

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

LIQUIDATOR'S SECTION 15 SUBMISSION

Roger A. Sevigny, Insurance Commissioner, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), submits this brief pursuant to Section 15 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation entered January 19, 2005 ("Claims Procedures Order") and in accordance with the Structuring Conference Order issued January 28, 2011.

In this matter, Robert H. Hines ("Claimant") seeks to recover on a previously settled workers compensation claim. In 1997, Claimant filed a petition with the Minnesota Workers' Compensation Division asserting a workers compensation claim based on alleged exposure to asbestos against the City of Brooklyn Park, Claimant's employer (and, for certain of the years at issue, Home's insured), and Home. In 2008, after Home was placed in liquidation, the City of Brooklyn Park settled the petition both for itself as a self-insured and as Home's insured. Claimant essentially seeks to disregard the settlement and litigate his workers compensation claim anew as a third-party claim in the Home liquidation. However, the settlement of his claim with Home's insured precludes Claimant from bringing the claim again. Claimant cannot settle with Home's insured and then assert a claim against Home because his third-party claim depends on the already resolved claim against the insured.

A. Issue to be decided

Whether the Stipulation for Settlement precludes Claimant from proceeding with a claim for workers compensation benefits against the Home estate.

B. Exhibits

- A. Proof of Claim Number CLMN377962
- B. Employee's Claim Petition dated 2/3/97
- C. Employee's Amended Claim Petition dated 9/12/01
- D. Answer to Employee's Amended Claim Petition dated 9/13/01
- E. Stipulation for Settlement dated 1/17/08
- F. Letter dated 2/13/09
- G. Notice of Determination dated 1/12/10
- H. Objection to Notice of Determination dated 3/8/10

Background

This disputed claim proceeding arises from the Liquidator's determination of the Claimant's third-party claim in the Home liquidation. The Claimant seeks to recover for injury he allegedly suffered from exposure to asbestos while an employee of the City of Brooklyn Park. He filed a workers' compensation claim against the City of Brooklyn Park and its insurer before the Minnesota Department of Labor and Industry, Workers' Compensation Division ("WCD") in February 1997. See Employee's Claim Petition (Ex. B). The Claimant filed an Amended Claim Petition with the WCD on September 12, 2001. Ex. C. The City of Brooklyn Park and Home, as the City of Brooklyn Park's workers compensation insurer, filed an Answer to the Amended Claim Petition denying the claim on September 13, 2001. Ex. D. Home was subsequently

placed in liquidation by Order of Liquidation issued by the Merrimack County Superior Court on June 13, 2003.

A Stipulation for Settlement of Claimant's workers compensation claim was filed in February 2008. Ex. E. The parties to the Stipulation are the Claimant, the City of Brooklyn Park "with regard to the now defunct Home Insurance Company/REM's coverage period of 1977 through August 14, 1985", the City of Brooklyn Park "with regard to the time it was self-insured through the League of Minnesota Cities Insurance Trust Worker's Compensation Plan for the period of August 15, 1985 through the claimed injury date of October 26, 1994", intervenor Group Health Plan, Inc. and the Special Compensation Fund. Ex. E at 1-2. The Settlement Agreement recites that the City of Brooklyn Park had two roles because, in light of Home's liquidation, it was uninsured for the 1977 through 1985 period and it was a self-insurer for later years. See id. at 2.

The Stipulation, under the heading Matters in Dispute, states that the Claimant contended that he was exposed to asbestos while employed by the City of Brooklyn Park between 1977 and 1994; that he claimed he had been permanently and totally disabled from the effects of asbestos-related disease; and that he claimed entitlement to disability benefits, costs, disbursements, and attorneys' fees. Ex. E at 3. It further states that the City of Brooklyn Park (for the period of Home insurance 1977-1985) contended that Claimant was not exposed to asbestos, cannot carry his burden of proof, and if he was exposed to asbestos, that the exposure was before he started to work for the city; denied Claimant was permanently and totally disabled; and denied that Claimant was entitled to disability benefits. Id. at 4. The City of Brooklyn Park (as self-insured for later years) similarly denied Claimant's claims. Id. at 5. The Special Compensation Fund similarly denied the claims. Id. at 5-6.

