

NO. A12-0538

State of Minnesota  
In Court of Appeals

Kolberg-Pioneer, Inc.,

*Appellant,*

v.

Belgrade Steel Tank Co.,

*Respondent.*

**APPELLANT'S BRIEF AND ADDENDUM**

Frederick W. Morris (#75358)  
Jonathon T. Naples (#347310)  
LEONARD, STREET AND DEINARD  
*Professional Association*  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402  
Tel: (612) 335-1500  
Fax: (612) 335-1657

James T. Martin (#68044)  
GISLASON MARTIN VARPNESS  
& JANES PA  
7600 Parklawn Avenue South  
Suite 444  
Minneapolis, MN 55435  
Tel: (952) 831-5793  
Fax: (952) 831-7358

and

CHAMBLISS, BAHNER  
& STOPHEL, P.C.  
Anthony A. "Bud" Jackson  
*(admission pro hac vice in appellate court pending)*  
1000 Tallan Building  
Two Union Square  
Chattanooga, TN 37402  
Tel: (423) 756-3000

*Attorneys for Respondent  
Belgrade Steel Tank Co.*

*Attorneys for Appellant Kolberg-Pioneer, Inc.*

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).

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... ii

STATEMENT OF THE LEGAL ISSUE ..... 1

STATEMENT OF THE CASE ..... 3

STATEMENT OF THE FACTS ..... 4

ARGUMENT ..... 13

A. There is a true conflict between the indemnity laws of Minnesota and Montana as applied to this case. ..... 16

B. Under the choice-influencing factors of Minnesota conflict of laws analysis, Minnesota law applies to KPI's indemnity claim against Belgrade. ..... 18

1. The first choice-influencing factor, "predictability of results," favors application of Minnesota law to determine the parties' rights. ..... 19

2. The second choice-influencing factor, "maintenance of interstate and international order," is not determinative of whose law should apply. ..... 22

3. The third choice-influencing factor, "simplification of the judicial task," is neutral. ..... 26

4. The fourth choice-influencing factor, "advancement of the forum's governmental interests," strongly favors application of Minnesota law. ..... 26

5. The fifth choice-influencing factor, "application of the better rule of law," if relevant, favors applying Minnesota law. ..... 31

CONCLUSION ..... 32

## TABLE OF AUTHORITIES

### Statutes

Minn. Stat. § 544.41 .....	14, 17, 24, 30
Mont. Code Ann. § 27-1-719 .....	17, 24, 31

### Cases

<u>Danielson v. Nat'l Supply Co.</u> , 670 N.W.2d 1 (Minn. Ct. App. 2003) .....	14, 18, 19, 22, 25, 26, 30
<u>Durden v. Hydro Flame Corp.</u> , 983 P.2d 943 (Mont. 1999).....	17, 29
<u>Farr v. Armstrong Rubber Co.</u> , 179 N.W.2d 64 (Minn. 1970) .....	14, 17, 30
<u>Hawkins, Inc. v. Am. Intern. Specialty Lines Ins. Co.</u> , 2008 WL 4552683 (Minn. Ct. App. Dec. 23, 2008) .....	18, 19
<u>Hime v. State Farm Fire &amp; Cas. Co.</u> , 284 N.W.2d 829 (Minn. 1979) .....	22
<u>In re Shigellosis Litig.</u> , 647 N.W.2d 1 (Minn. Ct. App. 2002) .....	14, 17, 24, 30
<u>JFK Med. Ctr., Inc. v. Price</u> , 647 So. 2d 833 (Fla. 1994) .....	21
<u>Julien P. Benjamin Equip. Co. v. Blackwell Burner Co.</u> , 450 So. 2d 901 (Fla. Dist. Ct. App. 1984).....	21
<u>Maseda v. Honda Motor Co., Ltd.</u> , 861 F.2d 1248 (11th Cir. 1988) .....	21
<u>Milkovich v. Saari</u> , 203 N.W.2d 408 (Minn. 1973) .....	12, 16, 18, 19
<u>Myers v. Gov't Emp. Ins. Co.</u> , 225 N.W.2d 238 (Minn. 1974) .....	14, 16, 18, 24, 27, 28
<u>O'Connell v. Jackson</u> , 273 Minn. 91, 140 N.W.2d 65 (1966) .....	17

Schumacher v. Schumacher,  
676 N.W.2d 685 (Minn. Ct. App. 2004) ..... 23, 24, 25

**Rules**

Minn. R. Civ. App. P. 132.01..... 35

## STATEMENT OF THE LEGAL ISSUE

This case presents an important conflict-of-laws issue concerning common law indemnity. Under both Minnesota and Montana law, a product manufacturer must indemnify a "downstream" product seller whose potential liability in a product liability case is only derivative or vicarious of the product manufacturer's liability. However, Montana, unlike Minnesota and most other states, allows a product manufacturer to extinguish the downstream seller's indemnity right by settling with the product liability plaintiff. Here, product seller Kolberg-Pioneer, Inc. ("KPI") and product manufacturer Belgrade Steel Tank Co. ("Belgrade") were sued in strict liability in Montana over an injury allegedly caused by defects in Belgrade's product. At issue is whether Minnesota or Montana law applies to KPI's right to indemnity with respect to the Montana lawsuit from Belgrade, a Minnesota company, where KPI bought the product at issue from Belgrade in Minnesota, and where the product was designed, manufactured and placed into the stream of commerce in Minnesota.

How the issue was raised in the trial court: KPI moved for summary judgment on its common law indemnity claims against Belgrade, arguing that Minnesota law, not Montana law, governs the parties' rights and duties and that, under Minnesota law, KPI is entitled to complete indemnity from Belgrade with respect to the Montana lawsuit. Appellant's Appendix ("AA"), AA-150 to -183, -295 to -314.

Statement of the trial court's ruling: On January 26, 2012, the District Court entered summary judgment for Belgrade, ruling that Montana law, not Minnesota law,

governed the parties' rights and duties and that Belgrade's settlement with the Montana plaintiff extinguished KPI's common law indemnity right by operation of Montana law. Appellant's Addendum ("Add."), Add. 1-15.

How the issue was subsequently preserved for appeal: Pursuant to the Minnesota Rules of Appellate Procedure, KPI timely appealed from the District Court's judgment by filing a Notice of Appeal with this Court on March 23, 2012. AA-380 to -381.

List of the most apposite cases:

Myers v. Gov't Emp. Ins. Co., 225 N.W.2d 238 (Minn. 1974).

Danielson v. Nat'l Supply Co., 670 N.W.2d 1 (Minn. Ct. App. 2003).

Hawkins, Inc. v. Am. Intern. Specialty Lines Ins. Co., 2008 WL 4552683 (Minn. Ct. App. Dec. 23, 2008).

## STATEMENT OF THE CASE

Appellant KPI, headquartered in South Dakota, bought and sold a silo designed, manufactured, and placed into the stream of commerce in Minnesota by Respondent Belgrade, a Minnesota company. More than a decade later, Belgrade's silo allegedly injured someone in Montana. The injured party sued Belgrade and KPI in Montana, alleging defects in Belgrade's silo.

