

CASE NO. A07-1033

**State of Minnesota
In Supreme Court**

MARK J. JEFFREY,

Employee-Relator,

vs.

BANANA REPUBLIC,

Employer-Respondent,

and

AMERICAN HOME ASSURANCE,
Administered by AIG CLAIM SERVICES, INC.,

Insurer-Respondent.

RELATOR'S BRIEF AND APPENDIX

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STATEMENT OF LEGAL ISSUES

I. DID COMPENSATION JUDGE VALLANT'S AWARD VIOLATE THE PUBLIC POLICY OF INSURING THAT ATTORNEYS WHO REPRESENT COMPENSATION CLAIMANTS RECEIVE REASONABLE COMPENSATION SO THAT COMPETENT COUNSEL WILL BE AVAILABLE TO INJURED EMPLOYEES?

Ruling Below: The Workers' Compensation Court of Appeals affirmed Judge Vallant's award.

Apposite Statutes:

1. Minn. Stat. § 176.081

Apposite Cases:

1. *In re Award of Attorney's Fees (Rock v. Bloomington School Dist.)*, 269 N.W.2d 360, 363 (Minn. 1978).
2. *Kahn v. State, University of Minnesota*, 327 N.W.2d 21, 24 (Minn. 1982).
3. *Mack v. City of Minneapolis*, 333 N.W.2d 744, 749 (Minn. 1983).
4. *Moen v. G.F. Business Equipment*, 42 W.C.D. 952 (W.C.C.A. 1989).

II. WAS COMPENSATION JUDGE VALLANT'S AWARD ARBITRARY AND CAPRICIOUS?

Ruling Below: The Workers' Compensation Court of Appeals affirmed Judge Vallant's award.

Apposite Statutes:

1. Minn. Stat. § 176.081

III. DID COMPENSATION JUDGE VALLANT ABUSE HIS DISCRETION BY PLACING TOO MUCH WEIGHT ON THE AMOUNT INVOLVED IN RELATOR'S CLAIM FOR BENEFITS?

Ruling Below: The Workers' Compensation Court of Appeals affirmed Judge Vallant's award.

Apposite Statutes:

1. Minn. Stat. § 176.081

STATEMENT OF THE CASE

Mark Jeffrey (hereinafter "Relator") suffered a work-related injury on September 17, 2004. Relator filed a claim petition on November 9, 2004. A trial was held before Compensation Judge Paul Vallant on January 18, 2006. Judge Vallant issued his Findings and Order on March 20, 2006. Attorney David C. Wulff filed his Statement of Attorney Fees and Costs on May 4, 2006. (A-1-7.) The hearing on Attorney Wulff's entitlement to attorney fees and costs was held before Judge Vallant on August 14, 2006. Judge Vallant issued his Findings and Order on Attorney's Fees on October 13, 2006. (A-32-35.) Relator filed his Notice of Appeal to the Workers' Compensation Court of Appeals on November 3, 2006. No cross appeal was filed by Employer and Insurer. The Workers' Compensation Court of Appeals issued its decision and order on May 1, 2007. Relator filed his Petition for Writ of Certiorari on May 24, 2007. The Writ of Certiorari was issued on May 24, 2007 (A-36), and was served upon the Workers' Compensation Court of Appeals and all parties on May 30, 2007.

STATEMENT OF THE FACTS

On September 17, 2004, Mark Jeffrey (hereinafter "Relator") was standing at a table folding clothes at Banana Republic when his floor supervisor jabbed or poked him in the right low back with his fingers. Relator was startled and twisted suddenly experiencing acute thoracolumbar and low back pain and muscle

tightness. Relator promptly reported the incident to the store manager and left work approximately two hours early. (Exh. D and Findings 1 and 2.)

As the result of his injury, Relator was rendered temporarily and totally disabled from September 17, 2004 through October 10, 2004, giving rise to a claim for 2.2 weeks of TTD benefits at \$130.00 per week for a total of \$286.00, plus interest. Relator also incurred medical expenses which, including his associated mileage, totaled \$2,371.15 based upon the amounts billed by the health care providers and \$1,746.87 after reduction per the fee schedule. Relator completely recovered from his injury by November 12, 2004. (Exh. D.)

