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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Amy Hiltner,	)	
	)	
Plaintiff/Appellant,	)	
	)	
v.	)	Supreme Court No. 20140308
	)	
Owners Insurance Company,	)	
	)	
Defendant/Appellee.	)	

On a Certified Question from the
United States District Court for the District of North Dakota
Civil No. 3:12-cv-13
Honorable Ralph R. Erickson, Chief Judge

BRIEF OF AMICUS CURIAE NORTH DAKOTA ASSOCIATION FOR JUSTICE IN SUPPORT OF PLAINTIFF/APPELLANT AMY HILTNER

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IDENTITY OF AMICUS CURIAE

The amicus curiae is the North Dakota Association for Justice. The North Dakota Association for Justice is an organization of North Dakota attorneys committed to protecting and advancing the rights of individual North Dakotans, particularly the right to trial by jury and the right to seek redress from those who cause North Dakotans harm. This brief is offered because the North Dakota Association for Justice concluded that the issue before the Court is of both paramount and fundamental importance in its potential to affect those rights.

STATEMENT OF AUTHORSHIP AND FUNDING

No party's counsel authored any part of this brief, and no party, party's counsel, person, or entity other than the amicus curiae, it members, or its counsel contributed moneys toward the authorship or production of this brief.

LAW AND ARGUMENT

[1] Before the Court is a certified question of whether North Dakota law requires district courts to deduct no-fault benefits from an award of economic damages before the district court reduces the award of economic damages by the percentage of fault attributable to the plaintiff. *See* N.D.R.App.P. 47. The amicus curiae authors this brief to advise this Court of the far-reaching consequences of this Court's answer to the certified question. In particular, the broad phrasing of the certified question contemplates an outcome that will not only affect the application of the offset provision contained within Section 26.1-40-15.4(1)(b), N.D.C.C. but also the offset provision contained within Section 26.1-41-08, N.D.C.C. This Court must answer "yes" to the certified question for several reasons. First, that answer is the only way in which to further the public policies of both the Auto Accident Reparations Act (the "Act") and the modified comparative fault statutes ("Comparative Fault Statute"). Second, an answer of "no" would lead to absurd, illogical, and unworkable results that contradict the express and implied purposes of the Act and the Comparative Fault Statute. Finally, the majority of other no-fault have jurisdictions have already answered "yes" to the same question.

I. THIS COURT SHOULD HARMONIZE THE ACT'S AND THE COMPARATIVE FAULT STATUTES TO FURTHER THEIR RESPECTIVE PUBLIC POLICY INTERESTS.

[2] This Court should answer the certified question in a manner that harmonizes the public policies of both the Act and the Comparative Fault Statute. Consequently, courts should interpret the secured person exemption of the Act to further the public policy of adequately compensating automobile accident victims. Likewise, courts should interpret the Comparative Fault Statute to further the public policy that a person at fault is only

liable for the amount of damages attributable to that person's fault. An answer of "yes" to the certified question harmonizes both of these public policies.

[3] In 1975, the legislature enacted the Act, which has become more commonly known as North Dakota's "No-Fault" statutes. *See* 1975 N.D. Laws ch. 265. At the same time, the legislature passed a declaration stating that "[t]he legislative assembly declares that its purpose in enacting this chapter is to avoid inadequate compensation to victims of motor vehicle accidents." N.D.C.C. § 26-41-02. This Court has repeatedly held that "[t]he primary purpose of the Auto Accident Reparations Act is to 'provide adequate compensation for victims of motor vehicle accidents.'" *Kroh v. Am. Fam. Ins.*, 487 N.W.2d 306, 309 (N.D. 1992) (quoting *Van Klootwyk v. Arman*, 477 N.W.2d 590, 593 (N.D. 1991)). Specifically, North Dakota's "[n]o-fault insurance was designed to encourage quick, informal payments to assure injured plaintiffs are compensated for their injuries" without considering issues of fault. *Piatz v. Austin Mut. Ins. Co.*, 2002 ND 115, ¶ 12, 646 N.W.2d 681 (concluding further that the purpose was to "secure rapid payment of claims by eliminating the fault controversy"). The quick, informal payments are called "basic no-fault benefits". N.D.C.C. § 26.1-41-01(2).

[4] In fact, "[w]ith regard to basic no-fault benefits, a tortfeasor whose vehicle carries the required insurance is exempt from liability to pay for the injured person's economic loss which is covered by basic no-fault benefits." *Imperial Cas. & Indem. Co. v. Gen. Cas. Co. of WI.*, 458 N.W.2d 355, 357 (N.D. 1990). This is commonly referred to as the "secured person exemption." *See* N.D.C.C. § 26.1-41-08(1). An offset provision, the secured person exemption is designed to eliminate the duplicative recovery of the same elements of loss. *See Kroh*, 487 N.W.2d at 309.

[5] However, the secured person exemption does not swallow the policy of the Act. Indeed, this Court has held that "[o]ur construction of section 26.1-41-08(1) as a threshold requirement is in keeping with the purpose of chapter 26.1-41 (the No-Fault Act). The primary purpose of the No-Fault Act is to compensate automobile accident victims adequately." *Riesenauer v. Schaefer*, 515 N.W.2d 152, 155 (N.D. 1994) (citing *Moser v. Wilhelm*, 300 N.W.2d 840, 847 (N.D. 1980)).

[6] Therefore, this Court has specifically refused to "interpret" the secured person exemption "in the manner [that] would deny compensation to a victim of a motor vehicle accident and undercut the primary reason the legislature enacted the Auto Accident Reparations Act." *Van Klootwyk*, 477 N.W.2d at 593; *see also, e.g., Johnson v. Nodak Mut. Ins. Co.*, 2005 ND 112, ¶ 15, 699 N.W.2d 45 (dismissing an "interpretation [that was] contrary to the purpose of the no-fault statutes").

[7] Further, this Court's decision in *Moser v. Wilhelm* is controlling. The *Moser* Court analyzed the application of the secured person exemption in the context of a two vehicle accident in which a passenger filed a lawsuit against the driver of a second vehicle. 300 N.W.2d at 841–42. The jury determined that the driver of the second vehicle was 90 percent negligent and the driver of the first vehicle was 10 percent negligent. *Id.* at 842. This Court went on to state as follows:

> [i]n this case, the evidence shows that both vehicles were 'secured motor vehicles' pursuant to Section 26-41-03(16). Therefore, [both drivers and the passenger] were all 'secured persons' pursuant to Section 26-41-03(17). In accordance with Section 26-41-12, N.D.C.C., all were exempt from liability for economic losses to the extent of all basic no-fault benefits paid or payable.

Id. at 847. The *Moser* decision, therefore, recognized that the secured person exemption applies to plaintiffs, defendants, and all other secured persons alike. In other words, the

secured person exemption cannot apply exclusively to one person but rather it must apply to any and all secured persons regardless of the fault inquiry.

[8] Additionally, in 1987, the legislature enacted the comparative fault provision in N.D.C.C. § 32-03.2-02. *See* 1987 N.D. Laws ch. 404. "By enacting N.D.C.C. § 32-03.2-02, the Legislature 'clearly intended to replace joint and several liability with several allocation of damages among those who commit torts in proportion to the fault of those who contributed to an injury.'" *M.M. v. Fargo Pub. Sch. Dist. No. 1.*, 2012 ND 79, ¶ 7, 815 N.W.2d 273 (quoting *Rodenburg v. Fargo-Moorhead YMCA*, 2001 ND 139, ¶ 25, 632 N.W.2d 407). Put another way, under the Comparative Fault Statute, "the fault of two or more parties may be compared so that each party is liable only for the amount of damages attributable to the percentage of fault by that party." *Saltsman v. Sharp*, 2011 ND 172, ¶ 9, 803 N.W.2d 553 (citing N.D.C.C. § 32-03.2-02).

[9] Here, this Court should answer the certified question in a manner that furthers the public policies of the Act and the Comparative Fault Statute. The Act was enacted more than a decade before the Comparative Fault Statute. At the time the secured person exemption was drafted, the legislature could not have envisioned a reduction in economic damages for comparative fault followed by a further reduction for no-fault benefits. Consequently, it is necessary to identify the appropriate interplay between the Act and the Comparative Fault Statute.

