

ORIGINAL

Decision No. 57969

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates
and practices of SAVAGE TRANSPORTATION
COMPANY, INC., a corporation, and
UNITED STATES EXPRESS, a corporation.

Case No. 6064

Berol and Silver by Edward M. Berol and Bertram Silver;
Melvin D. Savage, Jr., and Charles Wallen, Jr., for
the respondent.
Franklin G. Campbell, Art Lyon, and George B. Dill, for
the Commission staff.

O P I N I O N

On February 25, 1958, the Commission issued an order instituting an investigation on its own motion into the operations, rates, and practices of Savage Transportation Company, Inc., a corporation, and United States Express, a corporation.

Public hearings have been held at Los Angeles and San Francisco at various times during the period from May 28, 1958, through October 9, 1958. The matter was submitted on October 9, 1958.

Purposes

The investigation was ordered for the purpose of determining:

1. Whether Savage Transportation Company, Inc., and United States Express, or either of them, have violated Public Utilities Code Sections 3664 and 3667, by charging, demanding, directing or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in Commission Minimum Rate Tariff No. 2.
2. Whether Savage Transportation Company, Inc., and United States Express, or either of them, have violated the Public Utilities Code by failing to adhere to other provisions and requirements of Minimum Rate Tariff No. 2.

3. Whether Savage Transportation Company, Inc., and United States Express, or either of them, have operated or are operating as highway common carriers between fixed termini, or over regular routes between the City of Los Angeles and the City and County of San Francisco and between the Cities of Los Angeles and Oakland, without first having obtained a certificate of public convenience and necessity, or being possessed of, or having acquired rights to so operate as required by Section 1063 of the Public Utilities Code.

Findings and Conclusions

Based upon all of the evidence of record, the Commission hereby makes the following findings and conclusions:

1. Savage Transportation Company, Inc., is a corporation which has been issued permits from this Commission to operate as a radial highway common carrier, a highway contract carrier, and a city carrier. This carrier was first issued its radial highway common carrier and highway contract carrier permits in December of 1935. In June of 1949, this carrier was issued a certificate of public convenience and necessity to operate as a highway common carrier of general commodities between San Francisco and Los Angeles. In April of 1955, this carrier was issued a certificate of public convenience and necessity to operate as a highway common carrier of general commodities from San Francisco to various other points within the state. In 1956, this carrier was authorized to and did transfer its certificated operating rights to another carrier.

2. During the four five-day periods February 4, 1957, through February 8, 1957; March 25, 1957, through March 29, 1957; April 15, 1957, through April 19, 1957; and May 20, 1957, through May 24, 1957, the respondent transported shipments of property for compensation between the City and County of San Francisco and the City of Los Angeles. During the first five-day period, at least 226 such shipments were transported; during the second five-day period, at least

236 such shipments were transported; during the third five-day period, at least 222 such shipments were transported; and during the fourth five-day period, at least 265 such shipments were transported. Eighty-one different consignors and forty-two different consignees paid the freight charges for these shipments. The weight of these shipments ranged from less than 100 pounds to in excess of 70,000 pounds. A wide variety of commodities ranging from grocery items to furnaces were transported on these shipments.

3. During the periods of time these shipments between San Francisco and Los Angeles were transported, no more than eleven of the consignors or consignees paying the freight charges had written contracts (other than the usual contract entered into between shipper and common carrier) with respondent covering the transportation of property between the points in question. During this same period of time, five of the consignors or consignees paying the freight charges had purported oral contracts (other than the usual contract entered into between the shipper and common carrier) with the respondent covering the transportation of property between the points in question. However, during this same period of time, at least eleven of the consignors who paid the freight charges, and one of the consignees who paid the freight charges, had neither written nor oral contracts (other than the usual contract entered into between shipper and common carrier) with the respondent covering the transportation of property between the points in question. These eleven consignors are the Maclin Company, B. F. Goodrich Company, Sampson Chemical and Sales Company, Smith Davis Company (also the affiliated Plextone Corporation), the Ames Harris Neville Company, Cargill and Company, the General Cigar Company, The California Saw Works, Independent Lithograph Company, R. H. Elliott Co., and American Cyanamid Company. The consignee was the D. Z. Collins Company. Two of the consignors

who paid the freight charges, The Bemis Brothers Bag Company and American Smelting and Refining Company, had purported oral contracts with the respondent. However, under the terms of these purported contracts, either party to the contract could cancel it at any time. For this reason, the Commission considers these contracts illusory. With respect to the balance of the consignors or consignees paying the freight charges, it could not be determined from the evidence whether or not they had purported oral contracts with the respondent for the transportation of property between the points in question.

