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State of Minnesota
In Supreme Court

Mark Schmitt,

Employee/ Respondent,

vs.

Innovative Lawn Systems, and Total Repair Services,

Employers/ Respondents,

and

American Interstate Insurance Co.,

Insurer/ Respondent,

and

West Bend Mutual Insurance Co.,

Insurer/ Relator-Appellant,

and

MN Dept. of L & I Rehab Unit, MN Dept. of Human Services, St. Paul Radiology, and Regions Hospital,

Intervenors,

and

Special Compensation Fund,

Respondent.

BRIEF AND APPENDIX OF APPELLANT WEST BEND MUTUAL INSURANCE COMPANY

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STATEMENT OF LEGAL ISSUES

I. Did the compensation judge commit a legal error in holding Employer/Respondent, Innovative Lawn Systems (ILS), wasn't insured for workers' compensation coverage with Insurer/Respondent, American Interstate Insurance Company (American Interstate), when ILS was previously insured by American Interstate under the name Valley Erosion, Inc. and American Interstate failed to properly terminate coverage under Minn. Stat. § 176.185 because it failed to provide notice of cancellation or non-renewal to Valley Erosion and the commissioner?

Though American Interstate conceded it never filed a notice of cancellation or non-renewal, the compensation judge held American Interstate effectively terminated and canceled its policy. Furthermore, though ILS legally changed its name from Valley Erosion, Inc., the compensation judge held coverage would not extend to ILS. The Workers' Compensation Court of Appeals (WCCA) did not address this issue claiming it did not need to since it affirmed the finding that Insurer/Appellant, West Bend Mutual Insurance Company (West Bend), was estopped from denying coverage.

Apposite Case:

Zakrajshek v. Shuster, 239 N.W.2d 919 (Minn. 1976)

Apposite Statute:

Minn. Stat. § 176.185

II. If ILS was still insured for workers' compensation coverage with American Interstate at the time of the Employee's injury, was it legally impossible for ILS to have relied to its detriment on misrepresentations that it had workers' compensation coverage with West Bend?

The compensation judge did not address this issue because the compensation judge held American Interstate effectively terminated and cancelled its policy, and furthermore, the policy in question did not cover the Employer. The WCCA simply ignored this argument.

Apposite Cases:

Hydra-Mac, Inc. v. Onan Corp, 450 N.W.2d 913 (Minn. 1990)
Kahn v. State, Univ. of Minn., 289 N.W.2d 737 (Minn. 1980)

Apposite Statute:

Minn. Stat. § 176.185

III. Since ILS conceded it never informed West Bend's agent that it had employees, as a matter of law, was it unreasonable for ILS to rely on false documentation of workers' compensation insurance provided by the agent?

Though he expressly held the Employer never notified West Bend that it had employees, the compensation judge held the Employer reasonably relied on certificates of insurance provided by West Bend's agent indicating the Employer had workers' compensation insurance. The WCCA upheld this holding.

Apposite Cases:

Hydra-Mac, Inc. v. Onan Corp, 450 N.W.2d 913 (Minn. 1990)
Kahn v. State, Univ. of Minn., 289 N.W.2d 737 (Minn. 1980)
North Star Center v. Sibley Bowl, Inc. 205 N.W.2d 331 (Minn. 1973)

IV. Did the compensation judge have jurisdiction to determine if West Bend was estopped from denying it insured ILS for the Employee's injury?

The WCCA upheld the compensation judge's holding that he had jurisdiction to decide whether West Bend was estopped from denying it insured ILS for the Employee's injury.

Apposite Cases:

Taft v. Advance United Expressways, 494 N.W.2d 725 (Minn. 1991)

Apposite Statutes:

Minn. Stat. § 175.16
Minn. Stat. § 175.17

STATEMENT OF CASE

Compensation Judge Gary P. Mesna heard this matter on June 14, 2006. The parties stipulated that the Employee, Mark D. Schmitt, sustained a compensable work injury. There was no dispute over his entitlement to benefits. However, there was a dispute as to whether the Employer, Innovative Lawn Systems (ILS), was uninsured or covered by either American Interstate Insurance Company (American Interstate) or West Bend Mutual Insurance Company (West Bend).

West Bend and ILS argued that ILS had workers compensation coverage with American Interstate at the time of the Employee's injury because ILS legally changed its name from Valley Erosion, Inc., which American Interstate previously issued insurance to, and American Interstate never properly terminated coverage under Minn. § 176.185. Specifically, American Interstate never provided notice of termination to Valley Erosion, Inc. or the commissioner.

