

2. Coercing truck drivers to employ other persons to provide unloading services, aka “lumping” services, and
 3. Coercing truck drivers to use and pay laborers to handle their freight or cargo, aka “lumpers.”
2. Plaintiff Drivers and others similarly situated are entitled to relief under 49 U.S.C. § 14704(a)(1) enjoining and restraining Defendants’ violations of both 49 U.S.C. § 14103(a) and (b).
 3. This civil action seeks to have this Court:
 1. Declare that the conditions imposed by Supervalu for truck driver access to its unloading docks, including requiring certain minimum insurance coverage limits and choosing to receive cargo on pallets too heavy and bulky for unloading without mechanical equipment, are effectively requirements upon truck drivers that they accept assistance from others to unload their trucks, the cost of which must be borne by Supervalu under the mandate of 49 U.S.C. § 14103(a);
 2. Declare that the requirements imposed by Supervalu upon truck drivers that they have certain minimum insurance coverage limits before they are allowed to unload their own trucks were and are “coercive” under 49 U.S.C. § 14103(b);
 3. Declare that the requirements imposed by Supervalu upon shippers that cargo be shipped on pallets requiring mechanical assistance to unload, thereby implicitly imposing upon truck drivers the requirement that they utilize mechanical assistance to unload their own trucks, were and are “coercive” under 49 U.S.C. § 14103(b);

4. Enjoin Supervalu from continuing to operate in violation of either 49 U.S.C. § 14103(a) or (b), and specifically from shifting the cost of lumping services to drivers;
5. Order that Supervalu provide an accounting of both all payments for lumping services by drivers, and all funds received by it from the payments made by drivers for lumping services;
6. Order Supervalu to disgorge the total amount drivers have been required to pay for unloading and lumping services, i.e. the amount by which Supervalu has unjustly enriched itself by illegally shifting unloading costs or imposing lumping costs, while operating in violation of either 49 U.S.C. § 14103(a) or (b); and
7. Award Plaintiffs attorney fees and costs.

RELEVANT STATUTE

4. 49 U.S.C.A. §§ 14103(a) and (b) provides in pertinent part as follows:
(a) Shipper responsible for assisting.--Whenever a... receiver of property requires that any person who owns or operates a motor vehicle transporting property in interstate commerce... be assisted in the... unloading of such vehicle, the... receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the... persons providing such assistance.(b) Coercion prohibited.--It shall be unlawful to coerce or attempt to coerce any person providing transportation of property by motor vehicle for compensation in interstate commerce... to... unload any... such property... from such vehicle or to employ or pay... persons to... unload any part of such property... from such vehicle....

JURISDICTION AND VENUE

5. This action arises under 49 U.S.C. §§ 14103 and 14704(a)(1). Jurisdiction over these claims is granted to this Court by 28 U.S.C. §§ 1331 (federal question jurisdiction), 1337 (proceedings arising under an act of Congress regulating commerce), and 1367

(supplemental jurisdiction). The cause of action in this complaint arises under the laws of the United States regulating interstate commerce and the activities of motor vehicle operators engaged in the transportation of property in interstate commerce, including 49 U.S.C. §§ 14103 and 14704(a)(1).

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that Supervalu resides in this judicial district.

PARTIES TO THE ACTION

7. Plaintiff Owner-Operator Independent Drivers Association, Inc. (“OOIDA”) is a non-profit trade association with a membership comprised of “owner-operators,” professional truckers and small fleet owners who own and operate heavy duty trucks. OOIDA is incorporated in Missouri, and maintains its principle place of business in Grain Valley, Missouri. OOIDA was founded in 1973 and now has over 130,000 members residing in all fifty states and in Canada. OOIDA brings this action in a representative capacity and seeks equitable relief on behalf of the proposed class of truck drivers, including those who are its members.
8. Plaintiff Joseph Rajkovacz is a citizen of the State of Wisconsin. Rajkovacz is an independent truck owner-operator who provides interstate transportation of property for compensation on a per-load basis. He is a member of OOIDA. He “owns or operates a motor vehicle transporting property in interstate commerce” (as referenced in 49 U.S.C. § 14103(a)), and is “a person providing transportation of property by motor vehicle for compensation in interstate commerce” (as referenced in 49 U.S.C. § 14103(b)). Rajkovacz has delivered goods to Supervalu and has been deprived of his rights under

federal law as a result of its unlawful practices. Rajkovacz has been injured by the requirement that he accept and pay for lumping services.

