

Case No. A06-1664

State of Minnesota
In Supreme Court

Aaron R. Carlson and Robert S. Carlson,

Appellants,

v.

Allstate Insurance Company and Midwest Family Mutual Insurance Company,

Respondents,

and

Allstate Insurance Company,

Respondent,

v.

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

Respondent.

BRIEF OF RESPONDENT ALLSTATE INSURANCE COMPANY

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I. ISSUES PRESENTED

1. When an automobile policy limits uninsured motorist coverage to “the policyholder” with respect to bodily injuries sustained as a pedestrian, may an emancipated adult son designated as a “driver” under such a policy held by his father be considered a “policyholder” for purposes of such coverage when, as a pedestrian, he is struck and injured by an uninsured vehicle?

The trial court and Minnesota Court of Appeals held: No.

Apposite authority: *Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc.*, 258 N.W. 2d 570 (Minn. 1977); *Bobich v. Oja*, 258 Minn. 287, 104 N.W. 2d 19 (1960); *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W. 2d 246, 249 (Minn. 1998).

2. When an emancipated adult son is designated as a “driver” under his father’s automobile insurance policy and sustains bodily injury by reason of being struck as a pedestrian by an uninsured vehicle, does that adult son have a legally cognizable, “reasonable expectation” of uninsured motorist coverage under the unambiguous terms of the policy, which is entirely consistent with the Minnesota No-Fault Act?

The trial court and Minnesota Court of Appeals held: No.

Apposite authority: *Atwater Creamery v. Western Nat’l Mut. Inc.*, 366 N.W. 2d 271 (Minn. 1985); *Hubred v. Control Data Corp.*, 442 N.W. 2d 308 (Minn. 1989); Minn. Stat. § 65B.49, subdiv. 3a(5)(2006); Minn. Stat. § 65B.43, subdiv. 5 (2006).

3. When Minn. Stat. § 65B.49, subdiv. 3a(5) allows an individual who sustains injuries while not occupying a motor vehicle to “select” policies under which he “is insured” for purposes of uninsured motorist benefits, does the statute allow an emancipated adult son, designated as a “driver” under his father’s automobile insurance policy, to “select” his father’s policy to provide such coverage when he is injured as a pedestrian?

The trial court and Minnesota Court of Appeals held: No.

Apposite authority: Minn. Stat. § 65B.49, subdiv. 3a(5)(2006); *Becker v. State Farm Mut. Auto. Ins. Co.*, 611 N.W. 2d 7 (Minn. 2000).

II. STATEMENT OF FACTS

A. The subject accident.

On January 1, 2003, shortly after midnight, Appellant Aaron R. Carlson was struck and injured by an uninsured driver as he walked across Lyndale Avenue in Minneapolis. A. 53 (7), 56 (17 - 18).¹ His most significant injury was to his right knee. A. 53 (7); 57 (23), 59 (32).²

B. The insured vehicle.

It is undisputed that prior to the subject accident Aaron's father, Appellant Robert Carlson, leased a 2002 Ford Focus specifically for Aaron's use. Robert Carlson made all of the lease payments and also paid to insure the car. A. 40 (3-4); *see also* A. 54 (9). At the time Robert leased the Focus (and at the time of the subject accident) Aaron Carlson lived in Minneapolis. A. 40 (4), A. 43 (16), A. 60 (36), A. 61 (37-38). Robert Carlson lived in Hibbing. A. 40 (4).

Before Robert leased the Focus, he had previously leased a Ford Escort for Aaron's use. A. 51(5). When asked why neither the Escort nor the Focus was leased in Aaron's name, Robert Carlson testified: "They were leased in my name because he [Aaron] was unable to make any payments. He wasn't working. He was going to school." A. 41 (5-6).

¹ References herein to "A. ___" are to the Appellants' Appendix. Parenthetical references are to the deposition page referenced on the cited page of the Appendix.

² Aaron obtained a default judgment against the uninsured driver. A. 60 (35-36).

C. The Allstate policy.

Before Robert Carlson leased the Focus, he met with independent insurance agent Mike Fay in Hibbing for the purpose of adding the Focus to his (Robert's) Allstate policy. A. 41 (6). Aaron was not present. A. 41 (6); A. 54 (10). Fay is an independent insurance agent with Allstate. A. 73(5). Fay also has contracts with (and thus writes coverage for) six other insurance carriers. A. 73 (6); A. 80 (34). Prior to the subject accident Fay had been Robert Carlson's insurance agent for approximately 25 years. A. 73 (7 - 8).

It is undisputed that at the time the Focus was added to Robert Carlson's Allstate policy and a revised Declarations Page was issued, sons Aaron and Christopher were designated as "drivers," not as "named insureds." A. 19. Robert knew Aaron was designated as a "driver," and not as an "insured." A. 42 (9); *see also* A. 43 (13). He testified that at the time he and Fay were discussing the addition of the Focus to the Allstate policy they did not discuss naming Aaron as an "insured" rather than as a "driver." A. 44 (20).

Allstate's underwriting guidelines prohibited designating Aaron as an "insured" on Robert Carlson's policy, because Aaron did not own the Focus and was not on the lease and, as such, had no "firsthand direct" relationship with the vehicle. A. 75 (16), A. 76 (17); A. 77 (22 - 24). Insurance agent Fay knew that neither of Robert Carlson's two sons was living with Robert and his wife in Hibbing, which was another impediment to their being named as "insureds" under the policy. *Id.* Fay never requested that Allstate list

Aaron as an “insured” on Robert’s policy, because Fay knew it was impermissible. A. 80 (34 - 35); 84 (49).³ Fay testified that he had no option other than to list Aaron as a “driver.” A. 77 (23 - 24); *see also* A. 78 (27-28).

