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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-252**

Damian Salib,
Respondent,

vs.

Allstate Insurance Company,
Appellant.

**Filed February 25, 2008
Affirmed
Willis, Judge**

Hennepin County District Court
File No. 27-CV-05-014929

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Considered and decided by Willis, Presiding Judge; Toussaint, Chief Judge; and
Peterson, Judge.

UNPUBLISHED OPINION

WILLIS, Judge

Appellant Allstate Insurance Company challenges the district court's judgment in
favor of respondent Damien Salib, arguing that the district court erred by concluding that,

under the collateral-source statute, Allstate was not entitled to a reduction of the damages award for the amount of workers'-compensation benefits that Salib received. We affirm.

FACTS

In December 2000, Salib was injured in a motor-vehicle accident that occurred during the course and scope of his employment. The workers'-compensation carrier for Salib's employer paid benefits to Salib totaling \$134,026.72. Salib settled his claims against the driver of the other vehicle for \$100,000, which was the limit of the other driver's insurance policy, and he signed a settlement agreement on October 25, 2003.

At about the same time that Salib reached the settlement with the other driver, he also negotiated a settlement with his employer's workers'-compensation carrier for the amount of additional benefits to which he claimed he was entitled. Under the terms of that settlement agreement, which the parties signed on November 5, 2003, the workers'-compensation carrier agreed to pay \$59,000 to Salib. In addition, the parties agreed that the workers'-compensation carrier would assign to Salib its subrogation rights against the other driver and reduce the \$59,000 payment to Salib by \$44,000. As a result, Salib was allowed to keep the full amount of the \$100,000 settlement with the other driver, and he received an additional \$15,000 from the workers'-compensation carrier (the difference between \$59,000 and the \$44,000 reduction). The settlement agreement between Salib and the workers'-compensation carrier provided that it constituted a "full, final, and complete settlement" of Salib's "past, present or future" claims against his employer and the workers'-compensation carrier.

Salib then began an action against Allstate for underinsured-motorist benefits. There is no dispute that Salib had an insurance policy with Allstate that was in full force and effect at the time of the December 2000 accident and that the policy provided Salib with underinsured-motorist coverage of up to \$50,000. The underinsured-motorist action went to trial, and a jury returned a verdict awarding Salib \$186,312.50.

Allstate moved for a determination of collateral sources under Minn. Stat. § 548.36 (2006). The parties agreed that the \$100,000 settlement with the other driver was a collateral-source payment, and the district court reduced the damages award for underinsured-motorist benefits by that amount. But the district court concluded that Allstate was not entitled to a reduction of the damages award for the workers'-compensation benefits that Salib had received. After deducting the \$100,000 settlement with the other driver, the damages award was \$86,312.50, and thus, the district court ordered judgment for Salib in the amount of \$50,000, which was the limit of his underinsured-motorist coverage. Allstate appeals from the district court's collateral-source determination.

DECISION

The workers'-compensation act provides an exclusive, no-fault remedy against an employer for an employee who is injured during the course and in the scope of employment. Minn. Stat. § 176.021, subd. 1 (2006). The employee, however, is generally free to pursue claims against a third-party tortfeasor who caused the employee's injuries. Minn. Stat. § 176.061, subd. 5(a) (2006). And when an employer's workers'-

compensation carrier pays benefits to an employee, the carrier is subrogated to the employee's rights of recovery against third-party tortfeasors. *Id.*; *see also Backhauls, Inc. v. Thake*, 393 N.W.2d 427, 429 (Minn. App. 1986) (referring to the right of an employer or an employer's workers'-compensation carrier to subrogation), *review denied* (Minn. Nov. 19, 1986). Thus, when the employee is compensated for his injuries by his employer's workers'-compensation carrier, the carrier becomes entitled to reimbursement from the tortfeasor.

On occasion, and in this case, the workers'-compensation carrier, in connection with a settlement of workers'-compensation benefits, will assign its subrogation rights to the employee. Thus, in exchange for accepting a set and usually discounted amount of benefits, the employee not only receives those benefits but also retains (or regains) the right to pursue recovery from a third party. In other words, the employee is afforded the opportunity to make up the shortfall of workers'-compensation benefits by pursuing a claim that the workers'-compensation carrier, by virtue of subrogation, would have had against the third party.

The collateral-source statute generally requires a district court to deduct from an award of personal-injury damages the amount of certain payments—including workers'-compensation benefits—already received by the plaintiff in connection with the injury at issue. Minn. Stat. § 548.36 (2006). The statute excepts from this general rule payments “for which a subrogation right has been asserted.” Minn. Stat. § 548.36, subd. 2(1).

