

# ARTHUR CHAPMAN

KETTERING SMETAK & PIKALA, P.A.

ATTORNEYS AT LAW

## 2018 MINNESOTA AUTOMOBILE LAW SEMINAR

SEPTEMBER 27, 2018 | METROPOLITAN BALLROOM – GOLDEN VALLEY, MINNESOTA

### AGENDA

- 9:00 a.m. – 9:15 a.m.**      **Welcome and Introductions**  
*Shayne M. Hamann*
- 9:15 a.m. – 9:45 a.m.**      **Case Law Update**  
*Stephen M. Warner and Beth A. Jenson Prouty*  
Steve and Beth will discuss the practical implications of recent decisions of the Minnesota state and federal courts that may impact liability, UM, and UIM automobile coverage. They will also highlight Minnesota bad faith, garage policies, as well as emerging insurance coverage issues that may impact insurance companies in the future.
- 9:45 a.m. – 10:15 a.m.**      **What You Need to Know in Handling No-Fault and Fraud Claims**  
*Shayne M. Hamann*  
Shayne will discuss the ever-changing landscape of Minnesota No-Fault claims and how claims adjusters can stay ahead of the ever-crafty claimant and claimant's attorney. What are the top things that are important when handling Minnesota No-Fault claims and what is on deck for future No-Fault claims. Shayne will also discuss emerging trends in fraud-related claims and what to do to combat fraud in the automobile and No-Fault arena.
- 10:15 a.m. – 10:30 a.m.**      **Refreshment Break**
- 10:30 a.m. – 11:00 a.m.**      **Bodily Injury, Uninsured and Underinsured Update**  
*Paul J. Rocheford and William J. McNulty*  
Paul and Will are going to provide an update pertaining to these automobile related claims. The pair will also discuss the handling of collateral sources, including Medicare, in automobile related claims evaluation, as well as practical tips to follow before and at mediation.
- 11:00 a.m. – 11:30 a.m.**      **Potpourri of Tips for Handling Cases in Minnesota**  
*Shayne M. Hamann and Gregory J. Duncan*  
Shayne and Greg will discuss practical tips for handling your automobile claims in Minnesota. What are popular trends of plaintiff attorneys, what are the differences in the various counties in Minnesota and how can your company stay ahead of the competition.

*See reverse for continued agenda...*

**11:30 a.m. – 12:00 p.m. Auto-Related Panel Discussion**

*Eugene C. Shermoen, Steven J. Erffmeyer, and Bradley L. Idelkope – Moderated by Shayne M. Hamann*

Our panel of automobile law attorneys will discuss a varied compilation of automobile topics. We encourage you to request a topic to be discussed when you send in your RSVP for our September seminar. The topics we will discuss will be as follows: motions in limine, post-trial motions and computation of post judgment interest after a jury verdict, 30(b)(6) depositions, issues related to punitive damage claims and how they are changing in Minnesota, and various settlement releases and key provisions to have in your release.

**12:00 p.m. – 1:00 p.m. Lunch**

**1:00 p.m. – 2:00 p.m. Neurological and Neuropsychological Perspectives on Concussion in Automobile and Personal Injury Related Claims**

*Guest Speaker, Nathaniel Nelson and Dr. Donald Starzinski*

- To understand the Neurological basis for injury to the brain that can result in various pathology.
- To define concussion / TBI and its related symptoms vis-à-vis its underlying pathophysiology.
- To understand the natural history of concussion and TBI including how it is diagnosed and treated.
- To realize the implications for correctly diagnosing concussion and TBI for purposes of efficient management, i.e. proper reimbursement of services.

**2:00 p.m. Questions and Answers and Closing Remarks**

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**Practice Group Chair**  
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#### **Shayne's Team**

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**Steven J. Erffmeyer**  
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#### **Steve's Team**

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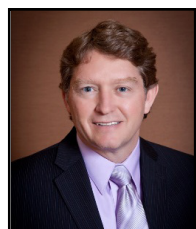


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## John's Team

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**Donald T. Starzinski, M.D., Ph.D.**  
**Curriculum Vitae**

Education:

- 1965-1969            Secondary Education:  
Our Lady of the Ozarks, Carthage, MO  
Special recognition for accomplishment in Latin, Chemistry  
and Mathematics
- 1969-1973            University of Minnesota, Minneapolis, MN  
B.A., Summa Cum Laude  
Major: Psychology  
Honors: Phi Beta Kappa, Evans Scholarship,  
Charleton Blundt Scholarship Award
- 1973-1978            University of Minnesota, Minneapolis, MN  
Ph.D.  
Major: Psychopharmacology  
Thesis: Effects of ethanol on aggression
- 1978-1982            University of Minnesota, Minneapolis, MN  
M.D.  
Major Program: Internal Medicine  
Honors: Mary Bizal Peterson Award in recognition of  
potential for study in Neurology
- 1983-present        Continuing Medical Education  
Emphasis on Neurology, Pharmacology, Psychiatry,  
and Integrative Medicine
- 2004                    Bush Medical Fellowship in Integrative Medicine  
Certificate Program in Traditional Chinese Medicine  
Academy of Pain Research, San Francisco, CA
- 2005-2009            Board Certification training and Continuing Medical Education  
American Academy of Medical Acupuncture  
Board certified, 2009  
American Board of Medical Acupuncture

**Donald T. Starzinski, M.D., Ph.D.**

Curriculum Vitae

Page 2

Clinical Experience:

- 1979 Intern, Chemical Dependency Training Program: Involved training and experience in various treatment strategies for chemical dependency, especially group and family therapy.
- 1982-1983 Transitional (General Medicine) Internship in Neurology  
Hennepin County Medical Center  
Director: Milton G. Ettinger, M.D.
- 1983-1986 Residency in Neurology  
University of Minnesota Hospital and Affiliated hospitals  
Director: Arthur Klassen, M.D.
- Residency completion and Board eligibility in Neurology:  
June, 1986
- Diplomate of the American Board of Psychiatry and Neurology:  
Certified, April, 1991
- Chief Resident at University of Minnesota Hospitals and  
Hennepin County Medical Center
- Elective in EEG and Evoked Potentials under  
directorship of Fernando Torres, M.D.
- Board eligibility in Clinical Neurophysiology:  
Completed June, 1986  
Written Exam for American Board of Clinical Neurophysiology, Completed, Spring, 1988
- 1986-1994 Private Practice: Mankato Clinic, Ltd., Mankato, MN
- 1986-1990 Ethics Committee: Immanuel-St. Joseph Hospital, Mankato, MN
- 1990 Chair of Ethics Committee, Immanuel-St. Joseph Hospital,  
Mankato, MN
- 1986-present Independent Neurologic Exams for medical-legal purposes,  
including extensive written reports and court depositions
- 1995-2011 Clinical Director of Minnesota Neurorehabilitation Hospital,

**Donald T. Starzinski, M.D., Ph.D.**

Curriculum Vitae

Page 3

- Brainerd, MN: Directing clinical activities of an interdisciplinary Neurorehabilitation team
- 1995-present Neurology Consultant, State Operated Services, State of Minnesota, Brainerd, MN
- 1995-2006 Member of Pharmacy and Therapeutics Committee, Brainerd Regional Human Services Center, Brainerd, MN
- 1996-2006 Chair of Pharmacy and Therapeutics Committee, Brainerd Regional Human Services Center, Brainerd, MN
- 2003-2006 Chair of Pharmacy and Therapeutics Committee, Northern State Operated Services, State of Minnesota
- 1996-1998 Chair of Ad Hoc Ethics Committee, Brainerd Regional Human Services Center, Brainerd, MN
- 2004-2009 Training and Practice of Traditional Chinese Medicine  
Acupuncture, Herbal Medicine, and Qigong  
Academy of Pain Research, San Francisco, CA  
Director: Tsun-Nin Lee, M.D. and  
American Academy of Medical Acupuncture
- 2004-present Private Practice of Integrative Medicine, including Acupuncture, Herbal Medicine, and Qigong  
Harmony Health and Wellness
- 1995-present Neurology/Neurorehabilitation consultant  
State Operated Services, State of Minnesota
- 2013-present Behavioral Neurology consultant  
Forensics Services, Minnesota Security Hospital

Administrative Experience:

- 1991-1993 Chief of Medicine: Immanuel-St. Joseph Hospital, Mankato, MN
- 1991-1993 Executive Committee Member: Immanuel-St. Joseph Hospital, Mankato, MN



**Donald T. Starzinski, M.D., Ph.D.**

Curriculum Vitae

Page 4

- |              |   |
|--------------|---|
| 1995-2005    | Chief of Neurology, Brainerd Regional Human Services Center, Brainerd, MN   |
| 1995-2005    | Medical Staff Executive Committee, Brainerd Regional Human Services Center, Brainerd, MN  |
| 1997-2000    | President of the Medical Staff, Brainerd Regional Human Services Center, Brainerd, MN   |
| 2001-2002    | President of Northern State Operated Services Medical Staff, State of Minnesota   |
| 1995-2011    | Executive Board, Minnesota Neurorehabilitation Hospital, Brainerd, MN   |
| 1996-2005    | Chair of Pharmacy and Therapeutics Committee for Department of Human Services, State of Minnesota<br>Emphasis on development of drug policy, pharmacoeconomics, and practice standards. |
| 2006-present | Member of Pharmacy and Therapeutics Committee for Department of Human Services, State of Minnesota  |
| 1995-present | Ex Officio Member of Traumatic Brain Injury Advisory Committee, Department of Human Services, State of Minnesota  |
| 1996-1998    | Traumatic Brain Injury Advisory Subcommittee Chair, Continuum of Care; Department of Human Services, State of Minnesota   |
| 2003-2011    | Clinical Director for Neurorehabilitation Services, State Operated Services, State of Minnesota   |
| 2004-present | Private Practice in Integrative Medicine<br>Acupuncture and Meditative Exercise   |

**Donald T. Starzinski, M.D., Ph.D.**

Curriculum Vitae

Page 5

Research Experience:

- 1974-1979            U.S.P.H.S. Predoctoral Research Fellow
- Psychopharmacology Training Program, University of Minnesota  
                          Research projects have centered on the effects of ethanol on aggression  
                          Presented at the Midwest Analysis of Behavior Association meeting in Chicago, 1976
- 1995-2011            Program evaluation of the Minnesota Neurorehabilitation Hospital, including outcome studies.
- 2000-2011            Epidemiologic studies of Traumatic Brain Injury issues in State of Minnesota Regional Treatment Centers.

Teaching Experience:

- 1973-1974            Laboratory Psychology  
                          Instructor, University of Minnesota  
                          Responsibilities included lectures on experimental psychology, instruction in lab procedures, preparation of tests, and critical reading of lab reports
- 1977                    Course in Analysis of Complex Behavior  
                          Discussion Leader  
                          Duties included critical reading of student papers dealing with the application of Behavior Modification
- 1973-1978            Presentation of several seminars on various topics in Neurology to neurology residents and faculty. Special interest in headaches and other pain syndromes and their treatment and Clinical Neurophysiology
- 1986-1994            Presentation of seminars on topics in neurology to Internal Medicine Department, Immanuel-St. Joseph Hospital, Mankato, MN
- 1995-2011            Presentation of neurology-related seminars to Minnesota

**Donald T. Starzinski, M.D., Ph.D.**

Curriculum Vitae

Page 6

Neurorehabilitation Hospital and Brainerd Regional Human Services Center, Brainerd, MN

- 1995-present Presentation of traumatic brain injury and psychopharmacology-related topics to professionals, including resident physicians, and general audiences throughout the state of Minnesota
- 1999 Presentation to the International Society of Psychosocial Rehabilitation on New Pharmacologic Approaches to Mood Disorders
- 2004 Presentation of Proposal of Study in Traditional Chinese Medicine to the Board of Directors, Bush Medical Fellowship Foundation
- 2005-present Presentation to State Operated Services, various health providers, and the general public on topics related to Integrative Medicine, emphasizing health and wellness

Publications:

Ph.D. Thesis:

Effects of Ethanol on Aggression. University of Minnesota Archives, Mpls., MN, 1978

State-Coordinated Services for Traumatic Brain Injury Survivors: Toward a Model Delivery System. *The Journal of Head Trauma Rehabilitation*, 1998; 13(6): 72-81.

Starzinski, Donald T., M.D., Ph.D.; *The Forensic Neurological Assessment of Traumatic Brain Injury*; In: *The Forensic Evaluation of Traumatic Brain Injury*; Murrey, Gregory J., Ph.D., A.B.P.N. editor; CRC Press, 2000.

Starzinski, Donald T., M.D., Ph.D.; *The Forensic Neurological Assessment of Traumatic Brain Injury*; In: *The Forensic Evaluation of Traumatic Brain Injury, Second Edition*; Murrey, Gregory J., Ph.D., A.B.P.N. editor; CRC Press, 2008

An Inpatient Neurobehavioral Rehabilitation Programme for Persons with Traumatic Brain Injury: Overview of and Outcome Data for the Minnesota Neurorehabilitation Hospital. *The Journal of Head Trauma*, 2004, 18: 519 - 532

Base Rates of Traumatic Brain Injury History in Adults Admitted to State Psychiatric Hospitals: A 3-Year Study. *Rehabilitation Psychiatry*, 2004, 49(3)

Career Interests:

Interest in Neurorehabilitation, particularly for Acquired Brain Injury, including development of rehabilitation programs with a broad spectrum of inpatient and outpatient services

The practice of General Clinical Neurology as a consultant

Interest in Clinical Neuropharmacology, including teaching and research in this area

Interest in drug policy and practice standards as part of Pharmacy and Therapeutics projects for the State of Minnesota

Medical-legal consultations

Integrative/Holistic Medicine, including Herbal Medicine, Acupuncture, and Qigong; particularly related to health and wellness in the practice of Neurology, Psychiatry, and Neurorehabilitation

**Nathaniel William Nelson, Ph.D., L.P., ABPP**  
**Curriculum Vitae**

**Education**

B.A. – Psychology (Magna Cum Laude) St. John’s University Collegeville, MN	1994 – 1998
M.A. – Psychology Graduate School of Psychology Fuller Theological Seminary Pasadena, CA	1998 – 2000
M.A. – Theology Graduate School of Theology Fuller Theological Seminary Pasadena, CA	1998 – 2003
Ph.D. – Clinical Psychology Graduate School of Psychology Fuller Theological Seminary (APA Accredited) Pasadena, CA	1998 – 2004

**Training**

Clinical Trainee – Practicum I (Adult Psychotherapy) Inter-Community Alternative Network Pasadena, CA Supervisor: Julie Cradock, Ph.D.	9/99 – 6/00
Clinical Trainee – Practicum II (Child and Adult Psychotherapy) Fuller Psychological and Family Services Pasadena, CA Supervisor: Robert Glass, Ph.D.	9/00 – 6/01
Neuropsychometrist (Adult Neuropsychology) UCLA Neuropsychiatric Institute Los Angeles, CA Supervisor: Karen Miller, Ph.D.	11/00 – 11/01
Clerkship (Adult Neuropsychology) Harbor-UCLA Medical Center Torrance, CA Supervisors: Marcel Pontón, Ph.D., Kyle Boone, Ph.D., ABPP-CN	9/01 – 7/02
Pre-Internship (Health Psychology, Adult Psychotherapy) West Los Angeles Veterans Affairs Medical Center	9/02 – 6/03

## **Nathaniel William Nelson, Ph.D., L.P., ABPP**

Curriculum Vitae

Page 2

Los Angeles, CA

Supervisors: Bruce Naliboff, Ph.D., Edward Carroll, Ph.D.

