

CASE NO.: A11-1171

STATE OF MINNESOTA
IN SUPREME COURT

ANDREA SCHATZ,

Appellant,

vs.

INTER-FAITH CARE CENTER AND
NEW HAMPSHIRE INSURANCE COMPANY
AS ADMINISTERED BY CHARTIS,

Respondents.

RESPONDENTS' BRIEF AND APPENDIX

Nicole B. Surges (#213391)
Erstad & Riemer, P.A.
8009 34th Avenue South, Suite 200
Minneapolis, MN 55425
952-896-3700
ATTORNEY FOR RESPONDENTS

Lori Swanson
Minnesota Attorney General
1800 Bremer Tower
445 Minnesota Street
Saint Paul, MN 55101
651-296-3353
**ATTORNEY FOR STATE OF
MINNESOTA**

James B. Peterson (#185012)
Falsani, Balmer, Peterson,
Quinn & Beyer
1200 Alworth Building
306 West Superior Street
Duluth, MN 55802
218-723-1990
**ATTORNEY FOR
RELATOR-APPELLANT**

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).

TABLE OF CONTENTS

LEGAL ISSUES	1
STATEMENT OF THE CASE	4
STATEMENT OF THE FACTS	5
STANDARD OF REVIEW	5
ARGUMENT:	
I. IF MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008), SHIFTS COSTS OF OUT-OF-STATE MEDICAL TREATMENT TO THE EMPLOYEE, THE LEGISLATURE HAD THE PURVIEW DUE TO SO TO APPROPRIATELY LIMIT OUT-OF-STATE TREATMENT EXPENSES	6
A. STATUTORY CONSTRUCTION	6
B. STATUTES IN ISSUE	8
C. APPLICATION OF MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008)	10
II. MINNESOTA STATUTES SECTION 176.136, SUBD. 1b(d) (2008) DOES NOT CONFLICT WITH THE FUNDAMENTAL PRINCIPLES OF THE WORKERS' COMPENSATION ACT; RATHER, IT IS AIMED AT ACHIEVING THE PRINCIPLE OF COST CONTAINMENT	12
A. EFFECTUATING ALL FUNDAMENTAL PRINCIPLES OF THE ACT	13
B. AVOIDING RESULTS THAT ARE ABSURD, UNREASONABLE OR IMPOSSIBLE TO APPLY	14
C. ALTERNATIVELY, IF MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008) DOES CONFLICT WITH THE FUNDAMENTAL PRINCIPLES OF THE WORKERS' COMPENSATION ACT, IT STILL MUST BE GIVEN EFFECT AS A SPECIAL AND MORE RECENT PROVISION	15

III.	MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008) DOES NOT EXTEND THE MINNESOTA WORKERS' COMPENSATION ACT TO OUT-OF-STATE MEDICAL PROVIDERS OR IMPROPERLY REQUIRE MINNESOTA COMPENSATION JUDGES TO APPLY AND INTERPRET THE LAWS OF OTHER STATES	16
A.	EXTENDING JURISDICTION TO OUT-OF-STATE PROVIDERS	17
B.	APPLYING AND INTERPRETING THE LAWS OF OTHER STATES	18
IV.	MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008) DOES NOT VIOLATE AN EMPLOYEE'S RIGHTS OF EQUAL PROTECTION, DUE PROCESS AND RIGHT TO REDRESS UNDER THE MINNESOTA CONSTITUTION	22
A.	EQUAL PROTECTION / FUNDAMENTAL RIGHT TO TRAVEL	24
1.	RATIONAL BASIS REVIEW	27
2.	STRICT SCRUTINY REVIEW	30
B.	DUE PROCESS AND RIGHT OF REDRESS	32
	CONCLUSION	36
	CERTIFICATION	38
	ADDENDUM	39

TABLE OF AUTHORITIES

MINNESOTA DECISIONS

<i>American Family Ins. Group v. Schroedl</i> , 616 N.W.2d 273 (Minn. 2000)	1, 7
<i>Botler v. Wagner Greenhouses</i> , 754 N.W.2d 665 (Minn. 2005)	2, 19, 20
<i>Cordell v. Chanhassen Auto Body</i> , 269 Minn. 103, 130 N.W.2d 362 (1964)	1, 16
<i>Erickson v. Sunset Memorial Park Ass'n</i> , 259 Minn. 532, 108 N.W.2d 434 (1961)	9
<i>Finke v. Midwest Coast Transp.</i> , 59 W.C.D. 111 (W.C.C.A. 1999), summarily aff'd 592 N.W.2d 129 (Minn. 1999)	<i>passim</i>
<i>Freeman v. Armour Food Co.</i> , 380 N.W.2d 816 (Minn. 1986)	3, 20
<i>Gluba Ex. Rel. Gluba v. Bitzan & Ohren Masonry</i> , 735 N.W.2d 713 (Minn. 2007) <i>passim</i>	
<i>Greene v. Comm'r of the Minn. Dep't of Human Svcs.</i> , 755 N.W.2d 713 (Minn. 2008)	30
<i>Hale v. Viking Trucking Co.</i> , 645 N.W.2d 119 (Minn. 2002)	2, 21
<i>Kline v. Berg Drywall, Inc.</i> , 685 N.W.2d 12, 21 (Minn. 2004)	32, 34
<i>Kolton v. County Anoka</i> , 645 N.W.2d 403 (Minn. 2002)	3, 24, 27, 34
<i>Miller Brewing Co. v. State</i> , 284 N.W.2d 353, 356 (Minn. 1979)	6
<i>Mitchell v. Steffen</i> , 504 N.W.2d 198 (Minn. 1993)	4, 24, 30
<i>Parson v. Holman Erection Co.</i> , 428 N.W.2d 72 (Minn. 1988)	<i>passim</i>
<i>State by Beaulieu v. RSJ, Inc.</i> , 552 N.W.2d 695 (Minn. 1996)	1, 7
<i>Sundby v. City of St. Peter</i> , 693 N.W.2d 206 (Minn. 2005)	2, 18
<i>Varda v. Northwest Airline Corp.</i> , 692 N.W.2d 440 (Minn. 2005)	5

SUPREME COURT OF THE UNITED STATES DECISIONS

Attorney Gen. of N.Y. v. Soto-Lopez, 476 U.S. 898 (1986) 25

Hooper v. Bernadillo County Assessor, 72 U.S. 612 (1985) 26

Shapiro v. Thompson, 394 U.S. 618 (1969) 30

Zobel v. Williams, 457 U.S. 55 (1982) 26

FOREIGN DECISIONS

Bill Cooper Frac Tank Co. v. Columbia Reg'l Hosp., 856 P.2d 586 (Okla. Civ. App. 1993) 35

Bowman v. J & J Log & Lumber Co., 305 A.D.2d 888 (N.Y. App. Div. 2003) 34, 35

Conn v. Kotasek Corp., 198 A.D.2d 600 (N.Y. App. Div. 1993) 35

Rivers v. State Accident Ins. Fund, 610 P.2d 288 (Or. Ct. App. 1980) 26, 27

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. XIV, § 1 3, 24

Minn. Const. art. I, § 2 24

Minn. Const. art. I, § 7 32

STATUTORY PROVISIONS

Minn. Stat. § 175A.01 (2008) 18

Minn. Stat. § 176.001 (2008) *passim*

Minn. Stat. § 176.135 (2008) *passim*

Minn. Stat. § 176.136, Subd. 1b(d) (2008)	<i>passim</i>
Minn. Stat. § 176.471 (2008)	5
Minn. Stat. § 176.481 (2008)	5
Minn. Stat. § 645.16 (2010)	1, 6, 7, 13
Minn. Stat. § 645.17 (2010)	1, 13, 21
Minn. Stat. § 645.26 (2010)	15, 16

FOREIGN STATUTORY PROVISIONS

Neb. Rev. Stat. § 48-120(1)(a) & (b) (2011)	23
Iowa Code § 85.27(3) (2011)	23
N.D. Admin. Code 92-01-02-27 & 92-01-02-29.2 (2011)	23
Ark. Code. R. § 099.30® (2011)	23
Mo. Rev. Stat. § 287.140(3) (2011)	23
S.D. Codified Laws § 62-7-8 (2011)	23

LEGAL ISSUES

I. If Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) shifts costs of out-of-state medical treatment to the Employee, did the legislature have the authority to do so to limit out-of-state treatment expenses.

