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Update on Developments in California Drone Law

October 13, 2014 by Donald P. Wagner

The governor acted recently on the two bills involving us The governor acted recently on the two bills involving use of unmanned aerial vehicles ("UAVs or "drones") sitting on his desk, AB 1327 (Gorell) and AB 2306 (Chau). Both were discussed in some depth previously in this space. One bill was signed and the other vetoed.

These two bills had reached Gov. Brown with overwhelming bipartisan support in the legislature, though the more significant and far reaching of the two, Mr. Gorell's AB 1327, had garnered opposition from the media and some law enforcement agencies. Specifically, it put limits on law enforcements' use of drones absent a search warrant. That was the bill the governor vetoed.

In his message explaining his unwillingness to sign AB 1327, the governor said that the provisions of the bill go "beyond what is required by either the 4th Amendment [to the United States Constitution] or the privacy provisions of the California Constitution." Apparently, he does not want to add privacy protections to California law, at least in the drone context, beyond the already existing constitutional minimums.

The other bill, Mr. Chau's AB 2306 which the governor did sign, will take effect January 1, 2015. As discussed before, it creates an actionable invasion of privacy to use a drone to obtain an image or sound recording of a person engaged in a personal or familial activity under circumstances in which the person has a reasonable expectation of privacy. The bill also makes several other changes to California privacy law and provides that the violation of this drone law can result in the imposition of actual, treble, and punitive damages.

Mr. Wagner is Of Counsel to Buchalter Nemer and a member of the California Legislature representing the Central Orange County's 68th Assembly District. e of unmanned aerial vehicles ("UAVs or "drones") sitting on his desk, AB 1327 (Gorell) and AB 2306 (Chau). Both were discussed in some depth previously in this space. One bill was signed and the other vetoed.

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One Community Gets Relief from Aircraft Noise

October 23, 2014 by Barbara E. Lichman, Ph.D., J.D.

In a rare showing of unanimity between airport operator and noise impacted community, on September 30, 2014 the Board of Supervisors of Orange County, California ("Board") approved the extension, for an additional 15 years, of a long-standing set of noise restrictions on the operation of John Wayne Airport ("Airport"), of which the Board is also the operator. Those restrictions include: (1) limitation on the number of the noisiest aircraft that can operate at the Airport; (2) limitation on the number of passengers that can use the Airport annually; (3) limitation on the number of aircraft loading bridges; and, perhaps most important, (4) limitation on the hours of aircraft operation (10:00 p.m. to 7:00 a.m. on weekdays and 8:00 a.m. on Sundays).

The restrictions were originally imposed in settlement of a lawsuit in 1986, between the Board, the neighboring City of Newport Beach and two environmental organizations, the Airport Working Group of Orange County, Inc. and Stop Polluting Our Newport. The obvious question is whether similar restrictions might be achieved at other airports today. The not so obvious answer is that such a resolution is far more difficult now, but not impossible.

Since, and partially as a result of, the 1986 settlement and the restrictions it contained, the United States Congress enacted the Airport Noise and Capacity Act of 1990, 49 U.S.C. § 47521-45733 ("ANCA"). While ANCA clearly expressed the intent of Congress to preempt the imposition of local airport noise restrictions ("noise policy must be carried out at the national level," 49 U.S.C. § 47521(3)), it provides two avenues to circumvent that comprehensive preemption. First, ANCA provides seven express exceptions under which the prohibition on local enactment of airport noise restrictions does not apply. 49 U.S.C. § 47524(d). The extension of the JWA noise restrictions qualifies under 49 U.S.C. § 47524(d)(4), as "a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety."

However, even where an existing or planned local restriction does not fit neatly into any one of the specific categories of exception, ANCA provides for a process whereby a proposed restriction may either: (a) be agreed to by the airport proprietor and all aircraft operators (i.e., airlines); or (b) may be submitted to the Secretary of Transportation, through his/her designee, the Administrator of the Federal Aviation Administration ("FAA"), for approval. 49 U.S.C. § 47524(c). he standards of review specified in the statute for application by the Secretary are admittedly both vague and draconian. See, e.g., 49 U.S.C. § 47524(c)(2)(B) ["the restriction does not create an unreasonable burden on interstate or foreign commerce"]. Nevertheless, in some rare instances, such as Los Angeles International Airport's nighttime over-ocean arrival and departure procedures, which is a local restriction long in effect, and, because of fewer night operations, not uniquely burdensome, the restriction may be able to meet ANCA's difficult standard.

