

**SELECTED REFERENCES TO  
MINNESOTA MOTOR VEHICLE  
LIABILITY LAW**

**JARDINE**

ATTORNEYS AT LAW

**LOGAN &**

P.L.L.P.

**O'BRIEN**

8519 Eagle Point Boulevard • Suite 100 • Lake Elmo, Minnesota 55042-8624  
Firm: (651) 290-6500 • Fax (651) 223-5070  
Website: [www.jlola.com](http://www.jlola.com)

## NEGLIGENCE

Negligence is the failure to use reasonable care. Reasonable care is that care which a reasonable person would use under like circumstances.

### VIOLATION OF A TRAFFIC STATUTE IS PRIMA FACIE EVIDENCE OF NEGLIGENCE

Minn. Stat. § 169.96(b) (2006); and *Wong v. Am. Fam. Mut. Ins. Co.*, 576 N.W.2d 742, 744 n.1 (Minn. 1998).

## TRAFFIC STATUTE

### A. RIGHT OF WAY

- (1) At an uncontrolled intersection where two cars approach at the same time, the motorist on the left shall yield the right of way to the motorist on the right.
- (2) When approached by an emergency vehicle with flashing lights, motorists shall yield the right of way, stop at the nearest right side curb and remain in that position until the emergency vehicle has passed.
- (3) When turning left, crossing or entering a roadway, the turning, crossing or entering motorist must yield to others.
- (4) Speeding motorists forfeit the right of way which they otherwise may have been afforded to them under the right of way statutes.
- (5) Motorists in the right lane must yield the right of way to a transit bus merging from the left.

See Minn. Stat. § 169.20 (2006).

### B. SPEED

- (1) No motorist shall drive at a speed greater than is reasonable and prudent.
- (2) Speed shall be reduced to avoid collisions.
- (3) Speeds in excess of limits shall be prima facie evidence that the speed is unreasonable, not prudent and not lawful, or negligence *per se* within a city.
- (4) A motorist is required to reduce his speed when:
  - approaching an intersection, hill crest or railroad crossing,
  - approaching or going around a curve, traveling upon any narrow, winding roadway, or
  - a special hazard exists with respect to pedestrians, other traffic, or weather.

See Minn. Stat. § 169.14 (2006); and *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224-25 (Minn. 1998).

### C. SIGNALING

The driver of a vehicle may not make a turn at an intersection, turn a vehicle to enter a private road or driveway, or make a lane change unless and until the movement can be made with reasonable safety after giving an appropriate signal. A signal of intention to turn right or left shall be given continuously not less than the last 100 feet traveled by the vehicle before turning. See Minn. Stat. § 169.19 (2006).

### D. FOLLOWING TOO CLOSELY

A motorist shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicle, the traffic and highway conditions. See Minn. Stat. § 169.18, subd. 8 (2006); and *VanTassel v. Hillerns*, 311 Minn. 252, 254-55, 248 N.W.2d 313, 315 (Minn. 1976).

### E. PEDESTRIANS

- (1) Pedestrians and motorists owe each other an equal and reciprocal duty of reasonable care.
- (2) A pedestrian must obey traffic control signals and must cross the roadway within a crosswalk.
- (3) A pedestrian walking along a roadway shall:
  - Walk on sidewalks where provided, or
  - Otherwise walk along the left side of the roadway.
- (4) A pedestrian is prohibited from hitchhiking or soliciting business on a roadway.
- (5) Motorists must stop to yield the right of way to a pedestrian crossing within any crosswalk or at an intersection. However, no pedestrian shall abruptly enter the path of a vehicle which is so close that it is impossible for a motorist to yield.

See Minn. Stat. §§ 169.21 and 169.22 (2006).

### F. BICYCLISTS

- (1) Bicyclists are subject to the traffic statutes.
- (2) Bicyclists owe motorists an equal and reciprocal duty of reasonable care.
- (3) Bicyclists shall only carry the number of riders for which the bicycle is designed and equipped.
- (4) Bicyclists shall drive on the right side of the roadway.

