UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., et al,

Plaintiffs,

vs.

CASE NO. 3:02-cv-1005-J-25MCR

LANDSTAR SYSTEM, INC., et al,

Defendants.

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ORDER

THIS CAUSE is before this Court on Plaintiffs' Motion and Memorandum of Law in Support of Plaintiffs' Motion for Class Certification (Dkt. 112) and supplemental memorandum (Dkt. 159) and Defendants' responses thereto (Dkt. 118, 156). This Court having considered same, as well as the argument of the parties, this Court makes the following findings:

The instant action is brought by Plaintiff drivers who are owner-operators of truck tractors who lease their equipment and their services to motor carriers that haul freight in interstate commerce, pursuant to operating authority issued by the U.S. Department of Transportation (DOT), and the Federal Motor Carrier Safety Administration (FMCSA). Specifically, Plaintiffs allege that Landstar failed to word its owner-operator leases in literal compliance with the federal Truth-in-Leasing regulations set out in 49 C.F.R. §376.12, and therefore must pay damages, restitution and disgorgement pursuant to 49 U.S.C. §14704(a)(2).

Plaintiffs' seek, pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3), to certify the following class:

> All owner-operators in the United States who, after November 1, 1998, and through the pendency of this proceeding, had or have leases with Landstar Inway, Inc., Landstar Ranger, Inc., or Landstar Ligon, Inc., or their authorized agents or business affiliates ("Lessors"), that

> are subject to federal regulations contained in Part 376, Code of Federal Regulations.

If granted this class would be approximately 7000 people.

This Court's task is to conduct a rigorous analysis before determining that class certification is appropriate. *General Tel Co. of the Southwest v. Falcon*, 457 U.S. 147, 160-61 (1982). On the other hand, the Court may not conduct an inquiry on the merits at this early stage in the proceedings. *Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1569 n.11 (11th Cir. 1992) citing *Nelson v. United States Steel Corp.*, 709 F.2d 675, 679-80 (11th Cir. 1983); *Krueger v. New York Tel. Co.*, 163 F.R.D. 433, 438 (S.D. N.Y. 1995) (stating "court should not resolve any material factual disputes in the process of determining whether plaintiffs have provided a reasonable basis for their assertions") (citation omitted)).

To obtain class certification, Plaintiffs must demonstrate that they meet the general class certification requirements set forth in Federal Rule of Civil Procedure 23(a). *Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1569 (11th Cir. 1992). These prerequisites are commonly referred to as (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See General Telephone Co. of Southwest v. Falcon*, 457 U.S. at 156 (1982); *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir.1985). "The requirements of commonality, typicality and adequacy of representation tend to merge." *Falcon*, 457 U.S. at 157 n.13. Commonality and typicality represent the 'nexus' necessary between class representatives and class members." *Washington*, 959 F.2d at 1569 n.8. After determining that these prerequisites have been met, the Court must then determine which, if any, form of class action is appropriate pursuant to Rule 23(b). The standard of proof in support of certification is liberal. *See Binion v. Metropolitan*

Pier & Expo. Auth., 163 F.R.D. 517, 520 (N.D. Ill. 1995); *Armstead v. Pingree*, 629 F.Supp. 273, 279 (M.D.Fla. 1986).

A. Rule 23(a) Prerequisites to a Class Action

1. Numerosity:

Plaintiffs meet the numerosity requirement in that the class is so numerous that joinder of the class members is impracticable. *See* Fed. R. Civ. P. 23(a)(1). "Impracticable does not mean impossible." *Robidoux v. Celani*, 987 F.2d 931 (2d Cir. 1993). And the plaintiffs do not need to show the exact number of class members, but instead "must show some evidence of or reasonably estimate the number of class members." *Barlow v. Marion County Hosp. Dist.*, 88 F.R.D. 619, 625 (M.D. Fla.1980). Plaintiffs estimate that there are over 7,000 owner-operators under lease to Landstar who are potential members of the class.

