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FLASH NO. 77 CALIFORNIA AB5 LITIGATION UPDATE— THE TRO IS EXTENDED



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Yesterday, on January 13, 2020, Judge Benitez of the United States District Court for the Southern District of California extended the temporary restraining order previously entered in the litigation brought by the California Trucking Association ("CTA") to enjoin the enforcement of California Assembly Bill No. 5 ("AB5") against motor carriers in California. The public now awaits his decision and order on CTA's motion for a preliminary injunction.

During yesterday's two hour hearing, Judge Benitez entertained arguments from the parties on the subject of whether the Federal Aviation Administration Authorization Act ("FAAAA") preempts the enforcement of AB5. (Judge Benitez' earlier decision and the ensuing temporary restraining order granted on New Year's Eve were the subject of [Interconnect FLASH! No. 76](#) (January 2, 2020)). Judge Benitez took the matter under advisement and is drafting a decision and order either granting or denying preliminary injunctive relief. Under federal rules, a temporary restraining order expires after fourteen (14) days and can typically only be extended for another fourteen (14) day period unless the parties consent to a further extension. Consequently, a decision may be forthcoming yet this month. While predicting an outcome is always hazardous, nothing that developed at the hearing appears to have suggested that Judge Benitez' position has changed since granting the temporary restraining order on December 31, 2019.

Notably, in the meantime, on January 8, 2020, Judge William F. Highberger of the Superior Court of the State of California for the County of Los Angeles issued an order, in the case of *The People of the State of California v. Cal Cartage Transportation, et al.*, holding that the FAAAA does in fact preempt enforcement of AB5 against motor carriers operating in the State of California. In so holding, Judge Highberger noted that one of the motivating factors behind the preemptive language in FAAAA was Congress' intent to protect the owner-operator business model in the trucking industry and preclude its replacement by an "employee-operator" regime.

Building on Congressional intent, Judge Highberger recounted the extensive federal statutes and regulations favoring independent owner-operators as a catalyst for eliminating state-imposed barriers to truckers' entry into the motor carrier industry. He referenced the Truth-In-Leasing Regulations as promoting uniform governance of the relationship between carriers and owner-operators as a means of promoting stability and economic welfare of the independent trucker. In calling attention to FAAAA's preemption provision, he reiterated Congress' goal of eliminating the patchwork of state and local regulations, which had bogged down the motor carrier industry and increased costs for motor carriers and consumers.

The crux of Judge Highberger's analysis was two-fold. First, he determined that "Prong B" of AB5's ABC Test is preempted, because it prohibits motor carriers from using independent owner-operators in any capacity. This is so, Judge Highberger noted, because "Prong B" requires a worker to perform work outside the usual course of the hiring entity's business. Given the transportation-related services at the core of every motor carrier's business, "Prong B" would prohibit performance of these services by independent owner-operators. Judge Highberger went on to explain the "exceptions" included in AB5 afford no real relief from AB5's prohibition against motor carriers' use of independent owner-operators.

Second, Judge Highberger determined that an absolute prohibition against the use of independent owner-operators has a substantial effect on motor carriers' prices, routes and services. In arriving at this conclusion, Judge Highberger called attention to the economic burdens and impediments to a competitive marketplace caused by AB5's prohibition against owner-operators. Among other things, Judge Highberger remarked that some motor carriers would be forced to revamp their business models to utilize only employee drivers, while others (along with shippers) would lose the efficiencies and cost-savings realized through the use of owner-operators. From a regulatory standpoint, Judge Highberger noted, the type of services performed by motor carriers, as well as the type of workers used to perform the services, would fall to scrutiny of the courts, rather than a competitive market.

During the course of his own analysis, Judge Highberger relied openly on Judge Benitez' recent ruling granting the temporary restraining order against AB5 enforcement, as well as decisions from the First Circuit and the Supreme Judicial Court of Massachusetts (holding that the FAAAA preempts the ABC Test, as adopted in Massachusetts and California) and relatively recent California case law. In turn, Judge Benitez may very well draw upon the thorough preemption analysis contained in Judge Highberger's decision when rendering his decision. In any event, the transportation industry now eagerly awaits Judge Benitez' ruling with respect to CTA's motion for a preliminary injunction.

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