

What do the Two Ninth Circuit Decisions, *Ruiz v. Affinity Logistics I* and *Ruiz v. Affinity Logistics II*, Mean to the Logistics and Delivery Industry in California?

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Two recent decisions from the United States Court of Appeals for the Ninth Circuit, (*Ruiz v. Affinity Logistics Corp.* (9th Cir. 2012) 667 F.3d 1318.), and *Ruiz v. Affinity Logistics Corp.*, 2014 U.S. App. LEXIS 11123 (9th Cir. Cal. June 16, 2014) (Hereinafter referred to as "*Ruiz I*" and "*Ruiz II*.")) have caused some stir in the logistics and delivery industry regarding the use of independent contractor drivers.

Fernando Ruiz previously worked as a driver for Penske Logistics Corporation, a furniture delivery company that had a contract with Sears. His job status was that of an "employee." When Sears terminated its contract with Penske in November 2003, Sears advised the drivers that Affinity Logistics Corporation, a Georgia corporation, would take over Penske's contract. Affinity told Ruiz and the other drivers that if they wished to be hired by Affinity, they had to become independent contractors. Ruiz converted to contractor status, and he and the other plaintiffs signed written contractor agreements that stated that Georgia law would control the agreement. Ruiz filed a class action suit in a federal wage and hour claim, arguing that he and the other drivers should have been classified as employees and not as independent contractors.



In the District Court suit, Affinity's "Choice of Law" argument was that Georgia law should be followed, and that a Georgia legal presumption that workers are independent contractors, if they agree in writing to that classification. The District Court agreed and decided that Ruiz and the plaintiff class were properly classified as independent contractors, based upon this presumption. Ruiz appealed, and the Ninth Circuit heard his case.

The Ninth Circuit, in *Ruiz I*, on February 8, 2012, vacated and remanded the District Court decision finding Fernando Ruiz to be an independent contractor driver, ruling that under California's "choice of law" framework, California law should have been followed instead of the Georgia law presumption. On remand, the District Court, again, found the drivers to be independent contractors. Ruiz appealed again, and the result was this most recent decision, *Ruiz II*, on June 16, 2014.

The Ninth Circuit, in the follow up case, *Ruiz II*, ruled that, because Affinity had the right to control the details of the drivers' work, and because the totality of the secondary factors weigh in favor of the drivers, under California's *Borello* test, the Ninth Circuit found the drivers to be employees of Affinity rather than independent contractors.

The take-away in *Ruiz I* is that Choice of Law provisions which affect California workers will be heavily scrutinized, if not outright negated, if California is found to have a materially greater interest in a contract dispute, and the other state's law is in conflict with California's policy to protect its workers. California courts will likely avoid any application of law that would contravene the fundamental California public policy in favor of ensuring worker protections. It is certain that the California governmental agencies which deal in worker classification issues will rely on *Ruiz I* wherever they can, if it means finding misclassification of workers.

The take-away in *Ruiz II* is that California is probably the most difficult state in which to utilize contract labor, and will continue to favor employment status when it comes to worker classification issues. No surprises here, at all. However, the main lesson of *Ruiz II*, should be to avoid treating independent contract drivers in the manner in which Affinity treated Ruiz.

For an examination of the *Ruiz* cases, and how Choice of Law provisions governing California workers will be examined in federal and California courts, and how to avoid the same pitfalls as Affinity, and thus allegations by the government for "misclassification" of contract drivers, please visit the Williams and Associates website at for the full *Ruiz I* and *Ruiz II* article at the below address:

<http://www.williamslawassociates.com/Articles/What-do-the-Two-Ninth-Circuit-Decisions-Ruiz-v-Affinity-Logistics-I-and-Ruiz-v-Affinity-Logistics-II-Mean-to-the-Logistics-and-Delivery-Industry-in-California.shtml>