

OWNER-OPERATOR INDEPENDENT)

DRIVERS ASSOCIATION, INC.,)

CARL HARP, GARVIN KEITH ROBERTS,)

AND MICHAEL WIESE,)

)

ON BEHALF OF THEMSELVES AND)

ALL OTHERS SIMILARLY SITUATED,)

Plaintiffs,)

Civil Action No. _____)

v.)

)

ARCTIC EXPRESS, INC., AND)

D&A ASSOCIATES, LTD.,)

Defendants.)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLASS ACTION COMPLAINT FOR DAMAGES

AND FOR DECLARATORY AND INJUNCTIVE RELIEF:

DEMAND FOR JURY TRIAL

The Owner-Operator Independent Drivers Association, Inc., Carl Harp, Garvin Keith Roberts, and Michael Wiese, individually and on behalf of all others similarly situated (collectively, "Plaintiffs" or "class members"), hereby sue Arctic Express, Inc. ("Arctic"), and D&A Associates, Ltd. ("D&A") (collectively, "Defendants"), and allege as follows:

NATURE OF THE ACTION

1. This is a class action against Defendants Arctic and D&A pursuant to which Plaintiffs, as class representatives on behalf of themselves and all others similarly situated, all of whom are independent truck owner-operators, challenge the lawfulness of Defendants' Independent Contractor Motor Vehicle Lease Agreements (the "Lease Agreements") and Lease/Purchase Option at Termination Agreements (the "Lease/Purchase Agreements") as applied to the class members. Plaintiffs maintain that Defendants' Lease Agreements and Lease/Purchase Agreements contain terms that violate the Federal commercial transportation laws and regulations as set forth under the United States Code and the Code of Federal Regulations.

More specifically, Plaintiffs assert that Defendants' Lease Agreements and Lease/Purchase Agreements, *inter alia*, unlawfully require the class members to forfeit, and unlawfully permit Defendants to possess and retain, escrow and other funds to which only the class members are entitled.

Accordingly, Plaintiffs seek declaratory and injunctive relief; an immediate accounting of escrow and other funds deposited with Defendants by the various class members during their respective periods of association with Defendants; the return of such escrow and other funds to the class members with

interest as calculated under applicable law; attorneys' fees and costs incurred by the class members in this action; and such other relief as may be deemed appropriate by the Court.

Plaintiffs also request an order enjoining and restraining Defendants from transferring, diverting, or otherwise concealing the class members' funds at issue and from destroying records relating in any way to the escrow funds or other amounts owed by Defendants to the class members.

JURISDICTION AND VENUE

2. This action arises under 49 U.S.C. §§ 14102 and 14704(a)(1) and (2), and 49 C.F.R. Part 376 *et seq.*, for violation of the leasing regulations governing the terms and conditions pursuant to which owner-operators lease equipment to authorized motor carriers for the transport of property.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question), because the claims asserted herein arise under the laws of the United States.

4. This Court has supplemental jurisdiction over all other claims made in this action pursuant to 28 U.S.C. § 1367(a) (Supplemental Jurisdiction), because any such claims are so related to claims within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 49 U.S.C. § 14704(d)(1), because Defendants' principal place of business and principal operating office are located in this judicial district.

PARTIES

6. Plaintiff Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), is a business association of persons and entities, commonly known as "owner-operators," who own and operate motor carrier equipment. OOIDA is a not-for-profit corporation incorporated in Missouri, with its headquarters at 311 R.D. Mize Road, P.O. Box L, Grain Valley, Missouri 64029.

OOIDA was founded in 1973 and now has over 36,000 members in all fifty (50) States of the United States and in Canada. A number of OOIDA's members are owner-operators who operate motor vehicles in and through the State of Ohio and are, or are likely to be, employed by or otherwise associated with Arctic and/or D&A under the terms set forth in Defendants' Lease Agreements and Lease/Purchase Agreements.

