

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMES GOODE and FRED LOVELESS	)	
	)	
Plaintiffs,	)	
v.	)	Case No.
	)	Complaint
AAFAB, INC.	)	
	)	Demand for Jury Trial
Defendant.	)	
	)	

**COMPLAINT FOR DECLARATORY RELIEF,  
INJUNCTIVE RELIEF AND DAMAGES**

James Goode and Fred Loveless, (“Plaintiffs”) bring this action seeking declaratory, injunctive and monetary relief against Defendant AAFAB, Inc., its agents, affiliates, or successors in interest (“AAFAB” or “Defendant”) and allege as follows:

**NATURE OF THE ACTION**

1. Defendant is a regulated motor carrier that provides transportation of property in interstate commerce under authority issued by the U. S. Department of Transportation (“DOT”). AAFAB transports property in equipment leased from independent truckers (known as “owner-operators”)

including Plaintiffs James Goode and Fred Loveless. Under federal law and regulations, authorized motor carriers like AAFAB may perform authorized transportation in equipment they do not own *only* if the equipment is covered by a written lease meeting the requirements set forth in 49 C.F.R. § 376.12 (Part 376). See 49 C.F.R. § 376.11 (a); see also 49 U.S.C. § 14102. A person injured by an authorized carrier's failure to comply with the federal leasing regulations may bring an action seeking injunctive relief and damages pursuant to 49 U.S.C. § 14704(a)(1) and (2), and may recover attorneys' fees and costs under 49 U.S.C. § 14704(e).

2. Plaintiffs have been injured by Defendant's execution of agreements with Contracting Plaintiff owner-operators that do not meet the requirements of Section 376.12. Numerous terms required by Section 376.12 are missing from the Standard Lease Agreement. Other terms included in the Standard Lease Agreement conflict with provisions of Section 376.12. Further, Defendant has engaged in a pattern and practice of conduct violating its obligations under Part 376 to Contracting Plaintiffs.

### **JURISDICTION AND VENUE**

3. This action arises under 49 U.S.C. §§ 14102 and 14704 *et seq.*, and 49

C.F.R. Part 376, *et seq.*, governing the terms and conditions pursuant to which truck owner-operators lease equipment to authorized motor carriers for the transport of property.

4. Jurisdiction of this matter is granted to this court by 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1337 (proceedings arising under an act of Congress regulating commerce). The causes of action alleged here arise under the laws of the United States regulating commerce and the activities of motor carriers engaged in the transportation of property in interstate commerce, including 49 U.S.C. §§ 13501, 14102 and 14704(a)(1) and (2), and 49 C.F.R. § 376 *et seq.*

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). AAFAB's principle place of business is in Smyrna, Georgia.

#### **PARTIES**

6. Plaintiff James Goode, citizen of the state of Mississippi, is an owner-operator who has leased motor vehicle equipment, with drivers, to AAFAB within the purview of 49 U.S.C. § 14102.

7. Plaintiff Fred Loveless, citizen of the state of Georgia, is an owner-operator who has leased motor vehicle equipment, with drivers, to AAFAB

within the purview of 49 U.S.C. § 14102.

8. AAFAB is a Georgia corporation and a regulated motor carrier, primarily engaged in the enterprise of providing transportation services to the shipping public under authority granted by DOT and formerly the ICC. During all times material to this case, Defendant is and has been an “authorized carrier” within the meaning of 49 C.F.R. § 376.2(a).

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

9. Plaintiffs entered into federally-regulated lease agreements (the “Lease Agreements”) with Defendant. A copy of the Lease Agreement entered into between Defendant and Plaintiff James Goode is attached as Exhibit “A.”

10. Plaintiff Fred Loveless’ Lease Agreement with Defendant is substantially similar to Plaintiff James Goode’s Lease Agreement.

