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## Spilman Discusses Recent Workers Compensation Case

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The state's highest court decided in a recent ruling that BrickStreet did not hold responsibility to provide deliberate intent liability insurance coverage to an employer that only purchased a standard workers' compensation policy.



Representing BrickStreet, Spilman Thomas & Battle attorneys said if the circuit court's order was not reversed, the decision would have been a "serious setback" to privatization measures enacted for workers' compensation insurance.

"The Court's decision in the Summit Point case holds great importance for all workers' compensation insurance carriers operating in West Virginia," a Spilman news release states. "Absent this ruling by the court, insurance carriers could have been expected to provide deliberate intent coverage to any employer they insured – regardless of whether or not the employer actually purchased such coverage."

Issues in the case date back to 2007 when BrickStreet insured Summit Point under a workers' compensation and employers liability insurance policy.

Later that year, Summit Point employee Brandon Gregory was injured when his hand was caught in a wood planer. In addition to submitting a claim for workers' compensation, Gregory filed a deliberate intent lawsuit against Summit Point claiming the company violated state law.

In response, Summit Point sent a letter to BrickStreet notifying it of the pending lawsuit and requesting the company to pay for it.

Three letters later, BrickStreet responded in August 2008 denying coverage based on the West Virginia Intentional Injury Exclusion Endorsement contained in its issued policy.

After receiving this denial, Summit Point filed a suit in Jefferson County Circuit Court claiming BrickStreet breached its contract.

The circuit judge sided with Summit Point and granted its motion for partial summary judgment in May 2010. A subsequent agreed judgment order was entered the next month awarding \$1,201,080.30 worth of damages to Summit Point.

BrickStreet appealed the order, arguing it had an affirmative duty to make a commercially reasonable offer of coverage for deliberate intent actions to Summit.

Additionally, BrickStreet argued the circuit court was flawed in its conclusion that the workers' compensation and employers liability insurance policy it issued to Summit Point was ambiguous regarding deliberate intent. BrickStreet also said the court erred in its finding that under the doctrine of reasonable expectation that the policy included coverage for deliberate intent actions.

"BrickStreet contends that the effect of the circuit court's ruling could arguably be to extend 'deliberate intent' insurance coverage to 30,000 employers in the State of West Virginia who have not chosen such coverage and have not paid such coverage," Justice Robin J. Davis wrote in the Nov. 17 opinion. "Thus, allowing the ruling to stand would lead to an absurd result that the West Virginia Legislature could not have conceived or intended."

Spilman said the decision to side with the standard policy used by most workers' compensation carriers in the state is an important decision for the business climate.

"The court's decision protects the business climate in West Virginia by providing workers' compensation carriers the assurance that, when combined with the proper endorsements dealing with deliberate intent coverage, use of the NCCI form policy will not result in unexpected liability for the carrier.



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