

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

OWNER-OPERATOR INDEPENDENT)
DRIVERS ASSOCIATION, Inc., JOHN E.)
NEIDIG, Individually and on behalf)
themselves and all others similarly situated,)
Plaintiffs,)
v.)
MAYFLOWER TRANSIT, INC.,)
Defendant.)

**Case No. IP98-0458 C B/S
Complaint – Class Action**

**CLASS ACTION COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND DAMAGES
DEMAND FOR JURY TRIAL**

The Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), and John E. Neidig (collectively, "Plaintiffs" or "class representatives"), bring this action, on behalf of themselves and all others similarly situated, against Defendant MAYFLOWER TRANSIT, INC. ("Mayflower" or "Defendant") and allege as follows:

NATURE OF THE ACTION

1. This is a class action against the Defendant, pursuant to which Plaintiffs, as class representatives on behalf of themselves and all others similarly situated, challenge the lawfulness of Mayflower's practice of overcharging independent owner-operators, who are members of the class ("Owner-Operators"), for insurance policies.
2. JURISDICTION AND VENUE

3. Jurisdiction of this claim 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 causes of action alleged in this complaint arise under the laws of the United States regulating commerce and the activities of motor carriers engaged in the transportation of property in interstate and foreign commerce, including 49 U.S.C. §§ 13501, 14102 and 14704(a)(1) and (2), and 49 C.F.R. § 312 et seq., or are state law claims so related to the federal law claims that they form part of the same case or controversy under Article III of the United States Constitution.
4. Venue is based upon 28 U.S.C. § 1391(b) in that Defendant is incorporated in the State of Indiana and in that a substantial part of the events giving rise to the claims raised herein occurred in this district or state.
5. PARTIES TO THE ACTION
6. Plaintiff 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 the State of Missouri, with its headquarters located at 311 Mize Road, P.O. Box L, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and now has over 40,000 members residing in all fifty (50) states and in Canada. Owner-operators are typically small business men and women who own and operate Class 7 and 8 trucks (large tractor-trailers) in interstate commerce. Owner-operators typically lease their equipment, with drivers, to private carriers and/or regulated motor carriers operating under the authority granted by the U.S. Department of Transportation ("DOT") and formerly, by the Interstate Commerce Commission ("ICC"). Each such lease is regulated under Title 49, Subpart B, Chapter III, Part 376 of the Code of Federal Regulations. 49 C.F.R. § 376.1 et seq. Owner-operators comprise one of the primary sectors of the interstate motor carrier industry, accounting for an estimated forty (40%) percent of all inter-city truck traffic in the United States. The number of owner-operators nationwide totals in the hundreds of thousands. A large number of OOIDA's members are owner-operators who operate

motor vehicles in the transport of property, including household goods, in interstate commerce and who have been, are, or are likely to be, operating under contract or otherwise associated with Defendant. Accordingly, OOIDA is a suitable representative to champion the class and protect the interests of its members.

7. Plaintiff John E. Neidig ("Neidig"), a citizen of the state of Washington, is an owner-operator who has leased motor vehicle equipment, with drivers, to Mayflower through one or more of Mayflower's agents within the meaning of 49 U.S.C. § 13907.
8. Neidig individually is, and other similarly situated Owner-Operators are, "owners" within the meaning of 49 C.F.R. § 376.2(d).
9. Neidig individually is, and other similarly situated Owner-Operators are, "lessors" within the meaning of 49 C.F.R. § 376.2(f).
10. The vehicles provided for use by Neidig and other Owner-Operators to Mayflower are "equipment" within the meaning of 49 C.F.R. § 376.2(b).
11. Mayflower is an Indiana corporation doing business in Indiana. Mayflower is a regulated motor carrier, primarily engaged in the enterprise of providing transportation services to the shipping public under authority granted by DOT and formerly the ICC.
12. Mayflower is an "authorized carrier" within the meaning of 49 C.F.R. § 376.2(a).
13. 49 U.S.C. § 13907 provides that a motor carrier, such as Mayflower, which provides transportation of household goods, is legally responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services, and which are within the actual or apparent authority of the agent, or which are ratified by the carrier.
14. 49 C.F.R. § 376.12(m) imposes on a motor carrier, such as Mayflower, the legal responsibility for ensuring that its agents provide, and that Owner-Operators, such as Neidig and the unnamed members of the potential class herein, receive the rights and benefits due under the federal leasing regulations in connection with leasing agreements between the carrier and the Owner-Operator.
15. On information and belief, the terms of the leasing agreements between Neidig and Mayflower's authorized agents are the same or

