Expert Report on the Similarities of KLLM Transport Services Lease-operators and their relationship to KLLM Transport Services, LLC

BY:

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1. Purpose of the Report

I was asked by counsel for the named plaintiffs to review documents associated with this case and publicly available information on the business of KLLM Transport Services, LLC (hereafter "KLLM") and use my expertise to assess:

- whether the opportunities and constraints experienced by the named plaintiffs and those who entered similar contractual agreements with KLLM are typical of purported independent contractor arrangements at companies in long-haul trucking;

- the type and extent of control exercised over KLLM lease-operators by KLLM;

- the degree to which workplace experiences and outcomes for KLLM lease-operators are outcomes of the policies, practices and organization of KLLM's primary business and the likelihood that those experiences and outcomes are shared by other contractors utilized KLLM.

This report presents preliminary analysis based on the data produced thus far in the case.

2. Expertise of the Author

I am an economic sociologist with 13 years of experience researching the trucking industry and its labor and employment practices. I have extensive training in both qualitative and quantitative methods and use both in my research. I received training in qualitative methods of ethnographic observation and interviewing at Syracuse University (M.A. 2002). I received further training in both qualitative and quantitative methods at Indiana University (Ph.D. 2010).

At Indiana University I completed a dissertation on work and employment relations in the long-haul trucking industry. My dissertation used a wide range of quantitative and qualitative data analysis. After completing my dissertation in 2010, I was awarded a two-year National Science Foundation post-doctoral fellowship to study the effects of the Great Recession on the work and employment opportunities of long-haul truckers. During my postdoctoral fellowship, I became a senior associate at the Center on Wisconsin Strategy (COWS), a think-tank and policy research center. In that capacity over roughly 6 years, I worked with and advised a range of stakeholders in the trucking industry and government on issues of regulation and efficiency in the industry. In particular, I served as an expert for the State Smart Transportation Initiative (a group of state DOT Secretaries interested in "best practices" for state transportation agencies) on issues related to the work of truckers and trucking operations.

In 2011 I developed a policy proposal to improve the efficiency of freight movements in urban areas to meet the interests of a range of stakeholders. This policy proposal aims at public investments to facilitate more efficient use of the time of truckers. I have presented this policy proposal to industry and government groups, including the North American Council on Freight Efficiency and more than one dozen State Transportation Secretaries. Several years ago, a group of four policy centers at the University of Wisconsin has received funding to explore this idea for the movement of food freight in the Upper Midwest from the US Department of Agriculture. I served as an adviser to that group. I have also provided advice on trucking to public agencies and elected officials, including the Chicago Metropolitan Agency for Planning, the Government Accountability Office, the National Science Foundation and a US Senator.

Currently I work full time at the University of Pennsylvania in several positions. I am a Robert and Penny Fox Family Pavilion Scholar, a Senior Fellow at the Kleinman Center for Energy Policy and a Lecturer in the Department of Sociology. In my work for the Kleinman Center I serve as an expert on the trucking industry for the Center in its work on energy efficiency. I have also worked for Penn's Wharton School of Business and Penn's Engineering School to develop conferences on trucking technology and innovation management.

My current research looks at the employment and environmental impacts of self-driving trucks. In recent years I have served as a consultant to Silicon Valley technology firms and investors on labor and use scenarios for self-driving trucks.

In terms of assessing the use of independent contractors by firms relative to the questions outlined above, I am uniquely qualified. In April of 2016, I published a book, entitled "The Big Rig: Trucking and the Decline of the American Dream" with the University of California Press, which is the only in-depth study of independent contractors in long-haul trucking since deregulation of the industry in the late 1970s and the development of the current labor practices of the industry.

I have attached a c.v. to this report that includes my recent publications and expert witness testimony.

3. Case Documents Reviewed for this Report

Case specific documents I have reviewed include:

- Plaintiff's Opposition to Defendant KLLM Transport Services, LLC's Motion for Partial Summary Judgement
- Plaintiff Cory Lilly's Response to Defendant's Motion for Partial Summary Judgement
- First Amended Complaint and Demand for Jury Trial
- Documents with Bates Stamps KLLM000001-KLLM001700; KLLM004513-KLLM004636; KLLM005516-KLLM005519 including, among others:
 - $\circ \quad \text{Driver Qualification Application}$
 - Hazardous Materials Transportation Training
 - o KLLM, Inc. Sexual or Racial Harassment Policy
 - KLLM Qual Com Policy
 - KLLM Cell Phone and Electronic Device Policy
 - o KLLM Loan Agreement and Employment Contract
 - Driver Payroll Recaps
 - Orientation Materials
 - o Tractor Lease/Purchase Agreement
 - $\circ \ \ \, Independent \ \, Contractor \ \, Driver \ \, Qualification \ \, Sign-up$
 - o Independent Contractor Agreement
 - o Owner/Operator Earnings Recap(s)
 - $\circ \ \ Load \ Refusals$
 - \circ Driver Logs
 - o Employee Personnel Actions Report
 - o Call Checks
 - Operations Orientation Packet
- Documents with Bates Stamps McGee Production_000001-002119
- Documents with Bates Stamps Shettles Production_000001-001214
- Designation and Objections to Third Amended Notice of 30(B)(6) Deposition
- Deposition of Brent Anthony and exhibits 3-7, 9-25
- Deposition of Brenda Beard
- Deposition of Charles Kenneth Hallmark and exhibits 1-10
- Deposition of Marcus Brent Jowers and exhibits 1-6
- Deposition of Corey Lilly and exhibits 1-5
- Deposition of John McGee and exhibits 1-25
- Deposition of Colton Miller and exhibit 1
- Deposition of Kyle Shettles and exhibits 1-6
- Deposition of Donald Tillman and exhibits 1-14
- Declaration of Donald Tillman
- Declaration of James Johnson
- Declaration of John McGee

- Declaration of Kyle ShettlesDeclaration of Charles HallmarkDeclaration of Colton Miller

4. Overview of the Findings

With regard to the purpose of the report as outlined above, preliminary analysis suggests:

- KLLM uses a common labor management model found throughout much of the long-haul truckload industry to create trucking services. This model substantially limits the exercise of control by independent contractors in order to preserve KLLM's ability to realize its operational goals and profit.
- The labor management model used by KLLM standardizes the interactions of lease-operators with KLLM in order to ensure efficiency and uniform outcomes.
- KLLM lease-operators are managed by KLLM to provide trucking services to KLLM's customers. In doing so KLLM coordinates the work of lease-operators with other drivers, including employees. This management is essential to ensuring that the time-sensitive refrigerated freight that KLLM frequently hauls is delivered in a timely manner.
- KLLM does not contract services from lease-operators in the way one business would from another, specifying some particular outcome, but rather KLLM directs the work of lease-operators in order to produce that outcome.
- KLLM lease-operators' limited ability to refuse loads and other nominal rights as contractors are unlikely to have a significant positive impact on their earnings and work-related behavior over the long-term. In fact, the decisions lease-operators make are unlikely to differ meaningfully from those made by employees.

Based on the data produced thus far in the case, there are is no apparent meaningful variation in the treatment of KLLM lease-operators or their ability to make significant decisions.

5. Glossary of Terms As Used in this Report¹

Brokerage – A business that arranges freight transportation by motor carriers but does not transport freight itself or take legal possession of freight.

Dedicated – Freight service organized to serve the regular shipping needs of a particular, usually high-volume customer. Dedicated service can entail meeting special requirements of shippers but almost always involves significant numbers of loads moving from particular origins and destinations. Dedicated service is typically a long-term (multi-year) relationship and motor carriers often differentiate within their own fleet drivers assigned to service a dedicated account.

Drop and Hook – A load assignment to pick up and drop off a pre-loaded trailer (i.e. the driver does not have to wait while the freight is loaded into a trailer, known as "live-loading" or "live-unloading")

Dry Van – A standard non-refrigerated "box" trailer. The most common trailer in the industry used to carry a majority of freight. Freight in a dry van is usually on pallets or in boxes.

Dry or Dry Van Freight – Anything that can be hauled in a dry van, but is often hauled in refrigerated trailers as well.

Federal Motor Carrier Safety Administration (FMCSA) – The federal agency responsible for most motor carrier regulation.

For-Hire Motor Carrier (For-hire Carrier) – An individual or firm with an operating authority to offer freight transportation services to the public for a fee.

Hours of Service (HOS) – The federally mandated rules set by the Federal Motor Carrier Safety Administration (FMCSA) that regulate, among other things, how many hours drivers may drive and work over certain periods of time.

