

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

LAWRENCE PADRTA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Case No. 96-0324-CV-W-2
LEDAR TRANSPORT, INC.,	)	
	)	
Defendant.	)	
	)	
	)	

**INTERIM REPORT ON ESCROW ACCOUNTS**

**I. PROCEDURAL BACKGROUND**

On June 21, 1996, Judge Gaitan entered a default judgment against defendant Ledar Transport, Inc. ("Ledar"), holding Ledar liable for all of the claims set forth in plaintiffs' complaint including: failure to return escrow accounts, failure to pay for completed transportation and delivery of loads, refusal to pay quarterly interest, deductions for claims by shippers that did not occur, understating mileage to reduce amounts owed, overcharging for fuel and charging for road and fuel taxes for states in which the class member had not traveled. (See Order of June 16, 1996 at 2) Thereafter, Judge Gaitan granted plaintiffs' motion for class certification.

The Court established a scheduling order which included a procedure for notifying class members of the pending action and established a claim procedure by which class members could set forth the amounts which they claimed Ledar owed them in certain categories. Under this claim procedure, once a claimant filed a claim form, Ledar had an opportunity to indicate whether it agreed with the amounts claimed. A hearing was held on September 27, 2000, to determine the amounts owed to plaintiffs as a return of their escrow accounts. The evidence presented by the parties established the following:

**II. EVIDENCE OFFERED CONCERNING THE ESCROW ACCOUNTS**

Twenty-four individuals submitted Form As. (See Plaintiffs' Ex. 6) Of those twenty-four individuals, counsel stipulated to the amounts of the security deposits taken from twenty-one of the individuals as follows:

Ledar collected a security deposit from the following individuals in the amounts indicated:

Daniel Aldrich	\$0
E Isie Bass	\$1,000
Johnny Brown	\$1,000
Edward Butler	\$1,000
Joseph Case	\$500
John Catron	\$1,000
Michael Croucher	\$2,250
Melvin Currie	\$750
Ronald Holman	\$1,000
David Jungeblut	\$1,000
Gary Jones	\$3,300
Ronald Kennedy	\$1,000
Martha Lindsey	\$500
Earl Lyle	\$1,000
Darrell McCoy	\$1,000
Scott Moody	\$1,000
Lawrence Padrta	\$1,500
Peter Reischman	\$2,000
Carl Ryan	\$1,000
Clifford Seckington	\$1,000
Charles Williams	\$500

(Plaintiffs' Ex. 1, Stipulation of the Parties Regarding Defendant's Collection of Security Deposit Amounts)

Plaintiffs then offered documents reflecting the amount of the security deposits taken from Michael Ray, Johnnie Ross and Luther Tidwell. Plaintiffs' Exhibit 2 consisted of settlement sheets for Michael Ray, for truck or unit number 57, for the weeks ending September 30, October 7, October 14 and October 21, 1995. On each week, the records reflect that \$250 was deducted, for a total of \$1,000. (See Tr. at 16; Plaintiffs' Ex. 2) Plaintiffs' Exhibit 3 consisted of settlement sheets for Michael Ray, for truck number 58, for the weeks ending September 30, October 7, October 14 and October 21, 1995, showing \$250 deducted each week, for total deductions of \$1,000. (Tr. at 16)

Plaintiffs' Exhibit 4 consisted of settlement sheets for Johnnie Ross, reflecting total deductions of \$1,000 for the weeks ending May 13, May 20 and May 27, 1995. (Tr. at 17)

Plaintiffs stipulated that defendant's Form A for Luther Tidwell for unit 58 was correct and that a security deposit of \$250 was taken from his pay. (See Tr. at 17; Plaintiffs' Ex. 8) Plaintiffs also stipulated that defendant's Form A for Luther Tidwell for unit 63 was correct and that \$1,000 was taken as a security deposit for this unit. (See Tr. at 17; Plaintiffs' Ex. 9) Mr. McCann, counsel for plaintiffs, indicated that a \$1,000 security deposit was taken from Mr. Tidwell on unit 63 and offered Plaintiffs' Exhibits 5 and 9 in support of this statement. (Tr. at 17-19) However, Plaintiffs' Exhibit 5 states that it is for unit 60, which counsel did not mention in the presentation of the evidence. Mr. Tidwell's Form B seeks a refund of his security deposits in the amount of \$2,250. Thus, based on the evidence, it appears that Ledar took a \$250 security deposit for unit 58 and separate deposits of \$1,000 each for units 60 and 63.

