OFFERS OF JUDGMENT AND FEE SHIFTING STATUTES: THE “UN-AMERICAN” RULE

2007 LEGISLATIVE REPORT
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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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A bout the time one is getting comfortable with a routine and things seem to be moving smoothly, life decides to take a sudden left turn. Personally for me it was the unexpected dissolution of Rider Bennett on April 10, 2007 after more than 45 years in existence. For the MDLA, it was the tragic loss of our Executive Director, Debra L. Oberlander, to cancer on July 4, 2007. Both events serve as reminders to all of us how things change and the need to keep focused on the important things in our lives.

The Rider Bennett story is probably old news by this date, but is still worthy of mention. Contrary to the some of the “stories” I have heard by people with acute hindsight, the recommendation to dissolve came as a complete surprise to the partners. Metaphorically it was the “perfect storm.” Many of the factors which led to the decision were known to each of us, but the convergence of those factors was not appreciated. Although it is tempting to engage in revisionist history to conclude a different decision here or there would have changed the outcome, such thinking ignores the fact that prior decisions were made based on the available information and with the firm’s best interest in mind. Regardless of the errors that might have been made, the closing caused more than 200 friends to suddenly scatter throughout the metropolitan area. It was a huge loss to all involved and possibly a lesson to the legal community that change is inevitable. One thing we learned was the value of organizations like the MDLA which assisted many of the displaced people to find a new job. I was part of a small group that was particularly fortunate in finding a new home with the Bassford Remele firm, which of course is very active in the MDLA.

More tragic, and much more important, was the passing of Debra L. Oberlander. Although there have been many people who have made contributions to the MDLA, Deb’s work was particularly significant. Deb had a true passion for her job and had a unique talent to connect with the members. Although now lost, she will not be forgotten. Thanks to all who contributed to the Emily Oberlander Memorial College Fund and special thanks to John and Barb Degnan and Wayne and Nancy Vander Vort for the care and assistance they gave Deb in her last months. Our collective sympathy goes out to Emily Oberlander for her loss.

But there is good news too. Renee Anderson has joined the MDLA as its new Executive Director. Renee comes to us from the Minnesota State Bar Association where she worked for the past five years as Director of Section Services. Prior to the MSBA, Renee spent 14 years as the Clinics and Practice Skills Administrator at William Mitchell College of Law, so Renee is accustomed to working with lawyers and legal organizations. Renee is enthusiastic about her new endeavor and has great plans for the MDLA. Please join me in welcoming Renee.

The 32nd Annual MDLA Trial Techniques Seminar is scheduled for August 16-18, 2007. If you have not signed up, please consider doing so today. Our incoming President, Paul A. Rajkowski has put together a great program and it deserves our support. On a similar note, the New Lawyers Committee has scheduled an event for September 13, 2007 at Brit’s Pub in Minneapolis. The Committee is challenging the existing MDLA membership to bring a new lawyer to the event to make them comfortable with the organization and to boost our membership.

My year as President of the MDLA ends at the 2007 Trial Technique Seminar. It has been a memorable year and I have appreciated the opportunity to serve in that capacity.
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OFFERS OF JUDGMENT AND FEE SHIFTING STATUTES: THE “UN-AMERICAN” RULE

By Thomas E. Marshall
JACKSON LEWIS LLP

Presently, in Minnesota, nearly 300 different statutes permit the recovery of attorney fees to successful litigants for various civil claims in tort, employment, family law and many other areas. Parties entitled to fees vary with each statute but they have one thing in common – all of these claims will be tried in court under the Minnesota Rules of Civil Procedure. The parties to all of these matters have the settlement mechanism of Rule 68 at their disposal. However, does the Rule work in fee shifting circumstances? Should a Rule or statutory change be implemented so that Rule 68 may work as a viable settlement tool? This article discusses the use of Rule 68, the practical effect of its use in negotiation in fee-shifting cases, and the ethics of fee negotiation.

RULE 68

Rule 68 offers a simple mechanism to shift certain risks of going forward to trial if a party rejects a reasonable settlement offer. The Rule provides that, at least 10 days before trial, either plaintiff or defendant may serve an irrevocable offer that judgment be entered for specific relief or payment of money with costs and disbursements then accrued. A party that accepts, in writing, within 10 days, may file the offer and the Court may enter judgment. If not accepted in 10 days, it is withdrawn and is not admissible, except in a later hearing to determine costs and disbursements. If the judgment finally entered is not as favorable to the offeree than the offeror, “the offeree must pay the offeror’s costs and disbursements.”

Rule 68 and Fee Shifting Statutes

Under the traditional “American” Rule, each party accepts responsibility for its own attorney fees and cannot shift that cost to the losing party. Exceptions exist, primarily via statute or contract, which alter the Rule and permit courts to award attorney fees as costs in certain circumstances. The United States Supreme Court, in Marek v. Chesny, held that costs under Federal Rule 68 include attorney fees to the extent that an underlying statute defines “costs” to include attorney fees.

In 1991, the Minnesota Supreme Court announced that costs under Minnesota’s Rule 68 “do not include attorney fees.” However, two years later the Court of Appeals allowed attorneys fees as a cost after a Minnesota Human Rights Act plaintiff accepted an offer of judgment. The Court of Appeals noted that the earlier Minnesota Supreme Court case did not address the Marek v. Chesny issue as to whether attorney fees are awardable as Rule 68 costs when they are defined as costs by the statute providing the foundation for the suit. Since the Minnesota Human Rights Act permitted recovery of “a reasonable attorney’s fee as part of the costs” the Court of Appeals remanded the case for consideration of an attorney fee award under Rule 68. The Minnesota Supreme Court later concurred with the Minnesota Court of Appeals in Collins, et al., v. Minnesota School of Business, Inc. Minnesota officially follows the federal line of cases begun with Marek and permits the awarding of attorney fees as a cost under Rule 68 when the underlying statute defines costs and disbursements to include attorney fees.

Thomas E. Marshall is a partner with Jackson Lewis LLP representing management in employment and labor issues. He is the current MDLA Secretary and Co-Chair of the MDLA Law Improvement Committee.

1 For a good summary of these statutes prepared by Deborah McKnight at the Minnesota House of Representatives, see Attorney Fee Awards in Minnesota Statutes, February 2004, http://www.house.leg.state.mn.us/hrd/pubs/attyfee.pdf
2 Minn. R. Civ. Pro. 68.
3 Id.