11. The Lease Agreements between AAFAB and Plaintiffs constitute leases as defined in 49 C.F.R. § 376.2(e).

12. The vehicles Plaintiffs provided to AAFAB for use are “equipment” within the meaning of 49 C.F.R. § 376.2(b).

13. Plaintiff Goode was leased to and operated for AAFAB from June 2001 to October 2001.

14. Plaintiff Loveless was leased to and operated for AAFAB from September 2001 to November 2001.

15. Upon learning of AAFAB's refusal to return Plaintiff Goode's escrow fund, The Cullen Law Firm, PLLC, wrote a letter to Alan Jorgensen, president of AAFAB, informing him of the requirements of the Truth-in-Leasing regulations and requesting that AAFAB return Plaintiff Goode's escrow funds to him.

16. Mr. Jorgensen responded by letter wherein he refused to return Mr. Goode's escrow fund, and indicated that he did not feel AAFAB had violated the Truth-in-Leasing regulations.

### **COUNT I**

#### **Unlawful Provision of Transportation Services by AAFAB**

17. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 16.

18. Under federal law, an "authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions: . . . [t]here shall be a written lease granting the use of the equipment and meeting the requirements contained in § 376.12." Defendant AAFAB is engaged in the unlawful provision of transportation services in equipment it does not own because the lease agreements governing its use of such equipment fail to

conform to 49 C.F.R. § 376, *et al.*

a. Defendant's Lease Agreements with Plaintiffs do not contain certain provisions required by 49 C.F.R. § 376.12. By way of illustration and not limitation:

(1) Defendant AAFAB's Lease Agreement does not recite that it shall have exclusive possession, control, and use of the equipment and that it shall assume complete responsibility for the operation of the equipment for the duration of the lease as required by 49 C.F.R. § 376.12(c).

(2) Defendant AAFAB's Lease Agreement does not specify who is responsible for removing identification devices from the equipment upon the termination of the lease and when and how the devices will be returned as required by 49 C.F.R. § 376.12(e).

(3) Defendant AAFAB's Lease Agreement does not specify that the carrier will permit the lessor to examine copies of the carrier's tariff or other documentation from

which rates and charges are computed as required by 49 C.F.R. § 376.12(g).

- (4) Defendant AAFAB's Lease Agreement does not clearly specify the amount, or the method of computation of the amount, of each chargeback delineated in the lease as required by 49 C.F.R. § 376.12(h).
- (5) Defendant AAFAB's Lease Agreement does not recite that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease agreement as required by 49 C.F.R. § 376.12(i).
- (6) Defendant AAFAB's Lease Agreement does not specify that it has a legal obligation to maintain insurance coverage for the protection of the public pursuant to FHWA regulations under 49 U.S.C. 13906 as required by C. F.R. § 376.12(j)(1).
- (7) Defendant AAFAB's Lease Agreement does not specify that when deductions for cargo or property damage are

made from a driver's compensation, a written explanation and itemization of those deductions will be given to the driver before the deductions are made as required by 49 C.F.R. § 376.12 (j)(3).

- (8) Defendant AAFAB's Lease Agreement does not specify the specific items to which the escrow fund can be applied as required by 49 C.F.R. § 376.12 (k)(2).
- (9) Defendant AAFAB's Lease Agreement does not specify that the carrier will provide to the driver at least a monthly accounting of any transactions involving the escrow fund as required by 49 C.F.R. § 376.12 (k)(3).
- (10) Defendant AAFAB's Lease Agreement does not specify the driver's right to demand an accounting of his escrow fund at any time as required by 49 C.F.R. § 376.12 (k)(4).
- (11) Defendant AAFAB's Lease Agreement does not specify that it will pay interest on the escrow fund at least quarterly at a rate equal to the average yield or

equivalent coupon issue yield on 91-day, 13-week

Treasury bills as required by 49 C.F.R. § 376.12 (k)(5).

