

In the Supreme Court

Appeal from the Court of Appeals
Sawyer, J., presiding

RAQUEL RODRIGUEZ
Plaintiff-Appellee,

and

PACIFIC EMPLOYERS INSURANCE
Intervening Plaintiff-Appellee,

v

A.S.E. INDUSTRIES, INC
Defendant, Cross-Plaintiff-Appellant,

Docket no. 133686

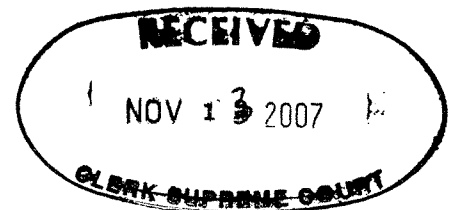
and

AMERICAN AXLE & MANUFACTURING HOLDINGS, INC
AMERICAN AXLE & MANUFACTURING, INC
Defendants, Cross-Defendants,

and

DESIGN SYSTEMS, INC
INNOVATIVE ENGINEERING, INC
PMI MANAGEMENT GROUP, INC
Defendants.

BRIEF ON APPEAL – APPELLEE PACIFIC EMPLOYERS



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TABLE OF CONTENTS

INDEX OF AUTHORITIES ii

STATEMENT OF THE BASIS FOR THE JURISDICTION OF THE COURT iv

STATEMENT OF QUESTIONS PRESENTED v

STATEMENT OF FACTS 1

ARGUMENT

I THE TRIAL COURT PROPERLY MADE INDEPENDENT FINDINGS THAT AVOIDED THE CAP ON THE AMOUNT OF THE NON-ECONOMIC DAMAGES DESCRIBED BY MCL 600.2946a(1) AFTER THE JURY MADE CONTRARY FINDINGS 1

II THE APPORTIONMENT OF THE FAULT BETWEEN A.S.E. AND AMERICAN AXLE MUST OCCUR BEFORE APPLYING ANY CAP ON THE AMOUNT OF THE NON-ECONOMIC DAMAGES THAT MIGHT APPLY 8

RELIEF 17

INDEX OF AUTHORITIES

STATUTES

1986 PA 178	13
1995 PA 249	13
MCL 8.3a	4
MCL 600.2946a(1)	10, 11, 12, 13, 14, 15, 16
MCL 600.2946a(3)	2, 3, 4, 5, 6, 7, 11
MCL 600.2949a	3, 8, 9, 11
MCL 600.6304(4)	8, 9, 11, 13, 14, 15, 16
MCL 600.6312	9

CASES

<i>Crane v Reeder</i> , 22 Mich 322 (1871)	12, 15
<i>Dewey v Cent Car & Mfg Co</i> , 42 Mich 399; 4 NW 179 (1880)	13
<i>Imlay Twp Primary Sch Dist No. 5 v State Bd of Ed</i> , 359 Mich 478; 102 NW2d 720 (1960)	13
<i>Karaczewski v Farbman Stein & Co</i> , 478 Mich 28; 732 NW2d 56 (2007)	5
<i>Lincoln v Gen Motors Corp</i> , 461 Mich 483; 607 NW2d 73 (2000)	12
<i>Mayor of Lansing v Pub Service Comm</i> , 470 Mich 154; 680 NW2d 840 (2004)	7
<i>Mayor of Port Huron v City Treasurer of Port Huron</i> , 328 Mich 99; 43 NW2d 77 (1950)	13
<i>People v Buehler</i> , 477 Mich 18; 727 NW2d 127 (2007)	13, 14, 15
<i>People v Harrison</i> , 154 Mich 363; 160 NW 623 (1916)	5

People v McIntyre,
461 Mich 147; 599 NW2d 102 (1999). 7

People v Monaco,
474 Mich 48; 710 NW2d 46 (2006) 5

Rakestraw v Gen Dynamics Land Sys, Inc,
469 Mich 220; 666 NW2d 199 (2003). 4

MISCELLANEOUS

Black's Law Dictionary (8th ed) 2

Strunk & White, *The Elements of Style* (New York: Longman 4th ed 2000) 2

The Oxford American College Dictionary 2

Webster's Dictionary of the English Language: Unabridged Edition 2

**STATEMENT OF THE BASIS FOR THE
JURISDICTION OF THE COURT**

MCR 7.301(A)(2) gives the Court authority to review *Rodriguez v ASE Ind, Inc*,
275 Mich App 8; - NW2d – (2007).