Defendant Ledar then offered testimony from Carl Higgs, President of Ledar since its inception in June of 1992. Mr. Higgs testified that portions of the security deposits had been returned to some of the class members. [1] For example, Defendant's Exhibit 9 was identified by Mr. Higgs as a settlement sheet for Ronald Holman, unit 55. [2] (Tr. at 45) Mr. Higgs testified that he discussed with Mr. Holman the refund of his security deposit and that following this discussion Mr. Higgs paid him. (Tr. at 45) Mr. Higgs identified Defendant's Exhibit 35, check no. 3880 in the amount of \$520 from Ledar to Ron Holman, as the refund of Mr. Holman's security deposit plus interest on truck number 55. (Tr. at 55) Mr. Higgs indicated that \$500 was the refundable portion of the security deposit and the \$20 was for interest. Mr. Higgs recalled that at or near the date on the check, Mr. Holman came in and Mr. Higgs gave him the check. (Tr. at 98) When asked why he issued Mr. Holman a refund, Mr. Higgs answered: "I didn't have any reason not to. He seemed like a decent fellow and I didn't feel like I had any risk there. ... I think he probably asked for it." (Tr. at 98-99) Mr. Higgs did not calculate the interest, but testified that he asked Mr. Holman if he thought \$20 was satisfactory and Holman agreed. The remaining \$500 of Mr. Holman's security deposit was not refunded to Holman because it was an amount to be kept in the event Ledar was entitled to the \$500 penalty which would be imposed if Holman terminated his lease within one year of its execution pursuant to the early termination clause. (Tr. at 55)

On cross-examination, Mr. Higgs was shown Plaintiffs' Exhibit 12, a three-page document. This document reflected that check no. 3880 was issued to Mr. Holman with a date of November 9, 1995. That portion of the check retained by Ledar contained the following handwritten notation: "Week ending 10/28/95 Ron Holman corrected mistake on o/o settlement 520.00." (Plaintiffs' Ex. 12) Plaintiffs' counsel then reviewed the two pages attached to this notation. These documents reflect, and Mr. Higgs did not disagree, that Mr. Holman purchased \$57 in gasoline, but had \$577 deducted from his check. (Tr. at 108-112) At the conclusion of his review of the records, Mr. Higgs conceded that it appeared that the check for \$520 was to correct a mistake in Mr. Holman's compensation. When asked to explain his testimony concerning his conversation with Mr. Holman as to whether \$20 was a satisfactory amount for interest, Mr. Higgs testified: "I don't know. I have no explanation." (Tr. at 113)

Mr. Higgs testified that Defendant's Exhibit 40 was a refund check in the amount of \$500, dated February 25, 1995, written to Carl Ryan. Mr. Higgs testified that the check was not issued at the end of Mr. Ryan's tenure with Ledar, but some place in the middle of it. The refund was made because Mr. Ryan "seemed to be doing a good job and we just—I didn't see any particular need of keeping that security deposit, except for the early termination fee." (Tr. at 58) On cross-examination, Mr. Higgs identified Plaintiffs' Exhibit 13 as a settlement sheet for Carl and Joetta Ryan, dated February 18, 1995. Given defendant's accounting system, settlement sheets for

the week ending February 18, 1995, would probably not be given to the driver until around the first of March. (Tr. at 119-20) Plaintiff's Exhibit 13 reflects a \$500 advance given by Carl Higgs to Mr. Ryan. When asked if check number 5087 for \$500 was really the \$500 advance, Mr. Higgs indicated he did not think that was possible, but added he really did not know because he did not understand the computer that well. (Tr. at 122-23)

Defendant's Exhibit 38 was identified by Mr. Higgs as a check his wife wrote to Johnny Ross on January 18, 1995, for the return of the refundable part of the security deposit for truck number 61. Defendant's Exhibit 39 was another check written to Mr. Ross, on June 7, 1995, for the refund of the refundable part of the security deposit. (Tr. at 57) Mr. Higgs testified that he had given loans to Mr. Ross, but he did not know how many. Plaintiffs' Exhibit 14, a settlement sheet for Johnny Ross, for truck number 61, for the week ending June 3, 1995, shows a deduction for a loan Ledar made to Mr. Ross. Check number 2034 is dated June 7, 1995. (Defendant's Ex. 39) When asked if check number 2034 could be a loan or advance to Mr. Ross, Mr. Higgs indicated that "[t]he only thing I know is my wife said it was a refund of security deposit." (Tr. at 136) Mr. Higgs had no idea what the check was for. (Tr. at 137) Mr. Higgs also had no personal knowledge of the other Ross check. (Tr. at 137)