American Interstate and ILS argued, though West Bend never issued a written policy, the misrepresentation of its insurance agent bound it to workers' compensation coverage for ILS. In the alternative, American Interstate and ILS argued, under a theory of promissory estoppel, West Bend was estopped from denying coverage.

Though American Interstate conceded it did not provide notice of termination to the commissioner, Judge Mesna found American Interstate effectively terminated coverage for Valley Erosion, Inc. In addition, Judge Mesna

held coverage to Valley Erosion, Inc. would not extend to ILS because he found ILS to be a new business. Regarding West Bend, Judge Mesna held its agent did not bind coverage, but West Bend was estopped from denying coverage based on the misrepresentations of its agent.

STATEMENT OF RELEVANT FACTS

On November 30, 2004, the Employee sustained a compensable work injury during the scope and course of his employment with ILS. (A-2, Findings 1 & 2; and ILS Exhibit 2, Mark Schmitt March 31, 2005 deposition transcript, pp. 6-7, hereinafter Schmitt T.) American Interstate paid benefits to the Employee under a temporary order. (June 14, 2006 hearing transcript, p. 8, hereinafter Hearing T; and American Interstate Exhibit 15.)

Jeff and John Trog have equal ownership interests in ILS. (Hearing T. 86 and 121; and American Interstate Exhibits 10.A. and 10.D.) Jeff started his first business in 1986 called Valley Lawn Services, Inc. (Hearing T. at 60-61.) The business performed lawn service, snow plowing and light landscaping. (Id.) It later expanded into heavier landscaping, drain tile systems, erosion control and street sweeping. (Id.) Jeff formally changed the name with the Minnesota Secretary of State to Valley Landscape, Inc. (Id. at 62.)

Jeff was the sole owner of Valley Landscape, Inc. until 1997 when he went into business with David Otterdahl. (Hearing T. 61.) They formally changed the name with the Minnesota Secretary of State to Structural Repair Services, Inc. (Id. at 62; and ILS Exhibit 3.)

Jeff and Mr. Otterdahl split Structural Repair Services, Inc. into different corporations based on its different operations. (Hearing T. 63.) Structural Repair Services, Inc. continued under its name doing concrete work and structural repairs on buildings. (Id.) Jeff and Mt. Otterdahl formed Total Repair, Inc. to perform

carpentry, repair and warranty work. (Id. at 63-64.) They formed Valley Waterproofing, Inc. to do production waterproofing on buildings. (Id.) Lastly, they formed Valley Erosion, Inc. to take care of snow plowing, lawn service and erosion control. (Id.) The Articles of Incorporation of Valley Erosion, Inc. is dated February 4, 1999. (American Interstate Exhibit 10.E.)

Jeff and Mr. Otterdahl obtained a workers' compensation policy from American Interstate that covered all of their businesses. (Hearing T. 64-65) They obtained the policy through American Interstate's insurance agent, Dennis Just. (Id.) Mr. Just is also a registered agent with West Bend. The American Interstate policy was marked as Exhibit 2 during Mr. Just's deposition taken on May 31, 2006. (ILS Exhibit 1, Exhibit 2 of Dennis Just deposition transcript May 31, 2006, hereinafter Just deposition Exhibits.) The policy lists Structural Repair Services, Inc. and Valley Landscaping, Inc. as named insureds and Total Repair, Inc., Valley Erosion, Inc., and Valley Waterproofing, Inc. as additional insureds. (Id.) In other words, the original company and the name it was changed to were listed as the named insureds, while the three break-away businesses were named as additional insureds.

The original American Interstate policy period was February 24, 1999 to February 24, 2000. (Just deposition Exhibit 2.) It was extended for at least an additional year through February 24, 2001. (West Bend Exhibit 1.)

American Interstate mailed a workers' compensation notice of non-renewal or cancellation dated December 18, 2000 to Structural Repair Services, Inc.

(American Interstate Exhibit 6.) American Interstate did not want to renew the policy due to the loss history and frequency of claims, not due to unpaid premiums. (Id.) The document was not sent to Valley Erosion. (Id.) Jeff does not recall ever receiving a notice of non-renewal or cancellation listing Valley Erosion, though the company continued to do business. (Hearing T. 70.) American Interstate concedes it never filed a certificate of cancellation or notice of cancellation with the Department of Labor and Industry. (Id. at 20 and 23.)