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5 Id.; see also Barr-Nelson v. Tonto’s, Inc., 336 N.W.2d 46, 53 (Minn. 1983).
6 Id., 473 US at 9.
9 Id., 505 N.W.2d at 95-96. Furthermore, the Court of Appeals noted that the Rule 68 offeror in Bucko could not get fees through the underlying statute and naturally could not claim them through Rule 68. Id.
10 Id., 505 N.W.2d at 96; Minn. Stat. § 363.14, Subd. 3 (now § 363A.33, Subd. 7).
11 655 N.W.2d 320, 325 (Minn. 2003).
12 Id., 655 N.W.2d at 326.
**Rule 68 in Operation**

In *Marek*, Defendants made a $100,000 offer of judgment in a civil rights claim which was declined. The offer expressly included accrued costs and attorney fees. Plaintiffs’ verdict was $55,000 and they sought all of their attorney fees as a cost provided by statute. Defendants sought to exclude any recovery of fees and costs following the Rule 68 offer. Plaintiffs first complained Defendants served an invalid offer because it lumped damages and costs together. The Supreme Court quickly disposed of that argument, writing, “[w]e do not read Rule 68 to require a defendant’s offer itemize the respective amounts being tendered for settlement of the underlying substantive claim and for costs.” The Court reasoned that the drafters of Rule 68 had concern more with the fact the defendant allowed judgment against itself, as opposed to the particular component of the offer. Minnesota also does not require itemization in an offer of judgment. Ultimately, the *Marek* plaintiffs received no fees from Defendants for their legal work post-offer of judgment. The plaintiffs, although the prevailing party, received no monetary benefit from the post offer services of their attorney. Plaintiffs protested that preventing them from obtaining their full fee from defendants thwarted the objectives of the civil rights statutes to provide for litigants’ costs. The Court disagreed and said that the goal of Rule 68 to encourage settlements does not conflict with the civil rights laws. Rule 68 is neutral and civil rights plaintiffs will benefit just as any other plaintiff under the operation of Rule 68.

The United States Supreme Court followed *Marek* with another interesting civil rights case, *Evans v. Jeff D.* Here, class action civil rights defendants ultimately served an offer of judgment giving plaintiffs more equitable relief than they would have been entitled to had the matter proceeded to trial. The offer of judgment specifically required that the plaintiffs waive attorney fees. The plaintiffs’ legal aid counsel felt compelled to accept the offer because they could not do better at trial. The question before the Court concerned whether the district court had the duty to reject the settlement because of the fee waiver condition.

The plaintiffs contended their attorney faced an “ethical dilemma” and the Court acknowledged a dilemma between seeking relief for the class and a fee award. It did not consider this dilemma an ethical one, however. The attorney had no ethical obligation to seek a statutory fee award but did have one to serve his clients ethically and competently. Since the settlement proposal exceeded potential trial results, the decision to accept “was consistent with the highest standards of our profession.” The plaintiffs argued “coercive waiver” to avoid statutory liability. Relying on *Marek*, the Court noted its implicit acknowledgment of a possibility of tradeoff between merits and attorney’s fees when it upheld a lump sum offer to settle the entire action. The Court considered the perspective of the defendant and the purposes of settlement, quoting *Marek*, “many a defendant would be unwilling to make a binding settlement offer on terms that left it exposed to liability for attorney’s fees in whatever amount the court might fix on motion of the plaintiff.” The Court permitted the waiver to stand, writing:

What the outcome of this settlement illustrates is that the Fees Act has given the victims of civil rights violations a powerful weapon that improves their ability to employ counsel, to obtain access to the courts, and thereafter to vindicate their rights by means of settlement or trial. For aught that appears, it was the “coercive” effect of [plaintiffs] statutory right to seek a fee award that motivated [defendants'] exceptionally generous offer. Whether this weapon might even be more powerful if fee waivers were prohibited in cases like this is another question, but it is in any event a question that Congress is best equipped to answer. Thus far, the Legislature has not commanded that

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15 *Marek v. Chesny*, 473 US at 3-4. The total fees and costs sought approached $172,000. Plaintiffs agreed that $32,000 represented costs and fees at that time Defendants made their offer of judgment.

16 Id., 473 US at 6.

17 *Hallow v. Filiyar*, 526 N.W.2d 631, 634 (Minn. Ct. App. 1995). It is also interesting to note that this case mis-cites the Koop holding. *Id.*


19 Id., 473 US at 10


21 *Id.*, 475 US at 717 fn. 5.

22 *Id.*, 475 US at 720.


24 *Id.*, 475 US at 729.

fees be paid whenever a case is settled... In this case, the District Court did not abuse its discretion in upholding a fee waiver which secured broad injunctive relief, relief greater than that which plaintiffs could reasonably have expected to achieve at trial.  

The Court found that the attorney fee claim under the statute belonged to the plaintiff, not the lawyer. Three justices dissented with the argument that permitting plaintiffs to waive fees discourages representation and undercuts the purpose of the Fees Act to promote civil rights.

Ultimately, if a Rule 68 offer is refused and the defendant’s offer is closer to the result, the federal courts will analyze the claim in terms of the “critical factor” of “the degree of success obtained.” Applying that analysis in Marek, the Supreme Court would not award post offer fees to a plaintiff since the post-offer efforts shown by the fees did not translate into any achievement of success.

The Minnesota Supreme Court has encouraged following federal decisions on Rule 68 since both state and federal rules are similar.

In summary, Minnesota Courts may consider the operation of Rule 68 regarding attorney fees when the underlying statute or contract considers attorney fees to be a “cost.” If the underlying statute only awards fees to a prevailing plaintiff, a prevailing defendant cannot obtain attorney fees through Rule 68. However, even in circumstances where a “prevailing party” may be entitled to attorney fees, like discrimination cases, courts rarely, if ever, award such fees to prevailing defendants. At best, all the defendant can hope for is that a court will offset the attorney fees sought.

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**Rule 68 in Settlement Negotiations Involving Attorney Fees**

Does Rule 68 really aid parties in settlement where attorney fees go to the victor? Defendants more often than not find themselves tied by attorney fee provisions. In many statutes they are not a “cost” and, even when they are considered at cost, they are not awarded to prevailing defendants. Only in the “cost” circumstance does a defendant have an opportunity to reduce an ultimate fee for making a reasonable settlement offer, but whether or not such a reduction will occur or what amount remains quite uncertain.

In my experience, Rule 68 is used primarily in two situations: early assessment of the case when either strong liability exists or damages are clearly defined; or late in suit when settlement efforts have been exhausted. Quite often when discussing early resolution negotiations, once attorney fees enter the equation, the discussions move from the merits of the case to the cost of obtaining a result. The discussions focus not only on the costs, a defendant may expend in representation, but its obligation to pay the fees of the opponent should defendant lose. Attorney fees not yet realized become the stumbling block of resolution. Case settlement values inflate with imaginative and expensive volumes of time that might be expended reaching a final decision. The defendant, who cannot shift his expense to the plaintiff, is expected to resolve the case for more than the time actually expended but at a “discount” over what it might face if it loses years later. As noted below, a serious question exists as to the propriety of such a negotiation technique, especially if a reasonable settlement is refused by an attorney’s motivation to charge more billable time to inflate the fee.

A Minnesota attorney has an obligation not to charge an unreasonable fee for services. A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of a litigation except for a lien to secure fees or a reasonable contingent fee. A Minnesota attorney who delays a

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27 Id., 475 US at 745, Brennan, dissenting.
29 Id.
30 Collins, 655 N.W. 2d at 329.
31 See Sigurdson v. Isanti County, 386, N.W.2d 715, 723 (Minn. 1986)(A trial court may award attorneys fees to a prevailing defendant in a Human Rights Act matter, "only upon a finding that the employee's action was frivolous, unreasonable, or without foundation, or was brought in bad faith").
32 The Evans Court discussed the reluctance of defendants to settle matters with an uncertain fee issue remaining open. 475 US at 734-37.
33 Minnesota Rules of Professional Conduct 1.5(a).
34 Minnesota Rules of Professional Conduct 1.8(i); See also Evans, 475 US 717, fn. 14 (Discussing ABA Model Rule of Professional Conduct 1.7(b) stating that a lawyer "must not allow his own interests, financial or otherwise, to influence his professional advice").
client’s suit with a view to the attorney’s own gain is guilty of a misdemeanor and could also be civilly liable for treble damages. Unfortunately, despite the existence of rules and statutes, the avarice of potential attorney fees provides an incentive to push the limits of appropriate negotiation. Rule 68 could be a tool to help parties genuinely assess the risks of going forward but, in the instance of fee shifting, fails in its utility. Where a fee is a statutory “cost” it may have some limited effect. In other circumstances, the Rule offers little support to the reasonable litigant and therefore receives little use in the fee shifting context.

