

Are you covered?

A Letter from Thomas McGrath

First off, I'd like to say that I hope these notes find you and your family in good health and spirits. It was great to see so many of you at the MCAA Convention in Florida. I brought my oldest daughter with me to the convention for the first time and was glad I did because she got to see the relationships we have formed since my first convention in 1994.

As many of you may know, we have settled the San Diego matter quite favorably. As in the past, this type of challenge only makes us stronger.

On another note, Andy Rogantino (NICA's Chief Operating Officer) and I made a visit to Lloyds of London last month. The trip proved to be very insightful and worthwhile. We have used Lloyds on our Occupational Accident Insurance for more than five years and are very confident that we will continue together for years to come.

In our efforts to work more efficiently with you and your company, we are trying to embrace technology to eliminate mistakes. I appreciate the drastic increase in the number of electronic transactions between our companies.

As the NICA Mission Statement says, "NICA is committed to being the world's leading resource in defining Independent Contractor status. We will become the standard by which the right of Independent Contracting is recognized and respected by government industry and the public. By embracing change and utilizing state of the art technology, we will provide superior services. We will continue to work diligently to preserve, protect, improve, and advance the lifestyle and professionalism of Independent Contractors." We have grown and learned a tremendous amount since 1993 and have you to thank for it. I appreciate your continued support and thank you for your past support.

Two Recent IC Challenges

Under the leadership of NICA General Counsel Owen Kane (pictured), NICA maintains a concentrated legal department of fourteen attorneys, paralegals, compliance auditors and administrative staff who work



together to define and defend the independent contractor model. At any one time, the legal department handles approximately two thousand cases at both the administrative and judicial levels. Win or lose, every case is a learning experience.

A California-based company recently received a favorable decision from the California Unemployment Insurance Appeals Board ("CUIAB"). The CUIAB examined whether the company had properly classified certain delivery drivers as independent contractors. During the audit period, the company had treated the drivers as employees but then transitioned its drivers to the independent contractor model. In its audit report, the Employment Development Department ("EDD") reclassified the workers as employees, resulting in an assessment for unpaid unemployment taxes.

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NICA

Your Resource For Independent Contractor Issues

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How would you do in an audit?

Take the mini Compliance Audit Quiz:

1. Does your manager believe they can fire ICs?
2. Can an IC stop providing services without liability?
3. Do dispatchers "take back" deliveries?
4. Would your dispatcher say they control the drivers?
5. Does the company guarantee the ICs minimum compensation?



If you would like answers to these questions, or would like to schedule for one of NICA's representatives to perform an on-site audit, please call NICA Customer Service at 800-551-NICA (6422).

Please post the back of this newsletter for your staff to see.

FOR THE ICs

myNICA.com

Genesis Health Plans has changed its name to **Alta Health Plans** effective April 1, 2007.

You can rest assured that even though the name has changed, your plan and benefits remain the same. Administration of your policies continue to be serviced by Fiserv Health. Fiserv Health issued new ID cards to all participants at the end of the month of March.

Should those enrolled in this product have any questions, or if you did not receive your new cards, you may contact Fiserv Health at: 800-235-7160. Independent contractors who are interested in the product may call NICA to enroll, however please be aware that Limited Medical Coverage is not currently available to ICs who live in the following states and territories: Connecticut, Maine, Maryland, Minnesota, Montana, North Dakota, Oregon, Puerto Rico, South Dakota, Vermont, Washington.

NICA also offers Dental and Vision benefits through Ameritas and VSP. These coverages are available in all states.

NICA to Provide FREE Family Prescription Program

We are pleased to announce that all current NICA members will receive the new **NICA Prescription Best Price Card**, offered by WellDyne/RxWest free of charge. Enrollment is automatic, so watch for your new ID cards; they will be included with one of your future settlements.



The **NICA Prescription Best Price Card** offered by WellDyne/RxWest is a simple and easy way to help you and your family cover all of your prescription needs. NICA participants and their family can obtain savings of up to 30% on drug prices through a national network of over 50,000 pharmacies.

Participating Pharmacies include: Sam's Club, Wal-Mart, Walgreens, CVS, Costco, Albertson's, Safeway, numerous community pharmacies, and many more.



Also, don't forget that as a participating member of NICA, you also have access to Group Limited Medical, Dental and Vision Insurance programs offered by Alta Health Plans and Ameritas. Enrollment is easy and available to you and your family members. Please call our Customer Service Center for information on the programs that are available through NICA at 800-551-NICA (6422).

