent contractors or employees for purposes of the California Labor Code and, if the latter, whether the Company had failed to reimburse the drivers for certain business-related expenses. In July 2004, the trial judge concluded that the class members were employees, and proceeded to trial phases focused on reimbursement and equitable relief,

where the matter now stands. Most of these coordinated cases were filed in the wake of the *Estrada* decision. Many of the complaints reference and incorporate the court's decision. FedEx Ground does not believe the trial court's decision has much (if any) force with respect to these proceedings, and FedEx Ground will appeal the decision once it becomes final. In any event, under California law, the *Estrada* trial court decision is entitled to no preclusive effect from this Court until the appellate process has been concluded.

These coordinated cases will raise a variety of factual and legal questions, but at the outset, three issues will be of paramount importance:

First, a predicate element of each claim in each complaint is whether each plaintiff (named or absent) should be re-classified as an employee and not treated as an independent contractor. Absent such a showing, each claim fails. Thus, one series of factual issues will concern whether, as to each contractor, FedEx Ground has failed to follow the terms of the operating agreement or otherwise failed to treat that owner-operator as an independent contractor. FedEx Ground will demonstrate that it has followed the terms of the operating agreement and has treated each owner-operator as an independent contractor.

Second, whether any independent contractor should instead be classified as an employee for purposes of a particular claim or legal right will depend on the "test" for determining such status under applicable law. There are several. In other words, there is not one, nationally recognized or applied standard for evaluating whether someone should be classified as an employee versus an independent contractor for all purposes under the laws of all states. Some tests are established under common law, some by statute. Although many of the relevant factors are similar, in any particular case, the differences between these tests may be significant.

Third, for the foregoing two reasons, and others, FedEx Ground disagrees that these cases are suitable for treatment on a class-wide basis. FedEx Ground will show that the question of whether there has been some exception to the operating agreement or extra-contractual practices inconsistent with independent contractor status is not amenable to class treatment. While FedEx Ground expects plaintiffs to rely heavily on the fact of class certification in the *Estrada* case, FedEx Ground respectfully submits that a review of the trial court's decision in that case demonstrates that class treatment actually is not appropriate for the adjudication of these claims.

#### **IV. FEDEX CORPORATION AND FEDEX EXPRESS**

FedEx Corporation, the parent company of FedEx Ground, has been named a co-defendant in seven of the coordinated actions. FedEx Express, the overnight air express delivery company that is also a wholly-owned subsidiary of FedEx Corporation, has been named a co-defendant in two of them. No plaintiff has alleged specific factual allegations against either entity, and they are included in the actions either under an erroneous understanding of the corporate structure of FedEx Ground or as part of an imprecise theory of indirect employer liability. Motions to dismiss are pending in all but one of those actions.

FedEx Corporation and FedEx Express believe that the issue of their joinder should be decided at the outset. Neither party is a legitimate defendant in these cases, and neither should be subjected to the unnecessary costs and burdens of a multidistrict litigation. If plaintiffs will not agree to voluntarily dismiss FedEx Corporation and FedEx Express (most of the actions were stayed before oppositions to the motions to dismiss would have been filed), then these co-defendants will seek a prompt briefing schedule on the matter.

#### **V. ALTERNATIVE DISPUTE RESOLUTION.**

FedEx Ground is committed to continuing to do business using an independent contractor model, and has represented to the thousands of owner-operators who have entered into contracts

with the Company that their desire to be treated as independent contractors will be respected. Nonetheless, FedEx Ground (and the other FedEx entities, should they remain parties to the litigation) are prepared to engage in good faith discussions regarding a non-litigated resolution of the cases, with the assistance of a neutral party. FedEx Ground believes that such discussions would be more productive if they were to occur after discovery has been concluded.

\* \* \* \*

Inasmuch as the Court has asked the parties for only a brief introduction to the case at this time, FedEx Ground looks forward to providing more information to the Court on these issues, and others, at the September 26, 2005 pretrial conference—and thereafter. To that end, we have attached to this summary a chart providing the status of Related Cases pending in state and federal court.

