STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0307
A17-0323

Ambassador Press, Inc., et al.,
Appellants (A17-0307),

vs.

Trifac Workers' Compensation Fund, et al.,
Appellants (A17-0323),

vs.

Workers' Compensation Reinsurance Association,
Respondent,

Michael Rothman, in his capacity as
Commissioner of the Department of Commerce, et al.,
Respondents (A17-0323).

Filed December 11, 2017
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-CV-16-1713

Charles N. Nauen, Robert J. Schmit, William A. Gengler, David J. Zoll, Lockridge Grindal Nauen P.L.L.P., Minneapolis, Minnesota (for appellant Ambassador Press, Inc. and Timing & Chemistry, Inc.)

Scott T. Anderson, John P. Edison, Rupp, Anderson, Squires & Waldspurger P.A., Minneapolis, Minnesota (for appellants Trifac Workers' Compensation Fund, et al.)

Gary Hansen, Aaron Mills Scott, Peter D. Stiteler, Fox Rothschild LLP, Minneapolis, Minnesota (for respondent Workers' Compensation Reinsurance Association)

Lori Swanson, Attorney General, Oliver J. Larson, Assistant Attorney General, St. Paul, Minnesota (for respondent commissioners)

Considered and decided by Bjorkman, Presiding Judge; Kirk, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

In these consolidated appeals, appellants challenge the Minn. R. Civ. P. 12.02 dismissal of their claims to recover assessments that respondent Workers' Compensation Reinsurance Association (WCRA) levied against them. Because the filed-rate doctrine bars their claims, we affirm.

FACTS

Every employer doing business in Minnesota must maintain workers' compensation insurance or self-insure for workers' compensation liability. Minn. Stat. § 176.181, subd. 2 (2016). To help lower the cost to employers of this mandatory insurance, the Minnesota Legislature created WCRA, a nonprofit association, to provide reinsurance to workers' compensation insurers and self-insured employers, all of which are required to be members of WCRA. Minn. Stat. § 79.34, subd. 1 (2016); 1993 Minn. Laws ch. 361, § 1, at 2537. WCRA's chief duty is to indemnify its members for losses in excess of the members' self-selected retention limits. Minn. Stat. §§ 79.34, subd. 2, .35(1) (2016). Its 13-member board of directors is charged with collecting and managing the funds necessary to meet that obligation, subject to statutory parameters, a mandatory plan of operation, and the oversight of the Commissioners of the Minnesota Department of Labor and Industry and the

Minnesota Department of Commerce (collectively, the commissioners). Minn. Stat. §§ 79.35, .37 (2016).

WCRA Funds

The board calculates premiums "sufficient to cover" expected liabilities and expenses, and WCRA charges the premiums to its members on a proportional basis according to their self-selected retention limits. Minn. Stat. § 79.35(4). If premiums collected prove to be more than the amount necessary to cover liabilities and expenses for the period in question, WCRA returns the "excess" premiums to its members prospectively as a credit against future premium charges. *Id.* Premium shortfalls are collected from members prospectively as "deficient premiums." *Id.* All WCRA premiums must be approved by the commissioner of labor and industry and "shall not be unfairly discriminatory." *Id.*

The board also invests premium payments pursuant to the investment policy stated in its required plan of operation. *See* Minn. Stat. §§ 79.36(4), .38, subd. 1(h) (2016). That plan calls for WCRA to maintain sufficient funds within a designated range, referred to as the positive capital band and negative deficit band. If investment returns yield funds that exceed the positive capital band, the board may declare an "excess surplus" and then must distribute the surplus funds to self-insurers and the policyholders of insurer members. Minn. Stat. § 79.361 (2016). If such a distribution later causes a shortfall in funds necessary to pay claims, "[t]he deficiency shall be made up by imposing an assessment rate against self-insured members and policyholders of insurer members." Minn. Stat. § 79.34, subd. 2a (2016). To do so, the board must determine the amount of the deficiency and

notify the commissioner of commerce of the amount and its recommended assessment rate. *Id.* The commissioner of commerce then "shall order an assessment at a rate and for the time period necessary to eliminate the deficiency," considering potential "financial hardship to employers." *Id.* The assessment must apply prospectively. *Id.*

2010-2014 Surplus Distribution Recovery Program

At the end of 2008, WCRA's financial statements indicated an accumulated deficit of $423.7 million, resulting from recent investment market declines and previous distributions of $1.3 billion in excess surplus and excess premiums. The deficit fell below the -10% deficit band allowed under WCRA's existing plan of operation and signified that it had inadequate funds to pay claims.

To address the financial shortfall, the board adopted a resolution to establish a Surplus Distribution Recovery Program (the program). The program, as amended and clarified in three subsequent resolutions in 2009 and 2010, provided for the prospective collection of assessments of up to $268 million over five years, 2010 to 2014, in the form of (1) deficiency assessments against self-insurers and policyholders in the recommended amount of $90 million, with the actual rate and time period of the assessments to be ordered by the commissioner of commerce and (2) deficient-premiums assessments against WCRA members in the amount of $178 million. The commissioner of labor and industry approved the program, and the commissioner of commerce approved the program and ordered the deficiency assessments to be imposed as recommended.

As WCRA collected assessments under the program, it also began to realize stronger investment performance, resulting in a surplus of $153 million as of December 31, 2012. WCRA nonetheless continued to collect assessments under the program.

The Present Litigation

After the program ended, two sets of plaintiffs initiated separate actions to recoup deficiency assessments and deficient-premiums assessments that they allege were wrongfully collected in 2013 and 2014, when WCRA no longer had a deficit.

One set of plaintiffs consists of eight employer groups that self-insure for workers' compensation liability and are members of WCRA—appellants Trifac Workers' Compensation Fund, The Builders Group, Builders & Contractors Workers' Compensation Fund, Care Providers Workers' Compensation Fund, Health Care Select Workers' Compensation Fund, Greater Minnesota Workers' Compensation Fund, Forest Products Commercial Workers' Compensation Group, and Minnesota Counties Intergovernmental Trust (collectively, Trifac). Trifac's complaint challenges both the deficiency assessments and deficient-premiums assessments, seeking a declaratory judgment, injunctive relief, and damages against WCRA and the commissioners for alleged breach of contract (WCRA) and exceeding statutory authority (the commissioners).

The other set of plaintiffs consists of two Minnesota employers that maintain workers' compensation insurance—appellants Ambassador Press, Inc. and Timing & Chemistry, Inc. (collectively, Ambassador Press). Ambassador Press challenges only the deficiency assessments, seeking injunctive relief and damages against WCRA for alleged breach of express and implied contract, implied covenants, and fiduciary duties, and several

other violations of law. Ambassador Press also seeks to represent the class of current and former Minnesota employers that paid deficiency assessments to WCRA on or after January 1, 2013.

The commissioners and WCRA moved to dismiss Trifac's complaint, and WCRA moved to dismiss Ambassador Press's complaint, arguing that the complaints are legally insufficient under Minn. R. Civ. P. 12.02(e), because all of the claims are barred by the filed-rate doctrine and the claims seeking declaratory and injunctive relief are moot.

The district court granted the motions and dismissed both complaints, reasoning in each case that (1) the filed-rate doctrine bars all claims and (2) the claims for declaratory and injunctive relief are moot. It also concluded that Trifac has no private right of action for damages against the commissioners and, in Ambassador Press's action, that WCRA did not, as a matter of law, exceed its authority by continuing to collect deficiency assessments after the deficit was eliminated. Trifac and Ambassador Press each appealed, and we consolidated the appeals.

D E C I S I O N

"We review de novo whether a complaint sets forth a legally sufficient claim for relief." *Walsh v. U.S. Bank, N.A*, 851 N.W.2d 598, 606 (Minn. 2014). In evaluating the complaint, we must accept the facts alleged as true, construing all reasonable inferences in favor of the nonmoving party. *Id.*; *see also N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004) (noting that a court may consider documents referenced in a complaint without converting the motion to dismiss to one for summary judgment).

Interpretation of statutes underlying those allegations presents a question of law subject to de novo review. *Krueger v. Zeman Constr. Co.*, 781 N.W.2d 858, 861 (Minn. 2010).

The central and dispositive issue in these appeals is whether the filed-rate doctrine bars Trifac's and Ambassador Press's claims. The filed-rate doctrine is a judicially created doctrine that prevents courts from adjudicating private claims that would effectively vary or enlarge rates regulated by a government agency. *Siewert v. N. States Power Co.*, 793 N.W.2d 272, 278 (Minn. 2011). The doctrine originated with the United States Supreme Court's decision in *Keogh v. Chicago & Nw. Ry.*, 260 U.S. 156, 43 S. Ct. 47 (1922), and most states have since adopted the filed-rate doctrine, invoking various rationales for doing so. *Schermer v. State Farm Fire & Cas. Co.*, 721 N.W.2d 307, 311-313 (Minn. 2006) (collecting cases).

The Minnesota Supreme Court adopted the filed-rate doctrine in its 2006 *Schermer* decision, *id.* at 317, and has since reiterated adherence to the doctrine and defined its parameters. The doctrine applies to "agency-approved rates" and bars "both direct and indirect challenges to rates and the reasonableness of those rates." *Siewert*, 793 N.W.2d at 278. Consequently, the supreme court has dismissed as barred claims directly challenging the lawfulness of agency-approved insurance rates, *Schermer*, 721 N.W.2d at 317, and claims indirectly challenging the reasonableness of agency-approved utility rates, *Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 43, 48 (Minn. 2009). But the court also has clarified that the doctrine does not preclude actions asserting common-law claims unrelated to the rates, *Siewert*, 793 N.W.2d at 280-82, or seeking to enforce agency-approved rates, *Hoffman*, 764 N.W.2d at 44-45.

Trifac and Ambassador Press argue that the filed-rate doctrine does not apply to deficient-premiums assessments and deficiency assessments, and that the doctrine does not bar their claims because they seek only to enforce the WCRA statutes and the commissioners' orders imposing those assessments. We consider each argument in turn.

I. The filed-rate doctrine applies to deficient-premiums assessments and deficiency assessments.

We examine each of the rationales underlying the filed-rate doctrine to determine whether the deficient-premiums assessments and deficiency assessments at issue here are agency-approved rates within the scope of the filed-rate doctrine, we look to the three primary principles underlying the doctrine: (1) separation-of-powers concerns regarding judicial interference with the legislative ratemaking function, (2) justiciability concerns regarding relative ability to determine the reasonableness of rates, and (3) non-discrimination concerns regarding retroactive judicial interference with an approved rate. *Hoffman*, 764 N.W.2d at 42. All three of these principles are implicated here.

A. Separation-of-powers concerns favor application of the filed-rate doctrine.

In addressing separation of powers, our supreme court recognized that "ratemaking is a legislative function," exercised to regulate public utilities and other businesses "affected with a public interest," such as insurance. *Schermer*, 721 N.W.2d at 314. Courts will not entertain a private claim that a particular rate approved under such a regulatory scheme is unreasonable or unlawful because doing so would require second-guessing the decision of the agency that approved the rate. *Id.*

The legislature charged both the commissioner of labor and industry and the commerce commissioner with responsibility for overseeing and approving WCRA's ratemaking activities. This oversight extends not only to the regular reinsurance premiums WCRA sets, but also to the related deficient-premiums assessments and deficiency assessments. In exercising that comprehensive oversight, the commissioners ensure that WCRA complies with statutory requirements that premiums rates and assessments rates be prospective, based on considerations of non-discrimination, proportionality, and financial impact. *See* Minn. Stat. §§ 79.34, subd. 2a, .35(4).

