



## Lease Purchase Programs:

# KNOW

**T**ruck lease/purchase programs are a good way to attract – or keep – veteran drivers who want to become owner-operators. But before you start signing leases and handing out keys, you need to schedule some long sessions with an attorney who understands the trucking industry, federal leasing regulations and state employment laws.

One important question that many carriers don't consider is how a truck lease arrangement might affect the independent contractor status of its owner-operators. The state of Illinois has an interesting law that basically

bans company-sponsored lease/purchase programs for owner-operators. Truck leases or financing must come from a totally independent third-party (even members of a carrier's owning family must stay out of the picture). Otherwise the owner-operators will be classified as employees for unemployment insurance purposes and the carrier could be subject to back taxes, interest and fines.

The Illinois law is unique and not likely to be widely adopted elsewhere, but it does underscore

the problems lease/purchase programs can create.

According to Nancy Joerg, a management-side employment lawyer with Wessels & Pautsch, the lease/purchase provision is part of a comprehensive law aimed at clarifying the independent contractor status of owner-operators. It was compromise legislation hammered out by a diverse group representing a broad spectrum of trucking interests and, like most compromise legislation, it has a few quirks. Nevertheless, said Joerg, "We were glad to get something. Before that we were stuck with an agency, the Illinois Department of

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Employment Security, which found every owner-operator to be an employee because of the supposed control and direction of the carriers over their drivers.”

“Control” is a major consideration in any federal or state review of independent contractor status. The more control a company exercises over its contractors, the more they start to look like employees. Many lease/purchase arrangements give the carriers what auditors see as a great deal of control over both equipment and drivers.

“When you purchase an automobile no one tells you where to use it, how to use it, how to maintain it,” Joerg noted. “But if you purchase a truck and the carrier is telling you how to use it, how to maintain it, and that you can only use it for them, then it starts to look like a sham.”

item for the owner-operator,” Joerg cautioned. “Is it a true rental in the sense that if the owner-operator goes on vacation, he still has rental payments?”

One particularly tricky question is whether or not the lease/purchase contract should tie the

**Poorly structured programs can jeopardize independent contractor status and violate leasing rules.**

ing a truck and has title to the truck, he can go anywhere else,” he explained. “The problem is that the company may not be able to take the truck back if the driver fails to make the payment.”

One remedy is to have lease agreements with buyout clauses. “The carrier or leasing company retains title to the truck so it’s simply a matter of repossessing it when the lease is cancelled,” Vragel explained. Some attorneys also recommend lease/purchase contracts that allow sub-leasing, but only to carriers that meet preset safety and financial standards.

## Warranty & Repairs

Another concern is that lease/purchasing agreements for new or used equipment can open sponsoring trucking companies to warranty and product claims.

“Are you supposed to give the owner-operator a warranty? Is there a guarantee that the truck will work?” asked Vragel. “I was involved in a case where the

# THE LAWS

“Ownership” is another key consideration. The Illinois rule was mainly a concession to the Teamsters and owner-operator groups who argued that lease/purchase plans often were little more than a way for carriers to charge drivers for the use of company trucks. At the same time, federal and state auditors look for equipment ownership or some other financial stake in independent contractor businesses.

Ideally, the owner-operator is building equity in the truck or has a reasonable buyout option at the end of the contract. Lease agreements without buyouts can work, but auditors “will be looking to see if this is truly an overhead

owner-operator to the carrier. Under many carrier-sponsored lease programs, the owner-operator is prohibited from taking the truck if he switches carriers.

“It’s a double-edged sword,” said Kurt Vragel, a transportation attorney based in Glenview, Ill. The practice pushes the envelope on those two key independent contractor issues – ownership and control – but it also helps protect the carrier’s investment.

“If you have a driver who is in fact lease purchas-

owner-operator claimed that the carrier gave him a faulty truck. It can cost quite a bit of money to extricate the company from such a claim, even if only to defend against the allegation that the truck was defective.”

Maintenance and repairs should be addressed up front, he advised.

“It might be prudent for both the trucking company and the owner-operator to get some kind of maintenance agreement with a major repair company.” Escrow or reserve funds to cover major repairs are a good idea as long as the owner-operator has complete access to that money, he said.

