

Blueprint

Commonwealth Contractors Group Self-Insurance Association • Vol. 3 • No. 5 • February 2001



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**Commonwealth Contractors
Group Self-Insurance Association**
9620 Iron Bridge Road, Suite 202
Chesterfield, Virginia 23832
888-321-1995
<http://www.ccgisia.com>

SERVICE COMPANIES:

Administrator: Billing, Underwriting,
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Self-Insured Concepts, Inc.
9620 Iron Bridge Road, Suite 202
Chesterfield, Virginia 23832
888-321-1995 • Fax 804-748-4929
email: ccgsia@mindspring.com

Third Party Administrator:
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Landin, Inc.
P.O. Box 17590
Richmond, Virginia 23226
800-277-8721 • Fax 804-359-9640
email: info@landininc.com

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From The Trenches

Don M. Roberts, Board Member
Commonwealth Contractors
Group Self-Insurance Association
President - Shoreline Contractors, Inc.

Beginning a career in construction is not the kind of advice a father would give his son. Having been raised on a farm in North Carolina, finding a position in engineering during the "Baby Boomer" generation influx into the workplace was not the simplest of tasks.

During that tenure, insurance and bonding were "self-taught" by exposure to the industry's safety side and its monetary cost and value. Working with insurance agents, we (Shoreline Contractors) were able to convince an agent to bring an insurance company representative to agreement on a "retro" plan in our workers' comp policy that would allow company participation in savings through safe working habits and results. This was my first experience in the type of process from which self-insurance companies evolved.

We have come a long way since then, and Commonwealth Contractors is an evolving process for contractors regarding safety as a fiscal issue, as well as a moral responsibility. This evolution, though taxing in its stresses and changes, has made Commonwealth Contractors one of the strongest and most experienced group self-insurance programs in existence. We should take pride in the results obtained by our staff at Self-Insured Concepts and Landin, Inc., the firms responsible for providing Commonwealth Contractor's services.

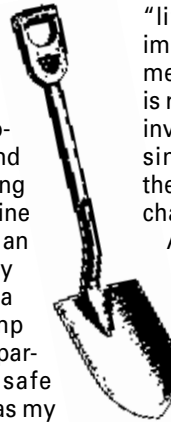
The Board of Commonwealth Contractors attempts to represent the original concepts of moral obligations to its Members, by soliciting input from them and ensuring that all Members' comments are brought to the Board through designated Board representatives. If you

as a Member have thoughts pertaining to any issue, you should feel free to contact a Board representative or your insurance agent to voice a concern.

Any Member will find that safety is not "lip service" to a theory - it must be implemented, and quite frankly, re-implemented over and over in the field, which is responsible for the results. Returns on investment will be proportionate to the sincerity and determined attitude of the Members, and our roster has those characteristics.

As much as the personality traits of managers are inherent in the businesses they direct, so are the results of Commonwealth Contractors as it ages. A coffee mug given to me by an associate denotes a logo on the outside containing language of which contractors are often accused - "Stubborn, Hard-headed, Narrow Minded, Self-centered, and Egotistical". Although those may seem negative in our social order, they are necessary in our industry to survive. Those facets of our personalities must be directed to the positive through diplomacy and tact, yet none of us can deny they give us the desire to achieve.

Commonwealth Contractors strives to keep our insurance agents' commissions equitable, our premium rates competitive, and our service above the levels of the conglomerate companies in order to maintain our reputation of integrity to our Members.



What the Future Holds

Peter G. Baldwin, Marketing Director
Commonwealth Contractors
Group Self-Insurance Association
Vice President of Marketing - Landin, Inc.

The dawn of a new year (and the real new millennium) brings new challenges and opportunities to Commonwealth Contract Members. On the horizon are a controversial OSHA regulation, potential modifications of Virginia's Workers' Compensation Act, and a changing insurance market. Here are some of the issues facing Virginia contractors in 2001.



OSHA Ergonomic Rule - After a long-term struggle between employee and employer organizations, and subsequently being bombarded by a barrage of lawsuits, this new OSHA regulation went into effect on January 16, but won't be enforced until October 15, with additional provisions taking place through January 18, 2005. Virginia's VOSH (and all state-operated OSHA programs) have until May 14 to activate this (or a stronger) regulation.

