UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC. and G.L. BREWER; GERALD E. EIDAM, JR.; JAMES E. MICHAEL; ROBERT PENMAN and JAMES E. SCHMIDT and on behalf of all others similarly situated,	
Plaintiffs,	Case No. 3:02-CV-1005-J-25 MCR
v.	
LANDSTAR SYSTEM, INC.; LANDSTAR EXPRESS AMERICA, INC.; LANDSTAR GEMINI, INC.; LANDSTAR INWAY, INC.; LANDSTAR LIGON, INC.; LANDSTAR LOGISTICS, INC.; and LANDSTAR RANGER, INC.,	
Defendants.	

PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

Defendants' ("Landstar") motion for partial summary judgment ("Landstar Mem.") should be denied for the following reasons:

- Landstar's motion is procedurally defective. Fed. R. Civ. P. 56 cannot be used to obtain advisory opinions regarding what "plaintiffs must prove" to establish the defendants' liability or the amount of damages plaintiffs may recover at trial. Landstar Mem. at 2.

- There is no legal basis for a "substantial compliance" standard for violations of the Truth-in-Leasing regulations. In any event, Landstar is in *total noncompliance* with the regulations.

- There is no legal basis for the application of "detrimental reliance" or "actual" damages standard for recovery under the Truth-in-Leasing regulations. *No case* decided under the regulations has imposed such a standard, and the Court should reject Landstar's invitation to do so.

Landstar candidly acknowledges that the central purpose of its motion is to obtain preliminary rulings bearing on class certification, arguing that "proof of 'sustained' damages and detrimental reliance will necessarily be on a contractor-by-contractor basis . . . and therefore will be highly relevant to Plaintiffs' ability to meet the requirements for class certification. . . ." Landstar Mem. at 5. However, this is not a proper use of a summary judgment motion. The motion should therefore be denied.

II. FACTUAL BACKGROUND

Plaintiffs, owner-operator truck drivers ("Owner-Operators") have filed a class action complaint seeking relief for Defendants' violations of the federal Truth-in-Leasing regulations found at 49 C.F.R. Part 376 ("Truth-in-Leasing regulations"). The facts alleged in the complaint demonstrate that it is the uniform policy of Landstar: (i) to overcharge Owner-Operators for fuel and fuel transaction fees; (ii) to unlawfully deduct costs related to military shipments before calculating Owner-Operator compensation; and, (iii) to unlawfully overcharge for base plates and permits issued by the states.

III. PROCEDURAL BACKGROUND

Plaintiffs commenced this action on November 1, 2002 (Dkt. 1). By order dated September 30, 2004, the Court denied Defendants' motion to compel arbitration (Dkt. 73). On March 4, 2004, Landstar voluntarily dismissed its appeal of the Court's order denying the motion to compel arbitration (Dkt. 86). By Order dated June 4, 2004, the Court denied Landstar's motion to dismiss as to the merits of Plaintiffs' Truth-in-Leasing claims (Dkt. 98).[1]

A status conference was held by the Court on April 9, 2004, at which time the Court indicated that it would set this action for trial in April 2005.

[1] That order did grant Defendants' motion to dismiss certain affiliated defendants.

IV. ARGUMENT

A. Landstar's Motion is Procedurally Misplaced.

Landstar improperly attempts to utilize Fed. R. Civ. P. 56 as a device to obtain abstract advisory rulings from the Court regarding the evidence Plaintiffs must present at trial to establish liability and damages. Landstar fails to proffer any "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" demonstrating that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). Indeed, Landstar cannot point to any undisputed facts showing that it has complied with the Truth-in-Leasing regulations - substantially or otherwise - or that the plaintiffs have sustained no damages - actual or otherwise. Rather, Landstar states that it seeks a "declaration" of what Plaintiffs must introduce at trial to establish liability and damages. Landstar Mem. at 20. This is not an appropriate basis for summary judgment.

Although summary judgment can be a useful procedural device under appropriate circumstances, it is, as the Eleventh Circuit has said, "not a catch penny contrivance to take unwary litigants into its toils and deprive them of a trial. . . ."[2] In ruling on a summary judgment motion "[t]he court is required to draw all permissible inferences against the party moving for summary judgment."[3] "The court's function is to determine whether there is any evidence in favor of the nonmoving party such as would authorize a jury to return a verdict in the party's favor."[4] It is not appropriate to ask the Court to issue abstract advisory opinions regarding the

---

[2] *Heath v. Jones*, 863 F. 2d 815, 819 (11th Cir. 1989)(citation omitted).

[3] *Id.*

[4] *Id.*

legal effect of facts that are undeveloped or disputed. This point was made by one District Court faced with a defense summary judgment motion seeking an advisory ruling as to the meaning of a contractual exclusion while the facts of the case still were in dispute:

> To discuss the legal issue of UM coverage while there exists this critical issue of material fact would be to improperly render an advisory opinion. *See Hamman v. Southwestern Gas Pipeline, Inc.*, 721 F. 2d 140, 144 (5th Cir. 1983)(advisory opinions beyond court's constitutional power). Resolution of a legal issue "may not be ascertained in the abstract, but only in the context of a precise factual situation." *Roland v. Allstate Ins. Co.*, 370 F. 2d 289, 292 (5th Cir. 1966)(refusing to rule on legal issue when material facts remained to be decided). *Bonneville Power Administration v. Washington Public Power Supply System,* 956 F. 2d 1497, 1508 (9th Cir. 1992)(observing that ruling on summary judgment motion beyond finding existence of material fact would be inappropriate).[5]

Similarly, Landstar's motion is predicated on *complete* abstraction - it avoids any discussion of the "precise factual situation" presented in this case. Landstar does not even attach a copy of the lease that it asserts substantially complies with the Truth-in-Leasing regulations. A ruling that Landstar's leases need only substantially comply with the Truth-in-Leasing regulations, while Plaintiffs contend (and the record reflects) that the leases are in *complete* noncompliance, "would be to improperly render an advisory opinion," impermissible under the rules, and beyond the Court's constitutional power.[6] Accordingly, Landstar's motion should be denied as procedurally defective. Even if Rule 56 could be used as Landstar attempts, the motion should be denied on its merits.

B. There Is No Legal Basis for The Application of a "Substantial Compliance" Standard for Violations of The Truth-in-Leasing Regulations.

It is well-settled that substantial compliance in the statutory setting is particularly disfavored:

---

[5] *Tsolainos v. Tsolainos*, 59 F. Supp. 2d 592, 597 (E.D. La. 1999) (emphasis added).

[6] *Id.*

> The doctrine of substantial compliance is an equitable doctrine designed to avoid hardship in cases where the party does all that can reasonably be expected of him. However, in the context of statutory prerequisites, the doctrine can be applied only where invocation thereof would not defeat the policies of the underlying statutory provisions.[7]

Further, "the doctrine of substantial compliance can have no application in the context of a clear statutory prerequisite that is known to the party seeking to apply the doctrine."[8] Courts applying the Truth-in-Lending Act, have held that strict compliance is required.[9]

> TRUTH-IN-LENDING ACT is a strict liability statute with respect to imposition of statutory damages: once a court finds a violation, *no matter how technical*, it has no discretion with respect to the imposition of liability.[10]

Here, the Truth-in-Leasing regulations mandate that: (1) "the written lease required under § 376.12. It is Landstar's non-compliance with this *mandatory* requirement that is before the Court in this case.

Dart Transit Co. Petition for a Declaratory Order[11] fails to support Landstar's "substantial compliance" theory. Although in *Dart*, the I.C.C. made a general statement at the outset of its opinion that "Dart was in substantial compliance with the leasing regulations," with respect to the terms of the regulated lease, nothing in the text of the opinion suggests that anything less than actual compliance is acceptable. For example, with respect to statements in

---

[7]*Sawyer v. County of Sonoma*, 719 F.2d 1001, 1008 (9th Cir. 1983).

[8]*Id.*

[9]Landstar places virtually exclusive reliance on the Truth-in-Lending Act, which is not applicable to this action based on the Truth-in-Leasing Act. Moreover, the analysis in this section shows that even if this were a Truth-in-Lending case, Landstar's argument would fail.

[10]*Fabricant v. Sears Roebuck,* 202 F.R.D. 310, 318 (S.D. Fla. 2001)(emphasis in original).

[11]9 I.C.C. 2d 701, 1993 WL 220182 (1993).

the carrier's operating agreement, the I.C.C. concluded that "this form of disclosure *is consistent with the letter* of the leasing regulations *as well as its intent* – to protect owner-operators from carrier abuse and collusion between carriers and third-party equipment rental interests."[12] The I.C.C. further reasoned that "the terms of the Maintenance Reserve Fund arrangement *are disclosed adequately* within Dart's owner-operator agreement to satisfy the requirements of § 1057.12(i)" and concluded "that the *full-disclosure requirements* of the Commission's leasing regulations *are* satisfied."[13] The I.C.C. thus required and determined that the written lease provisions complied with the "letter" as well as the "intent" of the leasing regulations. Furthermore, *Dart* is limited to the question of whether the four corners of the lease itself satisfy the full disclosure requirements of the regulations.[14] Nothing in *Dart* remotely supports the proposition that a regulated carrier can avoid its business conduct violations of the regulations by offering parol evidence of general business practices or materials outside the four corners of the lease.

Landstar's reliance on the unpublished decision of *Renteria v. K&R Transp., Inc.*[15] for the application of a broad substantial compliance standard is also unavailing. In *Renteria*, the

---

[12] *Id.* (emphasis added).

[13] *Id.* (emphasis added).

[14] Indeed, even after its *Dart* opinion, the I.C.C. has been quite clear that, in addition to compensation and the duration of the lease, the "Commission's 'truth-in-leasing' regulations require that certain . . . information and owner-operator rights be stated in all leases." Study of Interstate Commerce Commission Regulatory Responsibilities Pursuant to Section 210(a) of The Trucking Industry Regulatory Reform Act of 1994, 1994 WL 639996, *52 (Oct. 25, 1994). *See also Lease and Interchange of Vehicles*, 131 M.C.C. 286, 295, 1978 WL 10541, **8 (June 13, 1978)(rejecting proposal that compensation disclosures could be included by reference to business documents outside the lease).

[15] Nos. 98-CV-290 etc., slip op. at 11 (C.D. Cal. June 22, 2001) (Landstar Mem., Ex. A).

court permitted parol evidence showing that the plaintiffs "signed the agreements only after lengthy explanation of the terms," concluding:

> [T]he Court sees nothing that would indicate that the defendant motor carriers failed to adequately disclose to the plaintiffs all material information required by the provisions. . . . This is especially true for compensation and insurance coverage, where the agreements and oral communications clearly show that the defendants took all practical steps both to apprise the plaintiffs of the required information and to make available to the plaintiffs the details of the method defendants used in making their calculations.[16]

First, while Landstar fails at this time to identify any evidence supporting its substantial compliance defense, it should be stopped from any future attempt to introduce parol evidence extraneous to the four corners of the lease because: (1) Landstar's own lease contains an integration clause, and (2) the parol evidence rule prohibits the introduction of such evidence.[17] Second, it is telling that Landstar makes no effort here to demonstrate how its lease complies with the regulations, substantially or otherwise. Landstar does not even attach a copy of the lease with its summary judgment motion. For the Court's convenience, Plaintiffs have attached a copy of the lease at issue as Exhibit A. An examination reveals that the lease does not strictly *or* substantially comply with the regulations. Indeed, as highlighted by a number of recent incriminating admissions made by Landstar, it is indisputable that the lease does not comply with the regulations. In this regard, in a June 28, 2004 memorandum to Landstar owner-operators ("BCO's"), Landstar stated that it was superseding the lease at issue in this case with a new lease (Exhibit B), prompted by the allegations in the instant lawsuit: "claim[ing] that your existing

---

[16] *Id.*

[17] *See* Exhibit A, ¶26; *Int'l Erectors, Inc. v. Wilhoit Steel Erectors & Rental Service*, 400 F. 2d 465 (5th Cir. 1968)("[p]arol evidence rule forbids any addition to or contradiction of the terms of a written instrument . . . ."). *See also Sheinhartz v. Saturn Trans. System, Inc.*, 2002 WL 575636, at *8 (March 26, 2002)("[i]t does not matter what linehaul amount each owner-operator was quoted nor does it matter what each owner-operator was told orally about the cost of insurance . . . The dispositive and predominate legal and factual issues in this case are whether . . . Plaintiffs' leases complied with the federal regulations by clearly stating the amount to be paid to the owner-operators by Defendants. . . .")

agreement does not comply with OOIDA's view of federal rules and laws mainly addressing disclosures of information." *Id.* Landstar then states:

> Through the enclosed new Independent Contractor Operating Agreement, Landstar desires to make the required disclosures in an updated and uniform manner to all Landstar BCO's. The new agreement is intended to assure each of you receives uniform and up to date disclosures. *Id.*

An examination of the new lease, in turn, quickly reveals that the "required disclosures" are indeed totally "*new*", *i.e.*, they were *never disclosed* in the lease at issue in this case, substantially or otherwise.

(1) Previously Undisclosed Retention of Profits - The new lease discloses that Landstar receives volume discounts on goods or services purchased by Owner-Operators, and reserves the unilateral right to keep such profits.

> [T]he parties agree that [Landstar], from time to time, may obtain volume discounts or rebates from third party vendors as a result of the purchase of goods or services by [owner-operators]. [Landstar] will endeavor to pass along such discounts to [owner-operators]; provided however, *the parties agree that any discount may be retained in whole or in part by [Landstar] in its discretion.*

See Exhibit B at ¶ 13 (emphasis added). In contrast, the Landstar lease at issue here is *silent* on this point, thus substantiating plaintiffs' allegation that Landstar has received discounts for fuel that it has neither accounted for, or credited to owner operators. Complaint, Count II, ¶¶ 37-40.

(2) Previously Undisclosed Transaction Surcharges - Landstar's new lease states that Comdata charges "comprise both a transaction fee to the financial services provider Comdata *and an administrative fee and/or profit to CARRIER for its time and expense.*" (Exhibit B, App. C at 30 (emphasis added). In contrast, the lease at issue here is *silent* on this point, thus further substantiating the allegations in the complaint that Landstar realizes hidden profits on such charges. Complaint, Count II, ¶ 41.

(3) Previously Undisclosed Skimming of Revenues - Landstar's new lease discloses Landstar's adjustments of revenue as shown on freight bills:

> *reduced by* . . . a payment processing fee comprised of the actual cost incurred by CARRIER for those shipments in which CARRIER's customer or a third party payor make deduction for CARRIER's freight charges related to electronically-transmitted billing and payment account use.

Ex. B, App. A at 15 (emphasis added). In contrast, the lease at issue here is *silent* on this point, further substantiating the Plaintiffs' allegations that Landstar has skimmed monies owed to Owner-Operators by deducting two percent of the revenue shown on the rated freight bill for all DOD shipments before calculating the owner-operator's share of the revenue. Complaint, Count III, ¶¶ 46-53.

(4) Previously Undisclosed Surcharges for Base Plates - Landstar's new lease discloses that Landstar adds on administrative fees for obtaining base plates as follows:

> The charge [for base plates] comprises both the carrier's payments to the relevant IRP jurisdictions and an administrative fee to Carrier for its costs in applying for and obtaining the plate.

Again, the lease at issue here is *silent* on this point, further substantiating the allegations in the complaint that Landstar charged back Owner-Operators excessive sums for base plates. Complaint, Count IV, ¶¶ 55-62.

(5) Previous Failure to Provide Access to Chargeback Data - The new Landstar lease expressly specifies that Landstar will provide owner operators with the terms of volume discounts received:

> Landstar will provide [owner-operator] the names of the sources of any such volume discounts or rebates and the terms of such volume discounts or rebates upon the written request of [owner-operator].

Exhibit B at ¶ 13. Once again, the lease at issue is *silent* on this point, thus eliminating any remote similarity to *Renteria* where the court observed that the carrier "took all practical steps

both to apprise the plaintiffs of the required information and to make available to the plaintiffs the details of the method defendants used in making their calculations."[18]

The foregoing undisputed facts decimate any notion that Landstar has complied with the Truth-in-Leasing regulations at all, much less substantially. Thus, even if a substantial compliance standard were applicable, Landstar's conduct falls far short of that mark.

C. There Is No Legal Basis for the Application of "Detrimental Reliance" or "Actual" Damages Standard under the Federal Truth-in-Leasing Regulations.

Landstar's lengthy discussion regarding the standards for damages recovery under regulatory regimes other than the Truth-in-Leasing regulations is controverted by the wealth of case-law decided within the framework of the Truth-in-Leasing regulations.

In 1977, the ICC revised the leasing regulations to achieve full disclosure between the parties of "the elements, obligations, and benefits of leasing contracts. . . ."[19] The I.C.C. expected the required disclosures "to eliminate or reduce opportunities . . . for skimming and other illegal or inequitable practices. . . ."[20] As noted by the I.C.C.:

> If the Commission is to promote efficient transportation and fair working conditions, it is imperative that owner-operators be free to negotiate contracts which prevent regulated carriers from taking unfair advantage when using their services. This proceeding arises out of attempts to solve serious and longstanding problems facing owner-operators.[21]

---

[18] *Renteria*, slip op. at 11. For similar reasons, the court's unpublished decision in *Strickland v. Trucker's Express, Inc.*, No. CV-95-62-M-LBE, slip. Op. at 16 (D. Mont. Feb. 3, 2003)(Exhibit D to Landstar Mem.) is inapposite. Putting aside the court's admission of parol evidence in *Strickland* (the admission of which is prohibited in this case, *see Int'l Erectors*, *supra*), the court noted that "Defendant's verbal disclosure of information required by the regulation was in accord with the spirit and intent of the regulations." *Id.* Here, a comparison between the new Landstar lease and the lease in question amply demonstrates that until the new lease was issued, Landstar operated its skimming and profiteering programs in complete secrecy from Owner-Operators.

[19] *Lease and Interchange of Vehicles*, 129 M.C.C. 700, 700 (June 13, 1978).

[20] *Id.*

[21] 46 Fed. Reg. 44013, 1981 WL 107853.

In a subsequent rulemaking proceeding, the ICC made it clear that the agency had intended the charge-back rule to preclude the carrier's manipulation of charge-backs to make a profit. As stated in the notice of proposed rulemaking:

> It appears that, in certain instances, *carriers are defeating the intent of the present regulations by profiting from charge-back items* at the expense of owner-operators. Chargebacks are items that may be paid for initially by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement. We believe that all legitimate charge-backs and deductions should be clearly specified and identified in the lease and agreed upon between the parties. *The carrier should not be in a position to manipulate these expenses in such a way that it makes a profit in its handling of these matters. To the extent that charge-backs to owner-operators reduce the carrier's legitimate expenses, resulting in losses to the owner-operator and a profit to the carrier, they are not legitimate charge-backs or deductions.*[22]

The enabling statute for actions seeking damages to remedy violations of the leasing regulations, 49 U.S.C. § 14704(a)(2), makes a carrier "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."

Landstar's attempt to rewrite 49 U.S.C. § 14704(a)(2) by requiring owner-operators to prove "actual" damages and "detrimental reliance," is unsustainable. There is no requirement on the face of the statute requiring "actual" damages or "detrimental reliance." And, there is no suggestion in the legislative history that recovery of profits illegally obtained by carriers should be so delimited. There is also nothing in the Truth-in-Leasing regulations themselves imposing such conditions. To the contrary, the I.C.C. commentary to the rule-making proceedings expressly envisioned that a regulated carrier should not be permitted to retain ill-gotten gains at the expense of owner-operators.

Landstar cites no cases decided under Section 14704(a)(2) supporting its contention that Plaintiffs must prove "actual" damages and "detrimental reliance." There are none. Contrary to Landstar's bare assertion, *OOIDA v. New Prime, Inc.*, 339 F. 3d 1001 (8th Cir. 2003), never once

[22] *Id.* at 44015 (emphases added).

mentions the word "actual" damages, or does it suggest that "detrimental reliance" is a prerequisite to recovery.[23] Rather, in *New Prime* the court *presumed* that the carrier would be liable for returning all funds obtained in violation of the regulations, but denied class certification on the grounds that such funds might be offset by other monies due to the carrier: "[N]either Prime nor Success Leasing *would be liable for returning funds* if, for example . . . The funds *owed to the Owner-Operator* were offset by monies owed to Prime or Success."[24] Conversely, by Landstar's own reasoning - in the absence of offsets in *New Prime*, the plaintiffs would have been entitled to recover all such funds as damages under the regulations.[25]

Landstar's reliance on *Hall v. Aloha Int'l Moving Services Inc.*[26] further undermines its position. In *Hall*, the court concluded that the plaintiff's damages were not sustained "as a result of" the carriers' failure comply with the regulations, but were indirectly related to damage that had been caused to her household goods during shipment by the carrier. *Hall* thus holds that the damages must be *directly* caused by the violation, and not by some other cause. As such, *Hall* discredits Landstar's theory that the phrase "sustained as a result of" means that a plaintiff must

---

[23] Landstar Mem. at 7.

[24] *New Prime*, 339 F.3d at 1011.

[25] Landstar has no such cognizable offsets in this case. A defensive set-off must (1) be asserted solely to defeat or diminish the adverse party's recovery; (2) arise from a transaction extrinsic to the original claim; (3) be based on a contract or judgment; and (4) be liquidated or capable of liquidation without the aid of evidence presented at trial. *OOIDA v. Arctic Express, Inc., et al.*, Case No. C2 97-CV-750 (S.D. Ohio, Mar. 15, 2004)("Ex. C" at 4) ("Here, the items of set-off claimed by the Defendants would not be capable of liquidation without substantial evidence being presented at trial. This the Court will not allow."). *See also Dinces v. Robbins*, 604 F. Supp. 1021, 1026-28 (E.D. Pa. 1985); *Barrett v L.F.P., Inc.*, No. 85 C 6495, 1986 WL 7689, at *2 (N.D. Ill. June 27, 1986); *Jones v. Sonny Gerber Auto Sales, Inc,*. 71 F.R.D. 695, 697 (D. Neb. 1976); *Wigglesworth v. Teamsters Local Union No. 592,* 68 F.R.R. 609, 613 (E.D. Va. 1975); *Mathias v. Jacobs,* 167 F. Supp. 2d 606, 619 (S.D.N.Y. 2001). In this case, Landstar asserts no class-wide offsets as an affirmative defense, or defense to class certification. Rather, it pleads an offset as to only one of the named plaintiffs, as to whom it has asserted a counterclaim (Dkt.100, 12th Affirmative Defense). To put a fine point on it - Landstar has no valid liquidated offsets *against anyone.*

[26] No. CIV 98-1217 (MJD/JDL), 2002 WL 1835469 at *14 (D. Minn. Aug. 6, 2002).

show "detrimental reliance." To the contrary, *Hall* demonstrates that the phrase means only that the plaintiff must show "direct causation," a fact that Landstar cannot deny on this record.[27]

Landstar's claim that the court must conduct a case-by-case trial regarding whether every owner-operator can show detrimental reliance is ultimately refuted by the numerous cases in which class certification has been granted, and in which the courts have expressly acknowledged the plaintiffs' right to recover undisclosed overcharges and skimmed proceeds:

- *OOIDA v. Mayflower*, 204 F.R.D. 138, 148 (S.D. Ind. 2001)(court granted class certification noting: "Moneys not actually expended on insurance premiums were owed back to the owner-operators" and certifying as class all owner operators asserting that "Mayflower unlawfully overcharged them for insurance or unlawfully failed to repay them moneys that were overcharged for insurance.")

- *Sheinhartz v. Saturn Trans. System, Inc.*, 2002 WL 575636 at *8 (March 26, 2002)(district court certified class noting: "[i]t does not matter what linehaul amount each owner-operator was quoted nor does it matter what each owner-operator was told orally about the cost of insurance. . . . The dispositive and predominate legal and factual issues in this case are whether . . . Plaintiffs' leases complied with the federal regulations by clearly stating the amount to be paid to the owner-operators by Defendants. . . .")

- *OOIDA v. Ledar Trans.*, No. 00-0258-CV-W-2-ECF (W.D. Mo. March 31, 2002)(Ex. G at 16)(district court certified class of Owner-Operators who, "have had amounts withheld from their compensation by Defendants for items that were not specified in the Standard Lease Agreement as chargeback items eligible for deduction from their compensation, and/or for which no recitation as to how those amounts were to be computed was provided.")

- *Padrta v. Ledar Trans., Inc.*, No. 3-01-CV-80179 (S.D., Iowa, Jan. 23, 2003)(Ex. D at 5) (district court granted class certification to plaintiffs seeking "class-wide damages" observing: "The court is persuaded that plaintiffs have demonstrated not only that there are other members of the proposed class who have the same or similar grievances as plaintiffs, but also that the proposed class members' statutory claims, under 49 C.F.R. § 1057.12(k), present a multitude of common questions of law and fact.")

- *OOIDA v. Arctic Express, Inc., et al.*, Case No. C2 97-CV-750 (S.D. Ohio, Sept. 6, 2001)(Ex. E at 20)("By demonstrating that the common issue of whether § 376.12(k) was violated by the Defendants predominates over the four Counterclaims . . . as well as over

---

[27] *See, e.g., Shaw Warehouse Co. v. Southern Ry. Co.*, 288 F.2d 759, 777 (5th Cir. 1961)("We think that the statutory clause, 'damages in consequence of any such violations' means damages that are 'the direct result' of such violations.").

any issue of damages, the Plaintiffs have satisfied the predominance requirement of Rule 23(b)(3).")

- *OOIDA v. Heartland Express, Inc. of Iowa*, No. 3-01-CV-80179 (S.D. Iowa, Jan. 23, 2003)(Ex. F)(district court certified class where plaintiffs alleged that chargebacks for fuel and insurance were higher than costs actually incurred by carrier).

The foregoing authorities illuminate the firmly established principle that class certification is altogether appropriate in Truth-in-Leasing cases, and that proof of "detrimental reliance" or "actual" damages has never been a requirement of, or an impediment to, class certification.

Nonetheless, even if the Court were inclined to accept Landstar's novel proposition regarding proof of damages, Landstar offers no reason why a class could not be certified where the relief to be awarded would be in the form of *restitution*. Indeed, Landstar effectively concedes the point in its footnote analysis of *Albillo v. Intermodal Container Services.*[28] In *Albillo*, the California Court of Appeal affirmed such a restitution award reasoning as follows:

> We find that the trial court properly exercised its discretion in fashioning a restitution award which was precisely tailored to restore the amount respondents acquired by means of their unlawful and unfair business practice. Respondents violated the federal Leasing Regulations by failing to disclose the deductible amount for each type of coverage for which the lessor might be liable. . . . The trial court properly returned the parties to the status quo ante by ordering that the premium amounts paid by the appellants which constituted savings to respondents be restored to appellants.[29]

Landstar states that *Albillo* is inapplicable because restitution was awarded under a state statute, and that this Court has no equitable authority to award restitution. Again, Landstar is mistaken. Prior to the enactment of the ICCTA, the federal courts held that the I.C.C. had plenary power to seek restitution, even where the statute did not specifically authorize such power. In *I.C.C. v. B*

---

[28] 114 Cal. App. 4th 190, 8 Cal. Rptr. 3d 350,354 (2003)(Landstar Mem. at 10 n.5).

[29] *Id.* Significantly, the court never once suggested that "actual" damages or "detrimental reliance" were conditions to relief under the Truth-in-Leasing regulations.

& T Trans. Co.[30] the court was faced with the question of whether the I.C.C. had the right "to seek restitution in view of the lack of any express, or even implicit, authorization of such power in the language of the Motor Carrier Act."[31] The court concluded that the I.C.C. had the power to invoke the court's inherent equitable jurisdiction, quoting the Supreme Court:

> [T]he Administrator invoked the jurisdiction of the District Court to enjoin acts and practices made illegal by the Act and to enforce compliance with the Act. *Such a jurisdiction is an equitable one. Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction.* And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake. . . . Power is thereby resident in the District Court, in exercising this jurisdiction, 'to do equity and to mould each decree to the necessities of the particular case.' The court may go beyond the matters immediately underlying its equitable jurisdiction and decide whatever other issues and give whatever other relief may be necessary under the circumstances. . . .[32]

The Supreme Court continued that "*the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command.* Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied."[33] The court in *B & T Trans. Co.* also relied on the inherent equitable powers of the federal district courts, as explained by Justice Harlan in *Mitchell v. Robert DeMario Jewelery, Inc.*[34] There, the Court held that "*[w]hen Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes. As this Court long recognized, 'there*

---

[30] 613 F.3d 1182 (1st Cir. 1980).

[31] *Id.* at 1183.

[32] *Porter v. Warner Holding Co.*, 328 U.S. 395, 397-98 (1946) (emphasis added).

[33] *Id.* at 398 (emphasis added).

[34] 361 U.S. 288, 291092 (1960).

is inherent in the Courts of Equity a jurisdiction to . . . give effect to the policy of the legislature.'"[35] Based upon these principles, the court in *B & T Trans. Co.* concluded that "the traditional power of an equity court to grant complete relief may be said to have provided the I.C.C. with residual, untapped authority to seek equitable restitution once it has properly invoked the equity jurisdiction of the district courts."[36] The Fifth Circuit has embraced these fundamental precepts in *I.C.C. v. Brannon Systems, Inc.*: "While [§] 304a confers no affirmative authority on the I.C.C. to seek restitution of overcharge on shippers' behalf, it contains no language expressly or impliedly denying such authority."[37]

In this case, 49 U.S.C. § 14704(a) does not contain any "clear and valid legislative command" depriving the district court of its power to fashion equitable relief. *Porter, supra.* More important, the statutory purpose that underlies the ICCTA was to transfer to private parties the enforcement of the Truth-in-Leasing regulations that were formerly within the purview of the I.C.C. Thus, as observed in *Mitchell,* Congress, when it promulgated the ICCTA, "must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes."[38]

D. <u>Landstar's Reliance on the Truth-in-Lending Act is Misplaced.</u>

Landstar's contention that TRUTH-IN-LENDING ACT and the Truth-in-Leasing regulations "provide virtually identical actual damages remedies for violations of the same kinds

---

[35] *Id.* (emphasis added).

[36] *B & T Trans. Co.*, 613 F.2d at 1186; *See also I.C.C. v. J.B. Montgomery, Inc.*, 483 F.Supp. 279 (D. Colo. 1980) where the I.C.C. sued motor carriers seeking injunctive and restitutionary relief to recover transportation charges in excess of the tariff. The motor carriers moved to dismiss, claiming that such relief was not authorized by the Interstate Commerce Act, 49 U.S.C. § 10101 et seq. Relying on the holding of *B & T Trans. Co.*, the court held that "the ICC will be permitted to pursue restitutionary relief in this case." *Id.*, 483 F.Supp. at 280.

[37] 686 F.2d 295, 296 (5th Cir. 1982).

[38] Landstar's claim that Plaintiffs cannot be awarded restitution under common law is also mistaken. Landstar Mem. at 10., note 5. *See, e.g., Guyana Tel. &tel. Co., Inc. v. Melbourne Int'l Comm., Ltd.*, 329 F 3d 1241, 1249 (11th Cir. 2003)(restitution a "remedy that is often available to victims of a wrong").

of disclosure requirements," would have the Court overlook the clearly discernable substantive and procedural differences between the two regulatory regimes. Landstar Mem. at 13-14. The stated purpose of TRUTH-IN-LENDING ACT is to "assure a meaningful disclosure of the terms of the leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements." 15 U.S.C. 1601(b). TRUTH-IN-LENDING ACT sets forth a comprehensive remedial scheme authorizing, *inter alia*, statutory damages, *e.g.*, in the case of an individual action damages, "twice the amount of any finance charge in connection with the transaction." 15 U.S.C § 1640. Importantly, "detrimental reliance" is not mentioned in the statute. Rather, the rationale for imposing such a condition has been articulated as follows: "damages in these individually small transactions may be difficult to prove and adjusts its remedy to afford actual damages or at least a statutory minimum . . . Without a causation requirement, actual damages would overlay statutory damages for no apparent reason."[39] In clear contrast to the TRUTH-IN-LENDING ACT, ICCTA provides a unitary, broad, and unrestricted monetary remedy - "damages."[40] Such damages do not overlay or duplicate any other remedies, and there are no statutory damages which require or justify any additional burden of proof such as "detrimental reliance."

[39] *Perrone v. GMAC*, 232 F. 3d 433 (5th Cir. 2000); *See also Turner v. Beneficial Corporation*, 242 F. 3d 1023 (11th Cir. 2001)("Congress provided for statutory damages because actual damages would be nonexistent or extremely difficult to prove.").

[40] Landstar argues that "damages sustained" is identical to "actual damages sustained," and that both therefore require proof of "detrimental reliance." Landstar Mem. at 9 n. 4; *citing McMillian v. FDIC*, 81 F.3d 1041 (11th Cir. 1996). *McMillian* does not support such a radical conclusion. *McMillian* is a case interpreting the Financial Institutions Reform, Recovery, and Enforcement Act, which requires a finding of "actual direct compensatory damages" for recovery against the FDIC. *Id.* at 1054. While the court observed that actual and compensatory damages are "roughly synonymous," *Id.* at 1055, it did not conclude that the terms were interchangeable in every statutory setting, and certainly did not conclude that "detrimental reliance" is an element of either standard.

Moreover, the agreements in question are not "individually small transactions" for purchases of household goods such as satellite dish systems, *e.g., Turner*. These are *transportation contracts* subject to an entirely different regulatory regime governing *fairness of compensation* to owner-operators the mandate of which is clear: "The carrier should not be in a position to manipulate these expenses in such a way that it makes a profit in its handling of these matters."[41]

Finally, Landstar's claim that Plaintiffs cannot prove damages beyond "generalized, unspecified harm to the public," ignores the record. Landstar Mem. at 10. First, Plaintiffs have estimated their damages in response to the interrogatories called for in the Court's December 2, 2002 Scheduling Order. (Dkt. 18, 23). Further, it is undeniable that the members of the class have "sustained damages as a result of" Landstar's violations. There can be no question that because the lease specifies that an Owner-Operator's compensation is to be calculated based on a percentage of adjusted gross revenue ("AGR"), Landstar's skimming of gross revenues before computing the AGR, necessarily results in monies going into Landstar's pockets, when the lease requires that the monies were to be paid to Owner-Operators. A clearer case of damages resulting from such blatantly illegal conduct simply could not be made.

[41] *See supra*, note 20. Landstar's asserts that the Truth-in-Leasing regulations, like TRUTH-IN-LENDING ACT, require an owner- operator to show that they were "deterred from exploring alternatives in the marketplace." Landstar Mem. at 16. The Truth-in-Leasing regulations do not support such an absurd proposition. Placed in the context of this case, it is illogical that an owner-operator could "shop" for a contract provision on which revenues are not secretly skimmed by the carrier, just as one would shop for a satellite dish.

CONCLUSION

For all of the foregoing reasons, Landstar's motion should be denied.

Respectfully submitted,

Paul D. Cullen, Sr., Esq.
Joseph A. Black, Esq.
Daniel E. Cohen, Esq.
THE CULLEN LAW FIRM, PLLC
1101 30th Street, N.W., Suite 300
Washington, D.C. 20007-3770
(202) 944-8600 (Telephone)
(202) 944-8611 (Telecopier)

BRENNAN, MANNA & DIAMOND, P.L.

By: _____
Michael R. Freed

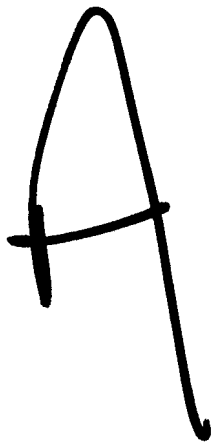
Florida Bar No. 069205
76 South Laura Street, Suite 1700
Jacksonville, Florida 32202
(904) 366-1504
(904) 366-1505 (facsimile)

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment has been served by Telecopier (without exhibits) and by First-Class Mail (with exhibits) to: Lawrence J. Hamilton II, Esq., Holland & Knight LLP, 50 North Laura Street, Suite 3900, Jacksonville, Florida 32202 (without enclosures); Daniel R. Barney, Esq., Scopelitis, Garvin, Light & Hanson, P.C., 1850 M St. N.W., Suite 280, Washington, D.C. 20036-5804, (without enclosures); and by Federal Express to Gregory M. Feary, Esq., Robert L. Browning, Esq., and Timothy W. Wiseman, Esq., Scopelitis, Garvin, Light & Hanson, P.C., 10 West Market St., Suite 1500, Indianapolis, Indiana 46204-2968, (with enclosures), this 30th, day of August, 2004.

Attorney



LANDSTAR INWAY

LANDSTAR INWAY, INC.
P.O. Box 7813
Rockford, Illinois 61125

STATEMENT OF LEASE & RECEIPT FOR EQUIPMENT

I. LANDSTAR INWAY, INC. ("CARRIER") (ICC Identification #MC-161864) and

GL Brewer
(INDEPENDENT CONTRACTOR'S NAME)

690 Curtin Ln
(INDEPENDENT CONTRACTOR'S ADDRESS)

Sonoma, Ca 95476
(CITY) (STATE) (ZIP CODE)

546-92-1894
(INDEPENDENT CONTRACTOR'S FEIN/SSN)

("INDEPENDENT CONTRACTOR") are parties to a written MOTOR VEHICLE AGREEMENT BETWEEN INDEPENDENT CONTRACTOR AND CARRIER (the "Agreement") whereby INDEPENDENT CONTRACTOR has leased to CARRIER the equipment specified in Section IV below (the "Equipment"), owned by INDEPENDENT CONTRACTOR, and INDEPENDENT CONTRACTOR is providing CARRIER as operator or operators of the Equipment for the purpose of loading.

