

August 5, 2021

2021-2022 Perilous Times for Motor Carriers Why Updating Legal Structures & Documents Is Prudent

“No man’s life, liberty or property are safe while Congress is in session.” Mark Twain.
Might the same be said of SCOTUS, the Supreme Court of the United States?

1. Minimum motor carrier BIPD insurance, from \$750,000 to \$2 million?¹

What will be the cost? Which carriers might not be underwritten at \$2 million? How will CMV insurers react? Now, in the event of a catastrophic accident, \$2 million is not enough. Availability and cost of umbrellas?

2. Runaway juries?

A Texas jury awarded [\\$101 million for a fender-bender](#)? Juries are a good reason to insulate motor carrier assets using appropriate corporate structuring. DeWitt’s “excess liability” program provides motor carriers “corporate” defense counsel to manage cooperation with the carrier’s insurer, selection and management of insurer paid BIPD attorneys, dealing with plaintiff attorneys and the intricacies of leveraging settlement within policy limits.

3. Congress and the independent contractor model?

[Protecting the Right to Organize Act of 2021](#) aspires to [promote unions](#), in the name of workers’ rights and [undercut independent contractors](#). In contrast, California voters [voted overwhelmingly](#) in favor of Transportation Network Company independent contractors.

4. Whence, independent contractor - California’s AB5 ABC test, 9th Circuit, SCOTUS?

Nevertheless, the IC model is under attack in litigation on multiple fronts.² DeWitt is closely tracking the litigation and potential ramifications. Might SCOTUS act by June 2022? In the midst of the 2022 mid-term elections?

5. Will perilous times for motor carriers come to a close with the 2022 mid-term elections?

No, of course not?

Will “prudent” motor carriers fare better? At DeWitt, we believe they will fare much better. We have updated our transportation operations contract models and our risk, asset protection [motor carrier corporate structure counseling](#). DeWitt has a comprehensive program for settlement of catastrophic accident claims, in cooperation with insurers, within policy limits.

¹ [U.S. House bill](#) was reintroduced April 2021. FMCSA makes the case that the \$750,000 minimum set in 1980 would today be at least \$4.4 million or more.

² For example, *California Trucking Association v Bonta*, a challenge to CA’s ABC test remains, for now, before the 9th Circuit, awaiting ruling on [CTA’s request for an en banc hearing](#). Meanwhile, a case involving a similar preemption issue, *C.H. Robinson Worldwide, Inc. v Allen*, is before SCOTUS No 20-1425 on *petition for certiorari*.