The Employer and Insurer (hereinafter referred to collectively as "Respondents") denied primary liability for Relator's claimed benefits and vigorously defended against his claims.

Relator retained Attorney David C. Wulff to represent him with regard to his claims. The professional services rendered by Attorney Wulff are described in detail in "Exhibit A Itemization of Professional Services Rendered" attached to the Statement of Attorney Fees and Costs filed by Attorney Wulff on or about May 4, 2006. (Exh. F; A-3-5.)

The professional services rendered by Attorney Wulff included the normal gathering of background information such as prior medical history records and current treatment records; preparation of a claim petition; preparation of written

discovery demands and responses; representation of Relator at his deposition; representation of Relator at the depositions of four witnesses Respondents asserted would refute Relator's version of how his injury occurred; review of surveillance videotapes and investigator's reports; preparation for and representation of Relator at the trial; and follow up work making sure that the benefits awarded by the Compensation Judge were properly paid. Attorney Wulff expended 35.9 professional hours in the representation of Relator, and his legal assistant expended 1.0 hours. (Exh. F; A-3-5.)

Following the hearing, Compensation Judge Paul Vallant issued a Findings and Order on March 20, 2006, awarding Relator 100% of the benefits claimed. This amounted to \$303.16 in TTD plus statutory interest, and \$1,746.87 in medical expense benefits after reduction per the fee schedule. (Exh. D.)

Attorney Wulff filed a Statement of Attorney Fees and Costs on May 4, 2006, seeking 25% contingency fees to be withheld from the TTD benefits and interest awarded to Relator, plus hourly *Roraff/Irwin* attorney fees payable by Respondents for recovery of the disputed medical expenses, for a total attorney fee of \$9,008.39. Attorney Wulff also sought payment of \$2,568.45 in subd. 7 fees payable to Relator and reimbursement of \$731.95 in advanced costs. (Exh. F; A-1-7.) Respondents filed an objection to Attorney Wulff's fees on May 15, 2006. (A-8-10.)

A hearing before Judge Vallant was held on August 14, 2006. The parties agreed that the fees payable based upon the statutory formula were inadequate to reasonably compensate attorney Wulff, and presented evidence and argument concerning what fee would be reasonable pursuant to the *Irwin* factors.

Judge Vallant issued his Findings and Order on Attorney's Fees on October 13, 2006. (A-32-35.) His findings of fact concerning the *Irwin* factors were as follows.

The Time and Expense Necessary to Prepare for Trial. Judge Vallant found at Finding No. 5, "Attorney Wulff reasonably expended 35.9 hours of attorney time and 1.0 hours of legal assistant time" in representation of the Relator in this matter. Judge Vallant indicated in his memorandum, "This was a very small claim. However in view of the vigorous defense interposed by the employer and insurer, it was appropriate for Attorney Wulff to prepare for hearing with equal vigor. In particular, the Compensation Judge finds that it was reasonable for Attorney Wulff to depose the trial witnesses identified by the employer. The Compensation Judge finds that the hours expended by Attorney Wulff for trial preparation were reasonable."

The Experience of Counsel. The parties stipulated that the hourly rates claimed by Attorney Wulff are reasonable given the experience and expertise of Attorney Wulff. Judge Vallant specifically incorporated this stipulation into

Finding No. 7: "Attorney Wulff has practiced in the area of workers' compensation since 1984, justifying the hourly rates stipulated to above."

The Responsibility Assumed by Counsel. Judge Vallant found at Finding No. 6, "Attorney Wulff assumed full responsibility for presentation of the employee's claim for workers' compensation benefits."

The Nature of the Proof Involved. Judge Vallant found at Finding No. 9, "The nature of proof involved the testimony of the employee, cross examination of the employer's witnesses, and presentation of medical records and bills." Judge Vallant found that the nature of the proof involved in this case justified the 35.9 hours of attorney time and 1.0 hours of legal assistant time expended by Attorney Wulff.

The Results Obtained. Judge Vallant found at Finding No. 10, "Attorney Wulff obtained a good result for the employee, recovering the full 2.2 weeks of temporary total disability benefits claimed and reimbursement of all medical expenses claimed." Attorney Wulff recovered 100% of all benefits payable to Relator and established primary liability. He could not have obtained a better result.

The Difficulty of the Issues. Judge Vallant found at Finding No. 8, "The issues in this case were not difficult or complex." However, Judge Vallant also found that Respondents vigorously defended against Relator's claims, and in light

of that vigorous defense all of the attorney time and legal assistant time expended by Attorney Wulff was reasonable and necessary.

The Amount Involved. Judge Vallant found at Finding No. 4, “The employee’s claim involved 2.2 weeks of temporary total disability benefits totaling \$303.16 (with interest) and medical expenses totaling \$1,746.86 (after fee schedule reductions). The employee withdrew his claim for temporary partial disability benefits prior to hearing.” In his Memorandum, Judge Vallant stated, “This was a very small claim,” and implied that this factor justified cutting attorney Wulff’s fees in half.

Judge Vallant awarded Attorney Wulff \$5,000 in fees, amounting to 57% of the \$9,008.39 in requested fees. His denial of nearly half of the attorney’s fees requested by attorney Wulff was based solely upon the modest amount involved in Relator’s claim for benefits.

LEGAL ARGUMENTS

I. THE SUPREME COURT HAS THE ULTIMATE AUTHORITY AND RESPONSIBILITY TO REGULATE ATTORNEY FEES IN WORKERS’ COMPENSATION CASES.

This Court confirmed in *Irwin v. Surdyk’s Liquor*, 599 N.W.2d 132 (Minn. 1999) that it has the ultimate authority and responsibility under the constitution to regulate attorney fees in workers’ compensation cases. *Irwin* established seven factors to be considered by compensation judges in determining what constitutes a

reasonable attorney fee when the statutory formula fees are inadequate to reasonably compensate an employee's attorney. *Id.* at 142. Unfortunately, *Irwin* did not provide guidance as to how these factors should be applied.

This case involves a clear misapplication of the *Irwin* factors and a violation of the principles established by this Court concerning how attorney fees are to be awarded. This appeal presents this Court with the opportunity to provide guidance on how the *Irwin* factors should be applied to avoid inequitable results such as occurred below.

II. COMPENSATION JUDGE VALLANT'S AWARD VIOLATES THE PUBLIC POLICY OF INSURING THAT ATTORNEYS WHO REPRESENT COMPENSATION CLAIMANTS RECEIVE REASONABLE COMPENSATION SO THAT COMPETENT COUNSEL WILL BE AVAILABLE TO INJURED EMPLOYEES.

This Court has consistently emphasized that one of the public policies to be promoted by attorney fee awards in workers' compensation cases is insuring that attorneys who represent claimants will receive reasonable compensation, so that competent counsel knowledgeable of the intricacies of workers' compensation law will be available to injured employees, especially including those with modest claims. See *In re Award of Attorney's Fees (Rock v. Bloomington School Dist.)*, 269 N.W.2d 360, 363 (Minn. 1978); *Schander v. NSP*, 279 N.W.2d 366, 367 (Minn. 1979); *Saari v. McFarland*, 319 N.W.2d 706, 708 (Minn. 1982); *Bettenburg v. Workers' Compensation Division*, 326 N.W.2d 668, 669 (Minn.

1982); *Kahn v. State, University of Minnesota*, 327 N.W.2d 21, 24 (Minn. 1982); *Mack v. City of Minneapolis*, 333 N.W.2d 744, 749 (Minn. 1983); *Edquist v. Browning-Ferris*, 380 N.W.2d 787, 789 (Minn. 1986). See also *Moen v. G.F. Business Equipment*, 42 W.C.D. 952 (W.C.C.A. 1989) (“...[T]o strictly limit fee awards to the amount of medical expenses disputed would discourage attorneys from representation of injured workers whenever the disputed amounts were modest or the issues presented were complex.”); *Gruber v. ISD #625*, 57 W.C.D. 284 (W.C.C.A. 1997).

Despite finding that all of the services performed by attorney Wulff were necessary to the successful resolution of Relator’s claims, that the amount of time claimed by attorney Wulff was reasonable, and that the effective hourly rate claimed by attorney Wulff was justified, Judge Vallant awarded half of attorney Wulff’s requested fee solely because he felt the amount of benefits involved in Relator’s claim was “very small”. No attorney can afford to represent clients for half of their normal fees. If this Court allows Judge Vallant’s award to stand, injured employees with modest claims will be unable to find experienced attorneys willing to represent them.

Judge Vallant’s award should be vacated as a violation of the public policy of insuring that injured workers will have access to experienced and competent representation.

III. COMPENSATION JUDGE VALLANT'S AWARD IS ARBITRARY AND CAPRICIOUS.

Judge Vallant found that all of the professional services rendered by attorney Wulff were necessary to the successful resolution of Relator's claims in light of the nature of the proof involved and the difficulty of the issues, that the amount of time claimed by attorney Wulff was reasonable in light of the vigorous defense put up by Respondents, and that the effective hourly rate requested by attorney Wulff was reasonable in light of his experience, the responsibility he assumed and the results he obtained. However, Judge Vallant awarded \$5,000 in fees rather than the \$9,008.39 requested without any explanation of why only \$5,000 in fees was reasonable. Judge Vallant simply chose a round number out of thin air and awarded that amount to attorney Wulff. He failed to articulate any logical or justifiable basis supporting his decision to cut attorney Wulff's requested fees in half. His decision to do so cannot be reconciled with his other findings of fact.

Judge Vallant's award should be vacated as arbitrary and capricious.

IV. COMPENSATION JUDGE VALLANT ABUSED HIS DISCRETION BY PLACING TOO MUCH WEIGHT ON THE AMOUNT INVOLVED IN RELATOR'S CLAIM FOR BENEFITS.

It is an abuse of discretion for a compensation judge to deny nearly half of an employee's claimed attorney's fees based solely upon the fact that the amount of benefits involved in the case is small where it cannot be shown that any of the professional services were unnecessary or should not have required the amount of

time claimed in light of the amount of the employee's claim, and where the effective hourly rate of return requested by the attorney is found to be reasonable.

First, it should be noted that what constitutes a "small" claim is in the eye of the beholder. Certainly, the loss of 2.2 weeks of wages and the prospect of having to pay \$2,371.15 in medical bills was a large and important claim in the eyes of this nineteen-year-old Employee.

More importantly, the law of this state has never permitted cutting an attorney's fees in half based solely upon the amount involved in the claim.

Until its repeal effective October 1, 1995, Minn. Stat. § 176.081, subd. 5(d) provided in relevant part that "the amount of money involved shall not be the controlling factor" in the determination of what constitutes a reasonable attorney fee.

In *Moen v. G.F. Business Equipment*, 42 W.C.D. 952 (W.C.C.A. 1989), the Workers' Compensation Court of Appeals stated, "[W]hile the amount in dispute is a factor to consider in an award of attorney's fees, it is neither the only nor the determinative factor. Awarding reasonable compensation for the efforts of attorneys who represent workers' compensation claimants, 'is in furtherance of the public policy of this state that injured workers' have access to representation by competent counsel knowledgeable of the intricacies of the workers' compensation law.' ...[T]o strictly limit fee awards to the amount of medical expenses disputed

would discourage attorneys from representation of injured workers whenever the disputed amounts were modest or the issues presented were complex.”

While the amount in dispute is one of the seven factors this Court has indicated should be considered in determining what amount will reasonably compensate an employee’s attorney, it has never been intended to justify the arbitrary reduction of fees otherwise warranted by the services performed and the results obtained. If compensation judges are allowed to reduce attorney fees based solely on the fact that the benefits claimed are relatively modest, without regard to whether the professional services rendered and time spent recovering those benefits were reasonable and necessary, injured employees with modest claims will never be able to find competent counsel to represent them.

Judge Vallant’s award should be vacated as an abuse of discretion and misapplication of the “amount involved” *Irwin* factor.

