

August 11, 2004

ALL ASSOCIATION MEMBERS

Circular Letter No. 04 - 1426

**RE: NCCI Item P-1389 — Revision of Employers' Liability Coverage
Endorsement (WC 00 03 03 B); and
Federal Employers' Liability Act Coverage
Endorsement (WC 00 01 04)**

The Minnesota Department of Commerce has approved the above filing to become effective 12:01 a.m., October 1, 2004, for new and renewal business only.

The **Minnesota Forms Manual** is designed to correspond with the language contained on the forms and endorsements in the National Council **Forms Manual** whenever practical and appropriate to do so. The first form change in the above filing deletes an exclusionary clause regarding bodily injury to the flying crew of aircraft from the Employers' Liability Coverage Endorsement (WC 00 03 03 B) that is no longer necessary. The second change amends the language in the Federal Employers' Liability Act Coverage Endorsement (WC 00 01 04) to add a clarification regarding the interaction of this endorsement with the provisions of Part Two, Section C of the Standard Workers' Compensation & Employers Liability Insurance Policy.

The attached exhibits illustrate the changes needed in the **Minnesota Forms Manual** to implement the revisions to the two endorsements in this filing. Please note that this proposed language contains underlined and strikethrough text. The underlining represents new or added text while the strikethroughs indicate deleted text. Additionally, please note that the Federal Employers' Liability Act Coverage Endorsement will be reissued as WC 00 01 04 A and Employers' Liability Coverage Endorsement WC 00 03 03 B will be reissued as WC 00 03 03 C effective October 1st as a result of the approval of this filing in Minnesota. Copies of the Minnesota Endorsement Numbers WC 00 01 04 and WC 00 03 03 B will be replaced with the revised endorsements on MWCIA's website at www.mwcia.org in the near future. To view copies of all of Minnesota's currently applicable forms and endorsements, go to our website and click on "Minnesota Manuals" on the left-hand margin of our homepage.

Please direct any questions you may have regarding this filing to one of our Member & Customer Services staff at 952.897.1737 or email our office at info@mwcia.org.

A NOTICE TO MEMBERSHIP:

The Minnesota Department of Commerce requests that MWCIA remind its members that the above filing only applies automatically to insurance companies who have filed a Limited Power of Attorney agreement with our Commerce Department. A properly executed Limited Power of Attorney authorizes MWCIA to make filings on behalf of individual insurance companies. Any insurance company who has not filed a Limited Power of Attorney must independently submit the changes represented in each filing item to the Minnesota Department of Commerce for their approval.

FILING MEMORANDUM

ITEM P-1389—REVISION OF THE EMPLOYERS LIABILITY COVERAGE ENDORSEMENT (WC 00 03 03 B) AND FEDERAL EMPLOYERS' LIABILITY ACT COVERAGE ENDORSEMENT (WC 00 01 04)

(To be effective 12:01 a.m. on October 1, 2004, applicable to new and renewal business only.)

PURPOSE

The purpose of this item is to:

- Remove the exclusion for bodily injury to any member of the flying crew of any aircraft from the Employers Liability Coverage Endorsement (WC 00 03 03 B), and
- Clarify the use of the Federal Employers' Liability Act Coverage Endorsement (WC 00 01 04)

BACKGROUND

Employers Liability Coverage Endorsement (WC 00 03 03 B)

The Employers Liability Coverage Endorsement is used to provide employers liability insurance in any state, including monopolistic state fund states (with the exception of Ohio), where the policy does not provide workers compensation insurance.

Currently, the endorsement excludes bodily injury to any member of the flying crew of any aircraft. Our records show that the exclusion was added to the endorsement in 1986 to be consistent with the exclusions found in stop-gap endorsements used in monopolistic fund states.

The flying crew exclusion is not found in the employers liability part of the standard workers compensation and employers liability policy. We were unable to determine the origin or intent of the exclusion in the endorsement through research of federal case law, federal regulations, and the United States code. Additionally, we were unable to locate any specialty line of coverage for this exposure. We also reviewed the workers compensation statutes in the monopolistic fund states and found that only North Dakota has an exemption for certain flying employees.

