An Overview of OOIDA Litigation

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I. INTRODUCTION

The passage of the ICC Termination Act of 1995[1] and the demise of the Interstate Commerce Commission ("ICC") over motor carrier regulatory functions has had a profound effect on the resolution of disputes.[2] The Report of the House Transportation and Infrastructure Committee highlights this development and explained:

> In addition to overseeing the background commercial rules of the motor carrier industry, the ICC currently resolves disputes that arise in such areas. There is no explicit statutory requirement to do so . . .. The ICC dispute resolution programs include household goods and auto driveaway carriers, brokers, *owner-operator leasing*, loss and damage claims, duplicate payments and overcharges, and lumping.

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1. ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) [hereinafter Termination Act].

2. The Termination Act was intended to substantially deregulate rail and motor carrier transportation.

> The bill transfers responsibility for all the areas in which the ICC resolves disputes to the Secretary (except passenger intercarrier disputes). *The Committee does not believe that DOT should allocate scarce resources to resolving these essentially private disputes, and specifically directs that DOT should not continue the dispute resolution function in these areas. The bill provides that private parties may bring actions in court to enforce the provisions of the Motor Carrier Act.* This change will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved—by the parties.[3]

To facilitate the private resolution of disputes in court, the legislature expanded the applicable law, which at that time only permitted complaints to be brought before the ICC.

The provisions adopted read as follows:

> 49 U.S.C. § 14701. General Authority
>
> (a) INVESTIGATIONS. If the Secretary or Board, as applicable, finds that a carrier . . . is violating this part, the Secretary or Board, as applicable, shall take appropriate action to compel compliance with this part.[4]
>
> (b) COMPLAINTS. A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of this part by a carrier . . ..[5]
>
> § 14702. Enforcement by the regulatory authority
>
> (a) IN GENERAL. The Secretary or the Board, as applicable, may bring a civil action—
>
> (2) to enforce this part, or a regulation or order of the Secretary or Board, as applicable, when violated by a carrier . . ..[6]
>
> § 14703. Enforcement by the Attorney General
>
> The Attorney General may, and on request of either the Secretary or Board shall bring court proceedings—
>
> (1) to enforce this part of a regulation or order of the Secretary or Board or terms of registration under this part . . ..[7]
>
> § 14704. Rights and remedies of person injured by carriers [or brokers]
>
> (a) IN GENERAL.
>
> (1) ENFORCEMENT OF ORDER. – A person injured because a carrier . . . does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this

3. H.R. REP. NO. 104-311, at 87-88 (1995) *reprinted in* 1995 U.S.C.C.A.N. 739, 799-800 (emphasis added). The reference to "DOT" within the quote is to U.S. Department of Transportation. Within the DOT, the Federal Highway Administration ("FHWA") initially administered and enforced the regulations of lease agreements between motor carriers and owner-operators of truck tractors commonly known as the Truth-in-Leasing Regulations ("Leasing Regulations"). Lease and Interchange of Vehicles, 49 C.F.R. § 376. These regulations are now administered and under the jurisdiction of the Federal Motor Carrier Safety Administration ("FMCSA").

4. 49 U.S.C. § 14701(a) (2000).

5. *Id.* § 14701(b).

6. *Id.* § 14702(a)(2).

7. *Id.* § 14703(1).

> subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 [the statute authorizing at least some of the motor carrier leasing regulations] and 14103.[8]
>
> (2) DAMAGES FOR VIOLATIONS. – A carrier . . . is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.[9]
>
> (b) LIABILITY AND DAMAGES FOR EXCEEDING TARIFF RATE. A carrier . . . is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.[10]
>
> (c) ELECTION.
>
> (1) COMPLAINT TO DOT OR BOARD, CIVIL ACTION. A person may file a complaint with the Board or the Secretary, as applicable, under section 14701(b) or bring a civil action under subsection (b) to enforce liability against a carrier . . ..[11]
>
> (2) ORDER OF DOT OR BOARD.
>
> (B) ENFORCEMENT BY CIVIL ACTION. – The person for whose benefit an order of the Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if a carrier . . . does not pay the amount awarded by the date payment was ordered to be made.[12]

