

A06-1721
NO. A06-1793

State of Minnesota
In Supreme Court

STANLEY ROEMHILDT,
Employee/ Respondent,

vs.

MET CON COMPANIES and,
STATE FUND MUTUAL COMPANIES,
*Employer and Insurer/
Relator,*

and

GRESSER COMPANIES and,
ZURICH INSURANCE COMPANY/CREATIVE RISK SOLUTIONS,
*Employer and Insurer/
Respondent.*

BRIEF AND APPENDIX OF EMPLOYER AND INSURER/RESPONDENT

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 Respondent Gresser
Companies and Zurich Insurance
Co./Creative Risk Solutions*

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

*Attorneys for Relator, 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. Roembildt

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	3
ARGUMENT	5
Standard of Review	5
I. “Any Defense,” As Defined By Minn. Stat. § 176.221, Subdivision 1, Does Not Include the Statute of Limitation Defense As Defined By Minn. Stat. § 176.151(1).	5
II. The Minnesota Legislature Did Not Draft Minn. Stat. § 176.221, Subdivision 1 to Overrule <u>Meinen v. Dashow</u> , 167 N.W.2d 730 (Minn.1969)	8
CONCLUSION	13
CERTIFICATION OF BRIEF LENGTH	15
RESPONDENT’S INDEX OF APPENDIX	16
RESPONDENT’S APPENDIX	RA-1

TABLE OF AUTHORITIES

MINNESOTA STATUTES

Minnesota Statute § 176.001.....	8, 9, 10
Minnesota Statute § 176.011, subdivision 16.....	12
Minnesota Statute § 176.151(1).....	5, 6, 7, 8, 12, 13
Minnesota Statute § 176.221, subdivision 1.....	6, 8, 10, 11, 12, 13
Minnesota Statute § 645.26.....	12

MINNESOTA SUPREME COURT DECISIONS

<u>Foley v. Honeywell</u> , 488 N.W.2d 268 (Minn.1992).....	10
<u>Hagen v. Venem</u> , 366 N.W.2d 280 (Minn.1985).....	10
<u>Knopp v. Gutterman</u> , 102 N.W.2d 689 (Minn.1960).....	6
<u>Livgard v. Cornelius Co.</u> , 243 N.W.2d 309 (Minn.1976).....	12
<u>Meinen v. Dashow</u> , 167 N.W.2d 730 (Minn.1969).....	5, 6, 7, 8, 9, 10, 13
<u>O'Malley v. Ulland Bros.</u> , 549 N.W.2d 889 (Minn.1996).....	10, 12
<u>Owens v. Water Gremlin Co.</u> , 605 N.W.2d 733 (Minn.2000).....	5
<u>Savina v. Litton Indus.</u> , 330 N.W.2d 456 (Minn.1983).....	6
<u>Weidemann v. Kemper Ins. Group</u> , 251 N.W.2d 117 (Minn.1976).....	6
<u>Zontelli v. Smead Mfg. Co.</u> , 343 N.W.2d 639 (Minn.1984).....	12

ISSUES

I. Whether “any defense” as defined by Minn. Stat. § 176.221, subd. 1 includes the statute of limitation defense as set forth in Minn. Stat. § 176.151 (1)?

A The Workers’ Compensation Court of Appeals affirmed the decision of the compensation judge and held that “any defense” as defined by Minn. Stat. § 176.221, subdivision 1 does not include the statute of limitations defense as set forth in Minn. Stat. § 176.151 (1).

B The compensation judge held that the employee’s claims were not barred by the statute of limitations set forth in Minn. Stat. § 176.151 (1) as § 176.151 (1) was not “any defense” as defined in Minn. Stat. § 176.221, subdivision 1.

II. Whether the Minnesota Legislature drafted Minn. Stat. § 176.221, subd. 1 so as to overrule Meinen v. Dashow, 167 N.W.2d 730 (Minn. 1969)?

A The Workers’ Compensation Court of Appeals affirmed the compensation judge and held that the statutory amendments to Minn. Stat. § 176.221, subdivision 1, following Meinen v. Dashow, 167 N.W.2d 730 (Minn.1969), did not overrule existing case law to permit an employer or insurer to assert the statute of limitations as a defense despite a voluntary payment of benefits.

B The compensation judge held that Minn. Stat. § 176.221, subd. 1 did not overrule Meinen v. Dashow, 167 N.W.2d 730 (Minn.1969).

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 under a Temporary Order, as well as, contribution and reimbursement toward the lump sum it paid pursuant to a Stipulation for Settlement.

Met Con and SFM defended against these claims, in part, by arguing the employee exceeded the applicable three year statute of limitations, thereby precluding Gresser and Zurich from maintaining a contribution action against Met Con and SFM.

The compensation judge found that Gresser and Zurich were entitled to contribution and reimbursement and that the employee's claim did not exceed the statute of limitations as the statute of limitations was tolled when Met Con and SFM initially admitted liability and paid benefits, regardless of its later denial of liability.

The Workers' Compensation Court of Appeals affirmed the decision of the compensation judge and further held that Minn. Stat. §176.221, subdivision 1 did not overrule case law defining a "proceeding" under Minn. Stat. § 176.151.

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 18, 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-8.) 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-6.) Pursuant to a Temporary Order, Gresser subsequently began paying benefits and sought contribution and reimbursement from Met Con. (RA-1, RA-4.)

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. (RA-6.) Met Con and SFM declined to be parties to the Stipulation for Settlement. (Id.)

A hearing on Gresser's claim for contribution and reimbursement from Met Con was heard by the compensation judge on October 14, 2005. The issue presented, in part, at the hearing was whether the contribution and reimbursement claim against Met Con for the August 2001 injury was barred by the three year statute of limitations.

ARGUMENT

Standard of Review

Statutory interpretation by the Workers' Compensation Court of Appeals is subject to de novo review by this Court. Owens v. Water Gremlin Co., 605 N.W.2d 733, 735 (Minn.2000) ("When reviewing questions of law determined by the WCCA, we are free to exercise our independent judgment.").

Introduction

Gresser and Zurich maintain that Met Con and SFM's August 28, 2001 acceptance of primary liability and subsequent payment of benefits constitutes a "proceeding" sufficient to toll the three year statute of limitations pursuant to Minn. Stat. § 176.151 and Met Con and SFM's reliance on Minn. Stat. § 176.221, subdivision 1, is misplaced as Meinen v. Dashow, 167 N.W.2d 730 (Minn.1969), is the controlling law in this matter. Moreover, the 1981 and 1983 statutory amendments to Minn. Stat. § 176.221, subdivision 1, were not intended to overrule Meinen v. Dashow, 167 N.W.2d 730 (Minn.1969).

I. "Any Defense," As Defined By Minn. Stat. § 176.221, Subdivision 1, Does Not Include the Statute Of Limitation Defense As Defined By Minn. Stat. § 176.151(1).

Minn. Stat. § 176.151, provides, "[t]he time within which the following acts shall be performed shall be limited to the following periods..." Minn. Stat. § 176.151 (1), further states, "[a]ctions 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, but not to exceed six years from the date of the accident.” [Emphasis Added.]

The “proceedings” referred to in Minn. Stat. § 176.151 (1), have long been recognized to include voluntary payment of workers’ compensation benefits to an injured employee and § 176.151 has not been amended to clarify or overrule years of case law defining “proceedings.” Savina v. Litton Indus., 330 N.W.2d 456 (Minn.1983); Weidemann v. Kemper Ins. Group, 251 N.W.2d 117 (Minn.1976), Knopp v. Gutterman, 102 N.W.2d 689 (Minn.1960). Neither has Minn. Stat. § 176.221, subdivision 1 been interpreted so as to overturn this line of cases. Thus, once an employer or insurer voluntarily commence payment of benefits, the statute of limitations has been tolled and cannot later be asserted as a defense where the employer retroactively denied primary liability.

In Meinen v. Dashow, 167 N.W.2d 730 (Minn. 1969), the Supreme Court ruled that in a case very similar to this one, where the employer and insurer accepted liability for an injury, paid some benefits, and then retroactively denied primary liability, that the statute of limitations did not bar the employee’s later claims as some benefits were initially paid, thus commencing an action within the meaning of the statute.

In Meinen, the employee was injured on August 27, 1962, and the employer, insured by American Insurance Company (AIC), filed a first report of injury on September 7, 1962. Id. at 731. AIC paid benefits to the employee from September 4 to October 1, 1962, and on October 23, 1962, filed a Notice of Denial of Liability. Id. The employee did nothing to enforce his rights under the Workers’ Compensation Act for approximately four years. Id.

at 732. Thereafter, on January 12, 1967, the employee filed a Claim Petition relative to the August 27, 1962 date of injury. Id. The employer and insurer asserted a statute of limitations defense, citing the applicable statute, Minn. Stat. § 176.151(1), which at the time provided

The time within which the following acts shall be performed shall be limited to the following periods, respectively: (1) Actions or proceedings by an injured employee to determine or recover compensation, two years after the employer has made written report of the injury to the commission, but not to exceed six years from the date of the accident.

Id.

