



Property Casualty Insurers
Association of America

Shaping the Future of American Insurance

April 23, 2010

NCOIL Workers' Compensation Insurance Committee
c/o Jordan Estey
Director of Legislative Affairs & Education
National Conference of Insurance Legislators
601 Pennsylvania Avenue N.W.
Suite 900, South Building
Washington, D.C. 20004

Re: NCOIL's Proposed Trucking and Messenger Courier Industries Workers'
Compensation Model Act

Dear Jordan:

The Property Casualty Insurers Association of America (PCI) is composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI members write over \$180 billion in annual premium including 46.8 percent of the commercial insurance market and 41.7 percent of the private workers compensation market.

We appreciate the opportunity to provide comments to NCOIL on the Proposed Trucking and Messenger Courier Industries Workers' Compensation Model Act. PCI wishes to acknowledge the work of the NCOIL Workers' Compensation Insurance Committee and Representative George Keiser (ND).

PCI believes that the misclassification of workers impacts all workers' compensation stakeholders and is one of the most serious issues impacting the states today. Among the states, there is significant variation in the classification of an operator of a car, van, truck, tractor, or truck-tractor as either an independent contractor or an employee for purposes of workers' compensation and unemployment insurance. In addition, there are special challenges with interstate truckers, considering that an operator's status can change — from an employer to an employee and even to an independent contractor — in just one trip through several states because of the way state laws are written.

The proposed model creates a presumption of employee status and sets a seven-point factor test to define an independent contractor for the trucking and messenger courier industries. The model is based on Minnesota law, which is a good starting point. A critical component of both the proposed model and the Minnesota law is that the operator must meet all seven factors in order to be deemed an "independent contractor," which is

an excellent approach. However, there is no reference as to how these provisions would work in conjunction with individual state criteria for unemployment insurance and for determination of independent contractor status under the IRS's "twenty-factor test."

PCI understands that there are challenges to developing a model that will provide an absolute bright line system for classifying independent contractors in the trucking and messenger courier industries, however, additions/changes may help to provide further clarity. For example, in New York, to be considered an independent contractor, operators must also be transporting goods under their own bill of lading and under their own Department of Transportation Number in addition to other criteria. NCOIL may want to include such a provision in the model act to provide clarity.

Before any final decisions are made on the proposed model act, PCI recommends that a review of state workers' compensation laws on the independent contractor in the trucking industry be completed due to state variations. Some states have enacted very specific statutory requirements; others rely on common law tests. Due to the interstate nature of the trucking industry, we believe that it is the best interest of all stakeholders to take the time to study and understand the many challenging aspects to the independent contractor issue in the trucking and messenger courier industries. It would also be advisable to review federal laws and regulations regarding liability insurance requirements and the trucking industry, as there may be parallels to the classification of independent contractors under workers' compensation insurance.

PCI believes that NCOIL's Proposed Trucking and Messenger Courier Industries Workers' Compensation Model Act should be considered as a first step in developing an appropriate model. We are more than willing to work with NCOIL on this endeavor. Please do not hesitate to contact PCI for further input and assistance.

Sincerely,



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