

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.*

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

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### LEGAL ISSUES

- I. Does "any defense" as defined by Minn. Stat. §176.221, subd. 1 include the statute of limitation defense in Minn. Stat. §176.151 (1)?

Compensation Judge held: no.

The Workers' Compensation Court of Appeals held: no.

- II. Do the principles of statutory construction indicate that the Minnesota Legislature rewrote Minn. Stat. §176.221, subd. 1 to overrule Meinen v. Dashow, 167 N.W. 2d 730 (Minn. 1969)?

Compensation Judge held: no.

The Workers' Compensation Court of Appeals held: no.

### STATEMENT OF FACTS

On August 17, 2001, Stanley L. Roemhildt (hereinafter "Employee") claimed to have sustained a work-related personal injury. On that date, Met Con Companies (hereinafter "Met Con") employed Employee. On that date, State Fund Mutual Insurance Company (hereinafter "State Fund Mutual") insured Met Con for Minnesota workers' compensation liability.<sup>1</sup>

On August 23, 2001 Met Con served and filed a First Report of Injury (A - 1). State Fund Mutual investigated the claim. State Fund Mutual initially admitted primary liability. State Fund Mutual served and filed a Notice of Primary Liability on August 28, 2001 (A - 2). During its investigation, State Fund Mutual paid to and on behalf of Employee certain workers' compensation benefits. On September 18, 2001, pursuant to Minn. Stat. §176.221, subd. 1, (within 60 days of the alleged injury), State Fund Mutual served

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<sup>1</sup> State Fund Mutual underwent a name change in August, 2006 and is now known as SFM Mutual Insurance Company. We are using the former name in this document.

and filed another Notice of Primary Liability, denying primary liability for Employee's alleged August 17, 2001 injury (A - 4).

**Over three years later**, on October 21, 2004, Employee served and filed a Claim Petition (A - 6), seeking workers' compensation benefits from Met Con/State Fund Mutual and from Gresser Companies (hereinafter "Gresser") and Zurich Insurance Company/Creative Risk Solutions (hereinafter "Zurich"). Gresser/Zurich later brought a Petition for Temporary Order and the Office of Administrative Hearings served and filed a Temporary Order on November 22, 2004.

Gresser/Zurich brought a Petition for Contribution against Met Con/State Fund Mutual and the cases were consolidated. In August, 2005, Employee and Gresser/Zurich settled their portion of the case. On August 12, 2005, the Office of Administrative Hearings served and filed an Award on Stipulation, approving a Stipulation for Settlement between Employee and Gresser/Met Con.

In her Findings and Order, served and filed on December 16, 2005 (A - 8), Compensation Judge Janice Culnane ruled that the applicable statute of limitation did not bar liability against Met Con/State Fund Mutual.

On appeal, the Workers' Compensation Court of Appeals affirmed the Compensation Judge's Findings and Order on the statute of limitation issue (A - 18).

#### **STANDARD OF REVIEW**

Relator Met Con/State Fund Mutual raises a purely legal issue on this appeal. This Court, therefore, should apply a *de novo* standard of review. Busch v. Advanced Maintenance, 659 N.W.2d 772 and 779 (2003).

## LEGISLATIVE HISTORY

In 1983, the Minnesota Legislature amended Minn. Stat.

§176.001 as follows:

It is the specific intent of the legislature that workers' compensation cases shall be decided on their merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' compensation legislation shall not apply in such cases . . . Accordingly the legislature hereby declares that the workers' compensation laws are not remedial in any sense and are not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.

Prior to 1981, Minn. Stat. §176.221, subd. 1 read as follows:

Subdivision 1 **Denial of liability, request for extension of time.** Within 30 days from the date of notice to or knowledge by the employer of an injury compensable under the chapter, and unless within that 30 day period, the employer or the insurer files with the commissioner of the department of labor and industry a denial of liability or a request for an extension of time within which to determine liability, the person responsible for payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 shall begin payment of compensation or charges for treatment.

Legislative amendments in 1981 and 1983 rewrote Minn. Stat.

§176.221 to read as follows:

Subdivision 1, **Commencement of Payment.** Within 14 days of notice to or knowledge by the employer or an injury compensable under this chapter, the payment of temporary total compensation shall commence. Within 14 days of notice to or knowledge by an employer of a new period of temporary total disability which is caused by an old injury compensable under this chapter, the payment of temporary total compensation shall commence; provided that the employer or insurer may file for an extension with the commissioner within this 14-day period, in which case the compensation need not commence within the 14-day period but shall commence

no later than 30 days from the date of the notice to or knowledge by the employer of the new period of disability. **Commencement of payment by an employer or insurer does not waive any rights to any defense the employer has on any claim or incident either with respect to the compensability of the claim under this chapter** or the amount of compensation due. Where there are multiple employers the first employer shall pay, unless that it is shown that the injury has arisen out of employment of the second or subsequent employer. Liability for compensation under this chapter may be denied by the employer or insurer by giving the employee written notice of the denial of liability. If liability is denied for an injury which is required to be reported to the commissioner under section 176.231, subdivision 1, the denial of liability must be filed with the commissioner within 14 days after notice to or knowledge by the employer of an injury which is alleged to be compensable under this chapter. **If the employer or insurer has commenced payment of compensation under this subdivision but determines within 60 days of notice to or knowledge by the employer of the injury that the disability is not a result of a personal injury, payment of compensation may be terminated upon the filing of a notice of denial of liability within 60 days of notice or knowledge.** (Remainder omitted, emphasis added.)

