By Gerald Murphy

The insurer’s right to seek reimbursement from a legally liable party for claim costs is called the right of subrogation. In workers’ compensation, this process is often times referred to as “Third Party Recovery” or “TPY Recovery.” An effective recovery program is important to policyholders because the money recovered, minus any costs of recovery, are credited directly to the policyholder’s claim. This reduces the claim costs and in the case of experience rated policies, it can also reduce the policyholder’s premium.

In an effort to increase the effectiveness of the agency’s recovery operations without adding staff, the State Accident Fund has contracted with Subrogation Partners (SP), a private recovery firm, to perform third party recovery services. Subrogation Partners will be working as the Fund’s agent to identify subrogation opportunities, and then pursue and recover the funds. Their fee is based exclusively on the actual amount of money recovered.

They have already conducted a review of the agency’s existing claims for subrogation opportunities and are currently gathering information on some potential claims. Effective January 15, 2004 Subrogation Partners will begin reviewing all of the new claims received. When they determine a claim has recovery potential, they may contact you for additional information. They will be working closely with your adjuster and the agency’s legal staff.

The concept of contracting out recoveries is not new for SAF. The agency has a long standing and very successful relationship with Reimbursement Consultants Incorporated (RCI), a contractor who has handled the agency’s Second Injury Fund recoveries with outstanding results for a number of years.

Please contact Ray Ambrose at (803) 896-5930, if you have questions, comments or concerns.

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Cold Weather Tips

By Russell Rush

It would be nice during these cold winter months to simply stay indoors by a roaring fire and sip hot chocolate. Life must go on and for many of us that means venturing into the great outdoors for work or pleasure. Here are some safety tips to help keep you and the ones you care about warm and healthy during this winter season.

- The best way to avoid the cold is to stay indoors. If possible schedule outdoor activities for the warmest part of the day.
- If you must go outside, several layers of lightweight clothing will keep you warmer than a single heavy coat. You might start with a t-shirt then progress with a turtleneck, a sweater or sweatshirt, a polar fleece coat and then a parka. Remember to dress your little ones in one more layer than you are comfortable wearing. Gloves and a hat will also help prevent loss of body heat.
- Understand the hazards of wind chill. As the wind increases, heat is carried away from the body at an increased rate, driving down body temperature.
- Stay dry! Water changes your body temperature 200 times faster than air. Moisture can come from the sky or from perspiration so be careful when working or playing outdoors.
- Don't depend on hot drinks like coffee or cocoa or alcoholic beverages to keep you warm when outdoors. They trick your body into thinking you are warmer than you really are.
- Frequently check on neighbors, friends and family who may be shut-in or don't receive visitors regularly, especially the elderly who are more susceptible to cold weather.
- Be careful with alternative heat sources. Keep things like space and portable heaters away from clothing, furniture or draperies and make sure they are well vented. Never leave a space heater or fire going unattended or while you sleep.
- Never use ovens or stoves as heaters.
- Keep faucets dripping to prevent pipes from freezing. Open cupboard and cabinet doors to pipes to assist in this effort.
- Don't be a peephole driver! Make sure your car windshield and windows are clear of frost, ice or snow before driving. Try spraying de-icer on your car glass at night to keep them free of overnight ice build-up. This will aid in the de-icing process prior to your next morning's commute.

The SAF Source is a quarterly newsletter published by the South Carolina State Accident Fund as a vehicle to provide news, technical information and guidance to state/local government policy-holders, policymakers and others concerned with the management of workers' compensation programs.

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Comments and contributions may be sent to: PO Box 102100 Columbia, SC 29221-5000
Terrorism Risk Insurance Act (TRIA)

By Ross Gamble

The September 11, 2001 attack on the World Trade Center and the Pentagon was the largest workers' compensation catastrophe in history. Prior to September 11th, terrorism had not been considered a likely workers' compensation catastrophe. The few terrorist events that did occur had a minimal impact on workers' compensation. This is an exposure that by statute cannot be excluded from primary insurance coverage. However, many reinsurers are electing not to provide terrorism coverage. This leaves primary insurers, including the state workers' compensation funds, facing terrorism exposure with no current provision for funding it.

The United States Congress recognized that terrorism is a catastrophe exposure that is real and significant for insurers of workers' compensation, and other lines of insurance. Thus Congress passed the Terrorism Risk Insurance Act of 2002. Quoting from the Act, "The Purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to-

1. Protect consumers by addressing market disruptions and ensure the continued widespread availability of property and casualty insurance for terrorism risk;

2. Allow for a transitional period for the private markets to stabilize, resume pricing of such insurance and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections."

Although TRIA provides for a backstop after individual company losses reach a certain limit, each insurer is responsible for paying insured losses up to a deductible. The deductible is 7% of premium in 2003 rising to 15% in 2005.

