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

REITER ET AL. *v.* COOPER, TRUSTEE FOR CAROLINA MOTOR EXPRESS, INC., ET AL.

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

No. 91–1496. Argued December 1, 1992—Decided March 8, 1993

The Interstate Commerce Act (ICA) requires that motor common carriers charge the tariff rates they file with the Interstate Commerce Commission (ICC), 49 U. S. C. §10762, and that such rates be ``reasonable,'' §17701(a). Between 1984 and 1986, petitioner shippers tendered shipments to Carolina Motor Express, a motor carrier subject to ICC regulation, at negotiated rates that were lower than the applicable tariff rates on file with the ICC. When Carolina filed for bankruptcy, respondents, the trustee in bankruptcy and a rate auditing firm, brought adversary proceedings against petitioners in the Bankruptcy Court to recover the difference between the negotiated and tariff rates. Petitioners responded, *inter alia,* that the tariff rates were unlawful because they were unreasonably high. The Bankruptcy Court entered judgment for respondents based on the tariff rates, but the District Court reversed and referred petitioners' defenses to the ICC. The Court of Appeals reversed, holding the petitioners' ``unreasonable-rate'' claims were no obstacle to respondents' actions because, even if the tariff rates were unreasonable, the ``filed rate doctrine'' required petitioners to pay those rates first and then seek relief in a separate action under §11705(b)(3), which gives shippers an express cause of action against carriers for damages (reparations) in the amount of the difference between the tariff rate and the rate determined by the ICC to be reasonable.

Held:

1. Petitioners' unreasonable-rate claims under §11705(b)(3) are subject to the ordinary rules governing counterclaims. Pp. 3–8.

(a) While respondents are technically correct that the

unreasonable-rate issue cannot be asserted as a defense, petitioners' §11705(b)(3) claims relate to the same shipments for which respondents seek to collect and, thus, are properly raised here as counterclaims. It makes no difference that the counterclaims may have been mistakenly designated as defenses. See Fed. Rule Civ. Proc. 8(c). Pp. 3–4.

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(b) The 2-year limitation for bringing a civil action under §11705(b)(3) is not applicable here since petitioners' claims seek merely recoupment. See *United States* v. *Western Pacific R. Co.,* 352 U. S. 59, 71. Pp. 4–6.

(c) Nothing in the ICA provides that, in a carrier's undercharge collection action, a §11705(b)(3) counterclaim is not subject to the normally applicable provisions of the Federal Rules of Civil Procedure, including Rule 54(b). That Rule permits a district court to enter separate final judgment on any claim or counterclaim after making ``an express determination that there is no just reason for delay.'' The ``filed rate doctrine''—which embodies the principle that a shipper cannot avoid paying the tariff rate by invoking common-law claims and defenses—does not preclude avoidance of the tariff rate through claims and defenses that are specifically accorded by the ICA itself. *Crancer* v. *Lowden,* 315 U. S. 631, distinguished. Pp. 6–8.

2. Respondents' arguments that petitioners' counterclaims are not yet cognizable in court are rejected. Pp. 8–11.

(a) The contention that paying the tariff rate is a prerequisite for litigating the reasonableness issue finds no support in the ICA. Rather, the ICA provides that a claim related to shipment of property accrues on delivery or tender of delivery, §11706(g). Pp. 8–9.

(b) Nor are petitioners required initially to present their claims to the ICC. The doctrine of primary jurisdiction requires only that a court enable ``referral'' to an administrative agency of a claim containing an issue within the agency's special competence, but does not deprive the court of jurisdiction. And the doctrine of exhaustion of administrative remedies—which would deprive the court of jurisdiction—is inapplicable here, both because the ICC has long interpreted the ICA as giving it no power to decree reparations itself, and because the Court can discern within the ICA no intent that ICC determination of the reasonable-rate issue must be obtained before filing the civil action. Pp. 9–11.

3. The courts below made no ``express determination'' required under Rule 54(b) for entry of a separate judgment on respondents' claims, and it cannot be said categorically that it would be an abuse of discretion either to grant or to deny such judgment. Although insolvency of the claimant is a factor weighing against separate judgment in that claimant's favor, this Court cannot say that insolvency is an absolute bar. *Curtiss-Wright Corp.* v. *General Electric Co.*, 446 U. S. 1, followed. Pp. 11–12.

949 F. 2d 107, reversed and remanded.

REITER *v.* COOPER

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SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, O'CONNOR, KENNEDY, SOUTER, and THOMAS, JJ., joined. BLACKMUN, J., dissented.