Although more than two years had passed since the employer filed a first report of injury with the commission, the court found that the statute of limitations did not apply in an action against the employer and insurer on the date of injury. The court used the following reasoning in their determination

When the employer filed with the commission a report of the accident of August 27, 1962, and then four payments of compensation were made to the employee, proof of which was also filed with the commission, a "proceeding" was commenced. This being so, the 2-year limitation provided for in § 176.151 has no application. That the employer-insurer decided that the payment was made in error and filed its denial of liability about 2 months after the accident occurred does not alter the situation. . . . [W]e do not see how a change of mind on the part of the employer-insurer could transform acts constituting proceedings before the Workmen's Compensation Commission to something less than that.

Meinen, 167 N.W.2d at 732.

Clearly, the facts in this case are very similar to those in Meinen. In this case, Met Con filed a first report of injury on or about August 17, 2001, and State Fund Mutual commenced payment of benefits on August 20, 2001. Benefits were paid until September

16, 2001, after which Met Con and State Fund Mutual filed a denial of primary liability. After Met Con filed the first report of injury with the commission or Department of Labor and Industry and payments were made to the employee, a “proceeding” was commenced, barring the three-year statute of limitations provided in Minn. Stat. § 176.151.

II. The Minnesota Legislature Did Not Draft Minn. Stat. § 176.221, Subdivision 1 to overrule Meinen v. Dashow, 167 N.W.2d 730 (Minn.1969)

Met Con and SFM argue the 1983 amendment to Minn. Stat. § 176.001 and 1981 and 1983 amendments to Minn. Stat. § 176.221, subdivision 1 overrule the longstanding principle set forth by Meinen v. Dashow, 167 N.W.2d 730 (Minn.1969) and previous jurisprudence—that an employer and insurer’s voluntary payment of benefits tolls the three and six year statute of limitations in which an employee may bring a workers’ compensation claim.. Conversely, Gresser and Zurich maintain that the 1981 and 1983 amendments to Minn. Stat. § 176.151 did not overrule Meinen v. Dashow. Rather, the legislative amendments simply codify the principle that a voluntary payment of benefits does not automatically estop an employer or insurer from later asserting the injury did not arise out of and in the course of employment.

First, with regard to Minn. Stat. § 176.001, Met Con and SFM argue the 1983 amendment to same eliminated the Act’s remedial nature and the decision in Meinen v. Dashow was impermissibly premised upon a remedial interpretation of the Act, therefore, § 176.001 (1983) overrules Meinen v. Dashow. This argument is without merit.

Met Con and SFM's sole support for this argument is one paragraph in the Meinen decision, which reads:

If the employer-insurer was justified in refusing to make 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, 167 N.W.2d at 733. According to Met Con and SFM, this language *clearly* demonstrates the Meinen Court's application of the liberal construction and remedial nature at that time. (Relator's Brief, p. 7.) (Emphasis Added). Gresser and Zurich object to this characterization of the aforesaid paragraph. There is nothing in this paragraph that "clearly" announces the decision, or rationale behind the decision, is based upon a liberal construction of the workers' compensation statute to benefit the injured worker. In fact, the decision was based upon a more important premise—that a change of mind on the part of the employer-insurer cannot transform acts constituting proceedings to something less than that. Furthermore, this Court has consistently held that years of judicial precedence will not be overturned simply, because the pre-1983 decisions were decided during a period of time when the Act was liberally construed to favor the injured worker.

There is no doubt that the 1981 enactment of § 176.001 and its 1983 amendment changed the intent of the legislature, which now reads:

It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. 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. ...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.

Minn.Stat. 176.001 (1994) (emphasis added).

In two of cases decided after the 1983 amendments to the Act, this Court discussed the construction of the Act. It said, "Statutes are to be construed so as to yield reasonable results, consistent with the admonition contained in Minn.Stat. § 176.001 (1984) that the Act is to be construed in a nondiscriminatory manner." Hagen v. Venem, 366 N.W.2d 280, 284 (Minn.1985); see also Foley v. Honeywell, 488 N.W.2d 268, 271-72 n. 2 (Minn.1992). Later, this Court held "that the even-handed standard is the correct standard to apply in determining questions of law under the Act." O'Malley v. Ulland Bros., 549 N.W.2d 889, 894 (Minn.1996). "The even-handed standard permits the Act to be construed to yield reasonable results consistent with prior decisions of this court and with the legislative intent of section 176.001-that is to say, that the Act shall be construed in a nondiscriminatory fashion." *Id.*

Met Con and SFM also rely on Minn. Stat. § 176.221, subdivision 1 in its pursuit to overturn Meinen v. Dashow. Minn. Stat. § 176.221, subdivision 1 provides:

Commencement of payment. Within 14 days of notice to or knowledge by the employer of 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 the compensation due.* Where there are multiple employers, the first employer shall pay, unless it is shown that the injury has arisen out of employment with 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 and served on the employee 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. After the 60-day period, payment may be terminated only by the filing of a notice as provided under section 176.239. Upon the termination, payments made may be recovered by the employer if the commissioner or compensation judge finds that the employee's claim of work related disability was not made in good faith. A notice of denial of liability must state in detail the facts forming the basis for the denial and specific reasons explaining why the claimed injury or occupational disease was determined not to be within the scope and course of employment and shall include the name and telephone number of the person making this determination.

