UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., et al,

Plaintiffs,

vs. **CASE NO. 3:02-cv-1005-J-25HTS**

LANDSTAR SYSTEM, INC., et al,

Defendants.

/

ORDER

THIS CAUSE is before the Court on Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability (Dkt. 218). Defendants' response thereto (Dkt. 246). Defendants' Motion for Partial Summary Judgment (Dkt. 238), Plaintiffs' response thereto (Dkt. 248). Defendants' Motion for Rule 16 Pre-Trial Management Conference (Dkt. 302), Plaintiffs' Motion Seeking Leave to Submit Supplemental Authority in Support of Motion for Partial Summary Judgment (Dkt. 311). and Plaintiffs' Motion to Strike Defendants' Summary Judgment Exhibits (Dkt. 318). This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337. The Court has considered all of the foregoing motions. For the reasons set forth below, both motions for partial summary judgment are due to be granted in part and denied in part. Defendants' Motion (Dkt. 302) is denied as moot, Plaintiffs' motion (Dkt. 311) is granted. and Plaintiffs' motion (Dkt. 318) is denied.

BACKGROUND

Plaintiffs (collectively referred to as "Owner-Operators") brought this action against Defendants (collectively referred to as "Landstar") alleging that Defendants have violated certain

Truth-in-Leasing provisions, which are part of the Motor Carrier Act of 1980. The Defendants are authorized motor carriers that provide transportation of property in interstate commerce under authority issued by the U.S. Department of Transportation ("DOT"). As such, the Defendants must enter into written leases with the owners of equipment and must adhere to and perform the required lease provisions.

The sections pertinent to Plaintiffs' and Defendants' motions are 49 C.F.R. § 376.12(d) & (h), which provide as follows:

> Compensation to be specified. The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

49 C.F.R. § 376.12(d).

> Charge-back items. The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.

49 C.F.R. § 376.12(h). A charge-back is a procedure by which a motor carrier deducts charges expended by the motor carrier on behalf of the driver for products and services from the compensation of a driver.

There are two leases that are at the center of these disputes: Original Lease and New Lease. The Original Lease allegedly (1) contained nothing regarding Landstar's practice of reducing

shipping revenues before calculating Plaintiffs' compensation and (2) failed to clearly specify that charge-backs included mark-ups for profits and fees and failed to disclose how the charge-backs' amounts were computed. The New Lease, which was adopted after this case was filed, allegedly (1) discloses Landstar's practice of understating shipping revenues but fails to provide the amount of the reductions or the method by which they are implemented and (2) discloses that charge-back items include mark-ups for profits and fees but fails to disclose how charge-backs are computed. The Plaintiffs filed this action seeking declaratory, injunctive, and monetary relief.

STANDARD OF REVIEW

Summary Judgment will be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)). Rule 56 "mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Chapman v. Am. Cyanamid Co.*, 861 F.2d 1515, 1518 (11th Cir. 1988) (omission in original) (citations omitted). The Court should grant summary judgment when the evidence favoring the non-moving party is merely colorable or is not significantly probative. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986) (citations omitted).

DISCUSSION

I. Plaintiffs' Motion

Plaintiffs ask this Court to hold that (1) Defendants have violated 49 C.F.R. § 376.12(d) by making undisclosed and/or undocumented reductions from revenue derived from freight before calculating compensation, thereby unlawfully reducing Plaintiffs' compensation; and (2) Defendants have violated 49 C.F.R. § 376.12(h) by (i) making charge-backs to compensation due to the Plaintiffs for items which the method for calculating the amount of such charge-backs was not disclosed and (ii) by making charge-backs in amounts that were in excess of sums actually paid by Defendants for the products or services.

Defendants initially respond that the Plaintiffs' motion should be denied because it fails to address any of Defendants' affirmative defenses that go to the issue of liability, including waiver, estoppel, and voluntary payment. Defendants then respond to the merits of Plaintiffs' motion. First, they ask this Court to adopt a "substantial compliance" standard of review regarding the regulations. Under the substantial compliance standard, Defendants ask this Court to supplement the Original Lease Disclosures with communications post-dating the leases' execution. The Defendants also assert that, although they want the Court to apply a substantial compliance standard, they have literally complied because the leases properly disclose revenue reduction and charge-back information. Finally, Defendants contend that the Plaintiffs' motion must be denied for failure to prove actual damages as an element of liability.

