**2017 MINNESOTA NO-FAULT SEMINAR**
**MARCH 30, 2017 | METROPOLITAN BALLROOM – GOLDEN VALLEY, MINNESOTA**

**AGENDA**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
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<tbody>
<tr>
<td>9:00 a.m. - 9:15 a.m.</td>
<td><strong>Introductions/WELCOME ~ Shayne M. Hamann</strong></td>
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<td>9:15 a.m. - 9:45 a.m.</td>
<td><strong>The Coverage Conundrum In The First Party Context ~ Stephen M. Warner and Allison V. LaFave</strong></td>
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<td></td>
<td>Steve and Allison will discuss various coverage scenarios when dealing with Minnesota Personal</td>
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<td>Injury Protection benefits including bad faith, provisions of your insurance policy to be mindful</td>
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<td>of, stacking issues and relevant first party cases to keep in mind when adjusting claims.</td>
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<td>9:45 a.m. - 10:15 a.m.</td>
<td>**The Changing Landscape Of No-Fault Law And Practical Claims Handling ~ Shayne M. Hamann and</td>
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<td>Jeffrey J. Woltjen**</td>
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<td>No-Fault law in Minnesota has continued to evolve with plaintiff attorneys continuing to be</td>
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<td>crafty with maximizing their clients’ recovery of No-Fault benefits. Shayne and Jeff will</td>
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<td>discuss strategies to employ when handling claims as well as what discovery and investigation</td>
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<td>to conduct early on in a case to increase chances of a successful independent medical</td>
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<td>examination and positive outcome at the arbitration hearing.</td>
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<td>10:15 a.m. - 10:30 a.m.</td>
<td><strong>Refreshment Break</strong></td>
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<tr>
<td>10:30 a.m. - 11:00 a.m.</td>
<td><strong>Rules, Rules, And More Rules: Using The No-Fault Arbitration Rules To Your Advantage ~ Shayne M. Hamann</strong></td>
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<td>The American Arbitration Association No-Fault Rules are a distinct set of rules that govern</td>
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<td>how a case in arbitration will be handled. How can you use those rules to your advantage and</td>
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<td>things to be mindful of early on in the investigation stage of the claim.</td>
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<td>11:00 a.m. - 12:00 p.m.</td>
<td><strong>Panel Discussion On Pertinent And Distinct No-Fault Issues And Case Scenarios ~ Shayne M. Hamann, Stephen M. Warner, Allison V. LaFave and Jeffrey J. Woltjen</strong></td>
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<td>The firm’s experienced No-Fault attorneys will discuss a variety of issues they have</td>
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<td>experienced pertaining to No-Fault coverage over the last year. How is a litigated No-Fault</td>
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<td>case different from an arbitrated No-Fault case? How do you educate your independent medical</td>
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<td>examination doctor in your cover letter? What checklists and sample letters are useful in</td>
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<td>handling No-Fault files and what potential changes are on the horizon for Minnesota No-Fault</td>
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<td>law? The panel will also discuss things to be mindful of when coordinating workers’</td>
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<td>compensation benefits with No-Fault benefits and issues to consider pertaining to No-Fault</td>
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<td>indemnity claims.</td>
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<td>12:00 p.m. - 1:00 p.m.</td>
<td><strong>Lunch</strong></td>
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<td>1:00 p.m. - 2:00 p.m.</td>
<td><strong>The Orthopedic Independent Medical Evaluation ~ Dr. Jeffrey H. J. Nipper, Minnesota Bone &amp; Joint Specialists</strong></td>
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<td>Dr. Jeffrey Nipper, an orthopedic surgeon will discuss and demonstrate for you what happens</td>
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<td>at an independent medical examination. What are the pertinent details and areas that peak his</td>
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<td>interest while performing an independent medical examination? What documents does he find</td>
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<td>particularly beneficial when preparing his report? How can you get the most out of the</td>
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<td>independent medical examination to protect your insurance company from paying out too much in</td>
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<td>No-Fault benefits?</td>
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<td>2:00 p.m.</td>
<td><strong>Questions and Answers and Closing Remarks</strong></td>
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Since the inception of her legal career, Shayne Hamann has been engaged almost exclusively in areas related to automobile and No-Fault litigation. Shayne’s extensive experience includes the defense of all types of personal injury-related claims. In addition to automobile cases, she has a vast background in handling cases involving insurance coverage and fraud, premise liability, commercial transportation and auto glass claims.

As a result of her many years serving as staff counsel for Farmers Insurance Group, Shayne has developed a unique set of skills enabling her to maneuver an insurance defense case with a skillful touch. She continues to build on innumerable hours in the courtroom, additionally arbitrating and mediating hundreds of cases with excellent results.

Shayne’s amiable and compassionate nature is evident in all she does. Clients enjoy working with Shayne because she provides individual attention to each case and has vast knowledge pertaining to the defense of personal injury claims. She understands that each case is unique, and strives to consistently provide all of her clients with an energetic, thorough, and favorable defense to litigation.

Shayne also commits herself to community work with active involvement with organizations such as William Mitchell College of Law, University of St. Thomas School of Law, and Concordia College-Moorhead. Shayne is currently a member of the Minnesota Supreme Court’s No-Fault Standing Committee and serves as the Treasurer for the Twin Cities Claims Association. When not at work or volunteering, Shayne enjoys being lakeside near her hometown of Perham, Minnesota with her husband, twin sons, and daughter.

**Education**
William Mitchell College of Law, J.D., 2003
Concordia College, B.A. 1995 (Honors: summa cum laude)

**Bar Admissions**
Minnesota, 2003
U.S. District Court, District of Minnesota, 2003

**Publications**
Various No-Fault form documents for Insured and Self-Insured entities
Presentations

“No-Fault Panel Discussion,” Twin Cities Claims Association, September 2016
“Minnesota Casualty & No-Fault Claims Handling,” The IMT Group Claims School, October 2015
“Minnesota No-Fault is 40 Years Old and Very Much Alive,” The Auto Club - AAA, April 2015
“Social Media and the Defense of Auto and Other Personal Injury Claims,” Wisconsin Claims Council, April 2015
“Have you ever wondered if there would be coverage?,” Commercial Insurance Coverage Seminar, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., May 2014
“State of the State of the MN No-Fault System,” Torts, Litigation & Ethics Seminar, Sieben Grosen Von Holtum & Carey, April 2014-16
“Current Trends of Plaintiff Attorneys in No-Fault and Bodily Injury Cases,” Woodlake Medical Management Webinar, March 2013
“E-Filing, E-Discovery and Experts: What to Include, What to Protect and What to Ask For,” Uninsured, Underinsured, No-Fault Insurance and Bodily Injury Update, Minnesota CLE, February 2013
“Social Media and Defense of Auto & Other Personal Injury Claims,” Twin Cities Claims Association, January 2013
“Facebook and Twitter Defenses,” Minnesota Motor Vehicle Accident Deskbook Seminar, Minnesota CLE, May 2012
“Making Your Case Come Alive - A Defense Perspective” Torts, Litigation and Ethics CLE, coordinated by Brett Olander and James Carey, March 2012

Representative Appellate Case


Honors and Awards

North Star Lawyer, 2015
Rising Star, Minnesota Law & Politics, 2006-2012

Professional Associations and Memberships

American Bar Association
Claims & Litigation Management Alliance
Concordia Women Connect; Twin Cities Chapter
Douglas K. Amdahl Inn of Court
Girls Scouts of the St. Croix Valley
Hennepin County Bar Association
Incarnation Lutheran Church & Preschool Volunteer
Minnesota Defense Lawyers Association
Minnesota No-Fault Standing Committee, Appointed 2013

Shayne M. Hamann
smhamann@ArthurChapman.com
Steve’s diverse practice includes representing businesses and insurance carriers in commercial transportation, insurance coverage, construction defect, premises liability and appellate matters in Minnesota, Wisconsin, and across the Midwest. Steve represents railroads in Federal Employers’ Liability Act (FELA) litigation, as well as local and interstate bus and trucking companies in motor vehicle accident and premises liability matters. He has considerable jury trial and arbitration experience, and has appeared before the Minnesota Court of Appeals on multiple occasions. Steve also chairs the firm’s Insurance Coverage Practice Group.

Outside of practicing law, Steve enjoys spending time with his family, golfing, and coaching youth sports.
Presentations (continued)
“CGL Book Update and Review,” “Coverage Trends: Cyber Risk and the Challenges of the Shared Economy,”
“Conflicts of Interest in Claim Handling and Litigation,” Twin Cities Claims Association, April 2015
“Common Coverage Issues Involving Automobiles, Bicycles, Mopeds, Motorcycles, and a Metro Transit Bus,”
“The 411 on Minnesota Subrogation and Indemnity Principles and Handling School Bus Accidents,” Twin Cities Claims Association, September 2014
“Evolution of Additional Insured Coverage - New ISO Changes, Court Cases, and Practical Implications,”
“The 411 on Minnesota Subrogation and Indemnity Principles and Handling School Bus Accidents,”

Professional Associations
Minnesota Defense Lawyers Association
Minnesota State Bar Association
Ramsey County Bar Association
Wisconsin State Bar Association

Stephen M. Warner
smwarner@ArthurChapman.com
Allison V. LaFave  

**Associate**  
500 Young Quinlan Building  
81 South Ninth Street  
Minneapolis, MN 55402  
Phone 612 375-5991  
Fax 612 339-7655  
avlafave@ArthurChapman.com  

**Practice Areas**  
Automobile Law  
Commercial Transportation  

**Licenses**  
Colorado  
Minnesota  

Allison works with clients in the areas of commercial transportation and automobile litigation. Her work includes representing railroad companies in Federal Employers' Liability Act (FELA) litigation, insurance carriers in personal and commercial automobile cases, and bus companies in motor vehicle accident matters. She has arbitrated numerous No-Fault cases with favorable results for her clients.

Allison is counted on by clients for her reliability and efficiency, and appreciate her composure and positivity. Clients benefit from her varied experience prior to joining Arthur Chapman, including practicing at a small Colorado-based firm, internships with the United States Attorney’s Office and Denver District Court, and her achievement in graduating at the top of her class from the University of Denver Sturm College of Law.

Outside of work, Allison is an avid runner, an aspiring golfer, and spends her time with her husband and two children.

**Education**  
University of Denver Sturm College of Law, J.D., 2011 (Honors: Order of St. Ives)  
Miami University, B.A., 2008  

**Bar Admissions**  
Colorado, 2011  
Minnesota, 2012  
U.S. District Court, District of Minnesota, 2013  

**Presentations**  
“MN No-Fault is 40 Years Old and Very Much Alive,” MN Automobile Law Seminar, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., September 2014  

**Legal Team**  
Shanda L. Wimberger, Secretary  
612 225-6770  
slwimberger@ArthurChapman.com
Professional Associations and Memberships
Colorado State Bar Association
Dakota County Bar Association
Minnesota Defense Lawyers Association
Minnesota State Bar Association
National Association of Railroad Trial Counsel
Volunteer Lawyers Network
Jeff Woltjen works to help clients navigate the litigation process in an efficient and cost-effective manner in the areas of automobile law, insurance fraud, and general liability. Clients rely on Jeff to handle everything from the most basic of questions to more complex and nuanced pieces of the claims process, particularly in No-Fault law. He takes great care in communicating with clients so that their best interests always remain in the forefront.

When not in the office, Jeff can be found playing soccer, chess, or studying or reading about WWII aviation.

Education
University of Minnesota Law School, J.D., 2011 (cum laude)
Bates College, B.A., 2007

Bar Admission
Minnesota, 2011

Presentations
“Mock No-Fault Arbitration Hearing,” “No-Fault-Related Panel Discussion,”
Minnesota No-Fault Seminar, Arthur, Chapman, Kettering, Smetak & Pikala,
P.A., March 2016

Publications
“Minnesota Supreme Court Allows Double Recovery Against No-Fault Insurer
Where Recovery Against Tortfeasor is Secured First, Arthur, Chapman,
Kettering, Smetak & Pikala, P.A., December 2015

Professional Associations and Memberships
Minnesota Defense Lawyers Association
Minnesota State Bar Association
JEFFREY HENRY JOHN NIPPER M.D.
CURRICULUM VITAE

EDUCATION

Edina Senior High School, Edina, Minnesota

University of Minnesota College of Biological Sciences, St. Paul, Minnesota
B.S. – Microbiology, Magna cum Laude

University of Minnesota Graduate School, Minneapolis, Minnesota
Ph.D. (not completed) – Pathology/Cell Biology

University of Minnesota Medical School, Minneapolis, Minnesota
M.D.

University of Minnesota Hospital and Clinics, Minneapolis, Minnesota
General Surgical Internship

Lutheran Hospital of Indiana, Fort Wayne, Indiana
Orthopedic Surgery Residency

CLINICAL EXPERIENCE
Post-Graduate Residency
- General Surgery Internship – Orthopaedic experience in hand, plastic, spine, and advanced trauma care.
- Orthopaedic Surgery Residency – General orthopedics with specialty rotations in hand, pediatrics, spine, adult reconstruction, and sports surgery.
- Professional Sports Team Physician – Game coverage with surgical and rehabilitation care of athletes from the “Fort Wayne Flames” and “Fort Wayne Kicks” professional soccer teams and the “Fort Wayne Komets” professional hockey team.
- Visiting Fellow: Steadman Hawkins Clinic – Training in knee arthroscopy/reconstruction and rehabilitation with J. R. Steadman, M.D., Chief Orthopedic Surgeon of the U.S. Olympic Skin Team, and training in shoulder arthroscopy/reconstruction and rehabilitation with Richard Hawkins, M.D.

Post-Residency/Clinical Practice (1991 – Present)
- Director (1991 – 2003; 2007 – 2010) Orthopedic Surgery and Sports Medicine, Coon Rapids Medical Center – Allina Medical Group (July 1991 – August 2011). Responsibilities have included clinical and surgical general orthopedics with special emphasis on shoulder arthroscopy/reconstruction, knee arthroscopy/reconstruction, physical therapy department supervision, orthopedic department staff coordinator and supervision, integration of orthopedic services with other departments of this large multi-specialty group.
JEFFREY HENRY JOHN NIPPER, M.D.

Curriculum Vitae
Page 2

- Team Physician – Coverage for athletic teams of multiple area high schools and junior colleges.

HONORS AND AWARDS

B.S. Magna cum Laude
Phi Beta Kappa

LICENSURE

Medical/Surgical: Indiana – 0203880 (inactive)
Minnesota – 031558
South Dakota – 9058

BOARD CERTIFICATION


FELLOWSHIPS AND GRANTS

- Variety Club Cardiovascular Research Grant for Young Investigators – 1980
- Minnesota Heart Association Grant for “Bioenergetics of Platelet Activation” – 1978 – 1980

SCIENTIFIC AND PROFESSIONAL SOCIETIES

- Hennepin County Medical Society
- Twin Cities Orthopedic Society
- Minnesota Orthopedic Society
- American academy of Orthopedic Surgeons – Fellow 1993

PUBLICATIONS

JEFFREY HENRY JOHN NIPPER, M.D.

Curriculum Vitae
Page 3


PRESENTATIONS/FACULTY

- Faculty: Shoulder and Knee Arthroscopy Teaching Lab, AAOS Learning Center, Rosemount, IL, August 22-23, 2003.
- Faculty: Shoulder and Knee Arthroscopy Updated (J&J and Mitek), Orthopedic Learning Center, Minneapolis, Minnesota, August 28, 2004

RESEARCH IN PROGRESS

- Nipper, JHJ; Green, J; Fritz, H: “Regeneration of the Patellar Tendon following Autograft Harvest in ACL Reconstruction.”
- Nipper, JHJ; DeBruzzi, S: “Stability and Recurrent Instability Following Arthroscopic Anterior Labral Repair.”
AGENDA

I. The Coverage Conundrums In The First Party Context
II. The Changing Landscape Of No-Fault Law And Practical Claims Handling
III. Rules, Rules, And More Rules: Using The No-Fault Arbitration Rules To Your Advantage
IV. Panel Discussion on Pertinent and Distinct No-Fault Issues and Case Scenarios
V. The Orthopedic Independent Medical Evaluation, Guest Speaker Dr. Jeffrey H. J. Nipper, Minnesota Bone & Joint Specialists

THE COVERAGE CONUNDRUM IN THE FIRST PARTY CONTEXT

STEPHEN M. WARNER
ALLISON V. LAFAVE

Arthur, Chapman, Kettering, Smetak & Pikala, P.A.
### Case Law Update: Assignment of Liens

  - Court held that American Family’s anti-assignment clause precludes the assignments the policyholders made to SUMA.
  - Rule: A patient’s assignment of a No-Fault insurance claim to a medical provider is invalid and unenforceable if the applicable automobile insurance policy forbids such an assignment and if the patient makes the assignment before the medical provider bills the patient for medical services.

### Case Law Update: Assignment of Liens

- Court acknowledged that this “decision may unsettle the expectations of medical providers that have been relying on assignments of No-Fault benefits.”
- But, “there are valid policy considerations on both sides.”
- “It is for the legislature, rather than this court, to weigh the competing policies at issue and determine the appropriate balance...Should the Legislature desire a different outcome, it could amend the No-Fault Act to effectuate that intent.”

### Case Law Update: District Court Jurisdiction

  - Jansen was injured in a motor vehicle accident. $20,000 medical benefits under policy. State Farm made payments $14,548.26, then discontinued per IME.
  - Jansen commenced action in **district court** claiming $30,942.15 in unpaid medical bills.
  - State Farm moved for summary judgment, arguing that the district court lacked subject-matter jurisdiction and that Jansen must arbitrate her claim because it is less than the $10,000 jurisdictional limit provided in Minn. Stat. § 65B.525, subd. 1. District court denied the motion.
Case Law Update: District Court Jurisdiction

- Court of Appeals reversed holding that “Because the amount of No-Fault medical-expense benefits potentially due and owing from State Farm is $5,451.74, Jansen may only pursue her claim in arbitration.”
- Not surprising, but favorable to insurers to enforce strict interpretation of arbitration mandate.

