FOR MORE INFORMATION

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Minnesota

1. **What are the statute of limitations for tort and contract actions as they relate to the transportation industry.**

   A. The statute of limitations for bodily injuries resulting from negligence is six (6) years. Minn. Stat. § 541.05, subd. 1(5).

   B. The statute of limitations for wrongful death is three (3) years from the date of death and no later than six (6) years from the wrongful act or omission. Minn. Stat. § 573.02, subd.

   C. The statute of limitations for taking, detaining, or injuring personal property is six (6) years. Minn. Stat. § 541.05, subd. 1(4).

   D. The statute of limitations for a contract action is six (6) years. Minn. Stat. § 541.05, subd. 1(1).

   E. The statute of limitations for a strict liability claim "arising from the manufacture, sale, use or consumption of a product" is four (4) years. Minn. Stat. § 541.05, subd. 2.

2. **What effects, if any, has the COVID Pandemic had on tolling or extending the statute of limitation for filing a transportation suit and the number of jurors that are sat on a jury trial.**

   On April 15, 2020, Governor Walz signed into law HF 4556, which suspended all statute of limitations. This legislation tolled all statutory deadlines until 60 days after the end of the peacetime emergency or February 15, 2021, whichever was earliest. On February 11, with the deadline nearing, the legislature passed HF 114, with unanimous support, which extended the expiration date of the tolling to April 15, 2021.

   Far fewer jury trials have taken place due to the COVID Pandemic. Few civil trials have been occurring and are being planned and scheduled moving forward. The number of jurors that are sat on a jury trial has not been dramatically affected by the COVID Pandemic.

3. **Does your state recognize comparative negligence and if so, explain the law.**

   Yes, Minnesota recognizes comparative negligence. Minnesota is a modified comparative fault state. A plaintiff cannot recover for his or her percentage of fault. If a plaintiff's fault is greater than the fault of the person against whom recovery is sought, plaintiff may not recover against that person. If plaintiff's fault is more than 50%, plaintiff recovers nothing. *See* Minn. Stat. § 604.01, subd. 1.

4. **Does your state recognize joint tortfeasor liability and if so, explain the law.**

Minnesota recognizes joint tortfeasor liability. Minnesota's joint tortfeasor liability statute (the Minnesota Comparative Fault Act) applies to cases involving damages for fault resulting in death, in injury to person or property, or economic loss. Minn. Stat. § 604.01, subd. 1. Minn. Stat. § 604.02 governs joint and several liability and loss reallocation. It provides that persons who are severally liable will have contributions in proportion to their fault. *Id.* However, persons will be held jointly and severally liable for the whole award if (1) the person's fault is greater than fifty percent, (2) two or more persons act in a common scheme or plan that result in injury, (3) a person who commits an intentional tort, or (4) a person whose liability arises under various environmental statutes. Thus, when two or more defendants cause a single, indivisible injury or harm, each defendant will be responsible for their percentage of damages, unless one of the above exceptions applies.

5. **Are either insurers and/or insureds obligated to provide insurance limit information pre-suit and if so, what is required.**

Yes. An insurer is required to disclose both the coverage and limits of an insurance policy within 30 days of a request in writing by a claimant. Minn. Stat. § 72A.201, subd. 11.

6. **Does your state have any monetary caps on compensatory, exemplary or punitive damages.**

Minnesota does not have any damages caps.

7. **Has your state recently implemented any tort reforms which may affect transportation lawsuits or is your state planning to, and if so explain the reforms.**

Minnesota has not recently implemented any tort reforms which would affect transportation lawsuits.

8. **How many months generally transpire between the filing of a transportation related complaint and a jury trial.**

Generally, there are about 24 months between filing of a complaint and a jury trial in the District of Minnesota.

9. **When does pre-judgment interest begin accumulating and at what percent rate of interest.**

In Minnesota, except as otherwise provided by contract or allowed by law, pre-judgment interest accrues "from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first." Minn. Stat. § 549.09, subd. 1(b). For a judgment or award of $50,000 or less, the rate of interest is based on the secondary market yield on one year of United States Treasury bills, calculated on a bank discount basis. The court administrator determines this percentage and rounds to the nearest one percent or four percent, whichever is greater. Minn. Stat. § 549.09, subd. 1(c)(1)(i). For a judgement or award over $50,000, the interest rate is 10% per year until paid in full. Minn. Stat. § 549.09, subd. 1(c)(2).

10. **What evidence at trial are the parties allowed to enter into evidence concerning medical expense related damages.**

Minnesota Rule of Civil Procedure 26.02 describes the scope and limits of discovery. "Discovery must be

limited to matters that would enable a party to prove or disprove a claim or defense or impeach a witness and must comport with the factors of proportionality," including "the importance of the discovery in resolving the issues." Minn. R. Civ. P. 26.02 (b). Generally, "parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party." *Id.* "Relevant information sought need not be admissible at the trial if discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id.*

Evidence of medical expenses billed to the plaintiff are admissible at trial, while evidence of the actual amount of medical expenses paid is not. *See Swanson v. Brewster,* 784 N.W.2d 264, 281-82 (Minn. 2010) (citing Minn. Stat. § 548.251, subd. 5). However, under Minnesota's collateral-source statute, a defendant may move for a post-trial reduction of a plaintiff's award by requesting a determination of collateral sources that have been paid for the plaintiff's benefit, including negotiated discounts. *See* Minn. Stat. § 548.251, subd. 2; *Swanson* 784 N.W.2d at 268.

11. Does your state recognize a self-critical analysis or similar privilege that shields internal accident investigations from discovery?

The self-critical analysis privilege is sparingly recognized in Minnesota federal courts. Courts in Minnesota have refused to accept the self-critical analysis in the context of a federal question case. *Capellupo v. FMC Corp.*, No. CIV. 4-85-1239, 1988 WL 41398, at *1 (D. Minn. May 3, 1988). The issue in this Title VII case was whether documentation outlining affirmative action plans, goals, and objectives were discoverable. The court ruled that keeping the documentation from the Plaintiff would deprive them of relevant, admissible evidence. In *Capellupo*, the court also recognized a reluctance by courts in this jurisdiction to accept the privilege at all. *Id.* at *4. Additionally, they have struck down the use of the privilege in a case arising in district court under diversity of citizenship jurisdiction. *Konrady v. Oesterling*, 149 F.R.D. 592 (D. Minn. 1993). The documentation in question was connected to an Institution Review Board organized pursuant to federal statute to monitor the testing of a new medical device. This information did not fall under the public policy behind the self-critical analysis privilege to continue to improve patient care under self-review. *Id.* at 595–96. Additionally, the *Konrady* court noted the judicial hostility to evidentiary privileges. *Id.*

This remains an open question in Minnesota state courts. In the case of *In re Parkway Manor Healthcare Ctr.*, 448 N.W.2d 116 (Minn. Ct. App. 1989), the Minnesota Court of Appeals declined to recognize a self-critical analysis privilege. *See id.* at 121. In the case of *State v. Larson*, 453 N.W.2d 42 (Minn. 1990), however, the Minnesota Supreme Court repudiated the premise underlying the *Parkway* Court's holding, *i.e.*, that the power to promulgate evidentiary privileges rested exclusively with the Minnesota Legislature. *See id.* at 46, n.3. As a consequence, whether Minnesota state courts would adopt the privilege remains an open question.

In *Stabnow v. Consolidated Freightways Corp. of Delaware*, the court recognized the elements necessary to utilize the self-critical analysis privilege. No. CIV. 99-641MJDRLE, 2000 WL 1336645, at *4 (D. Minn. Aug. 15, 2000).

> [F]irst, the information must result from a self-critical analysis undertaken by the party seeking protection, second, the public must have a strong interest in preserving the free flow of the type of information sought . . . the information must be of the type whose flow would be curtailed if discovery were allowed" and, in any event, "no document will be accorded a privilege unless it was prepared with the expectation that it would be kept confidential, and has in fact been kept confidential.