Predoctoral Internship (Neuropsychology Specialty Track) 7/03 – 6/04

Rush University Medical Center (APA Accredited)

Chicago, IL

Supervisors: Christopher Grote, Ph.D., ABPP-CN,

Clifford Smith, Ph.D., ABPP-CN, David Nyenhuis, Ph.D., ABPP-CN

Postdoctoral Residency (Adult Clinical Neuropsychology) 8/04 – 7/06

Evanston Northwestern Healthcare and Northwestern University

Evanston, IL

Member APPCN

Supervisor: Jerry Sweet, Ph.D., ABPP-CN/CP

### **Clinical Positions**

Clinical Neuropsychology 8/06 – 12/07

University of Minnesota-Fairview Medical Center

Department of Physical Medicine and Rehabilitation

Minneapolis, MN

Clinical Neuropsychology 1/08/ - 12/10

Minneapolis VA Medical Center

Psychology Service

Minneapolis, MN

Twin Cities Neuropsychology Partners, LLC 3/11 – present

Independent Practitioner (Clinical Neuropsychology)

Minneapolis, MN

### **Academic Appointments**

Assistant Professor of Physical Medicine & Rehabilitation 8/06 – 12/07

University of Minnesota

Minneapolis, MN

Adjunct Professor of Psychology 9/07 – 12/10

University of St. Thomas, Graduate School of Psychology

Minneapolis, MN

Assistant Professor of Psychiatry 5/08 – 12/10

University of Minnesota

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## **Nathaniel William Nelson, Ph.D., L.P., ABPP**

Curriculum Vitae

Page 3

Assistant Professor of Psychology 1/11 – present  
University of St. Thomas, Graduate School of Psychology  
Minneapolis, MN

### **Administrative Appointment**

Director of Training in Clinical Neuropsychology 4/08 – 12/10  
Minneapolis VA Medical Center (Member APPCN)  
Minneapolis, MN

### **Teaching, Mentoring and Supervision**

#### Courses Taught

Physiological Psychology La Sierra University B.A. Psychology Program	2002
Biological Bases of Behavior University of St. Thomas Psy.D. Program	2008
Physiology of Behavior University of St. Thomas M.A. Counseling Program	2007 – present
Biological Bases of Behavior University of St. Thomas Psy.D. Program	2008 – present
Advanced Psychopathology University of St. Thomas Psy.D. Program	2011 – present

#### Invited Lectures

“Clinical Neuropsychology in Psychiatric Inpatient Settings”  
Medical Student Lecture Series  
University of Minnesota Medical School

“Clinical Psychology and Neuropsychology in Medical Settings”  
Doctoral Program in Physical Therapy  
University of Minnesota

“Symptom Validity, Insufficient Effort, and Related Topics in Clinical Neuropsychology”

## **Nathaniel William Nelson, Ph.D., L.P., ABPP**

Curriculum Vitae

Page 4

Nation-Wife Polytrauma Videoconference – Polytrauma Grand Rounds

### **Mentoring and Supervision**

(Listing of neuropsychology trainees by year, training program or site of current employment)

Vina Goghari (practicum student) University of Illinois-Chicago	2006 – 2007
Christine Henriksen (research assistant) University of Manitoba	2006 – 2008
Thomas Campbell (pre-doctoral intern) Richmond VA Medical Center	2008
Lin Nelson (practicum student) University of Minnesota	2008 – 2009
Maya Yutsis (pre-doctoral intern) Pacific Graduate University	2008 – 2009
Sarah Viamonte (pre-doctoral intern) University of Alabama-Birmingham	2008 – 2009
James Hoelzle (post-doctoral resident) Minneapolis VA Medical Center	2008 – 2010
Bridget Doane (pre-doctoral intern) University of Alabama-Tuscaloosa	2009 – 2010
Ekaterina Keifer (pre-doctoral intern) University of Iowa	2010
Ann Marie Winkowski (practicum student) University of St. Thomas	2010
Tara Riddle (pre-doctoral intern) Ohio University	2010
Bridget Doane (post-doctoral resident) Minneapolis VA Medical Center	2010

### **Professional Licensure and Certification**

Licensed Psychologist, Illinois License Number 071006992 (Inactive)



## **Nathaniel William Nelson, Ph.D., L.P., ABPP**

Curriculum Vitae

Page 5

Licensed Psychologist, Minnesota License Number LP-4719

American Board of Professional Psychology (ABPP)

Board Certified in Clinical Neuropsychology (ABCN)

### **Professional Service**

Invited participant of the First Annual Meeting of the VA Psychology Training Council Washington, D.C.	2008
Invited student poster session evaluator for Edith Kaplan Scholarship Award Annual Meetings of the American Academy of Clinical Neuropsychology (AACN)	2008 – 2009
Invited reviewer of pre-doctoral student proposals for funding through the Associated Health Rehabilitation Research Pre-doctoral Fellowship Program, Department of Veterans Affairs, Office of Academic Affiliations (OAA)	2008 – 2009
Work Sample reviewer for American Board of Clinical Neuropsychology (ABCN)	2008 – present
Continuing Education Coordinator, The Clinical Neuropsychologist	2012 – present

### **Editorial Activity**

Co-head section editor (with David T.R. Berry, Ph.D.) of Symptom Validity Testing/Malingering section, Psychological Injury and Law	2009 – 2011
Member, Editorial Board, The Clinical Neuropsychologist	2009 – present
Consulting Editor, Assessment	2010 – present
Ad Hoc Reviewer: Archives of Clinical Neuropsychology (ACN); Assessment; Child Neuropsychology; Cognitive Neuropsychiatry; Journal of Clinical and Experimental Neuropsychology (JCEN); Journal of Clinical Psychology in Medical Settings; Journal of the International Neuropsychological Society (JINS); Psychological Assessment; Psychological Injury & Law; Spanish Journal of Psychology; The Clinical Neuropsychologist (TCN).	

### **Research**

Master's Thesis "Stress and Religious Coping in Elderly, Overseas Relief Workers" Advisor: Alvin Dueck, Ph.D.	1/99 – 12/00
Doctoral Dissertation "Establishing Correspondence Between Eight Current Measures of Suspect Effort" (Defended 5/31/02) Dissertation Chair: Kyle Boone, Ph.D., ABPP-CN	9/01 – 5/02

## **Nathaniel William Nelson, Ph.D., L.P., ABPP**

Curriculum Vitae

Page 6

### **Research-Funded Research (Ongoing)**

Sponheim, S.R. (PI), Lim, K., Armstrong, M., McGuire, K.A., Nelson, N.W., Thuras, P.D. Essential Features of Neural Damage in Mild Traumatic Brain Injury. Department of Veterans Affairs Rehabilitation Research and Development (RR&D) Merit Review, 7/1/12 – 6/30/16, \$1,099,824.

### **Research-Funded Research (In Review)**

Yu, F. (PI), Bronas, U., Nelson, N.W., (Co-I), Savik, K., Wyman, J., Dysken, M., & Konety, S. Functional Impacts of Aerobic Exercise Training in Alzheimer's Disease. R01 Proposal to the NIA/NINR PAR-11-100.

### **Research-Funded Research (Completed)**

Arbisi, P.A., & Nelson, N.W. (Co-I). Examination of the Impact of Context on MMPI-2 Validity Scales in Compensation Seeking Veterans. University of Minnesota Press – Test Division, 6/08 – 6/10, \$6,500.

Arbisi, P.A., & Nelson, N.W. (Co-I). The Validity of the MMPI-2 Restructured Form (RF) in Identifying the Development of Chronic Pain Conditions in Veterans of OEF/OIF, University of Minnesota Press – Test Division, 6/09 – 6/11, \$21,000.

Kehle, S. (PI), Polusny, M.A., (Co-PI), Arbisi, P.A., Erbes, C.R., Kehle, S., Nelson, N.W. (Co-I), Thuras, P.D., Collins, R., Sayer, N., Murdoch, M. Treatment Preferences and Barriers in OIF Soldiers with mTBI and/or PTSD. VA Health Services Research & Development. Quality Enhancement Research Initiative (QUERI) Rapid Response Proposal (RRP), 7/10 – 7/11, \$97,896.

Nelson, N.W. (PI), Sponheim, S.R., McGuire, K.A., Arbisi, P.A., & Polusny, M.A. Neuropsychological Outcomes of Blast-Related Mild Traumatic Brain Injury (mTBI) Among Veterans of Operations Enduring Freedom (OEF) and Iraqi Freedom (OIF). Minnesota Veterans Research Institute (MVRI), 1/09 – 1/11, \$20,000.

Nelson, N.W. (PI), Stankovitch, P., & Vye, C. Development of a memory disorders clinic at the Interprofessional Clinic (IPC) of the University of St. Thomas. University of St. Thomas, College of Applied & Professional Studies. Building Research and Development (BREAD) grant, 5/01/11 – 6/30/11, \$6,650.

Polusny, M.A. (PI), Arbisi, P.A., Erbes, C.R., Kehle, S., Nelson, N.W. (Co-I), Thuras, P.D., Collins, R., Sayer, N., Murdoch, M. Mild TBI/PTSD Comorbidity and Post-Deployment Outcomes in National Guard Soldiers. VA Quality Enhancement Research Initiative (QUERI) Rapid Response Project, Completed 12/08, \$75,000.

Yu, F. (PI), Dysken, M., Wyman, J., Savik, K., Nelson, N.W. (Consultant). Feasibility of Aerobic Activity in Alzheimer's Disease. American Health Assistance Foundation, 2009 – 2011, \$150,000.

Yu, F. (PI), Nelson, N.W., (Co-I), Dysken, M., Wyman, J., Savik, K. Validating Clinical Measures of Executive Function in U.S. Veterans. University of Minnesota Academic Health Center Seed Grant, 1/09 – 6/11, \$25,000.

### **Research-Peer-Reviewed Publications**

Nelson, N.W., Boone, K., Dueck, A., Wagener, L., Lu, P., & Grills, C. (2003). Relationships between eight measures of suspect effort. *The Clinical Neuropsychologist*, *17*, 263-272.

Nelson, N.W., Parsons, T.D., Grote, C.L., Smith, C.A., & Sisung, J. (2006). The MMPI-2 Fake Bad Scale: Concordance and specificity of true and estimated scores. *Journal of Clinical and Experimental Neuropsychology*, *28*, 1-12.

Nelson, N.W., Sweet, J.J., & Demakis, G. (2006). Meta-analysis of the MMPI-2 Fake Bad Scale: Utility in forensic practice. *The Clinical Neuropsychologist*, *20*, 28-58.

Sweet, J.J., Nelson, N.W., & Moberg, P. (2006). The Clinical Neuropsychologist & American Academy of Clinical Neuropsychology 2005 'Salary Survey': Professional practices, beliefs, and incomes of U.S. Neuropsychologists. *The Clinical Neuropsychologist*, *20*, 325-364.

Nelson, N.W., Sweet, J.J., & Heilbronner, R. (2007). Examination of the new MMPI-2 Response Bias Scale (Gervais): Relationship with MMPI-2 validity scales. *Journal of Clinical and Experimental Neuropsychology*, *29*, 67-72.

Nelson, N.W., Sweet, J.J., Berry, D.T.R., Bryant, F.B. & Granacher, R.P. (2007). Response validity in forensic neuropsychology: Exploratory factor analytic evidence of distinct cognitive and psychological constructs. *Journal of the International Neuropsychological Society*, *13*, 440-449.

Smart, C., Nelson, N.W., Sweet, J.J., Bryant, F., & Heilbronner, R.L. (2008). Identification of insufficient cognitive effort using the MMPI-2: An optimal classification tree analysis. *Journal of the International Neuropsychological Society*, *14*, 842-852.

Heilbronner, R.L., Sweet, J.J., Morgan, J.E., Larrabee, G.J., Millis, S.R., & Conference Participants (Nelson, N.W., et al.) (2009). American Academy of Clinical Neuropsychology consensus conference statement on the neuropsychological assessment of effort, response bias, and malingering. *The Clinical Neuropsychologist*, *23*, 1093-1129.

Arbisi, P.A., Erbes, C.R., Polusny, M.A., & Nelson, N.W. (2010). The concurrent and incremental validity of the Trauma Symptom Inventory in women reporting histories of sexual maltreatment. *Assessment*, *17*, 406-418.

Berry, D.T.R., & Nelson, N.W. (2010). DSM-5 and malingering: A modest proposal. *Psychological Injury & Law*, *3*, 295-303.

Nelson, N.W., Hoelzle, J.B., Sweet, J.J., Arbisi, P.A., & Demakis, G.J. (2010). Updated meta-analysis of the MMPI-2 symptom validity scale (FBS): Verified utility in forensic practice. *The Clinical Neuropsychologist*, *24*, 701-724.

Nelson, N.W., Hoelzle, J.B., McGuire, K.A., Ferrier-Auerbach, A.G., Charlesworth, M.J., & Sponheim, S.R. (2010). Evaluation context impacts neuropsychological performance of OEF/OIF veterans with reported combat-related concussion. *Archives of Clinical Neuropsychology*, *25*, 713-723.

Hoelzle, J.B., Nelson, N.W., & Smith, C. (2011). Comparison of Wechsler Memory Scale-Fourth Edition (WMS-IV)

and Third Edition (WMS-III) dimensional structures: Improved ability to evaluate auditory and visual constructs. *Journal of Clinical and Experimental Neuropsychology*, 33, 283-291.

Nelson, N.W., Hoelzle, J.B., McGuire, K.A., Ferrier-Auerbach, A.G., Charlesworth, M.J., & Sponheim, S.R. (2011). Neuropsychological evaluation of blast-related concussion: Illustrating the challenges and complexities through OEF/OIF case studies. *Brain Injury*, 25, 511-525.

Nelson, N.W., Hoelzle, J.B., McGuire, K.A., Sim, A.H., Goldman, D.J., Ferrier-Auerbach, A.G., Charlesworth, M.J., Arbisi, P.A., & Sponheim, S.R. (2011). Self-report of psychological function among OEF/OIF personnel who also report combat-related concussion. *The Clinical Neuropsychologist*, 25, 716-740.

Polusny, M.A., Kehle, S.M., Nelson, N.W., Erbes, C.R., Arbisi, P.A., & Thuras, P.D. (2011). Longitudinal effects of mild TBI and PTSD comorbidity on post-deployment outcomes in National Guard soldiers deployed to Iraq. *Archives of General Psychiatry*, 68, 79-89.

Sweet, J.J., Meyer, D., Nelson, N.W., & Moberg, P. (2011). The Clinical Neuropsychologist & American Academy of Clinical Neuropsychology 2009 'Salary Survey': Professional practices, beliefs, and incomes of U.S. Neuropsychologists. *The Clinical Neuropsychologist*, 25, 12-61.

Nelson, N.W., Hoelzle, J.B., Doane, B.M., McGuire, K.A., Ferrier-Auerbach, A.G., Charlesworth, M.J., Lamberty, G.J., Polusny, M.A., Arbisi, P.A., & Sponheim, S.R. (2012). Neuropsychological outcomes of U.S. veterans with report of remote blast concussion and current psychopathology. *Journal of the International Neuropsychological Society*, 18, 845-55.

Yu, F., Nelson, N.W., Savik, K., Wyman, J.F., Dysken, M., & Bronas, U.G. (2012). Affecting cognition and quality of life via aerobic exercise in Alzheimer's disease, *Western Journal of Nursing Research*. DOI: 10.1177/0193945911420174.

### **Research-Co-Authored Book**

Lamberty, G.J., & Nelson, N.W. (2012). *Specialty competencies in clinical neuropsychology*. New York, NY: Oxford University Press.

### **Research-Invited Publications**

Malina, A.C., Nelson, N.W., & Sweet, J.J. (2005). Framing the relationships in forensic neuropsychology: Ethical issues. *Journal of Forensic Neuropsychology*, 4, 21-44.

Nelson, N.W. (2007). Differential diagnosis of Alzheimer's dementia and vascular dementia. *Disease-A-Month*, 53, 148-151.

### **Research –Book Chapters**

Nelson, N.W., & Pontón, M.O. (2007). The art of clinical neuropsychology. In B.P. Uzzell, M. Ponton, & A. Ardila (Eds.). *International handbook of cross-cultural neuropsychology*. Mahway, NJ: Lawrence Erlbaum Associates.

Sweet, J.J., & Nelson, N.W. (2007). Validity indicators within executive function measures: Use and limits in detection of malingering. For K. Boone (Ed.). *Assessment of feigned cognitive impairment*. New York, NY: Guilford Publications.

Sweet, J.J., Condit, D.C., & Nelson, N.W. (2008). Feigned amnesia and memory loss. In R. Rogers (Ed.). *Clinical assessment of malingering and deception* (3<sup>rd</sup> edition). New York, NY: Guilford Press.

Nelson, N.W., & Sweet, J.J. (2009). Malingering of psychiatric disorders in neuropsychological evaluations: Divergence of cognitive effort measures and psychological test validity indicators. In J. Morgan & J. Sweet (Eds.). *Neuropsychology of malingering casebook*. New York, NY: Taylor & Francis.

Nelson, N.W., & Doane, B. (in press). Research and symptom validity assessment in mild traumatic brain injury cases. For D.A. Carone & S.S. Bush (Eds.). *Mild traumatic brain injury: Symptom validity assessment and malingering*.

Nelson, N.W., Lamberty, G.J., Sim, A.H., & Doane, B.M. (in press). Blast from the past and present: A review of blast-related injury in military personnel and veterans. For S.S. Bush (Ed.). *Neuropsychological Practice for Veterans*. New York, NY: Springer.

Nelson, N.W., Lamberty, G.J., Sim, A.H., Doane, B.M., & Vanderploeg, R.A. (in press). Traumatic brain injury in veterans. For S.S. Bush (Ed.). *Neuropsychological Practice for Veterans*. New York, NY: Springer.

### **Research-Presentations & Published Abstracts**

Nelson, N.W., & Dueck, A.C. (2001, June). Stress and religious coping in elderly, overseas relief workers. Poster session presented at the Annual Conference of Aging and Memory Research, UCLA Neuropsychiatric Institute, Los Angeles, CA.

Reger, G.M., Rogers, S.L., & Nelson, N.W. (2002, August ). Meta-analysis of the efficacy of religious and non-religious cognitive therapy. Poster session presented at the Annual Conference of the American Psychological Associations, Chicago, IL.

Salazar, X., Boone, K., Pontón, M., Sherke, J., Schrock, D., Nelson, N.W., Edwards C., & Razani, J. (2003, February). Validation of the Satz-Mogel short-form procedure for the WAIS-III in a clinically referred sample. Poster presented at the annual conference of the International Neuropsychological Society, Honolulu, HA. Abstract published in the *Journal of the International Neuropsychological Society*, 9 (2), 240.

Nelson, N.W., Boone, K.B., Lu, P., & Dueck, A.C. (2003, February). Establishing correspondence between eight current measures of suspect effort. Poster session presented at the annual conference of the International Neuropsychological Society, Honolulu, HA. Abstract published in the *Journal of the International Neuropsychological Society*, 9 (2), 281.

Nelson, N.W., Grote, C.L., Parsons, T.D., Smith, C.A., & Geary, E. (2004, February). Do MMPI-2 "conversion-v" profiles impact poor performances on the Victoria Symptom Validity Test? Poster session presented at the

annual conference of the International Neuropsychological Society, Baltimore, MD. Abstract published online in the Journal of the International Neuropsychological Society, 10 (S1), 83.

Nelson, E.N., Boone, K.B., Paul, L.K., & Nelson, N.W. (2004, February). Considerations for clinical use of the Stroop Test. Poster session presented at the annual conference of the International Neuropsychological Society, Baltimore, MD. Abstract published online in the Journal of the International Neuropsychological Society, 10 (S1), 113.

Grote, C.L., Parsons, T.D., Nelson, N.W., Smith, C.A., & Geary, E. (2004, February). MMPI-2 obvious-subtle difference scores predict failure on the Victoria Symptom Validity Test. Poster session presented at the annual conference of the International Neuropsychological Society, Baltimore, MD. Abstract published online in the Journal of the International Neuropsychological Society, 10 (S1), 82.

Sweet, J.J., Moberg, P., & Nelson, N.W. (2005, June). The American Academy of Clinical Neuropsychology and The Clinical Neuropsychologist salary survey 2005: A sampling of preliminary results. PowerPoint presentation delivered at the American Academy of Clinical Neuropsychology, Minneapolis, MN.

Sweet, J.J., Nelson, N.W., & Heilbronner, R.L. (2005, June). Relative lack of correspondence of individual MMPI-2 validity scales with individual measures of cognitive effort. Poster session presented at the American Academy of Clinical Neuropsychology, Minneapolis, MN. Abstract published in The Clinical Neuropsychologist, 19 (2), 156.

