



# ROBINS KAPLAN JUSTICE REPORT

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**UBER INVOLVED IN YOUR MINNESOTA PERSONAL  
INJURY CASE? IS THERE COVERAGE?**

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ROBINS  KAPLAN<sup>LLP</sup>

REWRITING THE ODDS

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## UBER INVOLVED IN YOUR MINNESOTA PERSONAL INJURY CASE? IS THERE COVERAGE?

**BY TONY SCHRANK**



**TONY SCHRANK**

Imagine this situation: You are badly injured in a car crash because of another driver's negligence. Your liability claim against the negligent driver's insurance company is denied because the driver was logged on the Uber app as an Uber driver at the time of the crash and the driver's personal policy has a business exclusion.

So, you make a liability claim against Uber's carrier. They deny your claim because the driver was logged on the Uber app, driving around and waiting to be assigned an Uber passenger but did not have an Uber passenger in the vehicle at the time of the crash. Because there was no Uber passenger in the vehicle, Uber's carrier claims the driver was not working for Uber and therefore the crash is not covered under the Uber liability policy. You now find yourself injured with a gap in coverage.

This gap in coverage was present in the early years of Uber and other rideshare companies. The Minnesota Legislature closed the gap in 2015 by enacting Minn. Stat. 65B.472, which sets out two parts of an Uber ride and mandates that the Uber policy provide a minimum amount of insurance coverage during each part. Part 1 is "while the driver is logged on to the transportation network company's digital network." This is the period when the Uber driver is on the Uber app but has not yet agreed to pick up an Uber passenger and is probably driving around looking for a preferable rider assignment. Part 2 is "while the driver is engaged in a prearranged ride." This period runs from the time an Uber driver agrees to pick up an Uber passenger, drives to pick up that Uber passenger, continues while the Uber driver transports the Uber passenger, and ends when the Uber passenger departs from the vehicle. Minn. Stat. 65B.472 mandates that the Uber policy provide a minimum amount of coverage during each of the two parts of an Uber ride and thus put an end to the insurance gap.

## SELECTED CASE RESULTS



KATHLEEN  
FLYNN  
PETERSON



COLIN  
PETERSON

### \$18 MILLION SETTLEMENT FOLLOWING FAILURE TO MANAGE SEPSIS

Kathleen Flynn Peterson and Colin Peterson settled a medical malpractice lawsuit for a 62-year-old woman who suffered loss of significant portions of all four limbs as a result of the defendant's failure to properly manage sepsis. The client had been able to return to work and therefore claimed no lost income. The settlement included future medical and rehabilitative needs and non-economic loss.

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## OTHER DRUG AND DEVICE INVESTIGATIONS

Robins Kaplan LLP is currently investigating many new potential cases. Please contact our Mass Tort team if you have any questions or know of any individuals whose case should be evaluated.

- **Abilify** – This atypical antipsychotic—used to treat a variety of disorders, including schizophrenia, bipolar, and depression—may cause impulse-control behaviors, including compulsive gambling.<sup>1</sup>
- **Benicar** – Popular blood pressure medication can cause intestinal problems known as sprue-like enteropathy, with chronic diarrhea, weight loss, nausea, and vomiting.<sup>2</sup>
- **Premature Hip Implant Failures** – Litigating cases involving DePuy ASR, DePuy Pinnacle, Stryker Rejuvenate, Stryker LFIT COCR V40, Wright Profemur, Wright Conserve, and Biomet M2a-Magnum.<sup>3</sup>
- **Invokana, Farxiga, and Jardiance** – These Type 2 Diabetes drugs can cause ketoacidosis—very elevated blood acid levels—which may require hospitalization.<sup>4</sup>
- **Stockert 3t Heater-Cooler Device** – This device used during open-heart surgery has been linked with a specific type of rare, nontuberculous mycobacterium infections, which can occur up to five years after exposure.<sup>5</sup>
- **Taxotere** – Studies and reports have associated permanent hair loss (alopecia) with the use of chemotherapy drug Taxotere (docetaxel).<sup>6</sup>
- **Viagra** – Use is associated with increased risk of melanoma.<sup>7</sup>
- **Zofran** – This anti-nausea drug prescribed “off label” for morning sickness is associated with increased risk of cleft palate and congenital heart defects.<sup>8</sup>
- **Whistleblower/False Claims Act** – Cases involving companies who defraud government entities, including unpaid or underpaid obligations, over billing, healthcare, or construction fraud.

