

NOTICE OF INTENT TO APPEAL

STATE OF MAINE
WORKERS' COMPENSATION BOARD
APPELLATE DIVISION
1037 FOREST AVE, STE 11
PORTLAND, MAINE 04103-3382

CASE NAME: Dale Henderson v. Oakleaf Realty & MEMIC
WCB FILE# or AIU CASE#: 11036442
ISSUANCE DATE OF DECISION: 06/12/2017
MAIL DATE OF DECISION: 06/12/2017

CHECK ONE:

- APPELLANT HAS ORDERED TRANSCRIPT FROM _____
(please notify Appellate Division when you receive transcript)
- TRANSCRIPT HAS ALREADY BEEN PREPARED
- REQUEST HAS BEEN MADE TO REGIONAL OFFICE TO ORDER TRANSCRIPT

APPELLANT:

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APPELLEE:

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Please include the same information about additional parties on a separate sheet.

NOTICE

A party in interest may file with the Appellate Division a notice of appeal of a decision by an administrative law judge pursuant to 39-A M.R.S.A. §318 within 20 days after receipt of notice of issuance of the decision by the administrative law judge. When filing this notice, the appellant also shall file with the clerk a copy of the decision appealed.

1. On 06/12/2017, Dale Henderson received notice of the issuance of a decision by Administrative Law Judge David Hirtle in the above captioned case.

2. The appellant appeals the following issue(s):
Please see attached.

THEREFORE, the appellant asks the Appellate Division to review the decision pursuant to 39-A M.R.S.A. §321-B.

Dale Henderson
SIGNATURE OF APPELLANT

DATED: 8/22/17
MONTH DAY YEAR

FILING INSTRUCTIONS

1. Mail original notice to the clerk of the Appellate Division at the above address by regular mail, or hand deliver to any regional Board office.
2. Mail one (1) copy by certified mail, return receipt requested to each other party named above.
3. Keep one (1) copy for yourself and keep the green certified mail cards when returned to you by the U.S. Post Office.

The State of Maine provides equal opportunity in employment and programs. Auxiliary aids and services are available to individuals with disabilities upon request. For assistance with this form, contact the ADA Coordinator at the Maine Workers' Compensation Board. Telephone: (888) 801-9087 or TTY Maine Relay 711.
WCB-240 (eff. 1/1/13, rev. 10/21/16)

Additional Parties

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STATE OF MAINE
WORKERS' COMPENSATION BOARD
27 STATE HOUSE STATION
AUGUSTA, MAINE 04333

DALE H. HENDERSON,)	
)	
Employee)	DOI: 03/02/2011
)	
vs.)	SSN: XXX-XX-9266
)	
OAK LEAF REALTY, INC.,)	
)	
Employer)	
)	
and)	
)	
MAINE EMPLOYER'S MUTUAL)	
INSURANCE COMPANY,)	
)	
Insurer)	

STATEMENT OF ISSUES

1. Did the Board have jurisdiction to consider or decide that the Oak Leaf Realty, Inc. insurance policy with MEMIC, containing an exclusion for Dale Henderson as an officer, constituted a valid basis to exclude or deny coverage, notwithstanding that no waiver of coverage had been obtained by MEMIC in accordance with 39-A M.R.S.A. §102 (11) (A)(4), which was required.
2. If the Board had jurisdiction to analyze whether to apply the MEMIC insurance policy's waiver of coverage regarding Dale Henderson, did the Board then err in failing to apply 39-A M.R.S.A. §106, requiring Board approval of any waiver.
3. Did the Board err in failing to impute the acts and knowledge of Cross Insurance, to MEMIC, as agent for MEMIC, concerning all matters involving Dale Henderson's 03/02/11

work injury, including notice of the injury, triggering the requirements for coverage, including a 14-day violation and penalties.

4. Did the Board err in placing the burden of proof on the employee to prove he was an employee of Oak Leaf Realty, Inc. on the 03/02/11 work accident when the employer admitted in pleadings that Dale Henderson was an employee.

5. Did the Board err in requiring the employee to prove “he was working for Oak Leaf Realty, Inc., rather than another of his corporate entities” without analyzing whether the employee was employed jointly at the time of his injury by Oak Leaf Realty, Inc., and any other entity owned by the employee.

6. Did the Board err in determining no 14-day violation occurred with either the employer or insurer.

7. Did the Board err in determining that the employee’s Notice of Injury to the employer was not sufficient to trigger an obligation to file a Notice of Controversy.

8. Did the Board err in determining that the Prentiss & Carlisle Flail Contract with Oak Leaf Realty, Inc., requiring that workers’ compensation coverage exist for Dale Henderson as an employee, and requiring the Certificate of Insurance from MEMIC, through Cross Insurance, was binding on Oak Leaf Realty, Inc. and MEMIC, and also non-enforcement by the Board thereof was a violation of *Me. Const. Art. 1, §11*, (no law impairing the obligation of contracts).