

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) others similarly situated,) Case No. _____
Plaintiffs,) Complaint-Class Action
v)
HEARTLAND EXPRESS INC.)
Defendant.) Demand for Jury Trial
)

**CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

The Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), William Meck and Kenneth Hinzman (collectively "Plaintiffs," or for all but the association, "Contracting Plaintiffs"), bring this action seeking declaratory, injunctive and monetary relief on behalf of themselves and all others similarly situated against Defendant Heartland Express Inc., its agents, affiliates, or successors in interest ("Heartland" or "Defendant") and allege as follow:

NATURE OF THE ACTION

1. Defendant is a regulated motor carrier that provides transportation of property in interstate commerce under authority issued by the U.S. Department of Transportation ("DOT"). Heartland transports property in equipment leased from independent truckers (known as "owner-operators") including the Contracting Plaintiffs William Meck and Kenneth Hinzman and others similarly situated. Under federal law and regulations, "authorized motor carriers" like Heartland may perform authorized transportation in equipment that they do not own *only* if the equipment is covered by a written lease meeting the requirements set forth in 49 C.F.R. § 376.12 (Part 376). See 49 C.F.R.

§ 376.1 I(a). Authorized motor carriers are required by regulation to follow the required lease Provisions. 49 C.F.R. § 376.12.

2. The lease agreements that Defendant uses to lease trucking equipment from Contracting Plaintiff owner-operators fail to contain important provisions required by Section 376.12. Additionally, certain terms contained in Defendant's Standard Lease Agreement conflict with provisions of Section 376.12. Finally, Defendant has engaged in a pattern and practice of conduct violating its obligations under Part 376 to Contracting Plaintiffs and others similarly situated.

JURISDICTION AND VENUE

3. This action arises under 49 U.S.C. §§ 14102 and 14704 *et seq.*, and 49 C.F.R. Part 376 *et seq.*, for violation of the statutes and regulations governing the terms and conditions pursuant to which truck owner-operators lease equipment to authorized motor carriers for the transport of property .

4. Jurisdiction of this matter is granted to this court by 28 U.S.C. §§ 1331 (federal question jurisdiction), and 1337 (proceedings arising under an act of Congress regulating commerce). The causes of action alleged here arise under the laws of the United States regulating commerce and the activities of motor carriers engaged in the transportation of property in interstate commerce, including 49 U.S.C. §§ 13501, 14102 and 14704(a)(1) and (2), and 49 C.F.R. § 376 *et seq.* Violations of the federal regulations are privately actionable under 49 U.S.C. § 14704(a)(1) and (2).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 49 U.S.C. § 14704(d)(1) in that Defendant is incorporated in and maintains a place of business in the State of Iowa and in that a substantial part of the events giving rise to the claims raised herein occurred in this district or state.

PARTIES TO THE ACTION

6. Plaintiff Owner Operator Independent Drivers Association, Inc. ("OOIDA") is a business association of persons and entities who own and operate motor vehicles, commonly known as "owner-operators." Owner-operators are small business truckers who own and operate a truck tractor (of a tractor-trailer combination). They lease their tractor and driving services, and often their own trailer, to motor carriers (such as Defendant), agreeing to move items in interstate commerce for the motor carrier in exchange for specified compensation. OOIDA is a not-for-profit corporation incorporated in the State of Missouri, with its headquarters located at 1 OOIDA Drive, N.W., P.O. Box 1000, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and now has over 7 1,000 members residing in all fifty (50) states and in Canada. OOIDA brings this action in a representative capacity and seeks declaratory and injunctive relief on behalf of all owner-operators including those who are its members.

7. Contracting Plaintiffs Kenneth Hinzman and William Meck, citizens of the state of Florida, are owner-operators who have leased motor vehicle equipment, with drivers, to Heartland within the meaning of 49 U.S.C. § 13907.

8. Contracting Plaintiffs Kenneth Hinzman and William Meck, are members of OOIDA and on information and belief that other members of the class are members of OOIDA.

9. Kenneth Hinzman and William Meck and other similarly situated owner-operators are "owners" within the meaning of 49 C.F.R. § 376.2(d), and "lessors" within the meaning of 49 C.F.R. § 376.2(f).

10. Each lease agreement entered between Contracting Plaintiffs and other similarly situated owner-operators, and Heartland constitute a "lease" within the meaning of 49 C.F.R. § 376.2(e),

11. The vehicles Contracting Plaintiffs, and other similarly situated owner-operators, provided to Heartland for use are "equipment" within the meaning of 49 C.F.R. § 376.2(b).
12. On information and belief, the leasing agreements between Contracting Plaintiffs are substantively identical to the leasing agreements entered between Heartland and other similarly situated owner-operators.
13. Heartland is an Iowa corporation doing business throughout the United States, including Florida. Heartland 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. During all time material to this case, Defendant is and has been an "authorized" carrier" within the meaning of 49 C.F.R. § 376.2(a).

