



MINNESOTA DEFENSE  
LAWYERS ASSOCIATION

# MDLA Legislative Agenda and Response

**WORKERS' COMPENSATION ADVISORY COUNSEL**

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# MDLA's GOALS



**CREATE EFFICIENCIES IN THE LITIGATION SYSTEM**



**CREATE COHESION BETWEEN STATUTES AND RULES**



**MAINTAIN A BALANCED LITIGATION SYSTEM**

# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

## POSSIBLE AGREEMENTS CAN BE REACHED ON:

- ▶ PROPOSAL: EXPEDITED HEARINGS ON PENALTIES
  - ▶ LIMITED TO PENALTIES ON TECHNICAL ISSUES ONLY
- ▶ CANNOT OVERLOOK CONSTITUTIONAL RIGHT TO HAVE CLAIMS HEARD IN A COURT OF LAW
- ▶ CITING PENALTIES IN CLAIM PETITION SHOULD NOT OVERRIDE STANDARD LITIGATION TRACK
  - ▶ SAFEGUARDS IN PLACE TO PREVENT FORCING EXPEDITED LITIGATION

# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

- ▶ PROPOSAL: PROVISION OF COURT CERTIFIED INTERPRETERS
  - ▶ GENERALLY SPEAKING, THE MDLA HAS NO OBJECTION TO THE PROVISION OF COURT CERTIFIED INTERPRETERS
- ▶ COST
  - ▶ IS THIS BORN BY THE COURT ALONE OR WILL THIS BE CHARGED BACK TO THE PARTIES?
- ▶ TYPE OF PROCEEDING
  - ▶ WILL THIS BE OFFERED FOR ALL APPEARANCES OR ONLY THOSE ON RECORD?
- ▶ AVAILABLE AT THE DEPARTMENT OF LABOR & INDUSTRY

# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

## ADDITIONAL INFORMATION IS NEEDED ON:

- ▶ PROPOSAL: INTERVENTION PROCESS UNDER MINN. STAT. § 176.361
  - ▶ “The potential intervenor may not collect, or attempt to collect, the extinguished interest from the Employee, Employer, Insurer, or any government program...”
  - ▶ Already a mechanism for protecting employees from Intervenor.
- ▶ FREQUENCY OR OCCURRENCE APART FROM STATUTE
- ▶ NEED ADDITIONAL INFORMATION FROM OUTSIDE SOURCES
  - ▶ SPEAK WITH MEDICAL PROVIDERS
  - ▶ NEED ADDITIONAL METRICS INCLUDING PERCENTAGE OF CLAIMS WHERE INTERVENOR FAILS TO FILE AND EMPLOYEE IS UNABLE TO TREAT

# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

- ▶ POSSIBILITY TO STREAMLINE PROCESS
- ▶ INTERVENTION WHEN NO LITIGATION IS AN ISSUE
- ▶ PROPOSAL: INDEPENDENT CAUSE OF ACTION FOR EMPLOYEE ON INTERVENTION CLAIMS
  - ▶ Totally destroys the settlement process
  - ▶ Does not solve the real issue

# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

- ▶ ISSUE: REMOVE CAP ON ATTORNEY FEES UNDER MINN. STAT. §176.081
- ▶ MDLA POSITION: THERE IS ROOM FOR DISCUSSION
  - ▶ QUESTION TOTAL REMOVAL OF CAP
- ▶ COSTS DIFFER FROM FEES
  - ▶ COST OF BUSINESS IS SEPARATE FROM WHAT IS AWARDED
- ▶ HOW DOES IT LIMIT WHAT ATTORNEYS ARE CAPABLE OF DOING?
- ▶ REMEDIES FOR ADDITIONAL FEES IN CASE LAW AND STATUTE
  - ▶ PETITIONS FOR EXCESS FEES
  - ▶ MINN. STAT. §176.191, HEATON, RORAFF, IRWIN, EDQUIST, GRUBER
    - ▶ AWARDED ON FORMULAIC AND SUBJECTIVE STANDARDS

# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

## ▶ NEED MORE DATA

- ▶ CASES TRIED VERSUS CASES SETTLED

- ▶ ATTORNEY FEES PAID VERSUS OBJECTIONS FILED

## ▶ INCREASE IN DENIAL OF CLAIMS

- ▶ COVID

- ▶ MENTAL HEALTH

- ▶ PHYSICAL INJURY



# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

- ▶ QUESTIONS AND ADDITIONAL INFORMATION NEEDED:
  - ▶ PERCENTAGE OR FEE ARRANGMENT IN OTHER STATES
  - ▶ WHO BEARS THE COST IN REMOVING THE ATTORNEY FEE CAP?
  - ▶ NEED DATA OF DENIALS THAT WERE LATER OVERTURNED
  - ▶ NEED DATA OF DENIALS BASED UPON NON-INJURY REASONS
  - ▶ SHOULD THERE BE SAFEGUARDS?
  - ▶ IS THERE JUSTIFICATION FOR KEEPING ATTORNEY FEE CAP?
  - ▶ WHY ARE CASES BEING TRIED VERSUS SETTLED?
  - ▶ IS THERE A RECIPROCAL PROPOSAL FOR THE FILING OF FRIVOLOUS OR DEFICIENT PETITIONS?

# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

## DECLINE FURTHER DISCUSSION ON:

- ▶ PROPOSAL: COMBINING TEMPORARY TOTAL AND TEMPORARY PARTIAL DISABILITY BENEFITS
  - ▶ 130 weeks + 275 weeks = 405 weeks or 7.8 years
    - ▶ Discourages a return to work → Goal of Workers' Compensation Act
- ▶ PROPOSAL: *EWING* LETTER REMOVAL
  - ▶ Already a process in place to terminate rehabilitation benefits
  - ▶ Further complicates process and creates additional litigation
- ▶ PROPOSAL: INCLUSION OF FRINGE BENEFITS IN CALCULATION OF AVERAGE WEEKLY WAGE
  - ▶ Further complicates calculations of wages
  - ▶ Turns temporary total disability into temporary partial disability
  - ▶ Room for discussion on comprehensive review of AWW statute

# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

- ▶ ISSUE: INDEPENDENT MEDICAL EVALUATIONS
  - ▶ Lack of qualified and available providers
  - ▶ Petitioner's attorneys do not have to meet burden for causation opinion
- ▶ IME VENDORS TO PRESENT
- ▶ MDLA PROPOSALS
  - ▶ Remove mileage caps, allow examinations pre-litigation, return authorizations prior to the commencement of litigation, expand ability to request pre-injury medical records
  - ▶ Need consequences for failing to return executed authorizations or failing to attend examination when no litigation has commenced as the Employer and Insurer cannot file a Motion to Compel
  - ▶ Address logistical issues including multiple body parts and types of injuries, location of Employees, available information, etc.

# RESPONSE TO MINNESOTA ASSOCIATION FOR JUSTICE'S LEGISLATIVE PROPOSALS

- ▶ Ethical obligation of attorney to provide best defense for clients
  - ▶ IME is one of the only tools available to defend claims
  - ▶ Putting additional limits on the IME further hinders the ability to defend the claim
- ▶ Minn. R. 5221.6050 subp. 9C → Seven working days to review request for treatment
- ▶ Minn. Stat. §176.081 subd. 1(c)(3) → Forty-five days to complete an IME or respond to a request or a dispute shall be certified
- ▶ Presents a Broader Issue
  - ▶ Number of qualified physicians
  - ▶ Minnesota Hospital Association Study
  - ▶ Surgical approval industry-wide
- ▶ Further modification the IME statutes will not redress the broader issue

# MDLA DISCUSSION PROPOSALS

- ▶ Intoxication Defense
  - ▶ Use as mitigation rather than a bar
- ▶ Employer-Directed Medical Care
- ▶ Fix for *Pierringer and Sershen*
  - ▶ Allow settlements for individual insurers
- ▶ Extend deadline for filing Answer to Claim Petition
  - ▶ Proposal to extend to 30 days to be consistent with civil courts
- ▶ Extend time for filing deadline to 11:59 p.m.
  - ▶ Consistent with civil courts

# MDLA DISCUSSION PROPOSALS

- ▶ Add language to Minn. Stat. §176.361 for intervention negotiations in good faith
  - ▶ Language requiring intervenors to provide fee-scheduled balances upon request
- ▶ Authorizations
  - ▶ Provide blank and non-redacted, executed authorizations within statutory timeframe at first request
  - ▶ Allow the suspension of benefits or a Motion to Compel without litigation
    - ▶ No recourse if the Employee fails to provide authorizations

# QUESTIONS?

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