

NO. A07-635

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State of Minnesota  
**In Court of Appeals**

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PARADIGM ENTERPRISES, INC.,

*Plaintiff/ Respondent,*

vs.

WESTFIELD NATIONAL INSURANCE CO.,

*Defendant/ Appellant.*

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**APPELLANT'S BRIEF**

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## **LEGAL ISSUE**

Did the trial court correctly grant summary judgment to Appellant and award Appellant a refund of a workers compensation insurance premium paid to Respondent?

No; the trial court incorrectly based its decision on the minimum coverage requirements of the Workers Compensation Act rather than the broader and actual coverage requirements contained in the contract between the parties.

## STATEMENT OF THE CASE

This contract action was brought in Clay County District Court, Seventh Judicial District, Court File No. C2-06-760, with The Honorable Galen J. Vaa presiding.

In April, 2006, Respondent Paradigm Enterprises, Inc. commenced an action against Appellant Westfield National Insurance Company seeking a refund of a portion of a workers' compensation insurance premium paid by Respondent to Appellant pursuant to a contract for the policy period April 19, 2004 to April 19, 2005. (A.1, Compl. (dated 4-10-06).)

In November, 2006, Respondent brought a motion for summary judgment, arguing that it was entitled to a refund of a portion of the premium as a matter of law under the Workers' Compensation Act ("the Act"). (A.9, Mem. Supp. Pl.'s Mot. Summ. J.; Transcript ("T.\_") at 4 (Respondent's counsel stating that interpretation of section 176.041, subd. 1(g) of the Act governs this case).) Appellant opposed the motion, arguing that this case is governed not by the Act but instead by the parties' insurance policy. (A.52, Def.'s Mem. Opp'n Pl.'s Mot. Summ. J.; T.6 (Appellant's counsel stating "This is a contract case \* \* \* governed by the terms and the conditions \* \* \* of the insuring agreement".))

The summary judgment motion was argued before The Honorable Judge Vaa on December 4, 2006. (Notice Mot. Summ. J.; A.116, 2-5-07 Order at 1; T.1.) By Order dated February 5, 2007, Judge Vaa granted Respondent's summary judgment motion, ruling that it was "called upon to interpret Minn. Stat. § 176.041, subd. 1(g)" of the Act and that "[r]esolution of this case turns on the meaning of the phrase 'preceding calendar

year” in said section of the Act. (A.122, Mem. att’d Order at 7.) Without ever reviewing the terms of the insurance policy between the parties, the trial court ordered Appellant to refund a portion of the workers’ compensation insurance premium paid by Respondent for the 2004 policy period. (A.117, 2-5-07 Order at 2 ¶¶1, 2.) The clerk of the Clay County District Court thereafter entered judgment on the trial court’s Order. (A.127, 2-5-07 Notice Entry J.)

In March, 2007, Appellant appealed the trial court’s February 5, 2007 Order granting Respondent summary judgment. (A.128, Notice Appeal (dated 3-19-07); Notice Case Filing (dated 3-26-07).) It is Appellant’s position that this case is governed not by the Workers’ Compensation Act, but instead by the terms of the insurance policy between the parties. Appellant asks this Court to reverse the trial court’s order and instead dismiss Respondent’s action in its entirety based on an application of the policy language to the undisputed facts.

### STATEMENT OF FACTS

Paradigm is a Minnesota corporation organized in January, 2001. (A.1, Compl. ¶ I; A.23, Morken Aff. ¶ I.) Glen Morken and Ron Morken are executive officers of Paradigm and each owned at least 25% of the stock of Paradigm during periods relevant herein. (A.1, Compl. ¶ III; A.23, Morken Aff. ¶ II.) For the three year period from April 19, 2003 to April 19, 2006, Paradigm purchased workers’ compensation insurance from Westfield. (Id. ¶ II (referring to a renewal policy for the period April 19, 2004 to April 19, 2005); A.112, Emery Aff. ¶ 5 (indicating that Westfield’s insurance to Paradigm covered the three annual policy periods from April 19, 2003 to April 19, 2006).)

