

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

If you are or were a contractor for FedEx Ground, a class action settlement may affect your rights.

Asbury, et al. v. FedEx Ground Package System, Inc.,
No. 3:06-cv-00826-RLM-CAN (WV)

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

- A settlement of a lawsuit against FedEx Ground Package System, Inc. ("FedEx Ground") has been proposed in which FedEx Ground will pay contractors to resolve claims brought by delivery contractors ("contractors") alleging that FedEx Ground misclassified them as independent contractors while controlling them like employees.
You may be eligible to receive a share of the settlement fund.
FedEx Ground and contractors agreed to a class action settlement that affects your rights whether you act or don't act. FedEx Ground will pay \$3,575,000.00 to resolve all claims. Your estimated settlement share, and how it is calculated, is shown in the Computation of Estimated Share Form worksheet included in this Notice packet.
Read this Notice and the worksheet carefully:

Table with 2 columns: Action and Description. Rows include: Do NOTHING (Receive Money), OBJECT (Write to the Court about why you don't like the settlement), GO TO A HEARING (Ask to speak in Court about the fairness of the settlement).

- These rights and options—and the deadlines to exercise them—are explained in this notice.
The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why did I get this notice package? PAGE 2
2. What is this lawsuit about? PAGE 2
3. Why is this a class action? PAGE 2
4. Why is there a settlement? PAGE 2

WHO IS PART OF THE SETTLEMENT

5. How do I know if I am part of the settlement? PAGE 2
6. Are there exceptions to being included? PAGE 3
7. I'm still not sure if I am included. PAGE 3

THE SETTLEMENT BENEFITS

8. What does the settlement provide? PAGE 3
9. How much will my payment be? PAGE 3
10. What is the formula for allocation of the Settlement Fund? PAGE 3
11. Will I owe any taxes? PAGE 3

HOW TO GET A PAYMENT-DO NOTHING

12. How will I receive a payment? PAGE 3
13. When would I get my payment? PAGE 3
14. What am I giving up to get a payment? PAGE 3

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this case? PAGE 4
16. How will the lawyers and Plaintiffs be paid? PAGE 4

FILING AN OBJECTION

17. How do I tell the Court that I object? PAGE 5

## THE COURT'S FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the settlement? .....	PAGE 5
19. Do I have to come to the hearing? .....	PAGE 5
20. May I speak at the hearing? .....	PAGE 5

## IF YOU DO NOTHING

21. What happens if I do nothing at all? .....	PAGE 5
--	--------

## GETTING MORE INFORMATION

22. How do I get more information? .....	PAGE 6
--	--------

## BASIC INFORMATION

### 1. Why did I get this notice package?

You received this notice because FedEx Ground's records show that you signed a FedEx Ground Pickup and Delivery Contractor Operating Agreement, to provide service in West Virginia, that was in effect between September 25, 2001, and October 15, 2007, and that you may have personally worked as a full-time contractor under that contract at some point between September 25, 2001 and April 30, 2016.

This notice summarizes the proposed settlement. To review the settlement agreement and other documents, visit [www.asbury-v-fedexground-settlement.com](http://www.asbury-v-fedexground-settlement.com). For more information you may also contact class counsel (see Question 15).

### 2. What is this lawsuit about?

Two contractors sued FedEx Ground as Plaintiffs, on behalf of themselves and a class of other pickup and delivery contractors. The lawsuit is about whether FedEx Ground misclassified pick-up and delivery contractors as independent contractors rather than as employees, and failed to provide them with legal rights that employees have under West Virginia law. On behalf of all contractors in West Virginia, Plaintiffs sought compensation for, among other things, relating to W. Va. Code § 21-5 ("West Virginia Wage Payment and Collection Act"); violation of W. Va. § 46-6 ("West Virginia Consumer Credit Protection Act"); and rescission and unjust enrichment. FedEx Ground maintains that the independent contractor classification is appropriate and denies that it has broken any laws.

