



B U L L E T I N

September 8, 2008

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R.C. 2185

To the Members of the Board

**RE: New York Workers Compensation
Endorsement Revision:
Foreign Voluntary Endorsement (WC 31 06 17A)
Effective October 1, 2008**

The Underwriting Committee of the New York Compensation Insurance Rating Board has authorized and the New York State Insurance Department has approved, an amendment to the Foreign Voluntary Endorsement (WC 31 06 17A). This endorsement change is effective October 1, 2008.

This endorsement is being modified to reflect the availability and selection of Limits of Liability. This change will provide greater flexibility in displaying chosen limits of liability for the 'Part Two – Employers Liability' portion of the form. Previously, this endorsement was hard coded noting only the Standard Liability Limits. This revision will eliminate display and processing confusion when different limits are chosen for this coverage.

The attached Foreign Voluntary Endorsement (WC 31 06 17A) reflects this change. Also attached are manual pages R-5, R-55, AC-5, and a revised Alphabetical Index and Numerical Index which illustrate this change.

These endorsements are also available via our website at: www.nycirb.org.

Very truly yours,

Monte Almer

President

WVT:tg
Encl.

*Issued October 1, 2008**Effective October 1, 2008***Section 3. Exclusions**

This insurance does not cover:

- A. Bodily injury arising from any direct or indirect consequence of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power. No current or subsequent endorsement to this policy will override or waive this limitation;
- B. Compensation or benefits imposed by any non occupational, disability benefits law, plan or any similar law or plan; and
- C. Bodily injury you intentionally cause or aggravate.

Section 4. Voluntary Workers Compensation

This endorsement amends Section A. of Part One of the policy by adding the following coverage:

On your behalf, we will voluntarily pay an amount equal to the benefits you would be required to pay if you and the employees described in Item 1. of the Schedule were subject to the workers compensation law designated in Item 1. of the Schedule of this endorsement.

We will pay those amounts to the persons who would be entitled to them under the law. If this is not possible, we will reimburse you for amounts you are required to pay.

The following provisions apply to this insurance:

- A. In no event will our liability under this section exceed the amount we or you would have been obligated to pay if the employment and injury had been subject to the workers compensation law designated in Item 1. of the Schedule of this endorsement. The only exception to this is as provided for in Section 6 – Repatriation Expense.
- B. We have the option of requesting you to pay sums due directly to persons entitled to them on our behalf. We will reimburse you for these payments when you provide us with satisfactory proof of payment.
- C. Before we are required to make any payment or reimburse you, the persons entitled or paid must:
 - (1) Release you and us in writing from all responsibility for the bodily injury or death;
 - (2) Transfer to us their right to recover from others who may be responsible for the injury or death to the extent of our payment or reimbursement; and
 - (3) Cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If a person entitled to payment under this section refuses to accept voluntary payments offered, we may, at our discretion, withdraw the offer to pay compensation benefits. If this happens, we will notify you and the employee that we will no longer be bound by the provisions of this section.

- D. Under this or any other policy we have issued to you, it is possible that the provisions of a workers compensation law, plan or any similar law or plan may hold you or us legally liable for any injury where payments have been made or would otherwise be made under Section 4. of this endorsement. If this happens, we agree that we will make no further payments under Section 4. if Section 5. of this endorsement applies.

Section 5. Legal Liability Under Workers Compensation Law

- A. If benefits are payable under a workers compensation or occupational disease law of any state, country or subdivision of a country other than the United States of America, its territories or possessions or Canada, we will reimburse you up to but not in excess of the cost of benefits which have been payable under the workers compensation law of the state designated in Item 1. of the Schedule of this endorsement.
- B. We will not be liable for any loss for which you had other valid and collectible insurance.

- C. We assume no obligation to defend any suit or proceeding against you outside of the United States of America, its territories or possessions or Canada.
- D. The coverage Section 5. affords does not cover fines or penalties imposed on you for failure to comply with the requirements of any workers compensation or occupational disease law of any state, country or subdivision of a country.

Section 6. Repatriation Expense

This section only applies to coverage provided for in Sections 4. and 5. of this endorsement.

Medical expenses include additional expenses of repatriation to the United States of America incurred as a result of bodily injury to employees. In the event an employee is injured, our liability is limited to the amount by which these expenses exceed the normal cost of returning the employee. In the event of an employee's death, our liability is limited to the amount by which the expenses of returning the body exceed the normal cost of returning an employee who is alive and in good health.

