

2003 WL 23953957 (W.D.Wash.) (Trial Pleading)
United States District Court, W.D. Washington.

MARION PRICE; Rodrigue Paul; Harry Davis; David L. Williams; and Allen R. Nunnery, on behalf of
themselves and the class they represent, Plaintiffs,

v.

CITY OF SEATTLE, a municipal corporation and political subdivision of the State of Washington; Lincoln
Towing Enterprises, Inc., a Washington corporation; Silverado Enterprises, Inc., a Washington corporation,
d/b/a Columbia Towing; and Gt Towing Service, Inc., a Washington corporation, Defendants.

No. C03-1365P.
September 25, 2003.

Second Amended Complaint for Damages and Declaratory and Injunctive Relief - Class Action

Schroeter, Goldmark & Bender, Adam J. Berger, WSBA #20714, Sonorichardson, WSBA #29333, Counsel for Plaintiffs

I. PRELIMINARY STATEMENT

1. This action arises out of the wrongful impoundment of motor vehicles by the City of Seattle and its towing contractors following arrest of individuals for driving with a suspended or revoked license. The City has violated and continues to violate state law, municipal ordinance, and the state and federal constitutions by adopting and pursuing a mandatory impoundment policy in these circumstances. The City and its contractors also violated and continue to violate state law, municipal ordinance, and the state and federal constitutions by failing to provide adequate notice and due process to the owners of the impounded vehicles concerning their rights to contest the validity of the impoundment.

2. Plaintiffs seek damages for themselves and the class of owners or other qualified redeemers under RCW 46.55.120 whose vehicles were unlawfully impounded under the mandatory impoundment policy. The damages sustained by the plaintiffs and the class they represent include costs for redeeming vehicles from impoundment, loss of use of the vehicles, and, in a substantial number of cases, loss of the vehicles at auction when the owners could not afford to redeem them. Plaintiffs also seek declaratory and injunctive relief to bar the City from continued implementation of the mandatory impoundment policy.

II. PARTIES

3. Plaintiff Marion Price is a resident of Seattle, Washington whose vehicle was impounded by the City and defendant Columbia Towing under the mandatory impoundment policy.

4. Plaintiff Rodrigue Paul is a resident of Seattle, Washington whose vehicle was impounded by the City and defendant Lincoln Towing under the mandatory impoundment policy.

5. Plaintiff Harry Davis is a resident of Seattle, Washington whose vehicle was impounded by the City and defendant GT Towing under the mandatory impoundment policy.

6. Plaintiff David L. Williams is a resident of Seattle, Washington whose vehicle was impounded by the City and defendants Lincoln Towing and Columbia Towing under the mandatory impoundment policy,

7. Plaintiff Alien R. Nunnery is a resident of Seattle, Washington whose vehicle was impounded by the City and defendant Columbia Towing under the mandatory impoundment policy.

8. Defendant City of Seattle is a municipal corporation and political subdivision of the State of Washington.
9. Defendant Lincoln Towing Enterprises, Inc. is a tow operator that removes, stores, and disposes of impounded vehicles under contract with the City of Seattle.
10. Defendant Silverado Enterprises, Inc., d/b/a Columbia Towing is a tow-operator that removes, stores, and disposes of impounded vehicles under contract with the City of Seattle.
11. Defendant GT Towing Service, Inc. is a tow operator that removes, stores, and disposes of impounded vehicles under contract with the City of Seattle.
12. Defendants Lincoln Towing Enterprises, Inc., Silverado Enterprises, Inc., and GT Towing Service, Inc. are referred to collectively as the “Tow Contractors.”

III. VENUE AND JURISDICTION

13. Venue is proper in this Court because the parties reside or transact business in this district and all or a substantial portion of the acts and omissions giving rise to this case occurred in this district.
14. Jurisdiction is proper in this Court under 28 U.S.C. §§ 1343 and 1367.
15. Some or all of the named plaintiffs have presented notices of claim to the City pursuant to RCW 4.96.020, and more than 60 days have elapsed since those claims were presented.

