

# Commercial Insurance Update

Topics Affecting Buyers of Commercial Insurance

MSP C 12/2003 – “Workers Compensation Insurance: Extraterritorial Exposures”

December, 2003

## Workers Compensation Insurance: Extraterritorial Exposures

By Jeffrey W. Cavnac, CPCU, RPLU

### Work in Other States

Workers compensation is statutory; in other words, each state has developed its own specific sets of laws and benefit levels for injuries subject to those laws. Because of these differences, if an employee hired in one state is injured during the course of his/her employment in another state, and that other state has higher benefits, the employee might elect to file a workers compensation claim in that state.



Because workers compensation law differs by state, it is often unclear as to which state's workers compensation benefits might apply. Although this issue has been litigated heavily, firm rules do not exist, and each situation needs to be evaluated on its own merits.

At least one general conclusion can be reached, however. An employee hired in one state and injured in another may obtain benefits in the other state. In practical terms, this means that any business sending an employee to another state could conceivably have an incidental workers compensation exposure in that state.

Almost without exception, a workers compensation policy will extend to cover employees who are hired in one state while temporarily working in

another. (Unfortunately, “temporary” is not defined, but a “rule of thumb” is 90 consecutive days.) The benefits provided to the injured worker would be from the state of hire. The problem arises when the state in which the employee is injured provides higher workers compensation benefits, and the employee files a claim in that state.

So what's an employer to do? What's the best way to deal with the out-of-state exposure?

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The appropriate approach to this problem is to have the “Other States” section (Part C) of the workers compensation policy apply to all states except the monopolistic state fund states (North Dakota, Ohio, Washington, West Virginia, and Wyoming). To avoid an uninsured loss due to clerical oversight, we recommend that the “Other States” section of the information page be completed to read, “*All states and U.S. Territories except North Dakota, Ohio, Washington, West Virginia, Wyoming, Puerto Rico, the U. S. Virgin Islands, and states designated in Item 3.a. of the information page.*” Note that states designated in Item 3.a. of the information page would be those states in which the employer has permanent operations.

Unfortunately, it may not always be possible to obtain full “Other States” coverage. For example, the State Compensation Insurance Fund of California will not add this endorsement.

If the employer rarely, if ever, sends an employee to another state, this is not a big deal. Significant extraterritorial exposures, however, could pose a problem, and might necessitate purchasing separate insurance in each state which has significant operations.

Employers with potential incidental workers compensation exposures in the monopolistic fund jurisdictions may be able to obtain coverage under a manuscript “Extended Protection Endorsement” that provides for reimbursement of benefits required of the insured under workers compensation law of these jurisdictions; however, this is becoming more difficult to obtain in the current hard insurance marketplace.

It should also be pointed out that an employer with operations in a monopolistic state who has purchased the required state workers compensation coverage in that state should have stop-gap coverage endorsed to its general liability or standard workers compensation policy. This would extend employers liability coverage to the monopolistic state fund state. An employer who only has incidental exposure in one of these jurisdictions would be able to rely on its normal employers liability coverage provided by its workers compensation policy in the major state of domicile.

## Work in Other Countries

Employees who travel outside the country present a similar challenge to their employers. Once again, if they are temporarily (not defined, as you’ll recall) out of the country, the workers compensation coverage from their state of hire should apply.

But what if they may be away for an extended period of time, or what if you actually hire citizens of a foreign country in that country?

The preferred way to handle this exposure is to purchase a foreign voluntary workers compensation policy. Under this type of policy, if the covered em-



ployee is injured while temporarily on assignment outside the United States, benefits equivalent to those provided by the workers compensation

law of the employee’s home state are provided. This policy can also extend coverage to foreign citizens hired abroad who are working abroad.

You should be aware, however, that every country has its own unique laws that pertain to employee injury. In most countries, this coverage is nationalized. In some countries (the United Kingdom, for example) you must purchase employers liability coverage in that country. The message here is when you hire employees in a foreign country, you need to carefully evaluate that country’s laws.