In June, 2004, Westfield conducted an audit of Paradigm for the initial policy period from April 19, 2003 to April 19, 2004 (“the 2003 policy period”) for purposes of assessing a final premium for the 2003 policy period. (A.107, Glanz Aff. ¶ 5. See also A.87, Policy at Part Five §§ E (stating that “The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis”), G (outlining the audit procedures).) The 2004 audit revealed that during the 2003 policy period, Paradigm had less than 22,880 payroll hours, and thus Westfield excluded Ron and Glen Morken from coverage and final premium calculations for the 2003 policy period. (A.107, Glanz Aff. ¶ 5; See also A.2, Compl. ¶ IV (stating that Paradigm had only 14,757 payroll hours for calendar year 2003).)<sup>1</sup>

Based on the 2004 audit, Westfield assessed a preliminary premium for the April 19, 2004 to April 19, 2005 policy period (“the 2004 policy period”) using the assumption that payroll hours for the 2004 policy period would likewise be under 22,880, thereby continuing to exclude workers’ compensation coverage for the two Morkens. (A.107, Glanz Aff. ¶ 5. See also A.1-2, Compl. ¶ III (stating that it was Paradigm’s intent to exclude the Morkens from coverage for the 2004 policy period).)

On June 23, 2005, Westfield performed its annual audit for the purposes of determining the final premium owed for the 2004 policy period. (A.2, Compl. ¶ VI; A.108, Glanz Aff. ¶ 6.) This second audit revealed that during the 2004 policy period,

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<sup>1</sup> When Westfield originally assessed the preliminary premium for the 2003 policy period, it excluded the Morkens from coverage pursuant to Minn. Stat. § 176.041, subd. 1(g) (discussed *infra* at 9) and Paradigm’s calendar year 2002 payroll hours, which were less than 22,880. As indicated, the audit confirmed that the exclusion was appropriate.

Paradigm had actual payroll hours in excess of 22,880. (A.108, Glanz Aff. ¶ 7.) Westfield then assessed a final additional premium of \$73,083, which included workers' compensation coverage for the Morkens. (A.2, Compl. ¶ VI; A.108, Glanz Aff. ¶¶ 7-8.)

After the 2005 audit, Paradigm agreed to pay the additional \$73,083 premium assessed by Westfield for the 2004 policy period in seven monthly installments. (A.3, Compl. VII; A.112, Emery Aff. ¶ 10; A.46, Hannig Aff. Ex. D (outlining payment arrangement).) Paradigm made the first five payments, but failed to pay the remaining two. (Id.)

In March, 2006, Paradigm challenged the portion of the additional 2004 policy period premium that was based on the inclusion of Ron and Glen Morken as covered employees. (A.108, Glanz Aff. ¶ 11.) Paradigm believed that under section 176.041 of the Act, Westfield was required to use the 2003 calendar year payroll hours when assessing a final premium for the 2004 policy period. (Id.) Paradigm's challenge ignored the relevant provisions of its policy with Westfield, which states that final premiums are calculated "using the actual, not the estimated, premium basis." (A.87, Policy Part Five § E.) The premium basis includes the payroll hours of "all [Paradigm's] officers and employees." (Id. at § C (emphasis added).)

The following month, in April, 2006, Paradigm commenced this action seeking to recover the portion of the 2004 policy period premium that related to the inclusion of coverage for Ron and Glen Morken. (A.1, Compl.) The trial court thereafter granted Paradigm summary judgment, relying exclusively on the minimum coverage requirements in section 176.041. (A.119-125, 2-5-07 Order, att'd Mem. at 4-10.)

Westfield appeals the trial court's decision on the ground that the Workers' Compensation Act is irrelevant to the interpretation of the contract terms agreed to by the parties (which provide greater coverage than the Act's minimum requirements). The terms of the insurance contract between the parties required Westfield to provide coverage and assess a final premium based on actual results rather than estimates, and thus required the Morkens to be included in the scope of coverage.<sup>2</sup>

## ARGUMENT

### I. Standard of Review.

Summary judgment is appropriate when the evidence shows that there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; Anderson v. State Dep't of Natural Res., 693 N.W.2d 181, 186 (Minn. 2005). "When reviewing a grant of summary judgment, an appellate court must consider (1) whether there are any genuine issues of material fact, and (2) whether the lower court erred in its application of the law." Leamington Co. v. Nonprofits' Ins. Ass'n, 615 N.W.2d 349, 353 (Minn. 2000).

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<sup>2</sup> If the trial court's decision is affirmed by this Court, Westfield will be faced with the considerable task of recalculating premium dividend payments made to its insureds, including Paradigm, for policy periods impacted by the unexpected trumping of policy interpretation by statutory interpretation. (Dividend payments are discretionary payments made to Westfield's insureds based on, *inter alia*, final premiums collected and workers' compensation benefits paid for each policy period. The dividends are Westfield's reward to insureds that utilize safe work practices. (See A.93 at Participating Endorsement).) Because of Paradigm's refusal to return an appropriate portion of its 2004 policy period dividend, Westfield has commenced an action in Clay County District Court, File No. C9-07-1009. More such actions (against other insureds) may become necessary.

