

NO. A10-446

STATE OF MINNESOTA  
IN SUPREME COURT

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Brian Martin,

Employee,

vs.

Morrison Trucking, Inc.,

Employer-Respondent,

and

Travelers Insurance Company,

Insurer-Relator,

and

Special Compensation Fund,

Respondent.

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**RESPONDENT'S BRIEF OF  
MORRISON TRUCKING, INC.**

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## INTRODUCTION

This is an insurance coverage dispute. In 2001 and 2002, Morrison Trucking, Inc. (hereinafter "Morrison Trucking") was a trucking firm located in Hager City, Wisconsin. On September 21, 2001, the Wisconsin Workers' Compensation Rating Board (hereinafter "WCRB") issued an insurance binder to Morrison Trucking providing workers' compensation insurance coverage effective September 15, 2001 through the Wisconsin Workers' Compensation Insurance Pool. The insurance was then placed through Travelers Insurance Company (hereinafter "Travelers"), a servicing carrier for the Wisconsin Workers' Compensation Insurance Pool. On December 20, 2001, Travelers issued Morrison Trucking the contemplated workers' compensation insurance policy which purported to exclude other states' insurance coverage for Minnesota.

Bryan Martin, an employee of Morrison Trucking, sustained a work injury on July 31, 2002 during the period of coverage under the Travelers policy. The injury occurred in Minnesota. Travelers paid Bryan Martin certain workers' compensation benefits pursuant to Wisconsin workers' compensation law. Bryan Martin ultimately claimed entitlement to Minnesota workers' compensation benefits. Travelers refused to pay those benefits. The Special Compensation Fund paid additional Minnesota workers' compensation benefits to Bryan Martin, pending the dispute between Morrison Trucking and Travelers as to whether or not Morrison Trucking was covered for Minnesota workers' compensation benefits.

Following a hearing, Compensation Judge Catherine Dallner issued Findings and Order served and filed April 25, 2008. The Compensation Judge held that Morrison Trucking was uninsured for the Minnesota workers' compensation benefits payable to the employee. The Compensation Judge also ordered Morrison Trucking to pay a penalty for

failing to have workers' compensation coverage for benefits payable under the Minnesota Workers' Compensation Act.

On October 29, 2008, the Workers' Compensation Court of Appeals issued a decision reversing the Compensation Judge's Findings and Order. The Workers' Compensation Court of Appeals held that Morrison Trucking was entitled to insurance coverage under the Travelers policy for Minnesota workers' compensation benefits payable to the employee pursuant to the reasonable expectations doctrine.

Travelers appealed to the Minnesota Supreme Court, which reversed the Workers' Compensation Court of Appeals' decision and remanded the matter for further consideration in light of Carlson v. Allstate Insurance Company, 749 N.W.2d 41 (Minn. 2008).

On remand, the Workers' Compensation Court of Appeals held that the exclusion of Minnesota benefits from the Travelers policy was inconsistent with the mandatory coverage provisions of the Wisconsin Workers' Compensation Act and contrary to public policy. The Workers' Compensation Court of Appeals held that the purported exclusion was arbitrary and invalid and could not be enforced to prevent coverage for Morrison Trucking's liability to the employee for Minnesota workers' compensation benefits. Therefore, the Workers' Compensation Court of Appeals reversed the finding that Morrison Trucking was not insured for workers' compensation liability for Minnesota workers' compensation benefits by Travelers. The Workers' Compensation Court of Appeals vacated the penalty assessment against Morrison Trucking and ordered Travelers to reimburse the Special Compensation Fund for the Minnesota workers' compensation benefits paid to the employee.

Travelers has now appealed to the Minnesota Supreme Court once again.

