

**STATE OF MINNESOTA
IN COURT OF APPEALS**

**Aaron R. Carlson and
Robert S. Carlson,**
Appellants,

-vs-

**Allstate Insurance Company and
Midwest Family Mutual Insurance
Company,**
Respondents,
and
Allstate Insurance Company,
Respondent

Court of Appeals Number: A06-1664

-vs-

**Michael J. Fay, Individually, and
Mike Fay Insurance Agency,**
Respondent.

BRIEF OF APPELLANTS AARON AND ROBERT CARLSON

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LEGAL ISSUES

- I. Whether the language of the Allstate Policy provided uninsured motorist coverage to Aaron Carlson for his injuries arising out of the January 1, 2003 accident? Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc., 258 N.W.2d 570, 572 (Minn. 1977). Steele v. Great West Cas. Co., 540 N.W.2d 886, 888-889 (Minn.App. 1995).
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- III. Whether Uninsured Motorist Coverage is Mandated by Statute in this case? Minnesota Statutes §65B.49 Subd. 3a (5); Laffen v. Auto-Owners Ins. Co., 429 N.W.2d 264, 265 (Minn.App.,1988).

The Trial Court answered all three questions in the negative.

STATEMENT OF THE CASE

This case arises out of a collision on January 1, 2003 in which Appellant Aaron Carlson was struck by a motor vehicle while crossing a street in Minneapolis. Kahlil Anthony Queen operated the adverse vehicle. Just prior to the accident, Aaron Carlson parked and then exited the Ford Focus that his father, Appellant Robert Carlson, leased for him. As Aaron Carlson was crossing the street, Mr. Queen, who was parked on the other side of the street, pulled out and did a "U" turn, striking him. As a result of the accident, Appellant Aaron Carlson incurred severe injuries including a right anterior cruciate ligament avulsion, a

lateral tibial plateau fracture, and a grade 2 medial collateral ligament sprain. He underwent surgery and hospitalization, incurring \$31,898.30 in medical bills. He was also disabled from working for a substantial period of time.

Mr. Queen had no insurance coverage. On April 8, 2004, Appellants obtained a judgment against Mr. Queen in the amount of \$170,000.00. Since defendant Allstate Insurance Company had notice of both the hearing and the entry of judgment, it is bound by that judgment with regard to the liability of Mr. Queen and the amount of damages. The Allstate Insurance policy provided uninsured motorist coverage of \$300,000.00 per person. Since the amount of damages as a matter of law was \$170,000.00, the only issue in dispute was whether or not Allstate's policy afforded coverage to Aaron Carlson.

Appellants' claims involved two components. First, Appellants sought uninsured motorist coverage for Aaron Carlson from Respondent Allstate Insurance Company. Second, and alternatively, Appellant Aaron Carlson sought no-fault benefits from Midwest Family Mutual Insurance Company under Minnesota's Assigned Risk Plan.

Appellants and both Respondents moved for Summary Judgment at the same hearing prior to the third-party defendant being brought into the case. The Court, in an order dated August 4, 2006, granted Summary Judgment in favor of

Allstate and against the Carlsons and granted Summary Judgment in favor of the Carlson's and against Midwest Family Insurance. Appellants are making an appeal from that portion of the Trial Court's Order that granted Allstate Insurance Company's Motion for Summary Judgment, denied Plaintiffs' Motion for Summary Judgment against Allstate Insurance Company, and entered Judgment in favor of Allstate Insurance Company.

Appellants note that the Trial Court granted Judgment in favor of Appellant Aaron Carlson and against Midwest Family Mutual Insurance for the entire amount of the uninsured motorist claim even though Appellant only had a no-fault claim under the Assigned Claims Statute. While this matter has not been resolved at the time of the writing of the Brief, Appellants are not opposing an amended order by the District Court to correct this error. The Court dismissed the third-party defendant because the only party having a claim against it was Allstate Insurance Company. Appellants are not appealing from those portions of the Order, but if this Court reverses the Order, that portion of the Order would have to be modified as well.

