You Can't Handle the Truth ... In Leasing Regulations: *Porter v. T&T Farms, Inc.*

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As we all know, independent contractor programs and lease-to-own programs are currently under strict scrutiny from courts and legislatures throughout the country. While many of the recent court decisions involve employee misclassification issues, other dangers exist to these programs if not properly implemented. These dangers exist even if these programs are implemented in jurisdictions with favorable independent contractor laws. Any motor carrier seeking application of an independent contractor program should become familiar with the Truth In Leasing Regulations ("TIL"). These federal regulations are found in 49 C.F.R. § 376 and provide basic provisions that must be included in independent contractor agreements and lease purchase agreements. The TIL was initially designed to "prevent large carriers from taking advantage of individual owner-operators due to the individual's weak bargaining position." *Owner Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co., Inc.*, 367 F.3d 1108, 1110 (9th Cir. 2004). While each independent contractor program or lease-to-own program should be catered to each individual company, all of these programs—and the contracts used to apply them—must follow the TIL. A recent case out of the Northern District of Indiana confirms this requirement and stands as a warning for motor carriers to closely analyze their contracts and ensure compliance with the TIL.

In *Porter v. T&T Farms*, a driver, Michael Porter, sued T&T Farms, Inc. and the owner of T&T Farms individually for its lease-to-own program. Mr. Porter alleged in his complaint that T&T Farms offered drivers the option to enter into a lease-to-own program where a driver could haul loads for T&T Farms and own the tractor and trailer used to haul these loads at the end of a four-year lease. In order to recruit drivers to this four-year lease program, T&T Farms representatives told drivers they would make between $1,200 and $1,500 per week all while earning ownership of the tractor and trailer through the lease program. Importantly, no contracts were signed as part of this program. After beginning the program, Mr. Porter was surprised when T&T Farms began deducting amounts for insurance and various other expenses from his settlements. After driving for T&T Farms for approximately one year, Mr. Porter filed suit against T&T Farms and the owner of T&T Farms alleging violations of the Truth-In-Leasing Regulations among other allegations. T&T Farms filed a Motion to Dismiss the violations of the Truth-In-Leasing Regulations, which the court ruled on in its opinion.

T&T Farms' sole argument was that the TIL did not apply to its lease-to-own program based on a strict reading of the regulations. Under the first section of the TIL it states "the authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions . . . ." Those conditions include requirements that the lease agreement be in writing as well as provide certain other basic requirements. Based on the reading of the regulations, T&T Farms argued that because T&T Farms owned the equipment that was being leased to Mr. Porter, the TIL did not apply. The court agreed with T&T Farms to some extent, finding both Mr. Porter and T&T Farms dually owned the truck. However, the Court rejected the idea that ownership of the truck by T&T Farms placed T&T Farms outside of the liability imposed by the TIL. Citing another case, the Court stated:

> The purpose of the regulations is to protect owner-operators from abusive practices and promote the stability and economic welfare of the independent trucker segment of the motor carrier industry. This purpose does not support distinguishing between truck drivers who own their trucks outright, and truck drivers who must lease their trucks from carriers who then contract for their services, both of whom are vulnerable to large carriers.

Therefore, the court rejected T&T Farms' narrow reading of the TIL Regulations, finding applicability of the TIL even if the motor carrier owns the equipment that is being leased. Furthermore, the Court found the TIL specifically encompasses a lease-back program, in which the driver leases the truck from the company, the company retains the title to the truck, and the driver leases the use of the truck and their driving services back to the company. Based on this the court denied T&T Farms' motion to dismiss the alleged violations of the TIL. While the court did not determine whether T&T Farms actually violated any of the TIL Regulations, this case presents an example of the scope and applicability of the Truth In Leasing Regulations.

There are multiple considerations for motor carriers implementing an independent contractor or lease-to-own program. Aside from the misclassification issues currently facing the transportation industry, motor carriers must also remain mindful of the types of contracts utilized and the specific provisions contained within them. Additional examples of pitfalls with the Truth in Leasing Regulations include the failure of the motor carrier to disclose chargeback items, deductions, or provide documentation for deductions in lease agreements. See *Niiranen v. Carrier One, Inc.*, 2022 U.S. Dist. LEXIS 5123 (N.D. Ill. Jan. 11, 2022) (chargeback items); *Luxama v. Ironbound Express, Inc.*, 2021 U.S. Dist. LEXIS 16130 (D.N.J. Jan. 27, 2021) (deductions); *Cunningham v. Lund Trucking Co.*, 662 F. Supp. 2d 1262 (D. Or. 2009) (documenting deductions). Unfavorable provisions in contracts are inevitable, but unlawful provisions in contracts can expose motor carriers to liability down the road.