#### LEGAL ARGUMENT

- I. **THE STATUTE OF LIMITATION DEFENSE IN MINN. STAT. §176.151 (1) IS INCLUDED IN THE PLAIN LANGUAGE MEANING OF "ANY DEFENSE" IN MINN. STAT. §176.221, SUBD. 1.**

Minn. Stat. §176.151 (1) limits the time within certain acts shall be performed:

Actions or proceedings by an injured employee to determine or recover compensation, three years after the employer has made written report of the injury to the Commissioner of the Department of Labor and Industry ...

In the present case, it is undisputed that the Employee's Claim Petition (October 21, 2004), and Gresser/Zurich's Petition for Contribution (November 24, 2004) occurred **after three years** had elapsed from Met Con/State Fund Mutual filing their First Report of

Injury (August 23, 2001) and the Notice of Primary Liability (September 18, 2001), denying liability for Employee's alleged August 17, 2001 injury.

The statute of limitation defense of Minn. Stat. §176.151 (1) is one of many defenses that an employer and insurer may raise against an employee's claim for benefits.

In 1981 and 1983, Minn. Stat. §176.221, subd. 1 was amended to add the following language:

Commencement of payment by an employer or insurer does not waive **any rights to any defense** the employer has on any claim or incident either **with respect to the compensability of the claim under this Chapter** or the amount of the compensation due. (Emphasis added).

Met Con/State Fund Mutual respectfully submit that their initial payment of benefits to the Employee and then later timely denial of primary liability did "not waive any rights to any defense . . . with respect to the compensability of the claim" as contemplated by the amendment to subd. 1.

Met Con/State Fund Mutual respectfully submit that their statute of limitation defense meets the plain meaning of "any defense" in §176.221, subd. 1. The language "any defense" is not ambiguous, and there is no exclusion for the statute of limitation defense in §176.151 (1).

In Owens v. Water Gremlin Co., 605 N.W. 2d 733, 60 W.C.D. 36 (Minn. 2000), this Court reviewed Minn. Stat. §645.08 (1) and held, "It is a fundamental rule of statutory construction that words and phrases are to be construed according to their plain meaning." Owens, at 736, 41.

Since the underlying claim of the employee is barred by the time limitation of Minn. Stat. §176.151 (1), the contribution claim by Gresser/Zurich is also barred. Mitchell v. G.T.E./Unitrust Northern Construction Co., 41 W.C.D. 344 (1988).

**II. THE PRINCIPLES OF STATUTORY CONSTRUCTION INDICATE THAT THE MINNESOTA LEGISLATURE REWROTE MINN. STAT. §176.221, SUBD. 1 TO OVERRULE MEINEN V. DASHOW, 167 N.W. 2d 730 (MINN. 1969).**

The Compensation Judge made an error of law in relying upon Meinen v. Dashow, 167 N.W.2d 730 (Minn. 1969). The Workers' Compensation Court of Appeals did likewise. Both should be reversed.

In Meinen, this Court determined that a payment of benefits was a "proceeding" that tolled the time limitation in effect at that time. The Meinen case, however, has been overruled by subsequent amendments to the Minnesota Workers' Compensation Act, as set forth in the above Legislative History.

In 1983, the Minnesota Legislature amended the Minnesota Workers' Compensation Act to eliminate its "remedial" nature. Instead, as applicable to this case, Minn. Stat. §176.001 now indicates:

It is the specific intent of the Legislature that workers' compensation cases **shall be decided on their merits** and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' compensation legislation shall not apply in such cases. (Emphasis added).

This legislative change in the law overrules the holding of Meinen:

If the employer-insurer was justified in refusing to make the payments, it will be relieved from responsibility by a determination of this matter on

the merits. If it was not justified in denying liability, its denial should not work to the prejudice of the employee.

Meinen, at 733. This language -- "prejudice of the employee" -- clearly demonstrates the Meinen Court's application of the "liberal construction" and "remedial" nature of Chapter 176 **at that time**.

The rationale and legal foundation of Meinen have been rejected by the Minnesota Legislature. Meinen has also been overruled by another legislative change to Chapter 176.

The amendments to §§176.001 and 176.221, subd. 1 have overruled Meinen, and the statute of limitation in Minn. Stat. §176.151 (1) therefore applies to bar the claims of the Employee and Gresser/Zurich. This time limit is "any defense . . . to the compensability of the claim." Therefore, this Court should reverse the compensation judge and the Workers' Compensation Court of Appeals and instead hold, as a matter of law, that the statute of limitation bars Gresser/Zurich's contribution claim in this case.

In 1981 and 1983, the Minnesota Legislative **completely rewrote** Minn. Stat. §176.221, subd. 1 to specifically reserve "any defense" if a payment is made. These amendments were made well after the last substantive change to Minn. Stat. §176.151 (unchanged since 1969).

Minn. Stat. §645.26 also supports the reversal of the compensation judge and the Workers' Compensation Court of Appeals. Pursuant to **Subdivision 1 Particular control general**, the special provision ("any defense") shall prevail over the general provision

(what constitutes a proceeding). Furthermore, pursuant to **Subdivision 4 Laws passed at different sessions**, "the law latest in date of final enactment shall prevail." Since the amendments to §176.221 were enacted later than any substantive change to §176.151, the provisions of §176.221 prevail, with the effect of overruling Meinen.

**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: \_\_\_\_\_

10/19/06

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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 519 lines and 2,674 words. This brief was prepared using Microsoft Word Office 2000.

DATED: 10/19/06

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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).