

LEGAL NOTICE

# If You Are Or Have Been A FedEx Ground Or FedEx Home Delivery Pickup And Delivery Driver, a Class Action Lawsuit May Affect Your Rights.

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- FedEx Ground and Home Delivery (“FXG”) drivers have filed a class action lawsuit against FXG alleging that they have been misclassified as independent contractors instead of as employees and denied the benefits and protections of Maryland state law. This case is pending before Judge Robert L. Miller, Jr. in the United States District Court for the Northern District of Indiana (the “Court”).
- In this case, the Plaintiff has asserted claims under Maryland law, including for violation of Maryland’s wage statutes, injunctive relief, and declaratory relief declaring what class members’ rights are under Maryland law.
- The Court has allowed the lawsuit to proceed as a class action on behalf of:

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); 2) drove a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) from May 5, 2003 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 Maryland.

You may also be eligible to participate in a separate class action lawsuit against FXG seeking to recover employment benefits under the Employee Retirement Income Security Act of 1974 (“ERISA”). You should already have received a separate notice pertaining to that action. For additional information pertaining to the ERISA action, please contact the claims administrator or counsel at the address listed below in Section 21.

- The Court has not decided whether FXG did or did not do anything wrong. There is no money available now, and no guarantee there will be. However, your legal rights are affected, and you have a choice to make now:

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:</b>	
<b>DO NOTHING</b>	<p style="text-align: center;"><b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b></p> <p style="text-align: center;">By doing nothing, you keep the possibility of getting money and/or employee benefits that may come from a trial or a settlement. But, you give up any rights to sue FXG separately about the same legal claims in this lawsuit.</p>
<b>ASK TO BE EXCLUDED</b>	<p style="text-align: center;"><b>Get out of this lawsuit. Get no benefits from it. Keep rights.</b></p> <p style="text-align: center;">If you ask to be excluded and money or benefits are later awarded, you won’t share in those. But, you keep any rights to sue FXG separately about the same legal claims in this lawsuit.</p>

Your options are explained in this notice. To ask to be excluded, you must act before **October 14, 2008**. FXG is prohibited by law from asking or telling you to exclude yourself from this action, or even from expressing an opinion as to whether it is or is not in your best interest to remain a class member or exclude yourself from this action.

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- Plaintiff must prove the claims against FXG. If money or benefits are obtained from FXG, you will be notified how this affects your rights.
- If you currently work as a pick-up and delivery driver, FXG may not retaliate against you for participating in any manner in this case.
- **Any questions? Read on and visit [www.fedexclassactionlawsuit.com](http://www.fedexclassactionlawsuit.com).**

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**BASIC INFORMATION**

**1. Why did I get this notice?**

FXG’s records show that you currently work, or previously worked, as a pick-up and delivery driver (“P&D driver”) at FXG. This notice explains that the Court has allowed, or “certified,” a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court holds a trial. The trial is to decide whether the claims being made against FXG, on your behalf, are correct. Judge Miller of the United States District Court for the Northern District of Indiana is overseeing this class action. The

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lawsuit is known as *Thomas Westcott v. FedEx Ground Package System, Inc., et al.*, Civil No. 3:06-cv-00485-RLM-CAN (MD).

### **2. What is this lawsuit about?**

This lawsuit is about whether FXG should classify P&D drivers as employees rather than independent contractors. Plaintiff contends that because FXG kept the right to control how the P&D drivers conducted their work, the P&D drivers should be legally classified as employees rather than independent contractors. FXG disputes this. FXG maintains that the independent contractor classification is appropriate and denies that it has broken any laws. The Court has not ruled on the merits of the positions taken by either the Plaintiff or FXG.

### **3. What is a class action and who is involved?**

In a class action lawsuit, one or more people called “Class Representatives” (in this case Thomas Westcott) sue on behalf of other people who have similar claims. The people who have similar claims to or with the Class Representatives are a “Class” or “Class Members.” The individuals who sued—and all the Class Members like them—are called the Plaintiff. The company they sued (in this case, FXG) is called the Defendant. In this case, all pretrial proceedings are being resolved by the United States District Court for the Northern District of Indiana. If there is a trial of this action, it will then be held in the United States District Court for the District of Maryland. These two courts will resolve issues for everyone in the Maryland class—except for those people who choose to exclude themselves.

### **4. Why is this lawsuit a class action?**

The Court decided that this lawsuit can be a class action and move towards a trial because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts.

