

NATURE OF THE ACTION

1. During the recent emergency created by Hurricane Katrina, the State of Florida entered into two contracts with Defendant, Lipsey Water, for the procurement of ice and drinking water for victims of this disaster. Because of the hardships and hazards associated with the delivery of these items to disaster areas and the demand for timely delivery to the afflicted region, Lipsey Water engaged the services of a federally licensed transportation broker, 4 Points Logistics, to recruit hundreds of heavy duty refrigerated trucks and drivers. Lipsey Water also engaged the services of 4 Points to procure bagged ice from various suppliers, most of whom were outside of the State of Florida, so that Lipsey could fulfill its obligations to the State of Florida. The State of Florida agreed to pay a substantial premium in order to secure and transport the critically needed ice and drinking water.

2. Contracting Plaintiffs are small business truckers who agreed to respond to this emergency. Their complaint addresses systematic efforts by Defendants to profit from the premium prices paid by the State of Florida and to deprive drivers of the rightful compensation to which they are entitled. Defendant 4 Points violated various federal regulations governing the activities of federally authorized transportation brokers thus forfeiting any rights to fees or commissions under 49 C.F.R. §371.9(a). Defendant 4 Points also breached its agreements with Contracting Plaintiffs and seeks to deprive them of a large portion of the compensation to which the contracting parties had specifically agreed. Defendant Lipsey Water entered into agreements with the State of Florida specifying the payment of higher than market average transportation charges and fees. This was intended to attract sufficient numbers of drivers with equipment to respond to this emergency. Contracting Plaintiffs are third-party beneficiaries of the contracts between Lipsey Water and the

State of Florida. Lipsey Water now seeks to deprive Contracting Plaintiffs and the class they seek to represent of the benefits of the premium compensation that it negotiated with the State of Florida.

3. Plaintiffs seek a declaratory order that 4 Points provided significant non-brokerage services to Lipsey Water thereby acquiring a material beneficial interest in the ice shipments at issue. In such circumstances, federal regulation precludes 4 Points from brokering transportation services for motor carriers (Contracting Plaintiffs) as provided for in 49 C.F.R. §371.9(a). Plaintiffs also seek a declaratory order that they are entitled to receive all of the compensation for transportation services called for in the contracts between Lipsey Water and the State of Florida, undiminished by broker fees that 4 Points seeks to impose unlawfully. Alternatively, Contracting Plaintiffs seek a judgment that Defendant 4 Points breached its contractual agreement to pay them \$60.00 per hour in detention charges for each hour their equipment was in service awaiting final delivery instructions. Plaintiffs seek a judgment against Lipsey Water for all damages awarded on the grounds that, as the shipper, it is primarily responsible to the motor carriers for all transportation and detention charges. Finally, Plaintiffs seek equitable relief in the form of an accounting and a mandatory injunction compelling Defendants to deposit with the Court all sums received from the State of Florida pending resolution of all of the claims raised herein.

JURISDICTION AND VENUE

4. Jurisdiction of this matter is granted to this court by 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1337 (proceedings arising under an act of Congress regulating commerce). The causes of action alleged here arise under the laws of the United States regulating commerce and the activities of transportation brokers engaged in the interstate transportation of property by motor carriers, including 49 U.S.C. §§ 13901, 14704(a)(2), 14707, and 49 C.F.R. Part 371.

5. This Court has original jurisdiction over this matter under 28 U.S.C. §1332(d)(2) because at least one Contracting Plaintiff is a citizen of a state different from at least one Defendant and the amount in controversy exceeds the sum or value of \$5,000,000.

6. This Court has supplemental jurisdiction over causes of action brought under state law pursuant to 28 U.S.C. §1367, as such claims are so related to the claims arising under federal law that they form part of the same case or controversy under Article III of the United States Constitution. Federal law specifically contemplates that the remedies available under the federal statutes and regulations implicated here are in addition to “remedies existing under another law or common law.” 49 U.S.C. §13103.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 49 U.S.C. §14707(a). Defendant 4 Points Logistics maintains its principal place of business within this district, Defendant Lipsey Mountain Spring Water entered into separate contracts with Defendant 4 Points and with the State of Florida that were to be performed in whole or in part within this district. A substantial portion of the events giving rise to the claims alleged herein occurred in this district.