CLASS ACTION ALLEGATIONS

14. This action is brought by Plaintiffs as a national class action, on their own behalf and on behalf of all others similarly situated.
15. **Class Description.** Plaintiffs seek to represent a class (hereinafter "Class") consisting of all owner-operators in the United States who, after October 1, 1996 and through the pendency of this proceeding, are or have entered into leases with Heartland, or its authorized agents or business affiliates ("Lessors"), that are subject to federal regulations contained in Part 376, Code of Federal Regulations.
16. **Impracticability of Joinder.** On information and belief, there are hundreds of individual owner-operators who are members of this Class --Lessors. These individual owner-operators are residents of various states and travel continuously, and are, therefore widely dispersed geographically. Thus, joinder of all potential Class Members would be impracticable.

17. **Commonality.** Heartland has acted toward these Class Members in a way that affects all members of the Class -- Lessors -- similarly and, accordingly, questions of fact and law are common to the Class, as are questions of the liability of Heartland, or the appropriate nature of injunctive relief.

18. **Typicality.** The claims of the Plaintiffs are typical of the claims of the potential Class as a whole.

19. **Fair and Adequate Representation.** Plaintiffs are capable of fairly and adequately protecting the interests of the Class. Additionally, OOIDA has previously participated as class representative on behalf of owner-operators in several cases, and counsel for Plaintiffs (The Cullen Law Firm, PLLC) has been appointed Class Counsel in similar class actions throughout the country.

20. **Class Certification Appropriate Under Rule 23(b)(2).** Defendant has acted and/or failed to act on grounds generally applicable to the potential class as a whole, as described further herein. 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).

21. **Class Certification Appropriate Under Rule 23(b)(3).** The questions of law enumerated in the counts below are common to all potential class members, as described in paragraph 17 *supra*, and predominate over any questions affecting only -individual members which are essentially limited to the amounts due each member. Therefore, a class action's superior to other available methods for the fair and efficient adjudication of the claims herein.

22. **Additional Factors Favoring Class Certification.** Other factors favoring the certification of this suit as a class action include:

(a) the amounts in controversy for individual owner-operators are relatively small,

so that individual members of the Class would not find it cost-effective to bring individual claims;

(b) requiring individuals to prosecute separate actions would substantially impair or impede the individual members' ability to protect their interests;

(c) on information and belief, there is no litigation already commenced by Class Members concerning the causes of action raised in this Complaint;

(d) 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;

(e) no substantial difficulties are likely to be encountered in managing this class action;

(f) on information and belief, Defendant has utilized essentially the same standard lease agreement for years and the conduct at issue arises from this agreement; and

(g) Plaintiffs are represented by The Cullen Law Firm, PLLC, which has the experience of representing their clients in numerous class actions involving owner-operators and other small business truckers nationwide.

FEDERAL REGULATORY SETTING

23. Under federal law, an authorized motor 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 49 C.F.R. § 376.12. 49 C.F.R. § 376.1 I (a); *see also* 49 U.S.C. § 14102. A person injured on account of an authorized carrier's violation of or failure to comply with the federal leasing regulations may bring an action seeking injunctive relief and damages against

such authorized carriers pursuant to 49 U.S.C. § 14704(a)(1) and (2), as well as attorneys' fees and costs as authorized by 49 U.S.C. § 14704(e).

24. The federal leasing regulations provide that the lease contain specific provisions and that the regulated motor carrier adhere to those terms. 49 C.F.R. § 376.11 and § 376.12. The Contracting Plaintiffs entered into federally-regulated lease agreements (the "Lease Agreements") with Defendant. A genuine copy of the Lease Agreement entered between Defendant and Plaintiff Kenneth Hinzman is attached as Exhibit "A. " This Lease Agreement is substantially the same Agreement entered with all other Contracting Plaintiffs. On information and belief, this Lease Agreement is identical in all materials respects to Lease Agreements entered with the entire potential class.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

25. Defendant has procured insurance coverage for Contracting Plaintiffs and has charged back various sums for such insurance against the periodic compensation due Contracting Plaintiffs. On information and belief, each member of the prospective class has purchased insurance from or through Defendant, and charge-backs or deductions were made to their compensation for said insurance.

FORCED PURCHASE OF INSURANCE

26. 49 C.F.R. § 376,12 (i) requires that the lease specify that the lessor is not required to purchase or rent any products equipment or services from the authorized carrier as a condition of entering into the lease arrangement. Notwithstanding this provision, Defendant required Contracting Plaintiffs to purchase insurance through Defendant's program.

