CLIENT ALERTS & INSIGHTS

Time to Adapt: U.S. Supreme Court Declines Review of California Assembly Bill No 5

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Unfortunately, today, June 30, 2022, the U.S. Supreme Court delivered a deeply disappointing loss to the transportation industry and supply chain interests throughout the country by declining to review the California Trucking Association's challenge to Assembly Bill No. 5 ("AB5").

By way of background, AB5 codified into statutory law a rigid "ABC" test used for determining whether a worker is an employee or an independent contractor. On December 24, 2019, in a federal case brought by the California Trucking Association and others (collectively, "CTA"), CTA moved for a temporary restraining order to prohibit the enforcement of AB5 against motor carriers operating in California. Among other things, CTA argued that AB5 was preempted by 49 U.S.C. § 14501(c)(1), known as the Federal Aviation Administration Authorization Act ("FAAAA"). On December 31, 2019 (the day before AB5 was to become effective), Judge Roger T. Benitez issued a decision granting CTA's request for an emergency order enjoining the State of California from enforcing AB5 as against motor carriers. The judge found that that the "B" prong of the ABC test embodied in AB5 "is likely preempted by the FAAAA" because AB5 "effectively mandates that motor carriers treat owner-operators as employees, rather than as the independent contractors that they are." Judge Benitez later converted the temporary restraining order into a preliminary injunction. An appeal followed and, in April 2021, the United States Court of Appeals for the Ninth Circuit unfortunately reversed the district court's decision, finding that AB5 was not in fact preempted by the FAAAA. However, the appellate court did stay enforcement of its decision pending CTA's request for the United States Supreme Court to review the appellate court's decision.

After extensive briefing, and an outpouring of industry support emphasizing that this subject is of great public importance and that the Court needed to resolve a circuit split regarding the scope of FAAAA preemption, the Court nevertheless today declined to accept the case for review. As a result, the decision of the Ninth Circuit stands. Upon the Ninth Circuit's dissolution of the stay that it previously entered, the State of California may proceed to enforce AB5 against motor carriers in California. The Ninth Circuit's order entering the stay last year stated that, if certiorari was denied, the Ninth Circuit would issue the mandate to the trial court "immediately." Further, the Ninth Circuit requires the parties to advise the Ninth Circuit "immediately" upon the denial of certiorari.

Of course, the Court's decision to deny review has profound consequences for the transportation industry and supply chains in general. At a time when transportation resources and supply chains are already stressed, motor carriers, transportation intermediaries, and commercial shippers must all now adapt to the new landscape in California. Moreover, the industry can expect that other like-minded states will proceed with "copycat" legislation, creating yet further supply chain disruption.

Most immediately, motor carriers must evaluate and adopt alternative operating models to mitigate risk if they intend to continue to do business in California. These alternatives include pivoting to an employee driver model, seeking to comply with the business-to-business exemption in AB5, deploying a freight brokerage model, utilizing a "two-check" system of compensation, or implementing a "taxi cab medallion" model. Motor carriers who quickly adapt and innovate may be able to make summer lemonade out of the lemons delivered today by the U.S. Supreme Court.

Please contact a member of Benesch's Transportation & Logistics Practice Group with any questions or concerns.

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