Trifac and Ambassador Press argue that the commissioners' review and approval is not sufficiently robust to justify application of the filed-rate doctrine. They contend that the WCRA statutes afford the commissioners little more than a regulatory rubber stamp, in contrast to the agency oversight of the comprehensive private insurance-rate and public-utility regulatory schemes to which our supreme court applied the filed-rate doctrine in *Schermer* and *Hoffman*. We are not persuaded. Their characterization of the commissioners' authority under the WCRA statutes relies on federal cases that are factually and legally distinguishable. *See In re Workers' Comp. Refund*, 46 F.3d 813, 819 (8th Cir. 1995); *Am. Comp. Ins. v. Gruenes*, No. 97-1419 (Minn. Dist. Ct. Feb. 9, 1998) (order op.). More importantly, the cases they cite pre-date *Schermer*, in which our supreme court not only adopted the filed-rate doctrine but expressly rejected the argument that relatively "passive" agency review precludes application of the doctrine. 721 N.W.2d at 317-18. Differences in "degree of regulation," the *Schermer* court reasoned, are the legislature's choice and do not "materially impact the rationale for the filed rate doctrine." *Id.* at 318.

Here, the legislature plainly chose to regulate workers' compensation reinsurance, including establishing standards for and agency review of the various premiums rates and assessments rates WCRA proposes to fund that system. We presume that the legislature provided for the degree and manner of regulatory oversight that it considers appropriate.

In our view, separation-of-powers concerns are even more pressing here than they were in *Schermer* and *Hoffman*. In those cases, the supreme court applied the filed-rate doctrine to bar challenges to approved rates that private companies charge the public for insurance, *Schermer*, 721 N.W.2d at 314, 318, and for electricity, *Hoffman*, 764 N.W.2d at 43. Both rate-approval processes occur in the context of comprehensive statutory schemes. The private companies propose rates sufficient to afford a profit without being excessive or discriminatory, and the agencies charged with overseeing the rates ensure that the appropriate balance has been struck. *See* Minn. Stat. §§ 70A.05(3) (allowing for insurance rates to include "a profit that is not unreasonable"), 216B.16, subd. 6 (detailing factors governing reasonableness of public-utility rates, including "a fair rate of return") (2016).

By contrast, the challenged deficient-premiums assessments and deficiency assessments were recommended by a legislatively created nonprofit entity. WCRA's discretion in setting premiums rates and assessments rates is limited by the underlying policy goal of providing a sound financial basis to help insurers and self-insurers pay claims and guided by a statutorily mandated plan of operations. That the commissioners' review of the rates proposed by such an entity is, perhaps, less extensive than the regulatory oversight at work in *Schermer* and *Hoffman* does not mean that the separation of powers concerns noted in those cases apply with any less force here. To the contrary, the WCRA

regulatory scheme evinces uniquely extensive and balanced legislative action in the area of workers' compensation reinsurance—at both the rate-recommendation and rate-approval stages. Courts should not second-guess the reasonableness of rates approved under these circumstances.

Trifac and Ambassador Press also contend that application of the filed-rate doctrine deprives them of a remedy. We disagree. A "remedy" may be afforded by other means than judicial intervention, particularly where the statutes that regulate the rates "provide remedies that ensure protection of the interests of ratepayers." *Schermer*, 721 N.W.2d at 316. The statutes governing WCRA generally, and deficiency assessments and deficient-premiums assessments specifically, provide significant legislative protections, including: (1) deficient-premiums assessments must be equitable, prospective, not unfairly discriminatory, and subject to the approval of the commissioner of labor and industry, Minn. Stat. § 79.35(4); (2) deficiency assessments must be prospective, responsive to the financial circumstances of employers, and limited to the rate and time period necessary to eliminate the triggering "deficiency," as determined and ordered by the commissioner of commerce, Minn. Stat. § 79.34, subd. 2a; (3) WCRA's board includes multiple employer representatives and industry-elected insurer and self-insurer representatives, Minn. Stat. § 79.37; and (4) WCRA must distribute any excess in premiums or capital surplus, consistent with its status as a nonprofit association, Minn. Stat. §§ 79.35(4), .361. Under *Schermer*, we are persuaded that these protections are remedy enough.