- (5) Bicyclists shall not carry anything which creates an inability to keep one hand on the handlebars.
- (6) Each bicycle must be equipped with proper brakes and, at night, each bicycle must be equipped with a headlight and reflective devices on the front and rear.

See Minn. Stat. § 169.222 (2006).

## G. CHILDREN

- (1) Where children are known, or are reasonably expected to be in the vicinity, care commensurate with the greater hazard created by their presence or probable presence becomes the reasonable standard of care for a motorist.
- (2) A child driving a car is held to the same duty of reasonable care as an adult driving under the same circumstances.

See *Toetschinger v. Ihnot*, 312 Minn. 59, 71-72, 250 N.W.2d 204, 211 (1977); and *Miller v. State*, 306 N.W.2d 554, 555 (Minn. 1981).

## H. MOTORCYCLISTS

- (1) Motorcyclists are subject to the traffic statutes.
- (2) Foot rests, horn and rear-view mirrors are required on all motorcycles.
- (3) Eye protection is required for all motorcyclists.
- (4) Drivers and passengers under 18 years of age must wear a helmet.
- (5) A motorcycle is entitled to full use of a traffic lane and no other motor vehicle may deprive the motorcycle of such use.
- (6) Two motorcycles may operate abreast in a lane of travel.
- (7) A motorcycle passenger must be tall enough to reach both foot rests on the motorcycle and only ride upon a permanent and designated seat on the motorcycle.

See Minn. Stat. § 169.974 (2006).

## I. PASSING/OVERTAKING

- (1) A motorist may overtake and pass another vehicle only when the left lane is clearly visible and is free from oncoming traffic for a sufficient distance ahead.
- (2) The overtaking or passing motorist must always return to the right side of the roadway before coming within 100 feet of any motorist approaching from the opposite direction.

- (3) A motorist has a duty not to pass where hills, curves, or other similar obstructions interfere with the motorist's view.

See Minn. Stat. § 169.18 (2006); and *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998).

## J. TRAFFIC CONTROLS

- (1) Motorists must look and obey traffic signs and signals.
- (2) A motorist with a green light must yield the right-of-way to other vehicles and pedestrians lawfully within the intersection or adjacent crosswalk.
- (3) At a stop sign or light, motorists are required to stop at a stop line or, if none, at a place where the motorist may effectively observe approaching traffic, before entering an intersection.

See Minn. Stat. § 169.06 (2006).

## K. RESPONSIBILITY FOR VEHICLE MAINTENANCE

All motor vehicles shall be equipped with brakes that can adequately control the movement of, and stop and hold the motor vehicle. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle. See Minn. Stat. § 169.67 (2006).

## L. SEAT BELT USE REQUIRED

A seat belt shall be worn by a motorist, front seated passengers and by children between the ages of three and eleven. The failure to use a seat belt is inadmissible as evidence at trial. See Minn. Stat. §§ 169.685, subd. 4 and 169.686, subd. 1 (2006).

## M. CHILD SAFETY SEATS

Every motorist transporting a child under the age of four shall properly fasten the child in a child restraint system. See *State v. Lucas*, 589 N.W.2d 91, 92-93 (Minn. 1991). Failure to properly use the restraint system is inadmissible as evidence at trial. See Minn. Stat. § 169.685 (2006). However, a child may bring an action against his parents for negligent installation of a child passenger restraint system. See *Harrison v. Harrison*, 733 N.W.2d 451 (Minn. 2007).

## LIABILITY DEFENSES

### A. STATUTE OF LIMITATIONS

- (1) A negligence claim arising from an automobile accident must be commenced within six years.
- (2) When the person is under 18 years old, is insane, is in the military or is imprisoned, the statute of limitations is tolled until one year after the injured person turns 18, becomes competent, leaves the military or is released from prison.
- (3) When the claim is for wrongful death, the claim must generally be commenced within three years, except:
  - (a) The six-year contract statute of limitations applies to underinsured and uninsured motorist claims;
  - (b) A claim for indemnity by a No-Fault insurer against a residual liability insurer is not covered by the Wrongful Death Act and is subject to a six-year statute of limitations.

