

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Daniel Otto

Opinion No. 06-25WC

v.

By: Stephen W. Brown  
Administrative Law Judge

Price Mechanical, LLC,

Pekin Insurance Company,

For: Michael A. Harrington  
Commissioner

and

Dairy Farmers of America, Inc.

State File No. YY-00183

**RULING ON CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT  
AS TO THE STATUS OF DEFENDANT PRICE MECHANICAL, LLC'S INSURANCE  
COVERAGE BY PEKIN INSURANCE COMPANY**

**APPEARANCES:**

Christopher McVeigh, Esq., for Claimant

Theodore C. Kramer, Esq., for Defendant Price Mechanical, LLC

Erin J. Gilmore, Esq., and William J. Blake, Esq., for Pekin Insurance Company

Wesley M. Lawrence, Esq., for Defendant Dairy Farmers of America, Inc.

**ISSUE PRESENTED:**

Is Defendant Price Mechanical, LLC ("Price") covered by a Pekin Insurance Company ("Pekin") workers' compensation insurance policy for the purposes of Claimant's workers' compensation claim?

**EXHIBITS:**

Claimant's Statement of Undisputed Material Facts ("CSUMF")

Claimant's Attachment 1: Pekin Insurance Company Policy insuring Defendant Price for the Policy Period November 18, 2022 through November 18, 2023

Claimant's Attachment 2: Letter from Pekin to Defendant Price dated August 9, 2024 denying insurance coverage

Claimant's Attachment 3: Insurance Audit Report dated November 7, 2023

Claimant's Attachment 4: Affidavit of Christopher Price

Pekin's Statement of Undisputed Material Facts ("ISUMF")

Pekin’s Exhibit A: Pekin Insurance Company Policy insuring Defendant Price for the Policy Period November 18, 2022 through November 18, 2023 (same as Claimant’s Attachment 1)

Pekin’s Exhibit B: Iowa Secretary of State Business Entity Summary for Defendant Price

Pekin’s Exhibit C: Email from Attorney Theodore C. Kramer dated February 1, 2024 enclosing Certificate of Liability Insurance dated October 6, 2022

Defendant Price’s Corrected Statement of Undisputed Material Facts (“PCSUMF”)

Defendant Price’s Exhibit 1: Deposition of Christopher Price (“Price Deposition”)

**BACKGROUND:**

There is no genuine issue as to the following material facts:

1. This claim arises out of an injury that Claimant sustained while working in the course and scope of his employment with Defendant Price, an Iowa limited liability company, at a plant operated by Defendant Dairy Farmers of America, Inc. (“DFA”) in Saint Albans, Vermont.
2. Specifically, on October 16, 2023, Claimant began dismantling an exchanger on DFA’s premises. The exchanger carried hot caustic liquids, but DFA staff members assured him that it was safe to work on the device. While Claimant was dismantling the device, pressurized hot and caustic liquid sprayed onto him, causing personal injuries. (CSUF 1-3, ISUF 3, 13). While there is no dispute that Claimant suffered a compensable workplace injury, the parties dispute the extent of benefits that he is entitled to receive.
3. The present cross-motions concern a dispute about Defendant Price’s insurance coverage status for Claimant’s injury. There is no question that on the date of Claimant’s injury, Defendant Price was insured for workers’ compensation claims in Iowa by a Pekin Insurance Company policy. That policy also purports to confer coverage in other states, potentially including Vermont, so long as certain conditions are satisfied. (See CSUMF 4, ISUMF 1-2, Pekin’s Exhibit A).

*I. The Pekin Insurance Policy’s Coverage Provisions*

4. Relevant provisions of the Pekin insurance policy on the date of Claimant’s injury include the following:

ITEM 3. A. WORKERS COMPENSATION INSURANCE PART ONE OF THE POLICY APPLIES TO THE WORKERS COMPENSATION LAW OF THE STATES LISTED: IOWA

\* \* \*

C. OTHER STATES INSURANCE: PART THREE OF THE POLICY APPLIES TO THE STATES, IF ANY, LISTED HERE: ALL STATES AND U.S. TERRITORIES EXCEPT ND, OH, WA, WY, PUERTO RICO, THE U.S. VIRGIN ISLANDS, AND STATES DESIGNATED IN ITEM 3 A.

\* \* \*

#### PART THREE - OTHER STATES INSURANCE

##### A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers' compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

##### B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

(CSUMF 5, ISUMF 5-9).

