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February 24, 2011

Ms. Susan Nolan  
Executive Director  
National Conference of Insurance Legislators  
385 Jordan Road  
Troy, New York 12180

Dear Ms. Nolan,

On behalf of the Messenger Courier Association of America (MCAA), I am pleased to submit comments to Section 3 of the National Conference of Insurance Legislators (NCOIL) Proposed Trucking and Messenger Courier Industries Workers' Compensation Model Act. Since the first four factors have already been addressed by NCOIL, our comments focus on factors five and six. We look forward to continuing to work with NCOIL on this proposed model legislation.

NCOIL Section 3 - In the trucking and messenger courier industries, an operator of a vehicle or vessel is an employee and subject to state workers' compensation laws unless each of the following factors is present, and if each factor is present the operator is an independent contractor:

NCOIL Factor 5 - The individual substantially controls the means and manner of performing services, in conformance with regulatory requirements and specification of a shipper;

MCAA Comment - The NAIC/IAIABC amendment would damage business relationships between carriers and shippers. The language proposed would effectively exclude shipper specifications because shippers routinely specify instructions which are needed for the efficiency of their business, not just for the safety and timeliness of the delivery.

MCAA Comment - In regard to the first suggested amendment by United Parcel Service, it is important to point out that there is no "hiring" entity in a carrier/independent contractor relationship and requiring the individual to be free from all direction or control can directly ignore statutory, regulatory, and shipper specifications.

MCAA Comment - The second United Parcel Service amendment which essentially requires an independent contractor to regularly provide services to multiple entities is an unfair restriction on the individual's business practice. Nothing in common law dictates how many or how few customers a business chooses to service. Although an independent contractor has the right to provide delivery services for other companies, he should have the flexibility to contract his services at his own discretion.

NCOIL Factor 6 - The individual enters into a written contract that specifies the relationship to be that of an independent contractor and not that of an employee.

MCAA Comment - A written contract is stronger than the "certification statement" language proposed by the NAIC/IAIABC. It is unclear what sort of certification statement would be required or whether the certification statement would be uniform across each state. Having a written contract in place allows for more clarity and certainty.

We appreciate your consideration of these comments and look forward to working with you on this model legislation. Please do not hesitate to contact me if you have any questions about our comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rob Hackbarth".

Rob Hackbarth, CEO Hackbarth Delivery Service  
MCAA Second Vice President