MINNESOTA LAW SUMMARY

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MINNESOTA SUBSTANTIVE LAW

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Statute of Limitation ▪ Personal Injury ▪ Property Damage ▪ Wrongful Death ▪ Professional Negligence ▪ Contract ▪ UIM/UM Claims ▪ Government Entities ▪ Statute of Repose ▪ Product Liability ▪ Construction Warranties	**Personal Injury**: 6 years. Minn. Stat. § 541.05, subd. 1 (5). **Injury to Property**: 6 years. Minn. Stat. § 541.05, subd. 1 (4). **Wrongful Death**: 3 years. Minn. Stat. § 573.02, subd. 1. **Professional Negligence Resulting in Death**: 3 years from the date of death. Minn. Stat. § 573.02, subd. 1. **Contract**: 6 years. Minn. Stat. § 541.05, subd. 1 (1). **Uninsured Motorist**: 6 years from the date of the accident. *Weeks v. Am. Fam. Ins. Co.*, 580 N.W.2d 24 (Minn. 1998). **Underinsured Motorist**: 6 years. Does not run from the date of the accident, rather, from the date of the settlement or judgment against the tortfeasor. *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401 (Minn. 2000). **No-Fault PIP**: 6 years from the date the cause of action accrues. May include a coverage provision terminating eligibility for benefits after a prescribed period of lapse of disability and medical treatment, which period shall not be less than 1 year. *Entzion v. Illinois Farmers Ins. Co.*, 675 N.W.2d 925 (Minn. Ct. App. 2004). **Claim against Government Entity**: 180 days after the alleged loss or injury is discovered. Must submit a notice stating the time, place and circumstances, the names of any government employees known to be involved, and the amount of compensation or other relief demanded. Minn. Stat. § 3.736, subd. 5. A municipality shall be liable only in accordance with the applicable statute and where there is no such statute, every municipality shall be immune from liability. Minn. Stat. § 466.03, subd. 1. **Declaratory Actions**: There is no statute of limitations for declaratory judgment actions. *State v. Joseph,* 622 N.W.2d 358 (Minn. Ct. App. 2001). **Indemnity Actions for Improvement to Real Property**: Actions may not be brought more than two years from the accrual of the cause of action. Cause of action accrues upon payment of the final judgment, arbitration award, or settlement arising out of the unsafe and defective condition. Minn. Stat. § 541.051, subd. 1(b).

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	Statute of Repose: A cause of action arising out of improvement to real property is barred ten years after the date of substantial completion. Minn. Stat. § 541.051. **Notice of Possible Claim (Product Liability)**: 6 months from the date of entering into an attorney-client relation with the claimant in regard to the claim. Minn. Stat § 604.04. **Strict Liability (Product Liability)**: 4 years. Minn. Stat § 541.05, subd. 2. **Breach of Contract for Sale**: 4 years after the cause of action has accrued. Minn. Stat § 336.2-725(1). **Useful Life of Product Defense**: It is a fact question. The useful life of a product is not necessarily the life inherent in the product, but is the period during which with reasonable safety the product should be useful to the user. The period shall be determined by reference to the experience of users of similar products, taking into account present conditions and past developments. **New Home Construction Warranties**: ➢ 1 year free from defects caused by faulty workmanship and defective materials due to non-compliance with building standards; ➢ 2 years free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems due to non-compliance with building standards; ➢ 10 years free from major construction defects in the load-bearing portion of the dwelling due to non-compliance with building standards; ➢ Warranty claims begin to run at the time of breach or after the builder is notified of the problem and either refuses or is unable to honor the warranty. This event triggers the two year statute of limitations regardless of discovery of the damage. After August 1, 2004 no warranty action may be brought more than 12 years from completion of the improvements. Minn. Stat § 372A.02; Minn. Stat § 541.051, subd. 4.
Punitive Damages Insurable? Generally, no.	Minnesota law generally prohibits insurance for punitive damages, with limited exceptions. Minn. Stat § 60A.06, subd. 4 does authorize the sale of insurance covering vicarious liability for punitive and exemplary damages. *Wojciak v. Northern Package Corp*., 310 N.W.2d 675 (Minn. 1981); Minn. Stat. § 60A.06, subd. 4.

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Bad Faith claims allowed? Yes. Both first and third party cases allowed.	A party making a first party bad faith claim will need to move the court for an amended complaint to add the alleged bad faith claim (similar to a punitive damages claim). The burden is on the insured to prove bad faith against the insurance company. The plaintiff must establish: (1) that there was no reasonable basis for the insurance company's denying plaintiff's claim for benefits under this policy; AND (2) that the insurer, in denying the claim, either knew or recklessly failed to ascertain that the claim should have been paid. Minn. Stat § 604.18, subd. 2(a). The Minnesota Court of Appeals recently interpreted the first prong of Minnesota Statute section 604.18, subdivision 2(a) as follows: "[A]n insurer must conduct a reasonable investigation and fairly evaluate the results to have a reasonable basis for denying an insured's first-party insurance-benefits claim. If, after a reasonable investigation and fair evaluation, a claim is fairly debatable, an insurer does not act in bad-faith by denying the claim." *Peterson v. Western National Mut. Ins. Co.*, 930 N.W.2d 443, 450 (Minn. Ct. App. 2019). The court may award the following taxable costs for a violation of the good faith statute: (1) an amount equal to one-half of the proceeds awarded that are in excess of an amount offered by the insurer at least ten days before the trial begins or $250,000, whichever is less; and (2) reasonable attorney fees actually incurred to establish the insurer's violation of this section. Attorney fees may not exceed $100,000. Minn. Stat § 604.18, subd. 3. In Minnesota, a liability insurer, having assumed control of the right of settlement of claims against its insured, may become liable in excess of its undertaking under the terms of the policy if it fails to exercise "good faith" in considering offers to compromise the claim for an amount within the policy limits. This duty to exercise "good faith" includes an obligation to view the situation as if there were *no policy limits* applicable to the claim, and to *give equal consideration* to the financial exposure of the insured. *Short v. Dairyland Ins. Co.*, 334 N.W.2d 384, 387 (Minn. 1983); *Lange v. Fidelity & Cas. Co*., 185 N.W.2d 881 (Minn. 1971); *Larson v. Anchor Cas. Co.*, 82 N.W.2d 376 (Minn. 1957).
Disclosure State? Yes, per statute.	An insurer must disclose the coverage and limits of an insurance policy within 30 days after the information is requested in writing by a claimant. Minn. Stat § 72A.201, subd. 4.
The Standard for Negligence	Negligence is defined as "the failure to exercise such care as persons of ordinary prudence usually exercise under similar circumstances." Jury Instruction 25.10; *Mingo v. Extrand*, 230 N.W. 895, 896 (Minn. 1930). The four basic elements in a negligence case in Minnesota are: duty, breach of duty, injury or harm, and proximate cause. Foreseeability is also an important consideration. In negligence cases, duty is an obligation

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	to conform to a particular standard of conduct toward another. A legal duty may be imposed by common law or by statute. *Vaughn v. Nw. Airlines, Inc.*, 558 N.W.2d 736 (Minn. 1997); *Scott v. Indep. Sch. Dist. No. 709*, 256 N.W.2d 485 (Minn. 1977); *Lewellin v. Huber*, 465 N.W.2d 62 (Minn. 1991). Generally, a person does not owe a duty of care to another person if the harm is caused by a third party's conduct. *Fenrich v. The Blake School*, 920 N.W.2d 195, 201 (Minn. 2018). There are two exceptions to this: (1) when a special relationship exists between a plaintiff and a defendant and the harm to plaintiff is foreseeable; (2) when defendant's own conduct created a foreseeable risk of injury to a foreseeable plaintiff. *Id.* at 201–02. In *Fenrich*, the Court analyzed the "own conduct" exception to duty to reverse the court of appeal's grant of summary judgment. 920 N.W.2d at 196. The Court determined defendant, The Blake School, could potentially be liable to the general public for the negligence of one of its students. *Id.* at 207. In making this determination, the Court cited recent cases, including *Senogles* and *Montemayor* (addressed in part herein), to reiterate that close cases involving the (normally) legal issue of duty of care in the context of summary judgment require that the foreseeability issue be tried to a jury. *Id.* at 206. Factual, or but-for, causation is insufficient to establish liability in Minnesota. *George v. Estate of Baker*, 724 N.W.2d 1, 10-11 (Minn. 2006). There is proximate cause between a negligent act and an injury when the act is one which the party ought, in the exercise of ordinary care; to have anticipated was likely to result in injury to others. *Lietz v. N. States Power Co.*, 718 N.W.2d 865, 872 (Minn. 2006). For a claim of professional negligence, a physician-patient relationship is not a necessary element. *Warren v. Dinter*, 926 N.W.2d 370 (Minn. 2019). Instead, when there is no express physician-patient relationship, courts should turn to the traditional inquiry of whether a duty has been created by foreseeability of harm. *Id.* at 375.

