FedEx Buy of American Freightways: A Good Match

At least that is the opinion of most industry observers and other motor carriers. FedEx will pay $1.2 billion for American Freightways. The acquisition will complete FedEx’s less-than-truckload (LTL) network. Viking Freight, a FedEx company, serves the western U.S. and American covers the rest.

Both are non-union motor carriers as are all other FedEx holdings and FedEx itself. FedEx states it will not merge the two carriers, but will operate them as independent companies. It will continue its policy of having its holdings operate independently, but being able to market a total product.

A primary advantage of FedEx operating its companies independently is that the parent company and FedEx retain their operating status as an air carrier, while the trucking parts of their operations are designated as motor carriers. The distinction is important because of the impact on labor relations. Trucking companies can be organized by a union terminal by terminal. Airlines and railroads must be organized as one complete unit.

FedEx’s prime competitor, United Parcel Service (UPS), is a motor common carrier. That is how it started business, with the air part of its service developing later as a part of the motor carrier operation. FedEx started as an air carrier, and is protecting that designation wherever possible, primarily by not merging its motor carrier operations into its air operations.

FedEx maintains once Viking’s and American Freightway’s information systems are integrated, any shipments tendered to either carrier will move anywhere in the country in four days or less. Other LTL carriers take 5-7 days to ship cross country. This acquisition, in combination with Viking, produces the largest regional LTL carrier network in the country. Both carriers also serve Mexico and Canada.

Both carriers focus on smaller LTL loads (1000 lbs.), over short to medium distances (500 miles). Both offer time-definite LTL service. This type of service is less expensive than air alternatives. It is an area where FedEx needed to be to remain competitive. Finally, both carriers are technologically sophisticated, providing shippers the one thing they seem to want most, information about their shipments while they are in transit.

Some in the industry are wondering what this latest move by FedEx will mean to UPS. UPS does not have an asset-based LTL service. Instead, when its customers want or need LTL services, it arranges transportation of that freight on LTL motor carriers via its logistics services division.

Some industry observers think U.S. Freightways or Arkansas Best may be acquisition candidates for UPS, allowing it to become an asset-based LTL carrier. However, UPS could continue doing exactly what it does now. One thing is certain, UPS won’t be pushed into anything.
**OSHA Issues New Ergonomics Regulations**

The Occupational Safety & Health Administration (OSHA) has issued its long disputed new ergonomics standard. The musculoskeletal disorder (MSD) standard applies to all U.S. industries except construction, agriculture, maritime and railroads. These industries are excepted because they are covered under other OSHA or other government agency regulations.

The regulations sweep with an extremely broad broom. No specific occupations are identified or specified. Rather, they apply to all covered workplaces and to all employees. There is no exemption based on business size either. By OSHA’s own estimate, some 4.2 million very small businesses (less than 20 employees) must comply with the regulations.

Logistics and shipping operations are no exception. Truck cabs, docks, warehouses, pick and pack operations, offices — every work place within the logistics operational scope must comply. No occupation is exempt either. Office clerks, warehouse employees, truck drivers, dock hands, computer operators, foremen and supervisors and managers are all covered. A basic understanding of the regulations is a must.

MSDs are most typically associated with stress or strain placed on joints (elbows, wrists, knees, etc.), neck and back. The injuries usually involve loss of grip strength and/or muscle function, decreased range of motion, pain, numbness, tingling, burning, stiffness, etc. Carpal tunnel syndrome is one of the most commonly encountered MSDs. Typically the injuries are caused by repetitive actions, or by duties that require force, lifting (anything over 10 pounds), or an awkward position.

By October 2001, all covered businesses must notify all employees of common MSDs, their warning signs and symptoms. Employees must be instructed on the importance of reporting any suspected injury promptly. New employees must be informed with 14 days of hiring. This must be done whether or not the company or its employee has had any reported MSDs.

If an employee reports an MSD injury (or a suspected injury) the employer must perform a number of functions. Within seven days the employer must provide a medical analysis at no cost to the employee. The employer is bound by any recommended treatment (time off from work, reduced or light duties, etc.). The regulations require that the employee receive at least 90% of regular pay for a maximum of 90 days if not working or if working a different job.

