

# The Burger Court Opinion Writing Database

## *California Motor Transport Co. v. Trucking Unlimited*

404 U.S. 508 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 15, 1971

Re: No. 70-92 - California Motor Transport Co.  
v. Trucking Unlimited

Dear Bill:

I am still unsettled on the above case and  
hence you should make the assignment.  
It may be that if it "writes out" I can join  
it, but as of now the dissenter in the 9th  
Circuit has the better argument.

Regards,

WJD

Mr. Justice Douglas

Wm Douglas

Oct 71

70-92

3 M  
Supreme Court of the United States  
Washington, D. C. 20543

December 28, 1971

CHAMBERS OF  
THE CHIEF JUSTICE

No. 70-92 -- California Motor Transport Co. v.  
Trucking Unlimited

Dear Bill:

Please join me.

Regards,

WRB

Mr. Justice Douglas

Copies to the Conference

November 15, 1971

Dear Chief:

I have your note about No. 70-92 -  
California Motor Transport v. Trucking  
Unlimited.

I will be happy to keep that for  
myself if you like.

W. O. D.

The Chief Justice

Wm Douglas Oct 71

70-92

November 15, 1971

Dear Chief:

I have your tentative line-up  
on the assignment of this week's cases.  
It apparently crossed in the mails with  
the memoranda I had written you  
suggesting the assignment of two cases  
to Bill Brennan and two to Potter  
Stewart -- and the last one to me --  
the last one being No. 70-92.

William O. Douglas

The Chief Justice

*Douglas Admin File  
11/15/71*

Handwritten: JH

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun

5th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 70-92

California Motor Transport Co. et al., Petitioners,  
v.  
Trucking Unlimited et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Ninth  
Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil suit under § 4 of the Clayton Act, 15 U. S. C. § 15, for injunctive relief and damages instituted by respondents who are highway carriers operating in California against petitioners who are also highway carriers operating within and into and from California. Respondents and petitioners are, in other words, competitors. The charge is that the petitioners conspired to monopolize trade and commerce in the transportation of goods in violation of the antitrust laws. The conspiracy alleged is a concerted action by petitioners to institute actions in state and federal proceedings to resist and defeat applications by respondents to acquire operating rights or to transfer or register those rights. These activities, it is alleged, extend to rehearings and to reviews or appeals from agency or court decisions on these matters.

The District Court dismissed the complaint for failure to state a cause of action, 1967 Trade Cas. ¶ 72, 298. The Court of Appeals reversed, 432 F. 2d 755. The case is here on a petition for a writ of certiorari which we granted. 402 U. S. 1008.

GP  
Chas Thurgood

Planned for me  
JMM

Mr. Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-92

Justice Douglas, J.

Rehearing: \_\_\_\_\_

11/23/71

California Motor Transport Co. et al., Petitioners.  
v.  
Trucking Unlimited et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[December —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil suit under § 4 of the Clayton Act, 15 U. S. C. § 15, for injunctive relief and damages instituted by respondents who are highway carriers operating in California against petitioners who are also highway carriers operating within, into and from California. Respondents and petitioners are, in other words, competitors. The charge is that the petitioners conspired to monopolize trade and commerce in the transportation of goods in violation of the antitrust laws. The conspiracy alleged is a concerted action by petitioners to institute actions in state and federal proceedings to resist and defeat applications by respondents to acquire operating rights or to transfer or register those rights. These activities, it is alleged, extend to rehearings and to reviews or appeals from agency or court decisions on these matters.

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File  
Rec'd  
12/24/71

7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-92

California Motor Transport	}	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
Co. et al., Petitioners,		
v.		
Trucking Unlimited et al.		

[December —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil suit under § 4 of the Clayton Act, 15 U. S. C. § 15, for injunctive relief and damages instituted by respondents who are highway carriers operating in California against petitioners who are also highway carriers operating within, into and from California. Respondents and petitioners are, in other words, competitors. The charge is that the petitioners conspired to monopolize trade and commerce in the transportation of goods in violation of the antitrust laws. The conspiracy alleged is a concerted action by petitioners to institute actions in state and federal proceedings to resist and defeat applications by respondents to acquire operating rights or to transfer or register those rights. These activities, it is alleged, extend to rehearings and to reviews or appeals from agency or court decisions on these matters.

The District Court dismissed the complaint for failure to state a cause of action, 1967 Trade Cas. ¶ 72,298. The Court of Appeals reversed, 432 F. 2d 755. The case is here on a petition for a writ of certiorari which we granted. 402 U. S. 1008.

W. Douglas Dec 71



32  
484  
1  
You joined

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Burger

8th DRAFT

Supreme Court of the United States  
Circulated: 1/5/72

No. 70-92

California Motor Transport Co. et al., Petitioners,  
v.  
Trucking Unlimited et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Ninth  
Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil suit under § 4 of the Clayton Act, 15 U. S. C. § 15, for injunctive relief and damages instituted by respondents who are highway carriers operating in California against petitioners who are also highway carriers operating within, into and from California. Respondents and petitioners are, in other words, competitors. The charge is that the petitioners conspired to monopolize trade and commerce in the transportation of goods in violation of the antitrust laws. The conspiracy alleged is a concerted action by petitioners to institute actions in state and federal proceedings to resist and defeat applications by respondents to acquire operating rights or to transfer or register those rights. These activities, it is alleged, extend to rehearings and to reviews or appeals from agency or court decisions on these matters.

The District Court dismissed the complaint for failure to state a cause of action, 1967 Trade Cas. ¶ 72,298. The Court of Appeals reversed, 432 F. 2d 755. The case is here on a petition for a writ of certiorari which we granted. 402 U. S. 1008.

