

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.,

Petitioners.

**BRIEF AND APPENDIX OF RESPONDENT
TED HARRISON, JR., A MINOR, BY AUDREY
HARRISON, HIS GUARDIAN AD LITEM**

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STATEMENT OF THE ISSUES

IS RESPONDENT'S ACTION AN ACTION FOR DAMAGES ARISING OUT OF AN INCIDENT THAT INVOLVES A DEFECTIVELY DESIGNED, MANUFACTURED, INSTALLED OR OPERATING CHILD PASSENGER RESTRAINT SYSTEM AND THEREFORE WITHIN THE MINN. STAT. § 169.685, SUBD. 4(b) EXCEPTION TO MINNESOTA'S SEATBELT GAG RULE, MINN. STAT. § 169.685, SUBD. 4(a)?

Minn. Stat. § 169.685.

Phelps v. Commonwealth Land Title Ins. Co., 537 N.W.2d 271 (Minn. 1995).

Minn. Stat. § 645.08(1).

STATEMENT OF THE CASE AND FACTS

Appellants have stipulated that they were negligent in the maintenance and installation of the child safety restraint system in which Respondent was riding when he was injured in a collision. (Appellants' Appendix [A.] 21.) The sole issue before the Court is whether Minn. Stat. § 169.685, subd. 4(b), the exception to the seatbelt gag rule, applies to this litigation. The lower courts held that the exception is clear and unambiguous and applies to this case. (A. 1, 23.) Respondent seeks affirmance of that ruling.

A. April 19, 2001 Accident Resulted in Serious Injuries to Teddy.

On April 19, 2001, Respondent/Plaintiff Ted Harrison, Jr. (Teddy),¹ age 3, was seated in the right rear seating position, directly behind the front passenger seat, and was secured in a child safety seat, which is also known as a "child passenger restraint system." (A. 18.) His mother, Appellant/Defendant Amy Harrison (A. Harrison) was driving the vehicle. Another vehicle collided with Defendants' vehicle and caused Defendants' vehicle to leave the roadway and roll over several times. The collision caused Teddy to be released from his safety seat and ejected from the vehicle. Teddy was injured. (Id.)

¹ This action is brought on Teddy's behalf by Audrey Harrison, his guardian ad litem. For purposes of this brief, Respondent/Plaintiff will be referred to as Teddy. The Appellants/Defendants are Amy and Ted Harrison, Sr. When referred to jointly, they will be referred to as Defendants.

B. Defendants Installed, Maintained and Operated the Safety Seat in Which Teddy Was Riding at the Time of the Accident.

The safety seat that Teddy was in when the collision occurred was manufactured by Century Products Company (Century). It had been purchased new for Teddy by Defendants. (A. 19.) The safety seat used a two-slotted buckle mechanism that is situated in the seat bottom between the child's legs. The inbound slot had not been used for many months. (Id.)

Teddy's father, Appellant/Defendant Ted Harrison, Sr. (T. Harrison) was primarily responsible for installing the safety seat in Defendants' vehicle. (A. 20.) He knew that the vehicle shoulder/lap belt restraint harness had to be converted from the emergency locking mode to the automatic locking mode. This conversion allowed the vehicle's seatbelt to automatically lock into place as it was fed into the retractor and alleviated the need for a safety locking clip on the vehicle seatbelt when it is used with a child car seat. (Id.)

T. Harrison was also primarily responsible for maintaining Teddy's car safety seat. (Id.) He knew from the seat's instruction manual that he needed to keep debris out of the buckle slots. (Id.)

T. Harrison had installed Teddy's car seat in the Defendants' vehicle a few days before the accident. (A. 20-21.) On the day of the collision, T. Harrison had secured Teddy in the safety seat. T. Harrison customarily put Teddy into the safety seat, pulled the seat harness with the attached tongue over Teddy's head, secured the tongue on the

outbound buckle slot until he heard a click, and pulled upward on the harness to ensure that it was securely fastened. This was his installation procedure the day of the accident.

(A. 20-21.)

