

STATE OF MINNESOTA

IN SUPREME COURT

A07-1267

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Kathy L. Maricle,

*Relator,*

vs.

Farmstead Foods/Self-Insured and  
Special Compensation Fund,

*Respondents,*

vs.

EMPI, Inc., Minnesota Department of  
Human Services, Mayo Foundation,  
Blue Cross/Blue Shield of GA/Healthcare  
Recoveries, Inc., Ucare Minnesota,

*Intervenors.*

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**REPLY BRIEF OF EMPLOYEE-RELATOR**

BAUDLER, BAUDLER, MAUS  
& BLAHNIK  
Robert M. Maus  
Attorney for Employee-Relator  
108 North Main Street  
Austin, MN 55912  
(507) 433-2393

RORY H. FOLEY  
Office of the Attorney General  
Attorney for Respondents  
Suite 900  
445 Minnesota Street  
St. Paul, MN 55101-2127  
(651) 297-2972

## INADEQUATE FOUNDATION

Respondent claims Relator asks the Court to substitute its judgment for the compensation judge's resolution of the opposing medical opinions that the causation for the current claims are not related to her admitted September 25, 1989, injury at Farmstead Foods. Respondent ignores the gist of Relator's argument. Relator contends that Dr. Friedland's opinions on causation were grounded on inadequate foundation based upon four points raised in Relator's Argument and then summarized in the Conclusion of her brief. Her points included the fact that Dr. Friedland missed the medical record indicating that Relator reported to Dr. Waldron on January 22, 1997, that she was having "chronic" neck pain (Ex. 14, p. 7) and that Dr. Friedland did not recognize that Relator's second right shoulder surgery on March 2, 2006, included a decompression and debridement of her impingement syndrome which was an admitted work injury first treated by a "moderately successful" surgery on January 29, 1990. (Compare Ex. 7, p. 1, and Ex. 44; See also Dr. Engasser's IME report dated May 2, 1991, indicating Employee's first right shoulder surgery was "moderately successful," Res. App. 22; Sf. Ex. 8, p. 4)

Respondent dodges the first three points raised in Relator's Argument and then summarized in the Conclusion of her brief. Concerning Relator's fourth point, Respondent argues WCCA properly rejected Relator's claim that Dr. Friedland's opinion on fibromyalgia was based upon inadequate foundation because he did not address Relator's trigger points as identified by two doctors. Respondent is wrong in stating only two doctors identified trigger points in Employee's right scapular area, as five treating doctors found trigger points listed as follows:

<u>Dates</u>	<u>Treating Doctors</u>	<u>Exhibits</u>
December 29, 1989	Dr. Barry J. Larson	Exhibit 20, p. 1
December 13, 1996	Dr. M. P. Christian	Exhibit 46, p. 4

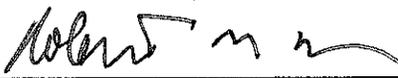
December 23, 1996	Dr. Waldron	Exhibit 14, p. 9
January 25, 2002	Dr. Heather Winkels	Exhibit 14, p. 13
February 15, 2005	Dr. Matthew J. Kirsch	Exhibit 44, p. 20
April 5, 2005 - June 28, 2005	Dr. Barry J. Larson	Exhibit 20, pp. 4-11

Dr. Friedland claimed Employee exhibited global tenderness not localized to specific trigger points necessary for a diagnosis of fibromyalgia. Neither Respondent nor WCCA resolved how five treating doctors found specific trigger points in Employee's right scapular area, but Friedland did not. Moreover, Dr. Friedland failed to state as a "salient" point of his foundation for his opinion on fibromyalgia that five treating doctors found specific trigger points in Employee's right scapular area.

A thorough review of all four points raised by Relator reveals that Dr. Friedland's opinions on causation collapse for lack of adequate foundation.

Respectfully submitted,

BAUDLER, BAUDLER, MAUS & BLAHNIK, LLP  
Attorneys for  
108 North Main Street  
Austin, MN 55912  
(507) 433-2393

By: 

Robert M. Maus, #68950