A “Modest” Proposal

Frustrated by the litigation costs and verdicts, some tort reformers seek the implementation of the “English Rule” to American jurisprudence. The English Rule requires losing litigants to pay their opponent’s attorney fees and costs. One state, for example, adopted a version of Rule 68 that required the opponent to pay attorney fees if the ultimate decision did not improve their position by 25%. Some reviewers have indicated that more symmetrical obligations owed between the parties on fees may improve settlement potential. The Minnesota Defense Lawyers Association, along with other groups such as the Minnesota Chamber of Commerce and National Federation of Independent Business, offered a proposal to the legislature in the form of statute offering a bright line process to courts faced with the dilemma of fee shifting when a Rule 68 offer has been refused. The proposed bill stated:

If an offer of judgment is made by a party under Rule 68 of the Rules of Civil Procedure to a party who may be entitled to an award of attorney fees under statute, and the party claiming attorney fees does not obtain a verdict in excess of the offer, exclusive of attorney fees, no attorney fees may be awarded for fees incurred after service of the offer of judgment.

In essence, the proposed MDLA bill implements the Marek decision beyond those cases where attorney fees are considered a “cost” in the underlying statute. The parties supporting the bill believe that it supports the goal of Rule 68 to encourage settlement by all parties and decrease litigation.

Initially, the bill was well received but it received opposition from an unexpected source. The Minnesota State Bar Association formally opposed the bill in the Legislature as an “unreasonable restriction on legal fees” under its Legislative Position 10, adopted on January 14, 2005. The MSBA has yet to articulate how the bill actually restricts fees as opposed to which party may have to pay them. Presently, the bill sits dormant and may appear again next session.

Until such time as the law or rules change as to Rule 68 and fee shifting, defendants have to use the tools available today. Assess your case early and consider making an offer at the outset, when substantial fees have not been incurred by either party.

Assess your case early and consider making an offer at the outset, when substantial fees have not been incurred by either party.

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35 Minn. Stat. § 481.071.
37 OCGA § 9-11-68. This statute was found unconstitutional under Georgia law in 2007. Fowler Properties Inc. v. Dowland, Nos. S07A0342, S07A0777 (S. Ct. Ga., June 4, 2007).
39 HF 1845, 84th Legislative Session (2005-06), 1st Engrossment April 11, 2005.
40 Minnesota Rules of Civil Procedure 68, Advisory Committee Note 1985; Collins, 655 N.W.2d at 324.
41 This position remains in effect for 6 years unless rescinded by the MSBA Assembly. MSBA Bylaws Article 13.2.
42 Koop, supra.
Last fall’s elections brought major changes to the makeup of the Minnesota Legislature. All 201 seats were on the ballot, and 53 new members were elected, representing more than a 25% turnover. Democrats comfortably regained control of the House from the Republicans by an 85-49 margin; Senate Democrats increased their majority to 44-23. For the first time in many years, all four caucuses elected new leadership. All constitutional offices were also won by Democrats, except for the Governor; Tim Pawlenty defeated Michael Hatch by 21,000 votes.

The Legislature convened on January 3rd, with legislative leaders and the Governor indicating their desire to work together and reach a compromise on major issues. Instead, the Legislature adjourned seconds before midnight on May 21st, as required by the Constitution, by passing all the major budget and tax bills without first reaching a global budget agreement with the Governor—a very unusual situation.

The Governor signed all the major budget bills into law, but exercised his line item veto power over a number of items in each of the budget bills. The only exception to this was the public safety finance bill which funds the courts; he signed that bill in its entirety. He did veto the omnibus tax bill, principally over the provision that would have inserted inflation back into state budget forecasts. Many constituency groups who had provisions in that bill are now asking the Governor to call a special session to repass the bill without the objectionable language. It remains to be seen whether an agreement can be reached between legislative leadership and the Governor on an agenda for such a session.

The last two sessions saw little action on major tort reform/civil justice legislation supported by MDLA, largely due to the House Republicans’ slim 68-66 majority. With the Democrats’ strong takeover of the House and their increased numbers in the Senate, there were expectations that this session would see the passage of many trial lawyers’ initiatives. Much to the surprise of many, none of their initiatives passed into law.

Following is a summary of the legislative issues MDLA monitored and actively participated in this session.

**DIRECT ACTION/BAD FAITH CLAIMS**

(SF 1152/HF 1251; SF 2173/HF 2389)

The MTLA’s top priority for the session was legislation that would permit “direct actions” against insurance companies. It would allow a plaintiff to name the insurer as a defendant in any claim against an insured individual, if the action is for negligence and the insurer has either: (1) an interest in the outcome of the controversy adverse to the plaintiff; (2) assumed or reserved the right to control the prosecution, defense, or settlement of the claim; or (3) agreed to prosecute or defend, provide an attorney, or pay the costs of the litigation for the insured individual. The bill also would have created a private cause of action against an insurance company for damages caused by the insurance company’s “bad faith” in refusing to pay a claim.

In spite of strong opposition and testimony from the insurance industry and representatives of the MDLA, the bill passed two House policy committees, and the House Public Safety Finance committee. It was then amended into the House Public Safety Finance bill to keep it alive, since its Senate companion had been defeated in the Senate Commerce committee; it passed the House floor as part of that bill. The language was originally included in this conference committee report and was returned to each floor for final passage. When the Governor indicated that he would veto the entire Public Safety Finance bill if this provision remained in the bill, the House and Senate reconsidered, and the direct action and bad faith language was removed from the bill.

The MTLA then introduced a second bill, SF 2173, that only dealt with bad faith claims. It passed the Senate Judiciary committee and the Commerce committee in an amended form and went to the Senate floor. When it was considered on the Senate floor, a significant amendment was offered to strike all the bill’s language and insert an entirely new proposal; that language was in many respects even more objectionable to the insurance industry than the original bill. Senator Scheid then moved to have the amended bill returned to her Commerce committee; that motion prevailed on a 34-30 vote. The bill was progressed so that leadership could attempt to garner enough votes to pass the bill. They were not able to do so, and the bill was never brought up again on either the Senate or House floor.

Many thanks are owed to Rich Thomas, Dale Thornsjo, Sandy Neren is with Messerli & Kramer, working out of their St. Paul office, and has monitored legislation for MDLA since 1995.
and Jerry Abrams for the excellent testimony and support they provided throughout the legislative deliberations on this legislation.

