# STATE OF MICHIGAN

# COURT OF APPEALS

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STANISLAW GOLEC,

Plaintiff-Appellant,

v

METAL EXCHANGE CORPORATION, d/b/a
CONTINENTAL ALUMINUM COMPANY,

Defendant,

and

TRAVELERS INDEMNITY COMPANY,
TRAVELERS INSURANCE COMPANY, and
TRAVELERS INSURANCE COMPANIES,

Garnishees-Defendants-Appellees.

UNPUBLISHED
January 11, 2002

No. 220166
Wayne Circuit Court
LC No. 90-019115-NI

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STANISLAW GOLEC,

Plaintiff-Appellee,

v

METAL EXCHANGE CORPORATION, d/b/a
CONTINENTAL ALUMINUM COMPANY,

Defendant-Appellee,

and

TRAVELERS INSURANCE COMPANY and
TRAVELERS INSURANCE COMPANIES,

Garnishees-Defendants-Appellants,

No. 220444
Wayne Circuit Court
LC No. 90-019115-NI

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and

TRAVELERS INDEMNITY COMPANY,
TRAVELERS INDEMNITY COMPANY OF
AMERICA, PHOENIX INSURANCE COMPANY,
CHARTER OAK FIRE INSURANCE COMPANY,
TRAVELERS INDEMNITY COMPANY OF
RHODE ISLAND, TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT, and
TRAVELERS INDEMNITY COMPANY OF
ILLINOIS,

Garnishees-Defendants.

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Before: White, P.J., and Cavanagh and Talbot, JJ.

TALBOT, J. (*dissenting*).

I respectfully dissent. Although I agree with the majority that coverage under the CUP is not co-extensive with coverage provided under the WC/EL policy, I conclude that the CUP exclusion bars plaintiff's recovery under the policy and therefore would affirm the trial court's grant of summary disposition in favor of Travelers.

I believe the trial court correctly determined that the CUP exclusion for "bodily injury . . . either expected or intended from the standpoint of the insured" effectively bars coverage for plaintiff's injuries. The trial court contrasted the language in the CUP policy with the WC/EL policy, which excludes coverage for "bodily injury intentionally caused or aggravated by [the insured]." It opined that the exception to the WDCA that applied to the instant case, that plaintiff's employer "disregarded actual knowledge that an injury was certain to occur," did not amount to *intentionally causing* an injury for the purposes of the WC/EL policy exclusion, but did amount to *expecting* an injury for the purposes of the CUP policy exclusion. Accordingly, the employer's subjective expectation of injury could be inferred as a matter of law. I agree.

It appears that plaintiff was in a no-win situation with regard to the CUP. Whether his employer disregarded actual knowledge that plaintiff would be injured is a question of fact for a jury to resolve. See *Travis v Dries & Krump Mfg Co*, 453 Mich 149, 184-187; 551 NW2d 132 (1996). If the case had gone to trial, plaintiff would have had to prove that his employer disregarded actual knowledge that plaintiff would be injured in order to survive the exclusive remedy provision of the WDCA. *Id.*; see also *Cavalier Mfg Co v Employees Ins Co of Wausau*, 211 Mich App 330, 340; 535 NW2d 583 (1995), remanded 453 Mich 953 (1996). If plaintiff had been successful in that regard, then in my opinion and contrary to the majority's holding, the CUP would not cover plaintiff's injuries; they would be excluded as bodily injuries expected by the insured employer. If, instead, plaintiff had failed to prove that his employer disregarded knowledge of certain injury, the CUP exclusion for "bodily injury . . . either expected or intended

from the standpoint of the insured" would not preclude coverage, but the exclusion for workers compensation claims would do so.

I disagree with the majority's distinction between the disregard of knowledge of certain injury and the expectation of injury. Because I do not subscribe to the majority's conclusion that "it is possible to deliberately disregard actual knowledge that an injury is certain to occur without actually intending or expecting the injury," I would affirm the trial court's conclusion that the CUP excludes coverage for plaintiff's injuries.[1]

/s/ Michael J. Talbot

[1] Based upon my resolution of this issue, it would be unnecessary to address plaintiff's remaining issues on appeal.