On October 22, 2001, Jeff and Mr. Otterdahl entered a settlement agreement in which they intended to go their separate ways. (Hearing T. 68; and American Interstate Exhibit 10.A.) According to the agreement, the following businesses were subject to it: Structural Repair Services, Inc., Total Repair, Inc., and Valley Waterproofing, Inc. (Id.)

Pursuant to the settlement agreement, Structural Repair Services, Inc., Total Repair, Inc., and Valley Waterproofing, Inc. all ceased doing business. (American Interstate Exhibit 10.A.) Jeff assumed the assets and liabilities of Total Repair, Inc., while Mr. Otterdahl assumed the assets and liabilities of Valley Waterproofing, Inc. (Id.) Valley Erosion was not included in the settlement agreement and Jeff continued to run it. (Id; and Hearing T. 71.)

In the spring of 2002, Jeff began discussing the lawn care business with his brother, John. (Hearing T. 70-71 and 120-121) John was interested in running a lawn care and snow removal business similar to Valley Erosion. (Id. at 120-121.) However, he wanted to start with a new name. (Id.) Therefore, on May 1, 2002,

they filed an Amendment of Articles of Incorporation with the Minnesota Secretary of State changing the name of Valley Erosion, Inc. to Innovative Lawn Systems, Inc. (Id. at 72-73, and 121; and American Interstate Exhibit 10.F.) The Trogs then issued themselves equal shares of stock in ILS. (Hearing T. 121; and American Interstate Exhibit 10.D.)

As soon as they changed the name to ILS, John became the president and handled the day to day operations, while Jeff handled the financial aspects. (Hearing T. 74-75 and 122.) Jeff had no involvement with the daily operations. (Id.)

Jeff referred John to Mr. Just to obtain insurance for ILS. (Hearing T. 75.) Jeff testified that they intended to rely on Mr. Just to provide all the insurance the business would need. (Id. at 75.) Jeff testified he understood they would need workers' compensation insurance. (Id. at 75-76.) However, prior to the Employee's injury, Jeff does not recall specifically discussing workers' compensation with Mr. Just, or his brother. (Id. at 75-76, 103 and 105.) Jeff testified:

> Q: Well, I thought your testimony a minute ago was that you had, in fact, discussed obtaining work comp coverage with Mr. Just for Innovative Lawn Systems; is that correct? You did discuss –
>
> A: I discussed business insurance.
>
> Q: But did you specifically ask Mr. Just about work comp?
>
> A: No. (Id. at 105.)

After referring Mr. Just to John, Jeff had no further involvement with obtaining insurance for ILS. (Id. at 76.)

Prior to the Employee's injury, John also does not recall ever specifically discussing workers' compensation insurance with Mr. Just. (Id. at 152.) John testified:

> Q: Prior to Mr. Schmitt's injury, did you ever recall specifically discussing workers' compensation insurance for Innovative with Mr. Just?
>
> A: No. (Id. at 152.)

Mr. Just issued a West Bend business liability policy to ILS that went into effect on June 26, 2002. (Just deposition Exhibits 7-9; and Just deposition T. 88.) ILS did not apply for workers' compensation insurance, nor did the policy provide it. (Id.) ILS has never paid any workers' compensation premiums to West Bend. (Id.) However, ILS produced three Certificates of Liability Insurance that indicate ILS had workers' compensation insurance with West Bend. (Just deposition Exhibits 12-14.) The Certificates were dated from April 14, 2003 to March 24, 2004. (Id.)

The Trogs did not produce the Certificates of Insurance until after they were deposed, which was well over a year after the coverage dispute arose. (Hearing T. 116-118, and 149-150.) Though Mr. Just never personally processed any of ILS' insurance certificates, he testified the certificates clearly state on their face they are intended for information only and confer no rights. (Just deposition T. 106-107, and 153-154.)

ILS initial premium to West Bend did not include payment for worker's compensation coverage, nor did ILS ever request any changes in this regard. (Id. at 87-88 and 160-161.) Mr. Just testified workers' compensation premiums are based on payroll. (Id. at 85 and 159.) When John took over ILS the company did not have any employees, nor did it have any employees for at least a month after John obtained liability insurance from West Bend. (Hearing T. 150-151.) An insurance audit for ILS dated August 14, 2003 indicated Jeff was doing all the work himself with no employees. (Just deposition Exhibit 9.) Furthermore, according to Mr. Just, both Jeff and John made it clear they would be the only individuals working for ILS. (Just deposition T. 86 and 94-95; and Just deposition Exhibits 19 and 20.) However, in October 2004, John hired Mr. Schmitt to work as a laborer. (Schmitt T. 7-8; and Hearing T. 127 and 151.) In fact, multiple changes occurred in ILS' payroll prior to Mr. Schmitt's injury. (Hearing T. 148-149.) John never informed Mr. Just of these changes. (A-3, Finding 14; Hearing T. 148-149; and West Bend Exhibits 5 and 6.) Yet, "quite a few times" he did inform Mr. Just of new equipment that needed to be insured. (Hearing T. 155-156.)