SEX ABUSE STATUTE OF LIMITATIONS (SF 1096/HF 1239;HF 2134)

Legislation to extend the sex abuse statute of limitations for civil actions, that had been unsuccessfully pursued in several prior sessions, was again introduced this year. The proposal provides that sex abuse committed against a minor must be commenced within the later of six years of the age of majority of the victim, or six years of the time that the victim fully comprehends the causal connection between the sexual abuse and the injury resulting from the abuse. The time of comprehension would be determined by a jury based on medical or psychological testimony. The bill’s effective date had it apply to actions pending on or commenced on or after the day following final enactment. A minor victim whose claim would be time-barred would be given until August 1, 2010 to commence an action for damages based on personal injury caused by sexual abuse.

The bill never had a Senate hearing. It was not supported by the House Public Safety and Civil Justice chairman, Rep. Mullery, and he refused to hear the bill. The bill’s advocates attempted to bypass his committee with their second bill intro, HF 2134, which was instead sent directly to a finance committee. When it was heard in the Public Safety Finance committee, Rep. Mullery’s motion to re-refer it back to his policy committee was successful.

The bill’s author, Rep. Steve Simon, offered the legislation as an amendment to the omnibus public safety finance and policy bill on the House floor, but withdrew it when it appeared there may not have been enough votes for passage.

The bill was opposed by the MDLA, church groups, and local government and school interests.

NO-FAULT BENEFIT CHANGES (SF 1309/HF 1359)

As introduced by the MTLA, this legislation would have increased maximum disability, income loss, funeral and burial expense benefits, replacement service and loss benefits, and would have modified payment of basic economic loss benefits. The bill also mandated that the limit of liability for basic economic loss benefits of two or more vehicles must be added together to determine the limit of coverage available for an accident. The bill passed House Commerce committee and was included as part of the House Omnibus jobs bill. The proposal was never heard in the Senate, though, and the language was removed from the jobs bill in conference committee.

JUDGMENT INTEREST RATES (SF 1403/HF 1461)

This MTLA legislation would have modified the method used to calculate interest on verdicts, awards, and judgments and increased the current 4% cap. In the House committee, it was amended to cap the increased rate to 10%. That language passed the House as part of the omnibus public safety finance bill, but was never heard in Senate committee. The provision was not included in the final conference committee report, and did not pass into law. It was opposed by MDLA. Legal Aid advocates also played a significant role in defeating this proposal.

CONSTRUCTION LIMITATION ON ACTIONS FOR CONTRIBUTION OR INDEMNITY (CHAPTER 105)

This Bar Association legislation provides that notwithstanding current law, an action for contribution or indemnity arising out of the defective and unsafe condition of an improvement to real property may be brought no later than two years after the cause of action for contribution or indemnity has accrued, regardless of whether it accrued before or after the ten-year period provided for in current law. In the case of an action for contribution or indemnity, the cause of action accrues upon the earlier of commencement of the action against the party seeking contribution or indemnity, or payment of a final judgment, arbitration award, or settlement arising out of the defective and unsafe condition. It was passed and signed into law by the Governor.

SICK LEAVE BENEFITS (SF 1128/HF 219)

As introduced, this proposal would have extended sick leave benefits to include care for a spouse, sibling, parent, grandparent, and stepparent; the current law only provides this benefit for care of a child. The business community did not oppose this bill, but it was removed from the final omnibus state government bill in conference committee, and did not pass into law. The Department of Employee Relations estimated that this proposal would have a significant fiscal impact on the state.
EMPLOYEE ACCESS TO PERSONNEL RECORDS (CHAPTER 119)

This legislation would require written notice to a new employee of their statutory right to review their personnel record. The bill was amended on the Senate floor to extend this notice to a terminated employee, but this latter provision, objected to by MDLA and others, was removed from the final version of the bill. It was signed into law by the Governor.

MEDICAL RECORDS DISCLOSURE (CHAPTER 147)

The omnibus health and human services bill makes extensive changes to the law relating to disclosure of health records and patients’ rights to access to their records. The bill was signed into law by the Governor.

SEX HARASSMENT STATUTE OF LIMITATIONS (SF 219/HF 133)

Legislation that would provide for a suspension of the statute of limitations while an employer is investigating an employee’s claim of sexual harassment, and require the employer to notify the potential charging party of the completion of the investigation and whether it resulted in disciplinary action before the limitation period could begin to run again, was introduced again this session. Tom Marshall met with the Senate author of the bill, who had introduced it at the request of a constituent, and discussed the arguments against the proposal; as a result, a hearing on the bill was not requested.

WHISTLEBLOWER PROTECTIONS (CHAPTER 136)

As introduced, this legislation contained a number of provisions objected to by employer groups. Tom Marshall again came to the rescue and met with several legislators to express concerns. The only language that passed into law as part of the omnibus jobs bill would protect a public employee who communicates the findings of a scientific or technical study that the employee, in good faith, believes to be truthful and accurate, including reports to a governmental body or law enforcement official. The disclosures protected pursuant to this section do not authorize the disclosure of data otherwise protected by law.

If the district court determines that a violation of this law has occurred, the court may order any appropriate relief, including but not limited to reinstatement, back-pay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement of any adverse records of an employee who was the subject of the alleged acts of misconduct.

RESTROOM ACCESS (CHAPTER 136)

This legislation requires retail establishments that have employee restrooms to provide access to customers with eligible medical conditions including Crohn’s disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome, or any other medical condition that requires immediate access to a restroom facility or who uses an ostomy device. The medical condition must be documented in writing. The retail establishment does not have to provide access unless three or more employees of the retail establishment are working at the time the customer requests use of the employee restroom facility; the retail establishment does not normally make a restroom available to the public; the employee restroom facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the establishment; and a public restroom is not immediately accessible to the customer.

A retail establishment or an employee of a retail establishment is not civilly liable for an act or omission in allowing a customer who claims to have an eligible medical condition to use an employee restroom facility that is not a public restroom if the act or omission: (1) is not negligent; (2) occurs in an area of the retail establishment that is not accessible to the public; and (3) results in an injury to or death of the customer or an individual other than an employee accompanying the customer. This section does not require a retail establishment to make any physical changes to an employee restroom facility.

For a first violation of this section, the city or county attorney shall issue a warning letter to the retail establishment or employee informing the establishment or employee of the requirements of this section. A retail establishment or an employee of a retail establishment that violates this section after receiving a warning letter is guilty of a petty misdemeanor. The fine for a first offense must not exceed $50.

PREVAILING WAGE LAW/PRIVATE CAUSE OF ACTION (CHAPTER 136)

The omnibus jobs budget bill includes amendments to the prevailing wage laws. It adds these laws to the sections of employment law for which an employee can bring a civil
action to address violations of the law. It also allows a court to order an employer found in violation of the prevailing wage laws to pay reasonable costs, disbursements, witness fees and attorney fees.

**JOINT AND SEVERAL LIABILITY AMENDMENTS (SF 1091/HF 561)**

Legislation that would impose joint and several liability for dramshop violations was introduced this session, but had no hearings. It is expected that this bill may receive consideration during the 2008 session.

**ATTORNEYS FEES/SETTLEMENT OFFERS (HF 514)**

This bill provides that if an offer of judgment is made to a party who claims money damages, and the party claiming attorney fees does not obtain a verdict in excess of the offer, no attorney fees may be awarded for fees incurred after service of the settlement offer. The bill also requires the court in setting attorney fees to take into consideration the reasonableness of the attorney fees in relation to the amount of the damages awarded to the prevailing party. This bill has historically been one of the initiatives of the business community; it has also been strongly supported by MDLA’s Law Improvement Committee. The bill was introduced by Rep. Paul Thissen this session, but it was not heard, and no Senate companion was introduced.

