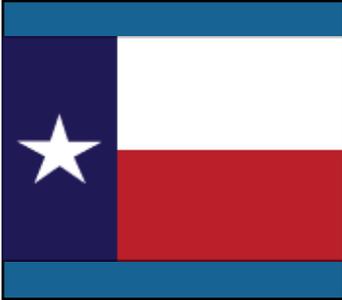


May 2010

TEXAS CIRCULATION
MANAGEMENT ASSOCIATION

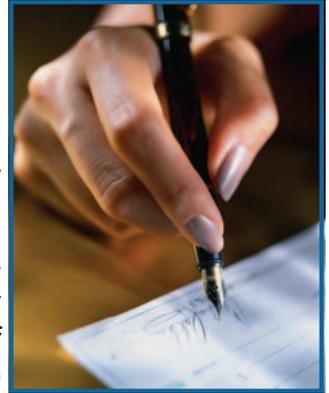
TCMA Lone Star Review



Board Briefs

If you missed the Austin Conference in April 2010, you missed a great line up of speakers, a panel discussion on the New Era of Circulation and a great time of sharing ideas of how to stay alive in the newspaper industry.

The two-half-day conference sessions that began at noon on Thursday and concluded on Friday turned out to be just right. There was plenty of time for socializing and ample time to get down to business.



As always, the Carrier of the Year Banquet was a highlight as we recognized the true heroes of our industry who day in and day out deliver the newspaper to our subscribers. The winners are on page five of this edition and you can view their videos online on the TCMA web site.

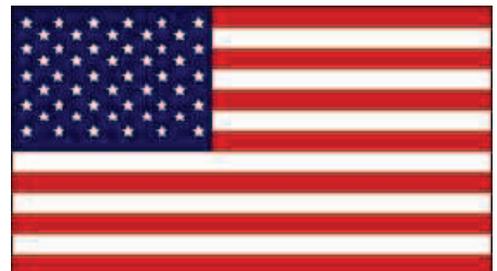
We welcome a new Associate Vendor Representative to the Board of Directors. **Constantine Efstratiou** joins **Nancy Bacher** representing the Vendors who support our Association. Constantine is employed with Schermerhorn Bros. Inc.

Mike Arnold became Chairman of the Board of Directors at the end of the 2010 Conference. The Board has a vacancy in the President position and will likely select a person to fill the position until the election at the next conference. There is also a vacancy in the Second Vice-President position. If you are interested in serving on the TCMA Board of Directors you can contact Mike Arnold at the Corpus Christi-Caller Times or J W Smith, TCMA Secretary/Treasurer at the Houston Chronicle.

Be sure to take a look at the Carrier of the Year videos online. In addition to the COTY videos, the 2010 Buyer's Guide is also online for your perusing throughout the year. You may not be the person responsible for circulation supplies and services for your newspaper, but you can point your purchasing contact to the TCMA web site to view our vendor pages as well as the buyer's guide.

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L. Michael Zinser
TCMA Legal Counsel
Zinser Law Firm
Nashville, TN

This month's column will update our readers on: (1) a recent IRS case involving independent contractor status, (2) the National Labor Relations Board appointees of President Obama and (3) Employee Free Choice Act update.

1. IRS/SS-8/Direct Seller Amendment – Very recently, a division of Lee Enterprises, Inc. received a letter from the Internal Revenue Service enclosing its SS-8 form concerning an individual with whom it has an independent contractor relationship for the delivery of newspapers for home delivery. Lee Enterprises declined to complete the SS-8 form independent contractor questionnaire and instead drafted a reply to the IRS explaining that the newspaper contractor involved qualified as a "Direct Seller" pursuant to 26 USC §3508. Much to its surprise, on February 9, 2010, Lee Enterprises received a determination in the case, finding that the newspaper contractor involved was an employee and proceeding to make many erroneous factual findings concerning the relationship of Lee Enterprises and the contractor at issue.

The determination letter of the IRS did **not** anywhere comment on the applicability of the above-mentioned Direct Seller Amendment. Lee Enterprises contacted the IRS by phone and questioned why the Direct Seller Amendment was not addressed in the determination letter. The agent contacted explained to Lee Enterprises that once she determined that Lee Enterprises did not complete the SS-8 form, she did not even read the letter. Talk about arbitrary and capricious agency action!

