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

2018 MINNESOTA NO-FAULT SEMINAR

MARCH 8, 2018 | METROPOLITAN BALLROOM – GOLDEN VALLEY, MINNESOTA

AGENDA

9:00 a.m. – 9:15 a.m. **Introductions/Welcome ~ *Shayne M. Hamann***

9:15 a.m. – 9:45 a.m. **Coverage Questions in the PIP Context and Case Law Update ~ *Stephen M. Warner and Allison V. LaFave***
Steve and Allison will discuss various coverage scenarios when dealing with Minnesota Personal Injury Protection benefits including a detailed dive into 'maintenance and use' issues to keep in mind when adjusting claims with examples. They will also cover the practical implications of recent decisions of Minnesota courts that may impact PIP coverage.

9:45 a.m. – 10:15 a.m. **What is a Motor Vehicle for No-Fault Coverage ~ *Shayne M. Hamann and Stephen M. Warner***
Buckle up for a white-knuckle ride to the outer limits of the definition of "motor vehicle". If a vehicle has wheels (and sometimes even when it does not) there has probably been a claim for No-Fault benefits related to it. Shayne and Steve will offer examples, tips and techniques for identifying where the boundaries of No-Fault coverage lie.

10:15 a.m. – 10:30 a.m. **Refreshment Break**

10:30 a.m. – 11:00 a.m. **Coordination of No-Fault Benefits with Workers' Compensation, Short-Term Disability, and Other Benefits. ~ *Gregory J. Duncan and William J. McNulty***
Will and Greg will discuss the interplay between workers' compensation, short-term disability benefits and No-Fault benefits. Included in this discussion will be issues of priority and coordination of benefits and remedies when No-Fault benefits are paid and how to maximize recovery in these scenarios. They will provide some practical examples of common scenarios and provide claim handling suggestions.

11:00 a.m. – 11:30 a.m. **Important Issues You Need to Know Pertaining to Uber and Lyft and PIP Priorities ~ *Gregory J. Duncan and Allison V. LaFave***
Greg and Allison will discuss unique insurance coverage issues pertaining to the popular Uber and Lyft phone applications. They will also comment on priority of PIP coverages and run through several interactive scenarios.

11:30 a.m. – 12:00 p.m. **File Handling/Fraud/EUO's/No-Fault Arbitration Update ~ *Shayne M. Hamann and William J. McNulty***
Shayne and Will are going to discuss tips and techniques that claims professionals can incorporate to best prepare for No-Fault arbitration, including when to request an independent medical examination, when to issue a suspension of benefits letter or reservation of rights letter and how and when to deny No-Fault benefits. They will discuss situations that warrant an examination under oath and what to look out for with respect to fraudulent claims or medical treatment. Finally, they will discuss recent trends and tactics that claimants are utilizing at No-Fault arbitration and how to combat those tactics.

See reverse for continued agenda…

12:00 p.m. – 1:00 p.m. **Lunch**

1:00 p.m. – 2:00 p.m. **The 411 on Minnesota Chiropractic Care**
Jesse Ternus, D.C., ExamWorks ~ Guest Speaker
Chiropractor Jesse Ternus will discuss and describe the various types of chiropractic treatment and the various modalities used by chiropractors. He will also discuss the benefits and drawbacks of each type of treatment, how long treatment should last and the reasonable cost of each type of treatment. Jesse will also discuss the tell-tale signs of excessive chiropractic treatment following a motor vehicle accident and when to determine that a second opinion or referral to an orthopedist or neurologist is really necessary for an injured individual. Come ready with questions for Chiropractor Ternus pertaining to Minnesota chiropractic care and your No-Fault cases.

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

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Jesse M. Ternus, D.C
Curriculum Vitae

PRESENT POSITIONS

Dr. Ternus currently holds the following positions:

Back Into Life Chiropractic – President (1999-Present)

The leading health professionals at Back Into Life Chiropractic are dedicated to helping achieve wellness objectives combining skill and expertise that spans the entire chiropractic wellness spectrum. Dr. Jesse Ternus is committed to bringing better health and a better way of life by teaching and practicing the true principles of chiropractic wellness care.

Patients seeking treatment at Back Into Life Chiropractic with Dr. Jesse Ternus are assured of receiving only the finest quality care through the use of modern chiropractic equipment and technology.

Achieve Healthcare – President (2008-Present)

Achieve Healthcare, PA is a Minnesota PCA Choice Provider Agency that offers services to persons who need help with day-to-day activities allowing them to be more independent in their own home and community. Achieve Healthcare allows eligible recipients to be responsible for hiring, training, supervising and terminating their own PCA staff rather than obtaining staff through an agency.

EDUCATION

Northwestern College of Chiropractic (1996-1999)
Graduated and licensed in the state of Minnesota as *Doctor of Chiropractic* in 1999. Highly trained in biomechanical analysis, orthopedic and neurological assessment, anatomy, physiology, x-ray analysis and interpretation, nutrition, and a broad range of physical therapeutic techniques.

University of Minnesota – Duluth (1992-1996)
Graduated with a Bachelor of Science degree in biology and chemistry.

CERTIFICATIONS

Sole Supports - The Bottom Block (2006-Present)
Advanced clinical training in biomechanics and orthotics. Certified in the use of Sole Supports Gait-Referenced Casting Technology (License # 3863).

Certified Drug Screening Professional (CDSP) (2005-Present)
Successful accomplishment of training and demonstrating proficiency in the examination process for collection of urine specimens as prescribed according to the Federal Guidelines of 49 CFR Part 40 (Registrar # DIP-010).

Certified Alcohol Screening Professional (CASP) (2005-Present)
Successful accomplishment of training and demonstrating proficiency in the examination process for performing non-evidential alcohol screenings as prescribed according to the Federal Guidelines of 49 CFR Part 40 (Registrar # STT-DIP-004).

First Responder (1999-Present)
First Responder No. 505832

MEMBERSHIPS / ORGANIZATIONS / AFFILIATIONS

Affordable Management Consulting (AMC)
Member

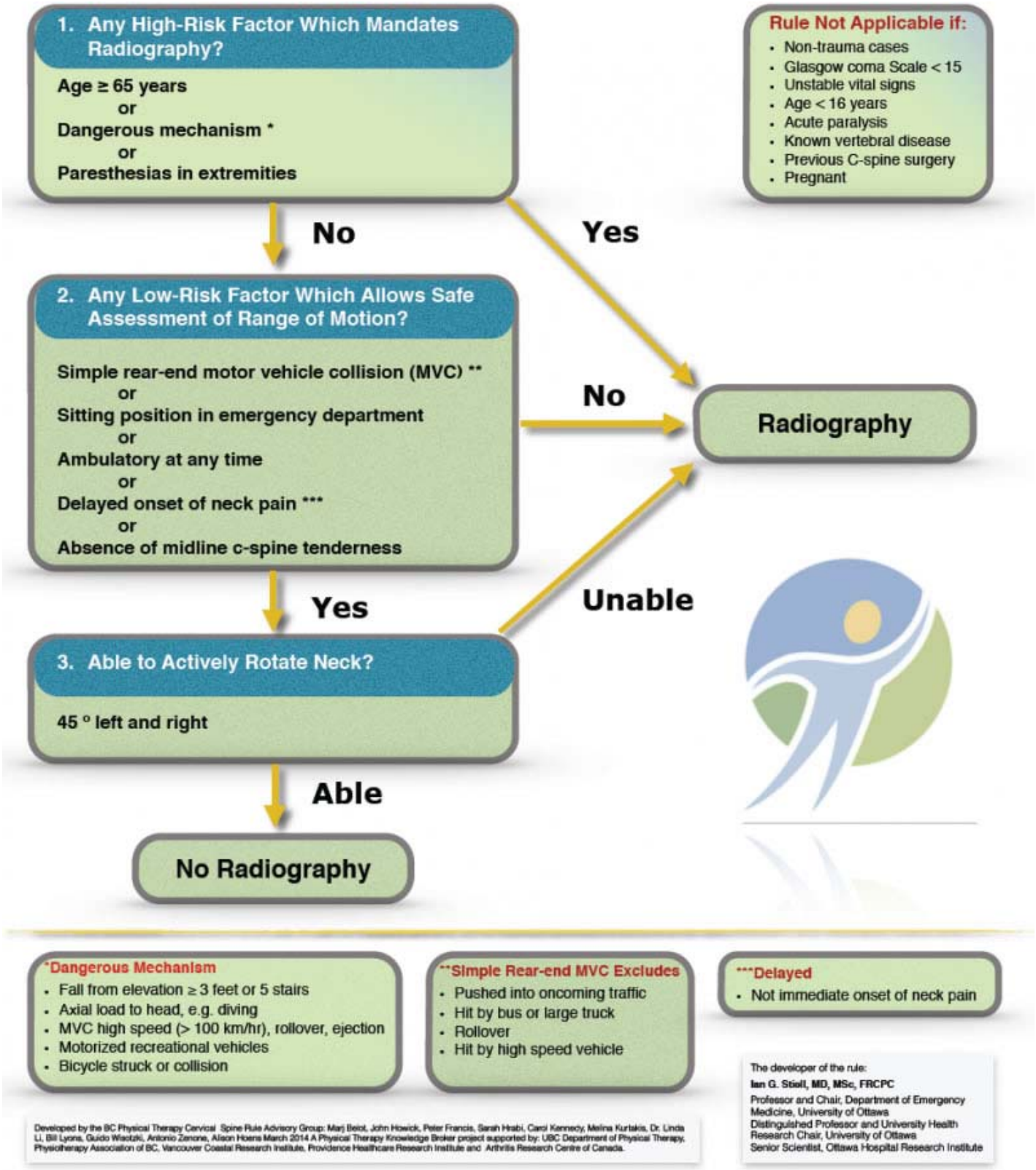
Associate Clinical Faculty of Northwestern Health Sciences University
Community Based Internship Program

Firefighter
Retired firefighter providing 10 years of service to the city of Ramsey, Minnesota's fire department and community.

The Masters Circle
Member

The Rotary Club of Ramsey, Minnesota
Member and participant of local and international service projects.

Canadian Spine Rule



Selected Physicians from the ExamWorks Medical Panel

Minnesota

Allergy
Phillip Halverson, MD
Scott Nicholas, MD

Audiology
Steven Chargo, MA/CCC-A

Cardiology
David Berman, MD
Richard Brody, MD
Thomas Davis, MD (File Review Only)

Chiropractic
Tom Boisen, DC*
Brian Garrity, DC
Michael Kohout, DC*
Perry Kranz, DC*
Susan Kranz, DC*
Dana Martin, DC
Michael Novak, DC*
Jesse Ternus, DC*
Thomas Triden, DC*
John Wildenauer, DC*
Sarah Yackley-Ploeger, DC

Colorectal Surgery
Isaac Felemovicius, MD

Dermatology
Steven Prawer, MD
Elyse Scheuer, MD
Erin Warshaw, MD

Ear, Nose & Throat
Thomas Ayre, MD
Barry Kimberley, MD
Philip Rapport, MD
Robert Silver, MD

Emergency Medicine
Mary Carr, MD (File Review Only)
Rocklin Shir, MD
James Sturm, MD
Andrew Topliff, MD
Randal Wojciehoski, DO, DPM*

Gastroenterology
Daniel McKee, MD*

General Surgery
Jon Gayken, MD
John Shearen, MD
James Sturm, MD

Hand Surgery
William Call, MD
L.T. Donovan, DO
Charles Hartz, MD*
Steven Meletiou, MD
Stephen Olmsted, MD
Thomas Walsh, MD

Hematology
Anna Schorer, MD

Infectious Disease
Peter Bornstein, MD (File Review Only)
Elliot Francke, MD
Gary Kravitz, MD

Internal Medicine
Patrick Arndt, MD
Beth Baker, MD, MPH
Merlin Brown, MD*
Elliot Francke, MD
Jared Frazin, MD
Philip Halverson, MD
Guilford Hartley, MD
Neil Hoffman, MD
Daniel McKee, MD*
Anna Schorer, MD
Ronald Vessey, MD
Randal Wojciehoski, DO, DPM*

Life Care Planning
Nancy Mitchell, OTR/L, CLCP, ATP, FIALCP

Nephrology
Jonathan Tolins, MD

Neurology
Rajiv Aggarwal, MD
Ansar Ahmed, MD*
James R. Allen, MD*
Irfan Altafullah, MD
Ivan Brodsky, MD
Joseph Burgarino, MD*

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Jack Hubbard, MD
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Appellate Litigation

We are the Arthur Chapman appellate practice group. And we know appeals.

No matter what happened in earlier litigation, knowing what it takes to win on appeal requires a special blend of talent and appellate experience. Our appellate team has both, in spades. Clients who trust us with their appeal will appreciate the intelligence, creativity, and dedication to securing the win that we bring to every appeal. They will further appreciate the benefits that come from having in their corner a team of experienced appellate attorneys. And that we are. Collectively, our team regularly appears before the Minnesota Court of Appeals, the Minnesota Supreme Court, the Eighth Circuit Court of Appeals, and the Minnesota Workers' Compensation Court of Appeals. We include former clerks of Minnesota's Court of Appeals and Supreme Court. And we know what it takes to win on appeal, whether that requires defending the decisions that came before, or reversing them.

Let us show you what our talent and experience can do for your appeal.

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Chair
Markowitz, Jeffrey M.
Co-Chair

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Florea, Adina R.
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LaFave, Allison V.
Schubert, Noelle L.
Seaborg, Colin S.
Tuft, Christine L.

2018 Minnesota No-Fault Law Seminar

March 8, 2018

Arthur Chapman
Kettering Smetak & Pikala, P.A.
Attorneys at Law

Agenda

I. Coverage Questions in the PIP Context and No-Fault Case Law Update
II. What is a Motor Vehicle for No-Fault Coverage
III. Coordination of No-Fault Benefits with Workers' Compensation, Short-Term Disability, and Other Benefits
IV. Important Issues You Need to Know Pertaining to Uber and Lyft and PIP Priorities
V. No-Fault File Handling/Fraud/EUO's/No-Fault Arbitration Update
VI. The 411 on Minnesota Chiropractic Care, *Guest Speaker Jesse Ternus, D.C., ExamWorks*

Coverage Questions in the PIP Context – "Maintenance and Use"

Stephen M. Warner
Allison V. LaFave

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Common Coverage Issues

- Maintenance and use?
- Motor vehicle involved?
- Did an accident occur?

What is "Maintenance and Use"

Minn. Stat. § 65B.43, subd. 3:

- Includes all activities incident to "use of a motor vehicle as a vehicle" and specifically mentions "occupying, entering into, and alighting from it."
- Excludes :
  - conduct within the course of a business of servicing or maintaining motor vehicles if the conduct is on the business premises; and
  - loading and unloading a vehicle unless the conduct occurs while occupying, entering or alighting from the vehicle.

Principles to Determine Whether or Not an Injury Arises Out Of the Maintenance or Use

- Must be a causal relationship between the injury and use of vehicle for transportation purposes (active accessory).
- Vehicle must be more than just place where injury occurs (mere situs).
- Injury must be natural and reasonable incident or consequence of use of the vehicle.

Klug Test

1) Consider the extent of causation between automobile and injury;
2) If sufficient causation, did act of independent significance break causal link;
3) Whether motor vehicle was being used for transportation purposes.

Gun Shot Cases

- Accidental discharge of handgun inside car injures person who is in process of getting into car.
- Following routine traffic stop, individual shot by police officer while getting out of van.
- Thief leaving scene of holdup shoots driver of van as thief tries to carjack van.

Gun Shot Cases *Continued*

- Woman's boyfriend chases her, tries to ram her car, then shoots her.
- While driving, operator of pickup truck tries to disentangle his dog from shotgun on floor. Gun goes off, passenger is injured.

Assault Cases

- Two men, who accuse each other of driving improperly, come to a stop light in their respective cars. One gets out and punches the other in the nose through an open window of the car.
- Woman injured while being robbed at gunpoint in her car.
- Man is in a fight, is pushed into a passing car, falls, and is run over.

Loading and Unloading Cases

- Garbage man injured when dumpster falls from a garbage truck.
- In consolidated cases, three individuals are injured while unloading trucks. Two individuals are hurt while lifting things inside the truck. The third person is hurt when the cable on the door of a trailer breaks causing him to fall.
- A truck driver slips in oil on the truck trailer when unloading his truck.

Loading and Unloading Cases *Continued*

- A can filled with gasoline is stored inside the trunk of a car. When the trunk of the car is opened, sparks from faulty wiring cause the trunk to catch fire. To prevent an explosion at the gasoline station where the car is parked, an individual tries to remove the gas can from the trunk. Gasoline spills, and the individual is badly burned.
- A pickup equipped with a "topper" is used on a camping trip. A kayak is loaded on top of the vehicle. One of the people on the trip tries to enter the "topper" in order to get a beer. The door of the topper catches on an elastic rope holding the kayak in place. The rope snaps off, injuring the man's eye.

Slip and Fall Cases

- Individual on icy street injured while attempting to avoid oncoming vehicle, which does not hit her.
- Woman got out of rear passenger door after car was parked on an icy street. She was trying to steady herself by leaning on the car as she walked around it. She fell on the ice.

Fire/Carbon Monoxide

- Car in garage leaking gas. When garage door opener was used, fumes from the gasoline were ignited.
- Five-year-old left alone in front seat of family vehicle is burned while playing with matches.
- Husband parks car in attached garage, forgets to turn off engine. Husband and wife are killed by CO.

People Not Occupying Motor Vehicles

- Woman gets car got stuck in snowbank about 100 yards from her apartment in subzero weather. Falls and takes half hour to crawl home. Suffers frostbite, which leads to the amputation of some fingers.
- Man taking down dead tree on his property. Ties one end of rope to tree and other end to trailer hitch on pickup, which he parks in street with hazards on. Approaching motorcyclist goes around pickup, then sees rope and loses control of the motorcycle.

Case Law Update: Minn. Stat. 62Q.75

Western National Insurance Company v. Nguyen, 902 N.W.2d 645

- Minnesota Court of Appeals – September 2017
- Supreme Court heard oral argument on March 5, 2018

Facts

- January 2011 accident leads to No-Fault claim.
- May 2012, No-Fault arbitrator denies Nguyen's claim in its entirety based on IME.
- February 2014, Nguyen begins treating at Center for Diagnostic Imaging (CDI).
  - CDI submitted a single bill to Western National for one of Nguyen's first visits.
  - Nguyen continued treating with CDI, but CDI did not submit any additional bills to Western National.
  - When Nguyen finished treatment with CDI near the end of 2014, his treatment charges exceeded $10,000.

Facts *Continued*

- April 2016, Nguyen files for No-Fault arbitration, seeking payment of the CDI bills.
- Western National asserts Minn. Stat 62Q.75, subd. 3 as a defense to the claim.
- Different arbitrator awards $11,695.23. Insurer moves to vacate.

Minn. Stat. 62Q.75: Prompt Payment Statute

- Health care providers and specified facilities must submit their charges within **six months** of the date of service.
- No reimbursement if charges not submitted within six months.
- Subdivision applies to all health care providers and facilities that submit charges … to reparation obligors (No-Fault carriers) for treatment of an injury under chapter 65B.

Court of Appeals Holding

- Statute's prompt-payment section applies to health-care providers seeking reimbursement from No-Fault insurers;
- Failure to comply with statute's prompt-payment section precluded provider from collecting those charges **from either No-Fault insurer or the insured**.

Takeaways

- Win for both PIP carriers and claimants.
- Could facilitate closure and/or resolution of stale claims.
- Cynical take: may motivate resumption of treatment.

Bad Faith Claims

- Bad Faith statute does not apply to arbitrated No-Fault claims.
- Seeing rise in litigated No-Fault claims.
- Plaintiff's bar using threat of bad faith claims for leverage, and to justify discovery.
- Good IME becomes even more critical – fairly debatable standard.

Civil Forfeiture

Briles v. 2013 GMC Terrain

- Not PIP-related, but brand new (2/14/18)
- Supreme Court holds that civil forfeiture of vehicle after DWI does not include proceeds of insurance policy covering vehicle.
- *See* eblast

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What is a Motor Vehicle for No-Fault Coverage

Shayne M. Hamann
Stephen M. Warner

Arthur Chapman
Kettering Smetak & Pikala, P.A.
Attorneys at Law

Definition of "Motor Vehicle"

Minn. Stat. § 65B.43, subd. 2:

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

Two Key Requirements To Be A "Motor Vehicle"

1. Required to be registered pursuant to Chapter 168;
2. Designed for use primarily on public roads, highways or streets.

Secondary Requirements To Be A "Motor Vehicle"

- Self-propelled by engine or motor.
- Transportation of persons or property.
- Will technology make these more important?
  - Autonomous vehicles
  - New propulsion designs

Motor Vehicle?

Farm Tractor as Motor Vehicle

Kastning v. State Farm Ins. Cos., 821 N.W.2d 621 (Minn. App. 2012)

- Farm tractor **not** "motor vehicle"
- Not subject to registration – farm vehicles specifically exempt (Minn. Stat. § 168.012, subd. 2)
- Not designed to be operated primarily on highways, even though it could be
  - no headlights, brake lights, signal lights, mirrors or horn and could only reach 30 m.p.h.

Motor Vehicle?

Road Construction Machinery as Motor Vehicle

- Designed primarily for use on roads? YES
- "Special mobile equipment" under Minn. Stat. § 168.002, subd. 31.
- "Special mobile equipment" is exempt from registration (§ 168.012, subd. 3).
- Also not designed for transportation of persons or property.

Motor Vehicle?

What About Now?

