

NO. A11-1841

State of Minnesota  
 In Supreme Court

Roger A. Giersdorf,

*Employee-Respondent,*

vs.

1. A & M Construction,
2. Merrimac Construction Company,

*Employers-Respondents,*

and

- 1a. Uninsured,
- 1b. The Hartford,
2. General Casualty Insurance Company,

*Respondent,*

*Insurer-Relator,*

*Insurer-Respondent,*

and

1. Rivers Edge Hospital & Clinic,
2. New River Medical Center,
3. Mayo Clinic,
4. Minneapolis Clinic of Neurology,
5. MN Department of Labor and Industry/VRU,
6. MN Department of Human Services,
7. Hennepin Faculty Associates,
8. Consulting Radiologists,
9. HealthPartners,

*Intervenors-Respondents.*

**BRIEF OF RESPONDENTS**  
**MERRIMAC CONSTRUCTION AND GENERAL CASUALTY INSURANCE**

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## TABLE OF CONTENTS

Table of Authorities. . . . .	ii
Legal Issue. . . . .	1
Most Apposite Authority. . . . .	1
Statement of the Case. . . . .	1
Statement of the Facts. . . . .	3
Standard of Review. . . . .	4
Argument. . . . .	4
Conclusion. . . . .	9
Certificate of Brief Length. . . . .	11

**TABLE OF AUTHORITIES**

<b>Minnesota Cases</b>	<b>Page</b>
<u>Adair v. Adair Watch &amp; Jewelry</u> , 37 WCD 431 (Minn. WCCA April 23, 1984). . . . .	6
<u>Harms v. Oak Meadows</u> , 619 N.W.2d 201 (Minn. 2000). . . . .	4
<u>Martin v. Morrison Trucking, Inc.</u> , slip. Op. (Minn. WCCA February 11, 2010). . .	6, 7
<u>Nehrig v. M. Dale Best</u> , 258 Minn. 193, 103 N.W.2d 368 (1960). . . . .	7
<u>Oster v. Riley</u> , 276 Minn. 274, 150 N.W.2d 43 (1967). . . . .	7
<u>Peterson v. Vern Donnay Constr. Co.</u> , 48 WCD 664 (Minn. WCCA April 2, 1993). . . . .	1, 6, 7
<u>Schmitt v. Innovative Lawn Sys., Inc.</u> , 67 WCD 306 (Minn. WCCA May 24, 2007). . . . .	1, 7, 8
<u>Steidel v. Metcalf</u> , 210 Minn. 101, 297 N.W.2d 234 (1991). . . . .	7, 8
<u>Tibbetts v. Leech Lake Reservation Bus. Comm’n</u> , slip op. (Minn. WCCA September 16, 1985). . . . .	5, 6
<u>Wallin v. Croix Carriers, Inc.</u> , 45 WCD 100 (Minn. WCCA April 19, 1991). . . . .	6

## LEGAL ISSUE

Whether the Workers' Compensation Court of Appeals properly decided that the issue in this matter is one of insurance coverage, over which compensation judges have jurisdiction to address and resolve, where the issue is ancillary to the adjudication of the employee's claim.

- (1) The employer-respondent A & M Construction, Inc., filed a Petition for Declaration of Insurance Coverage with the Office of Administrative Hearings, Workers' Compensation Division. In response, the insurer-relator, The Hartford, filed an Objection and Motion to Dismiss, alleging a compensation judge lacked subject matter jurisdiction to address the issue.
- (2) A Special Term Conference was held before compensation judge James Cannon on May 2, 2011. Judge Cannon issued an Order dated May 17, 2011, in which he denied and dismissed The Hartford's Objection and Motion to Dismiss. Judge Cannon stated in his Order that workers' compensation judges have jurisdiction to determine coverage issues.
- (3) The Hartford appealed the Order of Judge Cannon to the WCCA. The WCCA issued a Decision dated September 20, 2011, affirming the Order of Judge Cannon.

## MOST APPOSITE AUTHORITY

Schmitt v. Innovative Lawn Sys., Inc., 67 W.C.D. 306 (Minn. WCCA May 24, 2007).

Peterson v. Vern Donnay Constr. Co., 48 W.C.D. 664 (Minn. WCCA April 2, 1993).

