

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,

WDB

Mr. Justice Douglas

Wm Douglas Oct 71

70-92

CHAMBERS OF
THE CHIEF JUSTICE

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

December 28, 1971

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

Dear Bill:

Please join me.

Regards,

W. B.

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

Wm. O. Douglas
November 15, 1971

2/21
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 11/22/71

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.

RP
Chas Thurt
R. E. F. M.

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

6th DRAFT

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.

11/23/71

[December —, 1971]

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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.

7th DRAFT

File
Recd
12/29/71

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.

[December —, 1971]

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W. Douglas Dec 71

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brandeis
Mr. Justice Stone
Mr. Justice Holmes
Mr. Justice Mahan
Mr. Justice McReynolds

8th DRAFT

SUPREME COURT OF THE UNITED STATES

Frank Douglas, Jr.
UNITED STATES
Commissioner.

No. 70-92

2020 RELEASE UNDER E.O. 14176

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]

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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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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

Significant

Recirculated: 1-6

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]

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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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CH
Chest throughout

To: The Chief Justice
Mr. Associate Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

10th DRAFT

From: Douglas, A.

Circulate:

No. 70-92

SUPREME COURT OF THE UNITED STATES

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.

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 in my behalf tomorrow.

W. O. D. *WV*

The Chief Justice

cc: Conference

DR
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 Transport v. Trucking Unlimited, et al.

Dear Potter:

Please join me.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

BP
RA
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.

2nd DRAFT

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Stewart, Jr.
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

JAN 5 1972

No. 70-92

Circulated: _____

Re: 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* case¹ 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.² 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.³ 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

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

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

³ 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.

B
M
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

Dear Bill:

Please join me.

Sincerely,

Byron

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

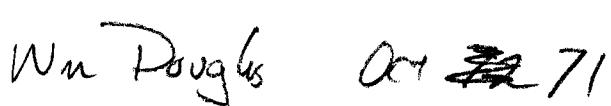
Dear Bill:

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

Sincerely,



Mr. Justice Douglas



5
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.

1

Mr. Justice Douglas

cc: The Conference