

THE NEW CENTURY COURIER INSURANCE PROGRAM

COURIER BEWARE

Over the many years we've worked with the courier industry, we have found a number of situations/exposures that may pose major problems. Day-to-day decisions are usually made without regard to insurance implications. The result may lead to actions or inactions that may not be covered by a standard insurance policy.

There are also a number of non-standard coverages that are should often be considered by courier companies. We suggest that you understand what these coverages are, so if you reject them, at least you've been informed.

It is extremely important for you to read and understand the following information/warning. We are always available to discuss any of these items with you to enhance explanation and obtain quotations for the appropriate coverage where available.

USE OF SUBCONTRACTORS/AGENTS

More and more, the courier industry is subcontracting work to "agents" (other courier companies). It is extremely important to establish responsibilities and liabilities via a formal written agreement. As with any contract or agreement, you should utilize your attorney, however, we can provide a sample "agent agreement" upon request.

The agreement should clearly outline certain minimum insurance requirements. Then you must absolutely make sure to monitor their insurance. We can give you suggestions on how best to do this.

Your customers are requiring you to provide certain levels of insurance – why wouldn't you want to do the same thing with subcontractor/agents you are paying?

UNINTENTIONAL REVEALING OF CONFIDENTIAL INFORMATION

Nearly any business today has a lot of personal customer information and as such, is exposed to privacy losses. Awareness of this potential liability has been heightened by the news media in recent years. Examples of the exposure include:

- Loss of data from stolen computers
- Improper disposal of work product
- Accidental leakage of information

We have recently introduced a product that will provide you with protection for these exposures at very reasonable premiums. We will automatically offer a minimum level coverage of \$25,000 per occurrence with a \$50,000 annual aggregate with each Package policy that we write. Higher limits are available upon request.

STOP GAP LIABILITY

This coverage may be provided by itself or by endorsement to the General Liability policy. It provides Employers Liability coverage for work-related injury arising out of operations or exposures in states that have monopolistic state funds for Workers Compensation, namely; North Dakota, Ohio, Washington and Wyoming.

If you have operations in any of these states or regularly enter any of them, you should consider adding this coverage.

INDEPENDENT CONTRACTOR WORKERS COMPENSATION SOLUTIONS

This topic is one that can be discussed for hours. It is important, misunderstood and often not handled properly. If you have your Workers Compensation (WC) coverage placed through the assigned risk pool, or even a voluntary market, but are covering only your true employees, the good news is that if a driver is injured and claims employee status to be compensated under WC, you do have a WC policy that will have to pay the claim. The bad news is that this situation would absolutely trigger an audit by the carrier and they WILL come after premium on all the IC's. Even without a claim to trigger it, an audit is extremely likely and they are going to go after premium on the IC's because they are "uninsured subcontractors". Be careful on subbing out any work to other companies – if you do this, you need to obtain a current WC certificate. Otherwise, you could end up getting charged for WC premium on their drivers as well.

There are several ways to deal with this issue efficiently:

1. Include the IC's under your WC. Because they are IC's, you can use the "one-third rule", meaning that the premium is based on one-third of their 1099 amounts. Also, you can charge back the premium to the IC's in many states – ask us which states. By using the one-third rule and charging the premium back, the IC relationship is reinforced. The average rate for the governing class – 7231 Parcel Delivery – is between \$10 and \$15 per \$100 of remuneration in most states.
2. Utilize a Professional Employment Organization (PEO) for all W-2 employees. This gets rid of the audit problem since you wouldn't have any employees, therefore you wouldn't have to buy WC at all. The problem with this option is that if an IC is injured and claims and wins employee status to obtain WC benefits, you've got no policy to respond.
3. Utilize a "third party contractor management company." There are three serving the courier industry – SCI, NICA and CMS. We know them all and how their programs work and largely for insurance reasons, we recommend SCI. Basically, there are three tiers to their program:
 - a. Occupational Accident insurance for the IC. Not WC, but it has decent levels of medical and disability coverage for work-related injuries.
 - b. "If any" WC policy on each IC, including an "alternate employer endorsement" naming SCI. This allows the IC to formally acknowledge that he is operating as an IC and exempt their own payroll and themselves from WC coverage as the "sole proprietor" if not incorporated or as an "executive officer" if incorporated. This serves to help SCI and the courier company to clearly define the IC position and to defend against reclassification if a legal action is brought by an IC to gain employee status in order to make a WC claim. This is supported and adhered to by the fact that every state allows small businesses across every business sector to use these exemption forms and disallowing this would go against established insurance practices in place for many years. Further, since SCI holds the contract with the driver and pays each driver on a 1099 basis, SCI is recognized as the primary labor contractor. So, in the event the IC comes after WC and he is deemed to be an employee, it is SCI's legal status as a primary labor contractor that is going to be considered the "employer", and as such, is extended a statutory coverage position under the IC's "if any" WC policy with the "alternate employer endorsement".
 - c. There is even further protection due to the fact that SCI maintains their own corporate WC coverage via an employee leasing company provided by a national A+ rated insurance carrier. SCI has its leased employees covered, both under clerical and driver class codes, and SCI has secured a position as "alternate employer" on the leasing company's WC policy. So in the extremely unlikely situation where a claim isn't shut down on the "if any" WC above, this policy will step up.

