INTRODUCTION

In 1887, Congress passed the Interstate Commerce Act\(^1\) as a means of protecting shippers and travelers from the abuses of carriers.\(^2\) In order to prevent discrimination toward shippers by carriers, section 10761(a) of the Interstate Commerce Act requires carriers to file a rate tariff prior to providing transportation services to customers.\(^3\) Section 10761 serves as the foundation for the "filed rate doctrine" which requires that shippers and carriers strictly adhere to the rates set out in the filed tariff.\(^4\) In 1980, Congress amended the Interstate Commerce Act\(^5\) in response to changes in national regulatory policy.\(^6\) The amendments streamlined entry by new carriers into the transportation industry, reduced rate restrictions, and placed restrictions on collective ratemaking.\(^7\) These modifications were designed to increase competition among carriers, thereby benefiting shippers, small carriers, and others through market-determined pricing.\(^8\) Many carriers, however, have taken advantage of the post-amendment environment by first negotiating with a shipper for a rate be-

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2. A. STICKNEY, THE RAILWAY PROBLEM 140 (1891). For purposes of this Note, the term "shippers" shall refer to manufacturers or other organizations that utilize the services of common carriers to transport goods.
3. Goodman, Unfiled Motor Common Carrier Rates Gain New Respectability as the ICC Celebrates Its Centennial, 54 TRANSP. PRAC. J. 292, 293 (1987). Section 10761(a) provides that:

   Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide that transportation or service only if the rate for the transportation or service is contained in a tariff that is in effect under this subchapter. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

4. See infra notes 49-57 and accompanying text.
8. See infra notes 80-83 and accompanying text.
low the tariff rate only to later bill the shipper at the higher tariff rate in reliance on the filed rate doctrine. The Interstate Commerce Commission (ICC) has recently determined that such practices will, in certain cases, constitute an unreasonable practice in violation of the Interstate Commerce Act. Therefore, there now exists a conflict between the filed rate doctrine and the unreasonableness provision of the Interstate Commerce Act. The United States Court of Appeals for the Eighth Circuit recently addressed this conflict in INF, Ltd. v. Spectro Alloys Corp.

This Note discusses the purposes behind the filed rate doctrine and the amendments made to the Interstate Commerce Act in 1980. In addition, this Note questions the appropriateness of strict adherence to the filed rate doctrine in light of the newly developing national regulatory policy as viewed by the ICC.

FACTS AND HOLDING

INF, Ltd. (INF) was a common freight carrier incorporated in Wisconsin. In 1983, INF arranged to transport goods for Spectro Alloys Corp. (Spectro), a metal products manufacturer and distributor incorporated in Minnesota. INF was aware that the goods to be shipped for Spectro were aluminum and aluminum alloy; however, the shipping rate quoted by INF to Spectro was based on the “iron and steel” rate set out in the tariff that INF had filed with the ICC in accordance with section 10761(a) of the United States Code. Both INF and Spectro apparently viewed the iron and steel rate as appropriate. During 1983 and 1984, INF made 124 shipments for Spectro. The shipments ceased when, in late 1984, INF’s parent

9. See infra notes 104-06 and accompanying text.
11. See infra notes 198-217 and accompanying text.
12. 881 F.2d 546 (8th Cir. 1989).
13. See infra notes 44-49, 80-87 and accompanying text.
14. See infra notes 118-68 and accompanying text.
17. Spectro, 651 F. Supp. at 1405.
18. Spectro, 881 F.2d at 547. See supra note 3.
20. Id.
corporation filed for Chapter 11 reorganization. Bankruptcy court auditors determined that the iron and steel rate charged by INF was improper as applied to the shipments of Spectro's aluminum goods and that the carrier had consequently undercharged Spectro by $22,460.70. The rate INF should have charged for the shipments, according to the auditors, was the higher “freight, all kinds” rate that INF had filed with the ICC. INF sued Spectro in state court for the alleged undercharges. Spectro denied that the rate charged was incorrect and removed the case to the Federal District Court for the District of Minnesota.

Spectro claimed in its answer that INF was estopped from collecting the alleged undercharges and that the demand for the undercharges was unreasonable. After a motion by Spectro to stay the proceeding, the district court decided that the “reasonableness” issue was within the primary jurisdiction of the ICC and accordingly referred the case to that agency for its ruling on the matter. In referring the case to the ICC, the court noted major policy changes set out by that agency. These policy changes included the determination that the “filed rate doctrine” did not necessarily bar equitable defenses. The court recognized the apparent intention of the ICC to expand its authority to determine reasonableness under section 10701 and expressed concern over the relationship between courts and administrative bodies.

22. Spectro, 881 F.2d at 547. INF later conceded that the statute of limitations set out in the Interstate Commerce Act precluded INF from collecting approximately $5,000 of this amount. INF, Ltd. v. Spectro Alloys Corp., 690 F. Supp. 808, 809 n.1 (D. Minn. 1988), rev’d, 881 F.2d 546 (8th Cir. 1989).
23. Spectro, 651 F. Supp. at 1405-06.
24. Brief for Appellee at 2, INF, Ltd. v. Spectro Alloys Corp., 881 F.2d 546 (8th Cir. 1989) No. 88-5324. “Undercharges” equal the difference between the rate for which the carrier transported goods for a shipper and the corresponding rate the carrier had filed with the ICC. Maislin Indus. v. Primary Steel, Inc., 879 F.2d 400, 401 (8th Cir. 1989). See infra notes 157-69 and accompanying text.
26. Id. at 1406.
27. Id. at 1407-08.
29. Spectro, 651 F. Supp. at 1407 (citing 1986 Policy Statement at 99). Although the ICC did not enumerate in the 1986 Policy Statement those equitable defenses on which shippers had relied, Spectro asserted an estoppel defense. Id. at 1406.
30. Id. See supra note 10. In United States v. Western Pac. R.R., 352 U.S. 59 (1956), the Supreme Court addressed the question of whether the issue of cargo classification was within the primary jurisdiction of the ICC. The Court noted that, in mat-
The ICC determined that Spectro had reasonably relied on the tariff quoted by INF and ruled that compelling Spectro to pay the undercharges would constitute an unreasonable practice.\(^3\) Despite the findings of the ICC, the district court determined that it was bound by the filed rate doctrine established by Congress and the United States Supreme Court and could not allow the equitable defenses asserted by Spectro.\(^3\) The court stated that “[n]either Congress nor any federal court has seen fit to mitigate the sometimes harsh effects of the filed rate doctrine by allowing equitable defenses.”\(^3\) The decision by the district court not to uphold the ruling was partially based on the closely divided vote of the ICC.\(^3\) Finally, the district court noted that the ICC itself recognized that the ruling was advisory only and that final authority to review the ruling and set a remedy remained with the court.\(^3\)