Allstate concedes that, under the collateral-source statute, the workers'-compensation carrier's assignment of its subrogation rights back to Salib precludes reduction of the damage award by the \$59,000 lump-sum settlement of Salib's workers'-compensation claims. *See* Minn. Stat. § 548.36, subd. 2(1); *Austin v. State Farm Mut. Auto Ins. Co.*, 486 N.W.2d 457, 458 (Minn. App. 1992) ("A workers' compensation carrier's assignment of its subrogation rights back to an employee precludes reduction of lump-sum disability settlement proceeds under the collateral source rule."), *review denied* (Minn. Aug. 4, 1992). Allstate instead focuses on the \$134,026.72 in workers'-compensation benefits that Salib received before the settlement and argues that the district court should have reduced the damage award by this amount.

By its express terms, the collateral-source statute excludes workers'-compensation benefits paid in connection with an assignment of subrogation rights, and we have so held. *See Buck v. Schneider*, 413 N.W.2d 569, 571-72 (Minn. App. 1987). Here, the district court correctly followed *Buck* and concluded that the collateral-source statute does not require deduction of workers'-compensation benefits paid from the damages award.

Allstate asserts that this case is distinguishable from *Buck* because Allstate, the defendant here, is an automobile insurer that has provided uninsured-motorist coverage, rather than a third-party tortfeasor. We find no basis for concluding that is a distinction that makes a difference. Rather, the analysis underlying our holding in *Buck* is equally compelling here. In *Buck*, we discussed the general purpose of the collateral-source

statute—“preventing windfalls by plaintiffs at the expense of defendants”—and concluded that the exception for subrogated claims was consistent with that primary purpose:

Buck contends he had to accept a lower cash settlement of his workers’ compensation claim in exchange for the assignment; this is presumably true, since the subrogation rights were valuable to the employer/insurer. The assignment was therefore not a sham transaction, and giving effect to it under the statute does not result in a windfall to Buck.

413 N.W.2d at 572. Here, as in *Buck*, Salib paid valuable consideration, in the form of foregone benefits, for the subrogation rights of the workers’-compensation carrier. Accordingly, here, as in *Buck*, the workers’-compensation benefits that Salib received should not be deducted from the damages award.

In addition to contravening the plain language of the collateral-source statute, drawing the distinction that Allstate suggests would be contrary to the purpose of mandatory underinsured-motorist coverage, which is “to place the insured in as good a position as he would have occupied had the negligent motorist been adequately insured.” *W. Nat’l Mut. Ins. Co. v. Casper*, 549 N.W.2d 914, 915-16 (Minn. 1996). Under Allstate’s view, a plaintiff would be able to recover the full measure of tort damages caused by a defendant with adequate insurance but only a portion of those damages caused by a defendant who is underinsured.

We further reject Allstate’s contention that the assignment of subrogation rights was invalid in this case. Allstate focuses on the timing of Salib’s settlement with the other driver and with the workers’-compensation carrier, contending that Salib had

already settled with the other driver, and thus, the only remaining claims were for underinsured-motorist benefits, and a workers'-compensation carrier has no subrogation rights against underinsured-motorist benefits. *See Cooper v. Younkin*, 339 N.W.2d 552, 553-54 (Minn. 1983). Therefore, Allstate concludes, the assignment did not convey any valid subrogation rights to Salib.

Despite Allstate's insistence that the settlement with the workers'-compensation carrier purported to assign subrogation rights to underinsured-motorist benefits, the district court expressly determined that the assigned subrogation rights were "not against [the underinsured-motorist provider], but against the [other driver]." We agree. Salib's settlement agreement with the workers'-compensation carrier clearly indicates that the carrier assigned the subrogation rights that it had in Salib's claim against the other driver. *Cooper* is therefore inapposite.

We disagree also with Allstate's argument that because Salib settled with the other driver before he settled with the workers'-compensation carrier, the assigned subrogation rights were worthless. The insured in *Austin* settled with the other driver for the limit of the other driver's liability coverage and then "eventually" settled with the workers'-compensation carrier. 486 N.W.2d at 458. The briefs in *Austin* confirm that the settlement with the other driver occurred two months before the settlement with the workers'-compensation carrier. The *Austin* court nevertheless concluded that the subrogation rights that the insured received as part of the settlement with the workers'-compensation carrier were not worthless. *Id.* at 460. As in *Austin*, the insured here,

Salib, settled with the other driver before he settled with the workers'-compensation carrier. And as in *Austin*, the timing of the settlements does not mean that the assigned subrogation rights were worthless.

