

Driving members to distinction.

PRIMARY
AGENT

MAY 2011

MARYLAND

**Ways to
race ahead
in the
sluggish
market**

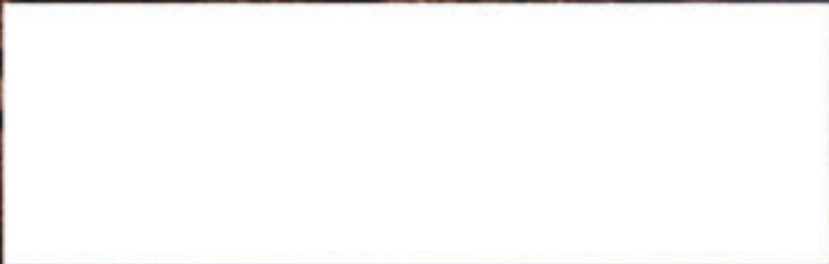
ALSO IN THIS ISSUE:

**Md. court interprets
other states endorsement**



INSURANCE
AGENTS & BROKERS
OF MARYLAND

Affiliated with





The case for out-of-state workers' comp coverage

Maryland court interprets Other States Endorsement



It only took a split second for Dean J. Young to fall and injure himself while framing a building on property near Salisbury, Maryland. But it took nearly six years for the courts to resolve the coverage issue that cleared the way for him to receive workers' compensation benefits.

In deciding this complicated case, involving two tiers of subcontractors and two states, the Maryland Court of Special Appeals in February clarified the meaning of a Residual Market Limited Other States Insurance Endorsement.

Background

In 2005, a Delaware corporation, A&B Enterprises, Inc., contracted with Maryland resident, Richard Townsend, to build a pole building on Townsend's Maryland property. A&B subcontracted the work to WMT Contracting, a business run by Delaware residents Wayne and Marie Travis. WMT in turn employed Young, a Delaware resident, to work on the site.

After the May 16, 2005 fall, Young initially filed a workers' compensation claim against WMT in Delaware, but that claim was later dismissed. Young then filed a claim with the Maryland Workers' Compensation Commission. Because WMT was uninsured, the Maryland Uninsured Employers' Fund was made a party. The Uninsured Employers' Fund promptly made both A&B and its insurance carrier, Zurich American Insurance Company, third parties in the case.

The Maryland Workers' Compensation Commission found WMT was uninsured, but recognized A&B as a "statutory employer" under Maryland law, and therefore liable for Young's benefits to be paid out of the Zurich policy. Zurich petitioned for judicial review, and the Montgomery County, Maryland Circuit Court affirmed the commission's ruling, resulting in the appeal to the Court of Special Appeals.

Decision

The court focused its decision on the insurance policy Zurich issued in Delaware to A&B, which provided workers' compensation coverage. In the policy application, A&B said Delaware was the only state in which it performed work. So, the workers' compensation portion of the coverage applied to Delaware's workers' compensation law. But the policy also contained a Residual Market Other States Insurance Endorsement, which promised to promptly pay benefits for workers' compensation as required by any other state, if all conditions were met.

It was these conditions that the court examined:

1. The employee claiming benefits was either hired under a contract of employment made in [Delaware] *or* was, at the time of injury, principally employed in [Delaware]: *and*
2. The employee claiming benefits is not claiming benefits in a state where, at the time of injury (i) you have other workers' compensation insurance coverage, *or* (ii) you were, by virtue of the nature of your operations in that



LEARN MORE

Read more about workers' compensation coverage, including issues with out-of-state employers, online.

Delaware:

www.iabgroup.com/de/coverages/wc

Maryland:

www.iabgroup.com/md/coverages/wc

Pennsylvania:

www.iabgroup.com/pa/coverages/wc

In deciding this case, the Maryland Court of Special Appeals clarified the meaning of a Residual Market Limited Other States Insurance Endorsement.



state, required by that state's law to have obtained separate workers' compensation insurance coverage, *or* (iii) you are an authorized self-insurer or participant in a self-insured group plan; *and*

3. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.

The court noted that each of these three requirements were

joined by "and" so these conditions would all have to be satisfied for the policy holder to be responsible for the workers' compensation benefits. However, within the second requirement there are three conditions separated by "or." The court found that because the lead in paragraph is written in the negative, satisfaction of any of the three subparts prevents coverage.

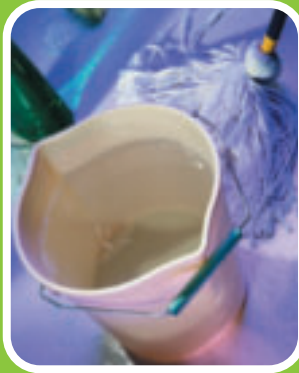
Young was hired in Delaware, and was, at the time of injury, principally employed in Delaware. In addition, the court concluded that Young's work was temporary, satisfying the first and third requirements. The court spent most of the opinion analyzing the second requirement.