Spectro appealed to the United States Court of Appeals for the Eighth Circuit.\(^3\) The Eighth Circuit initially decided that the reasonableness issue was within the primary jurisdiction of the ICC.\(^3\) The court stated that “the reasonableness of a carrier’s billing practices and efforts to collect undercharges [were] matters involving the special expertise of the ICC and [were] therefore within the ICC’s jurisdiction.”\(^3\) The Eighth Circuit then held that the lower court had erred in failing to adhere to the ruling of the ICC.\(^3\) According to the Eighth Circuit, the ICC was authorized to balance the filed rate doctrine against the reasonable practice provision.\(^3\) The court thereby concluded that the ICC had the right to change its policy regarding the filed rate doctrine and that the change was reasonable.\(^3\) The Eighth Circuit held that the finding of the ICC could not be set aside unless it was “arbitrary, capricious, or unsupported by substantial evidence.”\(^3\) Based on these findings, the Eighth Circuit reversed the district court.\(^3\)

\(^{31}\) Spectro, 881 F.2d at 547. The ruling of the ICC was decided by a three-two vote. \(\text{Id.}\)
\(^{32}\) Spectro, 690 F. Supp. at 810.
\(^{33}\) \(\text{Id.}\)
\(^{34}\) \(\text{Id.}\) at 811.
\(^{35}\) \(\text{Id.}\) at 810 n.5.
\(^{36}\) Spectro, 881 F.2d at 547.
\(^{37}\) \(\text{Id.}\) at 548.
\(^{38}\) \(\text{Id.}\) (citing Maislin Indus. v. Primary Steel, Inc., 879 F.2d 400 (8th Cir. 1989). The Eighth Circuit heard the Maislin and Spectro cases on the same day. \(\text{Id.}\)
\(^{39}\) \(\text{Id.}\)
\(^{40}\) \(\text{Id.}\)
\(^{41}\) \(\text{Id.}\)
\(^{42}\) \(\text{Id.}\) at 550.
\(^{43}\) \(\text{Id.}\)
BACKGROUND

THE INTERSTATE COMMERCE ACT

Congress initially passed the Interstate Commerce Act in response to public concern over the abusive practices of large carriers in the latter half of the 1800's. Railroads at the time were able to easily discriminate among shippers thereby giving large shippers an unfair advantage over smaller companies. The Interstate Commerce Act sought to ensure equal treatment of all companies that were not adequately protected by the forces of competition. To facilitate the application of the Interstate Commerce Act, Congress created the Interstate Commerce Commission, an independent regulatory agency.

One of the key provisions of the Interstate Commerce Act is set out at section 10761(a) of the United States Code. This statute compels certain common carriers to publish and file with the ICC a tariff setting out the rates and related practices for providing transportation or services subject to the jurisdiction of the ICC. Further, a common carrier must file its rates prior to providing transportation or other services to a shipper and may not deviate in any way from the rates it has filed. A published tariff has statutory effect, and its purpose is to ensure rate equality and prevent favoritism by a carrier toward certain shippers. Requiring strict compliance with the filed rate was also aimed at avoiding intentional misquotation of rates by carriers in order to give secret discounts or rebates to certain shippers. These filing requirements have afforded shippers and com-

44. 49 U.S.C. § 101-11917 (1983); supra notes 3, 10 and infra note 72.
46. Id. at 27-30.
47. Id. at 140.
48. Id. at 134.
50. 49 U.S.C. § 10761 (1983); supra note 3. The remaining provisions of section 10761 provide that:
   (b) The [ICC] may grant relief from subsection (a) of this section to contract carriers when relief is consistent with the public interest and the transportation policy of section 10101 of this title. The [ICC] may begin a proceeding under this subsection on application of a contract carrier or group of contract carriers and on its own initiative for a water contract carrier or group of water contract carriers.
   (c) This section shall not apply to expenses authorized under section 10751 of this title.
52. 13 AM. JUR. 2D Carriers § 107 (1964).
peting carriers "the opportunity to discover unreasonable, discriminatory, and predatory rates and to make their complaints known to the courts and the [ICC]." The filing requirements and the obligation on carriers not to deviate from their filed rates constitute what is known as the "filed rate doctrine." The principles of the doctrine were initially set out by the United States Supreme Court in *Louisville & Nashville Railroad Company v. Maxwell*. The Court in *Maxwell* stated that:

> [u]nder the Interstate Commerce Act, the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext. Shippers and travelers are charged with notice of it, and they as well as the carrier must abide by it, unless it is found by the [ICC] to be unreasonable. Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed. This rule is undeniably strict and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination.

The Supreme Court also noted that there existed a conclusive presumption that the shipper had knowledge of the filed rate. The rate, once filed, is a matter of public record, and shippers in the past have had no defense to a claim of undercharges brought by a carrier. Courts have upheld this approach even when the carrier had intentionally or fraudulently misquoted its rate to a shipper at the time the parties reached their shipping agreement. The Supreme Court has consistently upheld the filed rate doctrine since the time of *Maxwell*. In *Regular Common Carrier Conference v. United States*, the United States Court of Appeals for the District of Columbia held that without the rate filing requirement, which is a central feature of the Interstate Commerce Act, it would be all but impossible to ensure that rates were reasonable and nondiscrimina-

54. *Id.* at 293.
55. *Id.*
56. 237 U.S. 94 (1915). This case involved the purchase by G.A. Maxwell of rail travel tickets for a price below that set out in the published tariff of the railroad. *Id.* at 95-96. In holding that Maxwell was liable for the undercharges, the Court relied solely on the filed rate doctrine and the tariff published by the railroad. *Id.* at 95-100.
57. *Id.* at 97.
58. *Id.* at 98.
60. *Id.*
62. 793 F.2d 376, 379 (D.C. Cir. 1986) (holding that the provision in the Interstate Commerce Act which provided for the waiver of certain rate regulation requirements did not authorize the ICC to waive the requirement for tariff rate compliance).
When a shipper relies on a rate quotation that is below the lawful filed rate, only to discover later that it must pay the undercharges to the carrier, there has traditionally been no liability on the part of the carrier. A court hearing an undercharge case will generally first determine whether the case should be referred to the ICC. Under the doctrine of primary jurisdiction, a court will refer the case whenever a statutory matter therein requires the "special knowledge, experience, and services" of the ICC to rule on technical factual matters and when "uniformity of ruling is essential to comply with the purposes of the regulatory statute administered."

