COURT OF APPEALS
DECISION
DATED AND RELEASED

August 13, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. ***See*** **§ 808.10 and RULE 809.62, STATS.**

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2501

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

TOWN OF EAST TROY,

PLAINTIFF-APPELLANT,

V.

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Anderson, JJ.

PER CURIAM. The Town of East Troy appeals from a judgment dismissing its claim for coverage under two umbrella excess liability policies issued by St. Paul Fire and Marine Insurance Company. Because we conclude that coverage under the policies was limited to East Troy's water distribution activities,

the policies did not offer coverage relating to remediation of a contaminated landfill site.

The umbrella excess liability policies[1] were issued by St. Paul to the "Township of East Troy-Water Distribution Department" and covered the period from April 11, 1975 to April 11, 1977. In July 1974, a train derailment contaminated private wells in the Beulah Station area. In response, East Troy undertook to provide the residents of Beulah Station with potable water. On an emergency basis, East Troy obtained a military water truck to distribute water to the affected residents. This activity began on April 12, 1975, one day after St. Paul issued the first umbrella excess liability policy which is the subject of this action. Thereafter, East Troy dug a community well and created a system to distribute water from that well to the affected residences.

East Troy seeks defense and indemnification for its remediation efforts at a landfill site unrelated to the water distribution system described above. East Troy owned and operated a solid waste landfill beginning in the 1950's. Pursuant to an order of the Wisconsin Department of Natural Resources, the landfill was closed in 1981. From 1974 through 1981, East Troy expended funds to evaluate whether the landfill should be closed, to close the landfill and to install wells to monitor ground water and leachate which had filtered into neighboring property. East Troy paid premiums to St. Paul to purchase the policies and seeks to recover costs relating to the defense, investigation and cleanup of the landfill site.

[1] East Troy concedes that there is no coverage for the landfill remediation under primary general liability insurance policies also issued by St. Paul.

The parties filed cross-motions for summary judgment and the trial court concluded inter alia that the insurance policies covered the water distribution operation arising from the train derailment and did not provide coverage for costs associated with the investigation and remediation of the landfill site. East Troy appeals.

An appeal from a grant of summary judgment raises an issue of law which we review de novo by applying the same standards employed by the trial court. *See* ***Brownelli v. McCaughtry***, 182 Wis.2d 367, 372, 514 N.W.2d 48, 49 (Ct. App. 1994). We independently examine the record to determine whether any genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *See* ***Streff v. Town of Delafield***, 190 Wis.2d 348, 353, 526 N.W.2d 822, 824 (Ct. App. 1994).

The interpretation of an insurance contract presents a question of law. *See* ***Keane v. Auto-Owner's Ins. Co.***, 159 Wis.2d 539, 547, 464 N.W.2d 830, 833 (1991). We review questions of law without deference to the trial court. *See* ***id***. In filing cross-motions for summary judgment, the parties sought a ruling on this legal issue. *See* ***Schunk v. Brown***, 156 Wis.2d 793, 796, 457 N.W.2d 571, 572 (Ct. App. 1990). Where the terms of a contact are plain and unambiguous, we construe the contract as it stands. *See* ***Eden Stone Co. v. Oakfield Stone Co., Inc.***, 166 Wis.2d 105, 115, 479 N.W.2d 557, 562 (Ct. App. 1991). However, when words or phrases within a contract "are reasonably or fairly susceptible to more than one construction," ***Maas v. Ziegler***, 172 Wis.2d 70, 79, 492 N.W.2d 621, 624 (1992), the contract is ambiguous. Under such circumstances, we may consider extrinsic evidence of the parties' intent through their words and conduct. *See* ***Spencer v. Spencer***, 140 Wis.2d 447, 450, 410 N.W.2d 629, 631 (Ct. App. 1987). Whether a contract is ambiguous in the first instance is a question of law

which we decide independently of the trial court. *See* ***Wausau Underwriters Ins. Co. v. Dane County***, 142 Wis.2d 315, 322, 417 N.W.2d 914, 916 (Ct. App. 1987).

The parties argue over whether the "Township of East Troy" or the "Water Distribution Department" is the named insured. The Declarations page of the policies designates the named insured as "Township of East Troy-Water Distribution Department." East Troy argues that the description is inaccurate because it has never had a "Water Distribution Department." We conclude that the identity of the named insured is ambiguous. Accordingly, we resort to extrinsic evidence.

While a "Water Distribution Department" as such may not have existed, extrinsic evidence makes it clear that the policies were intended to insure risks relating to water distribution efforts. The policies were purchased the day before East Troy began using an emergency water truck to distribute potable water after the train derailment. When it came time for East Troy to renew the policies, the chairman of the Town of East Troy, Clem Tracy, wrote the insurance agent in March 1977 to advise that the water truck was being returned to the military, the affected residents had clean water and it would no longer be necessary to have the policies for the East Troy emergency water supply. This conduct evidences East Troy's intent to procure coverage for the water distribution operation arising from the derailment, not for general coverage for all East Troy activities. The trial court's findings on these undisputed facts are not clearly erroneous based on the facts in the record. *See* ***Armstrong v. Colletti***, 88 Wis.2d 148, 153, 276 N.W.2d 364, 366 (Ct. App. 1979); *see also* ***Noll v. Dimiceli's, Inc.,*** 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct. App. 1983) (the great weight and clear preponderance of the evidence standard is identical to the clearly erroneous standard).

Because we have construed the policies as providing coverage for water distribution activities only, St. Paul does not owe coverage to East Troy for matters relating to the landfill contamination.[2]

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[2] Having affirmed the trial court in this regard, we do not address the trial court's other grounds for dismissing East Troy's complaint.