

NO. A05-1038

State of Minnesota
In Supreme Court

Ted Harrison, Jr., a minor, by
Audrey Harrison, his guardian ad litem,
Respondent,

v.

Amy and Ted Harrison, Sr.,
Appellants.

**BRIEF OF AMICUS CURIAE
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TABLE OF CONTENTS

| | Page |
|---|------|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF INTEREST | 1 |
| ARGUMENT | 2 |
| I. HOLDING THAT A PARENT OR MOTORIST CAN “INSTALL” A CHILD PASSENGER SAFETY SYSTEM WOULD IGNORE PLAIN STATUTORY LANGUAGE AND WOULD VIOLATE PUBLIC POLICY | 3 |
| II. MINN. STAT. § 169.685, SUBD. 5 AND FEDERAL RULES FURTHER SUGGEST THAT NO ONE OUTSIDE A FACTORY CAN “INSTALL” A CHILD PASSENGER RESTRAINT SYSTEM..... | 8 |
| III. A BROADLY APPLIED RULE AND BROADLY APPLIED EXCEPTION CANNOT COEXIST, AND WOULD WORK TO DISCOURAGE USE OF SEAT BELTS AND CHILD PASSENGER RESTRAINT SYSTEMS..... | 13 |
| IV. OTHER COURTS HAVE HELD THAT MISUSE OF A CHILD RESTRAINT SYSTEM IS SYNONYMOUS WITH NONUSE, SUCH THAT THE EVIDENCE MUST BE EXCLUDED..... | 16 |
| CONCLUSION | 20 |

TABLE OF AUTHORITIES

CASES

| | |
|---|-------------|
| Anker v. Little, 541 N.W.2d 333 (Minn. Ct. App. 1995)..... | 14 |
| Brager v. Fee, 750 F.Supp. 364 (C.D. Ill. 1990) | 18 |
| Burck v. Pederson, 704 N.W.2d 532 (Minn. Ct. App. 2005)..... | 13 |
| Burstein v. Stevens, ___ A.2d. ___, 2006 WL 2162167 (N.J. Super. A.D. Aug. 3, 2006)..... | 5 |
| Chaney v. Young, 468 S.E.2d 837 (N.C. Ct. App. 1996)..... | 5, 18 |
| Commonwealth v. Engle, 847 A.2d 88 (Pa. Super. Ct. 2004)..... | 5 |
| Cressy v. Grassmann, 536 N.W.2d 39 (Minn. Ct. App. 1995)..... | 14 |
| Harrison v. Harrison, 713 N.W.2d 74 (Minn. Ct. App. 2006)..... | 1, 7, 9, 16 |
| Hoene v. Jamieson, 289 Minn. 1, 182 N.W.2d 834 (1970) | 6 |
| Lind v. Slowinski, 450 N.W.2d 353 (Minn. Ct. App. 1990)..... | 14 |
| Marsden v. Crawford, 589 N.W.2d 804 (Minn. Ct. App. 1999)..... | 13, 15 |
| Olson v. Ford Motor Co., 558 N.W.2d 491 (Minn. 1997) | passim |
| Schlotz v. Hyundai Motor Co., 557 N.W.2d 613 (Minn. Ct. App. 1997)..... | 5, 14 |
| Swelbar v. Lahti, 473 N.W.2d 77 (Minn. Ct. App. 1991)..... | 14, 15 |

| | |
|--|-----------|
| Terwilliger v. Hennepin County, 561 N.W.2d 909 (Minn. 1997) | 15 |
| Watkins v. Hartsock, 783 P.2d 1293 (Kan. 1989)..... | 5, 17, 18 |

STATUTES

| | |
|---|-------------|
| 23 U.S.C. § 405(b)(5)..... | 11 |
| 23 U.S.C. § 405(b)(6)..... | 11, 13 |
| 49 C.F.R. § 571.213 | 11 |
| 49 C.F.R. § 571.213(S4) | 12 |
| 49 C.F.R. § 571.213(S5.3.1) | 12 |
| 49 C.F.R. § 571.213(S5.3.2) | 12 |
| 49 C.F.R. § 571.213(S5.6.1) | 13 |
| 49 C.F.R. § 571.213(S5.6.1.5) | 12 |
| 49 U.S.C. § 30102(a)(2)..... | 11 |
| 49 U.S.C. § 30127(d) | 11 |
| 49 U.S.C. §§ 30116, 30118 | 11 |
| Kan. Stat. Ann. §§ 8-1345(d), 8-1346..... | 17 |
| Minn. Stat. § 169.685 | 7 |
| Minn. Stat. § 169.685, subd. (b)..... | 10 |
| Minn. Stat. § 169.685, subd. 4 | passim |
| Minn. Stat. § 169.685, subd. 4(a)..... | passim |
| Minn. Stat. § 169.685, subd. 4(b)..... | 3, 6, 9, 19 |
| Minn. Stat. § 169.685, subd. 5 | passim |
| Minn. Stat. § 169.685, subd. 5(a)..... | 10, 19 |
| Minn. Stat. § 169.685, subd. 5(b)..... | 19 |

