

STATE OF MINNESOTA  
IN SUPREME COURT

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Aaron R. Carlson and  
Robert S. Carlson,

Appellants,

-vs-

Allstate Insurance Company and  
Midwest Family Mutual Insurance  
Company,

File Number: A06-1664

Respondents,

and

Allstate Insurance Company,  
Respondent

-vs-

Michael J. Fay, Individually, and  
Mike Fay Insurance Agency,  
Respondent.

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BRIEF OF APPELLANTS AARON AND ROBERT CARLSON

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## LEGAL ISSUES

- I. Whether the language of the Allstate Policy provided uninsured motorist coverage to Aaron Carlson for his injuries arising out of the January 1, 2003, accident? Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc., 258 N.W.2d 570, 572 (Minn. 1977); Steele v. Great West Cas. Co., 540 N.W.2d 886, 888-889 (Minn.App. 1995).
- II. Whether the Doctrine of Reasonable Expectations requires coverage? Iostens, Inc. v. Northfield Ins. Co., 527 N.W.2d 116, 118 (Minn.App., 1995); Atwater Creamery Co. v. Western Nat'l Mut. Ins. Co., 366 N.W.2d 271, 278 (Minn.1985); Illinois Farmers Ins. Co. v. Eull, 594 N.W.2d 559, 561 (Minn.App.1999); Reinsurance Ass'n of Minnesota v. Johannessen, 516 N.W.2d 562, 565 - 566 (Minn.App.,1994).
- III. Whether uninsured motorist coverage is mandated by statute in this case? Minnesota Statutes §65B.49 Subd. 3a (5); Laffen v. Auto-Owners Ins. Co., 429 N.W.2d 264, 265 (Minn.App., 1988).

The Trial Court and the Court of Appeals answered all three questions in the negative.

## STATEMENT OF THE CASE

This case arises out of a January 1, 2003 accident in which Appellant Aaron Carlson, while walking across a street, was struck by a motor vehicle driven by Kahlil Anthony Queen. Just prior to the accident, Aaron Carlson had parked and then exited the Ford Focus that his father, appellant Robert Carlson, leased for him. As Aaron Carlson was crossing the street, Mr. Queen, who had parked on the opposite side of the street, pulled out, did a "U" turn and struck Aaron Carlson, inflicting severe injuries including a right anterior cruciate ligament avulsion, a lateral tibial plateau fracture, and a grade 2 medial collateral ligament sprain. He was hospitalized and underwent surgery, incurring \$31,898.30 in medical bills. Aaron Carlson was also disabled from work for a substantial period of time.

Mr. Queen had no insurance coverage. On April 8, 2004, appellants obtained a judgment against Mr. Queen in the amount of \$170,000.00. Since respondent Allstate Insurance Company had notice of both the hearing and the entry of judgment, it is bound by that judgment with regard to the liability of Mr. Queen and the amount of damages. The Allstate Insurance policy provided uninsured motorist coverage of \$300,000.00 per person. Since the amount of damages as a matter of law was \$170,000.00, the only issue in dispute was whether or not Allstate's policy afforded coverage to Aaron Carlson.

Appellants' claims involved two components. First, appellants sought uninsured motorist coverage for Aaron Carlson from respondent Allstate Insurance Company. Second, and alternatively, appellant Aaron Carlson sought no-fault benefits from respondent Midwest Family Mutual Insurance Company under Minnesota's Assigned Risk Plan.

Appellants and both respondents moved for Summary Judgment at the same hearing. The Court, in an Order dated August 4, 2006, granted Summary Judgment in favor of Allstate and against the Carlsons and granted Summary Judgment in favor of the Carlsons and against Midwest Family Insurance.

Appellants are making an appeal from that portion of the Trial Court's Order that granted Allstate Insurance Company's Motion for Summary Judgment, denied Plaintiffs' Motion for Summary Judgment against Allstate Insurance Company, and entered Judgment in favor of Allstate Insurance Company. The Court of Appeals in a decision dated July 11, 2007 affirmed the judgment of the Trial Court .

Appellants note that the Trial Court granted Judgment in favor of Appellant Aaron Carlson and against Midwest Family Mutual Insurance for the entire amount of the uninsured motorist claim, even though appellant only had a no-fault claim under the Assigned Claims Statute. That matter was corrected by stipulation of the parties and an amended judgment was entered. The Court dismissed the

third-party defendant because the only party having a claim against it was Allstate Insurance Company. Appellants are not appealing those portions of the Order; but were this Court to reverse that Order, that portion of the Order would have to be modified as well.

## STATEMENT OF THE FACTS

After graduating from Hibbing High School over ten years ago, appellant Aaron Carlson, son of Appellant Robert Carlson and Gail Carlson, moved to Minneapolis. (App. p. 52-53-Aaron Carlson Dep. p. 4-6). Appellant Robert Carlson provided cars for both Aaron Carlson and his younger brother Christopher. (App. p. 40-41 and 43-Robert Carlson Dep. p. 4-5 and 13). Appellant Robert Carlson initially leased a Ford Escort for Aaron in 1998, and when that lease expired in November of 2001, he obtained a Ford Focus for him. (App. p. 40-41-Robert Carlson Dep. p. 3 and 5). Although Aaron Carlson's customary employment both before the accident and at the present time is working as a computer programmer, at the time of the accident, he was between computer programmer type jobs and was working at several part time jobs - jobs that did not provide appellant Aaron Carlson with sufficient income to pay for either a vehicle or its insurance premiums. (App. p. 40-41-Robert Carlson Dep. p. 4 and 6 and App. p.53-54-Aaron Carlson Dep. p. 6 and 8-9).

