

NO. A12-1213

State of Minnesota
In Court of Appeals

Sharif Haji-Ali,

Appellant,

vs.

Sheelagh F. Russell,

Respondent.

**BRIEF AND ADDENDUM OF
APPELLANT SHARIF HAJI-ALI**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF LEGAL ISSUES

Whether the Hennepin County district court erred by denying Defendant's Motion to reduce Plaintiff's damages award, pursuant to Minn. Stat. § 548.251 (2010), by the amount paid to Plaintiff by her underinsured motorist insurance carrier.

Following jury trial, Defendant filed a Motion for a determination of collateral sources. (Appendix ("A.") 8.) The district court issued a Findings of Fact, Conclusions of Law, and Order for Judgment ("Order") on April 15, 2012, in which the court denied in part Defendant's Motion, concluding that uninsured motorist benefits do not constitute collateral sources. (Addendum ("Add.") 3-4.) Judgment was entered pursuant to this Order on May 16, 2012.

Apposite authority:

Minn. Stat. § 548.251 (2010)

Imlay v. City of Lake Crystal, 453 N.W.2d 326 (Minn. 1990)

STATEMENT OF THE CASE

This is a personal-injury action by Plaintiff Sheelagh F. Russell (“Russell”) against Defendant Sharif Haji-Ali (“Haji-Ali”). Russell commenced this action on January 4, 2011. In her Complaint, she alleged that Haji-Ali’s negligence caused a motor-vehicle accident on March 25, 2010, which accident caused personal injuries to Russell. (Appendix (“A.”) 3-4.) Haji-Ali served an Answer on February 8, 2011, denying Russell’s allegations. (A. 5-7.)

The case proceeded to jury trial in February 2012 in Hennepin County district court before the Honorable Ronald L. Abrams. (Addendum (“Add.”) 1.) The jury returned a special verdict form in Russell’s favor on February 13, 2012, which the district court adopted in its Findings of Fact, Conclusions of Law, and Order for Judgment, issued on April 15, 2012. (Add. 1; A. 24.) Judgment was entered on May 16, 2012. (Add. 4.)

Haji-Ali filed a Motion on March 1, 2012, seeking a collateral-source reduction of Russell’s award of damages by the amount of no-fault benefits and underinsured motorist (UIM) benefits received by Russell from her insurer. (A. 8.) Russell filed a Memorandum in opposition to Haji-Ali’s Motion on March 9, 2012. (A. 28.) The district court ordered that the no-fault benefits constitute collateral sources but that the UIM benefits do *not* constitute collateral sources. (Add. 2-4.) Thus, the district court reduced Russell’s damages award only by the amount of no-fault benefits. (Add. 4.)

Haji-Ali appeals from the district court’s denial of its Motion for a reduction of Russell’s award by the amount of UIM benefits. (A. 46-47.)

STATEMENT OF FACTS

The underlying facts in this appeal are not in dispute. Russell and Haji-Ali were involved in a motor-vehicle accident on March 25, 2010, in downtown Minneapolis. (A. 1.) Russell sustained injuries to her neck, back, and right foot and incurred certain medical expenses. (See A. 2.) Russell's insurer, USAA Casualty Insurance Company ("USAA"), paid no-fault benefits on Russell's behalf in the total approximate amount of \$40,097. (A. 13, 15-20.) USAA also agreed to pay Russell \$50,000 in UIM benefits pursuant to an Underinsured Motorist Release executed by Russell in late October 2011. (A. 21-23.)

Russell instituted this action against Haji-Ali, claiming negligence against Haji-Ali in the operation of his motor vehicle. (A. 1.) Haji-Ali denied all allegations of negligence. (A. 5-6.) The case proceeded to jury trial in February 2012. (Add. 1.) The jury returned a special verdict form on February 13, 2012, in which it found that Haji-Ali was negligent in the operation of his motor-vehicle and that his negligence was a direct cause of the motor-vehicle accident involving Russell. (A. 24.) The jury awarded damages to Russell in the approximate amount of \$102,974. (A. 25.)