Minn. Stat. § 645.08(1) 8

Minn. Stat. § 645.16 4

OTHER AUTHORITIES

Annotation, Failure to Use or Misuse of Automobile Child Safety Seat or Restraint System as Affecting Recovery for Personal Injury or Death, 46 A.L.R.5th 557 (2005)..... 14

Black’s Law Dictionary 450 (8th ed. 2004)..... 8

Note, The Seat Belt Defense in Tennessee: The Cutting Edge, 29 U. Mem. L. Rev. 215 (1998) 8

The American Heritage Dictionary of the English Language 475 (4th ed. 2000)..... 9

Tori R. A. Kricken, The Viability of “The Seatbelt Defense” in Wyoming: Implications of and Issues Surrounding Wyoming Statute § 31-5-1402(F), 5 Wyo. L. Rev. 133 (2005)..... 8

RULES

Minn. R. Civ. App. P. 129.03..... 1

STATEMENT OF INTEREST

The Minnesota Defense Lawyers Association (“MDLA”), founded in 1963, is a non-profit Minnesota corporation whose members are trial lawyers in private practice.¹ MDLA devotes a substantial portion of its efforts to the defense of civil litigation. MDLA is affiliated with the Minnesota State Bar Association and Defense Research Institute. Over the past 42 years, MDLA has grown to include representatives from over 180 law firms across Minnesota, with 800 individual members.

The MDLA has a public interest in protecting the rights of litigants in civil actions, promoting the high standards of professional ethics and competence, and improving the many areas of law in which its members regularly practice. Those interests translate into concerns regarding the practical impact of developing law within the civil justice system. To that end, and for the reasons articulated in this brief, the MDLA urges the Court to reverse the decision of the court of appeals in *Harrison v. Harrison*, 713 N.W.2d 74 (Minn. Ct. App. 2006), in furtherance of legislative intent and public policy.

¹ The undersigned counsel for Amici authored the brief in whole, and no persons other than Amici made a monetary contribution to the preparation or submission of the brief. This disclosure is made pursuant to Minn. R. Civ. App. P. 129.03.

ARGUMENT

This case involves interpretation of the Minnesota “gag rule” that generally excludes evidence regarding use, failure to use, installation, or failure of installation of child restraint systems and seat belts in any litigation involving personal injuries resulting from the use or operation of any motor vehicle. Minn. Stat. § 169.685, subd. 4(a). The rule is subject to a single exception that permits otherwise excluded evidence of use of these devices to be admissible in actions “arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system.” *Id.* at subd. 4(b).

As Appellant has observed, the exception was enacted subsequent to this Court’s decision in *Olson v. Ford Motor Co.*, 558 N.W.2d 491 (Minn. 1997), where the Court held that the rule’s plain language worked to exclude evidence of the plaintiff’s personal seat belt use in a crashworthiness action alleging failure of the seat belt itself. *Id.* at 497. Since issuing the decision in *Olson*, this Court has examined neither the rule nor the exception.

MDLA agrees with Appellant that should the Court affirm the court of appeals’ decision in *Harrison*, the exception will swallow the rule. Under the court of appeals’ approach, “installation” of child safety seats and seat belts are indistinguishable from “use” of such devices. This opens the door for litigants to argue that *all* evidence regarding use of child safety seats and seat belts will be admissible. Such an approach ignores the legislature’s delineation between “use” and “installation” of these devices, runs counter to legislative intent, and ignores the relevant statute as a whole as well as the

applicable federal law. Perhaps more elementally, the court of appeals' decision is incongruent with decisions from other jurisdictions that correctly hold a parent's ineffective use of a child safety seat is a misuse—evidence of which is barred by the gag rule. For these reasons, and in recognition of a strong public policy that encourages the use of vehicle safety devices, this Court should reverse the decision of the court of appeals and hold that evidence of Ted Harrison Sr.'s misuse of the child safety seat is inadmissible.