Because the silo was designed and manufactured here, and KPI's and Belgrade's relationship is centered here, KPI sued Belgrade in Minnesota for indemnity with respect to the Montana lawsuit. Thereafter, Belgrade and KPI reached separate settlements with the Montana plaintiff.

After the Montana case was concluded, Belgrade and KPI filed cross-motions for summary judgment in the Minnesota indemnity action. The District Court held KPI's potential liability in the Montana suit was only derivative or vicarious of Belgrade's liability and that KPI would be entitled to indemnity from Belgrade if Minnesota law governs the parties' rights. But the District Court also held that that Montana law, not Minnesota law, controls the parties' relationship and, as a result, that KPI's indemnity claim was barred because Belgrade settled with the Montana plaintiff.

## STATEMENT OF THE FACTS

KPI filed this suit against Belgrade in November 10, 2010, in Stearns County, Minnesota District Court, the Honorable Skipper J. Pearson presiding.<sup>1</sup> KPI, the "downstream" seller of a Belgrade product, asserted indemnity claims under Minnesota common law against Belgrade to recover the expenses KPI incurred to defend and resolve a Montana lawsuit in which KPI and Belgrade were sued over alleged defects in the design of and warnings about Belgrade's product.<sup>2</sup> On January 26, 2012, the District Court granted summary judgment in favor of Belgrade and dismissed KPI's claims, holding that Montana law rather than Minnesota law governed the parties' rights and that Belgrade's settlement with the Montana plaintiff extinguished KPI's indemnity rights by operation of Montana law.<sup>3</sup>

Belgrade, a Minnesota company founded in 1963, has been designing and making products in the state since 1963.<sup>4</sup> In 1996, Belgrade sold one of its horizontal or low-profile cement silos to KPI, a South Dakota company.<sup>5</sup>

The design of the silo Belgrade sold to KPI was the standard design for that type of silo manufactured by Belgrade.<sup>6</sup> The silo was also accompanied by the standard

---

<sup>1</sup> AA-1 to -8. Citations to record are to Appellant's Appendix ("AA") and the Addendum to Appellant's Brief, per the Minnesota Rules of Appellate Procedure. Also, Judge Pearson is now retired, and this case has been reassigned to District Court Judge John H. Scherer.

<sup>2</sup> AA-3 to -8.

<sup>3</sup> Add. 1-15.

<sup>4</sup> AA-12, -194.

<sup>5</sup> AA-3, -9, -46 to -48, -201, -282, -286.

warnings that Belgrade gave concerning silos of that type.<sup>7</sup> Belgrade designed and manufactured the silo at its only facility, which was and is located in Belgrade, Minnesota.<sup>8</sup>

Belgrade shipped the silo to KPI from its Minnesota facility to KPI's headquarters in Yankton, South Dakota in June 1996.<sup>9</sup> In August 1996, KPI sold the silo to Hall-Perry Equipment Company, an independent equipment dealer in Billings, Montana.<sup>10</sup>

Soon thereafter, Hall-Perry sold the silo to a Montana-based environmental-remediation company called Envirocon.<sup>11</sup>

In 1996, KPI made (and it continues to make) a piece of equipment called a "pug mill."<sup>12</sup> A pug mill is essentially a material-mixing device.<sup>13</sup> A pug mill and a silo are two separate pieces of equipment.<sup>14</sup> While a silo like the one Belgrade sold to KPI may be used to feed material into a pug mill for mixing, a pug mill may be used with or without a silo.<sup>15</sup> A silo is in no way necessary for a pug mill to operate.<sup>16</sup> Likewise, a

---

<sup>6</sup> AA-201 to -207.

<sup>7</sup> AA-195 to -196, -221 to -224, -266 to -267, -283 to -284.

<sup>8</sup> AA-12, -194.

<sup>9</sup> AA-12, -46, -48, -194, -282.

<sup>10</sup> AA-49, -283, -287 to -292.

<sup>11</sup> AA-4, -49.

<sup>12</sup> AA-284.

<sup>13</sup> AA-284.

<sup>14</sup> AA-252, -284.

<sup>15</sup> AA-252.

<sup>16</sup> AA-252.

silos may be used to store material for many reasons that do not involve a pug mill.<sup>17</sup>

Separately from its sale of Belgrade's silo, KPI sold one of its pug mills to Power Parts & Equipment in Washington State in July 1996.<sup>18</sup> It is believed that Power Parts & Equipment sold the pug mill to Envirocon, or that Envirocon otherwise acquired the pug mill, in 1996.<sup>19</sup>

Over the next decade, Envirocon used KPI's pug mill and Belgrade's silo together and separately on projects across the country.<sup>20</sup> On occasion, the pug mill and the silo would each be located on a different Envirocon project.<sup>21</sup> Notably, Envirocon used Belgrade's silo on a job in Florida from January to August 2006.<sup>22</sup>

In late August 2006, Envirocon relocated Belgrade's silo to a soil-remediation site in Montana.<sup>23</sup> The silo was apparently to be used to store a material called granular bentonite. Judith Ficek, then an employee of Envirocon, was assigned to work at the remediation site at the time.<sup>24</sup>

On October 3, 2006, Ms. Ficek was injured in connection with the silo while a vendor was pneumatically filling Belgrade's silo with bentonite.<sup>25</sup> Ms. Ficek claimed she

---

<sup>17</sup> AA-252 to -253.

<sup>18</sup> AA-284.

<sup>19</sup> AA-284.

<sup>20</sup> AA-252 to -253, -261 to -262.

<sup>21</sup> AA-252 to -254.

<sup>22</sup> AA-261 to -262.

<sup>23</sup> AA-262.

<sup>24</sup> AA-4 to -5, -9.

<sup>25</sup> AA-4, -9.

was permanently brain-injured by an "exploding hatch" on top of the silo that she alleged blew open and struck her in the face due to built-up air pressure from the pneumatic filling process.<sup>26</sup>

It is believed that KPI's pug mill was located next to the silo at the time of Ms. Ficek's accident.<sup>27</sup> Ms. Ficek, however, did not come into physical contact with KPI's pug mill on the date she was injured, nor was the pug mill operating at the time of Ms. Ficek's injury.<sup>28</sup>

In the summer of 2009, Ms. Ficek sued several parties in Montana federal court based on the incident that occurred on or near Belgrade's silo.<sup>29</sup> Her complaint included a single claim against KPI for strict product liability.<sup>30</sup>

KPI quickly determined it was Belgrade's silo, rather than a KPI product, that was the alleged mechanism of Ms. Ficek's injury, and, accordingly, in September 2009 KPI tendered its defense in the Ficek lawsuit to Belgrade.<sup>31</sup> Belgrade refused this tender.<sup>32</sup>

Ms. Ficek thereafter learned that Belgrade had manufactured the silo that allegedly injured her.<sup>33</sup> Accordingly, in February 2010 she added Belgrade as a party defendant to

---

<sup>26</sup> AA-4 to -5, -9, -239.

<sup>27</sup> AA-284.

<sup>28</sup> AA-247 to -248, -252.

<sup>29</sup> AA-27 to -42.

<sup>30</sup> AA-40 to -41.

<sup>31</sup> AA-5, -9, -18.

<sup>32</sup> AA-5, -9, -18.

<sup>33</sup> AA-227.

the Montana federal court case.<sup>34</sup> She asserted a strict product liability claim against Belgrade that was identical to the claim she had pled against KPI.<sup>35</sup>

Belgrade responded by moving to dismiss Ms. Ficek's complaint, arguing (ultimately unsuccessfully) that, because both Belgrade and its products lacked ties to Montana, the Montana court could not exercise personal jurisdiction over it.<sup>36</sup>

From the beginning of the Montana lawsuit, Ms. Ficek claimed she was injured by an "exploding hatch atop the silo."<sup>37</sup> Ms. Ficek premised her strict product liability claims against Belgrade and KPI on allegations that Belgrade's silo was defective and unreasonably dangerous due to its design and lack of adequate warnings.<sup>38</sup> She specifically claimed that the following aspects of Belgrade's silo were defective and caused her injury:

- (1) the design of the pop-off valves (intended to lift open, i.e., pop off, to relieve pent-up air pressure within the silo).
- (2) the design of the bag house, including the flexible hose connecting the silo to the bag house (a bag house is another outlet through which air pressure can escape the silo and is designed to filter dust from escaping air, similarly to how a vacuum bag operates);
- (3) the design of the manhole cover (the hatch that supposedly exploded and injured Ms. Ficek) and its latching mechanism;

---

<sup>34</sup> AA-109 to -126.

<sup>35</sup> AA-4, -9, -122 to -123.

<sup>36</sup> AA-332 to -353.

<sup>37</sup> AA-239.

<sup>38</sup> AA-127 to -149, 240 to -243.

- (4) the location of the fill pipes (the pipes through which material is pneumatically pumped into the silo);
- (5) the insufficiency of the warnings and instructions contained in the silo owner's manual; and
- (6) the lack of warnings or instructions on the silo itself.<sup>39</sup>

KPI had no involvement or input into any of these allegedly defective aspects of the silo.<sup>40</sup> Belgrade was using the design of the silo at issue before it ever did business with KPI.<sup>41</sup> Belgrade designed and manufactured the silo's pop-off valves, bag house, manhole cover, manhole cover latch, and fill pipes.<sup>42</sup> None of those components deviated in any respect from Belgrade's standard design.<sup>43</sup> And KPI never requested or suggested changes to those components.<sup>44</sup>

Nor did KPI request, suggest, or make any changes to the warnings or instructions concerning the silo.<sup>45</sup> Belgrade placed no warnings on the silo itself, other than a "confined space" warning placard.<sup>46</sup> All other warnings and instructions created by Belgrade were contained in the silo owner's manual.<sup>47</sup> It is undisputed that KPI

---

<sup>39</sup> AA-128 to -138; Add. 5.

<sup>40</sup> AA-201 to -210, -216 to -224, 265 to -267; Add. 13-15.

<sup>41</sup> AA-201.

<sup>42</sup> AA-201 to -205.

<sup>43</sup> AA-206 to -207.

<sup>44</sup> AA-201 to -207; -265; Add. 13-15.

<sup>45</sup> AA-266 to -267, -283; Add. 14-15

<sup>46</sup> AA-222 to -224.

<sup>47</sup> AA-195 to -196.

forwarded the silo owner's manual to its customer, Hall-Perry, and explicitly instructed Hall-Perry to send a copy of the manual to its customer.<sup>48</sup>

KPI renewed its tender of defense to Belgrade in 2010, and Belgrade again refused to accept KPI's tender.<sup>49</sup> As a result, and because the relationship between Belgrade and KPI is centered in Minnesota, KPI commenced suit against Belgrade in the Stearns County, Minnesota District Court in November 2010, asserting a claim of common law indemnity under Minnesota law.<sup>50</sup> KPI sought (and seeks) to recover the amount of any settlement it reached with Ms. Ficek, as well as the attorneys' fees and other expenses KPI incurred in defending itself against Ms. Ficek's strict product liability claim.<sup>51</sup>

Later in November 2010, the parties to the Montana case mediated Ms. Ficek's claims;<sup>52</sup> however, neither KPI nor Belgrade reached settlements with Ms. Ficek at that time.<sup>53</sup>

In January 2011, Belgrade answered KPI's indemnity complaint.<sup>54</sup> Belgrade admitted it had designed and manufactured the silo and accompanying bag house and that KPI had tendered its defense in the Montana lawsuit to Belgrade.<sup>55</sup> But Belgrade denied

---

<sup>48</sup> AA-283, -292; Add. 14-15.

<sup>49</sup> AA-5, -9, -20.

<sup>50</sup> AA-1 to -8.

<sup>51</sup> AA-5 to -7.

<sup>52</sup> AA-21.

<sup>53</sup> AA-230 to -236, -293 to -294.

<sup>54</sup> AA-9 to -10.

<sup>55</sup> AA-9.

any obligation to indemnify KPI with respect to the Montana lawsuit.<sup>56</sup>

In February 2011, Belgrade served on Ms. Ficek an offer of judgment for \$1 million, which she accepted.<sup>57</sup> This terminated the Montana litigation with respect to Belgrade, leaving KPI alone to defend the design of Belgrade's silo.<sup>58</sup>

After Belgrade allowed Ms. Ficek to take a \$1 million judgment against it and was dismissed from the case, KPI gave Belgrade at least two opportunities to participate in KPI's negotiations to settle Ms. Ficek's claim.<sup>59</sup> Belgrade continued its refusal to indemnify KPI.<sup>60</sup>

In April 2011, KPI settled Ms. Ficek's claim for \$175,000.<sup>61</sup>

Following discovery in this case, Belgrade and KPI filed motions for summary judgment.<sup>62</sup> Relying in part on the doctrine of *lex loci delicti*, Belgrade argued that Montana law applied to KPI's indemnity claim and that, as a matter of Montana law, Belgrade's settlement "extinguished" KPI's indemnity right against Belgrade.<sup>63</sup> Belgrade also argued that, even if Minnesota law applied, KPI's indemnity claim was barred as a matter of law.<sup>64</sup> In support of this argument, Belgrade claimed that KPI's potential

---

<sup>56</sup> AA-10.

<sup>57</sup> AA-21, -293 to -294.

<sup>58</sup> AA-21.

<sup>59</sup> AA-233 to -236.

<sup>60</sup> AA-21 to -22.

<sup>61</sup> AA-235 to -236.

<sup>62</sup> Add. 1, 6.

<sup>63</sup> Add. 6.

<sup>64</sup> Add. 6, 13–15.

liability in the Montana lawsuit was not merely derivative or vicarious of Belgrade's liability, but, rather, KPI was defending against allegations of personal fault in the Montana litigation.<sup>65</sup>

KPI argued that Minnesota law, not Montana law, governed the parties' rights and entitled KPI to complete indemnity.<sup>66</sup> KPI argued it was an innocent purchaser and its potential liability in the Montana lawsuit was purely derivative or vicarious because it was based only on design features of and warnings concerning the silo that KPI had no involvement in creating.<sup>67</sup>

On January 26, 2012, the District Court entered judgment ruling that Montana law governs the rights and duties of the parties. In so ruling, the District Court granted Belgrade's motion for summary judgment on all KPI's claims and denied KPI's motion for summary judgment on those same claims.<sup>68</sup>

The District Court held that Montana law applies to KPI's claims under an application of the five choice-influencing considerations adopted by the Minnesota Supreme Court Milkovich v. Saari, 203 N.W.2d 408 (Minn. 1973) for resolving conflict-of-laws questions.<sup>69</sup> Because the District Court held Montana law applies and Belgrade "settled" the product liability claim against it in the Ficek lawsuit by confessing judgment, the District Court held that, as a matter of Montana law, Belgrade's resolution

---

<sup>65</sup> Add. 6, 13–15.

<sup>66</sup> AA-152 to -183; -295 to -316; Add. 6, 13–15.

<sup>67</sup> AA-174 to -183; -295 to -316; Add. 6, 13–15.

<sup>68</sup> Add. 1–2.

<sup>69</sup> Add. 7–13.

of Ms. Ficek's claim against it extinguished all rights KPI may have had to obtain indemnity with respect to the Ficek lawsuit.<sup>70</sup>

The District Court also held, however, that, "[i]f, on appeal, it is determined that this Court incorrectly applied Montana law and that Minnesota law should apply, the Court believes Summary Judgment should be granted in favor of KPI."<sup>71</sup> Applying Minnesota indemnity law, the District Court determined that based on the evidence presented there is no genuine issue of material fact and KPI would be entitled to judgment as a matter of law that it is entitled to indemnity because its potential liability in the Ficek lawsuit was purely derivative or vicarious of Belgrade's potential liability.<sup>72</sup> The District Court also determined that "a subsequent hearing would be required to determine the reasonableness of KPI's settlement, as well as whether and to what extent an award of attorney fees and expenses would be appropriate."<sup>73</sup>

The District Court's January 26, 2012, judgment disposed of all claims before that court.<sup>74</sup> KPI timely appealed from that judgment on March 23, 2012.<sup>75</sup>

#### ARGUMENT

This appeal presents a single legal question: does the law of Montana or Minnesota govern downstream product seller KPI's right to indemnity from product

---

<sup>70</sup> Add. 13.

<sup>71</sup> Add. 13.

<sup>72</sup> Add. 13–15.

<sup>73</sup> Add. 15.

<sup>74</sup> Add. 1–2, 15.

<sup>75</sup> AA-380 to -381.

designer and manufacturer Belgrade for the costs KPI incurred to defend and resolve a product liability lawsuit based on Belgrade's silo?

KPI respectfully submits that the District Court erred in deciding that Montana law, not Minnesota law, governs the parties' rights and duties. Under the applicable standard of review, the District Court's ruling on which state's law governs the parties' rights is reviewed by this Court *de novo*.<sup>76</sup> The District Court's ruling not only resulted from an erroneous application of Minnesota's conflict-of-laws principles, but the ruling is also bad policy.

Minnesota's public policy is a critical consideration in the conflict-of-laws analysis.<sup>77</sup> Upholding the District Court's choice-of-law ruling would cause substantial injustice here because KPI would be denied indemnity for a lawsuit in which, indisputably, its potential liability was purely derivative or vicarious of Belgrade's potential liability. Denying KPI indemnity by operation of law would be antithetical to this state's express public policy of (1) relieving a downstream product seller of the burden of defending alleged product defects, which the seller had no hand in creating, and (2) placing that burden where it should rest—on the product manufacturer.<sup>78</sup>

---

<sup>76</sup> E.g., Danielson v. Nat'l Supply Co., 670 N.W.2d 1, 4 (Minn. Ct. App. 2003).

<sup>77</sup> E.g., Myers v. Gov't Emp. Ins. Co., 225 N.W.2d 238, 243 (Minn. 1974) ("Minnesota, as the justice-administering state, advances its governmental interest by providing access to its courts for its citizens and by considering its socio-legal policies as expressed by its legislature and courts.").

<sup>78</sup> See Minn. Stat. § 544.41; Farr v. Armstrong Rubber Co., 179 N.W.2d 64 (Minn. 1970); In re Shigellosis Litig., 647 N.W.2d 1, 6, 8 (Minn. Ct. App. 2002) (discussing Minn. Stat. § 544.41).

Moreover, it is bad policy to allow the law of the place of injury to a third party to govern the legal relationship between an indemnitor and indemnitee that is centered in Minnesota. The right of a "downstream" product seller (the indemnitee) to common law indemnity from the product manufacturer (the indemnitor) should be grounded in the law of the state in which the relationship between the indemnitee and indemnitor is based. Here, the relationship between KPI (the indemnitee) and Belgrade (the indemnitor) was based in Minnesota, where Belgrade designed, manufactured, and placed the product at issue into the stream of commerce and where KPI bought the product.

It is merely happenstance that, more than a decade after the transaction between KPI and Belgrade, Belgrade's product allegedly injured someone in Montana, rather than in Florida, Minnesota, or some other state. Suppose instead that Belgrade had sold three silos to KPI; one ended up in Florida, another in Minnesota, and the last in Montana; each injured someone in those states in the same manner that Judith Ficek claimed she was injured; and KPI was sued in each state for product liability based on identical, alleged defects in the silos. If the law of the place of injury were to govern KPI's right to indemnity from Belgrade, KPI would be entitled to indemnity with respect to the Minnesota and Florida product liability lawsuit but not the Montana lawsuit.

Such a result is arbitrarily inconsistent and unjust. The downstream product seller's right to common law indemnity from the product manufacturer should not shift and bounce about based on the fortuity of where the product ends up and happens to injure someone. Rather, the right to indemnity should be grounded in the law of the place

where the transaction between the indemnitor and indemnitee took place—here, Minnesota.

This Court should hold that Minnesota law governs KPI's right to indemnity and should remand the case for further proceedings consistent with that ruling and the District Court's ruling that there is no genuine dispute that KPI's potential liability in the Montana case was purely derivative or vicarious of Belgrade's potential liability.

**A. There is a true conflict between the indemnity laws of Minnesota and Montana as applied to this case.**

Minnesota's conflict-of-laws principles, adopted by the state Supreme Court in Milkovich v. Saari, 203 N.W.2d 408, 412 (Minn. 1973), apply to the question presented here. The analysis has two steps.<sup>79</sup> The Court must initially determine whether "there actually is a true conflict of laws and that more than one state's law may be constitutionally applied."<sup>80</sup> To determine whether a true conflict of laws exists, Minnesota courts ask, "will the choice of one law as compared to another determine the outcome?"<sup>81</sup>

Here, the law of Minnesota or Montana can be constitutionally applied, as the District Court held. Further, as the District Court ruled, the choice between Minnesota and Montana law would determine the outcome of this case. In the Montana lawsuit, the plaintiff, who alleged she was injured by Belgrade's silo, asserted a strict product liability claim against the designer/manufacture of the product, Belgrade, and against KPI, a

---

<sup>79</sup> E.g., id. at 6.

<sup>80</sup> Id.

<sup>81</sup> Myers v. Gov't Emp. Ins. Co., 225 N.W.2d 238, 241 (Minn. 1974).

"downstream" seller of the silo.<sup>82</sup> Under Montana law, if the designer/manufacturer in such a case settles with the plaintiff, that settlement, by operation of law, extinguishes the downstream product seller's right to indemnity from the "upstream" designer/manufacturer, even if the downstream seller did nothing to contribute to the alleged product defect, as is the case here.<sup>83</sup> No such "extinguishing" rule obtains under Minnesota law (or the law of most other states). Where the downstream seller (KPI) "has only a derivative or vicarious liability for damage caused by the one sought to be charged [the designer/manufacturer, Belgrade]," Minnesota allows the seller to obtain indemnity for the amount of any reasonable settlement with the product liability plaintiff and, where appropriate, for the seller's defense costs incurred in the product liability suit.<sup>84</sup> Thus, there is a conflict of laws because KPI likely would not be entitled to indemnity under Montana law, whereas it is indisputably entitled to some amount of indemnity under Minnesota law.<sup>85</sup>

---

<sup>82</sup> Montana, unlike Minnesota, does not allow "a nonmanufacturing defendant who did not contribute to the alleged defect to defer strict liability to the manufacturer." In re Shigellosis Litig., 647 N.W.2d 1, 6, 8 (Minn. Ct. App. 2002) (discussing Minn. Stat. § 544.41); compare Mont. Code Ann. § 27-1-719 (strict product liability statute).

<sup>83</sup> Durden v. Hydro Flame Corp., 983 P.2d 943, 949 (Mont. 1999).

<sup>84</sup> Farr v. Armstrong Rubber Co., 179 N.W.2d 64, 72 (Minn. 1970); O'Connell v. Jackson, 273 Minn. 91, 97, 140 N.W.2d 65, 69 (1966).

<sup>85</sup> The District Court ruled that, if Minnesota law were applied to KPI's right to indemnity, a hearing would have to be held to determine whether KPI's settlement with the Montana plaintiff was reasonable. Whether a settlement payment is reasonable is a question of law. Based on the relevant facts, including (1) the nature of the Montana plaintiff's claimed injury (permanent brain damage), (2) the amount of KPI's settlement payment (\$175,000) compared to what Belgrade paid (\$1 million), and (3) the fact that KPI gave Belgrade multiple opportunities to participate in the decision-making process as to what amount KPI would pay to settle, KPI believes that on remand the District Court

**B. Under the choice-influencing factors of Minnesota conflict of laws analysis, Minnesota law applies to KPI's indemnity claim against Belgrade.**

Because there is a true conflict between the laws of Minnesota and Montana, the Court must decide which state's law governs the parties' rights by applying the choice-influencing factors adopted in Milkovich: "(a) Predictability of results; (b) maintenance of interstate and international order; (c) simplification of the judicial task; (d) advancement of the forum's governmental interests; and (e) application of the better rule of law."<sup>86</sup>

The courts of this state have not hesitated to apply Minnesota law to cases precipitated by events occurring partially or wholly outside the state.<sup>87</sup> And this Court has done so in the contractual-indemnity context. In Hawkins, Inc. v. Am. Intern. Specialty Lines Ins. Co., 2008 WL 4552683 (Minn. Ct. App. Dec. 23, 2008), an insured was sued in California on a product liability claim based on events that occurred there. The insured later sued its insurer in Minnesota alleging the insurer breached its contractual duties to defend and indemnify the insured with respect to the California lawsuit. The insurance contract contained no choice of law provisions. The trial court held that Minnesota law rather than California law governed the parties' rights and duties

---

would have little difficulty concluding that KPI's \$175,000 settlement payment was reasonable.

<sup>86</sup> Milkovich v. Saari, 203 N.W.2d 408, 412 (Minn. 1973).

<sup>87</sup> Myers v. Gov't Emp. Ins. Co., 225 N.W.2d 238, 241 (Minn. 1974) (applying Minnesota law to action arising from car wreck that occurred in Louisiana); Danielson v. Nat'l Supply Co., 670 N.W.2d 1, 4 (Minn. Ct. App. 2003) (applying Minnesota law to product liability action arising from injury that occurred in Arizona involving a product purchased in Texas).

and, applying Minnesota law, granted the insurer summary judgment on the insured's claims. This Court affirmed, holding that the trial court had correctly concluded Minnesota law governed the relationship between the insured and insurer.<sup>88</sup>

Here, a correct application of the Milkovich factors to the facts of this case yields the result that Minnesota law applies to KPI's indemnity claim against Belgrade.

1. The first choice-influencing factor, "predictability of results," favors application of Minnesota law to determine the parties' rights.

The "predictability of results" factor "applies primarily to consensual transactions where the parties desire advance notice of which state law will govern in future disputes" and is usually unimportant in tort cases because of the unplanned nature of accidents.<sup>89</sup>

This case was precipitated by a personal-injury claim (the Montana lawsuit); however, KPI's indemnity claim against Belgrade "does not arise from an accidental encounter between the parties, but rather from a consensual business transaction—the sale of the silo."<sup>90</sup> The sale occurred between KPI in South Dakota and Belgrade in Minnesota more than ten years prior to the incident that gave rise to the Montana lawsuit. The silo at issue was designed, manufactured, and placed into the stream of commerce in Minnesota by Belgrade, a Minnesota company that has continuously manufactured products in this state for nearly half a century. After the silo was purchased by Envirocon, that company used the silo on projects across the country during the ensuing decade, most notably for 8 months on a project in Florida that ended mere weeks before

---

<sup>88</sup> Hawkins, 2008 WL 4552683, at \*1–5.

<sup>89</sup> E.g., Danielson, 670 N.W.2d. at 7.

<sup>90</sup> Add. 9.

Ms. Ficek's accident in Montana. As the District Court recognized, the predictability of results factor "favors application of Minnesota law" because "the record does not show either party had any reason to believe at the time of the sale that the silo would eventually end up in Montana or result in injury to a Montana resident."<sup>91</sup> Applying Minnesota law to downstream sellers' indemnity claims arising out of product liability actions based on Belgrade's products promotes predictability of results as between Belgrade and downstream sellers of its products.

By contrast, *unpredictability* of results would follow if the fortuity of where an accident involving a Minnesota manufacturer's product occurred were to determine what law governs the manufacturer's indemnity obligations to a downstream product seller. Here, Belgrade's silo spent eight months on an Envirocon job in Florida before being moved to Montana mere weeks before Ms. Ficek's accident. Supposing that the same kind of accident over which Belgrade and KPI were sued occurred in Florida instead of Montana and, as a result, Florida law were to govern KPI's indemnity rights against Belgrade, the outcome would be quite different from what would obtain under Montana law. Florida law is clear that "neither the manufacturer's settlement of a prior action brought against it by the same plaintiff . . . nor the fact that the plaintiff's complaint . . . alleges only active negligence by the distributor . . . precludes the maintenance of [an] indemnity claim on the . . . ground that the distributor's liability, if any, arises only

---

<sup>91</sup> Add. 9.

vicariously for a defect created in the product by the manufacturer."<sup>92</sup> Thus, under Florida law, unlike under Montana law, Belgrade's settlement with the plaintiff in the underlying product liability case would not extinguish KPI's right to indemnity from Belgrade on the basis that KPI's potential liability "arises only vicariously for a defect created in the product by the manufacturer."

Because this is the same basis on which KPI predicates its common law indemnity claim against Belgrade under Minnesota law, there would be no need to engage in a conflict of laws analysis. There would be no "true conflict" because the choice of Florida over Minnesota law would not determine the outcome. Instead, the only questions would be (1) whether KPI's potential liability in the underlying product liability lawsuit was merely vicarious of Belgrade's liability and, if so, (2) how much KPI would be entitled to recover from Belgrade by way of indemnity. Here, the District Court decided the first question in KPI's favor but, applying Montana law, held Belgrade's "settlement" with the Montana plaintiff barred KPI's indemnity claim by operation of law. Such disparity in

---

<sup>92</sup> Julien P. Benjamin Equip. Co. v. Blackwell Burner Co., 450 So. 2d 901, 902 (Fla. Dist. Ct. App. 1984); see also Maseda v. Honda Motor Co., Ltd., 861 F.2d 1248, 1256 (11th Cir. 1988) (citing Julien P. Benjamin) ("Honda concedes that an indemnitor is not released from an indemnity claim simply because the indemnitor settled with the plaintiff."). The Florida Supreme Court has similarly held (albeit not in the product liability context) that "voluntary dismissal of the active tortfeasor shall not impair the passive tortfeasor's right to indemnification. **It would be unconscionable to require a passive tortfeasor to compensate an injured party, while at the same time barring indemnification from the active party.** JFK Med. Ctr., Inc. v. Price, 647 So. 2d 833, 834 (Fla. 1994) (emphasis supplied).

results would be avoided by applying Minnesota law to indemnity claims like the one KPI asserted against Belgrade. Thus, as the District Court correctly ruled, the "predictability of results" factor favors applying Minnesota law.

2. The second choice-influencing factor, "maintenance of interstate and international order," is not determinative of whose law should apply.

Although the District Court correctly concluded that the "predictability of results" factor favors applying Minnesota law, the District Court erred in holding that the second choice-influencing factor, "maintenance of interstate and international order," is determinative and favors application of Montana law.

The second choice-influencing factor "addresses whether the application of Minnesota law would manifest disrespect for [Montana] or impede the interstate movement of people and goods."<sup>93</sup>

The District Court stated that "[e]vidence of forum shopping or evidence that application of one state's law would promote forum shopping indicates an attempt to evade, and hence disrespect for, the non-forum's law." Relying on this proposition, the District Court concluded that applying Minnesota law would "promote forum shopping." But the conflict-of-laws policy against promoting or encouraging forum shopping is aimed at discouraging the filing of cases here that have "little genuine contact with the state."<sup>94</sup> KPI has not sued Belgrade in a state having only attenuated contacts with KPI's indemnity claim against Belgrade. Rather, KPI has brought suit in a jurisdiction having a

---

<sup>93</sup> Danielson, 670 N.W.2d at 7.

<sup>94</sup> Hime v. State Farm Fire & Cas. Co., 284 N.W.2d 829, 833 (Minn. 1979).

deep connection to KPI's indemnity claim against Belgrade. KPI's indemnity claim arises out of a business transaction—the sale of Belgrade's silo to KPI. KPI bought the silo here. This jurisdiction is where the relationship between the parties is centered; the rights and duties of the parties to one another arise here. Belgrade has resided and has been designing and manufacturing products for nearly half a century in Minnesota. Minnesota is where Belgrade designed, manufactured, and placed into the stream of commerce the particular product that gives rise to KPI's indemnity. Thus, this lawsuit does not implicate the concerns underlying Minnesota's policy discouraging forum shopping.

In concluding that applying Minnesota law would promote forum shopping, the District Court also relied on Schumacher v. Schumacher, 676 N.W.2d 685 (Minn. Ct. App. 2004). In Schumacher, plaintiff son sued defendant father for personal injuries son sustained when he was kicked by one of the horses that father and son (both Minnesota residents) had brought to an Iowa horse show. This Court rejected son's argument that Minnesota law governed his negligence claim and held the claim was barred by Iowa's Domesticated Animal Activities Immunity Statute. Id. at 692. In Schumacher, the claim arose out of plaintiff's and defendant's joint activity that took place in the state of Iowa and that resulted immediately in the complained-of injury. Here, by contrast, KPI's claim is based on the sale by a Minnesota resident (Belgrade) to KPI, a South Dakota resident, of a product that was allegedly involved in an accident in Montana more than a decade later. And whereas in Schumacher the conduct giving rise to potential liability (stalling horses) occurred in Iowa, here the conduct giving rise to potential liability—Belgrade's design and manufacture of and crafting of warnings regarding its silo—occurred in

Minnesota. And in this case, it is Minnesota rather than the non-forum state that has adopted an applicable statute. Minnesota, unlike Montana, has adopted a "seller's-exception statute"<sup>95</sup> that relieves certain non-manufacturing sellers from the cost of defending a product liability suit by allowing a product seller that "did not contribute to the alleged defect to defer strict liability to the manufacturer" and to be dismissed from the case.<sup>96</sup> Thus, the facts of Schumacher are readily distinguishable from those of this case.<sup>97</sup>

In its discussion of the second choice-influencing factor, the District Court also cited Myers v. Gov't Emp. Ins. Co., 225 N.W.2d 238 (Minn. 1974),<sup>98</sup> but apparently did not credit the Minnesota Supreme Court's statement that the second factor generally is not determinative (at least in tort cases) "as long as the state whose laws are purportedly in conflict has sufficient contacts with and interest in the facts and issues being litigated."<sup>99</sup> Here, Minnesota has substantial contacts with and interest in the facts and issues being

---

<sup>95</sup> Minn. Stat. Ann. § 544.41.

<sup>96</sup> In re Shigellosis Litig., 647 N.W.2d 1, 8 (Minn. Ct. App. 2002). Montana strict liability law, by contrast, allows a plaintiff to maintain claims against the product designer/manufacturer as well as against downstream sellers in the chain of distribution, regardless of their lack of involvement in the creation of the alleged defect. Mont. Code Ann. § 27-1-719 (allowing a plaintiff to maintain a strict liability claim against a product "seller" and defining "seller" as a "manufacturer, wholesaler, or retailer").

<sup>97</sup> In its briefing to the District Court, KPI cited Schumacher for the general and unremarkable propositions that Minnesota courts are fully capable of applying Minnesota law (in relation to the third choice-influencing factor, "simplification of the judicial task") and that "predictability of results" is more important in cases arising out of consensual business transactions between parties than in tort cases arising from accidental encounters between parties.

<sup>98</sup> Add. 9.

<sup>99</sup> Myers, 225 N.W.2d at 242.

litigated, which involve a product designed, manufactured, and placed into the stream of commerce in Minnesota by a Minnesota company.

Choosing among conflicting laws of two or more states inevitably carries with it some level of disrespect for the law that is not chosen. While application of Minnesota law may manifest disrespect for Montana law, application of Montana's indemnity-extinguishing rule would manifest at least equal disrespect for Minnesota law, which has no indemnity-extinguishing policy and allows a downstream seller like KPI that is merely derivatively or vicariously liable in a product suit to obtain indemnity from the product designer/manufacturer.

As the foregoing discussion demonstrates, the second choice-influencing factor is neutral. The District Court committed an error of law in deciding this factor is determinative and compels the application of Montana law to KPI's indemnity claim.

3. The third choice-influencing factor, "simplification of the judicial task," is neutral.

"This factor is not particularly relevant where the competing laws are straightforward and the courts' interpretations of them are adequate to provide the guidance a trial court might wish to have."<sup>100</sup> And, "[o]f course, Minnesota courts are fully capable of applying Minnesota law."<sup>101</sup> Therefore, as the District Court noted, this factor is not determinative of the conflict of laws question.<sup>102</sup>

---

<sup>100</sup> Danielson v. Nat'l Supply Co., 670 N.W.2d 1, 8 (Minn. Ct. App. 2003) (internal quotations marks omitted).

<sup>101</sup> Schumacher v. Schumacher, 676 N.W.2d 685, 691 (Minn. Ct. App. 2004).

<sup>102</sup> Add. 10-11.

4. The fourth choice-influencing factor, "advancement of the forum's governmental interests," strongly favors application of Minnesota law.

The fourth choice-influencing factor "goes to which law would most effectively advance a significant interest of the forum state. This factor is designed to assure that Minnesota courts do not have to apply rules of law that are inconsistent with Minnesota's concept of fairness and equity."<sup>103</sup> This factor requires the courts to consider the public policy of both jurisdictions whose laws may be applied.<sup>104</sup>

Here, the District Court identified what it deemed three relevant public policy interests of Minnesota: (1) "compensating tort victims"; (2) "protecting consumers by imposing the cost of defective products on the maker"; and (3) "promoting settlement and finality." The District Court held the first interest had been satisfied because the Montana plaintiff "has already recovered for her injuries." The District Court then held that the second public policy interest favored application of Minnesota law, while the third interest favored applying Montana law. The District Court therefore deemed the fourth choice-influencing factor neutral because it had determined the relevant Minnesota public policy interests compelled opposite results as far as which state's law should apply.

There are two problems with the District Court's analysis. First, applying Montana's indemnity-extinguishing rule in a case such as this does not necessarily promote the public policy interests of "compensating tort victims" and "promoting settlement and finality." If a downstream product seller knows it may pursue an

---

<sup>103</sup> Danielson, 670 N.W.2d at 8.

<sup>104</sup> Id.

indemnity claim against the product manufacturer regardless of whether the manufacturer settles with the product liability plaintiff, arguably the seller is encouraged to settle with the product liability plaintiff because it remains possible for the seller to recover its settlement payment from the manufacturer. Such a rule therefore may promote the interests of compensating tort victims and promoting settlement. Moreover, to the extent Belgrade will argue it settled with the Montana plaintiff in reliance on Montana's indemnity-extinguishing rule to allow it to "buy its peace" and achieve finality, such reliance was either naïve or obtuse. KPI sued Belgrade on a Minnesota law indemnity claim three months before Belgrade made its \$1 million offer of judgment to the Montana plaintiff.

Second, the District Court, after identifying what it deemed conflicting Minnesota public policy interests, failed to take the next, necessary step in the analysis—to identify which of the conflicting policies is the "predominant consideration of Minnesota."<sup>105</sup> In Myers, which arose from a car wreck in Louisiana, the Minnesota Supreme Court was asked to decide whether the injured victims (Minnesota citizens) could maintain a direct action against the tortfeasor's liability insurer. A Louisiana statute allowed for such actions, but the Louisiana limitations period had run. The suit was timely if Minnesota's limitations period was applied. The Minnesota Supreme Court held the plaintiffs' direct action against the insurer was a vested right enforceable pursuant to Minnesota statute and that plaintiffs' action was timely because Minnesota's limitations period applied.

---

<sup>105</sup> Myers, 225 N.W.2d at 244.

In analyzing the conflict-of-laws question, the Myers court stated, "In determining the advancement of the forum's governmental interests, it is necessary that we not only analyze the interests of Minnesota as the forum state, but also consider the public policy of Louisiana."<sup>106</sup> Louisiana had a policy, expressed through legislation, of allowing direct actions against liability insurers.<sup>107</sup> Considering Minnesota's policies, the Myers court stated:

Minnesota, as the justice-administering state, advances its governmental interest by providing access to its courts for its citizens and by considering its socio-legal policies as expressed by its legislature and courts. Upon examination, it is apparent that conflicting policies exist in Minnesota which must be resolved to determine what governmental interest is to be considered. Minn.St. 541.14 clearly indicates a legislative intent that plaintiffs' vested, substantive claims against [the liability insurer] should be heard by our courts when commenced properly within the limits of our statute of limitations, irrespective of the inability of plaintiffs to secure relief in another jurisdiction because of the bar of that particular jurisdiction's statute. Against this, we must consider the decisions of this court which prohibit direct actions against insurers.<sup>108</sup>

The Myers court concluded that Minnesota's "predominant consideration" was "the availability of our courts to our citizens to enforce their vested rights"—the vested right at issue being the plaintiffs' rights under Louisiana statute to sue their tortfeasor's liability insurer directly. Although one of Minnesota's public policies was diametrically

---

<sup>106</sup> Id. at 242.

<sup>107</sup> Id.

<sup>108</sup> Id. at 243.

opposed to allowing such direct actions, the action was allowed to proceed because the conflicting Minnesota public policy was the "predominant consideration."

Here, under the fourth choice-influencing factor, the public policies of Montana and Minnesota must be examined and compared. The Durden case, in which Montana adopted the indemnity-extinguishment rule that is at issue, represents Montana's public policy. In Durden, the Montana Supreme Court reasoned that an indemnity-extinguishment rule furthers the policy of encouraging settlements by allowing a defendant designer/manufacturer in a product case to "buy his peace" simply by settling with the plaintiff.<sup>109</sup> But that Court also recognized the policy consideration undergirding "upstream" indemnification claims: "'upstream' indemnification fosters the policy behind strict products liability by placing final responsibility for injuries caused by a defective product upon the entity initially responsible for placing that product into the stream of commerce."<sup>110</sup>

The latter policy is unquestionably the "predominant consideration" of Minnesota in this case. The public policy interest of promoting settlement is a general policy adverted to by the courts and that applies in all cases. Contrast that general policy with the specific and express policy, adopted by both the Minnesota Supreme Court and legislature, of "placing final responsibility for injuries caused by a defective product upon

---

<sup>109</sup> Durden, 983 P.2d at 946–47.

