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

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., et al.,	)	
Plaintiffs,	)	
vs.	)	No. 00-0258-CV-W-FJG
LEDAR TRANSPORT, et al.,	)	
Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

STANDARD OF REVIEW

As stated in Court's earlier order ruling the parties' motions for summary judgment, "[i]n considering whether Ledar's leases violate the Truth-in-Leasing regulations, the Court finds that the proper standard to apply is the "substantial compliance" standard." (Doc. # 292).

A. Plaintiffs' Security Deposit Escrow Claim - Findings of Fact

1. Defendant Ledar Transport, Inc. ("Ledar") operated as a federally regulated motor carrier providing transportation of property in interstate commerce under authority granted by the Department of Transportation.

2. Plaintiffs Daniel Day, David Horn, Kenneth Reinsch, and Jason Buckallew entered into lease agreements ("Standard Lease Agreement") with Ledar subject to the

Truth-in-Leasing regulations[1].

3. Paragraph 4.m. of Ledar's Standard Lease Agreement with Plaintiffs provided that "Lessor shall furnish to Lessee a security deposit in the amount of $1000.00 in order to secure the payment of any amounts advanced to Lessor by Lessee."

4. Paragraph 4.m. of the Standard Lease provided that "[u]pon final settlement Lessee [Ledar] may deduct [from the security deposit] *all* monies due it by Lessor [owner-operator] such as, *but not limited to*, advances for fuel, security deposits, repairs, cash, loans and claims" (emphasis added). Paragraph 4.m. begins the 45-day time period within which Defendant must return escrow funds at the point when all of the above-listed items are returned to Defendant -- the "effective" date.

5. The lease fails to specify the items that may be deducted from escrow, fails to state that the owner-operator may demand an accounting at any time, fails to state that a final accounting will be rendered, and fails to state that interest will be paid.

6. Ledar deducted, from Plaintiff's compensation, $1,000.00 for a security deposit, usually in installments of $250.00 per week.[2]

7. Carl Higgs testified that he did not believe that the security deposit was subject to the escrow provisions of the leasing regulations.[3]

8. Steve Hadggega, the head of Ledar's safety department and one of the persons who conducted orientations with new drivers, testified that he did not know that owner-operator escrow funds were subject to the Truth-in-Leasing regulations, or who

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[1] Pls. Exs. 2, 11, 19, 29.
[2] Pls. Exs. 3-8, 12-16, 20-26; 30-36.
[3] Depo. Desig. of Carl Higgs, Pls. Ex. 384, 69/20 - 70/15.

at Ledar was responsible for compliance with the regulations.[4]

9. Plaintiffs Day, Horn and Reinsch never received any final accounting describing all final deductions made to their security deposit escrows. [5]

10. A review of the last settlement sheets for each of the named Plaintiffs and other drivers reveals that there was no accounting for the disposition of the security deposit escrows.[6]

11. After lease termination, the security deposit was omitted from any final reconciliation and not credited or returned to drivers.[7]

12. None of the Plaintiffs received their security deposit or any portion thereof within 45 days of lease termination.

13. Paragraph 4.m. of Defendant's Standard Lease Agreement contains an "early lease termination fee," which states that if the lease is terminated by Lessor for any reason within one year of the execution date hereof, then the security deposit shall be considered an "early lease termination fee" and shall be retained by Lessee.

14. Defendants presented no evidence at trial to support the claim that the "early lease termination fee" actually recouped costs such as licensing, fuel, decals and administrative costs related to driver certification.

15. Ledar recouped its costs immediately by deducting funds from owner-operator compensation.[8] This is exemplified by the fact that Ledar deducted $500 from Plaintiff Horn's compensation for "security deposit" **after** Horn had terminated his lease

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[4] Tr. 304/11 - 306:21 (Hadggega).
[5] Tr. 31/6 - 32/1 (Day); 219/20 - 220/10 (Horn); 265/10 - 265/13 (Reinsch).
[6] Pls. Exs. 8, 16, 27, 47.
[7] Tr. 565/20 - 566/1 (Roos).
[8] Pls. Exs. 3-8, 12-16, 20-26, 30-35.

with Ledar and after Horn returned the truck to Scott Higgs.[9]

16. The "early lease termination fee" was a penalty imposed by Ledar, unrelated to actual costs involved with the operation of the leased equipment.

B. Plaintiffs' Security Deposit Escrow Claim - Conclusions of Law

1. 49 C.F.R. § 376.2(l) defines an escrow fund as "money deposited by the lessor with either a third party or the lessee to guaranty performance, to repay advances, to cover repair expenses, to handle claims, to handle license and State permit costs, and for any other purpose mutually agreed upon by the lessor and lessee." Ledar's security deposit provision qualifies as an "escrow fund" under § 376.2(l).

2. Ledar's lease violated § 376.12(k) by failing to specify the items that may be deducted from escrow, failing to state that the owner-operator may demand an accounting at any time, and by failing to state that interest will be paid.

3. Paragraph 4.m. conflicts with the terms of §§ 376.12(k)(2) and (6), which limit the amounts that may be deducted from an escrow account to monies for obligations incurred by the lessor which have been previously *specified* in the lease. By failing to specify the items that may be deducted from the security deposit, Ledar has transformed the security deposit into "a general fund to satisfy any obligations incurred by [owner-operators], which is a violation of the letter *see* 49 C.F.R. § 376.12(K)(2)(providing that the lease must identify 'specifications to which the escrow fund can be applied'), and spirit of the regulations." See OOIDA v. Arctic Express, Inc., 159 F.Supp.2d 1067, 1077 (S.D. Ohio 2001).