4. The terms of the purported oral contracts, other than those involving Bemis Brothers Bag Company and the American Smelting and Refining Company, between the consignors and consignees, hereinabove referred to, and the respondent provided that the shipments are to be handled at the minimum rates prescribed by the Commission; that the shipper is to give all of its freight to the respondent; that the billing is to be performed through Transport Clearings; that the respondent will abide by the rules and regulations of the Commission; that there is no guarantee of tonnage; that there is no cancellation clause; and that the oral contract could be cancelled by mutual consent.

5. During the first of the five-day periods hereinabove mentioned in paragraph 2, respondent transported a total of 19 shipments between San Francisco and Los Angeles on four different days for those consignors and consignee (including Bemis Brothers Bag Company and the American Smelting and Refining Company) paying the freight charges, which it has been found had neither written nor oral contracts with the respondent. During the second five-day period, respondent transported a total of 33 shipments between these two cities for such consignors and consignee, with various of such shipments being transported on each of the five days included within the period. During the third five-day period, respondent transported a

total of 26 shipments between these two cities for such consignors and consignee, with various of such shipments being transported on each of the five days included within the period. During the fourth five-day period, respondent transported a total of 23 shipments between these two cities for such consignors and consignee, with various of such shipments being transported on each of the five days included within the period. During each of these four five-day periods, the weight of these shipments varied from less than 200 pounds to in excess of 8,000 pounds.

6. During the four five-day periods hereinabove mentioned in paragraph 2, respondent transported shipments of property for compensation between the City of Los Angeles and the City of Oakland. During the first five-day period, at least 22 such shipments were transported; during the second five-day period, at least 34 such shipments were transported; during the third five-day period, at least 41 such shipments were transported; and during the fourth five-day period, at least 39 such shipments were transported. Twenty-seven different consignors and four different consignees paid the freight charges for these shipments. The weight of these shipments varied from less than 100 pounds to in excess of 100,000 pounds and a wide variety of commodities ranging from canned goods to chemicals were transported.

7. During the period of time these shipments between Los Angeles and Oakland were transported, only one of the consignors and none of the consignees paying the freight charges had written contracts (other than the usual contract entered into between shipper and common carrier) with respondent covering the transportation of property between the points in question. During this same period of time, five of the consignors had purported oral contracts (other than the usual contract between shipper and common carrier) with the respondent covering the transportation of property between the points

in question. However, during this same period of time, at least three of the consignors who paid the freight charges had neither written nor oral contracts (other than the usual contract between shipper and common carrier) with the respondent covering the transportation of property between the points in question. These three consignors are B. F. Goodrich Company, Smith Davis Company, and the American Cyanamid Company. With respect to the balance of the consignors and consignees paying the freight charges, it could not be determined from the evidence whether or not they had purported oral contracts for the transportation of property between the points in question.

8. During the first of the five-day periods, respondent transported a total of nine shipments between Los Angeles and Oakland on four different days for the consignors which paid the freight charges, which it has been found had neither written nor oral contracts with the respondent. During the second five-day period, respondent transported a total of four shipments between these two cities on three different days for such consignors. During the third five-day period, respondent transported a total of seven shipments between these two cities on three different days for such consignors. During the fourth five-day period, respondent transported a total of nine shipments between these two cities for such consignors, with various of such shipments being transported on each of the five days included within the period. During each of these four five-day periods, the weight of these shipments varied from less than 200 pounds to in excess of 1,000 pounds.

