MINNESOTA

ISSUE I 2025

Defense

A CLAIM IS BORN - A DOCTRINAL AND EMPIRICAL LOOK AT BIRTH - RELATED CLAIMS

FOREVER LITIGATION OVER 'FOREVER CHEMICALS': PFAS LITIGATION OF THE PAST PRESENT AND FUTURE

RYGWALL V. ACR HOMES

The Editorial Committee welcomes articles for publication in *Minnesota Defense*. If you are interested in writing an article, please contact the Chief Editor or call the MDLA office at 612-750-8606.

VOLUME 47, ISSUE I

Minnesota Defense is a regular publication of the Minnesota Defense Lawyers Association for the purpose of informing lawyers about current issues relating to the defense of civil actions.

All views, opinions and conclusions expressed in this magazine are those of the authors, and do not necessarily reflect the opinion and/or policy of the editors, the Minnesota Defense Lawyers Association or its leadership.

The publication of any advertisement is not to be construed as an endorsement by *Minnesota Defense*, the Minnesota Defense Lawyers Association, or its leadership, of the product or service offered.

All inquiries should be directed to MDLA - director@mdla.org

9505 Copley Dr., Indianapolis, IN 46260

ARTICLES FROM PAST ISSUES

Members wishing to receive copies of articles from past issues of *Minnesota Defense* should forward a check made payable to the Minnesota Defense Lawyers Association in the amount of $5 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, director@mdla.org.

Winter 2024
Fact(s) or Fiction? - An Analysis of the Factual Foundation Requird for Expert Opinions
By Scott Jurchisin and Nick Rauch
Turning Over a New Leave: Updates to Minnesota's Earned Sick and Safe Time Leave
By Alemayehu Z. Ditamo
Human Factors Q & A
By Jeff Suway with Angela Miles and Shannon Nelson
Driveways and Obstacles
By Jessica Schwie and Joshua P. Devaney

Fall 2024
Lindke v. Freed: When Social Media Use Constitutes State Action
By Mary Haasl & Jordan Soderlind
The Argument for More Women on the Eighth Circuit: An Advocate's Experience
By StephanieAngolkar
Annual Amicus Assmebly
By Louise Behrendt & Ryan Paukert

Spring 2024
The Design Defect in Product Liability Laws
By Ryan Paukert
Beyond the Bar: The Demographic Insights Steering a Diverse Legal Future
By Nevin Selimovic
10 Benefits of MDLA Membership
By Stephanie Angolkar

Summer 2023
The New Omnibus Bill
Tessa Mansfield Hirte
Vacation, All I never Wanted
Emily L. Johnson & Parker T. Olson
The Uncertain Impact of Remote Work on Women in the Law
Lynn McMullen

Spring 2023
Impartiality in the Quasi-Judicial Decision Making
Paul Reuvers
What Partners Want What Associates Want
Stephanie Angolkar, Elle Lannon, Sean Kelly
Defending Dog Bite Cases
Ron Berman
Minnesota's New Rule 114
Kristi Paulson

JOIN A COMMITTEE

MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.

If you would like to join a committee's distribution list, please update your member profile on mdla.org specifying the appropriate committee under the "Practice Type" section. You will be automatically added to the distribution list.

To learn more about an MDLA committee, please visit www.mdla.org. Meeting times and dates for each committee are listed online.

Committees available include:

- Amicus Curiae
- Construction Law
- Diversity
- Editorial
- Employment Law
- Events Committee
- Governmental Liability
- Insurance Law
- Law Improvement
- Law Practice Management
- Long-Term Care
- Membership Committee
- Medical Liability and Health Care
- New Lawyers Committee
- Motor Vehicle Accident
- Products Liability
- Retail and Hospitality
- Technology
- Workers' Compensation
- Women in the Law

RETAIL AND HOSPITALITY

Focused on the defense of retailers, restaurants, and hospitality businesses against suits for:

- Minnesota Civil Damage Act
- Premises liability
- Falling merchandise
- Negligent security
- Food-borne illnesses
- Americans with Disabilities Act
- Minnesota Human Rights Act

For more information, email committee Co-Chairs Kelly Magnus - kmagnus@nilanjohnson.com or Brandon D. Meshbesher - brandon.meshbesher@lindjensen.com

THE PRESIDENT'S COLUMN

Elizabeth Sorenson Brotten

Foley Mansfield

Looking Ahead for MDLA: The Best is Yet to Come!

MDLA had a great start to the year in Walker at the Mid-Winter Conference held at Chase on the Lake. Rachel Beauchamp planned a fabulous and engaging conference. Highlights of the CLEs included a vulnerable and enlightening discussion on neurodivergence and a cutting-edge discussion on incorporating artificial intelligence into our daily work. The opportunity to connect with colleagues over s'mores, ice fishing on Leech Lake, or at American Legion Post #134 rounded out a balanced conference.

As the weather begins to warm, plants sprout, and the days continue to get longer, summer brings a sense of optimism and new potential, both personally and professionally. Personally, I love opening windows and doors to the fresh spring air, moving my workouts from the treadmill in the basement to outdoors, and the late nights in the backyard. Professionally, I'm excited to head to Nashville to represent MDLA at the DRI North Central regional meeting in Nashville. Leaders from State and Local Defense Organizations across the region will gather for two days of idea sharing as to how to strengthen our organizations and continue to keep them relevant for the civil defense lawyer of the future. Nashville is the perfect place for us to collaborate. While I do love the chance to wear (one of my multiple pairs of) cowboy boots, what inspires me most is the promise, hope, and dream-chasing on display on every block on and off Broadway. There is nothing more inspiring to me than watching others taking chances, chasing dreams, and pursuing the best version of themselves. I look forward to seeing some of Nashville's rising talents pursuing their dreams in music and striving to create their own new beginnings.

If you have not had a chance to engage with MDLA yet in 2025, make summer your season of "new beginnings" with one of the upcoming events.

On July 24, 2025, we host one of my favorite events of the MDLA year, the 24th Annual Women's Breakfast at The Marquette Building. This year, we are looking forward to welcoming our speaker, leading lawyer well-being coach Patty Beck. Patty's practical approach will leave all attendees with actionable and achievable ways to improve effectiveness as an attorney, as well as overall well-being. This is a great opportunity to network with other women in Minnesota's civil defense bar in a supportive and uplifting environment. I always leave this event feeling uplifted and encouraged about the future for women in the profession and in the civil defense bar.

Finally, make plans now to be in Duluth August 14 to 16 for our annual Trial Techniques Seminar. Stephanie Angolkar is planning an agenda full of topics essential for sharpening your trial and advocacy skills. We will also have plenty of time to build connections. We will kick off our conference with our annual diversity reception, celebrate our past presidents at the historic Kitchi Gammi Club, and enjoy time with family and friends on Friday night at the Glensheen Mansion. It promises to be one of the most memorable weekends of the year!

I look forward to seeing you at one of these events!

SAVE THE DATES

July 24, 2025 - Women in the Law Breakfast - The Marquette Bldg - Tenant Lounge

August 14-16, 2025 - Trial Techniques Seminar - DECC - Duluth, MN

January 23-25, 2026 - Mid-Winter Conference - Grandview Lodge - Nisswa, MN

Thank You *for your service*

Practice Areas

ADR
Appellate
Automobile Law
Business Litigation
Commercial Real Estate
Commercial Transportation
Construction
Employment Law
General Liability
Insurance Coverage
Professional Liability
Medical Malpractice
Product Liability
Subrogation
Workers' Compensation

Shayne Hamann

Arthur Chapman is proud to have a shareholder on the MDLA Board of Directors. Shayne focuses her practice in the areas of automobile and general liability litigation, No-Fault and insurance coverage.

The attorneys of Arthur, Chapman, Kettering, Smetak & Pikala, P.A. deliver top-tier legal expertise with down-to-earth character and values, without ego and pretense. Clients call on Arthur Chapman attorneys for litigation counsel in the areas of civil and business litigation.

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

Hudson, WI
811 1st Street
Suite 201
Hudson, WI 54016

ArthurChapman.com
1-800-916-9262

Good Litigators | Good People | Good Counsel

A CLAIM IS BORN - A DOCTRINAL AND EMPIRICAL LOOK AT BIRTH-RELATED CLAIMS

By Carrie Nearing & Scott Jurchisin

Medical malpractice claims usually arise from negligence that has affected the life of a patient—reducing abilities, increasing medical needs—or has resulted in the patient's death. But there is a complex and rarely treaded area of law concerning claims where the damages revolve around whether a life should begin in the first place. The statutes governing these types of claims are convoluted, but more complex are the damages associated with each claim. One such claim, *Szlachtowski v. Minnesota Urology P.A.*, Hennepin County, Court File No. 27-CV-23-10677, was recently tried in Minnesota, providing an opportunity to explore the doctrine and its application.

Types of Claims

It is first necessary to understand the various types of these birth-related claims for which Minnesota has jurisprudence.

Minnesota law prohibits an individual from alleging that they—the plaintiff themselves—should have been aborted; this is called a *wrongful life* claim:

> Wrongful life action prohibited. No person shall maintain a cause of action or receive an award of damages on behalf of that person based on the claim that but for the negligent conduct of another, the person would have been aborted.

Minn. Stat. § 145.424, subd. 1. Minnesota law also prohibits the same action, if brought by the child's parents—a *wrongful birth* claim:

> Wrongful birth action prohibited. No person shall maintain a cause of action or receive an award of damages on the claim that but for the negligent conduct of another, a child would have been aborted.

Id. at subd. 2.