The fact that a court has referred a case to the ICC does not bear upon the finality of the administrative decision. As a legal matter, "the degree of finality which attaches to the [ICC's] action must be gathered from determinations of the courts which involve directly the nature and scope of judicial review." When a court assumes jurisdiction of a case after referring it to the ICC, the task of the court is not to adjudicate the administrative question but rather to prevent abuse of discretion by the ICC. The Supreme Court in Chevron, U.S.A. v. Natural Resources Defense Council, Inc. held that when the issue referred was one of statutory construction, courts retained final authority and had to reject administrative constructions that were contrary to congressional intent. Section 706(2)(A) of title Five of the United States Code requires the reviewing court to set aside administrative actions and conclusions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Also having bearing on the judicial review of ICC rulings is

63. Id.
64. See e.g., Maislin Indus. v. Primary Steel, Inc., 879 F.2d 400, 403 (8th Cir. 1989) (holding that the ICC had primary jurisdiction over undercharge cases); Seaboard Sys. R.R. v. United States, 794 F.2d 635, 637 (11th Cir. 1986) (holding that a decision by the ICC to review the unreasonable practice of a carrier was "not contrary to statute" and was within the authority of the ICC); Delta Traffic Serv., Inc. v. E.L. Mustee & Sons, No. C87-1726 (N.D. Ohio May 12, 1988) (WESTLAW, Database DCT) (holding that undercharge cases were not within the primary jurisdiction of the ICC).
65. 2 AM. JUR. 2D Administrative Law § 788 (1986).
67. Id. at 415.
68. Id. at 415.
69. Id. at 415.
70. 467 U.S. 837 (1984) (reviewing the construction by the Environmental Protection Agency of a statute administered by that agency).
71. Id. at 842-43.
To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—
the doctrine of affirmative and negative orders.\(^7^3\) This doctrine holds that when the ICC has denied affirmative relief to a complainant, a court may not review the matter.\(^7^4\) Thus, in undercharge cases, this doctrine would stipulate that a court may not set aside the ruling of the ICC when the ruling denies relief to the shipper.\(^7^5\)

**THE MOTOR CARRIER ACT OF 1980**

The rate filing statute\(^7^6\) and concomitant filed rate doctrine were introduced during an era of substantial regulation and limitations on shipping-related contracts.\(^7^7\) The Supreme Court has viewed the doctrine as necessary for upholding the congressional policy of guarding against unjust discrimination by carriers against shippers.\(^7^8\) In 1980, however, Congress passed the Motor Carrier Act of 1980 (Motor Carrier Act)\(^7^9\) in response to changes in national regulatory policy.\(^8^0\) The Motor Carrier Act "strongly encourages greater competition, broader operating authority, greater participation by minority motor carriers and innovative pricing options to meet market demand."\(^8^1\)

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(1) compel agency action unlawfully withheld or unreasonably delayed; and
(2) hold unlawful and set aside agency action, findings, and conclusions found to be—
(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute;

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

**Id.**

73. I. Sharfman, supra note 68, at 406-07.
74. Id. at 407.
75. See id. at 407-10 (citing Procter & Gamble v. United States, 225 U.S. 282, 293 (1912) (holding that courts may only "entertain complaints as to affirmative orders of the [ICC]").
76. 49 U.S.C. § 10761(a) (1983); supra note 3.
80. Allen, 56 TRANS. PRAC. J. at 294.
81. Id. (citing 49 U.S.C. § 10101(a) (1983)). Section 10101(a) sets out the overall policies of the 1980 Act and provides that:
(a) Except where policy has an impact on rail carriers, in which case the principles of section 10101a of this title shall govern, to ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Gov-
The Motor Carrier Act seeks to ensure improved service to small communities and to ease the entry of new carriers into the transportation industry.\textsuperscript{82} As a result of this new legislation, carriers now have greater freedom to set their rates to meet market demands.\textsuperscript{83} Nevertheless, despite all of the amendments contained in the Motor Carrier Act, Congress did not revise the statute on which the filed rate doctrine is based.\textsuperscript{84} The United States Court of Appeals for the Fifth Circuit in\textit{Caravan Refrigerated Cargo, Inc. v. Yaquinto}\textsuperscript{85} noted that when Congress reviewed the Motor Carrier Act in contemplation of the 1980 amendments, “it did so in light of section 10761(a) of 49 U.S.C. § 10101(a) (1983).

\begin{itemize}
  \item (1) in regulating those modes—
    \begin{itemize}
      \item (A) to recognize and preserve the inherent advantage of each mode of transportation;
      \item (B) to promote safe, adequate, economical, and efficient transportation;
      \item (C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;
      \item (D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;
      \item (E) to cooperate with each State and the officials of each State on transportation matters; and
      \item (F) to encourage fair wages and working conditions in the transportation industry;
    \end{itemize}
  \item (2) in regulating transportation by motor carrier, to promote competitive and efficient transportation services in order to (A) meet the needs of shippers, receivers, passengers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public; (C) allow the most productive use of equipment and energy resources; (D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (E) provide and maintain service to small communities and small shippers and intrastate bus services; (F) provide and maintain commuter bus operations; (G) improve and maintain a sound, safe, and competitive privately owned motor carrier system; (H) promote greater participation by minorities in the motor carrier system; and (I) promote intermodal transportation; and
  \item (3) in regulating transportation by motor carrier of passengers (A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objections of this subtitle; (B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this subtitle; and (C) to ensure that Federal reform initiatives enacted by the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions.
\end{itemize}


\textsuperscript{83} Id. at 2286.

\textsuperscript{84} See infra notes 85-86 and accompanying text.