Defendant's Exhibit 41 contains copies of two checks issued to Wilbur Catron by Ledar on July 31 and August 21, 1996. The checks are in the amount of \$915.21 (check no. 4713, dated August 21, 1996) and \$610.83 (check number 4641, dated July 31, 1996). Mr. Higgs testified that Wilbur Catron was John Catron's son. John Catron died and according to Mr. Higgs' direct testimony, these checks represented a refund of the security deposit and more. Mr. Catron's security deposit was \$1,000. (Tr. at 59-60) The money was paid to help cover the funeral expenses for Mr. Catron, but represented a reimbursement of his \$1,000 security deposit in full. (Tr. at 61) On cross-examination, when asked if the payments were actually compensation for the week ending March 30, 1996, Mr. Higgs indicated that he did not know. (Tr. at 140)

Defendant's Exhibit 42 is a check in the amount of \$1,298, dated February 21, 1996, written by Ledar to Michael Croucher. On direct examination, Mr. Higgs testified that the check was to return the refundable portion of the security deposit, as well as other amounts owed as part of the final termination of his account. (Tr. at 61) Mr. Croucher operated two trucks and the check represented a \$500 refund for each truck. (Tr. at 148) However, it was pointed out to Mr. Higgs that Mr. Croucher did not start leasing truck number 51 until March 9, 1996. Mr. Higgs indicated that Mr. Croucher had the truck prior to March 1996, but no driver. Mr. Higgs was asked further questions about this:

Q. So, you gave him the \$500 back before he even paid you it?

A. Probably so.

Q. That doesn't make much sense does it?

A. No.

(Tr. at 148-49) Further, although Mr. Higgs indicated that this money was paid as part of the final termination of Mr. Croucher's account, it appears that both truck numbers 51 and 71 operated through the week of April 20, 1996. Additionally, the Court notes that Defendant Ledar Transport, Inc.'s Final Supplemental Accounting which was filed with the Court does not list check no. 5057 or the amount of \$1,298 as having been paid to Mr. Croucher. Further, the final supplemental accounting reflects security deposits totaling \$2,250.

Defendant's Exhibit 36 is a check in the amount of \$500 written to Scott Moody by Ledar and dated December 9, 1996. (Tr. at 56) Mr. Higgs testified that this payment was for a return of the security deposit. (Tr. at 56)

Defendant's Exhibit 37 consists of copies of two checks written to Michael Ray, each in the amount of \$500, and dated December 7, 1995 and February 23, 1996. (Tr. at 56) Mr. Higgs indicated that the checks each represented the refundable portion of the security deposit on truck numbers 57 and 58. (Tr. at 56) A notation appears on the front of both checks indicating "refund of security dep." (Defendant's Ex. 37)

Following the hearing, plaintiffs submitted further suggestions (Plaintiffs' Suggestions in Support of their Renewed Motion for Interim Order for Immediate Return of Escrow Funds, doc #103). Attached as exhibits are the declarations of Carl Ryan, John L. Ross, Michael Croucher, Bonnie Ray, Kenneth Coleman and John Brown. Each of the owner-operators who provided an affidavit disputed Mr. Higgs' testimony that the various checks identified by Mr. Higgs represented a return of their security deposits. For example, Mr. Ryan indicated that check no. 5087 in the amount of \$500 was not a refund of a portion of his security deposit, but an advance. Mr. Croucher attached settlement sheets reflecting that the security deposits were not even deducted from his compensation until one and one-half months after the alleged escrow refund check. (See Plaintiffs' Suggestions (doc #103) at Ex. C)

Ms. Ray's husband leased two trucks to Ledar. When Ms. Ray received the checks represented by Defendant's Exhibit 37, she took them to the Bank of Odessa. Ms. Ray stated in her affidavit that at that time check nos. 4240 and 5101 (Defendant's Exhibit 37) did not contain the notations "refund of security dep." on the front. (See Plaintiffs' Suggestions at Ex. D) An affidavit from Kenneth Coleman, the Cashier of the Bank of Odessa, was also provided to the Court. (See Plaintiffs' Suggestions at Ex. E) Mr. Coleman indicated that when check nos. 4240 and 5101 were processed at the bank, they were photocopied and their front image stored on microfilm. Attached to Mr. Coleman's affidavit were copies of the fronts of the checks in the condition in which they appeared at the time they were received by the bank. Except for the signature of Mr. Higgs, no handwriting appears on the fronts of the checks. (See Plaintiffs' Suggestions at Ex. E)