Independent Owner-Operator – The owner of a for-hire motor carrier who also works driving equipment they control. Independent owner-operators are responsible for all of the fixed and variable expenses of their operation and

¹ The meaning and usage of many common terms varies significantly across the industry. The definitions given here are intended only to help the reader understand how I will use these terms in this report, which may differ from specific legal or regulatory definitions and/or informal usage within particular firms or industry segments.

operate under their own legal authority to provide freight services to customers (which could include shippers, freight brokers or other motor carriers).

Lease-operator – A driver who is responsible for a large portion of the fixed and operating expenses of their tractor and works under contract for a motor carrier. Lease-operators may own trailers, but typically do not. Lease-operators operate under the authority of a motor carrier which typically finds and prices all of the loads hauled by the lease-operator.

Less-than-truckload (LTL) – Freight service moving shipments less than 10,000 pounds. These services often consolidate multiple shipments into a single truckload size shipment for long-distance transport and then break consolidated shipments down again for final delivery. Consolidating and breaking down of LTL shipments often happens at motor carrier-controlled terminals.

Less-than-truckload Carrier (LTL Carrier) – A for-hire motor carrier providing LTL service.

Live Load/Live Unload – When a driver must wait while freight is loaded into or unloaded from the trailer attached to their tractor.

Local – Freight services less than 150 miles from origin to destination.

Motor Carrier – Refers to a commercial vehicle transporting freight or passengers. For the purposes of this report I will use the term in the common usage meaning a motor carrier with an operating authority or motor carrier (MC) # issued by the FMCSA.

Operating Authority – The federally-mandated license required for a motor carrier to provide for-hire interstate freight services.

Parcel Service – Freight services that move packages or individual shipments of freight weighing 150 pounds or less (e.g. UPS or Fed-Ex).

Private Carrier – A trucking fleet that hauls goods that it produces or sells. A private carrier provides "in-house" services and does not require an operating authority.

Over-the-road (OTR) or Long-haul – Any freight services that transport freight more than 150 miles from origin to destination.

Refrigerated (also Reefer or Temperature-Controlled) – Used to refer to freight that must be transported at a particular temperature. It can also refer to van trailers used to haul that freight or firms that haul it (Refrigerated Carriers). Refrigerated vans (a.k.a. reefers) are often used to carry dry freight.

Segment (or Industry Segment) – A portion of the trucking industry distinguished by freight or service type. There are numerous recognized segments based on whether carriers are private or for-hire, size of shipments, distance goods are moved, the type of trailer required, etc. The most common segment distinctions would include, among others: private/for-hire, truckload/less-than-truckload, OTR/local. Within the OTR for-hire truckload segment are segments defined by the type of trailer used to haul freight (e.g. dry van, refrigerated, flatbed, tanker, etc.). Segments sometimes have distinct business models for firms and different labor market and operational characteristics relative to drivers.

Truckload (TL) – For-hire freight service that moves shipments larger than 10,000 pounds, large enough to fill a truck to capacity either based on legal allowable weight or trailer volume. Truckload freight moves "point-to-point" from shipper to consignee (receiver) without passing through a motor carrier facility.

Truckload Carrier (TL Carrier) – A for-hire motor carrier providing truckload service.

6. This Report in Not Intended as Legal Analysis

The similarities and differences among truck drivers working under different employment arrangements and why workers choose those different employment arrangements or start their own firms have been my primary research topics for the last 13 years. Over that time, I have performed extensive comparisons between employee truck drivers, lease-operators and independent owner-operators on all aspects of their work and compensation using data ranging from in-depth interviews to surveys to industry-level statistics. Whether workers are treated or classified by employers as employees or independent contractors has important legal and regulatory influences and consequences. These influences and consequences have necessarily been fundamental considerations in my research. However, no statement in this report should be understood as intended to make any assertion about the proper or improper legal or regulatory classification of workers. I have no formal training in the law and the analysis contained in this report is intended only to assist the reader in understanding the economics and organization of work and labor market behavior of truck drivers under various employment arrangements and management systems, not to assert how those workers should be understood relative to the requirements of any particular law or regulation.

7. Background on the Lease-operator Labor Management Model

KLLM uses the lease-operator labor management model common in the primary segment in which it competes. The sort of basic long-haul, point-topoint movement of full trailers of refrigerated goods that is the core business of KLLM is often done by lease-operators.

While this management model is often portrayed as a continuation of the long-standing tradition of independent owner-operators in the trucking industry, there are fundamental differences between independent owner-operators and lease-operators. In fact, the lease-operator model as it is employed by carriers today is a labor management strategy of relatively recent origin and is the result of a combination of the market conditions for motor carriers produced after deregulation, technological change, and a thorough transformation of the trucking industry's labor markets.²

A. Deregulation of the Industry and Labor

The trucking industry was historically subject to extensive economic regulation that limited both price competition and market entry by new firms. Prior to deregulation of the industry beginning in the late 1970s, large trucking firms were very profitable and truck drivers, most of whom were members of the International Brotherhood of Teamsters, were among the nation's highest paid blue-collar workers. During regulation, nationwide collective bargaining developed and for several decades wages were taken out of competition and working conditions standardized across the nation. In short, trucking firms in most segments of the industry did not compete based on how much they paid workers or basic working conditions (e.g. how often drivers slept in their trucks).³

Regulation was enacted in 1935 in order to combat the industry's central tendency toward excessive competition. In terms of economic theory several factors cause this tendency. First, trucking lacks asset specificity: the capital investments required for trucking are not generally tailored to narrow or specific product markets, and trucks are, for the most part, interchangeable and readily available. This means that the barriers to entry into the industry are low, so when trucking is profitable new firms are able to enter a market and existing firms can increase capacity quickly.

Second, trucking is a derived-demand industry. That is, what trucking produces is entirely dependent on the immediate demand for its services from

² Viscelli, Steve. 2016. *The Big Rig: Trucking and the Decline of the American Dream*. Berkeley: University of California Press.

³ Ibid. Chapter 1.

customers. Trucking firms cannot store what they produce for later sale. When demand slackens, some portion of equipment, facilities, and labor will be immediately underutilized. When that happens firms may have strong incentives to "keep the wheels rolling" by cutting the rate they charge customers, even taking a loss on individual loads to maintain market share or generate revenue to cover fixed expenses and survive down periods.

What these characteristics of the industry mean is that trucking markets can be very volatile and over the long-term there is significant risk but very little, if any, profit to be made by simply owning trucks as an asset – that's why many firms today shift the costs and liability of owning trucks to workers using the lease-operator labor management model.

Deregulation at the end of the 1970s plunged the industry into chaos as excessive competition immediately became the norm. Over several decades the vast majority of the leading less-than-truckload firms in the industry were driven out of business. Intense competition through cost cutting brought lower wages, greater amounts of unpaid work, and less desirable working conditions for truckers. Total employee compensation per mile, including benefits, fell by 44 percent in long-haul trucking from 1977 to 1987.⁴ Within two decades of deregulation conditions had deteriorated so much that Dr. Michael Belzer, a leading economist of the industry, characterized long-haul trucks as "sweatshops on wheels."⁵ These conditions upended labor-capital relations in the industry.

B. Owner-Operators in Long-Haul Trucking

Immediately after deregulation, trucking firms needed less expensive labor and turned to existing independent owner-operators, who worked primarily in agricultural hauling, which was never regulated, in order to shed the costs of expensive, inflexible unionized labor. Firms also began using owneroperators within their own fleet as a way to avoid the risk of owning trucks under chaotic and hyper-competitive market conditions. In the first years after deregulation using owner-operators was a survival strategy for many carriers.⁶

But the shift to owner-operator labor was short-lived. Despite carrier interest, by the mid-1980s, this labor supply was declining rapidly as intense

⁴ Corsi, Thomas M., and Joseph R. Stowers. 1991. "Effects of a Deregulated Environment on Motor Carriers: A Systematic Multi-Segment Analysis." *Transportation Journal* 30: 4-28.

⁵ Belzer, Michael. 2000. *Sweatshops on Wheels: Winners and Losers in Trucking Deregulation*. New York: Oxford University Press.

