

Private Fleet Drivers' Court Access Grabs Justices' Attention

DEEP DIVE



Robert Iafolla
Senior Legal Reporter

- Case presents narrow legal issue with economic significance
- Court mulls arbitration exemption for third time in five years

The US Supreme Court's upcoming consideration of arbitration requirements for disputes involving truck drivers who operate private fleets is poised to resolve a circuit split covering an area of the economy that expanded during the pandemic.

The justices [announced](#) last week that they'll weigh whether a transportation worker must be employed by a company in the transportation industry to be exempt from the Federal Arbitration Act, which is used to enforce agreements to handle disputes in private arbitration rather than in court.

A majority of the nearly 2 million tractor trailer drivers in 2022 worked for companies outside of the truck transportation industry, said Jason Miller, a professor of supply chain management at Michigan State University. Companies like Walmart Inc., Amazon.com Inc., and Stellantis NV instead use their own fleets.

"Private fleets are very, very common," Miller said.

With [Bissonnette v. LePage Bakeries Park St. LLC](#), the Supreme Court will ponder the scope of the FAA's transportation worker exemption for the third time in the past five years. The previous two cases yielded some of the few rulings in favor of plaintiffs in a series of arbitration cases going back decades.

The high court ruled that the exemption applies to independent contractors in 2019's *New Prime Inc. v. Oliveira*. Last year, the court in *Southwest Airlines Co. v. Saxon* held that airplane cargo loaders qualify for the exemption.

The justices are sending a message to the federal judiciary by attempting to resolve a circuit split over the scope of the exemption that's developed even after those two unanimous decisions, said Gerson Smoger of the plaintiff-side firm Smoger & Associates PC.

"They're telling the courts below 'you're not getting our message,'" Smoger said. "The justices have tried to make themselves clear on the exemption."

'Significant Economic Consequences'

In light of *Saxon*'s expansion of the FAA carveout, the US Court of Appeals for the Second Circuit reconsidered whether the exemption applies to drivers who deliver loaves of Wonder Bread and other baked goods for Flowers Foods Inc.

The drivers, who delivered under distribution agreements, alleged that Flowers Foods and its subsidiaries misclassified them as independent contractors rather than employees.

But the appeals court was [unwilling](#) to say *Saxon* obviated its own [50-year-old precedent](#) that a worker's employer must be in the transportation industry for the exemption to apply, [holding that](#) the drivers didn't qualify because they're in the bakery industry. The Eleventh Circuit also uses that added industry requirement.

The First and Seventh circuits, however, say the exemption applies to workers engaged in foreign or interstate transportation, regardless of what industry their employer operates in.

"It's a narrow question of statutory construction with very significant economic consequences," said Matthew Finkin, a law professor at the University of Illinois who's [written](#) about the transportation worker exemption.

The circuit split sweeps in all truck drivers employed by non-transportation industry companies, particularly retailers and manufacturers.

That industry distinction takes on added importance because of the recent uptick in the use of private fleets.

Only 45% of the 1.84 million heavy truck drivers in 2022 were employed by truck transportation companies, said Miller, the interim chair of Michigan State University's Department of Supply Chain Management.

Although private fleets partially fell out of favor following federal deregulation of the trucking industry because the price of third-party haulers decreased, Covid-driven driver shortages, increased shipping prices, and reduced levels of service led to their expansion in the past few years, supply chain scholars said.

That pandemic-era growth is probably temporary, particularly in light of the costs and potential liability that comes with running a fleet, said Chad Autry, a professor of supply chain management at the University of Tennessee.

But private fleets survived deregulation and remain a reliable—if expensive—solution to a persistent driver shortage, said John Taylor, a supply chain management professor at Wayne State University.

“What’s going to solve the driver shortage is autonomous trucks with no drivers,” Taylor said.

Clues for Next Time?

Legal scholars say the case should be cut and dry for the Supreme Court because adding an industry requirement seems to run contrary to the text of the law.

Saxon, for instance, avoided considering what Southwest Airlines Co. does as a company and instead focused on the worker’s job duties, making the industry-specific approach appear more inconsistent with the statutory language, said Christine Neylon O’Brien, a business law professor at Boston College.

“Maybe there’s some way around that, but boy, it’s hard,” she said.

The justices’ consideration of a transportation industry requirement likely won’t be its last foray into the scope of the FAA exemption, as they’ve been advancing in a piecemeal fashion so far, legal scholars said.

The next FAA question for the high court may be the hotly litigated issue of whether last-mile delivery drivers and app-based passenger drivers qualify for the exemption. Whether those drivers are engaged in interstate commerce—a requirement for the exemption—has been the main factor debated in those cases.

Just like *Saxon* provides clues for how the court will decide the industry requirement question, a ruling on an industry requirement could give some indication about how the justices view the interstate commerce issue, said Sarah Rudolph Cole, an Ohio State University law professor who specializes in arbitration.

“It’s going to be a narrow decision that hopefully gives some preview about how the last-mile delivery issue will be resolved,” she said.

The case is [Bissonnette v. LePage Bakeries Park St., LLC](#), U.S., No. 23-51.

To contact the reporter on this story: Robert Iafolla in Washington at riafolla@bloombergindustry.com

To contact the editors responsible for this story: Laura D. Francis at lfrancis@bloomberglaw.com; Genevieve Douglas at gdouglas@bloomberglaw.com