

## **Summary of California Cartage Express (CCX) DLSE Decisions (Jan 9, 2019)**

**Highlights:** On December 28, 2018, the Division of Labor Standards Enforcement (DLSE) issued an Order, Decision, or Award of the Labor Commissioner (ODA) in the cases of 14 port truck drivers against California Cartage Express (CCX).

In the 94-page decision, the Hearing Officer for **the DLSE found that the 14 drivers are employees – not independent contractors** – and therefore protected by California’s wage and hour laws.

In an unprecedented decision, the Labor Commissioner issued individual joint liability against Jim Degraw, General Manager and Operations Manager at CCX. This is under California’s recent wage theft enforcement law, SB588, which went into effect in 2016. Under the law, outlined in Labor Code Section 558.1, any employer – including "an owner, director, officer, or managing agent of the employer" – who violates, or causes to be violated California’s wage and hour laws may be held individually liable.

The decision orders **CCX and Jim Degraw to pay those 14 drivers a total of \$3,734,341.74** for:

- **Unpaid wages** that include the following:
  - **Unpaid piece rate wages** – CCX and Degraw failed to pay 10 drivers for chassis and “bobtail” movements. Four of the drivers were not paid for extra lease movements. Two of the drivers were not compensated for performing tire deliveries.
  - **Illegal paycheck deductions** - California’s Labor Code prohibits an employer from making deductions from an employee’s paycheck. CCX and Degraw made illegal deductions from drivers’ paychecks for electronic logging devices, fuel, LNG physical damage, maintenance of operating equipment, parking, trip deductions, and radio usage;
  - **Nonproduction hours** – CCX and Degraw failed to pay drivers for hours worked which fall outside the scope of piece rate, such as pre-trip inspections of the truck, inspecting and cleaning empty containers, waiting at the Borax plant to receive assignment, inspecting chassis equipment, waiting for mechanics to arrive when trucks needed repairing, and fueling tanks.
- **Unreimbursed expenses** - CCX and Degraw failed to reimburse drivers for out-of-pocket business expenses, such as fuel, DMV payments, truck repair, and insurance payments.
- **Meal and rest break premiums** - CCX and Degraw failed to provide 30-minute meal periods for every five hours worked and 10-minute rest period for every four hours worked.
- **Waiting time penalties** - for all earned wages due immediately upon termination.
- **Liquidated damages** - for failure to pay the state’s minimum wage under California’s Industrial Welfare Commission Wage Orders.
- **Interest** - accrued for all due and unpaid wages.

- **Attorney fees.**

The highest individual award is \$467,472.18 with the average award being \$266,738.70.

**Summary of process:** The claims were first filed between August 3, 2018 and August 29, 2018. Hearings were held from September 27, 2018 through October 9, 2018. Drivers had different claim periods, the longest being 6.5 years and the shortest 1.5 years. The claim periods vary depending on the hiring date, termination date if a driver is no longer with CCX, and/or evidence submitted.

**Total CCX claims:** In total, since 2015, **the Labor Commissioner has ordered CCX to pay 15 drivers \$3,893,067.71.** Of these, one claim was settled in 2017. The remaining 14 – from the December 2018 ODA – are within the appeal period and thus remain pending.

**Status of claims:** CCX has 15 days to either pay the drivers the amounts owed or appeal; if they do neither, then the decisions will become final judgments. If final judgments go unpaid, CCX's customers could be held liable for future claims under California's new joint liability law, SB1402.