

Ohnstad Twichell, P.C., is a full service law firm having a general and trial practice in North Dakota, Minnesota, and federal courts and offering services in the fields of probate, real estate, estate planning, corporate, employment law, family law, elder law, municipal finance and bonding, taxation, personal injury, criminal, negligence, commercial, insurance defense, water rights and automobile law.

## THINGS TO KNOW WHEN YOU GET IN AN ACCIDENT



**Robert G. Hoy** works in the West Fargo office and devotes his practice to personal injury, medical malpractice, and criminal defense.

It can happen to anyone. It could be a son, daughter, spouse, or ourselves, but anyone can be the victim of a motor vehicle accident. And whether it is a simple fender bender, or something more serious, there are some guidelines on how we should respond.

If the accident involves injuries or property damage, North Dakota statutes require the driver to remain at the scene until they have provided their name and address, insurance carrier, and the registration number of the vehicle. If requested, the driver is also required to produce their driver's license, as well as rendering any reasonable assistance to injured parties.

If you should strike an unattended vehicle, North Dakota law requires you attempt to locate the owner in the area, and if they cannot be found, you are to leave in a conspicuous place on the vehicle, your name and address, insurance carrier, and a brief statement of the circumstances involved. And while laws differ somewhat from state to state, all have substantially similar requirements.

Although state statutes do not always require you to notify law enforcement, they play a very important role in this process as well. If you are involved in an accident involving personal injury or any significant amount of property

damage, you should also notify local law enforcement (or dial 911) as soon as possible. Aside from their well-known responsibility of issuing traffic citations reflective of fault for the collision, law enforcement also serves as the official recorder of the collision scene. Depending upon the seriousness of the injuries, or the value of property damage involved, law enforcement officers will secure the scene, interview the drivers and witnesses to determine directions of travel, point of impact, fault, take photographs, and record statements. The crash reports they complete also contain the identities of the owners and drivers of each vehicle, the insurance carriers involved, the identity and seating position of each passenger, and other routine documentation that would otherwise be lost if not promptly recorded. Their photographs of the vehicles at the scenes, and the skid marks, paint transfers, fluid leaks, and the overall location are often the only visual documentation that exists. In cases involving serious injury or death, many law enforcement agencies also have accident reconstruction capabilities which allow them to make educated calculations of vehicle speed and direction.

Consequently, especially if you were not at fault, it is important that law enforcement be promptly contacted so they can control the scene and obtain the objective information necessary to document and memorialize the collision and thereby provide support for your belief the other driver was at fault for the collision.

Today's technology also permits you or other witnesses to document the scene as well. The ubiquitous camera phone allows you to begin taking photographs, and in some cases video,

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*A legal  
newsletter from  
Ohnstad Twichell, P.C.,  
with offices in  
West Fargo,  
Hillsboro,  
Mayville, Page,  
Hope, Finley,  
and Hatton  
North Dakota.*

*Review your  
classification of  
exempt employees.*

almost immediately. This may be particularly useful where the other driver is moving beer cans from his vehicle to the nearby ditch before law enforcement arrives. It can also be useful to record license plate numbers of other vehicles in the immediate area so witnesses can be identified at a later date should they leave the scene before law enforcement's arrival. Even if you do not have your camera phone handy, make an effort to identify those fellow drivers or other witnesses early to the scene but who may leave before law enforcement can identify them.

Automobile accidents have insurance ramifications as well. Your automobile insurance policy typically contains a provision requiring you to promptly report involvement in motor vehicle collisions. Prompt notification allows the insurance company to send its adjusters into the field to gather police reports, photographs, and witness statements. That information is used in apportioning fault and in paying both property damage and personal injury claims.

Last, but certainly not least, there are legal consequences flowing from traffic accidents. If you or a loved one is injured, you should visit with your attorney about the remedies available to you. Your automobile insurance policy provides you with Personal Injury Protection, or no-fault benefits, which should pay your immediate medical expenses, limited lost income, and expenses of replacement services. Some insurance companies are better than others at paying promptly and fully the insurance benefits you have purchased. Your attorney can assist you in resolving those problems.

You may also have a legal claim against the other driver for serious injuries or other losses you may suffer. A visit with your attorney can help you better understand the complex interrelationship of your legal claim and available insurance coverages under both your policy and the policy of the other driver. You should also make it a rule not to sign any documents admitting fault or giving up any legal claim you may have without first consulting your attorney. Such documents can waive your rights to collect the compensation to which you may be entitled and oftentimes have greater

significance than may be explained to you by the individual asking for your quick signature.

Hopefully, a lifetime of driving will spare you the difficulties associated with traffic accidents. In the event you, or a family member, have such an experience, it is hoped this information will be of assistance. Please contact your Ohnstad Twichell attorney with any questions you may have.

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## WAGE AND HOUR LAWS



**Susan L. Ellison** works in the West Fargo office and devotes her practice to employment law, family law, and elder law.

A violation of the wage and hour laws can cost an employer tens of thousands of dollars and even more for oversights in handling how employees are paid in the workplace.

