NAVIGATING MINNESOTA’S NEW FIRST-PARTY BAD FAITH LAW

CHANGES TO RULE 68 GREATLY FAVOR PLAINTIFFS

THE HELMET DEFENSE RULE IN MINNESOTA

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The Editorial Committee welcomes articles for publication in Minnesota Defense. If you are interested in writing an article, please contact one of the Editorial Committee members or call the MDLA office, 612-338-2717.

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I feel honored and privileged to serve the 2008-2009 term as MDLA’s President, following in the footsteps of two great women lawyers, Becky Moos of Bassford Remele, and Judge Kathy Messerich. I am proud to be the third woman to lead our organization and the first in-house lawyer. I welcome the responsibility and look forward to a rewarding and busy year.

THANK YOU

Thank you. I want to first start with a BIG THANK YOU to Paul Rajkowski, our President Emeritus, for his dedication, leadership and hours of time he contributed to our organization last year. Thanks, Paul, for your energy, commitment, and insight – you did a helluva of a job!

TTS. My year began in Duluth with a very successful 33rd Annual Trial Techniques Seminar in August. We were honored to have Marc Williams, the President-Elect of DRI, and his wife, Nancy, join us for the seminar. In addition, Charles Cole, the DRI North Central State and Local Defense Organization Director, joined us in Duluth. The speakers were fantastic! Justice Lorie Skjerven Gildea gave us an update from the bench. Drs. Bradley Gordon and Arthur Wineman provided us with an explanation of the electronic medical record and the basics of medicine. Charles Cole, Becky Moos and Karl Egge were engaging and gave us thoughtful advice on damages. Tom Grundhoefer, from the League, recapped the 35W Bridge Fund. The years of experience and wisdom were evident when Gene Bradt gave us his insights on mediation techniques. And, Rich Thomas closed the seminar with avoiding malpractice advice, and a little humor as he commented on the new Rule 68 of the Minnesota Rules of Civil Procedure. Thank you! We had a perfect evening to enjoy a dinner cruise on Lake Superior. And what seminar would be complete without Marc Williams, Chuck Cole, Paul Rajkowski, Steve Schwegeman, and Mike Ryan on the stage at Grandma’s singing and dancing to “YMCA” by the Village People!!

A special thank you and acknowledgement to our TTS sponsors who made it possible to keep the annual seminar affordable for our members: Bassford Remele; Larson•King; Cousineau McGuire; Geraghty, O’Loughin & Kenney; Lind, Jensen, Sullivan & Peterson; Rajkowski Hansmeier, and my boss, Barbara Tretheway.

Your Board. At our annual business meeting in August, we elected Mark Solheim of Larson•King to the position of Secretary. Pat Beety, League of Minnesota Cities, was voted Treasurer and Tom Marshall, Jackson Lewis, moved into the Vice President position. New members elected to the Board were: Cortney Sylvestre, a past chair of the Products Liability Committee and frequent lecturer at MDLA seminars. Kelly Putney, a co-chair of the Editorial Committee and chair of the 2008 golf/CLE event. Janet Ampe, past chair of the Employment Law Committee and contributor of many Minnesota Defense articles. Kenneth Kimber, active with the Young Lawyers Committee and providing insight as an out-of-state director. Existing members of the Board include: James Andreen, Dyan Ebert, Mark Frederickson, Lisa Griebel, Mark Kleinschmidt, Victor Lund, Paul Reuvers, and Terry Votol. Directors whose terms expired in 2008 were Shamus O’Meara, Barbara Zurek, and Susan Zwaschka. Thank you for your support and contributions of time on the Board.

2008-2009 GOALS

Goals. I am starting my year as President with my end goals in mind: organize and develop a business continuity plan for the MDLA Director’s Office and prepare a President’s Guide to the MDLA. I am excited to work with Debra Hatlestad, MDLA’s new Executive Director, to achieve these goals. We have been faced with a few years of transition in the director’s office, and with transition we learn. I want to take these learnings and record them in a
way to be a helpful and developing tool for my successors and future Boards. We will continue to work on the website to make it a better asset for our members. The soul of our organization, our substantive law committees, continue to grow and become more active. Last year, the MDLA membership saw a need and started a new committee, the Long Term Care Committee. Let us know if you have an idea for a new committee, seminar, or new ways to communicate information to our members. The Board is always looking for new paths, ways to grow, improve, and your valuable insights are important to us.

FREE MEMBERSHIP

Membership. Mark Fredrickson and Mary Mahler have been tireless in their role as Membership Committee co-chairs. One of the great strengths of the MDLA is its membership. MDLA provides unparalleled opportunities for young lawyers to learn from some of the best defense lawyers around. I am proud to announce that the MDLA Board has approved a change in the membership dues structure. This new structure provides a FREE MEMBERSHIP for all first-time MDLA members and reduced dues for our newer lawyers. Combined with the DRI’s initiative that gives first-time DRI members a free membership, the time has never been better to sign up your new associates and other non-members. If you have questions about the new program, contact the MDLA office, Mark or Mary.

Dinner & Justices. We reached across the aisle, so to speak, in this election year and held the first MDLA women’s lawyer dinner co-sponsored with the Minnesota Association for Justice. We enjoyed a fun evening of good food, spirited conversation, and judicial insights from Justices Skjerven Gildea and Meyer. We hope to make the dinner an annual fall event.

Board Meetings. Our first 2008-2009 Board meeting was held in October. The MDLA committee chairs participated in the meeting and joined the Board at our annual salute to Minnesota’s chief judges. We were honored by the presence of Chief Justices Eric Magnuson and Edward Toussaint, Jr. as well as Judges James Swenson, Kathleen Gearin, Kathryn Davis Messerich, Fred Grunke, William Johnson, and Dale Lindman. The MDLA Board has five formal Board meetings a year. We welcome members to attend any Board meeting. The complete Board meeting schedule is on the MDLA website.

DRI Annual Meeting in New Orleans, October 22-25, 2008. As I write this article I am personally looking forward to the DRI Annual meeting. This year, DRI has a new focus on in-house counsel and it is devoting an afternoon program designed for in-house lawyers. Aside from great programming, there is a 5-K fun-raiser run/walk on Saturday morning to support New Orleans schools, and, of course, a few social events.

Trial Academy. Pat Sauter, our first Dean of the MDLA Trial Academy, has spearheaded an energetic committee consisting of Amy Amundson, Greg Bulinski, Steve Schwegman, Mark Solheim, and Courtney Ward-Reichard to plan and host our first Trial Academy. Twelve faculty members have been selected. The event will be at the University of Minnesota, Minneapolis campus. The program begins with arguments before a slate of Hennepin County Judges, combined with lecture, demonstration, and video critique. This is an exciting opportunity for any lawyer who desires to hone their trial skills. January 8-10, 2009.

Mid-Winter Conference. In February the MDLA is back in Duluth for the Mid-Winter Conference. Once again, the seminar will be held at the Edgewater Resort and Waterpark. Hopefully, this year the weather will be a tad warmer for those who wish to take advantage of the local ski slopes. Mark Solheim has a wonderful program in the works. Judge Donovan W. Frank will give his insights from the federal bench. We will learn about the power of persuasion and presence - from the basics, such as how to shake a hand, end a conversation you didn’t want to be in from the beginning, and more difficult/delicate situations such as how to read verbal and non-verbal clues. Anticipate a great presentation on ethics issues surrounding reservation of rights, preparing witnesses, and best practices during times of reduction in work force. February 6-8, 2009.

Legislature. The upcoming legislative session should, once again, be extremely busy and hectic. Last year Dale Thorsjo did a tremendous job on the bad-faith legislation – the end result was that it was not so bad. The 2009 session will be a year for the no-fault statute. The Law Improvement and No-Fault Committees are already buzzing staying ahead of the curve! Please let Debra Hatlestad know if you wish your name to be added to the email list on this legislation. It should be interesting.

I look forward to the coming year. I am hopeful that our committees will continue to grow as they offer invaluable services and information to our members. I welcome your comments and suggestions, and I invite you to contact me at: 952/883-7186 (office), 612/270-7700 (cell) or email kay.e.tuveson@healthpartners.com. Or please contact Debra at the MDLA office 612/338-2717 or director@mdla.org.
NAVIGATING MINNESOTA’S NEW FIRST-PARTY BAD FAITH LAW

By Jessica J. Theisen, Esq.
COUSINEAU MCGUIRE CHARTERED

On August 1, 2008, Minnesota joined the majority of other states that recognize a cause of action for an insurer’s bad faith in the first-party context.Minnesota Statutes § 604.18, Minnesota’s new first-party bad faith law, is compromise legislation intended to address the real or perceived mistreatment of insureds and questionable claim practices employed by the insurance industry in connection with first-party claims. Under this new law, insurers who fail to make good faith settlement offers when there is a reasonable basis for liability under certain insurance policies may be responsible for up to $250,000 in damages and up to $100,000 in attorney’s fees.

The passage of this law is a notable break from long-standing Minnesota law rejecting a cause of action for first-party bad faith. Prior to its enactment, Minnesota courts used a contract law analysis to address disputes between an insured and an insurer regarding claims made against an insurance policy. Under this analysis, damages were limited to the value of the insurance policy unless the dispute was accompanied by an independent tort. Now, Minnesota Statutes § 604.18 provides a statutory cause of action for first-party bad faith, overturning Minnesota’s prior common law. The discussion that follows is intended to provide a roadmap through the language of this new statute and highlight unresolved areas that will likely be litigated.

THE BASICS: DEFINING INSURANCE POLICY, INSURED, AND INSURER UNDER MINN. STAT. SECTION 604.18.

