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## Minnesota Joins States Recognizing "Bad Faith" Claims

Claims handling procedures in the State of Minnesota face a new, potential exposure as of August 1, 2008. Up until that date, Minnesota did not recognize a first party cause of action for bad faith in the handling of claims. Although Minnesota does have a Fair Claims Handling Practice Act, prohibiting certain so-called "bad faith" practices in the handling of first party claims, the law contained only a potential administrative remedy, and did not give rise to a separate, civil cause of action for damages.

Minnesota Session Laws 2008, Chapter 208 is entitled "Insurance Standard of Conduct." The bill, enacted into law effective August 1, 2008, and referred to as the "Good Faith Insurance Law," allows an insured to obtain damages beyond the amount of his actual loss, under certain circumstances. The law does not apply to workers' compensation or health insurance policies, but otherwise generally governs conduct between insureds and insurers in connection with homeowner's policies, auto liability policies, comprehensive general liability policies, or other forms of first party coverage.

The potential new cause of action is triggered by a showing that an insurer lacked a reasonable basis for denying the benefits of the insurance policy, and either knew that it lacked such a reasonable basis, or acted in reckless disregard of the lack of a reasonable basis. An insurer is protected against such liability, however, if its actions are taken in cooperation with a fraud or arson investigation.

Any damages awarded to the plaintiff under this law are added to the amount the plaintiff would otherwise be entitled to under the policy, as taxable costs. The amount is equal to 50% of the difference between the amount awarded, and the amount offered by the insurer, subject to a limit of \$250,000.00. In

order to qualify as an offer, the insurer's offer must be made at least 10 days before the trial begins.

As an example, if the insured suffers a fire loss, for which the insurer offers \$50,000.00, and a jury subsequently awards \$100,000.00, the insured would receive additional taxable costs of \$25,000.00. Taxable costs under this section may only be awarded, however, by a district court judge, so awards that are resolved or confirmed in arbitration or appraisal are not subject to this provision.

In addition to taxable costs, the insured can obtain reasonable attorneys' fees that are incurred to establish a claim for the additional taxable costs. The attorneys' fees claimed under this law cannot include attorneys' fees incurred to assist the insured in recovering the basic entitlement under the policy. So, if the attorney has a contingent fee agreement with the insured and receives one-third of the amount awarded for the property damage, those attorneys' fees would not be awarded under Chapter 208.

Punitive damages are specifically prohibited by this section, although the claim for taxable costs is treated similarly to claims for punitive damages. The plaintiff may not assert a claim for taxable costs in the initial complaint, but must subsequently file a motion demonstrating reasonable grounds for such a claim, and obtain a court order allowing the amendment of the complaint to include that claim.

Regardless of the date of loss, the law applies to conduct occurring on and after August 1, 2008.



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## 2008 Legislative Changes to Workers' Compensation Act

The 2008 legislature instituted several changes to the Minnesota Workers' Compensation Act that went into effect on October 1, 2008.

The two more significant changes are the maximum compensation rate and the duration of temporary total disability. The maximum compensation rate of \$750 per week was catapulted to \$850 per week, while the temporary total disability cap increased from 104 weeks to 130 weeks. Both of these changes are currently in effect and will drastically increase the exposure for employers with high-paid employees.

There were also notable changes relating to rehabilitation and retraining. The time frame to request retraining increased from 156 weeks of wage loss benefits to 208 weeks. QRCs are affected by the workers' compensation statute as well. The Department of Labor & Industry can now issue penalties against QRC firms for not timely filing status reports. The QRCs did receive some benefit from the changes in that the maximum rate pay has increased.

Finally, the fee schedule was updated to include, among other things, a provision by which out-of-state providers are reimbursed at the same rate that a provider would receive if the injury occurred in that state. Under the former statute, out-of-state providers were simply paid their outstanding balance.

Make note of these fairly significant changes and feel free to contact any of HDBOB's workers' compensation attorneys with questions.



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## Live-in Girlfriend Not a "Dependent" Under the Minnesota No-Fault Act

The Minnesota Supreme Court recently declined to expand the definition of "dependent" under the State's No-Fault Act to include live-in partners.

