

NO. A07-1866

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State of Minnesota  
**In Supreme Court**

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

*Respondents,*

vs.

The Minnesota Joint Underwriting Association,

*Appellant.*

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**BRIEF OF AMICUS CURIAE  
MINNESOTA DEFENSE LAWYERS ASSOCIATION**

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LARSON • KING, LLP  
John M. Bjorkman (#209831)  
Paula Duggan Vraa (#219137)  
2800 Wells Fargo Place  
30 East Seventh Street  
St. Paul, MN 55101  
(651) 312-6511

*Attorneys for Appellant*

JOHNSON & CONDON, P.A.  
Mark J. Condon (#18296)  
Stacey A. Molde (#340947)  
7401 Metro Boulevard  
Suite 600  
Minneapolis, MN 55439-3034  
(952) 831-6544

*Attorneys for Amicus MDLA*

ROBINS, KAPLAN, MILLER  
& CIRESI, LLP  
Patricia Yoedicke (#119337)  
2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402  
(612) 349-8500

VANDERHEYDEN AND RUFFALO, PA  
David W. VanDerHeyden (#122622)  
302 Elton Hills Drive N.W., Suite 300  
P.O. Box 6535  
Rochester, MN 55903-6535  
(507) 281-3949

*Attorneys for Respondents*

MESHBESHER & SPENCE, P.A.  
Michael C. Snyder  
1616 Park Avenue  
Minneapolis, MN 55404  
(612) 339-9121

*Attorneys for Amicus Minnesota Association for Justice*

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## STATEMENT OF THE ISSUE

- I. Does the Minnesota Civil Damages Act contain a requirement that liquor vendors maintain an unspecified amount of separate and independent liability insurance limits for pecuniary loss damages, and impose a corresponding requirement upon their insurers to issue such coverage?**

The court of appeals held in the affirmative.

Apposite authority: Minn. Stat. § 340A.409; Minn. Stat. § 340A.801; *Scottsdale Ins. Co. v. Wohlsol, Inc.*, 2005 WL 2972997, \*5 (D. Minn. Nov. 7, 2005); *Peterson v. Scottsdale Ins. Co.*, 409 F.Supp.2d 1139, 1147-48 (D. Minn. 2006); *Benda v. Girard*, 592 N.W.2d 452, 455 (Minn. 1999).

## INTRODUCTION OF AMICUS CURIAE PARTY

The MDLA, founded in 1963, is a non-profit Minnesota corporation whose members are trial lawyers in private practice. MDLA devotes a substantial portion of its efforts to the defense of clients in civil litigation. Over the past 45 years, it has grown to include representatives from over 180 law firms across Minnesota, with more than 800 individual members.

Among MDLA's many goals is the protection of the rights of litigants in civil actions, the promotion of high standards of professional ethics and competence, and the improvement of the many areas of law in which its members regularly practice. The MDLA's interest in this case is to promote clarity of the law and uniform application of important legal principles at issue in civil litigation in Minnesota.

## ARGUMENT

### **I. Introduction.**

This appeal involves the straightforward issue of whether the Minnesota Civil Damages Act somehow imposes a requirement upon liquor vendors – and a corresponding requirement on their insurers – to maintain separate, cumulative limits of liability insurance coverage for bodily injury, loss of means of support, and property damage for a total of \$210,000 in liability coverage limits; as well as separate, additional coverage (in an unknown amount) for pecuniary loss. This narrow issue has much broader implications for the economics of the insurance industry as a whole, not to mention for liquor vendors whose premiums will soon be increased if their policies must be rewritten following the court of appeals' ruling.

The lower courts' analysis contradicts the plain language of Minn. Stat. § 304A.409, and the Department of Public Safety's interpretation of that statute, illogically imposing additional financial security requirements upon those liquor vendors who choose to purchase liability insurance instead of making a deposit with the commissioner of finance. It also fails to enforce the rights and obligations of the parties under the plain language of their insurance contracts, instead – and in direct conflict with the longstanding precedent of this court – rewriting unambiguous policies like those issued by the Appellant to impose additional obligations upon insurers for which no premium was ever received. The MDLA respectfully submits that both law and public policy will best be served by reversing the court of appeals and adopting the well-reasoned interpretations of the subject statutes reached by the U.S. District Court.

**II. The Minnesota Civil Damages Act does not contain a requirement that liquor vendors maintain an unspecified amount of separate and independent liability insurance limits for pecuniary loss damages, nor does it impose a corresponding requirement upon their insurers to issue such coverage. The court of appeals' conclusion to the contrary has tremendous implications for the insurance industry and insurance consumers as a whole.**

**A. The lower courts' decisions conflict with plain statutory language, agency interpretations, and two U.S. District Court decisions which arrived at the correct result.**

The Minnesota Court of Appeals held that, under Minn. Stat. §§ 340A.409 and 340A.801, liquor vendors who choose to purchase liability insurance are required to purchase cumulative limits of \$210,000 in liability coverage, as well as separate coverage for pecuniary loss. As argued in detail by the Appellant,<sup>1</sup> this conclusion is inconsistent with not only the plain language of the Civil Damages Act, but also: (1) the Department of Public Safety's instruction to liquor vendors that "The minimum limits of the policy are \$100,000 and a \$300,000 aggregate per policy year per licensed location"<sup>2</sup>; (2) the fact that Minn. Stat. § 304A.409, subd. 1, provides liquor vendors the option to deposit \$100,000 – not \$210,000 plus an additional, unknown amount for pecuniary loss – with the commissioner of finance; and (3) two separate U.S. District Court decisions holding it would be "absurd" to conclude just as the court of appeals did here. *See Scottsdale Ins. Co. v. Wohlsol, Inc.*, 2005 WL 2972997, \*5 (D. Minn. Nov. 7, 2005); *Peterson v. Scottsdale Ins. Co.*, 409 F.Supp.2d 1139, 1147-48 (D. Minn. 2006).

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<sup>1</sup> See Appellant's brief at 5-14.

<sup>2</sup> *Steps to Follow to Apply to State of MN for a Liquor License*, available at <http://www.dps.state.mn.us/alcgamb/alcenf/process.htm> (last visited February 20, 2009). "An agency's interpretation of the statutes it administers is entitled to deference." *Benda v. Girard*, 592 N.W.2d 452 (Minn. 1999).

Contrary to the court of appeals' decision, it is clear that the legislature did not intend to impose upon insurers the obligation to issue separate and independent pecuniary loss coverage over and above the \$100,000 required to establish financial responsibility. First, as observed by the U.S. District Court, it would be "unreasonable, if not absurd" to conclude that the amount required to establish financial responsibility varies based on the method chosen. *Peterson*, 409 F.Supp.2d at 1147-48. Second, the legislature did not impose *any* requirements on insurance companies in Minn. Stat. § 304A.409. This contrasts with many other statutes in which the legislature does impose requirements upon insurers issuing certain types of policies. *See, e.g.*, Minn. Stat. § 65A.01 (requiring contracts of fire insurance to provide specified coverages); Minn. Stat. § 65B.134 (requiring auto insurance policies to provide at the option of the insured complete coverage); Minn. Stat. § 62A.03, subd. 1 (imposing certain requirements on all policies of individual accident and sickness insurance). Thus, the court of appeals' inference that the legislature "must have" intended to require insurers to issue separate and additional pecuniary loss coverage – in an unspecified amount – is doubly misguided. This erroneous decision has tremendous financial implications for the insurance industry and insurance consumers as a whole, making public policy considerations of paramount importance in reviewing the decision of the court of appeals.

**B. Law and public policy are best served by reversing the court of appeals.**

Appellant has set forth various public policy concerns in its brief, which the MDLA supports. Additionally, from a broader perspective, the court of appeals' decision

retroactively imposes upon insurers obligations not accepted under the plain language of the policy, for which no premium was ever paid. This Court disfavors any judicial action that would impose upon an insurer obligations, risks or duties which it did not accept under the policy and for which the insurer received no premium. *See, e.g., Shannon v. Great Am. Ins. Co.*, 276 N.W.2d 77, 78 (Minn. 1979) (“it would be wholly improper to impose coverage liability upon an insurer for a risk not specifically undertaken and for which no consideration has been paid.”); *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.”).

The lower courts’ decision here literally alters the unambiguous contract agreed to by both parties in this case, conflicting with 100 years of precedent expressing this Court’s strong support for the compelling public policy favoring the freedom of parties to contract. *See James Quirk Milling Co. v. Mpls. & St. L. R. Co.*, 98 Minn. 22, 23, 107 N.W. 742, 742 (1906) (“you have this paramount public policy to consider, that you are not likely to interfere with the freedom of contract.”) (citation omitted). In contrast, the U.S. District Court decisions enforce the parties’ contract as written: a bedrock policy routinely endorsed by this Court. *See, e.g., Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346-47 (Minn. 2003) (unambiguous contract must be given its plain and ordinary meaning, “and shall be enforced by courts even if the result is harsh.”); *Telex Corp. v. Data Prods. Corp.*, 271 Minn. 288, 135 N.W.2d 681, 686-87 (Minn. 1965). The Respondents’ interest is not compelling enough to outweigh the strong public policy

favoring the freedom of contract and the enforcement of unambiguous contracts as written.<sup>3</sup>

Further, if the court of appeals' decision remains the law of this State, liquor liability insurance policies will need to be rewritten and additional premiums charged for the increased risk. For policies already issued, the insurers are now subjected to increased risk for which they were never compensated. Hundreds, if not thousands, of policies in Minnesota are written exactly like, or very similar to, the policy at issue in this case. Insurers have legitimately relied upon the plain language of the statute, the plain language of their policies, and the validating interpretations of the U.S. District Court. The lower courts' strained analysis in this case turns all of this on its head. The MDLA respectfully submits that the subject policies, as currently issued, comply with the law as written, and the court of appeals should be reversed.

### CONCLUSION

The decision of the court of appeals misapplies plain statutory language, rewrites an unambiguous contract, and conflicts with all prior judicial interpretations of Minn. Stat. § 340A.409. For the foregoing reasons, the MDLA respectfully supports a reversal of the court of appeals.

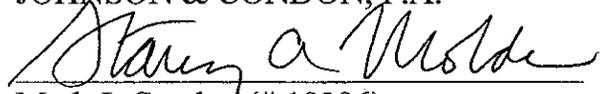
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<sup>3</sup> See Appellant's Brief at 18, fn. 5 (explaining that Respondents will not receive any more than they have already received even if the Court concludes that Minn. Stat. §340A.409 requires separate stated limits and that pecuniary loss coverage is required).

Dated: February 26, 2009

Respectfully submitted,

JOHNSON & CONDON, P.A.



Mark J. Condon (# 18296)

Stacey A. Molde (# 340947)

7401 Metro Boulevard, Suite 600

Minneapolis, MN 55439-3034

(952) 831-6544

*Attorneys for Amicus Curiae*

*Minnesota Defense Lawyers Association*