

NO. A08-312

STATE OF MINNESOTA
IN COURT OF APPEALS

GENNA L. CHRISTIAN
f/k/a GENNA L. PICARD,

Appellant,

vs.

JUDITH M. BIRCH,

Respondent.

APPELLANT'S BRIEF

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF LEGAL ISSUES

- I. When it is undisputed that Minnesota has concurrent jurisdiction over an occurrence, is it necessary or appropriate under the circumstances to engage in a choice of law analysis?**

Held: The District Court found that the concurrent jurisdiction over the accident created a choice of law issue, which the District Court ultimately resolved in favor of applying Wisconsin's Statute of Limitation, which, deprived that Court of subject matter jurisdiction. (Order, page 4-7).

Apposite Cases and Statutes:

State v. George, 60 Minn. 503 (1895); *Opahl v. Judd*, 30 Minn. 126, 14 N.W. 575 (1883); *Spafford v. Spahn*, 274 Minn. 180, 142 N.W.2d 727 (1966); *Smoot v. Fischer*, 248 S.W.2d 38 (Mo. App. St. L. 1952); Minn. Const. Art 2 § 2; Enabling Act, Act of Congress, 11 Stat. 166 February 26th 1857; Minn. Stat. § 484.02;

- II. When only common law negligence is pled, did the Court err by finding Minnesota's statute of limitations was substantive and as a consequence engage in a choice of law analysis?**

Held: The District Court found Minnesota's statute of limitations to be substantive, per *Danielson*, thereby triggering a choice of law analysis. (Order, page 4-7).

Apposite Cases and Statutes:

Danielson v. National Supply Co., 670 N.W.2d 1, 5 (Minn. Ct. App. 2003); *In Re Daniel's Estate*, 427 N.W. 465 (1940); *Kennecott Holdings Corp. v. Liberty Mut. Ins. Co.*, 578 N.W.2d 358, 361 n.7 (Minn. 1998)

- III. Assuming *arguendo* that a choice of law analysis was appropriate did the District Court abuse its discretion by finding Wisconsin's statute of limitations applied?**

The District Court found that the maintenance of interstate order and advancement of the forum states interest favored the application of Wisconsin's statute of limitations; that the simplification of the judicial task and predictability of result were neutral with regards to which statute of limitations to apply; and that the fifth factor should

not apply since the other factors supported applying Wisconsin's statute of limitations. (Order, page 4-7).

Apposite Cases and Statutes:

Danielson v. National Supply Co., 670 N.W.2d 1, 5 (Minn. Ct. App. 2003).

IV. Can the District Court exercise jurisdiction over a person who causes an accident over the territorial waters of Minnesota, in a Minnesota traffic lane, such that Minnesota's long arm statute is satisfied?

The District Court held that the Plaintiff made no showing of specific contracts which would allow Minnesota to exercise personal jurisdiction over the Defendant and that Defendant did not purposefully avail herself of the laws and jurisdiction of Minnesota. (Order, page 7-10).

I. STATEMENT OF THE CASE AND FACTS

On January 9, 2004, at approximately 11:00PM an accident happened in the Superior-bound lane of the Blatnik Bridge, which connects Superior, Wisconsin and Duluth, Minnesota. Judith Marie Birch (hereinafter “Defendant”) was driving her vehicle while intoxicated in the Superior-bound lane on the *wrong side* of the divided bridge. (Aff. of Heinen; A-20-21). Driving head on into oncoming traffic, the Defendant hit Genna Christian’s (hereinafter “Plaintiff”) vehicle head-on, while she was traveling from Minnesota. (Aff. of Genna Christian ¶ 1; A-13). The collision caused a ripple effect and a Minnesota vehicle following Plaintiff then collided with the back of her car. (*Id.*) Plaintiff’s air bag deployed and she was trapped in the vehicle. (*Id.*) Plaintiff’s front bumper was crushed up against her wheel, the entire driver’s side of her car was collapsed and the car was destroyed. (Aff. of Genna Christian ¶ 2; A-13). The accident occurred only feet from what is commonly referred to as the “arch” or center of the bridge. (*Id.*) Said accident was directly above the St. Louis river (*Id.*), which is a part of Minnesota’s territorial waters.

Minutes after being hit the Duluth Fire Department and Duluth Gold Cross Ambulance responded and had to extricate Plaintiff from her car. (*Id.*) The Superior, Wisconsin, Police Department was the last law enforcement agency to respond and because of the median separating the bridge’s traffic lanes, the Superior Police had to first pass the accident, turn around in the City of Duluth and re-approach the bridge in the Superior bound direction. (Aff. of Heinen; A-20).

Gold Cross Ambulance fitted the Plaintiff with a C-collar and placed her on a backboard. Plaintiff was eventually transported to St. Mary's Medical Center in Duluth, Minnesota. (Aff. of Genna Christian; A-13).

As a consequence of her drunken driving, the Defendant was charged with four criminal offenses in Wisconsin for operating while intoxicated. (Aff. of Lowden, Exhibit A, Aff. of Heinen; A-21, 22, 34-36). The Defendant plead guilty/no contest to the charge of causing injury/operating while intoxicated. (Aff. of Birch; A-59) She was fined, ordered to undergo an alcohol assessment, served jail time, and her driver's license was revoked. (*Id.*) It is clear that the sole liability for this accident rests with the Defendant.