5. The policy states further that Pekin has no duty to defend a "claim, proceeding, or suit that is not covered by this insurance." (ISUMF 6, Pekin Exhibit A).

#### II. Defendant Price Notified Pekin of Claimant's Injury; Pekin Denied Coverage

6. Defendant Price notified Pekin of this claim within days after Claimant's injury. Pekin denied coverage on the grounds that the applicable insurance policy did not provide coverage in Vermont. (CSUMF 6-7).
7. Pekin has paid no benefits to Claimant. (CSUMF 8, ISUMF 13, Pekin Exhibit D).

*III. Christopher Price's 2022 Conversations with Insurance Agent Eldon Neighbors*

8. Defendant Price contends that Pekin's denial is invalid because its principal, Christopher Price, notified his insurance agent Eldon Neighbors<sup>1</sup> that Defendant Price needed workers' compensation coverage in Vermont. (ISUMF 14, PSUMF 14, CSUMF 11, Claimant's Attachment 4).
9. Specifically, Mr. Price testified via affidavit that during the first week of October 2022, he called Mr. Neighbors and informed him that he was sending three workers to Vermont to work on a job. Mr. Price asked Mr. Neighbors to make sure all his insurance was taken care of and to make sure that everyone was covered. Mr. Neighbors had always taken care of Mr. Price's insurance needs by calling Pekin and ensuring proper coverage. Mr. Neighbors told Mr. Price "no problem," and indicated that he would "take care of it." After the call, Mr. Price did not think about insurance coverage because he believed he was covered. (*See generally* Claimant's Attachment 4).
10. Mr. Price testified at his deposition that the first time he discovered that there was a question as to his workers' compensation coverage in Vermont was when Claimant was injured:

I trusted that when I go to my insurance agent, tell him that I'm going to Vermont to work, to make sure that I'm covered, that I've got insurance, my guys are covered. And then, when I find out one of my guys gets hurt, I do not. That's a pretty [redacted] way to find out.

(Price Deposition, p. 100)

11. Mr. Price acknowledged at his deposition, however, that he had no specific knowledge of Mr. Neighbors being an employee or authorized agent of Pekin:

Q. [... Mr. Neighbors is] an agent, and he will get you insurance. That's what he does, correct?

A. Right.

Q. So he doesn't work for Pekin Insurance, or he's not an employee, I should say, of Pekin Insurance or any other insurance company, as far as you know?

A. Correct.

(Price Deposition, p. 128).

12. Nothing else in the record establishes that Mr. Neighbors held himself out as an agent acting on behalf of Pekin, or that Pekin took any action suggesting that Mr. Neighbors

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<sup>1</sup> In some parts of the record, this name is recorded as "Neighbor," and in others, "Neighbors." I refer to him as Mr. "Neighbors" in this document for consistency.

was *its* agent. Instead, Mr. Price refers to Mr. Neighbors as *his* insurance agent. This choice of language, of course, is not dispositive of the actual relationship that Mr. Neighbors has with the insurer and insured in this case; indeed, there is no evidence that Mr. Price would be in a position to know the particulars of any relationship Mr. Neighbors may have had with Pekin. To the extent that coverage depends on the authority of Mr. Neighbors to act on Pekin's behalf, additional evidence is necessary to establish the scope of his agency relationship, as well as the principal on behalf of whom he acts as an agent—specifically, whether he acts as Price's agent for the purpose of procuring coverage or Pekin's agent for the purpose of binding coverage, or both.

13. Additionally, while it appears undisputed that this conversation between Messrs. Price and Neighbors took place, there is no evidence of what, if anything, Mr. Neighbors did after receiving Mr. Price's request to secure coverage in Vermont—specifically, whether Mr. Neighbors forwarded this request to Pekin or its authorized agents.
14. On February 1, 2024, Defendant Price's counsel sent an email to Pekin's counsel stating in relevant part as follows:

Please understand that Mr. Price was under the impression his coverage in Vermont hadn't lapsed. Attached herewith is the Dec Page showing coverage prior to Mr. Otto's injury. Someone at Pekin dropped the ball after Mr. Price told their agent he still needed coverage in Vermont. Once this injury came to light Mr. Price informs me he immediately re-secured coverage in Vermont.

15. Attached to that email was a Certificate of Liability Insurance from an insurance policy dated October 6, 2022. The declaration page dated October 6, 2022, is for a policy period from November 18, 2021, through October 18, 2022—and thus did not purport to include the date of Claimant's October 2023 injury. The policy referenced also did not expressly mention any work conducted in Vermont. (ISUMF 10-12, Pekin Exhibit C). However, as Defendant Price accurately notes, these documents identify Defendant DFA as the "Certificate Holder," and Claimant was injured at DFA's facility in Vermont. (PSUMF 12).

#### *IV. Pekin's Policy Audit Following Claimant's Injury*

16. On November 7, 2023, Pekin prepared its annual audit of Defendant Price for the policy period that included Claimant's date of injury. Pekin included Claimant's wages in that audit and adjusted Price's premiums to account for those wages. (CSUMF 10, 12, Claimant's Attachment 3).

#### **ANALYSIS:**

1. Summary judgment is proper when "there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law, after giving the benefit of all reasonable doubts and inferences to the opposing party." *State v. Delaney*, 157 Vt. 247, 252 (1991). Summary judgment is appropriate only when the facts in question are clear, undisputed, or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979).

It is unwarranted where the evidence is subject to conflicting interpretations, regardless of the comparative plausibility of the facts offered by either party or the likelihood that one party or the other might prevail at trial. *Provost v. Fletcher Allen Health Care, Inc.*, 2005 VT 115, ¶ 15.

2. The injury giving rise to this claim happened in Vermont on October 16, 2023. Pekin’s insurance policy covering Price for that time period only expressly covers injuries occurring in Iowa, except to the extent the policy’s “other states insurance” applies. The “other states insurance” provision requires Price to notify Pekin “at once” of any work being performed in a state other than Iowa.

*I. The Policy’s Notice Provisions for Work in Other States Are Not Ambiguous*

3. Under Vermont law, insurance policy language must “be accorded its plain, ordinary meaning consistent with the reasonable expectations of the insured, and that terms that are ambiguous or unclear be construed broadly in favor of coverage.” *Towns v. N. Sec. Ins. Co.*, 2008 VT 98, ¶ 21.
4. Claimant contends that the following notice requirements in the policy’s “other states insurance” provisions are ambiguous:
5.
  - a. “Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.”

and

  - b. “If you have work on the effective date of this policy in any state not listed in Item 3.C. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.”

*A. The “At Once” Provision*

6. With respect to the first provision, Claimant argues that nothing in this policy makes “other states” coverage *contingent* upon Price providing such notice to Pekin or provides for any specific consequence of failing to provide such notice. Claimant thus argues that the policy language is ambiguous as to the effect of Defendant Price failing to provide Pekin with notice of its work in Vermont, and this ambiguity should be construed in favor of conferring coverage.
7. I find this unpersuasive. While Claimant is correct that the policy language does not explicitly say that coverage will not be afforded absent notice, the notice provision appears within the context of a policy provision outlining the terms on which coverage will be provided. There is no role for the notice requirement to play except as a required condition for triggering “other states” coverage. Without that conditional link between notice and coverage, the notice provision would effectively be meaningless surplusage. *Cf. N. Sec. Ins. Co. v. Mitec Elecs., Ltd.*, 2008 VT 96, ¶ 24 (noting that the Vermont

courts seek to give effect to all material parts of contracts and “strive to avoid” interpretations that render any portions of them “mere surplusage”).

8. This policy provision makes clear that the insured is required to provide notice of work outside of Iowa. It would be entirely within the reasonable expectations of the insured to understand that such notice was necessary to effectuate coverage. Indeed, Mr. Price actively sought to notify Pekin of Defendant Price’s work in Vermont by notifying Mr. Neighbors, demonstrating his reasonable understanding of—and actual effort to comply with—the requirement to provide notice in order to secure coverage.

*B. The Thirty-Day Notice Provision*

9. Claimant also contends that the policy’s requirement that Price provide notice to Pekin within thirty days if it has work in any state other than Iowa on the effective date of the policy is ambiguous because it does not provide an “anchor” to start the thirty-day window. Claimant argues that the thirty-day window could be read to mean either thirty days from the effective date of the policy or thirty days after the injury, and it is undisputed that Price was notified within thirty days after the injury.
10. Contrary to Claimant’s argument, however, the “if” clause of this provision provides an “anchor” date for the entire sentence: the effective date of the policy. Nothing in the sentence above suggests another date, such as the date of an injury; the sentence makes no reference to an injury. The only reasonable reading of this language is that if Price already had work underway in a state other than Iowa as of the effective date of the insurance policy, Pekin would only insure that work if Price notified Pekin within thirty days of the policy’s effective date. A sentence does not have to artificially repeat every reference and antecedent to evade ambiguity.
11. While the fact that insurance policies are generally drafted by the insurer with no input from the insured justifies resolving any ambiguities in favor of coverage, that does not mean that every conceivable improvement one might envision in the artfulness of a policy’s terms constitutes an ambiguity. The only rational reading of this policy’s notice provision is as a requirement for conferring “other states insurance” coverage. The only rational reading of the thirty-day window for work in other states that is taking place as of the effective date of the policy is that the insured must notify the insurer within thirty days of the effective date of the policy. As such, I cannot endorse Claimant’s preferred reading of the policy language.

*II. Claimant’s Status as an “Innocent Injured Worker” Does Not Obligate Pekin to Provide Insurance Coverage Where None Would Otherwise Exist*

12. Claimant also contends that irrespective of the coverage dispute between Price and Pekin, *he* is entitled to enforce coverage because he, as the innocent injured worker, had no dealings with Pekin in generating his workers’ compensation policy but simply relied on the existence of a workers’ compensation policy when performing his work. Thus, he contends, Pekin’s defenses to Price’s request to coverage do not apply to him.

13. I find this contention completely undermined by Claimant’s concession that he had no dealings with Pekin. There is no evidence or even allegation that he had any contractual relationship with Pekin at all, and there is no textual basis in the policy to consider him an insured. The policy insured Defendant Price, not Claimant.
14. Claimant cites 21 V.S.A. § 693, which provides as follows regarding the required contents of a workers’ compensation insurance policy:

Every policy of insurance and every guarantee contract covering the liability of an employer for compensation shall cover the entire liability of the employer to the employees ***covered by the policy*** or contract and also shall contain a provision setting forth the right of the employees to enforce, in their own names, the liability of the insurance carrier in whole or in part for the payment of such compensation at any time, either by filing a separate claim or by making the insurance carrier a party to the original claim.

*Id.* (emphasis added).

15. This statutory provision requires insurance policies to permit injured workers to pursue an insurer directly, rather than solely pursuing the employer, for claims “covered by the policy.” However, it does not purport to create insurance coverage for claims that would not otherwise be covered.
16. Claimant has a cognizable interest, sufficient to support standing, to advocate for *Price* being covered by Pekin’s policy for Claimant’s injury; specifically, Claimant would justifiably have greater confidence in being paid benefits if they are coming from an insurer. However, that does not mean that Claimant’s status as “innocent” confers upon Price any rights it would not otherwise have, and it certainly does not create any obligations on Pekin to pay for claims that it did not otherwise contract to insure.

*III. Pekin’s Audit and Adjustment of Defendant’s Price’s Insurance Premiums After Claimant’s Injury Does Not Estop Denial of Coverage for a Pre-Audit Claim*

17. Claimant argues that Pekin’s November 2023 audit of Defendant Price after notice of Claimant’s October 2023 injury and adjustment of insurance premiums based on Claimant’s wages estops Pekin from denying coverage for this claim.
18. In support of this theory, he relies upon a 1997 Oklahoma Supreme Court decision, *Dominic v. Creek Nation, State Ins. Fund*, 1997 OK 41, ¶¶ 9-11, which was in turn based on an Oklahoma Estoppel Act that has since been repealed. The Oklahoma statute that was in effect at the time of that decision, cited as 85 Okl. St. Ann. §§ 65.2 and 65.3, and subsequently repealed by Laws 2011, c. 318, s 87, provided that a claimant could preclude an insurer from denying workers’ compensation coverage for a claim upon a showing that “1) an injury that occurred during the time her employer maintained a compensation liability policy, 2) the insured employer’s payment of premiums based on the claimant’s salary, and 3) claimant’s injury occurred in and arose out of her employment with the insured employer.” *See generally Dominic, supra*. Claimant has

cited no comparable Vermont statutory scheme, and I see no basis to adopt a repealed Oklahoma statute as the common law of Vermont.

