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JLO Newsletter Winter 2020

## Minnesota Supreme Court Creates Medicaid Exception to Collateral Source Rule

By Jordan D. Sisto

### The Collateral Source Rule

At common law an injured plaintiff may recover damages from a tortfeasor despite already having received money or services from a third-party other than the tortfeasor like an insurance provider or state benefit program. See *Hueper v. Goodrich*, 314 N.W.2d 828 (Minn. 1982). While this theory of damages often leads to double-recovery for injured plaintiffs, the courts have reasoned that a tortfeasor should not benefit from an injured party having carried insurance. That is, a tortfeasor should not avoid punitive consequences where an injured party is insured against the type of loss caused by the tortfeasor. *See Id.* Generally, payments from outside sources are not credited against a tortfeasor's liability. *See* Restatement (Second) of Torts § 920A(2) (1979).

However, the Minnesota Legislature enacted Minn. Stat. § 548.251 in 1986, effectively abrogating the common law collateral source rule. As it reads today, Minn. Stat. § 548.251, "the Collateral Source Statute," indicates that:

Subdivision 1. **Definition.** For purposes of this section, "collateral sources" means payments related to the injury or disability in question made to the plaintiff, or on the plaintiff's behalf up to the date of the verdict, by or pursuant to:

(1) a federal, state, or local income disability or Workers' Compensation Act; or other public program providing medical expenses, disability payments, or similar benefits;

(2) health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage; except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others, payments made pursuant to the United States Social Security Act, or pension payments;

(3) a contract or agreement of a group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental or other health care services; or

(4) a contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability, except benefits received from a private disability insurance policy where the premiums were wholly paid for by the plaintiff.

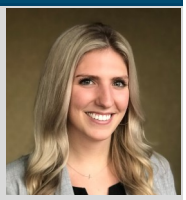
Minn. Stat. § 548.251, subd. 1 (2019). "Not included within the definition of collateral sources are life insurance benefits, whether purchased by the plaintiff or provided by others, private disability insurance purchased by the plaintiff, social security payments, pension payments, or other compensation or benefits[.]" § 13.8.Personal physical injury—Collateral source deductions, 27 Minn. Prac., Products Liability Law § 13.8 (2019-2020 ed.). The statute requires the court, under Subdivision 2, to determine collateral sources paid to the plaintiff… "(T)he court shall determine:"

(1) 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 except those for which a subrogation right has been asserted; and

## Firm Announcement

Welcome to

**Elle M. Lannon**



Elle has joined JLO as an associate attorney. She started with the firm in 2017 as a law clerk and received her J.D. from Mitchell Hamline School of Law in 2019.

Elle is assisting clients in the areas of Governmental Liability and Health Law.

(2) amounts that have been paid, contributed, or forfeited by, or on behalf of, the plaintiff or members of the plaintiff's immediate family for the two-year period immediately before the accrual of the action to secure the right to a collateral source benefit that the plaintiff is receiving as a result of losses. Minn. Stat. § 548.251, subd. 2. (2019).

Upon making these findings, the court has several duties. "The court shall reduce the award by the amounts determined under subdivision 2, clause (1), and offset any reduction in the award by the amounts determined under subdivision 2, clause (2)." Minn. Stat. § 548.251, subd. 3(a) (2019). Generally, a plaintiff's award is reduced by the amount of collateral benefits available, but offset by insurance premiums paid related to those benefits. Where a subrogation right has been asserted, the award will not be reduced, but a plaintiff may be liable to pay on the subrogation interest out of her award. *See Johnson v. Consolidated Freightways, Inc.*, 420 N.W.2d 608 (Minn. 1988); see also *Kohn v. La Manufacture Francaise Des Pneumatiques Michelin*, 476 N.W.2d 184 (Minn. Ct. App. 1991). The purpose of this statute is to prevent windfalls to plaintiffs and to prevent plaintiffs from the double-recovery available at common law. *See Buck v. Schneider*, 413 N.W.2d 569 (Minn. Ct. App. 1987).