For losses above our deductible the federal government will cover 90%, while we will be responsible for 10%.

The Act requires all entities, including state workers' compensation insurance funds, to participate in the program and charge premiums accordingly. For those reasons we have added a terrorism factor to all premium statements. It is 2 cents per $100 of payroll and is not subject to any modifications.

Don't forget to total up those 300 Logs and complete the 300A Form (Summary of Work-Related Injuries and Illnesses) for 2003.

A total of 5 years' worth of logs should be maintained and available in the event of a regulatory inspection. The 300A is to be completed and signed by the highest-ranking official at your location and then posted in a conspicuous place from February 1 to April 30. Failure to comply with the OSHA Recordkeeping Standard could result in regulatory citation. If anyone at your location needs help completing or training associated with these forms please contact your representative in the Safety & Loss Prevention Department at the State Accident Fund.

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Contractors and Workers' Comp

By Robert McCulloch

Contractors are often used in various contexts in state government. When contract personnel are injured, controversies often arise as to their status. An independent contractor is not an employee as defined in the workers' compensation act, and those who contracted with him or her are not liable to provide workers' compensation coverage. However, if the nature of the contract is such that person is considered an employee then workers' compensation coverage must be provided. The nature of the work is not important in trying to determine if someone is an independent contractor or an "employee" and thus is entitled to benefits. The most important consideration is the contractual relationship between the parties.

The four factors used to determine independent contractor status are listed below – South Carolina courts have held that all factors must be met for a person to have independent contractor status.

1. The employer's right to exercise control over the details of the work or how it is performed: To have independent contractor status, the independent contractor, not the prime contractor, has the absolute right to determine how the work will be accomplished. With an employee, the employer would rightly expect to have some control over the way the employee does their work. The employer has no say over how an independent contractor completes a task – the only important point is the result.

2. Method of payment: Generally, an independent contractor would be paid in a lump sum at the successful conclusion of a job.

3. Furnishing equipment: An independent contractor would furnish their own equipment for the job.

4. Right to fire or discharge at will: An independent contractor cannot be terminated without some liability, usually financial, to the entity or person who hired him.

Determining whether or not a person is an independent contractor must be done on a case by case basis. The four factors listed above are the guidelines that would be used in a conflict over the employment status. Just placing the words "independent contractor" in an agreement does not create that status. Keep in mind that the employer does not have the protection from liability lawsuits from independent contractors that it would have from an employee under the workers' compensation system.

Welcome New Policyholders!

J.F. Hawkins Nursing Home
Newberry, SC

A Father's Place
Conway, SC
Make plans to attend SAF’s...

EMPLOYERS’ WORKERS’ COMPENSATION UPDATE 2004

Four Locations:

Charleston (Trident Tech) March 4, 2004 9AM-3PM
Conway (Coastal Carolina University) March 9, 2004 9AM-3PM
Greenville (Greenville Technical School) March 18, 2004 9AM-3PM
Columbia (State Accident Fund) March 24, 2004 9AM-3PM

The sessions are designed to increase the attendees’ knowledge and understanding of recent developments in the workers’ compensation system and the potential impact of those changes on their organization’s workers’ compensation program. Registration is free, but space is limited.

The tentative agenda includes:

• New and Proposed Changes at the State Accident Fund
• New and Proposed Changes at the Workers’ Compensation Commission & Case Law Update
• New and Proposed Changes at the Second Injury Fund
• Changes in the Premium Calculation Process
• Update on Safety and Loss Control Issues

Final agenda and a map will be sent 2 weeks before each session. Meals not included. For more information or to make special arrangements contact Vicki Lewter at (803) 896-5916 or vlewter@saf.state.sc.us. You may mail your registration or fax it to (803) 612-2716.

Registration
EMPLOYERS’ WORKERS’ COMPENSATION UPDATE 2004
PO Box 102100 Columbia, SC 29221-5000

Name________________________________ Title______________________________

Organization___________________________

Mailing Address_______________________________________________________

Phone(______)________ Fax_____________ email__________________________

Circle the session the you wish to attend: Trident Tech (Charleston) Coastal Carolina University (Conway)

Greenville Tech (Greenville) State Accident Fund (Columbia)

Your area(s) of responsibility (circle all that apply): claims filing premiums safety supervision/management
A New Year,
A New Dedication to Safety

WE'RE ON THE WEB!
WWW.STATE.SC.US/SAF

Staff Changes at the SAF

By Vicki Lewter

We regret to announce that Ruby Flateau has resigned from her position as Administrative Manager for the State Accident Fund. Ruby has accepted an advancement opportunity. We appreciate her many contributions and wish her well on her new endeavors.

Remember your premium payments must be received on time to avoid a lapse in coverage.