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The Biggest Transportation Rulings Of 2019

By **Linda Chiem**

Law360 (December 19, 2019, 12:31 PM EST) -- A high court win for interstate transportation workers on arbitration agreements that gave plaintiffs' attorneys a weapon to keep their court disputes alive and an appeals panel's blessing of a consumer class action damages model were among the most impactful rulings of 2019 for the transportation industry.

The year yielded a mixed bag of rulings that addressed employment-related disputes involving the trucking and gig-economy industries and clarified the scope of federal preemption of transportation regulations, among other things.

Here, Law360 looks back at a few of the biggest rulings of 2019 affecting the transportation sector.

Justices Give Transportation Workers an Out From Arbitration

Truck drivers kicked off the year with a big win in the U.S. Supreme Court, which unanimously **ruled in January** that transportation workers engaged in interstate commerce are **exempt** from the Federal Arbitration Act regardless of whether they're classified as independent contractors or employees.

New Prime Inc. v. Oliveira involved a truck driver apprentice who alleged trucking company New Prime denied him minimum wage. The parties agreed that he was engaged in interstate commerce, so the dispute focused only on whether his contract as an independent contractor apprentice qualified as a "contract of employment" to fit Section 1 of the Federal Arbitration Act, which exempts from arbitration "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

Brad Hughes, a transportation litigation attorney at Clark Hill PLC, told Law360 that New Prime has reverberated throughout state courts and district courts, which have issued mixed analyses in 2019 on which disputes get sent to arbitration and which remain in court.

"It really buttoned up some of the loopholes that people have been using for a long time to hold tight to independent contractor status for workers who arguably might be deemed employees," Hughes told Law360. "It took away one of the arrows in the quiver that employment lawyers and transportation lawyers had to force disputes into arbitration under the FAA, and the Supreme Court altered the landscape in a relatively permanent way."

New Prime did not explicitly define what it means to be "engaged in interstate commerce" nor did it identify which "class[es] of workers" count toward the exemption. So those issues have been heavily litigated in a variety of cases involving transportation, logistics and gig-economy companies.

The decision was cited by courts that **allowed Amazon drivers** in Washington state and medical supply **delivery drivers in New Jersey** to deflect arbitration and keep their respective employment disputes in court. But it didn't really help Massachusetts drivers for food-delivery company DoorDash, who were instead **pushed into arbitration** because they didn't fit the exemption.

Gig Workers Gain a Third Circuit Tool Against Arbitration

Gig economy workers who can prove they're engaged in interstate commerce were given new

leverage to potentially keep their employment disputes in court, after the Third Circuit **held in September** that the FAA's Section 1 exemption applies to drivers transporting passengers, not just goods.

The appeals court said Uber Technologies Inc. driver Jaswinder Singh's suit over allegedly unpaid overtime and expenses shouldn't have been **forced into arbitration**, ordering more fact-finding on whether Singh fits the definition of a transportation worker engaged in interstate commerce.

Employee advocates and plaintiffs attorneys say the decision sets a course for ride-hailing drivers and potentially other gig economy workers to dodge arbitration in employment disputes, especially if their work routinely takes them across state lines, like in the tri-state area of New York, New Jersey and Connecticut.

It's another example of how the New Prime decision has been a "game changer" in the transportation, class action and employment litigation arenas, according to Glenn Danas, a partner with Robins Kaplan LLP who represents workers in employment litigation.

Singh was unique in that the Third Circuit went a step further and answered a question not addressed by New Prime, which is whether transport workers who move people, as opposed to just goods, qualify for the residual clause of Section 1, the part that refers to "any other class of workers."

"The Singh court held that transportation workers who move people do qualify under the FAA's residual clause, as long as they operate interstate, or are sufficiently related to interstate commerce as to be a part of it," Danas explained. "This is a massively important decision, insofar as it might be the crack in the FAA's façade through which a broad swath of transportation workers might blast a hole, evading the fatal sweep of individual arbitration."

But the ruling is no silver bullet, because ride-hailing drivers and potentially other gig economy workers will have a high bar to clear to prove they fit the criteria for the FAA's Section 1 exemption, and there are still state arbitration statutes that could derail such legal pursuits in court.

Third Circuit Tightens the Scope of Preemption

The Third Circuit said in a **precedential decision** in January that a federal law limiting state regulation of the trucking sector does not preempt New Jersey's standard for distinguishing between employees and independent contractors. The appeals court said the Garden State's version of the so-called ABC test applies broadly to all businesses, not just trucking, in a case involving delivery drivers for American Eagle Express Inc. who alleged they were misclassified as independent contractors instead of employees.

