IADC COMMITTEE NEWSLETTER

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IN THIS ISSUE

Before drafting a lease for your motor carrier client make sure it complies with U.S. Federal requirements or else it may trigger suits by the lessee independent truckers.

U.S. Federal Leasing Mandates

ABOUT THE AUTHOR

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Congress regulates leases between federally regulated motor carriers and independent truckers. Congress initially regulated leases between independent truckers and motor carriers through the Interstate Commerce Commission (ICC) until 1996 when it abolished the agency and transferred responsibility to the federal Department of Transportation. See: Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc., 339 F. 3d 1001, 1006 (8th Cir. 2003). When Congress abolished the ICC it chose to transfer enforcement directly to truckers by providing truckers with a private cause of action against motor carriers for violating the regulations. See: 49 U.S.C. §14704 (a); See also: Owner-Operators v. Swift Transportation, 632 F. 3d 1111, 1113 (9th Cir. 2011). Congress tasked the DOT with further regulating these leases. It does so through the Federal Motor Carrier Safety Administration and its Truth-In- Leasing regulations, 49 C.F.R. 0Part 376. The objectives of the regulations are:

> To promote truth-in-leasing - a full disclosure between the carrier and the owner–operator of the elements, obligations, and benefits of leasing contracts signed by both parties;… To eliminate or reduce opportunities for skimming and other illegal or in equitable practices by motor carriers; and… To promote the stability and economic welfare of the independent truckers segment of the motor carrier industry.

In re-Arctic Express, 636 F. 3d 781, 796 (6th Cir. 2011); Lease and Interchange of Vehicles, 43 Fed. Reg. 29,812 (July 11, 1978).

The Federal Highway Administration's Truth-in-Leasing regulations, found at 49 C.F.R. §376.12, mandate that leases between owner-operators and motor carriers contain certain provisions. The Truth-In-Leasing regulations further require motor carriers adhere to and perform those mandatory provisions. 49 U.S.C.A. §14704(a)(2) of the Federal Truth-In-Leasing regulations creates a right of action for owner/operators to recover damages for violations. Under 49 U.S.C.A. § 14704(e), prevailing owner/operators are entitled to an award of attorneys' fees. The statute went into effect because drafters of the statute anticipated that smaller owner/operators might not have the resources to collect oftentimes small amounts that might be improperly withheld or deducted from amounts paid by the motor carrier. The Truth-In-Leasing regulations protect independent truckers from motor carriers' abusive leasing practices. Owner-Operator Independent Drivers Association, Inc., v. Comerica Bank (In Re Arctic Express), 636 F.3d 781, 795 (6th Cir. 2011). Congress chose to enforce the Truth in Leasing regulations by providing truckers with a private cause of action against carriers for violating mandated regulations. See, 49 U.S.C.A. § 14704(a). See also, Owner-Operator Independent Drivers Association v. Swift Transportation Co., 632 F.3d 1111, 1113 (9th Cir. 2011). The Federal Department of Transportation (DOT) is authorized to regulate the relationship between owner-operators and motor

carriers including required terms in their leases. See, 49 U.S.C.A. § 14102(a).

The Federal Truth-in-Leasing regulations, 49 C.F.R. Part 376, sets forth specific requirements in response to concerns that carriers were taking advantage of owner/operators and overcharging them with undisclosed markups on certain items. Owner-Operator Independent Drivers Association, Inc. v. Swift Transportation, 632 F.3d 1111, 1114 (9th Cir. 2011). Section 14704(a)(2) provides a right to seek damages for injuries "sustained by a person as a result of an act or omission of a carrier or broker in violation of this part." 49 U.S.C.A. § 14704(a).

49 C.F.R. § 376.12 Lease requirements:

Except as provided in the exemptions set forth in subpart C of this part, the written lease required under § 376.11(a) shall contain the following provisions. The required lease provisions shall be adhered to and performed by the authorized carrier.

. . .

(d) Compensation to be specified. The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

(e) Items specified in lease. . . .The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portions of such items.

. . .

(f) Payment period. The lease shall specify that payment to the lessor shall be made within 15 days after submission of the necessary delivery documents concerning a trip in the service of the authorized carrier.

. . .