⁶ See Nickerson, Jack A., and Brian B. Silverman. "Why Firms Want to Organize Efficiently and What Keeps Them from Doing So: Inappropriate Governance, Performance, and Adaptation in a Deregulated Industry." *Administrative Science Quarterly* 48 (2003):433-65.

competition and plummeting freight rates bankrupted many of them. Soon the most profitable for-hire motor carriers were truckload firms making their profits through more efficient use of non-union employee drivers and sending these drivers point-to-point across large geographical areas. Owner-operators were being squeezed by declining rates and were not investing in their equipment, which caused them to have poor customer service and a loss of productivity. In contrast the high asset utilization rates achieved by profitable truckload companies that emerged after deregulation required that trucks be dependable and that drivers accept whatever loads were assigned to them by the increasingly sophisticated load planning systems that were being developed, including those using satellite linked computers.⁷ Owneroperators, while appealing in terms of low pay and reducing capital costs and the likelihood of unionization, were seen as unwilling or unable to submit to the dispatching requirements and achieve the equipment reliability required by the new breed of truckload firms that came to dominate long-haul trucking. Within just a few years, the number of loads hauled by owneroperators dropped dramatically.⁸

From the late-1980's to the mid-1990s, the leading truckload carriers generally favored non-union employee labor. But continually deteriorating pay and working conditions were causing increasingly high levels of employee turnover and associated costs. In an attempt to retain drivers longer and gain the cost advantages of independent owner-operators, carriers began adopting a new model in the mid-1990s. Independent owner-operators clearly did not fit with the organizational need carriers had for control and reliability. Firms began consciously transforming the labor market institutions around contracting, to create a new kind of owner-operator that would fit their needs: the lease-operator.⁹

Satellite-linked computers allow firms to much more efficiently dispatch drivers and plan loads.¹⁰ In order to maximize the return on the greater information these systems provide, dispatchers must be able to assume that drivers will accept the load they have assigned to them. Research suggests this contributed to the decline in the use of owner-operators with such rights.¹¹ Choosing when to work and what loads to haul, let alone choosing

⁷ Hubbard, Thomas N., "Information, Decisions and Productivity: On Board Computers and Capacity Utilization in Trucking", American Economic Review, Vol 93, No 4, September 2003, pp.1328-1353. ⁸ Corsi, Thomas M., and Joseph R. Stowers. 1991. "Effects of a Deregulated Environment on Motor Carriers: A Systematic Multi-Segment Analysis." Transportation Journal 30: 4-28.

⁹ Viscelli, 2016. Chapter 3.

¹⁰ Hubbard, Thomas N., "Information, Decisions and Productivity: On Board Computers and Capacity Utilization in Trucking", American Economic Review, Vol 93, No 4, September 2003, pp.1328-1353. ¹¹ Baker, George P. and Thomas N. Hubbard. "Contractibility and Asset Ownership: On-Board Computers

and Governance in U. S." The Quarterly Journal of Economics, Vol. 119, No. 4 (Nov., 2004), pp. 1443-1479.

loads based on how much they pay – a regular practice of owner-operators historically - is fundamentally at odds with the way long-haul firms have sought efficiency gains and profit since deregulation. Carriers need owneroperators that see taking whatever load is offered to them not as companies telling them what to do, but as doing what it takes to meet the needs of their customers and a smart way to "run their own small business." While contractors are promised and nominally retain the right to control the work they do, carriers can easily get them to behave like employees by controlling all of the immediately available work.

Through various individual and industry-wide recruitment and informational efforts (e.g. trucking newspapers), truckload firms created a pool of leaseoperators very different from previous owner-operators that could be incorporated into more efficient fleets utilizing satellite-linked computers.¹² In the mid-70's a majority of all owner-operators were union members in many segments; virtually none are today.¹³ Just before deregulation 33% of all owner-operators owned more than one truck and 16% of all owneroperators owned more than 5 trucks.¹⁴ By 1997 less than 14% of all owneroperators owned more than 1 truck and less than 2% owned more than 5 trucks.¹⁵ There have not been representative surveys done since that time that could accurately estimate the number of lease-operators that own more than one truck, but I suspect it is likely to be less than 1%. Perhaps most importantly, by 1997 90% of lease-operators received their payments through a permanent lease to haul freight exclusively for a single company.¹⁶ In contrast, only 50% of all owner-operators were under leases of 30 days or more in the mid-1970's and most of these drivers retained the right to haul for other carriers.¹⁷

Today, there are very few independent owner-operators in long-haul trucking, those truckers we might consider as owning and operating their own trucking business. These truckers are distinguished on numerous dimensions from lease-operators but primarily by the fact that they:

- operate under their own hauling authorities (they are in fact single truck or very small *for-hire motor carriers*, with the legal authority to haul freight);

deal directly with customers in finding and pricing loads;

¹² In this paragraph the term owner-operator is used because due to different survey methodologies and the changing nature of owner-operator/motor carrier relationships after the mid-70s, independent owner-operators and lease-operators were not always clearly distinguished in research.

¹³ Wyckoff, Daryl D. 1979. *Truck Drivers in America*. Lexington, MA: Lexington Books.

¹⁴ Agar, Michael. 1986. *Independents Declared: The Dilemmas of Independent Trucking*. Washington, DC: Smithsonian Institution Press.

¹⁵ Belman, Dale L., Kristen A. Monaco, and Taggert J. Brooks. 2005. *Sailors on the Concrete Sea: A Protrait of Truck Drivers' Work and Lives*. East Lansing, MI: Michigan State University Press.

¹⁶ Ibid.

¹⁷ Wyckoff, 1979; Agar, 1986.

- set the rates they charge to customers based on market conditions both relative to their costs and competition;

choose the freight they haul based on what it pays;

- tend to serve predominately small shippers or concentrate on highly specialized freight that requires specialized knowledge or equipment (e.g. hauling heavy equipment) that does not provide a return to the economies of scale crucial to large truckload firms.

While independent owner-operators are scarce today in most segments, leaseoperators are the preferred labor for many carriers. Most large long-haul firms today use lease-operators to haul a significant amount of their freight. Quite simply, lease-operators are a critical source of cheap and flexible labor.

Companies gain essential advantages by using lease-operators and how well firms execute the lease-operator labor management model has a significant role in determining their profitability. Because lease-operators own or lease a truck and pay for fuel, maintenance, and insurance, firms can potentially shift a significant amount of capital and operating costs to them, translating into much lower overall costs per unit of work. And, though lease-operators are often nominally free to choose what loads they haul, they are generally under greater pressure than employees to accept whatever work is offered to them and to spend more days working because they need to work many more hours per day and days per year to meet fixed expenses and then earn takehome pay.¹⁸ Finally, because of their financial vulnerability and the feared costs involved in breaking contracts (e.g. loss of funds in escrow accounts, deposits required to lease equipment and future lease payments) and switching firms they feel less free than employee drivers to guit bad firms, resulting in significantly lower turnover than employees when labor markets are tight and there is upward pressure on wages.

¹⁸ See Viscelli, 2016. Chapter 4.

8. The Lease-operator Labor Management Model at KLLM

Documents and testimony produced so far in this case indicate that KLLM uses the kind of management system outlined above as part of a coordinated set of overall recruitment and retention practices. KLLM operates in the refrigerated segment of the long-haul trucking industry. This segment is among the least desirable for truck drivers. This is primarily because this segment generally requires longer than average number of days away from home and pays poorly.

As a result, KLLM employs less experienced truckers and serves as an entry level employer. Relying on inexperienced drivers means firms need to train them and so KLLM has operated a truck driving school or CDL school (KLLM Driving Academy) to train workers new to the industry and has a partnership with a community college. The challenge for firms that need to train new workers in order to attract and retain enough labor is that they can leave once they have been trained. So KLLM requires students to work for the company for a year or pay \$4,000 at 12% interest for their training (KLLM000094) and requires drivers to agree to a non-compete clause (KLLM000096). Training contracts for CDL school have been shown to increase retention of new drivers.¹⁹

Training contracts, however, cannot entirely solve the general problems of poor pay and working conditions because drivers often begin looking for better driving opportunities as soon as such contracts expire. Firms need other ways to increase retention and make trucks with less experienced drivers profitable. The most important strategy in the refrigerated segment is to convince less experienced drivers to pay the expenses of the truck and work as a lease-operator.

Overall, because of the high turnover they experience, firms like KLLM must develop a substantial "pipeline" of drivers, often moving through the phases of student, trainee, employee and then lease-operator – though more aggressive companies, like KLLM, may allow inexperienced drivers to become lease-operators immediately after they complete training.