In 2008, the Court allowed the lawsuit to be a class action on behalf of contractors in West Virginia for claims pertaining to the West Virginia Wage Payment and Collection Act, the West Virginia Consumer Credit Protection Act and rescission and unjust enrichment. In December 2010, the District Court overseeing the case ruled West Virginia contractors were independent contractors and subsequently, Plaintiffs appealed that decision to the United States Court of Appeals for the Seventh Circuit. While on appeal, the case was mediated and the parties subsequently entered into an agreement to settle this action.

### 3. Why is this a class action?

In a class action lawsuit, the Plaintiffs sue on behalf of other people who have similar claims. The people who have similar claims to or with the Plaintiffs are a "Class" or "Class Members." The individuals who sued—and all the Class Members like them—are collectively called the Class.

The Court decided in 2008 to allow the matter to proceed as a class action because numerous contractors were treated the same way and had similar claims. The Court found that resolving the claims together was more efficient than contractors filing multiple, individual lawsuits.

### 4. Why is there a settlement?

The courts have not issued a final decision about the case, which has been going on for many years. Instead of further litigation, which could have taken many more years with no certainty of the outcome, both sides agreed to a class-wide settlement. The settlement provides the Class Members with compensation sooner and allows both sides to avoid the cost of a trial and further appeals. Plaintiffs and their lawyers think the settlement is in the best interest of the Class Members.

## Who is Part of the Settlement

### 5. How do I know if I am part of the settlement?

You are part of the settlement if you meet all the following criteria:

- (1) Signed Operating Agreement. You entered into a FedEx Ground or FedEx Home Delivery Pick Up and Delivery Operating Agreement (now known as OP-149 and Form OP-149-RES) that was in effect between September 25, 2001, and October 15, 2007;
- (2) Personally Drove Full Time. You drove a vehicle on a full-time basis (meaning exclusive of time off for commonly excused employment absences) any time between September 25, 2001, and October 15, 2007, to provide package pick-up and delivery services pursuant to that Operating Agreement; AND
- (3) Operated out of a West Virginia Terminal. You were dispatched out of a terminal in the state of West Virginia between those dates.

If you do not satisfy any one of these three conditions, you are not a member of the Class and are excluded from participation in this lawsuit.

#### **6. Are there exceptions to being included?**

You may have received an earlier notice that the Court allowed the case to proceed as a class action. If you opted-out of participation in the class action at that time, you will not be included in the settlement now.

#### **7. I'm still not sure if I am included.**

If you still are not sure whether you are included, you can call and ask for help. You can call 1-877-741-1232 or visit [www.asbury-v-fedexground-settlement.com](http://www.asbury-v-fedexground-settlement.com) for more information.

### **The Settlement Benefits**

#### **8. What does the settlement provide?**

FedEx Ground has agreed to pay \$3,575,000 to resolve the class claims asserted in the West Virginia action. The money will also be used to pay settlement administration costs, Plaintiffs' attorneys' fees and costs, and to pay the named Plaintiffs for their time and service to the Class. The entirety of the Net Settlement Fund—the total settlement amount after payment of administration costs, attorney's fees, litigation costs, and service payments to Named Plaintiffs who participated in the litigation—will be distributed to the Class with no money returned to FedEx Ground. The parties have agreed that settlement checks will be issued automatically to all members of the West Virginia Class if the settlement is approved and any appeals are resolved. The funds will be distributed through a qualified settlement fund ("QSF") and Rust Consulting will act as the Settlement Administrator.

#### **9. How much will my payment be?**

The enclosed Computation of Estimated Share Form explains your initial estimated settlement amount and how it was calculated. The settlement amount is an estimate and may be high or lower depending on a number of factors.

#### **10. What is the formula for allocation of the Settlement Fund?**

The Net Settlement Fund, after deduction of fees and expenses, will be distributed among the Class members who meet the Class definition based on their *pro rata* weeks worked within the Class Period. All Class members will receive a settlement payment of \$69.52 for each workweek during which it appears, based on data derived from FedEx Ground records, that they personally drove one of their FedEx Ground routes 35 or more hours, and a lower payment of \$24.33 for workweeks in which they drove between 16 and 35 hours per week. Class members will also receive a weighted interest component based upon when they drove for FedEx Ground. Class members who, based on data derived from FedEx Ground records, did not personally drive more than 16 hours in any workweek during the recovery period will receive a flat minimum payment of \$250 dollars. The average per Class member recovery, net of attorneys' fees and costs, will be approximately \$22,306.