Dated: September 20, 2005

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of September, 2005, a true and correct copy of the foregoing Statement of Facts and Critical Factual & Legal Issues was served by facsimile and by U.S. Mail on the following:

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**ATTACHMENT A**

**PENDING RELATED CASES AND MOTIONS**

Below is a compilation of cases pending in federal and state courts challenging the status of FedEx Ground package and delivery contractors, and a short summary of their status.

**Cases Pending in Federal Court**

Section 1: Cases Transferred to this Court Pursuant to Judicial Panel on Multidistrict Litigation's August 10, 2005, Order (alphabetically)

| <b>Case Name</b>  | <b>Court/Judge</b>  | <b>Current Status/Pending Motions</b>  |
|---|---|--|
| <i>Alexander, et al. v. FedEx Ground Package System, Inc., FedEx Home Delivery, Does 1-20</i>       | Northern District of Indiana<br><br>Chief Judge Robert L. Miller, Jr. | <i>MDL Status:</i> Transferred to MDL proceedings from the Northern District of California.<br><br><i>Case Status:</i> Prior to transfer, court denied plaintiffs' motion to remand case to state court, and stayed proceedings pending resolution of the motion to transfer for MDL proceedings.<br><br><i>Pending Motions:</i> No pending motions. |
| <i>Anfinson, et al. v. FedEx Ground Package System, Inc., Schnebeck, Pilakowski, John Does 1-10</i> | Northern District of Indiana<br><br>Chief Judge Robert L. Miller, Jr. | <i>MDL Status:</i> Transferred to MDL proceedings from the Western District of Washington.<br><br><i>Case Status:</i> Prior to transfer, transferor court stayed proceedings pending resolution of the motion to transfer for MDL proceedings.<br><br><i>Pending Motions:</i> Plaintiffs' Motion to Remand pending.                                  |
| <i>Bunger, et al. v. FedEx Ground Package System, Inc., FedEx Home Delivery</i>                     | Northern District of Indiana<br><br>Chief Judge Robert L. Miller, Jr. | <i>MDL Status:</i> Transferred to MDL proceedings from the District of South Dakota.<br><br><i>Case Status:</i> After FedEx Ground's answer to the complaint was filed, transferor court stayed proceedings pending resolution of the motion to transfer for MDL proceedings.<br><br><i>Pending Motions:</i> No pending motions.                     |

| <b>Case Name</b>   | <b>Court/Judge</b>   | <b>Current Status/Pending Motions</b>   |
|--|--|---|
| <p><i>Capers, et al. v. FedEx Ground Package System, Inc., Gaskins, Rettinger, Gelhausen, Collins, DiMaio, FedEx Corp., John Doe and Jane Doe 1-10</i></p> | <p>Northern District of Indiana<br/><br/>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Transferred to MDL proceedings from the District of New Jersey.</p> <p><i>Case Status:</i> Prior to transfer, transferor court granted Defendants' motion to dismiss in part. Discovery on the independent contractor status issue completed prior to the transferor court's issuance of a stay pending resolution of the motion to transfer for MDL proceedings.</p> <p><i>Pending Motions:</i> No pending motions.</p>  |
| <p><i>Craig, et al. v. FedEx Ground Package System, Inc.</i></p>   | <p>Northern District of Indiana<br/><br/>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Transferred to MDL proceedings from the District of Kansas.</p> <p><i>Case Status:</i> Prior to transfer, case was in preliminary discovery stage. Depositions of named plaintiffs and exchange of written discovery completed. During the discovery phase, the transferor court stayed the case pending resolution of the motion to transfer for MDL proceedings.</p> <p><i>Pending Motions:</i> No pending motions.</p>   |
| <p><i>Gregory v. FedEx Ground Package System, Inc.</i></p>   | <p>Northern District of Indiana<br/><br/>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Transferred to MDL proceedings from the Eastern District of Virginia.</p> <p><i>Case Status:</i> Prior to transfer, limited discovery took place: named Plaintiff's deposition taken, Plaintiff provided limited written discovery, and initial disclosures completed. Case was stayed in January 2005, pending resolution of the motion to transfer for MDL proceedings.</p> <p><i>Pending Motions:</i> Motion for Class Certification and Motion to Extend Deadlines pending.</p> |
| <p><i>Gennell, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery</i></p>   | <p>Northern District of Indiana<br/><br/>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Transferred to MDL proceedings from the District of New Hampshire.</p> <p><i>Case Status:</i> After FedEx Ground's answer to the complaint was filed, court stayed proceedings pending resolution of the motion to transfer for MDL proceedings.</p> <p><i>Pending Motions:</i> No pending motions.</p>   |

