COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 021276-96**

Thomas Dearmon	Employee
Save That Stuff, Inc.	Employer
Travelers Insurance Co.	Insurer
Workers' Compensation Trust Fund	Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Maze-Rothstein and Levine[1])

APPEARANCES
Steven H. Kantrovitz, Esq., for the employee
Gail E. Quinn Esq., for the insurer
Joseph Labadini, Esq., for the Workers' Compensation Trust Fund at hearing
Vincent F. Massey, Esq., for the Workers' Compensation Trust Fund on appeal

CARROLL, J. Travelers Insurance Co. (Travelers) appeals from a decision in which an administrative judge concluded that it was liable for the employee's stipulated June 5, 1996 industrial accident. (Dec. 4, 19.) Travelers contends that its assigned risk policy with the employer had expired as of June 1, 1996, and that it was no longer on the risk at the time of the accident. The judge found that the insurer was still obligated to provide coverage for the accident, because it had not notified the employer and the Workers' Compensation Rating and Inspection Bureau ("Rating Bureau") of its non-renewal of the policy in a manner that complied with the Rating Bureau's Procedural Manual and the provisions of G.L. c. 152, § 63.[2] Because we do not adopt the judge's

[1] Judge Levine recused himself from participation in deciding this appeal.

[2] G.L. c. 152, § 63, provides, in pertinent part:

> [I]nsurance [under this chapter] shall not be cancelled or shall not be otherwise terminated until ten days after written notice of such cancellation or termination is given to the rating organization or until a notice has been received by said organization that the employer has secured insurance from another insurance company or has otherwise insured the payment of compensation provided for by this chapter.

rationale in reaching this result, we do not report his reasoning in this opinion. Nevertheless, we affirm the decision because we believe it reaches the correct result for the reasons that follow.

The insurer does not dispute that it insured the employer under an assigned risk policy, pursuant to § 65A, from June 1, 1995 until June 1, 1996, days before the industrial accident. (Dec. 4, 12.) The employer had fully paid for the policy. (Dec. 12.) Sometime before the expiration of the policy, the insurer sent the employer a "Workers' Compensation Insurance Plan Letter," which included a premium quotation for the succeeding year. The premium quotation was dated April 12, 1996. (Dec. 13-14; Ins. Ex. 1.) The Insurance Plan Letter stated that payment must be received by the due date of May 31, 1996. The Letter continued: "If payment is not received by the due date, either the policy will be issued with a lapse in coverage or your premium check will be returned and no policy will be issued." (Ins. Ex. 1.) It is undisputed that the insurer sent the employer no further notice regarding the policy prior to its expiration. The insurer also sent the Rating Bureau a "Notice of Issuance/Cancellation /Nonrenewal/ Reinstatement," dated April 10, 1996, with Nonrenewal checked stating the reason, "policy expiring." (Dec.14; Ins.Ex. 2.)

In the decision on appeal, the judge concluded that the insurer had not properly terminated coverage under § 63 and the Rating Bureau Procedural Manual. The judge concluded that the insurer was still on the risk at the time of the employee's June 5, 1996 industrial accident due to the insurer's omission. (Dec. 19.)

The insurer contends that the judge erred in his conclusion that its policy of insurance with the employer was still in effect on June 5, 1996. We disagree. We consider that the correct result was reached for the following reasons -- not addressed by the decision -- which operate as a matter of law. See Raytheon Co. v. Director of Division of Employment Security, 364 Mass. 593, 598 (1974)(affirming lower court decision "because it reach[ed] the correct result, although for erroneous reasons"). Accord, Messersmith's Case, 340 Mass. 117, 122-124 (1959) (case remanded for consideration of record evidence that could support the result the judge had reached,

but with inadequate support in subsidiary findings).

In our view, the provisions of § 65B control the present case.[3] The insurer argues as a threshold matter that § 65B does not apply to this case because it involves a policy non-renewal at the end of the one year life of the policy, not a mid-term cancellation or termination. We have not construed the language of § 65B to sustain such a distinction. See Fontaine v. Evergreen Constr. Co., 13 Mass. Workers' Comp. Rep. 62 (1999) (applying the provisions of § 65B to a non-renewal of an expired policy). We now explicitly conclude that the language of § 65B, "cancel or otherwise terminate such policy," refers to any termination of a workers' compensation policy, whether by expiration of the policy term, non-payment, or other reasons. The policy of encouraging strict adherence to the compulsory coverage provisions of c. 152 supports such an interpretation. See Armstrong v. Town & Country Carpentry, 10 Mass. Workers' Comp. Rep. 516, 521 (1996), aff'd, 47 Mass. App. Ct. 693 (1999); Frost v. David C. Wells Insurance Agency, 14 Mass. App. Ct. 305, 307-309 (1982) (non-renewal notice required under § 63 to effect proper termination of expiring policy).