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Comparative Fault Statute (modified comparative) Modified 51%.	Contributory fault does not bar recovery if the contributory fault was *not greater* than the fault of the person against whom recovery is sought, but any damages allowed must be diminished in proportion to the amount of fault attributable to the person recovering. Minn. Stat. § 604.01, subd. 1. The court may, and when requested by any party shall, direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each party and the court shall then reduce the amount of damages in proportion to the amount of fault attributable to the person recovering. Minn. Stat. § 604.01, subd. 1. In actions involving MN Statutes, chapter 604 the court shall inform the jury of the effect of its answers to the comparative fault question and shall permit counsel to comment thereon, unless the court is of the opinion that doubtful or unresolved questions of law or complex issues of law or fact are involved which may render such instruction or comment erroneous, misleading or confusing to the jury. Minn. R. Civ. P. 49.01(b).
Joint and Several Liability? Yes.	When two or more persons are severally liable, contributions to awards are in proportion to the percentage of fault attributable to each. Persons whose fault is greater than fifty percent, persons who act together, or persons who commit an intentional tort are jointly and severally liable for the whole award. Minn. Stat. § 604.02, subd. 1. A defendant is severally liable when that person's liability is separate from another person's liability so that an injured person may bring an action against one defendant without joining the other liable person. The common law provides that two or more persons are severally liable at the instant multiple defendants commit an act that causes a single, indivisible injury to a plaintiff. *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713 (Minn. 2014). “Joint liability” is liability shared by two or more parties. Minn. Stat. § 604.02, subd. 1. The difference between “jointly and severally liable” and only “severally” is that a jointly and severally liable defendant is responsible for the entire award, whereas a "severally liable" defendant is responsible for only his or her equitable share of the award. *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 718 (Minn. 2014).
Common Scheme or Plan? Yes.	Parties may be jointly and severally liable for a whole award if the parties acted in a “common scheme or plan” resulting in injury. Minn. Stat. § 604.02, subd. 1.

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	Minnesota looks to Wisconsin's interpretation of "common scheme or plan," because Minnesota's comparative fault statute is based on Wisconsin's comparative negligence statute. *Riley v. Lake*, 203 N.W.2d 331, 339 (Minn. 1972). Wisconsin defines "common scheme or plan" in the context of "concerted action," which is what the Minnesota District Judges Association suggests as a definition for "common scheme or plan." 4 Minn. Dist. Judges Ass'n., *Minnesota Practice-Jury Instruction Guides, Civil*, CIVJIG Introductory Notes, Cat. 28 Note 1, p. 5 (6th ed. 2014). Three factual predicates are necessary to show "common scheme or plan:" (1) there must be an explicit or tacit agreement among the parties to act in accordance with a mutually agreed upon scheme or plan, but parallel action alone is insufficient to show a common scheme or plan; (2) there must be mutual acts committed in furtherance of that common scheme or plan that are tortious acts; and (3) the tortious acts that are undertaken to accomplish the common scheme or plan must be the acts that result in damages. *Richards v. Badger Mut. Ins. Co.*, 749 N.W.2d 581, 595 (Wis. 2008). Something more than causal negligence is required for parties to act in a concerted action. For example, the parties must know of the plan and its purpose and take affirmative steps to encourage the achievement of the tortious result. *See Lind v. Slowinski*, 450 N.W.2d 353, 357 (Minn. Ct. App. 1990).
Last Clear Chance considered? No. Use Comparative Fault Analysis.	The doctrine of last clear chance is abolished. Minn. Stat. § 604.01, subd. 1(a).
Assumption of Risk	Minnesota law recognizes two types of assumption of the risk: primary and secondary. The Minnesota Supreme Court recently held the doctrine of implied primary assumption of risk does not apply to a claim of negligence for injuries caused by recreational downhill skiing and snowboarding. *Soderberg v. Anderson*, 922 N.W.2d 200 (Minn. 2019). Further, the Minnesota Supreme Court also declined to apply the doctrine of implied primary assumption of risk to preclude liability for injuries arising out of the operation and patronage of bars. *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 191 (Minn. 2019). In determining this, the Court reiterated that a bar owner has a duty to exercise reasonable care under the circumstances to protect patrons from injury. *Id.* There is no jury instruction recommended for primary or secondary assumption of risk. Jury Instruction 28.25 & 28.30.

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	Primary assumption of the risk arises when parties have voluntarily entered a relationship in which plaintiff assumes well-known, incidental risks. As to those risks, the defendant has no duty to protect the plaintiff and, thus, if plaintiff's injury arises from an incidental risk, the defendant is not negligent. Plaintiff undertakes a primary assumption of risk when, with knowledge and appreciation of the risk, the plaintiff voluntarily engages in that risk, rather than avoiding it. A finding of primary assumption of the risk is rare in Minnesota, because it only applies in limited circumstances. *Renswick v. Wenzel*, 819 N.W.2d 198 (Minn. Ct. App. 2012); *Olson v. Hansen*, 216 N.W.2d 124 (Minn. 1974). Secondary assumption of the risk "is a type of contributory negligence where the plaintiff voluntarily encounters a known and appreciated hazard created by the defendant without relieving the defendant of his duty of care with respect to such hazard." *Armstrong v. Mailand*, 284 N.W.2d 343, 349 (Minn. 1979). The elements of both primary and secondary assumption of the risk are (a) knowledge of the risk; (b) an appreciation of the risk; and (c) a choice to avoid the risk but voluntarily chose to chance the risk. The manifestations of acceptance and consent dictate whether primary or secondary assumption of the risk is applicable, while the wisdom and reasonableness of the plaintiff's actions are not factors. *Andren v. White-Rodgers Co., Div. of Emerson Electric Co.*, 465 N.W.2d 102, 104–05 (Minn. Ct. App. 1991). When the facts are undisputed and reasonable people can draw only one conclusion, assumption of the risk is a question of law for the court. *Schroeder v. Jesco, Inc.*, 209 N.W.2d 414, 417 (Minn. 1973). The *Springrose* doctrine also applies here and holds that implied assumption of risk, in its secondary sense as an affirmative defense in tort actions, is to be limited to those situations in which the voluntary encountering of a known and appreciated risk is unreasonable and is to be considered a phase of contributory negligence, to be submitted with and apportioned under comparative negligence statute. *Springrose v. Willmore*, 192 N.W.2d 826 (Minn. 1971).
Dog Bite Laws	If a dog attacks or injures any person who is acting peaceably, without provocation, in any place where the person may lawfully be, the owner of the dog is liable to the person attacked or injured in the full amount of the injury. "Owner" includes any person that is harboring or keeping a dog, but the owner is primarily liable. Minn. Stat. § 347.22. A person "harboring" a dog, so as to come within the statutory definition of "owner" under the animal owner liability statute (Minn. Stat. § 347.22), is a person who affords lodging, shelters, or gives refuge to a dog for a limited purpose or time. However, harboring must involve something more than a meal of mercy to a stray