PARTIES TO THE ACTION

8. Plaintiff Owner-Operator Independent Drivers Association (“OOIDA”) is a business association of small business truckers including truckers who have federal operating authority to haul freight in interstate commerce. OOIDA is a not-for-profit corporation incorporated in the State of Missouri, with its headquarters located at 1 NW OOIDA Drive, Grain Valley, Missouri 64029. OOIDA was founded in 1973 and now has over 131,000 members residing in all fifty (50) states and in Canada. OOIDA brings this action in a representative capacity and seeks declaratory and

injunctive relief on behalf of those who hauled freight under Lipsey Water's contracts with the State of Florida under agreement with 4 Points Logistics, including those who are its members.

9. Plaintiff, Icehouse Cartage Express, Inc., is a small business trucking company based in Hamilton, Missouri. Icehouse Cartage is registered with the Federal Motor Carrier safety Administration (FMCSA) as a motor carrier in interstate commerce. Icehouse Cartage's federal authority allows it to transport property in interstate commerce, including shipments arranged by brokers such as 4 Points Logistics.

10. Plaintiff Grain Express, Inc., is a small business trucking company based in Emporia, Kansas. Grain Express is registered with the FMCSA as a motor carrier in interstate commerce. Grain Express' federal authority allows it to transport property in interstate commerce, including shipments arranged by brokers such as 4 Points Logistics.

11. Plaintiff Northstar Express, Inc., is a small business trucking company based in Middleton, New York. Northstar Express is registered with the FMCSA as a motor carrier in interstate commerce. Northstar Express' federal authority allows it to transport property in interstate commerce, including shipments arranged by brokers such as 4 Points Logistics.

12. Defendant 4 Points Logistics, LLC ("4 Points") is licensed by the FMCSA to broker the transportation of property in interstate commerce. 4 Points is a Delaware corporation with its corporate headquarters located at 712 West Main Street in Leesburg, Florida 34248-5183. 4 Points acts as a broker of transportation services between shippers like Lipsey Water and motor carriers like Contracting Plaintiffs.

13. Defendant Composite Analysis Group, Inc., d/b/a/ Lipsey Mountain Spring Water (“Lipsey Water”), is a Louisiana corporation having a place of business at 1701-D Oakbrook Drive, Norcross, Georgia 30093. Lipsey Water conducts business within the State of Florida.

FACTUAL ALLEGATIONS

14. During the last week of August and the first two weeks of September 2005, Hurricane Katrina came ashore and devastated lives and property in states along the Gulf of Mexico from Florida to Louisiana. An urgent need arose to provide life saving supplies of both ice and water to victims of Hurricane Katrina throughout the region. Hundreds of heavy duty trucks and drivers needed to be recruited for the acquisition, transport and delivery of this emergency relief. Specialized refrigerated truck units had to be obtained in order to keep shipments of ice frozen until delivered to victims of the disaster.

15. On or about September 1, 2005, Defendant Lipsey Water entered into a contract with the State of Florida, Department of Agriculture and Consumer Services, for the sale of 500-1000 truck loads of bottled water for \$9,310,000 to be delivered FOB Stennis NASA Center in Mississippi, transportation charges prepaid. This contract also provided for the payment of \$1,600.00 per day “drayage” / for holding the freight on 24 hour standby for subsequent movement to victims following its arrival at the Stennis NASA Center. A copy of Field Purchase Order 144528 covering this arrangement is attached as Exhibit 1.

16. On or about September 4, 2005, Defendant Lipsey Water entered into another contract with the State of Florida, Department of Agriculture and Consumer Services, for the sale of 25,000,000 pounds of ice at \$0.35 per pound (total \$8,750,000) to be delivered FOB Stennis NASA Center in Mississippi, transportation charges prepaid. This contract also provided for the payment of

\$1,600.00 per day “drayage” / for holding the freight on 24 hour standby for subsequent movement to victims following its arrival at the Stennis NASA Center. This September 4, 2005, agreement further provided for the payment of \$403.00 per truck per day for the “Rental of Mobile Refrigeration Units.” The agreement also stated that, “Additional Charges May Apply.” A copy of Field Purchase Order 144541 covering this arrangement is attached as Exhibit 2.