Fay and Robert Carlson had generally discussed on numerous prior occasions what it would take for “both boys including Aaron” to be removed from Robert’s policy and be separately insured. A. 80 (33). Had Robert wanted to obtain a separate policy for Aaron covering the Focus, the car would have had to have been co-titled in Aaron’s name, or co-leased by Aaron. A. 83(48); A. 84 (49). Fay testified that he generally encouraged getting such separate policies. A. 83 (48). However, he testified that had Robert wanted to obtain a separate policy for Aaron on the Focus, the cost of such a policy would have been higher because he would not have been able to take advantage of substantial multi-policy discounts. A. 79 (32), A. 80 (33). Thus, even though Robert Carlson’s premium on the subject policy was higher because Aaron was going to be driving the Focus in Minneapolis and not Hibbing, it was still substantially cheaper to add Aaron as a “driver” under Robert’s policy. A. 79 (32), A. 80 (33), 85 (53). Fay testified that “ I believe the difference was enough so that we were going to leave things at status quo.” A. 80 (33).

Fay also testified that he had discussions with Robert Carlson over the course of

³ In fact, Fay testified that he knew that none of the other companies he wrote insurance for – Progressive, Safeco, Farmers Home, Allied, Nationwide and Dairyland – would have allowed Aaron to be listed as an “insured” if he had no ownership interest in the vehicle, was not named on the lease, was not living in the insured’s household, and was not a student. A. 80 (34 - 35).

their insurance relationship about the difference between the “insured” and “driver” designations – but not at the time Robert Carlson met with him to add the Ford Focus to his policy, and not with respect to the differences in first-party coverages resulting from these designations. 86 (59). Instead, such discussions concerned the liability implications of continuing to include Robert’s young sons as “drivers” under his insurance policies.

A. 86 (59 - 60). Fay admitted that if he had been asked whether an individual designated as a “driver,” (as was Aaron) would be eligible for first party benefits with respect to injuries sustained as a pedestrian, he “would have probably said I don’t know, just because I never had that issue come up, we’ve never seen a claim paid for that, and it would have been something I probably would have looked up.” A 86 (57-58).

Robert testified that, prior to the subject accident, he recalls asking Fay: “Are the two boys covered the same as I and my wife,” and Fay responded: “Yes.” A. 45 (21-22). Fay denied that Robert ever asked him this specific and unusually-phrased question, but agreed that he told Robert that “the cars are covered.” A. 81 (38); A. 85 (54-56).

Ultimately, Allstate issued an automobile policy to Robert S. and Gail A. Carlson, policy number 0 32 247465 09/05, effective for the period from September 5, 2002 through March 5, 2003 (hereinafter “the Allstate policy”). *See generally* A. 108 - 145. The Policy Declarations list the “Named Insureds” as Robert S. and Gail A. Carlson, 1730 E. 37th Street, Hibbing, Minnesota. A. 19, A. 109. “Drivers” are designated as Robert, Gail, Christopher and Aaron Carlson. *Id.* “Covered vehicles” are a 2000 Mercury

Cougar, a 2001 Ford Escape and a 2002 Ford Focus. *Id.*

Part III of the “Minnesota Changes” for the Allstate policy describes, *inter alia*, Uninsured Motorist (UM) Insurance (Coverage SS). *See generally* A. 132 - 142.

Thereunder, the policy provides in relevant part as follows:

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. Bodily injury must be caused by accident and arise out of the ownership, maintenance or use of an uninsured . . . auto.

A. 137.

“**Insured person**” is defined in relevant part as:

1. While using **your** insured **auto**

- a) you
- b) any resident
- c) any other person using it with your permission.

A. 133.

“**Resident**” is defined as “. . . a relative who actually resides in **your** household. Unmarried dependent children, while temporarily away from home, will be considered residents.” A. 139. “**You**” or “**Your**” is defined as: “[T]he policyholder named on the Policy Declarations and that policyholder’s spouse who resides in the same household.”

A. 139.

Allstate ultimately denied uninsured motorist coverage to Aaron because he was

not an insured person at the time of the subject accident. *See* A. 75 (13).

D. The instant lawsuit.

Appellants Aaron Carlson and Robert Carlson commenced suit against Allstate seeking a declaration that Allstate was required to provide uninsured motorist coverage to Aaron under the Allstate policy, with respect to the injuries he sustained in the subject accident. Via an amended complaint, the Carlsons asserted alternative claims for No-Fault benefits against Midwest Family Mutual Insurance Company, seeking coverage under the Assigned Claims Plan, Minn. Stat. § 65B.63 (2005). *See generally* A. 149-160. Allstate commenced a third-party claim against insurance agent Michael Fay and his agency. *See generally* A 164 - 166.

The parties filed cross-motions for summary judgment. On August 4, 2006 the St. Louis County District Court, the Honorable Gary J. Pagliaccetti presiding, granted Allstate's motion and denied the Appellants' motion against Allstate, finding that Allstate was not obligated to provide uninsured motorist coverage to Aaron under the Allstate policy, with respect to the injuries he sustained in the subject accident. *See generally* A. 4 - 14. The court also granted Appellants' summary judgment motion against Midwest Family, and that issue is not before the court on this appeal. Allstate's third-party claims against agent Mike Fay were dismissed when the trial court granted Allstate's motion for summary judgment. That portion of the trial court order is not before this court, either.

The Carlsons appealed the grant of summary judgment to Allstate. The Court of

Appeals affirmed. *See Carlson v. Allstate Ins. Co.*, 734 N.W. 2d 695 (Minn. Ct. App. 2007); *see also* A. 213 - 224.