OOIDA seeks to have Defendants' leasing and business practices declared unlawful and in violation of Federal motor carrier leasing regulations (49 C.F.R. § 376 *et seq.*) and to have the continuation of

said practices permanently enjoined, and thus participates as a Plaintiff herein only in connection with Plaintiffs' prayers for declaratory and injunctive relief.

7. Plaintiff Carl Harp ("Plaintiff Harp") is a resident of the State of Michigan. Plaintiff Harp is an independent truck owner-operator who has provided motor vehicle equipment to Defendant Arctic under the terms of the Lease Agreement entered into between Plaintiff Harp and Defendant Arctic. In addition, Plaintiff Harp was party to a Lease/Purchase Agreement with D&A under which Plaintiff Harp leased from D&A, with the option to purchase, the motor vehicle equipment that was the subject of the Lease Agreement between Plaintiff Harp and Defendant Arctic.

The terms of the Lease Agreement entered into between Plaintiff Harp and Defendant Arctic are the same or substantially the same as the terms of the Lease Agreements entered into between Defendant Arctic and each of the class members herein.

Plaintiff Harp was compelled to terminate his contractual relationship with Defendant Arctic because of the unfair and oppressive conditions imposed upon him by the Lease Agreement. However, despite the fact that the Lease Agreement is no longer in effect, Defendant Arctic has persisted in unjustifiably depriving Plaintiff Harp of escrow and other funds deposited with Defendant Arctic and/or Defendant D&A by Plaintiff Harp during the term of the Lease Agreement.

In light of these circumstances, Plaintiff Harp seeks monetary damages and declaratory, injunctive, and other equitable relief on behalf of himself and all other similarly situated independent truck owner-operators.

8. Plaintiff Garth Keith Roberts ("Plaintiff Roberts") is a resident of the State of Florida. Plaintiff Roberts is an independent truck owner-operator who has provided motor vehicle equipment to Defendant Arctic under the terms of the Lease Agreement entered into between Plaintiff Roberts and Defendant Arctic.

In addition, Plaintiff Roberts was party to a Lease/Purchase Agreement with D&A under which Plaintiff Roberts leased from D&A, with the option to purchase, the motor vehicle equipment that was the subject of the Lease Agreement between Plaintiff Roberts and Defendant Arctic.

The terms of the Lease Agreement entered into between Plaintiff Roberts and Defendant Arctic are the same or substantially the same as the terms of the Lease Agreements entered into between Defendant Arctic and each of the class members herein.

Plaintiff Roberts was compelled to terminate his contractual relationship with Defendant Arctic because of the unfair and oppressive conditions imposed upon him by the Lease Agreement.

However, despite the fact that the Lease Agreement is no longer in effect, Defendant Arctic has persisted in unjustifiably depriving Plaintiff Roberts of escrow and other funds deposited with Defendant Arctic and/or Defendant D&A by Plaintiff Roberts during the term of the Lease Agreement.

In light of these circumstances, Plaintiff Roberts seeks monetary damages and declaratory, injunctive, and other equitable relief on behalf of himself and all other similarly situated independent truck owner-operators.

9. Plaintiff Michael Wiese ("Plaintiff Wiese") is a resident of the State of Florida. Plaintiff Wiese is an independent truck owner-operator who has provided motor vehicle equipment to Defendant Arctic under the terms of the Lease Agreement entered into between Plaintiff Wiese and Defendant Arctic. In addition, Plaintiff Wiese was party to a Lease/Purchase Agreement with D&A under which Plaintiff Wiese leased from D&A, with the option to purchase, the motor vehicle equipment that was the subject of the Lease Agreement between Plaintiff Wiese and Defendant Arctic.

The terms of the Lease Agreement entered into between Plaintiff Wiese and Defendant Arctic are the same or substantially the same as the terms of the Lease Agreements entered into between Defendant Arctic and each of the class members herein. Plaintiff Wiese was compelled to terminate his contractual relationship with Defendant Arctic because of the unfair and oppressive conditions imposed upon him by the Lease Agreement.

