



DAN FINNEY LAW

TRIAL ATTORNEY

October 24, 2024

Truck Leasing Task Force
Attn: Chairman Steve Rush

Re: Illusory truck leasing agreements

Dear Chairman Rush and members of the TLTF:

If you are a fleet owner with your own authority who transfers the right to possess, use and control your fleet to your operators, then you may classify those operators as independent contractors, and issue those operators 1099s to avoid, among other expenses, employer tax on those operating your trucks under your authority. But that means you also transfer those operators the right to operate that equipment under the authority of your competitors.

Law-abiding fleet owners accept this as part of the deal. Those who are more inclined to disregard legal technicalities will have their attorneys draft *illusory* leasing agreements that appear to transfer the right to possess the equipment to the operator, but as a matter of law, do not.¹ Then you assign those operators a truck from your fleet, then issue those employees 1099s. This way you can pass along the liability for employment tax to your operators without losing possession of your fleet.

So the illusory agreements are a front for tax evasion through employee misclassification, which is occurring industry-wide on an incredible scale. If the IRS would find out what is going on, those fleet owners who issue 1099s to employees who drive the fleet owners' equipment, but never transferred the right to possess that equipment, may be liable to the IRS for \$6,000 in penalties per violation, plus back taxes, and face criminal prosecution for tax evasion.

¹ Since the agreements all require arbitration for questions regarding the validity of the agreement, which is cost prohibitive for the operators, from the perspective of the fleet owner's attorneys who are drafting the agreement, the fact that the agreements are illusory and unenforceable should never see the light of day.

The IRS now knows what is going on, because of the information and evidence my client provided the special agents in the criminal investigation unit, as an IRS Whistleblower, regarding the underwriting. The IRS now knows that their agents can tell which fleet owners/carriers are evading employer taxes by looking at the underwriting.

If the coverage never leaves fleet owner, neither does the right to possess the equipment, and the operators of that equipment should be issued W2s. If the coverage transfers to the employee at the time a leasing agreement is executed, most likely the employees may be issued 1099s.

In most if not all cases involving those leasing agreements which are illegal, the employers deduct premiums to “facilitate” coverage for the operators under “Independent Contractor Policies” (ICPs). These policies are fleet insurance policies covering the fleet owners, but which declare to cover the operators under a name like “Maverick LLC Ind Cont.”

Since that is not the legal name of any individual or entity, alleging that ICPs covers the operators who are providing the premiums, is fraudulent. The reason for committing this fraud from the perspective of the insurer is that you can charge the operators premiums for underwriting, without incurring the expense of doing so. Then you launder kickbacks to the operators, in the form of proceeds checks to that name through the employers’ operating account, because the names all start with that of the carriers. (because the named insured on the fraudulent ICPs incorporates the name of the fleet owner/carrier, the depository banks will either miss or turn a blind eye towards the fraudulent negotiation of the check.

But since the insurance companies show the proceeds under the ICP are being paid to the same EIN as the carrier on their tax returns, the IRS can prove the policies are fraudulent. This proves the operators were never transferred the right to possess the equipment, and any operator of that equipment should have been issued a W2, not a 1099, whether they were charged to operate that equipment or not.

There are perhaps hundreds of thousands of operators every year for decades who are charged for ICPs, but all the premiums and proceeds go from and to the entity with the EIN of the carrier. So at \$6,000 penalty per misclassified operator, proven just by looking at the EINs of the named insured on the property damage policies, it is reasonable to expect criminal charges to be forth-coming.

At the beginning of 2023, Maverick Transportation, LLC was collecting millions of dollars a year from settlements owed to scores of operators to finance, maintain and insure equipment titled to Maverick Leasing, LLC. Maverick had a list of operators waiting to sign up for its leasing program. About a year later, Maverick told those operators the leasing program was no longer accepting new drivers.

Maverick may have shut down the leasing program because I showed its lawyers how easy it is to prove that it was a tax evasion scheme involving collusion with Great West Casualty Company, through fraudulent underwriting, by pointing to the attached affidavits. These checks were all negotiated into Maverick's account without the endorsement of the payees. Which is conclusive evidence of bank fraud. Since the payee on the one check, the named insured on the policy, has no EIN, it proves the policies are illegal. All of this is evidence proving that the Maverick Leasing Agreements are illusory, and fronts for a money-laundering and embezzlement racket, using wire fraud, bank fraud, and mail fraud.

