

# Longer Hours, Lower Wages & Little Hope

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## A Snapshot of U.S. Port Truck Drivers' Livelihoods Since Industry Lobbies Crippled Clean Truck Programs



This three-port survey provides the first and only systematic look at the impact of fleet replacement policies on port truck drivers' employment status, financial condition, economic well-being, and future prospects. It was conducted shortly after a House Transportation & Infrastructure subcommittee ordered an investigation of the port trucking industry and its leasing practices, and more than one year after litigation brought by the American Trucking Associations successfully stalled or altered the development of clean truck program requirements.

### Two important themes emerge from the findings:

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- 1. Many port drivers, in order to compensate for new clean truck expenses, are working dangerously long hours, earning less, and feel considerably less optimistic about the future.**
- 2. Trucking companies have seized greater control over drivers' work and the trucks they operate through drastic changes in methods of compensation, vehicle payments, registration, and lease arrangements, suggesting that the disputed harbor "owner-operator" or "independent contractor" business model violates federal laws.**

The data underscore policy recommendations for environmentally sustainable, economically sound clean truck programs: Ports must ensure that trucking companies invest in and maintain emissions-compliant trucks by requiring those businesses to legitimately employ their driver workforce. Legislation before Congress, H.R. 572, the Clean Ports Act of 2011, would make it clear that U.S. ports possess the legal authority to enforce such standards without the threat of expensive, lengthy litigation by industry opponents.

# OVERVIEW

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In the past two years, three major American ports advanced mandatory policies commonly referred to as “clean truck programs” to reduce deadly toxins emanating from container hauling operations. Officials at the separate but adjacent Ports of Los Angeles and Long Beach, as well as the Port of Oakland banned the dirtiest, oldest rigs to cut emissions in the short term. But their attempts to enact and enforce full-scale fleet replacement programs to sustain future clean up were met with fierce industry opposition, with legal roadblocks erected by the American Trucking Associations.

Litigation or the threat of it thus created a clean-air Catch 22 at California’s trade hubs: Thousands of subsidized clean diesel and alternative-fuel vehicles are now in service, but programs that are incomplete or compromised have burdened workers behind the wheel with the cost of EPA compliance, rather than the powerful industries that own the cargo or are in business to move it. The ways in which port drivers are now compelled by their companies to finance the new equipment and their maintenance in order to keep their jobs include:

- Making direct lease payments on replacement trucks to their companies
- Seeing lease and maintenance payments deducted from their paychecks
- Being charged lease payments for near- or fully-subsidized alt-fuel vehicles
- Financing the balance of subsidized replacement trucks or retrofit devices
- Paying taxes on subsidized portions of replacement vehicles or retrofit devices

Some drivers have since come forward in the media and to elected leaders with evidence they now earn below state and federal minimum wage due to the expense of clean trucks. Charges of one-sided, onerous terms have been so severe that a May 2010 House Transportation & Infrastructure subcommittee hearing entitled “Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach” centered less



# OVERVIEW

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## *Continued*

on immediate environmental progress than on the economic consequences for the workforce and the threat they pose to long term implementation. Several Members of Congress scrutinized the truck leasing practices that became ubiquitous after the American Trucking Associations succeeded in gutting key provisions of the Southern California programs in court.

At issue is the controversial market structure and profit-maximizing strategy that has dominated port trucking in the three decades since deregulation, in which trucking companies and their retail shipper clients transport imported goods via a contracted driver workforce who own and operate their own rigs. Individual drivers – labeled “independent” by the firms they haul for and impoverished according to several credible studies – must assume all costs and liability associated with port hauling. Given the age of the vehicles these low-wage workers can afford, U.S. seaports are dubbed “the place where old trucks go to die.”

The Port of Los Angeles sought to upend what officials there called the industry’s “caveman economics.” Environmentalists endorsed this approach, widely viewed as the most ambitious of the three, because the model requires companies to directly employ their drivers as the logical means to shift financial and legal accountability for clean truck replacement and maintenance onto companies with the capital to afford it. Labor advocates who have long asserted port drivers are independent in name only vigorously supported the LA Clean Truck Program, to facilitate an end to worker misclassification.

The Los Angeles Harbor Commission President at the time, David Freeman, made it clear why his port was undeterred in taking on the status quo:

***“I’m not influenced by threats of lawsuits, I am influenced by what is right or wrong. And what is wrong is the drayage system at the ports.”***

Shortly after this survey was conducted, a federal judge ruled the Los Angeles Clean Truck program is legal. An appeal has already been filed to the 9th Circuit, jeopardizing the ability for port officials to implement new standards to preserve environmental gains and reverse the economic consequences of the business model.

# THE SURVEYS

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The following presentation is based on a Public Welfare Foundation-funded survey of 581 port drivers to support efforts by the Coalition for Clean & Safe Ports. Dr. David Bensman of Rutgers University provided input and guidance on instrument development and survey methodology. A total of 8 surveyors, port drivers themselves, were hired by two coalition organizations, LAANE and the East Bay Alliance for a Sustainable Economy. Respondents were not offered incentives to participate and had the option of taking the survey in English, Spanish, Amharic, Punjabi and Vietnamese.

## **Los Angeles/Long Beach** (June 2-30, 2010)

**379** drivers responded, or **3.2%** of estimated driver population

- Largest ever survey of drivers in LA/Long Beach
- Peer-to-peer surveying at all 15 gate terminals in the adjacent port complexes
- 27 questions
- Topics included employment status, hours worked, lease arrangements, truck ownership, truck payments, job satisfaction

## **Oakland** (June 9 - July 8, 2010)

**202** drivers or **10%** of estimated driver population

- Peer-to-peer surveying at all 8 gate terminals at the port
- 30 questions
- Topics included employment status, hours worked, wages, truck ownership, truck payments, retrofit use, impacts on home and family life

## **Comparative Survey Data**

### **Los Angeles and Long Beach**

Kristen Monaco & Lisa Grobar, *A Study of Drayage at the Ports of Los Angeles and Long Beach* (2004)

Kristen Monaco, *Incentivizing Truck Retrofitting in Port Drayage* (2007)

CGR Management Consultants, *A Survey of Drayage Drivers Serving the San Pedro Bay Ports* (2007)

### **Oakland**

Howard Greenwich, *Taking the Low Road* (2007)

Jon Haveman & Kristen Monaco, *Comprehensive Truck Management Program: Economic Impact Analysis* (2008)

## **Additional Sourcing**

Sejal Patel for Sierra Club, BlueGreen Alliance, LAANE, IBT, *From Clean to Clunker: The Economics of Emissions Control* (2010)

Government Accountability Office, *Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification*, (2006)

*“The lack of resources among [independent contractors] and the inefficiencies in the current system strongly favor a more employee-oriented drayage sector.”*

– Jon Haveman and Kristen Monaco, Comprehensive Truck Management Program: Economic Impact Analysis, commissioned by the Port of Oakland

*“[An employee] requirement ... will maximize the likelihood of creating a market in which the reciprocal obligations between the Port and [companies] create a sustainable reliable supply of truckers attracted to stable and relatively well-paying jobs in an operationally efficient and orderly drayage market.”*

– Boston Consulting Group, San Pedro Bay Ports Clean Truck Program: CTP Options Analysis, commissioned by the Port of Los Angeles

*“We’re going to go after Los Angeles with everything we’ve got so their plan goes to hell in a handbasket.”*

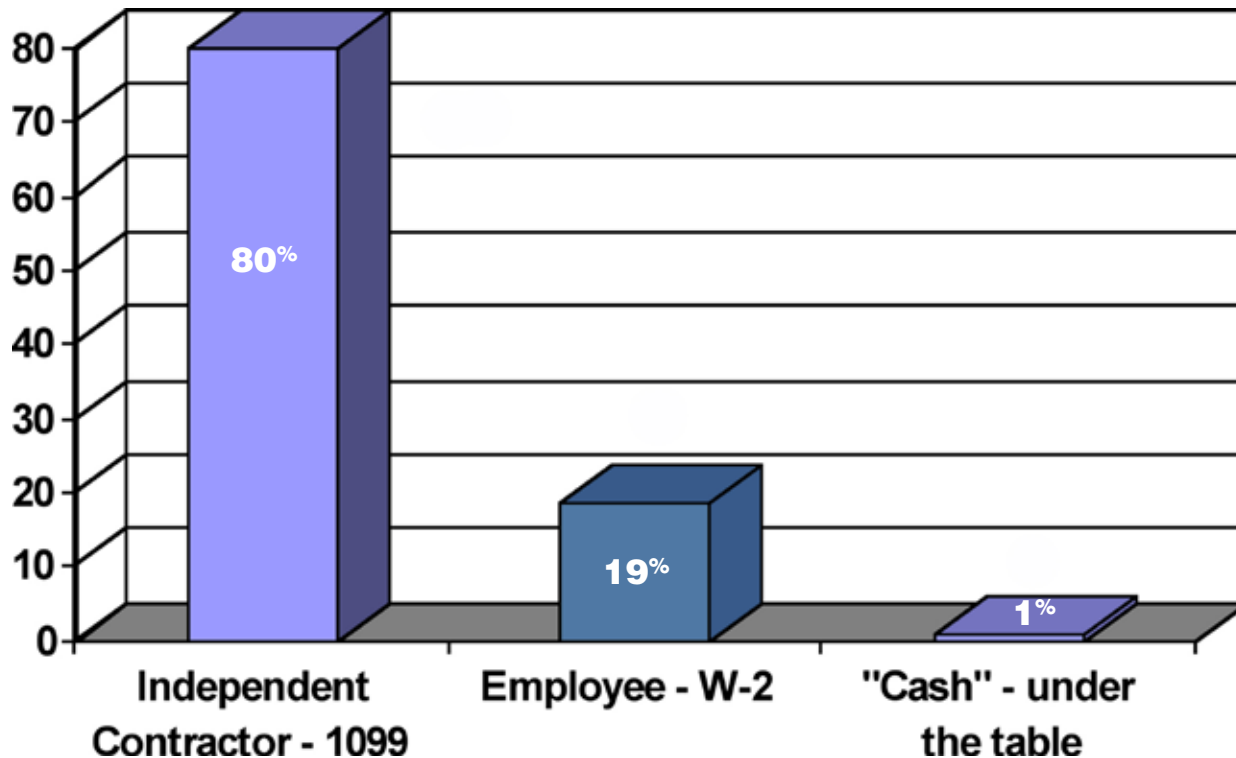
– American Trucking Associations executive Curtis Whalen to the Los Angeles Times, upon the Port of Los Angeles Clean Truck Program adoption