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	dog or the casual presence of a dog on someone's premises. *Anderson v. Christopherson*, 816 N.W.2d 626, 632-33 (Minn. 2012). The phrase "injures" in the statute includes a dog's affirmative but non-attacking behavior which injures a person who is immediately implicated by such non-hostile behavior. *Anderson v. Christopherson*, 816 N.W.2d 626, 630 (Minn. 2012). "Provocation" is voluntary conduct by the plaintiff-victim that exposes the person to a risk of harm from the dog, where the plaintiff-victim had knowledge of the risk. A plaintiff-victim who voluntarily provokes a dog in this manner is not entitled to recover damages for the dog attack. *Engquist v. Loyas*, 803 N.W.2d 400 (Minn. 2011); *Fake v. Addicks*, 47 N.W. 450 (Minn. 1890). Provocation focuses on the plaintiff-victim's conduct and requires both the plaintiff's direct knowledge of the danger and that the plaintiff-victim voluntarily exposed herself to that danger. *Engquist v. Loyas*, 803 N.W.2d 400 (Minn. 2011). The dog owner's liability statute imposes absolute liability on any dog owner whose dog attacks or injures another. Liability is absolute. It makes no difference that the dog owner may have used reasonable care; negligence is beside the point. Past good behavior of the dog is irrelevant. Neither the common law affirmative defenses nor statutory comparative fault are available to the defendant dog owner. *Engquist v. Loyas*, 803 N.W.2d 400 (Minn. 2011). Common law allows the comparative-fault statute to be used when allocating fault for negligent conduct between a dog owner and a co-tortfeasor. *Clark v. Connor*, 843 N.W.2d 785 (Minn. Ct. App. 2014).
Slip/Trip & Fall Laws	The following four elements are necessary for recovery: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of that duty being the proximate cause of the injury. *Louis v. Louis*, 636 N.W.2d 314 (Minn. 2001). A possessor of property has a duty to an entrant to use reasonable care to protect him or her from unreasonable risk of harm (caused by the condition of the premises or the activities on the premises). An entrant on another's property had a duty to use reasonable care for his or her own safety while on the premises. Jury Instruction 85.25; *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001).

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	"Reasonable care" is the care you would expect a reasonable person to use in the same or similar circumstances. Jury Instruction 85.25. A plaintiff must prove that a landowner has actual or constructive knowledge of a dangerous condition in order to establish a landowner's duty to use reasonable care. *Louis v. Louis*, 636 N.W.2d 314, 317 n.1 (Minn. 2001). A landowner is not liable to his invitee for physical harm caused on his property if it caused by known or obvious dangers unless the landowner should have anticipated the harm despite its known or obvious nature. *Sutherland v. Barton*, 570 N.W.2d 1, 7 (Minn. 1997). A condition is not obvious unless both the condition and the risk are apparent to and would be recognized by a reasonable man in the position of the visitor, exercising ordinary perception, intelligence, and judgment. *Louis v. Louis*, 636 N.W.2d 314, 321 (Minn. 2001); Restatement (Second) of Torts § 343A. In *Senogles*, the Court declined to adopt the blanket rule that Minnesota landowners owe no duty of care to a child entrant if the child enters the land accompanied by a parent or guardian. *Senogles v. Carlson*, 902 N.W.2d 38 (Minn. 2017). On the contrary, the Court recognized that such a rule ignores articulated Minnesota precedent that instead operates on a comparative fault framework that contemplates justice for all parties. *Id.* at 48. Minnesota law establishes that a landowner generally has a continuing duty to use reasonable care for the safety of all entrants. *Id.* at 42. However, a landowner is not liable to an invitee when the danger is known or obvious to the invitee, unless the landowner should anticipate the harm despite such knowledge or obviousness. *Id.* In determining the obviousness of the danger, a child's past experience informs an objective test: > The standard of conduct required of the child is that which it is reasonable to expect of children of like age, intelligence, and experience…Likewise to be taken into account are the circumstances under which the child has lived, and his experience in encountering particular hazards, or the education he has received concerning them. If the child is of sufficient age, intelligence, and experience to understand the risks of a given situation, he is required to exercise such prudence in protecting himself, and such cation for the safety of others, as is common to children similarly qualified.

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	Id. at 44. Considering this standard, the Court declined "to adopt a categorical rule that the danger of swimming unattended in any Minnesota river, lake, or pool is necessarily obvious to all children, no matter how young and inexperienced." *Id.* at 47.
Snow /Ice Removal Required of Property Owner? Yes, in reasonable time after the end of a storm.	It is elementary that an owner and possessor of land are under an affirmative duty to exercise reasonable care in maintaining his property in a reasonably safe condition for visitors on the premises. However, absent extraordinary circumstances, a business or other inviter may await the end of a storm and a reasonable time thereafter before removing ice and snow from sidewalks and steps. Specific time requirements vary by city ordinance. *Hedglin v. Church of St. Paul of Sauk Centre*, 158 N.W.2d 269 (Minn. 1968).
Landlord/Tenant Laws	In every lease of residential premises, the landlord or licensor covenants that the premises and all common areas are fit for the use intended by the parties, that the premises will be kept in reasonable repair during the term of the lease or license, except when the disrepair has been caused by irresponsible conduct of the tenant, that the premises will be reasonably energy efficient, and that the premises will be maintained in compliance with the applicable health and safety laws, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant. The parties to a lease or license of residential premises may not waive or modify the covenants imposed above. The statutory covenants of habitability found in Minnesota Statute Section 504B.161(1)(a) do not support a negligence cause of action by a tenant against a landlord for breach of duty to repair and maintain the common areas of the leased premises. Minn. Stat. § 504B.161, subd. 1; *Wise v. Stonebridge Communities, LLC*, 927 N.W.2d 772 (Minn. Ct. App. 2019). In Minnesota, a landlord who has not agreed to repair the leased premises has only a duty to warn a tenant of a defective condition if the landlord knows or should have known of the danger, and if the tenant, given due care, would not discover it. *Broughton v. Maes*, 378 N.W.2d 134, 136 (Minn. Ct. App. 1985); *Bills v. Willow Run I Apartments*, 547 N.W.2d 693, 695 (Minn. 1996). The landlord may agree with the tenant that the tenant is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. No such agreement, however, may relieve the landlord of the duty to maintain common areas of the premises. Minn. Stat. § 504B.161, subd. 2. A tenant or occupant may vacate a building that is destroyed or becomes uninhabitable or unfit for occupancy through no fault or neglect of the tenant or occupant. A tenant or occupant may expressly agree otherwise except as prohibited by statute. Minn. Stat. § 504B.131.

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Attractive Nuisance Laws? Yes.	In Minnesota, causes of action for attractive nuisance rely on that the landowner knew or had reason to have known that children were likely to trespass and that the landowner had reason to anticipate the presence of a child at the place of danger, not just nearby. *Croaker by and Through Croaker v. Mackenhausen*, 592 N.W.2d 857, 862 (Minn. 1999); Restatement (Second) of Torts § 339; Jury Instruction 85.19.
Dram Shop Liability? Yes.	A spouse, parent, child, guardian, employer or other person who is injured in person, property, and means of support or other pecuniary loss by an intoxicated person, has a right of action for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages. Minn. Stat. § 340A.801, subd. 1. A person claiming damages or contribution or indemnity from a licensed retailer of alcoholic beverages or municipal liquor store for an injury listed above, must give written notice to the licensee or municipality. In a case for damages, the notice must be served by the claimant's attorneys 240 days of the date of entering an attorney-client relationship with regard to the claim. For cases claiming contribution or indemnity, the notice must be served within 120 days after the injury occurred or within 60 days after receiving written notice of a claim for contribution or indemnity. Minn. Stat. § 340A.802, subd. 2; *Oslund v. Johnson*, 578 N.W.2d 353 (Minn. 1998). Nothing in this statute precludes common law tort claims against any person 21 years old or older who knowingly provides or furnishes alcoholic beverages to a person under 21 years old. Minn. Stat. § 340A.801, subd. 6. However, an allegedly intoxicated person ("AIP") cannot sue a liquor vendor for their own injuries which are the result of the AIP's voluntary intoxication. *Robinson v. Lamott*, 289 N.W.2d 60, 62 (Minn. 1979). The Dram Shop Act only applies to commercial vendors of alcoholic beverages. *Urban v. Am. Legion Dep't*, 723 N.W.2d 1, 6 (Minn. 2006). To sustain a cause of action under the Dram Shop Act, a plaintiff must establish the following: 1. An illegal sale of intoxicating liquor; 2. The illegal sale caused or contributed to the AIP's intoxication; 3. The AIP's intoxication was a direct cause of the plaintiff's injury; 4. Plaintiff sustained damages recoverable under the Dram Shop Act; and