The statutory collateral source rule codified at Minn. Stat. § 548.251 (2019), only applies to personal injuries. *Duluth Steam Co-op. Ass'n v. Rinsred*, 519 N.W.2d 215 (Minn. Ct. App. 1994). Property damage and other torts not perpetrated against a person are still governed by the common-law collateral source rule which allows for double recovery. *See id; see also Schmuckler v. Creurer*, 585 N.W.2d 425 (Minn. Ct. App. 1998).

### *Swanson v. Brewster*

In 2010, the Minnesota Supreme Court decided *Swanson v. Brewster*, 764 N.W.2d 264 (Minn. 2010). *Brewster* centered generally on the definition of the word "payment" in the Collateral Source Statute, but it focused specifically on whether a reduction to medical expenses pursuant to a contract between an insurer and healthcare provider constituted a "payment" by which an award should be reduced. *See id.* That is, should an injured party be entitled to recover the full amount of medical services billed or just the negotiated price actually paid by the insurer? The Supreme Court held that a negotiated discount of medical expenses constituted a collateral source under the Collateral Source Statute and therefore, such a discount constituted a "payment" by which an award could be reduced. *See id.* at 282. Thus, in *Brewster*, where medical insurance payments and a negotiated discount, taken together, satisfied the entire balance of past medical expenses, the plaintiff's award was reduced by the balance of the billed medical service, not just those payments made by the insurer.

### *Getz v. Peace*

In 2019, the Minnesota Supreme Court decided *Getz v. Peace*, 934 N.W.2d 347 (Minn. 2019). The question posed in *Getz* was substantially similar to that posed in Brewster. In *Getz* the Court was asked to consider whether a discount established by and negotiated through Minnesota's Prepaid Medical Assistance Program (PMAP) was similarly a "payment" by which an award of damages could be reduced. *See id.* at 349. Interestingly, the Court did not come to the same conclusion that it did in *Brewster*. *See id.* at 358.

After a collision with a school bus, Ambree Getz brought suit against Eila Peace and Palmer Bus Service (hereinafter, "Peace"). *Id.* at 350. Getz was a beneficiary of medical-assistance and her medical expenses were paid through Minnesota's PMAP, a subset of Minnesota's Medicaid program. *Id.* Getz was awarded damages and both insurance payments and negotiated discounts were deducted therefrom by the district court. *Id.* The court of appeals reversed the district court's decision regarding the discounts, "holding that the discounts were excepted from offset because they were 'payments made pursuant to the United States Social Security Act,' under Minnesota Statutes section 548.251, subdivision 1(2) (2018)." *Id.* The Supreme Court affirmed the decision of the court of appeals. This ruling completely contradicts the precedent established in *Brewster*, that only the actual paid-for value of medical services is recoverable as damages in a personal injury case from either the tortfeasor or a collateral source.

What distinguishes *Brewster* and *Getz* is the type of insurance coverage of which the plaintiff was a beneficiary. In *Brewster*, the plaintiff had private health insurance. *Brewster*, 764 N.W.2d at 266. However, in *Getz*, the plaintiff, Ms. Getz, was a Medicaid beneficiary. *Getz*, 934 N.W.2d at 352. The court of appeals held, and the Supreme Court later affirmed, that Ms. Getz Medicaid benefits "were obtained according to authority granted by the Social Security Act and therefore constitute 'payments made pursuant to the United States Social Security Act.'" *Id.* (*quoting Getz v. Peace*, 918 N.W.2d 233, 237 (Minn. Ct. App. 2018)). Payments made pursuant to

the United States Social Security Act are specifically exempted from offset in the Collateral Source Statute. Minn. Stat. § 548.251, subd. 1(2).