**AIRCRAFT INSURANCE LIABILITY LIMITS (CHAPTER 79)**

This new law increases the required minimum liability limits on aircraft insurance, and requires interested parties to meet and confer on issues related to aviation insurance and third parties. The parties are to submit their report and recommendations to the Legislature by November 15, 2007.

**EMPLOYER RETALIATION/CRIME VICTIMS (CHAPTER 54)**

This legislation expands the current law prohibiting employer retaliation for crime victims’ participation in criminal legal proceedings to include any violent crime as defined in this expanded law. It was passed into law as part of the omnibus public safety finance bill.

**PERSONAL RESPONSIBILITY IN FOOD CONSUMPTION BILL (SF 1261/HF 994)**

Legislation that would have protected food manufacturers and sellers from legal actions taken against them for alleged weight gain from consumption of their products was again introduced this session. The bill was never heard in committee this year, but was amended onto the public safety finance committee as a House floor amendment; it was removed during conference committee with little discussion.

**PRIMARY SEATBELT OFFENSE (SF 16/HF 106)**

Legislation to make violation of Minnesota’s seatbelt law a primary offense was again one of the top priorities for the chair of the Senate Transportation committee, Senator Steve Murphy. He was successful in passing it through the Senate again, and it passed the House Transportation committee. The chair of the House Public Safety committee, though, did not give the bill a hearing. Senator Murphy amended it onto the omnibus transportation policy bill, but it was not included in that final conference committee report.

**WORKERS’ COMPENSATION CHANGES (NUMEROUS BILLS)**

Over a dozen bills were introduced this session that would have made substantive changes to the workers’ comp system; none of them passed into law. Since all bills introduced this session remain alive for consideration next year, it is expected that some of them may see action next year. Several of the bills represent the recommendations of the workers’ comp advisory council made up of union and business representatives.

**SALES AND USE TAX STUDY**

The omnibus tax bill passed by the Legislature and vetoed by the Governor included establishment of a joint legislative subcommittee on Sales and Use Tax. The subcommittee was given the duty of examining the revenue productivity and equity implications of the current sales and use tax base, and the implications of demographic and economic trends for the future revenue adequacy of the current sales tax base, with the goal of recommending alternative tax structures to the Legislature. The group was specifically requested to report on the possibility of broadening the sales tax base while exempting business inputs,
and report on changes needed to move to a true tax on all final consumer consumption.

Since this legislation could lead to another discussion on imposing a sales tax on services, we monitored it throughout the session. No decision has been made yet on whether there will be a special session to reconsider this vetoed bill. **COURT BUDGET/NEW JUDGESHIPS (CHAPTER 54)**

The judiciary’s request this year was for $66M in new monies over their current base budget. The Legislature gave them $46.7M in new funds, representing a funding increase of 8.3%. These additional funds will be spent on increased employee costs, 3% pay raisers for judges in July of 2007 and July of 2008, mandated costs (guardian ad litem, interpreters, psych exam costs), and drug courts. The legislation also authorized 10 of the 12 new judgeships requested by the courts. Instead of being phased in over the next few years, as is normally done, all 10 judgeships are effective January 1, 2008. They are allocated as follows: 3 for the Court of Appeals, 3 for the First District, 2 for the 10th District, and 1 each for the 7th and 9th Districts.

**BOARD OF JUDICIAL STANDARDS**

Two bills were introduced to make changes to the process and makeup of the Board on Judicial Standards; neither had a hearing. The Supreme Court has established an advisory committee to make recommendations on the Board process that will start meeting in June. They are expected to take testimony from a number of interests, and issue a report by later this year.

**QUIE COMMISSION/JUDICIAL ELECTIONS**

Over the last year, a commission chaired by former Governor Quie met to deal with concerns raised by the White decision, and the possibility that the judicial selection/election system in Minnesota might have to be changed to maintain an impartial judiciary. The commission members spent many hours researching and discussing these issues; Greg Bulinski represented MDLA on the commission. They issued their report a few months ago, and narrowly voted in favor of a constitutional amendment to provide for judicial retention elections, with a performance review that would be available to voters in making their decision on whether a judge should be retained in office. The minority report of the commission favored a constitutional amendment to provide for an appointive system similar to the current merit system used by the governor, with reappointment by a commission; the Judicial Elections committee of the state bar association came out in favor of that minority report. Advocates of both constitutional amendment proposals are currently organizing efforts in support of their proposals. The Minnesota District Judges Association has historically favored the current system, and specifically has opposed retention elections. They are now reviewing the Quie Commission report and will be having a thorough discussion of the issue over the next several months.

The only bill introduced on judicial elections was authored by Senator Neuville (SF 324); it abolishes elections and replaces them with a modified federal appointment system. The bill has been introduced several times in recent years, but has not yet had a hearing.

In addition to the bills described above, Law Improvement Committee members also reviewed hundreds of bills we forwarded to them this session. They also monitored legislative activity on many dozens of those bills, and testified and wrote letters of opposition and support on several proposals. The MDLA additionally acted as an invaluable resource to other groups on numerous issues. The final MDLA Bill Status Report on all legislation tracked for the Association is posted on the MDLA website.

The 2008 session of the Legislature will convene on February 12, 2008. We will be meeting with legislators and staff over the interim to stay up to date on what legislation may be considered next year, and will be keeping your membership apprised of developments.

Our firm again appreciated the honor of monitoring legislation for the MDLA for our 13th session. We hope that you’re satisfied with the work your Association does on your behalf. As always, the involvement of the members of the Law Improvement Committee and other Association committees is what makes the Association so successful at the Capitol. MDLA continues to have an impeccable reputation at the Legislature, and the Association’s input is regularly sought on all civil litigation legislation.

Please feel free to contact us any time with questions or concerns. I can be reached at 651-228-9757, or sneren@messerlikramer.com.
MDLA presents the
32nd Annual Trial Techniques Seminar

EFFECTIVE PRETRIAL PRACTICE

AUGUST 16-18, 2007
Duluth Entertainment and Convention Center (DECC)
350 Harbor Drive
Duluth, Minnesota

MDLA’s 32nd Annual Trial Techniques Seminar will present an outstanding faculty comprised of MDLA members and excellent guest speakers. Come learn practical tips and strategies from the best. This exciting seminar offers:

- Fire Loss and Subrogation
- Accident Reconstruction: Technology, Trends and Trial Strategies
- Pre-Trial and Pre-Arbitration Preparation in BI/UM/UIM Cases
- Case Law and Standards Emerging in E-Discovery
- Damages: Lost Profits & Business Valuation
- Defending a Facet Neurotomy Case
- Ethics of Asserting Privilege and Work Product in the Pre-Trial Setting
- Use of TRO’s and Other Preliminary Injunctive Relief in Commercial Litigation
- Pre-Trial Issues on Spoliation of Evidence
- Update on Litigation Ethics

MDLA’s seminar schedule is posted on its web site and in this magazine, Minnesota Defense.

Register today!

