

Second of a 4 part series: **OWNERSHIP CHANGES AND COMBINATION OF ENTITIES—IT'S ALL ABOUT THE MOD!** (page 3)  
2 page supplement -celebrity sightings at MWCIA's Annual Luncheon

June 13, 2013



By Bruce A. Tollefson

## PRESIDENT'S CORNER

### MWCIA AT 30

The year 2014 marks a milestone for MWCIA. It has been 30 years since the organization was incorporated and became a licensed data service organization.

For those of you who have followed this column, I have often discussed our role as a data service organization and the products and services we supply to the workers' compensation marketplace. However, as we approach this anniversary, it is also a good time to reflect on the events from our history that culminated in major changes in the workers' compensation marketplace and this organization.

This history was the major theme of our recently completed annual luncheon. Our presenters at that luncheon were three key participants in that history who reflected on the causes and changes from this period. They were:

- **Bob Johnson** – President of the Insurance Federation of Minnesota (pictured in center)
- **John Lennes** – Past Department of Labor & Industry Commissioner (pictured on left)
- **Tom Harms** – Outside legal counsel for the MWCIA (pictured on right)



These three did an outstanding job of not just explaining what happened, but also in giving the context and causes in what was a series of major changes in Minnesota's workers' compensation landscape.

Workers' compensation protections have been the law in Minnesota since the 1920s. From the enactment of the first workers' compensation law, there has always been a data collection organization, which was the predecessor of today's MWCIA.

Beginning in the mid 1970s, Minnesota, like most states, began the process of increasing the level of benefits provided to injured workers. For more historical information on these events, you can look at my 4<sup>th</sup> Quarter 2012 Newsletter which can be accessed at <http://www.mwcia.org/Downloads/NewsLetter/12-4nl.pdf>.

The cost of these new benefits disrupted the market, raised the cost of insurance dramatically and triggered a series of events that lead to the system we have today. These events include the following:

#### Key Events in Minnesota Workers' Compensation History

- **1972** – National Commission on State Workers' Compensation Laws releases a study that focuses on state by state benefit levels.
- **1975** – MN Legislature passes major benefit expansion.
- **1975 – Early 1980s** – Changes in benefit structure result in significant proposed increases in mandatory rates.
- **1979** – MN Legislature establishes the Workers' Compensation Reinsurance Association.
- **1984** – Legislation to control growth in costs is enacted and creates the Minnesota Workers' Compensation Insurers Association.
- **1992** – MN Legislature mandates large cuts in premiums and tweaks benefits.

- **1995** – Minnesota Legislature limits temporary disability benefits and establishes Workers' Compensation Advisory Council to prescreen and agree upon all potential changes to workers' compensation system.

This history not only changed MWCIA but also provided a valuable lesson in how to manage the workers' compensation system. The main lesson was that there needed to be a balance between benefits provided injured workers and the costs imposed on businesses by those benefits. Our luncheon program described the history of how this imbalance was introduced into the marketplace. Our presenters also recounted the many problems and attempted solutions introduced to address this imbalance and the final solutions forged from this process. If you want to know more, please check out the "historical document" on the MWCIA website at <http://www.mwcia.org/AboutMWCIA.aspx>. Once on our website simply click on the Minnesota History tab on the right hand side. I think you will find it interesting and enlightening.

For a copy of MWCIA's State of the Market report presented at the 2013 Annual Luncheon, click [here](#).

*As the preferred provider of quality Minnesota Workers' Compensation information, we are committed to developing products, services and markets that meet our customers' evolving needs, and to providing a work environment rich in opportunities for personal and professional growth.*

## FROM THE IT CORNER

### **Manage USR & Web Membership Systems**

Effective August, 2013, we're enhancing the Manage USR System on our website.

- Fine invoices will be available via the Manage USR system and ultimately, these invoices will no longer be distributed via US mail;
- The Manage USR system will be integrated with the MWCIA Web Membership system. This change enhances the membership system by allowing each member to set up and maintain their own user accounts and permissions for MWCIA website systems.

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### **New look and feel to the MWCIA Classification Search**

Have you noticed the change in our "Classification Search" tool on our website? We've made it even more flexible and versatile by allowing you to search by "class code" in addition to the traditional "key word" search.