Trailer As Motor Vehicle

- Definition of "motor vehicle" includes trailer

BUT

- Only when connected to or towed by a "motor vehicle"
- So if towed by something that is not a "motor vehicle," trailer also **not** a "motor vehicle"

Motor Vehicle?

Snowmobile as Motor Vehicle

United Fin. Cas. Co. v. Nelson, 2015 WL 2373428 (D.Minn. May 18, 2015)

- Not Motor Vehicle because:
  - Exempt from registration under Ch. 168 (Minn. Stat. § 168.012, subd. 3).
- Not designed primarily for use on roads.
- **However**, court suggested legislature consider including snowmobiles as "motor vehicles."

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Motor Vehicle?

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Golf Cart As Motor Vehicle

Subject to registration under Chap. 168?

- If operated under permit and on designated roadways, golf carts are exempt from registration (§ 168.012, subd. 3a).
- If not operated under permit, can't legally be on roads at all – and don't have to be registered.

Golf Cart as Motor Vehicle

Designed primarily for use on public roads?

- Owner's manual is key – most manuals specifically state golf cart is designed for **off-road** use.
- Most golf carts are not street legal (i.e., no seatbelts, turn signals, air bags, doors and other safety features).

Permit to Operate Golf Cart or ATV on Public Roads or Streets

Minn. Stat. § 169.045

- Allows local govt. entities to pass ordinances for operation on streets by permit.
- Dawn to dusk only, unless outfitted with lights/safety equipment.
- Designated streets only
- Insurance required – liability only (motorcycle coverage).
- Can buy No-Fault too through Minn. Automobile Insurance Plan.

Moped – Is This a Motor Vehicle?

Moped – Scooter

Things to obtain about the moped

- Year, make and model
- Size of engine (cubic centimeter engine)
- Maximum speed of the moped/scooter

Moped – Scooter

- Claim submitted under automobile policy, not moped/scooter policy.
- Definition in insurance policy of motor vehicle ". . . Means every vehicle, other than a motorcycle or other vehicle with fewer than four wheels:"
  a) is required to be registered pursuant to Minnesota Statutes, Chapter 168; and
  b) is designed to be self-propelled by an engine or motor for use primarily upon public roads, highways, or streets in the transportation of persons or property and includes a trailer with one or more wheels, when the trailer is connected to or being towed by a motor vehicle.
- Exclusions - To bodily injury sustained by any person while occupying a motorcycle.

Moped – Scooter

Insurer denied plaintiff's claim for both PIP and UIM benefits under the insurance policy.

Moped – Scooter

- Plaintiff was not entitled to MN No-Fault benefits under the MN No-Fault Act because he was operating a "motorcycle" he owned when the accident occurred.
- Automobile policy excluded No-Fault benefits to anyone occupying a motorcycle.

Motorcycle Definition in the No-Fault Act

- "Motorcycle" means a self-propelled vehicle designed to travel on fewer than four wheels which has an engine rated at greater than five horsepower, and includes . . . (2) a motorized bicycle as defined in section 169.011, subdivision 45, but does not include an electric-assisted bicycle. . .
- Moped was not a motorcycle, but fit the definition of a motorized bicycle and thus MN No-Fault benefits are excluded.

Arctic Cat HDX ATV – Is This a Motor Vehicle?

No-Fault Definition in Insurance policy

"Motor Vehicle" means every vehicle which is:

1. Required by the MN Statutes to be registered; and 2. Designed to be self-propelled by an engine or motor for use primarily upon: (a) public roads; (b) highways; or (c) streets.

Definition not met for No-Fault purposes under the policy.

Arctic Cat HDX ATV - Is This a Motor Vehicle?

UIM Definition of Motor Vehicle

> "Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a bodily injury liability bond or policy applies at the time of the accident . .

Broader definition, in the UIM portion of the policy, than that of the No-Fault portion of the policy

Arctic Cat HDX ATV - Is This a Motor Vehicle?

Arctic Cat HDX ATV - Is This a Motor Vehicle?

Arctic Cat HDX ATV - Is This a Motor Vehicle?

Arctic Cat HDX ATV - Is This a Motor Vehicle?

- Vehicle registered and had a valid MN license plate (state requires vehicle to be registered). ATV's classification allows it to be driven on county and township roads; no city ordinances which prohibited the ATV from being driven within town; not likely to be driven on highways though; Did not meet the definition in the policy for No-Fault benefits; Definition was broader in the UIM portion of the policy so UIM coverage was afforded - "Underinsured motor vehicle" means a land motor vehicle or trailer of any type.
- Too broad of a definition, in the insurance policy so, UIM benefits were extended.
- Different definition of motor vehicle in No-Fault and UIM portions of the same automobile policy.

March 8, 2018 2018 Minnesota No-Fault Seminar 53

Pedestrians

- Sleds; 
- Hoverboards; 
- Bicycles; 
- Skateboards 

**Individuals on the above items would be treated as pedestrians and No-Fault benefits would apply.

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Contact

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Coordination of No-Fault Benefits with Workers' Compensation, Short-Term Disability, and Other Benefits

William J. McNulty
Gregory J. Duncan

Arthur Chapman
Kettering Smetak & Pikala, P.A.
Attorneys at Law

Coordination of No-Fault Benefits with Other Health Benefits

Generally, No-Fault benefits are the primary health benefit available to an individual involved in a motor vehicle accident.

- Main Exception – when workers' compensation benefits are available and primary over No-Fault.
  - Minn. Stat. § 65B.61, Subd. 1.

Motor Vehicle Accident in the Course and Scope of Employment

Rarely see a No-Fault claim in this situation because workers' compensation will generally accept the claim.

- Workers' compensation may deny claim for any number of reasons pursuant to the Minnesota Workers' Compensation Act. Example – personal errand exception.
- Be ready if you are the No-Fault carrier.

Motor Vehicle Accident in the Course and Scope of Employment

If workers' compensation denies claim.

- No-Fault must provide coverage for the employee/insured's medical treatment and wage loss.
  - So long as the claim would be compensable under the No-Fault policy but for the fact that the employee is in the course and scope of his/her employment.
- Remedies
  - Intervene in the workers' compensation action.

Motor Vehicle Accident in the Course and Scope of Employment

Intervention in the workers' compensation action

- If the injuries are more than minor chances are that the employee will start an action in the workers' compensation courts (OAH).
- A No-Fault carrier should be provided notice of the workers' compensation action and be afforded an opportunity to intervene in that action.

Motor Vehicle Accident in the Course and Scope of Employment

Motion/Application to Intervene

Mail or fax to:
P.O. Box 64221
St. Paul, MN 55164-0221
Fax: (651) 284-5731

State of Minnesota
Office of Administrative Hearings
Workers' Compensation Division
(651) 361-7900

MO0001
DO NOT USE THIS SPACE

WID number
468-96-5434
Date(s) of claimed injury
05/20/2010
Employee
DENNIS HANSEN
vs.
Employer(s)
LAUKKA MANAGEMENT, INC
and
Insurer(s)
MEADOWBROOK INS. GROUP, TBG
CLAIM SERVICES
and

Motion/Application to Intervene

Print in ink or type.
Enter dates in MM/DD/YYYY format.

1. The applicant is filing this Motion to Intervene in the following dispute(s):
   Claim Petition dated 05/24/2016 Rehabilitation Request dated
   Medical Request dated Request for Formal Hearing dated
2. The applicant, Auto-Owners Insurance Co. (name of entity filing this Motion to Intervene), has provided services or paid benefits to or on behalf of the employee, and has a statutory right to intervene under Minnesota Statutes section 176.361.
3. Attached to this Motion to Intervene is an Exhibit(s) itemizing the charges for services provided or payments made to or on behalf of the employee by the applicant from 05/21/2010 (date) to 10/03/2013 (date). The claim to-date is $4,268.57. Upon request of a party or to present evidence of the intervention claim at hearing, the applicant acknowledges that it will provide additional documentation, records and reports as required by law.
4. A determination in this case may affect the ability of the applicant to obtain payment from any source for the services provided or payments made to or on behalf of the employee as itemized in the attached Exhibit(s).
5. The applicant's representative WILLIAM J. MCNULTY (print name and title), can be contacted at (612) 376-5839 (phone number).
6. **This statement applies only to proceedings that may be scheduled at the Office of Administrative Hearings (OAH).** The applicant elects to attend all settlement conferences, pretrial conferences and other prehearing conferences **by telephone**, and will be available during the scheduled conferences at the above telephone number. The applicant acknowledges that electing to attend **by telephone** any settlement conference, pretrial conference, other prehearing conference, or a hearing at OAH, requires the applicant to comply with the OAH Standing Order Regarding Intervention, dated August 26, 2015 (available on the OAH website). The applicant also acknowledges that it has a right to appear in person at any scheduled OAH proceeding.

Therefore, the applicant requests it be allowed to intervene as a party in the above-captioned proceeding and that payment for services provided or benefits paid be made, plus appropriate statutory interest.

Dated: Sept 19 2016
Signature of applicant or representative
Printed name and title
WILLIAM MCNULTY, ATTORNEY
Mailing address
81 S 9TH ST, SUITE 500
Email address
wjmcnulty@arthurchapman.com
City
MINNEAPOLIS
State
MN
ZIP code
55402
Telephone

MN MO0001 (8/15)

Motor Vehicle Accident in the Course and Scope of Employment

Must file this within 60 days of receipt of Notice of Right to Intervene, or within 30 days of receipt of a Notice of an administrative conference or notice of expedited hearing.

- Failure to intervene can extinguish your right of reimbursement.

Motor Vehicle Accident in the Course and Scope of Employment

Once No-Fault has successfully intervened

- Provided notice of all hearings.
- Right to attend hearings and make arguments.
- You will be included in settlement discussions
  - If settlement discussions take place No-Fault will usually be asked to take a "haircut" to facilitate settlement.
  - If case goes to trial and employee wins then No-Fault should receive 100% reimbursement plus interest.

Motor Vehicle Accident in the Course and Scope of Employment

Coordination of benefits

- Certain scenarios exist where no-fault will provide benefits above and beyond what is available under the Workers' Compensation Act.
  - High Wage Earner
  - Medical treatment above and beyond that provided in treatment parameters under the Work Comp Act.
- No right of reimbursement from work comp carrier in this situation.
- But traditional right of subrogation/indemnity if applicable.

Motor Vehicle Accident and Other Insurance Pays Bills

If a health insurer pays for medical care when No-Fault should have paid, what are insurer's remedies?

- Generally have to note whether injuries arose out of an automobile accident or work accident when seek any medical treatment.

Motor Vehicle Accident and Other Insurance Pays Bills

If health insurer erroneously/accident pays

- It has a right of reimbursement against the No-Fault benefits.
- What about the discount that health insurance took?
- No-Fault does not get to take a discount, but other health insurance programs do.

Gratuitous Payment of Medical Expenses

- Occasionally an insurer is faced with a claim for reimbursement of medical expenses that the claimant never actually paid or incurred.
- Minn. Stat. § 65B.44 requires the No-Fault insurer to "reimburse" the injured claimant for all allowable expenses.
- What happens when there is no out-of-pocket exposure to the claimant?
- In-home nursing services provided by insured's wife were not compensable under No-Fault Act when insured was not obligated to pay for those services. *Great W. Cas. Co. v. Kroning*, 511 N.W.2d 32 (Minn. Ct. App. 1994).

Gratuitous Payments *continued*

Additional case example:

- Single car fatal accident in which passenger injured.
- Passenger gets plastic surgery on indent disfigurement injury.
- Decedent's father pays the bills for surgery.
- Claimant files arbitration claim saying bills were incurred and No-Fault insurer cannot coordinate benefits and must pay.
- Claim denied based on *Kroning* and lack of evidence that Claimant needed to repay Decedent's father.

Coordination of Benefits – Workers' Compensation Settlement

If employee is driving employer-furnished vehicle and that employer has workers' compensation and commercial automobile insurance through same insurer.

- Employee settles workers' compensation claim and then seeks No-Fault benefits.
- No-Fault carrier can assert that prior workers' compensation settlement bars the No-Fault claim.

Coordination of Benefits – Workers' Compensation Settlement

not limited to, visits/treatment with medical doctors, hospitalization, surgery, medication, chiropractic, osteopathic, pain clinic (whether inpatient or outpatient), pain syndrome treatment, pain rehabilitation treatment, cannabis treatment or medications, narcotic medications, psychiatric, psychological, mental health treatment and counseling, psychotropic medications, health club membership, home exercise equipment, durable medical equipment, massage therapy, acupuncture, acupressure, and expense and mileage. **This is a full, final and complete settlement against Employer and Insurer without exception and including any and all future medical benefits.**

Coordination of Benefits – Workers' Compensation Settlement

American Family Ins. Group v. Undermann, 631 N.W.2d 424 (Minn. App. 2001) To the extent that the No-Fault Act and the Workers' Compensation Act provide for compensation for personal injuries arising from motor vehicle accident, the two acts are in *pari materia* and must be construed together.

Claims Against the Wrong Insurer – Subrogation

Where a PIP insurer pays basic economic loss benefits which another reparation obligor is obligated to pay under the priority scheme, the reparation obligor that pays is subrogated to all rights of the Minn. Stat. § 65B.47, Subd. 6 person to whom benefits are paid.

Claims Against the Wrong Insurer - Claimant Remedy

Minn. Stat. § 65B.66: If a timely action for economic loss benefits is commenced against a an insurer and benefits are denied because of a determination that the obligor's coverage is not applicable to the claimant under priority scheme of 65B.47, a claim against a proper obligor or assigned claims plan may be made not later than 90 days after such determination becomes final or the last date on which the action could otherwise have been commenced, whichever is later.

Contact

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Gregory J. Duncan

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Important Issues You Need to Know Pertaining to PIP Priorities and Uber and Lyft Review

Gregory J. Duncan

Allison V. LaFave

Arthur Chapman

Kettering Smetak & Pikala, P.A.

Attorneys at Law

Priority Issues (Who Pays?)

- General Rule
- Accidents involving Personal Vehicles
  - Submit claim to policy under which you are a statutorily defined insured.
  - If not an "insured" under any policy, then submit claim to policy covering the occupied vehicle.
  - If not an "insured" under any policy and not occupying a vehicle, then submit claim to any policy covering an involved motor vehicle.

Who is an Insured

- Named insured?
- Resident relative?
- Occupant?
- Situations to consider:
  - College students, Military
  - Roommates – would have to be a relative

Exceptions to the General Rule: Business Vehicles

Vehicles being used in the business of transporting people or property.

- Coverage on vehicle being used in the business of transporting people or property is primary for driver and all occupants.
- Must be using the vehicle in the business of transporting persons or property at the time of the accident.

Employer Furnished Vehicles

- Coverage on an employer furnished vehicle is primary for the following individuals occupying or driving the vehicle:
  - Employee
  - Employee's spouse; and
  - Employee's resident relative
- Accident need not occur in course and scope of employment.
- Occasionally have issue whether Claimant qualifies as "employee."

Exceptions to the Exceptions

The rule governing vehicles used to transport person or property does not apply to the following:

- Bus
- Commuter Van
- Passenger in taxi
- Vehicle being used to transport children as part of a family or group family day care program.
- Vehicle being used to transport children to school or to a school-sponsored activity.

Government Vehicles

- Are they vehicles?
- When is a police car not a car?

Exclusions

- Converted Motor vehicles (age 14 and over)
- Races
- Intentional Injuries
- Motorcycles

53 96 15

Go to **www.menti.com** and use the code **53 96 15**

Priority Scenario # 1

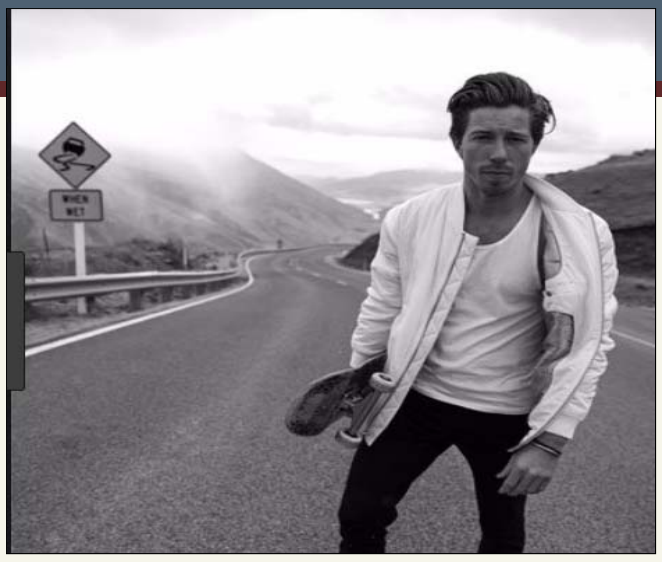
- Ed Begley, Jr. was riding his bicycle to an event in Minneapolis.
- He had dismounted the bike and was walking across a crosswalk.
- Vehicle 1 had stopped to let Ed cross the street when it was rear-ended by Vehicle 2 causing Vehicle 1 to hit Ed and propel him into Vehicle 3, which was legally parked and unoccupied.
- Ed doesn't own a motor vehicle and refuses to let anyone in his home own a vehicle.

Who Pays for Ed's Injuries?

A. The insurer for Vehicle 1.
B. The insurer for Vehicle 2.
C. The insurer for Vehicles 1 or 2.
D. The insurer for Vehicles 1, 2 or 3.
E. None of the above.

Priority Scenario # 2

- Shaun White runs a red light and gets hit.
- Lindsey Vonn is passenger in vehicle and hurts her knee.
- Shaun's vehicle was furnished by his employer and is insured.
- Lindsey does not have an automobile policy of her own but at the time was living with Tiger Woods who had an automobile policy.



Who Pays for Lindsey's Injuries?

A. Shaun's employer's insurer
B. Tiger's insurer
C. Assigned Claims Plan
D. None of the above

Priority Scenario # 3

- Marty McFly was operating Dr. Emmet Brown's DeLorean when it ran out of fuel on a dark highway.
- Marty didn't own a vehicle, but resided with his parents who had one vehicle.
- After Marty had exited the vehicle to try and get it started he was struck and injured by a '46 Ford driven by Biff Tannen.
- Doc Brown had not insured the DeLorean.

Who Pays for Marty's Injuries?

A. Biff's insurer.
B. Marty's parents' insurer.
C. Either Biff's or Marty's parents' insurers because Marty has exited the vehicle.
D. None of the above.

Priority Scenario # 4

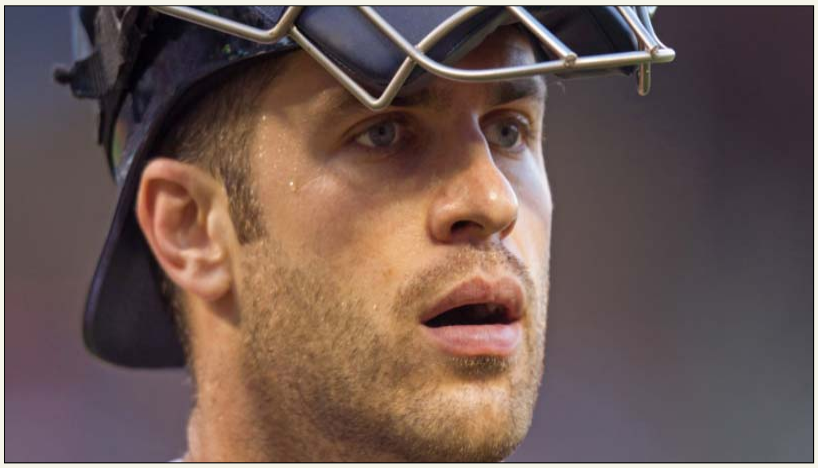
- Jessie Diggins works as an independent contractor for the Ski Delivery Service.
- She drives a vehicle owned by that company.
- She is injured while unloading items at a customer's loading dock.
- Jessie has her own personal auto policy and her company also insures its own vehicles.

Who Pays for Jessie's Injuries?

A. Jessie's personal policy
B. Ski company's policy
C. None of the above
D. Assigned Claims Plan

Priority Scenario # 5

- Joe Mauer's nephew is visiting his uncle for two weeks.
- Joe's nephew otherwise lives with his best friend from high school in an apartment.
- Joe's nephew doesn't own a car, but his friend does which the friend insures.
- Joe's nephew borrows his famous uncle's 1975 Camaro, which Joe's agent has neglected to insure, and is injured in a one car accident.
- Joe's five Aston Martins are all insured.



Who Pays for the Nephew's Injuries?

A. Joe's policy because his nephew was staying with him.
B. Joe's policy because his Aston Martins are insured.
C. The nephew's roommate's insurance company.
D. None of the above.

Transportation Network Law (Minn. Stat. § 65B.472)

- Driver or company he/she drives for must provide **primary** auto insurance while:
  - Driver logged on to company's network
  - Driver engaged in pre-arranged ride
- What about ride that is not "prearranged"?

Transportation Network Law – Coverage Timeline

- Driving but not logged in: personal policy
- Driving and logged in: trans. net. policy
- Driving with prearranged rider: trans. net. policy
- Driving after drop-off (still logged in): trans. net. policy
- Driving after drop-off (logged out): personal policy

Determining Where Accident Falls on Timeline

- Transportation network driver required to disclose upon request whether logged in or engaged in prearranged ride.
- Transportation network company required to **document** and **disclose** driver log-on activity and when engaged in prearranged ride.

