

No. A10-446

STATE OF MINNESOTA
IN SUPREME COURT

Bryan Martin,
Employee-Respondent,
vs.
Morrison Trucking, Inc.,
Employer-Respondent,
And
Travelers Insurance Company,
Insurer-Relator,
And
Minnesota Department of Labor and Industry, Special Claims Section, f/k/a
Special Compensation Fund,
Respondent.

BRIEF AND APPENDIX OF THE MINNESOTA DEPARTMENT OF LABOR
AND INDUSTRY, SPECIAL CLAIMS SECTION

Robert E. Kuderer (#207652)
Stacey A. Molde (#340947)
JOHNSON & CONDON, P.A.
7401 Metro Blvd., Suite 600
Minneapolis, MN 55439-3034
(952) 831- 6544
Attorneys for Insurer-Relator

LORI SWANSON
ATTORNEY GENERAL
Rory H. Foley (#0155056)
Assistant Attorney General
445 Minnesota Street, Suite 900
St. Paul, MN 55101-2127
(651) 297-2972

Thomas L. Cummings (#0237723)
JARDINE, LOGAN & O'BRIEN,
P.L.L.P.
8519 Eagle Point Blvd., Suite 100
Lake Elmo, MN 55042
(651) 290-6500
*Attorneys for Employer-
Respondent*

*Attorneys for Respondent Special
Claims Section*
Mr. Bryan Martin
4527 13th Avenue NW
Rochester, MN 55901
Employee-Respondent

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).

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
LEGAL ISSUES	1
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS	5
SCOPE OF REVIEW.....	13
ARGUMENT	14
I. THE WCCA CORRECTLY HELD THAT TRAVELERS INSURANCE COMPANY EXTENDED MORRISON TRUCKING, INC., MINNESOTA WORKERS' COMPENSATION INSURANCE COVERAGE BY ITS LIMITED OTHER STATES INSURANCE ENDORSEMENT.....	14
A. The Travelers' Policy Provided Coverage For A Known Risk.	16
B. The Servicing Carrier Agreement.....	18
C. The Wisconsin Workers' Compensation Insurance Pool Handbook.	20
II. THE REASONABLE EXPECTATIONS OF THE INSURED DOCTRINE, IF APPLIED, REQUIRES THAT TRAVELERS EXTEND MORRISON TRUCKING MINNESOTA COVERAGE IN THIS CASE.	24
III. TRAVELERS MUST REIMBURSE THE SPECIAL CLAIMS SECTION FOR ALL BENEFITS IT PAID MARTIN.	27
CONCLUSION	28
APPENDIX	RA

TABLE OF AUTHORITIES

Page

Federal Case

<i>St. Paul Fire & Marine Ins. Co. v. Federal Deposit Ins. Corp.</i> , 968 F.2d 695 (8th Cir. 1992)	1, 19
--	-------

State Cases

<i>Atwater Creamery Co. v. Western Nat'l Mut. Ins. Co.</i> , 366 N.W.2d 271 (Minn. 1985)	25, 26
<i>Carlson v. Allstate Ins. Co.</i> , 734 N.W.2d 695 (Minn. Ct. App. 2007).....	26
<i>Carlson v. Allstate Ins. Co.</i> , 749 N.W.2d 41 (Minn. 2008)	passim
<i>Falls v. Coca Cola Enterprises</i> , 726 N.W.2d 96 (Minn. 2007)	13
<i>Franklin v. Western Nat'l Mutual Ins. Co.</i> , 574 N.W.2d 405 (Minn. 1998)	13
<i>Krovchuk v. Koch Oil Refinery</i> , 48 W.C.D. 607 (1993), 502 N.W.2d 216 (Minn. June 3, 1993).....	14
<i>Kwong v. Depositors Ins. Co.</i> , 627 N.W.2d 52 (Minn. 2001)	1, 19
<i>Martin v. Morrison Trucking, Inc.</i> , 2010 WL 677240	1, 13
<i>Martin v. Morrison Trucking, Inc.</i> , 765 N.W.2d 639 (Minn. 2009)	4, 24
<i>Nicolson v. Home Ins. Co.</i> , 138 Wisc. 2d 581, 405 N.W.2d 327 (1987).....	1, 19

<i>Schmidt v. Innovative Lawn Systems, Inc.</i> , 67 W.C.D. 306, 2007 WL 1727849	26
---	----

<i>Wanzek Construction, Inc. v. Employers Ins. of Wausau</i> , 679 N.W.2d 322 (Minn. 2004)	13
---	----

State Statutes

Minn. Stat. § 176.001 (2008)	18, 20
------------------------------------	--------

Minn. Stat. § 176.021 (2008)	18
------------------------------------	----

Minn. Stat. § 176.183 (2008)	passim
------------------------------------	--------

Minn. Stat. § 176.471 (2008)	13
------------------------------------	----

Minn. Stat. § 79.01 (2008)	15
----------------------------------	----

Minn. Stat. ch. 176 (2008).....	13, 19
---------------------------------	--------

Wisc. Stat. § 102.28(2)(a) (2008).....	18, 19
--	--------

Wisc. Stat. § 102.31(1)(a) (2008).....	19
--	----

Wisc. Stat. § 619.01 (2008).....	15
----------------------------------	----

Other Authorities

2 Couch on Insurance, Third Ed. § 22.11 (2008).....	26
---	----

LEGAL ISSUES

- I. Does the Travelers Insurance Company supplementary workers' compensation insurance policy require that it provide Morrison Trucking with Minnesota workers' compensation coverage for Bryan Martin's injury?

The compensation judge held that the Travelers Insurance Company policy did not provide Minnesota coverage.

On remand, the Workers' Compensation Court of Appeals reversed and held that the policy and the Supplementary Wisconsin Limited Other States Coverage Request bound coverage and required that Travelers provide for Morrison's benefits due under Minnesota's Workers' Compensation Act.