A foreign voluntary workers compensation policy provides some additional benefits. Most policies provide 24 hour coverage when an employee is out of the country. Domestic workers compensation policies only provide coverage for injuries arising out of or in the course of employment.

In addition to injury arising out of or in the course of employment, these policies typically also provide coverage for endemic disease and repatriation expense. An endemic disease is one that is peculiar to a particular country. The endemic disease coverage language of a foreign voluntary workers compensation policy establishes that coverage ap-

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plies to injury or death arising out of endemic disease, even if the disease is not covered under the workers compensation or occupational disease law of the designated state.

Repatriation expense coverage reimburses the insured for expenses over and above normal transportation costs when it is necessary to bring an injured, sick or deceased employee back to the United States. Most foreign voluntary workers compensation policies have a sub-limit on repatriation expense. The adequacy of any such sub-limit should be carefully evaluated.

The extra transportation costs under such circumstances can be enormous. Because of the repatriation and endemic disease coverage available under a foreign voluntary workers compensation policy, many employers purchase this coverage for all employees injured outside the United States regardless of whether the assignment is temporary or permanent.

In addition to workers compensation, many insurance companies offering “foreign voluntary

workers compensation” coverage will provide additional benefits, such as:

- **Medical Assistance Services** – This includes worldwide medical and dental referrals, monitoring of treatment, and other forms of medical assistance.
- **Travel Assistance Services** – This includes emergency travel arrangements, assistance in the replacement of lost or stolen travel documents, translation services, etc.
- **Personal Security Services** – This includes real time security intelligence and security evacuation services.

## Conclusion

When employees either travel or work outside their state of hire, it creates unique extraterritorial exposures. Like any exposure to loss, these need to be evaluated, managed and appropriately insured. A capable insurance broker knowledgeable about extraterritorial exposures is critical to this process.



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***Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

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# Cybersecurity a Challenge

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Cybersecurity is a significant challenge for risk managers, as businesses depend more and more on computers and computer networks. Cyberthreats and reports of hacker attacks from around the world make it absolutely essential that organizations examine and update their computer security policies and systems.

Cyberattacks can shut down a computer system (e.g., denial-of-service attacks), cause the computer to malfunction (i.e., giving inaccurate answers or performing inappropriately), or give unauthorized entities access to the information contained on the computer. Hackers have even invaded innocent computers and caused them to participate in denial-

of-service attacks on large cybercorporations, such as AOL.

## What can you do to protect your business?

Perfect security is impossible, as any new security measure is a challenge to a determined attacker to find a way to circumvent it. However, most businesses can improve their present level of security if they are willing to spend the money and manpower to do so. Security can be expensive, and the return

**Cybersecurity** (Continued on page 4)

on investment isn't always obvious. Proper security prevents disasters but doesn't produce any visible pay-off, and thus can be a hard concept for management to swallow.

You can solve many cybersecurity problems with existing technology and techniques. Often, though, these aren't applied because no one in particular has the overall responsibility for security. A good first step is to give one person the responsibility and authority to enforce security procedures.

A security audit, which involves your staff or consultant trying to hack into your business's system to discover weaknesses, needs to be followed by corrective measures – application of patches, revision of password systems, etc. You should arrange for unannounced audits to be conducted periodically. You should also ensure that software currently available to detect attempted breaches of the security system is applied regularly.

Your personnel should be trained in security procedures, then held accountable for their practices. You should provide updated training as necessary. As one weakness is fixed, another may become apparent. Security must be approached on a system level, rather than piecemeal. Security is an evolving process, and requires ongoing updates to procedures.

Your business should have a fallback plan for secure operation when it is under attack and a disaster recovery program in case the worst-case scenario occurs.

Your traditional business insurance policies – CGL, business interruption, and so forth – most likely will limit coverage for losses involving loss of data and other computer-related problems. Still, some coverage may be available for many of these losses. You should review your policies for gaps in coverage, as some companies are restricting even the limited coverage that has been available in the past. You might want to consider a stand-alone cyberinsurance policy that covers third-party liability and first-party losses resulting from such events as viruses, hacker or denial-of-service attacks, extortion, and copyright and patent infringement. Policies vary widely in coverage and in price, so you will need to shop around.

