THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. **SUPERIOR COURT**

BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET

In Re Liquidator Number: **2009-HICIL-47**
Proof of Claim Number: **CLMN377962-01**
Claimant Name: **Robert H. Hines**

COMPENDIUM OF NON-NEW HAMPSHIRE AUTHORITIES CITED IN LIQUIDATOR'S SECTION 15 SUBMISSION

LABOR, INDUSTRY
CHAPTER 176 WORKERS' COMPENSATION

GO TO MINNESOTA STATUTES ARCHIVE DIRECTORY

Minn. Stat. § 176.521 (2010)

176.521 SETTLEMENT OF CLAIMS

Subdivision 1. Validity.

An agreement between an employee or an employee's dependent and the employer or insurer to settle any claim, which is not upon appeal before the court of appeals, for compensation under this chapter is valid where it has been executed in writing and signed by the parties and intervenors in the matter, and, where one or more of the parties is not represented by an attorney, the commissioner or a compensation judge has approved the settlement and made an award thereon. If the matter is upon appeal before the Court of Appeals or district court, the court of appeals or district court is the approving body. An agreement to settle any claim is not valid if a guardian or conservator is required under section 176.092 and an employee or dependent has no guardian or conservator.

Subd. 2. Approval.

Settlements shall be approved only if the terms conform with this chapter.

The commissioner, a compensation judge, the court of appeals, and the district court shall exercise discretion in approving or disapproving a proposed settlement.

The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in conformity with this chapter. A settlement agreement where both the employee or the employee's dependent and the employer or insurer are represented by an attorney shall be conclusively presumed to be reasonable, fair, and in conformity with this chapter except when the settlement purports to be a full, final, and complete settlement of an employee's right to medical compensation under this chapter or rehabilitation under section 176.102. A settlement which purports to do so must be approved by the commissioner, a compensation judge, or court of appeals.

The conclusive presumption in this subdivision is not available in cases involving an employee or dependent with a guardian or conservator.

The conclusive presumption in this subdivision applies to a settlement agreement entered into on or after January 15, 1982, whether the injury to which the settlement applies occurred prior to or on or after January 15, 1982.

Subd. 2a. Settlements not subject to approval.

When a settled case is not subject to approval, upon receipt of the stipulation for settlement, the commissioner, a compensation judge, or the court of appeals shall immediately sign the award and file it with the commissioner. Payment pursuant to the award shall be made within 14 days after it is filed with the commissioner. The commissioner may correct mathematical or clerical errors at any time.

Subd. 3. Setting aside award upon settlement.

Notwithstanding the provisions of subdivision 1, 2, or 2a, or any provision in the agreement of settlement to the contrary, upon the filing of a petition by any party to the settlement, the court of appeals may set aside an award made upon a settlement, pursuant to this chapter. In appropriate cases, the court of appeals may refer the matter to the chief administrative law judge for assignment to a compensation judge for hearing.

HISTORY: 1953 c 755 s 69; 1973 c 388 s 127,128; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1979 c 271 s 1; Ex1979 c 3 s 60; 1981 c 346 s 134,135; 3Sp1981 c 2 art 1 s 24-26; 1983 c 290 s 156-158; 1984 c 640 s 32; 1986 c 444; 1986 c 461 s 33; 1987 c 332 s 98; 1993 c 194 s 7,8

Ladwig & Ladwig, Inc., and Floyd Ladwig, individually, Appellants, v. Orlin Ladwig, Inc., and Orlin Ladwig, individually, Respondents

No. C1-85-155

Court of Appeals of Minnesota

372 N.W.2d 408; 1985 Minn. App. LEXIS 4437

August 13, 1985

PRIOR HISTORY: |**1| Appeal from District Court, Stearns County, Hon. Ranier L. Weis, Judge.

DISPOSITION: Affirmed.

COUNSEL: Thomas W. Lies, St. Cloud, Minnesota, for Appellant.

Douglas P. Anderson, Minnesota, for Respondents.

JUDGES: Leslie, Presiding Judge, Foley, Judge and Huspeni, Judge.

OPINION BY: FOLEY

OPINION

|*409| Ladwig & Ladwig, Inc. and Floyd Ladwig (plaintiffs/appellants) appeal the trial court's ruling that neither Orlin Ladwig, Inc. nor Orlin Ladwig individually (defendants/respondents) |*410| owe them any money, since the defendant corporation paid its full obligation to plaintiffs under the corporate "spin-off" agreement. We affirm.

FACTS

For some years prior to 1980, Floyd Ladwig and Orlin Ladwig farmed in Stearns County under the name Ladwig & Ladwig, Inc. Each owned 159 shares of the corporation and their wives each owned one share, for a total of 320 shares.

The corporation |**2| consulted attorneys in 1980 because of disagreements between the parties which proved insurmountable. They decided to create a second and new corporation, to be known as Orlin Ladwig, Inc., by splitting the existing corporation. This "spin-off" was to be accomplished pursuant to Section 335 of the Internal Revenue Code, as amended.

The shareholders, lawyers and accountants all intended a full, final and complete settlement of all business dealings between the brothers. The goal was to create two separate corporations which would be completely independent, with no obligations nor debts remaining between them. As part of the "spin-off," the corporate accountant required full and complete disclosure of all corporate assets and liabilities.

For several years before 1980, Floyd had handled all corporate finances. On August 26, 1980, without Orlin's knowledge, Floyd, on behalf of Ladwig & Ladwig, Inc., made an Agriculture Stabilization and Conservation Service (ASCS) loan using 6861 bushels of wheat as collateral for a loan of $ 19,285.45. On December 23, 1980, again without Orlin's knowledge, Floyd, on behalf of Ladwig & Ladwig, Inc., made an ASCS loan using 22,495 bushels of corn as |**3| collateral for a loan of $ 43,729.20.

From late 1980 until February 27, 1981, Floyd, without Orlin's knowledge, sold all the wheat and corn which was secured by the ASCS loans, except one bin of corn at Orlin's farm.

