

State of Minnesota
In Supreme Court

Steven Brua individually, Roxanne Brua individually,
and Travis Brua, individually,

Respondents,

v.

The Minnesota Joint Underwriting Association,

Appellant.

APPELLANT'S BRIEF, ADDENDUM AND APPENDIX

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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).

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STATEMENT OF ISSUES

Whether Minn. Stat. § 340A.409 Requires Separate Stated Limits Of Insurance For Pecuniary Loss.

The lower courts held that the Minnesota Joint Underwriting Association policy violated Minn. Stat. § 340A.409 because it provided a single limit of coverage for pecuniary loss and bodily injury.

Apposite Authorities:

Minn. Stat. § 340A.409

Minn. Stat. § 340A.801

Peterson v. Scottsdale Ins. Co., 409 F. Supp. 2d 1139 (D. Minn. 2006)

Scottsdale Ins. Co. v. Wohlsol, Inc., No. 04-4980, 2005 WL 2972997 (D. Minn. Nov. 7, 2005)

STATEMENT OF THE CASE

This declaratory action involves a liquor liability policy issued by Minnesota Joint Underwriting Association ("MJUA"). The policy defines bodily injury to include pecuniary loss and thereby subjects claims involving these types of damages to the same limit of coverage. At issue on appeal is whether the MJUA policy complies with the insurance requirements of Minn. Stat. § 340A.409. In other words, does the statute require separate stated limits for each category of recoverable damage under the Dram Shop Act?

By Memorandum and Order dated August 2, 2007, the Ramsey County District Court, the Honorable Edward J. Cleary presiding, concluded the MJUA policy did not comply with the statute and granted summary judgment against the MJUA. (Add. 1-8.)¹ Judgment was entered on August 15, 2007, and the MJUA timely appealed. On October 28, 2008, the Minnesota Court of Appeals, in an unpublished opinion, affirmed the district court. (Add. 9-15.) The court of appeals also concluded the policy did not comply with statute and noted "that if MJUA 'is going to offer pecuniary loss coverage, the coverage must exist independent of unrelated coverages and cannot be merged with bodily injury coverage without defeating the intent of Minn. Stat. § 340A.409 and related case law.'" (Add. 13-14.)

On January 20, 2009, this Court granted the MJUA's Petition for Further Review.

¹ References to "Add." are to the Addendum to Appellant's Brief.

STATEMENT OF THE FACTS

The decedent, Michael Brua, was killed in a single vehicle accident after drinking at the Bend-in-the-Road bar. (A12-13.)² Following the accident, respondents Steven, Roxanne, and Travis Brua – who are the father, mother, and brother of the decedent – commenced a dram shop action against Joette and Mark Burton, individually and doing business as Bend-in-the-Road. (A10-12.) The Complaint included claims for pecuniary loss, loss of means of support, and property damage. (A13.) The Bruas ultimately dropped their claim for loss of means of support.

At the time of decedent's death, the MJUA provided liquor liability insurance to the Bend-in-the-Road. (A15.) The MJUA policy includes the following coverage limits on the Declarations Page:

BODILY INJURY	\$ 50,000	EACH PERSON
	\$100,000	EACH OCCURRENCE
PROPERTY DAMAGE	\$ 10,000	EACH OCCURRENCE
LOSS OF MEANS OF SUPPORT	\$ 50,000	EACH PERSON
	\$100,000	EACH OCCURRENCE
ANNUAL AGGREGATE ³	\$300,000	ANNUALLY

(*Id.*) The policy defines the term “Bodily Injury” to include “bodily injury, sickness, or disease sustained by a person, including death resulting from any of these, *and pecuniary loss.*” (A23.) (Emphasis added.) The MJUA policy defines “Pecuniary Loss” as “loss of aid, advice, comfort, and protection that has a money

² References to “A” are to the Appendix to Appellant’s Brief.

³ An endorsement to the Policy deleted the words “Annual Aggregate” as set forth in the coverage limits, and replaced them with the words “Policy Period Aggregate Limit.” (A23.)

value other than loss of means of support, resulting from a person's death or recoverable under applicable law." (A23.)