Case Law Update: Out-of-State Insurers

Former Rule under Burgie et. al.:
  - Out-of-state insurer that is not licensed to write in Minnesota not required to extend benefits to insured injured in accident in Minnesota.

New rule as of December 2016.
- Founders Ins. Co. v. Yates, 888 N.W.2d 134 (Minn. 2016)
- An insurance company does not have to be licensed to write motor-vehicle insurance in Minnesota before it can be compelled to pay No-Fault benefits under Minn. Stat. § 65B.50.
- The insured vehicle must be present in the state of Minnesota.
**Applying New Rule**

- Claimant (WI resident) injured in accident in MN while passenger in brother’s (also WI resident) vehicle.
- Policy covering occupied vehicle issued in WI (med-pay coverage but no PIP).
- Insurer not licensed to do business in MN.
- Claimant sought PIP under brother’s auto policy.
- Coverage?

**Bad Faith and No-Fault**

- Bad faith does not apply to PIP arbitrations.
- Applies to litigated no-fault claims.
- Over $10,000 and not filed with AAA.

**Bad Faith and No-Fault**

- No appellate cases that address whether bad faith statute applies to PIP benefits.
- Potential argument: the interest penalty is the intended punishment for a No-Fault carrier’s failure to pay a claim.
- Interest applies regardless of whether the claim is arbitrated or in district court.
What Triggers Bad Faith?

- Minn. Stat. § 604.18 Insurance Standard of Conduct.
- Who can make a claim?
  - “Insured” under the insurance policy.
  - Neither third-party beneficiary nor assignee may seek recovery under the statute.

Anderson Standard

Before an insurer is liable for bad faith, the insured must affirmatively prove:
- the insurer’s denial was unreasonable; and
- the insurer either knew it had no “reasonable basis” to deny or the insurer “acted in reckless disregard” of the lack of a reasonable basis for denying.

Penalties for Bad Faith

- Pre-judgment interest
- Post-judgment interest
- Usual “costs and disbursements”
- And “taxable costs” for first-party bad faith:
  - An amount equal to one-half of the proceeds awarded that are in excess of an amount offered by the insurer at least 10 days before the trial begins or $250,000, whichever is less; and
  - Reasonable attorney fees actually incurred to establish the insurer’s violation of this section (Cap of $100,000).
## Requirements of Insurers

- Acknowledge a "claim" within 10 days
- Reply to insured or claimant - FCPA
  - Communication that “reasonably indicates a response is requested or needed”
- Complete investigation if possible within 30 days
  - Notify of acceptance or denial
  - But if cannot, notify of reasons why and expected date
  - EUO / Statement(s)

- Disclose policy limits
- Disclose No-Fault claim file in ten days if requested
  - To the claimant him/herself
  - Need not produce certain items
    - Internal company memoranda (i.e. notes)
    - Insurance fraud items
    - Attorney work product
    - Attorney/client “privileged” items

## Bad Faith Takeaways

- Incentive to keep claim out of district court.
- Special attention to stacked policies.
- **IME ASAP.** Records review/audit may not insulate insurer from bad faith claim.
- Be responsive, follow-up, document everything.
Stacking

- Required to offer stacking option to insured with more than one insured vehicle.
- Make sure the declaration page is clear.
- If any question, get underwriting involved early.
- If your language is vague – stacked No-Fault coverage is likely to apply.

PIP Coverage Exclusions

- Generally limited to statutory exclusions:
  - Motorcycles
  - Conversion
  - Official Racing Contest
  - Intentional Acts
- Conversion vs. Non-Permissive Use

Coverage for Pre-Existing Conditions

- Statute requires an insurer to pay for “loss” sustained by the claimant including all medical treatment and expense made necessary by the covered accident.
- Scheibel – apportionment between multiple MVAs.
- Pususta – apportionment in cases involving prior non-motor vehicle injuries.
The Changing Landscape Of No-Fault Law And Practical Claims Handling

Shayne M. Hamann
Jeffrey J. Woltjen

Topics To Be Covered

• Claims investigation for No-Fault matters.
• Arbitration Petition – venue, jurisdiction and itemization of claim.
• Leading up to and making the most of your IME.
• Fraud in the No-Fault context.
• Crafty strategies of Claimant/Plaintiff attorneys and how to handle.
CLAIMS INVESTIGATION FOR NO-FAULT MATTERS

- Police report
- Property damage photos and estimate
- Statement of insured
- EUO
- Social media and Facebook search
- Court Record Search - http://www.mncourts.gov/publicaccess

CLAIMS INVESTIGATION FOR NO-FAULT MATTERS

- Is an Examination Under Oath Needed?
- Common Examples - PIP coverage scenario, suspicious facts of loss, failure of insured to cooperate with a statement.
- Make your request early on in the case and before you start paying No-Fault benefits.
- Make sure that the Claimant has filled out the necessary “paperwork” your company requires before starting to pay No-Fault benefits (PIP application, medical authorizations, wage authorizations, listing of past and current medical provider information.)
APPLICATION FOR BENEFITS

- Application for Benefits is the formal document through which a Claimant notifies the insurance company that they are claiming benefits as a result of a motor vehicle accident.
- Often the first time you are receiving Claimant’s side of the story.
- Useful to nail down specific injuries for future arbitration purposes.
- Chiropractors like to fill out the form on behalf of their clients, especially non-English speakers.
  - Gives them an opportunity to over-treat by claiming several injuries.
  - Some chiropractors do not complete the application for benefits until months after the accident.
- Arthur Chapman has its own application for benefits template which is more thorough.

CLAIMS INVESTIGATION FOR NO-FAULT MATTERS

- Compare the medical records and medical bills to ensure that the claimant is treating for “accident-related” injuries and not other accidents or injuries.
- The medical care and treatment being administered should be reasonable, necessary and casually related to the motor vehicle accident in question!
- Watch for any way to exclude paying for medical bills you receive that are unrelated.
CLAIMS INVESTIGATION FOR NO-FAULT MATTERS

• If you find something that is “odd” or “just-not-right” in the medical records do not be afraid to arrange for an IME or question further.

• If you are having a vendor comb through the medical bills and records make sure they are flagging inconsistent information between the medical bills and the medical records, or treatment unrelated to the accident in question.

INDEPENDENT MEDICAL EXAMINATIONS

• Best tool to keep PIP costs down

• Not all IMEs are created equal
  - Chiropractic IME
    • Least useful way to support a denial of claim
    • Cannot opine on specialist treatment
    • Be sure to ask for discussion on widely accepted rates for treatment within metropolitan area
  - Neurologist/Orthopedic IMEs
    • More comprehensive
    • More credible
    • Mileage still varies from M.D. to M.D.

WHEN TO IME?

• Too early:
  - Risk undermining examiner’s opinion if the Claimant goes on to receive treatment from additional providers.
  - Risk possibility that Claimant’s symptoms are still progressing.

• Too late
  - Ongoing payment of repetitive treatment.
  - Risk having the IME opinion include a retroactive denial.
IMF Timing Rules of Thumb

• The more severe the accident, the longer removed an IME should be.
  - Give time to understand true progression of injury.
  - Ensures that Claimant will not seek treatment from new provider which would undermine IME opinion.
  - Allows time for IME M.D. to opine on any diagnostic imaging.
  - Never want to be in an arbitration where Claimant’s counsel can argue “IME Dr. did not even examine Claimant’s MRIs.”

• Never want to be in an arbitration where Claimant’s counsel can argue “IME Dr. did not even examine Claimant’s MRIs.”

IMF Timing Rules of Thumb

• The more infrequent the treatment, the longer removed an IME should be.
  - Less of an urgency to IME when treatment is at a reasonable rate.
• For aggressive treatment for minor injuries, the IME should be scheduled closer in time to accident.
  - Some chiropractors will be able to charge $7-10k in this amount of time. Watch medical bills.
  - Less of a risk that Claimant will be referred out if Chiropractor is burning through all of the PIP benefits.

No-Fault and UM/UIM Interplay and Experts

• Be mindful of the UM/UIM portion of the case when selecting a No-Fault doctor.
• Communicate with the UM/UIM adjuster, if it is conceivable that another first party claim will be advanced.
**Arbitration Petition**

Check for the following upon receipt of the petition:

- Venue
- Jurisdiction
- Itemization of Claim for No-Fault Benefits
- Check itemization against what your company has paid to date
- Supporting Documentation
- IRS medical Mileage

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**Arbitration Petition**

- Kiess interest computation and issues with same.
- Add Kiess language to denial letter.
- Way for claimants to make money.
- Interest paid above and beyond the standard $40,000 basic PIP benefits (Medical and Wage/RS).
Kiess Issue

- Late medical payments are subject to a 15% per annum interest penalty. "Bills are overdue if not paid within 30 days after the reparation obligor receives reasonable proof of the fact and amount of the loss realized."
  - Minn. Stat. 65B.54
- Kiess was injured in a auto accident in 1996. American Family paid benefits for a few months before discontinuing benefits in a denial letter.

- Kiess continued to treat for neck pain, and eventually received surgery valued at $12,000, but he did not continue to send the bills to American Family.
- Four years later, Kiess filed a petition for No-Fault Arbitration and claimed $7,000 worth of interest had accrued on the unpaid bills.
- The Supreme Court of Minnesota held that despite American Family’s denial, Kiess had an ongoing obligation to provide reasonable proof of the fact and amount of the loss realized.

Kiess Takeaways

- Denial of additional benefits does not release claimant of obligation to present ongoing bills and records to insurer.
- Interest does not begin to accrue until 30 days after non-payment.
- By adding Kiess language to a denial letter, you protect yourself from:  
  - Surprise
  - Interest penalties
Example Kiess Language

- “Please be advised that Insurance Company still requires that all medical bills and corresponding medical records continue to be sent in a timely fashion pursuant to American Family v. Kiess, 697 N.W.2d 617 (Minn. 2005).
- Use in your denial of No-Fault benefits letter.

Combatting Fraud

Red Flags:
- Occupants in multi-vehicle accidents have “common denominators”
- No police report
- Same medical treatment
- Immediate legal representation
- Refusal to cooperate
- Prior claims

If you see one or more of these red flags, investigate aggressively
- Early recorded statement from parties
- ISO reports
- Social media investigation and SIU referral
- Early consultation with attorney
- Examinations Under Oath
- Send early investigation letter
- Demand Claimant fill out application for benefits before honoring any claims
Fraud and How to Combat It

December 2016 - “21 Charged in MN Chiropractic Fraud Conspiracies”
- US Attorney for Minnesota brought charges against chiropractors for fraud.
- Claims of accidents that never occurred or services that were never rendered.
- Runners involved and kick-backs received for involvement.

“What to take-away?”
- Look for common providers amongst groups, individuals, medical providers.
- Is the towing company or body shop involved?
- How was the insured/claimant referred to a provider?
- Ask the claimant what care or treatment is being performed.
- Suspicious obtain an IME or EUO.

State Farm Mut. Auto. Ins. Co. v. Lennartson, 872 N.W.2d 524 (Minn. 2015)
- Insured injured in an auto accident
- State Farm paid benefits and then denied further payments.
- Lennartson secured a judgment in a civil suit for bodily injuries as a result of the accident
- After receiving judgment, Lennartson initiated PIP arbitration, and received an arbitration award for the same benefits she recovered at trial.
- State Farm moved to vacate the award arguing that this was a duplicate recovery that it was entitled to reduce.
**State Farm Mut. Auto. Ins. Co. v. Lennartson, 872 N.W.2d 524 (Minn. 2015)**

- Supreme Court of Minnesota held that economic loss benefits had no collateral estoppel effect on no-fault arbitration.
- Take-aways:
  - Crafty plaintiffs may succeed in securing a double recovery of benefits if they pursue and win the BI portion of the case prior to initiating arbitration.
  - Have not seen this happen yet.

**Crafty Strategies of Claimant Attorneys**

- Filing for arbitration early - before you have completed investigation or received medical bills, records, PIP application.
- Filing for arbitration immediately after a chiropractic IME and then urging their client to see a neurologist.
- If there is no or minimal property damage - obtain photos and estimate from at-fault carrier - Claimant’s attorney never wants this information to be used at an arbitration hearing.

**Crafty Strategies of Claimant Attorneys**

- Forum shopping - Anoka/Hastings/Roseville
- Look for opportunities to IME a Claimant sooner - excessive care and treatment, keeps treating despite minimal injuries/property damage.
- Kiess interest computation
- Mileage
- Incorrect information on No-Fault application for benefits - if something doesn’t sound right, call and ask us!
REFRESHMENT BREAK

RULES, RULES, AND MORE RULES: USING THE NO-FAULT ARBITRATION RULES TO YOUR ADVANTAGE

SHAYNE M. HAMANN
What We Will Discuss

A. Rules - MN Rules of No-Fault Arbitration Procedures
B. AAA Fees
C. Rules and Fees Amended and Effective September 1, 2016
D. AAA is administered by a Standing Committee of 12 Members who are appointed by the Minnesota Supreme Court

Purpose and Administration

• Purpose – Minnesota No-Fault arbitration system is to promote the orderly and efficient administration of justice in this State.
• AAA rules are intended to implement the Minnesota No-Fault Act.

Key Differences Between Arbitrated and Litigated Cases

• Bad Faith - will not apply to arbitrated cases, only litigated cases.
• Coverage issues should *never* be arbitrated.
• Issues of your case which interpret the No-Fault Act should also never be arbitrated.
**Key Differences Between Arbitrated and Litigated Cases**

Even if you arbitrate a case, you still have the right to try and vacate the decision of the arbitrator, if you have valid reasons to do so:
- Arbitrator abuses his/her discretion;
- Decides a legal issue; or
- Is not fair and impartial - high burden to show that this has been violated.

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**Day-To-Day Administration**

- The day-to-day administration of arbitration under Minn. Stat. Sec. 65B.525 shall be by an arbitration organization designated by the Standing Committee with the concurrence of the Minnesota Supreme Court.
- The administration shall be subject to the continuing supervision of the Standing Committee.
- American Arbitration Association is that organization currently and has been since the inception of No-Fault Arbitration in Minnesota.

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**Rule 5**

Initiation of Arbitration

A. For claims of $10,000 or less at the commencement of arbitration.

B. At such times as the respondent/insurer denies a claim.

C. The respondent shall advise the claimant of claimant’s right to demand arbitration.

D. In all cases the respondent shall also advise the claimant that information on arbitration procedures may be obtained from the AAA organization, giving the organization’s current address and email address.

E. Arbitration is commenced by the filing of the signed petition, and paying the filing fee and filing same with the AAA.
**Rule 5**

- In the event that a respondent claims or asserts that another insurer bears some or all of the responsibility for the claim, respondent shall file a petition identifying the insurer and setting forth the amount of the claims that it claims is the responsibility of another insurer.
- Regardless of the number of respondents identified on the claim petition, the claim is subject to the jurisdictional limits set forth in Rule 6 - $10,000.

**Rule 5 - Denial of Claim**

If a respondent fails to respond in writing within 30 days after reasonable proof of the fact and the amount of loss is duly presented in to the respondent, the claim shall be deemed denied for the purpose of activating these AAA rules.

**Rule 5 - Commencement Notice - Important Rule**

- At the time of filing, the claimant shall simultaneously provide a copy of the petition and any supporting documents to the respondent and arbitration organization.
- The arbitration organization shall provide notice to the parties of the commencement of the arbitration.
- The filing date (jurisdictional limit date) for purposes of the 30-day response period and itemization of claim of Claimant shall be the date of the arbitration organization’s commencement notice.
**Rule 5 - Itemization of Claim for No-Fault Arbitration**

At the time of filing the arbitration petition, or within 30 days after, the claimant shall file an itemization of benefits claimed and supporting documentation.

A. Medical and replacement services claims must detail:
   - The names of providers;
   - Dates of services claimed; and
   - Total amounts owing.

B. Income loss claims must detail:
   - Employers;
   - Rates of pay;
   - Dates of loss;
   - Method of calculation;
   - Total amounts owing.

**Rule 5 - Insurer's Response**

Within 30 days after receipt of the itemization of benefits claimed and supporting documentation from claimant, respondent shall serve a response to the petition setting forth all grounds upon which the claim is denied and accompanied by all documents supporting denial of No-Fault benefits claimed.
Rule 6 – Jurisdiction in Mandatory Cases

• By statute, mandatory arbitration applies to all claims for No-Fault benefits, where amounts in dispute are $10,000 or less.
• Claims can continue to accrue after the petition is filed.
• If the claimant waives a portion of the claim in order to come within the $10,000 jurisdictional limit, the claimant must specify within 30 days of filing the claims in excess of the $10,000 being waived.

Rule 7 – Notice

*** Make sure you have advised claimant counsel of who should receive the arbitration petition ***
• Upon filing of the petition form, the arbitration organization shall send notice to the other party together with a request for payment of the filing fee.
• Tactics of claimant attorneys – send to any address of insurer, not address it to the last known claim handler, miss-type the claim number.
• AAA addresses this with adding a list of addresses for respondent’s.

List of Respondent Addresses
Rule 8 – Selection of Arbitrator and Challenge Procedure

• The arbitration organization shall send simultaneously to each party to the dispute an identical list of four names of persons chosen from the panel.
• Listing should be from “venue” where case was filed.
• Each party to the dispute shall have 7 business days from the date of transmission in which to cross out one name on the list.
• You MUST complete within the required time. No additional time will be given, unless agreed to by the other side and – why would the other side ever agree to this.