This statutory change has led to a rash of private lawsuits seeking injunctive and monetary damages by individual owner-operators[13] and the Owner-Operator Independent Drivers Association ("OOIDA"), representing the interests of its member owner-operators.[14] No less than thirty lawsuits have been filed by OOIDA or others.[15]

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8. *Id.* § 14704(a)(1).
9. *Id.* § 14704(a)(2).
10. *Id.* § 14704(b).
11. *Id.* § 14704(c)(1).
12. *Id.* § 14704(c)(2)(B).
13. Under the Leasing Regulations, a "lease" constitutes "[a] contract or arrangement in which the owners grants the use of equipment, with or without driver, for a specified period to an authorized carrier [as defined by section 376.2(a)] for use in the regulated transportation of property, in exchange for compensation." 49 C.F.R. § 376.2(e). An owner-operator is considered an owner who contracts the vehicle with driver services being performed by himself or herself. *Id.* § 376.2(d). The Leasing Regulations are applicable, however, to the use of a vehicle whether without a driver as well as drivers engaged by the owner.
14. OOIDA is a business association comprised of individuals and entities that own and operate equipment under the Leasing Regulations or transport commodities exempt from the Leasing Regulations. It claims a membership exceeding 125,000 owner-operators which represent a growth of approximately 300% since it initiated litigation under 49 U.S.C. § 14704. The organization has been in the forefront of the judicial activity although other similar lawsuits have been filed by other organizations and independent individuals. *See* OOIDA, Homepage, http://www.ooida.com (last visited Nov. 6, 2005).
15. *See, e.g.*, Owner-Operator Indep. Drivers Ass'n v. New Prime, Inc., 192 F.3d 778 (8th Cir. 1999), *reh'g den.*, Oct 13, 1999, *cert. den.* 529 U.S. 1066 (2000); Owner-Operator Indep. Drivers Ass'n v. Mayflower Transit, Inc., 161 F. Supp. 2d 948 (S.D. Ind. 2002); Owner-Operator

II. JURISDICTION

The question of jurisdiction was a crux issue in the initial cases filed, first appearing in *Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc.*[16] Broadly speaking, the owner-operators argued that the provision of 49 U.S.C. § 14704(a)(1) and (a)(2) authorized "direct actions against carriers in federal court," while the carrier argued the "remedies were secondary to Federal Highway Administration's ("FHWA") administrative remedies in [49 U.S.C.] § 14701."[17]

While the district court dismissed the suit, deferring to the primary jurisdiction of FHWA, FHWA declined to exercise that jurisdiction.[18] The Court of Appeals was then faced with complex issues of statutory construction creating both administrative and judicial enforcement of remedies.

In a concise decision, the court, relying on the legislative history while noting the linguistic imperfections and inconsistencies in the applicable sections, felt the most logical reading of the statute allowed private actions and.[19] The court, thus, found that FHWA's remedial jurisdiction was not exclusive.[20]

Since the *New Prime* case, the jurisdictional issue has been raised in

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Indep. Drivers Ass'n v. Arctic Express, Inc., 287 F. Supp. 2d 820 (S.D. Ohio 2000); Owner-Operator Indep. Drivers Ass'n v. Ledar Transport, No. 00-0258-CV-W-2-ECF, 2000 WL 33711271 (W.D. Mo. Nov. 3, 2000); Owner-Operator Indep. Drivers Ass'n v. C.R. Eng., Inc., 325 F. Supp. 2d 1252 (D. Utah 2004); Owner-Operator Indep. Drivers Ass'n v. Landstar Sys., Inc., No. 3:02-CV-1005-J-25HTS, 2003 WL 23941713 (M.D. Fla. Sept. 30, 2003); Owner-Operator Indep. Drivers Ass'n v. Swift Transp., 288 F. Supp. 2d 1033 (D. Ariz. 2003); Renteria v. K & R Transp., Inc., No. 98 CV 290 MRP, 1999 WL 33268638 (C.D. Cal. Feb. 23, 1999); Gagnon v. Service Trucking, Inc., No. 5:02-CV-342-OC-10GRJ, 2004 WL 290743 (M.D. Fla. Feb 3, 2004).