- II. Does the Supreme Court's decision in *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41 (Minn. 2008) require that the Workers' Compensation Court of Appeals determine whether the reasonable expectations of the insured doctrine required that coverage be extended?

The compensation judge found that the reasonable expectations of the insured doctrine did not invalidate the exclusion of Minnesota workers' compensation insurance coverage in the Travelers policy.

The Workers' Compensation Court of Appeals on remand held that the workers' compensation policy language extended Minnesota coverage without resort to the doctrine.

Apposite Authorities:

Carlson v. Allstate Ins. Co., 749 N.W.2d 41 (Minn. 2008)

Martin v. Morrison Trucking, Inc., 2010 WL 677240

Nicolson v. Home Ins. Co., 138 Wisc. 2d 581, 405 N.W.2d 327 (1987)

Kwong v. Depositors Ins. Co., 627 N.W.2d 52, 55 (Minn. 2001)

St. Paul Fire & Marine Ins. Co. v. Federal Deposit Ins. Corp., 968 F.2d 695 (8th Cir. 1992).

- III. Must the Travelers Insurance Company reimburse the Minnesota Department of Labor and Industry's Special Claims Section for workers' compensation benefits it paid Martin under the Minnesota Workers' Compensation Act?

The compensation judge held that Travelers Insurance Company did not have to reimburse the Special Claims Section.

On remand the Workers' Compensation Court of Appeals held that Travelers Insurance Company must reimburse the Special Claims Section for all benefits it paid Martin.

STATEMENT OF THE CASE

Respondent Bryan Martin worked as a truck driver for Morrison Trucking, Inc. (“Morrison Trucking”) and injured his right heel on July 31, 2002, in a work-related accident in Winona, Minnesota. Martin reported the injury to his employer, which referred his claim to Travelers Insurance Company (“Travelers”), its workers’ compensation insurer. Travelers thereafter paid Martin Wisconsin workers’ compensation benefits pursuant to the terms of its Wisconsin Workers’ Compensation Insurance Pool policy.

On May 9, 2005, Martin filed a claim petition seeking Minnesota workers’ compensation benefits. Martin named the Minnesota Department of Labor and Industry, Special Claims Section, f/k/a Special Compensation Fund (“Special Claims Section”), as a party pursuant to Minn. Stat. § 176.183 (2008) after Travelers denied that its policy afforded Morrison Trucking Minnesota workers’ compensation insurance coverage.

On April 5, 2006, the Special Claims Section filed a Petition for Reimbursement against Morrison Trucking for the benefits it paid Martin pursuant to the Stipulation for Settlement.¹ On July 31, 2006, Morrison Trucking served and filed a Motion to Join Travelers. On August 11, 2006, Compensation Judge Catherine Dallner ordered Travelers joined as a party. On February 7, 2007, an Award on Stipulation approved the Stipulation for Settlement between Martin and the Special Claims Section, and thereafter,

¹ Although Bryan Martin is listed as a party, by his settlement with the Special Claims Section, he is no longer participating in this appeal.

the Special Claims Section paid Martin \$67,500 as a full, final and complete settlement of his claim for Minnesota workers' compensation benefits.

On February 7, 2008, a hearing on the Special Claims Section's Petition for Reimbursement was held before Compensation Judge Catherine Dallner at the Office of Administrative Hearings, Workers' Compensation Section, in St. Paul, Minnesota. On April 25, 2008, Judge Dallner issued her Findings and Order, and found Morrison Trucking was uninsured for Minnesota workers' compensation insurance coverage, and ordered Morrison Trucking to reimburse the Special Claims Section \$67,500, plus costs, for all benefits it had paid Martin pursuant to the Stipulation for Settlement, together with a 65% penalty in the amount of \$43,875 pursuant to Minn. Stat. § 176.183, subd. 2 (2008).

On May 23, 2008, Morrison Trucking filed a Notice of Appeal to the Workers' Compensation Court of Appeals ("WCCA"). On October 28, 2008, the WCCA reversed the compensation judge's Findings and Order, and vacated the order for penalties against Morrison Trucking.

On November 26, 2008, Relator Travelers filed a Petition for Writ of Certiorari with the Clerk of Appellate Courts.

On May 27, 2009, this Court vacated the WCCA's decision and remanded it to the WCCA for consideration of this Court's decision in *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41 (Minn. 2008). *Martin v. Morrison Trucking, Inc.*, 765 N.W.2d 639 (Minn. 2009). On February 11, 2010, the WCCA issued its decision, again reversing the compensation judge's April 25, 2008 Findings and Order, vacating the penalty assessed

against Morrison Trucking, and ordering Travelers Insurance Company to reimburse the Special Compensation Fund for the Minnesota workers' compensation benefits it paid to and on behalf of Bryan Martin.

On March 8, 2010, Relator filed a Petition for Writ of Certiorari, Writ of Certiorari, and Statement of the Case.

STATEMENT OF FACTS

Bryan Martin worked as a truck driver for Morrison Trucking, and on July 31, 2002, sustained a left heel injury in Winona, Minnesota, while in the course and scope of his employment. Findings and Order dated April 25, 2008; Stipulation No. 1; AA 40.² Martin, a Rochester, Minnesota resident, injured his heel exiting the truck after he had delivered a load of salt transported from Utah to a Culligan store in Winona. Transcript ("T.") 16-17, 35, 47; Ex. B.

Morrison Trucking started in 1995, and operated out of Red Wing, Minnesota, until 1997. T. 41. In 1997, Morrison Trucking relocated to Hager City, Wisconsin, where it has its office and garage, and where its fleet of trucks and trailers are repaired and maintained. T. 34-35; Ex. F. Heritage Insurance Company insured Morrison Trucking from 2000 through 2001. T. 61; Morrison Trucking Ex. 4. In July, 2001, Morrison changed insurance agents, and the Lawrence-Bombach Insurance Agency in Red Wing, Minnesota thereafter wrote Morrison Trucking's workers' compensation

² "AA" refers to Travelers' appendix to its brief.

insurance coverage. T. 26-27, 53. The agency also wrote Morrison Trucking's general liability and collision insurance coverage. T. 26-27.