Plaintiff's then boyfriend and now husband, Patrick Christian was a passenger in Plaintiff's car and was knocked unconscious, sustaining a head injury. (Aff. of Patrick Christian ¶ 1; A-15). As a result of the accident he also sustained a serious and potentially permanent back injury. (*Id.*) At the time of the accident, Patrick Christian was a legal resident of the State of Minnesota. (*Id.*) Mr. Christian has a case against the Defendant, pending in Sixth District Court and had previously expressed his intention to motion the Court for a consolidation of his action with the present matter, but because of this case's dismissal, he has been unable to do so. (*Id.*) The Plaintiff has no objection to Mr. Christian's proposed consolidation. (Aff. of Genna Christian ¶ 3; A-14).

On or about, May 18, 2007, Plaintiff filed a complaint against Defendant Judith Birch in the District Court of Minnesota, St. Louis County Court, Sixth

Judicial District alleging the Defendant's negligence. On November 21, 2007, the Honorable Judge Shaun R. Floerke heard oral arguments, and on January 2, 2008 granted Defendant's Motion for Summary Judgment. On January, 24 2008, Judge Floerke denied Plaintiff's request to bring a motion to reconsider under Minn. R. Gen. Prac. 115.11.

In his Order & Memorandum granting Defendant's Motion for Summary Judgment, Judge Floerke found that despite the District Court having concurrent jurisdiction over the accident, the District Court did not have subject matter over the claim based upon a choice of law analysis. (Order at 4-7; A-7-10). Additionally, the District Court found that it did not have personal jurisdiction over the Defendant as required by Minnesota's Long-Arm Statute. (Order at 7-10; A-10-13).

The issues on appeal are whether the District Court erred in its analysis with regards to both subject matter jurisdiction and personal jurisdiction over the Defendant, and whether that ruling should be reversed and remanded with instructions that Minnesota law applies and Minnesota Courts can exercise personal jurisdiction over the Defendant.

II. STANDARD OF REVIEW

Appellate courts ask two questions when dealing with appeals from summary judgment: (1) whether there are any genuine issues of material fact at dispute and (2) whether the district court erred in the application of law. *Jorgensen v Knutson*, 662 N.W.2d 893, 897 (Minn. 2003). In making its

determination, the appellate court views the facts in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Choice-of-law determinations, however, are questions of law which an appellate court reviews de novo. *Schumacher v. Schumacher*, 676 N.W.2d 685, 690 (Minn. Ct. App. 2004). Specifically, whether or not a district court applied the correct statute of limitations is a question of law which an appellate court reviews de novo. *State Farm Fire & Cas. v. Aquila, Inc.*, 718 N.W.2d 879, 883 (Minn. 2006).

The determination by the District Court of whether or not personal jurisdiction exists is a question of law. *V.H. v. Estate of Birnbaum*, 543 N.W.2d 649, 653 (Minn. 1996). When jurisdiction is challenged, the plaintiff bears the burden of proving that sufficient contacts exist to support personal jurisdiction over the defendant. (*Id.*) For the purposes of determining whether or not the Plaintiff has made their prima facie case supporting jurisdiction, all allegations in the complaint must be taken as true, together with any supporting evidence. (*Id.*) Doubt should be resolved in favor of retention of jurisdiction. (*Id.*)

III. ARGUMENT

a. SUBJECT MATTER JURISDICTION.

- i. **The District Court was correct in concluding that Minnesota had concurrent jurisdiction over the accident, but incorrectly asserted that a choice of law issue was created.**

The body of published opinions regarding civil actions in the area of concurrent jurisdiction over navigable waterways, in particular, upon bridges, is relatively sparse. That which exists, favors Appellant. It is clear that the underlying purpose of granting neighboring states concurrent jurisdiction over boundary waters is to avoid any confusion and concomitant prejudice associated with having to “pick the right court”; the very situation that has occurred in this case.

The Supreme Court of the United States, as early as 1909, recognized that concurrent jurisdiction with regards to boundary waters applies to both criminal and civil harms. See *Nielson v. Oregon*, 212 U.S. 315, 320 (1909). And Minnesota has long recognized that concurrent jurisdiction applies to civil harms. *Opsahl v. Judd*, 30 Minn. 126, 14 N.W. 575 (1883).

In *Opsahl*, a Plaintiff brought a wrongful death action in Minnesota for a steamship accident which occurred on the Wisconsin side of the channel of the St. Croix River. (*Id.* at 127, 129) The *Opsahl* Court stated the purpose behind concurrent jurisdiction with startling clarity: “If persons while upon the St. Croix river, and navigating its waters, are within the jurisdiction of the state, they should be deemed *entitled to the protection of its laws*; and the question of the right of action should not be made to depend upon the accident that at a particular point of time a boat happened to be in whole or part on one or the other side of the center of the stream.” (*Id.* at 130) (emphasis added)).

Minnesota has also recognized that concurrent jurisdiction extends to criminal actions taken upon permanent structures, such as bridges. *State v. George*, 60 Minn. 503 (1895). The *George* court held that “some of the purposes of this concurrent jurisdiction are to enforce proper police regulations on the river, and to regulate and protect interstate traffic on and across the river, and the persons engaged in the same.” (*Id.* at 505, emphasis added). The *George* court went on to state that “the question here involved is not whether the courts of Minnesota have jurisdiction over this permanent structure on this island considered as real estate, but whether Minnesota and her courts have jurisdiction over the persons and moving or movable vehicles and things on this bridge.” (*Id.*)

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In *State v. Nelson*, the Wisconsin Court of Appeals held that it was irrelevant that a defendant was fishing illegally while standing upon a dam retaining wall on the Minnesota side of the channel. *State v. Nelson*, 285 N.W.2d 924, 927 (Wis. Ct. App. 1979). In *Nelson*, the defendant was fishing off the retaining wall of the Trempealeau Lock and Dam on the Minnesota side of the Mississippi River. (*Id.* at 925) A Wisconsin warden observed the illegal conduct from the Wisconsin side of the channel and the defendant was cited and convicted for snagging fish from the Mississippi river, a crime recognized in both states.