16. *New Prime*, 192 F.3d at 778.

17. *Id.* at 781.

18. *Id.* FHWA responded with a Notice of Denial, declining to exercise primary jurisdiction because the Leasing Regulations and the issues raised by the Owner-Operators "'are fairly straightforward matters clearly within the competence of a court to resolve,' and because the ICC had addressed similar issues in OPA Information Bulletin No. 93-103, No. MC-C-30192, Dart Transit Co.-Petition for Declaratory Order, 9 I.C.C.2d 701 (June 28, 1993)." *Id.* New Prime appealed FHWA's refusal to exercise its administrative jurisdiction. OOIDA also commenced an action in the Southern District of Ohio, alleging that the lease agreements used by Arctic Express, Inc. and its affiliate, D & A Associates, Ltd. (collectively, 'Arctic Express'), violate[d] the same provisions of the Leasing Regulations. Arctic Express appealed FHWA's Notice of Denial to the Sixth Circuit, which transferred the appeal to [the Court of Appeals in the Eighth Circuit]. The American Trucking Associations filed amicus briefs in support of the [New] Prime and Arctic Express appeals, urging [the Court] to reverse the agency's refusal to exercise jurisdiction over the carriers' disputes with the Owner-Operators. *Id.*

19. *Id.* at 785.

20. *Id.* The court also rejected the argument that the FHWA be compelled to exercise its jurisdiction as such action was not reviewable under the Administrative Procedure Act. *Id.* at 786.

other similar cases without success.[21]

III. The Truth-in-Leasing Regulations

The federal Leasing Regulations were originally adopted to eliminate "provider plans" which were prevalent in the mid to late 1940s. Carriers, which held authority from the ICC to operate, were essentially leasing such authority to individuals or entities without such authority for single or multiple transportation movements. The authorized carrier did not exercise any control of such operation and, thus, did not have any responsibility for the operations.[22] This practice led to problems of assuring that the public and cargo were covered by the operator's insurance and that operations were performed in adherence to regulations.

As a result, the ICC promulgated regulations that required leased vehicles to be operated under the direction and control of authorized carriers.[23] Furthermore, the regulations made authorized carriers responsible to shippers, the public, and the agency for public liability claims, cargo loss and/or damages, and compliance with the rules and regulations.[24] Although this action solved the problems indicated, it did not address the relationship between the lessor and lessee of the equipment used in the transportation to any greater degree.

Later, complaints by owner-operators about the practices of motor carrier lessees led to government studies and ultimately to hearings leading to additional regulatory provisions. These provisions were designed

> (1) to simplify existing and new regulations and to write them in understandable English; (2) to promote . . . disclosure between the carrier and the owner-operator of the elements, obligations, and benefits of leasing contracts signed by both parties; (3) to . . . reduce opportunities for skimming and other illegal or inequitable practices; and (4) to promote the stability and economic welfare of the independent trucker segment of the motor carrier industry.[25]

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21. *See, e.g.*, *Mayflower Transit*, 161 F. Supp. 2d at 957 (denying Mayflower's motion to dismiss or stay pending resolution by the DOT while adopting the Eighth Circuit's holding in *New Prime*); *Swift Transp.*, 288 F. Supp. 2d at 1033. Decided prior to the *New Prime* case, the district court in Renteria v. K & R Transp., Inc., found that no private cause of action existed for damages without first obtaining an agency order. *Renteria*, 1999 WL 33268638, at *6.

22. *E.g.*, Performance of Motor Common Carrier Service by Riss & Company, 48 M.C.C. 327, 358 (1948).

23. *See generally* Lease and Interchange of Vehicles By Motor Carriers, 51 M.C.C. 461 (1950).

24. *See id.* at 515, 547.

25. Lease and Interchange of Vehicles, 131 M.C.C. 141, 142 (1979) [hereinafter *1979 Lease and Interchange of Vehicles*]. The main purpose of the renewed Regulation was to ensure truth-in-leasing by fostering disclosure. *See* Tousley v. N. Am. Van Lines, Inc., 752 F.2d 96, 101 (4th Cir. 1985) (citing Lease and Interchange of Vehicles, 129 M.C.C. 700, 706-08 (1978)).

