

CASE LAW UPDATE

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NEGOTIATED DISCOUNTS REMAIN A DEDUCTIBLE COLLATERAL SOURCE

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[Auers v. Progressive Direct Ins. Co., — N.W.2d — \(Minn. Ct. App. 2016\)](#) — In a recent decision, the Minnesota Court of Appeals determined that under Minnesota’s [collateral-source statute](#) and [Swanson v. Brewster, 784 N.W.2d 264 \(Minn. 2010\)](#), a discount negotiated by a health insurer remains a deductible collateral source after the health insurer has assigned its subrogation rights to a personal-injury plaintiff.

THE FACTS

In 2012, Karen Auers was injured in a car crash. As a result, she incurred \$178,083.44 in medical expenses, \$20,000 of which were covered as no-fault medical benefits and the rest being satisfied by her health insurer, Blue Cross Blue Shield (BCBS). BCBS was able to negotiate an \$85,869.59 discount with Auers’ medical providers, thus paying only \$72,216.85.

When Auers settled with the tortfeasor for the tortfeasor’s \$100,000 liability insurance limits, BCBS acquired a subrogation interest that it subsequently assigned back to Auers’ estate in exchange for \$5,000. (Auers had died for reasons unrelated to the accident shortly after the settlement.) Auers’ estate then sued Auers’ UIM insurer, Progressive, seeking UIM benefits for any damages Auers had sustained in excess of the tortfeasor’s \$100,000 liability limits.

Both parties then moved for summary judgment. Progressive argued that because a negotiated discount is a collateral source that must be deducted from an award for damages under *Swanson*, Auers’ damages did not exceed the \$100,000 needed to claim UIM benefits. Auers’ estate disagreed, arguing that because it had purchased BCBS’s subrogation rights and those rights had been asserted, the negotiated discount need not be deducted under the collateral-source statute. In essence, Auers’ estate argued that it was entitled to recover both the amount paid by BCBS and the value of the negotiated discount.

APPLICABLE LAW

Under Minnesota’s collateral-source statute — Minn. Stat. § 548.251 — “amounts of collateral sources that have been paid for the benefit of the plaintiff or are otherwise available to the plaintiff as a result of losses” are to be deducted from any award for damages. However, this deduction does not apply for losses for which a subrogation interest by another party has been asserted. Moreover, under *Swanson*, a negotiated discount obtained by a plaintiff’s health insurer is a “collateral source” to be deducted from an award for damages.

TRIAL COURT DECISION

At summary judgment, the trial court agreed with Auers’ estate, determining that because a subrogation interest had been asserted by BCBS and assigned to Auers’ estate, the collateral-source statute did not require deduction of the negotiated discount. It thus decided that Auers’ estate was entitled to UIM benefits in the amount of \$75,294.

Progressive appealed the summary-judgment decision, maintaining its argument that the collateral-source statute required the negotiated discount to be deducted and that, for that reason, Auers' estate could not show damages in excess of \$100,000 and was not entitled to UIM benefits.

ON APPEAL

The Minnesota Court of Appeals reversed the trial court's summary judgment decision, finding in favor of Progressive. Under Minnesota law, a subrogation lien entitles the holder only to the amounts *actually paid* by an insurer. Thus, no subrogation lien exists to recover *unpaid* amounts (such as a negotiated discount).

For that reason, the subrogation lien acquired from BCBS entitled the Auers' estate only to the value of the medical bills actually paid by BCBS — not to any amounts negotiated away by BCBS. Because the \$85,869.59 discount was thus not part of the assertable subrogation rights, the subrogation exclusion in the collateral-source statute could not operate to exclude the amount deduction. Given this deduction, Auers' estate had no claim to damages in excess of \$100,000 and therefore had no right to benefits under the UIM policy. ■

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