During the course of the dram shop action, a dispute arose over the amount of coverage available for the pecuniary loss claim. The Bruas claimed that inclusion of "pecuniary loss" within the definition of "bodily injury," thus subjecting pecuniary loss claims to the \$100,000 per occurrence bodily injury limit, violated Minn. Stat. § 340A.409 and was therefore unenforceable, and claimed that only the aggregate limit of \$300,000 applied to the pecuniary loss claim. (A2.) MJUA claimed that the \$100,000 limit applied to pecuniary loss claims. Ultimately, the parties settled the dram shop action. The MJUA paid the Bruas \$100,000 – the full limit available under the policy for pecuniary loss – and agreed that the Bruas could bring this declaratory action challenging the enforceability of the limit set by the policy. (A25-26.)

ARGUMENT

I. SUMMARY OF ARGUMENT AND STANDARD OF REVIEW.

The clear and unambiguous terms of the MJUA policy subject bodily injury and pecuniary loss to the same limit of coverage. The lower courts refused to enforce the policy based upon a misinterpretation of the insurance requirements of Minn. Stat. § 340A.409 and the resulting erroneous conclusion that the MJUA policy did not comply with those requirements. The MJUA respectfully submits reversal is required. Interpretation of an insurance policy and its application to undisputed facts are questions of law that this Court reviews *de novo*. *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 688 (Minn. 1997). The interpretation of a statute is also a question of law accorded a *de novo* standard of review. *Wynkoop v. Carpenter*, 574 N.W.2d 422, 425 (Minn. 1998).

II. THE STATUTE DOES NOT REQUIRE SEPARATE STATED LIMITS OF INSURANCE FOR PECUNIARY LOSS.

A. The Terms of the Statute are Clear.

To obtain a liquor license an applicant must provide proof of their financial responsibility. Minn. Stat. § 340A.409 permits applicants to satisfy this requirement in one of three ways: by submitting proof of insurance, by filing a bond, or by depositing cash or other security in the amount of \$100,000. (A54-55.)

Minn. Stat. § 340A.409 provides, in pertinent part:

No retail license may be issued, maintained or renewed unless the applicant demonstrates proof of financial responsibility with regard to liability

imposed by section 340A.801⁴ The minimum requirement for proof of financial responsibility may be given by filing:

(1) a certificate that there is in effect . . . an insurance policy issued by an insurer . . . providing at least \$50,000 of coverage because of bodily injury to any one person in any one occurrence, \$100,000 because of bodily injury to two or more persons in any one occurrence, \$10,000 because of injury to or destruction of property of others in any one occurrence, \$50,000 for loss of means of support of any one person in any one occurrence, and \$100,000 for loss of means of support of two or more persons in any one occurrence;

(2) a bond of a surety company with minimum coverages as provide in clause (1); or

(3) a certificate of the commissioner of finance that the licensee has deposited with the commissioner of finance \$100,000 in cash or securities which may legally be purchased by savings banks or for trust funds having a market value of \$100,000.

(A54-55.) The clear terms of Minn. Stat. § 340A.409 do not require insurance for pecuniary loss, nor do they require that a policy provide separate stated limits for the other items of recoverable damage. To begin with, the statute makes absolutely no mention of pecuniary loss. This is telling because the legislature added the insurance requirements of Minn. Stat. § 340A.409 to the statute at the

⁴ Minn. Stat. § 340A.801, the Minnesota Civil Damages Act, permits persons injured as a result of an illegal sale of alcohol to recover four types of damages: (1) personal injury, (2) property damage, (3) loss of means of support, and (4) other pecuniary loss. In particular, the Civil Damages Act provides:

A spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person . . . has a right of action in the person's own name for all damages sustained against a person who caused the intoxication

Minn. Stat. § 340A.801, subd. 1. (A56).

same time it added the pecuniary loss language to Minn. Stat. § 340A.801. *See* 1982 Minn. Laws ch. 528, §§ 2, 7 (A57-63).

In addition, unlike the Minnesota No-Fault Act, which uses the terms “stated limits” and “separate . . . coverages” to indicate that the various mandatory automobile coverages are cumulative, Minn. Stat. § 340A.409 does not expressly provide that the required coverage for each type of damages are to be separately provided. *Compare* Minn. Stat. §§ 65B.44 and 65B.49 *with* Minn. Stat. § 340A.409. If the legislature had intended separate stated limits for pecuniary loss or for the other items of recoverable damage under Minn. Stat. § 340A.801, it could have easily drafted the statute to so provide. This Court has noted “[i]t is not for us to rewrite a statute that has no ambiguities; that is for the legislature....” *Kealy v. St. Paul Housing & Redevelopment Authority*, 303 N.W.2d 468, 474 (Minn. 1981).