The regulations adopted were broad in application[26] and covered an extensive range of subjects including the specific items required to be included in the lease,[27] compensation and settlements tracking,[28] products, equipment and service transactions,[29] insurance obligations,[30] and escrow funds[31] plus other general requirements.[32]

During the time the ICC had jurisdiction, issues over the regulations governing equipment leases normally arose during the periodic audits made by FHWA of carrier operations. However, such issues were, presumably, informally resolved as few reported proceedings involving the issue exist.[33]

While no statistics are available, it appears that the FHWA, and now the Federal Motor Carrier Safety Administration ("FMCSA"), have not made periodic audits of carriers in respect to compliance with the Truth-in-Leasing Regulations ("Leasing Regulations"). Thus, few administrative directives or precedence exist.

IV. OOIDA Allegations

In the numerous federal cases filed by OOIDA, common allegations of violations have been made. A fairly exhaustive list would include:

1. Failure of carrier to assume full and complete responsibility for the operations of and exclusive possession and control of the equipment.[34]
2. Failure to clearly state compensation.[35]
3. Failure to specify that carrier shall assume the risk and costs of fines and

26. 49 C.F.R. § 376.1 (2005).
27. *Id.* § 376.12(e).
28. *Id.* § 376.12(d), (f).
29. *Id.* § 376.12(i).
30. *Id.* § 376.12(j).
31. *Id.* § 376.12(k).
32. *See id.* §§ 376.11, 376.12(a), (b), (c).
33. In the numerous cases litigated in court, two administrative cases have been cited. *See Arctic Express*, 287 F. Supp. 2d at 820; Dart Transit Company – Petition for Declaratory Order – Leasing Regulations, 9 I.C.C.2d 701 (1993). In *Dart Transit*, the issue involved was whether a leasing company with some affiliation with the carrier was subject to the Leasing Regulations. *Id.* Although finding that the affiliate was subject to the Leasing Regulations, and the carrier had not attached a copy of the lease agreement between that company and the owner-operator to its lease, that there was substantial compliance with the Leasing Regulations because a written authorization exists which allowed the motor carrier to deduct lease payments from the owner-operator's settlement and remit them directly to the leasing company. *Id.* A similar situation existed in Central Transport, Inc., Petition for Declaratory Order, No. MC-C-30050, 1988 WL 225559 (June 29, 1998), decided by the ICC, and a similar finding has also been cited in OOIDA litigation. The issue of what constitutes "affiliation" has not been firmly established as it is, essentially, fact specific and thus it is possible this issue will be a continuing one in OOIDA litigation.
34. 49 C.F.R. § 376.12(c)(1).
35. *Id.* § 376.12(d).

overweight and oversized trailers or improperly permitted over-dimensions and overweight loads in the absence of the violation arising from an act or omission of the owner-operator.[36]

4. Failure to specify and pay owner-operators within 15 days of submittal of logs and documents necessary to secure payment from shipper.[37]

5. Failure to specify and give a copy of the rated freight bill before or at time of settlement if payment is based on a percentage of revenue.[38]

6. Failure to specify access to tariffs or contracts.[39]

7. Failure to specify all charge-back items and how to amounts are to be computed and affording copies of documents which are necessary to determine validity of charges.[40]

8. Failure to specify that the owner-operator is not required to purchase or rent any products, equipment or services from the carrier as a condition of leasing.[41]

9. Failure to specify that the carrier has a legal obligation to maintain insurance coverage for the public.[42]

10. Failure to specify who is responsible for other insurance.[43]

11. Charging back more to the owner-operator than the cost of insurance to the carrier.[44]

12. Failure to issue a certificate of insurance and to provide a copy of policy upon request.[45]

13. Failure to provide written explanation and itemization of deductions for cargo and property damage before any chargeback is made.[46]

14. Failure to specify items to which escrow funds can be applied and failure to pay specified interest.[47]

15. Failure to give accounting to transaction regarding the escrow or specifying right to demand accounting at any time.[48]

