



ROBINS  KAPLAN LLP

# QUARTERLY

Tackling Tough Business Litigation Matters

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## Minnesota Bans Non-Competes Formed on or After July 1, 2023

ASSESSING REMAINING STRATEGIES TO PROTECT CONFIDENTIAL INFORMATION AND TRADE SECRETS

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On May 24, 2023, Minnesota Governor Walz signed into law a bill banning non-competition agreements formed on or after July 1, 2023. The new law applies to non-compete agreements formed with employees or independent contractors primarily residing and working in Minnesota. It provides limited exceptions, only permitting non-competes formed during the sale or dissolution of a business. The law also prohibits the use of choice of law or venue provisions to circumvent the non-compete ban.

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REWRITING THE ODDS

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Before this legislation, non-compete agreements had been one of several tools that Minnesota businesses commonly used to prevent the unauthorized dissemination of confidential and trade secret information to competitors. Agreements preventing insiders with knowledge of company confidential information from working for competitors often provided a clear, objective means to limit the risk of trade secret misappropriation and misuse of confidential information. Breaches of non-compete agreements are in many cases easier to assess and prove than other more targeted agreements protecting trade secret and confidential information.

Despite these benefits, the Minnesota legislature was moved by concerns about the misuse of non-compete agreements, especially the widespread use of such agreements to employees with only limited access to truly confidential information. The resulting new law provides businesses an opportunity to assess their protection strategies employed for company trade secret and confidential information in Minnesota.

Legal strategies employing trade secret law (via the federal Defend Trade Secrets Act or the Minnesota Uniform Trade Secrets Act) to protect proprietary information are presumably unaffected by the new law. To claim information as a trade secret, companies must, among other things, take “reasonable measures under the circumstances[.]” Thus, with the loss of non-compete agreements as a tool to facilitate protection, companies should assess whether remaining measures adequately cover the information that the company desires to protect. Companies should consider, for each type of information, whether there are overlapping protection measures that protect the information in different ways. If not, a company should consider augmenting its protection plan. Such alternative protection measures may be necessary to demonstrate that a trade secret holder took reasonable measures to protect information. Such a finding could result in a misappropriating employee—and their new employer—escaping with no liability at all.

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**Companies should consider evaluating and revising (as needed) the language of existing and proposed non-disclosure, non-solicitation, or no-business agreements so these agreements more clearly instruct employees on what is expected of them.**

The new Minnesota law leaves untouched several other contractual protections that businesses may leverage to protect their information. The new Minnesota law expressly carves out, and thus permits, non-disclosure agreements and non-solicitation agreements. The new law also provides that an unenforceable non-compete covenant does not render void or unenforceable other provisions in the agreement. Companies should beware, however, that certain provisions designated as non-disclosure or non-solicitation agreements may still be considered unenforceable noncompete agreements under Minnesota law. Non-disclosure or non-solicitation agreements that are unusually broad in scope may function as *de facto* non-compete agreements, falling within the scope of the new law and making it unenforceable.

More specifically, companies should consider evaluating and revising (as needed) the language of existing and proposed non-disclosure, non-solicitation, or no-business agreements so these agreements more clearly instruct employees on what is expected of them. For example, companies should avoid overly broad definitions of confidential information and trade secrets, as well as overly broad restrictions on potential post-employment conduct. A narrowly drafted restrictive covenant that addresses a legitimate business interest may be more defensible than one aimed at restricting the conduct or rights of a former employee. In addition, when crafting a restrictive covenant, companies should consider developing a credible and straightforward explanation for it, such as identifying the specific business interest it protects.

Minnesota's ban on non-compete agreements may affect some companies' efforts to protect confidential or trade secret information. To mitigate any risk of loss, companies should reevaluate their employment agreements to ensure they focus on protection that addresses the information itself and not the individuals that use the information.



# Minnesota Passes Survivorship Bill, Expanding Justice for Victims of Medical Malpractice and Wrongful Death

On May 20, 2023, Minnesota became the last state to pass a Survivorship Bill, expanding the damages that families can pursue after losing a loved one.

Liz Fors, co-chair of the Legislative Committee for Minnesota Association for Justice (MAJ) and partner at Robins Kaplan LLP, said MAJ has been working on behalf of consumers for over a decade to get this bill passed.

LIZ FORS

“We have been lobbying and educating our representatives and senators about the need for this bill for years,” Fors said. “One of our top priorities for 2023 was to get this law passed.”