Morrison Trucking "hired" its drivers after they completed their paperwork at the Hager City facility. T. 36. Once hired, drivers picked up their trucks in Hager City and ordinarily drove to Northfield, Minnesota where they picked up loads for delivery in Salt Lake City, Utah. T. 35. Morrison Trucking paid the drivers at its Hager City terminal. T. 36. Ninety-five percent of Morrison's freight loads went from Northfield, Minnesota to Salt Lake City, Utah. T. 35. Upon delivery of the freight in Utah, the Morrison Trucking driver ordinarily picked up a return load of salt for delivery in southern Minnesota. T. 35. In addition to Wisconsin, Morrison Trucking drivers regularly drove through the states of Minnesota, South Dakota, Wyoming, Utah, Nebraska, and Iowa. T. 35. Morrison Trucking drivers began and ended every run in Hager City, Wisconsin. T. 36.

In July, 2001, Morrison's Heritage Insurance workers' compensation insurance policy expired. T. 54. Morrison Trucking was unable to obtain a stand-alone workers' compensation policy through the voluntary insurance market. T. 46, 59-60. Geraldine Petree, a licensed insurance agent with the Lawrence-Bombach Agency, submitted Morrison Trucking's workers' compensation insurance application through the Wisconsin Workers' Compensation Insurance Pool ("Pool") administered by the Wisconsin Compensation Rating Bureau ("Bureau"). T. 52, 59, 68-69. The Wisconsin Pool is the involuntary insurance market. T. 93-94. The Bureau assigns an employer's

coverage to a servicing insurance carrier in the Pool. AA90. Only the Pool can bind workers' compensation coverage. Traveler's Insurance Co. Ex. 1.

Agent Petree filed the Morrison Trucking insurance application with the Wisconsin Pool because Morrison Trucking had relocated the business to Wisconsin and this was the only available workers' compensation insurance market for long-haul trucking firms. T. 59-60. Petree also filed a form entitled "Supplementary 'Wisconsin Limited Other States Coverage' Request." Petree Depo. Ex. 7; AA60. An employer that wants supplementary coverage must complete and submit the Supplementary Wisconsin Limited Other States Coverage Request form. *Id.*; T. 102-103. When he applied for Pool coverage, Morrison told Petree that all of Morrison Trucking employees were Wisconsin residents, and that it did not have any Minnesota employees, but that it did have Minnesota Owner/Operators. T. 31, 59-60, 71-72. Morrison's Pool application also indicated that it had employees who worked outside the State of Wisconsin. T. 32. The Application for the Supplementary Wisconsin Limited Other States Coverage that Morrison signed, and that Petree submitted to the Bureau, listed a number of drivers with Minnesota addresses. T. 63, 74-76; Petree Depo. Ex. 7; RA60.

Morrison Trucking did not list all of the states where it did business in its application. AA60. Tom Morrison, the company's owner, understood that because his company was an interstate trucking firm, he needed workers' compensation insurance coverage wherever his drivers worked because his employees could be injured any where. T. 29-30, 40. Morrison, therefore, completed and requested the Supplementary Wisconsin Limited Other States Coverage Request form. T. 107; AA60. Morrison

Trucking's Supplementary Wisconsin Limited Other States Coverage Request listed the names and Minnesota residence locations for its drivers, including Martin. AA60.

On September 21, 2001, the Wisconsin Bureau issued Morrison an insurance binder effective September 15, 2001. RA1.³ Nothing in the Bureau's insurance binder excluded Morrison's requested Minnesota coverage. Morrison Ex. 2; T. 109. The policy binder assigned the insurance policy coverage to the Travelers Insurance Company (hereinafter, alternatively, "Travelers") as the servicing carrier. Morrison Ex. 2. Insurers acting as servicing carriers for the Pool must sign a Servicing Carrier Agreement. Morrison Ex. 3. The Servicing Carrier Agreement contains the insurer's contractual obligations with the Pool and subjects the insurer to the requirements and performance standards contained in the Wisconsin Workers' Compensation Insurance Pool, Information and Procedures Handbook. AA61. The Handbook requires that an insurer issue the policy, including any requested endorsements, within 30 days of receipt of the completed application. AA102.

Carrie Sorenson, a Travelers' workers' compensation account manager and underwriter, reviewed the Bureau's binder letter and its attachments. T. 95-96. Sorenson also reviewed Morrison Trucking's insurance application and the Supplementary Wisconsin Limited Other States Coverage Request. T. 94, 107-108. Sorenson underwrote Morrison Trucking's risk, and issued it a policy, without the requested Minnesota coverage. Morrison Ex. 3; T. 94, 107-108.

³ RA refers to the appendix in this brief.

Part One of the Travelers' policy issued to Morrison Trucking sets forth the coverage extended. AA102-103. Part Three of the Travelers' policy explains the terms of the Other States Insurance coverage. It provides:

A. How This Insurance Applies

1. This other states' insurance applies only if one or more states are shown in Item 3C of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are self-insured for such work, all provisions of the policy will apply as though the state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers' compensation law of the state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of the policy in any state not listed in Item 3.A. of the Information Page, coverage will not be provided for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

Morrison Ex. 3; AA103.

The first page of Section Three to the Traveler's policy, the Wisconsin Limited Other States Insurance endorsement, appears eight pages later, and provided:

'PART THREE-OTHER STATES INSURANCE' is amended to read as follows:

1. Other states insurance applies in all states except Wisconsin, those states having a monopolistic state fund and those states listed in the schedule below.
2. When other states insurance is applicable, we will reimburse you for the benefits you are required to pay under the Workers' Compensation Law of the Applicable state.

