

The Wisconsin Court Of Appeals Holds That An Insurance Policy's "Employee" Exclusion Applies To A Seasonal/Short-Term Worker Who Was Not "Furnished" To The Employer

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In *Borntreger v. Smith, et. al.*, 2012 WL 569367 (Wis. Ct. App. Feb. 23, 2012), the Wisconsin Court of Appeals held that the "employee" exclusion in the insurer's commercial general liability insurance policy applied to an injury that arose on the insured's farm because the injured worker was an "employee" and not a "furnished" "temporary worker." The insurance company had issued a policy which provided commercial general liability coverage for a farm owned by the Smiths. A worker on the Smiths' farm, Borntreger, was injured on the farm and subsequently sued the Smiths and their insurance company.

The insurance company moved for summary judgment arguing it should not have to offer coverage to the Smiths because the policy's "employee" exclusion applied. The policy's "employee" exclusion applied to liabilities arising from bodily injury to an "employee" of the Smiths. The policy stated that a "temporary worker" is not an "employee." Thus, the parties agreed that if Borntreger was a "temporary worker," there would be coverage, whereas if Borntreger was an "employee," there would be no coverage. The policy further defined "temporary worker" as "a person who is furnished to you to substitute for a permanent 'employee' on leave or to meet seasonal or short-term workload conditions." Under this definition, it was undisputed that Borntreger fit into the seasonal/ short-term worker category. However, one issue before the court was whether Borntreger also had to be "furnished to" the Smiths if he was only a seasonal/short-term worker and not a substitute worker. In other words, did the "furnished to you" language apply only to the substitute worker clause or also to the seasonal/short-term worker clause?

The court concluded that the "furnished to you" language introduced two parallel clauses separated by "or" and that the "furnished to you" language unambiguously applied to the seasonal/short-term worker category. This meant that regardless of whether Borntreger was a substitute worker or a seasonal/short-term worker, he would only be considered a "temporary worker" if he was furnished by a third party to the Smiths. The court next reviewed the record and determined there was no preserved, valid argument that Borntreger was "furnished" to the Smiths by any third party. Therefore, the court held Borntreger was not a "temporary worker" and the "employee" exclusion applied.

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