19. Vermont does recognize the doctrine of equitable estoppel, which “precludes a party from asserting rights which otherwise may have existed as against another party who has in good faith changed his [or her] position in reliance upon earlier representations.” *In re Langlois/Novicki Variance Denial*, 2017 VT 76, ¶¶ 12-13. It is “based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his or her own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon.” *Id.* (internal cits. and punct. omitted).
20. Equitable estoppel has four elements: “(1) the party being estopped must know the relevant facts; (2) the party being estopped must intend that his or her conduct be acted upon; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must rely to his or her detriment on the estopped party’s representations.” *Id.*
21. Here, the audit and premium adjustment on which Claimant relies happened *after* his injury. Assuming without deciding that Pekin’s inclusion of Claimant’s wages might constitute conduct that could satisfy the first three elements of equitable estoppel, Claimant, as the party invoking estoppel, cannot satisfy the fourth element, detrimental reliance on that audit or premium adjustment. His injury occurred in October 2023. The audit and premium adjustment happened in November 2023. There is no evidence that would support a finding that Claimant, before his injury, knew that an audit was expected to occur, or that he relied to his detriment on such expectation. Accordingly, I find his invocation of equitable estoppel unavailing.

IV. *Factual Questions Concerning the Scope and Directionality of Mr. Neighbors’ Agency Relationship and Any Actions He Took After Mr. Price’s Request to Secure Insurance Coverage Preclude Summary Judgment*

22. Under Vermont’s common law of agency, the general rule is that notice to an agent is notice to a principal so long as the agent has actual or apparent authority to receive the notification. However, notice or knowledge received by the agent outside the scope of the agent’s authority is not imputed to the principal. *Mann v. Adventure Quest, Inc.*, 2009 VT 38, ¶ 11.
23. In support of coverage, Defendant Price relies primarily on its notification to Mr. Neighbors that it needed insurance coverage in Vermont and its expectation that Mr. Neighbors would take whatever steps were necessary to effectuate the necessary coverage in Vermont. However, as discussed in Background, ¶¶ 9-12, *supra*, the record is not clear whether or in what capacities Mr. Neighbors acted as an agent of Defendant Price, Pekin, or both.<sup>2</sup>

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<sup>2</sup> Claimant cites a 1979 Alabama Supreme Court case which held that an insurer could not disavow coverage that was bound by an agent, but that the insurer could pursue the agent for indemnity if he exceeded the scope of his authority to bind coverage. However, that result depended on the insurance agency having apparent authority to bind

24. While Mr. Price was not aware at the time of his deposition of any employment or agency relationship between Mr. Neighbors and Pekin, the evidence also does not establish that Mr. Price would be in a position to know the full scope and directionality of Mr. Neighbors's agency relationship. The record also does not clarify what actions, if any, Mr. Neighbors took to secure coverage after receiving Mr. Price's request. *See generally* Background, ¶¶ 9-12. As such, the evidentiary record does not establish whether notice upon Mr. Neighbors constituted notice to Pekin, or whether Mr. Neighbors took actions as Defendant Price's agent to notify Pekin.
25. If Pekin effectively received notice of Defendant Price's activities in Vermont "at once," whether by virtue of any agency relationship between it and Mr. Neighbors or because of any post-request action that Mr. Neighbors may have taken, then by the terms of Pekin's insurance policy, the "other states insurance" coverage would appear to apply to this claim. By contrast, if Mr. Neighbors had no agency relationship with Pekin and did nothing to notify Pekin of Mr. Price's request, then the "other states insurance" coverage would not apply.
26. Further development of these factual questions is necessary to resolve the question of whether Defendant Price effectively provided notice to Pekin of its work in Vermont for the purpose of triggering the "other states insurance" provisions of the policy. These lingering factual questions about Mr. Neighbors's agency and post-request actions make it inappropriate to resolve the question of insurance coverage as a matter of law.
27. Accordingly, Claimant's and Pekin's cross-motions for partial summary judgment are **DENIED**.

**ORDER:**

Claimant's Motion for Partial Summary Judgment and Defendant Pekin Insurance Company's Motion for Partial Summary Judgment are both **DENIED**.

**DATED** at Montpelier, Vermont this 8th of May 2025.

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Michael A. Harrington  
Commissioner

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coverage on the insurer's behalf. *Elmer Tallant Agency, Inc. v. Bailey Wood Prods., Inc.*, 374 So.2d 1312, 1314 (Ala. 1979) ("Tallant Agency, a *licensed general agent* of Zurich, *had apparent authority* to bind Zurich on an oral contract of insurance. Undisclosed, private limitations upon the authority of a general agent do not bind a third party who, being unaware of them, contracts with an agent within the customary scope of the agent's authority.") (emphasis added). The evidence at a formal hearing *might* support the same result here, but the evidence is insufficient to establish as a matter of law that Mr. Neighbors had authority—either apparent or actual—to bind Pekin.