IN THE SUPREME COURT OF TEXAS

NO. 09-0330

LIANA LEORDEANU, PETITIONER,

v.

AMERICAN PROTECTION INSURANCE COMPANY, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS

Argued April 15, 2010

JUSTICE JOHNSON, dissenting.

Workers' compensation statutes are construed liberally in favor of workers. *In re Poly-America, L.P.*, 262 S.W.3d 337, 350 (Tex. 2008). But construing statutes liberally does not mean effectively adding language to them to alter their meaning, which is what the Court does today. I dissent.

For an employee's injury to be compensable under the Texas Workers' Compensation Act, the injury must arise out of and be in the course and scope of the employee's employment. TEX. LAB. CODE § 401.011(10). The Act specifically excludes some injuries during travel from being in the course and scope of employment:

> The term ["course and scope of employment"] does not include:
>
> (A) transportation to and from the place of employment unless:
>
> (i) the transportation is furnished as a part of the

> contract of employment or is paid for by the employer;
> (ii) the means of the transportation are under the control of the employer; or
> (iii) the employee is directed in the employee's employment to proceed from one place to another place; or
>
> (B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:
>
> (i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and
> (ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

Id. § 401.011(12). Simplified, the definition specifies that the term "course and scope of employment" does not include "(A) transportation to and from the place of employment [with exceptions]; *or* (B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless [both (B)(i) and (B)(ii) are satisfied]." (Emphasis added) The Court concludes that subsection (A) applies to travel to and from the place of employment and subsection (B) applies to other dual purpose travel. ___ S.W.3d ___. Under the Court's construction of the statute, "course and scope of employment" does not include "(A) transportation to and from the place of employment [with exceptions]; *or, in dual-purpose travel activities other than those specified in (A),* (B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless [both (B)(i) and (B)(ii) are satisfied]."

The Court reaches its conclusion by improperly reading words into the statute that the Legislature did not include. *See City of Rockwall v. Hughes*, 246 S.W.3d 621, 631 (Tex. 2008) ("[C]hanging the meaning of [a] statute by adding words to it, we believe, is a legislative function, not a judicial function."). It does so by noting that the Act's "listing [401.011(12)(A) and (B)] as two disjunctive exclusions, can be read to suggest that travel is excluded from the course and scope of employment if either applies." ___ S.W.3d at ___. In my view, the statute not only "suggests" that travel is excluded from the course and scope of employment if either (A) or (B) applies, it plainly says so.

The court of appeals concluded that the statute declines to adopt the policy of allowing coverage when there is any business-related component to travel and mandates a different result for dual purpose travel. 278 S.W.3d at 881, 889. The court explained that a policymaker could come to the conclusion that dual purpose travel is compensable only if it is predominately for a business-related purpose. *Id.* The Court appears to downplay the court of appeals' reasoning by summarizing the appeals court's interpretation of the straightforward statutory language as being "[i]n sum, because the Legislature said so." ___ S.W.3d ___. But when courts interpret statutory language, they should take that language as it is written. *See Seay v. Hall*, 677 S.W.2d 19, 25 (Tex. 1984) ("[I]t would be a usurpation of our powers to add language to a law where the legislature has refrained."); *Simmons v. Arnim*, 220 S.W. 66, 70 (Tex. 1920) ("[Courts] are not the law-making body. They are not responsible for omissions in legislation."). Courts generally presume the Legislature said what it meant, and that the Legislature's omission of words was intentional. *See Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009) ("Where [statutory] text is clear, text is determinative

of [Legislative] intent."); *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981); *Mauzy v. Legislative Redistricting Bd.*, 471 S.W.2d 570, 572 (Tex. 1971); *see Tex. & N. O. R. Co. v. Tex. R.R. Comm'n*, 200 S.W.2d 626, 629 (Tex. 1947). Courts should only read words into a statute when those words are necessary to effect clear legislative intent or are implicit in the statute, or when the statute yields a nonsensical or absurd result absent the words. *See Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995) ("[C]ourts should not insert words in a statute except to give effect to clear legislative intent."); *Lee v. City of Houston*, 807 S.W.2d 290, 294-95 (Tex. 1991) ("A court may not judicially amend a statute and add words that are not implicitly contained in the language of the statute."); *Jones v. Liberty Mut. Ins. Co.*, 745 S.W.2d 901, 902 (Tex. 1988) (same).

The words the Court adds by "construction" are not implicit in the statute. Further, the court of appeals' opinion properly interprets the statute as the Legislature wrote it, effects the Legislature's intent as embodied in the language used, and demonstrates that construing the statute as it is written does not yield a nonsensical or absurd result.

I agree with the court of appeals that the dual purpose rule applies to Leordeanu's claim and her injury is not in the course and scope of her employment. For the reasons set out by the court of appeals, I would affirm its judgment.

_____

Phil Johnson
Justice

OPINION DELIVERED: December 3, 2010