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	5. Proper notice was provided to the liquor vendor pursuant to Minn. Stat. § 340A.802. Failure to establish any one of these elements will preclude the plaintiff's claims. *Rambaum v. Swisher*, 435 N.W.2d 19, 21 (Minn. 1989). Under *Hoggsbreath*, the fiancée of an automobile accident victim and the fiancee's daughter were "other persons" within the meaning of the Civil Damage Act, who played no role in causing the intoxication that contributed to the cause of the rollover accident and to the victim's injuries, and, thus, were entitled to exercise their right of action under the Act against the establishment which allegedly illegally sold alcoholic beverages to the driver. *Lefto v. Hoggsbreath*, 581 N.W.2d 855 (1998).
Social Host Liability? Yes.	A spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support or who incurs other pecuniary loss, by an intoxicated person under the age of 21 has a right of action for all damages sustained against a person who is 21 years old or older who: 1) had control over the premises and, being in a reasonable position to prevent the consumption of alcohol by that person, knowingly or recklessly permitted that consumption and the consumption caused the intoxication of that person or 2) sold, bartered, furnished or gave to, or purchased for a person under the age of 21 years alcoholic beverages that caused the intoxication of that person. Minn. Stat. § 340A.90; Minn. Stat. § 340A.502.
Reallocation of Uncollectible Amounts	Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment. Minn. Stat. § 604.02, subd. 2. Where a party to the transaction is not a party to the lawsuit, the trial court cannot determine whether a claim is collectible against that party because there is no legal right to collect until judgment against that party has been entered. *Hosley v. Pittsburgh Corning Corp*., 401 N.W.2d 136, 140 (Minn. Ct. App. 1987). Under Minn. Stat. § 604.02, subd. 2, an uncollectible portion of a party's equitable share of damages cannot be reallocated to a party that is only severally liable under Minn. Stat. § 604.02, subd. 1. *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 721 (Minn. 2014). Product liability- In a product liability case, an amount uncollectible from any person in the chain of manufacture and distribution shall be reallocated among all other persons in the chain of manufacture and distribution but not among the claimant or others at fault who are not in the chain of manufacture or distribution of the product. Provided, however, that a person whose fault is less than that of a claimant is

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	liable to the claimant only for that portion of the judgment which represents the percentage of fault attributable to the person whose fault is less. Minn. Stat. § 604.02, subd. 3; *Metag v. K-Mart Corp.*, 385 N.W.2d 864 (Minn. Ct. App. 1986).
Court approval needed for Bodily Injury settlement of a minor? Yes.	No part of the proceeds of any action or claim for personal injuries on behalf of any minor shall be paid to any person except under written petition to the court and written order of the court. Minn. Gen. R. Prac. 145.01.
Emotional Distress considered as Bodily Injury and recoverable? No.	The court in *Garvis* found that emotional distress is not an injury to the body, but to the psyche. However, emotional distress with appreciable physical manifestations can qualify as a "bodily injury." *Garvis v. Employers Mut. Cas. Co*., 497 N.W.2d 254, 257 (Minn. 1993). Similarly, the court in *Clemens and Hamlin* found that an injury to the body does not include nonbodily emotional distress or mental suffering. *Clemens v. Wilcox*, 392 N.W.2d 863 (Minn. 1986); *Hamlin v. Western Nat'l Mut. Ins. Co.*, 461 N.W.2d 395 (Minn. App. 1990). In order to recover for infliction of emotional distress, plaintiff must prove she: 1) was in the zone of danger, 2) had an objectively reasonable fear for her own safety, 3) had severe emotional distress with attendant physical manifestations, and 4) stood in a close relationship to the third-party victim. *Engler v. Ill. Farmers Ins. Co.*, 706 N.W.2d 764 (Minn. 2005).
Bystander Laws? Yes. Who can recover damages? Those who are physically injured as a result of emotional distress from witnessing injury to another.	The standard that a person within the zone of danger of physical impact who reasonably fears for his or her own safety and who consequently suffers severe emotional distress with resultant physical injury may recover is the proper standard to be applied to a negligently inflicted emotional distress case brought by a bystander who witnesses negligently-caused peril of or injury to another. *Stadler v. Cross*, 295 N.W.2d 552 (Minn. 1980); *Engler v. Ill. Farmers Ins. Co.*, 706 N.W.2d 764 (Minn. 2005).
Intra Family Immunity? None.	The Minnesota Supreme Court in *Anderson* totally abolished the doctrine of parental immunity and the court adopted the approach of charging the jury on a "reasonable parent" standard. The proper test of a parent's

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	conduct is this: What would an ordinarily reasonable and prudent parent have done in similar circumstances? *Anderson v. Stream*, 295 N.W.2d 595 (Minn. 1980). Similarly, the general rule is that the doctrine of intrafamilial immunity does not apply to suits between siblings. *Lickteig v. Kolar*, 782 N.W.2d 810 (Minn. 2010).
Parental Liability for Intentional Torts? Yes.	The parent or guardian of a minor (under the age of 18) who willfully or maliciously causes injury to any person or damage to any property is jointly and severally liable with the minor for any injury or damage caused in an amount not exceeding $1,000, if the minor would have been liable for the injury or damage had the minor been an adult. Minn. Stat. § 540.18, subd. 1.
Spouse Name required on Releases?	Yes, if loss of consortium claim pled. Otherwise, it is good practice to include spouse name. Loss of consortium is a derivative claim. *Kohler v. Fletcher*, 442 N.W.2d 169, 173 (Minn. Ct. App. 1989).
Collateral Source? Yes. Set Offs? Yes.	The purpose of the collateral-source statute is to prevent double recoveries by plaintiffs. *Swanson v. Brewster*, 784 N.W.2d 264, 273 (Minn. 2010). The collateral source statute provides that the court shall reduce the award of damages in the amount of that has been paid for the benefit of the plaintiff by collateral sources, and offset any reduction in the award by the amounts determined to have been paid, contributed, or forfeited by, or on behalf of, the plaintiff or members of the plaintiff's immediate family for the two years immediately preceding the accrual of the action. Minn. Stat. § 548.251, subd. 2. The statute states the jury shall not be informed of the existence of collateral sources or any future benefits which may or may not be payable to the plaintiff. Minn. Stat. § 548.251, subd. 5. By statute, a party may move the court, within ten days of the date of entry of the verdict, to determine the effect of collateral source payments on the damage award. Minn. Stat. § 548.251, subd. 2. The term "collateral source" means payments related to plaintiff's injury or disability, or on the plaintiff's behalf up to the date of the verdict, by or pursuant to: (1) federal, state or local income disability or Workers' Compensation Act; or other public program providing medical expenses, disability payments, or similar benefits (i.e. PERA benefits); (2) health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage; except life insurance, payments pursuant to US Social Security or pension payments; (3) a contract or agreement of a group, organization, partnership, or corporation to provide, pay for, or reimburse medical costs; or (4) a contractual or voluntary