However, despite the fact that the Lease Agreement is no longer in effect, Defendant Arctic has persisted in unjustifiably depriving Plaintiff Wiese of escrow and other funds deposited with Defendant Arctic and/or Defendant D&A by Plaintiff Wiese during the term of the Lease Agreement.

In light of these circumstances, Plaintiff Wiese seeks monetary damages and declaratory, injunctive, and other equitable relief on behalf of himself and all other similarly situated independent truck owner-operators.

10. Plaintiff owner-operators are "owners" within the meaning of 49 C.F.R. § 376.2(d).

11. Plaintiff owner-operators are "lessors" within the meaning of 49 C.F.R. § 376.2(f).

12. The vehicles provided for use by Plaintiff owner-operators to Defendant Arctic are "equipment" within the meaning of 49 C.F.R. § 376.2(b).

13. Defendant Arctic is a corporation incorporated under the laws of the State of Ohio, authorized to do business in Ohio, and having its principal place of business at 4301 Lyman Drive, Hilliard, Ohio 43026. Defendant is a regulated motor carrier, primarily engaged in the enterprise of providing

transportation services to the shipping public under authority granted by the United States Department of Transportation (the "DOT").

14. Defendant Arctic is an "authorized carrier" within the meaning of 49 C.F.R. § 376.2(a).

15. Defendant Arctic is a "lessee" within the meaning of 49 C.F.R. § 376.2(g).

16. Defendant D&A is a limited liability company organized under the laws of the State of Ohio, authorized to do business in Ohio, and having its principal place of business at 4277 Lyman Drive, P.O. Box 129, Hilliard, Ohio 43026. It is Plaintiffs' understanding, upon information and belief, that Defendant D&A, *inter alia*, engages in the business of leasing truck tractor units, with the option to purchase, to independent truck owner-operators.

17. Upon information and belief, Plaintiffs maintain that Defendant D&A is owned and controlled by Defendant Arctic, or Defendants Arctic and D&A are under common ownership and control and said Defendants act as a single entity and do not engage in arm's-length transactions between one and the other. Thus, Plaintiffs further maintain, upon information and belief, that the Lease/Purchase Agreements entered into between D&A and the various class members herein effectively were entered into between those various class members and Defendant Arctic or an alter ego or an agent of Arctic, and that Defendant Arctic consequently is liable under each of Plaintiffs' claims arising from the unlawfulness of the Lease/Purchase Agreements entered into between Defendant D&A and the various class members herein.

CLASS

18. Class Description. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action on behalf of themselves and all other similarly situated independent truck owner-operators. The class members include independent truck owner-operators who are or were engaged in leasing transactions with, or are or were otherwise associated with, Defendants Arctic and/or D&A, and who own and are entitled to a return of escrow and other funds held by Defendants Arctic and/or D&A. Each class member has, *inter alia*, entered into both a Lease Agreement with Defendant Arctic and a Lease/Purchase Agreement with Defendant D&A.

19. Impracticability of Joinder. On information and belief, there are several thousands of independent truck owner-operators who have entered into Lease Agreements and Lease/Purchase Agreements with Defendants Arctic and/or D&A during the past several (exceeding one) years. Each of these owner-operators is entitled to a refund of escrow and other funds held by Defendants Arctic and/or D&A, and each qualifies as a class member. Individual joinder of all potential class members is impracticable.

20. Commonality. Pursuant to identical, or substantially identical, Lease Agreements and Lease/Purchase Agreements, Defendants Arctic and D&A have acted and failed to act with regard to Plaintiffs' escrow and other funds in a way that affects all class members similarly and, accordingly, any questions of fact are common to the class as a whole. Defendants' actions and failures to act with regard to Plaintiffs' escrow and other funds also have caused substantially the same harm to each of the class members and, accordingly, any questions regarding Defendants' liability to individual Plaintiff class members are common to the class as a whole. Further, Defendants have acted and failed to act with regard to Plaintiffs' escrow and other funds in a manner generally applicable to the class, therefore making injunctive relief appropriate with respect to the class as a whole.