In short, the currently required process under ANCA, and its implementing regulation, 14 C.F.R. Part 161, for approval of airport noise and access restrictions may not be a guarantee of success, but it is a dramatic illustration of the ancient adage, "if you don't ask, you don't get."

California Once Again Relinquishes Clean Air Act Enforcement Responsibility to the Federal Government

October 28, 2014 by Barbara E. Lichman, Ph.D., J.D.

On October 24, 2014, the Environmental Protection Agency ("EPA") published its final rule documenting the failure of the California Air Resources Board ("CARB") to submit a State Implementation Plan ("SIP") revision containing measures to control California's significant contribution to the nonattainment, or interference with maintenance, of the 2006 24 hour fine particulate matter ("PM2.5") National Ambient Air Quality Standards ("NAAQS") in other states ("Interstate Transport SIP").

More specifically, CARB's failure to submit constitutes a violation of the general provisions of the Clean Air Act ("CAA"), § 110(a)(2)(D)(i)(I) which requires that CARB submit a SIP revision to comply with the implementation, maintenance and enforcement provisions related to new or revised NAAQS within three years after the promulgation of the revised NAAQS; and that such plan contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS ("Prong 1"), or interference with maintenance of the NAAQS ("Prong 2"), in any other state. The final rule implementing the "Finding of Failure" transfers to EPA the obligation to promulgate a Federal Implementation Plan ("FIP") to address the interstate transport requirements, within 24 months.

The issue has come to prominence as a result of the federal/state partnership that is the foundation of the CAA, see 42 U.S.C. § 7401(a)(3) and (4), giving EPA the power of approval over locally developed plans.

After five years of give and take with EPA, beginning with the submittal of "an infrastructure SIP certification letter," certifying compliance with the "information and authorities, compliance assurances, procedural requirements, and control measures that constitute the 'infrastructure' of a state's air quality management program," 79 Fed. Reg. 63737, in 2009, the proposed infrastructure SIP was the subject of a 2012 lawsuit brought by the Sierra Club against EPA for failure of enforcement of the infrastructure SIP requirements, which lawsuit was stayed by the United States District Court for the Northern District of California as related to ongoing litigation in the United States Supreme Court, EME Homer City v. EPA, 696 F.3d 7 (D.C. Cir. 2012). On March 6, 2014, CARB submitted a multi-pollutant infrastructure SIP revision including a SIP revision for the 2006 PM2.5 NAAQS. That submission, however, also failed to meet the requirements of CAA § 110(a)(2)(D)(i)(I), where CARB declined to include interstate transport of pollutants because of its interpretation of the D.C. Circuit Court of Appeals Opinion in EME Homer City v. EPA, supra, which it read as exempting states from addressing Prongs 1 and 2 "until U.S. EPA quantifies each state's transport obligation." After the Supreme Court's ultimate reversal of the D.C. Circuit Court's decision in EME Homer City, on July 18, 2014, CARB withdrew its earlier 2009 "infrastructure SIP certification letter" pending its future revision but leaving CARB without even a gesture of compliance.

These omissions by CARB should be viewed through the lens of EPA's contemporaneous refusal to approve the Air Quality Management Plan ("AQMP"), submitted by the Southern California Air Quality Management District ("AQMD"), the regional air quality enforcement partner of CARB. Although submitted to EPA in 2012, EPA has yet to act on all but a small portion of the AQMP. Therefore, AQMD is still relying on a 2007 AQMP that does not accommodate the NAAQS revisions since that time.