Rule 8 – Selection of Arbitrator and Challenge Procedure

• One of the arbitrators who have been approved on both lists shall be invited by the arbitration organization to serve in accordance with the designated order of the mutual preference.
• Any objection to an arbitrator based on the arbitrator’s post-appointment disclosure must be made within 7 business days from the date of transmission of the arbitrator disclosure form.

Rule 8 – Selection of Arbitrator and Challenge Procedure

• If you object to an arbitrator, AAA will first determine whether your objection is valid and will determine if the arbitrator stays or is removed.
• If you are unhappy with the AAA’s decision, you can appeal it then to the No-Fault Standing Committee.
• Standing Committee’s decision would be final.
**Rule 12 – Discovery**

**Governed by the AAA**

1. Exchange of medical reports;
2. Medical authorizations directed to all medical providers consulted by the claimant in the 7 years prior to the MVA;
3. Employment records and authorizations for two years prior to the accident, when wage loss is in dispute;
4. Supporting documentation under Rule 5; and
5. Exhibits to be offered at the hearing.

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**Rule 12 – Discovery**

• Upon application and good cause shown by any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts.
• Any IME for which the respondent can establish good cause shall be completed within 90 days following the commencement of the case unless extended by the arbitrator for good cause.

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**Rule 13 – Withdrawal**

• A claimant may withdraw a petition up until 10 days prior to the hearing, thereafter the consent of the respondent shall be required.
• The Claimant will be responsible for the arbitrator’s fee, if any, upon withdrawal.
• If case is withdrawn and an arbitrator has already been selected, and if the claimant shall file another petition against the same insurer, the previously appointed arbitrator will remain as the arbitrator.
**Rule 14 – Venue**

- Date, time and place of arbitration hearing
  - arbitration should occur within a 50-mile radius of the claimant’s residence.
- Watch for venue “shopping.”

**Rule 17 – Court Reporter**

Any party desiring an audio or stenographic records shall make arrangements directly with a court reporter and shall notify the other party of these arrangements at least 24 hours in advance of the hearing.

**Rule 23 – Witnesses, Subpoenas and Depositions**

The arbitrator has the power to issue subpoenas for witnesses to attend the arbitration hearing, or for depositions to be taken during the discovery phase and prior to arbitration hearing.
RULE 24 – EVIDENCE

• The parties may offer such evidence as they desire and shall produce to further advance a position.

• Documentation: medical records, medical bills, wage loss, replacement service information, IME, denial letter, PIP log, photos, property damage information, anything helpful to the defense - Social Media/Facebook/Google Searches.

RULE 26 – MISCELLANEOUS RULES

• Timing of award, Scope of Award.
• Confirmation, Vacation or Modification/Correction of the Award.

RULE 27 – FEES

• Claimant’s Filing Fee – as of 9/1/16 - $40
• Respondent’s Filing Fee – as of 9/1/16 - $150
• Arbitrator’s Fee – $50 or $300
Coordinated No-Fault Benefits in an Auto Case

No-Fault and Workers’ Compensation benefits
A. Keep in touch with the Workers Compensation adjuster;
B. Remember No-Fault will reimburse for replacement services; and
C. Workers’ Compensation only pays for 12 weeks of chiropractic benefits.
**PIP Indemnity vs. PIP Subrogation**

- Subrogation and Indemnity are distinct
- Both available in very limited circumstances
- Both reimburse for economic loss benefits
- Different purposes
  - Indemnity shifts burden for auto accident reparations to commercial vehicle carriers
  - Subrogation prevents double recovery by insureds
- Different procedures
- Different targets

**PIP Indemnity – Nuts and Bolts**

- **Who gets it:** PIP carrier
- **Who pays it:** Reparation obligor providing residual liability insurance
- **Type of vehicle:** Commercial vehicle of more than 5,500 lb. curb weight, not including a vehicle listed in Section 65B.47, subd. 1a.
- **When Available:** If negligence of commercial vehicle driver causes injury (comparative fault applies).
- **How Available:** Inter-company arbitration.

**PIP Indemnity – Key Issues**

- Who is a reparation obligor?
  - Founders clears up confusion
  - Now includes any insurer/self-insurer for MN accident when insured vehicle is in MN
- What is commercial vehicle of 5,500+ curb weight?
  - Curb weight = empty
  - Weight of attached trailer included
**Commercial Vehicle – Exempt Vehicles**

Vehicles listed in § 65B.47, subd. 1:

1) **Commuter van**
   - Capacity of seven to 16 persons, used principally to provide prearranged transportation of persons to or from place of employment or transit stop, driven by person who does not drive it as a principal occupation. (Minn. Stat. § 65B.43, subd. 12)

2) Vehicle used to transport children as part of a family or group family day care program.

3) Vehicle being used to transport children to school or school-sponsored activity.

4) Bus while in operation within Minnesota as to any Minnesota resident who is an insured as defined in section 65B.43, subd. 5.

**PIP Subrogation**

- Available in only three instances:
  - Accident in another state
  - Intentional tort
  - Tort not involving negligence in maintenance, use or operation of motor vehicle.

- Not available for Dram Shop claims.

- Only recoverable to extent of duplication of benefits or reimbursement for same loss.

**Licensing Requirements for Staff Adjusters in Minnesota**
Minn. Stat. 72B Definitions

Subd. 7. Staff adjuster.
• “Staff adjuster” means an adjuster who is a salaried employee of an insurance company or an affiliate of an insurance company and who is engaged in adjusting insured losses solely for that company or other companies under common control or ownership.

Subd. 5. Independent adjuster.
• “Independent adjuster” means a person who:
  • (1) is an individual, a business entity, an independent contractor, or an employee of a contractor, who contracts for compensation with insurers or self-insurers;
  • (2) is treated for tax purposes by the insurer or self-insurer in a manner that is consistent with the tax treatment of an independent contractor rather than the tax treatment of an employee, as defined in the Internal Revenue Code, United States Code, title 26, subtitle C; and
  • (3) investigates, negotiates, or settles property, casualty, or workers’ compensation claims for insurers or for self-insurers.

Subd. 6. Public adjuster.
• “Public adjuster” means any person who, for compensation or any other thing of value on behalf of the insured:
  • (1) acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;
**PUBLIC ADJUSTER**

Subd. 6. Public adjuster. (continued)

• (2) advertises for employment as a public adjuster of insurance claims or solicits business or represents to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or

• (3) directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

**72B.03 REQUIREMENTS**

Subdivision 1. Requirement; exceptions.

• (a) A person shall not act or hold out as an independent adjuster or public adjuster unless the person is licensed as an independent adjuster or public adjuster in accordance with this chapter, or is exempt from licensure as an independent adjuster or public adjuster under this chapter.

**STAFF ADJUSTER EXEMPTION**

72B.10 STAFF ADJUSTERS.

• A staff adjuster who adjusts losses or claims in this state shall not be subject to the application, licensing, or examination requirements or other qualifications set forth in sections 72B.01 to 72B.14. Such a staff adjuster shall not, however, engage in any of the practices forbidden to a licensee under section 72B.08, subdivision 1, clauses (3) through (15).
**Takeaway**

As long as you are acting within the scope of your employment as a staff adjuster within an insurance company, there are no individual licensing requirements for adjusters to handle PIP claims for accidents arising in Minnesota.

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**What is a Motor Vehicle?**

Minn. Stat. 65B.43 Subd 2 Motor Vehicle:

- "Motor vehicle" means every vehicle, other than a motorcycle or a vehicle with fewer than four wheels, which (a) is required to be registered pursuant to chapter 168 and (b) is designed to be self-propelled by an engine or motor for use primarily upon public roads, highways, or streets in the transportation of persons or property, and includes a trailer with one or more wheels, when the trailer is connected to or being towed by a motor vehicle.
  - Cars
  - Marked Police Cars
  - Snowmobiles
  - Buses
  - Light Rail Trains

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**Marked Police Car**

- Has four wheels
- Is a car, but
- Not a motor vehicle for the purposes of the No-Fault Act because it is not required to register or display number plates.
Snowmobile

- Not a motor vehicle because Minnesota statute governing vehicle registration specifically noted that the definition of motor vehicles did not include snowmobiles.
- Not a motor vehicle because it was not designed for use primarily upon public roads, highways, or streets.

Farm Tractor

- Not a motor vehicle because it is not required to be registered.
- Not a motor vehicle because it was not designed to be operated on public highways, has no headlights, brake lights, signal lights, mirrors or horn.
  - Kastning v. State Farm Ins. Companies, 821 N.W.2d 621

Litigated No-Fault Case

- More discovery!
- Deposition of Plaintiff.
- No limit on how far back you can obtain medical records.
- Never know if a case will end up in litigation, so document file accordingly.
- Bad faith will apply, however, interest is already mandatory at 15%.
PIP - INTENTIONAL ACTS EXCLUDED

• Under No-Fault Act, “intentional” means act or failure to act:
  - For purpose of causing injury, or
  - With knowledge that injury substantially certain.
• Viewed from perspective of injured person.
• Mental illness may eliminate capacity to form intent.

PIP - INTENTIONAL ACTS EXCLUDED

• Not Intentional if act or failure to act:
  - Is intentional but injury isn’t.
  - Done with realization that it creates grave risk of causing injury.
  - Done for purpose of avoiding bodily injury.

INTENTIONAL ACTS - PRACTICAL TIPS

• Get an early statement from claimant.
• Obtain mental health records for person suspected of intent to cause injury.
• Consider early engagement of mental health expert.
• Take an EUO.
Priority Scenario #1

Lucy is a passenger in Laura’s vehicle. Laura runs a red light. Lucy is injured. Laura has an automobile insurance policy of her own with Auto Insurance Nationwide. Lucy does not have an automobile policy of her own. She takes public transportation to and from work. Lucy lives with her brother who has an automobile policy with ABC Insurance Company. Lucy submits a PIP claim to Auto Insurance Nationwide. Is this the correct No-Fault carrier?

Priority Scenario #2

- Sean Spicer married to Kellyanne Conway. Sean is driving home from work in his vehicle furnished by White House.
- Kellyanne is driving on road near their house in her insured personal vehicle when their son, Donald, who is visiting home from college, darts out in front of Kellyanne on his bike.
- Kellyanne stops suddenly, is rear-ended by Sean, which in turn pushes Kellyanne’s vehicle into Donald’s bike, knocking him over.
- Sean, Kellyanne, and Donald all seek treatment with their chiropractors.
- Who pays?
**Priority Scenario #3**

Hank works as an independent contractor for a Rush-And-Go-Delivery Services. For work each day he drives a vehicle owned by that company and makes deliveries throughout the Twin Cities. He is injured while unloading items at a customer’s loading dock. Hank has his own automobile policy through Best Insurance Company of Minnesota. Rush-And-Go-Delivery Services is insured with Any Auto Insurance Company. Where would Hank submit a PIP claim and why?

**Priority Scenario #4**

- 19-year old Jeff Sessions. He owns a Ford Fiesta which sits in his garage at his apartment building where he lives alone. He stopped paying insurance premiums on the Fiesta 3 months ago and insurer sent him notice of cancellation, which he claims he didn’t receive.
- While riding his bicycle to work one day, Sessions is struck by an uninsured private passenger vehicle. Sessions walks to closest ER.
- Who pays?

**Priority Scenario #5**

Sara is riding her bike down the city sidewalk. She fails to stop for the red light at the intersection of Colfax Avenue and Smith Street in Minneapolis. She gets into an automobile accident with Henry. Henry had the green light. Sara is injured. Sara lives alone and does not own any automobiles. Where does she submit a PIP claim and why?
Consent Order

- If an arbitrator has issued a full award, meaning claimant received everything asked for at the arbitration hearing, the insurer MUST obtain a new IME.
- The old IME cannot be used.
- Consent orders.

Arbitration Award Sample #1

Example #1 - Arbitrator Ruling - Total Award
- Claimed receives all medical expenses provided.

Arbitration Award Sample #2

Example #2 - Arbitrator Ruling - Partial Award
- Some medical expenses are awarded and some are denied/not awarded.
- Clear itemization of what is awarded and what is denied.
Example #3 – Arbitrator Ruling - Vague Award

- Arbitrator just issues an award of medical expenses - does not itemize out.

Non-Medical Expense Benefits

Wage loss
- 85% of average weekly wage
- Maximum of $500 per week

Basic Requirements – Wage Loss Claim

- There must be a disability causing an inability to work.
- Does the insured have a doctor-authorized disability?
- Can the insured perform his pre-accident employment?
**Basic Requirements – Wage Loss Claim**

- There must be an actual loss of income caused by the inability to work.
- Actual, provable loss of income?
- Loss solely and directly caused by the inability to work?

**Wage Loss Cheat Sheet**

**Replacement Services Cheat Sheet**
Post Arbitration Award — Appeals

• An arbitrator has the authority to find facts and determine the sufficiency of proof in a No-Fault claim.
• Under Minnesota law, an arbitrator’s findings of fact are final.

Change of Award

The arbitrator may modify or correct an award if:
- there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
- the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
- the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

Change of Award

The arbitrator may also modify or correct an award:
- When the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
- To clarify the award.
Clarification of Award

- Minn. Stat. § 572B.20 allows a party to request clarification of an award, this provision refers to clarification of some ambiguity in an award.

- An arbitration award need not explain the arbitrator’s reasoning.

Vacating Award

The court shall vacate an award if:

1) the award was procured by corruption, fraud, or other undue means;
2) there was:
   a) evident partiality by an arbitrator appointed as a neutral;
   b) corruption by an arbitrator; or
   c) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 572B.15, so as to prejudice substantially the rights of a party to the arbitration proceeding;
4) an arbitrator exceeded the arbitrator’s powers;
5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section 572B.15, subsection (c), not later than the commencement of the arbitration hearing; or
6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 572B.09 so as to prejudice substantially the rights of a party to the arbitration proceeding.
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Lunch Break

The Orthopedic Independent Medical Evaluation

Guest Speaker
DR. JEFFREY H. J. NIPPER, MINNESOTA BONE & JOINT SPECIALISTS

Arthur Chapman
Kettering, Smetak & Pikala, P.A.
The Orthopedic Independent Medical Evaluation

Jeffrey H. J. Nipper, M.D.
Orthopedic Surgeon
Minnesota Bone & Joint Specialists

Introduction

- Orthopedic Surgery is a specialty dealing with the surgical and non-surgical treatment of disorders of the musculoskeletal system (bones, joints, muscles, ligaments, spine, connective tissue, etc.)
- Disorders/pathology: congenital, developmental, acquired, trauma, inflammatory, tumor, etc.
Approach to the IME Patient

- Courteous, respectful, inquisitive
- When possible, review records/data with patient
- Use of casual observation along with formal physical examination
- Reality that there are differences between private patients and the IME patient

Differences between IME and Non-IME Patient

The IME patient is:

- More likely to have ulterior motives, i.e. secondary gain
- More likely to have been coached by third party
- More likely to have been over treated*
- More likely to have legal counsel

*once treatment has been initiated

Differences between IME and Non-IME Patient

The IME patient is:

- More likely to misrepresent
- Less likely to cooperate with exam
- Less likely to volunteer information
- 400% more likely to have had more than one provider involved than non-IME*

*once treatment has been initiated
Components of the IME

- History of Present Injury includes the patient's account and information obtained from the written record.
- Physical Exam includes: general observations, affect, mental status, skin, neurological, spine, extremities, vascular, biomechanical function, general HEENT, general chest and abdomen.

