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"Lien-ing" Towards Compensability on Stairs Cases

By Sean M. Abernathy

Recently, the Supreme Court issued its opinion in *Lien v. Eventide*. This opinion represents the latest development in the ongoing saga in the line of "stairs cases" that stem from the Supreme Court's 2013 decision in *Dykhoff v. Xcel Energy,* 840 N.W.2d 821 (Minn. 2013). As my colleagues have written in prior *Brown & Carlson Insight* articles, the Workers Compensation Court of Appeals and the Minnesota Supreme Court have been wrestling with cases involving stairs and the question of whether a flight of stairs itself constitutes a "hazard" that exposes an Employee to an increased risk of injury. As the WCCA outlined in its decision in *Roller-Dick v. CentraCare Health Systems*, slip op. (W.C.C.A. October 19, 2017), "a flight of stairs alone increases the risk of injury." Under that test, once an Employee has an injury involving a flight of stairs, no further analysis need be performed. Simply because the incident involved a flight of stairs, the injury would be compensable.

Around the same time the WCCA issued the *Roller-Dick* decision, it also issued its decision in *Lien v. Eventide,* slip op. (W.C.C.A. December 29, 2017). Echoing its analysis in *Roller-Dick*, the WCCA found that "for an employee, who is injured on stairs located on the employer's premises, the stairs themselves constitute an increased risk and that injury is considered to have arisen out of the employment." The court's reasoning was that simply because an Employee sustains an injury on stairs on her Employer's premises while working, that injury is compensable. The WCCA went to considerable lengths to highlight what they felt were errors made by previous Workers Compensation judges and courts in looking at whether the stairs had defects or other features (presence or lack of anti-slip tread, paint, etc.) noting that "[a]n employer is liable for an injury arising out of and in the course of employment, 'without regard to the question of negligence.'" The WCCA takes the position that the presence or absence of a defect on a flight of stairs is irrelevant.

Recall that the Minnesota Supreme Court then issued its own decision in *Roller-Dick v. CentraCare Health System*, 916 N.W.2d 373, 375 (Minn. 2018). In that decision, the Supreme Court affirmed the WCCA below, but provided a specific footnote (Footnote 6) stating that while the "undisputed factual circumstances" surrounding the work injury amounted to an increased risk (e.g. the Employee carrying a plant from her desk and a handbag), the question of "whether stairs generally are hazardous is a matter for another case and another record." As my colleagues have noted, the Minnesota Supreme Court in *Roller-Dick* appears to have punted on the question of stairs as a general hazard and increased risk.

We now have the decision from the Supreme Court in *Lien v. Eventide*, A18-

0138 (Minn. Sup. Ct. Oct. 2, 2018). I note from the outset that this decision is a summary affirmance and is not precedential. "Summary affirmances have no precedential value because they do not commit the court to any particular point of view" *Hoff v. Kempton*, 317 N.W.2d 361, 366 (Minn. 1982). Therefore, we cannot look to this case as a dispositive holding from the Supreme Court affecting the compensability of stairs cases.

While we cannot treat the *Lien v. Eventide* decision as precedent, we *can* analyze it in context and "read the tea leaves" so to speak with regard to the Supreme Court's possible intentions toward the treatment of future stairs cases. In this Order, the Supreme Court looks to its prior decision in *Roller-Dick* and then immediately affirms the WCCA below without further analysis. One could argue that this treatment signals the jury is still out with regard to stairs cases and that the language from Footnote 6 remains in effect. In other words, the Supreme Court has still not taken a concrete position on whether stairs themselves constitute an increased risk to Employees.

However, one could also argue that by affirming two WCCA decisions involving defect-free stairs as compensable, the Supreme Court is edging ever closer to finding stairs themselves to constitute an increased risk of injury to Employees. Indeed, if we look at the Supreme Court's language in *Roller-Dick*, they note that the Minnesota Workers' Compensation system "obligates an Employer to compensate Employees for injuries arising out of and in the course and scope of employment without regard for negligence on behalf of the employee or *the employer*" *Roller-Dick*, at 375 (emphasis in original). This could be read as rejecting the idea that one must consider whether the staircase featured a defect or not. Instead, the question would be whether the simple presence of stairs increased the risk of injury. The Supreme Court then went on to note their agreement with the compensation judge that the Employee there was "undoubtedly" exposed to circumstances in her workplace that increased her risk of falling. *Id*, at 375. It could be that the court is insinuating that the "circumstance" is the flight of stairs, but they choose not to make that explicit determination, hence their hedge in Footnote 6. I do note that the facts of the case show the Employee to have been carrying a plant and not using the handrails, which are also "circumstances" considered by the court.

So where does this leave Employers and Insurers facing potential liability for stairs cases? As noted above, the Supreme Court's pronouncements in Footnote 6 from *Roller-Dick* remain in place and *Lien* has no precedential value. Thus, Employers and Insurers continue to have good grounds on which to deny cases where Employees fall on stairs that are not defective or clearly hazardous. However, if a claimant is carrying an item related to their employment, rushing for a work related reason, or otherwise exposed to an employment risk at the time of their injury on stairs, it is *highly likely* that their injury will be found to be compensable and attempts at an appeal will be affirmed under the WCCA's reasoning in *Roller-Dick* and *Lien*.

Even if an Employer and Insurer were to prevail before a workers' compensation judge on a case with a defect-free staircase in the absence of other risks or hazards, we continue to note the high likelihood of the Employee appealing to the WCCA based on these recent WCCA and Minnesota Supreme Court decisions. We also note the high likelihood that further appeal to the Supreme Court would then be necessary in order to achieve a good outcome given the WCCA's determination that stairs themselves are hazardous. This then leads to the need for a pure cost-benefit analysis weighing the prospect of protracted litigation with an uncertain outcome versus the associated costs in time and treasure.

For more detailed analysis of the Roller-Dick cases, I encourage you to read the

excellent *Brown & Carlson Insight* articles by my colleagues Timothy J. Manahan and James Fritz Hauschild.

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

Sean M. Abernathy

763-252-6365
sabernathy@brownandcarlson.com

Visit our Website

Brown & Carlson, P.A.
300 Highway 169 S.,#500
Minneapolis, MN 55426-1113
763-591-9950
F: 763-591-9202