¹ The Appellant does not allege that the District Court has concurrent jurisdiction over the Wisconsin side of the physical structure which is Blatnik bridge itself. Compare *Mississippi & Missouri RR Co v Ward*, 67 U.S. 485 (1862) (district court in Iowa did not have power under state nuisance law to partially destroy interstate bridge where actual damages sustained by Plaintiff involved sections of the bridge occupying the territorial waters of Illinois); See also, *State v. City of Hudson*, 231 Minn 190 (1950)

(*Id.*) The Court held that a defendant may be prosecuted outside the territorial waters of another state so long as the offense is punishable in both states. (*Id.* at 926)

Illinois has found that under its own concurrent jurisdiction it could prosecute a crime upon a bridge spanning the Mississippi River between Missouri and Illinois, despite the defendant's argument that the state failed to prove beyond a reasonable doubt his proximate location on the bridge in Illinois and therefore lacked jurisdiction over the offense. *People v. Pitt*, 435 N.E.2d 801, 803 (Ill. App. Ct. 1982); The Iowa Court has held that concurrent jurisdiction extends to crimes and activities occurring upon bridges crossing waters forming a common boundary. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984).

When a court exercises its concurrent jurisdiction, no choice of law issue is raised. See *George* 60 Minn. at 503 (Defendant charged under Minnesota common law larceny for crime committed on interstate bridge above Wisconsin territorial water); *Opahl v. Judd*, 30 Minn. 126, 14 N.W. 575 (1883) (applying Minnesota laws of negligence in wrongful death claim where steamboat was on Wisconsin side of channel); *Spafford v. Spahn*, 274 Minn. 180, 142 N.W.2d 727 (1966) (allowing exercise of concurrent jurisdiction where accident occurred upon ice in North Dakota territorial waters and upholding lower courts ruling which was based upon Minnesota law).²

² The defendants in *Spafford* asserted that South Dakota law should apply in a wrongful death action. The court held that even under Minnesota law regarding assumption of risk, the defendants would have prevailed, and so the Court did not decide upon the merits of South Dakota law applicable to the *Spafford*

The most analogous case, both factually, and for the assertion that Minnesota law should govern the action irrespective of any choice of law inquiry is *Smoot v. Fischer et al.*, 248 S.W.2d 38 (Mo. App. St. L. 1952). In *Smoot*, the plaintiff was injured in a car accident upon a bridge spanning Illinois and Missouri. (*Id.* at 40) The defendant driver argued at trial that he was entitled to rely on an Illinois guest motorist statute. (*Id.*)

The trial court decided against the driver defendant, holding that regardless of whether or not the defendant driver could prove the exact location of the accident, the case was governed exclusively by Missouri law. (*Id.* at 40-41) The trial court held that where a court is exercising concurrent jurisdiction it is free to apply its own state laws to the dispute. (*Id.* at 41) The St. Louis Court of Appeals upheld the trial court's determination reasoning, "...what is meant by a grant of concurrent jurisdiction is merely that transactions occurring anywhere on the water, which are the proper subject of concurrent jurisdiction, may lawfully be dealt with by the courts of either of the adjoining states *according to its own laws as fully and completely as those occurring elsewhere in its borders.*" (*Id.*) (emphasis added).

The reoccurring theme in all the above cited cases is that when there is concurrent jurisdiction the court never ventures into a choice of law analysis because the forum state's laws can be automatically applied without justification

facts 274 Minn. at 185. Although it can be argued that the *Spafford* court wished to avoid the needless resolution of a choice of law issue, the willingness to apply Minnesota law to the facts suggest that Minnesota law was the proper law to be applied especially in light of *George* and *Opsahl*

or explanation. Implicit in the grant of concurrent jurisdiction, is that in exchange for yielding strict adherence to state boundary lines, each state shares the benefits, and perhaps detriments, of allowing another state the opportunity to impose its courts and laws upon an area where it would otherwise be free to exclude. The ultimate effect of this District Court's decision is that only residents are entitled to the protection of Minnesota laws when Minnesota courts exercise concurrent jurisdiction. Although, the Court's determination that concurrent jurisdiction applied was proper, the Court's inquiry into choice of law questions analysis was improper and led to the incorrect determination that Wisconsin law applied and Plaintiff's claim was time-barred. For this reason, the District Court decision that Wisconsin law applied and that the District Court lacked subject matter jurisdiction should be reversed and remanded with instructions that Minnesota law applies to the case.