How does this rule affect contractors? Although created for "general industry" employers, the applicability of the ergonomics standard to contractors has different interpretations from different OSHA sources. According to these varying sources, contractors may fall under this rule if: (1) their "primary" operations are not construction; (2) any component of their operation is in general industry; or (3) they are not contractors! Due to this uncertainty, *Blueprint* will continue its attempt to find definitive answers. In the meantime, Members are encouraged to contact OSHA directly for an interpretation of their specific operations.

The lawsuits or the new Administration may alter the Ergonomic Rule timetable and/or its content, but for now, affected employers must educate employees on Muscular Skeletal Disorders (MSD) by October 15, identify "Action Triggers" of susceptible jobs,

constitute a series of events over 90 days if an MSD has arisen. Further, eligible MSD employees may be paid up to 90 days salary and benefits while they are recuperating under OSHA's Work Restriction Program:

Virginia Workers' Compensation Changes

the General Assembly is considering about a dozen new Workers' Compensation bills (bill details can be found Website <http://leg1.state.va.us/l1/bil.htm>) currently introduced both The House and The Senate, including these significant few:

- Chiropractic Care [HB 1594] - requires that employers include at least one chiropractor among its "panel of three" medical providers, if the injured employee sustained a back, neck, or spine injury.

- Medical Expenses After an Award [HB 2039] - contains a presumption that an injured employee's medical expenses incurred after (author's emphasis) an award for medical expenses has been issued by the Workers' Compensation Commission, are related to and payable as a result of the injury, plus a 9% interest charge if such payments are unreasonably delayed.

- Drug-Free Workplace [HB 2306] - Eliminates the current 4-year limit for a (maximum of 5%) premium discount, to those employers offering drug-free programs.

Note: Commonwealth Contractors now provides those Members meeting its criteria with the full 5% discount for each of the 4 years.

- Presumption of Dependency [HB 2647] Removes the requirement that a spouse, child, or parent must have been wholly dependent upon the deceased employee, to be eligible for certain benefits.

- Whole Body Coverage [SB 898] - Employees suffering Permanent Partial loss of use of the body as a whole will be eligible for financial compensation (as a proportionate percentage of 500

weeks), if the number of weeks of compensation for this permanency is not currently specified (in the Act).

- Suspension of Award [SB 1189] - Before the Workers' Compensation Commission can suspend previously-awarded benefits due to (the injured employee's) refusal of medical treatment/vocational rehabilitation, refusal of selective employment, or a change in condition, it must conduct an evidentiary hearing.

Workers' Compensation Market Conditions

Commonwealth Contractors continues to see mounting evidence of a "hardening" Workers' Compensation market. Some insurance carriers have raised their rates, while others are avoiding certain classes of business that they had underwritten in the past. Still others have abandoned the Workers' Compensation market that they so eagerly jumped into a few years ago.

So, where does that leave Commonwealth Contractors' Members? Exactly where they have been for years... comfortably safeguarded with competitive rates, ongoing dividends, substantial managed care savings, professional claims handling, complementary Loss Control assistance, premium credit (5%) for qualified substance abuse programs, and the security of a financially sound Workers' Compensation program. Regardless of market conditions, Commonwealth Contractors will continue its practice of serving its Members at the most reasonable costs for the highest quality services.

You Better Know Your PEOs – Guest Commentary

Lawrence D. Tarr, Commissioner
Virginia Workers' Compensation Commission
Salvatore Lupica, Commission Ombudsman
Virginia Workers' Compensation Commission

Mr. Tarr previously wrote about employee leasing (Winter 1999, Blueprint), before Virginia PEOs came into the picture. Msrs. Tarr and Lupica address the impact PEOs are likely to have on the Workers' Compensation environment with the recent passing of enabling legislation allowing PEOs to provide Workers' Compensation coverage for its leased employees.

Approximately 98% of the nearly 3 million people in Virginia's workforce are covered by the Workers' Compensation Act. The Act governs many aspects of the employer-employee relationship. One of the primary responsibilities imposed by the Act is that employers must procure workers' compensation liability insurance for their employees.

The relationship existing between a Professional Employer Organization (PEO) and the co-employees it shares with its client companies is different from the traditional employer-employee relationship contemplated by the Act. Traditionally, under Virginia law, a multi-prong test is used to determine whether the relationship between an individual providing services and the person or entity for which the service is supplied is in a true "employer-employee" relationship. The most important facet of this test is whether the purported employer has a right to control the scope and manner of the work.