9. Respondent's president declared that respondent was willing to hold its service out to the general public on shipments weighing in excess of 10,000 pounds between the San Francisco Territory and the Los Angeles Territory if it was economically feasible. During

the periods of time the shipments hereinabove referred to in paragraphs 2 and 6, and also subsequent to that time, the respondent has engaged in the solicitation of business, including solicitation for the transportation of shipments between the Cities of Los Angeles and San Francisco and Los Angeles and Oakland. This solicitation has included solicitation of individual shipments between Los Angeles and San Francisco and Los Angeles and Oakland, and from the evidence it appears that this solicitation was not limited to shipments of 10,000 pounds or more. During these same periods of time, respondent transported shipments for certain consignors who paid the freight charges between San Francisco or Oakland, on the one hand, and points near but outside the City of Los Angeles, on the other hand. These consignors had neither written nor oral contracts (other than the usual contract between shipper and common carrier) with the respondent covering these shipments. The weight of these individual shipments amounted to less than 10,000 pounds.

10. Some of the consignors who paid the freight charges but who had neither written nor oral contracts with the respondent and the consignee who paid the freight charges but who had neither a written nor oral contract with the respondent, hereinabove referred to, also used common carriers in addition to the respondent for the transportation of their shipments between San Francisco and Los Angeles and Los Angeles and Oakland.

11. During the period October 1, 1956, through June 30, 1957, the respondent's gross operating revenue from the transportation of property was \$770,550.64. During the period October 1, 1955, through June 30, 1956, respondent's gross operating revenue from the transportation of property was \$776,204.17.

12. On December 31, 1957, the respondent's equipment consisted of 25 tractors, 3 flat-bed or stake trucks, 5 line-haul van trucks, 16 flat-bed or stake trailers, 24 van trailers, 4 refrigerated van trailers, and 9 converter gears and dollies. On December 31, 1956, the respondent's equipment consisted of 31 tractors, 20 local pickup and delivery trucks, 2 flat-bed or stake trucks, 21 flat-bed or stake trailers, 35 van trailers, and 10 converter gears or dollies. The respondent has dock, terminal, and office facilities located in both San Francisco and Los Angeles. Dispatchers and dock help are employed by the respondent in both San Francisco and Los Angeles.

13. During the period from February 1, 1957, through May 31, 1957, the respondent transported other shipments of property for compensation for various shippers between various points in California. Further facts concerning these shipments together with the Commission's conclusion as to the applicable minimum charges for each shipment are set forth in the following table:

<u>Frt. Bill</u> <u>-Date</u>	<u>Point of</u> <u>Origin</u>	<u>Point of</u> <u>Destination</u>	<u>Commodity</u>	<u>Charge</u> <u>Assessed</u>	<u>Applicable</u> <u>Minimum</u> <u>Charge</u>
2- 4-57	Los Angeles	Various	Various	\$101.67	\$114.68
2-25-57	Los Angeles	Oakland	Various	269.82	339.67
2-28-57	Berkeley	Los Angeles	Alum. Paste	59.50	65.80
			Paint		
3-13-57	San Francis- co	Los Angeles	Wood Pallets	-	12.21
3-19-57	Sausalito	Various	Liquor	73.94	91.54
3-19-57	Sausalito	Long Beach	Liquor	190.07	251.27
3-22-57	Los Angeles	Various	Boxes	380.23	518.30
3-26-57	Los Angeles	Various	Various	193.43	205.22
4-10-57	Los Angeles	Santa Clara	Pulpboard	331.37	372.23
4-24-57	Torrance	Sacramento	Various	321.21	434.92
5-22-57	Los Angeles	Various	Various	77.17	86.47

14. Prior to the time the shipments described in paragraph 13 took place, the respondent had been served with a copy of the Commission's Minimum Rate Tariff No. 2 together with all corrections and supplements thereto which would affect the rating of the shipments described in paragraph 13. The respondent has also been served with

a copy of the Commission's Distance Table No. 4.

