

STATE OF MINNESOTA

IN SUPREME COURT

C6-74-45550

ORDER FOR HEARING TO CONSIDER
AMENDING CERTAIN RULES OF THE
MINNESOTA SUPREME COURT REGARDING
ARBITRATION UNDER THE MINNESOTA
NO-FAULT AUTOMOBILE INSURANCE ACT.

WHEREAS, Minnesota Statutes Section 65B.525 authorizes the Supreme Court to promulgate rules of court providing for the submission to arbitration of certain cases arising under the provisions of the Minnesota No-Fault Insurance Act, and

WHEREAS, the Supreme Court has appointed an advisory committee to formulate proposed rules of procedure for arbitration of these cases, and

WHEREAS, the Standing Committee on Arbitration has formulated such rules which, by Supreme Court order, have previously been promulgated and are presently in effect, and

WHEREAS, the Legislature of the State of Minnesota has amended Minnesota Statutes Section 65B.525 to make mandatory the arbitration of claims under \$5,000 made by victims of automobile accidents, and

WHEREAS, as a consequence of the amended legislation, the Standing Committee on Arbitration has petitioned this Court to amend certain of the existing rules of procedure for arbitration of claims under the Minnesota No-Fault Insurance Act,

NOW, THEREFORE, it is hereby ordered that a public hearing be held to consider the proposed amendments on April 10, 1986, at 9:00 a.m. in the Supreme Court chambers at the State Capitol in St. Paul.

IT IS FURTHER ORDERED THAT:

1. All persons, including members of the Bench and Bar, desiring to present

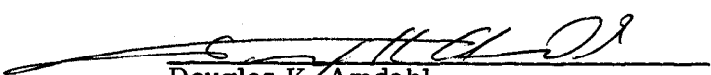
written statements concerning the subject matter of the hearing, but who do not desire to make an oral presentation at the hearing, shall file 10 copies of such statement with the Clerk of the Appellate Courts, 230 State Capitol, St. Paul, MN, 55155, on or before April 1, 1986, and

2. All persons desiring to make an oral presentation at the hearing shall file 10 copies of the material to be so presented with the aforesaid clerk together with 10 copies of a request to make the oral presentation. Such statements and requests shall be filed on or before April 1, 1986, and

3. Any person wishing to obtain a copy of the proposed amendments shall write to the aforesaid clerk.

Dated: JAN 21, 1986

BY THE COURT


Douglas K. Amdahl
Chief Justice

OFFICE OF
APPELLATE COURTS
FILED
JAN 21 1986
WAYNE TSCHIMPERLE
CLERK

RULES OF PROCEDURE FOR ARBITRATION

PREAMBLE. These rules shall apply to all No Fault claims denied on or after October 1, 1985. If the insurer fails to respond in writing within thirty days after claim is made to the insurer the claim shall be deemed to be denied.

1. ADMINISTRATION. Arbitration under L. 1974, c. 408, § 12 (M.S.A. § 65 B. 525) shall be administered by a standing committee of twelve members to be appointed by the Minnesota Supreme Court. Initially, the twelve members shall be appointed for terms to commence January 1, 1975, and the supreme court shall designate three such members for a one-year term, three for a two-year term, three for a three-year term and three for a four-year term. Thereafter, three members shall be appointed for a four-year term commencing on January 1 of each succeeding year.

The day-to-day administration of arbitration under L. 1974, c. 408, § 12 (M.S.A. § 65 B. 525) shall be handled by the American Arbitration Association (hereinafter AAA) or such other agency as shall be subsequently designated by the standing committee. Such administration shall be subject to the continuing supervision of the standing committee.

2. APPOINTMENT OF ARBITRATOR. The standing committee shall nominate annually a panel of arbitrators, which nominees shall be subject to approval by the supreme court. The panel appointed by the supreme court shall be certified by the standing committee to the AAA.

