

NO. A11-1841

State of Minnesota  
 In Supreme Court

Roger A. Giersdorf,

*Employee-Respondent,*

vs.

1. A & M Construction, Inc.,
2. Merrimac Construction Co., Inc.,

*Employers-Respondents,*

and

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

*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 Dept. of Labor & Industry/VRU,
6. MN Dept. of Human Services,
7. Hennepin Faculty Associates,
8. Consulting Radiologists,
9. HealthPartners, Inc.,

*Intervenors-Respondents.*

**BRIEF AND APPENDIX OF  
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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).

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## LEGAL ISSUE

**Whether the Workers' Compensation Court of Appeals properly decided that the issue in this matter is one of insurance coverage and that compensation judges have jurisdiction to determine issues related to coverage under workers' compensation insurance policies.**

- (A) The Hartford filed a Motion to Dismiss in response to A & M Construction's Petition for Declaration of Insurance Coverage on the basis that the compensation judge lacked subject matter jurisdiction.
- (B) The Compensation Judge ruled that the Office of Administrative Hearings, Workers' Compensation Section, has subject matter jurisdiction to address the employer's Petition for Declaration of Insurance Coverage.
- (C) The Hartford filed an interlocutory appeal with the Workers' Compensation Court of Appeals which affirmed the Compensation Judge's ruling.

## MOST APPOSITE CASE

*Schmitt v. Innovative Lawn Sys., Inc.*, 67 W.C.D. 306 (W.C.C.A. 2007)

*Peterson v. Vern Donnay Constr. Co.*, 48 W.C.D. 664 (W.C.C.A. 1993)

## MOST APPOSITE STATUTE

Minn. Stat. § 175A.01, subd. 5

## STATEMENT OF CASE

From June 12, 2007 until June 12, 2008, The Hartford insured A & M Construction, Inc. for workers' compensation liability in Minnesota by The Hartford. (A.<sup>1</sup> 2). During the policy period, A & M Construction, Inc. was on an installment billing plan and made monthly payments for its workers' compensation coverage premium. *Id.*

As the policy renewal date approached, The Hartford audited A & M Construction, Inc.'s books from June 12, 2007 through June 12, 2008. *Id.* Based on information gleaned from the audit, The Hartford increased A & M Construction, Inc.'s yearly premium for the subsequent policy period of June 12, 2008 until June 12, 2009. *Id.* The premium increase totaled \$8,242.00. *Id.*

The Hartford's policy contained two conflicting provisions with regards to payment of the workers' compensation premium. According to Part Five of the policy, the insured was to pay all premium when due. *Id.* However, on a document entitled "Direct Bill Information," the policy stated that insureds who were on an installment billing plan would have any additional premium spread equally over the future billing installments. *Id.*

On or about September 12, 2008, The Hartford billed A & M Construction, Inc. for the entire premium of \$9,372.64 instead of prorating the additional premium increase of \$8,242.00 over the remaining installments left on the policy. (A. 3). Two months later, on November 13, 2008, The Hartford provided A & M Construction, Inc. with notice of its intent to cancel the policy for nonpayment of the lump sum premium totaling \$7,653.28. *Id.*

Had the additional premium been prorated according to the installment billing plan, A & M Construction, Inc. would have been able to make monthly payments for its workers'

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<sup>1</sup> "A" refers to the Relator's Appendix.

compensation coverage. *Id.* However, because A & M Construction, Inc. could not pay the lump sum of the total premium, The Hartford cancelled its workers' compensation coverage for A & M Construction, Inc. on December 18, 2008. *Id.*

On February 12, 2010, Roger Giersdorf filed a Claim Petition asserting entitlement to workers' compensation benefits for an alleged injury arising out of and in the course of his employment with A & M Construction, Inc on January 20, 2009. *Id.* Following the receipt of Mr. Giersdorf's Claim Petition, A & M Construction, Inc. tendered the claim to The Hartford which denied that it owed a duty to defend and indemnify A & M Construction, Inc. since the policy had been cancelled. (A. 4).