C. State Patrol Investigated Car Safety Seat's Installation and Operation.

The Minnesota State Patrol investigated the collision and observed that the harness of the safety seat was unlatched at the scene of the collision. (A. 19.) The safety seat was strapped into Defendants' vehicle with the vehicle seatbelt, but it was tipped over to the left, away from the right rear passenger side window and door and nearly horizontal to the rear seat. (Id.)

The State Patrol experimented with the safety seat during the days following the collision and observed that the harness tongue could be pulled free of the outbound buckle slot even though the buckle mechanism had seemed to "click" into place when the tongue was inserted into the outbound buckle slot. The State Patrol ultimately discovered that a coin in the inbound, unused slot of the buckle mechanism caused this false latch phenomenon. The State Patrol noted dirt and debris on the coin and concluded that the coin had been in the buckle mechanism for some time. (A. 19-20.)

D. As a Result of the Accident, a Lawsuit Was Initially Brought Against Car Seat Manufacturer.

A product liability claim was asserted on Teddy's behalf against Century alleging Teddy's ejection from the car seat and the vehicle was the result of the defective design of Teddy's car seat. (A. 20.) Although not made parties to that lawsuit, Century had

asserted that Defendants were to blame for Teddy's injuries because of their improper installation and maintenance of the car seat. (Transcript of November 3, 2004 motion for summary judgment [T.] 3, 22.)

E. Teddy Brought This Lawsuit Against Defendants for Defective Installation of Car Seat.

1. Case was submitted on cross-motions for summary judgment.

After settlement of the Century lawsuit, this lawsuit was brought by Teddy against Defendants because of their defective installation of the car seat. (A. 12.) The case was submitted to the trial court on cross motions for summary judgment with the sole issue being "whether Minnesota Statutes section 169.685, subdivision 4(a), commonly referred to as the seatbelt evidence gag rule, is applicable to the current litigation, or whether the exception provided by subdivision 4(b) of that section applies." (A. 23.)

Defendants have agreed "that this case involve[s] a defective manufacture or design or installation as related to the settled claims against the manufacturer [of the car seat]." (Reply Memorandum of Law in Support of Defendants' Motion for Summary Judgment, p. 1, dated October 29, 2004.) Defendants have admitted that they 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." (A. 21.)

At the summary judgment motion hearing, Defendants asserted that in Teddy's lawsuit against Century, the car seat manufacturer, Century "would not have been precluded from pointing the finger, trying to point it at the empty chair essentially of [the Defendants] and saying that we can put in evidence that [Defendants] have misused this." (T. 15.) Defendants also acknowledged that perhaps Teddy could have asserted his claim against Defendants in the action brought against Century:

And while Century could have pointed the finger at an empty chair and, perhaps, [Teddy] could have asserted this action in that case and we hear counsel say there is a whole host of reasons. I suspect one of these reasons is tactical.

In any event, it doesn't matter. They didn't assert those claims there.

(T. 16.)

As Defendants viewed the statute in their presentation before the trial court, Minn. Stat. § 169.685, subd. 4(b) only applies if the evidence against the Defendants is being presented in the product liability lawsuit against the manufacturer. So if Teddy's present claim against the Defendants had been joined in Teddy's lawsuit against the product manufacturer, evidence of Defendants' defective installation of the child safety seat would have been admissible. To this assertion, Teddy's counsel responded that the exception, Minn. Stat. § 169.685, subd. 4(b), is not a joinder rule, it applies to this case and evidence of the Defendants' installation of the car seat is not barred. (T. 17.)

2. Trial court ruled in Teddy's favor.

The trial court ruled in Teddy's favor and granted Teddy's motion for summary judgment. (A. 23.) The trial court recognized that "[t]he core of the parties' dispute is whether the current action is one that arose out of an incident involving a defectively designed, manufactured, installed, or operating seat belt or child restraint system."