Specifically, the Court found that:

- There are numerous P&D drivers whose interests will be affected by this lawsuit;
- There are legal questions and facts that are common to each of them;
- The Class Representative’s claims are typical of the claims of the rest of the Class;
- The Class Representative and the lawyers representing the Class will fairly and adequately represent the Class’ interests;
- The common legal questions and facts are more important than questions that affect only individuals; and
- This class action will be more efficient than having many individual lawsuits.

More information about why the Court is allowing this lawsuit to be a class action is in the Court’s Opinion and Order certifying the class, which is available at [www.fedexclassactionlawsuit.com](http://www.fedexclassactionlawsuit.com).

## **THE CLAIMS IN THE LAWSUIT**

### **5. What does the lawsuit complain about?**

Plaintiff’s Class Action Complaint in the action brought in Maryland alleges that FXG’s classification of Maryland P&D drivers as independent contractors violates Md. Code Wage Payment and Collection, §§ 3-501, et seq. Plaintiff also brings claims alleging unjust enrichment and seeking declaratory relief.

Plaintiff contends that FXG has treated him illegally by calling him and other members of the class independent contractors when, under the law, they are really employees. As a consequence, Plaintiff contends that he and others who have driven for FXG were required to pay for certain business expenses that, but for the misclassification as independent contractors, would have been paid by FXG as their employer.

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Plaintiff seeks monetary damages for all members of the Maryland class who have been required to pay for certain business expenses (including improper deductions from wages), rescission of the Operating Agreement as an illegal contract, and a declaration that Class Members are legally classified as employees and have the rights of employees under Maryland law. You can read the Plaintiff's Class Action Complaint at [www.fedexclassactionlawsuit.com](http://www.fedexclassactionlawsuit.com).

### **6. How does FXG answer?**

FXG denies that it did anything wrong and says that Class Members are legally independent contractors and therefore not eligible for payment of business expenses, overtime, or other wage protections. FXG's Answer to the Class Action Complaint is also available at [www.fedexclassactionlawsuit.com](http://www.fedexclassactionlawsuit.com).

### **7. Has the Court decided who is right?**

The Court hasn't decided whether Plaintiff or FXG is correct. By establishing the class and issuing this Notice, the Court is not suggesting that the Plaintiff will win or lose this case. The Plaintiff must prove his claims through later proceedings in this lawsuit.

### **8. What is the Plaintiff asking for?**

The Plaintiff is asking for changes in how P&D drivers are classified by FXG, for monetary damages to compensate drivers who have been required to pay for certain business expenses because FXG has misclassified them as independent contractors, and a judicial declaration that the P&D drivers are employees of FXG.

### **9. Is there any money available now?**

No money or benefits can be collected now because the Court and/or a jury have not yet decided whether it agrees with Plaintiff that FXG has violated the law. There is no guarantee that money or benefits will or will not be obtained. If Plaintiff wins in this case, or there is a settlement, you will be notified about how this impacts your rights.

## **WHO IS IN THE CLASS**

You need to decide whether you are affected by this lawsuit.

### **10. Am I part of the Class?**

As noted above, the Court has certified a Maryland statewide class. You must meet the following requirements to be included in the class:

- You entered into a FedEx Ground or FedEx Home Delivery form Operating Agreement (now known as Form OP-149 and Form OP-149 RES);
- You **personally** drove a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) at some time from May 5, 2003 through October 15, 2007 to provide package pick-up and delivery services pursuant to the Operating Agreement; and
- You were dispatched out of a terminal in the state of Maryland.

### **11. What if I'm still not sure if I am included?**

If you are still not sure whether you are included, you can get free help at [www.fedexclassactionlawsuit.com](http://www.fedexclassactionlawsuit.com), or by calling or writing to the lawyers in this case, at the phone number or address listed in Question 15.

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### **YOUR RIGHTS AND OPTIONS**

You have to decide whether to stay in the Maryland class or ask to be excluded before the trial, and you have to decide this now.

#### **12. What happens if I do nothing at all?**

You don't have to do anything now if you want to keep the possibility of getting money or benefits from this lawsuit. By doing nothing you are staying in the class. If you stay in and the Plaintiff obtains money or benefits, either as a result of the trial or a settlement, you will be notified about how to apply for a share (or how to ask to be excluded from any settlement). While you do not need to do anything to stay in the class, you should keep your records pertaining to your relationship with FXG. Likewise, if your mailing address changes, please notify the claims administrator or class counsel.

Keep in mind that if you do nothing now, regardless of whether the Plaintiff wins or loses the trial, you will not be able to sue, or continue to sue, FXG—as part of any other separate lawsuit—about the same legal claims that are the subject of this lawsuit. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in this action.