A. Failure to Address Affirmative Defenses

The Court will first address Defendants' contention that Plaintiffs motion must be denied for

failure to address Defendants' affirmative defenses. The Court finds Defendants' argument unpersuasive. The absence of an affirmative defense is not an element of liability, and the Plaintiffs do not have the burden of proof as to Defendants' affirmative defenses. *See Chapman*, 861 F.2d at 1518 (stating that Rule 56 "mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial.").

The Eleventh Circuit's case that Defendants cite, *Still v. Travelers Ins. Co.*, is distinguishable. 88 F.3d 911 (11th Cir. 1996). The court stated that "[t]he entry of summary *final* judgment in th[e] case was error" where the court did not adjudicate the affirmative defenses. *Id.* at 914 (emphasis in original). As such, the judgment was only a *partial* summary judgment. *Id.*

The present case involves Plaintiffs' motion for *partial* summary judgment regarding Defendants' liability for allegedly failing to comply with the regulations. Likewise, Defendants only ask this Court for partial summary judgment. "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and we think it should be interpreted in a way that allows it to accomplish this purpose." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). The Defendants bear the burden of proof as to any affirmative defenses. *Int'l Stamp Art, Inc. v. U.S. Postal Serv.*, 456 F.3d 1270, 1274 (11th Cir. 2006) ("If the movant bears the burden of proof on an issue, because, as a defendant, it is asserting an affirmative defense, it must establish that there is no genuine issue of material fact as to any element of that defense."). This Court "find[s] no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials *negating* the opponent's claim." *Celotex Corp.*, 477 U.S. at 323 (emphasis in original). As such, the Plaintiffs were not required to address

Defendants' affirmative defenses in their motion for partial summary judgment.

B. Applicable Standard for Truth-in-Leasing Regulations

The Plaintiffs ask this Court to adopt the literal compliance standard, which has been applied under the Truth-in-Lending Act (TILA). *See, e.g., Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 318 (S.D. Fla. 2001) ("[O]nce a court finds a violation [of TILA], *no matter how technical*, it has no discretion with respect to the imposition of liability" (*quoting Grant v. Imperial Motors*, 539 F.2d 506, 510 (5th Cir. 1976))) (emphasis in *Fabricant*). The Defendants, on the other hand, ask this Court to adopt a substantial compliance standard and supplement the lease provisions with "all communications" between the parties. The Defendants concede "that authorities under the Truth-in-Lending Act are instructive on issues for which there is no Truth-in-Leasing case authority,"[1] but apparently wants the Court to apply the standards under "the very similar Truth[-]in[-]Lending Act" only when those standards support Defendants' position. *Compare* Defendants' Memorandum in Opposition (Dkt. 246) at 6 n.25 (asking Court to reject a literal compliance standard under Truth-in-Lending Act), *with id.* at 18 (asking Court to adopt a detrimental reliance standard under "the very similar" Truth-in-Lending Act).[2]

The language of Section 376.12 provides that written leases "shall contain" certain provisions

---

[1] Neither the Plaintiffs nor Defendants have provided any binding authority setting forth the standard to apply under the Truth-in-Leasing Act.

[2] Defendants seeks to impose a detrimental reliance standard regarding damages under the Truth-in-Leasing Act. However, this Court need not decide that issue at this time. Damages is a remedy— not an element of liability. *See* 49 U.S.C. § 14704(a)(2) ("Damages for violations. A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part."). Further, Plaintiffs explicitly reserved consideration of remedies for trial. *See* Plaintiffs' Memorandum in Support (Dkt. 219) at 2. This Court previously noted that even if the Plaintiffs prevail on the issue of liability, the "issues of damages will be unique and subject to individualized proof." *See* Order (Dkt. 199) at 4.

and that motor carriers "shall" adhere to and perform the required lease provisions. 49 C.F.R. § 376.12. The use of the word "shall" denotes an obligation "impervious to judicial discretion." *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Learch*, 523 U.S. 26, 35 (1998). The Defendants' proposition renders the Truth-in-Leasing Act merely advisory—contrary to its plain command, and this Court has no authority to rewrite the aforementioned regulation. Accordingly, the Defendants must literally comply with the Truth-in-Leasing Regulations and their request to apply a substantial compliance standard is **DENIED.**

C. 49 C.F.R. § 376.12(d)

Plaintiffs ask this Court to find that Defendants have violated § 376.12(d) by making undisclosed and/or undocumented reductions from revenue derived from freight before calculating compensation, thereby unlawfully reducing Plaintiffs' compensation. Under the regulation, the "amount to be paid by the authorized carrier . . . shall be clearly stated on the face of the lease or in an addendum . . . The amount to be paid may be expressed as a percentage of gross revenue . . . or by any other method . . . mutually agreed upon by the parties to the lease." § 376.12(d).