<sup>110</sup> Id. at 946 (quoting Jones v. Aero-Chem Corp., 680 F.Supp. 338, 340 (D. Mont. 1987)).

the entity initially responsible for placing that product into the stream of commerce."<sup>111</sup> The Minnesota Supreme Court has held that a downstream entity in the chain of distribution of a product, i.e., a seller, may obtain indemnity from the product designer/manufacturer, the upstream entity, when the seller must defend itself against a strict product liability claim based on allegations that the product is defective and unreasonably dangerous.<sup>112</sup> And the Minnesota legislature has adopted a "seller's-exception statute"<sup>113</sup> that "tempers the harsh effect of strict liability as it applies to passive sellers."<sup>114</sup> This statute "allows a nonmanufacturing defendant who did not contribute to the alleged defect to defer strict liability to the manufacturer" and to be dismissed from the case.<sup>115</sup>

The indemnity claim allowed by the Minnesota Supreme Court is an equitable claim. Thus, it is part of "Minnesota's concept of fairness and equity."<sup>116</sup> Montana's indemnity-extinguishing rule essentially allows product designer/manufacturers to leave downstream sellers "holding the bag" and defending a product they did not design or

---

<sup>111</sup> Id.

<sup>112</sup> Farr v. Armstrong Rubber Company, 179 N.W.2d 64, 72 (Minn. 1970).

<sup>113</sup> Minn. Stat. Ann. § 544.41.

<sup>114</sup> In re Shigellosis Litig., 647 N.W.2d 1, 8 (Minn. Ct. App. 2002).

<sup>115</sup> Id. at 8. Montana strict liability law, by contrast, allows a plaintiff to maintain claims against the product designer/manufacturer as well as against downstream sellers in the chain of distribution, regardless of their lack of involvement in the creation of the alleged defect. Mont. Code Ann. § 27-1-719 (allowing a plaintiff to maintain a strict liability claim against a product "seller" and defining "seller" as a "manufacturer, wholesaler, or retailer").

<sup>116</sup> Danielson, 670 N.W.2d at 8.

make. This rule would be especially inequitable as applied to this case, in which it is undisputed that KPI, the downstream seller of the silo designed and manufactured by Belgrade, did not create or have knowledge of the defects in the silo alleged by Ms. Ficek. To apply the Montana rule here would be antithetical to Minnesota's concept of fairness and equity, a result against which the fourth choice-influencing factor is specifically designed to guard. Contrary to the District Court's holding, the "advancement of the forum's governmental interests" factor strongly favors application of Minnesota law to KPI's indemnity claim. At minimum, this factor is neutral, as Montana public policy is at odds with that of Minnesota.

5. The fifth choice-influencing factor, "application of the better rule of law," if relevant, favors applying Minnesota law.

"This factor should be addressed when the other factors are not conclusive as to which state's law should be applied. . . . The better rule of law is the rule that made good socio-economic sense for the time when the court speaks."<sup>117</sup> For the reasons already discussed, Minnesota has the better rule of law, and the express public policy of Minnesota is to allow a downstream product seller like KPI, whose only liability derives from that of the product maker, to obtain indemnity from an upstream designer/manufacturer like Belgrade. To the extent this factor is relevant, it favors applying Minnesota law. At minimum, this factor is neutral, as the District Court held.

---

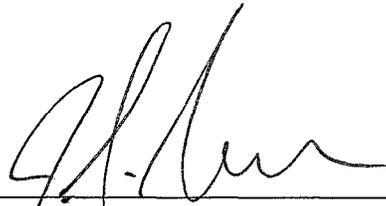
<sup>117</sup> Id. at 9.

## CONCLUSION

Under a correct application of Minnesota's five choice-influencing factors for deciding conflict-of-laws questions, Minnesota law, not Montana law, determines KPI's right to indemnity from Belgrade for the expenses KPI incurred to defend and resolve a product liability lawsuit based on Belgrade's silo. Unlike Montana, Minnesota allows a downstream product seller to obtain indemnity from the product maker for having to defend and resolve the underlying product liability case, regardless of whether the manufacturer settled with the product liability plaintiff. Here, all of Belgrade's actions giving rise to KPI's potential liability in the underlying product liability case—designing the silo, manufacturing the silo, crafting warnings concerning the silo, and placing the silo into the stream of commerce—occurred in Minnesota. KPI is entitled to indemnity from Belgrade under Minnesota law because there is no genuine dispute that KPI's potential liability in the underlying product liability case was purely derivative or vicarious of Belgrade's potential liability. Allowing Belgrade to claim the protection of a peculiarity of Montana law and thereby escape its responsibility to indemnify KPI would violate "Minnesota's concept of fairness and equity."

Accordingly, this Court should hold that Minnesota law governs the parties' rights and should remand this case for further proceedings consistent with the District Court's ruling that there is no genuine dispute that KPI's potential liability in the underlying product liability case was purely derivative or vicarious.

Dated: May 31, 2012



---

Frederick W. Morris (#75358)  
Jonathon T. Naples (#347310)  
LEONARD, STREET AND DEINARD  
*Professional Association*  
150 South Fifth Street, Suite 2300  
Minneapolis, Minnesota 55402  
Telephone: (612) 335-1500  
Facsimile: (612) 335-1657

and

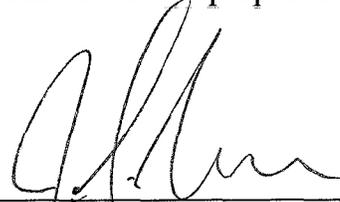
CHAMBLISS, BAHNER & STOPHEL,  
P.C.  
Anthony A. "Bud" Jackson  
*(admission pro hac vice in appellate  
court pending)*  
1000 Tallan Building  
Two Union Square  
Chattanooga, TN 37402  
Telephone: (423) 756-3000

***Attorneys for Appellant Kolberg-Pioneer,  
Inc.***

## CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subdivs. 1 and 3, for a brief produced with a proportional font. By automatic word count, the length of this brief is 7854 words. This brief was prepared using Microsoft Word 2003.

Dated: May 31, 2012



---

Frederick W. Morris (#75358)  
Jonathon T. Naples (#347310)  
LEONARD, STREET AND DEINARD  
*Professional Association*  
150 South Fifth Street, Suite 2300  
Minneapolis, Minnesota 55402  
Telephone: (612) 335-1500  
Facsimile: (612) 335-1657

and

CHAMBLISS, BAHNER & STOPHEL,  
P.C.

Anthony A. "Bud" Jackson  
*(admission pro hac vice in appellate  
court pending)*  
1000 Tallan Building  
Two Union Square  
Chattanooga, TN 37402  
Telephone: (423) 756-3000

***Attorneys for Appellant Kolberg-Pioneer,  
Inc.***