

NAIC 2009 Fall National Meeting
Washington, D.C.

Workers' Compensation (C) Task Force
Tuesday, September 22, 2009
2:00 p.m.—3:30 p.m.
Gaylord Convention Center
National Harbor 12-13, National Harbor Level

Roll Call

Merle Scheiber—Chair	South Dakota	Mila Kofman	Maine
Bill Deal—Vice Chair	Idaho	Ralph Tyler, III	Maryland
Jim Ridling	Alabama	Mike Chaney	Mississippi
Linda Hall	Alaska	John Huff	Missouri
Jay Bradford	Arkansas	Ann Frohman	Nebraska
Steve Poizner	California	Scott Kipper	Nevada
Thomas Sullivan	Connecticut	Roger Sevigny	New Hampshire
Gennett Purcell	District of Columbia	Kim Holland	Oklahoma
Kevin McCarty	Florida	Teresa Miller	Oregon
J.P. Schmidt	Hawaii	Joseph Torti, III	Rhode Island
Michael McRaith	Illinois	D. Kent Michie	Utah
Sandy Praeger	Kansas	Alfred Gross	Virginia
Sharon Clark	Kentucky	Jane Cline	West Virginia
James Donelon	Louisiana		

1. Longshore & Harbor Workers' Compensation Act and its Extensions (*John Chamberlain—U.S. Department of Labor*)
2. Proposed Bill to Establish the National Commission on State Workers' Compensation Laws: H.R. 635—Update (*Amanda Yanek—NAIC, D.C. Office*)

Task Force 2010 Charges (*Bob Card—NAIC*)

Attachment One

- Review draft charges
- Consider adoption

3. Draft Implementation Commentary: Guidelines for Regulations and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements—Update (*Bob Wake—ME*)

Attachment Two

4. National Conference of Insurance Legislators Draft Independent Contractor Model Law—Update (*Mr. Card*)

5. Consider Adoption of Working Group Reports (*Director Scheiber*)

Attachment Three

- Large Deductible Study Implementation (C) Working Group—*Alan Wickman (NE)*
- NAIC/IAIABC Joint (C) Working Group—*Eric Cioppa (ME)*
- Professional Employer Organization Model Law (C) Working Group—*Mr. Wake*

6. Any Other Matters

- Property and Casualty Insurance (C) Committee 3 p.m. – 5 p.m., Wednesday, Sept. 23, 2009



National Association of
Insurance Commissioners
2009 Fall National Meeting
Workers' Compensation
Task Force

**The Authorization And Method Of Insuring
The Longshore And Harbor Workers'
Compensation Act And Its Extensions - How
It Is Done, And Why It Matters.**

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Presenter

John Chamberlain,
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Branch of Financial Management, Insurance and Assessments

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Administration of the Act

The Longshore and Harbor Workers' Compensation Act is administered by

The Division of Longshore and Harbor Workers' Compensation,

Office of Workers' Compensation Programs

Room C 4315

200 Constitution Avenue, Washington, DC 20210

Phone 202-693-0038

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Administration of the Act

<http://www.dol.gov/esa/owcp/dlhwc/index.htm>

<http://www.dol.gov/esa/owcp/dlhwc/lscntac.htm>

<http://www.dol.gov/esa/owcp/dlhwc/lscntactmap.htm>

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The Extensions

Benefits under the Longshore and Harbor Workers' Compensation Act are extended by

- The Outer Continental Shelf Lands Act
- The Nonappropriated Fund Instrumentalities Act
- The Defense Base Act

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Cover

The Longshore and Harbor Workers' Compensation Act covers maritime employees, including longshore and harbor workers, ship builders, ship repairers and marine construction injured over "navigable waters" or on adjacent land.

7

Cover

The Outer Continental Shelf Lands Act covers workers on fixed platforms and rigs engaged in oil and gas work on the outer continental shelf, beyond territorial waters.

8

Cover

The Nonappropriated Fund Instrumentalities Act covers civilian employees of the various exchanges for the military including the Coast Guard.

9

Cover

The Defense Base Act covers employees of civilian contractors working under contracts with the United States. It includes subcontractors and subordinate contractors. It includes foreign nationals.

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Employers

Employers must be either Self-Insured or Insured with a company authorized by

- any state to write workers' compensation insurance, and
- The U. S. Department of Labor

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Excuses

I didn't know I needed the cover

My agent didn't tell me

I chose be self-insured

Its too expensive

My employees have elected state benefits

They chose state benefits

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Employers

There are no exceptions for

- the size of the company,
- minimum number of employees,
- Directors and officers of the corporation.

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Employers

This means that in some states, employers need a
“stand alone policy”.

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Employers

The obligation to obtain insurance, “To insure and keep insured” their obligations, is on the Employer.

There are no provisions relating to brokers or agents.

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Consequences for Failure to Insure

There are both civil and criminal proceedings for which are liable

- The company
- Its President, Treasurer and Secretary

Each needs separate representation –
8 law firms in all.

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Insurance

- 38(a) The *corporation* and its *president, secretary and treasurer* are severally liable for a fine of \$10,000 and imprisonment for not more than one year.
- The *president, treasurer and secretary* are also severally liable jointly with the *company* for the benefits during the period it fails to secure compensation

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Insurance

- Failure to report a claim carries a separate penalty of up to \$11,000.
- Failure to report a claim tolls the time bar
- Failure to controvert a claim requires 10% additional compensation for each amount unpaid.