17. Defendant Lipsey Water entered into an arrangement with Defendant 4 Points to secure the equipment and services of motor carriers like the Contracting Plaintiffs to transport the ice and water it was obligated to deliver under its contracts with the State of Florida, and to provide the equipment required to preserve the freight until its eventual delivery to hurricane victims.

18. Defendant 4 Points entered into numerous agreements with Contracting Plaintiffs and other motor carriers similarly situated for transportation services and use of their equipment on behalf of Lipsey Water. These agreements typically called for the payment of \$3.00 per mile for hauling freight and \$1.25 per mile for deadhead miles. In addition to mileage, 4 Points agreed to pay Contracting Plaintiffs \$60.00 per hour for “Detention/Layover.” No qualifications or limitations were specified in connection with this undertaking. Detention charges are intended to compensate motor carriers for the use of their equipment when the freight is not in transit as well as to compensate motor carriers for the opportunity cost of not being able to transport other freight while their equipment is in use. Detention charges are particularly important in connection with refrigerated shipments like ice where the motor carrier is required to run refrigerated units 24 hours per day while storing perishable commodities. Payment of detention charges for 24 hours per day is consistent with Lipsey Water’s obligation to the State of Florida to provide drayage – holding the freight on 24 hour standby for subsequent movement to victims.

19. At \$60.00 per hour, Contracting Plaintiffs were entitled to receive \$1,440.00 per day for Detention. Contracting Plaintiffs were never informed that Defendant Lipsey Water had contracted with the State of Florida for \$1,600.00 per day for drayage plus an additional \$403.00 per day for "Rental of Mobile Refrigeration Units in connection with ice shipments." Exhibit 2.

20. Pursuant to the terms agreed upon with 4 Points as evidenced in Exhibits 4-15 attached hereto, Contracting Plaintiffs provided transportation services and the use of their equipment to store and preserve the freight as detailed on Exhibit 3 attached hereto.

CLASS ACTION ALLEGATIONS

21. This action is brought by Plaintiffs as a national class action, on their own behalf and on behalf of all others similarly situated.

22. **Class Description.** Plaintiffs seek to represent a class consisting of all motor carriers in the United States who entered into agreements with 4 Points Logistics, LLC for the transport of ice or water on behalf of Lipsey Mountain Spring Water in connection with Field Purchase Orders 144541 or 144528 entered into between Lipsey Mountain Spring Water and the State of Florida.

23. **Impracticability of Joinder.** On information and belief, there are hundreds of individual motor carriers who are members of this Class. These individual motor carriers are residents of various states, travel continuously, and are widely dispersed geographically. Thus, joinder of all potential class members would be impracticable.

24. **Commonality.** Defendants have acted towards Class Members in a way that affects all members of the Class similarly and, accordingly, questions of fact and law are common to the Class, as are questions of the liability and the appropriate nature of equitable relief.

25. **Typicality**. The claims of the Plaintiffs are typical of the claims of the potential Class as a whole.

26. **Fair and Adequate Representation**. Plaintiffs are capable of fairly and adequately protecting the interests of the Class. Additionally, OOIDA has previously participated as class representative on behalf of owner-operators in several cases, and counsel for Plaintiffs (The Cullen Law Firm, PLLC) has been appointed Class Counsel in class actions in the transportation industry throughout the country.

27. **Class Certification Appropriate Under Rule 23(b)(2)**. Defendants have acted and/or failed to act on grounds generally applicable to the potential class as a whole, as described further herein. Thus, injunctive and declaratory relief is appropriate with respect to the potential class as a whole, making class certification appropriate under Fed. R. Civ. P. 23(b)(2).

28. **Class Certification Appropriate Under Rule 23(b)(3)**. The questions of law enumerated in the counts below are common to all potential class members and predominate over any questions affecting only individual members which are essentially limited to the amount of damages due each member. Therefore, a class action is superior to other available methods for the fair and efficient adjudication of the claims herein.