STANDARD OF REVIEW

Minn. Stat. § 176.481 grants this Court original jurisdiction allowing it to "reverse, affirm, or modify the order allowing or disallowing compensation and enter such judgment as it deems just and proper." This Court normally views facts in the light most favorable to the findings of the WCCA. *Hengemuhle v. Long Prairie Jaycees*, 358 N.W.2d 54, 60 (Minn. 1984). However, it is free to exercise its independent judgment in reviewing questions of law. *Bruns v. City of St. Paul*, 555 N.W.2d 522, 525 (Minn. 1996).

Whether the compensation judge had jurisdiction to find that West Bend was estopped from denying coverage for the Employee's injury is a question of law. Whether American Interstate insured ILS at the time of the Employee's injury involves an interpretation of Minn. Stat. § 176.185, and therefore, is also a question of law. Lastly, the issue of whether the compensation judge correctly held West Bend was estopped from denying coverage for the Employee's injury involves applying undisputed facts to the legal principal of promissory estoppel, and therefore, involves a question of law. If the Court finds American Interstate insured ILS at the time of the Employee's injury, the Court must next determine whether it was legally impossible for ILS to rely to its detriment on the misrepresentations of West Bend's agent. In the alternative, the Court must determine, as a matter of law, whether it was unreasonable for ILS to rely on the false certificates of insurance provided by West Bend's agent when ILS conceded it never informed the agent that it had employees.

ARGUMENT

I. ILS was insured for workers' compensation by American Interstate at the time of the Employee's injury because it was previously insured by American Interstate under the name Valley Erosion, Inc. and American Interstate failed to properly terminate coverage pursuant to Minn. Stat. § 176.185.

Regarding American Interstate's workers' compensation policy, two of the compensation judge's findings are legally erroneous. First, that American Interstate effectively cancelled and terminated its policy. Second, that coverage would not extend to ILS.

A. American Interstate failed to comply with Minn. Stat. § 176.185 because it did not provide notice of termination to Valley Erosion, Inc. and the commissioner.

The parties agree American Interstate previously issued a workers' compensation policy to Jeff Trog that named five separate corporations, including Valley Erosion, Inc. American Interstate attempted to cancel its coverage effective February 24, 2001. Minn. Stat. § 176.185, Subd. 1a(a), provides: "Within ten calendar days after the specified cancellation or termination date, the insurer must send to the insured and file with the commissioner a written notice of cancellation or termination in the manner prescribed by the commissioner." Subdivision 1a(c) further provides that a cancellation or termination is not effective "until the notice has been sent to the insured and received by the commissioner...." Contrary to Minn. Stat. § 176.185, American Interstate only mailed the notice of cancellation to one of the five named insured corporations. It did not provide a copy of the notice to Valley Erosion, nor did it file a copy with

the Commissioner. The statute is clear and unambiguous. Therefore, the compensation judge's finding that American Interstate effectively terminated its policy is erroneous.

B. ILS is covered by the American Interstate policy because it is the same corporation as Valley Erosion, Inc. The compensation judge erroneously created two exceptions that do not exist in Minn. Stat. § 176.185 to hold the statute does not apply: First, a name change exception. Second, an "inactive" status exception.

On May 1, 2002, Valley Erosion filed an Amendment of Articles of Incorporation with the Minnesota Secretary of State changing its name to ILS. The company, which was previously owned solely by Jeff Trog, issued equal shares to Jeff and John. The company continued in the lawn care and snow removal business with John running the businesses.

Contrary to the compensation judge's findings, the workers' compensation statute does not provide that an employer's name change or an employer's "inactive" status will relieve an insurer from its duty to provide the employer with notice of termination and file the notice with the commissioner. It is clear that American Interstate attempted to terminate coverage, but failed to do so. American Interstate's failure was not rectified by Valley Erosion's name change, nor its "inactive" status. Furthermore, the name change in no way affected American Interstate's ability to properly notify the corporation, or file the notice with the commissioner. Despite the name change, it could have still mailed the notice to Valley Erosion and filed it with the commissioner.