The ruling in Bedoya et al. v. American Eagle Express Inc . was a hit to the trucking industry, which has been fighting against state workplace regulations that it has long claimed interfere with interstate transport and drive up labor costs, experts say. The court rejected American Eagle Express' argument that the Federal Aviation Administration Authorization Act preempted the delivery drivers' claims.

Courts have been carving a brighter line limiting the scope of the FAAAA's preemption of any state law "relating to a price, route or service of any motor carrier," and the Third Circuit's decision further put the trucking industry on notice that the act isn't a golden ticket for dodging state wage or other labor regulations that apply broadly to all industries, attorneys say.

"Both sides of classification disputes in the Third Circuit read into Bedoya what they wish to see," said Marc S. Blubaugh, co-chair of Benesch Friedlander Coplan & Aronoff LLP's transportation and logistics practice group.

The decision certainly made arguments for FAAAA preemption of the "ABC" test less likely to succeed in Delaware, New Jersey and Pennsylvania, according to Blubaugh. However, it also provides firmer backing for the argument that jurisdictions using a particularly strict "B" prong are more likely to have their ABC tests preempted under the act.

Under Prong B of the ABC test, a worker is considered an employee unless the hiring entity establishes "that the person performs work that is outside the usual course of the hiring entity's business."

Blubaugh said the Bedoya case will be particularly informative as New Jersey weighs legislation — S.B. 4204 and A.B. 5936 — that would codify a stricter version of the ABC test for determining independent contractor status in the Garden State.

"The landscape is developing each day in New Jersey — and most of it is not good for the motor carrier industry," Blubaugh said.

The Third Circuit in Bedoya had reached the same conclusion on the scope of the FAAAA's preemption as the Seventh, Ninth and Eleventh circuits, which have all weighed the issue in other suits that involved misclassification claims or directly challenged state labor regulations. Attorneys say the courts have been in sync on curbing employers' attempts to expand the scope of federal preemption and thwart basic state labor protections that cover everyone.

Ninth Circuit OKs Benefit-of-the-Bargain Damages Model

The Ninth Circuit's **July decision** reviving a class certification bid in a suit alleging Nissan sold vehicles with defective manual transmissions paved the way for product liability classes to advance even if the alleged defect manifests differently for consumers.

The Ninth Circuit embraced plaintiff Huu Nguyen's "benefit of the bargain" damages model, which treated all purchasers in the class the same by awarding them the full average cost of replacing the allegedly defective part. The appeals court said the damages model was valid because it proposed that consumers are harmed at the point of sale by the alleged design defect and not by the actual performance of the system containing that defect. Nissan North America Inc.'s bid to get a panel rehearing or an en banc review before the full Ninth Circuit fizzled.

Attorneys say the ruling makes it much more difficult for automakers to defend themselves against consumer claims.

"The Ninth Circuit's ruling may facilitate plaintiffs' efforts to certify a class regardless of a defect's incident rate or disparities in how long consumers have driven their cars before the defect arises (if it ever does)," said King & Spalding LLP partner Madison H. Kitchens. "And in addition to glossing over individualized differences that would otherwise preclude class certification, the damages theory enables plaintiffs to inflate their damages."

Industry groups such as the Alliance of Automobile Manufacturers Inc. and the Association of Global Automakers had urged the Ninth Circuit to reconsider the decision, saying it was troublesome because it cleared the way for class action plaintiffs to go on a cash grab using dicey damages theories.

They claimed the Ninth Circuit essentially allowed plaintiffs' attorneys to spin traditional product liability claims — that only a few individuals might have had — into a full-blown class action involving consumers who might not have experienced any problems with their clutches.

Nguyen's attorneys at Capstone Law APC had insisted throughout the litigation that they had ample evidence to establish commonality on the issue of Nissan's knowledge — that the automaker knew as early as 2007 about the sticking clutch problems — for the purposes of class certification.

Nguyen's damages model was consistent with his theory of liability: He would have either paid less than the sticker price or would not have bought the vehicle at all had Nissan disclosed the defective nature of the clutch system and its propensity to overheat, according to court documents.

Ultimately, the court's decision was a restatement of California law and class action standards and recognized the "uncontroversial legal principle that all purchasers are harmed at the point of sale by a design defect," according to Capstone Law partner Ryan Wu.

--Editing by Rebecca Flanagan and Alyssa Miller.