Mishra, Reshma, Superior Court

From: Guy Bryant <GuyBryant@bryantbrownlaw.com>
Sent: Wednesday, December 19, 2012 2:22 PM
To: Dept. 20, Superior Court; 'Lisl Duncan'
Subject: RE: Godfrey, et al. v. Oakland Port Services (RG08379099) - December 21 CMC

Thank you!

Happy Holidays!

Guy A. Bryant
BRYANT & BROWN
A Professional Corporation
476 3rd Street
Oakland, California 94607

Telephone (510) 836-7563
Facsimile (510) 836-7564

http://www.linkedin.com/in/guybryant

www.bryantbrownlaw.com

From: Dept. 20, Superior Court [mailto:dept20@alameda.courts.ca.gov]
Sent: Wednesday, December 19, 2012 2:05 PM
To: 'Lisl Duncan'; Dept. 20, Superior Court
Cc: Guy Bryant
Subject: RE: Godfrey, et al. v. Oakland Port Services (RG08379099) - December 21 CMC

Counsel – Correct as to both items. The court will issue the subject orders with regard to a assets and will address the Statement of Decision issues by separate order. No appearance is required on 12/21/2012.

From: Lisl Duncan [mailto:lduncan@unioncounsel.net]
Sent: Tuesday, December 18, 2012 2:13 PM
To: Dept. 20, Superior Court
Cc: Guy Bryant
Subject: RE: Godfrey, et al. v. Oakland Port Services (RG08379099) - December 21 CMC

Dear Dept. 20:

In light of the upcoming case management conference date, December 21, 2012, I write to confirm the following:

1. Nothing additional is needed from the parties prior to the hearing date, including nothing further from Plaintiffs in order for the Court to issue its temporary protective order regarding Defendant's assets concurrently with the final judgment, as indicated at the prior hearing.

2. The Court previously indicated no appearance would be necessary on December 21; please let us know if the Court prefers the parties appear.

Thank you.

From: Guy Bryant [mailto:GuyBryant@bryantbrownlaw.com]
Sent: Friday, November 30, 2012 9:33 AM
To: dept20@alameda.courts.ca.gov
Cc: Lisl Duncan; Bill Aboudi
Subject: RE: Godfrey, et al. v. Oakland Port Services (RG08379099) - notice of decision
Importance: High

Dear Honorable Judge Freedman:

Defendant received in the mail yesterday the 11/19/12 Order Denying Defendants' Motion for Summary Judgment issued by the Honorable Judge Claudia Wilken in the U.S. District Court for Northern California (*Mendez v. R & L Carriers, Inc.*, Case No C 11-2478 CW). Defendant submits this brief response to Plaintiffs recent submission to the Court.

Defendant objects to the submission of this case to the Court on the grounds that the Court had previously closed the proceedings on November 16, 2012, after graciously offering Plaintiffs one last opportunity to brief the matter and/or submit additional information. Plaintiffs declined that offer at the time and chose to rely solely on oral argument and the papers previously submitted.

While Defendant has no quarrel with the Court being educated to the fullest extent with regard to the issues relevant to this case, Defendant does take issue with Plaintiffs' tardy submission of a pre-trial order from a federal district trial court and attempting to pass such order off as valid legal precedent. While Defense counsel has the greatest respect for Judge Wilken, her ruling in *Mendez* denying a Motion for Summary Judgment (a disfavored motion) seeking the "express" application of the FAAAA preemption doctrine can not be interpreted as applicable to the case at bar or valid legal precedent.

Unfortunately, Judge Wilken did not follow *Rowe v. N.H. Motor Transp. Ass'n* (2008) 552 U.S. 364 ("*Rowe*"). There can be no doubt that when Congress adopted the FAAAA, it intended to broadly preempt state laws that were "related to price, route or service" of a motor carrier. (49 U.S.C. §14501(c)(1).) *Rowe*, held that the FAAAA preempts a state regulation that "has a 'significant' and/or adverse 'impact' in respect to the federal act's ability to achieve its preemption-related objectives". (*Rowe,* supra., 552 U.S. 364.)