V. THIS COURT SHOULD USE THIS CASE AS AN OPPORTUNITY TO PROVIDE GUIDANCE ON HOW THE IRWIN FACTORS SHOULD BE USED TO DETERMINE WHAT CONSTITUTES A REASONABLE FEE IN CASES INVOLVING MODEST AMOUNTS OF BENEFITS.

This Court adopted the seven factors enunciated in *Irwin* to provide guidelines for compensation judges to determine what constitutes a reasonable fee when the statutory formula fees are inadequate. However, the Court did not provide any guidance as to how the factors should be applied.

“The express purpose of the *Irwin* decision is to afford a reasonable fee to an attorney for legal services provided to the employee.” *McCarthy v. Al Baker’s*, 61 W.C.D. 805 (W.C.C.A. 2001); *Langlois v. Univ. of Minnesota*, slip op. (W.C.C.A. Aug. 6, 2003); *Corbett v. Ipsco Minnesota, Inc.*, slip op. (W.C.C.A. Mar. 4, 2004); *Keller v. Quicksilver Express Courier*, slip op. (W.C.C.A. June 30, 2005); *Johnson v. VCI Asbestos Abatement*, slip op. (W.C.C.A. Sept. 15, 2005).

The determination of what constitutes a reasonable fee should not be based upon an arbitrary and capricious process. Compensation judges should not have the discretion to simply pick an amount out of thin air that seems reasonable to them. Application of the seven *Irwin* factors should be performed logically and consistently in order to ensure that the attorney is awarded a reasonable fee that adequately compensates him or her for the professional services reasonably and necessarily rendered in light of the unique claims and defenses involved in the case, while protecting against the employer and insurer being ordered to pay an excessively high fee.

The *Irwin* factors should be applied in a coordinated and inter-dependent fashion. None of the factors should be singled out or given over-riding weight or importance, without consideration of how the other factors relate to the ultimate goal of determining what constitutes a reasonable fee.

The Worker's Compensation Court of Appeals has stated in multiple cases that an award of fees should not be based *solely* upon a simple mathematical calculation of multiplying the hours spent on resolving a dispute by the attorney's hourly rate. See *Dally v. ConAgra/Peavey Co.*, slip op. (W.C.C.A. Oct. 18, 2000); *Borgan v. Bob Hegland, Inc.*, 62 W.C.D. 452 (W.C.C.A. 2002); *Duda v. Pizza Hut, Inc.*, slip op. (W.C.C.A. July 12, 2002); *Beckwith v. Sun Country Airlines*, slip op. (W.C.C.A. Nov. 18, 2002); *Karst v. Anoka-Hennepin Independent School District No. 11*, slip op. (W.C.C.A. June 5, 2003); *Keller v. Quicksilver Express Courier*, slip op. (W.C.C.A. June 30, 2005); *Johnson v. VCI Asbestos Abatement*, slip op. (W.C.C.A. Sept. 15, 2005).

However, the primary focus in any attorney fee hearing should be determining what services were reasonably necessary to the successful representation of the employee, whether the amount of time claimed for the performance of those services is reasonable, and whether the effective hourly rate of payment for the attorney is justified. Ignoring the number of hours worked by the attorney and the attorney's reasonable hourly rate would result in wholly arbitrary and capricious awards of attorney's fees detached from basis in fact or reality.

This Court should use this case as an opportunity to provide guidance on how the *Irwin* factors should be used to determine what constitutes a reasonable fee in cases involving modest amounts of benefits.

The Time and Expense Necessary to Prepare for Trial. This factor is fundamental to the process of calculating a reasonable attorney fee: determining what services and how much time were reasonably necessary for the successful resolution of the disputes concerning the benefits recovered on behalf of the employee. This factor should not be limited to services related solely to preparation for trial, but should be applied to all services related to the ultimate resolution of the claims.

The Amount Involved. This factor should be evaluated in terms of whether specific services performed by the attorney and the amount of time claimed are actually necessary in light of the amount of the claims involved in the case. The fact that the benefits involved in a case are modest should never be a justification for limiting or cutting fees when the services performed were necessary to the successful recovery of the benefits available. Otherwise, employees with modest claims will not be able to find competent representation.

