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Swanson v. Brewster: Are the Minnesota Courts Reforming the Tort System?

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The cost of health care continues to rise and, along with it, premiums are soaring.[1] Over the past decade, health care premiums have more than doubled, and the average worker's contributions more than tripled.[2] These increases are partly attributable to the rising number of uninsured Americans. During the chief tort reform movement in 1986, in response to the growing cost of insurance, the Minnesota legislature at least in part abrogated the common law collateral source rule.[3] This legislation provided that a defendant could, in certain instances, take an off-set on his or her damages for amounts paid to the plaintiff related to the injury.[4] In interpreting this legislation amidst the backdrop of the current health care environment, the Minnesota Supreme Court recently concluded that insurance companies do not have to pay an injured party amounts that she received from a "collateral source."[5] In particular, it held that the amount negotiated by the plaintiff's health insurance company for the plaintiff's care was a collateral source, as defined by Minnesota Statute § 548.251, and thus deductible under the statute.[6]

The *Swanson* ruling goes a long way to prevent a windfall double recovery to plaintiffs, and to protect insurance companies from paying inflated amounts that the plaintiff would never actually be obligated to pay. However, it leaves ripe for controversy several issues that call into question the scope of the "collateral source" and what will fall within its purview. Of particular interest is whether recipients of so called "charity care" will be entitled to recover amounts that they will never be obligated to pay, but that were not negotiated by an insurance provider. The court's analysis potentially leaves this type of possible windfall recovery to an uninsured plaintiff untouched. In addition, whether amounts paid by companies with a self-insured retention will fall within the definition of a "collateral source" remains to be seen. It is likely these issues, among others, will emerge as the true scope of the court's decision in *Swanson v. Brewster* becomes clear.

I. The court's decision in *Swanson v. Brewster*.

On October 18, 2005, a motor vehicle driven by Rebecca Brewster and owned by her father, Christopher Brewster, collided with a motorcycle driven by David Swanson at the intersection of Summit Avenue and Snelling Avenue in Saint Paul, Minnesota.[7] Mr. Swanson sustained injuries from the accident and sought medical care at Regions Hospital.[8] Mr. Swanson had health insurance coverage through HealthPartners, and Mr. Brewster had motor vehicle insurance coverage through State Farm Mutual Automobile Insurance Company (State Farm).[9] HealthPartners acknowledged its coverage of Mr. Swanson and notified State Farm of HealthPartners' right to assert "the reasonable value for any claims that have already been made or will in the future be made for medical and related services that have been provided to [Swanson]."[10]

In seeking treatment for the injuries he sustained in the accident, Mr. Swanson incurred $62,259.30 in medical bills at Regions Hospital and other medical providers.[11] In discharge of the obligation to pay the medical bills, Mr. Swanson paid $1,169.80 in co-payments and HealthPartners paid $17,643.76.[12] The remaining amount, $43,445.74, was forgiven as part of a negotiated discount between the medical service providers and HealthPartners.[13] Because HealthPartners was able to negotiate a discount on Mr. Swanson's behalf, the entire $62,259.30 was discharged, and Mr. Swanson would never become responsible for the amounts of his discounted medical bills.[14]

A. The lower courts.

Following the accident, Mr. Swanson commenced a tort action against Rebecca and Christopher Brewster in district court for the personal injuries he sustained in the accident.[15] Mr. Swanson alleged that Rebecca Brewster operated a motor vehicle negligently and that her negligence caused the accident and Swanson's injuries.[16] State Farm conceded Brewster's liability, and the only issue at trial was the amount of the plaintiff's damages.[17] The jury awarded Swanson damages totaling $134,789.00, which consisted of $38,000.00 for past pain and suffering, $4,230.00 for past wage loss, $30,300.00 in future pain and suffering, and various amounts for specific past health care expenses that totaled $62,259.30.[18]

After the district court received the jury's verdict, Brewster moved for "a collateral source determination" under Minnesota's collateral source statute § 548.251.[19] Specifically, Brewster asked the district court to reduce the jury award by, among other amounts, the negotiated amount secured by HealthPartners for the benefit of Swanson.[20] The district court referred to Brewster's position that the negotiated discount was a collateral source and thus should be deducted from the jury award, as being "a new strategy" and a "logical" assertion.[21] Nonetheless, the district court refused to side with Swanson, because it found no case law supporting Swanson's position, and due to a general lack of direction from the legislature to address "this significant policy issue."[22]