KLLM is a motor carrier focused on refrigerated freight and its relationship to its lease-operators is best understood as an internal management system. The primary difference between lease-operators and those truck drivers who are acknowledged by KLLM as employees, known as company drivers, is that lease-operators need to pay all of the expenses of the equipment that they operate before they can earn any take-home pay. In other words, lease-

¹⁹Hoffman, Mitchell and Burks, Stephen V. 2013. Training Contracts, Worker Overconfidence, and the Provision of Firm-Sponsored General Training. Available at: http://dx.doi.org/10.2139/ssrn.2220043

operators and company drivers perform the same work under different compensation schemes. In terms of the movement of freight itself – KLLM's core business - the work company drivers and lease-operators do for KLLM is exactly the same: KLLM plans which drivers will haul which loads, sends load information to drivers, drivers pick up freight for KLLM's customers at one location and deliver it to another location within a given period of time performing a variety of tasks such as scaling loads, paperwork, submitting information at specific times, etc. as required by KLLM. KLLM uses the same communications and monitoring systems and processes to ensure this work is carried out and meets its customers' expectations.

Data in the case thus far suggests that lease-operators are not operating their own trucking company providing trucking services for customers independently, they are operating entirely within the freight delivery system structured and controlled by KLLM.

Long-haul truck driving is difficult work. It requires many days away from home and often doesn't pay well. Carriers promise employees that if they become lease-operators, they will have control over their home time and how much money they earn. Unfortunately, carriers like KLLM can't deliver on those promises because drivers having meaningful control over the work they do - such as being able to pick and choose the loads that they haul - is fundamentally at odds with the systematic ways that firms maximize efficiency and realize their own goal of maximizing profit.

9. How Truck Drivers are Managed at KLLM

Refrigerated truckload firms engage in two basic activities that constitute the core of their businesses. The first is sales activity to identify and contract to haul the highest revenue freight possible. The second is a trucking operation geared to deliver that freight at the lowest possible cost while meeting the expectations of its customers.

Sales works with customers to set the timing of freight movements and price without consulting specific drivers, regardless of whether they are leaseoperators or company drivers, who will actually move the freight. Moving the freight will be a later task performed by the operations side of KLLM. This means that in contracting to haul freight, KLLM looks out for its own interests without concern for whether lease-operators or company drivers will actually perform the work. Once KLLM commits to haul a load it is responsible for meeting the specific requirements of that contract. All the evidence thus far suggests the operations side of its business uses a standard process applied across its fleets of lease-operators and company drivers to ensure that happens, with no meaningful variation except basic requirements of the freight service itself set by customers.

Truckload drivers, regardless of their classification by employers, make the same kinds of decisions about when and how to carry out their work. It is in KLLM's interest that truckers make decisions that maximize the use of KLLM's equipment, such as trailers, and complete loads in a timely manner. In other words, the goal is that workers make decisions that maximize returns for their employer.

Across different kinds of work and businesses there is a range of different management approaches to this problem. Economists, sociologists and management scholars all generally understand the key dimension of variation to be the degree to which workers' decisions need to be immediately constrained and monitored by machine and/or a manager (we could also describe this as the degree to which a worker is "self-directed" in their immediate work activity). On one side of this range are coercive management systems, on the other are consensual management systems. In general, less skilled or educated workers are more likely to be subjected to coercive systems and more skilled or educated workers are subject to more consensual management systems. However, there are many exceptions to this rule largely determined by the nature of the work being performed. Trucking is one of the exceptions.

The classic example of a coercive management system would be the assembly line. An assembly line is a method of "machine-pacing" workers - workers are assigned one or a few tasks and the speed of the line determines how often they perform that task or tasks. Similarly fry cooks at a fast food restaurant may have computer screens telling them when to drop or lift fry baskets. Even management systems where machine-pacing is central still most often require human monitoring by supervisors on a regular basis to ensure that workers are ultimately performing the tasks when and as required. On the other end of the spectrum are consensual systems (often referred to as "hegemonic" management systems), in which workers are deliberately given significantly more autonomy to make decisions. In many kinds of workplaces consensual systems result in far higher productivity than coercive systems. The key for consensual systems' higher productivity is to get workers to understand working harder as *in their own interest*. Coercive systems often make workers feel dominated and exploited which can lead to resentment and resistance and thus lower productivity.

Consensual systems, on the other hand, are consciously designed to align the interests of workers with that of their employer. Consensual systems can employ all kinds of particular incentives to achieve this, but the most important features generally involve compensation. Consensual management systems frequently use compensation systems intended to incentivize higher productivity by rewarding it directly or indirectly (e.g. commissions, profit-sharing, employee ownership, bonuses). One of the most common practices for aligning worker and employer interests in blue-collar jobs is piecework, which is when workers are paid based on the number of units or "pieces" they produce. Piecework is often found when individual productivity can be assessed easily but direct supervision or management of workers is difficult or expensive.

The vast majority of truck drivers in long-haul trucking are paid by the piece. This could be by the mile or as a percentage of revenue of each load hauled. KLLM pays it drivers by the mile (KLLM000155). Like other pieceworkers, KLLM drivers will try to find the most efficient ways to organize their work tasks in order to increase their pay. Especially in industries like trucking where direct human supervision over workers is difficult, expensive, or impossible, well-designed piecework systems that allow workers limited autonomy to plan and carry out their work result in significantly higher productivity. Michael Burawoy (1979) argued that in successful piecework systems, managers purposefully design the labor process to allow pieceworkers autonomy within a narrow range of options that ensure profitability. In response, pieceworkers treat management's demands as rules to a kind of game in which they work hardest on what returns them the greatest compensation. In well-designed systems this is also where worker effort results in the highest profit for employers. By playing the game, workers consent to management's rules and end up working smarter or

harder (i.e. producing more profit) than they would under more coercive and costly methods of control while still experiencing a greater sense of autonomy. A successfully designed labor game thus shapes both what workers do and how they experience what they do. Burawoy's concept of the game perfectly captures the way the pay-per-mile or pay-per-percentage system shapes the experience of truckers – regardless of whether they are company drivers or lease-operators.²⁰

Long-haul truckers want to drive as many miles as possible and make decisions about how and when to drive. Though carriers often suggest that lease-operators can behave very differently than company drivers, the decisions made by lease-operators and company drivers do not differ meaningful at most long-haul carriers. Based on data produced thus far in the case, it does not appear that KLLM's management of lease-operators differs in this regard.

A. Hours of Service

Employers do not control some key rules for how and how much truckers work. Those rules are set by the Federal Motor Carrier Safety Administration (FMCSA) through Hours of Service (HOS). HOS require truckers to record their work time by activity type. Truckers record hours on electronic logging devices (ELDs). Truckers must record one of four different statuses (off-duty, sleeper berth, on-duty driving, on-duty not driving) for every day of the year, including the days they do not work. Drivers must record duty status changes as they occur, which means that a driver's log must be up-to-date to the moment it is viewed. Whenever a driver changes duty status to or from "driving" their location must be recorded. ELDs record the number of hours spent in each duty status per day and running counts of on-duty hours over the last 7 and 8 days. Enforcement of HOS is handled by State DOT officials at truck scales and roadside checkpoints and by police. The immediate accuracy of the log is the driver's legal responsibility.

Drivers found in violation of HOS can be fined thousands of dollars and have their commercial drivers' license revoked. Carriers can be fined or even shutdown if they do not ensure that drivers, including lease-operators hauling loads under the company's authority, are in compliance.

HOS rules have been the subject of more than a decade of contentious legislative and court battles between safety groups, the insurance industry, trucking industry groups, and regulators. There are three basic HOS rules drivers recognize as important. First, drivers are allowed to spend no more

²⁰ Burawoy, Michael. 1979. *Manufacturing Consent*. Chicago: University of Chicago Press.

than 11-hours actually driving without taking a 10-hour mandatory break (the 11-hour rule). Second, if 14 hours had passed since the end of their last 10-hour break, they cannot drive any more, though they can continue to do other kinds of work (the 14-hour rule). So, if a driver came on duty at 6 am, he cannot drive after 8 pm, regardless of how much time he spent actually driving during that period. Third, drivers can spend a maximum of 60 hours over 7 days or 70 hours over 8 days on duty before they needed to stop driving (this rule is called the 70-hour rule because most drivers spend 8 or more days on the road at a time). Work hours are reset to zero under the 70-hour rule if a driver takes an uninterrupted 34-hour break, known as a "restart." Again, these rules have been much debated and varied over time. Recently drivers have also been required to take a 30-minute rest break within 8 hours of coming on duty after a 10-hour break.