**STATEMENT OF ISSUES**

- I. **WHETHER OR NOT THE WORKERS' COMPENSATION COURT OF APPEALS CORRECTLY APPLIED THE LAW IN DETERMINING THAT THE EXCLUSION FROM OTHER STATES' COVERAGE FOR MINNESOTA WAS INVALID UNDER THE CIRCUMSTANCES OF THIS CASE.**
  
- II. **WHETHER OR NOT MORRISON TRUCKING, INC., IS ENTITLED TO INSURANCE COVERAGE UNDER THE REASONABLE EXPECTATIONS DOCTRINE, BECAUSE THIS CASE IS ONE OF THOSE UNIQUE AND EGREGIOUS SITUATIONS WHERE THE EXCLUSION FROM COVERAGE WAS UNREASONABLY HIDDEN.**

## STATEMENT OF FACTS

In August 2001, Tom Morrison of Morrison Trucking applied for workers' compensation coverage for the employees of Morrison Trucking. (Resp't Morrison Ex. 1; See Hr'g Tr. 27, February 7, 2008.) The application for workers' compensation insurance was completed and submitted through the Lawrence Bohmbach Insurance Agency with the assistance of agent Geraldine Petree. (Resp't Morrison Ex. 1 at 1, 2; Hr'g Tr. 25-28.) In addition to the application for workers' compensation insurance, Morrison Trucking requested coverage in the entire United States for its employees by submitting a completed and signed "Supplementary Wisconsin Limited Other States Request" form. (Resp't Morrison Ex. 1 at 4; Hr'g Tr. 29-30.) The application for "other states coverage" specifically stated that the business of Morrison Trucking was over-the-road trucking in which its employees potentially traveled in all states. (Resp't Morrison Ex. 1 at 4; Hr'g Tr. 32.) The application indicated that Morrison Trucking had no physical operations located in any state outside of Wisconsin. (Resp't Morrison Ex. 1 at 4; Hr'g Tr. 30.) The application further indicated that Morrison Trucking employed a number of employees who resided in the state of Minnesota. (Resp't Morrison Ex. 1 at 4; Hr'g Tr. 31.)

The Wisconsin Compensation Rating Bureau (hereinafter "WCRB") issued a binder letter on September 21, 2001, which indicated that the workers' compensation insurance coverage applied for was being provided. (Resp't Morrison Ex. 2.) Travelers was assigned as the servicing carrier for the policy. (Hr'g Tr. 94-95.) Morrison Trucking paid the premium for the workers' compensation insurance including the "other states coverage" endorsement it applied for. (See Resp't Morrison Ex. 2.) Morrison Trucking received the Travelers insurance policy in December 2001, three months after the receipt of the WCRB binder letter. (Hr'g Tr. 44.)

Tom Morrison admitted he did not read the entire policy. (Id. at 44-45.) He glanced at the policy when it arrived, but he did not read the entire policy believing it only reiterated the terms of the coverage that was already paid for. (Id. at 38.)

Tom Morrison of Morrison Trucking reasonably expected to be provided with workers' compensation coverage for all employees while they were performing work in all states. (Id. at 30, 34.) That was the coverage requested on the application and the WCRB binder letter indicated it was being provided. (Resp't Morrison Ex. 1 at 4; Resp't Morrison Ex. 2; Hr'g Tr. 29, 30.) Tom Morrison reasonably believed that such coverage was in place. (Hr'g Tr. 30, 34.)

On July 31, 2002, one of Morrison Trucking's employees, Bryan Martin, sustained an injury while in the course of his employment with Morrison Trucking. (Employee's Claim Pet.; Hr'g Tr. 3, 6.) The injury was reported to Travelers, which processed the claim and paid workers' compensation benefits to the Employee pursuant to Wisconsin workers' compensation laws. (Hr'g Tr. 6.) Specifically, \$27,320.13 in wage loss and permanent partial disability benefits were paid to the Employee, and \$47,821.82 in medical expenses were paid on his behalf. (Id.)

In 2005, the Employee filed a claim electing additional benefits payable under the Minnesota Workers' Compensation Act. (See Id. at 33.) He was entitled to these benefits because his injury occurred in the state of Minnesota. (Id. at 16.) Prior to the filing of this claim, Morrison Trucking was never informed and was unaware that the insurance policy issued in December 2001 by Travelers purported to exclude benefits payable under the Minnesota Workers' Compensation Act. (Id. at 30, 34.)