Nelson, N.W., Sweet, J.J., & Heilbronner, R.L. (2005, June). Examination of the new MMPI-2 Response Bias Scale (Gervais): Relationship with standard and supplementary MMPI-2 validity scales. Poster session presented at the American Academy of Clinical Neuropsychology, Minneapolis, MN. Abstract published in The Clinical Neuropsychologist, 19 (2), 154.

Nelson, E., Grote, C., Nelson, N.W., & Zaccariello, M. (2005, June). WMS-III visual delayed percent retention: Psychometric limitations observed in an epilepsy sample. Poster session presented at the American Academy of Clinical Neuropsychology, Minneapolis, MN. Abstract published in The Clinical Neuropsychologist, 19 (2), 154.

Smart, C.M., Nelson, N.W., Sweet, J.J., Heilbronner, R.L. (2006, February). Identification of Secondary Gain Using the MMPI-2: An Optimal Classification Tree Analysis. Poster session presented at the annual conference of the International Neuropsychological Society, Boston, MA. Abstract published online in the Journal of the International Neuropsychological Society.

Nelson, N.W., Sweet, J.J., & Demakis, G. (2006, February). Meta-analysis of the MMPI-2 Fake Bad Scale. Poster session presented at the annual conference of the International Neuropsychological Society, Boston, MA. Abstract published online in the Journal of the International Neuropsychological Society.

Sweet, J.J., Nelson, N.W., Berry, D.T.R., Granacher, R.P., & Heilbronner, R.L. (2006, June). Impact on MMPI-2 of cognitive effort as measured by the Victoria Symptom Validity Test, Letter Memory Test, and Test of Memory Malingering. Poster session presented at the American Academy of Clinical Neuropsychology, Philadelphia, PA. Abstract published in The Clinical Neuropsychologist.

Nelson, N.W., Sweet, J.J., Berry, D.T.R., & Granacher, R.P. (2006, June). Exploratory factor analysis of cognitive

effort and response bias. Poster session presented at the American Academy of Clinical Neuropsychology, Philadelphia, PA. Abstract published in *The Clinical Neuropsychologist*.

Nelson, N.W., Sweet, J.J., Smart, C.M., Bryant, F.B., Berry, D.T.R., Granacher R.P., & Heilbronner, R.L. (2007, February). Identification of cognitive effort using the MMPI-2: An optimal classification tree analysis. Poster session presented at the annual conference of the International Neuropsychological Society, Portland, OR. Abstract published online in the *Journal of the International Neuropsychological Society*.

Lamberty, G.J., Nelson, N.W., Brogger, M.L., Henriksen, C.A., Sweet, J.J., & Condit, D.C. (2008, June). Further examination of the MMPI-2 Fake Bad Scale in secondary and non-secondary gain samples. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Boston, MA. Abstract published in *The Clinical Neuropsychologist*, 22, 413.

Nelson, N.W., Sweet, J.J., Thuras, P.D., Henriksen, C.A., & Condit, D.C. (2008, June). Aggregation of multiple effort indices improves overall specificity in non-secondary gain context. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Boston, MA. Abstract published in *The Clinical Neuropsychologist*, 22, 422.

Hoelzle, J.B., Nelson, N.W., & Smith, C.A. (2009, June). The WAIS-IV: Justified elimination of VIQ and PIQ? Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, San Diego, CA. Abstract published in *The Clinical Neuropsychologist*.

Hoelzle, J.B., Nelson, N.W., & Smith, C.A. (2009, June). Exploratory factor analysis of the WMS-IV: Continued inconsistency between Index scores and factor structure. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, San Diego, CA. Abstract published in *The Clinical Neuropsychologist*.

Nelson, N.W., Hoelzle, J.B., Sweet, J.J., Arbisi, P.A., & Demakis, G.J. (2009, June). Updated Meta-Analysis of the MMPI-2 Fake Bad Scale: Verified Utility in Forensic Practice. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, San Diego, CA. Abstract published in *The Clinical Neuropsychologist*.

Hoelzle, J.B., Nelson, N.W., McGuire, K.A., Sponheim, S.R., Ferrier-Auerbach, A.G., & Charlesworth, M.J. (2010, February). Secondary gain context impacts neuropsychological performances among OEF/OIF veterans with histories of blast-related concussion (mTBI). Poster session presented at the annual conference of the International Neuropsychological Society, Acapulco, Mexico. Abstract published online in the *Journal of the International Neuropsychological Society*.

Nelson, N.W., Hoelzle, J.B., McGuire, K.A., Sponheim, S.R., Ferrier-Auerbach, A.G., & Charlesworth, M.J. (2010, February). Blast-Related Concussion (mTBI): Preliminary neuropsychological findings. Poster session presented at the annual conference of the International Neuropsychological Society, Acapulco, Mexico. Abstract published online in the *Journal of the International Neuropsychological Society*.

Arbisi, P.A., Nelson, N.W., Hoelzle, J.B., & Strom, T (2010, March). The Ability of the MMPI-2-RF to Identify Implausible PTSD Claims in Veterans Populations. Paper presented to the Society for Personality Assessment

Annual Meeting, San Jose, CA.

Hoelzle, J.B., Arbisi, P.A., Nelson, N.W., & Meyers, G.J. (2010, March). Exploratory factor analysis of the MMPI-2 Symptom Validity Scale. Paper presented at the Annual Meeting of the Society for Personality Assessment, San Jose, CA.

Doane, B.M., Nelson, N.W., & Hoelzle, J.B. (2010, June). Meta-analytic review of embedded effort indices and neuropsychological performances in clinical and forensic neuropsychology. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Chicago, IL. Abstract published in *The Clinical Neuropsychologist*. \*(Recipient of the Edith Kaplan Award for Best Trainee Poster Presentation)

Hoelzle, J.B., Nelson, N.W., & Arbisi, P.A. (2010, June). Exploratory factor analysis of cognitive and somatic MMPI-2 and MMPI-2-RF validity scales. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Chicago, IL. Abstract published in *The Clinical Neuropsychologist*.

Keifer, K., Nelson, N.W., Hoelzle, J.B., & Thuras, P.D. (2010, June). Meta-analysis of the relationship between subjective cognitive limitation and objective neuropsychological performance. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Chicago, IL. Abstract published in *The Clinical Neuropsychologist*.

McGuire, K.A., Nelson, N.W., Hoelzle, J.B., Ferrier-Auerbach, A.G., Charlesworth, M.J., Armstrong, M. & Sponheim, S.R. (2010, June). Persistent Postconcussive Symptoms and PTSD in OEF/OIF Military Personnel. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Chicago, IL. Abstract published in *The Clinical Neuropsychologist*.

Nelson, N.W., Hoelzle, J.B., McGuire, K.A., Sim, A.H., Goldman, D.J., Ferrier-Auerbach, A.G., Charlesworth, M.J., Arbisi, P.A., & Sponheim, S.R. (2010, June). Evaluation context impacts MMPI-2 and MMPI-2-RF presentation among OEF/OIF veterans with histories of combat-related concussion. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Chicago, IL. Abstract published in *The Clinical Neuropsychologist*.

Nelson, N.W., Hoelzle, J.B., McGuire, K.A., Thuras, P.D., Ferrier-Auerbach, A.G., Charlesworth, M.J., & Sponheim, S.R. (2010 June). Blast exposure and other predictors of cognitive performance among Veterans of Operations Enduring Freedom (OEF) and Iraqi Freedom (OIF). Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Chicago, IL. Abstract published in *The Clinical Neuropsychologist*.

Nelson, N.W., Hoelzle, J.B., McGuire, K.A., Ferrier-Auerbach, A.G., Charlesworth, M.J., & Sponheim, S.R. (2010, June). The Minnesota Blast Exposure Screening Tool (MN-BEST): A Systematic Case Study Approach to Blast Exposure and Concussion. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Chicago, IL. Abstract published in *The Clinical Neuropsychologist*.

Nelson, N.W., Lamberty, G.J., Arbisi, P.A., Sweet, J.J., & Ben-Porath, Y.S. (2010, June). The Minnesota Multiphasic Personality Inventory (MMPI) and Clinical Neuropsychology: A Historical Review of Publication Trends and Topics. Poster session presented at the annual conference of the American Academy of Clinical



Neuropsychology, Chicago, IL. Abstract published in *The Clinical Neuropsychologist*.

Sweet, J.J., Giuffre Meyer, D., Nelson, N.W., and Moberg, P. (2010, June). Initial Findings from the TCN/AACN 2010 "Salary Survey": Practice Characteristics, Incomes, and Satisfaction. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Chicago, IL. Abstract published in *The Clinical Neuropsychologist*.

Doane, B.M., Salekin, K.L., Hedge, K.A., & Nelson, N.W. (2011, February). MSVT performance in adults with mild intellectual disability. Poster presented at the 39<sup>th</sup> Annual Meeting of the International Neuropsychological Society, Boston, MA. Abstract published online in the *Journal of the International Neuropsychological Society*.

Hoelzle, J.B., Nelson, N.W., McGuire, K.A., Ferrier-Auerbach, A.G., Charlesworth, M.J., & Sponheim, S.R. (2011, February). Factor analysis of cognitive and psychological response validity measures in a sample of U.S. veterans. Poster presented at the 39<sup>th</sup> Annual Meeting of the International Neuropsychological Society, Boston, MA. Abstract published online in the *Journal of the International Neuropsychological Society*.

Hoelzle, J.B., Ferrier-Auerbach, A.G., Nelson, N.W., Charlesworth, M.J., McGuire, K.A., Doane, B.M., Arbisi, P.A., Sponheim, S.R. (2011, March). Psychometric evaluation of the MMPI-2-RF and MMPI-2. Paper presented at the Annual Meeting of the Society for Personality Assessment, Boston, MA.

Doane, B.M., Nelson, N.W., Lamberty, G.J., & Arbisi, P.A. (2011, June). Serial Psychological Presentations in Veterans' Compensation and Pension Examinations Using the Minnesota Multiphasic Personality Inventory-Second Edition Restructured Form. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Washington, D.C. Abstract published in *The Clinical Neuropsychologist*.

Doane, B.M., Oien, J.L., Lamberty, G.J., Nelson, N.W., McGuire, K.A., & Sim, A.H. (2011, June). Examination of Service-Connected Disability and Psychological Presentation in a Diverse Polytrauma Sample. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Washington, D.C. Abstract published in *The Clinical Neuropsychologist*.

Hoelzle, J.B., Davenport, N.D., Nelson, N.W., McGuire, K.A., & Sponheim, S.R. (2011, June). Evaluating the relationships between cognitive constructs and anatomical brain connectivity in a military sample. Poster presented at the Annual Conference of the American Academy of Clinical Neuropsychology, Washington, D.C. Abstract published in *The Clinical Neuropsychologist*.

Nelson, N.W., Hoelzle, J.B., Doane, B.M., McGuire, K.A., Ferrier-Auerbach, A.G., Charlesworth, M.J., Polusny, M.A., Arbisi, P.A., Lamberty, G.J., & Sponheim, S.R. (2011, June). Neuropsychological outcomes of United States veterans with report of remote blast concussion and concurrent psychological distress. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Washington, D.C. Abstract published in *The Clinical Neuropsychologist*.

Oien, M.L., Nelson, N.W., Lamberty, G.J., & Arbisi, P.A. (2011, June). Neuropsychological Function in Posttraumatic Stress Disorder: A Meta-analytic Review. Poster session presented at the annual conference of the American Academy of Clinical Neuropsychology, Washington, D.C. Abstract published in *The Clinical Neuropsychologist*.

Yu, F., Nelson, N.W., Savik, K., Wyman, J.F., Dysken, M., & Bronas, U.G. (2011, November). Maintaining Cognition Using Aerobic Exercise in Alzheimer's Disease, symposium at the Gerontological Society of the America 64<sup>th</sup> Annual Scientific Meeting, Boston, MA.

Hoelzle, J.B., Marshall, P.S., Nelson, N.W., & Thiruselvam, I. (2012, February). Relationship between onset of ADHD symptoms and neuropsychological performance: Does age matter? Poster presented at the 40<sup>th</sup> Annual Meeting of the International Neuropsychological Society, Montreal, Canada. Abstract published online in the Journal of the International Neuropsychological Society.

Nelson, N.W., Anderson, C.R., Thuras, P.D., Kehle-Forbes, S.M., Erbes, C.R., Arbisi, P.A., & Polusny, M.A. (2012, June). Longitudinal investigation examining predictors of change in self-reported mild traumatic brain injury in National Guard veterans of the Iraq War. Poster presented at the Annual Meeting of the American Academy of Clinical Neuropsychology, Seattle, WA. Abstract published in *The Clinical Neuropsychologist*.

Yu, F., Nelson, N.W., Savik, K., Dysken, M., & Wyman, J.F. (2012, November). Aerobic Exercise: Effects on Alzheimer's Symptoms, paper at the Gerontological Society of the America 65<sup>th</sup> Annual Scientific Meeting, San Diego, CA.

#### **Research-Invited Book Reviews**

Parsons, T.D., & Nelson, N.W. (2004). Paradigm shift in social science research: A significance testing and effect size estimation rapprochement? A review of 'Beyond Significance Testing' (Kline). *PsycCRITIQUES*, 49 (3), online publication.

Nelson, N.W., & Hoelzle, J.B. (2009). An assessment handbook with 'personality'. A review of 'Handbook of personality assessment' (Weiner & Greene). *Journal of Clinical and Experimental Neuropsychology*, 31, 637-640.

Parsons, T.D., & Nelson, N.W. (2009). Beyond scientism: Personal experience in scientific research. A review of 'Chase, chance & creativity: The lucky art of novelty'. (Austin). *Journal of Psychology & Theology*, 37, 309-311.

#### **Research-In Review**

Brasure, M., Lamberty, G.J., Sayer, N., Nelson, N.W., MacDonald, R., Ouelette, J., Tacklind, J., Grove, M., Rutks, I.R., Kane, R.L., & Wilt, T.J. (manuscript in review). Systematic review: Multidisciplinary postacute rehabilitation for moderate to severe traumatic brain injury in adults.

Doane, B.M., Salekin, K.L., Hedge, K.A., & Nelson, N.W. (manuscript in review). Specificity of the Medical Symptom Validity Test and related profile analysis in adults with mild intellectual disability.

Nelson, N.W., Guidotti-Breting, L.M., & Sweet, J.J. (book chapter in review). Personality assessment and self-report instruments. For J. Donders, M. Kirkwood, & K.J. Stuck (Eds.). *Clinical Neuropsychology Study Guide and Board Review*.

Yu, F., Nelson, N.W., Savik, K., Dysken, M., Bronas, U.G., & Wyman, J.F. (manuscript in review). The impact of a 6-

## **Nathaniel William Nelson, Ph.D., L.P., ABPP**

Curriculum Vitae

Page 15

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### **Research-In Preparation**

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### **Honors**

Recipient, John P. Davis, Jr. Scholarship 2002

Recipient, pilot study funding awarded by Irving Gottesman, Ph.D. through the American Psychological Foundation for examination of neuropsychological outcomes of blast-related concussion among OEF/OIF Veterans 2008

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International Neuropsychological Society (INS)  
Midwest Neuropsychology Group (MNG)

### **References**

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Curriculum Vitae

Page 16

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**2018 MINNESOTA  
AUTOMOBILE LAW SEMINAR**

SEPTEMBER 27, 2018

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

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**AGENDA**

- I. Case Law Update
- II. What you Need to Know in Handling No-Fault and Fraud Claims
- III. Bodily Injury, Uninsured and Underinsured Update
- IV. Potpourri of Tips for Handling Cases in Minnesota
- V. Auto-Related Panel Discussion
- VI. *Guest Speakers, Nathaniel Nelson and Dr. Donald Starzinski* - Neurological and Neuropsychological Perspectives on Concussion in Automobile and Personal Injury Related Claims

September 27, 2018      2018 Minnesota Automobile Seminar      2

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September 27, 2018      2018 Minnesota Automobile Seminar      3

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**CASE LAW UPDATE**

STEPHEN M. WARNER  
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*PROGRESSIVE PREFERRED INS. CO. V. GRAESER*  
296 F.SUPP.3D 1099 (D.MINN. 2017)

**Auto Liability Coverage**

- Insured operating owned golf cart on city street while intoxicated.
- Passenger fell off, sustaining significant TBI
- Golf cart was not scheduled on insured's auto policy
- Liability coverage denied on two grounds:
  - No "covered auto" involved
  - 'Own other vehicle' exclusion

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*PROGRESSIVE PREFERRED INS. CO. V. GRAESER*  
296 F.SUPP.3D 1099 (D.MINN. 2017)

**Issues:**

- Whether golf cart was designed principally for operation upon public roads (which = "auto")
- Whether the No-Fault Act required coverage even if excluded by policy language (was golf cart a "motor vehicle")

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*PROGRESSIVE PREFERRED INS. CO. V. GRAESER*  
296 F.SUPP.3D 1099 (D.MINN. 2017)

**Key Holdings:**

- Golf cart owner’s manual made clear that it was not designed primarily for operation on public roads
  - Manual specifically stated it was designed for off-road use
  - Manual also expressly stated it did not satisfy NHTSA safety requirements for street use.
- Golf cart therefore not an “auto” under policy.

September 27, 2018      2018 Minnesota Automobile Seminar      7

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*PROGRESSIVE PREFERRED INS. CO. V. GRAESER*  
296 F.SUPP.3D 1099 (D.MINN. 2017)

**Key Holdings (continued):**

- No-Fault Act did not require coverage
- Statutory definition of motor vehicle:
  - Vehicle “designed to be self-propelled by an engine or motor for use primarily upon public roads . . .”
- Court rejected argument that “designed” only modified “self-propelled”; held that “motor vehicle” must be designed primarily for use on public roads
- Since golf cart wasn’t, No-Fault Act did not apply.

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**WORDS MATTER:  
UM/UIM ENDORSEMENT**

**Owned-Vehicle exclusion**

We do not provide Uninsured Motorists Coverage or Underinsured Motorists Coverage for “bodily injury” sustained by any “insured” ... [w]hile “occupying” any motor vehicle owned by that “insured” which is not insured for this coverage.