In the present case, there are no disputed facts. Rather, resolution of the present case requires this Court to interpret the language of a contract between the parties and any relevant language in the Workers' Compensation Act. Contract and statutory interpretation are legal matters subject to de novo review. Camacho v. Todd and Leiser Homes, 706 N.W.2d 49, 53 (Minn. 2005) (stating that “[s]tatutory construction is a question of law” and “[q]uestions of law are reviewed de novo”); Minnesota Prop. Ins. v. Slater, 673 N.W.2d 194, 196 (Minn. Ct. App. 2004) (noting that interpretation of an insurance policy and application of the policy to the facts of a case are also questions of law).

**II. The Minnesota Workers' Compensation Act Governs Minimum, not Maximum, Coverage Requirements, and does not Govern the Result Here.**

**A. The Purpose of the Workers' Compensation Act.**

The Minnesota Workers' Compensation Act (the “Act”) is codified at Minn. Stat. §§ 176.001, *et seq.* The Act “is intended ‘to assure the quick and efficient delivery of indemnity and medical benefits to injured workers.’” Klinefelter v. Crum and Forster Ins. Co., 675 N.W.2d 330, 335 (Minn. Ct. App. 2004) (quoting Minn. Stat. § 176.001). “The purpose of the Workers' Compensation Act is to provide security for individuals in the work force and to shift economic loss to industry and the public by holding employers strictly liable for work-related injuries sustained by their employees. D.W. Hutt Consultants, Inc. v. Constr. Maintenance Sys., Inc., 526 N.W.2d 62, 65 (Minn. Ct. App. 1995).

**B. The Workers' Compensation Act's Insurance Requirement.**

To further the purpose of the Act, "every employer must carry workers' compensation insurance or seek a written exemption permitting self-insurance." Id. (citing Minn. Stat. § 176.181, subd. 2). See also Minn. Stat. § 176.021, subd. 1 (subjecting all employers to the Act and mandating workers' compensation coverage for all employees).

In this case, to meet the requirements of the Act, Respondent Paradigm obtained workers' compensation insurance from Appellant Westfield. (See A.65-105, Policy.) Paradigm first obtained workers' compensation insurance from Westfield for the period April 19, 2003 to April 19, 2004. (A.112, Emery Aff. ¶ 5.) Paradigm renewed its annual insurance with Westfield on April 19, 2004, and again on April 19, 2005, for a total coverage period of three years. (Id.) The issue presented here relates to the extent of workers' compensation coverage provided in the second policy period, i.e., the 2004 policy period. Specifically, the issue is whether two executive officers employed by Paradigm were covered employees under the 2004 policy period.

**C. Minimum Insurance Coverage Required by the Act.**

The dispute in this case centers on whether either the Act *or* the insurance policy required workers' compensation coverage for two executive officers of Respondent. In both its Complaint and its motion for summary judgment, Respondent has focused its argument solely on the minimum requirements of the Act. In particular, Respondent argued below that the Act did not require coverage for its two executive officers because of an exception to coverage in Minn. Stat. § 176.041, subd. 1(g). (A.2, Compl. ¶ III

(alleging that an exclusion from coverage for Paradigm's two executive officers "is authorized by Minnesota Statutes Section 176.041, Subdivision 1(g)"); Mem. Supp. Pl.'s Mot. Summ. J. 4 (stating that "The determinative legal issue in this case is the meaning of the term 'the preceding calendar year' in § 176.041, Subd. 1(g)."); Pl.'s Reply Mem. 2-4 (also analyzing only the Act to determine the scope of coverage.)

Respondent is correct in asserting that Minn. Stat. § 176.041, subd. 1(g) contains an exception normally applicable to executive officers. That statutory provision states that the Act does not apply to:

(g) an executive officer of a closely held corporation having less than 22,880 hours of payroll in the preceding calendar year, if that executive officer owns at least 25% of the stock of the corporation.

Id. In the present case, it is undisputed that Paradigm is a closely held corporation and that two of its employees, executive officers Glen Morken and Ron Morken, each owned 45% of Paradigm's stock during the 2004 policy period.