\textsuperscript{85} 864 F.2d 388 (5th Cir. 1989) (holding that the Motor Carrier Act did not “abrogate the filed tariff doctrine” in an archetypal undercharge case).
and the long-standing judicial interpretations of that statute. In fact, the changes which Congress did make . . . indicate that its intent was to leave the filed tariff doctrine very much intact.\textsuperscript{86} The \textit{Caravan} court based its opinion on the Supreme Court decision in \textit{Square D Co. v. Niagara Frontier Tariff Bureau, Inc.}\textsuperscript{87} that “Congress must be presumed to have been fully cognizant” of the existing statutory scheme.\textsuperscript{88} The Fifth Circuit in \textit{Caravan} determined that any other decision would constitute judicial legislation.\textsuperscript{89}

In recent years, the unaltered status of the rate filing requirement has caused a growing problem of inefficiency because of the greatly increased competition that has occurred since 1980.\textsuperscript{90} Since the passage of the Motor Carrier Act, the number of carriers operating in this country has skyrocketed from approximately 17,000 to over 39,000, volume discounts are no longer per se discriminatory, and carriers may now hold both common and contract operating authority.\textsuperscript{91} This last development is significant because, unlike common carriers, contract carriers do not have to file their rates with the ICC.\textsuperscript{92} As a result, a carrier who wants to discriminate against certain shippers may do so merely by obtaining contract carrier status.\textsuperscript{93} These developments, as a whole, have produced at least two noteworthy results.\textsuperscript{94} The first has been far greater competition among carriers.\textsuperscript{95} This has resulted in a reduced risk that a carrier could unreasonably discriminate against certain shippers.\textsuperscript{96} The second result is that it is no longer easy for a shipper to verify in a timely manner the rate quoted to him by a carrier due to the vast number of rates that are negotiated everyday by carriers.\textsuperscript{97} Consequently, the ICC has recently re-examined the policy of strict adherence to the filed rate doctrine.\textsuperscript{98}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{86} \textit{Id.} at 390-91. See supra note 3.
\item \textsuperscript{87} 476 U.S. 409 (1986). The \textit{Square D} case involved an alleged conspiracy by a group of carriers to fix rates in violation of the Sherman Act and without complying with an agreement filed by the carriers with the ICC. \textit{Id.} at 411-13. The issue before the court was whether the carriers were subject to liability in a private antitrust action. \textit{Id.} at 410.
\item \textsuperscript{88} \textit{Id.} at 420 (citing \textit{Cannon v. University of Chicago}, 441 U.S. 677, 696-97 (1979) (holding that it would be presumed that our elected representatives know the law and its proper interpretation)). \textit{Caravan}, 864 F.2d at 391.
\item \textsuperscript{89} \textit{Caravan}, 864 F.2d at 392.
\item \textsuperscript{90} \textit{Goodman}, 54 TRANS. PRAC. J. at 296-99.
\item \textsuperscript{91} \textit{Revised Policy Statement}, 5 I.C.C.2d at 14-16.
\item \textsuperscript{92} \textit{Id.} at 16.
\item \textsuperscript{93} \textit{Id.}
\item \textsuperscript{94} See infra notes 96-98 and accompanying text.
\item \textsuperscript{95} \textit{Revised Policy Statement}, 5 I.C.C.2d at 14.
\item \textsuperscript{96} \textit{Id.} at 14-15.
\item \textsuperscript{97} \textit{Id.} at 16-17.
\item \textsuperscript{98} \textit{Allen}, 56 TRANS. PRAC. J. at 294.
\end{enumerate}
\end{footnotesize}
The competitive environment of commercial transportation and the attendant rise in the number of motor carriers since 1980 has given rise to a new problem. Carriers and shippers now negotiate hundreds of individual carrier rates every day. Carriers may file reduced tariff rates which become effective with as little as one day's notice. Carriers are thus able to respond more quickly to competition. The ICC has noted that "[i]n these circumstances, it would be extremely difficult for shippers to determine, prior to an initial movement [of goods], whether the agreed-upon rate is actually on file (or what rate their competitors are paying)." Many carriers have taken advantage of this situation by first negotiating a rate with a shipper and then failing to publish that rate in a timely fashion only to later bill the shipper for the so-called undercharge. Undercharge cases usually arise when a carrier goes bankrupt and the trustee in bankruptcy, having discovered the rate discrepancy, sues the shipper for the undercharges. Shippers have fought such claims on the premise that they constitute an unreasonable practice on the part of the carriers in violation of section 10701(a). This issue has been addressed by several courts and by the ICC; however, there is presently considerable disagreement among the circuit courts as to how undercharge claims should be handled.

In light of the changes and abusive practices of carriers that have followed passage of the Motor Carrier Act, the ICC has re-evaluated its long-standing policy of strict adherence to the filed rate doctrine. In 1985, the ICC reviewed a proposed rule submitted by the National Industrial Transportation League (NITL), a national organization representing the interests of shippers. Had the ICC adopted
the proposal as set out by the NITL, a filed rate would have been unreasonable if (1) the shipper and carrier had negotiated and agreed upon a rate lower than that eventually filed by the carrier; (2) the shipper had tendered shipments in reliance on a good faith belief that the carrier would file the agreed rate in its tariffs; and (3) the carrier did not file the agreed rate.\textsuperscript{111} Carriers and trustees in bankruptcy have criticized the NITL proposal claiming that the rule would amount to a class exemption for certain shippers from the filed rate statute.\textsuperscript{112} The ICC received considerable public comment on the proposal and in response adopted a policy statement entitled \textit{National Industrial Transportation League—Petition to Institute Rulemaking on Negotiated Common Carrier Rates} (1986 Policy Statement).\textsuperscript{113} The ICC stated that:

\begin{quote}
[W]e offer to undertake an \textit{advisory} analysis of whether a negotiated but unpublished rate existed, the circumstances surrounding assessment of the tariff rate, and any other pertinent facts. We would, at a court's request, determine, based on all relevant circumstances, whether collection of undercharges based on the rate contained in the filed tariff would constitute an unreasonable practice. . . . The referring court would retain final authority to set the remedy, if any, and \textit{review our determination}.\textsuperscript{114}
\end{quote}