In a teleconference spon-



**Patricia Smith**  
Senior Editor

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sored by the Truckload Carriers Assn., attorney Dan Barney of Scopelitis, Garvin, Light & Hanson, recommended an addendum to truck lease/purchase contracts that establishes minimum guidelines regarding the condition of the equipment when it's delivered and when it's returned.

The owner-operator should inspect the vehicle before taking delivery and should certify, in writing, that it meets the specified guidelines. Barney also said the lease should specify who will be responsible for maintenance

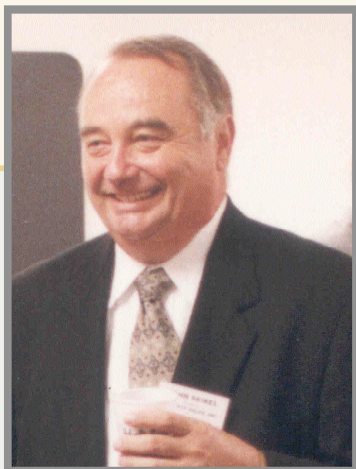
and repairs and he recommended an addendum listing service items and required maintenance intervals.

In order to avoid lawsuits, equipment lease/purchase agreements as well as operating agreements must strictly adhere to federal leasing rules, he cautioned. Any equipment-related charge-backs or deductions from settlement checks must be clearly specified in the operating agreement, including the method of computation.

Leasing agreements should make it clear that the lessee will be responsible for operating expenses, such as licenses, permits, maintenance and repairs. Otherwise, he explained, owner-operators may claim that they

thought those expenses were included in the lease payments. Moreover, documentation of those financial obligations can be helpful if the owner-operator's independent contractor status is questioned.

Leasing rules say that any unused escrow or reserve funds must be returned to the owner-operator within 45 days after termination of the hauling contract. Barney said contracts must list specific items to which the reserve funds will be applied. Owner-operators must be given an accounting of their reserve funds at least once a month but they have the right to ask for an accounting at any time. The rules also say that interest must be paid on escrow funds at least



John Seibel was running the transportation operation of a large grocery wholesaler when Dart Transit offered him a job running a truck lease/purchase program for owner-operators. It was 1984. Deregulation had wreaked havoc on the truckload carrier industry. As carriers fell, so did the owner-operators they couldn't pay. Dart wanted to help bring promising entrepreneurs back into the business by giving them a way to buy new or late-model used equipment at affordable prices.

Seibel took the job because "it sounded like fun." More than 20 years later he's still running Highway Sales Inc., a stand-alone company that offers new and used truck sales and leasing. Clearly, he's still having fun.

"As far as I'm concerned, we're the American dream," he says of the owner-

## The American Dream

Highway Sales uses straight talk and competitive pricing to put owner-operators in their own trucks.

ship opportunities they give truckers.

"Since we were children, that's what we've been taught to do. You don't rent a house forever, the dream is to own it. It's the same with a truck."

Since its inception, Highway Sales has helped more than 4,200 owner-operators buy their own trucks. Another 1,300 are currently leasing trucks (with an option to purchase). Seibel is the first to admit that not every customer is a happy one. "I'm positive that we haven't satisfied everyone but, if nothing else, I always try to give them a straight answer — whether they like it or not," he notes.

Apparently, that straight talk is precisely what most owner-operators want. "Highway Sales and Dart have about the most realistic lease/purchase program I've ever seen," says Bob Abts, a veteran owner-operator who recently paid off his lease on a 2003 Freightliner Columbia. "They're up front with everything. There aren't any secrets."

### GROUP BUYING

"We don't consider ourselves a lease/purchase program, we consider ourselves a group purchasing program," Seibel says. "What we do is bring to the owner-operator some of the discounts a fleet gets." Highway Sales does make a "reasonable" profit but "we aren't greedy," he adds. "We try to put together a fair program with reasonable monthly payments so his chances of success are better than with some other programs."