21. Typicality. Plaintiffs' claims are typical of the claims of the class members as a whole, and Plaintiffs are capable of fairly and adequately protecting the interests of the class.

22. Class Action Superior. Defendants' actions in failing to provide either an accounting or a return of the class members' escrow and other funds, and questions relating to Defendants' actions, predominate over any questions affecting only individual members of the class. Accordingly, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

23. Other Factors. In addition:

- a. the prosecution of separate actions by individual members of the class would substantially impair or impede the individual members' ability to protect their interests, in part because individual class members do not have the ability to promptly bring and prosecute these claims;
- b. there is no litigation already commenced by class members concerning this controversy that will protect the interests of the class members as a whole;
- c. the class action will be efficient because it will concentrate the litigation of numerous substantially identical claims in one forum; and
- d. a class action is fair and efficient because no substantial difficulties are likely to be encountered in the management of the class action.

FACTUAL ASSERTIONS COMMON TO ALL COUNTS

24. Owner-operators are small business men and women who own or control truck tractors, and sometimes truck trailers, used to transport property over the nation's highways. They comprise one of the primary sectors of the interstate motor carrier industry. It has been estimated that owner-operators account for approximately forty percent (40%) of all inter-city truck traffic in the United States. Nationwide, the number of owner-operators totals in the hundreds of thousands.

25. Owner-operators engage in the transportation of commodities exempt from DOT regulations, or, acting as independent contractors, they lease or otherwise provide their equipment and services to motor carriers who possess the requisite legal operating authority under DOT regulations to enter into contracts with shippers for the transport of property. The relationship between independent truck owner-operators and regulated carriers is set forth in an agreement between the parties which generally is regulated by the DOT under 49 U.S.C. § 14102 *et seq.* and 49 C.F.R. Part 376 *et seq.*

26. The class members herein are all independent truck owner-operators who, like each of the named individual Plaintiffs, have entered into two separate and distinct contracts with Defendants Arctic and D&A, a wholly-owned affiliate or alter ego or agent of Defendant Arctic.

27. The first contract, entitled the "Independent Contractor Motor Vehicle Lease Agreement" and referred to herein as either the "Lease Agreement" or the "Part 376 Lease Agreement" (*see infra*), is a standard agreement pursuant to which each class member has leased a truck tractor unit and the services of a qualified driver to Defendant Arctic for use by Defendant Arctic as a carrier in the transport of property. The Lease Agreement is regulated by 49 C.F.R. § 376 *et seq.* A model of the Part 376 Lease Agreement entered into by and between Defendant Arctic and each of the named Plaintiff owner-operators, which is typical of each class member's Lease Agreement with Defendant Arctic, is attached hereto as Exhibit "A."

28. The second contract, entitled the "Lease/Purchase Option at Termination" agreement and referred to herein as the "Lease/Purchase Agreement," is a commercial lease-purchase agreement pursuant to which each class member has leased from D&A, with the option to purchase, one or more truck tractor units of the type employed by motor carriers to transport property over the nation's highways. A model of the Lease/Purchase Agreement entered into by and between Defendant D&A and each of the named Plaintiff owner-operators, which is typical of each class member's Lease/Purchase Agreement with Defendant D&A, is attached hereto as Exhibit "B."

29. The Lease Agreement is directly regulated under 49 C.F.R. § 376 *et seq.* The Lease/Purchase Agreement, however, is **not** regulated under 49 C.F.R. § 376 *et seq.*

30. Pursuant to the Part 376 Lease Agreement, owner-operators, on behalf of and at the direction of Defendant Arctic, transport and deliver property from pick-up points to points of delivery.

Owner-operators generally are compensated for their services on a per-load basis and are entitled to a percentage share of the revenues paid to Defendant Arctic by shippers. The owner-operator receives his or her sole payment in the form of "settlement checks" issued to the owner-operator by Defendant Arctic, usually on a weekly basis.