4. Paragraph 4.m. begins the time for return of the security deposit from

[9] Tr. 208/25 - 209/16; Pls. Ex. 15.

when the owner-operator returns certain items. 49 C.F.R. § 376.12(k)(6) requires that the "lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of [lease] termination." 49 C.F.R. § 376.12(k)(6) (emphasis added). The Court finds that this extension of Defendant's deadline to return escrow funds to the owner-operator conflicts with 49 C.F.R. § 376.12(k)(6).

5. Ledar violated § 376.12(k)(6) by failing to provide final accountings of security deposit escrows to Plaintiffs and Class members.

6. Ledar violated § 376.12(k)(5) by failing to pay interest on security deposit escrows.

7. Where a motor carrier's lease agreement subjects owner-operator escrows to a forfeiture provision that is unrelated to the cost of maintenance of Plaintiffs' vehicles the forfeiture provision is a penalty and therefore is in violation of § 376.12(k). See OOIDA v. Arctic Express, Inc., 159 F.Supp.2d at 1075-76.

8. Ledar's "early lease termination fee" was a penalty imposed by the carrier, unrelated to actual costs involved with the operation of the leased equipment. The "early lease termination fee" was a penalty and an impermissible deduction under 49 C.F.R. § 376.12(k)(6).

9. The security deposit provision of Ledar's Lease Agreement and Ledar's security deposit practices violated § 376.12(k)(2)-(6), and as a result, Ledar is liable to Plaintiffs and Class members for such violations.

C. Plaintiffs' "Major Maintenance Reserve" Fund Escrow Claim - Findings of

Fact

1. Plaintiffs Buckallew, Day and Horn entered into Lease-Purchase a agreements with Defendants Hawthorn Leasing, Ledar and Scott Higgs respectively.[10]

2. Buckallew's Lease-Purchase agreement with Hawthorn established a "major maintenance reserve" under which Ledar would deduct seven cents per mile from Buckallew's compensation. According the agreement, "[t]he entire balance of the account will become the sole property of Lessor [Hawthorn] at the time the lease is terminated or if terminated prior to its completion date. After the completion date of the lease the account will be distributed 50% to Lessee [Buckallew] and 50% to Lessor [Hawthorn]." The agreement also states that "[i]f Lessee breaches said Agreement, Lessor has the right to hold any wages due and owing said Lessor as of the date of breach of this agreement until such time that it can be determined if Lessee owes Lessor any monies under any other provisions of this contract."

3. Plaintiff Day entered into a lease-purchase agreement with Ledar for a tractor truck, which contained the same "major maintenance reserve" provisions that were contained in Plaintiff Buckallew's agreement with Hawthorn.

4. Plaintiff Horn entered into a lease-purchase agreement with Scott Higgs, under which Scott Higgs agreed to lease Horn a tractor truck. The lease-purchase agreement had the same "major maintenance reserve" provisions that were contained in Plaintiff Buckallew's agreement with Hawthorn, except that the amount deducted was five cents per mile instead of seven cents. Paragraph 15 of the lease-purchase agreement stated that the "equipment will be operated exclusively under a lease agreement with Ledar Transport, Inc."

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[10] Pls. Exs. 1 (Day); 10 (Horn); 18 (Buckallew).

5. Scott Higgs entered into similar agreements with 67 Class members.[11]

6. Ledar deducted from Buckallew's and Day's compensation seven cents per mile for the "major maintenance reserve." Ledar deducted five cents per mile from Horn's compensation. These deductions are stated on Plaintiff's settlement statements.[12]

7. Plaintiffs never received any accountings for maintenance reserves from Hawthorn, Ledar or Scott Higgs.[13]

8. There were no documents admitted at trial indicating that any accountings of maintenance reserves were provided to Plaintiffs or Class members.

9. There is no evidence that Ledar, Hawthorn or Scott Higgs paid interest on owner-operator maintenance reserves.[14]

10. None of the Plaintiffs, nor drivers Dean Adams and Billy Eiland, ever received a final accounting of their maintenance fund from Ledar, Hawthorn or Scott Higgs.[15]

11. Scott Higgs admitted that he did not provide final accountings for maintenance reserve funds created under contracts between Higgs and Class members.[16]

12. The last settlement statements given to Plaintiffs, as well as to Adams and Eiland, do not provide "a final accounting to the lessor of all such final deductions made to the escrow fund" as required by § 376.12(k)(6). In fact, the final settlement

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[11] Tr. 518/2 - 520/19 (Scott Higgs); Pls. Ex. 363.
[12] Pls. Exs. 3-8; 12-16; 20-26.
[13] Tr. 160/25 - 161/6 (Buckallew). Tr. 220/11 - 221/3 (Horn).
[14] Tr. 161/7 - 161/9 (Buckallew); Tr. 523/2 - 523/11 (Scott Higgs).
[15] Tr. 52/1 - 52/18 (Day); Tr. 132/5 - 132/16 (Adams); Tr. 177/7 - 177/10 (Buckallew); Tr. 220/11 - 221/3 (Horn); Tr. 359/24 - 360/2 (Eiland).
[16] Tr. 523/12 - 523/18 (Scott Higgs).

statements are completely silent on the disposition of maintenance fund escrows.

13. The forfeiture of maintenance reserves was not related to the costs of maintaining Plaintiffs' vehicles.

D. Plaintiffs' "Major Maintenance Reserve" Fund Escrow Claim - Conclusions of Law

1. The major maintenance reserve meets the definition of an escrow fund as it is "money deposited by the lessor with either a third party or the lessee . . . to cover repair expenses." 49 C.F.R. § 376.2 (l).

2. The maintenance provisions in the Lease-Purchase Agreements fail to comply with the most basic requirements of § 376.12(k)(2) – (6). They fail to specify the specific items that may be deducted from escrow, that interest will be paid, that owner-operators are entitled to accountings, that a final accounting will be rendered, and that the remainder of the escrow fund will be returned no later than 45 days after lease termination.