I. HOLDING THAT A PARENT OR MOTORIST CAN “INSTALL” A CHILD PASSENGER SAFETY SYSTEM WOULD IGNORE PLAIN STATUTORY LANGUAGE AND WOULD VIOLATE PUBLIC POLICY

The district court ruled that evidence of Appellant's failure to secure 3-year-old Teddy Harrison was admissible pursuant to the single exception to the Minnesota seat belt and child passenger restraint system “gag rule.” Minn. Stat. § 169.685, subd. 4(a)-(b). The court of appeals affirmed amid the determination that Appellant had “defectively installed” the child passenger safety system within the meaning of the gag rule and exception. The rule is found in subdivision 4(a) of Minn. Stat. § 169.685, and the exception in subdivision 4(b), which state in their entirety:

(a) Except as provided in paragraph (b), proof of the use or failure to use seat belts or a child passenger restraint system as described in subdivision 5, or proof of the installation or failure of installation of seat belts or a child passenger restraint system as described in subdivision 5 shall not be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.

(b) Paragraph (a) does not affect the right of a person to bring an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint

system. Paragraph (a) does not prohibit the introduction of evidence pertaining to the use of a seat belt or child passenger restraint system in an action described in this paragraph.

The gag rule and its exception must be construed together *de novo*, and if they are clear from ambiguity their plain language controls. Minn. Stat. § 645.16. In interpreting the rule and exception, the court of appeals appropriately turned first to the plain language. However, the court overlooked a key distinction as to how the legislature employed the words “use” and “installation”—a distinction that fundamentally affects this case and shows why Appellant could not have “defectively installed” the child passenger restraint system.

Subdivision (a) bars evidence of “use or failure *to use*” a seat belt or child passenger restraint system and evidence of “installation or failure *of installation*” of such devices. Minn. Stat. § 169.685, subd. 4(a) (emphasis supplied). This language strongly suggests the legislature intended that a motorist’s “use or failure to use” a seat belt or child passenger restraint system properly is fundamentally different from a third party factory’s alleged failed efforts “of installation” of these devices. “Use or failure to use” is indicative of a person’s use, improper use or decision not to use a seat belt or child passenger restraint system. “Installation or failure of installation” is indicative of a third party’s error in factory installation of a seat belt or child safety restraint system. Just as a motorist cannot “install” a seat belt, a parent simply cannot “install” a child restraint safety system. Instead, a motorist or parent uses, misuses, or does not use a seat belt or child restraint safety system.

This interpretation is consistent with other case law that has discussed installation as an act by a manufacturer in a factory. For example, in *Olson* this Court found it “significant that the seat belt gag rule was enacted as part of a measure that required *manufacturers to install* seat belts in automobiles manufactured after January 1, 1964.” *Olson*, 558 N.W.2d at 495 (emphasis supplied). The court of appeals also held that evidence of “failure of installation of seat belts” was to be excluded from a case where a manufacturer had equipped a vehicle with a shoulder belt but not a lap belt. *Schlotz v. Hyundai Motor Co.*, 557 N.W.2d 613, 614-15, 618 (Minn. Ct. App. 1997).

Finally, decisions from other jurisdictions characterize situations similar to this not as a “defective installation,” but as a misuse of a child passenger restraint system—evidence of which is inadmissible. See *Watkins v. Hartsock*, 783 P.2d 1293, 1298-99 (Kan. 1989) (holding that “rationale ... concerning nonuse of a safety device also applies to the misuse of a child safety seat”); *Chaney v. Young*, 468 S.E.2d 837, 839 (N.C. Ct. App. 1996) (holding that “improper use of a seat belt” by placing child on driver’s lap “is tantamount to nonuse”); *Commonwealth v. Engle*, 847 A.2d 88, 90-91 (Pa. Super. Ct. 2004) (excluding evidence that “specific circumstances surrounding Child’s death pertained to the placement, positioning, and condition of Child’s infant restraint seat”); see also *Burstein v. Stevens*, ___ A.2d. ___, ___, 2006 WL 2162167, at 24-25 (N.J. Super. A.D. Aug. 3, 2006) (affirming exclusion of evidence concerning “misuse of a seat belt” where parent elected to use seat belt instead of child passenger restraint system); Part IV, *infra*.