substantially the same as the terms of the leasing agreements entered into between Mayflower, or its authorized agents, and each of the unnamed potential class members.

16. The potential class of unnamed plaintiffs consists of owner-operators and other entities who, like Neidig, have contracted with Mayflower, either directly or indirectly through an authorized agent, to lease equipment and to provide driving services to Mayflower. On information and belief, the number of persons making up this potential class is in the thousands, thus making joinder of all such persons impracticable.

CLASS ACTION ALLEGATIONS

1. **Class Description.** Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring this action on behalf of Owner-Operators who entered into regulated leases with Mayflower, directly or indirectly, pursuant to which Mayflower leased motor vehicle equipment from, and contracted for services by, the Owner-Operator and who purchased insurance from Mayflower as part of those lease agreements and who were harmed by Mayflower's practice of overcharging for such insurance.
2. **Impracticability of Joinder.** On information and belief, several thousand independent owner-operators have leased their equipment and services to, or otherwise have been associated with Mayflower and purchased insurance from Defendant Mayflower pursuant to those lease agreements. All such persons are potential class members. Individual joinder of all potential class members is thus impracticable.
3. **Commonality.** Mayflower has acted and/or failed to act in a way that affects all potential class members similarly. Accordingly, any questions of fact are common to the potential class as a whole. Mayflower's actions and failures to act have also caused the same harm to potential class members. Accordingly, questions of Defendant's liability to the class are common to all class members. Additionally, Mayflower has acted and/or refused to act in generally the same manner with respect to each member of the class. Therefore, potential class-wide injunctive relief against such conduct is also appropriate.

4. **Typicality.** The claims of the Plaintiffs are typical of the claims of the potential class as a whole.
5. **Fair and Adequate Representation.** The Plaintiffs are capable of fairly and adequately protecting the interests of the class.
6. **Class Action Appropriate Under Rule 23(b)(2).** Mayflower has acted and/or failed to act on grounds generally applicable to the potential class as a whole. Thus, injunctive and declaratory relief is appropriate with respect to the potential class as a whole, making class certification appropriate under Fed. R. Civ. P. 23 (b)(2).
7. **Class Action Appropriate Under Rule 23(b)(3).** The questions of law, enumerated in the counts below, are common to all potential class members, and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the claims herein.
8. **Other factors favoring the maintenance of this suit as a class action include:**
 1. the amounts in controversy for individual plaintiffs are relatively small so that individual members of the potential class would not find it cost-effective to bring individual claims;
 2. requiring individuals to prosecute separate actions would substantially impair or impede the individual members' ability to protect their interests;
 3. on information and belief, there is no litigation already commenced by class members concerning the causes of action raised in this complaint;
 4. it is desirable to concentrate the individual members' claims in one forum, because given the amount in controversy, to require these claims to be brought in separate forums would effectively prevent individuals from bringing claims to recover their funds;
 5. no substantial difficulties are likely to be encountered in managing this class action; and
 6. counsel in this matter are experienced in both the trucking industry and in the management of class action litigation.

REGULATORY SETTING AND FACTUAL ASSERTIONS

23. Owner-operators are small business persons who own and/or control truck tractors, and sometimes truck trailers, used to transport property over the nation's highways. Acting as independent contractors, owner-operators lease 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 transportation of property. Owner-operators are typically compensated for their respective services on a per-load basis and share the revenue derived from a specific transportation movement. The carrier typically deducts its share of the revenues, as well as other expenses or costs incurred, from the settlement statement that it issues to the owner-operator.