Next the employer must establish a reporting system within 30 days. Employees must be allowed to participate in developing and implementing the program.

Within 45 days, all employees performing the job in which the MSD occurred must be trained about OSHA ergonomic regulations and the risk factors associated with their job. They must be retrained every three years.

Within 60 days the employer must conduct an extensive job hazard study. The purpose is to determine if MSD hazards exist and what can be done to prevent injuries. The employer must do whatever is necessary to conduct the study to include hiring an ergonomics professional to perform the analysis. The employer must use every “reasonable” method to identify the risk factors. Employers, including those with as few as 10 employees, must keep written or electronic records of all reported MSD incidents including its responses to the reports.

This is a thumbnail sketch of these new workplace injury standards that are set to become a final part of OSHA’s workplace safety regulations.

Virtually all industries have joined or are backing a coalition that has sued to stop the regulations. The speed with which the regulations have been put in place is viewed as a payoff to labor interests and unions by the Clinton administration.
Most business groups believe OSHA has completely underestimated the cost of the new standards. OSHA estimates it will cost all employers a total of $4.232 billion to comply. The Employment Policy Foundation, a think tank, puts the cost at $35 to $99 billion. The Small Business Administration (SBA) estimates the costs will be 2.5 to 15 times higher than what OSHA claims.

OSHA dismisses individual employer claims as to the cost impact on their company, taking the position that employers always tend to exaggerate costs to comply with regulations. Undoubtedly there is some truth to that notion, but federal agencies have been proven time and again to live in a financial vacuum when it comes to estimating the overall cost impact of proposed regulations on the private sector. Sometimes it is apparent they really don’t have a clue.

The National Association of Manufacturers (NAM) is leading the opposition charge. The lawsuit challenging the regulations will allege that: (1) OSHA’s required economic analysis is in error; (2) the regulations are vague and thus in violation of requirements governing development of regulations; (3) OSHA violated government procedures for issuing major regulations; and (4) the regulations are not supported by scientific studies.

The latter contention is also interesting. Ergonomics is a developing science and the medical impact of ergonomic-based injuries is still being learned — i.e., proper treatments, medications, normal recovery processes, etc. This ties in with the other fact about the regulations — they are not specific. They are so general in defining what constitutes an MSD injury that they are little more than guidelines. At least a part of this lack of specificity can be attributed to the lack of scientific evidence to define the injuries.

Then there is the burning question — is the MSD injury really job-related? Tendinitis in the elbow is a good example. You can get the problem from any number of personal activities — anything from playing tennis to hammering too many nails in your weekend Harry Homeowner project. You can also get it from using a computer keyboard incorrectly — either at home or in the office. While some MSD injury causes may be obvious, some are not. How are the injuries going to be definitively attributed? How can the employer be assured that the employee isn’t unintentionally doing things on his/her personal time that are aggravating an injury?

The questions are endless as are the very lengthy regulations. They were published in the November 14, 2000, Federal Register. They contain some examples and other information that OSHA hopes will guide employers and employees in applying them.

To repeat, these regulations reach into every workplace (except as previously noted) and every occupation. They apply to large and small businesses alike. All aspects of logistics operations, warehousing, trucking, dockwork, order fulfillment, office work, delivery truck drivers as well as over-the-road drivers, etc., are affected.

Final effectiveness will depend on the results of the legal challenges being posed by businesses. In may be years before anything final happens and then again it could be quicker. In the meantime, the foregoing gives our readers an idea of just what these regulations are about, and how they will impact all aspects of their operations.

**Parcel Shipping “Best Practices” Survey Results Released**

*Parcel Shipping & Distribution* magazine has released the results of its 2000 Best Practice Survey. The magazine claims it is the only organization that “evaluates the parcel shipping process from warehouse to dock to customer.” Here are a few of the key findings of the survey.
82% of managers believe shipping departments create value

73% of parcels shipped by respondents are sent to business addresses, 15% to residential locations, with the rest destined for Canada, Mexico and other countries

32% of all parcels are shipped via express service (1-2 days)

Wholesalers (30%), manufacturers (31%), and all other businesses (45%) are the biggest users of express services

Shipping volume is distributed as follows: 20% to Zone 1; 33% to Zones 2 & 3; 27% to Zones 4 & 5; and 20% to Zones 7 or higher

Rate negotiation remains the key element in reducing parcel shipping costs. Average negotiated discounts were 28% for express rates and 25% for all other rates. The size of the negotiated discount depends very much on the size of the shipper. The survey found that companies having less than $10 million in sales averaged discounts of 22% on express rates and 18% on all other rates. Those with sales of $100 million or more averaged 36% discounts for express services and 31% on all other rates.