Applying this standard analysis to a PEO-client relationship, it is normally the client that would be recognized as the employer. Accordingly, under the Workers' Compensation Commission's long-standing interpretation of the mandatory insuring requirement, the client had been required to have a workers' compensation insurance policy issued in its name.

The 2000 General Assembly made substantial changes to this analysis. The new legislation created a dual-employer relationship between the PEO and its business clients, with whom the PEO shares "co-employees." Under the new legislation, the PEO is considered a "co-employer" of the co-employees it shares with a client. Additionally, the legislation allows the PEO and its client to insure workers' compensation liability for their shared co-employees through a master policy issued in the name of the PEO.

In recognition of the importance of monitoring compliance of PEOs with the Act's mandatory insuring requirement, the new legislation also mandates registration and periodic reporting by PEOs. PEOs must initially register with the Commission before doing business in Virginia, and also must provide periodic notification to the Commission of changes in its client's status. PEOs must annually notify the Commission of the identities of its clients and provide information as to their insurance coverage.

The Commission has designed several strategies to ensure the orderly implementation of the new legislation. It has promulgated a comprehensive set of regulations to complement the legislation. A substantial part of the regulations is intended to provide the Commission with a means of ensuring compliance by PEOs and their clients with the mandatory insuring requirement.

These regulations clarify statutorily imposed reporting requirements, and delineate the parameters of a system by which the PEOs are to comply with these requirements. This clarification provides PEOs subject to the Commission's jurisdiction with certainty in their regulatory interaction with the Commission.

Keeping pace with current trends in the contemporary business environment, the Commission's regulations also detail procedures for electronic filing. Working with the Virginia Information Providers Network (VIPNET), the Commission has designed a completely web-based registration and reporting system providing PEOs with a convenient and quick way to fulfill their statutory reporting requirements. This cutting-edge system will serve as a model as the Commission continues a comprehensive upgrade of its management information systems.

A copy of the PEO regulations can be found at the Commission's website: www.vwc.state.va.us

DILBERT by Scott Adams



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When, Where, & How Determines Compensability

William K. Willis

Senior Vice President/Claims – Landin, Inc.

In the Spring '00 and Fall '00 issues of the *BluePrint* we discussed "INJURY BY ACCIDENT" and "ARISING OUT OF THE EMPLOYMENT," two parts of the "3 fold test" to determine the compensability of a Workers' Compensation claim.

You will recall that for there to be an INJURY BY ACCIDENT, there must be "an identifiable incident which occurs at some reasonable time which results in a sudden mechanical or structural change in the body." For the accident to ARISE OUT OF THE EMPLOYMENT, "it must be apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." Now let's discuss the third part of the 3 fold test to determine compensability, IN THE COURSE OF THE EMPLOYMENT.

The term IN THE COURSE OF THE EMPLOYMENT refers to the "time, place, and circumstances under which the accident occurred." Generally

speaking, "an accident occurs in the course of the employment when it takes place within the period of employment at a place where, from the nature of the work, the employee may be reasonably fulfilling the duties of his or her employment or is doing something that is reasonably incidental to the employment."

An illustrative example of an accident the Commission held to **have** occurred IN THE COURSE OF EMPLOYMENT is as follows: *An employee was struck by a car when he and several co-employees went across a street from the company parking lot, after work, to buy soft drinks. Employees report to work at the company parking lot in the morning and are driven back to the company parking lot at the end of the workday. All employees are paid from their arrival time until they leave the job site at the end of the day.* The Court held that, regardless of whether the work had been completed for the day, the accident occurred IN THE COURSE OF THE EMPLOYMENT, "as the employee was seeking to satisfy his personal comfort at a place known to and constructively approved by his employer."

An illustrative example of an accident the Commission held **not** to have occurred IN THE COURSE OF THE EMPLOYMENT is as follows: *An employee was told by his employer that he "was off the clock" and would not be getting paid, but he stayed at work anyway so that he could get a ride home with a co-employee who continued to work. The employee then began assisting the co-employee so that it would expedite their leaving the business premises and was injured while assisting his co-employee.* The Court held that "when an employee supplies labor gratuitously, with no promise of pay or compensation, then he is not covered for any injuries he may receive."

In summary, the "3 fold test" to determine the compensability of a Workers' Compensation claim requires that there must be: (A) an injury by accident, (B) arising out of the employment, and (C) occurring in the course of the employment. All three conditions must be present for an on-the-job injury to be compensable.

In the next issue of *BluePrint* we will discuss the distinction between an "employee" and an "independent contractor."

