

# Hi-Way --- --- Hi-Lites

VOLUME 10, NUMBER 2

MAY 2008



## IS THIS THE BEGINNING OF THE END OF OWNER-OPERATORS? SURVEY ON OWNER-OPERATORS PARTICIPATION NEEDED

**S**ince leaving the California Trucking Association, I have tried my best to keep from being political. But there comes a time when education of the masses must be done. If you are an owner-operator or if you are a motor carrier that utilizes the services of independent contractors – this article is for you.

There are certain factions in the United States that want to do away with independent contractors one way or another. They will either try to create a law that restricts a persons ability to make a living by stating that he HAS to be an employee to pickup a container in certain ports or a union who has lost so many members that they can see themselves going broke in the future or some governor who passes a state law or a senator running for President who is targeting independent contractors. And it all simply comes down to MONEY. Yes Money for taxes and MONEY for union dues.

The Truckload Carriers Association (TCA) has commissioned a study to collect data on owner operators. The trucking industry is threatened

with owner-operators (Independent Contractors) being re-classified as employees and they are asking trucking companies with owner-operators to participate in this survey. One of the consistent problems which arise in an employment classification case is that the judges, hearing officers and some legislators feel and have the perception that independent contractors are forced to be such by employers who see this as a way to avoid employment taxes, fringe benefits, etc. They have failed to realize that some people wish to create their own destiny. They do not want to work for someone else. These people, for some strange reason, can't grasp the idea of the value of the true entrepreneur in trucking as a sensible, preferred business model and with their own true desires. To participate, call James Hardman at: 651-483-5560 or email [jhardman5560@comcast.net](mailto:jhardman5560@comcast.net). You do not need to be a member of TCA to participate.

### Obama targets Independent Contractors

The fact that a U.S. Senator has filed a bill on independent contractors is

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Sustaining Member



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# Trucking Failures Hit Highest Level Since 2001

**T**rucking company failures in the first quarter accelerated to their highest levels since 2001. Driven by the sharp increase in fuel prices, failures rose to 935, up from 595 in the fourth quarter and 385 during the first three months of 2007.

Carriers are being buffeted by high costs and low demand for freight hauling. Both carriers and shippers are in a weakened financial state over who should absorb the pain from over \$4-a-gallon diesel. The 935 carriers that went under from January through March – either through bankruptcy or going out of business – operated about 42,000 power units. That represents about 2% of the nations 2 million Class 8 tractors. The typical fleet that failed had about 45 trucks and did a lot of longhaul work.

On April 15, the New York Times reported on a wave of bankruptcies among retail stores and how that affects their vendors, including trucking companies. The Sharper Image, filed for bankruptcy owing UPS inc more than \$6 million. On a smaller scale, a troubled store filed owing \$30,000 to an Arizona motor carrier.

The only good thing about this situation is that now there are now 2% fewer trucks operating. That's a significant idling of capacity. It will make it easier for the remaining players to continue to survive. Barring a catastrophic calamity, truckers might not feel like going out for a run, but they won't be on their deathbeds either because at the same time the dollar has fallen thusly increasing exports and other economic activity. ■



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# STOPPING DISTANCE RULE EXPECTED THIS MONTH

A rule mandating a reduction in stopping distances for heavy-duty trucks is rumored to be coming this month.

The anticipated revision of the Federal Motor Vehicle Safety Standard 121 is expected to shorten stopping distances for heavy-duty trucks by 20 to 30%. Today, most tractors stop in 255 to 292 feet. The 30% target cannot be met with 15" x 4" drums on steer axles. Meeting the cut to 248' for tractors would require 161/2" x 7" front drums and 85/8" wide rears. If a 75mph requirement is added, trucks will need front air disc brakes. ■

# KANSAS LAB ENDS DRUG TESTING SERVICES

Physicians Reference Laboratory of Overland Park has withdrawn from the US Department of Health & Human Services (HHS) as an authorized lab to test truck and bus drivers for prohibited drugs.

Motor carrier and others subject to the US Department of Transportation's drug testing rules in 49 CFR Part 40 must only use testing labs that appear on the HHS list of federally approved labs. Motor carrier should make sure they are using a Nationally Accredited Substance Abuse Program to avoid this problem. ■

# ROADCHECK 2008 COMES NEXT MONTH

The 2008 Roadcheck, a 72 hour truck and bus inspection blitz, will be held June 3-5. Inspectors will be out in force along the highways performing thousands of truck, bus, and driver inspections.