SCHEDULE OF EXCLUDED STATES

MN

IMPORTANT! IF YOU BEGIN WORK IN ANY STATE OTHER THAN WISCONSIN, YOU MUST OBTAIN INSURANCE COVERAGE IN THAT STATE AND DO WHATEVER ELSE MAY BE REQUIRED UNDER THAT STATE'S LAW, AS 'WISCONSIN LIMITED OTHER STATES INSURANCE' DOES NOT SATISFY THAT STATE'S WORKERS' COMPENSATION LAW.

AA103.

Travelers issued Morrison Trucking its policy on December 20, 2001. RA3. Neither the Lawrence-Bombach agent, Geraldine Petree, the Wisconsin Workers' Compensation Insurance Pool representative, Carrie Sorenson, nor any Travelers' representative ever informed Morrison that the workers' compensation policy he received excluded *only* Minnesota coverage. T. 38-39, 66. Morrison testified that Petree told him she did not know that the Travelers' policy excluded Minnesota coverage prior to Martin's accident. T. 83-84. Petree knew, however, that Morrison wanted coverage for his company employees wherever they worked. T. 85. Morrison first became aware that the Travelers' policy excluded Minnesota coverage only after Martin's attorney pointed out the excluded states list in the policy. T. 34. Travelers, however, never reduced Morrison's workers' compensation premium due to its exclusion of Minnesota coverage. T. 112-113.

On July 31, 2002, Bryan Martin suffered an injury in Winona, Minnesota, while in the course and scope of his duties with Morrison Trucking. Stipulation No. 1; AA40. Travelers paid Martin Wisconsin workers' compensation benefits. Stipulation No. 4; AA40. Travelers denied Martin Minnesota workers' compensation benefits. AA40.

On April 5, 2006, the Special Claims Section filed a Petition for Reimbursement against Morrison. Special Claims Section Ex. F; RA28. Morrison moved to join Travelers in the action. On August 11, 2006, Compensation Judge Catherine Dallner ordered Travelers joined as a party. On February 2, 2007, Martin entered a Stipulation for Settlement with the Special Claims Section, which paid him an additional \$67,000 in benefits, representing the difference between the Minnesota benefits he claimed and the Wisconsin workers' compensation benefits that Travelers previously paid. Special Claims Section Ex. B; RA35.

The Special Claims Section alleged that the Travelers' policy language and the reasonable expectations of the insured doctrine required that Travelers' reimburse the Special Claims Section for the Minnesota workers' compensation insurance benefits it paid Martin or on his behalf. Special Claims Section's Petition for Reimbursement; RA28.

On April 25, 2008, the compensation judge held that the Travelers' policy did not provide Morrison Trucking with Minnesota workers' compensation Insurance coverage. AA40. She further held that the "Reasonable Expectations of the Insured Doctrine" did not invalidate the Minnesota exclusion in the Travelers' policy. AA40. The compensation judge also held that the doctrine did not require Travelers to reimburse the Special Claims Section for the workers' compensation benefits it must pay Martin beyond those required by the Wisconsin Workers' Compensation Act. AA41. The compensation judge ordered that Morrison Trucking reimburse the Special Claims

Section for all benefits it must pay to or on behalf of Martin, and also ordered that it pay the Special Claims Section an additional 65% penalty.⁴ AA41.

On October 29, 2008, the WCCA reversed the compensation judge's order and vacated the statutory penalty assessed.⁵ AA01, AA18-19. The WCCA held that the Pool had bound coverage for Morrison Trucking, and that, as a servicing carrier for the Pool, Travelers was contractually bound to provide coverage for Morrison, and to reimburse the Fund for all benefits it must pay to or on behalf of Martin. AA18-19.

On November 26, 2008, Relator Travelers filed a Petition for Writ of Certiorari with the Clerk of Appellate Courts.

On May 27, 2009, this Court vacated the WCCA's decision and remanded it for consideration of this Court's decision in *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41 (Minn. 2008). On February 11, 2010, following remand, the WCCA issued its decision. The WCCA again reversed the compensation judge's April 25, 2008 Findings and Order, vacated the penalty assessed against Morrison Trucking, and ordered Travelers Insurance Company to reimburse the Special Compensation Fund for the Minnesota workers'

⁴ See Minn. Stat. § 176.183, subd. 2 (2008) (requiring that the compensation judge automatically assess a 65% penalty on all benefits paid to or on behalf of the injured employee, payable to the Special Claims Section when an uninsured employer is found liable for Minnesota workers' compensation benefits).

⁵ On September 17, 2008, Tom Morrison filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court. On December 29, 2008, the Bankruptcy Court granted the Special Claims Section's Motion to Appear Pro Hac Vice in Wisconsin Bankruptcy Court in order to preserve its potential claim against Morrison. On December 30, 2008, the Special Claims Section filed a Motion to Extend the Time to File a Complaint to Determine Dischargeability of a Debt should the compensation judge's decision be affirmed.

compensation benefits it had paid Bryan Martin. AA01-23.⁶ The WCCA reviewed the record again and determined that the Limited Other States Endorsement provided Morrison Trucking with Minnesota workers' compensation insurance coverage. AA14-15. It further held that nothing in the Limited Other States Endorsement provided Travelers a legitimate basis to exclude Minnesota from coverage. AA17. The WCCA held that the Travelers policy language required coverage, thus making the application of the reasonable expectations doctrine and *Carlson v. Allstate Ins. Co.* unnecessary. AA05-06.

On March 8, 2010, Relator filed a Petition for Writ of Certiorari, Writ of Certiorari, and Statement of the Case.