The compensation judge found that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) improperly shifts liability for the usual and customary charges of an out-of-state medical provider from the Employer and Insurer to the Employee. The Workers' Compensation Court of Appeals reversed, finding that the statute may shift liability for out-of-state medical treatment to the Employee but that the propriety of shifting liability was within the purview of the legislature rather than the courts, and held that the compensation judge had failed to apply the law as written.

Apposite Authority:

American Family Ins. Group v. Schroedl, 616 N.W.2d 273 (Minn. 2000)

State by Beaulieu v. RSJ, Inc., 552 N.W.2d 695 (Minn. 1996)

Parson v. Holman Erection Co., 428 N.W.2d 72 (Minn. 1988)

Cordell v. Chanhassen Auto Body, 269 Minn. 103, 130 N.W.2d 362 (1964)

Minn. Stat. § 645.16 (2010)

Minn. Stat. § 645.17 (2010)

Minn. Stat. § 176.001 (2008)

Minn. Stat. § 176.136 (2008)

II. Does Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) conflict with the fundamental principles of the Workers' Compensation Act?

The compensation judge found that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2009) conflicts with the express provisions and fundamental principles of the Workers' Compensation Act and refused to apply the statute. The Workers' Compensation Court of Appeals reversed, finding that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2009) is aimed at cost containment, one of the

fundamental principles of the Workers' Compensation Act, and held that the compensation judge's ruling was clearly erroneous.

Apposite Authority:

Gluba Ex. Rel. Gluba v. Bitzan & Ohren Masonry, 735 N.W.2d 713 (Minn. 2007)

Parson v. Holman Erection Co., 428 N.W.2d 72 (Minn. 1988)

Minn. Stat. § 176.001 (2008)

Minn. Stat. § 176.135 (2008)

Minn. Stat. § 176.136 (2008)

III. Does Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) extend the Minnesota Workers' Compensation Act to out-of-state medical providers and improperly require Minnesota compensation judges to apply and interpret the laws of other states?

The compensation judge did not address this issue but noted that she lacked jurisdiction over the Wyoming medical providers. The Workers' Compensation Court of Appeals held that while proper payment under the Wyoming statute was not in dispute here, future cases could raise the issue of a compensation judge or a Minnesota court's ability to resolve a dispute over proper payment under another state's statutory scheme.

Apposite Authority:

Botler v. Wagner Greenhouses, 754 N.W.2d 665 (Minn. 2008)

Sundby v. City of St. Peter, 693 N.W.2d 206 (Minn. 2005)

Hale v. Viking Trucking Co., 645 N.W.2d 119 (Minn. 2002)

Freeman v. Armour Food Co., 380 N.W.2d 816 (Minn. 1986)

Minn. Stat. § 176.136, Subd. 1b(d) (2008)

IV. Does Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) violate an employee's rights of equal protection, due process and right to redress under the Minnesota Constitution?

Given their limited jurisdiction, neither the compensation judge nor the Workers' Compensation Court of Appeals ruled on the constitutional issues.

Apposite Authority:

Gluba Ex. Rel. Gluba v. Bitzan & Ohren Masonry, 735 N.W.2d 713 (Minn. 2007)

Kolton v. County Anoka, 645 N.W.2d 403 (Minn. 2002)

Mitchell v. Steffen, 504 N.W.2d 198 (Minn. 1993)

U.S. Const. amend. XIV, § 1

Minn. Const. art. I, § 2

Minn. Const. art. I, § 7

STATEMENT OF THE CASE

Appellant Andrea Schatz (the Employee) filed a Medical Request with the Minnesota Department of Labor and Industry (DOLI) seeking payment of outstanding medical bills for treatment received in the state of Wyoming.

Pursuant to Minnesota law, Respondent Inter-Faith Care Center (the Employer) and its workers' compensation insurer, New Hampshire Insurance Company with claims administered by Chartis (the Insurer), paid her medical bills pursuant to the Wyoming workers' compensation fee schedule. *See* Minn. Stat. § 176.136, Subd. 1b(d) (2008). After payment of the bills, the providers claimed balances totaling \$7,198.36. A mediator/arbitrator from DOLI denied the Employee's request for payment of the unpaid balances, and she requested a formal hearing.

Following a hearing, Compensation Judge Patricia J. Milun ordered the Employer and Insurer to pay the balances remaining after application of the Wyoming fee schedule. Judge Milun found the Employer liable for the balances despite the limitations set forth in Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008). The Employer and Insurer appealed to the Workers' Compensation Court of Appeals (WCCA).

The WCCA reversed Judge Milun's Findings and Order, determining that under Section 176.136, Subdivision 1b(d) (2008), the Employer and Insurer were obligated to pay the Wyoming medical providers only those amounts due under the Wyoming workers' compensation fee schedule.

The Employee now appeals.

STATEMENT OF THE FACTS

The material facts are undisputed. On January 26, 2009, the Employee, Andrea Schatz, sustained an admitted left shoulder injury arising out of and in the course and scope of her employment with Inter-Faith Care Center. At that time, the Employee worked and resided in Minnesota. (App. 2.)

The Employee subsequently moved to Wyoming and continued to treat for the left shoulder injury. (App. 2.) Her treatment in Wyoming included two surgeries performed by a physician from Thunder Basin Orthopaedics, PC, with anesthesia for both provided by Wyoming Regional Anesthesia. (App. 2.) When she commenced care at Thunder Basin Orthopaedics, PC, the Employee initialed a Financial Policy form assuming personal liability for any amounts not covered by the workers' compensation carrier. (App. 2.)

Pursuant to Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) of the Minnesota Workers' Compensation Act ("the Act"), the Employer paid for the medical treatment in Wyoming according to the Wyoming Workers' Compensation Fee Schedule. (App. 3.) The providers then claimed balances totaling \$7,198.36, and this litigation ensued.

STANDARD OF REVIEW

Under Minnesota Statutes Section 176.481 (2008), this Court has original jurisdiction over workers' compensation disputes. The Court hears and disposes of workers' compensation matters as it does other civil matters. Minn. Stat. § 176.471 (2008).

Decisions that turn on the application of workers' compensation statutes to essentially undisputed facts involve questions of law and are reviewed de novo. *Varda v. Northwest*

Airlines Corp., 692 N.W.2d 440, 444 (Minn. 2005). Here, the parties have stipulated to the material facts, and the decision of the WCCA is subject to de novo review.

Similarly, the constitutional issues raised by the Employee present questions of law subject to de novo review. *Gluba Ex. Rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 718 (Minn. 2007). Statutes are presumptively constitutional and are declared unconstitutional with extreme caution and only when absolutely necessary. *Id.* at 719. The party challenging a statute's constitutionality must demonstrate that it is unconstitutional beyond a reasonable doubt. *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356 (Minn. 1979).

ARGUMENT

I. IF MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008) SHIFTS COSTS OF OUT-OF-STATE MEDICAL TREATMENT TO THE EMPLOYEE, THE LEGISLATURE HAD THE AUTHORITY TO DO SO TO LIMIT OUT-OF-STATE TREATMENT EXPENSES.

