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Overview of the State of Minnesota Court System
A. Trial Courts
There are three levels of courts in the Minnesota judicial system: the district courts, the Minnesota Court of Appeals and the Minnesota Supreme Court. **District Courts:** District courts are located in each of the state's eighty-seven counties and are divided among ten judicial districts. The district court is the trial court of general jurisdiction, and it has the power to hear any civil or criminal case and cases involving family, probate, juvenile, and traffic matters. Cases are tried either by a judge or a jury of six people. Twelve-person juries are only used in felony criminal cases. **Conciliation Court:** Conciliation Court is a division of district court that handles civil cases involving money claims of $10,000 or less. Claims are normally resolved by an informal hearing before a judge. Mediation is also an option.
B. Appellate Courts
Minnesota Court of Appeals: Nineteen judges sit on the Minnesota Court of Appeals, and cases are typically heard by three-judge panels. The court of appeals reviews all appealable matters from the district courts. An appeal must be filed within ninety days of the entry of judgment in the district court. **Minnesota Supreme Court:** This is the highest court in the State of Minnesota. It consists of seven justices. The Minnesota Supreme Court hears those appeals from the Minnesota Court of Appeals that are granted certiorari, as well as Minnesota Tax Court and Minnesota Workers' Compensation Court of Appeals. The supreme court also hears trial court decisions if it chooses to bypass the Court of Appeals, and it directly receives first-degree murder appeals and attorney and judge disciplinary cases.
C. Other Courts
Additionally, there are two executive branch courts created by statute to deal with a specific area of law: Minnesota Tax Court and the Minnesota Workers' Compensation Court of Appeals. **Minnesota Tax Court:** The Minnesota Tax Court is a specialized, executive branch court established by the Minnesota Legislature to hear only tax related cases. Minnesota Statutes Chapter 271 sets forth the authority and jurisdiction of the tax court. The purpose of the tax court is to provide timely and equitable disposition of appeals of orders issued by the Commissioner of Revenue and local property tax valuations, classification, equalization, and/or exemptions. Tax court judges travel throughout

Minnesota to conduct trials. Tax court decisions are appealable directly to the Minnesota Supreme Court.

Minnesota Workers' Compensation Court of Appeals: The Minnesota Workers' Compensation Court of Appeals has exclusive, statewide authority to review workers' compensation cases decided by compensation judges at the Office of Administrative Hearings and certain cases decided by the Workers' Compensation Division at the Department of Labor and Industry. A panel of three or five judges decides each appeal. Decisions of the Minnesota Workers' Compensation Court of Appeals are appealable directly to the Minnesota Supreme Court.

Procedural

A. Venue

Minn. Stat. § 542.01, entitled "Venue; general rule; exception," states:

> Except as provided in section 542.02, every civil action shall be tried in the county in which it was begun, unless the place of trial be changed as hereinafter prescribed; and when so changed all subsequent papers in the action shall be entitled and filed in the county to which such transfer has been made.

Minn. Stat. § 542.01 (2013).

Minn. Stat. § 542.09, entitled "Other cases; defendant's residence or where cause arose; corporations," states:

> All actions not enumerated in sections 542.02 to 542.08 and 542.095 shall be tried in a county in which one or more of the defendants reside when the action is begun or in which the cause of action or some part thereof arose. If none of the parties shall reside or be found in the state, the action may be begun and tried in any county which the plaintiff shall designate. A corporation, other than railroad companies, street railway companies, and street railroad companies whether the motive power is steam, electricity, or other power used by these corporations or companies, also telephone companies, telegraph companies, and all other public service corporations, shall be considered as residing in any county wherein it has an office, resident agent, or business place. The above enumerated public service corporations shall be considered as residing in any county wherein the cause of action shall arise and wherein any part of its lines of railway, railroad, street railway, street railroad, without regard to the motive power of the railroad, street railway, or street railroad, telegraph or telephone lines or any other public service corporation shall extend, without regard to whether the corporation or company has an office, agent, or business place in the county or not.

Minn. Stat. § 542.09 (2013).

B. Statute of Limitations

Legal Cause of Action	Limitation - Reference
Personal Injury Resulting from Negligence	6 years - Minn. Stat. § 541.05, subdiv. 1

	(2013). 2 years in cases where injury caused by defective or unsafe condition of real estate improvement. And no more than 10 years after substantial completion of the project. - Minn. Stat. § 541.051, subdiv. 1 (2013). "[I]n the case of a cause of action . . . which accrues during the ninth or tenth year after substantial completion of the construction, an action to recover damages may be brought within two years after the date on which the cause of action accrued, but in no event may such an action be brought more than 12 years after substantial completion of the construction." - Minn. Stat. § 541.051, subdiv. 2 (2013).
Personal Injury Resulting from Intentional Tort (such as Assault, Battery, Libel, Slander, False Imprisonment)	2 years - Minn. Stat. § 541.07(1) (2013). 6 years in cases where conduct meets definition of "domestic abuse" as defined by Minn. Stat. § 518B.01. - Minn. Stat. § 541.05, subdiv. 1(10) (2013).
Personal Property Damage	6 years - Minn. Stat. § 541.05, subdiv. 1 (2013). 2 years if property damage results from pesticide application. - Minn. Stat. § 541.07(7) (2013).
Uninsured/Underinsured Motorist Claims	6 years - Minn. Stat. § 541.05, subdiv. 1 (2013).
Contractual Obligations	6 years - Minn. Stat. § 541.05, subdiv. 1 (2013).
Contracts for Sales of Goods	4 years - Minn. Stat. § 336.2-725(1) (2013).
Breach of Express Written Warranty or Breach of Statutory (Minn. Stat. § 327A.02) Home Warranty	2 years - Minn. Stat. § 541.051, subdiv. 4 (2013). Contribution or indemnity actions: no later than 2 years after the earlier of (1) commencement of the action against party seeking contribution/indemnity, (2) payment of final judgment, arbitration award, or settlement arising out of breach. - Minn.

	Stat. § 541.051, subdiv. 4 (2013). For claims made under Minn. Stat. § 327A, claimant has 6 months to give written notice of defect to the builder once the defect has manifested itself. - Minn. Stat. § 327A.03(a) (2013).
Fraud	6 years - Minn. Stat. § 541.05, subdiv. 1 (2013).
Trespass Upon Real Estate	6 years - Minn. Stat. § 541.05, subdiv. 1 (2013).
Against a Sheriff or Coroner for Official Acts	3 years - Minn. Stat. § 541.06 (2013).
Sexual Abuse	6 years - Minn. Stat. § 541.073, subdiv. 2 (2013).
Legal Malpractice	6 years - Minn. Stat. § 541.05, subdiv. 1 (2013).
Medical Malpractice	4 years - Minn. Stat. § 541.076 (b) (2013).
Products Liability	4 years for strict liability - Minn. Stat. § 541.05, subdiv. 2 (2013). 4 years for breach of warranty - Minn. Stat. § 336.2-725 (1) (2013). 6 years for negligence - Minn. Stat. § 541.05, subdiv. 1 (2013). And notice of possible suit from claimant's attorney due 6 months after attorney-client relationship established in regard to claim - Minn. Stat. § 604.04, subdiv. 1 (2013).
Wrongful Death	If based on negligence, 3 years from date of death, but not more than 6 years from date of act giving rise to claim - Minn. Stat. § 573.02, subdiv. 1 (2013). If based on medical malpractice, 3 years from date of death, but not more than 4 years from date of act giving rise to claim - Minn. Stat. § 573.02, subdiv. 1 (2013); Minn. Stat. § 541.076 (b) (2013).
Fire Loss	2 years - Minn. Stat. § 65A.01, subdiv. 3 (2013).
Liquor Liability/Dram Shop Actions	2 years - Minn. Stat. § 340A.802, subdiv. 2 (2013).

	Notice of the claim for damages must also be served by the claimant's attorney within 240 days of the date of entering an attorney-client relationship with the person in regard to the claim. Minn. Stat. § 340A.802, subdiv. 2 (2013).
Recover Real Property	15 years - Minn. Stat. § 541.02 (2013).
Claim of Title to Real Estate Based on Source of Title	40 years from execution of title or occurrence recorded - Minn. Stat. § 541.023, subdiv. 1 (2013). Exceptions apply. *See* Minn. Stat. § 541.023, subdiv. 6 (2013). For statute of limitations affecting title to or possession of tax-forfeited lands, refer to Minn. Stat. § 541.024.
Foreclosure of Real Estate Mortgage	15 years from the maturity of the whole of the debt secured by the mortgage, unless the time of the maturity of the debt or obligation secured by such mortgage is clearly stated in such mortgage - Minn. Stat. § 541.03, subdiv. 1-2 (2013).

C. Time for Filing An Answer

In Minnesota, an answer must be filed within twenty calendar days of service of process. Minn. R. Civ. P. 12.01 (2013). The service of a motion permitted under Minn. R. Civ. P. 12.01 "alters these periods of time as follows unless a different time is fixed by order of the court:

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after service of notice of the court's action;

(2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement."

Minn. R. Civ. P. 12.01 (2013).

In computing any period of time prescribed or allowed by the Minnesota Rules of Civil Procedure, "by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included." Minn. R. Civ. P. 6.01 (a) (2013).

"The last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday, or, when the act to be done is the filing of a document in court, a day on which weather or other conditions result in the closing of the office of the court administrator of the court where the action is pending, or where filing or service is either permitted or required to be made electronically, a day on which unavailability of the computer system used by the court for electronic filing and service makes it impossible to accomplish service or filing, in which event the period runs until the end of the next day that is not one of the aforementioned days." Minn. R. Civ. P. 6.01 (a) (2013).

"When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation." Minn. R. Civ. P. 6.01 (b) (2013).

D. Dismissal Re-Filing of Suit

Minn. R. Civ. P. 41.01, entitled "Voluntary Dismissal; Effect Thereof" states:

> **(a) By Plaintiff by Stipulation.** Subject to the provisions of Rules 23.05, 23.09 and 66, an action may be dismissed by the plaintiff without order of court (1) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (2) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.
>
> **(b) By Order of Court.** Except as provided in clause (a) of this rule, an action shall not be dismissed at the plaintiff's instance except upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim may remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal herein is without prejudice.

Minn. R. Civ. P. 41.01 (a)-(b) (2013).

Liability

A. Negligence

Comparative Negligence and Scope:

Minnesota is a modified comparative fault jurisdiction. A plaintiff may recover if the plaintiff's "contributory fault was not greater than the fault of the person against whom recovery is sought," although "any damages allowed must be diminished in proportion to the amount of fault attributable to the person recovering." Minn. Stat. § 604.01, subdiv. 1 (2013).

In general, only individual comparison of fault is permitted. *Cambern v. Sioux Tools, Inc*., 323 N.W.2d 795, 798 (Minn. 1982). Aggregation of the fault of two or more parties is permitted only when two or more defendants engaged in a joint venture and owe the plaintiff a common duty. *Krengel v. Midwest Automatic Photo, Inc*., 203, 210 N.W.2d 841 (Minn. 1973).

B. Negligence Defenses

The most common affirmative defenses in civil negligence litigation are contributory negligence, Minn. Stat. § 604.01 (2013); *Busch v. Busch Const., Inc*., 262 N.W.2d 377 (Minn. 1977); secondary assumption of risk, *Springrose v. Willmore*, 292 Minn. 23, 192 N.W.2d 826 (1971); and primary assumption of risk. Primary assumption of risk differs from secondary assumption of risk in that it involves an issue of duty. *See Rieger v. Zackoski*, 321 N.W.2d 16 (Minn. 1982) (primary assumption of risk by the plaintiff removes any duty on the part of the defendant).

23 Minn. Prac., Trial Handbook For Minn. Lawyers § 39:19 (2013 ed.).

C. Gross Negligence, Recklessness, Willful and Wanton Conduct

"The Minnesota definition of 'gross negligence' is 'negligence of the highest degree.'" *Ackerman v. Am. Family Mut. Ins. Co.*, 435 N.W.2d 835, 840 (Minn. Ct. App. 1989) (quoting *High v. Supreme Lodge of the World,* 214 Minn. 164, 170, 7 N.W.2d 675, 679 (1943)).

Willful and wanton conduct is the failure to exercise ordinary care after discovering a person or property in a position of peril. *See Bryant v. N. Pac. Ry. Co.,* 221 Minn. 577, 585, 23 N.W.2d 174, 179 (1946).

"The term '**reckless**' appears numerous times in the Minnesota Statutes and cases. However, there is no satisfactory definition of the term for civil purposes." 4 Minn. Prac., Jury Instr. Guides--Civil CIVJIG 25.37 (5th ed.) (2013). "A person is **reckless** when he or she knows or has reason to know that: (1) If he or she does act, there is a high risk of harm to another, or (2) If he or she does not act, there is a high risk of harm to another; and proceeds to act, or fails to act, in deliberate disregard of, or indifference to that risk." *Id*.

D. Negligent Hiring and Retention

Negligent hiring is defined as the "negligence of an employer in placing a person with known propensities, or propensities which should have been discovered by reasonable investigation, in an employment position in which, because of the circumstances of the employment, it should have been foreseeable that the hired individual posed a threat of injury to others." *Ponticas v. K.M.S. Investments,* 331 N.W.2d 907, 911 (Minn. 1983).

The Minnesota Court of Appeals in *Yunker v. Honeywell, Inc*., 496 N.W.2d 419, 422 (Minn. Ct. App. 1993) explained the distinction between the **negligent hiring** and **negligent retention** causes of action as follows: "Negligent hiring occurs when, prior to the time the employee is actually hired, the employer knew or should have known of the employee's unfitness, and the issue of liability primarily focuses upon the adequacy of the employer's pre-employment investigation into the employee's background. Negligent retention, on the other hand, occurs when, during the course of employment, the

employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further action such as investigating, discharge, or reassignment." (quoting *Garcia v. Duffy*, 492 So. 2d 435, 438–39 (Fla. Dist. Ct. App. 2d Dist. 1986) (citations omitted).

"The difference between **negligent hiring** and **negligent retention** focuses on when the employer was on notice that an employee posed a threat and failed to take steps to insure the safety of third parties." *Yunker*, 496 N.W.2d at 423.

E. Negligent Entrustment

"In Minnesota negligent entrustment has been defined as a separate wrongful act when the negligence of the driver is reasonably foreseeable and the entrustor fails in the duty to take steps to prevent operation of the vehicle by the driver." *Lim v. Interstate Sys. Steel Div., Inc.*, 435 N.W.2d 830, 832 (Minn. Ct. App. 1989) (citing *Jones v. Fleischhacker,* 325 N.W.2d 633, 640 (Minn.1982)).

F. Dram Shop

To establish liability under Minn. Stat. § 340A.801, a plaintiff must establish:

1. That the sale of alcohol was in violation of a provision of Minn.Stat. ch. 340A;
2. That the violation was substantially related to the purposes sought to be achieved by the Dram Shop Act;
3. That the illegal sale was a cause of the intoxication; and
4. That the intoxication was a cause of the plaintiff's injuries.

Rambaum v. Swisher, 435 N.W.2d 19, 21 (Minn.1989).

Who may sue:

-Minn. Stat. § 340A.801, subdiv. 1 provides in part that "[a] spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person, has a right of action in the person's own name for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages." Minn. Stat. § 340A.801, subdiv. 1 (2013).

-The intoxicated person is barred from any recovery under the act. *Sather v. Woodland Liquors, Inc.,* 597 NW 2d 295, 298 (1999).

Notice required under Minn. Stat. § 340A.802:

-A plaintiff must serve notice of a claim upon the establishment within 240 days of the commencement of an attorney-client relationship regarding the claim. Minn. Stat. § 340A.802, subdiv. 2 (2013).

Statute of Limitations:

Minn. Stat. § 340A.802 provides for a two year statute of limitations, which begins running from the date of the injury. Minn. Stat. § 340A.802, subdiv. 2 (2013).

Joint and Several Liability:

Minnesota's joint and several liability statute has reduced the number and success of dram shop claims. *See* Minn. Stat. § 604.02 (2013).

G. Joint and Several Liability

Allocation of damages, off sets etc.:

Several liability is the general rule in Minnesota. Minnesota statutory law provides that several liability attaches to multiple tortfeasors who are judged to have caused injury to a plaintiff, which means each tortfeasor is liable for his or her proportionate share of the damages. Minn. Stat. § 604.02 subdiv. 1 (2013).

Joint and Several Liability:

However, persons will be held "jointly and severally liable for the whole award if

(1) a person's fault is greater than 50 percent;
(2) two or more persons act in a common scheme or plan that results in injury;
(3) a person who commits an intentional tort; or
(4) a person whose liability arises under" various environmental statutes.

Minn. Stat. § 604.02, subdiv. 1 (2013).

While Minn. Stat. § 604.02 has a section for reallocating uncollectible awards, it has traditionally been thought the reallocation would also apply to joint liability. However, a recent Minnesota Supreme Court case suggests it may be interpreted to apply to several liability. In *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68 (Minn. 2012), the Minnesota Supreme Court held that when a jury attributes 50% of the negligence that caused an injury to the sole defendant and 50% to a nonparty to the lawsuit, the sole defendant was severally liable for plaintiff's damages only to extent that jury found the sole defendant was 50% at fault for plaintiff's injuries. On remand, the district court determined that since nonparty's equitable share of the obligation was uncollectible, and the fault attributable to the nonparty was subject to reallocation. Therefore, the judgment was entered against the sole defendant for the entire award, plus costs and interest, less amounts already paid. Moreover, in *O'Brien v. Dombeck*, 823 N.W.2d 895 (Minn. Ct. App. 2012), the Minnesota Court of Appeals held that when two or more parties are severally liable on a judgment, Minn. Stat. § 604.02, subdiv. 2, authorizes reallocation of the uncollectible portion of a party's equitable share of the judgment and district courts are not required to allocate costs according to each party's percentage of fault.

Third-Party Defendants and Statute of Limitations:

The Minnesota Supreme Court has held that a claim for contribution by a joint tortfeasor "does not accrue or mature until the person entitled to the contribution has sustained damage by paying more than his fair share of the joint obligation." *Grothe v. Shaffer*, 305 Minn. 17, 232 N.W.2d 227 (1975).

H. Wrongful Death and/or Survival Actions

Survival Actions:

A cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in Minn. Stat. § 573.02. All other causes of action by one against another, whether arising on contract or not, survive to the personal representatives of the former and against those of the latter.

Wrongful Death:

In Minnesota, a statutory claim for wrongful death exists. Minn. Stat. § 573.02 (2013). In general, recovery in a wrongful death action "is the amount the jury deems fair and just in reference to the pecuniary loss resulting from the death . . . ." *Id*. The recovery is for the exclusive benefit of the surviving spouse and next-of-kin, and the court "determines the proportionate pecuniary loss of the persons entitled to the recovery and orders distribution accordingly." *Id*. Pecuniary loss is "the money value to the survivor of the continuance of decedent's life, measured by the money value of what the evidence shows the decedent probably or with reasonable certainty would have contributed in money, property, or services during the remainder of his life." *Cummins v. Rachner*, 257 N.W.2d 808, 814 (Minn. 1977). Pecuniary loss also includes loss of advice, comfort, assistance, and protection. Gravley v. Sea Gull Marine, Inc., 269 N.W.2d 896, 901 (Minn. 1978).

Allowable Claimants or Class:

A trustee acting on behalf of the surviving spouse or next-of-kin is permitted to bring a claim based upon the wrongful act or omission of any person or corporation. Minn. Stat. § 573.02 (2013).

Role of Estate in Action:

Recovery for wrongful death is not a part of the decedent's estate. *Martz v. Revier*, 284 Minn. 166, 169, 170 N.W.2d 83, 85 (1969).

I. Vicarious Liability

In some cases the fault of one party may be imputed to another under vicarious liability principles:

Master—Servant. An employer is vicariously liable for the torts of its employees if the torts are committed in the course and scope of employment. *Schneider v. Buckman*, 433 N.W.2d 98, 101 (Minn. 1988); *Ismil v. L.H. Sowles Co*., 295 Minn. 120, 123, 203 N.W.2d 354, 357 (1972). Minnesota characterizes the liability of master-servant as joint

and several liability. *Schneider*, 433 N.W.2d at 101; Kisch v. Skow, 305 Minn. 328, 332, 233 N.W.2d 732, 734 (1975).

Independent Contractors. Employers of independent contractors generally are not vicariously liable for the physical acts of the independent contractors unless an exception to the general no-liability rule is established. The nature of the employment relationship will be critical in determining whether a person is an employee or independent contractor, with the control element typically the pivotal factor in making that determination. *E.g., Ossenfort v. Associated Milk Producers, Inc*., 254 N.W.2d 672, 676 (Minn. 1977). However, an independent contractor may be an agent for purposes of binding a principal for non-physical torts.

Partnerships. Partners are agents of the partnership:

> (1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.
>
> (2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

Minn. Stat. § 323A.0301 (1)-(2) (2013). An act of a partner "apparently carrying on in the ordinary course the partnership business" usually binds the partnership. Minn. Stat. § 323A.0301 (1) (2013). "Thus, if a partner commits a wrongful act or omission while acting 'in the ordinary course of the business of the partnership' the partnership is liable, for compensatory and apparently, as well, punitive damages." *Shetka v. Kueppers, Kueppers, Von Feldt and Salmen*, 454 N.W.2d 916, 919 (Minn. 1990).

The liability of a partner is imputed to the other partners in a partnership. Minn. Stat. § 323A.0305 (2013). The action of the partner committing the tort must also be in the course and scope of the partner's authority. *Id*. Partners are jointly and severally liable for everything chargeable to the partnership under section 323A.0305. *See* Minn. Stat. § 323A.0306(a) (2013); *Midland Nat'l Bank v. Perranoski*, 299 N.W.2d 404, 411, n. 5 (Minn. 1980).

4 Minn. Prac., Jury Instr. Guides--Civil Division C Cat. 30 Note 1 (5th ed.) (2013).

J. Exclusivity of Workers' Compensation

Minn. Stat. § 176.031, entitled "Employer's Liability Exclusive" states:

> The liability of an employer prescribed by this chapter is exclusive and in the place of any other liability to such employee, personal representative, surviving spouse, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death. If an employer other than the state or any municipal subdivision thereof fails to insure or self-insure liability for compensation to injured employees and their dependents, an injured employee, or legal representatives or, if death results from the injury, any dependent may elect to claim compensation under this chapter or to maintain an action in the courts for damages on account of such injury or death. In such action it is not necessary to plead or prove freedom from contributory negligence. The defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of employment, or that the injury was due to the contributory negligence of the employee, unless it appears that such negligence was willful on the part of the employee. The burden of proof to establish such willful negligence is upon the defendant. For the purposes of this chapter the state and each municipal subdivision thereof is treated as a self-insurer when not carrying insurance at the time of the injury or death of an employee."

Minn. Stat. § 176.031 (2013).

Damages

A. Statutory Caps on Damages

Types of Non-Economic Damages

There is no Minnesota statutory definition for noneconomic damages. However, pain and suffering and disability have been recognized as noneconomic damages. *Kyute v. Auslund*, 668 N.W.2d 698, 700 (Minn. Ct. App. 2003).

Caps on Non-Economic Losses. Recovery for wrongful death is not a part of the decedent's estate. *Martz v. Revier*, 284 Minn. 166, 169, 170 N.W.2d 83, 85 (1969).

Treatment of Multiple Injuries. Not Applicable - In Minnesota, there is no cap on noneconomic damages recovery. Accordingly, treatment of multiple injuries would not affect the cap on non-economic damages claims.

Caps for Death Matter And Exceptions. In Minnesota, there is no cap on noneconomic damages recovery in nor is there a cap for noneconomic damages in a death case.

B. Compensatory Damages for Bodily Injury

Actual damages, also known as compensatory damages, are intended to restore the injured person's financial situation to a position roughly equivalent to what is was before the accident occurred. Actual damages can be awarded for medical bills, lost income, pain and suffering, permanent disability, mental stress, and other similar hardships.

C. Collateral Source

Collateral Source Rule Minn. Stat. § 548.251

Once liability is admitted or determined, a party may file a motion to determine collateral sources, and the parties may submit evidence establishing:

-The amount of collateral sources that have been paid for the benefit of the plaintiff or are otherwise available to the plaintiff as a result of losses except those for which a subrogation right has been asserted; and

-Amounts that have been paid, contributed, or forfeited by, or on behalf of, the plaintiff or members of the plaintiffs immediate family for the two-year period immediately before the accrual of the action to secure the right to a collateral source benefit that the plaintiff is receiving as a result of the loss.

-The court must then reduce and offset the award accordingly.

Collateral source is defined as payments related to the injury or disability in question made to the plaintiff, or on the plaintiffs behalf up to the date of the verdict, by or pursuant to:

-A federal, state, or local income disability or Workers' Compensation Act; or other public program providing medical expenses, disability payments, or similar benefits;

-Health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage; except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others, payments made pursuant to the United States Social Security Act, or pension payments;

-A contract or agreement of a group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental or other health care services; or

-A contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability, except benefits received from a private disability insurance policy where the premiums were wholly paid for by the plaintiff.

D. Pre-Judgment/Post-Judgment Interest

Pre-Judgment Interest:

Minn. Stat. § 549.09, subdiv. 1(b) states:

Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first, except as provided herein. The action must be commenced within two years

of a written notice of claim for interest to begin to accrue from the time of the notice of claim. If either party serves a written offer of settlement, the other party may serve a written acceptance or a written counteroffer within 30 days. After that time, interest on the judgment or award shall be calculated by the judge or arbitrator in the following manner. The prevailing party shall receive interest on any judgment or award from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from the time when special damages were incurred, if later, until the time of verdict, award, or report only if the amount of its offer is closer to the judgment or award than the amount of the opposing party's offer. If the amount of the losing party's offer was closer to the judgment or award than the prevailing party's offer, the prevailing party shall receive interest only on the amount of the settlement offer or the judgment or award, whichever is less, and only from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from when the special damages were incurred, if later, until the time the settlement offer was made. Subsequent offers and counteroffers supersede the legal effect of earlier offers and counteroffers. For the purposes of clause (2), the amount of settlement offer must be allocated between past and future damages in the same proportion as determined by the trier of fact. Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest shall not be awarded on the following:

(1) judgments, awards, or benefits in workers' compensation cases, but not including third-party actions;

(2) judgments or awards for future damages;

(3) punitive damages, fines, or other damages that are noncompensatory in nature;

(4) judgments or awards not in excess of the amount specified in section 491A.01; and

(5) that portion of any verdict, award, or report which is founded upon interest, or costs, disbursements, attorney fees, or other similar items added by the court or arbitrator.

Minn. Stat. § 549.09, subdiv. 1(b) (2013).

-The statute establishes two rates for prejudgment interest based on the value of the lawsuit. For lawsuits of $50,000 or less, the interest is computed as simple interest per annum which averages around 4%. The other interest rate applies to lawsuits over $50,000 and is set by statute at 10%.

Post-Judgment interest:

Calculable from the time of the verdict until the judgment is finally entered. *Pacific Indemnity Co. v. Thompson-Yaeger, Inc.*, 258 N.W.2d 762 (Minn. 1977).

E. Damages for Emotional Distress

"To establish a claim for **negligent infliction of emotional distress**, plaintiff must show she: (1) was within a zone of danger of physical impact; (2) reasonably feared for her own safety; and (3) suffered severe emotional distress with attendant physical manifestations." *K.A.C. v. Benson*, 527 N.W.2d 553, 557 (Minn. 1995).

"To sustain a claim for **intentional infliction of emotional distress**, plaintiff must establish: (1) the conduct was extreme and outrageous; (2) the conduct was intentional or reckless; (3) it caused emotional distress; and (4) the distress was severe." *Id.* at 560.

F. Wrongful Death and/or Survival Action Damages

Caps on Damages:

Minnesota has no cap on wrongful death damages but does not allow recovery for grief of the heirs nor is the pain and suffering of the decedent recoverable by the heirs. *Hutchins v. St. Paul, M. & M. Ry. Co*., 44 Minn. 5, 46 N.W. 79 (1890).

Release/Court Approval Issues:

A release to the person liable, by those entitled to the amount recoverable for death caused by a wrongful act, is a bar to a subsequent action brought by the personal representative of deceased. *Sykora v. J. I. Case Threshing-Mach. Co*., 59 Minn. 130, 60 N.W. 1008 (1894).

While an administrator may, in good faith, settle a claim for damages for the death of his intestate by the wrongful act of another, without the consent of the surviving spouse and next of kin of his intestate, yet a release of such claim fraudulently made by the administrator, the adverse party participating, is no bar to an action to enforce the claim by a succeeding administrator. *Aho v. Jesmore*, 101 Minn. 449, 112 N.W. 538 (1907).

The right of action given by Minn. Stat. § 573.02, for wrongful death, creates an indivisible cause of action, and a settlement with one of the wrongdoers is a bar to a subsequent action against others whose wrongful conduct may have contributed to cause the death. *Almquist v. Wilcox*, 115 Minn. 37, 131 N.W. 796 (1911).

In an action for wrongful death, it is no defense that the defendant had settled with one of the next of kin prior to the appointment of the administratrix or the commencement of an action. *McVeigh v. Minneapolis & R.R.R. Co*., 110 Minn. 184, 124 N.W. 971 (1910).

Minn. R. Gen. Prac. 144.05 governs distribution of proceeds involving actions for death by wrongful act. It states:

> Application for the distribution of money recovered under Minn. Stat. § 573.02 shall be by verified petition of the trustee. Such petition shall show the amount

which has been received upon action or settlement; a detailed statement of disbursements paid or incurred, if any; the amount, if any, claimed for services of the trustee and of the trustee's lawyer; the amount of the funeral expenses and of demands for the support of the decedent; the name, age and address of the surviving spouse and each next of kin required to be listed in the petition for appointment of trustee and all other next of kin who have notified the trustee in writing of a claim for pecuniary loss, and the share to which each is entitled.

If an action was commenced, such petition shall be heard by the court in which the action was tried, or in the case of settlement, by the court in which the action was pending at the time of settlement. If an action was not commenced, the petition shall be heard by the court in which the trustee was appointed. The court hearing the petition shall approve, modify, or disapprove the proposed disposition and shall specify the persons to whom the proceeds are to be paid.

Minn. R. Gen. Prac. 144.05 (2013).

G. Punitive Damages

Minn. Stat. §§ 549.191 and 549.20 discuss punitive damages. Punitive damages are allowed in civil actions "upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, subdiv. 1(a)(2013).

Punitive damages may not be asserted in a complaint, rather, after filing suit, a plaintiff may move the court to amend the pleadings to assert punitive damages. Minn. Stat. § 549.191 (2013). The motion must include an affidavit specifying the grounds for punitive damages. *Id*.

Minnesota courts will allow punitive damages only on a showing of "maliciousness, an intentional or willful failure to inform or act . . . ." *Wikert v. N. Sand & Gravel, Inc*., 402 N.W.2d 178, 183 (Minn. Ct. App. 1987).

H. Diminution in Value of Damaged Vehicle

The measure of damages to an automobile resulting from a collision is the diminution of the value and where automobile is materially wrecked, such damages are usually established by proving the value of the automobile before and after the collision and where damages to automobile are of such a character that the automobile may be repaired and put in substantially as good a condition as before, the reasonable cost of restoring the automobile to its former condition is the proper measure of damage. *Kopischke v. Chicago, St. P., M. & O. Ry. Co*., 230 Minn. 23, 40 N.W.2d 834 (1950)**.**

I. Loss of Use of Motor Vehicle

Recovery for injury to property may include damages for loss of use. *See Kopischke v. Chicago, St. P., M. & O. Ry. Co*., 230 Minn. 23, 30–31, 40 N.W.2d 834, 839 (1950).

Evidentiary Issues

A. Preventability Determination

Not applicable in Minnesota law as this is understood.

B. Traffic Citation from Accident

Minn. Stat. 169.94 discusses records of conviction for traffic violations:

> **Subdivision 1. Not admissible as evidence.** No record of the conviction of any person for any violation of this chapter shall be admissible as evidence in any court in any civil action.
>
> **Subd. 2. Not to affect credibility as witness.** The conviction of a person upon a charge of violating any provision of this chapter or other traffic rule less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

Minn. Stat. § 169.94, subdiv. 1-2 (2013).

Minn. Stat. § 169.94 prohibited the asking of plaintiff in an automobile accident case whether he had pleaded guilty in justice court to a violation of traffic regulation arising out of accident. *Warren v. Marsh*, 215 Minn. 615, 11 N.W.2d 528 (1943). However, Minn. Stat. § 169.94 did not prohibit introduction of evidence showing that no tickets were issued at scene of an accident. *LeClair v. Sickler*, 275 Minn. 320, 146 N.W.2d 853, 856 (1966).

C. Failure to Wear a Seat Belt

Minn. Stat. 169.686, subdiv. 1 (a)-(b) establishes a seat belt requirement:

> (a) Except as provided in section 169.685, a properly adjusted and fastened seat belt, including both the shoulder and lap belt when the vehicle is so equipped, shall be worn by the driver and passengers of a passenger vehicle, commercial motor vehicle, type III vehicle, and type III Head Start vehicle.
>
> (b) A person who is 15 years of age or older and who violates paragraph (a) is subject to a fine of $25. The driver of the vehicle in which a violation occurs is subject to a $25 fine for each violation of paragraph (a) by the driver or by a passenger under the age of 15, but the court may not impose more than one surcharge under section 357.021, subdivision 6, on the driver. The Department of Public Safety shall not record a violation of this subdivision on a person's driving record.

Minn. Stat. 169.686, subdiv. 1 (a)-(b) (2013).

Minn. Stat. 169.685, subdiv. 4 (a)-(b) discusses the admissibility of the use or failure to use seat belts into evidence:

> (a) Except as provided in paragraph (b), proof of the use or failure to use seat belts or a child passenger restraint system as described in subdivision 5, or proof of the installation or failure of installation of seat belts or a child passenger restraint system as described in subdivision 5 shall not be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.

(b) Paragraph (a) does not affect the right of a person to bring an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system. Paragraph (a) does not prohibit the introduction of evidence pertaining to the use of a seat belt or child passenger restraint system in an action described in this paragraph

Minn. Stat. 169.685, subdiv. 4 (a)-(b)(2013).

D. Failure of Motorcyclist to Wear a Helmet

Evidence of use or non-use of helmet use is not expressly prohibited or required and should be argued on a relevance basis. Minnesota does not have a mandatory helmet law at this time.

E. Evidence of Alcohol or Drug Intoxication

Minn. Stat. § 169A.45, entitled "Evidence," states:

Subdivision 1. Alcohol concentration evidence. Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for violating section 169A.20 (driving while impaired) or 169A.31 (alcohol-related school bus or Head Start bus driving), the court may admit evidence of the presence or amount of alcohol in the person's blood, breath, or urine as shown by an analysis of those items. In addition, in a prosecution for a violation of section 169A.20, the court may admit evidence of the presence or amount in the person's blood, breath, or urine, as shown by an analysis of those items, of:

(1) a controlled substance or its metabolite; or
(2) a hazardous substance.

Subd. 2. Relevant evidence of impairment. For the purposes of section 169A.20 (driving while impaired), evidence that there was at the time an alcohol concentration of 0.04 or more is relevant evidence in indicating whether or not the person was under the influence of alcohol.

Subd. 3. Evidence of refusal. Evidence of the refusal to take a test is admissible into evidence in a prosecution under section 169A.20 (driving while impaired).

Subd. 4. Other competent evidence admissible. The preceding provisions do not limit the introduction of any other competent evidence bearing upon the question of whether the person violated section 169A.20 (driving while impaired) or 169A.31 (alcohol-related school bus or Head Start bus driving), including tests obtained more than two hours after the alleged violation and results obtained from partial tests on an infrared or other approved breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample, as described in section 169A.51, subdivision 5, paragraph (b) (breath test using infrared or other approved breath-testing instrument).

Minn. Stat. § 169A.45, subdiv. (1)-(4)(2013).

Evidence of intoxication is admissible to show contributory negligence if intoxication was proximate cause of injury, but mere fact that plaintiff may be under the influence of alcohol does not constitute contributory negligence. *Kedrowski v. Czech*, 244 Minn. 111, 118, 69 N.W.2d 337 (1955); *see also Olstad v. Fahse*, 204 Minn. 118, 121, 282 N.W. 694, 696 (1938).

Results of tests of blood samples taken from plaintiff after collision with county sheriff's squad car, and expert testimony regarding tests, were relevant and admissible in plaintiff's negligence action against county on issue of whether accident was caused by speeding of sheriff's squad car or by plaintiff's turning into path of sheriff's squad car. *VanHercke v. Eastvold*, 405 N.W.2d 902, 906 (Minn. Ct. App. 1987).

F. Testimony of Investigating Police Officer

Police officer's testimony that automobile driver's intoxication was major contributing factor in rear-end collision was admissible in dram shop action; officer had investigated accident, officer was 21-year veteran of police force, officer had taken two 40-hour classes on traffic accident investigation, and officer had investigated numerous rear-end traffic accidents. *May v. Strecker*, 453 N.W.2d 549, 555 (Minn. Ct. App. 1990).

No abuse of discretion in admission of police officer's testimony concerning accident reconstruction; despite fact that witness was not disclosed as expert, court limited scope to what officer investigated and his opinion based upon evidence. *Frazier v. Burlington N. Santa Fe Corp*., 811 N.W.2d 618 (Minn. 2012), as modified (Apr. 19, 2012).

G. Expert Testimony

Minn. R. Evid. 702 states:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The opinion must have foundational reliability. In addition, if the opinion or evidence involves novel scientific theory, the proponent must establish that the underlying scientific evidence is generally accepted in the relevant scientific community.

Minn. R. Evid. 702 (2013).

H. Collateral Source

Because collateral source deductions are for the court to determine, not the jury, the existence of collateral sources should not be revealed to the jury. Minn. Stat. § 548.25, subdiv. 5 (2013). However, evidence of collateral source payments constituting present or future income may be admissible to impeachment a plaintiff's claim of financial destitution. *Kroning v. State Farm Auto. Ins. Co*., 549 N.W.2d 106, 110 (Minn. Ct. App. 1996), aff'd in part, rev'd in part, 567 N.W.2d 42 (Minn. July 31, 1997); *Bartosch v. Lewison*, 413 N.W.2d 530, 533 (Minn. Ct. App. 1987).

I. Recorded Statements

The Minnesota Rules of Civil Procedure define a statement as "(1) a written statement signed or otherwise adopted or approved by the person making it, or (2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof that is a substantial verbatim recital of an oral statement by the person making it and contemporaneously recorded." Minn. R.Civ. P. 26.02(d) (2013).

Generally, an out of court statement is inadmissible hearsay. But the statement may be admitted if it is a non-hearsay statement against interest or subject to an exception to the hearsay rule. Even if not admissible to prove the fact of the matter asserted, a statement may be used at trial for the limited purpose of impeaching a witness if he/she gives trial testimony which is inconsistent with his/her previous statement.

The use of statements at trial is further restricted by Minn. Stat. § 602.01, which provides:

> Any statement secured from an injured person at any time within 30 days after such injuries were sustained shall be presumably fraudulent in the trial of any action for damages for injuries sustained by such person or for the death of such person as the result of such injuries. No statement can be used as evidence in any court unless the party so obtaining the statement shall give to such injured person a copy thereof within 30 days after the same was made.

Minn. Stat. § 602.01 (2013).

The purpose of Minn. Stat. § 602.01 is to prevent unfair practices in the procurement of statements from injured parties. *See Yeager v. Chapman*, 233 Minn. 1, 10, 45 N.W.2d 776, 782 (1951). The exclusionary clause of the statute, like the presumption of fraudulence, only applies to statements given by an injured person who seeks to recover in an action for injuries sustained. *See Hilleshiem v. Stippel*, 283 Minn. 59, 65, 166 N.W.2d 325, 330 (1969). The statute does not bar the admission of statements in other types of actions, even if closely related to a personal injury action. *See, e.g., Dike v. American Family Mut. Ins. Co*., 284 Minn. 412, 420, 170 N.W.2d 563, 567 (1969) (holding no statutory protection existed for statement made by injured insured in his declaratory judgment action against insurer to determine coverage for motor vehicle accident); *Hillesheim*, 283 Minn. at 64-65, 166 N.W.2d at 329 (concluding statute did not apply to statement given by injured defendant in personal injury case). Therefore, when taking the statement of an injured person, it is important to provide him/her with a copy of the statement within 30 days, to ensure that it may be used at a later trial.

J. Prior Convictions

Minn. R. Evid. 609, entitled "Impeachment by Evidence of Conviction of Crime" states:

> **(a) General rule.** For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and the court determines

that the probative value of admitting this evidence outweighs its prejudicial effect, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, vacation or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, vacation or certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, vacation or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. Evidence of juvenile adjudications is not admissible under this rule unless permitted by statute or required by the state or federal constitution.

(e) Pendency of appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Minn. R. Evid. 609 (a)-(e) (2013).
Underlying rule governing admissibility of prior convictions for impeachment is principle that impeachment by prior conviction assists jury to judge better the credibility of a witness by affording jury opportunity to view that person as a whole. *State v. Lloyd*, 345 N.W.2d 240, 247 (Minn. 1984).

The Minnesota Supreme Court must sustain evidentiary ruling on admissibility of prior conviction unless clear abuse of discretion is shown. *State v. Brouillette*, 286 N.W.2d 702, 707 (Minn. 1979).

K. Driving History

Generalized driving characteristics reflect one's character and are inadmissible under Minn. R. Evid. 404. *See George v. Estate of Baker*, 724 N.W.2d 1, 9 (Minn. 2006) (admitting evidence of driver's careful nature and driving history was harmless error).

L. Fatigue

Not discussed by statute in Minnesota. Evidence of driver fatigue, if relevant to the case, may come into evidence through cross-examination.

M. Spoliation

"Spoliation of evidence refers to the destruction of relevant evidence by a party . . . ." *Hoffman v. Ford Motor Co.*, 587 N.W.2d 66, 71 (Minn. Ct. App. 1998) (internal quotations omitted).

Trial judges have inherent power to impose sanctions for the loss, destruction or spoliation of evidence even in the absence of a violation of a court order or a finding of bad faith or willful destruction; the appropriateness and extent of the sanctions is determined by "the prejudice to the opposing party." *Patton v. Newmar Corp*., 538 N.W.2d 116 (Minn. 1995) (whether the spoliation is deliberate or negligent or unintentional is also relevant). *See also State v. Carlson*, 267 N.W.2d 170 (Minn. 1978) (intention of spoliator emphasized over prejudice to opposing party); *State v. Koehler*, 312 N.W.2d 108 (Minn. 1981) (inadvertent loss of homicide victim's stomach contents); *State v. Trimble*, 371 N.W.2d 921 (Minn. Ct. App. 1985) (negligent discarding of sanitary napkin in rape case).

While intentional spoiliation is a factor in considering the sanction to be imposed, the trial court has discretion to determine an appropriate sanction in light of the complete record, the context of the claims asserted, the nature of the item lost, the prejudice caused, and the potential for correcting any prejudice. *Foust v. McFarland*, 698 N.W.2d 24 (Minn. Ct. App. 2005) (citing and following *Patton v. Newmar Corp*., 538 N.W.2d 116 (Minn. 1995)).

When spoliation of evidence significantly prejudices the defense in a products liability and breach of warranty case, there is no abuse of discretion by excluding evidence supporting plaintiff's claims. *Hoffman v. Ford Motor Co*., 587 N.W.2d 66 (Minn. Ct. App. 1998).

When critical evidence under exclusive control of an adverse party is destroyed accidentally or otherwise, the trial court has discretion to instruct the jury that it may draw an unfavorable inference from that fact. *Wajda v. Kingsbury*, 652 N.W.2d 856 (Minn. Ct. App. 2002), citing *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc*., 456 N.W.2d 434, 436 (Minn. 1990) and *Kmetz v. Johnson*, 261 Minn. 395, 403, 113 N.W.2d 96, 101 (1962) (exclusive control and possession required).

23 Minn. Prac., Trial Handbook For Minn. Lawyers § 2:26 (2013 ed.).

Settlement

A. Offer of Judgment

Minn. R. Civ. P. 68 permits either party to make a written offer to have judgment entered or to settle the case on terms specified in the offer which must be made at least 10 days before the start of trial. The offer can be for money or any other relief sought (such as in a declaratory judgment action).

An offer must specify whether it is a "damages only" offer, which does not include any prejudgment interest, costs or fees, or a "total obligation" offer, which includes prejudgment interest, costs and fees. If not specified, an offer will be presumed to be a "damages only" offer, which permits the offeree to seek interest, costs and fees.

An offer remains open for 10 days, during which time it may be accepted by serving a written response. After 10 days, if there is no response, the offer is withdrawn.

An accepted "total obligation" offer will be filed with the court administrator and will become a judgment. For an accepted "damages only" offer, a motion must be brought by the offeree to determine any applicable prejudgment interest, costs and fees.

Effect of Refusal:

If defendant made the offer, and the case is resolved for an amount less than the original offer, the defendant is entitled to costs and disbursements incurred after the service of the offer.

If plaintiff made the offer, and the matter is resolved for an amount greater than the original offer, the plaintiff gets all costs and disbursements, and "double" costs and disbursements incurred after the service of the rejected offer.

If there is no offer of judgment made in the case the prevailing party is entitled to its costs and disbursements

It is possible for both parties to obtain costs:

1) If a defendant beats its own statutory offer on verdict, and
2) It is a prevailing party at trial.

B. Liens

Minn. Stat. § 514.68, entitled "**Liens for Hospital Charges**" states:

> Any person, firm, or corporation operating a hospital in this state shall have a lien for the reasonable charges for hospital care of an injured person upon any and all causes of action accruing to the person to whom such care was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitated such hospital care, subject, however, to any attorney's lien.

Minn. Stat. § 514.68 (2013).

Minn. Stat. § 256B.042, **Minnesota's Medical Assistance Lien Provision**, states:

> When the state agency provides, pays for, or becomes liable for medical care, it shall have a lien for the cost of the care upon any and all causes of action or recovery rights under any policy, plan, or contract providing benefits for health

> care or injury, which accrue to the person to whom the care was furnished, or to the person's legal representatives, as a result of the illness or injuries which necessitated the medical care. For purposes of this section, “state agency” includes prepaid health plans under contract with the commissioner according to sections 256B.69, 256D.03, subdivision 4, paragraph (c), and 256L.12; children's mental health collaboratives under section 245.493; demonstration projects for persons with disabilities under section 256B.77; nursing facilities under the alternative payment demonstration project under section 256B.434; and county-based purchasing entities under section 256B.692.

Minn. Stat. § 256B.042, subdiv. 1 (2013.)

The **statutory basis for a mechanic's lien** is set out in Minn. Stat. § 514.01, which states:

> Whoever performs engineering or land surveying services with respect to real estate, or contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes hereinafter stated, whether under contract with the owner of such real estate or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed, that is to say, for the erection, alteration, repair, or removal of any building, fixture, bridge, wharf, fence, or other structure thereon, or for grading, filling in, or excavating the same, or for clearing, grubbing, or first breaking, or for furnishing and placing soil or sod, or for furnishing and planting of trees, shrubs, or plant materials, or for labor performed in placing soil or sod, or for labor performed in planting trees, shrubs, or plant materials, or for digging or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, altering or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same, or in or upon the adjoining half of any highway, street, or alley upon which the same abuts.

Minn. Stat. § 514.01 (2013).

Minn. Stat. § 481.13, subdiv. 1, which **governs lien for attorneys' fees**, states:

> (a) An attorney has a lien for compensation whether the agreement for compensation is expressed or implied (1) upon the cause of action from the time of the service of the summons in the action, or the commencement of the proceeding, and (2) upon the interest of the attorney's client in any money or property involved in or affected by any action or proceeding in which the attorney may have been employed, from the commencement of the action or proceeding, and, as against third parties, from the time of filing the notice of the lien claim, as provided in this section.

(b) An attorney has a lien for compensation upon a judgment, whether there is a special express or implied agreement as to compensation, or whether a lien is claimed for the reasonable value of the services. The lien extends to the amount of the judgment from the time of giving notice of the claim to the judgment debtor. The lien under this paragraph is subordinate to the rights existing between the parties to the action or proceeding.

(c) A lien provided by paragraphs (a) and (b) may be established, and the amount of the lien may be determined, summarily by the court under this paragraph on the application of the lien claimant or of any person or party interested in the property subject to the lien.

Judgment shall be entered under the direction of the court, adjudging the amount due.

Minn. Stat. § 481.13, subdiv. 1 (2013).

C. Minor Settlement

Minn. Stat. § 540.08, entitled "Injury to child or ward; suit by parent or guardian," states:

> A parent may maintain an action for the injury of a minor son or daughter. A general guardian may maintain an action for an injury to the ward. A guardian of a dependent, neglected, or delinquent child, appointed by a court having jurisdiction, may maintain an action for the injury of the child. . . . No settlement or compromise of the action is valid unless it is approved by a judge of the court in which the action is pending.

Minn. Stat. § 540.08 (2013).

Rule 145 of the Minnesota General Rules of Practice establishes the procedures to be followed in actions on behalf of minors.

D. Negotiating Directly With Attorney

Permitted

E. Confidentiality Agreements

Permitted

F. Releases

A release is "a relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists, to the person against whom it might have been enforced. *Gronquist v. Olson*, 242 Minn. 119, 125, 64 N.W.2d 159, 163-64 (1954).

Because the law encourages settlement of disputes, releases are presumed valid. *Clark v. Allstate Ins. Co.*, 405 N.W.2d 463, 465 (Minn. Ct. App. 1987).

Pierringer release — release of one of many defendants:

-A Pierringer release discharges the portion of the plaintiff's whole cause of action equal to the percentage of causal fault attributed to the settling defendant.

-The remainder of the cause of action, against all non-settling defendants, is preserved.

-A Pierringer release contains a provision whereby the plaintiff agrees to indemnify the settling defendant from claims for contribution, made against the settling defendant by the non-settling defendants.

-The settling defendant's fault will still be submitted to the jury, and used to calculate comparative fault, such that the non-settling defendant will only be required to pay his fair share of the damages. *See Frey v. Snelgrove,* 269 N.W.2d 918 (Minn. 1978) (citing *Pierringer v. Hoger,* 124 N.W.2d 106 (Wis. 1963); *Fire Ins. Exch. v. Adamson Motors,* 514 N.W.2d 807 (Minn. Ct. App. 1994)).

G. Voidable Releases

A release of a claim for personal injuries, executed, in reliance on false representations of probability of recovery made by an attending physician in the employ of persons sought to be charged therewith, is voidable. *Nelson v. Chicago & N. W. R. Co.*, 111 Minn. 193, 126 N.W. 902 (1910).

Release from liability for personal injuries procured by false representation that releasee is signing only a receipt for money paid for purposes other than for release of entire cause of action is fraudulent and voidable. *Marino v. N. Pac. Ry. Co*., 199 Minn. 369, 272 N.W. 267 (1937).

Transportation Law

A. State DOT Regulatory Requirements

The Minnesota Department of Transportation's regulatory information can be found at: http://www.dot.state.mn.us/library/lawsregs.html

Minnesota traffic regulations are listed in Minn. Stat. Ch. 169.

B. State Speed Limits

Minn. Stat. § 169.14, subdiv. 2(a)-(d), which governs speed limits, states:

(a) Where no special hazard exists the following speeds shall be lawful, but any speeds in excess of such limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful; except that the **speed limit** within any municipality shall be a maximum limit and any speed in excess thereof shall be unlawful:

(1) **30 miles per hour** in an urban district;

(2**) 65 miles per hour** on noninterstate expressways, as defined in section 160.02, subdivision 18b, and noninterstate freeways, as defined in section 160.02, subdivision 19;

(3) **55 miles per hour** in locations other than those specified in this section;

(4) **70 miles per hour** on interstate highways outside the limits of any urbanized
area with a population of greater than 50,000 as defined by order of the commissioner of transportation;
(5) **65 miles per hour** on interstate highways inside the limits of any urbanized area with a population of greater than 50,000 as defined by order of the
commissioner of transportation;
(6) **ten miles per hour** in alleys;
(7) **25 miles per hour** in residential roadways if adopted by the road authority
having jurisdiction over the residential roadway; and
(8) **35 miles per hour** in a rural residential district if adopted by the road authority having jurisdiction over the rural residential district.

(b) A speed limit adopted under paragraph (a), clause (7), is not effective unless the road authority has erected signs designating the speed limit and indicating the beginning and end of the residential roadway on which the speed limit applies.

(c) A speed limit adopted under paragraph (a), clause (8), is not effective unless the road authority has erected signs designating the speed limit and indicating the beginning and end of the rural residential district for the roadway on which the speed limit applies

(d) Notwithstanding section 609.0331 or 609.101 or other law to the contrary, a person who violates a speed limit established in this subdivision, or a speed limit designated on an appropriate sign under subdivision 4, 5, 5b, 5c, or 5e, by driving 20 miles per hour or more in excess of the applicable speed limit, is assessed an additional surcharge equal to the amount of the fine imposed for the speed violation, but not less than $25.

Minn. Stat. Ann. § 169.14, subdiv. 2(a)-(d)(2013).

C. Overview of State CDL Requirements

The Minnesota CDL manual listing the requirements to obtain a Minnesota CDL can be found: https://dps.mn.gov/divisions/dvs/forms-documents/documents/cdlmanual.pdf

Insurance Issues

A. State Minimum Limits of Financial Responsibility

Minnesota law requires liability limits of not less than $30,000 for one person and not less than $60,000 for two or more persons in any one accident, a motor vehicle with less than this coverage is considered uninsured. Minn. Stat. § 65B.49, subdiv. 3(1) (2013).

B. Uninsured Motorist Coverage

An uninsured motor vehicle is defined as a motor vehicle or a motorcycle which does not have liability insurance meeting the requirements of Minnesota Law. Minn. Stat. Sec. 65B.43, subdiv. 16 (2013). Minnesota law requires liability limits of not less than

$30,000 for one person and not less than $60,000 for two or more persons in any one accident, a motor vehicle with less than this coverage is considered uninsured. Minn. Stat. Sec. 65B.49, subdiv. 3 (2013). Note that the minimum UM limits are lower, only $25,000/$50,000. An uninsured motorist contract of insurance is permitted to use definitions which provide benefits or coverages which are in addition to those mandated by the statute. Minn. Stat. Sec. 65B.49, subdiv. 7 (2013). Consequently, in cases where a UM claim does exist under the statutory standards, it would be reasonable to review the injured person's uninsured motorist contract to determine if the contract provides UM benefits. There are four typical types of uninsured motorist scenarios: vehicles without insurance, out-of-state and low limits accidents, Minnesota accidents with non-resident motorists with low limits, denial of coverage or insolvency and hit and run or phantom vehicles.

C. No Fault Insurance

Minnesota's No-Fault provisions are found in the Minnesota No-Fault Automobile Insurance Act (Sections 65B. 41 to 65B.71). No-Fault insurance is mandatory in Minnesota. The provisions of the act apply to the maintenance or use of a motor vehicle in Minnesota. "Maintenance or use of a motor vehicle" means "occupying, entering into, and alighting from" an automobile. Minn. Stat. § 65B.43, subdiv. 3 (2013). Maintenance or use of a motor vehicle does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining a motor vehicle unless the conduct occurs off the business premises or conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into or alighting from it. *Id*.

Who is Covered: An insured within the meaning of the No-Fault provisions includes the named insured and the following persons not identified by name as an insured while residing in the same household with the named insured and not identified by name in any other contract providing for No-Fault insurance as an insured:

-A spouse,

-Other relative of a named insured, or

-A minor in the custody of a named insured or of a relative residing in the same household with a named insured.

Minn. Stat. Section 65B. 43, subdiv. 5 (2013).

Basic Economic Loss Benefits: Subject to any applicable deductions, exclusions, disqualifications and any other conditions, basic economic loss benefits must provide a maximum of Forty Thousand Dollars ($40,000.00) for loss arising out of the injury of any one person, as follows:

-Twenty Thousand Dollars ($20,000.00) for medical expense loss arising out of injury to any one person; and

-A total of Twenty Thousand Dollars ($20,000.00) for income loss, replacement services loss, funeral expense loss, survivor's economic loss, and survivor's replacement services loss arising out of the injury to any one person.

Minn. Stat. § 65B. 44, subdiv. 1 (2013).

Medical: Medical expense benefits will reimburse all reasonable expenses for necessary medical, surgical, X-ray, optical, dental, chiropractic, and rehabilitative services, including prosthetic devices, prescription drugs, necessary ambulance and all other reasonable transportation expenses incurred in traveling to receive covered medical benefits, hospital, extended care and nursing services. Minn. Stat. § 65B.44, subdiv. 2 (2013).

Income: Disability and income loss benefits will provide compensation for 85% of the injured persons loss of present and future gross income from an inability to work proximately caused by the non-fatal injury subject to a maximum of Two Hundred Fifty Dollars ($250.00) per week. Income means any salary, wages, tips, commissions, professional fees, and any other earnings from work or tangible things of economic value produced through work in an individually owned business. Loss of income includes the costs incurred by a self-employed person to hire substitute employees to perform tasks which are necessary to maintain the income of the injured person, which are normally performed by that injured person and which cannot be performed because of the injury. Minn. Stat. §§ 65B.43, subdiv. 6 (2013); 65B.44, subdiv. 3 (2013).

-Any income the injured person earns from any substitute work actually performed or substitute work which the injured person was capable of performing but unreasonably failed to undertake will reduce any disability and income loss benefits payable under the No-Fault provisions. Inability to work means disability which prevents the injured person from engaging in any substantial gainful occupation or employment on a regular basis, for wage or profit, for which the injured person is or may, by training, become reasonably qualified. If the injured person returns to employment and is unable by reason of the injury to continue the work continuously, compensation for lost income shall be reduced by the income received while that person was actually able to work. Minn. Stat. § 65B.44, subdiv. 3 (2013).

Replacement Services: Replacement service loss benefits will reimburse all expenses reasonably incurred by or on behalf of the injured person in obtaining usual and necessary substitute services in lieu of those that, had the injured person not been injured, the injured person would have performed not for income but for direct personal benefit or for the benefit of the injured person's household. If the non-fatally injured person is performing on a full time basis care and maintenance of a home with or without children, the benefit provided will be the reasonable value of such care and maintenance for the reasonable expenses incurred in obtaining usual and necessary substitute care and maintenance of the home, whichever is greater. Replacement services benefits are subject to a maximum of Two Hundred Dollars ($200.00) per week. Additionally, all replacement services loss sustained on the date of the injury and

during the first seven (7) days following is excluded in calculating these benefits. Minn. Stat. § 65B.44, subdiv. 5 (2013).

Funeral and burial benefits: Also included under the basic economic loss benefits. "Funeral and burial benefits shall be reasonable expenses not in excess of $2,000, including expenses for cremation or delivery under the Darlene Luther Revised Uniform Anatomical Gift Act, chapter 525A." Minn. Stat. § 65B. 44, subdiv. 4 (2013). Economic loss benefits and replacement services loss benefits are also provided to the survivors of the injured party. In the event of death occurring within one (1) year of the date of the accident and as a consequence of the injuries received in the accident, survivors economic loss benefits are payable subject to a maximum of Two Hundred Dollars ($200.00) per week to cover the loss accruing after decedent's death of contributions of money or tangible things of economic value, not including services, that surviving dependents would have received from the decedent for their support during their dependency had the decedent not suffered the injury causing death. The following are presumed to be dependents of the decedent:

-A spouse living with the decedent at the time of the decedent's death; an

-Any child under the age of eighteen (18), or if over age eighteen (18) but physically or mentally incapacitated from earning, living with the decedent and receiving regular support at the time of death. These payments only terminate when the recipient ceases to maintain a status which if the decedent were alive would be that of dependency. Minn. Stat. § 65B. 44, subdiv. 6(2013).

Survivor Benefits: Survivor replacement services loss benefits are to reimburse expenses reasonably incurred by the surviving dependents after the date of death in obtaining ordinary and necessary services in lieu of those the deceased would have performed for their benefit, "had the decedent not suffered the injury causing death, minus the expenses of the survivors avoided by reason of the decedent's death." These benefits are subject to a maximum of Two Hundred Dollars ($200.00) per week. Minn. Stat. § 65B.44, subdiv 7 (2013).

Property Damage Exclusion: Basic economic loss benefits do not include benefits for physical damage done to property including motor vehicles and their contents. Minn. Stat. § 65B.44, subdiv. 8 (2013).