See Minn. Stat. §§ 541.05, 541.07, 541.15 and 573.02 (2006); *Mikalas v. Parott*, 684 N.W.2d 458 (Minn. 2004); and *State Farm v. Liberty Mut. Ins. Co.*, 678 N.W.2d 719 (Minn. App. 2004).

### B. TORT THRESHOLDS

Before bringing a claim for damages, the claimant must establish at least one of the following:

- (1) A permanent injury;
- (2) Permanent disfigurement;
- (3) Disability for 60 cumulative days;
- (4) \$4,000 in medical expenses, excluding diagnostic tests and other non-remedial treatment; or
- (5) Death.

See Minn. Stat. § 65B.51, subd. 3 (2006).

### C. CONTRIBUTORY NEGLIGENCE

Minnesota is a comparative fault state. When a person fails to exercise due care, he is negligent, and that negligence can be compared to the negligence of others. If the injured party is found to be more than 50% at fault, he is barred from recovery.

### D. THE EMERGENCY RULE

When a motorist confronted with an emergency makes a choice that is not necessarily the safest choice, the motorist's choice will not be negligent unless that choice

is so hazardous that a reasonable person would not have made it under similar circumstances.

The emergency must not have been brought about by the motorist seeking to be excused by the emergency rule.

See *Berg v. Nelson*, 559 N.W.2d 722, 724 (Minn. App. 1997); *Trudeau v. Sina Contracting Co.*, 241 Minn. 79, 62 N.W.2d 492 (1954); and *Zickrick v. Strathern*, 211 Minn. 329, 1 N.W.2d 134 (1941).

### E. AN UNAVOIDABLE ACCIDENT

Unanticipated mechanical failures, unexpected weather or unexpected road conditions may provide a basis for an unavoidable accident defense. The presence of altered road conditions requires an exercise of care by the motorist commensurate with the known road conditions. The concept of an unavoidable accident has restricted application. It is normally a fact question whether, under the circumstances, the motorist's action constituted negligence. See *Tuckner v. Chouinard*, 407 N.W.2d 723 (Minn.App.1987); and *Marshall v. Galvez*, 480 N.W.2d 358 (Minn.App.1992).

### F. CAUSATION

Causation links negligence with the injury. The negligence must be a substantial factor in bringing about the injury. A "but-for" analysis is insufficient. See *Lubbers v. Anderson*, 539 N.W.2d 398 (Minn. 1995).

### G. GOOD SAMARITAN IMMUNITY

The emergency care, advice, assistance or transportation of an injured person by non-emergency personnel is a protected activity under the immunity provisions of the Good Samaritan law, unless the person acts in a willful and wanton or reckless manner.

The Good Samaritan statute is meant to encourage lay persons to help those in need, even when there is no legal obligation to do so, by providing immunity from liability claims arising out of an attempt to assist a person in peril.

See Minn. Stat. § 604A.01; and *Swenson v. Waseca Mut. Ins. Co.*, 653 N.W.2d 794 (Minn. App. 2002).

## CLAIMS

### A. OWNER'S LIABILITY

An owner of a vehicle is vicariously liable for the acts of a permissive user; a permissive user shall be deemed the agent of the owner of such vehicle. *See* Minn. Stat. § 169.09 subd. 5a (2006).

Under the No-Fault Act, a lessee is considered an "owner" of a motor vehicle when the motor vehicle is subject to a lease having an initial term of six months or longer. *See* Minn. Stat. § 65B.43, subd. 4 (2000).

### B. VICARIOUS LIABILITY

- (1) Generally—Liability is incurred when one is responsible for the acts of another through the theory of agency or special relationship.
- (2) Employer/Employee—
  - (a) An employer will be vicariously liable if an employee's wrongful act is committed within the scope of his employment.
  - (b) An employer shall indemnify an employee for civil damages if the employee was acting in the performance of his employment duties and was not guilty of intentional misconduct, willful neglect or bad faith, and has not been indemnified by another.

*See* Minn. Stat. §§ 169.09, subd. 5a and 181.970 (2006); *Nadeau v. Melin*, 260 Minn. 369, 110 N.W.2d 29 (1961); and *Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d 11 (Minn. 1979).

