
NO. A10-446

State of Minnesota
 In Supreme Court

Brian K. Martin,

Employee,

vs.

Morrison Trucking, Inc.,

Employer-Respondent,

and

Uninsured,

Travelers Insurance Company,

Insurer-Relator,

and

Special Compensation Fund,

Respondent.

REPLY BRIEF OF INSURER-RELATOR
 TRAVELERS INSURANCE COMPANY

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SUMMARY OF ARGUMENT

As set forth in Travelers' opening brief, the WCCA's conclusion that the exclusion of Minnesota benefits is "void as against public policy" because Wisconsin requires its employers to carry workers' compensation insurance is erroneous. Neither respondent even addressed the Wisconsin case law or statutes cited by Travelers unequivocally proving that Wisconsin does *not* mandate that its employers obtain insurance for workers' compensation benefits that may become due under the law of *other states*. In so holding, the WCCA pronounced an unambiguous contractual provision "void" by judicial fiat, without any legal basis, and transformed the policy into an "all states, all risk" policy, which was never intended or even permitted by the Wisconsin Pool. This action interferes with Wisconsin's right to govern its own assigned risk Pool, and imposes special "Minnesota" rules on not only Wisconsin, but the other 48 states.

Instead of addressing Travelers' arguments, respondents continue to press the "reasonable expectations" doctrine, which this Court previously addressed, remanding to the WCCA in light of Carlson v. Allstate Insurance Co., 749 N.W.2d 41 (Minn. 2008). On remand, the WCCA conceded the inapplicability of the doctrine. Neither respondent appealed; therefore, the "reasonable expectations" issue is resolved and not available for consideration on this appeal.

ARGUMENT

I. Contrary to respondents' arguments, public policy is *not* served by judicially expanding insurance coverage under unambiguous written contracts because the insured businessowner "glanced" at its insurance policy instead of reading it.

Both respondents make the general, unsupported assertion that "public policy" somehow supports "requiring [the Wisconsin Pool] provide Morrison with Minnesota workers' compensation coverage by its policy in this case." (SCF Brief, p. 20; Morrison Brief, p. 9.) Respectfully, as set forth in Travelers' opening brief, Wisconsin has no expressed policy – or interest in – mandating that its employers purchase insurance to cover benefits due under *Minnesota* law. Wisconsin, logically, mandates only that coverage for benefits that may become due under *its own* workers' compensation law. Tellingly, neither respondent even addressed the authority cited by Travelers to this effect. Travelers' Brief, p. 20-23 (citing Wis. Stat. § 102.31; State v. Koch, 537 N.W.2d 39 (Wis. Ct. App. 1999); Simonton v. Dept. of Industry, Labor and Human Relations, 214 N.W.2d 302 (Wis. 1974)). With all due respect, the WCCA was simply wrong to hold that Wisconsin public policy requires the Wisconsin Pool to extend coverage for *Minnesota* benefits.

As for Minnesota, respondents' "public policy" interpretation flatly contradicts longstanding law. Minnesota has no expressed policy interest in disregarding unambiguous contract language when necessary to find insurance coverage – even workers' compensation insurance coverage. It has no policy interest in imposing special rules on the assigned risk Pools of the other 49 states. It has no policy interest in

permitting insureds to “assume” they received all coverage applied for instead of reading their insurance policies to confirm that fact. In fact, Minnesota’s expressed public policy is the opposite. See Carlson v. Allstate Ins. Co., 749 N.W.2d 41, 48 (Minn. 2008) (insurer’s failure to orally inform an insured about an exclusion is insufficient grounds to void the exclusion) (citing Hubred v. Control Data Corp., 442 N.W.2d 308, 310 (Minn. 1989)); Atwater Creamery Co. v. Western Nat’l Mut. Ins. Co., 366 N.W.2d 271, 278 (Minn. 1985) (the doctrine of reasonable expectations *does not excuse the insured from reading the policy*) (emphasis supplied); Shannon v. Great Am. Ins. Co., 276 N.W.2d 77, 78 (Minn.1979) (“it would be wholly improper to impose coverage liability upon an insurer for a risk not specifically undertaken and for which no consideration has been paid.”).