STATEMENT OF THE FACTS

Appellant Aaron Carlson is the son of Appellant Robert Carlson and Gail Carlson. (App. p. 53-Aaron Carlson Dep. p. 6). After graduating from Hibbing High School, about ten years ago, Appellant Aaron Carlson moved to Minneapolis. (App. p. 52-Aaron Carlson Dep. p. 4). Appellant Robert Carlson provided cars for both Aaron Carlson and his younger brother. (App. p. 40-41 and 43-Robert Carlson Dep. p. 4-5 and 13). Appellant Robert Carlson initially leased a Ford Escort for Aaron around 1998, and when that lease expired around November of 2001, he obtained a Ford Focus. (App. p. 40-41-Robert Carlson Dep. p. 3 and 5). While Aaron Carlson's usual employment both before the accident and at the present time is working as a computer programmer, at the time of the accident, he was between computer programmer type jobs and was working a number of part time jobs. These jobs did not provide Appellant Aaron Carlson with sufficient income for him to pay for either the vehicle or the insurance premiums. (App. p. 40-41-Robert Carlson Dep. p. 4 and 6 and App. p.53-54-Aaron Carlson Dep. p. 6 and 8-9).

Appellant Robert Carlson had his automobile and homeowners insurance with Respondent Allstate Insurance Company for a number of years, and since 1990, he obtained that coverage through Allstate agent Michael Fay. (App. p. 73-

Michael Fay Dep. p. 7). At the time of the accident, Robert Carlson normally used a company car for his own driving purposes. (App. p. 43-Robert Carlson Dep. p. 14-15). Robert Carlson owned a 2000 Mercury Cougar which was used by Aaron Carlson's younger brother, Christopher Carlson, and he owned a 1999 Ford Explorer which was used primarily by his wife, Gail Carlson. (App. p. 43-Robert Carlson Dep. p. 14). Robert Carlson also leased a 2002 Ford Focus for Aaron Carlson's use. (App. p. 40-Robert Carlson Dep. p. 3-4). Respondent Allstate Insurance Company insured these three vehicles under a single policy. (App. p. 18-24-Affidavit Exhibit A). Robert Carlson paid all the lease payments and the insurance premiums on the Ford Focus. (App. p. 40 and 43-Robert Carlson Dep. p. 4 and 16). Aaron Carlson paid for the gas and most of the maintenance costs. (App. p. 40-41-Robert Carlson Dep. p. 4 and 6 and App. p. 54-Aaron Carlson Dep. p. 9). Prior to the accident, Respondent Allstate Insurance Company paid a comprehensive damage claim for a dent to the Ford Focus caused by a hit and run driver in a parking lot. Allstate's adjusters contacted Aaron Carlson rather than Robert Carlson concerning the form filled out by Appellants. (App. p. 42-Robert Carlson Dep. p. 10, App. p. 63-Aaron Carlson Dep. p. 47-48 and App. p. 38-39-Affidavit Exhibit L).

Respondent does not allege or claim that Robert Carlson was not completely forthright and honest about Aaron Carlson's use of the Ford Focus or that either of

these Appellants made any fraudulent representations to Allstate Insurance. (App. p. 74-75-Michael Fay Dep. p. 11 and 14). Michael Fay knew that Robert Carlson was intending to purchase the insurance to cover his son Aaron. (App. p. 74-Michael Fay Dep. p. 11-12). Robert Carlson told Mr. Fay that he was procuring the car and insurance coverage for Aaron because his son could not afford either of these expenses. (App. p. 74-Michael Fay Dep. p. 10). Robert Carlson told Michael Fay that the car was going to be used by his son Aaron who was living in Minneapolis where the car was going to be garaged. (App. P. 41-42-Robert Carlson Dep. p. 7-9 and App. p. 74-75 and 76-77-Michael Fay Dep. p. 10-14 and 20-21 and App. p. 18-25, 29-34-Affidavit Exhibits A,E,F,G, and H). Michael Fay conveyed that information to his principal, Respondent Allstate Insurance Company. (App. p. 75-77-Michael Fay Dep. p. 16 and 20-21 and App. p. 18-25 and 29-34-Affidavit Exhibits A,E,F,G, and H). The policy and its documents for the vehicles state that the Ford Focus was going to be driven by Aaron Carlson "100%" and listed his address in Minneapolis. (App. p. 30-36-Affidavit Exhibits F,G,H, and J). There is also a listing of Aaron Carlson's driving record which showed only one old speeding ticket. This would have been no impediment to his obtaining insurance. (App. p. 84-85-Michael Fay Dep. p. 52-54 and App. p. 36-37-Affidavit Exhibits J and K). There is a slight evidentiary dispute as to what Allstate knew about Aaron