7.75, including 1.5 ethics credit in MN, ND, IA and WI. MN Civil Trial Specialist–7.5

MDLA members $225
Non-members $275
Judges and Judicial Law Clerks $50

Registration Fee must be received no later than August 10, 2007. After that date, a late registration fee of $35 will be assessed. Cancellation may be made within five (5) days of the seminar for a complete refund. Cancellations after that date are subject to a $50.00 administrative fee.

Dinner at the DECC – Adults - $35; Children 4-12 - $20; Children under 4 are no charge, but must be counted.

Name ____________________________________________
Firm __________________________________________________
Address ________________________________________________
City __________________________________ State ______ Zip __________
Telephone ___________________ FAX __________ E-mail ______________________________

Amount enclosed:

- Seminar registration: $ __________
- Dinner at the DECC
  ( ) Adults @ $35 $ __________
  ( ) Children (4-12) @ $20 $ __________
  ( ) Children under 4 $ FREE
- Total $ __________

Make checks payable to MDLA. Send to:

MDLA
600 Nicollet Mall, Suite 380-A
Minneapolis, MN 55402

Phone: (612) 338-2717
Fax: (612) 333-4927
e-mail: director@mdla.org

Paul A. Rajkowski (Seminar Coordinator)
Rajkowski Hansmeier, Ltd.
Roger Burgmeier
Burgmeier Consulting
The Honorable
Jeanne J. Graham
U.S. District Court of Minnesota
Mark P. Hodkinson
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Matthew W. Woodcock
Matson, Driscoll & Damico
Debra Oberlander
EXECUTIVE DIRECTOR, MDLA

This will be my last column for Minnesota Defense. It's hard to believe this time has come. As many of you know, I was diagnosed with ovarian cancer in the fall of 2001 and have been managing that challenge since that time. Unfortunately, this spring it became apparent managing the disease was no longer an option. The hard part for me was not being able to continue going to work at least for a few hours a day. Although my mind was willing and able, my body simply would not comply.

I want to thank all of you for allowing me to serve as executive director of MDLA for the past eight years. It has been an honor and a privilege for me, and I simply enjoyed every minute. It's just the best job in the world, and I had a great time.

I want to thank you for the lovely flowers/plants, cards/notes and expressions of support I've received over the recent weeks. It's been very gratifying and has helped me get through the more difficult times. I apologize for not being able to thank you individually, but I do appreciate your kindness and thoughtfulness.

I also want to thank you for your contributions to Emily's college fund. I was overwhelmed when the fund was set up and even more so when your contributions came in. I don't know if you can imagine what a relief this is for me. I was so worried about Emily having to navigate the financial aid maze by herself, and because of your generosity I don't have to. I am grateful from the bottom of my heart.

Last Saturday, I received a very special visitor -- The Honorable Kathryn Messerich, a past president of MDLA. She presented me with the 2007 President's Award. I was so touched I cried. I am honored and privileged to be a recipient of this prestigious award. It is truly humbling and I thank you for this honor. I will treasure it, as will Emily.

I am very proud of MDLA and the strength of the association. I believe the new leadership will build on that foundation and MDLA will become even stronger and more viable. You all are the best lawyers in the State of Minnesota, and it has been a privilege working with each and every one of you.

Thanks for the memories!

Renee Anderson
EXECUTIVE DIRECTOR, MDLA

Deb Oberlander worked just down the hall from me for five years. When our paths crossed during the course of the day, I knew that a friendly greeting would always be heard. And, when Deb spoke of her work with the MDLA, her enthusiasm and dedication was evident.

I am truly honored to be given the opportunity to be a part of this wonderful association and carry forward Deb’s great work and many accomplishments.

Many members have already shared kind words of welcome and generously provided guidance and assistance as I learn the varied responsibilities of my position. With time, I hope to become as much of an asset as Deb to the association.

I am very excited to be your new executive director, but I know that active participation by members is what really makes an organization thrive. Don’t ever hesitate to let me know of an idea or suggestions on ways we can continue to bring value to our membership and growth to the organization. I eagerly look forward to my journey ahead with the MDLA and a fantastic future of meeting and working with each and every one of you.

Welcome Renee!
2007 MDLA GOLF TOURNAMENT AND CLE SEMINAR
Stoneridge Golf Club
June 8, 2007

Halleland Lewis Nilan & Johnson attorneys Mark Girouard, Susan MacMenamin and David Wright presented the CLE portion of MDLA’s Annual Golf Tournament and CLE Seminar, titled: “Sanctions! Traps and Hazards in the Litigation Course, and How to Avoid Them.” The panel provided an insightful review of recent Minnesota state and federal sanctions decisions. The CLE was tailored toward the practitioner, offering tips throughout the presentation to help attorneys identify and avoid potential problems that might arise at each stage of litigation. Thanks to the many engaged MDLA attorneys in the audience, a lively discussion ensued and the shared experiences and knowledge of our members made this CLE all the more valuable.

Following the CLE, the event moved outside to the golf course for a challenging and fun afternoon of golf on a beautiful, sunny day. After play, the golfers gathered at the clubhouse patio for a light appetizer reception and chance to swap stories about the eagle scores they “almost” made.

Congratulations to the following prize winners!
1st Place Team: Dave Wright, Cort Sylvester, Kevin Lindsey, Josh Bobich
Halleland Lewis Nilan & Johnson P.A.

2nd Place Team: Kelly Putney, Stanford Hill, Mark Belinski, Mark Hodkinson
Bassford Remele, A Professional Association

Closest to the Pin: Dave Wright,
Halleland Lewis Nilan & Johnson P.A.

Longest Putt: Allan Wallace,
American Family Mutual Insurance

Long Drive Women: Sarah Smith-Larkin,
Rajkowski, Hansmeier LTD

Long Drive Men: Ben Hayek,
Lind, Jensen, Sullivan & Peterson P.A.

ANNOUNCEMENT

The election of the Officers and Members of the Board of Directors of the Minnesota Defense Lawyers Association will take place as part of the Association’s Annual Meeting in Duluth on Friday, August 17, 2007.

The Nominating Committee is accepting nominations for the positions of the Officers of the Association and Members of the Board of Directors. The Chair of the Nominating Committee is President Emeritus Gregory P. Bulinski, Bassford Remele, A Professional Association.

If any member of the Association has an interest in serving as an Officer or Member of the Board of Directors, or would like to nominate any other member of the MDLA, please contact Gregory P. Bulinski at gregb@bassford.com or by telephone at 612-333-3000.
Murnane Brandt hosted the MDLA Sixth Annual Women Lawyers Breakfast held at Windows on Minnesota on July 19. This year’s breakfast focused on the SAGE Report’s findings relating to the recruitment and retention of women litigators with an emphasis on mentoring. The idea for the topic came from the finding in the SAGE Report that most women perceive they are not able to advance as far in the legal profession as men. The CLE program began with Leslie Altman, a shareholder of Littler Mendelson, providing an explanation of the MSBA SAGE Report and its findings relating to the recruitment and retention of women in the legal field. Lisa Brabbit, Assistant Dean for External Affairs at the University of St. Thomas, followed with a presentation on mentoring and its importance in retaining women in the legal field. From a private firm perspective, panelists Judith Bevis Langevin, a principal of Gray Plant Mooty, and Laura Maupin, an associate at Terhaar, Archibald, Pfefferle & Griebel, LLP each shared their own perspective on the effective retention and promotion of women in the legal field. This outstanding program ended with a very interactive and enlightening discussion between panelists and attendees. Application has been made for 1.0 hour of Elimination of Bias credits in Minnesota and 1.0 hour of CLE credit in Wisconsin.
MDLA COMMITTEE UPDATES

MDLA’s committees remain active and provide great opportunities to learn and discuss issues/topics of concern with others in similar practices. Meeting notices can be found on MDLA’s web site at www.mdla.org, on the list of upcoming MDLA events at the end of e-mails sent to members and via the list serve for the respective committee. If you are interested in being on a list serve for a particular committee, please let me know, and I’ll add your e-mail address to the appropriate list serve.