Plaintiffs argue that Landstar's Original Lease "fails to disclose or document its practice of reducing shipping revenues before calculating Plaintiffs' compensation." Plaintiffs' Motion (Dkt. 218) at 1. However, Plaintiffs concede that "in both the Original and New Landstar leases, compensation is calculated as a percentage of '98% of Adjusted Gross Revenue [(AGR)].'" Plaintiffs' Memorandum in Support (Dkt. 219) at 12. The Plaintiffs also concede that both leases set forth the specific deductions used to calculate AGR. *Id.* at 12-13; *see, e.g., id.* at Ex. A. This unambiguously falls within the myriad of possible compensation methods upon which the parties may agree. *See* § 376.12(d) ("or by any other method . . . mutually agreed upon by the parties"). As

such, this Court finds that Defendants have literally complied with the requirements of Section 376.12(d) in the Original and New Leases. Plaintiffs' motion as it relates to Section 376.12(d) is **DENIED**.

Because Plaintiffs and Defendants ask this Court to grant summary judgment in their favor regarding Section 376.12(h), both parties' motions on this issue will be discussed *infra* Part II.B.

II. Defendants' Motion

Defendants ask this Court to hold that (1) a class-representative Plaintiff lacks standing with respect to charge-back claims if the named class representative never purchased the item subject to the specific claim, and (2) 49 C.F.R. § 376.12(h) neither prohibits charge-backs which include administrative costs or mark-ups nor requires their disclosure. Plaintiffs respond by reiterating this Court's prior ruling that the class-representative Plaintiffs do have standing and argue that Section 376.12(h) does prohibit charge-backs which include administrative costs or profits and that there must be disclosure.

A. Standing

Defendants reassert the arguments presented to the Court in their opposition to Plaintiffs' motion for class certification. *See* Defendants' Response in Opposition to Plaintiffs' Motion for Class Certification (Dkt. 118). This Court disagreed with Defendants and certified the class. Subsequently, the Defendants petitioned the Eleventh Circuit Court of Appeals for permission to appeal this Court's class certification, and the petition was denied. *See Landstar Inway, Inc., et al. v. OOIDA, Inc., et al.*, No. 05-90034-J (11th Cir. 2005) (Dkt. 205). The Defendants do not assert that facts or circumstances in the case have changed since the Court's class certification. As such,

Defendants' argument regarding Plaintiffs' standing is without merit. Defendants' motion as it relates to standing is **DENIED**.

B. 49 C.F.R. § 376.12(h)

The mandates of Section 376.12(h) have spawned disputes across the country in recent years. Plaintiffs and Defendants in this case dispute (1) whether motor carriers are allowed to include administrative fees and/or make profits on charge-backs and (2) whether motor carriers must disclose documents to determine the validity of charge-backs. After reviewing the language and legislative history of the regulation, this Court answers both affirmatively.

i. Fees and Profits

The Truth-in-Leasing Act is silent regarding motor carriers' ability to include administrative fees or profit on charge-backs. Therefore, this Court must look to the legislative history for guidance. *See Texas Instruments, Inc. v. United States*, 551 F.2d 599, 606 (5th Cir. 1977). In 1978 and 1979, the proposed rule relating to charge-back items provided the following: "The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at time of payment or settlement." *Lease and Interchange of Vehicles*, 131 M.C.C. 286, 328 (June 13, 1978), *available at* 1978 WL 10541; *Lease and Interchange of Vehicles*, 131 M.C.C. 141, 160 (January 9, 1979), *available at* 1979 WL 11158. In 1981, the Interstate Commerce Commission (ICC) made the following statement:

> It appears that, in certain instances, carriers are defeating the intent of the present regulations by profiting from charge-back items at the expense of owner-operators. . . . The carrier should not be in a position to manipulate these expenses in such a way that it makes a profit in its handling of these matters. To the extent that charge-backs to owner-operators reduce the carrier's legitimate expenses, resulting in losses

> to the owner-operator and a profit to the carrier, they are not legitimate charge-backs or deductions.

Lease and Interchange of Vehicles, 46 Fed. Reg. 44013-01, 44014-15 (ICC Sept. 2, 1981), *available at* 1981 WL 107853. In the next paragraph, the commission recognized that charge-backs may "includ[e] administrative costs." *Id.* at 44015.