The insurance policy issued in December 2001 to Morrison Trucking contained an obscure exclusion purporting to exclude the benefits claimed by the Employee under the

Minnesota Workers' Compensation Act. (See Resp't Morrison Ex. 3 at 16.) The exclusion consists of the abbreviation "MN" typed in small print near the margin of the 16th page of a 23 page policy. (Resp't Morrison Ex. 3 at 16.)

Travelers conducted no investigation into the actual operations of Morrison Trucking upon which to base the exclusion. (Hr'g Tr. 112.) There was no investigation into whether or not Morrison Trucking had a facility located in Minnesota, etc. (Id.) Relying on the insurance application's disclosure that Morrison Trucking employed several Minnesota residents, the purported exclusion was incorporated into the policy based on the mistaken assumption that Morrison Trucking had operations in Minnesota (Id. at 99, 104, 106, 111-112.)

Despite reducing the insurance coverage from what was originally applied for, Travelers did not adjust or reduce the premium for the exclusion. (Id. at 112.) Morrison Trucking was charged the full premium based on payroll that was computed at the time the application was submitted. (Id. at 112-113.)

Morrison Trucking applied for and paid for workers' compensation insurance coverage for its employees who performed over-the-road trucking in all 48 continental United States. (Resp't Morrison Ex. 2; Hr'g Tr. 25-33.) Tom Morrison, the representative of Morrison Trucking who procured the insurance, was not informed that coverage for certain claims, such as the employee's claims herein, was lacking. (Hr'g Tr. 36, 37.) The policy it replaced had no such exclusion. (See id. at 34, 61.) No communication was provided to Morrison Trucking drawing attention to the exclusion. (Id. at 36-40.) No communication was provided to Morrison Trucking explaining the exclusion. (Id.)

## STANDARD OF REVIEW

The Minnesota Supreme Court has original jurisdiction for review of decisions from the Workers' Compensation Court of Appeals as set forth in Minn. Stat. §176.471, subd. 1. Travelers appeals from the Workers' Compensation Court of Appeals determination that the Travelers policy extended Minnesota workers' compensation Insurance coverage for Morrison Trucking. 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). The Minnesota Supreme Court must determine whether the Workers' Compensation Court of Appeals' opinion conforms with the Minnesota Workers' Compensation Act and/or whether the Workers' Compensation Court of Appeals committed an error of law. See Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607 (W.C.C.A. 1993), aff'd without opinion, 502 N.W.2d 216 (Minn. 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 WORKERS' COMPENSATION COURT OF APPEALS CORRECTLY APPLIED THE LAW IN DETERMINING THAT THE EXCLUSION FROM OTHER STATES' COVERAGE FOR MINNESOTA WAS INVALID UNDER THE CIRCUMSTANCES OF THIS CASE.**

This informal brief is respectfully submitted on behalf of Morrison Trucking. It is the position of Morrison Trucking, that the decision of the Workers' Compensation Court of Appeals herein served and filed February 11, 2010 should be affirmed. Morrison Trucking agrees with and relies upon the analysis of the Workers' Compensation Court of Appeals as set forth in its decision. That analysis will not be repeated. The following is intended to supplement the Workers' Compensation Court of Appeals decision and to respond to arguments raised by the Appellant.

The Workers' Compensation Court of Appeals' decision in this matter sets forth a reasonable and workable solution for dealing with workers' compensation coverage for "transient" employees. It would be unreasonable to require employers to obtain a separate policy of workers' compensation insurance for every state in which its "transient" employees, such as over-the-road truck drivers, worked. The arguments set forth by Travelers, when reduced to a basic level, would create a situation where an employer like Morrison Trucking could be required to have separate workers' compensation insurance policies for benefits payable in every state that its employees traveled. Presumably, an employer like Morrison Trucking could then be required to pay corresponding premiums for each insurance policy.

Under Minnesota workers' compensation law, jurisdiction for Minnesota benefits are extended to employees who work in the unique class that requires them to travel throughout

the country due to the very nature of their work. See Vaughn v. Nelson Bros. Construction, 51 W.C.D. 159 (W.C.C.A. 1994). The Wisconsin Workers' Compensation Act is similar. The Wisconsin Workers' Compensation Act extends jurisdiction to injuries occurring out of state if the employee was working under a contract of hire made in Wisconsin. See Wis. Stat. §102.03(5). The principles behind the extension of jurisdiction are applicable to the case at hand.

