

## Articles

# Prologue: Federal Motor Carrier Leasing and Interchange Regulations and OOIDA Litigation

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The Transportation Law Journal has a history of publishing symposium issues devoted to significant aspects of transportation law. The Journal also focuses on how underlying historical events have influenced our current laws and practices. Some of the issues covered include:

- Aviation Safety and Security
- Aviation and Airport Infrastructure
- International and Intermodal Transportation
- Urban Mass Transit
- Transportation Regulations: Past, Present and Future
- Transportation Deregulation
- Intrastate Regulation
- Interstate Commerce Commission Anniversary Proceedings
- Hazardous Materials Transportation
- Railroad Industry

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The history of motor carrier transportation is replete with significant regulatory changes emanating from landmark judicial decisions and legislative activities.

One example is the Interstate Commerce Commission's ("ICC") handling of application under former section 212(c) of the Interstate Commerce Act, 49 U.S.C. § 312(c), which involved involuntary conversions of motor contract carriers to common carriers if the carriers' operations did not conform to the newly enacted definition of contract carriage. Extensive litigation occurred as to whether the common carrier authority issued allowed the transportation of "the same commodities between the same points or within the same territory as authorized in the permit" issued to reflect contract carriage.<sup>1</sup>

Another excellent example occurred in 1986 when the ICC diverted from the "filed rate" doctrine<sup>2</sup> and, in particular circumstances, gave equitable relief from the doctrine.

Despite the fact that over one hundred cases involving an estimated \$10 million in undercharges were before the ICC based on its new "reasonable practice jurisdiction," the United States Supreme Court, in *Maislin Industries, Inc. v. Primary Steel, Inc.*,<sup>3</sup> upheld the propriety and applicability of the "filed rate" doctrine leading to subsequent special legislation to resolve the handling of the outstanding undercharge claims.<sup>4</sup>

In Lease and Interchange of Vehicles, the ICC adopted regulations covering a significant part of the legal and economic relationship between motor carriers and owner-operators.<sup>5</sup>

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1. 49 U.S.C. § 312(c) (2000). See generally *Conversion of Motor Carriers from Contract to Common Under Section 312(c) of the Interstate Commerce Act*, 107 U. PA. L. REV. 1150 (1959). See also *J. B. Montgomery, Inc. v. United States*, 206 F. Supp. 455 (D. Colo. 1962), *aff'd*, 376 U.S. 389 (1964), *on further reconsideration*, *J. B. Montgomery, Inc. Conversion Application*, 98 M.C.C. 262 (1965), *set aside*, *J. B. Montgomery, Inc. v. United States*, 257 F. Supp. 188 (D. Colo. 1966).

2. Under then existing law, a motor common carrier of property was not allowed to charge or receive any different compensation for transportation services than the rate set forth in the applicable tariff. 49 U.S.C. § 10761(a). See James C. Hardman, *Motor Common Carriage and the Filed Rate Doctrine*, 51 TRANSP. PRAC. J. 404 (1990).

3. *Maislin Industries, Inc. v. Primary Steel, Inc.*, 497 U.S. 116 (1990), *rev'g* 879 F.2d 400 (8th Cir. 1989).

4. Congress eliminated the filing of individually determined motor carrier tariffs in 1994. Trucking Industry Regulatory Reform Act of 1994, Pub. L. No. 103-311, 108 Stat. 1673 (1994).

5. See *Lease and Interchange of Vehicles*, 129 M.C.C. 700 (1978); *Lease and Interchange of Vehicles* 131 M.C.C. 141 (1979). Earlier in *Lease and Interchange of Vehicles by Motor Carriers*, 52 M.C.C. 675 (1951), the ICC adopted regulations governing the responsibility of motor carriers, who are utilizing another party's equipment, to shippers, the public and to the agency in respect to public liability claims, cargo loss and/or damages and compliance to administrative rules and regulations. Owner-operators are individuals or entities which lease their vehicles to regulated motor carriers with driver service and which operate pursuant to registration authority held by the motor carrier. See 49 C.F.R. pt. 376.

The enforcement of the regulations involved exclusive administrative remedies and the ICC was quite active in enforcement activity. However, with the passage of the ICC Termination Act,<sup>6</sup> the Federal Highway Administration inherited the dispute programs administered by the ICC<sup>7</sup> and enforcement activities thereafter virtually ceased.

The new legislation, however, expanded remedies for violation from complaints before the agency to private actions in courts for enforcement.<sup>8</sup>

The allowance for injunctive relief, monetary damages, and the availability of class actions and attorney fees provided significant impetus for private party enforcement and, in a relatively short time period, lawsuits under the statute were filed generally by the Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), on behalf of its members.<sup>9</sup>

The lawsuits, which currently number in excess of twenty, involve substantial monetary damages and have been vigorously defended by the motor carrier defendants.

The litigation has raised numerous and significant legal issues important in the context of transportation law. Such issues involve a review of the intent and reasonable interpretation of the Regulations; private versus regulatory dispute resolution; class action damages and other relief; and, finally, the legality and propriety of compulsory arbitration in the resolution of disputes.

Courts, to date, have reached different conclusions on the various issues, leaving the motor carrier industry participants and their legal counsel in "limbo."

Authors of the symposium articles have attempted to identify and impart a thorough and meaningful understanding of the issues involved, provide their sage appraisal of the status of current litigation quagmire, and suggest possible resolution of the problems.

The Staff of the Transportation Law Journal and its advisor, Professor Robert Hardaway, are to be commended for bringing this study of OOIDA litigation to readers while it is still unfolding. This collection of articles allows readers to review the subject, appraise it, and contribute

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6. ICC Termination Act, Pub. L. No. 104-88, 109 Stat. 803 (1995).

7. 49 U.S.C. § 14702 (2000). The Secretary of the Department of Transportation assigned its authority to the Federal Highway Administration.

8. A significant number of truckload motor carriers conduct their operations utilizing owner-operators. The issues arising in the litigation are critical to the parties' future relationships, if not continued usage of such operators.

9. OOIDA is a business association of persons and entities who own and operate motor carrier vehicles with driver services typically under lease to private and regulated motor carriers. Founded in 1973, it allegedly has over 127,000 members residing in the United States and Canada. Its membership has presumably grown approximately four-fold during the period it has engaged in Leasing Regulation litigation.

their views as to meaningful steps that might resolve the problems which have arisen in this critical area of transportation law.

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