31. The Part 376 Lease Agreement constitutes a "lease" within the meaning of 49 C.F.R. § 376.2(e) because it is a "[a] contract or arrangement in which the owner [each class member] grants the use of equipment, with or without driver, for a specified period to an authorized carrier [Defendant Arctic] for use in the regulated transportation of property, in exchange for compensation."

32. Pursuant to the Lease/Purchase Agreement, Defendant D&A leases to an individual truck owner-operator a truck tractor for use by the owner-operator in providing services as an independent contractor to a DOT-regulated motor carrier (*i.e.*, Arctic) under a separate agreement governed by 49 C.F.R. Part 376 *et seq.* (*i.e.*, the Part 376 Lease Agreement).

33. The Lease/Purchase Agreement does **not** constitute a "lease" within the meaning of 49 C.F.R. § 376.2(e) because it is **not** a "[a] contract or arrangement in which the owner [the class member as lessor] grants the use of equipment . . . to an authorized carrier [Defendant Arctic as lessee]." Rather, the Lease/Purchase Agreement is an "equipment purchase or rental contract" under 49 C.F.R. § 376.12(i), pursuant to which Defendant D&A grants the use of equipment to owner-operators, who are not authorized carriers.

34. Each Lease/Purchase Agreement between Defendant D&A and an individual owner-operator specifies, in a schedule attached to the Agreement, the weekly truck rental and other payments to be made by the owner-operator to Defendant D&A for the ostensible purpose of covering maintenance of and repairs to leased vehicles. With respect to "maintenance funds," the Lease/Purchase Agreement provides as follows:

9. Maintenance

(a) [The owner-operator], at its own cost and expense, shall maintain, service, repair and overhaul the Equipment so as to keep the Equipment in good operating condition, ordinary wear and tear excepted. To facilitate compliance with the maintenance requirements set forth herein, [the owner-operator] agrees to the creation of a maintenance fund and to specifically authorize [D&A], or its designee, to administer such fund. The purpose of said maintenance fund is to ensure [the owner-operator]'s compliance with [applicable provisions] herein and to provide for future maintenance costs to be incurred with respect to the Equipment. The maintenance fund shall be created and financed by contributions of [the owner-operator], each week, in an amount the equivalent of **nine (9) cents** per mile for each mile recorded on the

odometer of the Equipment; provided, however, that in the event the total balance in the maintenance fund of [the owner-operator] at any time exceeds \$7,500, the contribution by [the owner-operator] shall be reduced to four and one-half (4½) cents per mile. Provided further, that in the event the total balance in the maintenance fund of [the owner-operator] at any time exceeds \$10,000 no contribution to the maintenance fund shall be required. If the balance in the maintenance fund at any time drops below the \$7,500 or \$10,000 thresholds established above, the maintenance contribution of [the owner-operator] shall be restored to nine (9) cents per mile or four and one-half (4½) cents per mile, respectively. Any change in the rate of contribution shall take effect within thirty (30) days.

(b) **Should the amount in the maintenance fund exceed corresponding expenses for maintaining the Equipment, such excess, if any, shall be paid [the owner-operator] only upon this Agreement running to term, as set forth [under the terms] herein; should this Agreement not run to term in accordance with [the terms] herein, such excess, if any, will be distributed to [the owner-operator] only if [the owner-operator] exercises its Option to Purchase as defined [herein].**

WARNING: THE MAINTENANCE FUND IS NON-REFUNDABLE. IF THIS LEASE IS TERMINATED, BY EITHER THE [THE OWNER-OPERATOR] OR [D&A], BEFORE THE END OF THE TERM DESCRIBED [HEREIN], [THE OWNER-OPERATOR], IS NOT ENTITLED TO ANY DISTRIBUTION FROM THE MAINTENANCE FUND EXCEPT UPON EXERCISE OF [THE OWNER-OPERATOR]'S OPTION TO PURCHASE.

Lease/Purchase Agreement, at pp. 6-7 (emphases in original).