Appellant Robert Carlson for a number of years purchased all of his automobile and homeowners insurance from respondent Allstate Insurance Company, and since 1990 had done so through Allstate agent Michael Fay. (App. p.

73-Michael Fay Dep. p. 7). At the time of the accident, Robert Carlson normally used a company car for his own driving purposes. (App. p. 43-Robert Carlson Dep. p. 14-15). However, Robert Carlson owned a 2000 Mercury Cougar used by Aaron Carlson's younger brother, Christopher Carlson, and a 1999 Ford Explorer used primarily by his wife, Gail Carlson. (App. p. 43-Robert Carlson Dep. p. 14). Robert Carlson also leased a 2002 Ford Focus for Aaron Carlson's use. (App. p. 40-Robert Carlson Dep. p. 3-4). Prior to leasing the Ford Focus, Robert Carlson through Allstate had insured the other vehicles he had provided his son Aaron, with continued coverage for the Ford Focus intended as a replacement for coverage on a previous motor vehicle used by Aaron. (App. p. 30). Robert Carlson paid all the lease payments and the insurance premiums on the Ford Focus. (App. p. 40 and 43-Robert Carlson Dep. p. 4 and 16). Aaron Carlson paid for the gas and most of the maintenance costs. (App. p. 40-41-Robert Carlson Dep. p. 4 and 6 and App. p. 54-Aaron Carlson Dep. p. 9). Respondent Allstate Insurance Company insured all three vehicles used by the Carlson's under a single policy. (App. p. 18-24-Affidavit Exhibit A). Prior to the accident, respondent Allstate Insurance Company had paid a comprehensive damage claim for a dent to the Ford Focus caused by a hit and run driver in a parking lot. At that time, Allstate's adjusters contacted Aaron Carlson rather than Robert Carlson concerning the form filled out by appellants. (App. p.

42-Robert Carlson Dep. p. 10, App. p. 63-Aaron Carlson Dep. p. 47-48 and App. p. 38-39-Affidavit Exhibit L).

Respondent does not allege or claim that Robert Carlson was anything but completely forthright and honest about Aaron Carlson's use of the Ford Focus or that either of these appellants made any fraudulent representations to Allstate Insurance. (App. p. 74-75-Michael Fay Dep. p. 11 and 14). Michael Fay knew that Robert Carlson was intending to purchase the insurance to cover his son Aaron. (App. p. 74-Michael Fay Dep. p. 11-12). In fact, Robert Carlson told Mr. Fay that he was procuring the car and insurance coverage for Aaron because his son could not afford either expense. (App. p. 74-Michael Fay Dep. p. 10). Robert Carlson told Michael Fay that the car was going to be used by his son Aaron who was living in Minneapolis where the car was going to be garaged. (App. P. 41-42-Robert Carlson Dep. p. 7-9 and App. p. 74-75 and 76-77-Michael Fay Dep. p. 10-14 and 20-21 and App. p. 18-25, 29-34-Affidavit Exhibits A,E,F,G, and H).

Michael Fay conveyed that information to his principal respondent, Allstate Insurance Company. (App. p. 75-77-Michael Fay Dep. p. 16 and 20-21 and App. p. 18-25 and 29-34-Affidavit Exhibits A,E,F,G, and H). The policy and its documents for the vehicles state that the Ford Focus was going to be driven by Aaron Carlson "100%" and listed his address in Minneapolis. (App. p. 30-36-Affidavit Exhibits

F,G,H, and J). The file even contains a listing of Aaron Carlson's driving record which showing only one old speeding ticket, a violation that would not have been an impediment to his obtaining insurance. (App. p. 84-85-Michael Fay Dep. p. 52-54 and App. p. 36-37-Affidavit Exhibits J and K).

A slight evidentiary dispute exists as to what Allstate knew about Aaron Carlson's school status. Robert Carlson stated that he told Michael Fay that Aaron was no longer a student. (App. p. 46-Robert Carlson Dep. p. 25 ). Michael Fay stated that while he did not recall whether or not he knew Aaron was a student, he was sure that Robert Carlson had never told him that Aaron was still a student. (App. p. 74 and 84-Michael Fay Dep. p. 10 and 51).

Respondent Allstate Insurance Company charged a higher premium based on the fact that Aaron was a younger driver using the vehicle and because the Ford Focus was being garaged in Minneapolis rather than Hibbing. (App. p. 41-42-Robert Carlson Dep. p. 8-9 and App. 79-81-Michael Fay Dep. p. 31-32 and 36-37). The only financial advantage the Carlsons received because Robert Carlson rather than Aaron Carlson was purchasing the insurance was a multi-vehicle discount and a homeowners / automobile coverage discount offered by Allstate in order to obtain all of Robert Carlson's business, which Allstate did in fact receive (App. p. 79 and 85-Michael Fay Dep. p. 31-32 and 53). As point of fact, there would have been no

additional costs, whatsoever, to list Aaron Carlson as a named insured under the Allstate policy since the premium was based on his use of the vehicle (App. p. 84-85-Michael Fay Dep. p. 52-53).