Before the Supreme Court, the parties argued over whether or not the phrase "pursuant to" should be construed narrowly, or broadly. *Getz*, 934 N.W.2d at 353. Peace argued that the phrase should be construed narrowly to only include payments specifically contemplated by Title XIX of the Social Security Act (the provision that created Medicaid.) *Id.* Under Peace's view, discounts are not specifically contemplated by Title XIX and, even if they were, the discounts at issue in Peace were negotiated by private insurers under contract with the State and not directly by the state. *Id.* at 353-354. Therefore, the discounts were not made "pursuant to" the Social Security Act.

The Court was not persuaded by this interpretation. Instead, the court held that, since the "Medicaid program explicitly authorizes states to contract with managed-care organizations," and the managed-care organizations in the case at bar were working under that authority, the benefit payments made by the organizations and the discounts negotiated thereby are payments made "pursuant to" the Social Security Act. *Id.* at 357. Therefore, discounts negotiated under Minnesota's PMAP, or more generally under a Medicaid program, are not considered collateral source payments subject to offset. The court further rejected an argument that payments made by a managed-care organization weren't contemplated by the statute, instead concluding that the unambiguous language of the statute indicated that the legislature had considered and contemplated the Social Security Act as referenced in Subdivision 1(2) of the statute. *Id.*

### Conclusion

Generally, the ruling in *Getz* will not change the status quo as to collateral source payments for those privately insured. Negotiated discounts and payments made by private insurers are subject to offset. However, in the specific case where an injured plaintiff is a Medicaid beneficiary, regardless if her coverage is provided through a contract with a private insurer, any discounts negotiated or payments made by that insurer will not be subject to offset. Therefore, Medicaid beneficiaries can receive a double-recovery, which the Collateral Source Statute was meant to prevent. It further seems like the Supreme Court is disinclined to take any action in remedying this inequity, instead deferring to the legislature to change the rule.

## Congratulations

Congratulations to **Pat Collins** and **Tessa McEllistrem** who successfully defended the City of Woodbury against Walker Properties of Woodbury II, LLC's attempt to vacate nearly 10 years of litigation involving a land use and contract dispute. The district court denied Walker Properties' motion to vacate, and Pat and Tessa successfully defeated Walker Properties' attempt to appeal that decision to the Minnesota Court of Appeals and to the Minnesota Supreme Court.

**Tessa McEllistrem** successfully obtained summary judgment dismissal on behalf of client Comcast. Plaintiff, a new owner of a mobile home park, alleged claims of trespass and unjust enrichment claiming that an easement entered into between the previous owner of the mobile home park and Comcast was ineffective since it was unrecorded. However, the Court agreed with Comcast's position that Plaintiff had implied notice of the easement making Comcast's presence at the park lawful. The Court granted Comcast's motion for summary judgment and dismissed the entirety of Plaintiff's claims.

## A Cost-Risk Analysis of Workers' Compensation Appeals and Potential Payment of Employee Appellate Fees

By Joe S. Koe

### Introduction

When an employee's attorney prevails on appeal, the attorney may be awarded reasonable attorney's fees. This appellate attorney's fee is awarded strictly for the necessary work performed at the appellate level. Issues of appellate attorney's fees pursuant to Minnesota Statutes section 176.511 have not been subjected to heavy litigation, at least in recent years. For example, for the year 2019, a simple yet broad Westlaw search[1] reveals only one case involving an issue of appellate attorney's fees. Further searches on Westlaw retrieved one case from 2016 through 2018.

The lone case in 2019 is *Beager v. N. Valley, Inc.*, slip op. No. WC19-6262 (W.C.C.A. May 15, 2019). This case, in short, presents an issue that compelled the Workers' Compensation Court of Appeals (W.C.C.A.) to clarify the scope of what constitutes litigation for purposes of awarding reasonable appellate attorney's fees. The case also serves as a reminder of the risk of increasing litigation costs when parties become unnecessarily contentious. This case will be discussed in turn, but first it is important to provide an overview of the procedural aspects of appellate attorney's fees in workers' compensation cases.

