

Delaware Compensation Rating Bureau, Inc.



The Widener Building • 6th Floor  
One South Penn Square  
Philadelphia, PA 19107-3577  
(302) 654-1435 (215) 568-2371  
FAX (215) 564-4328  
[www.dcrb.com](http://www.dcrb.com)

TO: Delaware Classification & Rating Committee

FROM: Betty Ann Campbell  
Director – Rating Rules & Policy Reporting

DATE: August 5, 2004

RE: Employers Liability Coverage Endorsement – WC 00 03 03 B  
Federal Employers Liability Act Coverage – WC 01 01 04

In Item Filing No. P-1389, the National Council on Compensation Insurance, Inc. (NCCI) has proposed a countrywide revision for the Employers Liability Coverage Endorsement (WC 00 03 03 B) to remove the exclusion of “bodily injury to any member of the flying crew of any aircraft” and to the Federal Employers Liability Act Coverage Endorsement WC 01 01 04 to add clarifying language to specify that the policy exclusion of FELA coverage does not apply, effective October 1, 2004.

The Bureau proposes to adopt this item filing in Delaware in order to maintain consistency with industry standards.

The Item Filing No. P-1389 memorandum and proposed endorsements are attached.

Attachment

## 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)**

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**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 the 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

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequently to preparation of the policy.)**

Endorsement Effective  
Insured

Policy No.

Endorsement No.  
Premium \$

Insurance Company

Countersigned By \_\_\_\_\_

**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 for 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 Employer's Liability Act.

Schedule

- 1. Limits of liability
  - Bodily Injury by Accident \$ \_\_\_\_\_ each accident
  - Bodily Injury by Disease \$ \_\_\_\_\_ aggregate

- 2. State

**Note 1:** The federal Employers Liability Act makes an interstate railroad liable for bodily injuries sustained by an employee. That liability of the railroad is insured by Part Two (Employers Liability Insurance) unless specifically excluded by Federal Employers Liability Act Exclusion.

**Note 2:** Use this endorsement when providing Federal Employers Liability Act coverage under Program I or II of Rule XIII of the Basic Manual.

**Note 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.