

A Tribute To FedEx Ground Driver Tony Marcellino  
*Celebrate His Courage: Speak Out*



*“I Was Not In Control Of My Destiny.”*

On August 8, 2006, a tragic traffic accident claimed the life of FedEx Ground driver Tony Marcellino. As a young and vibrant 36 year-old in the prime of his life, Tony made friends wherever he went and had an infectious smile and engaging sense of humor. He could often be heard bragging about his wife, a disabled former Stockton, California, police officer, and his two beautiful children, Marco, 5, and Elisabeth, 4. He was fittingly born on the 4th of July, 1970 and had a personality like a fire-cracker - - sparkling, entertaining and sharp. He worked for FedEx Ground for about 11 years from the Stockton terminal.

Tony was as courageous and articulate as he was honest and direct. He got involved in the *Estrada* case back in 2003, when he attended a meeting with class counsel and told some hair-raising stories about his treatment by FedEx terminal management. As with many of the trial witnesses, he loved his job and was happy to service FedEx’s customers with a smile. He was anything but a “disgruntled” driver.

While he loved his work, he was not deceived in the least by Company spin about his real status - - he knew that he was treated as an employee even though the company used the FedEx lingo about “his business.” On May 11, 2004, he testified before California Superior Court Judge Schwab about his experience at FedEx that led him to realize how the company’s independent contractor scam was more fantasy than reality. Here are some of his main points and key stories he testified to:

- When his truck was in an accident, he learned that the terminal manager, without Tony's knowledge or consent, had inserted on the Protective Insurance application a "value" of \$9,000 for his truck, even though that was far less than he paid for it;
- Tony was told he couldn't wear an earring or a pony tail (so he hid his pony tail under a FedEx baseball cap);
- At the company's suggestion, he bought a "supplemental" van after receiving assurances that "we will get this approved for a second route;" after losing \$300-\$500 per week running the supplemental, he learned that FedEx "was not approving any new routes" so he parked the truck, as he could not sell it. Then he was told to buy a bigger truck or he could lose his contract; a few weeks later, when he didn't buy a new truck, FedEx created a new route out of his and gave it to another driver in the terminal who was willing to buy a new, bigger van.
- He tried to drop out of the flex program and was told that FedEx would not "contract" to anyone not in the Flex program. When he complained to Contractor Relations, they told the terminal manager that he was wrong. So the terminal manager reconfigured Tony's route and added the out-of-the-way stops that Tony was attempting to avoid. When Tony complained to contractor relations, they said the terminal had every right to reconfigure the route and could add those stops permanently, even over his objection. He said, "So I was forced to do what I was trying to avoid doing by opting out."
- In his terminal, the terminal manager locked the doors or held the scanners to ensure that the drivers did not leave before the sort was complete.
- Even though his OVC didn't work for the first 3 years, he was required to insert it after every stop!
- He was told his minimum hours of work were 9.5 hours.
- He and his co-workers were threatened with contract termination so much that they complained to FedEx about the terminal manager and unanimously asked the company to replace him at a Roundtable. The Regional Manager promised to take action but nothing happened for months and then the terminal manager was promoted!
- "It was obvious that I was not in control of my destiny!"

Don't these stories sound familiar? So many other drivers testified to similar occurrences that the Court could only conclude that the drivers were employees.

Tony's family is now suffering further from the FedEx "independent contractor scam." Because Tony was covered by FedEx Ground's group-sponsored Protective Insurance Work Accident policy instead of being provided by FedEx with the real workers compensation coverage it provides *all* of the company's employees, Tony's family will receive less than one-half of what his wife and children would be awarded under the California Workers' Compensation Act for death benefits. To be precise, Protective's death benefit is \$166,000 paid over ten years, or approximately \$1300 per month. Not enough to pay a typical California mortgage – that's for sure. Needless to say, besides condolences, FedEx Ground has offered **no** help or support to the family of their loyal and long-term worker. Yet, under California's workers compensation law, the legal death benefit for a widow of an industrially-injured worker

with two minor children exceeds \$320,000 paid at the regular temporary disability rate of about \$3200 per month, continuing until the worker's children are 18 years of age.

Because of this gross disparity in benefits, Tony's widow will be forced to plead for justice before the Workers Compensation Appeals Board in hopes of ensuring that her family gets what they are really due and need for their continuing support.

We know that all of your hearts go out to Terri, Marco and Elisabeth. Tony's life was brief but much like a bright and shining star - - illuminating the heavens and making us smile. He will long be remembered and loved by those whose lives he enriched!