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1. <http://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2015/55668a-eng.php>

2. <http://www.fda.gov/Drugs/DrugSafety/ucm359477.htm>; <http://www.ncbi.nlm.nih.gov/pubmed/22728033>

3. *Concerns about Metal-on-Metal Implants*, available at [www.fda.gov](http://www.fda.gov)

4. <http://www.fda.gov/drugs/drugsafety/ucm446845.htm>

5. See <https://www.cdc.gov/hai/outbreaks/heater-cooler.html>

6. See, e.g., Kluger, *Permanent Scalp Alopecia Related to Breast Cancer Chemotherapy by Sequential Fluorouracil/Epirubicin/Cyclophosphamide (FEC) and Docetaxel: A Prospective Study of 20 Patients*, *Annals of Oncology* at 1 (May 9, 2012); Prevezas et al., *Irreversible & Severe Alopecia Following Docetaxel or Paclitaxel Cytotoxic Therapy for Breast Cancer*, 160 Br. J. Dermatology 883-885 (2009); Tallon et al., *Permanent Chemotherapy-Induced Alopecia; Case Report and Review of the Literature*, 63 J. Am. Academy of Derm. 333-336 (2010).

7. Wen-Qing Li, et al. *Sildenafil Use and Increased Risk of Incident Melanoma in U.S. Men: A Prospective Cohort Study*. JAMA Intern. Med. (June 2014)

8. M. Anderka et al. *Medications Used to Treat Nausea and Vomiting of Pregnancy and Risk of Selected Birth Defects*. Birth Defects Res A Clin Mol Teratol. (Jan. 2012); JT Anderson et al. *Ondansetron use in Early Pregnancy and the Risk of Congenital Malformations – A Register Based Nationwide Cohort Study*. Pharmacoepidemiology and Drug Safety. (Oct. 2013)



An Uber driver's own personal auto insurance policy may exclude all coverage, including liability, PIP, and UIM/UM, when their insured is driving Part 1 and Part 2 of an Uber ride per Minn. Stat. 65B.472, subd. 4. Some companies choose to offer coverage to their insureds for Part 1 and Part 2, and when that occurs, Minn. Stat. 65B.472 permits the injured party to make a liability, PIP, and UM/UIM claim against those policies—this potential coverage should be investigated at the onset of the case.

Now that Minn. Stat. 65B.472 requires that Uber's policy cover both Part 1 and Part 2 of a ride, what does the statute tell us about the minimum amount of coverage the Uber policy must carry during each part of the ride to benefit the Uber passenger and/or third parties involved in a collision with the Uber driver?

-UM/UIM minimum coverage:

-Part 1: \$25,000/\$50,000

-Part 2: \$25,000/\$50,000

Even though the statutory UM/UIM minimum is \$25,000/\$50,000 during Part 2, Uber represents on its website that its insurance provides \$1,000,000 in UM/UIM coverage to Uber drivers and Uber passengers during Part 2.

-Liability minimum coverage:

-Part 1: \$50,000/\$100,000

-Part 2: \$1,500,000

If your client is hit by a negligent Uber driver, whether the minimum coverage is \$1,500,000 or \$50,000 depends on whether the Uber driver was in Part 1 or Part 2 of the Uber ride at the time of the crash. You must discover early whether the Uber driver had an Uber passenger in his or her vehicle or had agreed to pick up an Uber passenger at the time of the crash. If either one is true, the higher limit will apply. The involved insurance companies are required by law to "cooperate to facilitate the exchange of relevant information with directly involved parties." That mandate should assist in obtaining the facts needed to determine coverage.







