

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



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## NEGLIGENCE

Negligence is the failure to use reasonable care. Reasonable care is the care which a reasonable person uses under like circumstances. Also, violation of a traffic statute is prima facie evidence of negligence. Minn. Stat. § 169.96(b) (2012); *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, the 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 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.

Minn. Stat. § 169.20, subs. 1, 7 (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/her 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.

Minn. Stat. § 169.14 (2012); *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. Minn. Stat. § 169.19 (2012).

### 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. Minn. Stat. § 169.18, subd. 8 (2012); *VanTassel v. Hillerms*, 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.

Minn. Stat. §§ 169.21 and 169.22 (2012).

### F. BICYCLISTS

1. Bicyclists are subject to the traffic statute.
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 that are visible from a distance of at least 500 feet.

Minn. Stat. § 169.222 (2012).

## 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.

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

## H. MOTORCYCLISTS

1. Motorcyclists are subject to the traffic statute.
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.

Minn. Stat. § 169.974 (2012).

## 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.

Minn. Stat. § 169.18 (2012); *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998).

## J. TRAFFIC CONTROLS

1. Motorists must look at 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, before entering the intersection.

Minn. Stat. § 169.06, subds. 4, 5 (2012).

## K. RESPONSIBILITY FOR VEHICLE MAINTENANCE

All motor vehicles shall be equipped with brakes that can adequately stop, hold, and control the movement of the vehicle, including two separate means of applying the brakes. 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. Minn. Stat. § 169.67 (2012).

## L. SEAT BELT USE REQUIRED

A seat belt shall be worn by a motorist and passengers. The failure to use a seat belt is inadmissible as evidence at trial. Minn. Stat. §§ 169.685, subd. 4 and 169.686, subd. 1 (2012).

## M. CHILD SAFETY SEATS

Every motorist transporting a child under the age of eight and shorter than 4'9" shall properly fasten the child in a child restraint system. Failure to properly use the restraint system is inadmissible as evidence at trial. Minn. Stat. § 169.685 (2012). However, a child may bring an action against his/her parents for negligent installation of a child passenger restraint system. *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 injured 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.

Minn. Stat. §§ 541.05, 541.07, 541.15, and 573.02 (2012); *Mikalas v. Parott*, 684 N.W.2d 458 (Minn. 2004); *State Farm v. Liberty Mut. Ins. Co.*, 678 N.W.2d 719 (Minn. Ct. 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.

Minn. Stat. § 65B.51, subd. 3 (2012).

## C. CONTRIBUTORY NEGLIGENCE

Minnesota is a comparative fault state. When a person fails to exercise due care, he/she 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/she is barred from recovery. Minn. Stat. § 604.01; CIVJIG 28.15.

## 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.

*Berg v. Nelson*, 559 N.W.2d 722, 724 (Minn. Ct. App. 1997); *Trudeau v. Sina Contracting Co.*, 241 Minn. 79, 62 N.W.2d 492 (1954); *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.

*Tuckner v. Chouinard*, 407 N.W.2d 723 (Minn. Ct. App. 1987); *Marshall v. Galvez*, 480 N.W.2d 358 (Minn. Ct. 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. *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.

Minn. Stat. § 604A.01 (2012); *Swenson v. Waseca Mut. Ins. Co.*, 653 N.W.2d 794 (Minn. Ct. 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. Minn. Stat. § 169.09, subd. 5a (2012).

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. Minn. Stat. § 65B.43, subd. 4 (2008).

## **B. VICARIOUS LIABILITY**

1. Generally, vicarious liability is incurred when one is responsible for the acts of another through either a special relationship or the theory of agency.
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/her employment duties and was not guilty of intentional misconduct, willful neglect or bad faith, and has not been indemnified by another.

Minn. Stat. §§ 169.09, subd. 5a and 181.970 (2012); *Nadeau v. Melin*, 260 Minn. 369, 110 N.W.2d 29 (1961); *Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d 11 (Minn. 1979).

Minnesota statute § 169.09(5a) imposing liability on motor vehicle owners for operation of vehicle by any other person with owner's consent is preempted by Graves Amendment, which abolishes vicarious liability for rental vehicle owners, to the extent it seeks to impose vicarious liability on the owner of a rental vehicle. *Meyer v. Nwokedi*, 777 N.W.2d 218 (Minn. 2010).

## **C. NEGLIGENCE 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 reckless driver.

*Axelsson v. Williamson*, 324 N.W.2d 241 (Minn. 1982); *Johnson v. Johnson*, 611 N.W.2d 823 (Minn. Ct. App. 2000); 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.

Minn. Stat. § 573.02, subd. 1 (2012); *Thill v. Modern Erecting Co.*, 284 Minn. 508, 170 N.W.2d 865, 866-67 (1969); *Brandt v. State*, 428 N.W. 2d 412 (Minn. Ct. App. 1988).

## **E. EMPLOYEE'S THIRD PARTY ACTION**

Minnesota statute § 176.061 preserves the rights of injured employees to recover tort damages against third-party tortfeasors. A subrogation interest is afforded to the employer in a third-party proceeding. The employee will not obtain double recovery from the tortfeasor for benefits already awarded. An injured employee may, however, recover monetary damages from two different sources. The statutory distribution formula applied to proceeds from a third-party claim provides an injured employee with the opportunity for a full common-law recovery against the third party, who is not subject to the benefits and burdens of the workers' compensation system. The employer's subrogation interest in a third-party proceeding vests when an employee accepts workers' compensation benefits from an employer.

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. Employer recovery is limited to any workers' compensation benefits "paid and payable", and is recovered from the common law tort damages for which the third-party tortfeasor is found liable.

An injured employee must choose between receiving workers' compensation benefits from the employer and a common-law negligence action against a third party when the employer and the third party are engaged in furtherance of a common enterprise. A common enterprise exists if all of the following three factors are met:

1. The employers are engaged on the same project;
2. The employees are working together on a common activity; and

3. In such fashion that they are subject to the same or similar hazards.

Minn. Stat. § 176.061, subds. 1, 3, 4, 5, 6 (2012); *LeDoux v. M.A. Mortenson Co.*, 835 N.W.2d 20 (Minn. Ct. App. 2013); *Perez v. Intern. Business Machines (IBM)*, 2011 WL 1828019; *Zurich Am. Ins. Co. v. Bjelland*, 710 N.W.2d 64, 65 (Minn. 2006); *U.S. Specialty Ins. Co. v. James Courtney Law Office, P.A.*, 662 N.W.2d 907, 912 (Minn. 2003); *Sayre v. McGough Construction Co., Inc.*, 580 N.W.2d 503, 505 (Minn. Ct. App. 1998); *Allstate Ins. Co. v. Eagle-Picher Ind., Inc.*, 410 N.W.2d 324, 327 (Minn. 1987); *Janzen v. Land O'Lakes, Inc.*, 278 N.W.2d 67, 69 (Minn. 1979); *Lambertson v. Cincinnati Welding Corp.*, 312 Minn. 114, 121, 257 N.W.2d 679, 685 (1977); *McCourtie v. U.S. Steel Corp.*, 253 Minn. 501, 93 N.W.2d 552 (1958).

## 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.

Where an employee settles an action against a third-party tortfeasor upon claims to which the employer is subrogated and neglects to notify the employer, the employer has the option to accept a credit out of the employee's settlement from these claims.

Minn. Stat. § 176.061 (2012); *Folstad v. Eder*, 467 N.W.2d 608, 611 n. 3 (Minn. 1991); *Paine v. Water Works Supply Co.*, 269 N.W.2d 725, 731 (Minn. 1978); *Zurich Am. Ins. Co. v. Bjelland*, 710 N.W.2d 64 (Minn. 2006); *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. Minn. Stat. § 65B.53 (2012).

## 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. Minn. Stat. § 573.02, subd. 1 (2012); *Wynkoop v. Carpenter*, 558 N.W.2d 527, 529-30 (Minn. Ct. 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 intoxication for dram shop liability. Intoxication for purposes of a dram shop claim requires proof that an individual exhibit outward manifestations of intoxication which would put a person exercising reasonable care on notice that the individual has lost control of their actions or motions to a significant extent. Intoxication does not require proof of any specific amount of drinking or any degree of intoxication. Further, the intoxication must be the proximate cause of the injury. Minn. Stat. § 340A.801 (2012); *Mjos v. Village of Howard Lake*, 287 Minn. 427, 178 N.W.2d 862 (1970); *Kryzer v. Champlin American Legion No. 600*, 494 N.W.2d 35 (Minn. 1992); *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367 (Minn. 2008).

In a claim for damages, 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 sixty days after receiving written notice of a claim for contribution or indemnity, whichever is applicable. Minn. Stat. § 340A.802, subd. 2 (2012); *Oslund v. Johnson*, 578 N.W.2d 353 (Minn. 1998).