In summary, while states are challenged by the continuously changing Clean Air Act regulatory landscape, CARB's failure to meet the requirements for regulation of interstate pollutant transport effectively abrogates the federal/state partnership which is the gravamen of Clean Air Act enforcement and, once again, leaves exclusively in the hands of the federal government comprehensive authority over the structure of Clean Air Act enforcement that Congress believes should properly be shared with the states.

One Code To Rule Them All: Dronecode

October 31, 2014 by Paul J. Fraidenburgh

Drones have just found their new best friends: coders. On Oct. 13, the Linux Foundation unveiled a nonprofit organization called the Dronecode Project, an open-source development initiative uniting thousands of coders for the purpose of building an aerial operating system for drones. Hopeful that the project will bring order to the chaos that has surrounded software developers as they sprint to carve out a share of the bourgeoning market for unmanned aircraft systems (UAS), UAS operators are now asking whether Dronecode will finally provide the horsepower and industry-wide support needed to launch a universal drone operating system.

Dronecode's instant edge in the industry is the result of combining the responsive and creative culture of an open-source development platform with the institutional knowledge of founding members like 3D Robotics, Baidu, Box, DroneDeploy, Intel, Qualcomm and Walkera. While the Dronecode Project appears to have the heft for a home run, its success will depend upon whether the aerial operating system it ultimately produces can win the hearts of the operators who rely on UAS day in and day out for filmmaking, firefighting, precision agriculture, pipeline inspection, package delivery pilot programs and hundreds of other applications.

Meeting this challenge will require more than just talented coders. In addition to relying on user-friendly platforms and systems that intelligently adapt to flight in new environments, UAS operators now expect a system that is engineered with an eye toward the regulatory environmentswithin which they operate. The Federal Aviation Administration's September 2014 approval of several petitions to operate small UASs weighing 55 pounds or less under Section 333 of the FAA Modernization and Reform Act of 2012 provides a preliminary road map for operational compliance. To become the industry standard, Dronecode will have to build a practical platform that takes the FAA's road map into account and makes it easy for operators to comply with federal aviation safety standards.

Monitoring and controlling altitude, for example, is a primary consideration of the FAA in ensuring that commercial UAS operations do not interfere with manned aircraft. The FAA's Sept. 25 Grant of Exemption to Astraeus Aerial expressly limited operations to below 400 feet and included an in-depth analysis of the system's altitude reading capabilities prior to granting authorization. Since most UASs do not include a typical barometric altimeter, the FAA has approved operating systems that provide altitude information to the UAS pilot through a digitally encoded telemetric data feed that downlinks from the UAS to a ground-based, on-screen display.

But what happens when the connection to the UAS operator on the ground is lost? While many coders could build a GPS-based altitude reading system before having their morning coffee, it is the challenge of preparing for lost-link events that will require collaboration between the greatest minds in software, artificial intelligence and "sense and avoid" systems — precisely the type of collaboration Dronecode aims to facilitate.

To date, the FAA's analysis of lost-link events has focused on the ability of the UAS, upon losing a connection, to perform preprogrammed maneuvers that include flying to safety without the control of an operator. Thus, while improving the operator experience is an important factor for Dronecode's success, lasting success in the UAS software industry will require systems to perform safely and reliably without an operator. These systems will truly be "unmanned."

With hundreds of thousands of lines of code already written, only time will tell whether Dronecode's operating system will be tailored to the operating parameters defined by the FAA and accepted in the UAS community.

FAA Seeks Input from Governmental Entities Concerning Revised Air Traffic Routes Over Southern California

November 11, 2014 by Barbara E. Lichman, Ph.D., J.D.

The Federal Aviation Administration ("FAA") has scheduled six "briefings" with governmental jurisdictions potentially impacted by the planned "Southern California Optimization of Airspace and Procedures in the Metroplex (SoCal OAPM)" ("Project"). The Project is expected to involve changes in aircraft

flight paths and/or altitudes in areas surrounding Bob Hope (Burbank) Airport (BUR), Camarillo Airport (CMA), Gillespie Field (SEE), McClellan-Palomar Airport (Carlsbad) (CRQ), Montgomery Field (MYF), Los Angeles International Airport (LAX), Long Beach Airport (LGB), Point Magu Naval Air Station (NTD), North Island Naval Air Station (NZY), Ontario International Airport (ONT), Oxnard Airport (OXR), Palm Springs International Airport (PSP), San Diego International Airport (SAN), Santa Barbara Municipal Airport (SBA), Brown Field Municipal Airport (SDM), Santa Monica Municipal Airport (SMO), John Wayne-Orange County Airport (SNA), Jacqueline Cochran Regional Airport (TRM), Bermuda Dunes (UDD), Miramar Marine Corps Air Station (NKX) and Van Nuys Airport (VNY).