Following the jury trial, Haji-Ali sought a collateral-source reduction of Russell's damages award. (A. 8.) Haji-Ali argued that USAA paid two sums on Russell's behalf that constitute collateral sources: no-fault benefits in the amount of \$40,097; and UIM benefits in the amount of \$50,000. (A. 9-10.) "Collateral sources" are defined in relevant part to mean payments made by or pursuant to "automobile accident insurance" to a plaintiff or on her behalf related to personal injuries suffered by the plaintiff. See

Minn. Stat. § 548.251, subd. 1. Such “collateral sources” are deducted from a plaintiff’s damages award, in order to prevent a plaintiff from obtaining “double recovery” from both the defendant and her own insurer. *Id.*, subd. 2(1), 3(a). Haji-Ali argued that the district court should deduct the no-fault benefits and UIM benefits from Russell’s award of damages and award damages to Russell in the reduced amount of \$12,877.76. (A. 10.)

The district court agreed with Haji-Ali that the no-fault benefits received by Russell constitute collateral sources and reduced Russell’s damages award by approximately \$40,097. (Add. 2, 4.) The district court concluded that the UIM benefits paid by Russell’s insurer do not, however, constitute collateral sources. (Add. 4.) The district court recognized that, under *Imlay v. City of Lake Crystal*, 453 N.W.2d 326, 333-34 (Minn. 1990), a defendant may receive a collateral source offset for uninsured motorist (UM) benefits received by a plaintiff. (Add. 3.) The district court reasoned that there are critical distinctions between UM benefits and UIM benefits that preclude an application of the rule from *Imlay*. (*Id.*) The district court, therefore, refused to reduce Russell’s damages award by the amount of \$50,000 in UIM benefits. (Add. 4.) Haji-Ali appeals. (A. 46.)

ARGUMENT

The district court erred as a matter of law by denying Haji-Ali’s Motion to reduce Russell’s damages award by the amount of UIM benefits paid to Russell by her automobile insurer, USAA. Under the plain language of the collateral-source statute, UIM benefits constitute “collateral sources.” Moreover, governing Minnesota precedent holds that all payments by automobile insurers to their insured plaintiffs constitute

collateral sources that must be deducted from the plaintiffs' personal-injury damages award. The district court found distinctions between UM and UIM benefits that are illusory and entirely irrelevant to whether UIM benefits, like UM benefits, constitute "collateral sources." The district court's denial of Haji-Ali's Motion will leave Russell with an impermissible "windfall."

For these reasons, as elaborated in the foregoing Argument, Haji-Ali respectfully requests that this Court reverse the district court's Order and hold that UIM benefits constitute "collateral sources" that must be deducted from Russell's award of damages.

I. Standard of Appellate Review.

Haji-Ali argues on appeal that the district court committed a reversible error of law by denying his Motion for a collateral-source reduction of Russell's damages award by the amount of UIM benefits paid by Russell's insurer. Whether the district court accurately applied the collateral-source statute presents a question of law, to which this Court applies a *de novo* standard of review. *Do v. Am. Family Mut. Ins. Co.*, 779 N.W.2d 853, 856 (Minn. 2010); *see also Hansen v. Robert Half Int'l*, 813 N.W.2d 906, 915 (Minn. 2012) (reviewing *de novo* district court's construction of statute). Under this standard, the district court is not entitled to any deference and its erroneous application of law may not be overlooked as a matter of judicial discretion.

The goal of statutory interpretation is to ascertain and effectuate the intent of the legislature. *Rohmiller v. Hart*, 811 N.W.2d 585, 589 (Minn. 2012). When interpreting a statute, Minnesota courts "first look to see whether the statute's language, on its face, is clear or ambiguous." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn.

2000) (quotations omitted). Courts apply the plain and ordinary meaning of words and phrases in a statute when examining the language for ambiguity. *Frandsen v. Ford Motor Co.*, 801 N.W.2d 177, 178 (Minn. 2011). A statute’s meaning is ambiguous only if it is subject to more than one reasonable interpretation. *Troyer v. Vertlu Mgmt. Co./Kok & Lundberg Funeral Homes*, 806 N.W.2d 17, 21 (Minn. 2011). When a statute’s language is unclear or ambiguous, Minnesota courts “will go beyond the specific language of the statute to determine the intent of the legislature.” *Premier Bank v. Becker Dev., L.L.C.*, 785 N.W.2d 753, 759 (Minn. 2010) (citation omitted).

II. The District Court Erred as a Matter of Law by Declining to Reduce Russell’s Award of Damages by the Amount of UIM Benefits Paid by Her Insurer.