After setting forth the parties' positions, the Stipulation provides that "[a]s a compromise of the parties' respective claims and positions," the City of Brooklyn Park for both the Home coverage period and the self-insured period agrees to make, and the Claimant and his spouse agree to accept, payments totaling \$115,000. The City of Brooklyn Park for the Home coverage period was responsible for \$25,000 and for the self-insured period was responsible for the remaining \$90,000. Ex. E at 6. Of the total lump sum settlement amount, \$70,000 was allocated to Claimant:

as a full, final and complete settlement forever of any and all of the [Claimant's] claims related to his alleged asbestosis, asbestos-related pleural disease, or any other form of lung disability, that the [Claimant] has made, or could make, under the Minnesota Worker's Compensation Act

Ex. E at 6 (emphasis added).¹

The Stipulation further provides that:

Upon compliance with the terms herein and the payment of the workers' compensation benefits specified above, such payments shall constitute a full, final, and complete settlement forever of the [Claimant's] claims for workers' compensation benefits arising out of his alleged asbestosis, asbestos-related pleural disease, or any other form of lung disease, including, but not limited to temporary total, permanent partial, temporary partial, and permanent total disability benefits . . . and all other sums or benefits provided by the Minnesota Workers' Compensation Act, with the exception of medical benefits

Ex. E at 9 (emphasis added). It then contains a number of representations by the Claimant, including that he is represented by an attorney who has explained the stipulation. *Id.* at 12 (¶¶ A, C). The representations also include an acknowledgement that Claimant understands that if his medical condition worsens he will be entitled to no additional workers compensation benefits (with the possible exception of medical benefits), and a statement that he considers the stipulation to be "fair and reasonable." *Id.* at 12 (¶ F), 13 (¶ I). The Stipulation is signed by

¹ The settlement excluded claims for medical benefits, which were to remain open subject to the City of Brooklyn Park's continuing denials of primary liability. *Id.* at 6-7, 9. Claimant has not asserted any claim for medical benefits.

Claimant, his spouse, his attorney, the City of Brooklyn Park, its attorney and the intervenors. Id. at 13-18.

Claimant filed a proof of claim seeking workers compensation benefits in the Home liquidation. Ex. A. See Ex. H (explaining claim). The Liquidator denied the claim because Claimant had settled his workers compensation claim and the City of Brooklyn Park paid Home's portion of the settlement. Ex. G.

ARGUMENT

Claimant's claim was properly denied because Home's insured, the City of Brooklyn Park, settled with Claimant in 2008. Any Home obligation to Claimant depends upon the City of Brooklyn Park's liability to Claimant. The Claimant has asserted a "third party claim" in the Home liquidation as permitted by RSA 402-C:40, I, which allows persons with claims against an insured to file a claim directly in the liquidation. Such third-party claims depend upon the existence of valid claims against the insureds of the insolvent insurer. The 2008 settlement of the Claimant's workers' compensation claim precludes the third party claim Claimant now asserts against Home. Claimant may have become dissatisfied with the settlement amount, but he cannot further proceed against City of Brooklyn Park and so has no claim against Home.

The Stipulation of Settlement completely resolved Claimant's workers compensation claim for asbestos related injury (except for the possibility of future medical benefits, which is not at issue). In this proceeding, Claimant contends that his workers compensation claim for the period Home insured the City of Brooklyn Park should have resulted in a larger award than the

\$25,000 allocated to that period in the Stipulation of Settlement. See Ex. H (Claimant’s Objection). Claimant apparently claims it was worth \$500,000. Id.²