Components of the IME

- Laboratory and Imaging includes: blood work, x-ray, CT, MRI, ultrasound, EMG, etc.
- Diagnosis is based predominantly on objective data.
- Discussion and responses to specific interrogatives is based on diagnosis, procedures performed and outcome, knowledge of orthopedic literature, PPD schedules, etc.
Neuromuscular Anatomy

- Brain → Spinal Cord → Peripheral nerve → Motor or Sensory endpoint
Neuromuscular Anatomy

Range of Motion

- Active versus passive measurement
- Many tables and reference values available (textbooks, AMA Guide, etc.)
- Variety of measurement techniques/tools: patient position, goniometer, inclinometer, digital instruments with computer analysis

Mock IME

PART 1: Full speed physical exam
PART 2: Slower exam with closer look at critical components
Conclusions

- The fundamentals of an orthopedic IME are similar to any other orthopedic evaluation.
- The physical examination is conducted such that abnormalities (if any) may be identified and characterized.
Minnesota Rules of No-Fault Arbitration Procedures

Available online at adr.org

Rules and Fees Amended and Effective September 1, 2016
Table of Contents

Minnesota Rules of No-Fault Arbitration Procedures

Rule 1. Purpose and Administration ................................................. 4
Rule 2. Appointment of Arbitrator .................................................. 4
Rule 3. Name of Tribunal ............................................................. 4
Rule 4. Administrator ................................................................. 5
Rule 5. Initiation of Arbitration ....................................................... 5
Rule 6. Jurisdiction in Mandatory Cases .......................................... 6
Rule 7. Notice .............................................................................. 6
Rule 8. Selection of Arbitrator and Challenge Procedure ...................... 6
Rule 9. Notice to Arbitrator of Appointment ....................................... 7
Rule 10. Qualification of Arbitrator and Disclosure Procedure ............... 7
Rule 11. Vacancies ..................................................................... 8
Rule 12. Discovery .................................................................... 8
Rule 13. Withdrawal ................................................................... 9
Rule 14. Date, Time, and Place of Arbitration ..................................... 9
Rule 15. Postponements .................................................................. 9
Rule 16. Representation ............................................................... 10
Rule 17. Stenographic Record ......................................................... 10
Rule 18. Interpreters .................................................................... 10
Rule 19. Attendance at Hearing ...................................................... 11
Rule 20. Oaths .......................................................................... 11
Rule 21. Order of Proceedings and Communication with Arbitrator ........ 11
Rule 22. Arbitration in the Absence of a Party or Representative .......... 12
Rule 23. Witnesses, Subpoenas and Depositions ................................ 12
Rule 24. Evidence .................................................................... 12
Rule 25. Close of Hearing ............................................................... 12
Rule 26. Re-opening the Hearing .................................................... 13
Rule 27. Waiver of Oral Hearing ...................................................... 13
Rule 28. Extensions of Time .......................................................... 13
Rule 29. Serving of Notice .............................................................. 13
Rule 30. Time of Award ............................................................... 13
Rule 31. Form of Award ............................................................... 14
Rule 32. Scope of Award ............................................................... 14
Rule 33. Delivery of Award to Parties .............................................. 14
Rule 34. Waiver of Rules ................................................................. 14
Rule 35. Interpretation and Application of Rules ............................... 14
Rule 37. Applications to Court and Exclusion of Liability ..................... 15
Rule 38. Confirmation, Vacation, Modification, or Correction of Award. .... 15
Rule 39. Administrative Fees .......................................................... 15
Rule 40. Arbitrator’s Fees ............................................................... 16
Rule 41. Rescheduling or Cancellation Fees ....................................... 16
Rule 42. Expenses ................................................................. 16
Rule 43. Amendment or Modification ............................................... 16
Rule 1. Purpose and Administration

a. The purpose of the Minnesota no-fault arbitration system is to promote the orderly and efficient administration of justice in this State. To this end, the Court, pursuant to Minn. Stat. 65B.525 and in the exercise of its rule making responsibilities, does hereby adopt these rules. These rules are intended to implement the Minnesota No-Fault Act.

b. The Arbitration under Minn. Stat. 65B.525 shall be administered by a Standing Committee of 12 members to be appointed by the Minnesota Supreme Court. Initially, the 12 members shall be appointed for terms to commence January 1, 1975, and the Supreme Court shall designate three such members for a one-year term, three for a two-year term, three for a three-year term, and three for a four-year term commencing on January 1 of each succeeding year. After July 1, 1988, no member shall serve more than two full terms and any partial term.

c. The day-to-day administration of arbitration under Minn. Stat. 65B.525 shall be by an arbitration organization designated by the Standing Committee with the concurrence of the Supreme Court. The administration shall be subject to the continuing supervision of the Standing Committee.

Rule 2. Appointment of Arbitrator

The Standing Committee may conditionally approve and submit to the arbitration organization nominees to the panel of arbitrators quarterly in March, June, September and December of each year, commencing March 1988. These nominees then may be included in the panel of arbitrators that the Standing Committee shall nominate annually for approval by the Supreme Court. The panel appointed by the Supreme Court shall be certified by the Standing Committee to the arbitration organization.

Rule 3. Name of Tribunal

Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Minnesota No-Fault Arbitration Tribunal.
Rule 4. Administrator

When parties agree to arbitrate under these rules, or when they provide for arbitration by the arbitration organization and an arbitration is initiated thereunder, they thereby constitute the arbitration organization for the administrator of the arbitration.

Rule 5. Initiation of Arbitration

a. **Mandatory Arbitration** (for claims of $10,000 or less at the commencement of arbitration). At such time as the respondent denies a claim, the respondent shall advise the claimant of claimant’s right to demand arbitration.

b. **Nonmandatory Arbitration** (for claims over $10,000). At such time as the respondent denies a claim, the respondent shall advise the claimant whether or not it is willing to submit the claim to arbitration.

c. **All Cases.** In all cases the respondent shall also advise the claimant that information on arbitration procedures may be obtained from the arbitration organization, giving the arbitration organization’s current address and email address. On request, the arbitration organization will provide a claimant with a petition form for initiating arbitration together with a copy of these rules. Arbitration is commenced by the filing of the signed form, together with the required filing fee, with the arbitration organization. If the claimant asserts a claim against more than one insurer, claimant shall so designate upon the arbitration petition. In the event that a respondent claims or asserts that another insurer bears some or all of the responsibility for the claim, respondent shall file a petition identifying the insurer and setting forth the amount of the claim that it claims is the responsibility of another insurer. Regardless of the number of respondents identified on the claim petition, the claim is subject to the jurisdictional limits set forth in Rule 6.

d. **Denial of Claim.** If a respondent fails to respond in writing within 30 days after reasonable proof of the fact and the amount of loss is duly presented to the respondent, the claim shall be deemed denied for the purpose of activating these rules.

e. **Commencement Notice.** The claimant shall simultaneously provide a copy of the petition and any supporting documents to the respondent and arbitration organization. The arbitration organization shall provide notice to the parties of the commencement of the arbitration. The filing date for purposes of the 30-day response period shall be the date of the arbitration organization’s commencement notice.

f. **Itemization of Claim.** At the time of filing the arbitration form, or within 30 days after, the claimant shall file an itemization of benefits claimed and supporting documentation. Medical and replacement services claims must detail the names of providers, dates of services claimed, and total amounts owing. Income-loss claims must detail employers, rates of pay, dates of loss, method of calculation, and total amounts owing.
g. **Insurer's Response.** Within 30 days after receipt of the itemization of benefits claimed and supporting documentation from claimant, respondent shall serve a response to the petition setting forth all grounds upon which the claim is denied and accompanied by all documents supporting denial of the benefits claimed. There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the arbitration organization’s auspices.

**Rule 6. Jurisdiction in Mandatory Cases**

By statute, mandatory arbitration applies to all claims for no-fault benefits or comprehensive or collision damage coverage where the total amount of the claim, at the commencement of arbitration, is in an amount of $10,000 or less. In cases where the amount of the claim continues to accrue after the petition is filed, the arbitrator shall have jurisdiction to determine all amounts claimed including those in excess of $10,000. If the claimant waives a portion of the claim in order to come within the $10,000 jurisdictional limit, the claimant must specify within 30 days of filing the claims in excess of the $10,000 being waived.

**Rule 7. Notice**

Upon the filing of the petition form, the arbitration organization shall send notice to the other party together with a request for payment of the filing fee.

**Rule 8. Selection of Arbitrator and Challenge Procedure**

The arbitration organization shall send simultaneously to each party to the dispute an identical list of four names of persons chosen from the panel. Each party to the dispute shall have seven business days from the date of transmission in which to cross out a maximum of one name objected to, number the remaining names in order of preference, and return the list to the arbitration organization. In the event of multiparty arbitration, the arbitration organization may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

One of the persons who have been approved on both lists shall be invited by the arbitration organization to serve in accordance with the designated order of the mutual preference. Any objection to an arbitrator based on the arbitrator’s post appointment disclosure must be made within seven business days from the date of transmission of the arbitrator disclosure form. Failure to object to the appointed arbitrator based upon the post-appointment disclosure within seven business days constitutes waiver of any objections based on the
post-appointment disclosure, subject to the provisions in Rule 10. An objection to a potential arbitrator shall be determined initially by the arbitration organization, subject to appeal to the Standing Committee.

If an acceptable arbitrator is unable to act, or for any other reason the appointment cannot be made from the submitted list, the arbitration organization shall have the power to make the appointment from among other members of the panel without the submission of additional lists. If any arbitrator should resign, be disqualified, or unable to perform the duties of the office, the arbitration organization shall appoint another arbitrator from the no-fault panel to the case.

**Rule 9. Notice to Arbitrator of Appointment**

Notice of the appointment of the neutral arbitrator, whether appointed mutually by the parties or by the arbitration organization, shall be transmitted to the arbitrator by the arbitration organization, and the signed acceptance of the arbitrator shall be filed with the arbitration organization prior to the opening of the first hearing.

**Rule 10. Qualification of Arbitrator and Disclosure Procedure**

a. Every member of the panel shall be a licensed attorney at law of this state or a retired attorney or judge in good standing. Effective January 1, 2004, requirements for qualification as an arbitrator shall be: (1) at least 5 years in practice in this state; (2) at least one-third of the attorney's practice is with auto insurance claims or, for an attorney not actively representing clients, at least one-third of an ADR practice is with motor vehicle claims or no-fault matters; (3) completion of an arbitrator training program approved by the No-Fault Standing Committee prior to appointment to the panel; (4) at least three CLE hours on no-fault issues in the last year; and (5) arbitrators will be required to recertify each year, confirming at the time of recertification that they continue to meet the above requirements.

b. No person shall serve as an arbitrator in any arbitration in which he or she has a financial or personal conflict of interest. Under procedures established by the Standing Committee and immediately following appointment to a case, every arbitrator shall be required to disclose any circumstances likely to create a presumption or possibility of bias or conflict that may disqualify the person as a potential arbitrator. Every arbitrator shall supplement the disclosures as circumstances require. The fact that an arbitrator or the arbitrator’s firm represents automobile accident claimants against insurance companies or self-insureds, including the respondent, does not create a presumption of bias. It is a financial conflict of interest if, within the last year, the appointed arbitrator or the arbitrator’s firm has been hired by the respondent to represent the respondent or respondent’s insureds in a dispute for which the respondent provides insurance
coverage. It is a financial conflict of interest if the appointed arbitrator received referrals within the last year from officers, employees or agents of any entity whose bills are in dispute in the arbitration or the arbitrator’s firm has received such referrals.

c. If an arbitrator has been certified and has met the requirements of subdivision (a) for the past five years but becomes ineligible for certification under Rule 10(a) due to retirement or change in practice, the arbitrator may continue to seek annual certification for up to five years from the date of retirement licensure or practice change if the following requirements are satisfied:

The arbitrator completes and files an annual No-Fault Arbitrator Recertification form which certifies that:

1. He or she is an attorney licensed to practice law in Minnesota and is in good standing or a retired attorney or judge in good standing;

2. He or she has retained current knowledge of the Minnesota No-Fault Act (Minn. Stat. §§ 65B.41-65B.71), Minnesota appellate court decisions interpreting the Act, the Minnesota No-Fault Arbitration Rules, and the Arbitrators’ Standards of Conduct; and

3. He or she has attended CLE course(s) in the last year containing at least three credits relating to no-fault matters.

The rules regarding bias and conflict of interest as set forth in subdivision (b) remain applicable to arbitrators who recertified under this subdivision (c).

Rule 11. Vacancies

If for any reason an arbitrator should be unable to perform the duties of the office, the arbitration organization may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

Rule 12. Discovery

The voluntary exchange of information is encouraged. Formal discovery is discouraged except that a party is entitled to:

1. exchange of medical reports;

2. medical authorizations directed to all medical providers consulted by the claimant in the seven years prior to the accident;

3. employment records and authorizations for two years prior to the accident, when wage loss is in dispute;

4. supporting documentation required under No-Fault Arbitration Rule 5; and

5. other exhibits to be offered at the hearing.
However, upon application and good cause shown by any party, the arbitrator may permit any discovery allowable under the Minnesota Rules of Civil Procedure for the District Courts. Any medical examination for which the respondent can establish good cause shall be completed within 90 days following the commencement of the case unless extended by the arbitrator for good cause.

The Minnesota Rules of Civil Procedure shall apply to claims for comprehensive or collision damage coverage.

**Rule 13. Withdrawal**

A claimant may withdraw a petition up until 10 days prior to the hearing, thereafter the consent of the respondent shall be required. The claimant will be responsible for the arbitrator’s fee, if any, upon withdrawal. If the petition is withdrawn after a panel of arbitrators is submitted and if the claimant shall file another petition arising from the same accident against the same insurer, the same panel of arbitrators shall be resubmitted to the claimant and the respondent. If the petition is withdrawn after the arbitrator is selected and if the claimant shall file another petition arising from the same accident against the same insurer, the same arbitrator who was earlier assigned shall be reassigned. The claimant who withdraws a petition shall be responsible for all parties’ filing fees incurred upon the refiling of the petition.

**Rule 14. Date, Time, and Place of Arbitration**

An informal arbitration hearing will be held in the arbitrator’s office or some other appropriate place in the general locale within a 50–mile radius of the claimant’s residence, or other place agreed upon by the parties. The arbitrator may fix the date, time and place for the hearing. If the claimant resides outside the state of Minnesota, the arbitration organization shall designate the appropriate place for the hearing. At least 14 days prior to the hearing, the arbitration organization shall transmit notice thereof to each party or to a party’s designated representative. Notice of hearing may be waived by any party. When an arbitration hearing has been scheduled for a day certain, the courts of the state shall recognize the date as the equivalent of a day certain court trial date in the scheduling of their calendars.

**Rule 15. Postponements**

The arbitrator, for good cause shown, may postpone any hearing upon the request of a party or upon the arbitrator’s own initiative, and shall also grant
such postponement when all of the parties agree thereto. The party requesting a postponement will be billed for the cost of the rescheduling; if, however, the arbitrator determines that a postponement was necessitated by a party’s failure to cooperate in providing information required under Rule 5 or Rule 12, the arbitrator may assess the rescheduling fee to that party.

**Rule 16. Representation**

Any party may be represented by counsel or other representative named by that party. A party intending to be so represented shall notify the other party and the arbitration organization of the name, mailing address, and email address of the representative, at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

If counsel or other representative named by the claimant withdraws from representation of any pending matter, the claim shall be dismissed, unless the claimant advises the arbitration organization of the intention to proceed pro se or a replacement counsel or representative is named within 30 days of the sending of notice of withdrawal.

**Rule 17. Stenographic Record**

Any party desiring an audio or stenographic record shall make arrangements directly with a stenographer and shall notify the other party of these arrangements at least 24 hours in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceedings, it must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place determined by the arbitrator.

**Rule 18. Interpreters**

Any party desiring an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service. The arbitrator may assess the cost of an interpreter pursuant to Rule 42.

Interpreters must be independent of the parties, counsel, and named representatives. All interpreters must abide by the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.
Rule 19. Attendance at Hearing

The arbitrator shall maintain the privacy of the hearings. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness.

Rule 20. Oaths

Arbitrators, upon accepting appointments to the panel, shall take an oath or affirmation of office. The arbitrator may require witnesses to testify under oath or affirmation.

Rule 21. Order of Proceedings and Communication with Arbitrator

The hearing shall be opened by the recording of the date, time, and place of the hearing, and the presence of the arbitrator, the parties, and their representatives, if any. Either party may make an opening statement regarding the claim. The claimant shall then present evidence to support the claim. The respondent shall then present evidence supporting the defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure, but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence. Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and description of the exhibits in the order received shall be made part of the record. There shall be no direct communication between the arbitrator and the parties other than at the hearing, unless otherwise advised by the arbitration organization or by agreement of the parties and arbitrator. However, an arbitrator may directly contact the parties, but such communication is limited to administrative matters. Any direct communication between the arbitrator and parties must be conveyed to the arbitration organization, except communications at the hearing. Pre-hearing exhibits can be sent directly to the arbitrator, delivered in the same manner and at the same time to the opposing party. Parties are encouraged to submit any pre-hearing exhibits at least 24 hours in advance of the scheduled hearing. If the exhibits are not provided to opposing counsel and the arbitrator at least 24 hours before the hearing or if the exhibits contain new information and opposing counsel has not had a reasonable amount of time to review and respond to the information, the arbitrator may hold the record open until the parties have had time to review and respond to the material or reconvene the arbitration at a later
date. Any other oral or written communication from the parties to the arbitrator shall be directed to the arbitration organization for transmittal to the arbitrator.

Rule 22. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

Rule 23. Witnesses, Subpoenas and Depositions

a. Through the arbitration organization, the arbitrator may, on the arbitrator's initiative or at the request of any party, issue subpoenas for the attendance of witnesses at the arbitration hearing or at such deposition as ordered under Rule 12, and the production of books, records, documents and other evidence. The subpoenas so issued shall be served, and upon application to the district court by either party or the arbitrator, enforced in the manner provided by law for the service and enforcement of subpoenas for a civil action.

b. All provisions of law compelling a person under subpoena to testify are applicable.

c. Fees for attendance as a witness shall be the same as for a witness in the district courts.

Rule 24. Evidence

The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the issues. The arbitrator shall be the judge of the relevancy and materiality of any evidence offered, and conformity to legal rules of evidence shall not be necessary. The parties shall be encouraged to offer, and the arbitrator shall be encouraged to receive and consider, evidence by affidavit or other document, including medical reports, statements of witnesses, officers, accident reports, medical texts and other similar written documents that would not ordinarily be admissible as evidence in the courts of this state. In receiving this evidence, the arbitrator shall consider any objections to its admission in determining the weight to which he or she deems it is entitled.

Rule 25. Close of Hearing

The arbitrator shall specifically inquire of all parties as to whether they have any further evidence. If they do not, the arbitrator shall declare the hearing closed. If
briefs or documents are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of said documents. The time limit within which the arbitrator is required to make his or her award shall commence to run upon the closing of the hearing.

Rule 26. Re-opening the Hearing

At any time before the award is made, a hearing may be reopened by the arbitrator on the arbitrator’s own motion, or upon application of a party for good cause shown.

Rule 27. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the arbitration organization shall specify a fair and equitable procedure.

Rule 28. Extensions of Time

The parties may modify any period of time by mutual agreement. The arbitration organization or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The arbitration organization shall notify the parties of any extension.

Rule 29. Serving of Notice

Each party waives the requirements of Minn. Stat. 572B.20 and shall be deemed to have agreed that any notices or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection herewith including application for the confirmation, vacation, modification, or correction of an award issued hereunder as provided in Rule 38; or for the entry of judgment on any award made under these rules may be served on a party by mail or electronic means addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

Rule 30. Time of Award

The award shall be made promptly by the arbitrator, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the
hearing, or if oral hearings have been waived, from the date of the arbitration organization’s transmittal of the final statements and proofs to the arbitrator. In the event the 30th day falls on a weekend or federal holiday, the award shall be made no later than the next business day.

Rule 31. Form of Award

The award shall be in writing and shall be signed by the arbitrator. It shall be executed in the manner required by law.

Rule 32. Scope of Award

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable consistent with the Minnesota No-Fault Act. The arbitrator may, in the award, include arbitration fees, expenses, rescheduling fees and compensation as provided in sections 39, 40, 41, and 42 in favor of any party and, in the event that any administrative fees or expenses are due the arbitration organization, in favor of the arbitration organization, except that the arbitrator must award interest when required by Minn. Stat. 65B.54. The arbitrator may not, in the award, include attorneys fees for either party.

Given the informal nature of no-fault arbitration proceedings, the no-fault award shall not be the basis for a claim of estoppel or waiver in any other proceeding.

Rule 33. Delivery of Award to Parties

The award may be delivered by the arbitration organization to the parties or their representatives by mail, electronic means, personal service, or any other manner permitted by law.

Rule 34. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection thereto in writing shall be deemed to have waived the right to object.

Rule 35. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator’s powers and duties. All other rules shall be interpreted by the arbitration organization.
Rule 36. Release of Documents for Judicial Proceedings

The arbitration organization shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any documents in the arbitration organization’s possession that may be required in judicial proceedings relating to the arbitration.

The arbitration organization shall not release documents that are privileged or otherwise protected by law from disclosure. This includes, but is not limited to, any notes, memoranda, or drafts thereof prepared by the arbitrator or employee of the arbitrator that were used in the process of preparing the award, and any internal communications between members of the standing committee made as part of the committee’s deliberative process.

Rule 37. Applications to Court and Exclusion of Liability

a. No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party’s right to arbitrate.

b. Neither the arbitration organization nor any arbitrator in a proceeding under these rules can be made a witness or is a necessary party in judicial proceedings relating to the arbitration.

c. Parties to proceedings governed by these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

d. Neither the arbitration organization nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

Rule 38. Confirmation, Vacation, Modification, or Correction of Award

The provisions of Minn. Stat. § 572B.01 through § 572B.31 shall apply to the confirmation, vacation, modification, or correction of award issued hereunder, except that service of process pursuant to the Minn. Stat. § 572B.05 shall be made as provided in Rule 29 of these rules.

Rule 39. Administrative Fees

The initial fee is due and payable at the time of filing and shall be paid as follows: by the claimant, $40.00; by the respondent, $150.00. In the event that there is more than one respondent in an action, each respondent shall pay the $150.00 fee.
Upon review of a petition, if the arbitration organization determines that a claim was filed in error, the organization may require that payment of respondent’s filing fee be assessed against the claimant.

The arbitration organization may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fee.

Rule 40. Arbitrator’s Fees

a. An arbitrator shall be compensated for services and for any use of office facilities in the amount of $300 per case.

b. If the arbitration organization is notified of a settlement or a withdrawal of a claim at any time up to 24 hours prior to the scheduled hearing, but after the appointment of the arbitrator, the arbitrator’s fee shall be $50. If the arbitration organization is notified of a postponement, settlement or a withdrawal of a claim 24 hours or less prior to the scheduled hearing, the arbitrator’s fee shall be $300. Unless the parties agree otherwise, the fee in a settlement shall be assessed equally to the parties, the fee in a withdrawal shall be borne by claimant, and the fee in a postponement shall be borne by the requesting party. Regardless of the resolution of the case, the arbitrator’s fee shall not exceed $300 and is subject to the provisions of Rule 15.

c. An arbitrator serving on a court-ordered consolidated glass case shall be compensated at a rate of $200.00 per hour.

Rule 41. Rescheduling or Cancellation Fees

A party requesting to reschedule or cancel a hearing shall be charged a fee of $100.00, provided that the request does not fall within the provisions of Rule 40(b) that specifically address settlement or withdrawal.

Rule 42. Expenses

Generally each side should pay its own expenses. An arbitrator does, however, have the discretion to direct a party or parties to pay expenses as part of an award.

Rule 43. Amendment or Modification

The Standing Committee may propose amendments to these rules as circumstances may require. All changes in these rules and all other determinations of the Standing Committee shall be subject to review and approved by the Minnesota Supreme Court.
Minnesota No-Fault Filing Addresses for Respondents

Pursuant to Rule 5(e) of the Minnesota No-Fault Rules, as amended and in effect on March 1, 2016, a claimant must provide the respondent (insurance company) with a copy of the filing materials. The below mailing and email addresses are provided by the American Arbitration Association (AAA®), with the consent of the below insurance companies, for the purpose of filing for Minnesota No-Fault arbitration. Email addresses should only be used for filing purposes. The AAA will periodically update this form. To check for updates, please visit our website at www.adr.org/MNNOFault.

AAA Insurance
Attn: AAA MN Claims
25510 W. 11 Mile Road
Southfield, MN 48034

AAA — Glass Case Filing
Attn: Patricia Deneau
Regional Claim Manager
1 Auto Club Drive
Dearborn, MI 48126

AIG Insurance
2051 Killebrew Drive, Suite 100
Bloomington, MN 55425

AIG — Glass Case Filing
2000 Lone Oak Parkway, Suite 121
Eagan, MN 55121

AMCO Insurance
Nationwide Insurance
PO Box 26005
Daphne, AL 36526

In addition, fax to:
877-590-8188

American Family
Attn: Scanning Center
6000 American Parkway
Madison, WI 53783

Ameriprise Auto & Home
Attn: Jennifer Zahring
3500 Packerland Drive
De Pere, WI 54115

Amica Insurance
PO Box 9690
Providence, RI 02940

Allstate Insurance
PO Box 2874
Clinton, IA 52733-2874

Auto-Owners Insurance
Attn: Michael Weiland
PO Box 64357
St. Paul, MN 55164

Bristol West
Attn: Dawn Brinson
400 Colonial Center Parkway, #200
Lake Mary, FL 32746

Burlington Insurance
Attn: Holly Slama
PO Box 4368
Mankato, MN 56002

Country Financial
PO Box 2020
Bloomington, IL 61702

Country Insurance — Glass Case Filing
Attn: Randy Murry
Material Damage Claims
1711 GE Road
Bloomington, IL 61704

Esurance Insurance
PO Box 20666
Tampa, FL 33622

Farm Bureau Financial Services/Farm Bureau
Attn: Lori Klein
No-Fault Claim Specialist
Farm Bureau Financial Services
Phone: 651-768-2168
lori.klein@fbfs.com

Gateway Insurance
Attn: Deb Hartigan
150 Northwest Point Boulevard
3rd Floor
Elk Grove Village, IL 60007

Geico Insurance
Attn: Denise Thompson
1 GEICO Center
Macon, GA 31295
R9MNArbitration@geico.com

MINNESOTA NO-FAULT FILING ADDRESSES FOR RESPONDENTS
Updated February 9, 2017.
Great West Casualty Company  
1100 West 29th Street  
South Sioux City, NE 68776

The Hartford  
Attn: Lorene Sullivan  
PO Box 14269  
Lexington, KY 40512-4269  
Lorene.Sullivan@thehartford.com

Horace Mann  
3701 Regent Boulevard, Suite 300  
Irving, TX 75063

IDS Property Casualty Insurance Company  
Attn: Jennifer Zahring  
3500 Packerland Drive  
De Pere, WI 54115

Illinois Farmers  
National Document Center  
PO Box 268993  
Oklahoma City, OK 73126  
Fax: 877-217-1389

Illinois Farmers — Glass Case Filing  
Attn: Steven R. Kluz  
Stoel Rives LLP  
33 South Sixth Street, Suite 4200  
Minneapolis, MN 55402

Liberty Mutual  
PO Box 1052  
Montgomeryville, PA 18936

Liberty Mutual — Glass Case Filing  
Attn: CSC  
2345 Rice Street, Suite 230  
Roseville, MN 55113

MetLife Auto & Home  
Attn: Jeff Kemp  
JKemp@metlife.com

Metropolitan Council  
Attn: Risk Management  
390 Robert Street  
St. Paul, MN 55101

Mid-Century Insurance  
2051 Killebrew Drive, Suite 100  
Bloomington, MN 55425

Motorist Insurance Group  
Attn: Marina Casey  
Medical Team Lead  
Marina.Casey@motoristsgroup.com  
PO Box 182476  
Columbus, OH 43218-2476  
Phone: 440-414-1188

Nationwide Insurance/Allied Insurance  
One Nationwide Gateway  
Dept. 5574  
Des Moines, IA 50391

Nationwide Insurance/Allied Insurance — Glass Case Filing  
Attn: Paul Maruska  
3600 American Boulevard West  
Suite 410  
Bloomington, MN 55431

Progressive Insurance  
900 Long Lake Road, Suite 200  
New Brighton, MN 55112  
MNPIPLIT@Progressive.com

Progressive — Glass Case Filing  
Attn: Lenny Wallen-Friedman  
527 Marquette Avenue, Suite 860  
Minneapolis, MN 55402

Safeco Insurance  
PO Box 515097  
Los Angeles, CA 90051-5097

Safeco Insurance — Glass Case Filing  
Attn: CSC  
2345 Rice Street, Suite 230  
Roseville, MN 55113

Secura Insurance  
Attn: Robert Gessler  
PO Box 819  
Appleton, WI 54912-0819

Sedgwick Claims Management  
Legal claims@sedgwickcms.com

State Farm Insurance  
PO Box 52270  
Phoenix, AZ 85072-2270

State Farm — Glass Case Filing  
CGS Cityline Building 2, 14th Floor  
PO Box 853918  
Richardson, TX 75085-3918

Travelers Insurance  
Attn: Kari Root  
385 Washington Street  
Mail Code SB01S  
St. Paul, MN 55102  
kroot@travelers.com
USAA Insurance
PO Box 5000
Daphne, AL 36526

Wilson Mutual Insurance
Attn: Jackie Downs
Jackie.downs@wilsonmutual.com

21st Century Insurance
National Document Center
PO Box 268993
Oklahoma City, OK 73126
Fax: 877-217-1389
Case Law Update


Background

In April 2012, Ronning suffered permanent injuries after a pickup truck in which he was a passenger collided with a vehicle driven by Krueger in Iowa. State Farm insured the truck under a policy that included $1 million in underinsured motorist (“UIM”) coverage.

Ronning retained an attorney to sue Krueger. Krueger’s only liability insurance was a bodily-injury policy issued by Farm Bureau with a coverage limit of $100,000. However, Ronning’s attorney failed to sue Krueger within Iowa’s two-year statute-of-limitations period for personal injury claims. In August 2015, Ronning sued State Farm for underinsured motorist benefits. State Farm moved to dismiss Ronning’s claim for failure to state a claim upon which relief can be granted. Ronning also commenced a malpractice lawsuit against his former attorney for failing to timely sue Krueger, which eventually resulted in a settlement. Ronning subsequently sent State Farm a purported Schmidt-Clothier notice of the settlement.

State Farm did not substitute a payment to Ronning in the amount of the settlement; State Farm responded by amending its motion to dismiss and asking the district court to declare the Schmidt-Clothier notice invalid, or, in the alternative, to stay the 30-day notice period until the court determined whether Ronning had pleaded a legally viable UIM claim. The district court granted State Farm’s motion to dismiss, concluding that because Ronning

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admittedly could not resolve his time-barred tort claim against Kruger through adjudication or settlement, he could not satisfy the condition precedent for bringing a UIM claim against State Farm.

**HOLDING**

Ronning appealed to the Minnesota Court of Appeals, challenging the district court’s Rule 12.02(3) dismissal of his claim for UIM benefits. The court of appeals noted that underinsured motorist coverage is available to insureds who are legally entitled to recover damages for bodily injury from owners or operators of underinsured motor vehicles, but that here, Ronning’s UIM claim was dismissed because he failed to first recover from Krueger – a condition precedent to bringing underinsured claims. The court recognized that the two ways in which Ronning could have satisfied that condition precedent were either concluding a tort action against the underinsured tortfeasor and seeking underinsurance benefits if the judgment exceeded the limits of the tortfeasor’s policy, or obtaining his “best settlement” from the tortfeasor, providing a Schmidt-Clothier notice to the UIM carrier, and then bringing a UIM claim.

Ronning conceded that, because of his former attorney’s negligence, he could not resolve a tort claim against Krueger through adjudication or settlement but nevertheless asserted that he could still claim UIM benefits from State Farm because the only statutory condition precedent for this type of claim is that the insured is “legally entitled to recover damages.” The court of appeals rejected Ronning’s reading of Minnesota Supreme Court case law and noted there is nothing to suggest that the supreme court intended to eliminate the non-statutory condition precedent for underinsurance claims. The court of appeals also rejected Ronning’s contention that an insured has a ripe underinsured motorist claim merely because he can show damages and the tortfeasor’s fault.

Further, the court rejected Ronning’s argument that the district court prematurely dismissed his complain because a fact issue exists as to whether State Farm has been prejudiced. The court noted that because satisfying the condition precedent is necessary for the existence of a valid UIM claim, Minnesota courts have engaged in prejudice analyses only when the insured brought a timely action against the tortfeasor but failed to provide the UIM insurer with adequate notice of a tentative settlement. Thus, the court held, “by leapfrogging to the question of prejudice, Ronning ignores case law demonstrating that his claim is not ripe until he recovers from Krueger. Because no underinsurance claim exists here, the question of prejudice is irrelevant.”

Finally, the court of appeals rejected of Ronning’s attempt to circumvent the condition-precedent requirement by suggesting that he may proceed with his unripe UIM claim so long as he “credits” State Farm for the full liability limits of Krueger’s insurance. The court noted that an underinsured’s liability is statutorily tied to the damage exceeding a recovery from the tortfeasor’s insurance, not the insured’s willingness to “credit” a certain amount, and that allowing an insured to claim UIM benefits without first recovering from the tortfeasor risks inappropriately elevating UIM coverage to the status of primary coverage.

**Practical Effect**

In conclusion, the Minnesota Court of Appeals made it clear that it “did not leave insureds like [Ronning] remediless” because, as the lower court had also recognized, Ronning could and did address the lost UIM claim in a lawsuit against the negligent attorney. Ronning had settled the malpractice claim for $200,000, which was $100,000 more than Krueger’s bodily-injury coverage limit. The settlement amount indicated to the court that the settlement appeared to contemplate the UIM benefits which Ronning now improperly sought to recover from State Farm.

**BACKGROUND**

On March 9, 2010, Lindstrom applied by phone and obtained a six-month auto policy from Progressive. Lindstrom then filled out an application for insurance online, providing his mother's mailing address, with an incorrect zip code, as the address for the policy. On March 24, 2010, Progressive mailed a premium bill to Lindstrom at the address listed in his application. Progressive also emailed the bill to the email address Lindstrom had provided. Lindstrom did not pay the premium. Accordingly, Progressive mailed a Cancellation Notice to Lindstrom, again to the address he had provided in his application, indicating that the policy would be cancelled effective April 26, 2010 if the premium was not received. Lindstrom failed to pay the premium by the cancellation date, and the policy was cancelled. Lindstrom was the at-fault party in an accident on June 8, 2010 in which the other involved driver sustained injury.

Progressive denied coverage for Lindstrom with regard to the other driver's injury claim because the policy had been cancelled before the accident occurred. Lindstrom brought a declaratory judgment against Progressive, arguing that he should be entitled to coverage under the policy because he never received the Cancellation Notice.

**HOLDING**

The district court granted summary judgment and the court of appeals affirmed. The court of appeals noted that the statutory requirements for cancellation of an auto policy are met by proof of mailing of the Cancellation Notice to the address listed on the policy. Therefore, actual notice of cancellation is not required, and cancellation for nonpayment of premium is not conditioned on the insured's actual receipt of the premium bill. As long as the insurer can provide proof that the Cancellation Notice was mailed to the address listed on the policy, cancellation will be effective.

**PRACTICAL EFFECT**

*Lindstrom* provides further ammunition for insurers against post-cancellation claims by insureds that they did not receive actual notice of cancellation. It is also a reminder that documenting proof of mailing of the Cancellation Notice is an absolute administrative necessity in order for the cancellation to be considered valid.
Founders Ins. Co. v. Yates, 876 N.W.2d 344 (Minn. App. 2016), review granted (Minn. May 17, 2016)

The Minnesota Supreme Court, reversing the 2016 decision of the Minnesota Court of Appeals, found that an out-of-state insurer that is not licensed to write motor vehicle accident insurance in Minnesota, but is licensed to write other lines of insurance in Minnesota, is still obligated under Minn. Stat. § 65B.50, subd. 2 (2014) to pay basic economic loss benefits to the insured when the insured vehicle is in Minnesota and an accident occurs in Minnesota.

BACKGROUND

Shortly after moving to Minnesota from Illinois, Yates was driving on a snowy Minnesota highway when his car collided with a vehicle that had lost control on an exit ramp. At the time of the accident, Yates’s car was insured under a Founders policy issued to him as an Illinois resident, and he had not notified Founders of his move to Minnesota. Founders does not write or issue motor-vehicle insurance in Minnesota, but has been licensed to write Dram Shop liability insurance in Minnesota since 2005.

Following the accident, Founders denied Yates’ No-Fault claim for over $17,000 in chiropractic expenses. The subject policy, written and issued in accordance with Illinois laws, capped medical-payments coverage at $1,000. Minnesota basic economic-loss benefits under the No-Fault act have no counterpart under Illinois law. Yates filed a petition for no-fault arbitration, to which Founders objected. Founders then brought a declaratory-judgment action in Minnesota district court, seeking a ruling that it had no duty to provide basic economic-loss benefits under Minnesota’s No-Fault Act. The arbitrator held a hearing and awarded Yates over $19,000 in benefits, over Founders’ objection. Yates moved the district court to confirm the arbitration award and Founders moved to vacate it. The district court erroneously determined that Founders was licensed to write and issue motor-vehicle insurance in this state because it wrote Dram Shop liability insurance. Accordingly, the district court concluded that Founders was required under Minn. Stat. § 65B.50, subd. 1 to provide basic economic-loss benefits to its insured. Founders appealed.