Thus, the ICC, rather than making a blanket declaration in regard to all undercharge claims, announced its willingness to take an ad hoc approach in its review of such cases and indicated that such review was to be for advisory purposes only.\textsuperscript{115} The ICC declared that its policy statement was consistent with the purposes of the Motor Carrier Act and did not abrogate the rate filing statute.\textsuperscript{116} The ICC also noted that its new policy applied only to the narrow situation in which a carrier negotiated an unpublished rate with a shipper and then later billed at a higher rate.\textsuperscript{117}

\begin{itemize}
\item \textsuperscript{111} Id.
\item \textsuperscript{112} Id. at 308.
\item \textsuperscript{113} Id. at 2-3.
\item \textsuperscript{114} Id. at 13 (emphasis added).
\item \textsuperscript{115} Id.
\item \textsuperscript{116} Id. at 6, 13-14.
\item \textsuperscript{117} Id. at 7.
\end{itemize}
"FILED RATE" DOCTRINE

DEVELOPMENTS AFTER THE MOTOR CARRIER ACT

Since the issuance of the 1986 Policy Statement and the developments following the Motor Carrier Act, courts have split as to how undercharge cases should be decided and who has jurisdiction over such matters.118 Less than three months prior to the policy changes announced by the ICC, the United States Court of Appeals for the Eleventh Circuit decided Seaboard System Railroad v. United States.119 In Seaboard, a soybean processor had reached an agreement with a railroad for transporting soybean meal at the railroad's multi-car rate.120 Two years later, the railroad informed the shipper that it did not have a multi-car rate on the route over which the soybeans were being shipped.121 The only rate available on this route, according to the carrier, was the higher, single-car rate.122 The railroad then began re-billing the shipper at the single-car rate.123 The carrier in this case had properly filed its rates; the discrepancy centered around an ambiguity in the tariff as published.124 After the ICC ruled that the collection of undercharges in this case would be an unreasonable practice, the carrier petitioned the court for a review of the matter.125 The Eleventh Circuit affirmed the authority of the ICC to review the case, noting that while the administrative decision marked "a change from past practice," it was not contrary to section 10761(a) and was consistent with the statutory mission of the ICC.126 Consequently, the effect of the decision was to prevent the carrier from collecting the alleged undercharges.127

The United States District Court for the Western District of Tennessee reached a similar conclusion in Orr v. ICC.128 The court, as in Seaboard, was asked to review a decision of the ICC.129 Orr was a typical undercharge case insofar as the dispute involved the attempt by a carrier to bill a shipper at the filed rate, even though the parties

118. Allen, 56 TRANS. PRAC. J. at 294, 298. However, many lower federal courts reviewing undercharge claims have referred the matter to the ICC. Maislin, 879 F.2d at 403.
119. 794 F.2d 635 (11th Cir. 1986).
120. Id. at 636.
121. Id.
122. Id.
123. Id.
124. Id. at 636-37. The ambiguity centered around whether a set of rates published by the railroad and contained in a set of brackets was applicable to all routes of the railroad or only to certain other rates set out in the tariff. Id.
125. Id. at 636.
126. Id. at 637. See supra note 3.
127. Id. at 636.
129. Id. at 676.
had previously negotiated a lower rate.\textsuperscript{130} It was clear in \textit{Orr} that the rate negotiated between the parties was lower than the filed rate.\textsuperscript{131} Although the carrier argued that the shipper should have verified publication of the rate, the ICC rejected this argument and found that an implied contract had existed between the parties and that the shipper had properly relied on the rate quoted.\textsuperscript{132} In upholding the alleged primary jurisdiction of the ICC over the matter, the \textit{Orr} court went so far as to state that "the issue of whether the ICC has the jurisdiction to determine whether the collection of undercharges here is unreasonable or not cannot be seriously questioned."\textsuperscript{133} As to its scope of review over the findings of the ICC, the district court held that:

In determining whether ICC's action is arbitrary and capricious, this court must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not to substitute its judgment for that of the agency."\textsuperscript{134}

The court upheld the conclusion of the ICC that collection of undercharges would have been an unreasonable practice on the part of the carrier.\textsuperscript{135}

Despite the changing transportation environment that has followed the Motor Carrier Act and the \textit{1986 Policy Statement}, several courts continue to strictly apply the filed rate doctrine.\textsuperscript{136} In fact, many of these courts have refused to refer the matter to the ICC.\textsuperscript{137}

For example, in \textit{Caravan}, the Fifth Circuit not only strictly applied the filed rate doctrine, enabling the carrier to collect alleged un-

\begin{itemize}
  \item \textsuperscript{130} Id. at 676-77.
  \item \textsuperscript{131} Id. at 678.
  \item \textsuperscript{132} Id.
  \item \textsuperscript{133} Id. at 679.
  \item \textsuperscript{134} Id. at 677-78 (quoting Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971) (reviewing the authority of the Secretary of Transportation to permit the construction of a highway through a public park in the state of Tennessee)).
  \item \textsuperscript{135} Id. at 680.
  \item \textsuperscript{136} Allen, 56 TRANS. PRAC. J. at 295, citing \textit{Caravan}, 864 F.2d 388 (stating that the United States Court of Appeals for the Fifth Circuit was unwilling to permit a shipper to undermine the filed tariff doctrine by relying on a defense of unreasonableness); Delta Traffic Service, Inc. v. E.L. Mustee & Sons, No. C87-1726, slip op. (N.D. Ohio May 12, 1988) (WESTLAW, Database DCT) (holding that "until Congress . . . decides differently, the Court has no choice but to enforce the published tariffs. . . ."); and Orscheln Bros. Truck Lines v. Zenith Electronics, 708 F. Supp. 845 (N.D. Ill. 1988) (holding that the "nondiscrimination objectives of the [Interstate Commerce] Act remain unimpaired and that the 'unreasonable practice' jurisdiction exercised by the [ICC] must be exercised with the continuing validity of those objectives in mind").
  \item \textsuperscript{137} Id.
\end{itemize}
dercharges, but also refused to refer the case to the ICC. The court stated that the facts involved in this case did not involve technical or complex issues that required the expert analysis of the ICC, thereby invoking the doctrine of primary jurisdiction. The Fifth Circuit viewed this dispute as one which involved only the applicability of 49 U.S.C. § 10761(a).