In *Zakrajshek v. Shuster*, 239 N.W.2d 919 (Minn. 1976), this Court held: "Minn. Stat. § 176.185 was not intended to provide free insurance to employers who are delinquent in their premium payments. It was intended to provide the employer a reasonable opportunity to obtain replacement insurance before his coverage is terminated and to provide the department a reasonable time to see that he does." In compliance with the holding in *Zakrajshek*, the purpose of the statute is best satisfied by holding ILS, formerly known as Valley Erosion, Inc., is still insured by American Interstate. First, the basis for the attempted non-renewal was not delinquent premiums, it was due to Valley Erosion's loss history and frequency of claims. Second, not only is the statute intended to provide the employer a reasonable opportunity to obtain replacement insurance, it is also intended to "provide the department a reasonable time to see that he does."

After receiving notice of cancellation or termination, Minn. Stat. 176.185, Subd. 1b requires the department to notify the employer of its obligation to obtain coverage. Due to American Interstate's failure to file a notice of termination, the department never had the opportunity to follow up with Valley Erosion to confirm it was going to obtain coverage. The name change would not have impacted the department's ability to follow up with Valley Erosion because it did not occur until after American Interstate attempted to terminate coverage. Furthermore, even if the department waited until after the name change to contact Valley Erosion, its inquiries likely would have still led it to ILS. The name change likely would have no impact on the outcome of the department contacting Valley

Erosion. Contrary to the compensation judge's findings, this is equally true during periods that Valley Erosion may have been inactive.

Unfortunately, this case involves a lot of speculation as to what would have happened had American Interstate complied with the law. It is certainly possible things would have turned out substantially better for Jeff and John Trog. The Court should not allow American Interstate to benefit from the uncertainty it created simply because Valley Erosion changed its name, or because Valley Erosion may have been temporarily inactive. By relying on these two factors, the compensation judge has created exceptions that do not exist in the statute. As counsel for ILS pointed out in its' brief to the WCCA, creating these distinctions could place other businesses at risk of having their workers' compensation policies terminated without notice. (ILS' WCCA Respondent's Brief, p. 15.)

II. If ILS was insured by American Interstate at the time of the Employee's injury, as a matter of law, it was impossible for ILS to rely to its detriment on the misrepresentations that West Bend insured it for workers' compensation coverage.

The compensation judge relied on the doctrine of equitable estoppel to argue West Bend was prevented from denying coverage for the Employee's injury. Equitable estoppel requires a showing that one party made promises or inducements that the other party relied on and the party will be harmed if estoppel is not applied. *Hydra-Mac, Inc. v. Onan Corp*, 450 N.W.2d 913, 919 (Minn. 1990), *citing Northern Petrochemical Co. v. U.S. Fire Ins. Co.*, 277 N.W.2d 408,

410 (Minn. 1979). *See, e.g., Kahn v. State, Univ. of Minn.*, 289 N.W.2d 737 (Minn. 1980), adopting equitable estoppel to workers' compensation cases.

Because American Interstate, as argued above, insured ILS at the time of the Employee's injury, ILS could not have relied on West Bend's agent to its detriment. To the extent the compensation judge held American Interstate did not insure ILS, he is correct that estoppel would be necessary to prevent harm to ILS. However, assuming this Court reverses the compensation judge's findings pertaining to American Interstate, then there is no longer a need to apply estoppel and the compensation judge's findings must also be reversed in this regard.

It is well established that estoppel should only be applied when necessary to prevent harm to the party invoking the doctrine. In the present case, it was not necessary to apply estoppel to protect ILS, assuming the Employee's claim is covered by American Interstate. However, the WCCA never addressed American Interstate's coverage, and therefore, its approach to the estoppel issue was completely flawed. Without deciding the coverage issue against American Interstate, it was impossible for the WCCA to determine whether it was necessary to apply estoppel to prevent harm to ILS.

Because the WCCA failed to properly consider all aspects of this appeal, in order to protect West Bend's right to review, it is essential this Court gives full consideration to the threshold issue of whether coverage existed with American Interstate due to its failure to provide and file proper notice. Only then can proper

consideration be given to whether the compensation judge correctly held that it is necessary to apply estoppel to protect ILS.

III. As a matter of law, it was unreasonable for ILS to rely on the certificates of insurance provided by West Bend's agent when ILS conceded it never informed the agent that it had Employees.