[10] In fact, this Court has previously addressed the interplay between the Act and the Comparative Fault Statute. *See Haff v. Hettich*, 1999 ND 94, ¶¶ 34–35, 593 N.W.2d 383. Specifically, the *Haff* Court reasoned that "[w]e construe our no-fault statutes in harmony with other statutes." 1999 ND 94, at ¶¶ 34. The Court further addressed the fact that the

Comparative Fault Statute was a general statute and that the no-fault statutes were specific in nature. *See id.* at ¶¶ 34–35 (citing N.D.C.C. § 1-02-07 (specific controls general). The Court concluded as follows:

> [w]e believe the purpose of the no-fault system to transfer victim compensation for personal injuries arising out of motor vehicle accidents from a fault-based tort recovery to a compulsory no-fault insurance would be seriously undermined if our no-fault statutes applied modified comparative fault principles to medical malpractice in treating personal injuries sustained in a motor vehicle accident.

Id. at ¶¶ 35. This Court has warned against applying the *general* Comparative Fault Statute in a manner that would undermine North Dakota's *specific* no-fault laws. *See id.* The following examples articulate this interplay and explain why courts must first apply the specific no-fault deduction before applying the general Comparative Fault Statute reduction.

II. REDUCING ECONOMIC DAMAGES FOR COMPARATIVE FAULT PRIOR TO DEDUCTING NO-FAULT BENEFITS LEADS TO ABSURD, ILLOGICAL, AND UNWORKABLE RESULTS.

[11] Reducing economic damages for comparative fault prior to deducting no-fault benefits from economic damages leads to absurd, illogical, and unworkable results that contradict the express and implied purposes of the Act and the Comparative Fault Statute. The following examples in this section aim to illustrate these results.

[12] First, consider a two-vehicle accident in which a jury awards economic damages in the amount of $35,000.00. The jury finds the defendant, a secured person, was 80 percent at fault and the plaintiff was 20 percent at fault. The plaintiff exhausted the available $30,000.00 in no-fault benefits. There is no dispute that the plaintiff can only recover $5,000.00 in economic damages because of the secured person exemption. *See*

N.D.C.C. § 26.1-41-08. The following chart, *Fig. 1*, illustrates the calculation preferred by Owners Insurance Company:

***Fig. 1* Reduction for Comparative Fault Prior to Deduction of No-Fault Benefits**				
Economic Damages: **$35,000.00**	**Parties:**	**Percentage of Fault:**	**Amount of Economic Damages that Each Party Must Pay:**	**Percentage of Recover-able Economic Damages that Each Party Must Pay:**
	Defendant	80%	$35,000.00 x 80% - $30,000.00 = *($2,000.00)*	= ?%
	Plaintiff	20%	$35,000.00 x 20% = *$7,000.00*	= 140%

[13] Here, the calculation in *Fig. 1* illustrates that the $35,000.00 of economic damages is first reduced for comparative fault and then the $30,000.00 of no-fault benefits is deducted from the remaining amount of economic damages for which the defendant is liable. The result is that the defendant has a negative liability and that the plaintiff is liable for $7,000.00 of a total possible recovery of $5,000.00.

[14] Obviously, the result of this calculation is absurd, illogical, and altogether unworkable. "We presume the Legislature did not intend an unreasonable result or unjust consequence." *Indus. Contractors v. Workforce Safety & Ins.*, 2009 ND 157, ¶ 11, 772 N.W.2d 582. Similarly, this Court "construes statutes to avoid absurd or illogical results." *Mertz v. City of Elgin*, 2011 ND 148, ¶ 17, 800 N.W.2d 710. Initially, it is absurd to calculate damages in a manner that produces a negative liability for a defendant who is 80 percent at fault. Similarly, considering the plaintiff already recovered $30,000.00 in no-fault benefits, it is illogical to argue that the plaintiff is liable for

$7,000.00 of the remaining $5,000.00 in economic damages. Finally, courts should not construe the Act to needlessly punish victims of automobile accidents by applying the calculation of damages that reduces victims' recovery to the greatest extent possible. That outcome clearly would inconsistent with the legislative policy of the Act.

[15] However, this Court can avoid these absurd and illogical results by answering "yes" to the certified question. The calculation in *Fig. 2* articulates this proper construction:

***Fig. 2* Deduction of No-Fault Benefits Prior to Reduction for Comparative Fault**				
Economic Damages: **$35,000.00** - $30,000.00 = $5,000.00	**Parties:**	**Percentage of Fault:**	**Amount of Economic Damages that Each Party Must Pay:**	**Percentage of Economic Damages that Each Party Must Pay:**
	Defendant	80%	$5,000.00 x 60% = *$4,000.00*	= 80%
	Plaintiff	20%	$5,000.00 x 40% = *$1,000.00*	= 20%

[16] Here, the approach in *Fig. 2* preserves the public policies of both the Act and the Comparative Fault Statute. First, recall that the $30,000.00 of no-fault benefits is paid "without regard to fault" of either the defendant or the plaintiff. *See* N.D.C.C. § 26.1-41-06. Courts should, therefore, avoid commingling the application of no-fault benefits with issues of comparative fault. Second, this construction complies with the *Riesenauer* Court's ruling that "[o]ur construction of section 26.1-41-08(1)" must further "the purpose of chapter 26.1-41 (the No-Fault Act)", which is "is to compensate automobile accident victims adequately." 515 N.W.2d at 155. Finally, this construction ensures that

each party "is liable only for the amount of damages attributable to the percentage of fault by that party." *Saltsman*, 2011 ND 172 at ¶ 9.

[17] Further, consider the next example, which is sufficiently analogous to the facts of the matter before the Court, involving two defendants. All three parties are secured persons. The plaintiff exhausted $30,000.00 in no-fault benefits, and the jury awarded $100,000.00 in economic damages. Defendant 1 was found 55 percent at fault. Defendant 2 was found 25 percent at fault. Plaintiff was found 20 percent at fault. There is no dispute that the plaintiff can only recover $70,000.00 in economic damages because both defendants are secured persons. *See* N.D.C.C. § 26.1-41-08. The following chart, *Fig. 3*, illustrates the calculation preferred by Owners Insurance Company:

***Fig. 3* Reduction for Comparative Fault Prior to Deduction of No-Fault Benefits**				
Economic Damages: **$100,000.00**	**Parties:**	**Percentage of Fault:**	**Amount of Economic Damages that Each Must Pay:**	**Percentage of Economic Damages that Each Party Must Pay:**
	Defendant 1	55%	$100,000.00 x 55% - $30,000.00 = *$25,000.00*	= 35.7%
	Defendant 2	25%	$100,000.00 x 25% = *$25,000.00*	= 35.7%
	Plaintiff	20%	$100,000.00 x 20% = *$20,000.00*	= 28.6%

[18] The calculation in *Fig. 3* illustrates that the $100,000.00 is first reduced for comparative fault and then the $30,000.00 of no-fault benefits is subtracted from the remaining amount of damages for which defendant 1 is liable. The result is that defendant 1 is liable for $25,000.00, defendant 2 is liable for $25,000.00, and the plaintiff is liable for $20,000.00. This result is problematic for a number of reasons.

[19] First, both defendants are liable for the same amount of recoverable damages despite having different percentages of fault. That result is completely contradictory to the express purpose of the Comparative Fault Statute. *See, e.g., Saltsman*, 2011 ND 172 at ¶ 9 (holding persons "liable only for the amount of damages attributable to the percentage of fault").

[20] Second, and similarly, the presence of multiple secured persons raises the additional issue of how to apportion the secured person exemption among two or more secured defendants. The two secured defendants are not entitled to separate deductions of $30,000.00, which would result in a $60,000.00 deduction, because the plaintiff only received $30,000.00 in no-fault benefits. Consequently, this Court must apply the secured person exemption in a manner that ensures that all secured persons are not liable for economic damages that have been paid by no-fault benefits, ensures that the parties are only liable for the amount of damages attributable to the percentage of fault by each party, and ensures that the plaintiff is adequately compensated. This Court can achieve this result by using one of the two following calculations.

***Fig. 4* Deduction of No-Fault Benefits Prior to Reduction for Comparative Fault**				
Economic Damages: **$100,000.00** - $30,000.00 = $70,000.00	**Parties:**	**Percentage of Fault:**	**Amount of Economic Damages that Each Party Must Pay:**	**Percentage of Economic Damages that Each Party Must Pay:**
	Defendant 1	55%	$70,000.00 x 55% = *$38,500.00*	= 55%
	Defendant 2	25%	$70,000.00 x 25% = *$17,500.00*	= 25%
	Plaintiff	20%	$70,000.00 x 20% = *$14,000.00*	= 20%

[21] Here, the approach in *Fig. 4* swiftly resolves any issue about how to apportion the deduction for no-fault benefits among equally secured persons. Second, the approach in *Fig. 4* is consistent with the Comparative Fault Statute in that each person at fault "is liable only for the amount of damages attributable to the percentage of fault by that party." *Saltsman*, 2011 ND 172 at ¶ 9. Third, the approach in *Fig. 4* is consistent with the underlying policy of the Act in that the plaintiff is adequately compensated. *See Kroh*, 487 N.W.2d at 309. Fourth, the approach in *Fig. 4* comfortably fits within this Court's ruling in *Moser* in that *every* secured person is exempt from paying economic loss paid by no-fault benefits. Fifth, the approach in *Fig. 4* is the approach that the majority of other no-fault jurisdictions have adopted.

[22] Additionally, this Court can achieve the same result by reducing for comparative fault first and then deducting no-fault benefits based upon each party's respective percentage of fault.

***Fig. 5* Reduction for Comparative Fault Prior to Deducting Apportioned No-Fault Benefits**				
Economic Damages: **$100,000.00**	**Parties:**	**Percentage of Fault:**	**Amount of Economic Damages that Each Must Pay:**	**Percentage of Economic Damages that Each Party Must Pay:**
	Defendant 1	55%	$100,000.00 x 55% - $16,500.00 = *$38,500.00*	= 55%
	Defendant 2	25%	$100,000.00 x 25% - $7,500.00 = *$17,500.00*	= 25%
	Plaintiff	20%	$100,000.00 x 20% - $6,000.00 = *$14,000.00*	= 20%

Regardless of the method of calculation, this Court must acknowledge that the passenger, Joshua Jeffries, in the underlying lawsuit was a secured person who is entitled to the

secured person exemption. *See* N.D.C.C. § 26.1-41-01(20) (defining "secured person" as an "occupant of a secured vehicle"). Therefore, the secured person exemption and the $30,000.00 offset cannot apply exclusively to Denault. Otherwise, the result would not only violate the Act's secured person exemption but the Comparative Fault Statute provision that each person at fault "is liable only for the amount of damages attributable to the percentage of fault by that party." *Saltsman*, 2011 ND 172 at ¶ 9.

III. THE MAJORITY OF OTHER NO-FAULT JURISDICTIONS DEDUCT NO-FAULT BENEFITS FROM ECONOMIC DAMAGES PRIOR TO REDUCING ECONOMIC DAMAGES FOR COMPARATIVE FAULT.

[23] The majority of other no-fault jurisdictions have already answered "yes" to the certified question. *See, e.g.*, *Hickenbottom v. Schmidt*, 626 P.2d 726 (Colo. Ct. App. 1981); *Norman v. Farrow*, 880 So. 2d 557 (Fla. 2004); *Weite v. Momohara*, 240 P.3d 899 (Haw. Ct. App. 2010). This Court should and, perhaps, must do the same. *See St. Paul Mercury Ins. Co. v. Andrews*, 321 N.W.2d 483 (N.D. 1982) ("Because the North Dakota Auto Accident Reparations Act is undeniably 'a part of a uniform statute,' we are obliged to consider the provision of § 1-02-13, NDCC," which strives for uniformity in uniform acts).

[24] First, the Supreme Court of Florida faced the same question of whether or not to deduct no-fault benefits from an award of economic damages before reducing the remaining award for comparative fault. *See Norman*, 880 So. 2d at 560–61. After a lengthy discussion, the Supreme Court of Florida ruled that damages should be computed by deducting the amount of no-fault benefits paid or payable from the amount of economic damages awarded, adding the noneconomic damages awarded, and then

applying the percentage of comparative fault to reduce the total damages recoverable. *See id.*

[25] Second, the Court of Appeals of Hawaii addressed the same question. *See Weite*, 240 P.3d at 922–25. That court held that no-fault benefits are "to be deducted from the 'total damages' awarded by the trier of fact prior to apportionment of the damages" for comparative fault. *Id.* at 923.

[26] Third, the Court of Appeals of Colorado addressed the same question. *See Hickenbottom*, 626 P.2d at 927. In so doing, Colorado's court of appeals reversed the trial court and further held that "the recoverable P.I.P benefits are to be deducted from the total amount of damages attributable to defendant's negligence before the court reduces the judgment by the percentage of comparative negligence attributable to plaintiff." *Id.*

[27] Unfortunately, the only case cited in the *Order for Certification* was the Minnesota Court of Appeals case of *LeBaron v. Hanson*, 374 N.W.2d 197, 199 (Minn. Ct. App. 1985). (*See* Order for Certification, at p. 3, ¶ 5 n. 1). No other court or jurisdiction has ever cited the *LeBaron* decision as support for the issue before this Court.

[28] Initially, the Minnesota Court of Appeals decided *LeBaron* in 1985 before the Minnesota Legislature passed a clarifying amendment to its collateral source statute. *See Casper v. City of Stacy*, 473 N.W.2d 902, 906 (Minn. Ct. App. 1991). In adopting the amendment, the Minnesota Legislature made it clear that it was not changing the law, but rather clarifying the meaning of its collateral source statute in order to require courts to first deduct collateral sources and then apply the contributory fault allocation—the position advocated by Hiltner. *Id.* at 906.

[29] Second, the Minnesota Court of Appeals decided *LeBaron* at a time when the persuasive authority from the Minnesota Supreme Court was *Parr v. Clothier*, 297 N.W.2d 138 (Minn. 1980). *See LeBaron*, 374 N.W.2d at 198. Not only was *Parr* criticized by well-respected commentators, see *id.* at 198 n.2, but the result in *Parr* was subsequently criticized by the Supreme Court of Minnesota itself. *See Tueng v. Konetski*, 320 N.W.2d 420, 421–22 (Minn. 1982). In *Tueng*, the Supreme Court of Minnesota stated that "the offset provision [of Section 65B.51, Minn. Stat.] should not operate until plaintiff has been fully compensated. . . . We do not think the offset provision should operate as a penalty, but rather should operate only to the extent necessary to preclude duplicate recovery." 320 N.W.2d at 422. The reasons for the criticism and the comments of the Supreme Court of Minnesota in *Tueng* were summarized by a Minnesota Senate-appointed Injury Compensation Commission, which recommended the clarifying statutory change to the Minnesota Collateral Source Statute. *See Casper*, 473 N.W.2d at 906. That Commission reported its conclusions to the Legislature as follows:

> In recommending the amendment, the commission stated:
>
> > To follow the court's decision in *Parr* does more than prevent a double recovery of economic loss; it permits an invasion and undue recognition of damages that are not covered by the No-Fault Act. In some cases it may completely preclude tort recovery, despite the fact that the plaintiff is less at fault than the defendant.
> >
> > The same potential problem exists in cases involving the collateral source statute, Section 548.36. To avoid the *Parr* problem, the Commission recommends that section 548.36, subdivision 3 be amended.

Id. (internal quotations omitted in original).

[30] Finally, it remains important to understand the structure of the Court of Appeals in Minnesota. Its decisions are decided by a three-member panel randomly selected from all of the Judges of that Court. *See* Minn. Stat. § 480A.08, subdiv. 2. There is no "*en*

banc" review of a panel decision. So, panel decisions of the Minnesota Court of Appeals may, and sometimes do, conflict. *See, e.g.*, *Eischen Cabinet Co. v. Hildebrandt*, 683 N.W.2d 813, 817–18 (Minn. 2004).

[31] In fact, a panel decision of the Minnesota Court of Appeals only reaches the Supreme Court of Minnesota if the Supreme Court of Minnesota grants a petition for further review. *See* Minn Stat. § 480A.10, subdiv. 1. The Supreme Court has made it clear that a denial of a petition for review of a Court of Appeals' decision does not carry with it any additional weight in terms of precedential value. *See, e.g.*, *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721 (Minn. 2010). As the Supreme Court of Minnesota said in *Murphy v. Milbank Mutual Insurance Company*, 388 N.W.2d 732, 739 (Minn. 1986): "The temptation to read significance into a denial of a petition for further review is best resisted. The denial does not give the court of appeals decision any more or less precedential weight than a court of appeals decision from which no review was sought." That is the situation with *LeBaron*; the Supreme Court of Minnesota denied review.

[32] In summary, the majority of other no-fault jurisdictions would each answer "yes" to the certified question, and this Court should too.

CONCLUSION

[33] For all the foregoing reasons, the North Dakota Association for Justice respectfully requests that this Court answer "yes" to the certified question so that district courts deduct no-fault benefits from awards of economic damages prior to apportioning the remaining economic damages attributable to each person's respective percentage of fault.

Dated this 7th day of October, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that, on the 7th day of October, 2014, I served the foregoing document on the following by electronic mail transmission pursuant to N.D. Sup. Ct. Admin. Order 14(D):

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CERTIFICATE OF SERVICE

I hereby certify that, on the 8th day of October, 2014, I served the foregoing document on the following by electronic mail transmission pursuant to N.D. Sup. Ct. Admin. Order 14(D):

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