# Economist and environmentalist-recommended policy requirements were revised or removed from clean truck plans due to industry litigation threats

|                |   |
|----------------|---|
| Feb. 19, 2008  | <b>Port of Long Beach adopts clean truck program without employee requirement under threat of litigation.</b>   |
| March 20, 2008 | <b>Port of Los Angeles adopts economist-recommended clean truck program with employee requirement.</b>  |
| July 28, 2008  | <b>ATA files lawsuits against both LA and Long Beach to end clean truck concession programs.</b>  |
| Oct. 1, 2008   | <b>Clean truck programs successfully launch in Southern California.</b> Oldest trucks are banned. Companies small and large acquire new clean fleets as concessionaires, with many hiring employee drivers ahead of schedule.                 |
| April 14, 2009 | <b>Port of Seattle adopts truck plan without employee requirement under threat of litigation.</b>   |
| April 29, 2009 | <b>ATA obtains court injunction pending trial:</b> After being reversed by an appellate court, a federal judge enjoins key concession provisions, including the employee requirement that ties truck financial responsibility to companies.   |
| June 16, 2009  | <b>Port of Oakland adopts truck program without the employee requirement recommended by commissioned economic analysis.</b>   |
| Aug. 25, 2009  | <b>Port of Houston adopts partial loan subsidy plan to help drivers replace 207 trucks.</b> Some \$36 million in state grants with \$9 million from the EPA is available but has few takers; only 3 of 8 applications have credit to qualify. |
| Oct. 19, 2010  | <b>Port of Long Beach settles out of court with ATA, abandoning concession requirements.</b>  |
| March 10, 2010 | <b>Port Authority of New York &amp; New Jersey adopts limited truck plan without employee requirement under threat of litigation.</b> Only 8% of fleet to be replaced funded by \$28 million in Port Authority and EPA grants.                |
| March 10, 2010 | <b>ATA affiliate in New Jersey threatens to sue the Port Authority over an approved dirty truck ban.</b>  |
| Aug. 26, 2010  | <b>Judge rules LA Clean Truck Program legal:</b> Operational and environmental standards are not preempted.   |
| Sept. 16, 2010 | <b>ATA appeals case to Ninth Circuit:</b> Clean truck programs in LA and elsewhere remain under legal cloud.  |
| Sept. 22, 2010 | <b>ATA affiliate in New Jersey seeks regulatory review to stop the Port Authority from initiating its limited truck plan.</b>   |

# The overwhelming majority of Oakland port drivers are treated as independent contractors\*

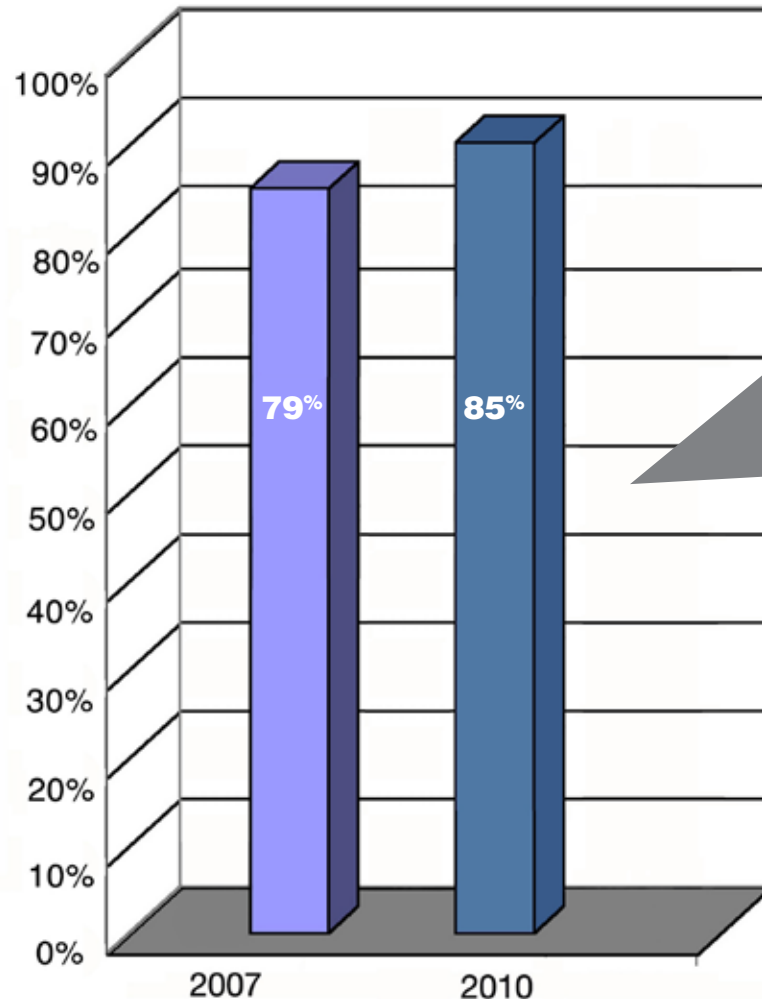
Workers who receive IRS forms 1099 have no right to government health and safety protections or employer-paid unemployment and disability insurance. They are ineligible for employer-sponsored health insurance and must pay the employer's portion of social security taxes.



*\*In this data presentation, where it is necessary to make a distinction amongst the port driver workforce, we use "independent contractors" or "independent drivers" to describe workers that reported receiving 1099 tax forms. Similarly, we use "employees" or "employee drivers" to denote those drivers whose companies provide them with a W-2.*