B. Management of Lease-Operators

Within the rules set by HOS, once a driver has developed basic planning skills, load characteristics determine how hard they work and how much they earn. All drivers recognize better and worse loads. Good loads involve more driving time and less unpaid work and waiting time. Generally, there are just a few load characteristics that determine this. The first is how soon a driver can start hauling it, and whether it needs to be live-loaded or is preloaded. The second consideration is how many miles the load is to be hauled. All else being equal, long loads simply mean a greater amount of driving relative to unpaid work, especially waiting. The third major consideration is the geographic area the load requires a driver to go through and whether it is mountainous, urbanized, etc., which determines among other things the speed they can drive, how long it might take to find parking and, of course, how far they are from home.

Load quality determines most aspects of the job from how many hours they work and when, to how much waiting and other unpaid work they do, to what kind of traffic conditions they encounter, to when they will be able to return home, and ultimately the size of their paychecks. Unfortunately, neither employees nor lease-operators have meaningful control over load selection. Again, as explained above, the sales department has already agreed to haul the loads "offered" to lease-operators and dispatchers have already figured out the optimal way to assign those loads to available trucks.

Extensive management is evident in the assigning and reassigning of loads. In the refrigerated segment bad loads generally require drivers to perform more live loading and unloading (i.e. they wait while the trailer is loaded or unloaded). Some refrigerated loads also require significant waiting time to set drivers up to complete loads quickly once they actually pick them up. For instance, some customers will require that drivers complete a 10-hour break before they pick up loads in order to ensure that drivers have a full HOS clock available to run the load. What this means is that KLLM needs to control the location and timing of drivers' breaks in order to ensure they meet the commitments KLLM made to customers. If lease-operators had control over load assignments they would generally avoid these kinds of waits, which they are not typically paid for. Charles Hallmark explains how this works in his deposition describing how KLLM's control over load assignments influences waiting:

"And certain customers, like a Cargill or Fresh Express, want their drivers to have a ten-hour break and sufficient hours to run the loads. So sometimes KLLM, without asking whether or not you want to sit, will sit you to guarantee their customer that you are able to deliver the load in the time frame that they give you." (Deposition of Charles Hallmark p.67:1-10).

Once loads are underway, KLLM actively tracks the progress of loads to ensure on-time delivery. KLLM uses satellite-linked computers to monitor lease-operators as they carry out the company's work. This system is called a Qualcomm, after the original manufacturer of the most common system. This system can provide a range of information to dispatchers but is most often used to find the location of a truck to estimate its arrival time at the destination. This information is sent from the truck to the system at regular intervals and dispatchers can "ping" a truck to gets its current location.

In combination with this information, driver information about their available HOS and the estimated time of availability to haul their next load are what allow load planners to assign loads in a way that maximizes KLLM resources and profit while ensuring that it meets its commitments to customers. There are no differences among drivers in how they are monitored once hauling freight, regardless of how they are classified by KLLM (Deposition of Brent Anthony p.16:13-22).

If KLLM dispatchers believe that a load will be late based on GPS data provided by the Qualcomm system, they will direct drivers to meet another KLLM truck in order to swap trailers, so that a driver with sufficient HOS can complete the load on-time. This is a common practice in the truckload segment, particularly in refrigerated freight, known as a re-power.

Brent Anthony in his deposition describes repowers this way (p.21:6-24): Q. ...So if an independent contractor takes a long extended break and because of that the load is delivered late, you would have an issue with that; agreed? A. If a load is running late, we ask for, you, an ETA, and we could what we call "repower the load" to deliver the load on time.

Q. What's repower the load?

A. Essentially it's getting a driver with available hours or a team under the load to deliver on time.

Q. KLLM does not want its independent contractors to take breaks that are so long that they will not be able to meet the schedule they've agreed to; fair?

A. Like I said, they can, and they do all the time without any consequence. But we do have an obligation to service out customers just like the contractor has an obligation to the contract to not violate.

Repowers demonstrate KLLM's interest and ability to manage and direct the labor of lease-operators to, from an economic perspective, produce trucking services using the labor of lease-operators and other drivers. KLLM is not, in fact, contracting with a separate business for a discrete trucking service of moving a load from one place to another in a specified time when they offer a load to a contractor, they are engaging in their core activity of producing trucking services.

As Mr. Anthony suggests, lease-operators often can't make their scheduled appointments and KLLM "repowers" the load. And yet, he says, there are no consequences of lease-operators breaking that commitment to deliver the load on time. If, in fact, KLLM was contracting with lease-operators by the load there would be consequences for not fulfilling the contract. The fact is, however, that an individual driver can't reliably perform the freight service KLLM's customers expect and so ultimately it is up to KLLM to provide that service.

KLLM does this for all of its drivers, as Mr. Anthony says in his deposition (p. 28:3-6):

Q. For all drivers, for all loads, you're verifying whether they're running on time, and if not, you're taking appropriate action; right? A. Yes.

Beyond these basic processes of load planning, monitoring and direction of the work, KLLM clearly sets the requirements that govern the details of lease-operators pay and other important aspect of the work drivers will do. Often these are far in excess of what a trucker would need to do in order to safely, legally and efficiently deliver a load. For instance, KLLM requires that lease-operators scale every load they haul and washout trailers after each load, unless a sweepout is authorized by dispatch (KLLM005518). While customers and/or the law may require loads to be within specific weights and that trailers be clean, they do not necessarily require that trucks be scaled and trailers washed after every load. These are KLLM rules intended to ensure those outcomes. These requirements cost lease-operators significant amounts of time. If they had control, lease-operators could use their experience and judgement to decide whether they needed to scale a load or washout a trailer.

C. Decisions made by Lease-operators

The vast majority of variation in earnings and work of both company drivers and lease-operators at a company like KLLM is the result of how many days they work and the characteristics of the loads they are assigned.

Questions in the depositions of the named plaintiffs, however, imply that drivers make several kinds of important decisions. These would include: what route they take; where to stop for fuel; where to get maintenance done; and, what loads to haul. It is unlikely that decisions in any of these areas result in any meaningful differences among drivers.

Routing Decisions

Truckers receive load information and often specific driving directions and will plan their routes using electronic mapping devices or paper maps, if they are not familiar with a route, to ensure that it takes them on truck-approved roads. There is virtually always one best route to haul a load. While leaseoperators may be nominally free to choose a different route and company drivers nominally required to take a prescribed one, in reality this typically makes no significant difference. The routes on which KLLM plans loads are already the best ones available for that freight and the timing of the load delivery accounts for that and the drivers' available hours. Any meaningful deviation in routing would cost the lease-operator in additional fuel and increase travel time, which could lead to missing a delivery.

In fact, KLLM does not monitor the routes of its drivers because it is only concerned about the delivery time, with the exception of loads that must travel a certain route to protect the freight, e.g. high altitude routes that cause packaging to burst (Deposition of Brent Anthony, p.17:11-4).

The ability to choose routes almost certainly makes no meaningful difference to the work and earnings of lease-operators because it constrained by the basic geography of moving the load and planning of KLLM.

KLLM also appears to "help" lease-operators plan routes for certain loads, what it calls VIP loads and set requirements for communication and trip planning. From KLLM005519:

Trip Planning and Live dispatch

a. On all VIP loads we will be helping you with trip planning to make sure plan is adequate to deliver load on time. b. Knowing how far you will be able to make it each day and having an idea of what city you will be breaking in will help with knowing your eta to receiver.

c. if running late on a load you will be required to provide us with your break location for after you run out your 14 hr clock

d. If you are having trouble with planning out your trips, please contact your dispatcher so we can help walk you through it

e. Make sure and get as many miles under you on first day of trip, so you are not having to play catch-up

Furthermore, if contractors chose their own route, it would have significant negative consequences for KLLM because its process assumes that they take the shortest route available. In his deposition, Mr. Anthony says, "...you can get the location of where the cargo is. And then run the miles out to the designation (sic) to see how far out they are" (p.27:1-3). But this use of the GPS to ensure on-time delivery only works if the driver does not take a significantly lengthier route.

Driver depositions, however, suggest that when it matters to KLLM, KLLM does, in fact, intervene to ensure that drivers run routes how they want them run in great detail. Marcus Jowers describes such a situation in his deposition (p.79:18-p.80:7):

A. ...And I talked to him in regard to, one of his dispatchers was telling me where I had to stop when I was hauling this one load. I was in West Virginia somewhere...