No court has ever held that the motor carrier that raises the FAAAA preemption affirmative defense has an additional duty to further "mitigate" the "adverse impact" of the state law as Judge Wilken suggests in her opinion. At page 12 of her opinion Judge Wilken discusses a speculative alternative of the motor carrier paying for the meal periods to offset the impact of the California law. Judge Wilken wrote, "the wage alternative thus significantly reduces section 226.7's impact on motor carrier prices, routes, and services and undercuts the reasoning of the four cases that Defendants cite, all of which assume that section 226.7 inflexibility requires motor carriers to provide drivers with numerous breaks through out the day." (Emphasis added.) Judge Wilken acknowledges but dismisses the actual requirement that motor carriers "must actually provide drivers. . . meal breaks." (Id.) In her opinion on page 13, Judge Wilken also acknowledges and similarly dismisses (and speculates) about the fact that California law only permits the meals and breaks to be "partially waived at the employee's discretion." (Cal. Lab. Code section 512(a).) The language of the FAAAA says nothing about the motor carrier's obligation to mitigate a state law that directly impacts the prices, route, and services. This is the glaring flaw in Judge Wilken's rationale and Defendant argues would not be endorsed by the Ninth circuit or by state appellate courts

Defendant thinks it is fair to say Judge Wilken did not have the benefit of actual witness testimony and facts to review before she was confronted with a premature summary judgment motion requesting express application of the FAAAA preemption doctrine. It is also probably fair to say that Judge Wilken wrote the Order Denying the Motion for Summary Judgment in the tortured manner as described above so that Plaintiffs in that case could have the opportunity at trial to present testimony and evidence to rebut the FAAAA preemption doctrine. However, it would not be appropriate for this Court in this case to adhere to the reasoning of Judge Wilken for the following reasons and objections:

1. California Evidence Code section 452(d) provides that the court can take judicial notice of the records and pleadings in the pending action, or in any other action pending in the same court, or any other court of record in the U.S. Evidence Code section 453 provides that a trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and:

   a) gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and

b) furnishes the court with sufficient information to enable it to take judicial notice of the matter.

In this case, Plaintiffs failed to follow Evidence Code sections 452 and 453.

2. In *Fitz-Gerald,* the California Court of Appeal that addressed this issue approved a ruling on summary judgment that a wage & hour class action (specifically UCL claims and arguably by implication meal and rest break violations) filed by flight attendants was preempted by the federal Railway Labor Act (RLA; 45 U.S.C. § 151 et seq.), and specifically relevant to this case, that application of IWC Order No. 9-2001 would violate the Airline Deregulation Act of 1978 ("ADA") (49 U.S.C. §41713). (*Fitz-Gerald v. Skywest,* (2007) 155 Cal.App.4th 411, at 413-414, 420.) Defendant and Plaintiffs are in agreement that the ADA and FAAAA must be treated equally with regard to court interpretation. *Fitz-Gerald* is currently the law in California and this Court is bound to follow *Fitz-Gerald.*

3. Mr. Aboudi testified at trial that compliance with state law would directly impact "routes and services" of AB Trucking. In fact, all of Plaintiffs drivers that testified at trial acknowledged that strict compliance with state law would cause them to "lose their place in line" when they were driving to and from the Port of Oakland. (*See* Plaintiffs' Proposed Statement Of Decison at p. 3, lines 17-19.) This is just one example of many where the evidence at trial was conclusive that the California meal and break laws required specific activities at specific times every day that directly impacted the route and services of AB Trucking. Thus, California meal and Break laws are a match for the type of state regulations the FAAAA was designed to address and "level the playing field" between motor carriers and air carriers. (See *Mendonca* discussion in Defendant's Objection to Proposed Statement of Decision.)

4. The California meal and break laws are not a specific motor vehicle health and safety law immune to the application of the FAAAA preemption doctrine.

While there are many other reasons to support the application of the FAAAA preemption doctrine to the case at bar, Defense counsel will end its discussion here as the Court has many other matters to attend. Defense counsel and Mr. Aboudi thank the Court for its indulgence in this case and for taking up the responsibility of drafting the Statement of Decision. It has been indeed an honor to appear in Dept. 20 as the Court and staff have exhibited good humor and top flight professionalism.

best regards,

Guy A. Bryant
BRYANT & BROWN
A Professional Corporation

476 3rd Street
Oakland, California 94607

Telephone (510) 836-7563
Facsimile (510) 836-7564

http://www.linkedin.com/in/guybryant

www.bryantbrownlaw.com

From: Lisl Duncan [mailto:lduncan@unioncounsel.net]
Sent: Monday, November 26, 2012 5:31 PM
To: dept20@alameda.courts.ca.gov
Cc: Guy Bryant
Subject: Godfrey, et al. v. Oakland Port Services (RG08379099) - notice of decision

Honorable Judge Freedman:

Attached please find correspondence asking that the Court take notice of the recent decision in *Mendez v. R+L Carries, Inc.*, Case No. C 11-2478 CW, which is also attached herewith.

We will file the letter and attachment with the Court tomorrow, November 27, 2012.

Thank you.

Lisl R. Duncan

please note new contact information
Weinberg, Roger & Rosenfeld
800 Wilshire Blvd. Ste. 1320
Los Angeles, California 90017-2607
phone: (213) 380-2344 | fax: (213) 443-5098
email: <lduncan@unioncounsel.net>