

February 23, 2015

Testimony submitted to the Connecticut Labor and Public Employees Committee on HB 5366

My name is Kevin Maloney, and I live at 4016 Mountain Road in Suffield, CT. I am the President and owner of Northeast Express Transportation, Inc. a courier and a distribution company headquartered in Windsor Locks. NEXT, as we refer to it, was originally incorporated in 1954 as New Haven Mail Delivery Service, and was at the time acknowledged as the one of the first if not the first private mail delivery service in the country. Today, NEXT is a much more diversified company utilizing over sixty independent contractors in addition to our twenty plus administrative and warehouse employees.

Our courier division provides inter-office services to many of Connecticut's financial and manufacturing institutions. We also provide on-call emergency pickup and delivery of blood and tissue samples to area hospitals as well as deliveries of prescriptions to the elderly and other house-bound patients. Our distribution arm provides overnight delivery of emergency parts for disabled agricultural equipment as well as daily deliveries of pharmaceuticals to chain pharmacies. The demand for these types of services varies, so it is important that we are able to maintain a flexible work force, able to expand and contract on short notice.

We have used the independent contractor model, the standard in the courier industry, for over forty years and indeed, we still have contractors today that have been with us for most of those forty years. We do not operate any of our own equipment, but utilize the IC model exclusively.

One of the things we are most proud of is the improvement we have seen in the personal lives of our contractors. Many of them now operate multiple vehicles for us, and we've watched them purchase homes and prosper as the company has grown and they have grown with it. We view ourselves in part as an incubator for entrepreneurs; in fact, at least a half dozen of our contractors have taken the business knowledge they acquired working for us and gone on to start their own transportation companies. We have a significant number of émigrés from Ghana working for us as contractors, and they tell us stories of how much better the lives of their extended families are as a result of monies and commodities that they are able send back home. Most of them will return home routinely for periods of a month or two, a length of time that would be impossible for them were they employees.

Our industry has had a cordial relationship with the Department of Labor going back to the Declaratory Ruling reached between us in 1994, and that relationship continues today, supported by the "Best Practices Agreement" which we collectively developed in 2009. I don't see our industry at risk because of the voluntary actions of the DOL; however, I do see our industry at risk because of the JSF decision reached in 2003 by the Connecticut Supreme Court, a decision which fundamentally changed the ABC test the DOL utilizes to determine independent status and removes any discretion the DOL might otherwise have when deciding

such cases. While THE JSF case had nothing whatsoever to do with the courier industry, it precludes independent contractors from being classified as such if they provide those services only to a single company. While we require our contractors to provide proof of service to others by supplying us with a 1099 form from another transportation company, the reality is that for some period of time I have to take the contractor's word that he or she is in fact working for another company or attempting to work for other companies, and during that period of time we could be in non-compliance without even knowing it. The other reality is that most if not all of our contractors really have no desire to work for anyone else. The tenure of some our contractors (35+ years) speaks to the fact that they feel they're being treated fairly by our company and should not be compelled against their will to work for anyone else.

As you probably know, in 2013 the motor carriers in Connecticut were granted relief from the particular facet of the ABC test that required their contractors to work for more than one company. At the time, the DOL opposed our inclusion in this legislation and to this day, despite all their explanations, I simply cannot understand the reasoning behind that opposition. Our contractors invest a substantial amount of money in their equipment, just as the motor carrier IC's do, and they deserve no less protection than what was granted to the motor carrier industry. I urge you to support HM5366 to correct this inequity.