# Since the ATA lawsuit the prevalence of independent contractors at Southern California ports has increased

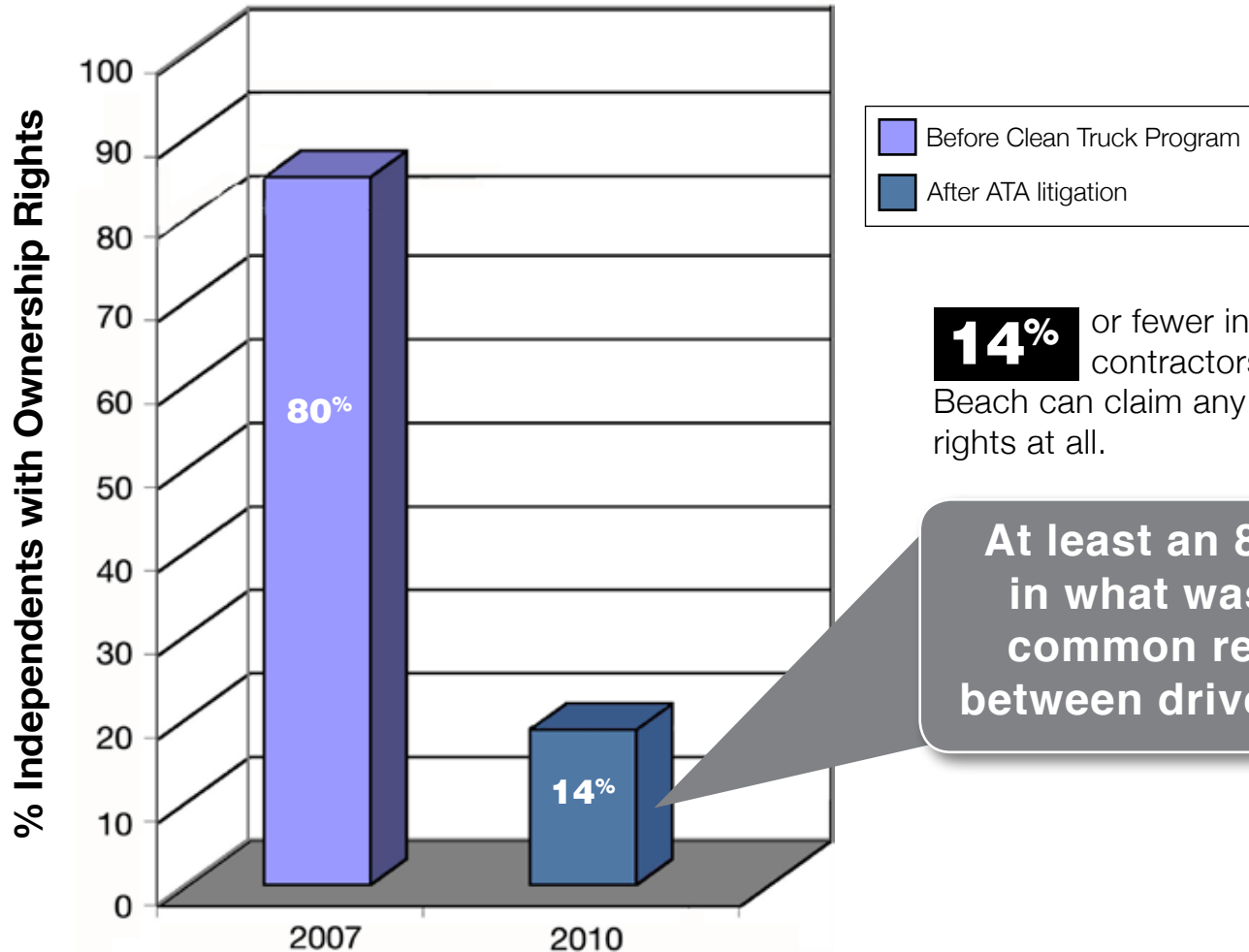
The proportion of drivers that fall under the disputed “independent contractor” category



6% of LA/Long Beach drivers who received 1099 tax forms at the time of this survey additionally reported they received W-2s within the last 24 months.

**30%** is the cost advantage for employers who use independent contractors instead of W-2 employees.

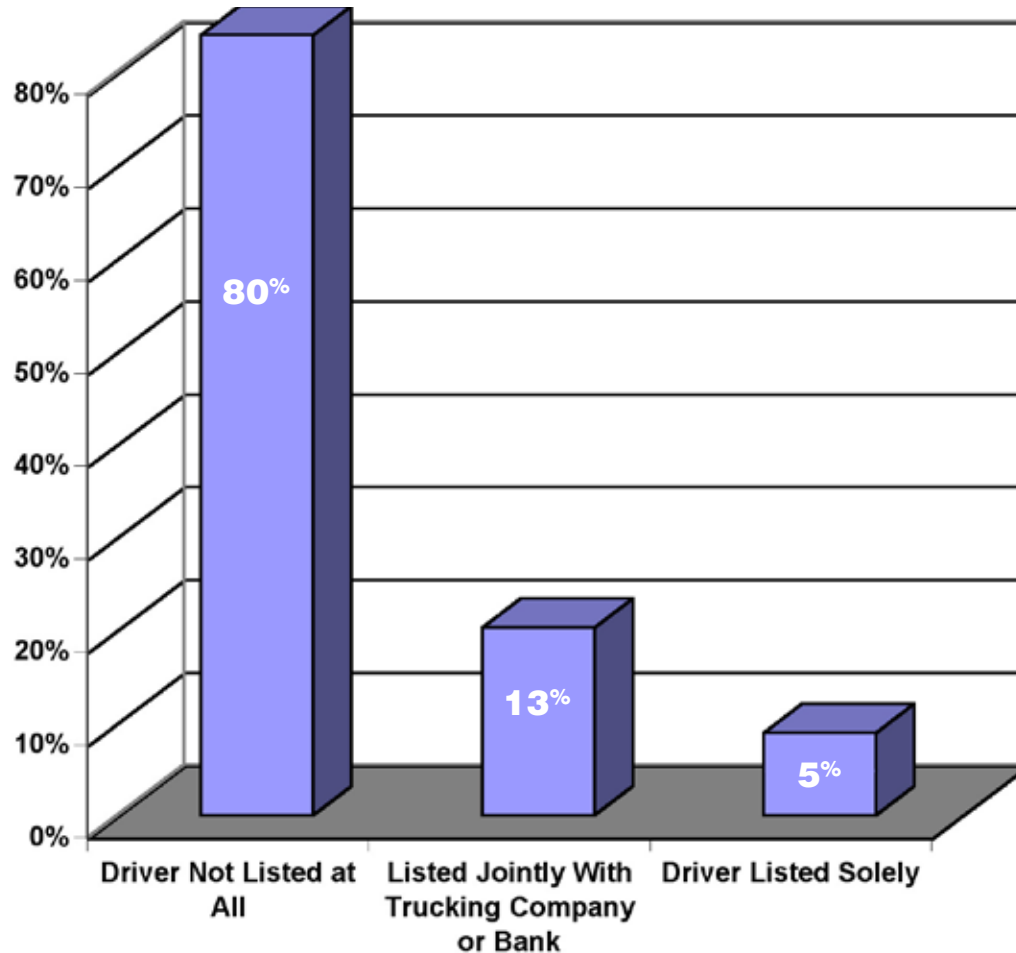
# The number of independent drivers in LA and Long Beach with truck ownership rights has plummeted



**14%** or fewer independent contractors in LA/Long Beach can claim any truck ownership rights at all.

**At least an 83% decline in what was once the common relationship between driver and truck.**

# The majority of port drivers in Southern California report that their names no longer appear on DMV vehicle registration documents



## Is your name listed on the truck's registration?

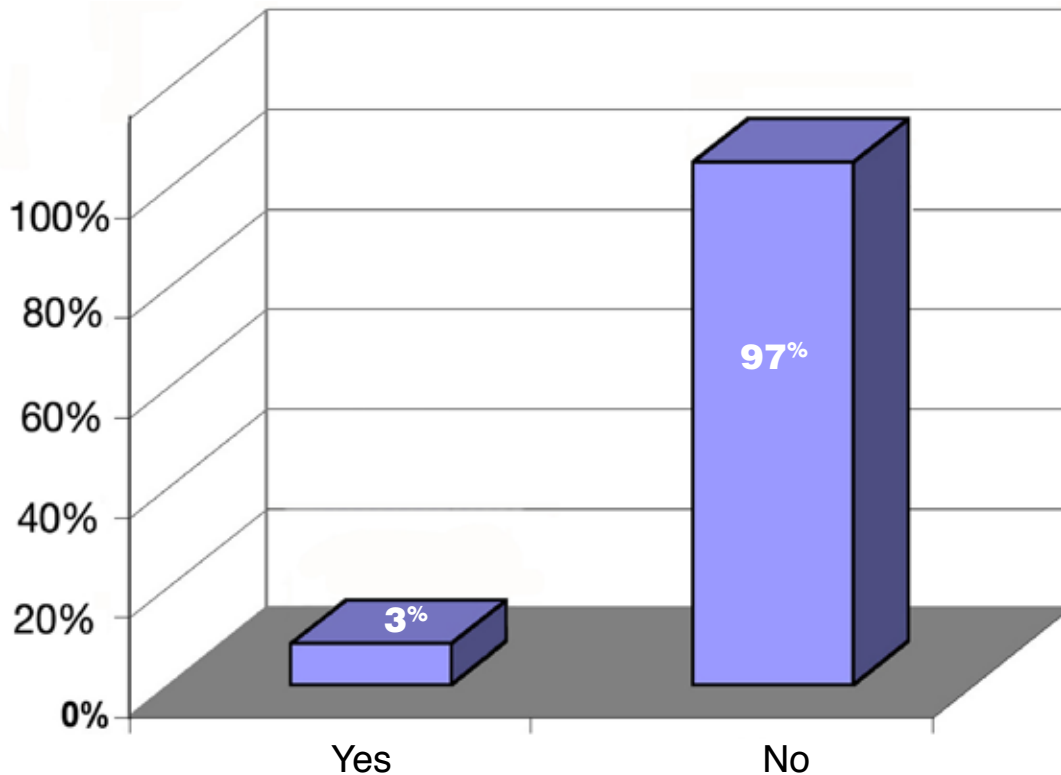
**5%** of all LA/Long Beach drivers are the sole registrant on the truck they operate.

