

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**

**Claimant Number:**

**Policy or Contract Number:**

**Date Of Loss:**

**ORDER ON THE MERITS**

Robert H. Hines has filed a proof of claim seeking to recover for injuries sustained as a result of exposure to asbestos while an employee of the City of Brooklyn Park, Minnesota. The Liquidator has denied the claim stating the Stipulation for Settlement signed by Mr. Hines, the City of Brooklyn Park, and others in 2008 precludes Mr. Hines from proceeding with a claim for workers compensation benefits again Home.

**RELEVANT FACTS**

Mr. Hines worked for the City of Brooklyn Park, Minnesota as a field inspector of construction. *Hines Section 15 Submission*. He reviewed on-going construction, including foundations, framing, insulation, heating systems, cooling systems, etc. He began his work for the City in 1977. In 1994, Mr. Hines was diagnosed with asbestosis. *Hines Section 15 Submission*.

Mr. Hines 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 in February 1997. *Proof of Claim*. Mr. Hines filed an Amended Claim with the Workers Compensation Division on September 12, 2001. *Proof of Claim*. Mr. Hines alleged he contracted asbestosis and other related injuries as a result of his work for the City. *Id.* The City of Brooklyn Park and Home filed an Answer to the Amended claim and denied the claim. *Proof of Claim*. Home was placed in liquidation on June 13, 2003.

In February 2008, the parties to the workers compensation claim filed a Stipulation for Settlement. *Stipulation for Settlement, Exhibit 9 to Liquidator's Section 15 Submission*. Mr. Hines was a party to the Stipulation. *Id.* The City of Brooklyn Park was also a party, both with regard to the now defunct Home Insurance Company/REM coverage period of 1977 through August 14, 1985, and with regarding to the time the City was self-insured through the League of Minnesota Cities Insurance Trust Workers Compensation Plan, from August 15, 1985 through the claimed date of injury of October 26, 1994. *Id.* Other parties to the Stipulation were the intervenor, Group Health Plan, Inc. and the Special Compensation Fund. *Id.*

The Stipulation for Settlement states that Mr. Hines contends that he was exposed to asbestos while employed by the City of Brooklyn Park between 1977 and 1994 and that he was permanently and totally disabled from the effects of asbestosis, and that he was entitled to disability benefits, attorneys fees and other amounts. *Id.* In the Stipulation for Settlement, the City of Brooklyn Park denied that Mr. Hines was exposed to asbestos, asserted Mr. Hines had not met his burden of proof, and asserted that if Mr. Hines was exposed to asbestos, the exposure was before he began working for the City of Brooklyn Park. *Id.* The City also denied Mr. Hines was permanently and totally disabled, and denied he was entitled to disability benefits. The Special Compensation Fund made the same denials as the City of Brooklyn Park. *Id.*

The Stipulation for Settlement provides that the parties compromised their claims and positions. The City of Brooklyn Park, for both the Home coverage period and the self-insured period, agreed to make payments totaling \$115,000. *Id.* For the Home coverage period, the City of Brooklyn Park paid \$25,000 and the remaining \$90,000 was for the period the City was self-insured. *Id.* The Stipulation for Settlement indicates Mr. Hines and his spouse agreed to accept that amount. The amount was divided.

The Stipulation for Settlement includes a series of representations made by Mr. Hines. Those representations include that he was represented by an attorney who explained the Stipulation. In addition, Mr. Hines represented that he considered the Stipulation to be fair and reasonable. *Id.* The Stipulation of Settlement specifically states:

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 Employee'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...

*Id.* The Stipulation was signed by Mr. Hines, his spouse, counsel for Mr. Hines, the City of Brooklyn Park, its attorney, and the intervenors. *Id.*

## LEGAL ANALYSIS

The issue before the Referee is whether Mr. Hines can proceed with a claim for workers compensation benefits against Home in this liquidation proceeding, in light of the Stipulation for Settlement entered into in February 2008 or whether that Stipulation precludes Mr. Hines from proceeding with such a claim.

Mr. Hines asserts that Home should have provided him with a large settlement based on his asbestos related injuries, and because Home, in his words, “filed for bankruptcy” he was forced to settle for less with the City of Brooklyn Park, under state law. The Liquidator argues that Mr. Hines is precluded from bringing a third party claim against Home in the liquidation because the 2008 settlement of Mr. Hines’ workers’ compensation claim precludes such a third party claim. The Liquidator argues that the Stipulation of Settlement completely resolved Mr. Hines’ workers’ compensation claim for asbestos related injury.

This case is governed by the laws of Minnesota. Under Minnesota statute, §176.521, Subd. 1, an agreement between an employee or an employee’s dependent and the employer or insurer to settle any workers’ compensation claim is valid if 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. Where a party is not represented by an attorney, the commissioner or a compensation judge must also approve the settlement. *Id.* In this case, Mr. Hines confirmed that he was represented by counsel who had explained the Stipulation for Settlement to him. Minn. Stat. §176.521, Subd. 2 states that 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 [the statute] except when it settles medical compensation. The Stipulation for Settlement specifically excludes medical compensation. Because Mr. Hines and the City of Brooklyn Park were both represented by counsel, the Stipulation for Settlement is presumed fair. *Gordon v. Beaver, 928 F.Supp. 858, 861 (D.Minn. 1996).*

The language of the Stipulation for Settlement is clear. It expressly prevents Mr. Hines from seeking additional funds from the City of Brooklyn Park for the period during which Home provided coverage. *Stipulation for Settlement, Exhibit 9 to Liquidator’s Section 15 Submission.* The Stipulation also specifically states that the payments by the City of Brooklyn Park were full, final and complete settlement forever of Mr. Hines’ claims for workers’ compensation benefits arising out of his alleged asbestosis and other related injuries.

Mr. Hines agreed in the Stipulation for Settlement to accept the funds as full, final and complete settlement. He accepted those funds. *Exhibit F to Liquidator’s Section 15 Submission.* Under

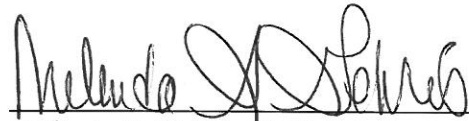
the doctrines of accord and satisfaction, this acceptance discharges Mr. Hines' cause of action against the City of Brooklyn Park and its insurer, Home. *See Ladwig & Ladwig, Inc. v. Orlin Ladwig, Inc.*, 372 N.W.2d 408 (Minn.App. 1985). *See also Olin v. Minnesota Teamsters Constr. Div. Health & Wel. Fund*, 2001 U.S. Dist. LEXIS 17799 (D.Minn. 2001 (a settlement with similar language as a release of liability).

## CONCLUSION

For the reasons set forth above, the Referee finds that Mr. Hines accepted a settlement from the City of Brooklyn Park for his workers' compensation claims related to asbestosis and asbestos-related diseases. That Stipulation for Settlement precludes Mr. Hines from bringing a claim against Home for the same damages in this Liquidation.

**So ordered.**

May 3, 2011  
Dated

  
Melinda S. Gehris, Referee