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WatchDog seeks to keep our clients better informed about the issues facing airport and seaport truckers. There is none bigger than the potential of the California law known as AB-5, which the California Trucking Association (CTA) describes as “thermonuclear.” It could be around the corner – and potentially extend beyond California’s borders.

AB-5: Roaring back?

A brief review of AB-5

- **September 19, 2019: AB-5** is signed into law, with an effective date of January 1, 2020. It would make it illegal for most industries, including trucking, to hire independent contractors (think owner-operators) if those contractors perform tasks that the company does in its normal course of business. A company that runs trucks can hire an independent contractor to do computer programming, or an accountant – but not to drive trucks, because delivering goods by truck is their core business.
- **December 31, 2019:** The CTA petitions the courts and receives an indefinite exemption for trucking companies.
- **April 28, 2021:** Three judges from the Court of Appeals voted 2-1 to overturn the exemption. Trucking companies doing business in California WILL be subject to AB-5 according to their decision.

The CTA has appealed, requesting a hearing before a larger panel of 11 appeals judges; that may be granted in the next week or two. Appeals can be heard very rapidly – or can take many months. All this leaves many or most truckers doing business in California uncertain about the continued viability of their business structure and model – not to mention the confusion wreaked on the approximately 70,000 men and women in California working as owner-operators.

Which companies would AB-5 impact?

If AB-5 becomes applicable to truckers, it will impact any trucking company that uses both employed drivers and subcontracted drivers. That will likely include the majority of airport cartage companies, as well as many or most drayage companies hauling FCL and LCL cargo. The business model based on supplementing employed drivers and equipment with owner-operators has become the dominant structure for trucking companies over the last three decades, for obvious reasons – it enables companies to minimize cost while they adapt to seasonality and other factors which impact the volume of demand.

If/when AB-5 comes into effect vis-à-vis truckers, this structure goes out the window.



How might truckers adapt?

Trucking companies might return to the original business model – work exclusively with their own, employed drivers and owned trucks. But that would hamstring their ability to adjust to changes in demand.

Alternatively, a trucker could take the opposite strategy and transform into a broker – firing all employed drivers, selling its equipment, and emerging as a pure brokerage operation, hopefully with all or some of the same people now functioning as owner-operators.

A third option would be to break into two companies – a trucking company with employed drivers, and a brokerage company using owner-operators.

Law firms are exploring other options such as relocating a trucking company, and its owner-operators, outside of California. But, as attorney Greg Feary, of Scopelities Garvin Hanson Light Fear commented to FreightWaves, **“These are not minor decisions.”**

Indeed. And a further complication potentially rendering relocation a chancy, if not useless gambit, lies in the fact that laws similar to AB-5 are under consideration in many other states – and are even being discussed at the Federal level.

We are aware of a few cartage and drayage companies who have worked with their legal advisors and altered, or begun to alter, their structure and approach so that they can weather AB-5, with minimal disruption, if it comes crashing into relevance. But most small cartage and drayage companies are likely **not** fully prepared.

As every forwarder knows, the trucking market, especially for drayage, is already deeply unsettled by the Pandemic – for many months now, forwarders are simply not able to provide the same level of predictable ground service that our clients are accustomed to receiving. And a return to normalcy is not yet in sight. Forwarders need to be aware that AB-5, a potentially devastating development, could arrive suddenly – impose an even deeper level of chaos, with great implications for both cost and service.

We’d suggest speaking with the management of your core truckers operating in California -- learn their contingency plans if AB-5 comes into effect – and make adjustments accordingly.

Diesel supply issues?

In addition to all the other problems your truckers are struggling with, there may be a diesel supply shortage developing, especially in the Southeast, due to lingering effects of the Colonial Pipeline cyber attack. The oil is flowing through the pipeline again – but it refills the pipeline at just walking speed – a few miles per hour. While there hasn’t been a major problem yet, both Pilot and Travel Centers, the two largest truck stop operators, have reported intermittent supply outages, per the Wall Street Journal.