15. Subsequent to the time of the shipments described in paragraph 13 and subsequent to the time during which the Commission staff commenced its investigation of these shipments, respondent sent balance due bills to the various shippers of these shipments. The dates of the balance due bills and the additional amounts assessed, with the dates of the original freight bills are set forth in the following table:

<u>Date of Original Freight Bill</u>	<u>Date of Balance Due Bill</u>	<u>Additional Charges Assessed</u>
2- 4-57	7- 9-57	\$ 13.00
2-25-57	11-12-57	69.61
2-28-57	10- 7-57	6.30
3-13-57	6-17-57	12.21
3-19-57	6- 6-57	15.84
3-19-57	10-18-57	41.28
3-22-57	12-26-57	162.13
3-26-57	11-12-57	11.79
4-10-57	11-12-57	44.41
4-24-57	6-26-57 and 11-12-57	109.15
5-22-57	7- 9-57	9.30

The Commission staff did not direct or request the respondent to issue these balance due bills.

16. The United States Express is a corporation which has been issued permits from this Commission to operate as a radial highway common carrier, a highway contract carrier, and as a city carrier. Melvin D. Savage, Jr., owns all of the outstanding stock of the United States Express Company and owns all but 5,000 of the outstanding shares of stock of Savage Transportation Company, Inc. There are in excess of 40,000 shares of stock outstanding of Savage Transportation Company, Inc. The officers of United States Express are President, Melvin D. Savage, Jr.; Vice President, John Jay Ferdon; Secretary-Treasurer, Margaret Lucy. The officers of Savage Transportation Company, Inc., are President, Melvin D. Savage, Jr.; Vice President, Charles Wallen; Secretary-Treasurer, John Jay Ferdon. The United States Express uses the same dock and office facilities

as the Savage Transportation Company, Inc., but has no payroll because it has no employees. United States Express credits 90 per cent of its manifest revenues to Savage Transportation Company, Inc., for administrative and other expenses. Certain of the van trailers owned by Savage Transportation Company, Inc., contained on their sides the sign of United States Express. Savage Transportation Company, Inc., has sent out balance due bills on its own letterhead stationery for the collection of monies due the United States Express.

Status Violations

In order to ascertain whether the respondent was improperly operating as a highway common carrier between the City of Los Angeles and the City and County of San Francisco and between the City of Los Angeles and the City of Oakland, it is first necessary to ascertain whether it was operating as a common carrier between these points. Based upon all of the evidence of record in this matter, it is the Commission's finding and conclusion that the respondent, Savage Transportation Company, Inc., has dedicated its property to serve the public as a common carrier between these points for shipments of any size. Likewise, based upon all of the evidence of record, it is the Commission's finding and conclusion that this respondent's operations as a common carrier between San Francisco and Los Angeles were between fixed termini and over a regular route. With respect to the operation between Los Angeles and Oakland, it is the Commission's finding and conclusion that during a portion of the period of time covered by the Commission's investigation, respondent's operation as a common carrier between these points were between fixed termini and over a regular route. It follows from this, therefore, that it is the Commission's conclusion that during this period of time respondent was operating as a highway common carrier between Los Angeles and San Francisco and between Los Angeles and Oakland. Inasmuch as the

respondent operated as a highway common carrier between these points during a period of time when it did not have a certificate of public convenience and necessity to so operate, it is the Commission's conclusion and it finds that the respondent violated Section 1053 of the Public Utilities Code.

Rate Violations

It is clear from the facts hereinabove found, with respect to the shipments described in paragraph 13, that in its original billing, respondent assessed transportation charges for these shipments less than the applicable minimum charges set forth in the Commission's Minimum Rate Tariff No. 2. Four of these undercharges resulted from an improper consolidation of shipments, three resulted from a failure to assess split pickup or split delivery charges, one resulted from a failure to assess an off-rail charge, one resulted because the shipment was rated from an incorrect point of origin, one resulted from the application of an incorrect rate, and one resulted because no charge had been assessed for the shipment at all. The total amount of the undercharges resulting from this original billing was \$493.90.

The facts hereinabove found show that the respondent sent out balance due bills with respect to the shipments in question after the Commission staff began its investigation of respondent's records. However, even after the rendering of the balance due bills, \$26.48 in undercharges still remain.

Notwithstanding that the rebilling was performed by the respondent, it is the Commission's conclusion that respondent violated Sections 3664 and 3667 of the Public Utilities Code by assessing and collecting a lesser charge for the transportation of property than the applicable minimum charges prescribed by the Commission.

