

**ARTICLES**

# Too good to be true? Insurance for IC Misclassification Risk

**Jan 4, 2018**

For a generation now, few issues have preoccupied the courier industry as deeply or consistently as Independent Contractor misclassification. Although the industry has relied heavily on an “IC model” since its beginnings, the practice has been continually under siege by government regulators, plaintiff’s attorneys, and others. Like the proverbial Dutch boy and the dike, every time the industry manages to plug up a challenge spouting from one direction, a new leak appears elsewhere.

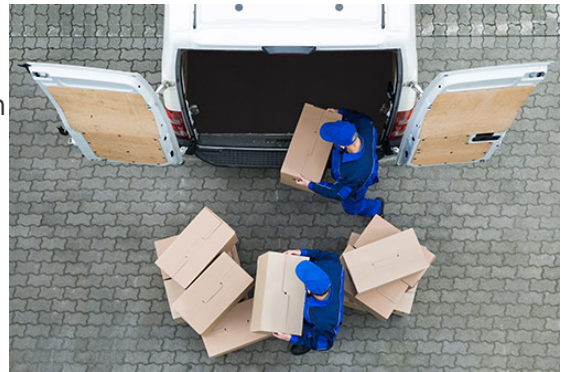
Sometimes it’s been the feds (IRS and DOL) leading the charge. Other times individual states (California, Colorado, Illinois, Massachusetts, New York, North Carolina, Oregon, etc.) Waves of class action lawsuits periodically sweep through as well. Today, IC misclassification risks remain high and seem poised to worsen. Federal-state agency information sharing promises more aggressive enforcement activity at the same time as plaintiffs’ attorneys await the results of the first wave of lawsuits they have initiated—which could lead to broader attacks against industry businesses.

In the face of all this risk, it seems almost too good to be true for an insurance product to burst onto the scene offering low-cost protection against charges of IC misclassification. While the product’s creator, Brightstone Insurance, is a leading insurance broker and risk advisor, to the local delivery and logistics industry, why should an insurance company willingly expose itself to such financial risks? Does the program hold up to scrutiny, or are there limitations (fine print) that make it unlikely that companies that purchase the insurance will see it pay out for them in their hour of need?

We connected with Jeff Ice, CIC, and Peter Schlactus, CIC, CRM, AAI, of Brightstone to probe into this new IC Misclassification Insurance product and posed some questions that we hope will help you decide for yourselves.

*Editor’s note: Schlactus is a member of Courier Magazine’s Editorial Advisory Board.*

**Courier Magazine: Do you have an insurance solution to the industry’s IC misclassification risks?**



Jeff Ice: There's no such thing as insurance that covers everything, but we have crafted an insurance policy that will pay for many of the costs associated with serious IC misclassification claims. And the cost of the insurance should be affordable to any business that qualifies. We think it's about as close to a 'no-brainer' opportunity as companies will ever see, and we're ready to stake our reputation on buyers not being disappointed.

**CM: How is it that this insurance is first becoming available now?**

Peter Schlactus: This program is a perfect example of why Jeff, my father, and I, merged our agencies a couple of years ago. We each had separately pursued this kind of insurance without success for years. Together, we felt we could offer an insurance company a large enough business opportunity and enough credible industry data for it to take the risk. And while success still didn't come easy -- there were many fruitless negotiations and some false starts -- we've ultimately brought to market a solution we feel very proud of.

**CM: So, it's simply a matter of throwing your weight around now that your former companies -- KBS and Oswald Logistics -- are united as Brightstone?**

PS: Not only that. We've been able to show that even in tough times, only a small percentage of our clients fall victim to IC misclassification claims. That's the method behind the madness of our program's pricing. Our insurer stands to profit more from using lower premiums to entice a large number of delivery companies to invest in the insurance, versus charging more but only attracting high-risk buyers.

Jl: We should give credit to our underwriters for having the vision to throw their hat in the ring. Insurance is a conservative industry where few are comfortable being the first to take a risk. So, hats off to our carrier, which is rated "A" by A.M. Best. We hope the industry rewards their gumption by giving serious consideration to the program.

PS: Also, the industry is getting savvier about how it utilizes ICs. Most companies will be able to meet the program's minimum underwriting standards and will be willing to take advantage of the free risk control services that are included with the program. These include an IC advice hotline and a complimentary evaluation of a company's business practices.

**CM: How can you be confident that industry businesses will be evaluated fairly and receive advice tailored to their operations? After all, Presumably the insurance company is no specialist.**

PS: True, it's a national carrier, and we shared your concerns about the insurance company people making a mess of things. But our carrier agreed to let Bright stone select an industry insider to deliver both risk control and claims services. We presented the opportunity to Consultees, led by veteran Paul Gap, as well as his affiliated legal team at Jasminka, P.C., and they jumped. So, both before and after any claims occur buyers will have the benefit of integrated services from a seasoned team that's expert in their industry.

