

ARTHUR CHAPMAN

KETTERING SMETAK & PIKALA, P.A.

ATTORNEYS AT LAW

2015 MINNESOTA AUTOMOBILE LAW SEMINAR

SEPTEMBER 24, 2015 | METROPOLITAN BALLROOM – GOLDEN VALLEY, MINNESOTA

AGENDA

- 9:00 a.m. – 9:15 a.m. Introductions/Welcome ~Shayne M. Hamann**
- 9:15 a.m. – 9:45 a.m. To Rescind or Not to Rescind, That is the Question: Misrepresentations in the Modern Automobile Insurance Policy Application ~ Mark S. Brown and William J. McNulty**
Mark and Will are going to discuss material misrepresentations in the modern age of electronic insurance policy applications and their impact on coverage for first and third party claims following an accident. The discussion will look at tools and strategies that insurance companies can employ when an individual or an insured claims he or she is entitled to coverage, when it is questionable that coverage should have been provided in the first place, scenarios where a policy can be rescinded, and times when coverage will be afforded.
- 9:45 a.m. – 10:15 a.m. Important Principles to Keep in Mind When Defending Auto-Related Claims ~ Shayne M. Hamann and Paul J. Rocheford**
Shayne and Paul will discuss a potpourri of automobile-related topics and helpful reminders including initial claims handling principles and investigation, the importance of social media, the impact of the updated Minnesota Rules of Civil Procedure, along with dealing with attorney liens and releases. There will also be a discussion on cases dealing with reallocation of fault, *Swanson v. Brewster* collateral source information and making the most of independent medical examinations.
- 10:15 a.m. – 10:30 a.m. Refreshment Break**
- 10:30 a.m. – 11:00 a.m. Case Law Update: Recent Trends in UM/UIM Coverage ~ Stephen M. Warner and Gregory J. Duncan**
Greg and Steve will discuss the practical implications of legislation and decisions of the Minnesota state and federal courts in the last twelve months which may impact uninsured and underinsured motorist coverage.
- 11:00 a.m. – 11:30 a.m. The Changing Landscape of No-Fault Law in Minnesota ~ Shayne M. Hamann and Allison V. LaFave**
No-Fault law in Minnesota has changed more over the last year than it has in the last several years. Plaintiff attorneys continue to be crafty with how they maximize their clients' recovery of No-Fault benefits. Shayne and Allison will discuss the recent legislative changes and how the changes have impacted No-Fault law, as well as how to handle replacement service claims after the *Schroeder* case. There will also be a discussion of how early investigation and meaningful discovery early on in a case can increase chances of success at the arbitration hearing.
- 11:30 a.m. – 12:00 p.m. Auto-Related Panel Discussion ~ Paul J. Rocheford, Eugene C. Shermoen, Kafi C. Linville, Stephen M. Warner, Brendan M. O'Connell and Adina R. Florea – Moderated by Shayne M. Hamann**
Back again by popular demand, a panel of the firm's experienced auto attorneys will discuss a variety of issues they have seen and experienced over the last year. The panel will discuss pretrial issues and a motion in limine pertaining to the *Frye-Mack* standard and digital motion x-rays, combating motions to compel claims file materials, practical examples of how to deal with examinations under oath and dealing with the unresponsive insured, evaluation factors in an automobile personal injury case, including comparative fault, nature of the impact and expert opinions, as well as the importance of pre-suit investigation and important principles of recorded statements, witness information and property damage information.
- 12:00 p.m. – 1:00 p.m. Lunch**
- 1:00 p.m. – 2:00 p.m. Pain Pathology and Common Injuries Associated with Whiplash ~ Dr. Kristen Zeller, Summit Orthopedics**
Dr. Zeller will discuss the "grey" areas of chronic pain including the signs and symptoms to watch for in medical records, including opioid management and how pain doctors try to conservatively deal with this diagnosis. She will also discuss the various treatment options for chronic pain and how to ferret out the claims that are significant from the claims that are less believable. There will also be a discussion of chronic pain as it pertains to automobile accident related claims and an update pertaining to radio frequency neurotomies.
- 2:00 p.m. Questions and Answers and Closing Remarks**

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Kristen M. Zeller, M.D.
Curriculum Vitae

Citizenship: USA

EDUCATION

Pain Management Fellow
Mayo Clinic
Jacksonville, FL
2002-2003

Resident in Anesthesiology
Department of Anesthesiology
Loyola University Medical Center
Maywood, IL
1999-2002

Resident in Obstetrics and Gynecology
Department of Obstetrics and Gynecology
Loyola University Medical Center
Maywood IL
1998-1999

University of Minnesota Medical School
Minneapolis, MN
Degree: MD
1994-1998

University of Minnesota – Minneapolis Institute of Technology
Degree: BS
1990-1994

BOARD CERTIFICATION

Board Certified in Anesthesiology
Board Certified in Pain Management

MEDICAL LICENSURE

Minnesota

EMPLOYMENT

Summit Orthopedics
Interventional Pain Specialist
2009-current

Employment (con't)

Midwest Spine Institute and Midwest Pain Specialty Group
Interventional Pain Specialist
2005-2009

Interventional Pain Management Staff
Fairview-University
Direct of Pain Management, University of Minnesota Anesthesia Residency
2003-2005

Regional Anesthesia Specialist
University of Minnesota
2004

HONORS/AWARDS/PATENTS

Loyola University Medical Center Resident of the Year

Chief Resident
Department of Anesthesia
Loyola University Medical Center

First Place Award for MARC meeting presentation: Case Report

Second Place Award for MARC meeting presentation: Research Project

Full Athletic Scholarship
University of Minnesota: Swimming

All-Academic Honors: Swimming

All American Honors: Swimming

Academic & Athletic Excellence Award
1993 & 1994

Top Five Scholar Athlete Award

Dorothy Shepard Student-Athlete Award

Graduated with High Honors
Institute of Technology
University of Minnesota

PROFESSIONAL MEMBERSHIPS AND SOCIETIES

American Society of Anesthesiology
Illinois Resident Delegate at the ASA: October 2002
American Academy of Pain Medicine – 2003, 2004, 2005

EDUCATIONAL ACTIVITIES

Curriculum/Course Development

Curriculum Review Committee
Department of Anesthesiology Resident Program at Loyola University
Medical Center, Maywood, IL
2001, 2002

Director of University of Minnesota Anesthesia/Pain Management
Resident – Rotations, 2003, 2004, 2005

Teaching Activities

Primary educator of Pain Management of Anesthesia residents and
medical students, University of Minnesota – 2003, 2004, 2005

Initiated and coordinated a weekly Anesthesiology Morbidity and
Mortality conference, 2001

Prepared a CA-2 lecture as a senior resident, Loyola University
Medical Center – Presented Grand Rounds twice as a senior resident
at Loyola University Medical Center Department of Anesthesiology

Assisted in preparing third year medical students for USMLE1,
University of Minnesota Medical School, Minneapolis, MN
1997, 1998

Education Administration

Chief Resident
Department of Anesthesiology
Loyola University Medical Center
2001, 2002

Education Administration (con't)

Midwest Anesthesia Resident Conference Coordinator for Loyola
University Medical Center
Omaha, Nebraska meeting, 2001

Regional Anesthesia Conference Educator, Axillary Block
September 2004

**INSTITUTIONAL/DEPARTMENTAL ADMINISTRATION
RESPONSIBILITIES, COMMITTEE MEMBERSHIPS AND OTHER
ACTIVITIES**

Hospital Perioperative Antibiotic Review Committee
Loyola University Medical Center – 2001, 2002

Fairview University Academy of Physician Leadership
University of Minnesota – 2004, 2005

PRESENTATIONS

Zeller, K: "Management in a Parturient with a Mediastinal Mass"
Case Report, Midwest Anesthesia Resident Conference
Milwaukee, WI - March 9-11, 2011

Zeller, K: "Anesthetic and Recovery Profiles of Lidocaine versus
Mepivacaine for Spinal Anesthesia Patients Undergoing Infraumbilical
Surgical Procedures"
Midwest Anesthesia Resident Conference
Milwaukee, WI - March 9-11, 2002

Zeller, K: "Anesthesia for a Child with Complex I Enzyme Deficiency"
Midwest Anesthesia Resident Conference
Omaha, NE – March 8-10, 2002

INSTITUTIONAL PRESENTATIONS

"Intraoperative Awareness"
CA-2 Anesthesia Resident weekly curriculum lecture
August 2001

"Predictability of Preoperative Pulmonary Function Tests"
Grand Rounds – Department of Anesthesiology
November 2001

Institutional Presentations (con't)

“Malignant Hyperthermia vs. Neuroleptic Malignant Syndrome”
Grand Rounds – Department of Anesthesiology
August 2002

“Sacroiliac Joint Pain”
Pain Management weekly didactic – November 2002

“Complications of Intrathecal Infusion Therapy: Multiple Case Reports”
Mortality and Morbidity Conference – January 2003

“Neurological Complications of Epidural Therapy: Multiple Case Reports”
Mortality and Morbidity Conference – February 2003

“Case Report: Prolonged neurological deficits status post epidural placement”
Department of Anesthesia Conference – May 2003

“Low Back Pain and Indications for Epidural Steroid Injections”
Department of Pain Management – December 2003

“Axillary Block for Regional Anesthesia and Post-Op Pain Control”
Department of Anesthesia, University of Minnesota – September 2004

“Pain Mechanisms-Pathophysiology”
Department of Anesthesia
University of Minnesota – December 2004

“Treatment of Post-Operative Pain”
Department of Anesthesia
University of Minnesota – December 2004

“Cancer Management Pain”
Thoracic Surgery/Oncology Conference
University of Minnesota – March 2005

“Epidural Management for Post-Operative Pain Control”
Department of Anesthesiology
University of Minnesota – April 2005

GUEST LECTURE

“Case Report: Prolonged neurologic deficits status post epidural placement”
Grand Rounds – Loyola University Medical Center
May 2003

ABSTRACTS PUBLISHED

Sitzman BT, Zeller KM, Domashevich VY, Lamter TJ, Fenton DS.
Chemical burns following accident phenol exposure. Accepted for publication, Pain Medicine.

**2015 MINNESOTA
AUTOMOBILE LAW SEMINAR**

SEPTEMBER 24, 2015

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AGENDA

- I. To Rescind or not to Rescind, That is the Question: Misrepresentations in the Modern Automobile Insurance Policy Application
- II. Important Principles to Keep in Mind when Defending Auto-Related Claims
- III. Case Law Update: Recent Trends in UM/UIM Coverage
- IV. The Changing Landscape of No-Fault Law in Minnesota
- V. Auto-Related Panel Discussion
- VI. *Guest Speaker, Dr. Kristen Zeller* - Pain Pathology and Common Injuries Associated with Whiplash

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**TO RESCIND OR NOT TO RESCIND,
THAT IS THE QUESTION:
MISREPRESENTATIONS IN THE
MODERN AUTOMOBILE
INSURANCE POLICY APPLICATION**

MARK S. BROWN
WILLIAM J. McNULTY

ARTHUR CHAPMAN
KETTERING SMETAK & PIKALA, P.A.
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TRADITIONAL POLICIES

- Insured signs the policy application
- Application contains language pursuant to Minn. Stat. Sec. 60A.08, subd. 9
- Binding Authority for an Agent/Broker



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NEW POLICY APPLICATIONS

- Online Applications
- Over the Phone Applications
- Underwriting Guidelines
- Underwriting Review

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**IMPORTANT PRINCIPLES
TO KEEP IN MIND WHEN
DEFENDING
AUTO-RELATED CLAIMS**

SHAYNE M. HAMANN
PAUL J. ROCHEFORD

ARTHUR CHAPMAN
KETERING SMETAK & PIKALA, P.A.
ATTORNEYS AT LAW

**INITIAL CLAIM HANDLING PRINCIPLES
AND INVESTIGATION**

- Get as much information about the accident as possible
 - Witnesses
 - Responding police department/state patrol
 - Statement of insured and any witnesses if appropriate
- Property damage information
 - Vehicle photos - 4 corners
 - Property damage estimates
 - Above is particularly important in low speed accidents or accidents with minimal property damage

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**INITIAL CLAIM HANDLING PRINCIPLES
AND INVESTIGATION**

- Current injuries of plaintiff
 - Statement of plaintiff can be beneficial
 - Current places plaintiff is treating
 - Past medical providers and injuries
- Check plaintiff and insured on social media
 - Check more often if an injured party is a frequent poster of information or photos

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UPDATED MN RULES OF CIVIL PROCEDURE AND PRACTICAL IMPLICATIONS

- Get as much information prior to suit as you can
 - Past and current medical records;
 - Employment/payroll and tax records;
- Joint Discovery Plan - created collectively with plaintiff attorney.
- Disclosures
 - Initial - 60 days after answer.
 - Expert - 90 days before trial.
 - Pretrial - 14 days before trial.
- Discovery issues/motion with the Court.
- Know Plaintiff counsel - try and stay one step ahead!

