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## HDBOB Attorneys Among Most Influential in Minnesota History



*Horace Hansen*



*Gene Bradt*

**M**innesota *Law & Politics* recently unveiled its list of the top 100 most influential Minnesota attorneys, along with 50 “runners-up.” Joining vaunted names such as Supreme Court Chief Justice Warren Burger, Supreme Court Justice Harry Blackmun, Walter Mondale, and Hubert Humphrey III, are HDBOB’s founder Horace Hansen and long-time HDBOB partner Gene Bradt.

Horace worked as a prosecuting attorney for the Ramsey County Attorney’s office until his practice was interrupted by World War II. After serving as a lieutenant in an Army replacement troop, he became a Captain in the Judge Advocate General’s Corp. where he was part of the legal team prosecuting the Germans for war crimes in Nuremburg and Dachau — where he served as Chief Prosecutor. Following the war, Horace returned to the U.S. where he was one of the founders of Group Health Association of America (now known as Health Partners) and was widely recognized as an expert in insurance, banking and health law. During the tenure of Minnesota Governor Orville Freeman, Horace declined an invitation to consider an appointment to the Minnesota Supreme Court.

Gene Bradt joined HDBOB in 1963 and practiced primarily in the areas of insurance defense law and medical malpractice. He quickly became recognized by his peers as one of the pre-eminent lawyers in his field, and was instrumental in expanding the firm into a recognized leader in insurance defense. Active very early on in the history of the Minnesota Defense Lawyers Association, he ultimately served as its president. He received many honors during his career, including induction into the American College of Trial Lawyers and was a perennial “Super Lawyer.” In his later years with the firm he developed an active arbitration and mediation practice, which he continues yet today following his retirement from the firm in 2004.

HDBOB appreciates *Law & Politics’* recognition of two great attorneys — Horace and Gene — who not only helped to shape Minnesota’s legal landscape, but have also set the high standards that HDBOB continues to uphold.

## Negligent Credentialing of Physicians – Minnesota’s Newest Tort

**A**s you lay on a gurney about to be wheeled into an operating room and look up at the masked doctors and nurses above you, it is comforting to believe that someone has assumed responsibility for assuring that your doctors meet professional standards. Although most patients do not have the resources to investigate a physician’s competency, all hospitals and medical centers not only have such resources, but now owe a duty to their patients to do so.

In *Larson v. Wasemiller*, 738 N.W.2d 300, (Minn. 2007), the Minnesota Supreme Court recognized a common-law cause of action against hospitals and medical centers for the tort of negligent credentialing of their physicians. The Court allowed the plaintiff, after experiencing severe complications following gastric bypass surgery, to sue the hospital where her surgery was performed, alleging the hospital was negligent in granting

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## NEGLIGENT CREDENTIALING OF PHYSICIANS

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surgery privileges to the doctor who performed her procedure. Twenty-seven other states have similarly recognized this emerging tort.

The Minnesota Court of Appeals refused to recognize this new tort, reasoning that the strict confidentiality surrounding the decision-making function of a peer review committee, as created by Minn. Stat. § 145.64(1)(a), limited the liability of hospitals.

However, the Supreme Court reversed the Court of Appeals, concluding that the policy considerations underlying negligent credentialing outweighed the policy considerations reflected in the peer review statute because the statute still precludes access to the confidential peer review materials. The Court recognized that Minnesota's peer review statute provides for the confidentiality of peer review proceedings and grants some immunity to those involved in the credentialing process, but it does not ignore their common law duty regarding standard of care.

It seems only natural under Minnesota common law to require hospitals to use due care in fulfilling their duty of selecting only competent physicians and excluding dangerous physicians from practicing at their facility. The *Larson* decision will likely increase the overall quality of patient care.



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## Workers' Compensation Subrogation Involving Medical Malpractice

Workers' compensation carriers are always on the look-out for potentially negligent third parties from whom they can recover payments made to an injured employee. Typically, the potential for subrogation, as allowed under Minn. Stat. § 176.061, is apparent in claims involving automobile accidents or garden variety slip and fall injuries. However, medical negligence by an employee's medical provider is sometimes not so obvious

Should an employee's work injury or disease be aggravated by medical negligence, the workers' compensation insurer is entitled to subrogate for the benefits paid to the employee as a result of the medical negligence. Even if the employee chooses not to sue the provider, the insurer may pursue the claim with the employee as the named plaintiff.

Workers' compensation carriers would be wise to closely monitor files involving orthopaedic injuries where a delay in surgery or a misdiagnosis could be negligent; surgical procedures result in nerve damage or other uncommon complications; medication errors, etc. An early review of the file protects against possible statute of limitations defenses and even destruction of evidence. It also allows you to have an active voice in any settlement discussions if the employee has already started suit through his or her own attorney.

Although medical malpractice cases are difficult to pursue and win, it is still important to seek review of workers' compensation cases where significant benefits are being paid to an employee and medical malpractice appears to have been possibly committed. We encourage our clients to ask any of our attorneys to review a claim where medical malpractice is suspected.