Q. Why was the dispatcher telling you where to stop?

A. They wanted me to go an extra like 40 miles before they wanted me to stop.

Q. Well, were they asking you to do that? Or telling you you had to do that? A. I don't recall what the wording was.

But they – they were very strongly advocating for me to keep moving.

As Mr. Jowers' answer implies, KLLM may use different words when it exercises control over lease-operators, but it still exercises control.

Fuel Purchases

One difference often suggested between lease-operators and company drivers is that lease-operators can choose where to fuel their truck. KLLM employee drivers are apparently sent fuel stops based on "optimization" plans that assess the price and availability of fuel relative to the fuel needs for the trip planned. Company drivers are limited to stopping at the stations where KLLM has agreements to purchase fuel and has authorized its Comdata cards (the payment card issued to company drivers). KLLM like negotiates discounts at all these stops. Lease-operators also use Comdata cards issued by the company, receive discounted fuel prices and get the optimized fuel routing. Because no data on fuel consumption for lease-operators and company drivers is available at this point, it is not yet possible to assess the effects of lease-operators' nominal right to stop at other fuel stops. Further, it is not possible to assess whether or not this right results in any significant difference in behavior between lease-operators and company drivers. However, it is unlikely that it does. While company drivers may receive optimized fuel stops that they are supposed to follow, it is not necessarily the case that they do follow them. Often times drivers schedule fueling for times when they will be stopping anyway and authorization of Comdata cards is not typically driven by a fuel optimization plan – in other words, company drivers and lease-operators can use their Comdata card for fuel at a network of approved stops, not just those particular stops authorized based on the optimization plan. The result is that company drivers often do deviate from the ideally fueling plan provided by the company in order to make the most of their stops.

One statement in the data suggests KLLM may authorize *only* the individual fuel optimized stops for each trip. Mr. Anthony suggests that if company drivers are not "at there (sic) designated fuel route, they're not eligible for reimbursement on the fuel. This would be a highly unusual strategy and there is no other evidence I am aware of that supports this statement. More importantly, company drivers like these almost never pay for fuel out-of-pocket (Deposition of Brent Anthony, p.17:17-19).

It is highly unlikely that the ability to choose where to fuel makes any meaningful difference in earnings of lease-operators, it is likely they are best off following the optimization plan provided for them and deviating from it for the same reason a company driver might - to save themselves time.

Where Maintenance is Done

The ability to perform maintenance is an area where an owner-operator could in theory reduce their costs by performing their own labor. There is nothing in the data produced here to suggest that this is done by lease-operators for KLLM. KLLM, because it ultimately has an interest in preserving the value of the tractor, requires additional service on the truck, namely 4 inspections by KLLM personnel.

If lease-operators were going to perform their own maintenance, it would almost always be preventive maintenance. KLLM apparently requires that lease-operators have such regular maintenance performed by a specific kind of technician, precluding the lease-operator from saving money by performing his/her own oil changes and routine maintenance. The lease-purchase contract for the tractor requires the lease-operator to have the inspections performed and follow the maintenance guidelines in Appendix C (KLLM004552). Appendix C says that "regular scheduled maintenance" includes "PMA – (See Attached form)_30,000 miles." (KLLM004568). The attached form was apparently created by KLLM and is titled, "Tractor PMA Inspection (Done Every 30,000 Miles)/FHWA-Annual Inspection Certification." It also has spaces for information from the inspector that "meets the Qualification Required 396.19," which is the Federal Motor Carrier Safety Administration rule that specifies the qualifications of inspectors for *annual* vehicles inspections. The appearance of the document and the contract requirements give the appearance that drivers are required by federal law to have such inspectors inspect and perform PM on the vehicle every 30,000 miles. This is not the case, this is a KLLM requirement intended, no doubt, to ensure that lease-operators do not engage in the very common practice among owner-operators of deferring maintenance when short on cash. Qualified inspectors are required by law for the annual inspection, not for regular preventative maintenance.

The Ability to Refuse Loads

When drivers get a bad load at KLLM, there is little they can do about it except ask to be reassigned or refuse the load. They cannot get themselves a different load. As KLLM admits, lease-operators are only able to work for KLLM while under lease to the company and as such are dependent on the company for all of their revenue.

Lease-operators may be able to refuse loads, but if they don't know what other work is available, all they can do is wait to be assigned another load. Dispatchers can simply tell drivers that no other work is available and make them sit. KLLM lease-operators' understanding of how the system works is commonplace and reflects the frequent punishment of lease-operators for refusing loads.

Loads are planned without consulting drivers and done in a way that most efficiently matches drivers to loads by origin, destination and timing. The goal of this planning is to schedule loads as far in advance as possible. Brent Anthony suggests that KLLM tries to schedule loads "weeks in advance." (Deposition of Brent Anthony p.15:19). If a driver refuses a load, then other assignments may need to be reworked or the firm may not have a driver to cover a commitment to a customer. Punishment of drivers in the refrigerated segment is commonplace because load planners' and dispatchers' jobs are made more difficult when lease-operators refuse loads and customer service may suffer. This issue is discussed in Mr. Anthony's deposition, (p. 51:5-13):

Q. Okay. If drivers refuse – independent contractor drivers refuse a load, are they ever not given work for a few days or threatened with any discipline?

A. It's against company policy.

Q. Where's that policy written?

A. It's not a written policy. It's preached every day. And that our planner know that we do not retaliate on the driver if they refuse a load.

While Mr. Anthony expresses the common rhetoric that carriers do not punish drivers, the reality experienced by drivers is often quite different. In fact, it is the potential of this punishment that incentivizes drivers to accept all loads. And planners clearly have the power and incentive to punish when drivers refuse loads and make their work more difficult. The likely reason that it must be, "preached every day" is exactly because it is potentially an issue every day. Drivers know that they are dependent on the company for loads and believe that refusing loads puts them at risk.

The data produced thus far has evidence of this. In some cases, dedicated accounts required that lease-operators give up their right to refuse loads, but even when they had the nominal right to refuse loads, drivers knew not to. There is ample evidence of this in the data produced.

Mr. Hallmark says in his deposition (p. 45:11-18):

A. ...I experienced an issue where I didn't want to go to the east coast. So they gave me a load to North Carolina. I refused the load. They said wait until the next day.

They gave me another load to North Carolina and I refused the load and I sat till the next day. Then I was given a third load to North Carolina. I got the idea. I took their potatoes to North Carolina.

Mr. Miller recalls a similar experience in his deposition (p.47:13-23)

A. ...I believe it was a load going to, I want to say, Mississippi or Alabama. I can't remember, but it was a lot of miles and it wasn't – the money wasn't worth it and I turned it down because they wanted me to drive overnight. And I asked them did they have something coming through the daytime that I can drive back to Atlanta, and they said no – or going to Alabama in the daytime, and they said no. And they kept sending me the same load over and over, but there was a lot of KLLM drivers coming into that plant and getting loads all day long, so I knew they weren't being truthful with me.

Mr. Jowers says in his deposition he thought refusing loads could have an impact on other loads being assigned to him or result in threats (p.137:3-21):

Q. Did you have any understanding or belief that somehow if you rejected more than one or two or three loads, there would be some impact or result in other loads being assigned to you? A. Yes.

Q. What was that?

A. Well, they'll patch you through to Oscar or Calvin once again. And then they'll start the threats about abandonment, things of that nature.

Q. Okay. So it all goes back to the abandonment threats – A. Yes.

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Q. – that we've already talked about.

On the times when you did reject a load, how long would you typically have to wait to get another one?

A. Anywhere between three hours and three or four days.

Mr. Lilly suggests in his deposition that the threat of punishment was clear early on (p.156:8-15):

Q. At KLLM, did you consider yourself under forced dispatch? A. Yes.

Q. Is that because you were in the Ventura Foods dedicated program? A. Yes.

Q. Had you gone OTR, do you know whether that was forced dispatch or not?

[Objection by counsel]

A. They tell you it's not forced, but, like I said earlier they made it very clear during orientation that if you refuse a load, the dispatchers have, you know, the ability to make – hold out on giving you another load.

Because they don't know if other work is available and they are absorbing all of the costs of the truck, lease-operators quickly learn to accept whatever loads are assigned to them.

