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## Judges poised to preserve state employment laws in truck driver case

*Circuit skeptical that federal statute trumps local law in truckers' suit*

By Laura Hautala

PASADENA - A federal appeals court Monday appeared skeptical of arguments that federal law wins out in regulating employment practices in the trucking industry. A group of short-haul truck drivers hired by Penske Logistics LLC to deliver appliances said they were denied meal and rest breaks, but the trucking company argued before the 9th U.S. Circuit Court of Appeals that it is exempted from California's employment laws because of a federal doctrine of deregulation for interstate commerce.

Lawsuits against trucking companies for denying meal and rest breaks - either by pushing employees to skip the breaks or by misclassifying drivers as independent contractors and therefore not paying for the breaks - have surged in California courts in recent months, and state and federal regulators have taken a special interest in investigating trucking companies for such violations.

A Southern District judge ruled in 2011 in this case that federal law preempted state meal and rest breaks, granting summary judgment to the trucking company. On Monday, the appellate panel appeared to suggest that Penske's lawyers interpreted federal law too broadly when they argued the break requirements would directly violate the Federal Aviation Administration Authorization Act. *Dilts v. Penske Logistics LLC*, 12-55705 (9th Cir., filed Apr. 19, 2012).

James H. Hanson, who argued for the trucking company, said the meal and rest break laws would necessarily drive up the costs of doing business, and therefore impact prices.

However, Chief Judge Alex Kozinski countered by asking whether, for example, the state's unique vehicle emissions laws don't also drive up the cost of doing business. "California is an expensive place to do business, isn't it?" Kozinski asked.

Hanson, who is a partner at Scopelitis, Garvin, Light, Hanson & Feary PC in Indianapolis, answered simply, "Yes." After a pause, the gallery erupted in laughter and someone in the observing crowd called out, "He concedes, Your Honor!"

Kozinski also questioned the attorney for the truck drivers, Deepak Gupta, extensively about the penalties built into the California law. But it was Jack Zouhary, a visiting judge from Ohio's Northern District, who provided the toughest line of questioning for Gupta, the founding principle of Washington, D.C. appellate firm Gupta Beck PLLC. Zouhary repeatedly pressed him to defend his argument that there should be a presumption against federal preemption.

Zouhary asked Gupta to square his arguments with a 2008 U.S. Supreme Court case considering a Maine health and welfare law that sought to regulate the delivery of tobacco products. The high court held that the same federal law cited in Monday's case preempted the Maine law.

Gupta responded that the same argument doesn't apply in Monday's case because it involves an employment law and a less direct impact on prices, routes and services. "If they're regulated as an employer or a taxpayer, there is no preemption," he told Zouhary.

Gupta ceded 10 minutes of his time to U.S. Department of Justice attorney Jeffrey

Tuesday, March 4, 2014

### U.S. Court of Appeals for the 9th Circuit Judges poised to preserve state employment laws in truck driver case

A group of short-haul truck drivers who delivered appliances told a 9th U.S. Circuit Court of Appeal panel they were denied meal and rest breaks, but the trucking company argued federal law exempts them.

### California Supreme Court State high court to evaluate judge's decades-old handling of death penalty case

The state Supreme Court could become a hot seat Tuesday for a Los Angeles judge, who is accused of failing to adequately represent his client as a capital defense lawyer.

### U.S. Supreme Court Precedent allowing juror testimony to be tested at high court

On Monday, the U.S. high court granted certiorari in a case in which a litigant's right to a fair trial collides with the law's policy favoring the secrecy of jury deliberations. By **Michael J. Raphael**

### Government Judicial branch audit will go forward, union claims

The California Court Reporters Association told members Monday that it had been informed that a proposed audit of the Administrative Office of the Courts will proceed.

### Mergers & Acquisitions Dealmakers

A roundup of recent merger and acquisition and financing activity and the lawyers involved.

### Law Practice Longtime Warner Bros. GC Shulman to ramp up neutral work

John A. Schulman will bring 25 years of in-house perspective and industry expertise to Alternative Resolution Centers, or ARC, where he will serve as the firm's newest neutral.

### Crowell grows West Coast energy practice

Crowell & Moring LLP has grabbed the general counsel for two state energy regulators and will bring them on as partners in its San Francisco office.

### Litigation Sprint accused of overcharging government \$21M in bid to comply with wiretap requests

The lawsuit brought by U.S. Attorney Melinda Haag's office claims Sprint Communications Inc. embedded hidden costs into its bills for providing information to the government from 2007 to 2010.

Criminal

Clair, who said the Obama administration does not believe federal law preempts the state meal and rest break requirements for truck drivers.

The federal law in question only forbids states from enforcing policies that affect prices, routes or services, he said, "regardless of how the state law works."

Judge Susan P. Garber rounded out the appellate panel, and she also voiced doubts about the trucking company's arguments. Just before Kozinski's laughter-inducing comments, she had told Hanson, "I have a hard time seeing how a modest economic law like this is preempted."

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### **Deputy public defender pleads guilty to fraud**

Audrey Owens, who spent the last 12 years in the Riverside County public defender's office, entered the guilty plea in front of U.S. District Judge Virginia A. Phillips.

### **Litigation**

#### **Federal Circuit revives patent suit against Apple**

Sherman Oaks-based Ancora Technologies Inc. saw its patent infringement claims against technology giant Apple Inc. revived following a decision by the U.S. Court of Appeals for the Federal Circuit.

### **Corporate**

#### **Jones Day, Goodwin advise on Five9's \$115M IPO**

San Ramon-based customer call center software developer Five9 Inc. tapped Jones Day to help guide the company through its planned \$115 million initial public offering. Goodwin Procter LLP is advising the offering's underwriting syndicate.

### **U.S. Court of Appeals for the 9th Circuit 9th Circuit publishes trademark abandonment decision**

Workers at an insurance company acquired by Wells Fargo & Co. likely misstepped when started a competing company with the same name, a 9th U.S. Circuit Court of Appeals panel held on Monday in a newly published opinion.

### **Criminal**

#### **Bad facts meet the Fourth Amendment in hard case**

In the wake of the U.S. high court's ruling in *Fernandez v. California*, many are writing the Fourth Amendment's obituary. By **Jacqueline Goodman**

### **Defenders must address underlying causes of criminality**

The realities of today mean that public defender offices must adopt innovative strategies while exercising sound fiscal judgment. By **Winston A. Peters**

### **Product Liability**

#### **GM's delayed recall a moral failure**

General Motors recently issued a recall of 778,000 vehicles; two weeks later it upped that to 842,000. But when did GM know? By **Jonathan Michaels**

### **Entertainment & Sports**

#### **YouTube takedown ruling clouds film ownership**

The 9th Circuit's recent decision in the 'Innocence of Muslims' case could turn film ownership on its head. By **Mark Litwak**

### **Securities**

#### **High court focus on securities class actions**

The U.S. Supreme Court recently granted review in a securities case; is set to hear arguments in another; and has just issued an opinion in a third. By **Mark R.S. Foster**

**Judicial Profile**

**Barry P. Goode**

Superior Court Judge Contra Costa County  
(Martinez)

**Energy Law**

**Drought adds twist to fracking debate**

While critics have long argued that fracking risks contaminating groundwater, they are hoping the drought will bring attention to how much water fracking consumes and sway more people to their side.

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