

## 2016 Legislative Update

By Tessa M. McEllistrem

The 2016 session of the Minnesota legislature provided many alterations and additions to state statutes. Below is a summary of the most significant legislation, which will impact crime, governmental entities, and elections.

### Controlled Substances

S.F. No. 3481 changes Chapter 160 of the Minnesota Statutes to increase the threshold amounts for certain cocaine and methamphetamine crimes but to lower the thresholds for certain marijuana crimes. It also establishes new mandatory minimum prison sentences for crimes that involve a substantial amount of controlled substances and expands the conditional release program for non-violent drug offenders.

### Police Body Cameras

Chapter 171 of the Minnesota Statutes has been amended to determine the date of classification system collected by police body cameras and provides for the retention and destruction of the data. It seeks to clarify which data could become public when law enforcement agency officers are using a portable recording system. The new law seeks to keep data collected by the portable recording system as private data unless the data documents the discharge of a firearm by a peace officer in the course of duty, the subject of the

data request that the data be accessible, data that is involved in active criminal investigations, public personnel data, and data that documents the use of force by a peace officer that results in substantial bodily harm.

### Elections

Chapter 162 of the Minnesota Statutes requires a presidential nomination primary to be held in Minnesota on a date that would be jointly selected by the party chairs of the major political parties. Each voter must request the ballot of the party from whom they wish to vote and the party choice is recorded and becomes part of the public information list. The results of each primary bind the party election of delegates.

### Broadband Equality

Chapter 189 allocates \$35 million in 2017 to a new grant program titled "Border-to-Border Broadband" to get broadband to underserved areas. Additionally, funds can be awarded to areas with a significant proportion of low-income households. This was put in place

## Congratulations !

JLO congratulates the following on their selection as a **2016 Minnesota Super Lawyer: Joseph E. Flynn, Lawrence M. Rocheford, and Leonard J. Schweich.**

Congratulations are also extended to those selected as **2016 Minnesota Rising Stars: Elisa M. Hatlevig, and Vicki A. Hruby.**

These honors are reserved for those lawyers who exhibit excellence in practice. *Super Lawyer* and *Rising Stars* are a Thomson Reuters business.

to help bring broadband to areas with slow or no service.

### Sanitary Sewer Systems

Minn. Stat. Ch. 442A, which relates to creating or dissolving sanitary sewer districts, has been amended to get rid of the requirement to include a justification for the inclusion, or exclusion, of parcels. Additionally, notice can now be done in a newspaper of general circulation rather than through the state register. Additionally, notice to affected parcel owners can be done through mail or email now. ●



## Collateral Source Rules: Knowing the Difference Between Minnesota and Wisconsin

By Abby J. Richardson

Collateral source rules can vary from state to state. In some states, tort plaintiffs may receive a “double recovery” which requires the tortfeasor to pay the entire compensation amount regardless of other compensation sources. Other states have reduced the amount tortfeasors owe depending on compensation made by third-parties on behalf of the plaintiff. Knowing the applicable collateral source rule is important for clients and tortfeasors alike, as the amount of recovery for a plaintiff and the out-of-pocket payments by a tortfeasor can vary greatly.

In Wisconsin, courts follow the common-law rule governing collateral sources. This means that the amount of damages awarded to a person injured because of another individual’s tortious conduct is not reduced when the injured party receives compensation from another source, such as insurance or sick leave. *Payne v. Bilco Co.*, 54 Wis.2d 424, 433, 195 N.W.2d 641, 647 (1972). Although many states argue this allows for a “double recovery” by plaintiffs, the Wisconsin Supreme Court identified three policy justifications for their collateral source rule. “First, is to deter a tortfeasor’s negligent conduct ‘by placing the full cost of the wrongful conduct on the tortfeasor.’ Second, is to fully compensate the injured party. Third, is to allow the insured to receive the benefit of the premiums paid for coverage that he or she had the foresight to purchase.” *Orlowski v. State Farm Mut. Auto. Ins. Co.*, 2012 WI 21, ¶ 18, 339 Wis.2d 1, 810 N.W.2d 775 (internal citations omitted). Based on this concept, a governmental agency, such as the State, can recoup from the tortfeasor

amounts it expended for plaintiff’s medical services, but the collateral source rule will “prevent the tortfeasor from benefiting from third-party payments made for the medical services rendered to an injured Plaintiff.” *Ellsworth v. Schelbrock*, 2000 WI 63, ¶ 20, 235 Wis.2d 678, 611 N.W.2d 764. This outcome supports Wisconsin’s stance that the collateral source rule is intended to place upon the tortfeasor full responsibility for the loss he or she has caused. *Id.*

Minnesota also followed the common-law collateral source rule until 1986. However, in 1986 the Minnesota Legislature passed the collateral-source statute, codified as Minn. Stat. § 548.251, in order to prevent some double recoveries by plaintiffs. *See* Act of Mar. 25, 1986, ch. 455, § 80, 1986 Minn. Laws 878, 878-79; *Imlay v. City of Lake Crystal*, 453 N.W.2d 326, 331 (Minn. 1990). The statute changed the rule on collateral sources and damage awards, essentially providing that a plaintiff cannot recover money damages from the defendant if the plaintiff has already received compensation from certain third parties or entities. *Swanson v. Brewster*, 784 N.W.2d 264, 269 (Minn. 2010).

Contrary to Wisconsin, Minnesota allows an award to a plaintiff to be off-set by collateral sources. Collateral sources are defined as payments related to the injury or disability in question made to the plaintiff, or on the plaintiff’s behalf up to the date of the verdict, by a Federal, State or local income disability or workers’ compensation act or other program providing medical expenses, disability payments, or similar benefits; health, accident and sickness, or automobile accident insurance or liability insurance that provided health benefits or income disability coverage (except life insurance benefits) and payments made pursuant to social security or pensions. Minn. Stat. § 548.251, subd. 1. Procedurally, the statute pre-

vents double recovery through a post-trial reduction by the district court of a plaintiff’s award. Therefore, following a verdict, and by motion of the defendant, Minnesota courts shall reduce any award by the amount of any collateral sources received by the plaintiff. *See* Minn. Stat. § 548.251, subd. 2, 3. However, the plaintiff is entitled to a collateral source benefit for insurance premiums paid in the two-year period prior to the accrual of the action. Minn. Stat. § 548.251, subd. 2(2). ●

### Congratulations

Congratulations to **Larry Rocheford** and **Abby Richardson** for successfully obtaining summary judgment on behalf of the Plaintiff in the case *United Fire & Casualty Co. v. Christensen Construction & Design Co., Inc., et al.* United Fire brought a Declaratory Judgment action against its insured arguing that there was no coverage under the insured’s insurance policy for claims brought against it in an underlying lawsuit. The underlying lawsuit arose out of construction work the insured contracted to do. United Fire argued that the four claims arising from the underlying lawsuit against the insured were not covered under the policy or were excluded from coverage based on the policy’s exclusions. United Fire argued that the indemnification claim did not satisfy the definition of “property damage”, as required for grant of coverage under the policy and the claim for breach of contract: incomplete work was not caused by an “occurrence”, as required under the policy for a grant of coverage. Further, United Fire argued that the other two counts, breach of contract: delay and breach of contract: incomplete work were excluded from coverage under the policy’s Damage to Impaired Property exclusion. Based on those arguments, the judge granted summary judgment in favor of United Fire.

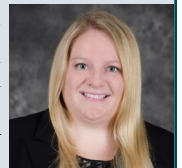
## Firm News

### Jardine, Logan & O'Brien welcomes new associates Keith Czechowicz and Sarah Gronemeyer.



Keith earned his J.D. from William Mitchell College of Law in January 2016. He previously worked as a law clerk and attorney at a Minneapolis based insurance defense firm. Keith practices in the area of civil litigation, with a particular emphasis on Minnesota workers' compensation defense litigation. Outside of the office, Keith enjoys spending time in the out-of-doors with his wife and daughter.

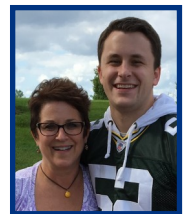
Before joining the firm, Sarah clerked for the Honorable Jana M. Austad in Cass County. While attending law school she completed a judicial externship in Anoka County District Court and clerked for a bankruptcy and social security law firm. Sarah earned her B.A. in History from the University of Northern Iowa before receiving her J.D., *cum laude*, from Hamline University School of Law in 2014. Sarah will be working in the areas of Construction Law, Government Liability, and Civil Litigation.



### Congratulations to JLO Attorney Keith Czechowicz and JLO Paralegal Debra Patterson!



Keith and Deb defeated seven other teams to become the winners of the 2016 JLO Packer/Viking tailgate bean bag toss tournament.



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## About the Firm

Jardine, Logan & O'Brien, P.L.L.P., is a mid-sized civil litigation law firm that has handled some of the region's largest and most difficult disputes with outstanding results for clients. Litigation has always been our primary focus. With trial attorneys admitted in Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa, our firm has the ability and expertise to manage cases of any size or complexity. We are trial lawyers dedicated to finding litigation solutions for our clients. View our website at [www.jlolaw.com](http://www.jlolaw.com) to obtain additional information. Please call us to discuss a specific topic.

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