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**WORDS MATTER:  
PIP ENDORSEMENTS**

*Frauendorfer v. Meridian Sec. Ins. Co.* (Minn. App. 2017)  
 The **Definitions** Section is amended ...:  
 B. The following definition is added:  
 “Motor vehicle” means .... “motor vehicle” does not include: a motorcycle

*EMC v. Richards* (D. Minn. 2018)  
**I. Definitions**  
 B. The following definition is added:  
 “Motor vehicle” means .... “motor vehicle” does not include: a motorcycle....

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**WORDS MATTER**

“Without express language that the Definitions section in the PIP Endorsement is meant to modify the rest of the policy, one is left with the conclusion that the Definitions section in the PIP Endorsement applies only to the PIP Endorsement.”

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**FIRST-PARTY BAD FAITH CLAIMS  
IN FEDERAL COURT**

- Minnesota First-Party Bad Faith Statute requires prima facie showing supported by credible evidence before leave to amend will be granted.
- Several recent federal court decisions (by magistrates) that Plaintiff in federal court need not meet statutory requirements.
- Instead, to amend to add bad faith claim in federal court, need only satisfy more liberal Rule 15 pleading standard.

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### FIRST-PARTY BAD FAITH CLAIMS IN FEDERAL COURT

- Federal standard for amendments to pleadings is plausibility.
- So may now be much easier to assert bad faith claim in federal court.
- NOTE: at least one other federal magistrate has held that state statutory requirements must be satisfied.

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13

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### OUT-OF-STATE POLICIES AND MINNESOTA ACCIDENTS

#### **Minn. Stat. Ann. § 65B.50**

**Subdivision 1. Filing.** Every insurer licensed to write motor vehicle accident reparation and liability insurance in this state shall, on or before January 1, 1975, or as a condition to such licensing, file with the commissioner and thereafter maintain a written certification that it will afford at least the minimum security provided by section 65B.49 to all policyholders, except that in the case of nonresident policyholders it need only certify that security is provided with respect to accidents occurring in this state.

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14

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### OUT-OF-STATE POLICIES AND MINNESOTA ACCIDENTS

**Subd. 2. Contacts of liability insurance as security covering the vehicle.** Notwithstanding any contrary provision in it, every contract of liability insurance for injury, wherever issued, covering obligations arising from ownership, maintenance, or use of a motor vehicle, except a contract which provides coverage only for liability in excess of required minimum tort liability coverages, includes basic economic loss benefit coverages and residual liability coverages required by sections 65B.41 to 65B.71, while the vehicle is in this state, and qualifies as security covering the vehicle.

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15

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**OUT-OF-STATE POLICIES AND  
MINNESOTA ACCIDENTS**

**Is it a non-Minnesota policy?**  
**Is the insured licensed to do business in Minnesota?**

- **NO:** insurer must only provide PIP and liability coverage in accordance with the MN No-Fault Act; residence of the insured does not matter.
- **YES:** Where did the insured reside at the time of the accident?
  - **In MN:** must conform the policy to all of the requirements of the MN No-Fault Act.
  - **Outside MN:** insurer must only provide PIP and liability coverage in accordance with the MN No-Fault Act.

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**REDUCING CLAUSES  
OUT-OF-STATE POLICIES & MN ACCIDENTS**

**Reducing Clause:** UM/UIM limits reduced by amount recovered from liability insurance

- WI Policy; WI insured; MN accident; insurer licensed in MN.
- Subd. 1 case: reducing clause is enforceable.
- Result: Plaintiff/insured with > \$100,000 damages; liability claim settled for \$50,000 liability limits; plaintiff had UIM coverage of \$100,000; UIM coverage reduced by \$50,000 ; up to \$50,000 of UIM coverage available.

*Friese v. American Family* (Minn. App. 2018), *review denied*.

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**EXHAUSTION CLAUSES  
OUT-OF-STATE POLICIES & MN ACCIDENTS**

**Exhaustion Clause:** There is no claim for UIM benefits if you settle for/recover less than the full liability limits.

- Subd. 1 case: ND Policy; ND insured; MN accident; insurer licensed in MN
- Insured settled with tortfeasor for 90% of liability limits; UIM claim dismissed because of policy's exhaustion clause. *Ziegelmann v. Nat'l Farmers* (Minn. App. 2004)
  - BUT if: ND Policy; insured moved to MN during policy period; MN accident - exhaustion clause would not be enforceable.

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**EXHAUSTION CLAUSES**  
OUT-OF-STATE POLICIES & MN ACCIDENTS

- Subd. 2 case: WI Policy; issued to insured while residing in WI; insurer not licensed to do business in MN; insured argued they moved to MN during policy period.
  - Exhaustion clause is enforceable. When the insurer is not licensed to do business in MN, the residence of the insured does not matter. The insurer is only required to conform its policy to comply with PIP and liability requirements of the MN No-Fault Act.

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**STATUTORY INDEMNITY**  
OUT-OF-STATE POLICIES & MN ACCIDENTS

**Minn. Stat. § 65B.53, subd. 1:** A reparation obligor paying or obligated to pay basic or optional economic loss benefits is entitled to indemnity ... from a reparation obligor providing residual liability coverage ....

**Minn. Stat. § 65B.43, subd. 9:** “Reparation obligor” means an insurer or self-insurer obligated to provide the benefits required by sections 65B.41 to 65B.71, ...

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**STATUTORY INDEMNITY**  
OUT-OF-STATE POLICIES & MN ACCIDENTS

**State Farm v. SGI** (Henn. Cty. 2018)

- State Farm paid PIP to its insureds, the Lawlers; State Farm sought indemnity from SGI, which insured the at-fault party
- SGI is a Canadian insurer that is not licensed to do business in Minnesota
- Held: SGI is not a “reparation obligor” because it is not required to provide “the benefits” required by the MN No-Fault Act. “The benefits” means all of the benefits. An insurer not licensed to do business in MN is not required to provide all of the benefits mandated by the MN No-Fault Act.

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*THESING V. IMPERIUM INS. CO.*  
2018 WL 1175419 (D.MINN. MAR. 6, 2018)

**UIM Case**

**Issues:**

- Are UIM Exclusions ever valid?
- Whether insured can bypass policy on occupied vehicle and collect primary UIM from own policy.

**Facts:**

- Claimant injured while driving DOT vehicle
- Did not seek UIM from policy on DOT vehicle
- Instead sought “excess” UIM from own policy

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*THESING V. IMPERIUM INS. CO.*  
2018 WL 1175419 (D.MINN. MAR. 6, 2018)

**Facts (continued):**

- Insurer denied coverage based on exclusion for injury sustained while occupying employer-furnished vehicle.
- Alternatively, sought reduction in limit based on UIM available from occupied vehicle.

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*THESING V. IMPERIUM INS. CO.*  
2018 WL 1175419 (D.MINN. MAR. 6, 2018)

**Key Holdings:**

- Exclusion invalid because it denied insured statutorily mandated coverage.
- Generally only valid UIM exclusions are those preventing coverage conversion.
- Claimant could not bypass available primary UIM and collect entire limit from excess carrier.
- Excess insurer entitled to reduce limit by amount of available primary UIM.

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*RODRIGUEZ V. STATE FARM MUT. AUTO. INS. CO.*  
2018 WL 3213641 (MINN. APP. JUL. 2, 2018)

**PIP Case**

**Issue:** Interplay between Workers' Comp/No-Fault

**Facts:**

- Claimant bus driver hit by stolen vehicle
- Collected workers' comp benefits
- Workers' comp carrier discontinued chiro. after 12 weeks per Minn. R. 5221.6200 (setting 12 weeks as reasonable period of chiro. low back injury).
- Claimant did not challenge this decision

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25

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*RODRIGUEZ V. STATE FARM MUT. AUTO. INS. CO.*  
2018 WL 3213641 (MINN. APP. JUL. 2, 2018)

**Facts (continued):**

- Claimant then sought PIP from personal auto carrier.
- PIP carrier denied benefits based on Minn. R. 5221.6200 as well.
- Arbitrator awarded all benefits claimed.
- District court vacated arb. award on motion by PIP carrier.
- Court of Appeals reversed.

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26

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*RODRIGUEZ V. STATE FARM MUT. AUTO. INS. CO.*  
2018 WL 3213641 (MINN. APP. JUL. 2, 2018)

**Key Holdings:**

- PIP carrier could not rely on Workers' Comp carrier determination on duration of chiro.
- Particularly where no decision made on validity of comp carrier's decision.
- More specific provisions of No-Fault Act trumped general provisions of Workers' Comp Act.
- No-Fault Act required PIP carrier to pay requested benefits and then seek contribution from comp carrier.

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27

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### UM: WHAT IS A "HIT-AND-RUN"

- When an uninsured-motorist policy provision does not define "hit-and-run vehicle," a vehicle is a "hit-and-run vehicle" if the vehicle does not stop and leaves the accident scene and the insured does not have an opportunity to obtain the unidentified driver's information.
  - Insured not required to establish the driver drove away with the intent of escaping liability

*Russell v. Sentinel Ins. Co.* (Minn. App. 2018)

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28

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### 62Q.75 CASES

*West. Nat'l Ins. Co. v. Nguyen*

- Supreme Court affirmed denial of benefits for bills not submitted by provider to known PIP carrier within 6 mo.
- Because provider was not entitled to payment, claimant suffered no loss, so no PIP benefits

*Bach v. Lib. Mut. Fire Ins. Co.*

- Court of appeals held PIP benefits available for bills not submitted within six months because no evidence that provider had been given PIP carrier information.

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29

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30

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**WHAT YOU NEED TO KNOW  
IN HANDLING NO-FAULT  
AND FRAUD CLAIMS**

SHAYNE M. HAMANN

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

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**AGENDA**

- Ever-changing No-Fault landscape in MN and how to stay on top of the current trends
- Key things to know and trends to watch for
- Handling fraud-related claims

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**TIMELY, EARLY AND THOROUGH  
INVESTIGATION**

- Prompt completion of a MN PIP Application;
- Don't pay PIP benefits until you get the PIP application;
- Recorded statement can be very useful - since no deposition taken before arbitration hearing;
- Listing of past and current medical providers;
- Completed authorizations to gather medical records and employer records.

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## ACKSP PIP APPLICATION

September 27, 2018 34

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## APPLICATION FOR BENEFITS

- If no formal recorded statement taken, the PIP Application is the first time you are receiving Claimant's information pertaining to the facts of the accident;
- Useful to nail down specific injuries for future arbitration purposes;
- Be mindful of different people filling out the application for No Fault benefits - attorneys/paralegals/chiropractors/assistants at chiropractic offices date the PIP application was completed.

September 27, 2018 35

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## A PICTURE IS WORTH A THOUSAND WORDS

- Technological age - so many insureds take pictures at the scene - it's the "thing to do";
- Have them email you those pictures to keep in your claim file;
- Obtain photographs and property damage estimate information from other carrier if necessary.

September 27, 2018 36

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**CLAIMS INVESTIGATION FOR NO-FAULT MATTERS**

- Compare the medical records and Medical bills to ensure that the claimant is treating only for “accident-related” injuries and not other accidents/injuries or ailments.
  - I.E., I see a lot of charges on itemized statements for things unrelated to an MVA - flu shot, tetanus booster, allergy shots/other non-MVA-related medication.
- The medical care and treatment being administered should be **reasonable, necessary** and **casually** related to the motor vehicle accident in question!
- Watch for ways to exclude paying for medical care and treatment that is unrelated to the accident in question.

September 27, 2018      2018 Minnesota Automobile Seminar      37

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**THE IME**

Best tool we have (next to an EUO) to keep PIP costs down and an injured person “somewhat” honest.

September 27, 2018      2018 Minnesota Automobile Seminar      38

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**THE IME CONTINUED**

Not all IMEs are created equal:

- Chiropractic IME -
  - Least useful way to support a denial of a claim - can only deny future chiropractic care;
  - Cannot opine on specialist treatment;
  - Be sure to ask for discussion on widely accepted rates for treatment within metropolitan area;
  - Be sure to ask for types and numbers of modalities claimant needed during “reasonable” time for treating with a chiropractor;

September 27, 2018      2018 Minnesota Automobile Seminar      39

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**THE IME CONTINUED**

Neurological and Orthopedic IMES

- More comprehensive;
- Generally more credible;
- Get more mileage from the IME ortho/neuro who can write a "good" report;
  - Many IME doctors will say the same thing in each report and that doctor will lose his/her credibility, so work with the IME vendor and use good IME doctors who can write "thorough" IME reports.

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**WHEN TO IME**

The more severe the accident, the longer removed an IME should be.

- Give time to understand true progression of injury of claimant;
- Ensures that the claimant will not seek treatment from a new provider;
- Make sure IME doctor opines on any diagnostic imaging the claimant has had.

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**IME 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 the accident.

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### IME TIMING RULES OF THUMB

- Some chiropractors will treat an injured party - up to 5 times a week for several weeks along with several modalities given at each visit;
- Broad-based claims of need for replacement services - early on after an accident.
- Watch medical bills and review records - “cookie-cutter type records” - same things said at same visit - can be intertwined with records you have read on another injured party.

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43

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### NO-FAULT AND UM/UIM INTERPLAY AND IMES

- Be mindful of the UM/UIM portion of the case when selecting a No-Fault doctor;
- Some No-Fault doctors will not testify, you always want one that will testify;
- Communicate with the UM/UIM adjuster, if it is conceivable that another first party claim will be advanced.

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44

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### ARBITRATION PETITION PROCESS

- Check for the following upon receipt of the petition:
- Venue - watch for “forum shopping”;
  - Jurisdiction - \$10,000 or less at time of filing;
  - Itemization of claim for No-Fault benefits - or within 30 days of filing;
  - Verify itemization with PIP log of payments made to date;
  - Supporting documentation for medical bills, wage loss and replacement services;
  - IRS medical mileage - use IRS medical mileage rate - 18 cents per mile - 2018.

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45

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*KIESS AND INTEREST*

- See our sample denial letter - and use it!
- Claimant’s attorneys make money on interest and insurance companies don’t want to pay out more than they are “required” to pay!
- Interest is paid above and beyond the standard \$40,000 in basic PIP benefits (Medical/Wage loss/Replacement Service Benefits).

September 27, 2018      2018 Minnesota Automobile Seminar      46

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*CRAFTY STRATEGIES OF CLAIMANT ATTORNEYS*

- Forum shopping - Roseville, Anoka, Hastings;
- Kiess interest computation - Claimant’s attorneys will always compute 30 days after treatment - regardless of when insurer received medical bills/records;
- Mileage - always claim IRS business mileage rate - 54.5
- Filing for arbitration when you don’t have an IME but a bill may be outstanding for over 30 days
- Incorrect information on a PIP application or sloppily filled out.

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*WAGE LOSS BENEFITS*

- Make sure you have an understanding of claimant’s job duties/responsibilities;
- Make sure there is an accompanying disability slip verifying the injured person is off of work for accident-related injuries;
- You have a wage loss verification form filled out by someone in HR - not the injured person;
- Payroll information verifies that time was missed from work and the injured person was either not paid, or had to use sick/vacation time.

September 27, 2018      2018 Minnesota Automobile Seminar      48

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**REPLACEMENT SERVICE BENEFITS**

- Primary homemaker or someone is being paid to perform household chores;
- What is it that the injured person cannot do around the house;
- Length of time of inability to perform household chores/tasks;
- Disability slip - it shouldn't be "open-ended" - a beginning and end date;
- If "fishy" circumstance - your best weapon is to set claimant up for an IME.

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**62Q - WESTERN NATIONAL V. NGUYEN**

The Court of Appeals ruled and the Supreme Court affirmed:

- Minnesota law bars a No-Fault claim where the Medical provider fails to submit the medical expenses to the No-Fault insurer within 6 months from the date of service or the date the health care provider knew or was informed of the correct name and address of the No-Fault insurer.

Minn. Stat. Sec. 62Q.75, Subd. 3.

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**62Q - WESTERN NATIONAL V. NGUYEN**

- Minn. Stat. §62Q.75, Subd. 3 applied, because the medical provider had submitted only one bill to the insurance company within the statutory six-month time frame, so the Medical provider could not collect its remaining charges;
- The patient did not suffer a loss that would entitle him to No-Fault benefits, other than the one expense initially submitted to Western National for payment;
- Medical-expense benefits never became due because the medical provider did not submit its claims to the insurance company pursuant to uniform electronic transaction standards.

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**WORKERS' COMPENSATION AND NO-FAULT INTERPLAY**

*Rodriguez v. State Farm*

- Keep lines of communication open with workers' compensation adjuster.
- Make sure you are getting medical records and bills from providers - especially chiropractors.
- Obtain authorization to get the workers' compensation file.

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**WORKERS' COMPENSATION AND NO-FAULT INTERPLAY**

- Workers' compensation will **always** stop paying after 12 weeks of chiropractic care.
- Replacement Service claims - not covered by workers' compensation benefits either.
- Get your own No-Fault IME.

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**FRAUD - RED FLAGS**

No-Fault is rampant with fraud-related claims:

- Unfortunately most stem from chiropractic care and providers trying to "game the system"
- Watch for excessive care and treatment after a minor accident;
- Occupants in same vehicle all have same attorney and treat with same providers;
- Inconsistent stories of an accident;
- Refusal to cooperate or provide information pertaining to other available No-Fault insurance;
- Injuries inconsistent with mechanics of the accident;
- No police report;
- Other driver adamant that accident didn't happen.

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**TOOLS TO COMBAT FRAUD**

- Complete your investigation, if possible within 30 days;
- If you cannot, indicate what else you need and what you are waiting for;
- Determine if an EUO is needed and what you want to find out at the EUO;
- Some attorneys give you wide latitude on an EUO and others do not - so have to be prepared for both scenarios;
- If your request for an EUO is denied - you will have to have an arbitrator rule on your request.

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**TOOLS TO COMBAT FRAUD**

- Thorough and immediate investigation;
- ISO reports;
- Recorded Statement;
- EUO
- Something “fishy” about a claim, or you feel another company is primary for PIP - spend the money and have an EUO taken;
- Best to take the EUO before money is paid out.

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**REFRESHMENT BREAK**

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**BODILY INJURY, UNINSURED  
MOTORIST AND  
UNDERINSURED MOTORIST  
UPDATE**

PAUL J. ROCHEFORD  
WILLIAM J. McNULTY

**ARTHUR CHAPMAN**  
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**OVERVIEW**

- Tort Thresholds - Background
- Collateral Source Statute
- Trends with Underinsured Motorist Claims
- Bad Faith

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**TORT THRESHOLDS**

When do tort thresholds apply?