Allstate, in its Memorandum, claims that its underwriting policy would have forbidden listing Aaron as a named insured because he was not living at home and had no interest in the vehicle, a statement based on Allstate's refusal to add Aaron as a named insured when the policy came up for renewal after its refusal to pay this claim. The timing of Allstate's taking this position makes it highly suspect and misses the point. Michael Fay readily admits that all Robert Carlson had to do to make Aaron a "named insured" was to have him jointly hold "an interest" in the vehicle. (App. p. 77-83-84-Michael Fay Dep. p. 24 and 48-49).

Robert Carlson obtained coverage for the Ford Focus prior to his signing the lease. Had Allstate informed Robert Carlson that his son's not having an interest was a concern, Robert Carlson could easily have added Aaron's name to the lease agreement and solved the problem. (App. p. 41-Robert Carlson Dep. p. 6). In fact, Robert Carlson stated he had no real reason for not doing so in the first place, but he never gave it a thought. (App. p. 41-Robert Carlson Dep. p. 6).

Robert Carlson stated that on at least two separate occasions prior to the

accident giving rise to this lawsuit, he asked Michael Fay and Helen Baumgartner, another agent in Michael Fay's office, "Are the two boys covered the same as I and my wife", and his (Fay's) response back was "Yes." (App. p. 44-45-Robert Carlson Dep. p. 20-22). Although Michael Fay could not recall any specific conversations regarding that issue, he thought the question unusually worded. (App. p. 81-Michael Fay Dep. p. 37-39). Michael Fay stated that Robert Carlson probably simply asked him if his sons were covered, and Michael Fay told him "yes". (App. p. 86-Michael Fay Dep. p. 57-58).

Regardless, Michael Fay never pointed out or explained the importance of the fact that Aaron Carlson was listed as a driver of the vehicle but not listed as a "named insured" (App. p. 44-45-Robert Carlson Dep. p. 20-22 and App. p. 75-86-Michael Fay Dep. p. 13-14 and 57-58). Michael Fay was not even aware of the significance of this "named insured" issue until Allstate later denied the claim after paying some of the medical bills which it got the medical providers to pay back to it. (App. p. 75-Michael Fay Dep. p. 14).

Aaron Carlson stated he did not even know he was not a "named insured" under the policy prior to the accident, an understandable oversight considering that Allstate issued a proof of insurance card to Aaron Carlson in connection with his use of the vehicle (App. p. 54-Aaron Carlson Dep. p. 10 and App. p. 18-24-

Affidavit Exhibit A).

One of the few factual disputes in the case is what Michael Fay knew about the “named insured” coverage issue and when he knew about it. As previously stated, even Michael Fay – as a licensed agent - was unaware of any difference between listing Aaron Carlson as a driver or as a “named insured” prior to the accident. Not until after appellant Aaron Carlson’s accident when Michael Fay was asked to list Aaron Carlson and his fiancé as named insureds under the policy, did Allstate tell Fay it would not do that unless they owned an interest in the vehicle. (App. p. 35-Affidavit Exhibit I). Moreover, had motor vehicle ownership been an issue, the problem would easily have been solved by giving Aaron Carlson an ownership interest in the vehicle by adding his name to the lease. (App. p. 77 and 83-84-Michael Fay Dep. p. 24 and 48-49).

Respondent Allstate states that on numerous occasions, Michael Fay told Robert Carlson that Aaron should obtain his own coverage, a misleading contention. The record clearly reflects that what Michael Fay actually testified to was that he warned Robert Carlson that he would be vicariously liable were his son involved in an accident and that it would be better for Robert if Aaron had his own vehicle and coverage. (App. p. 86-Michael Fay Dep. p. 59). Robert Carlson was never told about Allstate's alleged critical distinction between what it termed “listed drivers”

and “named insureds.” (App. p. 44-45-Robert Carlson Dep. p. 20-22 and App. p. 75 and 86-Michael Fay Dep. p. 13-14 and 57-58). Moreover, if respondent Allstate is correct about its underwriting position, Aaron Carlson could never obtain his own coverage as long as his father was the owner of the vehicle in question.

## ARGUMENT

Respondent Allstate moved for Summary Judgment claiming that as a matter of law it is not required to pay uninsured motorist benefits and no-fault benefits under the policy that appellant Robert Carlson procured for his son appellant Aaron Carlson. Allstate claimed that even though Aaron Carlson was listed on the policy as the sole driver of the vehicle and the premium charged was based on Aaron Carlson's age, his driving record, and his location in Minneapolis, the fact that Aaron Carlson was struck while crossing the street to go from his vehicle to a coffee shop, precluded his being covered since he was not a "named insured" under the policy. The Trial Court agreed and granted summary judgment.

Appellants contend that Allstate is wrong for three (3) reasons. First, Aaron Carlson is in fact an insured under the terms of the Allstate policy. Second, under the Doctrine of Reasonable Expectations, the Court should not allow a mere clerical designation to be the basis for respondent to avoid paying benefits for the coverage which appellant Robert Carlson purchased for his son Aaron Carlson; and the Court should interpret or reform the policy accordingly. Finally, Minnesota Statutes §65B.49 Subd. 3a (5) allows a pedestrian to pick uninsured motorist coverage from any policy with which he is "insured" with no requirement

that he or she be a named insured.