Survey participants included a good representation of parcel shippers: 42% manufacturers; 14% wholesalers; 10% retail companies with the balance (34%) composed of all other types of parcel shippers.

More information on the survey results can be found in the November-December 2000 issue of Parcel Shipping & Distribution magazine (www.psdmag.com).

**FMCSA Updates Hazmat Route Designations**

The Federal Motor Carrier Safety Administration (FMCSA) has updated its listing of restricted and designated hazardous materials (hazmat) highways. This list must be updated periodically in accordance with federal laws.

All states and Indian tribes furnish DOT with information about any route restrictions in their state or reservation. Highways may be totally restricted, that is no hazmats are allowed on the road, or may be restricted to selected types of hazmats. A series of codes is used to indicate the restrictions as follows.

- 0 - All hazmats banned
- 1 - Explosives
- 2 - Gas
- 3 - Flammables
- 4 - Flammable Solids/Combustibles
- 5 - Organics
- 6 - Poisons
- 7 - Radioactive Materials
- 8 - Corrosives
- 9 - Dangerous (Other)

Some routes may be designated as a “preferred route” for certain types of radioactive materials. Others may have restrictions on medical waste or other materials.

While these route restrictions are of most concern to motor carriers, those shipping and receiving hazmats, should be aware of them. Private fleet operators are also subject to the routing restrictions.

**DOT Issues Final CDL Report**

A U.S. Department of Transportation (DOT) special panel has issued its final report on the commercial driver license (CDL) scandal occurring in Illinois and Florida. The panel
was appointed when Illinois Governor George Ryan asked for help in conducting a review of that state’s CDL program in March of this year.

The scandal involves corruption in the Illinois CDL program. State employees were taking bribes to ensure applicants passed CDL tests. It is also alleged that employees were soliciting political contributions from CDL applicants in return for favorable consideration. The investigation involved DOT’s Inspector General, the FBI, IRS, US Postal Inspection Service and Illinois State Police.

As the investigation progressed it was discovered that third-party (contractor) test administrators were involved and one in Florida was connected to the corruption in Illinois. Truck drivers would obtain Florida CDLs illegally. Federal statutes allow a driver who has a CDL in one state to exchange it for a CDL from another state. The illegally licensed Florida drivers would travel to Illinois and exchange the illegal Florida CDL for a valid Illinois one.

It was also discovered that Illinois was issuing hardship licenses to CDL holders. These would be licenses issued to drivers with violations that ordinarily would cause a suspension or loss of license, but because of personal hardship (loss of income, etc.), they are allowed to drive anyway. One of those “hardship” drivers was driving the tractor-trailer that, in 1999, collided with an Amtrak train at a railroad crossing in Bourbonnais, IL, killing 11 people.

 Fallout from the scandal is varied. The suburban Chicago New Delhi Driving School that was the center of all the illegal activity has been closed down. Its owner has been sentenced to three years in prison. Other Illinois licensing sites are involved, but not to the extent of those in the Chicago area.

Approximately 33 people (including at least eight state license examiners) have been convicted of various offenses and several more remain under indictment. Penalties include prison time as well as fines. Federal officials report that approximately $170,000 of payoff money went into now Illinois governor George Ryan’s campaign fund. Ryan has not been charged with any wrongdoing.

The FMCSA developed a list of drivers who procured licenses through the Illinois related scams. Approximately 763 drivers in 26 states have been identified. Another 1,977 have been identified as having received licenses from a third-party provider, a driving school, in Tampa, FL. Approximately 470 drivers were ordered to retest. Illinois reports that 218 of 295 driver retesting failed. Another 175 didn’t show up so their licenses were revoked.