Transportation Network Law – Insurance Requirements

Insurance Requirements while Logged on Only:

- BI Liability: $50,000 / $100,000
- Prop. Damage Liability: $30,000
- PIP: Statutory $20,000 / $20,000
- UM/UIM: $25,000 / $50,000

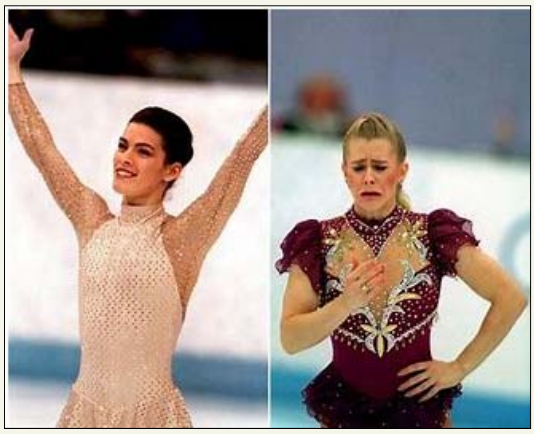
Transportation Network Law – Insurance Requirements

Insurance Requirements while Engaged In Prearranged Ride:

- BI/Prop. Damage Liability: $1,500,000 CSL
- PIP: Statutory $20,000 / $20,000
- UM/UIM: $25,000 / $50,000

Priority Scenario #6

- Tonya Harding has a personal auto policy. She works as an Uber Driver in Minnesota on the weekends.
- Tonya rear-ends Nancy Kerrigan right before Olympic qualifying skate right after she dropped off an Uber passenger.
- Tonya gets whip-lash injury that prevents her from skating.



Who Pays?

A. Tonya's personal policy
B. Tonya's Uber policy
C. Kerrigan's policy
D. None of the above

CONTACT

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FILE HANDLING / FRAUD / EUO'S / NO-FAULT ARBITRATION UPDATE

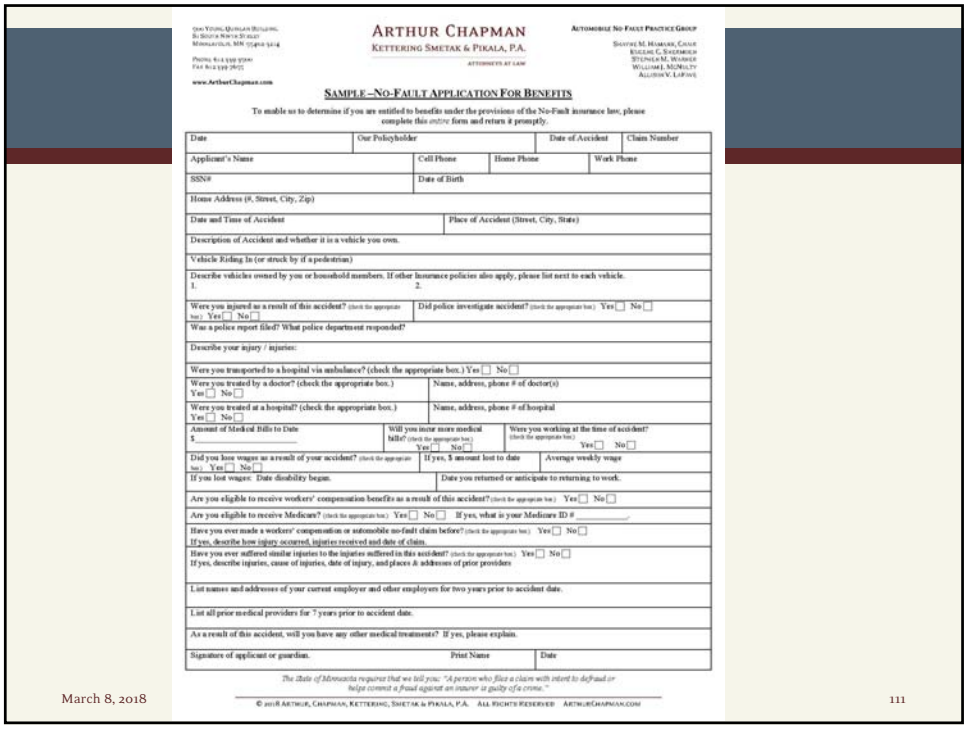
SHAYNE M. HAMANN
WILLIAM J. MCNULTY
ARTHUR CHAPMAN
KETTERING SMETAK & PIKALA, P.A.
ATTORNEYS AT LAW

Topics To Be Covered

- File Handling Tips and Pointers
- No-Fault IME and Beyond
- Fraud and EUO's
- No-Fault Arbitration
- Denial letter and ROR's
- Post Arbitration Decision Dealings
- No-Fault Trends

File Handling Tips and Pointers

- Make sure the PIP Application is filled out completely and signed by the injured party.
  - Course and scope of employment?
  - Employer furnished vehicle?
  - Resident relative?
- The PIP Application should also list past and current medical providers of injured party.



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ATTORNEYS AT LAW

AUTOMOBILE NO-FAULT PRACTICE GROUP

www.ArthurChapman.com

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 ☐ No ☐		Did police investigate accident? (check the appropriate box.) Yes ☐ No ☐		
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 ☐ No ☐				
Were you treated by a doctor? (check the appropriate box.) Yes ☐ No ☐		Name, address, phone # of doctor(s)		
Were you treated at a hospital? (check the appropriate box.) Yes ☐ No ☐		Name, address, phone # of hospital		
Amount of Medical Bills to Date $_____		Will you incur more medical bills? (check the appropriate box.) Yes ☐ No ☐	Were you working at the time of accident? (check the appropriate box.) Yes ☐ No ☐	
Did you lose wages as a result of your accident? (check the appropriate box.) Yes ☐ No ☐		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 ☐ No ☐				
Are you eligible to receive Medicare? (check the appropriate box.) Yes ☐ No ☐ If yes, what is your Medicare ID #_____				
Have you ever made a workers' compensation or automobile no-fault claim before? (check the appropriate box.) Yes ☐ No ☐ If yes, describe how injury occurred, injuries received and date of claim.				
Have you ever suffered similar injuries to the injuries suffered in this accident? (check the appropriate box.) Yes ☐ No ☐ If yes, describe injuries, cause of injuries, date of injury, and places & addresses of prior providers				
List names and addresses of your current employer and other employers for two years prior to accident date.				
List all prior medical providers for 7 years prior to accident date.				
As a result of this accident, will you have any other medical treatments? If yes, please explain.				
Signature of applicant or guardian.		Print Name	Date	

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

FILE HANDLING TIPS AND POINTERS

Medical records

- To order priors or not?
  - Competing interests – you get a much fuller picture when you have prior records, but oftentimes prior records can take a long time to obtain and they can be exceptionally expensive.
  - Even if you elect to not order priors, ensure that you have a list of all prior providers and obtain authorizations so you can order those records in the future.
  - Best to order when you get authorizations so no issues in getting "updated" authorizations.

File Handling Tips and Pointers

Independent medical examinations consideration

- When should an IME be requested?
- What type of doctor should perform the exam?
- Weaver letter (suspension letter) / retroactive denial?
- When should benefits be discontinued?

No-Fault IME

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

No-Fault IME

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 _____?

File Handling Tips and Pointers

Non medical claims

- Wage loss
  - Who is excusing the insured from work?
  - Documentation of lost wages?
    - Self employed? Business and personal tax returns
- Replacement services
  - Who does insured live with?
  - What type of house?
    - Is everyone a primary homemaker these days?
    - There can only be one primary homemaker

Fraud

Red flags

- Occupants in multi-vehicle accidents have common denominators
- Same medical treatment
- Immediate legal representation
- Inconsistent stories
- Very similar claim documents
- Refusal to cooperate
- Injuries inconsistent with mechanics of accident
- No police report
- Prior claims/underwriting action

Ways to Combat Possible Fraud

- Thorough and immediate investigation
- Recorded Statements
- Signed and, if possible, notarized statement of claim.
- EUOs
- Avoid or delay petition filed with the American Arbitration Association.
  - Motions to stay or intervene
- Lawsuit

Examinations Under Oath

What is an EUO?

- Very similar to a deposition
- Attorney has an opportunity to ask an insured questions while the insured is sworn in under oath
- Court reporter transcribes the entire conversation
- Insurer gets a transcript/record that can be used to deny benefits or impeach insured

Examinations Under Oath

One of the best tools at a No-Fault carrier's disposal

- Like everything else, pros of an EUO
  - Pros
    - Insured's story is "on the record"
    - Can decipher whether coverage exists or whether a denial is appropriate
    - Can get parties to walk away from the claim if they are unwilling to participate

No-Fault Arbitration

- AAA has reported a rather significant drop in petitions for No-Fault arbitration over the past few years
- Electronic case filings of Plaintiff
- Electronic calendaring as of 6/1/2018

No-Fault Arbitration

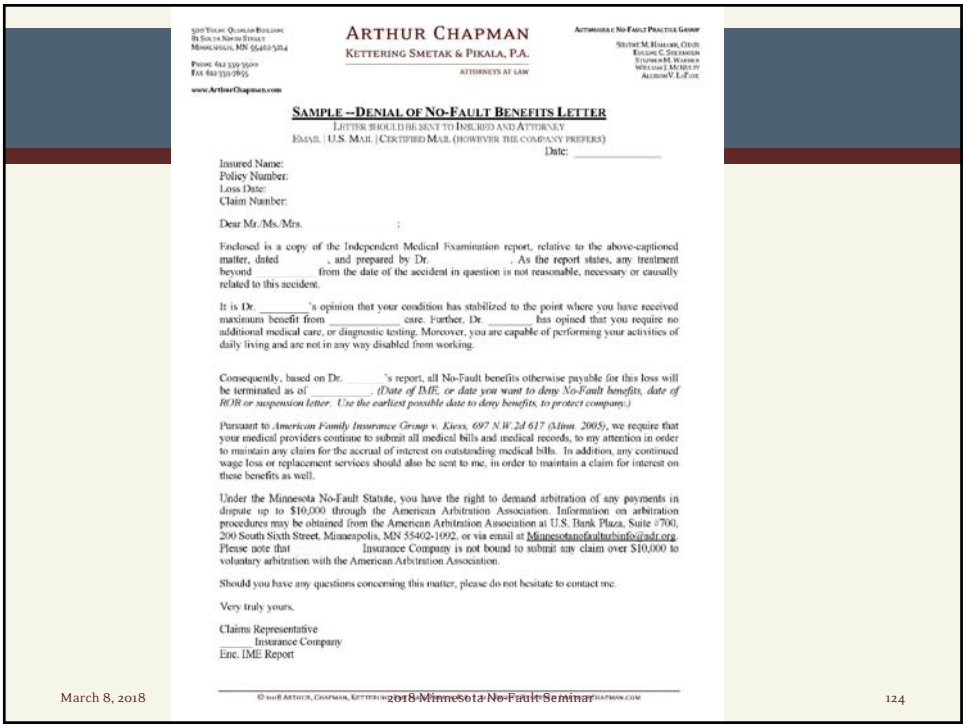
Petition filed with AAA

- What do we need?
  - Your entire file, including claims notes
- Petition must be less than $10,000 or AAA does not have jurisdiction
  - Watch out for amended petitions with prior treatment that increases claim to over $10,000
- Petition must be itemized so we have notice of what claims will be brought at arbitration
- Determine if amounts on petition need to be paid.

No-Fault Arbitration

Best tools for the defense at arbitration

- Have a good idea of the full medical history of the insured
  - Prior medical and employment records that are seemingly unimportant can provide great arguments at arbitrations
- Have an appropriate IME
  - Chiropractic versus orthopedic versus neurologic
    - Is an addendum needed
  - Have an adequate denial letter



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ATTORNEYS AT LAW

SAMPLE --DENIAL OF NO-FAULT BENEFITS LETTER
LETTER SHOULD BE SENT TO INSURED AND ATTORNEY
EMAIL | U.S. MAIL | CERTIFIED MAIL (HOWEVER THE COMPANY PREFERS)

Date: _____

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

Dear Mr./Ms./Mrs. :

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

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

Consequently, based on Dr. _____'s report, all No-Fault benefits otherwise payable for this loss will be terminated as of _____. *(Date of IME, or date you want to deny No-Fault benefits, date of ROR or suspension letter. Use the earliest possible date to deny benefits, to protect company.)*

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

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

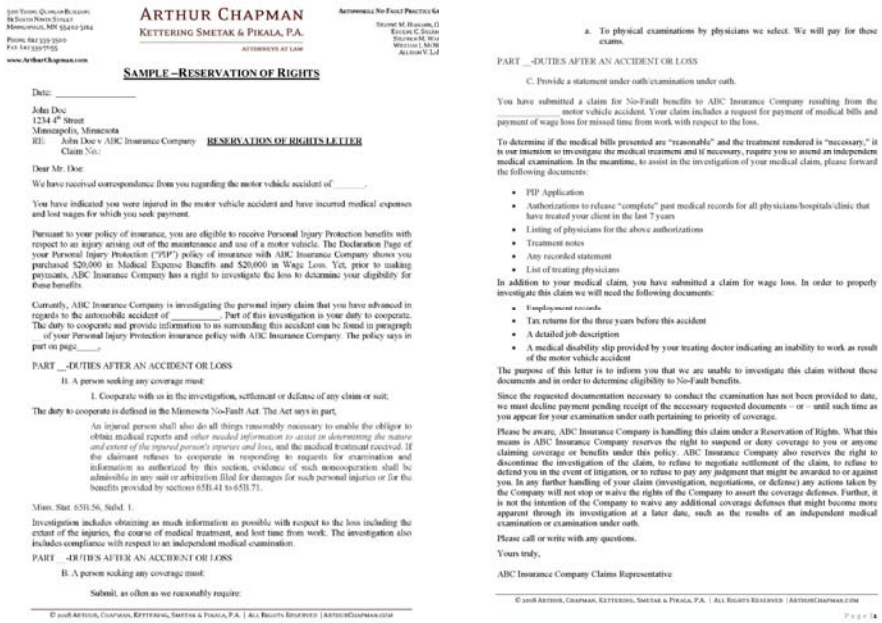
Should you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

Claims Representative
_____ Insurance Company
Enc. IME Report

Denial Letter Following IME

- Cite the IME language justifying denial of the claim.
- Consequently, based upon the IME report, all No-Fault benefits otherwise payable for this loss will be terminated as of _____.
- *Discuss Kiess* and interest.
- Use our sample denial letter.



ARTHUR CHAPMAN
KETTERING SMETAK & PIKALA, P.A.

SAMPLE – RESERVATION OF RIGHTS

Date: _____

John Doe
1234 4th Street
Minneapolis, Minnesota
RE: John Doe v ABC Insurance Company **RESERVATION OF RIGHTS LETTER**
Claim No.:

Dear Mr. Doe:

We have received correspondence from you regarding the motor vehicle accident of _____.

You have indicated you were injured in the motor vehicle accident and have incurred medical expenses and lost wages for which you seek payment.

Pursuant to your policy of insurance, you are eligible to receive Personal Injury Protection benefits with respect to an injury arising out of the maintenance and use of a motor vehicle. The Declaration Page of your Personal Injury Protection ("PIP") policy of insurance with ABC Insurance Company shows you purchased $20,000 in Medical Expense Benefits and $20,000 in Wage Loss. Yet, prior to making payments, ABC Insurance Company has a right to investigate the loss to determine your eligibility for these benefits.

Currently, ABC Insurance Company is investigating the personal injury claim that you have advanced in regards to the automobile accident of _____. Part of this investigation is your duty to cooperate. The duty to cooperate and provide information to us surrounding this accident can be found in paragraph ___ of your Personal Injury Protection insurance policy with ABC Insurance Company. The policy says in part on page_____:

PART __-DUTIES AFTER AN ACCIDENT OR LOSS

B. A person seeking any coverage must:

1. Cooperate with us in the investigation, settlement or defense of any claim or suit;

The duty to cooperate is defined in the Minnesota No-Fault Act. The Act says in part,

> An injured person shall also do all things reasonably necessary to enable the obligor to obtain medical reports and *other needed information to assist in determining the nature and extent of the injured person's injuries and loss*, and the medical treatment received. If the claimant refuses to cooperate in responding to requests for examination and information as authorized by this section, evidence of such noncooperation shall be admissible in any suit or arbitration filed for damages for such personal injuries or for the benefits provided by sections 65B.41 to 65B.71.

Minn. Stat. 65B.56, Subd. 1.

Investigation includes obtaining as much information as possible with respect to the loss including the extent of the injuries, the course of medical treatment, and lost time from work. The investigation also includes compliance with respect to an independent medical examination.

PART -DUTIES AFTER AN ACCIDENT OR LOSS

B. A person seeking any coverage must:

Submit, as often as we reasonably require:

a. To physical examinations by physicians we select. We will pay for these exams.

PART __-DUTIES AFTER AN ACCIDENT OR LOSS

C. Provide a statement under oath/examination under oath.

You have submitted a claim for No-Fault benefits to ABC Insurance Company resulting from the _____ motor vehicle accident. Your claim includes a request for payment of medical bills and payment of wage loss for missed time from work with respect to the loss.

To determine if the medical bills presented are "reasonable" and the treatment rendered is "necessary," it is our intention to investigate the medical treatments and if necessary, require you to attend an independent medical examination. In the meantime, to assist in the investigation of your medical claim, please forward the following documents:

- PIP Application
- Authorizations to release "complete" past medical records for all physicians/hospitals/clinic that have treated your client in the last 7 years
- Listing of physicians for the above authorizations
- Treatment notes
- Any recorded statement
- List of treating physicians

In addition to your medical claim, you have submitted a claim for wage loss. In order to properly investigate this claim we will need the following documents:

- Employment records
- Tax returns for the three years before this accident
- A detailed job description
- A medical disability slip provided by your treating doctor indicating an inability to work as result of the motor vehicle accident

The purpose of this letter is to inform you that we are unable to investigate this claim without these documents and in order to determine eligibility to No-Fault benefits.

Since the requested documentation necessary to conduct the examination has not been provided to date, we must decline payment pending receipt of the necessary requested documents – or – until such time as you appear for your examination under oath pertaining to priority of coverage.

Please be aware, ABC Insurance Company is handling this claim under a Reservation of Rights. What this means is ABC Insurance Company reserves the right to suspend or deny coverage to you or anyone claiming coverage or benefits under this policy. ABC Insurance Company also reserves the right to discontinue the investigation of the claim, to refuse to negotiate settlement of the claim, to refuse to defend you in the event of litigation, or to refuse to pay any judgment that might be awarded to or against you. In any further handling of your claim (investigation, negotiations, or defense) any actions taken by the Company will not stop or waive the rights of the Company to assert the coverage defenses. Further, it is not the intention of the Company to waive any additional coverage defenses that might become more apparent through its investigation at a later date, such as the results of an independent medical examination or examination under oath.

Please call or write with any questions.

Yours truly,

ABC Insurance Company Claims Representative

Reservation of Rights Letter

Additional Investigation and Discovery

- EUO;
- IME;
- Excessive chiropractic/massage therapy treatment; and
- Coverage issues – priority or otherwise
- Premature filing of an arbitration petition.

Post Award Dealings

- Full award – need a new IME to continue to deny No-Fault benefits;
- Partial award – maintain denial/new IME;
- Full denial – maintain denial of No-Fault benefits based upon existing IME.

Post Award Dealings

- Do you need another IME to continue to deny No-Fault benefits that remain;
- Take a wait-and-see approach;
- Try and negotiate a full and final No-Fault close-out with claimant/claimant attorney.

No-Fault and UM/UIM Interplay with Experts

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

No-Fault Arbitration Trends

Trends we are seeing

- 62Q arguments, *see Nguyen* case
- Failure to itemize claim
- Medical mileage rate continues to climb (doctors medical mileage rate for 2018 is .18¢ per mile)
- Atlas Orthogonal Chiropractic claims
- Wage loss for work missed to attend appointments
- Fast and loose interest calculations
- *Kiess* case – state in denial letter

Contact

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SMHamann@ArthurChapman.com

William J. McNulty

612 375-5939

WJMcnulty@ArthurChapman.com

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Jesse M. Ternus, D.C.

Chiropractic and Personal Injury

March 08, 2018

- Background
- University of Minnesota 1996 graduate. Biology and Chemistry.
- Northwestern College of Chiropractic 1999 graduate.
- Back Into Life Chiropractic established 1999.
  - Family practice
  - Work Comp, Personal Injury
- Performing Independent Chiropractic Exams since 2009.
- The information presented are my own opinions and do not necessarily represent the overall opinion of the profession but are based on my own experiences after 19 years of practice and performing over 2000 exams.

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Injury Continuum

No Injury ⟷ **Death**

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Human Healing and Physiology

During my clinical experience, I've come to appreciate that some patients have little desire to return to pre-accident status.

When the patient deviates from the normal healing process and time frame the question must be asked; Why?
Is there a pre-existing condition? Is there a psychological factor? Is there an underlying health condition that slows the healing process? Is the patient unmotivated to return to pre-accident status?