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Insurance

Excuses we have heard:

- I didn't know I needed the cover
- My agent didn't tell me
- I chose to be self-insured
- It's too expensive
- My employees have elected state benefits

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Insurance

- Companies must be authorized by the Department of Labor in addition to any State requirements
- <http://www.dol.gov/esa/owcp/dlhwc/LS-272.pdf>
- <http://www.dol.gov/esa/owcp/dlhwc/LS-272instructions.pdf>
- They must be authorized by a State to write workers' compensation insurance

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Insurance

- Once authorization is granted, it can be withdrawn only for good cause.
- Usually authorization is voluntarily surrendered by a company when their rating drops below our acceptable level.

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Insurance

- The Longshore Statute permits us to “take into consideration the recommendation of any State authority having supervision over carriers or over workmen’s compensation”.
- This presentation is a first step on our part to begin the dialogue.

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Insurance

We would like to ensure that our authorization procedures are consistent with those of the various states, and that they represent the current “best practices”.

23

Insurance

- We would like to ensure that when an authorized carrier changes its name, re-domesticates, merges, changes ownership, or any similar alteration in status, we are notified.

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Insurance

- We look at a company's Best Rating –
- we require a B+ or better.
- We look at five years history especially
 - Net worth
 - Risk based capital ratio

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Insurance

- We want to know why the company is applying.
- We want a thriving market with competition

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Insurance

- Some companies want to participate in assigned risk pools
- Others want to provide “incidental” or “if any” policies

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Insurance

- We want to know who will be handling their claims
- We do not authorize third party adjusters or administrators
- We look for companies who would know a longshore claim if they saw one.

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Insurance

Most companies are part of a group, which pool their resources, either through reinsurance or capital maintenance agreements.

We believe we are really authorizing groups rather than individual companies.

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Insurance

- The company must submit its policy forms before using them
- The usual policy is the standard workers' compensation policy with a Longshore endorsement

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Insurance

- The problem with the standard policy is that the endorsement covers only the states listed in the policy.
- It is possible for there to be a valid longshore claim outside the boundaries of the state.

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Insurance

- For there to be a valid policy of insurance, there should be:
 - A workers' compensation policy
 - With a longshore extension
 - A payroll declaration showing at least one "F" class
 - An authorized carrier
- All policies issued for the longshore act or its extensions must be notified to our district offices. This will shortly be an electronic function

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Insurance

- Some states exclude Longshore claims from their own workers' compensation system.
- Others permit both systems concurrently. In those cases we expect the carrier to pay and report longshore benefits subject to credit for amounts paid under the state act.

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Insurance

- There is no requirement that an injured worker may choose or elect one system or the other.
- The employer is not permitted to offer such a "choice". The employer or carrier must pay longshore benefits.

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Insurance

- We currently have about 358 authorized carriers.
- Of these about 163 reported payments last year
- Between 50 and 60% of the annual payments are made by self-insured employers or their captive insurance companies

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Insurance

- Many companies form part of a group, and reinsure or pool their losses into a holding company or pool
- We believe that we are really authorizing the group.

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**2010 PROPOSED CHARGES
NEW OBJECTIVES AND GOALS**

As of: 8/19/09

WORKERS' COMPENSATION (C) TASK FORCE

The mission of the Workers' Compensation (C) Task Force is to study the nature and effectiveness of state approaches to workers' compensation and related issues—including, but not limited to, assigned risk plans; safety in the workplace; treatment of investment income in rating; occupational disease; and cost containment—and the relevance of adopted NAIC model laws pertaining to workers' compensation.

Ongoing Maintenance and/or Necessary Updates to NAIC Programs, Products or Services:

1. Discuss issues arising with respect to advisory organization and insurer filings for workers' compensation.—*Essential*
2. Appoint a Large Deductible Study Implementation Working Group to ensure that the NAIC charges presented in the Findings and Recommendations of the NAIC *Workers' Compensation Large Deductible Study* are properly completed. The Working Group is to report the results of their ongoing charge on a quarterly basis.—*Important*
3. Appoint an NAIC/IAIABC Joint Working Group as it studies issues of mutual concern to insurance regulators and workers' compensation administrators. Review relevant model laws and papers and consider possible charges in light of Working Group recommendations. The Working Group is to report the results of their ongoing charge on a quarterly basis.—*Important*
4. Appoint a Professional Employer Organization Model Law Working Group to complete development of a paper to be of assistance to the states in the implementation of the NAIC Guidelines for Regulations and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950), to coordinate with other NAIC groups on issues relating to professional employer organizations, and to follow changes in the professional employer organization marketplace. The Working Group is to report the results of their ongoing charge on a quarterly basis.—*Important*

New Objectives and Goals Representing New NAIC Programs

1. Appoint a Model Law Review Working Group to review older workers' compensation model laws and regulations for relevance, in accordance with NAIC Standards for Model Law Review. Make recommendations regarding whether the particular model law or regulation should be deleted, amended or kept in its current form. The Working Group is to report the results of their ongoing charge on a quarterly basis.—*Deferrable*
2. Provide assistance to participating states in conducting a 2010 multi-state examination of the National Council on Compensation Insurance.—*Essential*

Sponsors for 2010 Charges
(Except as noted, I support all charges)

SIGNATURE	STATE