## UPCOMING EVENT: **2018 WOMEN TRIAL LAWYERS CONFERENCE**

From November 1 to 3, the second annual Women Trial Lawyers Conference will take place at the Grand View Lodge in Nisswa, Minnesota. Conference presenters will discuss many aspects of trial practice in Minnesota, including evidentiary support issues and negotiation tactics. The event will also address issues uniquely affecting women trial lawyers, including gender bias and career advancement.

Robins Kaplan attorneys Holly Dolejsi and Elizabeth Fors serve among the event's course chairs. Dolejsi and Fors helped create the annual conference in 2017, along with three other women lawyers in the Minneapolis area, and in conjunction with Minnesota Association for Justice. The event is designed to allow women lawyers the opportunity to develop deeper networks and hone their trial skills. One goal of the conference is to make attendance accessible by obtaining sponsors to cover all registration costs. Robins Kaplan is proud to sponsor this event.

**To learn more or to register for the conference, visit [wtlcamp.com](http://wtlcamp.com).**

**November 1 - 3, 2018  
Grand View Lodge  
23521 Nokomis Avenue  
Nisswa, MN 56468**

## BRANDON THOMPSON INDUCTED INTO THE INTERNATIONAL ACADEMY OF TRIAL LAWYERS



**BRANDON  
THOMPSON**

Brandon Thompson has been inducted into the International Academy of Trial Lawyers (IATL). The Academy seeks out, identifies, and honors those who have achieved a career of excellence through demonstrated skill and success in jury trials, trials before the court, and appellate practice. Membership is limited to just 500 attorneys nationwide.

Thompson joins Kathleen Flynn Peterson, Lawrence Farese, Martin Lueck, and IATL Vice President Roman Silberfeld in the Academy.

## KATE JAYCOX NAMED SECRETARY OF THE MINNESOTA ASSOCIATION FOR JUSTICE



**KATE  
JAYCOX**

Kate Jaycox, a principal in the firm's Mass Tort Group, has been named secretary of the Minnesota Association for Justice (MAJ) for 2018-2019. As secretary, Jaycox will lead the Membership Committee, overseeing annual recruitment goals and objectives for the organization.

MAJ is a professional association of plaintiffs' attorneys who represent people injured by the negligence or misconduct of others. Jaycox has been involved with the organization since 2004, serving on the organization's Board of Governors and Executive Committee.

She currently co-chairs the MAJ Education Committee. In 2017, Jaycox was named a Member of the Year in recognition of her extraordinary leadership and devoted service to the organization.

## FINALISTS: ELITE TRIAL LAWYERS



**TARA  
SUTTON**



**HOLLIS  
SALZMAN**

*The National Law Journal* recently announced its list of finalists for the 2018 Elite Trial Lawyers awards, and Robins Kaplan's partners and practice groups were well represented. The firm's Personal Injury and Medical Malpractice Group was named a finalist in the Medical Malpractice category, and Mass Tort Group Chair Tara Sutton was selected as a finalist to receive the NLJ's inaugural Elite Women of the Plaintiff's Bar Award.

The Elite Trial Lawyer awards recognize U.S. attorneys and law firms that have provided cutting-edge representation and achieved major wins on behalf of plaintiffs. According to the NLJ, the finalists were selected from more than 300 submissions.

In addition to recognizing Ms. Sutton and the Personal Injury and Medical Malpractice Group, the NLJ also selected as finalists the firm's Antitrust and Trade Regulation Group and its group chair Hollis Salzman.