However, Respondent's interpretation of the Act begs the question of whether the parties' insurance policy provided the disputed coverage. That is, Respondent's position, which relies entirely on an exception to coverage in the *Act*, ignores the broader coverage provided pursuant to the terms of the parties' *contract*. The contract can and did extend workers' compensation coverage to Paradigm's executive officers regardless of any minimum requirements or exceptions in the Workers' Compensation Act. Therefore, as explained below, Respondent's arguments relating to the proper interpretation of the exception to coverage for executive officers is irrelevant.

**D. Coverage Required by the Parties' Insurance Contract.**

Respondent does not dispute that it entered into a contract for workers' compensation coverage with Appellant. That contract is part of the record and is contained in Appellant's Appendix at A.65-105. Further, Respondent did not dispute any of the terms of that contract below.

Part Five of the parties' contract governs the assessment and collection of premiums based on the coverage provided. (A.87, Policy at Part Five, §§ A-G.) As indicated in the policy, all premiums are determined by Appellant's "manuals of rules, rates, rating plans and classifications." (Id. at § A.) The classifications used by Appellant are based "on an estimate of the exposures [Respondent] would have during the policy period." (Id. § B.) The initial premium assessed for each policy period is merely an estimate. (Id. at § E.) The final premium is determined after each policy period ends by using the actual, not the estimated, results. (Id.) Specifically, this portion of the policy states:

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy.

Id. The final premiums are determined by multiplying a set rate by a premium basis. (Id. at § C.) The premium basis is defined as follows:

*"Th[e] premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:*

1. *all your officers and employees engaged in work covered by this policy; and*

2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. \* \* \*

(Id. (emphasis added).)

For the 2004 policy period at issue, Westfield assessed its initial premium of \$46,359 using an estimate based on the actual payroll hours worked during the 2003 policy period, the year preceding the inception of the 2004 policy. (A.38, Morken Aff. Ex. B; A.87, Policy at Part Five § E.) Because Respondent had fewer than 22,880 payroll hours during the 2003 policy period, both Respondent and Appellant estimated that Respondent would likewise have fewer than 22,880 payroll hours during the 2004 policy period. (Morken Aff. Ex. C (reflecting adjustments from the estimated results for the actual results for the 2004 policy period).) Thus, the initial premium for the 2004 policy period did not include any amount for coverage for the Morkens.

After the 2004 policy period ended, Westfield conducted an audit for purposes of assessing and collecting (or refunding<sup>3</sup>) the final premium. (A.108, Glanz Aff. ¶ 6.)<sup>4</sup>

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<sup>3</sup> Respondent received a refund of a portion of the workers' compensation premium paid to Appellant for the 2005 policy period based on a 2006 audit that revealed actual payroll hours less than the estimated hours (and less than the 22,880 hour threshold). (A.110, Glanz Aff. ¶ 16-17.) Based on the district court decision below, Westfield has commenced an action to recover this refund in the event this Court affirms the district court because Respondent cannot have it both ways, i.e., Respondent cannot receive a refund when its hours during the policy period are below the 22,880 hour threshold and yet refuse to pay an additional premium when its hours during the policy period exceed the 22,880 hour threshold. (Clay County Court File No. C9-07-1009.)

<sup>4</sup> Paradigm argued below that Westfield was required to perform its 2005 audit and final premium assessment using the payroll hours of Paradigm from calendar year 2003. (Mem. Supp. Pl.'s Mot. Summ. J. 3.) It makes no logical sense, and directly contradicts the parties' contract, to base a final premium on payroll hours incurred during a year not related to the policy period in question. In addition, despite Paradigm's argument that the

That audit revealed that Respondent's actual payroll hours greatly exceeded the estimates, resulting in total payroll hours exceeding the 22,880 threshold. (A.36, A.40, Morken Aff. Exs. A, C (indicating Paradigm had 25,799 payroll hours during the 2004 policy period, and showing the corrected premium amounts based on those hours).) Because the terms of the policy require that the actual payroll of *all* officers be included in the final premium basis (A.87, Policy at Part Five § C), Westfield assessed a final premium of \$119,442, which was \$73,083 greater than the initial premium. (A.38, Morken Aff. Ex. B.) This final premium included coverage for the Morkens.<sup>5</sup>

**E. Statutory versus Contractual Coverage.**

In the present case, Respondent is seeking to enforce the minimum coverage provisions required under the Act. By contrast, Appellant is seeking to enforce the broader and more generous coverage provisions required under the parties' insurance

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Workers' Compensation Act requires final premiums to be assessed using payroll hours from the "preceding calendar year," the Act does not impose any such requirement. See Minn. Stat. § 176.041 (containing no discussion relating to premium assessment and instead merely allowing certain persons an exception to mandatory coverage).

