

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SECURITY SERVICES, INC. v. KMART CORP.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 93-284. Argued February 28, 1994—Decided May 16, 1994

The mileage rate tariff that petitioner motor carrier filed with the Interstate Commerce Commission (ICC) did not list distances for calculating charges for shipments, but instead relied upon a Household Goods Carriers' Bureau (HGCB) Mileage Guide for its distance component. The Mileage Guide states that it may not be used to determine rates unless the carrier is shown as a "participant" in the Guide. Participants are listed in a separate HGCB tariff filed with the ICC. When petitioner failed to pay its fees, HGCB canceled petitioner's participation by supplementing the latter tariff. Sometime later, petitioner contracted to transport respondent shipper's goods at rates below its filed tariff rates. Petitioner subsequently filed for Chapter 11 bankruptcy and, as debtor-in-possession, asserted that respondent was liable under the Interstate Commerce Act's filed rate doctrine for undercharges based on the difference between the contract and tariff rates. Respondent refused to pay. Petitioner sued. The District Court granted summary judgment for respondent, and the Court of Appeals affirmed, concluding that the filed tariff could not support an undercharge claim because it was void under ICC regulations requiring participation in mileage guides referred to in a carrier's tariff; that the regulations' retroactive voiding of the tariff was permissible under *ICC v. American Trucking Assns., Inc.*, 467 U. S. 354; and that nonparticipation in the Guide was not a mere technical defect excused by petitioner's substantial compliance with the filed rate rule.

Held: A motor carrier in bankruptcy may not rely on tariff rates it has filed with the ICC, but which are void for nonparticipation under ICC regulations, as a basis for recovering undercharges. Pp. 3-13.

(a) A bankruptcy trustee for a defunct carrier or the carrier itself as a debtor-in-possession is entitled to rely on the filed rate doctrine, which mandates that carriers charge and be paid the rates filed in a tariff, to collect for undercharges based on effective, filed rates. *Maislin Industries, U. S., Inc. v. Primary Steel, Inc.*, 497 U. S. 116. The ICC's void-for-nonparticipation regulation, however, invalidates a mileage-based tariff once cancellation of the carrier's participation in an agent's distance guide is published, as it was here. Such a tariff is incomplete and ceases to satisfy the fundamental purpose of tariffs: to disclose the freight charge due to the carrier. Petitioner may not recover for undercharges based on filed, but void, rates lacking an essential element. Pp. 3-9.

(b) The rule of *American Trucking, supra*, at 361-364, is not apposite here, for the void-for-nonparticipation regulation does not apply retroactively. Under the regulation, petitioner's tariff reference to the HGCB Mileage Guide became void as a matter of law and its tariff filings incomplete on their face when HGCB canceled its participation in the Guide by filing a supplemental tariff. The transactions with respondent occurred after that date. Pp. 9-11.

(c) Also inapplicable is the "technical defect" rule. See, e.g., *Berwind-White Coal Mining Co. v. Chicago & Erie R. Co.*, 235 U. S. 371, 375. A tariff like petitioner's that refers to another tariff for essential information, which tariff in turn states that the carrier may not refer to it, does not provide the "adequate notice" of rates to be charged that the Court's "technical defect" cases require. Pp. 11-13.
996 F. 2d 1516, affirmed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, STEVENS, O'CONNOR, SCALIA, and KENNEDY, JJ., joined. STEVENS, J., filed a concurring opinion. THOMAS, J., and GINSBURG, J., filed dissenting opinions.