Certificates of Insurance

Commonwealth Contractors routinely issues Certificates of (self) Insurance to satisfy Members' contractual insurance requirements. When a Member, or agent, needs a Certificate, it can be ordered directly from our Service Agent, Landin, which we urge you to do as much in advance as possible.

How To Order Certificates:

- Order From – Landin at:
 - 804-359-9600 (*Richmond area*)
 - 800-277-8721 (*toll free*)
 - x10, Brenda
 - x16, Katie
 - x27, Renee
 - 804-359-9640 (*fax*)

- Ordered By - Member or Agent
- Distribution - Original to Certificateholder, copy to Member by mail or fax.
- Turnaround Time - within 24 work hours, with urgent requests satisfied the same day.

Exceptional Growth Continues

Stan Adams

President – Self-Insured Concepts, Inc.

Commonwealth Contractors maintains its sound financial performance for the nine months ended December 31, 2000. Enviably earnings of over \$2,000,000 in pre-tax income for those nine months bring our accumulated Members' surplus to its current level of almost \$11,800,000. Commonwealth Contractors' unaudited condensed Statement of Condition as of December 31, 2000 is to the right:

Earned premiums for the 4/1/00-01 plan year are projected to exceed \$12,500,000 for the first time since 1997, with over \$12,000,000 in pro rata premiums as of December 31, 2000. This premium level represents an increase of approximately 21% over last year, and if the current loss ratio of 40.7% holds true through March 31, 2001 (plan year end), we would have the most profitable year since inception of Commonwealth Contractors, with over \$4,000,000 in pre-tax income.

Investment earnings remain strong with earnings to-date of over \$1,100,000 derived from funds invested through SunTrust Asset

Management. At December 31, 2000, Commonwealth Contractors had in excess of \$22,000,000 invested at SunTrust.

Statement as of December 31, 2000

Cash and Investments	\$22,918,537
Board Discretionary Fund	1,541,681
Receivable From Reinsurers	4,447,579
Other Assets	1,136,790
Total Assets	\$30,044,587
Claims Reserves	\$15,957,384
Unearned Premiums	2,258,294
Dividends Payable	87,470
Other Liabilities	35,057
Total Liabilities	\$18,338,205
Members Surplus	\$11,706,382*

* Prior to reducing Members' Surplus by \$2,476,271 of recently declared dividends.

Terrific Return-On-Investment

Stan Adams

President – Self-Insured Concepts, Inc.

The Virginia Bureau of Insurance has approved Commonwealth Contractors' 2000/2001 premium refund distribution in the amount of **\$2,476,271**. A breakdown of our dividend history follows:

The total refunds over the past five years amount to \$15,976,330, for an average of \$3,195,266 per year, an accomplishment unmatched by any Group Self-Insurance Association in Virginia.

Dividends are returned to Members whenever the group has a positive claims experience, and individually reflect the loss record of each recipient Member. Therefore, the more effective the safety efforts, the better the claims experience, and the larger the dividends.

This is exciting news for all of our Members and especially those who have been with us for the past five years. With over \$9,000,000 of Members' surplus remaining after this premium refund distribution, the future looks even brighter for Members who stay with Commonwealth Contractors.

Plan Year	Premium Refund
99/00	\$ 3,631,277
98/99	2,041,578
97/98	3,618,145
96/97	4,209,059
95/96	1,989,742
81/82-94/95	5,935,852
	21,425,653
00/01 Premium Refund Approved	2,476,271
TOTAL PREMIUM REFUNDS	\$23,901,924



Dividend Equity Schedules Explained

Stan Adams
 President – Self-Insured Concepts, Inc.

By now Members should have received their dividend distributions from Commonwealth Contractors, as approved by the Bureau of Insurance in December 2000. Members frequently have questions concerning the individual line items presented on the equity schedules accompanying the dividend checks, so the following is a brief explanation of each significant line item on the equity schedule.

Audited Premium -

Your final audited premium for the plan year (4/1-3/31).

Investment Earnings -

Interest and dividends allocated to your account based upon earnings by plan year, from inception to date.

Incurred Claims Losses -

Your claims' payments and reserves on reported claims.

Other Reserves -

An estimate of any claims which may have occurred, but have not yet reported to Commonwealth Contractors. This amount, as provided by our independent actuaries, includes an estimate for claims which could be reopened and an allowance for any previously underestimated amounts for prior claims.

