IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., and WILLIAM MECK and KENNETH HINZMAN, individually, and on behalf of all others similarly situated.,	No. 3-01-CV-80179
Plaintiffs,	
vs.	**ORDER GRANTING CLASS CERTIFICATION**
HEARTLAND EXPRESS, INC. OF IOWA,	
Defendant.	

On December 18, 2002, the court held hearing on plaintiffs' resisted motion to certify the class. The court commends counsel for presenting thorough factual and legal materials and forceful arguments on each issue. The court concluded that it should defer ruling on the motion until the parties had presented final papers for and against the motion. Those papers have now been filed, and the matter is deemed submitted for ruling.

I. Background

Plaintiffs are Owner-Operator Independent Drivers Association, Inc. (OOIDA), William Meck (Meck) and Kenneth Hinzman (Hinzman). They bring this action on behalf of themselves and all others similarly situated. OOIDA brings this action in its representative capacity of its owner-operator members. It is a not-for-profit agency incorporated and located in Missouri, and has approximately 86,000 members nationwide. Meck and Hinzman are citizens of Florida.

Defendant is Heartland Express, Inc. of Iowa (Heartland). Heartland transports property in equipment leased from independent truckers (owner-operators), including formerly Meck and Hinzman. Authorized motor carriers like Heartland are required by federal law and regulations to have a written lease meeting the statutory requirements if they transport in equipment they do not own. These regulations are sometimes referred to as truth in leasing regulations.

Plaintiffs contend that Defendant's leases fail to contain required provisions under 49 C.F.R. § 376.12. Specifically, plaintiffs allege that defendant has charged back insurance coverage to owner-operators; leases are required to specify that such purchase of insurance is not a requirement of entering into the lease. Plaintiffs further allege that the charge-back was higher than the insurance premium; that defendant charges more for fuel than it pays out to fuel suppliers; and that the leases do not contain provisions as to how fuel payment is calculated. Plaintiffs filed this lawsuit seeking a mixture of equitable and monetary relief under the regulatory enforcement provisions of 49 U.S.C. § 14704.

Plaintiffs seek to represent a class consisting of all owner-operators in the United States who, after October 1997, have leases or have entered into leases with Heartland. Defendant contends certification is not appropriate for reasons discussed below.

Plaintiffs' motion seeks certification of a class in accordance with Federal Rules of Civil Procedure 23(a) and either 23(b)(2) or 23(b)(3) (this order will refer to individual rules of the Federal Rules of Civil Procedure as "Rule"). The burden is on plaintiffs to demonstrate that the requirements for certification under these Rules have been met. Smith v. Merchants & Famous Bank of West Helena, 574 F.2d 982 (8th Cir. 1978); Walker v. World Tire Corp., 563 F.2d 918, 921 (8th Cir. 1977).

Before certifying a class, the court must engage in "rigorous analysis" of plaintiffs' ability to meet the requirements of Rule 23. Gen. Tel. Co. v. Falcon, 457 U.S. 147, 161 (1982). However, courts have no authority "to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action," Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177-178, 94 S.Ct. 2140, 2152-2153 (1974), unless it is necessary to make a meaningful determination of class certification issues. Coopers & Lybrand v. Livesay, 437 U.S. 463, 469, 98 S.Ct. 2454, 2458 (1978).

Plaintiffs and defendant have presented considerable evidentiary support for and against the motion; the court concludes that on balance the interests of justice are better served by granting class certification.

II. Analysis

A. Federal Rule of Civil Procedure 23(a).

Plaintiffs must demonstrate that the persons they wish to represent as a class are "similarly situated," the proposed class is sufficiently numerous, the case presents common questions of fact and law, the claims of class representatives are typical of the class, and plaintiffs are adequate representatives. Fed. R. Civ. P. 23(a). The court finds that plaintiffs have carried their burden as to each element of Rule 23(a).

There is no dispute that there is numerosity. Both parties agree there are perhaps up to 600 plaintiffs in this suit. The court finds that numerosity is satisfied.

In order to meet the commonality test, there must be common questions of law or fact among the members of the class. Paxton v. Union Natl. Bank, 688 F.2d 552, 561(8th Cir. 1982). Commonality is not required on every question raised in a class action, but is satisfied when the legal

question linking the class members is substantially related to the resolution of the litigation. Id.; DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1174 (1995). In their Amended Complaint, plaintiffs allege defendant has violated one federal regulation. Defendant testified in the evidentiary hearing on class certification that there was no negotiation during the relevant period, such that all leases were of the same form. The court finds that there is a common legal question, which is the application of the truth in leasing regulation to defendant's leases.

