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Court of Appeals Keeps Workers' Compensation Dispute Out of District Court

The Minnesota Court of Appeals vacated a Ramsey County District Court Order granting summary judgment to two Minnesota counties that sought to have a workers' compensation claim adjudicated outside of the workers'



John Guthmann

compensation courts. Both counties argued that any workers' compensation claim that is based upon a statute not found in the workers' compensation law opens the door to district court jurisdiction. In December 2006, the Minnesota Supreme Court refused to accept review of the case.

On June 15, 2002 Robert Sutherland asked Paul Fish to examine the insulation under his Roseau County home to see if it had been damaged in a recent flood. Fish previously installed the insulation. Shortly after Fish emerged from beneath the house, he suffered a stroke that resulted in a partial loss of speech and left him essentially a quadriplegic. Thereafter, Fish filed a claim for workers' compensation benefits against Roseau and Lake of the Woods County on the theory that he was assisting in flood relief when he suffered his stroke within the meaning of Minn. Stat. § 12.22, subd. 2(a). Under the statute, a qualifying flood relief volunteer is deemed an employee of the county. Fish later amended his Claim Petition to also allege that he was an employee of Sutherland and Strata Corporation (a company that had a contract with Sutherland to maintain his property in exchange for the right to extract gravel from the property).



Joe Twomey

workers' compensation law as it was not referenced in the workers' compensation statutes. Accordingly, the counties argued, workers' compensation judges did not have jurisdiction to adjudicate the rights of Fish as a potential "employee."

Both Fish and Strata Corporation opposed the civil lawsuit. HDBOB attorneys John Guthmann and Joe Twomey represented Strata and took an active role in seeking a dismissal of the civil lawsuit out of concern that adjudication of Fish's rights in two different courts could produce inconsistent results. Fish and Strata filed Motions for Summary Judgment on the basis that the district court lacked jurisdiction to determine a workers' compensation claim and on the basis that no judicable controversy existed because district courts do not have jurisdiction to issue a declaratory judgment when the court has no jurisdiction over the underlying claim. In Fish's case, the underlying action was Fish's workers' compensation claim. Each county filed a separate Motion for Summary Judgment on the basis that Fish did not qualify as a flood volunteer under Minn. Stat. § 12.22 as a matter of law.

Rather than adjudicate the claim through the workers' compensation courts, the two counties filed a Declaratory Judgment action in Ramsey County District Court. They argued that Minn. Stat. § 12.22 fell outside the

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Jury Significantly Discounts Plaintiff's Injury Claims

A Chisago County jury substantially reduced the claimed value of an automobile liability action in which symptom magnification played a major role in the defense.



James Schaps

The plaintiff, a fifty-eight year old passenger in a car involved in a collision resulting in very little property damage, complained of neck pain and headaches as well as injuries to her right knee, right hip and right arm and shoulder. She also alleged post-traumatic depression. The plaintiff treated extensively for her alleged injuries – including two neurosurgical consultations – amassing medical expenses in excess of \$155,000.00 by the time of trial. She demanded \$340,000.00 (including medical expenses) for a full settlement.

HDBOB partner James Schaps presented compelling medical testimony from experts in the area of orthopedic surgery and psychology. The experts concluded that the plaintiff's pre-existing conditions were not aggravated by the low-impact collision. The psychologist specifically stated that, in his opinion, the plaintiff was engaged in "symptom magnification."

The jury found that the plaintiff had not sustained permanent disfigurement or a permanent injury, nor had she sustained a 60-day disability as a result of the accident. Of the \$155,000.00 in claimed medical expenses, the jury found that only \$7,550.46 were reasonable, necessary and causally related to the accident. The jury rejected past and/or future claims for pain and suffering, emotional distress or other damages. Following application of collateral offsets, the jury's verdict was reduced to a defense verdict.

Minnesota Supreme Court Addresses Dual-Purpose Rule

The Minnesota Supreme Court summarily affirmed the Workers' Compensation Court of Appeals ruling regarding the dual purpose doctrine.

In *Kurtz ex. Rel. v. Lakes Medi Van, Inc.*, No. WC05-281, 2006 WL 1324465 (W.C.C.A. April 25, 2006), the Court affirmed the workers' compensation judge's determination that the employee's fatal accident while commuting home from work was covered under the dual purpose doctrine and thus arose out of an in the course and scope of employment. In *Kurtz*, the employee worked as a driver, providing nonemergency medical transportation in outstate Minnesota. Although the employee did not typically take the company van home at night or on weekends, he requested permission from his dispatcher to take it home for the weekend, explaining that his personal vehicle was being repaired and that his first pick-up on Monday was before 7:00 a.m. in Little Falls. The employer's policy is that company vehicles are not for personal use unless approved by the office. Such approval is given on a case-by-case basis. The employee was given permission to use the van and left the employee's Brainerd office en route to his home in Little Falls. The employee hit a deer with the van and pulled the van to the side of the road. While the employee was on the side of the road, he was struck by another vehicle and died.

The W.C.C.A. noted that, although as a general rule an employee is not covered when commuting to and from work, an exception to this rule applies when an employee is engaged in a "dual purpose" activity that serves both his own interests and that of his employer. Here, the Court found that it was appropriate to place the risk of injury on the employer because the business purpose of the trip was also a "concurrent cause" of the trip. Specifically, the Court stated that the evidence was sufficient to support a finding that the employee would have had to make the trip to Little Falls even had it not coincided with his trip home. Acknowledging that this was a close case, the Court held that the evidence was sufficient to support a finding that the employee's work created the necessity for the trip and thus the business purpose of the trip was a "concurrent reason for" and not a "mere incident to" the employee's personal activities on the night of the fatal injury.