The WCCA found the compensation judge's decision clearly erroneous because she refused to apply Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) and improperly construed Sections 176.136, Subdivision 1b(d) (2008) and Section 176.135 (2008). Because the WCCA's decision is consistent with Minnesota law regarding statutory construction, the decision must be affirmed.

A. STATUTORY CONSTRUCTION.

Minnesota Statutes Section 645.16 (2010) requires that every law shall be construed, if possible, to give effect to all provisions. Moreover, when the words of a law in 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. *Id.* To achieve these ends,

the legislature adopted statutes governing statutory interpretation in Minnesota, and the courts apply cannons of construction to determine legislative intent.

A fundamental principle of statutory construction is that a statute is only ambiguous if its language is subject to more than one reasonable interpretation. *American Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). Where the legislature's intent is clearly manifested by the plain and unambiguous language of a statute, statutory construction is neither necessary nor permitted. *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996).

When construction is necessary, statutes must be read as a whole with no word, phrase or sentence deemed superfluous or insignificant. *Schroedl*, 616 N.W.2d at 277. While statutory construction focuses on the language of the provision at issue, it is appropriate to analyze that provision in light of surrounding sections to avoid conflicting interpretations. *Id.* In the workers' compensation context, it is also useful to heed the legislature's command that the common law rule of liberal construction no longer applies. That is, the Act is not to be given broad liberal construction in favor of the claimant or employee. *See* Minn. Stat. § 176.001 (2008). The legislature explicitly intends the Act to be interpreted to provide "quick and efficient delivery of indemnity and medical benefits to injured workers at a *reasonable cost* to the employers who are subject to [its] provisions." *Id.* (emphasis added).

Here, the Employee urges the Court to ignore the law as written. The Employee's argument disregards the letter of the law under the pretext of pursuing its spirit, an approach expressly prohibited by statute. *See* Minn. Stat. § 645.16 (2010).

B. STATUTES IN ISSUE.

At issue is the interplay between Minnesota Statutes Section 176.135, Subdivision 1(a) (2008), which holds employers liable for medical treatment reasonably necessary to cure and relieve a work injury, and Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008), which limits that liability for treatment obtained outside of Minnesota.

In 2008, the legislature amended the Act to provide:

An employer's liability for treatment, articles, and supplies provided under this chapter by a health care provider located outside of Minnesota is limited to the payment that the health care provider would receive if the treatment, article, or supply were paid under the workers' compensation law of the jurisdiction in which the treatment was provided.

Minn. Stat. § 176.136, Subdivision 1b(d) (2008).

The statute is patently unambiguous and evinces the intent of the legislature to limit employers' liability for medical treatment outside of Minnesota. As Senate Counsel John C. Fuller and Thomas S. Bottern explained in their analysis of the proposed amendment, the statute "provides that health care providers who are located out of state shall be paid at the rate the provider would receive under the workers' compensation law where the treatment was provided." Senate Counsel, Research, and Fiscal Analysis Bill Summary, S.F. No. 3218 - Workers' Compensation Advisory Council Recommended Bill, § 8 (Mar. 17, 2008).¹ Cost

¹When the legislature's intent is in doubt, it is appropriate to look to legislative and administrative interpretations of the statute. Minn. Stat. § 645.615 (2010). For analyses mirroring Fuller and Bottern, *see also* Senate Counsel, Research, and Fiscal Analysis Bill Summary, S.F. No. 3218 - Workers' Compensation Advisory Council Recommended Bill, § 8 (Mar. 3, 2008); House Research Bill Summary - H.F. 3566, § 8 (Mar. 7, 2008); House Research Bill Summary - H.F. 3566, § 8 (Mar. 11, 2008). There are no legislative minutes discussing the intent of the amendment.

containment is a legitimate legislative objective, consistent with the intent and purpose of the Act. *Gluba*, 735 N.W.2d at 725.

The Employee argues that statutory terms are subject to implied exceptions based on public policy and maxims of natural justice. (Appellant's Br. 13.) She relies on *Erickson v. Sunset Memorial Park Ass'n*, 259 Minn. 532, 108 N.W.2d 434 (1961), for this proposition. (Appellant's Br. 9.)

Erickson, however, is inapplicable to this case. *Erickson*, sued out in the wake of the Supreme Court of the United States' decision in *Shelley v. Kraemer*, involved a restrictive covenant that prevented purchasers of cemetery plots from selling their plots to non-Caucasians.² *Id.* at 436-37. Unconstitutional public discrimination through court enforcement of discriminatory, private agreements is irrelevant to limits on employer liability for medical treatment under the Act.

In addition, the Act already has limitations on the amounts Minnesota employers and insurers must pay for medical treatment in Minnesota. The legislature has established that the Commissioner of DOLI "shall by rule establish procedures for determining whether or not the charge for a health service is excessive." Minnesota Statutes Section 176.136, Subdivision 1(a) (2008). Further, Subdivision 1(b) indicates that the procedures must limit the charges allowable for medical treatment as defined and compensable under Section 176.135. Minn. Stat. § 176.136, Subd. 1(b) (2008).

²In *Erickson*, the defendant argued that the prohibited restrictions under Minnesota Statutes Section 507.18 did not apply to burial plots, and, alternatively, that they conflicted with religious and fraternal burial rights under Minnesota Statutes Section 306.02. The court disagreed with both arguments, observing that even if the arguments had merit, "[t]he general terms of a statute are subject to implied exceptions founded on rules of public policy and the maxims of natural justice so as to avoid absurd results." *Erickson*, 108 N.W.2d at 451.

C. APPLICATION OF MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008).

The Employee frames this initial issue as whether the WCCA's interpretation of Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) "erroneously" shifts liability for the usual and customary charges of an out-of-state medical provider for treatment over and above that out-of-state provider's workers' compensation laws from the Employer and Insurer to the Employee. (Appellant's Br. 6). Framing the issue in this manner is flawed and misleading.

Not a single provision within the Act requires employers to pay for 100 percent of all medical expenses related to work injuries. To the contrary, Minnesota Statutes Section 176.135 (2008) requires employers to pay only for medical treatment that is reasonably required to cure and relieve a work injury. Employer liability is further limited to treatment provided at a "reasonable cost." Minn. Stat. § 176.001 (2008).

The Employee also couches the issue in legal language that is no longer applicable. Relying on *Finke v. Midwest Coast Transp.*, 59 W.C.D. 11 (Minn. 1999), *summarily aff'd* 592 N.W.2d 129 (Minn. 1999), the Employee assumes that the Employer should be liable for the "usual and customary charges" of out-of-state medical treatment. *Finke*, W.C.D. at 116-17. The 2008 adoption of Minnesota Statutes Section 176.136, Subdivision 1b(d) (2009), however, abrogated *Finke*, which relied on the language of a statute repealed in 1992.

The repealed statute, Minnesota Statutes Section 176.135, Subdivision 3, stated that charges for out-of-state medical treatment were excessive when the charges exceeded the usual and customary charges for similar treatment in the community where the treatment

occurred. With its adoption of Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008), the legislature has clarified that “similar treatment” means treatment provided under the other state’s workers’ compensation laws rather than treatment provided at regular market rates.³ Notably, of the four provisions contained in Section 176.136, Subdivision 1b (2008), two expressly reference the “usual and customary charge” for medical treatment, but Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) is not one of them.⁴

Despite these facts inconvenient to the Employee, she argues that Section 176.136, Subdivision 1b(d) (2008) ought to apply only in those instances where an out-of-state medical provider has intervened in the Minnesota workers’ compensation case. (Appellant’s Br. 13.) Dissenting from the WCCA majority, the Honorable Judge Stofferahn agreed. (App. 13.)