- Sprain/Strain
  - Grade 1, 2, 3

1. Acute phase
   - 3 days - 1 week
   - Inflammation and pain.
   - PRICE
   - Chiropractic care with physiotherapies
2. Repair phase
   - 1 – 6 weeks
   - Less inflammation but pain may persist.
   - Chiropractic care. Passive Physiotherapies have a decreasing effectiveness at this point.
3. Remodeling phase
   - 6 weeks – 12 weeks for grade 1 and 2
   - Chiropractic adjustments to promote range of motion.
   - Active rehabilitation is most important.
   - At this point the patient usually has reached "maximum therapeutic benefit"

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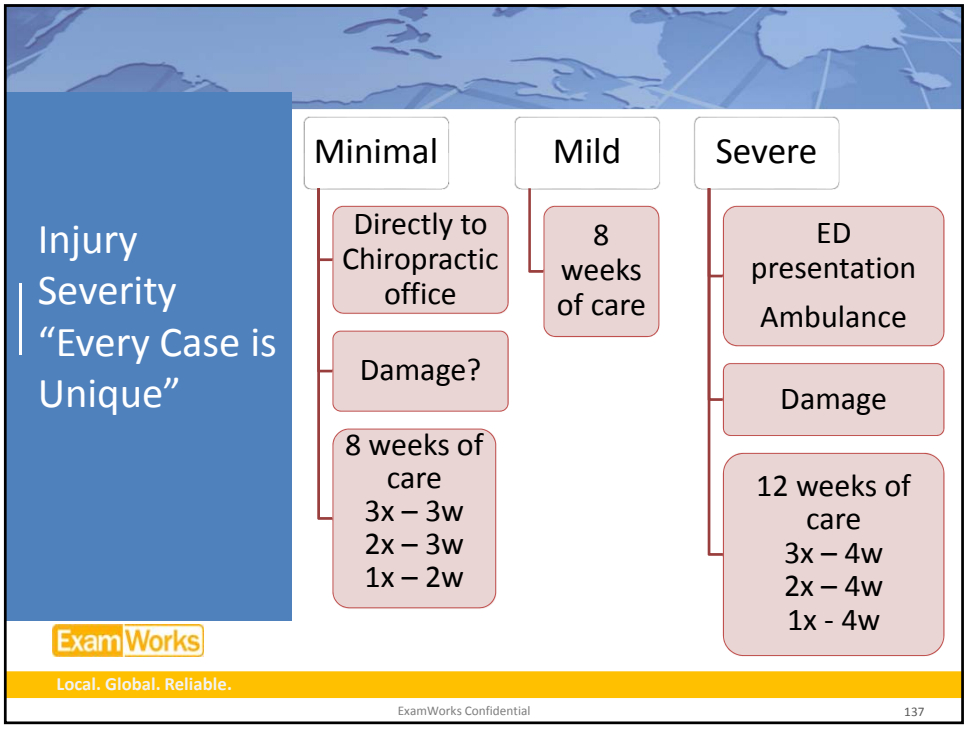
Injury Severity "Every Case is Unique"
Minimal
Directly to Chiropractic office
Damage?
8 weeks of care
3x – 3w
2x – 3w
1x – 2w
Mild
8 weeks of care
Severe
ED presentation
Ambulance
Damage
12 weeks of care
3x – 4w
2x – 4w
1x - 4w
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Literature Support
C:\Users\docte\OneDrive\Documents\ODG-Criteria.pdf
C:\Users\docte\OneDrive\Documents\Neck Pain Task Force Report - Haldeman et al (2).pdf
C:\Users\docte\OneDrive\Documents\Haldeman et.al neck task force (1).pdf
C:\Users\docte\OneDrive\Documents\CCGPP LB disorders (1).pdf
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ODG -TWC

ODG Treatment

Integrated Treatment/Disability Duration Guidelines

Neck and Upper Back (Acute & Chronic)

Back to ODG - TWC Index

(updated 11/18/14)

CONTENTS

Explanation of Medical Literature Ratings (see Contents for more detail):

Ranking by Type of Evidence:
1. Systematic Review/Meta-Analysis
2. Controlled Trial – Randomized (RCT) or Controlled
3. Cohort Study - Prospective or Retrospective
4. Case Control Series
5. Unstructured Review
OTHER:
6. Nationally Recognized Treatment Guideline (from guidelines.gov)
7. State Treatment Guideline
8. Other Treatment Guideline
9. Textbook
10. Conference Proceedings/Presentation Slides

Ranking by Quality within Type of Evidence:
a. High Quality
b. Medium Quality
c. Low Quality

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C:\Users\docte\OneDrive\Documents\Haldeman et.al neck task force (1).pdf

C:\Users\docte\OneDrive\Documents\CCGPP LB disorders (1).pdf

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Clinical Practice Implications of the Bone and Joint Decade 2000–2010 Task Force on Neck Pain and Its Associated Disorders

From Concepts and Findings to Recommendations

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C:\Users\docte\OneDrive\Documents\Haldeman et.al neck task force (1).pdf

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The Bone and Joint Decade Task Force On Neck Pain and Its Associated Disorders

Summary of Key Findings
January 2008

Scientific Secretariat
Scott Haldeman, DC, MD, PhD, FRCP(C), President, Neck Pain Task Force
Linda Carroll, PhD, Scientific Secretary, Neck Pain Task Force
J. David Cassidy, DC, PhD, DrMedSc, Scientific Secretary, Neck Pain Task Force
Eugene J. Carragee, MD, FACS
Pierre Côté, DC, PhD
Stephen W. Greenhalgh, MA, MLIS, Library Scientist, Neck Pain Task Force
Jaime Guzman, MD, MSc, FRCP(C)
Lena Holm, DrMedSc
Sheilah Hogg-Johnson, PhD
Eric L. Hurwitz, DC, PhD
Margareta Nordin, PT, DrMedSc, CIE
Paul Peloso, MD, MSc, FRCP(C)
Gabrielle van der Velde, DC, PhD (Candidate)

Background

The Bone and Joint Decade 2000-2010 Task Force on Neck Pain and Its Associated Disorders is composed of a group of international researchers and scientist-clinicians who have spent the past seven years undertaking a comprehensive and structured review of the current research on neck pain. The Scientific Secretariat of the Task Force is composed of 13 members and has been supported by an international Advisory Committee of 17 members. The Task Force and Advisory Committee members represent 14 disciplines ranging from neurology and rheumatology to epidemiology, chiropractic and physical therapy from across nine countries.

In conducting its review of the available published research on neck pain, the Neck Pain Task Force considered almost 32,000 research citations and performed critical appraisals of the more than 1,000 research studies that were relevant to its mandate. The Task Force report synthesizes the best available evidence on the onset, course and prognosis, assessment and management of neck pain, and includes the results of several original research studies.

Literature Support

C:\Users\docte\OneDrive\Documents\ODG-Criteria.pdf

C:\Users\docte\OneDrive\Documents\Neck Pain Task Force Report - Haldeman et al (2).pdf

C:\Users\docte\OneDrive\Documents\Haldeman et.al neck task force (1).pdf

C:\Users\docte\OneDrive\Documents\CCGPP LB disorders (1).pdf

Chiropractic Management of Low Back Disorders

Council on Chiropractic Guidelines and Practice Parameters

The Council on Chiropractic Guidelines and Practice Parameters (CCGPP), was formed in 1995 by the Congress of Chiropractic State Associations (COCSA) with assistance from the American Chiropractic Association, Association of Chiropractic Colleges, Council on Chiropractic Education, Federation of Chiropractic Licensing Boards, Foundation for the Advancement of Chiropractic Sciences, Foundation for Chiropractic Education and Research, International Chiropractors Association, National Association of Chiropractic Attorneys and the National Institute for Chiropractic Research. The charge to the CCGPP was to create a chiropractic "best practices" document. CCGPP was delegated to examine all existing guidelines, parameters, protocols and best practices in the United States and other nations in the construction of this document.

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March 2008

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Two "types of patients"

Injury, Care, get better, discharged, resume normal life (work)

Injury?, legal representation, prolonged care, excessive passive modalities, don't seem to get better, not discharged, MRI referral, Neurological referral, "Pain Clinic" referral, IME, does not resume normal life (work) etc.

Why do the offices who see the most auto cases take the longest time to return the patient to pre-accident status?

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Two Types of Treating Chiropractors:

Patient receives thorough examination, legible and complete treatment records, conservative treatment, plain film x ray to areas of subjective complaints only, minimal passive therapies, minimal massage therapy, graduated treatment frequency, rehabilitation, conservative vocational and ADL restriction, effort to perform active rehabilitation at home, discharge within 8 -12 weeks.

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Two Types of Treating Chiropractors:

Patient receives examination?, x rays CTL and extremity despite lack of subjective complaints or objective findings, highly abbreviated and poorly legible treatment records, excessive passive modalities, excessive massage therapy, treatment plan remains at high frequency, little effort to promote independent rehabilitation, excessive vocational and ADL restriction, MRI CTL and extremity despite lack of objective and subjective indication, referral to pain management and neurologist, no anticipated discharge date in daily records, IME.

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What is in my opinion reasonable and necessary care?

- Therapies
- Chiropractic adjustments
- Durable medical equipment
- Massage
- Acupuncture
- Rehabilitation
- Referrals
- Imaging

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Therapies / Modalities

- Interferential (EMS)
- Ultrasound
- Heat/Ice
- Intersegmental traction
- Laser
- More. “the flavor of the week”

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Interferential (EMS)

- Acute phase
- Pain relief
- My office charges $22

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Ultrasound

- Acute phase
- No more than 8 treatments to one anatomical area
- My office charges $22

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Ice/Heat

- Use is palliative
- My office does not charge for this service

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Intersegmental Traction

- Intervertebral disc herniation
- Paraspinal muscle stretching
- Used during the rehabilitation phase
- Effectiveness in management of soft tissue injury?
- My office charges $22

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Laser (Low Level Laser Therapy)

- "We show that LLLT reduces pain immediately after treatment in acute neck pain and up to 22 weeks after completion of treatment in patients with chronic neck pain." Lancet December, 2009
- As of 2006, the Centers for Medicare and Medicaid Services did not provide coverage for LLLT,[16] as of 2014 Aetna did not provide coverage,[17] and as of 2016 Cigna did not provide coverage. Wikipedia
- A 2008 Cochrane Library review concluded that LLLT has insufficient evidence for treatment of nonspecific low back pain,[7] a finding echoed in a 2010 review of chronic low back pain. Wikipedia

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Other Therapies and Services

- Kinesio Taping
- TENS, home traction, pillows, etc.
- Orthotics
- Acupuncture
- Massage
- The "flavor of the week"
  - Do the records show there is a decrease in objective findings as a direct result of the therapies use?
  - Is the provider transitioning from the use of passive therapies to an active participation outside of the office by the patient. I.e., exercises, rehabilitation, and effort to resume normal vocational and ADL activities?

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Imaging and Diagnostic Studies

- Plain Film X ray
  - Indications
  - Time between accident and films
    - Diagnostic and clinical relevance
  - Dynamic x ray measurement
- MRI
  - Indications
  - Time between accident and films
- sEMG
  - In office (Myovision)

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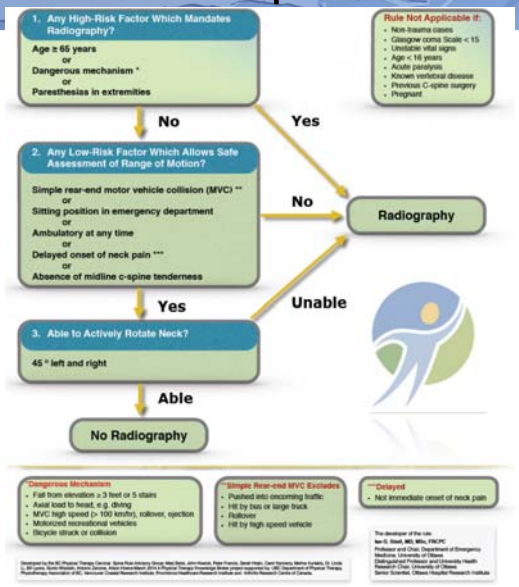
Canadian Spine Rule



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Pain Management Referral & "Neurological" Referral

The United States is currently experiencing an opioid epidemic and addiction is a major socioeconomic concern

- The question needs to be asked; If the records show there is positive change in the patients condition with the care they are already receiving, why the need for the medical referral? What clinical information is expected to be gained by the referring doctor to speed the recovery process?
- Second Opinion?
- Is the referral made to help the patient return to pre-accident status or is the referral made to help with litigation?

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Concussion?

- Injury continuum
- Soft tissue injury to the brain
- Difficult to diagnose
  - D.C. may have advanced training in the diagnosis and management of concussion and closed head injury.
  - Diagnosis of concussion is heavy on accurate subjective information provided by patient.
  - Objective findings due exist such as brain MRI, loss of coordination, cranial nerve dysfunction, etc.

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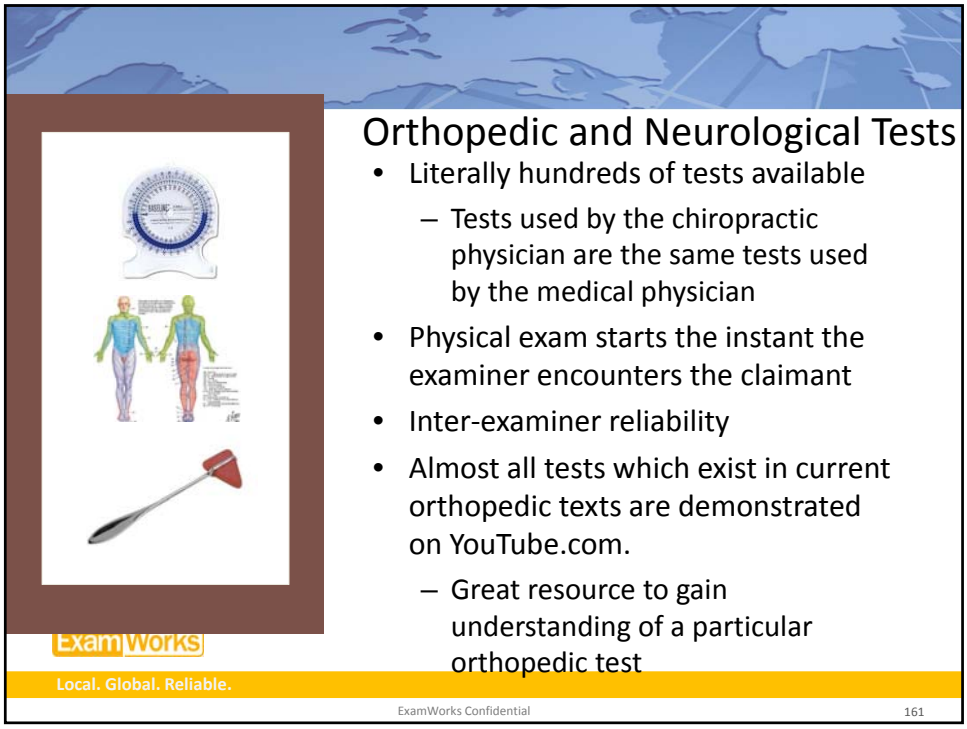
Orthopedic and Neurological Tests
• Literally hundreds of tests available
– Tests used by the chiropractic physician are the same tests used by the medical physician
• Physical exam starts the instant the examiner encounters the claimant
• Inter-examiner reliability
• Almost all tests which exist in current orthopedic texts are demonstrated on YouTube.com.
– Great resource to gain understanding of a particular orthopedic test
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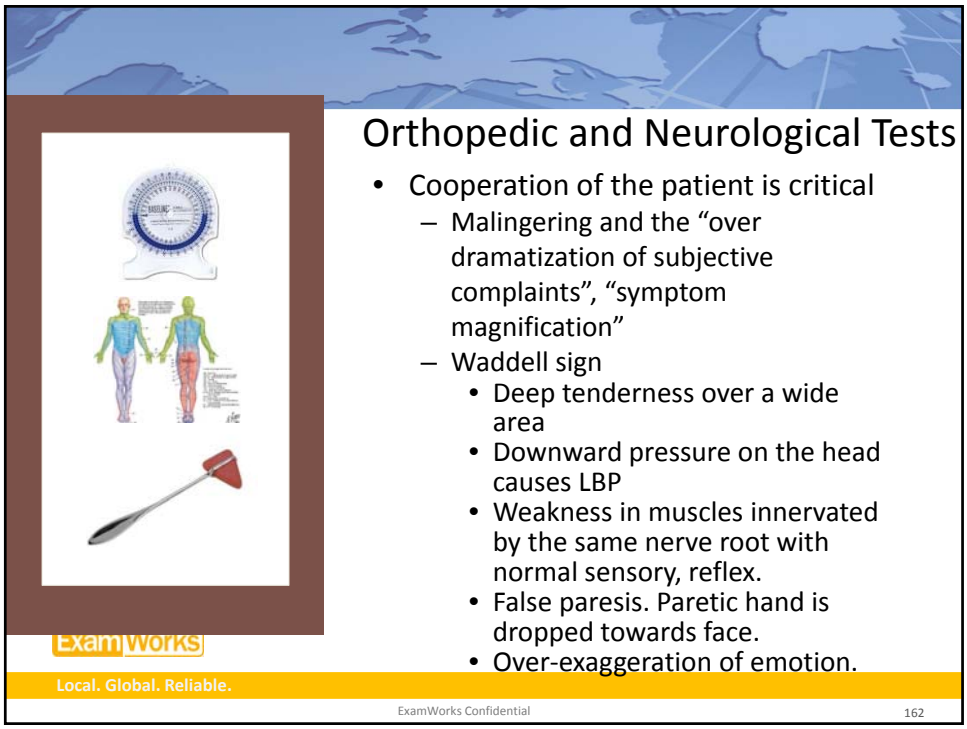
Orthopedic and Neurological Tests
• Cooperation of the patient is critical
– Malingering and the "over dramatization of subjective complaints", "symptom magnification"
– Waddell sign
• Deep tenderness over a wide area
• Downward pressure on the head causes LBP
• Weakness in muscles innervated by the same nerve root with normal sensory, reflex.
• False paresis. Paretic hand is dropped towards face.
• Over-exaggeration of emotion.
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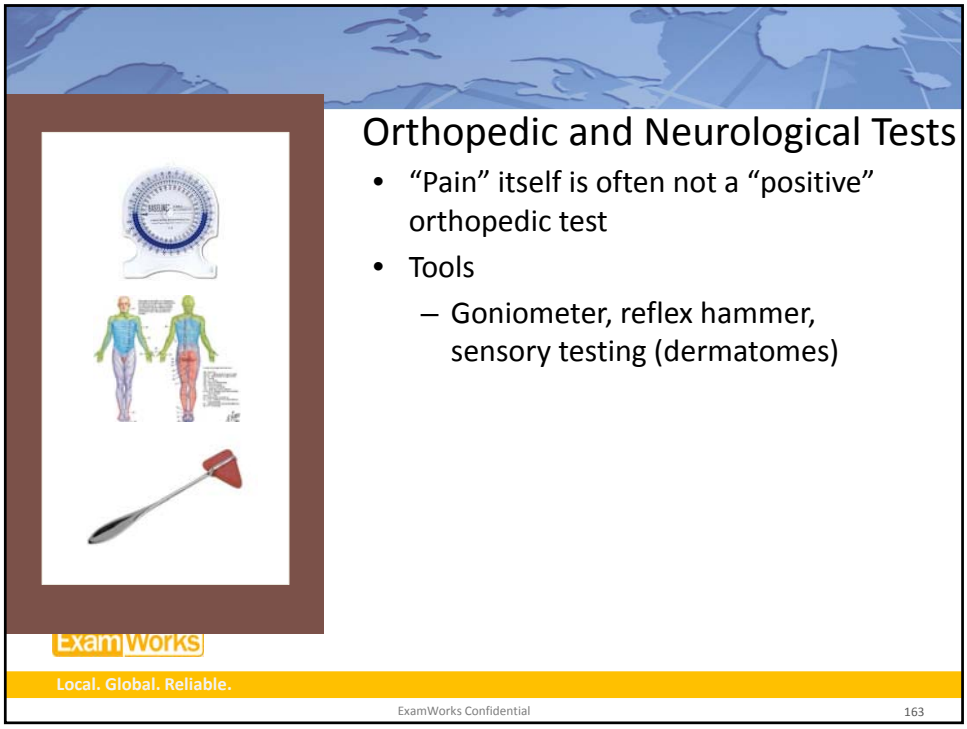
Orthopedic and Neurological Tests
• "Pain" itself is often not a "positive" orthopedic test
• Tools
– Goniometer, reflex hammer, sensory testing (dermatomes)
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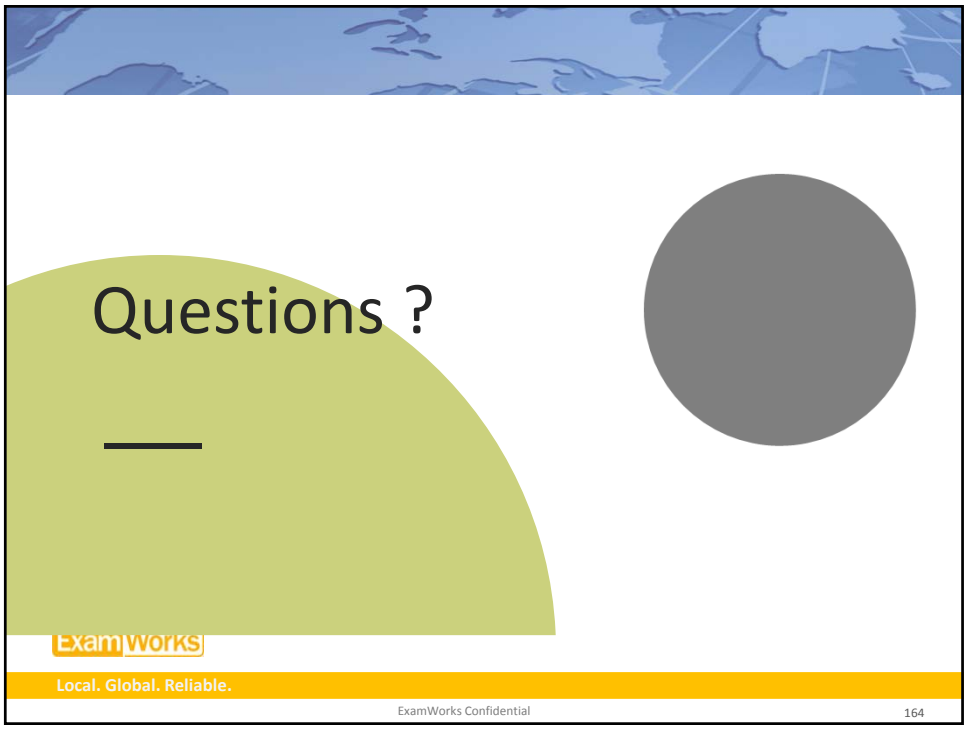
Questions ?
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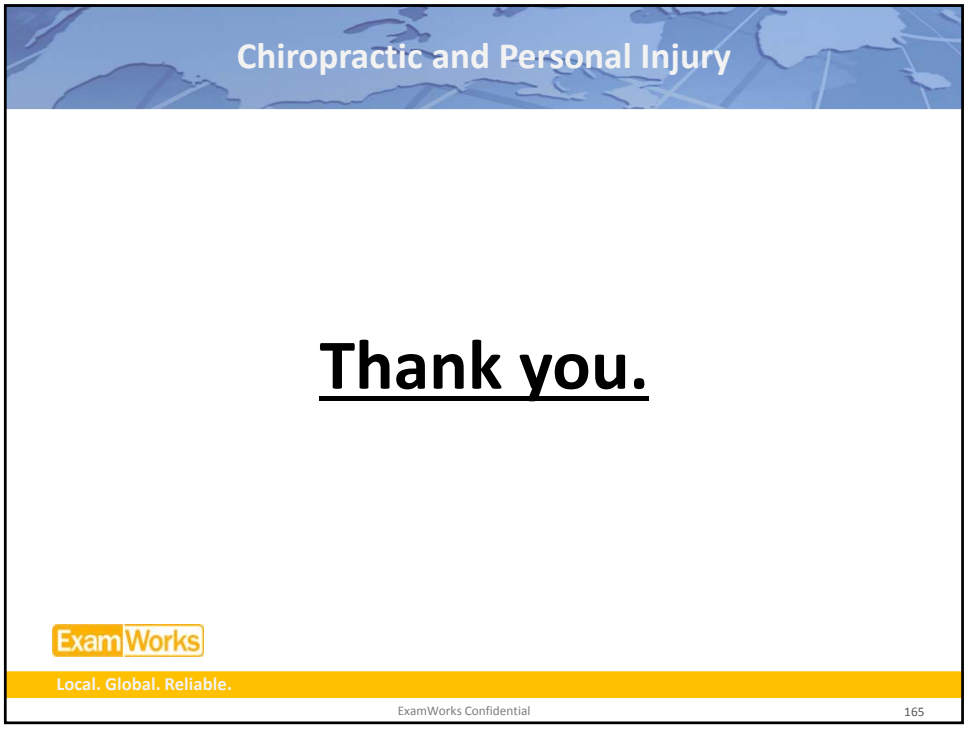
Chiropractic and Personal Injury
Thank you.
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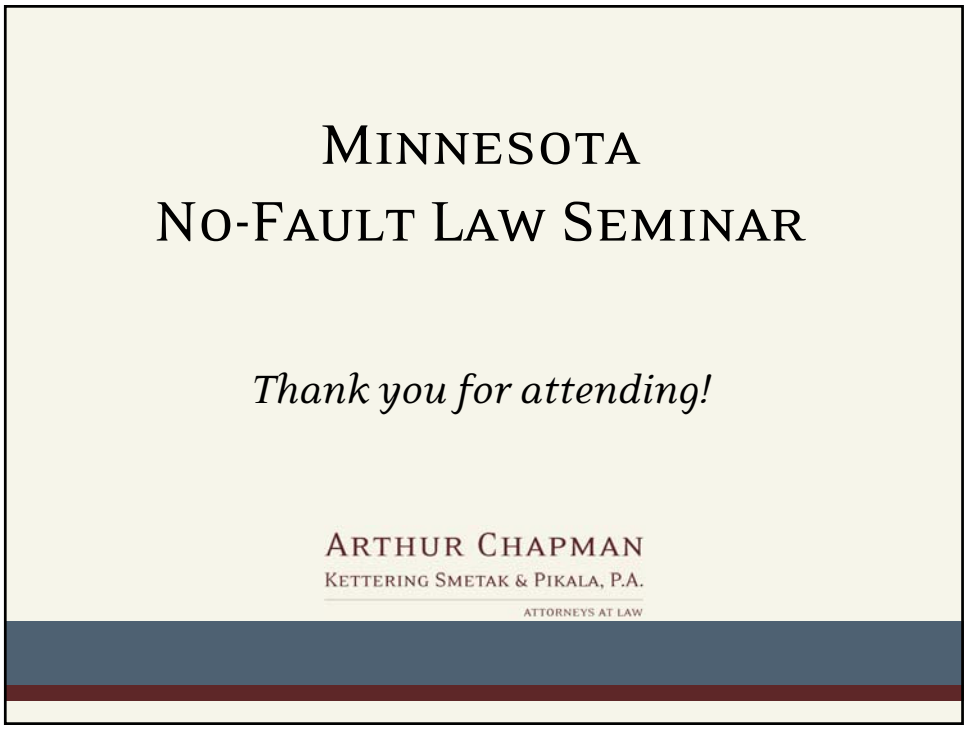
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NO-FAULT LAW SEMINAR
Thank you for attending!
ARTHUR CHAPMAN
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Charles B. Harris
Allison V. LaFave

