

# SUPREME COURT OF WISCONSIN

CASE No. : 2005AP1638

COMPLETE TITLE :

Hjalmer C. Heikkinen, Kim Heikkinen, Special  
Administrator of the Estate of Amelia Heikkinen,  
State of Wisconsin Department of Health and  
Family Services and Tommy G. Thompson Secretary,  
Department of Health and Human Services,  
Plaintiffs-Respondents,

v.

United Services Automobile Association and  
Margaret E. Morse,  
Defendants-Third-Party  
Plaintiffs-Respondents,

v.

The Catholic Mutual Relief Society of America  
and Archdiocese of Milwaukee,  
Defendants-Third-Party  
Defendants-Appellants-Petitioners.

REVIEW OF A DECISION OF THE COURT OF APPEALS  
2006 WI App 207  
Reported at: 296 Wis. 2d 438, 724 N.W.2d 243  
(Ct. App. 2006-Published)

OPINION FILED: October 12, 2007  
SUBMITTED ON BRIEFS:  
ORAL ARGUMENT: September 12, 2007

SOURCE OF APPEAL:  
COURT: Circuit  
COUNTY: Milwaukee  
JUDGE: Michael Guolee

JUSTICES:  
CONCURRED:  
DISSENTED:  
NOT PARTICIPATING: CROOKS, J., did not participate.

ATTORNEYS :

For the defendants-third-party defendants-appellants-petitioners there were briefs by *Frank L. Steeves*, *O. Thomas Armstrong, Jr.* and *von Briesen & Roper, S.C.*, Milwaukee, and oral argument by *O. Thomas Armstrong, Jr.*

For the defendants-third-party plaintiffs-respondents there was a brief filed by *Terry E. Johnson*, *Frederick J. Smith*,

*Michael D. Crooks, and Peterson, Johnson & Murray, S.C., Milwaukee, and oral argument by Terry E. Johnson.*

For the plaintiffs-respondents there was a brief filed by *Don C. Prachthouser, Kevin J. Kukor, and Murphy & Prachthouser, Milwaukee, and oral argument by Don C. Prachthouser.*

An amicus brief was filed by *Michael B. Apfeld, Milwaukee, on behalf of the Defense Research Institute.*

An amicus brief was filed by *William C. Gleisner, III and the Law Offices of Wm. Gleisner, Milwaukee, and Lynn R. Laufenberg and Laufenberg & Hoefle, S.C., Milwaukee, on behalf of the Wisconsin Academy of Trial Lawyers.*

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2005AP1638  
(L.C. No. 2003CV1267)

STATE OF WISCONSIN : IN SUPREME COURT

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Hjalmer C. Heikkinen, Kim Heikkinen, Special Administrator of the Estate of Amelia Heikkinen, State of Wisconsin Department of Health and Family Services, and Tommy G. Thompson, Secretary, Department of Health and Human Services,

Plaintiffs-Respondents,

v.

United Services Automobile Association and Margaret E. Morse,

Defendants-Third-Party Plaintiffs-Respondents,

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Defendants-Third-Party Defendants-Appellants-Petitioners.

**FILED**

**OCT 12, 2007**

David R. Schanker  
Clerk of Supreme Court

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REVIEW of a decision of the Court of Appeals. *Affirmed.*

¶1 PER CURIAM. The court is equally divided on the question of whether the published decision of the court of

appeals, Heikkinen v. United Services Automobile Association, 2006 WI App 207, 296 Wis. 2d 438, 724 N.W.2d 243, should be affirmed or reversed. CHIEF JUSTICE SHIRLEY S. ABRAHAMSON, JUSTICE ANN WALSH BRADLEY, and JUSTICE LOUIS B. BUTLER, JR., would affirm; JUSTICE DAVID T. PROSSER, JUSTICE PATIENCE DRAKE ROGGENSACK, and JUSTICE ANNETTE KINGSLAND ZIEGLER would reverse. JUSTICE N. PATRICK CROOKS did not participate.

¶2 Accordingly, the decision of the court of appeals is affirmed.