3. Ledar, Hawthorn and Scott Higgs violated § 376.12(k)(3) by failing to provide maintenance fund accountings to Plaintiffs and Class members.

4. Ledar, Hawthorn and Scott Higgs violated § 376.12(k)(6) by failing to provide final maintenance fund accountings to Plaintiffs and Class members.

5. Ledar, Hawthorn and Scott Higgs violated § 376.12(k)(5) by failing to pay interest on maintenance fund escrows.

6. Ledar, Hawthorn and Scott Higgs violated § 376.12(k)(6) by failing to return maintenance fund escrows to Plaintiffs and Class members no later than 45 days after lease termination.

7. When a motor carrier's "transformation of the maintenance fund into 'non-

refundable' monies is unrelated to the cost of maintenance of the Plaintiffs' vehicles" the forfeiture is an unlawful penalty and therefore a violation of § 376.12(k).[17]

8. The forfeiture provisions contained in the lease-purchase agreements of Ledar, Hawthorn and Scott Higgs constituted unlawful penalties and therefore violated § 376.12(k).

9. Plaintiffs were harmed because they did not receive any interest on their escrow funds, they were not provided accountings or final accountings, and their escrow funds were not returned, at any time, after lease termination.

10. The maintenance reserve provisions in Defendants' Lease-Purchase agreements, and Defendants' maintenance reserve practices violated § 376.12(k)(2)-(6), and as a result, Defendants are liable to Plaintiffs and Class members for such violations. The measure of damages is properly within the remedy phase of this case.

E. Plaintiffs' Compensation Claims - Findings of Fact

1. Ledar's Lease Agreement provides that Ledar may, unilaterally lower the compensation paid to owner-operators.[18]

2. Ledar required owner-operators such as Dean Adams to sign a one-page lease agreement that lowered his compensation from 80 cents per mile to 71 cents per mile.[19]

3. Ledar failed to pay Plaintiffs and Class members compensation on a timely basis or, in some cases, at all. This was especially true after the Plaintiff or class member stated his or her intention to terminate their relationship with Ledar.

4. When Plaintiff Reinsch told Norma Higgs that he was terminating his

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[17] See Arctic, 159 F.Supp.2d at 1076.
[18] Pls. Exs. 2, 19.
[19] Tr. 108/8 - 111/12 (Adams); Pls. Exs. 49, 51.

relationship with Ledar, she put a "stop payment" on his compensation check.[20]

5. After Buckallew informed Ledar that he was leaving, he did not receive compensation for approximately 3600 miles.[21] Despite the fact that Buckallew had turned in all of the necessary paperwork, a handwritten note was placed on his file dated 4/1/00: "Paperwork a mess. I'm not going to do it for him!!"

6. Horn did not receive compensation for 3371 miles he drove for Ledar after he stated that he was terminating.[22]

7. Dean Adams has not received compensation for more than 7500 miles he drove for Ledar.[23]

8. These are not isolated incidents. Norma Higgs told Buckallew and Eiland during orientation that drivers would not be paid if they failed to fold their paperwork properly.[24]

9. Gary Doss testified that Norma Higgs decided if drivers were paid, and that she did not pay drivers who folded their paperwork incorrectly.[25]

10. The Court finds that Ledar failed to pay Plaintiffs and Class members the stated rate of compensation within 15 days of submitting the required paperwork.

F. Plaintiffs' Compensation Claims - Conclusions of Law

1. The provision of Ledar's Lease Agreement providing that Ledar may unilaterally lower the compensation paid to owner-operators violates § 376.12(d) which states that the amount of compensation "shall be clearly stated on the face of the

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[20] Tr. 282/2 - 283/9 (Reinsch).
[21] Tr. 173/16 - 175/16 (Buckallew); Pls. Exs. 26, 27.
[22] Tr. 201/4 - 202/2 (Horn); Pls. Ex. 15.
[23] Tr. 121/18 - 126/25 (Adams); Pls. Ex. 56-58.
[24] Tr. 153/5 - 154/2 (Buckallew); 323/19 - 323/25 (Eiland).
[25] Tr. 240/7 - 240/24 (Doss).

lease."

2. Section 376.12(f) states that "payment to the lessor shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier." The Court finds that Ledar is liable to Plaintiffs and to Class members for violating §§ 376.12(d) and (f) of the regulations.

G. Plaintiffs' Charge-Back Against Compensation Claims - Findings of Fact

1. Ledar's Lease Agreement with Plaintiffs failed to identify the following items that were charged-back against their compensation: "transaction fees," "excess advances," "bobtail insurance," physical damage insurance, charges for "insurance" (workers compensation or occupational accident insurance), trailer repairs and washes, fuel tax, use tax and truck repair charges.[26]

2. In some cases, there are handwritten itemizations of charges found at the bottom of his Lease Agreements. Plaintiff Day testified that such itemization was added **after** he had signed the lease.[27]

3. The Court finds that unsigned, handwritten notations of charge-back items shall not be considered part of the Lease Agreement.

4. Ledar's Lease Agreement with Plaintiffs also failed to contain recitations as to how each item charged-back was to be computed.

5. The evidence does not support Carl Higgs' testimony that Ledar complied with the charge-back regulation by informing owner-operators during their orientation of all charge-backs to compensation.[28]

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[26] Pls. Exs. 1-8 (Day); 10-16 (Horn), 18-27 (Buckallew); 29-48 (Reinsch).
[27] Tr. 26/1 - 26/8 (Day).
[28] Tr. 618/5 - 625/10 (Carl Higgs).

6. Ledar used no checklists in orientation.[29] As a result, Carl Higgs could not testify that charge-backs were disclosed during orientations he did not attend.[30]

7. Further, Ledar presented no evidence that Plaintiffs were given any written materials at orientation, other than the Lease Agreements themselves, or any addenda, that disclosed such charge-backs or their amounts.