II. The original of the Agreement and of this document is on file at CARRIER's General Office, whose address is noted above. The second copy of this Statement of Lease and Receipt for Equipment is the Statement of Lease to be carried on the Equipment as required by 49 C.F.R. § 1057.11(c)(2). CARRIER verifies that the Equipment is being operated by CARRIER pursuant to the terms of the Agreement. There are no restrictions in the Agreement as to commodities that may be transported.

III. IDENTIFICATION OF EQUIPMENT:

TRACTOR ✓ New Lease or ___ Trade of Equip.
Number 437213 (TO BE ASSIGNED BY CARRIER)
Make Kenworth
Tractor Type: COE ___ or CONV ✓
Model Year 95 Empty Weight 19,360
Serial Number 1XKWD89X4SR672346

TRAILER ✓ New Lease or ___ Trade of Equip.
Number 537213 (TO BE ASSIGNED BY CARRIER)
Make Doonan
Trailer Type S/D Model Year 97
Serial Number 1098648294V120B605
Length 48' Empty Weight 11,200

IV. RECEIPT OF EQUIPMENT: CARRIER hereby acknowledges receipt of the Equipment described above, which is the Equipment described in the Agreement.

Date 1-30-98 By Lori Roscoe
(TO BE ENTERED BY CARRIER'S AUTHORIZED AGENT OR EMPLOYEE UPON APPROVAL BY THE GENERAL OFFICE)

Revised 1/18/95

EXHIBIT A

121-06

MOTOR VEHICLE AND HAULAGE AGREEMENT BETWEEN INDEPENDENT CONTRACTOR AND LANDSTAR INWAY, INC. ("Agreement")

1. **EQUIPMENT:** INDEPENDENT CONTRACTOR represents and warrants to CARRIER that it holds full legal title to or is otherwise authorized to contract the equipment identified in Section IV of the Statement of Lease and Receipt for Equipment (the "Equipment"), and further warrants and represents that the Equipment is in good, safe and efficient operating condition as required by government authorities and shall be so maintained at INDEPENDENT CONTRACTOR's expense throughout the duration of this Agreement. The choice of location and persons to perform any necessary repairs or maintenance is exclusively vested with INDEPENDENT CONTRACTOR. ALL POWER EQUIPMENT WHICH IS THE SUBJECT OF THIS AGREEMENT IS TO BE OPERATED BY FULLY QUALIFIED AND LICENSED OPERATORS TO BE PROVIDED BY INDEPENDENT CONTRACTOR AT ITS EXPENSE.

(a) Receipt for Equipment. Upon INDEPENDENT CONTRACTOR making available to CARRIER the Equipment, CARRIER shall furnish to INDEPENDENT CONTRACTOR the Statement of Lease and Receipt for Equipment, which shall constitute the receipt required by 49 C.F.R. § 376.11(b). Upon termination of the Agreement, INDEPENDENT CONTRACTOR shall execute the same or similar Statement of Lease and Receipt for Equipment as the written receipt for the return of the Equipment by CARRIER to INDEPENDENT CONTRACTOR. In the event that INDEPENDENT CONTRACTOR fails to submit the Statement of Lease and Receipt for Equipment upon termination of this Agreement, INDEPENDENT CONTRACTOR authorizes CARRIER to enter the time and date in Section VI of the Statement of Lease and Receipt for Equipment to evidence the return of the Equipment to INDEPENDENT CONTRACTOR by CARRIER. If required by applicable federal, provincial or state law, INDEPENDENT CONTRACTOR shall name CARRIER on either the vehicle or plate portion of the vehicle permit, or include CARRIER on a statement of a lease between INDEPENDENT CONTRACTOR and a third party. However, under no circumstances shall CARRIER be, or be deemed to be, liable for any lease payments whatsoever due or owed from INDEPENDENT CONTRACTOR to any third party. In the event that CARRIER is found to be liable for such lease payments, INDEPENDENT CONTRACTOR shall fully indemnify CARRIER for any and all costs or damages imposed.

(b) Operation of Equipment. INDEPENDENT CONTRACTOR agrees to operate the Equipment in a safe and prudent manner at all times in accordance with the laws of the various jurisdictions in which it is operated and pursuant to the operating authorities of the CARRIER, and in accordance with all rules relating to traffic safety, highway protection and road requirements.

(c) Inspection and Maintenance of Equipment. INDEPENDENT CONTRACTOR agrees to maintain the Equipment, at its sole expense, in accordance with the safety and equipment standards specified in all applicable federal, provincial and state laws under which the Equipment is licensed to operate. INDEPENDENT CONTRACTOR shall, at its expense, make the Equipment available for inspection by CARRIER at a place designated by CARRIER. Thereafter, as required by applicable federal law, INDEPENDENT CONTRACTOR shall make the Equipment available for inspection by CARRIER at least once every 120 days. Providing that such inspection is done every 120 days and at a place designated by CARRIER, then CARRIER will pay for the expense of inspection. If the Equipment is not inspected every 120 days, the Equipment will be placed out-of-service by CARRIER until the required inspection is completed, in which case the inspection shall be at INDEPENDENT CONTRACTOR's sole expense. If any inspection reveals that the Equipment does not comply with applicable standards of federal, provincial or state law, the Equipment must be made to comply with such requirements by INDEPENDENT CONTRACTOR, at its expense, within a reasonable time as determined by CARRIER. INDEPENDENT CONTRACTOR shall, at its sole expense, keep records of inspection, repair, and maintenance of the Equipment in accordance with the Federal Motor Carrier Safety Regulations (49 C.F.R. Part 396) and, if operated in Canada, applicable provincial regulations, and shall maintain all such records for the duration of this Agreement and for six (6) months thereafter. INDEPENDENT CONTRACTOR shall, as directed by CARRIER, forward to CARRIER all maintenance records covering the Equipment required by applicable DOT or Canadian federal or provincial regulations.

(d) Painting or Marking of Equipment. If required by applicable federal, provincial or state law, INDEPENDENT CONTRACTOR shall cause the name, style, mark or logo of CARRIER to be affixed to the Equipment on the direction and in the manner prescribed by CARRIER. INDEPENDENT CONTRACTOR shall be responsible for the cost of affixing such name, style, mark or logo and for the removal of same at the termination of this Agreement.

2. **DURATION OF AGREEMENT:** This Agreement shall be effective as of the date entered hereinbelow and shall remain in effect until terminated in accordance with the provisions of this Agreement. The breach by either party of any of the provisions of this Agreement shall immediately terminate all provisions of this Agreement, except those provisions relating to indemnification of CARRIER by INDEPENDENT CONTRACTOR as contained in this Agreement, which indemnification provisions shall be effective at all times. Either party, by giving the other party twenty-four (24) hours written notice, may terminate this Agreement at any time. CARRIER may also terminate the Agreement

immediately by oral notice followed by written notice to INDEPENDENT CONTRACTOR. Acceptance of tender of load after the effective date of this Agreement shall indicate understanding and acceptance by INDEPENDENT CONTRACTOR of the terms and conditions of this Agreement. INDEPENDENT CONTRACTOR shall ensure that any worker employed or utilized by INDEPENDENT CONTRACTOR to provide services under this Agreement complies with the terms and conditions of this Agreement. Although this Agreement does not contain a stated date of termination, the parties agree that they are not creating a permanent or indefinite relationship.

3. **EXCLUSIVE POSSESSION AND RESPONSIBILITY:** The Equipment shall be for CARRIER's exclusive possession, control and use for the duration of this Agreement. This provision is set forth solely to conform with Federal Highway Administration regulations and shall not be used for any other purposes, including any attempt to classify INDEPENDENT CONTRACTOR or its workers as employees of CARRIER. Nothing in the provisions required by 49 C.F.R. § 376.12(c)(1) is intended as evidence that the INDEPENDENT CONTRACTOR or any worker provided by INDEPENDENT CONTRACTOR is an employee of CARRIER. During the term of this Agreement, CARRIER shall have the exclusive right to subcontract the Equipment to other authorized motor carriers. INDEPENDENT CONTRACTOR may only subcontract or trip lease the Equipment upon prior written authorization received from CARRIER as set forth in Paragraph 19. CARRIER has no right to and will not control the manner nor prescribe the method of doing that portion of the operation which is contracted for in this Agreement by INDEPENDENT CONTRACTOR, except such control as can reasonably be construed to be required by all applicable laws and regulations. INDEPENDENT CONTRACTOR reserves the right to accept or reject any freight tendered for transportation by CARRIER.

4. **COMPENSATION:** It is expressly understood and agreed that INDEPENDENT CONTRACTOR's compensation shall be as set forth in Appendix A and such compensation shall constitute the total compensation for everything furnished, provided, or done by INDEPENDENT CONTRACTOR in connection with this Agreement, including the services of its drivers. All mileage computations shall be based on CARRIER's mileage guide.

(a) Settlements. CARRIER shall settle with INDEPENDENT CONTRACTOR with respect to services provided under this Agreement within fifteen (15) calendar days after INDEPENDENT CONTRACTOR's submission, in proper form, of those documents necessary for CARRIER to secure payment from CARRIER's customers, including the bill of lading, signed delivery receipt or other proof of delivery acceptable to CARRIER, and properly completed driver logs as required by applicable federal, provincial or state law, and, in the case of C.O.D. shipments, delivery of the certified check or money order due to CARRIER. CARRIER will provide INDEPENDENT CONTRACTOR, at or before the time of settlement, a copy of the applicable rated freight bill, bills of lading (in the case of Canadian originating shipments) any other applicable document from which rates or charges are computed, or a computer-generated document containing the same information. INDEPENDENT CONTRACTOR may view during CARRIER's normal business hours a copy of any such applicable freight bill or other document. CARRIER may, at its discretion, delete the names of shippers and consignees shown on any such underlying document to be inspected by INDEPENDENT CONTRACTOR. Upon termination of this Agreement, CARRIER will withhold the final settlement due to INDEPENDENT CONTRACTOR, if any, under this Agreement until INDEPENDENT CONTRACTOR returns to CARRIER the identification devices INDEPENDENT CONTRACTOR is required to return to CARRIER pursuant to Paragraph 6 of this Agreement. In the event that the identification devices have been lost or stolen, a letter certifying their removal will satisfy this requirement for purposes of issuing final settlement to INDEPENDENT CONTRACTOR.

(b) Pre-Trip Settlement. Where INDEPENDENT CONTRACTOR has secured a pre-trip settlement of any kind from CARRIER, or if there shall be any other amounts due CARRIER from INDEPENDENT CONTRACTOR or its workers pursuant to this Agreement, including but not limited to, operational expenses set forth in Paragraph 7, cargo claims, property damage, towing charges, requested clothing items, vehicle repairs, tires, equipment cleaning expenses, and deductions for any insurance related costs, CARRIER shall be authorized to deduct the amount of such pre-trip settlement or other amount due CARRIER from any settlement, escrow fund, or any monies due or becoming due to INDEPENDENT CONTRACTOR from CARRIER under this Agreement, and if such monies are insufficient to cover the total amount due CARRIER, then INDEPENDENT CONTRACTOR will on demand pay to CARRIER all sums remaining due to CARRIER, together with interest at the maximum legal rate and any expense, including reasonable attorney fees, incurred by CARRIER in recovering such amounts from INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR and its workers shall not charge any purchase to CARRIER and, in the event INDEPENDENT CONTRACTOR or its workers do charge any purchase to CARRIER, such sums paid by CARRIER shall be treated as a Pre-Trip Settlement made to INDEPENDENT CONTRACTOR and shall be recoverable by CARRIER under this provision. INDEPENDENT CONTRACTOR authorizes CARRIER to make pre-trip settlements in compensation requested by INDEPENDENT CONTRACTOR or its workers directly to INDEPENDENT CONTRACTOR's workers, provided, however, that CARRIER has complete discretion as to whether to issue a pre-trip settlement and the amount of any pre-trip settlement. In no event shall CARRIER make a pre-trip settlement to INDEPENDENT CONTRACTOR of more than 30% of INDEPENDENT CONTRACTOR's adjusted gross revenue as set forth in Appendix A. CARRIER shall furnish INDEPENDENT CONTRACTOR a written explanation and itemization of all deductions and chargebacks made under this provision. All comcheck (or similar service) Pre-Trip Settlements requested by INDEPENDENT CONTRACTOR shall be subject to a fee of Three Dollars ($3.00) for each

such settlement. Pre-Trip Settlements pre-loaded onto INDEPENDENT CONTRACTOR's fuel card shall be subject to a fee of One Dollar and Seventy-Five Cents ($1.75) for each such settlement. CARRIER will be deemed to have a lien against monies in its possession which are receivables to the INDEPENDENT CONTRACTOR to cover any monies advanced or paid by CARRIER for items which are INDEPENDENT CONTRACTOR's responsibility.

(c) Other Costs and Deductions/Multiple Contracts. INDEPENDENT CONTRACTOR, at the time of signing this Agreement or at any time thereafter, may authorize CARRIER to make additional deductions not set forth in this Agreement from settlements due INDEPENDENT CONTRACTOR. In such case, a copy of the signed authorization to make such additional deduction, specifying the amounts, terms, and conditions thereof, shall be attached to and made a part of this Agreement. CARRIER shall furnish INDEPENDENT CONTRACTOR with a written explanation and itemization of all deductions made from settlements due INDEPENDENT CONTRACTOR under this Agreement. If INDEPENDENT CONTRACTOR has more than one agreement with CARRIER, INDEPENDENT CONTRACTOR understands and acknowledges that CARRIER may make deductions from trip settlements due, and escrow funds held for, INDEPENDENT CONTRACTOR for any monies due CARRIER under the terms of any agreement.

(d) In addition to certain insurance coverages, INDEPENDENT CONTRACTOR is required to provide at its sole cost all Equipment, accessories or devices required for the operation of the Equipment. In the event INDEPENDENT CONTRACTOR elects to purchase, lease or finance such Equipment, accessories or devices from CARRIER or a commonly owned company, the terms of Appendix C of this Agreement shall apply.

5. ESCROW: INDEPENDENT CONTRACTOR and CARRIER shall establish an escrow fund. The total amount of such escrow fund shall be Five Hundred Dollars ($500) per unit, which amount will be deducted from INDEPENDENT CONTRACTOR'S compensation within a fifteen (15) week period. Such escrow fund shall be returned to INDEPENDENT CONTRACTOR only upon termination of this Agreement and the balance due shall be refunded not later than forty-five (45) days after such termination, provided the four (4) following listed conditions are complied with by INDEPENDENT CONTRACTOR:

(1) Return to CARRIER of all identification devices;

(2) Return of base plate and permits as required herein;

(3) Return of all signed delivery receipts for all shipments not previously forwarded to CARRIER; and

(4) Return of all other property of CARRIER.

The escrow fund may at any time be applied by CARRIER to satisfy any claims or debts owed by INDEPENDENT CONTRACTOR pursuant to the terms of this Agreement, including but not limited to advances made to INDEPENDENT CONTRACTOR or its workers, cargo claims, property damage or trailer damage claims, insurance costs, and the cash value of permits not returned to CARRIER. CARRIER shall provide an accounting to INDEPENDENT CONTRACTOR of any transaction involving the escrow fund, which accounting shall be shown on the settlement sheet produced at the time the transaction is made. INDEPENDENT CONTRACTOR may at any time request and receive an accounting for transactions involving the escrow fund. CARRIER shall pay interest on the escrow funds on a quarterly basis, which shall be established on the date the interest period begins and shall be equal to the average yield of 91 day, 13 week treasury bills, as established in the then most recent weekly auction by the Department of Treasury. For Canadian resident contractors only, the interest shall be at a rate equal to the average annual yield of 90 day treasury bills sold on the first date prior to such payment date on which the Canadian Federal Minister of Finance accepts tender for the purpose of 90 day treasury bills. For purposes of calculating the amount of the escrow fund on which interest will be paid, CARRIER will deduct a sum equal to the average advance made to INDEPENDENT CONTRACTOR during the period of time for which the interest is due.

6. IDENTIFICATION DEVICES: All identification devices of CARRIER required by any law or regulation shall be secured in the name of CARRIER and shall be displayed on the Equipment, at INDEPENDENT CONTRACTOR's expense, in accordance with all applicable regulations during the term of this Agreement. All identification devices and documents are the sole property of CARRIER. Any such identification shall be removed from the Equipment by INDEPENDENT CONTRACTOR and returned to CARRIER by first class mail addressed to CARRIER's address or in person immediately upon termination of this Agreement. The parties agree that, in addition to any other right, remedy or claim CARRIER may have, INDEPENDENT CONTRACTOR shall pay CARRIER Twenty-Five Dollars ($25.00) per day for INDEPENDENT CONTRACTOR's failure to remove and/or return all identification devices to CARRIER upon termination of this Agreement.

7. OPERATIONAL EXPENSES: Except as otherwise provided in this Agreement, INDEPENDENT CONTRACTOR shall furnish, provide and pay all operational expenses including, but not limited to, the items listed in this paragraph. In the event CARRIER is called upon to pay any of these operational expenses on behalf of INDEPENDENT CONTRACTOR, such payment shall be considered a Pre-Trip Settlement to INDEPENDENT CONTRACTOR (and a cost of operation) and CARRIER shall be entitled to seek reimbursement from INDEPENDENT CONTRACTOR or to charge back the payment as set forth in paragraph 4(b). Operational expenses include, but are not limited to, the following:

(a) All fuel, oil, tires and all equipment, accessories, or devices used in connection

with the operation of the Equipment.

(b) All maintenance costs including all repairs;

(c) All taxes and assessments, insurance costs and other payments due by reason of the payment by INDEPENDENT CONTRACTOR of wages or other earnings to its workers;

(d) Base plates, including apportioned or prorated base plates, fuel permits and all other permits required to operate the Equipment (except overdimension/overweight permits), empty miles, detention, accessorial charges, licenses, and all tax payments with respect to the Equipment or on the use or operation thereof, including all reports required of INDEPENDENT CONTRACTOR connected therewith, and all ferry, bridge and highway tolls;

(e) Fuel and Fuel Use Taxes, and Ton Mile/Mileage Taxes;

(f) All fines and penalties resulting from acts or omissions of INDEPENDENT CONTRACTOR, including any monies paid by CARRIER in the form of penalties to a government or regulatory body because of some act or omission on the part of INDEPENDENT CONTRACTOR or its workers;

(g) All insurance costs relating to insurance coverage required by this Agreement or otherwise requested by INDEPENDENT CONTRACTOR from CARRIER;

(h) Federal Highway Use Tax on the Equipment; federal, provincial, state and city income taxes; and, any self-employment or payroll taxes;

(i) All sales, use, excise and other taxes due to ownership or operation of Equipment in the jurisdiction imposing such taxes, including federal goods and services tax and all applicable provincial taxes;

(j) All other expenses incurred in the operation of the Equipment, including, but not limited to, empty mileage, expenses incurred to transfer any shipment and/or secure additional equipment to complete delivery in case of breakdown or delay;

(k) In the event that the duration of this Agreement is less than six (6) months, INDEPENDENT CONTRACTOR shall be responsible for the costs related to all prequalification drug and alcohol tests required by applicable law.

8. LOADING AND UNLOADING: INDEPENDENT CONTRACTOR shall be responsible for the loading and unloading of all shipments transported under this Agreement at INDEPENDENT CONTRACTOR's expense, unless otherwise specified in Paragraph 4 or Appendix A of this Agreement.

9. OVERWEIGHT/OVERDIMENSION SHIPMENTS: CARRIER shall provide all required overweight/overdimension permits to INDEPENDENT CONTRACTOR; provided, however, that INDEPENDENT CONTRACTOR shall have the duty to determine that its load is in compliance with the size and weight laws of the jurisdictions in which it will travel and to notify CARRIER if the vehicle is overweight or in need of permits before commencing transportation. Except when a violation results from the acts or omissions of INDEPENDENT CONTRACTOR, CARRIER shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are preloaded, sealed or the load is containerized, or when the trailer or lading is otherwise outside INDEPENDENT CONTRACTOR's control, or for improperly permitted overdimension and overweight loads, and CARRIER shall reimburse INDEPENDENT CONTRACTOR for any fines therefor paid by INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR shall reimburse CARRIER for any costs or penalties paid by CARRIER due to INDEPENDENT CONTRACTOR's failure to comply with the terms of any permit or INDEPENDENT CONTRACTOR's failure to pick up permits made available by CARRIER.

10. LICENSE PLATES: Unless INDEPENDENT CONTRACTOR already has obtained a valid base plate under the International Registration Plan ("IRP") or, for Canadian resident contractors, the Canadian Agreement on Vehicle Registration ("CAVR"), CARRIER shall obtain such plate in CARRIER's name for use by INDEPENDENT CONTRACTOR, in which case the amount specified in Appendix A per tractor per year (or a pro rata based amount for a partial year plate) shall be deducted from INDEPENDENT CONTRACTOR's compensation within an eighteen (18) week period beginning with the fifth weekly settlement made pursuant to this Agreement. If CARRIER receives a refund or credit for an IRP or CAVR plate registered in the name of CARRIER, or if such base plate is authorized by INDEPENDENT CONTRACTOR to be resold by CARRIER to another contractor, CARRIER shall refund to INDEPENDENT CONTRACTOR a pro rata share of the amount received by CARRIER less a transfer fee of $125.00 per plate. INDEPENDENT CONTRACTOR shall not be entitled to reimbursement for an unused portion of a base plate, however, unless CARRIER is able to reuse or resell the plate to another contractor.

11. PERMITS: CARRIER shall provide INDEPENDENT CONTRACTOR with all necessary permits, and shall charge INDEPENDENT CONTRACTOR the amount specified in Appendix A per tractor per year , which charge shall be deducted from INDEPENDENT CONTRACTOR's compensation within an eighteen (18) week period beginning with the fifth weekly settlement made pursuant to this Agreement. All permits certificates and licenses issued in CARRIER's name shall be returned to CARRIER upon termination of this Agreement. No refund shall be made to INDEPENDENT CONTRACTOR by CARRIER of the permit costs upon termination of this Agreement. INDEPENDENT CONTRACTOR shall be liable to CARRIER for any expense caused to CARRIER by INDEPENDENT CONTRACTOR's failure to return all permits required by this provision.

12. **FUEL USE AND MILEAGE TAXES:** INDEPENDENT CONTRACTOR shall be responsible for all Fuel Use and Mileage Taxes incurred due to the operation of the Equipment under this Agreement, provided, however, that CARRIER shall prepare and file all reports required under the International Fuel Tax Agreement or other applicable state or provincial law on behalf of INDEPENDENT CONTRACTOR pursuant to the procedures set forth in Appendix E.

13. **SELECTION OF INDEPENDENT CONTRACTOR'S SUPPLIERS:** INDEPENDENT CONTRACTOR is not required to purchase or rent any products, equipment or services from CARRIER as a condition of entering into this Agreement.

14. **INSURANCE:** The responsibilities and obligations between CARRIER and INDEPENDENT CONTRACTOR involving insurance shall be as specified in Appendix B. CARRIER shall have no insurance responsibilities or obligations pertaining to INDEPENDENT CONTRACTOR or the Equipment other than those expressly stated in this Agreement or mandated by law.

15. **LOSS OR DAMAGE CLAIMS:** INDEPENDENT CONTRACTOR shall be responsible to CARRIER for any loss, damage or delay claim incurred during the term of this Agreement as follows:

(a) Personal Injury and Property Damage. Personal injury and/or property damage claims due, in whole or in part, to INDEPENDENT CONTRACTOR's or its workers' negligence, as determined by CARRIER, will be charged to INDEPENDENT CONTRACTOR up to One Thousand Dollars ($1,000.00) per claim, when such claims arise out of INDEPENDENT CONTRACTOR's or its workers' operation of the Equipment on a public highway or road. Personal injury and/or property damage claims due, in whole or in part, to INDEPENDENT CONTRACTOR's or its workers' negligence, as determined by CARRIER, will be charged to INDEPENDENT CONTRACTOR up to Two Thousand Dollars ($2,000.00) per claim, when such claims arise out of INDEPENDENT CONTRACTOR's or its workers' operation of the Equipment on private or governmental property other than a public highway or road.

(b) Trailer Damage. If INDEPENDENT CONTRACTOR or its workers are permitted to use a trailer which is the property of, interchanged to, or furnished by CARRIER and the trailer is damaged or destroyed, INDEPENDENT CONTRACTOR shall be responsible for the damage or loss, provided, however, that CARRIER agrees to limit INDEPENDENT CONTRACTOR's liability for damage to such trailers furnished by CARRIER to One Thousand Dollars ($1,000.00) per incident. This liability limitation shall not apply, however, if the damage is caused, in whole or in part, by any willful or intentional act of INDEPENDENT CONTRACTOR or its workers, or if the driver of the Equipment was not qualified and/or approved by CARRIER at the time of the incident.

(c) Cargo Damage. INDEPENDENT CONTRACTOR shall be responsible for any claim resulting from cargo shortages, cargo damage, or delays in transporting shipments due, in whole or in part, to the negligence of INDEPENDENT CONTRACTOR or its workers, as determined by CARRIER, provided, however, that CARRIER agrees to limit INDEPENDENT CONTRACTOR's liability for any cargo claim to One Thousand Dollars ($1,000.00) per shipment. This liability limitation shall not apply, however, if the damage is caused, in whole or in part, by any willful or intentional act of INDEPENDENT CONTRACTOR or its workers, or if the driver of the Equipment was not qualified and/or approved by CARRIER at the time of the incident.

(d) Clean-Up Expenses. INDEPENDENT CONTRACTOR shall be responsible for all costs of cleaning up any accident or spill, including but not limited to diesel fuel spills, involving the Equipment or the services provided by INDEPENDENT CONTRACTOR under this Agreement, provided, however, that CARRIER agrees to limit INDEPENDENT CONTRACTOR's liability for each such incident to Two Thousand Dollars ($2,000.00). This liability limitation shall not apply, however, if the damage is caused, in whole or in part, by any willful or intentional act of INDEPENDENT CONTRACTOR or its workers, or if the driver of the Equipment was not qualified and/or approved by CARRIER at the time of the incident.

(e) Miscellaneous. INDEPENDENT CONTRACTOR'S liability under subparagraphs (a), (b), (c) and (d) above shall not exceed Two Thousand Dollars ($2,000.00) for any single incident, provided, however, that this liability limitation shall not apply if the incident is caused in whole or in part, as determined by CARRIER, by any willful or intentional act of INDEPENDENT CONTRACTOR or its workers, or if the driver of the Equipment was not qualified and/or approved by CARRIER at the time of the incident.

16. **INDEPENDENT CONTRACTOR RELATIONSHIP:** This Agreement is intended by the parties to create the relationship of CARRIER and INDEPENDENT CONTRACTOR and not that of an employer/employee nor master/servant relationship. Neither INDEPENDENT CONTRACTOR, its workers, nor any individual providing services of any kind to INDEPENDENT CONTRACTOR, are to be considered employees of CARRIER at any time, under any circumstances or for any purpose. INDEPENDENT CONTRACTOR unconditionally waives and releases CARRIER, and any third-party employee benefit fund that provides benefits to any of CARRIER's current or former employees, from any claim for benefits based on any past services rendered to CARRIER under this Agreement. INDEPENDENT CONTRACTOR shall assume full and complete responsibility for all workers utilized by it in the performance of all obligations under this Agreement. In recognition of the independent contractor relationship which exists between the

parties, it is acknowledged that INDEPENDENT CONTRACTOR has the right to determine the manner and means of performing all work hereunder. INDEPENDENT CONTRACTOR has the right to decide what work to perform under this Agreement, provided, however, that when work is accepted by INDEPENDENT CONTRACTOR the work will be performed in accordance with the terms of this Agreement, the requirements, if any, of CARRIER's customers, and all applicable laws and governmental regulations. In no event shall any contracts or statements of CARRIER be deemed, construed or implied to control, direct, or infringe on INDEPENDENT CONTRACTOR's right to control or actually control the manner and means of INDEPENDENT CONTRACTOR's performance of the services contemplated in this Agreement. INDEPENDENT CONTRACTOR further agrees to defend, indemnify and hold CARRIER harmless from any claims, demands, suits, or actions brought by any workers, any union, the public, or state, provincial or federal agencies, arising out of the operation of the Equipment or the provision of driver services pursuant to this Agreement.

17. **PASSENGERS:** No passenger shall be permitted to travel in the Equipment without prior written authorization from CARRIER. Any passenger authorized by CARRIER must be a minimum of 18 years of age, and must sign a waiver of liability as provided in the Passenger Authorization Form to be provided by CARRIER. In no event shall more than one authorized passenger be permitted at any one time.

18. **REFLECTIVE TAPE MARKINGS:** In order to ensure safe operations on the highways, INDEPENDENT CONTRACTOR agrees that all trailing equipment provided to CARRIER by INDEPENDENT CONTRACTOR shall be properly marked with reflective tape as specified by CARRIER or as may be required by applicable law.

19. **SUBCONTRACTING/TRIP-LEASING:** INDEPENDENT CONTRACTOR may trip-lease or subcontract the Equipment to a third party other than a subsidiary of CARRIER only upon receiving prior written authorization from CARRIER. The following procedures shall apply to any trip-lease or subcontract situation:

In order to request authorization from CARRIER for any trip-lease, INDEPENDENT CONTRACTOR shall:

1) Obtain valid carrier information (name, address, identification number, phone number, contact person of carrier);

2) Call CARRIER's main office and provide CARRIER with information about the carrier and about the load;

3) Receive and record release number, if trip lease is approved. In the event that a trip-lease is not approved, a release number will not be given and INDEPENDENT CONTRACTOR may not enter into a trip-lease agreement; and

4) Any payments in advance offered to INDEPENDENT CONTRACTOR by any other carrier must be refused.

Upon delivery of any trip-lease load, INDEPENDENT CONTRACTOR shall:

1) Obtain a signed proof of delivery;

2) Indicate release number on each piece of paperwork; and

3) Mail all paperwork, including a copy of the signed-off trip-lease agreement, placards, shipping order or bill of lading, delivery receipt and logs to the designated representative of CARRIER.

CARRIER assumes no responsibility for the collection of freight charges or payment to INDEPENDENT CONTRACTOR of any trip-lease related revenue unless this provision is complied with by INDEPENDENT CONTRACTOR. During the term of any trip-lease, INDEPENDENT CONTRACTOR shall remove or cover up all of CARRIER's identification on the Equipment, and CARRIER shall have no responsibility for, and INDEPENDENT CONTRACTOR shall fully indemnify CARRIER regarding, the operation of the Equipment in respect to the public, shippers, and governmental regulations during the term of such trip-lease.

20. **UNAUTHORIZED USE OF EQUIPMENT:** If, during the term of this Agreement, INDEPENDENT CONTRACTOR or its workers operate any Equipment in any manner varying from the regulations or beyond the scope of the operating authority of CARRIER, or uses the Equipment for its own purposes, or for benefit of a third party other than CARRIER (except as allowed in Paragraph 19) or for any other purpose not permitted by this Agreement, then this Agreement shall, at CARRIER's option, be deemed terminated as of the time that such unauthorized use occurred, and all obligations and liabilities of CARRIER under this Agreement shall be deemed to have ceased and terminated as of the time of such unauthorized use, except for any and all provisions regarding the indemnification of CARRIER by INDEPENDENT CONTRACTOR which provisions shall survive the termination of this Agreement. Nothing in this Agreement shall prohibit INDEPENDENT CONTRACTOR from rendering services as a driver to any third party. If INDEPENDENT CONTRACTOR renders services as a driver to another company, INDEPENDENT CONTRACTOR shall include such time on all driver logs submitted to CARRIER as required by federal, provincial or state law. Failure to comply with these requirements may result in the immediate termination of this Agreement by CARRIER.

21. **TRAILER UTILIZATION PROGRAM:** INDEPENDENT CONTRACTOR may utilize CARRIER's trailers under

the Trailer Utilization program described in Appendix D.

22. DUE DILIGENCE AND COOPERATION WITH CARRIER ON CLAIMS:

(a) Cargo Claims. INDEPENDENT CONTRACTOR warrants that all cargo loaded on the Equipment shall be delivered to the consignee with reasonable diligence, speed and care and as may be required by the shipper or on the bill of lading. INDEPENDENT CONTRACTOR or its driver shall immediately report any cargo exceptions or damages to CARRIER.

(b) Accidents. INDEPENDENT CONTRACTOR or its driver shall notify CARRIER immediately of any property damage and any incident or accident involving any pedestrian or occupant of any type of vehicle, whether or not the incident or accident appears to have resulted in personal injury and whether or not INDEPENDENT CONTRACTOR appears to be at fault.

(c) Roadside Inspections. INDEPENDENT CONTRACTOR or its driver shall notify CARRIER in a timely fashion of any roadside inspection of the Equipment and the results thereof, and INDEPENDENT CONTRACTOR shall provide CARRIER with a copy of the roadside inspection report received in connection with each such inspection.

(d) Notice of Infractions, Claims or Suits. INDEPENDENT CONTRACTOR shall forward immediately to CARRIER every demand, notice, summons, ticket or other legal process received by INDEPENDENT CONTRACTOR that involves a charge, infraction, claim, suit or other legal proceeding arising from the operation of the Equipment, the relationship created by this Agreement or the services performed hereunder.

(e) Independent Contractor's Assistance and Cooperation. INDEPENDENT CONTRACTOR and its driver shall cooperate fully with CARRIER in the conduct of any legal action, regulatory hearing or other similar process arising from the operation of the Equipment, the relationship created by this Agreement or the services performed hereunder. INDEPENDENT CONTRACTOR shall, upon CARRIER's request, provide written reports or affidavits, attend hearings and trials and assist in securing evidence or obtaining the attendance of witnesses. INDEPENDENT CONTRACTOR shall provide CARRIER with any assistance as may be necessary for CARRIER or CARRIER's representatives or insurers to investigate, settle or litigate any accident, claim or potential claim by or against CARRIER.

23. C.O.D. SHIPMENTS: In handling C.O.D. or order/notify shipments, INDEPENDENT CONTRACTOR or its workers shall perform as indicated on the shipping order; call the originating terminal to report the C.O.D. or order/notify shipment; accept only a certified check, cashier's check or United States or Canadian Postal money order made payable to CARRIER for the shipment; and, remit to CARRIER no later than the next business day after the delivery date the full amount specified on the freight bill, including transportation and C.O.D. charges. In the event that INDEPENDENT CONTRACTOR accepts any other method of payment, INDEPENDENT CONTRACTOR shall bear the risk of loss. In the event of non-delivery of such a shipment, INDEPENDENT CONTRACTOR or its workers shall advise CARRIER of such non-delivery no later than the next business day following the day of attempted delivery or collection.

24. EQUAL EMPLOYMENT OPPORTUNITY: The services and Equipment specified herein will be furnished by INDEPENDENT CONTRACTOR in full compliance with all applicable federal, provincial, state and local laws and regulations pertaining to government contracts and subcontracts, including, without limitation, Executive Order 11246.

25. GOVERNING LAW AND ARBITRATION: This Agreement is to be governed by the laws of the State of Illinois. Any dispute arising out of or relating to this Agreement, including any allegation of breach thereof, shall be fully and finally resolved by arbitration in accordance with Illinois' arbitration act, and the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). A Demand for Arbitration shall be filed with the AAA's office located in or closest to Rockford, Illinois, and shall be filed not later than one year after the dispute arises or the claim accrues. Failure to file the Demand within the one year period shall be deemed a full waiver of the claim. The place of the arbitration hearing shall be Rockford, Illinois. Both parties agree to be fully and finally bound by the arbitration award, and, where allowed by law, judgment may be entered on the award in any court having jurisdiction thereof. All dollar amounts specified in this Agreement are based on U.S. Dollars.

26. ENTIRE AGREEMENT: This Agreement contains the entire agreement between CARRIER and INDEPENDENT CONTRACTOR and supersedes, cancels and revokes all other contracts between the parties relating to the Equipment and any other contract which is alleged to cover any services rendered by INDEPENDENT CONTRACTOR to CARRIER, or to which INDEPENDENT CONTRACTOR is alleged to be a third-party beneficiary as a result of any services rendered to CARRIER, provided, however, that the parties may amend or modify this Agreement in writing signed by both parties or, with respect to modification of any chargeback item, as allowed for in Appendix A of this Agreement.

27. SEVERABILITY AND SAVINGS: If any sections, part or parts of sections of this Agreement are deemed invalid for any reason whatsoever, the provisions of this Agreement shall be void only as to such section, sections or part, or parts of sections, and this Agreement shall remain otherwise binding between the parties hereto. Any section, or part or parts of sections voided by operation

of the foregoing shall be replaced with provisions which shall be as close as the parties' original intent as permitted under applicable law.

28. NON-WAIVER: The failure or refusal of either party to insist upon the strict performance of any provision of this Agreement, or to exercise any right in any one or more instances or circumstances shall not be construed as a waiver or relinquishment of such provision or right, nor shall such failure or refusal be deemed a custom or practice contrary to such provision or right.

29. NOTICES: Any notice required or permitted by this Agreement shall be deemed conclusively to have been given when deposited in the United States or Canada Mail properly addressed with first class postage prepaid. The address of each party shall be that set forth on the Attached Statement, and the address to which notices are to be sent may be changed by providing the other party notice of change of address. Where INDEPENDENT CONTRACTOR provides notice of change of its address, the change of address will be effective upon CARRIER's sending acknowledgment of the notice.