B. Interpreting the Statute to Require Separate Stated Limits for Pecuniary Loss Presumes Legislative Error.

Interpreting the statute to require separate stated limits for pecuniary loss presumes the legislature erred when it enacted the statute: that it omitted any insurance requirement for pecuniary loss. While at least one court has implied that the lack of separate stated limits for pecuniary loss might be an “apparent legislative oversight” there is nothing in the statute or the legislative history to support such a conclusion. *See Acceptance Indemnity Ins. Co. v. Staples*, Civ. No. 3-93-382, 1993 WL 811736 (D. Minn. 1993) (A34-37). In addition, such a

conclusion goes against the general rules of statutory construction that require courts to presume the statute is effective. See *Lewis-Miller v. Ross*, 710 N.W.2d 565, 569 (Minn. 2006) (“[w]hen interpreting legislative enactments, we must presume that the legislature intended its statutes to be ‘effective,’ and not productive of ‘absurd * * * or unreasonable’ results.”); see also Minn. Stat. § 645.17.

The legislature did not inadvertently omit pecuniary loss from the statute’s insurance requirements. As noted above, the statute’s insurance requirements and pecuniary loss language were added at the same time. In addition, the legislature has had numerous opportunities to revise and “correct” the statute over the years. It is telling that even after more than 15 years since this “apparent legislative oversight” was first pointed out the legislature has not amended the statute. A far more reasonable interpretation of the statute – one that does not depend upon legislative error for its existence – is that the statute does not require separate stated limits for any of the categories of recoverable damage.

Interpreting the statute to require a separate stated limit for pecuniary loss also improperly favors a class of claimants. Minn. Stat. § 340A.801 permits two classes of people to make dram shop claims: (1) persons physically injured by an illegal sale of alcohol; and (2) dependents of persons injured by an illegal sale. These two classifications are also evident in Minn. Stat. § 340A.409 which sets limits of coverage for injured victims (bodily injury) and dependants (loss of means of support). As noted in *Peterson v. Scottsdale Ins. Co.*, 409 F. Supp. 2d.

1139, 1149 (D. Minn. 2006) (A44-53), “the coverage requirements for ‘bodily injury’ damages are designed to compensate one class of persons who are injured by an unlawful sale of alcohol – namely, those persons who suffer a physical injury – while the coverage requirements for ‘loss of means of support’ were intended to compensate the class of persons who are dependent on the injured person for support.”

The fact that the limits set forth in Minn. Stat. § 340A.409 are aimed at compensating different classes of claimants is inconsistent with the conclusion that a separate limit of coverage is required for pecuniary loss. Indeed, interpreting the statute to require cumulative limits while at the same time interpreting it to require pecuniary loss coverage in some unstated amount presumes the legislature intended to provide greater compensation to one class of claimants (i.e. dependants vs. injured persons). This Court has already expressed disfavor for such unequal treatment. *See Jones v. Fisher*, 309 N.W.2d 726 (Minn. 1981) (allowing innocent victim to recover against 3.2 beer vendor because “to rule otherwise would result in an unequal treatment of two classes of plaintiffs”).

III. THE STATUTE DOES NOT REQUIRE SEPARATE STATED LIMITS OF INSURANCE FOR ANY OF THE CATEGORIES OF RECOVERABLE DAMAGE.

A. The Proof of Financial Responsibility Requirements Should be the Same.

The conclusion the statute requires separate stated limits for each of the categories of recoverable damage creates inconsistent financial responsibility

requirements. The amount needed to satisfy the financial responsibility requirements of Minn. Stat. § 340A.409 should be the same regardless of the method used to satisfy those requirements. The statute permits an applicant to satisfy the financial responsibility requirements by depositing \$100,000 in cash or securities with the commissioner of finance. Interpreting the statute to require \$210,000 in insurance but only \$100,000 in cash or securities leads to an inconsistent and unreasonable result. Indeed, such an interpretation is at odds with prior judicial interpretations of the statute. *See Peterson*, 409 F. Supp. 2d 1139 (Kyle, J. presiding) (A44-53); *Scottsdale Ins. Co. v. Wohlsol, Inc.*, No. 04-4980, 2005 WL 2972997 (D. Minn. Nov. 7, 2005) (Montgomery, J., presiding) (A38-43).