For example, if an employee's attorney retains multiple experts, spends hours of time providing them with foundation concerning the case, obtains detailed reports from them, and also takes their depositions for presentation at hearing,

when the claims involve a small amount of medical expense, that attorney's fees should probably be reduced because the amount involved simply would not justify the services rendered.

The Difficulties of the Issues. This factor also should be evaluated in terms of whether specific services performed by the attorney and the amount of time claimed are actually necessary in light of the issues involved in the case. The fact that the issues involved in a case are simple and straightforward should never be a justification for limiting or cutting fees when the services performed were necessary to resolve the issues involved in the case. Otherwise, employees with claims involving relatively simple issues will not be able to find competent representation.

For example, if the employee's attorney or staff spends hours conducting legal research when the claim involves a well-settled area of the law, the requested fees should probably be cut because the difficulty of the issues simply would not justify the services rendered.

The Nature of the Proof Involved. This factor directly relates to determining whether the services performed by the attorney were necessary and the time claimed was reasonable. What documentary and testimonial evidence was reasonably necessary to discover and then present at hearing in order to successfully represent the employee in the case? Is the amount of time claimed by

the attorney for discovering and then presenting that evidence at trial reasonable in light of the evidence involved? Did the employer identify four witnesses they claimed would refute the employee's version of how the injury occurred thereby necessitating four depositions that otherwise would not have been required? If so, a higher fee is probably justified than if no such witnesses were involved.

The Responsibility Assumed by Counsel. This factor has never been very well explained as to how and when it should be applied. One example may be if an attorney has his or her client gather their own medical records or personnel records, or obtain reports from their own doctor, or otherwise perform services normally performed by an attorney or their staff, and then claims fees based upon the performance of those acts, the claimed fees should be reduced because the attorney did not assume full responsibility for performing those services. Another example may be if the attorney assumes the responsibility of challenging a previously well-established principle of law, or establishing a new precedent, or taking on a case that is being defended with particular vigor, a higher fee should be awarded because of the extra responsibility assumed in taking on the case. In any event, this factor should be evaluated and applied in terms of whether the responsibility assumed by the attorney justifies the necessity of the services performed and the amount of time claimed.

The Experience of Counsel. This factor relates more to the hourly rate of return claimed by the attorney and the amount of time claimed than the necessity of the services performed. A more experienced attorney should be expected to be able to perform certain services in less time than an inexperienced attorney. However, a more experienced attorney should also be compensated at a higher effective hourly rate of return than an inexperienced attorney.

The Results Obtained. The Workers' Compensation Court of Appeals has dealt with this factor in a variety of cases.

In *Bednar v. Carpenter Lumber Co.*, slip op. (W.C.C.A. Dec. 12, 1991), the court stated, "We reject the employer and insurer's argument that an employee's attorney may recover fees only directly proportionate to his success in the case overall."

In *Stark v. Heritage Communications*, slip op. (W.C.C.A. May 10, 2000), the court stated, "[W]e find no basis in case law or elsewhere for concluding that an employee's attorney's entitlement to a reasonable *Roraff* fee for successful and necessary work recovering medical benefits due his client, payable by the employer and insurer, should be in any way conditioned on the proportionate relationship between those owed benefits and other benefits found to be not owed. In the present case, the value of the benefits obtained for the employee [\$812.12 in medical expenses, approximately 5% of the overall benefits claimed] was

substantial, even as reduced by section 176.136, and, assuming that his claim is otherwise reasonable, the employee's attorney deserves a reasonable fee for the time he necessarily expended in successfully obtaining those benefits, regardless of the relative size of his unsuccessful effort. ... [T]he issues on which an employee's attorney did not prevail have little if any bearing on the attorney's entitlement to a reasonable fee for medical expense work on which he did prevail."

When less than 100% of the benefits claimed are awarded, fees claimed for services rendered relating to the benefits denied may be reduced, but not in direct proportion to the percentage of benefits awarded versus the benefits claimed. The focus should be on determining what professional services were reasonably necessary to the successful recovery of the benefits awarded to the employee. See *Dally v. ConAgra/Peavey Co.*, slip op. (W.C.C.A. Oct. 18, 2000); *Duda v. Pizza Hut, Inc.*, slip op. (W.C.C.A. July 12, 2002); *Langlois v. Univ. of Minnesota*, slip op. (W.C.C.A. Aug. 6, 2003).

