No. 127140

IN THE
SUPREME COURT OF ILLINOIS

PRATE ROOFING AND INSTALLATIONS, LLC, Plaintiff-Appellee, v. LIBERTY MUTUAL INSURANCE CORPORATION, Defendant-Appellant, and THE ILLINOIS DEPARTMENT OF INSURANCE, ROBERT MURIEL in his capacity as Director, and PATRICK RILEY, in his capacity as Hearing Officer, Defendants.	Appeal from the Appellate Court, First Judicial District, No. 1-19-1842 Circuit Court of Cook County, Illinois, No. 18 CH 9826 Honorable Caroline Kate Moreland, Judge Presiding

BRIEF AND ARGUMENT OF PLAINTIFF-APPELLEE PRATE ROOFING AND INSTALLATIONS, LLC

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ARGUMENT

I. INTRODUCTION

This appeal arises out of a dispute between Appellee, Prate Roofing & Installations, LLC ("Prate"), and Appellant, Liberty Mutual Insurance Corporation ("Liberty") over whether an uninsured subcontractor of Prate had employees who worked on Prate projects, so as to justify Liberty charging Prate additional premium. Prate argued that Liberty is not entitled to any additional premium because its uninsured subcontractor did not have any employees who worked on Prate projects. Rather, Prate's uninsured subcontractor sub-subcontracted all labor to another fully insured subcontractor. The outcome of the dispute between Prate and Liberty is entirely dependent upon the outcome of this factual issue. If the uninsured subcontractor had employees who worked on Prate projects, Prate owes additional premium. If the uninsured subcontractor did not have employees who worked on Prate projects, Prate does not owe any additional premium. The Department of Insurance ("DOI") found that Prate's uninsured subcontractor had employees who worked on Prate projects. As it turns out, however, the DOI lacked statutory authority to make such a factual determination. *Prate Roofing and Installations, LLC v. Liberty Mut. Ins. Corp.*, 2021 IL App (1st) 191842-U, ¶1; *CAT Express, Inc. v. Muriel*, 2019 IL App (1st) 181851, ¶34. For this reason, the appellate court correctly vacated the Department's final order and the circuit court's order affirming it.

Liberty appeals the appellate court's decision, contending that the Department had statutory authority to decide the dispute between Prate and Liberty under Section 462 of the Insurance Code. As support for its petition for leave to appeal and its appeal to this Court, Liberty contends that the appellate court's decision in the present case conflicts with a recent decision of the Idaho Supreme Court in *Travelers Ins. Co. v. Ultimate Logistics, LLC*, 167 Idaho 13, 467 P.3d 377 (2020). Contrary to Liberty's contentions, however, the *Ultimate Logistics* decision is consistent with the *CAT Express* and the appellate court's decision in the present case because, in *Ultimate Logistics*, the department was not required to decide an employment status dispute.

II. THE APPELLATE COURT CORRECTLY HELD THAT THE DEPARTMENT OF INSURANCE DID NOT HAVE STATUTORY AUTHORITY TO DECIDE AN EMPLOYMENT STATUS DISPUTE

After Prate filed its Notice of Appeal of the circuit court's order, the First District Appellate Court rendered its decision in *CAT Express, Inc. v. Muriel and Liberty Mutual Ins. Co.*, 2019 IL App (1st) 181851. In *CAT Express*, the court held that the Department of Insurance ("DOI") did not have express or implied statutory authority to resolve a private dispute between an insurer and insured and therefore, the DOI's final order was void. *Id.* at ¶*35*. Liberty does not argue here that *CAT Express* was incorrectly decided.

The facts in *CAT Express* were very similar to the facts in the present case. CAT was insured under a workers' compensation policy issued by Liberty, who had been assigned to the risk by the National Council on

Compensation Insurance ("NCCI"). *Id.* at ¶1. After a premium audit, Liberty charged CAT an additional premium based on Liberty's belief that CAT, a trucking company, employed a substantial number of owner-operators that CAT did not disclose as employees. *Id.* CAT requested that the NCCI resolve the question of whether its owners-operators were independent contractors or employees covered under the policy. *Id.* The NCCI determined that it did not have jurisdiction to answer this question and advised CAT to appeal to the DOI. *Id.* CAT did so, and the DOI found that Liberty had correctly determined that CAT's owner-operators were employees rather than independent contractors and found CAT liable for the additional premium. *Id.* CAT exhausted its administrative remedies and sought administrative review in the circuit court. The circuit court affirmed the DOI's order.