Wohlsol, like this case, involved a dispute over the amount of available liquor liability coverage. 2005 WL 2972997 at *1. In *Wohlsol*, the policy subjected all categories of recoverable damage to a \$100,000 “common cause” limit. *Id.* at *3. The claimants advanced the same arguments the respondents made here, that this coverage limit was invalid because it violated Minn. Stat. § 340A.409, and that each category of recoverable damage must have a separate limit of coverage. *Id.* The federal district court, applying Minnesota law, rejected this argument, holding:

If the statute were read to require a minimum of \$210,000 with respect to insurance, then liquor licensees that choose to satisfy the financial responsibility requirement with insurance would have a greater dollar amount available to injured persons than those that choose to satisfy the financial responsibility requirement with a cash

or securities deposit. The legislature could not have intended such an incongruous result...The statute does not require insurers to specify a minimum limit for each individual category of damages and instead requires a minimum limit of \$100,000 to satisfy claims for all of the various components of injury.

Id. at *5 (A42).

Likewise, in *Peterson*, the federal district court reached the same conclusion. *Peterson* involved a situation where, as here, the claimants sought to recover for pecuniary loss. 409 F. Supp. 2d at 1140. Like here, the policy subjected pecuniary loss and bodily injury claims to the same limit of coverage. *Id.* at 1143. The claimants argued this single coverage limit violated Minnesota law and was unenforceable, claiming Minn. Stat. § 340A.409 required separate limits of coverage for each category of recoverable damage. The *Peterson* court flatly rejected the argument, and concluded the statute only requires a minimum of \$100,000 in liquor liability coverage. *Id.* at 1150. As noted by the court:

[I]f we were to accept the Plaintiffs' interpretation of that statute, those applicants who should choose to establish financial responsibility, by purchasing insurance, would be required to afford a greater sum of funds for dram shop liability, than those applicants who should deposit cash with the Commissioner of Finance. Such an interpretation would be unreasonable, if not absurd. If public policy required cumulative coverages, then the amount of the coverage should be the same whether under-written by an insurer, by cash, or by bond. Stated otherwise, under the Plaintiffs' interpretation, the amount of funds, that would be required to be available for a dram shop claimant, would vary depending upon how the liquor license applicant should make its showing of financial responsibility. We cannot attribute to the legislature an intent to legislate an unreasonable or absurd result.

Id. at 1147-48 (A51).

The *Wohlsol* and *Peterson* courts are not alone in recognizing the incongruity of interpreting a financial responsibility statute to require more insurance than cash. In *Babcock v. Liedigk*, 198 Mich. App. 354, 497 N.W.2d 590 (Mich. App. 1993) the Michigan Court of Appeals considered whether a liquor liability insurance policy with a \$50,000 aggregate limit satisfied Michigan's financial responsibility requirements. Like Minnesota, the Michigan statute permitted a licensee to provide proof of financial responsibility in several different ways. In finding the policy satisfied the statutory requirements, the Michigan court noted:

[T]he fact that the requirements of the statute may be satisfied by the posting of \$50,000 in cash or unencumbered securities reflects a legislative intent to create a total pool of \$50,000 to secure the payment of claims To require the issuance of a liquor liability policy with an aggregate coverage greater than the amount required to be posted in the form of a cash bond or unencumbered securities would be contrary to the legislative intent behind the statute, absent some clear language in the statute that the legislature intended to treat the posting of a cash bond or unencumbered securities differently than obtaining liquor liability insurance coverage to satisfy the financial responsibility requirement of the act.

Id. at 359, 497 N.W.2d at 593-94.

Here, the district and appellate courts erred in failing to interpret Minn. Stat. § 340A.409 in a way that harmonizes and effectuates the three alternatives for assuring financial responsibility. According to the lower courts, the “legislature . . . may have decided that dram shops that have the ability to deposit a six figure sum should be treated differently than those relying on insurance.” (Add. 14.) The assumption being that these entities will have the financial ability

to satisfy any judgment for an amount in excess of \$100,000. There is nothing in the statute or the legislative history to support such a conclusion. Indeed, it is equally plausible to conclude that dram shops with the financial resources to select the cash or securities option are sufficiently sophisticated to structure their business so as to be judgment proof.