Carlson's school status. Robert Carlson stated he told Michael Fay that Aaron was no longer a student. (App. p. 46-Robert Carlson Dep. p. 25). Michael Fay does not recall whether or not he knew Aaron was a student but that Robert Carlson never told him that Aaron was still a student. (App. p. 74 and 84-Michael Fay Dep. p. 10 and 51).

Respondent Allstate Insurance Company charged a higher premium based on the fact that Aaron was a younger driver who was using the vehicle and because the Ford Focus was being garaged in Minneapolis rather than Hibbing. (App. p. 41-42-Robert Carlson Dep. p. 8-9 and App. 79-81-Michael Fay Dep. p. 31-32 and 36-37). The only financial advantage that the Carlson's received because Robert Carlson rather the Aaron Carlson was purchasing the insurance was a multi-vehicle discount and a homeowners / automobile coverage discount. (App. p. 79 and 85-Michael Fay Dep. p. 31-32 and 53). Respondent Allstate made this offer in order to obtain all of Robert Carlson's business, which it did in fact receive. There would have been no additional costs whatsoever to list Aaron Carlson as a named insured under the Allstate policy since the premium was based on his use of the vehicle. (App. p. 84-85-Michael Fay Dep. p. 52-53). Allstate, in its Memorandum, claimed that its underwriting policy would have forbidden listing Aaron as a named insured because he was not living at home and did not have an interest in the vehicle. This statement

is based on Allstate's refusal to add Aaron as a named insured when the policy came up for renewal *after* its refusal to pay this claim. The timing of Allstate taking this position makes it highly suspect. It also misses the point. Michael Fay readily admits that all Robert Carlson had to do was jointly hold "an interest" in the vehicle with his son. (App. p. 77-83-84-Michael Fay Dep. p. 24 and 48-49). Robert Carlson obtained coverage for the Ford Focus prior to his signing the lease, and had Allstate informed him that this was a concern or issue, Robert Carlson could easily have added Aaron's name to the lease agreement and solved the problem. (App. p. 41-Robert Carlson Dep. p. 6). In fact, Robert Carlson stated he had no real reason for not doing so in the first place but he never gave it a thought. (App. p. 41-Robert Carlson Dep. p. 6). Due to the fact that Respondent Allstate had knowledge of these particular facts, Allstate should not now be allowed to advance this technicality in order to avoid coverage.

Robert Carlson stated that on at least two separate occasions prior to the accident giving rise to this lawsuit, he asked Michael Fay and Helen Baumgartner, another agent in Michael Fay's office, "Are the two boys covered the same as I and my wife, and his response back was 'Yes.'" (App. p. 44-45-Robert Carlson Dep. p. 20-22). Michael Fay could not recall any specific conversations regarding that issue but thought the question was unusually worded. (App. p. 81-Michael Fay

Dep. p. 37-39). Michael Fay stated that Robert Carlson probably asked him if his sons were covered and Michael Fay told him “yes”. (App. p. 86-Michael Fay Dep. p. 57-58). It is undisputed that Michael Fay never pointed out or explained the importance of the fact that Aaron Carlson was listed as a driver of the vehicle but not listed as a “named insured”. (App. p. 44-45-Robert Carlson Dep. p. 20-22 and App. p. 75-86-Michael Fay Dep. p. 13-14 and 57-58). Aaron Carlson stated he did not even know he was not a named insured under the policy prior to the accident. (App. p. 54-Aaron Carlson Dep. p. 10). Allstate issued a proof of insurance card to Aaron Carlson in connection with his use of the vehicle. (App. p. 18-24-Affidavit Exhibit A). In fact, Michael Fay was not even aware of the significance of this “named insured” issue until Allstate denied the claim. (App. p. 75-Michael Fay Dep. p. 14).