1. Collateral-Source Statute.

The UIM benefits paid to Russell by USAA constitute collateral sources and must be deducted from Russell’s damages award. “Collateral sources” are defined to mean “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” a number of sources, including “health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage.” Minn. Stat. § 548.251, subd. 1(2).¹

¹ The original collateral-source statute, Minn. Stat. § 548.36, was renumbered to Minn. Stat. § 548.251 in 2008 without any change in its language.

Collateral-source deductions operate to reduce a plaintiff's ultimate award of damages. The premise of the collateral-source statute is that "a plaintiff cannot recover money damages from the defendant if the plaintiff has already received compensation from certain third parties or entities." *Swanson v. Brewster*, 784 N.W.2d 264, 269 (Minn. 2010). Once a defendant's liability is admitted or determined by a fact-finder and damages are awarded to the plaintiff, the district court must review the plaintiff's award to determine "amounts of collateral sources that have been paid for the benefit of the plaintiff or are otherwise available to the plaintiff." Minn. Stat. § 548.251, subd. 2(1). The court "shall" reduce the plaintiff's award of damages by the amounts that qualify as "collateral sources," except those "collateral sources . . . for which a subrogation right has been asserted."² *Id.*, subds. 2(1), 3(a).

The enactment of section 548.251 partially abrogated the common-law collateral-source rule. At common law, a personal-injury plaintiff was entitled to receive the full measure of damages from a defendant, even if other sources had already paid some of those damages to the plaintiff or on her behalf. *Imlay*, 453 N.W.2d at 332. The common-law rule granted a plaintiff a "double recovery" of her damages "because the tortfeasor must pay the entire compensation amount regardless of other compensation sources." *Swanson*, 784 N.W.2d at 269; *see also Do*, 779 N.W.2d at 857-58 (stating that common-law rule "allow[ed] an injured person to recover damages from a tortfeasor even when

² It is undisputed that no subrogation right has been asserted in the \$50,000 of UIM benefits in dispute in this matter.

that award results in a double recovery” (citing *Hueper v. Goodrich*, 314 N.W.2d 828, 830 (Minn. 1982))).

The common-law rule received criticism because it granted plaintiffs an undeserved “windfall.” *Imlay*, 453 N.W.2d at 331. The cost of this windfall is borne by the public through increased insurance premiums. The Minnesota Legislature enacted the collateral-source statute in order to eliminate this windfall. As *Imlay* explains, “the primary goal of [the collateral-source statute] is to prevent double recoveries by plaintiffs.” *Id.*

2. **UIM Benefits Are Collateral Sources and Must Be Deducted From Russell’s Award of Damages.**

The \$50,000 in UIM benefits paid to Russell by her insurer constitute a “collateral source” that must be deducted from her damages award against Haji-Ali. “Collateral sources” are defined, in relevant part, to mean:

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 . . . health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage.

Minn. Stat. § 548.251, subd. 1(2). Here, Russell and Haji-Ali were involved in a motor-vehicle accident, resulting in personal injuries to Russell. Russell’s motor vehicle is insured by USAA under a policy that provides for both UM and UIM benefits. Russell sought UIM benefits from USAA, and Russell and USAA entered into a settlement agreement to pay Russell \$50,000 in UIM benefits.

Unquestionably, this \$50,000 constitutes a “payment.” This “payment” was “related to the injury” suffered by Russell as a result of the motor-vehicle accident with Haji-Ali. Finally, the “payment” was “made . . . by or pursuant to . . . automobile accident insurance.” Accordingly, under the plain and unambiguous language of the statute, the \$50,000 in UIM benefits paid by USAA to Russell constitute a “collateral source.” *See id.*

This conclusion is consistent Minnesota caselaw, which defines all payments made pursuant to automobile accident insurance as “collateral sources.” *Imlay*, 453 N.W.2d at 333. In *Imlay*, one of the issues was whether UM benefits constitute collateral sources which must be deducted from a plaintiff’s award. *Id.* The Minnesota Supreme Court wasted few words in resolving this question: “Automobile accident insurance clearly is covered by the statute and thus uninsured motorist benefits are a collateral source.” *Id.*

Under *Imlay*, “collateral sources” are defined to include all payments made to an injured plaintiff by an automobile insurance provider. This broad ruling certainly includes the payment of UIM benefits to Russell by her insurer, USAA.