16. Failure to specify conditions for the return of escrow funds.[49]

17. Failure to return escrow funds within 45 days.[50]

18. Failure to specify the terms of any equipment purchase or rental contract which give the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.[51]

Other miscellaneous charges have been made in specific cases:

36. *Id.* § 376.12(e).
37. *Id.* § 376.12(f).
38. *Id.* § 376.12(g).
39. *Id.*
40. *Id.* § 376.12(h).
41. *Id.* § 376.12(i).
42. *Id.* § 376.12(j)(1).
43. *Id.*
44. *Id.*
45. *Id.* § 376.12(j)(2).
46. *Id.* § 376.12(j)(3).
47. *Id.* § 376.12(k)(2), (5).
48. *Id.* § 376.12(k)(2), (4).
49. *Id.* § 376.12(k)(6).
50. *Id.*
51. *Id.* § 376.12(i).

1. Selling insurance without a license.
2. Failure to provide full tax credits.
3. State law conversion relating to chargebacks, interest on escrow, and fuel tax credits.
4. Common law fraud for insurance chargebacks exceeding cost to carrier.
5. Unconscionable lease terms in violation of state law.
6. Involuntary servitude in violation of Thirteenth Amendment to U.S. Constitution.
7. Infringement on the owner-operator's right to make contracts in violation of 42 U.S.C. § 1981.

These miscellaneous charges have generally been abandoned in litigation or disappeared because of settlements.

In respect to the other listed charges, OOIDA has adopted a "laundry list" approach to litigation. While this approach has worked to its advantage in at least one case,[52] litigation has focused on issues where monetary damages, rather than drafting efforts or oversights, have been involved. Thus, the main issues focus on the handling of escrow funds, insurance premiums, chargeback items and handling, and the failure to clearly state compensation.

Escrow, under the Leasing Regulations, requires (a) authorization of the lessor-owner-operator,[53] (b) payment of interest,[54] (c) deductions which are allowed,[55] and (d) return of funds.[56] Escrows are liberally defined[57] and, yet, some motor carriers have excluded monies designated as "security deposits" as well as failed to pay any of the specified interest on the funds.[58] Other troublesome issues involving escrows can be attributed to a lack of clarity in establishing what deductions can be made against escrow funds[59] and the time period in which escrow funds must be returned to the owner-operator.[60] Courts have uniformly and strictly required compliance with the escrow regulatory provision.[61]

In respect to insurance premiums, the issue is still open. OOIDA has taken the position that the motor carrier cannot charge any amount over

52. *Ledar Transport*, 2000 WL 33711271, at *11.
53. 49 C.F.R. § 376.12(k)(1).
54. *Id.* § 376.12(k)(5).
55. *Id.* § 376.12(k)(3)(i).
56. *Id.* § 376.12(k)(6).
57. Escrow funds are defined as "[m]oney deposited by the lessor with either a third party or the lessee to guarantee performance, to repay advances, to cover repair expenses, to handle claims, to handle license and State permit costs, and for any other purposes mutually agreed upon by the lessor and lessee." *Id.* § 376.2(l).
58. *See, e.g., Ledar Transport*, 2000 WL 33711271, at *4, *7.
59. 49 C.F.R. § 376.12(k)(2); *See* Lease and Interchange of Vehicles, 129 M.C.C. 700, 721 (1978) [hereinafter *1978 Lease and Interchange of Vehicles*]; Owner-Operator Indep. Drivers Ass'n v. Arctic Express, Inc., 159 F. Supp. 2d 1067, 1076-77 (S.D. Ohio 2001).
60. 49 C.F.R. § 376.12(k)(6); *see 1978 Lease and Interchange of Vehicles*, 129 M.C.C. at 725.
61. *See, e.g., Arctic Express*, 159 F. Supp. 2d at 1078.

the premium charged by the insurer, while motor carriers, in some instances, have added an amount to cover its administrative and management costs in negotiating, establishing, and administering an insurance program in which the owner-operators may secure insurance.

