

# JOURNAL OF COMMERCE

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## Court Orders Track Comany to Pay Insurer Back Premium

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Illinois' Supreme Court has refused to take up a lower court decision that a trucking firm's contractors are covered by the firm's workers compensation policy unless they can provide proof of insurance on their own.

The high court's Dec. 3 decision on Wausau General Insurance vs. Kim's Trucking is a victory for the Wisconsin-based insurer, which was seeking over \$33,000 in additional premium from the debris hauler.

But the case could also have a longer-term effect on high-risk employers outside Illinois since it sets a precedent.

High-risk firms, which face high premiums when insured through state-run assigned risk plans, often try to cut the cost by "hiding" their employees under the rubric of "independent contractor."

"What this case says is the language of the Wausau policy is clear," said **Edwards S. Margolis of Teller, Levit and Silvertrust**, Wausau's attorney. "The policy Kim's signed says if you don't furnish certificates of insurance for contractors, they are considered employees" unless the contractor opts to be uninsured.

Kim's attorney, Bernadette Garrison Barrett of Barrett, Sramek and Jasinski, was in court and unavailable for comment Tuesday.

Workers compensation coverage, which pays for medical care, rehabilitation and lost wages of injured workers, is mandatory. But some employers try to get around the requirement by leasing employees or hiring them as independent contractors.

Since insurers assess premium based on the number of employees as well as the type of occupation, use of contractors can result in premium too low for the insurer's level of risk. That's why Wausau went to court, said its attorney.

Kim's bought two workers compensation policies from Wausau between 1991 and 1993. During that period the company had three employees and contracted with 13 to 15 highway waste haulers as the need arose. When the insurer sought proof that the contractors were insured, Kim's could only provide certificates for a few of them, according to the legal papers.

Kim's then claimed it was not liable for the additional premium, saying it was up to the independent contractors to provide their own workers compensation insurance. Wausau went to court seeking \$27,857 in premium for the 1991-1992 policy year, and \$5,553 for 1992-1993.

The Wausau language developed the National Council on Compensation Insurance is "the same language in virtually every employer's policy" used in 33 states, said Margolis.