(A. 28.) The trial court ruled that it did. The trial court concluded that "[n]either a plain reading of the statute nor case law" supported Defendants' assertion that "the exception to the gag rule" for defective installation "is limited to product liability claims against designers, manufacturers, distributors, and retailers of child passenger restraint systems. Ordinarily, it is the consumer who installs a child passenger restraint system, such that Defendants' reading of the statute would render the exception for "defective installation' virtually meaningless." (A. 28-29.) The trial court continued:

Moreover had the legislature intended for the exception to apply only to products liabilities claims and to afford no benefit to consumers, this Court thinks it could have plainly stated that intention.

(A. 29.)

3. Court of Appeals affirmed trial court's ruling.

Upon entry of final judgment, Defendants brought this appeal. The Court of Appeals affirmed. (A. 1.)

ARGUMENT

THE MINN. STAT. § 169.685, SUBD. 4(b) EXCEPTION FROM THE SEATBELT GAG RULE APPLIES TO TEDDY'S ACTION AGAINST DEFENDANTS.

A. Standard of Review.

Teddy agrees with Defendants that the construction of statutory provisions is a question of law, which this Court reviews *de novo*. Minnesota Citizens Concerned for Life, Inc. v. Kelley, 698 N.W.2d 424, 427 (Minn. 2005).

B. Minn. Stat. § 169.685, subd. 4(b) Is Clear and Unambiguous.

While Teddy does not necessarily disagree with the basic rules of statutory construction as set forth in Defendants' brief, Teddy does disagree with Defendants' application of those basic rules to the plain language of Minn. Stat. § 169.685, subd. 4(b).

1. The words of the Legislature are clear and subject to only one reasonable interpretation.

When interpreting a statute, the court's function is to ascertain and effectuate the intention of the Legislature. Minn. Stat. § 645.16. Olmanson v. LeSueur County, 693 N.W.2d 876, 879 (Minn. 2005). "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16. "Where the intention of the legislature is clearly manifested by plain unambiguous language . . . no construction is necessary or permitted. Thus, prior to consideration of legislative history, a determination that [the statute under consideration] is ambiguous is necessary." Phelps v. Commonwealth Land Title Ins. Co., 537 N.W.2d 271, 274 (Minn. 1995).

In interpreting a statute, the court first determines whether the statute's language, on its face, is ambiguous. Am. Tower L.P. v. City of Grant, 636 N.W.2d 309, 312 (Minn. 2001). A statute is ambiguous only when its language is subject to more than one reasonable interpretation. Id. "Where the Legislature's intent is clearly discernible from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." Id. Here, the words of the statute are clear and are subject to only one reasonable interpretation.

Subdivision 4(b) states that Minn. Stat. § 169.685, subd. 4(a), the seatbelt gag rule, "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 seatbelt or child passenger restraint system." Words and phrases are to be construed according to rules of grammar and according to their common and approved usage. Minn. Stat. § 645.08(1); Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604, 608 (Minn. 1980) ("courts generally strive to construe a term according to its plain and ordinary meaning").

The Legislature chose the phrase "arising out of," which is a phrase commonly used by the Legislature and has been subject to uniform interpretation by this Court.² Under the law, there is a presumption that when words have been given a well defined meaning by the courts, it is presumed that they have the same meaning in a statute

² There are over 300 statutes in Minnesota which contain the phrase "arising out of."

subsequently enacted. See, e.g., Minn. Stat. § 645.17, subd. 4. Minn. & P. R.R. Co. v. Sibley, 2 Minn. 13, 2 Gil. 1 (Minn. 1858) (“When terms of art or peculiar phrases are used, it must be supposed they were used in the sense as understood by persons familiar and acquainted with such terms.”). The words “arising out of” are generally construed to be very broad, general and comprehensive. This Court has held that the phrase “arising out of” is not to be construed to mean “proximately caused by” and that the phrase is much broader than proximate cause. The words “arising out of” mean causally connected with, not proximately caused by. Foley v. Honeywell, Inc., 488 N.W.2d 268, 271 (Minn. 1992); Faber v. Roelofs, 311 Minn. 428, 250 N.W.2d 817, 822 (1977).