Id. at *5 (citing *Spencer Savings Bank v. Excell Mortgage Corp.,* 960 F.Supp. 835, 836 n. 2 (D.N.J.1997) (internal quotations omitted). The court in the *Stabnow* case did not find the materials attempting to be protected to

actually be self-critical and in the interest of public policy. *Id.* Additionally, the court questioned whether the self-critical analysis privilege was even still in existence in Minnesota but left that issue open. *Id.* at *6. Following the *Stabnow* decision, Minnesota courts have yet to address its use.

Investigation files or information or insurance company claim files can be considered work product privileged in Minnesota when created in anticipation of litigation. On the other hand, documents prepared "in the ordinary course of business" may not be found to have been prepared in anticipation of litigation. *City Pages v. State of Minnesota,* 655 N.W.2d 839, 846 (Minn. Ct. App. 2003). Whether documents were prepared in anticipation of litigation is a factual determination. *Bieter Co. v. Blomquist*, 156 F.R.D. 173, 180 (D.Minn.1994). The test is whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. *Id*. "In determining whether a document was prepared for litigation, a district court must consider when and by whom the [document] was made and the purpose of the [document]." *In re Child of Simon*, 662 N.W.2d 155, 161 (Minn. Ct. App. 2003).

A party may obtain discovery of documents prepared in anticipation of litigation or for purposes of trial based on a showing of substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Minn. R. Civ. P. 26.02(c); *State ex rel. Humphrey v. Philip Morris Inc.*, 606 N.W.2d 676, 690 (Minn. Ct. App. 2000).

Unlike some courts that have a bright line rule on whether an insurance adjuster's claim file is discoverable, Minnesota looks at this issue on a case by case basis depending on whether the court reasonably believes litigation is anticipated citing *Carver v. Allstate Ins. Co.* that "not all documents prepared by an insurance company in investigating a claim meet [the] prerequisite[s]" of the work product doctrine. *Kleven v. American Family Mut. Ins. Co.,* 2012 WL 3792833 (Minn. Ct App. 2012) citing *Carver,* 94 F.R.D. 131, 134 (S.D. Ga. 1982).

As the District Court for the Southern District of Georgia aptly observed:

> [i]n the early stages of claims investigation, management is primarily concerned not with the contingency of litigation, but with deciding whether to resist the claim, to reimburse the insured and seek subrogation …or to reimburse the insured and forget about the claim shortly thereafter. At some point, however, an insurance company's activity shifts from mere claims evaluation to a strong anticipation of litigation. This is the point where the probability of litigation is substantial and imminent. The point is not fixed, it varies depending on the nature of the claim and the type of investigation.

If outside counsel has not yet been retained, it can be challenging to prevent discovery of company investigation files or insurance claim files. As a result, we recommend clients retain counsel immediately after any serious trucking accident and be in communication with the claims adjuster which maximizes the opportunity to claim privilege for both work product and attorney-client privileges.

12. Does your state allow independent negligence claims against a motor carrier (i.e. negligent hiring, retention, training) if the motor carrier admits that it is vicariously liable for any fault or liability assigned to the driver?

The rule in Minnesota is that an employer is vicariously liable for the acts of an employee committed within the scope of employment. "Minnesota law does not recognize a claim for negligent hiring or retention that is premised solely upon an employee's negligent act." *Cook v. Greyhound Lines, Inc.*, 847 F. Supp. 725, 733 (D. Minn. 1994). Rather, direct liability claims, such as negligent hiring or negligent supervision, "impose liability for an employee's intentional tort, an action almost invariably outside the scope of employment, when the employer knew or should have known that the employee was violent." *Yunker v. Honeywell, Inc.*, 496 N.W.2d

419, 422 (Minn. Ct. App. 1993).

