

A06-1793

NO. A06-1721

State of Minnesota
In Supreme Court

STANLEY ROEMHILDT,

Employee/Respondent,

vs.

MET CON COMPANIES and,
STATE FUND MUTUAL COMPANIES,

*Employer and Insurer/
Respondent,*

and

GRESSER COMPANIES and,
ZURICH INSURANCE COMPANY/CREATIVE RISK SOLUTIONS,

*Employer and Insurer/
Relator.*

RELATOR'S BRIEF AND APPENDIX

Jay T. Hartman (#124291)
Jennifer A. 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 Relator

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

*Attorneys for Respondent, Met Con Companies and
SFM Mutual Insurance Co.*

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 Respondent Stanley L. Roemhildt

TABLE OF CONTENTS

TABLE OF CONTENTS	<i>i</i>
TABLE OF AUTHORITIES	<i>ii</i>
LEGAL ISSUES	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	4
ARGUMENT	8
Standard of Review	8
I. A Non-Settling Employer and Insurer May be Compelled to Contribute to a Reasonable Settlement of Future Potential Benefits	9
CONCLUSION	15
APPENDIX	16

TABLE OF AUTHORITIES

MINNESOTA STATUTES

Minnesota Statute § 176.421, subdivision. 1(3)..... 8
Minnesota Statute § 176.521..... 13, 14

MINNESOTA SUPREME COURT DECISIONS

De Nardo v. Divine Redeemer Memorial Hospital, 450 N.W.2d 290 (Minn. 1990)..... 9
Employers Mut. Cas. Co. v. Chicago, SP. P, M. & O. Ry. Co., 50 N.W.2d 689 (Minn. 1951)..... 9, 10
Haverland v. Twin City Milk Producers Ass’n., 142 N.W.2d 274 (Minn. 1966)..... 9, 10
Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54 (Minn. 1984)..... 8
Northern States Power Co. v. Lyon Food Prods., Inc., 229 N.W.2d 521 (Minn. 1975)..... 8
Peniston v. City of Marshall, 255 N.W. 860 (Minn. 1934)..... 9
Redgate v. Standard Sroga’s Service, 421 N.W.2d 729 (Minn. 1988)..... 8
Senske v. Fairmont & Waseca Canning Co., 45 N.W.2d 640 (Minn. 1951)..... 13

MINNESOTA WORKERS’ COMPENSATION COURT OF APPEALS DECISIONS

Husnik v. J.C. Penney Co., Inc., 57 W.C.D. 264, 273 (W.C.C.A. 1997)..... 13, 14
Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607 (W.C.C.A. 1993)..... 8
Masters v. Moorhead Construction Co., 47 W.C.D. 432 (W.C.C.A. 1992)..... 12, 13
Niemi v. Mesabi Drill, 45 W.C.D. 348 (W.C.C.A. 1991)..... 11
Othon v. Hutchinson Technology, slip op. (W.C.C.A. June 16, 1995)..... 14

ISSUES

I. Whether A Non-Settling Employer And Insurer May Be Compelled To Contribute To A Reasonable Settlement Of Future Potential Benefits?

A The Workers' Compensation Court of Appeals reversed the decision of the compensation judge and held that a non-settling employer and insurer could not be compelled to contribute to a reasonable settlement of future benefits.

B The compensation judge held that if the settlement agreement was reasonable, then the settling employer and insurer could maintain a contribution and reimbursement action against the non-settling employer and insurer.

i. Employers Mut. Casualty Co. v. Chicago, SP, P, M. & O. Ry. Co., 50 N.W.2d 689 (Minn. 1951).

ii. Peniston v. City of Marshall, 255 N.W. 860 (Minn. 1934);

iii. Niemi v. Mesabi Drill, 45 W.C.D. 348 (W.C.C.A. 1991), summarily aff'd (Minn. Oct. 31, 1991).

iv. Masters v. Moorhead Construction Co., 47 W.C.D. 432 (W.C.C.A. September 21, 1992).