When the ICC enacted the regulations in 1979, the issue arose as to what insurance costs could be quoted to the owner-operator and was disposed of as follows:

> We believe that a prime concern of lessors in choosing insurance coverage is knowing exactly how much they will be charged. With this information they are better equipped to obtain the best insurance coverage possible. . . . Therefore, at this time we will not require that carriers [disclose] to the owner-operator the total cost of insurance that the carrier pays but will require the lease to specify the amount for insurance provided by or through the carrier.[62]

A similar issue has arisen regarding fuel discounts. Motor carriers frequently provide owner-operators with "credit cards" which allow the owner-operators to make purchases at pump price and also secure "cash" withdrawals so as to avoid the need to carry considerable amounts of cash on the road. The carriers ultimately deduct the charges against the owner-operator's contract settlement.

In some instances, motor carriers and fuel suppliers negotiate volume discounts predicated upon the volume of purchases made during a prescribed period of time. The discount is determined on the overall purchases made by the carrier, including the owner-operators.

OOIDA has argued that, under the Leasing Regulations, the owner-operators should receive the discount since they purchased the fuel.[63] Some motor carriers voluntarily distribute the discount to the owner-operators, some motor carriers remit a portion of the discount, and some motor carriers retain the discount.

Those motor carriers who retain the discounts or a portion of them assert that the practice is not only allowable under the Leasing Regulations, but is warranted equitably because the motor carrier extends its credit and availability of funds while the credit of the owner-operator is outstanding.[64] Further, the motor carrier incurs credit losses,[65] computer time and accounting expenses, administrative costs in issuing the card and securing the card's return, and expenses in promoting the program.

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62. *1979 Lease and Interchange of Vehicles*, 131 M.C.C. at 141.

63. *See, e.g.*, Class Action Complaint at Count 11, Owner-Operator Indep. Drivers Ass'n v. Landstar Sys., Inc., No. 3:02-CV-1005-J-25HTS, 2003 WL 23941713 (M.D. Fla. Sept. 30, 2003).

64. Normally, the motor carrier must pay the suppliers on a daily basis; whereas, reimbursement from the owner-operator through contract settlements usually lags from 7 to 14 days.

65. If an owner-operator cancelled his or her contract with the motor carrier it is not infrequent that they do so when a balance due for fuel or cash advances under the fuel card exists.

It would seem that the ICC's reasoning regarding insurance premiums would be applicable to fuel card discounts; however, it does not appear that any court has yet ruled on this issue.

OOIDA's position in respect to "charge back items" under the Leasing Regulations has been that detailed information must be set forth in the contract or no chargeback of an unlisted item can be made.[66] While OOIDA has never advanced a bright line test, it has been successful in requiring many motor carriers to amend their contracts to cover every possible chargeback and how they were to be determined. As a result, many contracts between owner-operators and motor carriers have been expanded to the point where they appear to be documents evidencing a merger agreement between major corporations.[67]

The final major contention arising in OOIDA litigation has been that compensation terms were not clearly stated. While this has been true in many instances, in practice, the parties usually have agreed to such terms by their practices. The typical deficiency, for example, involved payment by miles driven in handling of the freight. The contract would specify "X" cents per mile as determined by a specifically named computer program or other determinative schedule. The named program, however, frequently provides two different methods of determining mileage, either over the shortest routes between any origin and destination or over the most practical routes.

In many, if not most, instances, the motor carriers paid owner-operators on the basis of mileage using the shortest mileage scale because they were paid by the shipper on that basis. This was readily understood and accepted by the parties without any discussion. However, OOIDA litigation has necessitated that the parties address the possible alternatives and clearly specify the standard to be used.

Similarly, in some instances, shippers would pay the motor carrier a set rate which would include, for example, an amount for washing or cleaning out the trailer before the pickup of their freight. The motor carrier would subtract the costs of cleaning the trailer as the carrier paid for the washing before computing what the owner-operator would be paid if his or her contract called for payment on the basis of a percentage of "revenue." OOIDA has asserted that the percentage paid should be

66. 49 C.F.R. § 376.12(h).