Allstate, having been fully aware Robert Carlson's desire to obtain coverage for his son and all of the surrounding circumstances, and having fully charged the Carlson's for that coverage, should not be allowed to advance a technical problem created by its choice of boxes to place Aaron's name in, thereby allowing Allstate to avoid coverage and deny a legitimate claim.

#### STANDARD OF REVIEW

A reviewing court is not bound by and need not give deference to a trial court's decision on a purely legal issue. Frost-Benco Elec. Ass'n v. Minneapolis Publ Utilities Comm'n, 358 N.W.2d 639, 642 (Minn. 1984). A material fact is one of such a nature as will affect the result or outcome of the case depending on its resolution. Pischke v. Kellen, 383 N.W.2d 201, 205 (Minn. App. 1986); Rathbun v. W.T. Grant Co., 219 N.W.2d 641, 646 (Minn. 1974). The Court can only grant summary judgment to a party if no genuine issue exists as to any material fact, the moving party having the burden of proof and the non-moving party having the benefit of that view of the evidence that is most favorable to him or her. Nord v. Herreid, 305 N.W.2d 337, 339 (Minn. 1981); Sauter v. Sauter, 70 N.W.2d 351, 353

(Minn. 1985). A motion for summary judgment may be granted when the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; Grondahl v. Bulluck, 318 N.W.2d 240, 242 (Minn. 1982).

Summary judgment is a blunt instrument and should be used only when it is perfectly clear that no issue of fact is involved and when it is neither desirable nor necessary to inquire into facts which might clarify the applications of the law. Donnay v. Boulware, 144 N.W.2d 711, 716 (Minn. 1966). Summary judgment is intended to secure a just, speedy and inexpensive disposition; but it is not designed as a substitute for trial where there are factual issues to be determined. Woody v. Krueger, 374 N.W.2d 822, 824 (Minn. App. 1985).

I . THE PROVISION OF ALLSTATE'S POLICY PROVIDED  
COVERAGE TO THE CARLSONS

In the present case, appellants are relying primarily on the Doctrine of Reasonable Expectations. An understanding of the actual insurance policy language, however, is an important factor in that analysis; and, therefore, appellants wish to start by examining the policy language. Whether or not the Court agrees with Appellant's interpretation of the policy provisions, which the Court of Appeals did not, no reasonable review of the language can conclude that the language is so plain and clear that a consumer such as Robert Carlson should have clearly recognized that his son would not be covered by the policy because he was listed as a driver rather than a policy holder.

The provisions of an insurance policy are to be interpreted according to plain, ordinary sense so as to effectuate the intention of the parties. The policy should be construed as a whole with all doubts concerning the meaning of language employed to be resolved in favor of the insured. Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc., 258 N.W.2d 570, 572 (Minn. 1977). The terms of an insurance policy should be construed according to what a reasonable person in the

position of the insured would have understood the words to mean, rather than what the insurer intended the language to mean. (Id.). A key principle of insurance policy construction mandates that policies should be interpreted to give effect to the intent of the parties as it appears from the entire contract. Steele v. Great West Cas. Co., 540 N.W.2d 886, 888-889 (Minn.App. 1995).

The Trial Court in its opinion assumed that Aaron Carlson was not an insured under the terms of the policy without even looking at or referring to the complete definition of insured under that policy. Instead of looking at the policy definition, the Court concentrated on situations where non-insureds would be afforded coverage – a viewpoint which had no application to the present case and was never raised by the appellants in the claim.

The Court of Appeals in its decision affirming the Trial Court, while acknowledging that the term “policy holder” appears nowhere on the declaration page, held that a reasonable person reading it would know that the terms “insured” “named insured” and “policy holder” are one and the same and that because Aaron Carlson was listed by Allstate in the “driver” box rather than the “named insured” box, he would not have coverage as a pedestrian. This totally ignores Allstate’s duty to clearly draft its policies so that consumers know exactly what the policies provide, an obligation particularly true considering that the insured went

to Allstate and stated he wanted to buy coverage to protect his son.

Allstate's insurance policy in the Minnesota endorsement with regard to Uninsured Motorist Coverage on page 6 states:

We will pay damages for bodily injury sickness, disease or death which an insured person is legally entitled to recover from the owner or operator of an uninsured auto. Injury must be caused by accident and arise out of the ownership, maintenance or use of an uninsured auto.

(App. p. 137).

Page 6 then defines insured person as:

1. You and any resident.

(App. p. 137).

The Trial Court committed a significant error when it stopped its analyses at this point without interpreting the critical word "you." The Trial Court failed to take note of page 8 of the uninsured motorist coverage portion of Allstate's contract which went on to define "You" or "Yours" as:

the policyholder named on the Policy Declarations and that policyholder's spouse who resides in the same household.

(App. p. 139). The main policy which also has language governing uninsured motorist coverage and is the place where most insureds would naturally look has similar language starting on page of 9 of the main policy which states as follows:

If a limit of liability is shown on your declarations page for Coverage SS, we will pay damages for bodily injury, sickness,

disease or death which an insured person is legally entitled to recover from the owner or operator of an uninsured auto. Injury must be caused by accident and arise out of the ownership, maintenance or use of an uninsured auto.

Insured person is then defined on page 9 as “1. You and any resident relative.”

