R.C. 1990

To the Members of the Board

Re: New York Experience Rating Plan
September 11, 2001 Terrorist Attacks

The Rates Committee has adopted, and the New York State Insurance Department has approved, revisions to the New York Experience Rating Plan to incorporate the treatment of claim and loss data emanating from the terrorist acts of September 11, 2001.

Due to the expected magnitude of the workers compensation claims that will be filed as a result of the September 11, 2001 events, the inclusion of these claims in an individual employer’s experience rating calculation would result in a modification that is not indicative of the employer’s true loss potential and, in some cases, could impose an undue financial hardship on individual employers. Consequently, the Rating Board and its members have concluded that these workers compensation claims should not enter the experience rating process. In order to implement this decision, claims reported with Catastrophe Number 48, as defined in RC bulletin 1989, dated November 21, 2001, will be excluded from New York data for purposes of experience rating. To accomplish this exclusion, the New York Experience Rating Plan has been revised as follows:

- Part One, Item D – Claims reported with Catastrophe Number 48 are explicitly excluded from merit rating calculations.
- Part Two, Item D. 2. – Claims reported with Catastrophe Number 48 are excluded from experience rating calculations.
- Part Two, Item 4. g. – This paragraph is added to state that the Rating Board will revise the specified ratings when a claim is resubmitted as a code 48 case after previously being submitted as a non-code 48 claim.

A copy of each of the amended rules of the Plan are enclosed for your reference.

An effective date of January 1, 2002 will apply to these changes.

Revised manual pages will be distributed as soon as they are available.

Very truly yours,

Monte Almer

President

Encl.
D. MERIT RATING PLAN

When an employer’s premium is less than the amount necessary to qualify for interstate or intrastate experience rating, but greater than the minimum premium, a merit rating factor shall apply to the New York manual premium. It shall be based upon the number of indemnity and medical claims of the insured during the most recent three year period for which statistics are available. This three year period is that which would otherwise be used for experience rating purposes. Cases to be counted as claims are defined as those which have been paid (totally or partially) or for which a reserve has been established.

* EXCEPTION: All claims reported with Catastrophe Number 48 shall be excluded from merit rating calculations.

The following schedule is to be used in determining the appropriate merit rating factor:

<table>
<thead>
<tr>
<th>Number of Claims</th>
<th>Merit Rating Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>-8%</td>
</tr>
<tr>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>2</td>
<td>+4%</td>
</tr>
<tr>
<td>3 or more</td>
<td>+8%</td>
</tr>
</tbody>
</table>

The Rating Board will determine the appropriate factors and notify the carrier.

The New York Merit Rating Endorsement (WC 31 04 02) should be attached to each policy which is subject to the Merit Rating Plan.
14. Employee Leasing

For the purpose of this rule, employee leasing arrangements shall mean an arrangement whereby an entity contracts with another entity to lease some or all of its workers. The entity providing the workers shall be referred to as the labor contractor. The entity utilizing the workers shall be referred to as the client.

The payroll and loss experience of the client's leased and non-leased employees shall be assigned to the client for experience rating purposes.

Note: Any reference to the labor contractor as an additional insured in any manual rule or endorsement used for employee leasing purposes does not imply common ownership between the client and the labor contractor for experience rating purposes.

D. PAYROLLS AND LOSSES

1. Payrolls

The audited payrolls or other exposures for each classification in the experience period are those reported in accordance with the New York Workers Compensation Statistical Plan.

2. Losses

The incurred losses in the experience period are those reported in accordance with the New York Workers Compensation Statistical Plan.

"Incurred losses" are defined as paid losses plus outstanding reserves for claims as of the date of valuation.

No loss shall be excluded from the experience of a risk on the grounds that the employer was not responsible for the accident that caused such loss.

EXCEPTION: All claims reported with Catastrophe Number 48 shall be excluded from experience rating calculations. Refer to New York Workers Compensation Statistical Plan, Part IV, Item 11 for definition of losses included under Catastrophe Number 48.

For purposes of this Plan, losses incurred under the New York Workers' Compensation Law and the United States Longshore and Harbor Workers' Act shall be subject to the respective accident limitations shown in the Tables of Weighting and Ballast Values.

No loss shall be included in the experience of a risk if it is not required to be reported to the Workers' Compensation Board as defined in Section 110 of the Workers' Compensation Law provided that the employer pays the claim in the first instance or reimburses the carrier for the treatment rendered to the employee.

