

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 7, 2011**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

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

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. 2011AP261**

**Cir. Ct. No. 2009CV2580**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**MARIA RAMIREZ AND RODOLFO RAMIREZ,**

**PLAINTIFFS-APPELLANTS,**

**PRINCIPAL LIFE INSURANCE COMPANY, RACINE UNIFIED SCHOOL  
DISTRICT, ZURICH AMERICAN INSURANCE COMPANY AND UNITED  
HEALTHCARE INSURANCE COMPANY,**

**INVOLUNTARY PLAINTIFFS,**

**v.**

**XU CHEN, HORACE MANN PROPERTY & CASUALTY INSURANCE  
COMPANY, CRAIG S. THIESEN AND STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY,**

**DEFENDANTS,**

**AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Racine County:  
CHARLES H. CONSTANTINE, Judge. *Affirmed.*

Before Brown, C.J., Reilly, and Curley, JJ.

¶1 PER CURIAM. Maria Ramirez was severely injured while a passenger in a car driven by Xu Chen when the two were engaged in work for their employer, the Racine Unified School District (the District). Maria and Rodolfo Ramirez appeal from an order determining that the District’s insurer, American Guarantee and Liability Insurance Company, does not provide coverage under an endorsement to the policy that states an employee is insured only if the employee has no other valid and collectible insurance. We conclude that there is no ambiguity in the endorsement excluding coverage when an employee has his or her own insurance. We affirm the circuit court’s order.

¶2 The coverage determination was made on the parties’ cross-motions for summary judgment. We review a summary judgment determination de novo using the same methodology as the circuit court. *Blum v. 1st Auto & Cas. Ins. Co.*, 2010 WI 78, ¶14, 326 Wis. 2d 729, 786 N.W.2d 78. Because there are no material disputed facts, this case involves only the interpretation of an insurance policy and a question of law is presented. *See id.*, ¶¶14, 15. An unambiguous insurance policy should not be rewritten by construction to impose liability for a risk the insurer did not intend to cover or for which it was not paid. *Id.*, ¶19.

¶3 The American Guarantee policy issued to the District provides \$1 million coverage under a business auto coverage form. The “WISCONSIN CHANGES” endorsement to the policy modifies the insurance provided under the business auto coverage form for any automobile licensed or principally garaged in

Wisconsin. The endorsement provides for changes in liability coverage, in relevant part:

If your business is other than selling, servicing, repairing or parking “autos,” Who Is An Insured is changed to include an officer, agent or “employee” of such business while using a covered “auto.” However, that person is an “insured” only if he or she has no other valid and collectible insurance with at least the applicable minimum limit specified by WIS. STAT. Section 344.15. In this event, coverage will be provided only up to the applicable minimum limit specified by WIS. STAT. Section 344.15.

¶4 It is undisputed that the District is a business other than selling, servicing, repairing or parking automobiles. Thus, Chen, as a District employee, is an insured. It is undisputed that Chen had a personal automobile liability policy issued by Horace Mann Property & Casualty Insurance Company with a \$100,000 per person and \$300,000 per occurrence limit, exceeding the applicable minimum limit specified by WIS. STAT. § 344.15 (2005-06).<sup>1</sup> It follows that Chen is excluded as an insured because she had other valid and collectible insurance.

¶5 The Ramirezes contend that the reference to “such business,” refers to the business of motor vehicle handlers—a business engaged in selling, servicing, repairing or parking automobiles—and serves to include an officer, agent, or employee of a motor vehicle handler using a covered automobile and not employees of the District. They argue that by reference to the functions of motor vehicle handlers, the policy put into place the provision authorized by WIS. STAT. § 632.32(5)(b) (2009-10),<sup>2</sup> that a policy issued to anyone other than a motor

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<sup>1</sup> The automobile accident occurred August 30, 2006.

<sup>2</sup> All subsequent references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

vehicle handler may limit the coverage afforded to officers, agents or employees of a motor vehicle handler to the minimum amounts and to instances when there is no other valid and collectible insurance with at least those minimum limits.

¶6 Nothing in the Wisconsin changes endorsement supports the proposition that the changes in liability coverage were intended to apply only to employees of a motor vehicle handler. The only type of business referenced in the paragraph is a business “other than selling, servicing, repairing or parking” automobiles. By its introductory phrase, the provision expressly applies to businesses other than motor vehicle handlers. The reference to “such business” refers back to the District’s business.<sup>3</sup> Ambiguity cannot be infused by attempting to match up the language to statutory provisions the endorsement does not adopt.

¶7 The circuit court looked to *Pemper v. Hoel*, 2004 WI App 67, 271 Wis. 2d 442, 677 N.W.2d 705 (Ct. App. 2004), where a similar limitation in a Wisconsin changes endorsement was applied to exclude coverage. In *Pemper*, the endorsement included anyone other than an officer, agent or employee of the insured business except “that person is an ‘insured’ only if he or she has no other valid and collectible insurance with at least the applicable minimum limit specified by [WIS. STAT. §] 344.15.” *Pemper*, 271 Wis. 2d 442, ¶7. There we held that a reasonable insured would understand that a Wisconsin changes endorsement’s definition of an insured is designed to supplant the main policy’s definition. *Id.*, ¶9. We also explained that the “endorsement redefines who is an

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<sup>3</sup> That “such business” refers back to the only business mentioned in the paragraph is further supported by the fact that the next provision in the Wisconsin changes endorsement states: “If your business is selling, servicing, repairing or parking ‘auto,’ [an insured includes] anyone other than an officer, agent or ‘employee’ of such business....”

insured for Wisconsin policies. Because the limiting clause immediately follows the definition of an insured, we conclude that the exclusion adequately references and therefore restricts the definition of an insured.” *Id.*, ¶12. We agree that *Pemper* applies even though it is a case involving a motor vehicle handler and adopts the permissible limitation in WIS. STAT. § 632.32(5)(c).

¶8 As *Pemper* illustrates, under the Wisconsin changes endorsement an insured is any employee of a business not engaged in the selling, servicing, repairing or parking of automobiles—the District—who does not have his or her own valid and collectible insurance. See *Pemper*, 271 Wis. 2d 442, ¶12. Under the unambiguous language of the endorsement, Chen is excluded as an insured. The endorsement is dispositive; we need not address any other arguments.<sup>4</sup>

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

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<sup>4</sup> The Ramirezses argue for the first time on appeal that the exclusion of coverage for Chen violates the omnibus statute, WIS. STAT. § 632.32(3)(a). That section provides:

[E]very policy subject to this section issued to an owner shall provide that: (a) Coverage provided to the named insured applies in the same manner and under the same provisions to any person using any motor vehicle described in the policy when the use is for purposes and in the manner described in the policy.

In *Folkman v. Quamme*, the court recognized that the required provision is intended “to make sure when a policy insures a vehicle listed in the policy, the policy follows the vehicle to provide coverage for individuals that use it with permission and are responsible for using it” because insurance companies are prohibited from insuring only certain drivers. *Folkman v. Quamme*, 2003 WI 116, ¶61, 264 Wis. 2d 617, 665 N.W.2d 857 (citation omitted). Chen was not driving a vehicle specifically listed in the policy and there is no violation of § 632.32(3)(a).

