R.C. 2108

To the Members of the Board

RE: New York Workers Compensation
Waiver of Our Right to Recover From Others Rule

The Rates Committee has adopted, and the New York State Insurance Department has approved, effective, May 1, 2006, for new and renewal business, a change to the Waiver of Our Right to Recover From Others rule to allow for blanket coverage.

Currently, a provision in the Standard Workers Compensation and Employers Liability Insurance Policy allows a carrier to waive its right of recovery against anyone liable for an injury covered by the policy. Rule IX.K—Special Conditions or Operations Affecting Coverage and Premium, under the Waiver of Our Right to Recover From Others rule in the New York Workers Compensation and Employers Liability Insurance Manual, restricts coverage to a specific basis with a premium charge of 2% to 10% of the total premium at each job or location subject to a minimum premium charge of $15 per job or location.

The rule, as shown on the attached Pages R-57 and R-58 of the Manual, has been amended to allow for coverage on a blanket basis, in addition to the specific basis. The amendments specify that, if coverage is to be provided on a specific basis, then the premium charge would range from 5% to 10% of the total premium for each person or organization named in the schedule subject to a minimum of $250 per policy. However, if coverage is to be provided on a blanket basis, then a premium charge range of 2% to 10% would apply with a minimum premium of $250 per policy.

The Waiver of Our Right to Recover from Others Endorsement (WC 00 03 13) has not changed and is included as an attachment to this bulletin as a 1st Reprint. The only change to the endorsement is the inclusion of Notes 3 and 4 which state the premium requirements for both the blanket and specific coverage.

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

Very truly yours,
Monte Almer
President

CD:tg
Encl.
The rates used in the following examples of the transition program calculations are for illustration purposes only.

**EXAMPLE 1**

<table>
<thead>
<tr>
<th>Current Rate</th>
<th>Published Rate</th>
<th>Transition Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>4 x 5.30 + 1 x 8.24</td>
<td>5.89</td>
</tr>
<tr>
<td>Year 2</td>
<td>3 x 5.30 + 2 x 8.65</td>
<td>6.64</td>
</tr>
<tr>
<td>Year 3</td>
<td>2 x 5.30 + 3 x 9.08</td>
<td>7.57</td>
</tr>
<tr>
<td>Year 4</td>
<td>1 x 5.30 + 4 x 9.53</td>
<td>8.68</td>
</tr>
<tr>
<td>Year 5</td>
<td>10.00</td>
<td>10.00</td>
</tr>
</tbody>
</table>

**EXAMPLE 2**

<table>
<thead>
<tr>
<th>Current Rate</th>
<th>Published Rate</th>
<th>Transition Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>4 x 14.82 + 1 x 8.24</td>
<td>13.50</td>
</tr>
<tr>
<td>Year 2</td>
<td>3 x 14.82 + 2 x 8.65</td>
<td>12.35</td>
</tr>
<tr>
<td>Year 3</td>
<td>2 x 14.82 + 3 x 9.08</td>
<td>11.38</td>
</tr>
<tr>
<td>Year 4</td>
<td>1 x 14.82 + 4 x 9.53</td>
<td>10.58</td>
</tr>
<tr>
<td>Year 5</td>
<td>10.00</td>
<td>10.00</td>
</tr>
</tbody>
</table>

Refer to the New York Experience Rating Plan Manual for the Transition Program applicable to expected loss rates.

**K. WAIVER OF RIGHT TO RECOVER FROM OTHERS**

★ 1. Coverage

A provision in the Standard Policy allows the carrier to waive its right of recovery against anyone liable for an injury covered by the policy. Attach the Waiver of Our Right to Recover from Others Endorsement (WC 00 03 13) to waive right of recovery.

A carrier’s right to waive recovery from others applies only to the extent that an insured performs work under a written contract that requires the insured to obtain an agreement from the carrier.
2. Premium
   
   a. Specific
      A premium charge of 5% to 10% of the total standard premium developed in conjunction with the work for which the waiver is provided shall apply for each person or organization named in the endorsement, subject to a minimum premium of $250 per policy.

   b. Blanket
      A premium charge equal to 2% to 10% of the total standard premium, subject to a minimum premium of $250 per policy.

   Note: If a premium charge other than the minimum percentage is used, the underwriting file will be documented as to the reason for the higher percentage.

L. NEW YORK STATE ASSESSMENT

1. Explanation

   The New York State Assessment is a separate identifiable charge to policyholders for the funding of the Special Disability Fund, Reopened Case Fund, Workers’ Compensation Board expenses, Special Funds Conservation Committee expenses and interdepartmental expenses associated with the administration of OSHA requirements.

2. General Information

   The New York State Assessment amount must be displayed as a separate identifiable charge on the policy information page. Code 0932 must be used in conjunction with this charge for policy submission use only.

   The New York State Assessment amount is subject to change at audit and at all subsequent retrospective rating adjustments.

   The New York State Assessment amount is charged in conjunction with the effective date of the rates used on each policy. Therefore, where the Anniversary Rate Date Endorsement (WC 00 04 02) applies, e.g., when two sets of rates are used, two assessment percentages will apply.

   For all policies effective on or after January 1, 2001, in accordance with applicable New York statutes (Chapter 188, Laws of 1999 and Chapter 510, Laws of 2000) premium must be used as the basis for calculating the policy charge.

3. Premium Base for Calculating the New York State Assessment

   For purpose of this rule, premium is defined as premium determined on the basis of Rating Board or authorized (deviated) rates (or percentage premium deviation) plus any applicable territory differential premium, including any experience modification, merit rating factor, minimum premium, Construction Classification Premium Adjustment Program policy credit factor, surcharges and credits from Workplace Safety Programs, credits from independently filed carrier specialty programs (for example, alternative dispute resolution, drug-free workplace, managed care or preferred provider organization programs) and the additional charge for the Terrorism Risk Insurance Act of 2002. The expense constant, including the expense constant in the minimum premium, the premium discount, as defined in Rule VII, and premium credits for participation in any deductible program are excluded from the premium base for the determination of the assessment charge.
WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Notes:

1. Use this endorsement to waive the company’s right of subrogation against named third parties who may be responsible for an injury.

2. The sentence in ( ) is optional with the company. It limits the endorsement to apply only to specific jobs of the insured, and only to the extent that the insured is required to obtain this waiver.

★ 3. The company shall as applicable indicate a premium charge of 2% to 10% of the total standard premium subject to a minimum charge of $250 per policy for blanket coverage.

★ 4. The company shall as applicable indicate a premium charge of 5% to 10% of the total standard premium for each person or organization named above subject to a minimum charge of $250 per policy for specific coverage.