

CASE NO. A12-1555

**STATE OF MINNESOTA
IN SUPREME COURT**

CVS Caremark Corporation, *et al.*, Coborn's Incorporated, Kmart Holding Corporation, *et al.*, Snyder's Drug Stores (2009), Inc., *et al.*, Target Corporation, Walgreen Co., and Wal-Mart Stores, Inc.,

Petitioners,

vs.

Graphic Communications Local 1B Health & Welfare Fund "A" and The Twin Cities Bakery Drivers Health and Welfare Fund, Individually and on behalf of all others similarly situation,

Respondents.

REQUEST OF THE INSURANCE FEDERATION OF MINNESOTA, THE AMERICAN TORT REFORM ASSOCIATION, AND MINNESOTANS FOR LAWSUIT REFORM FOR LEAVE TO PARTICIPATE AS AMICI CURIAE

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TO: THE MINNESOTA SUPREME COURT AND TO COUNSEL FOR ALL PARTIES ABOVE-NAMED:

Applicants the Insurance Federation of Minnesota, the American Tort Reform Association, and Minnesotans for Lawsuit Reform respectfully request that the Minnesota Supreme Court grant them leave to participate in this case as *amici curiae* pursuant to Rule 129 of the Minnesota Rules of Civil Appellate Procedure in the event the Court grants the Petition for Review in the above-captioned case. Applicants will support the brief of the Petitioners.

I. STATEMENT OF APPLICANTS' INTEREST

The Applicants are coalitions of business groups that share a public interest in representing the interest of Minnesota businesses.

The Insurance Federation of Minnesota ("IFM") represents a majority of the property casualty insurers doing business in Minnesota. Its objective is to work with government in the development of public policy. IFM monitors legislative, regulatory, and judicial activities that affect the insurance industry and develops policy positions that are communicated to legislators, legislative committees, state agencies, and the courts of Minnesota. IFM has appeared as *amicus curiae* in numerous cases that affect the insurance industry.

The American Tort Reform Association ("ATRA") is a nationwide 501(c)(6) non-profit organization backed by over 135,000 grassroots supporters and with affiliated coalitions in more than forty states. Its membership consists of a broad variety of businesses, nonprofit organizations, and trade and professional associations. As the only national organization dedicated exclusively to tort and liability reform, ATRA works to bring greater fairness, predictability, and efficiency to America's civil justice system through public education and the enactment of legislation.

Minnesotans for Lawsuit Reform (“MnFLR”) is the state’s leading business advocacy organization focused solely on Minnesota’s civil justice system. MnFLR represents over 64,000 employers, including numerous statewide business trade associations, local chambers of commerce, government entities and individual businesses. To further its mission of addressing the impact of our civil justice system on business and consumers, MnFLR works to educate and engage the general public, conducts research into civil justice issues, and advocates for businesses and consumers at the legislative level.

II. STATEMENT OF PARTY SUPPORTED AND POSITION TAKEN

The Applicants support the position of the Petitioners and will argue that the Court of Appeals erred in greatly expanding liability under the Consumer Fraud Act, Minn. Stat. § 325F.69, subd. 1 (2012), and the Minnesota Private Attorney General Statute, Minn. Stat. § 8.31, subd. 3a.

The Court of Appeals decision could result in at least three significant changes to the current law. Any one of these changes would increase the vulnerability of Minnesota businesses and their insurers to meritless lawsuits. As a whole, if allowed to stand, the Court of Appeals decision will have unprecedented and dramatic ramifications for Minnesota businesses’ operations and exposure to liability.

First, the Court of Appeals decision holds that a business may be liable for a material omission under the Consumer Fraud Act based on a failure to disclose pricing or other confidential information, even if the business had no affirmative duty to disclose that information. This holding could require that businesses disclose confidential or proprietary information to avoid exposure to Consumer Fraud suits. Imposing an affirmative duty on businesses to disclose pricing and other confidential information for which there is no duty to disclose would negatively impact businesses’ ability to compete. Compiling the often complex

and expansive data behind their pricing determinations in a manner that could be communicated to consumers would also be prohibitively expensive if not entirely impracticable for most businesses.

Second, the Court of Appeals decision significantly lowers the bar for plaintiffs pleading causation under the Consumer Fraud Act. Under the Court of Appeals decision, plaintiffs would not need to show any causal link between a material omission or misstatement and their injury; instead, causation is in essence presumed by the mere fact a purchase was made. This holding eliminates the requirement that plaintiffs plead and establish a causal nexus between the alleged injury and the defendants' conduct. Eliminating this key element of a consumer fraud cause of action will allow meritless suits to survive motions to dismiss or for summary judgment. As a result, Minnesota businesses would bear the costs of increased and protracted meritless litigation.

Finally, the Court of Appeals decision greatly expands the availability of a private cause of action under Minnesota law by holding that a plaintiff may use the violation of a statute for which there is no private cause of action as a predicate for stating a claim under the Consumer Fraud Act. Despite specifically holding that Minn. Stat. § 151.21, subd. 4 was not intended to create a private right of action, the Court of Appeals nevertheless permitted Respondents to bring their claim by "bootstrapping" a purported violation of a statutory provision intended to regulate a field into a Consumer Fraud Act claim. If allowed to stand, this holding would transform statutes intended to regulate a field by government enforcement on behalf of the public good into mechanisms for private plaintiffs to seek large damage awards against Minnesota businesses. This holding would have a significant impact on Minnesota businesses, particularly in the insurance industry.

If the Court of Appeals decision is permitted to stand, it will have immediate and far-reaching consequences for Minnesota businesses. The additional costs that would be borne by Minnesota businesses would inevitably be passed on to Minnesota consumers. The Court of Appeals decision will also make Minnesota far less attractive to potential new businesses. The questions that will be addressed in this appeal are therefore of the utmost importance to the Applicants, who represent the interests of Minnesotan businesses and consumers from across the spectrum.

III. STATEMENT OF WHY PARTICIPATION OF AMICI CURIAE IS DESIRABLE

The issues raised by this case affect interests far beyond those of the parties to this action, and will have a major impact on businesses throughout Minnesota. The Applicants, representing the interests of Minnesota businesses, have extensive experience in civil justice issues and their effect on businesses and consumers, and are therefore uniquely equipped to present the Court with their perspective on the broad-reaching issues in this case. Such a perspective will be invaluable in helping the Court to understand the practical impact that the Court of Appeals decision would have on Minnesota businesses and consumers.

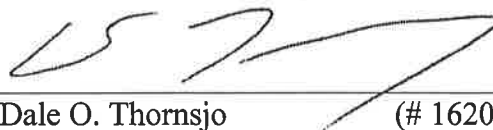
IV. CONCLUSION

For the above reasons, Applicants the Insurance Federation of Minnesota, the American Tort Reform Association, and Minnesotans for Lawsuit Reform respectfully request the opportunity to participate in this case as *amici curiae* in the event the Court grants the Petition for Review in the above-captioned case.

Respectfully Submitted,

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DATED: July 1, 2013



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