Imlay’s broad rule is consistent with the conclusion reached by many foreign jurisdictions that UIM benefits constitute collateral sources. *Ex Parte Barnett*, 978 So. 2d 729 (Ala. 2007) (referring to both uninsured and underinsured motorist benefits as “UM”); *Beaird v. Brown*, 373 N.E.2d 1055, 1057 (Ill. App. 1978); *Peele v. Gillespie*, 658 N.E.2d 954, 958 (Ind. App. 1995); *Southard v. Lira*, 512 P.2d 409, 414-15 (Kan. 1973); *Schwartz v. Hasty*, 175 S.W.3d 621, 628 (Ky. App. 2005); *Kremen v. Md. Auto. Ins.*

Fund, 770 A.2d 170, 177 (Md. 2001); *Smith v. Shaw*, 159 S.W.3d 830, 833 (Mo. 2005); *Pusl v. Means*, 982 A.2d 55, 558-59 (Pa. Super. Ct. 2009); *Estate of Rattenni v. Grainger*, 379 S.E.2d 890, 891 (S.C. 1989); *Pustaver v. Gooden*, 566 S.E.2d 199, 201-02 (S.C. App. 2002); *Bradley v. H.A. Manosh Corp.*, 601 A.2d 978, 983-84 (Vt. 1991); *Johnson v. General Motors Corp.*, 438 S.E.2d 28, 35-36 (W. Va. 1993); *Voge v. Anderson*, 512 N.W.2d 749, 751 (Wis. 1994). *But see Int'l Sales-Rentals Leasing Co. v. Nearhoof*, 263 So. 2d 569, 571 (Fla. 1972) (holding that UIM benefits are not collateral sources). Granted, many of these foreign jurisdictions continue to apply the common-law collateral-doctrine, which Minnesota partially abrogated. In these foreign jurisdictions, UIM benefits are *not* deducted from a plaintiff's damages award.

Regardless, these cases provide solid support for Haji-Ali's argument that the UIM benefits paid to Russell by USAA constitute collateral sources. The issue in this case is the definition of collateral sources, not whether Minnesota's collateral-source statute or the traditional common-law rule is the better approach to addressing a plaintiff's damages award. On the issue before this Court, it is well settled that UIM benefits constitute collateral sources.

The district court concluded, in stark contrast to the above reasoning, that "Defendant [Haji-Ali] is not entitled to a collateral source offset for the \$50,000 Plaintiff [Russell] received for her UIM Claim." (Add. 4.) The district court reached this conclusion by disregarding the plain language of the collateral-source statute, ignoring governing caselaw interpreting the statute, and subverting the legislative intent in enacting the statute to prevent double recoveries by injured plaintiffs. For the foregoing

reasons, the district court's reasoning is erroneous, and this Court should reverse the district court's denial of Haji-Ali's Motion.

III. The District Court Deviated Impermissibly From the Broad Holding in *Imlay* That All Payments Pursuant to Automobile Insurance Constitute "Collateral Sources" by Erroneously Identifying Differences Between UM and UIM Coverage That Are Irrelevant Under the Collateral-Source Statute.

The district court concluded that the UIM benefits paid to Russell by her insurer are not "collateral sources." (Add. 3-4.) The district court noted that UM benefits constitute "collateral sources" under *Imlay*, but the district court distinguished this matter from *Imlay* on the ground that there are "distinction[s] between UM and UIM coverage." (Add. 3.) This reasoning fails to account for *Imlay*'s broad rule that "[a]utomobile accident insurance is covered under the [collateral-source] statute." 453 N.W.2d at 331. UIM benefits are payments made pursuant to "automobile accident insurance" and, therefore, are also "collateral sources." Any distinctions between UM and UIM coverage are irrelevant for purposes of making a collateral-source determination.

The purpose of UM and UIM coverage is to protect and compensate an insured person who is involved in an accident with an at-fault driver with no or minimal bodily-injury liability insurance. In the event the at-fault driver's insurance coverage is either non-existent or insufficient to recover the full measure of the plaintiff's damages, UM and UIM coverage step in to fill the gap between the damages award and the at-fault driver's liability coverage limit.