## 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.

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

CIVJIG 91.15 (2013); *Stout v. AMCO Ins. Co.*, 645 N.W.2d 113 (Minn. 2002).

- b. Recovery may be allowed for past damages for loss of earnings. Loss of earnings may include the following: earnings; salary; and value of work 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. CIVJIG 91.20.

2. Future damages:

- a. Recovery may be allowed for the value of reasonable and necessary future healthcare 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.

decided on a daily or hourly basis.

CIVJIG 91.10; *Danydowycz v. Quady*, 300 Minn. 436, 440, 220 N.W.2d 478, 481 (1974); *Berg v. Gunderson*, 275 Minn. 420, 432, 147 N.W.2d 695, 703 (1966).

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; and emotional distress.

CIVJIG 91.25; *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980).

### 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. Minn. Stat. §§ 549.191 and 549.20 (2012); 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. Minn. Stat. § 169A.76 (2012).

### E. AGGRAVATION AND DUTY TO MITIGATE

A person who has a pre-existing condition at the time of an accident is entitled to damages for aggravation of that condition directly caused by the collision, even if the

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.

Minn. Stat. §§ 65B.44 and 65B.51 (2012); CIVJIG 91.15, 91.30, 91.47, 91.55 (2013); *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980).

### B. NONECONOMIC 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; and emotional distress.

Exact values are difficult to place upon these non-economic damages that are not necessarily

injuries or damages differ from those that would have been suffered by a person without that condition. 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. CIVJIG 91.40 and 91.41 (2008).

Failure by the claimant to act reasonably in caring for his/her injury will reduce his/her recovery. *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. Minn. Stat. § 604.01, subd. 1a (2012); CIVJIG 91.45 and 91.47 (2008).

## F. 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. *Canada By and Through Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997).

## AFTER VERDICT

### A. NO-FAULT OFFSET

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. Minn. Stat. § 65B.51, subd. 1 (2012).

The No-Fault offset must be made before the damages are reduced by the injured party's comparative fault. Minn. Stat. § 65B.51, subd. 1. A post-trial motion determines the amount of the No-Fault offset. Although the No-Fault statute is silent as to how long a party has to file a motion, the Collateral Source statute is instructive and requires such a motion shall be filed within ten days of a verdict. Minn. Stat. §§ 548.251 and 65B.51 (2012); *Wertish v. Salibus*, 558 N.W.2d 258 (Minn. 1997).

### B. COLLATERAL SOURCE OFFSET

Minnesota law provides that plaintiffs' damages awards will be reduced by the amount of the plaintiff's collateral sources. Minn. Stat. § 548.251. After the fact-finder has rendered a verdict, the judge determines the amount of collateral sources that were paid for the plaintiff's benefit or were otherwise available to the plaintiff. This includes insurance payouts and negotiated discounts between the insurance company and the healthcare provider. The

judge then calculates the amounts that have been paid by or on behalf of the plaintiff to secure a collateral source benefit for the two-year period prior to the action's accrual. This amount is deducted from the collateral source amount, and the resulting final amount is deducted from the plaintiff's damages award. *Swanson v. Brenster*, 784 N.W.2d 264 (Minn. 2010).

In a motor vehicle liability action, the collateral source statute reduces the plaintiff's verdict by the amount of any pre-verdict underinsured motorist (UIM) benefits received where the UIM insurer waived subrogation. *Russell v. Haji-Ali*, 826 N.W.2d 216 (Minn. Ct. App. 2013).

## C. LIMITATION ON JOINT LIABILITY

In 2003, the legislature amended the statute on joint liability. Generally, when two or more persons are severally liable, contributions to awards are in proportion to the percentage of fault attributable to each except when:

- A person's fault is greater than 50%;
- Two or more parties act in accordance with a common scheme or plan;
- A person commits an intentional tort; or
- A person's liability is otherwise enumerated by the statute.

Minn. Stat. § 604.02 (2012).

## D. REALLOCATION OF LIABILITY

Minnesota law allows for reallocation of damages when the court determines a party's share of a judgment is uncollectible, so long as such a motion is made within one year after the judgment is entered. Minn. Stat. § 604.02 (2012).

Non-parties to a lawsuit are also covered by § 604.02 as long as they were a party to the incident at issue. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68 (Minn. 2012). A pending decision from the Minnesota Supreme Court is expected to settle whether the remaining defendants are reallocated the entire uncollectible amount or that amount reduced to the remaining defendant's percentage fault.

### 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.