III. ARGUMENT

A. Standard of Review

When reviewing an appeal from an order granting summary judgment, this court is to determine whether there are any genuine issues of material fact, and whether the lower court erred in its application of the law. *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W. 2d 888, 894-95 (Minn. 2006)(citations omitted). The facts in this case are undisputed. As such, only questions of contract and statutory interpretation are presented to this court for review, both of which present questions of law subject to de novo review. *Progressive Specialty Ins. Co. v. Widness*, 635 N.W. 2d 516, 518 (Minn. 2001)(citations omitted).

B. The relevant terms of the Allstate policy, construed under well-accepted rules of policy interpretation, do not require that Aaron Carlson, as an emancipated adult designated under his father's policy as a "driver," be deemed a "policyholder" for purposes of uninsured motorist coverage with respect to bodily injuries sustained as a pedestrian.

It is black letter law in Minnesota that "provisions of an insurance policy are to be interpreted according to plain, ordinary sense so as to effectuate the intention of the parties." *Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc.*, 258 N.W. 2d 570, 572 (Minn. 1977), *reh'g denied* (Oct. 13, 1977). In so doing, the court must construe the policy as a whole, "with all doubts concerning the meaning of language employed to be

resolved in favor of the insured.” *Id.* (citing *Bobich v. Oja*, 258 Minn. 287, 104 N.W. 2d 19 (1960)). The court must also construe the terms of a policy according to “what a reasonable person in the position of the insured would have understood the terms to mean, rather than what the insurer intended the language to mean.” *Id.* (citations omitted). This court has held that “[a]s long as an insurance policy does not omit coverage that is required by law and the policy does not violate applicable statutes, ‘the extent of the insurer’s liability is governed by the contract entered into.’” *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W. 2d 246, 249 (Minn. 1998)(citations omitted).

In the instant case, Appellants do not contend that any portion of the Allstate policy is inconsistent with the Minnesota No-Fault Automobile Insurance Act (hereinafter, “No-Fault Act”), Minn. Stat. § 65B.41, *et.seq.*(2006). Instead, they argue that the policy should be interpreted to confer uninsured motorist coverage to Aaron Carlson as an “insured,” with respect to the bodily injuries he sustained in the subject accident, because of the undefined term “policyholder” used in the Allstate policy to define “insured persons” for purposes of uninsured motorist coverage. *See App. Br. p. 22.* They assert that while the definition of the term “You” refers to the “policyholder” identified on the Declarations Page, the Declarations Page does not specifically identify anyone as a “policyholder” and instead identifies only “insureds” and “drivers.” Thus Appellants argue that the undefined term “policyholder” should be interpreted to encompass both “insureds” and “drivers” as identified thereon. But, as the Court of

Appeals found below, Appellants' interpretation of these terms does not consider the policy as a whole and is not reasonable under the circumstances. *See Carlson*, 734 N.W. 2d at 699-700.

With respect to the provision of uninsured motorist benefits, the Allstate policy states in relevant part: "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. Thereafter, "*insured persons*" are defined as, "while using your insured auto: you, any resident, and any other person using it with your permission." The terms "*you*" or "*your*" is defined as: "the policyholder named on the Policy Declarations and that policyholder's spouse who resides in the same household." Finally, "*Resident*" is defined as ". . . a relative who actually resides in *your* household. Unmarried dependent children, while temporarily away from home, will be considered residents."

The Declarations Page admittedly does not specifically identify anyone as a "policyholder." Instead, it identifies as "named insureds" only Robert Carlson and his wife, Gail. It identifies as "drivers" Robert, Gail, Aaron and Christopher Carlson. Appellants assert that because the declaration lists only "insureds" and "drivers," and does not designate any specific "policyholder," they "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." *See Appellants' Br.* pp. 22-23.

In point of fact, Aaron Carlson never asked for coverage, paid for coverage, or

“was told” any information from insurance agent Fay about the extent of insurance coverage that would be provided under Robert’s Allstate policy. Instead, the evidence shows that only Robert sought coverage for the Focus, and only Robert spoke to Fay about coverage.

Regardless, the salient question on this issue under longstanding Minnesota law is not what either Aaron or Robert specifically thought or concluded, but what a *reasonable person* in Robert’s position would have understood the policy terms to mean, construing the policy as a whole. *See Canadian Universal*, 258 N.W. 2d at 572. This was the test applied by the Court of Appeals below, when it concluded that “a reasonable person would understand that the “policyholders” are the ‘named insured(s), not the listed drivers.” 734 N.W. 2d at 699-700. Considering the circumstances under which insurance coverage for the Focus was procured and paid for, and construing the policy as a whole, this court should agree with the Court of Appeals, and conclude that no reasonable person would interpret the term “policyholder” to include individuals identified as “drivers” on the Declarations Page.

The evidence shows that Robert leased the Ford Focus for Aaron’s use, because Aaron did not have the funds to do so. Robert – not Aaron – met with insurance agent Mike Fay. No separate policy was either sought or written for Aaron covering the Focus – nor could such a policy have been issued, in light of the fact that Aaron undeniably had no ownership interest in the vehicle and was not an obligor under the lease. Instead, the

Focus was added to the pre-existing auto policy issued by Allstate to Robert and his wife. Robert, not Aaron, paid the policy premiums. The declarations page lists only Robert and Gail as “insureds,” listing sons Aaron and Christopher as “drivers.” Moreover, Robert acknowledges that he knew Aaron was designated as such on the declarations page. Information regarding policy additions and changes was sent only to Robert Carlson and his wife, not to Aaron. *See, e.g.*, A. 18 (“Confirming Your Policy Change” letter, sent only to Robert and Gail Carlson). Under these circumstances, no reasonable person would construe the term “policyholder” to include persons designated on the Policy Declarations as “drivers.”