#### **13. Why would I ask to be excluded?**

If you already have your own lawsuit against FXG concerning employment classification and want to continue with it, you need to ask to be excluded from the Maryland class. If you exclude yourself from the class—which also means to remove yourself from the class, and is sometimes called “opting-out” of the class—you won't get any money or benefits from this lawsuit even if the Plaintiff obtains them as a result of the trial or from any settlement (that may or may not be reached) between FXG and the Plaintiff. However, you may then be able to sue or continue to sue FXG for employment classification practices that occurred or occur at any time. If you exclude yourself, you will not be legally bound by the Court's judgment in this action.

If you start your own lawsuit against FXG after you exclude yourself, you'll have to hire and pay your own lawyer for that lawsuit, and you'll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against FXG, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

#### **14. How do I ask the Court to exclude me from the Class?**

To ask to be excluded, you must send an “Exclusion Request” in the form of a letter sent by mail, stating that you want to be excluded from *Thomas Westcott v. FedEx Ground Package System, Inc., et al.*, Civil No. 3:06-cv-00485-RLM-CAN (MD). Be sure to include your name and address, and sign the letter. You must mail your Exclusion Request postmarked by **October 14, 2008**, to: In re FedEx Ground Package System Employment Practices Litigation, c/o US Bank, P.O. Box 24389, Jacksonville, FL 32241-4389.

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**THE LAWYERS REPRESENTING THE CLASS**

**15. Who represents the Plaintiff in this case?**

The Court appointed the following lawyers and law firms to serve as class counsel for Plaintiff in this lawsuit. They may be contacted in the following manner:

**Lynn Rossman Faris**  
LEONARD CARDER, LLP  
1330 Broadway, Suite 1450  
Oakland, CA 94612  
Tel: (510) 272-0169  
Fax: (510) 272-0174

**Susan E. Ellingstad**  
LOCKRIDGE GRINDAL  
NAUEN P.L.L.P.  
100 Washington Avenue  
South, Suite 2200  
Minneapolis, MN 55401  
Tel: (612) 339-6900  
Fax: (612) 339-0981

**Robert I. Harwood**  
HARWOOD FEFFER LLP  
488 Madison Avenue  
New York, NY 10022  
Tel: (212) 935-7400  
Fax: (212) 753-3630

Additionally, Maryland counsel are Ian Otto, STRAUS & BOIES LLP, 4041 University Dr., Fifth Floor, Fairfax, VA 22030, Tel: (703) 764-8700, Fax: (703) 764-8704 and Jordan M. Lewis, SIEGEL, BRILL, GREUPNER, DUFFY & FOSTER, P.A., 100 Washington Ave S, Suite 1300, Minneapolis, MN 55401, Tel: (612) 337-6100, Fax: (612) 339-6591.

**16. Should I get my own lawyer?**

You do not need to hire your own lawyer because class counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than class counsel to speak for you.

**17. How will the lawyers be paid?**

If class counsel obtains money or benefits for the class, they can ask the Court for an award of fees and expenses. You won't have to pay these fees and expenses. If the Court grants class counsel's request, the fees and expenses would be either paid directly by FXG or, if there is a settlement, may be paid out of a common settlement fund, obtained for the class.

**THE TRIAL**

The Court has not yet scheduled a trial to decide who is right in this case.

**18. How and when will the Court decide who is right?**

As long as the case isn't resolved by a settlement or by the Court in the Northern District of Indiana before a trial, Plaintiff will have to prove his claims at a trial in the Maryland District Court. There has been no date set for the trial of this matter. A jury in Maryland will hear all of the evidence to determine whether the Plaintiff or FXG are right about the claims in the lawsuit. There is no guarantee that either Plaintiff or FXG will win, or that Plaintiff will get any money for the class.

**19. Do I have to come to the trial?**

You do not need to attend the trial. Class counsel will present the case for the Plaintiff, and FXG will present the defenses. You and/or your own lawyer are welcome to attend the trial at your own expense.

**20. Will I get money after the trial?**

If the Plaintiff obtains money or benefits as a result of the trial or a settlement, you will be notified about how to participate. We do not know how long this will take.

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**GETTING MORE INFORMATION**

**21. Are more details available?**

Visit the website, [www.fedexclassactionlawsuit.com](http://www.fedexclassactionlawsuit.com), where you will find the Court's Opinion and Order certifying the class, the Class Action Complaint that the Plaintiff submitted, the Defendant's Answer to the Class Action Complaint, and information about how to exclude yourself from the class if you wish. You may also speak to one of the lawyers by calling 1-866-534-0901, or by writing to: In re FedEx Ground Package System Employment Practices Litigation, c/o US Bank, P.O. Box 24389, Jacksonville, FL 32241-4389.

DATE: August 28, 2008.