

No. A12-1654

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State of Minnesota  
**In Court of Appeals**

CONTINENTAL HYDRAULICS INCORPORATED,

*Relator,*

vs.

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

*Respondent.*

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**RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX**

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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).

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## **Legal Issue**

Minnesota law assigns a special tax rate to successor corporations who purchase a portion of a predecessor corporation, and there is substantial common management or control between the two. In such cases, the successor receives a tax rate that is based in part on the predecessor's tax rate. Here, Continental Hydraulics, Inc. acquired the hydraulics division of Continental Machines, Inc., and retained all of the division's employees. Save for the Italian president of Continental Hydraulics, all of its managers are former Continental Machines employees. Was Continental Hydraulics a successor, properly assigned a tax rate based in part on Continental Machines, Inc.'s rate, and properly penalized for failing to promptly report the succession to the Minnesota Department of Employment and Economic Development ("DEED")?

Unemployment Law Judge Scott Mismash found that it was.

## **Statement of the Case/Statement of Facts**

The question before this court is whether Continental Hydraulics, Inc., is a successor to Continental Machines, Inc. For ease of understanding, the statement of the case and statement of facts have been combined.

Continental Machines is a privately-held Minnesota corporation that, until 2011, had two divisions: a hydraulics division and a machine tool division.<sup>1</sup> It had

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<sup>1</sup> E-7, T. 19. Transcript references will be indicated "T." Exhibits in the record will be "E-" with the number following.

165 employees, 81 of whom worked in the hydraulics division.<sup>2</sup> It sought a buyer for its hydraulics division beginning in 2009, and entertained bids in 2010.<sup>3</sup> The successful bidder was an Italian company, Duplomatic Oleodinamica SpA, a unit of AXA Investment Managers Private Equity Europe SA, which is in turn a subsidiary of AXA SA.<sup>4</sup> Duplomatic then created Continental Hydraulics, Inc., wholly owned by Duplomatic, in an effort to break into the North American hydraulics market.<sup>5</sup> Continental Hydraulics then purchased the hydraulics division from Continental Machines, Inc. in April of 2011.<sup>6</sup>

Following the purchase, Continental Hydraulics hired all 81 of the hydraulics division employees from Continental Machines.<sup>7</sup> Those employees continue to report to the same building in Savage, MN, which Continental Machines owns and now leases to Continental Hydraulics.<sup>8</sup>

Continental Hydraulics currently has three executive-level employees, two of whom came from Continental Machines.<sup>9</sup> The first, Gary Heist, is currently the chief financial officer of Continental Hydraulics, and participated as Continental Hydraulics' only witness at the hearing before the ULJ.<sup>10</sup> He was the vice president and treasurer at Continental Machines, and at Continental Hydraulics

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<sup>2</sup> T. 19, E-6, p. 1.

<sup>3</sup> T. 22.

<sup>4</sup> T. 10-11, 13, 22, E-9, p. 4.

<sup>5</sup> T. 11, 18.

<sup>6</sup> E-9, p. 3, T. 10, 11, 30.

<sup>7</sup> T. 19-20.

<sup>8</sup> T. 3, 22-23, E-2.

<sup>9</sup> T. 16.

<sup>10</sup> T. 2-3.

serves “the same function that [he] did for Continental Machines.”<sup>11</sup> The second, Dale Horihan, was the general manager of the hydraulic division at Continental Machines, and is now the CEO of Continental Hydraulics, and has total local control.<sup>12</sup> The third, Roberto Maddalon, is the Italian CEO of Duplomatic, and serves as the chairman and president of Continental Hydraulics.<sup>13</sup> All of Continental Hydraulics’ employees report to Horihan, who in turn reports to Maddalon.<sup>14</sup> However, Maddalon has little experience in the United States market, and generally relies on Heist and Horihan for advice and guidance on the market.<sup>15</sup>

Continental Hydraulics’ managers also came from Continental Machines. Cheryl Marshall, the director of operations at Continental Hydraulics, was the director of materials at Continental Machines.<sup>16</sup> Continental Hydraulics sales manager Vonn Bonemma was previously also in sales at Continental Machines, although not in a management capacity.<sup>17</sup>

Around August of 2011, Continental Hydraulics registered itself as a business entity with DEED, and sought a new employer identification number.<sup>18</sup> DEED sent a reminder to Continental Hydraulics that they were required to

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<sup>11</sup> T. 15.