| Case Name  | Court/Judge  | Current Status/Pending Motions   |
|--|--|--|
| <p><i>Griffin, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery, Does 1-20</i></p>                | <p>Northern District of Indiana</p> <p>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Transferred to MDL proceedings from the Northern District of Illinois.</p> <p><i>Case Status:</i> After Defendants responded to the complaint, transferor court stayed proceedings pending resolution of the motion to transfer for MDL proceedings.</p> <p><i>Pending Motions:</i> FedEx Corp. Motion to Dismiss pending.</p> |
| <p><i>Humphreys, et. al v. Federal Express Corp., FedEx Ground Package System, Inc., FedEx Home Delivery</i></p>               | <p>Northern District of Indiana</p> <p>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Transferred to MDL proceedings from the Western District of Texas.</p> <p><i>Case Status:</i> After Defendants responded to the complaint, transferor court stayed proceedings pending resolution of the motion to transfer for MDL proceedings.</p> <p><i>Pending Motions:</i> FedEx Express Motion to Dismiss pending.</p>   |
| <p><i>Johnson, et al. v. FedEx Home Delivery, FedEx Ground Package System, Inc.</i></p>  | <p>Northern District of Indiana</p> <p>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Transferred to MDL proceedings from the Eastern District of New York.</p> <p><i>Case Status:</i> After FedEx Ground responded to the complaint, transferor court stayed proceedings pending resolution of the motion to transfer for MDL proceedings.</p> <p><i>Pending Motions:</i> No pending motions.</p>                   |
| <p><i>Kilmartin v. Federal Express Incorporated, Federal Express (Cranbury Location), John Does 1-5 and John Does 6-10</i></p> | <p>Northern District of Indiana</p> <p>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Transferred to MDL proceedings from the District of New Jersey.</p> <p><i>Case Status:</i> After FedEx Ground responded to the complaint, transferor court stayed proceedings pending resolution of the motion to transfer for MDL proceedings.</p> <p><i>Pending Motions:</i> No pending motions.</p>                         |
| <p><i>Lee, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery, Does 1-20</i></p>                    | <p>Northern District of Indiana</p> <p>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Transferred to MDL proceedings from the District of Minnesota.</p> <p><i>Case Status:</i> After Defendants responded to the complaint, transferor court stayed proceedings pending resolution of the motion to transfer for MDL proceedings.</p> <p><i>Pending Motions:</i> FedEx Corp. Motion to Dismiss pending.</p>         |

| <b>Case Name</b>   | <b>Court/Judge</b>  | <b>Current Status/Pending Motions</b>   |
|--|---|---|
| <i>Lester, et al. v. Federal Express Corp., FedEx Ground Package System, Inc., FedEx Home Delivery</i> | Northern District of Indiana<br><br>Chief Judge Robert L. Miller, Jr. | <i>MDL Status:</i> Transferred to MDL proceedings from the Eastern District of Michigan.<br><br><i>Case Status:</i> Case stayed by transferor court prior to discovery pending resolution of the motion to transfer for MDL proceedings.<br><br><i>Pending Motions:</i> FedEx Express Motion to Dismiss, and Joint Motion to Extend Stay and Vacate Case Management Status and Scheduling Conference pending. |
| <i>Louzau, et al. v. FedEx Ground Package System, Inc.</i>   | Northern District of Indiana<br><br>Chief Judge Robert L. Miller, Jr. | <i>MDL Status:</i> Transferred to MDL proceedings from the Southern District of New York.<br><br><i>Case Status:</i> Case stayed by transferor court prior to discovery pending resolution of the motion to transfer for MDL proceedings.<br><br><i>Pending Motions:</i> FedEx Ground's Motion for Clarification and/or Motion to Extend Stay pending.  |
| <i>Sheehan, et al. v. FedEx Ground Package System, Inc., FedEx Home Delivery</i>                       | Northern District of Indiana<br><br>Chief Judge Robert L. Miller, Jr. | <i>MDL Status:</i> Transferred to MDL proceedings from the District of Massachusetts.<br><br><i>Case Status:</i> After FedEx Ground responded to the complaint, transferor court stayed proceedings pending resolution of the motion to transfer for MDL proceedings.<br><br><i>Pending Motions:</i> No pending motions.  |

