

Cleaver-Brooks, Inc. v. Twin City Fire Insurance ***

Case Number

S-14-0822

Case Audio

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April 30, 2015

Court Number

Douglas

Case Summary

S-14-0822 Cleaver Brooks, Inc. v. Twin City Fire Insurance Company (Appellant) vs. American Insurance Company, SSW, Inc. f/n/a National Dynamics Corp., Daniel T. Scully, Roger L. Swanson, Verlyn L. Westra, John Does 1, 2, and 3

Douglas County, Judge Gary B. Randall

Attorneys: J. Scott Paul (McGrath North Mullin & Kratz PC LLO) (Appellee American Insurance Company) --- Tiernan T. Siems, Andrew M. Collins (Erickson Sederstrom PCLLO) (for Appellee Cleaver Brooks, Inc.) --- Terry R. Wittler (Cline Williams Wright Johnson & Oldfather LLP) (for Appellees SSW, Inc. f/k/a National Dynamics Corp; Daniel T. Scully, Roger L. Swanson, and Verlyn L. Westra) --- Andrew T. Schlosser (Fitzgerald Schorr Barmettler & Brennan PCLLO) (for Appellant Twin City Fire Insurance Company)

Civil: Declaratory judgment; right to intervene in Workers' Compensation claim

Proceedings below: The district court found Appellant Twin City responsible for payment of the underlying workers' compensation award on the grounds that Twin City was the insurance carrier for National Dynamics at the time of employee Risor's injury as decided in a workers' compensation action. See *Risor v. Nebraska Boiler*, 277 Neb. 679 (2009) (Risor II); *Risor v. Nebraska Boiler*, 274 Neb. 906 (2008) (Risor I).

Issues: 1. The Court erred in granting Cleaver-Brooks' Motion for Summary Judgment as to Twin City. 2. The Court erred in granting American's Motion for Summary Judgment as to Twin City. 3. The Court erred in denying Twin City's Motion for Summary Judgment. 4. The Court erred in dismissing Twin City's counterclaim against Cleaver-Brooks. 5. The Court erred in dismissing Twin City's cross-claim against American. 6. The District Court erred in finding Twin City solely liable for payment of the Award. 7. The District Court erred in finding that there was a workers' compensation judgment against Twin City's insured, National Dynamics. 8. The District Court erred in interpreting the Nebraska Supreme Court's holding in *Risor I* such that Twin City was ultimately liable for payment of Risor's workers' compensation Award. 9. The District Court erred in interpreting the Nebraska Supreme Court's holding in *Risor I* as applying to the merits of any subsequent contribution or indemnity claim rather than being limited to the interventional due process claims before the Supreme Court in *Risor I*. 10. The District Court erred in finding Twin City was an insurer of "Nebraska Boiler." 11. The District Court erred in finding Twin City was in privity with "Nebraska Boiler." 12. The District Court

erred in finding Cleaver-Brooks' delay in asserting that Risor was not its employee prior to May 28, 1998, was not inexcusable. 13. The District Court erred in finding the delay in giving notice of Risor's claim to Twin City was not inexcusable. 14. The District Court erred in finding Twin City was not prejudiced by receiving notice of Risor's claim only after entry of the Award. 15. The District Court erred in finding representations concerning American's dates of coverage for "Nebraska Boiler" made to the Workers' Compensation Court by counsel retained by American to defend Cleaver-Brooks did not constitute judicial estoppel binding American to such coverage. 16. The District Court erred in finding Risor was continuously employed by "Nebraska Boiler," and, therefore not holding Cleaver-Brooks to be judicially estopped from asserting Risor was an employee of National Dynamics. 17. The District Court erred in finding Cleaver-Brooks and American were not unjustly enriched as a result of Twin City's payment of the Award. 18. The District Court erred in finding that American owed no duty to exercise reasonable care with respect to Twin City. 19. The District Court erred in finding Cleaver-Brooks did not breach its duty to exercise reasonable care with respect to Twin City.