**76%** of independent drivers are not listed on the truck registration.

**100%** of employee drivers are not listed on the truck registration.

# Almost all Southern California port drivers who make payments on a truck are restricted to hauling for a single company

**Are you allowed to haul loads for another company with the truck you're currently driving?**



**97%** of drivers with a truck payment are prohibited from hauling for multiple clients.

## Clean truck leases differ from traditional purchase:

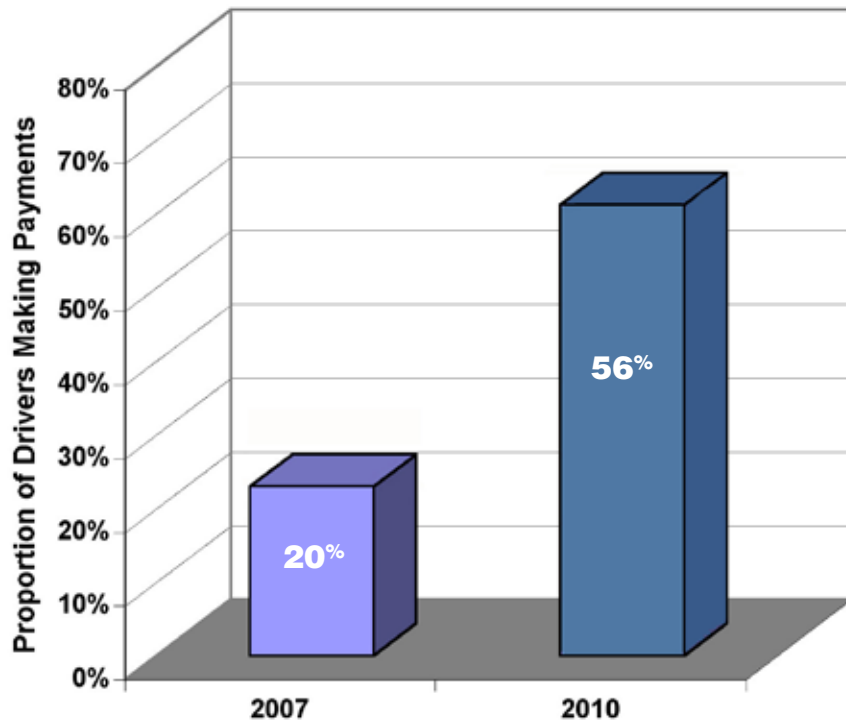
Leases contain exclusivity clauses and minimum haul thresholds. Violations incur financial penalties and/or default and repossession.

"The Equipment shall be for CARRIER's exclusive possession, control, and use for the duration of this Agreement. As such, CONTRACTOR shall not operate the Equipment for any other motor carrier or entity during the term of this Agreement without prior written consent from CARRIER."

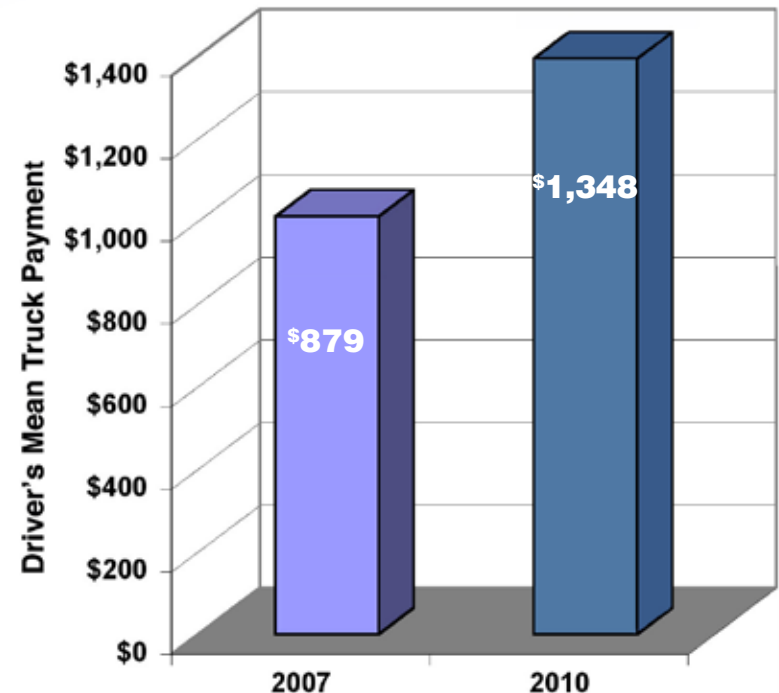
*-Total Transportation Services, Inc., Independent Contractor Agreement*

# LA and Long Beach drivers have been hit with both new and steep vehicle payments

**Do you make a regular payment on a truck loan?**



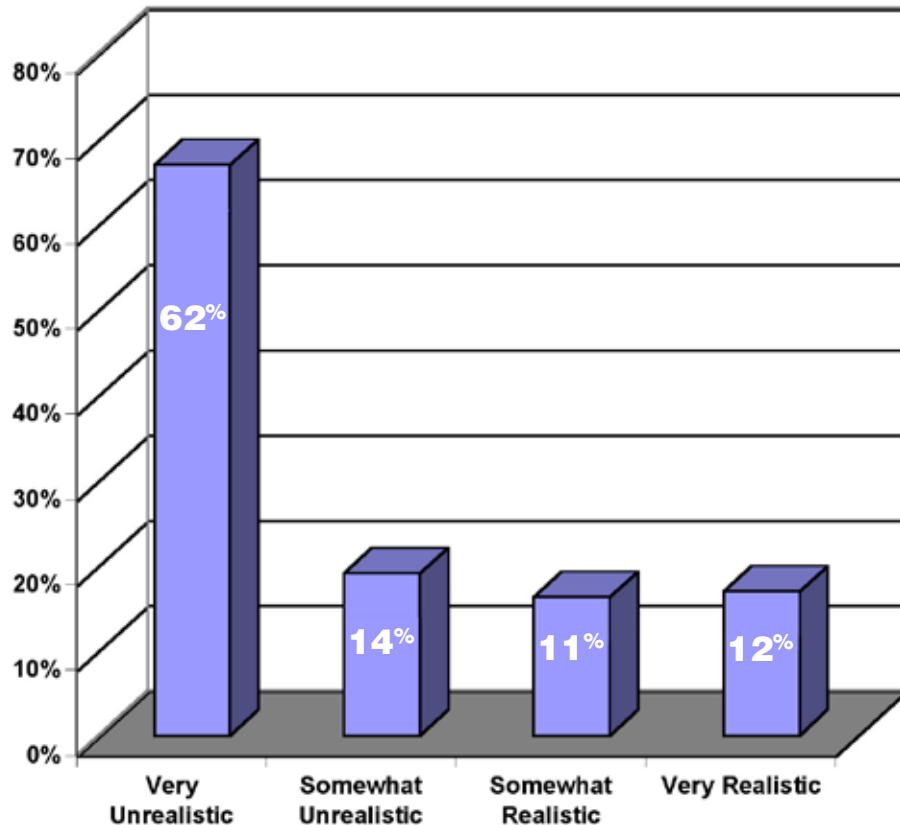
**How much is your truck payment?**



**The key consequence of industry litigation against the LA program is that workers behind the wheel, rather than companies, are being forced to make the clean truck payments.**

# Southern California drivers carrying clean truck costs have dim hopes their investments will lead to eventual vehicle ownership

How realistic do you believe it is that you will one day own the truck you are currently leasing or making payments on?



**21%** of drivers who have leased or owned a truck in the past 24 months no longer do.

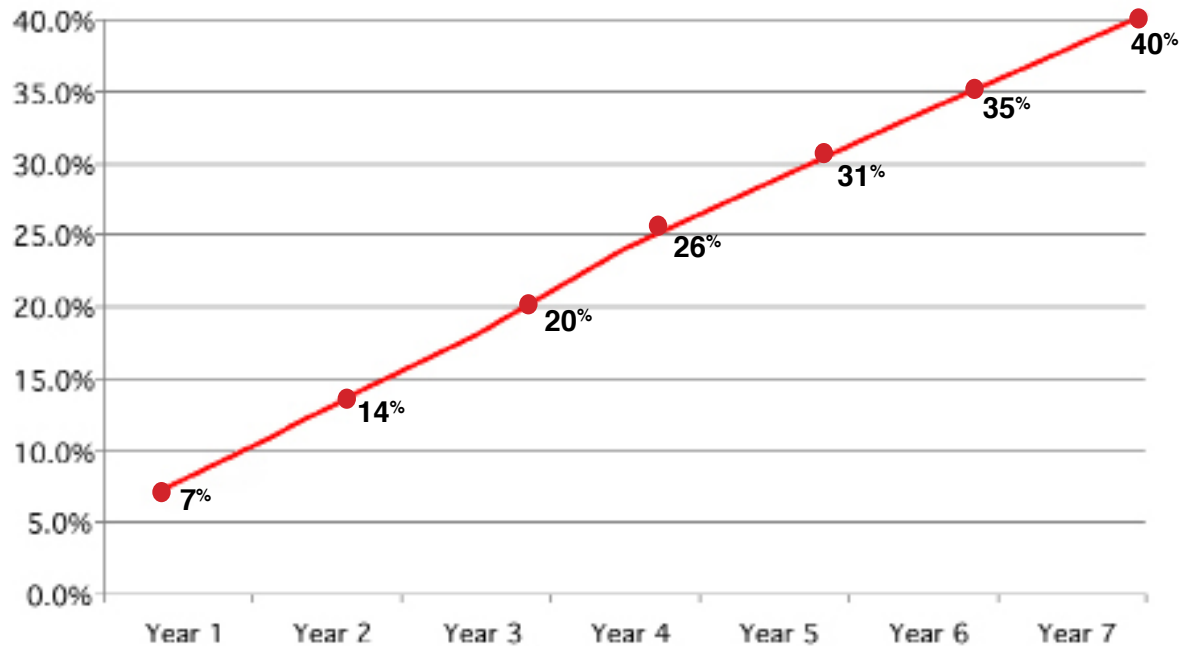
**Balloon Payments:** Upon fulfilling their leases, many drivers who have a purchase option must pay between \$8,000-\$20,000 to own the truck. Their low incomes suggest the vast majority will forfeit that right after years of investment because they will be unable to meet these high payments.

