

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JUL 27 2009

TOBIAS LEMER)
)
 Appellant,)
)
 vs.)
)
 NORTH DAKOTA)
 WORKFORCE SAFETY & INSURANCE,)
)
 Appellee, and)
)
 SIEMENS POWER GENERATION, INC.)
)
 Respondent.)
 _____)

STATE OF NORTH DAKOTA

APPEAL FROM THE ORDER AFFIRMING ADMINISTRATIVE DECISION DATED
APRIL 23, 2009; ORDER FOR JUDGMENT DATED APRIL 30, 2009;
AND JUDGMENT DATED MAY 4, 2009
MERCER COUNTY, SOUTH CENTRAL JUDICIAL DISTRICT
THE HONORABLE DONALD L. JORGENSEN, PRESIDING
MERCER COUNTY CIVIL NO.: 29-09-C-1011
SUPREME COURT CIVIL NO.: 20090158

APPELLANT'S REPLY BRIEF

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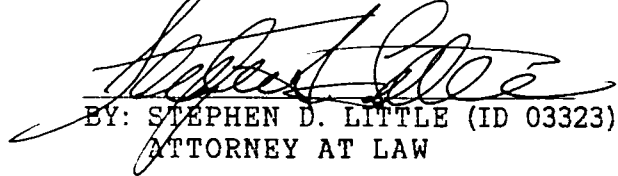
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The central question in evaluating the conflicting medical opinions in this case is whether aging, genetics and personal habits are, in and of themselves, pre-existing medical conditions which preclude injured workers from establishing compensable work injuries. If the promise of sure and certain relief in exchange for access to the courts is anything but illusory, then injured workers cannot be "red lined" because of genetics, personal habits or aging. Both the employer and WSI take injured workers as they find them, imperfections and all.

Furthermore, N.D.C.C., Chapter 14-02.4 prohibits discrimination in the provision of public services, e.g., workers compensation benefits. If Workforce Safety & Insurance wishes to deny benefits to legitimate injured workers who happen to be aging or drink, smoke or eat to excess or who are not genetically perfect, it should stop collecting premiums for such workers and allow them to sue their employers. Injured workers are either entitled to the sure and certain relief promised by N.D.C.C., Section 65-01-01 or they are entitled to the same access to the courts engaged by everyone else.

Submitted this 27th day of July, 2009.

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CERTIFICATE OF SERVICE

I, Stephen D. Little, certify that on the 27th day of July, 2009, a true and correct copy of the Appellant's Reply Brief with an attached Certificate of Service were mailed to the following:

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