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December 29, 1981

Honorable Douglas K. Amdahl
Chief Justice of the Minnesota
Supreme Court
State Capitol
St. Paul, Minnesota 55101

No. 45550

Re: Proposed Amendments to Rules of Procedure
for Arbitration of No-Fault Automobile
Insurance Act Claims

45550

Dear Mr. Chief Justice:

We have reviewed with interest the Order dated November 17, 1981 of former Chief Justice Robert J. Sheran concerning the proposed amendments to the arbitration of no-fault claims. We wish to indicate to you and to other members of the Minnesota Supreme Court our approval of the majority of the proposed changes.

We do wish to advise the members of the Court of our objection to the proposed revision of Section 12 of the Arbitration Rules. Under the proposed Rule, an independent medical examination must have been completed within 90 days of the initiation of the matter through the American Arbitration Association. We feel that the requirement that the independent medical examination be completed within 90 days imposes a difficult, if not impossible, burden upon the insurer.

The appointment schedules of those physicians who are willing to conduct independent medical examinations would often times prevent the independent medical examination from being "completed" within 90 days. Our experience indicates that appointments for independent medical examinations generally take place four to six months from the date of requesting such an examination. Thus, under the proposed new rule, it would not be possible for an insurer to have "completed" an independent medical examination prior to the arbitration hearing.

We wish to call to the attention of the Court the provisions of Minnesota Statute §65B.56 which provides for "physical

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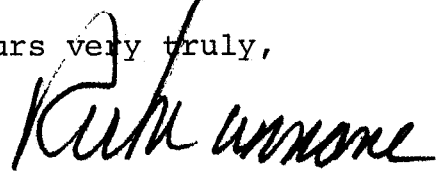
examination by a physician or physicians selected by the obligor as may reasonably be required." This statutory provision does not place a limitation upon the insurer as to the scheduling of a physical examination or when such an examination must be "completed". We feel that the arbitration process would be better served if Section 12 was amended to provide as follows:

Any independent medical examination deemed necessary by the respondent should be completed within 150 days following initiation of the case by the AAA.

If the Court were to adopt the amendment to Rule 12 as described above, such an amendment would provide sufficient time to the insurer for the scheduling and completion of an independent medical examination. We assume that the thrust of the proposed amendment is to prevent delay in the arbitration process. We do not feel that by providing for an additional 60 days within which the medical examination must be "completed" will unduly delay the arbitration process. We are of the opinion that by providing for an additional 60 days for the completion of an independent medical examination there would be a proper balance between the desire to provide for a quick resolution of disputes, and the necessity that both parties are afforded an opportunity to present their case in a fair manner.

We are hopeful that the members of the Court will consider our position with respect to the proposed amendment to Rule 12. In the event that the members of the Court have any questions concerning our position, we would certainly be free to respond in any fashion that the Court deems desirable.

Yours very truly,



Robert W. Murnane

RWM:sm