<sup>12</sup> T. 15.

<sup>13</sup> T. 15, 16, 18.

<sup>14</sup> T. 16.

<sup>15</sup> T. 18.

<sup>16</sup> T. 16.

<sup>17</sup> T. 16.

<sup>18</sup> E-5, T. 21-22.

provide requested information about its acquisition of the Continental Machines division within 30 days, and gave instructions on how to do so.<sup>19</sup> In November of 2011, a routine electronic review of Continental Hydraulics' filings alerted DEED to the fact that Continental Hydraulics was reporting wages on employees who had all previously been employed by Continental Machines. DEED sent Continental Hydraulics a letter informing it that it planned to transfer Continental Machines' tax experience rating to Continental Hydraulics effective April 21, 2011, and gave Continental Hydraulics 30 days to respond.<sup>20</sup> Because DEED paid over \$585,000 in unemployment benefits to a number of Continental Machines employees from 2006 through 2010, this tax rating was high: 8.34% in 2011.<sup>21</sup>

On December 19, 2011, Continental Hydraulics went online, and updated its information in DEED's computer system. It indicated that it had acquired part of Continental Machines, Inc. on April 21, 2011, had acquired 81 of 165 employees, and that it shared either 25% or more common ownership or "substantially common management or control" with the predecessor.<sup>22</sup> The next day, DEED sent Continental Hydraulics a letter confirming that it was transferring 49.09% of Continental Machines' experience rating to Continental Hydraulics,

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<sup>19</sup> E-5.

<sup>20</sup> E-4.

<sup>21</sup> E-1, p. 2.

<sup>22</sup> E-6.

and was additionally assessing an \$18,201 penalty for Continental Hydraulics' failure to notify DEED of the acquisition in a timely manner.<sup>23</sup>

Continental Hydraulics appealed both the experience rating transfer and the penalty, and Unemployment Law Judge ("ULJ") Scott Mismash held a consolidated de novo hearing on both issues. The ULJ found that Continental Hydraulics was properly determined to be a successor to Continental Machines, that a portion of the experience rating was properly transferred, and that DEED properly assessed a penalty against Continental Machines for failing to promptly notify DEED of its acquisition of the Continental Machines hydraulics division.<sup>24</sup> Continental Hydraulics filed a request for reconsideration with the ULJ, who affirmed.<sup>25</sup>

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Continental Hydraulics under Minn. Stat. § 268.105, subd. 7(a) (2012) and Minn. R. Civ. App. P. 115. DEED is charged with the responsibility of administering and supervising the unemployment insurance program.<sup>26</sup> Unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not by an employer or from employer

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<sup>23</sup> E-8.

<sup>24</sup> Appendix, A5-A10. Because the ULJ issued two identical decisions following a consolidated hearing on both the experience rating and penalty issues, only one copy of the ULJ's decision and order on reconsideration are attached to this appendix.

<sup>25</sup> Appendix, A1-A4.

<sup>26</sup> Minn. Stat. § 116J.401, subd. 1(18) (2012).

funds.<sup>27</sup> In 2011, over \$1.8 billion in combined state benefits and federally funded extended benefits were paid from the trust fund to over 275,000 unemployed Minnesotans. DEED's interest therefore carries over to the Court of Appeals' interpretation and application of the Minnesota Unemployment Insurance Law. DEED is thus considered the primary responding party to any judicial action involving a ULJ's decision.<sup>28</sup>

### Standard of Review

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Continental Hydraulics' substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.<sup>29</sup>

The Court of Appeals held in *Skarhus v. Davannis* that it will not disturb the ULJ's factual findings when the evidence substantially sustains them.<sup>30</sup>

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<sup>27</sup> Minn. Stat. § 268.069, subd. 2 (2012); *N.L.R.B. v. Gullett Gin Co.*, 340 U.S. 361, 364 (1951) ("Payments to the employees were not made to discharge any liability or obligation of respondent, but to carry out a policy of social betterment for the benefit of the entire state."); *see also Lolling v. Midwest Patrol*, 545 N.W.2d 372, 376 (Minn. 1996); *Jackson v. Minneapolis Honeywell Regulator Co.*, 47 N.W.2d 449, 451 (Minn. 1951) (recognizing that unemployment benefits are paid from state funds).

<sup>28</sup> Minn. Stat. § 268.105, subd. 7(e) (2012).

<sup>29</sup> Minn. Stat. § 268.105, subd. 7(d) (2012).

<sup>30</sup> 721 N.W.2d 340, 344 (Minn. App. 2006) (citing Minn. Stat. § 268.105, subd. 7(d)).

“Substantial evidence” is the relevant evidence that “a reasonable mind might accept as adequate to support a conclusion.”<sup>31</sup> In *Ress v. Abbott Northwestern Hosp., Inc.*, the Supreme Court stated that the appellate courts exercise independent judgment on issues of law.<sup>32</sup>

### Argument

Under Minnesota law, a business is a successor, and subject to having receiving a tax experience rating based in part on the predecessor’s rating, when there is substantially common management between the two. Minn. Stat. § 268.051, subd. 4 explains that:

(b) A portion of the experience rating history of the predecessor employer is transferred to the successor employer when:

(1) a taxpaying employer acquires a portion, but less than all, of the organization, trade or business, or workforce of another taxpaying employer; and

(2) there is 25 percent or more common ownership or there is substantially common management or control between the predecessor and successor, the successor employer acquires, as of the date of acquisition, the experience rating history attributable to the portion it acquired, and the predecessor employer retains the experience rating history attributable to the portion that it has retained. If the commissioner determines that sufficient information is not available to substantiate that a distinct severable portion was acquired and to assign the appropriate distinct severable portion of the experience rating history, the commissioner must assign the successor employer that percentage of the predecessor employer's experience rating history equal to that percentage of the employment positions it has obtained, and the predecessor

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<sup>31</sup> *Moore Assocs., LLC v. Comm’r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996).

<sup>32</sup> 448 N.W.2d 519, 523 (Minn. 1989).

employer retains that percentage of the experience rating history equal to the percentage of the employment positions it has retained.

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(d) Each successor employer that is subject to paragraph (a) or (b) must notify the commissioner of the acquisition by electronic transmission, in a format prescribed by the commissioner, within 30 calendar days of the date of acquisition. Any successor employer that fails to notify the commissioner is subject to the penalties under section 268.184, subdivision 1a, if the successor's assigned tax rate under subdivision 2 or 5 was lower than the predecessor's assigned tax rate at the time of the acquisition. Payments made toward the penalties are credited to the trust fund.

Statutory terms are, of course, given their plain ordinary meaning unless specifically defined otherwise.<sup>33</sup> A court may not set aside the plain meaning of the statute in order to insert its own concept of what it believes the law ought to be.<sup>34</sup>

Here, the key phrase is “substantially common management or control between the predecessor and successor.” On a day-to-day level, the management and control of Continental Hydraulics is overwhelmingly similar to what existed at Continental Machine. Gary Heist, currently the chief financial officer at Continental Hydraulics, testified that he currently performs “the same function that [he] did for Continental Machines.”<sup>35</sup> Dale Horihan, formerly the general manager at Continental Machines, is now the CEO at Continental Hydraulics, and has total local control. The other two managers at Continental Hydraulics also

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<sup>33</sup> Minn. Stat. § 645.08 (2012).

<sup>34</sup> Minn. Stat. § 645.16 (2012).

<sup>35</sup> T. 15.

came from Continental Machines. Cheryl Marshall, the former director of materials, is now the director of operations.<sup>36</sup> Only Vonn Bonemma is new to management; the previous sales associate is now the sales manager.<sup>37</sup> On a day-to-day level, the management team still reports to an off-site head. At Continental Machines, owner and chairman Michael Wilkie was located in Chicago, and made the ultimate decisions about the company, including hiring, layoffs, and major purchases.<sup>38</sup> This is also true of the current president of Continental Hydraulics, who works in Italy.<sup>39</sup> In short, the management and local control of Continental Hydraulics is still in the hands of Heist and Horihan, who lead the managers under them, and report and advise the ultimate decisionmaker, who works off-site.

Relator's brief makes a befuddling argument: that "substantially common management or control between the predecessor and successor" means that there must be some period of time in which the same individuals exercising the management or control were working for both the predecessor and the successor.<sup>40</sup> It then goes on to argue that "management" can only mean executive-level officers.<sup>41</sup>

This is a strange reading of the statute, and one that has no basis in Minnesota law. Minnesota law does not state that a succession only occurs when

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<sup>36</sup> T. 16.

<sup>37</sup> T. 16.

<sup>38</sup> T. 20, 32.

<sup>39</sup> T. 15, 16, 18.

<sup>40</sup> Relator's brief, p. 15-16.

<sup>41</sup> Relator's brief, p. 16.

there is substantially common management or control both before, during, and after a succession. It contains no requirement that two businesses be operating contemporaneously. It does not contemplate that a predecessor will also survive a succession, nor that a successor will exist as a unique entity prior to a succession. Indeed, Minn. Stat. § 268.051, subd. 4(f) explains that “If there has been a transfer of an experience rating history under paragraph (a) or (b), employment with a predecessor employer is not considered to have been terminated if similar employment is offered by the successor employer and accepted by the employee.” The law expressly contemplates that a successor corporation will retain employees of the predecessor corporation.

Relator’s brief is partially accurate in its explanation of what the federal SUTA Act, 42 U.S.C. § 503(k)(1) did, in that Minnesota did broaden its statutory succession definition to include not just common ownership, but also common management and control. However, relator’s brief does not cite a single case, either before or after the statute was amended, in which a successor and a predecessor were required to contemporaneously operate in order for such a succession to occur. And indeed, no such cases exist. Minn. Stat. § 268.051, subd. 4(h) states that: “For purposes of this chapter, an ‘acquisition’ means anything that results in the obtaining by the successor employer, in any way or manner, of the organization, trade or business, or workforce of the predecessor employer.” Once a thing is obtained by another, it no longer exists in its prior state. Under relator’s interpretation, predecessor and successors would cease to

exist as a practical matter under the statute, since any portion of a predecessor, once acquired, will no longer be operating in the same way it did before the acquisition.

If the Minnesota legislature had wanted such a contemporaneous requirement to exist, it could have written it into the statute. It did not. The Federal Unemployment Tax Act, 26 U.S.C. § 3301 *et seq.* and the Federal Unemployment Compensation Act, 42 U.S.C. § 501 *et seq.* both provide monetary incentives to encourage Minnesota to operate an unemployment insurance program, including tax credits to Minnesota employers and administrative funding to the Department. This is why state unemployment insurance laws have both substantial overlap and substantial differences; federal law sets the floor, but not the ceiling, for what state laws must contain in order to retain eligibility for federal funds. As relator's brief notes, Texas law defined "substantially common management or control."<sup>42</sup>

Minnesota's legislature chose not to adopt such confining definitions. Similarly, Minnesota is one of the only states that assigns a penalty to employers who fail to report an acquisition within 30 days. Most states penalize only those employers who engage in SUTA dumping. Minnesota, though, penalizes employers who fail to notify DEED of a succession, even where the employer had no deceptive intention, and even where the employer would have actually benefited by notifying DEED and having the experience rating transferred.

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<sup>42</sup> Relator's brief, p. 17.

Federal law provides certain requirements, and offers guidance on what those requirements mean, but states can and do differ in their ultimate adoption of conforming state laws.

It is true, as relator's brief notes, that Minnesota did expand the number of situations in which an experience rating would be transferred from a predecessor to a successor, to include situations in which there was substantially common management or control between the two.<sup>43</sup> But it is also true that the Minnesota legislature made no requirement that successors and predecessors operate during some contemporaneous and overlapping period. Indeed, such a requirement would virtually eliminate cases in which experience ratings are transferred, as the most common experience transfer ratings involve the sale or transfer of an existing corporation (which then ceases to operate) to a new corporation to take advantage of the lower experience rating assigned to new employers under Minn. Stat. § 268.051, subd. 5. And the federal Department of Labor has never found that Minnesota's successor laws are out of conformity.

The United States Department of Labor issues guidance documents to assist states in adopting state laws that conform with the federal requirements. One such document, entitled "DETAILED EXPLANATION OF SECTION 303(k)," answers the question "How does a state determine if there is 'substantially' common ownership, management, or control of two employers?" The document explains:

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<sup>43</sup> Relator's brief, p. 13.

The state must examine the facts of each case using reasonable factors. Among other things, the state would consider the extent of commonality or similarity of: ownership; any familial relationships; principals or corporate officers; organizational structure; day-to-day operations; assets and liabilities; and stated business purposes. The Department is not at this time establishing a bright line test of what constitutes “substantially” common ownership, management, or control.<sup>44</sup>

Here, the ULJ properly considered these types of factors. “Management” and “control” are not ambiguous, they are not terms of art, and the ULJ applied their plain ordinary meaning. Day after day, Continental Machines’ former employees report to work at the same job site, to do the same work. They are managed by the same familiar faces that oversaw their work at Continental Machines, including Heist, Horihan, and Marshall. In particular, Heist and Horihan, who managed the day-to-day operations and controlled the work site at Continental Machines, continue to do so at Continental Hydraulics, and continue to give advice to the off-site decisionmakers who ultimately control the company. Minnesota law does not define these terms, and certainly does not adopt relator’s contention that “management” means executives that must make all major decisions for the company.

Relator’s brief argues that Continental Hydraulics did not participate in any sort of sham transaction, and cites to a DOL document outlining one such sham transaction as an example of how SUTA dumping can occur. But that is not the inquiry imposed by this statutory provision. The plain language of this statutory

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<sup>44</sup> [http://wdr.doleta.gov/directives/attach/UIPL30-04\\_AttachI.cfm](http://wdr.doleta.gov/directives/attach/UIPL30-04_AttachI.cfm)

provision makes no reference to sham transactions, and orders no investigation into the motives of the involved parties. Relator claims that Minnesota's law "is not meant to apply to an arm's length, marketed asset purchase."<sup>45</sup> This argument ignores the fact that someone must pay for the benefits that unemployed workers receive. Unemployment benefits are paid from state funds, the unemployment insurance trust fund, not by an employer or employer funds.<sup>46</sup> There is widely-held yet erroneous view that employers pay the cost of benefits, despite the fact that all benefits are paid from the public fund, and even in the best of years only 60% of benefits are charged back to the employers whose former employees collected benefits. The other 40% collected from the public fund is borne by taxpaying employers as a whole. The public interest prevails over any private interest,<sup>47</sup> and the public has a strong interest in the proper payment of benefits.

Contrary to popular belief, an employer does not prepay the state unemployment insurance trust fund for benefits paid out. Indeed, the opposite occurs. When the state trust fund pays benefits to an unemployed worker, the employer's experience rating increases and the trust fund recoups the amount of unemployment benefits paid out, usually over a four-year period following the benefit payout. The base tax rate assigned to all employers covers the costs of businesses that cease operation, as those businesses obviously do not repay the unemployment trust fund for the benefits their former employees receive.

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<sup>45</sup> Relator's brief, p. 18.

<sup>46</sup> Minn. Stat. § 268.069, subd. 2.

<sup>47</sup> Minn. Stat. § 645.17(5) (2012).

When an employer is able to avoid its experience rating, it means that the state trust fund is unable to fully recoup the unemployment benefits paid to its former employees. The cost of benefits must then be borne by the remaining Minnesota employers, who suffer a higher base tax rate. Here, Continental Machines' employees received over \$585,000 in unemployment benefits between 2006 and 2010. The money from the fund is gone, and the fund needs to be replenished. The legislature made a decision that this is a cost that should be borne, at least in part, by the successor corporation, rather than Minnesota businesses as a whole. This is not designed to be punitive, and there is no reason why a successor corporation would be unable to consider the predecessor's experience tax rating when doing due diligence on the company's liabilities and assets, and when making a decision about purchase price and conditions. Indeed, Continental Hydraulics, in engaging in an "arm's length, marketed asset purchase" was in an optimal position to carry out this type of calculus.

Minnesota law already contains a provision to penalize those companies that seek to manipulate the unemployment insurance system in order to procure a lower experience rating. Minn. Stat. § 268.051, subd. 4a, allows DEED to transfer all or part of an experience rating, "regardless of whether there is any commonality of ownership, management, or control between the person," if it concludes that an employer took an action to avoid an experience rating history or avoid the transfer of an experience rating history. DEED has never contended that

Continental Hydraulics engaged in a sham transaction or in SUTA dumping, and did not seek to penalize Continental Hydraulics under this statutory provision.

