



*Driving Trucking's Success*

# **Intermodal Goods Movement Briefing: The Ports of Long Beach and Los Angeles**

## **ATA Ports Litigation Update**

**April 1, 2009  
Long Beach CA**

# CA Ports Litigation Update

- **3/20 9<sup>th</sup> Circuit Court of Appeals 3-0 Reversal;**
- **US District Court Central District of CA/Judge Christina Snyder has set oral arguments for a Preliminary Injunction of the Ports' Concession Plans for April 27;**
- **Ports agreed to delay until October 1 the implementation of truck parking mandates and restrictions that were otherwise scheduled to go into effect April 1.**

# Legal Parameters

- **Federal preemption... 49 U.S.C. § 14501(c) (1), prohibits states-political subdivisions of states from enacting or enforcing a law that relates to the price, route, or services of any motor carrier.**
- **U.S. Supreme Court-Rowe v. New Hampshire Motor Transport Association, et. al., February 20, 2008**
- **Vote was 9-0.**

# Sup. CT-Rowe Ruling

**Federal Preemption goal... “to assure that carrier rates, routes and services are structured via “competitive market forces” and not because of “governmental commands”...**

# Litigation Review

- **Complaint Filed in U.S. District Court July 28**
- **Preliminary Injunction Filed July 30**

## **ATA Not Challenging “Environmental” Elements of the Ports’ Clean Truck Programs (CTP)**

- **Truck Ban/Retirement Schedule**
- **Drayage Truck Registry (DTR)**
- **Truck Grant Program**
- **Container Fees & Incentives**

# **U.S. District Court**

## **Preliminary Injunction Issues:**

- **Do Concession Plans Fall Within Federal Rates, Routes and Services Preemption Scope?**
- **Are Ports Concession Plans Exempt From Federal Preemption...**
  - **As Market Participant ?**
  - **As Sovereign Tidelands ?**
  - **Under Motor Vehicle Safety Exception ?**

# U.S. District Court Holding

- Ports CTP plans directly impact motor carrier rates, routes, and services;
- **ATA likely to prevail** on Market Participant preemption issue;
- **ATA likely to prevail** on Sovereign Tidelands preemption issue; but...
- **Ports likely to prevail** on Safety Preemption Exception issue-WMDs, Drugs...
- *Therefore No preliminary injunction.*

# 9th Circuit Court of Appeals

- ATA filed appeal 9/10/08
- Denied **Emergency** Injunction 9/24
- Parties ordered to file appeal petitions on expedited schedule
  
- ATA brief filed 10/8/08
- **U.S. DOJ-DOT/Amicus Brief filed 10/20\***
- Ports brief filed 11/26/08
- ATA reply brief filed 12/19/08
- Oral arguments 3/04/09
- Decision 3/20/09

## **\*U.S./DOJ Amicus Brief Details**

- **Brief submitted because Congress has delegated to the U.S. DOT the authority to implement this “safety” related federal preemption provision;**
- **The application of the provision “is a matter of critical concern to the federal government...” ;**
- **Broad safety exemption construction made by the District Court would “permit the exception to swallow the rule”;**
- **Aspects of the Concession Plans clearly have no relationship to motor vehicle safety and squarely fall within the scope of federal preemption;**
- **Preempted issues include prohibiting the use of independent contractors and imposing financial oversight of carriers granted concessions.**

# Court of Appeals

- **...Congress intended to broadly pre-empt state laws that were ‘related to a price, route or service’ of a motor carrier;**
- **...Congress intended to avoid the spectacle of state and local laws re-regulating what Congress had sought to deregulate;**
- **...mere reading of some of the stated purposes of the LA Board underscores an extensive attempt to reshape and control the economics of the drayage industry...**

# Court of Appeals

- ...it could **“hardly be doubted”** that the **Concession Plans** would be preempted by the federal law;
- ...found that the **District Court** had given **far too broad a scope to the concept of motor vehicle safety**;
- ...warned that under such an interpretation **“the exception would swallow the preemption section itself.”**

# Court of Appeals

- **Many of the Concession Plans' components did not appear to be sufficiently safety related;**
- **Specifically, the independent contractor phase-out, the job posting and experienced-drivers-first requirement, the financial disclosure requirements, the on-street parking ban;**

# **Court of Appeals**

**Regarding LA's owner operator ban:**

**“[W]e see little safety-related merit in those thread-paper arguments, which denigrate small businesses and insist that individuals should work for large employers or not at all.”**

# Court of Appeals

- ...a motor carrier who refused to sign “the likely unconstitutional concession agreements,” would have to endure “at the very least a loss of customer goodwill – or indeed, of the carrier’s whole drayage business.”
- “will be forced to incur large costs which, if it manages to survive those, will disrupt and change the whole nature of its business in ways that most likely cannot be compensated with damages alone.”

# Court of Appeals

- **In short, motor carriers should not be required to adhere to the various unconstitutional provisions in the Ports' (concession) agreements;**
- **Motor carriers are likely to suffer irrevocably if forced to do that or give up their businesses;**
- **...likely to result in at least some irreparable harm to the motor carriers;**
- **The district court abused its discretion when it denied a preliminary injunction as to significant parts of the agreements.**

# Court of Appeals

- We **reverse** the district court's decision as to the Concession agreements;
- **Remand** for further consideration the specific terms of each agreement and for the issuance of an appropriate preliminary injunction;
- Ordered the **district court to proceed as quickly as possible** so that ATA will not suffer unnecessary harm from any unconstitutional provisions;
- “[N]o petition for rehearing will be entertained and the mandate shall issue forthwith.”



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**Thank You!**

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