One of the few factual disputes in the case is what Michael Fay knew about the “named insured” coverage issue and when he knew about it. As previously stated, Michael Fay was not aware of any difference between listing Aaron Carlson as a driver or as a “named insured” prior to the accident, so the matter did not come up at that point. It was not until after Appellant Aaron Carlson’s accident when Michael Fay was asked to list Aaron Carlson and his fiancé as named insureds under the policy that Allstate told Fay it would not do that. (App. p. 35-Affidavit Exhibit

I). Moreover, had it been an issue, it would easily have been solved by giving Aaron Carlson an ownership interest in the vehicle by adding his name to the lease. (App. p. 77 and 83-84-Michael Fay Dep. p. 24 and 48-49).

Furthermore, Respondent Allstate states that on numerous occasions, Michael Fay told Robert Carlson that Aaron should obtain his own coverage. What Michael Fay actually testified to was that he warned Robert Carlson that he would be vicariously liable if his son were to be in an accident and that it would be better for Robert if Aaron had his own vehicle and coverage. (App. p. 86-Michael Fay Dep. p. 59). Robert Carlson was never told about Allstate's alleged critical distinction between what it termed listed drivers and named insureds. (App. p. 44-45-Robert Carlson Dep. p. 20-22 and App. p. 75 and 86-Michael Fay Dep. p. 13-14 and 57-58). Moreover, if Respondent is correct about its underwriting position, Aaron Carlson could never obtain his own coverage so long as his father was the owner of the vehicle.

ARGUMENT

Respondent Allstate moved for Summary Judgment claiming that as a matter of law it is not required to pay uninsured motorist benefits and no-fault benefits under the policy that Appellant Robert Carlson procured for his son Appellant Aaron Carlson. Allstate claimed that even though Aaron Carlson was

listed on the policy as the sole driver of the vehicle and the premium charged was based on Aaron Carlson's age, his driving record, and his location in Minneapolis, because Aaron Carlson was struck while crossing the street to go from his vehicle to a coffee shop, he was not covered since he was not a "named insured" under the policy. The Trial Court agreed and granted summary judgment.

It is Appellants' position that Allstate is wrong for three (3) reasons. First, Aaron Carlson is an insured under the terms of the Allstate policy. Second, under the Doctrine of Reasonable Expectations, the Court should not allow a mere clerical designation to be the basis for Respondent to avoid paying benefits for the coverage which Appellant Robert Carlson purchased for his son Aaron Carlson, and the Court should interpret or reform the policy accordingly. Finally, Minnesota Statutes §65B.49 Subd. 3a (5) allows a pedestrian to pick from uninsured motorist coverage from any policy with which he is "insured" with no requirement that he or she be a named insured.

STANDARD OF REVIEW

A reviewing court is not bound by and need not give deference to a trial court's decision on a purely legal issue. Frost-Benco Elec. Ass'n v. Minneapolis Pub Utilities Comm'n, 358 N.W.2d 639, 642 (Minn. 1984). The Court can only grant summary judgment to a party if there is no genuine issue as to any material

fact, the moving party having the burden of proof and the non-moving party having the benefit of that view of the evidence that is most favorable to him or her. Nord v. Herreid, 305 N.W.2d 337, 339 (Minn. 1981); Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1985). A material fact is one of such a nature as will affect the result or outcome of the case depending on its resolution. Pischke v. Kellen, 383 N.W.2d 201, 205 (Minn.App. 1986); Rathbun v. W.T. Grant Co., 219 N.W.2d 641, 646 (Minn. 1974). A motion for summary judgment may be granted when the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; Grondahl v. Bulluck, 318 N.W.2d 240, 242 (Minn. 1982).