29. **Additional Factors Favoring Class Certification**. Other factors favoring the certification of this suit as a class action include:

(a) the amounts in controversy for individual motor carriers are relatively small, so that individual members of the Class would not find it cost-effective to bring individual claims;

(b) requiring individuals to prosecute separate actions would substantially impair or

impede the individual members' ability to protect their interests;

(c) on information and belief, there is no litigation already commenced by Class Members concerning the causes of action raised in this Complaint;

(d) it is desirable to concentrate the individual members' claims in one forum because, given the amount in controversy, to require these claims to be brought in separate forums would effectively prevent individuals from bringing claims to recover their funds;

(e) no substantial difficulties are likely to be encountered in managing this class action; and

(g) Plaintiffs are represented by The Cullen Law Firm, PLLC, which has the experience of representing their clients in numerous class actions involving small business truckers nationwide.

COUNT I
VIOLATION OF FEDERAL REGULATIONS – UNLAWFUL PROVISION OF
BROKERAGE SERVICES BY DEFENDANT 4 POINTS

30. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 29.

31. Under applicable federal regulations, a broker of transportation services may not charge or receive compensation from a motor carrier for brokerage services where the broker has a material beneficial interest in the shipment. 49 C.F.R. §371.9(a).

32. Defendant Lipsey Water is not a manufacturer of bagged ice and had no capability on its own of fulfilling its contract with the State of Florida for the emergency provision of 25,000,000 pounds of ice.

33. In order to satisfy its obligations to the State of Florida, Lipsey Water enlisted the services of Defendant 4 Points, directed by at least two of its officers and directors, to provide a

significant non-brokerage service to it by procuring ice from individual vendors throughout the country. Harold Bibby and Scott Moscrip are officers, directors and principal shareholders of Defendant 4 Points. Messrs Bibby and Moscrip devoted significant time and effort in procuring substantial quantities of ice in order to enable Lipsey Water to fulfill its contractual obligations to the State of Florida.

34. Defendant 4 Points, acting through its officers and directors, provided significant non-brokerage services to Defendant Lipsey Water thereby acquiring a “material beneficial interest” in the shipment of ice on behalf of Lipsey Water within the meaning of 49 C.F.R. §371.9(a). Because of its material beneficial interest in the Lipsey Water ice shipments, 4 Points is precluded from charging or receiving compensation from Contracting Plaintiffs and others similarly situated for brokerage services.

COUNT II
VIOLATION OF FEDERAL REGULATION – WITHHOLDING OF RECORDS OF
BROKERED TRANSACTIONS

35. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 34 above.

36. Federal regulations require transportation brokers like 4 Points to keep detailed records of each brokered transaction, including the amount of compensation it received for the brokerage service, a description of any non-brokerage services performed in connection with the transaction as well as the amount of compensation it received for such non-brokerage services, and the name of the payer for such services. Each party to the brokered transaction has the right to review these required records of the transaction. 49 C.F.R. §371.3.

37. On October 24, 2005, Contracting Plaintiffs Grain Express and Northstar Express, through Counsel, submitted a demand upon Defendant 4 Points for all documents required to be

maintained in connection with their brokered transactions dealing with the movement of freight on behalf of Lipsey Water. Defendant 4 Points violated federal regulations by failing to make available any of the records required by 49 C.F.R. §371.3(c).

COUNT III
BREACH OF CONTRACT BY 4 POINTS

38. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 29 above.

39. 4 Points' agreement with Contracting Plaintiffs called for the payment of \$60.00 per hour for Detention/Delay without qualifications or limitations. Both 4 Points and Contracting Plaintiffs anticipated significant detention time after the shipments arrived at Stennis NASA Center in Mississippi and before the shipments were directed to specific locations for distribution to victims of Hurricane Katrina. No storage facilities were available at Stennis NASA Center and it was always contemplated that Contracting Plaintiffs and others similarly situated would provide the necessary storage in their truck/refrigerated trailer combinations. For shipments of ice, the storage service provided under agreement with 4 Points was critical – without Contracting Plaintiffs' refrigerated equipment, the ice would melt.