Even though the parties in this litigation have suggested that a parent's alleged negligent "installation" is at issue, the case law from other jurisdictions supports the conclusion that Appellant "used" a child passenger restraint system, perhaps incorrectly. For purposes of the parties' cross motions for summary judgment, the parties stipulated that the Harrisons were negligent in maintaining and installing the car seat. The stipulation states that:

it is agreed that The Harrisons were negligent in the maintenance of Teddy's car seat, specifically, in the failure to discover and remove the coin from the buckle mechanism, and in the installation of the car seat into the Harrison vehicle, specifically, in the failure to convert the shoulder/lap belt restraint harness to the automatic locking mode and in the failure to confirm that the car seat's buckle tongue was securely latched into the buckle mechanism by pulling up adequately on the harness.

Appellant's Appendix (hereinafter "AA __"), at 21. MDLA respectfully suggests that given the important public policies regarding use of motor vehicle safety devices, the parties' stipulation should not control this Court's *de novo* review of whether Harrison "installed" the car seat within the meaning of state and federal law. Properly viewed, the stipulation establishes certain facts but reaches no legal conclusion. *See, e.g., Hoene v. Jamieson*, 289 Minn. 1, 7, 182 N.W.2d 834, 838 (1970) (rejecting parties' stipulation that statute was not severable because question is legal one that affects public interest).

Consistent with this Court's *de novo* review of the statutory language, the evidence of Harrison's alleged misuse of the child safety seat must be held inadmissible unless the exception in Minn. Stat. § 169.685, subd. 4(b) applies. The exception states that the rule "does not prohibit the introduction of evidence pertaining to the use of a seat belt or child passenger restraint system." Minn. Stat. § 169.685, subd. 4(b). However,

such evidence of use is unambiguously limited to “an action described in this paragraph”—namely, “an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system.” Missing from the list is an action alleging inappropriate use of such safety devices. The exception does not apply here because Harrison’s alleged misuse of the child seat is at issue.

Unless the legislature’s delineation between “use” and “installation” is carefully applied, the exception will be broadened beyond the legislature’s plain language and clear intent, to the detriment of public policies mandating use of seat belts and child passenger restraint systems. The court of appeals concluded that “not all litigation that involves the use of a child passenger restraint system also involves a claim that the child passenger restraint system was defectively designed, manufactured, installed, or operated.” *Harrison*, 713 N.W.2d at 79. If installation is in fact synonymous with use, amici MDLA struggles to identify a situation where the exception would not swallow the rule. Under the court of appeals’ approach, anytime a parent uses or fails to use a car seat, that parent is installing or failing to install the car seat. By equating misuse with defective installation, the evidence of any use giving rise to litigation would be admissible. This statutory construction ignores the plain language of Minn. Stat. § 169.685 as well as legislative intent.

II. MINN. STAT. § 169.685, SUBD. 5 AND FEDERAL RULES FURTHER SUGGEST THAT NO ONE OUTSIDE A FACTORY CAN “INSTALL” A CHILD PASSENGER RESTRAINT SYSTEM.

Amici MDLA contends that the Court should reverse the decision of the court of appeals based on the plain language of Minn. Stat. § 169.685, subd. 4 to hold that Harrison could not have “defectively installed” the car seat. Should the Court find ambiguity in the words “defective installation,” MDLA generally agrees with Appellant that the words “defective installation” strongly indicate a legislative intent to carve a narrow exception to the gag rule for products liability cases in response to *Olson*. *Olson* was a “crashworthiness” case. “Crashworthiness is a products liability doctrine.” Tori R. A. Kricken, *The Viability of “The Seatbelt Defense” in Wyoming: Implications of and Issues Surrounding Wyoming Statute § 31-5-1402(F)*, 5 Wyo. L. Rev. 133, 164 (2005); accord Note, *The Seat Belt Defense in Tennessee: The Cutting Edge*, 29 U. Mem. L. Rev. 215, 223 (1998). Under the “crashworthiness doctrine,” manufacturers may be liable for injuries over and above those which otherwise would have resulted “when the defective design or manufacture of a vehicle does not actually cause a crash but instead increases the severity of injuries suffered by occupants.” *Olson*, 558 N.W.2d at 494 n.2.

In attempting to construe the terms “defective installation,” the court of appeals erred in rejecting the argument that “defect” be narrowly confined to crashworthiness cases. Canons of construction dictate that words and phrases with special meaning are “construed according to such special meaning.” Minn. Stat. § 645.08(1). “Defect” is a term of art in the products liability context and has special meaning. *Black’s Law Dictionary* 450 (8th ed. 2004) (defining “defect” as “[a]n imperfection or shortcoming,

esp. in a part that is essential to the operation or safety of a product”). A product is “defective” when it “contain[s] an imperfection or shortcoming in a part essential to the product’s safe operation.” *Id.* As Appellants have observed, the legislature adopted Minn. Stat. § 169.685, subd. 4(b) in direct response to *Olson*, which was a “crashworthiness” case sounding in “defective design or manufacture.” *Olson*, 558 N.W.2d at 494 n.2.