Last year's 3-day inspection event recorded the highest driver out-of-service rate since 1999. Of the truck drivers inspected, 6.2% were placed out-of-service while only 3.8 bus drivers were OOS. Almost 22% of inspected vehicles were placed out of service. For a majority of those vehicles, brakes were the problem. ■

## GET AN APU AND SAVE FUEL

**A**uxiliary power units, initially pushed by federal and state governments to reduce air pollution despite concerns over their initial costs, are attracting more buyers who purchase them for the fuel savings, now that diesel is at \$4 a gallon. Drivers who idle less than one hour a day have reported saving \$100 a month in fuel. Drivers who idle 7 or more hours in 24 have said they save more than \$1,000 monthly. In California, legislation that became effective 1/1/08 requires heavy-duty trucks to be equipped with an automatic engine shut-off device that limits idling to no more than 5 minutes. And APUs on trucks manufactured in 2007 or later must either be equipped with diesel particulate filters or have their exhaust plumbed into the truck engine's diesel particulate filter. Be extra careful in the city of Sacramento, idling longer than 5 minutes can produce a fine up to \$25,000. ■

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Note: All activation fees and monthly fees will be waived upon registration.

# IS THIS THE BEGINNING OF THE END OF OWNER-OPERATORS? continued from page 1

not a major news item. But when the senator is Barack Obama, (Democrat) and the bill co-sponsored by another Democrat Senator Hillary Clinton, S.2044, entitled "Independent Contractor Proper Classification Act" that IS big news today.

Obama has zeroed in on an issue of great interest to the trucking industry – and to all who deal with employment issues on a daily basis. In one sense it would "take the muzzle off" the dogs of enforcement. In addition, the bill will also eliminate the "everybody's doing it" defense of industry practice as a justification for worker misclassification.

Obama's bill would amend the Revenue Act of 1978 in three key areas:

1. Requires employers to treat workers misclassified as independent contractors as employees for employment tax purposes;
2. Repeals a ban on Treasury regulations or revenue rulings on employee/independent contractor classification issues; and
3. Eliminates the defense of "Industry practice" as a justification for misclassifying workers as independent contractors.

The bill enables workers to petition the Treasury Secretary for clarification of their status. It prohibits employer retaliation against any workers filing these petitions. Language describing the petition process would be added to required workplace postings regarding employment rights. Finally, the bill requires any employer hiring an "independent contractor" to provide the following notice to the individual:

" Each employer shall notify any individual who is hired..as an independent contractor.. of the Federal tax obligations of an independent contractor, the labor and employment law protections that do not apply to independent contractors, and the right of such independent contractors to seek a status determination from the IRS."

### The FedEx Factor

Obama's bill may well languish in committee. But to a degree it reveals the presidential candidate's thinking and that it is significant. I imagine that FedEx is paying close

attention: the embattled delivery behemoth is fighting – and losing – a state-by-state defense of its hiring practices. Those "independent contractor" drivers, in their FedEx trucks and FedEx uniforms, are looking more like employees every passing day except for those few California contractors who were smart enough to contact NTA. I have never seen a such a bunch of guys who were really fighting to remain independent contractors.

If S.2044 becomes law, or if Obama's quest for the presidency succeeds, FedEx will probably have to throw in the towel or will have to

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# IS THIS THE BEGINNING OF THE END OF OWNER-OPERATORS? continued from page 4

change the way they do business by hiring only those independent contractors who have incorporated.

Needless to say, FedEx is currently writing a few hefty checks to a candidate who name rhymes with "pain."

## In related news from the Boston Globe, Governor Cracks down on misclassification

One by one, the states are turning up the heat on independent contractor classification. On March 12, 2008 Massachusetts Governor Deval Patrick (Democrat) signed Executive Order 499 creating a joint task force to identify and crack down on illegal misclassification of workers as independent contractors.

Once again – it's about taxes - Governor Patrick and other state officials hope that the initiative will bring in millions of dollars in revenue from so called unscrupulous business owners who dodge taxes and other costs by paying workers in cash or by calling them independent contractors.

Union leaders, business owners, and others say they are being squeezed out of the market by companies that skirt the law, including hiring illegal immigrants. Such abuses are common in the building and trucking industry.

Nine state agencies are on the task force, and they are charged with conducting a joint investigation into the "underground economy" crafting stiffer laws, and encouraging the reporting of violations to the government.

Its happening all across the economy, from pizza shop owners to transportation companies, "Said Labor and Workforce Development Secretary Suzanne Bump, who added that the initiative is modeled after similar efforts in California and New York.