Lee Enterprises then filed a request for redetermination. This written request recounted the action of the IRS in failing to even consider the written response when it was determined that the SS-8 "form" questionnaire had not been completed. In the request for redetermination, it was explained that the SS-8 is irrelevant because of the applicability of the Direct Seller Amendment. Lee Enterprises told the IRS that its "failure to consider the information set forth in my April 27 reply constitutes arbitrary and capricious agency action, and infringes upon Lee's due process rights in violation of the Fourteenth Amendment to the United States Constitution."

On March 9, 2010, the IRS reconsidered its earlier determination of employee status. The IRS redetermination stated:

We have thoroughly considered your request for reconsideration and have concluded that the worker's status, for federal unemployment tax purposes, should be changed. We hereby find the worker to be an independent contractor when she performs services for you.

The worker was engaged to deliver newspapers to the firm's customers. Her remuneration was based upon sales/output, not hours worked. The worker's remuneration was established in the Independent Contractor Agreement in which she would be paid a delivery fee per newspaper delivered.

Under §3508 of the Internal Revenue Code, workers that meet certain qualifications will not be treated as employees for FICA, FUTA or FITW purposes. These workers are referred as statutory non-employees

The worker in this case meets the requirements to be classified as a direct seller under the IRS §3508(b)(2).

The determination letter goes on to conclude that the parties had a written agreement and that the written agreement provided that the contractor would not be treated as an employee for federal tax purposes. Compensation to an individual classified as an independent contractor is not subject to federal income tax withholding, federal insurance contributions tax, or federal unemployment tax.

(Continued on page 3)

(Continued from page 2)

One must wonder whether the agent involved is one of the army of new employees employed by the Obama administration to attack independent contractor status. Is it possible these new agents are unaware of the Direct Seller Amendment?

Editor's Note: Lee Enterprises, Inc. was represented by The Zinser Law Firm.

2. NLRB Appointments – On March 27, 2010, President Obama announced two recess appointments to fill two of the three vacancies on the National Labor Relations Board. One of the recess appointments was union attorney Craig Becker. Mr. Becker had been so controversial that his nomination was blocked by a filibuster in December 2009 and was sent back to the President. The President re-nominated him and has opted to give him a recess appointment, which will allow him to serve, unconfirmed, until the end of 2011. The President also appointed Mark Pearce to fill another vacancy on a recess basis. Becker and Pearce are both very pro-union Democrats. President Obama had also nominated Bryan Hayes to fill a vacant Republican seat on the Board. Interestingly, the President did not appoint Mr. Hayes on a recess basis. Thus, there are currently three Democrats and one Republican on the NLRB. The one Republican, Peter Schaumber, will leave in August 2010, when his term expires. The NLRB will then have 3 very pro-union Democrats on the Board, with the 2 Republican seats vacant.

3. Employee Free Choice Act Update – The President's healthcare bill has been rammed down our throats. While the administration may try to do the same thing with the Employee Free Choice Act, it may prove to be a little more difficult. While the Employee Free Choice Act has passed in the House of Representatives, there is no version that has passed in the United States Senate. Additionally, the election of Scott Brown to the Senate in Massachusetts gives the Republicans 41 votes, thereby making it impossible for the Democrats to cut off a filibuster against EFCA. Democratic Senators Blanche Lincoln and Ben Nelson are publicly opposed to EFCA as well. This writer, however, does **not** believe that the unions have given up on this bill. Employers must remain vigilant and continue to impress upon your United States Senators your opposition to EFCA.

L Michael Zinser is a guest columnist for the Lone Star Review.

Our Newest Members!

