

dates of the policy, the amounts and types of coverage, the cost to the lessor [owner?operator] for each type of coverage, and the deductible amount for each type of coverage for which the lessor [owner?operator] might be liable." This provision also requires that "[i]f the lessor [owner?operator] purchases any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor," (emphasis added).

14. 49 C.F.R. § 376.12(j)(1) provides that the lease "specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance." In addition, "If the authorized carrier will make a charge back to the lessor [owner?operator] for any of this insurance, the lease shall specify the amount which will be charged-back" Id.

15. 49 C.F.R. § 376.12(h) provides that "[t]he lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment of settlement, together with a recitation as to how the amount of each item is to be computed." When deductions are taken from an owner-operator's compensation then that individual "shall be afforded copies of those documents which are necessary to determine the validity of the charge." Id. This provision is applicable to all charge back items including charge backs for various forms of insurance coverages identified in 49 C.F.R. § 376.12(j).

CLASS ACTION ALLEGATIONS

16. This action is brought by Plaintiffs as a national class action, on their own behalf and on behalf of all others similarly situated.

17. Class Description. Plaintiffs represent a class (hereinafter "Class") consisting of all owner-operators in the United States who have entered federally regulated leases with BMC, or its authorized agents or business affiliates.

18. Impracticability of Joinder. Upon information and belief, there are over one thousand (1,000) individual owner?operators who are members of this Class. These individual owner?operators are residents of various states and travel continuously, and are, therefore widely dispersed geographically. Thus, joinder of all potential Class Members would be impracticable.

19. Commonality. BMC has acted toward these Class Members in a way that affects all members of the Class similarly and, accordingly, questions of fact and law are common to the Class, as are questions of the liability of BMC, or the appropriate nature of injunctive relief.

20. Typicality. The claims of the Plaintiffs are typical of the claims of the potential Class as a whole.

21. Fair and Adequate Representation. Plaintiffs are capable of fairly and adequately protecting the interests of the Class. Additionally, OOIDA has previously participated as class representative on behalf of owner?operators in several cases, and counsel for Plaintiffs (The Cullen Law Firm, PLLC) has been involved in numerous class actions around the country.

22. Class Certification Appropriate Under Rule 23(b)(2). Defendant has acted and/or failed to act on grounds generally applicable to the potential class as a whole, as described further in this Complaint. Thus, injunctive and declaratory relief is appropriate with respect to the potential class as a whole, making class certification appropriate under Fed. R. Civ. P. 23(b)(2).

23. Class Certification Appropriate Under Rule 23(b)(3). The questions of law enumerated in the counts below are common to all potential class members, as described in paragraph 21 supra, and predominate over any questions affecting only individual members which are essentially limited to the amount of damages due each member. Therefore, a class action is superior to other available methods for the fair and efficient adjudication of the claims herein.

24. Additional Factors Favoring Class Certification. Other factors favoring the certification of this suit as a class action include:

(a) the amounts in controversy for individual owner-operators are relatively small, so that individual members of the Class would not find it cost-effective to bring individual claims;

(b) requiring individuals to prosecute separate actions would substantially impair or impede the individual members' ability to protect their interests;

(c) upon information and belief, there is no litigation already commenced by Class Members concerning the causes of action raised in this Complaint;

(d) it is desirable to concentrate the individual members' claims in one forum because, given the amount in controversy, to require these claims to be brought in separate forums would effectively prevent individuals from bringing claims to recover their funds;

(e) no substantial difficulties are likely to be encountered in managing this class action;

(f) Upon information and belief, Defendant has utilized essentially the same standard lease agreement for years and the conduct at issue arises from this agreement; and

(g) Plaintiffs are represented by The Cullen Law Firm, PLLC, which has the experience of representing their clients in numerous class actions involving owner?operators and other small business truckers nationwide.

FACTUAL ALLEGATIONS

25. Plaintiffs Shaw and McGrath and others similarly situated are owner?operators who leased their equipment, a truck tractor and driving services, to BMC within the meaning of 49 C.F.R. § 376.2(e).