The above analysis is equally applicable to Minnesota's ability to exercise personal jurisdiction over the Defendant. It is only logical that "Concurrent Jurisdiction" under the Minnesota Constitution, Minn. Stat. § 484.02 and the Enabling Act also encompasses personal jurisdiction over a defendant who commits an act or omission upon a structure that is a physical extension or emanation of what is traditionally understood as "Minnesota." To hold otherwise, would allow a non-resident tortfeasor the opportunity to obstruct bridges and waterways with impunity and otherwise engage in wrongful conduct mere inches from Minnesota without fear of being haled into Minnesota courts. This clearly

would obfuscate the holdings in *Opsahl* and *George* and frustrate the policies for which Concurrent Jurisdiction was established. For this reason, the Plaintiff requests that this Court reverse and remand the decision of the trial court and specifically hold that the Court has personal jurisdiction, which is inextricably linked to concurrent jurisdiction based on the facts of the case.

ii. The District Court erred when it determined Minnesota's statute of limitations is procedural, and as a consequence erred by engaging in a choice of law analysis.

When a choice of law issue is raised in Minnesota courts, the first step is to decide whether the issue is procedural or substantive. *Danielson v. Nat'l Supply Co.*, 670 N.W.2d 1, 6 (Minn. Ct. App. 2003). If the matter is procedural, then Minnesota courts apply Minnesota procedural law. If this issue is substantive, only then are Minnesota courts required to apply the five factor test. *Milkovich v. Saari*, 203 N.W.2d 408 (Minn. 1973). By applying the five factor choice of law test, the Court must have found that Minnesota's statute of limitations as applied to common law negligence actions was substantive. This was in error.

In reaching its decision, the court first determined that the District Court had concurrent jurisdiction over the accident under the Minnesota Constitution. (Order at 4; A-7). In this regard, the District Court was correct. See Minn. Stat. § 482.02 (allowing Minnesota courts to exercise concurrent jurisdiction in civil and criminal cases as if jurisdiction reached to the shore of Minnesota's neighboring states).

Next, the Court framed the dispositive issue: If Wisconsin's statute of limitations applies Plaintiff's claim is time-barred. (Order at 4; A-7). The District Court, however, applied the incorrect standard of law in determining which statute of limitations applied to the case at bar.

After recognizing a conflict of law existed, the district court applied the factors outlined in *Milkovich*. (Order at 4-5; A-7-8). In doing so, the Court left out a crucial step in analysis. The Court needed to pose the question: Is the law to be applied procedural or substantive in nature? The procedural distinction is important, because Minnesota law has traditionally, and currently follows the procedural approach followed in *Danielson* when confronted with which statute of limitations to apply. *Danielson*, 670 N.W.2d at 5. In making its determination, the Court appears to have incorrectly adopted and relied entirely on the "Choice Influencing Consideration Approach" used in *Danielson*. (Order at 4; A-7; citing, *Danielson* at 6).

In Minnesota, statute of limitations have traditionally been viewed as procedural. *Danielson*, 670 N.W.2d at 5, citing, *In Re Daniel's Estate*, 427 N.W. 465, 469 (1940); *Amer. Mut. Liability Ins. Co. v. Reed Cleaners*, 122 N.W.2d 178, 180 n.1 (1963); *United States Leasing Co. v. Biba Info. Processing Servs., Inc.*, 436 N.W.2d 823, 825 (Minn. Ct. App. 1989), review denied (Minn. May 24th, 1989). In *Danielson*, the court recognized ambiguity as to whether or not Minnesota still followed the procedural approach or the modern trend discussed in

the Restatements. *Danielson*, 670 N.W.2d at 6, *citing*, Restatement (Second) Conflict of Laws § 142 cmt. e.

Apparently, the confusion stems mainly from the decision in *Myers v. Gov't Employee Ins. Co*, 225 N.W.2d 238 (2004). In that case, Minnesota residents were allowed to bring suit against an insurance company in Minnesota applying a Louisiana direct action statute for an accident which occurred in Louisiana, despite the fact that Minnesota specifically prohibited direct negligence actions against insurance companies. *Myers v. Gov't Employee Ins. Co*, 225 N.W.2d 238, 240-241 (1974). The trial court held that under Minnesota's statute of limitations, the direct action could proceed. (*Id.* at 241) The Minnesota Supreme Court affirmed the trial court, but specifically dealt with a different conflict of laws: the issue presented and decided upon actually involved the two states competing treatments of direct negligence actions against insurance companies. (*Id.* at 240-41) Arguably, the extent of the statutes of limitations analysis was only relevant to the choice influencing consideration approach to the extent it was tied to the broader conflict between the right to sue an insurance company directly; consequently, *Myers* is not on point because this case involves a pure statute of limitations analysis.

Myers, did not replace the procedural approach. *Danielson*, 670 N.W.2d at 5-6, *discussing*, *Davis v. Furlong*, 328 N.W.2d 150, 152 n.2 (declining to recognize any exception to rule that matters of procedure are governed by the forum state's law), *Kennecott Holdings Corp. v. Liberty Mut. Ins. Co.*, 578

N.W.2d 358, 361 n.7 (Minn. 1998) (characterizing statutes of limitations as procedural in context of forum non conveniens). Instead, *Myers* carved out an exception to the traditional rule that statutes of limitations are procedural in Minnesota. Under *Myers*, a statute of limitations is substantive and subject to the Choice Influencing Consideration Approach, if the remedy sought by the plaintiff is created by statute. If the remedy sought involves common law relief, however, the general rule applies, and statutes of limitations are viewed by Minnesota courts as procedural. Needless to say, in the case at bar, Plaintiff seeks common law relief based on Defendant's negligence. (Complaint, ¶11-15; A-2). For this reason, the District Court erred when it did not apply Minnesota's statute of limitations and Plaintiff's claim is not time barred under the procedural approach.

In the Defendant's Motion to Dismiss, the last sentence states, "In *Danielson* the court held that statutes of limitations are substantive despite the traditional view that statutes of limitations are strictly procedural because of the outcome determinative effect of the application of statute of limitations. *Danielson*, 670 N.W.2d at 6 (Minn. Ct. App. 2003)." (Def. Memo, page 7-8; A-52-53). It appears the District Court followed this reasoning, to some extent, by merely following the Choice Consideration Influence Approach. (Order at 6; A-9). This is an incorrect view of *Danielson* for any number of reasons. First, it ignores the *Danielson* Courts stated reasoning for conducting a Choice-Influencing Consideration Approach when that Court states, "[b]ecause Minnesota has shown some inclination to apply the choice-influencing considerations

analysis, we will also apply that analysis to this case.” *Danielson*, 670 N.W. at 6. Yet, the *Danielson* court looked to reconcile by coming to the conclusion that under both the procedural approach or the choice-influencing consideration approach, the Minnesota statute of limitations would have prevailed with respect to the *Danielson* facts. This of course does not mean that the choice-influencing consideration approach is the *actual* test used in Minnesota. Unlike the *Danielson* facts, the facts of the case at bar cannot be reconciled if both tests are used, and Defendant expects to prevail.³ Defendant’s assertion ignores the Procedural Approach discussion in *Danielson* specifically discussing how *Myers v. Gov’t Employees Ins. Co*, 225 N.W.2d 238 did not “cite, much less purport to overrule, the traditional rule that statutes of limitation are procedural as governed by the law of the forum.” *Danielson*, 670 N.W.2d at 6-7.

Plainly and simply a limitation period is substantive when it applies to a right created by statute as opposed to a right recognized at common law. (*Id.* at 6) Minnesota’s statute of limitations is substantive if it relates to a statutory right, because “the limitations period [acts as] a condition of the right rather than as an actual statute of limitations.” (*Id.* at 6 n. 2) But here, in Plaintiff’s case, she is only seeking common law relief for negligence and therefore it was not necessary, nor appropriate, for the Court to conduct a choice of law analysis.

iii. Assuming *arguendo* the District Court was correct in undertaking a choice of law analysis, it abused its discretion by

³As discussed below, this Court could reconcile both tests if it were to find that the District Court erred in its Choice Influencing Consideration Approach in finding that Wisconsin Law was appropriate

finding certain factors favored the application of Wisconsin's statute of limitations.

Where a tort is involved, the only two relevant factors used in the choice of law analysis are the fourth and fifth which are: (4) advancement of the Forum's Governmental Interest and (5) the better rule of law. *Boatwright v. Budak*, 625 N.W.2d 623, 483, 489, (Minn. Ct. App. 2001), *citing*, *Milkovich v. Saari*, 203 N.W.2d 408, 412 (Minn. 1973).

The "advancement of the forum government's interest" inquiry simply asks the Court to determine which choice of law most advances a significant interest of the forum. *Jepson v. Gen. Cas. Co. of Wis.*, 513 N.W.2d 467, 472 (Minn. 1994). Since the choice of law here involves statute of limitations, one of which will bar Plaintiff's claim, the analysis is relatively straightforward. If Wis. Stat. § 893.54 is applied, Plaintiff will have no forum in which to litigate her claim. If Minnesota's statute of limitations is applied, Plaintiff will have an opportunity to present her case on the merits.

With regard to Minnesota's interest in applying its own statute of limitations to this case, the Trial Court appears to have found that the State of Minnesota has a lesser interest in protecting a nonresident Plaintiff, injured within an area where Minnesota exercises concurrent jurisdiction. (Order at 6; A-9) ("most of the public policies behind Minnesota's interest are not applicable to Plaintiff in this case"). The District Court found that this factor supports, albeit

narrowly, an application of Wisconsin's statute of limitations. The position taken is without support in Minnesota law. (*Id.*).

The Court appears to have merged two different principles into one unified statement of law. The first principle is that Minnesota has an interest in providing courts for its residents. The second principle is that Minnesota has an interest in providing compensation for tort victims. *Jepson v. Gen. Cas. Co. of Wis.*, 513 N.W.2d 467, 472 (Minn. 1994). Implicit in the District Court's reasoning is that because Plaintiff is not a resident of Minnesota, that Minnesota has less interest in compensating her for the actions of Defendant. This is not the policy in Minnesota.

It is well settled that Minnesota places great importance in compensating tort victims. (*Id.*). The Supreme Court of Minnesota has even refused to apply the laws of Minnesota, when the laws of a sister state would better compensate a tort victim. (*Id.*) citing, *Bigelow v. Halloran*, 313 N.W.2d 10, 12-13 (Minn. 1981). Indeed, there is no indication in the *Jepson* and *Danielson* cases that "residency" is required for the court to have an interest in compensating a tort victim. As *Bigelow* illustrates, there appears to be no meaningful residency requirement to Minnesota's public policy behind compensation of tort victims. See, e.g., *Bigelow*, 313 N.W.2d at 13, using the language, "compensation of tort victim" in regards to a victim who was an Iowa resident; *Jepson*, 513 N.W.2d at 472, discussing forums interest in compensating tort victims without regard to the fact that the plaintiff was at the time of trial an out of state resident).

