No. 17-340

# In The
# Supreme Court of the United States

NEW PRIME, INC.,

*Petitioner,*

v.

DOMINIC OLIVEIRA,

*Respondent.*

**On Writ Of Certiorari To The United States Court Of Appeals For The First Circuit**

## BRIEF OF THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC. AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT


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## IDENTITY AND INTEREST OF *AMICUS CURIAE* OOIDA[1]

The Owner-Operator Independent Drivers Association, Inc. ("OOIDA") is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators, small-business motor carriers, and professional drivers. More than 160,000 members of OOIDA are professional drivers and small businessmen and women located in all 50 states and Canada.

"Owner-operator" is the term for an individual who owns a commercial motor vehicle ("CMV") and leases that CMV and his or her driving services to a motor carrier under rules authorized under 49 U.S.C. § 14102 and promulgated at 49 C.F.R. Part 376 (the "Truth-in-Leasing" rules). Motor carriers, such as New Prime, Inc., are companies who are authorized and registered by the federal government to operate commercial motor vehicles in interstate commerce. 49 U.S.C. § 13902.

The question of whether or not the contracts of owner-operators are subject to the Federal Arbitration

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[1] No party's counsel authored this brief in whole or in part. No party, party's counsel, or person – other than the *amicus curiae* – contributed money intended to fund the preparing or submitting of this brief. Counsel for both parties have consented to the filing of this brief.

Act ("FAA") will determine whether or not owner-operators will continue to have any meaningful opportunity to protect their small businesses from the type of predatory behavior described in Mr. Oliveira's brief. Congress and federal motor carrier regulators' concern for these issues are the reasons the Truth-in-Leasing rules were promulgated. Especially important is the right to bring an action in federal court for damages and injunctive relief specifically granted to owner-operators by Congress in 1995. 49 U.S.C. §§ 14102, 14704.

## SUMMARY OF THE ARGUMENT

OOIDA submits this brief as *amicus curiae* to inform the court how owner-operator truck drivers are a class of workers engaged in interstate commerce, and how their lease agreements with motor carriers, such as New Prime, Inc., are contracts of employment, as set out in the FAA exemption found at 9 U.S.C. § 1. Congress looked to two factors when it formed the scope of Section 1 of the FAA: the maintenance of a smooth operating transportation system and Congressional concerns for enacting specific regulations governing the contracts of transportation workers. In the 1950s Congress authorized the Interstate Commerce Commission ("ICC") to promulgate rules requiring motor carriers, such as New Prime, Inc., to assume responsibility and control over the operations of their owner-operators. Motor carriers are also required to obtain public liability insurance for their owner-operator operations, as if their owner-operators were the carriers'

own trucks and employee drivers. Later, the ICC promulgated additional rules under this regulatory scheme to protect owner-operators from being exploited by motor carriers. The newer rules established standards for the contracts presented by motor carriers to owner-operators and for the conduct of motor carriers under those contracts. These statutes and rules support the economic stability and safety performance of the participants in the motor carrier industry and, therefore, promote the smooth flow of goods in interstate commerce.

Also, consistent with Congress' intention to exclude contracts of employment of workers engaged in interstate commerce from the FAA, Congress specifically provided for the means of resolving owner-operator/motor carrier disputes by statute. Originally, the ICC was charged with adjudication of such disputes. Once the ICC was terminated in 1995, Congress granted owner-operators a private right of action in federal courts to adjudicate those rights and seek damages and injunctive relief. *See* 49 U.S.C. § 14704, and *Owner-Operator Indep. Drivers Ass'n, Inc. v. New Prime, Inc.*, 192 F.3d 778, 785 (8th Cir. 1999).

This legislative and regulatory history demonstrates that motor carrier/owner-operator contracts are among the contracts Congress exempted in Section 1 of the FAA.

But even if the Court believes that the FAA exemption may not have originally contemplated contracts such as those between motor carriers and owner-operators, Congress' grant of a private right of action in federal court was a de facto expansion of the FAA exemption, providing owner-operators the right to go to court to resolve disputes with motor carriers.

## ARGUMENT

### CONGRESS HAS REGULATED THE CONTRACTUAL RELATIONSHIPS OF MOTOR CARRIERS AND OWNER-OPERATORS SINCE THE 1950S

Congress relied upon two factors to form the scope of Section 1 of the FAA: the maintenance of a smooth operating transportation system and Congressional concerns for enacting specific regulations governing the contracts of transportation workers (as detailed in Respondent's brief). In holding that the FAA exemption applies to "transportation workers," the Court has held that it was "rational for Congress to ensure that workers in general would be covered by the provisions of the FAA, while reserving for itself more specific legislation for those engaged in transportation." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001).

