

**MINNESOTA SUPREME COURT ORDERS SOLVENT INSURANCE CARRIER TO  
PAY 100% OF CLAIM WHERE LIABILITY APPORTIONED TO 50% TO ITS INJURY  
AND 50% TO INSOLVENT INSURANCE CARRIER COVERED BY MIGA**

In a lengthy opinion issued on June 10, 2010, the Minnesota Supreme Court held in Seehus v. Bor-Son Construction, Inc., that a solvent workers' compensation insurer does not have a contribution claim against the Minnesota Insurance Guaranty Association (MIGA) arising from an employee's Claim Petition involving disability resulting from successive injuries because the insurer's claim is not a "covered claim" under Minnesota Statute Chapter 60C (2008). The Supreme Court further ruled that when a solvent workers' compensation insurer's injury is a substantial contributing factor to an employee's claim, the solvent workers' compensation insurer is solely liable for that claim even though 50% of liability was apportioned to MIGA.

Seehus sustained an admitted low back injury on March 8, 1989, while working for Bor-Son while it was insured by CNA. Sp. He subsequently sustained a second injury to his low back on March 19, 2001, while working for Wesley Residence when it was insured by Meadowbrook Insurance Group/GAB. Meadowbrook /GAB subsequently became insolvent and its claims were assumed by MIGA. In June 2007, the employee filed a Claim Petition against Wesley/MIGA. In October 2007, MIGA filed a Petition for Joinder and Contribution/Reimbursement against Bor-Son/CNA. The case went to a hearing solely to determine the liability of the employers/insurers for medical claims. A compensation judge found each injury a substantial contributing factor to the claims and apportioned liability 50% to Bor-Son/CNA and 50% to Wesley/MIGA. However, the judge also concluded he lacked jurisdiction to order MIGA to pay, so he ordered Bor-Son/CNA to pay 100% of the medical claims.

Bor-Son/CNA appealed to the Workers' Compensation Court of Appeals (WCCA) which reversed, holding the judge lacked jurisdiction to even join Bor-Son/CNA in the first instance. Wesley/MIGA appealed to the Supreme Court.

The Minnesota Supreme Court, after reviewing extensively the legislative and case law history involving the Workers' Compensation Act and Chapter 60C (the statute which creates MIGA and provides procedures for adjudicating claims of policyholders against insolvent insurance carriers who are members of MIGA) concluded the judge did have jurisdiction to determine whether the injuries involving CNA and MIGA were substantial contributing factors to the employee's claims. It also ruled that the judge appropriately found that pursuant to the Maxwell case, MIGA cannot be compelled to share liability with the solvent insurer. The Supreme Court ruled Bor-Son/CNA were 100% solely responsible for the Seehus claim.

**Analysis**

The Minnesota Supreme Court has strictly construed the statute governing insolvent insurers and the Minnesota Insurance Guaranty Association, Minnesota Statutes Chapter 60C. Its significant decisions include the following:

Case Name	Supreme Court's Decision or Holding
Taft	Workers' compensation courts do not have jurisdiction when the sole issue is whether a solvent insurer's claim against MIGA is a "covered claim" under Chapter 60C.
Gerads	Workers' compensation courts do not have jurisdiction to determine MIGA's contribution claim against a solvent insurer.
Wiss	Workers' compensation courts do not have jurisdiction to adjudicate contribution claims between solvent insurers and MIGA.
Maxwell	A solvent workers' compensation carrier does not have a contribution claim against MIGA because it is not a "covered claim" under Chapter 60C.
Seehus	Workers' compensation courts have jurisdiction to determine whether a solvent insurer's and MIGA's injuries are substantial contributing factors to employee's current claims <u>and</u> to order the solvent insurer to pay 100% of the claim if its injury is a substantial contributing factor.

The Minnesota Supreme Court's decision in Seehus raises another hurdle to any claims for equitable apportionment/contribution/reimbursement which a solvent insurer may have against an insolvent insurer whose claims are covered by MIGA. If you are involved in a case involving MIGA and your injury is a substantial contributing factor to the employee's claims, there is a strong likelihood you could be held responsible for 100% of the claims. The Seehus decision, however, leaves open the question of how little liability can be apportioned to a solvent insurer's injuries before that injury is determined to be a substantial contributing factor to the employee's claims and trigger its responsibility to pay 100% of the claims. The syllabus and head notes of the Supreme Court's decision indicate that where a solvent insurer is found to bear "some causal responsibility" for the employee's claim, it is solely liable for the claim, but the body of the Supreme Court's decision does not use the phrase "some causal responsibility." In Seehus, Bor-Son/CNA was found 50% responsible and they did not appeal this equitable apportionment of liability. Subsequent case law will have to determine whether lower percentages of apportionment will trigger liability. For example, if a compensation judge apportions responsibility 10% to a solvent insurer and 90% to MIGA, will that 10% liability be enough to trigger the solvent carrier's liability and ultimately its 100% responsibility for the claim?

Please contact our attorneys if you have any questions about the Seehus decision and its potential impact on your claims. Thank you.