Then, for WC on your employees, you can get your own WC policy and not be concerned about an audit, because you will be able to demonstrate that the drivers are otherwise insured. Alternatively you can utilize a PEO for the employees.

The cost of this program is approximately \$25/week per driver (paid for by the driver, of course) and SCI charges approximately \$2 per check to administer the settlements.

4. We have secured a program with a national “A rated” carrier that will offer a similar three-tiered program, all with the same carrier:
 - a. Occupational Accident Insurance similar to what SCI and the other third-party management companies offer.
 - b. Contingent Liability provides legal defense coverage in the event an IC attempts to be reclassified and gain WC benefits. If the IC is successful, the policy responds with benefits equivalent to statutory WC benefits, subject to an overall limit.
 - c. WC on the W-2 employees, with no possibility of going after WC premium on the IC’s.The cost averages about \$95/month per driver for the Occ-Acc and Contingent.

UTILIZING A PROFESSIONAL EMPLOYMENT ORGANIZATION (PEO), EMPLOYEE LEASING COMPANY OR TEMPORARY STAFFING COMPANY

Many of you do this now, have done it in the past or will in the future. There are clearly advantages gained, such as the IC/WC issue discussed earlier in this document. There is, however, a potential problem of which you should be aware.

Injury to a “leased” or “temporary” worker should be covered by the PEO/Temp-Company’s WC policy. No problem there, however, there could be a problem if the injured worker decides to file suit against you for negligence. Your commercial general liability policy will likely deny coverage due to the “Employers Liability” exclusion. Employee, as defined in the GL policy, includes a “leased worker”. If the worker was a “temporary worker” – a person who is furnished to you to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions -- the Employers Liability exclusion does not apply.

There are a couple of solutions, so if you are using leased or temporary workers, contact us. We’ll help you determine if there is a problem then advise you how to address it.

LEASING DRIVERS TO CUSTOMERS (DRIVING CUSTOMERS VEHICLES)

While this doesn’t seem to be a big trend in the delivery industry, we have come across it in several potential claim situations.

Our underwriters have not contemplated this exposure or priced for it. It’s questionable, at best, as to whether your Non-Owned/Hired Auto coverage (if you carry this) would apply. The facts in each situation will have to be closely examined in order to determine if coverage applies.

Since some of you utilize IC’s, another concern should be if the IC status would hold up under IRS scrutiny when the alleged IC is not providing his/her own “equipment”.

Also, what about “occupational injury”? Is the IC covered somewhere, or will an injured driver end up with a claim against your customer’s WC policy? Certainly, that won’t promote good customer relations!

If you intend to or are doing any driver leasing we need to know about it immediately and you need to make sure that there’s a clear understanding, in writing with your customer that the customer’s auto insurance will apply on a primary basis for any accident involving their vehicle.

DRIVER REPORTING

Those of you that have Owned Auto policies with certain carriers such as Lincoln General, Clarendon, Scottsdale, Wesco and Progressive, ***MUST REPORT ANY NEW DRIVERS IMMEDIATELY!***

Accidents involving drivers who are unreported may result in denial of coverage or reduction of coverage. It’s best to report anyone new right away. You should have a form in your office for *New Driver Reporting*.

EMPLOYEE BENEFITS LIABILITY

This coverage protects the Insured employer against claims by employees or former employees resulting from negligent acts or omissions in the administration of the Insured's Employee Benefit Programs (i.e. Group Medical/Health Insurance).