8. Plaintiffs Day, Horn and Reinsch requested documentation necessary to determine the validity of charge-backs to compensation and Ledar failed to provide such documents.[31]

9. Plaintiffs Adams, Buckallew and Eiland did not receive documentation necessary to determine the validity of charge-backs to compensation.[32]

10. Ledar's failure to both disclose charge-backs to compensation and to provide back-up documentation had a material negative impact on the ability of Plaintiffs to receive proper compensation and was not merely a technical violation of the leasing regulations.

11. Ledar's failure to provide timely documentation of repair costs, for example, deprived Buckallew and Horn of information necessary to dispute such charges.[33]

12. Ledar charged-back for Comdata-related transaction fees in excess of what Ledar advanced on behalf of Plaintiffs and Class members.[34] Ledar hid its actual costs by "whiting out" the actual costs in documentation provided to drivers.[35]

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[29] Tr. 661/8 - 662/17 (Carl Higgs).
[30] Tr. 622/22 - 623/11 (Carl Higgs).
[31] Tr. 40/11 - 40/13 (Day); 214/4 - 217/20 (Horn); 271/3 - 271/16 (Reinsch).
[32] Tr. 114/1 - 116/15 (Adams); 158/25 - 159/8 (Buckallew); 336/11 - 337/23 (Eiland).
[33] Tr. 175/24 - 176/2 (Buckallew); 214/4 - 217/20 (Horn).
[34] Tr. 272/16 - 273/13 (Reinsch); Pls. Ex. 37.
[35] Tr. 41/9 - 43/10 (Day); 344/13 - 344/20 (Eiland).

H. Plaintiffs' Charge-Back Against Compensation Claims - Conclusions of Law

1. Section 376.12(h) requires that the lease "clearly specify all items that may be initially paid for by carrier," but ultimately deducted from owner-operator compensation together with a recitation of how each item is to be computed. Subsection (h) also requires that the lease state that owner-operators "shall be afforded copies of those documents which are necessary to determine the validity of the charge."

2. Ledar's Lease Agreement violated § 376.12(h) by failing to clearly specify all items that may be initially paid for by carrier," but ultimately deducted from owner-operator compensation together with a recitation of how each item is to be computed. Ledar violated § 376.12(h) by failing to provide documentation to owner-operators necessary for them to determine the validity of charge-backs to compensation.

3. Ledar's failure to comply with the regulation injured Plaintiffs. The amount of damages suffered by Plaintiffs and Class members will be determined in the damages phase of this case.[36]

I. Plaintiffs' Insurance Claims - Findings of Fact

1. Section 376.12(j) requires the lease agreement to specify the cost of insurance charged-back to owner-operators. It requires the lease to specify that the carrier will provide, upon request, owner-operators with a copy of each insurance policy purchased through the carrier. The regulation also requires that the lease specify that

[36] The regulatory history of Section 376.12(h) indicates that charge-backs that exceed the actual amount advanced by the motor carrier are unlawful. The Interstate Commerce Commission concluded that, "[t]o the extent that charge-backs to owner-operators reduce the carrier's legitimate expenses, resulting in losses to the owner-operators and a profit to the carrier, they are not legitimate charge-backs or deductions." Lease and Interchange of Vehicles, 46 Fed. Reg. 44013 (Sept. 2, 1981).

the carrier will provide a certificate of insurance to owner-operators containing certain prescribed information.

2. Ledar's Lease Agreement with Plaintiffs failed to comply with any of the requirements of § 376.12(j).

3. Ledar's conduct also failed to comply with the requirements of § 376.12(j).

4. Plaintiffs were never provided certificates of insurance for insurance products such as bobtail, physical damage, and workers' compensation insurance, that were purchased through Ledar.[37]

5. Plaintiffs Day and Reinsch requested the policies for insurance products they purchased through Ledar, but were never given any insurance policies.[38]

J. Plaintiffs' Insurance Claims - Conclusions of Law

1. The Court concludes that Ledar's lease agreement and Ledar's practices violated § 376.12(j) and that Ledar is liable to Plaintiffs and Class members for such violations.

K. Plaintiffs' "Forced Purchase" Claim - Findings of Fact

1. Despite language in the Lease Agreement stating that owner-operators were not required to purchase products and services from Ledar, in practice just the opposite was true.

2. Plaintiffs Day and Horn were told that they could not purchase insurance products for their truck from sources other than through Ledar.[39]

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[37] Tr. 40/11 - 41/5 (Day); 158/3 - 158/5 (Buckallew); 212/14 - 212/20 (Horn); 270/18 - 270/25 (Reinsch).
[38] Tr. 85/13 - 86/19 (Day); 270/18 - 270/25 (Reinsch).
[39] Tr. 9/16 - 9/24, 10/10 - 10/13, 28/13 - 28/24 (Day); 210/24 - 211/22 (Horn).

3. Plaintiff Day and Billy Eiland both testified that they were told they were required to have their trucks repaired at Ledar's facility.[40]

4. Plaintiffs' testimony was corroborated by Gary Doss, who testified that Scott Higgs told him that drivers "don't need to go anywhere else" for insurance for their trucks.[41]

5. Plaintiffs were harmed as a result of forced purchases of repair services and insurance. Plaintiff Day testified that prices for repairs at Ledar's shop were "ridiculous" and the amounts charged by Ledar for physical damage insurance and bobtail insurance were "unreasonably high."[42] At the same time, Horn testified that, his father, who owns an insurance agency in Texas, told him that he could get his insurance for less money if he purchased it elsewhere.[43]

L. Plaintiffs' "Forced Purchase" Claim - Conclusions of Law

1. The Court finds that Ledar's conduct violated § 376.12(i), which prohibits forced purchases of goods and services from the carrier, and that Ledar is liable to Plaintiffs and Class members for such unlawful conduct.