If you are currently enrolled in the Group Limited Medical Insurance Program offered by Alta Health Products, this card is not for use in addition to the benefits of the Alta Plan. The prescription plan that will give you the lowest prescription cost should be used at that time.

Richard Durham – Chief Financial Officer

Richard is the point contact in building NICA's partnership with the IRS. For the past two years, he has attended bi-monthly meetings with the IRS in Washington D.C. to discuss independent contractor issues. NICA

has driven approximately \$37 million to the IRS in state and federal tax escrow accounts for the company's affiliated independent contractors. Each year, Richard's tax preparation team prepares several hundred individual tax returns for affiliated NICA independent contractors. As the project manager for NICA's retirement planning services, he coordinates retirement savings plans for both NICA employees and affiliated independent contractors. Richard also oversees NICA's tax escrow and distribution services.

Richard has more than 20 years experience in both private and public accounting. He has been with NICA since 2003. In addition to his internal responsibilities as NICA's CFO which include oversight of internal accounting and controls and preparation of corporate taxes, Richard manages several of the services NICA provides directly to independent contractors.

Prior to joining NICA, Richard has held management positions with National Development as well as public accounting firms. He has a BS in accounting from Bentley College and an MBA in Finance from Suffolk University.

Tracking Fuel Costs

With the high prices being paid for fuel, it is good to know that the Federal Standard Mileage Rate for 2007 has gone up to 48.5 cents per mile.



We would also like to remind the independent contractors that NICA has a state tax escrow program which allows them to pay their State Estimated Tax Payments.

Even though the filing deadline has passed, we are still processing 2006 tax returns and the Tax Organizer can be downloaded from the Website. The IC can fill it out and send it to us for return completion.

Easy Online Access to Your 1099

Making your life easier is the cornerstone of NICA's business. NICA is investing in IT systems that improve the way we process - and you access - your data.



All NICA-affiliated ICs are now able to obtain their 1099-MISC form for 2006 online at myNICA.com.

All they need is their user ID* and password**, and their 1099 information is just a couple clicks away!

* The IC's user ID is his/her NICA Member ID, which can be found at the top of their check stub

**The IC's password is either his/her social security number or tax ID

IC Challenges (continued from cover)

In analyzing whether an employer-employee relationship existed, the CUIAB analyzed the various factors set forth in *Empire Star Mines Co., Ltd. v. California Employment Commission*, 28 Cal.2d 33 (1946). In holding that the drivers at issue were independent contractors, the CUIAB noted the following factors favored a finding of independent contractor status: 1) the drivers were engaged in a particular occupation; 2) the level of skill involved in operating a delivery business including deciding what route to take and where to park; 3) the drivers' ability to gauge the profitability of certain deliveries; 4) the drivers at issue provided their own tools and equipment; 5) the services were performed for a brief period of time; and 6) the existence of independent contractor agreements detailing the nature of the parties' relationship. In addition, the CUIAB gave great weight to an Internal Revenue Service ruling that the drivers at issue were independent contractors.

A courier company recently lost its appeal in a DOL unemployment tax assessment case. The Administrative Law Judge had initially found that the DOL "should have done a more thorough investigation" and that the company had satisfied the first two prongs of the ABC Test (A: direction and control; B: services performed are outside the usual course of the company's business or the service is performed outside all of the places of business of the company). The only issue under appeal was "Part C" of the ABC Test (individuals are customarily engaged in an independently established trade, occupation, profession or business). On appeal, the Superior Court of New Jersey held that the company owner's testimony regarding the independent nature of the couriers' businesses was not enough. Rather, the Court suggested that specific documentation, such as physical business cards, documentation substantiating business relationships with other entities, newspaper advertisements promoting their business, etc. was necessary to establish the Part C prong. Although the Superior Court of New Jersey ultimately upheld the Administrative Law Judge's decision, the opinion was helpful in looking to future cases. Specifically, the Court reiterated that each case is judged on its own, individual facts. The decision further provided insight into what evidence the Court would consider persuasive in establishing Part C of the ABC Test.

What to say? **What not to say?**

When interacting with independent contractors, you should be aware of the appropriate language and terminology:

SETTLEMENT **NOT** PAYROLL

CONTRACT **NOT** HIRE

FLAT RATE **NOT** HOURLY/DAILY/MONTHLY

TERMINATE **NOT** FIRE

CONTRACTOR **NOT** EMPLOYEE

1099 **NOT** W2

ORIENTATION **NOT** TRAINING

COMMISSION **NOT** WAGE/SALARY

DOWN TIME **NOT** SICK/VACATION/HOLIDAY

CONTRACT FEE **NOT** SET HOURS