Liability for negligent hiring "is predicated on the negligence of an employer in placing a person with known propensities, or propensities which should have been discovered by reasonable investigation, in an employment position in which, because of the circumstances of the employment, it should have been foreseeable that the hired individual posed a threat of injury to others." *Ponticas v. K.M.S. Investments*, 331 N.W.2d 907, 911 (Minn. 1983) (rejecting, as a matter of law, that "there exists a duty upon an employer to make an inquiry as to a prospective employee's criminal record even where it is known that the employee is to regularly deal with members of the public"). Because truck drivers typically are hired to transport freight and not to interact with the public generally, a trucking company probably would not be liable under a negligent hiring claim for failing to investigate a driver's non-vehicular criminal history. *See Hartfiel v. Allison*, No. A15-1149, 2016 WL 281416, at *4 (Minn. Ct. App. Jan. 25, 2016) (granting summary judgment to truck company on negligent hiring claim where it checked employees driving record but did not check his criminal history).

Negligent supervision, on the other hand, "requires an employer to exercise ordinary care in supervising the employment relationship, so as to prevent the foreseeable misconduct of an employee from causing harm to other employees or third persons." *Cook v. Greyhound Lines, Inc.*, 847 F. Supp. 725, 732 (D. Minn. 1994). Thus, if during the course of employment, a truck company becomes aware that one of its employees has violent propensities, and does nothing about it, it may be liable for negligent supervision or negligent retention if the employee later assaults someone. *See Hartfiel*, 2016 WL 281416, at *4 (permitting negligent retention claim to proceed where driver assaulted a sub-contractor and supervisor while employed by trucking company).

Minnesota does not follow the majority view that once an employer has admitted to an agency relationship with an employee, it is no longer proper to allow a plaintiff to pursue other theories of derivative or dependent liability. In Minnesota, courts will allow an injured party to proceed under other theories of liability beyond vicarious liability. *Lim v. Interstate Sys, Steel Div Inc.*, 435 N.W.2d 830, 832-33 (Minn. Ct. App. 1989) (holding evidence of negligent entrustment was admissible even though vicarious liability was conceded); *See also, Jones v. Fleischhaker*, 325 N.W.2d 633, 640 (Minn. 1982) (entrustor found both causally negligent and vicariously liable for entrustee's negligence).

13. Does your jurisdiction have an independent claim for spoliation? If not, what are the sanctions or repercussions for spoliation?

Minnesota does not have an independent claim for spoliation. However, Minnesota courts have considerable discretion to grant sanctions when, regardless of intent, a party disposes of evidence that it knows, or should know, should be preserved for pending or future litigation. *See Patton v. Newmar*, 538 N.W.2d 116, 118–19 (Minn. 1995). The propriety of a sanction for the spoliation of evidence is determined by the prejudice resulting to the opposing party. *See Hoffman v. Ford Motor Co.*, 587 N.W.2d 66, 71 (Minn. Ct. App. 1998). Prejudice is determined by considering the nature of the item lost in the context of the claims asserted and the potential for correcting the prejudice. *Patton,* 538 N.W.2d at 119. Potential sanctions include: (1) adverse inference jury instructions, *see Litchfield Precision Components*, 456 N.W.2d at 436; (2) monetary sanctions, *see Multifeeder Tech., Inc. v. British Confectionery Co.*, No. 09-1090 (JRT/TNL), 2012 U.S. Dist. LEXIS 132619, at *34 (D. Minn., Sep. 18, 2012); *Capellupo v. FMC Corp*., 126 F.R.D. 545, 552 (D. Minn. 1989); (3) a finding of civil contempt, *see Multifeeder Tech., Inc.,* 2012 U.S. Dist. LEXIS 132619, at *34; and (4) exclusion of evidence related to the spoliated evidence, *see Patton,* 538 N.W.2d at 117; *Hoffman*, 587 N.W.2d at 71. Dismissal of a claim or defense may be warranted in extreme circumstances but is seldom invoked as a spoliation sanction. *See Capellupo,* 126 F.R.D. at 552.