Further, under the policy definition of “insured persons,” uninsured motorist coverage is extended not only to policyholders, but is also extended to “residents,” and to “any person using your auto with your permission.” “Resident” is defined as a relative who actually resides in your household, including “unmarried dependent children, while temporarily away from home.” If the court were to construe the term “policyholder” to include those individuals designated on the Policy Declarations only as “drivers,” the court would effectively negate and render superfluous all of the policy terms and definitions which extend uninsured motorist coverage to resident relatives, and individuals using “your” car with “your” permission.

The courts below appropriately found that the terms of the subject policy do not require that Allstate provide Aaron Carlson with uninsured motorist coverage for injuries

he sustained as a pedestrian. Allstate therefore respectfully requests that this court affirm the lower courts' grant of summary judgment in its favor.

C. The “reasonable expectations” doctrine does not require that Aaron Carlson, as an emancipated adult designated under his father’s policy as a “driver,” be entitled to uninsured motorist coverage under the Allstate policy with respect to bodily injuries sustained as a pedestrian.

Appellants assert that the heart of their appeal in the instant matter lies in the doctrine of reasonable expectations. *See* App. Br. at 19. Accordingly, they argue that they had a “reasonable and objective belief” that Robert Carlson’s non-resident, emancipated son Aaron Carlson – designated as a “driver” under the Policy Declarations, not as “named insured” – would be considered an “insured person” under the terms of the Allstate policy, with respect to uninsured motorist coverage and with respect for injuries Aaron sustained as a pedestrian. App. Br. 32. The trial court and the Court of Appeals determined that the “reasonable expectations” doctrine does not apply to supply such coverage, because the terms of the policy clearly precluded uninsured motorist coverage for designated “drivers” who were not using the insured vehicle at the time of the accident. *See* 734 N.W. 2d at 700 (citations omitted).

Before embarking on a discussion of the “reasonable expectations” doctrine in Minnesota; it is important to note that Appellants do not argue that the uninsured motorist coverage provided under the Allstate policy was in any way inconsistent with the uninsured/underinsured motorist coverage requirements of the No-Fault Act. *See* Minn. Stat. § 65B.49, subdiv. 3a (2006). Instead, consistent with the No-Fault Act, the Allstate

policy provides uninsured motorist benefits not only to the named insured, but to the spouse of the named insured, to resident relatives (even while temporarily away from home), and to permissive drivers injured while using or “occupying” the insured vehicle. *Compare* A. 133, 137, 139 *with* Minn. Stat. § 65B.49, subdiv. 3a(5) (2006) and Minn. Stat. § 65B.43, subdiv. 5 (2006).

Therefore the Allstate policy, as written and consistent with the No-Fault Act, undisputedly provides uninsured motorist coverage to Aaron Carlson as a permissive, designated “driver” of the Ford Focus, for bodily injuries sustained while he was using or occupying the Focus. As written, and consistent with the Act, the Allstate policy also provides such coverage to the extent that Aaron meets the definition of “resident” of Robert Carlson’s household. Consequently, the narrow issue presented by Appellants is whether the doctrine of reasonable expectations should be employed to confer uninsured motorist coverage to “driver” Aaron under the Allstate policy, when he sustained bodily injuries as a pedestrian, at a time when he did not “reside” in his father’s household.

In *Atwater Creamery v. Western Nat’l Mut. Inc.*, 366 N.W. 2d 271 (Minn. 1985), this court held for the first time that, considering the circumstances attendant to a layperson’s acquisition of insurance, “the 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.” *Id.* at 277 (citations omitted). This court’s decision in *Atwater Creamery*

was decided on unique facts, in which a “hidden, or masked” exclusion precluded burglary coverage if there were no visible marks of forced entry and, as such, left the insured without coverage where the burglary was conducted by one “skillful enough to leave no marks.” *Id.* at 274-75.

The reasonable expectations doctrine does not, however, “remove from the insured the responsibility to read the policy,” but at the same time “does not hold the insured to an unreasonable level of understanding of the policy.” *Hubred v. Control Data Corp.*, 442 N.W. 2d 308, 311 (Minn. 1989)(citing *Atwater Creamery*, 366 N.W. 2d at 278). And the reasonable expectation test is not a “license to ignore” clear terms and exclusions to conform to a result that the insured might prefer. *Board of Regents of The Univ. of Minn. v. Royal Ins. Co. of America*, 517 N.W. 2d 888, 891 (Minn. 1994). In the final analysis, the doctrine of reasonable expectations “asks whether the insured’s expectation of coverage is reasonable, *given all of the facts and circumstances.*” *Hubred*, 442 N.W. 2d at 311 (emphasis added)(citing *Atwater Creamery*, 366 N.W. 2d at 278).

This court’s application of these principles in the *Hubred* case illustrates why the reasonable expectations doctrine should not be employed to find uninsured motorist coverage for Aaron Carlson under the facts of this case. In *Hubred*, Plaintiff Evangeline Hubred was an employee of Control Data Corporation (“CDC”) and was a participant in CDC’s health care plan. She paid an extra premium to insure her husband, Chester, who was not an employee of CDC. Chester was thereafter seriously injured while working at

his place of business, “Seasonal Enterprises, Inc.” Chester was the president and majority owner of the business, and was not covered by worker’s compensation insurance. CDC denied coverage, citing a portion of its health care plan booklet which provided, in relevant part, that it would not cover medical expenses “necessary because of an injury or disease incurred during employment for wages or profit at or outside of Control Data, or covered by the Workers’ Compensation Act or similar laws, statutes or decrees .” 442 N.W. 2d at 310.