Summary judgment is a blunt instrument and should be used only where it is perfectly clear that no issue of fact is involved, and that it is not desirable nor necessary to inquire into facts which might clarify the applications of the law. Donnay v. Boulware, 144 N.W.2d 711, 716 (Minn. 1966). Summary judgment is intended to secure a just, speedy and inexpensive disposition, but it is not designed as a substitute for trial where there are factual issues to be determined. Woody v. Krueger, 374 N.W.2d 822, 824 (Minn. App. 1985).

I. THE PROVISION OF ALLSTATE'S POLICY PROVIDED COVERAGE TO THE CARLSONS

The provisions of an insurance policy are to be interpreted according to plain, ordinary sense so as to effectuate the intention of the parties. The policy should be construed as a whole with all doubts concerning the meaning of language employed to be resolved in favor of the insured. Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc., 258 N.W.2d 570, 572 (Minn. 1977). The terms of an insurance policy should be construed according to what a reasonable person in the position of the insured would have understood the words to mean rather than what the insurer intended the language to mean. (Id.). A key principle of insurance policy construction is that policies should be interpreted to give effect to the intent of the parties as it appears from the entire contract. Steele v. Great West Cas. Co., 540 N.W.2d 886, 888-889 (Minn.App. 1995).

The Trial Court in its opinion assumes that Aaron Carlson is not an insured under the terms of the policy without even looking at or referring to the complete definition of insured under the policy. Instead of looking at the policy definition, the Court concentrated on situations where non-insureds would be afforded coverage which had no application to the present case and was never raised by the Appellants in the claim. Respondent Allstate's insurance policy in the Minnesota endorsement in regards to Uninsured Motorist Coverage on page 6 states:

“We will pay damages for bodily injury sickness, disease or death which an insured person is legally entitled to recover from the owner or operator of an uninsured auto. Injury must be caused by accident and arise out of the ownership, maintenance or use of an uninsured auto”.

(App. p. 137 - Emphasis in original).

Page 6 then defines insured person as:

“1. **You and any resident**”.

(App. p. 137-Emphasis in original).

The Trial Court committed a significant error when it stopped its analyses at this point without interpreting the critical phrase “you”. What the trial court failed to take note of was that page 8 of the uninsured motorist coverage portion of defendant’s contract went on to define “You” or “Yours” as:

“means the policyholder named on the Policy Declarations and that policyholder’s spouse who resides in the same household”.

(App. p. 139). The main policy which also has language governing uninsured motorist coverage and which is the place where most insureds would naturally look has similar language starting on page of 9 of the main policy which states as follows:

“If a limit of liability is shown on your declarations page for Coverage SS, we will pay damages for bodily injury sickness, disease or death which an insured person is legally entitled to recover from the owner or operator of an uninsured auto.

Injury must be caused by accident and arise out of the ownership, maintenance or use of an uninsured auto”.

(Emphasis in original).

Insured person is then defined on page 9 as “1. You and any resident relative”.

(Emphasis in original). Page 10 of the uninsured motorist coverage portion of defendant’s contract then goes on to define “You” as:

“means the policyholder named on the declarations page and that policyholder’s resident spouse”.

(App. p. 123-124)

Therefore, the contract directs the parties to look to the Declarations page to determine who is going to be covered by the policy. Indeed, the cover letter sending the amended Declarations page to the Carlson’s tells them to “verify vehicles listed on the Policy Declarations and ID cards”. (App. p. 18-19-Affidavit Exhibit A). Thus Appellants were told by Allstate to inspect those documents to make sure that Aaron Carlson was listed on them. Nowhere in the Declarations

page is the term “policyholder” used. The Declarations page specifically names Robert Carlson, Gail Carlson, Christopher Carlson, and Aaron Carlson as drivers covered by the policy. Therefore, any reasonable insured such as Robert Carlson would read the contract as providing full coverage to his sons as the agent had promised.