Set forth below is information on scheduled meetings of various substantive committees. Committee members are reminded of upcoming meetings via the list serve for each committee. If you are not a member of a committee, again committee meeting notices can be found on MDLA’s web site and on information queries sent weekly. Any MDLA member is welcome to attend any committee meeting. We also welcome guests to “check us out.” A guest is allowed to attend one committee meeting. The guest is then encouraged to join MDLA to participate in the activities of the committee.

AMICUS COMMITTEE: This committee meets via list serve to consider requests for appearances by MDLA as an amicus.

COMMERCIAL LITIGATION COMMITTEE: This committee does not currently schedule regular meetings but does attempt to meet at least quarterly.

CONSTRUCTION LAW COMMITTEE: MDLA’s Construction Law Committee meets at 4:00 p.m. on the third Monday of every other month (January, March, May, July, September, and November) at The Local, 931 Nicollet Mall, Minneapolis. Occasionally, the meeting date is changed, but efforts are made to adhere to this meeting schedule.

EDITORIAL COMMITTEE: The Editorial Committee meets to proof Minnesota Defense, MDLA’s quarterly magazine. Since the magazine is published on or about February 1, May 1, August 1, and November 1, the proofing meetings are scheduled about two weeks before those publication deadlines.

EMPLOYMENT LAW COMMITTEE: This committee meets at noon on the first Wednesday of every other month, commencing with February, April, June, August, October, and December. Again, meeting dates may be changed as conflicts arise, etc. Janet Ampe, Henningson & Snoxell, and Mary Senkbeil, Regis Corporation, made the determination that new co-chairs of the Employment Law Committee should be appointed. Jim Andreen, Erstad & Riemer, and Amy Tabor, Faegre & Benson, LLP, volunteered to serve as new co-chairs of this committee. Thanks to Janet and Mary for getting this committee organized and functioning. We look forward to continuing their work with our new co-chairs – Jim and Amy.

GOVERNMENTAL LIABILITY COMMITTEE: This committee attempts to meet at various locations, dates and times, but every other month. The committee does a case law update CLE in February (the first meeting of the year) at the League of Minnesota Cities in St. Paul.

INSURANCE LAW COMMITTEE: MDLA’s Insurance Law Committee meets at noon on the second Tuesday of every other month at the law firm of Bassford Remele, 33 South Sixth Street, Suite 3800, Minneapolis. Upcoming meetings will be September 11, and November 13, barring any unforeseen conflicts.

LAW IMPROVEMENT COMMITTEE: This committee monitors legislation during Minnesota’s legislative sessions. In that regard, a meeting is typically scheduled prior to or early in the legislative session and then during the session as bills are introduced and decisions need to be made on MDLA’s action on such proposed legislation.

NO-FAULT COMMITTEE: This committee generally meets on the second Friday of every other month – starting with January — although this schedule is currently under review to allow more committee members the opportunity to attend meetings in person.

PRODUCTS LIABILITY GROUP: MDLA’s Products Liability Group meets on a more informal basis, depending on the schedules of the Chair and Vice Chair.

WORKERS’ COMPENSATION COMMITTEE: This committee meets every other month, depending on the schedules of the co-chairs, 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.

Several MDLA members have worked to create an “Ad Hoc Committee on Nursing Home and Assisted Living Claims.” This ad hoc committee is still in an early organizational stage and does not have set meeting dates yet. We are also considering whether or not this committee should become a “full-fledged” MDLA committee rather than an “ad hoc” committee.

Watch for more information on MDLA committees – meetings, activities, etc. – on MDLA’s web site at www.mdla.org. We also have list serves established for each of our substantive committees which allow members of those particular committees to communicate with each other on a more informal basis. These list serves also allow our members in out-state Minnesota more opportunities to participate in the association even though they are often unable
Please contact me.
I am interested in serving on an MDLA committee.

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Amicus Curiae Committee
William M. Hart, Chair

Commercial Litigation Committee
Stephen P. Laitinen, Chair

Construction Law Committee
Steven M. Sitek, Chair

Continuing Legal Education Committee
Susan R. Zwaschka, Chair

Defense Law Practice Management
Michael J. Ford, Chair

Editorial Committee
Victor E. Lund, Chair

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

Governmental Liability Committee
Paul Reuvers, Chair

Information Sharing Committee
Steven R. Schwegman, Chair

Insurance Law Committee
John Anderson and Dale Thornsjo, Co-Chairs

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

Membership Development Committee
Mark Fredrickson and Mary Mahler, Co-Chairs

New Defense Attorneys Section
Amy K. Amundson and Lacee B. Anderson, Co-Chairs

No-Fault Committee
Jessica R. Wymore, Chair

Products Liability Group
Cortney G. Sylvester, Chair

Workers’ Compensation Committee
Douglas Brown and Nicole Surges, Co-Chairs

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NAME _____________________________________________

FIRM _____________________________________________

ADDRESS ___________________________________________

PHONE ____________________________________________

COPY, FILL OUT AND MAIL TO:
Renee C. Anderson, Executive Director
Minnesota Defense Lawyers Association
600 Nicollet Mall
Suite 380A
Minneapolis, MN 55402

MDLA MEMBER ANNOUNCEMENTS

Gary J. Gordon, previously a partner at Rider Bennett, has joined the firm of McCollum, Crowley, Moschet & Miller, Ltd. as a Shareholder. Gordon has more than 30 years of practice in civil and commercial litigation across a range of areas, including mass disasters, products liability, professional negligence and consumer class actions. He is the author of several legal publications and has been a frequent lecturer on topics such as expert witnesses and scientific evidence. He is an active member of the Defense Research Institute, the American Board of Trial Advocates, American Board of Professional Liability Attorneys, and the International Association of Defense Counsel. Gordon was named a “Super Lawyer” by Minnesota Law and Politics for 2005 and 2006.

Jeffrey R. Homuth has joined the firm of McCollum, Crowley, Moschet & Miller, Ltd. and is practicing primarily in the area of Workers Compensation defense. He received his J.D. from the University of Minnesota Law School in 2006 and his B.A. in Political Science from the University of Michigan, Ann Arbor in 2003. During law school, he was on the Dean’s list, argued cases before the Maynard Pirsig Moot Court, and participated as a Student Attorney in the Law School’s Civil Practice Clinic.

Congratulations to these MDLA members on their respective achievements.
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.

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**Winter 2006**

- The Medicare Super Lien: more powerful than an ordinary health care lien, faster than a typical governmental bureaucracy and able to impose penalties and increased exposure in a single bound
  
  *Sean J. Mickelson*

- No-Fault or Our Fault? Ideas on How We Can Solve Many of Our Own No-Fault Problems
  
  *Kelly Sofio*

- Statutes of Limitations, Statutes of Repose and Notice Requirements at a Glance
  
  *Michael D. Carr*

**Spring 2006**

  
  *Patricia Beety*

- The Evolution and Extinction of The Business Risk Doctrine and Other Issues Affecting Insurance Coverage in Construction Defect Litigation
  
  *Carrie Hund*

**Summer 2006**

- Barbarians at the Gate: Is Public Entity Lead-Based Paint Litigation Coming to Minnesota?
  