3. QUALIFICATIONS OF ARBITRATORS. Every member of the panel shall be a licensed attorney at law of this state. No person shall serve as an arbitrator in any arbitration in which he has a financial or personal conflict of interest, whether actual or potential. Under procedures established by the standing committee and immediately following his appointment to the panel, each member shall be required to disclose any circumstances likely to create a presumption or possibility of bias or conflict which may disqualify him as a potential arbitrator. Each member shall supplement said disclosure as the circumstances require. A party to an arbitration may advise the AAA of any reason why the arbitrator should withdraw or be disqualified from serving prior to exercising strikes permitted by these rules. An objection to a potential arbitrator shall be determined initially by the AAA, subject to appeal to the standing committee. If any arbitrator should resign, be disqualified or unable to

perform the duties of his office, the AAA shall appoint another arbitrator to the case.

4. SELECTION OF ARBITRATOR. On procedures to be adopted by the standing committee, the AAA, upon initiation of an arbitration, shall select from the panel three potential arbitrators to resolve the claim and shall notify the insurer and the claimant of the selection. Each party may strike one of the potential arbitrators and an arbitrator shall be selected by the AAA from the remaining names of potential arbitrators. In the event of multiparty arbitration, the AAA may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest. If the selected arbitrator is unable or unwilling to serve for any reason, the AAA may appoint an arbitrator. Such appointment will be subject to challenge for cause only.

5. OATHS. Arbitrators, upon accepting appointment to the panel, shall take an oath or affirmation of office. the arbitrator may require witnesses to testify under oath or affirmation.

~~6. INITIATION OF ARBITRATION. At such time as the insurer denies the claim of the claimant, the insurer shall advise the claimant of its willingness or lack thereof to submit the claim to arbitration. In the event that the insurer is willing to submit the claim to arbitration, the insurer shall advise the claimant that the claim may be submitted to arbitration and that information regarding initiation of the arbitration procedure may be obtained from the AAA and shall advise the claimant of the AAA's current address. The AAA shall provide a demand for arbitration form which shall be supplied to any claimant requesting said form together with a printed copy of these rules of procedure. Arbitration shall be commenced by the filing with the AAA of the demand for arbitration form and the filing fee set forth below.~~

6. INITIATION OF ARBITRATION

(a) MANDATORY ARBITRATION (For claims under \$5,000). At such time as the insurer denies the claim of the claimant, the insurer shall advise the claimant of claimant's right to demand arbitration.

(b) NON-MANDATORY ARBITRATION (For claims over \$5,000). At such time as the insurer denies the claim of the claimant, the insurer shall advise the claimant of it's willingness or lack thereof to submit the claim to arbitration.

(c) ALL CASES. In both Mandatory and Non-Mandatory cases the insurer shall also advise the claimant that information regarding the initiation of the arbitration procedure may be obtained from the AAA and shall advise the claimant of the AAA's current address. The AAA shall there upon provide an appropriate arbitration form to any claimant requesting said form together with a printed copy of these rules of procedure. Arbitration shall be commenced by the filing with the AAA of the appropriate form and the filing fee set forth below.

7. JURISDICTION IN MANDATORY CASES. By statute, mandatory arbitration applies to all claims involving the amount of \$5,000 or less. In those cases where the claim continues to accrue, the arbitrator shall have jurisdiction to determine all amounts up to the jurisdictional limit, including amounts which shall have accrued from the time of the original claim. In the event that the claims do not exceed the jurisdictional limit, the arbitrator shall determine all claims existing between the parties on the day of the hearing including amounts accruing since the initial claim unless the arbitrator shall find good cause otherwise.

In the event the claim shall have accrued to an amount in excess of \$5,000 by the time the arbitration hearing is held, the arbitrator shall notify the respective parties and request a stipulation that the arbitrator shall be empowered to hear the full claim. *In the event that the parties do not so stipulate, the arbitrator will then determine the claim due on the date of filing, or at such other specific date as the parties shall agree. Prior determination by an arbitrator of a claim of \$5,000 or less shall not bar the parties from seeking later determination of additional claims incurred or arising after the period of time covered by a previous arbitration determination.