In addition, the Lease/Purchase Agreement provides that:

[The owner-operator] hereby authorizes [D&A], or its designee, to make deductions from any monies due and owing [the owner-operator] from whatever sources for purposes of satisfying any and all obligations of [the owner-operator] arising under this Agreement. Said deductions shall be in accordance with the Schedule of Authorized Deductions attached [to the Agreement].

Lease/Purchase Agreement, at p. 4.

35. In turn, each Part 376 Lease Agreement between Defendant Arctic and an individual class member provides that:

[The owner-operator] hereby authorizes [Arctic] to deduct from [the owner-operator]'s settlements, escrow fund, or other compensation [the truck rental amount cited in the owner-operator's Lease/Purchase Agreement with D&A] per week, and to pay [D&A] a like amount for the sole purpose of satisfying [the owner-operator's] lease obligation to [D&A].

Part 376 Lease Agreement, at p. 7.

In addition, each Part 376 Lease Agreement between Defendant Arctic and an individual class member provides that:

[The owner-operator] hereby authorizes [Arctic] to deduct from [the owner-operator]'s settlements, escrow fund, or other compensation \$0.09 per mile, and to pay [D&A] a like amount for the sole purpose of satisfying any maintenance obligations imposed upon [the owner-operator] by [D&A].

Part 376 Lease Agreement, at p. 7.

36. Pursuant to the above provisions of the respective Part 376 Lease Agreements and the Lease/Purchase Agreements, Defendant Arctic, as Defendant D&A's "designee" and as lessee under Arctic's Part 376 Lease Agreement with the owner-operator, deducts the rental and "maintenance fund" payments cited in the referenced schedule in the D&A Lease/Purchase Agreement directly from each class member's compensation on a weekly basis. These deductions are reflected in weekly settlement statements provided to the class members by Defendant Arctic, and the deducted funds are maintained in Defendant Arctic's and/or Defendant D&A's possession and control.

37. The "maintenance funds" described in each Lease/Purchase Agreement between Defendant D&A and an individual owner-operator constitute regulated escrow funds within the meaning of 49 C.F.R. § 376.2(l) because they are monies "deposited . . . to guarantee performance, to repay advances, to recover repair expenses, to handle claims, to handle license and state permit costs, and for any other purposes mutually agreed upon."

38. Pursuant to their respective Lease/Purchase Agreements and Part 376 Lease Agreements with Defendants, each class member has deposited with Defendant Arctic and/or Defendant D&A between approximately \$1,000.00 and \$20,000.00 per vehicle leased to Defendant Arctic.

39. DOT regulations expressly provide for the disclosure in lease agreements of certain terms set forth in equipment purchase or rental contracts such as the ones entered into between D&A and the class member owner-operators. Specifically, 49 C.F.R. § 376.12 provides:

Products, equipment, or services from authorized carrier -- The lease shall specify 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 arrangement. **The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.**

49 C.F.R. § 376.12(i) (emphasis added).

40. Defendant Arctic's Lease Agreement does not specify the terms of the rental payment or escrow withholding provisions of the D&A Lease/Purchase Agreement. Nevertheless, Defendant Arctic, as Defendant D&A's "designee" and as lessee under Arctic's Part 376 Lease Agreement with the owner-operator, deducts the rental and "maintenance fund" payments cited in the referenced schedule in the D&A Lease/Purchase Agreement directly from each owner-operator's compensation on a weekly basis, and such funds are maintained in the possession and control of Defendant Arctic and/or Defendant D&A. Consequently, Defendants have violated and remain in violation of 49 C.F.R. § 376.12(i).

41. DOT regulations specifically provide for the manner in which regulated motor carriers, such as Defendant Arctic, are required to maintain escrow funds, including providing for an immediate accounting and the return of escrow funds to the lessor owner-operator following lease agreement termination. Specifically, 49 C.F.R. § 376.12 provides as follows:

(k) *Escrow funds* -- If escrow funds are required, the lease shall specify:

(1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party.

(2) The specific items to which the escrow fund can be applied.

(3) That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways:

(i) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or

(ii) By providing a separate account to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis.

