

October 24, 2008

MINNESOTA COURT OF APPEALS DECLARES EXCESS MEDICAL BILLS NOT SUBJECT TO COLLATERAL SOURCE STATUTE IN DETERMINING OFFSET FOR UIM CARRIER

In *Fischer v. Western National Mut. Ins. Co.*, 2008 WL 3290064 (Minn. App. Aug. 12, 2008), the Minnesota Court of Appeals affirmed the district court; holding that the gap between the amount of medical expenses incurred and the actual amount paid to medical providers is not subject to deduction pursuant to the collateral source statute.

In *Fischer*, Jeffrey Fischer was injured in an automobile accident. He carried no-fault and UIM coverage with Western National. He settled with the at-fault driver for \$28,000 and then brought a UIM claim against Western National. Fischer and Western National stipulated the at-fault driver was 100% at fault. Hence, the only issue for jury determination was damages.

The jury awarded Fischer \$190,062.65 in damages, including \$120,235.23 for past medical expenses. Contained in those expenses, Fischer had incurred \$87,368.76 in medical bills; however, Fischer's health insurer negotiated a reduced fee with the providers for \$27,710.64. Western National brought a motion for collateral-source determination. The district court reduced the award by the \$27,710.64 already paid for the past medical expenses in contravention to Western National's argument that the entire \$87,368.76 should have been offset.

Western National appealed the district court's decision; arguing the district court's failure to further reduce the award by the \$59,658.12 gap between the amount paid and the amount incurred violated the purpose of the collateral source statute, Minn. Stat. § 548.36, and the No Fault Act, Minn. Stat. § 65B.42(5), by presenting Fischer with a double recovery. The Minnesota Court of Appeals rejected Western National's arguments and affirmed the district court.

The appellate court relied on three key cases, *Stout v. AMCO Ins. Co.*, 645 N.W.2d 108 (Minn. 2002), *Tezak v. Bachke*, 698 N.W.2d 37 (Minn. Ct. App. 2005), and *Foust v. McFarland*, 698 N.W.2d 24 (Minn. Ct. App. 2005) to refute Western National's arguments. The court noted that all three cases established the policy that any windfall resulting from the difference in medical expenses incurred and the amount paid should be awarded to the insured based on the insured's payment of his premiums.

Lastly, the appellate court held Minn. Stat. § 548.36 did not apply because the statutory definition for a "collateral source" only included payments, and the gap deduction was not a payment. Therefore, because the statutory collateral source rule did not apply, the court applied the common law collateral source rule which specifically allows plaintiffs to obtain double recoveries based on a third-party's payment of the plaintiff's medical expenses through gift or contractual obligation.

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