The Minnesota Court of Appeals affirmed the district court's ruling on different grounds.[23] The court of appeals denied the off-set based upon what it considered existing controlling precedent.[24] However, the court also recognized a lack of clarity from the legislature leading to some "uncertainty" and "inconsistent" decisions in the courts.[25] Its ruling also conceded the persuasive power of Swanson's argument: "[the defendant's] assertion that the discharge of a debt may function in the same way as an actual expenditure of funds for purposes of the collateral source statute [is] logical" and failing to reduce damage awards by negotiated discount amounts would result in "double recovery" which would "undermine the purpose of the collateral source statute."[26]

The court of appeals opinion was ripe with uncertainty regarding the ultimate correctness of its ruling, telegraphing that the Minnesota Supreme Court perhaps ought to intervene and provide some certainty and clarity to the negotiated discounts issue raised by Swanson.[27] The Minnesota Supreme Court took the occasion to do just that. It reversed the lower courts, and held that negotiated discounts are collateral sources under the collateral source statute, and therefore the amount of the discount must be deducted from a jury's award.[28]

B. The Minnesota Supreme Court thoroughly analyzed the issue.

At issue before the Minnesota Supreme Court in *Swanson v. Brewster* was whether the medical discount HealthPartners had negotiated with Regents Hospital was a "collateral source" under

Minnesota Statute § 548.251, and therefore, deductible from a jury's damage award.[29] In *Swanson*, the medical providers' "rack rates" for the services the injured party received totaled just over $62,000, yet the medical providers "apparently" discounted their services to individuals insured by HealthPartners.[30] In Mr. Swanson's case, the discount came to just over $43,000.[31] The court held the negotiated discount was a collateral source and should, therefore, be properly deducted from the jury's award.[32]

1. The common law collateral source rule vs. the collateral source statute.

At common law, under the collateral source rule, the negotiated discount would be a collateral source.[33] However, the collateral-source benefits a plaintiff received at common law had no impact on a tortfeasor's responsibility to pay damages to the plaintiff.[34] As a result, a plaintiff may receive more than the actual compensation amount, or a double-recovery, because the tortfeasor must pay the entire compensation amount regardless of other compensation sources.[35] Specifically,

A [p]laintiff may recover damages from a tortfeasor, although the plaintiff has received money or services in reparation of the injury from a source other than the tortfeasor. The benefit conferred on the injured person from the collateral source is not credited against the tortfeasor's liability.[36]

The common law collateral source rule was applicable in Minnesota until 1986.[37] In 1986, "The Minnesota Legislature enacted the collateral source statute to abrogate the common law collateral source rule and prevent windfalls and overcompensation."[38] Undoubtedly, the purpose of the collateral source statute was to change the rule so that "a plaintiff [under the statute] cannot recovery money damages from the defendant if the plaintiff has already received compensation from certain third parties or entities."[39]

Procedurally, Minnesota's Collateral Source Statute prevents double recovery, "through a post-trial reduction of a plaintiff's jury award."[40] After a jury returns a verdict for the injured plaintiff, and an amount is awarded for damages, the statute allows the defendant to request a determination of collateral sources that must be deducted from the awarded amount.[41] The court then determines the 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 loss, except those for which a subrogation right has been asserted.[42] This requires a determination of the 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 proceeding the accrual of the action to secure the right to a collateral source benefit that the plaintiff is receiving as a result of the loss.[43] Upon performing the calculations, the district court then makes the appropriate reductions.[44]

2. The *Swanson* court recognized that the collateral source statute abrogated the common law rule.

The *Swanson* court found the Minnesota legislature intended only to partially abrogate the common law collateral source rule with the enactment of the collateral source statute.[45] It reasoned this was evident in the legislature's definition of the phrase "collateral source" in the statute, and the requirement that compensation from a non-tortfeasor/third-party be deducted from a plaintiff's award only if it fits within four statutory exceptions:

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.[46]

The question before the court was whether the discount of just over $43,000 that HealthPartners negotiated with medical providers for the plaintiff's care was a collateral source consistent with the second provision of the statute.[47] If so, the amount could be deducted from the plaintiff's jury award.[48] If not, the plaintiff would be entitled to receive the full jury award from the defendant, even though such a recovery would result in overcompensation at "odds with the fundamental principles underlying recovery of compensatory damages in tort actions."[49] Significantly, the court observed: "[the plaintiff] will never be responsible for the amount by which his medical bills were discounted."[50] Consequently, and not surprisingly, the court agreed with Swanson and held that the concept of negotiated discounts could be found in the statute's definition of a "collateral source" in order to avoid overcompensation to the plaintiff.[51] It was therefore proper to deduct the amount of a negotiated medical discount from the plaintiff's jury's award.[52]