## STATEMENT OF THE CASE

Employee-respondent Roger Giersdorf filed a Claim Petition with the Office of Administrative Hearings, Workers' Compensation Division on February 12, 2010, alleging a work-related injury on January 20, 2009. On January 20, 2009, the employee was working for A & M Construction, hereinafter "A & M."

Respondent-employer A & M was insured for workers' compensation liability from June 12, 2007 through December 18, 2008, through a policy with Relator-insurer The Hartford. After an audit of A & M, The Hartford increased A & M's premium. Despite a practice of installment billing, A & M was billed for the entire premium increase in a lump sum. Due to nonpayment of the lump sum in full, The Hartford cancelled the policy effective December 18, 2008. The Hartford denies coverage after that date, alleging the policy was properly cancelled and not in effect on the date of injury. The Hartford therefore alleges that it has no duty to defend and indemnify A & M in regards to the alleged work injury.

Respondent-employer Merrimac Construction allegedly served as the general contractor for A & M on the date of injury. At that time, Merrimac Construction was insured for purposes of workers' compensation liability by General Casualty Insurance Company, hereinafter "General Casualty."

A & M filed a Petition for Declaration of Insurance Coverage (Ad. 1<sup>1</sup>) and The Hartford filed an Objection and a Motion to Dismiss alleging that a compensation judge lacks subject matter jurisdiction to address the contractual issue. (A.6, A-9<sup>2</sup>.) A Special Term Conference took place before Compensation Judge James Cannon on May 2, 2011. Judge Cannon issued an Order dated May 17, 2011 in which he denied and dismissed The Hartford's Objection to Petition for Declaration of Insurance Coverage and Motion to Dismiss. (A. 1-4.) Judge Cannon stated that the central issue in the case was whether an

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<sup>1</sup> "Ad" refers to the Relator's Addendum.

<sup>2</sup> "A" refers to the Relator's Appendix.

insurer had properly cancelled or improperly cancelled a policy. (Ad. 3.) Judge Cannon further stated that the issue of whether The Hartford breached its contract with A & M was indistinguishable from a coverage issue, and that compensation judges have jurisdiction to determine coverage issues. (Ad. 3.).

The Hartford filed an appeal with the Workers' Compensation Court of Appeals, arguing that this is a breach of contract issue, over which a compensation judge lacks jurisdiction. (Ad. 17-18.)

The Workers' Compensation Court of Appeals issued a Decision dated September 20, 2011. (Ad. 5-9.) The Court affirmed the Order of Judge Cannon. The WCCA stated that claim is whether The Hartford's cancellation of their policy was ineffective, thereby warranting coverage for A & M on the date of injury. (Ad. 9.) The WCCA stated that the issue is whether insurance coverage was in effect and this issue is within the jurisdiction of a compensation judge. (Ad-9.)

The Hartford filed a Petition for Writ of Certiorari on October 17, 2011, seeking review of the WCCA decision. (A. 19-20.)

The respondent-employee's Claim Petition for the January 20, 2009 alleged work injury remains pending with the Office of Administrative Hearings, Workers' Compensation Division. There has not yet been a judicial finding of a work-related injury on January 20, 2009.

### **STATEMENT OF THE FACTS**

There has been no evidentiary hearing in this case, and there are no findings of fact. The facts relevant to this case are included in the Statement of the Case, above.

## STANDARD OF REVIEW

Jurisdiction is a question of law and, as such, on appeal the court's review is *de novo*. Harms v. Oak Meadows, 619 N.W.2d 201 (Minn. 2000).

## ARGUMENT

In its brief, the relator-insurer The Hartford stipulates that jurisdiction of the workers' compensation courts extends to issues relating to coverage under workers' compensation policies, where such a determination is ancillary to the adjudication of an employee's claim. However, The Hartford argues that jurisdiction does not extend to the interpretation of a workers' compensation policy "in the context of an alleged breach."

The Hartford states in its brief that this is a classic breach of contract dispute. By labeling this a breach of contract issue, The Hartford is attempting to take this out of the jurisdiction of the workers' compensation courts. Therefore their argument is based on semantics. It is the position of respondents Merrimac Construction and General Casualty Insurance Company that a coverage issue and a breach issue are one in the same and therefore this is within the jurisdiction of the workers' compensation courts.