Minnesota law does allow wrongful conception claims. A *wrongful conception* claim alleges that a child was conceived due to negligent medical care—usually care intended to render a patient sterile—or that negligent care resulted in the birth of a child with a preventable disease or defect:

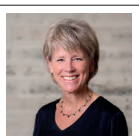
> Failure or refusal to prevent a live birth. Nothing in this section shall be construed to preclude a cause of action for intentional or negligent malpractice or any other action arising in tort based on the failure of a contraceptive method or sterilization procedure or on a claim that, but for the negligent conduct of another, tests or treatment would have been provided or would have been provided properly which would have made possible the prevention, cure, or amelioration of any disease, defect, deficiency, or disability; provided, however, that abortion shall not have been deemed to prevent, cure, or ameliorate any disease, defect, deficiency, or disability. The failure or refusal of any person to perform or have an abortion shall not be a defense in any action, nor shall that failure or refusal be considered in awarding damages or in imposing a penalty in any action.

Id. at subd. 3. As plainly stated, these three provisions disallow abortion to be a factor in a claim—it cannot be the basis for a claim, it cannot be considered a possible remedy to a wrongful conception, and, therefore, it may not be used as a defense. *Id.* at § 145.424.

Damages

There are a few damages concepts unique to birth-related claims. One example, as discussed above, is the prohibition on the jury considering the possibility of an abortion in determining the plaintiffs' damages.

The loss-of-chance doctrine also presents distinct complications to birth-related claims. Though it is not commonly recognized, plaintiffs periodically bring medical malpractice or negligence claims alleging, as damages,



Carrie Nearing focuses her litigation and trial practice on the defense of professional liability claims and licensing board proceedings against physicians, nurses, and other healthcare providers. Carrie also provides consultation and guidance to health care organizations and healthcare professionals on ways to manage and mitigate exposure to claims. Over the past 25 years, Carrie has vigorously and successfully defended numerous professionals through trial and administrative proceedings. She also uses her skills at collaboration to effectively resolve cases that may not be suited for extensive litigation.

Scott Jurchisin practices in the areas of professional liability, business litigation, and construction litigation. Scott has experience litigating medical malpractice cases as both a plaintiff and defense lawyer, which has given him a unique understanding of the issues and arguments common in those cases. Scott's career has focused on trial advocacy. Prior to joining Larson King, Scott served as trial counsel for individuals and companies in business and construction cases. And over the last several years, he has fostered trial advocacy skills in future generations as a member of the Minnesota State Bar Association's Mock Trial Committee.

A Claim is Born **continued from page 6**

the loss-of-chance to conceive. These damages are alleged by plaintiffs who—instead of having a child they did not intend to have are unable to have a child they intended to have.

Minnesota has not recognized loss-of-chance to conceive a child as a viable theory of recovery. Rather, Minnesota generally rejects the loss of chance doctrine in this context and has only applied it in the context of a lost chance to recover from a disease. Where "a physician's negligence diminishes or destroys a patient's chance of recovery or survival," Minnesota law has recognized the claim. *Dickhoff ex rel. Dickhoff v. Green*, 836 N.W.2d 321, 337 (Minn. 2013). This is because the decrease in a patient's chance of survival is a"real injury." *Id.* at 334 (quoting *Matsuyama v. Birnbaum*, 890 N.E.2d 819, 832 (Mass. 2008)). Even then, Minnesota courts have only allowed loss-of-chance damages where "the future effects flowed directly from the initial injuries, the initial injuries were the sole cause of the future effects, and the probabilities of their occurrence were proven with reasonable medical certainty." *Fabio v. Bellomo*, 504 N.W.2d 758, 763 (Minn. 1993). Without those factors present, a plaintiff's damages would be too speculative to be awarded.

Given that narrow application—that is, only in situations where a patient's chance of recovery or survival is at issue—it is not likely that Minnesota courts would extend the loss of chance doctrine to include the loss of chance to conceive a child. For example, in a loss of chance to conceive claim—if we try to apply the doctrine—the prospective parents would be the *patients*. The prospective parents have not had any diminishment or destruction of their chance of *recovery* or *survival*. It would be the unborn child who has suffered a diminishment or destruction of their chance of survival, an untenable proposition. The prospective parents cannot bring such a claim on behalf of their unborn child—the doctrine has only been applied when the plaintiff themself is harmed. *Id.* So as of now, a loss of chance to conceive claim does not meet the requirements of the loss of chance doctrine adopted by Minnesota courts.

Another concept with a unique application to wrongful conception damages is an offset due to the benefit provided to the parents by the unplanned child. Offset is a longstanding damages principle that recognizes that even harmful conduct may provide some benefits:

> When the defendant's tortious conduct has caused harm to the plaintiff or to his property and in so doing has conferred a special benefit to the interest of the plaintiff that was harmed, the value of the benefit conferred is considered in mitigation of damages, to the extent that this is equitable. Restatement (Second) of Torts § 920 (1979).

This issue of offsetting damages by the benefit of an unwanted child—along with other wrongful conception damages issues—was addressed by the Minnesota Supreme Court in *Sherlock v. Stillwater Clinic*, 260 N.W.2d 169, 173 (Minn. 1977). Other jurisdictions had founded the offset on "the injustice of requiring a negligent physician to pay for all the economic costs of an unplanned child while the parents derived all the joy, affection, and satisfaction from rearing the child." *Id.* (referencing *Shaheen v. Knight,* 11 Pa.D. & C.2d 41, 45 (1958)). The SHERLOCK court noted that "a number of courts took the position that any damage caused to the parents was more than offset by the intangible benefits gained by the birth of a child." *Id.* (citing *Gleitman v. Cosgrove*, 227 A.2d 689 (N.J. 1967); *Ball v. Mudge*, 391 P.2d 201 (Wash. 1964)). The *Sherlock* court did observe that "[a] minority of courts have continued to adhere to the older view that all damages [for economic costs of an unwanted child] should be denied as a matter of law." *Id.* at 174 (citing *Terrell v. Garcia*, 496 S.W.2d 124 (Tex. Civ. App. 1973)). But "[a] growing majority of courts have allowed recovery for all damages proximately caused by the physician's negligence," and "ordinarily required that damages be reduced by any benefits conferred by the child." *Id.* (citing *Stills v. Gratton*, 127 Cal. Rptr. 652 (Cal. Ct. App. 1976); *Anonymous v. State*, 366 A.2d 204 (Conn. Super. Ct. 1976); *Betancourt v. Gaylor*, 344 A.2d 336 (N.J. Super Ct. Law Div. 1975); *Bowman v. Davis*, 356 N.E.2d 496 (Ohio 1976).

The *Sherlock* court took the opportunity to comment on its concern for the child who is the subject of wrongful conception claims. It stated its hope that parents of an unplanned, healthy child would be "advised of the psychological consequences" on the child of bringing such a lawsuit. *Id.* at 176. It also stated its concern for "the silent interests of the child and, in particular, the parent-child relationships that must be sustained long after legal controversies have been laid to rest." *Id.* at 177. The legislature has not addressed these concerns with policy, so they remain dicta.

After analyzing the origins of wrongful conception cases, the *Sherlock* court held that for wrongful conception cases, "elementary justice requires that [a physician whose actions were intended to prevent conception or birth] be held legally responsible for the consequences which have in fact occurred." *Id.* at 174. Therefore, in order to place plaintiffs in the position they would have been had no wrong occurred, "the parents of an unplanned child should at least be entitled to recover all damages immediately incident to pregnancy and birth." *Id.* at 175. Those damages would include prenatal and postnatal medical expenses, pain and suffering, and loss of consortium. *Id.* Parents are also permitted to recover the costs of rearing the child, which include costs incurred to maintain, support, and educate their child throughout their minority. *Id.* at 176. The court acknowledged that "public sentiment may recognize that to the vast majority of parents the long-term and enduring benefits of parenthood outweigh the economic costs of rearing a healthy child," but it refused to declare so as a matter of law. *Id.* at 175. It did hold, however, that child-rearing damages would be subject to an offset for "the value of the benefits conferred to them by the child." *Id.* at 176. In fact, the jury is "required

continued on page 8

A Claim is Born **continued from page 7**

to reduce [the child-rearing] costs by the value of the child's aid, comfort, and society which will benefit the parents for the duration of their lives." *Id*. And there should be strict judicial scrutiny of verdicts to prevent excessive awards in wrongful conception cases. *Id.*at 176.

The ground-breaking *Sherlock* decision sparked a dissent. The dissent's position was that "the worth of a healthy child to his parents will always exceed [the costs of child-rearing]," which was consistent with *Christensen v. Thornby*, a Minnesota case from 1934. *Id.* at 177 (citing *Christensen v. Thornby*, 255 N.W. 620 (Minn. 1934)). The dissent found it significant that the *Christensen* court unanimously "considered it preposterous for the father of an unplanned child to be awarded damages in a [wrongful conception case] for the cost of nurture and education of the child during its minority." *Id*. The dissent posited that "[I]t is difficult to visualize a case where a human being does not have some monetary value in addition to [pecuniary] damages incurred by next of kin." *Id*. (quoting *Pehrson v. Kistner*, 222 N.W.2d 334, 337 (Minn. 1974)). In the dissent's judgment, allowing "parents to recover damages by proving their healthy child a net burden to them" is contrary to public policy. *Id.*

Szlachtowski v. Minnesota Urology P.A.

The case recently tried to verdict in Minnesota, *Szlachtowski v. Minnesota Urology P.A.*, was a wrongful conception case that highlighted the *Sherlock* damages issue. In the *Szlachtowski* case, the plaintiffs—Steven and Megan *Szlachtowski*—alleged that negligent care regarding a vasectomy resulted in their having an unplanned child (the "Child"). Mr. Szlachtowski underwent a vasectomy procedure at Minnesota Urology, followed by standard post-procedure testing to check for the presence of live sperm. A Minnesota Urology nurse communicated to him that the test results were negative for sperm and that it was alright to discontinue contraceptives. However, the test results were actually positive for sperm. Ms. Szlachtowski later became pregnant and gave birth to the Child.