STATEMENT OF THE CASE

This matter came on for hearing before The Honorable Janice Culnane on October 14, 2005, following a Petition for Contribution filed by the Employer, Gresser Companies (hereinafter "Gresser"), and its insurer, Zurich Insurance Company (hereinafter "Zurich"), against Met Con Companies (hereinafter "Met Con") and State Fund Mutual. State Fund Mutual Insurance Company has recently undergone a name change and is now known as SFM Mutual Insurance Company and will be referred hereinafter as "SFM."

Gresser and Zurich's Petition for Contribution was premised upon the causal role of Met Con's August 17, 2001 injury and the Employee's condition and disability after his work related incidents at Gresser on September 7, 2004 and October 4, 2004.

Gresser and Zurich maintained they had a right to contribution and reimbursement from Met Con and SFM for a portion of the benefits they paid out under a Temporary Order, as well as, contribution and reimbursement toward the lump sum it paid out pursuant to a Stipulation for Settlement. Met Con and SFM argued, in part, that as they were not a party to the Stipulation for Settlement, they could not be compelled to pay a portion of a lump sum settlement which closed certain future benefits that had not yet accrued, for all injures with both employers and insurers.

The compensation judge found that Gresser and Zurich were entitled to contribution and reimbursement from Met Con and SFM for benefits paid, including a portion of the lump sum payment under the Stipulation for Settlement. In her memorandum, the compensation judge determined the terms of the Stipulation for Settlement were reasonable, and ordered Met Con and SFM to pay, in part, fifty percent of the lump sum settlement.

Met Con and SFM appealed the compensation judge's decision to the Workers' Compensation Court of Appeals, where it was reversed. The Workers' Compensation Court of Appeals held that Met Con and SFM could not be compelled to contribute to a settlement of

future potential benefits that had not yet accrued and where they were not a party to the Stipulation for Settlement. Gresser and Zurich maintain the Workers' Compensation Court of Appeals decision is contrary to law, the evidence as submitted, and public policy and, therefore, appeal the decision.

STATEMENT OF FACTS

The employee, Stanley Roemhildt, is currently sixty-one years of age with a date of birth of December 28, 1945. (Transcript p. 2.) On August 17, 2001, he sustained an injury to his low back while employed as a bricklayer by Met Con, then insured for workers' compensation liability by State Fund Mutual Insurance Company (now referred to as SFM Mutual Insurance Company) (A.1.) Met Con filed a First Report of Injury on August 23, 2001 and admitted liability for the injury vis-à-vis a Notice of Primary Liability Determination on August 28, 2001. (A.2.) Wage loss benefits and medical benefits were paid by Met Con to and on behalf of the Employee from August 20, 2001 to September 16, 2001. (Id.) Thereafter, Met Con and SFM retroactively denied liability based upon the Employee's alleged failure to cooperate with the investigation of the injury and that his injury was a continuation of a previous personal injury. (A.4.) A second Notice of Primary Liability Determination was filed with the Department of Labor & Industry on September 20, 2001 by Met Con denying liability for the August 17, 2001 injury. (Id.) At the contribution and reimbursement hearing, the Employee testified he intended to contest the termination of benefits, but "it never really panned out to anything" and he went back to work shortly thereafter (T. 70.) He also testified that his low back pain "never did go away" after the August 2001 work injury (T. 76.)

On September 7, 2004, and again on October 4, 2004, the employee sustained injuries to his low back during the course and scope of his employment with Gresser. (A.29.) Gresser was insured for workers' compensation liability by Zurich Insurance Company on both dates of injury. (Id.) The September 7, 2004 and October 4, 2004 injuries permanently worsened the employee's condition and he was unable to fully recover from either.

The employee served and filed a Claim Petition on October 21, 2004 seeking various benefits from Met Con and Gresser as a result of the aforesaid work related injuries. (A.8.) Pursuant to a Temporary Order, Gresser subsequently began paying benefits and sought contribution and reimbursement from Met Con. (A10, A.14.) On December 21, 2004, the Employee's Claim Petition and Gresser's Petition for Contribution and Reimbursement were consolidated for hearing. (A.16.)

The Employee, Gresser and Zurich, and their respective attorneys, attended mediation on August 4, 2005, and successfully resolved the Employee's claims on a full, final and complete basis, with medical expenses left open, in exchange for a lump sum payment of \$82,500.00. (A.17, A.18.)

SFM chose not to participate in the mediation or settlement negotiations and ultimately did not become a party to the Stipulation for Settlement. Throughout these proceedings, SFM has argued that the amount of the settlement agreement was unreasonable and it was under no obligation to pay any amount to the Employee as it had a statute of limitations defense. The Stipulation for Settlement was filed and an Award was issued on August 12, 2005, which closed out all of the Employee's claims relative to the Met Con injury, assigned all rights the Employee had against Met Con and SFM to Gresser and Zurich, and preserved all rights that Gresser and Zurich had against Met Con and SFM for contribution and/or reimbursement of past, present or future workers' compensation benefits, including the \$82,500.00 lump sum payment. (A.17, A.18.) Specifically, the provision concerning Gresser's reservation of rights reads as follows:

It is the express intention of this settlement agreement to preserve all rights that Gresser Companies, Inc. and Zurich Insurance Company have against Met Con Companies and State Fund Mutual Insurance Company for contribution and/or reimbursement of past, present or future workers' compensation benefits paid to, or on behalf of the employee, *including* the \$82,500.00 lump sum paid pursuant to this stipulated settlement, which has purchased a full, final and complete

settlement of the employee's claims against not only the employee's injuries at Gresser, Inc., but also the employee's August 17, 2001, injury, with the exception of medical expenses. Met Con Companies/State Fund Mutual Insurance Company has refused to participate in the settlement negotiations that resulted in this settlement agreement or the terms of this settlement agreement, and nothing contained in this document shall be deemed to in any way limit any defense Met Con Companies or State Fund Mutual Insurance Company might have against a subsequent contribution/reimbursement claim pursued by Gresser/Zurich. The employee assigns all rights that he might have against Met Con Companies and State Fund Mutual Insurance Company for past or future workers' compensation benefits to Gresser, Inc./Zurich Insurance Company, which the employee understands will be the subject matter of a future contribution claim against Met Con Companies and State Fund Mutual. The express intention of this agreement is that nothing contained in this settlement agreement or otherwise will in any way preclude or limit the rights of Gresser, Inc./Zurich Insurance Company to proceed in contribution and/or reimbursement against Met Con Companies/State Fund Mutual for all past workers' compensation benefits paid by Gresser, Inc./Zurich to or on behalf of the employee or for the payments made pursuant to this Stipulation for Settlement. The parties to this Stipulation for Settlement agree that the \$82,500.00 lump sum payment made herein represents a fair and reasonable compromise of good and valid claims the employee would have for workers' compensation benefits in the future and that all past benefits received by the employee have been appropriately paid pursuant to the Workers' Compensation Act.

A hearing on Gresser's claim for contribution and reimbursement from Met Con was heard by a compensation judge on October 14, 2005. The issues presented at the hearing included equitable apportionment of liability, whether claims against Met Con for the August 2001 injury were barred by the statute of limitations, and whether Gresser was entitled to contribution from Met Con for past benefits paid by Gresser and the lump sum paid pursuant to the settlement between the Employee and Gresser. In addition to the Employee's testimony at the August 14, 2005 hearing, Gresser and Zurich submitted the independent medical examination report of Dr. Mark Engasser, M.D. (Pet'r Trial Ex. 6.) In the report, Dr. Engasser opined that the October 2004 injury was a permanent aggravation of the Employee's preexisting low back condition. (Id.) He apportioned liability for the Employee's condition as 40% to the October 2004 injury and 60% to the August 2001 injury. (Id.) Dr. Engasser placed the Employee at

maximum medical improvement for his low back condition and the report was served on the Employee on February 16, 2005. (Id.) Met Con and SFM submitted as evidence the independent medical examination report of Dr. Galbraith whereby Dr. Galbraith opined that the Employee's August 17, 2001 injury was temporary in nature and had resolved by October 1, 2001. (Respondent's Trial Exhibit C.) With regard to the September 7, 2004 and October 1, 2004 Gresser injuries, Dr. Galbraith opined that neither injury was permanent in nature. (Id.)

