

# NEBRASKA SUPREME COURT

## Picard v. P & C Group 1

306 Neb. 292 (2020) · No. No. S-18-207 · Decided July 2, 2020

### SUMMARY

The Nebraska Supreme Court addressed successive workplace injuries sustained by Halina Picard and considered whether workers' compensation benefits could be apportioned outside Nebraska's Second Injury Fund statute. The court held that, absent an applicable apportionment statute, the full-responsibility rule applies, but concluded that a reasonable controversy existed concerning the 2015 injury, precluding penalties, attorney fees, and interest. The judgment of the Court of Appeals was affirmed in part and reversed and remanded in part.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| COURT                 | Nebraska Supreme Court                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| WRITING FOR THE COURT | Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DECIDED               | July 2, 2020                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DOCKET                | No. S-18-207                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | P & C Group 1 and Hartford Fire Insurance Company petitioned for further review of a Nebraska Court of Appeals decision affirming workers' compensation awards for two successive injuries. Picard filed a cross-appeal concerning penalties, attorney fees, and interest.                                                                                                                                                                                                                                                                                         |
| STANDARD OF REVIEW    | Jurisdictional questions not involving factual disputes are reviewed as matters of law. Workers' compensation awards may be modified, reversed, or set aside only for the statutory grounds stated in Neb. Rev. Stat. § 48-185. Factual findings of the Workers' Compensation Court have the effect of a jury verdict and are not disturbed unless clearly wrong; questions of law are reviewed independently. Whether a reasonable controversy exists under § 48-125 is a question of fact, as is whether an injured worker has suffered a loss of earning power. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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## PARTIES

P & C Group 1, Inc., doing business as Camaco, LLC, Hartford Fire Insurance Company v. Halina Picard

## TOPICS

workers compensation

appellate procedure

appellate jurisdiction

standard of review

statutory interpretation

## PRACTICE AREAS

workers compensation

appellate procedure

statutory interpretation

## QUESTIONS PRESENTED

1. Whether Picard's cross-appeal concerning penalties, attorney fees, and interest was properly perfected and within the Nebraska Supreme Court's jurisdiction.
2. Whether Nebraska law permits apportionment of workers' compensation awards for successive work-related injuries outside the statutory Second Injury Fund provisions.
3. Whether Picard's loss of earning power from the 2015 back injury could be assessed independently of the disability caused by her 2012 hand injuries.
4. Whether Picard was entitled to permanent partial disability benefits for the 2015 injury when that injury caused no additional loss of earning power or employability.

## HOLDINGS

1. An appellee may properly perfect a cross-appeal on further review by complying with the Nebraska Supreme Court's appellate rules; filing a separate cross-petition for further review is not required.
2. A reasonable controversy existed regarding the compensability of Picard's 2015 injury, so the award of penalties, attorney fees, and interest under § 48-125 was properly reversed and vacated.
3. Unless otherwise provided by statute, Nebraska applies the full-responsibility rule and generally does not apportion recovery for two or more successive work-related injuries. Because Picard's injuries occurred after December 1, 1997, apportionment was inapplicable.
4. Picard was not entitled to permanent partial disability benefits for the 2015 injury because that injury caused no additional loss of earning power or employability when considered in light of the disability from the 2012 injury.

## KEY QUOTATIONS

*"Therefore, we clarify that unless otherwise provided by statute, Nebraska applies the full-responsibility rule and generally does not apportion the recovery for two or more successive work-related injuries."* (309)

*"Because Picard's earning power was not impaired by the 2015 accident, the injury was not compensable under § 48-121(2)."* (313)

## FACTUAL BACKGROUND

Picard suffered bilateral carpal tunnel injuries in a 2012 workplace accident and received surgery, permanent restrictions, and workers' compensation benefits. In 2015, while working in a position accommodating those restrictions, she suffered a herniated disk and underwent back surgery. She returned to the same position without additional accommodations, remained competitively employed, and earned a higher hourly wage than before the 2015 injury. The compensation court nevertheless awarded separate whole-body benefits for both injuries, including a 55-percent loss-of-earning-capacity award for the 2015 injury.

## PROCEDURAL HISTORY

The Nebraska Workers' Compensation Court awarded Picard benefits for a 2012 bilateral carpal tunnel injury and a 2015 back injury, and also awarded penalties, attorney fees, and interest. The Court of Appeals affirmed the injury awards but reversed and vacated the penalties, fees, and interest. The Nebraska Supreme Court granted P & C's petition for further review, denied Picard's petition for further review, but exercised jurisdiction over Picard's properly perfected cross-appeal.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand to the Court of Appeals with directions to enter an order affirming the Workers' Compensation Court's award of benefits for the 2012 injury and reversing the award of benefits for the 2015 injury.

## CASES CITED

- Picard v. P & C Group 1, 27 Neb. Ct. App. 646, 934 N.W.2d 394 (2019)
- Risor v. Nebraska Boiler, 274 Neb. 906, 744 N.W.2d 693 (2008)
- Cox Nebraska Telecom v. Qwest Corp., 268 Neb. 676, 687 N.W.2d 188 (2004)
- Armstrong v. State, 290 Neb. 205, 859 N.W.2d 541 (2015)
- J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017)
- Williams v. Gering Public Schools, 236 Neb. 722, 463 N.W.2d 799 (1990)
- Kline v. Farmers Ins. Exch., 277 Neb. 874, 766 N.W.2d 118 (2009)
- McBee v. Goodyear Tire & Rubber Co., 255 Neb. 903, 587 N.W.2d 687 (1999)
- Mendoza v. Omaha Meat Processors, 225 Neb. 771, 408 N.W.2d 280 (1987)
- Heiliger v. Walters & Heiliger Electric, Inc., 236 Neb. 459, 461 N.W.2d 565 (1990)
- Jacob v. Columbia Ins. Group, 2 Neb. Ct. App. 473, 511 N.W.2d 211 (1994)
- Cummings v. Omaha Public Schools, 6 Neb. Ct. App. 478, 574 N.W.2d 533 (1998)
- Rodgers v. Nebraska State Fair, 288 Neb. 92, 846 N.W.2d 195 (2014)
- Davis v. Goodyear Tire & Rubber Co., 269 Neb. 683, 696 N.W.2d 142 (2005)
- Sidel v. Travelers Ins. Co., 205 Neb. 541, 288 N.W.2d 482 (1980)

- *Anderson v. Cowger*, 158 Neb. 772, 65 N.W.2d 51 (1954)
- *Micek v. Omaha Steel Works*, 136 Neb. 843, 287 N.W. 645 (1939)
- *Madlock v. Square D. Co.*, 269 Neb. 675, 695 N.W.2d 412 (2005)
- *Whitesides v. Whitesides*, 290 Neb. 116, 858 N.W.2d 858 (2015)
- *Gilkeson v. Northern Gas Engineering Co.*, 127 Neb. 124, 254 N.W. 414 (1934)
- *JBS Swift & Co. v. Ochoa*, 888 N.W.2d 887 (Iowa 2016)
- *Mergentime Perini v. Department of Employment Services*, 810 A.2d 901 (D.C. 2002)
- *Liberty Mutual Insurance Co. v. Peoples*, 595 S.W.2d 135 (Tex. Civ. App. 1979)
- *Colorado Fuel & Iron Corp. v. Industrial Commission*, 151 Colo. 18, 379 P.2d 153 (1962)
- *Tomes v. Gray & Dudley Co.*, 201 Tenn. 697, 301 S.W.2d 389 (1957)