COURT OF APPEALS DECISION DATED AND FILED

September 30, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

Appeal No. 02-3177

Cir. Ct. No. 00-CV-126

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

TERRY L. QUINN N/K/A TERRY L. JOHNSON, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF GREGORY IVAN QUINN, AND DOUGLAS QUINN,

PLAINTIFFS-RESPONDENTS,

V.

JAMES E. RILEY,

DEFENDANT,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Marquette County: RICHARD O. WRIGHT, Judge. *Reversed and cause remanded with directions.*

Before Deininger, P.J., Vergeront and Lundsten, JJ.

¶1 LUNDSTEN, J. This case involves uninsured motorist (UM) coverage and a reducing clause. American Family argues that the circuit court erred when it concluded that a reducing clause in the UM section of American Family's policy is ambiguous and unenforceable. We agree with American Family, and reverse the circuit court.

Background

¶2 In 1997, James Riley, an uninsured motorist, struck and killed volunteer firefighter Gregory Quinn as Gregory was responding to the scene of an accident. Because Gregory's death occurred in the course of his service as a firefighter, his spouse Terry was paid worker's compensation benefits totaling $271,275. Terry and Gregory's son, Douglas, were also paid amounts by the United States Department of Justice under 42 U.S.C. § 3796.

¶3 At the time of the accident, the Quinns were insured under an American Family policy with UM limits of $250,000 each person/$500,000 each accident.[1] Following Gregory's death, his spouse Terry and son Douglas filed suit to recover UM benefits under the policy. American Family and the Quinns both moved for summary judgment. American Family argued that the policy's UM reducing clause was valid and enforceable and, therefore, the UM benefit to the

[1] The Quinns actually had four American Family policies and, before the circuit court, they sought coverage under each policy. The circuit court, however, concluded that American Family's anti-stacking clause was valid and, therefore, a single per-person limit of $250,000 was available to the Quinns. The circuit court granted summary judgment to American Family on this topic and the Quinns do not challenge that order. Moreover, although there are four policies at issue in this case, we need only analyze one to determine whether the reducing clause in all four is ambiguous. The four policies are the same in all respects pertinent to this appeal, and our discussion will treat the case as if there were a single policy.

Quinns was reduced to zero because Terry had received worker's compensation benefits in excess of $250,000.

¶4 The circuit court determined that the reducing clause was ambiguous and, therefore, concluded that the Quinns were entitled to the $250,000 of UM coverage. The court cited two reasons why American Family's reducing clause was ambiguous in the context of the policy: (1) the policy's declaration page contained no language stating that the policy was subject to limitations and reductions; and (2) the policy did not clearly explain that it was providing a fixed level of UM insurance that would be arrived at by combining payments made from all sources. The circuit court denied American Family's motion for summary judgment with regard to the reducing clause, and American Family appeals that order.

Discussion

¶5 This is another appeal involving the efficacy of a reducing clause in an automobile insurance policy. Most of the published cases on this topic deal with underinsured motorist (UIM) coverage. Here, we examine a UM reducing clause. Reducing clauses to both UIM coverage and UM coverage are authorized by WIS. STAT. § 632.32(5)(i),[2] and the parties have not suggested any reason why the UIM cases do not apply in our UM context. Indeed, both parties and the Wisconsin Academy of Trial Lawyers (WATL) rely on UIM cases.[3] Therefore,

[2] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

[3] WATL submitted an amicus brief.

apart from one argument dealing with the statute requiring UM coverage, we look to UIM cases for guidance and controlling precedence.

¶6 We also note that, although American Family is the appellant, we find it easier to structure our discussions around the arguments made by the Quinns and WATL.

¶7 In this case, we review a grant and a denial of summary judgment. Our review is *de novo*, and we apply the same standard as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). A party is entitled to summary judgment if there is no genuine issue as to any material fact and that party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). We begin our review with an overview of the policy and its pertinent parts.

