

## Choosing a Trucking Company: Contract interpretations

A couple months ago I had a new client come in and we went over their business situation. They just moved to a new company a few weeks before and gave me their story of what happened at the old.

They were only there for six months before it became clear they couldn't financially survive the treatment. They respectfully gave their 30 day notice.

Their subsequent treatment, to say the least, was obscene. First of all their second last check was immediately withheld (even though they drove the last 30 days). Then, after the plates were removed, the real abuse began.

I have read a sizable sampling of lease operator contracts (lease operator paid cents per mile as opposed to owner operator paid percentage). The similarities of some are astounding, as if they were written by the same lawyer or (more likely) copied from each other.

Most terms and conditions are presented almost identically, such as: independent contractor versus employee, or defining damage liability, fines etc.. Eventually, however, contracts refer to "Schedule A": rate of pay, rate of fuel surcharge (if any), license/insurance costs (if any), administration costs (if any) and deductibles etc. . All these inclusions or exclusions make up the company pay package.

There are two basic types of "schedule A's". One often referred to as zero based (or all inclusive) and the other includes a list of regular deductions. Zero based statements have no deductions except fuel costs whereas the other type can deduct: License, insurance, administration, workers compensation etc. off each pay period. My new client signed a basic zero based pay package (license and insurance included).

Almost all contracts include a cancellation clause, determining the responsibilities of each party in the event of termination. In the illustration above the contract had a somewhat standard line which read:

"...if the independent leaves any non-refundable portion of permits, licensing, insurance, decals, satellite removal/repair will be charged to Independent..."

There can be non-refundable costs associated with licensing (especially if the company doesn't transfer the plate to another truck). However, this company also defined **INSURANCE** as "non-refundable" even though they had a zero based contract which included insurance costs.

This was their position. They bought insurance from a provider that required up front payment in full (every year). Since the company didn't have the cash up front, it had the lump sum financed through a premium installment contract.

The argument the company made to my client was, since the insurance was paid in advance for the entire year they had the right to deduct the prorated balance (according to their calculations \$3,308.37), and then clearly stated in writing "...No refund has been received or is expected for insurance..."

For anyone with even a basic knowledge of how insurance works we can see the breakdown in business logic. If the truck was written off ten days into the contract, would the entire annual premium be lost? According to the trucking company logic... it would!

By the time the company wrote the statement "...no refund has been received or is expected for insurance..." the client had been at the new company for nearly a month. In all probability the trucking company should have already received the credit notice from their insurance provider.

To confirm the facts on the process I phoned the trucking company's insurance broker, I recorded a conversation where the representative clearly explained the standard "refund process system" (averaging 3 weeks from cancellation) and kept the evidence for a later date (by the way this was not the only area of conflict in the final settlement).

When given an opportunity to perpetrate a fraud, some people don't hesitate. It starts by someone in charge fabricating their own definition and interpretation of reality, contract phrases and "evidence". Having skewed logic stand alone (or paired with half the facts) lines are drawn. Checks (if any) are NOT released unless the operator signs an indemnity (relinquishing rights to sue for satisfaction). This is referred to as extortion.

This company perpetrated a fraud, a fraud clearly understood by all who know the facts. It is clear some companies view drivers and operators as a dime a dozen, a renewable resource that can be abused at will. Sure the company has a limited life span and will choke their "resources" to their own slow demise, but unfortunately it may take years (and many victims) for specific word to get around.

Buyer beware places a heavy burden on the driver pool, a pool that seems to grow **more** cynical rather than less.

There used to be a strong bond of trust, co-operation and loyalty between driver and company. If the industry is to attain or sustain long term profitability, the industry must return to a trust and loyalty based relationship.

The key is NOT to circulate legislation, but education. There must be a clear industry standard and a clear form of accountability. Not a minor task.

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883 words

Here's the definition of fraud: "A false representation of a matter of fact - whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed - that deceives and is intended to deceive another so that the individual will act (or not act) upon it to her or his legal injury."