For motor carrier transportation, Congress and several federal regulatory agencies acted upon those concerns by establishing requirements for leasing agreements (the contracts) between motor carriers and owner-operators and by providing administrative and

then statutory schemes for resolving disputes that arise under those leasing agreements.

### A. Congress and The ICC First Mandated Motor Carrier Control of and Responsibility for Owner-Operators

The federal government's oversight of owner-operator/motor carrier contracts began when Congress required motor carriers operating with federal authority to assume responsibility for the safe operation of owner-operators with whom they contract. Congress responded to agency and congressional findings that motor carriers had attempted to immunize themselves from the negligence of the drivers who operated their own vehicles by making them all nominally "independent contractors." *See* Amendments to the Interstate Commerce Act, Pub. L. No. 84-957; H.R. Rep. No. 84-2425, reprinted in 1956 U.S.C.C.A.N. 4304, 4309; *see also White v. Excalibur Ins. Co.,* 599 F.2d 50, 52 (5th Cir. 1979) (citing *Transamerican Freight Lines, Inc. v. Brada Miller Freight Sys., Inc.*, 423 U.S. 28 (1975)); *Am. Trucking Ass'ns, Inc. v. United States*, 344 U.S. 298, (1953); *Alford v. Major*, 470 F.2d 132 (7th Cir. 1972). Because the financial condition of owner-operators was such that injured members of the public were not able to recover in legal actions against them, Congress assigned public liability and the responsibility for insurance to motor carriers. Amendments to the Interstate Commerce Act, Pub. L. No. 84-957; H.R. Rep. No. 84-2425, reprinted in 1956 U.S.C.C.A.N. 4304, 4309.

Congress imposed those requirements upon motor carriers by authorizing the ICC to promulgate "regulations as may be reasonably necessary to assure that motor carriers will have full direction and control of vehicles while they are being used under such leases, and will be fully responsible for the operation thereof in accordance with applicable law and regulation, as if they were the owners of the vehicles," including compliance with all safety rules. *Id*.

The ICC thereafter promulgated rules which stated, in part: "The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease." 49 C.F.R. § 376.12(c)(1).

Congress' mandate over motor carrier/owner-operator leasing agreements illustrates how it considered and treated such agreements as falling within the FAA exemption. This statute and the rules directing motor carriers to assume responsibility and control over owner-operators in their lease agreements were intended to promote a safer and more stable motor carrier industry, thereby ensuring the smoother flow of goods.

### B. The Expansion of The Leasing Rules to Address Motor Carrier Exploitation of Owner-Operators

The leasing rules were amended significantly by the ICC in 1979 and have existed without material change since then. Lease and Interchange of Vehicles, 131 M.C.C. 141 (January 9, 1979); 49 C.F.R. Part 376.[2] In promulgating these regulations, the ICC responded to a well-documented and longstanding history of abuses by motor carriers of owner-operators in their lease/contract relationship. *Global Van Lines v. Interstate Commerce Comm'n*, 627 F.2d 546, 548 (D.C. Cir. 1980). These amendments, which have become known as the "Truth-in-Leasing Rules," were intended to achieve "full disclosure of the benefits and obligations of leasing arrangements between owner-operators and regulated carriers." Lease and Interchange of Vehicles, 129 M.C.C. 700, 702 (June 13, 1978). Specific provisions are required to be included in the written lease, such as specifying owner-operator compensation, prohibiting motor carriers from forcing owner-operators to purchase goods and services from the carrier as a condition for entering the lease, and disclosing the type and amount of any charge-backs the motor carrier may deduct from an owner-operator's compensation during the term of the lease. *See* 49 C.F.R. § 376.12. To impart the importance of these rules to motor carriers, the

[2] In 1996, the regulations were redesignated from 49 C.F.R. Part 1057 to Part 376 without substantive change. *See* 61 Fed. Reg. 54706, 54707 (October 21, 1996).