M. Plaintiffs' Piercing the Corporate Veil Claims - Findings of Fact

1. Ledar's freight-hauling business was accomplished principally through owner-operator drivers who leased trucks to Ledar, and by employees of Jayco Inc., a corporation nominally owned by Norma Higgs,[44] the wife of Carl Higgs and mother of Scott Higgs. The trucks leased to Ledar were obtained pursuant to lease-purchase agreement with either one of the Higgs, Ledar, or Hawthorn. The combined activities of

[40] Tr. 24/12 - 25/4 (Day); 328/18 - 329/4 (Eiland).
[41] Tr. 231/7 - 231/19 (Doss).
[42] Tr. 24/12 - 25/4, 28/13 - 29/3, 85/13 - 86/19 (Day).
[43] Tr. 210/24 - 211/22 (Horn).
[44] Pls. Exs. 160-164.

this trio of corporations together with those of the Higgs individually encompass all of the necessary activities of the freight-hauling business.

2. No stock was ever issued for any of the three corporations.[45]

3. The three individual defendants, Carl Higgs, Norma Higgs and Scott Higgs, exercised managing control over Ledar Transport, Inc. and Hawthorn Leasing, Inc. as well as over the non-party corporation, Jayco Inc., which provided through its employees essentially all of the services necessary to the conduct of Ledar's freight-hauling business.

4. Ledar was nominally owned by Carl Higgs and Scott Higgs and they were its directors and officers.[46]

5. Ledar had no assets.[47] The trucks used in its freight-hauling business were owned by Carl Higgs or Scott Higgs. [48]

6. Norma Higgs and Scott Higgs, employees of Jayco, provided driver-orientation services to Ledar.[49] Jayco provided Ledar with sales, customer relations, dispatch payroll, accounting and shop services.[50]

7. Consistent with check writing authority in all three Higgs,[51] they made all of the financial decisions associated with Ledar's conduct of its business.[52]

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[45] Tr. 569/6 - 8 (Roos).
[46] Tr. 451/3 - 7 (Nickle); Tr. 532/24 - 533/1 (Scott Higgs); Pls. Exs. 116 - 128.
[47] Pls. Ex. 384 (Depo. Desig. Carl Higgs: 16/16 - 17/19); Pls. Ex. 381 (Depo. Desig. Scott Higgs: 26/12 - 24); Tr. 559/13 - 20 (Roos).
[48] Pls. Ex. 381 (Depo. Desig. Scott Higgs: 22/16 - 23/25); Pls. Ex. 384 (Depo. Desig. Carl Higgs: 147/13 - 148/11); Tr. 524/24 - 526/17 (Scott Higgs); Tr. 538/10 - 540/16 (Carl Higgs).
[49] Tr. 102/14 -15 (Adams).
[50] Tr. 399/17 - 406/23 (Rhoney); 451/14 - 452/3 (Nickle); Pls. Ex. 383: (Dep. Desig. Norma Higgs, 21/1 - 33/22, 43/20); Tr. 486/9 - 495/7 (Norma Higgs).
[51] Tr. 230/1-5; Tr. 694/23 - 695/2; Pls. Ex. 383 (Dep. Desig. Norma Higgs: 66/3 - 66/25).
[52] Tr. 229/24 - 25; Tr. 448/25 - 449/10.

8. Hawthorn was nominally owned by Carl Higgs and Scott Higgs, and they were its initial directors and officers.[53]

9. To Mr. Doss, it appeared that Hawthorn was owned by the three Higgs.[54] He observed it to be managed by all three Higgs.[55]

10. To Mr. Adams, a driver who leased a truck from Hawthorn, Ledar and Hawthorn appeared to be the same company.[56]

11. The purported sale of Hawthorn to Catherine Rhoney was a sham. Ms. Rhoney paid only $1,000.00 of the $30,000.00 purchase price.[57]

12. After he sold his interest in Hawthorn, Carl Higgs continued to play a management role in the company.[58]

13. Hawthorn had no assets.[59] Hawthorn owned no trucks.[60] The trucks leased by Hawthorn to drivers were owned by Carl Higgs or Scott Higgs.[61]

14. Though Hawthorn entered into agreements to lease trucks from Carl Higgs and Scott Higgs, Hawthorn never paid any money to them.[62]

15. Hawthorn and its contractual relations to the Higgs as lessors to Hawthorn, to the drivers as lessees of Hawthorn, and to Ledar which collected money owed by drivers to Hawthorn were ignored. Rather than monies flowing from Ledar to

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[53] Exs. 149, 154 (Articles of Incorporation).
[54] Tr. 229/12 - 13.
[55] Tr. 228/20 - 229/7.
[56] Tr. 111/7 - 112/1.
[57] Tr. 412/23 - 413/24 (Rhoney).
[58] Ex. 384:115/7 - 10; Tr. 542/3 - 544/8.
[59] Tr. 412/14 - 16.
[60] Tr. 413/25 - 414/3; Tr. 524/24 - 526/17; Ex. 381 (Depo. Desig. Scott Higgs 55/16 - 56/5, 56/12 - 57/1 and 58/19 - 59/3).
[61] Tr. 408/15 - 409/21; Tr. 524/24 - 526/17; Tr. 538/10 - 540/16; Ex. 384 (Depo. Desig. Carl Higgs 109/14 - 110/16).
[62] Pls. Ex. 384 (Dep. Desig. Carl Higgs 117/4 - 118/6 and 124/70 - 125/21); Tr. 538/10 - 542/2 (Carl Higgs).