SCOPE OF REVIEW

The Minnesota Supreme Court has original jurisdiction for review of the WCCA decisions as set forth in Minn. Stat. § 176.471, subd. 1 (2008). Travelers appeals from the WCCA determination that the Travelers policy extended Minnesota workers' compensation insurance coverage for Morrison Trucking Company. Interpretation of insurance policy language is a question of law. *Wanzek Construction, Inc. v. Employers Ins. of Wausau*, 679 N.W.2d 322, 324 (Minn. 2004); *Franklin v. Western Nat'l Mutual Ins. Co.*, 574 N.W.2d 405, 406 (Minn. 1998). Review of questions of law is *de novo*. *See Falls v. Coca Cola Enterprises*, 726 N.W.2d 96 (Minn. 2007). This Court must determine whether the WCCA's opinion conforms with Minn. Stat. ch. 176 (2008) or

⁶ The WCCA found that application of the reasonable expectations doctrine was "unnecessary in determining the validity of the exclusionary endorsement in this case." *Martin v. Morrison Trucking*, 2010 WL 677240 at *4; AA6.

whether the WCCA committed an error of law. *See Krovchuk v. Koch Oil Refinery*, 48 W.C.D. 607 (1993), *aff'd without opinion*, 502 N.W.2d 216 (Minn. June 3, 1993). A decision which rests upon the application of a statute or rule to essentially undisputed facts involves a question of law. *Id.*

ARGUMENT

I. THE WCCA CORRECTLY HELD THAT TRAVELERS INSURANCE COMPANY EXTENDED MORRISON TRUCKING, INC., MINNESOTA WORKERS' COMPENSATION INSURANCE COVERAGE BY ITS LIMITED OTHER STATES INSURANCE ENDORSEMENT.

The WCCA on remand held that the Limited Other States Insurance Coverage Endorsement in the Travelers' policy extended Minnesota workers' compensation coverage for the employer, Morrison Trucking. AA01. In reaching this conclusion, the WCCA held that the limited other states insurance endorsement afforded coverage not otherwise available to companies, such as Morrison, when obtaining workers' compensation coverage through the residual/assigned risk market. AA06. It therefore, held it unnecessary to address the Reasonable Expectations of the Insured doctrine. AA05-06.

The WCCA thoroughly examined the terms of the Travelers policy, including the provisions contained in the Wisconsin Limited Other States Coverage endorsement, the Servicing Carrier Agreement, and the Pool Handbook. AA01-23. The WCCA held that the Wisconsin Limited Other States Coverage endorsement attached to the Traveler's policy extended Minnesota coverage for Morrison Trucking employees injured when transiting through Minnesota. AA14-19. In reaching this conclusion, the WCCA first

examined the Wisconsin Limited Other States Coverage Endorsement. The WCCA explained the difference between policies written by insurers in the voluntary market and from those written in the involuntary market.⁷ AA07. In the first instance, insurers may write an Other States Insurance endorsement in the voluntary market for coverage in other states:

“Other States Insurance” affords a method by which insured in the *voluntary market* may be provided coverage for exposures in other states. There are two sections in the standard policy that apply: Part One-Workers’ Compensation Insurance which is Item 3 A. on the Information Page; and Part Three-Other States Insurance which is Item 3.C. on the Information Page. In the voluntary market, Item 3.A. should list every state where the employer has known “operations” as of the effective date of the policy. Part Three-Other States Insurance stops the gap in coverage which could result when an insured does not have coverage under Item 3.A. It is designed to provide automatic, temporary coverage for newly acquired locations and startup operations in other states after the effective date of the policy, as well as coverage for incidental or temporary out-of-state exposures such as business travel by employees.

AA07-08.

⁷ The *voluntary market* refers to workers’ compensation insurance coverage freely purchased from a licensed insurer in the state, or when a qualifying employer elects to self-insure. The *involuntary market or residual/assigned risk* market refers to workers’ compensation insurance policies for employers with higher risks, who have been unable to obtain insurance from an insurer in the voluntary market. In the *residual/assigned risk* market, participating insurers agree to write coverage through a joint pool. In Minnesota, this is known as the Assigned Risk Plan, and all insurers licensed to write workers’ compensation insurance policies participate in the Plan. Applications for workers’ compensation insurance through the Assigned Risk Plan are placed with a participating carrier. See Minn. Stat. § 79.01, et seq. (2008). In Wisconsin, as the WCCA opinion indicates, the Wisconsin Workers’ Compensation Rating Board is the designated administrator for the Wisconsin Workers’ Compensation Insurance Pool. AA06-07. The Pool designates six workers’ compensation insurance carriers who receive rotating coverage assignments to issue policies and coverage for eligible employers. AA06-07; Wisconsin Statutes Section 619.01, et seq. (2008).

In the second instance, insurance carriers, such as Travelers in this case, who participate in the *residual/assigned risk* insurance market may issue a Limited Other States Endorsement for an employer.

The Wisconsin Workers' Compensation Insurance Pool Handbook sets out the rights and responsibilities for insurers and insured operating under the Pool. AA61-96. In establishing performance standards for insurance carriers in the Pool, the Handbook provides:

The employers must receive the same services in the residual market as they would in the voluntary market.

AA69. The Pool policy that Travelers issued to Morrison Trucking contained the Wisconsin Limited Other States Endorsement. AA102-103.

A. The Travelers' Policy Provided Coverage For A Known Risk.

In this case, the Limited Other States Insurance Endorsement that Travelers issued Morrison Trucking provided:

WISCONSIN LIMITED OTHER STATES INSURANCE ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Wisconsin is shown in Item 3.A. of the Information Page.

"PART THREE-OTHER STATES INSURANCE" is amended to read as follows:

1. Other states insurance applies in all states except Wisconsin, those states having a monopolistic state fund, and those states listed in the schedule below.
2. When other states insurance is applicable, we will reimburse you for the benefits you are required to pay under the Workers' Compensation Law of the applicable state.

SCHEDULE OF EXCLUDED STATES

MN

IMPORTANT IF YOU BEGIN WORK IN ANY STATE OTHER THAN WISCONSIN, YOU MUST OBTAIN INSURANCE COVERAGE IN THAT STATE AND DO WHATEVER ELSE MAY BE REQUIRED UNDER THAT STATES LAW, AS 'WISCONSIN LIMITED OTHER STATES' INSURANCE DOES NOT SATISFY THE REQUIREMENTS OF THAT STATE'S WORKERS' COMPENSATION LAW.