On appeal, the appellate court asked the parties to brief the issue of whether the DOI had statutory authority to resolve the parties' dispute. *Id.* at ¶2. The court noted that CAT's appeal centered on the question of whether the Director was correct in deciding that the owner-operators CAT contracted with were employees of CAT and were not independent contractors. *Id.*

The Court examined Sections 401-403 and 462 of the Illinois Insurance Code to determine whether the DOI had authority to resolve the dispute. As to Sections 401-403, the Court stated:

> The language of section 401(c) is broad and authorizes the Director "to conduct such examinations, investigations and hearings in addition to those specifically provided for, as may be necessary and proper for the efficient administration of the insurance laws of this State. Id. § 401(c).

> But despite such breadth, the parties here make no effort to describe, and do not explain, how an employment status and premium dispute between an insurer and an insured involves "the efficient administration of the insurance laws of this State" or whether the determination that someone is an employee for purposes of workers' compensation insurance coverage is regulated by the Insurance Code or by any regulation promulgated by the Director.

Id. at ¶20. The court found that Liberty's determination that CAT owed additional premiums under the policy involved only private interests; CAT's interest in paying a correct premium and Liberty's interest in receiving the correct premium. *Id.* at ¶22. The court found:

> The Insurance Code does not vest the Director with express or implied authority to make factual determinations regarding the scope of coverage under any contract of insurance. The Department and the Director administer the laws of this state, not individual insurance contracts between an insurer and an insured.

Id. at ¶23.

The Court then went on to determine whether Section 462 of the Insurance Code conferred authority on the Director to resolve the parties' dispute. In rejecting the argument that section 462 applied, the Court noted that section 462 allows a party aggrieved by NCCI's rating system to review the applied rating system, and if the review is adverse to the party, the party can appeal to the DOI. *Id.* at ¶27. The court found that section 462 was not implicated, because:

> Here, CAT was not aggrieved by application of the NCCI rating system; CAT was aggrieved by Liberty's determination as to the number of workers to which the rating system applied when calculating the adjusted premium.

Id.

The facts in the present case are very similar to the facts in *CAT Express*. First, as in *CAT*, the NCCI did not rule on Prate's original dispute. On the contrary, in its decision, the NCCI stated that it had insufficient information to determine the issue presented and suggested that Prate "re-file" (not appeal) its dispute with the DOI. (C 97) It should be noted that the issue, as framed by NCCI in its June 2, 2016 letter, (C 96), did not reference the specific issue of whether ARW LLC had employees of its own that worked on Prate projects. Had it referenced that specific issue; it can be assumed the NCCI would have indicated that it did not have jurisdiction to decide this factual issue. This assumption is supported by the fact that Liberty and, ultimately, the DOI, (C 23-24), relied on a previous decision of the DOI in *In the Matter of the Workers' Compensation Insurance Policy No. TARIL32058 Issued to: Central Terrace Cooperative, Inc. by AM Trust Financial Company, Hearing No. 15-HR-0904* (hereinafter "*Central Terrace*"). A copy of the *Central Terrace* decision is in the Common Law Record at C 214-219. Paragraph 1 of the DOI's decision in *Central Terrace* states:

> On October 27, 2015, Tim Hughes, Regulatory Services Manager with the National Council on Compensation Insurance ("NCCI") informed the Complainant, Janice Dickens ("Ms. Dickens"), Property Manager for Central Terrace Cooperative, Inc. ("Central"), *that the Illinois Workers' Compensation Dispute Resolution Board did not have jurisdiction to hear Central's dispute with AmTrust North America* ("AmTrust") regarding Policy No. TARIL32058-03.

(Emphasis added) (C 214, ¶1). The facts and legal issues in *Central Terrace* were, in Liberty's own words, "strikingly similar" to the facts and legal issues

in the present case. *See* C 418. This means that, in issuing its final order in the present case, the DOI relied upon a final order (*Central Terrace*) which it likely did not have authority to issue.

