MINNESOTA SUPREME COURT DECLINES TO EXTEND *BROOKS* AUTOMATIC-REIMBURSEMENT RULE TO A MEDICAL PROVIDER THAT DOES NOT RECEIVE PROPER NOTICE OF ITS RIGHT TO INTERVENE IN A WORKERS' COMPENSATION PROCEEDING.

In *Gamble v. Twin Cities Concrete Products*, the Minnesota Supreme Court considered whether to extend its decision in *Brooks v. A.M.F., Inc.*, 278 N.W.2d 310 (Minn. 1979), and require automatic payment of a medical provider's treatment expenses when an employer fails to give the medical provider notice of its right to intervene in a workers' compensation proceeding to determine responsibility for those expenses. Based on the promulgation of specific rules to protect an intervenor's interests since *Brooks* and the absence of prejudice, the supreme court declined to extend the automatic-reimbursement rule and determined that the hospital was not entitled to automatic payment of its medical bills.

In *Gamble*, the self-insured employer denied the employee's claim for fusion surgery on grounds it was not related to and was not reasonable and necessary treatment for the work-related injury. The employee had the surgery. The employee's personal medical insurer paid $52,809 (78% of the billed amount) to the hospital for surgery-related medical treatment expenses

A hearing was held to determine whether the surgery was causally related to the work injury, whether the surgery was reasonable and necessary, and who was responsible for the medical expenses related to the surgery. The hospital did not participate in the hearing because no party gave it notice of its statutory right to intervene. The judge found the surgery causally related to the work injury but not reasonable and necessary. The judge therefore ordered the employer to reimburse the employee's personal medical insurer but authorized the employer to seek reimbursement from the employee's medical providers, including the hospital. No party appealed.

After reimbursing the employee's personal medical insurer, the employer sought reimbursement from the employee's medical providers. The hospital intervened, seeking to obtain payment of the unpaid balance of the employee's medical bills. The judge held a second hearing and again found that the surgery not reasonable and necessary. The judge therefore denied the hospital's claim for payment and ordered the hospital to reimburse the employer.

On appeal, the Workers' Compensation Court of Appeals (WCCA) reversed, concluding the *Brooks* automatic-reimbursement rule obligated the employer to pay the hospital's full bill regardless of the reasonableness and necessity of the surgery because the hospital had not been given proper notice of its right to intervene and participate in the workers' compensation proceeding. The employer appealed.

The Minnesota Supreme Court reversed, holding that a potential intervenor that does not receive proper notice of its right to intervene in a workers' compensation proceeding is not entitled to automatic payment of its medical charges—i.e., the *Brooks* automatic-reimbursement rule does

not apply—unless the medical provider can show the lack of notice resulted in prejudice. The court further held that the hospital failed to show it was prejudiced by the lack of notice in this case. The supreme court's reasoning behind the decision is therefore two-fold.

First, the court acknowledged the promulgation of specific rules since *Brooks* to protect an intervenor's interest in workers' compensation proceedings. For instance, an intervenor is now entitled to a hearing to determine if it was effectively excluded from negotiations, *see* Minn. R. 1420.1850, subp. 3B (2013), and a judge may now sanction a party for failing to provide a potential intervenor with notice of its right to intervene if the failure materially prejudiced the rights and liabilities of the other parties and/or potential intervenor, *see* Minn. R. 1415.1100, subp. 4 (2013). Second, the court reasoned the compensation judge adequately protected the hospital's interests by revisiting the reasonableness and necessity of the surgery de novo at the second hearing and the hospital was not materially prejudiced by the lack of notice.