- Action arises out of negligence
- Negligence involves a motor vehicle
- For non-economic loss damages (not special damages)

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**TORT THRESHOLDS**

When is a threshold met?

- Medical expenses in excess of \$4,000
  - Diagnostic expenses?
- Disability of 60 days or longer
  - Need not be consecutive
- Permanent Injury or Disfigurement (scarring)
- Death

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**TORT THRESHOLDS**

Exceptions

- Motorcycle accidents
  - Do not arise out of use of a motor vehicle.
  - Does not matter if Defendant is driving a motor vehicle?? Should thresholds apply?
- Uninsured Motorist accidents
  - Tort threshold applies to motor vehicle **with respect to which security has been provided.**
  - Tort threshold applies to UM claim against insurer.

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**COLLATERAL SOURCE OFFSETS**  
**MINN. STAT. § 548.251**

Subdivision 1. Definition. For purposes of this section, “collateral sources” means PAYMENTS related to the injury or disability in question made to the plaintiff, **or on the plaintiff’s behalf** up to the date of the verdict, by or pursuant to:

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

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**COLLATERAL SOURCE OFFSETS**

- Entitled to collateral source offset for payments made pursuant to health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage
- Insurance Premiums are added back in!

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**MINN. STAT. §548.251**

**Subd. 2. Motion.** .... A party may file a motion within ten days of the date of entry of the verdict requesting determination of collateral sources. If the motion is filed, the parties shall submit written evidence of, and the court shall determine:

- (1) amounts of collateral sources that have been paid for the benefit of the plaintiff or are otherwise available to the plaintiff as a result of losses **except those for which a subrogation right has been asserted**; and
- (2) **amounts that have been paid, contributed, or forfeited by, or on behalf of, the plaintiff or members of the plaintiff's immediate family for the two-year period immediately before the accrual of the action to secure the right to a collateral source benefit that the plaintiff is receiving as a result of losses.**

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**COLLATERAL SOURCE OFFSETS**

Exception to collateral source offsets

- “except payments made pursuant to the United States Social Security Act.”
- What does this mean?

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**SWANSON V. BREWSTER**  
**784 N.W.2D 264 (MINN. 2010)**

- The meaning of “payments” in Minnesota’s collateral source statute, Minn. Stat. § 548.251 (2008), includes negotiated discount amounts.
- “Negotiated discount amounts” - the amounts a plaintiff is billed by a medical provider but does not pay because the plaintiff’s insurance provider negotiates a discount on the plaintiff’s behalf.

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**SWANSON V. BREWSTER (CONTINUED)**

In a personal injury action where there has been a negotiated discount by the insurer to pay medical provider's bills

- Deduct the discounted amount as a collateral source
- **Add the amount the plaintiff paid in premiums to obtain the insurance**

*Exception:* The negotiated discount offset likely does not apply to first-party PIP (No-Fault) claims

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**RENSWICK V. WENZEL**  
819 N.W.2D 198 (MINN. CT. APP. 2012)

An injured plaintiff's **Medicare** benefits in the form of payments for medical care or Medicare-negotiated discounts **ARE** collateral sources that **are excepted** from the collateral source offset provision of Minn. Stat. §548.251

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**GETZ V. PEACE, \_\_ N.W.2D \_\_**  
**(MINN. CT. APP. 2018)**

- Discounts negotiated for Medicaid beneficiaries under Minnesota's Prepaid Medical Assistance Program are "payments made pursuant to the United States Social Security Act" that are excepted from collateral-source offset statute.
- **Opinion issued on September 17, 2018.**
- Beth Jenson Prouty case alert by email last week.

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**COLLATERAL SOURCE OFFSETS**

- \$200,000 - amount billed by provider
- \$75,000 - amount paid by insurance
  - Tortfeasor owes \$75,000 - If the insurance is not a payment made pursuant to the Social Security Act. Also must add in two years of insurance premiums.
  - Tortfeasor owes \$200,000 - if the insurance is a payment made pursuant to the Social Security Act (i.e., Medicare or state Medicaid).

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**RECENT TRENDS IN UIM CLAIMS**

Interrogatories served upon UIM Carrier

- Claim Notes/Writings
- Reserve information
- Why was UIM claim denied?
  - Set forth factual basis for denial
  - Who decided to deny claim?
- How many times has insurer hired IME doctor?
- Plaintiff's counsel looking for leverage - "scare tactic"

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**RECENT TRENDS IN UIM CLAIMS**

- Defenses to Interrogatories
  - Assert privileges
  - Refuse to answer questions because of privileges/scope of question/proportionality under new rules
- Get ready for a motion to compel discovery

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**RECENT TRENDS IN UIM CLAIMS**

**Rule 30.02(f) Deposition**

- Demand that corporate representative be produced to testify about certain topics
  - UIM policy/duties to insured
  - IME doctor and frequency
  - Investigation into Claim
  - Adherence to Fair Claims Practices
  - Rationale for Denial of Benefits

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**RECENT TRENDS IN UIM CLAIMS**

- Serve objections to the notice of taking deposition
- File a motion for a protective order
- Insured will argue that insurer is a party to a breach of contract claim and discovery broadly allowed
  - Claim representative could be deposed
    - **KNOW THE FILE**

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**GOOD FAITH/BAD FAITH**

**Minn. Stat. §604.18**

- “The absence of a reasonable basis for denying the benefits of the insurance policy; and
- That the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy.”
- In state court, must amend complaint (like punitive damages)
- Burden of proof
- Measure of damages (*Wilbur v. State Farm*, 892 N.W.2d 521 (Minn. 2017)).

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**BAD FAITH**

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Threatened in UIM (and other first party) claims

- A method to extract additional settlement money
- Do you want to be deposed?

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**POTPOURRI OF TIPS FOR  
HANDLING CASES IN  
MINNESOTA**

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**AGENDA**

- MFCPA
- Venue
- Case Evaluations
- Keeping Insured Informed of Happenings Pre-Suit
- Requests for Investigative Files
- IMES
- Medical/Legal Opinions of Plaintiffs
- Service of Process
- Sequence and Timing of Discovery

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**MINNESOTA FAIR CLAIMS PRACTICES ACT**

- Acknowledge a “claim” within 10 days of receiving notice of it.
- Reply to insured or claimant - per the 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 excepted date of response.
  - EUO/Statements.

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**INSURANCE POLICY AND LIMITS**

- You are required by FCPA to release the limits applicable to a claim, i.e., liability limits.
- You might as well disclose the insurance policy as well - because you will have to with Initial Disclosures required in a litigated case.
- Redact insurance policy premiums paid on the declaration page for third party claims and any other protected information of your insured, i.e., factors/citations, etc.

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**VENUE**

- Recently noted an increase in certain auto plaintiff lawyers engaging in venue shopping by commencing action into venues that they believe are more favorable.
- Venue in Motor Vehicle Case: Minn. Stat. § 542.095:
  - Action brought in county where action arose, or
  - County of residence of defendant or a majority of defendants.

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**VENUE CONTINUED**

- § 542.095 applies to all actions against owner, driver, or operator of any motor vehicle.
- Arising out of and by reason of the negligent driving, operation, management, and control of the motor vehicle.
- When brought in proper county, the venue shall not be changed without the written consent of the plaintiff or court order.

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**VENUE SHOPPING**

- Change of venue as a matter of right. Minn. Stat. § 542.10
  - Action will be tried in improper county unless:
    - Within 20 days of service of the summons defendant serves a written demand that the case be tried in proper county.
    - Also serves an affidavit signed by defendant or her/his lawyer setting forth the county of residence and that no part of the action arose in the county designated in the complaint.

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**VENUE SHOPPING**

- The demand, affidavit, and proof of service shall be filed with the court administrator in the county where the action was begun within 30 days from the date of service of these documents.
- Proper objection changes venue automatically.
- Potential pitfalls:
  - Requires attention to detail.
  - Tight deadline.
  - Commencement vs. filing concerns.

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**FINAL COMMENTS ON VENUE**

- Change of venue by motion to court: Minn. Stat. § 542.11:
  - Written consent of parties
  - When a defendant is named solely to prevent change of venue
  - Impartial trial not possible
  - Convenience of witnesses and interest of justice
- Case Examples

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**CASE EVALUATIONS - PRE-SUIT**

- Venue
- Liability and Damages - what are you “really” fighting?
- Total medical specials
- PIP payments to date - Need a PIP log to verify
- Narrative report
- Wage loss - other vocational considerations
- Private health insurance liens - need this information
- Medicare/Medicaid payments - need this information
- Health insurance premium add-backs/PIP add backs, etc.
- Does your insured have assets - underinsured.

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**KEEPING INSURED APPRISED OF CASE DEVELOPMENTS - PRE-SUIT**

- Vital to keep insured informed of what is going on with case pre-suit;
- Insured needs to know when they may be sued if case will not settle;
- Insured aware insurer hiring counsel to represent their interest;
- Advise of issues in case if any, i.e., damages and liability;
- Know what insureds side of accident is and how insured is processing the details of a claim being made with their insurance company;
- You want to take the "shock" factor of being sued out of the equation.

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91

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**KEEPING INSURED APPRISED OF CASE DEVELOPMENTS - PRE-SUIT**

- If Insured has photos taken at scene get copies of those;
- Witness information - take statements;
- Talk to those inside insured's vehicle - you never know when or where you will find helpful case information.

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92

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**REQUESTS FOR INVESTIGATIVE FILES**

- Perennial problem of plaintiff counsel believing that insurance companies and their lawyers are out to hide relevant information.
- Again, anecdotal indications that certain plaintiff lawyers are increasing their bluster and efforts in demanding access to the entire claim/investigation file.

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93

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## HOW PLAINTIFF LAWYERS PERCEIVE US



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## HOW WE PERCEIVE OURSELVES

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## GENERAL RULE

Minn. R. Civ. P. 26.02(d) allows for the production of documents:

... prepared **in anticipation of litigation** or for trial by or for another party or by or for that other party's representative (including the other party's ... **insurer**, or **agent**) only upon a showing that the party seeking discovery **has substantial need** of the materials in the preparation of the party's case and that the party **is unable without undue hardship to obtain the substantial equivalent of the materials by other means** . . . . [T]he court shall **protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.**

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**THE DISPUTE**

- The disputed materials usually revolve around recorded or written statements, claim notes, internal medical or legal evaluations, annotated field adjuster photographs or interview reports.
- The nature of the case matters:
  - First party insurance claims vs. third party claims. *See, Weitzman v. Blazing Pedals, Inc.*, 151 F.R.D. 125, 126 (D. Colorado 1993).

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**THE PROPER STANDARD IN THIRD PARTY CASES**

- Can the document fairly be said to have been prepared or obtained because of the prospect of litigation? *Banks v. Wilson*, 151 F.R.D. 109, 112 (D. Minn. 1993) (Witness statement protected).
- If there is enough reason to foresee litigation in the future, investigative documents are protected from discovery. *Raso v. CMC Equip. Rental, Inc.*, 154 F.R.D. 126, 129 (E.D. Pa. 1994).

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**MENTAL IMPRESSIONS**

- Even where discovery is ordered in a first-party case against an insurer, if the information contains the thoughts or mental impressions of the insurer’s investigators, agents or representatives, it is immune from discovery. *Joyner v. Continental Ins. Co.*, 101 F.R.D. 414, 415 (S.D. Ga. 1983) (Case involved a first-party bad faith claim against its insurer).
- Redactions, in camera review, etc.

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**A FEW TIPS**

- Fully document the nature and onset of the claimed injuries in the file.
- Document the file if the claimant says he or she has a lawyer or is contacting a lawyer.
- Document the date of first contact from a law firm.
- Keep in mind our suggested criteria for taking recorded statements.
- Clearly delineate mental impressions and opinions from other factual information in the claim notes.

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**IMES AND MEDIATION**

- Best to mediate - unless a medical causation issue or large proportion to have an IME after mediation;
- Saves insurance company time and expense;
- You absolutely need any medical lien information or Medicare/Medicaid payments, along with any health insurance and PIP add back information and amounts;
- If plaintiff attorney is being "difficult" about this, can the mediator assist? Many mediators will require this information beforehand, to assist in mediation process;
- Share information with your mediator beforehand - difficult plaintiff attorney, difficult insured, low limits, causation issues, prior negotiations.

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**MEDICAL/LEGAL OPINIONS FROM PLAINTIFFS**

- Increase in use of medical/legal experts and IMEs by plaintiffs?
- Difficulty in getting treating doctors to testify?
- The doctor/lawyer problem.
- Life care experts.
- Increase in use of physician's assistants to render expert testimony?

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**MINNESOTA SERVICE OF PROCESS**

- Service of Process in Minnesota - Pocket Service;
- Filing within one year of service - unless an agreement to extend that time period;
- Can check MNCIS - see if a case has been filed;
- Keep lines of communication open with opposing party - if you can't get a case settled, ask for a courtesy copy of the S and C and affidavit of service when insured has been served.

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**SEQUENCE AND TIMING OF DISCOVERY**

- We continue to see plaintiff counsel serving written discovery with the complaint.
- Minn. R. Civ. P. 26.04 provides that “parties may not seek discovery from any source before the parties have conferred and prepared a discovery plan . . . .”
- However, new change to this rule allows for document request to be served more than 21 days after service of the summons and complaint.

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**DISCOVERY TIMING *CONTINUED***

- However these early document requests will be deemed served for purpose of answering the requests on the date when the discovery plan is completed.
- Summarized:
  - Written discovery shouldn't be served with the S&C. If it is, no need to answer right away.
  - Early document requests under new rule are designed to put the defendant on notice to preserve documents, i.e. insure proper retention.

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### TIMING SUMMARY *CONTINUED*

- Discovery conference occurs within 30 days from when the answer to the complaint is due.
- Written discovery plan must be completed and signed within 14 days of the discovery conference.
- Initial disclosures of witnesses, exhibits, damage computations and insurance policies are required to be served by the parties within 60 days after the original due date of the answer. Newly added parties have 30 days to make initial disclosures.
- Plaintiff counsel routinely ignore all of these rules.

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106

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### MINNESOTA PERSONAL INJURY ATTORNEYS

- Call us with questions on a plaintiff attorney - we can advise who is a straight shooter and who is not.
- With a certain attorney be prepared and try a case or is a lot of “puffing” going on instead.

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107

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108

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**AUTO-RELATED PANEL  
DISCUSSION**

PANELISTS - EUGENE C. SHERMOEN, STEVEN J.  
ERFFMEYER AND BRADLEY L. IDELKOPE  
MODERATED BY SHAYNE M. HAMANN

**ARTHUR CHAPMAN**  
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**PUNITIVE DAMAGES**

- Complaint **MUST NOT** seek punitive damages.
- Motion may be filed after suit.
- Must allege:
  - Applicable legal basis under Section 549.20 or other law for awarding punitive damages and must be accompanied by one or more affidavits showing the factual basis for the claim.
- The court shall grant the moving party permission to amend the pleadings to claim punitive damages if it finds *prima facie* evidence in support of motion.

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**PUNITIVE DAMAGES - §549.20**

Minn. Stat. §549.20

- Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.

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**PUNITIVE DAMAGES - §549.20**

- A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:

- deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or
- deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

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**PUNITIVE DAMAGES**



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**PUNITIVE DAMAGES**



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**PUNITIVE DAMAGES - OTHER LAW**

- Minn. Stat. §169A.76
- (a) In a civil action involving a motor vehicle accident, it is sufficient for the trier of fact to consider an award of punitive damages if there is evidence that the accident was caused by a driver:
  - (1) with an alcohol concentration of 0.08 or more;

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**PUNITIVE DAMAGES - OTHER LAW**

- (2) who was under the influence of a controlled substance;
- (3) who was under the influence of alcohol and refused to take a test required under section 169A.51 (chemical tests for intoxication); or
- (4) who was knowingly under the influence of a hazardous substance that substantially affects the person's nervous system, brain, or muscles so as to impair the person's ability to drive or operate a motor vehicle.

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**PUNITIVE DAMAGES**

**Factors**

- Seriousness of hazard to the public
- Profitability of the misconduct to defendant
- Duration of misconduct
- Defendant's awareness
- Concealment
- Attitude
- Financial Condition
- Total effect of punishment to be imposed upon defendant
- Criminal Penalties

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**PUNITIVE DAMAGES**

- Separate Proceeding
- Judicial Review - Court must review factors and make specific findings.

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**POST-VERDICT/PRE-JUDGMENT INTEREST**

- Time period is between a jury verdict and the Court's order for judgment and the physical entry of judgment.
- Statutorily defined by Minn. Stat. § 549.09  
 "When a judgment or award is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in paragraph (c) and added to the judgment or award."

NOTE: § 334.01 will apply to debt collection actions.

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**POST-VERDICT/PRE-JUDGMENT INTEREST *CONTINUED***

- The rate (Minn. Stat. § 549.09, subd. 1(c)(1))
  - For Judgments under \$50,000 OR against the state or a political subdivision = 4% per annum
  - For Judgments over \$50,000 = 10% per annum (if after 8/1/2009)
- Start date: Jury Verdict
- End date: When the judgment is physically entered by the Court Administrator.

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**PRE-AWARD INTEREST**

It's a longstanding and lasting motivator:  
 "Awards of prejudgment interest are designed to serve two functions: to compensate prevailing parties for the true cost of money damages incurred, and to promote settlements when liability and damage amounts are fairly certain."  
*Solid Gold Realty, Inc. v. Mondry*, 399 N.W.2d 681 (Minn. Ct. App. 1987). See *Glodek v. Rowinski*, 390 N.W.2d 477 (Minn. Ct. App. 1986).

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**PRE-AWARD INTEREST**

Established by § 549.09, subd. 1(b)

- Pre-award begins to run from the date the action is commenced that is triggered by a demand for arbitration, commencement of the action, or the time of a written notice of a claim, whichever occurs first. Most often use is the date of service of S & C.
- Plaintiff must commence the action within two (2) years of the written notice for interest to accrue.
- End date for accrual of interest is the date of a verdict.

