

A04-769

STATE OF MINNESOTA  
IN SUPREME COURT

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David H. Toth,

Appellant,

v.

Gerald Arason, Individually, and  
d/b/a Arason's Body Shop

Respondent.

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**BRIEF AND APPENDIX OF RESPONDENT  
GERALD ARASON, INDIVIDUALLY AND D/B/A ARASON'S BODY SHOP**

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## INTRODUCTION

This appeal is about attorneys' fees, and who is going to pay them. The Appellant/Plaintiff, David H. Toth is an insured motorist and the Respondent/Defendant, Gerald Arason, individually and d/b/a Arason's Body Shop is an auto body repair shop. The Appellant sustained a collision loss to his 1997 Chevrolet *work truck* and the Respondent was requested by the Appellant and his insurer Western National Mutual Insurance Company to make the repairs. The parties admit that Respondent Arason violated Minn. Stat. 325F.60 in failing to present the Appellant Toth with a written estimate stating a replacement OEM radiator was used in the repairs. The parties also admit that the insurance company, Western National Mutual, paid more than 90% of the repairs.

Appellant Toth contends that under Minn. Stat. 325F.63 Respondent's violation of Minn. Stat. 325F.60, Subd. 1 is deemed to be a violation of Minn. Stat. 325F.69, Subd. 1 and therefore the provisions of Minn. Stat. 8.31, Subd. 3a, apply to allow him to claim damages including **costs of investigation and reasonable attorneys fees**. The Minnesota Court of Appeals held that Minn. Stat. 325F.64 applies to exempt the transaction from Minn. Stat. 325F.63 and therefore a violation of Minn. Stat. 325F.60, Subd. 1 is not deemed to be a violation of Minn. Stat. 325F.63 and the

remedy sought by Appellant Toth through Minn. Stat. 8.31, Subd. 3a does not apply to Respondent's violation. The Court of Appeals further declined to rule on Appellant's final attempt to allege a direct violation of Minn. Stat. 325F.69. Notwithstanding the admitted violation of Minn. Stat. 325.F.60, Subd. 1 because this issue was not raised in the District Court and was first brought forward during the Appeal. The Appellate Court's decision should be affirmed.

### **STATEMENT OF FACTS**

The parties to this action both reside in the small remote community of International Falls, Minnesota and often discussed issues concerning a repair of the Appellant's vehicle when they ran into each other in the grocery store or when they met in the restaurant for breakfast in the mornings.<sup>1</sup> The first thing the Appellant Toth did after his vehicle was wrecked was to call the insurance company, Western National Insurance Mutual Company, and the second thing he did was to call the Respondent, Jerry Arason d/b/a Arason's Body Shop.

#### **A. The Parties Entered into a Contract.**

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<sup>1</sup> Arason testified: "At the end of January my wife and I stopped into the grocery store after church, which we had done on many occasions, and he (Toth) made mention of some leakage with his vehicle... and he's always been very complimentary. But, pertaining to the radiator he talked about the leakage in January and says "Well, what's the deal?" Well, he didn't know but (said) "it's under warranty and Sheridan Motors are taking care of it." Transcript page 280, line 16 through 281, line 20; page 284, line 4-23.

On March 10, 1997 the Plaintiff purchased a new GMC *work truck* pickup from Sheridan Motors, Inc., International Falls, Minnesota. On August 14, 1997 with only 4,792 miles on the odometer he rear ended another vehicle in an accident which ultimately caused \$10,042.52 in damage to the vehicle. He was, at the time of the accident, insured by Western National Mutual Insurance Company with “collision damage coverage.”

On August 14, 1997 Appellant asked the Respondent to bring his pickup to Arason’s Body Shop for an estimate. Jerry Arason, owner of Arason’s Body Shop, a family business with more than 53 years experience, prepared an estimate the very next day. This was a “visible damage estimate” and did not include all of the damage required to repair the vehicle. (See Exhibit 1)

The Appellant Toth advised the Respondent Arason to work with the insurance company Western National Mutual Insurance Company and go ahead with the repairs. Parts were ordered and repairs were started immediately. At the same time Plaintiff’s insurance company, having been notified of the accident, began the process of adjusting the claim. The insurance company worked directly with the Respondent and ultimately prepared their own detailed repair estimate through Timberland Claims

Service, Grand Rapids, Minnesota. (See Exhibit 2) The Appellant admitted he had little contact with the insurance company and left the negotiation and dealings up to the Respondent. The insurance company did not complete their estimate until after Respondent had completed making the required repairs to the vehicle.

By the time the insurance company prepared the final estimate (Exhibit 2) nearly all of the work had been completed on the vehicle. The Respondent testified on cross:

Q: You must have been working with some authorization to do the work. Correct?

A: Yes.

Q: And that authorization came from Darris Winter?

A: Yes, and the owner. The owner (Toth) was very anxious to have it repaired.  
Transcript page 19, line 14-20.

#### **B. Insurance Company Negotiations.**

Western National Mutual Insurance Company was contacted on the day of the collision by their insured, the Appellant Toth. Toth was advised to obtain two estimates and he immediately called the Respondent, Arason. Toth told Arason that he had insurance and asked Arason if he had dealt with Western National. Arason told him he was familiar with Western National and that he had worked with adjustor, Darris Winters. (Transcript

page 201, line 8-17) Toth received the repair estimate from the insurance adjuster, Timberland, on about September 15, four days before he picked up the vehicle. (Transcript page 202, line 24 – 203, line 4) Toth's vehicle, by Respondent's testimony, had been completed on September 13<sup>th</sup>, (except for installation of the grill) and all of the parts, including the radiator, had been installed at the time the estimate from the insurance company was received. (Transcript page 18, line 9-25) The vehicle had been sitting in Arason's yard for several days after the job was completed before Toth picked it up on September 19<sup>th</sup>. Arason was paid a few days later by an insurance company check.

Respondent Arason was accustomed to dealing with an insurance company. The Respondent further testified:

Q: OK. Now, what percentage of your work is ultimately paid for by an insurance company?

A. I would say the greatest percentage, 90-95% is insurance. It's all insurance work. I do a lot of work for individuals, but I would say the biggest percentage of the volume of business is with insurance companies. (Transcript page 36, line 10-17)

Arason further testified:

A. We negotiate-the insurance adjustor and I negotiate the job as to what is to be done and what isn't to be done on the particular job. It was a negotiating process.

Q: Is it common for the insurance company to call the shops by determining how much they are going to pay for the job?

A: True.

Q: Do you have to work within what the insurance company is going to pay?

A: True.

Q: Alright. In the majority of the cases, Mr. Arason, who do you deal with when you are doing a job, the insurance adjustor or the owner of the vehicle?

A: In most cases the owner brings the vehicle to my place of business of their own free will and leaves—will leave it to my hands, leave it up to me to do the negotiating and put the vehicle back to what—to their satisfaction. Mr. Toth—maybe I'm getting carried away, but I never got any money when the job when out. I wanted him to be perfectly satisfied. A \$10,000.00 job goes out and got no money. He's got the check and he wants to try it out, and that's fine and dandy. I want him to be satisfied. (Transcript page 291-292)

**C. The Insurance Company Prepared the Repair Estimate After Repairs had been made.**

The original visual damage estimate (Exhibit 1) was prepared by Arason. This was not intended to be the final estimate but only what could be seen from an inspection of the vehicle. The insurance company, through its agent, Darris Winter, prepared the actual repair estimate (Exhibit

2) and had the responsibility of giving a copy of that estimate to their insured.

The vehicle was a current model GMC *work truck* that was substantially damaged from a front end collision. The repair costs amounted to more than \$10,000.00. Lots of repairs were required which included replacement of some parts and repair of others. The estimate was not finalized by the insurance adjustor until the vehicle had been completely repaired,<sup>2</sup> and was sitting in the Respondent's body shop parking lot.

The Respondent Arason had frequent contact with the adjustor, Darris Winters. He was asked specifically if he had ever discussed with Mr. Winter whether he had a replacement radiator or an OEM radiator. Arason testified:

A. I told him—I told him I couldn't get it. (The OEM Radiator) It wasn't available.

Q: So did you ever tell him you were installing an OEM radiator?

A. Yes, from my regular supplier, yes.

Q: An OEM radiator?

A: No not—an OEM replacement radiator.

Q: A replacement radiator?

A: Yes. (Transcript page 57, line 5-18)

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<sup>2</sup> With the exception of the installation of the grill.