Lastly, Gresser and Zurich submitted the deposition testimony of workers' compensation legal expert, David Bailey, in support of their position that the Stipulation for Settlement between Zurich and the Employee, was reasonable under the circumstances of this case. (Pet'r Trial Ex. 16.) According to Mr. Bailey, he calculated the settlement value of the Employee's claims in this matter as between \$119,000 and \$171,000. (Id. at 16.) When calculating those values, Mr. Bailey did take into account the liability presented by Gresser as well as Met Con. (Id.) With regard to a reasonable settlement value range, Mr. Bailey opined that he would expect to close out a claim of this type for approximately \$80,000 to \$150,000. (Id. at 17.) Ultimately, Mr. Bailey believed that the \$82,500 full, final and complete settlement, leaving medical expenses open, was reasonable and within the bounds of custom and practice in the Minnesota workers' compensation litigation system. (Id. at 18-19.)

ARGUMENT

Standard of Review

The matter presently before this Court is a mixed question of law and fact. Specifically, whether an employer and insurer that were not parties to a reasonable Stipulation for Settlement can be ordered to reimburse an employer and insurer that were parties to the stipulation for future potential benefits is a question of law that must be considered by the reviewing court de novo. Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607 (W.C.C.A. 1993).

However, the reasonableness of any settlement agreement is a question of fact, and a compensation judge's findings of fact may not be disturbed unless the findings are clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted. Minn. Stat. § 176.421, subd. 1(3) (1992). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60.

Similarly, "[f]actfindings are clearly erroneous *only* if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 229 N.W.2d 521, 524 (Minn. 1975) (*emphasis added*). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id. See Redgate v. Standard Sroga's Service, 421 N.W.2d 729, 734 (Minn. 1988) (stating it is not the appellate court's role "to make their own evaluation of the credibility and probative value

of witness testimony and to choose different inferences from the evidence than the compensation judge.”).

I. A Non-Settling Employer And Insurer May Be Compelled To Contribute To A Reasonable Settlement Of Future Potential Benefits.

The instant case presents an issue regarding the application of the principles of equitable apportionment. Gresser and Zurich maintain that they may demand reimbursement from another employer and insurer that are jointly responsible for an injured employee’s condition for any monies or benefits paid to or on the behalf of the injured employee. Equity demands and the law requires that this right of contribution and reimbursement include future benefits paid pursuant to a full, final, and complete settlement, so long as the settlement can be proven to be reasonable.

A claim for contribution is an equitable remedy which demands that “one who has paid more than his share is entitled to contribution from the other to reimburse him for the excess so paid, thus equalizing their common burden.” Employers Mut. Casualty Co. v. Chicago, SP. P. M. & O. Ry. Co., 50 N.W.2d 689, 693 (Minn. 1951). The party seeking contribution need not make payment pursuant to a judgment, but may settle by a fair and provident payment and then seek contribution from other joint tort-feasors for their fair share of the settlement price. Id.

The common law doctrines of contribution and apportionment have long been recognized as applicable to workers’ compensation proceedings. See Peniston v. City of Marshall, 255 N.W. 860 (Minn. 1934); Haverland v. Twin City Milk Producers Ass’n., 142 N.W.2d 274 (Minn. 1966); and De Nardo v. Divine Redeemer Memorial Hospital, 450 N.W.2d 290 (Minn. 1990). Where successive employers and insurers have each contributed to an employee’s disability, they each must contribute their proportionate shares of the total liability for an injured employee’s benefits. Denardo, 450 N.W.2d 290.

The burden of the party seeking contribution is to establish that the other party did in fact contribute to the employee's overall disability and any apportionment thereto ordered must be in the ratio that each accident bears to the total disability involved. Haverland, 142 N.W.2d at 280.

Here, substantial evidence supported the compensation judge's determination that Met Con did in fact contribute to the employee's overall disability. At the October 14, 2005 hearing, the judge heard testimony from the employee that since the August 17, 2001 Met Con injury, he had continued difficulty with his low back. In addition, the medical records of the employee's treating doctors demonstrate that he had continued difficulty with his low back following the August 17, 2001 injury. After hearing and considering all of the evidence, the compensation judge determined that Gresser and Zurich had met their burden and established that Met Con did contribute to the employee's overall disability. As a result, equity demanded that Met Con and SFM contribute their proportionate share to the benefits Gresser and Zurich paid to the employee, including the lump sum settlement.