FAILURE TO PROVIDE INSURANCE DOCUMENTS

27. 49 C.F.R. § 376.12(h) requires the authorized carrier to provide to the lessor documents that are necessary to determine the validity of any charge-back to the plaintiffs compensation. 49 C.F.R. § 376.120)(2) requires Defendant to: (1) provide the lessor with a certificate of insurance for each such policy including the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable; and 2) provide the lessor, upon request, with a copy of each policy. The lease fails to state these obligations. Defendant charged-back various sums for insurance coverage, but failed to provide relevant insurance documents upon request of the Contracting Plaintiffs.

EXCESSIVE CHARGE-BACKS FOR INSURANCE

28. 49 C.F.R. § 376.12(h) requires the lease to "clearly specify all items that maybe initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of the payment or settlement, together with a recitation as to how the amount of each item is to be computed." The leases between the Defendant and Contracting Plaintiffs state that the amount of the charge-back for insurance will be the insurance premium. The amount charged-back from the plaintiff's compensation for insurance was an amount higher than the insurance premium. The lease did not specify that an amount would be added to the insurance premium and charged-back from the lessor's compensation. The plaintiff did not provide documentation necessary to determine the validity of charge-backs added to the insurance charge-back.

EXCESSIVE CHARGE-BACKS FOR FUEL

29. 49 C.F.R. § 376.12(h) provides that the lease "clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation ... together with a recitation as to how the amount of each item is to be computed." The lease must also recite that the lessor is to be afforded copies of those documents which are necessary to determine the validity of the charge. Defendant's Lease Agreements do not contain these provisions.

30. Defendant has entered into an arrangement with Comdata, Inc., which, among other things, is intended to facilitate the acquisition of fuel by Contracting Plaintiffs and other owner-operators from various truck stops throughout the nation. Pursuant to Defendant's arrangement with Comdata, Inc., Contracting Plaintiffs and other owner-operators procure fuel at various truck stops using credits made available to the Contracting Plaintiffs on a Comdata Card issued to each owner-operator. Comdata, Inc. notifies Defendant of fuel acquired by Contracting Plaintiffs and other owner-operators using its Comdata card. Thereafter, an amount equal to the pump price of the fuel is deducted from the Contracting Drivers' compensation by Defendant. From time to time Defendant issues small credits to Contracting Plaintiffs purportedly representing a discount from the transaction price for certain fuel acquired using the Comdata card. Thereafter, Defendant pays for the fuel acquired by the Contracting Plaintiffs by making payments either to Comdata, Inc. or directly to the truck stop chain that dispensed the fuel to the Contracting Plaintiffs. Sums charged back by Defendant to the compensation of Contracting Plaintiffs for such fuel are substantially greater than the amounts actually paid by the

Defendant to Comdata or individual truck stops for such fuel providing Defendant with a substantial profit on the transaction.

31. The leases between the Plaintiff's and Defendants do not disclose the amount deducted from the owner-operator's compensation that exceeds the actual price for fuel paid by the Defendant. The Lease does not contain a recitation as to how this deduction from compensation is calculated. The Defendants have not afforded the Plaintiffs copies of those documents which are necessary to determine the validity of the charge.

COUNT I
UNAUTHORIZED PROVISION OF TRANSPORTATION SERVICES

32. Plaintiffs re-allege and incorporate the allegations of paragraphs I through 31 above.

33. Defendant's, lease agreements with Contracting Plaintiffs do not contain specific provisions required by 49 C.F.R. § 376.12 and contain provisions that conflict with Section 376.12.

34. Defendant's performance of authorized transportation services in equipment it does not own under the aforementioned Lease Agreements violates Section 376.1 1 (a).

35. As a direct and proximate result of this violation of federal law, the rights of Contracting Plaintiffs have been violated and Defendant has engaged in the unauthorized transport of property in interstate commerce in violation of federal statutes and regulations and in violation of the terms of its DOT operating authority.

COUNT 11
FORCED PURCHASE OF INSURANCE
(in violation of 49 C.F.R. § 376(i))

36. Plaintiffs re-allege and incorporate the allegations of paragraphs I through 35 above.
37. The lease agreement requires Contracting Plaintiffs to purchase insurance from the Defendant in violation of 49 C.F.R. § 376.12 (i).
38. As a direct and proximate result of this violation of federal law, the rights of Contracting Plaintiffs have been violated.

COUNT 11
FAILURE TO PROVIDE INSURANCE INFORMATION
(in violation of 49 C.F.R. § 376.12(h), (j))

39. Plaintiffs re-allege and incorporate the allegations of paragraphs I through 38 above.
40. Contracting Plaintiffs, have requested insurance information, specifically, complete policies and certificates of insurance, for insurance policies purchased from or through the authorized carrier and for which deductions were made from their compensation.
41. Defendant has failed and fails to comply with these requests for copies of insurance policies and certificates of insurance in violation of **49 C.F.R. § 376. 12 (h) & 0**.
42. As a direct and proximate result of these violations of federal law, the rights of Contracting Plaintiffs have been violated.