General Rules for PIP Priority in Minnesota
Who is Primary?

VEHICLE	DRIVER	OCCUPANT	PEDESTRIAN
Personal Vehicles	**1st** — policy where driver is statutorily defined insured. **2nd** — policy covering occupied vehicle.	**1st** — policy where occupant is statutorily defined insured. **2nd** — policy covering occupied vehicle.	**1st** — policy where pedestrian is named insured. **2nd** — submit claim to any involved vehicle. **3rd** — if no insurance on involved vehicles — go to assigned claims plan.
Business Vehicles Used In Business Of Transporting Persons Or Property (at the time of the accident) * See Exceptions	**1st** — policy covering business vehicle. **2nd** — policy where driver is statutorily defined insured.	**1st** — policy covering business vehicle. **2nd** — policy where occupant is statutorily defined insured.	**1st** — policy covering business vehicle. **2nd** — policy where pedestrian is named insured. **3rd** — submit claim to any involved vehicle. **4th** — if no insurance on involved vehicles — go to assigned claims plan.
Business Vehicles **Exceptions**	**The rule governing vehicles used to transport persons or property does not apply to the following**: ▪ Bus ▪ Commuter Van ▪ Passenger in a taxi ▪ Taxi driver (for policies issued/renewed between 9/1/96 & 9/1/97) ▪ Vehicle being used to transport kids as part of a family or group family day care program ▪ Vehicle being used to transport kids to school/school-sponsored activity		
Business Vehicles Employer Furnished (accident need not occur in course & scope of business)	**1st** — if driver is an employee, spouse of employee, or resident relative of employee - policy covering business vehicle. **2nd** — if none of the above, policy where driver is statutorily defined insured.	**1st** — if occupant is an employee, spouse of employee, or resident relative of employee - policy covering business vehicle. **2nd** — if none of the above, policy where occupant is statutorily defined insured.	**1st** — policy covering business vehicle. **2nd** — policy where pedestrian is a statutorily defined insured. **3rd** — submit claim to any involved vehicle. **4th** — if no insurance on involved vehicles — go to assigned claims plan.
Fleet Vehicles In Interstate Commerce	If the vehicle occupied is 1 of 5 or m ore vehicles under common ownership, **and** regularly used in the business of transporting persons or property — PIP coverage is **not available** if the accident occurs **outside the State of Minnesota**.		
EXCLUSIONS to PIP	**The following exclusions bar no-fault coverage in Minnesota:** ▪ *Converted Motor Vehicles* (car thieves & joy riders) — if under age 14 can go to the assigned claims plan ▪ *Races* - if injury/death results from official racing contest ▪ *Intentional Injuries* - if intentionally causing or attempting to cause injury to self/others ▪ *Motorcycles* - unless a pedestrian, or motorcycle PIP coverage purchased		

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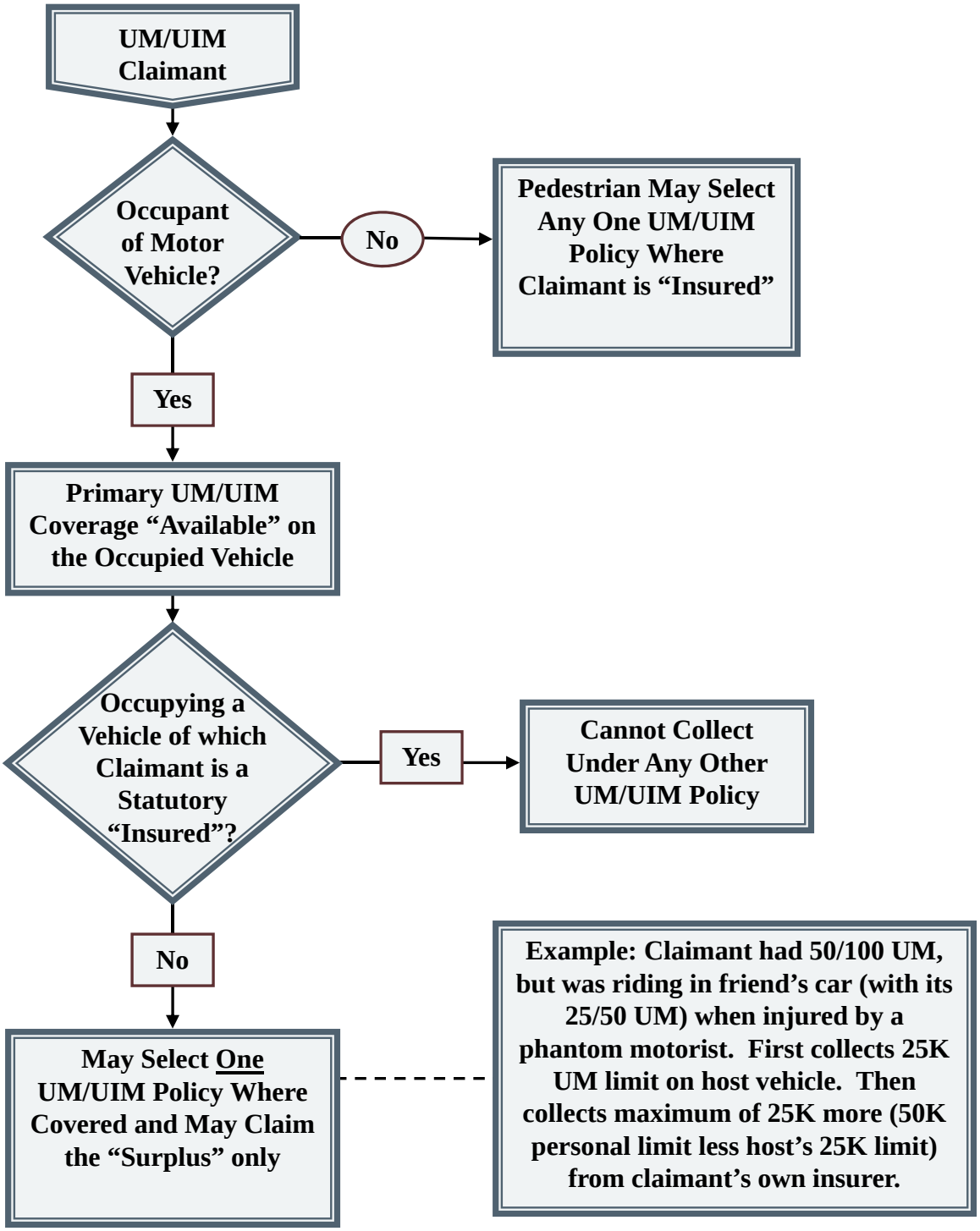
Determining the Source of UM/UIM Coverage in Minnesota



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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. **<u>What Benefits are Available?</u>**

- 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. **<u>Handling a No-Fault Claim:</u>**

- Start-up Letter – <u>see</u>, our sample;
- Know the amount of coverage available to the insured;
- Application for No-Fault Benefits – <u>see</u>, 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.*

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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.

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Requirements - provide proof of economic loss with pre/post-incident timesheets, payroll information, paystubs, certifications from employer of lost time/profits, disability slip, etc.

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

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

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

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

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

- **IME.** Make sure the independent medical examiner addresses the wage loss issue and is aware of any claimed past or current wage loss and has the documentation to examine. The IME doctor can also inquire as to additional information, or job specifics that he/she can incorporate into your IME report, that may further assist in defending the case.

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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 – PIP START-UP LETTER TO INSURED

Date:

Insured Address:
Insured:
Claim Number:
Date of Loss:
Injured Party:

Dear _____:

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

In accordance with the Minnesota No-Fault Automobile Insurance Act, the PIP benefits available to you for the above date of loss, are as follows: $_____ for medical expense benefits and $_____ for wage loss/replacement service benefits.

Loss of income will be paid to a maximum of $_____ not to exceed $500.00 per week at a rate of 85% of your gross wages.

For replacement services, we will pay for such services, not exceeding $200.00 per week; which would be payable under the maximum coverage of the loss of income benefits available of $_____. Replacement service benefits are not available for the day of the accident or the first full week after the accident.

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

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

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

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

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

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In order for _____ Insurance Company to consider payment of related charges for medical care, we need your medical providers to send us both medical records and medical bills. Your medical bills will not be paid without the corresponding medical records, so please advise your providers of this and they can contact me with any questions. Medical records in support of *any and all* medical bills/charges are necessary for consideration of payment for any and all medical care and treatment you receive.

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

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

If replacement services are being claimed, a disability statement from your treating physician is also required. Verification of the services provided and the amount paid is required from the service(s) provider as well. Documentation is also required pertaining to the alleged services where assistance is needed or claimed, along with appropriate documentation pertaining to what you need assistance for, and the type of tasks you cannot perform.

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

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

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

Please promptly return the requested information as soon as possible, so that we can begin processing your claim. Please note – Insurance Company will not be paying any medical charges associated with your care until the attached PIP application and authorizations are completed and documents are executed.

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

Very truly yours,

Adjuster's name
Title and
Insurance Company Contact Information
Including Email Address

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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 ☐ No ☐	Did police investigate accident? (check the appropriate box.) Yes ☐ No ☐		
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 ☐ No ☐			
Were you treated by a doctor? (check the appropriate box.) Yes ☐ No ☐	Name, address, phone # of doctor(s)		
Were you treated at a hospital? (check the appropriate box.) Yes ☐ No ☐	Name, address, phone # of hospital		
Amount of Medical Bills to Date $_____	Will you incur more medical bills? (check the appropriate box.) Yes ☐ No ☐	Were you working at the time of accident? (check the appropriate box.) Yes ☐ No ☐	
Did you lose wages as a result of your accident? (check the appropriate box.) Yes ☐ No ☐	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 ☐ No ☐			
Are you eligible to receive Medicare? (check the appropriate box.) Yes ☐ No ☐ If yes, what is your Medicare ID # _____.			
Have you ever made a workers' compensation or automobile no-fault claim before? (check the appropriate box.) Yes ☐ No ☐ If yes, describe how injury occurred, injuries received and date of claim.			
Have you ever suffered similar injuries to the injuries suffered in this accident? (check the appropriate box.) Yes ☐ No ☐ If yes, describe injuries, cause of injuries, date of injury, and places & addresses of prior providers			
List names and addresses of your current employer and other employers for two years prior to accident date.			
List all prior medical providers for 7 years prior to accident date.			
As a result of this accident, will you have any other medical treatments? If yes, please explain.			
Signature of applicant or guardian.	Print Name	Date	

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

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RECORDED STATEMENTS: 15 TIPS

1. CLAIMANT: Confirm at beginning of statement if they are represented by counsel. If so, obtain name of counsel and terminate discussion.

2. Identify yourself and your role in the claim. Explain that the statement is being recorded. Confirm they are ok physically and mentally and "now is a good time."

3. Tell the Claimant that providing a recorded statement may allow the claim to proceed more quickly.

4. When interviewing your insured, tell them that the statement is being taken in anticipation of a potential claim being brought against the insured.

5. Use English words and require the interviewee to use English words. Avoid "unh-huh" and "mm-hmm." If they use these words for responses, ask if that is a "yes" or a "no" response.

6. Make certain that only one person speaks at a time!

7. Take notes of the discussion in the event of an equipment failure.

8. Ask them if they have given any other recorded statements or interviews.

9. Claimant: Review all claim and medical/injury history.

10. MVA: Create a diagram for you to follow; use landmarks if directions are not known.

11. Do they have any documents? Insured may give you authorization to obtain police report.

12. Do they have any photographs? If a slip and fall, get them to take pictures immediately.

13. Are there any witnesses known? Get names, addresses, and phone numbers.

14. At the close of the interview, ask if they have anything to add and ask if all of their answers have been truthful.

15. Minn. Stat. §602.01: "Certain Statements Presumed To Be Fraudulent." Provide a copy of the recorded statement to the injured person. Transcribe the tape or just send an e-copy as soon as possible.

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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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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

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Automobile No-Fault Practice Group

Shayne M. Hamann, Chair
Eugene C. Shermoen
Stephen M. Warner
William J. McNulty
Allison V. LaFave

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

500 Young Quinlan Building
81 South Ninth Street
Minneapolis, MN 55402-3214

Phone 612 339-3500
Fax 612 339-7655

www.ArthurChapman.com

ARTHUR CHAPMAN
KETTERING SMETAK & PIKALA, P.A.
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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

500 Young Quinlan Building
81 South Ninth Street
Minneapolis, MN 55402-3214

Phone 612 339-3500
Fax 612 339-7655

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SAMPLE --DENIAL OF NO-FAULT BENEFITS LETTER

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

Date: _____

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

Dear Mr./Ms./Mrs. _____:

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

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

Consequently, based on Dr. _____'s report, all No-Fault benefits otherwise payable for this loss will be terminated as of _____. *(Date of IME, or date you want to deny No-Fault benefits, date of ROR or suspension letter. Use the earliest possible date to deny benefits, to protect company.)*

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

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

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

Very truly yours,

Claims Representative
_____ Insurance Company
Enc. IME Report

MINNESOTA NO-FAULT

Minnesota Rules of No-Fault Arbitration Procedures

AMERICAN ARBITRATION ASSOCIATION®

Available online at **adr.org**

Rules Amended and Effective January 1, 2018

Table of Contents

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 maters justly, exercising independent judgement, 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.

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8011

IN RE MANDATORY AND PERMISSIVE ELECTRONIC SCHEDULING FOR NO-FAULT ARBITRATION

ORDER

The administrator for the no-fault arbitration process authorized by Minn. Stat. § 65B.525 (2016), has implemented an electronic calendaring system that will assist the parties, the arbitrators, and the administrator in scheduling arbitrations. The No-Fault Arbitration Standing Committee recommends that use of this electronic system be made mandatory for all but self-represented claimants.

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that effective June 1, 2018, all attorneys admitted to practice in the State of Minnesota or admitted pro hac vice to practice in the State of Minnesota, and providers licensed to write insurance in the State of Minnesota and their representatives, are required to use the electronic calendaring system provided by the no-fault arbitration organization when scheduling no-fault arbitrations. All self-represented claimants scheduling no-fault arbitrations may, but are not required to, use the electronic calendaring system provided by the no-fault arbitration organization.

Dated: February 28, 2018

BY THE COURT:

Lorie S. Gildea
Chief Justice

American Arbitration Association
Dispute Resolution Services Worldwide

Minnesota Insurance Center

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/

August 7, 2014

Shayne M. Hamann, Esq.
Arthur Chapman Kettering
Smetak & Pikala, P.A.
81 S. Ninth Street, Suite 500
Minneapolis, MN 55402-3214

Re: 56 600 03006 14
Martha Gonzalez
and
State Farm Insurance Companies

Dear Arbitrator Hamann:

The Association has received a petition for mandatory arbitration under the Minnesota No-Fault Arbitration Rules. A copy of the petition and response are enclosed. The parties have selected you to serve as the arbitrator. We hope that you are able to offer the benefit of your wisdom and experience. This case will be administered according to the Minnesota No-fault Arbitration Rules which can be found on our website, www.adr.org.

Please take special care when completing the disclosure form and note the following Arbitrator's Oath before signing:

THE ARBITRATOR BY THIS OATH CERTIFIES THAT:

1. **I will act in good faith and with integrity and fairness.**

2. **I have disclosed to the parties prior to this hearing any interest or relationship likely to affect impartially or which might create an appearance of partiality or bias. (Canon II, Code of Ethics for Arbitrators in Commercial Disputes)**

   CANON II
   An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias.

3. **I have had no ex parte contacts, either orally or in writing, with any of the parties to this arbitration or their counsel except for communications concerning scheduling and anticipated duration of arbitration hearing. (MN No-Fault Arbitration Rule 21)**

If you are able to accept, please execute and return one copy of the enclosed Notice of Appointment at your earliest convenience. You will be compensated in accordance with Rule 40. Thank you for your consideration in this matter. I look forward to hearing from you in the near future.

Very truly yours,

Kelly A. Baker
Supervisor
612 278 5106
BakerK@adr.org

KAB/s
Enclosure(s)

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

Re: 56 600 03006 14
Martha Gonzalez
and
State Farm Insurance Companies

Claim File Number: 23381 T 657
Accident Date: December 15, 2013
Pol#: 142 0101A17 236 Pol Hld: Carlos Salazar

Case Manager: Kelly A. Baker

NOTICE OF APPOINTMENT

To: Shayne M. Hamann, Esq.