In fact, the behavior of lease-operators does not differ much from employee drivers under what is often called forced-dispatch systems. Lease-operators will refuse or complain about loads when they don't pay well, go to areas they don't like to drive in or won't get them home when promised. Company drivers will also refuse or complain about loads for the same reasons. Overall, both employees and lease-operators need the ability to refuse loads for the most common reason at most firms, which is that they don't have sufficient hours to complete the load or are fatigued. While lease-operators often refuse more loads when they first start in that arrangement (because they are promised the right to do so without punishment) they quickly learn that the costs of getting on a dispatcher bad side aren't worth it. Over time, employee drivers often actually feel more able to refuse loads as they gain experience, they know a company is less likely to make them sit as a punishment when it is paying the cost of the truck. On the other hand, lease-operators feel great pressure to accept loads.²¹

²¹ See Viscelli, 2016. Chapter 4.

12. Conclusion

The available evidence in this case suggests that lease-operators at KLLM are operating under similar organizational plans and procedures as each other and employees. The facts strongly suggest that KLLM lease-operators are not, in fact, operating their own small business but are, rather, employees of KLLM, dependent on KLLM and operating under the lease-operator management model common throughout the refrigerated segment of the industry.

From an economic perspective the issue of whether or not there is an employment relationship or separate business is a question of whether a particular business is "making" or "buying" a service or product. In a "buying" situation, a business contracts with another business for some outcome. In a "making" situation, a business uses the labor of an employee to produce an outcome. In a making situation a business has the *incentive and ability to monitor and manage* the labor activity a worker is doing in order to ensure the outcome they are trying to achieve (e.g. getting a load there on time). What a firm "makes" is what it "does" and what is often referred to as its "core" business.

The data produced thus far in this case suggests that in order to carry out its core business of transporting full truckloads of freight as efficiently and cheaply as possible, KLLM manages lease-operators extensively using uniform load planning, monitoring and dispatching systems. When KLLM's interests are at risk, particularly due to service failures, KLLM intervenes and coordinates the labor of lease-operators with that of other workers to ensure that it fulfills commitments to customers. This kind of monitoring and direction clearly suggests that KLLM lease-operators are not operating a business of their own design and under their own control.

Review of the data produced thus far in the case also suggests that KLLM employs a lease-operator management model consistent with those used widely in the refrigerated truckload system. This labor management model is intended to produce uniform, efficient outcomes in the delivery of freight by standardizing and streamlining the assignment of loads to drivers, eliminate day-to-day negotiation and control by lease-operators. In fact, this system results in behavior that is, relative to the overall operation of firms, indistinguishable from that of employees with one notable exception. That exception is the compensation scheme under which lease-operators labor, which requires them to pay expenses related to the tractor before they begin to earn take-home pay.

13. Author CV

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Academic Appointments

2016-Present	University of Pennsylvania Robert and Penny Fox Family Pavilion Scholar Senior Fellow, Kleinman Center for Energy Policy Lecturer, Department of Sociology
2012-2016	Swarthmore College Visiting Assistant Professor
2010-2012	University of Wisconsin – Madison National Science Foundation/American Sociological Association Postdoctoral Fellow in Economic Sociology

Education

Ph.D.	Department of Sociology, Indiana University, 2010
M.A.	Department of Anthropology, Syracuse University, 2002
B.A.	Colgate University, cum laude, with honors in Philosophy, 1996

Books

The Big Rig: Trucking and the Decline of the American Dream. Berkeley: UC Press, 2016.

- Max Weber Award for Outstanding Book of the Year from the American Sociological Association's Section on Organizations, Occupations and Work (2017).
- Outstanding Book Award from the American Sociological Association's Section on Inequality, Poverty and Mobility (2017).
- Distinguished Scholarly Book Award from the American Sociological Association's Section on Labor and Labor Movements, co-winner (2017)

Media coverage in: The Wall Street Journal, The Washington Post, The New York Times, The Atlantic, Business Week, Money, Time, Forbes, NPR Radio Times, Transport Topics, Supply Chain Digest, FleetOwner, Arkansas Democrat Gazette, Long Beach Press Telegram, The

Pennsylvania Gazette, Trucks.com, Landline, Industry Watch, Truckers News, Sociological Images, Heartland Politics, In the Workplace, Knowledge at Wharton, Thinking Aloud, Road Dog Radio, Penn Current, The Ringer, PBS Newshour.

Reviews in: American Journal of Sociology, Contemporary Sociology, Labor Notes, Men and Masculinities, Labor, Journal of American Culture, Journal of Working Class Studies.

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Articles and Book Chapters

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Book Reviews

Review of When Good Jobs Go Bad: Globalization, De-unionization, and Declining Job Quality in the North American Auto Industry, by Jeffrey S. Rothstein. Work and Occupations. Forthcoming.

Review of Negotiating Work, Family, and Identity among Long-haul Christian Truckers: What would Jesus Haul? by Rebecca Upton. Contemporary Sociology. 47(4):502-503. July, 2018.

Grants

Ford Foundation, Good Gig Jobs Convening, 2018-9, \$10,000

Heinz Foundation, Future of Work in Freight Transportation, 2018, \$35,000

UC Center for Labor Research and Education, Labor Impacts in Transportation of California's Climate Plan, 2018 \$28,000

UC Center for Labor Research and Education, Autonomous Truck Employment Impacts Project, 2017-8, \$30,500

Working Partnerships USA, Autonomous Vehicle Research Project, 2017-8, \$45,000

Mellon Environmental Studies, Curriculum Grant, Swarthmore College, 2013, \$5,000

Lang Center Civic & Social Responsibility, Curriculum Grant, Swarthmore College, 2012-2013, \$5,000

W.E. Upjohn Institute for Employment Research, Mini-Grant, 2011. \$4,500

Awards and Fellowships

NSF/ASA Postdoctoral Fellowship in Economic Sociology, U. of Wisconsin, 2010-2012

Department of Sociology, Advanced Departmental Fellowship, Indiana University, 2005-2006

Department of Sociology, Ph.D. Qualifying Exam Pass with Honors, Indiana University, 2004

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Maxwell School of Citizenship and Public Affairs, Recipient, Goekjian Summer Research Grant, Syracuse University, 2001

Department of Anthropology, Ph.D. Qualifying Exam Pass with Distinction in Theory, Syracuse University, 2000

Colgate University, Donald C. Cerri Memorial Scholarship, 1992-1996

Colgate University, Patriot League Scholar Athlete Award, 1993-1995

Invited Talks/Panels

- "The Future of Goods Movement." Delaware Valley Regional Planning Commission. December 10th, 2018.
- "A Laboratory of Democracy in a Land of Predation." Cornell ILR/Rutgers Symposium on Federalism in US Work Regulation. School of Management and Labor Relations, Rutgers University. November 8th, 2018.
- "Goods Movement and the Climate." Architecture League. New York, New York. November 3th, 2018.
- "Energy in Transportation." Wharton Energy Conference. Philadelphia PA. October 26th, 2018.
- "Towards a Workers' Agenda for New Technology: Research, Policy, and Organizing." EARNCon, Chicago October 5th, 2018.
- "Automation and Impacts on Low and Moderate Wage Workers." Federal Reserve Bank Reinventing our Communities Conference. Baltimore, MD. October 3rd, 2018.
- "Cargo and Logistics." Labor in Climate Transition. UC Labor Center. Berkeley, CA. September 12th, 2018.
- "Driverless? Autonomous Trucks and the Future of the American Trucker." Heinz Foundation's Future of Work Project Advisory Meeting. Pittsburgh. August 9th, 2018.
- "Driverless? Autonomous Trucks and the Future of the American Trucker." International Brotherhood of Teamsters' National Legislative Conference. Washington, DC. July 17th, 2018.
- "Driverless? Autonomous Trucks and the Future of the American Trucker." Virginia Tech National Science Foundation Autonomous Truck Workshop. Alexandria, VA, June 29th, 2018.
- "Driverless? Autonomous Trucks and the Future of the American Trucker." International Brotherhood of Teamsters' Joint Council 7 Annual Seminar. Lake Tahoe, CA. June 12th 2018.
- "Driverless and Door-to-Door: Autonomous Trucks, Ecommerce and the Future of the American Trucker." MIT, Institute for Work and Employment Research. May 8th, 2018.
- "Predatory Employers, Vulnerable Workers: How Unrestrained Employer Power Increases Inequality." University of Texas – Austin, Inequality Working Group, March 29th, 2018.
- "Autonomous Vehicles and Labor: Where is the common ground?" Uber. December 19th, 2017.
- "Predatory Employers, Vulnerable Workers." UMass Amherst, Department of Sociology. September 13th, 2017.
- "Independents: Past, Present and Future." Uber Freight. March 30th, 2017.
- "Over-the-Road Truckload: The Good, the Bad and the Ugly and What Self-Driving Trucks Could Do About Them." Otto. March 30th, 2017.
- "The Role of Ethnography in Understanding Worker Misclassification." Labor Relations, Law, & History/International & Comparative Labor Research Seminar, ILR, Cornell University. March 21st, 2017.