AA103.

In interpreting this endorsement, the WCCA addressed every argument that Travelers had raised to exclude Minnesota coverage from its Policy. AA10-19. The WCCA concluded that as an insurer of last resort, "Travelers was obligated to provide coverage to the employer necessary to meet its mandated responsibility of obtaining compensation insurance to cover the full extent of its liability to its employees. This was not a voluntary market plan and Travelers could not elect to exclude necessary coverage simply because it did not want to underwrite the risk--hence the term 'involuntary market.'" AA17. The WCCA indicated that the "Wisconsin Limited Other States Endorsement" amended the standard Other States insurance endorsement as a means to enable an insurer providing *other states coverage* to an insured in the residual/assigned risk market with the same protections afforded an insured in the voluntary market.

AA08. The WCCA held:

The "Limited Other States Insurance Endorsement" amends the Other States Insurance in the standard policy to provide employers, insured in the residual/assigned risk market, with protection from incidental exposures resulting from interstate travel by employees of the state listed in Item 3A. Unlike Part Three, the endorsement does not provide coverage for business operations in other states, but provides coverage only for incidental,

temporary out-of-state exposures. If a claim occurs, the Limited Other States Insurance Endorsement allows an insurance carrier, not authorized to provide coverage directly in a particular state, to make benefit payments indirectly through the employer. The problem of the inability of a state residual market/assigned risk plan to write coverage in other states is avoided by substituting a contractual right of indemnification or reimbursement between the insurer and employer.

AA08. The WCCA's decision is consistent with the Pool Handbook which provides:

Although "Other States Coverage" has been incorporated into the new simplified 'Worker's Compensation and Employers' Liability Policy,' as Part 3, this coverage is not automatically provided to all risks under a Pool policy. Applicants wanting this coverage, must so indicate on the application form, and also submit a completed and signed "Supplementary Wisconsin Limited Other States Request" form with the application.

"Wisconsin Limited Other States Coverage" is intended to provide limited, temporary coverage for Wisconsin employers for injury to an employee who regularly works in Wisconsin, but just happens to be in another state at the time the compensable injury occurs, and elects coverage in the other state. It is not intended to provide coverage to employers who have operations in other states. Such operations will most likely require the employer to obtain coverage to satisfy the requirements of the Workers' Compensation Law in the other state, and the Wisconsin Pool policy cannot provide this coverage.

AA89-90.

The WCCA's construction of Travelers' Limited Other States Coverage endorsement is consistent with the expressed legislative policy that all potential injury exposures be covered for workers' compensation insurance coverage, as set forth in both Minnesota and Wisconsin law. *See* Minn. Stat. §§ 176.001 and 176.021 (2008) and Wisc. Stat. § 102.28(2)(a).

B. The Servicing Carrier Agreement.

The WCCA also reviewed the Wisconsin Pool's Servicing Carrier Agreement to determine the rights and obligations created for insurers and insureds when participating

in the Wisconsin Pool for coverage of residual/assigned risk market exposures. The WCCA indicated that “the servicing carrier must perform its duties in accordance with the provisions and requirements set forth in the Pool Handbook and the Wisconsin Basic Manual incorporated by reference and made a part of the Agreement.” AA8

The WCCA further held that Travelers’ attempt to enforce the provision excluding Minnesota coverage was contrary to and inconsistent with Wisc. Stat. §§ 102.28(2)(a) and 102.31(1)(a). It held that under Wisconsin insurance law, an insurance policy may expand the coverage requested but may not restrict the coverage otherwise required. AA17; see *Nicholson v. Home Ins. Co.*, 138 Wisc. 2d. 581, 405 N.W.2d 327 (1987). Minnesota law similarly holds that an insurer’s policy may not conflict with statutory coverage requirements. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41 (Minn. 2008); *Kwong v. Depositors Ins. Co.*, 627 N.W.2d 52, 55 (Minn. 2001) (Insurance contract governs so long as it does not omit mandated coverage or contravene applicable statutes). The WCCA correctly held that the authority or power “to refuse to enforce insurance contract terms is limited to situations where the contract would violate ‘some explicit public policy’ that is well defined and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest.” AA18 (citing *St. Paul Fire & Marine Ins. Co. v. Federal Deposit Ins. Corp.*, 968 F.2d. 695 (8th Cir. 1992)). Minnesota and Wisconsin have both recognized and expressed “a strong public policy interest in insuring full coverage of an employer’s liability to its employees.” AA15. The Minnesota Workers’ Compensation Act, Minn. Stat. ch. 176 (2008), places this public policy interest statement in the opening section of the Act,

demonstrating its importance. Minn. Stat. § 176.001 (2008). This important public policy will be satisfied by requiring that Relator provide Morrison with Minnesota workers' compensation coverage by its policy in this case.

C. The Wisconsin Workers' Compensation Insurance Pool Handbook.

The WCCA further examined the requirements applicable to Travelers as an insurer participating in the Wisconsin Workers' Compensation Insurance Pool under the Pool Handbook. AA08-09. The Handbook explains the servicing carrier's duties, rights, and obligations under the Servicing Carrier Agreement. AA61-96.

The WCCA noted that the Handbook provides:

Rule II states that *any risk* entitled to be insured for workers' compensation may be covered by making application to the WCRB.⁸ Rule III.A. requires the servicing carrier to issue a policy of insurance to the applicant upon receipt from the Pool of the binder, on the basis of the classifications and rates shown in the notice of designation (binder).

AA08-09. The WCCA went on to explain the servicing carrier's obligation to issue a requested policy, including the requested endorsements within 30 days from the carrier's receipt of the application and premium deposit. AA09. "There is no evidence Travelers contacted the Pool concerning the employer's eligibility for Wisconsin Limited Other

⁸ The WCCA Opinion footnote provided:

Rule II, Application by Employer, states: Any risk that, in good faith, is entitled to workers' compensation insurance may obtain coverage by making application to the WCRB on the prescribed form." The Wisconsin Basic Manual, Rule III, Explanation of Terms, defines "Risk" as "all insured operations of one employer within a state."