Minnesota's No-Fault Act requires all automobile insurance policies issued in the State to provide minimum limits of UM coverage and UIM coverage: \$25,000 of each

type of coverage per person injured in an accident, with a total limit of \$50,000 per accident. Minn. Stat. § 65B.49, subd. 3a (2010). An “underinsured motor vehicle” is defined as a vehicle whose automobile insurance coverage meets the statutory requirements of the No-Fault Act (including, but not limited to, these minimum limits of bodily-injury liability coverage) but whose policy limit is less than the amount needed to compensate the injured person for actual damages. Minn. Stat. § 65B.43, subd. 17 (2010).

Minnesota law defines an “uninsured motor vehicle,” by contrast, to mean a vehicle for which an automobile insurance policy that meets the requirements of the No-Fault Act is *not* in effect. Minn. Stat. § 65B.43, subd. 16 (2010). This could mean that the motor vehicle is not insured at all. It could also mean that the motor vehicle is covered by insurance, but that insurance does not provide the minimum limits required by Minnesota law.

Thus, the distinction between UM and UIM coverage is simply based on the insured status of the at-fault driver. Unquestionably, this distinction is irrelevant for purposes of the collateral-source statute. UM and UIM coverage must be included in automobile insurance policies pursuant to Minnesota law, and Russell’s own policy with USAA provided for both UM and UIM coverage. Payment of either UM benefits or UIM benefits constitute a “payment[] . . . made . . . by or pursuant to automobile insurance.” Minn. Stat. § 548.251, subd. 1(2). Accordingly, both UM and UIM benefits are “collateral sources.”

The district court in this matter erred by ignoring the plain language of the collateral-source statutes to identify distinctions between UM and UIM coverage that do not exist and are not relevant. For example, the district court concluded that UIM benefits are not “collateral sources” because they have been characterized as “excess coverage” by Minnesota courts. *Employers Mut. Cos. v. Nordstrom*, 495 N.W.2d 855, 865 (Minn. 1993). (Add. 3.) The district court apparently determined that UIM coverage provides benefits in “excess” of a jury’s award of damages.

This is an entirely incorrect understanding of the purpose of UIM coverage. The proper equation is to begin with the total award of damages—in this case, approximately \$102,974. If the tortfeasor’s liability insurance coverage is sufficient to pay the entire award of damages, the tortfeasor is not the operator of an “underinsured motor vehicle,” and the injured plaintiff is not entitled to UIM benefits from her own insurer. UIM coverage comes into play only when the tortfeasor’s total liability insurance coverage is less than the total award of damages. The “excess coverage” described by *Nordstrom* is excess above the tortfeasor’s liability coverage—not excess above the initial award of damages.

In sum, the collateral-source statute and *Imlay* do not support the district court’s reasoning that the UIM benefits paid to Russell are distinct from UM benefits and therefore do not constitute “collateral sources.” The district court deviated impermissibly from well-established law in exempting Russell’s UIM benefits from its collateral-source determination.

IV. The District Court Erred by Labeling the Collateral-Source Statute Ambiguous.

The district court began its analysis of Haji-Ali's Motion for a collateral-source determination with the observation that *Imlay* declared that the term "automobile accident insurance" in the collateral-source statute to be "ambiguous." (Add. 2.) This is an entirely inaccurate and incomplete interpretation of *Imlay*'s analysis and holding.

The *Imlay* Court complained about the lack of clarity in the language of the collateral-source statute. The Court found the statute to be "poorly written, ambiguous," and capable of being read "as providing for one, two, three or four different types of collateral source benefits." 453 N.W.2d at 334. The Court noted that the definition of collateral sources in the statute could be interpreted to refer broadly to payments made pursuant to "automobile accident insurance" or, in a more limited reading, "automobile accident insurance . . . that provides health benefits or income disability coverage." *Id.*

Despite the Court's consternation with the language of the collateral-source statute, however, the Court applied the plain meaning of the statute's language when it concluded, "Automobile accident insurance clearly is covered by the statute and thus uninsured motorist benefits are a collateral source." *Id.* at 333. The Court reached this conclusion with no apparent difficulty, as there is very little interpretive analysis on the collateral-source statute in this section of the *Imlay* opinion. The Court did not address, pursue, or analyze the contention that the statute must be read in a limited fashion, and it certainly did not agree with that contention. The Court applied the plain language of the statute and expressed minor frustration with the statute's ambiguity—and moved on.