40. Contracting Plaintiffs experienced substantial periods of detention following their arrival at Stennis NASA Center. The detention times experienced by Contracting Plaintiffs, as detailed on Exhibit 3 were typical for all potential class members.

41. Contracting Plaintiffs performed all of the obligations required of them under their agreement with Defendant 4 Points.

42. On or about September 22, 2005, Defendant 4 Points sent a communication to Contracting Plaintiffs reneging on its prior commitment to pay detention charges at the rate of \$60.00 per hour without any limitations or restrictions. Defendant 4 Points notified Contracting Plaintiffs that they would be compensated for no more than 10 hours per day for detention even though their equipment was in use under the agreement with 4 Points for 24 hours per day. A copy of 4 Points' September 22, 2005 notification is attached hereto as Exhibit 16.

43. Following its unilateral notification of September 22, 2005, 4 Points has sent checks to a number of motor carriers for amounts less than the amount due under their original contracts. 4 Points is attempting to coerce individual carriers to abandon their claims for the full amount due by placing special endorsements on its checks indicating that the payee accepts the payment in full satisfaction of all obligations owed.

44. 4 Points breached its contracts with Contracting Plaintiffs and others similarly situated by refusing to pay the full amount of the detention fees specified in its original Carrier Rate Confirmation Sheets. Contracting Plaintiffs and others similarly situated have been injured as a result of 4 Points' breach of contract and they are entitled to damages.

COUNT IV
BREACH OF CONTRACT BY LIPSEY WATER

45. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 29 and 38 through 44 above.

46. In its agreement with the State of Florida for the sale of 25,000,000 pounds of ice (Exhibit 2), Lipsey Water extracted a promise from the State of Florida to pay it \$403.00 per day for the "Rental of Mobile Refrigerated Units." Contracting Plaintiffs Icehouse Cartage, Grain Express and Northstar Express and other motor carriers similarly situated provided mobile

refrigerated units in connection with the transport and storage of ice sold by Lipsey Water to the State of Florida.

47. All Contracting Plaintiffs and others similarly situated who transported and stored ice on behalf of Lipsey Water were intended third party beneficiaries of Lipsey's agreement with the State of Florida to rent "Mobile Refrigerated Units."

48. Defendant Lipsey Water is legally obligated to pay all Contracting Plaintiffs and others similarly situated, \$403.00 per day rental for use of their "Mobile Refrigerated Units." Lipsey Water has made no provision for the payment of such sums to Contracting Plaintiffs nor has Lipsey Water provided 4 Points with sufficient funds to pay such sums.

49. Lipsey Water has breached its undertaking with the State of Florida to pay rental charges on Mobile Refrigerated Units. Lipsey Water is liable for damages to Contracting Plaintiffs and others similarly situated as third party beneficiaries of its contract with the State of Florida.

COUNT V
LIPSEY WATER IS PRIMARILY LIABLE FOR ALL
TRANSPORTATION AND DETENTION CHARGES

50. Plaintiffs re-allege and incorporate the allegations of paragraphs 1 through 29 and 38 through 49 above.

51. In each of its contracts with the State of Florida (Exhibit 1 and 2), Lipsey Water agreed to deliver all purchases of both ice and water, "FOB Destination – Transportation Charges Prepaid."

52. Lipsey Water delegated the responsibility for arranging for the transportation and storage of ice and water under its contracts with the State of Florida to 4 Points.

Notwithstanding this delegation, Lipsey Water remains primarily responsible for the payment of all freight and detention charges due to Contracting Plaintiffs and others similarly situated. 4 Points has failed to pay Contracting Plaintiffs what they are due for transportation charges and detention. On information and belief Lipsey Water has refused to tender sufficient funds to 4 Points to pay transportation charges and detention fees.