### C. NEGLIGENT SUPERVISION / ENTRUSTMENT

A claim may be based on the failure to adequately supervise another. The claim is founded on the principle that had the supervision been reasonable, the accident would not have happened.

A negligent entrustment claim may arise where one person entrusts a vehicle to another knowing that the other is an incapable, incompetent, or a reckless driver.

*See* *Axelson v. Williamson*, 324 N.W.2d 241 (Minn. 1982); *Johnson v. Johnson*, 611 N.W.2d 823 (Minn. App. 2003); and Restatement (Second) of Torts § 390.

### D. LOSS OF CONSORTIUM

Consortium involves the mutual and reciprocal privileges and duties of the marital relationship. A consortium claim is based on the same liability as a negligence action, but is a separate claim with a separate injury. Failure to join the consortium claim to the personal injury claim where the consortium claim was available when the personal injury claim was tried bars the consortium claim. Because the consortium claim is separate, while still derivative, its inclusion in an action or a settlement is important to prevent multiple claims.

*See* Minn. Stat. § 573.02, subd. 1 (2006); *Thill v. Modern Erecting Co.*, 284 Minn. 508, 170 N.W.2d 865, 866-67 (1969); and *Brandt v. State*, 428 N.W.2d 412 (Minn. App. 1988).

### E. EMPLOYEE'S THIRD PARTY ACTION

An injured employee has the right to bring a third-party action when injured in a vehicle accident that arose out of and in the course and scope of his employment. An injured employee may make a claim for pain and suffering, general disability, embarrassment, disfigurement, anguish and loss of earning capacity against a third-party tortfeasor when that employee is not fully compensated by the employer/insurer under the Workers' Compensation Act.

*See* Minn. Stat. § 176.061, subd. 5 (2006); *Folstad v. Eder*, 467 N.W.2d 608 (Minn.1991); and *Sayre v. McGough Construction Co., Inc.*, 580 N.W.2d 503 (Minn.App. 1998).

### F. WORKERS' COMPENSATION SUBROGATION

An employer paying workers' compensation benefits to an employee is entitled to recover from the at-fault motorist, except for those damages not compensable under the Workers' Compensation Act.

When an employer is not notified of settlement negotiations with a third-party tortfeasor, any settlement that results in the release of an employer's rights may be void and the employer shares in the settlement proceeds according to Minn. Stat. § 176.061, subd. 6.

*See* Minn. Stat. § 176.061; *Folstad v. Eder*, 467 N.W.2d 608, 611 n. 3 (Minn.1991); *Tyroll v. Private Label Chemicals, Inc.*, 505 N.W.2d 54, 59 n. 6 (Minn.1993); *Paine v. Water Works Supply Co.*, 269 N.W.2d 725, 731 (Minn.1978); *Zurich American Insurance Company v. Bjelland*, 710 N.W.2d 64 (Minn.2006); and *Adams v. DSR Sales, Inc., et al*, 727 N.W.2d 139 (Minn. 2007).

## G. COMMERCIAL VEHICLE INDEMNIFICATION

If there is a commercial vehicle involved, the No-Fault insurer will have an indemnity claim against the insurer of the at-fault commercial vehicle. The recovery is based upon the percentage of fault of the commercial vehicle. The insurer of the commercial vehicle is only liable for reasonable and necessary expenses causally related to the motor vehicle accident. The claim must be brought through inter-company arbitration. *See* Minn. Stat. § 65B.53 (2006).

## H. WRONGFUL DEATH

When death is caused by a wrongful act, an action may be maintained by any blood relative of the decedent who suffers compensable damages. Damages may be awarded to fairly compensate a decedent's survivors for the pecuniary loss arising from the decedent's death, including the reasonable value of loss of advice, comfort and protection which would have been provided by the decedent. *See* Minn. Stat. § 573.02, subd. 1 (2006); and *Wynkoop v. Carpenter*, 558 N.W.2d 527, 529-30 (Minn. App. 1997).

