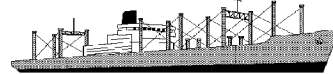




Rollin' On [®]



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U.S. SUP. CT. FLATTENS CARRIERS; CARRIES POWER

Flat Fees Don't Flop

The U.S. Supreme Court recently issued two opinions regarding motor carriers. Both cases originated in Michigan. Unfortunately for the carriers, the Supremes ruled against them, and in favor of the state, in both cases.

In one case the carriers, joined by the American Trucking Association as *amicus curiae* (ostensibly meaning "friend of the court" but really a friend of the carriers) asked the court to invalidate Michigan's annual fee of \$100 which is imposed upon trucks engaged in *intrastate* (not *interstate*) transportation. The carriers claimed that the Michigan law discriminates against interstate carriers and imposes an unconstitutional burden on interstate commerce, the idea being that trucks transporting both interstate and intrastate shipments engage in less intrastate business than trucks transporting only intrastate loads.

The basis for this claim is what is known as the dormant Commerce Clause, which the Founding Fathers inserted into the U.S. Constitution centuries ago. The Constitution provides express authority to Congress to regulate commerce between the states. The courts have interpreted that clause to contain a negative command, which "prevents a state from jeopardizing the welfare of the nation as a whole by placing burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear".

The Supremes, in a unanimous decision, found nothing wrong with Michigan's law. The court noted that Michigan imposes the flat \$100 fee

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only upon intrastate transactions, that is, only upon activities taking place exclusively within the state's borders. The court further stated that there was little, if any, evidence that the \$100 fee imposes any significant practical burden upon interstate trade. Finally, the court stated that the fee taxes purely local activity, and that it does not tax an interstate truck's entry into the state, nor does it tax transactions spanning multiple states.

Score: States 1, Carriers 0 **Anyone for Bingo?**

In the other case, the court addressed a situation that arose out of the "bingo card" system. A law passed in 1965 authorized the states to require proof that a trucker had a federal permit and complied with certain requirements. By 1991, 39 states were demanding such proof, and in turn provided the trucker with a stamp to place on the multistate bingo card.

Due to this inefficiency and burdensome scheme, Congress created the Single State Registration System (SSRS), which allows carriers to select a base state which can demand the federally-related proof. SSRS prohibits states from imposing additional registration requirements. Michigan imposes a \$100 fee on each Michigan base-plated truck operating in interstate commerce.

The Supremes, in a 6-3 decision, held that Michigan's law was not preempted by SSRS. Thus, in this case the court looked to federal statutory law, and Congressional intent, in upholding the law, whereas in the prior case, decided on the same

day, the court looked to the U.S. Constitution.

Score: States 2, Carriers 0

U.S. Supreme Court: Power Galore

Once again, the United States Supreme Court is going into recess, which lasts until late September or early October. It's a nice job if you can get it. After all, many of us would like to take off for the summer. This current group of nine justices has been together for more than 10 years, which is an all time record, going back more than 200 years.

Due to the age of the group, some vacancies, voluntary or otherwise, are soon to occur. That is what the skirmish was about a few weeks ago, where the senators could not agree on how to deal with the federal court nominees. Yes, the dispute was ostensibly over some appellate court judges, but the real focus was for what was further down the road – but not much further.

This third branch of government has a huge impact on the country, thus the importance of the appointments, which are lifetime appointments. It's not like the executive branch, with an eight year max shelf life, or the legislative branch, where the senators are elected for six year terms and the house members have only two year terms. Plus there are only nine justices, compared to 100 senators and 435 representatives. Although there is only one president, there are literally millions of federal employees, so the executive branch is well represented. It's the Supreme Court where the center of power is compacted in an extremely small group of people.

That's it for now. Until next time, keep the cargo *rollin'*!

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 25 years and emphasizing transportation law, business law and related litigation.

The Obligatory Disclaimer

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