

**CHARLES BUGBEE, d/b/a  
INDEPENDENT TRANSPORT**

**v.**

**MAINE EMPLOYERS' MUTUAL  
INSURANCE COMPANY**

**Docket NO. INS-98-8**

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**DECISION AND ORDER**

Charles Bugbee, d/b/a Independent Transport, filed a petition with the Superintendent on May 16, 1998, contesting the cancellation of Independent Transport's workers' compensation insurance policy by the Maine Employers' Mutual Insurance Company ("MEMIC") for nonpayment of premium. The Petitioner contends both that the notice of cancellation was untimely and that he was not in default on his premium obligation at the time of cancellation. For the reasons set forth below, the policy cancellation is valid and the Petition is denied.

Mr. Bugbee received a notice from MEMIC dated May 4, stating that his policy had been cancelled, effective one minute after midnight on May 1. During the day on May 1, there had been an accident giving rise to a claim against the policy. According to Mr. Bugbee, the post-cancellation advisory was the first notice of cancellation he received, which would violate the 30-day notice requirement of 24-A M.R.S.A. § 2908(5)(A) and 39-A M.R.S.A. § 403(1). MEMIC, however, contends that it had already sent timely notice, and that this was a second notice warning Mr. Bugbee that the cancellation had taken effect as previously announced.

Most of the relevant facts surrounding the cancellation are undisputed. Under the business name Independent Transport, Mr. Bugbee hauls logs and wood products, operating from his home in Aroostook County. His workers' compensation policy was last renewed on July 21, 1997, for a one-year term. The premium was payable in quarterly installments, and the last installment, \$1067.75, was due on March 21, 1998. On March 20, Mr. Bugbee sent MEMIC a check for \$500, with a handwritten note on the invoice explaining:

*Due to layoff things are not so profitable. Please give me a week or two to pay the rest. This is for myself. I have no employees. I drive my own truck and it is currently parked till I find some employment. I will greatly appreciate a little more time.*

Mr. Bugbee testified that the company that had laid him off was Pelletier and Pelletier, in Fort Kent.

MEMIC received the partial payment on March 26, cashed it, and applied it to the Independent Transport account. Meanwhile, on March 25, MEMIC prepared

a notice of cancellation for mailing, dated March 26 and stating that the policy would be cancelled, effective at 12:01 a.m. on May 1, for nonpayment of a past-due premium of \$1067.75. A certificate of mailing was prepared by MEMIC on March 25, and stamped by the Post Office on March 26, stating that cancellation notices had been sent to eleven addresses, including Mr. Bugbee's. A copy of the Independent Transport cancellation notice was received by Mr. Bugbee's insurance producer, the F.A. Peabody Company, on March 27.

Mr. Bugbee, however, testified that he checked his mail in anticipation that MEMIC might send a cancellation notice, that he received no communication of any kind from MEMIC, and that based on the assumption that his coverage was in order, he made no further attempt to follow up either with MEMIC or with the producer.

After receiving the post-cancellation advisory, Mr. Bugbee tendered payment of the past-due balance, which MEMIC rejected. He then filed a petition with the Superintendent contesting the cancellation, pursuant to 24-A M.R.S.A. § 2908(6), and the Superintendent held an adjudicatory hearing on June 26, 1998.<sup>1</sup>

The first issue to decide is whether the cancellation is void because proper notice was not given pursuant to 24-A M.R.S.A. § 2908(5) and 39-A M.R.S.A. § 403(1). It is not reasonably in doubt that the document mailed by MEMIC on March 26 was the original of the same cancellation notice which was copied to F.A. Peabody. Pursuant to 24-A M.R.S.A. § 2908(5)(C), the certificate of mailing constitutes conclusive proof that Mr. Bugbee did in fact receive the notice of cancellation three days later, *i.e.* on March 30, 1998 (March 29 being a Sunday). Timely notice was therefore received, and there is no dispute that it stated a facially valid ground for cancellation and was otherwise in accordance with the Maine Cancellation Control Act.

Furthermore, even in the unlikely event that Mr. Bugbee's after-the-fact recollections are accurate and the notice somehow was not actually delivered to his Post Office Box, he has testified to his familiarity with the cancellation process, having made late or partial payments several times in the past, having received several other notices of cancellation, and having actually lost coverage "a couple of times." Mr. Bugbee knew that he was in default on his premium installment, and based on his own testimony and on the testimony regarding MEMIC's usual business practices, I find that he also knew that MEMIC could be expected to send a cancellation notice even though a partial payment had been made. Nevertheless, he made no attempt, either through MEMIC or through F.A. Peabody, to ascertain the status of his coverage. I therefore conclude that Mr. Bugbee, at the very least, knew that he was at extremely high risk of being without workers' compensation coverage when his truck was on the road on May 1, 1998.