## I. DRAM SHOP/LIQUOR LIABILITY

The standard that imposes criminal liability for purposes of driving a vehicle while intoxicated (a blood alcohol level over .08) is not the same standard that will satisfy the requirement of "obvious intoxication" for dram shop liability. Obvious intoxication for purposes of a dram shop claim requires proof that a driver exhibit outward manifestations of intoxication which would put a person using reasonable powers of observation on notice that such a person has become intoxicated. Obvious intoxication does not require proof of any specified amount of drinking or any degree of intoxication. *See Hartwig v. Loyal Order of Moose*, 253 Minn. 347, 364, 91 N.W.2d 794 (1958); *Strand v. Village of Watson*, 245 Minn. 414, 72 N.W.2d 609 (1959); and *Murphy v. Hennin*, 264 Minn. 457, 199 N.W.2d 489 (1963).

A plaintiff must serve a notice of claim upon a liquor vendor within 240 days of the date of entering into an attorney/client relationship. In the case of claims for contribution or indemnity, the notice must be served upon a liquor vendor within 120 days after the injury occurs or within 60 days after receiving written notice of a claim for contribution or indemnity, whichever is applicable. *See* Minn. Stat. § 340A.80, subd. 2.

## DAMAGES

### A. ECONOMIC DAMAGES

- (1) Damages to date:
  - (a) Recovery may be allowed for the value of healthcare expenses that are necessary up to the time of the verdict.
    - Medical supplies
    - Hospitalization
    - Healthcare services of every kind

*Note:* The value of diagnostic x-rays are determined separately for tort threshold purposes.

*See* CIVJIG 91.15 (2008); *Stout v. AMCO Ins. Co.*, 645 N.W.2d 113 (Minn. 2002); and *Foust v. McFarlane*, 698 N.W.2d 24, 35-36 (Minn.Ct.App.2005).

- (b) Recovery may be allowed for past damages for loss of earnings. Loss of earnings may include the following:
  - Earnings
  - Salary
  - Value of working time

The fact that the injured person actually received their salary for all or part of the time is not to be considered in deciding the value of the injured person's lost working time.

- (2) Future Damages:
  - (a) Recovery may be allowed for the value of reasonable and necessary medical expenses: medical, surgical, x-ray, optical, dental, chiropractic, rehabilitative services (including prosthetic services), prescription drugs, ambulance and all other medical expense transportation, sign interpreting/language translation services, hospital, extended care and nursing services reasonably certain to be necessary for treatment in the future.
  - (b) Loss of earning capacity compensates a person for a loss or diminution of the power to earn in the future and is based on factors such as age, work habits, length of loss of earning capacity, skill, experience, training and years of earning expectancy compared to plaintiff's life expectancy. Loss of earning capacity damages that are *reasonably* certain to

occur may be awarded. A plaintiff has a duty to act *reasonably* to prevent or reduce their loss of earnings.

It is important to note that a plaintiff is not required to meet any tort threshold in order to solely recover economic losses. Minn. Stat. § 65B.51, subd. 3 states that tort thresholds only apply with respect to non-economic detriment claims.

*See* Minn. Stat. §§ 65B.44 and 65B.51 (2006); CIVJIG 91.15, 91.20, 91.30, 91.35 (2008); and *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980).

## B. NON-ECONOMIC DAMAGES

### (1) Damages to date:

Recovery may be allowed for non-economic past damages for bodily and mental harm. Items included for past damages for bodily and mental harm are the following:

- Pain
- Disability
- Disfigurement
- Embarrassment
- Emotional Distress

Exact values are difficult to place upon these non-economic damages that are not necessarily decided on a daily or hourly basis.

### (2) Future Damages:

Recovery may be allowed for non-economic future damages that are reasonably certain to be experienced in the future, including:

- Pain
- Disability
- Disfigurement
- Embarrassment
- Emotional Distress

## C. PUNITIVE DAMAGES CLAIM

Punitive damages may be awarded when a fact-finder finds by clear and convincing evidence that the tortfeasor acted with a deliberate disregard for the rights and safety of others.

Punitive damages may not be alleged in the initial complaint. The plaintiff must bring a motion for leave to amend the complaint. If the court finds *prima facie* evidence in support of the motion, the court shall grant leave to amend to assert a claim for punitive damages.