II. THE DOCTRINE OF “REASONABLE EXPECTATIONS” WOULD REQUIRE THAT ALL STATE PROVIDE COVERAGE TO THE CARLSONS

The doctrine of “reasonable expectations” protects the “objectively reasonable expectations” of insureds “even though painstaking study of the policy provisions would have negated those expectations”. Jostens, Inc. v. Northfield Ins. Co., 527 N.W.2d 116, 118 (Minn.App., 1995). Courts may interpret an insurance policy according to the insured party's reasonable expectations, even though the language of the policy would have “proscribed coverage” and negated those expectations. Atwater Creamery Co. v. Western Nat'l Mut. Ins. Co., 366 N.W.2d 271, 278 (Minn.1985); Illinois Farmers Ins. Co. v. Eull, 594 N.W.2d 559, 561 (Minn.App.1999). The doctrine of “reasonable expectations” permits a court to construe an insurance policy according to “real-life situations” rather than “arbitrary rules”. Tower Ins. Co., Inc. v. Minnesota Holstein-Freisan Breeders' Ass'n, 605 N.W.2d 768, 772 (Minn.App. 2000). The doctrine is generally applied

to protect individuals where the insurance policy terms have been misrepresented or misunderstood, or where legal technicalities would defeat coverage which the insured reasonably believed was in place. Reinsurance Ass'n of Minnesota v. Johannessen, 516 N.W.2d 562, 565 -566 (Minn.App.,1994).

In adopting the doctrine of reasonable expectations, the Minnesota Supreme Court in Atwater Creamery Co. stated as follows:

The doctrine of protecting the reasonable expectations of the insured is closely related to the doctrine of contracts of adhesion. Where there is unequal bargaining power between the parties so that one party controls all of the terms and offers the contract on a take-it-or-leave-it basis, the contract will be strictly construed against the party who drafted it. Most courts recognize the great disparity in bargaining power between insurance companies and those who seek insurance. Further, they recognize that, in the majority of cases, a lay person lacks the necessary skills to read and understand insurance policies, which are typically long, set out in very small type and written from a legalistic or insurance expert's perspective. Finally, courts recognize that people purchase insurance relying on others, the agent or company, to provide a policy that meets their needs. The result of the lack of insurance expertise on the part of insureds and the recognized marketing techniques of insurance companies is that "[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations." Keeton, 83 Harv.L.Rev. at 967.

The traditional approach to construction of insurance contracts is to require some kind of ambiguity in the policy before applying the doctrine of reasonable expectations. Several courts, however, have adopted Keeton's view that ambiguity ought not be a condition precedent to the application of the reasonable expectations doctrine.

As of 1980, approximately ten states had adopted the newer rule of reasonable expectations regardless of ambiguity. *Davenport Peters Co. v. Royal Globe Insurance Co.*, 490 F.Supp. 286, 291 (D.Mass.1980). Other states, such as Missouri and North Dakota, have joined the ten since then. [FN2] Most courts recognize that insureds seldom see the policy until the premium is paid, and even if they try to read it, they do not comprehend it. Few courts require insureds to have minutely examined the policy before relying on the terms they expect it to have and for which they have paid. ...

The burglary definition is a classic example of a policy provision that should be, and has been, interpreted according to the reasonable expectations of the insured. *C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.*, 227 N.W.2d 169 (Iowa 1975). *C & J Fertilizer* involved a burglary definition almost exactly like the one in the instant case as well as a burglary very similar to the Atwater burglary. The court applied the reasonable-expectations-regardless-of-ambiguity doctrine, noting that “[t]he most plaintiff might have reasonably anticipated was a policy requirement of visual evidence (abundant here) indicating the burglary was an 'outside' not an 'inside' job. The exclusion in issue, masking as a definition, makes insurer's obligation to pay turn on the skill of the burglar, not on the event the parties bargained for: a bona fide third party burglary resulting in loss of plaintiff's chemicals and equipment”. *278 *Id.* at 177. The burglary in *C & J Fertilizer* left no visible marks on the exterior of the building, but an interior door was damaged. In the instant case, the facts are very similar except that there was no damage to the interior doors; their padlocks were simply gone. In *C & J Fertilizer*, the police concluded that an “outside” burglary had occurred. The same is true here.