Page 10 of the uninsured motorist coverage portion of Allstate’s contract goes on to define “You” as:

the policyholder named on the declarations page and that policyholder’s resident spouse.

(App. p. 123-124)

Therefore, the contract directs the parties to look to the declarations page to determine who is going to be covered by the policy. Indeed, the cover letter accompanying the amended declarations page to the Carlsons tells them to “verify vehicles listed on the Policy Declarations and ID cards.” (App. p. 18-19-Affidavit Exhibit A). Appellants were told by Allstate to inspect those documents to make sure that Aaron Carlson was listed on them. Nowhere in the declarations page does the term “policyholder” appear. The declarations page specifically names Robert Carlson, Gail Carlson, Christopher Carlson, and Aaron Carlson as drivers covered by the policy. Therefore, Robert Carlson and Aaron Carlson would reasonably conclude based on what they asked for, paid for, and were told that Aaron Carlson was “insured” by the policy and all clauses referring to “insured”

included him. Any reasonable insured such as Robert Carlson would read the contract as providing full coverage to his sons as the agent had promised; to argue otherwise goes against to intent of the parties.

## II . THE DOCTRINE OF “REASONABLE EXPECTATIONS” REQUIRES THAT ALLSTATE PROVIDE COVERAGE TO THE CARLSONS.

The doctrine of “reasonable expectations” protects the “objectively reasonable expectations” of insureds “even though painstaking study of the policy provisions would have negated those expectations.” Jostens, Inc. v. Northfield Ins. Co., 527 N.W.2d 116, 118 (Minn.App., 1995). Courts may interpret an insurance policy according to the insured party's reasonable expectations, even though the language of the policy would have “proscribed coverage” and negated those expectations. Atwater Creamery Co. v. Western Nat'l Mut. Ins. Co., 366 N.W.2d 271, 278 (Minn.1985); Illinois Farmers Ins. Co. v. Eull, 594 N.W.2d 559, 561 (Minn.App.1999). The doctrine of “reasonable expectations” permits a court to construe an insurance policy according to “real-life situations” rather than “arbitrary rules.” Tower Ins. Co., Inc. v. Minnesota Holstein-Freisan Breeders' Ass'n, 605 N.W.2d 768, 772 (Minn.App. 2000). The doctrine is generally applied to protect individuals where the insurance policy terms have been misrepresented or misunderstood, or where legal technicalities would defeat coverage which the insured reasonably believed was in place. Reinsurance Ass'n of Minnesota v. Johannessen, 516 N.W.2d 562, 565 -566 (Minn.App.,1994).

In adopting the doctrine of reasonable expectations, the Minnesota Supreme

Court in Atwater Creamery Co. stated as follows:

The doctrine of protecting the reasonable expectations of the insured is closely related to the doctrine of contracts of adhesion. Where there is unequal bargaining power between the parties so that one party controls all of the terms and offers the contract on a take-it-or-leave-it basis, the contract will be strictly construed against the party who drafted it. Most courts recognize the great disparity in bargaining power between insurance companies and those who seek insurance. Further, they recognize that, in the majority of cases, a lay person lacks the necessary skills to read and understand insurance policies, which are typically long, set out in very small type and written from a legalistic or insurance expert's perspective. Finally, courts recognize that people purchase insurance relying on others, the agent or company, to provide a policy that meets their needs. The result of the lack of insurance expertise on the part of insureds and the recognized marketing techniques of insurance companies is that "[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations." Keeton, 83 Harv.L.Rev. at 967.

The traditional approach to construction of insurance contracts is to require some kind of ambiguity in the policy before applying the doctrine of reasonable expectations. Several courts, however, have adopted Keeton's view that ambiguity ought not be a condition precedent to the application of the reasonable expectations doctrine. As of 1980, approximately ten states had adopted the newer rule of reasonable expectations regardless of ambiguity. Davenport Peters Co. v. Royal Globe Insurance Co., 490 F.Supp. 286, 291 (D.Mass.1980). Other states, such as Missouri and North Dakota, have joined the ten since then. [FN2] Most courts recognize that insureds seldom see the policy until the premium is paid, and even if they try to read it, they do not comprehend it. Few courts require insureds to have minutely examined the policy before relying on the terms they expect it to have and for which they have paid. ...

The burglary definition is a classic example of a policy provision that should be, and has been, interpreted according to the reasonable expectations of the insured. C & J Fertilizer, Inc. v. Allied Mutual Insurance Co., 227 N.W.2d 169 (Iowa 1975). C & J Fertilizer involved a burglary definition almost exactly like the one in the instant case as well as a burglary very similar to the Atwater burglary. The court applied the reasonable-expectations-regardless-of-ambiguity doctrine, noting that “[t]he most plaintiff might have reasonably anticipated was a policy requirement of visual evidence (abundant here) indicating the burglary was an 'outside' not an 'inside' job. The exclusion in issue, masking as a definition, makes insurer's obligation to pay turn on the skill of the burglar, not on the event the parties bargained for: a bona fide third party burglary resulting in loss of plaintiff's chemicals and equipment”. \*278 Id. at 177. The burglary in C & J Fertilizer left no visible marks on the exterior of the building, but an interior door was damaged. In the instant case, the facts are very similar except that there was no damage to the interior doors; their padlocks were simply gone. In C & J Fertilizer, the police concluded that an “outside” burglary had occurred. The same is true here.