(4) The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time.

(5) That while the escrow fund is under the control of the carrier, the carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury.

(6) The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor of all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination.

49 C.F.R. § 376.12(k).

42. Defendant Arctic and/or Defendant D&A, as Defendant Arctic's wholly-owned affiliate or alter ego or agent, have failed to provide the mandatory proper accounting to class members and have failed to return escrow funds (with quarterly interest) to class members no later than 45 days after the termination of the class members' respective leases. Consequently, Defendants have violated and remain in violation of 49 C.F.R. § 376.12(k).

43. Violations of DOT regulations are privately actionable. Specifically, 49 U.S.C. § 14704(a)(2) provides as follows:

Rights and remedies of persons injured by carriers or brokers

A carrier or broker providing transportation or service subject to jurisdiction under [applicable Federal motor carrier transportation law] is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

Further, 49 U.S.C. § 14704(c) provides as follows:

A person may . . . bring a civil action under [this section] to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under [applicable Federal motor carrier transportation law].

44. Parties asserting a private right of action under 49 U.S.C. § 14704 may seek and are entitled to reasonable attorneys' fees and costs incurred in the prosecution of such an action. Federal law expressly provides that:

The district court shall award a reasonable attorney's fee under [Section 14704]. The district court shall tax and collect that fee as part of the costs of the action.

49 U.S.C. § 14704(e).

45. Defendants are liable for violations of Federal commercial transportation laws and regulations as described herein, and Defendants' acts and omissions have caused Plaintiffs to bring this action.

46. All conditions precedent to the maintenance of this action have been performed, discharged, or otherwise satisfied.

COUNT I

(Violation of 49 C.F.R. § 376.12(i) *et seq.*,

Unauthorized Deduction of Purchase or Rental Payments)

47. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 46 above.

48. Defendant Arctic's actions in deducting regular purchase or rental payments due under the respective D&A Lease/Purchase Agreements from compensation due to owner-operators under their respective Part 376 Lease Agreements with Arctic are unlawful and constitute material violations of

49 C.F.R. § 376.12(i) *et seq.* because said Part 376 Lease Agreements do not specify or even make reference to the terms of the Lease/Purchase Agreements which ostensibly give Defendant Arctic the right to make deductions from owner-operators' compensation for purchase or rental payments.

49. As a direct and proximate result of Defendants' acts and omissions, individual Plaintiffs and all class members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

COUNT II

(Violation of 49 C.F.R. § 376.12(k) *et seq.*,

Unauthorized Deduction and Non-Return of Escrow Funds)

50. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 49 hereof.

51. Defendant Arctic's actions in making direct escrow fund ("maintenance fund") deductions from compensation due to owner-operators under the Part 376 Lease Agreements, and Defendant Arctic's and/or Defendant D&A's subsequent retention and failures to return such escrow funds pursuant to D&A's respective Lease/Purchase Agreement with owner-operators, are unlawful and constitute material violations of 49 C.F.R. § 376.12(k) *et seq.* because:

- a. Arctic's Part 376 Lease Agreements do not specify or even make reference to the terms of the Lease/Purchase Agreements which ostensibly give Defendant Arctic the right to make deductions from an owner-operator's compensation for escrow fund ("maintenance fund") payments. See 49 C.F.R. § 376.12(i), *supra*.

- b. There are no provisions in Arctic's Part 376 Lease Agreements which identify the specific items to which the escrow fund can be applied.

