

NO. A06-1344

State of Minnesota  
 In Supreme Court

Connie C. Reider,

*Employee-Respondent,*

vs.

Anoka-Hennepin School District #11,  
 Self-Insured,

*Employer-Relator,*

and

Noran Neurological Clinic,  
 Blaine Chiropractic Center,

*Intervenors,*

and

Insurance Federation of Minnesota,

*Amicus Curiae.*

**BRIEF AND APPENDIX OF AMICUS  
 INSURANCE FEDERATION OF MINNESOTA**

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I.

**INTRODUCTION**

The Insurance Federation of Minnesota (hereinafter, "IFM") was granted leave to participate as *Amicus Curiae* by Order of the Supreme Court dated July 31, 2006. The IFM joins in the position of the Relator Anoka-Hennepin School District #11 (hereinafter "Anoka") in asking this Court to reverse the determination of the Workers' Compensation Court of Appeals that appointment of a neutral physician, notwithstanding a timely request or motion, is discretionary with the Compensation Judge.

II.

**STATEMENT OF THE CASE**

Amicus IFM adopts Relator Anoka's Statement of the Case.

III.

**ARGUMENT**

The Workers' Compensation Court of Appeals erred by rejecting the plain, direct, and unambiguous language of Minn. Stat. §176.155, subd. 2 in holding that appointment of a neutral physician is always discretionary. Amicus IFM urges this Court to reverse the Workers' Compensation Court of Appeals and to adopt the rationale set forth in the dissenting opinion of The Honorable Miriam Rykken of the Workers' Compensation Court of Appeals.

Amicus IFM has intervened on behalf of its insurer members, but its support for the Relator in this matter is not limited only to that constituency. It is the position of the IFM, and the Relator, that the Minnesota Legislature has granted to all potential litigants in the workers' compensation system the right, upon timely request, to have a physician appointed by the Court to assist the parties and the fact finder not only in resolving disputes that have been exacerbated by widely divergent medical opinions, but also in helping the parties decide the best course of action in the increasingly complex and technical world of medical practice.

Relator has done an excellent job of tracing the history of Legislative activity in the 1970s regarding ongoing concerns about high costs in Minnesota's workers' compensation system. Numerous studies, as cited by Relator, recommended changes. As Relator points out, in 1979, the Minnesota Legislature amended Minn. Stat. §176.155, subd. 2 replacing the permissive "may" with the mandatory "shall" with respect to the obligation of the Compensation Judge to designate a neutral physician if an interested party requests such an appointment at least 30 days before a scheduled prehearing conference.

This Court has previously acknowledged these legislative studies and reviews as they have influenced ongoing changes in Minnesota's workers' compensation law. See, e.g., Parson v. Holman Erection Company, 428 N.W.2d 72.

The essence of this appeal is whether the Workers' Compensation Court of Appeals can ignore, for whatever reason, the clear intent of the Legislature in responding to the concerns of its constituents and implementing changes the Legislature deems are in the best interests of the citizens of the State of Minnesota.

Minnesota Statutes Chapter 645 speaks directly to the issue before this Court. Minn. Stat. §645.08, subd. 1, cannons of construction, requires that "words and phrases are construed according to the rules of grammar and according to their common and approved usage . . ." Minn. Stat. §646.16 mandates that "when the words of the law and their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."

Finally, and most tellingly, Minn. Stat. §645.44, subd. 16 specifically defines "shall" as mandatory.

This is exactly the position asserted by Judge Rykken in her dissent. The fact that two judges on the Court of Appeals panel felt compelled to disregard not only the plain language of the statute but also the Legislature's specific interpretation of the operative "shall" is bewildering and disconcerting.

It is ironic that the majority of the Workers' Compensation Court of Appeals panel disregards what is implicitly a legislative recognition of the import and solemnity with which the citizenry regards our justice system and our judges. Moreover, the Legislature clearly recognizes the flaws in our adversarial system and the reality that too often "experts" (including medical experts) become advocates for the party retaining their services.

The Legislature obviously appreciates that when a physician is directed by a judge, and not by one of the parties, to examine a litigant and to report to the Court, he or she will be much more inclined to be objective and straightforward.

In 1979, the Minnesota Legislature appropriately, in the highest traditions of the democratic process, listened to the concerns of its constituents, embraced the recommendations of the numerous studies cited by the Relator, and enacted their revisions to Minn. Stat. §176.155. The Workers' Compensation Court of Appeals exceeded its authority in dismissing the clear, unambiguous and statutorily defined language chosen by the Legislature to grant workers' compensation litigants the right to have a neutral physician appointed by a compensation judge.

It must be stated that the workers' compensation system is not only about the costs of insurance or about wage loss and permanent disability benefits paid to injured workers. It is increasingly a realm dealing with serious, invasive, and life-changing medical care and treatment. It should be reassuring to all parties that a vehicle for an unbiased opinion as to the propriety of such care and treatment is available.

Amicus IFM does not suggest enforcement of this statute will be without administrative burden or expense. However, "it is for the Legislature, not the Court, to judge the social utility of this statutory system, which has no common law counterpart, to balance the interests of the employees and employers, and to make whatever adjustments and corrections it deems appropriate." Parson, 428 N.W.2d at 76.

IV.

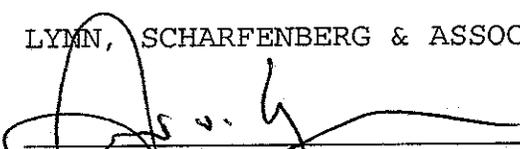
CONCLUSION

The Workers' Compensation Court of Appeals exceeded its authority in holding all requests for neutral physicians are discretionary with the Compensation Judge under Minn. Stat. §176.155 (2). Amicus IFM joins in the Relator's request for this Court to reverse the Workers' Compensation Court of Appeals and hold that, upon timely motion, appointment of a neutral physician is mandatory in accordance with the clear and unambiguous intent of the Legislature.

Respectively Submitted,

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DATED: 8-18-06

  
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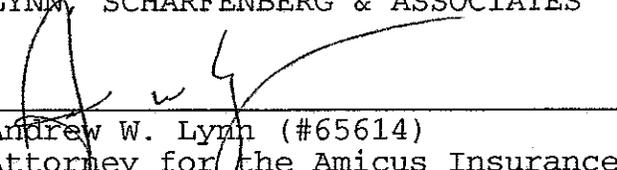
**CERTIFICATION OF BRIEF LENGTH**

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I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a monospaced font. The length of this brief is 300 lines and 1,348 words. This brief was prepared using Microsoft Word Office 2000.

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DATED: 8-18-06

  
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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).