[Emphasis Added]. In its brief, Met Con and SFM contend the Minnesota Legislature rewrote Minn. Stat. § 176.221, subdivision 1 in its entirety with the unequivocal intent that “any defense” be reserved if a payment for compensation is made, which is later rescinded. By its plain meaning, “any defense” in Minn. Stat. § 176.221, subdivision 1, must necessarily include a statute of limitations defense.

In making this argument, Met Con and SFM overlook the fundamental principle of statutory construction:

The object of all interpretation and construction of law is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, *to give effect to all its provisions.*

Minn. Stat. § 645.26 [Emphasis Added]. Gresser and Zurich maintain that Minn. Stat. §§ 176.151 and 176.221 must, and can be, construed together to effectuate the intent of the legislature in quickly delivering benefits to injured employees, while at the same time protecting the employer from unreasonable costs and burdens.

Under the workers' compensation act, a payment of benefits to the employee indicates an acceptance of liability for the injury and constitutes a proceeding for the purposes of Minn. Stat. § 176.151(1). Livgard v. Cornelius Co., 243 N.W.2d 309, 311 (Minn.1976). As the Workers' Compensation Court of Appeals held, a voluntary payment of benefits is an admission by the employer and insurer that the employee's injury is one "arising out of and in the course of employment." Minn. Stat. § 176.011, subdivision 16. However, according to this Court, a voluntary payment of benefits does not, absent prejudice, estop an insurer from later denying primary liability for a claimed injury. Zontelli v. Smead Mfg. Co., 343 N.W.2d 639 (Minn.1984). This, of course, ensures the quick and efficient delivery of benefits to the injured employee, while still protecting the interests of the employer. In other words, it is the "even-handed" approach that the legislature intended when drafting the laws. See O'Malley v. Ulland Bros., 549 N.W.2d 889, 894 (Minn.1996).

Moreover, it can not be fairly stated that the clear intent of the legislature in including "any defense" in Minn. Stat. § 176.221, subdivision 1, was to overrule the definition of "proceeding" in Minn. Stat. § 176.151(1). Clearly, these are two distinct

statutory provisions and if the legislature had intended to overrule years of judicial precedence with respect to the interpretation of “proceedings”, it would have more directly attacked Minn. Stat. § 176.151 by amending it or repealing it. The legislature did neither, Minn. Stat. § 176.151 has essentially remained unchanged since the Meinen decision was issued.

As the Workers’ Compensation Court of Appeals stated, “a bell once rung, cannot be unring.” It is unfathomable that an employer or insurer would be allowed to gain a defense it lost when the action or proceeding commenced. Minn. Stat. § 176.221, subdivision 1, merely provides that the employer does not waive any defenses it might otherwise have available, such as primary liability.

CONCLUSION

For purposes of Minn. Stat. § 176.151, a voluntary payment of benefits is still considered a “proceeding” which tolls the statute of limitations. Minn. Stat. § 176.221, subdivision 1, simply codifies the principle that a voluntary payment of benefits will not automatically estop an employer or insurer from later asserting the injury did not arise out of or in the course of employment. As Met Con and SFM voluntarily assumed payment of benefits to the employee following the 2001 injury, the statute of limitations in which the employee may bring a claim has been tolled and Met Con and SFM are precluded from asserting a statute of limitations defense. Gresser Companies and Zurich Insurance respectfully request that this Court affirm the decisions of the compensation judge and

Workers' Compensation Court of Appeals that the employee's claims against Met Con were not barred by the statute of limitations.

Respectfully Submitted,

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

DATE: November 16, 2006



JAY T. HARTMAN (#124291)
JENNIFER A. CLAYSON KRAUS (#0350242)
Attorneys for Gresser Companies and
Zurich Insurance Company/Creative Risk Solutions
550 Hamm Building
408 St. Peter Street
St. Paul, MN 55102
(651) 222-2922

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. 132.01, subdivisions 1 and 3, for a brief produced with a proportional font. The length of the brief is 356 lines and 3,810 words. This brief was prepared using Microsoft Word Office 2003.

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

DATE: November 16, 2006

JAY T. HARTMAN (#124291)
Attorneys for Gresser Companies and
Zurich Insurance Company/Creative Risk Solutions
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).