* ALTERNATE LANGUAGE IN PLACE OF REMAINING PARAGRAPH ABOVE.

In the event that the parties do not so stipulate, the arbitrator shall not hear the case and the arbitration shall be dismissed without prejudice to claimants right to pursue the claim in courts of law.

7- 8. FILING FEE. The filing fee shall be assessed as follows:

To the claimant-~~\$25.00~~ \$50.00
To the insurer-~~\$100.00~~ \$150.00

~~8.~~ 9. NOTICE. Upon the filing of the ~~demand for~~ appropriate arbitration form by either party, the AAA shall send a copy of said form to the other party together with a request for payment of the filing fee.

9. 10. CONCILIATION AND PRE-TRIAL ARBITRATION PROCEDURES. Through prehearing conference or other joint communication to the parties, the arbitrator may, and is encouraged to, conciliate the claim, and he shall encourage the parties to narrow the issues so far as possible in an effort to shorten the hearing. At least ten days before the hearing, the arbitrator shall ask the parties to stipulate to facts not in dispute, and may ask each party to furnish the other parties with copies of each document or exhibit which that party intends to offer in evidence. ~~Any and all correspondence from a party to the arbitrator must be filed with the AAA for transmittal to the arbitrator. Any and all oral communication with the arbitrator must be done jointly and with the knowledge of the opposing party.~~

11. COMMUNICATION WITH ARBITRATOR. Any or all communication, oral or written, from a party to the arbitrator must be through the AAA for transmittal to the arbitrator. In any and all cases oral communication with the arbitrator must be done jointly and with the knowledge of the opposing party.

~~10-(a).~~ 12. TIME AND PLACE OF ARBITRATION.
(a) If conciliation is not successful, an informal arbitration hearing will be held in the arbitrator's office or some other appropriate place in the general locale of the claimant's residence, or other place agreed upon by the parties. The arbitrator shall fix the time and place for such informal hearing. At least fourteen days prior to the hearing, the ~~arbitrator~~ AAA shall mail notice to each party or to the parties' designated representative. Notice of hearing may be waived by any party. When an arbitration hearing has been scheduled for a day certain, the courts of the state shall recognize such date as the equivalent of a day certain court trial date in the scheduling of their calendars.

(b) A party requesting a postponement shall make his request to the arbitrator, through the AAA, who shall rule on all such requests.

(c) A postponement fee of ~~\$50.00~~ \$100.00 shall be charged against the party causing the postponement.

~~11~~ 13. WITNESSES, SUBPOENAS, DEPOSITIONS.

(a) The arbitrator may, on his own initiative or at the request of any party, issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence. The subpoenas so issued shall be served, and upon application to the district court by either party or the arbitrator, enforced in the manner provided by law for the service and enforcement of subpoenas for a civil action.

(b) All provisions of law compelling a person under subpoena to testify are applicable.

(c) Fees for attendance as a witness shall be the same as for a witness in the district courts.

~~(d) Upon application of any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts.~~

14. DISCOVERY. Discovery of any kind beyond exchange of medical reports and other exhibits to be offered at the hearing is discouraged. However, upon application and just cause shown by any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts. Any adverse medical examination deemed necessary by the respondent shall be completed within 90 days following initiation of the case by the AAA unless extended by the arbitrator for cause.