Two reasons some companies may not want to buy cyberinsurance involve confidentiality – an insurer will likely require an in-depth evaluation of the security systems and policies currently in place, and security breaches would need to be reported. Often, security breaches are not reported to law enforcement or insurers because companies fear bad publicity, with a consequent loss of consumer confidence. You will need to consider these issues.

In light of ongoing cyberattacks and cyberthreats, your company must assess its current cybersecurity system and make tough decisions about how much time, money, and personnel it wants to devote to improving its systems. You should also consider a cyberinsurance policy. The consequences of not doing so can be severe. ✂

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# Spotlight on Our Community:

Looking for a way to give back to our community during this Holiday Season? Here's information about one of Cavnagac & Associates' favorite Charitable Opportunities:



## Senior Community Center of San Diego



In a recent survey, most of the seniors served at Senior Community Center reported eating less than two meals a day, and more than a quarter said they did not have enough money to eat full meals. Most of these seniors have to choose between eating or living in a sheltered environment. Given the advanced needs that age brings, this sacrifice can be deadly.

- The core service of Senior Community Center is its nutrition program, which provides two hot meals a day, 365 days a year. With the opening of Market Square Manor, seniors now have four downtown meal sites available.
- Senior Community Center serves an average of 1,000 meals a day at the three downtown locations or delivered to frail, homebound seniors. We are the only downtown agency that delivers hot meals to homebound seniors. The Home Delivered Meals drivers take special care to notify our social workers if any senior is in need of medical or social services.
- Seniors are asked for voluntary donations when they eat. No one is turned away if they do not have money; however, the majority of seniors do pay an average of 30 cents per meal simply because they are proud and do not want to eat for free.

### Health, Social Services & Activities

- Medical consultation and assessment
- Medication management
- Health education
- Referral to other community health care providers
- Counseling on entitlement programs, such as Veteran's benefits, MediCal, Medicare, SSI and Social Security
- Housing assistance and homeless outreach, transportation, legal, mental health, and substance abuse issues
- Periodic educational classes to enhance social, physical and emotional health
- We provide transportation to extracurricular activities such as concerts, plays, museums and provide a variety of activities in-house to allow our seniors an opportunity to keep their minds and bodies active.

### Mission and Vision

To provide quality and compassionate services for the survival, health and independence of seniors living in poverty.

To create an environment where seniors living in poverty are respected and live free of fear with pride and dignity. We believe in:

- Helping at-risk seniors remain healthy and independent.
- Serving as an advocate and "voice" for seniors living in poverty.
- Treating our seniors with respect and dignity at all times.
- Offering high-quality services that exceed our seniors' expectations.
- Expanding our efforts through aggressive outreach to seniors in need.
- Being proactive, growth-oriented and a catalyst for leveraging community resources.
- Exceeding our donors' expectations by thanking and recognizing them for their gifts.
- Being a leader among non-profit organizations.
- Being fiscally sound.

If you would like to make a gift to Senior Community Centers, here is what your donation can provide for our seniors:

- **\$40** = two hot nutritious meals a day for one month
- **\$120** = two hot nutritious meals a day for three months
- **\$240** = two hot nutritious meals a day for six months
- **\$480** = two hot nutritious meals a day for an entire year

### 4 Ways to Help

1. You can **donate online** by visiting <http://www.servingseniors.org>. Click to enter and choose the link "How to Give."
2. **Checks** can be mailed to **Senior Community Center, Attn: Development, 525 14th Street, 2nd Floor Administration, San Diego, CA 92101.**
3. Senior Community Center has partnered with **Cars 4 Causes** to allow you to donate your used car, hassle-free. To donate, please call **Cars 4 Causes** at **1-800-766-CARE (1-800-766-2273).**
4. **Volunteer!** Individuals, groups and/or firms may contact **Tim Ruis** at **619-235-4182, Extension 305.** ❀