ICC required that those provisions "shall be adhered to and performed by the authorized carrier." *Id.*

Particularly pertinent to the FAA transportation exemption, the ICC's stated purposes for these regulations were:

> (1) to simplify existing and new regulations and to write them in understandable English; (2) to promote truth-in-leasing – a full disclosure between the carrier and the owner-operator of the elements, obligations, and benefits of leasing contracts signed by both parties; (3) to eliminate or reduce opportunities for skimming and other illegal or inequitable practices; and (4) ***to promote the stability and economic welfare of the independent trucker segment of the motor carrier industry***.

Lease & Interchange of Vehicles, 131 M.C.C. 141 (January 9, 1979) (emphasis added).

When commenting on the proposed rules, ICC Chairman O'Neal observed:

> My concern is that because they like to eat, owner-operators will continue to find it necessary to enter into contracts with carriers they would like to avoid. . . . The difficulty is that one owner-operator by himself will have very little chance of bargaining any changes in any contract. His option will be take it or leave it.

Lease and Interchange of Vehicles, 43 Fed. Reg. 29812, 29813 (July 11, 1978).

The regulation of the contractual relationship between motor carriers and owner-operators underscores Congress' concern about this particular group of interstate transportation workers and their necessary role in the free flow of goods. *See* Lease and Interchange of Vehicles, 131 M.C.C. 141, 143-44 (January 9, 1979); *Global Van Lines v. Interstate Commerce Comm'n*, 627 F. 2d 546, 550-51 (D.C. Cir. 1980).

These rules protect owner-operators and benefit the public: "Since only the carrier has ICC authority, it is not permitted to delegate it, abrogate it, or evade the responsibilities imposed on it by means of a contractual device, for there are basic requirements that are inherent in the relationship of the carrier for hire with operating authority to the public. . . . [T]hus, responsibility to the public under the leasing device is fixed." *Rediehs Exp., Inc. v. Maple*, 491 N.E.2d 1006, 1011 (Ind. 1986) (citations omitted). As the Seventh Circuit noted in a review of Section 376.12(j)(1), the point of the leasing regulations "is to remove from the domain of private choice the terms on which [those with federal operating authority] may do business." *Westfield Ins. Co. v. Hanover Ins. Co.*, 9 F.3d 656, 657 (7th Cir. 1993). The immutability of the rights of owner-operators and the duties of motor carriers under these rules is precisely the type of public policy choice that Congress intended to remove from private discretion and preserve for itself under the FAA Section 1 exemption. Contracts by regulated carriers employing owner-operators to transport goods in interstate commerce are thus

squarely within the exemption of Section 1 to the FAA applicable to "transportation workers."

That policy is further bolstered by the history of the government's direction of the resolution of owner-operator and motor carrier disputes, which New Prime, Inc. attempts to avoid by requiring its drivers to accept an arbitration clause in its contracts.

### C. The Provisions in Federal Law For Motor Carrier/Owner-Operator Dispute Resolution

Consistent with Congress' intent to reserve from the FAA the resolution of owner-operator/motor carrier disputes, federal law has long provided for the resolution of contractual disputes between owner-operators and motor carriers. Originally, the ICC resolved disputes between owner-operators and motor carriers through enforcement proceedings. Then, when, Congress passed the ICC Termination Act ("ICCTA"), Pub. L. No. 104-88, 89 Stat. 26 (December 29, 1995), it granted owner-operators a private right of action in federal court to resolve these disputes. 49 U.S.C. § 14704.

#### 1. Pre-1995 Resolution of Owner-Operator Complaints by the ICC

Prior to the 1995 enactment of the ICCTA, the ICC regulated economic and market rules for motor carriers. The ICC held plenary authority over enforcement of the Truth-in-Leasing regulations, including the authority to seek court enforcement of a motor carrier's

obligation to safeguard, account for, pay interest on, and eventually return escrow funds. The ICC could "begin an investigation [of a violation of the leasing regulations] on its own authority or on a complaint." 49 U.S.C. § 11701(a) (1995). Owner-operators could bring such a complaint under the authority of 49 U.S.C. § 11701(b) (1995). As noted by the ICC:

> Carrier leasing practices are investigated based on patterns of complaints and other information received or developed by the Commission's field staff and through compliance surveys. The Commission takes enforcement action to ensure compliance with the leasing regulations. For example, the Commission seeks injunctions against carriers that fail to make payments to owner-operators.

Interstate Commerce Commission, *Study of Interstate Commerce Commission Regulatory Responsibilities Pursuant to Section 210(a) of the Trucking Industry Regulatory Reform Act of 1994*, 1994 WL 639996, at *53 (October 25, 1994).