Section 2:      "Tag-Along" Actions (alphabetically)

| <b>Case Name</b>  | <b>Court/Judge</b>   | <b>Current Status/Pending Motions</b>  |
|---|--|--|
| <i>Bertram, et al. v. Federal Express Corp., FedEx Ground Package System, Inc., d/b/a FedEx Home Delivery, and their respective health benefit and pension plans, DOES 1-20</i> | Western District of Kentucky<br><br>Chief Judge John G. Heyburn II | <i>MDL Status:</i> Tag-along status reported to Judicial Panel on Multidistrict Litigation. Conditional Transfer Order not yet issued.<br><br><i>Case Status:</i> Answer due on October 10, 2005.<br><br><i>Pending Motions:</i> No pending motions. |

| Case Name   | Court/Judge  | Current Status/Pending Motions   |
|---|--|--|
| <i>Carlson, et al. v. FedEx Ground Package System, Inc.</i>   | Middle District of Florida<br><br>Judge Susan C Bucklew        | <i>MDL Status:</i> Tag-along status reported to Judicial Panel on Multidistrict Litigation. Conditional Transfer Order not yet issued.<br><br><i>Case Status:</i> Case removed to federal court and answered on July 25, 2005. No further proceedings have taken place.<br><br><i>Pending Motions:</i> No pending motions. |
| <i>Carraher, et al. v. FedEx Ground Package System, Inc.</i>  | Middle District of Florida<br><br>Judge James D. Whittemore    | <i>MDL Status:</i> Tag-along status reported to Judicial Panel on Multidistrict Litigation. Conditional Transfer Order not yet issued.<br><br><i>Case Status:</i> Service has not yet been effected.<br><br><i>Pending Motions:</i> No pending motions.  |
| <i>Cooke v. FedEx Ground Package System, Inc.</i>   | District of South Carolina<br><br>Judge Cameron McGowan Currie | <i>MDL Status:</i> Tag-along status reported to Judicial Panel on Multidistrict Litigation. Conditional Transfer Order not yet issued.<br><br><i>Case Status:</i> Answer due on October 3, 2005.<br><br><i>Pending Motions:</i> No pending motions.  |
| <i>Fleming, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery, Does 1-5</i> | Northern District of Mississippi<br><br>Judge W. Allen Pepper  | <i>MDL Status:</i> Conditional Transfer Order issued and not contested. <sup>1</sup> Case to be transferred to MDL proceedings.<br><br><i>Case Status:</i> Prior to transfer, responses to Complaint filed. No subsequent proceedings.<br><br><i>Pending Motions:</i> FedEx Corp. Motion to Dismiss pending.               |
| <i>Hart v. FedEx Ground Package System, Inc.</i>  | Western District of Pennsylvania<br><br>Judge Thomas Hardiman  | <i>MDL Status:</i> Conditional Transfer Order issued on August 30, 2005, and not contested. Case to be transferred to MDL proceedings.<br><br><i>Case Status:</i> Case removed to federal court and answered.<br><br><i>Pending Motions:</i> No pending motions.   |