### Appellate Attorney's Fees Overview

Minnesota Statutes Section 176.511, subdivision 3 and 5 authorize the Workers' Compensation Court of Appeals (W.C.C.A.) and the Supreme Court, respectively, the discretion to provide for reasonable attorney's fees in an award. Minn. Stat. §176.511, subd. 3 requires that one of three following instances must occur before the W.C.C.A. can award reasonable attorney's fees: 1) where an award of compensation is affirmed, or modified and affirmed; 2) where an order disallowing compensation is reversed; or 3) where a petition to vacate an award is granted. As for the Supreme Court, Minn. Stat. §176.511, subd. 5 limits an award of reasonable attorney's fees to the first two instances mentioned.[2]

Attorney's fees on appeal are normally awarded as a matter of course rather than in response to any petition or proceeding for fees. However, if the W.C.C.A. does not, on its own, award attorney's fees upon successful appeal, the employee's attorney may petition to the W.C.C.A. for reasonable attorney's fees. This petition for attorney's fees must be made within 45 days of filing the appellate decision; otherwise the attorney's fees related to the appeal will be deemed waived. Minn. Admin. Rules part 9800.1700; *Georges v. Reserve Mining Co.*, 49 W.C.D. 1 (W.C.C.A. June 11, 1993). Likewise, where the standard or routine attorney's fees awarded does not reasonably compensate an employee's attorney for the necessary work performed for a successful appeal, the attorney must petition the W.C.C.A. for reconsideration of an initial award of attorney's fees within 45 days of filing the appellate decision. Minn. Admin. Rules part 9800.1700[3]; *Kuhnau v. Manpower, Inc., slip op.,* 2015 WL 1447407 (W.C.C.A. Feb. 17, 2015). However, the W.C.C.A. will consider a petition to reconsider initial award of appellate attorney's fees only in exceptional cases or unusual circumstances. *Shire v. Rosemount, Inc.*, slip op., No. WC16-5927 (W.C.C.A. Apr. 19, 2016).[4]

Appellate attorney fees are wholly distinct from Minn. Stat. §176.081 contingent fees[5], *Roraff* and *Heaton* fees. As such, .081 contingent fees, *Roraff* and *Heaton* fees are not payable for appellate work. *Bastian,* slip op. (W.C.C.A. May 11, 1995).

### The Reasonableness Standard

As indicated above, reasonableness is the standard for fees on appeal. There are no statutes, court or administrative rules that establish or govern what amount is reasonable. To determine reasonableness of attorney's fees, the W.C.C.A. has relied on an informally-created standardized guideline. *Telephone Interview* with Kevin Kittilson, Deputy Court Adm'r, Minn. Workers' Comp. Court of Appeals (Dec. 30, 2019). For instance, the W.C.C.A. in *Poulos v. Super-Value Stores*, slip op. (W.C.C.A. Apr. 19, 1993) described its standard practice of awarding fees: "[g]enerally, this court has awarded a fee of $350.00 where the appeal is decided on briefs alone and has awarded a sliding scale of fees where oral argument is had, based on the distance the employee's attorney was required to travel for oral argument." Conversely, when an employee's attorney wins on appeal with little to no additional work, e.g., no oral argument and/or submission of a brief, the W.C.C.A. has declined awarding attorney's fees. *See*, *Johannsen v. Nat'l Steel Pellet Co.*, 65 W.C.D. 55 (W.C.C.A. Jan. 31, 2005) (declining to award reasonable appellate attorney's fees because the employee's attorney submitted a one-sentence brief in response to the employer's appeal and there was no

oral argument); *Hoffman v. SDS, Inc.*, slip op., 1998 WL 48834 (W.C.C.A. Jan. 20, 1998) (declining to award reasonable appellate attorney's fees because employee's attorney did not file a brief and there was no oral argument).