The filed rate doctrine was also upheld by the United States District Court for the Northern District of Ohio in Delta Traffic Service, Inc. v. E.L. Mustee & Sons. The carrier in Mustee had charged the shipper a rate that was below the rate filed with the ICC. The carrier later sought to recover the alleged undercharges from the shipper. The district court vacated the order by the lower court to refer the matter to the ICC. The court reasoned that because it had to presume that Congress was fully cognizant of the filed rate doctrine, yet had declined to amend it through the Motor Carrier Act, the courts were bound to uphold the filing requirement. The court stated that when no ambiguity existed, referral to the ICC would have been a pointless exercise. The Mustee approach is representative of several other district court decisions as well.

In 1989, the ICC reconsidered its policy as set out in the 1986 Policy Statement and clarified its role in undercharge cases. In response to comments received from representatives of both the shipper and carrier industries and in recognition of the increasing frequency with which carriers were failing to file their rates in a timely manner, the ICC issued a revised policy statement which asserted a much broader jurisdictional stance on the issue. The ICC expressed concern that "[c]ourts...

138. Caravan, 864 F.2d at 393.
139. Id. at 389-90.
140. Id. at 390. See supra note 3.
141. No. C87-1726, slip op. (N.D. Ohio May 12, 1988) (WESTLAW, Database DCT) [hereinafter pagination refers to WESTLAW screens].
142. Id. at 1.
143. Id.
144. Id.
145. Id. at 3-4.
146. Id. at 5.
147. See Allen, 56 TRANS. PRAC. J. at 285 (citing Orscheln Bros. Truck Lines, Inc. v. Zenith Elec. Corp., 708 F. Supp. 845 (N.D. Ill. 1988) (criticizing the 1986 Policy Statement because it "effectively remove[d] the shipper's obligation to ascertain whether the negotiated rate was actually filed"); In re Total Transp., Inc., 84 Bankr. 590, 598 (D. Minn. 1988) (holding that a carrier was bound by the filed rate doctrine and the authority of the ICC over such matters was limited).
149. Id. at 2, 4-7.
viewing our unreasonable practice finding as merely a non-binding recommendation may believe they are bound" by the filed rate doctrine and section 10761(a) of the United States Code.\textsuperscript{150} The \textit{Revised Policy Statement} cited a Supreme Court case to support the notion that the ICC has primary jurisdiction over matters involving the reasonableness of carrier practices.\textsuperscript{151} The ICC criticized the view of many courts that undercharge cases were merely ordinary contract questions not requiring the expertise of the ICC.\textsuperscript{152} Finding such a view to be "inappropriately narrow," the ICC stated that "[w]hile the factual determinations in each case . . . have contract elements, the facts are evaluated and ultimate conclusions reached in the context of what practices are reasonable under current conditions in the industry."\textsuperscript{153} In order to reconcile its approach with the existence of the filing statute and the filed rate doctrine, the ICC noted that an "unreasonable practice determination is separate and apart from the filed rate doctrine embodied in [section] 10761(a); it is a determination of a violation of another, co-equal provision of the Interstate Commerce Act . . . . If rates and practices are not reasonable, the filed rate requirement does not apply . . . ."\textsuperscript{154} Thus, in the opinion of the ICC, the new policy in undercharge cases does not emasculate the filing statute, but merely provides a foundation for a separate determination of undercharge claims under the reasonableness provision set out at section 10701.\textsuperscript{155} The \textit{Revised Policy Statement} clarified and expanded the role of the ICC as described in the 1986 \textit{Policy Statement}, by stating that (1) the ICC would now accept undercharge petitions for a declaratory order based on negotiated rate claims without a prior court order, and (2) the practice by carriers of agreeing to a rate, failing to publish the rate, and then billing the shipper at a later time for a higher rate was an unreasonable practice in light of post-Motor Carrier Act developments.\textsuperscript{156}

One month after the ICC issued the \textit{Revised Policy Statement}, the United States Court of Appeals for the Eighth Circuit decided

\textsuperscript{150} Id. at 6. \textit{See supra} note 3.

\textsuperscript{151} Id. at 7 (quoting Great N. Ry. v. Merchants Elevator Co., 259 U.S. 285, 291 (1922) (stating that "[w]henever a . . . practice is attacked as unreasonable . . . there must be preliminary resort to the [ICC]").

\textsuperscript{152} \textit{Revised Policy Statement}, 5 I.C.C.2d at 7.

\textsuperscript{153} Id. at 7-8 (citing Nader v. Allegheny Airlines, Inc., 426 U.S. 290, 304 (1976) (finding that the doctrine of primary jurisdiction had been applied in actions raising questions about the validity of a practice or rate set out in a tariff that had been filed with an administrative agency)).

\textsuperscript{154} Id. at 9 (citing \textit{Maxwell}, 237 U.S. at 97). \textit{See supra} note 3. In \textit{Maxwell}, the Court stated that "[d]eviation from [the filed rate] is not permitted . . . unless [the rate] is found by the [ICC] to be unreasonable." \textit{Maxwell}, 237 U.S. at 97.


\textsuperscript{156} \textit{Revised Policy Statement}, 5 I.C.C.2d at 17.
Maislin Industries v. Primary Steel, Inc., 157 a typical undercharge case.158 Maislin Industries, a carrier, had made several shipments of steel for Primary Steel over a three-year period.159 In accordance with section 10761(a), Maislin had filed tariffs with the ICC for its services.160 However, the parties had negotiated a rate lower than the applicable filed rate, and Maislin failed to file this lower rate once it was agreed upon.161 Maislin eventually filed for Chapter 11 bankruptcy, and the bankruptcy trustee discovered the alleged undercharges and sought to collect from Primary Steel.162 The United States District Court for the Western District of Missouri referred the case to the ICC which determined that collection of the undercharges would be an unreasonable practice.163 On appeal, the Eighth Circuit upheld the deference of the district court toward the ICC ruling.164 The Eighth Circuit first ruled that the case was properly within the primary jurisdiction of the ICC, stating that:

"[T]he ICC has primary jurisdiction over any matter that "raises issues of transportation policy which ought to be considered by the [ICC] in the interests of a uniform and expert administration of the regulatory scheme laid down by [the] Act." Further, the doctrine of primary jurisdiction should be exercised if the issues in the proceeding "turn on a determination of the reasonableness of a challenged practice . . . ."165"