~~12~~ 15. EVIDENCE. The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the issues. The arbitrator shall be the judge of the relevancy and materiality of any evidence offered and conformity to legal rules of evidence shall not be necessary. The parties shall be encouraged to offer, and the arbitrator shall be encouraged to receive and consider, evidence by affidavit or other document, including medical reports, statements of witnesses, officers, accident reports, medical texts and other similar written documents which would not ordinarily be admissible as evidence in the courts of this state. In receiving such evidence, the arbitrator shall consider any objections to its admission in determining the weight to which he deems it is entitled. ~~Any adverse medical examination deemed necessary by the respondent~~

~~should-be-completed-within-150-days-following
initiation-of-the-case-by-the-AAA.~~

~~13-~~ 16. ARBITRATOR'S FEES. An arbitrator shall be compensated for his services and for the use of his office or other appropriate facilities used for the hearing in the amount of ~~\$100~~ \$150 for each one-half day or a part thereof that is spent in hearing. If a claim is settled prior to the commencement of the hearing, the arbitrator's fees shall not exceed the sum of \$50.00. These fees shall be paid by the insurer but may be taxed as a cost and disbursement as set out hereinafter.

~~14-~~ 17. COSTS. In addition to the award, there may be taxed, at the discretion of the arbitrator, the actual costs and disbursements incurred, or any part thereof.

~~15-~~ 18. CLOSE OF HEARING. The arbitrator shall specifically inquire of all parties as to whether they have any further evidence. If they do not, the arbitrator shall declare the hearing closed. If briefs or documents are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of said briefs or documents. The time limit within which the arbitrator is required to make his award shall commence to run upon the close of the hearing.

~~16-~~ 19. TIME OF AWARD. The arbitrator shall render his award promptly and, unless otherwise agreed to by the parties, not later than thirty days from the close of the hearing or the reopened hearings.

~~17-~~ 20. REOPENING OF HEARINGS. At any time before the award is made, a hearing may be reopened by the arbitrator on his own motion, or for good cause shown, upon application of a party.

~~18-~~ 21. DELIVERY OF AWARD TO PARTIES. The placement of an award or a true copy thereof in the mail, addressed to the parties or their attorneys for delivery at their last known address, or personal service of an award upon a party or in any other manner which may be prescribed by law shall constitute legal delivery thereof.

~~19-~~ 22. CONFIRMATION, VACATION, MODIFICATION OR CORRECTION OF AWARD. Provisions of Minnesota Statutes, § 572.10 through 572.26 shall apply to the confirmation, vacation, modification or correction of award issued hereunder.

~~20-~~ 23. AMENDMENT OR MODIFICATION. The standing committee may propose amendments to these rules as circumstances may require. All changes in these rules, and all other determinations of the standing committee, shall be subject to review and approval by the Minnesota Supreme Court.

TO BE PRINTED ON BACK OF OATH OF ARBITRATOR FORM

ARBITRATOR'S CONTINUING REPRESENTATION

THE ARBITRATOR BY HIS OATH CERTIFIES THAT:

1. I will act in good faith and with integrity and fairness.

2. I have disclosed to the parties (and co-arbitrators) prior to this hearing any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias. (Canon II, Code of Ethics for Arbitrators in Commercial Disputes)

CANON II.

An Arbitrator should disclose any interests or relationship likely to affect impartiality or which might create an appearance or partiality or bias.

Safeco Ins. Co. v. Stariha,
346 N.W. 2D 663 (Minn. App. 1984)

3. I have had no ex parte contacts with regard to this arbitration proceeding, either orally or in writing, with any of the parties to this arbitration or their counsel except:

a. Communications concerning scheduling and anticipated duration of arbitration hearing. (Rule 11)

b. Pre-Arbitration Proceedings as described in Rule 10 of Minnesota No-Fault Automobile Insurance Arbitration Rules.

Crosby-Ironton, et al v. Independent School, et al,
285 N.W. 2d 667 (Minn. 1979)

Beebout v. St. Paul Fire & Marine Ins. Co.,
365 N.W. 2d 271 (Minn. App. 1985)

MURNANE, CONLIN, WHITE, BRANDT & HOFFMAN

ATTORNEYS AT LAW

SUITE 1400

ONE CAPITAL CENTRE PLAZA
WABASHA AT SIXTH STREET
SAINT PAUL, MINNESOTA 55102
(612) 227-9411

April 4, 1986

THOMAS M. CONLIN*
ROBERT W. MURNANE
ROBERT T. WHITE
JOHN E. BRANDT*
JOHN R. HOFFMAN*
JOHN D. HIRTE
STEVEN J. KIRSCH
LAWRENCE R. KING*