Having determined that the insurer was required to notify the employer of the policy termination under § 65B, the question arises as to sufficiency of the notice to the employer. The statute provides that the written notice must express the insurer's "desire to cancel or terminate" the policy. A reasonable read of the phrase would be that the notice must express an unambiguous intent to cancel or terminate the policy. Cf. G.L. c. 175, § 113A(2) (setting out notice requirements for "propos[ed]" or "intended"

[3] General Laws c. 152, § 65B, provides, in pertinent part:

> If, after the issuance of a policy under sixty-five A [an assigned risk policy], it shall appear that the employer to whom the policy was issued is not or has ceased to be entitled to such insurance, the insurer may cancel or otherwise terminate such policy in the manner provided in this chapter; provided, however, that any insurer desiring to cancel or otherwise terminate such a policy shall give notice in writing to the rating organization and the insure[d] of its desire to cancel or terminate the same. Such cancellation or terminations shall be effective unless the employer, within ten days after the receipt of such notice, files with the department's office of insurance objections thereof . . . .

cancellation in motor vehicle liability policies). In the present case, the only notice given to the employer of the insurer's purported "desire" or intent to terminate coverage was simply nothing of the sort.

We agree with the insurer that a clearly expressed "Notice of Non-renewal," such as that sent to the Rating Bureau (Ins. Ex. 2), would have been adequate notice to the employer, under § 65B, of the insurer's "desire to cancel or terminate" the policy.[4] That document stated: "NOTICE OF . . . NONRENEWAL . . . Coverage provided by the policy number shown above is being nonrenewed at above policy expiration date for the following reason: . . . policy expiring." However, that document was sent only to the Rating Bureau, not to the employer. Instead, the insurer sent the employer an "Insurance Plan Letter." The Insurance Plan Letter sought payment of the premium for the next year's coverage: "Enclosed is your renewal quotation based on the latest payroll classification information available to us." (Ins. Ex. 1.) It continued at the bottom of the page of text addressing various issues regarding premium assessment: "In order to avoid a lapse in coverage, your renewal payment must be received by the due date shown above. Depending on the plan requirements, if payment is not received by the due date either the policy will be issued with a lapse in coverage or your premium check will be returned and no policy will by issued." Id. While the insurer argues that the Insurance Plan Letter served the same notice to the employer as the Notice of Non-renewal served on the Rating Bureau, we disagree.

The law regarding termination or cancellation of compulsory insurance policies, such as those written to cover motor vehicle liability and workers' compensation, holds insurers to a high standard of diligence.[5] "A notice of cancellation of insurance must be

[4] We need not address the timing of the notice, as our conclusion that the content of the notice was insufficient renders that issue moot.

[5] Any argument that case law involving cancellations is not apposite to this policy termination is misplaced. As we have discussed, all policy terminations are treated the same under § 65B, however and whenever they occur.

definite and certain. [Citation omitted.] Conditions imposed with respect to giving notice must be strictly complied with." Gulesian v. Senibaldi, 289 Mass. 384, 387 (1935). "[C]onditions imposed by law with respect to the giving of notice must be strictly complied with if the cancellation is to be valid." Liberty Mutual Insurance Co. v. Wolfe, 7 Mass. App. Ct. 263, 265 (1979). See Fields v. Parsons, 353 Mass. 706, 707 (1968). The "Insurance Plan Letter" in the present case is, by its very nature, not a "definite and certain" notice of the policy's termination. In fact, it is just the opposite. It is an invitation to renew with a premium quotation, an indication of the insurer's "desire" to continue coverage. Certainly, that coverage is contingent upon the employer's timely paying the premium. However, that fact in no way changes the statutory obligation for the insurer to express its unambiguous intent to terminate coverage. Our review of relevant case law uncovers no situation like the present one: Cases reviewed contained cancellation or termination notices that issued sometime after the insureds' failure to timely pay premiums. See Gulesian v. Senibaldi, supra at 385; Liberty Mutual v. Wolfe, supra at 264; Paloeian v. Day, 299 Mass. 586, 588 (1938); Strong v. Merchants Mutual Insurance Co., 2 Mass. App. Ct. 142, 144-145 (1974) (fire insurance required by mortgage); Fontaine v. Evergreen Constr. Co., supra; cf. White v. Edwards, 352 Mass. 655, 655-656 (1967)(cancellation notice ineffective for lack of specificity after overdue premium paid). The present case is, in fact, most like Frost v. David Wells Ins. Agency, supra, in which the court "conclud[ed] that an additional notice . . . was required in order to terminate the policy on its expiration date[,]" Id. at 308, and held that the insurer could be on the risk for an industrial accident occurring six weeks after the policy expiration, in the absence of adequate notice. Id. at 306-307. "[C]overage continues despite expiration of the policy when there has been no compliance with the statutory notice requirement." Id. at 309.

Therefore, because the insurer did not send the employer a clear, definite and unambiguous notice of termination of its policy, it failed to fulfill its notice obligations under § 65B. The policy continued past its expiration date as a result, and covered the date of injury.

The record compels a finding that there was improper termination as a matter of law, therefore the case is appropriate to be affirmed. See Raytheon, supra; Roney's Case, 316 Mass. 732,739 (1944) (result required as a matter of law therefore recommittal inappropriate); G.L. c. 152, § 11C.

Accordingly, we affirm the decision due to the failure of adequate notice to the employer under § 65B. We summarily affirm all other issues raised by the insurer. Because the insurer challenged the award of § 34 benefits, we award the employee's attorney a fee under § 13A(6) in the amount of $1,218.26.

So ordered.

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Martine Carroll
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

Filed: December 14, 1999
MC/jdm