

Geary Bonville, d/b/a]	
NCT, et al.]	
]	
v.]	
]	DECISION AND ORDER
MAINE EMPLOYERS' MUTUAL]	
INSURANCE COMPANY]	
]	
Docket NO. INS-00-14]	

Geary Bonville *d/b/a* NCT has filed a petition pursuant to 24-A M.R.S.A. § 2908, contesting the cancellation for nonpayment of premium of NCT's workers' compensation insurance policy by the Maine Employers' Mutual Insurance Company ("MEMIC"). The disputed portion of the premium represents the charge for covering Stanley Bonville, who is Geary Bonville's son. Because no valid waiver of coverage was filed with the Workers' Compensation Board during the policy period, the Petition is *DENIED*.

The basic facts are not in dispute. "NCT," or "North Country Two," is the name under which Geary conducts a trucking business as a sole proprietor.¹ Therefore, pursuant to 39-A M.R.S.A. §§ 102(11)(A)(5) & 102(11)(B), both Geary and Stanley have the option to decide whether or not to be eligible for workers' compensation benefits, and the default option is that Stanley is a covered employee and Geary is not. If a different option is chosen, that choice is not effective unless a written notice to that effect is filed with the Workers' Compensation Board.

Unfortunately, even though NCT made clear when applying for coverage for the 1999–2000 policy year that Stanley did not want to be a covered employee, Stanley did not actually execute a waiver of coverage form and file it with the Workers' Compensation Board until February of 2000, shortly after the policy anniversary date. This means that Stanley would have been entitled to workers' compensation benefits if he had been injured on the job before the waiver was filed, and that MEMIC would have been obligated by the terms of the policy to pay those benefits. The notation on the policy application that Stanley was not intended to be covered would not have been sufficient to make him ineligible for benefits.

The result was that MEMIC had provided a year of coverage to NCT at a level that NCT neither needed nor wanted. At this point, there is no way to return the parties to their original position – either NCT must be ordered to pay for the unnecessary coverage, or MEMIC must be ordered to provide coverage for free. The fact that Stanley Bonville turned out not to have been injured during the policy period is irrelevant to the analysis. MEMIC assumed the risk of that

injury, and the premium in question is the market price for assuming that risk. Just because a car never gets into a collision, that does not mean the airbag has no value.

In an earlier case, *Common Courage Press, Inc. v. MEMIC*, No. INS-96-19 (Me. Bur. Ins. Dec. 4, 1996), the insurer was required to bear the loss in similar circumstances. However, in *Common Courage*, the failure to execute the waiver of coverage was the result of the producer's negligence, and the producer was held to be acting as the agent of the insurer. In this case, it is undisputed that the producer did contact NCT in a timely manner and attempt to get NCT to correct the oversight and file a valid waiver of coverage.

It is therefore *ORDERED* that NCT's petition is *DENIED* and the disputed premium is hereby determined to be properly charged to NCT. MEMIC's original cancellation request is now moot, because the parties have represented that they have entered into a mutually agreeable payment arrangement and the cancellation request has been withdrawn.

This Decision and Order was entered by consent of all parties pursuant to 5 M.R.S.A. § 9053(2). If it does not accurately reflect the terms understood and agreed to, any party may file a motion for reconsideration pursuant to Bureau of Insurance Rule 350, § 19, within twenty days after receiving this notice.

¹Although Geary also owns a corporation named NCT, Inc., which had initially been named as a party to this proceeding, he testified that the corporation is not currently actively in business. Likewise, although he had referred to Stanley at one point as one of the "owners" of the business, he clarified that Stanley is not actually in partnership with him and meant only that the business is a family business.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

JUNE 20, 2000

ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER