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## CLIENT ALERT

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# California Enacts Legislation Making Forwarders and Brokers Potentially Liable for Motor Carrier Liability

On September 22, 2018, Governor Jerry Brown signed into law a bill (SB-1402) that would make forwarders, customs and property brokers and shippers liable to pay any judgments that have been entered against drayage companies arising out of their indebtedness to drayage drivers for unpaid wages or expenses, inappropriate deductions, penalties for unpaid unemployment insurance or other judgments in favor of the drivers. Briefly, the bill applies to “customers” who use a “port drayage motor carrier” to provide “port drayage services” using a “commercial driver.” Each of the terms in quotes is defined in the legislation, and would include a freight forwarder, property broker, customs broker or shipper. The law is set to take effect in January, 2019.

The legislation provides for the California Division of Labor Standards Enforcement to post on its website each month a list of port drayage motor carriers who have been found to owe commercial drivers money arising from a number of violations, including failure to pay wages, imposing unlawful expenses on employees, failure to remit payroll taxes, failure to pay worker's compensation coverage, or misclassification of employees as independent contractors. The bill further provides that a customer that uses a port drayage motor carrier after its name appears on the list “shall share with the motor carrier or the motor carrier's successor all civil legal responsibility and civil liability owed to a port drayage driver for port drayage services obtained after the date the motor carrier appeared on the list, meaning joint and several liability with the motor carrier ...”. If the customer has a contract with the port drayage motor carrier at the time the carrier is put on the list, the customer has 90 days to terminate the contract or it will have the joint and several liability imposed on it for the subsequent services.



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The theory behind this legislation is that imposing this liability on the customers of the offending motor carriers will cause them to cease using these companies and thereby protect the rights of the drivers. For forwarders, brokers and shippers, it appears the key response to this legislation should be to pay close attention to the list published each month to make sure they don't use companies on the list. In other words, paying attention to this list should be a key part of the vetting that is done to confirm that the truckers being used are financially and operationally fit and competent to be trusted with cargo.

Underlying this bill is a long-term issue involving the classification of these port drayage drivers as independent contractors, which has been the subject of a number of recent legal and administrative cases in California. This item from a May 2018 Trucker's newsletter provides the flavor of this issue: "Since 2011, California port truckers have filed 948 claims alleging that they have been misclassified as independent contractors. Drivers have been awarded more than \$48 million in about 450 of those cases, according to the latest data from the California labor commissioner's office. Both Los Angeles and Long Beach city officials are looking at whether they have the legal power to take action against motor carriers at Southern California's port complex who they believe are misclassifying drivers as independent contractors rather than employees." A recent California Supreme Court decision, *Dynamex Operations West Inc. vs. Superior Court*, apparently held (according to this newsletter) that most California workers should be classified as employees rather than independent contractors. It is likely that there will be further litigation in California over this issue with respect to port drayage companies.

This is another example of the importance for forwarders and brokers to adequately vet their truck and cartage companies to reduce the risk of being embroiled in litigation over liability arising from the use of a trucker or drayage operator that has unpaid judgments pertaining to the operator they use or employ.