3. The court sought guidance in other jurisdictions, in particular the *Globe* decision out of Florida.

The *Swanson* decision was not rendered in a vacuum. The court considered the jurisprudence of other states in reaching its conclusion.[53] The court was confronted by the fact that "there are now twenty-eight states that have modified in some form the collateral source rule."[54] And notably, "eleven states, including Minnesota and Florida, replaced the common law collateral source rule with a statutory scheme 'that, wholly or partially, eliminates the rule itself or eliminates the benefits of the rule.'"[55] Of particular relevance was the Florida Supreme Court's decision in *Globe v. Frohman* in which the court concluded Florida's collateral source statute serves to prevent plaintiff windfalls in discounted medical contract instances.[56] The Florida court therefore found that the negotiated discount was a collateral source within the statutory scheme.[57]

The *Swanson* court repeatedly sought guidance from *Globe*.[58] It concluded that "the Florida court's analysis . . . applies to the facts of [*Swanson*]."[59] The *Swanson* court found, consistent with the Florida court's analysis, that "the discount secured by HealthPartners was as much a benefit to [the plaintiff] as the $17,643.76 HealthPartners tendered to [the plaintiff's] medical providers, because the delivery of money did not alone satisfy Swanson's medical debt."[60] HealthPartners tender of $17,643.76 to the medical providers plus the discount it negotiated with medical providers relieved

the plaintiff of his obligation to pay the total amount of his medical bills, which amounted to $62,259.30.[61] The court reasoned the discounted amount was precisely the type of payment that benefited the plaintiff.[62]

4. The court's decision overturned two other lower court rulings, but left one decision intact.

The dissent also highlighted another consequence of the majority's decision to recognize negotiated discounts as a collateral source under the statue: the court's decision overruled two previous published opinions by the court of appeals that had concluded "negotiated discounts do not constitute 'collateral sources' under the statute."[63]

In *Foust v. McFarland*,[64] the court of appeals concluded that the defendant could not deduct write-offs because the amount was never paid, but rather represented an amount which the medical insurance providers billed the plaintiff and did not attempt to collect pursuant to the plaintiff's medical plan.[65] *Foust* involved a plaintiff that sustained severe injuries resulting from an automobile accident.[66] A jury awarded the plaintiff substantial damages and the defendant sought multiple collateral-source deductions, including the gap between the amount billed and the amount paid by the plaintiff's insurance company.[67] The court of appeals decided to disallow the negotiated discount deductions.[68]

Similarly, in *Tezak v. Bachke*,[69] the court held that the collateral source statute does not apply to the gap between the amount of the medical bills and the discounted amount paid by the health insurer because the gap is not a "payment" under the statute.[70] The plaintiff in *Tezak* was injured in an automobile accident, incurred medical expenses, and later died of unrelated causes.[71] The plaintiff's health insurance paid only a portion of what the plaintiff's medical providers billed in full satisfaction of the debt.[72] The trustee of the plaintiff's estate sued the defendant for the full amount billed rather than what was actually paid to satisfy the debt.[73] On appeal, the defendants in *Tezak* took the position that under general principles relating to compensatory damages, the plaintiff should be limited to damages for which a person has sustained actual losses and that a party should not receive double recovery for damages."[74] The court in *Tezak* rejected this argument without expressly defining the term "payment" within the context of the collateral source statute.[75]

The Minnesota Supreme Court's decision in *Swanson* directly overrules both *Foust* and *Tezak* by holding that negotiated medical discounts, or "write-offs" (to quote the *Foust* court), are a collateral source under the statute. In doing so, the court explicitly defined what the term "payment" means within Minnesota's collateral source statute.[76] The court considered various definitions offered by Black's Law Dictionary, American Heritage Dictionary, and the American Heritage Dictionary of the English Language.[77] The court found the definition in Black's Law Dictionary particularly compelling to its analysis: "a payment may be something other than cash; it is '[t]he money or *other valuable thing* so delivered in satisfaction of an obligation.'"[78] The court found such a definition applicable in Swanson, concluding that the negotiated medical discount was a "payment" because "it involved the *exchange of things of value* to discharge [the plaintiff's] medical bill contractual obligations."[79]

The court, however, emphasized that a "payment" under the statute must be "related to the injury or disability in question" and "made on the plaintiff's behalf pursuant to a health insurance policy."[80] The court found that the negotiated medical discounts satisfied both requirements.[81] The court, therefore, defined "payment," for purpose of the negotiated medical discount under the collateral

statute, as (1) involving the exchange of things of value to discharge a plaintiff's medical bill obligation; (2) related to a plaintiff's injury or disability; and (3) made on the plaintiff's behalf pursuant to a health insurance policy.[82] The court found that HealthPartners' negotiated medical discounts could be defined as a "payment" within this definition.[83] Accordingly, the medical discounts that an insurer such as HealthPartners negotiates for its insured's care is now considered a "payment" under Minnesota's collateral source rule.[84]

