

# Big Conference Changes!

The August 2010 publication of the TCMA *Lone Star Review* was delayed in order to provide an update of the Association after the Board of Directors met in Austin, Texas, in mid September.

During the first Board Meeting of the new year, Chairman-President **Mike Arnold**, (*Corpus Christi-Caller Times*) welcomed **Constantine Efstratiou** the newest member who was elected during the April, 2010, conference in Austin.

**Marti Christiansen**, (*Austin American-Statesman*) will serve as the President-Elect for the upcoming year. Joining Marti from the *Austin American-Statesman* is First Vice-President, **Kelly Johnson**. Marti will head up the 2011 Buyer's Guide. Kelly will take charge of the 2011 Carrier of the Year Competition. The Board discussed and approved changes in the competition this year.

Our newest Vendor Representative is **Constantine Efstration** (*Schermerhorn Bros.*). He will assist **Nancy Bacher** (*NIE Solutions*) as they plan for the Vendor participation at the annual conference.

The most exciting news is TCMA will hold its annual conference in Austin on March 31-April 1, 2011. The Board of Directors discussed keeping the two-day format with the conference beginning on Thursday at 12:30 pm and concluding on Friday at 1:00 pm.



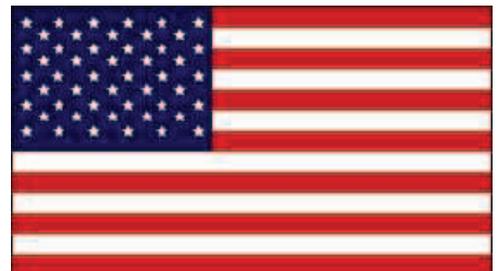
The Carrier of the Year Banquet will be a luncheon on Friday, April 1, 2011. This will be a great send off as the conference ends. On Thursday evening, we will participate in a vendor reception followed by an off site gathering designed to create more networking opportunities. In addition, one of the Thursday afternoon sessions will consist of a breakout to a smaller group for topics of specialized interest.

We are making our vendors readily available by including them in the same location as our meeting room. This worked well for us last Spring.

*(Continued on page 3)*

Inside this issue:

Zinser Law Firm	2
Buyer's Guide Update	4
Membership Renewal	4
Carrier of the Year Competition	5
TCMA Newsletter Sponsors	6





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The independent contractor wars continue. This column will report on a class action victory for Publishers Circulation Fulfillment, a Michigan Court of Appeals case involving the Detroit Newspaper Agency, and a successful contract settlement for the Publisher of *Hawaii Tribune-Herald*.

### **Class action status denied newspaper carriers**

Class action status was denied newspaper carriers because the U.S. District Court ruled that the critical determinant is the degree to which the reported employer exercises control *in fact* over the results produced or the means used to obtain them. There would need to be an individualized determination of the degree of control that PCF actually exercised over each of the punitive class members.

In trying to prevail in class certification, the plaintiffs relied on the fact that all the carriers signed a form independent contractor agreement. However, the court said that was not dispositive because the agreement, on its face, only attempted to control the end result, not the manner and means of how the result is accomplished. Nothing in the form agreement supports a determination that PCF had a common policy of reserving control over the means the carriers used to complete their deliveries.

Finally, the court rejected a claim that training materials for PCF supervisors evidenced control; plaintiffs failed to show that PCF used the training materials in a common way to control the manner and means of delivery of the newspaper carriers.

### **Jury will decide independent contractor issue**

While delivering newspapers for Detroit Newspaper Agency (“DNA”), defendant Barber ran a stop sign and ran into plaintiff Krywy, who suffered a serious injury. Krywy sued both Barber and DNA for damages from her injury. At the trial level, the judge found that there was no question of fact and that Barber was an independent contractor. DNA was dismissed as defendant.

In deciding that there was no question about the independent contractor status, the judge took into account the following facts:

- The means and method of transportation for delivering papers was left to the carrier;
- The carrier was permitted to deliver other newspapers at the same time as delivering papers for DNA;
- The carrier was responsible for providing a substitute rather than DNA providing one;
- The carrier’s contract refers to the carrier as an “independent contractor;”
- The carrier is not included in any Company benefit plans;
- The carrier’s contract with the Company provides that the carrier “shall indemnify, defend and hold

*(Continued on page 3)*

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DNA harmless from and against all claims, damages, losses, and expenses ... asserted against DNA ... by any other person, for injury ... arising out of any acts or omissions of the Contractor or the Contractor's agents."

Krywy appealed DNA's dismissal, arguing that there was indeed a question of fact as to Barber's employment status, and therefore a jury, not the judge, should make that call. The Michigan Appeals Court agreed. Specifically, the court found that there were questions of fact about the following:

- The Company owned the delivery route and contracted with whomever it chose once a carrier stopped delivering;
- New carriers were "trained" by the Company, not the prior carrier;
- The Company set forth rules or "suggestions to be followed" regarding how newspapers should be delivered;
- When the carriers did not comply with delivery instructions, or failed to deliver a paper, they were fined a substantial penalty that had to be paid to the Company rather than to the customer whose paper was mis-delivered;
- The contract between the carrier and the Company is "at will;"
- All billing and accounting is handled by the Company rather than by the carrier;
- The newspapers are never owned by the carrier, but remain the property of the Company until they are left at the customers' premises;
- The carrier could not cancel a customer for any reason (including nonpayment), without receiving permission from the Company.

This court decided that, since there were questions of fact, it was up to a jury, and not the judge, to decide.

*(Continued from page 1)*

Our breaks will be around the vendor area as to give our membership an opportunity to see the vendors without having to go to another meeting room.

