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**When a Rule 68 Offer of Judgment is Rejected and is Ultimately More Favorable than Offeree's Net Judgment, Costs from Inception of Suit to Offeror**

In Vandenheuevel v. Wagner, No. A03-324 (Minn., Jan. 20, 2005), the Minnesota Supreme Court held when an offeree rejects an offer of judgment made pursuant to Minn. R. Civ. P. 68, and that offer is ultimately more favorable to the offeree than the net judgment, the offeror may recover costs and disbursements incurred *from the beginning of the lawsuit*.

On May 11, 2000, Dawn Vandenheuevel sustained injuries in a two-vehicle automobile accident with Virgil A. Wagner; she then incurred more than \$40,000 in medical bills. Vandenheuevel and her husband brought suit against Wagner for personal injuries and loss of consortium. On May 16, 2002, one month prior to trial, Wagner made a Rule 68 written offer of judgment for \$25,000, which the Vandenheuevels rejected. After a two-day trial, the jury awarded Dawn Vandenheuevel \$30,000 in past medical expenses, \$1,000 for past pain and suffering, and \$90 for past loss of earnings. The jury also awarded D. Scott Vandenheuevel \$1,000 for loss of consortium.

The Vandenheuevels' no-fault carrier paid \$20,000 in medical benefits and \$90 in past lost earnings. Neither party requested the jury make specific findings of fact regarding how much of the \$30,000 in medical bills were attributable to those paid by the no-fault carrier. Therefore, the full \$20,000 in medical benefits and the \$90 for past lost earnings were deducted from the award; the net judgment was \$12,000. Because the net judgment was less than Wagner's \$25,000 offer of judgment, the district court concluded Wagner was entitled to recover all his costs and disbursements incurred *since the beginning of the lawsuit* pursuant to Rule 68. A divided Minnesota Court of Appeals panel affirmed.

On appeal to the Minnesota Supreme Court, the Vandenheuevels argued that Rule 68 allowed Wagner to recover only those costs and disbursements incurred *after the offer of judgment was made*, basing their position primarily on an earlier version of Rule 68, which specifically directed that only those costs incurred "after the making of the offer" were recoverable to the offeror. Rejecting the Vandenheuevel's various arguments that this method of calculation was meant to remain unchanged after Rule 68's amendment in 1985, the Minnesota Supreme Court concluded that the plain language of today's Rule 68 – requiring simply that "the offeree . . . pay the offeror's costs and disbursements" – does not limit recoverable costs and disbursements to those incurred after the making of the offer.

Vandenheuevel reaffirms the supreme court's past comments regarding the purpose of Rule 68: to promote settlement between the parties. In addition, the opinion clarifies two things: (1) in determining whether the offer exceeds the ultimate judgment, the court will look at the net judgment after collateral source deductions; and (2) recoverable costs include all costs and disbursements incurred from the beginning of the lawsuit. Most of all, the Minnesota Supreme Court's Vandenheuevel decision emphasizes the potential advantages – and pitfalls – of making and rejecting Rule 68 offers.