



August 31, 2021

*WatchDog seeks to keep our clients better informed about the issues facing airport and seaport truckers. There has been a lot of breaking news in the last week or so – and **none of it is good**, from the perspective of air and sea forwarders who are already struggling to deliver their clients' cargo efficiently in the face of delays at ports and CFSS, equipment shortages, and driver shortages.*

## Hurricane Ida – an additional drain on capacity?

FEMA will no doubt play a critical role in directing badly needed relief supplies, as well equipment to restore infrastructure, to Louisiana and other areas affected by Hurricane Ida in the coming weeks and months. Most of those supplies and equipment will move by truck.

In the past, FEMA has been ready to pay whatever the market requires to divert the required trucking capacity from the ordinary commercial routes, and that is likely to be no different this time around. Help won't come cheap given the capacity crunch and inflated rates that are already impacting the LTL – and especially FTL – markets.

What will this mean for forwarders? Another brick in the wall. FEMA's critical capacity needs are likely to be yet another factor driving additional delays and even higher costs for ground transportation in the coming months.

## AB-5 exemption: Hanging by a thread?

Recent court decisions all point in the wrong direction for trucking companies in California.

Your vendors are desperately seeking to maintain their temporary exception from AB-5: the law that would make it illegal for most trucking companies to work with the 90,000 owner-operators that are a critical component of much trucking capacity on the west coast<sup>1</sup>. But it's not looking good:

- In April, the U.S. Court of Appeals threw out the ruling that exempted truckers from AB-5.
- Then, in June, the California Trucking Association's petition to appeal that ruling was denied.
- And last week, another court ruled that even Proposition 22, which provided an exception from AB-5 for app-based drivers (Uber, DoorDash, etc.), was unconstitutional. While that decision doesn't directly impact trucking companies, it doesn't bode well for the transportation industry as a whole as it seeks to escape the broad sweep of AB-5.

Where do things stand now? The California Trucking Association has made a last-ditch petition to the U.S. Supreme Court – but most analysts seem to give it little chance of success. If and when it is denied,

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<sup>1</sup> See *WatchDog* dated May 17, 2021



our understanding is that the exception currently protecting so many trucking companies would fall almost immediately. Many companies would be scrambling to fundamentally restructure their business – just when they are already overwhelmed with operational, capacity, and driver issues.

Stay tuned. AB-5 means we may be on the brink of structural change (read: additional chaos) in California – and soon, most likely, in other states as well.

## Liability – Nuclear verdict breaks the billion dollar(!) threshold

Last week a Florida jury blew away all previous records by awarding punitive damages in excess of one billion dollars against two parties when a driver, improperly vetted and distracted by his phone, slammed into a line of stopped cars on Route 95 in Florida and killed a young man.

What does this mean for forwarders, and the trucking companies on which they depend? Unfortunately, quite a bit.

As nuclear verdicts grow both in frequency and size, it will inevitably be reflected in insurance premiums. In some cases, insurance companies may choose to pull out of states where these verdicts are most common.

But an even greater risk to forwarders is the likelihood that they would be looped into such a suit through vicarious liability if a similar condition surrounded an accident involving a trucking company that the forwarder had selected without demonstrably vigorous vetting.

It won't take a plaintiff's attorney long to sniff out the fact that forwarders have much deeper pockets than most of the hundreds of trucking companies they employ.

**Sloppy compliance could cost unimaginable sums. Be warned.**

### So what's a forwarder to do?

Forwarders can't control the trucking market or the courts. Costs are going up, and will likely rise even further based on supply and demand and the three factors outlined in this WatchDog. But they can mitigate the cost and service issues by:

- 1) Building and strengthening long-term relationships with quality trucking partners – even if it costs a little more in the short run. Focus especially on finding California truckers who may be better prepared for AB-5.
- 2) Keeping their clients informed about the factors – including these new developments – that are driving up costs and compromising service.
- 3) Rechecking and committing to even more vigorous vetting and control over their trucking vendors. The stakes are exponentially higher than they were just a few years ago.

The days of just finding a cheap trucker for a given move are over for forwarders – or they should be. Forwarders need a coherent ground transportation strategy that combines a demonstrable, aggressive process for vetting trucking vendors with the ability to efficiently manage and control order execution.