Minnesota Urology admitted that it was negligent and that its negligence caused Mrs. Szlachtowski's pregnancy. It focused its defense on damages, alleging that the comfort, aid, and society provided by the Szlachtowskis' unexpected child exceed the costs of raising the child to age 18, and therefore no damages should be awarded.

Determining damages in the case presented both legal and factual challenges. The parties attempted to clarify the damages framework in their motions in limine. Minnesota Urology argued for a *Sherlock* offset, but applied to all of the Szlachtowskis' damages, not just their child-rearing costs. It brought a motion in limine asking the court to determine that each category of damages could be reduced by the offset. The Szlachtowskis opposed the motion, arguing that any offset should not be applied to each category of damages, but only to the damages awarded for the cost of raising their child. Relying on *Sherlock*, they argued that wrongful conception claims are analytically indistinguishable from ordinary medical malpractice claims. See *Sherlock*, 260 N.W.2d at 174–75. As such, the Szlachtowskis asserted that wrongful conception actions may seek the damages deemed proper in any medical malpractice action. One item of damages, however, is uniquely addressed in wrongful conception cases—damages for the costs of raising an unplanned child. The Szlachtowskis argued that *Sherlock* held that only these damages would be "subject to an offset for the value of the benefits conferred to [the parents] by the child." *Id*. at 176.

The court ruled in favor of the Szlachtowskis, holding that any offset for comfort, aid, and society that Child's birth provided to the Szlachtowskis could only offset their child-rearing expenses and costs. Thus, the special verdict form, in relevant part, asked the jury to determine the following values:

> 1. What amount of money will fairly and adequately compensate Plaintiffs for the following:
>
> * * *
>
> g. Past child-rearing expenses (excluding past health care expenses);
>
> 2. What amount of money will fairly and adequately compensate Plaintiffs for child-rearing expenses (including health care expenses) reasonably certain to occur in the future up to the time [their child] reaches age 18?
>
> 3. What amount of money represents the benefit of the comfort, aid, and society, that Plaintiffs are reasonably certain to derive from [their child] over the course of Plaintiffs' lives?

Pursuant to the court's order, any amount of benefit determined in response to question 3 above would only offset any damages awarded under questions 1.g and 2. It would have no impact on the other damages decided by the jury.

The parties presented the damages framework throughout trial. When the parties were discussing jury instructions with the court, the defendant identified that, though liability was admitted, telling the jury that Minnesota law "allows someone who had an unplanned pregnancy because of "..." medical negligence [to] be awarded compensation for . . . damages" assumes that damages will be awarded. However, the jury may still determine that the plaintiffs did not suffer an injury, so any instruction to the jury must be more permissive instead of prescriptive.

The parties also had to navigate the issue of abortion, which

continued on page 9

A Claim is Born **continued from page 8**

they did during voir dire. The plaintiffs' concern was that jurors who supported the right to abortion or had personal experiences with abortion would not award damages because the plaintiffs made a choice not to have an abortion. Because Minn. Stat. § 145.424 expressly prohibits the ability to have an abortion from being considered in damages calculations, the parties had to explore the potential jurors' beliefs in detail. Several potential jurors included, directly or indirectly, their position on abortion in their responses to their questionnaires or to questioning. Some responses were definitive: the juror was pro-choice. Others were more vague: the juror would "roll with [the pregnancy]." Each of these responses was vetted.

One potential juror expressed the view that "[e]ven though the test was positive but were told were [sic] negative, I think having a child is a blessing." This response was consistent with the defendant's offset defense—that there is a benefit to having a child, which should be considered in awarding damages. Counsel for the parties had to determine whether this personal belief would prevent the juror from applying the law as he was instructed—to award the damages the evidence supported. After questioning this juror on his response and hearing that he did not believe he could be impartial, the parties agreed to strike him. Another potential juror stated that they did not know how they would be able to calculate the comfort, aid, and society of the plaintiffs' child when the plaintiffs did not want a fourth child, and did not feel comfortable putting a number on it. A potential juror without children stated that she was open to hearing both sides of calculating the benefit of the plaintiffs' fourth child, but that she did not know if she would be able to calculate it.

The Szlachtowskis showed some concern that the jury would believe that their bringing the lawsuit meant that they did not love their son. They reiterated in voir dire, opening statement, and direct examination that they did love their son. But they emphasized this case was not about whether they loved their son, but about the financial and other impacts that having an unplanned pregnancy had on their lives.

The parties continued framing the damages issue in their opening statements. The plaintiffs stated that they anticipated the defendant would ask the jury to offset the costs of raising a child with the benefit of having a child. But they noted that the costs of raising a child were "very real, and they're also . . . exactly the costs that this family planned not to have when they chose to have a vasectomy."

The defendant's opening statement focused on how good of a situation the plaintiffs and their child were in, saying that their child "hit the jackpot." When discussing damages, the defendant offered that it accepted responsibility for the costs of the pregnancy, the birth, and Ms. Szlachtowski's medical care related to the birth. It stated that it disputed the cost of raising a child to the age of 18 and the value of the comfort, aid, and society that the child would bring. Defendant highlighted that the benefit of the child should be calculated over the child's lifetime—not just to 18 years old. It suggested that this number—the number for the offset—would be the highest number on the verdict form.

In the direct examination of Ms. Szlachtowski, plaintiff's counsel framed the offset defense, including possible reduction of the offset amount:

> Ms. Szlachtowski, I'm now going to turn to a different topic. And I want to ask you some questions about the comfort, aid, and society that [your child] brings to you and your husband. And as part of that, I want to talk about some of the things that lessen your ability to enjoy [your child] and his comfort and aid and society, okay?

Ms. Szlachtowski then testified to the factors that might reduce the offset amount. She said that having a child four years after her three other children is challenging. She testified that she was not able to spend as much time with her other children or enjoy their activities because she was a mom to an infant. She testified that she loved her son, but she felt like she missed out on other things by being at home with him.

On cross examination, defense counsel asked Ms. Szlachtowski: "What is the benefit that [your child] will bring your family over the course of your lifetime?" She testified that—outside of her son making them laugh and cry, happy and sad—she loved her son, but she did not know what the future looks like for them, so she could not say what comfort, aid, and society her son will bring. She differentiated the challenges she was having with her fourth child from the challenges she had with her other children by explaining that they were in that stage of life—infants, naps, and diapers—close in time, but her fourth child was four years later, after she believed she was no longer in that stage.

Mr. Szlachtowski testified that having the child set their family plan back five years. He also testified that it is difficult for him to enjoy the child's comfort, aid, and society because raising his other children does not allow him to spend much time with the child. When asked by defense counsel about the positive memories of events and milestones that the child's life will provide them, Mr. Szlachtowski testified, "that's the ideal situation . . . I don't think that's guaranteed . . . you don't have to go far from my house to see tragedies where it goes the wrong way."

In their closing argument, the defendant again posited that the value of the comfort, aid, and society of the plaintiffs' child would be the largest number on the verdict form. The defendant shared that in its view, the number for the benefits of the Child would "dwarf the cost of raising a child to age 18 by probably a factor of ten," and would be in the range of $2 million to $4 million. Relying on that estimate, the defendant characterized

A Claim is Born **continued from page 9**

the plaintiffs' wrongful conception claim as "the only area of the law...where a mistake has led to an overwhelming benefit." It listed happy moments in a child's life to support the benefit a child provides: holding the child, attending the child's events, and the child getting married.

The plaintiffs argued in closing that it was the defendant's burden to establish that any offset to child-rearing costs should be deducted and to establish the amount of that offset. They argued that the defendant failed to meet that burden because they only provided guesswork and speculation; nobody knows what the future will hold for the Szlachtowskis and their Child.

The jury returned a significant damages award for the plaintiffs totaling $1,138,065.90, which broke down as follows:

$450,000 for Ms. Szlachtowski's pain, discomfort, embarrassment, and emotional distress;

$150,000 for Mr. Szlachtowski's emotional distress;

$15,000 for Ms. Szlachtowski's loss of consortium;

$15,000 for Mr. Szlachtowski's loss of consortium;

$62,773.59 for past health care expenses (stipulated);

$23,815.31 for past loss of earnings (stipulated);

$35,320.24 for past child-rearing expenses; and

$386,156.76 for future child-rearing expenses.

Surprisingly, the jury's awards for Ms. Szlachtowski's and Mr. Szlachtowski's emotional distress were each $50,000 higher than requested by the plaintiffs in closing. But most significantly, the jury valued the benefit of the Child's comfort, aid, and society at $0—effectively nullifying the law.

The defendant has filed a motion asking the court to correct the jury's failure to apply the law. Its arguments include: the value of the benefit the Child provided the Szlachtowskis should have offset all damages, not just the cost of raising the Child; the Court should have instructed the jury that it could consider the joy, fun, and satisfaction the Child would bring to the Szlachtowskis throughout their lifetimes in determining the value of the Child's benefit; and that the jury's determination that the benefit of the Child's life on the Szlachtowskis has no value "is perverse, not justified by the evidence, and contrary to law."

Conclusion

While *Sherlock* provided the infrastructure to allow an offset in wrongful conception cases, it is important to consider both the doctrinal and empirical shortcomings of the theory. Under the law, the benefit can likely only offset child-rearing expenses, meaning that plaintiffs may be able to recover significant damages even when a jury determines the child's benefit will be greater than the total damages. And in practice, this jury struggled to conceptualize the fairness of the offset and effectively nullified it. Defense lawyers must understand both of these angles to provide appropriate counsel to their clients in wrongful conception cases.

MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.

EDITORIAL COMMITTEE

MDLA's Editorial Committee is responsible for publication of its quarterly magazine, Minnesota Defense. If you would be interested in publishing in the Minnesota Defense or serving as an editor, please contact us at director@mdla.org.

For more information, email committee chairs Rachel Beauchamp - rbeauchamp@cousineaulaw.com or

GOVERNMENT LIABILTY

Attorneys who work with municipalities on a wide range of government liability issues. The Committee typically meets quarterly with a CLE type format. An annual update regarding recent case law decisions, focusing on issues that pertain to cities, counties and other municipalities, is given in the winter at the League of Minnesota Cities in St. Paul. Other meetings rotate among the firms. The December holiday party is always enjoyable.

- Quarterly CLE
- Winter Annual Update of Case Law Decisions
- Representing Cities
- Representing Counties
- Representing other Municipalities
- Annual Holiday Party

For more information, email committee Co-Chairs Jordan H. Soderlind- jhs@ratwiklaw.com or Julia Kelly - julia.c.kelly3@gmail.com

FOREVER LITIGATION OVER 'FOREVER CHEMICALS': PFAS LITIGATION OF THE PAST, PRESENT, AND FUTURE

By Allison Lange Garrison & Andrew Sako

Introduction

Litigation over the class of chemical compounds known as PFAS, better known by the moniker "forever chemicals," has increased exponentially in recent years. Driven by increased regulatory, scientific, and media attention, PFAS litigation has expanded and diversified, moving beyond traditional contamination cases against chemical manufacturers to novel theories of liability against a widening variety of corporate defendants. Defendants have advanced strong defenses revealing the legal and scientific gaps in plaintiffs' theories during litigation. Nevertheless, PFAS litigation will continue to grow and evolve.

Businesses and their legal counsel can and should take proactive steps to mitigate their risk of exposure in PFAS litigation. Working under the protection of the attorney-client privilege, companies and counsel should develop a comprehensive PFAS strategy encompassing product investigations, regulatory responses, and brand-protective communications.

In this article, we open with a primer on the science of PFAS. We turn next to a survey of PFAS litigation against chemical manufacturers before highlighting a new wave of litigation targeting manufacturers of PFAS-containing products. We close with practical considerations for businesses and counsel to manage their PFAS litigation exposure.

What Are PFAS? A Science Primer

PFAS (per- and polyfluoroalkyl substances) are a large and diverse group of synthetic chemicals characterized by a carbon-fluorine bond. PFAS compounds number in the thousands or tens of thousands, depending on how broadly the class is defined. As the Sixth Circuit Court of Appeals noted in a recent PFAS-related action, the number of different PFAS "is roughly [equivalent to] the number of known species of mammals on Earth." See, In re *E. I. du Pont de Nemours & Co.* C-8 Pers. Inj. Litig. ("*Hardwick*"), 87 F.4th 315, 321 (6th Cir. 2023).

PFAS offer useful manufacturing properties such as chemical and thermal stability and oil, water, stain, and soil resistance. Consequently, PFAS are used to manufacture a wide variety of consumer, commercial, and industrial products, including: cookware, carpets, textiles, apparel, cosmetics, personal hygiene products, cleaners, coating and paint, insulation, and wax. The aerospace, semiconductor, automotive, electronics, and construction industries as well as the military all rely heavily on PFAS in product components.

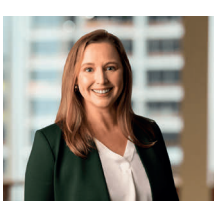
All PFAS are not the same. Different compounds within the class can vary greatly in their chemical structure and properties. Two forms of non-polymeric PFAS, usually referenced by their acronyms PFOS and PFOA, are the most frequently studied by the scientific community and historically have been the target of PFAS litigation. PFAS like the fluoropolymer PTFE have been approved by the U.S. Food and Drug Administration (FDA) for use in medical equipment and surgical implants. The distinctions between different PFAS are important, and often are overlooked by the media and the plaintiff's bar.

For its part the U.S. Environmental Protection Agency (EPA) acknowledges "there are thousands of PFAS with potentially varying effects and toxicity levels, yet most studies focus on a limited number of better known PFAS compounds . . . research is still ongoing to determine how different levels of exposure to different PFAS can lead to a variety of health effects." Env't Prot. Agency, Our Current Understanding of the Human Health and Environmental Risks of PFAS (2024), https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas

Early PFAS Litigation Against Chemical Manufacturers

Litigation over PFAS is not a new phenomenon. For decades, a diverse set of plaintiffs have sued chemical manufacturers claiming violation of federal or state environmental laws as well as common law claims sounding in personal injury, negligence, products liability, trespass, and public nuisance.

Public water systems, states, and private property owners



Allison Lange Garrison is an experienced litigator who represents businesses in commercial disputes, product liability defense, and complex tort litigation. Andrew Sako focuses his practice on litigating restrictive covenant and trade secret disputes, and defending clients in product liability matters across a variety of industries. Allison and Andrew are members of the PFAS product stewardship and strategic counsel team at Nilan Johnson Lewis PA, and advise clients on the complex legal and regulatory landscape surrounding PFAS.

Forever Litigation **continued from page 11**

have pursued damages from these defendants for the cost of testing and remediation of PFAS in soil, groundwater, and drinking water; the cost of obtaining drinking water from alternative sources; and the diminution in their property value from PFAS contamination. Individuals and classes of persons have pursued relief for alleged personal injuries or wrongful deaths arising out of claimed exposure to PFAS and have made claims for medical monitoring for anticipated future health effects of PFAS exposure.

The PFAS litigation stage was set in 2001 when a class of West Virginia residents sued DuPont claiming its PFOA manufacturing activities had contaminated their drinking water. As part of the settlement of that suit, DuPont funded a scientific study tasked with evaluating the effects on human health of exposure to PFOA (also known as "C8"). In 2011, the C8 Panel released its results, asserting a "probable link" between PFOA and six human diseases including kidney or liver disease.

The panel's findings led to additional legal action against DuPont and broader interest in the potential health risks of PFAS. Thousands of class members with one of the six diseases studied by the C8 Panel were permitted to bring individual personal-injury actions against DuPont. Importantly, DuPont was barred by the terms of the settlement agreement from challenging general causation, or whether PFOA exposure caused the six diseases. DuPont was permitted to challenge specific causation, or whether the individual plaintiff's disease was causally linked to PFOA exposure. Similar suits were brought by other states and municipalities.

Frequent defenses in PFAS litigation are general and specific causation and traceability. Defendants point to the lack of consistent scientific conclusions about the relationship, if any, between exposure to most PFAS and human health and the environment. And because of differences in chemical structure and properties, a study about one PFAS (e.g., PFOS or PFOA) cannot be extrapolated to apply to the other 10,000 or more compounds in the PFAS class.

Exposure to PFAS does not lead to a "signature illness," and the dose-response relationship between PFAS exposure at various levels or concentrations is not established. Moreover, given the background levels of PFAS in the world, it is not at all easy to trace any one plaintiff's alleged harm to their exposure to a specific PFAS manufactured by any one defendant.

Consequently, the threshold issue of standing is a stark challenge for any plaintiff claiming injury from PFAS exposure. This challenge was laid bare in an Ohio class action brought by a retired firefighter who alleged he underwent a blood test that revealed trace quantities of five PFAS compounds which, he claimed, put him at an increased risk of illness. He sued 10 PFAS manufacturers and sought to certify a nationwide class of over 300 million Americans who also had PFAS in their bloodstream. The Ohio federal district court rejected that request, but agreed to certify a class of 11 million Ohio residents.

On appeal, the Sixth Circuit Court of Appeals concluded the plaintiff lacked standing to bring this action. *See Hardwick*, 87 F.4th at 321. The court explained that the plaintiff "does not know what companies manufactured the particular chemicals in his bloodstream; nor does he know, or indeed have much idea, whether those chemicals might make him sick; nor, as a result of those chemicals, does he have any sickness or symptoms now." *See id.* at 318. Standing requires the plaintiff to tie his alleged injury to each defendant, and according to the Sixth Circuit, he "has not even tried to make that more specific showing in this case." *See id.* at 320. In an opening line that no doubt will be quoted by many defense counsel in future PFAS actions, the court observed, "Seldom is so ambitious a case filed on so slight a basis." *See id.* at 318.

The New Wave of PFAS Consumer-Fraud Litigation

In the past few years, plaintiffs have been expanding the scope of litigation over PFAS dramatically to begin targeting manufacturers of products containing PFAS. Plaintiffs have sued manufacturers in a range of industries over the alleged presence of PFAS in such products as: food, beverages, food packaging, pet food, raincoats, children's clothing, bandages, diapers and baby wipes, mascara, toothpaste, and personal care items like tampons and condoms. Given the ubiquity of PFAS used in consumer, commercial, and industrial products, the pool of prospective defendants is near bottomless.

Plaintiffs tend to ground these actions in theories of consumer fraud and false advertising, seeking financial damages related to the purchase of the defendant's PFAS-containing product. Plaintiffs point to a defendant's marketing or labeling statements that a product is "healthy," "natural," "safe," or "sustainable" and argue such statements are false and misleading because the product in question contains PFAS. In the alternative, plaintiffs fault the defendant for violating a general duty to warn by excluding PFAS from the product's list of ingredients. On these theories, plaintiffs claim the defendant violated state consumer-protection or false-advertising statutes and is liable for common-law claims of negligence and failure to warn.