Id. at n.15; AA21.

States coverage or requested additional information to clarify the employer's eligibility for the requested coverage." AA09.

Once the Bureau receives a complete application (including any supplementary forms or information) and the appropriate deposit premium, the Bureau binds coverage and notifies all interested parties. The designated servicing carrier will subsequently issue a one year policy to the employer, and bill the employer for any additional premiums that are due.

AA09.

As a servicing carrier for the Wisconsin Pool, Travelers signed a Servicing Carrier Agreement. Travelers Ex. 4. The agreement set forth the contractual obligations of the parties. Travelers Ex. 1. The initial insurance binder that the Lawrence-Bombach Agency issued Morrison Trucking included the "Supplementary 'Wisconsin Limited Other States' Coverage Request." Morrison Ex. 2; AA60. Morrison Trucking properly completed the Supplementary Coverage Request. Morrison Ex. 2; AA60. The Request form specifically indicated that not all of Morrison Trucking employees were Wisconsin residents. *Id.* Morrison listed seven employees, including Bryan Martin, who were Minnesota residents. *Id.* Tom Morrison signed the Request which provided:

By my signature below, I hereby certify that I have answered all questions in this Questionnaire accurately and completely. I understand that the Pool and its servicing carrier will rely upon this information in determining my/our eligibility for 'Other States' coverage, and that immediate notice must be provided to the servicing carrier should any operations change in the future.

AA60.

Thereafter, the Pool Handbook requires that the Bureau bind coverage, upon the submission of the properly completed application.⁹ Petree reviewed and submitted Morrison's Application and Request for the "Supplementary 'Wisconsin Limited Other States' Coverage Request" and the Bureau bound coverage. T. 74-76.

As the WCCA opinion noted, "[T]he Pool consists of six servicing carriers that are insurance companies licensed to do business in Wisconsin. Each servicing carrier receives assignments from the WCRB, on a rotating basis, to issue workers' compensation insurance policies and provide specified insurance services to eligible employers. In consideration for such services, a servicing carrier receives a percentage of the billed premium."¹⁰ AA7.

Travelers may have an action against the Wisconsin Pool for reimbursement, but that action does not negate its obligation to provide the coverage it is bound through this policy.

Once an insured has completed an Application for insurance coverage and a Supplementary Limited Other States' Coverage Request form provided by his insurance agent, received a binder, and paid his premium, his belief thereafter that he had the

⁹ The Bureau binds coverage and notifies all interested parties. The designated servicing carrier will subsequently issue a one year policy to the employer, and bill the employer for any additional premiums that are due. Travelers' Ex. 1 at 23-24; RA24.

¹⁰ The Wisconsin Workers' Compensation Insurance Pool Handbook provides that the list of servicing carriers in the Pool is subject to change. At the time it issued the policy in this case, Travelers was one of six insurance carriers assigned to employers seeking Pool coverage. AA58.

insurance coverage he requested is reasonable. The Wisconsin Workers' Compensation Insurance Pool Information and Procedures Handbook describes this process:

Although "Other States Coverage" has been incorporated into the new simplified "Workers' Compensation and Employers' Liability Insurance Policy," as Part 3, this coverage is not automatically provided to all risks under a Pool Policy. Applicants wanting this coverage, must so indicate on the application form, and also submit a completed and signed "Supplementary Wisconsin Limited Other States Request" form with the application.

"Wisconsin Limited Other States Coverage" is intended to provide limited, temporary coverage for Wisconsin employers for injury to an employee who regularly works in Wisconsin, but just happens to be in another state at the time the compensable injury occurs, and elects coverage in the other state. It is **not** intended to provide coverage to employers who have *operations* in other states. Such operations will most likely require the employer to obtain coverage to satisfy the requirements of the Workers' Compensation Law in the other state, and the Wisconsin Pool cannot provide this coverage. Wisconsin Limited Other States Coverage, if attached to the Policy, will never apply in Wisconsin, in any monopolistic state fund state, or in any state where the employer has operations which should be covered under a policy in that state. These states will be listed on a Schedule of Excluded States shown on the Wisconsin Limited Other States Endorsement.

AA58 (emphasis in original; italics added).

The WCCA's interpretation of the Supplementary Limited Other States Insurance Endorsement language is consistent with the Pool Handbook. Because Morrison Trucking did not have "operations" in Minnesota, it qualified for the Supplementary Limited Other States Insurance coverage for which it applied, paid for, and reasonably expected. AA58.

The WCCA emphasized that both Minnesota and Wisconsin recognized the strong public policy interest in an employer's insuring full coverage for its employees. AA18.

Travelers' argument, if successful in defeating coverage in this case, would eviscerate the protections guaranteed by its own policy and by Minnesota law. This Court should uphold that public policy by affirming the WCCA decision.

II. THE REASONABLE EXPECTATIONS OF THE INSURED DOCTRINE, IF APPLIED, REQUIRES THAT TRAVELERS EXTEND MORRISON TRUCKING MINNESOTA COVERAGE IN THIS CASE.

This Court reversed and remanded this case to the WCCA to reconsider its decision in light of this Court's decision in *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41 (Minn. 2008) (reasonable expectations of the insured doctrine cannot apply in the face of clear policy language). Relator argues that the WCCA went beyond the bounds of this Court's remand Order when it reexamined the Travelers' policy language instead of limiting its review to the Compensation Judge's penalty award. Travelers' Brief, p. 12.

The Court's Order provided:

IT IS HEREBY ORDERED that the decision of the Workers' Compensation Court of Appeals filed October 29, 2008, be and the same is, reversed and the matter is remanded for reconsideration in light of *Carlson v. Allstate Insurance Company*, 749 N.W.2d 41 (Minn. 2008).

