

## TIA Workers Compensation Guidance

TIA recommends that its members request certificates of workers compensation insurance from every carrier with whom they do business, and put those certificates in the carrier's file. In most states, sole proprietors and partners are not covered as employees unless they elect to be covered. In some states, executives may opt out of coverage. Without a written certificate of exemption, however, these individuals retain the right to claim coverage. In the trucking industry, the result is that many owner operators may not have workers comp coverage, but will file a claim if they are injured. The state will look for some entity to cover the cost.

TIA's position in such situations is that brokers are independent contractors who undertake to arrange transportation but do not take responsibility as carriers. Because brokers do not act as carriers, they do not and cannot subcontract their duties to motor carriers. Nevertheless, some states have tried to argue that motor carriers *are* subcontractors to brokers, and that the brokers are liable for workers compensation claims not covered by the motor carrier, because the brokers are prime contractors who are, in effect, employing the motor carrier as a subcontractor.

TIA recommends that in order to be in the most defensible position if such claims are made, a broker that is TIA member get carriers that do not have workers compensation insurance to complete and sign a form like the enclosed Certificate of Election. In this way, if your firm is audited, the auditors will find either proof of workers compensation or a certificate of election for every carrier the broker paid during the previous workman's compensation policy term. If either is provided, the auditor should not put the carriers' pay on the broker's workman's compensation policy and charge a premium.

The rates for truck drivers are rather high, which means the premium is relatively high. For example in New York the rate is about \$11 per \$100 of payroll. New York has arbitrarily determined that 50% of the amount paid to a trucker is payroll. To illustrate, consider the following: a broker does \$5,000,000 in gross revenue per year, and 20% of the broker's business is with small trucking companies that do not purchase workers compensation insurance. In New York, the resulting premium would be \$55,000 (\$1,000,000 discounted 50% @ \$11 / \$100). In other states, the rate may be even higher.

While brokers are just discovering this workers compensation issue, it is not a new concept. The construction industry has dealt with this issue for years. The rule of thumb for the construction industry is "no worker ever enters a job site without a hard hat and a workers compensation insurance certificate".

The US Chamber of Commerce has published a book summarizing the various state worker's compensation laws. The book lists the six basic objectives which underlie the workers compensation laws with Objective No. 1 being to "Provide sure, prompt, and reasonable income and medical benefits to work-accident victims or income benefits to their dependents, regardless of fault" (emphasis added). The goal of the system, therefore, is to find benefits for the injured worker and if that means going beyond the direct employer, then that will be the case.

## CERTIFICATE OF ELECTION

### **CERTIFICATION**

This is to certify that the firm named below has elected to not cover its owners, partners or officers under the workers' compensation laws of the State of \_\_\_\_\_. The firm named below certifies that it has no employees. The firm named below certifies that it uses no independent contractors. Based upon the election not to cover owners, partners or officers, the fact there are not other employees and that no independent contractors are used, a workers' compensation policy is not purchased.

### **AGREEMENT**

The firm named below promises, in consideration for work received from Client, that if the owners, partners or officers choose to change their election, if any employee is hired or if any independent contractor is used, then a certificate of insurance evidencing workers' compensation coverage will be furnished prior to the commencement of any work.

### **PERIOD**

The period of this agreement is: \_\_\_\_\_ to \_\_\_\_\_.

### **CARRIER**

Carrier Name: \_\_\_\_\_

MC Number: \_\_\_\_\_

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_