On or about March 4, 2011, A & M Construction served and filed a Petition for Declaration of Insurance Coverage, asking that a compensation judge determine whether or not A & M Construction, Inc. had workers' compensation insurance coverage with The Hartford at the time of Mr. Giersdorf's injury. (A. 1-5). In response, the Hartford served and filed both an Objection to the Petition for Declaration of Insurance Coverage and a Motion to Dismiss on March 29, 2011, contending that the Office of Administrative Hearings lacks subject matter jurisdiction to consider this coverage issue. (A. 6-16). This issue proceeded to a Special Term Conference before Compensation Judge James Cannon on May 2, 2011. (Ad.<sup>2</sup> 1). Judge Cannon issued an Order dated May 17, 2011, in which he denied and dismissed The Hartford's Objection to the Petition for Declaration of Insurance Coverage and The Hartford's Motion to Dismiss. (Ad. 1-4). Judge Cannon noted that workers' compensation courts have traditionally had jurisdiction to determine issues related to coverage under workers' compensation policies

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<sup>2</sup> "Ad" refers to Relator's Addendum.

when such a determination is ancillary to the adjudication of the employee's claims. (Ad. 3). The Hartford appealed Judge Cannon's Order. (A. 17-18).

On September 20, 2011, the Minnesota Workers' Compensation Court of Appeals (WCCA) issued a decision on The Hartford's interlocutory appeal. (Ad. 5-9). The WCCA acknowledged that workers' compensation courts cannot fashion or impose remedies for breaches of insurance contracts. (Ad. 8-9). However, the Court concluded that it was apparent that the employer was seeking a ruling appropriately made in the workers' compensation system—namely whether The Hartford is obligated to defend and indemnify the employer against the employee's claim for workers' compensation benefits. (Ad. 9). The Court emphasized that what the employer is actually asserting is that The Hartford's purported cancellation of the insurance contract was ineffective and that coverage therefore existed at the time of the date of the employee's injury. *Id.* Because a determination of insurance coverage is inherent in workers' compensation claims, the WCCA affirmed Judge Canon's decision that jurisdiction existed in the workers' compensation system to determine the insurance coverage issue. *Id.*

On October 17, 2011, The Hartford filed with this Court a Petition for Writ of Certiorari, seeking further review of the WCCA's decision, and on October 17, 2011, a Writ of Certiorari was issued. (A. 21-24).

On December 12, 2011, A & M Construction, Inc. served and filed an Amended Petition for Declaration of Insurance Coverage. (App.<sup>3</sup> 1). The Amended Petition for Declaration of Coverage outlines the statutory provisions which The Hartford failed to follow when cancelling A & M Construction's workers' compensation policy. (App. 3-5). A & M Construction alleges

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<sup>3</sup>“App” refers to Employer-Respondent's Appendix.

that The Hartford's failure to comply with these statutory provisions makes The Hartford's cancellation of its insurance policy ineffective. (App. 5).

### **STATEMENT OF THE FACTS**

As no evidentiary hearing has been conducted, there are no Findings of Fact. The record consists of the pleadings of the parties, as described in the Statement of the Case and exhibits offered at the Hearing on the Motion to Dismiss.

### **STANDARD OF REVIEW**

The Minnesota Supreme Court, when reviewing questions of law determined by the Workers' Compensation Court of Appeals, is free to exercise its independent judgment. *Bruns v. City of St. Paul*, 555 N.W.2d 522 (Minn. 1996). On appeal, this Court has recognized that it must view the facts in the light most favorable to the findings of the Workers' Compensation Court of Appeals. *Talmage v. Medtronic, Inc.*, 315 N.W.2d 433, 437 (Minn. 1982). Such findings will not be disturbed unless consideration of evidence and inferences permissible therefrom requires reasonable minds to adopt a contrary conclusion. *Id.*

### **ARGUMENT**

#### **I. AS A MATTER OF LAW, A COMPENSATION JUDGE HAS SUBJECT MATTER JURISDICTION TO ADDRESS AND DETERMINE ISSUES RELATED TO COVERAGE UNDER WORKERS' COMPENSATION INSURANCE POLICIES.**

Workers' compensation courts have jurisdiction to consider "all questions of fact and law arising under the workers' compensation courts of Minnesota." Minn. Stat. § 175A.01, subd. 5 (2011). This jurisdiction extends also to questions related to insurance policies and coverage where such a determination is ancillary to adjudication of the employee's claim. *See, e.g., Peterson v. Vern Donnay Constr. Co.*, 48 W.C.D. 664, 669 (W.C.C.A. 1993). Specifically,

compensation judges have resolved cases in which the primary issues were insurance coverage and/or the interpretation of workers' compensation insurance policies. *See, e.g., Wallin v. Croix Carriers, Inc.*, 45 W.C.D. 100 (W.C.C.A. 1991); *Adair v. Adair Watch & Jewelry*, 37 W.C.D. 431 (W.C.C.A. 1984). In such cases, a coverage determination requires compensation judges to apply principles of contract law and agency theory. *See Schmitt v. Innovative Lawn Sys., Inc.*, 67 W.C.D. 306 (W.C.C.A. 2007).

Pursuant to the jurisdiction provided in Minn. Stat. § 175A.01, subd. 5, workers' compensation judges have jurisdiction to interpret provisions in the Minnesota Workers' Compensation Act related to the proper cancellation and termination of insurance coverage. *See* Minn. Stat. § 176.185 (2011). Subdivision 1 outlines the various notice requirements insurers must comply with in order to cancel or terminate an insurance policy. Specifically, if a cancellation is due to nonpayment of a premium, the insurer must send notice at least 30 days before the actual date of cancellation and provide the amount of premium due and the due date. Minn. Stat. § 176.185, subd. 1(c)(2) (2011).

The Hartford claims that none of parties in this action dispute that it followed the proper statutory procedures in cancelling the policy with A & M Construction, Inc. Although the parties concede that The Hartford followed the statutory notice provisions in Minn. Stat. § 176.185, subd. 1, the employee and A & M Construction contend that The Hartford's cancellation of its policy falls short of meeting the requirements in Minn. Stat. § 176.185. Under Minn. Stat. § 176.185, "[n]o policy shall be canceled by the insurer within the policy period nor terminated upon its expiration date until a notice in writing is delivered or mailed to the insured that meets all of the requirements in paragraphs (a) to (c)." Minn. Stat. § 176.185, subd. 1(c)(2) requires the notice to state the proper amount of premium due. In this case, it is the position of

the employee and A & M Construction that the notice provided by The Hartford under Minn. Stat. § 176.185, subd. 1(c)(2) failed to provide the proper amount of premium due. Because The Hartford did not comply with Minn. Stat. § 176.185, subd. 1, a legal issue exists as to whether its cancellation was effective under the Workers' Compensation Act.

This Court has recognized that jurisdiction exists for workers' compensation judges to interpret the provisions of Minn. Stat. § 176.185. For example, in *Ives v. Sunfish Sign Co.*, the workers' compensation insurer issued a binder policy to the employer and alleged that the binder had been cancelled prior to the employee's work injury. 275 N.W.2d 41 (Minn. 1979). The employer contended that the insurer had failed to follow the proper statutory procedures to cancel the binder, and therefore, the policy was still in effect. The court had jurisdiction to interpret Minn. Stat. § 176.185 and found the binder had not been properly cancelled and concluded that coverage still existed for the claim.

The ability of workers' compensation judges to make insurance coverage decisions is reflected in other instances as well. For example, in *Peterson v. Vern Donnay Construction Company*, a coverage issue arose between two different insurers as to whose policy was in effect at the time of the employee's injury. The compensation judge allowed the record to remain open in order for the parties to conduct further investigation, discovery, and briefing on this coverage issue.

When the compensation judge ultimately determined which insurer's policy was in effect on the employee's date of injury, the insurer appealed to the Workers' Compensation Court of Appeals, arguing that the compensation judge did not have authority to make this type of coverage determination since the employee's rights were not in dispute.

On appeal, the Court determined that the compensation judge had the ability to resolve the coverage issue presented in this case. The Court further reasoned that there were no statutory or legal prohibitions against the compensation judge or Workers' Compensation Court of Appeals exercising jurisdiction over the coverage issue presented. Additionally, the Court highlighted cases in which decisions were based on the consideration and resolution of unclear or conflicting workers' compensation policy provisions. Due to the related nature between the insurance policies and the employee's claim for workers' compensation benefits, the Court concluded that the compensation judge's exercise of jurisdiction was proper.

The law in *Peterson* was later applied in *Schmitt v. Innovative Lawn Sys., Inc.*, 67 WCD 306 (WCCA 2007). In *Schmitt*, a dispute arose between the workers' compensation insurer, the employer, and an insurer's agent. The compensation judge determined that the insurer was estopped from denying workers' compensation coverage for the employer, based on representations of coverage made by its agent. The compensation judge also concluded that there was no duty to defend the employer on the part of the insurer and therefore he denied the employer's claim for attorney fees. All of the parties appealed.

On appeal, the insurer argued that the true issue in the case involved either a negligence claim under tort law or a breach of contract issue between the agent and the employer. The insurer argued that neither theory pertained to the laws related to workers' compensation. Therefore, the insurer maintained that the compensation judge had no jurisdiction to make the coverage determination.

The Workers' Compensation Court of Appeals noted that contrary to the insurer's assertion, the claim before the compensation judge related not to a claim for negligence or breach of contract against the insurer's agent but to direct claims by the employee for workers'

compensation benefits and by the employer for insurance coverage. In *Schmitt*, there was no separate law governing the relationship between the parties. *Cf. Taft v. Advance United Expressway*, 464 N.W.2d 725 (Minn. 1991) (holding that MIGA's obligations were governed solely by Minn. Stat. § 60C and that therefore claims against MIGA could not arise under the workers' compensation act). The Court reasoned that the relationship between the coverage dispute and the workers' compensation claim were close enough to therefore justify the compensation judge's exercise of jurisdiction in this case.

The standards articulated in *Peterson* and *Schmitt* allow for the exercise of subject matter jurisdiction in the instant case. The Hartford attempts to argue that because the facts in *Peterson* and *Schmitt* are not exactly identical to those in the instant case that subject matter jurisdiction must therefore be lacking. This argument ignores the consistent analytical framework and rationale provided by the Workers' Compensation Court of Appeals—namely that compensation judges do have subject matter jurisdiction over insurance coverage disputes when such disputes are inextricably tied to an employee's claim for workers' compensation benefits.

This same framework was applied in *Tibbetts v. Leech Lake Reservation Business Commission*, slip op. (W.C.C.A. Sept. 16, 1985) which The Hartford relies upon to argue that a compensation judge does not have subject matter jurisdiction to address coverage issues. In *Tibbetts*, the compensation judge had to determine whether the Leech Lake Band of Chippewa Indians had workers' compensation insurance coverage at the time of the employee's injury. The compensation judge determined that the cancellation of the insurance policy by the insurer was proper. As a result, the compensation judge dismissed the insurer from the case, and the Workers' Compensation Court of Appeals affirmed the compensation judge's decision.