The ICC had broad authority to enforce its regulations, including the Truth-in-Leasing regulations, under 49 U.S.C. §§ 11701, *et seq.* (1995). *See S. Pac. Transp. Co. v. Commercial Metals Co.*, 456 U.S. 336, 349-50 (1982). This authority included the power to issue a cease-and-desist order, *Shaw Warehouse Co. v. S. R. Co.*, 308 I.C.C. 609, 633-634, 637 (1959), to seek a federal court injunction requiring a carrier to comply with its regulations, *Interstate Commerce Comm'n v. All-American, Inc.*, 505 F.2d 1360 (7th Cir. 1974), and to bring suit for civil

forfeiture, 49 U.S.C. §§ 16(8), 11901(a) (1976 ed., Supp. III), for each knowing violation of an order of the Commission. This Court noted that "[t]he Commission's authority under the Interstate Commerce Act [wa]s not bounded by the powers expressly enumerated in the Act." *Interstate Commerce Comm'n v. Am. Trucking Ass'ns, Inc.,* 467 U.S. 354, 365 (1984). Instead, the ICC could fashion any number of remedies so long as they were "legitimate, reasonable, and directly adjunct to the Commission's explicit statutory power." *Id*.; *Interstate Commerce Comm'n v. Transcon Lines*, 513 U.S. 138, 145 (1995). These broad, undefined remedies were authorized out of the recognition that Congress could not be expected to anticipate "every evil sought to be corrected" by the ICC and that "the absence of express remedial authority should not force the Commission to sit idly by and wink at practices that lead to violations of ICA provisions." *Am. Trucking*, 467 U.S. at 371; *see also Zola v. Interstate Commerce Comm'n,* 889 F.2d 508, 516 (3d Cir. 1989) (holding that "[t]he Commission's discretionary remedial powers are not limited to the rate-making area"). OOIDA is unaware of any motor carrier ever invoking the FAA and an arbitration clause in an owner-operator contract to try to deprive the ICC of its dispute resolution jurisdiction.

### 2. The ICC Termination Act Granted a Specific Private Right of Action in Federal Court

Congress terminated the ICC as a federal agency by passing ICCTA. Congress transferred several areas

of the ICC's authority and functions (including its jurisdiction over the Truth-in-Leasing regulations) to the U.S. Department of Transportation ("DOT"). *See* 49 U.S.C. § 14102. Within the DOT, responsibility over the Truth-in-Leasing regulations now resides with the Federal Motor Carrier Safety Administration. 49 C.F.R. § 1.87(a)(6), (8). The ICCTA provision codified at 49 U.S.C. § 14704(a) expressly authorizes private actions for damages and injunctive relief to remedy violations of that section of the Motor Carrier Act and its implementing regulations. This private right of action was first recognized by the courts in litigation between OOIDA and New Prime, Inc.: *Owner-Operator Indep. Drivers Ass'n, Inc. v. New Prime, Inc.*, 192 F.3d 778, 785 (8th Cir. 1999).

The courts have further recognized that the federal default four-year statute of limitations under 28 U.S.C. § 1658 applies to actions under 49 U.S.C. § 14704. *Owner-Operator Indep. Drivers Ass'n, Inc. v. United Van Lines, LLC*, 556 F.3d 690, 696 (8th Cir. 2009), and under the American Rule, prevailing plaintiff owner-operators, but not prevailing motor carrier defendants, have a right to recover reasonable attorneys fees under 49 U.S.C. § 14704(e). *Owner-Operator Indep. Drivers Ass'n, Inc. v. New Prime, Inc.*, 398 F.3d 1067, 1071 (8th Cir. 2005). In rejecting New Prime, Inc.'s assertion that it was entitled to attorneys fees, the Eighth Circuit observed:

> The right to enforce privately the Truth in Leasing regulations, a right which this court recognized in Prime I, would be severely

> chilled if we were to adopt Prime's interpretation of § 14704(e). Claims of independent owner operators may often be for a relatively small amount of damages. The class action complaint filed in this action, for example, alleged that each prospective class member had deposited approximately $1,000—$20,000 with Prime under the disputed contract terms that established reserve funds and a security deposit. This shows that the potential rewards are already low, and increasing the risks by imposing attorney fees on owner operators who do not prevail would discourage them from pursuing their claims in court. Absent any evidence to the contrary, we do not conclude that Congress established a private remedy and simultaneously created a unique and formidable barrier to its attainment.