Right to Benefits: For every accident occurring within the State of Minnesota, every person suffering a loss from injury arising out of the maintenance or use of a motor vehicle has a right to basic economic loss benefits. This includes any loss suffered as a result of being struck as a pedestrian by a motorcycle.

-If the accident occurs outside of Minnesota but in the United States, United States possessions or Canada, and a loss is suffered from injury arising out of the maintenance or use of a motor vehicle or as a result of being struck as a pedestrian by a motorcycle, the right to recover the benefits applies to the

insureds, and the driver and other occupants of a secured vehicle other than:

(1) A vehicle owned by a government other than this state, its political subdivisions, municipal corporations, or public agencies.

Minn. Stat. Ann. § 65B.46 (2013).

Reparation Security Compulsory: Mandatory No-Fault insurance coverage applies to every motor vehicle registered, licensed, or principally garaged in Minnesota. A non-resident owner of a motor vehicle which is not required to be registered or licensed, or which is not principally garaged in the state must maintain reparation security in effect continuously throughout the period of the operation, maintenance or use of the motor vehicle within the state with respect to any accidents occurring in the state. This security shall also include coverage for property damage to a motor vehicle rented or leased within the state by a nonresident,

- Every plan of reparation security must provide for payment of basic economic loss benefits as stated above and must also contain stated limits of liability for each vehicle for which coverage is granted of not less than Thirty Thousand Dollars ($30,000.00) because of bodily injury to one person in any one accident and, not less than Sixty Thousand Dollars ($60,000.00) because of injury to two or more persons in any one accident, and not less than Ten Thousand Dollars ($10,000.00) for injury to or destruction of property. Minn. Stat. §§ 65B.48 (2013), 65B.49, subdiv. 3(1) (2013).

Tort Recoveries: A person may bring an action in negligence for economic loss not paid or payable by a reparation obligor or through the assigned claims plan because of any lack of insurance coverage for the economic loss, daily or weekly dollar limitations, the seven-day services exclusion, or the limitations on benefits contained in Minn. Stat. § 65B.44, subdiv. 1, i.e. the maximum Forty Thousand Dollars ($40,000.00) coverage required for basic economic loss benefits under the No-Fault provisions.

D. Disclosure of Limits and Layers of Coverage

Minn. Stat. § 72A.201, which regulates claims practices, states that "[a]n insurer must disclose the coverage and limits of an insurance policy within 30 days after the information is requested in writing by a claimant." Minn. Stat. § 72A.201, subdiv. 11 (2013).

Minn. R. Civ. P. 26.02 (c), entitled "Insurance Agreements" states:

> In any action in which there is an insurance policy that may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and, pursuant to Rule 34, may obtain production of the insurance policy; provided, however, that this provision will not permit such disclosed information to be introduced into evidence unless admissible on other grounds.

Minn. R. Civ. P. 26.02 (c) (2013).

E. Unfair Claims Practices

Minnesota's Unfair Claims Practices Act does not provide a private cause of action. *Morris v. Am. Fam. Mut. Ins. Co*., 386 N.W.2d 233 (Minn. 1986).

Minn. Stat. § 72A.20 prohibits certain methods, acts, and practices that are defined as unfair or deceptive. These include the following practices:

(1) misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(2) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(5) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

(8) attempting to settle a claim for less than the amount to which reasonable persons would have believed they were entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured;

(10) making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;

(11) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(14) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(15) requiring an insured to provide information or documentation that is or would be dated more than five years prior to or five years after the date of a fire loss, except for proof of ownership of the damaged property;

(16) stating or implying to an insured that filing a claim related to the I-35W bridge collapse for no-fault motor vehicle insurance benefits would or may result in cancellation or nonrenewal of the insured's policy or in a surcharge or other future increase in premium rates, when any such consequence of filing the claim would be prohibited by law;

(17) failing to promptly inform an insured who files a claim related to the I-35W bridge collapse and described in section 65B.133, subdivision 5a, of the provisions of that law, both orally and in writing.

Minn. Stat. § 72A.20, subdiv. 12 (1)-(17) (2013).

F. Bad Faith Claims

First-Party Bad Faith, Minn. Stat. § 604.18:

- A Plaintiff cannot initially plead a bad faith claim in the complaint. After filing the suit, a party may make a motion to amend the pleadings to claim recovery of taxable costs under this section. The motion must allege the applicable legal basis under this section for awarding taxable costs under this section, and must be accompanied by one or more affidavits showing the factual basis for the motion. The motion may be opposed by the submission of one or more affidavits showing there is no factual basis for the motion. At the hearing, if the court finds prima facie evidence in support of the motion, the court may grant the moving party permission to amend the pleadings to claim taxable costs under this section.

- Law regarding what standard is used for amendment of a first-party bad faith claim is not clear, is it Rule 15 where amendments should be freely granted or is it the punitive damage standard.

- The insured must establish that:

  -The insurer had no reasonable basis to deny the claim, or

  -The insurer had reckless disregard for whether there was a reasonable basis to deny the claim.

- There is an exception in the event the insurer is conducting or cooperating with a fraud or arson investigation.

- Damages and attorney's fees:

-Damages and fees "shall be determined by the court" in a separate proceeding

-A successful insured can recover either one-half of the proceeds awarded that exceeded the insurer's offer, or $250,000, whichever is less.

-A successful insured can also recover attorneys fees incurred in prosecuting the bad faith claim only (not the benefits claim) and these fees are capped at $100,000

- Does not apply to claims for No-Fault Benefits or Workers' Compensation Benefits.
- Does apply to claims for first party property damage, and UM and UTM claims.

Third-Party Bad Faith:

- Third-party bad faith arises when an insurer for a tortfeasor refuses to settle with a plaintiff within the policy limits without a good faith reason.
- An insurer's refusal of an offer to settle will not be deemed in good faith if:

  -The insurer did not in good faith believe the insured was not liable, or

  -If the insurer did not believe in good faith that the proposed settlement figure was greater than the amount a jury would award as damages. *Short v. Dairyland Ins. Co*., 334 N.W.2d 384, 387 (Minn. 1983).

- Additionally, the insured/tortfeasor may assign their (first-party) claim for bad faith to a plaintiff following judgment.

G. Coverage – Duty of Insured

"Generally, an insurance consumer is responsible to educate himself concerning matters of insurance coverage." *Louwagie v. State Farm Fire & Cas. Co.*, 397 N.W.2d 567, 569 (Minn. Ct. App. 1986).

Both the insurer and insured must cooperate to further the legislative purpose of expedited payments. For example, a policy may require notice to the insurer within six months of the accident. Minn. Stat. § 65B.55, subdiv. 1 (2013). If the insured fails to comply with the notice requirement, the insurer can deny basic economic loss benefits without showing prejudice. *Terrell v. State Farm Ins. Co*., 346 N.W.2d 149, 152 (Minn. 1984).

Similarly, in exchange for the insurer making prompt payments, the insured is required to cooperate in transmitting medical information and in submitting to an independent medical examination ("IME"). Therefore, an insured's unreasonable failure to attend an IME warrants the suspension of no-fault benefits. *Neal v. State Farm Mut. Ins. Co*., 529 N.W.2d 330, 333–34 (Minn. 1995).

A No-Fault insurer may require its insured-claimants to attend an examination under oath, provided it is "reasonably necessary" to enable the insurer to determine the facts of the accident, and the nature and extent of the injured person's injuries and loss, and the medical treatment received. *Western Nat. Ins. Co. v. Thompson*, 797 N.W.2d 201, 206 (Minn. 2011). The reasonableness of an insurer's request for examinations under oath and the insured's refusal to comply with the request is a factual dispute that can be made by an arbitrator, not a coverage dispute that should be made by a court prior to arbitration. *Id*. at 207.

22 Minn. Prac., Insurance Law & Practice § 8:12 (2013 ed.).

H. Fellow Employee Exclusions

In *D.W. v. Radisson Plaza Hotel Rochester*, 958 F. Supp. 1368, 1377-78 (D. Minn. 1997), the court states:

> [T]he Minnesota Workers' Compensation Act . . . is intended to be an employee's exclusive remedy against an employer for most job-related injuries. *See* Minn. Stat. § 176.031; *Fernandez v. Ramsey County,* 495 N.W.2d 859, 860 (Minn. Ct. App. 1993). Specifically, employers are required to "pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment without regard to the question of negligence . . . ." Minn. Stat. § 176.021, subdiv. 1 (2013). One exclusion to the WCA, commonly called the "assault exception," is found in the following statutory language: "Personal injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of personal reasons, and not directed against the employee as an employee, or because of the employment." Minn. Stat. § 176.011, subdiv. 16 (2013). In short, an injury is exclusively compensable under the WCA when it: (1) arises out of the employment, (2) is in the course of the employment, and (3) does not come within the assault exception. *See Foley v. Honeywell, Inc.,* 488 N.W.2d 268, 271 (Minn.1992).