



A. Robert Rosin · Patricia Walsh · Michael M. Lum
Roger F. Liu · Gregory S. Gerson · Timur Bilir
Janette G. Leonidou (Of Counsel)

777 Cuesta Drive, Suite 200
Mountain View, California 94040
(650) 691-2888
(650) 691-2889 (fax)
www.lrconstructionlaw.com

U.S. DISTRICT COURT ISSUES PRELIMINARY INJUNCTION ENJOINING ENFORCEMENT OF AB 5 AS TO MOTOR CARRIERS

On Thursday, January 16, 2020, Judge Roger T. Benitez of the United States District Court for the Southern District of California entered a preliminary injunction in a lawsuit brought by the California Truckers Association (CTA).

Judge Benitez ordered that the State of California is “temporarily enjoined from enforcing Assembly Bill 5’s ABC test, as set out in Cal. Labor Code § 2750.3(a)(1), as to any motor carrier operating in California, pending the entry of final judgment in this action.” The preliminary injunction replaces a temporary restraining order that Judge Benitez issued on December 31, 2019.

The preliminary injunction is not the final word as to whether Assembly Bill 5 (AB 5) is enforceable. Nor does the injunction address the enforceability of AB 5 as to individuals providing services other than those related to the transportation of persons and property. For example, the preliminary injunction would not enjoin the enforcement of AB 5 as to (a) licensed subcontractors providing construction services, not transportation services or (b) owner-operators who provide other types of services, like street sweeping, that do not involve transportation of property.

There are also open questions as to whether the off-haul of construction spoils or debris or the hauling of materials solely within a construction site will constitute operation of a motor carrier under the preliminary injunction.

Additional Background

The CTA is one of a number of plaintiffs who have filed lawsuits challenging AB 5 and the *Dynamex* decision. Other courts have issued differing and conflicting results on the issues presented in CTA's lawsuit.

Judge Benetiz granted the preliminary injunction based on the doctrine of federal preemption, holding that it is likely that the Federal Aviation Administration Authorization Act (FAAAA) preempts AB 5. The FAAAA is one of a series of laws that deregulated the trucking industry.

The enforceability of AB 5 will not be determined in the near future. There may be conflicting rulings until the Ninth Circuit, and possibly the U.S. Supreme Court, finally decides the issue. For example, a U.S. District Court in 2016 sustained a challenge to AB 219, a law which required sellers of ready-mix concrete used on public projects to pay prevailing wages to delivery truck drivers. The challenge to AB 219 was not resolved by the Ninth Circuit Court of Appeals until September 20, 2018.

The preliminary injunction in the CTA lawsuit does not define what constitutes a "motor carrier," which leaves some ambiguity as to the scope of the injunction. Under the FAAAA, however, the term "motor carrier" has a defined meaning. For purposes of the FAAAA, a motor carrier is "a person providing motor vehicle transportation for compensation." 49 U.S.C. § 13102(14). A "motor vehicle" is a "vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation." 49 U.S.C. § 13102(16). A "highway" is "a road, highway, street, and way." 49 U.S.C. § 13102(9). The term "transportation" refers to "movement of passengers or property, or both", or alternatively, "services related to that movement." 49 U.S.C. § 13102(23).

Based on these statutory definitions, and because the preliminary injunction is based on the FAAAA, the Teamsters and other parties seeking to enforce AB 5 may argue that particular activities are not within the scope of the preliminary injunction if drivers were not engaged in the "movement of passengers or property" on a "highway." For example, some courts have found that garbage or debris is not "property" and hence that the FAAAA does not preempt laws that affect the hauling of garbage or debris. If these cases were followed, the FAAAA and preliminary injunction might not apply to the hauling of garbage or spoils. Similarly, hauling confined entirely to a construction site arguably does not constitute operation of a motor carrier because the hauling activities do not involve movement of property "on a highway."

The CTA will try to use its lawsuit and the preliminary injunction as leverage to obtain favorable amendments to AB 5. Such amendments probably would not take effect before 2021, however, unless the Legislature passes an urgency bill.

<p>This alert is intended to provide information about changes in legislation and should not be relied upon as legal advice. This document may be considered to be advertising under the California Rules of Professional Conduct. Copyright 2020. A. Robert Rosin, Esq., Patricia Walsh, Esq., and Michael Lum, Esq., Leonidou & Rosin Professional Corporation (650) 691-2888.</p>
--