[11] Atwater had a burglary policy with Western for more than 30 years. The creamery relied on Charles Strehlow to procure for it insurance suitable for its needs. There is some factual dispute as to whether Strehlow ever told Poe about the “exclusion” as Strehlow called it. Even if he had said that there was a visible-marks-of-forcible-entry requirement, Poe could reasonably have thought that it meant that there must be clear evidence of a burglary. There are, of

course, fidelity bonds which cover employee theft. The creamery had such a policy covering director and manager theft. The fidelity company, however, does not undertake to insure against the risk of third-party burglaries. A business that requests and purchases burglary insurance reasonably is seeking coverage for loss from third-party burglaries whether a break-in is accomplished by an inept burglar or by a highly skilled burglar. Two other burglaries had occurred at the Soil Center, for which Atwater had received insurance proceeds under the policy. Poe and the board of the creamery could reasonably have expected the burglary policy to cover this burglary where the police, as well as the trial court, found that it was an “outside job”.

[12] [13] The reasonable-expectations doctrine gives the court a standard by which to construe insurance contracts without having to rely on arbitrary rules which do not reflect real-life situations and without having to bend and stretch those rules to do justice in individual cases. As Professor Keeton points out, ambiguity in the language of the contract is not irrelevant under this standard but becomes a factor in determining the reasonable expectations of the insured, along with such factors as whether the insured was told of important, but obscure, conditions or exclusions and whether the particular provision in the contract at issue is an item known by the public generally. The doctrine does not automatically remove from the insured a responsibility to read the policy. It does, however, recognize that in certain instances, such as where major exclusions are hidden in the definitions section, the insured should be held only to reasonable knowledge of the literal terms and conditions. The insured may show what actual expectations he or she had, but the fact finder should determine whether those expectations were reasonable under the circumstances.

We have used the reasonable-expectations-of-the-insured analysis to provide coverage where the actual language interpreted as the insurance company intended would have proscribed coverage. *Canadian Universal Insurance Co. v. Fire Watch, Inc.*, 258 N.W.2d 570 (Minn.1977). Western correctly points out that the issue there concerned a special endorsement issued subsequent to the policy

which reduced coverage without notice to the insured. While the issue is somewhat different in the instant case, it is not so different that the general concept is made inapplicable.

[14] In our view, the reasonable-expectations doctrine does not automatically mandate either pro-insurer or pro-insured results. It does place a burden on insurance companies to communicate coverage and exclusions of policies accurately and clearly. It does require that expectations of coverage by the insured be reasonable under the circumstances. Neither of those requirements seems overly burdensome. Properly used, the doctrine will result in coverage in some cases and in no coverage in others.

366 N.W.2d at 277 –279.

In other words, a consumer should not have to have a law degree to be able to understand an insurance policy. The doctrine recognizes the fact that insurance contracts contain highly technical language that the average layperson would not be expected to understand and therefore the doctrine will override such language where it would defeat the reasonable expectation of the insured. This doctrine has been applied to help both insurance companies and the insured with the court's underlying rationale being to have the policy provide the type of coverage that was paid for. The consumer should not expect to have coverage which he did not pay for, such as in cases where they are attempting to get both liability and UIM coverage for the actions of the driver of the vehicle. On the other hand, a consumer who paid for burglary coverage should not have that coverage taken away merely because the policy has an obscure provision requiring visible

evidence of the break in on the outside door.

In this case, after acknowledging the doctrine, the Trial Court in its memorandum mistakenly eviscerates the doctrine by improperly stating that the doctrine cannot be applied in cases where a literal reading of the policy language would prevent coverage. This situation is the sole reason for the doctrine. In the present case, Appellant Robert Carlson approached Respondent Allstate Insurance Company and completely and honestly explained the circumstances concerning the use of his vehicles. He asked the insurance agent to obtain coverage for him and his sons. In Robert Carlson's own words, I asked, "are the two boys covered the same as I and my wife" and the agent's response was "yes". All the parties understood that the Ford Focus was going to be used exclusively by Aaron Carlson in Minneapolis and consequently the premium was increased to account for that fact. As confirmation of that fact, Aaron Carlson and Christopher Carlson's names were added to the Declarations page and proof of insurance cards were issued accordingly. Therefore, any reasonable insured under those circumstances would assume that his sons, for whom he was procuring the coverage in the first place, were going to be fully covered. Even a trained attorney reading the policy would expect coverage after noting the reference to "you" meaning the person referred to in the Declarations page and then seeing Aaron