HOLDING

Minnesota Court of Appeals

The court of appeals reversed, finding that an out-of-state insurer that is not licensed to write motor vehicle accident insurance in Minnesota, but is licensed to write other lines of insurance in Minnesota, has no obligation under the No-Fault Act to provide basic economic loss benefits to its insured who was injured in an accident in Minnesota.

The court first analyzed the plain language of the policy, which both parties agreed did not provide for the benefits requested by Yates. The court then addressed Minn. Stat. § 65B.50, subd.1, which requires every insurer licensed to write auto insurance in Minnesota to certify that it will afford at least the minimum security required by the No-Fault Act to all policyholders for accidents occurring in Minnesota. The court noted that Founders’ license to write Dram Shop liability insurance in Minnesota does not authorize it, without further licensing, to write motor-vehicle insurance in Minnesota. Consequently, the court held that § 65B.50, subd. 1 did not apply.

The court further concluded that the plain language of § 65B.50, subd. 2, which requires every auto policy, wherever issued, to provide basic economic loss benefits while the insured vehicle is in Minnesota, did not require Founders to provide economic loss benefits because that provision only applies to insurers licensed to write automobile policies in Minnesota. While recognizing a split in Minnesota authorities on the issue, the court ultimately concluded Subdivisions 1 and 2 must be read together such that the limitation in Subdivision 1 to insurers licensed to write auto policies in Minnesota would be essentially imported into Subdivision 2.
Minnesota Supreme Court

The Minnesota Supreme Court disagreed with Founders and the Court of Appeals that it should read subdivision 1 and subdivision 2 together. The Court noted that subdivision 1 imposes additional requirements on licensed insurers that subdivision 2 does not impose on nonlicensed insurers, and therefore, applying subdivision 2 to nonlicensed, out-of-state insurers does not make subdivision 1 unnecessary. The Court also disagreed that applying subdivision 2 to nonlicensed, out-of-state insurers would “void [] directives which limit the types of insurance for which an insurance company can conduct business in Minnesota,” pointing out that multiple statutory rights and obligations accrue to licensed insurers that do not apply to nonlicensed insurers. Finally, looking at the plain language of subdivision 2, the Court emphasized that it clearly states it applies to “every contract of liability insurance for injury, wherever issued” and nothing suggests that it is limited to insurers licensed in Minnesota. The Court also recognized, in a parting footnote, that applying subdivision 2 to nonlicensed, out-of-state insurers could present one or more constitutional issues in certain cases, but it expressed no opinion on the constitutionality of Minn. Stat. § 65B., subd. 2, since that issue had not been raised before the court.

Practical Effect

The importance of this decision is its clarification that an insurance company does not have to be licensed to write motor-vehicle insurance in Minnesota before it can be compelled to pay No-Fault benefits under Minn. Stat. 65B.50. This decision settles the recognized split in authorities regarding the interpretation of § 65B.50, subd. 2. The supreme court’s footnote about the constitutionality of subdivision 2 indicates possible such future challenges. For now, however, out-of-state insurers must pay basic economic loss benefits to the insured when the insured vehicle is in Minnesota and an accident occurs in Minnesota.

BACKGROUND

In June 2012, Karen Auers was injured in a motor vehicle accident. At the time of the accident, Ms. Auers was insured by Progressive under a policy that included underinsured motorist (UIM) benefits of up to $100,000. As a result of the crash, Ms. Auers incurred $178,083.44 in medical expenses. Progressive paid $20,000 of the bills through No-Fault medical benefits, and the remaining expenses were satisfied by Ms. Auers’ health insurance carrier, Blue Cross and Blue Shield of Minnesota (BCBS). BCBS negotiated approximately $85,869.59 in discounts with her medical providers, paying $72,216.85 to these providers and asserting a medical lien in that amount.

In March 2013, Ms. Auers received a settlement offer from the tortfeasor’s insurer for the liability insurance policy limit of $100,000. In June 2013, respondent obtained a “Release of Subrogation Interest and Claim” from BCBS, after which BCBS accepted $5,000 in exchange for an assignment of its right of subrogation, “to the extent permitted under Swanson v. Brewster” to respondent.

Auers’ estate then sued Progressive, and the district court determined that she was entitled to UIM benefits for damages exceeding the tortfeasor’s liability-insurance limits. Progressive appealed, claiming that the negotiated discount was a collateral source offset. The Minnesota Court of Appeals, (Rodenberg, J).

HOLDING

1. Pursuant to Swanson v. Brewster, 784 N.W.2d, 264 (Minn. 2010) a negotiated discount of medical expenses is a collateral source subject to offsets.
2. A subrogee that has negotiated a discount of medical expenses may not assert a subrogation right for the discount under Swanson, and the subrogation right is limited to the amount of the subrogee’s payment.
3. An injured plaintiff who purchases the subrogation interest of a health-insurance carrier is not entitled to collateral-source offset under Minn. Stat. § 548.251 in his personal injury case.

As a result, the tortfeasor was deemed not to be underinsured.

PRACTICAL EFFECT

- Negotiated Discounts Remain Collateral Sources to be Deducted from an Injured Party’s Verdict or Settlement under Minn. Stat. § 548.251.
- When considering whether a case has the potential for UIM exposure, the total medical specials may not be an accurate barometer if the outstanding expenses have not yet been negotiated down by the Plaintiff’s health insurance provider.

**BACKGROUND**

Donaldson was passenger in a vehicle operated by his friend, Patton, who was driving while intoxicated. A pedestrian saw Patton driving erratically and called 911. A police officer responded and Patton attempted to flee, losing control of the vehicle in the course of his efforts to evade police and colliding with a tree. Donaldson sustained serious injuries in the accident. Patton was ultimately convicted of felony criminal vehicular operation.

American Family insured the vehicle under a policy issued to Patton’s father with a $100,000 liability limit. Patton’s father also had an umbrella policy from American Family with a $1,000,000 limit. Donaldson entered into a *Drake v. Ryan* agreement with American Family whereby American Family agreed to pay the limit of the underlying liability policy in exchange for Donaldson’s agreement that any further damages claim could only be asserted against the proceeds of the umbrella policy, such that the Pattons could have no personal exposure for the claim. American Family then denied coverage under the umbrella policy pursuant to intentional-acts and criminal-acts exclusions.

After reaching the *Drake v. Ryan* settlement, Donaldson commenced a personal injury action against Patton and his father. American Family provided the Pattons with a defense in the personal injury action under a reservation of rights and brought a declaratory judgment action seeking a declaration of no coverage under the umbrella policy. In response, Donaldson entered into a *Miller-Shugart* Agreement with the Pattons in the personal injury action.

**HOLDING**

The Eighth Circuit affirmed summary judgment in favor of American Family, holding that the Pattons had violated the cooperation clause in the umbrella policy by entering into the *Miller-Shugart* Agreement with the Pattons after their *Drake v. Ryan* settlement with American Family. The court noted that there are two prerequisites that must be met before a *Miller-Shugart* Agreement may override the insured’s duty to cooperate: (1) the insurer must deny the existence of any coverage for the underlying claim; and (2) the insured must be at risk of personal exposure for damages in the underlying case. In the court’s view, Donaldson’s *Miller-Shugart* Agreement with the Pattons did not satisfy the second prerequisite because the earlier *Drake v. Ryan* settlement had insulated the Pattons from any possibility of personal exposure for Donaldson's damages. Consequently, the *Miller-Shugart* Agreement violated the cooperation clause in the umbrella policy.

The court also concluded that the Pattons’ violation of the cooperation clause was both material and prejudicial to American Family because it foreclosed the possibility of a later settlement in which American Family could participate and compromised American Family’s right to contest liability and the amount of damages. Accordingly, the breach of the cooperation clause entitled American Family to deny coverage under the umbrella policy.

**PRACTICAL EFFECT**

*Donaldson* demonstrates the pitfalls litigants can encounter when they stretch insurance-related settlement methods beyond the boundaries of their intended use. It is a reminder that *Miller-Shugart* settlements are only appropriate in circumstances where the insured has risk of personal exposure. The decision clearly illustrates the tension created between an insured’s duty to cooperate and their right to protect themselves from personal exposure, and provides a potential roadmap for challenging coverage where *Miller-Shugart* agreements are utilized.
Hegseth v. American Family Mut. Ins. Group, 877 N.W.2d 191 (Minn. 2016)

BACKGROUND

On March 30, 2007, Jamy Hegseth was a passenger in a vehicle driven by another when that vehicle and a semi-truck were involved in an accident that injured Hegseth. The semi-truck left the scene before the identity of the driver could be determined. Hegseth sought UM benefits from two policies - one that covered the vehicle she was riding in (issued by West Bend Insurance), and an American Family policy that covered her own vehicle. The parties agreed that under Minn. Stat. § 65B.49, subd. 3a(5), the American Family policy was excess UM protection. On June 14, 2012, Hegseth settled her claim for primary UM benefits with West Bend for the policy limits. Two months later, on August 17, 2012, she demanded that American Family pay her excess UM benefits. On September 13, 2012, American Family denied the claim, concluding that Hegseth had been fully compensated for her injuries. On July 9, 2013, Hegseth brought suit against American Family, which moved for summary judgment arguing that the excess UM claim was barred by the 6-year statute of limitations for contract actions (Minn. Stat. § 541.05, subd. 1(i)). The district court granted American Family’s motion, concluding that the excess UM claim accrued over 6 years earlier, on the date of the accident. The court of appeals affirmed. Hegseth sought review, arguing that: (1) resolution of the primary UM claim is a condition precedent to the assertion of an excess UM claim, and it is unjust for the excess claim to accrue before the occurrence of the condition; and (2) excess UM claims should accrue on the date the insurer denies the claim for excess benefits.

HOLDING

1. The resolution of the primary UM claim is not a condition precedent to the assertion of a claim for excess UM benefits under the No–Fault Act.
2. Claims for excess UM benefits accrue on the date of the accident.

PRACTICAL EFFECT

• All claims for UM benefits, both primary and excess, accrue on the date of the accident.
• Keep in mind, however, that when a UM claim arises due to an insurer’s insolvency, the statute of limitations begins to run when insurer is declared insolvent. See Oganov v. Am. Family Ins. Grp., 767 N.W.2d 21 (Minn. 2009).
• UIM claims, on the other hand, accrue on the date of settlement with or judgment against the tortfeasor. See Oanes v. Allstate Ins. Co., 617 N.W.2d 401 (Minn. 2000).
Saengkeo v. Minnesota Automobile Assigned Claims, 877 N.W.2d 568 (Minn. Ct. App. 2016)

**BACKGROUND**

A passenger in an uninsured vehicle owned and operated by a third-party brought an action against the assigned claims plan seeking recovery for economic loss benefits for injuries suffered in a single vehicle accident in the uninsured vehicle. The assigned claims plan is designed to provide basic economic loss benefits to injured persons who may not otherwise be covered by personal injury protection coverage due to circumstances such as lack of vehicle ownership. Minnesota law disqualifies from participation in the assigned claims plan any vehicle owner who fails to insure a vehicle. The plaintiff did not own a vehicle. However, Minnesota law also disqualifies from the plan “[p]ersons, whether or not related by blood or marriage, who dwell and function together with the owner [of an uninsured vehicle] as a family.” These disqualifying provisions do not apply if the owner of the uninsured vehicle demonstrates by clear and convincing evidence “to have [not] contemplated the operation or use of the vehicle.”

**HOLDING**

In this case, the passenger’s brother, with whom the plaintiff lived, was the co-owner of an uninsured vehicle. The brother had co-signed on a loan for a vehicle with a girlfriend and therefore co-owned a vehicle. The brother was no longer in a relationship with the girlfriend at the time the plaintiff moved in with his brother and the vehicle was used solely by the former girlfriend. She alone was insured under the vehicle’s policy. Plaintiff argued that the disqualifying provisions did not apply because his brother did not contemplate using the vehicle he co-owned with his ex-girlfriend and was not required to insure the vehicle. However, the court held that a plain reading of the statute required the brother as an owner to maintain insurance on the vehicle if it was contemplated that anyone would use or operate the vehicle. Since the ex-girlfriend was clearly using and operating the vehicle the court reversed the trial court and precluded plaintiff’s recovery from the assigned claims plan.

**PRACTICAL EFFECT**

There are strike scenarios of when someone is eligible for No-Fault coverage through the MN Assigned Claims Plan.

BACKGROUND

Plaintiff Stand Up Multipositional Advantage MRI, P.A. (SUMA) provides MRI testing to patients. Prior to providing MRI services, SUMA required each patient to sign a one-page document that purported to create an assignment and lien agreement. In July 2013, SUMA initiated a lawsuit against sixteen different defendants, including eight patients, seven attorneys who represented the eight patients, and American Family, the insurance company that provided No-Fault insurance benefits to the eight patient-defendants. SUMA alleged that American Family failed to make payments of No-Fault benefits directly to SUMA pursuant to the assignments that it had obtained from its patients.

HOLDING

The Minnesota Court of Appeals held that a patient’s assignment of a No-Fault insurance claim to a medical provider is invalid and unenforceable if the applicable automobile insurance policy forbids such an assignment and if the patient makes the assignment before the medical provider bills the patient for medical services. In support of its holding, the Court of Appeals relied on the statutory definition of when a “loss” occurs for the purpose of a claim for medical expense benefits—which is when that medical expense is incurred. Therefore, the Court held that the pre-loss assignments to SUMA at issue in this case were invalid and unenforceable.

PRACTICAL EFFECT

This holding has broad implications. An assignment of a No-Fault claim will only be valid before receipt of a medical bill if the applicable insurance policy does not include an anti-assignment provision. If the policy does include an anti-assignment provision, the assignment will only be valid if entered after the patient receives the bill for services. This may ultimately result in the refusal of medical providers to treat claims without prior payment as there is no assurance that the insured will sign a post-billing assignment of his or her right to personal injury protection benefits under the policy. In addition, careful review of the date of any assignments should be undertaken before issuing payment of a No-Fault claim directly to a claimant.

The Minnesota Supreme Court granted Stand Up Multipositional Advantage MRI, P.A.’s petition for review on June 21, 2016, and the Court heard oral arguments in the case on October 11, 2016.

In Wilbur v. State Farm, the Court of Appeals interpreted the amount of taxable costs that may be available to a prevailing property when an insurer unreasonably denies UIM benefits. Specifically, the appellate court concluded the phrase “proceeds awarded” in the “Good Faith” Minn. Stat. 604.18, subd. 3(a)(1) means the amount of the net judgment entered by the district court as UIM benefits, not necessarily the proceeds awarded by a jury.

BACKGROUND

Wilbur sustained severe injuries in a motor vehicle collision. He recovered the full $100,000.00 policy limit in damages from the at-fault driver’s insurance company. He then pursued additional insurance coverage from his own insurer, State Farm, under his underinsured motorist (UIM) coverage. State Farm made an initial offer and payment of $1,200, then later offered an additional $26,800 to settle the UIM claim. Wilbur declined the offer and sought the $100,000 policy limit. Ultimately, Wilbur sued State Farm and the matter proceeded to a jury trial. The jury awarded Wilbur $412,764.63 in damages. After collateral source offsets, the district court determined the damages Wilbur was entitled to recover were $255,956.59. Because the UIM limits were $100,000 and State Farm had already paid $1,200, the district court entered judgment in the amount of $98,800.00.

Following the jury verdict, Wilbur moved to amend his complaint to add a claim of bad faith against State Farm pursuant to Minn. Stat. §604.18. The statute provides, in part, that if an insurer unreasonably denies benefits to an insured, the district court may award taxable costs of “an amount equal to one-half of the proceeds awarded that are in excess of an amount offered by the insurer at least ten days before the trial begins or $250,000, whichever is less.” Minn. Stat. §604.18, subd. 3(a)(1) (emphasis added). The statute also allows for reasonable attorney fees, pre-judgment interest, post-judgment interest, costs, and disbursements.

The parties agreed that the statute provides for taxable costs, but disagreed on the meaning of “proceeds awarded.” According to State Farm, the phrase should be construed to be capped by the policy limit and should be one half of the policy limits less the $28,000 that had been offered by State Farm before trial. According to Wilbur, the phrase should be construed as the net jury verdict for damages after collateral source offsets (or one-half of the $255,956.59 net verdict).

HOLDING

As a matter of first impression, the Court of Appeals concluded that the term “proceeds awarded” was ambiguous. Therefore, the Court of Appeals considered the legislative intent of the statute. In so doing, the Court of Appeals upheld the district court's decision that the term “proceeds awarded” referred to the amount of judgment entered by the court after applying the offsets. Plaintiff was awarded as taxable costs one half of the policy limits less the amount State Farm had offered before trial.

PRACTICAL EFFECT

The amount of taxable costs allowed on a successful bad faith claim is limited by the UIM policy limits. However, an insurer must still be cognizant of its exposure for attorney fees, interest, costs, and disbursement for a wrongful denial of benefits.

This case is currently being reviewed by the Minnesota Supreme Court.
**Background**

Plaintiff Hamilton, a 52-year-old self-sufficient man, was injured in a one-vehicle accident. Plaintiff was driving a car owned by his girlfriend, Dahlquist, who was a front-seat passenger. The vehicle crashed after Dahlquist negligently grabbed the steering wheel from her passenger seat. After collecting the liability limit from Dahlquist’s policy, Hamilton sought UIM benefits from a policy that Allstate had issued to his brother, arguing that he was a resident relative of his brother’s household.