9. Plaintiff Carl Schaefer is a citizen of the State of Ohio. Schaefer is an independent truck owner-operator who provides interstate transportation of property for compensation on a per-load basis. He is a member of OOIDA. He “owns or operates a motor vehicle transporting property in interstate commerce” (as referenced in 49 U.S.C. § 14103(a)), and “a person providing transportation of property by motor vehicle for compensation in interstate commerce” (as referenced in 49 U.S.C. § 14103(b)). Schaefer has delivered goods to Supervalu and has been deprived of his rights under federal law as a result of its unlawful practices. Schaefer has been injured by the requirement that he accept and pay for lumping services.
10. Each proposed class member is a “person who owns or operates a motor vehicle transporting property in interstate commerce” (as referenced in 49 U.S.C. § 14103(a)), or a “person providing transportation of property by motor vehicle for compensation in interstate commerce” (as referenced in 49 U.S.C. § 14103(b)), who has delivered goods to Supervalu, and who has been required by Supervalu to accept assistance in unloading his or her truck, and or to employ and to pay lumpers for lumping services. Each class member has been deprived of his or her rights as a result of Supervalu’s unlawful practices. Each class member has been injured as a result of Supervalu’s requiring them to accept assistance, and to employ and to pay lumpers.
11. Defendant Supervalu, Inc. is headquartered at 11840 Valley View Road, Eden Prairie, Minnesota 55344. Supervalu has received goods transported in interstate commerce

delivered by Plaintiffs and class members. Supervalu is a “receiver of property” within the meaning of 49 U.S.C. § 14103(a).

CLASS ACTION ALLEGATIONS

12. **Class Description.** Pursuant to F.R.Civ.P. Rule 23, Plaintiff Drivers and OOIDA bring this action on behalf of themselves and all others similarly situated - those persons who own or operate a motor vehicle transporting property in interstate commerce (as referenced in 49 U.S.C. § 14103(a)), and those persons providing transportation of property by motor vehicle for compensation in interstate commerce (as referenced in 49 U.S.C. § 14103(b)), who have delivered goods to Supervalu, and who have been required by Supervalu to accept assistance in unloading his truck, and or to employ and or to pay lumpers for lumping services;
13. **Impracticality of Joinder.** On information and belief, thousands of persons, all of whom are class members, have delivered property in interstate commerce to Supervalu. Joinder of all potential class members is impracticable.
14. **Commonality.** Supervalu has acted in a manner that affects all class members similarly and, accordingly, questions of fact are common to the class as a whole as contemplated by F.R.Civ.P. Rule 23(a)(2). Supervalu’s actions have caused the same harm to class members and, accordingly, any questions of law respecting Supervalu’s liability to individual class members are common to the class as a whole.
15. **Typicality.** Plaintiff Drivers’ claims are typical of the claims of the class members, and Plaintiffs are capable of fairly and adequately protecting the interests of the class as contemplated by F.R.Civ.P. Rule 23(a)(3).