The Legislature uses a series of definitions to limit the scope of Minnesota Statutes § 604.18. An “insurance policy” is defined as:

- a written agreement between an insured and an insurer that obligates an insurer to pay proceeds directly to an insured.
- Insurance policy does not include provisions of a written agreement obligating an insurer to defend an insured, reimburse an insured’s defense expenses, provide for any other type of defense obligation, or provide indemnification for judgments or settlements.

Subdivision 1 specifically excludes the following types of policies from the coverage of the statute: workers’ compensation; health insurance; dental insurance; surplus lines insurance; fraternal life insurance policies; and township mutual fire insurance policies. Reflecting the Legislature’s intention to limit the applicability of this statute to first-party claims, the statute defines an “insured” as:

- a person who, or an entity which, qualifies as an insured under the terms of an insurance policy on which a claim for coverage is made. An insured does not include any person or entity claiming a third-party beneficiary status under an insurance policy.

The term “insurer” is broadly defined by the statute and includes all carriers licensed or authorized to transact insur-

1 2008 Minn. Laws Ch. 208 §§ 1 and 2. Minn. Stat. § 604.18 applies to “causes of action for conduct that occurs on or after” August 1, 2008. Insurers should anticipate the potential for first-party bad faith claims for violation of this statute in all claim files which are open and ongoing on August 1, 2008. 2008 Minn. Laws Ch. 208 § 2.
4 Olson, 277 N.W.2d at 387-88.
6 Minn. Stat § 604.18, subd. 1(a).
7 Minn. Stat. § 604.18, subd. 1(a)-(b).
ance under Minnesota Statutes § 60A.06, with the exception of a political subdivision providing self-insurance or a pool of political subdivisions under Minnesota Statutes § 471.981, subdivision 3 and the Joint Underwriting Association. 9

Given the above definitions, Minnesota Statutes § 604.18 is limited in scope. The impact of this new law will be felt mostly in the areas related to UM/UIM policies and the property coverage of homeowner’s policies. Not all first-party claims are affected by Minnesota’s new first-party bad faith law.

WHAT IS THE LIABILITY STANDARD FOR INSURERS UNDER MINN. STAT. SECTION 604.18?

The Minnesota Legislature adopted the objective standard derived from Anderson v. Continental Ins. Co., 271 N.W.2d 368, 375 (Wis. 1978). 10 Under this standard, the insured bears the burden of showing:

(1) the absence of a reasonable basis for denying the benefits of the insurance policy; and
(2) that the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy. 11

Disputes between an insured and an insurer about the value of a claim will not be enough to establish bad faith under this statute. However, claim denials without prior investigation, inadequate investigations, destruction of evidence and other insurer misconduct may support a finding of a violation of the statute.

WHAT DAMAGES ARE AVAILABLE UNDER THE STATUTE?

An insurer who violates Minnesota’s new bad faith law may be obligated to pay to the insured as taxable costs:

(1) an amount equal to one-half of the proceeds awarded that are in excess of an amount offered by the insurer at least ten days before the trial begins or $250,000, whichever is less; and
(2) reasonable attorney fees actually incurred to establish the insurer’s violation of this section. 12

An award of taxable costs under this statute is within the court’s discretion and is in addition to prejudgment and postjudgment interest, costs, and disbursements otherwise allowed by law. 13

ARE THERE ANY LIMITS ON DAMAGES AND ATTORNEY’S FEES RECOVERABLE UNDER THIS STATUTE?

Minnesota Statutes § 604.18 contains a number of limitations on damages and attorney’s fees for actionable bad faith conduct. Punitive damages and exemplary damages are not available for violation of this statute. 14 Also, a violation cannot be the basis of any claim or award under chapter 325D (unlawful trade practices) or 325F (consumer protection, products and sales). 15 As to attorney fees, such awards are limited to $100,000, and are discretionary with the court. 16 Any claim for attorney’s fees must be separately accounted for by the insured’s attorney and must not be duplicative of the fees for the insured’s attorney otherwise expended in pursuit of proceeds for the insured under the insurance policy. 17 A violation of this statute does not give rise to a claim for attorney’s fees under Minnesota Statutes section 8.31, the private attorney general’s statute. 18

WHEN IS AN INSURED’S CLAIM FOR TAXABLE COSTS DETERMINED?

A claim for taxable costs under Minnesota Statutes § 604.18 must not be asserted in a party’s initial pleading. 19 Instead, a party seeking to recover damages for an insurer’s bad faith conduct must bring a motion to amend the pleadings to assert a claim. 20 Such motion must be accompanied by one or more affidavits setting forth the factual basis for the motion. 21 This motion may be opposed by one or more affidavits showing there is no factual basis

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9 Minn. Stat. § 604.18, subd. 1(c).
10 Minn. Senate, Debate on S.F. 2822, 85th Minn. Leg., Gen. Sess. (Apr. 14, 2008)(video and audio available online from Senate Audio and Video Archives); Minn. Leg., Conference Comm., Insurance Standards of Conduct: S.F. 2822, 85th Leg., Reg. Sess. (Apr. 9 & Apr. 10, 2008)(video and audio available online from Senate Audio and Video Archives for Apr. 9, 2008 only).
11 Minn. Stat. § 604.18, subd. 2(a)(1-2).
12 Minn. Stat. § 604.18, subd. 3(a)(1-2).
13 Minn. Stat. § 604.18, subd. 3.
14 Minn. Stat. § 604.18, subd. 3(b).
15 Minn. Stat. § 604.18, subd. 2(b).
16 Minn. Stat. § 604.18, subd. 3(a).
17 Id.
18 Minn. Stat. § 604.18, subd. 3(b).
19 Minn. Stat. § 604.18, subd. 4(a).
20 Id.
21 Id.
for the motion. At hearing the court may grant the motion if the court finds prima facie evidence to support the motion.

In an effort to keep the focus on the underlying policy dispute and not the bad faith claim, an insured’s entitlement to taxable costs is determined by the court in a subsequent proceeding following the fact finder’s determination of the amount an insured is entitled to recover under the insurance policy. This proceeding shall be governed by the procedures set forth in Minnesota General Rules of Practice 119. The following evidence is inadmissible in this proceeding:

- Findings or determinations made in arbitration proceedings conducted under section 65B.525 or rules adopted under that section;
- Allegations involving, or results of, investigations, examinations, or administrative proceedings conducted by the Department of Commerce;
- Administrative bulletins or other informal guidance published or disseminated by the Department of Commerce; and
- Provisions under chapters 59A to 79A and rules adopted under those sections are not admissible as standards of conduct.

**ARE THERE ANY OTHER EXCLUSIONS UNDER THE STATUTE?**

Minnesota Statutes § 604.18 also contains a number of additional exclusions. Unlike bad faith claims in the third-party context, a claim for taxable costs under the statute may not be assigned. Of particular significance in the area of no-fault insurance, claims resolved or confirmed by arbitration or appraisal are not covered by the statute. Claims against insurance agents are also excluded unless the agent’s conduct has caused or contributed to an insurer’s errors, acts or omissions which result in a violation of this statute. An insurer does not violate the statute by conducting or cooperating with a timely investigation into arson or fraud.

**POTENTIAL FOR LITIGATION; CALCULATION OF TAXABLE COSTS.**

It is anticipated that the calculation of taxable costs under Minnesota Statutes § 604.18 will be litigated. The damages available for a violation of this statute are calculated based on the difference between the amount offered by the insurer - at least ten days before trial - and an amount equal to one-half of the proceeds awarded that are in excess of an amount offered by the insurer, up to $250,000. The phrase “amount offered” is not defined so it is unclear if a violation of this statute could be found in a situation in which the insurer denies the claim, offering nothing to its insured. However, since one of the underlying purposes of this legislation is to discourage unreasonable claim denials, it is anticipated the Minnesota courts would consider the “amount offered” in the case of a denial to be $0.

Similar ambiguities are present with the undefined phrase “proceeds awarded.” When construing an ambiguous statute, the court may consider its contemporaneous legislative history. Senator Tarryl Clark (DFL-St. Cloud), the bill’s Senate author, provided an explanation of the operation of the statute on the floor of the Senate. In her example, the insurer’s last offer to the insured ten days before trial was $50,000. The insured rejected the offer, tried the case and was awarded $250,000 under the insurance policy. Senator Clark indicated that under this new law the insured would be entitled to the $250,000 award plus an additional $100,000 (representing one-half the difference between the insurer’s last offer before trial and the amount of the proceeds awarded under the policy) for a violation of this statute.

Senator Clark’s example did not identify the applicable limits of the insurance policy at issue. Therefore, it is

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22 Id.
23 Id.
24 Minn. Stat. § 604.18, subd. 4(b): Minn. Leg., Conference Comm., *Insurance Standards of Conduct: S.F. 2822, 85th Leg., Reg. Sess. (Apr. 9 & Apr. 10, 2008)* (video and audio available online from Senate Audio and Video Archives for Apr. 9, 2008 only).
25 Id.
26 Minn. Stat. § 604.18, subd. 4(d)(1-4).
27 Minn. Stat. § 604.18, subd. 4(e).
28 Minn. Stat. § 604.18, subd. 4(c).
29 Id.
30 Minn. Stat. § 604.18, subd. 5.
31 Minn. Stat. § 604.18, subd. 2(c).
32 Minn. Stat. § 645.16(7); *Baker v. Ploetz*, 616 N.W.2d 263, 269 (Minn. 2000).
33 See Minn. Senate, *Debate on S.F. 2822, 85th Minn. Leg., Gen. Sess. (Apr. 14, 2008)* (video and audio available online from Senate Audio and Video Archives) (discussing operation of statute).
unclear if the “proceeds awarded” language is intended to address proceeds under the insurance policy or damages determined at trial. Consider the same example but instead the jury determines damages to be $500,000 and the policy at issue has a $250,000 limit. Are the taxable costs for violation of the statute $100,000 (one-half the difference between the insurer’s $50,000 offer and the $250,000 policy limits), or $225,000 (one-half the difference between the $50,000 offer and the $500,000 damages determined at trial)?

