

July 3, 2022

**Motor Carrier Comprehensive Risks Management  
Beyond ABC – a Defensible Independent Contractor Classifications**  
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**1. Beyond California’s ABC criteria, cross over to broker-carrier contracting?<sup>1</sup>**

- a. California AB-5, ABC contractor classification test:
  - (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
  - (B) The person performs work that is outside the usual course of the hiring entity's business.
  - (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
- b. Possible remedy? Switch from Truth-in-Leasing, 49 CFR Part 376, to DeWitt’s model Broker Contracted Carrier Agreement for Purchase of Transportation (“BCCA”)?
- c. BCCA with Contractor turned authorized carrier broker-carrier is:
  - i. Exempt per 49 CFR 376.22.
  - ii. Provides primary BIPD coverage ahead of (broker’s contingent coverage).
  - iii. Potentially a barrier to IC classification challenges & catastrophic BIPD claims.<sup>2</sup>

**2. Components of the DeWitt model program.**

- a. Onboarding Contractors, a “meeting of the minds” – Oral and written communication build into the organizations culture.
- b. Master BCCA document (maximum 4 pages) - Paper and electronic versions DocuSign options; each page initialed by the “Contracted Carrier”.

**2. Potential to reduce uncertainty for motor carrier in 2022 and Beyond?**

- a. [2021-2022 Perilous Times for Motor Carriers – Why Updating Legal Structures & Documents Is Prudent](#), July 2021.
- b. Corporate structure, closely observed, is key to motor carrier risk management.<sup>3</sup>

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<sup>1</sup> June 30, 2022, the U.S. Supreme Court denied *certiorari* in *CTA v Bonta*. Thus, California’s ABC test is in effect. New Jersey and other states are thought likely to follow.

<sup>2</sup> [Catastrophic Accidents CMV Involvement, Avoiding Nuclear Verdicts, Settlements Within Policy Limits](#), 8/2021.

<sup>3</sup> [Transportation and Logistics Entity Structure Briefing - Separation of Brokerage Business from Carrier Entity](#), 6/2021.