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### **DLI Workers' Compensation Insurance Verification**

Need or want to verify or confirm workers' compensation coverage? The DLI website has a convenient tool which has been enhanced and is very easy to navigate. Click on the following link and follow the prompts: <http://www.inslookup.doli.state.mn.us/>

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We continue to be very fortunate to have an IT Department that keeps us on the cutting edge of technology. Special thanks go out to Sue Levey and her very talented staff.

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## FROM THE UNDERWRITING CORNER

### **Circulars & Filings**

Since our last issue of MWCIA News, the following circulars have been filed and approved for use in MN:

### [Circular Letter 12-1628](#)

#### **Minnesota Department of Commerce Bulletin 2012-2**

This circular announces release of Bulletin 2012-2 by the Department of Commerce which clarifies the reporting of the Special Compensation Fund (SCF) Premium Surcharge in the NAIC Annual Statement.

### [Circular Letter 13-1629](#)

#### **4-1-2013 Assigned Risk Rates**

This circular announces the 2013 Assigned Risk Rates and Miscellaneous Values effective 4/1/2013.

### [Circular Letter 13-1630](#)

#### **Revisions to the Minnesota Basic Manual - Officials of Political Subdivisions**

This circular updates the *Minnesota Basic Manual* to amend the verbiage on how to compute payroll for officials of political subdivisions to make it consistent with Minnesota Statute §79.211.

### [Circular Letter 13-1631](#)

#### **2012 Test Audit Summary**

This circular announces the release of the 2012 Test Audit Summary Report.

### [Circular Letter 13-1632](#)

#### **2012 Annual Report**

This circular announces release of the 2012 MWCIA Annual Report.

### [Circular Letter 13-1633](#)

#### **Elimination of Class Code 5000-Chimney Construction**

This circular announces the elimination of class code 5000-Chimney Construction.

### [Circular Letter 13-1634](#)

#### **Upcoming Changes to Manage USR and Web Membership Systems**

This circular announces upcoming changes to the Manage USR and Web Membership systems.

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### **Amendment to MN Stat. §181.723 Building Construction Contractor Registration**

The MN Department of Labor and Industry, recently introduced a two year pilot project for the registration of construction contractors. The program amends the standards for determining when individual construction workers are considered employees. The law applies to both independent contractors (individuals) and business entities (such as LLC's and corporations) that provide public- or

private-sector commercial or residential building construction or improvement services in Minnesota on or after **September 15, 2012.**

The program replaces the Independent Contractor Exemption Certificate program (ICEC). Refer to [Circular Letter 12-1618](#) and [Circular Letter 12-1624](#)) for further information.

With the implementation of this program, the MN DLI published a "**Checklist for Construction Contractors in the Building Construction Industry**" which is an excellent tool and resource document not only for contractors but also agents, brokers, and carriers. Here's a snapshot of this tool:

#### **Checklist for Construction Contractors in the Building Construction Industry**

##### **Building construction contractors must:**

Register or, if required, hold a current license, with the Department of Labor and Industry (DLI).

- Register online at no cost at <http://www.dli.mn.gov/CCLD/register.asp>

- Determine whether any exemptions from contractor registration apply at <http://www.dli.mn.gov/CCLD/PDF/registrationFAQ.pdf>

- Apply or renew a residential, electrical, plumbing or high-pressure-piping contractor license online at <https://secure.doli.state.mn.us/license/initialapp.aspx>

Maintain current registration, if required, with the Secretary of State **and** with the DLI.

Enter into contracts, submit invoices and receive payments in the name of the business entity.

Meet the nine-factor test at [http://www.dli.mn.gov/CCLD/Register\\_nine\\_factors.asp](http://www.dli.mn.gov/CCLD/Register_nine_factors.asp).

Comply with all applicable employment, tax and workers' compensation and unemployment insurance laws.

##### **When hiring subcontractors:**

Verify that all subcontractors are registered or licensed with the DLI or

are exempt at <https://secure.doli.state.mn.us/lookup/licensing.aspx>.

Verify each subcontractor that is required to be registered with the Secretary of State has an active business filing at <http://mbisportal.sos.state.mn.us/>.

Verify the subcontractor can meet the nine-factor test at [http://www.dli.mn.gov/CCLD/Register\\_nine\\_factors.asp](http://www.dli.mn.gov/CCLD/Register_nine_factors.asp).

Enter into **written** contracts with each subcontractor for the construction services.

Obtain invoices from and pay the business entity, not the individual owner(s) of the business.