The Eighth Circuit relied on United States Supreme Court precedent to support the notion that a court had to accept the revised ICC interpretation of the filed rate doctrine and related statutes so long as that interpretation was reasonable.166

157. 879 F.2d 400 (8th Cir. 1989).
158. Allen, 56 TRANS. PRAC. J. at 294. According to Allen, undercharge cases are those in which a carrier first negotiates with a shipper for a rate below the tariff rate, only to later bill the shipper at the higher tariff rate, in reliance on the filed rate doctrine. Id. Typically these cases are brought by a trustee in bankruptcy. Id.
159. Maislin, 879 F.2d at 401.
160. Id. See supra note 3.
161. Maislin, 879 F.2d at 401.
162. Id. The alleged undercharges totaled $187,923.36. Id.
164. Maislin, 879 F.2d at 402, 406.
165. Id. at 403 (quoting Nader, 426 U.S. at 304-06 (stating that the issue before the court was whether a case of alleged fraudulent misrepresentation by a carrier should first be referred to the Civil Aeronautics Board)).
166. Id. at 406 (citing Chevron, 467 U.S. at 844-45). The court also concluded that the ruling of the ICC was "by no means a mere advisory opinion." Id. (citing Penn-
In response to the argument by Maislin that the filed rate doctrine barred judicial consideration of equitable defenses, the Eighth Circuit stated that "[t]he 'courts have never held that the [ICC] lacks authority to prohibit the unreasonable collection of undercharges' under section 10701."167 Furthermore, the court held that when conflicts existed between two statutory provisions, "‘it [was] not for courts to place enforcement of one doctrine above the other.’"168 On the basis of these conclusions, the Eighth Circuit affirmed the district court ruling deferring to the ICC and denying Maislin the right to collect the undercharges.169

ANALYSIS

The United States Court of Appeals for the Eighth Circuit in INF, Ltd. v. Spectro Alloys Corp.170 determined that the filed rate doctrine did not require a freight carrier to collect undercharges when to do so would constitute an unreasonable practice in the opinion of the ICC.171 The court departed from the traditional approach to transportation cases involving deviations from filed tariffs.172 Traditionally, unless an aggrieved shipper could demonstrate that the filed rate was unreasonable or discriminatory, a shipper had no recourse against undercharge claims of carriers either in equity or at law.173 In 1980, however, Congress amended the Interstate Commerce Act to comport with the natural movement toward industrial de-regulation.174 These amendments dramatically increased competition between motor common carriers and reduced the potential for abusive carrier practices.175 The 1980 amendments have also resulted in significant practical problems that shippers must overcome in order to verify rates quoted by carriers.176 The Eighth Circuit decision

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167. Id. at 404-05 (quoting Seaboard, 794 F.2d at 638). See supra note 10.
168. Maislin, at 405 (quoting In Re Tucker Freight Lines, 85 Bankr. 426, 429 (1988)).
169. Id. at 402, 406.
170. 881 F.2d 546 (8th Cir. 1989).
171. Id. at 550.
172. See Allen, The "Filed Rate" Doctrine v. Exercise of the CC's "Unreasonable Practice" Jurisdiction to Defeat Undercharge Claims, 56 TRANS. PRAC. J. 294, 294 (1989).
176. Id. at 16. Since the Motor Carrier Act was passed in 1980, the number of car-
in Spectro must therefore be analyzed with a view to the practical effects of the Motor Carrier Act.\textsuperscript{177}

**JURISDICTION**

The Eighth Circuit considered the case of Maislin Industries v. Primary Steel, Inc.\textsuperscript{178} on the same day that it considered Spectro.\textsuperscript{179} Relying on Maislin, the court asserted that the ICC had primary jurisdiction over the matter in Spectro as well.\textsuperscript{180} The court did not view the ruling of the ICC as one involving only legal questions but as also involving factual questions which were properly determinable by the ICC.\textsuperscript{181} In Maislin, the Eighth Circuit had viewed as highly important "a uniform and expert administration of the regulatory scheme laid down by the Act."\textsuperscript{182} The Eighth Circuit view is, therefore, in direct opposition to Caravan Refrigerated Cargo, Inc. v. Yaquinto,\textsuperscript{183} decided by the United States Court of Appeals for the Fifth Circuit.\textsuperscript{184} The Fifth Circuit decided that Caravan, another typical undercharge case, had not raised technical or other issues requiring the expertise of the ICC.\textsuperscript{185} The Fifth Circuit recognized only the legal question of the applicability of the filing statute.\textsuperscript{186}

The United States District Court for the Northern District of Ohio also rejected the primary jurisdiction of the ICC over undercharge cases.\textsuperscript{187} In Delta Traffic Service, Inc. v. E.L. Mustee & Sons,\textsuperscript{188} the district court considered referral to the ICC to be a "pointless exercise" because the court had to enforce the published rate.\textsuperscript{189} Like Caravan, the Mustee decision also preceded the issuance of the ICC's Revised Policy Statement and failed to discuss the policy considerations later addressed by the ICC.\textsuperscript{190} The Mustee court, like many others, has handled the undercharge situation by
strictly adhering to the filed rate doctrine.¹⁹¹

The *Spectro* court mentioned the *Revised Policy Statement* in a footnote, but the case did not expressly rely on the new policy.¹⁹² However, the Eighth Circuit did rely on *Maislin* in which the court had discussed the same post-Motor Carrier Act developments that were addressed by the ICC in the *Revised Policy Statement*.¹⁹³ The ICC has ruled in the *Revised Policy Statement* that “[w]hile the factual determinations in each [undercharge] case . . . have contract elements, the facts are evaluated and ultimate conclusions reached in the context of what practices are reasonable under current conditions in the industry. This is precisely the kind of determination to be made by an expert agency.”¹⁹⁴

The above examples make it clear that, as of yet, there has been no consistent method by which a court will determine the applicability of the doctrine of primary jurisdiction in undercharge cases.¹⁹⁵ However, the new policy of the ICC, issued in 1989, should assist and encourage courts to uniformly develop an approach that considers post-Motor Carrier Act developments.¹⁹⁶ The Eighth Circuit appears to have given due regard to the role of the ICC in light of these developments.¹⁹⁷

