

NO. A12-1213

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State of Minnesota  
**In Court of Appeals**

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Sharif Haji-Ali,

*Appellant,*

vs.

Sheelagh F. Russell,

*Respondent.*

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**REPLY BRIEF OF APPELLANT  
SHARIF HAJI-ALI**

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## INTRODUCTION

Appellant Sharif Haji-Ali (“Haji-Ali”) submits this Reply Brief in further support of his appeal to this Court on the issue of whether UIM benefits constitute “collateral sources” under Minnesota law.

Respondent Sheelagh F. Russell (“Russell”) instituted this personal-injury action in Hennepin County District Court against Haji-Ali, following a motor-vehicle accident involving the two parties. (Appendix (“A.”) 1-4.) In February 2012, Russell obtained a jury verdict in the approximate amount of \$102,974. (A. 24.) Haji-Ali filed a collateral-source Motion seeking to reduce Russell’s total damages award by two sums paid to Russell by her automobile insurer, USAA Casualty Insurance Company (“USAA”): \$40,097 in no-fault benefits; and \$50,000 in underinsured motorist (“UIM”) benefits. (A. 8-10.) The district court issued an Order on April 15, 2012, granting Haji-Ali’s Motion with respect to the no-fault benefits but denying the Motion with respect to the UIM benefits. (Addendum (“Add.”) 1-4.)

Haji-Ali argues on appeal that the district court’s decision is inconsistent with the definition of “collateral sources” provided by Minn. Stat. § 548.251, subd. 2(1) (2012), and out of line with Minnesota Supreme Court precedent, which holds that all payments made pursuant to automobile accident insurance constitute “collateral sources.” *Imlay v. City of Lake Crystal*, 453 N.W.2d 326, 333 (Minn. 1990). In response, Russell argues that this Court should ignore the plain language of the statute and the broad holding of *Imlay* in order to grant Russell a financial windfall to which she is not entitled. This Court should reject Russell’s invitation to circumnavigate *Imlay* and, instead, reaffirm its

commitment to adherence to governing Minnesota precedent. Accordingly, Haji-Ali respectfully requests that the Court of Appeals reverse the district court's order and hold, instead, that the UIM benefits paid to Russell by USAA are "collateral sources" that must be deducted from Russell's award of damages.

### **LEGAL ARGUMENT**

#### **I. Minnesota Law Clearly Includes UIM Benefits in the Definition of "Collateral Sources."**

The conclusion that UIM benefits constitute "collateral sources" is entirely consistent with Minnesota statutory and case law. "Collateral sources" are defined by the statute to mean, in relevant part, "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 . . . automobile accident insurance." Minn. Stat. § 548.251, subd. 2(1).

In every respect, Russell's receipt of \$50,000 in UIM benefits from USAA meets this definition. Clearly, the \$50,000 was a "payment . . . made to the plaintiff," Russell, for the "injury . . . in question" in this lawsuit, namely, the injuries that she sustained as a result of a motor-vehicle accident with Haji-Ali. There is no dispute that USAA provides "automobile accident insurance" to Russell. Further, the payment was made before "the date of the verdict," since Russell received the \$50,000 from USAA in late 2011, and the jury reached a verdict in this lawsuit on February 13, 2012. The plain and unambiguous language of section 548.251, subdivision 2(1), clearly includes UIM benefits in the definition of "collateral sources."

Minnesota Supreme Court precedent confirms this interpretation. “Automobile accident insurance clearly is covered by the [collateral-source] statute,” and therefore any payments made by an automobile accident insurer to a plaintiff up to the date of the verdict. *Imlay*, 453 N.W.2d at 333 (concluding that UM benefits constitute “collateral sources” under the statute). UIM benefits are payments made pursuant to “automobile accident insurance” and are, therefore, subject to the collateral-source statute.

No Minnesota caselaw has ever chipped away at or called into question the broad rule from *Imlay*. Moreover, no Minnesota court has introduced any exceptions to dilute the unambiguous language of Minn. Stat. § 548.251, subd. 2(1). If a plaintiff, such as Russell, receives a payment up to the date of the verdict from an automobile accident insurer, such as USAA, then this payment is a “collateral source.”

As Haji-Ali anticipated, Russell attempts to argue that the *Imlay* Court found the statutory definition of “collateral sources” to be ambiguous as to the term “automobile accident insurance.” (Res. Br. at 5-6.) Haji-Ali explained at length in his appellant brief that *Imlay*’s reference to ambiguity in the statute is mere dicta. (App. Br. at 14-15.) Russell appears to concede this point by stating, “The Supreme Court did treat UM benefits paid in *Imlay* as collateral sources pursuant to Minn. Stat. § 548.251.” (Res. Br. at 6.) Apparently, Russell agrees that the *Imlay* Court’s concerns about the wording of the statute had no effect on its broad holding that payments made pursuant to automobile accident insurance constitute “collateral sources.”

Defining UIM benefits as “collateral sources” is also consistent with the legislative intent of enacting the collateral-source statute, which is to bar double recovery

of damages to plaintiffs. *Swanson v. Brewster*, 784 N.W.2d 264, 269 (Minn. 2010) (“In 1986, the Minnesota Legislature passed the collateral-source statute in order to prevent some double recoveries by plaintiffs.”); *Do v. Am. Family Mut. Ins. Co.*, 779 N.W.2d 853, 858 (Minn. 2010) (“The primary purpose of the [collateral-source] statute is to prevent double recoveries.”); *Imlay*, 453 N.W.2d at 331 (“Collateral source statutes . . . abrogate a plaintiff’s common law right to be over-compensated and now prevent double recoveries.”).

Here, the jury awarded Russell a total of approximately \$102,974, to compensate her for her personal injuries. (A. 24.) Prior to this award of damages, Russell received \$40,097 in no-fault benefits and \$50,000 in UIM benefits, both of which are also intended to compensate Russell for her personal injuries. (A. 15, 21.) Thus, Russell is entitled to a total award of \$102,974, and she has already received \$90,097 of this amount from her own insurer. Under a correct interpretation of the collateral-source statute, the district court would have reduced Russell’s award of \$102,974 by both the no-fault benefits and the UIM benefits and required Haji-Ali to pay the balance. Russell would therefore receive a total of \$102,974 from Haji-Ali and her own insurer.

Instead, the district court concluded erroneously that the \$50,000 in UIM benefits are *not* “collateral sources.” (Add. 3-4.) Accordingly, the district court ordered Haji-Ali to pay approximately \$62,877 to Russell, in addition to the \$40,097 in no-fault benefits and \$50,000 in UIM benefits that she already received. Adding these three figures together, we arrive at a total of \$152,974, which is \$50,000 *more* than the jury awarded Russell.

In short, the district court's Order ignores both the letter and the spirit of the collateral-source statute. The Court of Appeals should reverse this Order and hold, consistent with Minnesota law, that the \$50,000 in UIM benefits are "collateral sources" that must be deducted from Russell's total damages award.

II. **Russell's Argument that the UIM Benefits Are Not "Collateral Sources" Is Inconsistent with the Minnesota No-Fault Act and Supporting Caselaw.**

A. **Russell Inaccurately Characterizes UIM Benefits as "Excess Coverage" to Which She Is Entitled Above and Beyond the Award of Damages by the Jury.**

Russell claims that the definition of "collateral sources" does not include payments made by automobile accident insurers who provide "excess coverage" or umbrella coverage to their insureds. (Res. Br. at 7.) Her contention presupposes that an injured plaintiff is entitled to an "excess" of recovery in UIM benefits above and beyond the award of damages for which a defendant is liable.

This argument is not consistent with the Minnesota No-Fault Act. Under the Act, insurers are obligated to provide UIM coverage when an insured is injured by a defendant whose own liability insurance policy limit "is less than the amount needed to compensate the insured for *actual damages*." Minn. Stat. §§ 65B.43, subd. 17 (2012) (defining an "underinsured motor vehicle") (emphasis added); *see also* Minn. Stat. § 65B.49, subd. 3a (2012) (requiring UIM coverage). "Actual damages" are the damages that a jury awards to a plaintiff, and UIM coverage fills the gap between the defendant's liability policy limit and this measure of damages.

