

**Testimony of  
Chris MacKrell  
President and COO  
Custom Courier Solutions  
On Behalf of the Customized Logistics and Delivery Association  
Senate Health, Education, Labor and Pensions Committee  
Subcommittee on Employment and Workforce Safety  
November 12, 2013**

Chairman Casey and Ranking Member Isakson:

I appreciate this opportunity to provide testimony to the Committee on the need for proper classification of individuals as independent contractors or employees. I share your concern over businesses that intentionally misclassify employees as independent contractors. With that said, I want you to have the full picture. I would like to share how my industry, the customized logistics and delivery industry, relies upon independent contractors to respond to our customers' needs. I also want to voice our concerns with legislation introduced in the House and Senate in past Congresses addressing the misclassification of employees as independent contractors.

I am the President and COO of Custom Courier Solutions, which is a customized logistics and delivery company based in New York with operations throughout the Mid-Atlantic and Northeast. We have offices in Fairless Hills and Scranton, PA, along with seven locations in upstate New York and one location each in Maryland and Virginia. Our company has been providing business services to our customers for more than seven years. Throughout that time, Custom Courier Solutions has relied heavily on independent contractors to meet our customers' needs. Custom Courier Solutions employs approximately 156 individuals and utilizes the services of about 225 independent contractors to make deliveries.

Custom Courier Solutions is a long-standing member of the Customized Logistics and Delivery Association (CLDA) and its predecessor organization, which is the non-profit association of the messenger courier industry. My testimony today is submitted on behalf of CDLA's 425 members, who represent our industry and have serious concerns about this critical issue.

The same-day customized logistics and delivery industry is an integral part of the American economy, providing transportation of packages, medical supplies, bulk materials and documents among businesses and corporations in the United States and beyond. What distinguishes our companies from other components in the delivery supply chain is our emphasis on less than 24 hour, just-in-time delivery of packages in response to customer demand.

Customized logistics and delivery businesses are small businesses that have a long history of positive influence in their communities. Firms typically employ about 25 individuals, who receive good salaries and benefits, and utilize up to three times that many independent owner-operator drivers annually. There are more than five thousand small businesses that make up the multibillion-dollar same-day delivery industry.

Our owner-operators pick up and deliver important business documents or packages that need to be sent or received quickly either locally, regionally or nationally. They also deliver items that the customer is unwilling to entrust to other means of delivery because they are either time-sensitive or require specialized individual handling, including machine parts, medical supplies, blood and organs for transplant.

While there are many industries that use our CLDA members' services, certain industries critically depend on couriers for expedited same-day or less than 24 hours delivery on a daily basis. Biomedical labs and analysis centers use couriers to retrieve and deliver samples for testing and evaluation. The manufacturing industry relies on customized logistics and delivery services to distribute parts to keep their plants operating smoothly. Financial institutions use members of our industry to transfer multiple documents every day between branch processing centers and the Federal Reserve. Law firms rely on us to deliver confidential documents on very strict deadlines and use couriers to ensure rapid delivery. Pharmaceutical distributors utilize use our members as a critical part of their ability to deliver medications to pharmacies, hospitals and nursing homes daily. And pharmacies rely on customized logistic and delivery professionals to deliver medications to the homebound. These are just a few examples of our primary customer markets – each CLDA member company, depending on its expertise and regional needs, has a unique customer and market profile.

Due to the critical need for flexibility and speed, these packages cannot be slotted into the existing delivery times for next-day or two-day delivery offered by the Postal Service and the large overnight delivery companies. They must be delivered according to the customer's schedule and specifications. Organs must be delivered in a certain timetable to be viable for transplantation. Medical specimens must be delivered for testing within a specific timeframe if results are to be useful and available quickly. And legal documents are often prepared and delivered to the client or judge on unforgiving deadlines.

For these types of goods, customized logistics and delivery services are the only form of delivery that does not jeopardize the item delivered or the business involved. Independent contractors are a key part of our ability to make this happen. They are crucial to meeting customer demands for flexible scheduling and to ensure that a delivery professional will always be available for a customer's specific needs.

The business model for the customized logistics and delivery industry is particularly reliant on independent contractors, who are engaged to perform a variety of deliveries. The nature of the industry, with its on-demand, often unscheduled delivery model, requires a varying number of courier drivers on any given day and time of day to complete a set service. The business model is also supported by numerous dedicated employee resources in a variety of executive, clerical and administrative functions.

