COURT AWARDS ATTORNEYS' FEES AGAINST PLAINTIFFS IN MOTOR CARRIER LEASING DISPUTE[1]

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In an unusual and potentially important ruling, a federal district court has interpreted a statutory provision enacted in 1995, 49 U.S.C. § 14704(e), to authorize an award of attorneys' fees in favor of two trucking company defendants and against the unsuccessful plaintiffs, who had claimed the defendants had violated leasing regulations promulgated by the Department of Transportation. The ruling is unusual because attorneys' fees are rarely awarded against unsuccessful plaintiffs and because most statutes authorizing attorneys' fees awards have been construed to allow awards in favor of prevailing plaintiffs as a matter of course but to allow awards to prevailing defendants only on a showing that the suit was frivolous or brought in bad faith.

By Order issued January 21, 2004, in O*wner-Operator Independent Drivers Association, Inc. et al v. New Prime Inc.*, W.D. Mo. No. 97-3408-CV-S-DW, Judge Dean Whipple of the United States District Court for the Western District of Missouri, Southern Division, directed the plaintiffs to pay the defendants $559,718.00 in attorneys' fees incurred in defending against a suit alleging that the defendant had violated the Department of Transportation's "Truth in Leasing" regulations, 49 C.F.R. Part 376. The suit had been filed in 1997 as a class action by the Owner Operator Independent Drivers Association ("OOIDA") and two individual owner operators against New Prime, Inc., a trucking company, and an affiliated company. The suit

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[1] This article was published in *The Transportation Lawyer* (August 2004), a joint publication of the Transportation Lawyers Association and the Canadian Transport Lawyers' Association, and is reprinted here with the kind permission of that publication.

claimed that the agreements by which owner operators leased their vehicles and services to the defendants violated the Truth in Leasing regulations by allowing the defendants to retain certain escrow funds after the termination of the leases. The suits were filed pursuant to 49 U.S.C. § 14704(a)(1) and (a)(2), which was enacted as part of the Interstate Commerce Commission Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (1995) ("ICCTA"), and which, for the first time, allowed individuals to file suit for injunctive relief and damages against motor carriers for violations of the Truth in Leasing regulations.[2] ICCTA's provisions became effective on January 1, 1996. Before ICCTA, only the Interstate Commerce Commission ("ICC") could initiate administrative and judicial actions against carriers for violations of the regulations; until ICCTA, there was no private right of action for individuals to obtain injunctive relief or damages for violations.[3]

In three decisions in 2002, the district court dismissed the suit. Its principal holding was that the ICCTA provisions allowing private suits for violations of the Truth in Leasing regulations should not be construed to apply to lease arrangements entered into before ICCTA's effective date, which were all the lease arrangements between the individual plaintiffs and the defendants. The court also denied the plaintiffs' motion to certify the action as a class action,

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[2] The Truth in Leasing Regulations had been promulgated by the Interstate Commerce Commission in 1979. ICCTA transferred authority over the Truth in Leasing regulations from the ICC to the United States Department of Transportation.

[3] 49 U.S.C. § 14704(a)(1) expressly authorizes private persons to bring judicial actions for violations of the Truth in Leasing regulations, but only for *injunctive* relief. However, 49 U.S.C. § 14704(a)(2) provides, in the passive voice, that "a carrier . . . is liable for damages sustained by a person as a result of an act or omission of that carrier . . . in violation of this part." Although confessing to being "mystified" by the statutory language, the Eighth Circuit held earlier in this case that the two subsections together were intended to create private rights of action for both injunctive relief and damages for violations of the Truth in Leasing Regulations. *Owner-Operators Independent Drivers Ass'n v. New Prime, Inc*., 192 F.3d 778, 785 (8th Cir. 1999), *cert. denied*, 529 U.S. 1066 (2000).

holding that the individual issues in the case would predominate over the common issues. On appeal, the Eighth Circuit affirmed both holdings, and the Supreme Court has denied further review.[4]

Meanwhile, the defendants asked the district court to award them costs, including their attorneys fees, against the plaintiffs, pursuant to 49 U.S.C. § 14704(e) and Rule 54(d)(1) of the Federal Rules of Civil Procedure. 49 U.S.C. § 14704(e), also enacted as part of ICCTA, provides: "The district courts shall award a reasonable attorney's fee under this section. The district court shall tax and collect that fee as part of the costs of the action." Rule 54(d)(1) provides: "Except when express provision thereof is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs . . . ."

In ruling that the defendants are entitled to an award of fees under these provisions, the district court rejected two arguments of the plaintiffs. First, the plaintiffs argued that, inasmuch as the court had ruled that the plaintiffs could not file their suit under § 14704, the court had no jurisdiction to award fees to the defendants under § 14704(e). The court however, held that it had jurisdiction to hear the plaintiffs' claims under § 14704 even though it ultimately denied those claims.

Second, and of greater importance for other cases, plaintiffs argued that § 14704(e) was not intended to authorized fee awards in favor of defendants. The court, however, ruled that "nothing in the language of § 14704(e) limits the award of attorneys fees to prevailing plaintiffs only. Indeed, the Court finds that the statute is unambiguous on this point." The court also

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[4] *Owner-Operators Independent Drivers Ass'n v. New Prime, Inc*., 339 F.3d 1001 (8th Cir. 2003), *cert. denied,* 2004 U.S. LEXIS2577 (2004) .

noted that courts have held that defendants can be deemed to be "prevailing parties" for purposes of awarding costs under Rule 54(d). Because the court had dismissed the plaintiff's claims in their entirety, the court held that the defendants were the prevailing parties.