Plaintiffs allege economic harm on a class-wide basis, asserting that class members did not get the benefit of their bargain by purchasing the PFAS-containing product, and/or that class members would not have purchased the product at all if they had known about the presence of PFAS in the item. These classes, if certified, could encompass every consumer who bought the products at issue from the manufacturer. These types of cases follow a model used in many other consumer class actions in which the basis

Forever Litigation **continued on page 13**

Forever Litigation **continued from page 12**

of injury is alleged overpayment for a product that was arguably worth less. Those cases frequently fail at a motion to dismiss stage.

Manufacturers have pushed back on these lawsuits, seeking and often achieving dismissal under Fed. R. Civ. P. 12(b)(1) and (6). Defendants often challenge plaintiffs' threshold allegations that product testing revealed the presence of PFAS, arguing:

- The plaintiffs did not assess products in the same line as those they had purchased;
- The tested products were not obtained near in time to the products the plaintiffs purchased;
- The test results about a few sample products cannot be extrapolated to the plausible allegation that PFAS will be found in all of the defendant's subject products; or
- The levels of PFAS in the tested products are not plausibly alleged to be harmful.

As a close corollary, defendants criticize the adequacy of the plaintiffs' testing methodology. Plaintiffs often rely on testing for the presence of total organic fluorine (TOF) in a product to support their allegations that a product contains PFAS. Defendants assert that a TOF test only finds fluorine, a compound in many compounds besides PFAS, so plaintiffs' TOF testing does not plausibly support their allegation that the product at issue contains PFAS. This defense is gaining traction with some courts. *See, e.g., Bounthon v. P&G*, No. 23-cv-00765-AMO, 2024 U.S. Dist. LEXIS 187445, at *19 (N.D. Cal. Oct. 15, 2024).

The defendants also assert that the plaintiffs' generalized concerns about PFAS, without proof of actual harm or reliance on the advertising, are insufficient to establish standing. Moreover, the defendants argue that a "reasonable consumer" would not be misled by the defendant's product advertising. Given the widespread use of PFAS in products and the general media attention around PFAS, a reasonable consumer would not plausibly conclude that the product at issue was free of PFAS. This argument was successful in achieving dismissal of a PFAS suit against a maker of children's clothing; widely available information about the use of PFAS in the apparel industry led the court to conclude a reasonable consumer would not plausibly infer from the defendant's labeling (which did not mention PFAS) that the clothing at issue was PFAS free. *See Garland v. Child.'s Place, Inc.*, No. 23 C 4899, 2024 U.S. Dist. LEXIS 59395, at *20 (N.D. Ill. Apr. 1, 2024).

In a related argument, a popcorn manufacturer relied on the reasonable consumer expectation test to defend against a PFAS suit over the presence of PFAS in the popcorn bag and packaging. The plaintiff claimed an advertisement stating the popcorn was made with "only real ingredients" was fraudulent because the popcorn bag was made with PFAS. The defendant argued, and the court agreed, that no reasonable consumer would understand the term "ingredients" to include the packaging in which the food was purchased. *See Richburg v. Conagra Brands, Inc.*, Nos. 22 CV 2420 and 22 CV 2421, 2023 U.S. Dist. LEXIS 21137 (N.D. Ill. Feb. 8, 2023).

While motions to dismiss these PFAS consumer-fraud suits are sometimes granted, typically the plaintiff will file an amended complaint that survives a follow-up challenge, leading to discovery and (often) settlement. Thus far, no class of PFAS consumers has been certified.

Inter-Relationship Between PFAS Litigation and Regulatory Scrutiny Over PFAS in Products

Although our focus here is litigation, we must place the surge of PFAS litigation over the past several years in the context of a steep uptick in PFAS regulatory action. It is crucially important for manufacturers and their counsel to understand PFAS regulatory developments because compliance with some of the new PFAS regulations may actually increase their risk of litigation exposure. In this section we will highlight some of the most important recent changes to the PFAS regulatory environment.

At the federal level, the Biden Administration EPA promulgated a series of rules aimed at regulating PFAS among manufacturers, including the following:

- The EPA finalized a rule under the Toxic Substances Control Act (TSCA) to require companies that manufacture or import PFAS or PFAS-containing products to report a wide variety of data to the EPA about their PFAS uses, production volumes, disposal efforts, worker exposures, and more. All required information must be reported to the EPA by January 11, 2026.
- The EPA designated two specific PFAS (PFOS and PFOA) as "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a/k/a Superfund. This designation empowers EPA to investigate and remediate PFOS and PFOA contamination and impose corrective action on manufacturers and property owners.
- The EPA issued a national drinking water standard for certain PFAS, under the Safe Drinking Water Act. By 2029, all public water systems must reduce their levels of five specific PFAS down to the lowest limit possible using currently available technology (4 or 10 parts per trillion).

The Trump Administration recently pushed this deadline

Forever Litigation **continued on page 14**

out to October 13, 2026. On March 12, 2025, EPA Administrator Lee Zeldin announced the agency will undertake 31 deregulatory actions, which, notably, did not mention PFAS.

Additionally, a patchwork of PFAS regulation has emerged among states, and Minnesota is one of the frontrunners. In 2023, Minnesota enacted comprehensive PFAS legislation known by the title "Amara's Law," which:

- Bans the use of "intentionally added" PFAS in certain product categories ranging from cookware and cosmetics to textiles and furniture, beginning on January 1, 2025;

- Imposes a reporting requirement on manufacturers (similar to the TSCA requirement) to report on the use of PFAS in their products to the Minnesota Pollution Control Agency (MPCA), by January 1, 2026; and

- Ban the sale of all products containing intentionally added PFAS by January 1, 2032, unless the MPCA has determined that the use of PFAS in a product constitutes a "currently unavoidable use."

While regulatory interest in PFAS is not new, it also is no coincidence that as federal regulators and state legislatures imposed new PFAS regulatory regimes, litigation over PFAS increased. A PFAS lawsuit over the presence of PFAS in a certain product category (*e.g.*, cosmetics or food packaging) often follows shortly after a state-imposed ban on PFAS in that product category. Complaints often reference the EPA's PFAS-related actions, such as the national drinking water standard, as confirmation of the seriousness of PFAS contamination or exposure. More specifically, the CERCLA designation regarding PFOS and PFOA almost certainly will drive new litigation against companies that own or operate PFOS- or PFOA-contaminated sites.

Finally, the PFAS reporting requirements under TSCA and Minnesota's Amara's Law will expose all reporting companies to the risk that plaintiffs will obtain their PFAS disclosures via public-records requests and then rely on those disclosures to support complaint allegations. By way of example, in the spring of 2024 a razor manufacturer was sued shortly after disclosing information about its use of PFAS to regulators in the State of Maine. We predict a wave of litigation following shortly after the two January 2026 deadlines to report PFAS information to the federal EPA and the MPCA, which reinforces the need for careful and precise reporting to federal and state government agencies on PFAS uses, coupled with liberal application of confidential business information (CBI) designations to protect some of the disclosures.

A constitutional challenge is pending in Minnesota federal district court over the state's PFAS law. *Cookware Sustainability Alliance v. Kessler*, No. 25-CV-41 (JRT/DTS) (D. Minn.). An industry group of cookware manufacturers claim the PFAS product-category ban, which went into effect in January of this year, violates the Commerce Clause of the U.S. Constitution by discriminating against the out-of-state commerce of cookware that continues to contain PFAS. The plaintiff also contends the PFAS reporting requirement, coming online on January 1, 2026, violates the First Amendment and federal trade-secret law. The manufacturers seek injunctive and declaratory relief. The court denied the plaintiff's request for a preliminary injunction of the product-category ban, and the MPCA is now moving to dismiss the suit.

<u>Toward a PFAS Strategy: How Businesses and Their Counsel Can Respond to PFAS Litigation Risks</u>

The floodgates of PFAS litigation are wide open. Businesses and their counsel must take proactive steps to mitigate their PFAS litigation risks and respond to the current PFAS regulatory climate.

Businesses should engage outside counsel to develop a PFAS strategy under the protection of the attorney-client privilege. This strategy may involve an investigation into the presence PFAS in the business's products. Undoubtedly confidential business information will arise from this investigation, which the company must take steps to protect.

Counsel should evaluate federal and state PFAS regulations to determine their applicability to their organization or client, and plan for compliance with upcoming PFAS reporting requirements and either product-specific or global PFAS bans. Additionally, companies should harmonize their PFAS messaging in their marketing and advertising statements, public disclosures and shareholder communications, and PFAS-related customer audits and consumer or media inquiries.

Such actions not only will support the business's risk-mitigation strategy but also will help the business plan for the day—not so far into the future— when they will need to rely on alternatives to PFAS.

RYGWALL V. ACR HOMES

By Kate Baker

In May 2024, the Minnesota Supreme Court issued its decision in *Rygwall, as Tr. for Rygwall v. ACR Homes, Inc*., a medical-negligence, wrongful-death lawsuit commenced after a group home resident's alleged aspiration caused the resident's death. Following *Rygwall,* parties have argued that the degree to which an expert's identification-affidavit must articulate the elements of a prima facie case of medical negligence sufficient to avoid dismissal has somehow changed, and also that parties' evidentiary burden at trial is now supplanted by the *Rygwall* court's decision. Neither interpretation of *Rygwall* is correct. *Rygwall* does not change the standard applicable to dispositive motions and compliance with *Rygwall*, and the settled precedent upon which *Rygwall* relies, is irrelevant at trial.

LEGAL ANALYSIS

In *Rygwall,* the trustee for the heirs and next of kin of a deceased group home resident sued the facility where the decedent resided, alleging that staff's negligence in failing to seek emergent medical care after the resident aspirated caused the resident's death. *Rygwall v. ACR Homes, Inc*. (*Rygwall III)*, 6 N.W.3d 416, 420 (Minn. 2024). The trustee claimed that had 911 been called when the resident showed signs of respiratory distress and aspiration, the resident would have been prescribed immediate antibiotic therapy, which would have prevented the aspiration sequelae that caused the resident's death. *Id*. at 424.

In support of her liability theory, the trustee disclosed an emergency medicine physician who opined on the group home's alleged negligence and causation. *Id*. at 425. In his expert-identification affidavit, the emergency medicine physician opined that the resident aspirated as a result of a seizure, that aspiration is a condition requiring emergent medical care, and that the group home's failure to seek timely emergency medical care delayed the necessary administration of appropriate antibiotics, causing the resident's death. *Rygwall v. ACR Homes, Inc. (Rygwall II)*, No. A22-1376, 2023 WL 3701358, at *4-5 (Minn. App. May 30, 2023), rev. granted (Minn. Sept. 19, 2023). The emergency medicine physician's expert report summarized his causal opinion as follows: "[h]ad [the resident's] change in clinical status been immediately acted on with rapid evaluation and treatment, there is a reasonable degree of medical certainty her condition never would have deteriorated to [acute respiratory distress syndrome (ARDS)], septic shock, multi-system organ failure, and ultimately her death." *Id*. at *5. Simply stated, the expert opined that the resident died because the group home staff's purported negligence delayed life-saving treatment. *Id*. at *4-5.

The group home moved for summary dismissal of the trustee's complaint for lack of sufficient expert opinion to establish causation, which is an essential element of a wrongful-death claim. *See generally Rygwall v. ACR Homes, Inc. (Rygwall I),* Court File No. 02-CV-20-2659, 2022 WL 18018562 (Minn. Dist. Ct. Aug. 1, 2022). The group home argued that the conclusory opinions offered by the trustee's expert left fatal gaps in the causal chain, because the expert produced no admissible testimony showing that it was more probable than not that the resident's death was caused by the alleged delay in medical treatment. *Id*. at *4. The group home argued that the expert failed to opine on what specific course of action was needed and how such treatment would have prevented the resident's death. *Id*. at *5. As a result, the group home argued that the proffered opinions amounted to nothing more than unsupported conjecture. *Id*.

The district court granted the group home's motion, concluding that the trustee's expert misstated facts in the record and relied on those misstatements in forming his opinion. *Id*. at *5. Regardless of the factual inaccuracies in the plaintiff's expert's report, the district court further concluded that the expert failed to outline an adequate causal chain, as the expert did not opine on the "specific course of action or treatment" needed, nor did the expert identify a "timeline by when administering that treatment would have prevented [the resident's] death." *Id*. at *6. For that reason, the district court concluded that any jury tasked with reaching a verdict could not do so without speculating as to the type of appropriate treatment and whether earlier medical treatment would have materially improved the resident's outcome. *Id*.

The trustee appealed the district court's order, arguing that the district court held her to "a heightened causation standard" by faulting her expert for not providing a "specific medication name" or "treatment window" when her expert-witness evidence explained "how" and "why" the group home's alleged negligence substantially caused the resident's death. App. Br., No. A22-1376, 2023 WL 3805048 at *33-34, 40-41 (Minn. App. Jan. 23, 2023). The trustee contended that her expert's "discussion of causation and the necessary treatment for [the resident] was specifically tied to the conditions [the resident] actually developed as a result of her aspiration event—sepsis, septic shock, and ARDS." *Id*. at *54 (citations and quotations omitted). Alternatively, the trustee argued that "deducing causation falls uniquely within the province of the factfinder, the jury" and that "[g]iven the fact-intensive and fine-grained nature of the causation inquiry, causation can seldom . . . be disposed of on a motion for summary judgment." *Id*. at *35-

Kate Baker authored this article while an associate at Bassford Remele. She is now Assistant Counsel, Risk Management, with University of Minnesota Physicians

***Rygwall* continued on page16**

Rygwall **continued from Page 15**

36 (citations and quotations omitted).

The Minnesota Court of Appeals affirmed the district court's order, similarly reasoning that the expert-identification affidavit failed to "explain how [the resident's] treatment would have progressed had she been seen sooner or how immediate treatment would have prevented her condition from becoming fatal." *Rygwall II*, 2023 WL 3701358, at *5. Following that decision, the trustee petitioned the Minnesota Supreme Court for review, framing the issue as whether the district court improperly decided causation, when questions of causation belong solely to juries. See generally App. Br., No. A22-1376, 2023 WL 10672254 (Minn. Dec. 4, 2023). The supreme court granted the trustee's petition and, in briefing before the supreme court, the parties disputed not only whether the causal issue before the lower courts was one of fact or law, but also the requisite criteria to survive a motion to dismiss under Minnesota's expert disclosure statute, section 145.682, or for summary judgment. *See generally* App. Br. 2023 WL 10672254; Resp. Br., 2023 WL 10672258; and App. Reply, 2024 WL 1403289 (articulating the same).

As a preliminary matter, the Minnesota Supreme Court confirmed the valid, yet distinct, reasons which support pursuit of statutory dismissal as opposed to summary judgment. *Rygwall III*, 6 N.W.3d at 428. The supreme court explained that statutory dismissal for a deficient expert-identification affidavit is generally limited to review of the affidavit and is therefore permissible where deficiencies in the affidavit are not remedied within the statute's 45-day safe harbor provision. *Id.; see also* Br. of Amicus Curiae of Minn. Defense Lawyers Assoc., No. A22-1376, 2023 WL 10672257, at *13-14 (Minn. Dec. 18, 2023) (noting that, when a defendant chooses to pursue dismissal under the procedural protections afforded by the statute, the standard of review is more deferential to the district court's decision, as appellate courts are limited to review for abuse of discretion). In contrast, decisions based on summary judgment invite the Court to review the record as a whole, thereby permitting parties to present to the Court anything learned during discovery, but are not subject to the same procedural protections afforded by Minnesota's expert disclosure statute. *Rygwall III*, 6 N.W.3d at 428; *see also* Br. of Amicus Curiae of Minn. Defense Lawyers Assoc., 2023 WL 10672257 at *13-14 (noting that summary judgment motions permit the parties to present any information learned through discovery to the court, yet give no deference to the lower court's decision, as appellate courts review summary judgment de novo and independently analyze the evidence in the record in the light most favorable to the nonmoving party).

Yet, in confirming defendants' procedural right to determine *how* to challenge the sufficiency of a plaintiff's expert evidence based on the context-specific facts of each case, the supreme court rejected both the group home's argument about the *substantive* standard for causation in medical malpractice lawsuits based on Minnesota's expert-disclosure statute and the trustee's *procedural* argument that questions of causation lie almost exclusively with the jury. *Rygwall III*, 6 N.W.3d at 429-30, 434-35. The Court explained that because medical malpractice is a species of common-law negligence, such cases are subject to the same common-law principles that govern causation in ordinary negligence claims. *Id*. at 429-30. In other words, causation in a medical negligence lawsuit—both *before and after* the passage of Minnesota's expert-disclosure statute—requires that a plaintiff show by qualified expert testimony that it is "more likely than not that the defendant's conduct was a substantial factor in bringing about the result." *Id*. at 429 (quoting *Walton v. Jones*, 286 N.W.2d 710, 715 (Minn. 1979)); *see also George v. Est. of Baker*, 724 N.W.2d 1, 11 (Minn. 2006) (noting that plaintiffs in common-law negligence lawsuits must show that the alleged negligence was a foreseeable, substantial cause of the claimed injury and would not have occurred without a negligent act). When a plaintiff is unable to satisfy that standard, any finding of causation is therefore based on mere speculation or conjecture, and courts must dispose of the relevant claims, regardless of the procedural mechanism chosen by the defendant to challenge the causal deficiency.

The supreme court explained this established principle as follows:

> Our cases interpreting section 145.682 have explained the requirements for plaintiffs in medical malpractice cases in greater detail. We have held that the expert affidavit must: *(1) disclose specific details concerning the expert's expected testimony, including the applicable standard of care, (2) identify the acts or omissions that the plaintiff alleges violated the standard of care, and (3) include an outline of the chain of causation between the violation of the standard of care and the plaintiff's damages.* These requirements do not modify the common-law causation standard any more than the statutory text did. They merely require that the expert affidavit—to the extent expert testimony is needed to prevent the jury from speculating—include information about the hornbook elements of negligence: . . . duty (standard of care), breach (violation), causation, and injury.

Id. at 431 (emphasis added) (citations and quotations omitted).

The principles the supreme court reiterated in *Rygwall* are not new. As the *Rygwall* court explained in its decision, these principles were first established in *Sorenson v. St. Paul Medical Center*—a decision the supreme court issued in 1990, shortly after the enactment of section 145.682—and have been uniformly upheld since then. *Rygwall III*, 6 N.W.3d at 431-32 (relying on *Sorenson v. St. Paul Ramsey Med. Ctr*., 457 N.W.2d 188 (Minn. 1990)).

Rygwall **Continued on page 17**

Rygwall **continued from Page 16**

In *Sorenson*, the issue before the supreme court on review of the district court's grant of summary judgment was whether the expert's affidavit "contained sufficient details concerning 'the substance of the facts and opinions' and a sufficiently precise 'summary' of the grounds for each opinion." 457 N.W.2d at 191. The defendant physicians in that case pointed to Minnesota Rule of Civil Procedure 26.02(d) as guidance when deciding section 145.682 challenges to the sufficiency of expert evidence and argued that, because Rule 26.02(d) requires a "detailed disclosure," and Minnesota's expert-disclosure statute is substantially similar to that procedural rule, section 145.682 similarly requires a "detailed disclosure." *Id*. But the supreme court expressly rejected that argument, concluding that "there is no authority for the proposition that Rule 26.02(d) actually requires a 'detailed disclosure.'" *Id*. Instead, the court noted that "[t]he 'substance' and 'summary' language of both the rule and the statute suggest a more general disclosure requirement." *Id*.

To comport with that requirement, the *Sorenson* court explained that plaintiffs must disclose expert testimony that "interpret[s] the facts and connect[s] the facts to conduct which constitutes malpractice and causation." *Id*. at 192. In other words, plaintiffs were expected to "set forth, by affidavit or answers to interrogatories, specific details concerning their expert's expected testimony, including the applicable standard of care, the acts or omissions that plaintiffs allege violated the standard of care and an outline of the chain of causation that allegedly resulted in damage . . . ." *Id*. at 193.

Following *Sorenson*, expert-identification affidavits were deemed insufficient if reports contained "empty conclusions" regarding necessary prima facie elements of a medical-malpractice claim. *Id*. at 193 (noting that, in future cases, plaintiffs must set forth specific details concerning their expert's expected testimony as to the accepted medical standard, any purported breach therefrom, and an outline of the chain of causation from that alleged breach to the claimed damages); see also *Stroud v. Hennepin Cnty. Med. Ctr.*, 556 N.W.2d 552, 556 (Minn. 1996) (affirming that an expert-identification affidavit, relying on the facts, must explain how the provider's alleged conduct caused the patient's claimed injury); *Lindberg v. Health Partners, Inc*., 599 N.W.2d 572, 577-78 (Minn. 1999) (affirming dismissal where expert affidavit failed to set forth the accepted medical standard, how the defendant allegedly departed from that standard, and outline the causal chain connecting the alleged negligent act or omission to the purported injury); *Anderson v. Rengachary*, 608 N.W.2d 843, 848 (Minn. 2000) (concluding that expert affidavit was deficient where expert failed to adequately describe the acts or omissions of the medical provider that allegedly violated the accepted medical standard and thereby caused the claimed injury); *Teffeteller v. Univ. of Minn*., 645 N.W.2d 420, 428 (Minn. 2002) (reiterating that a "meaningful disclosure is required setting forth the standard of care, the act or omissions violating that standard, and the chain of causation" (citations omitted)). Ultimately, the standard set forth in Sorenson and its progeny never changed.

Yet, because of the arguments raised by the parties in briefing to the Minnesota Supreme Court, the court expressly reaffirmed the standard that plaintiffs must meet to survive dismissal based on insufficient expert evidence:

[W]e reaffirm our holding in *Sorenson* that under section 145.682, when an expert opinion is necessary to allow the jury to draw reasonable inferences without speculating, a plaintiff in a medical malpractice case must submit an expert affidavit that "outlines a chain of causation." To satisfy that requirement, the expert affidavit must include an opinion on causation that is supported with reference to the specific facts in the record connecting the conduct of the defendant provider to the injury suffered by the harmed patient. To support a summary judgment motion in a medical malpractice case where expert testimony is needed, the expert must provide an opinion with proper foundation and enough information about the specific case to reassure the court that the jury will have sufficient information to draw a reasonable inference—without speculating—that the provider's conduct caused the plaintiff's injury. This is the same standard that applies to any plaintiff facing a summary judgment challenge to a negligence claim that requires expert testimony.

A review of the facts and the affidavits in our cases in the line from *Sorenson* to *Teffeteller* demonstrates that the affidavits in each case failed the basic test articulated in *Sorenson*. *We reaffirm that principle today*.

Rygwall III, 6 N.W.3d. at 434-35 (emphasis added). Consequently, the supreme court, in reaffirming the longstanding principles governing challenges to expert evidence on causation, expressly noted that "*in so stating, we are in no way suggesting any change in how we address proof of causation in routine common-law negligence cases.*" *Id*. at 435 (emphasis added).

Because the supreme court, after independently reviewing all evidence in the light most favorable to the trustee, determined that the emergency medicine expert adequately explained both "how" and "why" the group home's alleged negligence caused the resident's worsening condition and death, the supreme court concluded that the trustee raised a genuine issue of material fact as to causation that was sufficient to survive dismissal of her Complaint. *Id*. at 435-39. The supreme court, after conducting that de novo review, reversed the decision of the court of appeals, and remanded the matter to the district court for further proceedings consistent with its opinion. *Id*. at 439.

Following *Rygwall*, the bar to survive dispositive motion practice, whether brought under section 145.682 or for summary judgment, is no higher or lower than it always has

***Rygwall* Continued on page 18**

Rygwall **Continued from page 17**

been. Thus, any reading of *Rygwall* as evidencing a lessened burden of proof for expert-identification affidavits going forward would be utterly improper. The plain language of the Minnesota Supreme Court's decision makes clear that the standard upon which causation has always been and will continue to be weighed is unchanged. That standard can be summarized as follows: a qualified expert, whose opinion relies on proper foundation, must adequately explain both "how" and "why" the medical provider's alleged negligence caused the plaintiff's claimed injury, such that a court is satisfied that a jury will be able to decide liability without engaging in speculation or conjecture.

Indeed, the Minnesota Court of Appeals very recently affirmed a district court's grant of summary judgment based on a plaintiff's failure to establish causation by qualified expert testimony under *Rygwall's* guidance, and the Minnesota Supreme Court denied review of the appellate court's decision. In *Barsness v. Fairview Health Services*, a woman fell and hit her head after a post-partum nurse encouraged her to take a bath after giving birth. No. A23-1803, 2024 WL 3565772, *1 (Minn. App. July 29, 2024), *rev. denied* (Minn. Oct. 30, 2024). The plaintiff claimed that she developed post-concussion syndrome, vision problems, and a spinal injury as a result of that fall. *Id*.

During discovery, the plaintiff produced an expert-identification affidavit of a labor and delivery nurse, who opined that bathing after a delivery that required an epidural breached the accepted medical standard and that the breach at issue caused the plaintiff's purported injury. *Id*. at *2. After Fairview moved to dismiss the plaintiff's complaint under section 145.682 or, alternatively, for summary judgment for failure to establish causation by qualified expert evidence, the plaintiff produced two additional expert witness affidavits from her treating chiropractors. *Id*. Those affidavits opined that the plaintiff "was injured as a direct and proximate result of the incident alleged in the Complaint" and then listed the injuries those medical providers attributed to the plaintiff's fall. *Id*. After the hearing on Fairview's dispositive motions, the district court granted Fairview's motion to dismiss for failure to comply with the statutory requirements set forth in section 145.682 and summarily dismissed the plaintiff's complaint, because the plaintiff "failed to create a disputed issue of material fact" on causation and damages. *Id*.

Because the district court considered matters outside the expert-identification affidavits when ruling on Fairview's motions, the Minnesota Court of Appeals reviewed only the district court's decision as to the lack of existence of any genuine issue of material fact and did so de novo. *Id*. at *2-3. The court of appeals first examined whether expert testimony was necessary to establish causation and agreed that, under the facts at issue, "a layperson could not reasonably understand and make inferences concerning the connection between the breach of duty and injury" without expert testimony. *Id*. at *4 (quoting *Rygwall III*, 6 N.W.2d at 431). The court explained that a lay person would be unable to understand how an epidural might affect the body to the point of falling, how the fall at issue might have caused the specific injuries the plaintiff claimed to be experiencing, or how the plaintiff's pre-birth complaints differ from her alleged post-fall injuries if such claims were made in the absence of expert support. *Id*. Given the medical complexity of the plaintiff's alleged injuries, the court of appeals agreed that expert testimony was required to establish causation. *Id*. The court of appeals therefore went on to analyze whether the evidence in the record supported granting summary judgment.

On appeal, the plaintiff argued that her expert affidavits, when viewed together, sufficiently established causation because the affidavits stated that "there was a deviation from the standard of care," that "the deviation led to the fall and injury," and listed "the injuries [the experts] claim were a 'direct and proximate result' of her fall." *Id*. Relying on *Rygwall*, the plaintiff argued her expert affidavits were sufficient to survive summary judgment because expert-affidavit expectations "do[] not require that every link in [the] chain of causation be explicitly described and explained." *Id*. at *5. The court of appeals disagreed, explaining:

Recently, the Minnesota Supreme Court reviewed its own caselaw and clarified what information related to causation needs to be included in an expert affidavit for a plaintiff's medical-malpractice case to survive summary judgment. According to the supreme court, expert affidavits must lay enough foundation for their opinions on the cause of a plaintiff's injury to ensure a jury can decide the issue without speculating. The supreme court stated that,

To support a summary judgment motion in a medical malpractice case where expert testimony is needed, the expert must provide an opinion with proper foundation and *enough information about the specific case* to reassure the court that the jury will have sufficient information to draw a reasonable inference—without speculating—that the provider's conduct caused the plaintiff's injury.

Id. at *5 (quoting *Rygwall*, 6 N.W.3d at 430). In revisiting the supreme court's Rygwall decision, the court of appeals expressly rejected the plaintiff's contention that each link in the causal chain need not be established, pointing to the supreme court's instruction that "a finding of causation cannot be based upon mere speculation or conjecture." Id. (quoting *Rygwall*, 6 N.W.3d at 430). Rather, the court of appeals explained "*Rygwall* mirrors previous cases in which the supreme court has stated that expert affidavits cannot contain merely broad and conclusory statements as to causation." *Id*. (citations omitted). For that reason, expert disclosures must "provide an outline of the chain of causation between the breach and the injury." *Id*. (citing *Teffeteller*, 645 N.W.2d at 429).