The court of appeals compounded its error by turning to a common dictionary to define what Minn. Stat. § 169.685, subd. 4 means by “defective installation.” “Defective” was defined as “[h]aving a defect; faulty”; and “install” was defined as “[t]o connect or set in position and prepare for use.” *Harrison*, 713 N.W.2d at 78 (citing *The American Heritage Dictionary of the English Language* 475, 907 (4th ed. 2000)). Initially, there is no merit to using these definitions when “defective” has a well-known and special meaning directly related to the legislative adoption of subdivision 4(b).

Perhaps more importantly, the court apparently overlooked that subdivision 4 of section 169.685 references subdivision 5 for guidance on how “failure of installation” is described. *See* Minn. Stat. § 169.685, subd. 4(a) (stating that “proof of the installation or failure of installation of ... a child passenger restraint system *as described in subdivision 5* shall not be admissible ...”) (emphasis supplied). In exercising *de novo* review of Minn. Stat. § 169.685 in its entirety, this Court must examine subdivision 5. The subdivision suggests that only a factory may “install” vehicle safety equipment. Further, it references federal law, which, as explained below, strongly suggests that safety

equipment “defects” arise in the factory, not in a parent’s “defective installation” of a child safety seat. Subdivision 5 of section 169.685 states:

(a) Every motor vehicle operator, when transporting a child under the age of four on the streets and highways of this state in a motor vehicle equipped with *factory-installed* seat belts, shall equip and *install* for use in the motor vehicle, according to the manufacturer's instructions, a child passenger restraint system *meeting federal motor vehicle safety standards*.

(b) No motor vehicle operator who is operating a motor vehicle on the streets and highways of this state may transport a child under the age of four in a seat of a motor vehicle equipped with a *factory-installed* seat belt, unless the child is properly *fastened* in the child passenger restraint system. Any motor vehicle operator who violates this subdivision is guilty of a petty misdemeanor and may be sentenced to pay a fine of not more than \$50. The fine may be waived or the amount reduced if the motor vehicle operator produces evidence that within 14 days after the date of the violation a child passenger restraint system *meeting federal motor vehicle safety standards* was purchased or obtained for the exclusive use of the operator.

(c) The fines collected for violations of this subdivision must be deposited in the state treasury and credited to a special account to be known as the Minnesota child passenger restraint and education account.

Minn. Stat. § 169.685, subd. 5 (emphasis supplied).

Subdivision 5 strongly indicates that installation occurs in the factory. The subdivision twice states that seat belts are “factory-installed.” Child restraint systems also can be “factory-installed.” *See* 49 C.F.R. § 571.213(S4) (“Factory-installed built-in child restraint system means a built-in child restraint system that has been or will be permanently installed in a motor vehicle ...”). It is true that Minn. Stat. § 169.685, subd. 5(a) indicates that a motor vehicle operator “shall equip and install” a child passenger restraint system, but subdivision 5(b) then states that motor vehicle operators must ensure that a child is “properly *fastened*” in such a system (emphasis supplied). On balance,

subdivision 5 supports the conclusion that only a factory may be said to “install” a child passenger restraint system for purposes of interpreting the gag rule and exception.

The subdivision further references “federal motor vehicle safety standards” as providing additional explanation about child passenger restraint systems. Through power of the purse, Congress encourages use of child passenger restraint systems and seat belts. *See* 23 U.S.C. § 405(b)(5)-(6) (providing federal grants for states that implement child passenger protection education programs and that enact laws mandating children’s restraint in motor vehicles); 49 U.S.C. § 30127(d) (“Congress finds that it is in the public interest for each State to adopt and enforce mandatory seat belt use laws and for the United States Government to adopt and enforce mandatory seat belt use regulations.”). Further, Congress has specifically passed laws requiring disclosure of motor vehicle “defects.” *See* 49 U.S.C. §§ 30116, 30118. “Defect” is defined as “any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.” 49 U.S.C. § 30102(a)(2). This definition strongly suggests that Congress—where the Minnesota Legislature says courts must look for guidance on child passenger safety systems—would not agree that Harrison could have defectively installed his son’s child passenger restraint system.