*Id.* Similarly, here, New Prime, Inc.'s effort to apply the FAA to owner-operator contracts would create another formidable barrier, effectively denying owner-operators the private remedy in federal court granted by Congress.

Several federal courts have held that motor carriers lease contracts with owner-operators fall into the FAA exemption: *See Owner-Operator Indep. Drivers Ass'n, Inc. v. C.R. England, Inc*., 325 F. Supp. 2d 1252, 1257 (D. Utah 2004) ("It is clear that Plaintiffs, as persons who, pursuant to the Operating Agreements at issue, actually move items in interstate commerce, are in a class of workers engaged in interstate commerce, or are transportation workers, within the meaning of

the exemption."); *Owner-Operator Indep. Drivers Ass'n, Inc. v. Landstar Sys., Inc.*, No. 3:02-CV-1005-J-25HTS, 2003 WL 23941713, at *2 (M.D. Fla. September 30, 2003) ("[B]y operation of federal law the individual Plaintiffs and Defendants have an employee-employer relationship."); *Gagnon v. Serv. Trucking Inc.*, 266 F. Supp. 2d 1361, 1364 (M.D. Fla. 2003), *vacated pursuant to settlement*, No. 5:02-CV-342-OC-10GRJ, 2004 WL 290743 (M.D. Fla. February 3, 2004) ("The Court agrees that the Plaintiff – and the other putative class members, all of whom are truck drivers – fall within the definition of 'workers engaged in interstate commerce.'").

The ICC's former expansive authority to resolve complaints of owner-operators against motor carriers and the current private right of action express the purpose of the FAA exemption: to ensure that conflicts related to persons engaged in interstate commerce are resolved in ways that best fulfill public policy interests. If the FAA applied to motor carrier/owner-operator contracts, then motor carriers' imposition of an arbitration requirement would defeat the consistent enforcement of rules created to protect the public's interest in a stable, reliable transportation system. The public would not be protected from an owner-operator who was forced to drive a thousand miles in one week without being paid, damaging that driver's economic stability, health, safety, and ability to operate within federal law and meet all of his economic obligations to his motor carrier, the maintenance of his truck and business, and his family's needs at home.

The FAA exemption applies to whole classes of contracts of employment of persons engaged in interstate or international commerce. The exemption was not written to expand and contract to the extent the federal government chooses to regulate such contracts. Common law distinctions between "employees" and "independent contractors" were not of concern to Congress in drafting the FAA exemption. The Court need not determine whether New Prime, Inc.'s labeling of Mr. Oliveira as an independent contractor was accurate. Both employees and independent contractors, such as owner-operators, fall within the FAA exemption.

Even if the court were to find that owner-operator contracts were not the type of contract contemplated by the FAA exemption, the subsequent Congressional grant of a private right of action to owner-operators for damages and injunctive relief must be harmonized with whatever the FAA exemption may have existed previously. "Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment. The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) (citations omitted), cited with approval by *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1018 (1984). By requiring an arbitration clause in owner-operator contracts,

motor carriers would defeat the unmistakable public policy choice of Congress in ICCTA to preserve the remedy to seek damages and injunctive relief in court available previously through the ICC. This statute continues Congress' intent to protect drivers from coercive contracts and behavior by motor carriers, and ensures the public benefits from a stable and smooth transportation system.

## CONCLUSION

The Congress and federal agencies' historical oversight and regulation of motor carrier/owner-operator contracts, and their provision of different procedures and forums to resolve disputes under those contracts demonstrate precisely the type of contract for employment of persons engaged in interstate commerce that Congress intended to exempt from the FAA. These statutes and rules ensure a stable transportation industry by requiring motor carriers to take responsibility for the safe operation of owner-operators, requiring motor carriers to use and comply with owner-operator contract provisions that remedy the historical ways that motor carriers have exploited owner-operators, and giving owner-operators the right to go to federal court to resolve disputes under those contracts. These requirements ensure that owner-operators are directed by motor carriers to operate safely and that they have the economic predictability and stability to do so. A definitive finding by this Court more than 90 years after the passage of the FAA that motor carrier/owner-operator

contracts are not exempted from the FAA would erect such a burden (similar to the Eighth Circuit's observation quoted above) that it would effectively defeat an owner-operator's ability to enforce his or her rights, and therefore frustrate the public policy choices of Congress and the regulating agencies.

Respectfully submitted,

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