Workers' comp payments got you down? **HELP IS AVAILABLE.**

UNDER COMPENSATING

BY PETER CARTER

Here's a scary workers' comp story to tell your grandkids. Once upon a time, an Ontario-based owner-operator suffered a work-related injury. The Workers' Compensation (WCB) people wanted to determine how much he should be paid while he was off work so asked him to submit the previous year's tax return.

In spite of being injured, the owner-operator was a clever man who managed to write off a lot of stuff.

His net income was zero. So was the WCB payout.

As Bogdan Szybalski, an account exec with insurer Hugh Wood Canada Ltd., says: "WSIB [Ontario's version of the Workers' Comp board, otherwise known as the Workplace Safety and Insurance Board] collects premiums based on your gross income but they pay out according to your net. There's something wrong with that."

There're quite a few things wrong with WSIB, it would seem. In addition to the way it assesses an independent worker's net income, WSIB is seriously limited in its definition of on-the-job mishaps. For an owner-operator it's often hard to tell what is or isn't a workplace injury. Not only that, but if you are an independent operator and covered only by WSIB (or the equivalent in other provinces) you might have a healthy percentage of your lost income replaced by WSIB, but you probably won't ever recover other losses; i.e., truck payments, contracts, goodwill, you name it.

It can all go down the tube.

Who hasn't heard the one about the owner-operator who fell off his truck and broke his pelvis? The way the story goes, he had his medical bills taken care of, he received 75 percent of his income, and he had enough to live on, but he hadn't taken out a payment-protection policy so he ultimately lost his truck and had to declare bankruptcy.

Also, truck insurance companies are increasingly insisting that a company's owner-operators carry coverage beyond what WSIB provides. Fortunately, there are quite a few alternatives available, so he who is willing to pay can relax.

Further, fleets are finding that drivers are attracted to companies that offer upgraded benefits. Offering an owner-operator the chance to join a group plan, with the discount that being a member of a group brings, is a driver lure. It's also often good for the carrier.

According to Glenn Caldwell, a national accounts sales manager for the National Truck League of Canada, if a fleet was to insist that owner-operators maintain full WSIB coverage, "chances are they would need to pay the owner-operators an additional two percent to cover the costs and I'm not sure where this additional revenue would come from.

"Many owner-operators who are required to carry WSIB currently spend over $300 a month for coverage which really only covers workplace injuries." Caldwell maintains his company can set up 24-hour coverage for owner-operators for between $100 and $130 a month.

Zig Swiercz is Manager of Compensation & Benefits at Mississauga, Ont.-based TST Solutions L.P., which 10 years ago decided to require its owner-operators to opt into their WSIB alternative plan.

"The rates charged to the owner-operators were significantly lower than what they were paying for WSIB," he says. "And they were providing at least equivalent

PUTTING YOUR MOUTH WHERE YOUR MONEY IS

Fed up with WSIB? Think you can do better? Here's what the board's Ken Kish (holder of the ungainly title Manager Transportation/Construction Cluster Service Delivery Division) says about that.

"WSIB is large, it's bureaucratic; and it can be somewhat political. But employers who participate pay for the entire system, so employers should engage in a constructive manner with the system.

"As a stakeholder, you have the right to influence policy and the way WSIB is managed. Employers who complain about the board should realize that they have more influence than they realize and be working for proactive change."

coverage. In addition, we did not look at their tax returns as the benefit was based on a percent of their revenue."

Swiercz also says to date, the plan has not "had any serious claims issues."

At a recent workshop sponsored by trucking insurance provider Markel, Swiercz told the audience that one of TST's concerns was that some customers are concerned that owner-operators who drive on to their property might not be covered if they don't have WSIB protection.

"We went to our customers to let them know that owner-operators are allowed to opt out of workers comp; showed them the waiver, so when the owner-op went onto their property, the coverage was there."

Some shippers and receivers refuse to accept anything less than WSIB; Hamilton's Dofasco, for instance. Dave Halcrow, the manager of Dofasco's traffic department says that drivers must show a WSIB certificate of clearance—updated every three months—to enter the site. "Our corporate legal people say they don't want to deal with private coverage," he says. If your customers are going to demand WSIB coverage, you might enquire about purchasing the minimum coverage required and topping it up with an alternative plan.

According to lawyer Stephen Ross, whose firm specializes in insurance law, WSIB coverage offers protection from most lawsuits, something alternative coverage cannot deliver. He's a big exponent of WSIB and says "the lawsuits can start in Ontario but be applied in the deep south U.S. I know from hearing terrible stories that some U.S. verdicts can be astronomical amounts."

How best to protect yourself and your business? According to WSIB's Transportation Expert Ken Kish, don't "have accidents. You push your drivers and you're pushing your risks higher and higher."

TST's Swiercz says that implementing an extensive alternative coverage scheme forced TST to monitor driving patterns more diligently; and as a result the company's loss ratios have been decreasing. "We're watching driver habits more closely and our claims are under constant review." ▲

YOU GET WHAT YOU PAY FOR

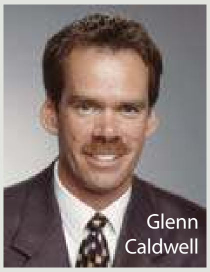
Glenn Caldwell of National Truck League has been in the coverage business for 20 years and has more than once seen the look of horrified disappointment on an owner-operator's face when he learns he's not covered as well as he thought. Because of that, Caldwell points to a few red flags to watch for when choosing alternative insurance coverage.

First, benefits should be payable from the first day of disability—many programs have elimination periods before benefits apply.

Benefits should be paid based on gross earnings—not net. A reasonable benefit is 75 percent of gross.

The Own Occupation Definition should be three years or more. "Own occupation" basically defines the sort of jobs the owner-operator is able to do, beyond driving. It's a serious source of confusion. If a policy states the own-occupation definition is three years, the coverage will cease after three years unless the driver's education, experience, and training prohibit him from performing any job.

Certain plans offer as little as 15 days for a sprain or strain type of injury, even though the owner-operator might not be able to return to work that soon. Look for a plan that offers at least 30 or 60 days with no cap on how many times that type of injury can be claimed. Watch for a pre-existing conditions clause that could result in a claim being denied.


Glenn Caldwell

Bottom Lines: a minimum of $300,000 accidental death and dismemberment; an age-65 benefit or minimum $300,000 permanent and total disability benefit (lump sum payment vs. an ongoing payment to 65); $10,000 accidental medical with at least $1,000 chiropractic/physio; $10,000 rehab with no restrictions; $10,000 spousal retraining; $10,000 repatriation and $10,000 home and vehicle modification.

The most important thing you can do is read the entire policy and not simply the summary of its key points, says Caldwell.