CONSEQUENTIAL LOSS (ERRORS & OMISSIONS)

If you make a delivery that is late, delivered to the wrong address, or never gets delivered at all and there are financial consequences – **YOU HAVE NO COVERAGE!** You would need to purchase Errors & Omissions coverage, specifically. This coverage has been accessible, although very expensive, very limited, and came with a high deductible. We have introduced a new Errors & Omissions product underwritten by St. Paul/Travelers.

However, even with affordable coverage available, it may best be dealt with by; (a) avoidance – not accepting work that clearly imposes significant, (b) contractually transferring the risk back to the customer via a Hold Harmless Agreement, or just having the customer sign off, indicating that you have no liability for consequential damages.

A couple of examples should clearly illustrate the risks:

- A delivery driver picks up a contractor's bid that must be delivered by noon on Friday. The driver is delayed and the bid arrives late. As it turns out, it would have been the winning bid. Contractor sues the delivery company – NO COVERAGE!
- A delivery driver is delivering medical records from a private physician's office to a record storage facility. The container holding the records falls out of the delivery truck spilling records all over the highway. The driver manages to pick-up most of the records and completes the delivery to the records storage facility. It turns out that several of the records weren't retrieved. One record contained the positive results of an HIV test for a prominent local politician. The lost record is found by someone who hands it over to the local news media. The politician sues the delivery company for "invasion of privacy & humiliation" – NO COVERAGE!

In the vast majority of situations where "consequential loss" could occur, the delivery company knows what is being transported, as opposed to the many miscellaneous, non-risky packages that most delivery companies mainly deal with delivering. The delivery driver/company can then consciously make the decision not to accept the job, or accept it only if the customer agrees, in writing, to hold the delivery company harmless for any consequential loss – unless of course, Errors & Omissions coverage is obtained.

The appropriate application will be supplied to you upon request.

TRAILERS (OWNED/LEASED BY COURIER COMPANY)

What would seem to be a simple thing, buying or leasing a few trailers and making them available to your IC's, actually creates a serious coverage issue for both liability and physical damage. If you own or lease the trailer, it *doesn't* fall under your Non-Owned/Hired Auto policy. Can you *fix* the problem by leasing it to the IC? **NO!** Assuming the IC is driving a one ton pick-up, it's likely he/she has a Personal Auto policy. There is absolutely no liability or physical damage coverage related to the trailer under that policy. Now, if the IC has a Commercial Auto policy and schedules the trailer, at least you'd have the protection of that policy, but only while the trailer was pulled by the vehicle scheduled on the policy. Hopefully the limits are reasonably high.

The bottom line is that trailers can be a big problem. If you utilize them in any way, we can help give you the proper advice.

CHARGING DRIVERS FOR YOUR NON-OWNED/HIRED AUTO COVERAGE

You *must not specifically* make a deduction from your driver for AUTO INSURANCE as reimbursement for a Non-Owned/Hired Auto policy. This implies that the drivers are covered – which ***IS NOT*** true. You, the courier company, are covered for acts of the driver – period!

UMBRELLA LIABILITY

Most of you are aware that Umbrella Liability increases the amount of protection you have for liability claims (General Liability, Auto Liability and Employer's Liability) and it *may* pick up some liability exposures not covered by your primary policies.

Limits normally begin at \$1,000,000 and can be increased in increments of \$1,000,000 to just about any limit you desire.

It's been our experience that the vast majority of the courier companies *do not* purchase an Umbrella. A large percentage of you did purchase Umbrellas prior to the *hard market* hitting us in late 2000. However, with premiums for all coverages escalating significantly, many of you felt you had to cut out the Umbrella or at least reduce limits. Nonetheless, we haven't seen the amounts of damage awards reduced, or even level off, so it's still a good idea to consider an Umbrella at some level.

EMPLOYMENT PRACTICES LIABILITY COVERAGE

It's hard to pick up a major newspaper these days without reading about some company being sued by an employee for harassment, wrongful termination, or discrimination of varying types including sex, race and national origin. While lawsuits against major Fortune 500-type companies get most of the press, there are an increasing number of law suits being filed against small to medium sized employers. Often they are groundless, but it can get expensive just to put up a defense. There are quite a few insurance products available at reasonable costs and with reasonable deductibles. Some of these will also extend coverage to allegations made by IC's. It's not a bad idea to consider purchasing this coverage.

FIDUCIARY LIABILITY INSURANCE

This insurance covers claims arising from a breach of responsibilities or duties imposed on a benefit plan administrator or a negligent act, error or omission of the administrator. For example, a pension plan goes broke based on mismanagement by the plan administrator.