There is a gaping hole in the Employee’s proposed approach. Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) captioned “Limitation of Liability,” has no requirement that the out-of-state medical provider intervene in the Employee’s claim. Moreover, the Act has a section specifically devoted to intervenor interests. *See* Minnesota Statutes Section 176.361 (2008). Nowhere in Section 176.361 (2008) is there reference to limits of liability under Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008). If Section 176.136, Subdivision 1b(d) (2008) required intervention for the statute to apply, one of the two sections would expressly state this requirement. Holding otherwise inserts language and intention into the Act that is not there.

³This was the argument made by the Employer and Insurer in *Finke*.

⁴The provisions that reference the “usual and customary” charges for medical treatment are Minnesota Statutes Section 176.136, Subdivisions 1b(a) and 1b(b) (2008).

Also, it is unfair for the Employee to argue that the two medical providers in question did not intervene when she did not place them on notice of the right to intervene as required by Minnesota Statutes Section 176.361 (2008). Therefore, the argument should be disregarded as the providers could not intervene without notice of the right to do so.

The legislature, and not the courts, judges the social utility of the Act, balances the interests of employees and employers, and makes adjustments and corrections to the Act it deems appropriate. *Parson v. Holman Erection Co.*, 428 N.W.2d 72, 76 (Minn. 1988). Thus, because Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) is unambiguous and aimed at the legitimate legislative objective of cost containment, the decision of the WCCA must be affirmed.

II. MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008) DOES NOT CONFLICT WITH THE FUNDAMENTAL PRINCIPLES OF THE WORKERS' COMPENSATION ACT; RATHER, IT IS AIMED AT ACHIEVING THE PRINCIPLE OF COST CONTAINMENT.

The Employee perceived a conflict between Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) and Minnesota Statutes Section 176.135, Subdivision 1(a) (2008). The compensation judge agreed, holding that “[a] finding that the insurer is not obligated to pay the unpaid balance under Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) would effectively transfer liability from the Minnesota Insurer to the Minnesota employee and thus would be in conflict with Minnesota Statutes Section 176.135.” (App. 4.) The finding was based on a prohibited liberal reading of the Act and usurped the judgment of the legislature. *See* Minn. Stat. § 176.001 (2008).

A. EFFECTUATING ALL FUNDAMENTAL PRINCIPLES OF THE ACT

There are two fundamental principles under the Act: (1) to assure the quick and efficient delivery of indemnity and medical benefits to injured workers; and (2) ensuring those benefits are furnished at a reasonable cost to employers. Minn. Stat. § 176.001 (2008). As the WCCA observed, Minnesota Statutes Sections 176.135 and 176.136, Subdivision 1b(d) (2008) can be read together without conflict to achieve both ends.

The first requires employers to pay for medical treatment that is reasonably necessary to cure and relieve a work injury; the second does not limit the employee's entitlement to treatment, only the amount an employer may be required to pay for treatment received in another state. (App. 10.) Thus, Section 176.136, Subdivision 1b(d) (2008) furthers one of the Act's fundamental principles.

The WCCA's reading is also consistent with Minnesota Statutes Section 645.16 (2010), as it gives effect to all of the Act's provisions. Moreover, the WCCA's reading defers to the legislature and recognizes its sole discretion to enact laws addressing limitations of liability for medical treatment under the Act. *Parson*, 428 N.W.2d at 76.

B. AVOIDING RESULTS THAT ARE ABSURD, UNREASONABLE OR IMPOSSIBLE TO APPLY.

The WCCA's reading prevents Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) from becoming unreasonable and absurd, an interpretation consistent with Minnesota Statutes Section 645.17 (1) (2010). Under the Employee's analysis, the provision would only apply when out-of-state providers intervene or charge the amount allowed under their state's workers' compensation fee schedule. The Act contains neither qualification.

Such qualifications would put Minnesota employers at the mercy of the whims of out-of-state medical providers.

Instead, Minnesota Statutes Section 176.136, Subdivision 1b (2008) entitled “Limitation of liability,” speaks of employers’ “limited” liability for treatment rendered outside of Minnesota without qualification. That liability is limited to the workers’ compensation fee schedule/workers’ compensation laws of the state where treatment occurred.

Furthermore, the analysis urged by the Employee would render Minnesota Statutes Section 176.135, Subdivision 6 (2008) superfluous or impossible to apply to the extent that it is applicable to Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008). Under Section 176.135, Subdivision 6 (2008), employers and insurers are not required to notify employees “of payment of charges that have been reduced in accordance with section 176.136.” The legislature would have excepted Section 176.136, Subdivision 1b(d) (2008) from Section 176.135, Subdivision 6 (2008) if they believed that the former would never apply or was limited to qualified circumstances.

The purpose of the intervention statute, Minnesota Statutes Section 176.361 (2008), is to allow parties to intervene in the workers’ compensation case because they have an interest in the matter. A party would only intervene in a workers’ compensation claim when it had not been paid or it had been paid less than what it believed was due. If Section 176.136, Subdivision 1b(d) only applied to out-of-state providers that intervene as proposed by the Employee and Judge Stofferahn, the statute would have no purpose because it would not apply to any provider. The workers’ compensation carrier would have already paid all

of the medical treatment pursuant to the laws of the other state, and when the medical provider intervened in the Minnesota workers' compensation case for the difference between what it billed and was due under Section 176.136, Subdivision 1b(d), the court would have to deny the intervention claim. This would put out-of-state providers that intervene at a distinct disadvantage and discourage intervention because the potential intervenors would know that they would collect nothing further if they intervened. However, if they did not intervene, then they could be paid more.

Because Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) serves a fundamental purpose of the Act and unambiguously reflects the will of the legislature, the decision of the WCCA must be affirmed.

C. ALTERNATIVELY, IF MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2009) CONFLICTS WITH THE FUNDAMENTAL PRINCIPLES OF THE WORKERS' COMPENSATION ACT, IT STILL MUST BE GIVEN EFFECT AS A SPECIAL AND MORE RECENT PROVISION.

Assuming the Employee is correct that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) conflicts with the principles embodied in Minnesota Statutes Section 176.135 (2008), the former must still be given effect under Minnesota law.

Under Minnesota Statutes Section 645.26, Subdivision 1 (2010), when a general provision of law irreconcilably conflicts with a special provision within the same law, the special provision prevails unless the general provision was enacted at a later date and manifests the legislature's intent that the general provision shall prevail. Similarly, in the event that clauses within the same law are irreconcilable, the clause last in order of date or

position must prevail. Minn. Stat. § 645.26, Subdivision 2 (2010); *see also Cordell v. Chanhassen Auto Body*, 269 Minn. 103, 109, 130 N.W.2d 362, 366 (1964).

Adopted as part of the 2008 amendments to the Act, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) is a special provision that directly addresses Minnesota employers' liability for out-of-state medical treatment. In contrast, Minnesota Statutes Section 176.135 (2008), pre-dates the 2008 amendments and provides for employers' general liability for medical treatment under the Act.

Whether the provisions are compared by date or specificity of purpose, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) controls. Thus, even if there is a conflict between Minnesota Statutes Section 176.135 (2008) and Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008), the position urged by the Employee is erroneous as a matter of law. The statutes controlling statutory construction in the event of a conflict require a finding that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) prevails over Minnesota Statutes Section 176.135 (2008). Accordingly, the decision of the WCCA must be affirmed.

III. MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008) DOES NOT EXTEND THE MINNESOTA WORKERS' COMPENSATION ACT TO OUT-OF-STATE MEDICAL PROVIDERS OR IMPROPERLY REQUIRE MINNESOTA COMPENSATION JUDGES TO APPLY AND INTERPRET THE LAWS OF OTHER STATES.