The court’s interpretation of this language is critical. Should it determine the “proceeds awarded” language refers to the damages determined at trial, insurers who violate this statute may face significant exposure in excess verdict cases. However, considering “proceeds awarded” is an insurance term of art, it seems more likely the court will find that “proceeds awarded” refers to proceeds awarded under the insurance policy and not the amount of damages determined by the fact finder. This conclusion is also supported by the language of subdivision 4(b) which indicates taxable costs under the statute “shall be determined by the court” after the fact finder determines “the amount an insured is entitled to under the insurance policy. . . .” Had the legislature intended the phrase “proceeds awarded” to refer to damages determined at trial it could have chosen language indicating as much. Further, while a fact finder can determine damages in excess of the policy limits, a plaintiff’s recovery is still limited to the policy limits. The proceeds awarded following a fact finder’s decision can never exceed policy limits.

The passage of Minnesota Statutes § 604.18 marks the beginning of a new chapter in Minnesota law. While this new law presents the potential for significant penalties for insurers engaging in bad faith claims practices, an award of the taxable costs for violation of this statute is discretionary with the court and capped at the amounts discussed above. While one cannot say for certain how Minnesota courts will construe this new law, a cause of action for first-party bad faith is now available in Minnesota and insurers and practitioners need to be prepared for insureds willing to bring first-party bad faith claims and test the boundaries of this new law.

The court’s interpretation of this language is critical. Should it determine the “proceeds awarded” language refers to the damages determined at trial, insurers who violate this statute may face significant exposure in excess verdict cases. However, considering “proceeds awarded” is an insurance term of art, it seems more likely the court will find that “proceeds awarded” refers to proceeds awarded under the insurance policy and not the amount of damages determined by the fact finder. This conclusion is also supported by the language of subdivision 4(b) which indicates taxable costs under the statute “shall be determined by the court” after the fact finder determines “the amount an insured is entitled to under the insurance policy. . . .” Had the legislature intended the phrase “proceeds awarded” to refer to damages determined at trial it could have chosen language indicating as much. Further, while a fact finder can determine damages in excess of the policy limits, a plaintiff’s recovery is still limited to the policy limits. The proceeds awarded following a fact finder’s decision can never exceed policy limits.

Through its previous editions, the MDLA Release Deskbook has become a primary resource for lawyers and judges throughout the state. Updated sections in this new edition discuss ethical considerations in settlements as well as partial releases and employment cases. Chapters include a detailed review of the law and practical aspects of structured settlements. Suggestions to help the practitioner in the drafting and analysis of settlements and release agreements and an extensive appendix of forms and a topical index are included.

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Call the MDLA office (612) 338-2717 with questions.
INTRODUCTION

It remains to be seen how the new and significantly revised Rule 68 will develop and to what extent defendants will be impacted. But, the outlook looks bleak for defendants. On February 29, 2008, the Minnesota Supreme Court adopted the Supreme Court Advisory Committee’s recommendations and considerably altered Rule 68 of the Minnesota Rules of Civil Procedure. The new Rule 68 has been “extensively revamped” to “clarify its operation and to make it more effective in its purpose of encouraging settlement.” Minn. R. Civ. P. 68, advisory committee comment (2008). While the declared intent of the new Rule is the same as that of the former rule, these two rules are by no means the same. With the many modifications, the new Rule is likely to necessitate major strategic changes for defendants litigating in the courts of the State of Minnesota while undoubtedly providing numerous advantages to plaintiffs. This article will present an overview of the former rule, Federal Rule 68, the new Rule, and highlight some of the probable impacts the new Rule will have on defendants.

FORMER RULE 68

Like the new Rule 68, under the former rule, either party could make an offer to settle, for money or other relief (such as that demanded in an action for declaratory judgment) at any time prior to 10 days before trial. Minn. R. Civ. P. 68 (2008) (adopted February 29, 2008, eff. July 1, 2008). Although construed as an offer of judgment, an offer under the former rule did not have to explicitly reference Rule 68. The former rule was clear that an offer included costs and disbursements incurred to date. “At any time up to 10 days before trial, either party could serve an offer upon the other, including all costs and disbursements then accrued, to (1) allow the court to enter judgment for a specified amount against it, or (2) pay or accept a sum of money.” Id. The offerer had to accept the offer within 10 days of service, by serving a response within the 10-day period, or the offer was automatically “deemed withdrawn.” An offer was not revocable during the 10-day period. The failure to accept an offer was not admissible except to later determine costs, if necessary. If the judgment eventually entered was less favorable to the offeree than the offer, the offeree was required to pay the offeror’s costs and disbursements. Essentially, under the former rule, the effect of making the offer of judgment was to shift the burden of paying costs to the offeree.

Although clear and concise given its stated purpose, the Advisory Committee had several concerns about the operation of the former rule. Among those concerns was that the former rule was confusing. In addition, the Advisory Committee perceived the former rule to lack real significance in its ability to foster settlement. In other words, the Advisory Committee felt that the former rule was weak because if a final judgment was less than the defendant’s offer, the plaintiff was still considered the prevailing party and therefore entitled to costs and disbursements under Rule 54.04. Also concerning to the Advisory Committee was the notion that practitioners were often surprised to face the obligation of paying the opposing party’s costs and disbursements, since the former rule did not require offers to explicitly reference Rule 68. Finally, the Advisory Committee perceived that there was confusion about whether a party obligated to pay costs and disbursements was still entitled to attorney’s fees, if allowed for under statute as a “cost.”

FEDERAL RULE 68

The former Minnesota rule 68 mirrored much of the current Federal Rule 68. The Federal Rule is simple: if a plaintiff rejects the defendant’s offer and receives a less favorable judgment at trial, the plaintiff pays the defendant’s costs and disbursements. Fed. R. Civ. P. 68. A notable difference between the former Minnesota rule and the current Federal Rule is that the Federal Rule limits the plaintiff’s ability to recover attorney’s fees in those cases where attorney’s fees are recoverable
by the prevailing party, e.g. civil rights actions. “Plaintiffs...who have rejected an offer more favorable than what is thereafter recovered at trial will not recover attorney’s fees for services performed after that offer is rejected.” *Marek v. Chesny*, 473 U.S. 1 (1985).

However, the most significant difference between the former Minnesota rule and the Federal Rule is that under the Federal Rule only defendants can make offers of judgment. In practice, this is a distinction without a difference. As the prevailing party, a plaintiff is already entitled to recover costs and disbursements; therefore, eliminating any real incentive to plaintiffs to utilize the former Minnesota rule. The fact that, in practice, plaintiffs did not make offers under the former Minnesota rule illustrates the underlying, and often overlooked, principle behind the Federal Rule’s express limitation on plaintiffs’ ability to make offers. As a case progresses, costs and more notably, attorney’s fees appreciably increase for the defendant. As a result, defendants have a built-in incentive to settle cases. The same cannot be said of plaintiffs, who, due to the contingency-fee arrangement, incur no such increase in attorney’s fees. Accordingly, it is this principle, underlying the former Minnesota rule, and explicit in the Federal Rule, that was regrettably overlooked in the drafting and adoption of the new Minnesota Rule 68.

**NEW RULE 68**

Rule 68 was significantly altered to address the Advisory Committee’s concerns that the former rule was weak, confusing, and unclear. Under the new Rule, which is actually four new rules (68.01 through 68.04), an offer may still be made by any party, at any time prior to 10 days before trial, and is not revocable during that 10-day period. Minn. R. Civ. P. 68.01(a); 68.02(a) (2008). Also like the former rule, an unaccepted offer is not admissible except in a later proceeding to determine costs and disbursements, if appropriate. Minn. R. Civ. P. 68.03(a). The new Rule also explicitly defines “applicable attorney fees” to eliminate any prior confusion about when a party is entitled to recover attorney’s fees, and offers must now explicitly reference Rule 68, or they are deemed ineffective. Minn. R. Civ. P. 68.04(a).

However, making an offer is now more complex. An offer can be made as a “total-obligation” offer or as a “damages-only” offer. Minn. R. Civ. P. 68.01(a). A “total-obligation” offer includes prejudgment interest, costs and disbursements and attorney’s fees, if collectible. Minn. R. Civ. P. 68.01(c). A “damages-only” offer does not include prejudgment interest, costs and disbursements, or any recoverable attorney’s fees. Minn. R. Civ. P. 68.01(d). But beware, because the new Rule has a twist. If an offer does not specify which method, “damages-only” or “total-obligation,” is being used, the offer will automatically be deemed a “damages-only” offer. Minn. R. Civ. P. 68.01(c). This is significant because if a “damages-only” offer is accepted, the costs and disbursements, prejudgment interest, and attorney’s fees (if collectible) can still be sought by the accepting party through motion practice. Minn. R. Civ. P. 68.01(c); 68.02(b)(2).

Acceptance of an offer is also made more complex under the new Rule. If a “total-obligation” offer is used, the method of acceptance is still the same – the acceptance is filed with the court. Minn. R. Civ. P. 68.02(b)(1). However, if a “damages-only” offer is made and accepted, a motion must be filed and heard in order to determine prejudgment interest, costs, disbursements and attorney’s fees, if applicable. Minn. R. Civ. P. 68.02(b)(2). This will not only add complexity to the new Rule, but will undoubtedly increase motion practice, and thus the burden, on our already overworked court system.