As the court in *Poulos* explained, the amount of attorney's fees awarded on successful appeal varies. This variation is generally dependent on whether or not oral argument was conducted. However, other factors may exist that compel the W.C.C.A. to deviate from its informal guideline. Unfortunately, there is no literature or publication that reveals or breaks down the actual framework of the guideline. This is most likely because the court did not want to create too much formality, and therewith, any hindrances to its authority to use its discretion in determining the reasonableness of appellate attorney's fees. *Telephone Interview* with Kevin Kittilson, Deputy Court Adm'r, Minn. Workers' Comp. Court of Appeals (Dec. 30, 2019).

In analyzing cases from the late 1980s to the present, the amount considered reasonable has been the subject of constant adjustment. In 1984, the W.C.C.A. awarded $250 for prevailing on appeal where a brief was filed and oral argument was conducted. *Burson v. George A. Clark & Sons.* et. al., 1985 WL 47628 (W.C.C.A. Oct. 22, 1985). By 1986, the W.C.C.A. awarded $450 where a brief was filed and oral argument was conducted. *Hodgins v. Ford Motor Co.*, 1986 WL 55131 (W.C.C.A. October 13, 1986). By 1997, the W.C.C.A. awarded $1,000 for prevailing on appeal where a brief was filed and oral argument was conducted. *Swenson v. Quality Checked Plastics*, 56 W.C.D. 378 (W.C.C.A. Apr. 23, 1997). In 2015, the W.C.C.A. awarded $3,500 where a brief was filed and oral argument was conducted. *Ruby v. Casey's General Store, Inc.*, slip op., No. WC15-5804 (W.C.C.A. Sept. 23, 2015).

The current guideline was adjusted by an increase of $300 on October 1, 2018. *Telephone Interview* with Kevin Kittilson, Deputy Court Adm'r, Minn. Workers' Comp. Court of Appeals (Dec. 30, 2019). Accordingly, the W.C.C.A. will generally award $3,800 in appellate attorney's fees where a brief is filed and oral argument is conducted. *Id.* Conversely, W.C.C.A. will generally award $3,300 where a brief is filed and no oral argument is conducted. *Id.* Moreover, the distance factor discussed in the *Poulos* case was eliminated from the guideline. *Id.* Of note, in cases where an employee's attorney prevails on some issues and not all, the attorney may be awarded reasonable attorney's fees for the issues on which the attorney prevailed. *Carlson v. Terry Feldmann's Imports*, 52 W.C.D. 593 (W.C.C.A. June 5, 1995) (awarding appellate attorney's fees for prevailing on one of the issues presented). Accordingly, the amount awarded may be less than the amount generally awarded. *Id.*

Lastly, as to the Minnesota Supreme Court's workers' compensation attorney's fees on certiorari, the Supreme Court issued a standing order making adjustments to its standard fee schedule. The fee schedule had not been adjusted since 1988.[6] *In re Workers' Compensation Attorney Fees on Certiorari*, 653 N.W.2d 451 (Minn. 2002) (Mem.). The standing order states the following:

> IT IS HEREBY ORDERED that $1,200 in attorney fees shall be allowed where briefs are filed and the matter is considered on the en banc nonoral calendar and $1,600 in attorney fees shall be allowed where briefs are filed and the matter is considered on the en banc oral calendar. This fee schedule shall be effective January 1, 2003, on all appeals filed thereafter. *Id.*

### ***Beager v. N. Valley, Inc.***

The employee in this case, without representation by an attorney, settled his case on a full, final, and complete basis. An award on stipulation was served and filed. Subsequently, the employee retained an attorney seeking to vacate that award. The employee's attorney contacted the employer and insurer in attempt to negotiate an agreement to vacate the award on stipulation but to no avail. Consequently, the employee's attorney obtained additional medical evidence, including a medical report, drafted a petition to vacate, and filed it with the W.C.C.A.