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M.R.C.P. 5.04

Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period.

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M.R.C.P. 5.04

- Powerful rule for defense but does it have any teeth in practice?
- Mechanics of Enforcement - Motion Practice.
- Purpose is not Statute of Limitation, but to limit the costs and burdens associated with litigation of actions once commenced.
- Or ...

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NEW CASE LAW

- *Gams v. Houghton*, August 24, 2015 - Minnesota Court of Appeals.
- *Cole v. Wutzke*, August 31, 2015 - Minnesota Court of Appeals.
 - Rule 60.02 on vacating judgment applies
 - Rule 60.02 factors apply to Rule 5.04
- Petitions for Review?

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RULE 60.02 FACTORS TO OBTAIN RELIEF FROM A JUDGMENT/ORDER

- Whether the party seeking relief has a reasonable claim or defense on the merits.
- Whether the party has a reasonable excuse for the neglect (Lawyer here, not insured Defendant).
- Whether the party acted diligently after the entry of judgment.
- Whether the party has demonstrated that no prejudice will occur to the opposing party.

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SOCIAL MEDIA SITES

Top Social Networking/Interactive Video/Blogging Websites:

A. 	E. 
B. 	F. 
C. 	G. 
D. 	H. 
E. 	I. 

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SOCIAL MEDIA STATISTICS *continued*

- Traffic on Facebook.com outpaces traffic on Google.com.
- People watch 3 billion videos a day on YouTube and every minute 36 hours of video is uploaded to YouTube.
- People currently spend more time on social media sites than on email.
- 48% of Facebook users check it before they get out of bed - in the 18-34 age range.

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EXAMPLE OF A FREQUENT POSTER OF INFORMATION

Hostas are now planted. I took the photo before I cleaned up the mess. I really like the end look. Heck, I like the whole thing. I spent my summer well. And of course, I can take pride and say that I did it myself. 9/4/2014



Share
4 people like this.

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NO NECK AND BACK PAIN WITH TUBING!



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MY NECK IS REALLY BOTHERING ME,
BUT I CAN STILL GO TO PARIS, FRANCE!



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I HAD LOW BACK SURGERY - BUT CAN
RIDE A MECHANICAL BULL!



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IMPLICATIONS IN
PERSONAL INJURY CASES

1. The fact that a plaintiff may intend a limited audience does not change the fact that the information is available to the public at large.
2. Social Media Evidence - **twitter** "tweets" - **facebook** "posts" - YouTube Videos - LinkedIn Accounts are all *likely* discoverable/relevant.
3. Plaintiff may have been engaged in many physical activities - relevant for the lawsuit considering assertions of permanent injuries and decreased physical activity.
4. Goal is to stay "one step ahead" of the injured party. See what they are posting on social media sites prior to any litigation!

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**IMPLICATIONS IN
PERSONAL INJURY CASES**

Social Media to be used as **impeachment or direct** evidence -
"you have to let the cat out of the bag at some point."

- A. A lot will depend upon what you have and when you want to use it.
- B. Credibility of the party/witness.
- C. Facts of case - damages/liability.
- D. What are your goals - hopes for the end result of the case?
- E. Will releasing the information pre-suit help resolve the case?
- F. Who is representing Plaintiff?

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**JOINT AND SEVERAL LIABILITY AND
REALLOCATION**

- *Staab* Case
- Joint vs. Several
- Effect on evaluations

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**EXCEPTIONS TO THE 50%
SEVERAL LIABILITY LIMITATION FROM *STAAB V. DIOCESE OF ST. CLOUD*, 853 NW2D 713 (MINN. 2014)**

1. A person whose fault is greater than 50%;
2. Two or more persons who act in a common scheme or plan that results in injury;
3. A person who commits an intentional tort;
4. A person whose liability arises under various environmental statutes.

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REALLOCATION

Minn. Stat. §604.02 Subd. 2. **Reallocation of uncollectible amounts generally.** Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

- Reallocation only applies among jointly liable parties.

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EXAMPLE

- Dram shop cases.
- Dram shop 20% at fault and AIP/Driver 80% at fault.
- Driver may be uninsured, or have minimum limits and likely is uncollectible depending on injuries.
- What is the dram shop's exposure?
- Dram shop pays its percentage of fault unless it is jointly liable (e.g. more than 50% at fault).
- Other joint liability possibility??

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COLLATERAL SOURCES

- *Swanson v. Brewster*, 784 N.W.2d 264 (Minn. 2010); *Renswick v. Wenzel*, 819 N.W.2d 198 (Minn. Ct. App. 2012) review denied.
- Private plans vs. Government plans (Medicare, Medicaid, MNCare).
- Offsets affecting evaluation.
- Plaintiff purchases the subrogation lien.
- Premiums for two years must be added back. Paid by or on behalf of plaintiff/his/her family. Affects the offset.

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ATTORNEY LIEN STATUTE

§481.13 LIEN FOR ATTORNEYS' FEES.
 Subdivision 1. **Generally.**
 (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.

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ATTORNEY LIEN STATUTE *continued*

(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.

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**RELEASE EXAMPLE OF PROTECTION
FOR AN ATTORNEY LIEN**

Releasing Party, whose signature appears below, agrees to satisfy out of the consideration being paid pursuant to this agreement any and all attorney liens, including the lien of attorney Joe Smith, and to indemnify, defend, and to save and hold harmless the Party Released and her attorneys from responsibility, liability and/or payment thereof. I.e., please see Exhibit A - which is the mediated settlement agreement.

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MEDICARE, RELEASE AND BEING OVERLY CAUTIOUS

- Obtaining documentation from Medicare is difficult;
- Work with plaintiff counsel to obtain client's Medicare portal payment information on conditional payments;
- Be as thorough and descriptive as you can in releases of claims involving Medicare;
- Incorporate as much key information as you can into release when Medicare is involved.

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SAMPLE RELEASE WITH MEDICARE LANGUAGE

Releasing Party, whose signature appears below, agrees to satisfy out of the consideration being paid pursuant to this agreement any and all medical liens, private health insurance liens, medical assistance liens, and Medicare/CMS (Centers for Medicare and Medicaid Services) as well as any outstanding medical bills and any other medical providers or entities, and claims of those persons or corporations and entities, public or private, for medical services and treatment afforded to the Releasing Party, if any, and to indemnify, defend, and to save and hold harmless the Party Released and its attorneys from responsibility, liability and/or payment thereof.

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SAMPLE RELEASE FOR MEDICARE WITH INCORPORATION OF DOCUMENTS

Incorporated herein by reference are Exhibits A and B. Exhibit A is the mediated settlement agreement, in which Plaintiff acknowledges that he will satisfy the Medicare/CMS lien with the settlement proceeds discussed within this release. Furthermore, Plaintiff acknowledges that he has not treated his ankle injury since November of 2014 and that there is no evidence of Plaintiff needing future medical care or treatment, and Plaintiff does not anticipate any need for treatment of his ankle in the future. Exhibit B is the Medicare Secondary Payer Recovery Portal which indicates a \$19,614.76 conditional payment amount. Plaintiff by signing this release acknowledges that it is his responsibility to satisfy Medicare's conditional payment amount.

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REFRESHMENT BREAK

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**CASE LAW UPDATE: RECENT
TRENDS IN UM/UIM
COVERAGE**

STEPHEN M. WARNER
GREGORY J. DUNCAN
ARTHUR CHAPMAN
KETTERING SMETAK & PIKALA, P.A.
ATTORNEYS AT LAW

UIM - EXCESS: WHEN AVAILABLE

Sleiter v. Am. Fam. Mut. Ins. Co., 868 N.W.2d 21 (Minn. 2015)

- 19 people injured when school bus struck by at-fault vehicle.
- Liability carrier (\$60,000) and bus UIM carrier (\$1 million) tendered limits to district court.
- Special master apportioned limits among all injured parties, found Sleiter's damages were \$140,000, and awarded Sleiter pro rata distribution of \$36,144.03.
- Sleiter then sought excess UIM from family's auto policy, which had \$100,000 UIM limit.

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UIM - EXCESS: WHEN AVAILABLE

SLEITER V. AMERICAN FAMILY

- American Family denied coverage on ground that its UIM limit did not exceed UIM coverage provided by bus policy.
- District court and court of appeals agreed with American Family, but supreme court reversed.
- Dispute turned on interpretation of term "coverage available" as used in Minn. Stat. §65B.49, subd. 3a(5).
 - In addressing primary UIM, limit of liability for UIM **coverage available** to injured person is limit specified for occupied vehicle.
 - BUT-
 - Per statute, excess available only to extent by which the limit exceeds the limit of liability of the **coverage available** to the injured person from the occupied motor vehicle.

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UIM - EXCESS: WHEN AVAILABLE

SLEITER V. AMERICAN FAMILY

- American Family argued "coverage available" = underlying UIM limit.
- So no coverage because its \$100,000 limit did not exceed bus policy's \$1 million UIM limit.
- Sleiter argued "coverage available" = amount actually recovered from host vehicle's UIM policy.
- Supreme Court held term "coverage available" is ambiguous and adopted Sleiter position because:
 - Consistent with No-Fault Act's purpose of relieving uncompensated victims from economic stress of MVAs.
 - No danger of duplicate recovery.

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UIM - WHO MAY RECOVER?

Hanbury v. Am. Fam. Mut. Ins. Co., No. A14-1746, 2015 WL 3649312 (Minn. App.)

- Adult, non-resident son of auto passenger killed in MVA sought UIM coverage from his own insurer.
- Claimed wrongful-death settlement did not adequately compensate him for his loss.
- Decedent was not an insured under son's policy.

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UIM - WHO MAY RECOVER?

HANBURY V. AMERICAN FAMILY

- Policy provided UIM coverage only to insured persons who sustained bodily injury as a result of MVA.
- Son's claim was only for pecuniary loss resulting from his mother's death; no bodily injury.
- Son argued he was entitled to UIM based on status as Trustee for heirs and next of kin of decedent.

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UIM - WHO MAY RECOVER?

HANBURY V. AMERICAN FAMILY

Holdings:

- Since decedent was not insured under policy, trustee had no coverage either.
- Policy did not omit coverage required by No-Fault Act.
- UIM statute speaks in terms of compensation of *injured person*.
- So coverage properly denied where son not injured.

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UIM - OUT-OF-STATE POLICY/MN ACCIDENT

Tomars v. United Fin. Cas. Co., 2015 WL 3772024 (D. Minn.)

- MN resident, driving employer-furnished vehicle garaged in MN, injured in MN accident.
- Policy issued to employer (an OH corp.) in Ohio, with Ohio UIM endorsement.
- Injured person collected more than \$1 million from tortfeasor.