[11] Atwater had a burglary policy with Western for more than 30 years. The creamery relied on Charles Strehlow to procure for it insurance suitable for its needs. There is some factual dispute as to whether Strehlow ever told Poe about the “exclusion” as Strehlow called it. Even if he had said that there was a visible-marks-of-forcible-entry requirement, Poe could reasonably have thought that it meant that there must be clear evidence of a burglary. There are, of course, fidelity bonds which cover employee theft. The creamery had such a policy covering director and manager theft. The fidelity company, however, does not undertake to insure against the risk of third-party burglaries. A business that requests and purchases burglary insurance reasonably is seeking coverage for loss from third-party burglaries whether a break-in is accomplished by an inept burglar or by a highly skilled burglar. Two other burglaries had occurred at the Soil Center, for which Atwater had received insurance proceeds under the policy. Poe and the board of the creamery could reasonably have expected the burglary policy to cover this burglary

where the police, as well as the trial court, found that it was an "outside job".

[12] [13] The reasonable-expectations doctrine gives the court a standard by which to construe insurance contracts without having to rely on arbitrary rules which do not reflect real-life situations and without having to bend and stretch those rules to do justice in individual cases. As Professor Keeton points out, ambiguity in the language of the contract is not irrelevant under this standard but becomes a factor in determining the reasonable expectations of the insured, along with such factors as whether the insured was told of important, but obscure, conditions or exclusions and whether the particular provision in the contract at issue is an item known by the public generally. The doctrine does not automatically remove from the insured a responsibility to read the policy. It does, however, recognize that in certain instances, such as where major exclusions are hidden in the definitions section, the insured should be held only to reasonable knowledge of the literal terms and conditions. The insured may show what actual expectations he or she had, but the fact finder should determine whether those expectations were reasonable under the circumstances.

We have used the reasonable-expectations-of-the-insured analysis to provide coverage where the actual language interpreted as the insurance company intended would have proscribed coverage. Canadian Universal Insurance Co. v. Fire Watch, Inc., 258 N.W.2d 570 (Minn.1977). Western correctly points out that the issue there concerned a special endorsement issued subsequent to the policy which reduced coverage without notice to the insured. While the issue is somewhat different in the instant case, it is not so different that the general concept is made inapplicable.

[14] In our view, the reasonable-expectations doctrine does not automatically mandate either pro-insurer or pro-insured results. It does place a burden on insurance companies to communicate coverage and exclusions of policies accurately and clearly. It does require that expectations of coverage by the insured be reasonable under the circumstances. Neither of those requirements seems overly

burdensome. Properly used, the doctrine will result in coverage in some cases and in no coverage in others.

366 N.W.2d at 277 –279.

In other words, a consumer should not have to have to possess a law degree to be able to understand an insurance policy. The doctrine recognizes the fact that insurance contracts contain highly technical language which the average layperson would not be expected to understand and, therefore, the doctrine overrides language which would defeat the reasonable expectation of the insured.

This doctrine has been applied to help both insurance companies and the insured with the court's underlying rationale aimed at having the policy provide the type of coverage that was paid for. Consumers should not expect to have coverage which they did not pay for, such as in cases where they are attempting to get both liability and uninsured coverage for the actions of the driver of the vehicle. On the other hand, a consumer who paid for burglary coverage should not have that coverage taken away merely because the policy has an obscure provision requiring visible evidence of the break-in on the outside door. Neither should that coverage be denied because the company issuing the policy decided to list Aaron Carlson as a "driver" instead of a "named insured".

The Court of Appeals in looking at the Supreme Court decision of Atwater

has attempted to limit its holding as much as possible and has, without saying it, implied that the doctrine of reasonable expectations does not apply if there exists any language in the policy precluding coverage - the approach taken by the Trial Court. After acknowledging the doctrine, the Trial Court in its memorandum eviscerates the doctrine by improperly stating that the doctrine cannot be applied in cases where a literal reading of the policy language would prevent coverage. This circumstance is the sole reason for the doctrine.

The Appellate Court took a slightly different approach but reached essentially the same conclusion. The Court of Appeals began by acknowledging the existence of the doctrine stating:

Appellants next argue that under the doctrine of reasonable expectations, Carlson is entitled to uninsured-motorist coverage. The doctrine of reasonable expectations protects the objectively reasonable expectations of an insured even if a close study of the insurance policy would negate those expectations. Iostens, Inc. v. Northfield Ins. Co., 527 N.W.2d 116, 118 (Minn.App.1995), review denied (Minn. Apr. 27, 1995). When determining whether the insured's expectations are objectively reasonable, courts consider any ambiguity in the policy, whether the insured was orally informed of an important but obscure provision, and whether the provision is of a type that is generally known to the public. Hubred v. Control Data Corp., 442 N.W.2d 308, 311 (Minn.1989). The doctrine is generally applied when an insurance policy has been misrepresented or misunderstood, or when a legal technicality would defeat the insured's objectively reasonable expectations. Reinsurance Assn. of Minn. v. Johannessen, 516 N.W.2d 562, 565-66 (Minn.App.1994), review denied (Minn. Aug. 24, 1994).