26. Plaintiff Shaw was leased with and operated for BMC from October 1997 to June 2000. See Exhibit A. Plaintiff McGrath was leased with and operated for BMC from May 1997 to October 1999. These leases and the leases between BMC and other similarly situated owner?operators, constitute "lease[s]" as defined in 49 C.F.R. § 376.2(e).

27. Upon information and belief, the leasing agreements between BMC and Plaintiffs Shaw and McGrath are substantively the same to the leasing agreements entered between BMC and other similarly situated owner?operators.

28. The lease agreements entered between Plaintiffs Shaw and McGrath and BMC fail to meet the requirements of 49 C.F.R. § 376.12 in that a number of provisions required by that regulation are missing from the lease and a number of provisions included in the lease are in conflict with that regulation.

29. Pursuant to their lease agreements, BMC required Plaintiffs Shaw and McGrath to obtain various types of insurance coverage. Defendant obtained various insurance coverage for Plaintiffs and deducted amounts to pay for such insurance from their weekly or periodic compensation. BMC deducted amounts from Plaintiffs Shaw and McGrath for physical damage, bobtail, occupational accident and workers compensation insurance. Upon information and belief, each member of the prospective class has similarly purchased one or more of these types of insurance from or through Defendant, and deductions were made for said insurance from income or escrow accounts.

30. Despite the deductions for various insurance, and its obligations under 49 C.F.R. § 376.12 (h) & (j), Defendant provided Plaintiff Shaw with only one certificate of insurance during his lease term with BMC. Moreover, the one certificate provided to him did not comply with the law as it does not provide the cost of the insurance coverage as required by 49 C.F.R. § 376.12(j)(2). Upon information and belief, each member of the prospective class has similarly not received insurance certificates from BMC to which they were entitled.

31. Plaintiff Shaw has requested BMC to provide copies of insurance policies and certificates of insurance pursuant to 49 C.F.R. § 376.12(h) and (j). Plaintiff Shaw has not received any response from BMC. In fact, BMC expressly refused correspondence that sought insurance information it was required to provide to Plaintiff Shaw.

32. Plaintiff McGrath similarly requested that BMC provide copies of the insurance policies for which deductions were made to his income or

escrows. Plaintiff McGrath did not received these policies from BMC.

33. Defendant's lease authorizes deductions from Plaintiffs Shaw's and McGrath's compensation to pay "premiums" for the various types of insurance coverages provided from or through Defendant. See Exhibit A at pp. 2, 4A, and 4, 6B and C. Upon information and belief, the averments of this paragraph are substantively the same for all members of the Class.

34. During the leases between Plaintiffs Shaw and McGrath and Defendant, BMC was deducting various amounts for that insurance from their weekly compensation. Upon information and belief, the averments of this paragraph are substantively the same for all members of the Class.

35. The amounts deducted by BMC from Plaintiffs Shaw's and McGrath's compensation were substantially greater than the insurance "premiums" paid by BMC for said insurance coverage and which it agreed to deduct from their compensation. Upon information and belief, the averments of this paragraph are substantively the same for all members of the Class.

COUNT I

FAILURE TO PROVIDE INSURANCE AND CHARGE BACK INFORMATION

(in violation of 49 C.F.R. § 376.12(h) and (j))

36. Plaintiffs reallege and incorporates the allegations of paragraphs 1 through 35.

37. Defendant has failed and fails to comply with its obligations under 49 C.F.R. § 376.12(h) and (j)(1), in that the lease fails to specify the amount that will be charged back to the owner?operator for insurance or how that amount is to be calculated.

38. Defendant has failed to comply with its obligations under 49 C.F.R. § 376.12(j)(2) in that Defendant has failed to provide Plaintiffs Shaw and McGrath and others similarly situated with appropriate certificates of insurance or with copies of insurance policies upon request.