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**UIM - OUT-OF-STATE POLICY/MN ACCIDENT
*TOMARS V. UNITED FIN. CAS. CO.***

- Policy's UIM endorsement had \$1 million limit; but Ohio is difference-of-limits state for UIM.
- Injured person sought full \$1 million in UIM coverage under policy.
- Court held insurer owed no UIM benefits, because policy was issued in Ohio and not subject to MN No-Fault Act requirements. (M.S.A. 65B.49, subd. 3a(1)).
- Employer, as vehicle owner, owed statutory minimum UIM. (M.S.A. 65B.49, subd. 3a(2)).

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UIM - SNOWMOBILE MOTOR VEHICLE?

United Fin. Cas. Co. v. Nelson, 2015 WL 2373428 (D. Minn.)

- Semi driver injured in collision with snowmobiler sought UIM under commercial auto policy.
- Snowmobiler was traveling in ditch alongside road and tried to cross road to get to opposite ditch.
- UFCC brought dec action on ground that snowmobile was not an underinsured auto as required by policy.

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UIM - SNOWMOBILE MOTOR VEHICLE?

UNITED FIN. CAS. CO. V. NELSON

- Court held snowmobile was not an “auto” or “motor vehicle” because not designed for travel on public roads (per owner’s manual) and not required to be registered.
- Policy excluded “any auto or equipment . . . designed mainly for use off public roads, while not on public roads.”
- Nelson argued snowmobile was on public road when accident occurred, so should be coverage.
- Court disagreed because snowmobile was only crossing road, but was otherwise traveling in ditch.
- Also held mobile equipment exclusion would bar coverage.

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**UIM - TRIAL PRACTICE
ALMOST A CAUTIONARY TALE**

Belzer v. Am. Fam. Mut. Ins. Co., 2015 WL 5197287 (Minn. App.)

- During UIM trial, Plaintiff’s counsel observes American Family adjuster speaking with a juror.
- Turns out juror was commenting to adjuster about difficulty in opening swinging gate separating gallery from well of the courtroom.
- After nominal jury award, Plaintiff moves for new trial on grounds of prejudice; motion denied, Court of Appeals affirms.
- Consider cost in defense fees from that one conversation.

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UM - STATUTE OF LIMITATIONS

Hegseth v. Am. Fam. Mut. Ins. Group, No. A14-1189, 2015 WL 1013967 (Minn. App.), *review granted*.

- Court reiterates that UM claim accrues, and stat. of lms. begins to run, on date of the accident as long as at-fault driver did not have insurance at that time.
- Distinguishes cases holding that, where UM claim accrues as result of insurer insolvency, stat. of lms. begins to run when insurer is declared insolvent.
- Supreme Court has granted review.

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EXCLUSIONS - CRIMINAL ACTS

Am. Fam. Mut. Ins. Co. v. Donaldson, 2015 WL 366433 (D. Minn.)

- Insured minor got drunk, drove insured father’s vehicle.
- Led police on high-speed chase, resulting in injury to son’s passenger.
- Son charged with, and pled to, crim. vehicular operation.
- Violation of law exclusion in umbrella policy barred coverage for injury arising out of violation of penal law or ordinance when insured was convicted.

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CRIMINAL ACTS EXCLUSION
AMERICAN FAMILY V. DONALDSON

Court held exclusion applied to preclude coverage:

- Not overly broad even though it would arguably exclude coverage for most auto accidents.
- No public policy violation even though coverage excluded for negligent criminal conduct.
- Reasonable expectations doctrine did not apply because exclusion was unambiguous and not hidden.

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EXCLUSIONS - CRIMINAL ACTS
continued

Country Mut. Ins. Co. v. Orloske, 2014 WL 7214834 (D. Minn.)

- Brother shoots, kills brother during drunken dispute.
- Claims shooting accidental (“I didn’t know the gun was loaded”).
- Pleads to Manslaughter 2nd Degree.
- Homeowner’s policy has criminal acts exclusion with specific language applying it regardless of intent and even where there is no criminal conviction.

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CRIMINAL ACTS EXCLUSION
COUNTRY MUTUAL V. ORLOSKE

Court holds exclusion is enforceable and bars coverage:

- Exclusion not overly broad even though it could encompass merely negligent violations of municipal ordinances.
- Minnesota courts uphold criminal acts exclusions without requirement of intent.
- Orloske’s conduct was undeniably criminal.
- Reasonable expectations doctrine did not apply because exclusion was admittedly unambiguous and not hidden or obscure.

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PIP - RELATEDNESS

Dahler v. Auto-Owners Ins. Co., No. A14-0343, 2014 WL 6863202 (Minn. App.)

- Dahler injures back in slip-and-fall while entering his truck.
- Gets steroid injections, which allegedly are direct cause of Guillain-Barre syndrome.
- Auto-Owners denies PIP benefits for treatment of Guillain-Barre.

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PIP - RELATEDNESS
DAHLER V. AUTO-OWNERS INS. CO.

- Issue: Whether syndrome arose from maintenance or use of motor vehicle.
- District Court: no causal nexus between maintenance or use and syndrome because it arose from non-negligent medical procedure.
- Court of Appeals Reversed: Syndrome “grew out of and flowed from” use of automobile, and injections were not acts of independent significance.

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**THE CHANGING
LANDSCAPE OF NO-FAULT
LAW IN MINNESOTA**

SHAYNE M. HAMANN
ALLISON V. LAFAVE

ARTHUR CHAPMAN
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ATTORNEYS AT LAW

AGENDA

- I. Petition, Discovery, Strike Lists, and Stenographic Records
- II. Lapse Defense and Sample Letter
- III. Replacement Services post *Schroeder v. Western National*
- IV. 2015 Legislative Changes and Triggering Date;
- V. Case-law update on Timing of No-Fault and Bodily Injury claims
- V. Examinations Under Oath

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PETITION

- Jurisdiction
 - Claim must be \$10,000 or less on date of filing
 - Claimant may waive part of the claim to meet jurisdiction
 - Claim can continue to grow after filing
- Venue
 - Hearing within 50 miles of Claimant’s residence
 - Forum shopping
- Attachments
 - Itemization of claim
 - Denial of benefits letter/reason for arbitration
 - Medical bills/wage loss/replacement services
- Rule 5(e) - 30 days after filing petition, claimant has to file itemization of claim and supporting documents.

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RESPONSE

- Must be made within 30 days
- Set out basis for denial
 - Documents
 - IME
 - EUO
 - What insurer needs
- Include IME report
- Mileage
- Counterclaims—Missed IME fees

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DISCOVERY

- Voluntary exchange of information
- Medical authorizations for seven years
- Employment authorizations for two years
- Social Media and Facebook discovery
- Anything else relevant: workers’ compensation, social security, tax records, etc.

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**EARLY INVESTIGATION IN
NO-FAULT CASES**

Initial documents after notice of No-Fault claim and to prepare for arbitration:

- Prior and subsequent medical providers;
- Prior accidents, injuries, claims;
- Recorded statement of claimant/insured;
- Property damage photos and estimates;
- Social Media and Facebook search;
- EUO if needed.

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**EARLY INVESTIGATION IN
NO-FAULT CASES**

Find out who medical providers are ASAP

- Chiropractic Clinics - savvy with No-Fault;
- General Medical Clinics - assistance required;
- Noran Neurological Clinic - connected to many MN chiropractors;
- *Kieass* letter - interest on No-Fault claim.

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STRIKE LIST - IMPORTANT!

- Pursuant to Rule 8, AAA, will send four potential arbitrators from it's roster of neutrals.
- The Association maintains biographical data provided by each of these arbitrators and sends resumes. Online research also useful.
- Each party can strike one name.
- Rank the remaining three in order of preference.
- The parties have **10 days** to submit their strike list and/or order of preference. Parties do not disclose strike lists to each other.
- If you fail to turn in the strike list, other side will get his/her 1st choice.

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RULE 17: STENOGRAPHIC RECORD

- Any party desiring a stenographic record (court reporter) makes arrangements to have hearing recorded.
- Must notify the other party and AAA of these arrangements at least 24 hours in advance of the hearing.
- The requesting party or parties pays the cost of the record.
- Especially effective in cases with *Pro Se* Claimants or particularly egregious claims.
- Keeps Claimant and Arbitrator accountable and on good behavior.

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LAPSE DEFENSE - MEDICAL TREATMENT

Minn. Stat. §65B.55, Subd. 2

- Authorizes the insurer to provide in its insurance policy a provision terminating benefits if there has been a lapse in disability AND treatment for a period of at least one year.
- The treatment necessary to prevent lapse must be medical treatment for the injuries arising out of the original automobile accident for which compensation is sought.

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LAPSE DEFENSE: DISABILITY

- There must also be a lapse in disability.
- The NF Act does not provide a specific definition of disability.
- In *Thomas v. Western National*, the MN S.C. held that “disability” is to be interpreted by its plain and ordinary meaning.
- The arbitrator defined disability as “anything affecting the normal physical and mental abilities of a person.”
- Was a narrative report available before the lapse occurred?

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HOW TO PROCEED IN LAPSE CASE?

- If there is a lapse in treatment of more than one year **and** no narrative report, do not pay any medical bills or claimed wage loss/replacement service.
- Verify lapse notice was given—usually discussed in initial acknowledgement of submission of no-fault claim.
- If not in initial letter than provide notice to insured in writing *at least 60 days prior to the expiration of the time limit.*
- **See, handout.**

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LAPSE DEFENSE AT THE ARBITRATION

- What will happen at an arbitration hearing?
- Narrative report: when was it written—before or after lapse?
- IME: is it thorough?
- Medical records/wage records of claimant: what do they say?
- Claimant’s testimony: believable v. unbelievable?
- Arguments to arbitrator: definition of disability.

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REPLACEMENT SERVICES BENEFITS

- Usual and necessary services that the injured person would have performed but for the alleged injuries;
- \$200 per week maximum;
- No recovery for the date of the accident or week following;
- Two different ways to prove up RS claim:
 - Primary Homemaker - *Rindahl* case - obtain reasonable value of household care and maintenance;
 - Or - needs to show the actual expense was incurred - someone was hired to perform task.
 - Current landscape.

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**SCHROEDER V. WESTERN NATIONAL -
REPLACEMENT SERVICE CASE - SUPREME COURT
UPHELD DECISION IN JUNE 2015**

Facts of Case:

- Insured claimed replacement services following a motor vehicle accident;
- Insured seriously injured - spinal fracture and surgery;
- Insured lived alone and no family nearby;
- Insured disabled for a period of time following surgery;
- No one provided household care or maintenance service for insured on a paid or volunteer basis.
- Total amount in dispute - \$3,400!
- Insurer failed to try to settle.

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**SCHROEDER V. WESTERN NATIONAL -
REPLACEMENT SERVICE CASE**

- Western National denied insured's claim asserting that it could not calculate and process the claim until it received proof of what replacement services were performed and by whom;
- Western National agreed that insured need not have incurred any expense to be eligible for replacement service benefits;
- *Issue - Whether a primary household manager's care and maintenance services must first be replaced - without or without cost- to trigger eligibility for replacement service benefits?*
- **Holding - An insured who normally, as a full-time responsibility, provides care and maintenance of a home is entitled to the reasonable value of the insured's care and maintenance services, *without regard to whether the services were replaced when the insured could not perform them.***
Citing, M.S.A. 65B.44, Subd. 5.

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**HANDLING RS CLAIMS
POST-SCHROEDER**

- More claims for replacement services.
- More investigation - checking insured out on social media, surveillance on egregious cases.
- In-person meetings with Insured.
- Statements to determine which benefits will come into play.
- Not paying a replacement services claim unless you have a **disability slip** from a medical provider.
- Potential of more ROR letters, earlier IME, taking statements from *insured* after a loss and specifically discussing household chores.
- Specific inquiries of IME doctor whether replacement services are reasonable, necessary, and causally related.