Russell misuses the term “excess coverage” to suggest that she is entitled to the \$50,000 in UIM benefits in “excess” of the full measure of damages awarded by the jury. She argues that the \$50,000 is “excess” money that she is entitled to keep, even though she would end up with \$152,974 instead of the \$102,974 that the jury awarded her. Clearly, the collateral-source statute operates to avert this situation. *See Swanson*, 784 N.W.2d at 269 (observing that collateral-source statute precludes double recovery by plaintiffs); *Do*, 779 N.W.2d at 858 (same); *Imlay*, 453 N.W.2d at 331 (same).

**B. Russell’s Claim to UIM Benefits Is, Contrary to Her Argument, Inextricably Linked to Her Liability Claim Against Haji-Ali.**

Russell argues that UIM benefits are not “collateral sources” because her claim to UIM benefits is “entirely separate and distinct” from her claim for liability against Haji-Ali. (Res. Br. at 7-8.) Again, this argument is directly contradictory to the No-Fault Act. Insurers are required to provide UIM coverage when the insured “is legally entitled to recover *damages* for bodily injury from owners or operators of underinsured motor vehicles.” Minn. Stat. § 65B.43, subd. 19 (2012). UIM coverage does not extend from the mere occurrence of an accident involving an “underinsured motor vehicle” but instead provides coverage only in connection with *damages* awarded against a tortfeasor. An insured has no legal right to UIM benefits unless and until she reaches a settlement with or obtains an award for damages against the tortfeasor. In other words, Russell’s claim to UIM benefits would not exist without her liability claim against Haji-Ali. In this way, Russell’s right to UIM coverage is inextricably linked to the plaintiff’s liability claim.

Russell argues repeatedly that a claim by an injured plaintiff for UIM benefits is not “ripe” until after the plaintiff exhausts her claim against the tortfeasor’s liability insurance coverage. (Res. Br. at 7, 8, 10.) Russell appears to make this argument in support of her position that UIM claims are distinct and detached from liability claims against tortfeasors. Russell’s argument ignores the plain fact that she has reached a settlement with her automobile insurer, USAA, for UIM coverage. When an injured plaintiff reaches a settlement of her claim to UIM benefits with her own insurer, her claim is unquestionably “ripe” for resolution.

Russell’s reliance on the Supreme Court’s opinion in *Do* in support of her position is wholly misplaced. *Do* reinforces a long line of caselaw that a payment made by a tortfeasor does not constitute a “collateral source.” 779 N.W.2d at 858-59 (citing *Dean v. Am. Family Mut. Ins. Co.*, 535 N.W.2d 342, 345 (Minn. 1995); *Hueper v. Goodrich*, 314 N.W.2d 828, 830 (Minn. 1982)). A tortfeasor’s payment to an injured plaintiff is necessarily considered a “direct source” of recovery for the plaintiff. *Id.* at 859. “Collateral sources,” on the other hand, are consistently understood to mean “a source unrelated to and unconnected with the tortfeasor.” *Id.* Accordingly, *Do* holds that when an injured plaintiff reaches a settlement agreement with a tortfeasor’s insurer and then sues his own insurer for no-fault benefits, the settlement payment is not a “collateral source” that reduces the no-fault insurer’s obligation to the insured plaintiff. *Id.*

*Do* is clearly distinguishable from this case. Here, the issue is whether a payment to the plaintiff by her *own* insurer is a “collateral source.” As demonstrated above, the

\$50,000 that Russell received from her UIM insurer absolutely constitutes a “collateral source.”

More importantly, Russell grossly misquotes *Do* by claiming that, like the no-fault carrier in *Do*, Haji-Ali will experience no harm in paying an extra \$50,000 in damages to Russell “because he will pay ‘exactly what [he] was required to pay.’” (Res. Br. at 9 (quoting *Do*, 779 N.W.2d at 857).) In *Do*, the Supreme Court observed that no-fault benefits are “‘primary with respect to’ any other benefits available to the injured person.” 779 N.W.2d at 857 (quoting Minn. Stat. § 65B.61 (2010)). Thus, a no-fault insurer may not withhold benefits on the ground that the insured might recover damages from a tortfeasor. *See id.* The Court concluded that the no-fault insurer in *Do* “paid exactly what it was required to pay” because no-fault insurers are, indeed, statutorily required to pay no-fault benefits promptly to an insured “without regard to fault.” *Id.* (quoting *Milbrandt v. Am. Legion Post of Mora*, 372 N.W.2d 702, 705 (Minn. 1985)).