16. Class Representatives. OOIDA is a non-profit trade association of over 130,000 members that is nationally recognized in its efforts to stop abusive practices directed at truck drivers. OOIDA shares common interests with the class members and there is substantial overlap between OOIDA's membership and the proposed class members. Plaintiffs are represented by The Cullen Law Firm, PLLC, general counsel to OOIDA, which has the experience of representing their clients in numerous class actions involving the trucking industry. OOIDA has been recognized as an adequate class representative, on behalf of its members, in numerous class actions. Plaintiffs are also represented by local counsel Andrew Morrison, Esq., who has experience of representing plaintiffs in class actions in the federal district courts in Minnesota. In sum, Plaintiff Drivers, with factual and legal issues typical of owners or operators, who have delivered goods in interstate commerce to Supervalu, and OOIDA, for its experience in representing the interests of owner-operators in class actions, will fairly and adequately protect the interests of the class as contemplated by F.R.Civ.P. Rule 23(a)(4).
17. Class Action Superior. Questions regarding Supervalu's denial of the class members' rights under federal motor carrier law, and other questions relating to Supervalu's actions, predominate over any questions affecting individual members of the class. Accordingly, a class action is superior to other available methods for the fair and efficient adjudication of this controversy as contemplated by F.R.Civ.P. Rule 23(b)(3).
18. Other factors. In addition:
 1. 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 the amount of the claims of individual class members is too small to warrant the filing of separate legal proceedings and because the individual class members do not have the ability to promptly bring and prosecute these claims;

2. there is no litigation already commenced by class members concerning this controversy that will protect the interests of the class members as a whole;
3. the class action will be efficient because it will concentrate the litigation of the claims in one forum; and
4. a class action is fair and efficient because no substantial difficulties are likely to be encountered in the management of the class action.

FACTUAL ALLEGATIONS

19. Supervalu frequently requires that cargo be delivered upon pallets which are heavy enough that they require mechanical assistance for unloading from the truck to the dock. Because drivers typically do not bring with them the mechanical means of moving the cargo, the requirement that cargo be delivered on pallets necessarily implies that the drivers either be allowed to use the mechanical assistance available at the Supervalu sites, or accept assistance. Supervalu refuses to allow drivers to operate mechanical cargo moving devices on its unloading sites. It therefore requires drivers to accept assistance in unloading their trucks.
20. Starting on or about March 28, 2005, Supervalu unreasonably, without justification and without prior notice, started requiring drivers wishing to unload their own trucks to show proof of the following:

1. general liability insurance with a \$3 million annual aggregate limit and \$1 million per occurrence limit;
 2. “statutory” workers compensation insurance and \$1 million employers liability insurance;
 3. automobile liability insurance with a \$1 million combined single limit; and
 4. a fidelity bond or crime insurance for \$50,000 per loss.
21. The insurance coverages required by Supervalu are in excess of those required by 49 U.S.C. § 31139, and 49 C.F.R. 387.
22. On or about March 28, 2005, Plaintiff Rajkovacz, as he had before, undertook to deliver a “less than truckload” shipment of cottage cheese to Supervalu’s Quincy Distribution Center in Quincy, Florida. The delivery amounted to three pallets. He was prohibited by Supervalu from unloading his truck himself because he did not have proof of the insurance coverage recently required by Supervalu. He was thus required by Supervalu to accept the assistance of others to unload his truck. Supervalu did not offer to pay for such services. To the contrary, he was required by Supervalu either to pay \$70 in cash to a lumping service company identified as Progressive Logistics to unload his truck, or have the load rejected. Rejection of the load would have resulted in a considerable loss to himself. Not being able to unload his own truck, he was detained for several hours while waiting for Progressive Logistics to unload his truck. Being detained, he lost the opportunity to earn money by driving his truck. Supervalu has not reimbursed Rajkovacz for either the imposed lumping fees, or his detention time.
23. On deliveries prior to March 28, 2005, Plaintiff Rajkovacz had unloaded his own truck at

the Quincy Distribution Center, thereby minimizing his detention time, and allowing him to minimize the risk of theft of the cargo and/or damage to his trailer.