The application for leave to appeal and filing fee were filed with the Court on
May 15, 2007.

STATEMENT OF QUESTIONS PRESENTED

I

WHETHER THE TRIAL COURT PROPERLY MADE INDEPENDENT FINDINGS IN AVOIDANCE OF THE CAP ON NON-ECONOMIC DAMAGES PROVIDED FOR IN MCL 600.2946a(1) AFTER THE JURY HAD MADE CONTRARY FINDINGS.

Plaintiff-appellee
Raquel Rodriguez answers "Yes."

Intervening plaintiff-appellee
Pacific Employers Ins Co answers "Yes."

Defendant, cross-plaintiff-appellant
A.S.E. Industries, Inc answers "No."

Defendants, cross-defendants
American Axle & Mfg Holdings
American Axle & Mfg, Inc, do not answer.

Defendants
Design Sys, Inc,
Innovative Eng, Inc,
PMI Mgt Group, Inc, do not answer.

Court of Appeals answered "Yes."

Trial Court answered "Yes."

II

IF THE DAMAGES CAP APPLIES, WHETHER THE TRIAL COURT PROPERLY APPLIED THE APPORTIONMENT OF FAULT BETWEEN A.S.E. AND AMERICAN AXLE BEFORE APPLYING THE DAMAGES CAP.

Plaintiff-appellee
Raquel Rodriguez answers "Yes."

Intervening plaintiff-appellee
Pacific Employers Ins Co answers "Yes."

Defendant, cross-plaintiff-appellant
A.S.E. Industries, Inc answers "No."

Defendants, cross-defendants
American Axle & Mfg Holdings
American Axle & Mfg, Inc, do not answer.

Defendants
Design Sys, Inc,
Innovative Eng, Inc,
PMI Mgt Group, Inc, do not answer.

Court of Appeals did not answer.

Trial Court did not answer.

STATEMENT OF FACTS

Raquel Rodriguez was injured at work for American Axle & Manufacturing by a conveyor that was designed and installed by A.S.E. Industries. (2b) Rodriguez was paid workers' compensation by Pacific Employers Insurance and then sued A.S.E. (5b)

A jury decided that A.S.E. had not been grossly negligent but had been thirty percent negligent in causing the injury and that American Axle had been seventy percent negligent. (2b) The trial court recognized this but added that A.S.E. had willfully disregarded its own knowledge that the design of the conveyor was defective and that there was a substantial likelihood of an injury happening (2b) so that a cap on the amount of the non-economic losses supplied by a statute — MCL 600.2946a(1) — did not apply and ordered A.S.E. to pay thirty percent of all of the losses that Rodriguez experienced. (2b)

The Court of Appeals affirmed. (2b)

The Court granted A.S.E. leave to appeal the questions of "whether the trial court properly made independent findings in avoidance of the cap on non-economic damages provided for in MCL 600.2946a(1) after the jury had made contrary findings" and "if the damages cap applies, whether the trial court properly applied the apportionment of fault between defendant and American Axle before applying the damages cap." (9b)

ARGUMENT

I

THE TRIAL COURT PROPERLY MADE INDEPENDENT FINDINGS THAT AVOIDED THE CAP ON THE AMOUNT OF THE NON-ECONOMIC DAMAGES DESCRIBED BY MCL 600.2946a(1) AFTER THE JURY MADE CONTRARY FINDINGS.

Or can be used as a coordinating conjunction to introduce an alternate word or clause as in the sentence **I will offer him beer or wine.** A comma must always precede **or** when the alternate word or clause is an independent clause as in the sentence **We can meet this afternoon, or we can discuss the case during dinner tonight.**

Or can be used as a coordinating conjunction to introduce an alternate meaning of a word or clause as in the sentence **I am a student of botany, or the science of plants**. A comma must precede **or** when an alternate meaning of a word or clause is introduced.

Or can be used as a coordinating conjunction to introduce the consequence of some action as in the sentence **Hurry up, or we will be late to the movie**. In this context, **or** is a synonym for **otherwise**.

Or can be used to introduce an afterthought as in the sentence **John's indifference — or was it? — left Jane quite unsettled**. *Webster's Dictionary of the English Language: Unabridged Edition. The Oxford American College Dictionary*. Strunk & White, *The Elements of Style* (New York: Longman 4th ed 2000), p 5.

And **or** can be used instead of the coordinating conjunction **either**. However, this is not a common use. This is a literary or poetic use as in the sentence **Or in the heart or in the head**. *Webster's Dictionary of the English Language: Unabridged Edition*.

Or is no technical word that has a special meaning in law. **Or** is not like **fee** which has a common meaning — the amount that is due for some professional advice or service — and another, special meaning in law — an interest in real estate such as fee simple. There is no entry in Black's Law Dictionary (8th ed) for **or**.

Or is used only as a coordinating conjunction to introduce an alternate clause in MCL 600.2946a(3), which says that,

"The limitation on damages under subsection (1) for death or permanent loss of a vital bodily function does not apply to a defendant if the trier of fact determines by a preponderance of the evidence that the death or loss was the result of the defendant's gross negligence, or if the court finds that the matters stated in section 2949a are true."

Or is first used to introduce an alternate clause to the direct object **death**. That alternate clause is **permanent loss of a vital bodily function** in "The limitation on damages under subsection (1) for death or permanent loss of a vital bodily function does not apply

if . . ." **Permanent loss of a vital bodily function** cannot be understood as another meaning of **death** or as an explanation of **death** because a person must be alive — not dead — to have any **loss of a vital bodily function**. **Or** does not indicate a consequence of the action of **death**. **Or** does not introduce an afterthought.

Or is used again in subsection (3) to introduce an alternate clause. This alternate clause is the independent clause **if the court finds that the matters stated in section 2949a are true**. This usage is manifest for several reasons. First, the comma preceding **or** signals an independent clause — one providing additional information — not a dependent clause.

Second, **or** is a coordinating conjunction introducing an alternate clause because the clause introduced — . . . **if the court finds . . .** — is the second of two grammatically identical clauses. Grammatically, the clause beginning **if the court finds** is a conditional clause because of the conditional **if**. And grammatically, the clause beginning **if the trier of fact determines** is also a conditional clause because of the same conditional **if**. Plainly, these two clauses are parallel conditionals and can be sensibly understood only as alternatives because of **or**.

Third, **or** cannot sensibly introduce an alternate meaning to the first clause **if the trier of fact determines by a preponderance of the evidence that the death or loss was the result of the defendant's gross negligence**. **The trier of fact** and **the court** are not the same noun. **The trier of fact** is the jury or the judge when the right to a jury is waived. **The court** is always the judge. Also, **gross negligence** is not mentioned at all in MCL 600.2949a. Section 2949a(1) mentions **willful disregard** of knowledge, which is quite different from **gross negligence**,

"In a product liability action, if the court determines that at the time of manufacture or distribution the defendant had actual knowledge that the product was defective and that there was a substantial likelihood that the defect would cause the injury that is the basis of the action, and the defendant **willfully disregarded that knowledge** in the manufacture or distribution

of the product, then sections 2946(4), 2946a, 2947(1) to (4), and 2948(2) do not apply." (emphasis added)

Or cannot be understood as introducing another meaning or description to a single subject — a synonym — when there are two different people — **the trier of fact** and **the court** — making two different decisions — **gross negligence** and **willful disregard** — in subsection (3).

Or does not introduce a consequence. The second conditional is not the consequence of the first as **We will be late for the movie** is the consequence introduced by **or** in the sentence **Hurry up, or we will be late for the movie**. **Or** is not introducing an afterthought in 2946a(3). It would be most problematic for any statute or court rule to ever have an afterthought because all laws are commands, which ought not have an afterthought.

The confirmation that **or** is used to introduce an alternate clause is seen with the use of the correlative **either**. Subsection (3) has the very same meaning when the correlative of **or** — **either** — is added as in **if EITHER the trier of fact determines by a preponderance of the evidence that the death or loss was the result of the defendant's gross negligence, or if the court finds that the matters stated in section 2949a are true**.

The Court can appreciate this for itself as the meaning of a word in a statute can be considered independently or de novo. *Rakestraw v Gen Dynamics Land Sys, Inc.*¹

The Court must give **or** this common meaning as a coordinating conjunction to introduce an alternate clause because of MCL 8.3a, which says,

"All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning."

¹ 469 Mich 220, 224; 666 NW2d 199 (2003).

This statute which directs the understanding of all statutes must be applied as the Court observed when deciding *People v Harrison*² that,

"The general rule is thus concisely stated in 36 Cyc. p. 1105:

'It is competent for the legislature to enact rules for the construction of statutes, present or future, and, when it has done so, each succeeding legislature, unless a contrary intention is plainly manifested, is supposed to employ words and frame enactments with reference to such rules. * * * Such acts of legislative construction are not binding upon the courts as to transactions occurring before their passage, but as to matters occurring thereafter such legislation guides all departments of government, even though plainly contradictory to the act construed.'"

There is no occasion for any interpretation because **or** is in no way ambiguous. **Or** cannot mean **and** as Justice KELLY observed in the case of *People v Monaco*³ that "'And' is conjunctive. 'Or' is disjunctive. They do not mean the same thing." Certainly, **and** is a coordinating conjunction used to introduce an associative word, clause, or sentence to be understood together with a preceding word, clause or sentence — not an alternate — as the Court ruled in the case of *Karaczewski v Farbman Stein & Co*⁴ that "use of the word 'and' makes it perfectly clear to any reader that both requirements must be met."

Serious problems occur by saying that **if the court finds that the matters stated in section 2949a are true** is not an independent alternate to **if the trier of fact determines by a preponderance of the evidence that the death or loss was the result of the defendant's gross negligence**. One problem would be that one word — **or** — would acquire two different meanings in the same sentence. The first use of **or** in subsection (3) is unquestionably as a coordinating conjunction to introduce an alternate clause — **death or permanent loss of a vital bodily function** — which would remain but then be different were

² 154 Mich 363, 367-368; 160 NW 623 (1916).

³ 474 Mich 48, 62; 710 NW2d 46 (2006) (KELLY, J., dissenting).

⁴ 478 Mich 28, 43; 732 NW2d 56 (2007).

or to mean something other than a coordinating conjunction that introduces **if the court finds . . .** as an independent, alternate clause to **if the trier of fact determines . . .**

The other problem is with the effective expungement of **if the court finds . . .** The clause **if the court finds** would be effectively expunged from subsection (3) by understanding **or** as anything other than introducing an alternate to **if the trier of fact determines**. There is no occasion for the court to decide that a manufacturer willfully disregarded knowledge that the product was defective once the trier of fact accepts that the manufacturer was grossly negligent just as there is no occasion to say anything after accepting **coffee** when asked **Will you have coffee or some tea?** Accepting the first obviates any consideration of the second. Once the trier of fact accepts that the manufacturer was grossly negligent, the limit or "cap" on the amount of the losses is removed and it becomes quite superfluous for the court to consider the willful disregard of the defect. The cap cannot be removed a second time. And the cap cannot be reinstated by the court once removed by the jury.

And there is no occasion for the court to decide that a manufacturer willfully disregarded the knowledge that the product was defective once the trier of fact denies that the manufacturer was grossly negligent **if or** is not a coordinating conjunction that introduces an alternate, which effectively expunges **if the court finds that the matters stated in section 2949a are true** from subsection (3). The trial court would be precluded from deciding that the manufacturer willfully disregarded the knowledge of a defect whether the trier of fact accepted or denied that the manufacturer was grossly negligent.

These problem are avoided when recognizing that **or** introduces an alternate clause. There is an occasion for the court to consider if a manufacturer willfully disregarded the knowledge of some defect in a product. That occasion is after the trier of fact first has denied that the manufacturer was grossly negligent just as when a guest has first denied **coffee** when asked **Will you have coffee or some tea?** may say **tea**.

Expunging the alternate clause cannot be warranted because of some apparent incongruity with the first clause. Any incongruity between the absence of gross negligence and the presence of willful disregard for the knowledge of some defect in a product made by a manufacturer is more apparent than it is real. Two different people — **the trier of fact** and **the court** — can hear the same evidence and reach different conclusions — a manufacturer had not been grossly negligent but had willfully disregarded the knowledge of a defect in some product — to assess the amount of the loss experienced by a user. Certainly, two juries can be seated to hear charges leveled against two people involved in a robbery in which someone was killed and one jury convict the first accused of manslaughter and the other jury convict the second accused of murder.

And the text may not be expunged from subsection (3) even were it incongruous or absurd that a manufacturer may have been entirely free of gross negligence but had willfully disregarded knowledge of a defect as the Court observed in the cases of *Mayor of Lansing v Pub Service Comm*⁵ that,

"Our task, under the Constitution, is the important, but yet limited, duty to read and interpret what the Legislature has actually made the law. We have observed many times in the past that our Legislature is free to make policy choices that, especially in controversial matters, some observers will inevitably think unwise. This dispute over the wisdom of a law, however, cannot give warrant to a court to overrule the people's Legislature."

and *People v McIntyre*⁶ that,

* * *

"In Michigan, this same so-called rule of statutory construction has been stated as follows '[D]eparture from the literal construction of a statute is justified when such construction would produce an *absurd and unjust result* and would be

⁵ 470 Mich 154, 161; 680 NW2d 840 (2004).

⁶ 461 Mich 147, 156, n 2; 599 NW2d 102 (1999).

clearly inconsistent with the purposes and policies of the act in question.' *Salas*, n 2, *supra* at 109 (emphasis added).

[We] agree with Justice Scalia's description of such attempts to divine unexpressed and nontextual legislative intent as 'nothing but an invitation to judicial lawmaking.' Scalia, *A Matter of Interpretation: Federal Courts and the Law* (New Jersey: Princeton University Press, 1997), p 21. This nontextual approach to statutory construction has unfortunately led [the Court of Appeals majority] away from the task of determining the *Legislature's* expressed intent."

(emphasis by the Court)

The decision by the jury that A.S.E. had not been grossly negligent actually required that the trial court decide if A.S.E. had willfully disregarded knowing of a defect in the conveyor because of the coordinating conjunction **or** that has been used to introduce the independent, alternate clause **if the court determines . . .** The decision by the jury cannot bar the trial court from deciding if A.S.E. had willfully disregarded the knowing of the defect.

II

THE APPORTIONMENT OF THE FAULT BETWEEN A.S.E. AND AMERICAN AXLE MUST OCCUR BEFORE APPLYING ANY CAP ON THE AMOUNT OF THE NON-ECONOMIC DAMAGES THAT MIGHT APPLY.

MCL 600.6304(4) describes a cap on the amount that a person can pay when sued for causing any injury to another. The cap is a ratable amount or percentage of all of the losses. The rate is the extent of the fault of the individual sued when compared to the fault of all of the people at fault as the second sentence of subsection (4) says that "Except as otherwise provided in subsection (6), a person shall not be required to pay damages in an amount greater than his or her percentage of fault as found under subsection (1)" and subsection (1) says that,

"In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death involving fault of more than 1 person, including third-party defendants and nonparties, the court, unless otherwise agreed by all parties to the action, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating both of the following:

(a) The total amount of each plaintiff's damages.

(b) The percentage of the total fault of all persons that contributed to the death or injury, including each plaintiff and each person released from liability under section 2925d, regardless of whether the person was or could have been named as a party to the action."

This cap applies to all kinds of cases save three. This cap does not apply to a medical malpractice case as the second sentence of subsection (4) says "Except as otherwise provided in subsection (6) . . ." and subsection (6) says that,

"If an action includes a medical malpractice claim against a person or entity described in section 5838a(1), 1 of the following applies:

(a) If the plaintiff is determined to be without fault under subsections (1) and (2), the liability of each defendant is joint and several, whether or not the defendant is a person or entity described in section 5838a(1).

(b) If the plaintiff is determined to have fault under subsections (1) and (2), upon motion made not later than 6 months after a final judgment is entered, the court shall determine whether all or part of a party's share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties, whether or not another party is a person or entity described in section 5838a(1), according to their respective percentages of fault as determined under subsection (1). A party is not required to pay a percentage of any uncollectible amount that exceeds that party's percentage of fault as determined under subsection (1). The party whose liability is reallocated continues to be subject to contribution and to any continuing liability to the plaintiff on the judgment."

The other two exceptions from the cap are for crime involving gross negligence and crime involving alcohol or drugs as the third sentence of subsection (4) says that "This subsection and section 2956 do not apply to a defendant that is jointly and severally liable under section 6312" and MCL 600.6312 says that,

"A defendant that is found liable for an act or omission that causes personal injury, property damage, or wrongful death is jointly and severally liable if the defendant's act or omission is any of the following:

(a) A crime, an element of which is gross negligence, for which the defendant is convicted.

(b) A crime involving the use of alcohol or a controlled substance for which the defendant is convicted and that is a violation of 1 or more of the following:

(i) Section 14 of the explosives act of 1970, Act. No. 202 of the Public Acts of 1970, being section 29.54 of the Michigan Compiled Laws.

(ii) Section 111 of the Michigan code of military justice of 1980, Act No. 523 of the Public Acts of 1980, being section 32.1111 of the Michigan Compiled laws.

(iii) Section 625 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.625 of the Michigan Compiled Laws.

(iv) Section 185 of the Aeronautics code of the state of Michigan, Act. No. 327 of the Public Acts of 1945, being section 259.185 of the Michigan Compiled Laws.

(v) Section 80176 of part 801 (marine safety), 81134 of part 811 (off-road recreation vehicles), or 82127 of part 821 (snowmobiles) of the natural resources and environmental protection act, Act. No. 451 of the Public Acts of 1994, being sections 324.80176, 324.81134, and 324.82127 of the Michigan Compiled Laws.

(vi) Section 353 of the railroad code of 1993, Act No. 354 of the Public Acts of 1993, being section 462.353 of the Michigan Compiled Laws.

(vii) Section 237 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.237 of the Michigan Compiled Laws."

MCL 600.2946a(1) also describes a cap on the amount that a person can pay when sued for causing an injury to another. This cap is a specific amount of money for a particular kind of loss — non-economic damages — suffered after the injury as the first sentence of section 2946a(1) says that,

"In an action for product liability, the total amount of damages for noneconomic loss shall not exceed \$280,000.00, unless the defect in the product caused either the person's death or permanent loss of a vital bodily function, in which case the total amount of damages for noneconomic loss shall not exceed \$500,000.00."

The specific amount of this cap is changed each year by the treasurer as the second and third sentences of section 2646a(1) say that,

"On the effective date of the amendatory act that added this section, the state treasurer shall adjust the limitations set forth in this subsection so that the limitations are equal to the limitations provided in section 1483. After that date, the state treasurer shall adjust the limitations set forth in this subsection at the end of each calendar year so that they continue to be equal to the limitations provided in section 1483."

This cap applies to just one kind of case. This cap applies to only a product liability case because the conditional clause of the first sentence of subsection (1) says "In an action for product liability . . ."

There are two exceptions to *this* cap. One exception is for the gross negligence of the manufacturer or distributor of the product as subsection (3) says that,

"The limitation on damages under subsection (1) for death or permanent loss of a vital bodily function does not apply to a defendant if the trier of fact determines by a preponderance of the evidence that the death or loss was the result of the defendant's gross negligence . . ."

The other exception is for the willful disregard of the knowledge that the product was indeed defective as subsection (3) says that "The limitation on damages under subsection (1) for death or permanent loss of a vital body function does not apply to a defendant . . . if the court finds that the matters stated in section 2949a are true" and section 2949a says that,

"In a product liability action, if the court determines that at the time of manufacture or distribution the defendant had actual knowledge that the product was defective and that there was a substantial likelihood that the defect would cause the injury that is the basis of the action, and the defendant willfully disregarded that knowledge in the manufacture or distribution of the product, then sections 2946(4), 2946a, 2947(1) to (4), and 2948(2) do not apply."

The problem now is that both statutes appear to apply. Section 6304(4) can apply for this case is not one of the three kinds that are excluded by the second and third sentences of subsection (4). Certainly, this case is not a medical malpractice case, a

crime involving gross negligence, or a crime involving either alcohol or drugs. And yet, section 2646a(1) can also supply its different cap because this case is a product liability case and presumably not excluded by any gross negligence or willful disregard of the knowledge of a defect.⁷

The Court can consider the problem of which of these statutes applies as "Issues concerning the interpretation and application of statutes are questions of law for this Court . . ." *Lincoln v Gen Motors Corp.*⁸

The Court can decide this problem for itself or de novo as "Issues concerning the . . . application of statutes are questions of law for this Court to decide de novo."⁹

The Court has an established rule available to resolve the apparent conflict. When two statutes concerning the same subject appear to apply, the more specific applies as an exception to the more general. This rule for reconciling statutes was considered a familiar rule when Justice CHRISTANCY applied it for the first time in Michigan in the 1871 case of *Crane v Reeder*,¹⁰

" . . . we think this a proper case for the application of the familiar rule for the construction of statutes—that where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the legislature are not to be presumed to have intended a conflict."¹¹

⁷ The Court directed the parties to take it for granted that neither of these exclusions applied when propounding the question.

⁸ 461 Mich 483, 489; 607 NW2d 73 (2000).

⁹ *Lincoln*, p 489-490.

¹⁰ 22 Mich 322 (1871).

¹¹ *Crane*, p 333-334.

