

COURT FINDS ENGLAND'S LEASE AGREEMENT VALID

On June 20, 2007, the federal district court for the District of Utah issued an order on the trial of the class action case filed by OOIDA against C.R. England relating to its current Independent Contractor Operating Agreement and the prior version of that Agreement. The Court found that England's current Agreement (2002-present) does not violate in any respect the federal Truth in Leasing Regulations. Dan England, Chairman of the Board, stated: "We are pleased with the Court's ruling that our current agreements with our lease drivers are completely lawful and that our drivers can know that there is no issue with their contracts."

Regarding England's prior lease agreement (1998-2002), the Court rejected OOIDA's claims for injunctive and monetary relief. It did find some provisions in violation of the Regulations. The violations were mainly related to non-disclosure of certain charges and deductions. The Court applied a "strict compliance" standard, rather than a "substantial compliance" standard used by other courts. The Court did order England to provide an accounting to the Court of deductions of certain monies from escrow funds of class members under the former lease agreement, and to propose a form of accounting to the Court in the next several months, which England will do.

Evidence at trial demonstrated that in the fall of 2001, because of pending court challenges brought against other carriers, England began revision of its Independent Operating Agreement (ICOA). In June of 2002, just weeks before the revised version (RICOA) was planned for a fleet-wide roll out, suit papers were served. Although OOIDA's initial class action on behalf of five-named plaintiff's sought damages and injunctive relief relating to the ICOA, OOIDA subsequently amended its complaint seeking the same as it related to the new RICOA version utilized by England.

The court rejected OOIDA's request for millions of dollars relating to charge-backs and certain required purchases under the ICOA, such as Qualcomm service, and gave no monetary award to the class relating to those violations. As part of that claim, OOIDA argued at trial that England was required to disclose the mark-up on fuel and parts it made available to drivers, something that England's current RICOA now does. England demonstrated at trial that the prices it made available to its drivers during that period (1998-2002), even with the mark-up, were still lower than the drivers could obtain from any other source. After disclosure in the RICOA, the evidence at trial showed that the drivers continued to purchase those items through England at the same rate because it made economic sense.

Although the court found that specificity was lacking in the original agreement, as to certain charge-backs and required purchases and what deductions were to be taken from the escrow accounts, the evidence demonstrated that many of the charges were itemized and initialed by the lease operators in an attachment to the ICOA. However, the evidence at trial was that the plaintiff lease operators did not read their ICOA or RICOA before signing it.

As to the accounting of Escrow Funds under the ICOA, England maintains its rights under both state and federal law to net the amounts owed to England against anything due the lease operator. An accounting

will demonstrate that other purchases, advances and obligations of the lease operator offset the escrows.

"We are pleased generally with the Court's ruling, especially its finding that our current lease agreement is in full compliance with the leasing regulations. We will proceed with the accounting requested by the Court. However, we continue to be of the opinion that "substantial compliance" with these regulations is the better reasoned rule of law and may request appellate review," says Dan England.