30. TERMINATION: The INDEPENDENT CONTRACTOR will, at the time this Agreement is terminated, remove all CARRIER identification from the Equipment and return all of CARRIER's property and freight to CARRIER's nearest terminal, including trailers, chains, binders, and tarps and placards. Plates and permits must be returned to the Permit Department in Rockford, Illinois. If INDEPENDENT CONTRACTOR fails to return CARRIER's property or freight to CARRIER or remove all CARRIER identification from the equipment to CARRIER within fifteen (15) days after termination of this Contract, INDEPENDENT CONTRACTOR will pay CARRIER an initial payment of damage in the amount of $1,000.00, as a pre-estimate of damages and not as a penalty, and CARRIER may pursue all other remedies allowed by law or authorized in the Agreement against INDEPENDENT CONTRACTOR. If INDEPENDENT CONTRACTOR fails to perform its obligations under this Agreement, CARRIER may, in addition to any other remedy provided by law or under this Agreement, complete INDEPENDENT CONTRACTOR's obligations and charge INDEPENDENT CONTRACTOR for any expenses associated with completing INDEPENDENT CONTRACTOR's obligations.

Les parties ont specifiquement requis que la presente convention de meme que tous les documents s'y rattachant soitent redigees en langue anglais seulement.

The parties have specifically requested that this Agreement and all documents hereto be drafted in the English language only.

IN WITNESS WHEREOF, CARRIER and INDEPENDENT CONTRACTOR do hereby sign this Agreement on this 29 day of Jan, 199[illegible], the effective date of this Agreement.

LANDSTAR INWAY, INC.
CARRIER

GL Brewer
INDEPENDENT CONTRACTOR

Signature

GL Brewer
Signature

IRS W-9 Certification: Under penalties of perjury, I certify that the number shown on this form is my correct tax payer identification number and I am not subject to backup withholdings according to the Internal Revenue Service (IRS).

~~68-0048114~~ GL Brewer
(DBA - Name that matches SS# or FID# used below)

68-0048114
(Social Security Number or Federal I.D. Number)
(This number will be used on Federal Form 1099)

Corporation ____ Individual ✓ Partnership ___

APPENDIX A

Compensation

(a) Contractor's Share of Revenue: Unless otherwise agreed to in writing between the parties, CARRIER shall pay INDEPENDENT CONTRACTOR based on the following:

(1) For haulage of loads tendered by CARRIER:

Power Unit/Tractor	67% of 98% of Adjusted Gross Revenue ("AGR")
Power Unit with CARRIER's Platform Trailer on Fixed Rental	75% of 98% (AGR)
Power Unit while pulling CARRIER's Refrigerated Trailers	68% of 98% (AGR)
Regular Trailer (van, flat, extendible flat, stepdeck)	8% of 98% (AGR)
Specialized Trailer (double drop, tri-axle, insulated van w/heater)	9% of 98% (AGR)
Refrigerated Trailer	10% of 98% (AGR)
Heavy Haul Trailer (7 or more axles in combination)	10% of 98% (AGR)

(2) Adjusted Gross Revenue shall mean revenue to CARRIER shown on freight bills, or amended bills, to the shippers, consignees, or other carriers for commodities hauled by INDEPENDENT CONTRACTOR, reduced by: (a) any and all expenses attributed to accessorial services paid to a third party or to INDEPENDENT CONTRACTOR by CARRIER; (b) the amount paid to any third party by CARRIER in relation to movement of the load, including without limitation: amounts paid to other contractors as a pro rata payment for their participation in the movement of a load; any amount paid by CARRIER to interline or augmenting carriers; and, any warehouse or storage charges; (c) any revenue received by CARRIER as an excess value charge on high value freight charge; (d) all incentives, discounts or commissions given to CARRIER's customers or other third parties; and (e) amounts paid or accrued for certain specialized trailers and excessive trailer spotting situations.

(b) Accessorial Services Charges: The percentages of Accessorial Charges listed below shall be paid to INDEPENDENT CONTRACTOR, provided that such Accessorial Services Charges are covered by a written contract or tariff and are billed to and collected from a shipper or customer by CARRIER:

Detention	- 100%
Tarping	- 100%
Loading	- 100%

Unloading	- 100%
Sort & Segregate	- 100%
New York City	- 100%
Motor Surveillance (A & E)	- 100%
Satellite Tracking	- 85%
Government Security (A & E)	- 85%
Constant Surveillance (A & E)	- 85%
Protective Services (A & E)	- 85%

All other accessorial charges, including but not limited to, team operation, job site delivery, air ride, dual driver, temperature control and stop-off pay shall be paid to INDEPENDENT CONTRACTOR based on its percentage of Adjusted Gross Revenue specified above, provided that such other accessorial charges are covered by a written contract or tariff and are billed to and collected from a shipper or customer by CARRIER.

(c) Chargeback Expenses: Pursuant to Paragraphs 10 and 11 of this Agreement, the amounts to be charged back to INDEPENDENT CONTRACTOR by CARRIER for license plates and permits provided by CARRIER shall be based on the following annual fees:

IRP Base Plate	$1,500 per tractor
Permits	$ 325 per tractor

(d) Electronic Weekly Settlements (Landstar Card): CARRIER shall provide INDEPENDENT CONTRACTOR with a debit card (Landstar Card). Unless INDEPENDENT CONTRACTOR requests otherwise, settlement of the INDEPENDENT CONTRACTOR's processed trips shall be deposited electronically each week by CARRIER on the Landstar Card and will be subject to an administrative fee of one dollar and seventy-five cents ($1.75) per deposit.

All chargeback items and fees to be deducted from INDEPENDENT CONTRACTOR's Share of Revenue herein are subject to adjustment, by CARRIER. No less than thirty (30) days prior to any adjustment INDEPENDENT CONTRACTOR will be notified in writing by CARRIER of the adjustment, the amount of adjustment and the date the adjustment is proposed to take effect. If INDEPENDENT CONTRACTOR does not agree to the change, it shall notify CARRIER on or before the proposed effective date of adjustment. Acceptance of any load by INDEPENDENT CONTRACTOR after the proposed effective date of the adjustment will indicate understanding and acceptance by INDEPENDENT CONTRACTOR of the new fee or chargeback amount and the parties will use their best efforts to promptly execute a written addendum reflecting the adjusted fee or rate.

APPENDIX B

Insurance

It shall be CARRIER's responsibility, pursuant to federal, provincial and/or state law, to provide no less than the minimum legislated public liability and property damage insurance for the Equipment at all times while the Equipment is being operated on behalf of CARRIER. The parties agree and understand that CARRIER's qualification as a self-insurer with the Federal Highway Administration satisfies its insurance obligations under federal law. CARRIER's possession of the required insurance shall in no way affect CARRIER's right of indemnification against INDEPENDENT CONTRACTOR as provided for in this Agreement.

INDEPENDENT CONTRACTOR shall maintain, at its sole cost and expense, the following minimum insurance coverages during the term of this Agreement:

1. Unladen Liability ("Bobtail"). INDEPENDENT CONTRACTOR shall procure, carry and maintain public liability and property damage insurance which shall provide primary coverage to INDEPENDENT CONTRACTOR whenever the Equipment is not transporting freight on behalf of CARRIER, which coverage shall be in a combined single limit of not less than One Million Dollars ($1,000,000.00) for any one occurrence (the "Non-Trucking Use - Broad Form Unladen Policy). The Non-Trucking Use - Broad Form Unladen Policy shall name CARRIER and its affiliates as additional insureds, and shall provide (1) for first dollar coverage with no deductibles, (2) for waiver of the insurer's subrogation rights against each additional insured, (3) shall apply whenever the Equipment is either "bobtailing" or "deadheading", and (4) shall be primary with respect to all insureds. For purposes of such insurance, "bobtailing" means the Equipment is being operated without a trailer attached and "deadheading" means the Equipment is being operated with an attached trailer which does not contain or carry any cargo. INDEPENDENT CONTRACTOR expressly acknowledges that it shall be solely responsible for any loss in excess of policy limits and shall indemnify and hold CARRIER harmless against any loss in excess of INDEPENDENT CONTRACTOR'S policy limits. Such policy of insurance coverage shall provide for thirty (30) days prior notice to CARRIER of cancellation or material change In the event that INDEPENDENT CONTRACTOR fails to provide CARRIER with proof of insurance coverage required under this provision, INDEPENDENT CONTRACTOR authorizes CARRIER to deduct from INDEPENDENT CONTRACTOR's compensation an amount of Sixteen Dollars and Ninety-Nine Cents ($16.99) per unit per week for the Non-Trucking Use - Broad Form Unladen Policy required by this provision. INDEPENDENT CONTRACTOR may, in accordance with policy terms, cancel the certificate of insurance for Non-Trucking Use - Broad Form Unladen Policy provided by CARRIER at any time as INDEPENDENT CONTRACTOR elects by written notice to CARRIER or the appropriate insurance agent, provided, however, that such cancellation does not affect INDEPENDENT CONTRACTOR's obligations and undertakings under this Agreement. INDEPENDENT CONTRACTOR understands that Non-Trucking Use - Broad Form Unladen Policy provided by CARRIER does not apply to injury or damage to INDEPENDENT CONTRACTOR, or its workers, nor to collision or comprehensive coverage to the Equipment, and it is further understood that if INDEPENDENT CONTRACTOR desires to have such coverage, it shall have the duty to obtain and pay for it.

2. Tractor Damage. It is INDEPENDENT CONTRACTOR's responsibility to procure, carry and maintain any fire, theft or collision insurance that INDEPENDENT CONTRACTOR may desire for the Equipment. CARRIER shall not be liable for any loss of or any damage to the Equipment, and INDEPENDENT CONTRACTOR expressly waives all claims it may have in the future against CARRIER for such loss or damage to the Equipment. INDEPENDENT CONTRACTOR may, at its sole discretion, elect to purchase collision insurance through CARRIER, in which case CARRIER will (1) furnish INDEPENDENT CONTRACTOR a copy of the policy upon request, and (2) provide a certificate of insurance to INDEPENDENT CONTRACTOR, which shall show the name of the insurer, the policy number, the effective dates of coverage, the amounts and types of coverage, the deductible or retained liability amounts for which INDEPENDENT CONTRACTOR may be liable, and the cost to INDEPENDENT CONTRACTOR for such requested coverage.

3. Worker's Compensation or Occupational Accident Coverage. Prior to commencing operations under this Agreement, INDEPENDENT CONTRACTOR shall provide a certificate of insurance, acceptable to CARRIER, showing that INDEPENDENT CONTRACTOR has procured worker's compensation insurance in an amount not less than the statutory limits required in INDEPENDENT CONTRACTOR's state of residence, including employer's liability insurance in an amount not less than Five Hundred Thousand Dollars ($500,000.00). INDEPENDENT CONTRACTOR shall provide CARRIER with a certificate of insurance, acceptable to CARRIER, showing that written notice of cancellation or modification of the policy shall be given to CARRIER at least thirty (30) days prior to such cancellation or modification. Notwithstanding anything to the contrary in this Agreement, if INDEPENDENT CONTRACTOR has no drivers other than himself or INDEPENDENT CONTRACTOR only uses drivers who own their equipment, then, in lieu of the required worker's compensation coverage, INDEPENDENT CONTRACTOR can participate in the "Contractor Protection Plan" approved by CARRIER and offered through CARRIER's insurer, or any occupational accident plan acceptable to CARRIER that

provides, at a minimum, the following:

(a) Coverage for substantially all claims which are considered compensable under applicable state or provincial workers' compensation laws even though the claimant under the coverage may be an independent contractor and may not typically be entitled to worker's compensation benefits;

(b) Coverage of $500,000.00 aggregate per occupational accident;

(c) A minimum of $400.00 per week occupational accident disability benefits with a maximum seven day waiting period;

(d) A minimum of $50,000.00 lump sum accidental death benefits;

(e) A minimum 24 month temporary total disability benefit;

(f) First dollar occupational medical coverage with no deductible and a minimum of 104 weeks of medical coverage;

(g) Indemnification of CARRIER from all policy benefits the claimant may have received from an occupational accident covered under such coverage but did not receive because claimant pursued worker's compensation benefits instead of benefits available under the occupational accident coverage; and

(h) Certification showing that written notice of cancellation or modification of the plan shall be given to CARRIER at least thirty (30) days prior to such cancellation or modification.

If INDEPENDENT CONTRACTOR fails to acquire and maintain the worker's compensation insurance or acceptable alternatives required herein, then CARRIER shall have the right, but not the obligation, to include INDEPENDENT CONTRACTOR's participation in the Contractor Protection Plan and shall be entitled to deduct and charge back INDEPENDENT CONTRACTOR the amount of $26.00 per unit per week for CARRIER's expense in obtaining such coverage on INDEPENDENT CONTRACTOR's behalf. CARRIER's Contractor Protection Plan is NOT statutory worker's compensation and employer's liability coverage, and even when INDEPENDENT CONTRACTOR is provided coverage under the terms of CARRIER's Contractor Protection Plan, INDEPENDENT CONTRACTOR shall still be responsible for any worker's compensation and employer's liability insurance coverage that may be required by applicable law.

In the event that INDEPENDENT CONTRACTOR obtains insurance coverage through CARRIER pursuant to this provision, CARRIER or the insurance underwriter shall provide INDEPENDENT CONTRACTOR with a certificate of insurance for each insurance policy under which the INDEPENDENT CONTRACTOR is provided coverage. Such certificate shall state the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to INDEPENDENT CONTRACTOR for each type of coverage, and the deductible or retained liability amounts for which INDEPENDENT CONTRACTOR may be liable. A copy of the actual policy is available for review by INDEPENDENT CONTRACTOR at CARRIER's principal place of business. INDEPENDENT CONTRACTOR recognizes and agrees that CARRIER is not in the business of selling or soliciting insurance, and any insurance coverage requested by INDEPENDENT CONTRACTOR or provided through CARRIER is subject to all of the terms, conditions and exclusions of the actual policy issued by the insurance underwriter. In the event that the insurance costs shall change or vary, as determined by the insurer, CARRIER shall advise INDEPENDENT CONTRACTOR of such change in insurance cost in writing and INDEPENDENT CONTRACTOR's failure to object or terminate the coverage being provided through CARRIER in writing to CARRIER shall constitute an express consent and authorization to CARRIER to deduct and charge back to INDEPENDENT CONTRACTOR the revised amount.

APPENDIX C

Equipment Purchase Program

1. Tractor Computer Purchase - As evidenced by execution of this Agreement, INDEPENDENT CONTRACTOR has elected to finance through CARRIER or an affiliated company the purchase or lease of certain tractor computer equipment. The parties acknowledge that the terms of that financing agreement are set forth in a separate note and security agreement ("Contract"). Pursuant to the terms of the Contract, INDEPENDENT CONTRACTOR hereby authorizes CARRIER to deduct from any settlements or any other sums owed by CARRIER to INDEPENDENT CONTRACTOR the costs associated with that financing, including, application fees, down payments, the principal amount, interest, and any other fees, expenses or charges for which INDEPENDENT CONTRACTOR is obligated pursuant to the terms of the Contract.

APPENDIX D

Trailer Utilization Program

(a) Trailer Utilization Fee: CARRIER will deduct from INDEPENDENT CONTRACTOR's settlement the following amount for each week a trailer provided by CARRIER is used by or in the possession of INDEPENDENT CONTRACTOR or its workers:

Type of Trailer	Weekly User Fee
Flatbed	$155.00/per week
Step Deck	$170.00/per week
Extendible	$185/per week
Double Drop	$260/per week

(b) Trailer Maintenance: CARRIER shall be responsible for all maintenance, including tires and repairs, needed to insure safe and efficient operation of any trailer provided for use by CARRIER. As a condition of using CARRIER's trailer, INDEPENDENT CONTRACTOR agrees to follow CARRIER's Trailer Policies and Procedures, including Preventative Maintenance Schedules, copies of which are available from CARRIER upon request.

(c) Use of Trailer: It is further agreed by the parties that in the event INDEPENDENT CONTRACTOR or its workers shall change or substitute any parts or accessories of CARRIER's trailer including, but not limited to, the tires of said equipment, without written permission from CARRIER, then INDEPENDENT CONTRACTOR shall pay CARRIER a sum not to exceed the actual cash value, as calculated by CARRIER, for each such unauthorized change or substitution. INDEPENDENT CONTRACTOR agrees to return CARRIER's trailer in the same good condition as received by INDEPENDENT CONTRACTOR, reasonable wear and tear excepted, along with any and all other equipment or property belonging to CARRIER immediately upon CARRIER's request or upon termination of this Agreement at a time and place designated through CARRIER. In the event the trailer is not in as good a condition as it was when delivered by CARRIER, INDEPENDENT CONTRACTOR hereby authorizes CARRIER to restore the trailer to proper condition and to deduct or charge INDEPENDENT CONTRACTOR for such repairs or reconditioning. In the event INDEPENDENT CONTRACTOR for any reason fails to comply with this provision, INDEPENDENT CONTRACTOR agrees to reimburse CARRIER for all reasonable expense and cost incurred by CARRIER in recovery of its trailer and/or property from INDEPENDENT CONTRACTOR or its workers. INDEPENDENT CONTRACTOR agrees that in the event it is necessary for CARRIER to enter upon private property and/or remove private property in order to recover its trailer and/or property, INDEPENDENT CONTRACTOR does hereby irrevocably grant CARRIER or its duly authorized agents, permission to do so and further agrees to save and hold harmless CARRIER, or its duly authorized agents, from any form of liability for any claim or damage whatsoever in connection with such repossession.

APPENDIX E

Fuel and Mileage Taxes

CARRIER shall prepare and file all reports required under the International Fuel Tax Agreement ("IFTA") or other applicable state or provincial law with respect to the fuel and mileage taxes incurred by the Equipment during the term of this Agreement, pursuant to the following procedures:

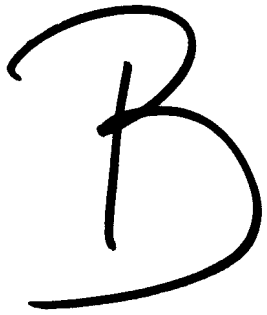
1. INDEPENDENT CONTRACTOR shall be responsible for the payment of all fuel and mileage taxes payable for the Equipment during the term of this Agreement.

2. INDEPENDENT CONTRACTOR agrees to timely submit all documents, including but not limited to original and legible fuel receipts, temporary permits showing fuel and/or mileage taxes paid, and toll tickets, required by CARRIER in order to prepare the necessary tax filings. INDEPENDENT CONTRACTOR shall be responsible for any additional tax, expense, penalty or interest incurred as a result of INDEPENDENT CONTRACTOR's failure to submit such required documents.

3. CARRIER shall calculate on a monthly basis the fuel owed for the Equipment in each applicable state and province. Any such tax that is owed after calculating the credit given to INDEPENDENT CONTRACTOR for purchases made at the pump shall be charged back to INDEPENDENT CONTRACTOR on a monthly basis as a pre-trip settlement. Additional information regarding the procedures utilized by CARRIER in calculating fuel taxes is available from CARRIER upon request. Tax credits available due to the over-purchase of fuel by INDEPENDENT CONTRACTOR shall, as allowed by state and provincial law, be carried over and applied by CARRIER to the next month's tax liability. Upon termination of the Agreement, CARRIER shall pay INDEPENDENT CONTRACTOR, as part of its final settlement, any fuel tax refund that INDEPENDENT CONTRACTOR may be entitled to, provided, however, that any such refund will first be applied to any expense owed to CARRIER by INDEPENDENT CONTRACTOR under this Agreement.

4. Mileage taxes are computed on a per load basis for miles traveled in those states that assess a mileage tax. CARRIER shall charge back all owed mileage taxes to INDEPENDENT CONTRACTOR on a per load basis as a pre-trip settlement.

5. INDEPENDENT CONTRACTOR agrees to cooperate fully with CARRIER, and to provide CARRIER with any additional documentation requested by CARRIER, in connection with any fuel or mileage tax audit. In the event that additional taxes are assessed to the Equipment after any such audit, then INDEPENDENT CONTRACTOR agrees to pay such additional taxes; provided, however, that INDEPENDENT CONTRACTOR shall not be responsible for the payment of any penalties or interest due to any error made by CARRIER in preparing the various tax reports.



LANDSTAR CARRIER GROUP

Landstar Carrier Group
13410 Sutton Park Drive, South
Jacksonville, FL 32224
904 398 9400

TO: ALL CARRIER GROUP BCOs

FR: GARY HARTTER

DT: June 28, 2004

RE: New Independent Contractor Operating Agreement

As Landstar has grown, we have not routinely required BCOs to sign new versions of the Haulage Agreement. We recognize most of our BCOs have operated without any problem under the same agreement since becoming a Landstar BCO long ago. However, Landstar, like numerous other motor carriers, has been sued by the Owner Operators Independent Drivers Association (OOIDA), which claims that your existing agreement does not comply with OOIDA's view of federal rules and laws mainly addressing disclosures of information.

Landstar very much disagrees with OOIDA's claims and believes its Haulage Agreements are in compliance with federal rules and regulations. However, over the years the Haulage Agreemont used by the individual Landstar Companies has evolved and having so many different versions of the Haulage Agreement can create an overly bureaucratic system with the inherent inefficiencies. Over the past 14 months we have arrived at a single Carrier Group computer operating system which all Landstar agents and BCOs are using. This was accomplished while retaining the four carrier identities and the relationships with customers we all value. It is now apparent that the new Independent Contractor Operating Agreement needs to be executed.

Importantly, **THE COMPENSATION CALCULATION YOU ARE CURRENTLY RECEIVING UNDER YOUR EXISTING AGREEMENT WILL REMAIN THE SAME**

Through the enclosed new Independent Contractor Operating Agreement, Landstar desires to make the required disclosures in an updated and uniform manner to all Landstar BCOs. The new agreement is intended to assure each of you receives uniform and up to date disclosures.

The attached Independent Contractor Operating Agreement must be executed and returned to Landstar by no later than September 1, 2004. To help expedite this process, for each BCO who returns a signed copy of this Independent Contractor Operating Agreement to Landstar on or before August 1, 2004, Landstar will "freeze" the cost of the base plate for trucks registered at 80,000 lbs. ($1,650) and the permit fee package ($340) at the April, 2004 rate through March, 2007.

Please review the enclosed Independent Contractor Operating Agreement, paying particular attention to Appendix A which deals with your individual compensation. It is our intent that, **THE COMPENSATION CALCULATION YOU ARE CURRENTLY RECEIVING UNDER YOUR EXISTING AGREEMENT WILL REMAIN THE SAME,** and we would greatly appreciate your assistance in verifying your compensation calculation. If you have any questions at all about the compensation calculation please call BCO services at (866)299-8863. We have established a secure e-mail address to answer any questions you may have (contract@landstar.com). After you have finished reviewing the new agreement, we ask that you execute the signature page (follow the instructions attached to the front of the agreement) and return it to Landstar using the pre-addressed envelope we have provided.

Again though, Landstar believes that a new Independent Contractor Operating Agreement now makes the best business sense, **THE COMPENSATION CALCULATION YOU ARE CURRENTLY RECEIVING UNDER YOUR EXISTING AGREEMENT WILL REMAIN THE SAME.** Landstar intends to implement new Independent Contractor Operating Agreements on a cycle of no less than every three years.

Landstar values its BCOs and recognizes the vital role each of you plays. We look forward to our continued relationship as we travel down the road to success together.

INSTRUCTIONS

After you review the enclosed Independent Contractor Operating Agreement and each of the Appendices, please sign the signature page (place your signature on each of the lines provided on the signature page) on behalf of you and your business.

- Please place only the fully signed signature page in the enclosed postage paid envelope and return it to Landstar at the address indicated on the envelope.
- Immediately upon receipt of the fully signed signature page, Landstar will return to you an executed Statement of Lease with a date indicating the effective date of your new Independent Contractor Operating Agreement.
- Your Statement of Lease executed by Landstar represents Landstar's acknowledgement and agreement (for your files) as to its obligations to you under the Independent Contractor Operating Agreement.

LANDSTAR RANGER, INC.

INDEPENDENT CONTRACTOR OPERATING AGREEMENT

(For New BCOs)

Pursuant to the federal leasing regulations (49 C.F.R. Part 376), the undersigned CARRIER and INDEPENDENT CONTRACTOR (the "parties") enter into this Independent Contractor Operating Agreement, including Appendices ("Agreement"):

1. **DURATION OF AGREEMENT:** This Agreement will be effective as of the date set forth in the Statement of Lease and Receipt for Equipment (the "Effective Date") and will automatically expire three (3) years from the Effective Date. The breach by either party of any of the provisions of this Agreement will immediately terminate the Agreement. In addition, either party may terminate this Agreement at any time for any reason by oral notice, followed by written notice to or from CARRIER's Qualifications Department in Jacksonville, Florida, to the other party.

2. **EQUIPMENT AND SERVICES:**

(a) INDEPENDENT CONTRACTOR represents and warrants to CARRIER that it holds full legal title to or is otherwise authorized to contract the equipment identified in Section III of the Statement of Lease and Receipt for Equipment (the "Equipment") to CARRIER, and further warrants and represents that the Equipment is now and will for the term of this Agreement be maintained in good and safe operating condition as required by government authorities at INDEPENDENT CONTRACTOR's expense. The choice of location and persons to perform any necessary repairs or maintenance is exclusively vested in INDEPENDENT CONTRACTOR. ALL POWER EQUIPMENT WHICH IS THE SUBJECT OF THIS AGREEMENT IS TO BE OPERATED BY FULLY QUALIFIED AND LICENSED OPERATORS TO BE PROVIDED BY INDEPENDENT CONTRACTOR AT ITS EXPENSE. INDEPENDENT CONTRACTOR will ensure that any operator employed or utilized by INDEPENDENT CONTRACTOR to provide services under this Agreement complies with the terms and conditions of this Agreement.

(b) Receipt for Equipment. Upon INDEPENDENT CONTRACTOR making available to CARRIER the Equipment, CARRIER will furnish to INDEPENDENT CONTRACTOR the Statement of Lease and Receipt for Equipment, which will constitute the receipt required by 49 C.F.R. § 376.11(b). If required by applicable United States or Canadian federal, provincial, state or local law or regulation (the "Applicable Law"), INDEPENDENT CONTRACTOR will name CARRIER on either the vehicle or plate portion of the vehicle permit, or include CARRIER on a statement of a lease between INDEPENDENT CONTRACTOR and a third party. However, under no circumstances will CARRIER be, or be deemed to be, liable for any lease payments whatsoever due or owed from INDEPENDENT CONTRACTOR to any third party. If CARRIER is found liable for such lease payments, INDEPENDENT CONTRACTOR will fully indemnify CARRIER for any and all costs or damages imposed.

(c) Services/Operation of Equipment. For all shipments accepted by INDEPENDENT CONTRACTOR, at its sole discretion, INDEPENDENT CONTRACTOR will furnish all transportation, loading and unloading, and other services necessary in connection with the accepted shipments.

(d) Carrier Safety Compliance and Security. INDEPENDENT CONTRACTOR acknowledges that minimum carrier safety compliance standards and requirements may differ from one jurisdiction to another, and that the minimum standards and requirements in effect under Applicable Law in the United States may differ from those in effect under Applicable Law in each of the Canadian provinces and territories. INDEPENDENT CONTRACTOR agrees to operate the Equipment in a safe and prudent manner at all times in accordance with the laws and regulations of the various jurisdictions in which it is operated and pursuant to the operating authorities of CARRIER, and in accordance with all rules relating to traffic safety, highway protection, road and cargo securement requirements.

When providing services to CARRIER under this Agreement, INDEPENDENT CONTRACTOR will have a working wireless mobile telephone and will provide CARRIER with the phone number. INDEPENDENT CONTRACTOR will also maintain and use a trailer lock and a kingpin lock whenever hauling cargo on behalf of CARRIER, although a trailer lock is not required if INDEPENDENT CONTRACTOR hauls exclusively non-enclosed trailers. Both the trailer and kingpin locks must be of a type pre-approved by CARRIER (which approval will not be unreasonably withheld). Currently, CARRIER has approved use of the "WARLOK" or "Abloy Enforcer" trailer locks, and the "Enforcer" kingpin lock or "WARLOK" kingpin lock.

(e) Periodic Inspection and Maintenance of Equipment. INDEPENDENT CONTRACTOR agrees to maintain the Equipment, at its expense, in accordance with the safety and equipment standards specified by all Applicable Law in the jurisdictions where the Equipment is licensed to operate. INDEPENDENT CONTRACTOR will, at its expense, make the Equipment available for inspection by CARRIER at a place designated by CARRIER. Thereafter, as required by Applicable Law, INDEPENDENT CONTRACTOR will make the Equipment available for inspection by CARRIER at least once every one hundred twenty (120) days. Providing that such inspection is done every 120 days at a place designated by CARRIER, and the Equipment passes such inspection, then CARRIER will pay for such inspection. If the Equipment is not inspected every 120 days, CARRIER may either place the Equipment out-of-service or withhold any and all Pre-Trip Settlements from INDEPENDENT CONTRACTOR until the required inspection is completed, in which case the inspection will be at INDEPENDENT CONTRACTOR's expense. If any inspection reveals that the Equipment does not comply with Applicable Law, the Equipment must be made to comply with such requirements by INDEPENDENT CONTRACTOR, at its expense, within a reasonable time as determined by CARRIER. INDEPENDENT CONTRACTOR will, at its expense, keep records of inspection, repair, and maintenance of the Equipment in accordance with the Federal Motor Carrier Safety Regulations (49 C.F.R. Parts 393 and 396) and, if operated in Canada, applicable provincial or territorial regulations, and will maintain all such records for the duration of this Agreement and for six (6) months thereafter. INDEPENDENT CONTRACTOR will, as directed by CARRIER, forward to CARRIER all maintenance records covering the Equipment required by Applicable Law.

(f) Pre-Trip Inspections. INDEPENDENT CONTRACTOR will ensure that its operators conduct a thorough pre-trip inspection (including, without limitation, an inspection of all air brake adjustments) of the Equipment in accordance with Applicable Law: (i) prior to commencing operation of such Equipment on any given trip, and thereafter no less than once every 24 hours while such Equipment remains in operation, and (ii) immediately prior to crossing any international or provincial boundary. INDEPENDENT CONTRACTOR will further ensure that its operators prepare, carry on board, and produce upon request a legal type of trip inspection report for each such pre-trip inspection, that shows all required items, including the name and signature of the person conducting the inspection, the full list of items that have been inspected, the vehicle make and unit or plate numbers, any defects found, and the time the inspection was done.

(g) Hours of Service Rules. INDEPENDENT CONTRACTOR will ensure that its operators comply fully with the hours of service rules and prepare, carry on board, and produce upon request accurate daily logs, all in accordance with the Applicable Law of the various jurisdictions in which they are operating.

(h) Painting or Marking of Equipment. If required by Applicable Law, INDEPENDENT CONTRACTOR will cause the name, style, mark or logo of CARRIER to be affixed to the Equipment in the manner prescribed by CARRIER. INDEPENDENT CONTRACTOR will be responsible for the cost of affixing such name, style, mark or logo and for the removal of same at the termination of this Agreement. If requested by CARRIER, INDEPENDENT CONTRACTOR also agrees to display its own name and address on the Equipment during the term of this Agreement.

(i) Safety and Qualification Certification. Although INDEPENDENT CONTRACTOR is an independent contractor and not an employee of CARRIER, CARRIER still has a regulatory obligation under 49 C.F.R. Part 391 and under Applicable Law in Canada to ensure that the operator of the Equipment is safe, properly qualified and in compliance with the Federal Motor Carrier Safety Regulations ("FMCSR") (49 C.F.R. Parts 382, 383, 391, 392 and 395) and under Applicable Law in Canada. In order for CARRIER to meet its obligations under federal law, INDEPENDENT CONTRACTOR agrees to make itself and its operators available for periodic safety and qualification certification at a place designated by CARRIER. All new operators are required to attend and successfully complete a safety and qualification certification program within one hundred and twenty (120) days of the Effective Date. CARRIER reserves the right to disqualify any operator of the Equipment that does not meet the qualification standards set forth by CARRIER or the FMCSRs, in which case INDEPENDENT CONTRACTOR is obligated to provide another fully qualified and licensed operator to operate the Equipment at its sole expense.

3. **EXCLUSIVE POSSESSION AND RESPONSIBILITY:** The Equipment will be for CARRIER's exclusive possession, control and use, and CARRIER shall assume complete responsibility for the operation of the Equipment for the duration of this Agreement. This provision is set forth solely to conform with Federal Motor Carrier Safety Administration regulations. It shall not be used for any other purposes, including any attempt to classify INDEPENDENT CONTRACTOR or its operators as CARRIER's employees. Nothing in the provisions required by 49 C.F.R. § 376.12(c)(1) is intended as evidence that INDEPENDENT CONTRACTOR or any worker provided by INDEPENDENT CONTRACTOR is an employee of CARRIER. During the term of this Agreement, CARRIER will have the exclusive right to subcontract the Equipment to other authorized motor carriers. INDEPENDENT CONTRACTOR may only subcontract the Equipment upon receiving prior written authorization from CARRIER as set forth in Paragraph 18. CARRIER has no right to and will not control the manner nor prescribe the method of doing that portion of the operation which is contracted for in this Agreement by INDEPENDENT CONTRACTOR, except such control as can reasonably be construed to be required by Applicable Laws. INDEPENDENT CONTRACTOR reserves the right to accept or reject any freight tendered for transportation by CARRIER.

4. **COMPENSATION AND DEDUCTIONS FROM COMPENSATION:** INDEPENDENT CONTRACTOR's entire compensation will be as set forth in Appendix A and A-1, and such compensation will constitute the total compensation for everything furnished, provided, or done by INDEPENDENT CONTRACTOR in connection with this Agreement, including the services of its operators. CARRIER may make subsequent adjustments to INDEPENDENT CONTRACTOR's compensation in the event CARRIER has either underpaid or overpaid the amount owed to INDEPENDENT CONTRACTOR as set forth in Appendix A and A-1. All mileage computations will be based on the latest edition of the mileage guide or software utilized by CARRIER, information on which is available from CARRIER upon INDEPENDENT CONTRACTOR's written request. INDEPENDENT CONTRACTOR acknowledges and agrees that CARRIER does not guarantee or warrant any specific number of shipments or amount of total revenue to INDEPENDENT CONTRACTOR during the term of this Agreement.

(a) Settlements.

(1) Payment Period. CARRIER will settle with INDEPENDENT CONTRACTOR with respect to services provided under this Agreement within fifteen (15) calendar days after INDEPENDENT CONTRACTOR's submission, in proper form, of those documents necessary for CARRIER to secure payment from CARRIER's customers, including the bill of lading, signed delivery receipt or other proof of delivery acceptable to CARRIER.

(2) Freight Documentation. CARRIER will provide INDEPENDENT CONTRACTOR, at the time of settlement, a copy of the applicable rated freight bill or a computer-generated document containing the same information, or, in the case of contract carriage, any other form of documentation actually used for a shipment containing the same information that would appear on a rated freight bill. When

a computer-generated freight bill is provided, INDEPENDENT CONTRACTOR may examine, during normal business hours, a copy of any actual document underlying the computer-generated document. Regardless of the method of compensation, INDEPENDENT CONTRACTOR may examine, during CARRIER's normal business hours, copies of CARRIER's tariffs or, in the case of contract carriage, other documents from which rates and charges are computed, provided that where rates and charges are computed from a contract, only those portions of the contract containing the same information that would appear on a rated freight bill will be disclosed by CARRIER. CARRIER may, in its discretion, delete the names of shippers and consignees shown on a rated freight bill or other form of documentation.

(3) Required Return of Identification Devices. Upon termination of this Agreement, CARRIER will withhold any final settlement due to INDEPENDENT CONTRACTOR under this Agreement until INDEPENDENT CONTRACTOR returns to CARRIER the identification devices INDEPENDENT CONTRACTOR is required to return to CARRIER pursuant to Paragraph 6 of this Agreement. If the identification devices have been lost or stolen, a letter certifying their removal will satisfy this requirement for purposes of issuing final settlement to INDEPENDENT CONTRACTOR.

(b) Chargebacks and Other Deductions.

(1) Pre-Trip Settlement and Other Amounts Due. Where INDEPENDENT CONTRACTOR has secured from CARRIER an advance of settlement compensation in the form of a cash equivalent, including advances loaded onto the Landstar Card provided to INDEPENDENT CONTRACTOR, to cover any of INDEPENDENT CONTRACTOR's operating expenses set forth in Paragraphs 7, 8, 9, 10, 11, or 12 of this Agreement or in Appendices A and A-1 (Compensation), B (Insurance), C (Equipment/Service Purchase Program and Landstar Card), or D (Trailer Utilization Program) (together referred to hereafter as "Pre-Trip Settlements"), or there are any other amounts due CARRIER from INDEPENDENT CONTRACTOR or its operators pursuant to this Agreement in the form of Equipment painting or marking expenses under Paragraph 2(d) of this Agreement, Escrow Fund and Fuel Tax Escrow Fund contributions under Paragraphs 5(a) and 12(a), losses or damage under Paragraph 15, C.O.D. transportation charges that INDEPENDENT CONTRACTOR was responsible for collecting from shipper under Paragraph 22 but failed to collect or collected but failed to remit to CARRIER, termination-related expenses under Paragraph 30, loans extended to INDEPENDENT CONTRACTOR or its operators, or court-ordered garnishments or tax liens against INDEPENDENT CONTRACTOR or its compensation, INDEPENDENT CONTRACTOR hereby authorizes CARRIER to deduct the amount of such Pre-Trip Settlement or other amount due CARRIER from any settlement compensation, Escrow Fund or Fuel Tax Escrow Fund balance, or any monies due INDEPENDENT CONTRACTOR from CARRIER under this Agreement. If such monies are insufficient to cover the total amount due CARRIER, then INDEPENDENT CONTRACTOR will on demand pay to CARRIER all sums remaining due, together with interest at the maximum legal rate and any expense, including reasonable attorneys' fees, incurred by CARRIER in recovering such amounts from INDEPENDENT CONTRACTOR.