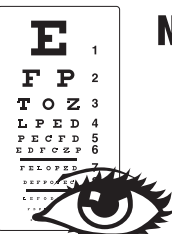
Though laws exist to prevent employers from paying workers in cash or misclassifying employees as contractors, Bump said that a lack of coordination among state agencies has hindered enforcement. Patrick's order requires state agencies to share information and clarify ambiguities in laws, such as differing definitions of independent contractor.

A 2004 Harvard study found that misclassifying workers alone cost Massachusetts roughly \$152 million on unpaid income taxes from 2001 to 2003.

Since independent contractors do not have to fill out W-9's for

employment, this makes the intermodal market a haven for illegal immigrants.

The only sure fire way to combat this encroaching problem to require the independent contractors to become incorporated. This makes more business sense anyway - protection from lawsuits and a drop in your taxes. After all, why would anyone in their right mind want to be taxed at the higher sole proprietor rate of 34% or 39% when you can be taxed at the Corporate 15% level. So beat the "tax and spend" Democrats at their own game and incorporate the Republican way today! ■



## NorthAmerican Transportation Association Inc Announces a New NATIONWIDE Vision Plan for Fleets & Independent Owner-Operators

*With the NTA SightSelect Plan, you and your eligible dependents will receive comprehensive, high-quality vision care.*

Our vision care plan offers:

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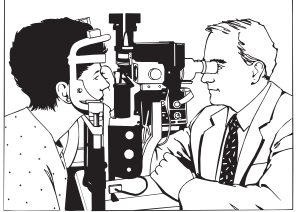
A small administration charge will be added to the premium. A three-month premium is due upon sign-up. Payments must be received before the 15th of the month prior to the month due to ensure eligibility. Members may choose quarterly, semi-annual or annual payments.

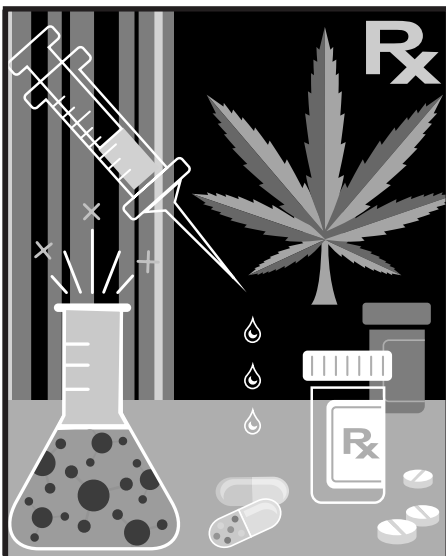
### CALL 800-805-0040

NOTE: This is a Partial Listing of the NTA SightSelect Plan. The vision plan benefits summary must be consulted to determine the exact terms and conditions of coverage. A specimen copy of the benefits summary is available upon request for examination at the Administration Office of NorthAmerican Transportation Association.

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**VMT TAX MAY LOOM IN  
THE FUTURE**

**W**ith the traditional method of funding new highways and maintaining existing roadways – the National Highway Trust Fund is on the verge of going broke. Congress has been looking for new way to tax motorists without increasing the federal gas tax, which has been 18.4 cents a gallon since 1993. Diesel fuel is taxed at a rate of 24.4 cents a gallon.

With automobiles getting better fuel efficiency, the cost of road building and repairing rising astronomically and inflation taking a bite out of the tax dollar, the feds predict that the Highway Trust Fund will go into the red in 2012.

So a congressional study commission gave the state of Oregon a chance to see if a Vehicle Mileage Tax (VMT) fee is workable. After all, people pay their electric and water bills based on use. So transportation officials now wonder, why can't a fuel tax be based on use.

To find out, Oregon DOT decided to conduct a rubber-meets-the-road, real-world VMT fee test that included 285 volunteer vehicles, 299 motorists and two service

stations in Portland. Heavy duty trucks were not a part of the pilot project. Nevertheless, the VMT tax could easily be tailored to accommodate the inclusion of heavy-duty trucks.

The systems works like this, a mileage reader is installed inside each vehicle, The reader picks up the vehicle-miles-traveled data, which is then read wirelessly at a fuel station. The reader attached to a 64 year old Portland resident volunteer kept a



precise accounting of how many miles he drove, and where and at what time of day he was on the road. It recorded mileage for every trip to the grocery store, health club, neighborhood public school and even to the family's rental property.