The compensation judge found that she lacked jurisdiction over the Wyoming medical providers. She did not, however, determine whether Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) extends the Act to out-of-state medical providers or improperly requires the application and interpretation of the laws of other states. (App. 3-4.) Reversing

the compensation judge, the WCCA observed that while proper payment under Wyoming's fee schedule was not disputed here, future cases might raise the issue of a compensation judge's ability to resolve payment disputes involving another state's fee schedule. (App. 11.)

It is well established that the Court will only decide actual controversies, and the court does not issue advisory opinions or decide cases to simply establish precedent. *Sinn v. City of St. Cloud*, 295 Minn. 532, 203 N.W.2d 365 (1972). Here, there is no actual controversy over the amount paid to the Wyoming providers pursuant to the Wyoming fee schedule. It is premature to address what may happen in future cases. Neither the parties nor the medical providers disputed that the Insurer paid the bills in question pursuant to Wyoming's workers' compensation laws. In fact, at the hearing, the parties stipulated and agreed that the bills were properly paid. (App. 2.) Therefore, there is no justiciable issue here regarding the amounts paid.

If the Court chooses to consider the potential jurisdictional issue that may arise in future cases, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) provides limited authority to the Minnesota workers' compensation courts to address payments due to out-of-state medical providers pursuant to the workers' compensation laws of the state where the treatment occurred.

A. EXTENDING JURISDICTION TO OUT-OF-STATE PROVIDERS.

Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) does not extend the Act to out-of-state medical providers. By its express terms, the statute merely limits Minnesota employers' liability under the Act for medical treatment obtained in another state. The

statute does not mandate that the provider is bound by it, only that the employer pay a specific amount for the care.

The statute does not contain a limitation of liability between employees and out-of-state health care providers. Further, it does not state whether an employee is liable for the difference between what a Minnesota employer pays to out-of-state providers and the amounts those providers bill for services. In short, the statute does not attempt to limit, impair or otherwise affect the interests of out-of-state providers.

What Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) does say is that Minnesota employers, entities subject to both personal and subject matter jurisdiction under the Act, are only required to pay out-of-state medical providers those amounts due for the same treatment under the workers' compensation laws of the state where treatment occurred. Enforcement of the statute is within the power of Minnesota compensation courts and requires no exercise of extra-jurisdictional authority.

B. APPLYING AND INTERPRETING THE LAWS OF OTHER STATES.

Compensation judges and the WCCA have limited jurisdiction and are generally prohibited from interpreting and applying laws outside of the Act. Minn. Stat. § 175A.01 (2008); *see also Sundby v. City of St. Peter*, 693 N.W.2d 206, 215 (Minn. 2005).⁵ Consistent with this principle and contrary to the Employee's assertions, application of Minnesota

⁵The Employee cites *Hughes v. Edwards Mfg.*, 61 W.C.D. 481 (Minn. 2001) in support of this rule. (Appellant's Br. 13.) While the Employer and Insurer agree with the Employee's interpretation of the rule, *Hughes* is neither binding on this Court nor on point. *Hughes* involved two issues: (1) whether the employee's work was a substantial contributing factor to her injury; and (2) whether the compensation judge erred in awarding medical payments to non-intervening medical providers. *Hughes*, 61 W.C.D. at 482.

Statutes Section 176.136, Subdivision 1b(d) (2008) does not require compensation judges to apply or interpret the laws of other states.

Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) limits liability for out-of-state treatment under the Act to that which the health care provider would receive if the treatment were paid “*under the workers’ compensation law of the jurisdiction in which the treatment was provided.*” Minn. Stat. § 176,136, Subd. 1b(d) (2008) (emphasis added).

The statute incorporates by reference the workers’ compensation laws of other states into the Act when treatment is obtained outside of Minnesota. When Section 176.136, Subdivision 1b(d) (2008) is triggered, an employee’s right to medical benefits has already arisen under Minnesota law.

By referencing payments to out-of-state providers pursuant to the workers’ compensation laws of the states where the treatment occurred, the statute expressly grants limited authority to compensation judges and the WCCA to consult other states’ fee schedules/workers’ compensation laws to determine the proper payment due to an out-of-state provider if there is a dispute about the amount paid. The statutory mandate that employers’ liability to out-of-state providers be limited to the fee schedule/workers’ compensation laws of the state where treatment is provided informs this conclusion. *See Botler v. Wagner Greenhouses*, 754 N.W.2d 665, 670 (Minn. 2008).

In *Botler*, the employee sustained serious injuries, including a closed-head injury, that required nursing home care. *Id.* at 667. Following a divorce, Lutheran Social Services was appointed successor general guardian and conservator by district court order. *Id.* The compensation judge held the employer liable for the costs and attorney fees of appointing the

guardian. *Id.* at 668. However, the compensation judge denied payment of the continuing administrative costs of the guardianship. On appeal, the WCCA vacated the compensation judge's Findings and Order and dismissed the appeal. *Id.* The WCCA found that the compensation courts lacked jurisdiction to interpret or apply Minnesota Statutes Section 524.5-501(c), the statute dealing with appointment of guardians. *Id.* The Workers' Compensation Court of Appeals also found that the Act did not authorize the relief requested. *Id.*

Reinstating the compensation judge's findings and order, this Court found that workers' compensation courts do have jurisdiction to award the costs and attorney fees of appointing a guardian if the appointment occurs under the statutory mandate of Minnesota Statutes § 176.092 and the reasonableness of those costs are not in dispute. *Id.* at 670.⁶

Similarly, in this case, Minnesota Statutes § 176.136, Subdivision 1b(d) (2008) contains the statutory mandate that payment for out-of-state medical treatment be made according to the workers' compensation laws of the jurisdiction where treatment is provided. Inherent in this mandate is the workers' compensation courts' authority to refer to the workers' compensation laws of the jurisdiction where treatment is provided for the limited purpose of determining the amount payable.

The statute grants the authority to order payment of medical benefits consistent with another state's fee schedule/workers' compensation laws, rather than the authority to determine liability for benefits under another state's law. *See Freeman v. Armour Food Co.*,

⁶ In *Botler*, Minnesota Statutes Section 176.092 triggered the appointment of the employee's guardian. Determination of the reasonableness of the fees and costs associated with the appointment, however, were vested in the district court under Minnesota Statutes Section 524.5-501(c).

380 N.W.2d 816, 820 (Minn. 1986) (distinguishing between WCCA's authority under the Act to order reimbursement to a no-fault carrier and its lack of authority to determine the no-fault carrier's liability outside of the Act).

The case law cited by the Employee highlights this distinction. In *Hale v. Viking Trucking Co.*, 645 N.W.2d 119 (Minn. 2002), this Court held that compensation judges lack jurisdiction to determine whether an insurer is entitled to reimbursement for benefits incorrectly *paid under* another state's law. *Hale*, 645 N.W.2d at 125 (emphasis added). In two other cases cited by the employee, the WCCA had previously reached the same conclusion. See *Rundberg v. Hirschbach Motor Lines*, 51 W.C.D. 193, 206 (W.C.C.A. 1994); *Boothe v. TFE*, 55 W.C.D. 353, 355 (W.C.C.A. 1996).

In contrast, benefits here were paid under Minnesota law, and the parties had no rights, remedies or interests arising under the laws of another state. Reference to the Wyoming fee schedule is for the limited purpose of determining the proper payment to out-of-state providers which is consistent with the express terms of the statutory directive of Minnesota Statutes Section 176.136, Subdivision 1b(d) (2009).⁷ To hold otherwise would improperly render the statute an absurdity or one impossible to apply. See Minn. Stat. § 645.17 (1) (2010).