This conclusion is bolstered by federal safety regulations governing child passenger restraint systems, 49 C.F.R. § 571.213. *See* Appendix to Brief of Amicus Curiae Minnesota Defense Lawyers Association. The definitions in section 571.213 of the Code define “child restraint system” as “any device, except Type I or Type II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children

who weigh 30 kilograms (kg) or less.” 49 C.F.R. § 571.213(S4). The definitions further distinguish between (1) a “built-in child restraint system,” which is “designed to be an integral part of and permanently *installed* in a motor vehicle”; and (2) an “add-on child restraint system,” which “means any portable child restraint system.” *Id.* (emphasis supplied). This again supports the conclusion that only built-in, factory-installed systems can be said to have been “installed” within the meaning of the federal regulations and Minn. Stat. § 169.685, subs. 4-5.

Federal regulations found subsequent to the definitions provide less clarity. Add-on systems are interchangeably described as being “attached,” “installed,” or “securely belted.” *See, e.g.,* 49 C.F.R. § 571.213(S5.3.1) (stating that add-on systems “must not have any means designed for *attaching* the system to a vehicle seat cushion or vehicle seat back”); 49 C.F.R. § 571.213(S5.3.2) (stating that add-on system shall meet certain requirements “when *installed* solely by each of the means indicated in the following table ...); 49 C.F.R. § 571.213(S5.6.1.5) (stating that instructions for add-on systems shall state that “systems should be *securely belted* to the vehicle”) (emphasis supplied). However, the regulation governing the printed instructions that must accompany sales of child passenger restraint systems is instructive. This regulation suggests that even if a consumer might initially “install” an add-on system, the system subsequently is “secured” after such initial installation:

Each add-on child restraint system shall be accompanied by printed installation instructions in English that provide a step-by-step procedure, including diagrams, for *installing* the system in motor vehicles, *securing* the system in the vehicles, positioning a child in the system, and adjusting the system to fit the child. For each child restraint system that has

components for attaching to a tether anchorage or a child restraint anchorage system, the installation instructions shall include a step-by-step procedure, including diagrams, for properly attaching to that anchorage or system.

49 C.F.R. § 571.213(S5.6.1) (emphasis supplied); *see also* 23 U.S.C. § 405(b)(6) (providing federal grants to states with laws requiring “minors who are riding in a passenger motor vehicle to be *properly secured* in a child safety seat or other appropriate restraint system”) (emphasis supplied).

On balance, federal law supports the conclusion that although Appellant might be faulted for failing to “secure” either his child or a child passenger restraint system, he cannot be faulted for “defective installation” of such a system for purposes of holding that the gag rule exception applies. The general rule of Minn. Stat. § 168.685, subs. 4-5 dictates that evidence of Harrison’s alleged misuse and/or failure to “secure” the child passenger safety restraint is inadmissible.

III. A BROADLY APPLIED RULE AND BROADLY APPLIED EXCEPTION CANNOT COEXIST, AND WOULD WORK TO DISCOURAGE USE OF SEAT BELTS AND CHILD PASSENGER RESTRAINT SYSTEMS

Minnesota courts have applied the seat belt and child passenger safety restraint “gag rule” broadly over the years, in deference to the legislature. *Olson*, 558 N.W.2d at 496; *see also Burck v. Pederson*, 704 N.W.2d 532, 536 (Minn. Ct. App. 2005) (holding that rule barred admission of physician’s proffered testimony as to seat belt causing abdominal injury), *rev. denied* (Minn. Dec. 13, 2005); *Marsden v. Crawford*, 589 N.W.2d 804, 807 (Minn. Ct. App. 1999) (holding that rule applied in breach of contract context to bar evidence of failure to restrain child), *rev. denied* (Minn. May 18, 1999); *Schlotz*, 557