(g) Copies of freight bill or other form of freight documentation. When a lessor's revenue is based on a percentage of the gross revenue for a shipment, the lease must specify that the authorized carrier will give the lessor, before or at the time of settlement, a copy of the rated freight

bill, or, in the case of contract carriers, any other form of documentation actually used for a shipment containing the same information that would appear on a rated freight bill.. Regardless of the method of compensation, the lease must permit lessor to examine copies of the carrier's tariff or, in the case of contract carriers, other documents from which rates and charges are computed, provided that where rates and charges are computed from a contract of a contract carrier, only those portions of the contract containing the same information that would appear on a rated freight bill need be disclosed. The authorized carrier may delete the names of shippers and consignees shown on the freight bill or other form of documentation.

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

(Emphasis added.)

Typical acts, omissions and violations of Federal Truth in Leasing are:

1. Failure to reimburse or pay the owner-operator within fifteen days (49 C.F.R. § 376.12(f));
2. A violation of Truth-In-Lending by not expressly including the mandatory provisions in the lease (49 C.F.R. § 376.12(e);
3. Failure to provide truthful and complete copies of freight bills and other documents in violation of 49 C.F.R. § 376.12(g);
4. Refusal to allow the owner-operator the right to examine unaltered freight bills or provide true and accurate copies of other documents mandatorily required under 49 C.F.R. 367.12(g);
5. Failure of the lease to expressly recite how items that are to be deducted from the owner-operator are clearly computed as mandated by 49 C.F.R. 367.12(b);
6. The charge-backs in the lease are not specified in the lease as mandated by 49 C.F.R. 367.12(h);
7. The failure to provide the owner-operator documentation to determine the final settlement amounts in violation of 49 C.F.R. § 376.12(h); and,
8. Failure of the lease to specify that the lessor is not required to purchase or rent any products, equipment or services from the motor carrier as a condition of entering into the lease. 49 C.F.R. § 376.12(i).

The provisions of Truth in Leasing are mandatory. Summary judgment as to liability has been enforced by courts on lease violations. Owner–Operator Independent Driver's Association, Inc. v. Bulkmatic Transport Company, 503 F. Supp. 2d 96 (N.D. Illinois, 2007) (granting plaintiff's motion for summary judgment against motor carrier, because the Act's required terms and conditions were either ambiguous or not "clearly stated on the face of the lease"). Owner-operators can achieve summary judgment or a directed verdict against motor-carriers for the lease violations alone.

Because the motor carrier is the party with all of the documents, a failure to comply with the disclosure and document requirements of the Federal Truth-In-Leasing Act can result in the motor carrier being able to take advantage of smaller owner-operators. This is the reason Truth in Leasing was enacted into law. By failing to provide the required documentation to transparently show the proper rates, deductions, calculations, and back-up information the owner-operator is prevented from knowing whether they are getting properly paid under the lease.

Federal TruthinLeasing regulations, 49 CFR §376.1 et seq., promulgated under the Motor Carrier Act, 49 USCA section 14101 et seq., applies not only to motor carriers but also to their "affiliates" and therefore the regulations apply to someone separate from the motor carrier where such entity is under common ownership and has common officers with the motor carrier. See: Owner–Operator Independent Drivers Association, Inc. v. Arctic Exp., 807 F. Supp. 2d 820 (S. D. Ohio 2000). It is clear therefore that the umbrella of the Act covers more than just the motor carrier. In Owner–Operator Independent Drivers Association v. Mayflower Transit, Inc., 161 F. Supp. 2d 948 (S. D. Indiana 2001), the Act was held to apply against motor carriers and their "agents" even if the motor carrier is directly not a party to the lease and thus the motor carrier could potentially be liable for any violations by its agents who act with actual or apparent authority on behalf of the carrier. Further in Owner–Operators Independent Drivers Association, Inc., v. United Van Lines, LLC., 2006 WL 1877081 (D. D. Missouri 2006) (unreported opinion) the Act was held to apply, "to those acting in collusion with a motor carrier and do not extend to nonparties absent a collusive relationship or the nonparties independent violation of the regulations". As a consequence agents and wholly controlled affiliates are at risk as well.

The transportation attorney should carefully review leases to insure that they incorporate the necessary disclosures and expressly incorporate the mandatory terms.

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