Applying *Rygwall* and prior decisions upon which *Rygwall* relies, the court of appeals concluded that the expert

***Rygwall* Continued on page 20**

2025 ROSTER

THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

MINNESOTA CHAPTER

www.MinnesotaMediators.org

The following attorneys are recognized for

Excellence in the field of Alternative Dispute Resolution


Beth Bertelson
(612) 278-9832


Philip L. Bruner
(612) 332-8225


Patrick R. Burns
(612) 877-6400


Joseph Daly
(612) 724-3259

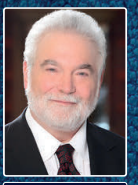

James Dunn
(651) 365-5118


Sheila Engelmeier
(612) 455-7723


Just. James Gilbert
(952) 767-0167


Hon. Sam Hanson
(612) 790-1244


Martin Ho
(612) 298-2839


Steve Kirsch
(612) 312-6519


Roger Kramer
(651) 789-2923


Donald McNeil
(952) 841-0206


Linda Mealey-Lohmann
(612) 791-2218


Antone Melton-Meaux
(612) 790-0386


Kristi Paulson
(612) 895-2210


Philip Pfaffly
(612) 349-5224

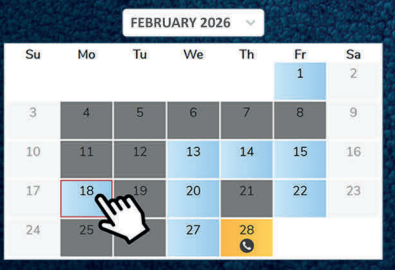

Mark Pilney
(651) 702-1414


Peter Pustorino
(952) 465-3088


Paul J. Rocheford
(612) 375-5937


James G. Ryan
(612) 338-3872


Doug Shrewsbury
(952) 428-9840



Check your preferred available dates or schedule appointments online, directly with Academy Members - for free.

Visit our national roster of 1000+ top neutrals at www.NADN.org

NADN is administrator for the DRI Neutrals Database

www.DRI.org/neutrals

dri Lawyers Representing Business.™

DRI CORNER

By Tony Novak, Larson King
MDLA DRI State Representative

Hello from DRI! I hope you are all finding time to plan our summer vacations and are as excited as I am for some warm weather. I also hope you are all finding some time away from your busy practices to focus on your professional development. We are all busy with the next pleading, deposition, or trial, but we need to remember to take time to think about our own long-term professional trajectory. Taking time to ask questions about the type of practice you want to have in 3/5/10 years can help focus your attention and energy on what steps you can take to help achieve those goals. I'm just as guilty of focusing so much on the present crisis or task that I sometimes forget to plan ahead and think of the bigger picture of my own practice.

So, I'd encourage all of you to take an hour or two to map out your professional development plan for the next year, including making sure to hold your calendars for rewarding events like MDLA's Trial Techniques Seminar in August or the DRI Annual Meeting in October. I'm planning to be at both and hope many of you can join me. Duluth in the summer and Chicago in the fall also sound pretty nice after a Minnesota winter that seems to keep hanging on.

I was excited to attend the DRI North Central regional meeting in Nashville this spring. It is always a fantastic opportunity to meet state and regional defense bar leaders and to share ideas for making our organizations stronger.

As always, if you are considering becoming a DRI member (or you've taken a break and want to re-engage with your DRI membership), please reach out with any questions. Both MDLA and DRI provide a diverse range of professional development opportunities, and I would love to share how membership with both groups can fit into any professional development plan.

***Rygwall* Continued from page 18**

to suffer as a result of the fall, nor did the affidavits explain "how" and "why" the fall caused those "specific injuries." *Id*. (citing *Teffeteller*, 645 N.W.2d at 429, n. 4 (articulating that the expert-affidavit requirement necessitates expert testimony illustrating "how" and "why" the alleged malpractice caused the claimed injury)). That evidence, without more, would require jurors to impermissibly speculate about causation and damages. Because the plaintiff's expert affidavits failed to establish "the causal link between the fall and said injuries[,]" the court of appeals affirmed the district court's grant of summary judgment in Fairview's favor. *Id*. at *6-7 ("[T]he evidence in the record is not sufficient to show that it was more probable than not that [the plaintiff's] injuries resulted from the alleged medical negligence."). The plaintiff petitioned the Minnesota Supreme Court for review of that decision, but the supreme court denied her petition in October 2024—further signaling that the standard remains unchanged.

CONCLUSION

Practically, *Rygwall* leaves both plaintiffs and defendants with the same procedural guardrails that have been guiding parties to tort claims commenced in this state since the 1980s. Plaintiffs must provide expert testimony to support their medical negligence claims in all but the most exceptional cases. Plaintiffs must then disclose expert-identification affidavits from medical providers who are qualified to render the opinions offered. And, upon receipt of those expert disclosures, defendants must evaluate the sufficiency of the proffered expert testimony and, should they conclude that the expert testimony fails to satisfy any element of a prima facie case of medical negligence, decide whether to pursue dismissal under section 145.682, summary judgment, or both—recognizing the distinct procedural differences between those mechanisms.

And importantly, regardless of the court's ultimate conclusions as to the sufficiency of the proffered expert evidence at the dispositive motion stage, a plaintiff's burden changes once trial begins. Indeed, at the trial stage, the question is no longer whether an affidavit provides a sufficient causal chain to survive dismissal and, for that reason, courts no longer view all evidence in the light most favorable to the plaintiff. Rather, the issue to be determined at trial is whether a plaintiff, through qualified expert testimony, put forth *actual evidence* sufficient to establish her medical-malpractice claim. In other words, at trial, the question is: is the *actual evidence* the plaintiff presented to the jury sufficient to allow the jury to decide, without conjecture or speculation, that the defendant's negligence in fact caused the claimed injury? *Rygwall* in no way suggests that the Minnesota Supreme Court intended the summary-judgment standard to supplant the evidentiary burden plaintiffs must satisfy at trial.

Stated simply, *Rygwall* addresses the hypothetical question of whether a jury might be able to decide liability based on proffered expert evidence. But once a plaintiff puts in her evidence at trial, the question is no longer hypothetical. Instead, the issue is whether the plaintiff actually provided sufficient evidence to the jury to allow the jury to conclude—without resorting to speculation or conjecture—that the defendant's negligence more probably than not caused the plaintiff's claimed injury. Reliance on a mere outline, with all inferences drawn in the plaintiff's favor, is no longer proper; a casual chain linking the purported negligence to the claimed damages must instead be established by actual testimony from a qualified expert. Stated differently, *Rygwall* does not change the standard to survive dismissal or any other evidentiary burden plaintiffs must satisfy at trial.

MINNESOTA LAWYERS MUTUAL'S

Defense Program

INSURANCE SPECIFICALLY DESIGNED
AND RATED FOR DEFENSE FIRMS

Members of MDLA have access to MLM's Defense Program offering a lawyers' professional liability policy with preferred pricing and enhanced coverage.

MINNESOTA DEFENSE LAWYERS ASSOCIATION

Two Ways to Save

- **Preferred pricing** for firms with substantial insurance defense practice
- **A 5% membership credit -** Credit applied to premium on a per attorney basis

Enhanced Coverage*

- **Additional Claim Expense -** Benefit equal to one-half of the policy single limit, up to a maximum of $250k per policy period
- **Increased Supplementary Payment Limit -** From $10k to $25k - this includes loss of earnings if you attend a trial at our request and coverage for costs and fees incurred defending disciplinary claims
- **Aggregate Deductible -** Caps the total amount the insured will have to pay in total deductibles regardless of the number of claims in a single policy period

*Visit www.mlmins.com for qualification details

"We are proud that the MDLA has selected MLM as a partner to offer coverage to its membership. MLM has long been recognized as a financially stable and consistent carrier for Minnesota lawyers, and we're thrilled to work in partnership with MDLA to benefit members of the association."

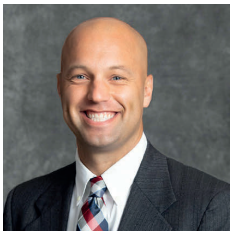
Paul Ablan, President and CEO
Minnesota Lawyers Mutual

Protect your firm with the ***premium savings*** and ***enhanced coverage*** offered to you as a member of the MDLA.

Apply for a quote online!

www.mlmins.com

MINNESOTA LAWYERS MUTUAL INSURANCE COMPANY



Chris Siebenaler
612-373-9641
chris@mlmins.com

013122022

InQuis

Evidence-Based Rehab Experts

WHAT WE OFFER

- Life Care Planning
- Vocational Rehabilitation
- Wage Loss Analysis
- Litigation Consulting

Our consultants are experienced and credentialed life care planners and vocational rehabilitation counselors, in addition to being nationally-recognized experts in their respective fields.

Their knowledge of their areas of expertise, as well as experience testifying in and out of court, allows InQuis to facilitate optimum outcomes grounded in evidence.

Specialized Backgrounds Among Our Consultants:

- Traumatic/Acquired Brain Injury
- Spinal Cord Injury
- Amputations
- Burns
- Musculoskeletal/Soft Tissue Injury
- Chronic Pain Management
- Pediatric Trauma and Care

LET'S CONNECT

843.352.9418

www.inquisglobal.com

jwooddy@inquisglobal.com

MINNESOTA Defense

Minnesota Defense Lawyers Association
9505 Copley Dr.
Indianapolis, IN 46260
(612) 750-8606
www.mdla.org