Neither Floyd nor the corporation received permission from ASCS before selling the wheat and corn which was security for the loans.

February 16, 1981 was the date set to complete the corporate "spin-off" and close the sale. The assets of the old corporation were to be transferred to Orlin's new corporation for $ 118,388.

Floyd did not disclose to the corporate accountants or corporate attorneys the existence of the ASCS loans against wheat and corn, at least until the date of the closing. Neither did Floyd inform them that all the wheat and most of the corn had been sold before February 16, 1981, and that the ASCS loans had not been repaid from the sales of the grain.

Floyd did not tell anyone on February 16, 1981 that he expected a substantial shortfall (still owed to ASCS) when the remaining corn from the bin at Orlin's farm was sold.

On April 9, 1981 Orlin Ladwig, Inc. paid $ 118,388 to Ladwig & Ladwig, Inc. as the full, final and complete

settlement contemplated |**4| by all parties, the certified public accountant and the attorneys.

In May 1983, Floyd sued Orlin demanding that he pay one half of the debt owed to the ASCS and alleging that Orlin had converted crops used as collateral for the loans. The trial court ruled in favor of Orlin.

There was no motion for new trial. Appellants only disputed that the evidence sustained findings number 22 and 24. [1]

> 1 22. The parties effectuated a complete accord and satisfaction on 16 February 1981 which was finalized, with minor adjustments, on 9 April 1981 by the payment of the necessary settlement funds . . .
>
> 24. If the ASCS loans had been disclosed, Orlin Ladwig, Inc. could have assumed those loans and deducted the amount of those loans from the $ 118,388 settlement figure paid to Ladwig & Ladwig, Inc. with the net result still being that the total obligation owed by Orlin Ladwig, Inc. in this corporate spin-off remaining at $ 118,388.

ISSUES

1. Did the trial court err in ruling respondents owed no money to appellants |*411| |**5| because the parties established an accord and satisfaction under which all obligations were paid?

2. Would equity alone justify relief in this case?

ANALYSIS

1. Orlin contends that since appellants did not file a cost bond under Minn. R. Civ. App. P. 107, this appeal should be dismissed. Appeal is not effective unless notice of appeal and appeal bond are filed with the clerk. *Dempsey v. Meighen*, 257 Minn. 576, 102 N.W.2d 825 (1960). However, if no prejudice is shown, the court may relieve the appellant of default. *Id.* Since no prejudice has been shown here, appellants are relieved of default.

The trial court found that Floyd owed a fiduciary duty to Ladwig & Ladwig, Inc. and to Orlin to disclose the existence of the ASCS loans and to disclose the fact that the grain securing these loans had been sold without repaying the loans.

The court further found that there was no mutual mistake; instead, Floyd deliberately failed to disclose the loan information. Moreover, the court found that if the loans had been disclosed, Orlin Ladwig, Inc. could have assumed them and deducted the amount from the $ 118,388 settlement figure paid to Ladwig & Ladwig, Inc. In that case, the |**6| total obligation owed by Orlin Ladwig, Inc. would have remained $ 118,388.

The court concluded that the deal on February 16, 1981 established an accord and satisfaction of the parties' business dealings; hence defendant corporation paid its full obligation.

An accord and satisfaction acts to discharge a contract or cause of action. It is an executed contract, and may be expressed or implied from circumstances which clearly and unequivocally indicate the intention of the parties. *Acton Construction Co., Inc. v. State*, 363 N.W.2d 130 (Minn. Ct. App. 1983).

An enforceable accord and satisfaction arises when a creditor accepts the debtor's offer to provide a different performance. *Total Equipment Leasing Corp. v. LaRue Investment Corp.*, 357 N.W2d 347, 350 (Minn. Ct. App. 1984), *pet. for rev. denied*, (Minn. Feb. 19, 1985).

The critical issue is the intent of the parties. If the parties objectively intended the new promise to constitute full settlement of the original claim, the defense of accord and satisfaction is established. *Id.*

Absent proof of an express agreement, the court will look to the conduct of the parties. If the parties fully performed their duties pursuant |**7| to the alleged accord, the court will presume a satisfaction. *Id.*

Here, the parties agreed that $ 118,388 would satisfy Orlin's complete obligation and thereby accomplish a successful "spin-off" corporation. Only Floyd had complete knowledge of the ASCS loan situation and the outstanding debt obligation. At the time the corporate split was accomplished, he led Orlin, the lawyers and accountant to believe that the corn in Orlin's bin would satisfy the obligation to ASCS. He accepted the check for $ 118,388. The court could easily have found that acceptance of the check with full knowledge of the loan situation, constituted an accord and satisfaction.

2. Finally, it is clear that in all respects, the equities favor the respondents. In fact, equity alone justifies denial of relief under these facts where appellant Floyd Ladwig blatantly withheld information about the two ASCS loans. As the Minnesota Supreme Court said:

> 'The case is one for the application of the rule that if a party conceals a fact material to the transaction and peculiarly within his own knowledge, knowing that the other party acts on the presumption that no such fact exists, it is as much a fraud as if |**8| the existence of such fact were expressly denied, or the reverse of it expressly stated. *Thomas v. Murphy*, 87 Minn. 358, 91 N.W. 1097. The

rule has also been stated as follows: "Failure to correct another's delusion is obviously fraudulent if the circumstances are such that the fraud-feasor's very silence reasonably caused the misapprehension, or if he has in any way contributed to the **|*412|** delusion." * * * It was said in *C.H. Young Co. v. Springer*, 113 Minn. 382, 129 N.W. 773, that a contract may be avoided by one of the parties for his own mistake of fact when such mistake was caused by the inequitable conduct of, or when known to and wrongfully acted upon or taken advantage of by, the other contracting party.'

Norris v. Cohen, 223 Minn. 471, 478, 27 N.W.2d 277, 281 (1947), (quoting *King v. International Lumber Co.*, 156 Minn. 494, 496, 195 N.W. 450, 451 (1923)).

