



Briefings

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TN TOP 5

Things To Do After a Car Accident

1. **Make sure everyone is safe**, and immediately go to the hospital if you are injured. You cannot risk contributing to your injuries by failing to have them checked out by a physician. Also, even if you are seriously injured, failure to seek immediate medical treatment may allow insurance companies to later question whether the injuries you were claiming were really severe or were caused by the accident.
2. **Contact the police.** Police have accident investigation skills, an authoritative presence at an accident scene and can contact other emergency services. They also make excellent witnesses in court. When approached by the police, witnesses will be more forthcoming and insurance and other contact information is likely to be exchanged with greater ease.
3. **Gather information.** Take photographs with your cell phone camera, take down the names and numbers of witnesses, make note of the weather conditions, the functionality of traffic signals and any debris field left as a result of the accident. Police also do this, but it is helpful to have additional corresponding records.
4. **Continue to keep notes.** You will remember other things about the accident a few days later. Keep a journal to help you remember important aspects of the case, your medical appointments, the pain you are feeling, the receipts you are generating and any other out-of-pocket expenses that you have incurred as a result of the accident.
5. **Consult a lawyer.** Do not speak to the other parties involved or their insurance company representative — or possibly your own — before consulting a lawyer. You are likely to receive follow-up phone contact from various insurance companies, and the information you provide to them may be misinterpreted.

Keep this "Top Five" list in your glove box. Contact the attorneys at Thomsen Nybeck to advise you on insurance company correspondence, police follow-up or other questions about the accident. Your health and legal rights are too important to handle unprepared.

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Ryan Wood contributed to this article. He practices in the litigation section at Thomsen Nybeck in the areas of criminal law and general civil litigation. rwood@tn-law.com

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Debtors Presumed To Own All Funds In A Joint Account

Garnishment – *The process by which a creditor with a judgment can take money that the debtor has or is owed.*

On April 22, 2010, the Minnesota Supreme Court held that when a creditor seeks to garnish funds in a bank account that the debtor holds jointly with another person, the joint account holders must prove that some funds are not subject to garnishment. All of the funds in the account may be garnished unless the debtor or non-debtor joint owner can prove that some of the funds in the account belong to the non-debtor. Then those funds contributed by the non-debtor are not subject to garnishment.

In the underlying action, judgment was entered against Mona Savig for failure to make credit card payments to First National Bank of Omaha. On the bank's behalf, law firm Messerli & Kramer served a post-judgment garnishment summons on Ms. Savig and Midwest Bank, where she held both a joint checking and a joint savings account with her spouse. Midwest Bank withheld \$2,000 from Ms. Savig's account and turned the money over to Messerli & Kramer.

Ms. Savig and her spouse filed a complaint in the U.S. District Court alleging a violation of the Fair Debt Collection Practices Act. The complaint asserted that \$842 from the joint checking account belonged to Ms. Savig's spouse and should not have been garnished. The federal court asked the Minnesota Supreme Court to decide the question of law.

After examining the relationship between Minnesota's garnishment statutes and the Multiparty Accounts Act (Minn. Stat. § 524.6-201), the Court determined that "the approach most consistent with the overall process built into the garnishment statutes is to place the burden of proof on the account holders to prove net contributions, similar to the process for claiming an exemption."

This is good news for creditors who are attempting to garnish bank accounts in order to collect a judgment, and for banks responding to a creditor's garnishment summons. Under this ruling, all of the funds in the joint account are available to the creditor unless the debtor or the joint owner comes forward to show which portion

of the funds in the account belongs to the debtor. The ruling also places the burden upon the person best able to meet it: the joint account owners who have access to deposit and withdrawal history and other information regarding the source of the funds in the account.

For joint account holders, the Court's decision confirms the importance of maintaining thorough personal records. Items such as deposit slips, payroll records and bank statements can be used to show how much of the account belongs to the debtor and how much belongs to the non-debtor joint owner. A significant downside for a non-debtor joint account holder is that he or she may not receive advance notice of the garnishment. Minnesota law requires that notice be given by the bank to the debtor, but not to joint account holders of the debtor. While a joint owner may still recover the garnished funds from the creditor later, that process is more difficult than acting immediately to protect his or her interest.

If you need legal counsel for filing a garnishment action, responding properly to such an action or defending the funds in a joint account from garnishment, call one of our business law attorneys.

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Ivory Ruud contributed to this article. She focuses her practice in the areas of Real Estate Law, Business Law, Estate Planning and Wind Energy. iruud@tn-law.com

Home Buyer Tax Credit closing deadline extended!

The Home Buyer Tax Credit, part of the Homebuyer Assistance and Improvement Act (HR 5623), initially required an executed purchase agreement on or before the end of April 2010, with a closing deadline of June 30, 2010. In late June 2010, Congress acted to pass an extension to the closing deadline (though the purchase agreement deadline remains unchanged). Now, the transaction must close by September 30, 2010 (rather than the June 30 deadline) to obtain the credit.

