

State of Minnesota  
**In Court of Appeals**

Randy A. Vee and Joyce L. Vee,  
*Plaintiffs-Appellants (A08-1695),*  
vs.

Badri Abas Ibrahim, Freightways Corporation,  
*Defendants,*  
Ernest Meyer Crouzer, Northern Plains Dairy, LLP,  
*Defendants-Appellants (A08-1702),*  
and

American President Lines, Ltd.,  
*Defendant-Respondent.*

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**BRIEF OF RESPONDENT AMERICAN PRESIDENT LINES, LTD.**

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## STATEMENT OF THE ISSUE

**Whether a trailer (specifically, a “semitrailer,” as defined by statute) is a “motor vehicle” within the meaning of the motor vehicle vicarious liability statute (Minn. Stat. § 169.09, subd. 5a).**

The district court, applying the explicit language of the governing statutory definition, held that a trailer is not a “motor vehicle”.

### **Apposite authorities:**

Minn. Stat. § 169.01, subd. 3

Minn. Stat. § 169.09, subd. 5a.

## STATEMENT OF THE CASE AND FACTS

A motorcycle driven by Randy Vee (“Vee”) collided with a tractor-trailer driven by Badri Ibrahim (“Ibrahim”). (NA 7.)<sup>1</sup> The tractor was owned by defendant Freightways Corporation (“Freightways”), and Ibrahim was an employee of Freightways. Vee (and his wife) sued Freightways and Ibrahim. (NA 6.) Vee sued American President Lines, Ltd. (“APL”) as the alleged owner of the trailer. (NA 6.) Vee claimed APL was vicariously liable for Ibrahim’s conduct under Minn. Stat. § 169.09, subd. 5a,<sup>2</sup> as the alleged owner of a “motor vehicle,” i.e., the trailer. (NA 6-7.) Vee also sued Northern Plains Dairy (“Northern Plains”), the owner of another motor vehicle involved in the accident, and the driver of that vehicle, Ernest Crouzer. (NA 6.) Northern Plains and Mr. Crouzer filed a cross-claim against APL. (NA 10.)

APL moved for summary judgment, asserting that it is not vicariously liable for Ibrahim’s (or Freightways’) conduct because a trailer is not a “motor vehicle” within the meaning of Minn. Stat. § 169.09, subd. 5a. On July 18, 2008, the Ramsey County District Court, the Honorable Steven D. Wheeler presiding, granted the motion, concluding, in part, that the definitions in Minn. Stat. § 169.01

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<sup>1</sup> References to “NA \*” refer to the appendix of Appellant Northern Plains. References to “VA \*” refer to the appendix of Appellant Vee.

<sup>2</sup> Respondent APL will refer to § 169.09, subd. 5a as the “motor vehicle vicarious liability statute” or “vicarious liability statute” instead of the “Safety Responsibility Act” because (a) it is only one provision of the Safety Responsibility Act, most of which was repealed in 1974, and (b) this phrase more accurately describes the provision.

expressly govern § 169.09 subdivision 5a and the definition of “motor vehicle” in § 169.01 subdivision 3 does not include trailers: “‘Motor Vehicle’ means every vehicle which is self-propelled. . .” (VA 28-31.) (emphasis added.) Judgment was entered on August 21, 2008 pursuant to Rule 54.02. (VA 39.) The Vees and Northern Plains/Crouzer filed appeals, which this Court consolidated.

## ARGUMENT

### I. SUMMARY OF ARGUMENT AND STANDARD OF REVIEW.

The truck tractor involved in this accident, owned by defendant Freightways and driven by its employee, is clearly a “motor vehicle” within the meaning of Minn. Stat. § 169.09, subd. 5a. Appellants contend that a second vehicle – the semitrailer – is also a “motor vehicle” within the meaning of the statute, and that the alleged owner of the semitrailer – APL – is also vicariously liable for the conduct of Freightways’ driver. Minn. Stat. § 169.01, subdivision 3 expressly states that only self-propelled vehicles are “motor vehicles.” Hence, the district court correctly concluded a trailer is not a motor vehicle and should be affirmed.

There is no reason for this Court to ignore the clear and unmistakable terms of the statute. Appellants ask this Court to disregard a statutory definition of “motor vehicle” that expressly governs and to apply a definition contained in the No-Fault Automobile Insurance Act. Not only does that “motor vehicle” definition expressly state that it only applies to the insurance chapter, but the case law cited by Appellants, applying the insurance definition to the vicarious liability

statute is wholly inapplicable in light of the statutory changes that took place in 2005. Prior to that time, the vicarious liability statute sat alone without any corresponding definition of “motor vehicle”; now it is part of Chapter 169 and expressly subject to the definitions contained in that Chapter.

This Court should not (indeed, cannot) disregard those definitions in pursuit of what Appellants claim is the spirit of the law. There is clear evidence that the legislature intended to make the vicarious liability statute subject to the definitions in § 169.01 when it moved the statute to § 169.09, during which it extensively revised § 169.09 including the addition of three subdivisions with multiple references to “motor vehicle” and numerous revisions to other terms defined in § 169.01. Appellants’ speculative assertions about the legislature’s alleged intent and the purpose behind the vicarious liability statute cannot overcome the clear terms of the statute’s governing definition.

The district court properly applied the clear terms of the statute. Freightways is the owner of a “motor vehicle” as defined by Minn. Stat. § 169.01, subdivision 3; APL is not. The interpretation of a statute is a question of law subject to *de novo* review. See *Olmanson v. LeSueur County*, 693 N.W.2d 876, 879 (Minn. 2005); *AutoOwners Ins. Co. v. Perry*, 749 N.W.2d 324, 326 (Minn. 2008).

**II. APL IS NOT VICARIOUSLY LIABLE UNDER § 169.09 SUBD. 5a BECAUSE A TRAILER IS NOT A “MOTOR VEHICLE” UNDER THE GOVERNING STATUTORY DEFINITION.**

**A. The Governing Statutory Definition Is Unambiguous, So No Further Statutory Construction Is Warranted.**

APL cannot be held vicariously liable because a semitrailer is not a “motor vehicle” within the meaning of the motor vehicle vicarious liability statute (Minn. Stat. § 169.09, subd. 5a),<sup>3</sup> which provides as follows:

Whenever a motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle. Minn. Stat. § 169.09, subd. 5a, emphasis added.

The meaning of “motor vehicle” in § 169.09 subdivision 5a is expressly defined in § 169.01. Subdivision 1 of that section states that “[f]or the purposes of this chapter, the terms defined in this section shall have the meanings ascribed to them” (emphasis added), including the following:

Subd. 3. Motor vehicle. “Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include an electric personal assistive mobility device or a vehicle moved solely by human power. Minn. Stat. § 169.01, emphasis added.

As the district court held, a trailer is not “self-propelled” so it is not a “motor vehicle.” (VA 28-31.)

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<sup>3</sup> The accident from which this suit arises occurred on July 27, 2006. All references to statutes are to the Minnesota statutes in effect on that date except where otherwise indicated.

Appellants ask this Court to disregard the definition of “motor vehicle” in § 169.01 and to apply the “motor vehicle” definition in § 65B.43 of the No-Fault Automobile Insurance Act. However, that definition is expressly and explicitly limited to §§ 65B.41 – 65B.71: “The following words and phrases, shall, **for the purpose of sections 65B.41 to 65B.71**, have the meanings ascribed to them, except where the context clearly indicates a different meaning.”<sup>4</sup> Minn. Stat. § 65B.43, subd. 1 (emphasis added).

As the Appellants concede, “[w]hen 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**”; only “when the words of a law are **not explicit**, the intention of the legislature may be ascertained. . . .” Minn. Stat. § 645.16 (emphasis added). The Minnesota Supreme Court has repeatedly held that “[w]hen the meaning of a statute is apparent from its language, no further statutory construction is permitted.” *McCaleb v. Jackson*, 307 Minn. 15, 17, 239 N.W.2d 187, 188 n. 2 (Minn. 1976); *Molloy v. Meier*, 679 N.W.2d 711, 723 (Minn. 2004) (quoting from *Owens v. Water Gremlin Co.*, 605 N.W.2d 733, 736 (Minn. 2000) (“‘If the words of the statute are ‘clear and free from all ambiguity,’ further construction is neither necessary nor permitted’”)). “[T]here is no room for judicial construction when

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<sup>4</sup> There is one notable exception to this. The definition of “owner” in § 65B.43 subd. 4 expressly and exceptionally applies to § 169.09 subd. 5a by way of a specific cross-reference. In contrast, the definition of “motor vehicle” in § 65B.43 subd. 2 never has done so.

the statute speaks for itself.” *U.S. Sprint Commc’ns Co., Ltd. v. Comm’r of Revenue*, 578 N.W.2d 752, 754 n. 12 (Minn. 1998) (citing *Comm’r of Revenue v. Richardson*, 302 N.W.2d 23, 26 (Minn. 1981)).

**B. The Statute Is Not Ambiguous When Applied To A Trailer Attached To A Truck-Tractor.**

Faced with the incontestable reality that a trailer is not a motor vehicle under the governing definition, Appellants now argue, for the first time, that a trailer loses its separate identity and becomes part of a single unit (i.e. “motor vehicle”) when it is attached to a truck-tractor.<sup>5</sup> Again, Appellants’ argument flies in the face of the unambiguous terms of § 169.01. The statute’s terms are not, as Vee suggests, ambiguous in their application to “a towed trailer . . . being drawn by a truck. . . .” (Vee Br. at 13-15.) This is directly contradicted by the definitions, especially the definition of “truck-tractor”:

Subd. 2. Vehicle. “**Vehicle**” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.”

Subd. 3. Motor vehicle. “**Motor vehicle**” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not

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<sup>5</sup> Appellants raise a number of new arguments for the first time on appeal. For instance, Vee now claims for the first time that the tractor and trailer are a single unit. Northern Plains completely changed horses mid-stream. Having previously raised absolutely no issues with respect to APL’s claimed vicarious liability, Northern Plains now focuses exclusively on that issue and raises arguments even Vee did not assert below. This Court will not consider legal arguments or theories raised for the first time on appeal. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

include an electric personal assistive mobility device or a vehicle moved solely by human power.

\* \* \*

Subd. 7. Truck-tractor. “Truck-tractor” means: (1) a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn; . . . .

\* \* \*

Subd. 10. Trailer. “Trailer” means any vehicle designed for carrying property or passengers on its own structure and for being drawn by a motor vehicle but does not include a trailer drawn by a truck-tractor semitrailer combination or an auxiliary axle on a motor vehicle which carries a portion of the weight of the motor vehicle to which it is attached.

Subd. 11. Semitrailer. “Semitrailer” means a vehicle of the trailer type so designed and used in conjunction with a truck-tractor that a considerable part of its own weight or that of its load rests upon and is carried by the truck-tractor and includes a trailer drawn by a truck-tractor semitrailer combination.

Minn. Stat. § 169.01 (emphasis added).

Under these definitions there is a clear and unmistakable distinction between a “vehicle” (subd. 2) and a “motor vehicle” (subd. 3), which is a subcategory of “vehicle.” There is also a clear and unmistakable distinction between “truck-tractors” (subd. 7), which are expressly defined as “motor vehicles,” and “trailers” and “semitrailers” (subd. 10 and 11), which are expressly defined as “vehicles.” Most importantly, contrary to Appellants’ claimed ambiguity, a “truck-tractor” is expressly defined as “a motor vehicle designed and used primarily for drawing other vehicles. . . .” (Subd. 7, emphasis added.) It is

thus absolutely clear that under these definitions, a “truck-tractor” “drawing” a “semitrailer” is a “motor vehicle” “drawing” a “vehicle.” The accident here involved a “truck-tractor” (owned by defendant Freightways Corporation) “drawing” a “semitrailer.” There is simply no ambiguity in the statute and the district court properly applied the statute to the undisputed facts of this case.

**C: Prior Law Cannot Be Resorted To For The Purpose Of Creating Statutory Ambiguity.**

“[W]here the meaning of a revised statute is free from ambiguity, the prior law cannot be resorted to for the purpose of creating ambiguity. The change in the prior law, when clear and unambiguous, must be given full effect.” *Sterling Electric Co. v. Kent*, 233 Minn. 31, 34, 45 N.W.2d 709, 711 (1951). *See also U.S. Sprint Commc’ns*, 578 N.W.2d at 754 n.12; *Village of Tonka Bay v. Comm’r of Taxation*, 242 Minn. 23, 25, 64 N.W.2d 3, 5 (1954). A U.S. Supreme Court case cited in *Mankato Citizens Telephone Co. v. Commissioner of Taxation*, 275 Minn. 107, 114, 145 N.W.2d 313, 318 (1966) in support of this principle explains its rationale:

The whole doctrine applicable to the subject may be summed up in the single observation that prior acts may be resorted to, to *solve*, but not to *create*, an ambiguity. If [the statute in question] were an original act, there would be no room for construction. It is only by calling in the aid of a prior act that it becomes possible to throw a doubt upon its proper interpretation. . . . The main object of the revision was to incorporate all the existing statutes in a single volume, that a person desiring to know the written law upon any subject might learn it by an examination of that volume, without the necessity of referring to prior statutes upon the subject. If the language of the revision be plain upon its face, the person examining it ought to be able to rely upon it. If it be but another volume added

to the prior Statutes at Large, the main object of the revision is lost, and no one can be certain of the law without an examination of all previous statutes upon the same subject. *Hamilton v. Rathbone*, 175 U.S. 414, 421, 20 S. Ct. 155, 158, 44 L. Ed. 219 (1899).

Following the U.S. Supreme Court's rationale, if someone were to look at Minn. Stat. § 169.09 subdivision 5a and wanted to know the meaning of the term "motor vehicle," the logical place to look would be the definitional section at the beginning of the chapter, which expressly states that those definitions govern the chapter. Even if that person happened to look at the definitions in Minn. Stat. § 65B.43 (more than 100 chapters away), those definitions are expressly limited to chapter 65B, so logically they would not apply. "If the language of the [revised statute is] plain upon its face, the person examining it ought to be able to rely upon it." *Hamilton*, 175 U.S. at 421. If this court were to rule otherwise, the term "motor vehicle" in subdivision 5a of § 169 would have a secret meaning different from and inconsistent with not only the definitions at the beginning of chapter 169 that expressly govern, but also different from and inconsistent with the other nine references to "motor vehicle" in other subdivisions of § 169.09 (e.g., subd. 16, which includes three such references). Such a construction of the vicarious liability statute, even if authorized, would be unworkable, making a mess of § 169.09.

The definition of "motor vehicle" found in Minn. Stat. § 169.01 is clear and unmistakably applies to the vicarious liability provision found in Minn. Stat. §

169.09, subd. 5a. The district court correctly interpreted the statute and applied the only definition it was permitted to so should be affirmed.

**III. PRESUMPTIONS REGARDING LEGISLATIVE INTENT DO NOT APPLY BECAUSE THE STATUTORY LANGUAGE IS CLEAR, AND THE PRESUMPTIONS ASSERTED BY APPELLANTS ARE OTHERWISE INAPPLICABLE.**

This Court need not speculate as to the legislative intent behind the amendment of the relevant statutes because the statutes are clear and unambiguous. If a statute is unambiguous and “explicit,” the Court does not have authority to go beyond the statute and inquire further into legislative intent, including the application of presumptions regarding legislative intent. Minn. Stat. §§ 645.16, 645.17; *see* the cases cited above; *see also Minneapolis – Saint Paul San. Dist. v. City of Saint Paul*, 240 Minn. 434, 437, 61 N.W.2d 533, 536 (1953) (“Extrinsic aids may be used to solve ambiguities which exist but cannot be used to create them. Before a party may resort to the use of extrinsic aids it must appear that the statute is ambiguous.”) This specifically includes the presumption that a revision of existing statutes did not change their meaning, and the presumption that a prior “court of last resort” construction of statutory language continues in subsequent laws. *Champ v. Brown*, 197 Minn. 49, 55-56, 266 N.W. 94, 97 (1936) (citing presumption regarding revision of statutes, but concluding that “[w]e may not resort to [prior statutes], however, to create ambiguities where the language is plain”); *Mankato Citizens Telephone Co. v. Commissioner of*

*Taxation*, 275 Minn. 107, 113–14, 145 N.W.2d 313, 318 (1966); Minn. Stat. §§ 645.16(5), 645.17(4).

Even if Appellants could establish the prerequisite statutory ambiguity, the presumptions they assert would be inapplicable. The presumption that a revision of existing statutes did not change their meaning applies where an ambiguous, discretionary change has been made by a revisor of statutes pursuant to his limited discretionary authority, and such changes are expressly intended to not change the meaning of the statute. *State ex rel Decker v. Montague*, 195 Minn. 278, 262 N.W. 684 (1935); *Wangensteen v. Northern Pac. Ry. Co.*, 218 Minn. 318, 16 N.W.2d 50 (1944); *Dostal v. County of McLeod*, 247 Minn. 452, 77 N.W.2d 654 (1956); *Mankato Citizens Telephone Co. v. Commissioner of Taxation*, 275 Minn. 107, 145 N.W.2d 313 (1966). Here, the legislature itself moved the statute to the specific location it intended, by specifically instructing the revisor of statutes to renumber it from “170.54” to “169.09, subdivision 5a.” 2005 Minn. Sess. L. Serv. ch. 163 (H.F. 225). This was not a discretionary change by the revisor of statutes but instead a direct act of the legislature.

The presumption that a prior “court of last resort” construction of statutory language continues in subsequent laws does not apply to court of appeals decisions. “The court of appeals . . . is not the court of last resort with respect to a statute’s construction”; “the principle of statutory construction embodied in section 645.17(4) does not apply to [a] court of appeals’ interpretation [of a] statute . . . .” *Anderson-Johanningmeier v. Mid-Minnesota Women's Center, Inc.*, 637

N.W.2d 270, 276 (Minn. 2002). Northern Plains erroneously describes this presumption as applicable to “an earlier appellate court’s construction.” (Northern Plains Br. at 4-5, emphasis added.) The case it cites for this principle, *Western Union Tel. Co. v. Spaeth*, 232 Minn. 128, 132, 44 N.W.2d 440, 442 n.6 (1950), instead applied it to a prior Minnesota supreme court decision, citing § 645.17(4) as authority; the same is true of *Petron v. Waldo*, 272 Minn. 513, 139 N.W.2d 484 (1965), which Northern Plains also cites. Appellants do not cite any supreme court decisions in support of their strained interpretation of “motor vehicle.” All of the cases Appellants cite to support their interpretation of “motor vehicle” (*Golla*, *Runia*, *Schumacher*, discussed below) are court of appeals decisions and are inapposite.

If there were a statutory ambiguity (and there is not), the most appropriate presumption for the Court to apply would be § 645.17(2), which states that “the legislature intends the entire statute to be effective and certain.” As explained above and further below, it is clear that the legislature, in the 2005 amendments, in fact intended the entirety of § 169.09 to be subject to and governed by the definitions in § 169.01, and in particular that the 11 references to “motor vehicle” in that section would have a consistent, uniform, and “certain” meaning. *Id.* Construing the meaning of “motor vehicle” in subdivision 5a to be defined by an insurance definition more than 100 chapters away with no cross-reference would give that term a secret meaning inconsistent with the other nine instances of that

term in § 169.09. The legislature presumptively intended otherwise, and based on the evidence discussed above and further below, it in fact intended otherwise.

Even if one of the above presumptions applied, it would not be conclusive: the presumptions are merely permissive – “the courts may be guided by” them “[i]n ascertaining the intention of the legislature.” Minn. Stat. §§ 645.17 and 645.44, subd. 15. Regardless of the application of any presumption, it is clear that the legislature, in the 2005 amendments to § 169.09, intended the term “motor vehicle” in the vicarious liability statute to be governed by the definition in § 169.01, as discussed above and further below.

**IV. PRIOR JUDICIAL INTERPRETATIONS OF THE VICARIOUS LIABILITY STATUTE ARE INAPPLICABLE SINCE THE STATUTE CONTAINED NO MOTOR VEHICLE DEFINITION, AND PARTIES IN PRIOR CASES DID NOT RAISE CONTRARY EVIDENCE.**

Appellants further urge this Court to ignore the explicit language of the statute by attempting to characterize the 2005 changes as a mere renumbering that left intact prior judicial decisions applying the No-Fault Automobile Insurance Act’s definition of motor vehicle to the vicarious liability provision now in Minn. Stat. § 169.09, subdivision 5a. In doing so, Appellants suggest this Court must follow cases like *Great American Ins. Co. v. Golla*, 493 N.W.2d 602 (Minn. App. 1992), *State Auto. & Cas. Underwriters v. Runia*, 363 N.W.2d 818 (Minn. App. 1985), and *Schumacher v. Heig*, 454 N.W.2d 446 (Minn. App. 1990). Appellants are mistaken. To begin with, none of these cases involve a semitrailer. More importantly, all of these cases pre-date the 2005 statutory changes. This is not a

situation where, as Appellant Vee characterizes it, a statute has simply been moved to a “new neighborhood” nor is the “real issue” for the court in this case whether the “new neighborhood get[s] to silently rewrite the law whose previously construed words remain exactly the same.” (Vee Br. at 9). Instead, here the old neighborhood was silent as to what constituted a motor vehicle while the new neighborhood created by the legislature expressly defines the term. In reality, Appellants invite the court to disregard the explicit language of the statute for the legislative silence that existed prior to 2005. The Court should decline this invitation.

The status of the law prior to the 2005 amendments was, at best, unclear and uncertain, especially about whether a trailer was a “motor vehicle” within the meaning of the vicarious liability statute, since no Court had (or has)<sup>6</sup> specifically addressed that issue. *Great American Ins. Co. v. Golla*, 493 N.W.2d 602 (Minn. App. 1992), on which the Appellants primarily rely, addressed whether a farm tractor was a “motor vehicle.” Presumably because the parties did not adequately brief the issues and cite to all of the relevant evidence, no evidence was cited for the factual conclusion that the definition of “motor vehicle” in § 65B.43 was intended to replace the definition that had been with the vicarious liability statute

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<sup>6</sup> Note, however, that in *King v. Liberty Homes, Inc.*, 508 F. Supp. 2d 730 (D. Minn. 2007) the court implicitly recognized the significance of the recodification of the Safety Responsibility Act under Chapter 169. As acknowledged by the court, “the parties agree that the definition of a ‘motor vehicle’ within Chapter 169 . . . does not govern this action because the agency liability provision was not recodified until two days after the accident in this case.” *Id.* at 733. Here, the accident occurred after the recodification.

and no evidence to the contrary was addressed, i.e., that: (a) the definition in § 65B.43 is expressly limited to that chapter; (b) the vicarious liability statute was (and still is) over 100 chapters away, with no cross-reference to the definition in § 65B.43; (c) in 1979 the legislature had created a cross-reference between the § 65B.43 definition of “owner” and the vicarious liability statute, but never did so for the definition of “motor vehicle”; and (d) the vicarious liability statute was expressly intended to “supplement[]” the Highway Traffic Regulation Act (Chapter 169)<sup>7</sup> and was located immediately after it, supporting the more likely inference that the legislature, after repealing most of Chapter 170, expected the remaining provisions to fall back on the definitions in the previous chapter they were designed to supplement. Presumably cited by one of the parties, the legal authority for the above conclusion, *In re Eystad*, 214 Minn. 490, 8 N.W.2d 613 (1943), also did not adequately support it.<sup>8</sup>

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<sup>7</sup> *Frye v. Anderson*, 248 Minn. 478, 487-88, 80 N.W.2d 593, 599-600 (1957) and former § 170.53.

<sup>8</sup> The issue in *Eystad* was whether a later statute that expressly governed the procedure and deadline for filing an eminent domain appeal implicitly repealed a conflicting prior statute that otherwise would have established the deadline. The court held that the later statute was unambiguous, so “there [was] neither room nor reason for interpretation”; it implicitly repealed and superseded the conflicting prior statute. If the definition of “motor vehicle” in § 170.21 had not been repealed and the definition of “motor vehicle” in § 65B.43 expressly applied to the vicarious liability statute, *Eystad* would have been analogous and the conflicting later definition would have implicitly repealed and superseded the prior conflicting definition. That is not what occurred, however: § 170.21 was repealed, and most importantly, the definition of “motor vehicle” in § 65B.43 never expressly applied to the vicarious liability statute and instead was expressly limited to Chapter 65B,

The *Golla* court declined to look to the definition of “motor vehicle” in § 169.01 based on the “history of the No-Fault Act,” citing *Stepec v. Farmers Ins. Co.*, 301 Minn. 434, 222 N.W.2d 796 (1974) and *State Auto. & Cas. Underwriters v. Runia*, 363 N.W.2d 818 (Minn. App. 1985), to which the parties had presumably directed the court. *Stepec* involved the interpretation of an insurance policy and whether a snowmobile was a “motor vehicle” within the meaning of an insurance statute. The case pre-dated the No-Fault Automobile Insurance Act and there was no issue regarding vicarious liability under the motor vehicle vicarious liability statute. Apparently there was no governing definition of “motor vehicle” in the insurance statutes at the time, and “the parties agree[d]” that the court should look to the definition of “motor vehicle” in § 170.21, which had not been repealed yet.<sup>9</sup> *Runia* also involved the interpretation of an insurance policy. The court’s discussion of the vicarious liability statute, apparently prompted by the way the parties had framed their arguments, was actually *dicta* because there was no vicarious liability claim or issue - the claim was only that the snowmobile operator was an insured under the policy,<sup>10</sup> to which the vicarious liability statute

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so there was no statutory conflict and only evidence that the insurance definition was intended to be limited to Chapter 65B.

<sup>9</sup> *Stepec v. Farmers Ins. Co.*, 301 Minn. 434, 437, 222 N.W.2d 796, 798 (1974) (“The parties agree that §§ 65B.22, subd. 3, and 170.21, subd. 5, are in *pari materia*.”)

<sup>10</sup> The owner of the snowmobile was the father of the injured girl and had not been sued; there was no claim or issue about whether he was vicariously liable for the snowmobile operator’s negligence.

was inapplicable. Presumably because the parties did not adequately brief the issues and cite to all of the relevant evidence, no evidence was cited for the factual conclusion that the definition of “motor vehicle” in § 65B.43 replaced the definition that had been with the vicarious liability statute, evidence to the contrary was not addressed, and whether the definition in § 169.01 should have applied instead was not considered. *Stepec* was cited as authority.

The legal authority for the *Golla*, *Runia*, and *Schumacher*<sup>11</sup> cases thus can be traced back to *Stepec*, which pre-dated the No-Fault Act and was inapplicable. Presumably because the parties did not adequately brief the issues and cite to all of the relevant evidence, the cases state or repeat the factual conclusion that the insurance definition was intended to replace the vicarious liability definition without addressing the evidence to the contrary. Nonetheless, each of the contended “motor vehicles” in those cases – a farm tractor, a snowmobile, and an ATV – were found to not be “motor vehicles” within the meaning of the vicarious liability statute, contrary to Appellants’ contention that “motor vehicle” should be liberally construed.

The principal points here are that: (1) all of these cases are clearly distinguishable because they did not involve trailers and pre-dated the 2005

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<sup>11</sup> *Schumacher v. Heig*, 454 N.W.2d 446, 448 (Minn. App. 1990), cited by Appellant Northern Plains Dairy, considered whether an all-terrain-vehicle was a “motor vehicle” within the meaning of the vicarious liability statute. The court merely cited to the *Runia* case as authority for looking to the insurance statute definition of motor vehicle, with no further discussion.

amendments (and *Stepec* and *Runia* were insurance cases); and (2) before the 2005 amendments, the law was unclear and uncertain because the evidence above to the contrary had never been raised by parties and considered, i.e., the law – even to the limited extent it had been decided, involving a farm tractor, snowmobile, and an ATV, sometimes in the context of insurance – was not “settled” or “established,” as Appellants contend.

**V. FURTHER EVIDENCE OF LEGISLATIVE INTENT SUPPORTS THE DISTRICT COURT’S APPLICATION OF THE GOVERNING STATUTORY DEFINITION.**

**A. The “Motor Vehicle” Definition In Minn. Stat § 65B.43 Does Not Cross-Reference The Vicarious Liability Statute While The “Owner” Definition Does.**

If further inquiry into the intention of the legislature were necessary and authorized (and it is not), the legislature’s intent is apparent in the language of the statutes and the nature of the 2005 amendments to Minn. Stat. § 169.09. The best evidence of the legislature’s intent is in the explicit language of the statutes, as discussed above. Next in importance, the definition of “owner” in Minn. Stat. § 65B.43 includes an express reference to Minn. Stat. § 169.09, subdivision 5a, while in contrast, the definition of “motor vehicle” in Minn. Stat. § 65B.43 does not:

‘Owner’ means a person, other than a lienholder or secured party, who owns or holds legal title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. If a motor vehicle is the subject of a lease having an initial term of six months or longer, the lessee shall be deemed the owner for the purposes of sections 65B.41 to 65B.71, **and 169.09, subdivision 5a**, notwithstanding the fact that the lessor

retains title to the vehicle and notwithstanding the fact that the lessee may be the owner for the purposes of chapter 168A. Minn. Stat. § 65B.43, subd. 4, emphasis added.

‘Motor vehicle’ means every vehicle, other than a motorcycle or other vehicle with fewer than four wheels, which (a) is required to be registered pursuant to chapter 168, and (b) is designed to be self-propelled by an engine or motor for use primarily upon public roads, highways or streets in the transportation of persons or property, and includes a trailer with one or more wheels, when the trailer is connected to or being towed by a motor vehicle. Minn. Stat. § 65B.43, subd. 2.

Note in particular that when the 2005 amendments to § 169.09 were enacted, the specific reference in the definition of “owner” above to 170.54” was revised to “169.09, subdivision 5a” but no similar reference was added then, or ever, to the definition of “motor vehicle” in that section. 2005 Minn. Sess. L. Serv. ch. 163 (H.F. 225).

If the legislature had intended the definition of “motor vehicle” in § 65B.43 to govern the meaning of that term in the vicarious liability statute, at some point it would have: (1) created an express cross-reference between them, as it did with the definition of “owner”; (2) moved the vicarious liability statute into Chapter 65B; or (3) created a new definition of “motor vehicle” in the chapter containing the vicarious liability statute with the same text as the definition in § 65B.43.

**B. The 2005 Amendments Evidence That The Legislature Intended Subd. 5a To Be Governed By Definitions In § 169.01.**

In 2005, when the legislature moved the vicarious liability statute into § 169.09, it certainly was aware of the statutory definitions in § 169.01. It is common in statutes (as in insurance policies and contracts) for terms to be defined,

often in prefatory definition sections, for the obvious reason that terms often need to be defined to make them clear and to have their intended meaning. *See e.g.* §§ 168.011, 169A.03, 171.01, and former § 170.21. In § 169.09 there are 143 instances of terms defined in § 169.01.<sup>12</sup> The 2005 amendments to § 169.09 added subdivisions 16, 17, and 18, which include eighteen instances of terms defined in § 169.01.<sup>13</sup> 2005 Minn. Sess. L. Serv. ch. 163 (H.F. 225). The 2005 amendments also revised twenty-nine terms in § 169.09 that are defined in § 169.01.<sup>14</sup> *Id.*

More specifically, the legislature was certainly aware of the definitions of “motor vehicle” and “vehicle” in § 169.01. Chapter 169, entitled “Traffic Regulations” (covering motor vehicle operation rules, inspection and maintenance

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<sup>12</sup> There are 143 instances of terms defined in § 169.01 that appear in § 169.09: “vehicle” – 39 instances; “motor vehicle” – 11 inst.; “commissioner” – 34 inst.; “person” – 8 inst.; “pedestrian” – 1 inst.; “driver” – 30 inst.; “owner” – 13 inst.; “street” or “highway” – 3 inst.; and “traffic” – 4 inst.

<sup>13</sup> The 18 instances of defined terms being used in newly created subdivisions include: “motor vehicle” – 3 ref.; “vehicle” – 3 ref.; “driver” – 1 ref.; “owner” – 3 ref.; “highway” – 1 ref.; “Commissioner” – 6 ref.; “person” – 1 ref.

<sup>14</sup> The 29 revised terms include: subd. 1 - two references to “person” revised to “individual”; subd. 2 – one reference to “person” revised to “individual”; subd. 3 – 6 references to “person” revised to “individual”, 1 reference to “automobile” revised to “vehicle”; subd. 4 – “police officer” revised to “peace officer”; subd. 6 – one reference to “person” revised to “individual”; subd. 7 - one reference to “person” revised to “individual”; subd. 8 – “a motor vehicle” revised to “an accident”; subd. 9 – two references to “Department” revised to “commissioner,” one reference to “persons” revised to “individuals”; subd. 11 – two references to “motor vehicle” revised to “vehicle,” two references to “Department” revised to “commissioner,” and one reference to “person” revised to “individual”; subd. 12 - two references to “motor vehicle” revised to “vehicle,” and one reference to “person” revised to “individual”; subd. 14 - three references to “person” revised to “individual”; subd. 15 - one reference to “person” revised to “individual”

requirements, insurance requirements, and the consequences of accidents, among other subjects), is fundamentally about motor vehicles and other vehicles, reflected in the fact that the first two definitions in § 169.01 (in a list of more than 90) are of “vehicle” and “motor vehicle.” The 2005 amendments to § 169.09 added three references to “motor vehicle” in new subdivision 16; new subdivision 17 added two references to “vehicle”; a reference in subdivision 3 to “automobile” was changed to “vehicle”; in subdivision 8, a reference to “motor vehicle” was deleted; and in subdivision 11 two references to “motor vehicle” were revised to “vehicle.”

What the legislature did not do in 2005 is also significant: it did not move the vicarious liability provision into Chapter 65B, instead choosing to move it to Chapter 169; and it did not create any cross-reference between the vicarious liability provision and the insurance definitions in § 65B.43, even though it amended the cross-reference to “owner” in § 65B.43.

It is thus abundantly clear that the legislature, when it enacted the 2005 amendments to § 169.09, intended § 169.09, including subdivision 5a, to be governed by the definitions in § 169.01, including the definition of “motor vehicle,” and that the 11 references to “motor vehicle” in § 169.09 would have a consistent and uniform meaning throughout the 18 subdivisions of § 169.09, as well as throughout Chapter 169.

**C. Further Evidence That The Legislature Intended The Vicarious Liability Statute To “Supplement” Chapter 169.**

The 2005 Amendments are consistent with the legislature’s express prior intent that the vicarious liability statute “supplement[.]” Chapter 169, which is the “Highway Traffic Regulation Act.” *Frye v. Anderson*, 248 Minn. 478, 487, 80 N.W.2d 593, 599 (1957). Section 170.53, which previously accompanied the vicarious liability statute when it was at § 170.54, “provide[d] that [Chapter] 170, designated as the Safety Responsibility Act, [was] not a repeal of the Highway Traffic Regulation Act or the Drivers License Law but is supplementary thereto.” *Id.* at 488. This is corroborated by the fact that the Safety Responsibility Act (Chapter 170) was located immediately after the Highway Regulation Act (Chapter 169), with related titles (Chapter 169 – “Traffic Regulations”; Chapter 170 – “Traffic Accidents”). More importantly, it is corroborated by the legislature’s act in 2005 of moving the vicarious liability statute into Chapter 169, where it continues to “supplement” and be a part of Chapter 169. In 2005 the legislature simply finished what it began in 1974 upon repealing much of Chapter 170, i.e., clarifying its intent that the vicarious liability statute “supplement” and be a part of Chapter 169, and thus be governed by the definitions set forth in § 169.01.

**D. Only The Legislature Has The Authority To Rewrite Unambiguous Statutory Language.**

Appellant Northern Plains asserts “it is unlikely, at best, that the legislature intended to make a substantive change to Minnesota’s Safety Responsibility Act. . . .” (Northern Plains Br. at 6.) Northern Plains urges this Court to ignore the fact that the legislature clearly intended subdivision 5a to be governed by the definitions in § 169.01, and seemingly implies that if the Court is wrong in not following the governing definition the legislature can correct any such error. Northern Plains has it backwards. It is the Court’s role to apply the statute as written. It is the legislature’s role to rewrite the statute if its unambiguous language leads to an undesired result. *See State ex rel. Timo v. Juvenile Court of Wadena County*, 188 Minn. 125, 128-29, 246 N.W. 544, 546 (1933); *Mattice v. Minnesota Property Ins. Placement*, 655 N.W.2d 336, 341 (Minn. App. 2002). If there is a problem with unambiguous statutory language, the remedy lies with the legislature. *Id.*

Appellants’ argument also finds no support in case law that provides reenactment without change presumptively constitutes adoption of prior judicial interpretations. *See Western Union Tel. Co. v. Spaeth*, 232 Minn. 128, 44 N.W.2d 440, 442 (1950). Here, there was an unmistakable change in the statute from undefined to defined terms. No amount of speculation and discussion about victim compensation and so-called legislative intent can change this fact.