While this ruling overturned the lower court's decisions in *Foust* and *Tezak*, it left the *Stout v. AMCO Insurance Co.*,[85] decision, and its progeny, intact.[86] In *Stout* the court addressed the issue of negotiated medical discounts within the context of the Minnesota No Fault Act.[87] *Stout* involved a plaintiff injured in an accident whose medical bills were discounted pursuant to Medicaid and MinnesotaCare fee schedules.[88] The court concluded that, under the No Fault Act, a person incurs medical expenses as he receives the bills (i.e. "the amount billed") and not as the expenses were paid out (i.e. "the amount tendered").[89] This conclusion, the court stated, would "remove the incentive for no-fault insurers to delay the payment of meritorious claims in hope that the injured person's health insurer will step in and pay his or her medical bills at a discounted rate."[90] Therefore, the court held, the negotiated discount of the plaintiff's medical bills should be included in his loss.[91]

The Minnesota Supreme Court in *Swanson* justified its decision to recognize negotiated medical discounts as collateral sources only under the Minnesota Collateral Source Statute, and not in the no fault context, because the No Fault Act is different than the collateral source statute in form, purpose, and function.[92] In form, the court noted the phrases at issue in *Swanson* were completely different from the ones at issue in *Stout*.[93] The purpose of the collateral source statute, the court stated, "is to prevent double recoveries by plaintiffs."[94] On the other hand, one of the purposes of the No Fault Act is "to encourage appropriate medical and rehabilitation treatment of the automobile accident victims by assuring prompt payment for such treatment."[95] The court thus concluded, "reducing an award by the negotiated discount in the collateral source context does not raise the same concern as a situation governed by the No Fault Act."[96]

II. Potential implications of the *Swanson* decision.

The result of the *Swanson* decision is to protect insurance companies in the future from making payments on amounts the insured party will never become obligated to pay. It therefore helps to insulate defendants from liability that creates a windfall to the plaintiff. In the traditional health insurance context the implications of *Swanson* are clear—the negotiated discount between health care providers and the insurance companies is a "collateral source" and therefore "paid" or otherwise available for the benefit of the injured party.[97] In *Swanson*, therefore, even though the jury awarded the injured party over $60,000 for past medical expenses, State Farm, the defendant's insurer, was responsible for paying just over $15,000, or about a quarter of the jury's award, in full satisfaction of the plaintiff's past medical expenses.[98] This ruling greatly reduces an insurer's exposure when the insured party has health insurance. Further impacts of the *Swanson* decision, however, have yet to be realized.

Swanson will certainly impact settlement negotiations and defense strategies. Defense counsel will likely argue that a plaintiff's claims for past medical expenses only constitute the expenses that were actually paid. Whether this argument will work in all contexts remains up for debate. Two likely areas of dispute are situations involving "charity care" and parties with a self-insured retention.

A. Charity care

"Charity care" remains an issue left unanswered by the *Swanson* decision.[99] Charity care, also known as uncompensated care, is health care provided for free or at a reduced price to low income patients.[100] The issue that will surely arise is whether an uninsured or underinsured plaintiff who receives charity care will be able to collect the monies for which he or she never became obligated to pay. In this context, the ideological parting of the ways between the *Swanson* majority and dissenting opinions will become paramount.

While the issue of how the courts will ultimately address this question is unclear, there is a rising need for charity care across the United States and Minnesota. "In 2004, the Robert Wood Johnson Foundation reported that 44 million individuals in the United States lacked health insurance, and the annual cost of uncompensated care for those individuals was $40.7 billion."[101] When individuals lacking coverage for only part of the year were included in the study, the expenditure amount rose to $125 billion for coverage of all uninsured patients.[102] Alarmingly, in 2007, the U.S. Census Bureau reported that the number of U.S. residents without health insurance had risen to 45.7 million, or 15.3 percent of all Americans.[103] The U.S. Congressional Budget Office estimated in 2009 that another 10 million Americans will become uninsured over the next decade.[104] Indeed, with the recent jump in unemployment, uninsured Americans have risen to 50.7 million or 16.7 percent.[105] The recent health care reform bill may work to reduce this amount; however, it has yet to be determined what real impact this new legislation will have on an economy with such high unemployment and an American workforce whose health coverage is, in large part, employment-dependent.[106]

While Minnesota's uninsured rate tends, on average, to be half the national rate, the cost of charity care continues to mount.[107] In 2008, Minnesota hospitals incurred $117 million in uncompensated, charity care, up from $80.3 million just three years earlier.[108] Between 2000 and 2008 charity care grew by 17.2 percent.[109] Interestingly, in 2008 Minnesota hospitals reported that 33.3 percent of charity care was provided to patients with insurance coverage.[110] This shows that this cost is not only incurred for the benefit of the uninsured but also for underinsured Americans.

Presumably, the number of uninsured persons in the United States will continue to rise and, along with it, the costs associated with so called "charity care." Consider a scenario in which an uninsured plaintiff is injured and receives charity care by a medical provider at a cost of only $10 to the plaintiff, yet the retail value of the medical provider's services is $10,000. Further assume the plaintiff subsequently sues the tortfeasor and is awarded $10,000 damages by a jury for her past medical expenses. The pivotal issue the Minnesota Supreme Court will likely face is whether the plaintiff is entitled to the full $10,000 award, even though she only paid $10 for the medical care and the additional $9,990 dollars surely constitutes a windfall; or whether the $9,990 is more properly understood as a "collateral source" deductible from the plaintiff's $10,000 award. The defendant will, of course, prefer the latter. Nonetheless, it is unclear how the Minnesota courts will apply the *Swanson* decision to cases of charity care similar to the above hypothetical.

The *Swanson* decision makes clear that a plaintiff cannot recover money damages from the defendant if the plaintiff has already received compensation from certain third parties or entities.[111] The issue with charity care therefore is whether the discounted health care will fall within the court's definition of a "payment" rendered pursuant to one of the four statutory exceptions.[112]

Interestingly, the majority and dissent appeared to have already teed-up the debate on this issue. The majority opinion stated: "The collateral-source statute is designed to address instances when a third

party—such as the government, an insurance company or an organization—discharges a tort plaintiff's medical debts whether by a money payment or otherwise."[113] The dissent, on the other hand, highlights the fact that the collateral-source statute only partially abrogates the common-law rule and that the enumerated four categories of collateral sources in the statute necessarily excludes other collateral sources not listed.[114] As such, the dissent states, "Gifts and charitable contributions are not included in the statutory definition of 'collateral sources.'"[115] Consequently, the issue will likely turn on whether a hospital is an organization providing health care, which is arguably a collateral source, or whether it is engaged in giving a charitable contribution, which arguably is not.

The analysis must begin with the court's definition of "payment". It defined "payment" in the context of a negotiated medical discount between an insurance company and a medical provider under the collateral source statute as:

(1) involving the exchange of things of value to discharge a plaintiff's medical bill obligation,

(2) related to a plaintiff's injury or disability, and

(3) made on the plaintiff's behalf pursuant to a health insurance policy.[116]

This definition is likely to be applied with some uniformity in analyzing this statute with the exception of the third component. The final component comes from one of the four subsections in Minnesota Statute § 548.251 subdiv. 1. In the case of charity care, the court would likely apply subsection (3), as opposed to subsection (2) used in *Swanson*. Subsection (3) provides a collateral source is a payment relating to the injury made *pursuant to* a "contract or agreement of a group, organization, partnership or corporation to provide, pay for, or reimburse the cost of hospital, medical, dental or other health care services."[117] As a result, a court would need to determine if money or other valuable thing was delivered in satisfaction of an obligation related to an injury or disability pursuant to an agreement or contract.

The court's analysis of other parts of the collateral source statute in *Swanson* sheds some light on the charity care issue. In particular, in analyzing subsection (3), the court found that the phrase "the cost of" modifies the word "reimburse" but not the word "provide."[118] It concluded "that the provision of hospital, medical, dental or other health care services is a collateral source."[119] It therefore determined that the "Legislature intended that the word payment be interpreted broadly because the statute states that the *provision* of health care services is a collateral source even though it is not the delivery of money 'to the plaintiff or on the plaintiff's behalf.'"[120] This suggests that the court would find that the mere provision of health services provided pursuant to a contract or agreement would constitute a collateral source under the statute. The issue to be overcome therefore would be whether there was an "agreement" for the hospitals to provide charity care to uninsured or underinsured parties, or whether it was merely gratuitously provided.

Whether there is an agreement or contract likely merges with the question of whether there is an exchange of things of value under the first prong of the court's definition of "payment."[121] The court in *Swanson* admittedly gave this analysis a cursory review. As the dissent aptly pointed out, the majority left to speculation the "thing" of value exchanged between HealthPartners and Regions Hospital.[122] The majority simply found "it appears that HealthPartners and the medical providers had some type of understanding that in exchange for HealthPartners referring its policyholders to them, they would provide medical services at a discount to these policyholders."[123] Even with this perfunctory analysis, it appears charity care would likely not qualify as a collateral source under the statute, because there appears to be nothing of actual value being exchanged. Indeed, it is doubtful

that a medical provider would even be motivated to attract additional charity care patients in the first instance, other than for generating considerable good will in the community.