And there is no requirement that subrogation rights be “asserted” in any particular manner to qualify for the exception in section 548.36, subdivision 2(1); all that is required is that the subrogation rights not have been waived. *Buck*, 413 N.W.2d at 571. Here, the workers'-compensation carrier did not waive its subrogation rights but rather assigned them to Salib, and Salib paid valuable consideration for those rights. In addition to reducing the lump-sum settlement with the workers'-compensation carrier by \$44,000, Salib also gave up his claims to temporary-partial and total disability benefits, permanent-partial and total disability benefits, rehabilitation benefits, retraining benefits, supplemental benefits, as well as other workers'-compensation benefits. The assignment of the workers'-compensation carrier's subrogation rights to Salib was, therefore, a valid assignment. Consequently, the workers'-compensation benefits fall within the exception for a collateral source ““for which a subrogation right has been asserted,”” and Allstate is not entitled to a reduction of the award for those benefits. *See Buck*, 413 N.W.2d at 571 (quoting Minn. Stat. § 548.36, subd. 2(1)).

Allstate argues finally that public policy requires that the damage award be reduced by the amount of workers'-compensation benefits that Salib received to prevent a double recovery or windfall. A primary purpose of the collateral-source statute is to prevent double recoveries by plaintiffs. *Imlay v. City of Lake Crystal*, 453 N.W.2d 326,

331 (Minn. 1990). *See also Buck*, 413 N.W.2d at 572 (explaining that the “apparent purpose” of the collateral-source statute is to prevent “windfalls by plaintiffs at the expense of defendants”). Before the verdict in the underinsured-motorist action, Salib received \$100,000 from the settlement with the other driver, which there is no dispute was properly deducted as a collateral-source payment, and \$134,026.72 in workers’-compensation benefits. Allstate contends that the amount that Salib received from the settlement with the other driver and from earlier workers’-compensation benefits, therefore, is \$47,579.72 in excess of the \$186,312.50 jury verdict and that allowing Salib to keep the \$47,579.72 excess is contrary to the collateral-source statute’s purpose of preventing a windfall or double recovery.

But simply reducing the damage award by the amount of workers’-compensation benefits that Salib received, as Allstate insists should be done, ignores the question of whether the amounts paid by the workers’-compensation carrier were also part of the damages awarded by the verdict in the underinsured-motorist action. The supreme court has rejected essentially the same argument explaining that “[s]imply reducing the . . . award by the total workers’ compensation benefits . . . regardless whether such amounts were included in the award can hardly be said to promote a public policy against double recovery.” *Casper*, 549 N.W.2d at 918. In addition, simply reducing the damage award by the amount of workers’-compensation benefits that Salib received would “shift the burden of loss for an auto accident from the auto injury reparations system to the workers’ compensation system,” which is not what the collateral-source statute was

intended to do. *Id.*; see also *Fryer v. Nat'l Union Fire Ins. Co.*, 365 N.W.2d 249, 255 (Minn. 1985) (explaining that shifting the burden of loss to the workers'-compensation system "is inconsistent with the legislative coordination of the various reparation payments").

More importantly, Allstate's argument that the damage award should be reduced by the amount of workers'-compensation benefits that Salib received does not take into account the fact that Salib paid valuable consideration for the subrogation rights that the workers'-compensation carrier assigned to him. As the court in *Buck* noted, "subrogation rights are valuable to the employer/[workers'-compensation carrier]," and there Buck, "presumably," accepted a lower settlement in exchange for the subrogation rights. 413 N.W.2d at 572. The record here clearly shows that in order to obtain the subrogation rights, Salib had to give up his claims to workers'-compensation benefits, including "wage loss benefits and additional bodily disability benefits."¹ Salib's decision to give up these claims to additional benefits and accept the settlement from the workers'-compensation carrier, while taking the chance of gaining a greater recovery from a damage award in the underinsured-motorist action, does not result in a windfall or double recovery to Salib.

Because the workers'-compensation carrier assigned its subrogation rights to Salib as part of the settlement of Salib's claim to workers'-compensation benefits, those

¹ The settlement with the workers'-compensation carrier explained that Salib gave up his claims to a host of benefits, including nursing services, massage therapy, chiropractic treatment, future disability payments, rehabilitation, and retraining.

benefits fall within the exception in section 548.36, subdivision 2(1), for a collateral source “for which a subrogation right has been asserted.” And because Salib gave valuable consideration for the subrogation rights, giving effect to the assignment under the collateral-source statute does not result in a double recovery or windfall to Salib.

Affirmed.