Carlson v. Allstate Ins. Co., 734 N.W.2d 695, 700 (Minn. App. 2007). (Emphasis added). As stated in the previous paragraph, a close study of the policy provisions was required by the Court to show there was no coverage, Robert Carlson was orally informed that his son would be fully covered, and the provision in question was never brought to his attention. During oral argument at the Court of Appeals one of the Justices went so far as to question whether any ordinary consumers understand the difference in Underinsured Motorist coverage afforded to pedestrians as opposed to occupants of a motor vehicle.

Acknowledging these facts, the Court of Appeals then goes on in its analysis to completely ignore what it had just affirmed about the doctrine of reasonable expectations by adopting the Trial Court position that the doctrine cannot be applied if the policy language contradicts that expectation. In this regard, the Court of Appeals states as follows:

Appellants argue that they had a reasonable expectation that uninsured-motorist coverage extended to Carlson because Robert Carlson's insurance agent told him that his two children were "covered the same as" he and his wife and because Carlson's name was added to the policy-declarations page and insurance cards were issued accordingly. The district court determined that any expectation of coverage that appellants may have had was defeated by the plain language of the policy, noting that uninsured-motorist coverage is extended "only to those who are considered 'insured [persons]' under the policy" and that Carlson was not an "insured person" when he was struck by the uninsured motorist.

As we have noted above, we agree with the district court that Carlson was not an “insured person” as a pedestrian. Thus, regardless of whether Carlson was a listed driver on the policy-declarations page, the plain language of the policy excludes coverage for Carlson's injuries. See Reinsurance Ass'n, 516 N.W.2d at 566 (noting that the doctrine of reasonable expectations does not apply when a prominent term excludes coverage). Further, even if Robert Carlson was told that his two children were “covered the same” as he and his wife, the doctrine of reasonable expectations does not eliminate the policyholder's obligation to read the policy. See Hubred, 442 N.W.2d at 311. And we note that while Carlson was in, on, or getting into or out of the vehicle, he had the same uninsured-motorist coverage that his parents had. Thus, under the plain language of the policy, appellants had no reasonable expectation of coverage for Carlson's injuries.

(Id. Emphasis added).

However, as noted in the previous section, the policy language was far from being plain and easy to read. Not even Allstate's agent knew about the problem either he or Allstate created by the placement of Aaron Carlson's name in the “driver” box rather than the “named insured” box. The appellant challenges Respondent to find a single layman who would understand the ramifications caused by listing a person as a “driver” or a “named insured” in a personal automobile policy.

More importantly, the Court of Appeals analysis does not really look at how an insured would reasonably and objectively interpret the crucial policy

provision which states: "We will pay damages for bodily injury, sickness, disease or death which an insured person is legally entitled to recover from the owner or operator of an uninsured auto." (Emphasis added). The question is not whether the "plain language" of the policy would exclude a stranger once he or she exited the insured motor vehicle but rather whether or not Robert and Aaron's had a reasonable and objective belief that Aaron would be considered an "insured person" under the terms of the policy.

It is undisputed that Robert Carlson approached Respondent Allstate Insurance Company and completely and honestly explained the circumstances concerning the use of his vehicles. He asked the insurance agent to obtain coverage for him and his sons. In Robert Carlson's own words, he asked, "are the two boys covered the same as I and my wife" and the agent's response was "yes". All the parties understood that the Ford Focus was going to be used exclusively by Aaron Carlson in Minneapolis and that consequently the premium was increased to reflect that fact. As confirmation, Aaron Carlson's and Christopher Carlson's names were added to the declarations page and proof of insurance cards were issued accordingly. Furthermore, Robert Carlson paid a full premium for Aaron Carlson's uninsured coverage. Any reasonable insured under those circumstances would assume that his sons for whom he was procuring the coverage in the first

place were going to be fully covered and "insureds" under the policy.

Even a trained attorney reading the policy would expect coverage. Going beyond the ordinary and normal meaning of the word "insured,"( the person for whom the coverage was purchased) and looking at the separate definition section of the policy, the reader would see the main definition of insured is "You". The Term "You" is then defined in another section by referring the reader to the declarations page. Hence, the reader would upon seeing Aaron Carlson's name listed as a driver on that page conclude that appellant Aaron Carlson was fully covered.

Therefore, under the doctrine of reasonable expectations, respondent's tortuous reading of the policy language must be rejected and appellant Aaron Carlson's name be added to the policy, making him fully insured under the terms of that policy. Certainly no reasonable person after reviewing the language of the policy could conclude that "the clear language of the policy" would lead consumers such as the Carlson's to conclude that Aaron Carlson would not be covered under this situation.

In most simple terms, why would Appellant Robert Carlson knowingly pay good money for bad – or at best inadequate – insurance coverage.

In Atwater, the Supreme Court had previously concluded that the definition

section of the policy which barred coverage where there was no sign of forced entry was “**clear and precise**” and “**not ambiguous.**” Atwater Creamery Co., 366 N.W.2d at 276. If the Supreme Court wishes to follow the Court of Appeals’ policy of amending Atwater to exclude any case where it claims that the “plain language” of the policy excludes coverage - since “plain language” as used by the Court of Appeals is the same as unambiguous - this Court should simply abolish the doctrine altogether since any ambiguous language would have to be construed against the insurer anyway.

