

# Minnesota Employer Liability and Workers' Compensation Update Minnesota Self-Insurer's Association December 2, 2011

## Johnson & Condon, P.A.

**Matthew M. Johnson**

**[MMJ@Johnson-Condon.com](mailto:MMJ@Johnson-Condon.com)**

**Direct Dial: (952) 806-0484**

**Sarah E. Groskreutz**

**[SEGroskreutz@Johnson-Condon.com](mailto:SEGroskreutz@Johnson-Condon.com)**

**Direct Dial: (952) 806-0407**

# CASE LAW UPDATE REGARDING WORKERS' COMPENSATION SUBROGATION AND EMPLOYER LIABILITY

- Staab v. Diocese of St. Cloud, 780 N.W.2d 392 (Minn. Ct. App. 2010)
  - Not an employer liability or workers' compensation subrogation case.
  - Important case impacting all civil cases involving comparative fault.

# EMPLOYER LIABILITY – LAMBERTSON

- Based on case Lambertson v. Cincinnati Corporation, 257 N.W.2d 679 (Minn. 1977)
- Third Party's Right of Contribution Against Employer
- Fault-Based: Tortfeasor and Employer's Fault Compared

# EMPLOYER LIABILITY – LAMBERTSON (CONT.)

- Typical Claims:
  - Negligent Training/Supervision
  - Unsafe Workplace
  - OSHA Violations
  - Product Modification/Misuse
- Part II of Workers' Compensation Policy

# EMPLOYER LIABILITY – LAMBERTSON (CONT.)

- Lambertson Exposure:
  - Workers' Compensation Benefits Paid and Payable
  - Limited by Statute to Amount Employer May Recover By Way of Subrogation
- Problems Arise When Employer's Part II Coverage is Less Than the Potential Subrogation Recovery

# LAMBERTSON EXAMPLE

Comp Paid	300,000
Total Award	900,000
Subro Recovery	200,000
Lambertson Coverage	100,000

## Percentage of Fault Amongst Parties:

Plaintiff	0%
Tortfeasor	80%
Employer	20%

Lamberston Exposure	180,000
Excess Exposure to Employer	80,000

# WAIVE AND WALK

- Waive and Walk – Minn.Stat. § 176.061, subd. 11 (2000):
  - Waive Subrogation Claim for Paid and Payable, and Avoid Lambertson Claim by Tortfeasor

**COMPARATIVE FAULT: MINN.  
STAT. § 604.02, SUBD. 1  
(PRE 8/1/2003)**

When two or more persons are *jointly* liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that each is jointly and severally liable for the whole award . . .



# COMPARATIVE FAULT: MINN. STAT. § 604.02, SUBD. 1 (POST 8/1/2003)

**Joint Liability.** When two or more persons are *severally* liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that the following persons are jointly and severally liable for the whole award:

(1) A person whose fault is greater than 50 percent . . .

**STAAB V. DIOCESE OF ST.  
CLOUD, 780 N.W.2D 392 (MINN.  
CT. APP. 2010)**

- Plaintiff injured when she fell out of wheelchair that was pushed by her husband while exiting Holy Cross Parish School.
- Doorway where she was exiting had an interior floor 4-5 inches higher than the concrete outside.

**STAAB V. DIOCESE OF ST.**  
**CLOUD, 780 N.W.2D 392 (MINN.**  
**CT. APP. 2010) (cont.)**

- Plaintiff sued Diocese of St. Cloud
- Plaintiff did not sue her husband
- Diocese did not bring third-party action
- Both Diocese and husband were included on special verdict form
- Jury found Diocese 50% and husband 50% at fault

**STAAB V. DIOCESE OF ST.  
CLOUD, 780 N.W.2D 392 (MINN.  
CT. APP. 2010) (cont.)**

- Trial court held the Diocese must pay 100% of award based on Schneider v. Buckman, 433 N.W.2d 98 (Minn. 1988).
- In Schneider, the only defendant, an ambulance owner, was found 55% at fault while other non-parties shared the remaining fault.

**STAAB V. DIOCESE OF ST.**  
**CLOUD, 780 N.W.2D 392 (MINN.**  
**CT. APP. 2010) (cont.)**

- Because Buckman was only party defendant, court held he must pay 100% of verdict.
- Trial court in Staab followed Schneider determining that the Diocese, as the only defendant, must pay 100% of the award after the jury found it negligent.