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**PRE-AWARD INTEREST**

Example:

- Plaintiff is awarded \$500,000 by verdict or arbitration award, but provides notice of the claim three (3) years prior and commenced the action within two (2) years.
- Because the claim is over \$50k, the 10% rate applies.
- Plaintiff can recover an additional \$150,000 in pre-verdict interest.

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**PRE-AWARD INTEREST**

Minn. Stat. § 549.09, subd. 1(b), unambiguously provides for pre-award interest on all awards of pecuniary damages that are not specifically excluded by the statute, and does not restrict the recovery of pre-award interest to cases or matters involving wrongdoing or a breach of contract.

- *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 141 (Minn. 2017)

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**PRE-AWARD INTEREST**

- EXCLUSIONS from Pre-Award Interest:
  - Judgments, awards, or benefits in workers' compensation cases
  - Judgments or awards for future damages
  - Punitive damages, fines or other damages that are non-compensatory in nature
  - Judgments or awards not in excess of the amount specified in Minn. Stat. § 491A.01
  - Portion of any verdict, award, or report (i.e., court's order for judgment) founded upon interest, or costs, disbursements, attorney's fees, or other similar items added by the court or arbitrator.

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**POST-JUDGMENT INTEREST**

- Established by § 549.09, subd. 1(c)(1) and 1(c)(2)
- Start date: Entry of Judgment
- End date: for interest calculations: As soon as partial or full satisfaction of judgment. But note, when there is a partial satisfaction, interest continues to accrue, but only on the reduced principal amount.

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### HISTORICAL § 549.09 RATES

The following lists the judgment rates in effect for state courts for the periods noted:

YEAR	M.S. 549.09 Annual Rate	M.S. 549.09 Rate for Judgment exceeding \$50,000 Finally entered on or after 8/1/09 But not judgments for or against The state or a political subdivision Finally entered on or after 4/16/2010, Or Judgments or awards in family court Actions entered on or after 8/1/2015	M.S. 549.091 Rate for Child Support Judgments
2006	4%		6%
2007	5%		7%
2008	4%		4%
2009	4%	10%	Follow 549.09 rate (but not more than 18%)
2010	4%	10%	Follow 549.09 rate (but not more than 18%)
2011	4%	10%	Follow 549.09 rate (but not more than 18%)
2012	4%	10%	Follow 549.09 rate (but not more than 18%)
2013	4%	10%	Follow 549.09 rate (but not more than 18%)
2014	4%	10%	Follow 549.09 rate (but not more than 18%)
2015	4%	10%	Follow 549.09 rate (but not more than 18%)
2016	4%	10%	4%
2017	4%	10%	4%
2018	4%	10%	4%

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### APPLYING MULTIPLE RATES

Judgments greater than \$50,000 finally entered on or after 8/1/2009, except judgments entered for or against the state or a political subdivision entered on or after 4/16/2010, will have a single rate attach to them. For other judgments, interest accrues during any calendar year at the rate for that year for judgments.

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### CORPORATE DESIGNEE DEPOSITIONS

- What you need to know
- Differences between federal and state standards
- Protective orders
- Limitations on deposing “high ranking” officials

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**FEDERAL RULE 30(B)(6)**

- Federal counterpart to Minnesota rule 30.
- Controls when a deposition may be taken.
- 30(b)(6) a deposition notice must describe the matters for examination, the organization designates an agent to testify.
- 30(b)(6) notice requires not just specificity, but “painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.”

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**RULE 30.02(F)**

- Minnesota rule of Civil Procedure 30: Depositions Upon Oral Examination
- A party may in the party's notice and in a subpoena name as the deponent a public or private corporation...and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.
- Compare the Minnesota standard to the Federal standard (reasonable (MN) v. painstaking (fed.)).

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**DEPOSITIONS OF CLAIMS HANDLERS**

- Pre-suit communication/Answer to Complaint set the stage.
  - Alleging insufficient information problematic
  - May justify deposition to ascertain why you don't have sufficient information.
  - Adequacy and timeliness of investigation again
- Individual vs. Corporate Designee
- If Corporate Designee Depo, serve formal objections.

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**BRING MOTION FOR PROTECTIVE ORDER**

- Relevance/Proportionality/Undue burden
- If counsel retained early:
  - Position based on advice of counsel
  - Legal conclusions not discoverable
  - Invades attorney-client privilege
  - Work product in anticipation of litigation
- If early IME: position based on medical opinion.

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**LIMITATIONS ON 30(B)(6) DEPOSITIONS**

Noting a deposition of a high-ranking official requires demonstrating the would-be deponent has two things

- 1) Unique or personal knowledge relevant to the case; and
- 2) The same information is not available from another source.

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**FAILURE TO COMPLY WITH CORPORATE DESIGNEE NOTICE**

Rule 37.02(b) (Minn.) provides that if a “person designated in Rule] ] 30.02(f) ... fails to obey an order to provide or permit discovery, ... the court ... may make such orders in regard to the failure as are just,” and includes a list of possible sanctions.

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**RELEASE - GENERAL PROVISIONS**

- Parties
- Who is providing release?
- Who is being released?
- What is being released?
- Voluntary
- No admission of liability
- Liens
- Release = Contract

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**RELEASE - CASE SPECIFIC PROVISIONS**

- Confidentiality
- Publication
- Non-Disparagement
- *Pierringer*
- *Naig / Reverse-Naig*
- Payment Information

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**MOTIONS**

- Motions In Limine
- Sample Post-Trial Motions

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**POST TRIAL MOTIONS - GENERALLY**

- Authorized by Minnesota Rule of Civil Procedure 59.03
  - Notice of motion for new trial must be served 30 days after a general verdict and heard within 60 days after the general verdict.
- Examples:
  - Motion for A New Trial
    - Newly discovered evidence
    - "Perverse" verdict
  - Motion for Judgment Notwithstanding the Verdict
  - Motion to reduce a jury verdict

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**SAMPLE POST-TRIAL MOTIONS**

Motion for a new trial (7 possible grounds): Minn. R. Civ. Pro. 59.01

- 1) Irregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;
- 2) Misconduct of the jury or prevailing party;
- 3) Accident or surprise which could not have been prevented by ordinary prudence;
- 4) Material evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial;

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**SAMPLE POST-TRIAL MOTIONS**

- 5) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;
- 6) Errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rule 46 and 51, plainly assigned in the notice of motion;
- 7) The verdict, decision, or report is not justified by the evidence, or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed, on appeal, to have been made on the ground that the verdict, decision, or report was not justified by the evidence.

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**SAMPLE POST-TRIAL MOTIONS**

Motion for a judgment as a matter of law (formerly Judgment Notwithstanding the Verdict)

- Usually attached in the alternative to a Motion for New Trial. Judgment may be granted only when the evidence is so overwhelming that reasonable minds cannot differ as to the proper outcome. *Lamb v. Jordan*, 333 N.W.2d 852 (Minn. 1983).
- Three basic principles:
  - All the evidence, including that favoring the verdict, must be taken into account; (2) the evidence is to be viewed in the light most favorable to the verdict; and (3) the court may not weigh the evidence or judge the credibility of the witnesses.

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**SAMPLE POST-TRIAL MOTIONS**

Motion to reduce the jury verdict a/k/a excessive damage

- A motion for a new trial should be granted if “the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence or acted” under a mistake or from an improper motive.

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**SAMPLE POST-TRIAL MOTIONS**

Newly discovered evidence

- Minn. R. Civ. P. 60.02(b) provides that newly discovered evidence which could not have been discovered through due diligence in time to move for a new trial pursuant to Minn. R. Civ. P. 59.03 may be grounds for a new trial or other relief. The nature of the newly discovered evidence, and the reasonably diligent efforts made by the party before and during the trial to discover this evidence, must be demonstrated to the court by way of affidavit in support of the Minn. R. Civ. P. 60 motion.
- Evidence must be admissible and relevant at trial and would have likely affected the outcome of trial, not merely cumulative, contradictory, or impeaching.

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**QUESTIONS AND ANSWERS**

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**LUNCH BREAK**

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**NEUROLOGICAL AND  
NEUROPSYCHOLOGICAL  
PERSPECTIVES ON CONCUSSION IN  
AUTOMOBILE AND PERSONAL INJURY  
RELATED CLAIMS**

*Guest Speakers*  
**NATHANIEL NELSON  
DR. DONALD STARZINSKI**  
**ARTHUR CHAPMAN**  
KETTERING SMETAK & PIKALA, P.A.  
ATTORNEYS AT LAW

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## Neurological and Neuropsychological Perspectives on Concussion in Automobile and Personal Injury Related Claims

Donald Starzinski, M.D., Ph.D.  
Nathaniel Nelson, Ph.D., L.P., ABPP

Thursday September 27<sup>th</sup>, 2018

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### Neurological Perspective

- To understand the Neurological basis for injury to the brain that can result in various pathology.
- To define concussion and its related symptoms vis-à-vis its underlying pathophysiology.
- To understand the natural history of concussion; including how it is diagnosed and treated.
- To realize the implications for correctly diagnosing concussion for purposes of efficient management, i.e. proper reimbursement of services.

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### Neurology 1-001

- Complexity –  $1.5 \times 10^{10}$  cortical neurons
- Anatomy and Physiology (Structure/Function)
- Consciousness pondered throughout the ages (Spectrum of Philosophical & Biomedical Views)

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### Traumatic Brain Injury / Acquired Brain Injury

- Spectrum of Pathology / Various Causes
- Structural / Functional Abnormalities
- Common Mechanism Regardless of Cause (Functional neuro-anatomy)

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### Clinical Neuropsychology: Subdiscipline of Clinical Psychology

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### The Clinical Neuropsychologist Thumbnail Sketch

**Who** are we?

- ~80% doctoral-level Clinical/Counseling Psychologists with 2-year post-doc in Clinical Neuropsychology
- ~80% work with adults, at least for part of their practice
- ~42% institution-based, ~23% private practice, ~25% both institution/private practice, 10% post-doctoral

**What** do we do?

- ~85% clinical/administrative, 8% teaching/training, 7% research

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### The Clinical Neuropsychologist Thumbnail Sketch

**When** are we consulted (primary reasons for referral)?

- Determination of diagnosis (inpatient and outpatient)
- Treatment planning (inpatient and outpatient)
- Establish baseline of cognitive and/or psychological functioning
- Educational evaluation
- Forensic evaluation

**Where** do our referrals come from (top 8 referral sources)?

- (1) Neurology
- (2) Psychiatry
- (3) Rehabilitation
- (4) Law (Attorney)
- (5) Neurosurgery
- (6) Internal Medicine
- (7) School System
- (8) Physiatry

Adapted from: Sweet et al., 2006, 2011, 2015

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### Clinical Neuropsychology Domains of Assessment

- Hundreds of standardized neuropsychological measures available to evaluate cognitive/psychological function

**Basic Domains of Assessment:**

- Intellectual Function
- Attention/concentration
- Language
- Visual-spatial Function
- Motor Function
- Executive Function
- Learning/Memory (Visual and Auditory)
- (Personality/Emotional)
- (Effort/Motivation)

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### Top 5 Conditions Referred for Neuropsychological Evaluations\*

Rank	2005	2010	2015
1	Traumatic Brain Injury	Traumatic Brain Injury	Traumatic Brain Injury
2	ADHD	ADHD	ADHD
3	Learning Disorder	Elderly dementias	Elderly dementias
4	Elderly dementias	Learning Disorder	Seizure Disorder
5	Stroke	Other medical/neurological	Other medical/neurological

\*Includes respondents who evaluate patients across the full lifespan (i.e., pediatric and adult)

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Adapted from: Sweet et al., 2006, 2011, 2015

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### Frequency of TBI-Related Neuropsychological Evaluation

TBI Severity Assessed			
	% Mild	% Moderate	% Severe
<b>Work Setting</b>			
Institution	69	19	18
Private Practice	75	18	11
Institution/Private Practice	67	21	16
<b>Identity</b>			
Pediatric	67	19	20
Adult	71	19	15
Lifespan	69	20	15

Adapted from: Sweet, J. J., Benson, L. M., Nelson, N. W., & Moberg, P. J. (2015). The American Academy of Clinical Neuropsychology, National Academy of Neuropsychology, and Society for Clinical Neuropsychology (APA Division 40) 2015 TCN professional practice and 'salary survey': Professional practices, beliefs, and incomes of U.S. neuropsychologists. The Clinical Neuropsychologist, 29, 1069-1162.

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### Concussion

**Definition**

- American Academy of Neurology
- DSM 5

**Features / Variability**

**Natural History**

**Other causes of symptoms**

- Medical
- Psychiatric
- Pharmacological

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### Definition - American Academy of Neurology

Concussion is recognized as a clinical syndrome of biomechanically induced alteration of brain function, typically affecting memory and orientation, which may involve loss of consciousness.

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### Definition – DSM-5- Traumatic

**Diagnostic Criteria**

A. The criteria are met for major or mild neurocognitive disorder.

B. There is evidence of a Traumatic Brain Injury—that is, an impact to the head or other mechanisms of rapid movement or displacement of the brain within the skull, with one or more of the following:

1. Loss of consciousness.
2. Posttraumatic amnesia.
3. Disorientation and confusion.
4. Neurological signs (e.g. neuroimaging demonstrating injury; anew onset of seizures; a marked worsening of preexisting seizure disorder; visual field cuts; anosmia; hemiparesis).

C. The neurocognitive disorder presents immediately after the occurrence of the traumatic brain injury or immediately after recovery of consciousness and persists past the acute post-injury period.

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### Signs and Symptoms

**LOC – unresponsiveness**

**Headache**

**Dizziness – decreased balance**

**Vision changes**

**Cognitive issues**

**Sleep changes – fatigue**

**Psychiatric issues**

**Personality changes**

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### Mild TBI (Concussion): Diagnosis From Acute-Injury Parameters

Criteria	Mild	Moderate	Severe
Structural imaging	Normal*	Normal or abnormal	Normal or abnormal
Loss of Consciousness (LOC)	0 – 30 minutes	>30 minutes and < 24 hours	> 24 hours
Alteration of consciousness/mental state (AOC)	A moment up to 24 hours	>24 hours. Severity based on other criteria.	>24 hours. Severity based on other criteria.
Post-traumatic amnesia (PTA)	0-1 day	>1 and < 7 days	> 7 days
Glasgow Coma Scale (best available score in first 24 hours)	13-15	9-12	<9

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*Note. \*Indisputable evidence of positive brain MRI finding may result in assignment of mild 'complicated' TBI.*

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### Diagnostic Testing

- Clinical Exam / Historical Features
- Imaging Studies
- Functional Imaging
  - f MRI / PET / SPECT

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### Clinical Examination

- Neurology / Neuro-Psychology / Psychiatry
- Ophthalmology
- ENT
- Orthopedics

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### Management Implications

**Treatment**

- Physical
- Mental Health
- Types / Duration of treatment
- Employment Impact / Return to Work
- ADL Impact / Replacement Services

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### Holistic Approach to the Individual Patient

- Case Conceptualization in Clinical Neuropsychology

**Incorporates Information from Multiple Aspects of Patient Function:**

- > Cognitive
- > Physical and Behavioral
- > Psychological/Emotional

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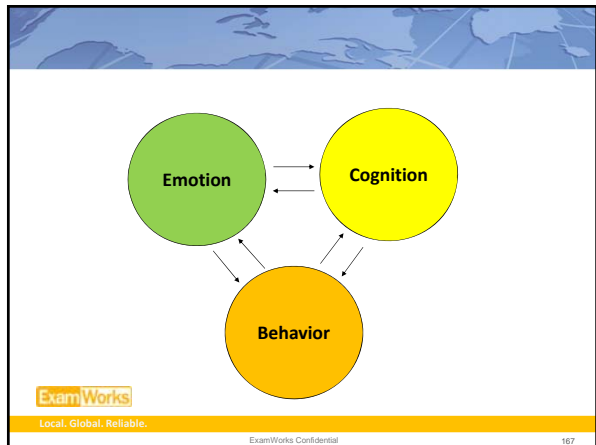
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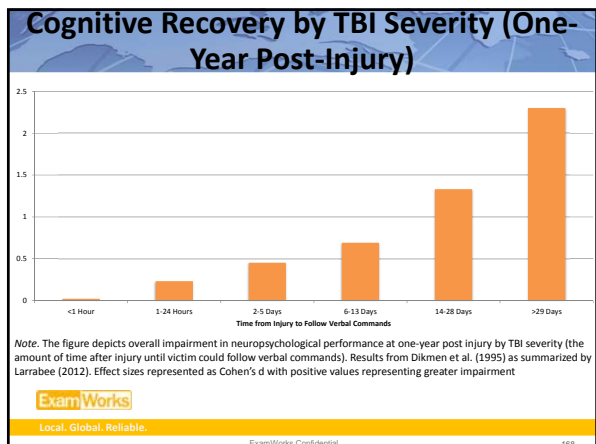
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**Summary**

- Traumatic Brain Injury – what it is.
- Concussion is a Mild Traumatic Brain Injury (mTBI)
- Difficulty of precisely identifying – the challenge.
- Onset of Symptoms and time course.
- Importance of identifying other causes of symptoms.

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**Thank You!**

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**MINNESOTA  
AUTOMOBILE LAW SEMINAR**

*Thank you for attending!*

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September 19, 2018

## Minnesota Court of Appeals gives Medicaid Beneficiaries the Benefit of the "Discount"

By Beth A. Jenson Prouty

On September 17, 2018, the Minnesota Court of Appeals issued *Getz v. Peace*, holding that medical-bill discounts negotiated for a plaintiff who is a Medicaid beneficiary cannot be used to offset damages awarded to the plaintiff. This means that if medical-bill discounts are negotiated by a managed-care organization operating under Minnesota's Prepaid Medical Assistance Program, which is funded by Medicaid, the Medicaid beneficiary can recover the amount of the negotiated discount. The *Getz v. Peace* opinion joins a body of developing case law on whether payments from a collateral source can reduce damages awarded to a plaintiff.

\* \* \* \* \*

Historically, under Minnesota's common law, an at-fault defendant had to pay the entire amount of damages awarded to a plaintiff, even if the damages had already been totally or partially satisfied from another source. In 1986, the Minnesota Legislature enacted the Collateral Source Statute, Minn. Stat. § 548.251, which allowed an award of damages to be reduced by amounts already paid to the plaintiff that fell within the statute's definition of a collateral source. The purpose of the statute was to avoid a double recovery to the plaintiff.