*ALSO ADMITTED IN WISCONSIN

ANDREW T. SHERN
P. DOUGLAS MCKEEN
JOHN J. BOWDEN
MICHAEL S. RYAN
LAURA J. MCKNIGHT
SUSAN D. HALL
ALFONSE J. COCCHIARELLA
MARY M. BOPE
PETER A. BOLOGNA

E. WILLARD MURNANE
(1907-1976)
CHARLES R. MURNANE
(1913-1982)

Clerk of Appellate Courts
230 State Capitol Building
St. Paul, Minnesota 55155

HAND DELIVERED

OFFICE OF
APPELLATE COURTS
FILED

APR 4 1986

WAYNE TSCHAMPERLE
CLERK

RE: HEARING TO CONSIDER AMENDING CERTAIN RULES OF
THE MINNESOTA SUPREME COURT REGARDING ARBITRATION
UNDER THE MINNESOTA NO-FAULT AUTOMOBILE INSURANCE
ACT - April 10, 1986.

Gentlemen:

We understand that Mr. Carl E. Norberg has secured an extension of time within which to file a Request To Make An Oral Presentation as provided for under the Order of Chief Justice Amdahl dated January 21, 1986. In accordance with that understanding, we are filing with your office ten copies of a Request to Make An Oral Presentation, and ten copies of the Statement Regarding Proposal For Amendment Of Certain Rules Regarding Arbitration Under The Minnesota No-Fault Automobile Insurance Act.

You will note that the undersigned appears as counsel for the Insurance Federation of Minnesota, the Alliance of American Insurers, the American Insurance Association, the National Association of Independent Insurers, the State Farm Mutual Automobile Insurance Company, the American Family Insurance Company and the Allstate Insurance Company. We understand that the public hearing is scheduled for April 10, 1986 at 9:00 a.m. and the undersigned will be present at that time to participate in the hearing.

We thank you for your assistance in the filing of the enclosed documents.

Best regards,

Lawrence R. King
Lawrence R. King

LRK:lh
Enclosures

STATE OF MINNESOTA
IN SUPREME COURT
C6-74-45550

OFFICE OF
APPELLATE COURTS
FILED

APR 4 1986

WAYNE TSCHIMPERLE
CLERK

RE: HEARING TO CONSIDER AMENDING CERTAIN
RULES OF THE MINNESOTA SUPREME COURT
REGARDING ARBITRATION UNDER THE
MINNESOTA NO-FAULT AUTOMOBILE
INSURANCE ACT.

REQUEST TO MAKE ORAL PRESENTATION

The undersigned as counsel for the Insurance Federation of Minnesota, the Alliance of American Insurers, the American Insurance Association, the National Association of Independent Insurers, the State Farm Mutual Automobile Insurance Company, the American Family Insurance Company and the Allstate Insurance Company, in accordance with the Order of this Court, dated January 21, 1986, does hereby request the opportunity to make an oral presentation before the Court on April 10, 1986.

RESPECTFULLY SUBMITTED,

MURNANE, CONLIN, WHITE, BRANDT & HOFFMAN

Dated: April 4, 1986

BY Lawrence R. King
Lawrence R. King MN:55827 WI:316274GC
Attorneys at Law
Suite 1400 - One Capital Centre Plaza
St. Paul, Minnesota 55102
(612) 227-9411

STATE OF MINNESOTA

IN SUPREME COURT
C6-74-45550

RE: HEARING TO CONSIDER AMENDING CERTAIN
RULES OF THE MINNESOTA SUPREME COURT
REGARDING ARBITRATION UNDER THE
MINNESOTA NO-FAULT AUTOMOBILE
INSURANCE ACT.