The WCCA’s holding also contradicts longstanding Minnesota law – or “policy” - - supporting freedom of contract. It interferes with the principle of comity between states. It ignores the undisputed record. It ignores the plain language of the policy. It ignores the secondary sources the WCCA itself unilaterally identified, all of which state that involuntary market Pools cannot insure exposure outside their state of domicile. AA.55-56 (Herrmann Depo., p. 21-22); AA.108; AA.108; AA.112; AA.117. Neither the WCCA nor respondents acknowledge the fact that in this case there was, in fact, exposure in Minnesota – Indeed, Martin was injured here. There is nothing supporting the WCCA’s holding, except the WCCA’s own policy having insurance coverage for all possible claims. That, respectfully, is not enough to throw longstanding precedent and the rules and policies of the residual market pools of the *other* states on their heads.

Ultimately, a state's general public policy of requiring businesses domiciled there to obtain insurance for benefits that may become due under its workers' compensation laws is unremarkable. The notion that this policy could somehow support "voiding" insurance policy exclusions for liability imposed by the law of *other states* defies all reason. None of the parties to this litigation ever advanced such a position or theory prior to remand. Tellingly, the WCCA failed to reach this issue in its lengthy initial decision, instead devoting its time to whether Travelers "correctly" included the subject exclusion. If public policy prevented the exclusion, that analysis would be entirely superfluous.

In the end, there is simply no legal basis to ignore the plain and enforceable contract language, which even the WCCA agrees is unambiguous. The WCCA should be reversed.

II. It is undisputed that, due to the Minnesota residence of Morrison's employees, the Wisconsin Pool *required* Travelers to exclude Minnesota.

Travelers, as servicing carrier of the Wisconsin Pool, does not set the rules of the Wisconsin Pool. It is *undisputed* that the Pool *required* Travelers to exclude Minnesota benefits in this case due to the known risk created by Morrison's many employees who live here. AA.57 (Herrmann Depo., p. 26.)¹ While respondents, particularly Morrison, now make an after-the-fact challenge to this requirement, the undisputed testimony is the

¹ The SCF cites the WCCA's observation that "Travelers [never] contacted the Pool concerning [Morrison's] eligibility for Wisconsin Limited Other States Coverage or requested additional information to clarify the employer's eligibility for the requested coverage," which perfectly illustrates the point that both the WCCA and respondents absolutely ignore Herrmann's undisputed testimony. (SCF Brief, p. 20-21) (citing AA.09) (WCCA decision, p. 9). Further, servicing carriers do not contact "the Pool" to underwrite each and every policy. The Pool issues a manual which the servicing carriers implement.

policy was issued one-hundred-percent consistent with Wisconsin Pool rules. Even Morrison's agent testified she knew Minnesota benefits were not covered.

The irony of the Minnesota WCCA telling the Wisconsin Pool administrators how to run the Pool for purposes of Minnesota is striking, especially given that the WCCA's own outside sources state that known exposure outside the Pool's state of domicile cannot be insured. The end result is that the Pools of several states are now required to cover Minnesota benefits if the employer "needed" coverage here and thought the Wisconsin policy would provide it. Never before has an affirmative burden of securing the necessary insurance coverage been shifted from insureds and their agents to the insurer – here, the servicing carriers of the involuntary risk plans of the other 48 states. The alternative is to simply require insureds and their agents to assess their own needs and to read their own insurance policies, which indeed, is the longstanding law of this state. See Carlson v. Allstate Ins. Co., 749 N.W.2d at 48 (insurer's failure to orally inform an insured about an exclusion is insufficient grounds to void the exclusion) (citing Hubred v. Control Data Corp., 442 N.W.2d 308, 310 (Minn. 1989)); Atwater Creamery, 366 N.W.2d at 278 (the doctrine of reasonable expectations *does not excuse the insured from reading the policy*) (emphasis supplied). The WCCA's holding contradicts the law, interferes with another state's sovereign right to govern its own assigned risk Pool, and ultimately rewrites the rules of the involuntary market. The WCCA should be reversed.