Relevant here, Minn. Stat. § 548.251, subd.1(2), defines a collateral source to mean:

[P]ayments related to the injury or disability in question made to the plaintiff, or on the plaintiff's behalf up to the date of the verdict, by or pursuant to:

.....

(2) health, accident and sickness, or automobile accident insurance ...; except ... payments made pursuant to the United States Social Security Act, or pension payments; (Emphasis added.)

**Private Insurer Pays Medical Bills:** In the 2010 decision of *Swanson v. Brewster*, the Minnesota Supreme Court concluded that negotiated discounts between a plaintiff's health insurer and a medical provider fall within the definition of "payments" and are thus a collateral source that offsets an award of damages. Thus, absent an exception, if the discount for medical bills is negotiated by a private insurer, an award of medical bill damages is reduced by the discount the provider obtained, leaving only the subrogation amount (the amount paid to satisfy the bill) to be awarded. The plaintiff does not get the benefit of receiving the "discounted" amount.

**Medicare or Medicaid:** Applying *Brewster*, payments from Medicare and Medicaid fall within the initial definition of a collateral source. However, the issue becomes whether they are excepted from the definition as “payments made pursuant to the United States Social Security Act.”

Medicare is a federal health insurance program, and payments by Medicare (including Medicare-negotiated discounts) are paid by the United States pursuant to the United States Social Security Act. Thus, in the 2012 decision of *Renswick v. Wenzel*, the Minnesota Court of Appeals held that payments by Medicare, including Medicare-negotiated discounts, are excepted from the definition of a collateral source because they are made “pursuant to the United States Social Security Act.” Therefore, if the discount for medical bills is negotiated by Medicare, an award of damages is not reduced. This means the Medicare-beneficiary plaintiff can recover the “discount” between the amount billed by the medical provider and the amount actually paid in satisfaction of the bill.

Medicaid, like Medicare, was enacted as part of the United States Social Security Act. However, payments by Medicaid (including Medicaid-negotiated discounts) are different from Medicare, because Medicaid is funded by both federal and state funds. Further, Minnesota’s Medicare program is administered through contracts with private-sector managed-care organizations (“MCOs”) operating under the Prepaid Medical Assistance Program, and medical bills are not paid (or negotiated) directly by Medicaid. In *Getz v. Peace*, the court of appeals held that payments (and negotiated discounts) do not have to be made directly by the state or federal government in order to be “made pursuant to the United States Social Security Act.” Rather, the determinative issue is whether Minnesota’s Medicaid program is administered in accordance with the United States Social Security Act. Concluding that Minnesota’s Medicaid program is administered in accordance with the United States Social Security Act, the court of appeals held that payments (and negotiated discounts) made by MCO’s are excepted from the definition of a collateral source. Thus, the Medicaid-beneficiary plaintiff can recover the “discount” between the amount billed by the medical provider and the amount actually paid in satisfaction of the bill.

In both *Renswick* and *Getz*, the Minnesota Court of Appeals noted that the result thwarted the intent of the Collateral Source Statute by allowing the plaintiff to receive a double recovery based on fictitious money on a debt the plaintiff never really owed. Additional public policy concerns also apply when comparing the plaintiffs who are privately insured and do not get the benefit of the “discount” with plaintiffs whose medical bills are paid/negotiated by Medicare or a Medicaid-funded insurer and receive the benefit of the “discount.” But the courts held that the statutory language is unambiguous and that if the Collateral Source Statute needs revision to embody a more sound public policy, this revision must be left to the legislature.

The members of Arthur Chapman’s [Automobile Law Group](#) stand ready to answer your questions.

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## Words Matter: When an Endorsement Modifies the Entire Policy

*By Beth A. Jensen Prouty*

The Federal District of Minnesota recently granted summary judgment and reaffirmed a foundational principle of insurance coverage:

*Terms in an endorsement do not modify the main policy form unless the endorsement expressly states an intent to do so.*

\* \* \* \* \*

The Minnesota No-Fault Act does not mandate UIM coverage for motorcycles. Thus, when a person is injured in a motorcycle accident, and does not have UIM coverage, they attempt creative arguments as to why an auto policy that insures their automobiles should also extend to provide UIM coverage for their motorcycle. These cases become particularly interesting when the motorcycle is insured through one carrier, and other automobiles with another carrier. The case law continues to unfold, and the language of endorsements is particularly important when considering if UIM coverage for a motorcycle exists in these situations.

In 2017, the Minnesota Court of Appeals decided the case of *Frauendorfer v. Meridian Security Insurance Company*. In the case, the liability policy that Frauendorfer purchased for his motorcycle did not provide UIM coverage. But Frauendorfer argued that Meridian, which insured his automobiles, should provide him with UIM coverage. The coverage analysis turned on whether a motorcycle is a “motor vehicle.” If a motorcycle is a motor vehicle, the owned-vehicle exclusion to UIM coverage excluded coverage because Frauendorfer owned the motor vehicle (the motorcycle) and did not insure it with Meridian. But if a motorcycle is *not* a motor vehicle, then UIM coverage was not excluded for the motorcycle.

The plain meaning of motor vehicle *includes* a motorcycle. But Frauendorfer argued that the policy defined “motor vehicle” and expressly excluded motorcycle from the definition of “motor vehicle.” He argued the policy’s definition of “motor vehicle” applied so that the owned-vehicle exclusion to UIM coverage did not apply.

The main policy form in the Meridian Policy did not contain a definition of motor vehicle. The UIM endorsement did not define motor vehicle. But the PIP endorsement did define “motor vehicle” – and defined it to exclude motorcycles. Frauendorfer argued this definition in the PIP endorsement was added to the main policy form and defined “motor vehicle” throughout the entire policy, including the UIM endorsement.

The Court of Appeals agreed with Frauendorfer. The court noted that the PIP endorsement stated: “The **Definition** Section is amended as follows,” and then added a definition of “motor vehicle.” The court held the fact that the word “Definition” was in bold referred the reader to a separate section of the policy – the Definition section of the main policy form. Thus, the PIP endorsement added the definition of “motor vehicle” to the definition section of the main policy form so that it would apply throughout the policy. The Meridian Policy was thus found to provide UIM coverage for the motorcycle because the owned-vehicle exclusion to UIM coverage did not apply.

For almost a year, insureds cited to the *Frauendorfer* case to argue that insurers must provide UIM coverage for motorcycles if the PIP endorsement in the policy defined “motor vehicle” to exclude motorcycles. But the July 2018 decision by the Federal District of Minnesota in *EMC v. Richards* clarified the reach of *Frauendorfer*.



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The *Richards* case involved essentially the same facts as *Frauendorfer*. But unlike the PIP endorsement in *Frauendorfer*, the PIP endorsement in the EMC Policy included only a Definitions section prefaced by the word “Definitions.” It did not indicate that the Definition section was intended to amend anything. The court held that “[w]ithout express language that the Definitions section in the PIP Endorsement is meant to modify the rest of the policy, one is left with the conclusion that the Definitions section in the PIP Endorsement applies only to the PIP Endorsement.”

*Richards* reaffirms a foundational principle of insurance coverage: “Provisions in the body of the policy are not to be abrogated, waived, limited, or modified by the provisions of an endorsement or rider unless expressly stated therein that such provisions are substituted for those in the body of the policy.”

**Moral of the Story:** The next time an insured argues a provision in an endorsement modifies the entire policy or another endorsement, look carefully to see if the endorsement indicates an express intent to apply outside of the endorsement itself. Words matter.



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*April 30, 2018*

## **IMPORTANT UPDATE REGARDING MINNESOTA NO-FAULT ARBITRATION CLAIMS AND CALENDARING**

As of June 1, 2018, the American Arbitration Association, will launch a new online scheduling system. This new online scheduling system will be available to all case participants through AAA Webfile® and Panelist eCenter®. What this means for insurance companies and insurance adjusters is that it is best to send files to our office for handling prior to the due date of the electronic calendar. If you do not send files to us to handle before the calendar due date, insurance companies and insurance adjusters/claims handlers will be required to complete the electronic calendar before the due date via the online scheduling system.

**The new online scheduling will replace the American Arbitration Association's existing paper calendar practice.**

Please contact Shayne M. Hamann, Auto and No-Fault Chair at Arthur Chapman for further questions at [szhamann@arthurchapman.com](mailto:szhamann@arthurchapman.com) or via telephone at 612-375-5996. Click [here](#) for the brochure from the American Arbitration Association which discusses the new online calendaring system that will take effect on June 1, 2018.

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# Standard Mileage Rates for 2018 Up from Rates for 2017

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IR-2017-204, Dec. 14, 2017

WASHINGTON — The Internal Revenue Service today issued the 2018 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2018, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 54.5 cents for every mile of business travel driven, up 1 cent from the rate for 2017.
- 18 cents per mile driven for medical or moving purposes, up 1 cent from the rate for 2017.
- 14 cents per mile driven in service of charitable organizations.

The business mileage rate and the medical and moving expense rates each increased 1 cent per mile from the rates for 2017. The charitable rate is set by statute and remains unchanged.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for more than four vehicles used simultaneously. These and other requirements are described in [Rev. Proc. 2010-51](#).

[Notice 2018-03](#), posted today on IRS.gov, contains the standard mileage rates, the amount a taxpayer must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that a taxpayer may use in computing the allowance under a fixed and variable rate plan.

*Page Last Reviewed or Updated: 14-Dec-2017*

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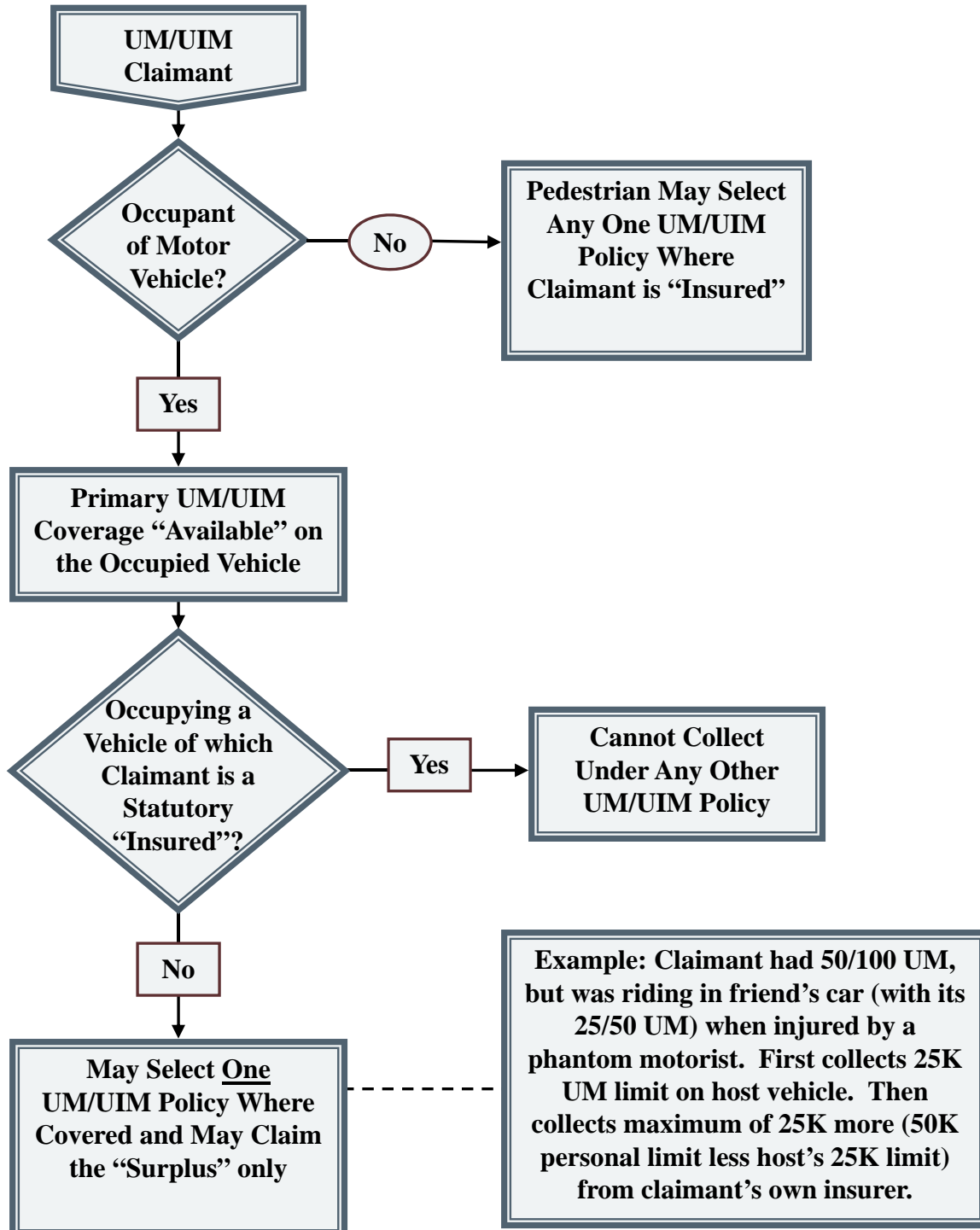
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## GENERAL RULES FOR PIP PRIORITY IN MINNESOTA

### WHO IS PRIMARY?

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

## Determining the Source of UM/UIM Coverage in Minnesota



**SAMPLE –NO-FAULT APPLICATION FOR BENEFITS**

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

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

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

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

**AFFIDAVIT OF NO INSURANCE**

I, \_\_\_\_\_, being duly sworn, make the following affidavit and state:

1. On the date of loss, \_\_\_\_\_, I resided at

\_\_\_\_\_, in the city of \_\_\_\_\_, state of \_\_\_\_\_.

2. That I do not own a currently registered motor vehicle on the date of loss.

3. That I have no motor vehicle insurance for which I am a named insured or qualify as an insured.

4. That no relative – related by blood or marriage, with whom I resided on the date of loss owned an insured motor vehicle.

5. That the following relatives resided with me on the date of loss at the address noted above.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. That I was not within the course and scope of my employment at the time of this accident.

I understand that an investigation concerning this oath will be made.

\_\_\_\_\_

Subscribed and Sworn to before me

This \_\_\_\_\_th day of \_\_\_\_\_. 20\_\_.

\_\_\_\_\_

Notary Public



**SAMPLE --DENIAL OF NO-FAULT BENEFITS LETTER**

LETTER SHOULD BE SENT TO INSURED AND ATTORNEY  
EMAIL | U.S. MAIL | CERTIFIED MAIL (HOWEVER THE COMPANY PREFERENCES)

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](mailto: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

**MINNESOTA NO-FAULT BENEFITS**  
**WAGE LOSS BENEFITS CHEAT SHEET**  
**M.S.A. 65B.44: Basic Economic Loss Benefits**

\*\*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?
  - Disability = Reduction in physical function that leads to inability to work caused by motor vehicle accident.
  - 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.
  - Is part-time or a reduced work schedule available?
  
- ✓ Does Claimant have an inability to work?
  - 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.
  - 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?
  - 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.
  - Includes salary, wages, tips, commissions, and earnings.
  - 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 reduce 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.

**MINNESOTA NO-FAULT BENEFITS**  
**REPLACEMENT/ESSENTIAL SERVICES BENEFITS CHEAT SHEET**  
**65B.44: Basic Economic Loss Benefits**

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?
  - 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?
  - Not required to be a full-time homemaker
  - Is required to show they are “primarily responsible for [service being replaced]”
  - 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?
  - Claimant must show:
    - i. out-of-pocket expense OR
    - ii. that such expense was actually incurred
    - iii. Documentation required showing what was done/incurred
  
  - 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:**

- Cross-reference claimant’s disability slips from medical records with work they claim to be unable to do
  - 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.

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**SAMPLE – PROVIDERS DENIAL BILLS**

Dated: \_\_\_\_\_

To: Medical Provider

RE: Insured:  
Claimant:  
Date of Loss:  
Claim Number:

Dear: \_\_\_\_\_:

We have received your recently submitted medical records and medical bills for \_\_\_\_\_. The records and bills were for care and treatment that occurred on \_\_\_\_\_. We did not receive these medical records and medical bills until \_\_\_\_\_. Because medical records and medical bills were not provided in a timely fashion after medical care and treatment occurred we will not be paying any of the recent medical bills provided from \_\_\_\_\_. In addition, \_\_\_\_\_'s Minnesota No-Fault benefits have been denied based upon the independent medical examination of \_\_\_\_\_.

Thank you. Please call or write with any questions.

Very truly yours,

Claims Adjuster

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**SAMPLE – PROVIDERS TIMELY BILLS**

Date: \_\_\_\_\_

To: Medical Provider

RE: Insured:  
Claimant:  
Date of Loss:  
Claim Number:

Dear: \_\_\_\_\_:

We have been informed that \_\_\_\_\_, was involved in a motor vehicle accident and is initiating care and treatment with your facility. Please be advised that we expect to receive medical records and medical bills within a timely fashion after medical care and treatment has occurred. Medical records and medical bills should be sent to \_\_\_\_\_ at \_\_\_\_\_ Insurance Company. The address and contact phone number is as follows: \_\_\_\_\_

Please be advised that medical bills must accompany medical records, as we will need both for processing payment. If medical records are not received, with the medical bills, this will further delay payment of your bill. In addition, if you do not promptly provide us with the medical records and medical bills, shortly after medical care and treatment is initiated, this may cause further issues with the No-Fault benefits available to \_\_\_\_\_.

Thank you and please advise of any questions.

Very truly yours,

Claims Adjuster



**SAMPLE –IME LETTER**

Date: \_\_\_\_\_

Doctor's Name and Address

Re: Name of Examinee: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Date of Loss: \_\_\_\_\_  
Date/examination: \_\_\_\_\_  
Our File No. \_\_\_\_\_  
My Client: \_\_\_\_\_

Dear Dr. \_\_\_\_\_:

Thank you for agreeing to perform an Independent Medical Examination of \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ time.