Hawthorn and then to the Higgs and then to the lenders, Ledar simply paid the purchase-money lenders directly.[63]

16. Melvin Nickle, Ledar's accountant when Ledar was a party to the agreement with Hawthorn which obligated Ledar to pay monies to Hawthorn, was ignorant of Hawthorn, and knew nothing of it until shortly before trial.[64]

17. Jayco employees did all of the work in furtherance of the trucking business not performed by owner-operator drivers. It handled: recruiting of drivers, orientation of drivers, execution of both lease-purchase agreements and operator agreements, dispatch of drivers, maintenance of equipment, and accounting for revenues and expenses, including accounting to drivers for income, lease payments, charge-backs and escrow funds.[65]

18. Jayco was nominally owned, directed and managed by Norma Higgs,[66] the wife of Carl Higgs and mother of Scott Higgs.

19. Jayco had no assets.[67] Its only source of revenue was the detail shop. Though it was providing Ledar services, it received from Ledar only enough to cover its payroll it provided to its employees.[68]

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[63] Pls. Ex. 381: (Depo. Desig. Scott Higgs 55/6 - 56/5 and 56/12 - 57/1); Tr. 524/24 - 533/1 (Scott Higgs); Tr. 538/10 - 540/16 (Carl Higgs).
[64] Tr. 453/16 - 457/9 (Nickle).
[65] Tr. 399/17 - 406/23 (Rhoney); 451/14 - 452/3 (Nickle); Pls. Ex. 383 (Norma Higgs Depo. Desig.: 21/1 - 33/22, 43/20); Tr. 486/9 - 495/7 (Norma Higgs).
[66] Pls. Exs. 160 - 164.
[67] Pls. Ex. 382 (Depo. Desig. Norma Higgs 36/24 - 37/25): Tr. 469/1 - 469/11(Norma Higgs).
[68] Pls. Ex. 381 (Depo. Desig. Scott Higgs 38/5 - 39/2).

20. Jayco was managed jointly by all three Higgs.[69] The shop was managed by Carl Higgs.[70] Scott Higgs was himself an employee of Jayco,[71] overseeing sales and customer relations, and the dispatch of drivers[72] hauling freight in trucks owned by him, under Ledar's authority. For a while, Scott Higgs was an officer of Jayco.[73]

21. All three Higgs had check writing authority for Jayco's accounts.[74]

22. All three Higgs had authority to hire or fire Jayco employees.[75]

23. All three Higgs provided driver orientation services, which were the province of Jayco.[76]

24. Jayco employees, like Steve Hadggega, were authorized to enter into contracts on behalf of Ledar and Hawthorn, this authority coming from either Carl Higgs or Scott Higgs.[77] When Mr. Hadggega changed from being an employee of Ledar to being an employee of Jayco, there was no change in his duties, or his relations with the Higgs.[78]

25. The three corporations, Ledar Transport, Hawthorn Leasing and Jayco, were corporations in form only, not in substance.[79]

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[69] Pls. Ex. 381 (Depo. Desig. Scott Higgs 30/7 - 17); Pls. Ex. 383 (Depo. Desig. Norma Higgs 22/23 - 23/24).
[70] Pls. Ex. 383 (Depo. Desig. Norma Higgs 34/5 - 35/6).
[71] Pls. Ex. 380 (Depo. Desig. Scott Higgs 68/21 - 68/23).
[72] Tr. 720/1 - 21 (Scott Higgs); Pls. Ex. 383 (Depo. Desig. Norma Higgs 17/23 - 19/6).
[73] Pls. Exs. 160 - 164; Tr. 476/18 - 478/1 (Norma Higgs).
[74] Pls. Ex. 381 (Depo. Desig. Scott Higgs: 30/24 - 31/12); Pls. Ex. 382 (Depo. Desig. Norma Higgs: 53/1 - 53/16); Pls. Ex. 383 (Depo. Desig. Norma Higgs: 67/1 - 4); Tr. 508/14 - 509/5 (Norma Higgs).
[75] Pls. Ex. 383 (Depo. Desig. Norma Higgs: 17/23 - 19/6) Pls. Ex. 383: 20/22 - 21/2; Tr. 313/23 - 314/4 (Hadggega).
[76] Tr. 102/14 - 15; Tr. 102/16 - 18; Tr. 720/22 - 725/19 (Scott Higgs).
[77] Tr. 309/21 - 310/2; Tr. 314/7 - 315/20; Tr. 317/21 - 318/6 (Hadggega).
[78] Tr. 309/4 - 309/20 (Hadggega).
[79] Tr. 570/7 - 570/22 (Roos).

26. All three corporations, Ledar, Hawthorn and Jayco, were underfunded and undercapitalized.[80] Not only were they formed with no significant capital, their operations depended upon loans one to the other[81] and upon loans from the Higgs.[82]

27. The Higgs' control over the corporations is evident in their ignoring of corporate formalities and normal business instrumentalities.[83] There is no evidence that any of the three corporations issued stock.[84]

28. Norma Higgs made several loans to Ledar, one in the amount of $50,000, and Ledar used that money for "cash flow."[85] None of the loans were documented or memorialized in a written instrument.[86]

29. The Court finds that Jayco essentially functioned as the alter-ego of Ledar.

30. The Court also finds, by virtue of her ownership of Ledar's alter-ego, Jayco, and through her undocumented loans to Ledar, that Norma Higgs was a *de facto* owner of Ledar.