Alter Ego Situation

United States Express was also included as a respondent in this matter for the purpose of ascertaining whether its relationship with Savage Transportation Company, Inc., is such that its corporate entity should be disregarded with the result that it and the Savage Transportation Company, Inc., be treated as one and the same entity for the purposes of this investigation. The Commission staff did not claim that United States Express had committed any violations nor did the record show any such violations.

With respect to the question of disregarding the corporate entity of United States Express, the California Supreme Court decisions have indicated that two requirements are needed for application of the alter ego doctrine the first of which is that there be such unity of interest or ownership that the separate personalities of the corporation and the shareholder no longer exist. The second requirement needed appears to vary depending upon the case involved. This Commission has indicated in a prior decision that this second requirement is met when the recognition of the separate corporate fiction would result in the evasion, circumvention, or frustration of regulatory law. Application of Direct Delivery System, Decision No. 51619 in Application No. 35927, 54 CPUC 258. It appears to the Commission from all of the evidence in this matter that the requirement of unity of interest and ownership among Melvin D. Savage, Jr., Savage Transportation Company, Inc., and United States Express has been met in this case. However, it is the Commission's conclusion that the second requirement has not been met at this time. For this reason, the Commission is not going to disregard the separate corporate entity of United States Express. United States Express is cautioned, however, that any evasion, circumvention or frustration of regulatory law by it resulting because of its close relationship with Savage Transportation Company, Inc., will cause the Commission to reconsider its

conclusion. In this regard, the operations of United States Express will be closely scrutinized to ascertain whether Savage Transportation Company, Inc., is using its relationship with United States Express to circumvent the suspension of its operating rights. Such a course of conduct would result in further action by this Commission. ✓

Penalty

The Commission has concluded that Savage Transportation Company, Inc., has violated Sections 1063, 3664 and 3667 of the Public Utilities Code. After consideration of all of the evidence of record, it is the Commission's conclusion that the radial highway common carrier permit and highway contract carrier permit of Savage Transportation Company, Inc., be suspended for a period of two days.

Subsequent to the time when this matter was submitted, the Commission has authorized Savage Transportation Company, Inc., to acquire a certificate of public convenience and necessity to operate as a highway common carrier between certain points. As a condition of that authority, that certificate was made subject to this decision. It is the Commission's conclusion that this certificate should likewise be suspended for a period of two days.

Savage Transportation Company, Inc., will also be ordered to cease and desist from operating as a highway common carrier between any points unless first authorized to so operate by this Commission.

Motions

During the course of the various hearings on this matter, several motions were made to strike certain evidence from the record, which motions were taken under submission. These motions are hereby denied.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein,

IT IS ORDERED:

1. That Savage Transportation Company, Inc., is hereby ordered to cease and desist from operating as a highway common carrier between any points within this State unless it has first obtained a certificate of public convenience and necessity from this Commission to so operate.
2. That the certificate of public convenience and necessity to operate as a highway common carrier, Radial Highway Common Carrier Permit No. 38652, and Highway Contract Carrier Permit No. 38653, issued to Savage Transportation Company, Inc., are hereby suspended for two days starting at 12:01 a.m. on the second Monday following the effective date of this order.
3. That Savage Transportation Company, Inc., shall post at its terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that its certificate of public convenience and necessity, radial highway common carrier permit, and highway contract carrier permit have been suspended by the Commission for a period of two days.
4. That Savage Transportation Company, Inc., shall examine its records for the period from January 1, 1957, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.
5. That within ninety days after the effective date of this decision, Savage Transportation Company, Inc., shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 4.

6. That Savage Transportation Company, Inc., is hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion that remain uncollected, together with any additional undercharges found after the examination required by paragraph 4 of this order, and to notify the Commission in writing upon the consummation of such collections.

7. That, in the event charges to be collected as provided in paragraph 5 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Savage Transportation Company, Inc., shall submit to the Commission, on the first Monday of each month, a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such action until such charges have been collected in full or until further order of this Commission.

8. That Savage Transportation Company, Inc., is further ordered and directed not to use its relationship with United States Express to circumvent the suspension of its operating rights.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Savage Transportation Company, Inc., and United States Express, and this order shall become effective twenty days after the completion of such service upon these respondents.

Dated at San Francisco, California, this
3rd day of February, 1959.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners