

SPECIAL REPORT

MICHIGAN COURT OF APPEALS CONFIRMS THAT MERE CERTIFICATES OF INSURANCE DO NOT SUFFICE

(02-15-13)

This Special Report was written by Daniel P. Hale, J.D., CPCU, ARM, CRM, LIC, AIC, AIS, API of Marsh & McLennan Agency LLC. Mr. Dan Hale can be contacted at 734-525-2429 or dhale@mma-mi.com. More Special Reports are available at www.mma-mi.com.

In December 2012 the Michigan Court of Appeals echoed a longstanding precedent that anyone hiring an independent contractor has an affirmative duty to confirm that the contractor maintains Workers' Compensation coverage for its employees. Most importantly, the court said that this obligation cannot be satisfied by requesting a mere certificate of insurance from the contractor.

In October 1973, the Court first stated that it "remains the burden of every principal hiring independent contractor to see that the selected contractor has clear, unquestioned, approved, and adequate Workmen's Compensation coverage. We caution that a mere 'certificate of insurance' of the existence of a policy, inadequate or inapplicable, does not suffice." *Woody v American Tank Co* 49 Mich App 217, 230 (1973)

In *Woody*, the defendant had hired an out-of-state independent contractor to provide demolition services. The agreement required that the contractor maintain workers' compensation coverage for the state where the work was to be performed. The contractor provided a certificate of insurance showing that a Workers' Compensation policy was in force. An injury then occurred in the course of the demolition project and the contractor's Workers' Compensation carrier denied coverage. The defendant tried to argue that they should not be liable for the employees' benefits because they had received a certificate of insurance from the contractor showing that Workers' Compensation coverage was in place. The court disagreed.

Much to the defendant's surprise, the out-of-state contractor was insured through an assigned risk Workers' Compensation program. This meant that the policy was limited to injuries sustained in the contractor's home state,

and did not extend coverage to injuries sustained in any other state. As typically is the case, none of these limitations were indicated on the certificate of insurance.

Ultimately, the defendant who had hired the contractor was liable for the injuries sustained by the uninsured contractor's employee under the terms of MCL 418.171, commonly known as the flow-through statute.

More recently, in December 2012, the Court of Appeals again echoed the message of *Woody* that a mere certificate of insurance does not suffice and that hiring entities have an obligation to look deeper to determine that "the selected contractor has clear, unquestioned, approved, and adequate Workmen's Compensation coverage." *Chase v Terra Nova*, unpublished, Mich App No 295138 (2012).

Even though the court declined to offer guidance on how one should go about determining whether the contractor has clear, unquestioned, approved, and adequate workmen's compensation coverage, the following are some strategies that should be considered.

- Request a copy of the independent contractor's original Workers' Compensation policy. In the age of digital documents and PDF files, these documents should be easy to transmit via email. The only true way to determine the terms and conditions of a policy is to review the actual policy language.
- Contact the Workers' Compensation carrier directly and ask for verbal confirmation on the policy status.
- Contact the agent who issued the certificate, ask for verbal confirmation of the policy status and verify the details that were indicated on the certificate.
- Consider adding the alternate employer Endorsement. (See our Special Report on this topic.)
- Consider adding a waiver of subrogation. (See our Special Report on this topic.)

The important thing to take away from both the *Woody* and *Chase* cases is that you should not rely on certificates as proof that the independent contractor has satisfied their obligation to maintain Workers' Compensation coverage. It is necessary to undertake an individual assessment of the policy forms in order to determine the true scope and breadth of coverage.

This type of guidance is just one of the many ways that Marsh and McLennan Agency can help its clients to sort through the complex world of insurance and is what sets us apart from most all other agencies.

This document is not intended to be taken as advice regarding any individual situation and should not be relied upon as such. Marsh & McLennan Agency LLC shall have no obligation to update this publication and shall have no liability to you or any other party arising out of this publication or any matter contained herein. Any statements concerning actuarial, tax, accounting or legal matters are based solely on our experience as consultants and are not to be relied upon as actuarial, accounting, tax or legal advice, for which you should consult your own professional advisors. Any modeling analytics or projections are subject to inherent uncertainty and the analysis could be materially affective if any underlying assumptions, conditions, information or factors are inaccurate or incomplete or should change.