UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC. and G. L. BREWER; GERALD E. EIDAM, JR.; CAREY R. LAUE; JAMES E. MICHAEL; ROBERT PENMAN AND JAMES E. SCHMIDT and on behalf of all others similarly situated,	)	Case No. 3:02-CV-1005-J-25-HTS
Plaintiffs,	)	
v.	)	
LANDSTAR SYSTEM INC.; LANDSTAR EXPRESS AMERICA, INC.: LANDSTAR GEMINI, INC.; LANDSTAR INWAY, INC.; LANDSTAR LIGON, INC.; LANDSTAR LOGISTICS, INC.; and LANDSTAR RANGER, INC,	)	
Defendants.	)	

PLAINTIFFS' ANSWERS TO INTERROGATORIES

PLAINTIFFS' INTERROGATORY #1

Describe the basis of federal jurisdiction, including all laws, acts having the force and effect of law, codes, regulations, and legal principals, standards and customs or usages, which the plaintiff contends are applicable to the instant action.

ANSWER

This action arises under 49 U.S.C. §§ 14102 and 14704 *et seq.*, and 49 C.F.R. Part 376 *et seq.*, for violation of the statutes and regulations governing the terms and conditions pursuant to which truck owner-operators lease equipment to authorized motor carriers for the transport of property. Jurisdiction of the Court rests on 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1337 (cases

arising under laws regulating commerce).

A private right of action to seek injunctive relief and damages under 49 U.S.C. § 14704(a)(1) and (2) was upheld by the Eighth Circuit in *Owner-Operator Ind. Drivers Ass'n. v. New Prime, Inc.*, 192 F.3d 778, 785 (8th Cir. 1999), *cert. denied*, 529 U.S. 1066 (2000). Following the *New Prime* decision, virtually every District Court to whom the issue has been presented has followed that holding. *See Owner-Operator Ind. Drivers Ass'n v. Mayflower Transit Inc*., 161 F. Supp.2d 948, 955 (S.D. Ind. 2001); *Owner-Operator Ind. Drivers Ass'n v. Arctic Exp., Inc.*, 87 F. Supp.2d 820 (S.D. Ohio 2000); *Owner-Operator Ind. Drivers Ass'n v. Ledar Transport, Inc.*, No. 00-0258-CV-W-2-ECF (W.D. Mo. Nov. 3, 2000); *Owner-Operator Ind. Driver's Ass'n. v. Swift Trans. Co. Inc.*, No. CV 02-1059 PHX PGR (D. Ariz. Oct.16, 2002) *See also In re Intrenet, Inc.*, 273 B.R. 153 (Bkrtcy S.D. Ohio 2002) (private right of action implicit in the court's finding that owner-operator funds held in escrow pursuant to the Truth-In-Leasing regulations were not property of debtor-carrier's estate). Based on these decisions, this action is properly before this Court and the Defendant's Motion to Dismiss is without merit.

Defendants have also filed motions to compel arbitration under the arbitration clauses contained in some, although not all, of their owner-operator leases. These arbitration clauses are unenforceable for a number of independent reasons including but not limited to the following:

1. Owner-operators are exempt from compulsory arbitration under § 1 of the Federal Arbitration Act, 9 U.S.C. § 1, since they are a "class of workers engaged in interstate commerce." The FAA preempts contrary state law so that there is no statutory basis to compel arbitration.

2. The arbitration clause is unenforceable because it limits owner-operators' statutory rights. Owner-operators have a statutory right to attorneys fees (49 U.S.C. § 14704(e)) which is

circumscribed by the commercial arbitration rules of the AAA. Moreover, Defendants' arbitration clause circumscribes the four-year federal statute of limitations by precluding owner-operators from raising claims after only one year. Under this clause an arbitrator would not have authority to hear the full range of claims arising under federal statutes and regulations.

3. The arbitration clause is unenforceable because it fails to provide an accessible and effective forum for the vindication of owner-operators statutory rights.