In response, the employer and insurer notified the court that it was waiving its right to object to the petition to vacate and even submitted a proposed order granting the petition to vacate. The W.C.C.A. vacated the award on stipulation. Upon prevailing, the employee's attorney petitioned the court for attorney fees incurred in successfully obtaining an award to vacate the previous stipulation. The employer and insurer objected, in part, contesting that there was no litigation as they did not object to the petition to vacate.

The W.C.C.A. rejected the employer and insurer's argument that there was no litigation. The court explained that the employer and insurer did not agree to vacate the award on stipulation when the employee's attorney reached out to

them, and consequently, the employee's attorney was compelled to begin the litigation process by gathering evidence and filing a petition to vacate. The W.C.C.A. found that the employee's attorney was entitled to an award of attorney's fees for his representation. The court did not grant hourly fees as claimed by the employee's attorney, but instead awarded $3,300 which is the amount "generally awarded for successful representation on appeals and on petitions to vacate in non-oral argument settings."

## Conclusion

The *Beager* case demonstrated that merely starting the litigation process and prevailing may entitle an employee's attorney to reasonable appellate attorney's fees. The court in *Beager* ultimately ruled in favor of the employee's attorney because he performed sufficient work to justify an award of reasonable attorney's fees, such as, gathering medical evidence, obtaining a medical report, and drafting the petition to vacate. It has always been important that an attorney who seeks reasonable attorney's fees for a successful appeal put in the sufficient work to justify such an award.

The *Beager* case also demonstrates how a defense, no matter how preliminary and reasonable, can create more costs than anticipated. A settlement is a means to reduce the risk and cost of litigation to the involved parties. Accordingly, a settlement establishes the cost to the parties and eliminates the risk of an uncertain outcome. However, due to the adversarial legal system, the dynamic between parties may become unnecessarily contentious. It may prove difficult for one side to admit an error or to admit that the opposing side may actually be right on the law. It is unclear why the employer and insurer in the *Beager* case could not come to an agreement with the employee's attorney; but, what is clear is that the *Beager* case serves as a good reminder to the defense of the necessity to assess and carefully consider what constitutes a "win."

[1] Search string: 176.511 and DA(2019).

[2] In all instances, the employee must be the prevailing party in order for the appellate courts to award attorney fees, otherwise, the aforementioned statute does not give authority to the appellate courts to award attorney fees. See, Berg v. Transamerica Corp., 39 W.C.D. 634 (W.C.C.A. March 18, 1987) (denying petition for attorney fees by attorney of medical provider on the basis that Minn. Stat. § 176.511 is only applicable to attorney fee requests by employees' attorneys).

[3] Minn. Admin. Rules part 9800.1700 provides that "the [W.C.C.A.] may tax actual and necessary costs and disbursements, as prescribed by Minnesota Statutes, section 176.511. Parties shall comply with the procedure in part 9800.1400 except that petitions under this part must be filed within 45 days of the filing of the final appellate decision in the main action."

[4] Of note, any issues regarding appellate attorney fees for the work performed at the Minnesota Supreme Court should be raised and directed to the Supreme Court; the appellate body at which work was performed and prevailed. Hartwig v. Traverse Care Center, slip op., No. WC14-5758 (W.C.C.A. Jan. 27, 2015); Bastian v. CEO Corp., slip op. (W.C.C.A. May 11, 1995).

[5] An award of appellate attorney fees will not be counted towards the $26,000.00 contingent fee limitation established under Minn. Stat. § 176.081. The W.C.C.A. in Charley v. FMC Corp., 67 W.C.D. 386 (W.C.C.A. August 30, 2007) reasoned that "[t]o include fees on appeal, as authorized under section 176.511, as part of the [contingency fee] cap established under section 176.081 would effectively preclude an award under section 176.511 in maximum fee cases, thereby restricting this court's discretion under an entirely collateral statutory provision.

