

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 17, 2009

502086

In the Matter of the Claim of
BILL HUTCHINSON,
Respondent,

v

LANSING CONDUIT CORPORATION
et al.,
Appellants,
and

MEMORANDUM AND ORDER

TRAVELERS INDEMNITY COMPANY
OF AMERICA et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: November 17, 2009

Before: Mercure, J.P., Spain, Rose, Kane and Garry, JJ.

Leonard B. Feld, Jericho, for appellants.

Cherry Edson & Kelly, L.L.P., Carle Place (David W. Faber of counsel), for Travelers Indemnity Company of America, respondent.

Jones, Jones & O'Connell, L.L.P., New York City (Marc A. Grodsky of counsel), for Utica Insurance Company and another, respondents.

Kane, J.

Appeal from a decision of the Workers' Compensation Board, filed April 21, 2006, which ruled that Reliance National Insurance Company was responsible for coverage on the date of claimant's disablement.

Claimant asserted that he had sustained work-related hearing loss in both ears and filed the present workers' compensation claim. An investigation revealed that Reliance National Insurance Company had provided workers' compensation insurance coverage to the employer from January to July 1996. The Workers' Compensation Board ultimately determined that the date of claimant's disablement was March 13, 1996 and held that, if the claim is established, Reliance would be the responsible carrier. Reliance and its third-party administrator (hereinafter collectively referred to as Reliance), as well as the employer, appeal.

We affirm. Under Workers' Compensation Law § 49-bb, which addresses work-related hearing problems, "the general rule is that the carrier on the risk on the date of disablement is responsible for the award" (Matter of Di Matteo v Duche & Son, 33 AD2d 1089, 1089 [1970]). There is no question that Reliance issued a workers' compensation insurance policy to the employer for a period that included the date of disablement. It is claimed that this policy contained an exclusion limiting its applicability to claims arising out of contract work performed for a specific entity, which the claim here did not. Reliance did not produce a copy of the policy, however, even though it had been twice directed and once penalized for failing to do so by a Workers' Compensation Law Judge. Indeed, nothing in the record beyond the bare assertions of Reliance's counsel supports the claim that the policy contains an applicable exclusion. As such, we perceive nothing irrational in the Board's finding that the Reliance policy is applicable to this claim (see Matter of Ovando v Hanover Delivery Serv., Inc., 13 AD3d 780, 781-782 [2004]; Matter of Senay v BH Motto & Co., 269 AD2d 647, 647-648 [2000]).

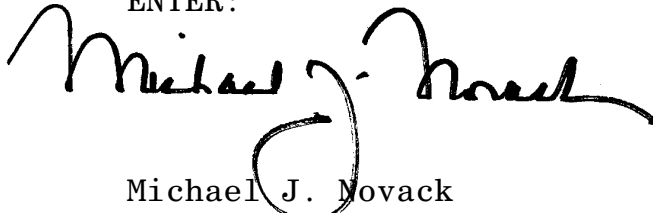
The remaining arguments of Reliance and the employer, to the extent they are properly before us, have been examined and

found to be without merit.

Mercure, J.P., Spain, Rose and Garry, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, prominent initial "M".

Michael J. Novack
Clerk of the Court