The Hubreds first argued that the relevant exclusion was ambiguous because, as president and majority shareholder of the business, Chester was technically not “employed for wages or profit.” This court concluded, however, that because Chester received a salary he would “under most circumstances be considered an employee” and as such, his injury falls “squarely within the scope of the exclusion.” *Id.* at 311.

The Hubreds alternatively argued that the “reasonable expectations” doctrine should still apply to confer coverage. This court also concluded, however, that the reasonable expectations doctrine did not apply to provide coverage to Chester under these circumstances because the Hubreds “point to no facts or circumstances which, despite the clear import of the exclusion, would justify a reasonable expectation of coverage in this case.” *Id.* Moreover, this court found that “[t]he fact that the Hubreds were not orally informed of the exclusion does not, standing alone, free them from the responsibility of having read the exclusion” and, accordingly, “in light of the unambiguous exclusion there

was no reasonable expectation of coverage in these circumstances.” *Id.* at 311-12.

When the same analysis is applied in this case, this court should conclude, as did the courts below, that the reasonable expectations doctrine does not require Allstate to provide uninsured motorist coverage to Aaron Carlson under the subject policy, for injuries he sustained as a pedestrian. First, as discussed above, the Allstate policy is not ambiguous. Relevant definitions for the terms “insured persons,” and “You” cannot be read by a reasonable insured in isolation to define Aaron Carlson as a “policyholder,” when the Declarations Page listed him only as a “driver,” and when Robert Carlson both acquired the policy and paid the premiums for the policy.

Second, the fact that the Allstate policy precludes uninsured motorist benefits for Aaron with respect to bodily injury sustained as a pedestrian was not a “hidden exclusion,” and was instead readily available from examination of relevant policy terms and definitions. Moreover, the coverage provided under the subject policy is consistent in all relevant respects with that described and mandated under the Minnesota No-Fault Act. The Act does not require that uninsured motorist coverage be provided to a permissive, designated “driver” of an insured vehicle who sustains injuries while he is not occupying that vehicle, and while he is not a “resident” of the insured’s household. *See* Minn. Stat. § 65B.49, subdiv. 3a(5); Minn. Stat. § 65B.43, subdiv. 5.⁴

⁴ Appellants also argue that the second paragraph of section 65B.49, subdiv. 3a(5) be construed to provide coverage to Aaron for purposes of the subject accident. That argument is addressed *infra*, in Section III.D.

While Appellants seem to recognize this, they assert that despite what the Allstate policy actually said (and thus aside from what the No-Fault Act requires), Aaron should still be entitled to the benefit of uninsured motorist benefits for injuries sustained as a pedestrian, because independent insurance agent Mike Fay allegedly answered “yes” to Robert’s generally-worded question of whether the coverage provided Aaron under the subject coverage was “the same as” the coverage available to Robert and his wife. In point of fact, the subject policy *did extend* uninsured motorist coverage to Aaron “*the same as*” Robert and his wife – as long his injuries were sustained as *a driver*, as he was *using* the insured Ford Focus.⁵

Nevertheless, Robert argues that his non-specific and obtusely-worded question as to “full coverage” provided him with the “reasonable expectation” that permissive driver Aaron would be “fully covered” for uninsured motorist benefits even when he was not “using” or occupying the Ford Focus, for injuries sustained as a pedestrian. There is no support for the proposition that such a specific “reasonable expectation” can be honored when formed in hindsight. Moreover, this court in *Atwater Creamery* carefully spoke of honoring reasonable expectations in the case of policy exclusions that are “important yet obscure,” or “major.” *See* 366 N.W. 2d at 278. The “exclusion” at issue here is neither. Instead, it applies to preclude *only* uninsured motorist coverage for the permissive driver

⁵ The subject policy also extended liability coverage to Aaron “*the same as*” that extended to Robert and his wife.

of a vehicle owned by the insured, under the narrow and limited circumstance when bodily injury is sustained while the permissive driver *is a pedestrian*, and when the permissive driver does “reside” in the named insured’s household.

Further, the specific “reasonable expectation” Appellants urge the court to honor in this case is not realistic under the facts and circumstances. *See Atwater Creamery*, 366 N.W. 2d at 278. When a parent buys a car for an emancipated, adult child and pays to insure that vehicle under the parent’s policy, it is not reasonable for the parent to assume that the child is covered for injuries sustained *as a pedestrian*, when the child is not driving, using or otherwise occupying the insured vehicle. To find otherwise would not only negate the clear terms of the Allstate policy in this case, but would effectively erase the carefully crafted statutory scheme embodied in the No-Fault Act, which distinguishes between insureds and permissive drivers of insured vehicles, and describes specific and limited situations under which individuals who are not “insureds” are entitled to uninsured motorist benefits covering the insured vehicle . Moreover, honoring Appellants’ “reasonable expectations” in this regard would require that all automobile policies issued in this state issued in conformity with state law be construed to provide uninsured motorist coverage to emancipated adults included under their parents’ policies as “drivers,” when they sustain injuries as pedestrians.

In affirming the district court’s decision on this issue, the Court of Appeals below did not, as Appellants assert, effectively “eviscerate” the doctrine of reasonable

expectations. *See* App. Br. p. 28-29. Instead, the court properly applied it to find that a parent's "reasonable expectations" cannot apply to supply coverage which clearly did not exist under the subject policy, and which is not required under the Minnesota No-Fault Act. *See Carlson*, 734 N.W. 2d at 700.