A defendant might argue that because a hospital's tax-exempt status might be contingent upon its provision of care to the uninsured that somehow an exchange has occurred: the hospital provides discounted care in exchange for a tax exemption.[124] A defendant could certainly argue that federal law mandates that hospitals provide community benefits, including charity care, in order to qualify as a tax-exempt entity. In fact, in Minnesota, "[n]early all hospitals have formal charity care policies that spell out criteria for determining charity care eligibility."[125] Moreover, 70 percent of these hospitals "post information about charity care in public areas, and most also instruct staff to provide this information to uninsured patients."[126]

The question is whether these facts constitute sufficient "agreement" to satisfy Minnesota Statute § 548.251, subdiv. 1(3). Likely, the court would find it is not sufficient. Because the collateral source statute is in contravention of the common law it must be strictly construed.[127] While a credible argument could be made that hospitals agree to provide charity care in exchange for tax-exempt status, there are other community benefits that a hospital could provide to qualify for this status. There is simply no obligation to provide such care.[128] This analysis leads to the conclusion that because of the lack of a formal agreement the care provided is more akin to a "gift or charitable contribution [which] are not included in the statutory definition of 'collateral source.'"[129]

On the other hand, given the cursory look at the "agreement" between the insurer and health care provider in *Swanson*, the court may find the provision of health care is a collateral source without the existence of a formal recognized agreement. In fact, the court may find that because most Minnesota hospitals post, or otherwise inform patients, of their charity care policies that they have agreed to provide such care either in exchange for government benefits or even mere good publicity. If so, these benefits would likewise be deemed a collateral source under the statute and properly deductible from a jury award for past medical expenses.

Despite the lack of a formal agreement regarding charity care in Minnesota, there is an agreement between hospitals and the Attorney General to provide discounts to uninsured patients who have incomes below $125,000 but do not qualify for charity care.[130] This agreement would likely qualify under Minnesota Statute § 548.251, subdivision 1(3) and therefore this "negotiated discount" would likely be deemed a collateral source. Interestingly, this could lead to a situation in which discounts premised on an expansion of charity care to certain injured parties would be a collateral source under the statute but others who receive traditional "charity care" would not.

If the court in *Swanson* had defined "payment" as being merely the discharging or satisfying of a debt for the purposes of the collateral source statute, then a charity care case would have easily fit within this broader definition. But, the court explained why it narrowed the definition further: "The fact that the words 'pay' and 'payment' include the idea of discharging a debt does not mean that a negotiated discount is a 'payment' as the word is used in the collateral source statute. . . A more penetrating analysis is warranted."[131] As a result of this narrow, three-prong definition, a defendant will have a more difficult time convincing a court in Minnesota that $9,990 of the damage award provided to a charity care plaintiff should be deducted as a collateral source because it is a "negotiated discount" under the *Swanson* court's definition of "payment."

While any predictions are mere conjecture at this point, the court's analysis in *Swanson* suggests that charity care would not be deemed a collateral source under Minnesota's collateral source statute.[132] The narrow construction of the term "payment", together with the strict construction of the statutorily

defined collateral sources, would likely result in a windfall recovery for a plaintiff receiving charity care even though the plaintiff never paid nor would be required to pay such expenses.

B. Self-Insured Retention

Another issue that may warrant further analysis is whether amounts paid as a part of a self-insured retention are deductible as a collateral source from a plaintiff's jury award after *Swanson*. Under the *Swanson* analysis, as discussed more fully below, it appears that amounts paid pursuant to a self-insured retention would not be considered a collateral source because of the narrow definition of the "payment". However, under subdivision 1(3), a strong argument could be made that monies paid pursuant to a self-insured retention related to the plaintiff's injury or disability are a payment under Minnesota's collateral source statute.[133] This issue was not addressed in *Swanson*, which was decided under subdivision 1(2) of the Minnesota collateral source statute.[134] However, the opinion could shed light on how the Supreme Court would approach this issue.