Since the standard workers compensation and employers liability policy does not include the flying crew exclusion, we have determined that it would be appropriate to remove the exclusion from the Employers Liability Coverage Endorsement.

Federal Employers' Liability Act Coverage Endorsement (WC 00 01 04)

The Federal Employers' Liability Act Coverage Endorsement is used to provide employers coverage under the Federal Employers' Liability Act (FELA) (45 USC Sections 51-60). Coverage for FELA is specifically excluded under Part Two, Section C of the Standard Workers Compensation and Employers Liability Insurance Policy. However, when the exclusion was added to the standard policy, Form WC 00 01 04 was not revised to specifically state that the use of the form resulted in voiding the exclusion. Since the endorsement does not include this language, we have determined that it is appropriate to add clarifying language to the Federal Employers' Liability Act Coverage Endorsement.

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**ITEM P-1389—REVISION OF THE EMPLOYERS LIABILITY COVERAGE ENDORSEMENT
(WC 00 03 03 B) AND FEDERAL EMPLOYERS' LIABILITY ACT COVERAGE ENDORSEMENT
(WC 00 01 04)**

PROPOSAL

It is proposed that the exclusion for bodily injury to any member of the flying crew of any aircraft be deleted from the Employers Liability Coverage Endorsement (WC 00 03 03 B), effective October 1, 2004.

It is further proposed that clarifying language be added to the Federal Employers' Liability Act Coverage Endorsement (WC 00 01 04) to specify that the policy exclusion of FELA coverage does not apply, effective October 1, 2004.

IMPACT

This item does not impact current premium levels.

IMPLEMENTATION

The attached exhibits detail the changes made to the Employers Liability Coverage Endorsement (WC 00 03 03 B) and the Federal Employers' Liability Act Coverage Endorsement (WC 00 01 04) in NCCI's *Forms Manual of Workers Compensation and Employers Liability Insurance*.

EMPLOYERS LIABILITY COVERAGE ENDORSEMENT

This endorsement applies only to work in the states shown in the Schedule.

- A. Part One (Workers Compensation Insurance) does not apply to work in a state shown in the Schedule.
- B. Part Two (Employers Liability Insurance) applies to work in states shown in the Schedule as though they were shown in Item 3.A. of the Information Page.
- C. Part Two (Employers Liability Insurance), C. Exclusions is changed by adding these exclusions.

This insurance does not cover

~~13. bodily injury to any member of the flying crew of any aircraft;~~

~~14~~ 13 bodily injury to an employee when you are deprived of common law defenses or are subject to penalty because of your failure to secure your obligations under the workers compensation law of any state shown in the Schedule or otherwise fail to comply with that law.

Schedule

States**Notes:**

1. Use this endorsement to afford employers liability insurance in any state, including monopolistic state fund states, with the exception of Ohio, where the policy does not provide workers compensation insurance. The states are to be listed in the Schedule. Use the Ohio Employers Liability Coverage Endorsement (WC 34 03 01 B) to afford employers liability insurance in Ohio. This endorsement deletes Part One workers compensation coverage and leaves only Part Two employers liability coverage. This endorsement can only be used on a standard workers' compensation insurance policy in Minnesota to provide Part Two Employer's Liability Insurance to employers self-insuring their workers compensation liability.
2. The endorsement may be used in a National Council state only if (1) all employees are excluded from the workers compensation law or all employees have elected not to be subject to the law, and (2) there is no state law or regulation making the use of this endorsement illegal. (See the *Basic Manual User's Guide*—Reference Tables—Workers Compensation and Employers Liability Coverage Summary.) This Note does not apply in Minnesota.
3. The NCCI has published this as an Advisory form. In Minnesota, all filed forms are considered standard.

