



It is the employer's legal responsibility to file the waiver of coverage. This can have harsh consequences if the employer is unaware of this obligation, which is why the workers' compensation insurance application asks the employer to list its executive officers and to indicate whether the employer intends to cover them. Unfortunately, in this case, the application filled out on North American Whitewater's behalf failed to list Ms. Mallen at all, and requested that Mr. Dostie be included on the policy, not excluded.

There is persuasive evidence that the producer, Michael A. Fetchero of CBIZ Benefits and Insurance Services, may have filled out the application incorrectly without adequately consulting with Mr. Dostie and Ms. Mallen. The error may have been compounded by MEMIC accepting an unsigned application. However, neither Mr. Fetchero nor CBIZ is a party to this proceeding, so questions of liability arising out of possible flaws in the application process are being dealt with separately. Therefore, this Decision and Order is limited to determining whether the terms of the contract between North American Whitewater and MEMIC called for coverage of Mr. Dostie and Ms. Mallen, until the effective date of their waiver of coverage, assuming that the policy application was valid. On that assumption, there was coverage and the premium charge was appropriate.

### ***Order and Notice of Appeal Rights***

It is therefore *ORDERED* that the Petition is *DENIED*.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. § 236 (2000) and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before February 23, 2004. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

<sup>1</sup> Pursuant to 24-A M.R.S.A. § 210, the Superintendent has appointed Bureau of Insurance Attorney Robert Alan Wake to serve as hearing officer, with full decisionmaking authority.

**PER ORDER OF THE SUPERINTENDENT OF INSURANCE**

**JANUARY 15, 2004**

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**ROBERT ALAN WAKE  
DESIGNATED HEARING OFFICER**