The Court has always recognized this principle. And without any debate. *Dewey v Cent Car & Mfg Co.*¹² *Mayor of Port Huron v City Treasurer of Port Huron.*¹³ *Imlay Twp Primary Sch Dist No. 5 v State Bd of Ed.*¹⁴ And in the Term just ended, a unanimous Court said in *People v Buehler*,¹⁵ ". . . When there is a conflict between statutes that are read *in para materia*, the more recent and more specific statute controls over the older and more general statute."¹⁶

Section 2946a(1) must be the exception to section 6304(4), which is the general statute. Section 2946a(1) was enacted by 1995 PA 249 and first effective on March 28, 1996, which was ten years after section 6304(4), which was enacted by 1986 PA 178 and effective from October 1, 1986. Section 2946a(1) is more specific than section 6304(4). Section 2946a(1) applies to just one kind of case — a product liability case — while section 6304(4) applies to all kinds of cases with three narrow exceptions. And section 2946a(1) applies to only one kind of loss experienced by an injured person — non-economic losses — while section 6304(4) applies to all of the losses.

This means that in a products liability case, the non-economic losses are capped by section 2946a(1) as the more recent and more specific statute and so, the exception, while the economic losses remain capped by section 6304(4), the earlier and general statute. This may be seen by Chart (a)

¹² 42 Mich 399, 402; 4 NW 179 (1880).

¹³ 328 Mich 99, 111-112; 43 NW2d 77 (1950).

¹⁴ 359 Mich 478, 485; 102 NW2d 720 (1960).

¹⁵ 477 Mich 18; 727 NW2d 127 (2007).

¹⁶ *Buehler*, p 26.

Products Liability Case

Total Damages	
Economic losses	Non-economic losses
\$314,000.00 (past)	\$1,000,000.00 (past)
+	+
\$1,890,000.00 (future)	\$7,000,000.00 (future)
\$2,204,000.00	\$8,000,000.00

⇒ Excepted and Capped by Section 2946a(1)

⇓

Capped by Section 6304(4) at
30% Fault of Manufacturer

\$661,200.00	\$500,000.00
--------------	--------------

Total Liability

\$1,161,200.00

Crane and Buehler do not allow disregarding section 6304(4) because of the more recent and specific section 2946a(1) as may be seen by Chart (b)

Products Liability Case

Total Damages	
Economic losses	Non-economic losses
\$314,000.00 (past)	\$1,000,000.00 (past)
+	+
\$1,890,000.00 (future)	\$7,000,000.00 (future)
\$2,204,000.00	\$8,000,000.00

⇒ Excepted and Capped by Section 2946a(1)

⇓

~~Capped by Section 6304(4) at
30% Fault of Manufacturer~~

⇓

\$2,204,000.00	\$500,000.00
----------------	--------------

Total Liability
\$2,704,000.00

The reason that Chart (b) is wrong is that section 2946a(1) is an exception from the earlier and still effective general statute — section 6304(4) — and is not an *exclusion* of that general rule. Certainly, there is no text in section 2946a — or any other statute — to suggest that section 2946a(1) superseded section 6304(4).

And *Crane* and *Buehler* do not allow imposing section 2946a(1) *into* section 6304(4) as may be seen by Chart (c)

Products Liability Case

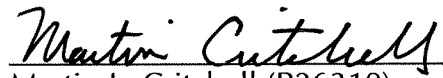
Total Damages	
Economic losses	Non-economic losses
\$314,000.00 (past)	\$1,000,000.00 (past)
+	+
\$1,890,000.00 (future)	\$7,000,000.00 (future)
\$2,204,000.00	\$8,000,000.00 \$500,000.00
⇓	⇓
Capped by Section 6304(4) at 30% Fault of Manufacturer	Capped by Section 6304(4) at 30% Fault of Manufacturer
\$661,200.00	\$150,000.00
Total Liability	
\$811,200.00	

⇐ Include the Cap of Section 2946a(1)

The reason that Chart (c) is wrong is that section 2946a(1) is an exception and apart from the earlier and general statute, section 6304(4). It is not included or a part of that earlier statute. There is no text in section 2946a or in section 6304 to suggest imposing or including the newer and specific statute in the prior, general one.

RELIEF

Intervening plaintiff-appellee Pacific Employers Insurance Company asks the Court to affirm *Rodriguez v ASE Ind, Inc*, 275 Mich App 8; - NW2d – (2007).


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