The Legislature often uses the word “incident,” which in common usage means “[a] definite and separate occurrence; an event.” American Heritage Dictionary, 886. (A. 9.) Moreover, when the Legislature has chosen to define “incident,” it has recognized that its plain meaning is an “event.” See, e.g., Minn. Stat. § 18B.01, subd. 12 (“‘incident’ means a flood, fire . . . or other event”); Minn. Stat. § 18C.005, subd. 15 (same); Minn. Stat. § 18D.01, subd. 6 (same); Minn. Stat. § 18E.02, subd. 5a (same). See also Minn. Stat. § 144A.2511 (“with all violations related to a single event or incident considered as one violation”); Minn. Stat. § 245A.12, subd. 6 (“liable for any claims made against the residential program that arose from incidents or events”). Accordingly, the word “incident” means “a series of acts committed in close proximity or a chain of events forming a part of a schematic whole.” Hamwright v. State, 787 A.2d 824, 831 (Md. App.

2001), cert. denied, 798 A.2d 552 (2002), citing to the definition as set forth in Webster's Third International Dictionary; People v. Beyer, 768 P.2d 746 (Colo. App. 1988) (same).

The common meaning of the word "involves" is "to have within or as part of itself." Valanski v. Ashcroft, 278 F.3d 203, 209-10 (3rd Cir. 2002). Webster's New World Dictionary. The term "involving" was used in the predecessor version of Minn. Stat. § 169.685, subd. 4, and was the focus in Swelbar v. Lahti, 473 N.W.2d 77 (Minn. Ct. App. 1991).

In Swelbar, a child who died was not restrained in a car seat but was being carried on her mother's lap. Id. at 78. In the resulting wrongful death action, the defendant sought to introduce into evidence that the mother was statutorily required to use a car seat for the child. Id. Plaintiff sought to exclude that evidence. Id. The Court of Appeals agreed with Plaintiff's position based upon the language of Minn. Stat. § 169.685, subd. 4, focusing on the word "involving" in the statute. The Court of Appeals stated:

Here, the statute unambiguously bars evidence of use or non-use of seatbelts or child restraints in any litigation "involving" personal injury resulting from use of a motor vehicle
What is more important, however, is that the prohibition against the use or non-use of a child restraint system refers to litigation involving personal injuries, not litigation for personal injuries.

Id. at 79.

Turning to the phrase "a defectively designed, manufactured, installed or operating seatbelt or passenger restraint system," Teddy does not dispute that the word "defectively" modifies the words "installed or operating." Nor does Teddy take issue

with the Court of Appeals' conclusions that "[i]n common usage, 'install' means, '[t]o connect or set in position and prepare for use,' . . . and 'defective' means, '[h]aving a defect; faulty.'" (A. 8.) Before the Court of Appeals, Defendants offered the definition of "defective" as "imperfect in form or function," a definition also to which Teddy does not take issue. (Appellants' Court of Appeals Brief, p. 12.)³

2. Applying the statute as written, Teddy's action is entitled to proceed.

Applying the statute as written and giving its terms their common and approved usage, the statutory exception permits the introduction of evidence as to Defendants' conduct in the installation of the car seat. This case is an action for damages arising out of an incident that involves a defectively designed car seat. Defendants have stipulated to that fact. (A. 20.) As the trial court recognized, the "exception is triggered in this case simply by the involvement in this case of a defectively designed car seat. On its face, the statute requires nothing more than involvement to trigger the exception." (A. 28.)

Defendants have also conceded that they failed to convert the shoulder/lap belt restraint harness to the automatic locking mode and failed to confirm the buckle tongue was properly latched. (A. 21.) This is defective installation of the car seat. The defect in

³ The Amicus Minnesota Defense Lawyers Association (MDLA) contends that the Legislature intended the courts to apply the definition of defect contained in 49 U.S.C. § 30102(a)(2). (Amicus MDLA Brief, p. 11.) Defendants have never asserted that definition. Minn. Stat. § 169.685, subd. 4(b) uses the term defectively, not defect. The Legislature nowhere references 49 U.S.C. § 30102(a)(2) or purports to offer such a definition. Moreover, the federal courts have held a "defect" under the Safety Act to be "a term used in the sense of an 'error or mistake.'" U.S. v. General Motors Corp., 565 F.2d 754, 758 (D.C. Cir. 1977).

the manufacture/design of the car seat by Century, coupled with Defendants' faulty installation of the car seat, are the chain of events forming a part of the schematic whole resulting in Teddy's injury. The exception applies.

