

# One Minute Memo<sup>®</sup>



## Ninth Circuit Declines To Enforce Contractual Choice Of Law Provision And Applies California's More Pro-Plaintiff Employment Law

In *Ruiz v. Affinity Logistics Corporation*, the Ninth Circuit Court of Appeals held on February 8, 2012 that a contractual choice of law provision was unenforceable as to whether furniture truck drivers were independent contractors or employees. The Ninth Circuit reversed a decision by a California federal district court that had applied Georgia law to find that California truck drivers were properly classified as independent contractors. The district court had honored the choice of law provision in the contract between the drivers and the company.

### The District Court Decision

Ruiz worked as a furniture truck driver in California for Affinity Logistics Corporation, a Georgia-based company. Affinity provides home delivery and logistical support services to various home furnishing retailers. Plaintiff signed an agreement with Affinity expressly providing that he was an independent contractor and that Georgia law would govern any dispute.

Ruiz then filed a class action under California wage and hour law, contending that he was really an employee, and not an independent contractor as provided for in his agreement with Affinity. The district court, in a bench trial, applied Georgia law under the contract's choice of law provision. Georgia law applies a presumption of independent contractor status where the parties have agreed to that status. Applying that law, the district court held that Plaintiff was properly classified as an independent contractor.

### The Ninth Circuit Opinion

The Ninth Circuit Court of Appeals reversed the district court holding, finding that it erred in concluding that Georgia law, not California law, applied to the independent contractor question. In determining the governing law, the Ninth Circuit acknowledged that the district court had properly determined the parties had a substantial relationship to Georgia. Nonetheless, the Ninth Circuit continued, the district court failed to determine (1) whether applying Georgia law was contrary to a fundamental public policy of California; and (2) whether California has a materially greater interest than Georgia in resolution of the issue.

The Ninth Circuit held that Georgia law is contrary to a fundamental public policy of California protecting workers. Under Georgia law, a contract designating an individual service provider as an independent contractor creates a presumption that the individual is an independent contractor, until proven otherwise. The Ninth Circuit stated that under California law, by contrast, an individual service provider is presumed to be an employee, and the employer must prove that the individual really was an independent contractor. Thus, "the starting point from which the drivers begin their lawsuit is vastly different depending on whether California or Georgia law applies."

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As to the second prong of the test, which the district court failed to reach, the Ninth Circuit held that California has a materially greater interest than Georgia in the outcome of the case. The court analyzed five factors: (1) the place of contracting, (2) the place of negotiation for contract, (3) the place of performance, (4) the location of the subject matter of the contract, and (5) the domicile, residence, nationality, place of incorporation, and place of business of the parties. Applying those factors, the Ninth Circuit found that California has a materially greater interest than Georgia in determining whether the drivers are independent contractors or employees. The court also noted that Affinity did not produce any evidence demonstrating that Georgia had a material interest in the outcome of the case.

The Ninth Circuit therefore held that the parties' choice of Georgia law was unenforceable, and remanded the case to the district court to determine the Plaintiff's status as an employee or independent contractor under California law.

## What *Ruiz* Means For Employers

*Ruiz* has important implications for employers based outside of California, but conducting business with workers in California. The holding in *Ruiz* is a cautionary tale as to the enforcement of an out-of-state choice of law provision in California. For a non-California choice of law provision to be upheld, the parties must have a substantial relationship to the non-California state, the non-California law must not be contrary to a fundamental public policy of California, and California must not have a materially greater interest than the non-California state in the outcome of the case.

This framework is particularly significant in the independent contractor arena, which has recently seen increased enforcement at the state and federal levels, new California legislation, and increasing class action and single plaintiff litigation.

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