The trial court properly ruled that appellants are not indebted to respondents. There was no error.

DECISION

We affirm the decision of the trial court.

MARK OLIN, Plaintiff/Counterclaim Defendant, vs. MINNESOTA TEAMSTERS CONSTRUCTION DIVISION HEALTH & WELFARE FUND; KEITH KRAMER, DANNY LOPEZ, GEORGE MATTSON, TOM NELTON, WAYNE PERLEBERG, PALMER PETERSON, PAT RADZAK, DAVID SWANSON, AL THOMAS, ROBERT ULLAND, GEORGE VOJTA, CHESTER WILANDER, in their capacity as Trustees of the MINNESOTA TEAMSTERS CONSTRUCTION DIVISION HEALTH & WELFARE FUND, Defendants/Counterclaimants.

Civil No. 00-1748 DDA/FLN

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

2001 U.S. Dist. LEXIS 17799

October 1, 2001, Decided

DISPOSITION: [*1] Motion for summary judgment was granted. Complaint was dismissed with prejudice.

COUNSEL: WILLIAM R. HAUCK, THILL LAW FIRM, P.A., St. Louis Park, Minnesota, appeared on behalf of Plaintiff/Counterclaim Defendant.

RICHARD L. EVANS, KATHLEEN M. BRENNAN, McGRANN SHEA ANDERSON CARNIVAL STRAUGHN & LAMB, CHARTERED, Minneapolis, Minnesota, appeared on behalf of Defendants/Counterclaimants.

JUDGES: DONALD D. ALSOP, Senior Judge, United States District Court.

OPINION BY: DONALD D. ALSOP

OPINION

ORDER ON MOTION FOR SUMMARY JUDGMENT

This case involves determining the rights of the parties under an employee health and disability benefit plan. Plaintiff Mark Olin ("Olin") is a participant in Defendant Minnesota Teamsters Construction Division Health & Welfare Fund ("the Fund"). Olin sued the Fund in Minnesota state court, alleging that the Fund wrongfully refused to pay benefits to Olin. The Fund removed the case to federal court [1] and asserted a counterclaim against Olin, alleging that Olin failed to fulfill an obligation to reimburse the Fund from the proceeds of a workers' compensation settlement. The Fund moved for summary judgment on Olin's claim and on its counterclaim. Summary judgment is [*2] appropriate if no genuine issue of material fact exists and if the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). For the reasons stated in this Order, the Court will grant the Fund's motion.

1 Federal jurisdiction over Olin's claim exists because the Fund is an "employee welfare benefit plan" within the scope of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(1), and suits to recover benefits from an ERISA plan present a federal question. 29 U.S.C. § 1132.

I.

In 1998 and early 1999, the Fund paid $ 5,669.54 for medical treatment of injuries to Olin's neck and shoulders and paid Olin an additional $ 278.57 in disability benefits related to the same injuries. Olin later filed a claim against his employer in Minnesota workers' compensation court in which Olin alleged, *inter alia*, that he sustained the injuries for which the Fund paid benefits in the course of his employment. The Fund's governing document, [*3] the Summary Plan Description (Van Ryswyk Affidavit Exhibit A, hereinafter "SPD") gave the Fund an interest in any recovery from Olin's employer [2], and the Fund intervened in the workers' compensation action to protect that interest. On July 15, 1999, the day the workers' compensation action was set for trial, the Fund rejected a settlement offer from the employer which would have paid the Fund $ 2,000 and would have paid Olin $ 40,000. Olin did not testify at the trial and did not call a treating physician to testify on his behalf. Several days after trial, Olin requested leave from the workers' compensation court to withdraw his claims related to the injuries for which the Fund had paid benefits. On July 30, 1999, the workers' compensation court entered an order denying Olin's request to withdraw some claims and disallowing all of Olin's claims. (Nissen Affidavit Exhibit B.) That order included a finding that the

Fund was not entitled to reimbursement of benefits paid to Olin. *Id.* at 4. Neither the Fund nor Olin challenged that finding on appeal.

> 2 The SPD provides the Fund with a first-priority subrogation right against and an independent right of reimbursement from "any third party who or which is in any way legally obligated to reimburse or compensate [the participant] ... for any loss whatsoever relating in any way" to the Fund's payment of medical or disability benefits. (SPD at 54.)

[*4] Despite the workers' compensation court's order, and after the time to appeal from that order expired [3], the employer on September 16, 1999, agreed to pay Olin $ 46,000 to settle Olin's workers' compensation claims. (Nissen Affidavit Exhibit G.) The Fund was not involved in negotiating the settlement agreement and received none of the proceeds. Although the stipulation for settlement specifically mentions only injuries for which the Fund had not paid benefits, the settlement agreement also states that it constitutes "a full, final and complete settlement of any and all claims with respect to any and all injuries claimed to have been sustained by" Olin, including Olin's neck and shoulder injuries. *Id.* at 3. The workers' compensation court approved the settlement agreement on September 29, 1999, and ordered the employer to pay Olin in accordance with the agreement's terms. (Nissen Affidavit Exhibit H.)

> 3 Parties to Minnesota workers' compensation proceedings may take appeals to Minnesota's Workers' Compensation Court of Appeals within 30 days of after service of an order on the merits of the case. Minn. Stat. § 176.421 Subd. 1.

[*5] After learning of the settlement agreement, the Fund refused to pay Olin's pending and future claims for benefits. Olin appealed that decision to the Fund's Board of Trustees, which affirmed the denial of benefits as a means of recouping its claimed interest in Olin's settlement proceeds. (Evans Affidavit Exhibit A.) The Trustees on behalf of the Fund concluded that the terms of the settlement agreement between Olin and his employer, along with Olin's conduct leading up to the settlement, evinced an intent to frustrate the Fund's interest in reimbursement and thereby to breach Olin's duty to cooperate with the Fund [4]. *Id.* Olin then requested that the workers' compensation court reopen his case for the purpose of determining Olin's rights *vis a vis* the Fund. (Second Evans Affidavit Exhibit A.) The workers' compensation court denied Olin's request on the ground that the workers' compensation court lacked jurisdiction to construe the terms of an ERISA plan. (Second Evans Affidavit Exhibit C.)

