vorable treatment as compared to commercial and industrial taxpayers. Because the railroad was unable to prove that the tax "targeted or singled out" the rail carriers compared to other taxpayers, Justice Thomas concluded there was no discrimination.

Mackenzie Shields

Brueningsen v. Resort Express Inc., No. 2:12–cv–00843–DN, 2015 WL 339671, at *1 (D. Utah Jan. 26, 2015) (holding that (1) under the Fair Labor Standards Act ("FLSA") an employer may retain cash tips when it does not take a tip credit; (2) Defendants were subject to the Motor Carrier Act exemption to the FLSA overtime requirement; (3) Plaintiff's common law claims were preempted by the FLSA and failed on the merits; and (4) Defendants Park City Transportation and Premier Transportation, Inc. did not have an employer-employee relationship with the Plaintiffs.)

All the Plaintiffs, except for Plaintiff Michael Power, were employed by Resort Express as van drivers, operating 15-passenger vans. Resort Express had control over work conditions, policy, and compensation. Plaintiffs drove customers on behalf of Resort Express, as well as Park City Transportation, Inc. ("PCT") and Premier Transportation, Inc. ("PTI") (collectively, "Defendants"). Defendants filed a motion for partial summary judgment on: (1) Plaintiffs' claim that Defendants violated the Fair Labor Standards Act by retaining non-cash tips; (2) Plaintiffs' claim (except Plaintiff Michael Power) that Defendants violated the FLSA by failing to pay overtime wages; (3) Plaintiffs' claims for conversion, unjust enrichment, and quantum meruit; and (4) all Plaintiffs' claims against Defendants Park City Transportation and Premier Transportation, Inc.

The Court first addressed Plaintiffs' claim that Defendants violated the FLSA by retaining non-cash tips. They asserted that they enjoyed a legal property right to all non-cash tips under Department of Labor ("DOL") regulation 29 C.F.R § 531.52, which the DOL authorized under §203(m) of the FLSA. However, a court will not defer to an agency's statutory interpretation if Congress has clearly and directly spoken on the issue. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). Applying step one of the two-prong *Chevron* analysis, the Court held that Congress had directly spoken on the issue of when an employer is required to turn over all tips to an employee, and therefore deference would not be given to the DOL's interpretation of §203(m). The Court further stated the statutory language is clear and

gives employers the choice of how they will pay their employees a minimum wage, either through a tip credit or not. Under the statute, if an employer elects to take a tip credit, the employee will be entitled to retain all tips, unless there is a valid tip pool which the employees engage in. If employers do not take a tip credit, they must pay their employees the hourly, federal minimum wage. The Court held that Resorts Express did not violate §203(m) by retaining non-cash tips because it did not take a tip credit.

Next, the Court examined Plaintiffs' claim that the Defendants failed to pay overtime in violation of the FLSA. The FLSA requires that employers pay overtime to employees working over forty hours in a workweek. The Court noted that there are a number of exemptions to the overtime requirement, but specifically discussed the Motor Carrier Act exemption, which states that employers do not need to pay overtime to any employee who the Secretary of Transportation has power over to establish qualifications and maximum hours of service pursuant to the statutory provisions in 29 U.S.C. § 213(b)(1)-(30) (2014). In order to be subject to regulations by the Secretary of Transportation the Court articulated that a motor carrier employee must move goods in interstate commerce and affect safe operation of motor vehicles on public highways. *Foxworthy v. Hiland Dairy Co.*, 997 P.2d 670, 672 (10th Cir. 1993).

The Court reasoned that because 97% of Defendant's business involved transporting passengers from the Salt Lake International Airport to the Park City region and a majority of passengers book their travel through a travel agency or an online travel site, Defendants were under the Motor Carrier Act exemption to the FLSA overtime requirement. The Court held that it was undisputed that Defendants are subject to the regulatory authority of the Secretary of Transportation under the MCA, and therefore they were exempt from the overtime provision.

The Court next analyzed the Plaintiffs' common-law claims including conversion, unjust enrichment, and quantum meruit. The Defendants argued that the common-law claims were preempted by the FLSA because they were rooted in the same facts and allegations of the Plaintiffs' claims under the FLSA. Plaintiffs counter argued that the Defendants had contradicted themselves and thus, defeated their own prior argument regarding recovery under the FLSA. The Court determined that the Defendants did not argue they were not subject to the FLSA, but rather argued that they had not violated the FLSA because they retained tips and that they are exempt from the overtime provisions. The Court held that because Plaintiffs' common-law claims originated from the notion that they were entitled to the tips, which they failed to prove, their common-law claims fail.

Lastly, the Court examined Defendant PCT and PTI's motion for

summary judgment on all of Plaintiffs' claims because the Plaintiffs were never their employees. The Court claimed that even if Plaintiffs had disputed this fact, which they did not, their allegations failed to show that they were employees of PCT and PTI merely because they drove customers of PCT and PTI on multiple occasions. The Court held that a reasonable jury could not reach the conclusion that Plaintiffs were employees of PCT and PTI and therefore held that PCT and PTI could not be liable under any of Plaintiff's causes of action because the causes of action are derived from the employer-employee relationship.

Accordingly, the Court granted the Defendants' Motion for Partial Summary Judgment in favor of the Defendants.

Joshua Nowak

Roper v. Carneal, No. 14CA0364 (Colo. App. Feb. 12, 2015) (order affirming trial court's denial of motion to dismiss) (holding: (1) a vehicle that qualifies as "special mobile machinery" under Colo. Rev. Stat. § 42-1-102(93.5)(a)(II) (2014) cannot also qualify as a "motor vehicle"; (2) in determining whether a vehicle qualifies as "special mobile machinery" or as a "motor vehicle," under Colo. Rev. Stat. § 42-1-102(93.5)(a)(II) (2014) use at the time of the incident is relevant but not dispositive, the proper inquiry is into the vehicle's design and common use; (3) a vehicle that is generally and commonly used to transport either persons or property over the public highways may qualify as a "motor vehicle"; (4) where a vehicle operates and transports maintenance materials exclusively on the public highways, that vehicle meets the "motor vehicle" definition; and (5) where operation over public highways is essential to a vehicle's function, that vehicle cannot be 'only incidentally operated or moved over the public highways').

Plaintiff, Tina Roper, filed suit alleging claims of negligence per se, negligence, respondeat superior, and property damage/loss of use against the defendants, Daniel R. Carneal and the Board of County Commissioners of the County of El Paso, Colorado. Roper claimed that Carneal was driving a county-owned snowplow when he allegedly ran a stop sign. Roper then drove off the road to avoid Carneal and crashed into a culvert and a fence, suffering personal injuries and damage to her car. The defendants claimed that they were immune from suit under the Colorado Government Immunity Act ("CGIA"), because a snowplow qualified as "special mobile machinery" rather than a "motor vehicle," and therefore the motor vehicle waiver of immunity did not apply.

This case turned on the issue of whether the snowplow was a "motor