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### **If Stairway, Then Compensable?**

By James Fritz Hauschild

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Not necessarily.

My colleague, Timothy J. Manahan, wrote an excellent article that was posted on our website and distributed to our clients back in March of 2018. Tim summarized recent case law dealing with stairway injuries, and offered some thoughts on how to analyze stairway injury claims. He noted that the Workers' Compensation Court of Appeals (WCCA) and Minnesota Supreme Court had issued a number of inconsistent decisions relating to workplace injuries that occurred on stairways.

One of the many cases summarized by Tim was *Roller-Dick v. CentraCare Health Systems*, slip op. (W.C.C.A. October 19, 2017). In *Roller-Dick*, the employee was descending an internal stairway on the employer's premises at the end of the day when she slipped and fell to the bottom of the flight of stairs, fracturing her left ankle. At the trial level, the compensation judge denied the employee's claim, finding that she had failed to establish that the risk of injury on the employer's stairway was any greater than that which she would have faced in "everyday life." On appeal, the WCCA rejected the compensation judge's conclusion, stating that the compensation judge had not used the correct test. Per the WCCA, a "flight of stairs alone increases the risk of injury." Therefore, once the employee established that she had fallen on a flight of stairs, nor further proof of an increased risk was required.

Prior to the *Roller-Dick* decision, stairway cases invariably focused upon the presence or absence of some hazardous condition (e.g., absence of handrail, steepness of stairs) or activity (e.g., hurrying) associated with a stairway which resulted in injury. The WCCA's *Roller-Dick* decision, and another WCCA decision called *Lein v. Eventide*, slip op. (W.C.C.A. December 29, 2017) changed the analysis. Specifically, *Roller-Dick* and *Eventide* held that a stairway in and of itself constitutes a "hazard." So, per the WCCA, when an employee is in the course of his/her employment and falls on a stairway, the injury is considered to have arisen out of the employment and the claim is compensable.<sup>1</sup> I like a bright line rule as much as the next guy, but this is not good from a defense perspective.

At the time Tim wrote his article, the *Roller-Dick* decision was on appeal to the Minnesota Supreme Court. So, we in the workers' compensation world have been waiting with bated breath for some time now. The Minnesota Supreme Court finally issued its decision, affirming the WCCA, on August 8, 2018. Significantly, though the Minnesota Supreme Court affirmed the WCCA, finding Ms. Roller-Dick's injury to be compensable, the Minnesota Supreme Court declined to make a ruling on whether a stairway in and of itself constitutes a "hazard." Footnote 6 of the Minnesota Supreme Court's decision reads as follows:

We need not hold today, as the WCCA did, that stairs themselves are workplace hazards exposing employees to an increased risk of injury. Rather, we conclude that the now-undisputed factual circumstances surrounding Roller-Dick's injury – established in the record – amount to an increased risk as a matter of law. Whether stairs generally are

hazardous is a matter for another case and another record.

The undisputed factual circumstances the Court refers to are that Ms. Roller-Dick was carrying a plant to her desk and not using the handrails of workplace stairs when she fell. While we can certainly disagree with the Court regarding whether the increased risk was work-related, the main takeaway from *Roller-Dick* is that the Supreme Court has yet to make a determination regarding whether stairs generally are hazardous. So, there are still legal grounds for denying a claimed stairway injury in the absence of some hazardous condition (e.g., absence of handrail, steepness of stairs) or activity (e.g., hurrying) associated with a stairway which resulted in injury. However, as Tim noted in his article, if your denied stairway claim goes to trial and is denied by the compensation judge, it will almost certainly be appealed to the WCCA, which will reverse based upon its holding in *Roller-Dick*. So, be prepared to give the Minnesota Supreme Court another opportunity to weigh-in.

Of note, *Lein v. Eventide* has been appealed and argued before the Minnesota Supreme Court, so the Court already has another opportunity to whether stairs in themselves are generally hazardous and create an increased risk.

[1] Under the Minnesota Workers' Compensation Act, in order for a claimed workplace injury to be compensable, it must be an injury "arising out of and in the course of employment." Minn. Stat. § 176.011, Subdivision 16.

If you have any questions about the above, or any other matters, please contact Fritz Hauschild, or any attorney at Brown & Carlson.

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