

STATE OF MICHIGAN
COURT OF APPEALS

JUDITH MERRIAM, as Personal Representative
of the Estate of Donald Merriam, Deceased,

UNPUBLISHED
January 19, 2006

Plaintiff-Appellee,

v

SCHUPAN & SONS, INC.,

No. 255367
Kalamazoo Circuit Court
LC No. 03-000097-NO

Defendant-Appellant.

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

MEMORANDUM.

In this wrongful death action, defendant appeals as of right the trial court order denying its motion to strike plaintiff's objection to its first amended notice naming plaintiff's decedent's employer as a non-party at fault. We reverse.

This Court's recent decision in *Kopp v Zigich*, 268 Mich App 258; ___ NW2d ___ (2005), that a defendant is entitled to name potential non-parties at fault and present evidence that such non-parties contributed to the plaintiff's injuries, under a plain reading of MCL 600.6304(1)(b) and MCL 600.2957(1), resolves this case. In *Kopp*, as here, the non-party was the plaintiff's employer. We recognize that plaintiff considers this to be an unfair result that is contrary to principles underlying the Worker's Disability Compensation Act, MCL 418.101 *et seq.* However, we are bound to uphold our duty to construe the text of the statute; plaintiff's argument is one of policy and should be directed toward the Legislature. *Maier v General Telephone Co of Michigan*, 247 Mich App 655, 664-665; 637 NW2d 263 (2001).

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Jane E. Markey