**STAAB V. DIOCESE OF ST.**  
**CLOUD, 780 N.W.2D 392 (MINN.**  
**CT. APP. 2010) (cont.)**

- Minnesota Court of Appeals disagreed finding Diocese's only severally liable because its fault did not exceed 50%.
- Court called into question whether Schneider is still good law in light of changes to statutory language.

**STAAB V. DIOCESE OF ST.**  
**CLOUD, 780 N.W.2D 392 (MINN.**  
**CT. APP. 2010) (cont.)**

- Case argued to Minnesota Supreme Court in December 2010
- No decision yet

# **STAAB's IMPACT ON SELF-INSURERS**

- If affirmed, there is arguably no Lambertson exposure when the third-party tortfeasor's fault is 50% or less.
- Third-party would not be required to pay more than its fair share resulting in no contribution claim.



# **STAAB's IMPACT ON SELF-INSURERS**

- Decreases potential for Lambertson exposure.
- However, subrogation recovery will be less if third-party only owes its percentage of fault.

# **STAAB's IMPACT ON SELF-INSURERS**

- May impact interplay between self-insured exposures (workers' compensation) and insured exposures (employer liability coverage).

# **STAAB's IMPACT ON SELF-INSURERS**

- If reversed, any finding of negligence could result in third-party owing the entire award (other than for the plaintiff's own fault).
- End result is that Lambertson claim may exist even if third-party's fault is less than 50%.

# WORKERS' COMPENSATION CASE LAW UPDATE

- Let's focus on three main trends that were prominent this year:
  - **Petitions to Vacate**
  - **Psychological injuries**
  - **PTD claims**

## **Petitions to Vacate-**

- **7 cases** were heard between February and October 2011.
- **5 Petitions** were granted.
  - That's over **71%**.
  - This is a significant increase compared to prior years.

## **Petitions to Vacate-**

- **The following evidence was deemed significant:**
  - **Change in diagnosis (ie. herniation to spondylosis; 3 surgeries since Award; new herniations ).**
  - **Change in ability to work (ie. able to work until deemed PTD).**
  - **Need for medical care (ie. \$185,000 in expenses paid since Award).**
  - **Additional PPD (15% to 40%; 11% to 25%).**
  - **A causal connection between the work injury and current condition (ie. agreement of the parties; unrefuted opinion of Dr. Wengler).**

## Psychological injuries-

- **2** main cases, each factually different; one involved unwanted touching by IME doctor.
  - A mere “temporal relationship between the injury and the onset of a mental condition, standing alone, is *insufficient* to establish causation for a mental injury.” Quijada v. Heikes Farms, Inc., slip op. (WCCA May 4, 2011) citing Rindahl v. Brighton Wood Farms, Inc., 382 N.W.2d 855 (Minn. 1986).
  - A medical opinion causally relating the mental condition to the physical injury *is required* to find depression compensable.

## **PTD claims-**

- Frandsen v. Ford Motor Co. is the seminal case.
- WCCA held the parties failed to refer to §176.101, subd. 4 or to include language in the Stipulation that PTD benefits would cease when the EE reached age 67.
- Supreme Court partially overturned and remanded, noting “waiver requires an expression of intent to relinquish the right at issue.”
  - Lesson - make sure your PTD Stipulations include language that you reserve all defenses to PTD claims under the statute and rules!



## PTD claims-

- However, on remand, the WCCA just held:
  - “There is **no need** to file a Petition to Discontinue Benefits to discontinue PTD benefits based on the presumptive retirement provision...”
  - “The ER/IR may cease payment of PTD benefits when an EE attains the age of 67 ***without taking further action.***”
  - If the EE disagrees, he may file a Claim Petition.

## **PTD claims-**

- This seemingly answers some long-standing procedural questions.
- However, it is contrary to the procedures outlined in Minn. Rule 5220.2630.
- And, it is contrary to Judge Milun's due process concerns, as outlined in *two* separate dissenting opinions.
  - Will the plaintiff bar push for an appeal?
  - **STAY TUNED!**

# *So, what can we look forward to in 2012?*



- **We anticipate increased claims relating to:**
  - Diabetic neuropathy
  - Complications of obesity
  - Bariatric surgeries
  - Age-related conditions
  
- **And, with the current economic conditions, we foresee:**
  - Increased lay-offs
  - An aging workforce
  - Attacks on the age 67 retirement presumption
  - Increased PTD claims

- **There are some big icebergs on the horizon...**
  - Risk management issues
  - Surgical implants
  - Medicare/MSA considerations



- **All of these factors will likely increase WC claims.**
  - We are happy to help
  - Please call with questions

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