



original position – either [the employer] must be ordered to pay for the unnecessary coverage, or MEMIC must be ordered to provide coverage for free. The fact that [the owner/employee] 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.

The nature of insurance, with an insurer accepting relatively small amounts from each policyholder in return for the promise to compensate them if needed for potentially catastrophic losses, makes it imperative that the contract spell out clearly what is covered and what is not from the outset, before either party knows whether there is a claim. The need for clear written documentation has been highlighted by recent coverage disputes that have made the front pages. The Legislature has incorporated a bright-line waiver process into Maine law, and this law not only protects the insurer that knows what risk it has assumed and what premium to charge for it, but also protects the employer that knows it will not incur unintended premium charges because its exempt workers have filed waivers, and the worker who knows his or her claim will be paid, if there is an accident, because he or she has not filed a waiver.

When a business incorporates, it agrees to assume the responsibilities as well as the benefits of corporate status. *See Joyce, Dumas, David & Hanstein, P.A. v. MEMIC*, No. INS-94-15 (Me. Bur. Ins. June 7, 1995) One of those responsibilities is to provide workers' compensation coverage for all of its employees, including working owners and their family members, unless a valid waiver of coverage has been filed in advance. MEMIC has acted within its rights in charging premium accordingly.

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

It is therefore *ORDERED* that the Petition is hereby *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 March 12, 2007. 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 31, 2007**

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**ROBERT ALAN WAKE**  
**DESIGNATED HEARING OFFICER**