The federal panel has issued a report that basically calls on Illinois and Florida to review current policies, strengthen audit and oversight functions, and take other steps to assure there is no repeat. The investigation is continuing.

Bogus CDLs and bribery scams involving state employees are apparently going to be a part of the landscape now. It is now being reported that more than 500 drivers may have obtained bogus CDs from Georgia and used them to obtain valid ones in as many as 13 states. The Georgia scam involved an independent examiner providing fake test results, allowing drivers to get Georgia CDLs, which they then swapped for legal CDLs from other states.

Private fleet operators need to be particularly alert to these growing scams. They should institute policies to make the most thorough of checks when hiring drivers and, take steps to protect their companies in the event they inadvertently hire an unqualified driver. As should be apparent from the numbers on retests in Illinois, most of these drivers are truly unqualified and are a hazard on the road. Few of them could actually pass the test.
**Fuel Costs Erratic but Generally High**

Oil prices are jumping around, reflecting the approach of winter and concerns about low inventories. The cost of diesel fuel is reflecting the market, varying by a few cents each week, but continuing at very high levels. Shippers feel the impact directly as motor, air, maritime and rail carriers adjust fuel surcharges to reflect the situation. Here is a summary of the cost of diesel fuel for the year to date.

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A PADD is a Petroleum Administration for Defense District. PADD designations are as follows: PADD1 - East Coast; PADD1A - New England; PADD1B - Central Atlantic; PADD1C - Lower Atlantic; PADDII - Midwest; PADDIII - Gulf Coast; PADDIV - Rocky Mountain; PADDV - West Coast (California is part of PADDV, but prices there vary significantly from other west coast states so they are shown separately.)

*ABMA Transportation & Logistics Report December 2000*
As can be easily seen from looking at the table, fuel costs have been on a steady climb, sometimes dramatically, since January 1, 2000. California and the west coast consistently post the highest prices with the New England states running a close second.

There is no sign prices will ease significantly, at least for the next couple of months. The primary factor will be the petroleum price per barrel as purchased from Middle Eastern and other suppliers. The second factor will be the type of winter the U.S. experiences. That, in turn, will dictate where petroleum processing will move, i.e., to create home heating fuel or gasoline/diesel fuel for vehicles. Industry watchers still hold out hope for a decline in prices by early spring of 2001, predicated on a reduced need for home heating fuels, and lower, from-the-oilfield prices.

**U.S. Reported to Have Lost NAFTA Truck Dispute**

The arbitration panel hearing Mexico’s complaint against the U.S. about truck access is reported to have issued a preliminary ruling on the dispute, finding for Mexico. It is also reported that the U.S. will appeal the ruling when it is finalized.

The dispute centers around Mexican and U.S. trucks having complete, cross-border access to all parts of each other’s country. This was part of the North American Free Trade Agreement (NAFTA).

The U.S. subsequently refused to honor the border opening because of serious concerns about the safety of Mexican trucks and drivers. Mexico did not, at that time, have a safety regulation program governing motor carriers and drivers. U.S. officials concede the situation has improved, but maintain Mexico is still not a par with the U.S. on safety issues.

While the Mexican government is pursuing an open border policy, not all Mexican carriers agree. Mexican motor carrier associations do not support open borders yet. They are concerned about direct competition with U.S. carriers.

In the U.S., the Owner-Operator Independent Drivers Association (OOIDA) has reiterated its strong opposition to open borders. It points out that Mexico’s vehicle safety systems “are still in their infancy when compared to the U.S.” They also point out that the two countries’ information systems are still incompatible. It is assumed that U.S. labor unions’ opposition to open borders continues as well.

There is also Congressional opposition to open borders. Legislation was introduced by Rep. Sherrod Brown (R-OH) in September to stop implementation of open borders should the arbitration panel rule against the U.S. The arbitration panel’s final report is not expected to be issued until January 2001. There likely will not be much movement on any legislation until that occurs. A U.S. appeal of the decision could further delay any legislative action.

Final action would also be dictated by the next president. Gore is seen as likely to continue the ban as is. Bush is seen as likely to at least begin negotiations with Mexico’s President Vincente Fox to establish a new timetable for full cross-border trucking.

**Postal Rate Increase Effective January 7, 2001**

The U.S. Postal Service (USPS) has announced the rate increase authorized by the Postal Rate Commission (PRC) will take effect January 7, 2001. USPS is taking the
increase under protest while it seeks reconsideration of the PRC decision. USPS maintains the increase it has been allowed to take does not generate adequate revenues. International rates will also increase on January 7th.

Some background — USPS cannot just arbitrarily increase or decrease its rates. It is subject to regulation and all rate requests must be approved by the PRC. The PRC has the authority to adjust any rate proposal upward or downward.

In this instance, USPS sought a 6% overall rate increase, producing $2.8 billion in additional revenues. The PRC reduced that to a 4.6% overall increase, generating $2.5 billion in additional revenues. The Direct Marketing Association (DMA) reports the average increases for each class of mail are as follows:

- 1.8% - First Class
- 16% - Priority Mail
- 2.7% - Parcel Post
- 17.6% - Bound Printed Matter
- 9.9% - Periodicals
- 4.5%-8.8% - Regular Standard Mail

The first class, first ounce rate will increase to 34¢ but the additional ounce rate will decrease to 21¢. Postcard rates remain the same.

A new one-pound rate ($3.50) is created for Priority Mail. The two-pound flat rate is increased to $3.95 and all other priority mail rates are also increased. Express mail rates are increased also. They will start at $12.25 for up to one-half pound and a $16.00 (up to two pound) flat rate will apply.

Rates for special services will also increase. Special services include certified mail, certificates of mailing, return receipts, delivery confirmation, insurance and COD fees.

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**Teamsters Win Some and Lose Some**

The Teamsters lost a National Labor Relations Board (NLRB) decision when it was overturned by the 3rd Circuit Court of Appeals in Philadelphia. The complaint was against Overnite and was intended to force the motor carrier to bargain with the union on subcontracting issues in Miami. The court held that subcontracting was not subject to mandatory bargaining. Overnite only challenged this one finding in the NLRB ruling. It did not challenge any others.

A second complaint, in which the NLRB found for the Teamsters, has also been appealed, this time to the 4th Circuit Court of Appeals in Richmond, VA. In this complaint the NLRB ordered Overnite to bargain with the union at terminals where the union lost the vote for union representation.

These two decisions are the only ones Overnite has lost before the NLRB in its recent dispute with the Teamsters. One decision has now been partially overturned and a court ruling is pending on the other.

The Teamsters had better luck in negotiating a settlement of wage and benefit claims on behalf of employees of bankrupt motor carrier Preston Trucking Co. Preston will pay $38.3 million to settle the claims. While an agreement has been reached, payment of the full amount will be contingent on the amount of money raised by the estate to satisfy creditors' claims.

In another action, indictment charges have been filed against Fort Lauderdale, FL union local president Clarence Lark, his brother-in-law Larry Crenshaw, and six others on racketeering charges. They are alleged to have used local members to smuggle drugs, and of forcing laborers to pay kickbacks to get more work.
The U.S. Department of Transportation (DOT) Has Promised to Give Serious Consideration to Alternative Hours of Service (HOS) Proposals. One alternative proposal of most interest is that put forward by the American Trucking Associations (ATA). ATA wants a 24-hour work-rest cycle, allowing a driver to be on-duty as long as 14 hours. Apparently the DOT is willing to be flexible on hours, but remains adamant that it is time to phase out paper logs in favor of on-board, electronic recording devices. DOT reports it has received over 70,000 comments in the HOS proceeding.

It Is Just About Impossible to Estimate the Cost Impact of Any HOS Proposal. This is the opinion of Michael H. Belzer, associate Professor, Wayne State University College of Urban Labor and Metropolitan Affairs. He performed the cost-benefit analysis on the first HOS proposal which was forced into a one-year hold by Congress. Belzer feels there is so much noncompliance with current rules it is impossible to get a real handle on what they actually cost. That makes it impossible to estimate the additional cost of any revised regulations.