24. In April 2005, Plaintiff Schaefer delivered a full load of pet food products to Supervalu's Ohio Valley Distribution Center in Xenia, Ohio. He arrived at approximately 2:00 a.m. and was prohibited by Supervalu from unloading his truck because he did not have proof of the recently required insurance coverage. He was thus required by Supervalu to accept the assistance of others to unload his truck. Supervalu did not offer to pay for such lumping services. To the contrary Supervalu referred him to the Xenia Lumper Service which was then the exclusive provider of lumping services at the Ohio Valley Distribution Center. He was given, and had, no other option. Xenia Lumper Service demanded that he pay \$75.00 in cash for lumping services. The lumping service company refused to unload the cargo until after he paid the \$75.00. Schaefer had to go to an ATM machine to get the required cash and return to the Ohio Valley Distribution Center at 10:00 a.m. for unloading. His alternative was to have the load rejected at considerable loss to himself. Supervalu has not reimbursed Carl Schaefer for the lumping fees, ATM transaction fees, nor for his time lost while obtaining cash.
25. Schaefer contacted his insurance agent who informed him that the insurance coverage required by Supervalu was not readily available.
26. Prior to March 2005, Schaefer had unloaded his own truck at the Ohio Valley Distribution Center, which minimized detention time, and minimized the risk of theft of the cargo and/or damage to his trailer.
27. Many deliveries to Supervalu by truck are known in the trucking industry as "less than

truckload,” aka “LTL,” deliveries, meaning that Supervalu takes delivery of goods in quantities that do not require the full capacity of a standard trailer. In the interest of efficiency, drivers in the less than truckload market typically start their runs with full trailers, and anticipate making multiple deliveries. Again, in the interest of efficiency, trailers used to make LTL deliveries are loaded in reverse order of the deliveries, i.e. the first set of goods loaded on the trailer is the last to be delivered. By virtue of these loading practices, if a receiver of goods (such as Supervalu) prevents a delivery (of any but the last set of goods), it prevents or impedes all subsequent deliveries. The undelivered goods physically block access to goods intended by the driver to be delivered later, and perhaps at a site located a substantial distance away. As a result, drivers in the LTL market are vulnerable to being coerced through the imposition of unreasonable and unusual delivery restrictions, especially those imposed without notice.

28. Drivers making “truckload” deliveries are also vulnerable to coercion due simply to the fact that idle time waiting for lumpers is lost driving time. Because truck drivers are generally paid by the mile, or by a percentage of the revenue from charges for shipping, they earn income driving, not waiting.
29. Some of the freight delivered to Supervalu is time sensitive, e.g. produce which is subject to spoilage. A driver hauling time sensitive cargo commits to deliveries within closely prescribed windows of time, and commits to deliver the cargo in a condition within closely prescribed parameters. By its nature the value of such cargo diminishes with the passage of time. Thus, any impediment to delivery of the cargo at the point of delivery places the value of the cargo in jeopardy, and places the owner-operator in jeopardy of a

claim for cargo loss. As a result of these circumstances, owner-operators delivering time sensitive cargo are vulnerable to being coerced through the imposition of unreasonable and unusual delivery restrictions, especially those imposed without notice.

30. Owner-operators of tractors who have leased their tractors to an authorized carrier are typically paid for their services from the revenues received by the carriers from those paying to ship goods. Upon the goods being delivered, either the seller or buyer (depending upon the terms of the sales contract about which the driver is typically ignorant) pays the carrier. The carrier then pays the owner-operator pursuant to the terms of the lease between it and the owner-operator. If a load is not delivered, the carrier is not paid, and the driver who failed to make the delivery is not paid. Thus an owner-operator who has incurred time, effort and cost to convey freight to its point of delivery is economically vulnerable to anything (or to the threat of anything) which impedes his ability to consummate the delivery. Without the delivery his costs of conveying are unreimbursed, and his time and effort are uncompensated. A driver faces significant economic consequences, as well as consequences to his continued employment, if he fails to make a delivery. As a result of these circumstances, owner-operators are vulnerable to being coerced to accept the services of lumpers, through the imposition of unreasonable and unusual delivery restrictions, especially those imposed without notice.
31. The circumstances of an owner-operator in the less than truckload market delivering time sensitive cargo, as set forth in more detail above, render him or her an easy victim of extortionate business practices at the point of delivery.
32. The effect of Supervalu's policy regarding driver insurance coverage is to require drivers

to accept the assistance of others to unload their own trucks, to pay for such assistance, and to unreasonably foreclose to drivers a means of avoiding having to pay the lumping service companies forced upon them by Supervalu, i.e. the option of unloading their own trucks.