- I. *Summary of why person is being sent for an independent medical examination and the facts and description of the accident/incident in question.*
- II. *Description of the examinees alleged injuries, care and treatment to date and any prior issues or injuries involved in this case to date.*
- III. For your examination, I am enclosing copies of the following materials:

*List out the documents and records, medical or otherwise that you are providing to the doctor to assist with his examination of Claimant/Plaintiff/Insured.*

- IV. Questions for the independent medical examiner to answer in the No-Fault context: *Please note these questions should be asked each time. These questions get to the heart of what needs to be established when denying No-Fault benefits and additional or future benefits that may come into play.*

Please provide me with a medical report of your examination of \_\_\_\_\_ and specifically address the following matters related to \_\_\_\_\_. Please also identify which records, items and/or documents you reviewed and relied upon in formulating your opinions. Please provide a summary of said records and indicate anything else you observed about \_\_\_\_\_ before, during or after the examination which you would like to discuss.

1. What injury or injuries, if any, do you feel \_\_\_\_\_ sustained as a proximate result of the \_\_\_\_\_ (date of accident) motor vehicle accident?
2. Did \_\_\_\_\_ sustain any injury or aggravation to a prior injury or condition as a result of the \_\_\_\_\_ motor vehicle accident? If so, please describe said injury, condition or aggravation, indicate if it is temporary or permanent injury and include any objective findings



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**SAMPLE –IME LETTER**

Date: \_\_\_\_\_

Page 2

and prognosis, including any future care or diagnostic testing you deem necessary as a result of the \_\_\_\_\_ motor vehicle accident.

3. What care, treatment and diagnostics testing, if any would \_\_\_\_\_ have required relative to any claimed injuries from the \_\_\_\_\_ motor vehicle accident. Is \_\_\_\_\_ in need of any future medical care, treatment, or surgery for any alleged injuries from the \_\_\_\_\_ motor vehicle accident?

4. Do you feel that \_\_\_\_\_ is capable of performing his/her activities of daily living including social activities and household chores and tasks?

5. Is \_\_\_\_\_ capable of working full time/part-time in their capacity as a \_\_\_\_\_?

Thank you for your attention to this matter. Please feel free to contact me should you have any questions or concerns or require any additional information. Please provide your report within two weeks of the independent medical examination along with a copy of your curriculum vitae.

Very truly yours,

Claim Representative  
Enclosures – as described above

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**KEY THINGS TO REMEMBER WHEN DEALING WITH MN PIP**

**1. When Does a Claim Arise?**

- Minn. Stat. Sec. 65B.41 – 65B.71 comprise the Minnesota No-Fault Automobile Insurance Act.
- Policies of automobile insurance must comply with the requirements of the statute.

**2. Maintenance or Use of a Motor Vehicle:**

- The phrase “maintenance or use of a motor vehicle” is defined at Minn. Stat. Sec. 65B.43, subd. 3. The definition generally includes all activities incident to “use of a motor vehicle as a vehicle” and specifically mentions “occupying, entering into, and alighting from it.”
- The statute excludes (1) conduct within the course of a business of servicing or maintaining motor vehicles if the conduct is on the business premise and (2) loading and unloading a vehicle unless the conduct occurs while occupying, entering or alighting from the vehicle.
- Clear principles have been established to determine whether or not an injury arises out of the maintenance or use of a motor vehicle.
  1. There must be a causal relationship between the injury and the use of a vehicle for transportation purposes.
  2. The vehicle must be more than just the place where the injury occurs;
  3. The injury must be a natural and reasonable incident or consequence of the use of the vehicle.

*See, North River Ins. Co. v. Dairyland Ins. Co., 346 N.W.2d 109, 114 (Minn. 1994).*

**3. Exclusions to MN PIP Coverage:**

- Intentional injuries;
- Motorcycles;
- Races;

**4. Who Pays for No-Fault Benefits?**

- See the Arthur Chapman PIP flow chart / Priorities chart

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**5. What Benefits are Available?**

- Under Minn. Stat. Sec. 65B.44, basic economic loss benefits include \$20,000 for medical expenses and an additional \$20,000 for income loss, replacement services/essential services, funeral expense loss and survivor's losses.
- The Maximum amount covered for funeral benefits is \$5,000;

**6. Handling a No-Fault Claim:**

- Start-up Letter – see, our sample;
- Know the amount of coverage available to the insured;
- Application for No-Fault Benefits – see, our sample;
- Medical and Employment authorizations;
- Investigation of Claim – Property Damage Photos and Estimates;
- Social Media Investigation;
- Statements;
- Examination Under Oath;
- Obtain medical records on insured from seven years prior to motor vehicle accident up to the present time including the motor vehicle accident in question;
- Obtain employment and tax records on insured from two years prior to the motor vehicle accident up to the present time including the employer at time of the accident in question;
- Pay medical bills, when received with medical records for care and treatment that is *reasonable, necessary and causally related* to the accident in question;
- Compile medical bills paid via a PIP log;
- Monitor file for independent medical examination – use only licensed medical doctors – orthopedists/neurologists; We do not recommend chiropractic IMES.
- Deny benefits after IME/or otherwise handle results of IME report;
- Monitor file for PIP arbitration.
- *A claimant has six years from the date of denial of his/her No-Fault benefits to initiate a No-Fault arbitration or a lawsuit pertaining to reinstating PIP benefits.*

# MINNESOTA NO-FAULT ARBITRATION PROCEDURES

## Minnesota Rules of No-Fault Arbitration Procedures



AMERICAN ARBITRATION ASSOCIATION®

Available online at [adr.org](http://adr.org)

Rules Amended and Effective January 1, 2018

# Table of Contents

<b>Minnesota Rules of No-Fault Arbitration Procedures</b> .....	4
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 .....	13
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 .....	14
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 . . . . .	15
Rule 36. Release of Documents for Judicial Proceedings . . . . .	15
Rule 37. Applications to Court and Exclusion of Liability. . . . .	15
Rule 38. Confirmation, Vacation, Modification, or Correction of Award. . . . .	15
Rule 39. Administrative Fees. . . . .	16
Rule 40. Arbitrator’s Fees . . . . .	16
Rule 41. Rescheduling or Cancellation Fees . . . . .	16
Rule 42. Expenses . . . . .	16
Rule 43. Amendment or Modification . . . . .	17
<b>Appendix</b> . . . . .	<b>18</b>

# Minnesota Rules of No-Fault Arbitration Procedures



## 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 bore 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.

## Appendix

### Standards of Conduct for Minnesota No-Fault Arbitrators

#### Preamble

No-Fault Arbitrators, like judges, have the power to decide cases. Therefore, arbitrators undertake serious responsibilities to the public, as well as to the parties. In order for the system to succeed, the public must have the utmost confidence in the arbitration process and the arbitrators who serve on the No-Fault Panel. To this end, these Standards of Conduct for Minnesota No-Fault Arbitrators have been established by the No-Fault Standing Committee. The purpose of these Standards is to provide guidance in order to promote a fair, neutral, and impartial panel of arbitrators.

#### I. Integrity and Fairness

**An arbitrator shall at all times act in a manner that promotes public confidence in the integrity and impartiality of the arbitration process.**

- A. An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceedings.
- B. Arbitrators shall conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, fear of criticism or self-interest. Arbitrators shall avoid conduct and statements which give the appearance of partiality.
- C. An arbitrator shall conduct the arbitration process in a manner which advances the fair and efficient resolution of the matters submitted for decision. An arbitrator shall make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.
- D. An arbitrator who withdraws prior the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, shall take reasonable steps to protect the interests of the parties in the arbitration, including return or destruction of evidentiary materials and the protection of confidentiality.

#### II. Disclosures

**An arbitrator shall make a full and complete disclosure of any interests or relationships pursuant to Rule 10.**

- A. An arbitrator shall make all disclosures as required under Rule 10.
- B. The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires the arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are called to the arbitrator's attention, or discovered.
- C. Any doubts as to whether or not disclosure should be made shall be resolved in favor of disclosure.

### III. Communications

#### **An arbitrator shall avoid impropriety or even the appearance of impropriety in communicating with parties.**

- A. An arbitrator shall not discuss a proceeding with any party or attorney in the absence of any other party or attorney.
- B. An arbitrator shall not have any direct communication other than what is prescribed in Rule 21.
- C. If a party or attorney attempts to communicate directly with the arbitrator, the arbitrator shall notify the arbitration organization.
- D. When an arbitrator communicates in writing with one party, the arbitrator shall at the same time send a copy of the communication to every other party.

### IV. Hearing Proceedings

#### **An arbitrator shall conduct the proceedings fairly and diligently.**

- A. An arbitrator shall conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.
- B. The arbitrator shall afford to all parties the right to be heard. The arbitrator shall allow each party a fair opportunity to present evidence and arguments.
- C. If a party fails to appear after due notice, the arbitrator may proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party. Arbitrators must comply with Rule 22.
- D. An arbitrator shall not exert pressure on any party to settle or to utilize other dispute resolution processes. An arbitrator shall not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so, in writing, by all parties and their representatives.

## V. Decisions, Orders and Awards

**An arbitrator shall make decisions in a just, independent and deliberate manner.**

- A. The arbitrator shall, after careful deliberation, decide only those issues submitted for determination.
- B. An arbitrator shall decide all matters justly, exercising independent judgment, and shall not permit outside pressure or other considerations to affect the decision.
- C. An arbitrator shall not delegate the duty to decide to any other person.
- D. An arbitrator shall make a determination based on the evidence presented. An award must be supported by the evidence.

## VI. Trust and Confidentiality

**An arbitrator shall be faithful to the relationship of trust and confidentiality inherent in that office.**

- A. An arbitrator is in a relationship of trust to the parties and shall not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- B. The arbitrator shall keep confidential all matters relating to the arbitration proceedings and decision.
- C. It is improper, at any time, for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. After an arbitration award has been made, it is improper for an arbitrator to assist, in any way, in proceedings to enforce or challenge the award.

## VII. Time and Availability

**An arbitrator shall devote the time and attention to each case in order to promote efficiency.**

- A. An arbitrator shall promptly schedule and be prepared for hearings.
- B. An arbitrator shall not delay the process and shall not postpone a hearing, except for good cause.
- C. An arbitrator shall promptly file decisions of any pending issues and shall issue an award within 30 calendar days of the closure of the record.

## VIII. Arbitrator Qualifications

**An arbitrator must continue to meet the qualifications under Rule 10 in order to serve on the Minnesota No-Fault Panel.**

- A. An arbitrator shall be faithful to the law and shall maintain professional competence in it.
- B. An arbitrator shall file a timely and accurate recertification form on an annual basis.
- C. An arbitrator shall provide evidence of qualifications upon request by the arbitration organization, No-Fault Standing Committee or Minnesota Supreme Court.

## IX. Enforcement Procedures

### Preamble

No-Fault Arbitrators are given broad discretion to make decisions and oversee the No-Fault arbitration process. Therefore, in order to ensure the protection of the public, an arbitrator who violates the above Standards is subject to the procedures outlined below.

*Application:* Inclusion on the No-Fault Panel of Arbitrators is a conditional privilege, revocable for cause.

*Scope:* These procedures apply to complaints against any No-Fault Arbitrator who has been approved to serve on the No-Fault Panel by the Minnesota Supreme Court, as well as those conditionally approved by the No-Fault Standing Committee.

### A. Complaint

1. A complaint must be in writing, signed by the complainant and filed with the arbitration organization. The complaint shall identify the arbitrator and the basis for the complaint.
2. Alternatively, if the arbitration organization becomes aware of a violation of these Standards of Conduct and is unable to remedy such violation, the organization shall notify the No-Fault Standing Committee as outlined in these procedures.
3. The arbitration organization shall provide a copy of the complaint and supporting documents to the arbitrator.
4. The arbitration organization shall notify the No-Fault Standing Committee,



which will assign an investigative member or members to investigate the allegation(s).

## **B. Investigation**

1. The assigned committee member(s) will undertake such review, investigation, and action as it deems appropriate. In all such cases, the member(s) will contact the arbitrator and complainant to review the allegations and may request additional notes, records, or recollection of the arbitration process. It shall not be considered a violation of these Standards for the arbitrator to make such disclosures as part of the investigation. The member(s) may also request the arbitration organization disclose any records pertinent to the investigation.
2. Once the investigation has been completed, the member(s) will draft a written memorandum, which shall include findings, conclusions and recommendations. This memorandum will be provided to the full Committee at the next quarterly meeting.
3. If the recommendation is for removal, suspension or a public reprimand, the arbitrator shall be notified, and shall have the right to appear before the No-Fault Standing Committee prior to deliberations on the complaint.
4. The No-Fault Standing Committee shall review the memorandum and determine whether the allegation(s) constitute a violation of the Standards of Conduct, and if so, recommend what sanction(s) would be appropriate. The Committee shall select a member to draft a Notice of the Committee's decision. The decision must include the findings, conclusions, and sanctions, if any.
5. The arbitration organization shall circulate the Notice to the arbitrator and complainant.

## **C. Sanctions**

The No-Fault Standing Committee may impose sanctions, including, but not limited to:

1. Removal from the Panel with set conditions for reinstatement, if appropriate. Should the Committee determine that removal is appropriate, such recommendation will be made to the Minnesota Supreme Court.
2. Suspension for a period of time;
3. The issuance of a public reprimand. The reprimand will be posted on the arbitration organization's website, which shall include publishing the arbitrator's name, a summary of the violation, and any sanctions imposed. The public reprimand may also be published elsewhere;
4. The issuance of a private reprimand;

5. The provision of “Best Practices” Information;
6. The imposition of retraining requirements;
7. Supervision of the arbitrator’s service for a period of time by a designee of the No-Fault Standing Committee; and
8. The notification of any professional licensing authority with which the arbitrator is affiliated, of the complaint and its disposition.

#### **D. Request for Appearance**

If the recommendation by the investigative member(s) is to remove, suspend or issue a public reprimand, an arbitrator may make a written request to the arbitration organization to appear before the No-Fault Standing Committee. After the arbitrator has been notified of the recommendation, the arbitrator has 15 calendar days from the date of the notice to request an appearance.

#### **E. Confidentiality**

All files, records, and proceedings of the No-Fault Standing Committee which relate to or arise out of any complaint shall be confidential, except:

1. As between Committee members and the arbitration organization;
2. As otherwise required by law by rule or statute;

If the Committee designates a sanction as public, the sanction and the grounds for the sanction shall be of public record, but the Committee’s file shall remain confidential. Confidential documents, memoranda, and communications shall include the deliberations, mental processes, and communications of the Committee and arbitration organization.

#### **F. Immunity**

The members of No-Fault Standing Committee and the arbitration organization shall be immune from suit for any conduct in the course of their official duties.





American Arbitration Association  
*Dispute Resolution Services Worldwide*

*Minnesota Insurance Center*  
Kathryn Stifter  
Vice President

January 23, 2013

U.S. Bank Plaza, Suite 700, 200 South Sixth Street, Minneapolis, MN 55402-1092  
telephone: 612-332-6545 facsimile: 612-342-2334  
internet: <http://www.adr.org/>

Jill Smith  
ABC Insurance Company  
123 ABC Drive  
Minneapolis, MN 55402

Re: 56 600 03921 13  
Darlene Smith  
and  
ABC Insurance Company

Claim File Number: 00000000400088044  
Accident Date: February 20, 2012  
Pol#: NA Pol Hld: Dan Smith

Dear Parties:

The American Arbitration Association has received a petition for mandatory No-Fault arbitration, pursuant to M.S.A. 65B.525. Enclosed to the Respondent is a copy of the petition and itemization of claim. This case will be administered according to the Minnesota No-Fault Arbitration Rules effective October 15, 2012. The Rules can be found on our website at: [www.adr.org](http://www.adr.org).

The Claimant has requested that the hearing be held in Wayzata, MN. Absent objection from the Respondent, we will submit a list of potential arbitrators from within a 50-mile radius of the requested locale in accordance with Rule 14.

Pursuant to Rule 5(f), Respondent has thirty days to file a response to the petition. We request that two copies of the response be sent to the Association and one copy to the Claimant. Please use our case number on all correspondence to our office. Filing fees not already paid will be billed in accordance with Rule 39.

Absent notice to the contrary, we will proceed with the administration of this case sending all correspondence to the above-named addresses. If you have any questions, please call the undersigned.

Very truly yours,

Susan B. Harrow  
Senior Case Manager  
612 278-5119  
[HarrowS@adr.org](mailto:HarrowS@adr.org)

Enclosure(s)  
SBH/s



**PETITION FOR NO-FAULT ARBITRATION**

The named Claimant(s), pursuant to M.S.A. 65B.525, hereby tender(s) the following dispute arising out of a no-fault insurance policy for resolution under the Minnesota No-Fault Comprehensive or Collision Damage Automobile Insurance Arbitration Rules administered by the American Arbitration Association.

Insurance Company: ABC Insurance Company Claim # 00000000400088044  
 Street: 123 Block Road Policy# 143121431  
 City: Minneapolis State: MN Zip: 55402 Phone 877-430-1882  
 Policyholder: Dan Smith Accident Date 2-20-2012

Name(s) of Claimant(s):	Minor Y N	Total Amount Claimed
Darlene Smith	N	\$5,601.34

Hearing Locale Requested Wayzata

I affirm that the information contained herein is true to the best of my knowledge.

Date: 1/18/2013 Signed: \_\_\_\_\_  
 (Must be signed by Claimant or Claimant's Representative)

Name of Filing Party Darlene Smith Phone 651-925-9097  
 Address: 269 N. Oxford, #4 City: St. Paul State: MN Zip 55104

If an attorney will be representing you, please complete items below:  
 Attorney Shayne M. Hamann Phone 612-375-5996 Fax 612-339-7655  
 E-mail smhamann@arthurchapman.com  
 Street: 81 South Ninth Street, #500 City: Minneapolis State: MN Zip: 55402

The following must be included:

Non-refundable \$35.00 filing fee (check made payable to the American Arbitration Association).

Send to: American Arbitration Association  
 700 Pillsbury Center  
 200 South Sixth Street  
 Minneapolis, MN 55402

**ITEMIZATION OF CLAIM**

Name Darlene Smith

MEDICAL:

Shoff Chiropractic	\$5,229.34
Impact Physical Medicine	<u>372.00</u>
	\$5,601.34