

Testimony of  
The Connecticut Messenger Courier Association  
Before the Legislature's  
Labor & Public Employees Committee

6:00 PM, Tuesday, February 24, 2015  
Middletown City Hall  
Middletown, Connecticut

Good evening. My name is Marshall Collins. I am appearing in my capacity as Counsel for the Connecticut Messenger Courier Association and to testify in support of HB 5366 An Act Concerning Eligibility For Unemployment Compensation And For-Profit Delivery Service Courier Companies.

The Connecticut Messenger Courier Association ("CMCA") consists of independent highly specialized small businesses that are messenger courier companies which arrange for the on demand delivery of a wide range of products, which are not limited to: legal documents, transplant organs, standardized testing materials and results, pharmaceuticals, machine parts, and financial records.

For approximately 80 years such companies have used a business model that relies on a pool of independent contractor drivers to meet fluctuating customer demand. The Department of Labor ("Department" or "DOL") also formally recognized the unique requirements of the messenger courier industry in its June 7, 1994 Declaratory Ruling:

*"companies rely on a pool of drivers to respond to significant fluctuation in customer demand."*

CMCA companies are an integral part of Connecticut's economy.

There is an impressive more than 20 year history where the Legislature, the Department and CMCA have worked together to enable messenger courier companies to strictly comply with the ABC test. Consequently Connecticut's regulation of the messenger courier has been a model of stability for the entire nation. A chronology of that cooperation is attached as Appendix A.

Unfortunately, a 2003 court case, which did not involve the messenger courier industry, has tied the Department's hands and made it impossible for the industry to remain in compliance. This is the reason that we have sought your help and the passage of HB 5366.

The Problem

CMCA companies encourage and by contract require their independent contractor drivers to drive for other companies. However, they have no way of knowing if the driver is in compliance until after the fact. If a driver stops driving for others and then files for unemployment compensation, the company cannot satisfy the most recent ABC test

interpretation. Even if all other aspects of the ABC test have been met, the companies are subject to penalty. The exposure for this industry must be corrected.

#### The Solution

HB 5366 is a practical solution, which maximizes the Department's ability to narrow the class of eligible companies that would receive the identical relief granted in *PA 13-168* to the Motor Transport Association operators of heavy trucks. The DOL did not object to the passage of *PA 13-168*.

HB 5366 does not relieve the messenger courier company from complying with the ABC test as required in *PA 13-168*.

*PA 13-168* grants narrow relief to the following:

“(P) Service performed by the operator of a motor vehicle transporting property for compensation pursuant to an agreement with a contracting party provided the following conditions are met:

- (i) The motor vehicle has a gross vehicle weight rating in excess of ten thousand pounds;...”

HB 5366 changes no other provision of the existing law and only extends the identical relief to messenger courier companies by adding the following language as (P)(ii):

“or (ii) the service is provided to a for-profit delivery service courier company as defined in the June 7, 1994 Declaratory Ruling issued by the Connecticut Department of Labor; and ...”.

Please note that by passing HB 5366, the DOL would have to make a determination whether the company claiming the narrow relief is a messenger courier company under the terms of its own Declaratory Ruling. Then if the company meets the Declaratory Ruling test, it still must comply in both law and fact with all other aspects of the ABC test.

Passage of HB 5366 would not result in the reclassification of one messenger courier driver from employee to independent contractor because for at least the last 40 years all CMCA drivers have been independent contractors under their longstanding business model. Thus there would be no loss to the unemployment compensation trust fund and no fiscal note.

Please favorably report HB 5366, which would allow the independent messenger courier industry to continue to comply with the ABC test. HB 5366 is necessary for them to continue to work with the DOL and to contribute to Connecticut's economy.

Passage of HB 5366 again recognizes the unique nature of the messenger courier industry and gives it the ability to continue to follow its 80 year business model.

This concludes my testimony. Thank you for your consideration.

## APPENDIX A.

### Chronology of Messenger Courier / Department of Labor / Legislative Activity Regarding Independent Contractor / Employee Status

- 1992: Labor & Public Employee House Chairman Rep. Mike Lawlor requests that DOL and CMCA work together to come up with an administrative solution to the employee/independent contractor distinction for the industry.
- 1994: DOL and CMCA agree on the terms of a Declaratory Ruling.
- June 7, 1994 DOL issues its Declaratory Ruling regarding the Messenger Courier Industry and the ABC test.
- 2003: the CT Supreme Court decides the JSF Promotions, Inc. v. Administrator, Unemployment Compensation Act case. The case, which involved product demonstrators in supermarkets, in part interpreted the ABC test to preclude an independent contractor from only working for one company.
- 2007: (approximately) CMCA approaches DOL regarding updating the ABC test as applied to the messenger courier industry. DOL helps CMCA develop a "Best Practices Agreement" as an industry standard to be used for contracts between the companies and their drivers and recognizes changed circumstances since the 1994 Declaratory Ruling.
- 2009: CMCA completes Best Practices Agreement for its members. DOL acknowledges that the JSF case decision precludes it from further action on the "C" part of the test.
- 2012: CMCA joins with the Motor Transport Association of CT to seek legislative relief from the JSF interpretation of the "C" part of the ABC test.
- 2013: the Legislature passes PA 13-168, which grants the MTAC operators of trucks over 10,000 pounds the requested relief. CMCA members are excluded.
- 2015: Representatives Berger and Sayers propose HB 5366.