The nice thing about the collusion between the carriers and respective insurers, from the prospective of the IRS, is should the carriers not have the money or the equity to pay the penalties and back taxes, and end up declaring bankruptcy because of the levies against their fleets and operating accounts, the IRS may be able to collect the money from their insurers, who are generally flush with cash, because they've been charging for underwriting that never happens.

Given the ubiquity of ICPs and corresponding "occupational hazard policies"² and the amount of money involved, it is reasonable to expect criminal charges and tax levies to be forthcoming, We are talking about, industry-wide, perhaps millions of counts of wire-fraud, tax-fraud, money-laundering, tax-evasion, embezzlement, and racketeering,

² Occupational hazard policies are workers compensation policies that state "this is not a workers compensation policy" at the top. But again, all you need to do is look how the proceeds are itemized by the insurers on their tax returns. The proceeds are made through a "structured settlement" for incidents that are defined as falling within section 104(a)(1) of the Internal Revenue Code. This section only exempts proceeds from worker compensation policies. The insurance companies do it this way, because otherwise the operators would owe income tax on the payments of their medical bills under these policies, and the fraud would be exposed.

involving billions of dollars of back taxes, penalties, wrongful debts, and converted premiums. And the illusory leasing agreements are the front for this racket.

I imagine that, based upon data gathered before the date of this letter, this task force may conclude that the *illusory* leasing agreements are not only unfair, but ruinous to the operators who execute the agreements, leading to an uneven distribution of power between labor and capital. But even if the leasing agreements had the opposite effect, and the operators lived like kings and queens because of them, the illusory leasing agreements are going away. So, the question of fairness of the illusory agreements may be moot.

Given the progress the leaders of the transportation industry serving as members of this task force have made in understanding the problems facing operators who are working under an illusory leasing agreement, we do not want the efforts of this task force discredited because the report issued by this task force equivocates on the question of unfairness of illusory agreements which are fronts for the most wide-ranging tax and money-laundering and embezzlement racket in U.S. History. And since the analysis proving this to be the case is well beyond the scope of responsibility of this task force, let's look at the question of the fairness of the illusory leasing agreements on its own merits.

Only those who hold title to a truck, or pay the titleholder, have the *right* to possess a truck. The problem is some who pay the titleholder for the right to possess that truck never receive that right. They may receive a truck, but not the *right* to the truck.

Perhaps as many as hundreds of thousands of operators are collectively paying billions of dollars a year to their employers and insurers through deductions from their settlements in exchange for nothing. Literally-nothing. The operators execute a leasing agreement for the right to possess the equipment but receive no more of a right to possess the equipment than any other operator who does not execute the agreement. That is unfair and untenable.

Let's say I pay \$16,000 for four tickets to a World Series game. And a task force was formed to investigate the fairness of this deal. The first question to ask will be whether I paid \$16,000 for the tickets. If the answer is yes, the second question will be whether I received the tickets. If the answer is no, those are the only questions the task force needs to ask to fulfill its mandate. I might have been given four free tickets to better seats because of what happened. That is irrelevant.

A trucking company did not transfer the right to possess their equipment to the operator, if the coverage from losses because of damage to the equipment did not also transfer to the operator. The trucking companies know which leasing agreements are illegal because trucking companies understand the underwriting of their trucks. And the insurance companies know which policies are illegal because they understand coverage.

Neither the titleholder nor the underwriter can produce the terms of coverage that apply to any operator who executed illusory leasing agreements. If subpoenaed to testify, they will either not show up or plead the fifth. I am speaking from experience.

Given our time constraints, I will not be providing this task force with anecdotes proving why the illusory agreements and embezzlement of perhaps billions of dollars over decades from the paychecks to operators result in unfairness to those operators, as legion as those anecdotes may be. I would offer that, based upon the thousands of hours I've spent investigating and litigating cases involving this issue, the only way to be certain the right conclusions are reached by this task force and anyone with a desire to improve the transportation industry, and thereby the US economy in general, is to follow Mr. Viscelli's recommendations. Thank you for your time.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. J. Ginnery". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

/encl.