The process for determining proper payment under Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) mirrors that under the law of *Finke* but shifts the burden

⁷This Court has observed that jurisdiction of the compensation courts is purely statutory and, as with other judicial forums, subject matter jurisdiction cannot be conferred by consent of the parties. *Hemmesch v. Molitor*, 328 N.W.2d 445, 447 (Minn. 1983). This principle highlights the inconsistencies in the Employee's argument. On one hand she argues that the compensation courts lack subject matter jurisdiction; and, on the other, she argues that subject matter jurisdiction ought to be found where providers consent through intervention.

of proof. Under *Finke*, employers were liable for the “usual and customary charges” of out-of-state medical treatment. *Finke*, 59 W.C.D. at 116. The employee had the burden of presenting evidence that the charges met the “usual and customary” standard by introducing into evidence a mere statement from the provider to that effect. *Id.* The burden then shifted to the employer and insurer to prove that the charges were excessive. *Id.*

Under Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008), the burden is on employers to prove that the payment is the amount the health care provider would receive if it were paid under the workers’ compensation law of the jurisdiction in which the treatment was provided. The payments are not disputed here, and, if disputed, the burden would shift to the Employee or the medical providers to prove that the Insurer’s calculation and payment under the applicable fee schedule/workers’ compensation laws was incorrect. However, there is absolutely no dispute that the Employer and Insurer properly paid the bills pursuant to the Wyoming workers’ compensation fee schedule, so the issue is not relevant to the current dispute and should not be addressed.

Because application of Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) only requires reference to the workers’ compensation laws of other states to determine liability arising under Minnesota law, the decision of the WCCA must be affirmed.

IV. MINNESOTA STATUTES SECTION 176.136, SUBDIVISION 1b(d) (2008) DOES NOT VIOLATE AN EMPLOYEE’S RIGHTS OF EQUAL PROTECTION, DUE PROCESS AND RIGHT TO REDRESS UNDER THE MINNESOTA CONSTITUTION.

The Employee’s constitutional claims must be viewed in the appropriate context. As social legislation without a common-law counterpart, the balance between employer and

employee interests under the Act is left to the discretion of the legislature. *Parson*, 428 N.W.2d at 76. This does not mean the legislature has a free hand. Its actions are only legitimate to the extent that they do not undermine the fundamental balance between those opposing interests. *See Gluba*, 735 N.W.2d at 725.

Each of the other states within the Eighth Federal Circuit also has a statutory provision limiting workers' compensation payments to out-of-state providers. Under those provisions, employees could be personally liable for the unpaid difference if the out-of-state provider decided to pursue payment beyond an employer's statutory liability.

North Dakota, Iowa, Nebraska and Arkansas limit payments to *all* health care providers treating employees for work injuries to the fee schedules adopted under their respective acts. *See* Neb. Rev. Stat. § 48-120(1)(a) & (b) (2011); Iowa Code § 85.27(3) (2011); N.D. Admin. Code 92-01-02-27 and 92-01-02-29.2 (2010); and Ark. Code R. § 099.30(R) (2000).⁸ Missouri limits workers' compensation liability to *all* medical providers to an amount no greater than that paid by a private individual or private health insurer for the same treatment or service. Mo. Rev. Stat. § 287.140(3) (2010). Finally, in South Dakota, as in Minnesota, out-of-state providers are limited to the payment allowed under the fee schedule of the state where treatment is provided. S.D. Codified Laws § 62-7-8 (2010).

None of these provisions has resulted in a published decision based on constitutional or jurisdictional grounds, so it is unclear if any have ever been challenged.

⁸Under Code of Arkansas Rules, Section 099.30(R), out-of-state medical providers are required to sign an agreement stating that they will comply with the Arkansas fee schedule.

A. EQUAL PROTECTION/FUNDAMENTAL RIGHT TO TRAVEL.

Under the Minnesota Constitution, “no member of the state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or judgment of his peers.” Minn. Const. art. I, § 2. Analysis under the clause mirrors that under the 14th Amendment to the United States Constitution, and both begin with the mandate that all similarly situated individuals shall be treated alike, but only “invidious discrimination” is deemed constitutionally offensive. *Kolton v. County Anoka*, 645 N.W.2d 403, 411 (Minn. 2002) (citing *Scott v. Minneapolis Police Relief Ass’n*, 615 N.W.2d 66, 74 (Minn. 2000)).

If a constitutional challenge involves a fundamental right or suspect classification, it must survive strict scrutiny. *Id.* If fundamental rights or suspect classifications are not involved, the courts apply rational basis review. *Id.* Here, the Employee argues that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) is subject to strict scrutiny because it interferes with her fundamental right to travel.⁹ (Appellant’s Br. 14-15.)

The fundamental right to travel includes the right to migrate and is implicated when a statute *actually deters* such travel, when *impeding* travel is its primary objective or when it uses any *classification* which serves to *penalize* the exercise of that right. *Mitchell v. Steffen*, 504 N.W.2d 198, 200 (Minn. 1993) (emphasis in original). “Penalize” in this context means to suffer disadvantage, loss or hardship. *Id.* at 202.

⁹The Employee correctly refrains from arguing that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2009) involves a suspect classification. Neither employees receiving benefits under the Act nor employees receiving medical treatment in another state are a suspect classification.

Here, there is no evidence that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) actually deters or seeks to impede travel. Thus, for strict scrutiny to apply, the statute must use a classification to disadvantage those who exercise the right to travel.

On its face, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) does not use a classification affecting the right to travel. It simply limits employers' liability to out-of-state medical providers to the amount the provider would receive for a workers' compensation claim in that state. It also does not penalize those who travel. Employees entitled to benefits under the Act may travel as they please without penalty. If, however, they receive medical treatment for a work injury from an out-of-state provider, the employer's liability will merely be based on the workers' compensation law of the state where treatment is obtained.

Whether the statute will even be triggered is unknown. An injured employee could visit each of the 50 states without the employer's liability being affected. Notably, the Employee's claim is the first challenging Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) since its adoption in 2008. This is hardly the "sufficiently large proportion of workers who incur severe economic hardship" that would render the workers' compensation scheme an unreasonable tradeoff for lost common law tort rights. *Gluba*, 735 N.W.2d at 725-26.

Moreover, this is not the typical right-to-travel case where residency requirements based on duration of residency result in the unequal distribution of public rights or benefits among otherwise qualified bona fide residents. *See Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898 (1986) (strict scrutiny applied to state statute limiting veterans preference to

veterans who were residents at time of enlistment or before certain date); *Hooper v. Bernalillo County Assessor*, 72 U.S. 612 (1985) (strict scrutiny applied to state statute limiting veterans preference to veterans who were residents on or before certain date); *Zobel v. Williams*, 457 U.S. 55 (1982) (strict scrutiny applied to state statute providing for varying state oil revenue payments to citizens based on length of residency). Here, the statute concerns employers' liability under the Act.

Thus, any penalty that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) may place on the Employee's right to travel or migrate is too attenuated to trigger the heightened scrutiny she urges. The Court has observed that legislation that might "indirectly" affect one's choice of living arrangements is distinguishable from legislation that "directly and substantially" interferes with such choices. *Gluba*, 735 N.W.2d at 720-21.

The only published decision applying an equal protection analysis to a similar workers' compensation classification used rational basis review. In *Rivers v. State Accident Ins. Fund*, 610 P.2d 288 (Or. Ct. App. 1980), Oregon allowed injured employees to choose their own physicians within that state but had no such provision for employees treating out of state. *Rivers*, 610 P.2d at 289. The injured employee, an Oregon resident, later moved to Washington where the employee treated for the work injury with a chiropractor of his choosing. *Id.* The insurer declined to cover further treatment unless the employee saw a medical doctor. *Id.*

Raising the equal protection issue *sua sponte*, the *Rivers* court did not apply strict scrutiny because the statute did not diminish the employee's right to out-of-state medical

care; rather, it only limited with whom he could treat. *Id.* at 290.¹⁰ The court applied rational basis review and found that a rational basis existed for the distinction the statute drew between an employee's ability to choose a doctor within Oregon but not being able to choose the doctor if in another state. *Id.* The Court of Appeals of Oregon found a rational basis in the state Board's ability to subpoena in-state physicians as witnesses, a power it lacked over out-of-state providers. *Id.* The classification allowed carriers a method of assuring that the out-of-state medical providers used were those known to cooperate in supplying reports and other required information. *Id.*

Similarly, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) does not diminish the Employee's right to out-of-state medical care; rather, it only limits the Employer's liability for that care to the fee schedule of the state where treatment is provided. This does not equate to penalizing travel, and, therefore, rational basis review applies.