The ICC then proposed to modify the charge-back provision "to require carriers to refund all amounts paid to the carriers which exceed the amount owed. Additionally, interest [was] to be paid and with interest computed by the same method as on escrow funds, for that portion of the amount deducted from owner-operator compensation which exceeds 110 percent of the amount which properly should have been deducted." *Id.* The language of the 1981 proposed rule stated the following:

> The lease shall clearly specify all items and the amount of such items, *including administrative costs*, that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment of settlement. *The carrier shall refund, with interest computed by the same method as on escrow funds under section 1057.12(1)(5), on deductions which exceed 110 percent of the amount shown on the lease as deductible from the lessor's compensation.*

Id. (emphasis added to language ultimately deleted).

However, the final rule relating to charge-backs substantially differs from the 1981 proposal. The language of the current rule provides as follows:

> The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, *together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.*

Lease and Interchange of Vehicles, 47 Fed. Reg. 51136-02, 51140 (November 12, 1982), *available*

at 1982 WL 146684 (emphasis added to language not present in 1981 proposal).

Although the regulations are silent, the legislative history makes clear that the commission considered a total prohibition on profits and rejected it. Other courts that have considered this issue reached the same conclusion. *Accord Albillo v. Intermodal Container Serv., Inc.*, 2000 WL 35436363, at *17 (Cal. Sup. Ct. Sept. 20, 2000) (discussing charge-backs for insurance payments and finding "that defendants' apparent profit on the charge-back amounts is not illegal under these disclosure regulations, or any other basis presented by plaintiffs"), *aff'd in part*, 8 Cal. Rptr. 3d 350 (Cal. Ct. App. 2003); *Kellander v. Davidson Bros., Inc.*, 2003 WL 25267577, at *5 (Pa. Ct. Of Common Pleas June 18, 2003) (discussing charge-backs for insurance payments and stating that the "regulation does not prohibit Defendant from deducting anything other than the actual costs of insurance"), *aff'd*, 880 A.2d 17 (Pa. Super. Ct. 2005) (table).

The Plaintiffs rely on *OOIDA v. Ledar Transport* to support their conclusion that the regulation prohibits motor carriers from making profits on charge-backs. No. 00-0258-CV-W-FJG, Slip Opinion (W.D. Mo. Dec. 30, 2004) (Plaintiffs' Motion, Ex. S). The court in *Ledar* made the following statement:

> The regulatory history of Section 376.12(h) indicates that charge-backs that exceed the actual amount advanced by the motor carrier are unlawful. The Interstate Commerce Commission concluded that, "[t]o the extent that charge-backs to owner-operators reduce the carrier's legitimate expenses, resulting in losses to the owner-operators and a profit to the carrier, they are not legitimate charge-backs or deductions."

Id. at 13 n.36 (quoting *Lease and Interchange of Vehicles*, 46 Fed. Reg. 44013 (Sept. 2, 1981)).

In the present case, Plaintiffs fail to properly assess the significance of the court's statement. The Plaintiffs allege that the court "specifically found" that this language prohibits profit-making.

See Plaintiff's Memorandum in Opposition (Dkt. 248) at 12. However, the court merely noted this language in a *footnote* after stating that the amount of damages suffered by plaintiffs would be determined in the damages phase of that case. There was no further emphasis from the court. This Court agrees with Defendants that charge-backs which include fees and profits are not unlawful.[3] Accordingly, the Defendants' motion as it pertains to the lawfulness of Defendants to charge more for products and services than they pay third-party vendors is **GRANTED**. Plaintiffs' motion as it pertains to the lawfulness of Defendants to charge more for products and services than they pay third-party vendors is **DENIED.**

ii. Disclosure

The Defendants contend that Section 376.12(h) does not require charge-back mark-ups to be disclosed, and in support of that position, they cite the following statement from the ICC:

> It is the cost to [owner-operators], not the cost to the carriers, which is critical to the [owner-operators] . . . Therefore, . . . we will not require that carriers disclos[e] to the owner-operators the total cost of insurance that the carrier pays but will require the lease to specify the amount that the owner-operator will be charged . . . .

Defendants' Memorandum in Support (Dkt. 239) at 15 (quoting *Lease and Interchange of Vehicles*, 131 M.C.C. at 151). However, Defendants' reliance on the commission's treatment of insurance is misplaced.

In 1979, the commission considered a proposed rule that would have *explicitly* required the carriers to specify the "full cost of the [insurance] policy" in the lease or an addendum. *See Lease*

---

[3] The Plaintiffs do not assert that they are unable to utilize the services of outside vendors. Section 376.12(i) provides in part: "The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement."

and Interchange of Vehicles, 131 M.C.C. 141, 149-50 (January 9, 1979), *available at* 1979 WL 11158. This has never been considered in such a manner with the proposed general charge-back provision, Section 376.12(h). The commission determined in 1979 that the carrier was only required to disclose the amount of the insurance charge-back, not the actual cost of the insurance. *Id.* at 150.