The compensation judge specifically held John Trog never informed West Bend or its agent that ILS had Employees. This finding is supported by the following facts: 1) When John took over ILS the company did not have any employees, nor did it have any employees for at least a month after John obtained liability insurance from West Bend. (Hearing T. 150-151.) 2) An insurance audit for ILS dated August 14, 2003 indicated Jeff was doing all the work himself with no employees. (Just deposition Exhibit 9.) 3) According to Mr. Just, both Jeff and John made it clear they would be the only individuals working for ILS. (Just deposition T. 86 and 94-95; and Just deposition Exhibits 19 and 20.) 4) John testified that he never informed Mr. Just of any changes in the payroll. (Hearing T. 148-189.)

In October 2004, John hired Mr. Schmitt to work as a laborer. (Schmitt T. 7-8; and Hearing T. 127 and 151.) In fact, multiple changes occurred in ILS' payroll prior to Mr. Schmitt's injury. (Hearing T. 148-149.) John never informed Mr. Just of these changes. (Finding 14; Hearing T. 148-149; and West Bend Exhibits 5 and 6.) Yet, "quite a few times" he did inform Mr. Just of new equipment that needed to be insured. (Hearing T. 155-156.)

It may have been reasonable for John Trog, as he testified, to review the certificates of insurance provided by Mr. Just for the limited purpose of securing

business. However, it is completely different to claim he relied on those certificates to confirm workers' compensation coverage for ILS' employees when he never informed West Bend or its agents that ILS had any employees. John induced certificates of insurance from West Bend's agent without ever disclosing the extent of the coverage needed. When John needed to insure new equipment he informed the agent, but not when he needed to insure new employees. Because ILS withheld information that was necessary for the agent to determine the extent of coverage needed, as a matter of law, it was unreasonable for John to rely on the certificates of insurance for anything other than securing business. This is similar to a situation where a contract is rescinded due to a party's misrepresentations. In *North Star Center, Inc. v. Sibley Bowl, Inc.*, 205 N.W.2d 331, 332 (1973), this Court held: "A contract may be avoided by one of the parties for his own mistake of fact when such mistake was caused by the inequitable conduct of the other contracting party." Similarly, it is undisputed that any information West Bend's agent provided regarding ILS' insurance needs was based on the false understanding that ILS did not have any employees.

IV. The compensation judge did not have jurisdiction to rule that West Bend was estopped from denying coverage for the Employee's injury.

This Court and the WCCA have reviewed numerous workers compensation cases involving coverage issues. Like the present case, some of them involve an employer that claims to have relied on the misrepresentations of an insurance agent. *See, e.g., Nehring v. Bast,* 103 N.W.2d 368 (Minn. 1960); *Oster v. Riley,* 150 N.W.2d 43 (Minn. 1967); and *Runnoe v. Bobs Business of Dorset, Inc.* 1994

WL 738334 (W.C.C.A. 1994). However, it does not appear in those cases the jurisdictional issue was raised by the parties or *sua sponte*.

Minn. Stat. § 175.16 allows the Commissioner of the Minnesota Department of Labor and Industry to delegate authority to compensation judges. However, Minn. Stat. § 175.17 limits the Commissioner's authority to administering "the laws relating to workers' compensation." ILS' coverage claims against West Bend actually involve contract or negligence issues between ILS and West Bend's agent. Neither theories of recovery pertain to "the laws relating to workers' compensation." Illustrative is the case of *Taft v. Advance United Expressway*, 464 NW2d 725 (Minn. 1991), where the Supreme Court held the workers' compensation division did not have jurisdiction to interpret or apply Minnesota Chapter 60C, the Minnesota Insurance Guaranty Association Act.

In contrast to the claims against West Bend, the coverage issue pertaining to American Interstate was certainly within the compensation judge's jurisdiction because it involved an interpretation of Minn. Stat. Sec. 176.185.

CONCLUSION

For the foregoing reasons, Appellants respectfully request the Court to reverse the decisions of the Workers' Compensation Court of Appeals and the compensation judge. If the Court holds the compensation judge properly exercised his jurisdiction, it should further hold West Bend cannot be estopped from denying coverage because American Interstate insured ILS at the time of the Employee's injury. In the alternative, the Court should hold West Bend cannot be estopped from denying coverage because it was unreasonable, as a matter of law, for ILS to rely on the misrepresentations of West Bend's agent when ILS failed to disclose essential information necessary for the agent to assess ILS' coverage needs.

Respectfully submitted,

Dated: 7-19-07

JARDINE, LOGAN & OBRIEN, P.L.L.P.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).