Option to Purchase and Purchase Price. Provided that the Lessee satisfies the conditions set forth in Paragraph 30(b) hereof, the Lessor hereby grants the Lessee the option to purchase the Vehicle on the "Purchase Date(s)" and for the corresponding "Purchase Price", described on Appendix "D" attached hereto: 07/03/2013 \$20,000.00

— Knight Transportation Tractor Lease Agreement

# More than 40 percent of the drivers at the nation's largest port complex are expected to terminate their current clean truck lease

A conservative projection based on the current lease default rate



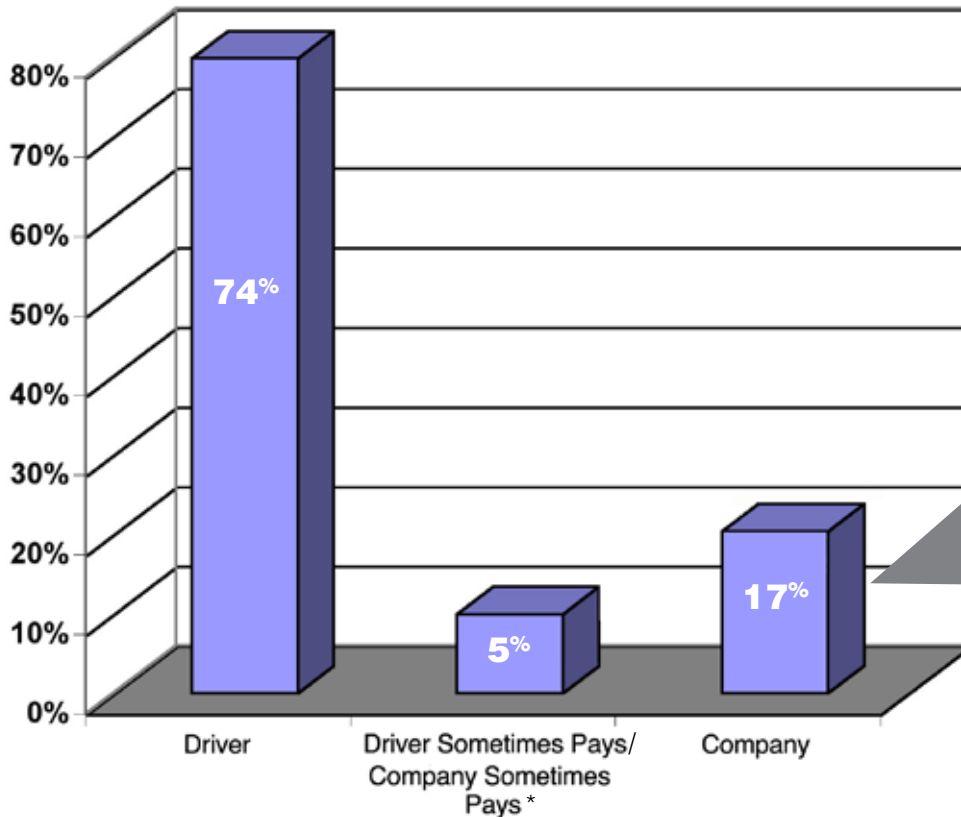
**41%** of drivers will terminate their leases over the course of the average 7-year term.

**14%** of drivers with clean truck leases have already terminated at least one such lease.

For every 4 drivers, there have been approximately 5 truck leases since the Clean Truck programs began.

# Industry litigation has created situations in which independent contractors haul cargo in company-owned trucks

## Who bears financial responsibility for trucks driven by independent contractors?



**89%** of LA/Long Beach drivers with truck payments make them directly to the company they work for.

**71%** of all drivers that make truck payments in LA/Long Beach are not listed on the DMV registration.

A new type of independent contractor has emerged who neither owns nor leases a truck.

# Companies also require LA and Long Beach port drivers to pay for repairs and the costly clean truck maintenance necessary for emissions compliance

| MAINTENANCE  | AVERAGE COST |                      |                |                    |                 |
|--|--------------|----------------------|----------------|--------------------|-----------------|
|  | PER SERVICE* | FREQUENCY PER YEAR** | YEAR ONE       | AVERAGE ANNUALIZED | OVER 7 YEARS    |
| <b>ROUTINE MAINTENANCE</b>   |              |                      |                |                    |                 |
| Oil, lube, filters and fluids  | \$361        | 2.9                  | \$722          | \$1,047            | \$7,328         |
| Water filter   | \$79         | 2.0                  | \$158          | \$158              | \$1,106         |
| Air Filter   | \$73         | 1.5                  | \$73           | \$110              | \$767           |
| Transmission Oil Service   | \$172        | 0.8                  | \$0            | \$138              | \$963           |
| Differential oil service   | \$112        | 0.7                  | \$0            | \$78               | \$549           |
| Truck valve adjustment   | \$333        | 1.5                  | \$333          | \$500              | \$3,497         |
| Truck wash   | \$33         | 12                   | \$396          | \$396              | \$2,772         |
| BIT inspection   | \$43         | 4.0                  | \$172          | \$172              | \$1,204         |
| <b>Subtotal Routine Maintenance:</b>   |              | <b>\$1,854</b>       | <b>\$2,598</b> | <b>\$18,185</b>    |                 |
| <b>WEAR AND TEAR</b>   |              |                      |                |                    |                 |
| Brake Shoe Kits  | \$1,901      | 0.4                  | \$0            | \$760              | \$5,323         |
| Brake Drums (6)  | \$1,204      | 0.4                  | \$0            | \$482              | \$3,371         |
| Lights   | \$103        | 1.0                  | \$103          | \$103              | \$721           |
| Belts  | \$209        | 0.16                 | \$0            | \$33               | \$234           |
| Batteries (4)  | \$477        | 0.3                  | \$0            | \$143              | \$1,002         |
| Airline hoses  | \$117        | 0.4                  | \$0            | \$47               | \$328           |
| Electrical cords   | \$170        | 0.4                  | \$0            | \$68               | \$476           |
| Clutch   | \$2,133      | 0.4                  | \$0            | \$853              | \$5,972         |
| Oil leaks  | \$743        | 0.6                  | \$0            | \$446              | \$3,121         |
| Seals  | \$965        | 0.3                  | \$0            | \$290              | \$2,027         |
| Tire rotation  | \$183        | 1.7                  | \$183          | \$311              | \$2,178         |
| Electrical fuses   | \$30         | 1.0                  | \$30           | \$30               | \$210           |
| Computer sensors   | \$1,000      | 0.14                 | \$0            | \$140              | \$980           |
| Shocks   | \$985        | 0.4                  | \$0            | \$394              | \$2,758         |
| Fifth wheel service  | \$186        | 0.45                 | \$0            | \$84               | \$586           |
| Air bags (6)   | \$1,014      | 0.14                 | \$0            | \$142              | \$994           |
| Fire extinguishers   | \$56         | 1.0                  | \$56           | \$56               | \$392           |
| Replace tires  | \$9,000      | 0.14                 | \$0            | \$1,260            | \$8,820         |
| Coolant filter   | \$18         | 0.67                 | \$0            | \$12               | \$84            |
| Clean Diesel Particulate Filter  | \$300        | 0.2                  | \$0            | \$60               | \$420           |
| DPFS Spark Plug  | \$48         | 0.36                 | \$0            | \$17               | \$121           |
| DPFS Flush   | \$1,000      | 0.2                  | \$0            | \$200              | \$1,400         |
| <b>Subtotal Wear &amp; Tear:</b>   |              |                      | <b>\$372</b>   | <b>\$5,931</b>     | <b>\$41,517</b> |
| <b>Average Cost in Year 1</b>  |              |                      | <b>\$2,226</b> |                    |                 |
| <b>TOTAL COST TO MAINTAIN A CLEAN TRUCK</b>  |              |                      |                |                    |                 |
| Over 7 Years   |              |                      |                | <b>\$59,702</b>    |                 |
| Average per Year   |              |                      |                | <b>\$8,529</b>     |                 |
| Average per Month  |              |                      |                | <b>\$711</b>       |                 |
| *Cost includes parts + labor.  |              |                      |                |                    |                 |
| **Frequency of service is measured in times-per-year and is based on an average of 54,000 miles driven per year. <sup>13</sup> |              |                      |                |                    |                 |