N.W.2d at 618 (holding that rule barred evidence as to “the installation or failure of installation of seat belts” as well as evidence of allegedly defective seat back and shoulder-restraint system); *Anker v. Little*, 541 N.W.2d 333, 340 (Minn. Ct. App. 1995) (following “statute’s literal meaning” and holding it applicable to crashworthiness actions), *rev. denied* (Minn. Feb. 9, 1996); *Cressy v. Grassmann*, 536 N.W.2d 39, 43 (Minn. Ct. App. 1995) (affirming constitutionality of Minn. Stat. § 169.685, subd. 4), *rev. denied* (Minn. Sept. 28, 1995); *Swelbar v. Lahti*, 473 N.W.2d 77, 79-80 (Minn. Ct. App. 1991) (holding that rule works to bar evidence of use or nonuse of child passenger restraint system in wrongful death action); *Lind v. Slowinski*, 450 N.W.2d 353, 359 (Minn. Ct. App. 1990) (stating that “specific intent of the legislature was to remove from jury consideration the use or nonuse of seat belts”), *rev. denied* (Minn. Feb. 21, 1990). Minnesota’s courts are not alone in this respect. “Statutes that bar the use of evidence of failure to use a child safety seat have been interpreted liberally, according to the clear terms of the statutes.” Annotation, *Failure to Use or Misuse of Automobile Child Safety Seat or Restraint System as Affecting Recovery for Personal Injury or Death*, 46 A.L.R.5th 557 (2005), at § 2[b].

However, in this situation the district court and court of appeals have erred by applying *both* the rule and exception broadly. In ruling that the claim was “unimpaired by the gag rule,” the district court stated: “A broad reading of the statute *and its exception* would indicate that the exception is triggered in this case simply by the involvement in this case of a defectively designed car seat.” See AA 28 (emphasis supplied). It is impossible to apply both a rule and exception broadly because, as

Appellant has observed, the exception swallows the rule, contrary to legislative intent. *See, e.g., Terwilliger v. Hennepin County*, 561 N.W.2d 909, 912 (Minn. 1997) (in statutory immunity context, stating “that the legislature did not intend the discretionary function exception to swallow the general rule of allowing recovery for those injuries negligently inflicted in the performance of government operations”).

Although neither this Court nor the court of appeals has issued a published decision interpreting the breadth of the exception, the court of appeals twice has confronted the rule’s application to child passenger restraint systems, and both times held the evidence inadmissible in furtherance of the legislature’s intent that the exclusionary rule be applied broadly. In *Marsden*, the issue was whether a daycare provider breached a contract that required use of a child restraint system. 589 N.W.2d at 805. The court held that the rule barred presentation of evidence to support the breach of contract theory. *Id.* at 807. In *Swelbar*, the issue was whether use or nonuse of a child passenger restraint system was inadmissible in a wrongful death action. 473 N.W.2d at 78. The court held that it was inadmissible. *Id.* at 79-80.

It is worth noting that in its *Harrison* decision the court of appeals cited neither *Marsden* nor *Swelbar*. It is true that both cases arose before the legislature enacted the exception in response to *Olson*, and it also is true that both cases involved “use” and not purported “installation” of a child passenger restraint system. However, by broadly applying the exception without citing to its prior cases that broadly applied the rule in the context of child passenger restraint systems, the court of appeals has confused the issue to the detriment of sound public policy.

A broadly applied rule and broadly applied exception cannot coexist. If the decision in *Harrison* is not reversed, the exception will have swallowed the rule—not just in the child passenger restraint context, but in the seat belt context as well. Under the court of appeals’ approach, there is no question that “defective installation” of a seat belt would include a motorist’s failure to make sure that one end of a seat belt is securely “installed” into the other end, *i.e.* that no coins or other debris lurk in the receptive end of the assembly. A motorist’s failure to take these steps, despite the motorist’s intention to properly use a seat belt or car seat, would be admissible as evidence unless the decision in *Harrison* is reversed. However, a motorist’s conscious and intentional decision not to use a seat belt or car seat *at all* would be inadmissible.

From an evidentiary standpoint, motorists would be better off not buckling themselves or restraining their children, for fear they might be accused of “defectively installing” one end of a seat belt buckle into the other end. This cannot be the legislature’s intent. The consequence of the court of appeals’ holding in *Harrison* is against public policies that encourage and in fact require use of seat belts and child passenger restraint systems. This Court should apply *de novo* review to reverse the decision of the court of appeals and strongly affirm the legislative intent and public policies that favor use of vehicle safety devices.

IV. OTHER COURTS HAVE HELD THAT MISUSE OF A CHILD RESTRAINT SYSTEM IS SYNONYMOUS WITH NONUSE, SUCH THAT THE EVIDENCE MUST BE EXCLUDED

“All 50 states have statutes making mandatory the use of child safety seats or restraint systems, and a number of states have statutes governing the admissibility of

evidence of the failure to comply with such mandatory use statutes.” Annotation, 46 A.L.R.5th 557, § 1[a]. For example, Kansas statutes state that “[e]vidence of failure to secure a child in a child passenger safety restraining system or a safety belt ... shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages,” and that “[f]ailure to employ a child passenger restraint system shall not constitute negligence *per se*.” Kan. Stat. Ann. §§ 8-1345(d), 8-1346.