As the court seemingly expanded the definition of course and scope of employment through the dual purpose doctrine, employers should be cautious about allowing employees to use work-related items for personal use.



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Surgical Versus Nonoperative Treatment for Back Pain

Is back surgery necessary? That's a common question asked around the world, as back pain continues to be a common problem among the masses. Recently, the American Medical Association offered some guidance on the issue, releasing the results of a study created to examine the outcomes of surgical and nonoperative treatment for lumbar intervertebral disk herniation, spinal stenosis, or degenerative spondylolisthesis. The Spine Patient Outcomes Research Trial (SPORT), a randomized clinical trial enrolling patients between March 2000 and November 2004, resulted in the finding that although surgery for sciatica appears to relieve pain more quickly, patients in both the surgery and non-operative treatment groups improved substantially over the 2-year study period.

Patients were considered for inclusion if they had radicular pain (below the knee for lower lumbar herniations, into the anterior thigh for upper lumbar herniations) and evidence of nerve-root irritation with a positive nerve-root tension sign (straight leg raise- positive between 30° and 70° or positive femoral tension sign) or a corresponding neurologic deficit (asymmetrical depressed reflex, decreased sensation in a dermatomal distribution, or weakness in a myotomal distribution).

Additionally, all participants were surgical candidates who had undergone advanced vertebral imaging showing disc herniation at a level and side corresponding to the clinical symptoms.

The surgery was a standard open discectomy with examination of the

involved nerve root. All participating surgical centers performed the same procedure under either general or local anesthesia, with patients in the prone position. The nonoperative treatment group received "usual care," with the study protocol recommending that the treatment include at least one physical therapy session, education/ counseling with home exercise instruction, and nonsteroidal anti-inflammatory drugs, if tolerated.

The baseline patient characteristics included a mean age of 42 years, with majorities being male, white, employed, and having attended at least some college. Sixteen percent (16%) of the patients were receiving employment compensation. All patients had radicular

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WORKERS' COMPENSATION DISPUTE CONTINUED FROM PAGE 1

Ramsey County District Court Judge Steven Wheeler denied the Motion for Summary Judgment brought by Fish and Strata and granted the Motion of Summary Judgment brought by both counties. The court ruled that it had jurisdiction and that Fish was not a flood volunteer "employee" as a matter of law. Fish and Strata appealed.

While the case was pending, the Minnesota legislature amended both Minn. Stat. § 12.22 (to add a specific reference to the workers' compensation law) and Minn. Stat. § 176.041 (to add a specific reference to Minn. Stat. § 12.22). Fish and Strata argued that the amendment should be deemed retroactive because it clarified existing law.

Reversing the trial court, the Minnesota Court of Appeals agreed with Strata's contention that the civil Complaint did not present a judicable controversy in light of the pending workers' compensation claim. In order for the dispute to be judicable and subject to district court jurisdiction, there must be a "present controversy." The Court of Appeals ruled that there was not a present controversy because the legislature intended Fish's claim to be decided under the workers' compensation statute. Because Fish's claim arose under the workers' compensation law, a workers' compensation judge first must adjudicate his case. The court noted that workers' compensation courts have jurisdiction to determine the extent of their own jurisdiction. Although the Court of Appeals

noted the recent amendment, it did not comment on whether the amendment should be deemed retroactive or prospective.

Both counties sought review from the Minnesota Supreme Court. The Supreme Court declined review in December 2006. Accordingly, the case now returns to the workers' compensation courts. It will be up to a compensation judge to resolve Fish's claims against Sutherland/Strata and the counties in a single proceeding.

The Court of Appeals ruling is significant as it limits the opportunity for litigants to seek an end run on the workers' compensation system simply because the employee's employment relationship arose out of a statute not specifically referenced in the workers' compensation law. If the trial court's decision had stood, it is safe to say that other parties would have been tempted to find ways to adjudicate workers' compensation disputes in district court. The piecemeal litigation of workers' compensation claims and the potential inconsistent results that could occur in multi-party cases will be avoided thanks to the Court of Appeals holding in *Lake of the Woods County v. Fish*, No. A05-2242, 2006 WL 2729458 (Minn. Ct. App. Sept. 26, 2006), review denied (Minn. Dec. 12, 2006).


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HDBOB's Mid-Winter Seminar

HDBOB's annual Mid-Winter Seminar is fast approaching!

**This year's seminar has been split into two days –
February 22 and February 23, 2007.**

The first day will be devoted exclusively to Minnesota workers' compensation issues while the second day of the two-day seminar will address issues relating to liability claims in Minnesota and Wisconsin. Each seminar will run from 8:30 am to noon and will include a brunch sponsored by HDBOB.

As in past years, HDBOB will apply to the Minnesota Board of Continuing Legal Education for approval of seminar credits.

Check your mail for soon-to-be-arriving invitations. However, if you would like to pre-register, please contact Caryl Ghimenti at cghimenti@hdbob.com.

We hope to see you all there!

BACK PAIN CONTINUED FROM PAGE 3

leg pain, ninety-seven percent (97%) in a classic dermatomal distribution. Most of the herniations were at L5-S1, posterolateral, and were extrusions by imaging criteria.

After documenting results between the surgical patients and those that chose to participate in nonoperative treatment, physicians examining the differences concluded that patients in both treatment groups improved substantially over the first two years. Although any differences in improvement were consistently in favor of surgery for all outcomes, the differences were "small and not statistically significant except for the secondary measure of sciatica severity and self-rated improvement." Additionally, because of the "high numbers of patients who crossed over in both directions, conclusions about the superiority or equivalence of the treatments are not warranted based on the intent-to-treat analysis alone." Based on the results of the study, it appears as though back surgery may not be the cure to back ailments. Rather, nonoperative treatment appears to offer a less invasive but often as successful solution to back pain.

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