> 4 The SPD conditions the participant's receipt of benefits upon the participant "extending all assistance and cooperation to the [Fund] which is reasonably necessary to assist the [Fund] in the recovery of the amounts due it." (SPD at 55.)

[*6] II.

The Fund seeks an order from this Court dismissing Olin's challenge to the Fund's denial of benefits and a judgment against Olin representing the Fund's interest in Olin's settlement proceeds [5]. With respect to the denial of benefits, the SPD provides that the Fund's Trustees may resolve all "questions or controversies ... as to a claim for benefits, as to the construction of language or as to any writing, decision, instrument, or account in connection with the operation of the Fund." (SPD at 6.) The parties do not dispute that this provision gives the Fund's Trustees discretionary authority to determine eligibility for benefits, so the Court must review the denial of benefits to Olin under a deferential abuse of discretion standard. *Milone v. Exclusive Healthcare, Inc.*, 244 F.3d 615, 618 (8th Cir. 2001).

> 5 A judgment in favor of the Fund arguably would be contrary to the Minnesota workers' compensation court's finding that the Fund was not entitled to reimbursement. The Court for that reason *sua sponte* asked the parties to consider whether the workers' compensation court's judgment barred federal jurisdiction over the Fund's counterclaim pursuant to the *Rooker-Feldman* doctrine. *See Lemonds v. St. Louis County*, 222 F.3d 488, 492 (8th Cir. 2000) (holding that "lower federal courts lack subject matter jurisdiction over challenges to state court judgments"), *cert. denied sub nom. Halbman v. St. Louis County*, U.S. , 148 L. Ed. 2d 1026, 121 S. Ct. 1168 (2001). As an initial matter, it is not clear that the workers' compensation court is a "state court" such that its judgment implicates the *Rooker-Feldman* doctrine. *See, e.g., Van Harken v. City of Chicago*, 103 F.3d 1346, 1348 (7th Cir.) (holding that the *Rooker-Feldman* doctrine does not apply to state administrative decisions), *cert. denied*, 520 U.S. 1241, 137 L. Ed. 2d 1049, 117 S. Ct. 1846 (1997). Furthermore, even assuming the workers' compensation court is a "state court" for this purpose, its order requiring the employer to pay Olin in accordance with the settlement agreement effectively contravenes its earlier finding that the Fund was not entitled to reimbursement. The earlier finding was predicated on the assumption that the employer was not liable to Olin and did not address the merits of the Fund's claim against Olin. This Court accordingly has jurisdiction over the Fund's counterclaim because a judgment in favor of the Fund would be consistent with the employer's agreement to pay

Olin and with the resulting modification of the workers' compensation court's judgment.

[*7] The SPD does not explicitly allow the Fund to deny benefits if a Fund participant refuses to reimburse the Fund from a settlement with a third party. The SPD, however, does impose a duty of cooperation upon Fund participants. As the Fund interprets the cooperation provision, the Fund has the authority to deny benefits to a participant who does not comply with the duty of cooperation when the participant's noncompliance frustrates the Fund's ability to obtain reimbursement from a third party. This interpretation is consistent with the Fund's status as an excess insurer, with the language of the cooperation provision and the SPD as a whole, and with the goals of the ERISA statute. The Fund's interpretation of the SPD thus meets the criteria set out in *Finley v. Special Agents Mut. Benefit Ass'n*, 957 F.2d 617, 621 (8th Cir. 1992), and is not an abuse of discretion.

Given that interpretation, the Fund may deny benefits to Olin if the denial is based on "substantial evidence." *Milone*, 244 F.3d at 618 (citations omitted). The Trustees were aware that Olin's injuries for which the Fund paid benefits were part of Olin's workers' compensation case and were [*8] an issue in the workers' compensation settlement agreement. Although the settlement agreement on its face involves injuries unrelated to the Fund's interest, the release of liability for all of Olin's injuries indicates that the settlement was related in some way to Olin's neck and shoulder injuries despite the characterization of the agreement. The broad nature of the settlement provides a sufficient basis for the determination that the Fund had a right to reimbursement from the settlement proceeds. And in determining that Olin failed to cooperate with the Fund, the Fund's Trustees noted that Olin did not present a strong case at trial, attempted to defeat the Fund's claim through withdrawing claims for certain injuries, and somehow managed to receive a larger settlement offer after the workers' compensation court rejected all of his claims. The Fund's conclusion that Olin violated his duty to cooperate is reasonable in light of those facts and also is not an abuse of discretion.

Olin does not take issue with the Fund's interpretation of the SPD or with the Fund's view of the evidence. Olin argues instead that the Fund cannot justifiably deny benefits to Olin simply because the Fund [*9] did not receive satisfactory relief from the workers' compensation court. As Olin points out, the Fund did not participate meaningfully in the workers' compensation trial and did not appeal the workers' compensation court's findings. According to Olin, the Fund is accountable for its failure to protect its own interests in the workers' compensation proceedings and therefore should have no discretion to hold Olin responsible for the Fund's losses. This argument would have more merit if the workers' compensation court's judgment precluded the Fund as a matter of law from asserting its rights against Olin in another forum. *See Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 115-16 (Minn. 1991) (noting that quasi-judicial administrative decisions may have res judicata and collateral estoppel effect under Minnesota law). The workers' compensation court, however, specifically held that it lacked jurisdiction to decide the matters at issue in this case. The Fund accordingly did not waive or otherwise lose its rights under the SPD, including its discretionary authority to deny benefits to Olin, because the Fund could not have asserted those rights in any prior proceeding.

[*10] Finally, Olin has presented no evidence tending to show that the amount the Fund claims is incorrect. The parties do not dispute that the Fund may enforce its rights against Olin by way of a counterclaim. *See* SPD at 55 (providing that the Fund may enforce its rights in "any court proceeding"). The parties also do not dispute that the Fund paid a total of $ 5,948.11 for injuries related to Olin's workers' compensation settlement. In the absence of an issue of fact concerning the amount owing, the Fund is entitled to judgment against Olin to the full extent of its benefit payments.

III.

For the foregoing reasons, **IT IS HEREBY ORDERED THAT**:

1. The Fund's motion for summary judgment is GRANTED.

2. Olin's Complaint is DISMISSED with prejudice.

3. The clerk shall enter judgment as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that

1) Plaintiff's Complaint is DISMISSED with prejudice;

2) Defendants shall have and recover of the Plaintiff $ 5,948.11.

Dated: October 1, 2001

DONALD D. ALSOP, Senior Judge

United States District Court

Linda Rae Van Gordon, formerly known as Linda Rae Wilson, Plaintiff, vs. Harlan Beaver, Defendant and Third-Party Plaintiff, vs. Ulland Brothers, Inc., Third Party Defendant.

Civ. No. 5-94-110

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FIFTH DIVISION

928 F. Supp. 858; 1996 U.S. Dist. LEXIS 6285

February 14, 1996, Decided

SUBSEQUENT HISTORY: [**1] Adopting Order of March 27, 1996, Reported at: 1996 U.S. Dist. LEXIS 7228. Reported at: 928 F. Supp. 858 at 860.

DISPOSITION: RECOMMENDED: Defendant/Third-Party Plaintiff's Motion for partial Summary Judgment be granted.

COUNSEL: For LINDA RAE VAN GORDEN fka Linda Rae Wilson, plaintiff: Douglas Gibbs Sauter, Sauter & Assoc. Coon Rapids, MN.

For HARLAN BEAVER, defendant: William F Davern, Michael D Barrett, Cousineau McGuire & Anderson, Mpls, MN.

For HARLAN BEAVER, third-party plaintiff: William F Davern, Michael D Barrett, Cousineau McGuire & Anderson, Mpls, MN.

For ULLAND BROTHERS, INC, third-party defendant: James Alan Wade, Laura J Schacht, Johnson Killen Thibodeau & Seiler, Duluth, MN.

JUDGES: Raymond L. Erickson, UNITED STATES MAGISTRATE JUDGE. Judge Michael J. Davis

OPINION BY: Raymond L. Erickson

OPINION

[*860] REPORT AND RECOMMENDATION

At Duluth, in the District of Minnesota, this day of February, 1996.

I. *Introduction*

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C. § 636(b)(1)(B), upon the Defendant and Third-Party Plaintiff's ("Defendant's") Motion for the entry of a partial Summary Judgment, which would limit the Plaintiff's recovery to those damages that are not recoverable under the Minnesota [**2] Workers' Compensation Act.

In accordance with their agreement, the issues have been considered by the Court upon the parties' written submissions and, for these purposes, the Plaintiff has appeared by Douglas G. Sauter, Esq., and the Defendant has appeared by William F. Davern and Michael D. Barrett, Esqs. No appearance has been made by the Third-Party Defendant, as the Motion was filed prior to the joinder of that party, and the Third-Party Defendant has not requested an opportunity to be heard on the issue.

[*861] For reasons which follow, we recommend that the Defendant's Motion be granted.

II. *Factual and Procedural History*

On August 27, 1990, near Perch Lake Township, Minnesota, a collision occurred between the Defendant's truck and a car that was being operated by the Plaintiff while she was in course and scope of her employment with Shades of Video, Inc. As a result of this accident, the Plaintiff alleges that she has sustained injuries to her head, neck, arms, legs, back and pelvis. In due course, the Plaintiff applied for workers' compensation benefits from her employer, and from her employer's workers' compensation carrier, the Minnesota W.C. Assigned Risk Plan ("Employer/Insurer"). [**3] The Employer/Insurer accepted primary responsibility for the Plaintiff's injuries, and paid her the usual blend of workers' compensation benefits. See, *Award and Stipulation for Settlement of Workers' Compensation Claims* ("Settlement Agreement"), at 2.

Subsequently, the plaintiff applied for additional workers' compensation benefits, including compensation for permanent partial disability and for ongoing chiropractic care. *Id.* at 2. Although this application was initially denied, the Employer/Insurer ultimately entered a

settlement agreement with the Plaintiff, on April 24, 1992, and paid her a lump sum benefit of $ 20,000, together with $ 600 for her future chiropractic expenses. *Id.* at 3. In return, the Plaintiff agreed that these payments would represent "a full, final, and complete settlement of any and all past, present, and future claims for workers' compensation disability benefits, except for non-chiropractic medical." *Id.* at 3. As to her future, non-chiropractic medical expenses, the Employer/Insurer agreed to pay any such billings that were "reasonably related to the [Plaintiff's] injury of August 27, 1990." *Id.* at 4. In reaching this accord with the **[**4]** Employer/Insurer, the Plaintiff was represented by legal counsel and, as a consequence, the settlement is "conclusively presumed to be fair, reasonable, and in conformity with [the applicable workers' compensation law]." See, *Minnesota Statutes Section 176.521, Subdivision 2.*

Under the statutory laws of Minnesota, once the Plaintiff elected to receive workers' compensation benefits, the Employer/ Insurer became subrogated to the Plaintiff's right to recover damages against the Defendant, or against any other third-party tortfeasor who was implicated in her injuries. See, *Minnesota Statutes Section 176.061, Subdivisions 5, 7 and 10;* see also, *Kliniski v. Southdale Manor, Inc.,* 518 N.W.2d 7, 9 (Minn. 1994). On October 24, 1992, the Defendant and the Employer/Insurer reached an agreement and settled all of the Employer/Insurer's subrogation and indemnity claims against the Defendant that arose from the subject accident. Specifically, this settlement "extinguished any and all liability of [the Defendant] to the [Employer/Insurer] for the workers' compensation subrogation interest, for workers' compensation benefits paid or payable, past, present or future, as a result **[**5]** of the injuries allegedly occurring on or about August 27, 1990, * * *." *Reverse-Naig Release,* at 1.

On August 26, 1994, the Plaintiff commenced her present action against the Defendant, seeking to recover damages for past and future pain and suffering; past and future medical expenses; past and future wage loss; loss of future earning capacity; general disability; emotional distress; fatigue; loss of enjoyment of life; and other general damages. Arguing that the Plaintiff has been fully paid for any damages recoverable under the Workers' Compensation Act, the Defendant urges us to enter a partial Judgment to the effect that the Plaintiff is precluded from securing a double recovery of her workers' compensation benefits. As a consequence, we are asked to render a legal judgment on the proper inclusivity of the Plaintiff's request for damages and, finding no genuine issues of material fact, we conclude that the entry of a partial Summary Judgment is appropriate. [1]

1 Summary Judgment is appropriate when we have viewed the facts, and the inferences drawn from those facts, in a light most favorable to the non-moving party, and we have found no triable issue, and the non-moving party has not identified any genuine issue of material fact which would preclude the entry of Summary Judgment. *Cram v. Lamson & Sessions Co.,* 49 F.3d 466, 471 (8th Cir. 1995); *Barnard v. Jackson County, Missouri,* 43 F.3d 1218, 1223 (8th Cir. 1995), cert. denied, *133 L. Ed. 2d 17,* U.S. , 116 S. Ct. 53 (1995). For these purposes, a disputed fact is "material," if it must inevitably be resolved and the resolution will determine the outcome of the case, while a dispute is "genuine," if the evidence is such that a reasonable Jury could return a Verdict for the non-moving party. See, *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986); *Churchill Business Credit Inc., v. Pacific Mutual Door Co.,* 49 F.3d 1334, 1336 (8th Cir. 1995); *Allison v. Flexway Trucking, Inc.,* 28 F.3d 64, 66-67 (8th Cir. 1994).

As Rule 56(e), Federal Rules of Civil Procedure, makes clear, once the moving party files a properly supported Motion, the burden shifts to the non-moving party to demonstrate the existence of a genuine dispute. In sustaining that burden, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." *Rule 56(e), Federal Rules of Civil Procedure; Krenik v. County of LeSueur,* 47 F.3d 953, 957 (8th Cir. 1995); *State of Nebraska ex rel. Nelson v. Central Interstate Low-Level Radioactive Waste Commission,* 26 F.3d 77, 80 (8th Cir. 1994), cert. denied, *130 L. Ed. 2d 395,* U.S. , 115 S. Ct. 483 (1994).

Moreover, a defendant is entitled to Summary Judgment where a plaintiff has failed "to establish the existence of an element essential to [his] case, and on which [he] will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265; *St. Paul Fire & Marine Ins. Co. v. Federal Deposit Ins. Corp.,* 968 F.2d 695, 699 (8th Cir. 1992). No genuine issue of fact exists in such a case because "a complete failure of proof concerning an essential element of [the Plaintiff's] case necessarily renders all other facts immaterial." *Id.* at 323; *Fischer v. NWA, Inc.,* 883 F.2d

594, 599 (8th Cir. 1989), cert. denied, 495 U.S. 947, 109 L. Ed. 2d 531, 110 S. Ct. 2205 (1990).

|**6|

|*862| III. *Discussion*

In the Defendant's view, the two pretrial settlements in this litigation -- namely, the Settlement Agreement between the Plaintiff and the Employer/Insurer, and the subsequent settlement between the Defendant and the Employer/Insurer -- act in concert to preclude the Plaintiff's recovery of any damages that would be recoverable under the Minnesota Workers' Compensation Act. According to the Defendant, the only damages, that the Plaintiff can now recover, relate to her claims of past and future pain and suffering. In contrast, while conceding that the Defendant should, in all probability, be entitled to a post-Verdict offset, for any damages that have already been paid by the Employer/Insurer, the Plaintiff argues that it would be inappropriate to now limit her damage claims, and she requests an Order that would allow her to submit all of her claims to the Jury for resolution.

We disagree with the Plaintiff's contention, for we are persuaded that the governing laws of Minnesota require a mechanism, for the trial of the Plaintiff's unresolved claims, that is "workable, not unduly complicated, least wasteful of judicial resources, and most consistent with the legal |**7| principles involved and the interests of the employee, employer, and third-party defendant tortfeasor[s]." *Tyroll v. Private Label Chemicals, Inc.,* 505 N.W.2d 54, 60 (Minn. 1993). Under the circumstances presented here, that mechanism would limit the Plaintiff's proof to those damage claims which have not been fully and finally compromised.

Necessarily, our analysis of the parties' conflicting positions commences with a brief overview of the interplay, under Minnesota law, between an injured plaintiff's workers' compensation claim, and her tort claim, under Minnesota's common law, against the third-party tortfeasor. Where, as here, a plaintiff alleges that she was injured, while at work, by the negligence of a third-party tortfeasor, her action against that tortfeasor encompasses two separate claims. The first involves an action against the tortfeasor for those damages that are "non-recoverable" under Minnesota's workers' compensation law -- namely, damages for "pain and suffering, general disability, embarrassment, disfigurement, and mental anguish." *Tyroll v. Private Label Chemicals, Inc.,* supra at 59.

As a second component of the plaintiff's action, she is statutorily |**8| authorized to prosecute a claim, which includes her employer/insurer's subrogation interest against the tortfeasor, for the amount of workers' compensation benefits that the employer/ insurer has paid, or will pay to the plaintiff, as a result of her claimed injuries. See, *Minnesota* |*863| *Statutes Section 176.061, Subdivision 5(a).* Quite logically, this latter claim is limited to those damages which are "recoverable" under the workers' compensation laws [2] -- such as those for past and future medical expenses, [3] past and future wage loss, and loss of future earning capacity. *Tyroll v. Private Label Chemicals, Inc.,* supra at 59.

2 The Minnesota Supreme Court has distinguished the damages that are "recoverable" in a workers' compensation action, from those which are "non-recoverable," by noting the distinctions which differentiate workers' compensation damages from common law tort damages. Accordingly, the Court has observed that workers' compensation damages are more limited in scope as they are "intended to compensate for loss of income due to inability to work because of a job-related injury (and, of course, for medical expenses)." *Tyroll v. Private Label Chemicals, Inc.,* 505 N.W.2d 54, 59 (Minn. 1993). Tort damages, "on the other hand, are, in some respects, more expansive, both in kind and amount." *Id.*

|**9|

3 In actuality, an employer/insurer's claim against a tortfeasor, for the reimbursement of payments made to a plaintiff for medical expenses, is not a subrogation claim at all. Under Minnesota law, an employer/insurer is permitted to commence a cause of action so as to recover those payments and, unlike a subrogated claim, such an action will exist separate and apart from the plaintiff's entitlements as a workers' compensation claimant. See, *Minnesota Statutes Section 176.061, Subdivision 7;* see also, *Folstad v. Eder,* 467 N.W.2d 608, 611 (Minn. 1991).

As the Minnesota Supreme Court has explained in *Folstad v. Eder,* 467 N.W.2d 608 (Minn. 1991), because of the interaction between these two distinct claims, their resolution -- either by settlement or by trial -- may require the joint participation of both the plaintiff and her employer/insurer. When both claims are collectively resolved -- either by trial or by settlement -- Minnesota law requires that the proceeds, which arise from that resolution, be allocated between the plaintiff and the employer/ insurer. See, *Minnesota Statutes* |**10| *Section 176.061 Subdivision 6.* [4]

Of course, Minnesota law also recognizes that the plaintiff and her employer/insurer may separately resolve their respective claims, either by settlement or by trial. See, *Folstad v. Eder,* supra at 611 (enumerating and explain-

ing the options available to plaintiff-employees and to employer/insurers in resolving their respective claims). When separate settlements are accomplished, before the trial of the action, then the allocation formula of Minnesota Statutes Section 176.061, Subdivision 6, is inapplicable as the recovery is for a separate, rather than for a commingled, claim. *Id.*

> 4 The allocation formula of Minnesota Statutes Section 176.061, Subdivision 6, has been paraphrased as follows:
>
> > Under subdivision 6, the employee's tort recovery is divided as follows: first, collection expenses and attorney fees (about 1/3 of the recovery); then 1/3 outright to the employee; next the employer's subrogation claim less a pro rata share for attorney fees; and finally, any balance remaining to the employee subject to a credit to the employer for any future benefits payable.
>
> *Kliniski v. Southdale Manor,* 518 N.W.2d 7, 9 n. 2 (Minn. 1994). Such an apportionment is necessary because, as we have noted in the text of this Report, the plaintiff's tort recovery includes both her tort damages, which are "non-recoverable" under the Workers' Compensation Statute, and the employer/insurer's subrogated claim for the reimbursement of those payments which were made to the plaintiff under the Minnesota Workers' Compensation Act. Allocation allows these competing interests to be satisfied from a common recovery of damages.

|11|** Here, the Plaintiff resolved her workers' compensation claim through a full, final and complete settlement with her Employer/ Insurer. She could, and did, accomplish this settlement without any participation by the Defendant. According to the terms of that settlement, the Employer/Insurer resolved the Plaintiff's past workers' compensation claims and, as we have noted, agreed to be liable for "any future non-chiropractic medical which is reasonably related to the employee's injury of August 27, 1990." *Settlement Agreement,* at 4. In turn, the Employer/Insurer settled its right to contribution or indemnity against the Defendant by what is known as a "reverse-*Naig*" agreement, which allows the Plaintiff "to pursue her remaining claim against the third party tortfeasor." *Folstad v. Eder,* supra at 611. This "remaining claim" is all that now pends before this Court and, therefore, the issue resolves to a determination of what elements of damage remain subject to recovery.

|*864| Although, at one time, excursions into this area of the law could properly be characterized as "somewhat shrouded in ambiguity," a series of clarifying decisions, by the Minnesota Supreme Court, have significantly **|**12|** simplified our consideration of the issue before us. See, *Jackson v. Zurich American Insurance Company,* 542 N.W.2d 621, 1996 WL 29014 (Minn., January 26, 1996); *Kliniski v. Southdale Manor, Inc.,* supra; *Tyroll v. Private Label Chemicals, Inc.,* supra; *M.W. Ettinger Transfer v. Schaper Mfg.,* 494 N.W.2d 29 (Minn. 1992); *Folstad v. Eder,* supra. Notwithstanding this helpful exploration of the subject area, our research has failed to isolate any decision which is precisely on point, and the parties have failed to draw one to our attention. As a consequence, our analysis resorts to reasoning by analogy. In this respect, we think the Court's reasoning, and its holding, in *Kaiser v. Northern States Power Co.,* 353 N.W.2d 899 (Minn. 1984), properly disposes of the issue before us.