Finally, Appellants argue that coverage is mandated under this court's decision in *Roepke v. Western Nat'l Mut. Ins. Co.*, 302 N.W. 2d 350 (Minn. 1981), which was not a "reasonable expectations" case, at all. *See* App. Br. 35. While they describe *Roepke* as a case with "virtually identical facts," they do not explain why *Roepke* requires this court give credence to their "reasonable expectation" that the Allstate policy provide uninsured motorist coverage to Aaron, for injuries he sustained as a pedestrian. It appears as if Appellants are suggesting that this court can and should find coverage if equity so requires, when coverage has been denied under a "technicality." *See* App. Br. p. 35. But that is not what this court found in *Roepke*.

Instead, the result in that case – while admittedly based on equity – was expressly limited to its "unique and peculiar" facts. 302 N.W. 2d at 351, 353. Therein, the insured was a corporate entity which owned six vehicles. The president and sole-shareholder of the corporation was killed while driving one of the vehicles, and the insurer thereafter denied the survivor's quest to allow stacking of no-fault coverages. This Court agreed that under the express terms of the no-fault act the decedent was not entitled to same, as he was not the "insured" under the policy and was instead driving a vehicle "furnished by

his employer.” 302 N.W. 2d at 352, (citing Minn. Stat. § 65B.47, subdiv. 2).

Nevertheless, under the “unique and peculiar facts” of that case, and in order to reach an “equitable result otherwise unavailable” under the Act, this court found it appropriate to “reverse pierce” the corporate veil in order to construe the decedent as an “insured” for the purpose of allowing stacking. *Id.* In so doing the court found it significant that the decedent was the president and sole shareholder of the named insured corporation, treated the insured automobiles as his own, and used them for family purposes. *Id.*, at 353. The court concluded that “[t]hese facts, coupled with the fact that no shareholder or creditor would be adversely affected, persuade us that the purpose of the no-fault act, stated . . . as providing insurance for persons and not vehicles, is best fulfilled by piercing the corporate veil and by holding that decedent was an ‘insured’ under the corporate policy.” *Id.*

The court’s decision in *Roepke* is understandable, in light of the fact that the decedent was the president and sole shareholder of the policyholder corporation. As such, recognition of the decedent via the “reverse piercing” mechanism reflected the reality of the insurance coverage situation presented in that case.

But the same cannot be said under the facts in this case. Here, the reality is that Robert Carlson, in an exemplary (and not uncommon) effort to assist an emancipated adult child, acquired the Ford Focus for his son Aaron’s use, because Aaron did not have the financial means to do so. Robert also obtained and paid for insurance on the vehicle,

including it under his own automobile policy under which Aaron was designated as a “driver.” The evidence demonstrates that Robert Carlson and independent agent Mike Fay had conversations over the years about having “the boys” acquire their own insurance policies, but that for financial reasons – specifically, for the purpose of taking advantage of multi-policy and multi-vehicle discounts – they decided to leave things “status quo.” Equity does not require that this scenario be adjusted to provide coverage to Aaron equivalent to that which he would have been entitled had he acquired his own vehicle and obtained his own insurance policy.

To the extent that this case describes a “gap” in first-party coverage that occurs when parents add their emancipated, adult non-resident children as permissive “drivers” of insured vehicles under their automobile policies, it is a slender one that occurs only when the “driver” is injured while *not* using or occupying the insured vehicle. Moreover, if at all, it is a “gap” that needs to be rectified legislatively, and not by this court in applying the doctrine of reasonable expectations.

This court has found that “as long as an insurance policy does not omit coverage that is required by law and the policy does not violate applicable statutes, ‘the extent of the insurer’s liability is governed by the contract entered into.’” *Lobeck*, 582 N.W.2d at 249 (citations omitted). Accordingly, because the Allstate policy was in all respects consistent with Minnesota law, it is inappropriate to apply the doctrine of “reasonable expectation” to confer coverage clearly not available thereunder.

The district court and the Court of Appeals properly concluded that the doctrine of reasonable expectations cannot be used to provide Aaron Carlson with uninsured motorist coverage under the facts of this case. Allstate therefore respectfully requests that this court affirm the lower court's grant of summary judgment in its favor.

D. The Minnesota No-Fault Act does not require that Aaron Carlson, as an emancipated adult designated under his father's policy as a "driver," be entitled to "select" his father's automobile policy to provide uninsured motorist coverage with respect to bodily injuries sustained as a pedestrian.

The Minnesota No-Fault Act requires every motor vehicle owner to obtain uninsured and underinsured motorist coverage of certain, specified minimum limits. Minn. Stat. § 65B.49, subdiv. 3a(1) (2006); *see also Turner v. Mutual Service Cas. Ins. Co.*, 675 N.W. 2d 622, 624 (Minn. 2004). The purpose of these coverages is to "protect named insureds from suffering an inadequately compensated injury caused by an accident with an inadequately insured automobile." *Turner*, 675 N.W. 2d at 624 (citation omitted). Since the 1985 amendments to the No-Fault Act, this court has found that uninsured and underinsured coverages are tied to the particular vehicle specified in the insurance policy, and has thus moved away from the notion that coverage "follows the individual." *See id.*; *see also Hanson v. American Family Mut. Ins. Co.*, 417 N.W. 2d 94, 96 (Minn. 1987). An automobile insurance policy that does not provide the mandatory minimum coverages specified under the No-Fault Act is reformed by operation of law to include that level of coverage. *See Osterdyke v. State Farm Mut. Auto. Ins. Co.*, 420 N.W.2d 900, 902 (Minn. 1988).

In this matter, Appellants argue that Minn. Stat. § 65B.49, subdiv. 3a(5)(2006) – and specifically the final paragraph of this section – should be interpreted to require that Allstate provide uninsured motorist to Aaron Carlson under the circumstances of the underlying accident. Appellants thus request that the subject policy be “reformed” to provide uninsured coverage to Aaron Carlson.