Our liability will never exceed the amount indicated in Item 2. of the Schedule of this endorsement for one covered employee or accident.

The policy does not afford coverage for repatriation expenses unless a specific limit of liability for each covered employee and accident appears in Item 2. of the Schedule of this endorsement.

Section 7. Employers Liability

The following agreement replaces Section B of Part Two – Employers Liability of the policy with respect to the coverage this endorsement provides:

A. We Will Pay

We will pay, on your behalf, all sums which you become legally obligated to pay as damages because of bodily injury by accident or disease, including resulting death, sustained in any state or country or subdivision of a country other than the United States of America, its territories or possessions or Canada by any of your employees arising out of and in the course of employment by you.

The following provisions apply to Section 7. of this endorsement:

- A. We will reimburse you for all reasonable expenses you incur, including attorneys' fees in defending any suit against you alleging injury and seeking damages on account of any insurance this section of this endorsement affords. We assume no obligation to defend any suit or any proceeding brought against you outside the United States of America, its territories or possessions or Canada.

- B. The limit of our liability under Part Two will be in accordance with the following provisions:

The words "damages because of bodily injury by accident or disease, including resulting death" in Part Two include damages for care and loss of services. These words also include damages for which you are liable because of suits or claims others bring against you to recover the damages obtained from such others because of bodily injury your employees sustain arising out of and in the course of their employment.

The limit of liability in Item 3. of the Schedule of this endorsement which applies to bodily injury by accident is the total limit of our liability for all damages because of bodily injury by accident including resulting death that one or more employees sustain.

The limit of liability in Item 3. of the Schedule of this endorsement which applies to bodily injury by disease is the total limit of our liability for all damages because of bodily injury by disease including resulting death that one or more employees sustain in any one state, country or subdivision of a country outside the United States of America, its territories or possessions or Canada listed in Item 1. of the Schedule of this endorsement.

The limits of liability designated in this endorsement supersede and are not cumulative with any limit(s) of liability elsewhere in the policy. The inclusion of more than one insured does not increase the limits of our liability.

Section 8. Premium

In addition to the provisions of Part V – Premium of the policy, the following provisions will apply to this endorsement:

- A. We will compute the premium for this coverage in accordance with Part Five of the policy, upon all remuneration paid to employees while traveling or temporarily residing outside the United States of America, its territories or possessions or Canada for a period of no longer than ninety days.
- B. We will determine the premium for this coverage on the basis of the workers compensation rules, classifications and rates in accordance with the manuals we use for the state workers compensation law designated in Item 1. of the Schedule of this endorsement.
- C. You must maintain payroll records for any employees covered by the provisions of this endorsement.

Section 9. Other Insurance

The following provision replaces Section E of Part One and Section F of Part Two of the policy with respect to the coverage this endorsement provides.

The insurance for a loss covered by this endorsement will be excess insurance over and above any other insurance except with respect to insurance provided under Section 5. The limits of liability for this insurance will be reduced by an amount equal to the limits of liability other insurance affords.

SCHEDULE

1. Name(s) of Employees	State or Country of Operations	Designated Workers Compensation Law
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2. Limits of Liability for Repatriation Expense

- \$ 15,000 each employee
- \$ 50,000 each accident

3. Limits of Liability for Part Two – Employers Liability

- ★ \$ _____ Bodily Injury by accident each accident
- \$ _____ Bodily Injury by disease each employee
- \$ _____ Bodily Injury by disease policy limit

D. VOLUNTARY COMPENSATION INSURANCE

1. Description of Coverage

Voluntary compensation insurance shall not provide compensation, medical or other benefits in excess of the statutory requirements in the workers compensation law designated in the Voluntary Compensation and Employers Liability Coverage Endorsement (WC 00 03 11A).

2. How Provided

Voluntary compensation insurance is provided by attaching the Voluntary Compensation and Employers Liability Coverage Endorsement (WC 00 03 11A) to the Standard Policy. *Refer to Rule VIII for rules and to Section I.H.9 of the Digest of Rulings and Interpretations.*

E. FOREIGN VOLUNTARY COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

1. Description of Coverage

Foreign voluntary compensation and employers liability insurance provides workers compensation, employers liability, repatriation expense and endemic disease coverage to employees temporarily working outside the United State of America, its territories or possession or Canada.