24. Under federal law, "the authorized carrier may perform authorized transportation in equipment it does not own only under . . . a written lease granting use of the equipment and meeting the requirements contained in § 376.12." 49 C.F.R. § 376.11. See also 49 U.S.C. § 14102.

25. The lease requirements provide that the lease contain specific provisions and require that the regulated motor carrier adhere to those terms. 49 C.F.R. § 376.12.

26. Neidig entered into a federally-regulated lease agreement (the "Glen Ellyn Lease Agreement") with Glen Ellyn Storage Corporation of Glen Ellyn, Illinois ("Glen Ellyn"), an authorized agent of Defendant Mayflower, on or about November 15, 1994. The Glen Ellyn Lease Agreement was terminated on or about January 8, 1996, when Neidig stopped driving for Glen Ellyn. A true and correct copy of the Glen Ellyn Lease Agreement is attached hereto as Exhibit "A."

27. The Glen Ellyn Lease Agreement constitutes a "lease" within the meaning of the federal leasing regulations because it is:

A contract or arrangement in which the owner [Plaintiff] grants the use of equipment, with or without driver, for a specified period to an authorized carrier [Defendant Mayflower or its authorized agent] for use in the regulated transportation of property, in exchange for compensation.

49 C.F.R. § 376.2(e)

28. The lease requirements specifically govern the parties' rights and obligations with respect to "charge-back items." Specifically, 49 C.F.R. § 376.12(h) provides:

Charge-back items. The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents, which are necessary to determine the validity of the charge.

29. The lease requirements provide:

If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.

49 C.F.R. § 376.12(j)(1).

30. Article 13 of the Glen Ellyn Lease Agreement specifically provides that "[t]he cost of all insurance shall be charged to the [owner-operator] statement account" (emphasis added).

31. Neidig purchased occupational accident insurance through Glen Ellyn. Glen Ellyn charged Neidig \$290.00 per month for this insurance. Mayflower, and/or its agent, Glen Ellyn, actually paid the insurance company a total of \$210.50 per month for the cost of this insurance. Therefore, Neidig was charged a total of \$79.50 per month for the insurance in excess of the cost borne by Mayflower, and/or its agent, Glen Ellyn. Since this charge exceeded "the cost of [the] insurance," it constitutes a violation of the lease agreement between the parties and a violation of the "charge-back" provisions of federal lease regulations.

32. On or about May 23, 1993, Neidig entered into a federally-regulated lease agreement ("the Gazda Lease Agreement") with Gazda Transportation System, Inc. ("Gazda"). Gazda is an Indiana corporation, with its registered office at One North Capitol Ave., Indianapolis, IN 46204. Gazda is an authorized agent of Mayflower. The Gazda Lease Agreement was terminated during November, 1994, when Neidig stopped driving for Gazda. A true and correct copy of the Gazda Lease Agreement is attached hereto as Exhibit B.

33. Schedule "B" of the Gazda Lease Agreement states that Gazda will charge back "100% of the premium amount" for insurance policies.

34. Neidig also purchased occupational accident insurance through Gazda. Mayflower, and/or its agent, Gazda, charged Neidig \$310.00 per month for this insurance. On information and belief, Mayflower, and/or its agent, Gazda, actually paid the insurance company approximately \$210.00 per month. Therefore, Neidig was charged approximately \$100.00 more for the insurance than it cost Mayflower, and/or its agent, Gazda. Since this charge exceeded "100% of the premium amount for [the] insurance policy," it constitutes a breach of the lease agreement between the parties, and a violation of the "charge-back" provisions of federal lease regulations.

35. On information and belief, Mayflower, through its authorized agents, overcharges Owner-Operators that purchase other insurance policies through Mayflower in a manner similar to that described above. These overcharges constitute violations of the federal lease regulations and a breach of each lease agreement between the authorized agents and each individual Owner-Operator.

COUNT ONE:

VIOLATION OF FEDERAL MOTOR CARRIER LEASING REGULATIONS

36. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 35 above.