There are two primary scenarios in which the Minnesota Survivorship Statute is pertinent, she explained. The first is when someone is the victim of medical malpractice but dies from an unrelated cause. Prior to the law being passed, the case could not be carried on after the person’s death. Unfortunately, this situation was not uncommon when the person was very old or sick, and defense attorneys have been known to drag their feet in those cases.

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**“We have been lobbying and educating our representatives and senators about the need for this bill for years. One of our top priorities for 2023 was to get this law passed.”**

- LIZ FORS, CO-CHAIR OF THE LEGISLATIVE COMMITTEE FOR MINNESOTA ASSOCIATION FOR JUSTICE (MAJ) AND PARTNER AT ROBINS KAPLAN LLP



In one instance, a wife lobbying for the Minnesota Survivorship Bill testified about a situation with her husband, who was suffering from stage 4 colon cancer. During one of the surgeries required to treat his cancer, a 12-inch sponge was left inside his abdomen. It was discovered two weeks later. He was hospitalized for nearly two months after it was removed, losing nearly 50 pounds and undergoing surgery after surgery to insert drains in all the infected abscesses the sponge left behind.

The couple hired a lawyer and offered to negotiate a fair settlement, but the hospital did not respond. After moving forward with a lawsuit, the hospital denied any negligence and requested a jury trial, which is now set after Thanksgiving.

“In my mind, there can be only one reason for the hospital to refuse to negotiate and to include ridiculous defenses and to ask for a jury trial—and that is they are hoping he will die from cancer before they can be held accountable for their negligence,” the wife said.

Fors recalls another case involving victims of alleged abuse in Minnesota nursing homes.

“Years ago in Southern Minnesota, there were numerous investigations at nursing homes where residents were sexually and physically abused,” Fors said. “Many of the victims died from unrelated causes before the lawsuit was resolved and their families could never hold the wrongdoers accountable.”

The second scenario involves claims for the deceased’s pain and suffering, and emotional distress. The previous law only allowed families to bring a claim for wrongful death when a loved one died from medical malpractice. The deceased’s economic damages, such as lost wages, were assessed. The families could only claim the loss of the relationship with their loved one, not the deceased’s pain and suffering.

**“Now we can get justice for these families. We don’t have to ignore the horrible things that their loved ones went through.”**

- LIZ FORS

With the passage of the bill, Fors and other members of the firm’s Personal Injury and Medical Malpractice Group are seeking to amend complaints to add these damages for a number of clients. They look forward to helping their clients finally get the justice they deserve and hold the wrongdoers accountable.

# FRONT AND CENTER

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On July 25, 2023, a federal judge in St. Paul ordered BMO Harris Bank to post bond for more than \$1.158 billion as a result of the \$1 billion jury verdict and interest award Robins Kaplan secured against BMO on behalf of its client Douglas Kelley. This case arose from one of the largest Ponzi schemes in U.S. history.

MICHAEL COLLYARD

This ruling follows a historic November 2022 jury verdict against BMO awarding Kelley approximately \$564 million in damages, and the court's June 2023 order awarding Kelley approximately \$500 million in interest.

The case involved former Wayzata fraudster Tom Petters, who was convicted and sentenced to 50 years in prison for fraud using accounts held at M&I Bank, which was acquired in 2011 by BMO Harris Bank. In November 2022, a Minnesota jury found that BMO aided and abetted breaches of fiduciary duty by Petters and his cohorts in using an M&I checking account to launder nearly \$74 billion in Ponzi scheme proceeds between 2002 and 2008.

This is the largest jury verdict in Minnesota history.



On May 17, 2023, Minnesota Attorney General Keith Ellison announced the details of his Office’s settlement with JUUL and Altria for deceptively marketing e-cigarettes, which includes \$60.5 million in combined payments by the two companies and public disclosure of JUUL and Altria internal documents. This announcement followed Minnesota’s three-week trial against the companies in March and April 2023. Robins Kaplan and Zimmerman Reed were privileged to partner with the State of Minnesota on this litigation.

**TARA SUTTON**

Under the terms of the Consent Judgment filed with the Hennepin County District Court, JUUL and Altria will together pay a total of \$60.5 million to the State of Minnesota over an eight-year period. This settlement is the largest per capita of all 48 states and territories that have settled with JUUL. The terms of the settlement require JUUL and Altria to publish their internal documents related to the litigation in a public document depository.