While the court's reliance on the plain language of § 14704(e) seems unexceptional on the surface, its opinion did not cite or address the many decisions, including Supreme Court decisions, which have construed other statutes authorizing attorneys fees as establishing very different standards for granting fees to prevailing plaintiffs and prevailing defendants even though the language of those statutes likewise makes no distinction between plaintiffs and defendants. In *Christianburg Garment Co. v. EEOC,* 434 U.S. 412 (1978), for example, the Supreme Court construed the attorney's fee provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(k), which provides: "In any action or proceeding under this title, the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs . . . ." Earlier, in *Newman v. Piggie Park Enterprises,* 390 U.S. 400, 402 (19), the Court had construed a substantially identical attorney's fee provision to require an attorney's fee award to a prevailing plaintiff as a matter of course, *i.e.*, "unless special circumstances would render such an award unjust."

In *Christianburg Garment*, however, the Court held that a different standard should apply in the case of prevailing defendants, even though the statutory language and the legislative history made no distinction between plaintiffs and defendants. The Court rejected the defendant's "plain meaning" argument that the same standard should apply to defendants and plaintiffs, stating that "the permissive and discretionary language of the statute does not invite, let alone require, such a mechanical construction." 434 U.S. at 418. The Court concluded that different standards were warranted by "two strong equitable considerations" -- first, that "the

plaintiff is the chosen instrument of Congress to vindicate" the anti-discrimination policies of the statute, and, second, an award of fees to a prevailing plaintiff is an award "against a violator of federal law." *Ibid.* Because these considerations do not apply to prevailing defendants, the Court held that fees to prevailing defendants should not be awarded as a matter of course but only when they can show that the plaintiff's suit was brought either in bad faith or "was frivolous, unreasonable, or without foundation even though not brought in subjective bad faith." 434 U.S. at 421.[5] Since, in most such circumstances, courts have long had the power, under the so-called American Rule, to award attorney's fees to the prevailing party, the practical effect of the dual standard endorsed in *Christianburg Garment* is to limit the beneficial effect of the *statutory* attorney's fee provision largely to prevailing plaintiffs.

Most attorney fee provisions in federal civil rights statutes employ the language of those considered in *Piggie Park* and *Christianburg Garment,* and the cases applying them have duly employed the differing standards for plaintiffs and defendants established by those decisions. *See, e.g.,* 42 U.S.C. § § 1988*,* 2000a-3(b), 2000b-1. Some statutes, like 49 U.S.C. § 14704(e), require the award of fees to certain prevailing parties, but, unlike § 14704(e), most of those that mandate the award of fees do so only for prevailing *plaintiffs*. For example, 49 U.S.C. § 11704 and its predecessors have long authorized persons to sue for damages caused by certain violations of Title 49 by regulated carriers, and § 11704(d)(3) requires courts to award

[5] Later, in *Fogarty v. Fantasy, Inc.,* 510 U.S. 517 (1994), the Court construed very similar statutory language in the attorney's fee provision of the Copyright Property Act, 17 U.S.C. § 505 but concluded that the *same* standards should apply in deciding fee awards for prevailing plaintiffs and defendants, because the basic purpose of the statute was not furthered more by awards to plaintiffs than by awards to defendants.

reasonable attorney's fees, but only "as part of the damages for which a . . . *carrier* is found liable. . . ." Emphasis supplied. *See also, e.g.,* 15 U.S.C. § 1691e (d); 15 U.S.C. § § 1681n, 1681o; 29 U.S.C. § 626 (b); 29 U.S.C. § 1132(g). Statutes that expressly allow for the award of fees to prevailing defendants typically do so only upon a showing that the plaintiff brought the action in bad faith. *See, e.g.* 15 U.S.C. § § 15, 15c, 26.

Judge Whipple's award of fees under 49 U.S.C. § 14704(e) to the defendants in the *New Prime* case may have been correct, but his opinion would have been more convincing if he had acknowledged and made an effort to distinguish the long line of cases applying the dual standard of *Christianburg Garment.* There is certainly an arguable distinction, based on the fact that the award of fees under § 14704(e) is mandatory, whereas the award of fees under the statute considered in *Christianburg Garment* is discretionary -- a fact the Court relied on to justify applying a different standard for plaintiffs and defendants. But it is far from clear why the mandatory or discretionary language of fee statutes should determine whether the same or different standards should be applied to prevailing plaintiffs and prevailing defendants when the statutory language itself makes no distinction between the two. Whether the same or different standards should apply should depend more on the basic purposes of the statutory provision, as the Court indicated in *Christianburg* Garment and *Fogarty v. Fantasy, Inc*., but Judge Whipple's opinion does not address the purposes of 49 U.S.C. § 14704(e).

The award of fees as a matter of course to prevailing motor carrier defendants sued under 49 U.S.C. § 14704 for violations of Title 49 or regulations promulgated under it could have important consequences. The possibility of incurring a large liability for the defendant's attorney's fees could well have a chilling effect on owner operators and other persons contemplating filing suits against motor carriers, not only for violations of the Truth in Leasing

regulations but also for any other violations of Title 49. OOIDA has appealed the attorneys' fee award against it, and whether appellate courts will endorse, or other district courts will follow, Judge Whipple's reading of § 14704 (e) remains, of course, to be seen.