The absurdity of this factor being weighed in favor in applying Wisconsin law is best illustrated by a perplexing scenario which could well be before this Court in the near future. The passenger in the Plaintiff's vehicle at the time of the accident (Patrick Christian) was a Minnesota resident and who has since brought a nearly identical action in the very same District. If this decision is allowed to stand with regards to the Plaintiff, it will not be very long until another District Judge is confronted with virtually the same fact pattern, and forced to either find that not even a Minnesota resident is entitled to relief under the facts in the case at bar, or alternatively, the Minnesota resident is entitled to relief, while the non resident seated next to him while both become victims, is not. In either event, the result is unfair and unjust and contrary to Minnesota's stated purposes of compensating tort victims.

Turning to the District Court's analysis and specific language with regards to this factor, we note two glaring omissions with regards to the stated reasoning behind the decision that this factor "narrowly supports an application of Wisconsin law." (Order at 6; A-9). First, the District Court never mentions any significant interests of Wisconsin in applying that statute of limitations. (*Id.*). Yet, it appears that the District Court found that Wisconsin had more of an interest in applying its own law than Minnesota's interest in compensating tort victims. Second, the District Court stated "most of the public policies behind Minnesota's interest are not applicable to Plaintiff in this case. Compensation for tort victims is meant to reduce the claimant's need for public assistance because of their injuries and help

ensure that medical providers will be paid for their services.” (Order at 6; A-9) (emphasis added). Even assuming Minnesota’s interest in ensuring only its providers are paid, the District Court failed to acknowledge that Plaintiff’s affidavits established that the Plaintiff was treated exclusively in Minnesota Medical facilities and was transported there via a Minnesota ambulance. (Aff. of Genna Christian; A-13). Finally, Plaintiff agrees with the District Court’s belief that Minnesota has an interest in holding Defendants responsible for their actions by using Minnesota’s statute of limitations, although it does not logically follow that this policy applies only to non-residents. (Order at 6; A-9) (“the public policy supporting compensation for non-resident tort victims is that Minnesota’s longer statute of limitations is more likely to hold a party causing an injury responsible for his or her actions.”)

Third, the location of the accident is paramount; arguably the accident occurred within Minnesota, for choice of law purposes, and certainly Minnesota has a compelling interest to ensure that it is capable of enforcing civil harms within its boundary waters under which it exercises concurrent jurisdiction and keeping interstate bridges safe.

Although the District Court should have only relied on factors four and five, we additionally note that the first three factors weigh in favor of applying Minnesota’s statute of limitations.

The District Court stated on page 5 of its Order and Memorandum, that the predictability of result factor was ‘unimportant’ due to the “unplanned nature of

accidents” and therefore held this factor to be neutral. Plaintiff concedes under normal circumstances accidents are not planned. However, this Appellate Court recognized that the predictability of result could have relevance in certain tort cases. *Danielson*, 670 N.W.2d at 7. Based on Defendants egregious, unlawful and reckless conduct, this Court should consider whether this factor should be weighed in favor of Plaintiff. The Defendants conduct, although not planned, was reckless and careless and injury substantially certain to follow. Under these circumstances, it is unjust to say that this “accident” was unexpected or unpredictable. Defendant should have reasonably believed a claim may have been brought against her in Minnesota courts because the accident took place in an area where Minnesota exercises concurrent jurisdiction. Having left Wisconsin (albeit in the wrong set of lanes) arguably the Defendant’s primary offense was to Minnesota and those exiting Minnesota’s land mass. Minnesota has an interest in insuring the safety of such individuals.

The District Court found that the maintenance of interstate order favors an application of Wisconsin law. (Order at 5; A-8). The District Court appeared to have determined that Plaintiff was forum shopping, citing *Jepson v. Gen. Cas. Co. of Wis.*, 513 N.W.2d 467, 470 (Minn. 1994), on the belief that Plaintiff is attempting to litigate in Minnesota simply because her claim is time barred in Wisconsin, and that no other reasoning exists for filing suit in Minnesota. (Order at 5-6; A-8-9) Under Minnesota law, ‘forum shopping’ typically involves a Plaintiff seeking to invoke some substantive law of Minnesota for greater

recovery. See *Jepson* 513 N.W.2d at 471. (discussing the dilemma of allowing a plaintiff to take advantage of another states lower driving costs and simultaneously allowing plaintiff to take advantage of Minnesota's more generous tort compensation laws involving stacking of vehicles under uninsured motorist coverage). The case at bar is factually distinguishable from *Jepson*, in that Plaintiff is bringing a claim for relief in Minnesota courts not for the clear benefit of substantive tort law. To the contrary, the Plaintiff brought her case in Minnesota because she would have an easier time consolidating her case and subpoenaing witnesses for trial (i.e., Minnesota law enforcement, witnesses, ambulance crew and medical providers, to name a few).

The maintenance of interstate order in tort cases is generally satisfied as long as the state whose laws are purportedly in conflict have sufficient contacts with and interest in the facts and issues being litigated. (*Id.*) In the case at bar, the accident occurred in an area where Minnesota exercises concurrent jurisdiction over civil harms, upon a bridge which facilitates the free flow of goods and people between Duluth, Minnesota and Superior, Wisconsin. Minnesota courts have a compelling interest in ensuring that those exiting and entering Duluth, Minnesota over bridges upon its boundary waters, are free from the dangers of intoxicated drivers who drive upon the Blatnik bridge. Ensuring that such conduct is punishable through civil suits under the laws of Minnesota, furthers Minnesota's interest in keeping its interstate bridges safe through deterrence.