The Hartford states that the Employer is claiming a breach of contract. As the Workers' Compensation Court of Appeals stated in its Decision, "while some of the language of the employer's petition points to a breach of contract claim . . . what the employer is actually asserting is that The Hartford's purported cancellation of the insurance contract was ineffective and that coverage therefore existed as of the date of the employee's injury." (Ad. 5.) Therefore, this is a coverage issue.

The Hartford cites one case to support their position that there is no jurisdiction in this situation. This case is Tibbetts v. Leech Lake Reservation Bus. Comm'n, slip op. (Minn. WCCA September 16, 1985). In Tibbetts, the insurer, Employers Mutual Liability Insurance Company, had cancelled its policy prior to the work injury. The compensation judge had dismissed the insurance carrier from the case and the WCCA affirmed that dismissal. The employer argued that, due to early cancellation, it was entitled to a credit of \$20,000 to be applied to future premiums. Therefore the issue in Tibbetts was not one of coverage but one of remedy.

In its brief, The Hartford brings up issues of “failure to mitigate” and “set off for premiums.” By bringing up the remedy issue, The Hartford is getting ahead of itself and making this case more complicated than it needs to be. These are not issues in the case at hand. The only issue is whether a compensation judge had jurisdiction to address the coverage issue in this situation. Furthermore, the Employee has not yet proved up a compensable injury under the Workers’ Compensation Act. If he fails to meet that burden and no compensation is due to the employee, the issue of damages is moot.

Nowhere in its decision did the court in Tibbetts state that it did not have jurisdiction over the coverage issue; it simply stated that it did not have authority to fashion a remedy and that the court had no equitable authority. At 8. No party is asking for a remedy in this case, and therefore Tibbetts is inapplicable.

The Hartford also argues that Tibbetts is analogous to the present case because in both cases, a workers’ compensation policy was properly and effectively cancelled. The parties have not stipulated that The Hartford properly and effectively cancelled its policy.

Judge Cannon points out in his Order that the central issue is whether the policy was properly or improperly cancelled. (Ad. 3.) The Court of Appeals states in its Decision that there is an issue of whether the policy cancellation was ineffective. (Ad. 5.) If the policy was improperly or ineffectively cancelled, The Hartford had a duty to defend and indemnify A & M Construction, and therefore A & M Construction had coverage on the date of injury. As Judge Cannon states in his Order, “the central issue in this case is simply whether an insurer has properly cancelled, or improperly cancelled, an employer’s workers’ compensation insurance policy, due to the employer’s failure to pay an additional premium.” (Ad. 3.) If the policy was improperly cancelled, The Hartford had a duty to defend and indemnify A & M Construction, and therefore A & M Construction had coverage on the date of injury. Therefore this is a coverage issue.

The Hartford does not cite cases beyond Tibbetts to support its argument. It does, however, try to distinguish this case from many others where the compensation judge was found to have jurisdiction over issues of coverage.

The Hartford cites and rejects several cases as inapplicable, in an effort to make the case at hand seem novel. These cases include Peterson v. Vern Donnay Constr. Co., 48 W.C.D. 664 (Minn. WCCA April 2, 1993); Adair v. Adair Watch & Jewelry, 37 W.C.D. 431 (Minn. WCCA April 23, 1984); Martin v. Morrison Trucking, Inc., slip op. (Minn. WCCA February 11, 2010); and Wallin v. Croix Carriers, Inc., 45 W.C.D 100 (Minn. WCCA April 18, 1991). In all of these cases, the compensation judge interpreted the terms of a contract and concluded whether coverage should be extended. The Hartford feels these cases are distinguishable because the court in these cases interpreted

the terms of an existing policy. While none of these cases are exactly similar to the present case, they provide strong support for the tenet that workers' compensation courts have jurisdiction to address and resolve contract interpretation and coverage issues.

For example, In Martin v. Morrison Trucking, the court addressed whether portions of an insurance policy were valid and enforceable, thus determining whether coverage existed. At 9. In Peterson v. Vern Donnay Constr. Co., the court reviewed the policies and premiums paid to determine which of two insurance policies covered the employer. At 15-16.

