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**UNPUBLISHED OPINIONS MAY IMPACT FUTURE CLAIMS UNDER THE NO-FAULT ACT**

Two recent unpublished Minnesota Court of Appeals may have a lasting impact on future UIM and No-Fault claims. First, Kahsay v. Liberty Mutual Ins. Co., A04-2129 (June 7, 2005), addresses Plaintiff's failure to provide proper Schmidt v. Clothier notice. Second, LaNasa v. State Farm Mut. Auto. Ins. Co., A04-1747 (June 7, 2005), deals with the impact of a workers' compensation settlement agreement on a claim for PIP benefits for injuries stemming from work-related auto accidents.

In Kahsay, the Court of Appeals reaffirmed the opinion that if a plaintiff fails to provide a proper Schmidt notice, it is presumed the UIM insurer is prejudiced, because the UIM carrier no longer has the ability to subrogate against the tortfeasor. That presumption, however, is rebuttable, and it is the insured's burden to show the insurer is not prejudiced. The financial status and assets of a tortfeasor are relevant to determining prejudice. Evidence that the tortfeasor is a poor subrogation prospect may be sufficient to rebut the presumption of prejudice. This opinion significantly diminishes the effect of the Schmidt notice requirement. Plaintiffs will argue the only way an insurer will be prejudiced by not receiving proper notice, is if the tortfeasor is one of the rare people with numerous assets, but who is significantly underinsured.

In LaNasa, the Court of Appeals concluded that in some situations, a full and final release of the workers' compensation claim may effectively release the injured employee's other similar claims, including potential No-Fault claims. When a party enters into a full and final settlement of a certain category of benefits, such as chiropractic care, rehabilitation, or retraining, the injured employee cannot then look to another insurer for compensation for additional benefits in the same category. A contract, such as a workers' compensation settlement agreement, is to be given its plain and ordinary meaning, even if the result is harsh. Based on this opinion, we recommend obtaining a copy of all workers' compensation agreements in situations involving work-related automobile accidents to determine if the claimant has waived a claim to benefits.

If you have any questions regarding these cases or other automobile-related issues, please contact any member of our Motor Vehicle Practice Group at (952) 831-6544. This letter, and other Minnesota Appellate Court opinion updates, are now available in .pdf form on the News and Resources page of our Firm's website: [www.johnson-condon.com](http://www.johnson-condon.com).

Sincerely,

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