The typicality rule requires that the claims of the named plaintiffs be typical of the class. Paxton, 688 F.2d at 561. The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiffs. Id. at 562; DeBoer, 64 F.3d at 1174. The court finds that a sufficient relationship exists between the alleged injury to the named plaintiffs and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct. See In re American Medical Systems, Inc. 75 F.3d 1069 (6th Cir. 1996).

Adequacy of representation means that the representatives will fairly and adequately protect the interest of the class. Beckmann v. CBS, Inc., 192 F.R.D. 608, 614 (D. Minn. 2000). Defendants argue that Meck and Hinzman cannot adequately represent the class because their individual claims differ from those of the proposed class members, and that Meck and Hinzman have an "ax to grind with Heartland." The court finds this argument unpersuasive. While they may or may not have other claims not now pleaded in the Amended Complaint, Meck and Hinzman are seeking the same declaratory and monetary relief as the potential plaintiffs would seek; these claims do not create a conflict for the class representatives. The court concludes that the named plaintiffs will adequately represent their class. The court further determines from this record that counsel for

plaintiffs will provide adequate representation of the class.

B. Rule 23(b).

Plaintiffs argue that certification of the class is proper under Fed.R.Civ.P. 23(b)(2) or 23(b)(3). Thus, after meeting the requirements of Rule 23(a), plaintiffs must also show either that they are entitled to equitable relief and that monetary damages do not predominate, Fed. R. Civ. P. 23(b)(2), or that common questions predominate over individual questions, and a class action is the superior method for adjudicating the controversy. Fed. R. Civ. P. 23(b)(3).

1. Rule 23(b)(2).

Defendants argue that certification under 23(b)(2) is not appropriate because this lawsuit is really about monetary damages and not injunctive relief. Rule 23(b)(2) class actions relate to injunctive or declaratory relief to the class as a whole, requiring a unity of purpose that is generally not available if predominant relief is monetary damages. Rice v. City of Philadelphia, 66 F.R.D. 17 (E.D. Pa. 1974); Robidoux v. Celani, 987 F.2d 931 (2d Cir. 1993). Monetary relief predominates unless it is incidental to requested injunctive or declaratory relief. Allison v. Citgo Petroleum Corp., 151 F.3d 402, 415 (5th Cir. 1998). Incidental means that damages flow directly from a defendant's liability to the class as a *whole* on the claims forming the basis of the injunctive relief. Id. When monetary relief being sought is less of a group remedy, like incidental or statutory damages, and instead depends more on the varying circumstances and merits of each potential class member's case, then the monetary relief "predominates" and certification under Rule 23(b)(2) is inappropriate. Id. However, "if the Rule 23(a) prerequisites have been met and injunctive or declaratory relief has been requested, the action usually should be allowed to proceed under subdivision (b)(2)." DeBoer 64 F.3d at 1175.

In their Amended Complaint, plaintiffs seek fourteen different items of relief, with approximately the first nine ranging from declaratory relief of legal violations, injunctions, and an accounting. Plaintiffs also seek restitution or disgorgement of sums allegedly unlawfully withheld, the creation of an escrow account, and the award of attorneys' fees. These equitable requests do not appear pretextual to monetary relief.

Defendant suggests that 23(b)(2) would be inappropriate because Meck and Hinzman no longer work for defendant, therefore they would not benefit from equitable relief. The court disagrees. Where class claims are inherently transitory such as here, "the termination of a class representative's claim does not moot the claims of the unnamed members of the class." Gerstein v. Pugh, 420 U.S. 103, 110 n. 11, 95 S.Ct. 854, 861 n. 11, 43 L.Ed.2d 54 (1975); Sosna v. Iowa, 419 U.S. 393, 401-02, 95 S.Ct. 553, 558, 42 L.Ed.2d 532 (1975). Even where the class is not certified until after the claims of the individual class representatives have become moot, certification may be deemed to relate back to the filing of the complaint in order to avoid mooting the entire controversy. See, e.g., County of Riverside v. McLaughlin, 500 U.S. 44, 50, 111 S.Ct. 1661, 1667 (1991); Sosna v. Iowa, 419 U.S. at 402 n. 11, 95 S.Ct. at 559 n. 11. Robidoux 987 F.2d at 938-939.

A hybrid Rule 23(b) class has been found to be an appropriate vehicle for class actions such as these facts present. See, e.g., Beckman, 192 F.R.D. at 615. In a hybrid case, liability can be determined under Rule 23(b)(2) procedures, and damages under Rule 23(b)(3). Id. The court finds that for purposes of determining liability, class certification would be appropriate under Rule 23(b)(2).

2. Rule 23(b)(3).

Certification under Rule 23(b)(3) requires greater precision in the definition of a class.