  *Matthew S. Frantzen*

- Who’s on the Risk? Allocating Damages Among Insurers in Construction Defect Claims
  
  *Brian H. Sande and Mark R. Bradford*

- 2006 Legislative Report
  
  *Sandy Neren*

**Fall 2006**

- The Corporate Death Defense: Alive And Well in Minnesota
  
  *Richard J. Leighton*

- Hot Off The Press: Minnesota Supreme Court Clarifies Pro-rata Insurance Coverage Allocation for Wet Home Contractor
  
  *Michael D. Carr and James F. Mewborn*

- Claims for Contribution and Indemnity After Weston v. McWilliams: Where Do the Claims Start and Where Do the Claims Stop? *Amy K. Amundson and Steven M. Sitek*

- Understanding Minnesota’s Contractual Indemnity Quagmire at a Glance
  
  *Michael D. Carr*

**Winter 2007**

- What Civil Defense Attorneys Should Know About ERISA
  
  *Tiffany M. Quick*

- Wooddale Builders, Inc. v. Maryland Casualty Co.: Supreme Court Addresses Certain Insurance Coverage Issues Pertaining to Moisture Intrusion Claims
  
  *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*

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CONTINUING LEGAL EDUCATION

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- MDLA Duluth Trial Techniques Seminars

- 2006 .......... 7.75
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- Insurance Law Institute

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- Golf and CLE Seminar

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Mini-Seminars

**Winter 2006**

- Now That I Have Passed the Bar Exam, What Can I Do to Benefit My Community?
  
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- Economic Loss Doctrine in Minnesota
  
  *2006 .......... 1.50*

- No-Fault Arbitrations – From Start to Finish
  
  *2006 .......... 1.50*

- Residential Moisture Intrusion Cases; How to Get the Most Out of an Expert
  
  *2005 .......... 1.50*

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**Upcoming Dates**

- MDLA 32nd Annual TTS Seminar
  
  Duluth Entertainment and Convention Center, Duluth
  
  August 16-18, 2007
  
  (Applied for 7.75 CLE credits)

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APPLICATION FOR MEMBERSHIP

Please print:

Date __________________

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.

I am a partner in or associated with the law firm of ____________________________________________________________

Year I was admitted to practice ________________ I am currently a member of DRI: Yes _____ No _____

Office address ______________________________________________________________________________

Areas of practice and specialization:

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

___ Employment ___ Environmental ___ General Litigation ___ Governmental Liability ___ Insurance Coverage ___ Medical Malpractice

___ Products Liability ___ Professional Liability ___ Subrogation ___ Workers’ Compensation ___ Other ____________________

Office address ______________________________________________________________________________

Office telephone _____________________________ Office fax number* _______________________________

Home address_________________________________________________ Home phone __________________

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 __________________ Attorney ID ____________________________________

(Call House Information, Minnesota Legislature, 651-296-2146 to learn which legislative district you live in.)

I attach my check 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 2 years $95
Member of the Bar 2 to 5 years $140
Member of the Bar 5 years or more $210
Retired Membership $40

(Fees established January 1, 2003)

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.
By Steven R. Schwegman
QUINLIVAN & HUGHES, P.A.
MDLA DRI State Representative

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.

I had the opportunity to join defense organization representatives from Illinois, Indiana, Minnesota, North Dakota, South Dakota, and Wisconsin for the North Central Regional Meeting on Friday, January 12, and Saturday, January 13 at the Charleston Place Hotel in Charleston, S.C. The 2007 meeting was hosted by MDLA. The 2008 Regional meeting will be hosted by Indiana in Savannah, Georgia, on January 18 and 19.

First, a little background. DRI is divided into 12 geographic regions. We are a part of the North Central Region which includes Illinois, Indiana, Minnesota, North Dakota, South Dakota and Wisconsin. This is the third largest region. Regions meet twice a year; once at the DRI Annual Meeting (this particular meeting is typically a planning session) and again as a group at a local venue. One of the purposes of the Regional meetings is to bring together various state and local defense organizations to share ideas and exchange information to improve each of our organizations. If you have any ideas to enhance the relationship between DRI and MDLA or ideas for facilitating interaction between the groups, please feel free to contact me.

I would strongly encourage you to make plans to attend the 2007 DRI annual meeting in Washington, D.C. (Wednesday, Oct. 10, 2007 – Sunday, Oct. 14, 2007). You can register online at www.DRI.org. There is a block of rooms at the Marriott Wardman Park hotel which is a classic favorite choice among downtown Washington, DC hotels. You save money if you register early. Remember, we are all stressed with our responsibilities to our clients, firms and families. However, I became a member of DRI because of what DRI has to offer and because it is good for business. The annual meeting will be an excellent opportunity to meet clients and good lawyers around the country who are willing to refer business.

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________________________________________

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Your MDLA Membership...

Benefits of MDLA membership include the following:

**Minnesota Defense**, a quarterly publication containing substantive articles regarding defense practice and association news.

**Annual Trial Techniques Seminar**, a CLE program held every August in Duluth, featuring techniques used in defense litigation.

**Annual Meeting**, held during the Trial Techniques Seminar.

**Mid-Winter Conference**, held in February at various locations.

Other seminars throughout the year.

**Information Sharing Program**, which collects and disseminates information about jury verdicts, expert witnesses, court orders, memoranda, briefs, transcripts, and jury instructions. We also have an e-mail query service for defense lawyers to solicit information from other MDLA members which can be extremely beneficial.

**Legislative Program**, including our MDLA Law Improvement Committee which monitors legislation of interest to the defense bar, authors legislation, testifies at bill hearings, and contacts legislators for support.

**Amicus curiae** appearances in selected cases.

We also have the following committees:

- Amicus Curiae Committee, William M. Hart, Chair
- Commercial Litigation Committee, Steve Laitenen, Chair
- Construction Law Committee, Steven N. Sitek, Chair
- Continuing Legal Education Committee, Susan R. Zwaschka, Chair
- Defense Law Practice Management Committee, Michael J. Ford, Chair
- Editorial Committee Minnesota Defense, Victor E. Lund, Chair
- Employment Law Committee, Jim Andreen and Amy Taber, Co-Chairs
- Governmental Liability Committee, Paul Reovers, Chair
- Information Sharing Committee, Steven R. Schwieger, Chair
- Insurance Law Committee, John Anderson and Dale Thornsjo, Co-Chairs
- Law Improvement Committee, Richard J. Thomas and Thomas E. Marshall, Co-Chairs
- Membership Development Committee, Mark Fredrickson and Mary Mahler, Co-Chairs
- New Defense Attorneys Section, Amy K. Amundson and Lacee B. Anderson, Co-Chairs
- No-Fault Committee, Jessica R. Wymore, Chair
- Products Liability Group, Courtney G. Sylvester, Chair
- Workers' Compensation Committee, Douglas Brown and Nicole Surges, Co-Chairs

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

Join today!