31. Though Hawthorn Leasing was set up nominally as a corporation and supposedly leased trucks from Carl Higgs and Scott Higgs to be re-let to drivers, no money was ever paid by Hawthorn Leasing to either of these two. Rather, Ledar paid the purchase money lenders directly, bypassing the drivers, Hawthorn, and themselves in the process.[87]

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80 Tr. 559/13 - 559/20 (Roos); Pls. Exs. 111, 112.
81 Pls. Ex. 381 (Depo. Desig. Scott Higgs: 59/25 - 60/12).
82 Pls. Ex. 383 (Depo. Desig. Norma Higgs 42/6 - 61/19); Tr. 500/1 - 501/11 (Norma Higgs); Tr. 568/11 - 18 (Roos).
83 Tr. 507/11 - 17 (Norma Higgs); Tr. 554/22 - 555/7 (Roos); Tr. 568/19 - 569/8 (Roos).
84 Tr. 569/6 - 8 (Roos).
85 Tr. 496/22 - 507/6 (Norma Higgs).
86 Tr. 507/11 - 507/24 (Norma Higgs).
87 Pls. Ex. 381 (Depo. Desig. Scott Higgs: 22/16 - 23/25); Pls. Ex. 381: 55/16 - 56/5; Ex. 381: 56/12 - 57/1; Tr. 538/10 - 540/16; Tr. 696/15 - 697/10 (Carl Higgs).

32. Their practices resulted in the Higgs building up personal equity using corporation funds, but outside the control or accounting of the corporations.[88]

33. Carl Higgs characterized what were, on their face, leases from Hawthorn to Ledar as mere "position papers" never put into effect.[89]

34. The Higgs loaned money to the corporations to meet operating expenses, but none of the loans were evidenced by a note or other evidence of indebtedness.[90]

35. All of the trucks used by Ledar in its freight-hauling business were titled in the names of Carl Higgs and Scott Higgs, and at least one in the name of Norma Higgs.[91] The Higgs' trucks were either leased by them to one of their corporations (either Ledar or Hawthorn) and then leased by those corporations (per lease-purchase agreements) to owner-operator drivers, or the Higgs leased them (per lease-purchase agreements) directly to owner-operator drivers, who in turn leased them to Ledar for use in its freight-hauling business.

36. Either individually or through the corporations they dominated, the Higgs: borrowed money to purchase the trucks, purchased the trucks, owned the trucks, sold the trucks (pursuant to lease purchase agreements) to drivers, had the trucks leased back to them for use in hauling freight, maintained the trucks, solicited loads to be hauled, dispatched the drivers, advanced most of the costs of hauling freight, received monies for the loads hauled, calculated the compensation of drivers including

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[88] Tr. 566/25 - 567/17 (Roos); Pls. Exs. 111, 112.
[89] Pls. Ex. 384 (Depo. Desig. Carl Higgs 119/23 - 120/22).
[90] Tr. 507/11 - 17 (Norma Higgs).
[91] Tr. 408/15 - 409/21; Tr. 413/25 - 414/3 (Rhoney); Ex. 381: (Depo. Desig. Scott Higgs 26/12 - 24); Pls. Exs. 202 - 275.

deductions for various charge-backs, escrows, and lease payments, and paid off the purchase-money loans. The Higgs controlled each and every one of these aspects of Ledar's freight-hauling business.

N. Plaintiffs' Piercing the Corporate Veil Claims - Conclusions of Law

1. Under Missouri law, a court will disregard the corporate entity and hold the owners liable if a) the owners exercised "complete domination" of finances, policy and business practice in respect to the transaction attacked so that "the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;" b) such control must have been used by the corporation to commit fraud or wrong, to perpetrate the violation of statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and c) the control and breach of duty must proximately cause the injury or unjust loss complained of. 66, Inc. v. Crestwood Commons Redevelopment Corporation, 998 S.W.2d 32 (Mo. 1999).

2. Among the factors to consider in evaluating the extent of domination of a corporation form are: ownership of stock, commonality of directors, commonality of officers, under-capitalization, identity of persons making corporate decisions, the declared purpose of the corporation, and the declared purpose or intentions of the owners.

3. Carl, Norma and Scott Higgs exercised complete domination of the finances, policy and business practices of Ledar with respect to Ledar's unlawful escrow practices such that Ledar had no separate mind, will or existence of its own.

4. Carl, Norma and Scott Higgs exercised complete domination of the finances, policy and business practices of Ledar with respect to Ledar's unlawful compensation practices such that Ledar had no separate mind, will or existence of its own.

5. Carl, Norma and Scott Higgs exercised complete domination of the finances, policy and business practices of Ledar with respect to Ledar's unlawful charge-back practices such that Ledar had no separate mind, will or existence of its own.

6. Carl, Norma and Scott Higgs exercised complete domination of the finances, policy and business practices of Ledar with respect to Ledar's unlawful insurance practices such that Ledar had no separate mind, will or existence of its own.

7. Carl, Norma and Scott Higgs exercised complete domination of the finances, policy and business practices of Ledar with respect to Ledar's unlawful forced-purchase practices such that Ledar had no separate mind, will or existence of its own.

8. Carl, Norma and Scott Higgs exercised complete domination of the finances, policy and business practices of Hawthorn with respect to Hawthorn's unlawful escrow practices such that Hawthorn had no separate mind, will or existence of its own.

9. Carl, Norma and Scott Higgs' control of Ledar was used by the corporation to perpetrate violations of the escrow, compensation, charge-back, insurance, and forced-purchase provisions of the Truth-in-Leasing regulations in contravention of Plaintiffs' legal rights.

10. Carl, Norma and Scott Higgs' control of Hawthorn was used by the corporation to perpetrate violations of the escrow provisions of the Truth-in-Leasing regulations in contravention of Plaintiffs' legal rights.

11. Carl, Norma and Scott Higgs' control of Ledar and Ledar's breach of duty to account for, and return, security deposit escrow funs proximately caused Plaintiffs and Class members unjust loss of their escrow funds.

12. Carl, Norma and Scott Higgs' control of Ledar and Ledar's breach of duty to pay the stated amount of compensation proximately caused Plaintiffs and Class members unjust loss of their compensation.

13. Carl, Norma and Scott Higgs' control of Ledar and Ledar's breach of duty by charging-back against compensation for items not disclosed in the Lease Agreement proximately caused Plaintiffs and Class members unjust loss of their compensation.