In *Auto-Owners Ins. Co. v. Perry*, 749 N.W.2d 324 (Minn. 2008), the claimant applied to Auto Owners for survivor's economic loss benefits after her live-in boyfriend was killed in a motor vehicle accident. In so doing, she argued that the portion of the Act indicating that "[q]uestions of the existence and the extent of dependency shall be questions of fact, considering the support regularly received from the deceased" created a class of provable dependents consisting of persons other than the surviving spouse and children of a decedent.

Auto Owners, on the other hand, contended that Perry failed to qualify as a "dependent" under the insurance policy and that the policy comported with the requirements of the No-Fault Act.

The District Court granted summary judgment to Auto Owners, and the Court of Appeals affirmed, reasoning that Minn. Stat. § 65B.44, subd. 6 "defines a dependent as a wife or husband of the deceased, or any child of a deceased parent."

The Minnesota Supreme Court affirmed the lower courts' decisions, holding that Perry was not a dependent as a matter of law. The Court also considered the evolution and legislative history of the Act and that past attempts to interpret the Act have favored "the intention of the legislature to limit dependency qualification to a decedent's surviving spouse and children."

Claims adjustors can breathe a sigh of relief that the Court did not agree to expand the scope of the Act. Indeed, even the Court realized that such an expansion would lead to the absurd result that "any person financially dependent on an insured decedent could potentially be entitled to survivors' economic loss benefits."



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### Announcement:

## Nicholas J. Micheletti Joins HDBOB

HDBOB is pleased to announce that Nicholas J. Micheletti has joined the firm. Nick is a 2005 *magna cum laude* graduate of the University of St. Thomas, where he received a B.A. in political science. He is also a 2008 *cum laude* graduate of the University of St. Thomas School of Law. While in law school, Nick was a Senior Editor for the school's Journal of Law and Public Policy, and he participated as a volunteer teacher in the Street Law program for the Minnesota Justice Foundation. Additionally, throughout most of his law school career, Nick clerked at the Hennepin County Attorney's office in the Violent Crimes division.



Nick is licensed to practice law in the state of Minnesota. His practice areas at HDBOB will include workers' compensation defense and general litigation defense.

# HDBOB IN THE COMMUNITY



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- 1 HDBOB Attorney Stacey Sorensen, coaches her mock trial team to victory!**
- 2 2008 HDBOB Family Day at Como Park in St. Paul**
- 3 HDBOB Races for Justice!**  
*HDBOB attorneys, staff and their families participated in the sixth annual Race for Justice, an event supporting the Loan Repayment Assistance Program of Minnesota which helps meet the legal needs of low-income Minnesotans by subsidizing the education debt of dedicated public-interest attorneys. HDBOB has been one of the event's sponsors for the last four years.*



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## Update on Wisconsin Social Host Liability: Just Don't Supply the Alcohol

The Fall/Winter 2007 edition of the HDBOB *Quarterly* addressed the Wisconsin Court of Appeals' decision in *Nichols v. Progressive Northern Ins. Co.*, 730 N.W.2d 460 (Wis. Ct. App. 2007). In *Nichols*, plaintiffs, who were injured when hit by an intoxicated underage drinker, sued the landowners who allowed the unsupervised and underage drinker to consume alcohol on their property, under the theory that the landowners were liable for common law negligence. The trial court dismissed the plaintiffs' common law negligence claim.

The Wisconsin Court of Appeals reversed the trial court, finding that passive social host liability could exist based on a claim for common law negligence. The court indicated that, although the homeowners did not provide the alcohol to the underage drinkers, they 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.

Reversing the Court of Appeals, the Wisconsin Supreme Court noted that, while plaintiffs adequately pled their common law negligence claim, recovery for such a claim was dependent upon public policy considerations. The Court focused on whether, as a matter of public policy, "allowing recovery would enter a field that has no sensible or just stopping point." The Court expressed concern regarding expansion of social host passive liability — specifically, that to allow plaintiffs' claims would expand liability to include parents who should have known that drinking would occur on the property while they were gone and, in essence, would lead to strict liability of property owners for injuries stemming from underage drinking on their property under any circumstances.

The Court thus determined that a common law negligence claim could not be maintained against defendants as social hosts when they did not provide the alcohol. Further, the Court encouraged the legislature to address the question of whether to hold social hosts accountable for the types of actions alleged in *Nichols*.

It remains to be seen whether the Wisconsin legislature will consider the issue of social host passive liability. Until such time, however, merely furnishing the location of a party and not the alcohol itself — even knowing underage drinking will occur on the premises — will not impose liability.



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