**UNACCEPTED OFFERS**

Above all, the million dollar question inevitably will be—what happens if an offer is not accepted? Unfortunately, the answer is not simple. The effect of an unaccepted offer varies remarkably depending upon whether your client is the plaintiff or the defendant. If you represent a defendant who made an offer that was rejected, and the final judgment was less than the amount of the offer, the defendant is entitled to costs and disbursements incurred after the date the offer was served. Minn. R. Civ. P. 68.03(b)(1). No longer can defendants recover all of their costs and disbursements as they could under the former rule. On the other hand, under the new Rule, the defendant is relieved of paying the plaintiff’s costs and disbursements incurred after the date of service of the offer. With this addition, the Minnesota Supreme Court has overruled, in part, *Borchert v. Maloney*, 581 N.W.2d 838 (Minn. 1998). Under *Borchert*, the plaintiff, as the prevailing party, is entitled to recover his or her costs and disbursements, simply by virtue of being the prevailing party. Under the new Rule, if the defendant’s offer is rejected and judgment is less than the amount of the offer, as the prevailing party, the plaintiff will recover his or her costs and disbursements up to the date of service of the defendant’s offer, but cannot recover costs incurred thereafter. While this provision offers a minor benefit to defendants, the
new Rule still offers more of an advantage to plaintiffs as plaintiffs are no longer exposed to all of the defendant’s costs and disbursements.

In contrast, if a plaintiff makes an offer that is rejected, and judgment entered is more favorable than the offer, he or she is entitled to recover an amount equal to the costs and disbursements incurred after the date the rejected offer was served. Minn. R. Civ. P. 68.03(b)(2). In addition, plaintiffs are entitled to all of their costs and disbursements as the prevailing party. This means that plaintiffs are entitled to those costs and disbursements plus the costs and disbursements they are entitled to for having made (and prevailed upon) a Rule 68 offer. Thus, plaintiffs essentially will be entitled to recover “double costs” under the new Rule.

This “double cost” penalty is perhaps the change to Rule 68 that will have the most severe implications for defendants. Savvy plaintiffs will undoubtedly begin to serve Rule 68 offers in conjunction with most summons and complaints, setting defendants up early to pay double costs. This will be particularly likely in cases where the damages are clear, but liability is disputed. A simple example helps illustrate. In a case where damages are certain at $100,000.00, but liability is in dispute, a sophisticated plaintiff will serve a Rule 68 offer of judgment for $90,000.00 with the summons and complaint. Because few defendants are willing, or even tactically able, to settle cases within 10 days of being served with a summons, the defendant will likely have to reject the offer. Should the plaintiff then prevail at trial with a $100,000.00 verdict, the plaintiff would be entitled to recover “double costs.” In essence, this places a fine on defendants for seeking justice in cases where liability is disputed.

The obvious result is that defendants and their attorneys will be forced to change the way cases are evaluated and managed, profoundly altering defendants’ litigation strategies. As noted, defendants frequently have little, if any, information about their cases within 10 days of being served with a summons and complaint (and Rule 68 offer). How can defense attorneys fairly and effectively advise their clients to accept an offer when only bare-bones facts about the case are known, if any facts are even known at all? Consequently, the reality created by the new Rule is that defendants who are served with a Rule 68 offer will have to adjust and budget for the possibility of paying “double costs.” The obvious, inequitable ramifications is that defendants will unquestionably feel pressured into early settlement to avoid the possibility of incurring “double costs.”

**COURT DISCRETION**

Another change to Rule 68 likely to lead to inequitable results for defendants is the addition of court discretion. Minn. R. Civ. P. 68.03(b)(3). The new Rule gives courts discretion to reduce the amount of an obligation imposed by Rule 68 in order to eliminate undue hardship or inequity. The court has discretion to reduce the amount of the obligation imposed by the rule as a result of a party’s failure to accept an offer if the resulting obligation “would impose undue hardship or otherwise be inequitable.” Minn. R. Civ. P. 68.03(b)(3).

Of course, plaintiffs, not defendants, are likely to be the frequent beneficiaries, if not the only beneficiaries, of the addition of the undue hardship prevision to Rule 68. Traditionally, it is plaintiffs who lack the financial ability to pay the opposing party’s costs and disbursements. In contrast, defendants, who are generally insured with coverage paying costs and disbursements, will not have a similar argument that enforcing the Rule would result in undue hardship. As a result, the new Rule gives plaintiffs an “out” in the event a plaintiff rejects an offer that is more favorable than the resulting judgment. Essentially, this makes the new Rule’s threat to plaintiffs of being obligated to pay the defendant’s costs and disbursements effectively meaningless.

**QUESTIONS LEFT UNANSWERED BY THE DRAFTING OF THE NEW RULE**

There is a drafting error in the new Rule that is likely to cause headaches for practitioners and judges alike in interpreting the new Rule. Because the new Rule allows parties to make two types of offers, “damages-only” and “total-obligation,” in some situations, both parties’ Rule 68 offers could be “winners” at the same time. Minn. R. Civ. P. 68.03(c)(1)-(2). An example is illustrative of this point. Assume that a defendant makes a “damages-only” offer of...
$8,000.00, which the plaintiff subsequently rejects. The case progresses and the plaintiff makes a “total-obligation” offer of $12,000.00 to settle the case, but the defendant rejects this offer. At the end of trial, both sides have incurred $10,000.00 in costs and disbursements since the date of their respective offers. Plaintiff obtains a verdict for $7,500.00. Which party is entitled to recover their costs and disbursements?

The defendant will argue that she is entitled to recover her costs and disbursements because her “damages-only” offer of $8,000.00 was more favorable to the plaintiff than the verdict of $7,500.00. Conversely, the plaintiff will argue that he is entitled to recover his costs and disbursements under Rule 68 because his “total-obligation” offer of $12,000.00 is more favorable to the defendant than the verdict given his costs ($7,500.00 verdict plus $10,000.00 in costs and disbursements for a total of $17,500.00). Both arguments have merit given the language of Rule 68.03(c); however, given the lack of clarifying language anywhere else in the new Rule, it is unclear which party will be considered the prevailing party for purposes of Rule 68. This drafting error will undoubtedly result in further complexity and confusion for practitioners attempting to utilize the new Rule.

CONCLUSION

Clearly, it is plaintiffs who will benefit from the change to Rule 68. Unfortunately, the overall effect of these changes will not be to encourage and foster well-reasoned and fair settlement, but to force defendants into settlement when their cases should otherwise be tried. If, as some plaintiffs’ attorneys have argued, the former rule favored defendants, necessitating a change, the new rule provides an undeniable advantage to plaintiffs, necessitating change once again. Further litigation is anticipated to clarify portions of the new Rule. Likewise, constitutional challenges are likely to address the vastly disparate advantages to plaintiffs in Minnesota’s new Rule 68.

FIRST ANNUAL WOMEN LAWYERS DINNER
STEEL’S FISH CAFE
OCTOBER 9, 2008

On Thursday, October 9, 2008, the First Annual MDLA Women’s Dinner (co-sponsored with the Minnesota Association for Justice) was held at Stella’s Fish Cafe. We enjoyed a fun evening of good food, spirited conversation, and judicial insights from Justices Skjerven Gildea and Meyer. We hope to make the dinner an annual fall event.
THE HELMET DEFENSE RULE IN MINNESOTA

By Scott V. Kelly and Daniel J. Bellig
FARRISH JOHNSON LAW OFFICE, CHTD.

INTRODUCTION
The facts speak for themselves:

Statistics indicate that motorcyclists are four times more likely to be injured while riding a motorcycle than in a passenger car, and twenty-one times more likely to die in a motorcycle accident. Experts believe that a projected 85% of serious injuries sustained while riding a motorcycle could have been avoided had the rider chosen to wear a helmet.

... The failure to wear a helmet can make the costs of such accidents disproportionately high, because injuries sustained to the head of a helmetless motorcyclist are twice as expensive, on average, as all other injuries to the rider combined.

These dramatic statistics raise an important question: in Minnesota, is evidence of a plaintiff’s failure to wear a helmet while riding a motorcycle admissible as a component of fault or to offset damages? To date, there is no definitive answer. There is no statute imposing a duty to wear a helmet or permitting or prohibiting evidence of helmet non-use in a civil trial. It also appears the legislature intentionally left the issue for the courts to resolve.

To ensure the safety of motorcycle riders, as a matter of fairness to defendants, to protect the pocketbooks of insureds, and to further Minnesota’s public policy, Minnesota courts should adopt a helmet defense rule which permits evidence of a plaintiff’s helmet use as a component of fault or as an offset of damages. First, we provide a background of Minnesota’s helmet laws and explain that presently there is no definitive Minnesota law on the admissibility of helmet evidence. Second, we explain that the legislature intended for the courts to resolve the helmet evidence issue. Then, we explain that both general principles of Minnesota law and public policy support a court imposed rule permitting helmet evidence. Finally, this article presents a brief overview of two alternative helmet defense rules.

BACKGROUND
On April 9, 1968, a motorcycle operated by Alan Burgstahler and an automobile operated by Jo Pat Wardall Fox collided. Burgstahler sued Fox for negligence and won a jury award of over $45,000. Fox appealed, claiming the trial court should have permitted cross-examination concerning Burgstahler’s failure to wear a helmet. At the time of the accident, Minnesota had no statute requiring motorcyclists to wear helmets or providing for a damage offset for failure to wear a helmet. Years after the accident, but before the appeal was resolved, the legislature enacted a statute requiring motorcyclists to wear protective headgear. The supreme court had to resolve whether damages should be reduced by evidence of failure to wear a helmet against the backdrop of the legislature’s decision to require helmet use by riders.

The court, without providing rationale or reasoning, adopted the rule of Rogers v. Frush, a Maryland decision which held that evidence of failure to wear a helmet while riding a motorcycle was irrelevant to the question of contributory negligence. As did the Maryland court in Rogers, the supreme court rejected the notion that the legislature’s decision to adopt a law requiring use of helmets after an accident had any bearing on the relevance of the evidence to negligence at the time of the accident.