1. RATIONAL BASIS REVIEW

Minnesota courts generally apply two formulations of the rational basis test to challenged classifications. One mirrors the standard applied by federal courts in equal protection cases under the Fourteenth Amendment. It asks whether the challenged classification has a legitimate purpose and whether it is reasonable to believe that use of the challenged classification promotes that purpose. *Kolton*, 645 N.W.2d at 411. The second, a heightened standard, sometimes called the Minnesota rational basis test, requires that:

¹⁰In *Rivers*, the employee raised an equal protection argument based on classifications of medical treatment. But because the Insurer had paid for his accrued chiropractic treatment, he had suffered no harm and lacked standing to bring the constitutional claim. *Id.* at 290.

(1) [t]he distinctions which separate those included in the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Id. The key difference is that the Minnesota test, unlike its federal counterpart, declines to hypothesize a rational basis to justify a classification. *Gluba*, 735 N.W.2d at 721.

Equal protection challenges to Minnesota workers' compensation statutes generally, however, require application of a third rational basis test, which echoes the Minnesota rational basis test and requires that a classification under the Act: (1) "apply uniformly to all those similarly situated;" *Id.* (2) "be necessitated by genuine and substantial distinctions between the two groups;" *Id.* and (3) "effectuate the purpose of the law." *Id.* This test does not set higher requirements than the federal standard and, instead, defers to the legislature regarding statutory classifications affecting the regulation of economic activity and the distribution of economic benefits. *Id.* at 723. Under this test, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) survives constitutional scrutiny.¹¹

¹¹The following analysis is applied in response to the Employee's argument. If Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) does indeed employ a classification, the accurate classification would be employers liable for out-of-state medical treatment versus employers liable for in-state medical treatment; under the statute, these two groups receive unequal treatment. *But see Bituminous Casualty Corp. v. Swanson*, 341 N.W.2d 285, 288 (Minn. 1983) ("[A]s long as the legislature bases its decisions on reasonable considerations, it does not matter that some employers must pay higher benefits than others."). To the extent that employees might be classified under the statute based on possible personal liability, such classification occurs outside operation of the statute because it is dependent on the out-of-state provider pursuing additional payment.

First, the classification under the statute applies uniformly to all those similarly situated, that is, employees eligible for medical benefits under the Act. If employees receive medical treatment in Minnesota, employers' liability is limited to the Minnesota Medical Fee Schedule adopted by the Commissioner of DOLI. If employees receive medical treatment in another state, employers' liability is limited to the fee schedules of the states where the treatment occurs. In those instances, some states may require higher payment and some may require lower payment than the Minnesota Medical Fee Schedule.

Second, the classification is necessitated by genuine and substantial distinctions between the two groups. Employees who treat out of state are substantially distinct from those who treat in Minnesota. The former obtain treatment from providers not subject to the Act's requirements and limitations.

Finally, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) effectuates one of the fundamental purposes of the Act. *See* Minnesota Statutes Section 176.001 (2008). In order to maintain "reasonable costs" for employers, insurers and, ultimately, Minnesota consumers, the law limits liability to out-of-state medical providers.¹² Without this limitation, employers would be liable for the usual and customary cost of out-of-state medical treatment, a risk not calculated into workers' compensation premiums. Cost reduction is a legitimate legislative objective. *Gluba*, 735 N.W.2d at 725.

¹² *See* 1 Lex K. Larson, *Larson's Workers' Compensation*, Desk Edition § 1.01 (Matthew Bender, Rev. Ed.) ("[T]he burden of compensation liability does not remain upon the employer but passes to the consumer, since compensation premiums, as part of the cost of production, will be reflected in the price of the product").

Because Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) satisfies the rational basis test applied to challenged workers' compensation statutes, it must be sustained as constitutional and the decision of the WCCA affirmed.

2. STRICT SCRUTINY REVIEW

Alternatively, if this Court determines that strict scrutiny applies, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) survives strict scrutiny review, which requires that the challenged statute be narrowly tailored and reasonably necessary to further a compelling governmental interest. *Greene v. Comm'r of the Minn. Dep't of Human Svcs.*, 755 N.W.2d 713, 725 (Minn. 2008). Here, the compelling state interest is limiting employers' liability for out-of-state medical treatment so employers will do business in Minnesota, provide jobs to Minnesotans and pass on goods to consumers at a lesser cost.

The Employee asserts, without any support, that limiting liability "is not a compelling interest under Minnesota equal protection law." (Appellant's Br. 16.) Presumably, this assertion is based on *Mitchell*, where this Court held that "conservation of the taxpayers' purse is simply not a sufficient state interest" to survive strict scrutiny. 504 N.W.2d at 203 (quoting *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 263 (1974)). See also *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969) ("The saving of welfare costs cannot justify an otherwise invidious classification.").

But here, the cost savings are not targeted at public, taxpayer dollars. Rather, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) seeks to limit the private liability of Minnesota employers, the foundation of the state's economy, under a statutory

scheme in which participation is mandatory. These cost savings, in turn, flow directly to Minnesota consumers and are reflected in the price of goods, and employers are able to provide more jobs to employees.

The private character of workers' compensation law requires that courts avoid indiscriminately resolving difficult questions in favor of the claimant on the theory that employees are beneficiaries of a personal insurance policy or public relief system. 1 Larson, *supra*, § 1.04[4]. Moreover, it supports the conclusion that limiting the costs to private Minnesota interests, employers and consumers alike, as they relate to out-of-state medical providers, parties who make little to no contribution to the Minnesota economy, is a compelling government interest.¹³

Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) is narrowly tailored and reasonably necessary to further that interest. The statute only affects an employer's liability for medical treatment obtained from an out-of-state provider. It could not be more narrowly tailored. Without the statute, Minnesota employers' liability would be subject to the law of *Finke*, requiring payment of the "usual and customary charges" where the out-of-state medical treatment is provided, a risk not calculated into Minnesota workers' compensation premiums.

¹³Out-of-state medical providers might contribute to the Minnesota economy to the extent that they successfully treat individuals who return or relocate to Minnesota.

B. DUE PROCESS AND RIGHT OF REDRESS.

Under the Minnesota Constitution, no person can be deprived of life, liberty or property without due process of law. Minn. Const. art. I, § 7. The Employee's due process argument, suggesting elements of her equal protection and jurisdictional arguments, ultimately appears to be that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) violates her procedural due process rights.

Procedural due process requires a course of legal conduct in harmony with the rules and principles established by Minnesota's system of jurisprudence for the protection and enforcement of private rights. *Kline v. Berg Drywall, Inc.*, 685 N.W.2d 12, 21 (Minn. 2004). When applied to statutes, due process asks whether a statute is so arbitrary, unreasonable and unjust as to be repugnant to the due process guarantees. *Parson*, 428 N.W.2d at 77.

The Employee's due process argument rests on her personal liability to out-of-state medical providers. She claims that she has suffered "a severe diminution in value . . . only because she moved from Minnesota to Wyoming" and has been "depriv[ed]" of a "property interest." (Appellant's Br. 16, 18.) This is a twofold mischaracterization.