<sup>1</sup> FedEx Ground has received a Notice of Opposition to the Judicial Panel on Multidistrict Litigation's August 30, 2005 Conditional Transfer Order from counsel in one action, *Perry v. FedEx Ground, et al.* (D. Mass.). On September 19, 2005, an attorney for FedEx Ground contacted the Judicial Panel on Multidistrict Litigation's Clerk's Office and confirmed that the Panel had received only *Perry's* Notice of Opposition. Accordingly, the other actions subject to the August 30, 2005 Conditional Transfer Order are in the process of being transferred to the Northern District of Indiana for coordinated pretrial proceedings.



| <b>Case Name</b>  | <b>Court/Judge</b>   | <b>Current Status/Pending Motions</b>  |
|---|--|--|
| <p><i>Johnson v. FedEx Ground Package System, Inc., FedEx Home Delivery, and their respective health and benefit plans, Does 1-20</i></p> | <p>Southern District of Iowa</p> <p>Judge Robert W. Pratt</p>                | <p><i>MDL Status:</i> Tag-along status reported to Judicial Panel on Multidistrict Litigation. Conditional transfer order issued on September 16, 2005. Plaintiff's Notice of Opposition due on or about October 3, 2005.</p> <p><i>Case Status:</i> FedEx Ground's Answer to the Complaint was filed on September 14, 2005.</p> <p><i>Pending Motions:</i> No pending motions</p>   |
| <p><i>Larson, et al. v. FedEx Ground Package System, Inc.</i></p>   | <p>Eastern District of Wisconsin</p> <p>Judge Lynn Adelman</p>               | <p><i>MDL Status:</i> Conditional Transfer Order issued on August 30, 2005, and not contested. Case to be transferred to MDL proceedings.</p> <p><i>Case Status:</i> After FedEx Ground responded to the complaint, the parties stipulated to a stay of proceedings. No further proceedings have taken place.</p> <p><i>Pending Motions:</i> No pending motions.</p>   |
| <p><i>Perry, et al. v. FedEx Ground Package System, Inc., FedEx Home Delivery</i></p>   | <p>Northern District of Indiana</p> <p>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Conditional Transfer Order issued on August 30, 2005. Plaintiffs filed Notice of Opposition on September 14, 2005. Opposition brief due September 29, 2005.</p> <p><i>Case Status:</i> Answer due on September 28, 2005.</p> <p><i>Pending Motions:</i> No pending motions.</p>  |
| <p><i>Riewe, et al. v. FedEx Corp., FedEx Ground Package System, Inc., FedEx Home Delivery, Respective Health Plans Does 1-20</i></p>     | <p>Northern District of Indiana</p> <p>Chief Judge Robert L. Miller, Jr.</p> | <p><i>MDL Status:</i> Notice filed with the Judicial Panel on Multidistrict Litigation of this potential tag-along action. Conditional transfer order not yet issued. Plaintiffs have filed a notice with Chief Judge Miller indicating they would not oppose coordinated treatment of this case.</p> <p><i>Case Status:</i> FedEx Ground answered the complaint. No subsequent proceedings.</p> <p><i>Pending Motions:</i> FedEx Corp. Motion to Dismiss pending.</p> |

