

TRUCKING

The American Trucking Associations says a recent Supreme Court decision in Maine will help turn an expected ATA challenge of Los Angeles harbor trucking rules into a "slam-dunk" case.

Steve Diamond, a law professor at Santa Clara University in Northern California, disagrees. Diamond, who has been following the evolution of the clean-trucks program at the Los Angeles-Long Beach port complex, says the ATA's case is "over the backboard."

The Supreme Court ruling on Feb. 20 involved an attempt by Maine to regulate the delivery of tobacco products. Maine passed a law requiring tobacco shippers to use only delivery companies that verify that recipients are old enough to legally buy tobacco products.

The court struck down the law, citing the 1978 Airline Deregulation Act. The court said federal law pre-empts state actions that have a "connection" with carrier "rates, routes or services," even if the connection is indirect.

The ATA said the principle underpinning the high court's decision in the Maine case, *Rowe v. New Hampshire Motor Truck Association*, was in line with industry objections to plans by the Port of Los Angeles to require harbor trucking companies to obtain operating concessions and hire only employee drivers as part of a clean-air program. The ATA said the central issue in both cases is federal authority to pre-empt state or local efforts to restrict interstate commerce.

"The court determined that the pre-emption should be broadly applied to any state law having a connection with or reference to carrier rates, routes or services," said Curtis Whalen, executive director of the ATA Intermodal Conference, in a message to association members.

Diamond disagrees. "Pre-emption doesn't apply," he said. Diamond said that unlike Maine,



AP/LIA

Driving to court

ATA: Court ruling supports argument against Los Angeles requirement for employee drivers

BY BILL MONGELLUZZO

which attempted to regulate trucking as part of an effort to prevent tobacco sales to minors, the Port of Los Angeles is simply attempting to protect its financial interests as a participant in harbor trucking.

The ports of Los Angeles and Long Beach have pledged millions of dollars to subsidize the replacement of old, pollution-spewing trucks under a clean-air program. The ports intend to raise hundreds of

millions of additional dollars through a fee on trucks that do not meet strict emission requirements. Diamond said that like any business entity with a financial stake in its assets, the ports are free to set standards that protect those assets.

Those arguments are likely to be played out in court if Los Angeles goes through with its plan to require trucking companies to obtain operating concessions and to hire employees

instead of the owner-operators who now dominate the field.

The ports, at the urging of the Teamsters union and environmental groups, had proposed making the use of employee drivers mandatory in what was to be a pollution-reduction plan jointly approved by Los Angeles and Long Beach.

Environmentalists argued that only well-financed trucking companies that paid drivers adequate wages and health benefits could sustain a \$2 billion program that seeks to replace some 16,800 old, polluting trucks with low-emission 2007-model trucks or their equivalent. The employee-driver requirement also would make it easier for the Teamsters to organize drivers.

The Long Beach Harbor Commission last month signaled its intention to head off possible litigation by approving a plan to allow trucking companies to hire either employees or owner-operators.

Although the ATA is scrutinizing Long Beach's truck plan, it appears to be one that trucking companies can live with. The Long Beach plan would grant concessions to licensed motor carriers that register their trucks and drivers and equip the vehicles with radio-frequency identification tags to help the port monitor compliance with safety, security and environmental standards.

The Los Angeles proposal is a different story. The port has contracted with Boston Consulting Group to further study the harbor trucking environment and the proposed clean-trucks program. The port will wait several more weeks for the consultants' report before issuing its final plan, which is likely to require the use of employee drivers as a condition for receiving a trucking concession.

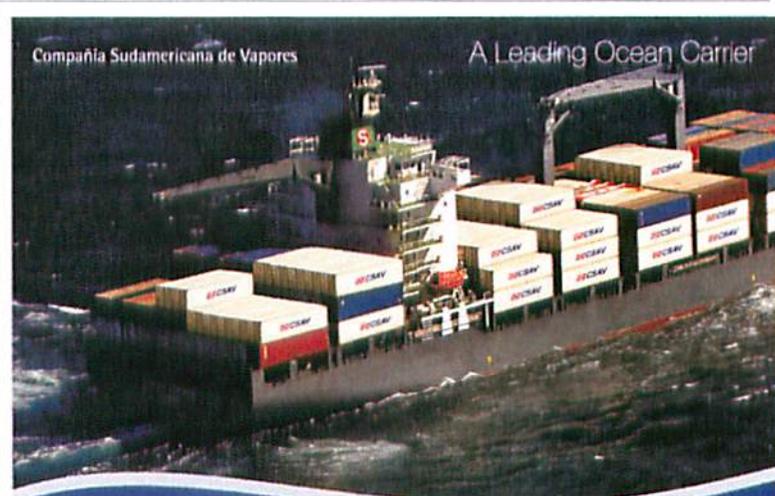
Motor carriers have felt since the ports first submitted their draft clean-trucks program last year that they would have an easy time in court shooting down any proposal under which Los Angeles or Long

Beach would change the existing independent-contractor model for harbor trucking by imposing a requirement that trucking companies use employee drivers.

Long Beach's timeline for retiring old trucks is identical to that of Los Angeles. Both ports intend to subsidize about 80 percent of the cost of

new trucks and 100 percent of the cost of retrofitting post-1993 trucks that can be brought up to 2007-model standards. Collection of the \$35-per-TEU fee on noncompliant trucks would begin on Oct. 1. ♦

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