By re-filing its dispute with the DOI, Prate was, in effect, commencing a new case with the DOI. Under these circumstances, the DOI's authority to resolve the dispute would need to come from section 401 of the Insurance Code. As in *CAT Express*, however, no such authority existed because the present case involves only private interests; Prate's interest in paying a correct premium and Liberty's interest in receiving a correct premium. A decision by the DOI that ARW LLC had employees who worked on Prate projects has nothing to do with the efficient administration of the insurance laws of this state, and the issues of whether ARW LLC had its own employees who worked on Prate projects and whether such employees would be covered under Prate's policy are not regulated by the Insurance Code or any regulations promulgated by the Director.

That the DOI considered the proceedings before it to be a new case is evident by the fact that the DOI did not simply review and affirm or reverse NCCI's findings, it allowed entirely new arguments and issues to be raised and did not hesitate to make factual and legal findings on issues that were never before the NCCI. In *CAT Express*, the issue was whether CAT's owner-operators were covered under the Liberty policy. In the present case, the pivotal issue is whether ARW LLC had employees who were covered under the

Liberty policy. As this Court stated in *CAT Express*, "the Insurance Code does not vest the Director with express or implied authority to make factual determinations regarding the scope of coverage under any contract of insurance."

As to section 462 of the Insurance Code, it is important that the crux of the dispute between Prate and Liberty before the DOI was whether Liberty had correctly determined that ARW LLC had employees of its own which exposed Liberty to workers' compensation liability. Although the NCCI Basic Manual Rule 2-H was addressed, Prate never argued that the policy language or NCCI rule should not apply to it even if ARW LLC had employees who worked on Prate jobs. Rather, Prate's primary argument was that Liberty had incorrectly determined that ARW LLC had its own employees who worked on Prate jobs. A review of the DOI's order shows that the outcome of the dispute depended almost entirely on the outcome of this factual issue. The DOI did not need to interpret the NCCI rules, it simply needed to determine whether ARW LLC had employees of its own who worked on Prate jobs.

As in *CAT Express*, Prate was not aggrieved by application of the NCCI rating system itself; Prate was aggrieved by Liberty's determination that ARW LLC had its own employees who worked on Prate jobs in applying the rating system and calculating Prate's premium. As this Court stated in *CAT Express*, the present case is essentially an insurance coverage or breach of contract dispute that requires a determination of whether Liberty is entitled to

additional premiums based on its premium audit finding that ARW LLC had its own employees who worked on Prate jobs.

The DOI and its Director lacked authority to resolve the dispute between Prate and Liberty and the Director's order and the circuit court's order were correctly vacated. For these reasons, this Court should affirm the appellate court's decision.

III. *CAT EXPRESS* AND THE CURRENT CASE BOTH INVOLVED EMPLOYMENT STATUS DISPUTES

In both *CAT Express* and the present case, the issue before the appellate court was whether the DOI had statutory authority to decide an employment status dispute between an insurer and insured. In reviewing the *CAT Express* case, the appellate court found the issue decided by the DOI was whether CAT Express' owner-operators were employees rather than independent contractors. 2021 IL App (1st) 191842-U, ¶53. The court stated:

> We found that the DOI and the Director lacked express or implied authority to decide an employment status dispute or to issue a final order on the issue.

Id. at ¶51.

The court further stated:

> This court concluded that the DOI did not have express or implied authority to resolve the employment status dispute as it did not directly or indirectly involve the DOI's or the Director's authority to administer the insurance laws of this state. We found that the DOI acted beyond its authority in conducting the hearing and issuing the final order.

Id. at ¶48.

> We found that the dispute between CAT Express and Liberty Mutual was essentially an employment status dispute: whether owners-

> operators used by CAT Express were independent contractors or employees for the purposes of coverage under Liberty Mutual's workers' compensation policy.

Id. at ¶53.

The appellate court correctly held that the same result is warranted in the present case, stating:

> Here, the underlying dispute between Prate and Liberty Mutual was an employment status dispute: namely, whether Prate's subcontractor ARW LLC, who had no workers' compensation coverage, had employees that would trigger additional premiums under Prate's policy. We specifically reject Liberty Mutual's characterization of the issue in this case as simply an analysis of the NCCI's Basic Manual Rule 2-H, i.e., whether Prate furnished satisfactory evidence that the subcontractor had workers' compensation insurance in force. While it may be true that the final determination of how much additional premium is due would be calculated according to that rule, in order to reach that determination, there must be findings of fact and conclusions of law made to establish ARW's status as an employer and if so, whether any of its employees completed work on Prate's projects. As we concluded in *CAT Express*. Such determinations require the DOI and the Director to make factual findings regarding the parties' private interests in the scope of their insurance contract. No public interest or administration of any insurance law or regulation is implicated by the dispute at bar.

Id. at ¶58.

Contrary to Liberty's arguments, the appellate court's decision in the present case is entirely consistent with the *CAT Express* decision. For these reasons, this Court should affirm the appellate court's decision.

IV. *TRAVELERS INSURANCE CO. v. ULTIMATE LOGISTICS. LLC* IS DISTINGUISHABLE BECAUSE IT DID NOT INVOLVE AN EMPLOYMENT STATUS DISPUTE

Liberty places a lot of stock in the Supreme Court of Idaho's decision in *Travelers Insurance Company v. Ultimate Logistics, LLC*, 167 Idaho 13, 467 P.3d 377 (2020), arguing that the appellate court's decision in this case conflicts with it. First of all, the Idaho Supreme Court's decision is in no way binding on this court. Second, the *Travelers* decision is easily distinguished from the present case and *CAT Express* in that the *Travelers* case did not involve an employment status dispute.

In *Travelers*, the insurer appealed the decision of the Idaho Department of Insurance ("IDOI") finding that two mechanics employed by Ultimate Logistics ("Ultimate") were improperly included in a premium-rate calculation made by Travelers. 467 P.3d at 379. Travelers argued that the IDOI acted outside its statutory authority in determining that the mechanics could not be included in the premium-rate calculation. *Id.* As in *CAT Express*, the insurer had determined that the mechanics should be included in the premium-rate calculation. Ultimate requested that the NCCI review the insurer's determination. The NCCI advised Ultimate that it could not make a determination as to whether the mechanics were properly included in the insurer's premium-rate calculation. It explained, "NCCI has no jurisdiction over coverage related issues; whether certain workers were included for coverage under your policy. The [insurance] carrier determines whether a worker poses a liability to the policy." 467 P.3d at 380.

Ultimate appealed to the DOI. After the DOI ruled in Ultimate's favor, Travelers appealed to the district court, again arguing that the DOI did not have statutory authority to determine whether the mechanics were employees or independent contractors. The district court determined that the issue of whether the mechanics were employees or independent contractors was moot and upheld the IDOI's decision. *Id.* at 381.

Travelers then appealed to the Idaho Supreme Court. The supreme court upheld the district court's opinion, finding that the issue of whether the mechanics were employees or independent contractors was moot because Travelers had, in effect, admitted that they were not employees and had treated them, instead, as uninsured subcontractors. The Idaho court stated,

> We need not address whether the mechanics were employees or independent contractors because the Department's final order did not rely upon such a distinction.

Id. at 383. The Idaho court further stated,

> [I]n its final order, the Director did not rely on the hearing officer's employee vs. independent contractor determination. Rather, the Director clarified that the issue before the hearing officer was not whether the mechanics were employees or independent contractors, but whether Travelers, which treated the mechanics as uninsured subcontractors, correctly included them in the premium-rate calculation under Basic Manual Rule 2.H.

Id. The Idaho court concluded by stating,

> Therefore, the question before this court is not whether the mechanics working for Ultimate were employees or independent contractors, nor is it whether NCCI or the Department of Insurance has the statutory authority to make such a determination.

Id. at 384.

As is blatantly obvious, Liberty's reliance on the *Travelers* decision is misplaced. In the present case, in making its determination, it was absolutely necessary for the DOI to resolve the factual issue of whether Prate's uninsured subcontractor, ARW, LLC, had employees who worked on Prate projects. For this reason, the DOI lacked statutory authority to decide this case. Finally, it can be inferred by the number of times the Idaho Supreme Court stated that its case *did not* involve an employment status dispute, that the *Travelers* case would have been decided differently had it involved an employment status dispute. For these reasons, this Court should find the *Travelers* decision unpersuasive and affirm the appellate court's decision.

V. The DOI Incorrectly Ignored or Misinterpreted Competent and Uncontroverted Evidence That ARW Roofing, LLC Had No Employees Who Worked on Prate Projects.

The appellate court correctly vacated the DOI and circuit court's orders because the DOI lacked statutory authority to decide the dispute between Prate and Liberty. Even if this Court determines that the DOI had statutory authority to decide Prate and Liberty's employment status dispute, however, the DOI and circuit court's orders should be reversed.

The facts of this case are not that complicated. Under the Liberty policy's language and workers' compensation statute, if a person (including a contractor like Prate) hires an uninsured subcontractor to perform construction work, the hiring person (and his insurer) is liable to pay workers compensation benefits to injured employees of the uninsured subcontractor,

but only if the uninsured subcontractor's employees actually perform labor on a job. See 820 ILCS 305/1(a)(3). It is all about exposure to liability. If the uninsured subcontractor's employees actually perform labor on the job, the hiring person and his insurer are exposed to liability for injuries to the employees of the uninsured contractor. Because of this exposure to liability, the hiring person's insurer is entitled to charge a premium for its exposure.

On the other hand, if a person hires an uninsured subcontractor who acts merely as a middleman who turns around and sub-subcontracts all labor to another subcontractor who is properly insured for workers compensation, there is no basis for the hiring person's insurer to charge an additional premium because there is no exposure to the hiring party or its insurer. If an employee of the properly insured contractor is injured on the job, his injuries will be covered under the properly insured contractor's policy, regardless of whether the middleman contractor was insured. That is, all that matters is that the employees working on the job be covered under their employer's workers' compensation policy. The insured status of a middleman without employees is irrelevant.

Prate does not suggest that there is a "middlemen exception" to the Workers' Compensation Act. Rather, Prate simply argues that according to the plain language of the Act, if a subcontractor has no employees that can get hurt on a project, there is no liability exposure to the hiring contractor or his insurer; it's just common sense.

The undisputed facts in this case are that Prate hired an uninsured subcontractor known as ARW Roofing, LLC. This fact alone, however, did not justify Liberty charging additional premium because Prate presented abundant evidence to Liberty and the DOI that ARW Roofing, LLC acted merely as a middleman who turned around and sub-subcontracted all labor on Prate jobs to Reliable Trade Services, who was properly insured. Thus, the employees who actually worked on Prate projects were protected under Reliable Trade Services' insurance policy. Prate further provided uncontradicted proof to the DOI that ARW Roofing, LLC had no employees of its own. Because ARW Roofing, LLC had no employees and all labor was performed by employees of Reliable Trade Services, who was properly insured, the fact that ARW Roofing, LLC did not carry insurance did not increase Prate or Liberty's workers compensation risk and Liberty was not entitled to charge an additional premium. The proof provided by Prate included, but was not limited to testimony from Michael Prate that:

> Emmolly Corporation organized ARW Roofing LLC in June 2012 in anticipation of it purchasing ARW Roofing, Inc. The purchase never occurred. ARW Roofing, LLC never had any employees or payroll.

(C406)

> All work which was the subject of agreements or contracts between Prate Roofing & Installations and ARW Roofing, LLC or ARW Roofing, Inc. (hereinafter "Prate Projects") was performed entirely by employees of ARW Roofing, Inc. or Reliable Trade Services, Inc. ARW Roofing, LLC never had any employees, and, thus, no ARW Roofing, LLC employee ever performed any work on any Prate Project.

Id. Michael Prate was the President of Emmolly Corp. which formed ARW Roofing, LLC, and, thus, he had personal knowledge of whether ARW Roofing, LLC had any employees and whether it sub-subcontracted Reliable Trade Services to perform the actual labor on Prate jobs. Michael Gurdak, President of Reliable Trade Services, testified:

> To the best of my knowledge, ARW Roofing, LLC has never had any employees or payroll.

(C 436) Gurdak further testified:

> Between October 18, 2014 and June 28, 2015, all work which was the subject of agreements or contracts between Prate Roofing & Installations and ARW Roofing, LLC or ARW Roofing, Inc. (hereinafter "Prate Projects") was performed entirely by employees of Reliable Trade Services, Inc. or ARW Roofing, Inc.

Id. at Para. 4. As President of Reliable Trade Services, Gurdak had personal knowledge of these facts. Gurdak further testified:

> Since at least May 1, 2013 and thereafter, ARW Roofing, Inc. and Reliable have carried workers' compensation insurance through American Interstate Insurance Company under Policy Nos. AVWCIL2200772013, AVWCIL2200772014 and AVWCIL2200772015. The employees who performed labor on Prate Projects were covered under these policies. These policies were in full effect during the course of all Prate Projects during these policy periods.

Id. at Para. 5. Gurdak clearly had personal knowledge of these facts.

Finally, Gurdak testified:

> Payments by Prate to ARW Roofing, Inc., ARW Roofing, LLC and/or Reliable on Prate Projects were used to pay ARW Roofing, Inc./Reliable for labor and material costs of said projects.

Id. at Para. 6. As President of Reliable, Gurdak had personal knowledge that any payments to ARW Roofing, LLC were used to pay ARW Roofing Inc./Reliable Trade Services for labor and materials on Prate jobs.

Liberty failed to introduce any evidence to contradict the evidence introduced by Prate that: (1) ARW Roofing, LLC did not have any employees; (2) All labor on Prate jobs during the audit period was sub-subcontracted by ARW Roofing, LLC to Reliable Trade Services; and (3) Reliable Trade Services was properly insured. In fact, Liberty conceded that Reliable Trade Services was properly insured. Moreover, there was no valid basis for the DOI to discount or question the credibility of the affidavits and other documentary evidence submitted by Prate. The DOI commented that it believed that the Prate and Gurdak affidavits presented contradictory facts, but this is clearly incorrect. In fact, all of the evidence submitted by Prate consistently established that ARW Roofing had no employees and all labor on Prate jobs was sub-subcontracted to Reliable Trade Services. Despite the complete lack of evidence to contradict the clear and unequivocal evidence submitted by Prate, and despite the lack of evidence that ARW Roofing LLC had its own employees, the DOI inexplicably found that ARW Roofing, LLC had employees of its own who performed labor on Prate jobs. Even if the DOI believed that Prate had not proven that ARW Roofing LLC did not have employees, this belief alone does not support a finding that ARW Roofing LLC did have employees, especially when Liberty failed to provide any evidence that ARW

Roofing LLC had its own employees. In order to warrant charging an additional $127,305 premium, Liberty must have had some burden of proving ARW Roofing LLC had its own employees *who worked on Prate jobs.* (If Liberty sued Prate for breach of contract, it clearly would have the burden of proving it is entitled to the additional premium.) The only "evidence" the DOI relied upon was its erroneous and unsupported interpretation of a document submitted by Prate to show the cost of labor on the relevant projects. Without valid proof that ARW Roofing, LLC had its own employees who worked on Prate projects, Liberty cannot establish that Prate's use of ARW Roofing LLC exposed Liberty to workers compensation liability sufficient to merit an additional $127,305 premium.

Factual determinations are against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Beggs v. Board of Education of Murphysboro Comm. Unit Sch. Dist. 186*, 2016 IL 120236 at ¶50. Taking into consideration: (1) the undisputed affidavits of Michael Prate and Michael Gurdak that ARW Roofing, LLC had no employees and all work was performed by Reliable which was properly insured; (2) the lack of any evidence from Liberty that ARW Roofing, LLC had its own employees that performed work on Prate jobs; and (3) the scant "evidence" relied upon by the Agency to find that ARW Roofing, LLC had its own employees, this Court should find that the DOI's final order and the circuit court's order affirming it are against the manifest weight of the evidence.

An insurance premium is defined as the amount paid to the insurer by the insured for covering his risk. *See* https://economictimes.indiatimes.com /definition/premium. In the present case, Prate's use of ARW Roofing, LLC did not give rise to any increased risk on the part of Prate or Liberty because ARW Roofing, LLC sub-subcontracted all labor on Prate jobs to Reliable Trade Services who was properly insured. In other words, if an employee was injured on a Prate job, that employee's compensation would be paid by his employer Reliable Trade Service's workers' compensation policy. (Coincidentally, there were no injuries on Prate jobs). Since Reliable Trade Services was properly insured, there was no reason for ARW Roofing, LLC to also be insured and there was no risk to Prate for Liberty to assume. Any workers' compensation insurance carried by ARW Roofing, LLC or Prate would have been redundant and duplicative of Reliable Trade Services' coverage. Liberty is not entitled to collect a premium when it did not assume any risk in connection with Prate's use of ARW Roofing, LLC. This is especially true where there were no claims which Liberty was caused to pay in connection with these jobs. As Liberty claims in its advertisements, "Only pay for what you need." Prate did not need workers' compensation insurance for ARW LLC and should not be required to pay Liberty for it.