(2) Pre-Trip Settlements to Compensation. INDEPENDENT CONTRACTOR authorizes CARRIER to make Pre-Trip Settlements in compensation (e.g. advances) requested by INDEPENDENT CONTRACTOR or its operators directly to INDEPENDENT CONTRACTOR's operators, provided, however, that CARRIER has complete discretion as to whether to issue a Pre-Trip Settlement and the amount of any Pre-Trip Settlement.

(3) Other Costs and Deductions/Multiple Contracts. INDEPENDENT CONTRACTOR, at the time of signing this Agreement or at any time thereafter,

may elect to authorize CARRIER to make additional deductions not set forth in this Agreement from settlements due INDEPENDENT CONTRACTOR. In each such case, INDEPENDENT CONTRACTOR will execute a signed authorization to make such additional deductions, specifying the amounts, terms, and conditions thereof, and a copy of the signed authorization will be retained by the parties and deemed an addendum to this Agreement. If INDEPENDENT CONTRACTOR has more than one agreement with CARRIER, INDEPENDENT CONTRACTOR agrees that CARRIER may make deductions from compensation due, and escrow funds held for, INDEPENDENT CONTRACTOR for any monies due CARRIER under any other agreement.

(4) Amounts Charged to CARRIER. INDEPENDENT CONTRACTOR and its operators will not charge any purchase to CARRIER and, in the event INDEPENDENT CONTRACTOR or its operators do charge any purchase to CARRIER, such sums paid by CARRIER will be treated as a Pre-Trip Settlement made to INDEPENDENT CONTRACTOR and will be recoverable by CARRIER under this provision.

(5) Method of Computation. Unless otherwise provided in this Agreement, all Pre-Trip Settlements and other amounts due CARRIER that are deducted from INDEPENDENT CONTRACTOR's settlement compensation, Escrow Fund and/or Fuel Tax Escrow Fund will be limited to the amount CARRIER advanced to INDEPENDENT CONTRACTOR, paid to a third party, or otherwise incurred, or that INDEPENDENT CONTRACTOR otherwise owed. INDEPENDENT CONTRACTOR understands and agrees that any use of the Landstar Card for receiving funds will subject INDEPENDENT CONTRACTOR to the transaction fees set forth in Appendix C.

(6) Deduction Information. INDEPENDENT CONTRACTOR shall be afforded copies of those documents, if any, which are necessary to determine the validity of the Pre-Trip Settlements or other amounts due that have been deducted from INDEPENDENT CONTRACTOR's compensation.

(7) Changes in Existing Charge-Backs, Accessorials and Other Deductions. If an existing Pre-Trip Settlement or other Charge-Back or Deduction item under Paragraph 4(b) of this Agreement (including but not limited to insurance costs under Appendix B and deductions under Appendices C and D) or an Accessorial Charge (Appendix A-1) will be changing, INDEPENDENT CONTRACTOR will be notified by CARRIER of the change in the weekly settlement statement or other written notice provided by CARRIER. In any event, INDEPENDENT CONTRACTOR will not be subject to any such change until thirty (30) days after such notice or such later time as is set forth in the notice. **INDEPENDENT CONTRACTOR's failure, by the end of 30 days after such notice, to notify CARRIER's Settlements Department in writing of any objection to the change will constitute INDEPENDENT CONTRACTOR's express consent and authorization to CARRIER to implement the change and modify accordingly the deductions from INDEPENDENT CONTRACTOR's settlement compensation, beginning immediately after the 30 day period.** Such modified amounts will replace and supersede those previously provided for in Paragraph 4(b)(1) above. If INDEPENDENT CONTRACTOR fails to notify CARRIER of any objection within the 30 day period -- or if INDEPENDENT CONTRACTOR notifies CARRIER in writing of INDEPENDENT CONTRACTOR's objection within the 30 day period and INDEPENDENT CONTRACTOR and CARRIER are then unable to resolve the matter to their mutual satisfaction -- INDEPENDENT CONTRACTOR and CARRIER have the right to terminate this Agreement at any time thereafter pursuant to Paragraph 1 of this Agreement (although INDEPENDENT CONTRACTOR will remain subject to the change until the effective date and time of termination).

(8) CARRIER Lien. CARRIER will be deemed to have a lien against monies in its possession which are receivables to the INDEPENDENT CONTRACTOR to cover any monies advanced or paid by CARRIER for items which are INDEPENDENT CONTRACTOR's responsibility.

(c) Reporting of Compensation. As required by law, CARRIER shall file with the Internal Revenue Service or other applicable federal, state or provincial governmental agency information tax returns (Form 1099 for U.S. residents and Form 1042-S for non-resident aliens) if INDEPENDENT CONTRACTOR is paid more than the statutory amount in compensation during a calendar year. INDEPENDENT CONTRACTOR will, if needed or requested by CARRIER, provide CARRIER with all information requested by CARRIER, including but not limited to a complete and accurate Form W-8 or W-9 to assist CARRIER in making all such required reports

5. ESCROW: INDEPENDENT CONTRACTOR hereby authorizes CARRIER to establish and administer an Escrow Fund in accordance with the following provisions (referred to throughout this Agreement as "Escrow Fund").

(a) The total amount of principal to be held in the Escrow Fund will be $500.00 for each power unit, which amount will be deducted from INDEPENDENT CONTRACTOR's compensation within a fifteen (15) week period from the Effective Date.

(b) The Escrow Fund will be returned to INDEPENDENT CONTRACTOR only upon termination of this Agreement. At the time of the return of any remaining balance in the Escrow Fund, CARRIER may deduct moneys for all Escrow Items. Such final deductions for Escrow Items shall be limited to amounts CARRIER actually spends, incurs, or owes to a third party, or that INDEPENDENT CONTRACTOR owes to CARRIER or a third party under a purchase or rental contract, before termination of this Agreement or, with respect to any INDEPENDENT CONTRACTOR obligation triggered by termination, including any expenses (including reasonable attorneys' fees) incurred by CARRIER in seeking the return of its identification devices and other property, all documented adjustments to INDEPENDENT CONTRACTOR's compensation, and all amounts CARRIER actually spends, incurs, or owes to a third party upon termination or within forty-five (45) days thereafter. CARRIER shall not make deductions from the Escrow Fund for items for which, by the end of forty-five (45) days after termination, neither INDEPENDENT CONTRACTOR nor CARRIER has yet made an expenditure or incurred a quantified, legally binding obligation to pay. CARRIER shall provide a final accounting to INDEPENDENT CONTRACTOR of all such final deductions made from the Escrow Fund within forty-five (45) days from the date of termination of the Agreement. In no event shall the Escrow Fund be returned later than 45 days from the date of termination.

(c) The Escrow Fund may at any time be applied by CARRIER to all adjustments in INDEPENDENT CONTRACTOR's compensation as set forth in Paragraph 4 above and to all chargeback and deduction items set forth in Paragraph 4(b) of this Agreement and in the other paragraphs, appendices and addendums referred to in Paragraph 4(b) (together, "Escrow Items" throughout this Agreement) to the extent that the amounts owed by INDEPENDENT CONTRACTOR for such Escrow Items exceed INDEPENDENT CONTRACTOR's earned and payable compensation at the time of any settlement or final accounting.

(d) CARRIER will provide an accounting to INDEPENDENT CONTRACTOR of any transaction involving the Escrow Fund, which accounting will be shown on the settlement sheet produced at the time the transaction is made. INDEPENDENT CONTRACTOR may at any time request and receive an accounting for transactions involving the Escrow Fund.

(e) CARRIER will pay interest on the Escrow Fund on a quarterly basis, which will be established on the date the interest period begins and will be equal to the average yield of 91-day, 13-week U.S. Treasury bills, as established in the then most recent weekly auction by the Department of Treasury. For purposes of calculating the amount of the

Escrow Fund on which interest will be paid, CARRIER will deduct a sum equal to the average Pre-Trip Settlement made to INDEPENDENT CONTRACTOR pursuant to Paragraph 4(b)(2) during the period of time for which the interest is due.

6. **IDENTIFICATION DEVICES:** All identification devices of CARRIER required by Applicable Law will be in the name of CARRIER and will be displayed on the Equipment, at INDEPENDENT CONTRACTOR's expense, during the term of this Agreement. All identification devices and documents are the sole property of CARRIER. Any such identification will be removed from the Equipment by INDEPENDENT CONTRACTOR and returned to CARRIER by first class mail addressed to CARRIER's address or in person immediately upon termination of this Agreement.

7. **OPERATIONAL EXPENSES:** Except as otherwise provided in this Agreement, INDEPENDENT CONTRACTOR will furnish, provide and pay all expenses related to the Equipment or its operations. In the event CARRIER is called upon to pay any of these operational expenses on behalf of INDEPENDENT CONTRACTOR, such payment will be considered a Pre-Trip Settlement to INDEPENDENT CONTRACTOR (and a cost of operation) and CARRIER will be entitled to seek reimbursement from INDEPENDENT CONTRACTOR or to charge back the payment as set forth in Paragraph 4(b). Except as otherwise provided in this Agreement, operational expenses include, but are not limited to, the following:

(a) All fuel, oil, tires and all equipment, accessories, or devices used in connection with the operation of the Equipment.

(b) All inspection costs, unless otherwise payable by CARRIER as set forth in Paragraph 2(d) above, and maintenance costs including all Equipment cleaning, towing and repairs;

(c) All taxes and assessments, insurance costs and other payments due by reason of the payment by INDEPENDENT CONTRACTOR of wages or other earnings to its operators;

(d) Base plates, including apportioned or prorated base plates, fuel permits and all other permits required to operate the Equipment (except overdimension/overweight permits), detention, accessorial charges, licenses, and all tax payments with respect to the Equipment or on the use or operation thereof, including all reports required of INDEPENDENT CONTRACTOR connected therewith, and all ferry, bridge and highway tolls;

(e) All fuel and fuel use taxes, and ton mile/weight-distance, and other mileage taxes;

(f) All fines and penalties, and all costs associated with commercial vehicle impoundment, resulting from acts or omissions of INDEPENDENT CONTRACTOR, including any monies paid by CARRIER in the form of penalties to a government or regulatory body, or costs related to the off-loading, removal or storage of freight upon impoundment of a vehicle, because of some act or omission on the part of INDEPENDENT CONTRACTOR or its operators;

(g) All insurance costs relating to insurance coverages required by this Agreement or otherwise requested by INDEPENDENT CONTRACTOR from CARRIER;

(h) Federal Highway Use Tax on the Equipment; all United States and Canadian federal, provincial, state and city or other local income taxes; and any self-employment or payroll taxes;

(i) All sales, use, excise, personal property, ad valorem, and other taxes due to ownership or operation of the Equipment in the jurisdiction imposing such taxes, including United States or Canadian federal goods and services tax and all applicable provincial taxes;

(j) All empty mileage, expenses incurred to transfer any shipment and/or secure additional equipment to complete delivery in case of breakdown or delay, and freight charges that CARRIER cannot collect from customers because INDEPENDENT CONTRACTOR failed to provide the necessary documentation;

(k) In the event that the duration of this Agreement is less than six (6) months, INDEPENDENT CONTRACTOR will be responsible for the costs related to all prequalification drug and alcohol tests required by Applicable Law;

(l) All INDEPENDENT CONTRACTOR-requested clothing items.

8. **LOADING AND UNLOADING:** INDEPENDENT CONTRACTOR will be responsible for the loading and unloading of all shipments transported under this Agreement at INDEPENDENT CONTRACTOR's expense. However, CARRIER reserves the right to arrange for the loading or unloading of a shipment with CARRIER's customers or another third party. INDEPENDENT CONTRACTOR's compensation, if any, for loading and unloading shipments is set forth in Appendix A.

9. **OVERWEIGHT/OVERDIMENSION SHIPMENTS:** CARRIER will provide all required overweight/overdimension permits to INDEPENDENT CONTRACTOR, but it shall be INDEPENDENT CONTRACTOR's duty to determine that the Equipment and shipment are in compliance with the size and weight laws of the jurisdictions in which INDEPENDENT CONTRACTOR will travel and to notify CARRIER if the vehicle is overweight or in need of permits before commencing transportation. Except when a violation results from the acts or omissions of INDEPENDENT CONTRACTOR, CARRIER will assumes the risks and costs of fines for overweight and oversize trailers when the trailers are preloaded, sealed or the load is containerized, or when the trailer or lading is otherwise outside INDEPENDENT CONTRACTOR's control, or for improperly permitted overdimension and overweight loads. Notwithstanding the above, INDEPENDENT CONTRACTOR will reimburse CARRIER for any costs or penalties paid by CARRIER due to INDEPENDENT CONTRACTOR's failure to comply with the terms of any permit or INDEPENDENT CONTRACTOR's failure to pick up permits made available by CARRIER.

10. **LICENSE PLATES:** INDEPENDENT CONTRACTOR must obtain, on its own or through CARRIER pursuant to Appendix C, a valid base plate under the International Registration Plan ("IRP").

11. **PERMITS:** INDEPENDENT CONTRACTOR must obtain, on its own or through CARRIER pursuant to Appendix C, certain governmental permits and licenses in order to legally provide services to CARRIER under this Agreement. Those permits include but are not limited to Single State Registration, IFTA Fuel Tax Permit, New York HUT Permit, DOT and State Hazardous Material Transportation Permits and Registration, and the Oregon Weight Receipt.

12. **FUEL USE, MILEAGE AND AD VALOREM TAXES:** INDEPENDENT CONTRACTOR's responsibility for Fuel Use, Mileage and Ad Valorem Taxes will be as follows:

(a) Fuel Taxes. Unless INDEPENDENT CONTRACTOR elects to obtain its own IFTA Fuel Tax Permit as set forth in Paragraph 11 above and Appendix C, CARRIER shall prepare and file all reports required under the International Fuel Tax Agreement ("IFTA") or other applicable state or provincial laws with respect to the fuel taxes incurred by the Equipment during the term of this Agreement, pursuant to the following procedures established by CARRIER in its discretion, a copy of which is available upon written request. INDEPENDENT CONTRACTOR acknowledges that CARRIER may assess penalties to INDEPENDENT CONTRACTOR for any unreported miles or unreasonably reported miles for the Equipment. CARRIER will calculate each month the additional fuel taxes owed or the accrued fuel tax credit stemming from an over-purchase, for the Equipment. Any net fuel tax debit for all taxing jurisdictions combined will be deducted from INDEPENDENT CONTRACTOR's compensation, and any net fuel tax credit for all taxing jurisdictions combined will be treated as a Fuel Tax Escrow Fund. The Fuel Tax Escrow Fund will be governed by all of the provisions set forth in Paragraph 5(b)-5(e), by substituting "Fuel Tax Escrow Fund" for "Escrow Fund", including applying the Fuel Tax Escrow Fund to cover any and all Escrow Items, as described in Paragraph 5(c), at the first settlement following completion of the monthly closure process. Itemization of the fuel tax liability incurred by INDEPENDENT CONTRACTOR will be set forth in the fuel

tax statement available to INDEPENDENT CONTRACTOR each month. INDEPENDENT CONTRACTOR, acknowledges that CARRIER may revise its fuel tax procedures, in which case INDEPENDENT CONTRACTOR agrees to be bound by the most recently revised fuel tax procedures.

(b) Cooperation By INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR agrees to cooperate fully with CARRIER, and to provide CARRIER with any documentation requested by CARRIER, including the submission of a properly completed fuel envelope for each shipment handled by INDEPENDENT CONTRACTOR, to assist CARRIER in reporting and paying all fuel tax liability for the Equipment. Original fuel receipts only need to be submitted by INDEPENDENT CONTRACTOR for fuel that is not purchased with the fuel card provided by CARRIER (the "Landstar Card") for administrative convenience. INDEPENDENT CONTRACTOR is encouraged, but not required, to purchase fuel with the Landstar Card (see Appendix C for certain transaction fees associated with use of the Landstar Card). In the event that any additional taxes are assessed to the Equipment for all taxing jurisdictions combined after any fuel tax audit, then INDEPENDENT CONTRACTOR agrees to pay such additional taxes; provided, however, that INDEPENDENT CONTRACTOR shall not be responsible for the payment of any penalties or interest due to any error made by CARRIER in preparing the various tax reports. If the audit results in a net fuel tax credit for all taxing jurisdictions combined, CARRIER agrees to credit the amount to INDEPENDENT CONTRACTOR at the next settlement.

(c) Mileage Taxes. CARRIER shall report and pay, and charge back on a per load basis to INDEPENDENT CONTRACTOR, all mileage taxes that may be owed for the Equipment during the term of this Agreement.

(d) Ad Valorem Taxes. The parties agree and acknowledge that a few states assess ad valorem (i.e. property) taxes on vehicles operating in those states based upon a mileage allocation. CARRIER shall estimate INDEPENDENT CONTRACTOR's ad valorem taxes for the States of Kentucky, Tennessee, Kansas and Arkansas, and will assess such tax to INDEPENDENT CONTRACTOR based upon the total number of miles traveled by the Equipment in those four (4) states. The assessed ad valorem taxes will be deducted from compensation to be paid to INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR shall be solely responsible for reporting and paying all applicable ad valorem or property tax for the Equipment in any other state.

13. **SELECTION OF INDEPENDENT CONTRACTOR'S SUPPLIERS:** INDEPENDENT CONTRACTOR is not required to purchase or rent any products, equipment or services from CARRIER as a condition of entering into this Agreement. Notwithstanding the above, the parties agree that CARRIER, from time-to-time, may obtain volume discounts or rebates from third party vendors as a result of the purchase of goods or services by INDEPENDENT CONTRACTOR. CARRIER will endeavor to pass along such discounts to INDEPENDENT CONTRACTOR; provided, however, the parties agree that any discount or rebate may be retained in whole or in part by CARRIER in its discretion. CARRIER will provide to INDEPENDENT CONTRACTOR the names of the sources of any such volume discounts or rebates and the terms of such volume discounts or rebates upon the written request of INDEPENDENT CONTRACTOR.

14. **INSURANCE:** The responsibilities and obligations between CARRIER and INDEPENDENT CONTRACTOR involving insurance will be as specified in Appendix B. CARRIER will have no insurance responsibilities or obligations pertaining to INDEPENDENT CONTRACTOR or the Equipment other than those expressly stated in this Agreement or mandated by Applicable Law.

15. **LOSS OR DAMAGE CLAIMS:** INDEPENDENT CONTRACTOR will be responsible to CARRIER for any loss, damage or delay claim arising from the operation of the Equipment during the term of this Agreement, and INDEPENDENT CONTRACTOR shall defend, indemnify and hold CARRIER harmless from any such claim, including but not limited to claims for property damage and personal injury (including death), cargo loss and damage, damage or loss to CARRIER's trailer, clean-up expenses, and all costs, (including attorney fees) incurred by CARRIER in investigating or defending against such claims. Notwithstanding the above, in consideration of

INDEPENDENT CONTRACTOR maintaining or providing the insurance coverage set forth in Appendix B, CARRIER agrees to limit INDEPENDENT CONTRACTOR's liability and indemnification obligations as follows:

(a) Personal Injury and Property Damage. Personal injury and/or property damage claims due, in whole or in part, to INDEPENDENT CONTRACTOR's or its operators' negligence, as determined by CARRIER, will be charged to INDEPENDENT CONTRACTOR up to One Thousand Dollars ($1,000.00) of the amount CARRIER paid or otherwise incurred per claim, when such claims arise out of INDEPENDENT CONTRACTOR's or its operators' operation of the Equipment. As detailed below, CARRIER agrees to waive up to seventy-five percent (75%) of INDEPENDENT CONTRACTOR's foregoing monetary responsibility for any particular personal-injury or property-damage claim, provided that the following conditions are met by INDEPENDENT CONTRACTOR:

(1) INDEPENDENT CONTRACTOR or its worker involved in the chargeable accident attends a defensive driving course with commentary drive approved by CARRIER within thirty (30) days of the accident date.

(2) The waiver will not apply if the accident is caused in whole or in part, as determined by CARRIER, by the willful or intentional act of INDEPENDENT CONTRACTOR or its operator, or if the operator of the Equipment was not qualified and/or approved by CARRIER at the time of the accident.

(3) The waiver will not apply to INDEPENDENT CONTRACTOR's responsibility for cargo damage and clean-up expenses as set forth in Paragraphs 15(b) and (c) below.

If INDEPENDENT CONTRACTOR meets each of the conditions listed above, then CARRIER agrees to waive or reimburse INDEPENDENT CONTRACTOR twenty-five percent (25%) of INDEPENDENT CONTRACTOR's monetary responsibility under this provision upon successful completion of the defensive driving course and an additional fifty percent (50%) if INDEPENDENT CONTRACTOR remains accident free with CARRIER for one (1) year after the date of the claim.

(b) Trailer Damage. If INDEPENDENT CONTRACTOR or its operators are permitted to use a trailer which is the property of, interchanged to, or furnished by CARRIER, including those trailers referenced in Appendix D, and the trailer is damaged or destroyed, INDEPENDENT CONTRACTOR will be responsible for the damage or loss, provided, however, that CARRIER agrees to limit INDEPENDENT CONTRACTOR's liability for damage to such trailers furnished by CARRIER to One Thousand Dollars ($1,000.00) of the amount CARRIER paid or otherwise incurred per incident. This liability limitation will not apply, however, if the damage is caused, in whole or in part, by any willful or intentional act of INDEPENDENT CONTRACTOR or its operators, or if the operator of the Equipment was not qualified and/or approved by CARRIER at the time of the incident.

(c) Cargo Damage. INDEPENDENT CONTRACTOR will be responsible for any claim resulting from cargo shortages, cargo damage, or delays in transporting shipments due, in whole or in part, to the negligence of INDEPENDENT CONTRACTOR or its operators, as determined by CARRIER, provided, however, that CARRIER agrees to limit INDEPENDENT CONTRACTOR's liability for any cargo claim to One Thousand Dollars ($1,000.00) of the amount CARRIER paid or otherwise incurred per shipment. This liability limitation will not apply, however, if the damage is caused, in whole or in part, by any willful or intentional act of INDEPENDENT CONTRACTOR or its operators, or if the operator of the Equipment was not qualified and/or approved by CARRIER at the time of the incident.

(d) Clean-Up Expenses. INDEPENDENT CONTRACTOR will be responsible for all costs of cleaning up any accident or spill, including but not limited to diesel fuel spills, involving the Equipment or the services provided by INDEPENDENT CONTRACTOR under this Agreement, provided, however, that CARRIER agrees to limit INDEPENDENT

CONTRACTOR's liability for each such incident to One Thousand Dollars ($1,000.00) of the amount CARRIER paid or otherwise incurred. This liability limitation will not apply, however, if the damage is caused, in whole or in part, by any willful or intentional act of INDEPENDENT CONTRACTOR or its operators, or if the operator of the Equipment was not qualified and/or approved by CARRIER at the time of the incident.

(e) Miscellaneous. CARRIER will provide INDEPENDENT CONTRACTOR with a written explanation and itemization of any deductions for cargo or property damage before such deductions are made. INDEPENDENT CONTRACTOR'S liability under subparagraphs (a), (b), (c) and (d) above will not exceed Two Thousand Dollars ($2,000.00) for any single incident, provided, however, that this liability limitation will not apply if the incident is caused in whole or in part, as determined by CARRIER; by any willful or intentional act of INDEPENDENT CONTRACTOR or its operators; if the operator of the Equipment was not qualified and/or approved by CARRIER at the time of the incident; or if INDEPENDENT CONTRACTOR fails to maintain the minimum insurance coverages required in Appendix B.

16. **INDEPENDENT CONTRACTOR RELATIONSHIP**: This Agreement is intended by the parties to create an independent contractor relationship and not that of an employer/employee nor master/servant relationship. Neither INDEPENDENT CONTRACTOR, its operators, nor any individual providing services of any kind to INDEPENDENT CONTRACTOR, are to be considered employees of CARRIER at any time, under any circumstances or for any purpose. INDEPENDENT CONTRACTOR unconditionally waives and releases CARRIER, and any third-party employee benefit fund that provides benefits to any of CARRIER's current or former employees, from any claim for benefits based on any past services rendered to CARRIER under this Agreement. INDEPENDENT CONTRACTOR will assume full and complete responsibility for all operators utilized by it in the performance of all obligations under this Agreement. In recognition of the independent contractor relationship which exists between the parties, it is acknowledged that INDEPENDENT CONTRACTOR has the right to determine the manner and means of performing all work hereunder. INDEPENDENT CONTRACTOR has the right to decide what work to perform under this Agreement, provided, however, that when work is accepted by INDEPENDENT CONTRACTOR the work will be performed in accordance with the terms of this Agreement, the requirements, if any, of CARRIER's customers, and of Applicable Law. In no event will any contracts or statements of CARRIER be deemed, construed or implied to control, direct, or infringe on INDEPENDENT CONTRACTOR's right to control or actually control the manner and means of INDEPENDENT CONTRACTOR's performance of the services contemplated in this Agreement. INDEPENDENT CONTRACTOR further agrees to defend, indemnify and hold CARRIER harmless from any claims, demands, suits, or actions brought by any operators, any union, the public, or state, provincial or federal agencies, arising out of the operation of the Equipment or the provision of operator services pursuant to this Agreement.

17. **PASSENGERS**: No passenger will be permitted to travel in the Equipment without prior written authorization from CARRIER. Any passenger authorized by CARRIER must be a minimum of 18 years of age, and both the passenger and INDEPENDENT CONTRACTOR must sign a waiver of liability as provided in the Passenger Authorization Form to be provided by CARRIER, and INDEPENDENT CONTRACTOR must obtain passenger accident insurance coverage as set forth in Appendix B. In no event will more than one authorized passenger be permitted at any one time.

18. **SUBCONTRACTING/TRIP-LEASING**: INDEPENDENT CONTRACTOR may trip-lease (subcontract) the Equipment to a third party other than an affiliate of CARRIER only upon receiving prior written authorization from CARRIER and only as allowed for under the federal leasing regulations (49 C.F.R. Part 376(a). CARRIER assumes no responsibility for the collection of freight charges or payment to INDEPENDENT CONTRACTOR of any trip-lease related revenue. During the term of any trip-lease, INDEPENDENT CONTRACTOR will remove or cover up all of CARRIER's identification on the Equipment and display instead the trip-lease carrier's identification, and, as between INDEPENDENT CONTRACTOR and CARRIER, CARRIER will have no responsibility for, and INDEPENDENT CONTRACTOR will fully indemnify CARRIER regarding, the operation of the Equipment.

19. **UNAUTHORIZED USE OF EQUIPMENT:** If, during the term of this Agreement, INDEPENDENT CONTRACTOR or its operators operate the Equipment in any manner varying from Applicable Law or beyond the scope of the operating authority of CARRIER, or uses the Equipment for its own purposes, or for benefit of a third party other than CARRIER (except as allowed in Paragraph 18) or for any other purpose not permitted by this Agreement, then this Agreement will, at CARRIER's option, be deemed terminated as of the time that such unauthorized use occurred. Nothing in this Agreement will prohibit INDEPENDENT CONTRACTOR from rendering services as a operator to any third party. If INDEPENDENT CONTRACTOR renders services as a operator to another company, INDEPENDENT CONTRACTOR will include such time on all operator logs submitted to CARRIER as required by Applicable Law. Failure to comply with these requirements may result in the immediate termination of this Agreement by CARRIER.

20. **TRAILER UTILIZATION PROGRAM:** INDEPENDENT CONTRACTOR may rent certain trailers from CARRIER under the Trailer Utilization Program described in Appendix D.

21. **DUE DILIGENCE AND COOPERATION WITH CARRIER ON CLAIMS:**

(a) Cargo Claims. INDEPENDENT CONTRACTOR warrants that all cargo loaded on the Equipment will be delivered to the consignee with reasonable diligence, speed and care and as may be required by the shipper or on the bill of lading. INDEPENDENT CONTRACTOR or its operators will immediately report any cargo exceptions, damages or delay to CARRIER.

(b) Accidents. INDEPENDENT CONTRACTOR or its operator will notify CARRIER immediately of any property damage and any incident or accident involving any pedestrian or occupant of any type of vehicle, whether or not the incident or accident appears to have resulted in personal injury and whether or not INDEPENDENT CONTRACTOR appears to be at fault.

(c) Roadside Inspections. INDEPENDENT CONTRACTOR or its operator will notify CARRIER in a timely fashion of any roadside inspection of the Equipment and the results thereof, and INDEPENDENT CONTRACTOR will provide CARRIER with a copy of the roadside inspection report received in connection with each such inspection.

(d) Notice of Infractions, Claims or Suits. INDEPENDENT CONTRACTOR will forward immediately to CARRIER every demand, notice, summons, ticket or other legal process received by INDEPENDENT CONTRACTOR that involves a charge, infraction, claim, suit or other legal proceeding arising from the operation of the Equipment, the relationship created by this Agreement or the services performed hereunder.

(e) Independent Contractor's Assistance and Cooperation. INDEPENDENT CONTRACTOR and its operator will cooperate fully with CARRIER in any legal action, regulatory hearing or other similar process arising from the operation of the Equipment, the relationship created by this Agreement or the services performed by INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR will, upon CARRIER's request, provide written reports or affidavits, attend hearings and trials and assist in securing evidence or obtaining the attendance of witnesses. INDEPENDENT CONTRACTOR will provide CARRIER with any assistance as may be necessary for CARRIER or CARRIER's representatives or insurers to investigate, settle or litigate any accident, claim or potential claim by or against CARRIER.

22. **C.O.D. SHIPMENTS:** In handling Collect on Delivery ("COD") shipments, INDEPENDENT CONTRACTOR or its operators will perform as indicated on the shipping order; call the originating terminal to report the COD shipment; accept only a certified check, cashier's check or United States or Canadian Postal money order made payable to CARRIER for the shipment; and, remit to CARRIER no later than the next business day after the delivery date the full amount specified on the freight bill, including transportation and COD charges. In the event that INDEPENDENT CONTRACTOR accepts any other method of payment, INDEPENDENT CONTRACTOR will bear the risk of loss. In the event of non-delivery of such a shipment,

INDEPENDENT CONTRACTOR or its operators will advise CARRIER of such non-delivery no later than the next business day following the day of attempted delivery or collection.

23. **EQUAL CONTRACTING AND EMPLOYMENT OPPORTUNITY:** The services and Equipment specified herein will be furnished by INDEPENDENT CONTRACTOR in full compliance with all applicable federal, provincial, state and local laws and regulations pertaining to government contracts and subcontracts, including, without limitation, Executive Order 11246.

24. **GOVERNING LAW:** The laws of the State of Florida shall govern the construction of this Agreement and performance of INDEPENDENT CONTRACTOR and CARRIER under this Agreement, including without limitation any dispute arising out of or relating to this Agreement, its terms or its implementation including any allegation of breach thereof or of violations of the requirement of all applicable governmental authorities such as the federal leasing regulations under 49 C.F.R. Part 376 without regard to the conflict of laws or choice of law rules of such state. INDEPENDENT CONTRACTOR and CARRIER hereby expressly consent to the exclusive jurisdiction and venue of the state and federal courts situated in the County of Duval, City of Jacksonville, State of Florida, for any injunctive relief hereunder and for any litigation arising under or relating to this Agreement or any business dealings between Carrier and INDEPENDNT CONTRACTOR.

25. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between CARRIER and INDEPENDENT CONTRACTOR and supersedes, cancels and revokes all other contracts between the parties relating to the Equipment and any other contract which is alleged to cover any services rendered by INDEPENDENT CONTRACTOR to CARRIER, or to which INDEPENDENT CONTRACTOR is alleged to be a third-party beneficiary as a result of any services rendered to CARRIER, provided, however, that the parties may amend or modify this Agreement in writing signed by both parties or, with respect to modification of any chargeback or accessorial item, as allowed for in Paragraph 4(b)(7) of this Agreement.

26. **GENERAL, SEVERABILITY AND SAVINGS:** All dollar amounts specified in this Agreement are based on U.S. Dollars. The headings used in this Agreement have no substantive effect and are used for convenience. References to CONTRACTOR as "it" and "its" shall be read as "he/she," "him/her," "himself/herself," and "his/hers," respectively, if CONTRACTOR is a natural person rather then a corporation, limited liability company, partnership, or other entity. If any sections, part or parts of sections of this Agreement are deemed invalid for any reason whatsoever, the provisions of this Agreement will be void only as to such section, sections or part, or parts of sections, and this Agreement will remain otherwise binding between the parties hereto. Any section, or part or parts of sections voided by operation of the foregoing will be replaced with provisions which will be as close as the parties' original intent as permitted under applicable law.

27. **NON-WAIVER:** The failure or refusal of either party to insist upon the strict performance of any provision of this Agreement, or to exercise any right in any one or more instances or circumstances will not be construed as a waiver or relinquishment of such provision or right, nor will such failure or refusal be deemed a custom or practice contrary to such provision or right.

28. **NOTICES:** Any notice required or permitted by this Agreement will be deemed conclusively to have been given when deposited in the United States Mail or Canada Post properly addressed with first class postage prepaid, when deposited with an overnight delivery carrier with the express charges prepaid and properly addressed to the other party, or when faxed to the other party at the appropriate fax number.

29. **COUNTERPARTS AND FACSIMILE OR IMAGED EXECUTION.** This Agreement may be executed in two or more counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile, imaged document or otherwise) to the other parties, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature hereupon delivered by facsimile or electronic image shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such party.

30. **TERMINATION:** The INDEPENDENT CONTRACTOR will, at the time this Agreement is terminated, remove all CARRIER identification from the Equipment and return all of CARRIER's property and freight to CARRIER's nearest terminal, including trailers, chains, binders, satellite communications equipment, tarps, and placards. Plates and permits must be returned to the Permit Department in Jacksonville, Florida. If INDEPENDENT CONTRACTOR fails to return CARRIER's property or freight to CARRIER or remove all CARRIER identification from the Equipment and return such identification (or a letter certifying its removal) to CARRIER within fifteen (15) days after termination of this Contract, CARRIER is authorized to withhold final settlement to INDEPENDENT CONTRACTOR until such identification is received by CARRIER, and CARRIER may pursue all other remedies allowed by law or authorized in the Agreement against INDEPENDENT CONTRACTOR. Such remedies include making deductions from any remaining balance in INDEPENDENT CONTRACTOR's Escrow Fund for the replacement value of CARRIER's unreturned property and for other amounts INDEPENDENT CONTRACTOR owes CARRIER. If INDEPENDENT CONTRACTOR fails to complete performance of all transportation and other obligations under this Agreement, CARRIER may, in addition to any other remedy provided by law or under this Agreement, complete INDEPENDENT CONTRACTOR's obligations and charge INDEPENDENT CONTRACTOR for any expenses associated with completing INDEPENDENT CONTRACTOR's obligations. INDEPENDENT CONTRACTOR shall receive no compensation for any shipment with respect to which INDEPENDENT CONTRACTOR has failed to complete all required transportation and other services. In the event CARRIER instructs INDEPENDENT CONTRACTOR not to complete performance of transportation or other services that INDEPENDENT CONTRACTOR is willing and able to perform, CARRIER will pay INDEPENDENT CONTRACTOR compensation determined in accordance with this Agreement and all Appendices hereto for the portion of such services that INDEPENDENT CONTRACTOR performed prior to termination. All provisions of this Agreement relating to indemnification of CARRIER by INDEPENDENT CONTRACTOR will remain in effect indefinitely after termination.

Les parties ont specifiquement requis que la presente convention de meme que tous les documents s'y rattachant soitent redigees en langue anglais seulement.

The parties have specifically requested that this Agreement and all documents attached hereto be drafted in the English language only.

[INDEPENDENT CONTRACTOR HEREBY AGREES TO THE TERMS OF THIS INDEPENDENT CONTRACTOR OPERATING AGREEMENT AS ACKNOWLEDGED BY ITS SIGNATURE ON PAGE 35 BELOW.]

APPENDIX A

Compensation

Unless otherwise agreed to in writing between the parties, CARRIER will pay INDEPENDENT CONTRACTOR based on the following:

1. Percentage of Adjusted Gross Revenue. Unless otherwise agreed to in writing between the parties, CARRIER shall pay INDEPENDENT CONTRACTOR as set forth below:

INDEPENDENT CONTRACTOR Furnishes Tractor #:_____:	Compensation:
Power Unit (Tractor) While Pulling Regular Trailer (Van, Flat, Extendible Flat, Stepdeck, But Not Platform or Refrigerated) Furnished by CARRIER	67% of 98% of Adjusted Gross Revenue ("AGR")
Power Unit While Pulling Platform Trailer Rented to Independent Contractor Under Trailer Utilization Program (see Appendix D)	67% of 98% of AGR plus 8% of 98% of AGR
Regular Trailer (Van, Flat, Extendible Flat, Step Deck) (see NOTE below)	8% of 98% of AGR in Addition to Compensation for Power Unit (if applicable)
Specialized Trailer (Double-Drop, Tri-Axle, Insulated Van w/Heater) in Addition to Power Unit	9% of 98% of AGR in Addition to Compensation for Power Unit
Refrigerated Trailer in Addition to Power Unit	10% of 98% of AGR in Addition to Compensation for Power Unit
Heavy Haul Trailer (4 or More Axles on Trailer) in Addition to Power Unit	10% of 98% of AGR in Addition to Compensation for Power Unit
NOTE: Trailer compensation will not be payable to INDEPENDENT CONTRACTOR if INDEPENDENT CONTRACTOR is pulling a trailer provided by CARRIER or CARRIER's customer for which no trailer rental charges under Appendix D have been charged to INDEPENDENT CONTRACTOR by CARRIER.	