Self-insurance is a risk management method typically used by larger corporations to retain more of the risks associated with various potential loses.[135] Full or exclusive self-insurance is rare, as a combination of self-insurance and commercial insurance usually provides the best cover for the self-insurer.[136] A common situation for a large corporation is to set aside a portion of its own money to cover the medical costs of its employees.[137] The company usually still contracts with an insurance company to administrator the self-insurance program and the insurance company typically provides the company seeking self-insurance with some level of coverage above a specified limit.[138]

The first two-prongs of the *Swanson* definition of "payment" appear to be satisfied in the context of a self-insured retention.[139] First, the party who retains the risk makes a payment, to the extent of the risk retained, in order to satisfy the plaintiff's medical obligation.[140] This prong of the analysis is even more-straight forward than the "payment" in *Swanson* because it involves "money delivered" to the medical care provider, as opposed to an exchange of another thing of value.[141] Second, these payments would be made for medical care provided after the insured was injured in an accident.[142] Accordingly, the amount paid would be related to the injury or disability in question.[143] The self-insured retention runs afoul of the *Swanson* definition in that no insurance proceeds would be used to discharge the debt.[144] Despite the fact that the self-insured retention falls outside of the "pursuant to a health insurance policy" prong of the Swanson definition, it may still be properly classified as "a payment" under the court's rationale.

The language of the statute upon which the *Swanson* court relied states that 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 *health insurance policy* is a collateral source under the statute.[145] However, in defining "payment" thusly, the court relied upon subdivision (2) of the statute in forming the third prong of its definition for "payment".[146] In the self-insured retention context the court would likely form this prong in reliance on the third subdivision: a payment related to an injury or disability made to the plaintiff or on the plaintiff's behalf *pursuant to a contract or agreement*.[147] A self-insured would seem to fall squarely within the statute's definition if it is "a group, organization, partnership, or corporation [that] provide[s], pay[s] for, or reimburse[s] the costs of hospital, medical, dental or other health care services" on behalf of a third person.[148] Thus, even though the self-insured retentions likely do not satisfy the third-prong of the *Swanson* court's definition, the court would likely nonetheless consider the self-insured retention a "payment" under the statute based on the full language of the statute.

Moreover, this interpretation is consistent with the legislative intent identified by the Swanson court. Concluding that the amount paid pursuant to a self-insured retention is a collateral source would prevent recovery by the plaintiff of sums he or she never was nor will be obligated to pay, and thereby prevent double recovery. As the court stated, "The collateral source statute is designed to address instances in when a third-party—such as the government, an insurance company, or an organization—discharges a tort plaintiff's medical debts whether by a money payment or otherwise."[149] Because a self-insured retention would, in most instances, result from an organization making a payment to discharge a tort plaintiff's medical debts, this situation would fall within the collateral source statute.

III.The court's decision provided both clarity and uncertainty.

Charity-care and self-insurance are issues ripe for future litigation. Uncertainty remains as to whether the collateral source statute will operate to exclude negotiated medical discounts from a plaintiff's jury award within these and other contexts not addressed by the *Swanson* decision. The inherent tension between the *Swanson* majority and dissent makes the scope of the decision hard to anticipate. However, what is clear is that *Swanson* interpreted the legislative intent to prevent an injured party from recovering more than what it cost to make him or her whole, in certain circumstances. Thus, *Swanson* held that negotiated medical discounts constituted payments under the statute and were deductible from a plaintiff's jury award. The result of this ruling is to ensure that a plaintiff is fully compensated for his or her injuries, the insurance company costs are contained, and societal goals are achieved all while controlling the ever-increasing cost of the national and state tort systems.

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[1] *See* AON Hewitt, Trends in HR and Employee Benefits: Health Care Cost Trends 1 (Nov. 2010), *available at* http://www.hewittassociates.com/_MetaBasicCMAssetCache_/Assets/Articles/2010/Health_Care_Cost_
[2] *See id.*
[3] *See* 1986 Minn. Laws 878–79. *See also* Swanson v. Brewster, 784 N.W.2d 264, 270 (Minn. 2010).
[4] *See* Minn. Stat. § 548.251 (2010).
[5] *Swanson*, 784 N.W.2d 264, 282 (Minn. 2010).
[6] *See id.* at 276.
[7] *Id.* at 266.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Swanson*, 784 N.W.2d at 266.
[12] *Id.* at 266–67.
[13] *Id.* at 267.
[14] *Id.*
[15] *See Swanson*, 784 N.W.2d at 267.
[16] *See id.*
[17] *See id.*
[18] *See id.*
[19] *Swanson*, 784 N.W.2d at 267.

