

**FILED**  
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**AMANDA FERRELL,  
JOHN STIGALL, and  
MISTY EVANS,**

2011 AUG 19 PM 3:06

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**Plaintiffs,**

**v.**

**Civil Action No. 11-C-1426**

**U-HAUL CO. OF WEST VIRGINIA,  
a West Virginia Corporation,**

**Defendant.**

**CLASS ACTION COMPLAINT**

The plaintiffs for their causes of action against the above-named defendant, U-Haul Co. of West Virginia, a West Virginia Corporation, allege and state as follows:

**PARTIES**

1. Plaintiff Amanda Ferrell is a resident and citizen of the State of West Virginia.
2. Plaintiff John Stigall is a resident and citizen of the State of West Virginia.
3. Plaintiff Misty Evans is a resident and citizen of the State of West Virginia.
4. Defendant U-Haul Co. of West Virginia is a West Virginia Corporation with its principal place of business in St. Albans, W.Va.

**JURISDICTION AND VENUE**

5. This Court has personal jurisdiction and venue over this action as the defendant conducts business in this county and this State.

6. This Court has subject matter jurisdiction over this action as the claims do not arise out of federal law. The plaintiffs and the class they seek to represent seek no relief under any federal laws or regulations, assert no federal claims, and withdraw any asserted state claim

that is preempted by federal law. The claims herein are brought solely under state common and state statutory law. Any and all claims or possible claims under any federal law, code, regulation, rule, and/or otherwise are expressly not brought herein and disclaimed. The United States District Court does not have diversity jurisdiction over this case as the named plaintiffs, the defendant, and all of the putative class members are citizens of this State.

#### **FACTUAL INTRODUCTION**

7. Defendant is in the business of leasing vehicles and non-motorized trailers for short-term use.

8. In order to rent from defendant, the customer must visit one of the defendant's authorized rental locations. At that time, the customer is quoted a price for the rental. The quoted price does not include any other fees.

9. After the customer chooses the vehicle at some of the defendant's locations, the customer is directed to an electronic terminal where the customer is directed to approve the charges. At that time, certain other options are offered to the customer such as optional liability and contents insurance. The customer can electronically agree to these charges by responding affirmatively to offer on the electronic terminal.

10. One of the optional offers proposed to the customer is an optional environmental charge. With respect to this optional charge, the customer can decline it in its entirety or select from several optional fees.

11. Unbeknownst to the customer, the defendant has already added a \$1.00, \$3.00, or \$5.00 environmental charge to the customer's rental. This undisclosed mandatory fee is not

required by any governmental regulation and amounts to the defendant surreptitiously shifting its overhead to its customers.

12. Some of the defendant's locations do not use the electronic terminal. Rentals at these locations, however, proceed in much the same manner in that the mandatory environmental charges are added to the customer's bill deceptively masquerading as a mandatory governmental fee.

13. The imposition of this charge is deceptive, false and fraudulent in two ways. First, the defendant attempts to hide conceal and suppress the fact that it is imposing the charge through giving the customer the supposed option to decline environmental charges on its electronic terminal. Second, the charge is concealed as an environmental "fee" which conveys the idea that it is some mandatory tax or pass-through, not a charge imposed by defendant to defray overhead.

14. On or about April 25, 2010, Plaintiff Stigall rented a motorized truck from defendant. While Stigall declined all optional environmental fees, a \$5.00 environmental fee was added to his bill.

15. On or about November 12, 2009, Plaintiff Ferrell rented a motorized truck from defendant. While Ferrell declined all optional environmental fees, a \$3.00 environmental fee was added to her bill.

16. On or about March 2, 2010, Plaintiff Evans rented a motorized truck from defendant. While Evans declined all optional environmental fees, a \$1.00 environmental fee was added to her bill.

## CLASS ACTION ALLEGATIONS

Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and plaintiffs further allege as follows:

17. This civil action is an appropriate case to be brought and prosecuted as a class action by plaintiffs against defendant pursuant to West Virginia Rules of Civil Procedure 23.

18. There exists a class of individuals like plaintiffs who have rented from defendant and who have entered into agreements and were fraudulently overcharged as described above. The aforesaid class of plaintiffs is limited to persons who are citizens of this State at the time this action is filed.

19. The claims of plaintiffs are typical of the claims of the class, and the plaintiffs will fairly and adequately protect the interests of the class with respect to the appropriate common issues of fact and law and have hired counsel competent to prosecute said action for and on behalf of the plaintiffs and the class.

20. The prosecution of this civil action by all plaintiffs in separate actions would create a risk of varying adjudications with respect to individual members of the class, could be dispositive of interests of other members of the class not parties and/or they may impair or impede their ability to protect their interests and/or the defendant has acted or refused to act on grounds generally applicable to the class making declaratory or injunctive relief appropriate for the whole class.

21. The class includes hundreds of West Virginia residents who have been overcharged as aforesaid for the services and products of defendant, and the class is, therefore, so numerous that joinder of all members is impracticable.