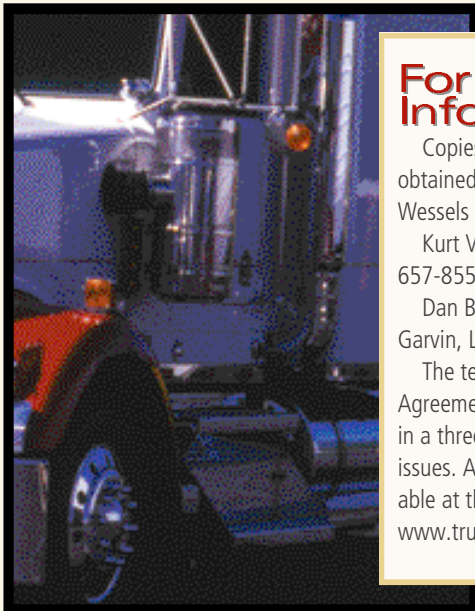
The company currently offers several new truck choices with a range of specifications and prices. It also has four locations where owner-operators or other buyers can shop the current stock of used trucks. The most expensive package right now is a Freightliner Columbia with a Detroit Diesel engine and a long list of amenities. The payments: \$1,880 a month the first year, \$1,780 the second year, \$1,685 years 4-6, and a \$16,578 balloon at the end of the contract. The

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every quarter using a rate that can't be lower than the rate on 90-day Treasury Bills.

Like any other lease or finance arrangement, carrier lease/purchase plans can require that the owner-operator maintain a certain level of insurance on the vehicle. The carrier can make insurance available to owner-operators, but company-sponsored insurance and other purchasing programs must be optional – not required. Costs or charge-backs, including administrative fees, should be specified. ■



## For More Information

Copies of the Illinois statute can be obtained by contacting Nancy Joerg, Wessels & Pautsch, (630) 377-1554.

Kurt Vragel can be contacted at (847) 657-8551.

Dan Barney can be reached at Scopelitis, Garvin, Light & Hanson, (202) 783-9222.

The teleconference, "Lease-Purchase Agreements and Escrow Funds," is second in a three-part series on owner-operator issues. Audio tapes of all three are available at the "products" section of [www.truckload.org](http://www.truckload.org).

## The American Dream *continued from page 56*

same truck, says Seibel, is currently running \$2,400 a month through other sources.

Unlike most of Highway Sales' customers, Abts is an experienced buyer who owned a 17-truck fleet before selling it in the late 1990s. He shopped elsewhere and found he could save about \$8,000 buying his truck through Highway Sales. "They buy in volume and they don't try to make a killing off it," he notes. "It was a very easy and reasonable way for me to get into a brand new truck."

Down payments are preferred, but not a must. "I like to see some kind of cash commitment," Seibel says, "but what we're looking for is the right people for the program. If it's someone who has been with the same company for a lot of years, or can show us that kind of staying power, we can be pretty flexible."

All new truck leases have a buyout option and, because ownership is the ultimate goal, Highway Sales tries to make that option as price competitive as possible. The company will also help the owner-operator negotiate buyout financing and, in many cases, guarantee loans. "If there's anyone who loves us it should be the truck dealers," says

Seibel, "because when an owner-operator leaves us he has an old asset and established credit."

Buyout clauses also give owner-operators a chance to take their trucks with them if they leave Dart. Highway Sales won't back the deal, but they will help whenever they can.

### BEYOND PAYMENTS

A successful lease/purchase goes beyond hammering out a contract and collecting payments. "You become responsible for everything," Seibel notes.

Today's new owner-operators are generally less experienced than their counterparts 20 years ago and they're typically less mechanically inclined. "They're off the charts when it comes to computers and electronic communications," Seibel notes, "but they aren't particularly interested in what goes on under the truck's

hood."

New trucks carry the manufacturers' full warranties and Seibel doesn't hesitate to exercise his company's purchasing power to make sure owner-operators get a fair shake on warranty repairs. "This is a decent group of people but they're also people who need a voice," he points out. "The contract says they're responsible for repairs but if something goes wrong shouldn't you stand up to help?"

If an owner-operator complains that he's not making enough money, Highway Sales has a one-page financial analysis form that will give him an easy-to-understand picture of revenues and costs.

When warranted, Seibel will even use his negotiating skills on those who can most affect an owner-operator's revenues. "There are probably 100 dispatchers who don't like me even a little bit," he chuckles.

"The thing that keeps me here is the people. Some of them have never owned anything in their life, now they own a truck and they own a house. They're good people and sometimes they need a little help."