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## Recent Developments in Wisconsin Social Host Law

### Parents, Landowners and Landlords— Be Aware of What Your Underage Children or Tenants are Consuming

The Wisconsin Court of Appeals recently held that property owners can be held liable for harm caused by underage drinkers who consume alcohol on their property. In *Nichols, et. al. v. Niesen and Progressive Insurance, et. al.*, 730 N.W.2d 460 (Wis. Ct. App. 2007), plaintiffs, who were injured when hit by an intoxicated underage drinker, sued the landowners who allowed the underage drinker to consume alcohol on their property and did not supervise the underage children, under the theory that the landowners were negligent. The claim was dismissed by the trial court.

On appeal, the court analyzed Wisconsin's definition of negligence as well as the public policy arguments which served to limit such recoveries in the past. Prior to *Nichols*, Wisconsin courts refrained from extending liability beyond those who provided alcohol to individuals. In *Nichols*, however, the homeowners did not provide the alcohol to the underage drinkers. Nevertheless, the Court of Appeals found that the homeowners had a duty to refrain from knowingly permitting underage drinkers to engage in illegal alcohol consumption on their property as it was reasonably foreseeable that such activity could cause injury.

Although Wisconsin common law limited liability for providing alcohol to an intoxicated person who later caused harm because the act of

providing the alcohol was found to be too remote from the injury to hold a person liable, the court in *Nichols* pointed out the exception to the common law rule found in *Sorenson v. Jarvis*, 119 Wis. 2d 627 (1984) and *Koback v. Crook*, 123 Wis. 2d 259 (1985). In *Sorenson* and *Koback*, the court held that a person who provided alcohol to minors who later caused harm could be found negligent.

The practical effect of the court's decision in *Nichols* appears to be that homeowners, property owners, and perhaps even landlords, should expect to be held accountable for injuries that result from underage drinking on their property.

The *Nichols* case leaves many questions unanswered. At what point will the chain of liability end? If a landlord knows that underage drinkers on their property consume alcohol on their property, will the landlord be deemed accountable for the injuries caused by the underage drinkers? Until the *Nichols* case is reviewed by the Wisconsin Supreme Court or similar cases come forward, these questions will remain unanswered.



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### Minnesota Workers' Compensation Decisions of Note

The Minnesota Workers' Compensation Court of Appeals (W.C.C.A.) has determined that attorney fees awarded by the W.C.C.A. are not included in the \$13,000 limit on attorney fees set forth in Minn. Stat. §176.081, subd. 1(b). In *Charley v. FMC Corporation, et. al.* (W.C.C.A., August 30, 2007) the W.C.C.A. distinguished fees awarded by the W.C.C.A. from those awarded under Minn. Stat. § 176.081, which authorizes payment of a certain percentage of compensation awarded to the employee. The court also pointed out that the fees awarded by the W.C.C.A. are discretionary, not subject to the statutory formula and are analyzed under the *Irwin* factors.

The constitutionality of the permanent total disability thresholds was upheld by the Minnesota Supreme Court in *Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713 (Minn. 2007). A compensation judge previously determined that the worker was unemployed and unemployable as a result of his work injury. However, since the employee's permanent partial disability rating of 10% was below the permanent total disability threshold of 13%, the judge denied his claim for permanent total disability benefits. The employee claimed that the threshold requirement was unconstitutional as it violated his right to equal protection. In a lengthy analysis, the Minnesota Supreme Court determined that the requirement was constitutional as it applied uniformly to all similarly situated persons as required under the equal protection clause of the Constitution.



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## HDBOB's Mid-Winter Seminar

HDBOB's annual Mid-Winter Seminar is fast approaching! This year's seminar has been split into two days – February 21 and February 28, 2008. The first day will be devoted exclusively to Minnesota workers' compensation issues while the second day of the two-day seminar will address issues relating to liability claims in Minnesota and Wisconsin. Each seminar will begin at 9:00 am and will conclude at approximately noon followed by a luncheon sponsored by HDBOB.

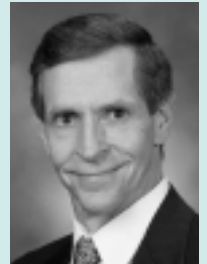
As in past years, HDBOB will apply to the Minnesota Board of Continuing Legal Education for approval of seminar credits.

*Check your mail for soon-to-be-arriving invitations. However, if you would like to pre-register, please contact Caryl Ghimenti at [cghimenti@hdbob.com](mailto:cghimenti@hdbob.com).*

**WE HOPE TO SEE  
ALL OF YOU THERE!**

## Who's Who in Estate Planning & Probate Law

**M**innesota Law and Politics recently released its "2007 Who's Who in Estate Planning and Probate Law" in Minnesota. HDBOB's Randall Sayers was among the attorneys honored, having been previously selected as a "Super Lawyer" — one of the Top 40 Estate Planning and Probate Law attorneys in Minnesota as voted upon by his peers.



*Randall Sayers*

Randy is a graduate of William Mitchell College of Law, J.D., cum laude and received his LLM in Taxation, *magna cum laude*. Randy is a member of both the Ramsey County and Minnesota State Bar Associations, having previously chaired the Elder Law section of the Minnesota State Bar Association from 1999-2000. He has also been elected a Fellow of the American College of Trust and Estate Counsel, a national association of more than 2,600 lawyers who have made outstanding contributions to the field of trust and estate law.

Randy is also a frequent speaker on estate and trust topics for Minnesota Continuing Legal Education, and he has been on the adjunct faculty at the William Mitchell College of Law (1993-98 and 2001-02), as well as at Hamline University College of Law (2004-present).