These meetings are targeted at "key governmental officials/ agencies" for the purpose of soliciting their views on the Environmental Assessment being prepared for the Project pursuant to the requirements of the National Environmental Policy Act, 42 U.S.C. 4321. The meetings will not be open to the public, although public meetings will be scheduled as well.

It is important to note the regional scope of the planned airspace changes, and that they may redistribute noise, air quality, and other impacts over affected communities, thus implicating new populations, and simultaneously raising citizen ire in newly impacted communities. It is therefore doubly important that governmental entities participate at the initiation of the process to ensure protection at its culmination.

The governmental meetings are planned for the following locations and times:

November 18, 2014 - Ventura, CA
E.P. Foster Library - The Elizabeth R. Topping Room
651 East Main St., Ventura, CA 93001
10:30 a.m. - 12:30 p.m.

November 19, 2014 - Los Angeles, CA
Pico Union Library- Meeting Room
1030 S. Alvarado St., Los Angeles, CA 90006
10:30 a.m. - 12:30 p.m.

November 20, 2014 - Burbank, CA
Buena Vista Branch Library - Meeting Room
300 N. Buena Vista St., Burbank, CA 91505
10:30 a.m. - 12:30 p.m.

December 9, 2014 - San Diego, CA
Airport Noise Mitigation/ Quieter Home Program Offices
San Diego County Regional Airport Authority - Conference Room
2722 Truxtun Rd., San Diego, CA 92106
10:30 a.m. -12:00 p.m.

December 10, 2014 - Palm Desert, CA
Palm Desert Library - Community Room
73-300 Fred Waring Dr., Palm Desert, CA 92260
10:30 a.m. - 12:00 p.m.

December 11, 2014 - Costa Mesa, CA
John Wayne Airport
Eddie Martin Administration Building - Airport Commission Hearing Room
3160 Airway Ave., Costa Mesa, CA 92626
10:00 a.m. - 12:00 p.m.

Questions should be addressed to Ryan Weller at (425)203-4544; or email at 9-ANM-SoCalOAMP@faa.gov; or facsimile at (425)203-4505.

FAA Loosens Regulation of Taxes on Aviation Fuel

November 12, 2014 by Barbara E. Lichman, Ph.D., J.D.

On November 7, 2014, the Federal Aviation Administration ("FAA") published its "Final Policy Amendment" ("Amendment") to its "Policy and Procedures Concerning the Use of Airport Revenue," first published 15 years ago in the Federal Register at 64 Fed. Reg. 7696, February 16, 1999 ("Revenue Use Policy"). The Amendment formally adopts FAA's interpretation of the Federal requirements for use of revenue derived from taxes including sales taxes on aviation fuel imposed by both airport sponsors and governmental agencies, local and State, that are non-airport operators.

In brief, the FAA concludes that "an airport operator or State government submitting an application under the Airport Improvement Program must provide assurance that revenues from State and local government taxes on aviation fuel will be used for certain aviation-related purposes." 79 Fed.Reg. 66283. Predictably, FAA received 25 substantive comments from a diverse group of interested parties, including airport operators, industry and nonprofit associations representing airports, air carriers, business aviation and airport service businesses, air carriers, state government agencies, and private citizens. For example, in response to the airports' and governments' comments that airport sponsors would find it impossible to provide assurance that other governmental agencies would comply with the revenue use statutes for the life of the Airport Improvement Program ("AIP") grant, and that airports should not be required to agree to a condition compliance with which they have no control, FAA takes the position that Federal statute 49 U.S.C. §§ 47107(b) and 47133 already require this level of control from local proprietors. This is because "[t]he grant assurances provided by airport sponsors include Grant Assurance 25, which provides, in relevant part: 'All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other facilities which are owned and operated by the owner and operator of the airport. . .'" 79 Fed.Reg. 66284. The FAA further concludes that airport sponsors often have influence on the taxation of aviation activities in their States and localities, and the FAA expects airport sponsors to use that influence to shape State and non-sponsor local taxation to conform to these Federal laws. Id. Moreover, FAA asserts its power to pursue enforcement action against non-sponsor entities for the purposes of limiting the use of aviation tax revenues under 49 U.S.C. §§ 46301, 47133 and 47111(f).