Note: An employer is not required to file a claim notice with the Workers' Compensation Board if the accident or illness requires ordinary first aid or causes loss of time from work of only one day beyond the working day or shift on which the accident or illness occurred.
3. Limitation on Total Losses Employed in a Rating.
   a. **An Accident Involving One Person**

   An accident involving an injury to one person shall be limited to the accident limitation in the Tables of Weighting and Ballast Values. The actual primary loss for such an accident is subject to the maximum primary value of $5,000.

   b. **Accidents Involving Two or More Persons**

   Accidents involving injuries to two or more persons shall be limited to the multiple claim accident limitation in the Tables of Weighting and Ballast Values, which is twice the normal accident limitation. The actual primary loss for such accidents is limited to $10,000, twice the normal maximum primary value.

   c. **Disease Losses**

   Disease losses for each policy year shall be limited to triple the accident limitation shown in the Tables of Weighting and Ballast Values, plus 120% of the risk's total expected losses for the experience period. For each policy year, the actual primary loss for disease losses is limited to $10,000, twice the normal maximum primary value, plus 40% of the risk's total expected primary losses for the experience period. For each policy year, the excess disease losses shall be the difference between the total disease losses and the primary disease losses as determined above.

   **Note:** To determine the limitation on total disease losses employed in a rating as described in c., the following procedure shall apply:

   1. Latest policy year—combine the disease losses for all policies within the experience period, having an effective date within 24 months prior to and valued at least 3 months prior to the experience rating date.

   2. Middle policy year—combine the disease losses of all policies having an effective date more than 24 months, but not exceeding 36 months prior to the experience rating date.

   3. Earliest policy year—combine the disease losses of all policies within the experience period, having an effective date more than 36 months prior to the experience rating date.

4. **Revision of Losses**

   Carrier submission of revised unit reports to the Rating Board, for purposes of automatically recalculating the current and up to two preceding experience modifications, is required only under the following circumstances:

   a. Originally reported loss values were incorrect due to a clerical error.

   b. The claimant or carrier has made a third-party recovery and the third-party has not filed a liability-over claim.

   c. The third-party in b., above, does file a liability-over claim, but settlement of such claim does not result in its recovery against the insured.
d. Where the originally reported claim is non-compensable as determined by:

(1) Official ruling denying benefits under the Workers’ Compensation Law

(2) A claimant's failure to file for benefits during the period of limitation allowed by the Workers' Compensation Law.

(3) A claimant's failure to prosecute his claim when a carrier contends, prior to valuation date, that the claimant is not entitled to benefits under the Workers' Compensation Law.

e. Where a claim has been legally held to be a Special Disability Fund case.

**Note:**

(1) A revised experience modification will automatically be issued by the Rating Board if the changes contained on a correction report, under one of the permissible conditions listed in a. through e. above, affect the current and up to two preceding modifications. For purposes of this rule's application to subrogation and special fund recovery situations, the current experience modification is that in effect when the revised loss value is determined by the insurance provider. No other changes in modification, other than those which are described in Note 2 below, will be promulgated by the Rating Board.

(2) An additional twenty-four months will be allowed for readjustment of any claim involving a recovery by subrogation or by other means.

If a case involving subrogation is expected to be open beyond the additional twenty-four months, upon a timely written application, properly filed directly with the Rating Board by the carrier or insured, a further extension of twenty-four months may be granted. Such application shall give notice to the Rating Board that a third-party subrogation case is still open, pending judicial decision. In this event, the Rating Board's files for the risk involved will be preserved. Note: It will be the responsibility of the carrier to file a final report prior to the close of the additional forty-eight month period detailing all subrogation recoveries not previously reported.

f. Official declaration by the courts or ruling by the Workers' Compensation Board that a claim is fully or partially fraudulent.

**Note:** In cases where a claim has been officially determined to be fully or partially fraudulent, revised experience modifications will automatically be issued by the Rating Board upon receipt of correction reports that affect the current and up to four prior experience modifications.

* g. Where a claim should have been reported with Catastrophe Number 48.

5. **Third-Party Cases**

When a risk's incurred losses include losses for which a third-party claim has been made, the inclusion of such losses in the experience rating calculation shall be as follows:

a. Unsettled claims—Losses shall be included in the experience rating calculation

b. Settled claims—Losses shall be included but must be adjusted prior to use in the experience rating calculation. The incurred loss shall equal the loss prior to settlement minus the amount recovered from others, plus expenses incurred in obtaining the recovery.

In cases where recovery expense exceeds recovery amount, the incurred loss shall equal the loss prior to settlement.