LETTER OPINION
2002-L-23

April 24, 2002

The Honorable Francis J. Wald
House of Representatives
433 7th St E
Dickinson, ND 58601-4525

Dear Representative Wald:

Thank you for your letter regarding comparative fault in motor vehicle accidents. The general comparative fault rule in N.D.C.C. § 32-03.2-02 does not apply to a "two-party motor vehicle accident" when one person is more than fifty percent at fault and the total property damages sought by an injured party exceeds a specific threshold. N.D.C.C. § 32-03.2-02.1. Apparently, there is some confusion within the insurance industry on whether the exception applies if, as a result of a two vehicle accident, one of the vehicles causes damage to property owned by a third person who has not contributed to the accident.

Your letter indicates that some insurance companies argue that the exception does not apply because the accident involves three parties, namely the two drivers and the innocent third-party owner of the property damaged by one of the vehicles. For reasons discussed in this letter, I conclude the position of those insurance companies is erroneous because it confuses a "party" to a lawsuit for damages with a "party" to a motor vehicle accident. The exception applies to motor vehicle accidents where two parties are at fault for the accident, even if the accident results in damage to an innocent third person.

The North Dakota Legislature enacted the present comparative negligence law, North Dakota Century Code Chapter 32-03.2, in 1987. It reads:

> Contributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property unless the fault was as great as the combined fault of all other persons who contribute to the injury, but any damages allowed must be diminished in proportion to the amount of contributing fault attributable to the person recovering. The court may, and when requested by any party, shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of

> fault attributable to each person, whether or not a party, who contributed to the injury. The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. Under this section, fault includes negligence, malpractice, absolute liability, dram shop liability, failure to warn, reckless or willful conduct, assumption of risk, misuse of product, failure to avoid injury, and product liability, including product liability involving negligence or strict liability or breach of warranty for product defect.

N.D.C.C. § 32-03.2-02 (emphasis added). The "two-party motor vehicle accident" exception to the above general rule was enacted in 1993 and amended in 1995:

> Notwithstanding section 32-03.2-02, in an action by any person to recover direct and indirect damages for injury to property, the damages may not be diminished in proportion to the amount of contributing fault attributable to the person recovering, or otherwise, if:
>
> 1. The party seeking damages is seeking property damages resulting from a two-party motor vehicle accident;
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> 2. The party seeking damages is seeking to recover direct physical property damages of not more than five thousand dollars and indirect damages not to exceed one thousand dollars; and
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> 3. The percentage of fault of the person against whom recovery is sought is over fifty percent.

N.D.C.C. § 32-03.2-02.1 (emphasis added).

The term "party" under the general comparative fault law, N.D.C.C. § 32-03.2-02, thus carries two meanings. The statute provides that "a party" may request the court apportion fault among "each person, whether or not a party." In this context, "party" refers to a litigant. The statute later provides, "When two or more parties are found to have contributed . . . ." In this instance, "parties" refers to those persons who are in part responsible for the cause of the accident.

Parallel to N.D.C.C. § 32-03.2-02, the term "party" likewise carries two meanings within the exception to the comparative fault law contained in N.D.C.C. § 32-03.2-02.1. In reference to "the party seeking damages," as in N.D.C.C. § 32-03.2-02, the term "party" refers to a litigant. In reference to a "two-party motor vehicle accident," however, I believe "two-party" refers to those persons who are in part responsible for the cause of the accident. It is reasonable to conclude that the term "party" in the exception was intended by the Legislature to have the same meaning as the term as used in N.D.C.C. § 32-03.2-02.[1]

Section 32-03.2-02.1, N.D.C.C., was passed to eliminate disputes over apportioning fault in smaller motor vehicle accidents. See Hearing on H.B. 1217 Before the Senate Transportation Comm. 1993 N.D. Leg. (Feb. 25) (committee minutes of comments by Representative Frank Wald). As an example, if one motor vehicle causes an accident by failing to observe a yield sign, striking a second vehicle and then striking a nearby pole or a home or a parked car, the accident is a two-party motor vehicle accident. The exception to the comparative fault law applies, assuming that the damages do not exceed the threshold and one party is over fifty percent at fault. The negligence of two parties has contributed to the cause of the accident so the accident is a two-party motor vehicle accident. While the innocent owner of the property may be a party in a lawsuit for damages resulting from the accident, if the owner did not contribute to the cause of the accident, the owner is not a party at fault for the accident.

I am aware that the 1995 bill amending N.D.C.C. § 32-03.2-02.1, as originally introduced, would have replaced "two-party automobile accident" with "motor vehicle accident." 1995 H.B. 1397 (as introduced). If the replacement language had remained in the final bill enacted by the Legislature, then the situation described in your letter probably would not have occurred. Nevertheless, the fact the Legislature preserved the limitation in N.D.C.C. § 32-03.2-02.1 to "two-party" accidents does not change the fact that the law, both before and after the 1995 amendments, applies when there are two contributing parties to the accident and does not include as a "party" to the accident (as opposed to the litigation) any innocent bystanders whose property is damaged in the course of an accident.

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[1] N.D.C.C. 32-03.2-01 defines fault:

> As used in this chapter, "fault" includes acts or omissions that are in any measure negligent or reckless towards the person or property of the actor or others, or that subject a person to tort liability or dram shop liability. The term also includes strict liability for product defect, breach of warranty, negligence or assumption of risk, misuse of a product for which the defendant otherwise would be liable, and failure to exercise reasonable care to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

Responsibility for property damages resulting from a motor vehicle accident under the comparative fault law is straightforward and uncomplicated. If one party is at fault, that party is responsible for all property damage caused by the accident. If two parties are at fault, the party who is more than fifty percent at fault is responsible for all property damages caused by the accident if the recovery sought does not exceed the threshold amount. N.D.C.C. § 32-03.2-02.1. If three or more parties are at fault, each party is responsible "for the amount of damages attributable to the percentage of fault of that party . . . ." N.D.C.C. § 32-03.2-02.

It is my opinion that the term "party" as used in the phrase "two-party motor vehicle accident" in N.D.C.C. § 32-03.2-02.1 refers to a person whose negligence contributes to the cause of an accident. It does not refer to an innocent bystander who has not contributed to the cause of an accident, even though the person suffers property damage as a result of the accident. If, in a two vehicle accident, one of the vehicles strikes a property owner's house, fence, tree, or other object, both the property owner and the less-at-fault driver would be a "party" entitled to recovery for minor direct property damage under N.D.C.C. § 32-03.2-02.1 unless some degree of fault for the accident were attributed to the property owner.

Sincerely,

Wayne Stenehjem
Attorney General

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