39. Defendant's failure to disclose the required insurance and charge back information is harmful to owner?operators because it prevents them from ascertaining whether they are being over charged for charge back items including insurance and/or subjected to unlawful reductions in compensation. This prevents owner?operators from effectively judging the benefit of their bargain and from making an informed choice whether to enter or continue the lease agreement or to allow such deductions. Defendant's failure to comply with 49 C.F.R. § 376.12(h) and (j) placed Plaintiffs Shaw and McGrath and others similarly situated in a position where they have neither the documentation nor information "necessary to determine the validity of the charge[s]."

40. As a direct and proximate result of these violations of federal law, the rights of Plaintiffs Shaw and McGrath, and other similarly situated owner?operators, have been violated.

COUNT II

UNLAWFUL DEDUCTIONS FROM COMPENSATION UNDER LEASE AGREEMENT

(in violation of 49 C.F.R. § 376.12(h) and (j))

41. Plaintiffs re?allege and incorporate the allegations of paragraphs 1 through 35 above.

42. Defendant has engaged in a pattern and practice of making deductions from owner?operators' compensation for insurance and other items not properly disclosed or enumerated and in amounts not properly set forth or explained in the Lease Agreements. Monies for those items have been and are unlawfully withheld and/or deducted from Plaintiffs Shaw and McGrath and the Class in violation of 49 C.F.R. § 376.12(h) and (j).

43. As a direct and proximate result of BMC's violations of Part 376, owner?operators are deprived of sums rightfully belonging to them and have incurred substantial monetary damages. BMC's failures are actionable. 49 U.S.C. § 14704(a)(1) and (2).

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, ARTHUR SHAW, BRIAN McGRATH, individually or in a representative capacity, and for all others similarly situated, respectfully request that this Court:

1. Certify a class comprised of owner-operators of motor vehicle equipment who, at any time on or after March 21, 1997, were parties to a lease agreement regulated by Part 376 with BMC, or who enter a lease agreement regulated by Part 376 with BMC at any time during the pendency of this proceeding;
2. Enter a declaratory judgment that BMC's lease agreement as set forth in Exhibit A fails to conform to the requirements of 49 C.F.R. § 376.12 in that several provisions required by that regulation are missing from the lease agreement and several provisions included in the lease agreement conflict with a motor carrier's responsibilities under that regulation;
3. Enter an injunction enjoining and restraining Defendant from performing regulated transportation in equipment it does not own unless and until it enters written lease agreements meeting the requirements of 49 C.F.R. § 376.12;
4. Enter an Order requiring Defendant to deliver to Plaintiff Shaw, Plaintiff McGrath and all members of the Class all insurance information and documentation for the Class as required by 49 C.F.R. § 376.12(h) and (j);
5. Enter a declaratory judgment that Defendant has violated 49 C.F.R. § 376.12 (h) and (j) by charging Plaintiffs Shaw and McGrath and all members of the class amounts for insurance coverage in excess of the premiums for such coverage;
6. Enter an Order that Defendant provide Plaintiffs an accounting of all transactions involving deductions from compensation for insurance, and requiring Defendant to recite how each deduction from compensation was calculated while providing all documentation necessary to confirm the validity of such transactions pursuant to 49 C.F.R. § 376.12 (h) and (j);
7. Enter judgment against Defendant in favor of individual class members for actual damages for violation of 49 C.F.R. § 376.12 pursuant to 49 U.S.C. § 14704(a)(2), including pre- and post-judgment interest, as allowed by law;
8. Enter an Order awarding restitution to the individual class members of all amounts wrongly withheld as a result of deductions related to insurance.
9. Create a common fund made up of all damages owed by Defendant to individual Class Members;
10. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid out of the common fund;
11. Award class counsel reasonable attorneys' fees and expenses pursuant to 49 U.S.C. § 14704(e); and
12. Enjoin Defendant from any acts of retaliation, harassment, or intimidation against Plaintiffs, the putative class and others who may assist and/or participate in this action;
13. Award such other relief as this Court may deem to be just and proper.

DEMAND FOR 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 a jury.

Respectfully submitted,

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