FAA interprets § 46301 as specifically authorizing the imposition of civil penalties for a violation of § 47133 and does not exclude non-sponsors from its coverage. Moreover, it views 49 U.S.C. § 47111(f) as inclusive of non-sponsor entities because "Congress did not limit FAA's enforcement authority in 49 U.S.C. § 47111(f) to just airport sponsors, but rather permitted judicial enforcement to restrain 'any violation' of chapter 471 – that includes the requirements of § 47133 – by any person for a violation. 'Any violation' encompasses violations by non-sponsors as well as airport sponsors." 79 Fed.Reg. 66285 [emphasis in original].

Finally, a number of commenters raised the issue of "federalism," or the distribution of power between the States and Federal government mandated by the United States Constitution, and the Amendment's lack of compliance with Executive Order 13132 on federalism, on the ground, among others, that the Amendment was not required by statute. In response, FAA argues that, although a formal federalism analysis is unnecessary due to the clear applicability of the cited statutes, it closely consulted with "States, local governments, political subdivisions, and interested trade groups," 79 Fed.Reg. 66287, and thereby satisfied any lingering federalism concerns.

Less predictably, FAA agrees with the majority of commenters that it would be unfair to penalize airport sponsors for taxes imposed by another entity. 79 Fed.Reg. 66284. Therefore, FAA has also agreed to revise Revenue Use Policy paragraph IV.D.2 to acknowledge the differences in taxes that are and are not controlled by the airport sponsor for purposes of grant compliance. For taxes within the airport sponsor's direct

control, the airport sponsor must comply with the revenue use requirements of §§ 47107(b) and 47133. For taxes imposed by non-sponsor States and local governments, however, the airport sponsor is expected to advise those entities of Federal requirements for use of aviation fuel tax revenues, and to take action reasonably within the sponsor's power to tailor State and local taxation to conform to the requirements of those statutes. 79 Fed.Reg. 66284.

Perhaps most important, however, FAA will not relinquish its power to pursue enforcement action under 49 U.S.C. §§ 46301 or 47111(f) against a non-sponsor State or local government that violates the revenue use policy or the limitations in 49 U.S.C. § 47133. Id. Because of that crucial caveat on FAA's self-imposed limitation on its own authority, jurisdictions with taxing power that include airport uses should be as aware of FAA's intentions as the airports themselves, and work closely with the relevant airport during the grant application and project approval processes to ensure that the disposition of resulting tax revenues from aviation fuel do not run afoul of FAA's enforcement intentions.

Pirker Reversed: NTSB Confirms FAA Has Jurisdiction Over Drones

November 18, 2014 by Paul J. Fraidenburgh

Earlier today, in a landmark decision for the unmanned aircraft systems industry, the National Transportation Safety Board reversed the Administrative Law Judge Patrick Geraghty's order in the Pirker case and held that unmanned aircraft systems fall squarely within the definition of "aircraft" under the Federal Aviation Regulations. This is the most significant legal opinion issued to date on the issue of drones in the United States.