Danielson's treatment of the interstate order factor is a more appropriate gauge of how a Minnesota Court should treat statute of limitations issues. *Danielson*, 670 N.W.2d at 7-8. The test is whether or not Minnesota's application of its own statute of limitations would manifest disrespect for Wisconsin's statute of limitations or impede the interstate movement of peoples and goods. (*Id.* at 7.) Maintenance of order is satisfied if Minnesota has sufficient contacts and interest in the facts and issues being presented. (*Id.*) The court incorrectly stated that the only contacts are "the facts that the accident occurred in a location that provides for concurrent jurisdiction and a passenger in Plaintiff's vehicle is a Minnesota resident." (Order at 5-6; A-8-9). However, even assuming that those were the only two contacts, this would suffice to meet the interstate order factor.

The District Court failed to attach sufficient weight to Minnesota's concurrent jurisdiction with Wisconsin over the bridge where the accident took place when deciding upon the interstate factor. The policy behind concurrent jurisdiction is to maintain interstate order by ensuring that both states will have jurisdiction over actions arising upon interstate waters. This prevents confusion between conflicting state agencies and courts in having to engage in difficult border disputes over bodies of waters. Interstate order is not benefited when tort victims are forced to abide by the border determinations of emergency personnel and an alleged painted line on the center of the bridge purporting to be the 'border'. Because both Wisconsin and Minnesota have concurrent jurisdiction

over the Blatnik Bridge, there is no disrespect to Wisconsin if Minnesota's statute of limitations is applied or vice versa.

b. PERSONAL JURISDICTION.

i. Does the District Court have specific personal jurisdiction over a nonresident defendant who causes an accident on a bridge where Minnesota has concurrent jurisdiction?

Minnesota's long-arm statute confers jurisdiction to the fullest extent permissible under the United States Constitution requirements of due process; federal due process is satisfied when evidence demonstrates that that defendant purposely established minimum contacts in foreign state. *In re Minnesota Asbestos Litigation*, 552 N.W.2d 242 (Minn. 1996). If permissible requirements of due process under the Constitution are met, requirements of the long-arm statute will necessarily also be met. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, *rehearing denied, certiorari denied*, 515 U.S. 1017. When personal jurisdiction is challenged doubt should be resolved in favor of retention of jurisdiction. *V.H. v. Estate of Birnbaum*, 543 N.W.2d 649 (Minn. 1996). The retention rule applies to foreign defendants. *Hardrives, Inc. v. City of LaCrosse, Wisconsin*, 307 Minn. 290, 240 N.W.2d 814 (1976). State courts exercise jurisdiction over nonresident defendants under long-arm statute subject only to the limits of the federal due process clause of the Federal Constitution. *Birnbaum*, 543 N.W.2d at 654. Finally, a single transaction connected to forum state can be sufficient to satisfy minimum contacts necessary to assert personal jurisdiction over nonresident defendant if the cause of action arises from that contact.

Marquette Nat'l Bank of Minneapolis v. Norris, 270 N.W.2d 290, 295 (Minn. 1978).

Minnesota Courts have a two pronged test to determine whether they can exercise jurisdiction over an individual. The first test is Minnesota's long-arm statute, which requires a nonresident:

- (a) Own, use, or possesses any real or personal property situated in this state; or
- (b) Transact any business within the state; or
- (c) Commits any act in Minnesota causing injury or property damage; or
- (d) Commits any act outside of Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:
 - (1) Minnesota has no substantial interest in providing a forum; or
 - (2) The burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice; or
 - (3) The cause of action lies in defamation or privacy.

Minn. Stat. § 543.19 Subd. 1.

The extent of Minnesota's jurisdiction is defined as extending to "all places, within its boundaries, as defined by the Constitution, and concurrently, to the waters forming a common boundary between [Minnesota] and adjoining states." Minn. Stat. § 101.01. Because Minnesota has jurisdiction over those persons traveling upon the bridge it has jurisdiction over those who cause accidents upon the bridge.

Minnesota's long-arm statute is satisfied, because the sovereignty and jurisdiction of Minnesota, is concurrently extended to the opposite shore of the St. Louis River. Minn. Stat. § 101.01. Additionally, Minn. Stat. § 484.02 is the

specific legislative grant to Minnesota courts to exercise this jurisdiction. Because none of the exceptions apply to the Defendant, in that Minnesota has a strong interest in protecting the flow of interstate people upon bridges spanning the St. Louis River as well as the goal of compensating tort victims, the District Court erred by not finding that for all intents and purposes, this act occurred “within Minnesota.”

Only after the first test has been satisfied does one apply the justice and fairness test under *International Shoe v. Washington*, 326 U.S. 310 (1945).

Factors to consider in assessing the fairness are:

- (1) Quantity of the contacts with the forum state
- (2) Quality and nature of the contacts
- (3) Connection between the cause of action and the contacts
- (4) The state’s interest in providing a forum
- (5) Convenience of the parties.

Marquette Nat’l Bank v. Norris, 270 N.W.2d 290, 295 (Minn. 1978).

The first three factors are accorded greater importance; the second two factors are given lesser consideration. *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983).

The District Court’s erred in its minimum contacts analysis because it failed to recognize that causing an accident in an area where Minnesota has jurisdiction is a sufficient contact. *Norris*, 270 N.W.2d at 295 (stating a single occurrence is capable of satisfying the due process requirements of personal jurisdiction).