3. The statute, on its face, does not require that the claim asserted against Defendants be a products liability claim.

a. Statute does not so limit application of the exception.

Defendants assert that the exception does not apply because the claim against Defendants is not a products liability claim. (Appellants' Brief, p. 14.) The statute, on its face, does not require that the claim asserted against these Defendants be a products liability claim in order for the action to proceed. Defendants assert that "[Teddy's] Complaint makes no mention of an incident involving a defective manufactured, designed, installed, or operating car seat." (Appellants' Brief, p. 15.) But this action is not before the Court on a Minn. R. Civ. P. 12.03 motion to dismiss.⁴ Defendants cannot ignore the stipulated facts for purposes of summary judgment as well as their specific acknowledgment to the trial court, in which they agreed "that this case involve[s] a defective manufacture or design or installation as related to the settled claims against the

⁴ In addition, Minnesota is a notice pleading state that does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it. See Minn. R. Civ. P. 8.01 (requiring pleading to include a "short and plain statement of the claim" showing entitlement to relief); Minn. R. Gen. Prac. 507 (the statement of the claim must "contain a brief statement of the amount and nature of the claim"). The general rule has long been that a complaint is sufficient if it "shows a prima facie right in the plaintiff to recover, and it is not necessary that it should negative a possible defence or state matter which would come more properly from the other side." Jones v. Ewing, 22 Minn. 157, 158-59 (1875).

manufacturer.” (Reply Memorandum of Law in Support of Defendants’ Motion for Summary Judgment, p. 1. See also A. 20.) It is simply incorrect to state that the April 19, 2001 incident is no different than any other ordinary motor vehicle accident.

All the exception requires is that this be an action for damages arising out of an incident that involves a defectively designed, manufactured, installed or operating seatbelt or child passenger restraint system. As the lower courts have held, this action fits within that exception. As the Court of Appeals succinctly stated:

The phrase, “an action for damages arising out of an incident that involves a defectively installed child passenger restraint system” does not describe only a product-liability action. It describes an action brought under any theory of liability that seeks recovery of damages that arose out of a certain type of incident. Whether the exception applies to a particular action depends on the nature of the incident from which the damage arose, rather than on the theory of liability. If the incident involves a defectively installed child passenger restraint system, the exception applies.

(A. 8.)

b. Defective installation is not a term of art limited to products liability actions.

Moreover, defectively installed is a term commonly used in contexts other than products liability and the law is replete with claims of defects in installation other than in the products liability context. Defective installation is not a term of art that is limited to products liability actions. See Posey v. Fossen, 707 N.W.2d 712 (Minn. Ct. App. 2006) (negligence action brought against defendant alleging defective installation of propane heating system); Voice v. Elevator Motors Corp., 2002 WL 338258 (Minn. Ct. App.

2002) (concluding the record is clear that it was a defect in Miller's installation, not in the product, that caused appellant's injury) (Respondent's Appendix [R.A.] 1); Rettman v. City of Litchfield, 354 N.W.2d 426 (Minn. 1984) (city counterclaimed for materials it furnished to Rettman for the project and the amount it spent on repairs because of defective installation of the water main); Palmetto Homes, Inc. v. Bradley, 593 S.E.2d 480 (S.C. Ct. App. 2004) (homeowners association sued a roofing contractor who defectively installed roofs); Carpenter v. Federal Ins. Co., 637 A.2d 1008 (Pa. Super. 1994) (homeowner's claims arose out of fire caused by fixture which had been defectively installed by subcontractor).

That defective installation is not a term of art limited to the products liability setting is also made clear by the Legislature's own use of those terms. For example, in Minn. Stat. § 327A.02, subd. 1(b), the Legislature declared the seller of a completed new dwelling warrants to the buyer that the home will be "free from defects caused by faulty installation of plumbing, electrical, heating and cooling systems due to noncompliance with building standards."