4. The arbitration clause is unenforceable because it is unconscionable under state law.

5. Owner-operators did not agree to arbitrate their statutory rights.

PLAINTIFFS' INTERROGATORY #2

Describe in detail the injuries or damages incurred by the plaintiff, and the specific acts or omissions by the defendant which have allegedly caused the injuries or damages.

ANSWER

49 C.F.R. § 376.12(h) provides that the lease "clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation . . . together with a recitation as to how the amount of each item is to be computed." The lease must also recite that the lessor is to be afforded copies of those documents which are necessary to determine the validity of the charge.

Defendants violated these provisions by deducting from compensation charges without disclosing how those deductions were calculated, by failing to provide documents necessary to validate the charges and/or by failing to inform the owner-operator that the deduction was being made. Injury can be estimated for most of the specific allegations by making certain assumptions regarding the Defendants' operations and practices. All assumptions have been identified in the calculations below.

Fuel Overcharges

Defendants authorize various truck stops to dispense fuel to owner-operators upon presentation of a valid Comdata card at the point of distribution. Defendants pay for the fuel dispensed to owner-operators by direct payment either to Comdata or the truck stop chain that dispensed the fuel. Defendants charge back amounts for fuel so dispensed in amounts that exceed the sums paid by the Defendants to Comdata or the truck stops for such fuel. The amount of the injury incurred by owner-operators can be calculated by making the following assumptions:

The average owner-operator drives his truck 100,000 miles a year.
His truck averages 6 miles per gallon.
The amount of the overcharge averages not less than 4 cents per gallon.

Dividing 100,000 miles by 6 mpg gives the number of gallons used by the driver per year, or 16,666 gallons. Multiplying that amount by the discount not received by owner-operators $0.04 equals $666.66. This amount represents the injury sustained annually by one owner-operator.

The Defendant employs over 8000 owner-operators at any one time. Multiplying this number by $666.66 yields annual injury of $5,333,000 for the entire class.

Fuel Card Overcharges

The Defendant charges $1.75 each time an owner-operator uses a Defendant-supplied fuel card. Depending on the type of transaction, the Defendant is charged not more than $0.75 or $0.81 per transaction. Assuming, for ease of calculation, that the amount of overcharge is $1.00 and that the owner-operator uses his fuel card twice a week or 104 times a year the average owner-operator is overcharged $104 per year. Total annual injury for the entire class equals $104 x 8000 or $832,000.

Unlawful Deductions for Third Party Payor Costs

The Department of Defense ("DOD") requires all motor carriers hauling DOD shipments to

obtain the payment for their services through US Bank's Power Track payment system. U.S. Bank charges a fee according to a sliding scale based on the cost of transporting shipments ranging from two percent for shipments costing under $600.00 to one percent for shipment costing over $2,000.00. Landstar operating companies obtain payment for carrying DOD shipments through this payment system.

Owner-operators working for Landstar operating companies are typically paid a percentage of the "adjusted gross revenue," which is based on revenue shown on the rated freight bill. According to the Defendants' annual report owner-operators were paid an average of 74 percent of Defendants' transportation revenue during 2001.

The Defendant charges back the U.S. Bank third-party payor cost to owner-operators carrying DOD freight by deducting two percent from the revenue shown on the rated freight bill for all DOD shipments before calculating the owner-operators' share of the revenue. Unless the parties agree otherwise, this cost is part of a carrier's ordinary overhead. Since the Defendant does not disclose this deduction in its leases or on the owner-operators' settlement sheets the entire amount of the deduction is unlawful and fully recoverable by the owner- operators.

Defendant's transportation revenue was $1,370,000,000 during 2001. If we assume that the Defendant receives 25 percent of its revenue from DOD, the injury on a class wide basis can be calculated as follows:

$1,370,000,000 x 25 = 34,250,000 x .02 = 6,850,000 x .74 = $5,069,000

The injury for individual class members will vary greatly depending on the amount of military

traffic they carry. However, the average injury per class member can be found by dividing $5,069,000 by 8000, which equals $633.63.