Section 65B.49, subdiv. 3a(5) establishes the order in which an injured person should seek uninsured-motorist coverage from “relevant policies” *Schons v. State Farm Mut. Auto. Ins. Co.*, 621 N.W.2d 743, 745 (Minn. 2001). It states, in its entirety:

If at the time of the accident the injured person is occupying a motor vehicle, the limit of liability for uninsured and underinsured motorist coverages available to the injured person is the limit specified for that motor vehicle. However, if the injured person is occupying a motor vehicle of which the injured person is not an insured, the injured person may be entitled to excess insurance protection afforded by a policy in which the injured party is otherwise insured. The excess insurance protection is limited to the extent of covered damages sustained, and further is available only to the extent by which the limit of liability for like coverage applicable to any one motor vehicle listed on the automobile insurance policy of which the injured person is an insured exceeds the limit of liability of the coverage available to the injured person from the occupied motor vehicle.

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 of liability for any one vehicle afforded by a policy under which the injured person is insured.*

Minn. Stat. § 65B.49, subdiv. 3a(5)(emphasis added)

Appellants claim no right to coverage under the first paragraph. Instead, their argument focuses on the phrase “is insured” in the second paragraph. Without applying

any of the well-established rules of statutory construction, Appellants simplistically argue that Aaron Carlson, “is insured” under the Allstate policy because, even though he may not be a “policyholder,” he “is insured” by that policy as a “driver.” Thus Appellants conclusorily argue, without any reasoned analysis, that the Allstate policy must therefore be reformed to provide uninsured motorist coverage to Aaron Carlson in conformance with the second paragraph of Section 65B.49, subdiv. 3a(5), with respect to injuries he sustained as a pedestrian. *See* App. Br. 37.

The question of the legislature’s intent behind the term “is insured” in the context of the second paragraph of this section is a question of first impression for this court. In addressing the issue, the Court of Appeals discounted this court’s opinion in *Becker v. State Farm Mut. Auto. Ins. Co.*, 611 N.W. 2d 7 (Minn. 2000), concluding that only the first paragraph of this section was discussed and construed therein and, as such, it was of no assistance in construing the term “is insured” in the second paragraph. *See Carlson*, 734 N.W. 2d at 702 (citing *Becker*, 611 N.W. 2d at 11).

Instead, the Court of Appeals carefully applied well-established rules of statutory construction, giving effect to the plain meaning of the statute as well as to all of its provisions and “construing it as a whole to avoid conflicting interpretations,” ultimately concluding that the second paragraph does not require that Allstate provide coverage to Aaron Carlson under the circumstances of this case. *Carlson*, 734 N.W. 2d at 700-01 (citing *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000))(further

citations omitted). In so doing, the Court of Appeals agreed with the district court, which concluded that the second paragraph does not mandate coverage for Aaron Carlson for injuries sustained as a pedestrian, because Carlson “was insured” by the Allstate policy *only* when he was “in, on, or getting out of the vehicle.” *Id.* at 702.

In reaching this conclusion the Court of Appeals below gave the term “is insured” its “plain and ordinary meaning.” *See Carlson*, 734 N.W. 2d at 702 (citing *Am Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn.2001)). The commonly accepted definition of “insure” is, *inter alia*, “to ‘have insurance for.’” 734 N.W. 2d at 702 (citing *The American Heritage Dictionary* 909 (4th ed.2000)). Thus, “a person ‘is insured’ by a policy only in those circumstances for which he has insurance.” *Id.* (citing *Sullivan v. City of Minneapolis*, 570 N.W.2d 8, 11-12 (Minn. Ct. App.1997) (concluding that because a police officer, who was injured while chasing a suspect on foot, was not covered by the Minneapolis insurance policy, which only covers city employees while they are occupying a city vehicle, he was not insured by that policy for the purpose of the second paragraph of section 65B.49, subdivision 3a(5)). The Court of Appeals therefore concluded that because Aaron Carlson was not entitled to uninsured motorist coverage under the terms of the subject policy *when he was injured as a pedestrian*, he was not “insured” under the policy for purposes of the second paragraph of Section 65B.49, subdiv. 3a(5) and thus not entitled to “select” the policy to provide uninsured motorist benefits. *See id.*

While this interpretation is not controlled by *Becker*, it is entirely consistent with it. The specific question in *Becker* was whether, under the first paragraph of Section 65B.49, subdiv. 3a(5), an individual injured while occupying a vehicle furnished by her employer (and thus required to look to the policy covering that vehicle as the primary source of coverage) was entitled to excess coverage afforded by a policy in which that individual was “otherwise insured” at the time of the accident. The specific phrase at issue was in the second sentence of this paragraph, which allows for such excess coverage only when the injured person “is occupying a motor vehicle of which the injured person is not an insured.” This court concluded that the term “insured” cannot be interpreted so broadly in this context so as to include any person who receives uninsured motorist benefits only by virtue of their occupancy of a vehicle. 611 N.W. 2d at 12. Instead, the court found that the proper interpretation of “insured” in this context means those persons specifically listed in Minn. Stat. § 65B.43, subdiv. 5. *See* 611 N.W. 2d at 13.

In so concluding, this court noted that to find otherwise; that is, to find that injured persons are “insured” under the vehicle simply because of their occupancy status, the only persons entitled to excess coverage would be those injured while occupying *uninsured* vehicles. 611 N.W. 2d at 12. The court reasoned that such an interpretation “does not make sense” in light of the language used in the remaining provisions of that section 65B.49, subdiv. 3a(5) and would therefore render meaningless other portions of the statute. *Id.*

In this case, Appellants interpretation of the term “is insured” in the second paragraph of Section 65B.49, subdiv. 3a(5) also renders meaningless other portions of this section. To find that an individual “is insured” for injuries sustained as a pedestrian because he is designated as a “driver” of a vehicle covered under his father’s policy would mean that coverage would be available simply because the “driver” would be entitled to coverage *at some other time*, when he was actually occupying the insured vehicle. This interpretation does not make sense in light of the remainder of this section.