2. Commonality:

In order to meet the commonality requirement, Plaintiffs must show that there are issues common to the class. Plaintiffs allege that the claims of the class all arise from Truth-in-Leasing Regulations, a single regulatory regime; that each class member's lease agreements with Landstar are identical in material respects; and the facts from the complaint demonstrate Landstar's uniform policy to overcharge owner-operators, skim proceeds, and to unlawfully charge for plates and permits.

Defendants primary complaint with class certification is in the commonality requirement. It is Defendants contention that four reasons exclude a commonality finding. First, "each class member that claims to have been injured by the alleged practice would have to offer proof that it in fact used the Landstar Card; as noted earlier, not all Landstar owner-operators actually use a Landstar

Card." Second, Defendants contend that each member of the class must demonstrate, under 49 U.S.C. §14704(a)(2)[1], that he/she sustained damages. Third, Defendants maintain that each class member would be required to establish detrimental reliance based upon the alleged violations, again pursuant to the language of 49 U.S.C. §14704(a)(2). Fourth, Defendants maintain that "every class member would have to testify that it was not advised of the terms of use of the Landstar Card orally or though writings other than in the Landstar lease." (Dkt. 118, pg. 10).

In *Klay v. Humana, Inc.*, 382 F.3d 1241 (11th Cir. 2004), the Eleventh Circuit addressed the issue of whether individualized determinations would defeat class certification under Rule 23(b)(3). There the Court stated: "It is primarily where there are significant individualized questions going to liability that the need for individualized assessments of damages is enough to preclude 23(b)(3) certification." *Klay*, 382 F.3d at 1260. Furthermore, the Court continued,"there are also extreme cases in which computation of each individual's damages will be so complex, fact-specific, an difficult that the burden on the court system would be simply intolerable, but we emphasize that such cases rarely, if ever, come along." *Klay*, 382 F.3d at 1260 (internal citation omitted).

It is true that not all aspects of this case present common issues. For example, if these common questions are resolved in favor of the putative class, the issue of damages will be unique and subject to individualized proof. Nonetheless, "the mere fact that questions peculiar to each individual member of the class remain after the common questions of the defendant's liability have been resolved does not dictate the conclusion that a class action is impermissible." *Bremiller v.*

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[1] 49 U.S.C.A. § 14704(a) provides: "(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."

Cleveland Psychiatric Institute, 898 F. Supp. 572, 578 (N.D.Ohio 1995) (citing Sterling v. Velsicol, 885 F.2d 1188, 1197 (6th Cir. 1988)). This Court concludes that there are common question of law and fact in this matter such that the commonality element has been satisfied. While there may be some individual damage determinations this Court does not find the instant matter to be such an extreme case such that class certification should be denied.

3. Typicality:

For the same reasons this Court finds that the class claims are common, it finds that Plaintiffs' claims are typical of the class -- i.e., the claims "arise from the same event or pattern or practice and are based on the same legal theory" as the claims of the class. Kornberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1337 (11th Cir.1984), cert. denied, 105 S.Ct. 1357 (1985). Accordingly, the Court concludes that Plaintiffs' claims are typical of the class claims.

4. Adequacy of Representation:

Prior to certifying a class, this Court must determine that Plaintiffs' counsel is qualified, experienced, and generally able to conduct the litigation. Defendants do not dispute that Plaintiffs' counsel possesses the qualifications, experience and abilities necessary for an undertaking of this magnitude. And this Court finds that they are so qualified.

Defendants do, however, assert that OOIDA is not a suitable class representative since OOIDA has not suffered an injury and seeks no redress. This Court is not persuaded by Defendants argument. In fact, this Court finds, as did the court in *OOIDA v. Arctic Express Inc.*, 97-CV-0750, (E.D. Ohio Sept. 4, 2001)[2], that OOIDA has standing to proceed.

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[2] This case is attached to Plaintiff's Motion (Dkt. 112) as Exhibit D.