4. The statute does not prohibit a plaintiff from pursuing separate actions against tortfeasors.

Defendants also assert that "[Teddy's] negligence claim against his parents may not be brought separately. It could have been brought along with [Teddy's] product liability action against the car seat manufacturer, an action that the exception specifically

addresses and permits.” (Appellants’ Brief, p. 16.) But the exception is not a joinder rule and the statute does not require what Defendants assert.

Defendants derive their argument from the Legislature’s use of the terms “an action.” (Id.) “An” is an indefinite article and in the plain sense means “any.” See Watson v. United Services Automobile Assoc., 551 N.W.2d 500, 502 (Minn. Ct. App. 1996), aff’d, 566 N.W.2d 683 (1997) (“‘an’ is an indefinite article, however, and in its plain sense means any insured”); see also Brooks v. Zabka, 450 P.2d 653, 655 (Colo. 1969) (recognizing “the indefinite or generalizing force of . . . an”); Stephan v. Pennsylvania General Ins. Co., 621 A.2d 258, 261 (Conn. 1993) (observing that “the indefinite article . . . ‘an’ refer[s] to unlimited objects”); State ex rel. Hurd v. Blomstrom, 37 N.W.2d 247, 249 (S.D. 1949) (“‘An’ is the indefinite article meaning “‘any.’”). In other words, the Legislature stated the gag rule does not affect a claimant’s right “to bring [any] action for damages” Minn. Stat. § 169.685, subd. 4(b).

In addition to the fact that nothing in the statute suggests Defendants’ joinder requirement, joinder is not required under the common law.⁵ It is the plaintiff’s prerogative to either join multiple defendants or to bring separate actions. This Court has specifically held that a plaintiff is not required to join all joint tortfeasors and “may proceed in one action or in separate actions.” Kisch v. Skow, 305 Minn. 328, 233

⁵ Defendants cite the joinder requirements of the Uniform Declaratory Judgment Act. (Appellants’ Brief, pp. 16-17.) That statute specifically states “[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration.” Minn. Stat. § 555.11. The same is not true of Minn. Stat. § 169.685, subd. 4(b).

N.W.2d 732, 734 (1975); see also Temple v. Synthes Corp., Ltd., 498 U.S. 5, 7 (1990).

Defendants' joinder argument is not supported by the language of the statute or the common law.

5. The lower courts' interpretation and application of the exception does not swallow the seatbelt gag rule.

Defendants also assert that to apply the exception here will allow the exception to swallow the gag rule. (Appellants' Brief, p. 18.) But proof of the installation or failure of installation of a child passenger restraint system is still generally not admissible. Failure to install a child passenger restraint system cannot be used, for example, as a defense in an auto accident case. But by the enactment of subdivision (b), subdivision (a) no longer precludes an affirmative action for damages arising out of an incident that involves a defectively installed child passenger restraint system, which is what the previous statute prohibited. If one fits the parameters of the exception, "evidence pertaining to the use of a seatbelt or passenger restraint system" in that action is admissible. Otherwise, the rule – as stated in Minn. Stat. § 169.685, subd. 4(a) applies. In rejecting Defendants' argument of "swallowing," the Court of Appeals correctly explained:

But 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.

(A. 9.)

6. Amicus MDLA's assertions are contrary to statute as written.

Amicus MDLA asserts, in essence, that subdivision 4(b) only applies to actions brought against the manufacturer of the vehicle because, according to the MDLA, installation is an act by a manufacturer in a facility. (MDLA Brief, p. 10.) Such an argument is contrary to the common understanding of installation. Further, if that was the Legislature's intent, it could clearly have said just that.