For more information about this extension, visit our blog at: <http://tnupdate.wordpress.com/>

“Miranda Rights” Protections: 40 Years Ago and Today

You might watch enough television or movies to be familiar with the phrase that begins, “You have the right to remain silent...” You might not realize that the United States Supreme Court’s landmark 1966 decision in *Miranda v. Arizona* was delivered on a 5-4 vote, and with scathing judicial opposition. Constitutionally speaking, the *Miranda* decision required the police to make criminal suspects aware of their 5th and 6th Amendment rights against self-incrimination and to the assistance of an attorney.

In practice, *Miranda*’s step-by-step instructions were intended to limit the possibility that trial courts would have to worry that a confession given to the police by a criminal defendant would be derived from coercion or undue influence. The *Miranda* decision and its progeny required all confessions waiving *Miranda*’s protections to be knowing, voluntary and intelligent. The warning given by police on television and in real life is the same statement the Supreme Court specifically directed law enforcement to use when handling interrogations.

As with many laws, the exceptions often swallow the rule. *Miranda* does not apply to simple roadside questioning or otherwise casual encounters with the police. For example, if you are pulled over by the police for speeding, you do not have to speak with them and they also do not have to read you your “*Miranda* rights.” At the risk of oversimplifying a complex rule, only incrimination-seeking questions coupled with the suspect’s inability to leave a coercive environment will trigger the requirement that the police utter the magic words of *Miranda* — or they risk having a confession deemed inadmissible.

One landmark clarification was recently announced in the 2010 case of *Berghuis v. Thompkins*, where the Supreme Court held that a criminal suspect must affirmatively indicate that he or she wants to remain silent. Somewhat strangely, the “right to remain silent” now only exists if you say something like: “I wish to remain silent,” or “No more questions, thanks,” or “I want my lawyer.”

In *Thompkins*, the suspect was read the *Miranda* warning and then sat in near silence for three hours; all the while the police were questioning him. After three hours passed, the suspect confessed. After a series of appeals, the United States Supreme Court stated in a 5-4 decision that *Thompkins*’ silence alone did not activate his *Miranda* rights because he did not affirmatively state that he refused police questioning. Among others, one of the court’s justifications was that police cannot be left to guess whether a suspect wishes to end an interrogation if the suspect never tells them to end it.

There is no question that *Thompkins* represents a departure from the original intent of the *Miranda* decision — now, a suspect has to know what to do about the fact that he or she has such rights and affirmatively tell the police how to proceed. The Supreme Court has now determined that sitting in silence does not in itself make the police aware that you are exercising your 5th and 6th Amendment rights.

If you are ever unsure of whether or not to speak with the police (in any matter other than a routine traffic stop), simply say, “I would like to speak to my lawyer about this first” or “I would like to remain silent.” This statement automatically invokes all of your 5th and 6th Amendment rights. Contact Thomsen Nybeck to guide you or a loved one through the proper legal channels.

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Ryan Wood contributed to this article. He practices in the litigation section at Thomsen Nybeck in the areas of criminal law and general civil litigation.
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Catlan McCurdy, a student at the University of Minnesota School of Law, was hired as the firm’s law clerk.

Attorney **Gretchen Schellhas (1)** spoke at the Minnesota Chapter of the Community Association Institute’s (CAI-MN) May 2010 Manager’s Luncheon on the topic of delinquencies and foreclosures.

Attorney **Chris Renz (2)** served as special prosecutor to investigate whether to bring criminal charges against Phil Young, the Mayor of Eden Prairie.

Attorney **Matt Drewes (3)** was quoted in the July 12, 2010, issue of *Minnesota Lawyer*, in an article regarding seeking punitive damages in a construction defect case, namely the 35W bridge collapse case.

Attorney **Ryan Wood (4)** on May 13, 2010, presented on the topic of new issues arising in DWI law at a Minnesota CLE-sponsored web-based continuing education seminar.

Attorney **Ivory Ruud (5)** was elected President and Chair of the Network One group within the Edina Chamber of Commerce.

Brad Boyd (6) and Thomsen Nybeck are now sponsoring the track cycling velodrome at the National Sports Center in Blaine, MN.

Attorney **Jack Carlson (7)** spoke at the Minnesota CLE about Tax Law for the Non-Specialist concerning S-corporations on May 20, 2010.

Attorney **Jack Carlson (7)** was listed in the June 2010 edition of *Minnesota Monthly* as one of Minnesota’s Best Lawyers in 2010 in the area of Tax Law.

Attorney **Jack Carlson (7)** was quoted in a July 25, 2010, *Star Tribune* Op-Ed piece regarding the estate tax.

Thomsen Nybeck sponsored a hole at the 2010 CAI-MN Golf Tournament held on July 14, 2010, in Stillwater, Minnesota.

ATTORNEYS

This newsletter is presented to you by the attorneys of Thomsen Nybeck:

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PRACTICE AREAS

Thomsen Nybeck has in-depth experience and knowledge in the following practice areas. For a complete list, visit www.tn-law.com. Call us at (952) 835-7000 to discuss your concerns or to determine if you have a case.

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Construction Defect Litigation
Corporations & Partnerships
Criminal Law
Employment Law
Estates, Wills and Trusts

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Financing
Personal Injury
Real Estate
Taxation
Townhome & Condominium Law
Wind Energy

“Large enough to be effective.
Small enough to care.”