



SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY

**Weekly Satellite Usage Fee Deemed Unlawful Forced-Purchase
Under Federal Leasing Regulations**

In a closely watched decision, a federal court of appeals found a motor carrier violated the No Forced-Purchase Provision of the Federal Leasing Regulations (49 C.F.R. §376.12(i)) when it passed through a \$15-per-week charge to owner-operators for sat-com network usage. *Fox v. TransAm Leasing, Inc.*, No. 15-3203 (10th Cir. Oct. 18, 2016). While the Tenth Circuit ordered the district court to grant the owner-operators' requests for declaratory and injunctive relief, the Court found the owner-operators' claim for damages as a result of the violation failed as a matter of law because the owner-operators presented no evidence of actual damages resulting from the \$15 usage fee.

In determining the motor carrier violated the Federal Leasing Regulations, the Tenth Circuit rejected the relevance of a prior Seventh Circuit decision, *OODA v. Mayflower*, which found a motor carrier may pass through or allocate the cost of its auto liability insurance to owner-operators so long as the carrier does not profit from the transaction. The Court nevertheless acknowledged the difference between a forced "purchase" of services or products (on one hand) and the negotiated allocation of operational costs (on the other hand). So, the Court arguably left the door open for continued reliance on the rationale underpinning *Mayflower* when a carrier allocates or transfers some of its operational costs to owner-operators, regardless of whether those costs relate to required insurance, so long as the allocation is properly documented.

As noted above, the only decision the Tenth Circuit expressly reached on damages was related to the owner-operators' failure to present evidence of actual damages. This result seems consistent with the conclusion disgorgement of the charges for an unlawful forced purchase (i.e., \$15 /week /owner-operator) **is not** the proper measure of damages. Motor carriers that charge owner-operators for satellite or ELD usage should review their operating agreements to ensure they include required disclosures and offer owner-operators necessary freedoms when it comes to the purchase of services and products.

If you have questions regarding these issues, please contact Greg Feary (gfeary@scopelitis.com), Adam Smedstad (asmedstad@scopelitis.com), Braden Core (bcore@scopelitis.com), or Kelli Block (kblock@scopelitis.com).

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