#### **11. Will I owe any taxes?**

You will receive an IRS Form 1099 for the amount you are sent. You should consult with an accountant or other tax advisor about the tax consequences of your settlement proceeds.

### **How You Get a Payment—Do Nothing**

#### **12. How will I receive a payment?**

There will be two rounds for distribution of the Net Settlement Fund. If the Settlement is finally approved and the time for appeals has expired, a settlement check will be mailed directly to you representing your share of the Net Settlement Fund. Within the next 180 days, a second check may be sent to you reflecting your *pro rata* share of unclaimed settlement proceeds and the remaining reserve fund. After the second round distribution, any uncashed checks will go to a *cy pres* fund, Legal Aid of West Virginia, 922 Quarrier Street, 4th Floor, Charleston, WV 25301 which was mutually agreed upon by the parties, and is subject to the Court's approval.

#### **13. When would I get my payment?**

The Court will conduct a Final Fairness Hearing on January 23-24, 2017, to decide whether to approve the settlement. You should receive your payment within a few months if the Court approves the settlement. However, payment will be delayed if there are appeals. You may visit [www.asbury-v-fedexground-settlement.com](http://www.asbury-v-fedexground-settlement.com) for updates on the progress of the settlement. Please be patient.

#### **14. What am I giving up to get a payment?**

Under the terms of the settlement, you will be releasing FedEx Ground Package System, Inc., and parties related to it, from all claims that were asserted or could have been asserted in this action relating to allegations of misclassification as an independent contractor set forth in Plaintiffs' Operative Complaint.

**If the Court approves the Settlement, your claims described above will be extinguished.**

## The Lawyers Representing You

### 15. Do I have a lawyer in this case?

The Court has appointed the following lawyers to serve as Class Counsel for the Plaintiffs and Class Members in this lawsuit:

Robert I. Harwood  
HARWOOD FEFFER LLP  
488 Madison Ave., Suite 800  
New York, NY 10022  
Tel: (212) 935-7400  
Fax: (212) 735-3630  
rharwood@hfesq.com

Beth Ross  
LEONARD CARDER, LLP  
1330 Broadway, Suite 1450  
Oakland, CA 94612  
Tel: (510) 272-0169  
Fax: (510) 272-0174  
bross@leonardcarder.com

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  
seellingstad@locklaw.com

#### **Co-Lead Class Counsel**

Damon L. Ellis, Esq.  
MANI ELLIS & LAYNE, P.L.L.C.  
405 Capitol St.  
P.O. Box. 1266  
Charleston, WV 25325-1266  
Tel: (304) 720-1000  
dellis@mle-law.com

#### **West Virginia Counsel**

These lawyers will be paid from the Settlement Fund, so you will not be charged personally for their work on this case and in negotiating this settlement.

### 16. How will the lawyers and Plaintiffs be paid?

Class Counsel will ask the Court to approve payment of (a) up to 30% of the Settlement Fund for attorney's fees and expenses to compensate the many attorneys who for eleven years invested thousands of hours and significant expenses investigating the facts, litigating the case, including appeals, and negotiating the settlement and (b) \$15,000 each in service awards for the Representative Plaintiffs for their efforts in pursuing this lawsuit, producing documents, and providing testimony on behalf of the Class. The Court will decide the attorney's fees and expenses to be paid.

Class Counsel will make their requests to the Court for attorney's fees and expenses, as well as service awards, on or before September 12, 2016. These requests will be available on the settlement website [www.asbury-v-fedexground-settlement.com](http://www.asbury-v-fedexground-settlement.com) or you can request a copy by contacting the Settlement Administrator (Question 22). Payment of attorneys' fees and expenses will be made out of the Settlement Fund and you will not be required to pay any other fees and expenses.

