

# The Burger Court Opinion Writing Database

*ICC v. Oregon Pacific Industries, Inc.*  
420 U.S. 184 (1975)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

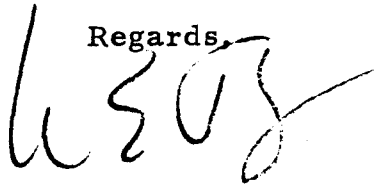
CHAMBERS OF  
THE CHIEF JUSTICE

January 8, 1975

Re: 73-1210 - ICC v. Oregon Pacific Industries

Dear Bill:

I join you in the opinion circulated December 26, 1974.

Regards,  


Mr. Justice Douglas

Copies to the Conference

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To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES J.

No. 73-1210

Circulate: 12/26/74

Recirculate:

Interstate Commerce Com-  
mission, Appellant,  
v.  
Oregon Pacific Industries,  
Inc., et al.

On Appeal from the United  
States District Court for  
the District of Oregon.

[January —, 1975]

MR. JUSTICE DOUGLAS delivered the opinion of the  
Court.

This is an appeal from a judgment of a three-judge  
District Court, 28 U. S. C. § 1253, which held invalid an  
order of the Interstate Commerce Commission promul-  
gating a car service order<sup>1</sup> under § 1 (15) of the Inter-  
state Commerce Act, 49 U. S. C. § 1 (15),<sup>2</sup> see 365 F.  
Supp. 609.

<sup>1</sup> This Service Order by its original terms was to expire July 31,  
1973, unless otherwise modified or changed by the Commission. It  
was, however, made effective "until further order of the Commis-  
sion" 39 Fed. Reg. 13971.

The Solicitor General without citation of any authority expressed  
his view that the District Court's decision was correct and moved  
that its judgment be affirmed. The Western Railroad Traffic Asso-  
ciation has filed an *amicus* brief taking the opposed view.

<sup>2</sup> Section 1 (15) provides:

"Whenever the Commission is of opinion that shortage of equip-  
ment, congestion of traffic, or other emergency requiring immediate  
action exists in any section of the country, the Commission shall  
have, and it is hereby given, authority, either upon complaint or  
upon its own initiative without complaint, at once, if it so orders,  
without answer or other formal pleading by the interested carrier  
or carriers, and with or without notice, hearing, or the making or

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGE 7

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SSSFCN00 50 ADV 1 N

To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Thurgood Marshall

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1210

From: Douglas, J.

Interstate Commerce Com-  
mission, Appellant,  
v.  
Oregon Pacific Industries,  
Inc., et al.

On Appeal from the United  
States District Court for  
the District of Oregon.

Circulate:

Recirculate:

1-31

[February —, 1975]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is an appeal from a judgment of a three-judge District Court, 28 U. S. C. § 1253, which held invalid an order of the Interstate Commerce Commission promulgating a car service order<sup>1</sup> under § 1 (15) of the Interstate Commerce Act, 49 U. S. C. § 1 (15).<sup>2</sup> *Oregon*

<sup>1</sup> This Service Order by its original terms was to expire July 31, 1973, unless otherwise modified or changed by the Commission. An amendment, however, made it effective "until further order of the Commission." 39 Fed. Reg. 13971 (1974). The same amendment suspended the Service Order effective April 15, 1974.

The Solicitor General without citation of any authority expressed his view that the District Court's decision was correct and moved that its judgment be affirmed. The Western Railroad Traffic Association has filed an *amicus* brief taking the opposing view.

<sup>2</sup> Section 1 (15) provides:

"Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine:

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To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1210

Circulate:

Recirculate: 2-10

Interstate Commerce Commission, Appellant,  
v.  
Oregon Pacific Industries, Inc., et al.

On Appeal from the United States District Court for the District of Oregon.

[February —, 1975]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is an appeal from a judgment of a three-judge District Court, 28 U. S. C. § 1253, which held invalid an order of the Interstate Commerce Commission promulgating a car service order<sup>1</sup> under § 1 (15) of the Interstate Commerce Act, 49 U. S. C. § 1 (15).<sup>2</sup> *Oregon*

<sup>1</sup> This Service Order by its original terms was to expire July 31, 1973, unless otherwise modified or changed by the Commission. 38 Fed. Reg. 12606. The Commission twice extended the deadline, 38 Fed. Reg. 19831, 31681, and on April 11, 1974, made it effective "until further order of the Commission," 39 Fed. Reg. 13971, on each occasion having found "good cause" for the extension. The April 11 amendment also suspended the Service Order indefinitely, effective April 15, 1974.