If you are able to accept this responsibility as Arbitrator, please sign and return this form to the AAA. This form will be provided to the parties above if you are appointed.

Pursuant to Rule 10, 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 following disclosure form as circumstances require.***

THE ARBITRATOR BY THIS OATH CERTIFIES THAT:

		YES	NO
1.	I will act in good faith and with integrity, fairness and neutrality.	____	____
2.	I am currently licensed to practice law in Minnesota and in good standing.	____	____
3.	I have 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.	____	____
4.	In the last year, I, or my firm, have been hired by Respondent to represent the respondent or respondent's insureds in a dispute for which respondent provides insurance coverage. 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.	____	____

If you responded "Yes," please explain:

_____

_____

_____

_____

_____

		YES	NO
5.	I, have received referrals within the last year from officers, employees or agents of any entity whose bills are in dispute in the arbitration referenced above, or my firm has received such referrals and I am aware of them.	____	____

If you responded "Yes," please list the entity and/or entities at issue:

_____

_____

_____

6. It is most important that the parties have complete confidence in the arbitrator's impartiality. Therefore, please disclose any past or present relationship with the parties or their counsel, direct or indirect, whether financial, professional, social or of any other kind. If any relationship arises during the course of the arbitration or if there is any change at any time in the biographical information that you have provided to the AAA, it must also be disclosed. Any doubts should be resolved in favor of disclosure. If you are aware of such a relationship please describe it below. The AAA will call the facts to the attention of the parties' counsel.

_____

_____

_____

_____

_____

_____

_____

THE ARBITRATOR'S OATH

The undersigned arbitrator, being duly sworn, hereby accepts this appointment and will faithfully and fairly hear and decide the matters in controversy between the above-named parties, in accordance with the Minnesota No-Fault Act and rules promulgated hereunder, and will make an Award according to the best of the Arbitrator's understanding.

Dated: _____ Signed: _____

☐ **CHECK HERE if compensation check should be made PAYABLE TO YOUR FIRM.**

Automobile Law Practice Group

Practice Group Chair

Shayne M. Hamann

Group Members

Blake M. Duerre

Gregory J. Duncan

Steven J. Erffmeyer

Charles B. Harris

Beth A. Jenson Prouty

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James F. Mewborn

Lee A. Miller

Paul J. Rocheford

Eugene C. Shermoen

Stephen M. Warner

February 28, 2018

Minnesota Supreme Court Holds Auto Insurance Proceeds Not Subject To Civil Forfeiture After DWI

by Stephen M. Warner

On February 14, 2018, the Minnesota Supreme Court issued its decision in *Briles v. 2013 GMC Terrain*, concluding that auto insurance proceeds for property damage to a vehicle are not subject to civil forfeiture after an impaired driving offense.

In the case, Briles' son was involved in a single-vehicle accident while operating Briles' GMC Terrain under the influence of alcohol. The son was charged with second-degree driving while impaired as a result of the accident. Scott County then gave Briles notice of seizure and the intention to seek forfeiture of the vehicle under Minn. Stat. § 169A.63, which provides that "all right, title and interest" in a vehicle vests in the appropriate government agency upon commission of certain listed offenses, including driving while impaired. Scott County separately notified Briles' auto insurer of the forfeiture and asserted a right to any insurance proceeds for property damage to the vehicle.

After the district court dismissed Briles' complaint for a judicial determination of the validity of the forfeiture, he appealed both the dismissal and the County's claim for the proceeds from his insurance policy. The Court of Appeals upheld the dismissal of his complaint but determined that the proceeds of the insurance policy were not subject to forfeiture. The Supreme Court affirmed. Observing that the civil forfeiture statute gives the government agency all "right, title and interest" in a vehicle subject to forfeiture, the court concluded that auto insurance proceeds are not an "interest" in the vehicle they insure, but rather are payments due under a contract. Accordingly, the insurance proceeds were not subject to forfeiture. As a result, while Scott County kept the vehicle, the insurance payment under the property damage coverage of the applicable policy went to Briles.

Note that the Supreme Court's decision is limited to civil forfeitures under Minn. Stat. § 169A.63, which generally applies to vehicle forfeitures after impaired driving offenses. Other statutes authorize civil forfeiture for different crimes, and are considerably broader in scope. But in the context of impaired driving offenses, this decision precludes state or local government agencies from seizing insurance proceeds as part of the vehicle forfeiture process.

Click here to read the Supreme Court's decision.

The members of Arthur Chapman's Automobile Law Group stand ready to answer your questions.

612 339-3500
www.ArthurChapman.com

500 Young Quinlan Building | 81 South 9th Street | Minneapolis, MN 55402
811 1st St. #201 | Hudson, WI 54016

2018 WL 845974
Only the Westlaw citation is currently available.
Supreme Court of Minnesota.

Russell Eldon BRILES,
Respondent/Cross-Appellant,
v.
2013 GMC TERRAIN, MN License Number 168 KSE, VIN: 2GKFLZE3XD6336507,
Appellant/Cross-Respondent.

A16-0768
|
Filed: February 14, 2018

Synopsis

Background: Owner of vehicle, which his intoxicated son crashed and totaled, brought action seeking judicial determination of forfeiture after police department sought to seize insurance proceeds from vehicle. The District Court, Scott County, No. 70-CV-15-24105, dismissed owner's complaint. Owner appealed. The Court of Appeals, 892 N.W.2d 525, affirmed in part and reversed in part. Parties filed petitions for review.

Holdings: The Supreme Court, Gildea, C.J., held that:

[1] owner was not entitled to exception from 60-day period for filing complaint for judicial determination of forfeiture, and

[2] insurance proceeds payable on a vehicle that is subject to forfeiture are not subject to forfeiture.

Affirmed.

West Headnotes (8)

[1] Appeal and Error
Cases Triable in Appellate Court

Issues of statutory interpretation are reviewed de novo.

Cases that cite this headnote

[2] Limitation of Actions
Operation as to rights or remedies in general

Not all time bars operate as jurisdictional limits.

Cases that cite this headnote

[3] Forfeitures
Pleadings and claims

In forfeiture proceeding, vehicle owner was not entitled to exception from 60-day period for filing complaint for judicial determination of forfeiture on ground that vehicle was stolen; time for owner to raise that issue was during the 60-day period. Minn. Stat. Ann. §§ 169A.63(8)(c)(3), 169A.63(8)(e), 169A.63(8)(f).

Cases that cite this headnote

[4] Forfeitures
Pleadings and claims

Even if 60-day deadline for filing complaint for judicial determination of forfeiture was subject to tolling on basis of unclean hands, vehicle owner failed to meet the high standard for tolling by alleging that his vehicle was stolen and that county knew vehicle was stolen. Minn. Stat. Ann. § 169A.63(8)(c)(3).

Cases that cite this headnote

[5] Forfeitures
Money, funds, and accounts in general

Insurance proceeds payable on a vehicle that is subject to forfeiture are not part of the owner's "right, title, and interest" in the vehicle and are thus not subject to forfeiture. Minn. Stat. Ann. § 169A.63(3).

Cases that cite this headnote

[6] Statutes

Plain Language;Plain, Ordinary, or Common Meaning

Statutes

Technical terms

Courts generally give the words of a statute their plain and ordinary meanings, but courts interpret technical words and phrases according to their special, technical meanings.

Cases that cite this headnote

[7] **Statutes**

Technical terms

Statutes

Context

Whether a word is used in a statute in a technical sense is based on the context in which it is used.

Cases that cite this headnote

[8] **Insurance**

Nature of Contracts or Policies

Insurance contracts are separate and distinct from the insured property.

Cases that cite this headnote

Court of Appeals.

Attorneys and Law Firms

James M. Ventura, Wayzata, Minnesota, for respondent/cross-appellant.

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, First Assistant County Attorney, Shakopee, Minnesota, for appellant/cross-respondent.

Mahesha P. Subbaraman, Subbaraman PLLC, Minneapolis, Minnesota, for amicus curiae Americans for Forfeiture Reform.

Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota for amicus curiae Minnesota Association of Criminal Defense Lawyers.

Syllabus by the Court

***1** 1. A complaint for judicial determination of a forfeiture under Minn. Stat. § 169A.63, subd. 8 (2016) is time-barred if it is filed more than 60 days after receipt of the notice the statute requires.

2. Because insurance proceeds payable as a result of damage to a forfeited vehicle are not a part of all "right, title, and interest" in the vehicle under Minn. Stat. § 169A.63 (2016), that statute does not authorize the forfeiture of insurance proceeds.

Opinion

OPINION

Gildea, Chief Justice.

This case asks us to interpret the vehicle forfeiture statute, Minnesota Statutes § 169A.63 (2016). Respondent Russell Briles brought a complaint under Minn. Stat. § 169A.63, subd. 8(e), challenging the forfeiture of his vehicle and the insurance proceeds payable to him under an insurance policy covering property damage to the vehicle. The district court dismissed the complaint because Briles filed it more than 60 days after he received the notice section 169A.63 requires. The court of appeals affirmed the district court's conclusion that Briles filed his complaint too late, but reversed the district court's conclusion that the insurance proceeds were subject to forfeiture under section 169A.63. Because we conclude that Briles's complaint is time barred, but that insurance payments are not subject to forfeiture under section 169A.63, we affirm the court of appeals.

FACTS

Russell Briles owned a 2013 GMC Terrain, which was driven by his son and heavily damaged in a single-vehicle accident. The City of Savage police arrested Briles's son for driving under the influence of alcohol as a result of the accident and seized the vehicle. On September 25, 2015, the police department served Briles with a timely notice of the seizure and the intention to seek forfeiture of the vehicle, as required by Minn. Stat. § 169A.63, subd. 8.

The notice described Briles's rights under the statute and informed Briles that if he did not file a complaint for judicial determination of the forfeiture within 60 days, pursuant to Minn. Stat. § 169A.63, subd. 8(e), he would lose the vehicle "automatically." *Id.*, subd. 8(c). Briles did not file a complaint within 60 days.

Also on September 25, the Scott County Attorney sent a letter to Briles's insurer, notifying the carrier of the forfeiture. The letter asserted a right to any insurance proceeds for the vehicle and asked the insurer to delay the disbursement of those proceeds until the forfeiture was completed. Briles was not provided a copy of the letter and the County did not otherwise notify him of the County's intention to seek forfeiture of the insurance proceeds. Briles did not learn of the letter to his insurance company until sometime in December, after the 60-day deadline in Minn. Stat. § 169A83, subd. 8(e) had passed. When he learned of the letter, Briles filed a complaint for judicial determination under Minn. Stat. § 169A.63, subd. 8, challenging the County's forfeiture of both the vehicle and the insurance proceeds.

***2** The district court dismissed Briles's complaint. The court concluded that because insurance proceeds are part of all "right, title, and interest" in a vehicle, Minn. Stat. § 169A.63, subd. 3, Briles received proper notice of the forfeiture of the insurance proceeds in the September 25 letter he received from the police. Given that Briles filed his complaint more than 60 days after he received that notice, the court held that his complaint was untimely and the court had no jurisdiction over it.

Briles appealed and the court of appeals affirmed in part and reversed in part. *Briles v. 2013 GMC Terrain*, 892 N.W.2d 525, 533 (Minn. App. 2017). The court of appeals affirmed the district court's dismissal of the complaint as untimely. *Id.* at 530. But the court concluded that insurance proceeds are not part of all "right, title, and interest" in a vehicle and therefore not subject to forfeiture under Minn. Stat. § 169A.63. *Briles*, 892 N.W.2d at 531. We granted the County's petition for review on the question of whether insurance proceeds are subject to forfeiture under section 169A.63 and also granted Briles's conditional cross-petition for review on the question of whether he timely filed his complaint. [1]

ANALYSIS

[1] On appeal, the County argues that the insurance proceeds on Briles's vehicle as well as the vehicle itself are subject to forfeiture under Minn. Stat. § 169A.63. Briles disagrees and argues that the district court should not have dismissed his complaint as untimely under the statute. The parties' arguments present issues of statutory interpretation that we review de novo. *State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011).

Before turning to the parties' specific arguments, we look first at the statute. Under Minn. Stat. § 169A.63, subd. 8(a), vehicles used in the commission of a "designated offense" are subject to forfeiture. The offense with which police charged Briles's son—second-degree driving while impaired—is a "designated offense." Minn. Stat. § 169A.63, subd. 1(e)(1) (defining "designated offense" as including second-degree driving while impaired). By operation of the forfeiture statute, "[a]ll right, title, and interest in a vehicle subject to forfeiture ... vests in the appropriate agency upon commission of the conduct resulting in the designated offense." Minn. Stat. § 169A.63, subd. 3. But the agency must give notice of its intention to forfeit to the owner of the vehicle and inform the owner of the owner's right to challenge the forfeiture. Minn. Stat. § 169A.63, subd. 8(b)–(c). Specifically, the notice must tell the owner about the owner's right to seek a judicial determination of the forfeiture by filing a complaint within 60 days of receiving that notice, and that if a complaint is not filed within 60 days, the owner will lose the property at issue. Minn. Stat. § 169A.63, subd. 8(c)(3). With these statutory provisions in mind, we turn to the parties' arguments.

I.

***3** We turn first to Briles's argument that the district court erred in dismissing his complaint as untimely. It is undisputed that Briles filed his complaint more than 60 days after he received the September 25 letter from police. Nevertheless, Briles argues that his complaint should be allowed to proceed. We disagree.

As noted above, the statute requires that a complaint for judicial determination of the forfeiture be filed within 60 days of service of the notice the statute mandates. Minn.

Stat. § 169A.63, subd. 8(e); *see also* Minn. Stat. § 169A.63, subd. 8(c)(3) (requiring that the notice inform the owner that "[y]ou will automatically lose the [property at issue] and the right to be heard in court if you do not file a lawsuit and serve the prosecuting authority within 60 days"). The statute also plainly provides that "an action for the return of a vehicle seized under this section *may not be maintained* by or on behalf of any person who has been served with a notice of seizure and forfeiture unless the person has complied with this subdivision." Minn. Stat. § 169A.63, subd. 8(f) (emphasis added).

[2] The statute unambiguously requires the timely filing of a petition for judicial determination to challenge the forfeiture of a vehicle.[2] Minn. Stat. § 169A.63, subd. 8(c)(3). Briles received a timely notice of the intention to forfeit his vehicle, and he therefore knew of the 60-day period in which to file a challenge to that forfeiture. Briles, however, did not file a complaint for judicial determination within that 60-day period. Because Briles did not comply with the statutory time limit, his complaint was untimely, and the district court properly dismissed it. Minn. Stat. § 169A.63, subd. 8(f).

[3] In urging us to conclude otherwise, Briles argues that the district court should not have dismissed his complaint because his son stole the vehicle and the vehicle therefore is not subject to forfeiture under the statute. Briles is correct that stolen vehicles are exempt from forfeiture under the statute. *See* Minn. Stat. § 169A.63, subd. 1(g) (excluding from the definition of "motor vehicle" vehicles "stolen or taken in violation of the law"). But the time to raise this argument was within 60 days of receipt of the September 25 notice. Minn. Stat. § 169A.63, subd. 8(f) (noting that complaint "must state with specificity the grounds on which the claimant alleges the vehicle was improperly seized"). *See also Patino v. One 2007 Chevrolet*, 821 N.W.2d 810, 813 (Minn. 2012) ("If the owner makes no demand for judicial determination or fails to make such a demand within the allotted time, the vehicle is administratively forfeited and the owner loses all rights to the vehicle."). Accordingly, we reject the stolen-vehicle argument.

***4** **[4]** Briles also argues that his delay beyond the 60-day deadline should be excused based on the doctrine of unclean hands. He contends that the vehicle was stolen and the County knew the vehicle was stolen, and that therefore, the County's efforts to forfeit the vehicle are inequitable. But even if the 60-day deadline in the statute was subject to tolling on the basis of unclean hands, an issue we need not decide, Briles's unclean-hands theory does not come close to meeting the "high" standard we apply for tolling. *See Sanchez v. State*, 816 N.W.2d 550, 560–61 (Minn. 2012) (declining to decide whether equitable tolling applied to toll the statute of limitations where petitioner did not offer evidence sufficient to meet the "necessarily ... high" standard for tolling).

In sum, Briles filed his complaint more than 60 days after he received notice of the intended forfeiture of his vehicle. We therefore hold that the district court properly dismissed the complaint insofar as it challenged the forfeiture of the vehicle.

II.

[5] Even though we have concluded that the district court properly dismissed Briles's complaint as untimely, that conclusion does not resolve this appeal because Briles separately challenges the forfeiture of the insurance proceeds. Specifically, Briles argues that, because he did not get timely notice that the County intended to seek forfeiture of not only his vehicle, but also the insurance proceeds payable under the insurance policy covering his vehicle, the proceeds are not forfeitable. The County disagrees, contending that the September 25 notice letter satisfied its obligation to give Briles notice because the letter cited Minnesota Statutes § 169A.63. Under the statute, "[a]ll right, title, and interest" in the vehicle is subject to forfeiture. *See* Minn. Stat. § 169A.63, subd. 3. Because insurance proceeds are an "interest" in a vehicle, the County contends, the statutory citation was sufficient to give Briles notice. The parties' arguments require us to determine whether insurance proceeds payable on a vehicle that is subject to forfeiture under Minn. Stat. § 169A.63 are also subject to forfeiture because those proceeds are part of the owner's "right, title, and interest" in the vehicle. We conclude that they are not.

[6] **[7]** We generally give the words of a statute their plain and ordinary meanings, but we interpret technical words and phrases according to their special, technical meanings. *State v. Schouweiler*, 887 N.W.2d 22, 25 (Minn. 2016). Whether a word is used in a technical sense is based on the context in which it is used. *Id.* The phrase "right, title, and interest" is a technical term with a well-developed

legal meaning. We have recognized that a transfer using the phrase "right, title, and interest" conveys all *interest* in a piece of property. *See Tuttle v. Boshart*, 88 Minn. 284, 92 N.W. 1117, 1118 (1903) ("[T]he operative words of the quitclaim deed in question were broad enough to include whatever and all *interest* the grantor might have had in the premises ...." (emphasis added)); *see also* Minn. Stat. § 507.06 (2016) ("A deed of quitclaim and release shall be sufficient to pass all the estate which the grantor could convey ...."); Minn. Stat. § 507.07 (2016) ("Every such [quitclaim deed], duly executed, shall be a conveyance to the grantee ... of all right, title, and interest of the grantor in the premises...."); *see also* Bryan A. Garner, *Garner's Dictionary of Legal Usage* 788–89 (3d ed. 2011) ("[Right, title, and interest], one of the classic triplets of the legal idiom, is the traditional language for conveying a quitclaim interest.").

As a triplet, Garner notes, "only one of the three words is necessary, as the broad meaning of *interest* includes the others." *Id.* "Interest" is defined as, "[a] legal share in something; all or part of a legal or equitable claim to or right in property." *Interest*, Black's Law Dictionary (8th ed. 2004). An "interest" under this definition must be an interest *in something*—some piece of property. In the context of the vehicle forfeiture statute, that property is the "vehicle subject to forfeiture," and only property rights in that vehicle are subject to forfeiture. *See* Minn. Stat. § 169A.63, subd. 3. Insurance proceeds that flow from an insurance policy that covers a vehicle subject to forfeiture are not an interest in that vehicle; they are payments due under an insurance contract.

***5** **[8]** The County's proposed interpretation of insurance proceeds, as part of the "interest in the vehicle," alters the language of the statute. Specifically, the County's interpretation, in effect, reads the word "in" as "about" or "relating to." But we cannot alter the words of the statute in this fashion. *Webber v. Webber*, 157 Minn. 422, 196 N.W. 646, 647 (1923) ("[T]he duty and prerogative of the court is to apply the law as it is."). An insurance contract is not an interest *in* a vehicle, it is a contract *about* a vehicle. Disregarding this distinction ignores our case law treating insurance contracts as separate and distinct from the insured property. *See Vetter v. Sec. Cont'l Ins. Co.*, 567 N.W.2d 516, 521 (Minn. 1997) (noting that insurance policies are contracts, and general principles of contract law, including the law of assignment, apply unless a statute provides otherwise); *Epland v. Meade Ins. Agency Assocs., Inc.*, 564 N.W.2d 203, 207 (Minn. 1997) ("[A] party to a contract may assign all beneficial rights to another...."). In other words, the right to receive payments on an insurance contract arises not from the vehicle itself, but from the contract the insured has with the insurance company. Insurance proceeds therefore are not an "interest in a vehicle" under Minn. Stat. § 169A.63, subd. 3. [3]

The County also argues that in spite of the statutory language, *Schug v. $9,916.50 in U.S. Currency*, 669 N.W.2d 379 (Minn. App. 2003), *rev. denied* (Minn. Dec. 16, 2003), controls the outcome here. We disagree. *Schug* held that insurance payments were forfeitable under Minn. Stat. § 609.5312 (2016), after a conviction for criminal vehicular operation in violation of Minn. Stat. § 609.21, subd. 2a (2002). Section 609.5312 provides that "[a]ll personal property is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a *designated offense*." Minn. Stat. § 609.5312, subd. 1 (emphasis added). The statute listed several crimes in the definition for "designated offense," including criminal vehicular operation. Minn. Stat. § 609.531, subd. 1(f) (2002). But the offense at issue in this case—driving while intoxicated—was not a designated offense under section 609.5312 when *Schug* was decided and it is not a designated offense under the statute as it is currently written. *See* Minn. Stat. § 609.531, subd. 1(f) (2016).

