

**NEWSLETTERS****Carrier Prevails After Three Years Of Litigation With Owner-Operators**

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A recent decision issued by the U.S. Court of Appeals for the Seventh Circuit in *Walker v. Trailer Transit Inc.*, - F.3d -, 2016 WL 3082305 (7th Cir. June 1, 2016) concluded three years of litigation over payment terms between a carrier and independent contractor owner-operators from whom the carrier leased equipment to deliver cargo. At issue was essentially what the lease agreement said and what it didn't say.

The independent contractor business model has long been common in the trucking industry. Under this arrangement, owner-operators lease equipment to carriers and transport cargo under the carrier's operating authority. Trailer Transit entered into more than 1,000 equipment leases with owner-operators from September 2001 through May 2012. The form of lease agreement provided that drivers would be paid for trips made under Trailer Transit's operating authority "a sum equal to seventy-one percent (71%) of the gross revenues derived from the use of the equipment leased herein (less any insurance related surcharge and all items intended to reimburse [Trailer Transit] for special services, such as permits, escort services and other special administrative costs...)"

Walker contracted as an owner-operator with Trailer Transit for nearly seven years. In 2013, he filed a class action lawsuit in federal district court, alleging that Trailer Transit billed customers in amounts higher than what was actually paid to third parties, such as escort drivers. Walker argued that the excess amount collected was not "intended to reimburse" Trailer Transit for special services, and that 71% of the excess should be paid to owner-operators. Trailer Transit filed a motion for summary judgment. Applying Indiana contract interpretation principles, the district court determined that as a matter of law the lease agreements did not provide a basis for the owner-operators to claim an entitlement to a percentage of the excess charges, referred to by the court as the "Add-On Fees." *Walker v. Trailer Transit Inc.*, 1 F.Supp.3d 879 (S.D. Ind. 2014).

The district court held that the owner-operators were entitled to a percentage of "gross revenue," which was the total amount received from customers for services, not "net revenues," which would be the amount received from the customers minus the cost of sale. Under the lease agreements, the Add-On Fees are excluded from the computation of gross revenue. The court also determined that there was a latent ambiguity in the lease agreements as to what type of charges are "special services" and "special administrative costs" which fall within the excluded Add-On Fees. To that extent, Trailer Transit's summary judgment motion was denied.

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Armed with a largely favorable ruling, Trailer Transit filed a motion for judgment on the pleadings, which asserted that Walker's complaint stated a breach of contract theory that the court already determined was not viable as a matter of law. Concluding that Walker could not prove any set of facts which would support his claim for relief, the court granted the motion for judgment on the pleadings and dismissed Walker's class action complaint. *Walker v. Trailer Transit Inc.*, 2015 WL 735766 (S.D. Ind. February 19, 2015).

Walker's appeal followed, and the Seventh Circuit wasted little time affirming the district court. The Seventh Circuit explained the owner-operators' contention that Trailer Transit owed 71% of the gross revenue on the principal charge for transportation, and 71% of net revenue on everything else. The court rejected this contention because, "That just isn't what the contract says." The court also observed that Walker, "furnished services to Trailer Transit for seven years. He must have found the remuneration satisfactory. Only in retrospect did he look for more, filing this suit about two years after hauling his last load. The judiciary does not rewrite contracts after the fact to favor one side."

This case is an example of how carriers with carefully drafted lease agreements can still find themselves in litigation when owner-operators become dissatisfied. Here, the courts reached a result consistent with Indiana law.

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