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**2015 AMENDMENTS TO THE
MINNESOTA NO-FAULT ACT**

- January 1, 2015, NFA amended to increase the maximum wage loss benefit from \$250 per week to \$500 per week for a standard, non-stacked auto policy;
- Survivor’s economic loss benefits increased from \$200 per week to \$500 per week;
- Funeral and burial expense benefits increased from \$2,000 to \$5,000 in total;
- **Effective Date January 1, 2015...but what does this mean?**

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**WHAT TRIGGERS APPLICATION OF
JANUARY 1, 2015 EFFECTIVE DATE?**

- Not Retroactive—Minnesota law presumes that laws do not have a retroactive effect unless Legislature clearly intends otherwise.
- Possibilities for triggering date:
 1. Date of policy formation or when renewal?
 2. Date of accident?
 3. Date on which insured incurs loss?
- Amount in total of No-Fault wage loss benefits is still the same.

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**WHAT TRIGGERS APPLICATION OF
JANUARY 1, 2015 EFFECTIVE DATE?**

- Our position: Amendment applies only to claims for benefits that arise from **accidents occurring on or after January 1, 2015.**
- Also take applicable policy into consideration—many contain conformity clauses that would impact whether insurer can decline to increase wage loss after effective date of amendment.
- Has not been addressed yet by MN courts.
- Short window on this issue.

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PIP - DUPLICATE RECOVERY

State Farm Mut. Auto. Ins. Co. v. Lennartson, 857 N.W.2d 713 (Minn. App. 2014) (*Foas* and *Lennartson* cases)

- Consolidated cases - both claimants injured in MVAs, submitted PIP claims, had benefits terminated after IME.
 - Facts
 - Lennartson then sued at-fault driver.
 - Jury awarded \$29k for past meds, court deducted \$11k in PIP recovery from award.

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PIP - DUPLICATE RECOVERY
STATE FARM V. LENNARTSON

- *Lennartson* (continued)
 - Lennartson then petitioned for No-Fault Arb. seeking reimbursement for same medicals that jury had awarded.
 - Arbitrator awarded additional \$11k in benefits.
 - District court vacated award on collateral estoppel grounds.
 - Reasoned that the public policy behind the No-Fault Act prevented her from recovering the same expenses she had already recovered in her negligence suit.

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PIP - DUPLICATE RECOVERY
STATE FARM V. LENNARTSON

- *Foas*
 - Brought petition for No-Fault Arb., but only to recover wage loss and medical expense benefits that were not awarded in negligence case.
 - Arbitrator awarded \$8k in additional medical and \$3k in wage loss
 - District court refused to vacate award, holding collateral estoppel did not apply.

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PIP - DUPLICATE RECOVERY
STATE FARM V. LENNARTSON

Court of Appeals Decision:

- No-Fault Act does not require offset of amounts recovered in negligence case from subsequent PIP arb. Award.
 - Statutory set-off provisions apply only to PIP benefits received before jury award.
 - Insured's potential double recovery allowed.
- No collateral estoppel because tort case and PIP arb. present different issues (tort v. contract).
- Being appealed to Supreme Court, oral arguments heard in June.

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HOW DO YOU KNOW IF AN EUO IS NEEDED?

- Complete as much investigatory information as you can.
- Elicit information from insured or his/her attorney.
- Know your insurance policy and what it allows you to do.
- If there are documents or items you need or are seeking to obtain, make claimant or his/her attorney aware in writing.
- Talk to other involved parties, passengers and responding officer to obtain additional investigation needed.
- Make your request through counsel to schedule an EUO.

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WHEN MIGHT AN EUO BE WARRANTED

- Suspicious circumstances of an accident.
- Coverage questions, other policies could be primary instead of your policy.
- Multiple parties in a single vehicle, all claiming the same or similar injuries - some or most may even treat with same providers.
- Minor accidents which cause all occupants to be injured.
- Single vehicle accidents.
- Occupants of a rental vehicle or do not have any sources of No-Fault insurance other than the rental vehicle.

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**HOW TO HANDLE AN EUO REFUSAL
POST *THOMPSON***

- After express or constructive refusal, suspend No-Fault benefits, outline the coverage and legal justification for the EUO.
- If insured/attorney petition for No-Fault arbitration, again request an EUO from Claimant’s attorney and make AAA aware of the issue of insured’s non-cooperation with insurer’s request.
- Make a determination on whether to note IME or wait.
- Odds are you are better off noting your IME as soon as arbitration petition is filed. You have 90 days from filing of petition to note an IME.

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**HOW TO HANDLE AN EUO REFUSAL POST
THOMPSON AND SUBSEQUENT COVERAGE ISSUES**

- Once arbitrator is assigned request an EUO directly from the arbitrator. Note all your prior requests and insured’s failure to cooperate and cite insurance policy provisions for right to obtain an EUO.
- If arbitrator denies your EUO request, attend the hearing with a court reporter and use the arbitration hearing as your EUO. Must give 24 hours, notice of having a court reporter in attendance.
- If the testimony at the hearing establishes a coverage question/legal issue, object to the arbitrator deciding a coverage question, make your record.
- If arbitrator continues to decide case and renders an award, move to vacate the arbitration award.

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**AUTO-RELATED PANEL
DISCUSSION**

PANELISTS - PAUL J. ROCHEFORD, EUGENE
C. SHERMOEN, KAFI C. LINVILLE, STEPHEN
M. WARNER, BRENDAN M. O'CONNELL,
ADINA R. FLOREA
MODERATOR - SHAYNE M. HAMANN

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COMMERCIAL VEHICLES

What constitutes a commercial vehicle as it
pertains to PIP indemnity?

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**FOUNDATION OF PRE-SUIT
INVESTIGATION**

- Recorded statements
 - Get the story and “nail down” what happened
 - Preserve recollections
- Photographs
 - Scene and vehicles
- Damage or repair estimates

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PHOTOGRAPHS & REPAIR ESTIMATES

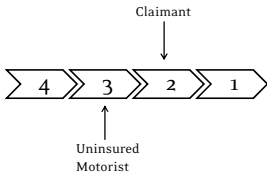
- Can assist in evaluation of Plaintiff's case
- Can indicate how accident really happened



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MOTION TO COMPEL UM CLAIM FILE

- Chain accident involving 4 vehicles
- Insurance information provided in accident report
- Claimant retains counsel 2 weeks after MVA
- Demand, offer, lawsuit
- Claimant positioning for bad-faith claim



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MOTION TO COMPEL UM CLAIM FILE

Requests	Order
• Entire UM claim file	• Relevance? Privilege log
• Native format photos	• Produced in available format
• Investigation manuals, policy or procedure guidelines	• No relevance, proprietary
• Attorney fees	• Not granted - requests not meritorious

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FRYE-MACK MOTION IN LIMINE

Auto Accident: Motion in Limine to exclude DMX video and any related opinions by chiropractor.

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INJURIES AND TREATMENT

- Soft tissue neck and headaches
- RFN procedures
- DMX video demonstrate ligamentous injury

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EXPERT TESTIMONY

- Witness must be qualified as an expert by knowledge, skill, experience, training or education.
- Opinion must have foundational reliability.
- Witness employed a scientifically valid methodology in arriving at the opinion.

Minn. R. Evid. 702, 703

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NEW OR EMERGING AREA OF TESTIMONY

Frye-Mack Standard Elements:

- 1) Generally accepted in relevant scientific community; and
- 2) Founded on reliable scientific theory.

Goeb v. Tharaldson, 615 N.W.2d 800, 814 (Minn. 2000)

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UBER / LYFT LAW

65B.472. Transportation network financial responsibility, MN ST § 65B.472

Uber and Lyft Law in Minnesota

Minnesota Statutes Annotated
Insurance (Ch. 65A-79A)
Chapter 65B. Automobile Insurance
New Fault Automobile Insurance

M.S.A. § 65B.472
65B.472. Transportation network financial responsibility
Effective: July 1, 2015
Currentness

Subdivision 1. Definitions. (1) Unless a different meaning is expressly made applicable, the terms defined in paragraphs (2) through (5) have the meanings given them for the purposes of this chapter.

(2) A "digital network" means any online-enabled application, software, Web site, or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

(3) A "personal vehicle" means a vehicle that is used by a transportation network company driver in connection with providing a prearranged ride and is:

(1) owned, leased, or otherwise authorized for use by the transportation network company driver; and

(2) not a taxicab, limousine, or for-hire vehicle.

(4) A "prearranged ride" means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the driver

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LEASED VEHICLES

- Graves Amendment (49 U.S.C. § 30106(a)) abolished vicarious liability for companies that rent/lease vehicles
 - *Meyer v. Nwokedi*, 759 N.W.2d 426 (Minn. Ct. App. 2009), aff'd, 777 N.W.2d 218 (Minn. 2010)
- Minn. Stat. § 65B.43, Subd. 4
- Minn. Stat. § 169.09, Subd. 5a

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Case Evaluation Factors

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LUNCH BREAK

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PAIN PATHOLOGY AND COMMON INJURIES ASSOCIATED WITH WHIPLASH

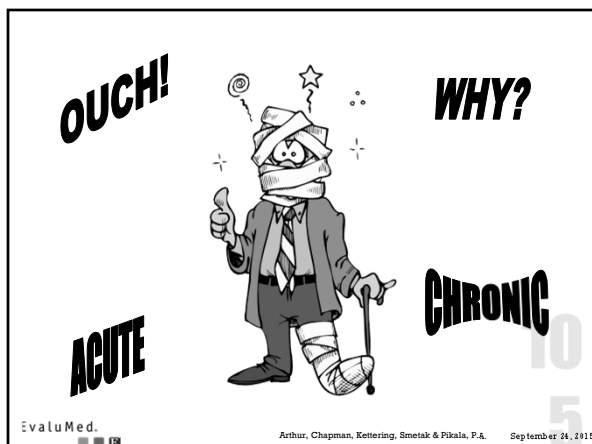
Guest Speaker
DR. KRISTEN M. ZELLER

ARTHUR CHAPMAN
 KETTERING SMETAK & PIKALA, P.A.
ATTORNEYS AT LAW

Pain Pathology and Common Injuries Associated with Whiplash

Kristen Zeller, MD
 Interventional Pain Management Specialist

Evaluated.




OUCH! **WHY?** **ACUTE** **CHRONIC**

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○ Pain - “Unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.”

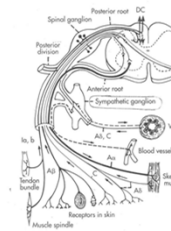
*1994 International Association for the Study of Pain

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Transmission (Dorsal Horn)

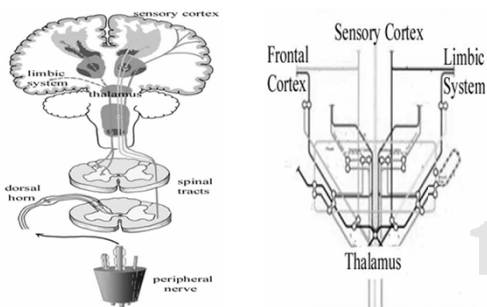


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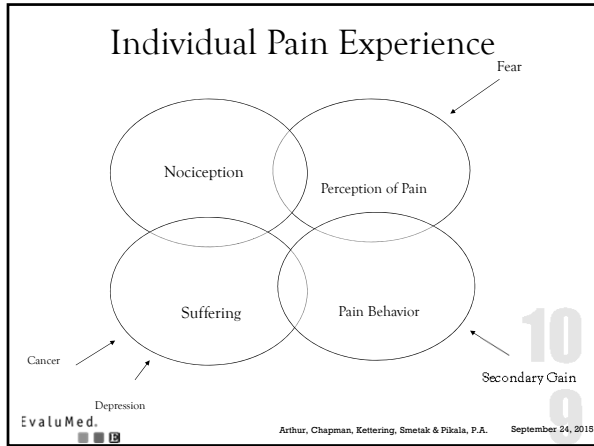
Basic Neuroanatomy of Pain

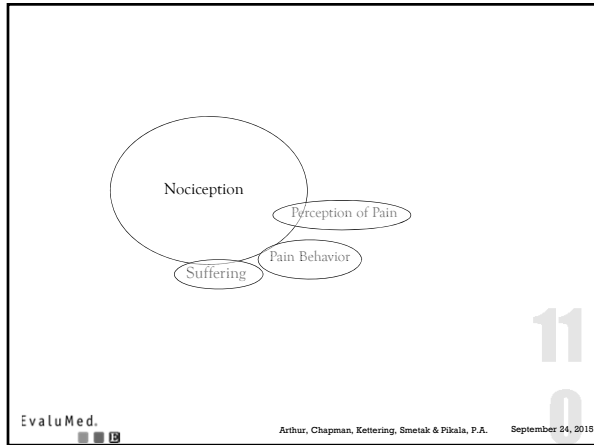


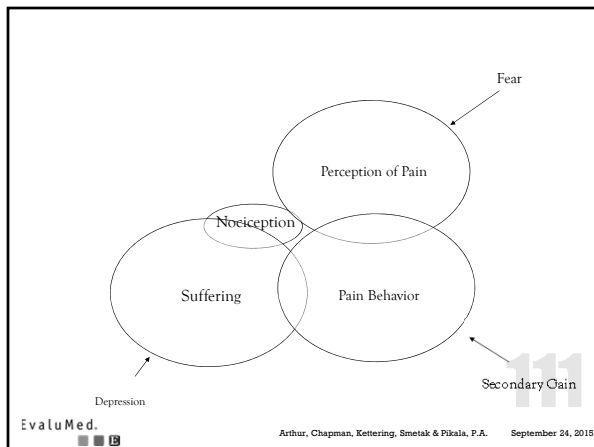
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How can we identify behavior factors in the chronic pain experience??

1. Workman's compensation
 2. Narcotics
 3. Enabling family
 4. Mental illness
 5. Escape from work, school
 6. Financial gain

11 2

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Depression or Chronic Pain?

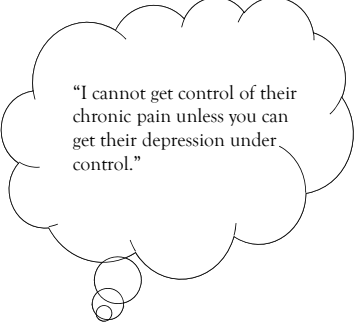
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"I cannot get control of my patient's depression unless you get control of their chronic pain."

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"I cannot get control of their chronic pain unless you can get their depression under control."

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High Pathology

ACUTE PAIN

CHRONIC PAIN

Low Pathology

116

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Chronic Pain

Psychiatric illness vs. True Physiologic Pathology

What is the diagnosis?

What imaging or diagnostic studies are there to confirm diagnosis?

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Whiplash Cervical Spine Injury

“Whiplash”

Initially used to describe the manner of in which the head is moved suddenly to produce a neck sprain.

Crowe 1928

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1995 Quebec Task Force

“Whiplash is an acceleration-deceleration mechanism of energy transfer to the neck that may result in bony soft tissue injuries, which in turn may lead to a variety of clinical manifestations known as Whiplash Associated Disorder”

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Whiplash

- Rear-ended vehicle collisions
- Side impact
- Front impact
- Other mishaps-sports related injuries

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Incidence

- 14 per 1,000 people

12
1

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WAD: Clinical Diagnosis

- Neck pain immediately or within 24 hrs after trauma is the cardinal manifestation
- Neck stiffness
- Headache
- Dizziness, vertigo, auditory symptoms, visual disturbances
- Concentration and memory problems
- Psychological problems

12
2

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Imaging

- Plain films—mainly for fractures, otherwise adds little—if degenerative changes are noted on initial plain films associated with higher risk of chronic complaints
- CT - Initial work up in severely traumatized
- MRI -ligamentous lesions, Disc herniations

12
3

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Post-mortem Studies

- Facet joint
- Yellow ligament
- Occasional disc lesions/endplate lesions
- Dorsal root ganglion
- Craniovertebral ligament lesions

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4

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Muscle Strain Injury

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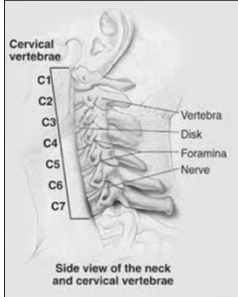
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Ligament Strain/ Sprain Injury

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Traumatic Facet Joint Injury




Side view of the neck and cervical vertebrae

12
7

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Disc Injury



Cervical Spine MRI

12
8

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Low Back Pain

- Nearly everyone at some point has back pain that interferes with work, routine daily activities or recreation
- Americans spend \$50 billion annually on low back pain
- Most common cause of job-related disability and leading contributor to missed work

12
9

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Injuries

- Sprain of ligaments and muscles of low back
- Pelvic ligament strains
- Herniated disc
- Annular tears
- Facet joint injuries
- Vertebral fractures

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Anterior sacroiliac ligament
Posterior sacroiliac ligament

13

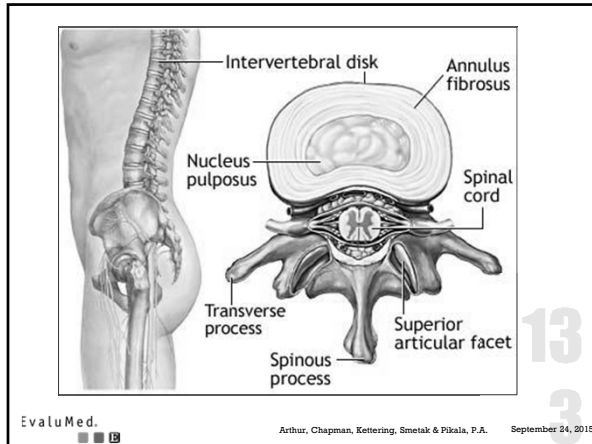
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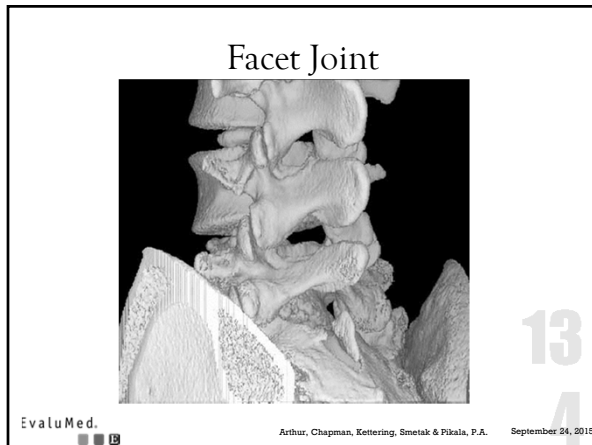
Herniated Disc

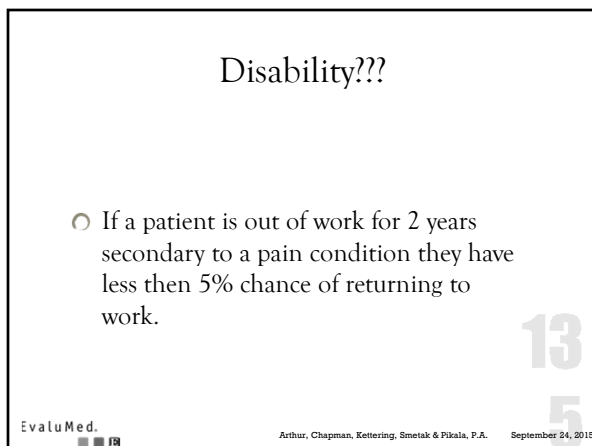
Nucleus pulposus herniating into spinal canal

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Who is disabled??

- Someone with true identifiable disease
- And/Or the patient that has minimal disease, but seems to have a lot of disabling behavior

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- Work and routine are life's healthy distractions from chronic pain.
- Very difficult to get control of chronic pain with a disabled person. NO DISTRACTION
- Depression tends to get much worse with the absence of work

13
7

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Radiofrequency Treatment

- Used for the facet joints and traumatic facet joint injury
- Cervical spine significantly more helpful for
- Paucity of scientific studies that support the repeated use of RF treatments
- With good stabilization and mechanics the majority of patients will heal with time

13
8

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THANK YOU!

Kristen Zeller, M.D.
Interventional Pain Management Specialist

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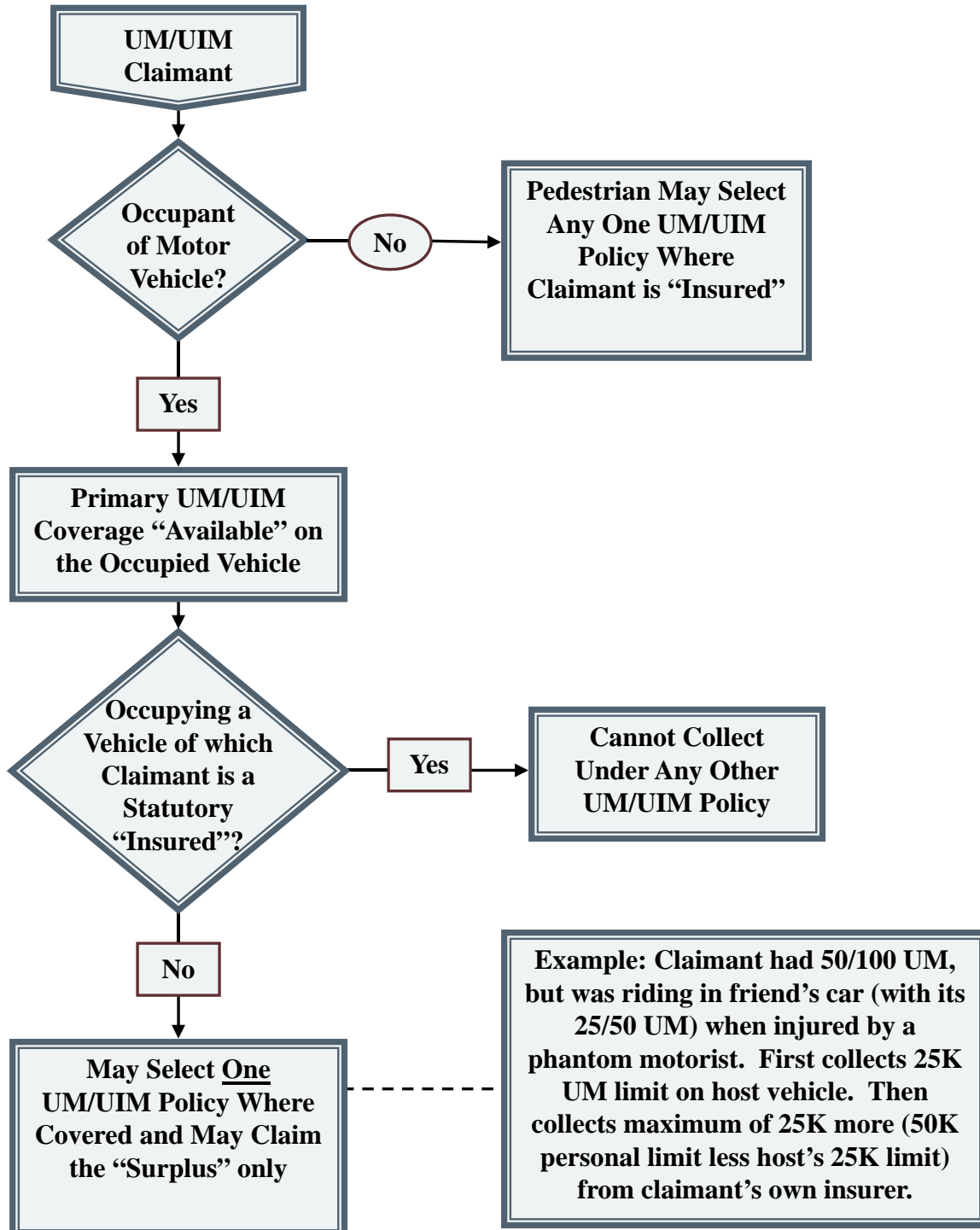
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**MINNESOTA
AUTOMOBILE LAW SEMINAR**

Thank you for attending!

