

WORKERS' COMPENSATION PREMIUMS

Court answers the question: "Who is an employee?"

An important issue facing many employers involves the deceptively simple-looking question, "Do I have to pay workers' comp premiums for all my employees?" The workers' compensation policies in 35 states now are being reevaluated by the National Council on Compensation Insurance (NCCI) because of an Illinois court case handled by Teller, Levit & Silvertrust.

The result of *Wausau General Insurance Co. vs. Kim's Trucking Inc.*, means that every employer who hires subcontractors will be responsible for paying workers' comp premiums - unless the worker already has coverage or specifically opts out. The attorney for Wausau, Edward S. Margolis, of Teller, Levit & Silvertrust, said this case answered the crucial question, "Who is an employee when determining the extent of employer's liability to pay workers' compensation premiums?"

Because the Illinois Supreme Court declined to hear an appeal of this case, 289 Ill. App. 3d 201 (1997) (cert denied), businesses now may face millions of dollars in additional, annual expenses.

"This is an enormous case and the effect is being felt among employers who choose to limit their workers' compensation expenses by defining their workforce as independent contractors," said Margolis, who was interviewed after the court decision by the Chicago Tribune and the influential industry publication, *National Underwriter*. He also wrote detailed articles in the *Commercial Law Bulletin* (January/February 1998) of the Commercial Law League of America and the *Illinois Bar Journal* (March 1998) of the Illinois State Bar Association about the court's new "bright-line" precedent guide for Illinois employers and insurance companies.

Because the court's interpretation of the law relies on language of the NCCI workers' comp insurance policy form, a policy that "an employee when determining the employers' liability to pay workers' if/on premiums? is standard in 35 states, NCCI now is reevaluating closed cases where claims of nonemployee status have been made. Call Margolis if you have questions about an employer's potential liability to pay worker's comp premiums.

The material contained herein is not to be relied upon as a substitute for consultation with your attorney.