Verify subcontractors are meeting workers' compensation insurance coverage requirements at <http://www.inslookup.doli.state.mn.us/>.

Do not coerce a person to adopt independent contractor status or form a business entity.

Do not misrepresent or misclassify an individual as an independent contractor.

If you have questions, contact the DLI at (651) 284-5074 or via e-mail at [dli.register@state.mn.us](mailto:dli.register@state.mn.us). View frequently asked questions about Minnesota Statute §181.723 at <http://www.dli.mn.gov/CCLD/PDF/registrationFAQ.pdf>.

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### Ownership Changes and Combination of Entities—it's all about the mod

This is part 2 of a 4 part series on the subject of ownership changes and combination of entities and the impact those changes can have on an entity's loss experience and experience modification.

In part 1, we discussed the ownership reporting requirements and reporting tools and define the various types of ownership changes along with a high level look at their impact.

In part 2, we'll explore the subject of Combination of Entities including qualifications for combinability, determination of combinability (aka "rulings"), and multiple combinations.

In part 3, we discuss what happens to the experience (loss experience) when there is a change in ownership or combination of entities. This is extremely important information to know and can be a significant factor in one's decision (due diligence) to purchase or not purchase a business.

In part 4, we'll identify those conditions under which the loss experience of an entity undergoing a change in ownership is excluded from future experience ratings. We'll also review the recalculation and application of experience rating modifications and the rules regarding the application of an experience rating modification when a change occurs.

We hope you find this 4 part series to be of value whether this is new information to you or simply a review.

### Part 2 Combination of Entities

The combination of two or more entities requires common majority ownership. Combination requires that:

- a. **The same person, group of persons or corporation owns more than 50% of each entity, or**
- b. **An entity owns a majority interest in another entity, which in turn owns a majority interest in another entity. All entities are combinable for experience rating purposes regardless of the number of entities involved.**

#### Determination of majority ownership

Determination of majority ownership interest is based on the following:

- a. Majority of issued voting stock.
- b. Majority of the owners, partners or members if no voting stock is issued.
- c. Majority of the board of directors or comparable governing body if a. or b. are not applicable.
- d. Participation of each general partner in the profits of a partnership. Limited partners are not considered in determining majority interest.
- e. Ownership interest held by an entity as a fiduciary. Such an entity's total ownership interest will also include any ownership held in a non-fiduciary capacity.

For purposes of this rule, fiduciary does not include a debtor in possession, a trustee under a revocable trust, or a franchisor.

### Multiple Combinations

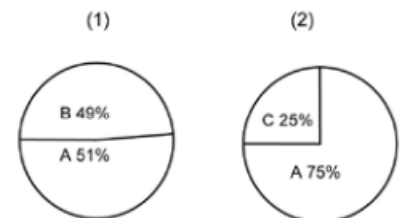
a. More than one combination of entities may be possible within a group of entities. The selection of combinations is based on the combination that involves the most entities.

b. If Rule 3-D-3-a does not result in a single group with a majority of entities, the combination will be based on the largest group of entities that can be combined unless the policy names dictate a clear group for determining combinability.

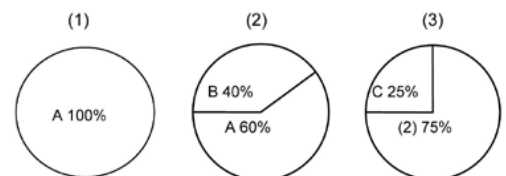
c. The experience of any entity may be used in only one combination.

### Combinability Quiz Are the following entities combinable?

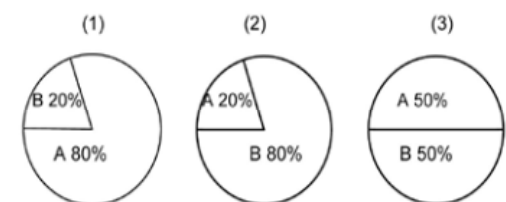
Example 1  
(Entities 1 & 2)



Example 2  
(Entities 1, 2, & 3)



Example 3  
(Entities 1, 2, & 3)



For correct answers, refer to the Minnesota Users Guide, page UG 20 of the *Minnesota Experience Rating Plan Manual* found on the MWCIA website.