FEDERAL EMPLOYERS' LIABILITY ACT COVERAGE ENDORSEMENT

This endorsement applies only to work subject to the Federal Employers' Liability Act (45 USC Sections 51–60) and any amendment to that Act that is in effect during the policy period.

G. **Limits of Liability** of Part Two (Employers Liability Insurance) is replaced by the following:

G. **Limits of Liability**

Our liability to pay for damages is limited. Our limits of liability are shown in the Schedule. They apply as explained below:

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease—aggregate" is the most we will pay for all damages covered by this insurance because of bodily injury by disease to one or more employees. The limit applies separately to bodily injury by disease arising out of work in each state shown in Item 3.A. of the Information Page or in the Schedule.

Bodily injury by disease does not include disease that results directly from bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

If any state is named in Item 2 of the Schedule, Part Two (Employers Liability Insurance) applies in that state to work subject to the Federal Employers' Liability Act as though that state were listed in Item 3.A. of the Information Page. Part One (Workers Compensation Insurance) does not apply in a state shown in the Schedule.

Part Two (Employers Liability Insurance), C. Exclusions, exclusion 9, does not apply to work subject to the Federal Employers' Liability Act.

Schedule

1. Limits of Liability

Bodily Injury by Accident \$ _____ each accident

Bodily Injury by Disease \$ _____ aggregate

2. State

Notes:

1. The Federal Employers' Liability Act makes an interstate railroad liable for bodily injuries sustained by an employee. The liability of the railroad is insured by Part Two (Employers Liability Insurance) unless specifically excluded by Federal Employers Liability Act Exclusion Endorsement.
2. Use this endorsement when providing Federal Employers Liability Act coverage under Program I or II as described in the **Basic Manual User's Guide**. In Minnesota, please refer to the Minnesota version of the Basic Manual.
3. Item 2 of the Schedule may be used to extend FELA coverage to a state not listed in Item 3.A. of the information Page. In order to conform each carriers' Information Page with other provisions of the Standard Workers' Compensation Policy, the Information Page must at a minimum comply with the sequence of Items 1 through 4 of WC 00 00 01.

EXHIBIT III

INDEX MINNESOTA FORMS MANUAL

The following forms and endorsements in this Minnesota Forms Manual have been approved by the Minnesota Commerce Department and are available for use in Minnesota.

- Introduction
- Workers' Compensation and Employers Liability Insurance Policy Rules
- WC 00 00 00 A Workers Compensation and Employers Liability Insurance Policy
- WC 00 01 01 A Defense Base Act Coverage Endorsement
- WC 00 01 04 [A](#) Federal Employers' Liability Act Coverage Endorsement
- WC 00 01 06 A Longshore and Harbor Workers' Compensation Act Coverage Endorsement
- WC 00 01 08 A Nonappropriated Fund Instrumentalities Act Coverage Endorsement
- WC 00 01 09 A Outer Continental Shelf Lands Act Coverage Endorsement
- WC 00 01 11 Migrant and Seasonal Agricultural Worker Protection Act Coverage Endorsement
- WC 00 02 01 A Maritime Coverage Endorsement
- WC 00 02 03 Voluntary Compensation Maritime Coverage Endorsement
- WC 00 02 04 Limited Maritime Coverage Endorsement
- WC 00 03 01 A Alternate Employer Endorsement
- WC 00 03 02 Designated Workplaces Exclusion Endorsement
- WC 00 03 03 [C](#) Employers Liability Coverage Endorsement
- WC 00 03 04 Insurance Company as Insured Endorsement
- WC 00 03 05 Joint Venture as Insured Endorsement
- WC 00 03 09 A Rural Electrification Administration Endorsement
- WC 00 03 10 Sole Proprietors, Partners, Officers and Others Coverage Endorsement
- WC 00 03 11 A Voluntary Compensation and Employers Liability Coverage Endorsement
- WC 00 03 13 Waiver of Our Right to Recover from Others Endorsement
- WC 00 04 01 A Aircraft Premium Endorsement