B. Interpreting the Statute to Require Separate Stated Limits is Inconsistent with DPS' Interpretation.

The Minnesota Department of Public Safety ("DPS") does not interpret the statute to require separate stated limits. DPS is the agency charged with enforcing the statute by way of its licensing of liquor vendors. DPS advises applicants and other members of the public in its website that they only need a total of \$100,000 in liquor liability insurance coverage to demonstrate that they are financially responsible. See Minnesota Department of Public Safety website, www.dps.state.mn.us/alcgamb/alcenf/process.htm (last visited Feb. 18, 2009). (A32.) According to DPS, "[t]he minimum limits of the policy are \$100,000 and a \$300,000 aggregate per policy per year per licensed location." *Id.* This agency interpretation is entitled to deference. See *Estate of Atkinson v. Minnesota Dep't. of Human Servs.*, 564 N.W.2d 209, 213 (Minn. 1997).

While the website information does not explain the DPS' interpretation in detail, it nevertheless demonstrates the DPS' conclusion that an applicant need have only \$100,000 in liability insurance to cover all categories of loss. The *Peterson* and *Wohlsol* courts recognized the significance of the agency's

interpretation. *See Peterson*, 409 F. Supp. 2d. at 1148 (stating that the Department of Public Safety’s interpretation of Minn. Stat. § 340A.409 “is entitled to weight and deference”); *Wohlsol*, 2005 WL 2972997 at *6 (A42-43). While this Court is not bound by the federal district courts’ interpretation of Minnesota law, the holdings in *Peterson* and *Wohlsol* are persuasive.

IV. EVEN IF SEPARATE STATED LIMITS OF INSURANCE WERE REQUIRED THE MJUA POLICY COMPLIES WITH THE STATUTE.

A. The Terms of the Policy are Clear.

The MJUA policy defines the term “bodily injury” to include “pecuniary loss.” (A23.) The policy also clearly sets the limit for bodily injury (and thus any claim for pecuniary loss) at \$50,000 for each person and \$100,000 for each occurrence. (A15.) There is no ambiguity as to whether, and to what extent, the policy provides coverage for pecuniary loss and the policy should be enforced as written. *See Ostendorf v. Arrow Ins. Co.*, 182 N.W.2d 190, 192 (Minn. 1970) (“courts will not redraft insurance policies in order to provide coverage where the plain language of the policy indicates that no coverage exists.”)

Contrary to the lower courts’ analysis, this case has nothing to do with *Brault v. Acceptance Indemnity Ins. Co.*, 538 N.W.2d 144 (Minn. App. 1995). The fact that the common law recognizes bodily injury and pecuniary loss as distinct types of damage does not preclude an insurer from defining the term bodily injury to encompass pecuniary loss. *Brault* involved insurance policies that provided coverage for all dram shop claims as established in Minn. Stat. §

340A.801, which, by its terms, includes claims for pecuniary loss. The policies did not specifically reference pecuniary loss and were completely silent as to the coverage limits for pecuniary loss. *Id.* Faced with a total absence of policy language, one of the insurers argued that because pecuniary loss is derivative of bodily injury, it was subject to the policy's stated bodily injury limit. *Id.* at 148. The court rejected that argument, concluding bodily injury did not include pecuniary loss. *Id.* at 149.

No resort in common law definitions is necessary or appropriate here. The MJUA policy specifically provides coverage for pecuniary loss and, by defining it within the bodily injury coverage, expressly assigns a clear limit of \$50,000 per person and \$100,000 per occurrence. (A15, 23.) The MJUA is free to define pecuniary loss in this way. *See Bobich v. Oja*, 104 N.W.2d 19, 24 (Minn. 1960) ("Parties to insurance contracts, as in other contracts, absent legal prohibition or restriction, are free to contract as they see fit, and the extent of liability of an insurer is governed by the contract they enter into.") Given the clear policy definitions and coverage limits, *Brault* has no bearing on the outcome of this case and the lower courts were wrong to conclude otherwise.

B. The Policy Does Not Impermissibly Blend and Dilute Any Mandatory Coverage.

The lower court rulings turn on the conclusion that the MJUA policy conflicts with the statute because it blends and dilutes the mandatory bodily injury coverage. Under the facts at issue here, this is both a legal and factual

impossibility. First and foremost, the statute does not require coverage for pecuniary loss, and does not require separate stated limits for other recoverable damages. But even if the statute did require a total of \$210,000 in coverage, that is exactly what the MJUA policy provided. As such, any suggestion that the coverage afforded by the MJUA policy was somehow illusory or that the limits were diluted is simply wrong.