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**ASSIGNED RISK NOTABLES**

**Assigned Risk Plan Volume  
(As of April 1, 2013)**

<u>Policy Count</u>	26,317	(+0.6%)
<u>Premium</u>	\$51,531,237	(+0.26%)
<u>Policy Average</u>	\$1,958	

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**New Assigned Risk Small Employer  
Payroll Verification Program**

The Minnesota Workers' Compensation Assigned Risk Plan (MWCARP) – Minnesota's market-of-last-resort for Minnesota employers unable to obtain workers' compensation insurance coverage in the voluntary market – is pleased to announce a new program, effective January 1, 2013, designed to provide enhanced payroll audit services to qualifying policyholders. It is called the **Small Employer Payroll Verification Program (the Program)**.

Payroll audits completed through *the Program* will provide the basis for any necessary premium adjustments as estimated payrolls are confirmed, just as they are confirmed in the normal payroll audit process conducted by plan servicing carriers.

The MWCARP is utilizing the highly talented payroll audit expertise of the MWCIA to provide plan policyholders that normally don't receive an on-site payroll audit (or only receive one once every three years) with a comprehensive on-site audit review.

The MWCARP has decided to implement this new program as a one-year pilot. A thorough review of *the Program* will help to determine its overall effectiveness and impact on achieving the Plan's goal of providing an effective and efficient Plan for Minnesota employers.

Policyholders fitting the general criteria noted above will be selected on a random basis to be participants in *the Program*. Policyholders that have been randomly selected as

participants in *the Program* can expect to receive a letter from MWCIA's special auditor outlining not only the specific types of financial records that must be available for review, but also, the date and time of the review.

Policyholders selected for *the Program* will be expected to cooperate in the same manner as they would when presented with a mail audit. Failure to cooperate will jeopardize their ability to keep and maintain their MWCARP policy.

We shall keep you informed of the progress of *the Program* once we have achieved a participation level that will yield relevant results.

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**REMINDERS**

**Training and Education**

MWCIA continues to offer and conduct workers' compensation training and educational classes throughout the state. These classes have been presented to agents, brokers, employers, trade associations, and insurance carriers. Topics presented have included: **Experience Rating; Revisions to the Experience Rating Plan Primary/Excess Split Point Value and Maximum Debit Modification Formula (eff. 1/1/13); 2013 MN Ratemaking Report; How to Classify a Risk; Classification Changes; Independent Contractors vs. Employee; Ownership; Employer Paid Claims, Legal or Not Legal; Controlling and Minimizing WC Costs through Loss Prevention and Loss Reduction Techniques; WC Pricing Tools, etc.**

The presentations have been enhanced with the participation of Philip Moosbrugger, JD, Ombudsman, MN Department of Labor and Industry. Phil's role in the presentations has been invaluable as Phil brings with him a wealth of seasoned

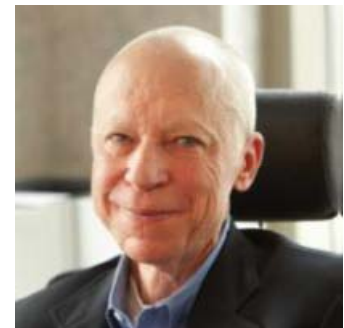
workers' compensation legal expertise.

If any of these or any other WC topics are of interest to you, contact Glenn Colby, CPCU, Senior Communications and Underwriting Specialist, at [glenn.colby@mwcia.org](mailto:glenn.colby@mwcia.org), tel. (952) 897-6411. There is no charge for this training so why not take advantage of this opportunity to expand your workers' compensation knowledge base?

**FYI**, MWCIA continues to participate in quarterly workshops for small business sponsored by the MN DEED, discussing MN employment tax and workers' compensation insurance. These workshops are held at convenient locations throughout the Twin Cities. The sessions are 8 hours in length and are free of charge. Refer to <http://www.uimn.org/uimn/employers/help-and-support/educational-seminars/seminar-schedule.jsp> for the upcoming seminar schedule.

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**MWCIA News** is a periodic publication of the Minnesota Workers' Compensation Insurers Association as a service to its members and the workers' compensation industry. Please direct any questions, comments or suggestions you may have concerning this publication to Glenn Colby, CPCU, editor of MWCIA News, % MWCIA; 7701 France Avenue South, Suite 450; Minneapolis, MN 55435. You may also contact Glenn by phone (952 897-6411), fax (952 897-6495), or e-mail ([glenn.colby@mwcia.org](mailto:glenn.colby@mwcia.org)).



**MWCIA PURPOSE**

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