Such an action would be a tragedy since the injustices addressed by Atwater still clearly exist to day. Commonly an insurance policy is drawn up by a company with no input from the consumer whatsoever. Normally that policy is not sent to the insured until after the contact is entered into and the policy premium is paid. It is also common, once coverage is obtained, to make frequent changes in the coverage without ever issuing a new complete policy and generally once someone signs up with a company, only declaration pages, as in the present case, are going to be sent to the consumer. Thus, as in the present case, the important issue was not even a consideration when he would have been sent the contract ten years earlier.

The Court of Appeals answers all with the mantra, “you should have

read the fine print.” That’s hardly a fair or justice answer to a practice which can border on fraud. This is particularly true in situations, such as the present case, where the insured has paid the full price for the uninsured coverage he thought he was obtaining for his son, and defendant is attempting the use an arcane policy provision to avoid the obligation it undertook.

While the Minnesota Supreme Court used a different theory, i.e. reverse piercing of the corporate veil, the facts of this case are virtually identical to the situation in Roepke v. Western Nat. Mut. Ins. Co., 302 N.W.2d 350, 353 (Minn. 1981) where the insurer also tried to exclude the person for whom coverage was purchased based on a technicality. In that case, the plaintiffs were the family of the sole owner of a corporation which purchased insurance for six vehicles which were used by the owner and his family. Subsequently, the owner was killed in a motor vehicle accident. While the policy provided for stacking, the named insured was the corporation and, therefore, under the clear and plain language of the policy, the stacking did not apply to anyone who was not a “named insured.” This Court found that there should be coverage based on the fact that decedent was the president and sole shareholder of the named insured corporation, the vehicles insured were used as family vehicles, and neither the decedent nor members of his household owned any other vehicles. Roepke, 302 N.W.2d at 353.

It needs to be emphasized that no claim of fraud has been presented in this case and appellants are seeking solely to receive the coverage they paid for and fully expected to receive. If either the policy or Allstate and its agents had clearly pointed out the alleged gap in coverage, all Robert Carlson had to do to correct the problem was to add Aaron Carlson's name to the lease agreement thereby allowing them to make him a named insured without any additional cost.

When asked whether a person is insured under a policy, the first thing anyone will do is look at what the declarations page says. Consequently, if respondent Allstate is going to attempt to make a fine distinction between a "named driver" and a "named insured", it has a duty to clearly spell that distinction out in the policy - particularly when the decision to list Aaron Carlson as the driver was a unilateral decision taken by Allstate after Robert had procured coverage. Therefore, if the Court determines that the place on the document where the name is added on the declarations page actually makes a difference, then under the doctrine of reasonable expectations, the policy should be amended to conform to the intent of the parties and the coverage purchased.

III. UNINSURED MOTORIST COVERAGE IS MANDATED BY  
STATUTE IN THIS CASE

An insurance policy will be reformed by the Court to conform to the coverage mandated by the No-Fault Act. Laffen v. Auto-Owners Ins. Co., 429 N.W.2d 264, 265 (Minn.App.,1988). Minnesota Statutes 65B.49 Subd. 3a (5), which governs mandatory uninsured and underinsured motorist coverage, states that “If at the time of the accident the injured person is not occupying a motor vehicle or motorcycle, the injured person is entitled to select any one limit for any one vehicle afforded by a policy under which the injured person is insured.”

Rather than looking at the statutory language which would override any policy provision, the Trial Court and the Court of Appeals in their analyses concentrated solely on their interpretation of the policy language. However, this is not the proper interpretation when uninsured motorist coverage and a pedestrian are involved. A clear examination of Minnesota’s No-Fault Act notes that the legislature intended to cover pedestrians. In the case of no-fault benefits, the legislature established the Minnesota Assigned Claims plan to cover pedestrians who were not otherwise covered. Therefore, the legislature, in setting priorities,

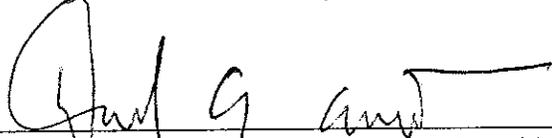
limits under Minnesota Statutes §65B.47, a person to picking a vehicle in which he or she is “an insured” which is a term defined elsewhere and used in a number of places including parts of Minnesota Statutes §65B.49. When it came to handling a pedestrian’s uninsured motorist benefits, however, the legislature deliberately used the term “is insured” when it stated that a person may choose any policy in which the injured person is insured. This is a much broader term than “an insured”. Aaron Carlson was clearly insured as a named driver under the Ford Focus. Indeed, he was the only person likely to ever make a claim under that coverage and the rate was set accordingly. A proper reading of the statute would look to the insurance policy which provided primary motor vehicle coverage to the pedestrian which in this case would be the policy covering the vehicle Aaron Carlson normally drove. Therefore the policy must either be read or conformed to comply with the coverage mandated by Minnesota Statutes §65B.49.

CONCLUSION

The Court should not allow a mere clerical designation to be the basis for respondent to avoid paying benefits for the coverage which appellant Robert Carlson purchased for his son Aaron Carlson and the Court should interpret or reform the policy accordingly. This Court should reverse the Trial Court's granting of Respondent Allstate Insurance Company's Motion for Summary Judgment and that portion of the judgment entered in accordance with that decision and enter judgment against Allstate Insurance Company in the sum of \$170,000.00.

Respectfully Submitted:

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