ARTHUR CHAPMAN
KETTERING SMETAK & PIKALA, P.A.
ATTORNEYS AT LAW

Determining the Source of UM/UIM Coverage in Minnesota



ARTHUR CHAPMAN

KETTERING SMETAK & PIKALA, P.A.

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GENERAL RULES FOR PIP PRIORITY IN MINNESOTA

WHO IS PRIMARY?

VEHICLE	DRIVER	OCCUPANT	PEDESTRIAN
PERSONAL VEHICLES	1st — policy where driver is statutorily defined insured. 2nd — policy covering occupied vehicle.	1st — policy where occupant is statutorily defined insured. 2nd — policy covering occupied vehicle.	1st — policy where pedestrian is named insured. 2nd — submit claim to any involved vehicle. 3rd — if no insurance on involved vehicles — go to assigned claims plan.
BUSINESS VEHICLES USED IN BUSINESS OF TRANSPORTING PERSONS OR PROPERTY (AT THE TIME OF THE ACCIDENT) * SEE EXCEPTIONS	1st — policy covering business vehicle. 2nd — policy where driver is statutorily defined insured.	1st — policy covering business vehicle. 2nd — policy where occupant is statutorily defined insured.	1st — policy covering business vehicle. 2nd — policy where pedestrian is named insured. 3rd — submit claim to any involved vehicle. 4th — if no insurance on involved vehicles — go to assigned claims plan.
BUSINESS VEHICLES EXCEPTIONS	The rule governing vehicles used to transport persons or property does not apply to the following: <ul style="list-style-type: none"> ▪ Bus ▪ Commuter Van ▪ Passenger in a taxi ▪ Taxi driver (for policies issued/renewed between 9/1/96 & 9/1/97) ▪ Vehicle being used to transport kids as part of a family or group family day care program ▪ Vehicle being used to transport kids to school/school-sponsored activity 		
BUSINESS VEHICLES EMPLOYER FURNISHED (ACCIDENT NEED NOT OCCUR IN COURSE & SCOPE OF BUSINESS)	1st — if driver is an employee, spouse of employee, or resident relative of employee - policy covering business vehicle. 2nd — if none of the above, policy where driver is statutorily defined insured.	1st — if occupant is an employee, spouse of employee, or resident relative of employee - policy covering business vehicle. 2nd — if none of the above, policy where occupant is statutorily defined insured.	1st — policy covering business vehicle. 2nd — policy where pedestrian is a statutorily defined insured. 3rd — submit claim to any involved vehicle. 4th — if no insurance on involved vehicles — go to assigned claims plan.
FLEET VEHICLES IN INTERSTATE COMMERCE	If the vehicle occupied is 1 of 5 or more vehicles under common ownership, and regularly used in the business of transporting persons or property — PIP coverage is not available if the accident occurs outside the State of Minnesota .		
EXCLUSIONS TO PIP	The following exclusions bar no-fault coverage in Minnesota: <ul style="list-style-type: none"> ▪ <i>Converted Motor Vehicles</i> (car thieves & joy riders) — if under age 14 can go to the assigned claims plan ▪ <i>Races</i> - if injury/death results from official racing contest ▪ <i>Intentional Injuries</i> - if intentionally causing or attempting to cause injury to self/others ▪ <i>Motorcycles</i> - unless a pedestrian, or motorcycle PIP coverage purchased 		

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STEPHEN M. WARNER
WILLIAM J. MCNULTY
ALLISON V. LAFAVE
JEFFREY J. WOLTJEN

SAMPLE – PIP START UP LETTER TO INSURED

Date:

Insured Address:

Insured:

Claim Number:

Date of Loss:

Injured Party:

Dear _____:

We have received notification of a claim under the Personal Injury Protection (PIP) benefits of _____ Automobile Policy for _____. All further correspondence regarding this claim should be directed to the attention of _____ Insurance Company's No-Fault Department and at the above address. Please be sure the claim number referenced-above is clearly identified on all correspondence as well as my name.

In accordance with the Minnesota No-Fault Automobile Insurance Act, the PIP benefits available to you for the above date of loss, are as follows _____ for medical:

Expense benefits and _____ for wage loss/replacement service benefits.

Loss of income will be paid to a maximum of \$20,000 not to exceed \$500.00 per week at a rate of 85% of gross wages for accidents occurring on or after January 1, 2015. If your loss occurred prior to January 1, 2015, then we would pay out \$250.00 per week at a rate of 85% of weekly gross wages for the accident.

Replacement services not exceeding \$200.00 per week; which would be payable under the maximum coverage of the loss of income benefits available of \$20,000.

Please note that a \$_____ deductible for medical expenses and a \$_____ deductible for lost wages will also apply.

To consider payment of this claim for personal injury protection benefits, we need the following information:

The _____ Insurance Company's completed PIP application, which is attached to this correspondence. If the injured person is under the age of 18, a parent or guardian will need to sign and date the PIP application.

The enclosed medical and wage loss authorizations will need to be signed and dated. Again, if the person is under the age of 18, a parent or guardian will need to sign and date the attached authorizations.

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FAX 612 339-7655

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A listing of *any and all* medical providers from **seven years prior to the above-referenced motor vehicle accident to the present**. See the attached form for providing the requested information.

Related medical bills and supporting medical records. **Please provide original medical bills and receipts**. Medical records in support of *any and all* medical bills/charges are necessary for consideration of payment for any and all medical care and treatment.

If lost wages are being claimed, we will request a lost wage verification form from the employer upon receipt of the wage authorization from you. A disability slip/statement from the treating physician is also required.

Medical expense benefits include mileage expense incurred to and from your medical providers. Please note the _____ Insurance Company, reimburses mileage at 23 cents per mile, with appropriate documentation concerning mileage to and from treatment. Mileage is paid out at the IRS medical mileage rate.

If replacement services are being claimed, a disability statement from the treating physician is required. Verification of the services provided and the amount paid is required from the service(s) provider as well. Documentation is also required pertaining to the alleged services where assistance is needed.

Please be advised that all medical expenses submitted for payment under the Personal Injury Protection coverage may be audited to determine the reasonableness of the charge. Expenses may also be reviewed for necessity of treatment and care provided. Upon confirmation of coverage, payment will be mailed separately from an explanation of benefit.

If there is a lapse of a period of one year for disability and medical treatment, your eligibility for No-Fault benefits will be terminated.

Pursuant to Minnesota Insurance Code 60A.955, Section 5, a person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

Please promptly return the requested information as soon as possible, so that we can begin processing your claim.

If you should have any questions regarding the above information, please feel free to contact me directly.

Very truly yours,

Adjuster's name, title and contact information

SAMPLE –NO-FAULT APPLICATION FOR BENEFITS

To enable us to determine if you are entitled to benefits under the provisions of the No-Fault insurance law, please complete this *entire* form and return it promptly.

Date	Our Policyholder	Date of Accident	Claim Number
Applicant's Name	Cell Phone	Home Phone	Work Phone
Home Address (#, Street, City, Zip)			
Date and Time of Accident		Place of Accident (Street, City, State)	
Description of Accident and whether it is a vehicle you own.			
Vehicle Riding In (or struck by if a pedestrian)			
Describe vehicles owned by you or household members. If other Insurance policies also apply, please list next to each vehicle. 1. _____ 2. _____			
Were you injured as a result of this accident? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/>		Did police investigate accident? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/>	
Was a police report filed? What police department responded?			
Describe your injury / injuries:			
Were you transported to a hospital via ambulance? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Were you treated by a doctor? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/>		Name, address, phone # of doctor(s)	
Were you treated at a hospital? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/>		Name, address, phone # of hospital	
Amount of Medical Bills to Date \$ _____	Will you incur more medical bills? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/>	Were you working at the time of accident? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/>	
Did you lose wages as a result of your accident? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/>	If yes, \$ amount lost to date	Average weekly wage	
If you lost wages: Date disability began.		Date you returned or anticipate to returning to work.	
Are you eligible to receive workers' compensation benefits as a result of this accident? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Are you eligible to receive Medicare? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, what is your Medicare ID # _____.			
Have you ever made a workers' compensation or automobile no-fault claim before? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe how injury occurred, injuries received and date of claim.			
Have you ever suffered similar injuries to the injuries suffered in this accident? (check the appropriate box.) Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe injuries, cause of injuries, date of injury, and places & addresses of prior providers			
List names and addresses of your current employer and other employers for two years prior to accident date.			
List all prior medical providers for 7 years prior to accident date.			
As a result of this accident, will you have any other medical treatments? If yes, please explain.			
Signature of applicant or guardian.		Print Name	Date

The State of Minnesota requires that we tell you: "A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime."

RECORDED STATEMENTS: 15 TIPS

1. **CLAIMANT:** Confirm at beginning of statement if they are represented by counsel. If so, obtain name of counsel and terminate discussion.
2. Identify yourself and your role in the claim. Explain that the statement is being recorded. Confirm they are ok physically and mentally and “now is a good time.”
3. Tell the Claimant that providing a recorded statement may allow the claim to proceed more quickly.
4. When interviewing your insured, tell them that the statement is being taken in anticipation of a potential claim being brought against the insured.
5. Use English words and require the interviewee to use English words. Avoid “unh-huh” and “mm-hmm.” If they use these words for responses, ask if that is a “yes” or a “no” response.
6. Make certain that only one person speaks at a time!
7. Take notes of the discussion in the event of an equipment failure.
8. Ask them if they have given any other recorded statements or interviews.
9. Claimant: Review all claim and medical/injury history.
10. MVA: Create a diagram for you to follow; use landmarks if directions are not known.
11. Do they have any documents? Insured may give you authorization to obtain police report.
12. Do they have any photographs? If a slip and fall, get them to take pictures immediately.
13. Are there any witnesses known? Get names, addresses, and phone numbers.
14. At the close of the interview, ask if they have anything to add and ask if all of their answers have been truthful.
15. Minn. Stat. §602.01: “Certain Statements Presumed To Be Fraudulent.” Provide a copy of the recorded statement to the injured person. Transcribe the tape or just send an e-copy as soon as possible.

SAMPLE –KIESS LETTER

Date: _____

Address of Plaintiff Attorney

Insured Name:
Claimant / Plaintiff Name:
Policy Number:
Date of Loss:
Claim Number:

Dear Mr./Ms./Mrs. _____:

_____ (*Insurance Company*) is in receipt of your letter dated _____, in which you state that you will no longer send medical bills to _____ (*Insurance Company*) because of your client's recent termination of No-Fault benefits pursuant to the independent medical examination conducted by Dr. _____ on _____ and the denial of No-Fault Benefits on _____.

Please be advised that _____ (*Insurance Company*) still requires that all medical bills and corresponding medical records continue to be sent to us in a timely fashion. As you are aware in the case of, *American Family Insurance Group v. Kiess*, 697 N.W.2d 617 (Minnesota 2005), interest on any outstanding medical bills does not begin to accrue until 30 days after an insurer receives copies of both your client's medical records and medical bills from various medical providers. If medical bills and medical records are not sent to _____ (*Insurance Company*) after your client undergoes treatment, we will dispute any allegation that interest is due from the date of treatment to the time of any arbitration hearing.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Claim Representative

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SAMPLE --DENIAL OF NO-FAULT BENEFITS LETTER

LETTER SHOULD BE SENT TO INSURED AND ATTORNEY

Date: _____

Insured Name:
Policy Number:
Loss Date:
Claim Number:

Dear Mr./Ms./Mrs. _____:

Enclosed is a copy of the Independent Medical Examination report, relative to the above-captioned matter, dated _____, and prepared by Dr. _____. As the report states, any treatment beyond _____ from the date of the accident in question is not reasonable, necessary or causally related to this accident.

It is Dr. _____'s opinion that your condition has stabilized to the point where you have received maximum benefit from _____ care. Further, Dr. _____ has opined that you require no additional medical care, or diagnostic testing. Moreover, you are capable of performing your activities of daily living and are not in any way disabled from working.

Consequently, based on Dr. _____'s report, all No-Fault benefits otherwise payable for this loss will be terminated as of _____. (*Usually, three days following the date of the letter is sufficient*).

Pursuant to *American Family Insurance Group v. Kiess*, 697 N. W.2d 617 (Minn. 2005), we require that your medical providers continue to submit all medical bills and medical records, to my attention in order to maintain any claim for the accrual of interest. In addition, any continued wage loss or replacement services should also be sent to me, to maintain a claim for interest on these benefits.

Under the Minnesota No-Fault Statute, you have the right to demand arbitration of any payments in dispute up to \$10,000 through the American Arbitration Association. Information on arbitration procedures may be obtained from the American Arbitration Association at U.S. Bank Plaza, Suite #700, 200 South Sixth Street, Minneapolis, MN 55402-1092. Please note that _____ Insurance Company is not bound to submit any claim over \$10,000 to voluntary arbitration with the American Arbitration Association.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

Claims Representative
_____ Insurance Company
Enc. IME Report

865 N.W.2d 66
Supreme Court of Minnesota.

Carmen SCHROEDER, Respondent,
v.
WESTERN NATIONAL MUTUAL INSURANCE
CO., Appellant.

No. A13–2289. | June 17, 2015.

Synopsis

Background: Insured filed a claim with her no-fault insurance provider for \$3,400 in replacement service loss benefits following rear-end collision which insurer refused to pay. Parties proceeded to arbitration and the arbitrator awarded insured’s entire claim plus interest and costs. The District Court, Hennepin County, denied insurer’s motion to vacate the award. [Insurer sought judicial review. The Court of Appeals, 850 N.W.2d 712](#), affirmed. Insurer appealed.

[Holding:] The Supreme Court, [Anderson, J.](#), held that insured was entitled to replacement service benefits regardless of whether she replaced her household services.

Affirmed.

West Headnotes (5)

[1] **Appeal and Error**
🔑Cases Triable in Appellate Court

Interpretation of a statute is subject to de novo review.

[Cases that cite this headnote](#)

[2] **Insurance**
🔑Survivors’ benefits; loss of services

An injured person who is primarily responsible for household services is not required to incur actual expense for replacement help but can recover the reasonable value of her or his own household service under the No-Fault Act. [M.S.A. § 65B.44\(5\)](#).

[Cases that cite this headnote](#)

[3] **Insurance**
🔑Survivors’ benefits; loss of services

Under No-Fault Act, recovery of replacement service loss benefits is not contingent on an independent showing of economic detriment. [M.S.A. §§ 65B.43\(7\), 65B.44\(5\)](#).

[Cases that cite this headnote](#)

[4] **Insurance**
🔑Survivors’ benefits; loss of services

Insured who owned and maintained her own home was entitled to reasonable value of household care and maintenance, as replacement service loss benefits under No-Fault Act for period of disability following rear-end collision, regardless of whether she replaced her household services. [M.S.A. § 65B.44\(5\)](#).

[Cases that cite this headnote](#)

[5] **Statutes**
🔑Giving effect to statute or language; construction as written
Statutes
🔑Clarity and ambiguity; multiple meanings

When the language of a statute is plain and unambiguous, it is assumed to manifest legislative intent and must be given effect.

Cases that cite this headnote

***66 Syllabus by the Court**

The Minnesota No-Fault Automobile Insurance Act, [Minn.Stat. § 65B.44, subd. 5 \(2014\)](#), allows an injured person who provides care and maintenance of a home as a full-time responsibility to recover the reasonable value of care and maintenance services, regardless of whether the services were actually replaced.

Attorneys and Law Firms

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OPINION

[ANDERSON](#), Justice.

The question presented by this case is whether a person injured in an automobile *67 accident may recover the reasonable value of household services under [Minn.Stat. § 65B.44, subd. 5 \(2014\)](#), if those services were not replaced or performed during the period of disability. We conclude that an injured person who has primary responsibility for care and maintenance of the household need not replace household services as a condition to recovering the reasonable value of such services. We therefore affirm.

Respondent Carmen Schroeder suffered a significant spinal injury in a motor vehicle accident on May 10, 2012. She was totally disabled until October 3, 2012. During her period of disability, Schroeder owned and

maintained her own home but was unable to perform most household duties, such as vacuuming, laundry, and yard work. Schroeder had no close family living nearby to help with household duties, she did not purchase replacement home care services, and nobody volunteered to perform the services for her.

On July 17, 2012, Schroeder filed a claim for \$3,400 in replacement service loss benefits with her no-fault insurance provider, appellant Western National Mutual Insurance Co.¹ She stated that, because she was primarily responsible for household care and maintenance and was unable to perform household duties until her disability ended, she was entitled to the “reasonable value” of the home care and maintenance services she was unable to perform. *See* [Minn.Stat. § 65B.44, subd. 5](#). Western National refused to pay Schroeder’s claim. Although Western National conceded that Schroeder need not pay for replacement services to receive benefits, Western National would not reimburse Schroeder for household services that were not replaced in some way.

The parties proceeded to arbitration, and the arbitrator awarded Schroeder’s entire claim of \$3,400, plus interest and costs. The district court denied Western National’s motion to vacate the arbitration award, concluding that although [Minn.Stat. § 65B.44, subd. 5](#), is unclear as to whether household services must be replaced when expenses are not incurred, replacement of services is not required under [Rindahl v. National Farmers Union Insurance Cos.](#), 373 N.W.2d 294 (Minn.1985). The court of appeals affirmed, concluding that [Minn.Stat. § 65B.44, subd. 5](#), does not require replacement of household services when the injured person is primarily responsible for household duties. [Schroeder v. W. Nat’l Mut. Ins. Co.](#), 850 N.W.2d 712, 717 (Minn.App.2014).

I.

^[1] Interpretation of a statute is subject to de novo review. [W. Bend Mut. Ins. Co. v. Allstate Ins. Co.](#), 776 N.W.2d 693, 698 (Minn.2009) (citing [Auto-Owners Ins. Co. v. Forstrom](#), 684 N.W.2d 494, 497 (Minn.2004)). Although arbitrators are generally the “final judges of both law and fact,” we have held that “in the area of automobile reparation, arbitrators are limited to deciding issues of fact, leaving the interpretation of the law to the courts.” [Johnson v. Am. Family Mut. Ins. Co.](#), 426 N.W.2d 419, 421 (Minn.1988).

The Minnesota No-Fault Automobile Insurance Act (“No-Fault Act”), [Minn.Stat. §§ 65B.41–.71 \(2014\)](#), sets

forth the requirements for no-fault automobile insurance and mandates benefits for “[b]asic economic loss.” [Minn.Stat. § 65B.44, subd. 1\(a\)](#). “Loss” is defined as “economic detriment resulting from the accident *68 causing the injury” and is limited to six statutorily defined categories. [Minn.Stat. § 65B.43, subd. 7](#). “Loss” does not include “noneconomic detriment,” which is defined as “dignitary losses suffered” as a result of the accident and may include “pain and suffering, loss of consortium, and inconvenience.” *Id.*, subds. 7–8.

[2] One category of economic, compensable loss is “replacement services loss,” which compensates an injured person as provided in [Minn.Stat. § 65B.44, subd. 5](#):

Replacement service loss benefits shall reimburse all expenses reasonably incurred by or on behalf of the nonfatally 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 nonfatally injured person normally, as a full time responsibility, provides care and maintenance of a home with or without children, the benefit to be provided under this subdivision shall be the reasonable value of such care and maintenance or the reasonable expenses incurred in obtaining usual and necessary substitute care and maintenance of the home, whichever is greater.

We have interpreted [section 65B.44, subdivision 5](#), as creating two mutually exclusive paths to compensation. *See Rindahl*, 373 N.W.2d at 296–97. The first clause “requires an actual expenditure or liability for services rendered,” *Nadeau v. Austin Mut. Ins. Co.*, 350 N.W.2d 368, 373 (Minn.1984), and is inapplicable here because Schroeder did not pay for replacement household services. An injured person who is primarily responsible for household services, however, “is not required to incur actual expense for replacement help but can recover the reasonable value of her or his own household services” under the second clause. *Rindahl*, 373 N.W.2d at 296.

A.

Western National first argues that Schroeder cannot recover replacement service loss benefits because she did not suffer an economic loss. Western National interprets the No-Fault Act as establishing two thresholds for recovery of replacement service loss benefits. First, the injured person must demonstrate “loss,” which is defined under [Minn.Stat. § 65B.43, subd. 7](#), as “economic detriment.” *See Minn.Stat. § 65B.44, subd. 1(a)* (providing that “[b]asic economic loss benefits” are available only when the injured person has suffered loss). Second, once “loss” is established, the injured person may recover only by satisfying the requirements of one of the six enumerated categories of loss. *See Minn.Stat. § 65B.43, subd. 7* (providing that “loss” consists only of the six enumerated categories); [Minn.Stat. § 65B.44, subds. 2–7](#) (providing requirements for each category of loss). Thus, Western National contends that because Schroeder suffered noneconomic detriment, she did not suffer a loss regardless of whether she satisfies the requirements of the replacement-services-loss statute, [Minn.Stat. § 65B.44, subd. 5](#).

Western National’s interpretation of the No-Fault Act contradicts the Act’s plain meaning. Nowhere does the Act state that an injured person must independently prove economic detriment. Rather, [Minn.Stat. § 65B.43, subd. 7](#), establishes that “loss” and “economic detriment” are equivalent terms “consisting only of” the six enumerated categories of loss, including “replacement services loss.” Thus, if an injured person suffers a loss—in other words, if he or she satisfies the requirements of one of the six statutory categories—that person has suffered economic *69 detriment as well. Because we conclude that Schroeder suffered replacement services loss, she necessarily suffered an economic loss under the statute.

[3] Moreover, our holding in *Rindahl* is controlling here and demonstrates that recovery of replacement service loss benefits is not contingent on an independent showing of economic detriment. Mary Lou Rindahl was injured in a motor vehicle accident and was unable to perform home care and maintenance. *Rindahl*, 373 N.W.2d at 295. The Rindahls did not hire anybody to perform these services; instead, “other members of the family ... t[ook] up the slack.” *Id.* at 296. We concluded that Rindahl was entitled to replacement service loss benefits under the second clause of [Minn.Stat. § 65B.44, subd. 5](#), because she was “primarily responsible for all housework [and] child care.” *Id.* at 297 (alteration in original). We did not consider whether Rindahl suffered economic detriment. *See id.* at 296–97.

