

INSURANCE:) Policies written by companies writing policies
WORKMEN'S COMPENSATION) known as excess aggregate policies,
COMMISSION:) catastrophe excess policies and stop loss
policies, under supervision and control of
the Insurance Department and Workmen's
Compensation Commission.

August 30, 1938



Missouri Workmen's Compensation
Commission,
Jefferson City, Missouri.

Attention: Mr. Spencer H. Givens,
Secretary

Gentlemen:

This is to acknowledge receipt of your request
for an opinion from this Department as follows:

"On behalf of the Workmen's Compensation Commission, I am herewith enclosing two forms of contracts known as the excess aggregate and catastrophe excess policies that are being issued by a number of companies, at least one of which not being authorized to transact business in this state. These contracts are generally classified as stop loss contracts.

"Under the first form, the company agrees to indemnify the employer from any loss in the following manner:

"That if at any time during the period of a contract any employee in the employer's immediate service shall sustain any personal injury by accident or disease while engaged in the service of the employer in work forming part of or process in their business liable to make compensation therefor by virtue of the state laws of Missouri which may be in existence at the time of any

accident covered by this policy, the company will indemnify the employer against all sums for which the employer would be so liable and will, in addition, be responsible for costs and expenses incurred with the company's consent in connection with any claim for such compensation, it being understood and agreed that the policy shall apply only to operations at certain locations or elsewhere within the State of Missouri. This policy is only to pay the excess of \$5,000.00 in respect of each and every disaster within a limit of liability of a certain stipulated amount in respect of each and every disaster irrespective of the amount of the policy.

"The term 'disaster' is defined in the policy to mean an accident or series of accidents arising out of one occurrence. This policy further provides that in the event of claim or any number of claims arising out of any one disaster occurring likely to exceed \$5,000.00 no cost shall be incurred without the consent of the company.

"We are desirous of having your opinion whether the two forms outlined above constitute the transaction of a workmen's compensation business in the State of Missouri. If the business written on the forms outlined above is not to be considered workmen's compensation insurance, I would appreciate your advising me under what classification such business may be placed. "

For answer to your question, we must refer to the statutes relative to the Workmen's Compensation Act to determine whether or not the form of the policies mentioned and enclosed in your letter, should be classified as Workmen's Compensation business in the State of Missouri.

Section 3323, R. S. Mo. 1929, provides in part as follows:

"Every employer electing to accept the provisions of this chapter, shall insure his entire liability thereunder except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer may himself carry the whole or any part of such liability without insurance upon satisfying the commission of his ability so to do. * * *"

The above section requires every employer, who elects to come under the provisions of this Act, in order that the employer may secure the payment of compensation to the injured employe, must provide for same in one of two ways: (1) He shall insure his entire liability thereunder, with some insurance carrier authorized to insure such liability in this state, or (2) the employer may himself carry the whole or any part of such liability without insurance upon satisfying the Commission of his ability to do so. He may also proceed under Section 3331, R. S. Mo. 1929, which provides that the "employer or group of employers may enter into an agreement to provide a system of compensation benefits or insurance in lieu of the compensation and insurance provided by this chapter." However, such substitute system and insurance shall be subject to the approval of the Superintendent of the Insurance Department.

It is those cases in which the employer elects to carry the whole or any part of his liability, after satisfying the Workmen's Compensation Commission of his

ability to do so, that the employers purchase what have been denominated excess aggregate policies, catastrophe excess policies, or stop loss policies.

Section 3326, R. S. Mo. 1929, provides in part as follows:

"Every policy of insurance against liability under this chapter shall be in accordance with the provisions of this chapter and shall be in a form approved by the Superintendent of the Insurance Department. * * *" (Italics ours)

It follows, therefore, that if the forms of policies mentioned above are to be considered as insurance against liability under the Workmen's Compensation Act, the forms of same must be approved by the Superintendent of Insurance.

In the catastrophe form submitted with your letter of request the insured is referred to as the "employer" and in the excess aggregate form the insured is referred to as "self-insured" and the company is referred to as "reinsurer." A reinsurer is one who agrees to indemnify or insure by contract by which a first insurer relieves himself from the liabilities and risks which he has undertaken, and devolves them upon other insurers. It has been suggested that these insurance contracts, mentioned above, between the employers and the insurance company are contracts of reinsurance and that the employe, who is the real beneficiary, is therefore not concerned with same. It is also suggested that the state is not interested and that these contracts are the private concern of the employer and the reinsurance carrier. It seems to us that when the employer has secured the consent of the Workmen's Compensation Commission under the provisions of Section 3323, supra, to carry the whole or any part of his liabilities without insurance, the transaction between the employer and the insured is not reinsurance, for that term presupposes that there is an original insurer. There can be no reinsurance without an original insurer.

The contract forms which you enclose provide that when there is a loss or injury to a workmen, which would likely come under the terms of the policies in question, the employer must give notice of the accident to the insurance company or its agents and must meet all of the requirements provided in said policies relative to notice etc., the same requirements as are usually found in policies of insurance covering liabilities under the workmen's compensation law; and these policies further provide that the employer shall not make any settlement or admission of liability without the consent of the insurance company, and that the employer shall give the insurance company all necessary information and assist in regard to any claim or suit or proceeding that may be filed thereon. These policies do not cover the entire liability of employer but only in cases above certain amounts or under certain conditions, according to the terms of the policy. However, in any event, they indemnify the employer against liability arising out of the relation of employer and employee as fixed and determined under the Workmen's Compensation Law. Whenever the employer enters into contracts of insurance, as above, it is nothing more than workmen's compensation insurance.

The fact that the insurance company insures part of the risk only does not thereby keep it from being workmen's compensation insurance. It is still workmen's compensation insurance.

Both the employer and the employee by reason of these contracts of insurance are better protected if the companies writing these policies are under the supervision of the Insurance Department of the State and the forms of policies approved by the Superintendent of the Insurance Department.

Conclusion.

It is, therefore, our opinion that the insurance carriers entering into the insurance contracts described in your letter of request, are engaged in workmen's compensation insurance business and are subject to the control and supervision of the Superintendent of Insurance.

Very truly yours

APPROVED:

COVELL R. HEWITT
Assistant Attorney-General

ROY MCKITTRICK
Attorney-General