

**CSX Insurance Company
Employer Status Determination**

This is the decision of the Railroad Retirement Board regarding status of CSX Insurance Company (CSXIC) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

CSXIC is a wholly-owned subsidiary of CSX Corporation. Information regarding CSXIC was provided by Mr. Richard H. Hamilton, President & General Manager of CSXIC, and Mr. John W. Tissue, Tax Counsel, CSX Corporation. CSXIC was incorporated November 25, 1987, and began operations December 4, 1987. It has three employees and first paid salaries or wages March 1, 1993. CSXIC markets insurance. Mr. Tissue describes the types of insurance sold by CSXIC as including the following:

- For employee exposures,
Workers' compensation
United States Longshore & Harbor Workers'
Compensation
Federal Employers' Liability Act;
- For Vehicle exposures,
Fleet liability
Fleet physical damage
Truckers' liability
Personal auto liability and physical damage;
- General liability insurance;
- Property insurance;
- Excess liability insurance;
- Fidelity insurance;
- Protection and indemnity insurance;
- Charterer's liability;
- Terminal operators legal liability;
- Hull Insurance;
- Cargo Insurance;

CSX Insurance Company

- Reinsurance,
 - Excess liability
 - Excess property
 - Personal auto
 - Personal homeowners
 - Railroad protective liability.

CSXIC does 35 percent of its business with CSX Transportation, a subsidiary of CSX Corporation and a covered employer.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(1)(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad, subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with one or more employers as defined in paragraph (i) of this subdivision and which operates any equipment or facility or performs any service (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

CSXIC is clearly not a carrier by rail. However, it is under common control with an employer by reason of CSXIC and CSX Transportation both being subsidiaries of CSX Corporation. The issue to be determined is whether CSXIC's provision of insurance to its rail affiliate constitutes the performance of a service in connection with rail transportation. Section 202.7 of the regulations provides that service is in connection with railroad transportation:

* * * if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier

CSX Insurance Company

by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. [20 CFR 202.7].

This is a case of first impression before the Board. This agency has never addressed the question of whether the provision of insurance is a service in connection with rail transportation. However, in addition to section 202.7 of the Board's regulations, quoted above, the Board is guided by various court decisions that have addressed the meaning of service in connection with railroad transportation.

In Standard Office Building v. United States of America, 819 F. 2d 1371 (7th Cir. 1987), the Court stated that the companion language in the Railroad Retirement Tax Act regarding performance of service in connection with transportation of passengers or property by railroad was intended to cover "substantially all those organizations which are intimately related to the transportation of passengers or property by railroad" but would "exclude services unrelated to rail transportation, such as operating an amusement park open to the public on land owned by the railroad * * *."

In a recent decision, Canadian Pacific Finance, Inc., BCD No. 96-11, the Board found that a company providing financial services to its railroad affiliates was a covered employer. Those services included tax, cash management, internal audit, and financing services. In so holding, the Board found these services to be analogous to services held covered under the Acts in Adams v. Railroad Retirement Board, 214 F. 2d 534 (9th Cir. 1954) ("accounting services, the services of a purchasing department, * * * correspondence and stenographic services * * * bridge and building services, a safety engineer and repairs for its automotive equipment and its general rolling stock").

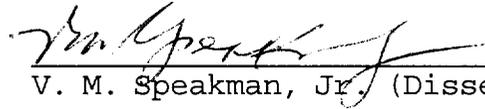
While the provision of insurance might broadly be viewed as related "economically" to the transportation of persons or property by rail, it is not the type of service that could be said to be intimately related to rail transportation and that a railroad would normally provide on its own. A review of the various precedential decisions leads a majority of the Board to conclude that section 1(a)(1)(ii) of the Railroad Retirement Act was not intended to bring within the coverage of that Act a service, such as the sale of insurance, that is neither intimately related to rail transportation nor a service that a carrier would normally perform.

CSX Insurance Company

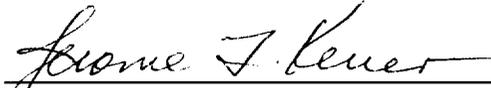
A majority of the Board finds that CSXIC is not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.



Glen L. Bower



V. M. Speakman, Jr. (Dissenting)



Jerome F. Kever