

**IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA**

**ROBERT L. AAMLID,**

Plaintiff,

vs.

**KERRY K. KERKMAN a/k/a KERRY K.  
KORKMAN and ORLAN D. BRAUN a/k/a  
ORLAN D. BRAUN and DOCKENDORF  
EQUIPMENT and MILWAUKEE  
INSURANCE COMPANY,**

Defendants.

Case No. CI99-38

**ORDER ON DISTRIBUTION**

**DATE OF HEARING:** October 16, 2000.  
**DATE OF RENDITION:** November 8, 2000.  
**DATE OF ENTRY:** Date of filing by court clerk (§ 25-1301(3)).  
**TYPE OF HEARING:** Open court, upon written stipulation.  
**APPEARANCES:**  
For plaintiff: No appearance.  
For defendants: No appearances.  
**SUBJECT OF ORDER:** Distribution of settlement proceeds.  
**PROCEEDINGS:** At the hearing, these proceedings occurred:

Pursuant to the previous agreement of counsel for plaintiff and counsel for defendants Dockendorf Equipment and Milwaukee Insurance Company, the matter was submitted upon the written stipulation of the parties.

**FINDINGS:** The court finds and concludes that:

1. The written stipulation of facts submitted by the remaining parties states:
  1. Milwaukee Insurance Company, a member of Unitrin Property and Casualty and Insurance Group, has paid \$2,794.29 in workers' compensation benefits to Mr. Aamlid or in his behalf in connection with the April 26, 1995, work related motor vehicle accident that was the subject of the petition filed in Holt County District Court.

2. By letter dated May 20, 1996, Rollyn Samp notified Milwaukee that his firm represented Mr. Aamlid with reference to the April 26, 1995 claim and with reference to a December 23, 1993 motor vehicle accident.

3. By letter dated May 23, 1996, Milwaukee responded by sending to Mr. Samp a copy of medical records in its possession and a copy of letters addressed to Mr. Aamlid. In the letter, Milwaukee also advised Mr. Samp that it would represent its subrogation interest and that it would not honor any attorney fees unless it explicitly requested his assistance in pursuing its subrogation interest.

4. On March 23, 1999, a petition was filed in Holt County District Court on behalf of Mr. Aamlid seeking damages for injuries sustained in the April 26, 1995 motor vehicle accident.

5. Mr. Aamlid did not give Milwaukee thirty days notice of an opportunity to join in instituting the action and to be represented by counsel.

6. Milwaukee was not made a party to the action filed in Holt County District Court until an amended petition was filed on April 19, 2000.

7. On or about May 2, 2000, the court was notified the night before trial that the action filed in Holt County District Court had been settled.

8. The action filed in Holt County District Court was settled for \$7,500.00.

9. Milwaukee was not consulted before the settlement was reached.

10. The attorney fee agreement between Mr. Aamlid and Mr. Samp's firm provided for a one-third contingency fee after payment of expenses.

11. Milwaukee did not retain Mr. Samp or Mr. Welsh to represent its subrogation interest.

12. Litigation expenses total \$4,630.14.

13. Blue Cross/Blue Shield claims a lien of \$10,278.50.

2. At the hearing on the motion to dismiss the plaintiff's claim against the defendant Kerkman with prejudice, and prior to such dismissal, counsel for defendants Dockendorf Equipment and Milwaukee Insurance Company appeared and acquiesced in the amount of the settlement and the granting of the motion to dismiss with prejudice. They thereby conceded that the settlement offer was fair and reasonable considering liability, damages, and the ability of the third person and his or her liability insurance carrier to satisfy any judgment, and this court implicitly determined as much in granting the motion to dismiss with their acquiescence.

3. Consequently, the employer and its insurer have waived any claim resulting from the plaintiff's (or plaintiff's counsel's) failure to timely notify them of the action.

4. Thus, under NEB. REV. STAT. § 48-118 (Reissue 1998):

[T]he party bringing the claim or prosecuting the suit shall be entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney's fees, which expenses and attorney's fees shall be prorated to the amounts payable to the employer or his or her insurer under the above right of subrogation and to the amount in excess of such amount payable to the employer or his or her insurer under his or her right of subrogation, and which expenses and attorney's fees shall be apportioned by the court between the parties as their interests appear at the time of such recovery.