COUNT IV
UNLAWFUL CHARGE-BACKS TO COMPENSATION FOR INSURANCE
(in violation of 49 C.F.R. § 376.12 (h), (i))

43. Plaintiffs re-allege and incorporate the allegations of paragraphs I through 42 above.

44. The lease does not specify the charge-backs made by Defendant against Contracting Plaintiff's compensation for insurance In, excess of amounts initially paid by the Defendants for the insurance premium in violation of 49 C.F.R. § 376.12 (h). Defendants failed to afford the Contracting Plaintiffs copies of those documents which are necessary to determine the validity of the charge-backs in violation of 49 C.F.R. § 376.12 (h).

45. As a direct and proximate result of Heartland's violations of 49 C.F.R. §376.12, (h), owner-operators are deprived of sums rightfully belonging to them and have incurred substantial monetary damages. Heartland's failures are actionable under 49 U.S.C. § 14704(a)(1) and (2).

COUNT V
UNLAWFUL CHARGE-BACKS TO COMPENSATION FOR FUEL
(in violation of 49 C.F.R. § 376.12 (h))

46. Plaintiffs re-allege and incorporate the allegations of paragraphs I through 45 above.

47. The Lease does not specify the charge-backs by Defendant against Contracting Plaintiffs' compensation for fuel in excess of amounts initially paid by Defendant for such fuel constitute in violation of 49 C.F.R. § 376.12(h). Defendants failed to afford Plaintiffs copies of those documents which are necessary to determine the validity of the charge-backs by Defendant against Contracting Plaintiffs' compensation for fuel in excess of amounts initially paid by Defendant for such fuel in violation of 49 C.F.R. § 376.12(h).

48. As a direct and proximate result of Heartland's violations of 49 C.F.R. §376.12(h) owner-operators are deprived of sums rightfully belonging to them and have incurred substantial monetary damages. Heartland's failures are actionable under 49 U.S.C. § 14704(a)(1) and (2).

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., WILLIAM MECK and KENNETH HINZMAN, individually and on behalf of all others similarly situated, respectfully request that this Court:

- 1 . Enter a declaratory judgment that the leases Defendant entered with Contracting Plaintiffs and all members of the Class violate 49 C.F.R. § 376.12 in that they fail to contain provisions required by law;
2. Enter a declaratory judgment that the leases Defendant entered with Contracting Plaintiffs and all members of the Class contain provisions that are inconsistent with the requirements and responsibilities imposed upon authorized carriers under 49 C.F.R. § 376.12;
3. Enter an injunction pursuant to 49 C.F.R. § 376.1 l(a) and 49 U.S.C. § 14704(a)(1) enjoining and restraining Defendant from performing authorized transportation in equipment it does not own until it enters into written lease agreements meeting the requirements contained in 49 C.F.R. § 376.12;
4. Certify a class comprised of lessors of motor vehicle equipment who, after October 1, 1996 and through the pendency of this proceeding are or have been parties to a lease agreement within the meaning of Part 376, Code of Federal Regulations, with Defendant;
5. Enter an Order requiring Defendant to deliver to Contracting Plaintiffs and all members of the Class all insurance information and documentation for the Class as required by 49 C.F.R. §

376.12(b) and 0);

6. Enter a declaratory judgment that Defendant has violated 49 C.F.R. § 376.12(h) by imposing excessive charge-backs against drivers for fuel purchases and insurance purchases;
7. Enter an Order that Defendant provide to Contracting Plaintiffs and Class Members an accounting of all transactions involving deductions to income, debits and credits to escrow funds, fuel tax credits and debits, and requiring Defendant to recite how each charge against income was calculated while providing all documentation necessary to confirm the validity of the same transactions pursuant to 49 C.F.R. § 376.12(h) and 0);
8. Enjoin Defendant from future violations of Part 376 regulations;
9. Enjoin Defendant from any acts of retaliation, harassment, or intimidation against Contracting Plaintiffs and Class Members and others who may assist and/or participate in this action;
10. Enter judgment against Defendant in favor of Contracting Plaintiffs and individual class members for restitution and disgorgement of all charge-backs and other sums unlawfully deducted from compensation in violation of 49 C.F.R. § 376.12 and for damages all pursuant to 49 U.S.C. § 14704(a)(2), including pre- and post-judgment interest, as allowed by law;
11. Create a common fund made up of all damages owed by Defendant to individual Class Members;
12. Award class counsel reasonable attorneys' fees and expenses incurred in the prosecution of this action to be paid out of the common fund;
13. Award class counsel reasonable attorneys' fees and expenses pursuant to 49 U.S.C. § 14704(c); and
14. Award such other relief as this Court may deem to be just and proper.

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,

WHITFIELD & EDDY,
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//SIGNED//

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