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	wage continuation plan provided by employers or any other system intended to provide wages during a period of disability, except private disability insurance benefits. Minn. Stat. § 548.251, subd. 1. Underinsured motorist benefits received before the verdict in tort action constitute a collateral source that must be applied to reduce the judgment against the tortfeasor. *Russell v. Haji-Ali*, 826 N.W.2d 216, 219 (Minn. Ct. App. 2013). Medicare benefits of injured plaintiff in the form of payments for medical care or Medicare-negotiated discounts to reduce medical bills are excepted from the collateral source offset provision and do not reduce a damages award. *Renswick v. Wenzel*, 819 N.W.2d 198, 211 (Minn. Ct. App. 2012).
Child Support Lien Laws	The court may impose a lien or charge on divided property at any time while the property, or subsequently acquired property, is owned by the parties or either of them, for the payment of maintenance or support money, or may sequester the property. Minn. Stat. § 518A.39, subd. 2 (g).
Wrongful Death and Survivorship Actions	By statute, Minnesota allows the trustee appointed to maintain an action after a death if the decedent might have maintained an action, had he lived, for an injury caused by the wrongful act or omission. Minn. Stat. § 573.02, subd. 1. An action for alleged professional negligence must be commenced within three years of the date of death. An action to recover damages for a death caused by an intentional act may be commenced at any time after the death. Any other action may be commenced within three years of the death, provided that that action is commenced within six years of the act or omission. Minn. Stat. § 573.02, subd. 1. The jury shall determine the amount of pecuniary loss by what it deems fair and just resulting from the death, and the court distributes the proportionate pecuniary loss to entitled persons. Minn. Stat. § 573.02, subd. 1. According to the court in *Frazier,* in the area of wrongful-death damages for a child, past cases represent history, not controlling law. *Frazier v. Burlington N. Santa Fe Corp*., 788 N.W.2d 770 (Minn. Ct. App. 2010). If an action for the injury was commenced by the decedent, it may be continued by the trustee. Minn. Stat. § 573.02, subd. 1. If the decedent was caused injury by the wrongful act or omission of a person or corporations and subsequently dies of an unrelated cause, the trustee may maintain an action for special damages arising out of such injury if the decedent might have maintained the action had he lived. Minn. Stat. § 573.02, subd. 2.

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	Punitive damages are allowed upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others. Minn. Stat. § 549.20, subd. 1. Minnesota has no survivorship statute.
Claims Against Third Parties ▪ Workers' Compensation Contributions ▪ Third-Party Actions ▪ Claims of Gross Negligence ▪ Employer Liability Claims ▪ Third-Party Remedies ▪ Right to Contribution	Minnesota Statute § 176.061, taken as a whole, presents a comprehensive plan for asserting the claims of both employer and employee against third parties and for distributing any sums recovered: • Section 176.061, subd. 3 discusses the right of employer . . . for indemnification or subrogation: If the employee or the employee's dependents elect to receive benefits from the employer, . . . the employer . . . has a right of indemnity or is subrogated to the right of the employee or the employee's dependents to recover damages against the other party. The employer may bring legal proceedings against the party and recover the aggregate amount of benefits payable to or on behalf of the employee or the employee's dependents, regardless of whether such benefits are recoverable by the employee or the employee's dependents at common law or by statute together with costs, disbursements, and reasonable attorney fees of the action. ➢ When the employee elects to collect workers' compensation benefits, the employer, who is subrogated to the rights of the employee, may bring suit against the third-party to recover the aggregate amount of workers' compensation benefits paid and payable. Importantly, this does not give the employer a wholly separate cause of action; rather, the employer may assert only those rights that the employee had at the time of the injury. *Minn. Brewing Co. v. Egan & Sons Co.*, 574 N.W.2d 54, 58 (Minn. 1998). • Section 176.061, subd. 5(a) discusses action by a third-party: If an injury or death for which benefits are payable is caused under circumstances which created a legal liability . . . on a party other than the employer . . . legal proceedings may be taken by the employee or the employee's dependants . . . or by the employer, or by the attorney general on behalf of the special compensation fund . . . against the other party to recover damages, notwithstanding the payment of benefits by the employer or the special compensation fund or their liability to pay benefits. • Section 176.061, subd. 5(c) discusses increased premium claims: If an employer, being then insured, sustains damages due to a change in workers' compensation insurance premiums, whether by a failure to achieve a decrease or by a retroactive or prospective increase, as a result of the injury or death of an employee which . . . created a legal liability for damages on the part of a party other than the employer, the employer, notwithstanding other remedies provided, may maintain an action

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	against the other party for recovery of the premiums. This action can be brought by joining in an action or by separate action. Damages recovered under this clause are for the benefit of the employer. • Section 176.061, subd. 5(e) discusses the permissibility of gross negligence claims: A co-employee working for the same employer is not liable for a personal injury incurred by another employee unless the injury resulted from the gross negligence of the co-employee or was intentionally inflicted by the co-employee. ➢ If the injured employee can show that the co-employee (1) owed the injured employee a personal duty and (2) was grossly negligent in performing that personal duty, the injured employee can bring a tort action against the co-employee. *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W2d 746, 754 (Minn. 2005). ➢ MN courts have defined gross negligence as action "without even scant care but not with such reckless disregard of probable consequences as is equivalent to a willful and intentional wrong." *State v. Chambers*, 589 N.W.2d 466, 478 (Minn. 1999). ➢ Gross negligence is more than just negligence. It is negligence of the highest degree. Jury Instruction 25.35. • Section 176.061, subd. 6 describes the formula used for allocating proceeds of a third-party action: (a) The proceeds of all actions for damages or of a settlement . . . received by the injured employee or the employee's dependents or by the employer or the special compensation fund . . . shall be divided as follows: (1) after deducting the reasonable cost of collection, including . . . attorneys fees and burial expenses in excess of the statutory liability, then (2) one-third of the remainder shall . . . be paid to the injured employee or the employee's dependents, without being subject to any right of subrogation. (b) Out of the balance remaining, the employer . . . shall be reimbursed in an amount equal to all benefits paid under this chapter to or on behalf of the employee or the employee's dependents by the employer . . . less the product of the costs deducted under paragraph (a), clause (1), divided by the total proceeds received by the employee or dependents from the other party multiplied by all benefits paid by the employer . . . to the employee or the employee's dependents. (c) Any balance remaining shall be paid to the employee or the employee's dependents, and shall be a credit to the employer . . . for any benefits which the employer . . . is obligated to pay, but has not paid, and for any benefits that the employer . . . is obligated to make in the future. (d) There shall be no reimbursement or credit to the employer . . . for interest or penalties. ➢ Generally, when an employer is not notified of settlement negotiations in a third-party action, any settlement that results in a release of [the employer's] subrogated claims [as well as those of the plaintiff for pain and suffering] is void as to the employer and the employer

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	shares in the settlement according to the statutory formula of MN Stat. § 176.061, subd. 6, which now will also include the automatic one-third after fees and expenses to the employee. *Adams v. DSR Sales, Inc.*, 727 N.W.2d 139, 143 (Minn. 2007). • Section 176.061, subd. 8a discusses notice to employer of intention to settle: In every case arising under subdivision 5, a settlement between the third-party and the employee is not valid unless prior notice of the intention to settle is given to the employer within a reasonable time. If the employer or insurer pays compensation to the employee . . . and becomes subrogated to the right of the employee or the employee's dependents or has a right of indemnity, any settlement between the employee or the employee's dependents and the third party is void as against the employer's right of subrogation or indemnity. When an action at law is instituted by an employee or the employee's dependents against a third-party for recovery of damages, a copy of the complaint and notice of trial or note of issue in the action shall be served on the employer or insurer. Any judgment rendered in the action is subject to a lien of the employer for the amount to which it is entitled to be subrogated or indemnified under the provisions of subdivision 5. • Section 176.061, subd. 9 discuses service of notice on the attorney general: In every case in which the state is liable to pay compensation or is subrogated to the rights of the employee or the employee's dependents or has a right of indemnity, all notices required to be given the state shall be served on the attorney general and the commissioner. • Section 176.061, subd. 11 discusses third-party right of contribution: To the extent the employer has fault, separate from the fault of the injured employee to whom workers' compensation benefits are payable, any nonmember third-party who is liable has a right of contribution against the employer in an amount proportional to the employer's percentage of fault but not to exceed the net amount the employer recovered pursuant to subdivision 6, paragraphs (b) and (c). The employer may avoid contribution exposure by affirmatively waiving, before selection of the jury, the right to recover workers' compensation benefits paid and payable, thus removing compensation benefits from the damages payable by any third-party. Procedurally, if the employer waives or settles the right to recover workers' compensation benefits paid and payable, the employee or the employee's dependents have the option to present all common law or wrongful death damages whether they are recoverable under the Workers' Compensation Act or not. Following the verdict, the trial court will deduct any awarded damages that are duplicative of workers' compensation benefits paid or payable. ➢ In *Lambertson*, superseded by section 176.061, subd. 11, the court permitted a contribution case against an employer. Even if a third-party defendant employer is less at fault than the employee, the employer may have to contribute to the verdict. However, a third-party