The Policy's Language and Organization

¶8 The "Wisconsin Family Car Policy" American Family issued to the Quinns is thirteen pages long. The first page is entitled "DECLARATIONS." It contains, among other information, lists of the policy's "COVERAGES AND LIMITS PROVIDED." The UM coverage appears as follows:

UNINSURED MOTORISTS — BODILY INJURY ONLY

$250,000 EACH PERSON $500,000 EACH ACCIDENT

Nowhere on the declarations page does it say that UM coverage is subject to a reducing clause. However, at the top of the page it states: "PLEASE READ YOUR POLICY." Also, the bottom of the page contains three sentences, and one of those sentences reads, in part, "These declarations form a part of this policy."

¶9 The parties refer to the second page as an "insuring agreement." That page has about thirteen lines of text and includes the following:

> - AGREEMENT
>
> **We** agree with **you**, in return for **your** premium payment, to insure **you** subject to all the terms of this policy. **We** will insure **you** for the coverages and the limits of liability as shown in the declarations of this policy.

¶10 The third page is a "QUICK REFERENCE." Near the top of this quick reference page are the following statements:

> This policy is a legal contract between you (the policyholder) and the company. The following Quick Reference is only a brief outline of some important features in your policy and is not the insurance contract. The policy details the rights and duties of you and your insurance company. **Read your policy carefully**.

IF YOU HAVE AN AUTO ACCIDENT OR LOSS

AGREEMENT

DEFINITIONS

PART I — LIABILITY COVERAGE

PART II — MEDICAL EXPENSE COVERAGE

PART III — UNINSURED MOTORISTS COVERAGE

PART IV — CAR DAMAGE COVERAGES

PART V — EMERGENCY ROAD SERVICE COVERAGE

PART VI — GENERAL PROVISIONS

¶11 Following the quick reference page are seven policy pages containing the nine sections listed on the quick reference page. The UM section

starts on the fourth of these seven pages. As indicated on the quick reference page, it is entitled: "PART III — UNINSURED MOTORISTS COVERAGE," and includes the following four subheadings:

> ADDITIONAL DEFINITIONS USED IN THIS PART ONLY
>
> EXCLUSIONS
>
> LIMITS OF LIABILITY
>
> OTHER INSURANCE

The subsection entitled "LIMITS OF LIABILITY" includes the reducing clause. It reads:

> The limits of liability of this coverage as shown in the declarations apply, subject to the following:
>
> 1. The limit for "each person" is the maximum for all damages sustained by all persons as the result of **bodily injury** to one person in any one accident.
>
> 2. Subject to the limit for "each person," the limit for "each accident" is the maximum for **bodily injury** sustained by two or more persons in any one accident.
>
> **We** will pay no more than these maximums no matter how many vehicles are described in the declarations, or **insured persons**, claims, claimants, or vehicles are involved.
>
> The limits of liability of this coverage may not be added to the limits of liability of any similar coverage under any other policy an **insured person** or any member of an **insured persons** household may have.
>
> **We** will pay only once for any damages or expenses payable under more than one coverage of this policy. Any damages or expenses paid under any other coverage of this policy are not eligible for payment under this coverage.
>
> The limits of liability of this coverage will be reduced by:

1. A payment made by the owner or operator of the **uninsured motor vehicle** or organization which may be legally liable.

2. A payment under the Liability coverage of this policy.

3. A payment made or amount payable because of **bodily injury** under any workers' compensation or disability benefits law or any similar law.

¶12 Following the seven pages of policy text is a signature page that is mostly blank. Following the signature page is a two-page UIM endorsement with the following title: "UNDERINSURED MOTORISTS (UIM) COVERAGE ENDORSEMENT — KEEP WITH POLICY."

Legal Principles Applicable to Determining Whether a Reducing Clause Is Ambiguous

¶13 In ***Folkman v. Quamme***, 2003 WI 116, 264 Wis. 2d 617, 665 N.W.2d 857, the supreme court clarified the analysis used to examine insurance policies containing reducing clauses. We recently summarized the ***Folkman*** clarification as follows:

> Contextual ambiguity occurs where a provision's words or phrases, when read in context of the policy's other language, reasonably or fairly lead to more than one construction. "The standard for determining a reasonable and fair construction is measured by the objective understanding of an ordinary insured." We may not isolate a small part of the policy from the context of the whole policy to find ambiguity. We must also be cognizant of the fact that some ambiguity is unavoidable. Contextual ambiguity will only exist if the policy is so ambiguous, obscure, or deceptive that it "befuddles the understanding and expectations of a reasonable insured." This ambiguity "must be genuine and apparent on the face of the policy."

Bellile v. American Family Mut. Ins. Co., 2004 WI App 72, ¶16, 272 Wis. 2d 324, 679 N.W.2d 827 (citations omitted). With these principles in mind, we turn to the arguments of the parties.

Whether the Policy's Reducing Clause Is Ambiguous

¶14 The Quinns argue that the UM reducing clause is ambiguous in the context of the entire policy because: (1) there is no indication on the declarations page that other portions of the policy modify, restrict, or reduce coverage; (2) the "insuring agreement" page does not contain any references to limitations on the coverage set forth in the declarations page; (3) the quick reference page does not inform insureds that any provisions in the body of the policy restrict, limit, or otherwise reduce the coverage set forth in the declarations page; and (4) there is no language in the heading or in the opening paragraphs of the UM coverage section advising insureds that any following language will limit or reduce UM coverage. We address these four arguments in the three sections below and explain why none of the arguments made by the Quinns, either individually or collectively, show ambiguity. Indeed, the following discussion demonstrates that the policy is not ambiguous with respect to the UM reducing clause.

1. The Declarations Page and the Insuring Agreement

¶15 The Quinns assert that the policy's declarations page and "insuring agreement" contribute to ambiguity because those pages fail to alert an ordinary insured to the fact that other portions of the policy limit UM coverage. In ***Bellile***, 272 Wis. 2d 324, quoted above, we addressed the same arguments the Quinns make here, in the context of what appears to be an identical American Family policy. Before quoting further from that case, we make two observations. First, our description of the first two pages of the policy in ***Bellile,*** collectively referred to in that case as the "declarations," shows that those two pages are, for purposes of this discussion, identical to what the parties here describe as the declarations page and "insuring agreement." Second, although ***Bellile*** is a UIM case and,

consequently, some of the discussion we quote is inapplicable here, when those obviously inapplicable portions are ignored, it is plain that in ***Bellile*** we addressed the same arguments that the Quinns make here. With these observations in mind, we now quote from ***Bellile***:

> We first look to the declarations and the quick reference index. *See* ***Schmitz***, 255 Wis. 2d 61, ¶¶62-63. Bellile notes the declarations lists UIM coverage of $150,000 and does not mention this coverage is subject to reduction by payments from other sources. *See* ***id.***, ¶62. Moreover, the quick reference sheet does not list UIM coverage.
>
> We cannot disagree with Bellile's observations regarding the shortcomings of the declarations and quick reference index. Be that as it may, "a lack of immediate explanation of a policy's reducing clause is not dispositive." ***Dowhower III***, 268 Wis. 2d 823, ¶20. This explanation is not required in the declarations because insurers cannot be expected to address every nuance of coverage in the declarations itself. ***Folkman***, 264 Wis. 2d 617, ¶56.
>
> Looking at the declarations as a whole, it does not present "inconsistent provisions, provisions that build up false expectations, [or] provisions that produce reasonable alternative meanings." ***Id.***, ¶31. We conclude the declarations provides adequate warning to the insured that the UIM coverage limits cannot be determined by looking solely at the declarations. At the top of the declarations' first page there appears in highlighted language, "**PLEASE READ YOUR POLICY**," and at the bottom of the page it states "[t]hese declarations form a part of this policy." Additionally, the declarations' second page states, "**We** agree with **you**, in return for **your** premium payment, to insure **you** *subject to all the terms of this policy*." (Emphasis added.) These provisions, which are not buried within the page, emphasize the declarations is but one component of the whole policy and that the rest of the policy must be referred to before a reasonable expectation of coverage can be formed.

Id., ¶¶17-19. Because we are addressing the same argument and the same policy language, we are not at liberty to reach a different result. *See* ***Cook v. Cook***,

208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). Thus, we conclude that the language on the first two pages of the policy before us "emphasize[s] the declarations is but one component of the whole policy and that the rest of the policy must be referred to before a reasonable expectation of coverage can be formed." ***Bellile***, 272 Wis. 2d 324, ¶19.

2. The Quick Reference Page

¶16 The Quinns assert that American Family's reducing clause is ambiguous because the quick reference page does not inform insureds that various provisions in the body of the policy restrict, limit, or otherwise reduce the coverage set forth in the declarations page. In this instance, our ***Bellile*** decision is not directly on point, but the difference between that case and this one works against the Quinns.

¶17 In ***Bellile***, the quick reference page omitted reference to the UIM coverage that was at issue in that case. Nonetheless, we concluded that the language discussed in the extended quote from ***Bellile*** in the prior section of this decision, combined with the "see below" language on the first declarations page, would lead a reasonable insured to look at the UIM portion of the policy for limitations on that coverage. ***Id.***, ¶20. We explained:

> We also conclude the quick reference index's failure to list UIM coverage, although inadvisable, does not force an insured to traverse an organizationally complex maze of a policy. *See* ***id.***, ¶55. Quite simply, finding the endorsement is not an arduous task. As indicated above, the policy's body is only eight pages long, and it is followed by the two-page UIM endorsement. The endorsement is clearly designated in highlighted type as "**UNDERINSURED MOTORISTS (UIM) COVERAGE ENDORSEMENT—KEEP WITH POLICY**" at the end of the policy. And once the insured finds this addition, he or she will notice that all the relevant provisions relating to

> UIM coverage, aside from the limit of liability (which is listed in the declarations), are contained within the two-page endorsement. What is more, the reducing clause is logically placed immediately after the "limits of liability" section. For these reasons, we conclude the policy's and UIM provisions' organization is not so ambiguous, obscure, or deceptive that it confounds the understanding and expectations of a reasonable insured. *See* ***id.***, ¶30.

Id., ¶21.

¶18 From the perspective of an insured, locating limitations on American Family's UM coverage is easier than locating the limitations on its UIM coverage. First, unlike UIM coverage, the quick reference *does* direct the reader's attention to the UM portion of the policy. Second, the quick reference indicates that this section of the policy contains "Exclusions" and "Limits of Liability" to UM coverage. Finally, if we substitute the references to the UIM endorsement with references to the UM coverage portion of the policy, the remainder of our discussion in ***Bellile*** applies with equal force here:

> And once the insured finds [the UM section], he or she will notice that all the relevant provisions relating to [UM] coverage, aside from the limit of liability (which is listed in the declarations), are contained within the [UM section covering approximately one page of text]. What is more, the reducing clause is logically placed immediately after the "limits of liability" section. For these reasons, we conclude the policy's and [UM] provisions' organization is not so ambiguous, obscure, or deceptive that it confounds the understanding and expectations of a reasonable insured.

Id., ¶21.

3. The UM Section

¶19 The Quinns contend that American Family's policy is ambiguous because there is no language in the opening paragraphs or in the heading of the UM coverage section advising insureds that there are limitations to UM coverage

in the text that follows. The Quinns argue that the UM section begins with the following statement that misleadingly suggests there are no limitations: "You have this coverage if Uninsured Motorist coverage is shown in the declarations." We disagree that the omission or inclusions in the opening language of the UM section create or add to ambiguity.[4]

¶20 The opening sentence merely informs a reasonable reader that this section of the policy applies to them if UM coverage is indicated in the declarations. No reasonable insured seeking to determine coverage would stop at this introductory language. Moreover, if the insured had not already seen the quick reference, alerting him or her to the fact that the UM section included "Exclusions" and "Limits on Liability," he or she would easily find those subsections in the short text that follows. To repeat, the text of the UM portion of the policy covers approximately one page and includes just four subheadings: "ADDITIONAL DEFINITIONS USED IN THIS PART ONLY," "EXCLUSIONS," "LIMITS OF LIABILITY," and "OTHER INSURANCE."

