

# The Burger Court Opinion Writing Database

*Transamerican Freight Lines, Inc. v.  
Brada Miller Freight Systems, Inc.*  
423 U.S. 28 (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

November 3, 1975

Re: 74-54 - Transamerican Freight Lines v.  
Brada Miller Freight Systems

Dear Harry:

I join in your proposed opinion circulated  
October 29.

Regards,

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 3, 1975

RE: 74-54, TRANSAMERICAN v. MILLER

Dear Harry:

Please add the following  
to your opinion:

"Mr. Justice Douglas concurs  
in the judgment."

WDV

WILLIAM O. DOUGLAS

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 30, 1975

RE: No. 74-54 Transamerican Freight Lines  
v. Brada Miller Freight System, Inc.

DEar Harry:

I agree.

Sincerely,

*Bill*

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 30, 1975

74-54, Transamerican v. Brada Miller

Dear Harry,

Although I have some doubt about the inclusion of the so-called analogue to admiralty law on page 12, if others do not share my reservation on this score, I shall be glad to join your opinion for the Court.

Sincerely yours,

PS,

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 31, 1975

Re: No. 74-54 - Transamerican Freight Lines Inc.  
v. Brada Miller Freight  
Systems Inc.

Dear Harry:

Please join me. For the record, however, I share Potter Stewart's doubts about linking this situation with Ryan-type indemnity. The latter rule has never ceased being controversial, so much so that Congress has eliminated it by amending the Longshoremen's Act.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 3, 1975

Re: No. 74-54 -- Transamerican Freight Lines, Inc., v.  
Brada Miller Freight Systems, Inc., et al.

Dear Harry:

Please join me.

Sincerely,

*Thurgood Marshall*  
T.M.

Mr. Justice Blackmun

cc: The Conference

V

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

From: Blackmun, J.

Circulated: 10/29/75

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-54

Transamerican Freight Lines,  
Inc., Petitioner,  
v.  
Brada Miller Freight Sys-  
tems, Inc., et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the  
Seventh Circuit.

[November —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In this case we are concerned with the "control and responsibility" requirement<sup>1</sup> of the Interstate Commerce

<sup>1</sup> The pertinent phrase in § 1057.3 (a) is "control and responsibility for the operation of the equipment." Section 1057.3 (a) reads in full as follows:

"The provisions of § 1057.4, except paragraphs (c) and (d), relative to inspection and identification of equipment, shall not apply.

"(a) *Equipment used in the direction of a point which lessor is authorized to serve.* To equipment owned or held under a lease of 30 days or more by an authorized carrier and regularly used by it in the service authorized, and leased by it to another authorized carrier for transportation in the direction of a point which lessor is authorized to serve. *Provided,* That the two carriers have first agreed in writing that control and responsibility for the operation of the equipment shall be that of the lessee from the time the equipment passes the inspection required to be made by lessee or its representative under § 1057.4 (c) until such time as the lessor or its representative shall give to the lessee or its representative a receipt specifically identifying the equipment and stating the date and the time of day possession thereof is retaken or until such time as the required inspection is completed by another authorized

✓  
pp. 2. 12 X-91  
To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Blackmun, J.

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

Recirculated: 11/3

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-54

Transamerican Freight Lines, Inc., Petitioner,  
v.  
Brada Miller Freight Systems, Inc., et al. } On Writ of Certiorari to  
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Seventh Circuit.

[November —, 1975]

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## Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 10, 1975

## MEMORANDUM TO THE CONFERENCE

Re: No. 74-54 - Transamerican Freight Lines, Inc. v.  
Brada Miller Freight Systems, Inc.There are three holds for Transamerican:

1. No. 73-1750, Pitt County Transportation Co. v. Carolina Freight Carriers Corp. The factual situation here is similar to that in Transamerican. One person was killed and another was injured due to the alleged negligence of the driver of a tractor trailer under lease from Pitt to Carolina. The lease contained an indemnification clause making the lessor responsible for loss or damage to the cargo or for injury to third parties if its negligence was the cause of the loss or damage. Judge Mehrige held that the provision was unenforceable and that Carolina was not entitled to indemnity. 358 F. Supp. 1177 (E. D. Va. 1973). The CA 4 reversed. 492 F.2d 243 (1974). It felt that there was nothing in the leasing agreement "which purports to relieve Carolina from any responsibility to third parties" and that the indemnification provision was not violative of either the spirit or the letter of the regulation. It attempted to distinguish the Seventh Circuit's Alford case, cited in our opinion, on the ground that the lessee there "conceded a *prima facie* violation of the regulation."

I feel that the CA 4 holding is consistent with our decision in Transamerican and I shall vote to deny certiorari.

2. No. 74-973, Jones Truck Lines, Inc. v. Ryder Truck Lines, Inc. This case differs from Transamerican in two respects. The first is that the lessor was not certificated to transport goods in the direction of a point the lessor was authorized to serve. What this means is that § 1057.4, rather than § 1057.3, of the regulations applies in its entirety. The SG, in its amicus brief in the present case, suggests that this difference is immaterial. I agree.

The second difference, however, is more substantial. The indemnification clause purported to relieve the lessee against "any loss, damage or happening giving rise to claims." The District Court held the agreement void and unenforceable. The CA 6 reversed. It attempted to distinguish the Alford case. It felt that the indemnification agreement would strengthen the possibility of recovery by the injured party because it would provide another source of funds from which recovery could be obtained. It relied on Tennessee law in rejecting an argument that the contract of indemnity could not be construed so as to relieve the lessee from the consequences of its own acts of negligence while the vehicle was under its exclusive dominion and control.

This point, of course, is one we expressly did not decide in Transamerican. Perhaps we should have taken the Jones case as a companion to Transamerican. On balance, I am not now eager to take another case in the same area, and I am content to regard Jones as based at least in part on state law. It seems to me that this is the kind of thing that is proper grist for the ICC mill if it gets around to rule-making with respect to indemnification provisions. Jones probably comes down to a battle between insurance companies, and, while results will be reflected in premiums and thus in costs to the respective carriers, I am content to deny. I see no point in remanding for reconsideration in the light of Transamerican, for the CA 6 would obviously reach exactly the same result it reached before.

3. No. 75-211, Dalton v. Indiana Refrigerator Lines. Here the driver stole the cargo while en route. The indemnification clause purported to protect the lessee "from any and all claims of whatever kind or nature that may arise under this agreement." The District Court found the agreement unenforceable. The CA 6 reversed, adhering to its position enunciated in Jones. I shall vote to deny.

H. A. B.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 30, 1975

No. 74-54 Transamerican Freight Lines  
v. Brada Miller

Dear Harry:

Please join me.

Sincerely,

*L Lewis*

Mr. Justice Blackmun

1fp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 31, 1975

Re: No. 74-54 - Transamerican Freight v. Miller Freight

Dear Harry:

Please join me.

Sincerely,

*WR*

Mr. Justice Blackmun

Copies to the Conference