B. Rule 23(b)(3): Form of Class Action Maintainable

Having met the prerequisite showing for the maintenance of a class action, this Court turns to the issue of whether Plaintiffs have established the requirements for maintaining a class under Federal Rule Civil Procedure 23(b)(3).

1. Predominance

Rule 23(b)(3) requires that common questions of law and fact predominate. See *Cox v. American Cast Iron Pipe Co.*, 784 F.2d 1546, 1557 (11th Cir. 1986). The predominance requirement is met when those issues subject to generalized proof and applicable to the class as a whole predominate over the issues subject to individualized proof. *Nichols v. Mobile Board of Realtors, Inc.*, 675 F.2d 671, 676 (5th Cir.1982). Here, this Court has no difficulty reaching the determination that questions of fact and law on the issue of liability predominate and are common to all class members.

2. Superiority

Rule 23(b)(3) lists four factors for this Court to consider when determining the predominance of issues and superiority of proceeding as a class action. Those factors are: (1) the individual interests of the members of the purported class in controlling the prosecution or defense of separate actions; (2) the extent and nature of any already-existing litigation; (3) the desirability of concentrating the litigation in the particular forum; and (4) the manageability of a class action.

This case is well suited for treatment as a class action since the individual members of this class have limited resources, are disperse geographically and it is unlikely that they each would file separate claims. Furthermore, as Plaintiffs point out, with the relatively small amounts of money involved per owner-operator, the class action is a superior form of adjudication. This Court

recognizes that there may be individual determinations necessary for a decision on actual damages. Nevertheless is appears that proceeding as a class action is the superior approach.

3. Parameters of the Class

The final issue that remains to be resolved is the exact definition of the class. Again Plaintiffs seek to certify a class of:

> All owner-operators in the United States who, after November 1, 1998, and through the pendency of this proceeding, had or have leases with Landstar Inway, Inc., Landstar Ranger, Inc., or Landstar Ligon, Inc., or their authorized agents or business affiliates ("Lessors"), that are subject to federal regulations contained in Part 376, Code of Federal Regulations.

Defendants object to this class definition contending that it lacks reference objective, that Plaintiffs lack standing to relief for owner operators that have leases with Landstar Gemini, Inc. or other authorized agents of a Landstar entity, and that the language is vague as to who exactly would be included in the class.

Landstar Logistics, Inc., Landstar System Inc., Landstar Express America, Inc., and Landstar Gemini, Inc, were removed as Defendants in this action according to the Amended Complaint (Dkt. 151). Therefore, Defendant's argument as to this point is moot. This Court does not find Defendants remaining arguments to be persuasive. Accordingly, Plaintiffs class definition will remain.

Accordingly, it is **ORDERED**:

1. Plaintiffs' Motion and Memorandum of Law in Support of Plaintiffs' Motion for Class Certification (Dkt. 112) is **GRANTED** and the Court certifies a class comprised of:

> All owner-operators in the United States who, after November 1, 1998, and through the pendency of this proceeding, had or have leases with Landstar Inway, Inc., Landstar Ranger, Inc., or Landstar Ligon, Inc., or their authorized agents or business affiliates ("Lessors"), that are subject to federal regulations contained in Part 376, Code of Federal Regulations.

2. Owner-Operator Independent Drivers Association, Inc., G.L. Brewer, Gerald E. Eidam, Jr., James E. Michael, and Robert Penman are appointed as Plaintiff Class Representatives.

3. The law firm of Brennan, Manna & Diamond, P.L., and The Cullen Law Firm, PLLC are appointed as Plaintiffs Class Counsel.

4. This case is hereby stricken from the Court's October 2005 Trial Calendar and hereby reset for the April 2006 Trial Calendar. A Second Pretrial is set for February 3, 2006 at 9:30 a.m. Final discovery shall commence immediately and end on or before December 19, 2005. Final dispositive motions shall be filed on or before January 13, 2006.

DONE AND ORDERED in Chambers this 30 day of August, 2005.

HENRY LEE ADAMS, JR.
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record