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The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

FLASH NO. 78

A BIG WIN FOR CALIFORNIA MOTOR CARRIERS: FEDERAL COURT PROHIBITS ENFORCEMENT OF ASSEMBLY BILL NO. 5



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On January 16, 2020, finding that "California runs off the road and into the preemption ditch," Judge Roger Benitez of the United States District Court for the Southern District of California issued his decision granting a preliminary injunction against enforcing California Assembly Bill No. 5 ("AB5") with respect to motor carriers in the State of California.

As written, AB5 would mandate employee status for any driver performing services within the usual course of the hiring entity's business. Thus, AB5 would, if enforced, make it impossible for motor carriers to utilize owner-operators and would, instead, force classification of all drivers as employees. Judge Benitez ruled that such a result is preempted by the Federal Aviation Administration Authorization Act (the "FAAAA"). Preemption under the FAAAA was the subject of [*Interconnect FLASH! Nos. 76*](#) and [*77*](#), published after Judge Benitez' issuance of a temporary restraining order and the subsequent hearing on preliminary injunction.

In issuing this latest decision, Judge Benitez noted that for decades, the trucking industry has used an owner-operator model to provide transportation of property in interstate commerce. He called attention to the fluid nature of the industry and its fluctuating demand for highly varied services, many of which are performed by independent-contractor drivers. Judge Benitez went on to confirm that an "all or nothing" approach to independent owner-operators runs afoul of the FAAAA's preemption.

Specifically, Judge Benitez held "an all or nothing state law like AB5 that categorically prevents motor carriers from exercising their freedom to choose between using independent contractors or employees" is likely preempted by the FAAAA. The judge added in a footnote that he "repeatedly invited" the California Attorney General and the Teamsters' counsel to explain during the hearing how the test in AB5 was not an "all or nothing" test. However, they were unable to provide any example.

Judge Benitez went on to recognize and reiterate that when Congress adopted the FAAAA, it intended to broadly preempt state laws that were related to prices, routes, and services of a motor carrier. As with prior rulings, Judge Benitez explained that preemption was intended to preserve federal deregulation of the motor carrier industry and to avoid a patchwork of state service-determining laws, rules, and regulations.

As part of his decision, Judge Benitez observed that as opposed to the ABC Test, the multi-faceted *Borello* test (referenced in AB5) is the more appropriate tool for classifying drivers as independent contractors or employees. In describing the *Borello* test, Judge Benitez noted that whether a driver's work "fits within the usual course of an employer's business is one factor among many - and not even the most important one." Thus, the court acknowledged the importance of allowing drivers who own and operate their own rigs to be considered independent contractors under California law.

In granting preliminary injunctive relief, Judge Benitez aligned with both federal and state courts in California, and in particular, a decision from the Los Angeles Superior Court, holding that because the ABC Test effectively prohibits motor carriers from using independent contractors to provide transportation services, the test has a significant, impermissible effect on motor carriers' prices, routes, and services and, thus, is preempted by the FAAAA.

While Judge Benitez' decision is highly encouraging for the motor carrier industry, an appeal of his decision to the United States Court of Appeals for the Ninth Circuit will almost inevitably follow. Moreover, Judge Benitez noted more than once that his ruling, at least in part, is premised upon the very early nature of the underlying court proceedings. For the time being, however, motor carriers and their customers can take solace that operations may continue without fear of reprisal under AB5.

As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.

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