Carlson's name listed as a driver on that page would determine that Appellant Aaron Carlson was fully covered. Therefore, under the doctrine of reasonable expectations, Respondent's tortuous reading of the policy language must be rejected and Appellant Aaron Carlson's name be added to the policy making him fully insured under the policy. Certainly no reasonable person after reviewing the language of the policy could conclude that "the clear language of the policy" would lead consumers such as the Carlson's to conclude that Aaron Carlson would not be covered under this situation.

It should be further noted that there is no claim for fraud in this case and Appellants are seeking only to receive the coverage they paid for and fully expected to receive. If either the policy or Allstate and its agents had clearly pointed out the alleged gap in coverage, all Robert Carlson had to do to correct the problem was to add Aaron Carlson's name to the lease agreement. This would not have resulted in any additional cost to list Aaron Carlson as a "named insured". In fact, a reading of Michael Fay's deposition indicates that prior to the accident, even Mr. Fay, the agent, was unaware of the distinction between listing Aaron Carlson as a driver and as a named insured. Certainly, Aaron Carlson, Robert Carlson or any other reasonable insured would not be aware of that distinction.

When asked whether a person is insured under a policy, the first thing any person is going to do is look at what the Declarations page says. Consequently, if Respondent Allstate is going to attempt to make a fine distinction between a named driver and a named insured, it has a duty to clearly spell that out in the policy. Therefore, if the Court determines that the place where the name is added to the declarations page actually makes a difference, then under the doctrine of reasonable expectations, the policy should be amended to conform to the intent of the parties and the coverage purchased.

III. UNINSURED MOTORIST COVERAGE IS MANDATED BY STATUTE IN THIS CASE

An insurance policy will be reformed by the Court to conform to the coverage mandated by the No-Fault Act. Laffen v. Auto-Owners Ins. Co., 429 N.W.2d 264, 265 (Minn.App.,1988). Minnesota Statutes 65B.49 Subd. 3a (5) which governs mandatory uninsured and underinsured motorist coverage states that “If at the time of the accident the injured person is not occupying a motor vehicle or motorcycle, the injured person is entitled to select any one limit for any one vehicle afforded by a policy under which the injured person is insured”.

Rather than looking at the statutory language which would override any policy provision, the Trial Court in its analysis concentrated solely on its interpretation of the policy language. This is not the proper question when

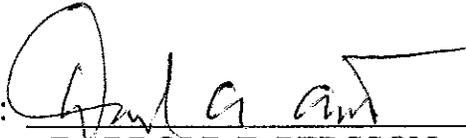
uninsured motorist coverage and a pedestrian are involved. It is clear from an examination of Minnesota's No-Fault Act that the legislature intended to cover pedestrians. In the case of no-fault benefits, the legislature established the Minnesota Assigned Claims plan to cover pedestrians who were not otherwise covered. Therefore, the legislature, in setting priorities, limits under Minnesota Statutes §65B.47, a person to picking a vehicle in which he or she is "an insured" which is a term defined elsewhere and used in a number of places including parts of Minnesota Statutes §65B.49. When the legislature came to handling a pedestrian's uninsured motorist benefits, however, it deliberately used the term "is insured" when it stated that a person may choose any policy in which the injured person is insured. This is a much broader term than "an insured" and Aaron Carlson was clearly insured as a named driver under the Ford Focus. Indeed, he is the only person likely to ever make a claim under that coverage and the rate was set accordingly. Therefore the policy must either be read or conformed to comply with the coverage mandated by Minnesota Statutes §65B.49.

CONCLUSION

This Court should reverse the Trial Court's granting of Respondent Allstate Insurance Company's Motion for Summary Judgment and that portion of the judgment entered in accordance with that decision and enter judgment against Allstate Insurance Company in the sum of \$170,000.00.

Respectfully Submitted:

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