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July 1, 2009

Ms. Susan Nolan
Executive Director
National Conference of Insurance Legislators
601 Pennsylvania Avenue, N.W., Suite 900
South Building
Washington, D.C.

SENT VIA EMAIL TO JORDAN ESTEY (JESTEY@NCOIL.ORG)

Dear Ms. Nolan:

On behalf of the Messenger Courier Association of the Americas (MCAA), I am writing to comment on the National Conference of Insurance Legislators' (NCOIL's) proposed Employee Misclassification Workers' Compensation Coverage Model Act.

MCAA is the non-profit trade association of the less than 24 hours expedited delivery companies. Our member companies play a critical role in the economy delivering critical time sensitive packages, medical supplies, pharmaceuticals, bulk materials and documents. Our industry consists largely of small, locally owned and operated businesses. The business model used by MCAA members relies upon the use of independent owner-operator contractors given the great uncertainty in the volume and type of deliveries a company may handle in any given day. Our independent owner-operator contractors are used in addition to dedicated employee resources.

We applaud your efforts to establish clear definitions of employees and independent contractors. MCAA believes clarity around these definitions is needed at both the state and federal level. We have some concerns with NCOIL's model legislation, however, which we will outline in detail.

MCAA does not believe the burden of proof should solely lie with the individual who is claiming to be an independent contractor. We believe it is more appropriate for the business owner contracting with independent contractors to jointly make that determination. In our industry, the business owners utilize both employees and independent owner-operator contractors and have a fuller appreciation of the distinctions than our independent owner-operator contractors would. Moreover, the penalties in the NCOIL model legislation for misclassification are imposed on the business owner. Therefore, the burden of proof should lie with the companies who are at risk for penalties.

MCAA also does not believe any industry should categorically be denied the ability to use independent contractors. While our industry is not targeted in this model legislation, we believe all industries and businesses should be able to properly engage independent contractors.

We also have some concerns over the nine criteria selected to determine if an individual is an employee or independent contractor. Any test used to determine whether an individual is an employee or independent contractor should not be an all-or-nothing test. Rather, if an individual meets most but not all of these standards they should be allowed to qualify as an independent contractor. This will account for factors outside of a courier company's control such as delivery requirements customers often place

when ordering service. It is critical that the courier company retain the ability to communicate these requirements to our drivers.

Additionally, the question in section 2(F)(2)(h) should be changed from an absolute test to a test of their ability. In its place, MCAA recommends the following new subsection.

‘(h) The independent contractor has the ability to incur continuing or recurring business liabilities or obligations.’

Thank you for your consideration of our comments. Please do not hesitate to contact me or John Ferraro, MCAA’s Director of Government Affairs.

Sincerely,



Mike Gulatieri
MCAA President