Imlay remains good law. No subsequent opinion has ever determined that the term “automobile accident insurance” is ambiguous as used in the collateral-source statute. Also, no court has limited *Imlay*’s holding that all payments from automobile accident insurance constitute “collateral sources.”

Additionally, the Minnesota legislature has not amended the statute to correct the deficiencies pointed out by the *Imlay* Court. It is a rule of statutory construction that the legislature is presumed to be aware of existing caselaw when it enacts legislation. *Goodyear Tire & Rubber Co. v. Dynamic Air, Inc.*, 702 N.W.2d 237, 244 (Minn. 2005). The legislature has declined the invitation by *Imlay* to amend the statute and clarify its use of the term “automobile accident insurance.” It may therefore be presumed that the legislature is satisfied with the courts’ broad interpretation of this term in defining a “collateral source.” Thus, the district court relied on an incorrect premise when it stated that the collateral-source statute is ambiguous.

V. The District Court’s Order Grants Russell a Windfall to Which She Is Not Entitled.

The conclusion cannot be avoided that Russell will obtain a windfall of \$50,000 if the UIM benefits paid to her by USAA are not deducted from her damages award as a “collateral source.” The jury found the measure of Russell’s damages to be approximately \$102,974. (A. 25.) In other words, the jury determined that Russell was entitled to be compensated in the total amount of \$102,974 for Haji-Ali’s negligent operation of his motor-vehicle. Any sum that Russell receives over this total amount is a windfall to Russell.

Russell received a total of approximately \$90,097 in compensation for her injuries from her insurer USAA: \$40,097 in no-fault benefits and \$50,000 in UIM benefits. As the district court's order presently stands, Russell is also entitled to recover approximately \$62,877 from Haji-Ali.

Adding \$90,097 to \$62,877, we arrive at a total recovery by Russell in the amount of \$152,974. This figure is \$50,000 more than the \$102,974 awarded to her by the jury. In short, the district court's order presents Russell with a windfall of \$50,000—precisely the scenario that the collateral-source statute was enacted to prevent.

The district court appears to have been unconcerned about this windfall. The district court stated, “The fact that the Plaintiff may receive more than the jury awarded if the Court does not grant Defendant’s request for the additional collateral source offset is not dispositive.” (Add. 3.) To the contrary, the elimination of windfalls to plaintiffs is the primary purpose of the collateral-source statute. “In 1986, the Minnesota Legislature passed the collateral-source statute in order to prevent some double recoveries by plaintiffs.” *Swanson*, 784 N.W.2d at 269. In 1987, just one year after the collateral-source statute was enacted, this Court observed that the statute “has the apparent purpose of preventing windfalls by plaintiffs at the expense of defendants.” *Buck v. Schneider*, 413 N.W.2d 569, 572 (Minn. App. 1987). The Minnesota Supreme Court has consistently reinforced this understanding of the purpose of the collateral-source statute in subsequent opinions. *See, e.g., Do*, 779 N.W.2d at 858 (“The primary purpose of the [collateral-source] statute is to prevent double recoveries.”); *Imlay*, 453 N.W.2d at 331

(stating that the collateral-source statute “abrogate[s] a plaintiff’s common law right to be over-compensated and now prevent double recoveries.”).

The fact is that Plaintiff has already been compensated for most of the \$102,974 in damages awarded by the jury in this matter. She received \$40,097 in no-fault benefits and \$50,000 in UIM benefits, both of which constitute “collateral sources.” These figures must be deducted from her damages award, leaving her with a subtotal of \$12,877.27 which Haji-Ali must pay. Any other conclusion grants Russell an impermissible windfall.

CONCLUSION

For all of the foregoing reasons, Haji-Ali respectfully requests that this Court reverse in part the district court’s Findings of Fact, Conclusions of Law, and Order for Judgment. The district court erred as a matter of law by failing to reduce Russell’s damages award by the measure of UIM benefits that she received from her insurer USAA. Haji-Ali respectfully requests that this Court direct the district court to reduce Russell’s award of damages to \$12,877.27, after deducting the \$50,000 in UIM benefits received by Russell.

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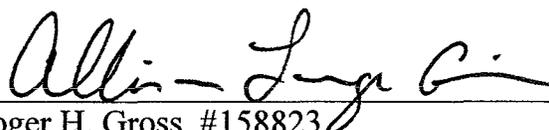
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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 4,284. This brief was prepared using Word 2010.

Dated this 10th day of August 2010.



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