## LEASE LANGUAGE

Excerpts from company leases are explicit that drivers pay for expensive clean truck maintenance:

*Lessee will, at Lessee's sole expense, keep and maintain the [truck] clean and in good working order and repair during the Lease Term. - Konoike Pacific California, Inc., Operating Lease Agreement.*

*Lessee is obligated to maintain the Vehicle at its own expense according to the Vehicle manufacturer's recommended schedule using authorized maintenance service providers. - Southern Counties Express In., Commercial LNG Vehicle Lease Agreement.*

*Contractor, at its sole cost and expense, shall maintain the Equipment in safe condition and in complete compliance with all laws and regulations of the states in which contractor operates and the DOT. - California Multimodal, LLC, Master Lease Agreement.*

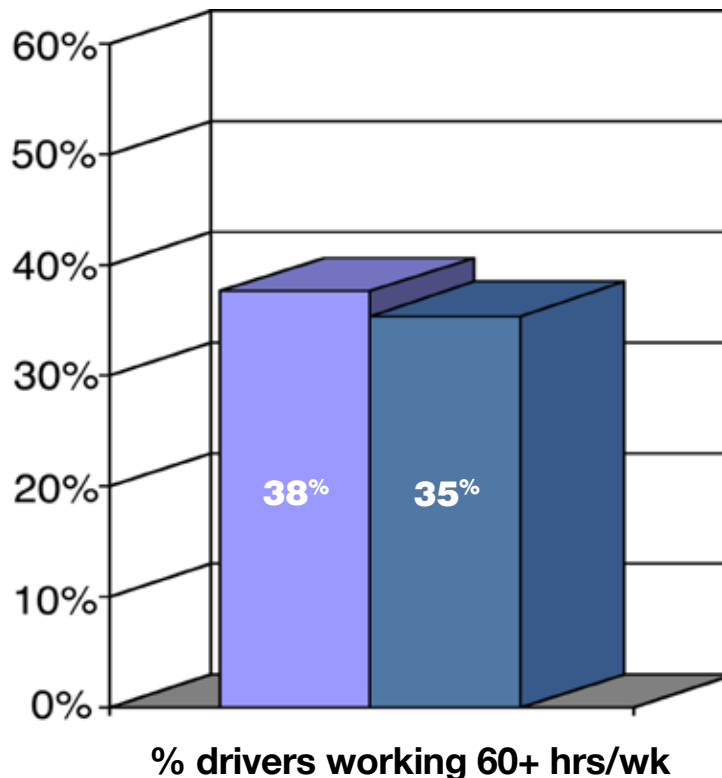
*All costs of operating, repairing and maintaining the Equipment shall be the sole responsibility of the Contractor. - Swift Transportation Corporation, Inc. Equipment Lease Agreement.*

Charts and data from Sierra Club et al. "From Clean to Clunker: The Economics of Emissions Control"

# Compromised clean truck programs have led to widespread violations of federal safety rules

To prevent injury and death from exhaustion-caused crashes, federal rules prohibit truck drivers from working more than 60 hours in any seven-day period and more than 14 hours in any 24-hour period.

**Over one-third of California port drivers now average more than 60 hours of work per week.**

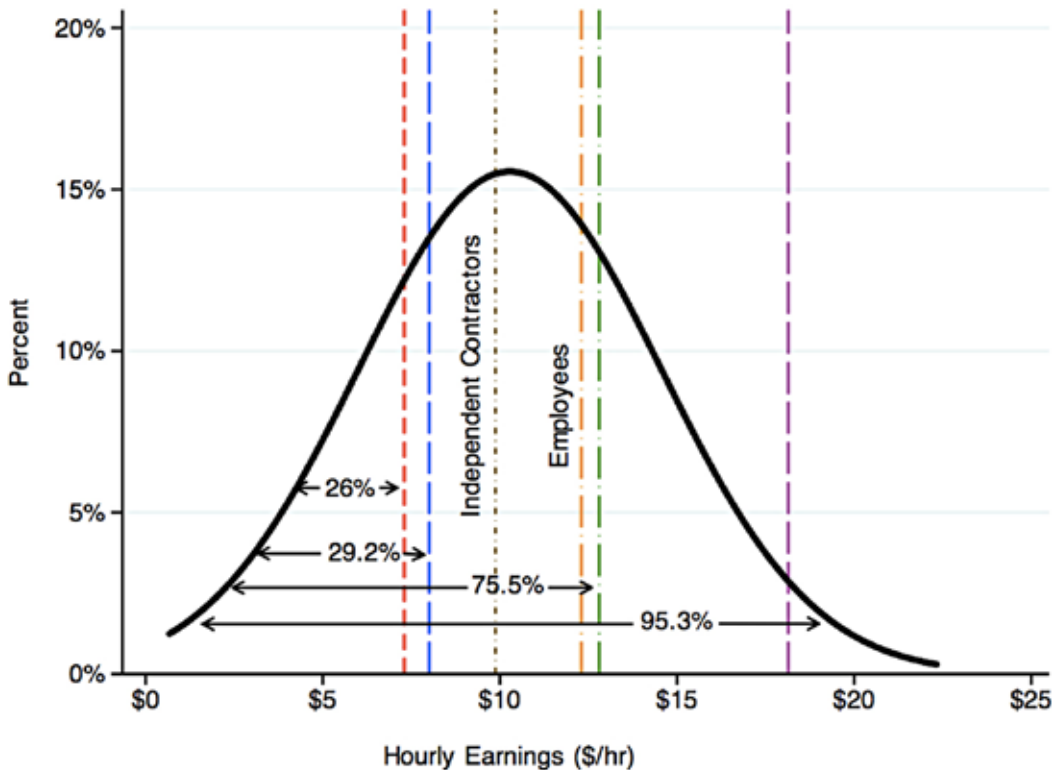


**16%** of LA/LB port drivers now average more than 70 hours of work per week

**11%** of Oakland port drivers now average more than 70 hours of work per week

# Oakland drivers are earning far less and in many cases below the living or minimum wage

## Distribution of Hourly Earnings



Federal Minimum Wage: \$7.25/hr

CA Minimum Wage: \$8/hr

Oakland Living Wage: \$12.82/hr

Median Wages for Truck Drivers

Nationwide: \$18.14/hr

**95%** of Oakland drivers make less than the median hourly wages of truck drivers nationally.

**76%** of Oakland drivers make less than the city's living wage requirement.

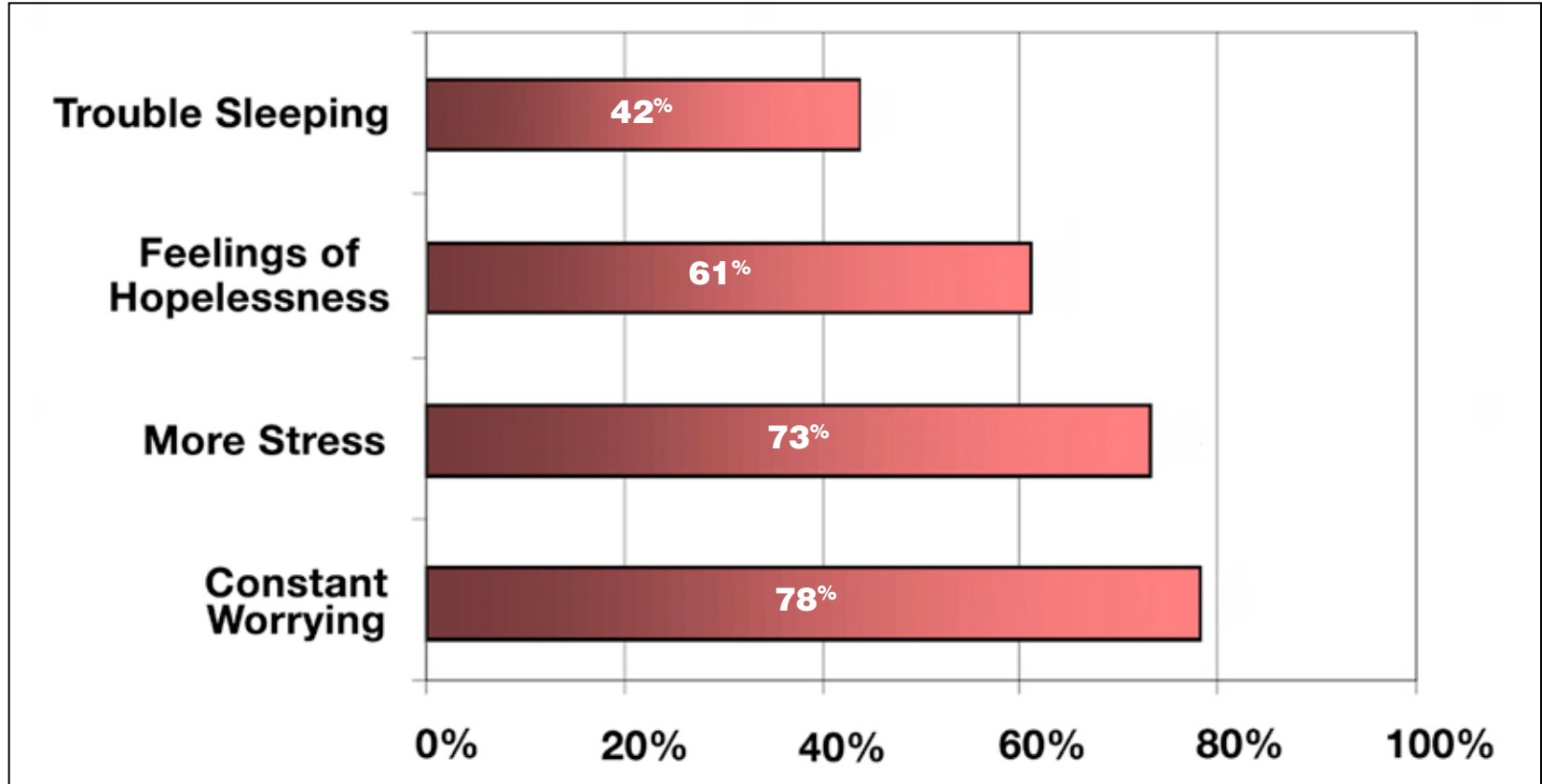
**29%** of Oakland drivers make less than the California State minimum wage.