In 1977, after the Burgstahler ruling, the legislature repealed the law requiring motorcyclists to wear helmets. However, the legislature replaced the mandate with a law allowing courts to admit evidence of helmet use to offset damages. As discussed in more detail below, the legislature then repealed the offset statute in 1999.

It is not clear what the supreme court held in Burgstahler. The opinion states that the only issue before the court was that of “damages”. However, the language of Rogers v. Frush is couched in terms of contributory negligence, a liability question. One way to read the court’s adoption of Rogers is that the supreme court ruled only that helmet evidence is not relevant to liability. But confusion comes from the court saying that it was considering only the “damages” issue. Would that mean the court did not determine the relevance of helmet evidence to liability? It could be that the rule of Rogers v. Frush extends to both liability and damages issues, but the language is constrained to a discussion of negligence, not avoidance or mitigation of damages. Thus, the extent of the court’s holding in Burgstahler is not clear.

Nor is it clear what the repeal of the helmet law, implementation of the helmet offset statute, and then repeal of the helmet offset statute has done to Burgstahler’s precedential value. As other commentators have noted: “The issue is whether Burgstahler still controls after the repeal of the mandatory helmet law.”

SCOTT V. KELLY is a shareholder with Farrish Johnson Law Office, Chtd. located in Mankato, Minnesota. DANIEL J. BELLIG is an associate attorney with Farrish Johnson Law Office, Chtd. The content of this article is derived from research and briefing performed by the authors as part of a motion in limine to admit evidence of a plaintiff’s failure to wear a helmet in a motorcycle-tractor collision. The authors wish to thank their client for permission to use their research and arguments for this article.
LEGISLATIVE HISTORY

One way to establish the effect of the offset and its repeal is to look at the legislature’s intent. The legislative history shows that the legislature intentionally left the issue of helmet evidence to the courts by (1) refusing to adopt a complete prohibition of helmet evidence and (2) repealing the offset statute with the specific understanding that the courts would resolve the issue.

Refusal to Prohibit Helmet Evidence

In 1999, legislators introduced a bill that would have repealed the helmet offset statute and replaced it with a complete prohibition of helmet evidence in civil trials. The bill did not pass; it died before a vote by the full House and Senate. To date, no helmet evidence prohibition has been adopted.

Repeal of the Mandatory Offset Statute

In March, 1999, SF 1762, a general transportation bill, was introduced. After passage by the Senate, SF 1762 went to the House where numerous changes were made. The bill and amendments from either house did not include anything regarding repeal of the helmet offset statute. To resolve the differences, the bill was sent to a conference committee.

The conference committee characterized SF 1762 as “housekeeping legislation” and went through the differences between the House and Senate hastily. Neither the repeal, nor any language concerning the offset statute, appeared in SF 1762 prior to the conference committee. However, the committee took time to discuss a proposed repeal of the helmet offset statute.

Two members of the conference, Senator Steve Murphy and Representative Tom Workman, were motorcycle enthusiasts and urged the committee to adopt language repealing the offset statute. There was surprisingly little discussion. The chairwoman wondered why it was prudent to have a law requiring the use of safety belts while not requiring motorists to wear helmets. The proponents replied that the governor, then Jesse Ventura, was satisfied with the seat belt requirements but did not approve of restrictive motorcycle laws. After being convinced repeal of the helmet offset would not endanger the “housekeeping bill,” the chairwoman dropped her objections and the committee approved the repeal without objection.

Despite the brevity of deliberation, the chairwoman’s understanding of the amendment offers clear insight into the intent of the repeal. Specifically, she understood repealing the offset would leave the issue of the admissibility of helmet evidence to the courts.

After the committee considered other details, SF 1762 was returned to the House and the Senate. For the first time, the bill contained a provision repealing the offset statute. Both houses adopted the conference committee’s report and passed the revised bill. Governor Ventura later signed the repeal into law.

Implications of the Legislative History

Had the legislature intended to prohibit helmet evidence in civil trials it would have done so by adopting the prohibition statute. It did not. Instead, the legislature left a gap in the law by not enacting the prohibition but repealing the offset. Based on the understanding of the conference committee chair, it appears the legislature left the gap for the courts to fill.

MINNESOTA LAW AND PUBLIC POLICY SUPPORT ADMISSION OF HELMET EVIDENCE

When a court confronts this issue, it will be influenced by (1) relevant Minnesota law and (2) public policy. We begin with a discussion of policy justifications for a helmet defense rule. We then explain how these policy concerns can fuse with general principles of Minnesota law to justify the rule.

Policy Concerns

It is difficult to square Burgstahler with the public policy implications of prohibiting helmet evidence. Statistics from the National Highway Traffic Safety Administration are staggering. Over 88,000 motorcyclists were injured during 2006. The NHTSA “estimates that helmets saved 1,658 motorcyclists’ lives in 2006, and that 752 more could have been saved if all motorcyclists had worn helmets.”

“Head injury is a leading cause of death in motorcycle crashes. An unhelmeted motorcyclist is 40 percent more likely to suffer a fatal head injury and 15 percent more likely to suffer a non-fatal injury than a helmeted motorcyclist when involved in a crash.” In Minnesota, in 2006, 77.6% percent of all motorcycle rider fatalities involved unhelmeted riders.

The costs of helmet non-use is alarming. The NHSTA reports that “[a]mong the unhelmeted motorcycle inpatients, charges for those suffering brain injuries were 2.25
times higher than for those without brain injuries.” This does not include long-term costs. Analysis of data “in three States with universal helmet laws showed that without the helmet law, the total extra inpatient charges due to brain injury would have almost doubled from $2,325,000 to $4,095,000.” The NHTSA estimates “that motorcycle helmet use saved $19.5 billion in economic costs from 1984 through 2002. An additional $14.8 billion would have been saved if all motorcyclists had worn helmets during that same period.”

General Principles of Law

Burgstahler’s refusal to recognize fault or reduce damages for failure to wear a helmet is contrary to general principles of Minnesota law. Minnesota’s comparative fault statute imposes on plaintiffs a general duty to avoid injury and mitigate their damages. Moreover, common law continues to reflect this general principle through the doctrines of primary and secondary assumption of risk. As one scholar notes, the supreme court tends to view tort law with a “core fault concept” and emphasizes “personal accountability.”

Reflecting these core concepts, the court of appeals has attempted to distinguish Burgstahler. In Johnson v. Farmers Union Central Exchange, Inc., the court of appeals permitted evidence of a plaintiff’s failure to wear protective goggles while working on anhydrous ammonia lines. Johnson argued that evidence of his failure to wear goggles “was inadmissible by analogy to cases excluding evidence of failure to wear motorcycle helmets or seatbelts”. However, the court permitted the evidence by distinguishing the absence of a statutorily imposed standard of care for helmet use with OSHA’s regulations requiring Johnson to wear eye goggles.

It seems that the court was recognizing a common law duty to take reasonable precautions to avoid injury. The court noted that even in the absence of an OSHA regulation, a jury could find Johnson negligent because he had been educated on, and understood the importance of, wearing safety goggles. It seems hard to believe that motorcycle riders do not appreciate the danger of helmet non-use. Thus, the distinction between the educated employee working with acid and the motorcycle rider, in terms of their appreciation of potential danger and their ability to avoid the danger by taking a simple safety step, is quite a stretch.

Fusion of Law and Policy

“A growing number of courts... are willing to allow admission of [helmet] evidence, especially due to scientific advancements proving the individual causes of injuries.” Iowa, though declining to adopt a helmet defense, noted in its 1991 survey of cases, “Other courts have allowed evidence of nonuse on the question of damages. Although these courts are in the minority, their numbers are growing.” Indeed, Iowa’s survey reveals that this is no small minority.

Courts that allow evidence of helmet non-use recognize three important policies:

First, plaintiffs who choose not to use certain safety devices must bear the consequences of their own actions in opting not to conform to a reasonable standard of care. Second, allowing a helmet defense encourages the overall use of such protective devices. Third, the law must recognize the responsibility of every person to anticipate the almost certain occurrence of an accident during one’s lifetime and take reasonable measures against it.

Ultimately, “the helmet defense affords a new opportunity to yield the most socially desirable and economical result.”

While the motorcycle rider is putting his or her own life at risk, the economic consequences of that choice fall on society. The freedom not to wear a helmet results in higher taxes, increased insurance rates and health care costs, as well as payments for damages from collisions between motorists and motorcyclists, since motorcyclists are often not covered by insurance.

The creation of a common law duty to wear a helmet... is clearly more efficient for society because the cost of taking that precaution (e.g. price of the helmet, discomfort, freedom of choice) is undoubtedly less than the expected benefit (prevention of possible head trauma).

In Halvorson v. Voeller, where North Dakota adopted its helmet defense rule, the court reasoned that helmets gave plaintiffs “an unusual and ordinarily unavailable means by which he or she may minimize his or her damages prior to the accident.” The court felt that concerns of highway safety and defensive driving put the minimal burden on the plaintiff to take basic safety precautions, such as wearing a helmet. With respect to legislative activity on helmet laws, the court stated:

Although there is good authority for the proposition that a court may adopt as a standard of care the requirements of a legislative enactment designed to protect a specified class of persons, it never has been suggested that a standard of care may be inferred from a statute which does not require the use of safety devices by a certain segment of society.

There is a difference between saying, “It is up to you to decide whether or not to wear a safety helmet,” and saying,
“You will never, under any circumstances, have to suffer legal consequences for not wearing a helmet.”