Under the Fair Labor Standards Act, employers are required to pay employees time and a half for work in excess of 40 hours each week unless the employee is categorized as exempt under the FLSA. Such exempt employees are management, professionals, and executive employees.

An employer must be very careful about how they categorize exempt employees. If an employee is not categorized properly and is deemed exempt when they should be paid overtime, the violation damages may accumulate quickly.

In this respect, an employer should review its classification of exempt employees from time to time to determine whether the employee continues to qualify for the exemption. An employer should track an employee's workday through time keeping. This, coupled with an analysis of the employee's work duties, will assist in determining whether the employee qualifies for the exemption.

There are a number of tests under the FLSA to determine exemptions. For instance, there are special considerations for agricultural employees, transportation industry employees, hospital and nursing home employees, motor carriers, and various other employee classifications.

It is easy for an employer to bypass these considerations and categorize employees as exempt when they should be earning overtime wages. The employer may not realize they are violating the FLSA until an employee notifies the Labor Department or other employment issues are questioned.

Ohnstad Twichell, P.C., can assist you in reviewing your exempt employee classifications to determine whether they comply with the FLSA. We will also assist you in taking action to prevent claims under the FLSA.

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## OIL RIGHTS/MINERAL INTERESTS



**William J. Brudvik**  
*works in the Mayville and Hope offices and devotes his practice to municipal law, business law, criminal defense, real estate, and estate planning/estate administration.*

Since oil was first discovered in Tioga in the early 1950s, mineral interests have become a significant part of real estate transactions in western North Dakota. Land is seldom transferred without the seller retaining all or part of the mineral rights. Land that passed from one generation to the next often had a devise of the surface rights to one child, perhaps the oldest, and a devise of the mineral rights to all of the children equally. Companies were formed in the 1950s to buy up mineral rights and hold for investors.

The price of crude oil has risen to the stratosphere. The recent disclosure of the Bakken formation which is believed to hold up to 167 billion barrels of oil encompasses virtually all of the western third of North Dakota is driving mineral leasing to a frenzy.

If you are from western North Dakota or have ancestors who were from there, you may have mineral rights that you are unaware of or that may still be in the name of the ancestor and not properly transferred to the next generation. Even if you know that you have mineral rights you may not be aware of the statutory requirements necessary to protect those rights.

How can I find out if I have mineral interests? Most counties will tell you if there has been any filings in the past 20 years if you have the legal description of the property. Otherwise, it may be necessary for you to hire an attorney or other real estate professional experienced in mineral law to do this research for you. If it is found that an ancestor owns mineral interests to which you are legally entitled, those interests could be transferred by the filing of an "Affidavit of Surviving Heir."

If you think you have mineral rights, you need to be aware of the statutory requirements to protect those interests. The North Dakota Century Code Chapter 38-18.1 provides that any mineral interest, if unused for a period of 20 years, can be considered abandoned and could revert to the surface owner unless you file a "Statement of Claim of Mineral Interest." If no such statement is on file and 20 years have elapsed, the surface owner has the right to re-claim the mineral rights. He does this by publishing a "Notice of Lapse" in the local newspaper. If the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry, the notice must also be mailed to that individual. The holder of the mineral interest must then file a "Statement of Claim" within 60 days or the mineral rights will revert to the surface owner. The obvious problem is that if you are unaware of potential mineral rights, or if you are remotely aware but do not receive the local paper, you will not be aware of the "Notice of Lapse" proceedings and your rights will revert to the surface owner.

The bottom line is that if you think you may have some interest in mineral rights in western North Dakota, you should inquire of the County Recorder or retain a real estate professional to render a search for mineral interests. If

*How to find out if you have mineral interests.*

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PEG BUCHHOLZ, PLS

you know that you have mineral interests, you must file the Statement of Claim of Mineral Interests every 20 years or risk losing those rights.

If you know the township and range of the land where you may have a potential mineral interest, there are two state websites that can tell you if there is oil activity in the vicinity of your land: [www.land.nd.gov](http://www.land.nd.gov) and [www.dmr.nd.gov/oilgas](http://www.dmr.nd.gov/oilgas).

Bob Rosenvold, Dave Wanner, Sara Sorenson, Ross Keller and I are all from western North Dakota and have knowledge and experience, both personally and professionally, of this unique area of law. Please call us if you have any questions or concerns about mineral interests.

**NEWS FROM OHNSTAD TWICHELL!!**

On May 20, 2008, attorney Bob Hoy was a speaker at the First District Medical Society in Fargo. His topic was “Medical Malpractice in North Dakota.”

Josh Roaldson serves on the board of directors for the Red River Valley Paralegal Association.

In August, attorneys Brian Neugebauer and Mike Nelson will celebrate 30 years of employment with Ohnstad Twichell - congratulations to both Brian and Mike!!

In May 2008, the West Fargo Chamber of Commerce presented the Ohnstad Twichell Law Firm with its “One for All” Award for commitment to community and/or chamber.

The Ohnstad Twichell Law Firm was also a recent 2008 ChamberChoice Nominee for the Chamber of Commerce of Fargo Moorhead.

The information provided in this letter is of a general nature and should not be acted upon without prior discussion with your Ohnstad Twichell, P.C., attorney.

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