**26%** of Oakland drivers make less than the federal minimum wage.

# Longer hours and lower wages are taking a huge toll on Oakland drivers

Since you began operating a newer/retrofitted truck, have you experienced:

## 4 Most Frequent Responses

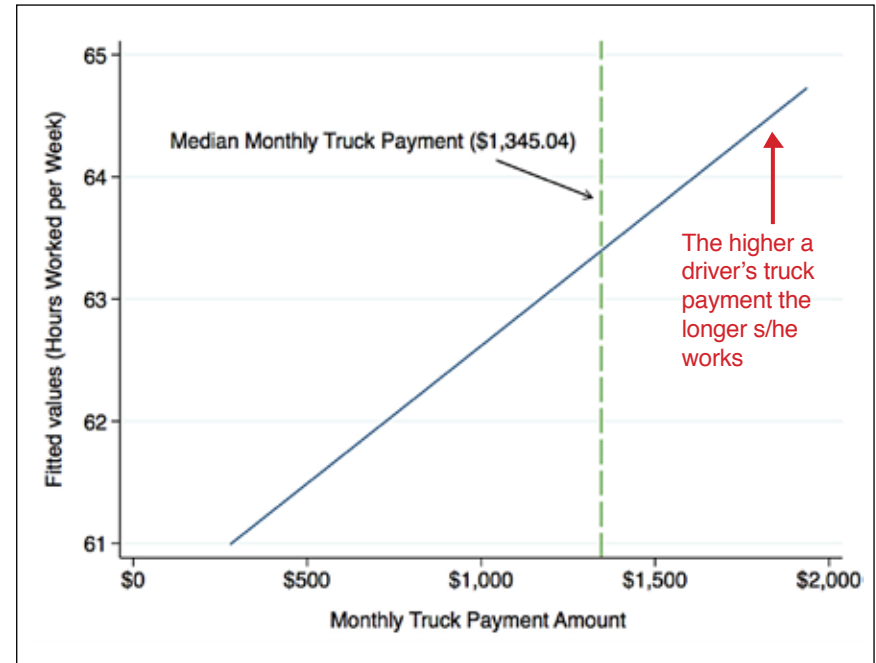


# Port truck drivers are clocking longer hours in order to meet their truck payments, but the more they work the less they make per hour

## Hours Worked per Week Regressed on Earnings (Oakland)



## Hours Worked per Week Regressed on Truck Payment (LA/Long Beach)



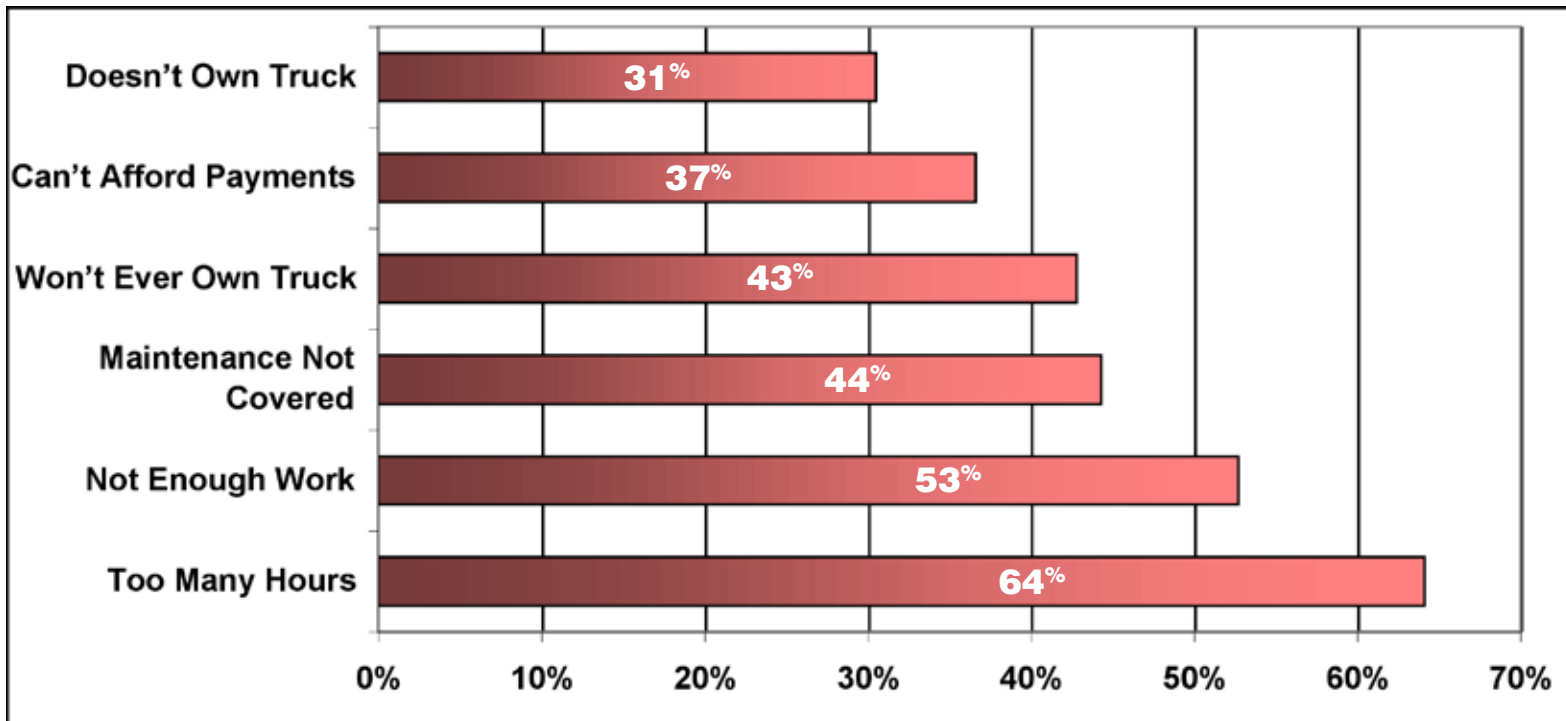
# LA and Long Beach drivers are dissatisfied with current truck lease terms and cite economic pressures and lack of ownership as top concerns