### **Carrier of the Year Contest**

There are too many great newspaper carriers that are going unrecognized and TCMA wants to change this. This year, a contest will be held in conjunction with the Carrier of the Year Competition. We are going to give individual Zone and District Managers the opportunity to win a paid trip to Austin for the conference. TCMA will pay the hotel and conference registration fee. All the winners will need to do is get to Austin. The contest will be based on the number of qualified COTY entries according to newspaper circulation. This prevents a major metropolitan newspaper from having an advantage over the small to mid-size newspaper. Check the web site and watch your email for the details as the competition begins in mid-October.

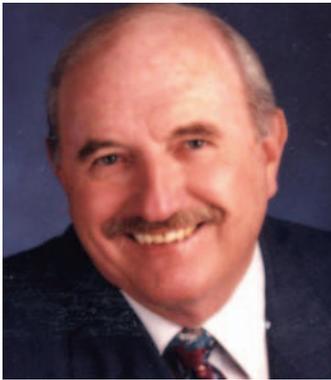
### **Facebook Page**

You can now follow TCMA on Facebook. Click on the link on the TCMA Home Page or search for TCMA on Facebook. Click on the "Like" icon and with each TCMA posting on Facebook, you will be notified on your page.



Our Association will be 100 years old in 2013. We are the oldest Circulation Sectional in the United States. During the last ninety-six years, TCMA has stayed on the cutting edge to keep the Association relevant to the current times. Today is not any different. TCMA will continue to serve our members, support our vendors and work to disseminate the most effective methods to market the daily newspaper.

## In Memoriam



**HOLLIS GLYNN PRICE** passed away unexpectedly on Wednesday, September 1, 2010, in Houston, Texas. He was 80 years of age.

Hollis was born on the 24th of December 1929, in the small East Texas community of Springfield. He and his family moved to Houston when Hollis was twelve years old. He attended the University of Houston and graduated with a Masters of Business Administration in 1955.

Hollis began his career with the Houston Chronicle at the age of 12 as a paper carrier. He returned to work at the Chronicle while he was in graduate school and worked as night manager of the complaint department. He was an independent distributor for the Chronicle for many years and then served as the Vice President of Circulation from 1996 to 1998. He retired from the Houston Chronicle in 1998. Hollis advanced to TCMA President in 1995 and presided over the 1996 Conference in Laredo, Texas.

Left to mourn his passing is his loving wife of 56 years, Lillian Price; and their children, Kathy Westmoreland and Hollis G. Price, Jr., both of Houston, and Laura Evans and her husband Andy, of Kalaheo, Hawaii. He will be greatly missed by his grandchildren, Megan and Shannon Westmoreland, and Jackson Evans; and by his constant companion and "best friend" Toby. He also leaves numerous nieces, nephews, brothers and sisters-in-law, and many, many dear friends.

A memorial service was held on Tuesday, September 7, 2010, with interment at Forest Park Lawndale Cemetery in Houston, Texas.

## Buyers Guide Update

TCMA values the support of our Associate Members (Vendors). Each year we publish a buyer's guide in conjunction with the annual conference.

Beginning in 2011 our Buyer's Guide will offer several "package deals" to provide our vendors with various advertising venues.

The pricing for our ads has been reduced and are similar to what other Circulation Sectionals are charging for ads. We are able to offer a price reduction as we have secured a permanent printer for the buyer's guide. The **Ultimate Print Source** in California prints our guide as well as several other sectional's buyer's guides.



As a bonus to advertising in the 2011 Buyer's Guide, at no additional cost to you, we are adding the buyers guide to our web site so your ad will never be more than a click away from our members. If you have viewed the *Lone Star Review* on the web site, **Blue Toad**, this is how your ad will appear digitally. There is a link on the web page that will take you directly to the Blue Toad site. Once at this site, the Buyer's Guide will appear in a book format allowing the user to turn the page, print the ad, email the ad, and link to your company's web site.



Look for a special web page coming soon on the TCMA web site with exciting details of the new buyer's guide pricing. In mid-November with the Membership renewals there will also be information on how you can increase your visibility using the many advertising venues TCMA has for you.

Vendors, on behalf of the TCMA Board of Directors, thank you for advertising with TCMA. Your continued support enables TCMA to keep our conferences affordable.

# COTY Competition Begins Soon!

The 2011 Carrier of the Year applications and instructions will be arriving in your mailbox in a few days. There is also a link on the Carrier of the Year (COTY) page on the TCMA web site.

Included with the applications will be the deadlines for the upcoming competition.

Does your newspaper have an on-going carrier recognition program? The TCMA COTY award program recognizes the best of the best. Each year you have the opportunity to nominate your carriers and/or your district managers/distributors. They are on the front lines every day, in all kinds of

weather, delivering newspapers to our subscribers. In some cities carriers are even delivering multiple products. (See *Big Conference Changes* on page one for COTY Competition changes this year.)



## Online Applications

The 2011 Applications will be online soon. It takes only few minutes to complete the application. Just a click sends your application to TCMA! Go to [www.texascma.org](http://www.texascma.org) and then to the Carrier of the Year page.

Check out the videos from 2007 through 2010 on the web site to view previous winners.

Every newspaper has some deserving carriers needing to be recognized. Nominate them today.

## Membership

TCMA By-Laws require the Secretary to mail membership renewal notices each November for the following year.

Be sure to watch for your membership renewal notice in the November 2010, *Lone Star Review*.

Your membership fee enables the Association to provide you a quarterly newsletter as well as supporting the Carrier of the Year Competition.

A special offer will be made to our Vendor members this year to cover membership, a newsletter ad and buyer's guide ad for a one time payment. No more individual invoices for each service—unless you want it that way.

Don't forget! You can renew online and use your credit card to pay for your membership.

**Pay Now**



# TCMA Lone Star Review Sponsors



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