First, the Employer's liability was limited not because the Employee moved but because she received medical treatment outside of Minnesota. In contrast, the Employee's *personal liability* resulted from a contract she signed in Wyoming when she commenced treatment there. The Employee initialed the financial policy of Thunder Basin Orthopaedics, PC, that states: "**Out of state Workers Compensation patients will be responsible for any remaining balance not covered by their Workers Comp.**" (App. at 2.) The Employee had

several options at that time. She could have negotiated with Thunder Basin Orthopaedics to not be responsible for any remaining balance not covered by workers' compensation, she could have treated elsewhere with a provider that accepted amount paid by the workers' compensation carrier as payment in full, she could have returned to Minnesota for treatment or she could have consulted an attorney about the financial policy's implications. She instead chose to sign the document and seek treatment. However, nothing in the Act provides that the Employee is entitled to any and all treatment she desires and every expense she incurs.

Second, medical benefits under the Act are essentially inchoate rights that vest at the time of treatment. The Employee does not own or exercise property rights over future medical benefits. *See* 1 Larson, *supra*, § 1.03[6] (noting that as a scheme of social protection, claimants lack "ownership" over their benefits). To the extent that medical benefits under the Act can be assigned "value," assignment is solely a legislative task and reflected in the fee schedule.

Legislative adjustments to benefits under the Act that result in increased costs to employees are not unprecedented. Changes to the Act have included a reduction in the term of temporary total disability benefits and stricter requirements to qualify for permanent total disability benefits based on permanent partial disability ratings. Each of these changes resulted in additional costs to employees. Unlike these examples, Minnesota employers' limited liability to out-of-state medical providers under Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) does not necessarily result in increased costs to employees.

Increased employee costs only result if out-of-state providers demand payment beyond the amounts due under that state's workers' compensation laws. This does not render Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) unconstitutional. As this Court has observed, a state may take one step at a time in addressing problems through legislation; equal protection does not require that a state choose between attacking every aspect of a problem or not attacking it at all. *Kolton*, 645 N.W.2d at 412 (quoting *Geduldig v. Aiello*, 417 U.S. 484 (1974)).

Valuation goes to the heart of the due process argument. The Act is social legislation that provides a measure of security to workers injured on the job, with the burden of that expense passed on to employers as a cost of production. *Kline*, 685 N.W.2d at 21. Adjusting and correcting the balance of employee and employer interests under the Act is a legislative function. *Parson*, 428 N.W.2d at 75. Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) limits the "value" of out-of-state treatment.

At least two states have faced the question of limiting workers' compensation payments to out-of-state medical providers. Those decisions have affirmed the enforcement of such limits. Moreover, in those cases, neither the Employees nor the courts objected to the limitations on constitutional grounds.

In *Bowman v. J & J Log & Lumber Corp.*, 305 A.D.2d 888 (N.Y. App. Div. 2003), the employee was awarded medical benefits under New York's workers' compensation system as a resident of that state. *Bowman*, 305 A.D.2d at 888. The employee then treated with a Connecticut orthopaedist, and the insurer objected to the use of an out-of-state medical

provider. *Id.* Affirming the rulings below, the *Bowman* court ordered the insurer to pay the Connecticut orthopaedist according to the New York fee schedule, reasoning that the state Workers' Compensation Board had reasonably determined that New York's fee schedule ought to apply to medical treatment provided by out-of-state providers. *Id.* at 889.¹⁴ *See also Conn v. Kotasek Corp.*, 198 A.D.2d 600 (N.Y. App. Div. 1993) (affirming Compensation Board's order to pay New York medical benefits to Florida provider according to Florida's fee schedule).¹⁵

Similarly, in *Bill Cooper Frac Tank Co. v. Columbia Reg'l Hosp.*, 856 P.2d 586, 587 (Okla. Civ. App. 1993), *cert. denied*, the Oklahoma employer and insurer paid for out-of-state medical treatment in Missouri under the Oklahoma workers' compensation fee schedule after the employee relocated. *Bill Cooper*, 856 P.2d at 587. Ruling for the employer and insurer, the court found that Oklahoma statutes contained no language excepting out-of-state providers from the Oklahoma fee schedule. *Id.* at 588.¹⁶

¹⁴In *Bowman*, apparently no statute existed governing payment to out-of-state medical providers. Instead, the decision turned on the New York Workers' Compensation Board's authority to determine the reasonableness of fees charged for medical treatment.

¹⁵At the time of *Conn*, New York statutorily limited payment to out-of state medical providers to "such charges as prevail in the same community for similar treatment of injured persons of a like standard of living." *Id.* at 601. The *Conn* court found that use of the Florida fee schedule achieved this goal. *Id.*

¹⁶In *Bill Cooper*, Columbia had intervened, and the court ruled separately that it had jurisdiction over the out-of-state provider. *Id.* at 588. This, however, had no effect on the fee schedule decision because "Oklahoma's Workers' Compensation Court [was] limited to providing the relief authorized by [the] statutes." *Id.* n.1.

Here, Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) does not force an out-of-state provider to accept payment under the Minnesota fee schedule. Instead, it provides payment in the amount due under the workers' compensation scheme where the provider is located. Respecting all interested parties, this is not arbitrary, unreasonable or unjust.

Moreover, the statute does not diminish the Employee's due process rights. She can still avail herself of the Minnesota Workers' Compensation courts and petition for review in this Court. The statute simply defines the benefit amount available through the claims or adjudication process for out-of-state medical treatment. There has been no "diminution in value;" rather, the value assigned to out-of-state medical treatment is pegged to the amount payable under the compensation law of the state where treatment is provided.

Because Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) is not arbitrary, unreasonable or unjust so as to be repugnant to due process guarantees, it must be sustained as constitutional and the decision of the WCCA affirmed.

CONCLUSION

In adopting Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008), the legislature unambiguously sought to limit Minnesota employers' liability to out-of-state medical providers. The statute is aimed at maintaining reasonable costs to employers, one of the Act's fundamental purposes. The statute applies to all out-of-state providers, regardless of intervention status, and incorporates by reference the workers' compensation laws of the state where treatment occurs. The statute applies to all employees eligible for

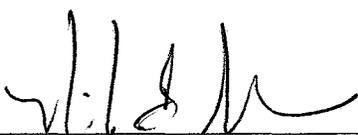
medical benefits under the Act and has no effect on employees' abilities to obtain medical treatment or invoke the judicial process where benefits are disputed.

Accordingly, the Employer and Insurer respectfully request that Minnesota Statutes Section 176.136, Subdivision 1b(d) (2008) be sustained as constitutional and the decision of the WCCA affirmed.

Respectfully submitted,

ERSTAD & RIEMER, P.A.

Dated: 8/29/11

By 

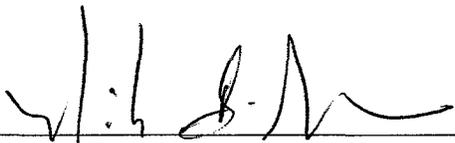
Nicole B. Surges, #213391
Attorneys for Inter-Faith Care Center and New
Hampshire Insurance Company as administered
by Chartis
8009 - 34th Avenue South, Suite 200
Minneapolis, MN 55425
(952) 896-3700

CERTIFICATE OF COMPLIANCE

I hereby certify that Brief of Respondent filed herein contains 9,579 words, excluding the table of contents, table of authorities, and certificates of counsel and services, as counted by the word processing system, Corel WordPerfect X4 2008 for Windows, used to generate the brief. The brief complies with the typeface and format requirements of Minn. R. Civ. App. P. 132.01(2011).

ERSTAD & RIEMER, P.A.

Dated: 8/29/11

By  _____
Nicole B. Surges, #213391

Attorneys for Inter-Faith Care Center and New
Hampshire Insurance Company as administered
by Chartis
8009 - 34th Avenue South, Suite 200
Minneapolis, MN 55425
(952) 896-3700