

A06-1721

NO. A06-1793

---

State of Minnesota  
**In Supreme Court**

---

Stanley L. Roemhildt,

*Employee/Respondent,*

vs.

Met Con Companies and,  
State Fund Mutual Insurance Company,*Employer and Insurer/Relator,*

and

Gresser Companies and

Zurich Insurance Company/Creative Risk Solutions,

*Employer and Insurer/Respondent.*

---

**REPLY BRIEF OF MET CON COMPANIES AND  
STATE FUND MUTUAL INSURANCE COMPANY – RELATOR**

---

Jay T. Hartman (#124291)  
Jennifer Clayson Kraus (#0350242)  
HEACOX, HARTMAN, KOSHMRL,  
COSGRIFF & JOHNSON, P.A.  
550 Hamm Building  
408 St. Peter Street  
St. Paul, MN 55102  
(651) 222-2922

*Attorneys for Gresser Companies and Zurich  
Insurance Company/Creative Risk Solutions*

M. Chapin Hall (#167496)  
LYNN, SCHARFENBERG &  
ASSOCIATES  
P.O. Box 9470  
Minneapolis, MN 55440-9470  
(952) 838-4476

*Attorneys for Met Con Companies and  
State Fund Mutual Insurance Company*

Mark G. Olive (#81541)  
SIEBEN, GROSE, VON HOLTUM  
& CAREY, LTD.  
900 Midwest Plaza East  
800 Marquette Avenue  
Minneapolis, MN 55402  
(612) 333-4500

*Attorneys for Stanley Roemhildt*

**TABLE OF CONTENTS**

	<u>Page</u>
Table of Authorities .....	iii
Legal Arguments .....	1
I.    THE PLAIN LANGUAGE MEANING OF "ANY DEFENSE" IN MINN. STAT. §176.221, SUBD. 1 INCLUDES THE STATUTE OF LIMITATION.	
II. <u>MEINEN V. DASHOW</u> HAS BEEN OVERRULED BY THE LEGISLATURE.	
Conclusion .....	4
Certification of Brief Length .....	5

TABLE OF AUTHORITIES

	<u>Page</u>
<u>STATE CASES:</u>	
<u>Knopp v. Gutterman</u> , 258 Minn. 33, 102 N.W.2d 689 (1960) .....	1, 2, 3
<u>Meinen v. Dashow</u> , 167 N.W.2d 730 (Minn. 1969) .....	1, 2, 3
<u>Nyberg v. Little Falls Black Granite Co.</u> , 192 Minn. 404, 256 N.W. 732 (1934) .....	1, 3
<u>Savina v. Litton Indus.</u> , 330 N.W.2d 456 (Minn. 1983) .....	2
<u>Weidemann v. Kemper Ins. Group</u> , 251 N.W.2d 117 (Minn. 1976) .....	2
 <u>STATE STATUTES:</u>	
Minn. Stat. §176.001 .....	3
Minn. Stat. §176.151 (1) .....	1, 3, 4
Minn. Stat. §176.221, subd. 1, .....	1, 2, 3
Minn. Stat. §645.26 .....	1

## LEGAL ARGUMENT

### **I. THE PLAIN LANGUAGE MEANING OF "ANY DEFENSE" IN MINN. STAT. §176.221, SUBD. 1 INCLUDES THE STATUTE OF LIMITATION.**

On Page 12 of its Respondent's Brief, Gresser/Zurich cite Minn. Stat. §645.26 and assert that statutory construction requires that every law shall be construed to give effect to all of its provisions. This assertion overlooks the longstanding principle that, "[i]f on its face or in application to subject matter a statute's meaning is plain, rules of construction do not apply." Knopp v. Gutterman, 258 Minn. 33, 102 N.W.2d 689 (Minn. 1960). Since "any defense" is plain, unambiguous and includes a statute of limitation defense, MetCon/SFM respectfully assert that this Court should decide in its favor on that basis alone.

### **II. MEINEN V. DASHOW HAS BEEN OVERRULED BY THE LEGISLATURE.**

Meinen v. Dashow, 167 N.W.2d 730 (Minn. 1969) is outdated law. Gresser/Zurich's reliance upon it is fatally flawed in several respects.

The Meinen Court relied upon two previous precedents, Nyberg v. Little Falls Black Granite Co., 192 Minn. 404, 256 N.W. 732 (1934) and Knopp v. Gutterman, 258 Minn. 33, 102 N.W.2d 689 (1960). The Meinen Court found that affirmance was required by these prior cases. The Meinen Court, however, reviewed the statutory basis for Nyberg and Knopp, and analyzed important policy considerations.

In construing Minn. Stat. §176.151 (1), the Meinen Court explicitly reviewed the language of Minn. Stat. §176.221, subd. 1, then in effect. The Meinen Court noted the 30-day provision then

in effect and concluded, "[n]o extension of time having been requested, the denial of liability filed on October 23, 1962, was not timely." Meinen, at 732.

The Meinen Court then reviewed certain policy considerations in favor of employers and insurers raised by Commissioner Laurence F. Koll. Significantly, the Meinen Court ultimately held, "[i]n our judgment, **these are matters which should be evaluated by the legislature.**" Meinen, at 733 (emphasis added). The use of the word "**should**" indicates that the Meinen Court actively invited the legislature to take action.

The legislature **did** evaluate these matters and took action. In 1981 and 1983, the legislature completely rewrote Minn. Stat. §176.221, subd. 1 to reserve "any defense." (See "Legislative History" in Relator's Brief). Gresser/Zurich argue that the statutory amendments have no effect. Gresser/Zurich argue that "any defense" somehow must be read as "any defense except a statute of limitation defense." This argument has no merit and should be rejected by this Court.

The words "any defense" mean just that. The words "any defense" are new to the 1981 and 1983 rewrite of Minn. Stat. §176.221, subd. 1. The Meinen Court never considered the legal significance of the words "any defense" because those words were not part of the statute at the time of the Meinen decision.

On page 6 of its Respondent's Brief, Gresser/Zurich cite Savina v. Litton Indus., 330 N.W.2d 456 (Minn. 1983), Weidemann v. Kemper Ins. Group, 251 N.W.2d 117 (Minn. 1976) and Knopp and assert: "[n]either has Minn. Stat. §176.221, subdivision 1 been

interpreted so as to overturn this line of cases." This assertion fails because all three of these cases were decided **before the legislature completely rewrote §176.221, subd. 1.** None of these cases, therefore, interpreted §176.221, subd. 1, in its present form.

On pages 8 and 9 of its Respondent's Brief, Gresser/Zurich misconstrue the significance of MetCon/SFM's reliance on Minn. Stat. §176.001. MetCon/SFM assert that the legislative rewrite to §176.001 provides secondary - but unmistakable - authority to the plain language "any defense" argument of §176.221, subd. 1. Nyberg, for example, explicitly refers to "liberal construction". Nyberg, at 405, 733. Likewise, Knopp also explicitly refers to "liberal construction". Knopp, at 696. The Meinen Court, following Nyberg and Knopp, focused on the "prejudice of the employee." Meinen, at 733.

The Meinen Court did not feel "justified in rejecting the rationale of the Nyberg case," based on its recognized authority of over 30 years. Meinen, at 733. The Minnesota Supreme Court, however, did feel justified to invite the legislature to evaluate these matters. Meinen, id. When the legislature took action and made sweeping changes to the Minnesota Workers' Compensation Act in 1983, it completely rewrote both §176.001 and §176.221, subd. 1.

Contrary to Gresser/Zurich's assertion, Minn. Stat. §176.151(1) makes sense and is completely consistent with the arguments of MetCon/SFM Mutual Insurance Company. After the complete legislative rewrite of Minn. Stat. §176.221, subd. 1, the

provisions of §176.151(1) apply **except** when the employer or insurer denies primary liability within 60 days. Since that is the case here, Gresser/Zurich's contribution claim should be denied because it is barred by the statute of limitation.

**CONCLUSION**

There is no question that the claim against Relator Met Con/ State Fund Mutual was brought outside the three-year statute of limitation. The plain meaning of "any defense" includes this time limit defense in Minn. Stat. §176.151 (1). The specific provision "any defense" controls over the general notion of what constitutes a proceeding. The later statutory amendment "any defense" controls the earlier unchanged language of §176.151 (1). Therefore, the compensation judge and the Workers' Compensation Court of Appeals should be reversed.

Respectfully Submitted,

LYNN, SCHARFENBERG & ASSOCIATES



DATED: \_\_\_\_\_

11/27/06

\_\_\_\_\_  
M. Chapin Hall (#167496)  
Attorneys for Met Con Companies  
and SFM Mutual Insurance Company  
P.O. Box 9470  
Minneapolis, MN 55440-9470  
(952) 838-4476

No. A06-1793  
STATE OF MINNESOTA  
IN SUPREME COURT

-----  
Stanley L. Roemhildt,

Employee/Respondent,

vs.

Met Con Companies and,  
State Fund Mutual Insurance Company,

Employer and Insurer/  
Relator,

and

Gresser Companies and  
Zurich Insurance Company/Creative Risk Solutions,

Employer and Insurer/  
Respondent.  
-----

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a monospaced font. The length of this brief is 291 lines and 1,292 words. This brief was prepared using Microsoft Word Office 2000.

LYNN, SCHARFENBERG & ASSOCIATES

DATED: 11/28/06

  
\_\_\_\_\_  
M. Chapin Hall (#167496)  
Attorneys for Met Con Companies  
and SFM Mutual Insurance Company  
P.O. Box 9470  
Minneapolis, MN 55440-9470  
(952) 838-4476