Over-the-road truck drivers are a unique class of employees. Their location of employment is transient. As noted, Minnesota and Wisconsin long arm statutes extend their states' jurisdiction for workers' compensation benefits to such employees wherever they are injured. As a result, the employees are covered by workers' compensation law for the state in which the employee is hired or in which the employer's operations are located.

Similarly, employees are covered by workers' compensation policies issued for the state in which the employee is hired in and in which the employer's operations are located. Premiums are paid for workers' compensation coverage based on their employment classification under one workers' compensation policy. It would be unreasonable to allow a workers' compensation insurer to charge a full premium for such transient employees under a particular workers' compensation policy and yet exclude coverage for benefits payable in the states where the transient employee works. Travelers is arguing they should be allowed to do just that.

The case at hand is distinguishable from the situation in which the employer has operations in multiple states. Had Morrison Trucking had operations in Minnesota where its employees regularly worked, then it could be expected to place workers' compensation

insurance coverage through a Minnesota policy. However, in this case, there were no operations in Minnesota by Morrison Trucking.

Again, when the arguments of Travelers are reduced to their basic level, it is apparent that Travelers is attempting to exploit an underwriting mistake that resulted in the insertion of an exclusion for Minnesota workers' compensation benefits under the "other states" coverage issued in the policy. Travelers has provided no reasonable basis for including the exclusion in the policy it issued to Morrison Trucking. The argument from Travelers is that the exclusion was there so it must be upheld. However, Travelers does not adequately address the fact that there was no legitimate basis or risk factor for the exclusion in the first place. Nor do they address the fact that there was no reduction in premium for the corresponding reduction in coverage. It can only be assumed that they do not adequately address those issues because they cannot.<sup>1</sup>

Travelers also seems to be arguing that there should have been no coverage for the employees of Morrison Trucking, because they did not "regularly work in Wisconsin." (See Appellant's Brief at 14-16). If that argument is taken to its logical conclusion, then no policy should have been issued, and no premiums should have been collected from Morrison Trucking. The premiums paid by Morrison Trucking should have been refunded, and Travelers should have notified Morrison Trucking that no coverage was being afforded and that it had to find coverage elsewhere.

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<sup>1</sup> Travelers argues that Morrison Trucking's insurance agent understood that Minnesota benefits could not be covered through the Wisconsin Pool if Morrison had Minnesota-resident employees. Specifically, Geraldine Petree answered a question during the hearing that "only Wisconsin residents are covered under the Wisconsin Pool policy." Clearly Ms. Petree's testimony is not accurate. Certainly there was coverage for all of Morrison Trucking's employees for Wisconsin benefits whether they were Minnesota residents or not. In fact there was coverage for all states' benefits, except ostensibly Minnesota benefits.

In short, the decision of the Workers' Compensation Court of Appeals herein served and filed February 11, 2010 should be affirmed.

**II. MORRISON TRUCKING, INC., IS ENTITLED TO INSURANCE COVERAGE UNDER THE REASONABLE EXPECTATIONS DOCTRINE, BECAUSE THIS CASE IS ONE OF THOSE UNIQUE AND EGREGIOUS SITUATIONS WHERE THE EXCLUSION FROM COVERAGE WAS UNREASONABLY HIDDEN.**

As the Workers' Compensation Court of Appeals initially held in its decision served and filed October 29, 2008, Morrison Trucking had a reasonable expectation of coverage for workers' compensation benefits paid or payable for work injuries occurring in the state of Minnesota. The purported exclusion of coverage for Minnesota benefits, which was arbitrarily and inconspicuously inserted in the Travelers' policy, is not valid.

Morrison Trucking applied for workers' compensation coverage to cover its employees for injuries occurring throughout the entire United States. (Resp't Morrison Ex. 1; Hr'g Tr. 27). The WCRB issued a binder of insurance through the Wisconsin Workers' Compensation Insurance Pool. (Resp't Morrison Ex. 2). The binder was issued September 21, 2001 and stated that insurance coverage was being afforded by the Wisconsin Workers' Compensation Insurance Pool effective September 15, 2001. (Id.)