| <b>Case Name</b>  | <b>Court/Judge</b>   | <b>Current Status/Pending Motions</b>  |
|---|--|--|
| <i>Slayman v. FedEx Ground Package System, Inc.</i>   | District of Oregon<br><br>Judge Ancer L. Haggerty            | <i>MDL Status:</i> Conditional Transfer Order issued on August 30, 2005, and not contested. Case to be transferred to MDL proceedings.<br><br><i>Case Status:</i> FedEx Ground answered the complaint. No subsequent proceedings.<br><br><i>Pending Motions:</i> No pending motions.   |
| <i>Smith, et al. v. FedEx Ground Package System, Inc., FedEx Home Delivery, Respective Health Plans Does 1-20</i> | Western District of Tennessee<br><br>Judge Bernice B. Donald | <i>MDL Status:</i> Conditional Transfer Order issued on August 30, 2005, and not contested. Case to be transferred to MDL proceedings.<br><br><i>Case Status:</i> FedEx Ground answered the complaint. No subsequent proceedings.<br><br><i>Pending Motions:</i> No pending motions.   |
| <i>Tierney, et al. v. FedEx Ground Package System, Inc.</i>   | District of Rhode Island<br><br>Judge William E. Smith       | <i>MDL Status:</i> Conditional Transfer Order issued on August 30, 2005, and not contested. Case to be transferred to MDL proceedings.<br><br><i>Case Status:</i> FedEx Ground answered the complaint. Afterwards, FedEx Ground filed a Motion to Stay and Plaintiffs filed a Motion to Amend Complaint.<br><br><i>Pending Motions:</i> FedEx Ground's Motion to Stay and Plaintiffs' Motion to Amend Complaint pending. |
| <i>Tofaute v. FedEx Ground Package System, Inc.</i>   | District of New Jersey<br><br>Judge Joseph E. Irenas         | <i>MDL Status:</i> Conditional Transfer Order issued on August 30, 2005, and not contested. Case to be transferred to MDL proceedings.<br><br><i>Case Status:</i> FedEx Ground answered the complaint. Afterwards, FedEx Ground filed a Motion to Stay.<br><br><i>Pending Motions:</i> FedEx Ground's Motion to Stay pending.  |
| <i>Willis v. FedEx Ground Package System, Inc., FedEx Corp.</i>   | Eastern District of Pennsylvania<br><br>Judge John P. Fullam | <i>MDL Status:</i> Conditional Transfer Order issued on August 30, 2005, and not contested. Case to be transferred to MDL proceedings.<br><br><i>Case Status:</i> Responses to Complaint due September 26, 2005.<br><br><i>Pending Motions:</i> No pending motions.  |

| <b>Case Name</b>                                     | <b>Court/Judge</b>  | <b>Current Status/Pending Motions</b>   |
|--|---|---|
| <i>Woomer v. FedEx Ground Package System, Inc.</i>   | Western District of Pennsylvania<br><br>Judge Thomas Hardiman | <i>MDL Status:</i> Tag-along status reported to Judicial Panel on Multidistrict Litigation. Conditional Transfer Order not yet issued.<br><br><i>Case Status:</i> Case removed to federal court and answered on September 12, 2005. No subsequent proceedings.<br><br><i>Pending Motions:</i> No pending motions.                       |
| <i>Zabrocki v. FedEx Ground Package System, Inc.</i> | Western District of Wisconsin<br><br>Judge John C. Shabaz     | <i>MDL Status:</i> Tag-along status reported to Judicial Panel on Multidistrict Litigation. Conditional transfer order issued on September 16, 2005. Plaintiff's Notice of Opposition due on or about October 3, 2005.<br><br><i>Case Status:</i> Service has not yet been effected.<br><br><i>Pending Motions:</i> No motions pending. |

Section 3: Other Federal Cases

| <b>Case Name</b>   | <b>Court/Judge</b>  | <b>Current Status/Pending Motions</b>  |
|--|---|--|
| <i>Vargas v. FedEx Ground Package System, Inc., FedEx Home Delivery, Does 1-10</i> | Central District of California<br><br>Judge Alicemarie H. Stotler | <i>MDL Status:</i> Not part of MDL proceedings.<br><br><i>Case Status:</i> Discovery phase.<br><br><i>Pending Motions:</i> No pending motions. |

**Cases Pending in State Court**

| <b>Case Name</b>                                     | <b>Court/Judge</b>  | <b>Current Status/Pending Motions</b>  |
|--|---|--|
| <i>Estrada v. FedEx Ground Package System, Inc..</i> | Superior Court of California, Los Angeles County<br><br>Judge Howard Schwab | <i>Case Status:</i> In accounting and equitable relief phases of the case.<br><br><i>Pending Motions:</i> Motion for equitable relief pending. |
| <i>Tolen v. FedEx Ground Package System, Inc.</i>    | Superior Court of California, Shasta County<br><br>Judge Jack Halpin        | <i>Case Status:</i> In initial stages (case filed in August 2005).<br><br><i>Pending Motions:</i> No pending motions.                          |

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