As stated above, typically when a person fails to ensure that a child is secured in a passenger restraint system, the allegation is not that the device was “defectively installed,” but that it was misused. This is precisely the situation facing the Harrisons. It is true that the parties stipulated for purposes of summary judgment that the Harrisons “were negligent in the maintenance of Teddy’s car seat,” *i.e.* that they were negligent “in the installation of the car seat into the Harrison vehicle.” See AA 21. However, the Court as part of *de novo* review cannot be constrained by the parties’ definition of “installation,” given the significant public policy implications at play. In light of similar cases from other jurisdictions, it is more reasonable to conclude that Harrison *misused* the child passenger restraint system.

In *Watkins*, 783 P.2d at 1299-1300, the Kansas Supreme Court held that evidence of a parent’s negligence in improperly attaching a car seat was barred by a gag rule prohibiting evidence of failure to secure a child. The parents had allegedly placed the car seat facing forward instead of facing rear, as they had been instructed at the hospital. *Id.* at 1294-95. The defendant had evidence that the infant’s death was attributable to the car

seat's position. As the court observed in determining whether its state's statute "bars the admission of evidence of both *nonuse* and *misuse* of a child safety seat":

The legislature has clearly stated that evidence concerning the failure to use a seat belt or the failure to secure a child in a safety restraining system or in a seat belt is not admissible for the purpose of determining comparative negligence or mitigation of damages in any action. . . .

The rationale ... concerning nonuse of a safety device also applies to the misuse of a child safety seat. The common-law rule that one is not required to anticipate negligence and guard against damages which might ensue if such negligence should occur applies to nonuse and misuse of a seat belt and a child passenger safety restraint device.

Id. at 1298-99; *see also Brager v. Fee*, 750 F.Supp. 364, 366-67 (C.D. Ill. 1990) (applying Illinois law, and barring evidence that motorist "failed to properly secure or place his son in the automobile so he would not be ejected from the auto in the event of a collision"); *Engle*, 847 A.2d at 90-91 (affirming exclusion of evidence where criminal defendant was charged with involuntary manslaughter where child's death was attributable to "placement, positioning, and condition of Child's infant restraint seat"); *Chaney*, 468 S.E.2d at 839 (holding that where motorist "strapped her infant son in her lap," the "improper use of a seat belt ... is tantamount to nonuse" such that evidence must be excluded).

When Minnesota's gag rule and exception are examined in light of laws and decisions from other states, the question of whether Harrison "installed" the child restraint system readily emerges as a red herring. His fault, if any, must be characterized as a "failure to use" the system properly. The message from the Minnesota Legislature is clear: "proof of the use or *failure to use* ... a child passenger restraint system ... shall not

be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.” Minn. Stat. § 169.685, subd. 4(a) (emphasis supplied). The exception in subdivision 4(b) is inapplicable because it permits introduction of child passenger restraint system use only in actions for incidents that involve “a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system.” The action against Harrison is not such an action.

The Minnesota Legislature’s message is clear: children are to be restrained in car seats. *See* Minn. Stat. § 169.685, subd. 5(a)-(b). It goes against public policy to affirm a rule that excludes evidence that a parent consciously failed to use a car seat at all while admitting evidence that a parent misused a car seat. For all these reasons, the Court should reverse the decision of the court of appeals and hold that evidence of Harrison’s alleged “misuse” of the child passenger restraint system is inadmissible.

CONCLUSION

The legislature has mandated use of seat belts and child passenger restraint systems. The legislature also has clearly enunciated a broad rule that evidence of a motorist's use or failure to use these devices is inadmissible except in actions involving defective installation, design, manufacture, or operation of these devices. This Court must construe the law to give effect to both legislative mandates. To that end, Appellant cannot be said to have "defectively installed" the child passenger restraint system for purposes of interpreting the evidentiary rule and exception. Holding otherwise would permit admission of evidence that a motorist failed to securely "install" one end of a seat belt assembly into the receptive end, but would bar admission of a motorist's conscious decision to not use a seat belt or child passenger restraint system *at all*. This runs contrary to plain statutory language, the legislature's clearly stated intent, relevant federal law and foreign case law, and sound public policy. For these reasons, MDLA urges that the decision of the court of appeals be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the Minn. R. Civ. App. P. 132.01, subd. 3, for a brief produced using the following font:

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).