- WC 00 04 03 Experience Rating Modification Factor Endorsement
- WC 00 04 05 Policy Period Endorsement
- WC 00 04 06 A Premium Discount Endorsement
- WC 00 04 09 Premium Determination Endorsement – Former Self-Insurers 1
- WC 00 04 10 Premium Determination Endorsement – Former Self-Insurers 2
- WC 00 04 12 Contingent Experience Rating Modification Factor Endorsement
- WC 00 04 14 Notification of Change in Ownership Endorsement
- WC 00 04 19 Premium Due Date Endorsement
- WC 00 04 20 Terrorism Risk Insurance Act Endorsement
- Policyholder Disclosure Notice of Terrorism Insurance Coverage
- Policyholder Disclosure Notice of Terrorism Insurance Coverage
- WC 00 05 03 A Retrospective Premium Endorsement One Year Plan
- WC 00 05 04 A Retrospective Premium Endorsement Three Year Plan
- WC 00 05 05 A Retrospective Premium Endorsement Long-Term Construction Project
- WC 00 05 08 Retrospective Premium Endorsement Aviation Exclusion
- WC 00 05 09 A Retrospective Premium Endorsement Changes
- WC 00 05 10 Retrospective Premium Endorsement Non-Ratable Catastrophe Element or Surcharge
- WC 00 05 11 Retrospective Premium Endorsement Short Form
- WC 00 05 12 A Retrospective Premium Endorsement One Year Plan – Multiple Lines
- WC 00 05 13 A Retrospective Premium Endorsement Three Year Plan - Multiple Lines
- WC 00 05 14 A Retrospective Premium Endorsement Long Term Construction Project - Multiple Lines
- WC 00 05 15 Retrospective Premium Endorsement Flexibility Options
- WC 00 06 03 Benefits Deductible Endorsement
- WC 89 06 09 B Policy Termination/Cancellation/Reinstatement Notice

- WC 22 00 00 A Minnesota Amendatory Endorsement
- WC 22 00 01 Information Page
- WC 22 04 01 Minnesota Contracting Premium Adjustment Program Endorsement
- WC 22 04 02 Minnesota Anniversary Rating Date Endorsement
- WC 22 06 00 Minnesota Policy Change Endorsement
- WC 22 06 01 B Minnesota Cancellation and Nonrenewal Endorsement
- WC 22 06 02 Minnesota Policy Information Page Endorsement Insured's Name
- WC 22 06 03 Minnesota Policy Information Page Endorsement Policy Number
- WC 22 06 04 Minnesota Policy Information Page Endorsement Effective Date
- WC 22 06 05 Minnesota Policy Information Page Endorsement Expiration Date
- WC 22 06 06 Minnesota Policy Information Page Endorsement Insured's Mailing Address
- WC 22 06 07 Minnesota Policy Information Page Endorsement Experience Modification
- WC 22 06 08 Minnesota Policy Information Page Endorsement Producer's Name
- WC 22 06 09 Minnesota Policy Information Page Endorsement Change in Workplace of Insured
- WC 22 06 10 Minnesota Policy Information Page Endorsement Insured's Legal Status
- WC 22 06 11 Minnesota Policy Information Page Endorsement Add States
- WC 22 06 12 Minnesota Policy Information Page Endorsement Employer Limits
- WC 22 06 13 Minnesota Policy Information Page Endorsement Change in State
- WC 22 06 14 Minnesota Policy Information Page Endorsement Endorsement Numbers
- WC 22 06 15 Minnesota Policy Information Page Endorsement Class, Rate, Other Change
- WC 22 06 16 Minnesota Policy Information Page Endorsement Interim Adjustment of Premium
- WC 22 06 17 Minnesota Policy Information Page Endorsement Carrier Servicing Office
- WC 22 06 18 Minnesota Policy Information Page Endorsement Interstate/Intrastate Risk ID Number
- WC 22 06 19 Minnesota Policy Information Page Endorsement Carrier Number