**MUNIR MEGHJEE**

The trial began on March 28, 2023, with opening statements by Attorney General Ellison and lead trial counsel Tara Sutton of Robins Kaplan. The State presented 11 witnesses in support of its claims against JUUL and Altria before Attorney General Ellison rested the State’s case on April 11. The settlement was announced on the eve of the case going to the jury for deliberation.

“We are proud to stand with Governor Walz, Attorney General Ellison, and Lieutenant Governor Peggy Flanagan to close another chapter in the fight against the tobacco companies putting Minnesota youth at risk through deceptive marketing,” said Tara Sutton, lead trial counsel from Robins Kaplan. “From the groundbreaking tobacco trial in 1998 to today, Robins Kaplan has been honored to play a role in protecting Minnesota’s children.”

“As the first state to go to trial against JUUL, Minnesota has proven once again, as it did 25 years ago, that it will hold tobacco companies accountable for their actions,” said Munir Meghjee, lead trial co-counsel and Robins Kaplan partner. “Thank you to Attorney General Ellison and our co-counsel Zimmerman Reed for partnering with us in this hard-fought battle for the benefit of Minnesota youth.”



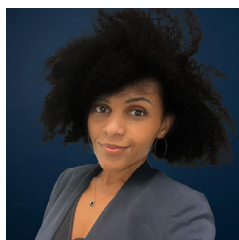
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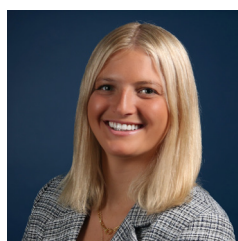


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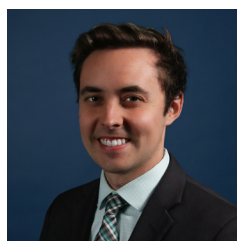
Joining us from 10 different law schools across the country, our 17 summer associates spent the summer working directly with our experienced trial lawyers to grow their skills as legal writers, thinkers, and advocates. We thank them for sharing their many talents with us.



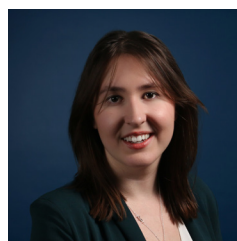
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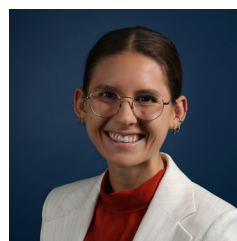
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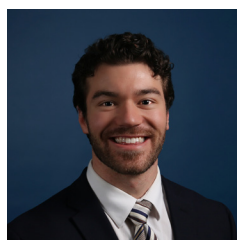
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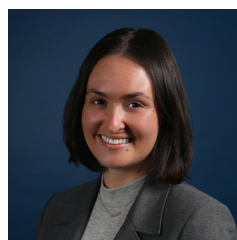
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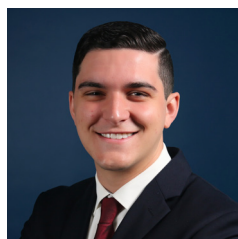
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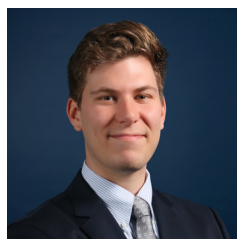
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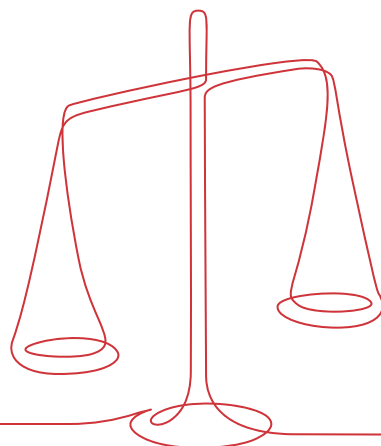
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# QUARTERLY

## 85 YEARS OF **REWRITING THE ODDS**

While Robins Kaplan's results speak for themselves, the firm's history is an intricate, idiosyncratic one. It was never an organization that walked in the path well-trod by so many firms that came before it. It is a legacy built by lawyers who conducted themselves as both advocates and entrepreneurs, men and women who set out to do things in a way that had never been done before and altered legal history as they went.

**The fight for access for everyone, for a place at the table for all, became part of the firm's DNA and is the foundation of who we are today.**

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