Martin v. Morrison Trucking, Inc., 765 N.W.2d 639 (Minn. 2010).

Nothing in the Court's remand Order limited the WCCA to the sole issue of the Compensation Judge's penalty award. The Court plainly directed the WCCA to reconsider the case in view of the decision issued in *Carlson*. In *Carlson*, this Court set forth when it is permissible to apply the doctrine of reasonable expectations to an insurance policy to determine whether coverage should be found. The Court indicated that the doctrine does not make ambiguity a rigid requirement for its application.

Carlson, but held that ambiguity may be considered when deciding to apply the doctrine. *Carlson*, 749 N.W.2d at 48-49. This Court limited the application of the doctrine to extreme situations where the insured's coverage was significantly different than what he reasonably believed he had bargained for with the insurer. *Id.* at 49.

The WCCA on remand reexamined the policy language at issue in the instant case and concluded that it was not ambiguous, and therefore found the application of the reasonable expectations of the insured doctrine unnecessary. AA05-06. It reasoned that the doctrine required a finding of policy ambiguity prior to application of the doctrine. AA05-06. The WCCA concluded, however, that the endorsement exclusion language in the policy was not ambiguous, and therefore, the doctrine was unnecessary in determining whether coverage existed. AA06.

Even had the WCCA applied the Reasonable Expectations of the Insured Doctrine to this case, it would have concluded that Travelers must afford Morrison Minnesota workers' compensation insurance coverage. *Atwater Creamery Co. v. Western Nat'l Mut. Ins. Co.*, 366 N.W.2d 271, 277 (Minn. 1985) (Insurance contracts are closely related to contracts of adhesion and Courts recognizing the inherent power disparity and reliance on professionals will honor coverage, where the policy language may not have indicated, when that expectation is reasonable).

The record in this case demonstrated that Morrison's expectation of coverage was reasonable. Travelers did not issue Morrison a policy within the 30 days required by the Handbook. AA69. The binder that Morrison received from the Lawrence-Bombach agency on September 15, 2001 led him to believe that he had received the coverage he

had requested. T. 30, 38-40. Having received no indication or notice from Travelers to the contrary, Morrison continued to reasonably assume that Travelers' policy contained the coverage he had requested.

Morrison's failure to read the policy that Travelers subsequently sent him does not defeat his reasonable expectation of coverage. Travelers had an obligation to clearly communicate the coverage and exclusions. *Carlson*, 749 N.W.2d at 48. Because Travelers did not inform Morrison that its policy differed in the scope of coverage for which he had bargained with the Wisconsin Pool through the Lawrence-Bombach Agency, he could reasonably expect that the policy issued provided the coverage he requested and need not parse through each provision of the document. *See generally* 2 Couch on Insurance, Third Ed. § 22.11 (2008) (citing *Carlson v. Allstate Ins. Co.*, 734 N.W.2d 695 (Minn. Ct. App. 2007)).

The facts in this case are in accord with *Atwater*, 366 N.W.2d 271. Morrison applied for coverage for his drivers wherever they worked and were subjected to potential injury. T. 29-30. He received his insurance binder from his insurance agent. T. 108. He relied upon his agent to place the necessary coverage. T. 30. Morrison did not know that the policy he received excluded Minnesota coverage. T. 33-34. *See also Schmidt v. Innovative Lawn Systems, Inc.*, 67 W.C.D. 306, 315, 2007 WL 1727849 at *6 (insurer was equitably estopped from denying coverage where employer reasonably relied on insurance agent's insurance certificates indicating coverage).

Morrison reasonably relied upon his insurance professionals to provide him with the workers' compensation insurance required. His expectation of coverage was

reasonable. Should this Court find the application of the doctrine of reasonable expectations appropriate, it should conclude that Morrison's coverage expectations were reasonable.

III. TRAVELERS MUST REIMBURSE THE SPECIAL CLAIMS SECTION FOR ALL BENEFITS IT PAID MARTIN.

It is undisputed that Martin was injured in the course and scope of his employment with Morrison Trucking and that the Special Claims Section paid him the additional Minnesota workers' compensation benefits to which he was entitled. AA39-40. Minnesota Statutes Section 176.183 (2008) requires that the Special Claims Section be reimbursed for claims it paid when the employer is insured for Minnesota workers' compensation. AA19. It provides:

After a hearing on a petition for benefits and prior to issuing an order against the special compensation fund to pay compensation benefits to an employee, a compensation judge shall first make findings regarding the insurance status of the employer and its liability. The special compensation fund shall not be found liable in the absence of a finding of liability against the employer. Where the liable employer is found after the hearing to be not insured or self-insured as provided for in this chapter, the compensation judge shall assess and order the employer to pay all compensation benefits to which the employee is entitled, the amount for actual and necessary disbursements expended by the special compensation fund, and a penalty in the amount of 65% of all compensation benefits ordered to be paid.

Minn. Stat. § 176.183, subd. 2 (2008).

Because the Travelers Insurance Company policy provided coverage for the Minnesota injury pursuant to the terms of the endorsement issued as part of the residual insurance market Pool policy, Travelers must reimburse the Special Compensation Fund for all Minnesota workers' compensation insurance benefits it paid to or on behalf of

Martin. AA19; Ex. B. Minnesota Statutes Section 176.183, subd. 2 (2008) plainly requires that Travelers make the Special Claims Section whole. This Court should affirm the Workers' Compensation Court of Appeals and order that Relator Travelers Insurance Company reimburse the Special Claims Section.

CONCLUSION

For the foregoing reasons, the Workers' Compensation Court of Appeals' decision should be affirmed in all respects.

Dated: 5/6/10

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota



RORY H. FOLEY
Assistant Attorney General
Atty. Reg. No. 0155056
Suite 900, 445 Minnesota Street
St. Paul, MN 55101-2127
(651) 757-1447 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR THE MINNESOTA
DEPARTMENT OF LABOR AND
INDUSTRY, SPECIAL CLAIMS
SECTION