[6] The Minnesota Supreme Court has not issued a subsequent order that would overrule the adjustments made to the standard fee schedule by this 2002 standing order. However, in recent rulings the Supreme Court has deviated from its 2002 standing order. *See*, *Forrest v. Children's Hospitals & Clinics of Minnesota*, 921 N.W.2d 555 (Minn. 2019) (Mem.); *Krumwiede v. Cgnsc Slayton, LLC*, 921 N.W.2d 763 (Minn. 2019) (Mem.).

## Case Law Update – *Miller Shugart* Settlements

A *Miller-Shugart* settlement is a settlement wherein an insured consents to a judgment in favor of the plaintiff on the condition that the plaintiff will satisfy the judgment only out of proceeds from the policy of the insured and will not seek recovery against the insured personally. *See Miller v. Shugart,* 316 N.W.2d 729 (Minn. 1982). The general requirements of a *Miller-Shugart* settlement in Minnesota are that there is coverage under the policy of insurance and that the settlement is reasonable under the circumstances. *Id.* After entry of a *Miller-Shugart* settlement, an insurer can challenge a determination that coverage exists as well as the validity and reasonableness of the settlement. *See id.* at 733-735. In *King's Cove Marina, LLC v. Lambert Commercial Constr. LLC,* United Fire & Casualty Company ("United Fire") successfully argued that a *Miller-Shugart* settlement was not reasonable. *See King's Cove Marina, LLC v. Lambert Commercial Constr. LLC,* No. A19-0078, 2019 WL 6834658 (Minn. Ct. App. Dec. 16, 2019).

In *King's Cove,* the insured, Lambert Commercial Construction, LLC ("Lambert") entered into a *Miller-Shugart* settlement with King's Cove Marina, LLC ("King's Cove"). In the agreement, Lambert confessed judgment in the King's Cove's favor in the amount of $2,000,000 plus interest for damages related to Lambert's construction practices. The district court found that the agreement was reasonable and enforceable against United Fire. United Fire appealed. *See id.*

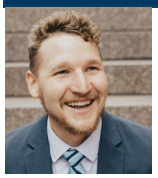
United Fire's appeal focused on whether or not a business-risk exclusion applied that would preclude coverage under Lambert's policy. The district court found that no policy exclusion applied. However, the court of appeals disagreed and held that an exclusion for work performed by Lambert applied and barred coverage for costs associated with repairing or replacing Lambert's own defective work. *See id.* at *6. Because the court of appeals found that the district court had erred in find-

ing that no coverage exclusion applied, it had to also address whether or not the settlement agreement was reasonable in light of the exclusion.

"A *Miller-Shugart* settlement agreement is invalid and unenforceable when the parties fail to allocate liability and damages among various defendants." *King's Cove Marina, LLC,* 2019 WL 6834658 at *8 (quoting *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 331 (Minn. 1993). Here, when the district court accepted the agreement under its interpretation of Lambert's insurance policy, it found that United Fire was liable for the whole settlement as a matter of law. Thus, the need to allocate damages between defendants was moot.

However, on finding that the court erred in determining that no policy exclusion applied, the court of appeals demonstrated that United Fire could not be held liable for damages arising under the exception. *See id.* Therefore, the damages referred to broadly in the agreement had to be split between United Fire and Lambert. Since the agreement did not allocate the damages between the parties, it was found unreasonable as a matter of law. *Id.* Generally, this decision does not affect jurisprudence regarding *Miller-Shugart* or other settlement agreements; but it clarifies that insurance companies can demonstrate that an exclusion applies on appeal and retroactively affect the reasonableness of an agreement thereby.

## About the Authors



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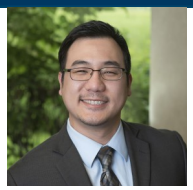

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## About the Firm

Jardine, Logan & O'Brien, P.L.L.P., is a mid-sized civil litigation law firm that has handled some of the region's largest and most difficult disputes with outstanding results for clients. Litigation has always been our primary focus. With trial attorneys admitted in Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa our firm has the ability and expertise to manage cases of any size or complexity. We are trial lawyers dedicated to finding litigation solutions for our clients.

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