This reasoning has absolutely no application with respect to Haji-Ali’s obligation to pay damages to Russell. It is black-letter law that a defendant’s liability is the measure of damages awarded by a jury as reduced by “collateral sources.” Under a proper application of the collateral-source statute, Haji-Ali will not be “required to pay” the \$50,000 in UIM benefits that Russell obtained from USAA, because this amount constitutes a “collateral source” that must be deducted from Russell’s damages award. The district court’s order is erroneous as a matter of law because it requires Haji-Ali to pay \$50,000 *more than* “he is required to pay.”

III. **Russell Makes an Unconvincing Attack on Haji-Ali's Citation to Foreign Caselaw that Conclude that UIM Benefits Are "Collateral Sources."**

In his principal brief, Haji-Ali identified support for his position that UIM benefits constitute "collateral sources" by noting the numerous foreign jurisdictions that have reached the same conclusion. (App. Br. at 9-10.) Russell points out, as Haji-Ali anticipated, that most of these foreign jurisdictions continue to follow the common-law collateral-source rule and do not reduce a plaintiff's damages award by UIM benefits. (Res. Br. at 11.) The issue on appeal is not whether the UIM benefits, being collateral sources, should or should not be deducted from her damages award, but whether they are "collateral sources" in the first place. Thus, it is appropriate for this Court to consider that a conclusion that UIM benefits *are* collateral sources would be consistent with the conclusion of many foreign jurisdictions.

Russell cites to the reasoning of two foreign courts for continuing to apply the common-law collateral-source rule in order to allow a plaintiff a double recovery of damages and UIM benefits. (Res. Br. at 12 (citing *Schwartz v. Hasty*, 175 S.W.3d 621, 628 (Ken. 2006); *Voge v. Anderson*, 512 N.W.2d 749, 752 (Wis. 1994)).) Minnesota law is not consistent with the law of these courts, since the Minnesota Legislature abrogated the common-law rule by enacting the collateral-source statute.

Russell argues that this Court should follow Florida law, which has concluded that UIM benefits are not deducted from a plaintiff's damages award. (Res. Br. at 11.) Florida law is directly contradictory to Minnesota law, however. In Florida, uninsured (UM) benefits do *not* constitute "collateral sources"; in Minnesota, UM benefits *are*

considered “collateral sources.” *Compare Imlay*, 453 N.W.2d at 333 (Minnesota law), with *Int’l Sales-Rentals Leasing Co. v. Nearhoof*, 263 So. 2d 569, 573 (Fla. 1972) (Florida law). It should go without saying that this Court follows Minnesota law, not Florida law, particularly when Florida law deviates so directly from the Minnesota Supreme Court’s own precedent.

### CONCLUSION

For all of the foregoing reasons, this Court should not entertain Russell’s arguments in support of her contention that UIM benefits are not “collateral sources.” Russell’s argument that she is entitled to a double recovery of damages from Haji-Ali and UIM benefits from USAA is based on a series of misinterpretation of Minnesota statutory and common law. Russell is attempting to divert the Court’s attention from the plain language of Minn. Stat. § 548.251, subd. 2(1), and the expansive holding of *Imlay* that all payments made pursuant to automobile accident insurance are “collateral sources.” Russell has failed to offer persuasive reasons to ignore this clear precedent.

Haji-Ali, therefore, respectfully requests that this Court reverse the district court's order and hold, instead, that the \$50,000 in UIM benefits paid to Russell constitutes a "collateral source" that must be deducted from Russell's total damages award.

Dated this 18th day of September, 2012.



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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 2,622 words. This brief was prepared using Word 2010.

Dated this 18th day of September, 2012.



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