

STATE OF MICHIGAN
COURT OF APPEALS

UNIVERSAL AM-CAN, LTD.,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 192145

Ingham Circuit Court

ATTORNEY GENERAL,

LC No. 94-078925-AW

Defendant-Appellant,

and

MICHIGAN PUBLIC SERVICE COMMISSION,

Defendant-Appellee.

Before: Markman, P.J., and McDonald and Fitzgerald, JJ.

FITZGERALD, J. (concurring.)

I concur with the majority's affirmance of this matter only because I am constrained to do so by MCR 7.215(H). But for this Court's decision in *In re Federal Preemption of Provisions of the Motor Carrier Act*, 223 Mich App 288; 566 NW2d 299 (1997), I would reverse. In doing so, I would adopt the reasoning of Judge Jansen in her dissenting opinion in *In re Motor Carrier Act, supra* at 311-313, that the leasing provision of MCL 469.10a(6); MSA 22.575(1)(6) is related to safety, fitness, and adequacy of insurance and is not preempted by § 601 of the Federal Aviation Administration Authorization Act, 49 USC 11501(h).

/s/ E. Thomas Fitzgerald