Rice v. City of Philadelphia, 66 F.R.D. 17 (E.D. Pa. 1974). This is so because Rule 23(b)(3) requires that questions of law and fact are common and predominant, and that a class action is a superior vehicle.

Defendants argue that individual questions of fact predominate and that plaintiffs do not meet the more stringent test of "commonality" required under Rule 23(a). However, the court finds that common questions of law and fact predominate. Plaintiffs seek relief based on alleged violation of one particular federal law. If liability is found, it will apply to all class members. Further, as defendant's CFO, John Cosaert, testified at the evidentiary hearing of December 18, 2002, all owner-operators were asked to sign the same form lease. There was no negotiation of terms. Thus, the court is satisfied that common questions of fact and law do predominate.

The second prong of Rule 23(b)(3) is whether class action is a superior vehicle to other forms of remedy for the potential plaintiffs. The federal rules set out four factors for which to analyze this question:

(1) The interest of members of the class individually controlling the prosecution or defense of separate actions. Fed. R. Civ. P. 23(b)(3)(A). The monetary interests of any one plaintiff are too small for each potential plaintiff to go forward on their own. Although the regulations allow for the award of attorney fees, according to OOIDA testimony, most of the potential plaintiffs earn a net annual salary of around $35,000 and are on the road for most of the year. The court agrees that it is doubtful that the majority of these owner-operators would have the time or inclination to seek the relief to which they are allegedly entitled.

(2) The extent and nature of any litigation already commenced by or against members of the class. Fed. R. Civ. P. 23(b)(3)(B). There is no evidence of other lawsuits.

(3) The desirability/undesirability of concentrating litigation in a particular forum. Fed. R. Civ. P. 23(b)(3)(C). Multiple suits might very well create inconsistent judgments. Thus, concentrating the issues in this forum is desirable.

(4) The difficulties in management of the class. Fed. R. Civ. P. 23(b)(3)(D). Plaintiffs' counsel appear to be capable of managing the class.

Defendants contend there are two other methods by which plaintiffs can seek relief that are superior to this class action lawsuit: filing a complaint with the Surface Transportation Board and individual actions. The court does not agree. First, determination of superiority is made by evaluating the case using the four factors set out in the rules. Rule 23(b)(3)(A)-(D). Second, as detailed above, 600 individual lawsuits would not be superior to this single class action.

Thus, as to the question of damages, the court finds that Rule 23(b)(3) shall be the appropriate vehicle.

III. Summary

Plaintiffs' motion for class certification is granted. Federal Rule of Civil Procedure 23(c)(4)(A) and (B) allow the court to narrow the requested class as to certain issues and into subclasses, so as to avoid problems of an over-broad class definition. Rice, 66 F.R.D. 17. The court certifies three subclasses as appropriate for purposes of further proceedings in this case the persons that meet the following requirements:

> Subclass A: All owner-operators in the United States who, after October 1, 1997 and through the pendency of this proceeding, are or have entered into leases with Heartland, or its authorized agents or business affiliates, that are subject to federal regulations contained in Part 376, Code of Federal Regulations, limited to those owner-operators who were charged for bobtail or non-trucking liability insurance.

Subclass B: All owner-operators in the United States who, after October 1, 1997 and through the pendency of this proceeding, are or have entered into leases with Heartland, or its authorized agents or business affiliates, that are subject to federal regulations contained in Part 376, Code of Federal Regulations, limited to those owner-operators who were charged for the use of the Comdata card.

Subclass C: All owner-operators in the United States who, after October 1, 1997 and through the pendency of this proceeding, are or have entered into leases with Heartland, or its authorized agents or business affiliates, that are subject to federal regulations contained in Part 376, Code of Federal Regulations, limited to those owner-operators who purchased fuel at Heartland terminals.

The court designates OOIDA, Meck, and Hinzman as class representatives, and Paul D. Cullen, Sr., David A. Cohen, Paul D. Cullen, Jr., and Kevin M. Reynolds as class counsel.

Further, in order to avoid the problems raised by defendants that determination of damages will result in a series of mini-trials, the court proposes to bifurcate this proceeding into two parts: the first phase will decide the liability issues; the second, damages issues.

Defendant's motion for partial summary judgment and the question of bifurcation here proposed will be heard commencing at 9:00 a.m. (CDT) on January 30, 2003. Thereafter, the court may or may not require amendment of the sub-class definitions. The court also retains the authority to modify or decertify the sub-classes or designate further sub-classes as the case progresses. General Tel. co. of Southwest v. Falcon, 457 U.S. 147, 160 (1982); Fed. R. Civ. P. 23(c)(1).

IT IS SO ORDERED.

Dated this 23rd day of January, 2003.

Charles R. Wolle

CHARLES R. WOLLE, JUDGE
U.S. DISTRICT COURT