<sup>5</sup> Respondent argued below that if either of the Morkens had made a workers' compensation claim for the 2004 policy period, "Westfield would have been within its rights to deny that claim because there was no coverage for [the Morkens]." (T.5. See also Pl.'s Reply Mem. at 2-3 (noting it would have been "interesting to speculate as to what defendant's position would be in this case if [the Morkens] had made a claim for workers' compensation benefits \* \* \*. It is likely defendant would have denied the claim.")) Contrary to Respondent's unsubstantiated allegation, Westfield did not deny (and could not have denied) any request for coverage during the 2004 policy period by the Morkens. Despite Respondent's belated speculation, other insureds in the Morkens' position have sought coverage in the speculated circumstances, and Westfield (like other carriers) has provided coverage in those circumstances. As argued throughout this case, Westfield is bound by the terms of its insurance policy. If a premium is charged based on mandatory coverage in the policy, then the mandatory coverage necessarily follows.

policy. The courts have addressed the interplay between statutory and contractual insurance requirements.

An insurance policy such as the policy between Appellant and Respondent is a contract. Krueger v. State Farm Fire and Casualty Co., 510 N.W.2d 204, 209 (Minn. Ct. App. 1993). Absent legal prohibition or restriction, parties to an insurance contract are free to contract as they see fit. Bobich v. Oja, 104 N.W.2d 19, 24 (Minn. 1960). Thus, the extent of the insurer's liability is governed by the terms of the insurance contract so long as the policy does not omit coverage required by law or otherwise violate any applicable statute. Lynch v. American Family Mut. Ins. Co., 626 N.W.2d 182, 185 (Minn. 2001).

In the present case, Respondent requested the trial court to enforce a provision of the Workers' Compensation Act without referencing the terms of the insurance policy between the parties. Apparently, Respondent believes that the terms of the Act govern regardless of the terms of the policy. But an insurance policy "is not limited by the statute's minimum coverage provisions." Krueger, 510 N.W.2d at 209 (referring to an insurance contract providing coverage against loss by fire). Contrary to Respondent's position, "[i]t is the terms of that policy that determine the rights and liabilities of the parties." Id. A policy "can include broader coverage than the minimum requirements of the statute." Id. (referring to a statute potentially applicable to the fire insurance policy at issue). If an insurer issues a policy providing more coverage than the statutory minimum, the insurance contract rather than the statute determines the extent of the insured's coverage. Id. (reversing a trial court's directed verdict because it failed to consider

whether the insurer's policy afforded greater coverage than the minimum coverage required by the standard fire policy).

The Act itself supports the notion that an insured is free to obtain greater than the minimum necessary workers' compensation insurance. See, e.g. Minn. Stat. § 176.185, subd. 9 (acknowledging that employers who have been exempted from the requirement to insure liability for workers' compensation under the Act may still choose to insure any part of that liability).

Respondent purchased workers' compensation insurance from Appellant. That insurance required premiums for coverage to be assessed and collected based on the actual payroll hours of all Respondent's officers and employees, including the Morkens.<sup>6</sup> If Respondent wanted to exclude the Morkens from insurance coverage for policy periods when Respondent's total payroll hours exceeded 22,880, Respondent should have requested alternative contract language. It did not. Respondent, like Appellant, is bound by the terms of the insurance policy. Interestingly, the broader scope of the insurance policy is supported by the public policy of Minnesota to provide benefits to injured employees. Rather than trying to restrict or limit coverage, Westfield's standard policy results in increased coverage for Minnesota's workers.

Appellant asks this Court to enforce the language of the insurance policy between the parties. Under the terms of that policy, despite the fact that some exception in the Workers' Compensation Act may have excluded mandatory coverage, coverage became

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<sup>6</sup> Westfield's insurance policy language is standard for the workers' compensation insurance industry.

mandatory when Respondent's total payroll hours exceeded 22,880 during the policy period. Accordingly, Respondent should be required to pay for the premium assessed pursuant to the coverage required in the contract.

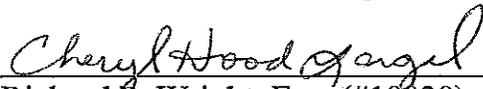
### CONCLUSION

For all the foregoing reasons, Appellant/Defendant respectfully requests that the trial court's order granting Respondent's/Plaintiff's motion for summary judgment be reversed, and that Appellant be allowed to collect and retain the workers' compensation premium assessed Respondent pursuant to the parties' contract.

Respectfully submitted,

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Dated: 5-10, 2007

  
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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).