Adjusted Gross Revenue ("AGR") will mean revenue to CARRIER shown on freight bills, amended bills or computerized summaries thereof, to the shippers, consignees, or other carriers for commodities hauled by INDEPENDENT CONTRACTOR, reduced by: (a) any and all expenses attributed to accessorial services paid to a third party, including an independent agent, or to INDEPENDENT CONTRACTOR by CARRIER; (b) the amount paid to any third party by CARRIER in relation to movement of the load, including without limitation: amounts paid to other contractors as a pro rata payment for their participation in the movement of a load; any amount paid by CARRIER to interline or augmenting carriers; and, any warehouse or storage charges; (c) any revenue received by CARRIER as an insurance surcharge; excess value charge on high value freight charge, a surcharge for additional security measures provided by CARRIER or an accessorial service charge not otherwise payable to INDEPENDENT CONTRACTOR pursuant to Paragraph 2 below; (d) all incentives, discounts or commissions given to CARRIER's customers or other third parties; (e) amounts paid or accrued for certain specialized trailers and excessive trailer spotting situations; (f) any fee or commission paid to a broker, freight forwarder or any third party, including but not limited to an affiliated company of CARRIER; (g) a payment processing fee comprised of the actual cost incurred by CARRIER for those shipments in which CARRIER's customer or a third party payor make deduction from CARRIER's freight charges related to electronically-transmitted billing and payment ("EB&P") account use; and (h) all other expense or cost incurred by CARRIER causing a reduction in revenue. Before calculating its percentage of revenue, INDEPENDENT CONTRACTOR should first deduct the amount set forth above for each shipment to calculate the applicable AGR.

2. Accessorial Service Charges Revenue:

(a) In addition to the percentage of Adjusted Gross Revenue listed in Paragraph 1 above, INDEPENDENT CONTRACTOR shall also be paid, as provided in Appendix A-1, the percentage of accessorial service charge revenue billed to, and received from, CARRIER's customers.

(b) Certain accessorial service charges, such as scale tickets, toll charges, permits and escorts, will be paid to INDEPENDENT CONTRACTOR only if such charges are billed to, and collected from, CARRIER's customer pursuant to a tariff or contract between CARRIER and its customer.

(c) Accessorial charges payable to INDEPENDENT CONTRACTOR will be reduced by the amount paid to any third party by CARRIER in relation to movement of the load, or performance of the accessorial service including without limitation, amounts paid to other contractors as a pro-rata payment for their participation in the load or performance of the accessorial service.

(d) Unless otherwise stated in Appendix A-1, INDEPENDENT CONTRACTOR will not be entitled to receive any other accessorial service charge billed and collected by CARRIER to its customers, and INDEPENDENT CONTRACTOR hereby waives, and releases CARRIER from, any claim or entitlement to such accessorial charges.

[INDEPENDENT CONTRACTOR HEREBY AGREES TO THE TERMS OF THIS APPENDIX A AS ACKNOWLEDGED BY ITS SIGNATURE ON PAGE 35 BELOW.]

APPENDIX A-1

Accessorial Service Charges

DESCRIPTION	% PAID
BLANKET WRAPPING	100
CHAINING AND/OR STRAPPING	100
CONSTANT SURVEILLANCE	85
DUAL DRIVER/NATIONAL AGENCY CHECK	85
DUAL DRIVER PROTECTIVE SERVICE	85
DETENTION	100
LOADING	100
LUMPER CHARGE	100
NEW YORK ARBITRARY	100
PADDING CHARGE	100
PROTECTIVE SECURITY SERVICE	85
REPAIR	100
REWEIGHING	100
SCALE TICKET	100
SHOW CHARGE	100
SATELLITE MOTOR SURVEILLANCE	85
SORTING & SEGREGATION	100
FUEL SURCHARGE	100
TARP CHARGES	100
TOLL CHARGES	100
UNLOADING	100
(MSS) MOTOR SURVEILLANCE	85

1. All accessorial service charge revenue listed above is subject to the provisions of Appendix A.

2. Unless a higher percentage of AGR is set forth above, INDEPENDENT CONTRACTOR will be paid for the accessorial service charges listed herein based on INDEPENDENT CONTRACTOR's percentage of AGR as specified in Paragraph 1 of Appendix A.

[INDEPENDENT CONTRACTOR HEREBY AGREES TO THE TERMS OF THIS APPENDIX A-1 AS ACKNOWLEDGED BY ITS SIGNATURE ON PAGE 35 BELOW.]

APPENDIX B

Insurance

It will be CARRIER's responsibility, pursuant to Applicable Law, to provide no less than the minimum legislated public liability and property damage insurance for the protection of the public pursuant to 49 U.S.C. § 13906 at all times while the Equipment is being operated on behalf of CARRIER. The parties agree and understand that CARRIER's qualification as a self-insurer with the Federal Motor Carrier Safety Administration satisfies its insurance obligations under federal law. CARRIER's possession of the required insurance will in no way affect CARRIER's right of indemnification against INDEPENDENT CONTRACTOR as provided for in this Agreement.

INDEPENDENT CONTRACTOR will maintain, at its sole cost and expense, the following minimum insurance coverages during the term of this Agreement:

1. Unladen Liability. INDEPENDENT CONTRACTOR will procure, carry and maintain public liability and property damage insurance with an insurer with an A.M. Best Company rating of at least B+, which will provide primary coverage to INDEPENDENT CONTRACTOR whenever the Equipment is not transporting freight on behalf of CARRIER, which coverage will be in a combined single limit of not less than One Million Dollars ($1,000,000.00) for any one occurrence (the "Non-Trucking Use - Broad Form Unladen Policy). The Non-Trucking Use - Broad Form Unladen Policy will name CARRIER and its affiliates as additional insureds, and will provide (1) for first dollar coverage with no deductibles; (2) for pollution liability coverage to apply to the clean-up, restoration or damage caused by a release or discharge of a pollutant; (3) for punitive damage coverage up to the policy limits with respect to the possible vicarious liability of CARRIER; (4) for waiver of the insurer's subrogation rights against each additional insured; (5) will apply whenever the Equipment is either "bobtailing" or "deadheading"; and (6) will be primary with respect to all insureds. For purposes of such insurance, "bobtailing" means the Equipment is being operated without a trailer attached and "deadheading" means the Equipment is being operated with an attached trailer which does not contain or carry any cargo. INDEPENDENT CONTRACTOR expressly acknowledges that it will be solely responsible for, and will indemnify and hold CARRIER harmless against, any loss in excess of INDEPENDENT CONTRACTOR'S policy limits. Such policy of insurance coverage will provide for thirty (30) days prior notice to CARRIER of cancellation or material change. In the event that INDEPENDENT CONTRACTOR fails to provide CARRIER with proof of insurance coverage required under this provision, INDEPENDENT CONTRACTOR authorizes CARRIER to deduct from INDEPENDENT CONTRACTOR's compensation the amount set forth below per power unit per week for the Non-Trucking Use - Broad Form Unladen Policy required by this provision: Fifth wheel vehicles - $18.99 per week; straight trucks, panel vans, pick-ups and automobiles - $11.99 per week. INDEPENDENT CONTRACTOR may, in accordance with policy terms, cancel the certificate of insurance for Non-Trucking Use - Broad Form Unladen Policy provided by CARRIER at any time as INDEPENDENT CONTRACTOR elects by written notice to CARRIER or the appropriate insurance agent, provided, however, that such cancellation does not affect INDEPENDENT CONTRACTOR's obligations and undertakings under this Agreement. INDEPENDENT CONTRACTOR understands that Non-Trucking Use - Broad Form Unladen Policy provided by CARRIER does not apply to injury or damage to INDEPENDENT CONTRACTOR, or its workers, nor to collision or comprehensive coverage to the Equipment, and it is further understood that if INDEPENDENT CONTRACTOR desires to have such coverage, it will have the duty to obtain and pay for it.

2. Equipment Damage. It is INDEPENDENT CONTRACTOR's responsibility to procure, carry and maintain any fire, theft or collision insurance that INDEPENDENT CONTRACTOR may desire for the Equipment. CARRIER will not be liable for any loss of or any damage to the Equipment, and INDEPENDENT CONTRACTOR expressly waives all claims it may have in the future against CARRIER for such loss or damage to the Equipment. INDEPENDENT CONTRACTOR may, at its sole discretion, elect to purchase collision insurance through CARRIER.

3. Worker's Compensation or Occupational Accident Coverage. Prior to commencing operations under this Agreement, INDEPENDENT CONTRACTOR will provide a certificate of insurance, acceptable to CARRIER, showing that INDEPENDENT CONTRACTOR has procured worker's

compensation insurance from an insurer with an A.M. Best Company rating of at least B+ in an amount not less than the statutory limits required in INDEPENDENT CONTRACTOR's state of domicile, including employer's liability insurance in an amount not less than One Hundred Thousand Dollars ($100,000.00). INDEPENDENT CONTRACTOR will provide CARRIER with a certificate of insurance, acceptable to CARRIER, showing that written notice of cancellation or modification of the policy will be given to CARRIER at least thirty (30) days prior to such cancellation or modification. INDEPENDENT CONTRACTOR is required to maintain statutory workers' compensation insurance coverage for all of its drivers, including itself, that reside or are domiciled in the States of North Carolina, Nevada, New Jersey or New York. In all other states, however, if INDEPENDENT CONTRACTOR has no drivers other than himself or if INDEPENDENT CONTRACTOR meets the domiciliary and fleet size criteria set forth in Schedule O, attached hereto and incorporated herein, then, in lieu of the required worker's compensation coverage, INDEPENDENT CONTRACTOR may obtain a occupational accident insurance policy acceptable to CARRIER that provides, at a minimum, the following:

(a) Coverage for substantially all claims which are considered compensable under applicable state or provincial workers' compensation laws even though the claimant under the coverage may be an independent contractor and may not typically be entitled to worker's compensation benefits;

(b) A minimum policy limit of $500,000.00 aggregate per occupational accident;

(c) $400.00 per week occupational accident disability benefits (if the INDEPENDENT CONTRACTOR's weekly gross compensation exceeds $1,800) with a maximum seven day waiting period;

(d) A minimum policy limit of $50,000.00 lump sum accidental death benefits;

(e) A minimum 24 month temporary total disability benefit;

(f) First dollar occupational medical coverage with no deductible and a minimum of 104 weeks of medical coverage;

(g) Indemnification of CARRIER from all policy benefits the claimant may have received from an occupational accident covered under such coverage but did not receive because claimant pursued worker's compensation benefits instead of benefits available under the occupational accident coverage; and

(h) Certification showing that written notice of cancellation or modification of the plan will be given to CARRIER at least thirty (30) days prior to such cancellation or modification.

4. Contractor Protection Plan. In lieu of obtaining the required workers' compensation or occupational accident insurance coverage specified in Paragraph 3 above, INDEPENDENT CONTRACTOR, if eligible under Schedule O of this Appendix B, may participate in a "Contractor Protection Plan" offered through an insurer approved by CARRIER. In the event INDEPENDENT CONTRACTOR elects to obtain coverage through the Contractor Protection Plan or in the event INDEPENDENT CONTRACTOR fails to acquire and maintain the workers' compensation or occupational insurance coverage set forth above, then CARRIER will be entitled to either deduct from settlements due INDEPENDENT CONTRACTOR the following in accordance with the terms of the Contractor Protection Plan, if eligible under Schedule O, commencing the effective date of this Agreement or deduct insurance cost for the Workers' Compensation Liability Insurance as referenced in and authorized by Appendix B-WC:

Plan I (Coverage of $500,000 aggregate per occupational accident).

A. $26.00 per week per operator for fifth wheel vehicles.

B. $20.00 per week per operator for straight trucks.

C. $15.00 per week per operator for panel vans, pickups and automobiles.

D. $15.60 per week for the second driver of a team operation; provided, however, that this discounted cost will only apply to fifth wheel vehicles and only in those operations where the team is composed of husband and wife or a legal partnership (CARRIER reserves the right to require sufficient proof of marriage or partnership from INDEPENDENT CONTRACTOR).

Plan II -OPTIONAL- (Coverage of $1,000,000 aggregate per occupational accident).

A. $30.00 per week per operator (available for fifth wheel vehicles only).

B. $18.00 per week for the second driver of a team operation; provided, however, that this discounted cost will only apply to fifth wheel vehicles and only in those operations where the team is composed of husband and wife or a legal partnership (CARRIER reserves the right to require sufficient proof of marriage or partnership from INDEPENDENT CONTRACTOR).

Plan III -OPTIONAL- (Coverage of $2,000,000 aggregate per occupational accident with a maximum of $500 per week occupational accident disability benefits).

A. $34.00 per week per operator (available for fifth wheel vehicles only).

B. $20.40 per week for the second driver of a team operation; provided, however, that this discounted cost will only apply to fifth wheel vehicles and only in those operations where the team is composed of husband and wife or a legal partnership (CARRIER reserves the right to require sufficient proof of marriage or partnership from INDEPENDENT CONTRACTOR).

(a) The parties recognize and agree that the Contractor Protection Plan is not statutory workers' compensation and employers liability coverage, and even when INDEPENDENT CONTRACTOR is provided coverage under such plan, INDEPENDENT CONTRACTOR will still be responsible for any workers' compensation and employers liability insurance coverage that may be required by applicable law.

(b) Workers' compensation coverage not applicable in Ohio, West Virginia, Washington, Wyoming and North Dakota.

(c) INDEPENDENT CONTRACTOR recognizes and agrees that CARRIER is not in the business of selling insurance, and any insurance coverage requested by INDEPENDENT CONTARCTOR from CARRIER and is subject to all of the terms, conditions and exclusions of the actual policy issued by the insurance underwriter. INDEPENDENT CONTRACTOR will be solely responsible for any workers' compensation and employers liability insurance coverage that may be required by applicable state law.

5. Passenger Accident Coverage. In the event INDEPENDENT CONTRACTOR or its drivers seeks authorization from CARRIER pursuant to 49 C.F.R. § 392.60 to carry a passenger in the Equipment and is not enrolled in the Contractor Protection Plan or its Equipment, INDEPENDENT CONTRACTOR agrees, prior to passenger authorization being issued, to procure, carry and maintain passenger accident insurance coverage from an insurer with an A.M. Best Company rating of at least B+ to provide medical coverage and accidental death and dismemberment coverage to any passenger that is authorized by CARRIER (the "Passenger Accident Coverage"). The Passenger Accident Coverage must provide, at a minimum, for (1) coverage up to $100,000.00 for accidental death and dismemberment to the passenger, (2) coverage of up to $100,000.00 for medical costs associated with an injury incurred by the passenger, (3) for a deductible amount no greater than $50.00 per claim, (4) waiver of the insurer's subrogation rights against Landstar and its subsidiaries, and (5) must be primary to any other coverage. INDEPENDENT CONTRACTOR may obtain Passenger Accident Coverage from any insurer of its choosing provided such coverage meets these minimum requirements.

6. Other Insurance. In addition to the insurance coverages required under this Agreement, it is solely INDEPENDENT CONTRACTOR's responsibility to procure, carry and maintain any

additional insurance coverage that INDEPENDENT CONTRACTOR may desire for the Equipment or its drivers, including but not limited to, no fault, uninsured and/or under insured motorist coverage, commercial liability and health insurance.

UNINSURED MOTORIST/UNDERINSURED MOTORIST AND TERRORISM COVERAGES

INDEPENDENT CONTRACTOR APPOINTS CARRIER AS INDEPENDENT CONTRACTOR'S ATTORNEY-IN-FACT FOR THE LIMITED AND SOLE PURPOSE OF TAKING ALL ACTIONS AND COMPLETING ALL FORMS NECESSARY FOR PURPOSES OF SELECTING OR REJECTING TERRORISM COVERAGE AND/OR UNINSURED MOTORIST COVERAGE AND/OR UNDERINSURED MOTORIST COVERAGE (COVERAGE PAID TO INDEPENDENT CONTRACTOR WHEN INSURANCE COVERAGE FROM THE LIABLE PARTIES IN AN ACCIDENT DOES NOT EXIST OR IS INSUFFICIENT, HEREAFTER REFERRED TO AS "UM/UIM COVERAGE") AND/OR PERSONAL INJURY PROTECTION COVERAGE ("PIP COVERAGE") ON BEHALF OF INDEPENDENT CONTRACTOR. IT IS AGREED THAT INDEPENDENT CONTRACTOR, AS NAMED INSURED, HAS REQUESTED THAT TERRORISM COVERAGE, UM/UIM COVERAGE AND PIP COVERAGE NOT BE PROVIDED UNDER THE UNLADEN LIABILITY POLICY ISSUED BY AMERICAN HOME ASSURANCE COMPANY ("THE POLICY") AND HEREBY DIRECTS AND AUTHORIZES CARRIER TO REJECT TERRORISM COVERAGE, UM/UIM COVERAGE AND PIP COVERAGE WHERE ALLOWED BY STATUTE ON BEHALF OF INDEPENDENT CONTRACTOR. SHOULD THIS REJECTION NOT BE ALLOWED BY LAW, INDEPENDENT CONTRACTOR DIRECTS AND AUTHORIZES CARRIER TO ACCEPT THE MINIMUM SPLIT LIMIT AMOUNT OF INSURANCE COVERAGE PRESCRIBED BY SUCH LAW ON BEHALF OF INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR AND CARRIER UNDERSTAND AND ACKNOWLEDGE THAT THE POLICY IS TO BE ISSUED AND DELIVERED TO GALLAGHER TRANSPORTATION SERVICES, A SUBSIDIARY OF ARTHUR J. GALLAGHER CO. OF KANSAS CITY, IN THE STATE OF MISSOURI.

7. Terms of CARRIER-Facilitated Insurance. In the event that INDEPENDENT CONTRACTOR obtains insurance coverage through CARRIER pursuant to this Appendix B, CARRIER or the insurance underwriter will provide INDEPENDENT CONTRACTOR with a certificate of insurance for each insurance policy under which the INDEPENDENT CONTRACTOR is provided coverage. Such certificate will state the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to INDEPENDENT CONTRACTOR for each type of coverage, and the deductible or retained liability amounts for which INDEPENDENT CONTRACTOR may be liable. A copy of the actual policy will be provided to INDEPENDENT CONTRACTOR upon request. INDEPENDENT CONTRACTOR recognizes and agrees that CARRIER is not in the business of selling or soliciting insurance, and any insurance coverage requested by INDEPENDENT CONTRACTOR or provided through CARRIER is subject to all of the terms, conditions and exclusions of the actual policy issued by the insurance underwriter. In the event that the insurance costs will change or vary, as determined by the insurer, CARRIER will advise INDEPENDENT CONTRACTOR of such change in insurance cost in writing and INDEPENDENT CONTRACTOR's failure to object or terminate the coverage being provided through CARRIER in writing to CARRIER will constitute an express consent and authorization to CARRIER to deduct and charge back to INDEPENDENT CONTRACTOR the revised amount.

8. Changes in Cost or Other Details of CARRIER-Facilitated Coverages. If CARRIER is facilitating any insurance coverages for INDEPENDENT CONTRACTOR pursuant to Section 7 of this Appendix and the cost to INDEPENDENT CONTRACTOR for, or other details of, the coverage changes from the information listed in this Appendix, INDEPENDENT CONTRACTOR will be so notified – in advance if reasonably possible – by fax, satellite or other wireless transmission, or other written notice. In any event, INDEPENDENT CONTRACTOR shall not be subject to any such change until thirty (30) days after such notice or such later time as is set forth in the notice. **INDEPENDENT CONTRACTOR's failure, by the end of 30 days after such notice, to notify CARRIER's Settlement Department in writing of any objection to the change shall constitute INDEPENDENT CONTRACTOR's express consent and authorization to CARRIER to implement the change and modify accordingly the deductions from INDEPENDENT CONTRACTOR's settlement compensation, beginning immediately after the 30 day period.** Such modified amounts shall replace and supersede those shown in the

table in Paragraph 4(b) of the Agreement. CARRIER shall thereupon provide INDEPENDENT CONTRACTOR with a revised Certificate of Insurance reflecting the change (such certificate to include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to CONTRACTOR for each type of coverage, and the deductible amount for each type of coverage for which INDEPENDENT CONTRACTOR may be liable) and, upon request by INDEPENDENT CONTRACTOR, a copy of the corresponding insurance policy. Even if INDEPENDENT CONTRACTOR fails to notify CARRIER of any objection within the 30 day period -- or if INDEPENDENT CONTRACTOR notifies CARRIER in writing of INDEPENDENT CONTRACTOR's objection within the 30 day period and INDEPENDENT CONTRACTOR and CARRIER are then unable to resolve the matter to our mutual satisfaction -- INDEPENDENT CONTRACTOR retains the right to terminate this Agreement at any time thereafter pursuant to Paragraph 1 of the Agreement (although INDEPENDENT CONTRACTOR shall remain subject to the change until the effective date and time of his/her termination).

[INDEPENDENT CONTRACTOR HEREBY AGREES TO THE TERMS OF THIS APPENDIX B AS ACKNOWLEDGED BY ITS SIGNATURE ON PAGE 35 BELOW.]

APPENDIX B-WC

WORKERS' COMPENSATION LIABILITY INSURANCE

WHEREAS State National Insurance Company ("Insurer") has issued a Workers' Compensation Insurance Policy covering the Contractor and his employees while under Agreement with Carrier; and

WHEREAS the Contractor has applied through the Insurance Office of America, Inc. enrollment form for a workers' compensation policy issued by Insurer; and

WHEREAS under the Agreement between Contractor and Carrier, the Contractor has the obligation to maintain such insurance coverage and has agreed to hold Carrier harmless of any liabilities arising between Contractor and the employees, agents and servants utilized by Contractor in the performance of the Agreement with Carrier;

NOW THEREFORE, it is further agreed that Contractor shall receive a Certificate of Insurance from Insurer evidencing the aforementioned Workers' Compensation policy, which certificate specifies the name of Contractor, the effective date of policies, the amounts and type of coverage. The cost to Contractor for the insurance shall be that provided on the certificate and as set forth herein.

IT IS FURTHER AGREED that the Carrier is hereby authorized to deduct from Contractor's weekly settlement an amount deemed by Insurer, for the State of _____ [state jurisdiction applicable to Contractor's business] to be an accurate charge as determined by Contractor's completed and signed enrollment form consistent with the weekly rates as set forth in this Appendix B-WC "rate sheet" attached hereto and as may be changed or amended from time to time. Carrier shall deduct such insurance costs as may be required by Insurer from Contractor's settlement to cover insurance costs by Contractor for this coverage. In the event the insurance cost or Insurer shall change or vary, as determined by Insurer, Contractor agrees to execute a further written authorization for such deduction periodically.

IT IS FURTHER AGREED by the parties that Contractor may cancel his or her coverage at any time or times as Contractor may elect; provided, however, that such cancellation does not effect Contractor's obligations and undertakings in the Haulage Agreement with Carrier. In any event, Contractor's coverage from Insurer shall be deemed automatically cancelled as soon as allowed under applicable law upon termination of the Haulage Agreement.

Weekly Rates

Contractor agrees that the rates set forth below apply on a per driver/per week basis to the workers' compensation insurance policy Contractor has elected to purchase through Insurance Office of America, Inc. from State National Insurance Company. Contractor acknowledges and agrees the rates set forth below are subject to change based on changes in underwriting criteria, underwriting risk factors unique to Contractor, reinsurance changes and/or general insurance market fluctuations. Contractor also authorizes a one time set up fee of $240 per Contractor.

State	5th Wheel 2004	Owner/Operator or Partner
AK	103.78	
AL	81.97	
AR	60.09	
AZ	50.82	
CA	202.36	
CO	102.05	
CT	76.78	
DC	195.20	
DE	133.27	
FL	137.15	
GA	53.10	
HI	95.68	
IA	57.67	
ID	62.31	
IL	91.73	

State	5th Wheel 2004	Owner/Operator or Partner
NH	114.78	
NJ	70.41	23.27
NM	56.22	
NV	78.44	23.27
NY	76.43	23.27
OH	monopolistic	
OK	92.77	
OR	81.62	
PA	89.93	
RI	93.25	
SC	72.48	
SD	43.34	
TN	59.90	
TX	110.35	
UT	45.28	

State	5th Wheel 2004	Owner/Operator or Partner
IN	39.74	
KS	50.05	
KY	83.28	
LA	98.86	
MA	52.13	
MD	42.92	
ME	130.43	
MI	96.78	
MN	95.78	
MO	121.36	
MS	98.79	
MT	125.58	
NC	87.90	23.27
ND	monopolistic	
NE	48.25	

State	5th Wheel 2004	Owner/Operator or Partner
VA	51.99	
VT	81.90	
WA	monopolistic	
WI	79.34	
WV	monopolistic	
WY	monopolistic	

[INDEPENDENT CONTRACTOR HEREBY AGREES TO THE TERMS OF THIS APPENDIX B-WC AS ACKNOWLEDGED BY ITS SIGNATURE ON PAGE 36 BELOW.]

Schedule O
of
APPENDIX B
Insurance
(For Use by Certain Owner-Operators)

1. INDEPENDENT CONTRACTORS using drivers ("Fleet BCOs") that meet the Fleet BCO criteria set forth below may elect to fulfill this Agreement's insurance requirements as set forth in Paragraph 14 and Appendix B.3 by submitting proof of occupational accident insurance coverage (of the type described in Appendix B.3) to CARRIER (via certificate of insurance). CARRIER's contractual requirements of insurance coverage for INDEPENDENT CONTRACTORS (and Fleet BCOs in particular) are intended as minimum requirements. CARRIER expects INDEPENDENT CONTRACTOR to fully comply with all laws governing its business operations, including laws directly related to insurance coverages required by any state or federal government having competent jurisdiction over such business operations. INDEPENDENT CONTRACTOR is required to maintain statutory workers' compensation in North Carolina, Nevada, New Jersey or New York.

2. Fleet BCO criteria for minimum occupational accident insurance coverage.

   A. Definitions.

      i. Domicile (Domiciliary) – the state(s) in which a Fleet BCO's business operations are principally localized.

      ii. Fleet Size – the number of workers engaged by a Fleet BCO (typically drivers) to perform services on behalf of BCO's independent business operations covered under this Agreement.

3. Domicile and Fleet Size Criteria. The following state-specific fleet size (and designated administrative) criteria entitle Fleet BCOs domiciled in the applicable state to satisfy this Agreement's insurance coverage requirement set forth in Paragraph 14 and Appendix B.3 by obtaining appropriate occupational accident insurance coverage:

   A. Fleets of any size:

      - Texas (with filing of state-specified "Agreement to Require Owner-Operator to Act as Employer" form)

   B. Fleet Size of less than 5:

      - Alabama
      - Arizona (with filing of state-specified workers' compensation rejection form)
      - California (with filing of appropriate forms to obtain motor carrier authorization)
      - Delaware
      - Iowa
      - Kentucky (with filing of state-specified workers' compensation rejection form)
      - Maine
      - Missouri
      - Tennessee
      - Wyoming

   C. Fleet Size of less than 4:

      - New Mexico

APPENDIX C

Equipment/Service Purchase Program and Landstar Card

INDEPENDENT CONTRACTOR is not required to purchase or rent any products, equipment, or services from CARRIER as a condition of entering into this Agreement. During the term of this Agreement, however, INDEPENDENT CONTRACTOR may elect to purchase, rent, and/or finance through CARRIER or an affiliated company certain products, equipment, and services. Upon such election by INDEPENDENT CONTRACTOR, the terms and conditions of each selected purchase or rental will be as set forth below in Items 1-12 or in a separate written agreement attached to, or whose terms are specified in, an addendum to this Agreement. INDEPENDENT CONTRACTOR hereby authorizes CARRIER to deduct from any settlement compensation, Escrow Fund, or other sums owed by CARRIER to INDEPENDENT CONTRACTOR the cost associated with the purchase and/or lease offering selected by INDEPENDENT CONTRACTOR listed in the table and text below or in a subsequent signed request/addendum or separate written agreement attached to an addendum.

	OFFERING	COST TO INDEPENDENT CONTRACTOR ("IC")*
1.	PrePass Transponder	$0.90 for each "pass through" up to maximum of $2.70 per day (See Para. 1 below)
2.	ICAPP Tire Purchase	Variable, plus $6 per tire. If IC elects to have CARRIER finance purchase, the cost to IC shall be those as set forth in a Promissory Note signed by IC (see Para. 2 below)
3.	Qualcomm Satellite Communications Equipment	A minimum of $65 per month for messaging charges (see Para. 3 below regarding messaging overage charges). If IC elects to have CARRIER finance the cost of purchase of Qualcomm equipment, the cost to IC shall be those as set forth in a Qualcomm Promissory Note signed by IC. (See Para. 3 below)
4.	(a) Prepaid Next Day Domestic Delivery Service (b) Prepaid Next Day Canada to U.S. Delivery Service	(a) Flat $100 for 10 prepaid mailings (plus full amount billed to CARRIER by any alternative delivery service used by IC and $15 handling fee and $12.50 Saturday Delivery Surcharge (if applicable), see Para. 4 below). (b) Flat $100 for 5 prepaid mailings (plus full amount billed to CARRIER for any alternative delivery service used by IC and $15 handling fee and $12.50 Saturday Delivery Surcharge (if applicable), see Para. 4 below).
5.	Trip Pak Express Delivery Service	$4 per week (See Para.5 below)
6.	Landstar Communication Network	$3.69 per week per truck (See Para. 6 below)
7.	Electronic Document Exchange (Truck Stop Scanning)	$2 per freight bill (plus additional $0.50/freight bill admin. fee if specified cover sheet not used, see Para. 7 below)
8.	IRP Base Plate (for 80,000 lb. registration)	$1,650 per tractor per year (or proportionately less for partial-year plate), (subject to pro rata refund under certain circumstances - see Para. 8 below)
9.	Trailer/Kingpin Lock	(a) $22.50 per week for 4 weeks (plus shipping charges – see Para. 9 below)

10.	Landstar Card	Variable (see Para. 10 below)
11.	Permits	$340 per tractor per year (See Para. 11 below)
12.	Misc. Equipment Purchase	Variable (see Para. 12 below)

See further details in Paragraphs 1-12 below. The charges listed herein may comprise a payment by CARRIER to an outside vendor and/or a charge or an administrative fee (which terms as used throughout this Appendix C may include profit to CARRIER) for its time and expense relating to the offering. If any of the charges for an offering selected by INDEPENDENT CONTRACTOR will be changing, INDEPENDENT CONTRACTOR will be notified by CARRIER of the change in the weekly settlement statement or other written notice provided by CARRIER. INDEPENDENT CONTRACTOR will not be subject to any such change until at least thirty (30) days after such notice or such later time as is set forth in the notice. INDEPENDENT CONTRACTOR's failure, by the end of 30 days after such notice, to notify CARRIER of any objection to the change will constitute INDEPENDENT CONTRACTOR's express consent and authorization to CARRIER to implement the change and modify accordingly the deduction from INDEPENDENT CONTRACTOR's settlement compensations, beginning immediately after the 30 day period. Such modified amounts will replace and supersede those shown in the table above. If INDEPENDENT CONTRACTOR fails to notify CARRIER's Settlements Department in writing of any objection within the 30 day period, or if INDEPENDENT CONTRACTOR notifies CARRIER of INDEPENDENT CONTRACTOR's objection within the 30 day period and INDEPENDENT CONTRACTOR and CARRIER are not able to resolve the matter to their mutual satisfaction, either INDEPENDENT CONTRACTOR or CARRIER may terminate this Agreement at any time pursuant to Paragraph 2 of the Agreement.

1. Terms and Conditions of PrePass Transponder Use. If INDEPENDENT CONTRACTOR elects to use a PrePass Transponder provided by CARRIER, then each such device will be provided to INDEPENDENT CONTRACTOR at no charge. INDEPENDENT CONTRACTOR will, at its sole expense, install the PrePass Transponder in the Equipment. INDEPENDENT CONTRACTOR agrees that a charge for each successful weigh-station "pass through" use of the transponder will be deducted from INDEPENDENT CONTRACTOR's settlement compensation, Escrow Fund, or other sums owed by CARRIER to INDEPENDENT CONTRACTOR at the rate of $0.90, with a maximum charge of $2.70 per day. These costs are comprised of a monthly flat fee assessed by PrePass to CARRIER as well as CARRIER's administrative fee for its time and expense for operating the PrePass Transponder Program. Upon termination of this Agreement, INDEPENDENT CONTRACTOR agrees to return each PrePass Transponder to CARRIER. In the event the PrePass Transponder is not returned within thirty (30) days from the date of termination, CARRIER shall be authorized to deduct up to $100 for each unreturned transponder, which may comprise the actual cost of the transponder and/or any penalty assessed to CARRIER by PrePass, from any settlement compensation, Escrow Fund or any other sums owed by CARRIER to INDEPENDENT CONTRACTOR.

2. Terms and Conditions of LCAPP Tire Purchase Program. If, during the term of this Agreement, INDEPENDENT CONTRACTOR elects to purchase tires through the LCAPP Tire Purchase Program, INDEPENDENT CONTRACTOR may purchase such tires by contacting CARRIER (or through CARRIER's website at www.landstaronline.com), and completing a tire purchase request form. The total amount of the purchase, together with a $6 per tire administrative fee to CARRIER, will be deducted from INDEPENDENT CONTRACTOR's settlement compensation. In the event INDEPENDENT CONTRACTOR chooses, at its sole discretion, to finance the purchase of tires through CARRIER, CARRIER is hereby authorized to deduct the amount to be financed and interest thereon, as set forth in a Promissory Note, from INDEPENDENT CONTRACTOR's settlement compensation. In the event this Agreement is terminated prior to full payment for any tire purchase requested by INDEPENDENT CONTRACTOR, INDEPENDENT CONTRACTOR hereby agrees to either repay CARRIER the remaining amounts owed or CARRIER is hereby authorized to deduct the amount owed from INDEPENDENT CONTRACTOR's Escrow Fund or final settlement compensation.

3. Terms and Conditions of Qualcomm Purchase Program. If, during the term of this Agreement, INDEPENDENT CONTRACTOR elects to purchase a Qualcomm device through the Qualcomm Purchase Program, and to have the costs deducted from INDEPENDENT CONTRACTOR's compensation, INDEPENDENT CONTRACTOR may do so by completing a Qualcomm Authorization for Deduction form. The cost for each Qualcomm device will be as disclosed in the Authorization for Deduction Form, and includes Integrated Mobile Communications Terminal, Panic Button and Remote Waiting Light. When financing is requested by INDEPENDENT CONTRACTOR, the total amount of loan principal and interest, as well as the periodic loan payment amount to be deducted weekly from INDEPENDENT CONTRACTOR's Weekly Settlement Statements, will be set forth in the promissory note, Authorization for Deduction Form or other written authorization signed by INDEPENDENT CONTRACTOR at the time of purchase. In addition to the financed amount for the Qualcomm unit, the amount of $65 per month will be deducted from INDEPENDENT CONTRACTOR's compensation for the messaging charges. CONTRACTOR shall also be liable for assessed message overages of $0.0003 per character/$0.02 per message when more than 60,000 character/750 messages are used by INDEPENDENT CONTRACTOR in any month. In the event this Agreement is terminated prior to full payment for any Qualcomm unit requested by INDEPENDENT CONTRACTOR, INDEPENDENT CONTRACTOR hereby agrees to either repay CARRIER the remaining amounts owed or CARRIER is hereby authorized to deduct the amount owed from INDEPENDENT CONTRACTOR's Escrow Fund or final settlement compensation.

4. Terms and Conditions of Prepaid Next Day Delivery Service. If, during the term of this Agreement, INDEPENDENT CONTRACTOR elects to take advantage of a negotiated special corporate prepaid rate to send correspondence to CARRIER's corporate or affiliated offices on a next-day-delivery basis, INDEPENDENT CONTRACTOR may purchase ten (10) prepaid domestic next-day-delivery shipment envelopes for a flat $100 or five (5) prepaid Canada to U.S. next-day-delivery shipment envelopes for a flat $100, which includes the next-day carrier's charges to CARRIER and CARRIER's fee for administrating the program and shipping the prepaid envelopes to INDEPENDENT CONTRACTOR. In addition, there is a $12.50 surcharge for each shipment designated as a Saturday delivery. If INDEPENDENT CONTRACTOR elects to purchase this service through CARRIER, INDEPENDENT CONTRACTOR hereby authorizes CARRIER to deduct these charges from INDEPENDENT CONTRACTOR's compensation. INDEPENDENT CONTRACTOR may continue to use UPS, FedExp, Airborne Express or any other express mailing service to send correspondence to CARRIER. However, in the event such correspondence is sent to CARRIER on a "bill recipient" basis, CARRIER is hereby authorized to deduct from INDEPENDENT CONTRACTOR's compensation the actual rate charged to CARRIER by the delivery service, plus a $15 handling fee. No handling fee, however, will be assessed for any next-day delivery sent through the above authorized prepaid delivery service program.