Travelers was assigned as the servicing carrier for the insurance coverage bound by the WCRB. (Hr'g Tr. 94-95). In December 2001, Travelers issued a policy which purported to set forth the details of the coverage bound by the WCRB. (Resp't Morrison Ex. 3). The insurance policy purported to exclude coverage for Minnesota workers' compensation benefits. (Id. at 16).

As the Workers' Compensation Court of Appeals held in its first decision, the coverage afforded when the binder was issued included Wisconsin limited other states

insurance coverage. There was no indication that any requested coverage had not been provided, nor was there any indication that any state, such as Minnesota, had been excluded from the other states coverage. Morrison Trucking, and its owner, Tom Morrison, reasonably believed there was coverage throughout the entire United States.

The subsequent policy issued by Travelers, which purported to exclude Minnesota coverage, was an invalid reduction in coverage. First, there was no rational basis for the exclusion. Second, the exclusion was not conspicuously or otherwise adequately communicated to Morrison Trucking. Third, Travelers had no authority to unilaterally amend the contract formed between the WCRB and Morrison Trucking pursuant to the insurance binder issued in September 2001. Fourth, there was no consideration in the form of a reduced premium for the elimination of coverage applied and paid for by Morrison Trucking.

Morrison Trucking is entitled to coverage under the reasonable expectations doctrine. The facts of this case represent one of those unique and egregious situations where the reasonable expectations doctrine should extend coverage, because the exclusion for Minnesota benefits was unreasonably hidden and not adequately communicated. Columbia Heights Motors, Inc. v. Allstate Ins. Co., 275 N.W.2d 32 (Minn. 1979); Gross v. Lloyds of London Ins. Co., 358 N.W.2d 266 (Wis. 1984); Atwater Creamery Co. v. Western Nat. Mut. Ins. Co., 366 N.W.2d 271 (Minn. 1985); Handal v. American Farmers Mut. Cas. Co., 255 N.W.2d 903 (Wis. 1977).

Morrison Trucking was engaged in the business of over-the-road trucking. (Resp't Morrison Ex. 1; Hr'g Tr. 25-33). It had no operations or facilities outside of the state of

Wisconsin. (Resp't Morrison Ex. 1; Hr'g Tr. 30). However, its employees regularly traveled throughout the entire United States. (Hr'g Tr. 32).

A policy of workers' compensation coverage was issued to Morrison Trucking by the WCRB. (Resp't Morrison Ex. 2). Premium was presumably calculated based upon the disclosures in the application, which stated that the employees were over-the-road truck drivers who spent 95% of their time outside of the state of Wisconsin. (Resp't Morrison Ex. 1).

There appears to be no valid underwriting basis to exclude Minnesota coverage. The exclusion was arbitrary and not based on logic. It appears to be based solely on the fact that some employees were Minnesota residents. There has never been a satisfactory explanation as to how that changed any risk factor or met any underwriting guideline.

Travelers argues that the underwriting process was logical. They base that on the testimony of the underwriter, the president of the WCRB, and Morrison Trucking's insurance agent.

Clearly the testimony of the underwriter and the president of the WCRB is biased testimony. Similarly, the reliance on the testimony of the insurance agent is severely misguided. The agent disqualified the credibility of her own testimony. On cross-examination, she could not recall the substance of the specific discussions. (Hr'g Tr. 82-85). Moreover, her testimony about Minnesota resident employees contradicted all documentary evidence. (Resp't Morrison Ex. 1 at 4).

In short, Travelers argues that the underwriter identified known uninsurable risks of Minnesota benefits. However, there is simply no basis for this argument as the only criteria

used was the residency of certain employees. There is no explanation how that equates to any type of “known risk.”

The binder issued by the WCRB provided coverage for all states (including Minnesota), because the coverage was applied for and there was no indication in the binder that any of the coverage applied for was not being provided. Travelers, as the servicing carrier, cannot unilaterally eliminate some of the coverage that was bound.