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	defendant employer's liability is limited to the amount of workers' compensation benefits paid or payable. *Lambertson v. Cincinnati Welding Corp.*, 257 N.W.2d 679 (Minn. 1977). *Naig* Agreements permit employee/plaintiffs to settle all claims except those covered under the Workers' Compensation Act. If used, the *Naig* Agreement must state that the settlement excludes all claims for which the employer and insurer may have a subrogation interest. *Naig v. Bloomington Sanitation*, 258 N.W.2d 891, 894 (Minn. 1977). Notice of settlement negotiations for a *Naig* settlement must be given to the employer-insurer in a manner and at a time such that the employer-insurer has a reasonable opportunity to participate in the negotiations and to appear or intervene in any litigation to protect its interests. We further hold that lack of notice is presumptively prejudicial to the employer, and, if the presumption is not rebutted by the employee, the employer is entitled to a credit for future compensation payable against the employee's *Naig* settlement recovery. *Adams v. DSR Sales*, *Inc.*, 727 N.W.2d 139 (Minn. 2007) (*quoting Easterlin v. Univ. of Minn.*, 330 N.W.2d 704, 708 (Minn. 1983)). A Reverse *Naig* as the name implies, provides a reversal of rights. In a Reverse *Naig*, an employer may settle its workers' compensation subrogation claim with the third-party tortfeasor. In doing so, the Employer can avoid certain deductions to its subrogation claim that otherwise benefit the employee/plaintiff. *Folstad v. Eder*, 467 N.W.2d 608 (Minn. 1991). Employees and employers can also agree that neither side will settle on a *Naig* basis, this is considered a No *Naig* settlement. A no-fault insurer has no independent right to initiate litigation of a workers' compensation claim. If an injured person does recover no-fault benefits and then recovers workers' compensation for the same loss, the no-fault insurer is free to claim reimbursement from the injured person based upon the workers' compensation recovery.
Immunity Statutes for Private Citizens & Insurance Companies	Lawful conduct or speech that is genuinely aimed at procuring favorable government action is immune from liability, unless the conduct or speech constitutes a tort or a violation of a person's constitutional rights. Minn. Stat. § 554.03.

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	The Arson Reporting Immunity Law grants immunity from any civil or criminal liability to insurance companies who release information required by statute. Minn. Stat. § 299F.054, subd. 4. If insurers, insurance support organizations or agents acting on the insurers' behalf, or authorized persons release information in good faith, whether orally or in writing, they are immune from liability, civil or criminal, for the release or reporting of the information. Minn. Stat. §60A.952, subd. 3. A person who, without compensation or the expectation of compensation, renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care, advice or assistance, unless the person acts in a willful and wanton or reckless manner in providing the care, advice, or assistance. Not applicable when rendering emergency services during course of regular employment and receiving or expecting to receive compensation. Minn. Stat. § 604A.01, subd. 2(a).
Immunity Statutes for Government Entities	Minn. Stat. § 3.732 defines the state entities that are entitled to statutory protections and Minn. Stat. § 466.01 defines the local government entities that are entitled to statutory protections. The State of Minnesota has waived immunity from liability for acts conducted by state employees acting within the scope of their employment. The state is immune from liability when the loss is based on the usual care and treatment, or lack of care and treatment, of a patient at a state hospital where reasonable use of available appropriations was used to provide for the patient's care. Minn. Stat. § 3.736. The state is immune from liability for punitive damages. The state's liability for compensatory damages is limited to $750,000 for any number of claims arising out of a single occurrence on or after January 1, 1998 and before January 1, 2000, $1,000,000 for any number of claims arising out of a single occurrence on or after January 1, 2000 and before January 1, 2008, $1,200,000 for any number of claims arising out of a single occurrence on or after January 1, 2008 and before January 1, 2009, and $1,500,000 for any number of claims arising out of a single occurrence on or after July 1, 2009. Minn. Stat. § 466.04. A state agency may obtain liability insurance, and to the extent the insurance exceeds the above-noted statutory limits, the state is deemed to have waived its governmental immunity. Minn. Stat. § 466.06. The state has waived immunity for its municipalities, cities, counties, towns, and other political subdivisions. The limits of liability for municipalities are the same as that set out above for the state. Also, no award of

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	damages can include punitive damages. Municipalities, like the state, are authorized to obtain insurance, which constitutes a waiver of immunity to the extent of coverage. Minn. Stat. § 466.02. The parks and recreation immunity conferred under Minnesota Statute §466.03 subd. 6e grants governmental entities immunity from "[a]ny claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services." Minn. Stat. § 466.03, subd. 6e.
Good Samaritan Law? Yes.	A person who renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care, advice, or assistance, unless the person acted willfully and wantonly or recklessly in providing such care, advice, or assistance. Minn. Stat. § 604A.01, subd. 2.
Common Law Immunity for Government Entities	The official immunity doctrine provides that a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong. *Elwood v. Rice Cty.,* 423 N.W.2d 671, 677 (Minn. 1988). A government employer may invoke the doctrine of vicarious official immunity even if the individual official whose conduct is in question is not specifically named in the suit. *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998). To determine whether vicarious official immunity applies, it must first be determined whether official immunity applies. Official immunity "protects government officials from suit for discretionary actions taken in the course of their official duties." *Kari v. City of Maplewood*, 582 N.W.2d 921, 923 (Minn. 1998).
Summary of Minnesota Regulatory Rules	MN Unfair Claims Practices Act is defined in Minn. Stat. § 72A.17 to 72A.32. The Unfair Claims Settlement Practices Act is found within the Unfair Claims Practices Act at section 72A.201. The following acts by an insurer, an adjuster, a self-insured, or a self-insurance administrator constitute unfair settlement practices: except for claims made under a health insurance policy, after receiving notification of claim from an insured or a claimant, failing to acknowledge receipt of the notification of the claim within 10 business days, and failing to promptly provide all necessary claim forms and instructions to process the claim, unless the claim is settled within 10 business days.

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	If an acknowledgment is made by means other than writing, an appropriate notation of the acknowledgment must be made in the claim file of the insurer and dated. Minn. Stat. § 72A.201, subd. 4 lays out what information must be present in the acknowledgement. It also constitutes unfair settlement practice to fail to reply, within 10 business days of receipt, to all other communications about a claim from an insured or a claimant that reasonably indicate a response is requested or needed, and to fail to complete the investigation and inform the insured or claimant of acceptance or denial of a claim within 30 business days or a reasonable time after receipt of notification of the claim. For claims submitted under a health policy that are accepted, the insurer must notify the insured or claimant no less than semiannually of the disposition of claims of the insured or claimant. This notification requirement is satisfied if the information related to the acceptance of the claim is made accessible to the insured or claimant on a secured website maintained by the insurer. For purposes of this clause, acceptance of a claim means that there is no additional financial liability for the insured or claimant, either because there is a flat co-payment amount specified in the health plan or because there is no co-payment, deductible, or coinsurance owed. Where evidence of suspected fraud is present, the requirement to disclose their reasons for failure to complete the investigation within the time period need not be specific. The insurer must make this evidence available to the Department of Commerce if requested. It is unfair settlement practice to fail to notify an insured that has made a notification of claim of all available benefits or coverages which the insured may be eligible to receive under the terms of a policy and of the documentation which the insured must supply in order to ascertain eligibility. It is unfair settlement practice to require an insured to give proof of loss within a specified time and thereafter seek to relieve the insurer of its obligations if the time limit is not complied with, unless the failure to comply with the time limit prejudices the insurer's right and then only if the insurer gave prior notice to the insured of the potential prejudice. It is unfair settlement practice to advise an insured or a claimant not to obtain the services of an attorney or an adjuster, or represent that payment will be delayed if an attorney or an adjuster is retained by the insured or the claimant.