The MJUA policy does not omit any coverage required by statute. Indeed, it provides more coverage than is required. This fact, however, does not result in an impermissible blending or diluting of coverage. To begin with, there is nothing in the statute that prohibits the MJUA (or any other insurer) from providing more coverage than statutory required by, for example, using a broader definition of bodily injury than the common law definition. See *Lynch v. American Family Mut. Ins. Co.*, 626 N.W.2d 182, 190 (Minn. 2001) (allowing insurer to provide broader coverage than required by No-Fault Act). The statute itself provides the policy must provide “at least” the coverage set forth therein, which presumes that the policy can provide more. Minn. Stat. § 340A.409, subd. 1:

There is also nothing that prevents the MJUA from “blending” the bodily injury coverage it provides with coverage for pecuniary loss. In that regard, the statute specifically states “[t]his subdivision does not prohibit an insurer from providing the coverage required by this subdivision in combination with other insurance coverage.” Minn. Stat. § 340A.409. Moreover, the conclusion the policy impermissibly blends and dilutes the mandatory bodily injury coverage

depends upon a hypothetical set of facts, not present here, involving multiple claimants with both bodily injury and pecuniary loss claims. This raises the question of whether it was even appropriate for the lower courts to reach the question of whether the policy complied with the statute. *See Lynch*, 626 N.W.2d at 184 (“Because American Family does not rely on its less-than-limits definition in this case, we need not address whether the policy can validly differ from the statutory language in this manner”); *Onvoy, Inc. v. Allete, Inc.*, 736 N.W.2d 611, 618 (Minn. 2007).

Any conclusion there is an impermissible dilution also presupposes that the MJUA would pay non-mandatory pecuniary loss claims before any bodily injury claims. Certainly, if the MJUA paid the hypothetical bodily injury claims first, thereby exhausting the policy coverage, no one could complain that the policy omitted any required coverage and therefore was unenforceable. As a practical matter, what is really involved with the hypothetical scenario presented here is the exhaustion of the available policy limits, not a dilution of any mandatory limit. The statute itself recognizes that if there are more than three claimants not every claimant can or will receive the claimed “statutorily mandated limit.” In short, there is nothing about the fact that a policy might be exhausted by way of the payment of claims that in any way conflicts with the statute or otherwise renders the clear terms of the MJUA policy invalid.

The irony of the lower courts’ ruling is that had the MJUA complied with the statute, as the lower courts interpreted it, it would have paid only \$8,000 to the

Bruas for their property damage claim. There was no claim for bodily injury. And the Bruas had no claim for loss of means of support. By defining bodily injury to include pecuniary loss the Bruas were able to recover \$100,000 for pecuniary loss that they would not have otherwise received. Under these circumstances, the coverage provided by the MJUA is hardly illusory.⁵

⁵ Even if this Court concludes that statute requires separate stated limits and that pecuniary loss coverage is required, the remedy would be reformation of the policy to provide the minimum required limits which in this case could not possibly be more than the \$50,000/\$100,000 required for the other categories of damage. *See Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683 (Minn. 1997) (policy in conflict with statute reformed to provide minimum required coverage). Again, respondents have already been paid all that they would be entitled to receive. There is simply no basis for subjecting any pecuniary loss claims to the policy's aggregate limit.

CONCLUSION

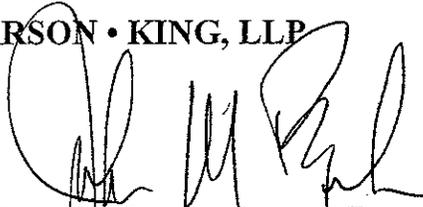
Minn. Stat. § 340A.409 does not require separate stated limits and the MJUA policy fully complies with Minnesota law. The policy's inclusion of pecuniary loss within the limit of coverage for bodily injury is fully enforceable, and the lower courts erred in holding otherwise. The MJUA respectfully requests that this Court reverse the lower courts and remand for entry of judgment in the MJUA's favor.

Dated: February 19, 2009

Respectfully submitted,

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