For the above reasons, this Court should reverse the DOI's final order and the circuit court's order affirming it and find that Liberty is not entitled to an additional premium in connection with Prate's use of ARW Roofing, LLC.

VI. THE DOI COMMITTED REVERSIBLE ERROR BY FAILING TO FIND THAT LIBERTY MISCALCULATED THE PREMIUM

In the circuit court, Prate argued, in the alternative, that even if all the evidence about ARW LLC and Reliable Trade Services is ignored, Liberty miscalculated the additional premium by using 90% of the full contract prices paid to ARW LLC rather than the actual labor cost. According to Liberty, it was supposed to use the payroll detailed in the records provided by the insured (Prate) to calculate the premium. (C 350) Instead, Liberty incorrectly used 90% of the full subcontract price to calculate the premium. (C 209) Prate submitted payroll records for Reliable, but the evidence was ignored by the DOI. Specifically, Prate submitted the following testimony of Michael Prate:

> Attached hereto as Exhibit 6 is a true and correct spreadsheet showing all of the jobs in which Prate issued payment to "ARW Roofing" during the policy audit period along with the actual labor cost for each job. The actual labor amount for all the referenced jobs during the audit period was only $44,140.25.

(C 459) The referenced spreadsheet clearly sets for the full contract price for each project and the actual labor cost for each. (C 482). Prate also provided documents for each ARW LLC job:

> Attached hereto as Group Exhibit 7 are documents for each job referenced in Exhibit 6, along with copies of invoices, Prate's checks to "ARW Roofing" and documents provided by Reliable showing that it performed all labor and the cost of such labor.

Id. As President of Emmolly Corp. and employee of Prate Roofing & Installations, LLC, Michael Prate clearly had personal knowledge of these

facts. These documents clearly show amounts Reliable Trade Services paid to its own employees for work on Prate projects, as well as amounts for materials. Included with the documents were QuickBooks reports obtained from Reliable showing the amount it paid in labor and workers' compensation insurance premium for its own employees. The reports, contained in the Common Law Record at C 490, 495, 500, 504, 505, 511, 518, 528, 529 and 534, are titled "Reliable Trade Services, Inc. Workers Compensation by Job Summary." As stated above, ARW LLC sub-subcontracted all Prate work to Reliable. Accordingly, Reliable's financial reports recite the name of the project it performed for ARW LLC and then the amount Reliable paid for workers' compensation insurance for Reliable's own employees. Remarkably, the DOI ignored the title of the reports and misinterpreted the information in the reports to erroneously find that ARW Roofing, LLC had its own employees. Had the DOI properly interpreted these documents, it would have found that the maximum premium owed by Prate is $20.304.52, not the $127,305 sought by Liberty. See C 456 (Actual payroll of $44,140.25 times the premium rate of $46/100 results in a premium of $20,304.52).

Again, factual determinations are against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Beggs v. Board of Education of Murphysboro Comm. Unit Sch. Dist. 186*, 2016 IL 120236 at ¶50. Based upon the affidavit testimony and documentation provided to the DOI,

this Court should reverse the DOI's final order and the circuit court's order affirming it as against the manifest weight of the evidence.

VII. CONCLUSION

WHEREFORE, the appellate court correctly ruled that the DOI lacked statutory authority to decide the dispute between Prate and Liberty. Prate Roofing and Installations, LLC respectfully requests that this Court affirm the appellate court's decision. In the alternative, Prate respectfully requests that the DOI and circuit court's final orders be reversed on the grounds that they are against the manifest weight of the evidence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 21 pages.

/s/Kevin J. Kuhn

NOTICE OF FILING AND CERTIFICATE OF SERVICE

I, Kevin J. Kuhn, an attorney, hereby certify that on December 8, 2021, I electronically filed the foregoing Brief and Argument of Plaintiff-Appellee Prate Roofing and Installations, LLC with the Clerk of the Supreme Court of Illinois using the Odyssey E-File Illinois system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey E-File Illinois system and, thus, will be served via the Odyssey E-File Illinois system.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/Kevin J. Kuhn

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