IV. STATUTORY BACKGROUND AND FACTUAL ALLEGATIONS

A. Statutory Background

16. At all times relevant to this case, a state law, RCW 46.55.113, authorized local governments to adopt ordinances allowing police officers to impound vehicles driven by drivers with suspended licenses. Pursuant to this statute, the City of Seattle adopted Seattle Municipal Code (“SMC”) 11.30.105, which provides, in part, that whenever the driver of a vehicle is arrested for driving with a suspended or revoked license, “the vehicle is subject to impoundment at the direction of a police officer.”
17. Depending on the nature of the driver’s offense and the driver’s history of similar violations, vehicles impounded under SMC 11.30.105 may be held for a minimum period of up to 90 days.
18. A car impounded pursuant to SMC 11.30.105 may be released from impoundment only by written order of the Seattle Police Department (“SPD”) or a court. See SMC 11.30.120. In order to redeem a car from impoundment, the registered owner or other person must pay the Tow Contractor for the costs of impoundment, including removal, towing and storage fees, and may also have to pay an administrative fee which is conveyed by the Tow Contractor to the City. *Id.* In the year 2001, these costs were at least \$66 for the towing fee, \$6 to \$13 per day for storage, and \$67 for the administrative fee. Thus, the costs to redeem a vehicle at that time would range from approximately \$250 to \$1,300 or more. These fees are periodically adjusted for inflation pursuant to the contracts between the City and the Tow Contractors,
19. SMC 11.30.120 and RCW 46.55.120(2) provide that any person seeking to redeem an impounded vehicle has the right to a hearing in municipal court to contest the validity of the impoundment. In order to exercise this right, the person must request a hearing within a very short time, generally ten days, after receiving notice of the impoundment. A person requesting a hearing is first provided with an administrative hearing, the results of which are subject to *de novo* appeal to the Seattle Municipal Court. Prior to the summer of 2000, the administrative hearing was held before an appointee of the SPD chief. During the summer of 2000, the municipal code was amended to provide for the administrative hearing before a Municipal Court magistrate. See SMC 11.30.120.D.

20. SMC 11.30.100 requires the Tow Contractors to mail notice to the last known owners of an impounded vehicle within 24 hours of the impoundment describing the particulars of the impoundment, the procedures for redemption, and the opportunity for a hearing to contest the propriety of the impoundment. SMC 11.30.100 and RCW 46.55.120(2) require similar notice to be given to each person who seeks to redeem an impounded vehicle.

21. If a person does not successfully challenge the validity of the impoundment or redeem the vehicle within applicable time periods, the Tow Contractor is authorized to sell the vehicle at auction. The registered owner is not permitted to bid at auction. Although any proceeds in excess of the towing, storage and administrative fees are to be turned over to the registered owner, as a practical matter, the auction proceeds rarely exceed these fees. In those cases where auction proceeds did exceed the fees, the proceeds have not been turned over to the registered owner, nor has the registered owner been notified of the existence or amount of the excess.

B. The City of Seattle's Mandatory Impoundment Policy

22. The courts have consistently held that, in order to pass constitutional muster, police officers must use discretion in exercising the impoundment power granted by RCW 46.55.113 and similar authorities. For example, the courts have found that impoundment is unreasonable and unconstitutional if another licensed driver is present or in the vicinity and able to take possession of the vehicle or if other reasonable alternatives to impoundment are available. On December 12, 2002, the Washington Supreme Court held that the Washington State Patrol's mandatory impoundment policy for suspended drivers, codified at WAC 204-96-010, exceeded the agency's authority under RCW 46.55.113 because it removed officers' ability to exercise discretion consistent with constitutional requirements. See *Ail-Around Underground, Inc. v. State*, 148 Wn.2d 145 (2002).

23. Contrary to these precedents, the City of Seattle adopted and pursued a mandatory impoundment policy and practice since at least 1999. Under this policy, sometimes referred to as "Operation Impound," police officers were trained and directed to impound vehicles without any exercise of discretion when drivers were arrested for driving with a suspended or revoked license. The existence of this policy was confirmed in briefs filed by the City Attorney's office in court proceedings, in the sworn testimony of SPD officers in numerous municipal court impound hearings, and in road signs posted throughout the City that proclaimed, "Drive suspended? Tow - no exceptions." On information and belief, the City continues to implement this mandatory impoundment policy even in light of the Supreme Court ruling in *All-Around Underground*.