All of these cases held that the compensation judge had jurisdiction to determine issues of coverage by addressing whether certain contractual provisions were valid and enforceable. The Hartford argues these cases are inapposite because they involved existing policies. By doing this, The Hartford is splitting hairs. What these cases support is that compensation judges have the authority to analyze and interpret insurance policies – existing or not – to determine whether and where coverage exists.

The Hartford lumps together another group of cases – Schmitt v. Innovative Lawn Sys., Inc., 67 W.C.D. 306 (Minn. WCCA May 24, 2007); Steidel v. Metcalf, 210 Minn. 101, 297 N.W.2d 324 (1941); Nehrig v. M. Dale Best, 258 Minn. 193, 103 N.W.2d 368 (1960); and Oster v. Riley, 276 Minn. 274, 150 N.W.2d 43 (1967) – as inapplicable because they deal with the issue of whether an insurer's agent properly bound an insurer to provide coverage, and whether an employer reasonably relied on those representations. Although we have no such issue in the present case, these cases still provide support for the respondents' arguments. These cases show that workers' compensation courts have

jurisdiction to address a multitude of contractual issues and determine whether or not a contract existed. In Schmitt v. Innovative Lawn Sys., Inc., the court addressed the issue of equitable estoppel. Also in Schmitt the court addressed the issue of whether insurance coverage had been properly terminated. Id. The court in Schmitt stated that “insurance coverage determinations invariably require compensation judges to apply principles of contract law and agency theory.” Id. at 14.

The case of Steidel v. Metcalf should be given a closer look. In that case, the employer had received notice of cancellation of its policy for nonpayment of premium. The employer then paid the balance of the premium due, and the policy was reinstated. The next month, the premium was increased and it was not paid in full by the employer. The insurer than notified the employer of the cancellation as of February 15, for nonpayment. The employer was later told by an agent of the insurer that they had coverage and that the insurer would “take care of it.” A work injury then occurred on March 7. The insurer refused to defend the employer against the employee’s claim. The Minnesota Supreme Court upheld the decision of the Industrial Commission, in which the Commission found that an insurance contract existed between the employer and insurer. Id. The Hartford distinguishes this case because it involved the employer’s justifiable reliance on the agent’s representations. Nonetheless, the issue in Steidel was whether or not the employer was insured by the insurer on the date of injury. Therefore the Steidel case is relevant to the case at hand.

The Hartford argues that workers’ compensation courts do not have jurisdiction over a coverage issue if the underlying issue is one of an alleged breach of contract. As

Judge Cannon states in his Order, the issues of coverage and alleged breach, in this situation, are indistinguishable. (Ad-3.) Furthermore, the “breach of contract” label does not take this out of the workers’ compensation courts’ jurisdiction. As the case law shows, the workers’ compensation courts have jurisdiction over coverage issues in a multitude of situations. Taken together, these cases support the broad authority of workers’ compensation courts to address review and interpret contractual issues and provide support for the determination of subject matter jurisdiction in this case. The Hartford fails to cite a single case where the workers’ compensation court lacked subject matter jurisdiction for a similar insurance contract interpretation and coverage issue.

### **CONCLUSION**

Despite The Hartford calling the issue in this case a breach of contract, it is simply a coverage issue. The case law holds that compensation judges have the authority to analyze contractual issues and apply principles of contract law to determine whether coverage exists.

The Hartford improperly raises the issues of remedy, damages, and equitable relief. These are not relevant in this case and they simply serve as a distraction to the coverage issue. No one has requested damages or any equitable relief. Any claim for damages is not ripe because the Employee has not, and may not succeed on his workers’ compensation claim. Furthermore, these potential issues may be rendered moot based on the coverage issue or on the Employee’s inability to prove up his case. The sole issue here is whether a compensation judge has jurisdiction to address the coverage issue in this situation.

Respondents Merrimac Construction and General Casualty Insurance respectfully request that this court affirm the decision of the WCCA that the workers' compensation court has subject matter jurisdiction to address the issue of whether or not A & M had workers' compensation coverage through The Hartford on the date of injury.

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**CERTIFICATE OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App.

P. 132.01, Subd. 3. The length of this brief is 2,634 words. The brief was prepared using Microsoft Word and 13-point Times New Roman font.

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