Moreover, the statute at issue in *Schug* expressly provided that "[a]ll money and other property, real and personal, that represent *proceeds* of a designated offense, ... are subject to forfeiture." Minn. Stat. § 609.5312, subd. 1 (emphasis added). The insurance payment in that case was arguably "proceeds" of the underlying criminal conduct of criminal vehicular operation, because but for the criminal vehicular operation, Schug would not have had any insurance payment. But the statute at issue here—Minn. Stat. § 169A.63—contains no such reference to "proceeds of a designated offence." For these reasons, *Schug* is inapposite. [4]

***6** In sum, insurance proceeds are not part of all "right, title, and interest in a vehicle" under Minn. Stat. § 169A.63, subd. 3. Accordingly, the September 25 notice Briles received did not include those proceeds. Because insurance proceeds are not subject to forfeiture as part of the "right, title, and interest" in Briles's vehicle, whether

such proceeds are forfeitable is not properly litigated within the confines of section 169A.63. *See* Minn. Stat. § 169A.63, subd. 9 (providing for "judicial determinations of the forfeiture of a motor vehicle"). The district court's dismissal of Briles's complaint to the extent it challenged the forfeiture of the insurance proceeds was therefore proper—but as to insurance payments, the complaint was dismissed for the wrong reasons. [5]

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

All Citations

--- N.W.2d ----, 2018 WL 845974

Footnotes

1 Briles moved to strike portions of the County's statement of the case, facts, and addendum that relate to earlier impaired-driving-incidents involving his son. In an August 14, 2017 order, we deferred decision on this motion until we reached the merits. *Briles v. 2013 GMC Terrain*, No. A16-0768, Order at 1 (Minn. filed Aug. 14, 2017). The State charged Briles's son with second-degree driving while impaired. The prior incidents provide the factual basis for the aggravating factors required for second-degree driving while impaired. *See* Minn. Stat. § 169A.25 (2016) ("A person ... is guilty of second-degree driving while impaired if two or more aggravating factors were present when the violation was committed."). Accordingly, we deny Briles's motion.

2 The district court and court of appeals characterized this time limit as a jurisdictional limit, depriving the district court of subject matter jurisdiction to hear the case. *See Briles*, 892 N.W.2d at 528. As we have noted, however, not all time bars operate as jurisdictional limits. *See Weitzel v. State*, 883 N.W.2d 553, 557 (Minn. 2016) (noting that limitation periods for filing a petition for postconviction relief under Minn. Stat. § 590.01 are not jurisdictional); *Hooper v. State*, 838 N.W.2d 775, 780–81 (Minn. 2013) (holding that the limitation period under Minn. Stat. § 590.01, subd. 4(a) is not jurisdictional); *In re Civil Commitment of Giem*, 742 N.W.2d 422, 427–28 (Minn. 2007) (discussing cases and concluding that not all time limits are jurisdictional); *Rubey v. Vannett*, 714 N.W.2d 417, 421–22 (Minn. 2006) (holding that deadlines for filing and hearing motion for a new trial or for amended findings under Minn. R. Civ. P. 59.03 are not jurisdictional). Given our resolution of this case, we need not determine whether the time limit in Minn. Stat. § 169A.63, subd. 8, is jurisdictional, and therefore we express no opinion on that issue.

3 Minnesota Statutes § 169A.63, subd. 4 reinforces our interpretation of "right, title, and interest" in a vehicle as not including the right to any insurance proceeds payable because of damage to the vehicle. This provision refers to the value of a vehicle as its retail value only, with no reference to money from other sources. *See* Minn. Stat. § 169A.63, subd. 4 (providing that the owner of a seized vehicle may take possession of it by giving security or posting a bond payable to the seizing agency in the amount of the retail value of the vehicle.). The forfeiture then proceeds against the security or bond as if it were the seized vehicle. *Id.* The statute does not say a bond must be posted to cover the insurance proceeds for a vehicle declared a total loss or otherwise damaged; it simply requires a bond to cover retail value—no more, no less. This provision underscores our interpretation of "interest" as limited to the vehicle itself.

4 The County's reliance on *In re Rebeau*, 787 N.W.2d 168 (Minn. 2010), is similarly unhelpful. Although we cited *Schug*, we did not discuss *Schug* or apply its reasoning in that attorney-discipline case because the issue presented in *Schug* was not before us in *Rebeau. See Rebeau*, 787 N.W.2d at 172. The reference to *Schug* in *Rebeau* is therefore dictum and does not assist in the resolution of this case.

5 Because insurance proceeds are not subject to forfeiture under Minn. Stat. § 169A.63, the dismissal of Briles's complaint brought under that statute is without prejudice to the rights and remedies the parties here and others may have in future proceedings involving the insurance payments.

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0314

Western National Insurance Company,
Respondent,

vs.

Jon Nguyen,
Appellant.

Filed September 18, 2017
Affirmed in part and reversed in part
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-16-14268

Kelly Sofio, Oskie & Sofio, PLLC, St. Paul, Minnesota (for respondent)

Charles D. Slane, Isaac I. Tyroler, TSR Injury Law, Bloomington, Minnesota (for appellant)

Wilbur W. Fluegel, Fluegel Law Office, Minneapolis, Minnesota (for amicus Minnesota Ass'n for Justice)

Considered and decided by Halbrooks, Presiding Judge; Reyes, Judge; and Florey, Judge.

S Y L L A B U S

Minn. Stat. § 62Q.75, subd. 3 (2016), applies in the no-fault context and may bar an insured's claim for medical-expense benefits from his no-fault insurer if the statute's application results in the insured not suffering a "loss" as defined in Minn. Stat. § 65B.54, subd. 1 (2016).

OPINION

HALBROOKS, Judge

Appellant insured challenges the district court's order vacating his no-fault arbitration award, arguing that the district court erred by applying Minn. Stat. § 62Q.75, subd. 3, to bar his claim for no-fault benefits. Appellant also contends that the district court erred by vacating respondent insurer's obligation to pay arbitration fees. We affirm in part and reverse in part.

FACTS

In January 2011, appellant Jon Nguyen sustained injuries in a motor-vehicle accident. The accident occurred during the course of Nguyen's employment while he was driving a company vehicle insured by respondent Western National Insurance Company. Nguyen's employer initially paid for his injury-related medical treatment as part of a workers' compensation claim. After Nguyen's workers' compensation benefits ended, Western National paid no-fault benefits to Nguyen. In May 2012, Western National requested that Nguyen attend an independent medical examination (IME). The examiner concluded that no further medical treatment was reasonable, necessary, or related to any injury sustained in the accident. Based on the IME, Western National notified Nguyen's attorney of its denial of future benefits. Nguyen filed for no-fault arbitration. In January 2013, the no-fault arbitrator denied Nguyen's claim in its entirety.

In February 2014, Nguyen began treating with a new health-care provider, the Center for Diagnostic Imaging (CDI). CDI submitted a single bill to Western National for one of Nguyen's first visits. Western National responded to CDI by letter in May 2014,

denying coverage for Nguyen's treatment based on the previous IME and the January 2013 arbitration. Nguyen continued treating with CDI, but CDI did not submit any additional bills to Western National. When Nguyen finished treatment with CDI near the end of 2014, his treatment charges exceeded $10,000.

In April 2016, Nguyen again filed for no-fault arbitration against Western National, seeking payment of the CDI bills. Western National asserted Minn. Stat. § 62Q.75, subd. 3, as a defense to the claim. A different arbitrator conducted a hearing and awarded Nguyen $11,695.23 in medical expenses, interest, and fees. Western National moved the district court to vacate the arbitration award.

In January 2017, the district court granted Western National's motion and vacated the award of arbitration fees and all but $1,027.25 of Nguyen's award for medical expenses and costs. The district court awarded Nguyen the value of the bill that CDI submitted to Western National in 2014. The district court concluded that Minn. Stat. § 62Q.75, subd. 3, applied, and that because CDI had submitted only one bill to Western National within the statutory six-month time frame, CDI could not collect its remaining charges. Thus, aside from the medical expenses for one visit, Nguyen did not experience a loss that would entitle him to no-fault benefits. The district court also concluded that medical-expense benefits never became due because CDI did not submit its claim to Western National pursuant to uniform electronic transaction standards. *See* Minn. Stat. § 65B.54, subd. 1 (requiring health-care providers to submit claims according to approved electronic standards and prohibiting health-care providers from directly billing insured when claim is

not remitted pursuant to standards). Finally, the district court determined that Nguyen is not personally obligated to pay the outstanding CDI charges. Nguyen appeals.

ISSUES

I. Did the district court err by applying Minn. Stat. § 62Q.75, subd. 3, to conclude that Nguyen did not suffer a "loss" under Minn. Stat. § 65B.54, subd. 1, that would entitle him to no-fault benefits?

II. Did the district court err by vacating the award of arbitration fees?

ANALYSIS

Nguyen contends that the district court erred by vacating in part his no-fault arbitration award. The district court vacated the award on the basis that the arbitrator exceeded his authority by failing to apply Minn. Stat. § 62Q.75, subd. 3. *See* Minn. Stat. § 572B.23(a)(4) (2016) (directing Minnesota courts to vacate arbitration award when arbitrator exceeds the arbitrator's powers). While a no-fault arbitrator has the authority to decide questions of fact, courts interpret the law. *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn. 2000). Appellate courts review de novo "the arbitrator's legal determinations necessary to granting relief." *Id.* A dispute regarding no-fault coverage also presents a question of law that we review de novo. *Garlyn, Inc. v. Auto-Owners Ins. Co.*, 814 N.W.2d 709, 712 (Minn. App. 2012); *see also Stand Up Multipositional Advantage MRI, P.A. v. Am. Family Ins. Co.*, 889 N.W.2d 543, 548 (Minn. 2017) (stating that whether a claim actually exists is a legal question for the courts).

I.

Under the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2016), an insured individual is entitled to basic economic-loss benefits for injuries

arising out of the maintenance or use of a motor vehicle. Minn. Stat. § 65B.44, subd. 1. Basic economic-loss benefits, which include reasonable and necessary medical-expense benefits, become payable as loss accrues. Minn. Stat. § 65B.54, subd. 1. A "loss" accrues not when the injury occurs but rather when medical expenses are incurred. *Id.* And an injured person "incurs medical expense as he or she receives bills for medical treatment." *Stout v. AMCO Ins. Co.*, 645 N.W.2d 108, 113 (Minn. 2002).

Nguyen argues that Minn. Stat. § 62Q.75, subd. 3, cannot bar his no-fault claim because the statute only governs claims between health-care providers and health-plan companies and he is not a health-care provider. As a matter of first impression, we interpret Minn. Stat. § 62Q.75, subd. 3, to decide whether it applies to the determination of whether an individual is entitled to no-fault benefits. The aim of statutory interpretation is to effectuate the legislature's intent. *State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 529 (Minn. 2015). If legislative intent is clear from the statute's unambiguous language, we interpret the statute according to its plain meaning. *Id.* But if the statute's language is ambiguous because it is susceptible to different reasonable interpretations, we may consider other methods of construction to ascertain legislative intent. *Id.*

The Minnesota Health Plan Contracting Act sets forth the requirements for contracts between health-care providers and health-plan companies. Minn. Stat. §§ 62Q.732-.751 (2016). This act includes a prompt-payment statute. Minn. Stat. § 62Q.75. Under Minn. Stat. § 62Q.75, subd. 2(a), health-plan companies must either pay or deny clean claims within 30 days of receiving the claim. A "clean claim" is a claim that has no defect or impropriety and does not lack any required substantiating documentation. *Id.*, subd. 1(b).

The general purpose underlying prompt-payment statutes is to prescribe a designated time period for health insurers to pay valid claims in order to facilitate timely payment to health-care providers. Michael Flynn, *The Check Isn't In The Mail: The Inadequacy of State Prompt Pay Statutes*, 10 DePaul J. Health Care L. 397, 402 (2007).

Minn. Stat. § 62Q.75 also establishes a timeline for health-care providers to "submit their charges" to health-plan companies. The statute provides:

> [T]he health care providers and facilities specified in subdivision 2 must submit their charges to a health plan company or third-party administrator within six 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 responsible health plan company or third-party administrator, whichever is later. *A health care provider or facility that does not make an initial submission of charges within the six-month period shall not be reimbursed for the charge and may not collect the charge from the recipient of the service or any other payer*. . . . This subdivision also applies to all health care providers and facilities that submit charges . . . to reparation obligors for treatment of an injury under chapter 65B.

Minn. Stat. § 62Q.75, subd. 3 (emphasis added). Although this statutory chapter does not generally apply to no-fault insurers, the more specific language of Minn. Stat. § 62Q.75, subd. 3, expressly states that it applies to no-fault insurers. *Compare* Minn. Stat. § 62Q.02(a) (2016) ("This chapter applies only to health plans, as defined in section 62Q.01, and not to other types of insurance issued or renewed by health plan companies, unless otherwise specified."), *with* Minn. Stat. § 62Q.75, subd. 3. The last sentence of subdivision 3 provides that "[t]his subdivision also applies to all health care providers and facilities that submit charges to . . . reparation obligors for treatment of an injury under chapter 65B." Minn. Stat. § 62Q.75, subd. 3; *see* Minn. Stat. § 65B.43, subd. 9 (2016)

(defining "reparation obligor" as "an insurer or self-insurer obligated to provide the benefits required" under the no-fault act). In a conflict between two statutory provisions, specific provisions in the statute control over general provisions. *See* Minn. Stat. § 645.26, subd. 1 (2016) (directing Minnesota courts to construe special provision as prevailing and as an exception to general provision). And even if this statutory language could be construed as ambiguous, the legislative history supports our interpretation. *See* Hearing on S.F. No. 1998 Before the S. Comm. on Commerce (Apr. 6, 2005) (statement of Sen. Michel). We conclude that Minn. Stat. § 62Q.75, subd. 3, applies to health-care providers seeking reimbursement from no-fault insurers.

We agree with Nguyen that the statute is silent about insured claimants and unambiguously provides only that "health care providers and facilities . . . must submit their charges to a health plan company . . . within six months." Minn. Stat. § 62Q.75, subd. 3. It is undisputed that Nguyen is not a "health care provider" as defined in the statute. *See* Minn. Stat. § 62Q.733, subd. 3 (2016) (defining "health care provider" as "a physician, chiropractor, dentist, podiatrist, or other provider as defined under section 62J.03, other than hospitals, ambulatory surgical centers, or freestanding emergency rooms"). But although the statute expressly sets forth only requirements for a health-care provider and not an insured, a health-care provider's failure to meet these requirements does affect whether the insured experiences a loss. "A health care provider or facility that does not make an initial submission of charges within the six-month period shall not be reimbursed for the charge and may not collect the charge from the recipient of the service or any other payer." Minn. Stat. § 62Q.75, subd. 3. In this case, with the exception of one

bill, CDI did not bill Western National within six months of providing treatment to Nguyen or of knowing that Western National was the responsible health-plan company.[1] Therefore, under Minn. Stat. § 62Q.75, subd. 3, CDI could not collect those charges from Western National or Nguyen.

And while it is unknown whether Nguyen personally received any bills from CDI, the no-fault act bars a health-care provider from directly billing an insured for the amount of a claim not remitted to the insurer according to the transaction standards in the no-fault act. *See* Minn. Stat. § 65B.54, subd. 1. "Claims by a health provider . . . for medical expense benefits covered by this chapter shall be submitted to the reparation obligor pursuant to the uniform electronic standards required by section 62J.536." *Id.* The statute further provides:

> Payment of benefits for such claims for medical expense benefits are not due if the claim is not received by the reparation obligor pursuant to those electronic transaction standards and rules . . . . A health care provider cannot directly bill an insured for the amount of any such claim not remitted pursuant to the transaction standards.

Id. Accordingly, if the health-care provider does not follow the statutory method for submitting bills to the insurer, that claim is not due. Here, because CDI did not submit the bills to Western National, it could not have complied with the electronic-transaction

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[1] Nguyen also argues that Minn. Stat. § 62Q.75, subd. 3, cannot bar his claim because CDI did not know the identity of the "responsible health plan company" after Western National notified CDI that it was denying coverage. This argument is unpersuasive. Western National's denial of coverage for a particular claim does not mean that it was not the responsible health-plan company for purposes of Minn. Stat. § 62Q.75, subd. 3.

standards required by Minn. Stat. § 65B.54, subd. 1. Therefore, under Minn. Stat. § 65B.54, subd. 1, CDI cannot seek payment from Nguyen.

Nguyen contends that even if he does not owe CDI for his medical expenses, Western National is still obligated to reimburse him because he incurred a loss under the no-fault act. His argument relies significantly on two supreme court cases. In *Stout*, the supreme court held that a no-fault insured's loss equals the amount billed for his medical expenses, not the amount the insured is ultimately obligated to pay after negotiated discounts or payments from other sources, such as payments from his health insurer. 645 N.W.2d at 113. The supreme court elaborated on this principle in *Lennartson*, holding that if an insured fully recovers claimed medical expenses through a tort action, the tort recovery does not reduce or eliminate the insured's recovery of no-fault benefits for the amount of medical expenses billed. 872 N.W.2d at 531.

But *Stout* and *Lennartson* are distinguishable. Both cases concern whether "a later event" could have a *collateral effect* on the amount of loss. *Id.* at 530. This case does not involve a subsequent event that either modified or eliminated Nguyen's amount of loss—the issue here is whether a loss ever accrued. In the no-fault context, if the health-care provider does not comply with the time requirements of Minn. Stat. § 62Q.75, subd. 3, or the submission requirements of Minn. Stat. § 65B.54, subd. 1, the insured claimant does not incur medical expense because he cannot be liable for a charge that the health-care provider "may not collect" for a bill that is "not due."

We conclude that because CDI did not submit its charges to Western National within the time period required by Minn. Stat. § 62Q.75, subd. 3, Nguyen never incurred medical

expense and thus a loss never accrued. Further, because the charges presented to the arbitrator were not transmitted to Western National as required by Minn. Stat. § 65B.54, subd. 1, the benefits never became due. Therefore, Nguyen never suffered a loss for which he is entitled to no-fault benefits.

II.

Nguyen also argues that the district court erred in vacating the portion of the award relating to arbitration fees. The arbitrator's award directed Western National to pay $300 for the arbitrator's fees and to reimburse Nguyen $35 for the filing fee. Western National asserts that it paid the $300 arbitrator's fee and did not ask the district court to vacate this part of the award. The district court ordered, without explanation, that this $300 award fee be vacated. Because Western National paid the $300 fee and did not ask the district court to vacate it, the district court erred in vacating the award in this respect.

The parties dispute whether the district court vacated the $35 filing fee award. Nguyen contends that the district court vacated this portion of the award. Western National asserts that the district court confirmed this aspect of the award because it was included in the costs award of $1,027.25.

Although we recognize Nguyen's concern about the phrasing of the district court's order, the only reasonable conclusion based on the record before us is that the $35 filing fee is included in the district court's award of $1,027.25 in costs. Because Western National never challenged the $35 filing fee award, and because we affirm the district court's confirmation of the award of $1,027.25 in costs, we need not address the filing fee further.

DECISION

The district court did not err by applying Minn. Stat. § 62Q.75, subd. 3, to bar Nguyen's no-fault claim. Because we conclude that, with the exception of one bill, Nguyen did not suffer a "loss" as defined in Minn. Stat. § 65B.54, subd. 1, we affirm the district court's decision to vacate in part the arbitrator's award of medical expenses. But we reverse the district court's decision to vacate the $300 arbitrator's fee.

Affirmed in part and reversed in part.

U.S. Department of Transportation
National Highway Traffic Safety Administration

TRAFFIC SAFETY FACTS
Research Note

NHTSA

DOT HS 812 381 Summary of Statistical Findings March 2017

Distracted Driving 2015

The National Highway Traffic Safety Administration (NHTSA) works to reduce the occurrence of distracted driving and raise awareness of its dangers. This risky behavior poses a danger to vehicle occupants as well as pedestrians and bicyclists. Driver distraction is a specific type of driver inattention. Distraction occurs when drivers divert their attention from the driving task to focus on some other activity. Oftentimes, discussions regarding distracted driving center around cell phone use and texting, but distracted driving also includes other activities such as eating, talking to other passengers, or adjusting the radio or climate controls. A distraction-affected crash is any crash in which a driver was identified as distracted at the time of the crash.

- Ten percent of fatal crashes, 15 percent of injury crashes, and 14 percent of all police-reported motor vehicle traffic crashes in 2015 were reported as distraction-affected crashes.
- In 2015, there were 3,477 people killed and an estimated additional 391,000 injured in motor vehicle crashes involving distracted drivers.
- Nine percent of all drivers 15 to 19 years old involved in fatal crashes were reported as distracted at the time of the crashes. This age group has the largest proportion of drivers who were distracted at the time of the fatal crashes.
- In 2015, there were 551 nonoccupants (pedestrians, bicyclists, and others) killed in distraction-affected crashes.

Methodology

This research note is based on data from NHTSA's Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System (NASS) General Estimates System (GES). FARS contains data on a census of fatal traffic crashes from all 50 States, the District of Columbia, and Puerto Rico. NASS GES contains data from a nationally representative probability sample of police-reported crashes of all severities, including those that result in death, injury, or property damage. The national estimates produced from GES data are subject to sampling errors. The NASS/GES Analytic User's Manual 1988-2015 (Report No. DOT HS 812 320) contains information on sampling errors.