On appeal, Met Con and SFM did not object to the reasonableness of the compensation judge's apportionment *per se*. Rather, their primary argument is that they cannot be compelled to contribute to a settlement agreement that closes out *all* claims, past, present, and *future*, against both employers and insurers. This position, and the Workers' Compensation Court of Appeals affirming of this position, is contrary to established judicial precedent.

In Employers Mut. Casualty Co. v. Chicago, the Supreme Court held that the party seeking contribution may settle for a fair and provident payment and then seek contribution from other joint tort-feasors for their fair share of the settlement price. 50 N.W.2d at 693. Although Employers Mutual Casualty Co. was a civil action, as previously indicated, the Minnesota workers' compensation system has adopted the common law principle of contribution and

apportionment. This includes contribution for monies paid pursuant to a fair and reasonable settlement agreement.

Moreover, the Workers' Compensation Court of Appeals has affirmed contribution towards Stipulation for Settlements where *future* benefits were forever foreclosed. In Niemi v. Mesabi Drill, six employers were found to have substantially contributed to an employee's disability. 45 W.C.D. 348 (W.C.C.A. 1991), summarily aff'd (Minn. Oct. 31, 1991). Five of the employers, their insurers, and the employee entered into a Stipulation for Settlement for all claims or *potential* claims (except future medical expenses), relating to the employee's injuries, including a 1979 injury at Mesabi Drill. Id. at 351. Mesabi Drill refused to participate in settlement negotiations and the other five employers filed a claim for contribution and reimbursement against Mesabi for its one-sixth share under the settlement agreement. Id. A compensation judge of the Office of Administrative Hearings determined that the employee's 1979 injury was a substantial contributing factor in the employee's total disability and the judge apportioned one-sixth of the responsibility for that disability to the 1979 injury. Id. at 351-352. The compensation judge ordered that Mesabi Drill and its insurer reimburse the other parties, in equal shares, an amount representing one-sixth of the Stipulation for Settlement amount. Id. at 352.

The facts before the Niemi court were virtually identical to the facts of this case. Gresser and Zurich entered into a Stipulation for Settlement with the employee which closed out all claims, including, past, present and *future* claims against Gresser, Zurich, Met Con and SFM (except medical expenses) for the August 17, 2001, September 7, 2004 and October 4, 2004 dates of injury. Gresser and Zurich filed a claim for contribution and reimbursement for the amount paid out under the Stipulation for Settlement against Met Con and SFM and presented

evidence, which the compensation judge found convincing, that Met Con's August 17, 2001 injury did substantially contribute to the employee's disability and therefore, Met Con and SFM were required to pay their fair share of the settlement.

In this matter, the Workers' Compensation Court of Appeals' majority discounted the importance of Niemi, stating that although it had affirmed the compensation judge's decision that a non-settling employer and insurer were liable for one-sixth of payment made for a full, final and complete settlement, the only argument on appeal was that substantial evidence did not support the judge's equitable apportionment, on causation grounds. There was no argument that contribution could not be awarded absent proof of the employee's underlying entitlement to benefits.

The Workers' Compensation Court of Appeals position must fail on two grounds. First, had the Stipulation for Settlement and contribution claim in Niemi been contrary to the law, the Workers' Compensation Court of Appeals could have declined to decide the issue presented to it (evidence supporting equitable apportionment) and simply have held that a non-settling party cannot be compelled to contribute to a settlement agreement that includes a close-out of future, non-accrued benefits.

Second, and perhaps most important, in a later case, the Workers' Compensation Court of Appeals cited Niemi for the proposition that a non-settling party *can* be compelled to contribute to a stipulation that closes out future benefits. In Masters v. Moorhead Construction Co., Great American Insurance Company, appealed from an Order dismissing its Petition for Contribution against the Minnesota Assigned Risk Plan. 47 W.C.D. 432 (W.C.C.A. September 21, 1992). On appeal, Assigned Risk asserted that because Great American entered into a full, final, and complete settlement with the employee, any contribution claims of Great American were barred.