Western National argues that *Rindahl* is factually

distinguishable because Rindahl's family provided replacement services, whereas Schroeder neither solicited nor received replacement services. It asserts that economic detriment occurred only when Rindahl's family members volunteered their services. We disagree. Rindahl was entitled to replacement service loss benefits because she was the "family member ... who does most of the work in the home." *Rindahl*, 373 N.W.2d at 297. The same designation applies to Schroeder, who lived alone during her period of disability. Nowhere in *Rindahl* did we state or even imply that our decision was dependent on replacement of services. Our observation that family members "[look] up the slack," *Rindahl*, 373 N.W.2d at 296, did not contribute to our holding, and there is no indication that we would have held differently if the household services had not been replaced.

To summarize, injured persons may recover under the No-Fault Act for "all loss suffered." *Minn.Stat. § 65B.44, subd. 1(a)*. "Loss" is defined as "economic detriment ... consisting only of" six categories, one of which is replacement services loss. *Minn.Stat. § 65B.43, subd. 7*. An injured person who satisfies the requirements of one of the six categories has suffered both loss and economic detriment; no other showing is necessary. Thus, Schroeder merely needed to demonstrate that she suffered replacement services loss under *Minn.Stat. § 65B.44, subd. 5*.

B.

^[4] Next, Western National argues that Schroeder does not satisfy the requirements of *Minn.Stat. § 65B.44, subd. 5*, because the plain meaning of "replacement service loss benefits" requires that the services actually be replaced. Western National notes that "replace" means "restore to a former place or position," or "take the place of esp[ecially] as a substitute or successor." It contends that the word "replacement" creates an "obvious pre-condition" that services must be replaced before they are compensable.

A plain-text reading of *Minn.Stat. § 65B.44, subd. 5*, however, clearly demonstrates that recovery is not contingent on replacing household services, if the injured person is primarily responsible for household

maintenance. See *Minn.Stat. § 65B.43, subd. 1* (stating that phrases in the No-Fault Act shall "have the meanings ascribed to them, except where the context clearly indicates a different meaning"). "Replacement service loss benefits" is a defined phrase with two independent meanings. The second clause, unlike the first clause, does not contain the words "[r]eplacement service" or "substitute services." *70 The use of a semicolon also suggests that *Minn.Stat. § 65B.44, subd. 5*, contains two clauses that are related in topic but nevertheless independent of one another. See William Strunk, Jr. & E.B. White, *The Elements of Style* 5–6 (4th ed.2000). There is no indication that the words "replacement" and "substitute" in the first clause of subdivision 5 apply to the second clause as well. We therefore reject Western National's proposed reading of the statute.

Applying *Minn.Stat. § 65B.44, subd. 5*, to the facts of this case, Schroeder is eligible to receive replacement service loss benefits. Schroeder lived alone at the time of the injury, so she had "primary responsibility for management of the household." *Rindahl*, 373 N.W.2d at 297. She may therefore recover "the reasonable value of [household] care and maintenance," *Minn.Stat. § 65B.44, subd. 5*, regardless of whether she replaced her household services.

II.

^[5] Finally, Western National and its *amici* urge us to consider several policy concerns.² However, "[w]hen the language of a statute is plain and unambiguous, it is assumed to manifest legislative intent and must be given effect." *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn.2001). We therefore decline to consider these policy arguments.

Affirmed.

All Citations

865 N.W.2d 66

Footnotes

¹ Schroeder claimed the statutory-maximum benefit of \$200 per week from May 19 to September 7, 2012. Thereafter, she was medically cleared to perform some household tasks, and she claimed \$100 per week from September 8 to October 3, 2012.

- 2 Western National expresses concern that an insurer should not bear responsibility for paying benefits to an injured person who neither performed nor purchased household services. But, regardless of the validity of Western National's argument, the Legislature, in enacting [Minn.Stat. § 65B.44, subd. 5](#), elected to recognize and compensate the work performed by the family member who is primarily responsible for household services. "[I]f the [No-Fault Act] needs revision in order to make it embody a more sound public policy, the Legislature, not the judiciary, must be the reviser." [Axelberg v. Comm'r of Pub. Safety](#), 848 N.W.2d 206, 213 (Minn.2014).

Minnesota Statutes Annotated
Insurance (Ch. 59A-79a)
Chapter 65B. Automobile Insurance
NO-Fault Automobile Insurance

M.S.A. § 65B.472

65B.472. Transportation network financial responsibility

Effective: July 1, 2015

[Currentness](#)

Subdivision 1. Definitions. (a) Unless a different meaning is expressly made applicable, the terms defined in paragraphs (b) through (g) have the meanings given them for the purposes of this chapter.

(b) A “digital network” means any online-enabled application, software, Web site, or system offered or utilized by a **transportation network company** that enables the prearrangement of rides with **transportation network company** drivers.

(c) A “personal vehicle” means a vehicle that is used by a **transportation network company** driver in connection with providing a prearranged ride and is:

(1) owned, leased, or otherwise authorized for use by the **transportation network company** driver; and

(2) not a taxicab, limousine, or for-hire vehicle.

(d) A “prearranged ride” means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a **transportation network company**, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include transportation provided using a taxicab, limousine, or other for-hire vehicle.

(e) A “**transportation network company**” means a corporation, partnership, sole proprietorship, or other entity that is operating in Minnesota that uses a digital network to connect **transportation network company** riders to **transportation network company** drivers who provide prearranged rides.

(f) A “**transportation network company** driver” or “driver” means an individual who:

(1) receives connections to potential riders and related services from a **transportation network company** in exchange for payment of a fee to the **transportation network company**; and

(2) uses a personal vehicle to provide a prearranged ride to riders upon connection through a digital network controlled by a **transportation network company** in return for compensation or payment of a fee.

(g) A “**transportation network company rider**” or “rider” means an individual or persons who use a **transportation network company's** digital network to connect with a transportation network driver who provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.

Subd. 2. Maintenance of transportation network financial responsibility. (a) A **transportation network company** driver or **transportation network company** on the driver's behalf shall maintain primary automobile insurance that recognizes that the driver is a **transportation network company** driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver:

(1) while the driver is logged on to the **transportation network company's** digital network; or

(2) while the driver is engaged in a prearranged ride.

(b) The following automobile insurance requirements apply while a participating **transportation network company** driver is logged on to the **transportation network company's** digital network and is available to receive transportation requests but is not engaged in a prearranged ride:

(1) primary coverage insuring against loss resulting from liability imposed by law for injury and property damage, including the requirements of section 65B.49, subdivision 3, in the amount of not less than \$50,000 because of death or bodily injury to one person in any accident, \$100,000 because of death or bodily injury to two or more persons in any accident, and \$30,000 for injury to or destruction of property of others in any one accident;

(2) security for the payment of basic economic loss benefits where required by section 65B.44 pursuant to the priority requirements of section 65B.47. A **transportation network company** and a **transportation network company** driver, during the period set forth in this paragraph, are deemed to be in the business of transporting persons for purposes of section 65B.47, subdivision 1, and the insurance required under this subdivision shall be deemed to cover the vehicle during the period set forth in this paragraph;

(3) primary uninsured motorist coverage and primary underinsured motorist coverage where required by section 65B.49, subdivisions 3a and 4a; and

(4) the coverage requirements of this subdivision may be satisfied by any of the following:

(i) automobile insurance maintained by the **transportation network company** driver;

(ii) automobile insurance maintained by the **transportation network company**; or

(iii) any combination of items (i) and (ii).

(c) The following automobile insurance requirements apply while a **transportation network company** driver is engaged in a prearranged ride:

(1) primary coverage insuring against loss resulting from liability imposed by law for injury and property damage, including the requirements of section 65B.49, in the amount of not less than \$1,500,000 for death, injury, or destruction of property of others;

(2) security for the payment of basic economic loss benefits where required by section 65B.44 pursuant to the priority requirements of section 65B.47. A **transportation network company** and a **transportation network company** driver, during the period set forth in this paragraph, are deemed to be in the business of transporting persons for purposes of section 65B.47, subdivision 1, and the insurance required under this subdivision shall be deemed to cover the vehicle during the period set forth in this paragraph;

(3) primary uninsured motorist coverage and primary underinsured motorist coverage where required by section 65B.49, subdivisions 3a and 4a; and

(4) the coverage requirements of this subdivision may be satisfied by any of the following:

(i) automobile insurance maintained by the **transportation network company** driver;

(ii) automobile insurance maintained by the **transportation network company**; or

(iii) any combination of items (i) and (ii).

(d) If insurance maintained by the driver in paragraph (b) or (c) has lapsed or does not provide the required coverage, insurance maintained by a **transportation network company** shall provide the coverage required by this subdivision beginning with the first dollar of a claim and have the duty to defend the claim.

(e) Coverage under an automobile insurance policy maintained by the **transportation network company** shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(f) Insurance required by this subdivision must satisfy the requirements of chapter 60A.

(g) Insurance satisfying the requirements of this subdivision shall be deemed to satisfy the financial responsibility requirements under the Minnesota No-Fault Automobile Insurance Act, sections 65B.41 to 65B.71.

(h) A **transportation network company** driver shall carry proof of coverage satisfying paragraphs (b) and (c) at all times during the driver's use of a vehicle in connection with a **transportation network company's** digital network. In the event of an accident, a **transportation network company** driver shall provide this insurance coverage information to the directly interested parties, automobile insurers, and investigating police officers upon request pursuant to section 65B.482, subdivision

1. Upon such request, a **transportation network company** driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers whether the driver was logged on to the **transportation network company's** digital network or on a prearranged ride at the time of an accident.

Subd. 3. Disclosure to transportation network company drivers. The **transportation network company** shall disclose in writing to **transportation network company** drivers the following before they are allowed to accept a request for a prearranged ride on the **transportation network company's** digital network:

(1) the insurance coverage, including the types of coverage and the limits for each coverage, that the **transportation network company** provides while the **transportation network company** driver uses a personal vehicle in connection with a **transportation network company's** digital network;

(2) that the **transportation network company** driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the **transportation network company's** digital network and is available to receive transportation requests or is engaged in a prearranged ride depending on its terms; and

(3) that using a vehicle with a lien against the vehicle to provide transportation network services may violate the transportation network driver's contract with the lienholder.

Subd. 4. Automobile insurance provisions. (a) Insurers that write automobile insurance in Minnesota may exclude any and all coverage afforded under the owner's insurance policy for any loss or injury that occurs while a driver is logged on to a **transportation network company's** digital network or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to:

(1) liability coverage for bodily injury and property damage;

(2) uninsured and underinsured motorist coverage;

(3) basic economic loss benefits as defined under [section 65B.44](#);

(4) medical payments coverage;

(5) comprehensive physical damage coverage; and

(6) collision physical damage coverage.

These exclusions apply notwithstanding any requirement under the Minnesota No-Fault Automobile Insurance Act, [sections 65B.41](#) to [65B.71](#). Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to the **transportation network company's** digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a vehicle to transport passengers for compensation.

Nothing in this section shall be deemed to preclude an insurer from providing coverage for the **transportation network company** driver's vehicle, if it so chooses to do so by contract or endorsement.

(b) Automobile insurers that exclude coverage as permitted in paragraph (a) shall have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this section shall be deemed to invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use in Minnesota prior to the enactment of this section that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public.

(c) An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy as permitted in paragraph (a) shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of subdivision 2 at the time of loss.

(d) In a claims coverage investigation, **transportation network companies** and any insurer potentially providing coverage under subdivision 2 shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the **transportation network company** driver if applicable, including the precise times that a **transportation network company** driver logged on and off of the **transportation network company's** digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident and disclose to one another a clear description of the coverage, exclusions, and limits provided under any automobile insurance maintained under subdivision 2.

Credits

[Laws 2015, c. 48, § 1, eff. July 1, 2015.](#)

M. S. A. § 65B.472, MN ST § 65B.472

Current with legislation of the 2015 Regular Session and First Special Session effective through June 29, 2015. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)