It is a matter of common knowledge that child car seats are not installed, generally, by the manufacturer. They are installed by the consumer. That is why Minn. Stat. § 169.85, subd. 5(a) states that "every motor vehicle operator . . . shall equip and install for use in the motor vehicle . . . a child passenger restraint system." The only exception to a consumer-installed child car seat is a factory-installed or integrated (built-in) child car seat, which even today is available only in a few select models of vehicles. Even when offered, such built-in seats are designed for forward-facing riders who are at least one year of age and weigh at least 20 pounds. All younger infants must be positioned rear-facing in separate non-factory-installed car safety seats until they are at least one year of age and weigh at least 20 pounds. Selecting and Using the Most Appropriate Car Safety Seat for Growing Children: Guidelines for Counseling Parents, 109 Pediatrics No. 3, March 2002, pp. 550-53.

The MDLA states that "a parent simply cannot 'install' a child restraint safety system." (MDLA Brief, p. 4.) The Legislature has stated to the contrary. In addition to Minn. Stat. § 169.685, subd. 5(a), quoted above, Minn. Stat. § 245A.18, subd. 2(b) states:

Before a license holder, staff person, caregiver or helper transports a child or children under age 9 in a motor vehicle, the person transporting the child must satisfactorily complete training on the proper use and installation of child restraint systems in motor vehicles.

Ultimately, in interpreting statutes, a court “cannot supply that which the legislature purposely omits or inadvertently overlooks.” Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588, 594 (1971). The statute, as enacted, does not state it applies to only product liability actions, nor does it state that it only applies when a factory installed child restraint system is implicated. To interpret the provision as Defendants and the MDLA request of this Court would require words to be added to the statute, and the rules governing statutory construction forbid that. See Phelps, 537 N.W.2d at 274; Underwood Grain Co. v. Harthun, 563 N.W.2d 278, 281 (Minn. 1997).

7. Teddy’s claim against Defendants is one of defective installation, not one regarding use of car seat.

Contrary to the MDLA’s assertion, no one is suggesting that “use” and “installation” are the same. (MDLA Brief, p. 7.) As the Court of Appeals held in this case, the definition commonly used across the country for the word install is to set in place, to connect up and fix ready for use. (A. 8.) Bracy Bros. Hardware Co. v. Herman-McCain Construction Co., 259 S.W. 384, 386 (Ark. 1924); Healy Tibbitts Construction Co. v. Employers Surplus Lines Ins. Co., 140 Cal. Rptr. 375, 380 (Cal. Ct. App. 1977), reh’g denied. “Use” means to put into action or service. Webster’s New World College Dictionary (4th ed. 2001), p. 1574; Lopez v. McMillion, 113 S.W.3d 447, 450 (Tex. Ct.

App. 2003). Teddy's action is premised on Defendants' defective installation of his car seat – i.e., on Defendants' actions in connecting up the car seat and getting it ready for Teddy's use.

Defendants have admitted their failures with regard to the installation of Teddy's car seat, which includes “the failure to convert the shoulder/lap belt restraint harness to the automatic locking mode.” (A. 21.) Attachment of the car seat to the motor vehicle constitutes installation. See, e.g., Minn. Stat. § 245A.18, subd. 2(c) (“At a minimum, the training must address the proper use of child restraint systems based on the child's size, weight and age, and the proper installation of a car seat or booster seat in the motor vehicle used by the license holder to transport the child or children.”)

There is no basis in the Court of Appeals opinion for the MDLA's assertion that “anytime a parent uses or fails to use a car seat, that parent is installing or failing to install the car seat.” (MDLA Brief, p. 7.) It is true that the car seat manufacturer will often use the terminology “misuse” to describe its affirmative defense in a products liability case.

As one commentator has explained:

The child restraint manufacturer will routinely allege that the child was not properly restrained in the child restraint. If the child was properly restrained, then the manufacturer will claim that the restraint was not properly installed in the vehicle. If the claimant meets those challenges, the manufacturer will then typically emphasize the severity of the collision, claiming that no child restraint could have prevented the child's injuries or death.

Waltman, Child Seat Litigation, 1 Ann. 2003 ATLA-CLE 247 (2003). The manufacturer's decision to place the blame on another's defective installation by describing it as "misuse" does not mean that installation and use are synonymous terms. What is at issue in this case is defective installation.