## AWARDS: LAWDAGON 500, TOP 250 WOMEN IN LITIGATION



**KATHLEEN  
FLYNN  
PETERSON**



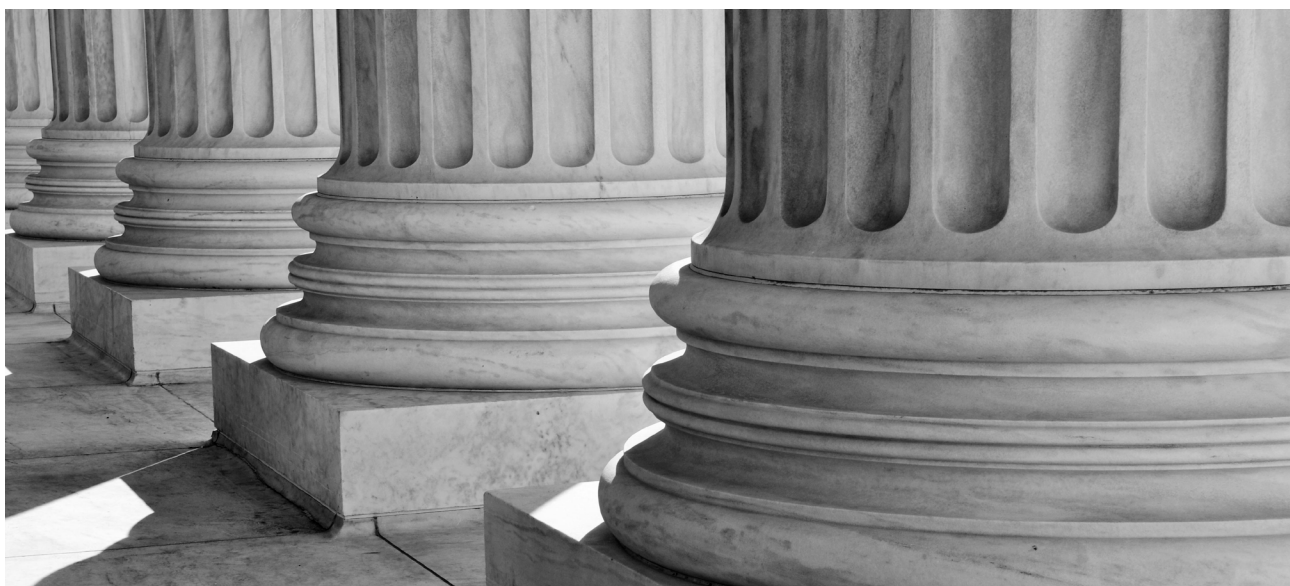
**TARA  
SUTTON**

Kathleen Flynn Peterson and Tara Sutton were named to *Lawdragon's* 2018 "500 Leading Lawyers in America" list. According to *Lawdragon*, the list serves as the leading guide to the nation's best lawyers and judges. It comprises private lawyers from a wide range of practices, as well as in-house counsel, law professors, judges and neutrals, government attorneys, and public-interest lawyers. Those named to the list represent less than one-half of one percent of the legal profession, placing them among the most elite group of legal professionals.

Flynn Peterson was also named one of the "Top 250 Women in Litigation" by *Benchmark Litigation*. The list is billed as the definitive guide to the country's leading female litigators.

For nearly 40 years, Flynn Peterson has been a constant champion for victims of injustice, often women and children, in the health care system. A registered nurse turned lawyer, she worked the night shift at St. Paul-Ramsey Medical Center while earning her J.D. Despite the institutional resistance of juries and policymakers to see fault in medical professionals, she has obtained millions of dollars in verdicts and settlements, many of them record-setting, to secure justice for individuals and families who have experienced injury or death as a result of medical negligence.

Tara Sutton has repeatedly achieved victories that create a path to recovery for thousands injured by drugs and medical devices. Chair of the firm's Mass Tort Group and a member of the Executive Board, Sutton has assumed the role of lead trial counsel in a number of nine- and ten-figure mass tort cases. In recent years, she has served as lead trial counsel in bellwether cases concerning the drugs Abilify, Chantix, and Mirapex, and spearheaded the negotiation of a \$1.4 billion global settlement program resolving Stryker Rejuvenate/ABGII modular hip implant litigation and a \$358 million settlement of the Benicar hypertension litigation.





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