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The Owner-Operator Business Model

By Gregory M. Feary
Managing Partner
Scopelitis, Garvin, Light, Hanson & Feary

In the last 10 years, there has been an undeniable siege against the owner-operator/no-asset independent contractor business model (12-10, p. 1). The attacks have come from all corners and, at times, seem designed to strike a fatal blow to the owner-operator model countrywide. Venture capitalists and long-time trucking company owners alike raise this question: Is the owner-operator trucking business model dying? I do not think so.

In one corner is the Owner-Operator Independent Drivers Association's campaign against motor carriers using owner-operators, alleging violations of the federal leasing regulations. OOIDA holds itself out as filling a void left by a federal government that allegedly is neither interested nor equipped to enforce such regulations.

From another corner comes a legion of plaintiffs' attorneys whose mission is to find money and benefits for their owner-operator clients, who liked the idea of earning more money as they worked harder and smarter but have been persuaded that conveniently rejecting their previously acknowledged independent contractor status better serves their current agenda, i.e., obtaining workers' compensation or unemployment tax benefits or using a host of employment laws to make their living in a manner that has become an unfortunate modern trend.

Politicians also have jumped on the bandwagon to protect the so-called "unwary victims" of the independent contractor characterization. The 2007 legislative session was rife with bills creating a laundry list of generic criteria that — regardless of common sense or custom and practice — each would need to be met for a worker to be legally considered an independent contractor in any business or industry.

Also on the legislative agenda were "anti-abuse" bills long on penalties but short on fair and objective standards in targeting so-called employers, who allegedly try to evade employment laws by intentionally misclassifying a worker as an independent contractor.

Finally, of course, the regulators have weighed in. Whether the agenda includes revenue generation, career building or regulatory hubris, there has been no shortage of state agency efforts to redefine American business as a one-business-model-fits-all construct.

I am reminded of a meeting that took place in New Jersey in 2005. Regulators were assembled to "understand" owner-operators and why workers' compensation premium assessments to a motor carrier should be viewed as inappropriate. Dismissing direct and on-point case law as irrelevant, one regulator proclaimed, "Every worker in our state is entitled to workers' compensation."

California initiated its own mission of sorts, not only by nearly enacting an anti-abuse bill into law — stopped by the governor's last-day veto — but also continuing its four-years-plus pursuit of unemployment tax

from the various segments of the transportation industry that commonly use owner-operators.

So how can I justify my claim that the owner-operator model is alive? The answer is quite simple: Trucking companies and truck drivers, the true stakeholders, see the owner-operator business model as mutually beneficial.

From the truck driver's perspective, there remains a continuum of entrepreneurial goals that range from making a good living predicated on running a small business to the more grand "American Dream" type of goals of building an empire from a single truck operation.

In trucking, possibly more than in any other industry, the names of some of the success stories are now legendary: Bill Watkins, Watkins Motor Lines Inc.; David Graebel, Graebel Van Lines Inc.; and J.B. Hunt, J.B. Hunt Transport Inc. There are scores more, including many that are less grand but certainly no less emblematic of a legitimate desire to earn a living by charting one's own course and building a business for oneself and future generations as well.

Trucking companies also see value in having such highly motivated entrepreneurs as service providers. Trucking companies understand the type of person who typifies this workforce. Independent of mind? There is no question. Pridelful and proud? Also typically true, but with these characteristics comes someone who really takes pride in a job well done.

The business-to-business collaborative approach is an age-old formula for success. Trucking companies see value in paying incentives for superior results. I am not suggesting that all company drivers across America fall short of this noble profile. But trucking, like any industry, operates on certain immutable principles, and the law of averages — like the law of gravity — can be trusted. On average, an owner-operator is a willing and motivated self-starter trying to get a job done and provide for his or her family while building a legacy.

Not all drivers are cut out to be owner-operators, but it is certainly true that not all drivers are cut out to work as company drivers.

If a society's laws, ideally, are to reflect the majority view of its citizens, then my prediction of a thriving owner-operator business model supported by this ideal legal paradigm is evident. We need look no further back than the last two years to state laws in Oregon, Kansas and South Carolina that recognize an owner-operator as an independent contractor. We need look no further than judicial rulings too numerous to mention that find owner-operators to be independent contractors. While the siege is likely to ebb and flow, statutes specifically defining owner-operators in trucking to be independent contractors throughout the states are proliferating and thus shrinking the battlefield.

Law firm Scopelitis, Garvin, Light, Hanson & Feary, Indianapolis, serves the transportation industry. Its offices in other cities include Chicago, Detroit, Los Angeles and Washington.



Opinion

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