In a twelve page opinion reversing the ALJ's March 7, 2014 decisional order, the NTSB stated:

"This case calls upon us to ascertain a clear, reasonable definition of 'aircraft' for purposes of the prohibition on careless and reckless operation in 14 C.F.R. § 91.13(a). We must look no further than the clear, unambiguous plain language of 49 U.S.C. § 40102(a)(6) and 14 C.F.R. § 1.1: an 'aircraft' is any 'device' 'used for flight in the air.' This definition includes any aircraft, manned or unmanned, large or small. The prohibition on careless and reckless operation in § 91.13(a) applies with respect to the operation of any 'aircraft' other than those subject to parts 101 and 103. We therefore remand to the law judge for a full factual hearing to determine whether respondent operated the aircraft 'in a careless or reckless manner so as to endanger the life or property of another,' contrary to § 91.13(a)."

The Federal Aviation Administration's success on appeal comes as no surprise to most members of the UAS industry, many of whom have already tacitly recognized the FAA's jurisdiction over unmanned aircraft by specifically requesting regulatory exemptions to conduct commercial UAS operations under Section 333 of the FAA Modernization and Reform Act of 2012.

The overturned decision, which had held that Respondent Raphael Pirker was entitled to dismissal of a $10,000 FAA enforcement action arising out of Mr. Pirker's UAS operations in the vicinity of the University of Virginia's campus, condemned the FAA for adopting an "overreaching interpretation" of the definition of "aircraft" under the Federal Aviation Regulations. The order even went so far as to state that adopting the FAA's interpretation "would result in reductio ad obsurdum in assertion of FAR regulatory authority over any device/object used or capable of flight in the air, regardless of method of propulsion or duration of flight." The NTSB's appellate panel unanimously disagreed.

Today's decision will maintain lasting significance as the FAA moves forward with developing comprehensive UAS regulations and exercising its jurisdiction over this bourgeoning technology – jurisdiction which the FAA impliedly promised in its appellate brief that it would not abuse.

Bonner County Wins Major Victory in Property Owner's "Takings" Lawsuit

November 24, 2014 by Barbara E. Lichman, Ph.D., J.D.

The decision of the Federal District Court for the Northern District of Idaho in SilverWing at *Sandpoint, LLC v. Bonner County*, a case that has been "hanging fire" for almost two years, was worth the wait. On Friday, November 21, 2014, the Court granted Defendant

Bonner County ("Bonner County") summary judgment on all Plaintiff SilverWing at Sandpoint, LLC's ("SilverWing") federal claims for inverse condemnation, or "taking," of private property by a public entity without just compensation, in violation of the 5th Amendment to the United States Constitution, and 42 U.S.C. § 1983, or violation of a plaintiff's constitutional or other federal rights by a person acting under color of state law. See, e.g., *Monell v. Department of Social Servs.,* 436 U.S. 658, 690 (1978). In addition, the Court granted summary judgment on SilverWing's state law contract claim for breach of the covenant of good faith and fair dealing.

In this case, SilverWing claimed that Bonner County had taken its property by implementing a plan for the airport, an Airport Layout Plan ("ALP") approved in accordance with the regulations promulgated by the Federal Aviation Administration ("FAA"), that showed the single runway at Sandpoint Airport moving 60 feet to the west, toward SilverWing's property. SilverWing argued that forcing the movement of a taxiway that already been constructed to service the "hangar homes" in the development, and thus causing it to incur upon the five lots closest to the runway, making them unbuildable, caused a loss to SilverWing of $26 million. The Court ruled that implementation of the requirements of the ALP was a federal requirement arising out of federal responsibility for aviation safety and not within the discretion of Bonner County.

The Court's ruling was substantially based on the concept of federal preemption. Preemption of state or local law occurs under one of three scenarios: (1) where the federal government affirmatively expresses an intent to preempt (express preemption); (2) where it has enacted laws which so substantially occupy the specified field that they leave no room for state or local law (field preemption); or (3) state or local law directly conflicts with federal law, or state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress (conflict preemption). See, e.g., *Montalvo v. Spirit Airlines*, 508 F.3d 464, 470 (9th Cir. 2007). In this case, therefore, the Court held that Bonner County was acting properly and in accordance with federal law that it had no power to contradict, and, therefore, could not be held responsible for the impacts.