DIRECTORS & OFFICERS LIABILITY

This is a form of Errors & Omissions insurance covering the directors and officers of a corporation. It can also be extended to protect the corporation against lawsuits alleging they committed wrongful acts. However, this coverage does not apply to bodily injury or property damage.

WAREHOUSING

A typical Cargo policy covers property in-due course of transit, which includes storage up to 72 hours. If you are storing property of any kind for more than 72 hours, you need to complete the *Warehousing Questionnaire* in the application, so we can provide coverage either under a.) Personal Property of Others or b.) Warehouseman's Legal Liability. Otherwise, you'll have no coverage.

TERRORISM

Since 9/11/01, many policies began excluding *terrorism* losses. A few states decided not to allow these exclusions, but generally, they are prevalent.

The Terrorism Risk Insurance Act (TRIA) was signed into law in November 2002 by President Bush, effectively negating all terrorism exclusions. All Insurance carriers licensed to do business in the U.S. must offer terrorism coverage. Often it's presented as an *optional* coverage that you as the Insured can accept or reject. Sometimes the coverage is automatically included in the policy - which is permitted as long as the carriers specifically identify that part of the premium allocated to terrorism. The TRIA applies to virtually all commercial policies.

If terrorism is optional, should you buy it? The first thing to assess is your exposure. From the stand point of property, if you own your building and are located in a *major* city, one might strongly consider buying it. Certainly cost is a factor. If it's a very *small* incremental cost, it's probably a no-brainer.

If your drivers spend a lot of their time in downtown areas of major cities, there's an increased exposure to *occupational injury*.

Turning to *liability* – it's conceivable that a courier may unknowingly pick up a package containing explosives and inadvertently deliver it to an office building. Even if you ultimately get dismissed from a lawsuit, you'll incur some defense costs, not to mention a lot of anxiety. Here again, if the incremental premium is small, and it usually is, you may want to go ahead and buy it.

Lastly, if the cargo you're carrying gets destroyed in a terrorist situation, you could be liable. Again, weigh the costs against the odds and do what makes sense.

SIGNAGE

We have always recommended (in the *NON-OWNED/HIRED AUTO PROGRAM AGREEMENT* included as part of our application) that IC's not use signage unless it is required under your Federal and/or State Operating Authority. When smaller vehicles (under 10,000 lbs. GVW) are involved, make sure to use only magnetic signs and require the IC's to remove them when not making deliveries. If you don't have/need formal operating authority and are not required to use signage, we strongly advise against it. You may want to use signage in an advertising capacity. From a risk management standpoint, we clearly feel the risk of signage making you a *target* for lawsuits, far outweighs any advertising benefit. You may have certain customers that require signage to gain access to their property. We suggest that you talk to them about requiring ID badges instead.

WEBSITES

Many of you proudly refer to websites in your advertising. Undoubtedly the web is a great way to display your company's services. However, most advertising, in whatever form, involves varying degrees of hype (translated as "stretching the truth", "laying it on a little thick", etc.). While it may have the desired effect in terms of attracting business, websites are also a great source of information for insurance underwriters. For example, if an underwriter goes to your website and sees you "operate in 48 states" and have "200+ drivers" – compared to your insurance application which states you operate 98% within 100 miles of your office with 50 drivers – there's a credibility issue. Your insurance application is likely accurate, but the 48 states and 200 drivers sound good. Technically, you can arrange transportation for customers virtually anywhere by sub-contracting work to other courier companies.

The point is, while websites can be very positive and help generate business, they can also send conflicting messages to insurance underwriters. Just be careful!

AUTO POLLUTION LIABILITY

The *ONLY* Pollution Liability coverage you have under any standard auto policy is relative to *pollutants* that escape from the vehicle's engine or fuel tank, such as oil or gasoline, as a result of an accident. You *DO NOT* have coverage for pollutants that you are transporting as cargo, however our standard cargo policy may provide up to \$10,000 of Pollution Clean-Up.

At one time or another, most couriers carry cargo that falls into a HAZMAT classification. This can include paint, soap, hair spray, etc. However, most of the time, there are only small quantities of these materials being transported and they are not considered bulk, so you don't need the HAZMAT placard. Frankly the exposure is likely minimal, but keep in mind, if you are carrying materials that fall into a HAZMAT category, in any amount - even less than the bulk definition, you need to think about securing the appropriate coverage. (To find out what quantity of HAZMAT material constitutes displaying a placard, go to hazmat.dot.gov and review the Code of Federal Regulations, specifically CFR49 – section 172.504.)