Solving Dock Delays Is Considered Key to Getting a Handle on HOS and Driver Fatigue. Drivers being kept waiting at docks for loading/unloading, longer than necessary, creates the environment for HOS violations. Additionally, the time is totally unproductive. Carriers realize the role dock delays are playing, and so do many shippers, as is evidenced by the recent code of conduct they jointly endorsed. The code was published in its entirety in the October issue of the ABMA Transportation & Logistics Report.

Motor Carrier Insurance Costs Are Rising Precipitously. Carriers are citing the increasing costs as part of their justification for rate increases. One carrier noted its insurance costs increased 30%. Most carriers’ policies renew at the end of the year.

3PL Users Are Generally Happy With the Services They Receive. According to the Third-Party Logistics (3PL) Survey, conducted by Exel, the University of Tennessee, and Cap Gemini Ernst & Young, 82% of 3PL users are satisfied. Other survey findings: outsourcing has reduced order cycle time from 8.8 to 6 days, and has reduced logistics asset holdings by 21.3%.

Warehouse Management Was the Most Frequently Used 3PL Service in 2000. A survey of large manufacturers conducted by Northeastern University and Andersen Consulting shows that 56% of respondents cited warehouse management as their most frequently used 3PL service. Forty-nine percent cite direct transportation service, 44% list...
freight forwarding, and 43% name freight bill payment and shipment consolidation as their most frequently used 3PL services.

**The U.S. Postal Service and Emery Worldwide Have Called It Quits.** Emery was operating USPS Priority Mail centers for the eastern states under a contract that had another 13 months to run. The two parties have been in almost constant disagreement, over volume and compensation, since the contract’s inception. CNF Inc, Emery’s parent company, maintains USPS owes it $90 million. The contract is due to terminate January 7, 2001, meaning Emery will continue handling the mail through the holiday season. It apparently will continue providing air service to the USPS for at least another nine months as well.

**Congressional Hearings on Rail Competition Issues Are Likely.** Shippers have been lobbying for more hearings on specific competitive issues such as captive shippers and uncompetitive rates. Individual companies, and trade associations representing virtually every rail shipper in the country, took the unprecedented step of sending a public letter to Congressional leaders requesting additional hearings.

**Truckers Have Named the Best and Worst Roads in the U.S.** Arkansas, Illinois, Louisiana, New York, Michigan, in that order, are the states with the worst roads in the country overall. Florida, Tennessee, Texas, Georgia, and Indiana have the best roads.

**Amtrak Must Reach Self-Sufficiency by 2003 and It Looks Like It Might Do It.** Amtrak fell approximately $310 million short of achieving self-sufficiency in 1999. It projects a $189 million shortfall in 2000 and $63 million in 2001, and it expects to be free of government subsidies in 2003. If it is not completely self-sufficient it expects to be so close that Congress will give it any extra time it needs. The passenger railroad’s mail and express freight service is what is bailing it out. Passenger revenues are increasing as well.

**Truckers Have Ended Their Strike At the Port of Montreal.** It is reported that up to 1,600 truckers demonstrated at the port and at motor carrier facilities throughout Montreal. They were striking for the right to unionize and against port delays and backups, long hours and poor working conditions. The Quebec government has fined the fledgling union $1 million for its month-long work action. The government has promised to help truckers and motor carriers to reach agreement on their differences.

**Motor Carrier Insurance Certifications Can Now Be Filed On-Line.** All motor carriers are required to maintain minimum levels of insurance dependent on the type of operating authority they have. Insurance companies usually make the filing with the DOT for the carriers via paper and other electronic means. Those filings will still be allowed, but new filings will have to be made via the web-based filing system which will eliminate the delays a carrier usually encounters in getting its certifications into the system. Insurance certifications are a key check element for shippers contracting for transportation services.

**Miscellaneous Statistics.** The DOT reports that hazardous materials incidents were 25% lower in June 2000 than in June 1999. Substantial reductions in air, highway and rail incidents were noted. Waterborne import and export trade surpassed 100 million metric tons in July 2000, a 6% increase over July 1999. The domestic airlines air revenue passenger load factor was 76% in August 2000, down from June and July, but the highest for August in at least five years.