5. Terms and Conditions of Trip Pak Express Delivery Services. If, during the term of this Agreement, INDEPENDENT CONTRACTOR elects to utilize CARRIER's account with Trip Pak Express to send correspondence to CARRIER's corporate or affiliated offices on an expedited basis INDEPENDENT CONTRACTOR may purchase the service for $4 per week for unlimited deliveries made to CARRIER's facilities. If INDEPENDENT CONTRACTOR elects to purchase this service through CARRIER, INDEPENDENT CONTRACTOR hereby authorizes CARRIER to deduct this charge from INDEPENDENT CONTRACTOR's compensation.

6. Terms and Conditions of Landstar Communication Network. CARRIER's Communication Network allows INDEPENDENT CONTRACTOR to receive timely communication, through calls to INDEPENDENT CONTRACTOR's mobile telephone from CARRIER and its agents on load availability in INDEPENDENT CONTRACTOR's operating area and breaking safety and security information. INDEPENDENT CONTRACTOR may also learn of load availability and other information by accessing CARRIER's website or by telephoning CARRIER or its agents. The charge is $3.69 per truck per week (this amount does not include INDEPENDENT

CONTRACTOR's wireless mobile service-provider phone charges), which amount will be deducted from INDEPENDENT CONTRACTOR's compensation unless INDEPENDENT CONTRACTOR elects not to participate in the Communication Network. If INDEPENDENT CONTRACTOR decides not to participate in the Landstar Communication Network, INDEPENDENT CONTRACTOR may elect to be removed from the system at any time and thus avoid the $3.69 weekly charge by contacting BCO Services at 800-872-9541.

7. Terms and Conditions of Electronic Document Exchange (Truck Stop Scanning) Program. CARRIER's electronic document exchange program allows independent contractors to access certain documents they have submitted to CARRIER, such as bills of lading, delivery receipts and other shipping documents, electronically. It will also allow independent contractors the ability to electronically send all shipping documents, other than driver logs, to CARRIER from participating truck stops and other participating facilities. In the event, during the term of this Agreement, INDEPENDENT CONTRACTOR elects to participate in this program, CARRIER is hereby authorized to deduct from INDEPENDENT CONTRACTOR's compensation $2 per freight bill for CARRIER's administrative fee in addition to the cost incurred by CARRIER with various third party providers. When sending documents to CARRIER electronically, INDEPENDENT CONTRACTOR must use the CARRIER-provided SCAC Bar Coded Cover Sheet. If INDEPENDENT CONTRACTOR fails to use the appropriate cover sheet, CARRIER is hereby authorized to deduct from INDEPENDENT CONTRACTOR's compensation an additional administrative fee of $0.50 per freight bill. In the event INDEPENDENT CONTRACTOR elects to send trip documentation to CARRIER electronically under this program, CARRIER will make all reasonable efforts to process such electronic documentation within two (2) days after receipt of the documentation for settlement to INDEPENDENT CONTRACTOR on its next regularly scheduled settlement not less than two (2) days from the receipt of the electronic documentation. The daily cut-off time for the two-day processing will be 2:00 p.m. The two-day processing period does not take into account weekends or holidays.

8. Terms and Conditions of IRP Base Plate. If, during the term of this Agreement, INDEPENDENT CONTRACTOR elects to obtain a valid base plate under the International Registration Plan ("IRP") through CARRIER, CARRIER will obtain such plate in CARRIER's name for use by INDEPENDENT CONTRACTOR. The charge for each base plate purchased through CARRIER will be $1,650 per year (or proportionately less for a partial-year plate as calculated by CARRIER's cost tabulation schedule which is available upon INDEPENDENT CONTRACTOR's request), and the actual wire fee charged by the state (currently $3 per plate). The base plate costs may be more than $1,650 per year if the Equipment must be licensed in excess of 80,000 pounds. The cost of a base plate for heavy equipment is available from CARRIER upon INDEPENDENT CONTRACTOR's request. The charge comprises both CARRIER's payments to the relevant IRP jurisdictions and an administrative fee to CARRIER for its costs in applying for and obtaining the plate. If INDEPENDENT CONTRACTOR elects to use this service, CARRIER is hereby authorized to deduct the charge from INDEPENDENT CONTRACTOR's compensation in eighteen (18) equal weekly installments. If CARRIER receives a refund or credit for a state base plate registered in the name of CARRIER upon its return by INDEPENDENT CONTRACTOR at termination, or if such base plate is authorized by INDEPENDENT CONTRACTOR to be resold by CARRIER to another contractor, CARRIER will refund to INDEPENDENT CONTRACTOR a pro-rata share (based on CARRIER's cost tabulation schedule) of the amount received by CARRIER less a transfer fee of $275 per plate. The transfer fee comprises the administrative transfer fee charged by Illinois (the IRP base state), the additional transfer fees assessed by certain other states participating in IRP, and an administrative fee to CARRIER. INDEPENDENT CONTRACTOR shall not be entitled to reimbursement for an unused portion of a base plate, unless CARRIER is able to reuse or actually resells the plate to another independent contractor. A transfer fee of $275 per plate will also be assessed if INDEPENDENT CONTRACTOR requests that the plate be transferred to another tractor owned by INDEPENDENT CONTRACTOR. A fee of $150 per plate will be assessed if INDEPENDENT CONTRACTOR replaces the Equipment during the term of the plate year

9. Terms and Conditions of Trailer and Kingpin Locks. During the term of the Agreement, INDEPENDENT CONTRACTOR agrees to maintain and use a trailer and kingpin lock whenever hauling cargo on behalf of CARRIER and its customers. INDEPENDENT CONTRACTOR is not required to have a trailer lock if it hauls exclusively non-enclosed trailers. If, during the term of this Agreement, INDEPENDENT CONTRACTOR elects to purchase the "War-Lock" or "Abloy Enforcer" trailer and kingpin locks through CARRIER, CARRIER is hereby authorized to deduct from INDEPENDENT CONTRACTOR's compensation $22.50 per week plus shipping charges for both locks for four (4) consecutive weeks. These amounts include both CARRIER's payments to the vendor of the locks and CARRIER's administrative expenses in supplying this service. In the event INDEPENDENT CONTRACTOR loses the key to either lock, a replacement key can be obtained from CARRIER at a charge of $10.00 each ($50.00 each if INDEPENDENT CONTRACTOR requests that the key be sent via overnight delivery).

10. Terms and Conditions of Landstar Card. Upon execution of this Agreement, CARRIER will provide INDEPENDENT CONTRACTOR with a Landstar Card to be used for the purchase of fuel at locations designated by CARRIER across the United States and Canada. The parties agree that INDEPENDENT CONTRACTOR is not obligated to use the Landstar Card provided by CARRIER or to purchase fuel at any particular location. INDEPENDENT CONTRACTOR will be entitled to all discounted fuel prices that may be offered by the vendor at the fuel pump. Otherwise, CARRIER shall retain any rebates or discounts received from these vendors participating in the Landstar Card program where such rebates or discounts cannot be attributed to fuel purchases made specifically by INDEPENDENT CONTRACTOR (e.g. where the rebate is not truck-specific). INDEPENDENT CONTRACTOR is not required to submit its original fuel receipts when using the Landstar Card; however, INDEPENDENT CONTRACTOR must still record the fuel purchase on its fuel envelope. If INDEPENDENT CONTRACTOR elects to have Pre-Trip Settlements or settlement payments made directly to the Landstar Card provided by CARRIER or any other card authorized by INDEPENDENT CONTRACTOR, including any settlement payment made in connection with a fuel purchase, CARRIER is hereby authorized to deduct the following transactional charges from INDEPENDENT CONTRACTOR's compensation:

Landstar Card Transaction	Charge to INDEPENDENT CONTRACTOR*
Each card load of a pre-trip settlement	$1.75
Each card load of a net settlement compensation payment	$1.75
Each additional card load other than pre-trip settlement, settlement payment, or loan	$10
Each card load of a loan	$35 (includes a $25 loan-processing fee to CARRIER)
***All charges listed comprise both a transaction fee to financial services provider Comdata and an administrative fee and/or profit to CARRIER for its time and expense.**	

11. Terms and Conditions of Permit Program. INDEPENDENT CONTRACTOR is required to maintain certain governmental permits and licenses in order to legally provide services to CARRIER under this Agreement. Those permits include but are not limited to Single State Registration, IFTA Fuel Tax Permit, New York HUT Permit, DOT and State Hazardous Material Transportation Permits and Registration, and the Oregon Weight Receipt. Except for the IFTA Fuel Tax Permit, all permits and licenses are required by the various governmental agencies to be obtained by CARRIER, as the authorized and licensed motor carrier. Accordingly, CARRIER shall provide all required permits and licenses (except for certain specialized permits for the transportation of overweight/overdimension shipments or other specialized commodities), and charge back to INDEPENDENT CONTRACTOR, pursuant to Paragraph 4(b) of the Agreement, the annual amount of $340 per tractor, if this Agreement is executed between January 1 and June 30, and $240 per tractor, if this Agreement is executed on or after July 1, which amounts will be deducted from INDEPENDENT CONTRACTOR's compensation in eighteen (18) equal weekly installments. This amount comprises the costs paid by CARRIER to the various governmental agencies for the permits, administrative expenses incurred by CARRIER in obtaining the required permits from the governmental agencies, and CARRIER's administrative expenses in reporting and paying all quarterly fuel taxes under CARRIER's IFTA Fuel Tax Permit on behalf of INDEPENDENT CONTRACTOR. In addition to these annual costs, INDEPENDENT CONTRACTOR shall be charged the actual cost of any specialized permits requested by INDEPENDENT CONTRACTOR from CARRIER, and the actual costs incurred by CARRIER in the event INDEPENDENT CONTRACTOR requests that the permits be transferred to replacement Equipment. In the event INDEPENDENT CONTRACTOR elects to maintain its own IFTA Fuel Tax Permit and to calculate, report and pay all quarterly fuel taxes for the operation of the Equipment, INDEPENDENT CONTRACTOR's cost for the remaining permits will be $200 per tractor, if this Agreement is executed between January 1 and June 30, and $100 per tractor, if this Agreement is executed after July 1, which amounts will be deducted from INDEPENDENT CONTRACTOR's compensation pursuant to Paragraph 4(b) of the Agreement. Upon such election by INDEPENDENT CONTRACTOR, INDEPENDENT CONTRACTOR shall be solely responsible for calculating, reporting and paying all fuel taxes owed for the operation of the Equipment, and INDEPENDENT CONTRACTOR shall indemnify, defend and hold CARRIER harmless against same. All permits and licenses issued in CARRIER's name will be returned to CARRIER upon termination of this Agreement. No refund will be made to INDEPENDENT CONTRACTOR by CARRIER of the permit costs upon termination of this Agreement. INDEPENDENT CONTRACTOR shall be liable to CARRIER for all expenses incurred by CARRIER due to INDEPENDENT CONTRACTOR's failure to return all such permits.

ELECTION: INDEPENDENT CONTRACTOR, by initialing below, hereby elects to maintain its own IFTA Fuel Tax Account subject to the terms of this Paragraph 11, in which case INDEPENDENT CONTRACTOR shall provide CARRIER with copies of all such permits prior to the execution of this Agreement. INDEPENDENT CONTRACTOR must also provide CARRIER with a completed fuel tax envelope and all mileages for the Equipment for the reporting and payment of ad valorem and mileage taxes.

_____
INDEPENDENT
CONTRACTOR'S Initials

12. Terms and Conditions of Miscellaneous Equipment Purchase. If, during the term of this Agreement, INDEPENDENT CONTRACTOR elects to purchase any other equipment, including load securement equipment, through CARRIER, INDEPENDENT CONTRACTOR may purchase such equipment by contacting CARRIER (or through CARRIER's web site at www.landstaronline.com) and completing a purchase request form. The total amount of the purchase, which includes a two percent (2%) administrative fee to CARRIER, will be deducted from INDEPENDENT CONTRACTOR's settlement compensation. In the event INDEPENDENT

CONTRACTOR chooses, at its sole discretion, to finance the purchase of such equipment through CARRIER, CARRIER is hereby authorized to deduct the amount to be financed and interest thereon, as set forth in a Promissory Note, from INDEPENDENT CONTRACTOR's settlement compensation. In the event this Agreement is terminated prior to full payment for any equipment purchases, INDEPENDENT CONTRACTOR hereby agrees to either repay CARRIER the remaining amounts owed or CARRIER is hereby authorized to deduct the amount owed from INDEPENDENT CONTRACTOR's Escrow Fund or final settlement compensation.

[INDEPENDENT CONTRACTOR HEREBY AGREES TO THE TERMS OF THIS APPENDIX C AS ACKNOWLEDGED BY ITS SIGNATURE ON PAGE 35 BELOW.]

APPENDIX D

Trailer Utilization Program

1. Trailer Rental: INDEPENDENT CONTRACTOR may perform services under this Agreement by electing, in its sole discretion, to use any of the following categories of trailers: trailers that INDEPENDENT CONTRACTOR furnishes, trailers that CARRIER furnishes at no rental charge, or trailers of the following types that CARRIER is willing to rent to INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR's level of compensation will, as set forth in Appendix A, vary depending on which category of trailer it uses. If INDEPENDENT CONTRACTOR elects to rent one of the following types of trailers from CARRIER, CARRIER will deduct from INDEPENDENT CONTRACTOR's settlement the following amount for each week a trailer provided by CARRIER is used by or in the possession of INDEPENDENT CONTRACTOR or its workers:

Type of Trailer	Trailer Rent
Flatbed	$155.00/per week
Step Deck	$170.00/per week
Extendible	$185/per week
Double Drop	$260/per week

2. Rental Trailer Maintenance: CARRIER will be responsible for all maintenance, including tires and repairs, needed to insure safe and efficient operation of any trailer rented to INDEPENDENT CONTRACTOR by CARRIER. As a condition of using CARRIER's trailer, INDEPENDENT CONTRACTOR agrees to follow CARRIER's attached Trailer Policies and Procedures, including Preventative Maintenance Schedules. If the Policies and Procedures are revised, INDEPENDENT CONTRACTOR will be so notified by satellite/wireless transmission, fax, overnight delivery, or other written notice. In any event, except in rare matters of safety urgency as determined by CARRIER, INDEPENDENT CONTRACTOR shall not be subject to any such revision until thirty (30) days after such notice or such later time as is set forth in the notice. **INDEPENDENT CONTRACTOR's failure, by the end of 30 days after such notice, to notify CARRIER of any objection to the revision shall constitute INDEPENDENT CONTRACTOR's express consent and authorization to CARRIER to activate the revision as to INDEPENDENT CONTRACTOR, beginning immediately after the 30 day period.** If INDEPENDENT CONTRACTOR fails to notify CARRIER of any objection within the 30 day period – or if INDEPENDENT CONTRACTOR notifies CARRIER of INDEPENDENT CONTRACTOR's objection within the 30 day period and INDEPENDENT CONTRACTOR and CARRIER are then unable to resolve the matter to their mutual satisfaction -- INDEPENDENT CONTRACTOR and CARRIER retain the right to terminate this Agreement at any time (although INDEPENDENT CONTRACTOR shall remain subject to the revision until the effective date and time of his/her termination).

3. Use of Trailer: INDEPENDENT CONTRACTOR agrees to use CARRIER's trailers only as specifically authorized by CARRIER. In the event INDEPENDENT CONTRACTOR or its workers uses a CARRIER trailer without CARRIER's authorization, INDEPENDENT CONTRACTOR will pay to CARRIER all damages incurred by CARRIER for such unauthorized use, including but not limited to, up to $0.80 per mile to reposition the trailer to its base facility. It is further agreed by the parties that in the event INDEPENDENT CONTRACTOR or its workers will change or substitute any parts or accessories of a trailer rented from CARRIER, including, but not limited to, the tires of said equipment, without written permission from CARRIER, then INDEPENDENT CONTRACTOR will pay CARRIER a sum not to exceed the actual cash value, as calculated by CARRIER, for each such unauthorized change or substitution. INDEPENDENT CONTRACTOR agrees to return CARRIER's rental trailer in the same good condition as received by INDEPENDENT CONTRACTOR, reasonable wear and tear excepted, along with any and all other equipment or property belonging to CARRIER immediately upon CARRIER's request or

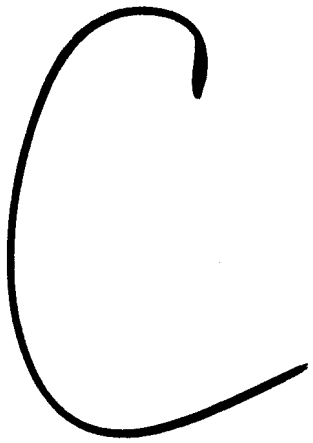
upon termination of this Agreement at a time and place designated through CARRIER. In the event the rental trailer is not in as good a condition as it was when delivered by CARRIER, INDEPENDENT CONTRACTOR hereby authorizes CARRIER to restore the trailer to proper condition and to deduct or charge INDEPENDENT CONTRACTOR for such repairs or reconditioning. In the event INDEPENDENT CONTRACTOR for any reason fails to comply with this provision, INDEPENDENT CONTRACTOR agrees to reimburse CARRIER for all reasonable expense and cost incurred by CARRIER in recovery of its trailer and/or property from INDEPENDENT CONTRACTOR or its workers. INDEPENDENT CONTRACTOR agrees that in the event it is necessary for CARRIER to enter upon private property and/or remove private property in order to recover its trailer and/or property, INDEPENDENT CONTRACTOR does hereby irrevocably grant CARRIER or its duly authorized agents, permission to do so and further agrees to save and hold harmless CARRIER, or its duly authorized agents, from any form of liability for any claim or damage whatsoever in connection with such repossession.

[INDEPENDENT CONTRACTOR HEREBY AGREES TO THE TERMS OF THIS APPENDIX D AS ACKNOWLEDGED BY ITS SIGNATURE ON PAGE 35 BELOW.]

2004 Independent Contractor Operating Agreement Signature Page

IN WITNESS WHEREOF, INDEPENDENT CONTRACTOR hereby agrees to and executes the Independent Contractor Operating Agreement and each Appendix referenced below, comprised of a total of 35 pages, to be effective as of the date set forth on the Statement of Lease and Receipt for Equipment to be provided to INDEPENDENT CONTRACTOR by CARRIER. CARRIER's signature on the Statement of Lease and Receipt for Equipment shall constitute CARRIER's acceptance of the Independent Contractor Operating Agreement and all Appendices.

X_____ INDEPENDENT CONTRACTOR Printed Name: _____ FID No.:_____	**Independent Contractor Operating Agreement** (Version 7/04) Date: _____ Truck No._____
X_____ INDEPENDENT CONTRACTOR Printed Name: _____	**Appendix A** (Version 7/04) **Appendix A-1** (Version 7/04)
X_____ INDEPENDENT CONTRACTOR Printed Name: _____	**Appendix B** (Version 7/04)
X_____ INDEPENDENT CONTRACTOR Printed Name: _____	**Appendix B-WC** (Version 7/04) (U.S. Resident Contractors Only)
X_____ INDEPENDENT CONTRACTOR Printed Name: _____	**Appendix B – Schedule O** (Version 7/04) (U.S. Resident Contractors Only)
X_____ INDEPENDENT CONTRACTOR Printed Name: _____	**Appendix C** (Version 7/04)
X_____ INDEPENDENT CONTRACTOR Printed Name: _____	**Appendix D** (Version 7/04)



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., et al.,	:	
Plaintiffs,	:	
v.	:	**Case No. 2:97-cv-750**
ARCTIC EXPRESS, INC., et al.,	:	**JUDGE ALGENON L. MARBLEY**
Defendants.	:	**Magistrate Judge King**

ORDER

This matter is before the Court on the Motion for Pretrial Conference filed by the Defendants, Arctic Express, Inc., and D&A Associates, Ltd. That Motion is **DENIED**. In the interests of clarifying the Court's previous Orders to facilitate the parties' trial preparation, however, the Court provides the following rulings regarding the proper scope of the trial in this case.

I. JURY

On October 14, 2003, the Plaintiffs filed a Notice of Withdrawal of Demand for Jury Trial. Pursuant to Rule 38(d) of the Federal Rules of Civil Procedure, a demand for trial by jury may not be withdrawn without the consent of the parties. Since the Defendants did not consent to the withdrawal, this case will be tried by a jury. The Plaintiffs contend that because the Defendants did not object to the Notice, the Court should grant the withdrawal. The issue, however, is not whether the Defendants objected to the Notice; the issue is whether the

Defendants consented, and a failure to object is not the equivalent of consent. Since the Defendants do not consent to the withdrawal of the Plaintiffs' jury demand, that demand stands.

II. AGGREGATION OF DAMAGES

This Court has repeatedly ruled that individualized damages issues will not prevent treatment of this matter as a class action. The most recent ruling to this effect was on October 22, 2003, just days before this matter was originally scheduled to begin trial. The benefit of a class action in this context is obviating the need to conduct hundreds or thousands of "mini-trials" on damages; the class action device allows the Court to award damages in an aggregate amount, with each individual class member's actual damages to be decided after trial. *See* 2 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 10.05 (3d ed. 1992) ("Aggregate computation of class monetary relief is lawful and proper.").

Allapattah Services, Inc. v. Exxon Corp., 333 F.3d 1248 (11th Cir. 2003), does not compel a different result. There, the court merely agreed with the district court that the case was not ideal for the entry of an aggregate final judgment because an aggregate judgment would not benefit the class greatly or result in a more expedient disposition of each class member's claim. *Id.* at 1257. Here, the opposite is true. Proving damages in the aggregate is a far superior method of addressing class members' claims where, as here, proof of those individual claims would increase exponentially the amount of time needed for trial, the extent of the judicial resources required, and the complexity of the overall proceedings. An award of aggregate damages here ultimately will simplify the claims process and benefit the class members.

As this Court has previously noted, all that is required here is that the Plaintiffs "adduce evidence at trial sufficient to allow the fact finder to make a *just and reasonable estimate*" of the

amount of damages suffered by the class. *Owner-Operator Indep. Drivers Assoc., Inc. v. Arctic Express, Inc.*, 288 F. Supp. 2d 895, 906 (S.D. Ohio 2003). Because, under the circumstances here, it is the superior method, damages at trial will be proven in the aggregate, and an aggregate award of damages will be entered by this Court. It should be noted that such an award will be entered for the class as a whole; no award will be entered for any individual class member.

III. MAINTENANCE EXPENSES

The Defendants argue that they should be permitted to introduce evidence of maintenance expenses incurred subsequent to the date of lease termination that were directly related to the operation of particular units by owner-operator class members. The Plaintiffs contend that, due to poor record-keeping by the Defendants, the best measure of damages involves matching lease terms for individual class members to maintenance expenses by truck unit and date. The Court currently has insufficient information in the record to determine whether such evidence would be admissible at trial. It is not clear to the Court whether the Defendants' records are such that they can say that certain expenses that occurred outside the lease period are attributable to class members, but they cannot say that certain expenses that occurred inside the lease period are not attributable to class members. If such is the case, then the Defendants likely would be precluded from proving expenses outside of the lease terms. In general, the Court is interested in the most accurate measure of damages possible. At first blush, the Defendants' approach would seem to lead to greater accuracy. If damages can be clearly and accurately determined, then there is no need to resort to a procedure, such as that suggested by the Plaintiffs, that provides only a reasonable estimate of damages. If, on the other hand, because of wrongdoing by the Defendant accuracy is only available in ways that would help the

Defendants but not in ways that would hurt them, then the Plaintiffs' estimation procedure is the most fair.

IV. JURISDICTION OVER COUNTERCLAIMS

This Court has dismissed the Defendants' counterclaims based on lack of subject matter jurisdiction. *Owner-Operator Indep. Drivers Assoc, Inc. v. Arctic Express, Inc.*, 238 F. Supp. 2d 963, 969 (S.D. Ohio 2003). The mere fact that a bankruptcy case is now pending does not give this Court jurisdiction over those counterclaims.

V. SET-OFFS

The Defendants are not entitled to introduce evidence of their "set-off" claims at trial. Even if the Defendants' claims properly could be considered to be defensive set-offs, and distinct from the Defendants' permissive counterclaims, those claims still would not be legally cognizable in this Court because all of the requirements for a defensive set-off have not been met. A defensive set-off must (1) be asserted solely to defeat or diminish the adverse party's recovery; (2) arise from a transaction extrinsic to the original claim; (3) be based on a contract or judgment; and (4) be liquidated or capable of liquidation without the aid of evidence presented at trial. *Dinces v. Robbins*, 604 F. Supp. 1021, 1026-28 (E.D. Pa. 1985); *see Barrett v. L.F.P., Inc.*, No. 85 C 6495, 1986 WL 7698, at *2 (N.D. Ill. June 27, 1986); *Jones v. Sonny Gerber Auto Sales, Inc.*, 71 F.R.D. 695, 697 (D. Neb. 1976); *Wigglesworth v. Teamsters Local Union No. 592*, 68 F.R.D. 609, 613 (E.D. Va. 1975); *see also Mathias v. Jacobs*, 167 F. Supp. 2d 606, 619 (S.D.N.Y. 2001) (holding that set-off was liquidated or capable of liquidation). Here, the items of set-off claimed by the Defendants would not be capable of liquidation without substantial evidence being presented at trial. This Court will not allow.

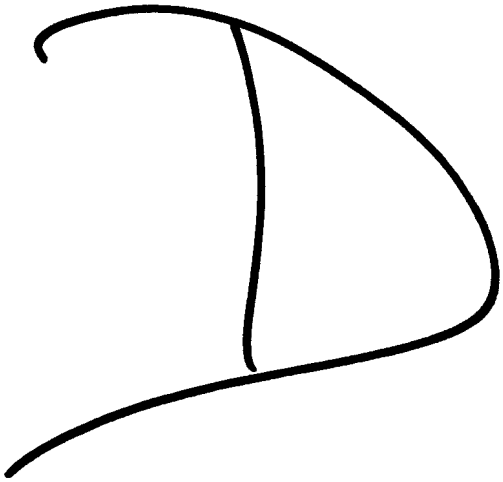
VI. RELEASES

The Plaintiffs are correct that any releases signed by class members are not relevant to any issue remaining in this litigation. Any documents purporting to release the Defendants from liability would be relevant only to liability. Such releases have no place in determining damages once the Defendants have been held to be liable. Evidence relating to releases thus will not be admissible at trial.

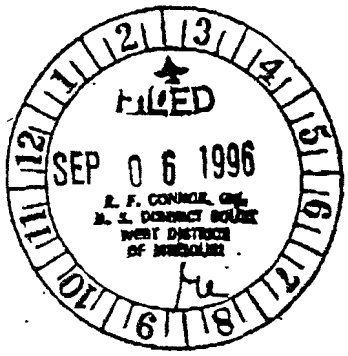
IT IS SO ORDERED.

/s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

Dated: March 15, 2004



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



Lawrence Padrta and Ronald D. Holman, on behalf of themselves and all other similarly situated,

Plaintiffs,

v.

Ledar Transport, Inc.,

Defendant.

Case No. 96-0324-CV-W-2

47292

ORDER

I. INTRODUCTION

On March 25, 1996, Lawrence Padrta and Ronald D. Holman, individually, and on behalf of all others similarly situated ("plaintiffs") filed a class action complaint for damages and injunctive relief against Ledar Transport, Incorporated ("Ledar"). In their complaint, plaintiffs, all of whom are independent truck owner-operators, sought compensation for transporting and completing delivery of loads. Additionally, plaintiffs requested an immediate accounting and the return of escrow funds deposited with Ledar by the class members. Finally, the class members moved the Court for an order temporarily restraining and enjoining Ledar from; (1) transferring, diverting or otherwise concealing the class members' escrow funds, and (2) from destroying records which

D.C. # 10

related in any way to the escrow funds or other amounts owed to the class members.

Following Ledar's failure to file a responsive pleading to plaintiffs' complaint, the Court issued a show cause order. Ledar, however, did not respond to the show cause order. As a result, this Court entered an order of final judgment by default against Ledar and in favor of plaintiffs. Plaintiffs maintain that the only issue remaining is whether such relief extends to the whole class. To this end, plaintiffs, pursuant to Federal Rule of Civil Procedure 23(c)(1), filed a motion for class certification. In the motion for class certification, plaintiffs seek class-wide damages and attorneys' fees from, and injunctive relief against, Ledar for, inter alia: (1) defendant's failure to provide an accounting to class members and/or return of certain escrow funds; and (2) breach of certain lease agreements with the class members. Plaintiffs maintain that the legal predicates for the claims of all class members against Ledar are the materially identical lease agreements and a common Department of Transportation regulation.[1] The motion for class certification is currently pending before this Court. Ledar, as has been the case throughout this litigation, has failed to file a response or otherwise defend this action.

II. DISCUSSION

Plaintiffs maintain that each independent owner-operator affiliated with Ledar entered into a lease arrangement with Ledar

[1] Plaintiffs refer to 49 C.F.R. § 1057.10(k) which provides for the manner in which regulated motor carriers are required to maintain escrow funds.

pursuant to which Ledar leased or leases motor vehicle equipment and related services from the owner-operator. The written lease agreements entered into by the class members with Ledar govern the parties' obligations regarding payment for the completed transportation and delivery of loads, fuel charges, escrow retention, escrow interest, and the deduction of amounts from the owner-operators' settlement checks. The lease arrangements require Ledar to return all escrow funds in its possession to the class members within 45 days of lease termination, pay interest on such funds, and provide an immediate accounting of all transactions involving the funds upon demand. For the reasons discussed more fully below, the Court will grant plaintiffs' motion for class certification.

Rule 23 (a) of the Federal Rules of Civil Procedure sets out four prerequisites applicable to all class actions. Rule 23(a) provides that:

> one or more members of a class may sue as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In addition to these prerequisites, a proposed class must fall within one of the three categories listed in Rule 23(b). Plaintiffs allege that the third category contained in Rule 23(b)(3) applies to this case. Rule 23(b)(3) provides that a class action may be maintained if:

> the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

The party moving for class action certification has the burden of showing that all of the prerequisites have been satisfied. Smith v. Merchants & Farmers Bank of West Helena, Ark., 574 F.2d 982, 983 (8th Cir. 1978). Moreover, the district court has wide discretion in determining whether or not to certify a class under Rule 23. Cooley v. Clinton, 635 F.2d 1364, 1378 (8th Cir. 1980).

The proposed class is composed of a group of owner-operators who have leased their services and motor vehicle equipment to Ledar. Each member of the proposed class has entered into a lease arrangement with Ledar pursuant to which Ledar leased or leases motor vehicle equipment and related services from the owner-operator.

Having defined the proposed plaintiff class, the court must now determine whether the prerequisites of Rule 23(a) exist. Plaintiffs estimate there are 750 independent truck owner-operators which are potential class members. In light of the fact that Ledar has failed to provide evidence to the contrary, the Court accepts

this allegation as true. Therefore, the class appears to be sufficiently numerous such that joinder of all members is impracticable.

Further, the Court finds that plaintiffs' claims or defenses are not only typical of the claims or defenses of the class, but also that the proposed class members share common questions of law and fact. Each of the potential class members has entered into a lease arrangement with Ledar. Plaintiffs allege that all of the lease arrangements are essentially identical. Importantly, plaintiff alleges that Ledar has breached each of these lease agreement in essentially the same fashion. The Court is persuaded that plaintiffs have demonstrated not only that there are other members of the proposed class who have the same or similar grievances as plaintiffs, but also that the proposed class members' statutory claims, under 49 C.F.R. § 1057.12(k), present a multitude of common questions of law and fact.

Finally, the Court finds no reason to suspect that plaintiffs Padrta and Holman will not fairly and adequately protect the interests of the class. As plaintiffs point out, Padrta and Holman have substantial stake in the controversy. Indeed, both Holman and Padrta seek damages for Ledar's nonpayment and substantial underpayment for the completed transportation and delivery of loads. Accordingly, the court finds that the proposed plaintiff class meets the prerequisites of Rule 23(a).

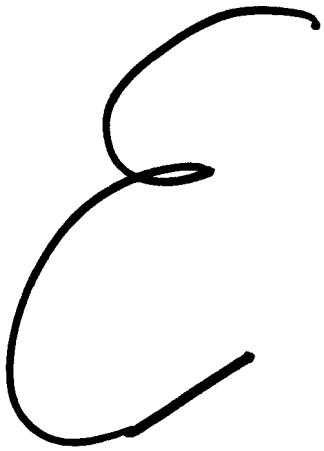
The next inquiry is whether the class action may be maintained under Rule 23(b)(3) because questions of law or fact common to the

members of the class predominate over any questions affecting only individual members and because a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Upon careful review, the Court finds that the questions of law or fact common to the members of the class in the instant cause of action predominate over any questions affecting only individual members. Indeed, "the class action device is a necessary vehicle for the vindication of small claims, especially when the nature of the claim involves complex litigation." Kassover v. Computer Depot, Inc., 691 F. Supp. 1205, 1213 (D. Minn. 1987). Given the typicality of the claims and the number of potential class members, the denial of a class action will most likely prejudice or operate to the detriment of any proposed class members. As such, plaintiffs' motion for class certification is granted.

Accordingly, it is **ORDERED** that plaintiffs' motion for class certification is **GRANTED**.

Fernando J. Gaitan, Jr.
United States District Judge

Dated: SEP 06 1996
Kansas City, Missouri



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

Plaintiffs,

v.

ARCTIC EXPRESS, INC. AND D & A ASSOCIATES, LTD.,

Defendants.

Case No. C2: 97-CV-00750

Judge Marbley
Magistrate Judge King

OPINION AND ORDER

I. INTRODUCTION

The Plaintiffs originally brought suit on June 30, 1997, alleging that certain agreements they entered into with the Defendants violated the Motor Carriers Act, 49 U.S.C. §§ 14101-02 and 14704, and the Regulations promulgated under the Act, 49 C.F.R. pt. 376. This matter is before the Court on the Plaintiffs' Renewed Motion for Certification of Class, filed on June 9, 2000, to which the Defendants filed a Memorandum in Opposition on July 3, 2001. The Court held a hearing on the Plaintiff's Motion on August 9, 2001. For the following reasons, the Plaintiffs' Motion for Certification of Class is **GRANTED.**

II. FACTS AND PROCEDURAL HISTORY

A. Procedural History

On June 30, 1997, the Plaintiffs, Owner Operator Independent Drivers Association, Inc., Carl Harp, Garvin Keith Roberts and Michael Wiese, filed their Complaint against Arctic Express, Inc. and D& A Associates, alleging in Count I a violation of 49 C.F.R. § 376.12(i)

101

(unauthorized deduction of purchase or rental payments), and in Count II a violation of 49 C.F.R. § 376.12(k) (unauthorized deduction and non-return of escrow funds).

On September 5, 1997, the Defendants filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted, and on January 15, 1998, filed a Motion to Dismiss Under Doctrine of Primary Jurisdiction. By Order dated August 17, 1998, this Court stayed this action pending the Defendants' appeal to the Sixth Circuit. On appeal, this case was transferred to the Eighth Circuit Court of Appeals for consolidation with three other cases.

The Eighth Circuit's opinion *Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc.*, 192 F.3d 778 (8th Cir. 1999), denied the petition for review of this case. By Order dated October 13, 1999, the Eighth Circuit denied the Petition for Rehearing and for Rehearing En Banc.

The stay was lifted early in 2000. On March 3, 2000, this Court issued *Owner-Operator Independent Drivers Association, Inc., v. Arctic Express, Inc.*, 87 F. Supp. 2d 820 (S.D. Ohio 2000), in which the Court treated the Defendants' Motion to Dismiss as one for summary judgment and granted summary judgment to the Defendants as to Count I, but denied it as to Count II. The Court also denied the Defendants' Motion to Dismiss brought under the doctrine of primary jurisdiction.

On September 6, 2000, the Plaintiffs filed a Motion for Partial Summary Judgment; in response, on September 29, 2000, the Defendants filed a Cross-Motion for Summary Judgment. On August 30, 2001, the Plaintiffs' Motion for Partial Summary Judgment was granted and the Defendants' Cross-Motion for Summary Judgment was denied.

This matter is now before the Court on the Plaintiffs' Renewed Motion for Certification of Class, filed on June 9, 2000, and on the hearing held on that motion on August 9, 2001.

B. Facts[1]

The Plaintiff, Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), is a business association comprised of individuals and entities who own and operate motor vehicle equipment. The three individual Plaintiffs, Carl Harp, Garvin Keith Roberts and Michael Wiese ("Members"), are persons who have entered into a Lease Purchase Agreement with Defendant, D & A Associates, Ltd. ("D & A"), and a Motor Vehicle Lease Agreement with Defendant, Arctic Express, Inc. ("Arctic"). Arctic is a regulated motor carrier engaged in the business of providing transportation services to the shipping public. D & A is a non-carrier company engaged in the business of leasing truck tractor units to independent owner-operators. D & A and Arctic are under common ownership and control.

Owner-operators are business men and women who own or control truck tractors used to transport property on the country's highways. Owner-operators either transport commodities exempt from Department of Transportation ("DOT") regulations, or, as independent contractors, lease or provide their equipment and services to motor carriers who possess the legal operating authority under DOT regulations to enter into contracts with shippers to transport property. The relationship between independent truck owner-operators and regulated carriers is set forth in an agreement between the parties and regulated by the DOT.[2] *See* 49 U.S.C. § 14102; 49 C.F.R. pt. 376.

---

[1]The facts are taken in part from this Court's March 3, 2000 Opinion.

[2]In 1995, the Interstate Commerce Commission ("ICC") transferred the regulation of motor carrier functions to the DOT, and to the Surface Transportation Board ("STB"). *See* 49 U.S.C. § 13501. The Federal Highway Administration, ("FHWA"), an agency within the DOT, administers and enforces regulations concerning lease agreements between motor carriers and owner-operators.