A&B did not have other workers' compensation insurance in Maryland. It was not an authorized self-insurer in that state. The court then turned to Maryland law for the subsection involving a state's requirement to have obtained separate workers' compensation. Under Maryland law, an employee is a "covered employee" if injured in Maryland unless the employee was considered a "casual employee" under Maryland Code or in Maryland only "intermittently or temporarily."

In this case, Young was hired as a regular employee, and he and WMT intended "that he would continue employment for a regular and indefinite term," the ruling found. He was therefore not a "casual employee."

Janitorial coverage

in a five-minute phone call.



Call. Quote. Bind. Using TAPCO's courteous and prompt call center, Janitorial coverage can be quoted, bound and delivered to your e-mail inbox quickly and accurately during one five-minute phone call.

CGL Coverage Available:

- Primary limits up to \$3 million Occurrence/Aggregate
- \$5,000 Medical Payments Coverage— included
- Blanket Additional Insured Endorsement— available
- Lost Key Coverage—\$25,000 Limit available
- Property Damage Extension available (Care, Custody and Control) Policy Limits up to a maximum of \$250,000 Occurrence/Aggregate
- Excess or Umbrella Limits up to \$5 million

No Deductible Required

Property Coverage Available:

- Building
- Contents
- Business Income
- Basic, Broad or Special Form
- Replacement Cost or Actual Cash Value
- Equipment Breakdown
- Inland Marine
- Computer Equipment
- Contractors' Equipment
- Outside Signs

** Available coverages and markets may vary dependent upon risk characteristics.*

The TAPCO Service Pledge


- "A"-rated non-admitted carrier
- Competitive pricing
- Fast policy turnaround
- In-house financing available in most states
- Quick claims handling
- \$10 credit to your personalized TAPCO EZ Bucks Visa debit card with each policy
- Visa, MasterCard and ACH payments accepted

1,000 Strong More than 1,000 classes of P&C business written under binding authority.



800-334-5579
www.gotapco.com

The court interpreted the endorsement to provide coverage where “an employee employed in the state of coverage [Delaware] is injured in another state [that] provides for benefits under its laws [Maryland], but the employer does not regularly do business in that state, and the employee is performing work in that state on a temporary basis.”

The court found that Young was hired in Delaware, his work in Maryland was temporary and Maryland did not require separate workers’ compensation insurance coverage within the meaning of the endorsement. As a result, Young will receive coverage for workers’ compensation benefits under the Zurich policy. 

James P. Steele contributed this article. He is a board member of the mid-Atlantic firm Carr Maloney and president of the D.C. Defense Lawyers’ Association. He focuses his practice on insurance coverage and complex litigation.

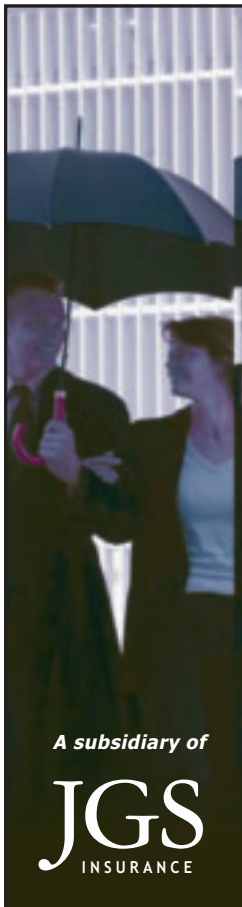
Partners.

At Harford Mutual, we’re committed to being here for our independent agents and policyholders. **Accessible. Experienced. Accountable. Responsive.** That’s Harford Mutual. That’s what mutual success is all about. Learn more about opportunities for mutual success with Harford Mutual at harfordmutual.com.



HARFORD MUTUAL

COMMITTED TO MUTUAL SUCCESS



When it comes to Umbrella or Equipment Breakdown Coverage

**We have fast, competitive quotes
for you, with the service you deserve.**

- Designed for Condos, Co-ops, Townhouses, Apartments, HOAs, PUDs, Habitational Accounts, and Lessor Risk Only Exposures
- Limits from \$1 Million to \$50 Million
- Coverage Includes Excess, G.L., D&O, & Auto
- **Minimum premiums as low as \$350**

For additional information or quotes call:

888.548.2465

And ask for a New Business Underwriter or email info@umbrellaprogram.com

Visit our website at www.umbrellaprogram.com

A subsidiary of

JGS
INSURANCE



**Preferred Property
Program®**

Service is our specialty; protecting you is our mission®