In relying on *Tibbetts*, The Hartford confuses and conflates the issue on appeal. The compensation judge in *Tibbetts* made a coverage decision after reviewing and interpreting the provisions in the insurer's policy. Following the Special Term Conference in this case, Judge Cannon only determined that he had subject matter jurisdiction to consider the coverage issue in this case. Judge Cannon has not yet made a determination regarding The Hartford's ongoing presence in the case, thereby rendering The Hartford's "fashion a remedy" argument premature and irrelevant. Following *Tibbetts* and the established line of appellate decisions on coverage issues, Judge Cannon has subject matter jurisdiction to make a determination regarding the coverage issue.

The Hartford also tries to argue that that the interpretation of contract terms and breach of contract issues necessarily fall outside the limited jurisdiction of workers' compensation courts. In doing so, The Hartford inappropriately tries to expand A & M Construction, Inc.'s arguments to avoid the exercise of jurisdiction in this case. The Hartford argues that the exercise of subject matter jurisdiction by the compensation judge will require looking at whether A & M Construction mitigated its damages and whether The Hartford's liability should be reduced contractually. These arguments simply "muddy the waters" and distract from the underlying coverage issue. A review of the pertinent facts and pleadings makes clear that this issue is a coverage dispute which can be decided by a compensation judge.

The issue before the Court is the interpretation of two conflicting policy provisions: Part Five of the policy which states that all premium must be paid when due and the "Direct Bill Information" section which allows for additional premium to be prorated over an insured's installment plan. Which provision applies in this case directly impacts Mr. Giersdorf's claim for workers' compensation benefits and A & M Construction, Inc.'s request for insurance coverage

from The Hartford. The interpretation of these conflicting policy provisions is so closely related to the employee's workers' compensation claim that the exercise of jurisdiction by the compensation judge is not only appropriate but also warranted.

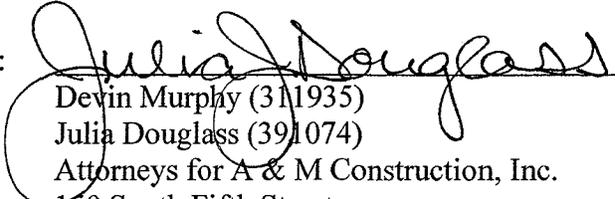
### **CONCLUSION**

A & M Construction respectfully requests that this Court affirm the Workers' Compensation Court of Appeals decision which allows a compensation judge to determine whether insurance coverage exists in this case. Case precedent from the Workers' Compensation Court of Appeals clearly demonstrates that compensation judges have subject matter jurisdiction to consider and address coverage issues. This case involves the interpretation of two conflicting policy provisions in order to determine whether A & M Construction had workers' compensation coverage at the time of the employee's alleged work injury. Therefore, subject matter jurisdiction in the workers' compensation system is proper.

Respectfully submitted,

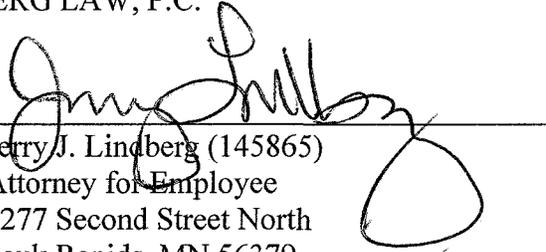
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## CERTIFICATE OF BRIEF LENGTH

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subd. 1 and 3, and for a brief proposed with a proportional font. The length of this brief is 2,786 words. This brief was prepared using Microsoft Word with 12-point Times New Roman font.

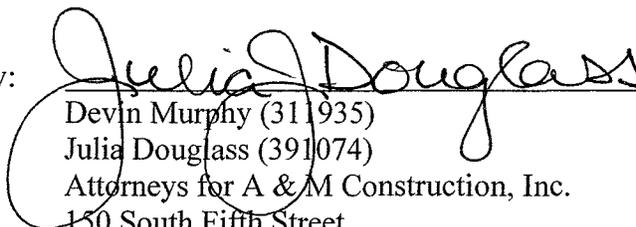
Respectfully submitted,

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