

BONN & WILKINS
CHARTERED
805 North Second Street
Phoenix, AZ 85004
(602) 254-5557

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Randall D. Wilkins, State Bar No. 009350
Brian J. Campbell, State Bar No. 013177
BONN & WILKINS, CHARTERED
805 North Second Street
Phoenix, Arizona 85004
(602) 254-5557

Paul D. Cullen, Sr., DC Bar No. 100230
David A. Cohen, PA Bar No. 54342
Joseph A. Hennessey, DC Bar No. 453582
THE CULLEN LAW FIRM, PLLC
1101 30th Street, N.W., Suite 300
Washington, D.C. 20007
(202) 944-8600

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Owner-Operator Independent Drivers
Association, Inc. and David Hayes, Bobby
Campbell, Gerald Webb, David Rush,
Valarie Helton, John Nunn, Sr., Wayne
Bibicoff, Roy Sparks, Olin Sparks, Paul
Hawkins, and Frank Carter, individually,
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

Swift Transportation Co., Inc. (AZ), Swift
Transportation Co., Inc. (NV), M.S.
Carriers, Inc., and M.S. Carriers
Warehousing & Distribution, Inc.,

Defendants.

Civ. 02-1059 PHX PGR

**MOTION FOR A PRELIMINARY
INJUNCTION AGAINST
DEFENDANTS
SWIFT TRANSPORTATION, INC (AZ)
AND M.S. CARRIERS, INC.**

Plaintiffs hereby move, pursuant to Fed.R.Civ.P. 65, 49 U.S.C. §§ 14102(a) and
14704(a)(1), and 49 C.F.R. §376.11(a), for a preliminary injunction enjoining and restraining
Swift Transportation Co., Inc. of Arizona (“Swift”) and M.S. Carriers, Inc. (“M.S. Carriers”)
from performing transportation of property that requires Department of Transportation
authorization in motor vehicle equipment Defendants do not own until Defendants execute

1 written lease agreements with the owners of such equipment that meet the requirements
2 contained in 49 C.F.R. § 376.12. In support of this motion, the Court is referred to the
3 following documents:

4 1. Plaintiffs' Class Action Complaint.

5 2. A genuine copy of the "Contractor Agreement, East Coast" executed on
6 December 17, 2001 between David B. Hayes and Swift Transportation Co., Inc. attached to
7 Plaintiffs' Complaint at Tab 1.

8 3. A genuine copy of the "Contract Hauling Agreement" executed on March 7,
9 2001 between David B. Hayes and M.S. Carriers, Inc. attached to Plaintiffs' Complaint at
10 Tab 2.

11 4. A genuine copy of the "Equipment Lease" executed on March 7, 2001 between
12 David B. Hayes and M.S. Carriers Warehousing and Distribution, Inc. attached to Plaintiffs'
13 Complaint at Tab 3.

14 5. A genuine copy of a Contract Hauling Agreement executed on December 7,
15 1998 between Frank S. Carter and M.S. Carriers (the "Carter Contract Hauling Agreement")
16 attached to Plaintiffs' Complaint at Tab 4.

17 6. Declaration of David B. Hayes authenticating documents at Tabs 1, 2, and 3
18 attached to Plaintiffs' Complaint at Tab 5.

19 7. Declaration of Frank S. Carter authenticating the document found at Tab 4
20 attached to Plaintiffs' Complaint at Tab 6.

21 8. Memorandum of Law in Support of Motion For a Preliminary Injunction
22 Against Defendants Swift Transportation, Inc (AZ) and M.S. Carriers, Inc.

23 9. Declaration of David B. Hayes in support of the preliminary injunction..

24 10. Declaration of Frank S. Carter in support of the preliminary injunction.

25 11. Declaration of Wayne Bibicoff in support of the preliminary injunction.

26 12. Declaration of James J. Johnston, President of OOIDA, in support of the
27 preliminary injunction.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs request Oral Argument before the Court on the above motion.

RESPECTFULLY SUBMITTED this ____ day of _____, 2002.

BONN & WILKINS, CHARTERED

By: _____
Randall D. Wilkins
Brian J. Campbell

and

THE CULLEN LAW FIRM, PLLC

By: _____
Paul D. Cullen, Sr.
David A. Cohen
Joseph A. Hennessey

Attorneys for Plaintiffs