To meet those needs, our members contract with competent, ambitious and responsible individuals on an "as needed" basis to service their community every day. These independent contractors (whom we refer to as owner-operators) pick up and deliver letters, important business documents or packages that need to be sent or received quickly within a local area. Because these items are transported according to the customer's own timetable and often these shipments

are time sensitive, the owner-operator business model allows courier companies to staff each day of work appropriately.

In our industry, independent contractors contribute to a healthy competition in many respects. Independent contractors bid for work from courier companies and by so doing set the price paid for their work. It is common in our industry for individuals to start out as an independent contractor providing services to courier companies and over time develop their own courier company and compete with the company to which they formerly provided services. In fact, I have had many independent contractors expand their own firms to support both the service they provided to CCS as well as offer their service to the general business community and are now competitors of Custom Courier Solutions.

In many instances, independent contractor owner-operator drivers can make significantly more money offering their services competitively to multiple businesses rather than receiving work from just one company. We have independent contractors who have made a good living and have provided services to our company dating back to 2006. *It is this entrepreneurial spirit and opportunity that helps drive our industry and our country.*

Many independent contractors in our industry enjoy the flexibility of their situations. Accepting or rejecting work based on their desire and ability to work as they wish is very attractive to many independent contractors. There are many examples of independent contractors telling companies that they will not work on certain days or will not accept dispatch after certain hours or refusing a job because they don't want to drive a long distance or short distances. The bottom line here is that they like having control over the work they perform when and if they want it.

The use of independent contractors by our industry is not a recent trend or a new phenomenon. Independent contractors have been an integral part of our industry since our early beginnings dating back well over a hundred years. Our industry has evolved as the economy has changed, but the need for independent contractors has remained a constant.

There is a concern over businesses that intentionally misclassify employees as independent contractors. As an industry reliant upon independent contractors for our mutual success, we are keenly aware of the need to properly classify individuals. CLDA urges all of its members to use industry best practices in making determinations on this matter. Our member companies make the determination about whether an individual is an independent contractor or an employee based upon guidance from federal, state and private sources. We take these decisions seriously.

Here's how our company does things: When engaging with an independent contractor, Custom Courier Solutions executes a written contract with the independent contractors. We ask that every potential independent contractor complete a questionnaire that details the rights and expectation of being an independent contractor. Included in the survey is the requirement that they file both state and federal tax forms. We submit 1099 forms for all the services that our independent contractors perform. We also require that they provide proof of the proper insurance for themselves and their vehicle.

Our industry has great concerns over the legislation that has been introduced in the Senate and House of Representatives in previous Congresses on classification of independent contractors.

Legislation to eliminate the safe harbor found in Section 530 of the Internal Revenue Code in particular is very troubling to our industry. The intention of these bills may be to curtail intentional misclassification by those companies or even industries. However, the reality is that these bills will affect all companies using independent contractors, including those that apply rigorous standards compliant with federal, state and local regulations.

We have two broad concerns with legislation introduced in previous Congresses to amend the Fair Labor Standards Act. In the past, legislation has created additional mandates and requirements on all businesses using independent contractors. These new requirements, in a vacuum, may not seem to some as too onerous. Unfortunately, we don't operate our businesses in a vacuum. These changes must be considered in the context of existing and new mandates being imposed on our businesses.

Second, we have a concern about the employees' rights website called for in previous legislation. We believe this proposed legislation does not recognize the rights of an individual to be an independent contractor or the benefits of being an independent contractor. Independent contractors often have much greater economic opportunity than employees, as well as the freedom to work when they want and where they want.

The majority of the legislation introduced over the last few years has focused on the rights of a misclassified worker, but it has never extended to the right of an individual who chooses to operate as a independent contractor.

We would urge this committee to proceed cautiously with this issue. Our industry has seen the successful use of industry guidance as a way to ensure proper compliance. In the State of Minnesota, our industry with the help of CLDA was able to pass a state law providing such guidance with the support of organized labor and the trucking industry. We also urge the committee to review the New York State Department of Labor (NYSDOL) Guidelines for the Messenger Courier Industry (a copy is attached). As part of the team that worked with the NYSDOL to design these guidelines, we can act as template for successful guidance throughout the country. We would recommend Congress consider this approach as an alternative to the changes in law.

The customized logistics and delivery industry is a critical part of the national and global supply chain. People in our industry are saving lives daily and improving the health and well being of our citizens. The most important deliveries - including financial transactions, critical machine parts, lab reports and lifesaving medications - are performed by independent contractors working for more than five thousand small courier companies. For more than 100 years, our industry has been served by a business model that is a great example of the American Dream. Our independent contractors work hard, follows the rules and provide efficient, flexible services that cannot be duplicated. We recommend that any future legislation consider how it will impact our industry and its essential core component: the independent contractor.