Whether the Reducing Clause Violates WIS. STAT. § 632.32(4)(a)

¶21 The Quinns argue that American Family's reducing clause cannot be used to reduce UM coverage by payments made under worker's compensation laws because such a reduction would not have been available to the tortfeasor, James Riley. In this respect, the Quinns rely on cases addressing reducing clauses

[4] We observe that this same argument could have been made in ***Bellile***. The UIM portion of the policy is susceptible to the same criticism the Quinns direct at the UM portion, that is, that there is no language in the opening paragraphs or in the heading of the UIM coverage section advising insureds that there are limitations to UIM coverage in the text that follows. *See* ***Bellile v. American Family Mut. Ins. Co.***, 2004 WI App 72, ¶11, 272 Wis. 2d 324, 679 N.W.2d 827.

that predate WIS. STAT. § 632.32(5)(i),[5] such as ***United Fire & Casualty Co. v. Kleppe,*** 174 Wis. 2d 637, 498 N.W.2d 226 (1993).

¶22 In ***Kleppe***, the supreme court held that a reducing clause that reduces uninsured motorist coverage by sums already paid or payable to the insured by his or her worker's compensation provider violates WIS. STAT. § 632.32(4)(a). ***Kleppe***, 174 Wis. 2d at 641-43. The Quinns' reliance on ***Kleppe***, however, simply begs the following question: What about the legislature's subsequent enactment of § 632.32(5)(i), which on its face authorizes the type of reducing clause found to be contrary to § 632.32(4)(a) in ***Kleppe***? The answer provided by the Quinns is that § 632.32(5)(i) conflicts with § 632.32(4)(a). Accordingly, we turn our attention to this argument.

¶23 The Quinns argue that WIS. STAT. § 632.32(4)(a) mandates that insurers provide at least $25,000 per person and $50,000 per accident of UM coverage and that, in circumstances like those in the instant case, the insured is deprived of that coverage by reducing clauses supposedly authorized by § 632.32(5)(i). Thus, according to the Quinns, the two statutes create ambiguity that should be resolved in favor of the insured. The Quinns provide no more explanation, and we are unable to discern why the two statutes conflict or why, in combination, they might be considered ambiguous.

¶24 WISCONSIN STAT. § 632.32(4)(a) directs insurers to provide UM coverage of at least $25,000 per person and $50,000 per accident. Section 632.32(5)(i) provides that the limits under a policy for UM coverage may be

[5] WISCONSIN STAT. § 632.32(5)(i) was created by 1995 Wis. Act 21, § 4, and was effective July 15, 1995.

reduced by payments made to the insured by amounts paid by or on behalf of any person or organization that may be legally responsible for the bodily injury or death for which the payment is made, amounts paid or payable under any worker's compensation law, and amounts paid or payable under any disability benefits laws. There is no conflict. Section 632.32(4)(a) contains a general directive that insurers provide at least a certain amount of UM coverage. Section 632.32(5)(i) is more specific: it permits insurers to reduce UM coverage when an insured receives compensation from any of three enumerated sources. When courts construe statutes, specific language controls general language. ***State v. Larson***, 2003 WI App 235, ¶6, 268 Wis. 2d 162, 672 N.W.2d 322 ("Where two statutes relate to the same subject matter, the specific statute controls the general statute."). Here, the plain language of the statute permits exactly what the Quinns complain about: allowing specified reductions to otherwise required UM coverage.

¶25 WATL weighs in on this topic, arguing that we should construe WIS. STAT. § 632.32(5)(i) as permitting a reduction, but only to the extent necessary to prevent double recovery by the insured. Thus, WATL asks us to read into § 632.32(5)(i) a limitation not found in the express language.

¶26 WATL's argument suffers from essentially the same defect as the Quinns' argument, namely, WATL does not begin by demonstrating any ambiguity in the statute which would permit us to go beyond the plain language of the statute and construe it in light of legislative intent revealed by extrinsic

sources. Instead, WATL points to dictum from two supreme court decisions which, WATL contends, support its view of the legislature's intent.[6]

¶27 Statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." ***Seider v. O'Connell***, 2000 WI 76, ¶43, 236 Wis. 2d 211, 612 N.W.2d 659. "[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." ***State ex rel. Kalal v. Circuit Court***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. "Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation, such as legislative history." ***Id.*** Because WATL does not explain ambiguity in the statute, and because we find none, we may not look beyond the statute and attempt to discern what the legislature meant to say.

Whether the Reducing Clause Is Ambiguous Per Se
Because it Adds the Phrase "or Any Similar Law"

¶28 We will now address an argument made by WATL, but not the Quinns. Subsection three of the reducing clause in the policy states: "A payment made or amount payable because of **bodily injury** under any workers' compensation or disability benefits law or any similar law." Focusing on the phrase "or any similar law," WATL argues that the reducing clause is ambiguous *per se* because "it purports to reduce UM benefits by additional sources not authorized by sec. 632.32(5)(i)." WATL's argument was addressed and rejected

[6] Those two cases are ***Blazekovic v. City of Milwaukee***, 2000 WI 41, ¶¶19-20, 234 Wis. 2d 587, 610 N.W.2d 467, and ***Hull v. State Farm Mutual Automobile Insurance Co.***, 222 Wis. 2d 627, 645 n.11, 586 N.W.2d 863 (1998).

in ***Van Erden v. Sobczak***, 2004 WI App 40, 271 Wis. 2d 163, 677 N.W.2d 718, *review denied*, 2004 WI 114, __ Wis. 2d __, 684 N.W.2d 136 (May 12, 2004) (No. 02-1595).

¶29 In ***Van Erden***, we addressed an American Family policy with the same reducing clause language. There, as here, WATL argued that the clause was invalid because of the addition of the phrase "or any similar law." We stated:

> The Van Erdens have adopted an argument found in WATL's brief. They contend the [reducing] clause is invalid because, in referencing the disability benefits, it adds to the language found in Wis. Stat. § 632.32(5)(i)3 [in that the clause adds "or any similar law"]. We disagree.
>
> As noted, the policies state: "A payment made or amount payable because of **bodily injury** under any workers' compensation or disability benefits law *or any similar law*." (Emphasis added.) The inclusion of the additional language does no disservice to the legislative intent. The wording merely acts as a catchall phrase for jurisdictions that may call their disability benefits law by another name.

Van Erden, 271 Wis. 2d 163, ¶¶24-25. We understand WATL to be making the same argument here and, therefore, we are bound by the ***Van Erden*** decision.

Whether the Reducing Clause Applies to
Reduce the Limits Available to All Claimants Equally

¶30 In the circuit court, the Quinns argued that, even if the reducing clause is enforceable, Gregory Quinn's surviving child, Douglas, is entitled to the UM benefit, unreduced by the worker's compensation payments, because Gregory's wife Terry, not his son Douglas, received those payments. On appeal, American Family argues that, if we conclude the reducing clause is enforceable, we should address this topic. American Family argues that Douglas is precluded from recovery under the policy because neither WIS. STAT. § 632.32(5)(i) nor the

policy language tracking that statute limits the applicability of the reducing clause to only those claimants who personally receive the worker's compensation payments.

¶31 The Quinns have not responded to American Family's argument and have not suggested any reason why we may not address the issue on appeal. Accordingly, we take their silence as a concession that Douglas may not recover under the UM portion of the policy. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (arguments not refuted may be deemed conceded).

Conclusion

¶32 We conclude that the UM reducing clause, in the context of the policy, is unambiguous and enforceable. We further conclude that it complies with WIS. STAT. § 632.32(5)(i). Finally, we conclude that the Quinns have conceded that Douglas may not recover under the UM portion of the policy. Accordingly, we remand and direct that summary judgment be entered in favor of American Family.

By the Court.—Order reversed and cause remanded with directions.

Not recommended for publication in the official reports.