As defined in the *Overview of the National Highway Traffic Safety Administration's Driver Distraction Program* (Report No. DOT HS 811 299), distraction is a specific type of inattention that occurs when drivers divert their attention from the driving task to focus on some other activity instead. The document describes distraction as a subset of inattention (which also includes fatigue, and physical and emotional conditions of the driver). However, while NHTSA may define the terms in this manner, inattention and distraction are often used interchangeably or simultaneously in other material, including police crash reports. It is important that NHTSA and NHTSA's data users be aware of these differences in definitions. It is also important to acknowledge the inherent limitations in the data collection for distraction-affected crashes and the resulting injuries and fatalities. The appendix of this document contains a table that describes the coding for distraction-affected crashes for FARS and GES as well as a discussion regarding limitations in the distracted driving data.

Data

Fatalities in Distraction-Affected Crashes

In 2015, there were a total of 32,166 fatal crashes in the United States involving 48,613 drivers. As a result of those fatal crashes, 35,092 people were killed.

In 2015, there were 3,196 fatal crashes that occurred on U.S. roadways that involved distraction (10% of all fatal crashes). These crashes involved 3,263 distracted drivers, as some crashes involved more than one distracted driver. Distraction was reported for 7 percent (3,263 of 48,613) of the drivers involved in fatal crashes. In these distraction-affected crashes, 3,477 fatalities (10% of overall fatalities) occurred. Table 1 provides information on crashes, drivers, and fatalities involved in fatal distraction-affected crashes in 2015.

Much attention across the country has been devoted to the dangers of using cell phones and other electronic devices while driving. In 2015, there were 442 fatal crashes reported to have involved cell phone use as a distraction (14% of all fatal distraction-affected crashes). For these distraction-affected crashes, the police crash report stated that the driver was talking on, listening to, or otherwise manipulating a cell phone

Table 1
Fatal Crashes, Drivers in Fatal Crashes, and Fatalities, 2015

	Crashes	Drivers	Fatalities
Total	**32,166**	**48,613**	**35,092**
Distraction-Affected (D-A)	3,196 (10% of total crashes)	3,263 (7% of total drivers)	3,477 (10% of total fatalities)
Cell Phone in Use	442 (14% of D-A crashes)	456 (14% of distracted drivers)	476 (14% of fatalities in D-A crashes)

Source: National Center for Statistics and Analysis (NCSA), FARS 2015 Annual Report File (ARF)

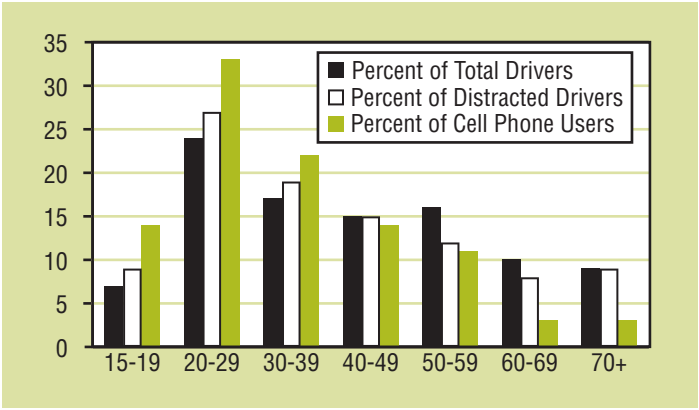
(or other cell phone activity) at the time of the crash. A total of 476 people died in fatal crashes that involved the use of cell phones or other cell-phone-related activities as distractions.

Table 2 presents 2015 fatal crash data for distraction-affected crashes by driver's age. Nine percent (290 of 3,183) of all drivers 15 to 19 years old involved in fatal crashes were distracted at the time of the crash. This age group has the largest proportion of drivers within each respective age group who were distracted (column titled "Distracted Drivers: % of Total Drivers").

The comparison of the proportion of drivers of each age involved in fatal crashes and those involved in distraction-affected fatal crashes points to overrepresentation of drivers under 30. This comparison is presented in the columns titled "Distracted Drivers: Percent of Distracted Drivers" versus "Total Drivers: Percent of Total Drivers." For all fatal crashes, 7 percent of the drivers in the fatal crashes were 15 to 19 years old (3,183 of the 48,613). However, for distracted drivers in fatal crashes, 9 percent of the distracted drivers were 15 to 19 years old (290 of the 3,183 distracted drivers in fatal crashes). Fourteen percent of all the distracted drivers using cell phones were 15 to 19 years old (64 of the 456 cell-phone distracted drivers in fatal crashes). Similarly, drivers in their 20s make up 24 percent of drivers in all fatal crashes, but are 27 percent of the distracted drivers and 33 percent of the distracted drivers who were using cell phones in fatal crashes.

For illustrative purposes, Figure 1 shows the distribution of drivers by age for all drivers involved in fatal crashes, distracted drivers involved in fatal crashes, and distracted drivers on cell phones during fatal crashes.

Figure 1
Percent Distribution of Drivers Involved in Fatal Crashes By Age, Distraction, and Cell Phone Use, 2015



Source: NCSA, FARS 2015 ARF

Table 3 describes the role of the people killed in distraction-affected crashes in 2015. The vast majority of victims of distraction-affected fatal crashes (and all fatal crashes) are motor vehicle occupants and motorcyclists (84% for distraction-affected fatal crashes and 82% for all fatal crashes). The balance of victims were nonoccupants – pedestrians, pedalcyclists and others.

Table 2
Drivers Involved in Fatal Crashes by Age, Distraction, and Cell Phone Use, 2015

	Total Drivers		Distracted Drivers			Drivers Using Cell Phones		
Age Group	Number	% of Total Drivers	Number	% of Total Drivers	% of Distracted Drivers	Number	% of Distracted Drivers	% of Cell Phone Drivers
15–19	3,183	7%	290	9%	9%	64	22%	14%
20–29	11,428	24%	891	8%	27%	151	17%	33%
30–39	8,479	17%	612	7%	19%	101	17%	22%
40–49	7,438	15%	482	6%	15%	62	13%	14%
50–59	7,785	16%	376	5%	12%	50	13%	11%
60–69	5,012	10%	275	5%	8%	15	5%	3%
70+	4,255	9%	287	7%	9%	12	4%	3%
Total	48,613	100%	3,263	7%	100%	456	14%	100%

Source: NCSA, FARS 2015 ARF; Note: The total includes 60 drivers 14 and younger, 6 of whom were noted as distracted. Additionally, the total includes 973 of unknown age, 44 of whom were noted as distracted.

Distracted drivers were involved in the deaths of 551 non-occupants during 2015. It is unknown how many of these nonoccupants were potentially distracted as well.

Table 3
People Killed in Distraction-Affected Crashes, By Person Type, 2015

Person Type	Killed in Distraction-Affected Crashes	Percentage of Distraction-Affected Fatalities
Total	3,477	100%
Occupants		
Driver	2,122	61%
Passenger	804	23%
Total Occupants	2,926	84%
Nonocccupants		
Pedestrian	443	13%
Pedalcyclist	79	2%
Other	29	1%
Total Nonoccupants	551	16%

Source: NCSA, FARS 2015 ARF

In 2015, 68 percent of the distracted drivers in fatal crashes were male as compared to 73 percent of drivers in all fatal crashes. Additionally, 58 percent of distracted drivers involved in fatal crashes were driving in the daytime (between 6 a.m. and 5:59 p.m.) as compared to 53 percent of drivers in all fatal crashes.

Estimates of People Injured in Distraction-Affected Crashes

In 2015, an estimated 2,443,000 people were injured in motor vehicle traffic crashes (Table 4). The number of people injured in distraction-affected crashes in 2015 was estimated at 391,000 (16% of all the injured people). An estimated 30,000 people were injured in 2015 in crashes involving cell phone use or other cell-phone-related activities (8% of all people injured in distraction-affected crashes).

Table 4
Estimated Number of People Injured in Crashes and People Injured in Distraction-Affected Crashes, 2011-2015

Year	Total	Distraction	
		Estimated Number of People Injured (% of Total Injured)	Cell Phone Use (% of People Injured in Distraction-Affected Crashes)
2011	2,217,000	387,000 (17%)	21,000 (5%)
2012	2,362,000	421,000 (18%)	28,000 (7%)
2013	2,313,000	424,000 (18%)	34,000 (8%)
2014	2,338,000	431,000 (18%)	33,000 (8%)
2015	2,443,000	391,000 (16%)	30,000 (8%)

Source: NCSA, NASS GES 2011–2015

Over the past 5 years, the *estimated number* of people injured in distraction-affected crashes has shown decreases and increases. The *percentage* of injured people in distraction-affected crashes as a portion of all injured people has remained relatively constant.

In 2015, there were an estimated 265,000 distraction-affected injury crashes (Table 5), 15 percent of all injury crashes. In these crashes, 272,000 drivers were distracted at the time of the crashes.

Table 5
Estimates of Distraction-Affected Injury Crashes, Drivers in Injury Crashes, and Injured People, 2015

Distraction-Affected Injury Crashes	Distracted Drivers in Injury Crashes	People Injured in Distraction-Affected Crashes
265,000 (15% of all injury crashes)	272,000 (9% of all drivers in injury crashes)	391,000 (16% of all injured people)

Source: NCSA, NASS GES 2015

Crashes of All Severity

Table 6 provides information for all police-reported crashes from 2011 through 2015 including fatal crashes, injury crashes, and property-damage-only (PDO) crashes for the year. During this time period, the percentages of crashes of all severities that involve distractions fluctuated very little.

Table 6
Motor Vehicle Traffic Crashes and Distraction-Affected Crashes by Year, 2011-2015

	Crash Severity	Overall Crashes	Distraction-Affected Crashes (% of Total Crashes)	D-A Crashes Involving Cell Phone Use (% of D-A Crashes)
2011	Fatal Crash	29,867	3,047 (10%)	354 (12%)
	Injury Crash	1,530,000	260,000 (17%)	15,000 (6%)
	PDO* Crash	3,778,000	563,000 (15%)	35,000 (6%)
	Total	**5,338,000**	**826,000 (15%)**	**50,000 (6%)**
2012	Fatal Crash	31,006	3,098 (10%)	380 (12%)
	Injury Crash	1,634,000	286,000 (18%)	21,000 (7%)
	PDO Crash	3,950,000	619,000 (16%)	39,000 (6%)
	Total	**5,615,000**	**908,000 (16%)**	**60,000 (7%)**
2013	Fatal Crash	30,202	2,923 (10%)	411 (14%)
	Injury Crash	1,591,000	284,000 (18%)	24,000 (8%)
	PDO Crash	4,066,000	616,000 (15%)	47,000 (8%)
	Total	**5,687,000**	**904,000 (16%)**	**71,000 (8%)**
2014	Fatal Crashes	30,056	2,972 (10%)	387 (13%)
	Injury Crash	1,648,000	297,000 (18%)	22,000 (8%)
	PDO Crash	4,387,000	667,000 (15%)	46,000 (7%)
	Total	**6,064,000**	**967,000 (16%)**	**69,000 (7%)**
2015	Fatal Crashes	32,166	3,196 (10%)	442 (14%)
	Injury Crash	1,715,000	265,000 (15%)	21,000 (8%)
	PDO Crash	4,548,000	617,000 (14%)	48,000 (8%)
	Total	**6,296,000**	**885,000 (14%)**	**69,000 (8%)**

*PDO – Property Damage Only
Sources: NCSA, FARS 2011–2014 Final File, FARS 2015 ARF, GES 2011-2015.

Appendix — Coding of Distraction During Crashes

In keeping with its distraction plan (*Overview of the National Highway Traffic Safety Administration's Driver Distraction Program*, April 2010, Report No. DOT HS 811 299), NHTSA continues to refine collection of information about the role of distracted driving in police-reported crashes. This includes improvements to the coding of distraction in FARS. Prior to 2010, FARS, which contains data about fatal motor vehicle crashes, and the NASS GES, which contains data about a sample of all severities of police-reported crashes, coded distraction information in different formats. FARS was more general and inclusive of generally inattentive behavior, whereas GES identified specific distracted-driving behaviors. In 2010, the two systems' methods of coding distraction were unified. Beginning in 2010 for both systems, when looking at distraction-affected crashes, the driver in both FARS and GES is identified as "Yes-Distracted," "No-Not Distracted," or "Unknown if Distracted." If the driver is identified as distracted, further coding is performed to distinguish the specific activity that was distracting the driver. This was not a change for data coding for GES, but was in FARS. The data collected on the Police Accident Report (PAR) did not change; rather, it is the way the data is classified in FARS to focus the fatal crash data on the set of distractions most likely to affect the crash. Prior to 2010 in FARS, distraction was not first identified in a Yes/No/Unknown manner. Rather, specific behaviors of the driver as coded on the PAR were combined and categorized as "distracted."

Because of this change in data coding in FARS, distraction-affected crash data from FARS beginning in 2010 cannot be compared to distracted-driving-related data from FARS from previous years. With only 6 years of fatal crash information for distraction under the new coding, the reader should take caution in making conclusions of trends in these data. GES data can be compared over the years, as the data coding did not change in this system.

Of additional note is the terminology regarding distraction. For FARS and GES data, beginning with 2010 data, any crash in which a driver was identified as distracted at the time of the crash is referred to as a distraction-affected crash. Discussion of cell phones is also more specific starting with the 2010 data. Starting in 2010, FARS no longer offers "cell phone present in vehicle" as a coding option; thus this code cannot be considered a distraction within the dataset. From discussion with law enforcement officers, this code in years past was used when it was believed that the driver was using a cell phone at the time of the crash and thus contributed to the crash, but proof was not available. The use of a cell phone is more specific with the current coding and if the specific involvement cannot be determined, law enforcement has other options available to discuss the role of the cell phone and thus the coding would reflect such. Because of these changes, the current language referring to cell phones is that the crash involved the *use of a cell phone* as opposed to the generic cell-phone-involvement used previously.

In a continuing effort towards uniformity in data collection among states, the Model Minimum Uniform Crash Criteria (MMUCC) was updated in June 2012. MMUCC is a guideline for collection of crash characteristics in PARs. In this updated edition, *MMUCC Guideline, 4th Edition*, the reporting element for distraction was improved after consultation with law enforcement, safety advocates, first responders, and industry representatives. The States are increasingly becoming compliant with these MMUCC guidelines.

Attribute Selection

As discussed in the Methodology section of this Research Note, FARS and GES were accessed to retrieve distraction-affected crashes. Table A-1 contains every variable attribute available for coding for driver distraction along with examples to illustrate the meaning of the attribute. This is the coding scheme available for FARS and GES. Table A-1 further indicates whether that attribute was included in the analysis for distraction-affected crashes.

In 2012, the variable attributes changed to account for different ways that State police accident reports describe general categories of distraction, inattention, and careless driving. These additional attributes provide a more accurate classification of the behavior indicated on the police accident report. If the cell in the table is greyed out, the attribute did not exist for the indicated data years.

If there are no indications of usage for distraction-affected crashes, the attribute was not considered as a type of distraction behavior and therefore not included in the analysis.

Data Limitations

NHTSA recognizes that there are limitations to the collection and reporting of FARS and GES data with regard to driver distraction. The data for FARS and GES are based on PARs and information gathered after the crashes have occurred.

One significant challenge for collection of distracted driving data is the PAR itself. Police crash reports vary across jurisdictions, thus creating potential inconsistencies in reporting. Many variables on the police accident report are nearly universal, but distraction is not one of those variables. Some PARs identify distraction as a distinct reporting field, while others do not have such a field and identification of distraction is based upon the narrative portion of the report. The variation in reporting forms contributes to variation in the reported number of distraction-affected crashes. Any national or State count of distraction-affected crashes should be interpreted with this limitation in mind due to potential underreporting in some States and over-reporting in others.

Table A-1
Attributes Included in "Driver Distracted by" Element and Indication of Inclusion in Distraction-Affected Definitions, GES and FARS

Attribute	Examples	Distraction-Affected Crashes	
		2010–2011	2012–2015
Not distracted	Completely attentive to driving; no indication of distraction or noted as Not Distracted		
Looked but did not see	Driver paying attention to driving but does not see relevant vehicle, object, etc.		
By other occupant	Distracted by occupant in driver's vehicle; includes conversing with or looking at other occupant	X	X
By a moving object in vehicle	Distracted by moving object in driver's vehicle; includes dropped object, moving pet, insect, cargo.	X	X
While talking or listening to cellular phone	Talking or listening on cellular phone; includes talking or listening on a "hands-free" or Bluetooth-enabled phone	X	X
While manipulating cellular phone	Dialing or text messaging on cell phone or any wireless email device; any manual button/control actuation on phone qualifies	X	X
Other cellular phone-related	Used when the police report indicated the driver is distracted from the driving task due to cellular phone involvement, but none of the specified codes are applicable (reaching for cellular phone, etc.). This code is also applied when specific details regarding cellular phone distraction/usage are not provided	X	X
While adjusting audio and/or climate controls	While adjusting air conditioner, heater, radio, cassette, using the radio, using the cassette or CD mounted into vehicle	X	X
While using other component/ controls integral to vehicle	Manipulating a control in the vehicle including adjusting headlamps, interior lights, controlling windows, door locks, mirrors, seats, steering wheels, on-board navigational devices, etc.	X	X
While using or reaching for device/object brought into vehicle	Radar detector, CDs, razors, music portable CD player, headphones, a navigational device, a laptop or tablet PC, etc.; if unknown if device is brought into vehicle or integral, use Object Brought Into Vehicle	X	X
Distracted by outside person, object, or event	Animals on roadside or previous crash, non-traffic related signs. Do not use when driver has recognized object/event and driver has taken evasive action	X	X
Eating or drinking	Eating or drinking or actively related to these actions	X	X
Smoking related	Smoking or involved in activity related to smoking	X	X
No driver present/unknown if driver present	When no driver is in this vehicle or when it is unknown if there is a driver present in this vehicle at the time of the crash		
Distraction/Inattention	Used exclusively when "distraction/inattention" or "inattention/distraction" are noted in case materials as one combined attribute		X
Distraction/Careless	Used exclusively when "distraction/careless" or "careless/distraction" are noted in case materials as one combined attribute		X
Careless/Inattentive	Used exclusively when "careless/inattentive" or "inattentive/careless" are noted in case materials as one combined attribute		X
Distraction/inattention, details unknown	Distraction and/or inattention are noted on the PAR but the specifics are unknown	X	
Distraction (distracted), details unknown	Used when "distraction" or "distracted" are noted in case materials but specific distractions cannot be identified		X
Inattention (inattentive), details unknown	Used when "inattention" or "inattentive" are noted in the case materials but it cannot be identified if this refers to a distraction		X
Not reported	No field available on PAR; field on PAR left blank; no other information available		
Inattentive or lost in thought	Driver is thinking about items other than the driving task (e.g., daydreaming)	X	
Lost in thought/Daydreaming	Used when the driver is not completely attentive to driving because he/she is thinking about items other than the driving task		X
Other distraction	Details regarding the driver's distraction are known but none of the specified codes are applicable	X	
Unknown if distracted	PAR specified states unknown		

The following are potential reasons for underreporting of distraction-affected crashes.

- There are negative implications associated with distracted driving—especially in conjunction with a crash. Survey research shows that self-reporting of negative behavior is lower than actual occurrence of that negative behavior. There is no reason to believe that self-reporting of distracted driving to a law enforcement officer would differ. The inference is that the reported driver distraction during crashes is lower than the actual occurrence.
- If a driver fatality occurs in the crash, law enforcement must rely on the crash investigation in order to report on whether driver distraction was involved. Law enforcement may not have information to indicate distraction. These investigations may rely on witness account and oftentimes these accounts may not be available either.
- Technologies are changing at a rapid speed and it is difficult to update the PAR to accommodate these changes. Without broad-sweeping changes to the PAR to incorporate new technologies and features of technologies, it is difficult to capture the data that involve interaction with these devices.

The following is a challenge in quantifying external distractions.

- In the reporting of distraction-affected crashes, oftentimes external distractions are identified as a distinct type of distraction. Some of the scenarios captured under external distractions might actually be related to the task of driving (e.g., looking at a street sign). However, the crash reports may not differentiate these driving-related tasks from other external distractions (looking at previous crash or billboard). Currently, the category of external distractions is included in the counts of distraction-affected crashes.

Limitations in the data can be seen in a quantifiable manner in a research paper titled *Precrash Data Collection in NHTSA's Databases* by Mark Mynatt and Greg Radja, published in 2013 for the ESV Conference. In this research paper, Mynatt and Radja reviewed crashes that were common in the National Motor Vehicle Crash Causation Survey (NMVCCS), an on-site investigations crash survey; the GES (police report data); and the Crashworthiness Data System (CDS), data from follow-on vehicle and crash scene inspections and driver interviews along with the police report. A total of 379 crashes involving 653 vehicles were determined to be present in all three programs. Mynatt and Radja looked at specific data for distraction in the common cases to quantify the difference in reporting of distracted driving behaviors due to additional sources of information as can be seen in the following excerpt from the paper:

Table A-2 shows the percentage of the common vehicles with a coded Distraction in each of the programs.

Table A-2
Common Vehicles With a Distraction Present (Percentages Rounded)

Distraction	NASS-GES	NASS-CDS	NMVCCS
Yes	11%	14%	28%
No	60%	46%	48%
Unknown	30%	40%	24%

As Table A-2 indicates, in these same vehicles a distraction was coded in the on-scene program twice as often as in the follow-on program; and 2.5 times more often than in the PAR-based program. The on-scene based program also had a lower percentage of Unknown Distraction coding.

While these findings cannot be expanded to quantify the potential underreporting in FARS and GES, they are valuable in understanding the potential underreporting that the FARS and GES data may experience for driver distraction.

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This research note and other general information on highway traffic safety may be accessed by Internet users at: https://crashstats.nhtsa.dot.gov/#/