**CM: Let's circle back to something you said at the beginning. No insurance covers everything. What does your program not cover? Where are the gaps?**

Jl: The most important thing to keep in mind is that this insurance is intended to make sure that a business

that's trying to do things right won't be crippled by legal costs if their IC practices are challenged. Companies can buy up to one million dollars of legal defense insurance. The policy provides a smaller limit of insurance for fines, taxes, and penalties levied by the IRS, and no coverage for other kinds of fines, taxes, settlements and judgments. So, a delivery company can't treat this insurance as a license to behave badly.

**CM: So, the program mainly covers legal expenses?**

Jl: Those expenses are a huge concern to our clients, and until now, there's been no protection at all.

**CM: What if a company is accused of intentionally misclassifying drivers. Aren't there commonly intentional acts exclusions that would permit? The insurance company wiggles out of covering claims?**

Jl: We're very up front that the program is to protect against unintentional misclassification. You shouldn't bother with the insurance if you're intentionally misclassifying drivers because in that case, you're going to end up paying out of pocket.

PS: But to be clear, this insurance will step in and defend companies against allegations of intentional or willful misclassification right up until the point where there may be a 'final adverse judgment' that the violations were intentional. That could even include appeals. What we're saying is that if you're operating in good faith, then you don't have to worry about the insurance company 'wiggling out,' as you put it, based on a claim being for intentional acts.

**CM: Is there any other "fine print" to know about?**

Jl: One thing our program won't cover is a claim by an individual IC that he or she is entitled to unemployment or Workers Compensation benefits. This is a more routine risk that a business should fund internally? But if the state or the Workers Comp carrier comes back after and alleges that all ICs -- or even just a group -- should be treated as employees, then that would trigger the policy to step up and defend.

PS: The fine print is actually quite limited. Still, we've developed a Program Summary sheet that describes the policy terms and conditions in more detail than just about any other insurance literature. It includes a clear list of various coverage exclusions and limitations so people can decide for themselves. Our proposal document goes even further. And we're happy to provide a complete sample copy of the policy along with our proposal. Several clients have had their attorneys examine the documentation and then went on to purchase the insurance after receiving the green light.

**CM: Your literature suggests that businesses should consider combining the IC Misclassification coverage with insurance for "Employment Practices Liability." Why is the IC protection not enough by itself?**

Jl: Normally it should be, but these claims can include a host of accusations, and when they're all jumbled together, we find that it only helps to have one insurance company sorting it all out instead of two potentially pointing the finger at each other.

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would be a positive factor.”

PS: Employment Practices Liability insurance covers things like harassment, discrimination, wrongful termination, retaliation and a boatload of similar charges. Our program also covers the costs of legal defense of wage and hour claims up to a sub-limit. A lot of times these kinds of claims are alleged along with IC Misclassification. The legal defense of all these things should be coordinated, and that’s best done under one policy with one insurer.

JJ: Plus, bundling insurance often saves money, which is why we allow other types of protection, like Fiduciary Liability protection for pension/401k plans to be included in the program.

**CM: Has the insurance stepped up when needed?**

PS: On the one hand, I wish I could tell you about all the ways that the insurance has come to the rescue of our clients, but on the other hand, I’m really glad that so far, our predictions about there not being very frequent claims have been borne out. As a result, our insurer remains enthusiastic about offering coverage, and we’ve even gotten good quotes in some really tough states, as well as for companies with a less-than-perfect record. And what also is clear is that companies are very pleased with the risk control services they are getting from Consultech. So, everyone sees the concrete value, and the best claims are the ones that are avoided, or at least prepared for ahead of time.

JJ: You’re not going to see companies writing letters complaining about how their claims are handled, I can tell you that.

**CM: You mentioned “tough states”—does the program cherry pick where it will provide insurance?**

JJ: No. The policy will respond to claims made in any state and companies doing business in all 50 states can qualify for the program.

**CM: Could the act of applying for insurance cause problems? Could it bring a company into the spotlight, or might it be viewed negatively that a business has fortified itself behind walls of insurance?**

PS: Actually, we checked this out with some of the foremost legal specialists in this field. They all told us that a company’s decision to get insurance would not be held against them. If anything, the insurance would be a positive factor. The coverage is for unintentional misclassification, so it shows that owners truly believed they were doing things correctly. Otherwise, why would they buy it?

JJ: As for shining a spotlight, no way. No regulators or class action attorneys can monitor what insurance a company purchases other than legally mandated coverage like auto or workers comp.

**CM: One final check: you’ve mentioned that price won’t be a stumbling block for buyers. How so?**

PS: The minimum premium for IC Misclassification coverage is less than \$1,000 per year. If that sounds reasonable for small companies, then larger companies can expect their quotes to likewise sound reasonable for their size. When Jeff talked about the insurance being a ‘no-brainer,’ he wasn’t kidding. Of

course, not everyone can qualify, but it only makes sense to try.

**CM: It's only fair to let you mention how readers interested in the program can find out more.**

Jl: Call us at 888-527-4321 or send an email to [transportation@risk-strategies.com](mailto:transportation@risk-strategies.com). Mention that you're interested in IC Misclassification Insurance and want to speak to a broker.

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