14. Carl, Norma and Scott Higgs' control of Ledar and Ledar's breach of duty, when Ledar deducted from Plaintiffs' compensation amounts to procure insurance products, to provide insurance certificates and, when requested insurance policies, proximately caused Plaintiffs and Class members unjust loss of their compensation.

15. Carl, Norma and Scott Higgs' control of Ledar and Ledar's breach of duty by forcing Plaintiffs and Class members to purchase products and services from Ledar proximately caused Plaintiffs and Class members unjust loss of their compensation.

O. Plaintiffs' Affiliation Claims - Findings of Fact

1. All of the trucks used by Ledar in its freight-hauling business were titled in the names of Carl Higgs and Scott Higgs, and at least one in the name of Norma Higgs.[92]

2. Scott Higgs entered into lease-purchase agreements with Plaintiff Horn and 67 Class members in which Higgs leased equipment to Class members.[93]

3. In a legal proceeding in Texas, Scott Higgs held himself out as "Scott Higgs d/b/a Ledar Transport."[94]

4. Paragraph 15 of the lease-purchase agreement between Horn and Scott Higgs states that "[i]t is understood that by both Lessee [Horn] and Lessor [Scott Higgs] that during this lease the equipment will operated exclusively under a lease agreement with Ledar Transport, Inc., a Missouri Corporation or such carrier as may be approved in writing by Lessor [Scott Higgs]."[95]

5. The lease-purchase agreements entered into between Scott Higgs and Class members stated that the "equipment will be operated exclusively under a lease agreement with Ledar Transport, Inc."

6. The lease-purchase agreements Scott Higgs entered into with Plaintiff Horn and Class members contain the same "major maintenance reserve account" that

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[92] Tr. 408/15 - 409/21; Tr. 413/25 - 414/3 (Rhoney); Ex. 381 (Depo. Desig. Scott Higgs: 25/12 - 24); Pls. Exs. 202 - 275.
[93] Tr. 418/2 - 520/19 (Scott Higgs); Pls. Ex. 363.
[94] Pls. Exs. 286 - 289.
[95] Pls. Ex. 10.

Hawthorn used in its lease-purchase agreements. In Plaintiff Horn's lease-purchase agreement, he was required to pay five cents a mile into the "reserve account," but the agreement provided that Scott Higgs would retain all of the funds if Horn terminated the lease early. For the reasons described above, this lease provision, and the confiscation of owner-operator escrow funds, violates § 376.12(k).

P. Plaintiffs' Affiliation Claims - Conclusions of Law

1. In Dart Transit Company - Petition for Declaratory Order, 9 I.C.C.2d 701 (1993), the ICC found that Dart "must comply with the equipment rental terms and escrow account provisions of the leasing regulations concerning the activity of its affiliate, Highway." 9 I.C.C.2d 701. Moreover, the ICC found that the purpose behind the Truth-in-Leasing regulations was to prevent "[a]buses or the potential for abuse occasioned by collusion between a carrier and the third-party beneficiary of an equipment purchase deduction." Id.

2. The Arctic court found that the ICC's interpretation was reasonable "as it serves to bring entities 'affiliated' with registered motor carriers under the umbrella of the Act." The court reasoned that "[t]he Commission's findings prevent registered carriers from taking advantage of a potential loophole in the Act. If this loophole is not closed, a registered carrier could create a non-registered business entity and thereby avoid the regulations promulgated under the Motor Carriers Act." Arctic, 87 F.Supp.2d 820, 828-29 (2000). The Arctic court concluded that "[f]ollowing Dart, D & A and Arctic's affiliation is enough to bring D & A under the provisions of the Motor Carriers Act. Id. at

829 (emphasis added). Broadly stated, one may not place title to a truck in an entity benefitting from the leasing of trucks to a carrier to both benefit from the leasing and avoid the obligations of a lessee under the Truth-in-Leasing regulations; with the benefits go the obligations.

3. Carl and Scott Higgs are each a "third-party beneficiary of a equipment purchase deductions." As owners of the trucks leased to Ledar, either directly or indirectly through a corporation controlled by them, they benefitted from Ledar's use of deductions from driver compensation to pay down the liens on the trucks they owned.

4. Carl and Scott Higgs also benefitted if their trucks were first leased to Hawthorn, and the trucks were then the subject of lease-purchase agreements between Hawthorn and drivers. The drivers would then enter into agreements to lease the trucks and their services to Ledar. Ledar still paid monies directly to the purchase-money lenders, ignoring Hawthorn.

5. The Court finds that, with regard to those trucks titled in Carl Higgs' name that were a) the subject of lease-purchase agreements with drivers through Hawthorn, and b) which were then leased by the drivers to Ledar, Carl Higgs is an "affiliated" entity of Ledar. By virtue of that "affiliated" status, Carl Higgs is liable to Plaintiffs and Class members for violations of Truth-in-Leasing regulations.

6. The Court finds that, with regard to those trucks titled in Scott Higgs' name that were a) the subject of lease-purchase agreements with drivers, either directly or through Hawthorn, and b) which were then leased by the drivers to Ledar, Scott Higgs is

an “affiliated” entity of Ledar. By virtue of that “affiliated” status, Scott Higgs is liable to Plaintiffs and Class members for violations of Truth-in-Leasing regulations.

CONCLUSION

After consideration of all of the testimony and the exhibits presented to the Court, including the lease agreements, the settlement sheets and oral communications amongst the parties, the Court in looking at the totality of the circumstances hereby **DETERMINES** that defendants’ leases and conduct were not in substantial compliance with the Federal Truth-in-Leasing Regulations as detailed above.

IT IS SO ORDERED.

/s/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: December 30, 2004 .
Kansas City, Missouri.