Distinguishing Minnesota’s Seatbelt Gag Rule

One might wonder why a court could not simply imply there is a common law duty to wear a helmet from the current statutory gag rule on seatbelt evidence. Like the distinction between goggles and helmets drawn in Johnson, it seems disingenuous to think that there is a difference between the liability and damage implications of failing to wear a helmet and failing to wear a seatbelt.

Truthfully, there is little, if any, distinction. The real distinction is between the policy decisions made by common law judges and legislators. Despite putting a seatbelt gag on the books, Minnesota’s legislature specifically declined to implement a law banning helmet evidence. Recall that when the legislator repealed the offset statute, during that same legislative session, it declined to pass a bill that had been introduced to prohibit evidence of helmet non-use. In the face of the harsh reality that helmets save lives, reduce injuries, and reduce hospital costs, a common law judge should be inclined to join the growing number of jurisdictions adopting a helmet defense rule.

ALTERNATIVE HELMET DEFENSE RULES

Once convinced the law supports a common law helmet defense rule, a court must then decide which offset theory to adopt. Some courts view failure to wear a helmet as relevant only to the issue of damages, while others view it as a component of comparative fault. North Dakota and Wisconsin illustrate these two approaches. It is beyond the scope of this article to detail the theoretical underpinnings or argue for either approach. However, the basic principles of the two approaches offer some insight into how a Minnesota court might approach the helmet defense rule.

In North Dakota, under Halvorson, “the amount of damages awarded the plaintiff for the injuries he sustained must be reduced in proportion to the amount of injury he would have avoided by the use of a helmet.” North Dakota’s approach views failure to wear a helmet as a separate cause of the injury, not an element of fault. Under this rule, a plaintiffs damages are first reduced due to his comparative fault and then further reduced by the amount of damages that would have been avoided if he wore a helmet.

Wisconsin uses a different approach for cases involving ATV accidents where the plaintiffs failed to wear helmets. There, “[t]he jury in a helmet defense case should determine and apportion accident negligence separately from helmet negligence... However, the helmet negligence comparison question should ask the jury to compare the plaintiff’s helmet negligence as against the total combined negligence of the defendants, rather than treating the comparison as an allocation or division of injuries or damages...” Thus, there are two components to the verdict form – the first for “accident negligence” between the plaintiff and defendant and the second for “helmet negligence”. The award from the first negligence determination is reduced by taking the first value and reducing it by the helmet negligence.

To better understand the difference, one should imagine a situation where a plaintiff’s failure to wear a helmet caused 95% of the damages but a jury, for whatever reason, believed it was only 10% of a plaintiff’s fault when compared against the defendant’s conduct. In that case, the North Dakota rule would evince plaintiff’s recovery. But, in Wisconsin, a plaintiff would still recover most of his or her damages.

Whatever approach is used, Plaintiffs should be held accountable for failure to take simple safety steps to prevent severe and costly injuries. While differing in the method of calculation, both the North Dakota and Wisconsin rules bring the law closer to fairness and a true reflection of fault than a total prohibition of helmet offset.

CONCLUSION

The legislature has removed itself as the policy maker when it comes to helmetless motorcycle riders. Now, the courts must decide whether to adopt a helmet defense rule and prevent plaintiffs from recovering damages for serious injuries that could have been avoided by taking the minimal safety step of wearing a helmet. Times have changed since Burgstahler. Other jurisdictions have departed from the notion that there is no common law duty to wear a helmet. They recognize the social and economic consequences of helmetless riders. Adopting a helmet defense in Minnesota might encourage riders to wear a helmet. This would, in turn, protect riders from severe and permanent injury while protecting defendants and insurers from the high costs of traumatic head injuries. Based on general principles of law and matters of policy, Minnesota should follow the growing trend of states by adopting a helmet defense rule.

ENDNOTES

In an action to recover damages for negligence resulting in any head injury to an operator or passenger of a motorcycle, evidence of whether or not the injured person was wearing protective headgear of a type approved by the commissioner shall be admissible only with respect to the question of damages for head injuries. Damages for head injuries of any person who has not wearing protective headgear shall be reduced to the extent that those injuries could have been avoided by wearing protective headgear of a type approved by the commissioner. For the purposes of this subdivision “operator or passenger” means any operator or passenger regardless of whether that operator or passenger was required by law to wear protective headgear approved by the commissioner.


*Burgtahler*, 186 N.W.2d at 183; Rogers, 262 A.2d at 551-552.

The Senate referred the bill to the Senate Committee on Transportation. Senate Journal – 81st Legislative Session (1999-2000) at 555 (hereinafter, “SJ”). It was later re-referred to the Senate Committee on the Judiciary, where it died. SJ at 697. The House referred its bill to the House Committee on Transportation Policy. House Journal – 81st Legislative Session (1999-2000) at 429 (hereinafter, “HJ”). The House received a report from its committee recommending the bill be adopted. HJ at 636. However, the House never considered the bill and upon its adjournment, the bill was returned to the House Committee on Transportation policy. See HJ at 8483-4.

HJ at 699.

HJ at 3797, 3832. Language respecting the use of helmet evidence was not included in the original house transportation file. See HJ at 712; 1837-39; H.F. No. 1551, 1st Engrossment - 81st Legislative Session (1999-2000); H.F. No. 1551, as introduced - 81st Legislative Session (1999-2000).


The preceding discussion of the conference committee for SF 1762 is derived from an audio recording of the committee’s proceedings available at the Legislative Reference Library.

SJ at 2933.

SJ at 2934; HJ at 4490-1.

SJ, “Communications Received Subsequent to Adjournment”, at 5.

Motorcycles: 2006 Data,” NHTSA Traffic Safety Facts, at 1. The statistics used in this section are updates of those used by John W. Schuster in “Riding Without a Helmet.”


Id.

Id.

Id.

Id.

Id.

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Id.
The 33rd Annual Trial Techniques Seminar, “Damages, Doctors, Bridges, & More!”, was held August 14-16 at the Duluth Entertainment and Convention Center. Kay A. Tuveson coordinated a wonderful seminar with excellent topics and speakers. This was our second year at the DECC and the experience continues to be positive – more room, delicious food, and a spectacular view of Lake Superior!

On Friday, August 15, the following topics were presented: Overview & Demonstration of the Electronic Medical Record: A Provider’s Perspective, Bradley D. Gordon, M.D., Regions Hospital; The ABC’s of CBC, LDL & HIV: An Introduction to the Alphabet Soup of Medical Testing, Arthur P. Wineman, M.D., Health Partners, Inc.; Chronic Pain – When it Won’t Stop Hurting, Arthur P. Wineman, M.D., Health Partners, Inc.; Update From the Supreme Court, Associate Justice Lorie Skjerven Gildea, Minnesota Supreme Court; Walking the Line in Damages: Arguments in Child Cases, Charles H. Cole, Schuyler Roche P.A.; Damages: Municipal/State Caps & the I-35W Victims Fund, Thomas Grundhofer, League of Minnesota Cities; and Preparing to Defend Catastrophic Injury Claims, Rebecca Egge Moos, Bassford Remele, P.A..

Saturday’s program included the following segments: Understanding the Economic Side of Damages; Karl Egge, Macalaster College; Arguing Damages in Mediation: A View From Both Sides of the Bar & Effective Mediation Tips, Gene Bradt, Attorney at Law; and The End of Court Neutrality – Rule 68: The Ship has Landed at Last – 1st Party Bad Faith, Richard J. Thomas, Burke & Thomas, PLLP.

CLE credits were approved as follows:
MN – 8.75 Event Code # 123878
WI – 11.5 standard
ND – 8.75 standard
IA – 9.75 (includes 1.75 of ethics credit)

Social Activities
The TTS kicked off with a welcome reception at the Inn on Lake Superior where attendees and their families enjoyed a complimentary appetizer buffet and great conversation in anticipation of the upcoming festivities.

On Friday evening, the Vista Star Harbor Dinner Cruise offered a stunning sunset view of Lake Superior for our annual dinner.
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<td><strong>North Central Region Trial Academy, Oakbrook, IL</strong></td>
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For additional reporting assistance, contact director@mdla.org or 612-338-2717
In this election year, the politicians announce change. The leaves are changing with the change of seasons. The MDLA is also changing with the hiring of a new Executive Director, Debra Hatlestad.

Although I know many of you and have met others at the Trial Techniques Seminar, committee meetings, or Board meetings, I want to formally introduce myself. I have been in the legal community my entire twenty-five year professional career. I have worked for the Honorable Judge LeRoy Yost in McLeod County, the Meeker County Attorney’s Office and Meeker County Sheriff’s Department, Rajkowski Hansmeier, Mackall, Crounse & Moore, Greene Espel, and Jackson Lewis LLP. My experience ranges from legal secretary, jailer/dispatcher, paralegal, to office administrator. On top of this I also supplemented my time working in the retail and hotel/banquet industry. I believe this experience provides a perfect union with the MDLA Executive Director position. I have the background for the committee/seminar topics and I know when I’m getting good customer service at a banquet/event. I tip well when service is good, and I’m hard when service is not what I would expect!

Aside from new personnel, the MDLA is also changing. In 2008, the Board has been more involved in the day-to-day operations and has had an opportunity to assess the Executive Director position. I am currently working approximately 20-25 hours a week. For the most part, many of the tasks associated with the Executive Director position can be done remotely, but we are retaining our office at the MSBA. We are committed to enhancing the organization with technology we already have available but are not utilizing to its full capability. While we have experienced several challenges in the past several months in configuring our electronic processes, we intend to capitalize on it soon and we are making great progress. We intend to streamline our processes to work to our common advantage, and provide more efficient and effective communication between the organization and its members.