*See* Minn. Stat. §§ 549.191 and 549.20 (2006); and CIVJIG 94.10 (2008).

## D. ALCOHOL RELATED SITUATIONS

A claim for punitive damages may be allowed when there is evidence that the accident was caused by a motorist:

- (1) with a blood alcohol concentration of .08 or more;
- (2) who was under the influence of a controlled substance; or
- (3) who was under the influence of alcohol and refused to take a chemical test.

Furthermore, blood tests which reveal blood alcohol concentration of .08 or more may be admissible in evidence, if relevant. A criminal conviction is admissible in evidence. *See* Minn. Stat. § 169A.76 (2006).

## E. AGGRAVATION CASES

A person who has a pre-existing disability or medical condition at the time of an accident is entitled to damages for aggravation of that pre-existing disability or medical condition directly caused by the collision.

Damages are limited to those that are over and above the damages that would have normally followed from the pre-existing disability or medical condition without the collision. *See* CIVJIG 91.40 (2008).

## F. EGGSHELL PLAINTIFF

A person with a pre-existing disability is entitled to recover even though the injuries or damages differ from the injuries or damages the collision would have caused a person without that pre-existing disability or medical condition. *See* CIVJIG 91.41 (2008).

## G. DIVISIBILITY OF DAMAGES

Parties whose negligence concur to cause injury are jointly and severally liable, even if they did not act in concert. When there are independent negligent acts and it is reasonably possible to determine which damages were caused by each act, a defendant is only liable for those damages caused by the party's own negligence. *See Canada By and Through Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997).

## H. DUTY TO MITIGATE

An injured person has a duty to act reasonably in obtaining treatment and caring for the injury. Failure by the claimant to exercise such reasonable care will reduce

his recovery. *See Couture v. Novotny*, 297 Minn. 305, 211 N.W.2d 172, 174 (1973). Failure to mitigate may only be considered in determining damages to which the plaintiff is entitled. *See* Minn. Stat. § 604.01, subd. 1 (2006); and CIVJIG 91.45 and 91.47 (2008).

## AFTER VERDICT

### A. OFFSETS

When liability is determined in a civil action and damages include an award for past medical and past wages, the tortfeasor is entitled to offset No-Fault benefits paid and collateral sources for which no subrogation interest has been asserted. *See* Minn. Stat. §§ 65B.51, subd. 1, and 548.36, subds. 2 and 3 (2006); and *Wertish v. Salvhus*, 558 N.W.2d 258 (Minn. 1997).

The No-Fault offset must be made before the damages are reduced by the injured party's comparative fault. *See* Minn. Stat. § 65B.51, subd. 1 (2006). A post-trial motion determines the amount of the No-Fault and/or collateral source offset. *See Suchy v. Illinois Farmers Insurance Company*, 574 N.W.2d 93 (Minn. App. 1998). In order to be considered, such collateral source motion shall be filed within ten days of a verdict. *See* Minn. Stat. §§ 548.36 and 65B.51 (2006); and *Rush v. Jostock*, 710 N.W.2d 570 (Minn. App. 2006), *review denied* (May 24, 2006).

### B. LIMITATION ON JOINT LIABILITY

In 2003, the legislature amended the statute on joint liability. For all claims arising after August 1, 2003, joint and several liability only applies where a defendant is greater than 50% at fault. *See* Minn. Stat. § 604.02.

### C. REALLOCATION OF LIABILITY

Minnesota law allows for reallocation of damages when the court determines a party's share of a judgment is uncollectible. *See* Minn. Stat. § 604.02, subd. 2 (2006); and *Schneider v. Buckman*, 433 N.W.2d 98, 103 (Minn.1988).

### NOTICE

The reference materials contained in this guide have been abridged from a variety of sources and should not be construed as legal advice. Please consult legal counsel with any questions concerning this guide.

Copyright © 2009  
JARDINE, LOGAN & O'BRIEN, P.L.L.P.  
8519 Eagle Point Boulevard, Suite 100  
Lake Elmo, Minnesota 55042

651-290-6500 / phone  
651-223-5070 / fax  
jlolaw@jlolaw.com / email  
www.jlolaw.com / website