**THE CONFLICT BETWEEN UNREASONABLENESS AND THE FILED RATE DOCTRINE**

Because the filed rate doctrine, as set out in section 10761(a) of the United States Code, compels carriers to charge and shippers to pay only the filed rate and because collection of the filed rate may, in the view of the ICC, constitute an unreasonable practice, undercharge cases necessarily involve a conflict between sections 10701 and 10761.¹⁹⁸ In *Spectro*, INF made a forceful argument claiming that the filed rate doctrine should have prevented the ICC from

¹⁹¹ Mustee, No. C87-1726, slip op. at 5. See supra note 62 and accompanying text.
¹⁹² Spectro, 881 F.2d at 549 n.1.
¹⁹³ Id.; Revised Policy Statement, 5 I.C.C.2d at 4-5.
¹⁹⁴ Revised Policy Statement, 5 I.C.C.2d at 7-8. The jurisdictional analysis of the Eighth Circuit in *Spectro* also noted that the lower court had failed to employ the only proper legal basis upon which an ICC finding could be rejected, namely, “that it was arbitrary, capricious or unsupported by substantial evidence.” *Spectro*, 881 F.2d at 550. The district court did not discuss this issue simply because INF did not raise it. Id. As a result, the appellate court logically determined that there was no basis upon which the district court could properly have rejected the findings of the ICC. Id.
¹⁹⁵ See supra notes 178-94 and accompanying text. See also Allen, 56 Transp. Prac. J. at 294.
¹⁹⁶ See supra notes 148-56 and 195 and accompanying text.
¹⁹⁷ Maislin, 879 F.2d at 404. See supra note 194 and accompanying text.
waiving the collection of undercharges sought by the carrier.\textsuperscript{199} This argument was based primarily on the United States Supreme Court decision in \textit{Louisville & Nashville Railroad v. Maxwell},\textsuperscript{200} in which the Court initially set out the filed rate doctrine.\textsuperscript{201} However, the Maxwell case preceded the congressional amendments set out in the Motor Carrier Act.\textsuperscript{202} Many of the filed rate cases relying on Maxwell were handed down during an era marked by the domination of the shipping industry by fewer carriers than exist today.\textsuperscript{203} While the potential for abusive practices is still present, the increased competition now existing in the transportation industry will likely prevent many of the problems of the past.\textsuperscript{204}

In undercharge cases after the Motor Carrier Act, carriers have been able to rely on the argument that despite the breadth of changes made to the Interstate Commerce Act, Congress nevertheless retained the section 10761 filing requirement.\textsuperscript{205} The position of the Fifth Circuit was that the failure of Congress to amend the statute was determinative of how courts should view claims made by shippers of unreasonable practices.\textsuperscript{206} The Fifth Circuit has stated that the only matter at issue in undercharge cases is the applicability of 49 U.S.C. § 10761(a).\textsuperscript{207} Yet, such a view fails to give proper effect to the purposes behind both the original Interstate Commerce Act and the Motor Carrier Act.\textsuperscript{208}

The original Interstate Commerce Act sought to protect shippers and travelers at a time when sufficient competition was unavailable.\textsuperscript{209} To strictly adhere to the filed rate doctrine, when doing so results in harm to shippers, contradicts the fact that this doctrine was formulated precisely to prevent such harm.\textsuperscript{210} As the ICC stated in the \textit{Revised Policy Statement}, "in the more competitive, more flexible pricing atmosphere created by 1980 deregulatory legislation, . . . there is little likelihood of carriers using a rate misquotation as a
means to discriminate in favor of particular shippers."\textsuperscript{211} The ICC has expressed concern over the fact that, since passage of the Motor Carrier Act, carriers often fail to file their rates.\textsuperscript{212} The ICC stated that "in these circumstances, rigid enforcement of the filed rate doctrine would unfairly reward those carriers for their own actions (or omissions), would frustrate the national transportation policy of encouraging pricing innovation and competition, and would not be necessary to prevent discrimination."\textsuperscript{213} Finally, the ICC noted that under the Supreme Court's analysis in \textit{Maxwell}, if the practice of a carrier was unreasonable, then the filed rate doctrine did not apply.\textsuperscript{214}

The Eighth Circuit in \textit{Spectro} did not specifically address the considerations of the ICC as set out in the \textit{Revised Policy Statement}.\textsuperscript{215} However, the court relied on \textit{Maislin}, in which the court recognized the authority of the ICC to balance the reasonableness requirement with the filed rate doctrine.\textsuperscript{216} The \textit{Spectro} decision, therefore, properly furthers the purposes behind the Interstate Commerce Act and the Motor Carrier Act.\textsuperscript{217}

\textbf{CONCLUSION}

In light of the developments that followed the Motor Carrier Act,\textsuperscript{218} the traditional strict adherence to the filed rate doctrine no longer comports in all circumstances with the purposes behind either the Interstate Commerce Act\textsuperscript{219} or the Motor Carrier Act. The recent practices of carriers have been as abhorrent as those practices complained against in the latter half of the 1800's. In 1989, the ICC properly asserted its primary jurisdiction over cases involving the issue of whether the rates or practices of carriers are reasonable. The ICC determined that if the practices of a carrier are unreasonable, then the filed rate doctrine does not apply. Those court decisions which are based only on the applicability of the filed rate doctrine, subjecting shippers to undercharge claims, fail to recognize developments that have followed the Motor Carrier Act and effectively sanction the acts of unscrupulous carriers. In noting that the ICC "had the authority to change its policy concerning the filed rate doctrine"

\begin{footnotes}
\item 211. 5 I.C.C.2d at 4.
\item 212. \textit{Id.} at 4-5.
\item 213. \textit{Id.} at 5.
\item 214. \textit{Id.} at 9 (quoting \textit{Maxwell}, 237 U.S. at 97).
\item 215. \textit{Spectro}, 881 F.2d at 548-50.
\item 216. \textit{Id.} at 548.
\item 217. \textit{See supra} notes 44-49 and 81-86 and accompanying text.
\end{footnotes}
and that its policy change was "reasonable," the United States Court of Appeals for the Eighth Circuit in *INF, Ltd v. Spectro Alloys Corp.* properly furthered the purposes behind anti-discriminatory legislation.

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220. 881 F.2d 546 (8th Cir. 1989).
221. *Id.*