What does this mean to you? Within the next couple of months, you will begin to see advancement and improvement to the MDLA’s website. For example, you will begin to see e-communication announcing event registration via the website, membership renewals AND online payments via the website, member profile management, e-mail blasts/list serve communication via the website versus director@mdla.org; and finally, improvements with respect to resources, links, and other MDLA information stored and accessible via the website. Please be patient! These improvements will be rolled out in small steps. However, your feedback and comments with respect to what you need and want from the MDLA on-line is critical. Please remember to send all comments, suggestions, thoughts, and feedback to director@mdla.org.

This is an exciting journey for me personally and professionally. As previously mentioned, I cannot imagine a more perfect marriage of my past and present passion and my future vision.

Finally, I want to thank those of you who have already provided your words of encouragement and appreciation. I look forward to meeting many more members as I continue to network with you all.

As the next edition will not be out until after the holidays: Happy Thanksgiving; Happy Holiday; and Happy New Year. I hear there are some GREAT Committee holiday parties!

Best Wishes,
Debra Hatlestad
MDLA is pleased to present its First Annual Trial Academy, an intensive trial practice training program for new to mid-level associates, specifically designed for the defense lawyer. Participants will come away with greater confidence, more defined litigation skills, and friendships that will serve them professionally and socially. The faculty will include prominent practitioners and judges from around the state providing individual attention to each phase of the trial. Along with faculty presentations, discussion and demonstrations, workshops and exercises give real hands on experience.

The MDLA Trial Academy is an excellent means of providing “on your feet” experience for lawyers who have limited courtroom and trial experience. Written materials are provided in advance so that participants have time to prepare for the different phases of the trial. The materials provided, which cover investigative materials, statements from witnesses to be used for impeachment, pleadings, deposition testimony, jury instructions and articles on trial advocacy, allow attendees to conduct an entire trial.

The Trial Academy will be held January 8-10, 2009 at the University of Minnesota Law School in Minneapolis. Watch for more information!
MDLA COMMITTEE UPDATES

MDLA committees provide great opportunities to learn and discuss issues and topics of current interest or concern with other members in similar practices. They serve as the heartbeat of the organization where important and valuable practice-related information is shared or association-wide positions are initiated and developed.

Committee members are notified of upcoming meetings via a list serve. Meeting notices are also posted on MDLA’s web site and in Requests and Events, a weekly e-mail publication. All members are strongly encouraged to become active participants. If you would like to be appointed to a committee, simply submit a statement of interest to director@mdla.org. Non-members are welcome to attend a committee meeting to learn more about the committee’s activities and member benefits.

AMICUS COMMITTEE: Corresponds via list serve to consider requests for appearances by MDLA as an amicus curiae. Chair is William Hart, Meagher & Geer, PLLP.

COMMERCIAL LITIGATION COMMITTEE: Meets quarterly. The committee typically offers a presentation and discussion on a specific topic of interest to commercial litigation practitioners. Chair is Steve Laitinen of Larson • King, LLP; Board Liaison is Paul Rajkowski of Rajkowski Hansmeier Ltd.

CONSTRUCTION LAW COMMITTEE: Typically meets at 4:00 p.m. on the third Monday of every other month (January, March, May, July, September, November) at the Local, 931 Nicollet Mall, Minneapolis. Chair is Steven Sitek, Bassford Remele, P.A.; Board Liaison is Mark Fredrickson of Lind, Jensen, Sullivan & Peterson, P.A.

EDITORIAL COMMITTEE: Meets to proof Minnesota Defense, MDLA’s quarterly magazine. The magazine is published on or about February 1, May 1, August 1, and November 1. Proofing meetings are scheduled about two weeks before the publication date. Chair is Victor Lund, Mahoney, Dougherty & Mahoney, P.A.

EMPLOYMENT LAW COMMITTEE: Meets at noon on the first Wednesday of every other month (December, February, April, June, August, October). Co-chairs are Jim Andreen, Erstad & Riemer, P.A. and Amy Taber, Faegre & Benson, LLP; Board Liaison is Dyan Ebert of Quinlivan & Hughes, P.A.

GOVERNMENTAL LIABILITY COMMITTEE: Meets quarterly with a CLE type format. In February, the committee presents an annual update at the League of Minnesota Cities in St. Paul. Other meetings rotate among firms. The December holiday party is always enjoyable. The committee also holds several informal meetings during the year to discuss case-specific concerns and maintains an email roundtable for sharing information. Chair is Joseph Flynn, Jardine, Logan & O’Brien, PLLP; Board Liaison is Paul Reuvers of Iverson Reuvers, LLC.

INSURANCE LAW COMMITTEE: Meets at noon on the second Tuesday of each odd-numbered month at the law firm of Bassford Remele, P.A. (33 South Sixth Street, Suite 3800, Minneapolis). The committee typically offers a presentation and discussion on a specific topic of interest to insurance practitioners. Co-chairs are Brian Sande, Bassford Remele, P.A. and Dale Thomsjo, Johnson & Condon, P.A.; Board Liaison is Lisa Griebel of Terhaar, Archibald, Pfeifferle & Griebel, LLP.

LAW IMPROVEMENT COMMITTEE: Monitors legislation during Minnesota’s legislative sessions. A meeting is typically scheduled prior to or early in the legislative session and then periodically during the session as bills are introduced and decisions are needed on proposed legislation. Co-chairs are Tom Marshall, Jackson & Lewis and Rich Thomas, Burke & Thomas, PLLP; Board Liaison is Kay E. Tuveson of HealthPartners, Inc.

LONG TERM CARE COMMITTEE: Meets every other month (December, February, April, June, August, October) at various times and locations. Co-chairs are Megan Hafner and Tony Kane, Terhaar, Archibald Pfeifferle & Griebel, LLP; Board Liaison is Kelly A. Putney of Bassford Remele, P.A.

NEW LAWYERS COMMITTEE: Opportunity for new lawyers practicing eight years or less to participate in several events, including a community service project, brown bag lunch CLEs, and happy hours throughout the year. There are also new lawyer speaking opportunities and social events at the MDLA TTS in August and at the Mid-winter conference. Co-chairs are Katie Downey, Murnane Brandt, and Christy Mennen, Halleland Lewis Nilan & Johnson; Board Liaison is Kenneth A. Kimber of Hanft Fride, P.A.

NO-FAULT COMMITTEE: Meets at noon on the second Friday of every other month beginning in January. The 2008 meetings are scheduled to take place at Oskie, Hamilton & Sofio (970 Raymond Avenue, Suite 202, St. Paul, MN 55114) on January 11, March 14, May 9, July 11, September 12 and November 14. Co-chairs are Tammy M. Reno and Eric S. Hayes of Brown Carlson, P.A.; Board Liaison is Terrance Votel of Votel, Anderson, McEachron & Godfrey.

PRODUCTS LIABILITY COMMITTEE: Meets on an informal basis. Co-chairs are Dana Lenahan and Susan MacMenamin, Halleland Lewis Nilan & Johnson, P.A.; Board Liaison is Cortney Sylvester of Halleland Lewis Nilan & Johnson, P.A.

WORKERS’ COMPENSATION COMMITTEE: Meets at 4:00 p.m. every other month (December, February, April, June, August, October) rotating between the law firms of Erstad & Riemer (8009 34th Avenue South, Suite 200, Minneapolis) and Brown & Carlson (5411 Circle Down Avenue, Suite 100, Minneapolis). Co-chairs are Douglas Brown, Brown & Carlson, P.A. and Charlene Feesnstra, Heacox, Hartman, Koshmir, Cosgriff & Johnson, P.A.; Board Liaison is Mark Kleinschmidt of Cousineau McGuire, Chtd.
Get Involved!
Join an MDLA committee.

___ Amicus Curiae Committee
William M. Hart, Chair

___ Commercial Litigation Committee
Stephen Laitinen, Chair

___ Construction Law Committee
Steven M. Sitek, Chair

___ Editorial Committee
Victor E. Lund, Chair

___ Employment Law Committee
Jim Andreen and Amy Taber, Co-Chairs

___ Governmental Liability Committee
Joseph Flynn, Chair

___ Insurance Law Committee
Brian Sande and Dale Thornsjo, Co-Chairs

___ Law Improvement Committee
Rich Thomas and Tom Marshall, Co-Chairs

___ Long Term Care Committee
Megan Hafner and Tony Kane, Co-Chairs

___ New Lawyers Committee
Katie Downey and and Christy Mennen, Co-Chairs

___ No-Fault Committee
Tammy M. Reno and Eric S. Hayes, Co-Chairs

___ Products Liability Committee
Dana Lenahan and Susan MacMenamin, Co-Chairs

___ Workers’ Compensation Committee
Douglas Brown and Charlene Feenstra, Co-Chairs

NAME ________________________________________________________________________
FIRM ________________________________________________________________________
ADDRESS _____________________________________________________________________
PHONE _______________________________________________________________________
EMAIL ________________________________________________________________________

COPY, COMPLETE AND MAIL TO:
Debra K. Hatlestad, Executive Director
Minnesota Defense Lawyers Association
600 Nicollet Mall
Suite 380A
Minneapolis, MN 55402

NEW MEMBERS
The following attorneys have joined the MDLA. We welcome them into our membership.

NEW MEMBERS

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asveen@halleland.com
ARTICLES FROM PAST ISSUES
Members wishing to receive a copy of an article from a past issue of Minnesota Defense should forward a check made payable to the Minnesota Defense Lawyers Association in the amount of $5.00 for postage and handling. In addition to the articles listed below, articles dating back to Fall '82 are available. Direct orders and inquiries to the MDLA office, Suite 380A, 600 Nicollet Mall, Minneapolis, MN 55402.