Operating and Administrative Expenses -

Your share of the costs for plan administration, service company fees, marketing fees, excess insurance, legal representation, taxes, etc.

Shared Losses -

As a member of a Group Self-Insurance

Association, any Member who experiences losses greater than their premium contribution to the Loss Fund (claims payment fund) must have their excess losses allocated proportionately to all other Members who have a positive surplus for the year.

Beginning Fund Equity -

Your gross earned premium refund by plan year before any distributions.

Current Distribution -

Represents your pro rata share of the current premium refund.

Remaining Fund Equity -

This amount represents your undistributed premium refund which will be paid to you when approved for distribution.

**CHECK OUT
www.ccgisia.com**

Post It Or Else!

All eligible Members (non-empt employer classifications having more than 10 employees) are required to have posted their OSHA Form 200, Summary of Occupational Injuries and Illnesses, by February 1 until at least March 1, in conspicuous locations where employees typically report to work.

LOOK FOR THE ARTICLE IN THE NEXT
BLUEPRINT EXPLAINING PLANNED
 OSHA RECORDKEEPING CHANGES

Commonwealth Contractors' Website gives you information on and answers to our Workers' Compensation program. What can you find? How about – Rates, Quick Quotes, Dividend History, Underwriting Guidelines, Contacts, as well as the newsletter you are now reading! You will also find "links" to other relevant insurance and safety sites. So, bookmark <http://www.ccgisia.com> and remember to visit us often.

New OSHA Poster

OSHA introduced a new 'plain language' workplace poster for informing workers of their rights to a safe workplace. Although, employers are not obliged to replace the poster they already have, the new poster is free from the www.OSHA.gov website, by calling OSHA at 757-441-3820 or VOSH at 804-786-7770, or writing to OSHA Publications Office – Room N3101 – 200 Constitution Ave NW – Washington DC 20210.

Another Safety Workshop Success

Compiled by Staff

Commonwealth Contractors held its third free-to-Members safety workshop during 2000, on November 14 in Manassas. Fifteen attendees braved severe weather and associated traffic problems that day and learned how to develop and improve contractor safety programs. Commonwealth Contrac-

tors' Board Member and Marketing Committee Chair Dennis Miller officially welcomed the group, and was followed by experts addressing topics from Accident Trends to Forklift Safety. Ratings of the workshop were resoundingly high, so be on the lookout for more workshops in the future.



The ins and outs of forklift safety standards are covered by Mike Gafford of VSB, Inc.



The group hears the details on hazard communication.



Board Member Dennis Miller kicks off the session.



VOSH Safety Consultant James Baker discusses fall protection.



How companies can save money through safety is Landin's Gene Fornash's theme.

The Safety Web

Cathy Duncan

Loss Control Consultant – Landin, Inc.

If you have ever entered into the World Wide Web, you have experienced what can be a very confusing world. The Internet has a host of information on any subject that you could ever imagine and then some. We will help simplify the process of researching construction safety Websites by summarizing a few construction safety web sites in each *Blueprint*. The following (precede each by <http://www>) are a start:

Safetyinfo.com

This is an on-line safety library with a lot of safety information. Most of the material is available to everyone, but membership (\$195 per year) allows you access to everything. They provide many services such as finding the best manufacturer's discounts on supplies and equipment, an extensive video library with

reasonable rates, an on-line newsletter and many other forms of resources. This is a definite must see!

Buildsafe.com

(Construction Safety Council)
The best part of this web site is the "Hazard Alerts." Check these for the latest information on emerging construction industry killers. You may find this information helpful for tool-box talks.

MSDSonline.com

This is a free data service that supplies companies with software and services for managing Material Safety Data Sheets in electronic format. It allows you to search for MSDSs that manufacturers have posted to the web.

Free-training.com

Free training is what it says. It offers free training on Hazard Communication, Personal Protective Equipment, Back Safety, and Forklift Safety and

Operation. It also provides resourceful links to other training sites. I tried out the Haz.com. Training module and it is very good. A good source to train employees with.

General Search Tips

Dogpile.com accumulates information through many search engines at once giving you bulk Websites on the information you are exploring.

About.com can tell you "about," just about any topic of research.

If you have a favorite Website that pertains to construction safety, please let us know and we will research it for possible inclusion in future newsletter issues. Commonwealth Contractors does not endorse any of these sites nor their advice, and provides this information merely as one source of guidance in supporting Members' safety efforts.

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