B. Justiciability concerns favor application of the filed-rate doctrine.

Justiciability concerns flow from the fact that courts lack a regulating agency's expertise and the ability to prospectively and responsively address an entire rate structure. *Schermer*, 721 N.W.2d at 315. As discussed above, deficiency assessments and deficient-premiums assessments are part of a comprehensive structure that balances premium-collection with investment, all within the context of a nonprofit association that must identify and distribute any "excess" surplus beyond that which prudent financial and risk management justifies retaining against anticipated claims. Weighing these various factors requires specialized background and expertise that are in the purview of the WCRA board and the commissioners, not a court. As a practical matter, a court order requiring WCRA to refund millions of assessment dollars would substantially reduce the funding base that WCRA uses to pay claims and that its board considers in setting future premiums, inevitably disrupting WCRA's broader rate scheme and perhaps triggering the need for future assessments. In short, courts are ill-equipped to fashion relief that appropriately contextualizes deficient-premiums assessments and deficiency assessments within this complex and evolving scheme.

C. Non-discrimination concerns favor application of the filed-rate doctrine.

The filed-rate doctrine also recognizes that a retroactive judicial damages award that effectively adjusts a rate for some ratepayers but not others would create discrimination in the rate schedule. *Hoffman*, 764 N.W.2d at 42. This concern is implicated here. In Trifac's case, awarding the requested relief would create a discriminatory rate structure for deficient-premiums assessments in favor of the eight WCRA members involved in that

case; those eight would be the only such members to recoup the challenged funds. Ambassador Press's request to represent the entire class of Minnesota employers that paid the challenged deficiency assessments may eliminate concerns about direct discrimination within that class. But that effort toward non-discrimination itself generates the concern that granting the requested relief—effectively refunding two years of deficiency assessments made by more than 100,000 Minnesota employers—eliminates millions of dollars from the funding base that WCRA uses to pay claims and that its board considers in setting future rates. This type of interference with a regulated rate structure is precisely what application of the filed-rate doctrine avoids.

II. The complaints seek more than mere enforcement of the law and the commissioners' orders.

Trifac and Ambassador Press argue that, even if the filed-rate doctrine applies to deficiency assessments and deficient-premiums assessments, their claims are not barred because they only seek to enforce statutory requirements and the commissioners' orders. A claim that merely seeks enforcement of an existing regulatory scheme is permissible under the filed-rate doctrine because such a claim does not question the reasonableness of the rates charged or require courts to determine the services to be provided by the regulated entity in exchange for those rates. *Id.* at 44. Trifac's and Ambassador Press's arguments strain the concept of enforcement.

The commissioners' orders regarding the deficiency assessments and deficient-premiums assessments call for the collection of up to $268 million, spread out over five years, to mitigate the financial burden of the assessments. They also incorporate a

"Payment Reduction" plan to annually evaluate the impact of "additional capital produced by earlier assessments, improved investment performance, and/or adjustments in reserve requirements," to determine whether any of the indicated factors warrant a reduction or elimination of payments. The commissioner of commerce's orders further permit self-insurers and policyholders to request an amendment to the program if they experienced excessive financial hardship detrimentally affecting their ability to pay the deficiency assessments. The commissioners issued multiple orders restating these aspects of the program and deliberately continuing the assessments for the full $268 million, over the full five years of the program, after considering the "Payment Reduction" factors.

Nothing in the commissioners' orders is susceptible of an interpretation that would yield the result that Trifac and Ambassador Press seek. Indeed, far from being enforceable to effectively eliminate deficiency assessments or deficient-premiums assessments after 2012, the orders reflect a reasoned decision to do the opposite. While Trifac and Ambassador Press may disagree that the decision was reasonable or even lawful, the filed-rate doctrine precludes judicial second-guessing of that decision. *See Schermer*, 721 N.W.2d at 314. The district court properly dismissed all claims as barred by the filed-rate doctrine.[1]

Affirmed.

[1] Trifac and Ambassador Press also challenge the district court's alternative bases for dismissal. Because we conclude that the filed-rate doctrine bars all claims, we decline to address these additional arguments.