24. Between 1999 and December 2002, the City of Seattle impounded approximately 20,000 vehicles pursuant to this policy. Approximately one third to one half the impoundments involved vehicles owned by someone other than the suspended driver. Approximately one quarter to one half of the vehicles were sold at auction because the owners could not afford to redeem them.

25. The impoundments were carried out by the Tow Contractors pursuant to contracts with the City. The Tow Contractors regularly failed to provide adequate and/or timely notice to the registered owners regarding the owner's right to contest the validity of the impoundment.

26. In addition, the SPD designee and Municipal Court magistrates who heard the impoundment cases consistently refused to consider legal challenges to the validity of the impoundments. Remedies available in the post-impoundment hearings also were inadequate to fully compensate owners whose cars had been unlawfully impounded.

V. CLASS ACTION ALLEGATIONS

27. This action is properly maintainable as a class action under CR 23(a) and CR23(b)(3).

28. The proposed class consists of owners of vehicles that were impounded for a violation of SMC 11.56.320 (Driving while license is suspended or revoked) from January 1, 1999 until the date of this complaint and other persons who were qualified and attempted to redeem such vehicles under RCW 46.55.120. This class likely exceeds fifteen thousand individuals.

29. The class, as defined, is so broad and numerous that joinder of all members is impracticable.
30. Plaintiffs are members of the class and their claims are typical of the claims • of the members of the class.
31. Plaintiffs will fairly and adequately represent the class and the interests of all members of the class.
32. Plaintiffs have no interests that are antagonistic to or in conflict with those interests that they have undertaken to represent as class representatives.
33. Plaintiffs have retained competent and experienced counsel who are able to represent effectively the interests of the class.
34. Questions of law and fact which are common to the class predominate over any individual questions. Among such common questions of fact and law are the following:
- a. Whether the City's mandatory impoundment policy violates state law, municipal ordinance, or the state and federal constitutions.
 - b. Whether the City's mandatory impoundment policy deprived class members of their rights and property without due process of law.
 - c. Whether the City's mandatory impoundment policy constituted an unreasonable and unconstitutional seizure of private property.
 - d. Whether the City acted negligently, reckless, willfully, or wantonly in carrying out the mandatory impoundment program.
 - e. Whether the mandatory impoundment of class members' vehicles constituted conversion of their property.
 - f. Whether the Tow Contractors routinely failed to give adequate notice to the owners of impounded vehicles regarding their right to contest the validity of the impoundment.
 - g. Whether the Tow Contractors' failure to provide adequate and required notice constituted state action that effected an unreasonable seizure and a taking of the owners' property without due process of law.
 - h. Whether the Tow Contractors acted negligently, recklessly, willfully, or wantonly in failing to give adequate notice to the owners of impounded vehicles.
 - i. Whether the Tow Contractors were unjustly enriched as a result of the mandatory impoundment policy and the failure to provide adequate notice.
35. A class action is superior to other methods for the fair and efficient adjudication of plaintiffs' claims and will prevent the undue financial, administrative, and procedural burdens on the parties and the Court which individual litigation would impose. Because the damages sustained by individual members of the class are relatively small compared to the resources of the defendants and the costs of individual litigation, it is impracticable for the members of the class to pursue individual litigation against defendants in order to vindicate their rights. In addition, many members of the class are poor and unsophisticated and lack the means to pursue individual vindication of their rights.
36. Accordingly, the proposed class fulfills the criteria of CR 23 (a), and certification of the class is appropriate under CR 23(b)(3).

VI. CLAIMS FOR RELIEF

A. Violation Of The United States Constitution And 42 U.S.C. § 1983

37. 42 U.S.C. § 1983 provides, in relevant part:

Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or Territory... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

38. The City of Seattle and the Towing Contractors are “persons” within the meaning of 42 U.S.C. § 1983.

39. The City of Seattle has deprived plaintiffs and the class they represent of rights, privileges or immunities secured by the Fifth and Fourteenth Amendments of the United States Constitution by depriving them of their property without due process of law.