67. The author was sent a revised contract which was approximately 70 pages in length and which was not clearly understandable to the author's feasible legal mind without extensive study which would probably not occur by the typical owner-operator. In another revised contract the drafter lists approximately 50 possible chargeback items and the list might actually not have been exhaustive as unforeseen or unpredictable charges or advances might arise. It is difficult to understand why it would not suffice to list recurring charges and merely include a catch-all provision, "any and all other money due the carrier by the owner-operator" with a single provision that the owner-operator will receive notice of the chargeback and the details supporting it.

based on the amount the shipper paid the carrier, without any deduction, regardless of whether a portion of the payment was for the carrier's services independent of the owner-operator's expense or participation.

While these types of drafting errors occurred, and rightfully should and could be corrected or avoided, it would seem that litigation of the scope and cost of OOIDA litigation might have been avoided by voluntary contract clarification, negotiations, and/or alternative dispute resolution techniques.

V. Other Issues

OOIDA litigation has also involved many other issues, including the applicability of class actions, limitation periods, injunctive relief, determination of monetary damages, and bankruptcy protection. In litigation to date, class actions have been authorized in most,[68] but not all,[69] cases, as has the issuance of injunctions.[70] While costs and reasonable attorney fees are provided by the statute[71] and have been awarded to the prevailing party, punitive damages have not been awarded and would probably never be awarded unless a state or common law claim allowed them. A major issue has also arisen as to whether claims must be arbitrated under contract clauses. In most instances, arbitration has not been allowed because of the application of the Federal Arbitration Act's exclusion involving transportation employees[72] or on the basis of equity.[73]

VI. Conclusions

Courts have differed on the issue of whether the Leasing Regulations should be enforced on a literal basis[74] or whether substantial compliance applies.[75] Resolution of this basic issue may determine the direction of outstanding and future litigation.

Very few cases have reached a final determination and many have

68. *E.g.*, *Mayflower Transit*, 161 F. Supp. 2d at 955.

69. *See, e.g.*, Owner-Operator Indep. Drivers Ass'n v. New Prime, Inc., 213 F.R.D. 537, 547 (W.D. Mo. 2002).

70. *See, e.g.*, *Ledar Transport*, 2000 WL 33711271, at *11.

71. 49 U.S.C. § 14704(e).

72. *See* 9 U.S.C. § 1 (2000). Attempts to avoid the FAA issue by requiring arbitration under state arbitration acts have also been unsuccessful. *See, e.g.*, *C.R. Eng.*, 325 F. Supp. at 1260.

73. *Id.*

74. *See, e.g.*, *Ledar Transport*, 2000 WL 33711271, at *4-*11; *Central Transport*, 1988 WL 225559, at *1-*4.

75. *See, e.g.*, Renteria v. K & R Transp., Inc., No. 98-0290 MRP, 2003 WL 24053772, at *1-*2 (C.D. Cal. Feb. 11, 2003). This position is more consistent with prior ICC cases. *See, e.g.*, *Dart Transit*, 9 I.C.C.2d at 702.

concluded based on a voluntary settlement or bankruptcy. It is therefore difficult to predict the future direction OOIDA litigation.

It is clear, however, that OOIDA litigation has confirmed the high cost and time expense of litigation. It also raises the issue as to whether court resolution was an effective medium to resolve leasing disputes in this instance, when the possibility of a single, or a minimal number of, administrative decisions might have more economically and effectively resolved common issues raised for both the parties and the industry. Apart from the expense, it is also clear that confusing results have and will continue to arise because of OOIDA lawsuits filed in diverse jurisdictions, leading to different results and engendering continued litigation.[76]

OOIDA litigation has caused industry participants to review their practices, procedures, and lease documents. In due time, it may assure compliance with the Leasing Regulations. It should also raise the question as to whether the Leasing Regulations should be modified or clarified to resolve some of the issues which have arisen due to the numerous and significant changes which have occurred in the motor carrier industry since their last promulgation.

76. A U.S. Supreme Court decision or decisions might be needed to resolve the diverse lower court decisions, but these cases are not the type of cases the U.S. Supreme Court would normally address. A more-feasible route to resolve the problem of diverse views would appear to be for the FMCSA to reverse the position FHWA has taken and accept jurisdiction of a significant case and/or rewrite the Leasing Regulations to resolve the confusion which now exists.