The commission specifically recommended that the United States transition to a VMT fee by 2025. Until then, the commission recommended increasing the current federal gas taxes up to 40 cents a gallon, a suggestion that seems to lack substantial political support in Congress because of the high prices of fuel. ■

**DEALING WITH BROKERS**

If you have to deal with brokers then be smart and make sure they are one of the 27 approved companies of the Transportation

Intermediaries Association. The TIA has a program that guarantees up to \$100,000 in payments to their motor carrier customers. ■

# VEHICLE BACKING

**T**he most common vehicle accident is a backing accident. Due to limited vision out of the side mirrors, drivers may not see other vehicles, obstacles, co-workers, or pedestrians when they're driving their vehicles backward. However, there are some actions that may prevent backing accidents.

Before getting into your vehicle, walk around it to check for obstructions and other dangerous situations. Once inside the vehicle, turn your head to the left and right to look directly out the sides and back of the vehicle. Use your side and rear-view mirrors to look in all directions to the rear of the vehicle. Backup cameras and sensors are good tools that can help you keep watch around your vehicle. When you're ready to back your vehicle, do so slowly.

If your vehicle is equipped with a backup alarm, make sure that it's working properly. If you don't have a backup alarm but feel that it's necessary to alert others that you're backing, put on your flashers and honk the horn as you back. Make sure that the area behind you is clear of obstacles, pedestrians, and other vehicles before you move. If you see pedestrians or vehicles approaching, judge their speed and distance before backing.

A "spotter" can help you with backing by sharing the responsibility for watching the rear of the vehicle. If the spotter is outside the vehicle, make sure that you can see each other in the side-view mirrors at all times. Don't proceed with backing if you lose sight of the spotter. Two-way radios and/or hand signals can be used to help communicate.



If you're acting as a spotter or work near backing vehicles, listen for the backup alarms and watch vehicle movement. Never assume that the driver sees you and knows where you're going. Don't walk alongside or ride a backing vehicle. Wear highly visible clothing if you're going to be working on foot around backing vehicles. With care and caution, you can safely back your vehicle. ■

## COURT RULES MOTOR CARRIER CAN COLLECT FROM SHIPPER WITH INTEREST

**O**ak Harbor Freight Lines brought suit against defendants Sears Roebuck & Co (shipper) and National Logistics Corp (broker) to recover nearly half a million dollars for the transportation of Sears' freight. Pursuant to the industry standard bills of lading, Sears was held liable directly to the freight carrier for unpaid shipping costs even though the majority of the costs had already been paid by Sears to the broker. The court rules that the Carrier contract between the motor carrier and the broker did not constitute a waiver or alter



Sears' liability of lading, the Carrier contract was not the sole lawful contract concerning payment obligations and equitable estoppel did not bar the freight carrier from collecting the freight charges directly from Sears. Further, the

court did not abuse its discretion in setting a date for the accrual of pre-judgment interest or by applying the rate set by state law rather than the federal rate.

The court made the ruling because of the way all of the paperwork had been transacted between all parties in this specific case, once the broker failed to pay Oak Harbor, Sears became liable for paying the motor carrier – even though Sears had already paid the broker. ■

# WELCOME NEW MEMBERS

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Gardena Welding Supply	Gardena, CA	T-Row's Transportation	Paramount, CA
Jesus A Garcia Trucking	Gardena, CA	Rony's Trucking	Phoenix, AZ
Hano Zengana Trucking LLC	Glendale, AZ	Sydney Express LLC	Phoenix, AZ
J M Trucking	Goodyear, AZ	K & S Trucking LLC	Phoenix, AZ
California Oil Transport	Hawthorne, CA	Al-Harbi Trucking LLC	Phoenix, AZ
Olivas Trucking	Hawthorne, CA	D Reyes Trucking	Phoenix, AZ
Caribbean Express	Inglewood, CA	S I A Transport	Phoenix, AZ
Sergio Aguirre Trucking	Laveen, AZ	Lima's Trucking	Phoenix, AZ
Tony's Transportation LLC	Lawndale, CA	Rosli Trucking	Phoenix, AZ
Donald Lester Co	Leesville, SC	Rudy's Trucking LLC	Phoenix, AZ
S L T Transport Inc	Long Beach, CA	Byron's Trucking	Phoenix, AZ
P S Trucking	Long Beach, CA	Apolotran Express	Pico Rivera, CA
St Jude Company	Los Angeles, CA	Genchev Trucking	San Diego, CA
Erick Nolasco Trucking	Los Angeles, CA	C T Fuel Transports	San Jacinto, CA
People & Logistics Transport	Los Angeles, CA	Medeiros Transportation	San Pedro, CA
Carrs Waste Oil Service	Los Angeles, CA	Ayanka Trucking LLC	Tempe, AZ
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Leo's Tank Lines	Moreno Valley, CA	La Playa Livery Limousine	Torrance, CA
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