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Court Sets New WC Guidelines

By: Daniel Hays

Illinois' highest state court, in a decision said to have a wide-ranging effect, has reinforced the right of workers' compensation insurers to act policy rates that count most independent contractors as company employees.

The breadth of the ruling, in the Wausau General Insurance Co. v. Kim's Trucking Co. case, was questioned by a national trucking association's lawyer, but attorneys for both Wausau and Kim's said the implications were extensive.

"Insurance companies will love this," said Kim's attorney, Bernadette Garrison Barrett. She added that thousands of trucking companies "will be affected in the state of Illinois alone."

The high court in its ruling refused an appeal of lower court language that went against Kim's.

For Kim's, a small firm in the Chicago suburb of Palos Heights, the decision meant that Wausa was able to increase the amount of premium charged for a single year almost five-fold. The premium for the 1991-1992 period increased after an audit from $6,262 to $27,857. "It's kind of scarey," said Ms. Barrett.

In the 1991-1992 year, Kim had dired three employees and contracted for 13 haulers on an as-needed basis, the court found.

Robert Digges, Jr., a lawyer with the American Trucking Association Litigation Center - which submitted a friend of court brief on the case - said he did not feel the case had nationwide implications. But his position was strongly disputed by **Edward S. Margolis, of Teller, Levit and Silvertrust**, the Chicago firm representing Wausa.

"This case is incredibly applicable," said **Mr. Margolis**, noting that it involved the language of the National Council on Compensation Insurance's workers' compensation insurance policy form used in 35 states.

The Illinois court found that the policy language used by Wausau is "broader than the automatic insurance liability provisions of the Workers' Compensation Act."

A key phrase, the court noted, stated premiums were to be calculated on the basis of the payroll and other persons the company engaged that "could make [the insurer] liable."

The word "could", "according to the court, means that independent truckers should be counted on the payroll since a section of the state's workers' compensation law automatically requiring coverage has been broadly interpreted. According to **Mr. Margolis**, the automatic coverage involves 19 categories of labor.

Mr. Margolis noted language in the opinion which said that Kim had three (3) ways to honot the policy's provisions. The firm can pay the outside haulers' premiums, show Wausau proof the haulers opted out of coverage.

those doing work on their behalf are independent contractors, "even though that's wrong."

Mr. Delehanty said he believed that prior to now, insurers had not won rulings on the independent contractor issue because "it's easier to settle than to litigate." He said many times insurers had fallen into the trap of "arguing over whether employees are independent contractors or not as opposed to looking at the policy language."

Mr. Diggs termed the Illinois ruling "ludicrous." He said the association believes the issue requires fact-intensive analysis that determines whether "the punitive employer is exercising control."

"I'm sure [the Illinois decision] will be cited in other controversies like this, but it has no binding authority in other states," he said. In his brief, which was rejected by the Illinois court, Mr. Diggs argued it was at odds with case law and a New Jersey court's decision. **Mr. Margolis** said the New Jersey opinion dealt with a different issue.