

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

_____	)	
In re FEDEX GROUND PACKAGE	)	CAUSE NO. 3:05-MD-527 RM
SYSTEM, INC., EMPLOYMENT	)	(MDL-1700)
PRACTICES LITIGATION	)	
-----	)	
THIS DOCUMENT RELATES TO:	)	
	)	
3:05-CV-530 ( <i>Craig</i> - Kansas)	)	
3:08-CV-193 ( <i>Boudreaux</i> - Louisiana)	)	
3:05-CV-595 ( <i>Tofaute</i> - New Jersey)	)	
3:08-CV-336 ( <i>Kelly</i> - Ohio)	)	
3:05-CV-540 ( <i>Humphreys</i> - Texas)	)	
_____	)	

ORDER

The plaintiffs having no objection, the court hereby GRANTS FedEx Ground's motion to reconsider [Doc. No. 2511] portions of the court's February 18, 2011 Order regarding clerical errors in the judgments [Doc. No. 2507].

**I. INDICATIVE RULING IN CRAIG, BOUDREAUX, AND TOFAUTE**

In its February 18 Order, this court indicated to the court of appeals that if certain MDL member cases were remanded because of errors in the judgments this court would amend the judgments in these MDL member cases to include the class definitions approved by this court when granting class certifications in these cases, as listed in the Appendix to the February 18 Order. The Appendix to the February 18 Order is hereby AMENDED with respect to the following three cases, to fully reflect the class definitions and sub-class definitions approved by this court:

- A. 3:05-CV-530 (*Craig* - Kansas)

- Kansas class definition:

All persons who: 1) entered or will enter into a FXG Ground or FXG Home Delivery form Operating Agreement (now known as form OP-149 and form OP-149 RES); 2) drove or will drive a vehicle on a fulltime basis (meaning exclusive of time off for commonly excused employment absences) since February 11, 1998, to provide package pick-up and delivery services pursuant to the Operating Agreement; and (3) were dispatched out of a terminal in the state of Kansas.

- ERISA class definition:

All persons who: 1) entered or will enter into a FXG Ground or FXG Home Delivery form Operating Agreement (now known as form OP-149 and form OP-149 RES); 2) drove or will drive a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) during the class period to provide package pick-up and delivery services pursuant to the Operating Agreement; and 3) were eligible for ERISA plan benefits, absent their mischaracterization as independent contractors.

B. 3:08-CV-193 (*Boudreaux - Louisiana*)

- Class definition:

All persons who, at any time after February 8, 2002, entered into a FXG Ground or FXG Home Delivery form Operating Agreement (now known as form OP-149 and form OP-149 RES) and drove a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) to provide package pick-up and delivery services in Louisiana pursuant to that Operating Agreement.

- Non-damages class definition:

All persons who have since February 8, 2002, entered, or will enter, into a FXG Ground or FXG Home Delivery form Operating Agreement (now known as Form OP-149

and form OP-149 RES) and currently drive, or will drive, a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) to provide package pick-up and delivery services pursuant to that Operating Agreement.

- Sub-class definition:

All persons who, at any time after February 8, 2002, entered into a FXG Ground or FXG Home Delivery form Operating Agreement (now known as form OP-149 and form OP-149 RES), drove a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) to provide package pick-up and delivery services in Louisiana pursuant to that Operating Agreement, and have been discharged or resigned from FXG.

C. 3:05-CV-595 (Tofaute - New Jersey)

- Class definition:

All persons who: 1) entered or will enter into a FXG Ground or FXG Home Delivery form Operating Agreement (now known as form OP-149 and form OP-149 RES); 2) drove or will drive a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) since May 19, 1999, to provide package pickup and delivery services pursuant to the Operating Agreement; and 3) were dispatched out of a terminal in the state of New Jersey.

- Sub-class definition:

All persons who: 1) entered into an FedEx Ground or FedEx Home Delivery Form Operating Agreement (now known as OP-149 and Form OP-149-RES) for the first time during the period from May 19, 1999 through October 15, 2007; 2) drove a vehicle on a fulltime basis (meaning exclusive of time off for commonly excused employment absences) from May 19, 1999 through October 15, 2007 to provide package pick-up and delivery services pursuant to the Operating Agreement;

and 3) were dispatched out of a terminal in the state of New Jersey.

## **II. CORRECTED JUDGMENTS IN HUMPHREYS AND KELLY**

Because FedEx Ground timely moved under Federal Rule of Civil Procedure 60(a) to correct the judgments in *Humphreys* and *Kelly* (see Doc. No. 2487), this court retains jurisdiction over these two cases, despite plaintiffs' notices of appeal. Fed. R. App. P. 4(a)(4)(A)(vi), 4(a)(4) (B)(i). The court therefore RECONSIDERS the portion of its February 18 Order that construed FedEx Ground's Rule 60(a) motion as a motion for an indicative ruling under Rule 62.1(a). The court hereby GRANTS FedEx Ground's Rule 60(a) motion (Doc. No. 2487) and DIRECTS the Clerk to correct the judgments as follows:

### **A. 3:05-CV-540 (*Humphreys* - Texas)**

The *Humphreys* judgment (Doc. No. 2482) shall be corrected to list only the *Humphreys* named plaintiffs (John Humphreys, David Meredith, Jeffrey Quebe, Niles Pinkham, Charles Campbell, and Tim Mershon) and the *Humphreys* case number (3:05-CV-540); the judgment shall not list the *Kelly* named plaintiffs or the *Kelly* case number.

The *Humphreys* judgment shall also be corrected to list the following class definition approved by the court when granting class certification:

All persons who: 1) entered or will enter into a FXG Ground or FXG Home Delivery form Operating Agreement (now known as form OP-149 and form OP-149 RES); 2) drove or will drive a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) since March 6, 2001, to provide package pickup and delivery services

pursuant to the Operating Agreement; and 3) were dispatched out of a terminal in the state of Texas.

B. 3:08-CV-336 (Kelly - Ohio)

The *Kelly* judgment [Doc. No. 2481] shall be corrected to list only the *Kelly* named plaintiffs (Paul Kelly, Dean Johnson, Thomas Wenzlick, Kenneth R. Miner, Adelbert Lawrence, Russell Jackson, and Robert Velo) and the *Kelly* case number (3:08-CV-336); the judgment shall not list the *Humphreys* named plaintiffs or the *Humphreys* case number.

The *Kelly* judgment shall also be corrected to list the following class definition approved by the court when granting class certification:

All persons who: 1) entered or will enter into a FXG Ground or FXG Home Delivery form Operating Agreement (now known as form OP-149 and form OP-149-RES) and/or provide or will provide package pick-up and delivery services pursuant to an executed Operating Agreement; 2) drove or will drive a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) since May 15, 2002 to provide package pick-up and delivery services pursuant to the Operating Agreement; and 3) were dispatched out of terminal in the state of Ohio.

SO ORDERED.

ENTERED: March 22, 2011

\_\_\_\_\_/s/ Robert L. Miller, Jr.  
Judge  
United States District Court