Plaintiff had a “fluid” residence history. At the time of the accident, he was living with Dahlquist but stored his belongings with his brother. His relationship with Dahlquist was tumultuous. When he and Dahlquist were on the outs, Plaintiff would stay with either of his two brothers until he and Dahlquist reconciled.

**Holding**

The court granted summary judgment in favor of Allstate, concluding that Hamilton was not a resident relative of his brother’s household. In particular, the court noted that Hamilton was not living under his brother’s roof when the accident happened and his close, intimate and informal relationship was with Dahlquist, not his brother. Moreover, there was no indication that the brother considered Hamilton when he contracted for insurance with Allstate. The fact that Hamilton was middle-aged and self-sufficient also supported the conclusion that he was not a resident of the brother’s household.

**Practical Effect**

Hamilton does not break any new ground regarding the question of when an individual may be considered a resident relative. It does, however, provide some helpful insight into the factors that courts emphasize in making the determination. In particular, the age and self-sufficiency of the individual seeking resident relative status are predominant factors.
Non-Permissive Use Exclusion In Liability Policy


**BACKGROUND**

Dylan Marshall was killed in a one-vehicle accident while a passenger in a car driven by Owen Hoglund, who was under the influence of alcohol, marijuana and the drug Ecstasy. The involved vehicle belonged to Casey Pederson, at whose home Marshall and Hoglund had attended a bonfire party. Hoglund had taken the car without Pederson’s express permission, though he was assured by someone else at the party that Pederson would not mind.

Hoglund was a minor when the accident occurred. His parents were divorced and his mother had sole custody. Both of his parents’ auto policies excluded liability coverage if a vehicle was used without a reasonable belief that the person was entitled to do so.

Marshall’s mother commenced a wrongful death action against Hoglund, his parents, and their insurers, among others. The district court granted summary judgment in favor of the insurers, finding that the non-permissive use exclusions in the policies precluded coverage. Marshall appealed, arguing special circumstances existed creating an inference that Pederson had given Hoglund implied permission to drive his car. Marshall relied on cases construing the Safety Responsibility Act in which it was held that the a vehicle owner can be presumptively held negligent for the conduct of a driver using the vehicle without permission when special circumstances exist that make the risk of negligent conduct foreseeable. Marshall argued that it was foreseeable to Pederson that someone attending a party at his home might borrow his vehicle without his permission, particularly when he left the vehicle parked in his driveway with the keys in the ignition.

**HOLDING**

The court of appeals declined to apply cases construing the Safety Responsibility Act, noting that the issue presented was not liability for the accident, but coverage under the policies. The court ultimately concluded that the non-permissive use exclusions in the policies barred coverage because the undisputed facts showed that Hoglund did not have permission to drive Pederson’s car. The court rejected the argument that simply leaving the keys in the vehicle while it was parked in his own driveway constituted implied permission from Pederson for anyone to use it. The court further reaffirmed that non-permissive use exclusions in liability policies are valid and enforceable under Minnesota law.

**PRACTICAL EFFECT**

While this decision does not break any new ground, it is notable in reflecting the Minnesota appellate courts’ continued willingness to apply non-permissive use exclusions to auto liability coverage. This is in stark contrast to the courts’ much more restrictive approach to PIP, UM, and UIM exclusions.
**Schumacher v. State Farm**, 2015 WL 6174537 (D.Minn. 2015)

**BACKGROUND**

In *Schumacher v. State Farm*, Judge Frank of the United States District Court held that the underlying bodily injury arbitration agreement between the plaintiffs and the tortfeasors was a binding final adjudication of damages, and because the damages awarded ($125,000) were less than the bodily injury limits ($200,000) the plaintiffs did not have an underinsured motorist (UIM) claim. State Farm’s motion for summary judgment was granted.

**HOLDING**

The Federal District Court found that the underlying arbitration met all of the requirements for collateral estoppel because the plaintiff had a full opportunity to be heard, it was a final adjudication, and the issue of damages was identical to the issue to be decided in the UIM claim.

**PRACTICAL EFFECT**

This decision also underscores the importance of the actual arbitration agreement language when arbitrating a bodily injury (BI) case. In this case, the parties indicated that the arbitrator’s final decision shall show the amount of damages awarded, if any. The parties indicated in an addendum to the arbitration agreement that plaintiffs reserved the right to present a *Schmidt v. Clothier* notice to the UIM carrier, but neither the arbitration agreement nor the addendum contained any language indicating that it was a “settlement” or “best settlement.” The federal district court found that the arbitration agreement was intended as the conclusion of the tort action rather than a method to achieve the “best settlement.”

A UIM carrier presented with a *Schmidt* notice pursuant to a binding arbitration agreement should make sure to get a copy of the binding arbitration agreement as the language may dictate whether it needs to intervene to protect its interest.
Sleiter v. American Family Mutual Insurance Co., 868 N.W.2d 21 (Minn. 2015)

**BACKGROUND**

Sleiter was one of 19 individuals injured when a school bus was struck by an underinsured, at-fault vehicle. Because there were so many people injured, a special master was appointed to allocate the proceeds of the available liability coverage and the $1,000,000 limit of UIM coverage for the bus. The special master determined that Sleiter was entitled to $1,600.33 from the liability policy and $34,543.70 from the UIM policy. Because Sleiter’s damages exceeded the allocated amounts, he then sought excess UIM benefits from American Family, which insured his family’s vehicle with a $100,000 UIM limit.

Under the Minnesota No-Fault Act, a person entitled to UIM benefits first seeks benefits from the vehicle he/she is occupying. If the injured person is not a named insured or resident relative of the named insured under the policy covering the occupied vehicle, that person can seek excess UIM benefits from a policy where he/she person is an insured. However, excess UIM benefits are limited to the difference between the “coverage available” from the primary UIM policy and the coverage available under the excess policy. Thus, Sleiter sought $65,457 in excess UIM benefits from the American Family policy (the difference between the benefits available to him under the bus’ UIM policy and the $100,000 limit of the American Family excess policy).

American Family denied coverage for excess UIM benefits, arguing that the “coverage available” to Sleiter under the UIM policy for the bus was the $1,000,000 limit, even though Sleiter had only recovered a small fraction of the limit. The district court granted summary judgment in favor of American Family, and the court of appeals affirmed.

**HOLDING**

The Minnesota Supreme Court reversed. In doing so, the court found that both the insurance company’s and Sleiter’s interpretations of the phrase “coverage available” in the No-Fault Act were reasonable, and that the statute was therefore ambiguous. Ultimately the court held that Sleiter’s interpretation was the better interpretation because it allowed individuals such as Sleiter to access their personal insurance coverage, giving them nothing more than the amount of coverage that they selected and purchased.

**PRACTICAL EFFECT**

In situations involving multiple claimants for primary UIM benefits under a single policy, the excess UIM carrier cannot use the primary UIM limit as the benchmark for determining whether excess UIM benefits are available. Rather, after Sleiter, the measuring stick for determining whether, and how much, excess UIM benefits are owed will be the fraction of the primary UIM limit that the insured actually received.
State Farm Mutual Insurance Co. v. Lennartson, 872 N.W.2d 524 (Minn. 2015)

BACKGROUND

The Minnesota Supreme Court consolidated State Farm v. Lennartson and State Farm v. Foss in this decision. In the underlying Lennartson and Foss cases, the plaintiffs were injured in auto accidents and sought No-Fault benefits through State Farm. Upon discontinuance of their No-Fault benefits, both plaintiffs brought negligence actions against the at-fault drivers, recovering past medical expenses. Post-suit, both filed arbitrations to recover additional No-Fault medical expense benefits, and both prevailed in those arbitrations. State Farm moved to vacate the awards, arguing that collateral estoppel barred the No-Fault arbitrator from considering medical expenses claim as part of the tort action and that they had secured double recovered in contravention of the No-Fault Act.

HOLDING

The Minnesota Supreme Court ruled that a No-Fault insurer is not entitled to offsets against claimants who first secure a recovery in a negligence action before seeking the remainder of their No-Fault benefits, even when the benefits claimed are identical to those awarded by the jury in the tort action.

In support of this decision, the court cited 1) that the plain language of the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-71 (2014), does not bar an insured from recovering No-Fault benefits for medical expenses already recovered in a prior negligence action, and (2) that collateral estoppel does not preclude an insured from seeking medical expense or income-loss benefits in No-Fault arbitration for the same losses recovered as damages in a prior negligence action.

PRACTICAL EFFECT

Lennartson is significant for two reasons: First, it allows a double recovery to claimants by not allowing a No-Fault insurer to offset damages awarded in a prior tort action arising from the same incident. And second, because of this, Lennartson may affect the timing with which the Plaintiffs’ bar chooses to pursue its paths of recovery in tort and No-Fault arbitration.

Lennartson arguably encourages Claimants to game the No-Fault system by making litigation against the tortfeasor the first move in the process rather than the last. Therefore, it is possible that No-Fault claimants will delay the filing of No-Fault arbitration petitions after denials until the parallel action against the tortfeasor is fully litigated to trial (which has its inherent risks), in an attempt to secure the double recovery that the Minnesota Supreme Court has allowed. This will result in more personal injury litigation and may also impede and prolong the conclusion of No-Fault claims.
DISCLAIMER

This publication is intended as a report of legal developments in the automobile law area. It is not intended as legal advice. Readers of this publication are encouraged to contact Arthur, Chapman, Kettering, Smetak & Pikala, P.A. with any questions or comments.
### General Rules for PIP Priority in Minnesota

**Who is Primary?**

<table>
<thead>
<tr>
<th>VEHICLE</th>
<th>DRIVER</th>
<th>OCCUPANT</th>
<th>PEDESTRIAN</th>
</tr>
</thead>
</table>
| **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** \* **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:  
- 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. | 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. |
| **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. | |
| **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. | 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. | |
| **Exclusions to PIP** | The following exclusions bar no-fault coverage in Minnesota:  
- Converted Motor Vehicles (car thieves & joy riders) — if under age 14 can go to the assigned claims plan  
- Races - if injury/death results from official racing contest  
- Intentional Injuries - if intentionally causing or attempting to cause injury to self/others  
- Motorcycles - unless a pedestrian, or motorcycle PIP coverage purchased. | 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. |
Determining the Source of UM/UIM Coverage in Minnesota

UM/UIM Claimant

Occupant of Motor Vehicle? No

Yes

Primary UM/UIM Coverage “Available” on the Occupied Vehicle

Occupying a Vehicle of which Claimant is a Statutory “Insured”? Yes

Cannot Collect Under Any Other UM/UIM Policy

No

May Select One UM/UIM Policy Where Covered and May Claim the “Surplus” only

Pedestrian May Select Any One UM/UIM Policy Where Claimant is “Insured”

Example: Claimant had 50/100 UM, but was riding in friend’s car (with its 25/50 UM) when injured by a phantom motorist. First collects 25K UM limit on host vehicle. Then collects maximum of 25K more (50K personal limit less host’s 25K limit) from claimant’s own insurer.
## 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.

<table>
<thead>
<tr>
<th>Date</th>
<th>Our Policyholder</th>
<th>Date of Accident</th>
<th>Claim Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant’s Name</td>
<td>Cell Phone</td>
<td>Home Phone</td>
<td>Work Phone</td>
</tr>
<tr>
<td>SSN#</td>
<td>Date of Birth</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home Address (#, Street, City, Zip)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date and Time of Accident</td>
<td>Place of Accident (Street, City, State)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description of Accident and whether it is a vehicle you own.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle Riding In (or struck by if a pedestrian)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Describe vehicles owned by you or household members. If other insurance policies also apply, please list next to each vehicle.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were you injured as a result of this accident? (check the appropriate box.)</td>
<td>Did police investigate accident? (check the appropriate box.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were a police report filed? What police department responded?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Describe your injury / injuries:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were you transported to a hospital via ambulance? (check the appropriate box.)</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Were you treated by a doctor? (check the appropriate box.)</td>
<td>Name, address, phone # of doctor(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were you treated at a hospital? (check the appropriate box.)</td>
<td>Name, address, phone # of hospital</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount of Medical Bills to Date</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ __________________________</td>
<td>Will you incur more medical bills? (check the appropriate box.)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>if yes, $ amount lost to date</td>
<td>Were you working at the time of accident?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average weekly wage</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Did you lose wages as a result of your accident? (check the appropriate box.)</td>
<td>If yes, $ amount lost to date</td>
<td>Date you returned or anticipate to returning to work.</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If you lost wages: Date disability began.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are you eligible to receive workers’ compensation benefits as a result of this accident? (check the appropriate box.)</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Are you eligible to receive Medicare? (check the appropriate box.)</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>
| 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 | No |
| 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 | No |
| 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.


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 --DENIAL OF NO-FAULT BENEFITS LETTER

LETTER SHOULD BE SENT TO INSURED AND ATTORNEY

EMAIL | U.S. MAIL | CERTIFIED MAIL (HOWEVER THE COMPANY PREFERS)

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 ___________. (Date of IME, or date you want to deny No-Fault benefits, date of ROR or suspension letter. Use the earliest possible date to deny benefits, to protect company.)

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 on outstanding medical bills. In addition, any continued wage loss or replacement services should also be sent to me, in order to maintain a claim for interest on these benefits as well.

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, or via email at Minnesotanofaultarbinfo@adr.org. 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
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
**Compensate for 85% of the injured person’s loss of gross income from the inability to work, proximately caused by an injury related to the subject motor vehicle accident and subject to a maximum of $500.00 per work.**

**Disability and income loss (wage loss) benefits are not intended to compensate for loss of earning capacity. Instead, the benefits are intended to reimburse the actual economic loss resulting from a disability and the related inability to work.**

✓ Does Claimant have a disability?

  o Disability = Reduction in physical function that leads to inability to work caused by motor vehicle accident.
  o Once a person is released to return to work without physical disability, entitlement to No-Fault wage loss benefits ends, even though income loss may continue.
  o Is part-time or a reduced work schedule available?

✓ Does Claimant have an inability to work?

  o Inability to work = lack of ability to work full time or return to same type of work formerly performed by injured person due to disability caused by the motor vehicle accident.
  o Substitute work is material in computing amount of benefits, but usually does not go to initial question of inability to work.

**Require proof of disability and inability to work with disability slip from medical provider.**

✓ To what extent is economic loss suffered as result of disability and inability to work?

  o Must be an actual, calculable economic loss suffered based upon:
    i. Insureds employment and wages as time of accident;
    ii. Definite offer of employment at a certain wage existing at time of accident; or
    iii. Consistent history of employment such that a specific period of employment at a certain wage can be reasonably predicted.
  o Includes salary, wages, tips, commissions, and earnings.
  o Also includes income (including vacation or sick leave) that is lost due to medical treatment.
Requirements - provide proof of economic loss with pre/post-incident timesheets, payroll information, paystubs, certifications from employer of lost time/profits, disability slip, etc.

- **Substitute work.** Amount of income earned from substitute work will reduces the amount of PIP disability income loss benefits.

- **Self-employed persons.** May recover income loss benefits by proving (1) cost incurred for substitute employees, (2) loss of tangible things of economic value, or (3) a reduction in gross income produced by self-owned business.

- **Job unavailability after release to return to work.** Disability income loss benefits are only payable during the period of disability from your job and inability to work due to injuries sustained in the automobile accident.

- **Loss of eligibility for unemployment benefits.** During the time of disability, can recover up to 100 percent of the amount of unemployment benefits, subject to a maximum of $500 per week.

- **Be wary of flexible employers.** Many employers these days allow employees who miss time from work, to make-up the time and not deplete paid-time-off (PTO). A wage verification form substantiating missed time from work or depletion of PTO is necessary.

- **IME.** Make sure the independent medical examiner addresses the wage loss issue and is aware of any claimed past or current wage loss and has the documentation to examine. The IME doctor can also inquire as to additional information, or job specifics that he/she can incorporate into your IME report, that may further assist in defending the case.
Reimbursement is required for all expenses reasonably incurred by or on behalf of an injured claimant in obtaining substitute services for his/her household (normal and ordinary duties), up to a maximum of $200 per week, beginning at least 8 days after the accident.

**Note ~ Replacement Service Benefits are not compensable for the day of the accident, or the entire week following the accident.**

** Note ~ Similarly there should be a corresponding disability slip which describes what and how the claimant requires assistance with normal and ordinary household duties/chores

✔ What value of services is Claimant entitled to?
  o Whichever is greater between:
    i. Reasonable value of service to be replaced OR
    ii. Expenses of providing the same
    iii. Documentation required showing what was done/incurred

✔ Does Claimant usually provide the services being replaced?
  o Not required to be a full-time homemaker
  o Is required to show they are “primarily responsible for [service being replaced]”
  o There can be only one primary homemaker
    i. Even if they are employed full-time, a Claimant can still make a claim for replacement services as long as they are primarily responsible.
    ii. Documentation required showing what was done/incurred

✔ What evidence must Claimant provide?
  o Claimant must show:
    i. out-of-pocket expense OR
    ii. that such expense was actually incurred
    iii. Documentation required showing what was done/incurred
  o If services involve fulltime responsibility, where Claimant is alleging status as the “primary homemaker” of the home ~ Claimant must show:
    i. Necessity for service OR
    ii. Reasonable value of the service
    iii. Documentation required showing what was done

Practice Tips:
  o Cross-reference claimant’s disability slips from medical records with work they claim to be unable to do
    o Ask for updated disability slips from treating provider before continuing to honor replacement services claims
Watch out for construction or remodeling projects that are passed off as normal work
  - Hiring friends to remodel kitchen
  - Constructing barn outside of house from start to finish

Watch out for the infamous 20 hours of vacuuming/week, heavy cleaning for multiple hours
  each week, extensive gardening and landscaping charges, etc.
  - Is the amount of time appropriate for the task?