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun

9th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated: —

Recirculated: 1-6

No. 70-92

California Motor Transport } On Writ of Certiorari to  
Co. et al., Petitioners. } the United States Court  
v. } of Appeals for the Ninth  
Trucking Unlimited et al. } Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil suit under § 4 of the Clayton Act, 15 U. S. C. § 15, for injunctive relief and damages instituted by respondents who are highway carriers operating in California against petitioners who are also highway carriers operating within, into and from California. Respondents and petitioners are, in other words, competitors. The charge is that the petitioners conspired to monopolize trade and commerce in the transportation of goods in violation of the antitrust laws. The conspiracy alleged is a concerted action by petitioners to institute actions in state and federal proceedings to resist and defeat applications by respondents to acquire operating rights or to transfer or register those rights. These activities, it is alleged, extend to rehearings and to reviews or appeals from agency or court decisions on these matters.

The District Court dismissed the complaint for failure to state a cause of action. 1967 Trade Cas. ¶ 72,298. The Court of Appeals reversed, 432 F. 2d 755. The case is here on a petition for a writ of certiorari which we granted. 402 U. S. 1008.

07  
change throughout

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Black  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Harlan  
Mr. Justice Stewart  
Mr. Justice Goldberg  
Mr. Justice Souter

10th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-92

From: Douglas, J.

Circulated:

1/8/72

California Motor Transport Co. et al., Petitioners,  
v.  
Trucking Unlimited et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Ninth  
Circuit.

[January 13, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil suit under § 4 of the Clayton Act, 15 U. S. C. § 15, for injunctive relief and damages instituted by respondents who are highway carriers operating in California against petitioners who are also highway carriers operating within, into and from California. Respondents and petitioners are, in other words, competitors. The charge is that the petitioners conspired to monopolize trade and commerce in the transportation of goods in violation of the antitrust laws. The conspiracy alleged is a concerted action by petitioners to institute actions in state and federal proceedings to resist and defeat applications by respondents to acquire operating rights or to transfer or register those rights. These activities, it is alleged, extend to rehearings and to reviews or appeals from agency or court decisions on these matters.

The District Court dismissed the complaint for failure to state a cause of action, 1967 Trade Cas. ¶ 72,298. The Court of Appeals reversed, 432 F. 2d 755. The case is here on a petition for a writ of certiorari which we granted. 402 U. S. 1008.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

January 12, 1972

Dear Chief Justice:

As I told you on the telephone, I have to be away Thursday, the 13th, because of the funeral of Cathy's father.

No. 70-92 - California  
Motor Transport v. Trucking Unlimited  
was scheduled to come down then.

It has been cleared and there is a court for the opinion. Justice Stewart has filed a concurring opinion, in which Justice Brennan joins.

I would appreciate it very much if you would be so kind as to announce the opinion on my behalf tomorrow.

W. O. D. *W. O. D.*

The Chief Justice

cc: Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. January 6, 1972

RE: No. 70-92 - California Motor Trans-  
port v. Trucking Unlimited, et al.

Dear Potter:

Please join me.

Sincerely,

*Bill*

Mr. Justice Stewart

cc: The Conference

BP  
M

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

November 24, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 70-92, California Motor Transport Co. v.  
Trucking Unlimited

In due course, I expect to circulate a concurring  
opinion in this case.

P.S. *P.S.*

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Brennan  
Mr. Justice Burger  
✓ Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Marshall  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

JAN 5 1972

No. 70-92

Circulated: \_\_\_\_\_

Rec'd

California Motor Transport Co. et al., Petitioners,  
v.  
Trucking Unlimited et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Ninth  
Circuit.

[January —, 1972]

MR. JUSTICE STEWART, concurring.

In the *Noerr* case<sup>1</sup> this Court held, in a unanimous opinion written by Mr. Justice Black, that a conspiracy by railroads to influence legislative and executive action in order to destroy the competition of truckers in the long-haul freight business was wholly immune from the antitrust laws.<sup>2</sup> This conclusion, we held, was required in order to preserve the informed operation of governmental processes and to protect the right of petition guaranteed by the First Amendment.<sup>3</sup> Today the Court retreats from *Noerr*, and in the process tramples upon important First Amendment values. For that reason I cannot join the Court's opinion.

In *Noerr* the defendants were joined together in an effort to induce legislative and executive action. Here, so the complaint alleges, the defendants have joined to induce administrative and judicial action. The difference in type of governmental [REDACTED] might make a difference in the applicability of the antitrust laws if the

/body

<sup>1</sup> *Eastern Railroad Conference v. Noerr Motor Freight Inc.*, 365 U. S. 127.

<sup>2</sup> See also *United Mine Workers v. Pennington*, 381 U. S. 657, 669-671.

<sup>3</sup> This conclusion, the Court held, was a corollary of our decisions in *United States v. Rock Royal Co-Operative, Inc.*, 307 U. S. 533, and *Parker v. Brown*, 317 U. S. 341, holding that when a monopoly or restraint of trade is the result of valid governmental action, there cannot be an antitrust violation.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 30, 1971

Re: No. 70-92 - California Motor  
Transport Co. v. Trucking  
Unlimited

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Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 23, 1971

Re: No. 70-92 - California Motor Transport Co.  
v. Trucking Unlimited

Dear Bill:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 16, 1971

Re: No. 70-92 - California Motor Transport Co.  
v. Trucking Unlimited

Dear Bill:

I am deferring my vote pending receipt of what  
Potter is going to write.

Sincerely,

*H.A.B.*

Mr. Justice Douglas

*Wm Douglas at 71*

*70-92*

6  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 6, 1972

Re: No. 70-92 - California Motor Transport Co.  
v. Trucking Unlimited

Dear Bill:

Please join me in your recirculation of  
January 5.

Sincerely,

*HAB.*  
—

Mr. Justice Douglas

cc: The Conference