22. There are questions of law and fact common to the class.
23. The interest of members of the class as to common questions of law and fact in individually controlling the prosecution of separate actions does not outweigh the benefits of a class action as to those issues.
24. The difficulties in management of this case as a class action are outweighed by the benefits it has with respect to disposing of common issues of law and fact as to the large number of litigants, and it is desirable to concentrate the litigation in one forum for the management of this civil action due to the number of cases filed, pending and to be filed.
25. The questions of law and facts common to the members predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this civil action.
26. There are subclasses of individuals whose claims may be more efficiently and appropriately adjudicated by class action.
27. Jurisdiction and venue are proper in this Court.
28. The individually named plaintiffs are members of the class they seek to represent. The members of the class are so numerous that joinder is impracticable and would involve hundreds of litigants, and the class in all other ways are similarly situated as required under Rule 23 of the West Virginia Rules of Civil Procedure and complies with the requirements thereof.
29. The class which plaintiffs seek to represent is those citizens of this State who have rented vehicles from defendant's facilities in West Virginia and have been charged for the "Environmental Fee" by defendant. Specifically excluded from this class, however, are (a) all

currently serving justices, judges and magistrate judges of the United States and the state in which this action is brought, and their current spouses; (b) all persons (and their current spouses) within the third degree of relationship to such justices, judges, magistrate judges and spouses; (c) all employees, agents, officers, directors, and affiliates of the defendant; and, (d) all persons excluded under the rules of procedure of this court or excluded under the laws of this state.

### **COUNT I**

Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and plaintiffs further allege as follows:

30. Defendant violated and breached its contractual duties and responsibilities to plaintiffs, and plaintiffs were damaged.

31. Plaintiffs are entitled to recover all the charges which they paid as a result of defendant's breach of contract.

### **COUNT II**

Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and plaintiffs further allege as follows:

32. Defendant violated West Virginia Code §32A-1-2 et seq. by advertising their services and products deceptively as described above.

33. Plaintiffs were damaged as aforesaid as a result of the violation of the statute by being required to pay false and fraudulent charges.

**COUNT III**

Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and plaintiffs further allege as follows:

34. Defendant's acts and conduct amounted to fraudulent concealment of charges and costs which plaintiffs did not owe.

35. Plaintiffs were damaged by defendant's fraudulent misconduct in that they were overcharged for the services.

**COUNT IV**

Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged and plaintiffs further allege as follows:

36. The acts and conduct of defendant violated West Virginia Code § 46A-6-102(13) by charging plaintiffs bills which they were not required to pay and by concealing, suppressing, and/or omitting pertinent information which plaintiffs were entitled to know.

37. As a proximate result of the unlawful conduct of defendant, plaintiffs suffered an ascertainable loss and damage in that they were overcharged for defendant's services and/or are entitled to \$200 per violation, adjusted for inflation, attorneys' fees and costs, and other disbursements of this action.

38. At least 20 days prior to the filing of this Complaint, plaintiffs afforded defendant notice and the right to cure these violations. Notwithstanding this notice, defendant took no action to cure the violation.

**COUNT V**

Plaintiffs incorporate all allegations above the same as if fully restated and re-alleged

and plaintiffs further allege as follows:

39. The actions of the defendant named in this "Complaint" as set forth hereinabove were done intentionally, maliciously, and/or with a reckless disregard for the rights of the plaintiffs and others, including the entire class, entitling the plaintiffs and the class to punitive damages for all causes of action alleged herein.

**PRAYER**

WHEREFORE, your Plaintiffs and the class they seek to represent demand that they be awarded damages and equitable and affirmative relief as follows:

1. Compensatory damages and punitive damages in an amount to be determined by the Court and jury; and
2. Damages as provided for under and pursuant to West Virginia Code §46A-101 et seq., including statutory, compensatory and punitive damages and equitable and injunctive relief; and
3. Damages as provided for under and pursuant to West Virginia Code §32A-1-2 et seq., including compensatory and punitive damages and equitable and injunctive relief; and
4. The costs and disbursements of this action, including attorney fees; and
5. Pre-judgment and post-judgment interest; and
6. Equitable and injunctive relief for providing an accounting and notice to plaintiffs and the class; and

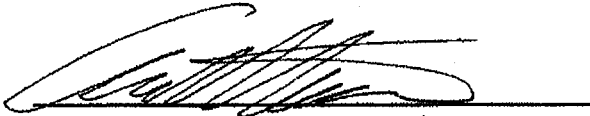


7. That the Court finds that this is an appropriate action to be prosecuted as a class action pursuant to West Virginia Rules of Civil Procedure 23, and that the Court finds that plaintiffs, and their counsel, are appropriate representatives and appropriate counsel for the class, and that this action shall proceed as a class action on the common issues of law and fact, all as this Court deems just and proper; and
8. For such other further and general relief, compensatory, punitive, equitable or injunctive, as the Court deems just and proper.

The Plaintiffs demand a trial by jury on all claims.

**AMANDA FERRELL,  
JOHN STIGALL, and  
MISTY EVANS,**

**By Counsel,**



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