

# A Challenge to North Dakota's Tort Caps

Amy L. De Kok  
NDSBA Legal Counsel

# Larimore School Bus Accident - January 5, 2015



# What is an Interpleader Action?

- Bus driver employed by Larimore School District failed to yield at the railroad crossing, which caused the accident.
- 2 fatalities and 12 other students injured as result of accident.
- Larimore School District and NDIRF filed interpleader action in state court.
  - What is an interpleader action?
  - Deposited \$500,000 (statutory limit).
- Defendants include parents of injured students, BNSF Railway Company, and several health care providers.

# Statutory Limits on Governmental Liability

- NDCC § 32-12.1-03(1): political subdivision liable for money damages for injuries when injuries caused by negligence, wrongdoing, or omission of any employee acting within scope of employment
- At time of accident, liability limited by statute to \$250,000 per person or \$500,000 for injury to three or more persons during any single occurrence.
- Current medical costs at time action commenced were already in excess of \$400,000. Continued medical expenses are anticipated.

# Constitutional Arguments

- Defendants filed motion for summary judgment.
- Violation of Article I, Section 9 of ND Constitution, which guarantees right of remedy for personal injuries and access to courts.
- Violation of substantive due process rights and equal protection rights protected by Article I, Sections 20 through 22 of ND Constitution.
- Damage cap is a special law contrary to Article IV, Section 13 of ND Constitution.

# School District and NDIRF Response

- Analysis must favor constitutionality; presumption.
- Political subdivisions not like private citizens – duties and responsibilities to general public to provide essential services.
- Balance between compensating injured parties and preserving mandate to provide essential public services.
- No constitutional violation.

## State Trial Court's Decision

- Judge Gary Lee issued a detailed written decision denying Defendants' Motion for Summary Judgment.
- Determined that N.D.C.C. § 32-12.1-03 is constitutional.
- Confirmed deposit of funds and discharged School District and NDIRF from all further liability.

# Appeal to ND Supreme Court

- Defendants appealed the issues to the North Dakota Supreme Court.
- Same constitutional arguments.
- Several political subdivisions have filed amicus curiae (“friend of the court”) briefs with the Court.
- NDSBA submitted an amicus brief along with ND League of Cities, ND Association of Counties, and ND Recreation and Park Association.
  - Joined in arguments made by School District and NDIRF.
  - Focused on policy considerations behind liability caps and likely result if no caps.

# Status of Case and Next Steps

- Briefing is complete.
- Oral argument to be scheduled for sometime in November.
- NDSBA will attend and keep apprised of further developments.
- Anticipate ND Supreme Court will affirm lower court's decision.
- Amendment to N.D.C.C. 32-12.1-03 in 2015 session (increased cap to \$1 million)