40. The City of Seattle has deprived plaintiffs and the class they represent of rights, privileges or immunities secured by the Fourth and Fourteenth Amendments of the United States Constitution by unlawfully and unreasonably seizing their property.

41. The Tow Contractors, acting in concert and conspiracy with the City of Seattle and under color of state law, have deprived plaintiffs and the class they represent of rights, privileges or immunities secured by the Fifth and Fourteenth Amendments of the United States Constitution by depriving them of their property without due process of law.

42. The Tow Contractors, acting in concert and conspiracy with the City of Seattle and under color of state law, have deprived plaintiffs and the class they represent of rights, privileges or immunities secured by the Fourth and Fourteenth Amendments of the United States Constitution by unlawfully and unreasonably seizing their property.

43. The City and the Tow Contractors are liable to the plaintiffs and the class they represent for all damages proximately caused by the foregoing constitutional violations.

B. Conversion

44. Conversion is the willful deprivation of the ownership of property without legal justification.

45. The City willfully deprived plaintiffs and the class they represent of their property without legal justification and without following the procedures required by law. The City is liable for all damages proximately caused to the plaintiffs and the class they represent arising from the conversion of their property.

46. The Tow Contractors willfully deprived plaintiffs and the class they represent of their property without following the procedures required by law and, therefore, without legal justification. The Tow Contractors are liable for all damages proximately caused to the plaintiffs and the class they represent arising from the conversion of their property.

C. Negligent, Reckless, Willful, and Wanton Misconduct

47. The City owed plaintiffs and the class they represent the duty to use reasonable care in the conduct of its activities in impounding vehicles for DWLS violations.

48. The City negligently, recklessly, willfully, or wantonly breached these duties by, *inter alia*, failing to exercise or allow the exercise of required discretion in ordering impoundments and failing to provide adequate notice or opportunity to class members to contest the validity of the impoundment.

49. The Tow Contractors owed plaintiffs and the class they represent the duty to use reasonable care in the conduct of their activities of impounding vehicles for the City of Seattle.

50. The Tow Contractors negligently, recklessly, willfully, or wantonly breached these duties by failing to provide adequate notice to vehicle owners of the facts of the impoundment, the right to contest the validity of the impoundment, and, in applicable cases, the proposed auction of vehicles and excess amounts of auction proceeds.

51. The City and the Tow Contractors are liable to the plaintiffs and the class they represent for all damages proximately caused by the breaches described above.

D. Unjust Enrichment

52. The City and the Tow Contractors have been unjustly enriched by their impoundment of vehicles pursuant to the unlawful mandatory impoundment policy, the failure to give adequate opportunity to class members to contest the validity of the impoundment, and the failure to give adequate notice to vehicle owners of the facts of impoundment, the right to contest the validity of the impoundment, and, in applicable cases, the proposed auction of vehicles and excess amounts of auction proceeds.

53. The City and the Tow Contractors are liable to the plaintiffs and the class they represent for disgorgement of their unjust earnings.

E. Violation of State Law and Constitution

54. The City's mandatory impoundment policy violates RCW 46.55.113 and Washington Constitution art. 1, § 7. Pursuant to RCW 7.24, plaintiffs are entitled to declaratory and injunctive relief to halt continued implementation of the mandatory impoundment policy in violation of these statutory and constitutional provisions.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief on behalf of themselves and the class they represent:

- a. An award of damages against defendants, including, but not limited to, the costs for redemption of wrongfully impounded vehicles, the lost value of auctioned vehicles and personal property, and damages caused by lost use of impounded and auctioned vehicles, all in an amount to be proven at trial;
- b. Disgorgement of all unjust earnings by the City and the Tow Contractors;
- c. A declaration that the City's mandatory impoundment policy violates RCW 46.55.113 and Washington Constitution art. 1, § 7.
- d. Preliminary and permanent injunctive relief prohibiting the City from continued implementation of the mandatory impoundment policy.
- e. An award of fees, costs, and disbursements in bringing this action; and
- f. Such other relief as the Court shall deem just and proper.