5. The real issue before this court is the "fair and equitable distribution of the proceeds" of the settlement contemplated by NEB. REV. STAT. § 48-118 (Reissue 1998).

6. The court agrees with the defendant employer and defendant insurer that this court, in making that determination, should consider that plaintiff did not give these defendants particularly timely notice of the right to participate, did not give them much opportunity to participate in the action or negotiation of settlement, and settled the claim before giving these defendants any realistic opportunity to participate.

7. The court concludes that, under these circumstances and the other circumstances described in the stipulation, the settlement proceeds should be distributed:

- a. \$4,630.14 to payment of litigation expenses;
- b. \$956.62 to counsel for plaintiff;
- c. \$956.62 to the plaintiff; and,
- d. \$956.62 to the defendant employer's compensation insurer (defendant Milwaukee Insurance Company).

8. Of the total settlement of \$7,500.00, the sum of \$5,103.00 has been paid into the clerk of this court, and the balance is represented by a check payable to "Unitrin and James R. Welsh."

9. The simplest means of disposing of the proceeds is to:

- a. Direct the court clerk to disburse \$956.62 to defendant Milwaukee Insurance Company, as compensation insurer for defendant Dockendorf Equipment;
- b. Direct the court clerk to disburse \$956.62 to the plaintiff, Robert L. Aamlid;

- c. Direct the court clerk to disburse the remaining funds held by the clerk to James R. Welsh Attorney Trust Account, and to order that they be distributed by attorney Welsh, first, to the payment of the stipulated litigation expenses, and, second, to the fees of the respective attorneys for the plaintiff; and,
- d. Order attorney Welsh to present the \$2,397.00 check to defendant Milwaukee Insurance Company for endorsement on behalf of Unitrin, to order said defendant to properly endorse said check on behalf of Unitrin payable to the James R. Welsh Attorney Trust Account and to return such check so endorsed to attorney Welsh, and to order that they be distributed by attorney Welsh, first, to the payment of the stipulated litigation expenses, and, second, to the fees of the respective attorneys for the plaintiff.

10. The court concludes that the same constitutes a fair and equitable distribution of the proceeds of settlement.

**ORDER:** IT IS THEREFORE ORDERED that:

1. The settlement proceeds paid in to the clerk of this court and in the form of a multi-party check in the possession of attorney James R. Welsh shall be distributed as follows:

- a. The court clerk shall disburse \$956.62 to defendant Milwaukee Insurance Company, as compensation insurer for defendant Dockendorf Equipment;
- b. The court clerk shall disburse \$956.62 to the plaintiff, Robert L. Aamlid;
- c. The court clerk shall disburse the remaining funds held by the clerk to the James R. Welsh Attorney Trust Account, and they shall be distributed by attorney Welsh, first, to the payment of the stipulated litigation expenses, and, second, to the fees of the respective attorneys for the plaintiff; and,
- d. Attorney Welsh is ordered to present the \$2,397.00 check to defendant Milwaukee Insurance Company for endorsement on behalf of Unitrin, and defendant Milwaukee Insurance Company is ordered to properly endorse said check on behalf of Unitrin payable to the James R. Welsh Attorney Trust Account and to return such check so endorsed to attorney Welsh, and the proceeds thereof shall be deposited to said attorney trust account and shall be distributed by attorney Welsh, first, to the payment of the stipulated litigation expenses, and, second, to the fees of the respective attorneys for the plaintiff.

2. All of said orders shall be performed within 60 days from the date of entry of this order, or within 30 days after entry of order spreading the mandate of any appellate court if appeal is timely taken from this order.

Signed in chambers at Ainsworth, Nebraska, on November 8, 2000.  
DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- ⋮ Mail a copy of this order to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- 9 Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- 9 Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- ⋮ Note the decision on the trial docket as: [date of filing] Signed "Order on Distribution" entered.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.

Mailed to:

BY THE COURT:

\_\_\_\_\_  
William B. Cassel  
District Judge