Id. at 435. The Workers' Compensation Court of Appeals rejected that argument as there was no basis in the statute or case law which would support such a bar to an employer's right of contribution. Id. Rather, the Workers' Compensation Court of Appeals held, "the adoption of such a theory would be directly contrary to the well-established doctrines of contribution and equitable apportionment among insurers." Id. "Further, the settlement of cases is to be encouraged," and "[t]o adopt the argument of Assigned Risk would discourage full and final settlements." Id. The court further held that if Great American could establish liability of Assigned Risk to the employee, it was entitled to contribution. Id. at 436. The court cited to Niemi for the proposition that "[f]ollowing the Award on Stipulation, the insured filed a contribution claim against an employer and insurer not a party to the Stipulation," and the court "affirmed the award of contribution against the non-settling employer and insurer."

As was of great concern in Master v. Moorhead Construction, if this Court were to accept the argument of Met Con and SFM and affirm the Workers' Compensation Court of Appeals majority opinion, future settlement agreements will be adversely effected. Under the Workers' Compensation Court of Appeals' majority decision, a petitioner may not receive contribution from a primarily liable employer absent proof that specific benefits would have been payable to the employee. As the dissent correctly points out, under the majority's decision, Gresser must serially assert multiple contribution claims against Met Con for the accrued benefits to which the employee would have been entitled but for the settlement.

It is well established that the law favors settlement agreements as they avoid the delays of litigation and expedite the granting of relief. Senske v. Fairmont & Waseca Canning Co., 45 N.W.2d 640 (Minn. 1951); Husnik v. J.C. Penney Co., Inc., 57 W.C.D. 264, 273 (W.C.C.A. 1997). Workers' compensation settlements, as authorized and limited by Minn. Stat. § 176.521,

are generally encouraged. Husnik at 274. Forcing employers and insurers to file multiple contribution claims as specific benefit claims come due will have an impermissible chilling effect on the settlement process, while recalcitrant parties are permitted to hinder settlement negotiations.

The majority is correct, nothing in the law permits a party to force settlement onto another party. However, that is not the case that is presently before this Court. This is simply one party pursuing its right to reclaim a portion of what it has paid to an injured party from another party that was jointly responsible for the condition of the injured party. Equity demands and the law of contribution requires that this include the right to recover monies paid out under a Stipulation for Settlement as long as the Stipulation for Settlement was reasonable and in accordance with Minn. Stat. § 176.521. Othon v. Hutchinson Technology, slip op. (W.C.C.A. June 16, 1995); Husnik, 57 W.C.D. at 273.

In proceeding with settlement, the party seeking contribution assumes the substantial burden and risk of proving not only the reasonableness of the settlement agreement, but also primary liability, causation and apportionment with respect to the injury from which contribution is sought. The non-settling party retains all defenses against the claim and, as here, may fully present and litigate those defenses. Where the settling party prevails with its claim after a full evidentiary hearing, the non-settling party has been deprived of no right or defense, and the remaining test is whether the portion of the consideration paid to close the employee's claims against the non-settling party was reasonable. Here, the compensation judge determined that it was, and substantial evidence supported that determination.

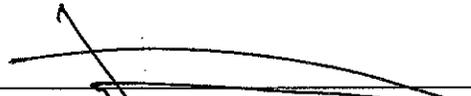
CONCLUSION

Apportionment and contribution are equitable remedies that have long been recognized by the Supreme Court of Minnesota and relied upon in the Minnesota workers' compensation system. Further, the fair settlement and resolution of workers' compensation cases is favored in the law. Where a jointly liable employer and insurer can establish that another employer and insurer have contributed to an employee's disability, the employer and insurer that have paid benefits to the injured employee, including payments pursuant to a reasonable settlement, may pursue a jointly liable employer and insurer in a contribution action. The Workers' Compensation Court of Appeals decision is contrary to established principles of equity and law, as well as substantial evidence, and therefore, Zurich and Gresser respectfully request that this Court reverse the decision of the Workers' Compensation Court of Appeals and affirm the compensation judge.

Respectfully Submitted,

HEACOX, HARTMAN, KOSHMRL,
COSGRIFF & JOHNSON, P.A.

DATE: October 10, 2006



JAY T. HARTMAN (#124291)
JENNIFER A. CLAYSON KRAUS (#0350242)
Attorneys for Self-Insured Employer
550 Hamm Building
408 St. Peter Street
St. Paul, MN 55102
(651) 222-2922

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).