

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 REPLY BRIEF

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Employers Mut. Casualty Co. v. Chicago, S.P. M. & O. Ry. Co.,
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**MINNESOTA RULES GOVERNING WORKERS' COMPENSATION PRACTICE AND
PROCEDURE**

Minnesota Rule1420.0900, subparagraph 8 1, 2

INTRODUCTION

In response to the Brief of Met Con Companies and State Fund Mutual Insurance Company, Respondent herein, Gresser Companies and Zurich Insurance Company/Creative Risk Solutions, submits this Reply Brief for the sole purpose of addressing the due process issue raised by the Respondent.

ARGUMENT

I. The Respondent Was Not Denied Due Process of Law and Was Afforded A Hearing on the Merits

Through the Minnesota Legislature, the Minnesota Department of Labor and Industry has been granted authority to promulgate rules regarding hearing procedures. *See Generally* Minn. Rule 1420.0900, subparagraph 8. Met Con and SFM do not argue that the established procedures violate due process, rather, they argue, albeit without legal support, that they were not provided an opportunity to be heard in accordance with the rules and due process.

Met Con and SFM further argue that at the October 14, 2005 hearing, Gresser and Zurich asserted Met Con and SFM were not entitled to a hearing on the merits.¹ (Respondent's Brief, p. 2.) This statement is false. At no time during the proceedings, did Gresser and Zurich claim Met Con and SFM were not entitled to a hearing on the merits. Quite the contrary. Throughout the pendency of this action, Gresser and Zurich have maintained that Met Con and SFM were given an opportunity to defend against the contribution claim in accordance with the rules and procedures established by the

¹ It should not go without notice that Met Con and SFM provided no citation for this factual allegation.

Minnesota Workers' Compensation Act and the Department of Labor and Industry, and that they indeed fully undertook that defense..

Minn. Rule 1420.0900, subparagraph 8, provides for the following hearing procedures:

- (1) After opening the hearing, the judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing.
- (2) Stipulations entered into by the parties before the hearing must be entered into the record.
- (3) If the judge requests opening statements, the party with the burden of proof shall proceed first. Other parties shall make opening statements in a sequence determined by the judge.
- (4) After opening statements, the party with the burden of proof shall begin the presentation of evidence. That party will be followed by the other parties in a sequence determined by the judge.
- (5) Cross-examination of witnesses will be conducted in a sequence determined by the judge.
- (6) When the parties and witnesses have been heard and if the judge believes that legal issues remain unresolved, final arguments may be presented in a sequence determined by the judge. Final argument may, in the discretion of the judge, be in the form of written memoranda or oral argument, or both. The judge shall decide when memoranda must be submitted. Final arguments must be limited to legal issues only.
- (7) The record of the case will be closed upon receipt of the final written memorandum or transcript, if any, or late-filed exhibits which the judge has received into the record, whichever occurs last.

As all parties were presented by counsel, there was no obligation on the part of the compensation judge to state the procedural rules. Stipulations were made on the record. (Transcript, 8-9.) Opening statements were made in accordance with Minn. Rule 1420.0900, subp. 8(A)(3). (T. 9-40.) Gresser and Zurich were allowed to present

evidence, which included the direct examination of the employee, Stanley Roemhildt (T. 47-88), and the introduction of exhibits, which consisted, in part, of an itemization of benefits (Pet'r. Zurich Ex. 1), exposure analysis (Pet'r. Zurich Ex. 2), settlement demand letter (Pet'r. Zurich Ex. 3), social security information (Pet'r. Zurich Ex. 4), the Stipulation for Settlement and subsequent Award (Pet'r. Zurich Ex. 5), the report of independent medical examiner, Dr. Engasser (Pet'r. Zurich Ex. 6), the injury reports of both insurers (Pet'r. Zurich Ex.s 7 and 8), the employee's relevant medical records (Pet'r. Zurich Ex.s 9-14), average weekly wage calculations (Pet'r. Zurich Ex. 15), and the deposition of expert David Bailly (Pet'r. Zurich Ex. 16.) Met Con and Zurich cross-examined the employee (T. 88-94) and Mr. Bailly. Further, they introduced exhibits, including a claim petition (Resp. State Fund Ex. A), a petition for contribution (Resp. State Fund Ex. B), and the report of its independent medical examiner, Dr. Galbraith (Resp. State Fund Ex. C). In addition, the record was left open so as to provide the parties time to submit legal memoranda on the legal issues raised as well as to permit additional time for Met Con and Gresser to submit the deposition of an unnamed witness. (T. 36, 99-103.)

Met Con and SFM also argued that Gresser and Zurich did not attempt to and did not prove the employee's claims. (Respondent's Brief, p. 2.) First, contribution claims are not subrogation claims. There is no obligation on the part of the petitioner in such a case to "stand in the shoes" of the employee and prove all elements of the employee's claims. Rather, contribution is an equitable remedy which allows a jointly responsible party that has paid more than its share, either by judgment or settlement, to seek

contribution from another jointly responsible party for reimbursement of that share. Employers Mut. Casualty Co. v. Chicago, S.P. M. & O. Ry. Co., 50 N.W.2d 689, 693 (Minn.1951).

Gresser and Zurich maintain that it presented substantial evidence upon which a compensation judge could reasonably conclude Met Con and SFM were jointly responsible—liable for reimbursing Gresser and Zurich for monies it paid pursuant to a reasonable settlement agreement. Additionally, even if this Court were to conclude that Gresser and Zurich were to “stand in the shoes” of the employee and prove his claims, Gresser and Zurich did in fact provide substantial evidence to support the employee’s claims as detailed *supra*. Moreover, Met Con and SFM had ample opportunity at the October 14, 2005 hearing, and later, to scrutinize and contradict Gresser and Zurich’s evidence and submit its own evidence.

CONCLUSION

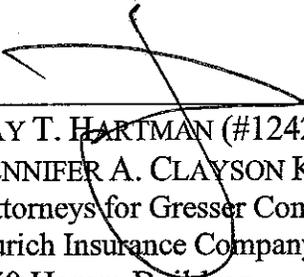
Met con and SFM were not denied due process of the laws as established by the Minnesota Legislature and rules promulgated by the Minnesota Department of Labor and Industry. Once again, Gresser and Zurich respectfully request that this Court reverse the decision of the Workers’ Compensation Court of Appeals and affirm the compensation judge, as apportionment and contribution are equitable remedies that have long been recognized by the Supreme Court of Minnesota and relied upon by the Minnesota workers’ compensation system. 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 employer, including payments pursuant to a reasonable settlement, may pursue a jointly liable employer and insurer in a contribution action.

Respectfully Submitted,

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DATE: November 16, 2006



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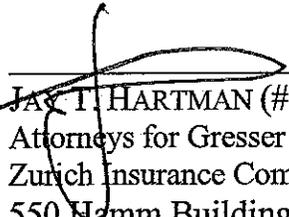
Employer and Insurer/Relator.

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. 132.01, subdivisions 1 and 3, for a brief produced with a proportional font. The length of the brief is 157 lines and 1,300 words. This brief was prepared using Microsoft Word Office 2003.

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