## Objecting to the Settlement

### 17. How do I tell the Court that I object?

If you are a Class Member, you can object to the settlement if you don't think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter stating that you object to the settlement. You may hire a lawyer to represent you at your own expense. Your objection must include:

- The name of this proceeding (*Asbury, et al. v. FedEx Ground Package Systems, Inc.*, Case No. 3:05-cv-00826-RLM-CAN);
- Your full name, address, and phone number;
- A written statement of objections, as well as the specific reason(s), if any, for each objection, including any legal or factual support you wish to bring to the Court's attention;
- Any evidence or other information you wish to introduce in support of your objections;
- A statement of whether you or your counsel intends to appear and argue at the Final Fairness Hearing (see Question 20); and
- Evidence or other information showing you are a member of the Class.

**Mail the objection to these three different places, postmarked no later than November 14, 2016:**

Clerk	Class Counsel	Defense Counsel
Clerk of the Court United States District Court For The Northern District of Indiana 204 South Main Street South Bend, IN 46601	Robert I. Harwood HARWOOD FEFFER, LLP 488 Madison Ave., 8 <sup>th</sup> Floor New York, NY 10022	Scott Voelz, Esq. O'MELVENY & MYERS LLP 400 South Hope Street 18 <sup>th</sup> Floor Los Angeles, CA 90071

### The Court's Final Approval Hearing

### 18. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Fairness Hearing on January 23-24, 2017, before Judge Robert L. Miller, Jr. of the United States District Court for the Northern District of Indiana, located at 325 Robert A. Grant Courthouse, 204 South Main Street, South Bend, Indiana, 46601. Refer to the settlement website [www.asbury-v-fedexground-settlement.com](http://www.asbury-v-fedexground-settlement.com) for the precise hearing schedule, which will be set by the Court on or before January 10, 2017.

At the Final Fairness Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will listen to class members who appear at the hearing, either in person or telephonically, who have filed a notice of intention to appear by November 14, 2016. The Court may also decide how much Class Counsel will receive as attorney's fees and costs and whether to award service payments to the Class Representatives (Question 16). After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

### 19. Do I have to attend the hearing?

No. Class Counsel will answer questions the Court may have. You are welcome, however, to come at your own expense, or attend via telephone. If you submit a written objection, you don't have to come to the Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### 20. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter stating your "Notice of Intention to Appear at Fairness Hearing in *Asbury, et al. v. FedEx Ground Package Systems, Inc.*, Case No. 3:05-cv-00826-RLM-CAN." Be sure to include your name, address, telephone number, and your signature.

Your Notice of Intention to Appear must be postmarked no later than November 14, 2016, and be sent to the Clerk of the Court, Class Counsel, and FedEx Ground's counsel at the address in Question 17.

### If You Do Nothing

### 21. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will be sent your proportional share of the Settlement Fund at the address at which you received this notice. **If you have moved, it is extremely important that you contact the Settlement Administrator at 1-877-741-1232 to provide them with your new address and telephone number.**

## Getting More Information

### 22. How do I get more information?

This notice summarizes the settlement. Additional details are included in the Settlement Agreement itself. You can get a copy of the Settlement Agreement by writing to the Settlement Administrator, Rust Consulting, or by visiting the Settlement Administrator's website at [www.asbury-v-fedexground-settlement.com](http://www.asbury-v-fedexground-settlement.com).

You can call 1-877-741-1232 toll free; write to Asbury v FedEx Settlement Administrator, c/o Rust Consulting Inc. – 5245, PO Box 2537, Faribault, MN 55021-9537 or visit the website at [www.asbury-v-fedexground-settlement.com](http://www.asbury-v-fedexground-settlement.com), where you can find answers to common questions about the settlement plus other information to help you determine whether you are a Class member and whether you are eligible for a payment. The status of the settlement, any appeals, and the date of payments will be posted on the settlement website.

*Please do not contact the Court or FedEx Ground or its lawyers with questions about the settlement.*