Arctic and each owner-operator entered into a "Independent Contractor Motor Vehicle Lease Agreement" ("Lease Agreement"), whereby the owner-operator leased a truck unit and provided, in return, the services of a qualified driver to Arctic.[3] Under the contract between D & A and the owner-operators, entitled "Lease/Purchase Option at Termination" ("Lease/Purchase Option"), Members leased from D & A truck tractor units. Under this Lease/Purchase Option, Members were obligated to make weekly equipment rental payments to D & A, and also were obligated to make payments to a maintenance fund based on mileage.

Under Paragraph 5A of the Lease Agreement, captioned "LEASE AND MAINTENANCE OBLIGATIONS," the Member agreed to have deducted a certain sum per week to pay D & A for his or her rental obligations; under Paragraph 5B, the Member agreed to have withheld nine cents per mile, also payable to D & A, "for the sole purpose of satisfying any maintenance obligations imposed upon Contractor by lessor of Contractor's equipment." Under Paragraph 9A of the Lease/Purchase Option entered into between D & A and the owner-operators, each Plaintiff who leased a motor vehicle was required to make maintenance payments at the rate of nine cents per mile. The maintenance payments were collected in a "maintenance

---

[3] The Defendants, through the September 4, 1997 Affidavit of Steven R. Russi, Executive Vice President of Defendants Arctic and D & A, acknowledge that the Members have entered into separate agreements with D & A and Arctic. Before the D & A and Arctic agreements were executed, the Members were given an orientation program where the terms and conditions of each agreement were explained, the details of the each individual Member's financial obligations were discussed, and the amount and circumstances of each monetary deduction from each Member's settlement were disclosed and reviewed. The Member's acceptance of the terms of the agreement was established when each individual Member placed his or her initials at the end of the agreement. Each of the Plaintiffs in this case initialed in the appropriate space at the end of the agreement.

fund." Arctic deducted the "maintenance fund" payments directly from the Member's compensation on a weekly basis.

Under Paragraph 9B of the Lease/Purchase Option, the unused maintenance fund monies were refundable if the lease ran its term. The fund balance was not refundable if the lease was terminated mid-term without the Member exercising his or her purchase option. None of the named Members in the present case exercised his purchase option, and thus the maintenance fund balances were not refunded to the Members under the D & A Lease/Purchase Option.[4]

When the commercial driver's licenses of two of the Members, who are Plaintiffs in this suit, were canceled or suspended, they notified Arctic and their equipment leases were terminated.[5] The Plaintiffs then voluntarily terminated their equipment leases with Arctic. The Plaintiffs could have hired other drivers for the vehicles they leased from D & A; however, they did not, and as a result their Lease/Purchase Options with D & A were terminated before the end of the specified lease term. Their maintenance fund monies were not returned to them.

The maintenance fund, according to Steven R. Russi, Executive Vice President of Arctic and D & A, was established based on a "projected per mile cost" of maintaining a truck over the term of the lease. D & A contends that it costs nine cents per mile to maintain a truck through the first 500,000 miles of operation; though during the first 100,000 to 200,000 miles, the per-mile cost is much less than nine cents. When the truck is new, maintenance costs are minimal; the maintenance costs eventually increase as the truck ages. The Defendants charged the

---

[4]Under Paragraph 11 of the Arctic Lease Agreement, a separate escrow account was established for each Member, and those funds have been returned to the Members, together with a full accounting as required by the federal equipment leasing rules.

[5] Federal Regulations preclude regulated carriers such as Arctic from using the services of any driver who does not have a valid commercial driver's license.

Members a flat rate of nine cents per mile to cover the total maintenance costs over lease term. The Defendants use the "savings" from the escrow fund during the first part of the lease to apply to the "deficit" that occurs toward the end of the lease.

For example, according to the September 28, 2000 Russi declaration, Plaintiff Wiese entered into a lease on June 11, 1996, for a term of 199 weeks. On March 27, 1997, less than ten months later, Plaintiff Wiese terminated the equipment lease. Prior to termination, Wiese drove 90,894 miles and spent $972.31 on maintenance of the truck, approximately 1 cent per mile. For the remaining thirty months, the truck was operated an additional 281,626 miles and D & A spent $30,467.80 to maintain the truck, at approximately 10.8 cents per mile. During the 155 weeks between the time Wiese terminated the lease and the ending date contemplated by the lease, Wiese made no further payments. Due to the alleged breach, the Defendants claim that Wiese owed $67,062.74 in rental payments, in addition to the cost of maintenance for the life of the truck.[6]

Having been deprived of their escrow funds and other funds deposited with the Defendants during the terms of their Lease Agreements and Lease/Purchase Options, the Plaintiffs are seeking, for themselves and on behalf of other similarly situated independent truck owner-operators, monetary damages and declaratory and injunctive relief.

---

[6] The Defendants brought Counterclaims on April 11, 2000 at the same time they filed their Answer to the Plaintiffs' Complaint. D & A brought individual Counterclaims against Plaintiffs Wiese, Roberts, and Harp alleging a breach of each Plaintiff's Lease/Purchase Option (Agreement). Arctic brought a Counterclaim against Plaintiff Roberts alleging a breach of the Independent Contractor Agreement (Lease Agreement).

III. ANALYSIS

Federal Rule of Civil Procedure 23, Class Actions, provides:

> (a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are question of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.
>
> (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
>
> . . .
>
> (3) the court finds that the questions of law or fact common to the members of the class predominate over any question affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

FED. R. CIV. P. 23(a), (b)(3).

Before certifying a class, the district court must engage in "rigorous analysis" of the plaintiff's ability to meet the requirements of Rule 23 of the Federal Rules of Civil Procedure. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982); *see also Shipp v. Memphis Area Office, Tenn. Dep't of Employment*, 581 F.2d 1167 (6th Cir.1978); *Senter v. Gen. Motors Corp.*, 532 F.2d 511 (6th Cir. 1976). The party that moves for class certification has the burden of proof under Rule 23. *Senter*, 532 F.2d at 520 (finding that "[a] plaintiff must show that the action satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.").

The plaintiff "must satisfy all four of the prerequisites contained in Rule 23(a) and then demonstrate that the class he seeks to represent falls within one of the subcategories of Rule 23(b)." *Senter*, 532 F.2d at 522. The courts must not inquire, however, into the merits of the underlying claims of the class representative. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). A court should accept as true the factual allegations in the plaintiff's complaint. *Shelter Realty Corp. v. Allied Maint. Corp.*, 574 F.2d 656, 661 n.15 (2d Cir. 1978); *Blackie v. Barrack*, 524 F.2d 891, 901 n.17 (9th Cir. 1975); *Mayo v. Sears, Roebuck & Co.*, 148 F.R.D. 576, 579 (S.D. Ohio 1993). Resolution of the class certification may, however, require the court "to probe behind the pleadings before coming to rest on the certification question." *Falcon*, 457 U.S. at 160. Though, "[i]n ruling on a class action a judge may consider reasonable inferences drawn from facts before him at that stage of the proceedings," *Senter*, 532 F.2d at 523, plaintiffs may not rely on pure speculation to satisfy Rule 23's requirements. *Cwiak v. Flint Ink Corp.*, 186 F.R.D. 494, 497 (N.D. Ill. 1999). Even after certification, a court may decertify a class if there is a subsequent showing that the grounds for granting certification no longer exist or never existed. *Falcon*, 457 U.S. at 160.

In this case, the required rigorous analysis includes examination of: (1) the proposed definition of the class; (2) the satisfaction, or lack thereof, of the four prerequisites of Rule 23(a); and, if necessary, (3) the satisfaction of the requirements of Rule 23(b)(3).

A. Definition of the Class

Before delving into a Rule 23 analysis, the court must first consider whether a precisely defined class exists and whether the named plaintiffs are members of the proposed class. *See East Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977) (discussing membership in a proposed class); *Rodriguez v. Berrybrook Farms, Inc.*, 672 F. Supp. 1009

(W.D. Mich. 1987) (citations omitted). While class definitions are obviously individualized to the given case, important elements of defining a class include: (1) specifying a particular group at a particular time and location who were harmed in a particular way, and (2) defining the class such that the court can ascertain its membership in some objective manner. *Crosby v. Soc. Sec. Admin.*, 796 F.2d 576, 580 (1st Cir. 1986) (holding that a class could not be certified because the definition "ma[de] class members impossible to identify prior to individualized fact-finding and litigation," thereby failing "to satisfy one of the basic requirements under Rule 23"); *cf. Rodriguez*, 672 F. Supp. at 1012 (finding that the plaintiffs met the requirement for defining a class because the definition specified a group of agricultural laborers "during a specific time frame and at a specific location who were harmed in a specific way . . . .") (citations omitted).

Where named plaintiffs fail to define the class adequately, the court not need proceed to a full analysis under Rule 23. *See Metcalf v. Edelman*, 64 F.R.D. 407, 409-10 (N.D. Ill. 1974). The "class must be capable of concise and exact definition." *Id.* at 409. If a court must come to numerous conclusions regarding class membership or adjudicate the underlying issues on behalf of each class member, then a proper class cannot be defined concisely. *See id.*

Here, the Plaintiffs have defined the class as follows:

> All independent truck owner-operators who have (1) entered agreements with Defendant D & A Associates, Ltd. which purport to lease, with the option to purchase, trucking equipment under the terms of D & A's equipment lease/purchase agreement, and (2) leased that equipment to Defendant Arctic Express, Inc. under the terms of Arctic's federally-regulated motor carrier lease agreement.

The Court accepts the Plaintiffs' definition of the class.

B. Numerosity

Rule 23(a)(1) requires the purported class to be "so numerous that joinder of all members is impracticable . . . ." FED R. CIV. P. 23(a)(1). Numerosity, although so named, imposes no numerical requirements upon the class, with one exception; "[W]hen class sizes reaches substantial proportions . . . the impracticability requirement is usually satisfied by numbers alone." *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996). To determine if this element has been satisfied "'requires examination of the specific facts of each case and imposes no absolute limitations.'" *Id.* (quoting *Gen. Tel. Co. v. EEOC*, 446 U.S. 318, 330 (1980)).

The Court finds that numerosity has been met in this case, as during the hearing on the Plaintiff's Motion, both parties agreed that the future class is comprised of approximately 2,000 members. That number, certainly one of "substantial proportions," in and of itself satisfies numerosity. Even if the class size were much smaller, numerosity would be satisfied given the unrefuted testimony of James Johnston, the President of OOIDA, that individual owner-operators would not be financially,[7] geographically, temporally or logistically[8] able to bring suit against the Defendants in this case, making joinder impracticable.

C. Commonality

As to commonality, the Sixth Circuit has explained: "Although Rule 23(a)(2) speaks of 'questions' in the plural, we have said that there need only be one question common to the class." *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998) (qualifying this finding by

---

[7] According to Mr. Johnston, average compensation for an owner-operator is $36,000 per year.

[8] Mr. Johnston testified that owner-operators typically spend between 250 and 300 nights away from home each year.

stating: "What we are looking for is a common issue the resolution of which will advance the litigation."). To meet the commonality requirement, therefore, "there need be only a single issue common to all members of the class." *In re Am. Med. Sys.*, 75 F.3d at 1080 (quotation omitted). The *American Medical Systems* Court reasoned that "[t]he commonality requirement is interdependent with the impracticability of joinder requirement, and the tests together form the underlying conceptual basis supporting class actions." *Id.* (quotation omitted).

According to the Plaintiffs, the common questions of law here include: "(1) whether the 'maintenance funds' collected and retained by Defendants qualify as 'escrow funds' under the federal leasing regulations . . . , and (2) whether D&A's equipment lease/purchase agreement . . . is subject to the escrow collection and handling provisions under which Arctic is directly regulated." The Defendants respond that the Plaintiffs cannot identify a common issue that would materially advance the litigation on behalf of all putative class members, as the Defendants' counterclaims would require 2,000 individuals to testify in order to resolve the question of whether each unnamed class member breached his or her Lease Agreement and/or Lease/Purchase Option.

In the case of *American Medical Systems,* the Sixth Circuit denied the plaintiff's motion for class certification in a products liability, penile prostheses implantation class where, in considering the commonality element, the Court found that "the plaintiffs received different models and have different complaints regarding each of those models." *Id.* at 1081. The facts in *American Medical Systems* exposed the problems inherent in certifying the class proposed there: at least ten different models existed; the plaintiffs experienced different problems with the prostheses, and an expert testified that there was no common cause for the implant malfunctioning. *Id.*

In contrast to the plaintiffs in *American Medical Systems*, who had ten different prostheses models implanted by different doctors, the Plaintiffs and proposed class members in this case all signed the identical Lease Agreements and Lease/Purchase Options with the Defendants. In addition, the plaintiffs in *American Medical Systems* experienced different problems related to the malfunction of the various prostheses, while here the owner-operators all brought the same complaint with regard to the agreements and are seeking recovery under the same legal theory.

Following the Sixth Circuit's decision in *Sprague*, all that is needed to satisfy commonality is *one* question common to the class. This element is easily met by the owner-operator Plaintiffs in this case. The common question of law, which the Court resolved in its August 30, 2001 Opinion and Order granting the Plaintiffs' Motion for Partial Summary Judgment, is whether the Agreements violated 49 C.F.R. § 376.21(k). All that remains for resolution of the Plaintiffs' case is the question of damages.[9]

D. Typicality

A named-plaintiff's claim is considered to be typical "if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *In re Am. Med. Sys.*, 75 F.3d at 1082 (quotation omitted). The requirement has been characterized as "the representative's interests [being] aligned with those of the represented group, and in pursuing his own claims, the named plaintiff will also advance the interests of the class members." *id.* (citation omitted); or, "as goes the claim of the named plaintiff, so go the claims of the class." *Stout v. J.D. Byrider*, 228 F.3d 709,

[9]The impact of the Defendants' counterclaims will be discussed in Part III.F, addressing the requirements of Rule 23(b)(3).

717 (6th Cir. 2000) (quotation omitted). In *Ingram v. Joe Conrad Chevrolet, Inc.*, 90 F.R.D. 129 (E.D. Ky. 1981), the court found: "Variations in fact patterns, defenses, or damages are not necessarily fatal to a motion for class certification. . . . A counterclaim against the class representatives and some, but not all, class members need not destroy typicality." *Id.* at 131.

The Plaintiffs argue that typicality has been met as "the claims of the named and unnamed Plaintiffs dovetail precisely on both legal and factual grounds." The Defendants respond that OOIDA is not a party to a lease or any other agreement with D & A or Arctic and paid no maintenance fees. As OOIDA cannot obtain a judgment for return of its maintenance fees, the Defendants claim that it cannot do so on behalf of the purported class, and is therefore not a typical representative of the class.

The Defendants essentially are arguing that OOIDA does not have standing to bring suit on behalf of the owner-operators. Although the Defendants have not brought a motion to dismiss formally, the Court will address whether OOIDA has standing to proceed. It is well settled:

> [An] association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Int'l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. Brock, 477 U.S. 274, 282 (1986) (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)). The final prong of the test is not a constitutional prerequisite, rather is a "prudential" consideration that serves to promote "adversarial intensity," or "administrative convenience and efficiency." *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 555-57 (1996).

Under the first prong of the test for associational standing, an individual has standing to bring suit if she has suffered an injury in fact, that is, "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 486 U.S. 737, 751 (1984). Here, the individual owner-operators litigants have suffered an injury in fact at the hands of Arctic and D & A. As this Court found in granting summary judgment to the Plaintiffs, it was a violation of 49 C.F.R. § 376.12(k) not to return to the owner-operators their escrow funds due. The relief requested is monetary, and would redress the owner-operators' financial injuries. The individual Plaintiffs, therefore, have standing to sue in their own right.

As for the second prong, the overlap of interests of OOIDA's membership and the unnamed class members, is reflected in Mr. Johnston's testimony that OOIDA was "formed to give professional truckers a voice in the matters that affect them, both on the state and federal level and in the regulatory agencies and in the legislatures, both state and federal." The Court concludes that this suit is an embodiment of the purpose behind the formation of OOIDA. As the first two elements of the *Hunt* test have been met, OOIDA has established standing to bring suit on behalf of the owner-operators who signed Agreements with Arctic and D & A.

Finally, as for the prudential considerations of the third prong, although OOIDA, unlike the owner-operator class members, is not entitled to monetary relief, there is no question in the Court's mind that adversarial intensity has been demonstrated by OOIDA. Currently, on behalf of various owner-operators, OOIDA is involved in sixteen lawsuits across the country. In addition, Mr. Johnston testified that OOIDA would be willing to continue prosecuting this case even if faced with the Defendants' counterclaims. The Court therefore concludes that OOIDA and the named Plaintiffs have standing to bring suit.

Typicality therefore is met by OOIDA and the named Plaintiffs. The named Plaintiffs' claims and the proposed class's claims are all focused on the same legal issue: whether the Lease Agreement and/or Lease Purchase Option violated § 376.21(k) of the Motor Carriers Act. The claims arise from the same practice of requiring owner-operators to sign Agreements with both Arctic and D & A. Finally, proof of violation of the Regulation will prove that violation for the entire class.

E. Fair and Adequate Representation

The Sixth Circuit has outlined two criteria to consider in determining whether "representation of the class would be adequate: 1) The representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Senter*, 532 F.2d at 524-25.

The Plaintiffs contend that the class members share common interests with all of the proposed class members, and that OOIDA shares a common interest with the class members as to qualify as a class representative under Rule 23(a)(4). In response, the Defendants argue that because of their counterclaims, the named Plaintiffs and class counsel are faced with potential conflicts of interest that render them incapable of adequately representing the class. The conflict, according to the Defendants, is that some Plaintiffs will end up owing the Defendants money while others will end up receiving money from the Defendants, resulting in conflicting financial interests of the class members and a potential source of conflict for Plaintiffs' counsel.

Here, the representative Plaintiffs and OOIDA have common interests with the unnamed class members since all are suing to determine whether the Defendants have violated § 376.12(k) by not returning escrow funds due. According to the testimony of Mr. Johnston, OOIDA was

created to provide a voice for owner-operators through both litigation and legislation. And although OOIDA is not entitled to monetary recovery, the named Plaintiffs are. It is unlikely that an attorney, to protect the interest of a class member who may owe D & A and/or Arctic money, would sabotage the litigation for the rest of the class.[10] As discussed in the 23(b)(3) analysis *infra*, variations in each class member's individual damage awards does not destroy an otherwise valid class.

Accordingly, the Plaintiffs have met the Rule 23(a) prerequisites for certification of 23(a). The sole remaining issue is whether certification is proper under Rule 23(b)(3).

F. Rule 23(b)(3)

Under Rule 23(b)(3), certification is proper if:

> [T]he court finds that the questions of law or fact common to the members of the class predominate over any question affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the articular forum; (D) the difficulties likely to be encountered in the management of a class action.

FED. R. CIV. P. 23(b)(3). The law of this Circuit is that "[s]ubdivision (b)(3) parallels subdivision (a)(2) in that both require that common questions exist, but subdivision (b)(3) contains the more stringent requirement that common issues 'predominate' over individual issues." *In re Am. Med. Sys.*, 75 F.3d at 1084 (citation omitted).

---

[10] To reach this conclusion, the Court would have to assume that the Plaintiffs' attorneys will violate their ethical obligations.

In *Sterling v. Velsicol Chemical Corp.*, 855 F.2d 1188 (6th Cir. 1988), the circuit court made an important observation in discussing a proposed mass tort class:

> [T]he factual and legal issues of a defendant's liability do not differ dramatically from one plaintiff to the next. No matter how individualized the issues of damages may be, these issues may be reserved for individual treatment with the question of liability tried as a class action. Consequently, the mere fact that questions of the defendant's liability have been resolved does not dictate the conclusion that a class action is impermissible.

Id. at 1196-97. Several other courts have also concluded that variations in damage awards or defenses will not defeat class certification. *See, e.g., Int'l Woodworkers of Am. v. Chesapeake Bay Plywood Corp.*, 659 F.2d 1259, 1269 (4th Cir. 1981) (finding that "[m]ere speculation as to conflicts that might develop at the remedy stage is insufficient to support denial of initial class certification."); *Ingram v. Joe Conrad Chevrolet, Inc.*, 90 F.R.D. 129, 131 (E.D. Ky. 1981) (same).

The Plaintiffs here argue that the common questions regarding the Defendants' unlawful retention of the escrow funds are sufficient to satisfy the "predominating prong" of 23(b)(3). In response, the Defendants contend that the individual factual issues and damage awards would result in thousands of mini-trials rendering the economies of scale that should be achieved by a class action null. The Defendants hypothesize that this Court would be trapped in the trial of the individual claims for years.[11]

In resolving this prong of the test, the Sixth Circuit's *Sterling* decision is important for two reasons. First, the case dictates that even with the presence of variations in damage awards,

---

[11]In their papers before the Court on the class certification issue, both the Plaintiffs and Defendants discuss whether the Defendants' counterclaims are compulsory or permissive. In the Opinion issued on August 2, 2001, the Court found the Defendants' counterclaims brought against Roberts, Wiese and Harp to be compulsory.

as could result here, a class action is still appropriate. Second, even though Arctic and D & A's liability under § 376.12(k) has been established here, *Sterling* makes it clear that a class action is still permissible.

As highlighted by the hearing on this matter, the primary issue to be reached by this Court in deciding the Plaintiffs' Motion for Class Certification is whether, under Rule 24(b)(3), the Defendants' counterclaims can destroy an otherwise cognizable class.[12] The Court concludes that, in the matter *sub judice*, the Defendants' counterclaims cannot.

In this case, the Defendants have brought counterclaims against the named Plaintiffs, Wiese, Roberts and Harp, but not against the unnamed class members. In addressing the requirements for a compulsory counterclaim, Rule 13 of the Federal Rules of Civil Procedure provides: "A pleadings shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party . . . ." FED. R. CIV. P. 13(a). The unnamed class members are not an "opposing party" under Rule 13(a), and therefore "[a] court may properly conclude that absent class members are not opposing or litigating adversaries for purposes of Rule 13, and therefore Rule 13 is inapplicable in the class context." 1 HERBERT B. NEWBERG AND ALBA CONTE, NEWBURG ON CLASS ACTIONS §4.34, at 4-146 to 4-147 (3d ed. 1992); *see also Johns v. Rozet*, 141 F.R.D. 211, 219 n.7 (D.D.C. 1992).

Here, the Defendants have brought counterclaims against the named Plaintiffs, but have not brought a counterclaim against the entire class; nor have the Defendants sought to certify a

---

[12] Generally, in the small number of cases addressing the issue, courts have found that it is proper to consider the defendant's counterclaims in deciding a motion to certify a class. *See, e.g., Heaven v. Trust Co. Bank*, 118 F.3d 735, 738 (11th Cir. 1997); *Roper v. Consurve, Inc.*, 578 F.2d 1106, 1116 (5th Cir. 1978), *aff'd*, 445 U.S. 326 (1980); *Morris v. Transouth Fin. Corp.*, 175 F.R.D. 694, 700 (M.D. Ala. 1997).

defendant class. It is true that this Court has ruled that the counterclaims against the named Plaintiffs are compulsory, but as the unnamed class members are not "opposing parties," this Court's prior holding does not extend to them. *See Frederick County Fruit Growers Assoc., Inc. v. Dole*, 709 F. Supp. 242, 245-46 (D.D.C. 1989) (declining to create a defendant class so that a counterclaim could be asserted against all of the plaintiff class members); *see also Johns*, 141 F.R.D. 218-19 (finding that the defendant's statement of "possible liability does not join the unnamed members of the proposed class as counterclaim plaintiffs.").

Even if this Court were to conclude that the Defendants could bring compulsory counterclaims against the entire class, by either bringing counterclaims against each individual class member or by certifying a defendant class, certification of the Plaintiffs' proposed class at this time is still prudent. If necessary, this Court could create a subclass who would be subject to the Defendant's counterclaims. *See Heaven v. Trust Co. Bank*, 118 F.3d 735 (11th Cir. 1997).[13] The circuit court in *Heaven* noted that "[t]he district court has no *sua sponte* obligation to subclassify; it is the plaintiff's burden to designate an appropriate class" with the caveat that "[w]here the named plaintiff has no real obligation to request certification of subclasses after his

---

[13]The *Heaven* court found:

> The court below considered the nature of SunTrust's counterclaims and determined that individual lessee counterclaim defendants would be compelled to come forward with individual defenses. This would require the court to engage in multiple separate factual determinations, a proper factor for consideration under Rule 23(b)(3)(D). The court also determined that the interest of some individual class members in controlling their own case would be compromised. Their exposure as counterclaim defendants could well exceed the amount they might recover for statutory penalties as class members. The statutory claims asserted by the class would be against the interests of these individual class members. This is a proper factor for consideration under Rule 23(b)(3)(A).

118 F.3d 735 at 738.

proposed class is rejected, an obligation arises for the district court to consider subclassification." *Id.*

The Fifth Circuit has followed the same line of thought:

> If the court should conclude at any time that the entire group of counter-claims makes the plaintiffs' claims on behalf of such persons unmanageable, the court has the continuing authority under Rule 23 to issue a supplemental order excluding counter-claim defendants from the plaintiff class or separating and severing the class into two different classes, one with counter-claims and one without counter-claims.

Roper v. Consurve, Inc., 578 F.2d 1106, 1116 (5th Cir. 1978), *aff'd*, 445 U.S. 326 (1980).[14]

Although this Court concludes that the unnamed class members are not "opposing part[ies]" as contemplated by Rule 13(a), assuming *arguendo* that the unnamed class members are opposing parties, and also assuming that the Defendants are able to bring counterclaims against all of the unnamed class members, this Court could, if necessary, certify a subclass of class members who are subject to the Defendants' counterclaims. At the present time, however, certification of the Plaintiffs' class is proper, and certification of a subclass is unnecessary.

By demonstrating that the common issue of whether § 376.12(k) was violated by the Defendants predominates over the four Counterclaims brought against the three named Plaintiffs, as well as over any issue of damages, the Plaintiffs have satisfied the predominance requirement of Rule 23(b)(3).

Finally, the Court will address the remaining requirements of Rule 23(b)(3). With respect to 23(b)(3)(A), the Court concludes, based on the testimony of Mr. Johnston, that individual class members do not have the resources to control, let along bring, separate actions against the Defendants. Regarding 23(b)(3)(B), the Court is unaware of any other litigation pending in this

[14] The Fifth Circuit split into the Fifth and Eleventh Circuits on October 1, 1981.

matter. Moreover, this forum, under 23(b)(3)(C), is a desirable location since Ohio was the situs of the agreements and is where the Defendants are located. And, the Plaintiffs satisfy 23(b)(3)(D) inasmuch as management of the class's claims poses no significant difficulties.

The Court therefore concludes that the Plaintiffs have satisfied both Rule 23(a) and Rule 23(b)(3).

IV. CONCLUSION

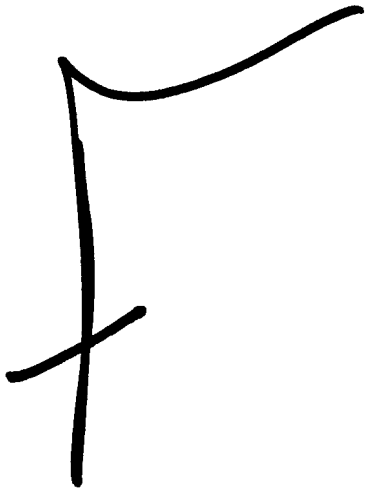
As the Plaintiffs have met all four requirements of Rule 23(a) and (b)(3), Renewed Motion for Certification of Class is **GRANTED,** and the following class is hereby certified:

> All independent truck owner-operators who have (1) entered agreements with Defendant D & A Associates, Ltd. which purport to lease, with the option to purchase, trucking equipment under the terms of D & A's equipment lease/purchase agreement, and (2) leased that equipment to Defendant Arctic Express, Inc. under the terms of Arctic's federally-regulated motor carrier lease agreement.

IT IS SO ORDERED.

ALGENON L. MARBLEY
UNITED STATES DISTRICT COURT

Dated: September 4, 2001



IN THE 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 similarly situated., Plaintiffs, vs. [redacted] Defendant.	No. 3-01-CV-80179 **ORDER GRANTING CLASS CERTIFICATION**

On December 18, 2002, the court held hearing on plaintiffs' resisted motion to certify the class. The court commends counsel for presenting thorough factual and legal materials and forceful arguments on each issue. The court concluded that it should defer ruling on the motion until the parties had presented final papers for and against the motion. Those papers have now been filed, and the matter is deemed submitted for ruling.

I. Background

Plaintiffs are Owner-Operator Independent Drivers Association, Inc. (OOIDA), William Meck (Meck) and Kenneth Hinzman (Hinzman). They bring this action on behalf of themselves and all others similarly situated. OOIDA brings this action in its representative capacity of its owner-operator members. It is a not-for-profit agency incorporated and located in Missouri, and has approximately 86,000 members nationwide. Meck and Hinzman are citizens of Florida.

Defendant is Heartland Express, Inc. of Iowa (Heartland). Heartland transports property in equipment leased from independent truckers (owner-operators), including formerly Meck and Hinzman. Authorized motor carriers like Heartland are required by federal law and regulations to have a written lease meeting the statutory requirements if they transport in equipment they do not own. These regulations are sometimes referred to as truth in leasing regulations.

Plaintiffs contend that Defendant's leases fail to contain required provisions under 49 C.F.R. § 376.12. Specifically, plaintiffs allege that defendant has charged back insurance coverage to owner-operators; leases are required to specify that such purchase of insurance is not a requirement of entering into the lease. Plaintiffs further allege that the charge-back was higher than the insurance premium; that defendant charges more for fuel than it pays out to fuel suppliers; and that the leases do not contain provisions as to how fuel payment is calculated. Plaintiffs filed this lawsuit seeking a mixture of equitable and monetary relief under the regulatory enforcement provisions of 49 U.S.C. § 14704.

Plaintiffs seek to represent a class consisting of all owner-operators in the United States who, after October 1997, have leases or have entered into leases with Heartland. Defendant contends certification is not appropriate for reasons discussed below.

Plaintiffs' motion seeks certification of a class in accordance with Federal Rules of Civil Procedure 23(a) and either 23(b)(2) or 23(b)(3) (this order will refer to individual rules of the Federal Rules of Civil Procedure as "Rule"). The burden is on plaintiffs to demonstrate that the requirements for certification under these Rules have been met. Smith v. Merchants & Famous Bank of West Helena, 574 F.2d 982 (8th Cir. 1978); Walker v. World Tire Corp., 563 F.2d 918, 921 (8th Cir. 1977).

Before certifying a class, the court must engage in "rigorous analysis" of plaintiffs' ability to meet the requirements of Rule 23. Gen. Tel. Co. v. Falcon, 457 U.S. 147, 161 (1982). However, courts have no authority "to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action," Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177-178, 94 S.Ct. 2140, 2152-2153 (1974), unless it is necessary to make a meaningful determination of class certification issues. Coopers & Lybrand v. Livesay, 437 U.S. 463, 469, 98 S.Ct. 2454, 2458 (1978).

Plaintiffs and defendant have presented considerable evidentiary support for and against the motion; the court concludes that on balance the interests of justice are better served by granting class certification.

II. Analysis

A. Federal Rule of Civil Procedure 23(a).

Plaintiffs must demonstrate that the persons they wish to represent as a class are "similarly situated," the proposed class is sufficiently numerous, the case presents common questions of fact and law, the claims of class representatives are typical of the class, and plaintiffs are adequate representatives. Fed. R. Civ. P. 23(a). The court finds that plaintiffs have carried their burden as to each element of Rule 23(a).

There is no dispute that there is numerosity. Both parties agree there are perhaps up to 600 plaintiffs in this suit. The court finds that numerosity is satisfied.

In order to meet the commonality test, there must be common questions of law or fact among the members of the class. Paxton v. Union Natl. Bank, 688 F.2d 552, 561(8th Cir. 1982). Commonality is not required on every question raised in a class action, but is satisfied when the legal

question linking the class members is substantially related to the resolution of the litigation. Id.; DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1174 (1995). In their Amended Complaint, plaintiffs allege defendant has violated one federal regulation. Defendant testified in the evidentiary hearing on class certification that there was no negotiation during the relevant period, such that all leases were of the same form. [redacted]

The typicality rule requires that the claims of the named plaintiffs be typical of the class. Paxton, 688 F.2d at 561. The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiffs. Id. at 562; DeBoer, 64 F.3d at 1174. The court finds that a sufficient relationship exists between the alleged injury to the named plaintiffs and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct. See In re American Medical Systems, Inc. 75 F.3d 1069 (6th Cir. 1996).

Adequacy of representation means that the representatives will fairly and adequately protect the interest of the class. Beckmann v. CBS, Inc., 192 F.R.D. 608, 614 (D. Minn. 2000). Defendants argue that Meck and Hinzman cannot adequately represent the class because their individual claims differ from those of the proposed class members, and that Meck and Hinzman have an "ax to grind with Heartland." The court finds this argument unpersuasive. While they may or may not have other claims not now pleaded in the Amended Complaint, Meck and Hinzman are seeking the same declaratory and monetary relief as the potential plaintiffs would seek; these claims do not create a conflict for the class representatives. The court concludes that the named plaintiffs will adequately represent their class. The court further determines from this record that counsel for

plaintiffs will provide adequate representation of the class.

B. Rule 23(b).

Plaintiffs argue that certification of the class is proper under Fed.R.Civ.P. 23(b)(2) or 23(b)(3). Thus, after meeting the requirements of Rule 23(a), plaintiffs must also show either that they are entitled to equitable relief and that monetary damages do not predominate, Fed. R. Civ. P. 23(b)(2), or that common questions predominate over individual questions, and a class action is the superior method for adjudicating the controversy. Fed. R. Civ. P. 23(b)(3).

1. Rule 23(b)(2).

Defendants argue that certification under 23(b)(2) is not appropriate because this lawsuit is really about monetary damages and not injunctive relief. Rule 23(b)(2) class actions relate to injunctive or declaratory relief to the class as a whole, requiring a unity of purpose that is generally not available if predominant relief is monetary damages. Rice v. City of Philadelphia, 66 F.R.D. 17 (E.D. Pa. 1974); Robidoux v. Celani, 987 F.2d 931 (2d Cir. 1993). Monetary relief predominates unless it is incidental to requested injunctive or declaratory relief. Allison v. Citgo Petroleum Corp., 151 F.3d 402, 415 (5th Cir. 1998). Incidental means that damages flow directly from a defendant's liability to the class as a *whole* on the claims forming the basis of the injunctive relief. Id. When monetary relief being sought is less of a group remedy, like incidental or statutory damages, and instead depends more on the varying circumstances and merits of each potential class member's case, then the monetary relief "predominates" and certification under Rule 23(b)(2) is inappropriate. Id. However, "if the Rule 23(a) prerequisites have been met and injunctive or declaratory relief has been requested, the action usually should be allowed to proceed under subdivision (b)(2)." DeBoer 64 F.3d at 1175.

In their Amended Complaint, plaintiffs seek fourteen different items of relief, with approximately the first nine ranging from declaratory relief of legal violations, injunctions, and an accounting. Plaintiffs also seek restitution or disgorgement of sums allegedly unlawfully withheld, the creation of an escrow account, and the award of attorneys' fees. These equitable requests do not appear pretextual to monetary relief.

Defendant suggests that 23(b)(2) would be inappropriate because Meck and Hinzman no longer work for defendant, therefore they would not benefit from equitable relief. The court disagrees. Where class claims are inherently transitory such as here, "the termination of a class representative's claim does not moot the claims of the unnamed members of the class." Gerstein v. Pugh, 420 U.S. 103, 110 n. 11, 95 S.Ct. 854, 861 n. 11, 43 L.Ed.2d 54 (1975); Sosna v. Iowa, 419 U.S. 393, 401-02, 95 S.Ct. 553, 558, 42 L.Ed.2d 532 (1975). Even where the class is not certified until after the claims of the individual class representatives have become moot, certification may be deemed to relate back to the filing of the complaint in order to avoid mooting the entire controversy. See, e.g., County of Riverside v. McLaughlin, 500 U.S. 44, 50, 111 S.Ct. 1661, 1667 (1991); Sosna v. Iowa, 419 U.S. at 402 n. 11, 95 S.Ct. at 559 n. 11. Robidoux 987 F.2d at 938-939.

A hybrid Rule 23(b) class has been found to be an appropriate vehicle for class actions such as these facts present. See, e.g., Beckman, 192 F.R.D. at 615. In a hybrid case, liability can be determined under Rule 23(b)(2) procedures, and damages under Rule 23(b)(3). Id. The court finds that for purposes of determining liability, class certification would be appropriate under Rule 23(b)(2).

2. Rule 23(b)(3).

Certification under Rule 23(b)(3) requires greater precision in the definition of a class.

Rice v. City of Philadelphia, 66 F.R.D. 17 (E.D. Pa. 1974). This is so because Rule 23(b)(3) requires that questions of law and fact are common and predominant, and that a class action is a superior vehicle.

Defendants argue that individual questions of fact predominate and that plaintiffs do not meet the more stringent test of "commonality" required under Rule 23(a). However, the court finds that common questions of law and fact predominate. Plaintiffs seek relief based on alleged violation of one particular federal law. If liability is found, it will apply to all class members. Further, as defendant's CFO, John Cosaert, testified at the evidentiary hearing of December 18, 2002, all owner-operators were asked to sign the same form lease. There was no negotiation of terms. Thus, the court is satisfied that common questions of fact and law do predominate.

