September 17, 2012

CIRCULAR LETTER NO. 2204

To All Members and Subscribers of the WCRIBMA:

The Department of Industrial Accidents' Policy for Issuing Stop Work Orders to Employers with Multiple Massachusetts Locations

In recent months, several Producers and insured employers have asked for the WCRIBMA's guidance regarding The Department of Industrial Accident's ("DIA") issuance of Stop Work Orders when insured employers have more than one location in Massachusetts and the DIA determines that the additional location(s) is not listed and therefore not covered by the employers' workers' compensation insurance policy.

After meeting with WCRIBMA staff and the Massachusetts Association of Insurance Agents, the DIA provided us with the policy used by its investigators when they are faced with a coverage issue that involves the insured having more than one location. The DIA states that its policy has been adopted after thorough research into the insurance policy terms and conditions, the insurance industry standards and guidelines and all the statutory and case precedent that bare on the subject.

The current DIA enforcement procedures involving secondary, tertiary or other permanent locations of employers operating in the Commonwealth under the provisions of an active Massachusetts Workers' Compensation insurance policy are as follows:

1. The address and location on the policy will always control the decision. This means that the address and location on the policy is the main business premises listed in the policy and therefore employees at that location will be covered. Other locations will be looked at with that basic fact being established. No Stop Work Order would ever be issued without first conducting an investigation.

2. Temporary work sites away from the insured main business premises are not considered to be a different permanent location for the purpose of determining coverage. The "insured main business premises", will be the location listed in Item 1 of the policy information page. A temporary work site is any location, not shown to be a permanent place of work, and from which the workers of the insured will return at sometime in the future.

3. When faced with a potential multiple locations issue the investigator will contact the insurance carrier to determine whether the employees at the additional location are covered under the employer's policy. Contacting the insurance carrier is a crucial part of the investigation and will be done before any Stop Work Order is issued.

4. In the event the employer at the additional location is a different and distinct legal entity from the employer listed on the policy's information page the investigator shall employ the same procedure on this other legal entity and shall only issue a stop work order to that other entity in the event he confirms no coverage exists for the employees of the entity at the other location. The different and distinct legal entity will have to show coverage under a separate policy of its own or provide proof that it is properly covered by the same policy issued to the employer listed on the policy information page.

If you have any questions about this policy, you may contact William C. Tattan, DIA Deputy Director/General Counsel 617-727-4900, Ext. 358. If you have questions concerning operations and Stop Work Orders you may contact Patrick Allosso, DIA Investigations Supervisor of Administration at 617-727-4900, Ext. 375.

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