Defendant ‘purposely availed’ herself of the forum state by driving intoxicated upon a bridge and thereby injuring persons in an area where Minnesota exercises concurrent jurisdiction. It was reasonably foreseeable, based on her contacts within this concurrent “transition” area, that she would anticipate being haled into either Wisconsin or Minnesota courts based upon which court was the first to gain jurisdiction over the civil harm. This one specific action as a matter of law is sufficient for a Minnesota Court to exercise personal jurisdiction over the Defendant.

Numerous additional factors supporting personal jurisdiction over this matter were presented by Plaintiff and appeared and were not given sufficient weight by the District Court. Specifically, the Court did not consider the following: (1) Defendant decided to drive intoxicated towards Minnesota apparently attempting to reach Minnesota; (2) Defendant ended up in the Minnesota exit lane, injuring travelers coming out of Minnesota, some of which were residents of Minnesota; (3) a passenger in Plaintiff’s vehicle was a Minnesota resident at the time of the accident and has filed a suit in the same District under the same facts; (4) Minnesota law enforcement utilized resources and time responding to the accident; (5) Plaintiff was treated at a Minnesota hospital; (6) Minnesota ambulance providers responded to and transported Plaintiff to a Minnesota hospital. (Aff. of Genna Christian; Aff. of Patrick Christian; Aff. of Heinen; A-13-16, 20-21).

Wisconsin has recognized that personal jurisdiction existed over a defendant who was illegally clam fishing on within Minnesota territorial waters, notwithstanding the fact that the defendant was an Iowa resident and never entered Wisconsin territorial waters. *See State v. Beck*, 555 N.W.2d 145 (Wis. Ct. App. 1996). The Wisconsin Court of Appeals reasoned it had jurisdiction over the defendant, not because he was or was not a Wisconsin resident, but rather because the defendant was taking clams from boundary waters in a manner prohibited by both states. (*Id.* at 148)

As stated, the United States Supreme Court has recognized that concurrent jurisdiction is a grant of jurisdiction and that the power extends to civil matters. *Nielson v Oregon*, 212 U.S. 315, 320 (1909). In *Nielson*, the Court held that a criminal could be prosecuted and punished consistent with the Constitution of the United States so long as the offense was punishable in both states. (*Id.* at 321). As the Court noted concurrent jurisdiction may “bring up from time to time many and some curious and difficult questions, so we properly confine ourselves to the question presented.” (*Id.* at 320-21.).

It is well settled that both Wisconsin and Minnesota recognize a cause of action for negligent operation of a motor vehicle. *Bash v. Employers Mut. Ins. Co. of Wis.*, 157 N.W.2d 634 (Wis. 1968); *Becker v. State Farm Mut. Auto. Ins. Co.*, 611 N.W.2d 7 (Minn. 2000). If the *Nielson* test were to be extended to a civil harm occurring within boundary waters, the test would be satisfied since both

states recognize a cause of action for negligent operation of a motor vehicle and the Plaintiff's civil claim was first brought in Minnesota district court.

Ironically, the District Court's decision and reasoning (based upon its personal jurisdiction evaluation) is largely based upon the precise sort of geographical uncertainty which arises whenever an accident occurs on navigable boundary waters. This is precisely what the concept of concurrent jurisdiction was made to avoid. (Order at 9; A-12) ("the fact remains that at the time of the accident, she had not yet [traveled into Minnesota]"); (*Id.* at 10; A-13) ("Defendant had not yet crossed the line on the bridge that would cause her to reasonably believe that she had availed herself of the laws and jurisdiction of Minnesota"). While this is factually unproven, and not entirely clear, certainly the Plaintiff is entitled to the benefit of the doubt in that retention of jurisdiction is proper.

Turning to the fourth factor, Minnesota has a strong interest in enforcing responsible driving upon bridges where it exercises concurrent jurisdiction and for compensating tort victims within this same area. *Opsahl, George, cited above.*

Finally, neither party will not be inconvenienced by having to drive between Duluth and Superior; a distance of several miles.

IV. CONCLUSION

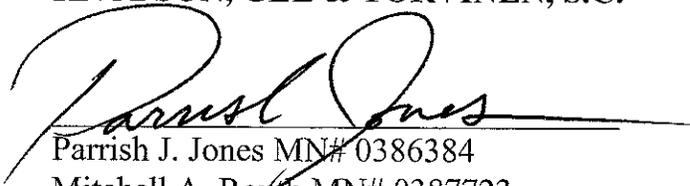
For the foregoing reasons, the Plaintiff asks that this Court reverse and remand the decision of the District Court: (1) with instructions that Minnesota law

applies to Plaintiff's claim; and (2) with instructions that personal jurisdiction over the Defendant is proper.

Respectfully submitted

Dated this 21 day of May 2008.

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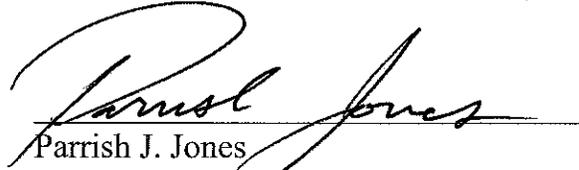
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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01 subds. 1 and 3 for a brief produced with proportional font. The length of the brief is 6651 words. This brief was prepared using Microsoft Word 2002.

Dated this 21 day of May 2008.

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CERTIFICATION OF MAILING

I certify that this brief was deposited in the United States mail for first class overnight delivery to the Clerk of the Appellate Court and all parties involved in this matter on May 21, 2008. I further certify that the brief was correctly addressed and postage was pre-paid.

Dated this 24 day of May 2008.

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