- "The Big Rig: Studying Class Power in the Field." Institute for the Study of Societal Issues and the Labor Center. UC Berkeley. September 21st, 2016.
- "Build It and They Will Come: Lessons from CBL Project-based Classes." The Third Annual Community Based Learning Lecture at Johns Hopkins University. Baltimore, MD. April, 2015.
- "Getting It from Here to There: Urban Truck Ports and the Coming Freight Crisis." State Smart Transportation Initiative Meeting, Salt Lake City, Utah. October, 2014.
- "Getting It from Here to There: Urban Truck Ports and the Coming Freight Crisis." North American Council on Freight Efficiency Meetings. Indianapolis, IN May, 2012.
- "Getting It from Here to There: Urban Truck Ports and the Coming Freight Crisis." State Smart Transportation Initiative Meeting, Seattle, WA. February, 2011.

Conference Organizing

Co-organizer, Gig Jobs and the Future of the Philadelphia, Annenberg School of Communication. University of Pennsylvania, March, 2019.

Co-organizer, Connected Vehicles Conference; Wharton School of Business, Program on Vehicle Mobility and Innovation, Mack Institute for Innovation Management, June 1st 2017.

Co-organizer, Moving America Forward: The Next Generation of Truck Freight Transport. Mobility21, University Transportation Center and the Kleinman Center for Energy Policy, University of Pennsylvania, October, 2018.

Conference Presentations

- "Driverless? Autonomous Trucks and the Future of the American Trucker." Moving American Forward Conference. University of Pennsylvania. October 24th, 2018.
- "Making Time to Talk: Working with Reporters." ASA Annual Meeting. Philadelphia, PA. August 2018.
- "The Big Rig: Class Power in Deregulated Labor Markets." Presidential Panel on Ethnography, ASA Annual Meeting. San Francisco, CA. August, 2014.
- "The Socioeconomic Mobility of Jewish Immigrants in the 20th Century." ASA Annual Meeting. San Francisco, CA. August, 2014. With Rachel Ellis, Kristin Geraty, and Melissa Wilde.
- "The Socioeconomic Mobility of Jewish Immigrants in the 20th Century." 2013 annual meeting
 of the Society for the Scientific Study of Religion, Boston, MA. With Rachel Ellis, Kristin Geraty,
 and Melissa Wilde.
- "Shifting Risk in the Great Recession." ASA Annual Meeting. Denver, CO. August 2013.
- "Constructing the Small Business Owner: The Role of Symbolic Boundaries in Shifting Employment Relations." Junior Theorists Symposium, Las Vegas, NV. August, 2011.
- "Self-Employed in the New World of Work: Independent Contracting and Worker Control in Trucking." ASA Annual Meeting, Las Vegas, NV. August, 2011.
- "Getting It from Here to There: Urban Truck Ports and the Coming Freight Crisis." Industry Studies Association Meetings, Pittsburgh, PA. June, 2011.
- "Why do Long-Haul Truckers become Owner-Operators?" Culture, Politics and Economy Workshop, University of Wisconsin. December, 2010.
- "Getting It from Here to There: Urban Truck Ports and the Coming Freight Crisis." Center on Wisconsin Strategy, University of Wisconsin. November, 2010.

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- "Ready to Call Your Own Shots? Taxes, Class, and Symbolic Boundaries in Long-Haul Trucking." ASA Annual Meeting. August, 2010.
- "Buying It: Class, Culture, and the Making of Owner-Operators in Long-Haul Trucking." Culture and Interaction Workshop, University of Pennsylvania. May, 2010
- "More Ways to Skin a Cat: How Tax Laws Affect Competition and Workers in Long-Haul Trucking." Social Science History Association Meeting. November, 2009
- "A Computer Won't Breathe Down Your Neck: Dignity and Surveillance in the Long-haul Trucking Industry." ASA Annual Meeting. August, 2008
- "Strange Bedfellows: Coalition Formation, Organizational Characteristics and Strategic Advantage." ASA Annual Meeting. August, 2005.
- "Strange Bedfellows: Coalition Formation, Organizational Characteristics and Strategic Advantage." Political, Economic and Cultural Sociology Workshop, Indiana University. May, 2004

Service

Reviewer for:

University of California Press Sociological Compass Work and Occupations Contemporary Sociology Industrial and Labor Relations Review

Consulting and Policy Work

Consulting, various and on-going. Providing expertise to a wide-range of policymakers and organizations and firms on labor, energy efficiency and automation in the freight industry.

Expert Witness, Providing expertise in lawsuits and arbitrations regarding truck drivers. Producing expert reports and testimony to assist courts and arbitrators in understanding the work and labor market behavior, work hours, and compensation of truck drivers.

Provided Testimony in the following: Gabriel Cilluffo v. Central Refrigerated Services Inc. William Blakley v. Celadon Group, Inc. Fredrick Blodgett v. FAF Inc.

Chicago Metropolitan Agency for Planning, *Expert Consultant*. 2017. Provided expertise and information on new technologies for freight transportation, including autonomous vehicles, to develop a regional transportation plan for the Chicago region (GOTO 2050).

Driftless Region Food and Freight Project, *Steering Committee Member*, 2015-2016. Provided expertise on freight logistics. Project funded by U.S. Department of Agriculture with goal of bringing together stakeholders to create more efficient and sustainable supply chains for local and regional produce in the Upper Midwest, particularly Chicago.

Center on Wisconsin Strategy, *Senior Associate*, 2012-2016. Provided expertise on the trucking industry to public and private stakeholders, including the State Smart Transportation Initiative, a working group of state DOT executives.

Previous Research and Work Experience

Center for Urban Ethnography, UC Berkeley, *Research Assistant*, 2001-2002 Assisted Professor Martin Sanchez-Jankowski in research on gangs, urban poverty, and health risks of urban poverty in Northern and Southern California.

Forest Communities Project, Director, Oakland, CA, 1998-1999

Designed and directed campaign under the fiscal sponsorship of Rainforest Action Network to develop US market support for local sustainable forestry initiative in the Slocan Valley of British Columbia. Directed all aspects of campaign including developing strategy for consumer education and media, acquiring funding, writing literature, and corporate and media relations.

BC Wild, *Project Consultant*, Vancouver and Atlin, British Columbia, Fall 1998 Worked with NGO in Vancouver and Tlingit First Nation in Atlin on a campaign to protect local native salmon fisheries in British Columbia, Yukon Territories and Alaska from pollution by international mining operations. Provided guidance on designing international efforts to support grassroots campaign.

Natural Resources Defense Council, *Researcher*, Washington, DC, 1997-8 Worked with Rainforest Action Network and Greenpeace on successful campaign for the protection of six million acres of ancient temperate rainforest in British Columbia and NRDC's Forest for Tomorrow Initiative and represented NRDC at conferences, meetings and other public forums. Wrote briefs and developed strategy for consideration by senior staff, including Robert Kennedy, Jr., on topics including: international market trends, the Forest Stewardship Council, US trade policy, corporate profiles, and consumer and media campaign strategies.

American Rivers, *Hydropower Reform Coalition Assistant*, Washington, DC, Fall 1996 Researched successful legal appeal of Federal Energy Regulatory Commission (FERC) ruling of nonjurisdiction pertaining to four hydropower dams in an effort to protect the American eel fishery in Maine. Developed guidance literature on model legal language for use by grassroots organizations in settlement agreements with FERC.

Teaching Experience

Recent Courses:

- Rich and Poor Introductory course on work, economic inequality and related policy in the US
- Social Problems and Public Policy: Educational Inequality in Philadelphia Introductory course about educational inequality in Philadelphia, includes substantial community-based learning with partner elementary school
- Qualitative Methods Advanced undergraduate methods course covering research design, participant observation, interviewing and qualitative data analysis
- Sociology of the US Labor Movement Advanced undergraduate course covering theories of the US labor movement

Other Courses Taught:

- Social Stratification Undergraduate course on the Sociology of Race, Class, and Gender
- Social Problems and Public Policy: The Underclass Introductory course about sociological conceptions of the "underclass" from the Moynihan report to the present
- Social Problems and Public Policy: The War on Drugs Introductory course about the public
 policy of the war on drugs and mass incarceration