**E. Purpose Of The Statute Satisfied By Imposition Of Subd. 5a Liability On Owner Of Truck-Tractor; Insurance Liability Fundamentally Different Than Vicarious Liability Imposed On Non-Insurer.**

If consideration of the general purpose of § 169.09 subdivision 5a were appropriate (which it is not – “the letter of the law shall not be disregarded under the pretext of pursuing the spirit,” Minn. Stat. § 645.16), that purpose is met by the imposition of subdivision 5a liability on the owner of the truck-tractor (expressly a “motor vehicle” within § 169.01, subd. 3 and 7), who is in the same position as an automobile owner who permits someone else to drive their car. The Appellants are trying to go beyond this to a second vehicle (the “semitrailer”), which is not supported by the statute. There is only one “motor vehicle” and one “owner” here – the owner of the truck tractor, defendant Freightways.

Appellants contend that the legislative intent behind § 169.09, subd. 5a is to “increase coverage” available to victims of motor vehicle accidents not to reduce or decrease it. (Vee Br. at 25; Northern Plains Br. at 7-8) What Appellants fail to appreciate is that subdivision 5a deals with legal liability, not insurance coverage. There is a fundamental difference between imposing limited liability on insurers (by way of the provisions of Chapter 65B), who are in the business of insuring, and imposing unlimited vicarious tort liability on non-insurers regardless of whether or to what extent they have insurance. As Appellants note, separate state and federal statutory provisions require motor carriers to whom those provisions

apply to have liability insurance coverage, which the motor carrier here – defendant Freightways – has.

**VI. FEDERAL INSURANCE REQUIREMENTS HAVE NO BEARING ON WHETHER APL IS VICARIOUSLY LIABLE.**

Federal insurance regulations have no bearing on whether APL is liable under the vicarious liability statute. Nothing in the regulations or the lone case cited by Appellants supports the assertion that the regulations or the MCS-90 endorsement create vicarious tort liability. In rejecting the identical arguments Appellants now raise on appeal, the district court astutely recognized that while the federal motor carrier safety act sets certain insurance requirements for motor carriers, “[t]he requirement that motor carriers have insurance does not mean that a motor carrier is automatically vicariously liable . . . .” (VA. 34.) As further noted by the district court, “[t]he MSC-90 endorsement, on its own, does not establish vicarious liability.” (VA. 35.)

Notably, Freightways (not APL) was the regulated motor carrier involved here so none of the regulations Appellants cite have any bearing on APL’s obligations. More importantly, even if they did, they only required the maintenance of insurance and the regulations did not, as the district court correctly concluded, impose tort liability on APL. In fact, *Pierre v. Providence Washington Ins. Co.*, 99 N.Y.2d 222, 784 N.E.2d 52 (N.Y. App. 2002), the lone case cited by Appellant Vee (Northern Plains failed to cite any authority) highlights the fact that the federal regulations do not impose tort liability on trailer owners. *Providence* is

an insurance coverage case. In *Providence* the claimant was trying to get access to the trailer owner's insurance coverage, which included a MSC-90 endorsement, by arguing that the tractor owner and driver (here, Freightways and Ibrahim) involved in the accident were insured by the policy. Ultimately the New York court agreed. (The case at hand is not a suit against an insurer, however, and there are no insurance issues in this case, so *Providence* is inapplicable and irrelevant.) What Appellants fail to recognize about the *Providence* case is that if, as they now contend, federal law automatically makes trailer owners vicariously liable, the claimant in *Providence* never would have needed to argue that someone other than the trailer owner was entitled to coverage under the policy.

Appellants posit that requiring insurance for vehicles without also imposing vicarious liability leads to an absurd result. Such an assertion ignores the potential liability a trailer owner might have arising out of the trailer itself under circumstances different than those in this case, e.g., if there was a contributing defect in the trailer connection, brakes, tires, or rear lights, or a contributing problem with the weight, balance, or shifting of the cargo in or on the trailer. Whether any insurance coverage APL had will apply to any judgment Vee may obtain against the driver and Freightways down the road is another question for a much later day. The resolution of such a coverage issue has nothing to do with APL's alleged tort liability in this case.

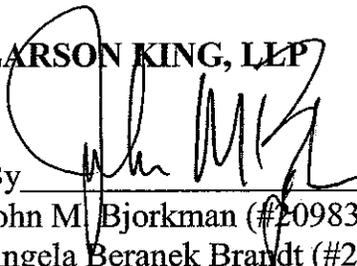
## CONCLUSION

The governing statutory definition is unambiguous. The district court was correct to not disregard it by using an insurance definition which expressly does not apply. The district court's decision should be affirmed.

Dated: December 3, 2008

Respectfully submitted,

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## CERTIFICATE

Pursuant to Rule 132.01, subd. 3(a)(1), the undersigned set the type of the foregoing brief in Times New Roman, a proportional 13-point font, on 8 ½ x 11 inch paper with written matter not exceeding 6 ½ by 9 ½ inches. The resulting principal brief contains 7,241 words, as determined by employing the word counter of the word-processing software, Microsoft Word XP, used to prepare it.

Dated: December 3, 2008

  
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