

“In Brief”

Case Law Update: Lumper Fees in the Eighth Circuit

Attorney John F. Fatino



A recent decision of the United States Court of Appeals for the Eighth Circuit will be of interest to those involved in the transportation industry. *Owner-Operators Independent Drivers Association, Inc. v. Supervalu, Inc.*, 651 F.3d 857 (8th Cir. 2011).

The Owner-Operators Independent Drivers Association, Inc. [hereinafter “OOIDA”]¹ along with others brought suit against Supervalu, Inc. in the United States District Court for Minnesota. As the case involves the application of *federal law* by the Eighth Circuit, the opinion is binding on other federal district

¹A review of the LEXIS databank, used by lawyers to track cases, reflects that the OOIDA has been a party to 120 federal cases.

courts in the Eighth Circuit—such as the Iowa based federal courts.

The Facts:

The facts of the case demonstrate that members of the OOIDA along with the OOIDA brought suit alleging that Supervalu’s practices violated 49 U.S.C. § 14103(a). The statute is set out in the margin.² In 2005, Supervalu implemented a policy which required that drivers either use Supervalu’s professional lumpers

²§ 14103. Loading and unloading motor vehicles.

(a) Shipper responsible for assisting. Whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle transporting property in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135) be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the person or persons providing such assistance.

or be subject to certain insurance requirements established by Supervalu. The facts reflect that Supervalu’s coverage requirements “significantly exceed[ed]” those required by 49 U.S.C. § 31139(b)(2) (\$750,000). As a result of the suit, Supervalu decreased the required amount to match federal law.

Nonetheless, OOIDA continued with the lawsuit. OOIDA’s theory was that “Supervalu’s insurance-coverage requirement effectively required OOIDA drivers to purchase Supervalu’s new lumping services, in violation of § 14103(a).” *Id.* at 860.

Supervalu argued that drivers maintained the right to unload provided the driver maintained the minimum required insurance. Supervalu argued, alternatively, that even if drivers were required to hire Supervalu’s lumpers, OOIDA could not prove a violation of the code section because the drivers were reimbursed by shippers. Finally, Supervalu argued the drivers were only entitled to injunctive relief under section 14704.

Office Locations:

317 Sixth Avenue, Suite 1200, Des Moines, Iowa 50309-4195 • 515-288-6041
110 N. Jefferson, Suite 101, Mt. Pleasant, Iowa 52641 • 319-385-9522
213 N. Ankeny Blvd., Suite 100, Ankeny, Iowa 50023 • 515-964-3633
3737 Woodland Avenue, Suite 437, West Des Moines, Iowa 50266 • 515-558-0111

“In Brief”

Case Law Update: Lumper Fees in the Eighth Circuit

Attorney John F. Fatino

Procedural Posture

In a series of rulings concerning cross-motions for summary judgment (each party argued it was entitled to judgment as a matter of law), the district court first concluded that under section 14704 a suit for money damages could not be maintained based upon the plan language of the statute. Second, the district court concluded that judgment in Supervalu’s favor was proper because OOIDA had not proven that the drivers were not reimbursed for lumping services. Id. at 861.

OOIDA appealed to the Eighth Circuit and argued, in part, that Supervalu, had an “unqualified duty...to provide compensation...” to drivers who are required to use unloading services. Id. at 862. The Eighth Circuit found that the case was one of the first impression; that is, apparently no other court had addressed the issue. Based upon the rules of statutory construction and the legislative history of the statute, the Court concluded that “Congress did not intend § 14103(a) to impose on any particular party an unqualified duty to reimburse incurred

lumping fees.” Id. at 866. Thus, based upon the facts before the Court, the Court found judgment was appropriate in Supervalu’s favor because there was no evidence that the drivers at issue were not reimbursed by either the shipper or the receiver. Id. As a result, the Court determined that it need not reach the remaining issues.

To that end, at least one member of the panel, Judge Colloton (former United States Attorney for the Southern District of Iowa) wrote separately to concur in the judgment (that is, the judge found the result was correct but wrote to express a different logic). Judge Colloton found, base upon the statute, when a “receiver requires an owner-operator to be assisted in unloading a motor vehicle, then the receiver is responsible for providing such assistance or compensating the owner-operator.” Id. at 869. Yet, Judge Colloton found an alternative ground existed to support the judgment of the district court. That is, money damages are not an available form of relief under the statute and dismissal of the claims was appropriate.

Consequently, as no party has sought review by the United States Supreme Court, the case is final. Readers will want to watch the continued evolution of these legal theories in the other federal circuit courts of appeal.

For further information about this case and other transportation issues, contact the author of this article, John F. Fatino, fatino@whitfieldlaw.com, Chair, Transportation Practice Group.



John F. Fatino
fatino@whitfieldlaw.com