III. The WCCA's holding that the reasonable expectations doctrine does not apply was not appealed by either respondent; therefore, it is not an issue available for consideration by this Court.

The time limitations for appeals are jurisdictional. See, e.g., Mingen v. Mingen, 662 N.W.2d 926, 929 (Minn. 2003). All issues decided adversely to the parties must be appealed within the appropriate time limits, including issues decided adversely to respondents. See Minn. R. Civ. App. P. 106. Respondents must appeal portions of orders or judgments or findings of fact which would result in an adverse judgment should appellant prevail on appeal. See Weigel v. Miller, 573 N.W.2d 759, 760 (Minn. Ct. App. 1998); Johnson v. Am. Econ. Ins. Co., 419 N.W.2d 126, 128 n.1 (Minn. Ct. App. 1988). The purpose of this requirement is to resolve all issues between the parties in one proceeding. If no notice of review is filed, the issue is not preserved for appeal. See, e.g., Arndt v. Am. Family Ins. Co., 394 N.W.2d 791 (Minn. 1986) (respondent must file notice of review to obtain appellate review of issues decided adversely to it, even if the ultimate judgment is entirely in the respondent's favor); City of Ramsey v. Holmberg, 548 N.W.2d 302 (Minn. Ct. App. 1996) (even if judgment below is ultimately in its favor, party must file notice of review to challenge district court's ruling on particular issue; if party fails to file notice, issue is not preserved for appeal).

Here, the WCCA reversed course and found the doctrine of "reasonable expectations" inapplicable. AA.05-06. If Travelers prevails on appeal, this finding will result in an adverse judgment for respondents. Therefore, it was the proper subject of a respondent's notice of review under Minn. R. Civ. App. P. 106. Although both

respondents heavily briefed the issue, it was not properly preserved, and therefore not available for consideration on appeal.

The same is true for the “reduction of coverage” argument alluded to by Morrison – essentially, that Morrison’s receipt of an insurance “binder” meant all coverage *requested* was automatically provided, without regard to the coverage actually *available* through the Wisconsin Pool or actual language of the policy. See Morrison’s Brief, p. 14 (citing Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc., 258 N.W.2d 570 (Minn. 1977)). This issue was not even addressed by the WCCA, let alone identified in any notice of appeal or notice of review, so it is not a subject of consideration on this appeal.

CONCLUSION

Instead of addressing the arguments raised by Travelers, the respondents instead focused on the “reasonable expectations” doctrine – an issue resolved prior to this appeal. Neither respondent contradicted the fact that the secondary sources cited by the WCCA actually support Travelers. Neither respondent attempted to distinguish the case law or statutes which, although cited by the WCCA, also support Travelers. Neither respondent even mentions, let alone addresses, the undisputed testimony of the only witness in this case with knowledge of the administration of the Wisconsin Pool – Ralph Herrmann, the President of the WCRB – that (1) the Pool cannot insure exposure outside Wisconsin; and (2) one of the ways it avoids such exposure is by requiring servicing carriers like Travelers to exclude limited other states coverage in any state where the employer’s employees reside. While protesting that Travelers’ exclusion of Minnesota was somehow “underhanded,” respondents ignore the fact that the Pool’s rules succeeded in identifying

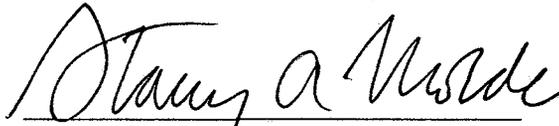
Minnesota exposure in this case. It is undisputed, even among the WCCA's sources, that state Pools cannot insure known exposure outside their borders.

Ultimately, even the WCCA found that the insurance policy clearly and unambiguously excludes Minnesota. There is simply no legal basis to "invalidate," *sua sponte* on remand, such an exclusion based on "public policy" that does not exist. The WCCA should be, once again, reversed.

Respectfully submitted,

Dated: May 20, 2010.

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