The Respondent further testified, on recross, the first the Respondent learned that the insurance adjustor had specified an OEM radiator was when he received the adjustor's repair estimate after completion of the job. In order to install an OEM radiator at that point the job would have had to have been delayed for a minimum of 6 weeks because the radiators were still on national back order. It may have been tied up for months. (Transcript page 66, line 20)

**D. The Respondent Violated Minn. Stat. 325F.60, Subd. 1.**

Minnesota Statutes 325F.60, Subd. 1(e) requires a shop to provide the customer with either a dated invoice for the repairs specifying which parts are original equipment parts or a detailed repair estimate defined by Minn. Stat. 325F.56. Only two of the many parts listed on both repair estimates (Exhibits 1 and 2) are at issue. They are a radiator and an air conditioner condenser.

**The radiator** was described by the Respondent Arason as an *OEM replacement part*. It was admittedly not purchased from a General Motors dealer, but the Statute does not limit the source of procurement. The radiator was found by the Trial Court to be of greater capacity than the OEM General Motors radiator (Appendix A-63) and there was no evidence it was inferior

(Appendix A-10). There was no defect identified in the radiator Arason sold.<sup>3</sup>

A repair estimate prepared by Respondent Arason (Exhibit 1) was presented to the Appellant at Arason's shop on August 15, 1997. Arason testified:

Q. It's true that at the time you prepared (the visual damage estimate) that you never gave a copy of that to Mr. Toth?

A. I showed it to him but he did not require a copy. He said to deal with his insurance company. (T Page 12, line 9-, line 7-11)...

Q. So it's your testimony that you provided Mr. Toth with a copy of that?

A. I had it right on the countertop, right there at the time. Yes. He wasn't interested. He said "Deal with my insurance people." (Transcript page 14, line 19-24)

The visual damage estimate prepared by Arason did not specify whether the radiator would be OEM or not. (Exhibit 1) The estimate of repairs prepared by the insurance company *after the fact* specified an OEM radiator. The vehicle had been completely repaired by September 13, 1997. The only thing left to do was to install the grill. The insurance company estimate was postmarked on the 13<sup>th</sup> and Respondent Arason received it on

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<sup>3</sup> Testimony from the Respondent Arason, a certified radiator repair man since 1957 (Transcript page 265) was that the replacement radiator was of better quality with greater

the 15<sup>th</sup> of September. Appellant Toth picked up the vehicle on September 19; he drove it home, but came back a week later to pay for it with a personal check of \$250.00 (deductible) and the insurance check of \$9,792.00. Arason admits a violation of Minn. Stat. 325F.60, Subd. 1(e) because the replacement radiator, which he installed was not the radiator specified by General Motors as a replacement part for the vehicle.

**The air conditioner condenser** was an OEM replacement part. It was not purchased from a General Motors dealer, but GM does not manufacture the AC condensers used in assembly of the 1997 GMC work truck which was repaired by the Respondent. In fact, in checking the manufacture part number it was found that the Delco AC condenser installed by Arason was in fact the exact part specified by General Motors. There was no violation of Minn. Stat. 325F.60, Subd 1(e) in Arason's use of this part.<sup>4</sup>

**E. Appellant Toth incurred damages of \$803.44.<sup>5</sup>**

Sheridan Motors, Inc., a General Motors automobile dealer, refused to replace the Appellant Toth's radiator because they found it was not a

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cooling capacity than the radiator initially installed in the vehicle as OEM equipment. (Appendix A-63; Transcript page 267)

<sup>4</sup> The repair estimate prepared after the fact (Exhibit 2) did not specifically identify the AC condenser as an OEM part.

<sup>5</sup> The repair invoice was for \$810.44 (Exhibit 16; A-105)

General Motors OEM part. As a result sustained damages found by the Trial Court to be in the amount of \$803.44. The Respondent argues that antifreeze began leaking from the vehicle approximately five months after the repairs were completed. There is no evidence the leaks Toth experienced in December 1997 had anything to do with the radiator. In fact, Toth testified that he took it to Sheridan Motors, initially, and they found a bad hose connection and a bad hose. (Transcript 222, line 9-11) Sheridan's replaced that hose and the leak stopped. (Transcript 224, line 11-15)

The radiator hose was not replaced when Respondent Arason made repairs to the vehicle in August and September 1997. (See Visual Damage Estimate Exhibit 1 and Timberland Claims Service (insurance company) estimate Exhibit 2) The upper radiator hose, not the lower was replaced. Hose repairs were made under Toth's warranty. (Transcript page 160, line 17-24) (Testimony of Pat Harris, Service Director at Sheridan Motors Inc.)

Two and one half years later Toth again brought his vehicle to Sheridan Motors complaining of a coolant leak. The cause of this leak was diagnosed to be a gasket in the side tank of the radiator, which was not covered under the warranty.<sup>6</sup>

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<sup>6</sup> Reference to Exhibit 12, General Motors Dealer Quick Reference Guide, medium duty trucks suggests that there is only a 12 month warranty on any replacement part, even if that part is a GM, OEM part replaced by a General Motors dealer or not.

**F. Respondent Arason offered to make good on Toth's complaints on several occasions.**

First, when Toth complained of a coolant leak in December 1997 Arason offered to take a look at it. Toth responded that he has going to take it to Sheridan Motors because the truck was still under warranty.

On March 20, 2000 Appellant Toth contacted the Minnesota Attorney General to make a complaint against the Respondent Arason's Body Shop. He wanted verification that the parts installed in the repair of his vehicle were OEM parts and to be paid for the cost of coolant amounting to \$93.11. (Appendix 109) Arason responded quickly to David Toth's complaint and on March 30, 2000 sent a message to the Attorney General enclosing a copy of the check that he had given Toth for expenses in the amount of \$100.00 and advised that Toth had agreed to come in next Wednesday, April 5<sup>th</sup> to make arrangements for the repair. Arason's Body Shop has been in business in Koochiching County for 73 years. They have built a reputation on doing good repair work and standing behind the work that they do.<sup>7</sup>

Toth testified that he did not cash the check Arason had given him and did not come in to make arrangements because Mr. Arason had not put down in writing exactly what he intended to do to the vehicle. However, Arason

testified he didn't know what was going to be required until he had had an opportunity to look at it. Toth admits, on cross examination that Arason had asked him to "bring your truck by" on Wednesday the following week "so I can take a look at it and I'll take care of it for you." (Transcript page 229, line 1-5) Toth then wrote the Attorney General the second time and asked for triple damages and a paint job. He also asked for attorney fees. (Transcript 230, line 20-231 line 3) He claimed he also wanted replacement of the air conditioner and condenser but admitted, on cross examination that "it puts out some cold air; He had not had it looked at it" and he "hasn't put Freon in it." He further admitted that it was not leaking that he knew of. (Transcript 233) It appears as though Toth had an immediate remedy available, if he had chosen to accept it. However, he wanted more *profit*.

### ARGUMENT

**A. The Appellant David H. Toth is entitled only to actual damages resulting from a breach of contract.** Trial Court found Toth is entitled to recover damages from Arason in the amount of \$803.44. This damage award was remanded by the Court of Appeals for reconsideration.<sup>8</sup>

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<sup>7</sup> Keith Stromstead, a 22 year employee at Arason's Body Shop testified that Arason's policy was that if there was some problem with the paint the customer could "bring it back and we'll redo it." (Transcript page 249, line 10-17)

<sup>8</sup> The repair invoice submitted by Toth and received by the Trial Court for replacement of the radiator was \$810.44. The Trial Court awarded \$7.00 less than this amount, without explanation.

Toth contacted Arason on August 15, 1997 and requested him to repair his 1997 GMC *work truck* that had been damaged in a collision. Arason immediately responded, towing Toth's truck to his shop and preparing a visual damage estimate. He presented the estimate to Toth, and Toth said he didn't need it. Toth left the estimate lying on the counter and advised Arason to contact his insurance people.

Minnesota Statue 325F.60 imposes a requirement on a repair shop to prepare an invoice, or an estimate as defined in Minn. Stat. 325F.56, Subd. 8. This statute defines Arason's contractual obligation to Toth. It requires written disclosure of repairs contracted for.

The Appellant Toth acknowledges that his insurance company paid up to 90% of the charges for repairs that were required to his truck and paid all charges above a deductible amount specified in an insurance agreement with Western National Insurance Company.

Arason displayed exemplary conduct in repairing Toth's vehicle. First, he immediately responded to Toth's call and picked up the wrecked truck and brought it to his shop. Second, he prepared a visual damage estimate the very next day and met with Toth. He displayed the estimate to Toth, but Toth did not take a copy of it. Arason then contacted Toth's insurance company as Toth had requested him to do. While negotiating with

the insurance company, Arason immediately began making repairs. He disassembled the vehicle and he ordered parts.

On August 25, 1997 Arason provided Toth with a vehicle to drive while his *work truck* was being repaired and gave him a rental agreement. On that same day he discussed with Toth that he could not get the radiator from a GM dealer because the radiator was on national back order, but stated that he had lined up a condenser and radiator from his supplier.<sup>9</sup>

Arason had the repair job substantially completed by September 13, 1997. The Appellant's *work truck*, completed except for installation of the grill, was sitting in Arason's lot waiting for the insurance company to complete the repair estimate. The estimate arrived on September 15<sup>th</sup> and Toth came in to pick up the vehicle on September 19, 1997.

Arason had completed repair to this newly purchased GMC *work truck* in less than thirty days. Every part Arason installed in the repair of the truck was an OEM part except for the radiator.<sup>10</sup> The radiator was described by Arason, a certified radiator repair man and observed by the Trial Judge to be of greater cooling capacity and of equal quality to the OEM radiator specified.

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<sup>9</sup> Transcript page 289-290, line 1-5

<sup>10</sup> Although the AC condenser manufactured by AC Delco was not obtained from a GM dealer, the condenser used was the specific OEM part identified to be used in the vehicle.

Arason's Body Shop repaired the entire vehicle in the time that it took the insurance company to prepare the written estimate. By the time the insurance company forwarded the estimate to their insured and to Arason, neither party was interested in looking at it in detail. Arason wanted to get paid and Toth wanted to pick up his vehicle. In fact, Toth was so anxious to pick up his vehicle that Arason allowed him to take it before the check was received from the insurance company.

**B. Appellant Toth does not have a remedy provided by Minn. Stat. 325F.63 and 8.31, Subd. 3a.**

The Appellant would have this Court enter into some fanciful statutory construction in order to extend the clear meaning of the truth in repairs act to the private Attorney General statute Minn. Stat. 8.31, Subd. 3a.

Both the Trial Court and Court of Appeals determined that the extended remedy provisions of Minn. Stat. 325F.63 do not apply to this case because an insurance company was involved. The legislature specifically exempted the extended remedies in cases involving insurance companies in Minn. Stat. 325F.64 for good reason:

1. Insurance company involvement lessens the customer's financial exposure to an agreed upon deductible.

2. Dealing with an insurance company has built in safe guards protecting both the insurance company and the insured customer. The insurance company has the expertise and ability to hire experts, investigators and adjustors to assure that they are not only getting their monies worth from the repair shop but also that the shop completes the job as specified by the adjustor.
3. The insured customer designates the insurance company as his agent in negotiating and determining how the claim is to be handled.
4. The expertise of the insurance company matches or exceeds the expertise and the experience of the repair shop.
5. There is no unequal bargaining power between an insurance company and a small family owned repair shop.
6. An insured customer first has recourse with the insurance company and is protected (as alleged by Toth) by The Fair Claims Practices Act. Minn. Stat. 72B.091, Subd. 2.

Insurance company involvement between the insured customer and the repair shop is the apparent reason why the legislature enacted the exemptions at Minn. Stat. 325F.64. An insured customer retains a remedy

for breach of contract and substandard repairs but is excluded from other remedies allowed by Minn. Stat. 325F.63.

The legislative intent in balancing remedies is clear. Extended remedies including reimbursement for investigation expense and attorneys' fees are available to consumers dealing directly with repair shops. However, when an insurance company is involved the bargaining positions change. A consumer then has the expertise and assistance of his insurer and is therefore not entitled to attorneys' fees and other remedies provided by Minn. Stat. 325F.63 and the Minnesota Private Attorney General Statute at Minn. Stat. 8.31, Subd. 3a.

**C. The Exemption Statute Minnesota Statute 325F.64 disqualifies Toth from claiming additional damages.**

Statutory construction does not allow the Appellant Toth to disregard the clear meaning of Minnesota Statute 325F.64 which exempts insurance paid repairs from extended damages.

The Court of Appeals carefully considered the relationship between the five statutes relied upon by the Appellant to reach the remedies provided by Minn. Stat. 8.31, Subd 3a. In a well researched and well reasoned decision<sup>11</sup> they concluded:

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<sup>11</sup> Toth v Arason 2005 WL 1216301 Minn. App. @ page 4-5.

**Therefore, under the exemption in Section 325F.64, Subd. 1, Section 325F.63 does not apply to Arason's violation of 325F.60, Subd. 1, and, as a result, the violation is not deemed to be a violation of Minn. Stat. 325F.69, Subd. 1 and the remedies available under Section 8.31, Subd. 3a do not apply to Arason's violation.**

The starting point in interpreting a statute is always the language of the statute itself. *Northwest Bank of North Dakota, N.A. v Doth* 159 F.3d 328, 8<sup>th</sup> Cir. (Minn. 1998); *Group Health Plan Inc. v Phillip Morris, Inc.* 621 NW2d2 (Minn. 2001) When the language of a statute is plain and unambiguous it manifests the legislative intent and the Court must give the statute its plain meaning. *Kersten v Minnesota Mut. Life Ins. Co.* 608 NW2d 869 (Minn. 2000)

Consumer protection regulations for *repairs and services* encompassed in Sections 325F.56 through 325F.66 were enacted in 1978. Subsequently, the legislature has revisited these provisions on four separate occasions to amend certain sections, but leave others unchanged. Amendments are summarized as:

1981- Sections 325F.60 and 325F.64 were amended to broaden the scope of repairs for which invoices were required.

1987- Sections 325F.56, .60 were amended to add Subd. 8:  
Definition of written estimate.

1988- Sections 325F.58, .60 and .62 were amended to include  
references to repair estimates.

1996- Section 325F.56, Subd. 2 and 325F.62 were amended to  
broaden requirements of signage at repair shops.

The legislature must be presumed to have used words in a statute thoughtfully and meaningfully and not by mere chance. American Tower L.P. v City of Grant 621 NW2d 37 (Minn. App. 2000)

Portions of an amended statute should be read together with the provisions of the original sections that were re-enacted without change by the amendment as if they had all been enacted as one. In Re: Phillips Trust 252 Minn. 301, 90 NW2d 522 (1958) A statute should not be construed so as to extend its provisions to cover that which is specifically excluded by the legislature. Mpls. Federation of Teachers Local 59 AFL-CIO v Obermeyer 275 Minn. 347 147 NW2d 358 (1966) Gullings v St. Bd. of Dental Examiners 200 Minn. 115 273 NW 703 (1937) Although remedial statutes are generally to be liberally construed, the Courts are not justified in giving a statute meaning and application not intended by the legislature. Pella Products v Arvig Telephone 488 NW2d 316 (Minn. App. 1992)

**D. Appellant Toth does not have a remedy provided by Minnesota Statute 325F.69, Subd. 1 and by reference Minnesota Statute 8.31, Subd. 3a.**

Appellant argues he has remedies pursuant to Minn. Stat. 325F.69 and Minn. Stat. 8.31, Subd. 3a.

**Toth first raised the claim at the Appellate level.** The Court of Appeals acknowledged that Appellant Toth raised this argument for the first time on appeal and declined to address the issue citing *Thiell v Stitch* 425 NW2d 580, 582 (Minn. 1988)

**Toth did not allege and is unable to prove a benefit to the General Public.** The duty of the Attorney General's office and thus the purpose of any statute granting private citizens the authority to bring a law suit in lieu of the Attorney General is the protection of public rights and the preservation of the interests of the State. In *Ly v Nystrom* 615 NW2d 302 (Minn. 2000) the Supreme Court, in a thorough and well reasoned decision, reasoned that the Consumer Fraud Act Minn. Stat. 325F.69, Subd. 1 and the Private Attorney General Statute, Minn. Stat. 8.31, Subd. 3a are legislative enactments generally discussed and applied in concert, but they are separate and distinct in their structure and purpose. The Consumer Fraud Act encourages aggressive prosecution of statutory violations and therefore

should be very broadly construed to enhance consumer protection. *Phillip Morris*, supra at 495. On the other hand, the Minnesota Attorney General Statute provides broad authority under Minn. Stat. 8.31 to investigate violations of law regarding unlawful business practices and a variety of other statutory prohibitions. The Private Attorney General Statute thus enhances the legislature's intent to prevent fraudulent representations and deceptive practices with regard to consumer products by offering an incentive for defrauded consumers to bring claims in lieu of the Attorney General. The duty of the Attorney General's office, and thus the purpose of any statute granting private citizens authority to bring a law suit in lieu of the Attorney General is **the protection of public rights and the preservation of the interests of the State.**

This Court in Nystrom held that the Private Attorney General Statute applies only to those claimants who demonstrate that their cause of action benefits the public. This conclusion is consistent with the history and purpose of the Office of the Attorney General to prosecute misrepresentations involving only matters of public interest. The Plaintiff Ly was defrauded in a single one on one transaction in which the fraudulent misrepresentation was made only to the complainant. A successful prosecution of this fraud claim does not advance state interests and

enforcement has no public benefit, and is not a claim that could be considered to be within the duties and responsibilities of the Attorney General to investigate and enjoin. Nystrom at 314.

In subsequent cases, private actions under the Attorney General's statute have been approved where Plaintiff's damages were caused by a lengthy course of prohibited conduct that effected a large number of consumers, Group Health Plan, Inc. v Phillip Morris, Inc. 621 NW2d 2 (Minn. 2001) and in a class action effecting more than one hundred consumers Wiegand v Walser Automotive Groups, Inc. 683 NW2d 807 (Minn. 2004)

The Court of Appeals has concluded that a claimant was not able to bring his action against a nonprofit corporation under the private Attorney General's statute where the claimant's cause of action was based on a single one on one incident that affected only him, and the prosecution of the claimant's suit would not benefit the public. Jensen v Duluth Area YMCA 688 NW2d 574 (Minn. App. 2004)

This Court in Collins v Minnesota School of Business 655 NW2d 320 (Minn. 2003) cited Nystrom supra with approval and went on to consider how to clarify the "public benefit standard" articulated in Nystrom. The facts in Collins demonstrated that the Minnesota School of Business

misrepresented its education program to the public at large. The program was offered to the general public and more than one thousand two hundred students had enrolled. When the education program was launched misrepresentations were made to the public at large by airing television advertisement. The school also made sales and information presentations and provided students with "Career Opportunity" sheets which the students interpreted as a list of jobs which they might qualify for after completing the program. These factors indicated that the Minnesota School of Business presented its program to the public at large and therefore claimants were entitled to attorney fees.

As applied to the present case, Toth's present argument that Arason had made false or misleading statements, even if taken in the light most favorable to the Appellant, disregarding of findings of the Trial Court are unsupported by any evidence. First, Arason made no statements to Toth at the time of the repairs and second, Toth had advised Arason to deal with his insurance company. The Trial Court found the testimony of Arason to be credible and further found there was no defect identified in the radiator sold by Arason to Toth.

### **CONCLUSION OF LAW**

This appeal is about attorneys' fees and who is going to pay them. The Appellant has claimed that a violation of Minnesota Statute Section 325F.60 entitles him to reach the Minnesota Private Attorney General's Statute at Minn. Stat. 8.31, Subd. 3a in order to claim attorneys' fees to regress a private claim. There was no showing, and for that matter no claim, that Toth's law suit against Arason conferred any benefit to the general public. Further he failed to show a causal connection between claimed representations made by Arason concerning a warranty and the failure of the radiator.

The transaction between Toth and Arason involved an insurance company that paid more than 90% of the total damages. This necessarily involved a third party insurer who under took the responsibility to represent Toth as an insured and negotiate with Arason as a repair shop. Toth and Arason had minimal contact between one another, and most of the negotiations were with the insurance company. Arason had initially prepared a visual damage estimate which Toth declined to accept advising Arason to forward it to the insurance company. The actual repair estimate prepared by the insurance company was not completed until after the vehicle had been completely repaired and was waiting for Toth to pick up. Involvement of the insurance company materially changed the relationship

between the parties from what it would have been in a normal customer-repair shop transaction. Recognizing this, the legislature appropriately exempted transactions involving insurers from all of the requirements contained in the Truth and Repairs Act except the requirement that an invoice or repair estimate be reduced to writing and given to the customer.

The well reasoned opinion of the Court of Appeals should be affirmed. The case should be remanded to the Trial Court for reasons stated in the Court of Appeals decision.

Respectfully submitted.

Dated: September 23, 2005



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).