53. Lipsey Water's contract with the State of Florida provides for ample funds to cover transportation charges and drayage. The ice contract calls for the payment of \$0.35 per pound for ice. On information and belief, Lipsey Water paid no more than an average of \$0.13 per pound for ice leaving it with a net of \$0.22 per pound for transportation charges and profit. Each truckload shipment contained 50,000 pounds of ice giving Lipsey Water \$11,000 in net revenue per truckload ($50,000 \times \$0.22 = \$11,000$). On average, Contracting Plaintiffs hauled each truckload of ice less than 1,000 miles. At \$3.00 per mile freight charge Lipsey Water is left with a net revenue of \$8,000 per truckload of ice. In addition, Lipsey Water is due \$1,600.00 per truck per day for drayage (including detention and final movement costs) plus \$403.00 per truck per day for use of the motor carrier's refrigerated unit. On average, Contracting Plaintiffs were detained 10 days. Thus, Lipsey Water stands to collect over \$20,000 per truck for detention and final movement charges ($(\$1,600.00 + \$403.00) \times 10$) on ice shipments and \$16,000 on water shipments. There is simply no equitable defense to Plaintiffs' claim that Lipsey Water should be held primarily liable to Contracting Plaintiffs and others similarly situated for all transportation and detention charges due.

54. Lipsey Water represented to the State of Florida that the cost of drayage would be \$1,600.00 per day. Drayage – holding a truck on 24 hour standby for subsequent movement to

victims – contemplated the services of drivers and equipment not services by Lipsey Water.

Lipsey Water is liable for damages to Contracting Plaintiffs and others similarly situated as third party beneficiaries of the drayage provisions in its contracts with the State of Florida.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs OOIDA, Icehouse Cartage Express, Inc., Grain Express, Inc., and Northstar Express, individually and for all others similarly situated, respectfully request that this Court:

1. Certify a class comprised of motor carriers who entered into agreements with Defendant 4 Points Logistics, LLC for the transportation of water and ice under Field Purchase Order (“FPO”) numbers 144528 and 144541 entered into between Lipsey Mountain Spring Water and the State of Florida;

2. Enter a judgment declaring that Defendant 4 Points Logistics, LLC has a material beneficial interest in shipments by Lipsey Mountain Spring Water under FPO 144541 and may not charge or receive compensation for brokerage services in connection with said shipments;

3. Enter an order compelling 4 Points Logistics, LLC to produce all records of the brokered transactions involving Contracting Plaintiffs;

4. Enter a judgment declaring that class members providing services under FPO 144541 are third party beneficiaries under Lipsey Water’s agreement to pay \$403.00 per day rental on “Mobil Refrigerated Units;”

5. Enter a judgment declaring that class members are third party beneficiaries under Lipsey Water’s agreements with the State of Florida (FPO numbers 144528 and 144541) to provide drayage for \$1,600.00 per day;

6. Enter a judgment in favor of the plaintiff class on all counts of the complaint;
7. Enter an order compelling Lipsey Mountain Spring Water to deposit with the Court all sums received by it from the State of Florida under FPO's 144528 and 144541 pending resolution of the rights of the respective parties herein;
8. Create a common fund made up of all damages awarded to class members;
9. Award class counsel reasonable attorneys' fees under counts I and II pursuant to 49 U.S.C. § 14704(e);
10. Award class counsel a reasonable attorneys fee out of the common fund; and
11. Award such other relief as this Court may deem to be just and proper.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues triable as of right by jury.

Respectfully submitted,

OWNER-OPERATOR INDEPENDENT DRIVERS
ASSOCIATION
ICEHOUSE CARTAGE EXPRESS, INC.
GRAIN EXPRESS, INC. and
NORTHSTAR EXPRESS

Paul D. Cullen, Sr.
Joyce E. Mayers
THE CULLEN LAW FIRM, PLLC
1101 30th Street, N.W., Suite 300
Washington, D.C. 20007
(202) 944-8600 (Telephone)
(202) 944-8611 (Telecopier)

Brennan Manna & Diamond

By: s/Michael R. Freed
Michael R. Freed, Trial Counsel

Florida Bar Number: 0069205

76 South Laura Street
Jacksonville, FL 32202
(904) 366-1504 (Telephone)
(904) 366-1501 (Telecopier)

Attorneys for Plaintiffs