The second prong of Rule 23(b)(3) is whether class action is a superior vehicle to other forms of remedy for the potential plaintiffs. The federal rules set out four factors for which to analyze this question:

(1) The interest of members of the class individually controlling the prosecution or defense of separate actions. Fed. R. Civ. P. 23(b)(3)(A). The monetary interests of any one plaintiff are too small for each potential plaintiff to go forward on their own. Although the regulations allow for the award of attorney fees, according to OOIDA testimony, most of the potential plaintiffs earn a net annual salary of around $35,000 and are on the road for most of the year. The court agrees that it is doubtful that the majority of these owner-operators would have the time or inclination to seek the relief to which they are allegedly entitled.

(2) The extent and nature of any litigation already commenced by or against members of the class. Fed. R. Civ. P. 23(b)(3)(B). There is no evidence of other lawsuits.

(3) The desirability/undesirability of concentrating litigation in a particular forum. Fed. R. Civ. P. 23(b)(3)(C). Multiple suits might very well create inconsistent judgments. Thus, concentrating the issues in this forum is desirable.

(4) The difficulties in management of the class. Fed. R. Civ. P. 23(b)(3)(D). Plaintiffs' counsel appear to be capable of managing the class.

Defendants contend there are two other methods by which plaintiffs can seek relief that are superior to this class action lawsuit: filing a complaint with the Surface Transportation Board and individual actions. The court does not agree. First, determination of superiority is made by evaluating the case using the four factors set out in the rules. Rule 23(b)(3)(A)-(D). Second, as detailed above, 600 individual lawsuits would not be superior to this single class action.

Thus, as to the question of damages, the court finds that Rule 23(b)(3) shall be the appropriate vehicle.

III. Summary

Plaintiffs' motion for class certification is granted. Federal Rule of Civil Procedure 23(c)(4)(A) and (B) allow the court to narrow the requested class as to certain issues and into subclasses, so as to avoid problems of an over-broad class definition. Rice, 66 F.R.D. 17. The court certifies three subclasses as appropriate for purposes of further proceedings in this case the persons that meet the following requirements:

> Subclass A: All owner-operators in the United States who, after October 1, 1997 and through the pendency of this proceeding, are or have entered into leases with Heartland, or its authorized agents or business affiliates, that are subject to federal regulations contained in Part 376, Code of Federal Regulations, limited to those owner-operators who were charged for bobtail or non-trucking liability insurance.

Subclass B: All owner-operators in the United States who, after October 1, 1997 and through the pendency of this proceeding, are or have entered into leases with Heartland, or its authorized agents or business affiliates, that are subject to federal regulations contained in Part 376, Code of Federal Regulations, limited to those owner-operators who were charged for the use of the Comdata card.

Subclass C: All owner-operators in the United States who, after October 1, 1997 and through the pendency of this proceeding, are or have entered into leases with Heartland, or its authorized agents or business affiliates, that are subject to federal regulations contained in Part 376, Code of Federal Regulations, limited to those owner-operators who purchased fuel at Heartland terminals.

The court designates OOIDA, Meck, and Hinzman as class representatives, and Paul D. Cullen, Sr., David A. Cohen, Paul D. Cullen, Jr., and Kevin M. Reynolds as class counsel.

Further, in order to avoid the problems raised by defendants that determination of damages will result in a series of mini-trials, the court proposes to bifurcate this proceeding into two parts: the first phase will decide the liability issues; the second, damages issues.

Defendant's motion for partial summary judgment and the question of bifurcation here proposed will be heard commencing at 9:00 a.m. (CDT) on January 30, 2003. Thereafter, the court may or may not require amendment of the sub-class definitions. The court also retains the authority to modify or decertify the sub-classes or designate further sub-classes as the case progresses. General Tel. co. of Southwest v. Falcon, 457 U.S. 147, 160 (1982); Fed. R. Civ. P. 23(c)(1).

IT IS SO ORDERED.

Dated this 23rd day of January, 2003.

Charles R Wolle

CHARLES R. WOLLE, JUDGE
U.S. DISTRICT COURT

FAX — — CASTELLE

To: DAVID A COHEN

Company : CULLEN LAW FIRM

Fax Number : 2029448611

Phone Number :

From : Clerk, Southern District of Iowa

Fax Number : 515-284-6418

Phone Number 515-284-6248

Time Sent : Thursday, Jan 23, 2003 12:53PM

Pages : 10

Description : 3:01-CV-80179, DOC: 60, QUE ID: 87574

Case Number: 3:01-cv-80179 Document Number: 60

The Southern District of Iowa is now accepting electronic filings in all cases. For information on enrollment and training call 1-888-923-3797 toll free.

-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.	)	

ORDER

Currently pending before the Court is Defendants' Motion for Summary Judgment (Doc. # 230), Plaintiffs' Motion for Summary Judgment (Doc. # 232), Defendants' Motion to Strike the Declaration of Gary Doss and to Exclude His Testimony At Trial (Doc. # 255), Defendants' Motion to Strike Declaration of David Wainstock and to Exclude His Testimony At Trial (Doc. # 261), Plaintiffs' Motion to Dismiss for Lack of Jurisdiction Counterclaims of Ledar and Hawthorne Leasing, Inc. Against Absent Class Members (Doc. # 267) and Plaintiffs' Motion to Dismiss Counterclaims of Ledar Transport, Inc. (Doc. # 269).

I. BACKGROUND

Defendant Ledar Transport, Inc. ("Ledar") operates as a federally regulated motor carrier providing transportation of property in interstate commerce under authority granted by the Department of Transportation. In order to transport this freight, Ledar leases equipment from independent owner-operator truckers who are "owners" of

the trucks within the meaning of 49 C.F.R. § 376.2(d). As a federally regulated motor carrier, Ledar may perform transportation in equipment it does not own only if the equipment is covered by a written lease agreement meeting the requirements contained in 49 C.F.R. Part 376, Section 376.12.

Defendants Ledar and Hawthorn Leasing, Inc. a/k/a Hawthorne Leasing, Inc. (hereafter "Hawthorne"), Carl E. Higgs and Scott L. Higgs have also entered into "Lease Purchase Agreements" with many of these owner-operators. Under these agreements, the owner-operators lease a truck tractor unit with an option to purchase at the end of a specified term. The owner-operators then enter into "Standard Lease Agreements" whereby the owner-operators lease the truck and their driving services back to Ledar.

Plaintiffs allege that Ledar's leases violate the requirements of 49 C.F.R. § 376 by having terms which conflict with the regulations; by failing to set forth certain terms required by the regulations and also by failing to include certain terms required by virtue of Ledar's business practices. Plaintiffs allege that this arrangement and the interrelation between the terms of the Lease-Purchase Agreement and the Standard Lease Agreement combine to create violations of the federal leasing regulations. In their First Amended Complaint, plaintiffs seek "a declaratory judgment that the Standard Lease Agreement does not comply with the requirements of Part 376; preliminary and permanent injunctive relief restraining Ledar from performing DOT-authorized transportation in equipment it does not own unless and until written lease agreements meeting the requirements of Part 376 are executed with all owner-operators leasing such equipment to Ledar; restitution of owner-operator lessors' escrow funds held by Defendants in violation of 49 C.F.R. § 376.12(k); and damages for Defendants' violation

of 49 C.F.R. Part 376 and the Standard Lease Agreement. Plaintiffs also seek recovery of costs and attorneys' fees as provided under 49 U.S.C. § 14704(e).

Plaintiffs originally filed suit in this Court against Ledar Transport Inc. on March 17, 2000. On April 5, 2000, plaintiff filed a Motion for a Preliminary Injunction. A hearing on the motion for preliminary injunction was held on September 27, 2000 and on November 3, 2000 this Court issued an Order granting plaintiff's Motion for a Preliminary Injunction. In the Order granting the Motion for Preliminary Injunction, the Court found that "there is no serious dispute that Ledar's Lease Agreement violates a number of regulatory requirements, or fails to include provisions in the Agreement which are required by the regulations." Accordingly, the Court enjoined Ledar from performing any transportation in equipment it did not own until it executed a written lease agreement approved by this Court as conforming to the requirements contained in 49 C.F.R. § 376.12. The Court also held that for each equipment lessor[1] who was subject to any other lease, lease-purchase or sales agreement, could at their option rescind their agreement free of any penalty or from any further obligation. (November 3, 2000 Order granting Motion for Preliminary Injunction). On November 14, 2000, the Court clarified its previous Order and stated that "[t]he equipment lessors also have the option of continuing to lease equipment from Ledar, making appropriate payments, and may at their option continue working for Ledar or may use the leased trucks in service for other carriers." (November 15, 2002 Order). On January 18, 2001, the Court issued an Order

[1] For purposes of the Standard Lease Agreements, the lessors are the owner-operators and the lessee is Ledar. For purposes of the Lease-Purchase Agreements, the lessors are either Ledar or Hawthorn Leasing or Scott Higgs and the lessees are the owner-operators.

approving a new lease and found that the revised lease complied with the provisions of 49 C.F.R. § 376.12. On May 7, 2001, plaintiffs filed a First Amended Complaint, adding as defendants, Hawthorn Leasing, Inc., Carl E. Higgs, Alice Norma Higgs and Scott L. Higgs. On March 31, 2002, the Court granted plaintiffs' Motion for Class Certification.

II. STANDARD

A moving party is entitled to summary judgment on a claim only if there is a showing that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). "[T]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the moving party meets this requirement, the burden shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. 242, 248 (1986). In Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986), the Court emphasized that the party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts" in order to establish a genuine issue of fact sufficient to warrant trial. In reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party, giving that party the benefit of all inferences that may be reasonably drawn from the evidence. Matsushia, 475 U.S. 574, 588; Tyler v. Harper, 744 F.2d 653, 655 (8th Cir. 1984), cert. denied, 470 U.S. 1057 (1985).

III. DISCUSSION

A. Defendants' Motion for Summary Judgment

Defendant moves for summary judgment on the following grounds: 1) Plaintiff's Claims Against Hawthorne Leasing, Inc., Carl Higgs, Scott Higgs and Norma Higgs Fail As a Matter of Law and 2) Plaintiffs' Cannot Base Their Damage Claims of Violations Outside the Applicable Two-Year Limitations Period. Defendants have also raised the issue of what the proper legal standard is analyzing plaintiffs' claims. Defendants argue that the correct standard is "substantial compliance" rather than a "strict" or "literal" compliance requirement. Because plaintiffs have addressed some of the same issues in their Motion for Summary Judgment, the Court will discuss those arguments where they overlap.

1. "Substantial Compliance" vs. " Strict Compliance"

Defendants argue that in determining whether it complied with the Truth in Leasing Regulations, the Court should apply the standard of "substantial compliance." Defendants argue that this standard has been applied by the Interstate Commerce Commission in Dart Transit Company - Petition for Declaratory Order, 91 I.C.C. 701, 702, 708, 1993 WL 220182 (1993), Renteria v. K&R Transportation, Inc., No. 98CV-290 (C.D.Cal. June 22, 2001) and Strickland v. Trucker's Express, Inc., No. CV-95-62-M-LBE (D.Mont. Feb. 3, 2003). In Renteria, the Court stated:

> Reviewing the authorities, however, the Court cannot conclude that the standard is one of literal compliance. Whatever, the facts may have been that prompted the court to grant the preliminary injunction in [OOIDA v.] Ledar, the case cannot stand for the proposition that substantial compliance with the Regulations should never be considered at all either in

> finding liability or in granting or denying a remedy for non-compliant conduct by way of injunction or restitution. A rule that anything less than literal compliance requires that automatic granting of relief would, in many cases, lead to a wholly unreasonable and even unjust result.

Id. at 8-9. In Renteria, the Court found that the defendants had substantially complied with the regulations finding that "the defendants took all practical steps both to apprise the plaintiffs of the required information and to make available to the plaintiffs the details of the method defendants used in making their calculations." Id. at 13. Similarly, in Strickland, the Court stated that it agreed with the analysis in Renteria that the appropriate standard to apply was that of "substantial compliance." In that case, the Court found that the defendant had substantially complied with 49 C.F.R. § 376.12(d) because plaintiffs were told exactly how much they would get paid for each load at the time they were contacted about the load and they received their pay in the amount they were told. However, with regard to § 376.12(g) relating to an insurance deduction, the Court found that the defendant had not substantially complied with this provision.

Plaintiffs argue that in this Court's November 3, 2000, Order granting the motion for Preliminary Injunction, the Court found that numerous provisions of Ledar's Standard Lease Agreement violated the Truth-in-Leasing regulations and are therefore illegal. Thus, plaintiffs argue that the Court should rely on its previous preliminary injunction findings and enter summary judgment in their favor on these issues. Plaintiffs also argue that defendants are liable for numerous other business practices.

Defendants argue that the Court is not bound by the preliminary injunction findings and that the concept of "substantial compliance" meets the purpose and spirit of the regulations. Defendants assert that the Court should view the totality of the

circumstances when making a determination as to whether defendants violated the regulations. Additionally, defendants argue that there are genuine issues of material fact which are in dispute as to whether the leases were in substantial compliance with the regulations.

In reply, plaintiffs argue that the doctrine of substantial compliance has no application in the context of a clear statutory prerequisite and that the regulations clearly require that the rights and obligations and disclosures be set out in the written lease. Even if the Court were to adopt the substantial compliance test, plaintiffs argue that Ledar has failed to introduce evidence that it substantially complied with the truth-in-leasing regulations.

The Court feels compelled to point out first that in the Order granting plaintiffs' Motion for a Preliminary Injunction, the Court did not determine what the correct standard was with regard to complying with the regulations. Rather, the Court in analyzing the motion for preliminary injunction found that it was appropriate in that context to apply a "reasonable cause" standard. Under this standard, the Court does not balance the equities between the parties as is traditionally done in with a motion for preliminary injunction, but rather determines only whether reasonable cause exists to believe that a violation of an act has occurred. In deciding whether the reasonable cause standard should be applied, the Court noted that pursuant to Burlington Northern Railroad Co. v. Bair, 957 F.2d 599 (8th Cir.), cert denied, 506 U.S. 821 (1992), several factors should be considered such as: 1) whether Congress had already balanced the equities; 2) whether the purpose of the act is served by the injunction and 3) whether there is a "flat ban" on the prohibited conduct. The Court found that these factors existed and then proceeded

to consider whether the plaintiffs had demonstrated that reasonable cause existed to believe that the terms of defendant's standard lease agreement violated the federal motor carrier law. After considering the parties' arguments the Court determined that there was reasonable cause to believe that Ledar's lease agreements violated federal motor carrier law. However, it should be noted that the Preliminary Injunction order was entered relatively early in the case and without the benefit of testimony from any witnesses. Additionally, the parties were allowed only a short time for oral argument. As the Court noted in International Brotherhood of Electrical Workers, AFL-CIO No. 1 v. St. Louis County, 117 F.Supp.2d 922, 934 (E.D.Mo. 2000), the standards for the granting of a preliminary injunction and for the entry of summary judgment are different. Additionally, defendants note that if plaintiffs had wished to have a consolidated preliminary injunction hearing and a trial on the merits, they needed to properly move the Court to do so under Fed.R.Civ.P. 65(a)(2). However, plaintiffs failed to do so.

At this stage of the proceedings, the Court now has the benefit of substantially more information than it did when considering the preliminary injunction motion, including the affidavits of Carl Higgs, Scott Higgs, Norma Higgs as well as two former employees, Gary Doss and David Wainstock. In 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. As the Court in Renteria v. K& R Transportation, Inc., No. 98CV290 (C.D. Cal. June 22, 2001) noted, "[a] rule that anything less than literal compliance requires the automatic granting of relief would, in many cases, lead to a wholly unreasonable and even unjust result. The Commission apparently recognized the danger involved in establishing the arbitrary rule. Circumstances may dictate that relief

be denied even in the face of noncompliance, technical or otherwise." (Slip op at 9). Plaintiffs state that in Sawyer v. County of Sonoma, 719 F.2d 1001, 1008 (9th Cir. 1983) the Court stated that the doctrine of "substantial compliance . . . has no application in the context of a clear statutory prerequisite that is known to the party seeking to apply the doctrine." However, as this case did not involve the Truth-in-Leasing regulations, but rather involved a county employee seeking additional retirement benefits for prior military service, the Court does not find it to be persuasive. Additionally, the Court notes that plaintiffs have failed to cite a single case suggesting that the "substantial compliance" standard should not be applied and that instead a literal or strict standard should be used.

Considering the parties arguments in this context, the Court finds that there are genuine issues of material fact which preclude the entry of summary judgment on the question of whether defendants are liable for violating the truth-in-leasing regulations. Accordingly, the parties' Motions for Summary Judgment on this basis are hereby **DENIED**.

2. Statute of Limitations

Defendants argue that plaintiffs cannot base their claims against Ledar on violations that occurred before March 17, 1998, which is two years before the date the Complaint was filed. Additionally, defendants argue that plaintiffs cannot base their claims against Hawthorne Leasing, Inc. or the individual defendants on violations that occurred before May 7, 1999, which is the date two years before the filing of the First Amended Complaint which named them as parties. Defendants argue that there is only one limitations period for damage actions under §14704 and that period is two years.

The statute states as follows:

> Damages - A person must file a complaint with the Board or Secretary, as applicable, to recover damages under Section 14704(b) within 2 years after the claim accrues.

47 U.S.C. § 14705(c). However, defendants state that in this instance, plaintiffs claims are authorized pursuant by § 14704(a)(2), not by § 14704(b). Defendants state that there is a drafting error in the statute and that the language contained in § 14704 (a)(2) pertaining to damages was intended to be codified at § 14704(b).

Plaintiffs disagree and note that because § 14705 does not contain a limitations period applicable to leasing regulation violations, the four year default limitations period in 28 U.S.C. § 1658 applies. This statute states that "[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues." Plaintiffs state that the Supreme Court has made clear that Congress intended this four year statute of limitations to apply to any federal statute enacted after December 1, 1990, that did not have its own statute of limitations. North Star Steel Co. v. Thomas, 515 U.S. 29, 34-35 (1995). Additionally, plaintiffs note that in OOIDA v. Heartland Express, Inc. of Iowa, No. 3-01-CV-80179, (S.D. Iowa Jan. 31, 2003), the Court considered these same arguments and found that the four year statute of limitations was applicable. In that case the Court stated: "[t]he damage recovery period applicable to motor carriers under the ICCTA is four years, the default statute of limitations for federal causes of action, 28 U.S.C. § 1658." (Slip op. at 7). In that case the Court did not find the statutory language of § 14704 ambiguous. Nor did the Court find that an absurd result would occur if the four year statute of limitations were applied.

At least one other federal district court has considered this issue and come to an opposite conclusion. In Fitzpatrick v. Morgan Southern, Inc., 261 F.Supp.2d 978 (W.D.Tenn. 2003) the Court found that the statute contained an error and agreed that the two year statute of limitations contained in § 14705(c) should be applied to private rights of action under § 14704(a)(2).

This Court agrees with the decision in Heartland Express, Inc. and finds that the statute is not ambiguous and that the four year statute of limitations applies in this instance. Therefore, defendants' Motion for Summary Judgment on this issue is hereby **DENIED**.

B. Plaintiffs' Motion for Summary Judgment

As previously discussed, the Court has found that there are disputed issues of fact relating to whether defendants violated the truth-in-leasing regulations. Therefore, the Court denied the parties' cross-motions for summary judgment. However, there is one issue on which the Court finds that there are no disputed issues of fact. Plaintiffs assert that Ledar and Hawthorne are "affiliated" entities because until the sale of Hawthorne in November 2000, both companies had the same owners, officers and directors. Hawthorne entered into "Equipment Lease Agreements" or lease-purchase agreements with plaintiffs Buckallew and Day as well as with most members of the class. The lease purchase agreements stated that "during this lease the equipment will be operated exclusively under a lease agreement with Ledar Transport, Inc., a Missouri corporation or such other carrier as may be approved in writing by Lessor."

In OOIDA v. Arctic Express, Inc., 87 F.Supp.2d 820 (S.D.Ohio 2000), the Court considered a similar issue. In that case, Arctic was a regulated motor carrier engaged in

the business of providing transportation services to the shipping public. D&A was a non-carrier company engaged in the business of leasing truck tractor units, with the option to purchase, to independent owner-operators. D&A and Arctic were under common ownership and control. In that case the Court considered the ICC's opinion in Dart. The Court found:

> The ICC found that the purpose behind the regulation 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. at 13. In reaching its conclusion in Dart, the Commission took into consideration comments and the purpose behind the leasing regulations. . . . This Court finds that this interpretation is reasonable as it serves to bring entities "affiliated" with registered motor carriers under the umbrella of the Act. The 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.

Id. at 828-29. The Court in Arctic following the ICC's decision in Dart, treated D&A and Arctic as affiliated entities.

Defendants assert that the degrees of "affiliation" can only be determined after a trial on the merits where plaintiffs must show evidence of the degree of affiliation between Ledar and Hawthorne. Defendants state that there are genuine issues of material fact in dispute as to the extent of "affiliation" between the two companies and the amount of "affiliation" required to subject a motor carrier to the regulations. The Court does not agree and finds that plaintiffs have met the standard to show that Ledar and Hawthorne are affiliated entities. Additionally, defendants argue that not all members of the class entered into equipment lease agreements with Hawthorne Leasing and those that did must be divided into subclasses for liability purposes. Thus, defendants argue there are genuine issues of material fact in dispute as to the nature

and extent of any liability against Hawthorne. However, this is an issue which can be addressed during the damages phase of the trial if necessary and need not prevent a finding that Ledar and Hawthorne are affiliated entities.

C. Motions to Strike Affidavits of Wainstock & Doss

Defendants have moved to strike the affidavits of both Gary Doss and David Wainstock because the declarations fail to meet the foundational requirements of Fed.R.Civ.P. 56(e), the plaintiffs failed to disclose these witnesses before the close of discovery and the declarations are attempts to support plaintiffs' fraud claims which have not been properly pled.

Plaintiffs argue that the declarations meet the foundational requirements of Fed.R.Civ.P. 56(e), the non-disclosure of these witnesses was substantially justified and harmless and fraud is an element of plaintiffs alter ego argument and is properly before the Court.

The Court will not strike the declarations of these witnesses at this time and instead will determine whether any testimony of these witnesses should be excluded after they have testified. Therefore, Defendants' Motions to Exclude the Declarations of David Wainstock and Gary Doss (Docs. 255, 261) are hereby **CONDITIONALLY DENIED.**

D. Motion to Dismiss Counterclaims of Absent Class Members

Plaintiffs move to dismiss the counterclaims filed against the absent class members by Ledar and Hawthorne Leasing for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. Plaintiffs state that because the Court has determined that absent class members are not "parties" to this action, the

claims against them cannot be brought as compulsory counterclaims under Fed.R.Civ.P. 13.

On May 2, 2001, the Court granted plaintiffs' motion to file an Amended Complaint to add Hawthorne Leasing, Carl Higgs, Scott Higgs and Alice Norma Higgs as defendants. Defendant Ledar answered the Amended Complaint and then brought counterclaims against the named plaintiffs. After the Court certified this case as a class action on March 31, 2002, Ledar and Hawthorne filed counterclaims against virtually all absent class members.

Defendants state in their Counterclaim that the Court has "original jurisdiction pursuant to 28 U.S.C. 1331 (federal question jurisdiction) and 1337 (proceedings arising under an act of Congress regulating commerce). The causes of action alleged in these counter-claims arise out of the exact same agreements under which the Plaintiffs' base their claims which are the subject matter of this litigation. However, in the alternative, if the Court finds that it does not have jurisdiction for these counter-claims under 28 U.S.C. 1331 or 1337, the Court has Supplemental jurisdiction to hear these counter-claims under 28 U.S.C. 1367 as the counter-claims are related to, and form part of, the same case or controversy." (Counterclaims of Ledar and Hawthorne Leasing, Inc.).

Plaintiffs argue that the counterclaims are facially deficient to invoke federal jurisdiction under 28 U.S.C. §§ 1331 and 1337. Plaintiffs state that defendants do not cite any Act of Congress upon which their jurisdiction for the counterclaims may be based and as a result their claim of original jurisdiction should be disregarded. With regard to supplemental jurisdiction, plaintiffs state that defendants' counterclaims are permissive and not compulsory and thus the Court has no supplemental jurisdiction over them.

Plaintiffs argue that because the counterclaims are permissive they require their own jurisdictional basis. Plaintiffs state that because defendants cannot meet either the diversity of citizenship requirement or the amount in controversy requirement, the counterclaims should be dismissed.

In response defendants argue that because the causes of action alleged in the counterclaims arise out of the same agreements upon which plaintiffs base their claims the Court has jurisdiction over the counterclaims. Defendants state that they "recognize that this Court could find that it does not have jurisdiction to hear their counterclaims under either 28 U.S.C. 1331 or 28 U.S.C. 1337. Contrary to Plaintiffs' assertions, however, such a determination would not be fatal to Defendants' counterclaims." (Defendants' Suggestions in Opposition, p. 2). Defendants assert that the Court has supplemental jurisdiction because the counterclaims relate to and form part of the same case or controversy. Defendants also argue that the Court has not already determined that the counterclaims against the absent class members are permissive because the Court did not make an affirmative finding or conclusion of law that: 1) the absent class members were not parties to the action, 2) that Fed.R.Civ.P. 13 does not apply to absent class members or 3) that any claims against absent class members cannot be brought as compulsory counterclaims.

First, the Court does not find that it has original jurisdiction over defendants' counterclaims as the only statute defendants cite is 28 U.S.C. § 1337 - proceedings arising under an act of Congress regulating commerce. However, defendants fail to make any reference to an act of Congress. Therefore, the Court will focus on the issue of supplemental jurisdiction.

In Evans v. American Credit Systems, Inc., No. 8:02CV472, 2003 WL 23018529 (D.Neb. Dec. 10, 2003), the Court noted:

> In 1990, the supplemental jurisdiction statute, 28 U.S.C. 1367(a), was enacted; it provides that "in any civil action of which the district courts have original jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the Constitution." 28 U.S.C. 1367(a). Prior to the adoption of section 1367(a), the "settled analytical framework" for determining the limits of federal jurisdiction over a state law counterclaim "depended on the distinction between 'compulsory' and 'permissive' counterclaim." *Blue Dane Simmental Corp. v. American Simmental Ass'n*, 952 F.Supp. 1399, 1407 (D.Neb.1997). There is much debate about whether section 1367(a) alters this well-settled framework. Nevertheless, this court concurs with the court in Blue Dane: "[P]re-1990 counterclaim case law focusing on Rule 13 and the 'compulsory' versus 'permissive' distinction remains as relevant and instructive today as it was before section 1367 was adopted. Using pre-1990 case law to ascertain whether a federal court has subject matter jurisdiction over a counterclaim is appropriate...." *Id.*

Id. at *1.

The Court has had an opportunity to previously consider the question of whether defendants' counterclaims were compulsory or permissive. In the Order certifying this case as a class action, the Court noted:

> Additionally, the Court does not find that the counterclaims against the named plaintiffs or the potential counterclaims which defendants state they anticipate filing defeat commonality or typicality. In Fielder v. Credit Acceptance Corp., 175 F.R.D. 313, 321 (W.D.Mo. 1997), the Court stated, "[t]his Court finds that Rule 13 of the Federal Rules of Civil Procedure is not applicable in class actions." Similarly, in Buford v. H & R Block, Inc., 168 F.R.D. 340 (S.D.Ga. 1996), aff'd., 117 F.3d 1433 (11th Cir. 1997), defendants argued that many of the putative class members had defaulted on their loans and that therefore they would have to assert counterclaims against them. However, the Court disagreed and found the counterclaims were permissive. In doing so the Court quoted from a leading commentator on the issue.
>
> > [S]trong reasons support a determination that Rule 13 governing counterclaims is inapplicable in class action suits based on the language of Rule 13 and its underlying policies.

> Apart from Rule 23 and its derivatives, all the other rules of civil procedure, including Rule 13, were promulgated with reference to guiding the conduct of litigating parties. Rule 13 expressly is applicable only to *opposing parties*. A court may properly conclude that absent class members are not opposing or litigating adversaries for purposes of Rule 13, and therefore Rule 13 is inapplicable in a class context. Because compulsory counterclaims can only be potentially involved when Rule 13 applies, if absent class members are not opposing parties within the meaning of the rule, it follows that any counterclaims that may be permitted in a class action are not governed by Rule 13 and are purely discretionary with the court.

Id. at 363, quoting, 1 NEWBERG ON CLASS ACTIONS § 4.34 (emphasis in original). See also, Davis v. Cash for Payday, Inc., 193 F.R.D. 518, 521-22 (N.D. Ill. 2000)("[p]otential counterclaims do not defeat class certification.")

Although the Court did not specifically state in that Order that defendants' counterclaims are not compulsory, the Court sees no reason to depart from that analysis. The Court also notes that in OOIDA v. Arctic Express Inc., 238 F.Supp.2d 963 (S.D.Ohio 2003), the Court also found that the unnamed class members were not "opposing parties" under Fed.R.Civ.P. 13(a) and that the counterclaims against these absent class members were permissive. Additionally the Court determined that there was no independent basis for asserting jurisdiction over the counterclaims. Id. at 966-968. Defendants make much of the fact that the Court in that case found that the counterclaims against the *named* plaintiffs were compulsory. However, as plaintiffs point out the Arctic court relied upon Sixth Circuit caselaw in reaching that determination. Plaintiffs note that Eighth Circuit caselaw contradicts the decision in Arctic only on the issue relating to the *named* plaintiffs.

In Peterson v. United Accounts, Inc., 638 F.2d 1134 (8th Cir. 1981), the Court considered whether a claim under the Fair Debt Collection Practices Act ("FDCPA") was

a permissive or compulsory counterclaim. In that case, plaintiffs incurred a debt as a result of medical treatment. A debt collection agency then filed suit against plaintiffs in state court to collect the debt. The plaintiffs then filed a claim in federal court alleging that the debt collection agency had violated certain provisions of the FDCPA. The district court dismissed the action finding that the claim should have been raised as a compulsory counterclaim. The Eighth Circuit reversed stating:

> the goals of Rule 13 and the purpose of the FDCPA can best be effectuated by holding the counterclaim involved in this case permissive, rendering it cognizable in either the state or federal court. In the instant case, the circumstances giving rise to the original debt are separate and distinct from the collection activities undertaken by United Accounts, Inc. While the debt claim and the FDCPA counterclaim raised here may, in a technical sense, arise from the same loan transaction, the two claims bear no logical relation to one another. Although there is some overlap of issues raised in both cases as a result of the defenses raised in the state action, the suit on the debt brought in state court is not logically related to the federal action initiated to enforce federal policy regulating the practices for the collection of such debts.

In Evans, the Court considered the Peterson case and stated that it

> [t]he Peterson case, of course, pre-dates the enactment of section 1367(a). Nevertheless, this Court finds Peterson is still relevant and controlling. Since 1990, other courts have concluded that a federal court does not have jurisdiction over a defendant's state law counterclaim, when the plaintiff's claim arises under the FDCPA. For example, in Orloff v. Syndicated Office Systems, Inc., 2003 WL 22100868, *2 (E.D.Pa. Aug. 20, 2003), the court stated that the '[p]laintiff's claims involve issues of statutory compliance. Defendants' counterclaim is simply a state law debt collection claim.' The Orloff court continued: 'Evidence of plaintiff's failure to pay Defendants money owed to them has no relevance on the issue whether the Defendants' actions in collecting the debt violated federal law.' Id. This court determines that Peterson is still good law and that Peterson is supported by post-1990 case law. Accordingly, the court judges that ACS's counterclaim is a permissive counterclaim.

Id. at *1. The Court finds this analysis persuasive and determines that while there may be some issues that overlap, defendants' counterclaims against the plaintiffs relate to

whether plaintiffs owe defendants money under state law, while plaintiffs' claims relate to whether defendants violated the federal truth-in-leasing regulations.

Defendants state that a four part test should be used to determine whether counterclaims are compulsory. Under this test a court considers four factors: 1) Are the issues of fact and law raised by the claim and counterclaim largely the same? 2) Would res judicata bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule? 3) Will substantially the same evidence support or refute plaintiffs' claim as well as defendant's counterclaim and 4) Is there any logical relation between the claim and the counterclaim? Even under this test however the Court finds that the counterclaims are not compulsory. The issues of fact and law raised in plaintiffs' claims and defendants' counterclaims will be different. Plaintiffs' claims allege that the defendants' leases violated the federal truth-in-leasing regulations. Defendants' counterclaims assert only state law breach of contract claims. With regard to the issue of res judicata, defendants state that a subsequent judge may determine that these counterclaims could or should have been litigated in this proceeding and then they would be forever barred from pursuing their claims. The Court does not find that res judicata will bar defendants' counterclaims. As plaintiffs note, if the counterclaims are not allowed to proceed because there is no jurisdiction, there will not be a final judgment on the merits necessary for res judicata under Missouri law. With regard to the third factor - defendants state they would rely on the exact same evidence as the plaintiffs to prove their claims and to refute plaintiffs' claims. Plaintiffs note that the same evidence will not be utilized as they will be comparing statutory and regulatory requirements to defendants' leases while defendants evidence will relate to whether the plaintiffs breached their

individual leases. Finally, defendants argue that the counterclaims have a logical relationship to plaintiffs' claims. The Court disagrees and finds that there is no logical relationship between the plaintiffs' claims and defendants' counterclaims. Therefore, the Court finds that defendants' counterclaims are permissive and thus require an independent jurisdictional basis if the Court is to retain jurisdiction over them.

Plaintiffs argue that defendants cannot meet either the diversity jurisdiction or amount in controversy requirements and thus the counterclaims should be dismissed. Plaintiffs assert that both Ledar and Hawthorne are incorporated in Missouri. Of the 339 individuals named in Ledar's counterclaims, plaintiffs state that 58 or 14.5% of those individuals are identified as having Missouri addresses. With regard to Hawthorne's counterclaims, 24 out of the 239 absent class members or 10% are identified as having Missouri addresses. Even if there were complete diversity, plaintiffs argue that defendants have failed to satisfy the amount in controversy requirement as the vast majority of claims against the absent class members are between $1,000 and $5,000 with some as low as $25.00. With regard to Hawthorne, the claims range between $2,000 and $5,000. Plaintiffs argue that defendants cannot aggregate their claims against the class in order to establish the jurisdictional minimum and that each member of the class must satisfy the amount in controversy requirement. In Trimble v. ASARCO, Inc., 232 F.3d 946, 960 (8th Cir. 2000), the Eighth Circuit stated: "in our view § 1367(a) and (b) can be read literally, and unambiguously, to require each plaintiff in a class action diversity case to satisfy the Zahn definition of "matter in controversy" and to individually meet the $75,000 requirement." Id. at 637-40 (footnotes and citations omitted). Defendants do not offer any suggestions in opposition to this point. The Court finds that

none of the counterclaims against the absent class members exceed $75,000, therefore there is no independent jurisdictional basis for defendants' permissive counterclaims. Thus, the Court hereby **GRANTS** plaintiffs' Motion to Dismiss the Counterclaims of Ledar and Hawthorn Against the Absent Class Members (Doc. # 267).

E. Motion to Dismiss Counterclaims of Named Class Members

Ledar in its Answer to the First Amended Complaint asserted counterclaims against the three named plaintiffs alleging that they breached their lease contracts by terminating them early. Plaintiffs assert that the counterclaims are not compulsory counterclaims under Fed.R.Civ.P. 13. Additionally, plaintiffs state that the counterclaims against the named class members must also be dismissed because they do not meet the amount in controversy requirement. The counterclaim against plaintiff Day is for $2,237.80, the counterclaim against plaintiff Reinsch is for $664.80 and the counterclaim against plaintiff Buckallew is for $6,703.04.

Defendants assert again that the counterclaims against the named class members are compulsory. As previously discussed the Court disagrees and finds that the counterclaims are permissive. As such there must be some independent basis for federal jurisdiction over these counterclaims. Defendants state only that if the Court determines that the counterclaims are not compulsory, the Court should exercise supplemental jurisdiction over the counterclaims under 28 U.S.C. § 1367. In this context, there is no requirement that the jurisdictional basis for the counterclaims be specifically plead for the Court to exercise its jurisdiction to hear them. (Defendants' Suggestions in Opposition, p. 10). The Court disagrees if the counterclaims are not compulsory, there must be some independent jurisdictional basis for the permissive counterclaims. In this

case the Court finds there is no basis for exercising jurisdiction over the counterclaims of the named plaintiffs. Therefore, plaintiffs' Motion to Dismiss the Counterclaims Against the Named Plaintiffs is hereby **GRANTED** (Doc. # 269).

IV. CONCLUSION

For the reasons stated above, the Court hereby **DENIES** defendants' Motion for Summary Judgment (Doc. # 230), **GRANTS in part and DENIES in part** plaintiffs' Motion for Summary Judgment (Doc. # 232), **PROVISIONALLY DENIES** defendants' Motions to Strike the Declarations of Gary Doss and David Wainstock (Docs. 255, 261) and **GRANTS** plaintiffs' Motions to Dismiss the Counterclaims Against the Absent and Named Class Members (Docs. 267, 269).

The Court will hold a pretrial conference with the parties on Wednesday January 21, 2004 at 10:30 a.m. Counsel for plaintiffs shall initiate the teleconference to the Court at the following number: (816) 512-5630.

Date: January 7, 2004
Kansas City, Missouri

/s/ FERNANDO J. GAITAN, JR.
FERNANDO J. GAITAN, JR.
UNITED STATES DISTRICT JUDGE