8. Legislative history does not support Defendants' and MDLA's position.

If the statute is found to be ambiguous, then the court may look to other factors, such as legislative history, to determine legislative intent. Minn. Stat. § 645.16. There is no question that the statute, as enacted, provides an exception in products liability cases involving a defectively designed, manufactured, installed or operating seatbelt or child passenger restraint system. It is also equally clear that the statute, as enacted, does not limit the exception's application to only lawsuits brought against the manufacturer or seller of a defective product. If the Legislature had so intended, it could easily have so stated. For example, the Legislature could have stated:

Paragraph (a) does not affect the right of a person to institute a civil action for damages against a dealer, manufacturer, or distributor for the defective design, manufacture, installation or operation of a passenger restraint system.

But the above is not what the Legislature enacted.

The Defendants' interpretation based on their version of legislative intent is made by directing the Court to comments made by Senator Leo Foley, who authored and presented the bill to the Senate Judiciary Committee. As this Court has recognized, "the legislature's intent, while deemed singular, arises from, although it is not necessarily the

same as, the collective understandings of the individual members.” In re the Matter of Handle With Care, Inc. v. Dept. of Human Services, 406 N.W.2d 518, 522 (Minn. 1987). The members’ understandings are not always expressed, or if expressed are not always made for the record. Therefore, the Court has treated such statements with caution. Id.; State v. McKown, 475 N.W.2d 63, 67, n. 6 (Minn. 1991).

Defendants present nothing from the House side. The discussion in the House of Representatives, specifically at the Civil Law Committee on March 6, 1999, reveals that members of the Legislature viewed the exception to be broader than Defendants assert. For example, Representative Stanek expressed his understanding of the proposed legislation as follows:

Stanek: So, I mean, I understand that if I own a vehicle and I alter the seatbelt somehow, but then I decide to wear it, if a young lady is in my car as a passenger and she’s injured as a result of that, then I understand that’s what your bill wants to get at.

Minn. H.R. Civ. L. Comm. H.F. 462, 81st Leg. Sess. (March 6, 1999).

Certainly the exception allows the introduction into evidence of seat belt and child seat use in a product liability action against the manufacturer where faulty design is asserted. The exception is not limited to just that scenario. The Legislature was well aware that it is the consumer who installs the child car seat in his or her vehicle, as Minn. Stat. § 169.685, subd. 5(a) and § 245A.18, subd. 2(b) reflect. There is nothing offered by the Defendants or the MDLA that the Legislature intended to remove a consumer who defectively installs a car seat from the statutory exception. In Hutchinson Technology,

Inc. v. Commissioner of Revenue, 698 N.W.2d 1, 12 (Minn. 2005), this Court held that even if the Legislature intended a more restrictive definition, if the Legislature did not actually say so, the Court was “unwilling to write into a statute what the Legislature did not.” The Legislature, by the wording of the statutory exception, clearly meant for the courts to hold accountable all those who by their defective installation of a child car seat unnecessarily expose children to the risk of serious injury or even death.

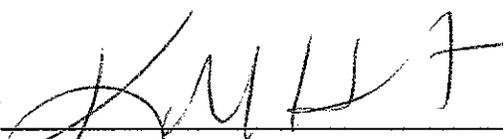
Based on the language of the statute, as written and as applied to the undisputed facts of record, Teddy respectfully requests affirmance.

CONCLUSION

Respondent, Ted Harrison, Jr., a minor, by Audrey Harrison, his guardian ad litem, respectfully requests that the trial court’s judgment and the Court of Appeals’ affirmance be affirmed.

Dated: September 15, 2006

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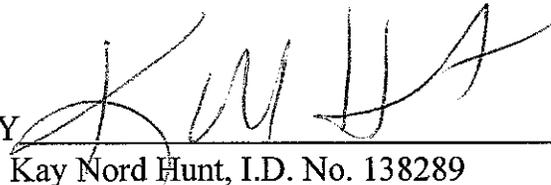
CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 5,746 words. This brief was prepared using Word Perfect 10.

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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).