A new information reporting requirement for employee benefit plans may have significant consequences for motor carriers that allow independent contractor owner-operators to participate in the motor carrier’s sponsored employee pension and welfare benefit plans. Of course, allowing owner-operators – non-employees – to participate in employee benefit plans has many potential serious consequences in and of itself, not the least of which is that it may result in the plan being deemed a multiple employer welfare arrangement (“MEWA”), which is a plan providing benefits to the employees of two or more employers.

Of immediate consequence to such a potential MEWA finding is that by the July 15, 2015 annual filing deadline, employers that manage “multiple employer plans” (“MEP”) must comply with the new Form 5500 filing requirements. Form 5500 is the information return that must be filed annually by qualifying employee benefit plans to report benefit plan information. The US DOL’s Interim Final Rule (“IFR”) provides that under the new Form 5500 filing requirement, all MEPs (regardless of type) must file a Form 5500, along with the following information:

- List of participating employers in the MEP
- A good faith estimate of the percentage of total contributions made by each participating employer during the plan year

The IFR expressly states the requirement is applied across all MEPs, defined broadly as “a plan that is maintained by more than one employer and is not a ‘single employer plan’ or a ‘multiemployer employer plan ie, collectively bargained plan)’ for Form 5500 filing purposes.” 79 Fed. Reg. 66618 (D.O.L. Nov. 10, 2014). Based on this broad definition, a motor carrier that administers a healthcare plan in which independent contractors participate appears to fall within the definition of MEP and, as a result, may be required to comply with the new filing requirement, including listing all participating independent contractors (ie, participating “employers”) and their percentage of
contributions. Failure to comply with the Form 5500 filing requirement could result in the following penalty assessments:

- $1,100 per day per plan from the DOL
- $25 per day (up to $15,000) per plan from the IRS

The information submitted in connection with the new Form 5500 filing requirements, including the list of participating independent contractors, will be publicly available as is all Form 5500 information. Among the reasons why allowing independent-contractor participation in a motor carrier’s healthcare plan may be problematic, the listing of them in the Form 5500 may trigger unwelcome scrutiny by state and/or federal labor departments, the IRS, or other state agencies. This scrutiny may invite a state or federal agency to more closely examine the motor carrier’s healthcare plan to determine whether it complies with any applicable requirements (including MEWA requirements), or closely examine the motor carrier’s independent contractor model for potential reclassification purposes. For additional information on this requirement and the implications of allowing independent contractors to participate in a motor carrier’s group healthcare plan, please contact Steve Pletcher (spletcher@scopelitis.com) or Katie Feary-Gardner (kfeary-gardner@scopelitis.com) in the Firm’s Indianapolis office at (317) 637-1777.