MCS-90

Federal regulations require that all motor carriers that are regulated on a federal level show proof of minimum financial responsibility. The MCS-90 endorsement to an existing Auto/Truckers policy is the primary means of satisfying this requirement. The MCS-90 is designed to protect the public, not the policyholder. The essence of the potential problem to the policyholder is that because of the MCS-90, a claim could be paid by the insurance company that *IS NOT* covered by the policy. In the event this happens, the insurance company can and will attempt to recoup what was paid from the insured/policyholder.

The primary source of trouble would likely involve environmental restoration and clean up. Unless you are a licensed HAZMAT carrier, it's highly unlikely you carry Auto Pollution Liability coverage. To our knowledge, it's not available from any insurance company currently underwriting Auto Liability coverage for courier companies. However, many of you routinely carry things that could be *pollutants*. For example, you may be carrying a load of plastic parts/goods of some kind. There's an accident and a fire ensues, melting the plastic onto the highway. It's highly likely that there will be some environmental clean-up. Due to the MCS-90, your insurance company would be responsible for the costs. Since there isn't coverage under the policy, the insurance company is entitled to come back to you for reimbursement.

There is a coverage endorsement – Pollution Liability - Broadened Coverage for Covered Autos. Unfortunately, to our knowledge, not one of the carriers underwriting couriers makes this endorsement available. Although, if it were available, it would provide reasonable coverage at an affordable premium.

On the other hand, you can secure the appropriate, separate Auto Pollution Liability coverage.

While this information is geared to those of you with Federal Authority, I'd advise the same caution to everyone. If you don't have Federal Authority (no MCS-90 on your policy) and a situation involving environmental clean up occurs – there is no coverage. Please be aware of the potential problem, and to the extent you can, try to avoid carrying products that are or could become *pollutants*.

CYBER RISK

As the business world continues to become more dependent on the internet and electronic data, you are increasingly subject to *Cyber Risk*. Whether you use only one computer in your operation or have several workstations and servers onsite, you have the potential for a cyber loss - particularly if you have a website. Cyber Risk insurance can be categorized into two different coverages; Third Party or First Party.

Third Party coverage protects your organization from claims arising out of things such as wrongful acts, including any form of defamation or other tort-related disparagement; trade libel; copyright infringement; plagiarism; misappropriation of ideas; liability arising from unauthorized access or use; computer virus transmissions or loss of service; disclosure of confidential information; and denial of service to customers. These claims can be centered around content on your webpage, such as using a link to another company's webpage without permission, using another company's logo without permission, defaming a company on your webpage, negligently displaying content or information, false advertising, or *framing*. Typically, Third Party claims are costly to defend and settle. Paying these expenses out-of-pocket could endanger you and your business. While many companies believe that this liability is covered under the Commercial General Liability policy, a gray area remains as to whether this will be covered by the carriers. The best way to cover your Cyber Liability and the Errors & Omissions associated with this is through a Third Party Cyber Liability policy.

First Party Cyber coverage protects your organization from unauthorized access by hackers, crackers and competitors into your systems (computer network, server, telephone, fax, e-mail, etc.) resulting in damages. The coverage provided includes protection against things like illicit transfer of money, securities, data and tangible property; network based extortion; theft of telecommunications services; loss or corruption of proprietary data; restoration or repurchase expense; computer viruses and other malicious code losses; and loss of Business Income due to intentional network disruption. These situations are not covered by your Property/Crime policies.

Unfortunately, as the internet continues to grow in popularity, so does the malicious intent of hackers and crackers!

CONTRACTS

Unfortunately, today we're living in a world where almost everything is governed in some way, shape or form by *contracts*. These seem to be ever more complex and from the standpoint of the courier industry – *most* of the time they are clearly in favor of the customer.

That being said, it's downright scary how many contracts are signed by couriers without review by their attorney or insurance agent/broker. There's often a *mistaken* assumption on the part of the courier that their insurance will cover any liability assumed under a contract. The fact is that some may be covered, but many won't be!

You need to thoroughly review any contract you're being asked to sign and/or give them to your attorney and insurance agent/broker. If you're going to assume liability that insurance doesn't cover, you should know that going in. Often, you can avoid uncovered liability by getting your attorney and/or your insurance agent/broker to either negotiate on your behalf with the customer, or at least give you enough information so you'll be in a position to make an enlightened decision.