The remaining issue is whether MEMIC's acceptance of the partial payment in any way affected the validity of the cancellation. Several variants on this theme have been raised: Would MEMIC's acceptance of the late payment constitute unjust enrichment if the cancellation proceeded as scheduled, or estop MEMIC from cancelling the policy? Was there in fact a "nonpayment of premium" within the meaning of the contract and the Cancellation Control Law? Did MEMIC by its actions agree to rescind the cancellation notice and/or to extend the term of the policy?

First, there was no unjust enrichment or estoppel, because MEMIC only accepted the funds subject to its obligation, upon final audit, to return any amount in excess of the cost of coverage. MEMIC is under no contractual or legal obligation to return all partial payment checks uncashed and to notify insureds that it will accept only checks for the exact amount stated on the invoice — indeed, many consumers would find the all-or-nothing approach burdensome and might well prefer that MEMIC continue its current practice of accepting partial payments as they arrive.

Second, the terms of the contract between Mr. Bugbee and MEMIC require the insured to "pay all premium when due," and reserve to MEMIC the right to cancel with timely notice for "Nonpayment of premium."<sup>2</sup> I interpret this language to mean that MEMIC has valid grounds for cancellation under the contract whenever all or part of a premium installment is overdue, and that interpretation is consistent with 24-A M.R.S.A. §§ 2908(1)(C) and 2908(2)(A), which permit an insurer to cancel coverage if the named insured fails or is unable "to discharge any obligation in connection with the payment of premium."

Finally, acceptance of partial payment does not waive the insurer's right to cancel for nonpayment, nor does it extend the term of the policy by operation of law. *See Panizzi v. State Farm Mut. Auto. Ins. Co.*, 386 F.2d 600, 604–06 (3d Cir. 1967), *cert. denied*, 392 U.S. 937 (1968). Although there is a long line of cases holding that a pattern of accepting late payments can constitute a waiver of the right to cancel for late payment, that is not the issue here, because MEMIC would have accepted late payment and reinstated the policy at any time before the cancellation took effect.

It is true that the partial payment of \$500 would have been sufficient — if the annual estimated premium was accurate — to pay for an extension of coverage almost halfway through the final quarter. Once again, however, that is not the issue in this case. It is unnecessary to decide whether it would have been unreasonable for MEMIC to refuse to extend the cancellation date from May 1 to June 1, if requested, because Mr. Bugbee never made such a request. There is no evidence that anyone even considered an extension of the cancellation date, let alone that the parties implicitly agreed to such an extension.<sup>3</sup> What Mr. Bugbee asked for was a grace period of a week or two in which to pay the remaining overdue premium, and MEMIC gave him more than a month.

Only two possible policy termination dates were ever considered by either party: May 1 and July 21. There is no basis on which Mr. Bugbee could have reasonably expected that his payment of about half of the fourth quarter bill would possibly entitle him to coverage for the entire quarter. Especially in light of his past experience with the cancellation process. He either knew, or deliberately avoided knowing, that he would be without coverage on and after May 1, 1988.

It is therefore *ORDERED* that the Petition is hereby *DENIED*. The policy is cancelled effective at 12:01 a.m. on May 1, 1998, according to the terms of the notices sent by MEMIC to the Petitioner.

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 (Supp. 1997) 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 the Superintendent's decision may initiate an appeal on or before September 8, 1998. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

## **PER ORDER OF THE SUPERINTENDENT OF INSURANCE**

**July 27, 1998**

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**ROBERT ALAN WAKE  
DESIGNATED HEARING OFFICER**

<sup>1</sup> Bureau of Insurance Financial Surveillance Attorney Robert Alan Wake was designated by the Superintendent pursuant to 24-A M.R.S.A. §210 to hear and decide this case. The order convening the hearing established terms and conditions for policy reinstatement pending the issuance of the Superintendent's decision, but those issues are moot because the Petitioner did not pursue reinstatement.

<sup>2</sup> NCCI Standard Policy form § V-D (4/1/92 edition); MEMIC Maine Cancellation and Nonrenewal Endorsement § VI-D(5) (1995 comprehensive endorsement filing). At the hearing, the Superintendent took official notice of the policy forms filed by and on behalf of MEMIC.

<sup>3</sup> When Mr. Bugbee's attorney asked him, on direct examination, "What was your understanding of what you were paying for with that \$500?" he did not respond "Another month and a half of insurance," or anything to that effect, but rather "Half my premium." The attorney did not follow up to clarify his question.