2. How Provided

Foreign voluntary compensation and employers liability coverage is provided by attaching the New York Foreign Voluntary Compensation and Employers Liability Coverage Endorsement (WC 31 06 17A) to the Standard Policy. *Refer to Rule VIII.D. for premium determination.*

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F. VOLUNTEER FIREFIGHTERS COVERAGE

1. Description of Coverage

♦ The Volunteer Firefighters' Benefit Law Policy provides coverage for the statutory obligations required under the New York Volunteer Firefighters' Benefit Law. In addition, this special policy must provide employers liability coverage comparable to Part Two of the Standard Policy. The Catastrophe (Other Than Certified Acts of Terrorism) Premium Endorsement (WC 00 04 21C) and Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00 04 22A) must also be attached to each policy.

2. Group Insurance

The Volunteer Firefighters' Benefit Law (VFBL) contains provisions that allow for group insurance. Under Section 32.1 of the VFBL, any town may obtain a single policy covering all fire protection districts and fire alarm districts within the town. Under Section 32.2, a group policy may be issued to a group of cities, villages, fire districts or town boards located within one county. Section 32.2 group insurance requires that:

- a. the governing board of each member fire district resolves to be insured under the group policy, and that each such resolution be filed with the chairman of the county board of supervisors;
- b. the group file with the chairman of the county board of supervisors an agreement executed by each member fire district agreeing to the effective date of the policy and the population of each fire district;

The limit of liability for Bodily Injury by Accident—each accident—applies to all bodily injury arising out of any one accident.

The limit of liability for Bodily Injury by Disease—each employee—applies as a separate limit to bodily injury by disease to any one employee.

The limit of liability for Bodily Injury by Disease—policy limit—applies as an aggregate limit for all bodily injury, regardless of the number of employees who sustain bodily injury by disease.

2. Limits of Liability for Repatriation Expense

The limits of liability for repatriation expenses for employees subject to foreign voluntary insurance are:

\$15,000	each employee
\$50,000	each accident

3. Increased Limits

The standard limits under Part Two—Employers Liability Insurance for employees subject to foreign voluntary insurance may be increased. The premium for the limits shall be determined by using the Table for Increased Limits in Rule VIII.B.3.

The limits of liability for Repatriation Expense may not be increased and are subject to the limits shown in 2. above.

4. Premium Determination

Premium shall be determined on the basis of the workers compensation rules and classifications in this manual, and carrier authorized rates for the state workers compensation law designated in the schedule in the New York Foreign Voluntary Compensation and Employers Liability Coverage Endorsement (WC 31 06 17A).

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The premium charge for repatriation expense coverage shall be \$375 for the limits shown in 2. above.

5. Payroll Records

When foreign voluntary coverage is provided, payroll records must be maintained for any employees covered by the provisions of WC 31 06 17A.

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**PREMIUM ALGORITHM (Continued)
PREMIUM ELEMENT DEFINITIONS**

Sequence of Presentation & / or Calculation	Premium Element Name	Premium Element Definition	
17	Drug-Free Workplace Credit	Premium credit in conjunction with independently filed carrier drug-free workplace programs.	
★	18	Repatriation Expense Premium	Premium charge for repatriation expense in conjunction with the New York Foreign Voluntary Coverage Endorsement WC 31-06-17A
TOTAL SUBJECT PREMIUM			
19	Experience Modification	Increases or decreases premium based on insured's prior loss experience.	
TOTAL MODIFIED PREMIUM			
20	Merit Rating Adjustment	Non - rated risk program. Premium adjustment based on number of claims.	
21	New York Construction Classification Premium Adjustment Program (NYCCPAP)	A factor that reduces the total modified premium - based on employer's average wages for contracting classifications.	
22	Drug-Free Workplace Credit	Premium credit in conjunction with independently filed carrier drug-free workplace programs.	
23	Managed Care/PPO Premium Credit	Premium credit in conjunction with independently filed carrier Managed Care or PPO programs	
24	Compulsory Workplace Safety and Loss Consultation Program Surcharge	Employers failing to initiate a Compulsory Safety Consultation or implement the recommendations of a certified loss consultant are charged 5% for each year of non-compliance.	
25	Non-ratable elements	Certain classifications have a catastrophe load that is not subject to experience rating. This premium is reported under separate statistical codes.	
26	Radiation Exposure NOC	Premium for operations involving research, manufacture, handling, transportation, use of or exposure to radioactive materials not performed for or under the direction of the Nuclear Regulatory Commission or any governmental agency.	
27	Aircraft Operation - Passenger Seat Surcharge	Premium for additional exposure from the operation of private aircraft.	

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