- (b) Defendant AAFAB's Lease Agreement contains the following provisions that conflict with 49 C.F.R. § 376.12:
- (1) Defendant AAFAB's Lease Agreement provides that it will return a driver's escrow funds 90 (ninety) days after a three day notice of lease termination is given. This provision is in direct conflict with 49 C.F.R. § 376.12 (k)(6) which requires that escrow funds be returned no later than 45 (forty-five) days from the date of termination.
  - (2) Defendant AAFAB's Lease Agreement provides that a driver will forfeit his escrow fund if he does not provide Defendant with a three working day notice of lease termination. This provision is in direct conflict with 49 C.F.R. § 376.12 (k)(6) which provides that *in no event* shall the escrow funds be returned later than 45 (forty-five) days from the date of termination.

19. As a direct and proximate result of this violation of federal law, the rights of Plaintiffs have been violated and Plaintiffs have suffered financial injury.

## COUNT II

### **Violations of the Truth-In-Leasing Regulations by AAFAB**

20. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 19.

21. The Truth-In-Leasing regulations mandate that lease agreements by motor carriers contain certain provisions and that those lease provisions “be *adhered to and performed* by the authorized carrier.” 49 C.F.R. § 376.12 (emphasis added).

22. Defendant AAFAB does not adhere to or perform the obligations established by 49 C.F.R. § 376.12. By way of illustration and not limitation:

- a. Defendant AAFAB did not provide Plaintiffs with a final accounting of their escrow funds in violation of 49 C.F.R. § 376.12 (k)(6).
- b. Defendant AAFAB did not pay interest on Plaintiff’s escrow funds in violation of 49 C.F.R. § 376.12 (k)(5).

- c. Defendant AAFAB did not return Plaintiffs' escrow funds in violation of 49 C.F.R. § 376.12 (k)(6).
- d. As a direct and proximate result of this violation of federal law, the rights of Plaintiffs have been violated and Plaintiffs have suffered financial injury;

**PRAYERS FOR RELIEF**

WHEREFORE, Plaintiffs, James Goode and Fred Loveless respectfully request that this Court:

1. Enter declaratory judgment that the leases Defendant entered with Plaintiffs are unlawful in that they fail to contain provisions required by 49 C.F.R. § 376.12 and contain other provisions that are inconsistent with the requirements and responsibilities imposed upon authorized carriers under 49 C.F.R. § 376.12;
2. Enter an Order that Defendant provide Plaintiffs an accounting of all transactions involving their compensation in any respect, including deductions from income, debits and credits to escrow funds, fuel tax credits and debits, and requiring Defendant to recite how each charge to income or escrow was calculated while providing all documentation necessary to confirm the validity

of the same transactions pursuant to 49 C.F.R. § 376.12(h), (j) and (k);

3. Enter an injunction pursuant to 49 C.F.R. § 376.11(a) and 49 U.S.C. § 14704(a)(1) enjoining and restraining Defendant from performing authorized transportation in equipment it does not own under the current non-compliant lease agreements it has entered into with its leased drivers.

5. Enter an injunction pursuant to 49 C.F.R. § 376.11(a) and 49 U.S.C. § 14704(a)(1) permanently enjoining and restraining Defendant from refusing to return drivers' escrow funds for failure to comply with any notice of termination requirements designated by Defendant.

4. Enter judgment against Defendant in favor of Plaintiffs for all actual damages for violation of 49 C.F.R. § 376.12 (h), (i), (j), and (k) pursuant to 49 U.S.C. § 14704(a)(2), including pre and post-judgment interest, as allowed by law;

5. Enter judgment against Defendant in favor of Plaintiffs for costs of this action, reasonable attorneys' fees, and other costs reasonably related to collections for unlawfully deducting, withholding or otherwise reducing Lessors compensation, such as for forced purchase of insurance and escrow fund charges, as well as pre- and post-judgment interest, as allowed by law;

6. Award Plaintiffs' counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action and pursuant to 49 U.S.C. § 14704(e).
7. Award such other relief as this Court may deem be just and proper.

**DEMAND FOR A JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues triable as of right by jury.

Respectfully submitted,

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Paul D. Cullen, Sr.  
Belinda L. Harrison