Does Claimant have children?
  - If he/she is hiring snow-removal services. Are the kids able to do it?
  - If he/she is claiming his/her kids performed the replacement work, are they not already
    required to perform chores and assist around the house?
    ▪ Replacement services are only available if the injured person was primarily
      responsible for the work being replaced.

Recorded Statements can be used to verify that the claimant is/isn’t the person primarily
  responsible for the work before the accident
  - Useful later on during arbitration for impeachment purposes, or if the Claimant decides
    to expand the scope of services being replaced
  - Insured has reasonable duty to cooperate with Insurer’s investigation

EUOs
  - More expensive and time consuming than recorded statements, but will provide more
    information
  - Must be reasonable part of investigation
    ▪ If claimant/counsel objects – the arbitrator has to decide
    ▪ Arbitrator decides if request is reasonable

To Pay or Not to Pay?
  - Do the medical records support inability to perform service to be replaced?
    ▪ Up to date disability slips?
  - Is there something that does not “sit right” with the claimed replacement/essential
    service request?
    ▪ Are these services necessary everyday tasks?
    ▪ Is it reasonable that the Claimant would be the one expected to perform all of
      these activities?
    ▪ Is the frequency of the tasks performed reasonable?
    ▪ Has the claim for replacement services gone on longer than it should?
  - Make sure the IME doctor addresses any claimed replacement services
  - If in doubt, ask for more information or do not pay the claimed charge until you
    investigate further.
    ▪ Claimant will have to prove the claim at arbitration. If it seems odd to you, it’s
      likely that an arbitrator could be convinced as well.
STATE OF MINNESOTA
COMMISSIONER OF COMMERCE

In the Matter of the Certificate of Authority of Horace Mann Insurance Company, a Illinois corporation licensed to do business in the State of Minnesota, NAIC No. 22578.

TO: Horace Mann Insurance Company
    Once Horace Mann Plaza
    Springfield IL 62715

Commissioner of Commerce Steven M. Minn (hereinafter "Commissioner") has determined as follows:

1. The Commissioner has advised Horace Mann Insurance Company (hereinafter "Respondent") that as a result of an investigation by the Commissioner concerning Respondent's conduct as a corporation engaged in the business of insurance in Minnesota, the Commissioner is prepared to commence formal proceedings in accordance with the provisions of Minn. Stat. § 45.027 (1998) against Respondent's Certificate of Authority to engage in the business of insurance in Minnesota based on allegations that Respondent denied insurance claims without doing a proper investigation in violation of Minn. Stat. § 72A.20 and § 72A.201.

2. Respondent acknowledges that it has been advised of its rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondent hereby expressly waives those rights. Respondent further acknowledges that it has been represented by legal counsel throughout these proceedings or has been advised of its right to counsel which right it hereby waives.

3. Respondent has agreed to an informal disposition of this matter without a hearing, as provided under Minn. Stat. § 14.59 (1998) and Minn. R. 1400.5900 (1997).

CONSENT ORDER
4. The following Order is in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to Minn. Stat. §45.027, subd. 5 (1998) that Respondent shall cease and desist denying no-fault automobile insurance benefits after an insured is awarded 100% of claimed medical benefits through arbitration, unless an IME or medical review subsequent to the arbitration award provides a basis for termination.

IT IS FURTHER ORDERED, pursuant to Minn. Stat. § 45.027, subd. 6 (1998) that Respondent shall pay to the State of Minnesota a civil penalty of $5,000.

This Order shall be effective upon signature on behalf of the Commissioner.

Dated: 10-18-95.

STEVEN M. MINN
Commissioner of Commerce
State of Minnesota

By: __________________________
GARY A. LAVASSEUR
Deputy Commissioner
Enforcement Division

133 East Seventh Street
St. Paul, Minnesota 55101
Telephone: (651)296-2594
CONSENT TO ENTRY OF ORDER

The undersigned, acting on behalf of Horace Mann Insurance Company, states that he has read the foregoing Consent Order; that he knows and fully understands its contents and effect; that he is authorized to execute this Consent to Entry of Order on behalf of Respondent; that he has been advised of Respondent's right to a hearing; that Respondent has been represented by legal counsel in this matter; or that he has been advised of Respondent's right to be represented by legal counsel and that he has waived this right; and that he consents to entry of this Order by the Commissioner of Commerce. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either express or implied.

Horace Mann Insurance Company

By: [Signature]

Its: District Claims Manager

STATE OF Minnesota

COUNTY OF Hennepin

This instrument was acknowledged before me on 10-7-99 (date) by [Signature]

(name(s) of person(s)) as [Type of authority, e.g., officer, trustee, etc] of [Name of party on behalf of whom the instrument was executed].

(stamp)

[Notary Public]

Title (and Rank)

My commission expires: 1/31/00
STATE OF MINNESOTA
COMMISSIONER OF COMMERCE

In the Matter of the Certificate of Authority
Of The Auto Club Group
A Michigan corporation licensed
To do business in the State of Minnesota
NAIC Nos. 11983, 21202

TO: The Auto Club Group
1 Auto Club Drive
Dearborn, MI 48126

Commissioner of Commerce Mike Rothman (hereinafter "Commissioner") has determined as follows:

1. The Commissioner has advised The Auto Club Group (hereinafter “Respondent”) that as a result of an investigation by the Commissioner concerning Respondent’s conduct as a corporation engaged in the business of insurance in Minnesota, the Commissioner is prepared to commence formal proceedings in accordance with the provisions of Minn. Stat. § 45.027 (2014) against Respondent’s Certificate of Authority to engage in the business of insurance in Minnesota based on allegations that Respondent denied a no-fault automobile insurance claim without doing a thorough investigation and failed to investigate and notify insured of acceptance or denial of claim within thirty (30) business days, in violation of Minn. Stat. §§ 72A.20, subd. 12(4), 72A.201, subd. 4(3)(i), and 72A.201 subd. 8(2) (2014).

2. Respondent acknowledges that it has been advised of its right to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondent hereby expressly waives those rights. Respondent further acknowledges that it has been represented by legal counsel throughout these proceedings, or has been advised of its right to be represented by legal counsel, which right it hereby waives.
3. Respondent has agreed to informal disposition of this matter without a hearing as provided under Minn. Stat. § 14.59 (2014) and Minn. R. 1400.5900 (2013).

4. The following Order is in the public interest.

**NOW, THEREFORE, IT IS HEREBY ORDERED**, pursuant to Minn. Stat. § 45.027, subd. 5 (2014), that Respondent shall cease and desist from denying no-fault automobile insurance benefits after an insured is awarded 100% of claimed medical benefits through arbitration, unless an IME or medical review subsequent to the arbitration award is conducted and provides a basis for denial of the claim, unless some other basis for denial exists under Minnesota law.

**FURTHER, IT IS HEREBY ORDERED**, pursuant to Minn. Stat. § 45.027, subd. 6 (2014), that Respondent shall pay to the State of Minnesota a civil penalty of $5,000.

This Order shall be effective upon signature on behalf of the Commissioner.

Date: 5-20-2015

MIKE ROTHMAN
Commissioner

MARTIN FLEISCHHACKER
Assistant Commissioner – Enforcement
Minnesota Department of Commerce
85 Seventh Place East, Suite 500
St. Paul, MN 55101
CONSENT TO ENTRY OF ORDER

The undersigned, acting on behalf of The Auto Club Group and Auto Club Group Property-Casualty Insurance Company (collectively, "Respondents"), states that s/he has read the foregoing Consent Order; that s/he knows and fully understands its contents and effect; that s/he has been advised of Respondents' right to a hearing in this matter and expressly waives that right; that Respondents have been represented by legal counsel in these matters, or have been advised of their right to be represented by legal counsel and expressly waive that right; and that s/he consents to entry of this Order by the Commissioner. It is further understood that this Consent Order constitutes the entire settlement agreement between the parties; there being no other promises or agreements, either express or implied.

The Auto Club Group

By: [Signature]

Its: Chief Operating Officer

STATE OF Florida
COUNTY OF Hillsborough

Signed or attested before me on May 6, 2015 (date)

[Stamp]

(Signature of notary officer)

Title (and Rank)
Notary Public, State of Florida
My Commission expires May 15, 2018
STATE OF MINNESOTA
COMMISSIONER OF COMMERCE

In the Matter of the Certificate of Authority
Of Government Employees Insurance Company
A Maryland corporation licensed
To do business in the State of Minnesota
NAIC Nos. 22063, 35882

TO: Government Employees Insurance Company
One GEICO Plaza
Washington, District of Columbia 20076-0001

Commissioner of Commerce Mike Rothman (hereinafter "Commissioner") has determined as follows:

1. The Commissioner has advised Government Employees Insurance Company (hereinafter "Respondent") that as a result of an investigation by the Commissioner concerning Respondent’s conduct as a corporation engaged in the business of insurance in Minnesota, that he is prepared to commence formal proceedings in accordance with the provisions of Minn. Stat. § 45.027 (2014) against Respondent’s Certificate of Authority based on allegations that Respondent denied a no-fault automobile insurance claim without doing a thorough investigation and failed to investigate and notify the insured of acceptance or denial of her claim within thirty (30) business days, in violation of Minn. Stat. §§ 72A.20, subd. 12(4), 72A.201, subd. 4(3)(i), and 72A.201 subd. 8(2) (2014).

2. Respondent acknowledges that it has been advised of its right to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondent hereby expressly waives those rights. Respondent further acknowledges that it has been represented by legal counsel throughout these proceedings, or has been advised of its right to be represented by legal counsel, which right it hereby waives.
3. Respondent has agreed to informal disposition of this matter without a hearing as provided under Minn. Stat. § 14.59 (2014) and Minn. R. 1400.5900 (2013).

4. The following Order is in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 45.027, subd. 5 (2014), that Respondent shall cease and desist from denying no-fault automobile medical insurance benefits after an insured is awarded 100% of claimed medical benefits through arbitration, unless an IME or medical review subsequent to the arbitration award is conducted and provides a basis for denial of the claim, pursuant to Minn. Stat. § 65B.56.

FURTHER, IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 45.027, subd. 6 (2014), that Respondent shall pay to the State of Minnesota a civil penalty of $5,000.

This Order shall be effective upon signature on behalf of the Commissioner.

Date: 8-31-2015

MIKE ROTHMAN
Commissioner

MARTIN FLEISCHHAACKER
Assistant Commissioner – Enforcement
Minnesota Department of Commerce
85 Seventh Place East, Suite 500
St. Paul, MN 55101
CONSENT TO ENTRY OF ORDER

The undersigned, acting on behalf of Government Employees Insurance Company (collectively, "Respondent"), states that s/he has read the foregoing Consent Order; that s/he knows and fully understands its contents and effect; that s/he has been advised of Respondents’ right to a hearing in this matter and expressly waives that right; that Respondents have been represented by legal counsel in these matters, or have been advised of their right to be represented by legal counsel and expressly waive that right; and that s/he consents to entry of this Order by the Commissioner. It is further understood that this Consent Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

Government Employees Insurance Company

By:  
Hank Nayden

Its:  Vice President & Legislative Counsel

STATE OF MARYLAND

COUNTY OF MONTGOMERY

Signed or attested before me on August 24, 2015 (date)

(stamp)

(Signature of notary officer) Debra C. Nielsen
Notary Public
Title (and Rank)
My Commission expires: 3/25/18
Standard Mileage Rates

The following table summarizes the *optional* standard mileage rates for employees, self-employed individuals, or other taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes.

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<th>Period</th>
<th>Rates in cents per mile</th>
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*Page Last Reviewed or Updated: 06-Jan-2017*
December 17, 2015

Minnesota Supreme Court Allows Double Recovery Against No-Fault Insurer Where Recovery Against Tortfeasor is Secured First

by Jeffrey J. Woltjen


In State Farm v. Lennartson, the Minnesota Supreme Court ruled that a no-fault insurer is not entitled to offsets against claimants who first secure a recovery in a negligence action before seeking the remainder of their no-fault benefits, even when the benefits claimed are identical to those awarded by the jury in the tort action.

Summary of State Farm v. Lennartson:

The Supreme Court held (1) that the plain language of the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-71 (2014), does not bar an insured from recovering no-fault benefits for medical expenses already recovered in a prior negligence action, and (2) that collateral estoppel does not preclude an insured from seeking medical expense or income-loss benefits in no-fault arbitration for the same losses recovered as damages in a prior negligence action.

Angela Lennartson was injured in 2008 and sought no-fault benefits through her parents’ State Farm insurance policy. State Farm, on the basis of an IME, discontinued benefits in January 2010, after paying $11,671 in medical expenses. She then sued the driver of the other vehicle for negligence. In November 2012, the jury awarded her the entire amount of damages she sought for her past medical expenses. Post-trial the district court deducted the no-fault benefits State Farm had already paid to Lennartson. Lennartson then filed for arbitration, securing an additional $11,790 in past medical expenses. State Farm moved to vacate the award, arguing that she had secured a double recovery in contravention of the No-Fault Act. The district court vacated the award and Lennartson appealed.

Similarly, Katie Foss was injured in a car accident in 2009 and obtained medical treatment and no-fault benefits through State Farm. State Farm, again on the basis of an IME, discontinued benefits in June 2012 after paying $39,667 out of a $50,000 PIP medical policy limit. Prior to this discontinuation, Foss sued the other driver for negligence and secured an award of $19,760 in past medical expenses. Foss then filed a petition for no-fault arbitration for past medical expenses and was awarded $8,284. State Farm moved to vacate the award, arguing that collateral estoppel barred the no-fault arbitrator from considering medical expenses claimed as part of the tort action. The district court vacated the award and Foss appealed.

The Minnesota Court of Appeals consolidated the cases and held that the No-Fault Act does not preclude a claimant from obtaining no-fault benefits for the same economic loss which was previously awarded in a parallel tort action and the Minnesota Supreme Court granted review.
First, the Minnesota Supreme Court concluded that a loss for which the no-fault insurer is required to reimburse accrues at the time the expense is incurred without any limitation or restriction: “Lennartson incurred a medical-expense loss at the moment she was billed for medical services. That Lennartson subsequently recovered damages for the same medical expenses in a negligence action did not modify or eliminate the loss, because the loss had already accrued to her.” Using the rules of statutory interpretation, the court further concluded that in instances where a negligence recovery is secured before a no-fault award, under the plain language of Minn. Stat. 65B.51, subd. 1, the no-fault insurer is not entitled to offsets, even though the reverse is true for the tortfeasor’s insurer when the no-fault award precedes the negligence recovery.

Second, the Supreme Court concluded that even if the damages claimed in a tort action are identical to the medical-expense and income-loss benefits at issue in a no-fault claim, collateral estoppel did not preclude an arbitrator from considering those same benefits as part of the subsequent no-fault award because the underlying legal issues are not identical.

Potential Impact of State Farm v. Lennartson on No-Fault Insurers:

*Lennartson* is significant for two reasons: First, it allows a double recovery to claimants by not allowing a no-fault insurer to offset damages awarded in a prior tort action arising from the same incident. And second, because of this, *Lennartson* may affect the timing with which the Plaintiffs’ bar chooses to pursue its paths of recovery in tort and no-fault arbitration.

In his concurrence with the decision, Justice Anderson reluctantly agreed that the statutory construction of the No-Fault Act compelled the result reached by the Minnesota Supreme Court. Justice Anderson wrote: “Although the result here is counter-intuitive and not necessarily reasonable, I generally agree that Lennartson has suffered a compensable loss under the no-fault statute and our precedent.” Further, the concurrence expressed concern about “the serious complications and pitfalls that necessarily follow from that conclusion [which allowed a double recovery to Lennartson].”

*Lennartson* arguably encourages Claimants to game the no-fault system by making litigation against the tortfeasor the first move in the process rather than the last. This will result in more personal injury litigation and may also impede and prolong the conclusion of no-fault claims.

Ironically, the court’s strict interpretation of the plain language of the No-Fault Act will turn the objectives of the Act, “provide[ing] prompt payment of specified basic economic loss benefits,” “speed[ing] the administration of justice,” and “eas[ing] the burden of litigation on courts of this state,” on its head.

As a result of this decision, it is possible that no-fault claimants will delay the filing of no-fault arbitration petitions after denials until the parallel action against the tortfeasor is fully litigated to trial (which has its inherent risks), in an attempt to secure the double recovery that the Minnesota Supreme Court blithely acknowledges but nonetheless allows. 

Click here to read the text of the Supreme Court’s decision.

Contact any of the Arthur Chapman Automobile Law attorneys to discuss these changes.

612 339-3500

www.ArthurChapman.com

500 Young Quinlan Building | 81 South 9th Street | Minneapolis, MN 55402 US
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 $________ 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.

For replacement services, we will pay for such services, not exceeding $200.00 per week; which would be payable under the maximum coverage of the loss of income benefits available of $________.

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.

A listing of any and all medical providers from seven years prior to the above-referenced motor vehicle accident up to the present, including any and all medical providers for your alleged accident-related injuries. See the attached form for providing the requested information. In addition, this is an ongoing request for medical provider information, so if you treat with additional medical
providers as your care and treatment continues, you need to provide the additional medical provider information to my attention.

In order for ____________ Insurance Company to consider payment of related charges for medical care, we need your medical providers to send us both medical records and medical bills. Your medical bills will not be paid without the corresponding medical records, so please advise your providers of this and they can contact me with any questions. 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 you receive.

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

Medical expense benefits include mileage expense incurred to and from your medical providers. Please note the ____________ Insurance Company, reimburses mileage at 19 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 your treating physician is also 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 or claimed, along with appropriate documentation pertaining to what you need assistance for, and the type of tasks you cannot perform.

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.

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 under this policy.

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
Insurance Company Contact Information
Including Email Address