- c. There are no provisions in Arctic's Part 376 Lease Agreements which specify (i) that while the escrow fund is under Arctic's control, Arctic shall provide an accounting to the owner-operator of any transactions involving such fund, and (ii) the means by which Arctic shall perform such an accounting.

d. There are no provisions in Arctic's Part 376 Lease Agreements which specify the right of the owner-operator to demand to have an accounting for transactions involving the escrow fund at any time.

e. There are no provisions in Arctic's Part 376 Lease Agreements which specify that while the escrow fund is under Arctic's control, Arctic shall pay interest on the escrow fund on at least a quarterly basis under the calculation methods and at the rate prescribed under 49 C.F.R. § 376.12(k)(5).

f. There are no provisions in Arctic's Part 376 Lease Agreements which specify (i) the conditions the owner-operator must fulfill in order to have the escrow fund returned, (ii) that Arctic, at the time of the return of the escrow fund, may deduct monies for those obligations incurred by the owner-operator which have been previously specified in the lease, and shall provide a final accounting to the owner-operator of all such final deductions made to the escrow fund, and (iii) that in no event shall the escrow fund be returned to the owner-operator later than 45 days from the date of lease termination.

g. The escrow provisions contained in the respective Lease/Purchase Agreements between owner-operators and Defendant D&A authorize the unlawful retention of escrow amounts in excess of those needed to offset obligations incurred by Defendant Arctic or by Defendant D&A on behalf of the respective owner-operators.

h. The escrow provisions contained in the respective Lease/Purchase Agreements between owner-operators and Defendant D&A unlawfully provide for the return of the owner-operator's escrow funds only upon completion of the lease term or upon exercise by the owner-operator of his or her option to purchase the equipment; unlawfully mandate the owner-operator's complete forfeiture of his or her escrow funds upon termination of the Arctic Part 376 Lease Agreement by either the owner-operator or Arctic; and unlawfully permit Arctic and/or D&A to retain the owner-operator's escrow funds upon termination of the Arctic Part 376 Lease Agreement by either the owner-operator or Arctic.

i. Defendants Arctic and D&A have failed, and continue to fail, to return to the owner-operators the escrow funds (with quarterly interest as calculated under applicable law) to which the

owner-operators rightfully are entitled following their respective terminations of their agreements with Arctic and/or D&A.

52. As a direct and proximate result of Defendants' acts and omissions, individual Plaintiffs and all class members have suffered substantial damages and have been, and will continue to be, irreparably harmed.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs Owner-Operator Independent Drivers Association, Inc., and Carl Harp, Garvin Keith Roberts, and Michael Wiese, individually and on behalf of all others similarly situated, respectfully request this Court:

- a. to certify the class as described herein;
- b. to enter judgment (i) declaring the practices of Defendants Arctic and D&A as described herein to be unlawful and in violation of Federal motor carrier leasing regulations (49 C.F.R. § 376 *et seq.*) and (ii) permanently enjoining the continuation of said practices; and
- c. to award reasonable attorneys' fees to Plaintiffs pursuant to 49 U.S.C. § 14704(e).

AND WHEREFORE, Plaintiffs Carl Harp, Garvin Keith Roberts, and Michael Wiese, individually and on behalf of all others similarly situated, request this Court to enter judgment:

- a. requiring Defendants immediately to provide an accounting of all transactions and other activity relating to the class members' escrow and other funds;
- b. requiring Defendants immediately to return to the class members the escrow and other funds (with quarterly interest as calculated under applicable law) rightfully belonging to the class members;
- c. enjoining Defendants from transferring, diverting, or otherwise concealing the class members' escrow and other funds and from destroying records which demonstrate Defendants' liability or relate in any way to the class members' escrow and other funds;

d. awarding reasonable attorneys' fees to the class members pursuant to 49 U.S.C. § 14704(e); and

e. awarding such other and further relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

Pursuant to Rules 38 and 39 of the Federal Rules of Civil Procedure, and to Rule 38.1 of the Rules of the United States District Court for the Southern District of Ohio, Plaintiffs Owner-Operator Independent Drivers Association, Inc., Carl Harp, Garvin Keith Roberts, and Michael Wiese, individually and on behalf of all others similarly situated, demand a trial by jury of all issues triable of right by a jury.

OWNER-OPERATOR INDEPENDENT DRIVERS

ASSOCIATION, INC., CARL HARP, GARVIN

KEITH ROBERTS, AND MICHAEL WIESE,

On Behalf of Themselves and All

Others Similarly Situated

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