STATEMENT REGARDING PROPOSAL FOR AMENDMENT
OF CERTAIN RULES REGARDING ARBITRATION
UNDER THE MINNESOTA NO-FAULT AUTOMOBILE
INSURANCE ACT

The undersigned as counsel for the Insurance Federation of Minnesota, the Alliance of American Insurers, the American Insurance Association, the National Association of Independent Insurers, the State Farm Mutual Automobile Insurance Company, the American Family Insurance Company and the Allstate Insurance Company, hereby submits the following statement for consideration by this Court:

1. That Rule 7 entitled Jurisdiction In Mandatory Cases be revised in such a manner so as to eliminate the potential of the arbitration of minimal or small claims for medical expense benefits, income loss benefits or other basic economic loss benefits. As currently proposed, Rule 7 would require the arbitration of very small claims such as a single medical bill or one week's wage loss. The Rule also creates the potential of multiple arbitrations which would not be in the interest of the claimant

or the insurer. By way of an example a claim may be submitted for a \$300 medical expense which if denied could be arbitrated under Rule 7, following the first arbitration an additional claim may be submitted for a newly incurred medical expense of \$300 and if denied the second medical bill would be arbitrated. This process of multiple arbitrations potentially would go on indefinitely, or at least until the basic economic loss coverage was exhausted. By creating the potential for numerous arbitrations involving relatively minor amounts, Rule 7 establishes both an ineffective and expensive method of resolving such claims.

2. That Rule 7 entitled Jurisdiction In Mandatory Cases be revised so as to include the alternate language referred to on page 3 of the Rules Of Procedure For Arbitration, said alternate language providing as follows:

In the event that the parties do not so stipulate, the arbitrators shall not hear the case and the arbitration shall be dismissed without prejudice to claimant's right to pursue the claim in courts of law.

3. That proposed Rule 14 entitled Discovery be deleted, and Rule 13(d) which provides as follows be substituted:

(d) Upon application of any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts.

4. That this Court consider any such further revisions of the Rules Of Procedure For Arbitration which may be submitted by the parties to this Statement at the time of their oral presentation.

RESPECTFULLY SUBMITTED,

MURNANE, CONLIN, WHITE, BRANDT & HOFFMAN

Dated: April 4, 1986

By Lawrence R. King
Lawrence R. King MN:55827 WI:316274GC
Attorneys at Law
Suite 1400 - One Capital Centre Plaza
St. Paul, Minnesota 55102
(612) 227-9411

PROPOSED REVISION OF RULE 7

TO BE INCLUDED AS THE FINAL SENTENCE OF THE FIRST PARAGRAPH OF RULE 7,

IN ANY EVENT, NO CLAIM OF AN AMOUNT OF \$5,000 OR LESS SHALL BE ARBITRATED UNTIL A PERIOD OF 180 DAYS HAS LAPSED FROM ANY PRECEDING ARBITRATION HEARING.

DATED APRIL 10, 1986

John V. Norton

COUNSEL FOR INSURANCE FEDERATION OF MINNESOTA, THE ALLIANCE OF AMERICAN INSURERS, THE AMERICAN INSURANCE ASSOCIATION, THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS, THE STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, THE AMERICAN FAMILY INSURANCE COMPANY, AND THE ALLSTATE INSURANCE COMPANY

4/10/86

Proposed amendment submitted by John V. Norton, during hearing on 4/10/86.

MULTIPLE CLAIMS

220- Should multiple arbitrations be initiated on the same occurrence, the administrator shall bring this to the attention of the standing committee.

for resolutions
~~The standing committee shall order the consolidation of multiple arbitrations. They shall order the consolidation in such a way to avoid duplication of hearings. If they cannot do so without effecting a jurisdictional change beyond the \$5,000 mandatory jurisdiction, the separate hearings may proceed.~~

Two consolidation
~~The standing committee shall resolve such issues.~~

4/10/86

Proposed amendment submitted by
Lawrence King, during hearing
on 4/10/86.