Tim Daly	GP Plastics
Jeff Bowman	Schermerhorn Bros
Constantine Efstratiou	Schermerhorn Bors
Johnny Garza	Pub Circ Fulfillment
Larry Martin	Surpass Calls, LLC
Brian McCormick	OSG Billing
Nanette Ghoston	Austin American-Statesman
Dave Gill	Austin American-Statesman
Suzanne Harm	Austin American-Statesman
George Ramirez	Austin American-Statesman
Rose Smith	Austin American-Statesman
Mark Winslow	Austin American-Statesman
Jimmy Wren	Austin American-Statesman
Rod McFarland	Conroe Courier
Chris Cornelison	Exec Tour and Travel Service

WELCOME

Thank you, Vendors

The Associate Members (Vendors) supporting TCMA by hosting a booth in the Vendor Room are an important part of the Conference each year.

This effort is no small accomplishment. Our vendors travel a great distance and some even ship products to the hotel for our attendees to view. It can be expensive on the part of the vendor to be a part of the TCMA Conference.

You can show your support for the vendors by giving their companies an opportunity to do business with your newspaper. All they want is an opportunity to give your newspaper a quote or an opportunity to show your newspaper how they can save you money. You may not be the purchaser of circulation supplies but you can talk to your purchasing personnel and give them the names of the vendors who support TCMA.

Our 2010 Conference Vendors:

GP Plastics
Hamilton Circulation Supplies
Kaspar Sho-Rack
NIE Solutions
OSG Billing
PDI Plastics
Ron Dino Promotions
Schermerhorn Bros.
The Pisa Group
Barden Circulation, Inc.

Thank you, Sponsors

Each year the Board of Directors solicits sponsorships from our vendors to make the conference possible. Their generous contributions enable TCMA to provide an affordable registration fee for our newspaper members. Keep your Buyer's Guide handy and when you need circulation supplies, please give our sponsors an opportunity to meet your needs. And while you are talking to them, be sure to thank them for supporting TCMA.

We had additional sponsors that supported the Conference after the Buyer's Guide was printed. The following is a complete list of the 2010 Conference Sponsors:

Silver:

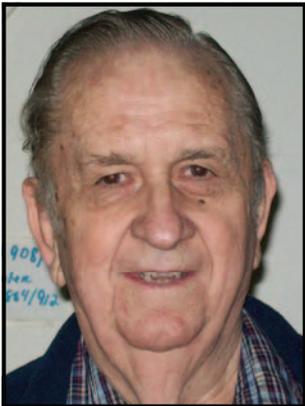
Schermerhorn Bros
Wilson Gregory Agency, Inc.
Kaspar Sho-Rack
GP Plastics
PDI Plastics

Bronze:

Roggen Management Consultants
Hamilton Circulation



2010 Carrier of the Year Winners



Orville Hart

Austin American-Statesman

Under 200 Route Size



Judy Heitter

McKinney Courier-Gazette

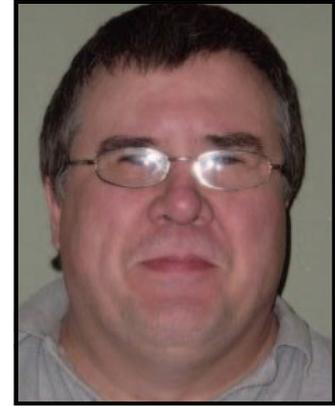
Over 200 Route Size



Richard Perez

Fort Worth Star-Telegram

Single Copy



Tom Freidrick

Austin American-Statesman

District Manager/Contractor



During the Carrier of the Year Banquet that was held at the 2010 Conference, the winner in each category was presented a check for \$300.00 and a framed certificate from the Governor of the State of Texas.

To see the Carrier of the Year Winners and a list of the Finalists in each category, log on to www.texascma.org.

Watch the Carrier of the Year videos again or for the first time! The COTY videos are embedded on the TCMA web site. Go to www.texascma.org and click on the Carrier of the Year page. The COTY videos for 2007, 2008 and 2009 can also be seen by selecting the link at the top of the Carrier of the Year web page.

Membership

Has your TCMA Membership lapsed or did you forget to renew for 2010? It's not too late! Check out the Membership page on the web site. If your name is missing, we missed your renewal!

Renew your membership or join TCMA for the for only **\$50.00!** Go to the TCMA membership web page. Complete the **Apply for Membership** form and then use your credit card to renew your membership or to join TCMA for 2010.

Pay Now



TCMA Lone Star Review Sponsors



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