

*We are dedicated to providing the highest quality legal services and obtaining superior results in partnership with those who entrust us with their needs for counsel.*

*We enjoy a dynamic and empowering work environment that promotes teamwork, respect, growth, diversity, and a high quality of life.*

*We act with unparalleled integrity and professionalism at all times to earn the respect and confidence of all with whom we deal.*

San Diego | Los Angeles | Phoenix | Tucson

[www.pettitkohn.com](http://www.pettitkohn.com)

## **JUDICIAL**

### **Federal**

#### **Ninth Circuit Court of Appeals Declines to Apply Exemption in *California Trucking Association v. Bonta, et al.***

In an anticipated recent opinion in *California Trucking Association v. Bonta, et al.*, the Ninth Circuit Court of Appeals reversed a district court’s decision, holding that the “ABC Test” (later codified as AB5) is *not* preempted by the Federal Aviation Administration Authorization Act of 1994 (“F4A”). In doing so, the federal appellate court noted that, because AB5 is a generally applicable labor law that impacts a motor carrier’s relationship with its workforce and “does not bind, compel, or otherwise freeze into place the prices, routes, or services of motor carriers,” it is not preempted by the F4A.

Under the ABC Test, a worker is presumed to be an employee unless: (A) the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; (B) the worker performs work that is outside the usual course of the hiring entity’s business; and (C) the worker customarily engages in an independently established trade, occupation, or business of the same nature as the work performed by the hiring entity.

Following the codification of the ABC Test via AB5, the California Trucking Association (“CTA”) initiated litigation in federal district court, which preliminarily enjoined the state from enforcing AB5 against motor carriers doing business in California. In its decision, the lower opined that AB5 “*relate[s] to* [emphasis included] a price, route, or service of any motor carrier... with respect to the transportation of property” and, as a result, is expressly preempted by the F4A. Motor carriers, and other businesses of similar ilk, lauded the decision as a victory against AB5 and a suggested blueprint for overcoming the high threshold set by the test.

On appeal, however, the favorable ruling was overturned. In the *Bonta* opinion, the Ninth Circuit first noted that AB5 presents as a law of general applicability, in that it impacts individuals “solely in their capacity as members of the general public” and therefore applies to employers generally. It therefore does not single out motor carriers, but instead impacts them in their capacity as

employers. Based on that determination, the court reversed the district court's ruling, lifted the injunction, and held that AB5 is *not* preempted by the F4A.

While technically focused on motor carriers, the *Bonta* decision highlights the continued willingness and desire of courts to enforce the stringent requirements of AB5. Employers must remain wary of the requirements placed on independent contractor classification, and should temper optimism that future judicial action (at least in the near term) will create, rather than extinguish, additional exemptions.

## Areas of Practice

Appellate

Business Litigation

Community Association Litigation

Employment & Labor

Personal Injury

Product Liability

Professional Liability

Real Estate Litigation

Restaurant & Hospitality

Retail

Transactional & Business Services

Transportation

Trial & Civil Litigation

San Diego | Los Angeles | Phoenix | Tucson

[www.pettitkohn.com](http://www.pettitkohn.com)

*This is Pettit Kohn Ingrassia Lutz & Dolin PC's employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shannon Finley, Carol Shieh, Rio Schwarting, Christopher Reilly, Tina Robinson, Zachary Rankin, or Christine Robles at (858) 755-8500; or Grant Waterkotte, Tristan Mullis, Andrew Chung, Jennifer Weidinger, Rachel Albert, Sevada Hakopian, Catherine Brackett, or Kaya Vyas at (310) 649-5772.*