Truckers Suffer Legal Setbacks in California Wage and Hour Preemption Cases

December 8, 2014 by Robert Cooper

Some recent decisions in the Ninth Circuit Court of Appeals and the California Supreme Court have reversed what had been a positive trend for trucking companies on the issue of federal preemption of state wage and hour laws. The issue is whether the Federal Aviation Administration Authorization Act (Known as the FAAAA or F-quad-A), a federal statute enacted by Congress in 1994, prevents truck drivers from bringing claims for meal and rest break, minimum wage, overtime and other claims under California law.

Prior to 2014, there were numerous case law decisions, especially in California federal courts, which had ruled that truckers *cannot* assert wage and hour claims because the FAAAA preempts such laws from being applied to trucking companies.[1] These decisions were based upon the courts' finding that the FAAAA's purpose was to protect trucking entities from being subject to numerous conflicting state laws across the country, and to promote efficiency and competition. The FAAAA therefore has been found in many prior cases to "preempt" (i.e., "override") California's wage and hour rules to the extent that these state laws affect "rates, routes or services" of the trucking companies.

Unfortunately, one of the key lower federal court decisions in which the court had found meal and rest break claims were preempted by federal law, *Dilts v. Penske Logistics, LLC No. 12-55705, --F.3d--, 2014 WL 3291749* (*9th Cir. July 9, 2014*), was recently overruled by Ninth Circuit Court of Appeals. The federal district court had found that the FAAAA preempts California's meal and rest break statutes and granted summary judgment, effectively dismissing the case. However, on appeal, the Ninth Circuit reversed and held that California statutes requiring unpaid 30-minute meal breaks and 10-minute paid rest break laws do not "set prices or effect routes or services directly or indirectly," but are merely "normal background rules for almost all employers doing business in the state of California." The court admitted in its decision that the meal and rest break laws will have to be taken into account by truckers in the way they do business, but concluded that the state laws "do not bind motor carriers to specific prices, routes, or services."

In addition to the *Dilts* decision by the Ninth Circuit, the California Supreme Court dealt a blow to trucking companies in the recent case, *People ex rel. Harris v. Pac Anchor Transportation*, Inc. No. S194388, --P.3d--, 2014 WL 3702674 (Cal. July 28, 2014). Again struggling with the issue of federal preemption, the Supreme Court upheld a Court of Appeal ruling finding that a trucking company was violating California's Unfair Competition Law (UCL) by misclassifying its drivers as independent contractors instead of employees. The court held that in misclassifying its drivers, Pan Anchor was competing unfairly because it was avoiding payments for unemployment insurance taxes, withholding state disability insurance and state income taxes, failing to provide workers compensation, failing to provide employees with itemized wage statements and failing to pay minimum wage. In a case brought by the California Attorney General against the trucker, the lower court had found that the FAAAA preempted the UCL, but the Court of Appeal reversed. The California Supreme court agreed with the Court of Appeal and affirmed its decision to overturn the lower court. Like the *Dilts* decision by the Ninth Circuit, the California Supreme Court concluded that any effect that California laws such as minimum wage may have upon rates, routes or services is too remote to support a claim of preemption by federal law.

The *Dilts* and *Pan Anchor* decisions suggest a radically changing landscape for the way trucking companies have traditionally conducted business, although the legal fight is far from concluded. The *Dilts* decision has been appealed, and could work its way to the U.S. Supreme Court. The Pan Anchor decision may also be appealed, and it is possible that the U.S. Supreme Court would agree to review the issue. Trucking companies, however, must heed these decisions and take them into account to adjust their policies.

1 See, for example, Campbell v. Vitran Express Inc. 2012 U.S. Dist. LEXIS 85509, Aguilarv. Cal. Sierra Express, 2012 U.S. Dist. LEXIS 63348, Esquivel v. Vistar Corp., 2012 US. Dist LEXIS 26686; Cole v. CRST, Inc. 2012 U.S. Dist. LEXIS 144944 [lower court decisions finding that California wage statutes are inapplicable to truckers due to federal preemption---overall, lower federal courts] Lower courts were divided eight to four on the issue of preemption of the meal and rest break laws, prior to the Ninth Circuit's decision in Dilts, finding no preemption.

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