## What are your complaints about your truck lease?

**70%** of drivers who currently lease a truck are unhappy with the arrangement.

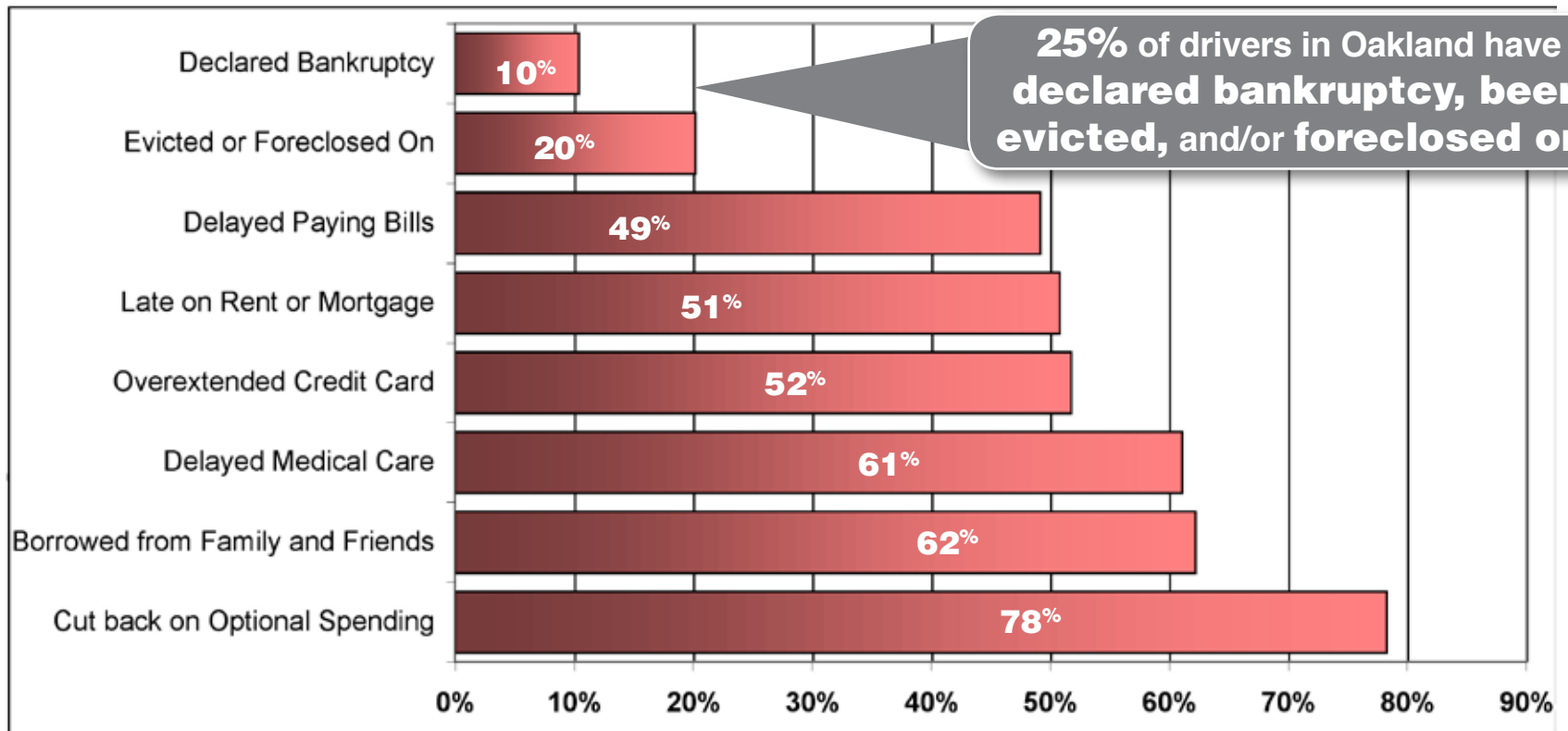
**42%** of drivers who currently lease a truck report being “strongly unsatisfied.”

### 6 Most Frequent Responses



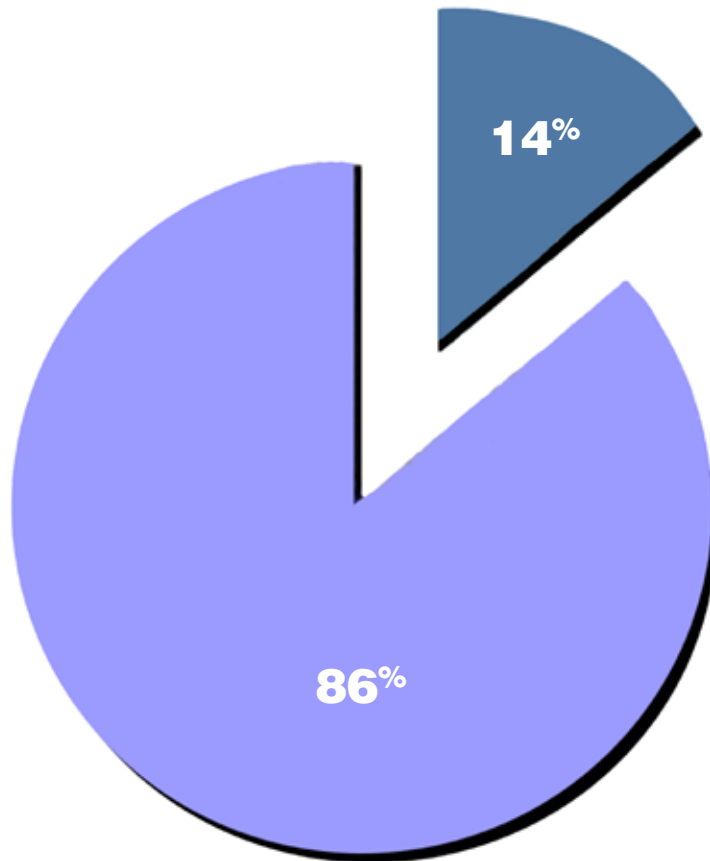
# Oakland drivers with new or retrofitted trucks are falling financially behind and resorting to desperate measures to stay afloat.

## Since you began operating a new or retrofitted truck have you:

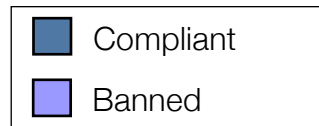


# Oakland port drivers face large-scale unemployment unless they obtain an environmentally compliant truck in the next three years.

## Meets Clean Truck Standard

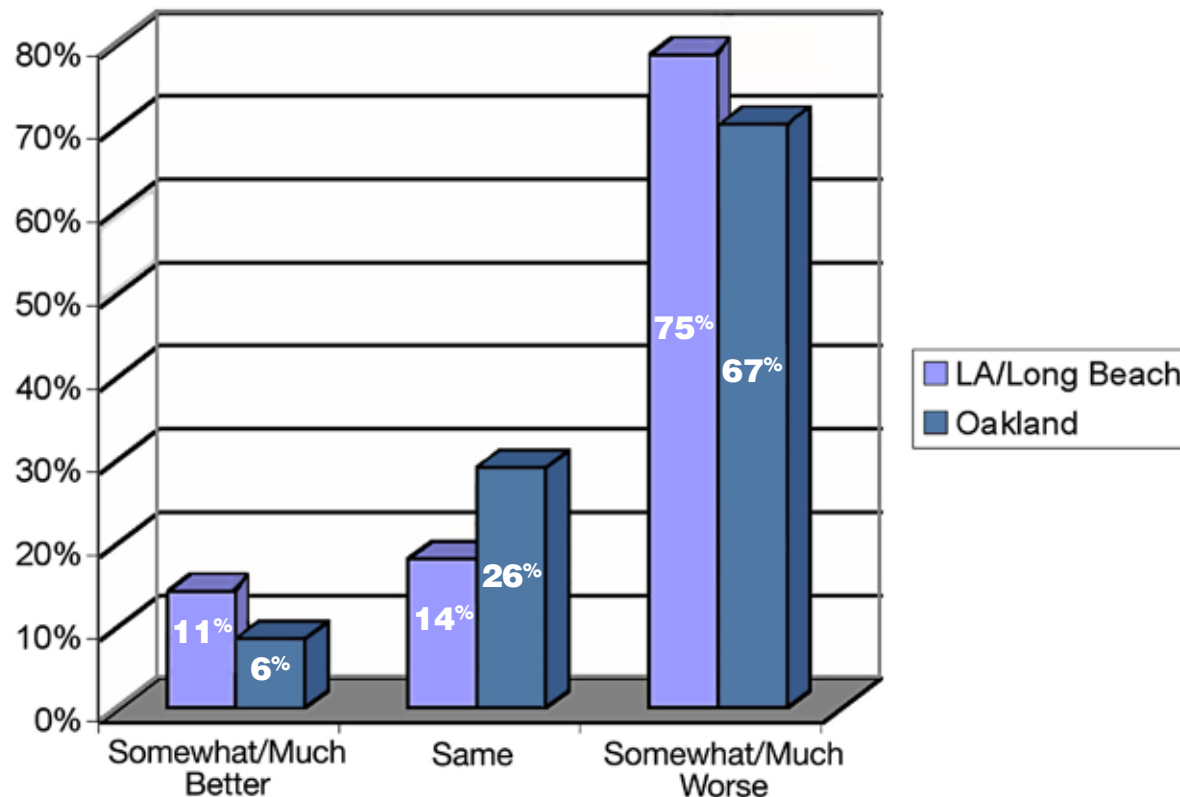


**86%** of independent Oakland port drivers currently operate trucks that do not meet the State's impending clean air standards. Unless they obtain a new vehicle, these drivers will be prohibited from working at any California port after Dec. 31, 2013.



# Evidence that California port workers are economically worse off underscores why the industry must assume responsibility for truck replacement at U.S. ports

If you were to compare the time period that you began driving newer model or retrofitted trucks versus earlier times, would you say your current economic situation is:



A man with a mustache, wearing a white safety vest over a striped shirt, stands in front of a white Freightliner truck. The truck's grille and headlights are visible, with the 'FREIGHTLINER' logo on the grille. The background is slightly blurred, showing the interior of the truck's cab.

*“ I make money for the truck – only  
I can’t take money for myself. ”*

– Oakland survey respondent

*“ We are modern-day slaves. ”*

– LA/Long Beach survey respondent

*“ I do not think I can overcome  
another week working in  
these circumstances. ”*

– LA/Long Beach survey respondent

*“ The way we work now is like a time bomb,  
we are almost ready to blow out. ”*

– Oakland survey respondent