When properly read in its entirety, it is clear that the source and availability of coverage depends on where the injured person “is” situated at the time of injury. Thus if a person “*is occupying a motor vehicle*” at the time of injury, the limit of uninsured motorist liability available to that person “is the limit specified for that vehicle.” But if an injured person “*is not occupying*” a vehicle at the time of the accident, only the policies under which the person “*is insured*” may be selected. In context, the phrase “is insured” can only mean “is insured” *at the time of injury*. If the injured person *is not* insured at the time of injury – because he was not a named insured under a policy of insurance or a resident relative of a named insured – there no policy to “select.” Interpreting the term “is insured” in the manner desired by Appellants effectively takes away the temporal context of this Section, and allows an injured pedestrian to “select” any policy under which he *might have been insured under circumstances other than those existing at the time of the subject accident*. Such an interpretation makes no sense.

Giving the second paragraph of Section 65B.49, subdiv. 3a(5) its proper interpretation undisputedly renders emancipated adult children like Aaron Carlson, insured under a parent's policy as "drivers," ineligible to receive uninsured motorist benefits for injuries sustained as pedestrians. But unlike basic economic loss benefits, the legislature did not guarantee uninsured motorist coverage to all injured persons under the No-Fault Act. See *Petrich v. Hartford Fire Ins. Co.*, 427 N.W. 2d 244, 246 (Minn. 1988). As this court found in *Petrich*, uninsured motorist coverage, even though required by statute, "do[es] not stand on the same footing" with the guarantee of basic economic loss benefits guaranteed by the legislature under Minn. Stat. § 65B.46, subdiv. 1. *Id.*

The No-Fault Act does not leave Aaron completely without compensation, as he is entitled to basic economic loss benefits under the assigned risk plan. He has sought – and received – such benefits for the injuries he sustained in the subject accident. The No-Fault Act, as currently written does not require anything more.

Accordingly, the district court and the Court of Appeals properly concluded that the second paragraph of Section 65B.49, subdiv. 3a(5) cannot be read to confer uninsured motorist coverage upon Aaron Carlson, for the purpose of allowing him to "select" coverage under the Allstate policy with respect to bodily injuries he sustained as a pedestrian. Therefore, Allstate respectfully requests that this court affirm the lower court's grant of summary judgment in its favor.

IV. CONCLUSION

Like many Minnesota parents, Appellant Robert Carlson leased and insured a vehicle for an emancipated adult son. Because his son, Appellant Aaron Carlson, was not the owner of the vehicle, it was added to Robert's automobile policy with Respondent Allstate Insurance Company, and Aaron was designated as a permissive "driver" thereunder. Under the Allstate policy – and consistent with the Minnesota No-Fault Act – as a designated "driver" Aaron was entitled to uninsured motorist coverage for injuries sustained while he used or occupied the insured vehicle. He was also otherwise entitled to such coverage as long as he resided in Robert's household; and even entitled to such coverage during temporary absences, such as when he was away at school.

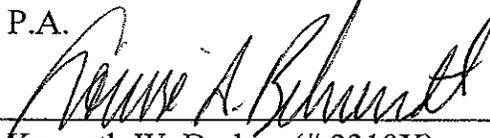
But this case concerns the injuries sustained by Aaron Carlson on January 1, 2003, when he was not a resident of Robert Carlson's household, when he was struck and injured by an uninsured vehicle as he walked across the street as a pedestrian. The district court and the Court of Appeals properly decided that under this narrow circumstance, the Allstate policy does not provide – and the Minnesota No-Fault Act does not require – that Allstate provide uninsured motorist coverage to Aaron Carlson.

First, the courts below correctly determined that Aaron Carlson – as an emancipated adult designated under his father's automobile policy as a "driver" – is not a "policyholder," and is therefore not entitled to uninsured motorist benefits under the subject policy, with respect to injuries sustained as a pedestrian. Second, the courts below

correctly concluded that the doctrine of reasonable expectations does not require that the clear and unambiguous terms of the Allstate policy – consistent in all respects with the Minnesota No-Fault Act – be interpreted to confer uninsured motorist benefits to emancipated adult Aaron Carlson, designated under his father’s policy as a permissive “driver,” with respect to injuries sustained as a pedestrian. And finally, the courts below correctly found that the term “is insured,” as used in Minn. Stat. § 65B.49, subdiv. 3a(5), cannot be construed to allow emancipated adult Aaron Carlson, designated under his father’s Allstate policy as a “driver,” to “select” his father’s policy to provide uninsured motorist coverage, with respect to injuries sustained as a pedestrian. Consequently, Allstate respectfully requests that this court affirm the lower court’s grant of summary judgment in its favor.

Dated: November 21, 2007.

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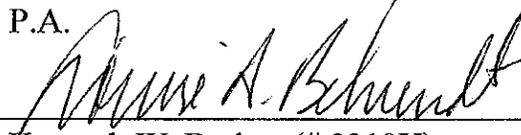
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CERTIFICATE OF COMPLIANCE

This brief complies with the word/line limitations of Minn. R. Civ. App. P. 132.01, subd. 3(a). This brief was prepared using WordPerfect Version 11.0 in 13-pt. font, which reports that the brief contains 676 lines and 8,201 words.

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