In *Kaiser,* the City of St. Paul, as the employer of injured firefighters, commenced an action against a third-party tortfeasor, asserting a subrogation claim for the workers' compensation payments that the City had made to the firemen. Prior to trial, the tortfeasor moved for Summary Judgment, which was granted, and which absolved the tortfeasor from any liability to the City under the Minnesota Workers? **|**13|** Compensation Statute. No appeal was taken from that Judgment and, when the firefighters commenced their own action against the same tortfeasor, the tortfeasor claimed that their action was barred by the doctrine of res judicata or collateral estoppel. While the Trial Court ruled that the prior Judgment was not a bar, the Supreme Court disagreed and held that, "to the extent that the firefighters' claims encompass claims for damages already adjudicated by the court in the employer's subrogation action, the firefighters are barred from asserting those claims by the principle of res judicata." *Id.* at 903. The bar, however, was not absolute, as the Court went on to hold, as follows:

> An employee may pursue full common law recovery against a third-party tortfeasor for damages not cognizable under the Workers' Compensation Act. Thus, while the firefighters could assert claims for pain and suffering, loss of earning capacity, loss of consortium, emotional distress and other items not compensable under workers' compensation law, the city, having no subrogation interest in these non-compensable claims, could not

> have asserted these claims. * * * Because these are claims different |**14| from those previously brought by the city, res judicata does not bar [the firefighters'] claims for damages not compensable under workers' compensation.

Id. at 903-04 [citations omitted].

Of course, we are not confronted with a prior adjudication, but the effect of the two settlements would, indeed, have the same preclusive impact as would an adjudication since, here, it was the Employer/Insurer's claim against the Defendant that was settled, and not a claim of the Plaintiff. As a consequence, in settling its claim, the Employer/Insurer has not prejudiced any of the Plaintiff's rights.

Accordingly, the Defendant is entitled to a partial Summary Judgment which precludes the Plaintiff from seeking a recovery for claims that were preclusively resolved by the settlement reached between the Defendant and the Employer/Insurer. These resolved -- and, therefore, precluded claims -- include the Plaintiff's request for past and future wage loss, and loss of earning capacity. [5] See, *Tyroll v. Private Label Chemicals, Inc.*, supra at 59. While the Plaintiff has not presented any legal authority which would commend a different result, we understand her to argue that the |**15| preclusion of such damage claims would prejudice her interest in a full recovery. We disagree. While represented by legal counsel, the Plaintiff elected to resolve her claims against the Employer/ Insurer and, under legal principles which |*865| had long preexisted the effectuation of that Settlement, she would have had to have been aware of the potential that the Defendant could secure a reverse-Naig release from the Employer/Insurer. No legerdemain was at play here, as we find that a limitation on the Plaintiff's damage recovery, against the tortfeasors, is mandated by Minnesota law.

> 5 To the extent that the Minnesota Supreme Court, in *Tyroll v. Private Label Chemicals, Inc.*, supra, has included "loss of earning capacity" as a "recoverable" claim under the Minnesota Workers' Compensation Act, we read that inclusion as implicitly overruling the Court's prior listing of "loss of earning capacity" as a "non-recoverable" damage claim in *Kaiser v. Northern States Power Co.*, 353 N.W.2d 899, 903 (Minn. 1984).

|**16| Lastly, we must consider the Plaintiff's claim that she should not be limited in her recovery of damages for future medical expenses. This issue is directly resolved by the Minnesota Supreme Court's holding in *Folstad v. Eder,* supra. Here, as in *Folstad,* the employer/insurer settled its claim against the third-party tortfeasor for the reimbursement of the medical expenses that were paid on behalf of the plaintiff. The Court concluded that these "subrogated damages," having been settled out of the plaintiff's action, should not properly be a part of the plaintiff's case. In the words of the Court:

> When the subrogated damages have been separated out of plaintiff's action and settled by the compensation carrier prior to trial, there is nothing left for the collateral source statute to act upon. Ordinarily there is no need to continue to assert in plaintiff's action a subrogation claim that has been settled and is now out of the lawsuit. There is no need to deduct what is no longer there to be deducted.

Folstad v. Eder, supra at 613.

We think that the very same may be said here. The Plaintiff's past medical expenses have been paid, and her future medical |**17| expenses, which are reasonably related to her relevant injuries, will also have been paid by the Employer/Insurer. Accordingly, as to future non-chiropractic medical damages, there is nothing to submit to the Jury. See, *Minnesota Statutes Section 548.36* ("Collateral Source Statute"). We think, however, that the Plaintiff's claim for future chiropractic expense must be treated differently, since she bears some potential of incurring such expenses without reimbursement from the Employer/Insurer. Unlike the non-chiropractic medical expenses, which will be timely paid by the Employer/ Insurer, there is some prospect that chiropractic expenses, if any, will not be subject to the Collateral Source Statute, and their award will not result in a "double recovery" to the Plaintiff. As a consequence, if the Plaintiff has incurred chiropractic expenses through the time of trial and into the future, which are not subject to the Collateral Source Statute, she should be permitted to prove those at her trial. Otherwise, we cannot envision any plausible basis for allowing the Plaintiff to litigate claims that have already been resolved. [6]

> 6 The Plaintiff has argued that her medical bills should be admitted at trial and, for this argument, she has relied upon the Court's recognition, in *Folstad v. Eder,* supra at 613, that certain procedural or substantive requisites may require such proof. In *Folstad,* the Court recognized that the Plaintiff had an obligation to prove that her medical expenses exceeded $ 4,000 in order to exceed

the no-fault threshold. See, *Minnesota Statutes Section 65B.51*. Subdivision 3. Here, the Plaintiff offers no correlating element of proof that would require the admission of her medical expenses, excepting those related to her chiropractic care. Given the fact that her claims at trial will largely focus upon her past and future pain and suffering, we see no need for her to itemize her medical expenses in proving the extent and intensity of her pain. Of course, such proof can include the number and duration of her hospitalizations, medical appointments, and the like.

|18|** THEREFORE, It is --

RECOMMENDED:

That the Defendant/Third-Party Plaintiff's Motion for a partial Summary Judgment [Docket No. 12] be granted, and that the Plaintiff's damage claim be limited to past and future pain and suffering; past and future chiropractic expense, if any; general disability; emotional distress; fatigue; loss of enjoyment of life; and other general damages.

Raymond L. Erickson

UNITED STATES MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than February 27, 1996**, a writing which specifically identifies **|*866|** those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing by no **later than |**19| February 27, 1996,** unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. § 636 to review the transcript in order to resolve all of the objections made.