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SSSBCNOC 50 URBADV 00 CONPR

To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

cc: Douglas; J.

circulate: \_\_\_\_\_

recirculate: \_\_\_\_\_

5th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 73-1210

<p>Interstate Commerce Commission, Appellant, v. Oregon Pacific Industries, Inc., et al.</p>	}	<p>On Appeal from the United States District Court for the District of Oregon.</p>
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[February —, 1975]

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 30, 1974

RE: No. 73-1210 ICC v. Oregon Pacific Industries

Dear Bill:

I was the other way but will acquiesce.

Sincerely,

*Bill*

Mr. Justice Douglas

cc: The Conference

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SSSRENOUJ BY ADV DILLI N

✓

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 30, 1974

No. 73-1210, ICC v. Ore. Pacific Industries

Dear Bill,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.  
/

Mr. Justice Douglas

Copies to the Conference

✓

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U.S. DEPARTMENT OF JUSTICE



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 6, 1975

Re: No. 73-1210 - Interstate Commerce Commission  
v. Oregon Pacific Industries,  
Inc.

---

Dear Bill:

I acquiesce.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

2

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 27, 1974

Re: 73-1210 -- Interstate Commerce Commission v.  
Oregon Pacific Industries, Inc., et al.

Dear Bill:

Please join me in your opinion in this case.

Sincerely,

  
T.M.

Mr. Justice Douglas

cc: The Conference

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 6, 1975

Re: No. 73-1210 - ICC v. Oregon Pacific Industries

Dear Bill:

Please join me.

Sincerely,

*Larry*

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 21, 1975

No. 73-1210 ICC v. Oregon

MEMORANDUM TO THE CONFERENCE:

I am circulating herewith a concurring opinion along the lines which I mentioned at the Conference.

If circulating a concurrence creates any problem in view of Bill's absence, or unduly delays bringing down the case, I will withdraw it. I view the concurring opinion as desirable but certainly not essential.

*Lewis*  
L.F.P., Jr.

SS

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U.S. DEPARTMENT OF COMMERCE

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Justice Powell, J.

No. 73-1210

Circulated: JAN 21 1975

Recirculated: \_\_\_\_\_

Interstate Commerce Com- mission, Appellant, v. Oregon Pacific Industries, Inc., et al.	On Appeal from the United States District Court for the District of Oregon.
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[January —, 1975]

MR. JUSTICE POWELL, concurring.

I am in agreement with the Court's opinion that the Interstate Commerce Commission had the power under § 1 (15) summarily to take the action which is the subject of this litigation. I believe, however, that in addition to reversing the judgment of the Court of Appeals, we should direct that the case be remanded for a prompt proceeding under § 1 (14) of the Act.

The Commission entered Service Order 1334 on May 3, 1973, without notice, hearing or an opportunity by interested parties to submit evidence or grounds of objection. The Commission found, as it must under § 1 (15), that:

" . . . An emergency exists requiring immediate action to promote car service in the interest of the public and commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest. . . ."

The Commission's counsel stated at oral argument that while the car shortage problem has a long history, the present order was in response to a particularly sharp but temporary increase in the severity of the problem. Counsel acknowledged, however, that this temporary

Changes 1, 2

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1210

To: The Chief Justice  
 ~ Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Rehnquist

From: Powell, J.

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

Interstate Commerce Com-  
 mission, Appellant,  
 v.  
 Oregon Pacific Industries,  
 Inc., et al.

On Appeal from the United  
 States District Court for  
 the District of Oregon.

Recirculated JAN 27 1975

[January —, 1975]

MR. JUSTICE POWELL, concurring.

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The Commission entered Service Order 1334 on May 3, 1973, without notice, hearing or an opportunity by interested parties to submit evidence or grounds of objection. The Commission found, as it must under § 1 (15), that:

" . . . An emergency exists requiring immediate action to promote car service in the interest of the public and commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest. . . ."

The Commission's counsel stated at oral argument that while the car shortage problem has a long history, the present order was in response to a particularly sharp but temporary increase in the severity of the problem. Counsel acknowledged, however, that this temporary

Wm. Douglas  
 87-74

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 4, 1975

No. 73-1210 ICC v. Oregon Pacific  
Industries, Inc.

Dear Bill:

I write to confirm that I join your opinion for the Court, and file a concurrence only to address the point which you did not think it necessary to reach.

Sincerely,

*Lewis*

Mr. Justice Douglas

lfp/ss

cc: The Conference

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U.S. SUPREME COURT ADVANCE

✓

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

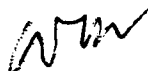
December 27, 1974

Re: No. 73-1210 - ICC v. Oregon Pacific

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to the Conference

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U.S. DEPARTMENT OF JUSTICE