37. Pursuant to 49 U.S.C. §§ 14704(a)(1) and (2) and 14704(e), this is an action against Mayflower by Neidig, individually, and on behalf of Owner-Operators, for equitable relief, damages, costs, and attorneys' fees. The relief sought by OOIDA is limited to declaratory and injunctive relief and related costs and recovery of attorneys' fees.

- 1. The authority of the Secretary of Transportation to issue regulations governing the relationship between motor carriers, such as Mayflower, and owner-operators, such as Neidig, and others similarly situated, is set forth in 49 U.S.C. § 14102.**
- 2. 49 U.S.C. § 14704(a) provides:**

In General.—

(1) . . . A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

(2) Damages for violations.—A carrier or broker providing transportation or service subject to jurisdiction under Chapter 135 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.

49 U.S.C. § 14704(a)

40. 49 U.S.C. § 14704(e) provides:

Attorney's fees.—The district court shall award a reasonable attorney's fee under this section. The district court shall tax and collect that fee as part of the costs of the action.

U.S.C. § 14704(e).

- 1. Defendant's acts and omissions, specifically failing to adhere to the terms of the lease agreement by overcharging Owner-Operators for insurance policies, constitute material violations of 49 C.F.R. § 376.12 of the DOT lease regulations.**
- 2. As a direct and proximate result of Defendant's acts and omissions, Neidig, and the members of the potential class, have suffered substantial damages.**

COUNT II

BREACH OF CONTRACT

43. Plaintiffs reallege and incorporate herein the allegations set forth in paragraphs 1 through 42 above.

44. This is an action brought by Neidig individually, and on behalf of Owner-Operators, for damages based upon breach of contract.

45. Pursuant to each Owner-Operator's respective lease agreements, Mayflower's authorized agents are obligated to confine charge-backs to only the actual cost of appropriate items.

46. Mayflower, and/or its authorized agents, materially breached the lease agreements with Owner-Operators by charging back amounts in excess of the actual cost of insurance policies. As a direct result of the breach of the lease agreements by Mayflower, and/or its authorized agents, the Owner-Operators have suffered substantial damages.

PRAYERS FOR RELIEF

WHEREFORE, OOIDA and Neidig, individually, and on behalf of Owner-Operators, request that this Court:

- 1. Declare Defendant in violation of Federal law and regulations;**
- 2. Declare Defendant in breach of the lease agreements;**
- 3. Order the Defendant to provide the Plaintiffs with an accounting of all items charged back to Owner-Operators;**
- 4. Enjoin Defendant from future violations of Federal regulations and wrongful acts in breach of contract;**
- 5. Certify a class comprised of owner-operators who have entered into lease agreements with the Defendant and who were overcharged for insurance policies by the Defendant.**
- 6. Enjoin Defendant from any acts of retaliation, harassment, and intimidation against class members and others who may assist and/or participate in this action;**
- 7. Enter judgment against Defendant in favor of individual class members for all actual damages for violation of 49 C.F.R. § 376.12(k) pursuant to 49 U.S.C. § 14704(a)(2), including pre- and post-judgment interest, as allowed by law;**
- 8. Enter judgment against Defendant in favor of Plaintiff Neidig individually, and on behalf of Owner-Operators, for all actual damages for breach of contract, including pre- and post-judgment interest, as allowed by law;**
- 9. Create a common fund made up of all damages owed by Mayflower to individual class members;**
- 10. Award class counsel a sum for reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid out of the common fund; and**
- 11. Award such other relief as the Court deems proper and just.**

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues triable as of right by a jury.

- Respectfully submitted,
- Owner Operator Independent Drivers Association, Inc., Plaintiff John E. Neidig, Plaintiff

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REPORT ON SPECIAL DAMAGES

Pursuant to the Case Management Plan issued July 14, 1998, Plaintiffs hereby respectfully submit its preliminary report on special damages for the above-referenced case. The figures are based on traditional formulas for recovery in cases of a similar nature and on the information available at this date. These figures are subject to change upon the discovery of additional information.

Insurance-Related Claims

Actual class-wide damages: \$11,842,718.00

For all drivers total paid above premium cost:

Using number of drivers X average lost insurance premiums.

(exclusive of interest, costs, and attorneys' fees)