The Stipulation of Settlement expressly prevents Claimant from seeking to obtain amounts in excess of the \$25,000 from the City of Brooklyn Park for Home’s coverage period. As a “compromise of disputed positions,” Claimant agreed to accept the payment “as a full, final and complete settlement forever” of all his claims related to alleged asbestosis under the Minnesota Worker’s Compensation Act (with the exception of medical benefits). Ex. E. at 6, 9. Claimant expressly stated that he understood that if his medical condition should worsen, he “will be entitled to no additional workers’ compensation benefits” from the City of Brooklyn Park for the Home period or the self-insured period (with the possible exception of medical benefits). Ex. E. at 12 (¶ F). He also stated that he considered the settlement “to be fair and reasonable.” Ex. E at 13 (¶ I). Claimant was represented by legal counsel, see Ex. E at 12 (¶¶ A, C), 14, and as a consequence, the settlement is “conclusively presumed to be reasonable, fair, and in conformity with [the workers’ compensation law].” Minn. Stat. § 176.521, Subd. 2. See Gordon v. Beaver, 928 F. Supp. 858, 861 (D. Minn. 1996).³

This settlement precludes Claimant from seeking additional workers compensation from the City of Brooklyn Park. See Gordon, 928 F. Supp. at 864-65 (noting that employee’s workers compensation settlement and employer’s settlement with tortfeasor have “the same preclusive

² The Liquidator is not aware of any basis for Claimant’s assertion that \$25,000 was the maximum amount he could collect from the City of Brooklyn Park because Home was in liquidation. See Ex. H (Objection). In that regard, the Liquidator notes that Claimant was represented by counsel in connection with the settlement.

³ Under Minn. Stat. § 176.521, Subd. 1, a settlement between an employee and the employer or insurer to settle a workers compensation claim is valid “where it has been executed in writing and signed by the parties and intervenors” unless one or more of the parties is not represented by an attorney, in which case the commissioner or a compensation judge must also approve the settlement. In this case both the Claimant and the City of Brooklyn Park were represented by attorneys. See Ex. E at 14, 18. “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 it settles medical compensation (which this settlement did not). Minn. Stat. § 176.521, Subd. 2.

impact as would an adjudication”). This also follows from the doctrines of accord and satisfaction and release. The Claimant agreed in the Stipulation to accept the payments under it “as a full, final and complete settlement forever” of his workers compensation claim. Ex. E at 6, 9. He subsequently accepted payment in accordance with the Stipulation. See Ex. H (the Objection); Ex. F (letter from the City of Brooklyn Park’s counsel). This accord and satisfaction discharges Claimant’s cause of action against the City of Brooklyn Park. See Ladwig & Ladwig, Inc. v. Orlin Ladwig, Inc., 372 N.W.2d 408, 411 (Minn. App. 1985). Furthermore, at least one court has treated a settlement containing similar language as releasing liability. See Olin v. Minnesota Teamsters Constr. Div. Health & Wel. Fund, 2001 U.S. Dist. LEXIS 17799 at *4, *8 (D. Minn. 2001).

Since Claimant cannot obtain additional workers compensation benefits from Home’s insured the City of Brooklyn Park, he cannot seek such additional benefits from Home. Any Home liability on a third-party claim depends upon the liability of its insured (as well as insurance coverage). See RSA 402-C:40, I (“Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.”). Here, the insured has already paid an agreed upon amount in settlement of a disputed liability for the Home insured period. Since Home’s insured is no longer liable to Claimant, neither is the Home estate.

CONCLUSION

For the foregoing reasons, the Referee should sustain the Liquidator's determination.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER
OF INSURANCE OF THE STATE OF
NEW HAMPSHIRE, SOLELY AS
LIQUIDATOR OF THE HOME
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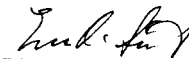


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March 4, 2011

Certificate of Service

I hereby certify that a copy of the foregoing Section 15 Submission, the Liquidator's Exhibits and a Compendium of Non-New Hampshire Authorities Cited was mailed to the Claimant, at 1831 Brookdale Court, Brooklyn Park, MN 55444 by first class mail, postage prepaid, on March 4, 2011.



Eric A. Smith