It is the position of Morrison Trucking that any such reduction of coverage must be rationally based and adequately communicated.

It is simply underhanded and not acceptable, based on the facts of this case, for Travelers to have issued a policy arbitrarily and inconspicuously purporting to exclude coverage for Minnesota workers’ compensation benefits. There was no rational basis. There was no reduction in premium. There was no notice that Travelers was trying to amend the bound coverage.

Moreover, it was contrary to the terms of the binder. The reasonable expectations doctrine is an exercise in fairness. If coverage is going to be amended or changed, then adequate notice needs to be given to the insured, and the change must have a rational basis. See Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc., 258 N.W.2d 570 (Minn. 1977).

Finally, Travelers argued to the Workers’ Compensation Court of Appeals that the “reasonable expectations doctrine” was not appropriately applied. Travelers cites Tom Morrison’s failure to read the entire 23 page policy as grounds to deny equitable relief. In doing so, Travelers ignores the basic premise of “reasonable” expectations doctrine. That is, the expectations and actions of Morrison Trucking and Tom Morrison were “reasonable” to create an expectation for coverage.

Again, Travelers relies on the testimony of Morrison Trucking's insurance agent. As noted above, the agent's testimony was inconsistent with the documentary evidence and otherwise not credible. (Resp't Morrison Ex. 1 at 4). She disqualified her own testimony by recalling no specific discussions. (Hr'g Tr. 82-85). Moreover, her testimony was contradicted by the testimony of others regarding discussions that she had with other persons when the claim issues arose. (Hr'g Tr. 82-85, 88-89).

As the Workers' Compensation Court of Appeals concluded in their first decision, Morrison Trucking had a reasonable expectation of coverage for Minnesota benefits.

## CONCLUSION

The purported exclusion in the Travelers' policy for additional benefits payable under the Minnesota Workers' Compensation Act cannot be enforced.

Morrison Trucking applied for workers' compensation coverage for its employees working and traveling in the entire United States. A binder was issued for that coverage. Morrison Trucking paid premiums for that coverage.

Travelers issued a policy to Morrison Trucking purporting to exclude coverage for Minnesota workers' compensation benefits.

The exclusion of Minnesota benefits from the Travelers' policy is inconsistent with the mandatory coverage provisions of the Wisconsin Workers' Compensation Act and contrary to public policy. The purported exclusion was arbitrary and invalid and cannot be enforced to prevent coverage for Morrison Trucking's liability to the employee, Bryan Martin, for Minnesota workers' compensation benefits. Therefore, Morrison Trucking was insured by Travelers for workers' compensation liability for Minnesota workers' compensation benefits.

Based on the facts of this case, the Workers' Compensation Court of Appeals' Decision must be affirmed.

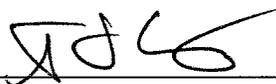
Moreover, Morrison Trucking's belief that it had insurance coverage for benefits payable under the Minnesota Workers' Compensation Act was a reasonable expectation. This is one of those unique and egregious situations where the exclusion from coverage was unreasonably hidden. Thus, Morrison Trucking is entitled to coverage under the reasonable expectations doctrine as well.

If the current Workers' Compensation Court of Appeals' Decision is not affirmed, then, as the Workers' Compensation Court of Appeals concluded in their first decision, Morrison Trucking had a reasonable expectation of coverage for Minnesota benefits and the case should be decided on that basis.<sup>2</sup>

DATED: 5/7/10

Respectfully submitted,

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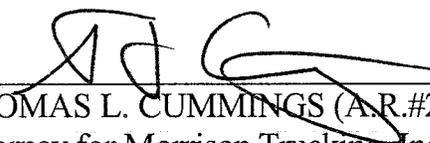
<sup>2</sup> If the Workers' Compensation Court of Appeals Decision is not affirmed, then the matter should be remanded to the Workers' Compensation Court of Appeals to address the penalty award of the compensation judge.

**CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn.R.Civ.App.P. 132.01, subs. 1 and 3, for a brief produced with a 13 point proportional font. The length of this brief is 1,918 words. This brief was prepared using Microsoft Office Word 2003.

DATED: 5/7/10

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