COUNT I

VIOLATION OF FEDERAL MOTOR CARRIER LAW, 49 U.S.C. § 14103

33. Plaintiffs re-allege and incorporate herein the allegations set forth in paragraphs 1 to 32 above.
34. Supervalu's practice of requiring drivers, such as Plaintiffs Schaefer and Rajkovacz, a) to accept the assistance of lumping service companies for the unloading of their trucks at Supervalu's place of business, and b) to pay for such services, shifts unloading costs from itself to drivers in violation of 49 U.S.C. § 14103(a).
35. Supervalu's practice of requiring drivers, such as Plaintiffs Schaefer and Rajkovacz, to employ lumping service companies for the unloading of their trucks at Supervalu's place of business coerces drivers to employ lumpers, and constitutes a material violation of 49 U.S.C. § 14103(b).
36. Supervalu's practice of requiring drivers, such as Plaintiffs Schaefer and Rajkovacz, to employ lumping service companies for the unloading of their trucks at Supervalu's place of business coerces drivers to pay for the fees of lumpers, and constitutes a material violation of 49 U.S.C. § 14103(b).
37. As a direct and proximate result of Supervalu actions and omissions, truck drivers, such as Plaintiffs, have been deprived of their rights under both 49 U.S.C. § §14103(a) and (b)

to be free of cost shifting and coercion, and are entitled to declaratory and injunctive relief under 49 U.S.C. § 14704(a)(1).

38. An injunction is particularly appropriate in this case because Supervalu has already been informed by the 8th Circuit Court of Appeals, in the case of Double D Spotting Service v. Supervalu, 136 F.3d 554 (8th Cir. 1998), that a driver “must be allowed to unload his own truck free of coercion to pay someone else to do the job.” Ignoring this constraint, clearly articulated and addressed explicitly to it, Supervalu has adopted policies and practices not only requiring drivers to accept the assistance of others to unload their own trucks, and not only requiring the drivers to pay for such services, but also coercing payment by drivers to others “to do the job.” An injunction will provide what the previous adjudication of its duties under 49 U.S.C. § 14103(b) did not, court oversight over Supervalu’s treatment of drivers at unloading sites.

COUNT II

RESTITUTION OF UNJUST ENRICHMENT

39. Plaintiffs re-allege and incorporate herein the allegations set forth in the paragraphs above.
40. Supervalu has required drivers to accept the assistance of lumping service companies to unload their trucks.
41. Supervalu has also coerced Plaintiffs and all other drivers similarly situated to accept and pay for lumping services at Supervalu’s distribution centers.
42. Supervalu has had knowledge of the matters set forth above. It has knowingly and intentionally devised the constraints and relationships extant upon its unloading docks.

43. Broadly speaking, a company's profit is calculated by subtracting its expenses from its income. Any increase in income, or decrease in expenses, increases the profits of a company. Any illegal decrease in expenses, illegally increases the profits of the company.
44. Through its practices Supervalu has shifted to drivers unloading costs that, pursuant to 49 U.S.C. § 14103(a), must be born by it.
45. The amount of the unloading cost illegally shifted to the drivers is the amount charged to the drivers by the lumping service companies. This is an enrichment of Supervalu through illegal cost-shifting.
46. Supervalu has accepted and retained the benefits of its cost-shifting and revenue from lumping services practices.
47. Supervalu has retained the benefits of, and continues to benefit from, its illegal practices.
48. Supervalu has obtained and retained ill-gotten benefits through a conscious interference with class members' legally protected interests under 49 U.S.C. § 14103.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs, individually and for all others similarly situated, respectfully request that this Court:

1. Certify a class comprised of those persons who own or operate a motor vehicle transporting property in interstate commerce (as referenced in 49 U.S.C. § 14103(a)), and those persons providing transportation of property by motor vehicle for compensation in interstate commerce (as referenced in 49 U.S.C. § 14103(b)), who have delivered goods to Supervalu, and who have been required

- by Supervalu to accept assistance in unloading his truck, and or to employ and or to pay lumpers for lumping services;
2. Enter a declaratory judgment to the effect that Supervalu's election to receive palletized freight is an election to require drivers to accept assistance in unloading their trucks thereby triggering its obligation to pay unloading costs in accord with 49 U.S.C. §14103(a);
 3. Enter a declaratory judgment to the effect that Supervalu's insurance coverage requirements is an election to require drivers to accept assistance in unloading their trucks thereby triggering its obligation to pay unloading costs in accord with 49 U.S.C. §14103(a);
 4. Enter a declaratory judgment to the effect that Supervalu's election to receive palletized freight amount to coercion of drivers to employ lumpers, and to pay for lumpers, in violation of 49 U.S.C. §14103(b);
 5. Enter a declaratory judgment to the effect that Supervalu's insurance coverage requirements amount to coercion of drivers to employ lumpers, and to pay for lumpers, in violation of 49 U.S.C. §14103(b);
 6. Enter a declaratory judgment to the effect that Supervalu's coercion of drivers to employ a lumping service company is in violation of 49 U.S.C. § 14103(b);
 7. Enter declaratory judgment that Supervalu coercion of drivers to pay a lumping service company is in violation of 49 U.S.C. § 14103(b);
 8. Enter an Order requiring Supervalu to provide Class Members an accounting of all transactions involving lumping fees paid by delivering drivers to lumping

service companies;

9. Enter an Order requiring Supervalu to provide Class Members an accounting of all moneys received by Supervalu from either lumping fees paid by delivering drivers or from the lumping service companies with which it has contracted;
10. Enter an order requiring Supervalu to disgorge to the class members the amount of the monies paid by drivers to the lumping service companies with which it has contracted, i.e. to disgorge the unjust enrichment premised upon illegal cost shifting;
11. Enjoin Supervalu from future violations of 49 U.S.C. § 14103(a);
12. Enjoin Supervalu from any acts of retaliation, harassment, or intimidation against class members and others who may assist and/or participate in this actions;
13. Establish a common fund for the benefit of the Class that includes all sums by which Supervalu has been unjustly enriched at the expense of Class Members from unlawful charges for lumping services;
14. Enter judgment against Supervalu in favor of the Class for the costs of this action and other costs reasonably related to collections for Supervalu's unlawful conduct, as well as pre- and post-judgment interest, as allowed by law;
15. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid out of the common fund;
16. Award class counsel reasonable attorneys' fees and expenses pursuant to 49 U.S.C. § 14704(e); and
17. Award such other relief as this Court may deem to 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,
OWNER-OPERATOR INDEPENDENT DRIVERS
ASSOCIATION, INC., et al.

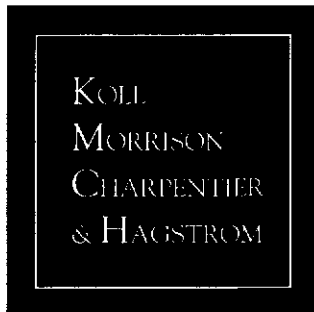
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05CV2809 PAM/JG

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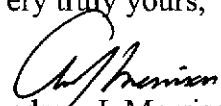
Re: Owner-Operator Independent Drivers Association, Inc., et al. v. Supervalu, Inc.

Dear Sir or Madam:

Enclosed for filing please find Civil Cover Sheet, Class Action Complaint for Declaratory and Injunctive Relief, and Restitution, Demand for Jury Trial, Summons in a Civil Case, and Motion for Admission Pro Hac Vice.

Thank you for your attention to this matter.

Very truly yours,


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Enclosures

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