Over Charges for Base Plates and Permit Fees

Base Plates

Defendant Landstar, uses Illinois as its base state for all of its operating companies. Prior to April 1, 2001, Landstar charged $1500 for all base plates sold to owner-operators working for the Landstar operating companies. After that date, Landstar began charging $1600 for all base plates. OOIDA believes that te Defendant is charged no mote than $1300 for each of its base plates by the state of Illinois. Therefore, the injury for individual owner-operators is approximately $200 per year prior to April 1, 2001 and $300 per year after that time.

Not all owner-operators obtain their bases plates through the Defendant. Assuming that 75 percent do, the current annual injury equals 6000 x $300 or $1,800,000 per year.

Reselling Charges

The State of Illinois charges $15 for transferring a base plate. Prior to April 1, 2001, the Defendant charged $250 to owner-operators for transferring or "reselling" their base plates when they left the Defendant. After that date the Defendant charged $275. The Defendant has a 60 percent turnover per year in its owner-operators. This means that at least 4800 owner-operators leave the Defendant each year. Assuming that all of these owner-operators are charged $275.00 for reselling their base plate the injury is $275 - $15 = $260 x 4800 = $1,248,000.

Permits

In addition to the base plate, the operator of a commercial motor vehicle is required to obtain special permits if the vehicle carries certain regulated shipments such as hazardous materials and alcohol or operates in states that have additional permit requirements such as New York and New Mexico. Prior to January 1, 2001, the Defendant charged $325 for an "annual permit package" that it provides to owner-operators to cover these special permits. After that date the Defendant began charging $340 for this package. The Defendant charges this fee to all owner-operators working for the operating companies whether or not the owner-operator requires these special permits. Without information from the Defendant it is impossible to measure the magnitude of the injury associated with this practice.

The total annual injury can be summarized as follows:

	Individual	Class
Fuel overcharges	$666.66	$5,333,000.00
Fuel card overcharges	$104.00	$832,000.00
Third Party Payor Costs	$633.63	$5,069,000.00
Base Plates	$300.00	$1,800,000.00
Reselling charges	$260.00	$1,248,000.00
Permits	unknown	unknown
Total	$1,964.29	$14,282,000.00

Congress did not enact a specific statute of limitations when it created the private right of action under 49 U.S.C. § 14704(a)(1) and (2). Accordingly, the default statute of limitations set forth in 28 U.S.C. § 1658 applies. Total estimated injury under this four-year statute of limitations would be $57,128,000 plus interest. Defendants violations are continuing and so the total amount of the injuries sustained continues to grow.

PLAINTIFFS' INTERROGATORY # 3

State the full name, address, and telephone number of all persons or legal entities who have a financial interest in this action, and state the basis and extent of that interest.

ANSWER

This action has been filed as a class action. The Defendant employs over 8000 owner-operators at anyone time with an approximate 60 percent turnover rate. Therefore, over the four-year period that this action covers, the class is likely to exceed 20,000 individuals. Plaintiffs estimate that on an annual basis the average injury suffered by owner-operators is approximately $1965.00.

The named class representatives in this action are:

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(707) 938-4528

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Buena Vista, CO 81211
(719) 395 3359

Carey R. Laue
140 S. John Wayne Road
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(217) 364-5198

James E. Michael
543 Cold Springs Road
Morgantown, WV 26501-7718
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Robert Penman
P.O. Box 1632
501 W. Miller Street
Rawlins, WY 82301
(307) 324-8484

James E. Schmidt
789 Chaney Road
Franklin, KY 42134
(270) 586-5881

The Owner-Operator Independent Drivers Association, Inc. ("OOIDA") brings this action in a representative capacity and seeks only declaratory and injunctive relief on behalf of all owner-operators including those who are its members. OOIDA's address is:

Owner-Operator Independent Drivers Association, Inc.
1 N.W. OOIDA Drive
P.O. Box 1000
Grain Valley, Missouri 64029
(800) 444-5791

PLAINTIFF'S INTERROGATORY #4

Describe the nature of any dispositive motions which the plaintiff anticipates may be filed in this action.

ANSWER

At the close of discovery, Plaintiffs anticipate filing a motion for partial summary judgment on the issue of liability.

Respectfully submitted,

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