Winter 2007
What Civil Defense Attorneys Should Know About ERISA
Wooddale Builders, Inc. v. Maryland Casualty Co.
Supreme Court Addresses Certain Insurance Coverage Issues Pertaining to Moisture Intrusion Claims
Tiffany M. Quick
John M. Bjorkman and Paula Duggan Vraa

Spring 2007
Advice for Goldilocks When Hiring
Good Help: Don’t Ask Too Much; Don’t Ask Too Little
Jessica J. Theisen and Tamara Novotny
Recent Developments in Employment Law for the Defense Attorney
Janet C. Ampe, Mary L. Senkbeil and Amy C. Taber

Summer 2007
Offers of Judgement and Fee Shifting Statutes: the “Un-American” Rule
Thomas E. Marshall
2007 Legislative Report
Sandy Neren

Fall 2007
Minnesota Supreme Court Considers Revisions to Rule 68 That Would Make Defendants Pay Double Costs and Disbursements Limiting Liability for Sexual Harassment: New Guidance from the Eighth Circuit
Megan Backer and Joseph Schmitt
Compliance With New Standard for Safety Information Can Assist Production Manufacturer in Defending Failure to Warn Claims
Christine M. Mennen and Sheila T. Kerwin
Navigating the Workers’ Compensation Subrogation Labyrinth... How to Resolve the “Unresolvable” Subrogation Case Through Alternative, Cutting-Edge Settlement Negotiation Models
Joseph M. Nemo III

Winter 2008
The A.P.I. Case: The “Kiss O’ Death” of Kissoonadath?
Dale O. Thorsnjo
Governmental Immunity Update
Carrie Hund

Spring 2008
DUDE, WHERE’S MY CAB? The rights, responsibilities, and liabilities involved in loaning and borrowing property... with a focus on taxicab claims in the Twin Cities.
David M. Werwie, Esq.
2008 Legislative Report
Sandy Neren
Religious Accommodation in the Workplace
James R. Andreen
Defense Strategies for Seeking Dismissal of Common Law and Warranty Claims in Commercial Construction Defect Cases Under MINN. STAT. § 541.051 Where the Contract Requires Arbitration of Disputes: A Case Study
Mark S. Brown and Kimberly L. Johnson

Summer 2008
Retaliation Claims: Not Just an Afterthought
Morgan A. Godfrey

MDLA UPCOMING DATES

2008
MDLA 2008 Insurance Law Institute
Minneapolis Marriott West, St. Louis Park
November 13, 2008

MDLA 44th Mid-Winter Conference
Edgewater Resort and Waterpark, Duluth
February 6-8, 2009

First Annual MDLA Trial Academy
University of Minnesota Law School
January 8-10, 2009

Watch for more information on these and other events in Minnesota Defense, by mail, and at www.mdla.org
APPLICATION FOR MEMBERSHIP

Please print:

Date __________________ Attorney ID __________________

I, ______________________________________________________________ , do hereby apply for membership in the Minnesota Defense Lawyers Association and do hereby certify that I am an attorney involved in the defense of civil actions in the State of Minnesota.

Law firm/Employer __________________________________________________________________________________________

__________________________________________________________________________________________________________

Admitted to practice _______/_______ (MM/YYYY) I am currently a member of DRI: Yes _____ No _____

Areas of practice and specialization:

___ ADR ___ Appellate ___ Auto: No-Fault ___ Commercial ___ Construction Law ___ Dram Shop

___ Employment ___ Environmental ___ General Litigation ___ Governmental Liability ___ Insurance Coverage ___ Long Term Care

___ Medical Malpractice ___ Products Liability ___ Professional Liability ___ Subrogation ___ Workers’ Compensation ___ Other ____________

Office address ___________________________________________________________________________ __

City/State/Zip _____________________________________________________________________________ __

Direct phone ____________________ Office phone __________________ Fax number* ___________________

E-mail address* ______________________________________________________________________________

*By providing a fax number and e-mail address, you are agreeing to receive fax and e-mails from the association that may contain a message of a commercial nature. Please sign here to express your understanding and acceptance of these communications. Signature _______________________________________

Legislative district where I live ____________________

(If unknown, go to www.house.leg.state.mn.us or call House Information, Minnesota Legislature at 651-296-2146.)

I attach my check payable to MDLA for $ _____________ * (to be returned to me if this application is not accepted).

I agree to abide by the bylaws of the Minnesota Defense Lawyers Association.

Signed __________________________________________________

*Annual MDLA Membership Fees:

Member of the Bar less than 1 year $95
Member of the Bar 1 to 5 years $150
Member of the Bar 5 years or more $210
Retired Status $40
First Time Member FREE

(Fees established January 1, 2008)

Copy, complete and mail to:
Minneapolis, MN 55402

MDLA is exempt from Federal taxation under IRC 501 (c)(6). As a result, membership dues are not tax deductible as a charitable contribution; they may be deductible as a business expense.
This column affords me the opportunity to talk about DRI—The Voice of the Defense Bar. DRI is an international organization of lawyers involved in the defense of civil justice. Although we are comprised of more than 22,000 members, we are an organization of individual relationships. The camaraderie, friendships and professional interaction among our membership are the elements that keep us relevant, vital, and strong.

By the time you read this column, I will have attended the 2008 DRI Annual Meeting in beautiful and jazzy New Orleans, Louisiana. The Annual Meeting was held at the Sheraton New Orleans which is on Canal Street directly across from the historic French Quarter. DRI returned to New Orleans for the Annual Meeting for the first time since Hurricane Katrina. The Crescent City was clean and better than ever with all your favorite restaurants, jazz clubs, and antique stores. We also heard from award winning author and former House Speaker Newt Gingrich, Contributing Editor to Newsweek Magazine Eleanor Clift and Journalist and Political Analyst Juan Williams.

Despite being stressed with our responsibilities to our clients, firms and families, I became a member of DRI because of what DRI has to offer and because it is good for business. The annual meeting was an excellent opportunity to meet clients and good lawyers around the country who are willing to refer business. Attendees also earned many hours of CLE credit through informative programming.

In addition to the excellent CLE programs, I attended a meeting of the DRI State Representatives and the State and Local Defense Organization (SLDO) Leadership breakfast. I also had the opportunity to join defense organization representatives from Illinois, Indiana, Minnesota, North Dakota, South Dakota, and Wisconsin for the North Central Regional Meeting during which we made plans for our 2009 Regional meeting which will be hosted by Illinois in Las Vegas from January 15 – 17, 2009.

There was a First-Time Attendees/DRI New Member Reception and Welcome Reception on Wednesday evening. Thursday evening began with the Diversity Reception followed by a great evening at the Networking Reception – Mardi Gras Style.

There were approximately 27 lawyers from Minnesota who attended the 2008 Annual Meeting. I would strongly encourage you to make plans to attend the 2009 DRI meeting scheduled for Chicago, October 7-11, 2009 at the Sheraton Chicago Hotel & Towers.

If you are not a member of DRI, please give me a call if you would like to discuss the benefits of a DRI membership. The goal of DRI is to be recognized as the organization of attorneys defending the interests of business and individuals in civil litigation. We hope that as a member you will take advantage of the scores of exceptional services and benefits DRI has to offer you. Its CLE programs are without parallel and as a new DRI member you are invited to attend these seminars at a reduced cost. In fact, if you qualify as a DRI “Young Lawyer” – attorneys who have been admitted to the bar five years or less – you are invited to attend your first seminar at no cost at all.

DRI also offers all of its members a subscription to its monthly magazine, “For The Defense,” the only national magazine for defense practitioners. Rarely will you receive an issue that does not contain something helpful to your practice. In addition, DRI members are welcome to utilize The Expert Witness Database which features information on over 65,000 plaintiff and defense experts and includes over 1 million pages of transcripts.

We also urge you to take advantage of the 25 substantive law and practice committees at DRI. Many of these committees sponsor seminars to corporate and are looking for talented lawyers to participate in them. We encourage you to use these committees to your advantage and to become actively involved. Hopefully, you will find it both interesting and rewarding.

As a State Representative I will facilitate the flow of communication between DRI and MDLA. I will also be attending MDLA Board meetings and submitting quarterly reports to DRI. If you have any questions, needs or concerns, please feel free to give me a call or contact me by email, sschwegman@quinlivan.com.
DRI MEMBERSHIP APPLICATION

DRI – The Voice of the Defense Bar
150 North Michigan Avenue, Suite 300
Chicago, Illinois 60601
(312) 795-1101

Date ______________________

Name ______________________ Telephone ______________________

Firm ______________________ Street ______________________

City State Zip ______________________

Year Admitted to the Bar: ____ State ______________________

I belong to a Local or State Defense Association:
Yes ( ) No ( )

To the extent that I engage in personal injury litigation, I
do not, for the most part, represent plaintiffs.

I have read the provision above and hereby make application for
Individual Membership.

( ) My check for the annual dues ($195 U.S.) is enclosed.
Please forward information on DRI publications, seminars and services.

( ) I have been admitted to the bar for fewer than five years.
My check for the annual dues for this category ($125 U.S.)
is enclosed. Please forward the appropriate publications.

( ) I wish to serve on a committee. Please send Committee
Preference List.

( ) Please bill me.

Signature ______________________

DRI is exempt from Federal taxation under IRC 501(c)(6). As a result, membership dues are not tax deductible as a charitable contribution; they are deductible as a business expense.
Come for the FUN of it!

Make plans now to attend

MDLA’s 44th Annual Mid-Winter Conference

February 6-8, 2009

Held this year at:

Edgewater Resort and Waterpark
Duluth, MN
218-728-3601 toll free 1-800-777-7925
http://www.duluthwaterpark.com/

For additional information contact:
Minnesota Defense Lawyers Association
600 Nicollet Mall, Suite 380A
Minneapolis, MN 55402
Phone: (612) 338-2717
FAX: (612) 333-4927
Internet: http://www.mdla.org