> We believe that a prime concern of lessors in choosing insurance coverage is knowing exactly how much they will be charged. With this information they are better equipped to obtain the best insurance coverage possible. It is the cost to lessors, not the cost to the carriers, which is critical to the lessors in choosing insurance coverage. Therefore, at this time we will not require that carriers disclos[e] to the owner-operator the total cost of insurance that the carrier pays but will require the lease to specify the amount that the owner-operator will be charged for insurance provided by or through the carrier.

Id. at 150-51.

In 1982, the commission made no changes to the insurance provision, concluding that the general charge-back provision would include insurance charge-backs. *See Lease and Interchange of Vehicles*, 47 Fed. Reg. 51136-02, 51139 (November 12, 1982), *available at* 1982 WL 146684 ("Finally, parties see no necessity for a requirement that carriers summarize the insurance coverage provided to the owner-operator. We agree, especially in view of our alteration of the proposed changes to § 1057.1(i), so as to *require that owner-operators have access to all documents supporting any charge-back*.") (emphasis added).

The 1982 final rule relating to charge-backs provides as follows:

> The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.

Id. at 51140. The commission commented that:

> [T]he parties feel that it would be impossible to set forth the exact amount of each item. . . . In many cases, the exact amount is not known until after the liability incurred, as with fuel and other operating expenses. . . . *[W]e conclude, that, rather than require carriers to state with specificity the amount of charge-backs, we should, instead, require that the lease contain the charge-back items, together with a recitation as to how the amount of each item is computed.* To ensure that the owner-operator has access to these computation methods, we will *require that the owner-operators be afforded copies of those documents* which are necessary to determine the validity of the charge. With such information, the owner-operators will be able to ascertain whether these charges have been computed correctly.

Id. at 51139 (emphases added). The legislative history makes clear that the regulation does not require the lease to state on the face of the lease the amount of charge-backs[4] or the mark-ups, but rather to list the items subject to charge-backs and provide access to the documents to determine the charges' validity.

It is undisputed that Landstar has failed to provide copies of documents necessary to determine the charge-backs' validity. *See, e.g.*, Plaintiffs' Memorandum in Support (Dkt. 218), Ex. N (Email from Robert L. Browning to Daniel E. Cohen) ("Those portions of the deposition in which there is a discussion of any amounts charged back to Landstar's drivers in excess of Landstar's out-of-pocket costs to third parties are hereby designated as 'Confidential-Attorneys' Eyes Only.' Such amounts are not required to be disclosed under the leasing regulations."); Defendants' Memorandum in Support (Dkt. 239) at 17 n.15 (presenting no evidence that they have provided copies of such documents and stating that "[i]f carrier's [sic] were forced to disclose their internal costs and thus their vendor pricing, they would not be able to agree to [] confidentiality provisions and would lose the ability to obtain the discounts previously offered.") (citation omitted).

Defendants have not provided the Plaintiffs access to documents under the Original or New

---

[4] "In many cases, the exact amount is not known until after the liability is incurred, as with fuel and other operating expenses." 47 Fed. Reg. at 51139.

Leases which allow them to ascertain whether they are being properly charged. Accordingly, Plaintiffs' motion as it relates to the Defendants' violation of Section 376.12(h) for failure to provide access to documents to determine the validity of the charges is granted. Defendants' motion alleging that Section 376.12(h) does not require disclosure is **DENIED.** Plaintiffs' motion alleging that Section 376.12(h) does require disclosure is **GRANTED.**

Accordingly, it is **ORDERED**:

1. Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability (Dkt. 218) is **GRANTED in part** and **DENIED in part.**

2. Defendants' Motion for Partial Summary Judgment (Dkt. 238) is **GRANTED in part** and **DENIED in part.**

3. Defendants' Motion for Rule 16 Pre-Trial Management Conference (Dkt. 302) is **DENIED as moot.**

4. Plaintiffs' Motion Seeking Leave to Submit Supplemental Authority in Support of Motion for Partial Summary Judgment (Dkt. 311) is **GRANTED.**

5. Plaintiffs' Motion to Strike Defendants' Summary Judgment Exhibits (Dkt. 318) is **DENIED.**

DONE AND ORDERED in Chambers this 6th day of October, 2006.

HENRY LEE ADAMS, JR.
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record