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	It is unfair settlement practice to fail to advise in writing an insured or claimant who has filed a notification of claim known to be unresolved, and who has not retained an attorney, of the expiration of a statute of limitations at least 60 days prior to that expiration. For the purposes of this clause, any claim on which the insurer has received no communication from the insured or claimant for a period of two years preceding the expiration of the applicable statute of limitations shall not be considered to be known to be unresolved and notice need not be sent pursuant to this clause; It is also unfair settlement practice to demand information which would not affect the settlement of the claim, and to refuse to settle a claim of an insured on the basis that the responsibility should be assumed by others. It is unfair settlement practice to fail, within 60 business days after receipt of a properly executed proof of loss, to advise the insured of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to the provision, condition, or exclusion is included in the denial. The denial must be given to the insured in writing with a copy filed in the claim file. It is unfair settlement practice to deny or reduce a claim on the basis of an application which was altered or falsified by the agent or insurer without the knowledge of the insured. It is unfair settlement practice to notify the insured of the existence of the additional living expense coverage when an insured under a homeowners policy sustains a loss by reason of a covered occurrence and the damage to the dwelling is such that it is not habitable, and to fail to inform an insured or a claimant that the insurer will pay for an estimate of repair if the insurer requested the estimate and the insured or claimant had previously submitted two estimates of repair.
Occurrence Trigger	Minnesota follows the generally accepted rule that the time of the occurrence, and, therefore, the triggering of coverage, is not the time the wrongful act was committed, but the time the complaining party was actually damaged. *Singsaas v. Diederich*, 238 N.W.2d 878, 880 (Minn. 1976). Minnesota follows an "injury-in-fact" or "actual-injury" rule and has explicitly rejected the continuous trigger rule. *In re Silicone Implant Ins. Coverage Litig.*, 667 N.W.2d 405 (Minn. 2003).

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	"Actual-injury" rule is applied to determine whether insurance coverage has been triggered by an occurrence. To trigger policy coverage, the insured must show that some damage occurred during the policy period. *Donnelly Brothers Const. Co. v. State Auto Prop. & Cas. Ins. Co.*, 759 N.W.2d 651 (Minn. Ct. App. 2009); *Wooddale Builders, Inc. v. Md. Cas. Co.*, 722 N.W.2d 283 (Minn. 2006).
Duty to Defend	The insurance company's duty to defend extends to every claim that arguably falls within the scope of the policy's indemnity coverage and exists regardless of the merits of the underlying claims. *Wooddale Builders, Inc. v. Md. Cas. Co.*, 722 N.W.2d 283 (Minn. 2006). An insurer has a contractual duty to defend a covered claim brought against its insured when the insurer undertakes such a duty in the insurance policy. *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co*., 819 N.W.2d 602 (Minn. 2012). A potential duty to defend a particular claim is triggered when the insured tenders notice of suit and opportunity to defend to the insurer. The existence of the duty to defend the claim is determined by comparing the language of the allegations in the underlying complaint to the relevant language in the insurance policy. If any part of the suit is arguably within the scope of coverage, the insurer must defend all claims; only if the insurer proves that all claims in the suit are clearly outside coverage does it not have a duty to defend. *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co*., 819 N.W.2d 602 (Minn. 2012). When an insurer has a duty to defend a liability claim for which it questions coverage, the insurer must expressly inform its insured that it accepts defense of the claim subject to its right to later contest coverage of the claim based on facts developed at trial. An insurer that fails to make such a reservation of rights is estopped from later denying coverage of the claim, up to the policy limits. *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co*., 819 N.W.2d 602 (Minn. 2012).
Product Liability Law	In Minnesota, a product manufacturer is strictly liable for damages caused by its product. *McCormack v. Hankscraft Co.*, 154 N.W.2d 488 (Minn. 1967). In any product liability action based in whole or in part on strict liability against a defendant other than the manufacturer, the defending party must file an affidavit certifying the correct identity of the manufacturer. The commencement of a product liability action based in whole or part on strict liability in tort against a certifying defendant shall toll the applicable statute of limitation relative to the defendant for purposes of asserting a strict liability in tort cause of action. Minn. Stat. § 544.41, subd. 1.

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	In *Montemayor*, the Court reversed the district court's grant of summary judgment determining that a reasonable jury could conclude that plaintiff's injury was reasonably foreseeable, therefore precluding summary judgment. *Montemayor v. Sebright Products, Inc.*, 898 N.W.2d 623 (Minn. 2017). A manufacturer's duty arises from the probability or foreseeability of injury to the plaintiff. *Id.* at 629. Courts should determine the issue of foreseeability if it is clear. *Id.* However, in close cases, the question of foreseeability is better left for the jury to decide. *Id.* "[A] manufacturer has a duty to warn if it 'should anticipate that an unwarned operator might use the machine in a particular manner so as to increase the risk of injury and the manufacturer has no reason to believe that users will comprehend that risk.'" *Id.* Further, manufacturers can be held liable in product liability cases despite intervening circumstances. *Id.* at 630. Here, the Court determined the facts presented a close call on the issue of foreseeability, specifically whether the manufacturer should have foreseen the possibility that a worker operating the extruder from the control panel would not have the ability to observe another worker performing maintenance inside the machine and whether it was foreseeable that a product user would fail to comply with OSHA regulations. *Id.* at 631. Once the plaintiff has filed a complaint against a manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of a strict liability in tort claim against the certifying defendant. Due diligence shall be exercised by the certifying defendant in providing the plaintiff with the correct identity of the manufacturer and due diligence shall be exercised by the plaintiff in filing a law suit and obtaining jurisdiction over the manufacturer. Minn. Stat. § 544.41, subd. 2. A court shall not enter a dismissal order relative to any certifying defendant where the plaintiff can show one of the following: (a) that the defendant has exercised some significant control over the design or manufacture of the product, or has provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the injury, death or damage; (b) that the defendant had actual knowledge of the defect in the product which caused the injury, death or damage; or (c) that the defendant created the defect in the product which caused the injury, death or damage. Minn. Stat. § 544.41, subd. 3. In *Schafer,* the court found that when a person suffers injury from consuming a food product, the manufacturer, seller, or distributor of the food product is liable to the extent that the injury-causing object or substance in the food product would not be reasonably expected by an ordinary consumer. *Schafer v. JLC Food Sys. Inc.*, 695 N.W.2d 570, 575 (Minn. 2005).

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	The date of manufacture of a mechanical heart valve or date of implantation of valve into patient triggered running of the six-year limitations period for wrongful death action against valve manufacturer based on patient's death related to defective valve. The manufacture or implantation was the act or omission on which action was based and there was no evidence that manufacturer either actively concealed any defect in product or falsely denied knowledge of any defect. *Lamere v. St. Jude Medical, Inc.*, 827 N.W.2d 782 (Minn. Ct. App. 2013). See "Reallocation of Uncollectible Amounts" section for analysis of allocation of damages.
Can a party contract away their own negligence in an indemnity agreement? Yes.	Pre-August 1, 2013: Minnesota law holds unenforceable agreements to indemnify another for the indemnitee's own negligence in building and construction contracts except to the extent that the underlying injury or damage is attributable to the negligent or wrongful act or omission of the promisor or promisor's agents or an owner, responsible party, or government entity agrees to indemnify a contractor directly or through another contractor with respect to strict liability under environmental laws. Minn. Stat. § 337.02; *Holmes v. Watson Forsberg Co.*, 488 N.W.2d 473 (Minn. 1992). In *Bolduc*, the court held that a contractual indemnification provision in a construction contract obligating a subcontractor to indemnify another party for damages not caused by the subcontractor's fault, unaccompanied by either a coextensive insurance agreement or a proper allegation that the promisor had failed to procure the required insurance, violated indemnification provision of statute governing agreements to insure in building and construction contracts, which rendered unenforceable indemnification agreements in which party assumed responsibility to pay for damages that were not caused by the party's own wrongful conduct. *Engineering & Const. Innovations, Inc. v. L.H. Bolduc Co., Inc.*, 825 N.W.2d 695 (Minn. 2013). Post-August 1, 2013: In May of 2013, section 337.05, subd. 1 was amended to include paragraphs (b) – (e), which became effective August 1, 2013 and apply to agreements entered into on or after that date. Section 337.05, subd. 1 now states:

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	(a) Except as otherwise provided in paragraph (b), sections 337.01 to 337.05 do not affect the validity of agreements whereby a promisor agrees to provide specific insurance coverage for the benefit of others. (b) A provision that requires a party to provide insurance coverage to one or more other parties, including third parties, for the negligence or intentional acts or omissions of any of those other parties, including third parties, is against public policy and is void and unenforceable. (c) Paragraph (b) does not affect the validity of a provision that requires a party to provide or obtain workers' compensation insurance, construction performance or payment bonds, or project-specific insurance, including, without limitation, builder's risk policies or owner or contractor-controlled insurance programs or policies. (d) Paragraph (b) does not affect the validity of a provision that requires the promisor to provide or obtain insurance coverage for the promisee's vicarious liability, or liability imposed by warranty, arising out of the acts or omissions of the promisor. (e) Paragraph (b) does not apply to building and construction contracts for work within fifty feet of public or private railroads, or railroads regulated by the Federal Railroad Administration.
Damage caps and exceptions	Minnesota has no caps on damages for personal injury or wrongful death except in claims against the state or its employees acting within the scope of their employment. The total liability of the state and its employees acting within the scope of their employment on any tort claim shall not exceed: (a) $300,000 when the claim is one for death by wrongful act or omission and $300,000 to any claimant in any other case, for claims arising before August 1, 2007; (b) $400,000 when the claim is one for death by wrongful act or omission and $400,000 to any claimant in any other case, for claims arising on or after August 1, 2007, and before July 1, 2009; (c) $500,000 when the claim is one for death by wrongful act or omission and $500,000 to any claimant in any other case, for claims arising on or after July 1, 2009; (d) $750,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 1998, and before January 1, 2000; (e) $1,000,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2000, and before January 1, 2008;

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	(f) $1,200,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2008, and before July 1, 2009; (g) $1,500,000 for any number of claims arising out of a single occurrence, for claims arising on or after July 1, 2009; or (h) $1,000,000 for any number of claims arising out of a single occurrence, if the claim involves a nonprofit organization engaged in or administering outdoor recreational activities funded in whole or in part by the state or operating under the authorization of a permit issued by an agency or department of the state. Minn. Stat. § 3.736, subd. 4. If the amount awarded to or settled upon multiple claimants exceeds the applicable limit, any party may apply to the district court to apportion to each claimant a proper share of the amount available under the applicable limit. The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement bears to the aggregate awards and settlements for all claims arising out of the occurrence. Minn. Stat. § 3.736, subd. 4. The limitations imposed above on individual claimants include damages claimed for loss of services or loss of support arising out of the same tort. Minn. Stat. § 3.736, subd. 4. Liability of any municipality on any claim within the scope of sections 466.01 to 466.15 shall not exceed: (1) $300,000 when the claim is one for death by wrongful act or omission and $300,000 to any claimant in any other case, for claims arising before January 1, 2008; (2) $400,000 when the claim is one for death by wrongful act or omission and $400,000 to any claimant in any other case, for claims arising on or after January 1, 2008, and before July 1, 2009; (3) $500,000 when the claim is one for death by wrongful act or omission and $500,000 to any claimant in any other case, for claims arising on or after July 1, 2009; (4) $750,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 1998, and before January 1, 2000; (5) $1,000,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2000, and before January 1, 2008; (6) $1,200,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2008, and before July 1, 2009; (7) $1,500,000 for any number of claims arising out of a single occurrence, for claims arising on or after July 1, 2009;

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	(8) twice the limits provided in clauses (1) to (7) when the claim arises out of the release or threatened release of a hazardous substance; or (9) $1,000,000 for any number of claims arising out of a single occurrence, if the claim involves a nonprofit organization engaged in or administering outdoor recreational activities funded in whole or in part by a municipality or operating under the authorization of a permit issued by a municipality. Minn. Stat. § 466.04, subd. 1. The liability of an officer or an employee of any municipality for a tort arising out of an alleged act or omission occurring in the performance of duty shall not exceed the above limits, unless the officer or employee provides professional services and also is employed in the profession for compensation by a person or persons other than the municipality. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort. Minn. Stat. § 466.04, subd. 1a and subd. 2. Minnesota has no cap on damages in medical liability cases.
Economic Loss Doctrine	Minn. Stat. § 604.101 governs claims by a buyer against a seller if the sale or lease that caused the seller to be a seller and the sale or lease that caused the buyer to be a buyer both occurred on or after August 1, 2000: Subd. 2: This section does not apply to claims for injury to the person; rather, it applies to any claim by a buyer against a seller for harm caused by a defect in the goods sold or leased, or for a misrepresentation relating to the goods sold or leased. Subd. 3: A buyer may not bring a product defect tort claim against a seller for compensatory damages unless a defect in the goods sold or leased caused harm to the buyer's tangible personal property other than the goods or to the buyer's real property. In any claim brought under this subdivision, the buy may recover only for: (1) loss of, damage to, or diminution in value of the other tangible personal property or real property; (2) business interruption losses, excluding loss of good will and harm to business reputation, that actually occur during the period of restoration; and (3) additional family, personal, or household expenses that are actually incurred during the period of restoration. Subd. 4: Common law misrepresentation claims cannot be brought against a seller relating to the goods sold or leased unless the misrepresentation was made intentionally or recklessly.

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	Subd. 5: This section does not alter the elements of a product defect tort claim or a common law claim for misrepresentation. For claims that occurred prior to August 1, 2000, Minn. Stat. § 604.10: (a) Economic loss that arises from a sale of goods that is due to damage to tangible property other than the goods sold may be recovered in tort as well as in contract, but economic loss that arises from a sale of goods between parties who are each merchants in goods of the kind is not recoverable in tort. (b) Economic loss that arises from a sale of goods, between merchants, that is not due to damage to tangible property other than the goods sold may not be recovered in tort. (c) The economic loss recoverable in tort under this section does not include economic loss due to damage to the goods themselves. (d) The economic loss recoverable in tort under this section does not include economic loss incurred by a manufacturer of goods arising from damage to the manufactured goods and caused by a component of the goods. (e) This section shall not be interpreted to bar tort causes of action based upon fraud or fraudulent or intentional misrepresentation or limit remedies for those actions. Minn. Stat. § 604.10.
Can a plaintiff recover medical bills written off by the provider? No.	Pursuant to the collateral source doctrine, *Swanson* held that the plaintiff can recover the total amount deducted rather than just the amount written-off. *Swanson v. Brewster*, 784 N.W.2d 264 (Minn. 2010). "Where a health-insurance carrier negotiates a discount from the medical providers of an injured plaintiff and obtains a subrogation lien by virtue of payment of the negotiated amount, the subrogation lien is limited to the amount paid." *Auers v. Progressive Direct Ins. Co.*, 878 N.W.2d 350, 357 (Minn. Ct. App. 2016). Further, the exception in Minn. Stat. § 548.251, subd. 2(1) for "amounts of collateral sources…for which a subrogation right has been asserted" applies only to the amounts actually paid by the carrier. Any negotiated discount remains a collateral source to be deducted from the injured party's verdict or settlement under Minn. Stat. § 548.251. *Id.* Minnesota's collateral source doctrine requires that compensation from a non-defendant be deducted from a plaintiff's award if it fits within the statutory definition of collateral sources. Negotiated-discount amounts—or write-offs- are "collateral sources" for purposes of the collateral-source statute. Minn. Stat. § 548.251.
Tort Thresholds for Motor Vehicle Accident Cases	Before bringing a claim for damages arising from a motor vehicle accident, the claimant must establish at least one of the following: (1) A permanent injury; (2) Permanent disfigurement; (3) Disability for 60 cumulative days;

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	(4) $4,000 in medical expenses, excluding diagnostic tests and other non-remedial treatment; or (5) Death. Minn. Stat. § 65B.51, subd. 3.

*****NOTICE*****

The reference materials contained in this summary 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 summary.