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FedEx Ground battles to keep using contractors

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By Nick Carey

ELK GROVE VILLAGE, ILL., July 12 (Reuters) - E.J. DelliBovi says not everyone is cut out to do his job.

"It's hard work, but I love it because I get to be my own boss," said the driver at FedEx Ground, FedEx Corp's (FDX.N: [Quote](#), [Profile](#), [Research](#)) ground delivery unit, who spends long hours driving and often lifts heavy boxes. "I like that freedom."

FedEx Ground uses 15,000 drivers like DelliBovi, 38, which it pays as independent contractors. Under this system, FedEx Ground drivers can own multiple routes, employing other drivers to deliver packages. Investors like the model because it helps FedEx save money and compete against main rival United Parcel Service Inc (UPS.N: [Quote](#), [Profile](#), [Research](#)) and its unionized work force.

But the FedEx Ground model faces challenges because not everyone is as contented as DelliBovi.

Lawsuits filed in 36 U.S. states claim the control FedEx Ground exercises over its contractors makes them employees, with a right to benefits and a refund for buying their trucks. Also, the International Brotherhood of Teamsters is campaigning to unionize FedEx Ground drivers.

"The contractor model is a large-scale fraud," said Shannon Liss-Riordan, an attorney representing drivers in Connecticut.

FedEx, however, says its contractors are entrepreneurs.

"These are independent contractors who can run and grow their own businesses," said spokesman Maury Lane.

Investors say the challenges to the FedEx Ground model represent a profit risk, but add that the company's strong track record of fighting off lawsuits should limit the threat.

DelliBovi says the system works for him. He owns two and a half routes in Elk Grove Village, a Chicago suburb that is home to the largest U.S. business park. He delivers and picks up packages at firms here throughout the day, rain or shine.

His main route grosses roughly \$90,000 a year, plus he gets a portion of the \$80,000 his second route raises and of the \$70,000 earned by the route he half owns with another driver.

"I own my trucks and pay my own taxes," the goateed and jocular New Yorker said while sitting patiently in heavy Chicago-area traffic. "That suits me fine."

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But Aaron Ver Steeg says he feels cheated by FedEx Ground.

Ver Steeg, 66, joined Roadway Package System -- bought by Memphis-based FedEx in 1998 and rebranded as FedEx Ground -- in Iowa in 1990 and said he owned three delivery routes until his "termination" in 2004 for complaining about his routes.

He said the routes, which he had believed he owned, were reallocated and he could not sell his trucks -- which cost between \$40,000 and \$48,000 --

to other FedEx Ground drivers.

"All told, I lost about \$150,000," Ver Steeg said.

He is now part of a lawsuit aimed at classifying past and present drivers as FedEx Ground employees. The lawsuit focuses on the extent to which FedEx controls its contractors. Attorney Joni Thome, who represents plaintiffs in Iowa and five other states, argues drivers must wear FedEx branded uniforms, use FedEx branded trucks and obey strict schedules so "they're employees, not contractors."

FedEx denies unfairly treating drivers like Ver Steeg.

"Our contractors are our lifeline to our customers," said FedEx's Lane.

He said they are terminated only for "non-performance" when servicing their routes. He added that only around 150 present and former drivers have joined the lawsuits, a "tiny portion of our 15,000 contractors."

Lynn Faris, an attorney representing drivers in California said that by not paying benefits or for trucks, FedEx can compete with UPS, where unionized drivers in UPS-owned trucks make an average of \$70,000 to \$75,000 a year, plus benefits.

In its fiscal 2007 fourth-quarter ending May 31, FedEx -- which saw full-year sales of \$35.2 billion -- reported FedEx Ground package volumes were up 8 percent. In April, UPS reported first-quarter ground package volumes were flat.

"But FedEx can't have it both ways," Faris said. "They can't have contractors but treat them like employees."

The California case began in 1999. FedEx has appealed a November 2005 ruling that it reclassify single route drivers in the state as employees and has so far managed to get an order that it reimburse drivers overturned by an appeals court. The California Court of Appeals 2nd District will hear arguments on these issues on July 24.

Pretrial proceedings for the other lawsuits are being heard in the U.S. District Court in South Bend, Indiana, to determine whether they should go to trial together or separately, a process that could last into the fall.

The Teamsters scored a success in June in its campaign against FedEx when the National Labor Relations Board certified an October 2006 election by contractors at two Wilmington, Mass. facilities of FedEx Home Delivery, a unit of FedEx Ground, in favor of unionization 24 to 8.

FedEx's Lane said the company will not bargain with the union and will force the issue into a federal court, "so all our objections can be heard."

Investors say this determination to keep fighting makes them confident FedEx Ground can defend this model.

"It is a risk we monitor," said portfolio manager Tom Lertz of Clayton, Missouri-based Argent Capital Management, which manages assets of \$920 million and follows FedEx. "But as FedEx has done such a good job of holding the line against legal challenges, we don't see it as a major risk."

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