

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

DECEMBER 27, 1995

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1693

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

GLORIA J. KREL,

Plaintiff-Appellant-Cross-Respondent,

v.

**BLUE CROSS & BLUE SHIELD
UNITED OF WISCONSIN,**

Defendant-Respondent-Cross-Appellant,

**WISCONSIN PHYSICIANS
SERVICE INSURANCE CORPORATION,**

Defendant,

**CHIPPEWA COMMONS, A GENERAL
PARTNERSHIP AND AMERICAN
MOTORISTS INSURANCE COMPANY,**

Defendants-Third-Party Plaintiffs,

v.

**UTILITY ENTERPRISES LTD.
and TRANSCONTINENTAL
INSURANCE COMPANY,
A CNA INSURANCE COMPANY,**

Third-Party Defendants.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

LaROCQUE, J. Gloria Krei, who settled her personal injury action against two defendants allegedly liable for negligently causing her to slip and fall in a mall, appeals a subrogation judgment, following a *Rimes* hearing, awarded to Blue Cross & Blue Shield United of Wisconsin for medical benefits paid Krei following her injury.¹ At the hearing, the circuit court found Krei 100% causally negligent in the accident.

Because we conclude that the outcome here is controlled by the recent decision, *Ives v. Rhineland Paper Co. Group Health Plan*, No. 95-0932 (Wis. Ct. App. Oct. 31, 1995, ordered published Nov. 28, 1995), we affirm the judgment. We need not address Blue Cross's cross-appeal.

We held in *Ives*:

To reach an equitable result in subrogation cases, we conclude that an insured who is greater than 50% contributorily negligent is made whole if the insured

¹ *Rimes v. State Farm Mut. Auto Ins. Co.*, 106 Wis.2d 263, 316 N.W.2d 348 (1982). In a *Rimes* hearing, the circuit court holds a post-settlement circuit to determine whether the settlement made the insured whole.

receives his or her total damages discounted by the percentage of contributory negligence, *even if that percentage is greater than 50%*.

Id. at 8.

We also noted:

We believe that under Wisconsin's *Rimes-Garrity* rules, an insurer may seek reimbursement out of settlement proceeds only where that sum compensates the insured for all damages less the percentage of the insured's contributory negligence, if any. *Garrity v. Rural Mut. Ins. Co.*, 77 Wis.2d 537, 253 N.W.2d 512 (1977).

Id. at 3.

In *Ives*, the insured's total damages were stipulated to be \$1.5 million. The Iveses received a settlement from the alleged tortfeasors of \$261,250. We remanded the matter to the circuit court to determine the percentage, if any, of the insured, Michael Ives', negligence. We concluded that the Iveses were "made whole" by payment of the settlement sum of \$261,000 if Michael was 82.58% or greater contributorily negligent because the Iveses received 17.42% of their damages in the settlement. (100% - 17.42% = 82.58%)

Here the circuit court found the insured, Krei, wholly at fault for her injuries. The court found the value of Krei's losses as follows:

Medical Expenses:	\$ 10,291.80	
Lost Wages:		1,806.00
Stockings:	224.00	
Pain & Suffering:		<u>30,000.00</u>
Total:	\$ 42,321.80	

Applying the logic of *Ives*, we therefore agree with the circuit court's determination that Krei was made whole in her receipt of \$29,500 from

the settling defendants and that she must therefore reimburse Blue Cross the amount of \$2,201.15 for insurance benefits paid to Krei.²

By the Court. – Judgment affirmed.

Not recommended for publication in the official reports.

² The trial court characterized the payment to Blue Cross as a "pro-rata share." The record suggests Blue Cross was compensated in full. Blue Cross does not contest the amount of the court's award. The discrepancy between this amount and the medical expenses found by the court is not an issue on appeal.