Finally, Continental Hydraulics argues that it should not be subjected to any penalty for failing to promptly inform DEED of its acquisition of Continental Machines' hydraulics division. DEED must again note that this penalty is not applied only to those employers who have engaged in SUTA dumping, as relator's brief contends.<sup>48</sup> DEED has never contended that Continental Hydraulics attempted to engage in SUTA dumping. But Continental Hydraulics did fail to notify DEED that it acquired a portion of Continental Machines, even after DEED mailed it a letter specifically informing it to fill out an online questionnaire to determine whether a succession took place.

DEED has no way of knowing when one company buys another, unless that company informs DEED of the purchase. DEED has an interest in the prompt and proper assessment of tax experience ratings, and so by law, requires that employers report acquisitions within 30 calendar days of the date of acquisition. Here, Continental Hydraulics acquired Continental Machines in April of 2011. Despite multiple letters from DEED, Continental Hydraulics did not report the acquisition until December of 2011, far after the 30-day requirement. Under Minn. Stat. § 268.184, subd. 1a(a), where "an employer failed to meet the notification requirements of section 268.051, subdivision 4, the employer must be assessed a penalty of \$5,000 or two percent of the first full quarterly payroll

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<sup>48</sup> Relator's brief, p. 27.

acquired, whichever is higher...The penalty under this paragraph must be canceled if the commissioner determines that the failure occurred because of ignorance or inadvertence.”

Relator’s brief makes two arguments: that Continental Hydraulics was not “subject” to subdivision (a) or (b), and that its failure to report the acquisition was caused by ignorance or inadvertence.<sup>49</sup> Specifically, relator argues that Continental Hydraulics is not a successor, and therefore was not “subject” to the successor laws, and had no obligation to notify DEED of the acquisition. But under the clear language of the statute, employers are required to notify DEED of any acquisition to allow DEED adjudicators to make a determination about whether the succession occurred. Minn. Stat. §268.051, subd. 4(g) explains that “The commissioner, upon notification of an employer, or upon the commissioner’s own motion if the employer fails to provide the required notification, must determine if an employer is a successor within the meaning of this subdivision.” DEED, and not the employer, must decide whether the succession occurred. Continental Hydraulics acquired a portion of an existing employer. The law does not state that only successors must notify DEED of an acquisition, but broadly requires that employers “subject to” the law must notify DEED of an acquisition. Even if this Court were to find that Continental Hydraulics were not a successor, it would still be subject to subdivisions a and b, in that first DEED and now this Court must consider whether, under the law, it is a successor or not. Continental

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<sup>49</sup> Relator’s brief, pp. 25-26.

Hydraulics, by failing to notify DEED of its acquisition until eight months after the fact, delayed an inquiry that under the law needed to take place.

Moreover, DEED notified Continental Hydraulics of this requirement. As early as August 5, 2011, DEED notified Continental Hydraulics by mail that it was required to notify DEED of an acquisition.<sup>50</sup> It specifically cited Minn. Stat. § 268.051, subd. 4(d). It followed up with an additional letter in November of 2011, again indicating that Continental Hydraulics needed to go online and fill out a questionnaire about the acquisition. But Continental Hydraulics did not go online and fill out the questionnaire until December 19. The questionnaire was less than two pages long, and could not have taken more than a few minutes to fill out. Continental Hydraulics cannot blame its delay on ignorance or inadvertence. Minnesota law is unlike most other states, in that the Minnesota legislature chose to penalize employers who failed to notify DEED of an acquisition of all or part of a company, regardless of the employer's intent. Continental Hydraulics failed to timely fill out the questionnaire, and the ULJ properly found that it was subject to the penalty.

### **Conclusion**

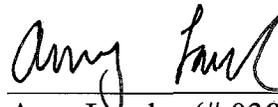
Unemployment Law Judge Scott Mismash correctly concluded that Continental Hydraulics was a successor to Continental Machines, and properly affirmed the 49.09% experience rating transfer from Continental Machines to

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<sup>50</sup> E-5.

Continental Hydraulics. DEED asks that the Court affirm the decision of the Unemployment Law Judge.

Dated this 3<sup>rd</sup> day of January, 2013.



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