### III. ANALYSIS

Defendant argues that the Court's default judgment does not require it to repay the security deposits to plaintiffs over and above monies owed to defendant. According to defendant, the "contract" requires the owner-operators to pay defendant for all advances, losses and damage claims. Further, defendant asserts that plaintiffs' position ignores the early termination clause of the contract which allows defendant to deduct as an "early lease termination fee" \$500 from any monies due Lessor.

In this Court's view, paragraph 3 of Judge Gaitan's default judgment is a directive to return all security deposits that Ledar has in its possession. The order does not provide that Ledar may offset funds owed to it by the class members from escrow amounts which Ledar failed to return. To the

extent a party wishes to seek a modification of Judge Gaitan's order, such a request should be directed to Judge Gaitan, not the undersigned.

In the suggestions filed by plaintiffs on October 11, 2000, plaintiffs argue that defendant has proved itself incapable or unwilling to provide truthful information to the court and that none of the evidence presented by defendant should be credited. (Plaintiffs' Suggestions at 1) The Court recognizes that much of Mr. Higgs' testimony was at odds with information contained in the Final Supplemental Accounting. In addition, testimony provided by Mr. Higgs concerning Mr. Holman's refund check was demonstrated to be false. Mr. Higgs was unable to provide any explanation as to why he testified about alleged conversations with Mr. Holman which clearly never occurred. That much of Mr. Higgs' testimony concerning the reasons various checks were issued appeared to be fabricated is demonstrated by the affidavits of class members and the microfilmed checks. Although Mr. Higgs is President of Ledar Transport, this Court concludes that Mr. Higgs' recollection about why various checks were issued is completely unreliable and should not be relied upon. The Court is sure that it need not remind defense counsel of their obligation not to knowingly present false testimony.

The Court finds that no credible evidence was presented that any portion of the escrow funds paid by plaintiffs were ever returned to them. Therefore, defendant Ledar is directed to pay to the following individuals the amounts indicated plus interest:

Daniel Aldrich	\$0
Elsie Bass	\$1,000
Johnny Brown	
Edward Butler	\$1,000
Joseph Case	\$1,000
John Catron	
Michael Croucher	\$500
Melvin Currie	\$1,000
Ronald Holman	
David Jungeblut	\$2,250
Gary Jones	\$750
Ronald Kennedy	
Martha Lindsey	\$1,000
Earl Lyle	\$1,000
Darrell McCoy	
Scott Moody	

Lawrence Padrta	\$3,300
Peter Reischman	\$1,000
Carl Ryan	
Clifford Seckington	\$500
Charles Williams	\$1,000
Michael Ray	
Johnnie Ross	\$1,000
Luther Tidwell	\$1,000
	\$1,500
	\$2,000
	\$1,000
	\$1,000
	\$500
	\$2,000
	\$1,000
	\$2,250

Based upon the Court's determination of the amounts owed, counsel for plaintiffs is directed to submit to this Court and defense counsel its calculation of the amount of interest owed to each claimant. Once the Court has received these calculations, it will enter a final Report and Recommendation which will incorporate the findings of this Interim Report and make recommendations to Judge Gaitan concerning the particular amount of the refund to which each class member is entitled. That Report and Recommendation will also give the parties ten days in which to file objections with Judge Gaitan.

IT IS SO ORDERED.

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SARAH W. HAYS  
UNITED STATES MAGISTRATE JUDGE

Date:

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Kansas City, Missouri

[1] Defendant also offered evidence that many of the drivers had left owing Ledar money and that the settlement sheets constituted a final accounting. (See Tr. at 35, 37-38) However, as noted by plaintiffs' counsel, as part of the default judgment, Judge Gaitan had already ruled that defendant did not provide a final accounting to plaintiffs Padrta and Holman and all other similarly situated owner-operators. (See Order of June 21, 1996 at 2)

[2] The settlement sheet indicates that it is for truck number 63. (See Defendant's Ex. 9)