This court should clarify that the *Irwin* factors should be applied in a logical and consistent fashion as described above, and establish that attorney fees should not be arbitrarily reduced based solely upon an assertion that the amounts involved are "modest" or the issues involved are "simple" where the services performed are otherwise necessary, the amount of time spent is otherwise reasonable, and the effective hourly rate of return for the attorney is otherwise reasonable.

VI. COUNSEL FOR RELATOR IS ENTITLED TO AN AWARD OF FEES FOR HANDLING THIS APPEAL.

Appellate fees pursuant to Minn. Stat. § 176.511, subd. 5 are payable if a fee award is challenged on appeal. In *Dimon v. Metz Baking*, slip op. (W.C.C.A. Oct. 7, 2003) *aff'd without opinion* (Minn. Jan. 29, 2004), the employer unsuccessfully challenged an award of *Roraff* fees all the way to the Supreme Court. The Workers' Compensation Court of Appeals affirmed the award and awarded employee's counsel \$1,250.00 in appellate fees; the Supreme Court affirmed the award and awarded employee's counsel \$1,200.00 in appellate fees. See also *Jorgenson v. Novak-Fleck, Inc.*, 638 N.W.2d 760 (Minn. 2002); *Klein v. Wal-Mart Stores, Inc.*, slip op. (W.C.C.A. July 31, 2002).

If this court vacates the findings and order of Judge Vallant and either remands or substitutes an award of fees, then it should award counsel for Relator \$1,200.00 in fees for successfully handling this appeal.

CONCLUSION

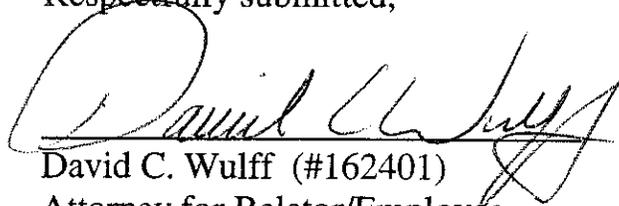
Relator respectfully requests that this Court vacate Finding No. 11 and Orders Nos. 1 and 2 in Judge Vallant's Findings and Order, award Attorney Wulff \$9,008.39 in fees and award Employee \$2,568.45 in subdivision 7 fees.

Relator invites the Court to use this case as an opportunity to clarify how the *Irwin* factors should be used to determine what constitutes a reasonable fee in cases involving modest claims.

Counsel for Relator respectfully requests an award of \$1,200.00 in appellate fees for handling this appeal.

Respectfully submitted,

Dated: 6/15/07

A handwritten signature in black ink, appearing to read "David C. Wulff", written over a horizontal line.

David C. Wulff (#162401)
Attorney for Relator/Employee
Law Office of David C. Wulff
2575 Hamline Avenue North, Suite D
Roseville, Minnesota 55113
651-636-1900

STATE OF MINNESOTA

IN SUPREME COURT

CASE TITLE:

CERTIFICATION OF BRIEF LENGTH

Mark J. Jeffrey,

Employee/Relator,

v.

SUPREME COURT NO.:

A07-1033

Banana Republic,

Employer/Respondent,

WORKERS' COMPENSATION

COURT OF APPEALS NO.:

WC06-273

and

American Home Assurance/
AIG Claim Services, Inc.,

DATE OF SERVICE OF

WRITTEN NOTICE OF

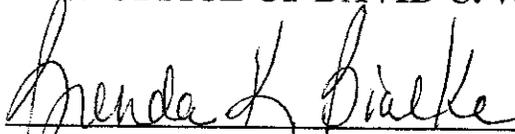
DECISION: 05/01/07

Insurer/Respondent.

I hereby certify that this brief conforms to the requirements of Minnesota Rules of Appellate Procedure 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 579 lines and 5,179 words. This brief was prepared using Microsoft Word 2002.

Dated: June 15, 2007.

LAW OFFICE OF DAVID C. WULFF



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).