[20] *See id.*
[21] *See* Trial Court Order for Judgment, Swanson v. Brewster, No. 27-CV-07-4159, 2008 WL 3832480 (Minn. Dist. Ct. Apr. 11, 2008).
[22] *See id.*
[23] *See Swanson*, 784 N.W.2d at 268.
[24] *See* Swanson v. Brewster, No. A08-0806, 2009 WL 511747, at *4 (Minn. Ct. App. Mar. 3, 2009).
[25] *See id.*
[26] *Swanson*, 784 N.W.2d at 268 (quoting *Swanson*, 2009 WL 511747, at *4).
[27] *See Swanson*, 2009 WL 511747, at *4.
[28] *See Swanson*, 784 N.W.2d at 276.
[29] *See id.* at 268.
[30] *See id. at* 266-67.
[31] *See id.* at 267.
[32] *See id.* at 282.
[33] *See Swanson*, 784 N.W.2d at 268. Insurance coverage, job benefits, donations and gratuitous services are examples of collateral source benefits. *Id.* The court in *Swanson* asserted that the common law collateral source doctrine—which considers compensation from any individual or entity other than the tortfeasor to be a collateral source—is broader than the collateral source statute, which defines the phrase and limits the instances in which the payments may be deducted from a plaintiff's award. *See id.* at 270.
[34] *See id.* at 268.
[35] *See id.* at 269.
[36] *Id*. (quoting Hueper v. Goodrich, 314 N.W.2d 828, 830 (Minn. 1982)).
[37] *Swanson*, 784 N.W.2d at 269.
[38] *See id.* at 269 (quoting Imlay v. City of Lake Crystal, 453 N.W.2d 326, 331 (Minn. 1990) (stating that the primary goal of the collateral-source statute is to prevent some double recoveries by plaintiffs)).
[39] *Id.*
[40] *Id.* Under the statutory construction, the parties are prohibited from disclosing to the jury that the plaintiff received benefits from a third party that may reduce the plaintiff's damages. *Id.* This serves to prevent the defendant from receiving a double benefit by having the jury reduce its award without explanation and then having the district court off-set that award by the amount of the collateral source payment. *Id.*
[41] Minn. Stat. § 548.251, subdiv. 2 (2010). Specifically the statute requires, upon receipt of a motion the court must 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 (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 the loss. *Id.* § 548.251, subdiv. 2.
[42] *Id.*§ 548.251, subdiv. 3.
[43] *Id.*
[44] *Id.*
[45] *Swanson*, 784 N.W.2d at 270.
[46] Minn. Stat. § 548.251 (2010).
[47] *See Swanson,* 784 N.W.2d at 270-71.
[48] *See id.* at 270.
[49] *Id. See also* Brief for Minnesota Joint Underwriting Assoc. et al. as Amici Curiae Supporting Petitioners, Swanson v. Brewster, 784 N.W.2d 264 (Minn. 2010) (No. A08-806), 2009 WL 6735276 at, *12-13.
[50] *Id.* at 267.

[51] *Id.* at 277.
[52] *Id.*
[53] *See Swanson*, 784 N.W.2d at 270-271.
[54] Brief of Minnesota Joint Underwriting Association, Minnesota Defense Lawyers Association and Insurance Federation of Minnesota as Amici Curiae Supporting Appellants, Swanson v. Brewster, 784 N.W.2d 264 (2010) (No. A08-806), 2009 WL6735276 (Amici Curiae Brief).
[55] *See id.*
[56] *See* Goble v. Frohman, 848 So.2d 406 (Fla. Dist. Ct. App. 2003). The amicus brief argued that: "the Minnesota Supreme Court should interpret [its] collateral source statute similarly, because the collateral source statutes of both states grew out of the same nationwide tort reform movement and share a common purpose and intent to prohibit windfall recoveries by plaintiffs." Amici Curiae Brief, Page 8 (citing Goble v. Frohman, 901 So.2d 830 (Fla. 2005).
[57] *See* Goble v. Frohman, 901 So.2d 830 (Fla. 2005).
[58] *See Swanson*, 784 N.W.2d at 276. A point of contention between the majority opinion in *Swanson* and its dissent was whether the decision to classify the negotiated medical discounts as a collateral source under the Minnesota statute was inconsistent with the various rationales employed by a majority of the courts and thus representative of "a distinct minority view among state courts that have considered the issue." *See id.* at 286. However, the majority opinion defended its ruling against this assertion by stating its opinion simply reflects a different interpretation of these cases and thus it did not believe that the dissent could fairly categorize its opinion as "a distinct minority." *See id.* at 280. The majority reasoned that it was interpreting a law, i.e. the Minnesota Collateral Source Statute, different from the laws presented to the sixteen courts cited by the dissent. Moreover, the majority noted that "the dissent also fail[ed] to note and explain that in 15 of the 16 cases it lists, the courts interpreted and applied the common-law collateral source rule, not a collateral-source statute." *Id.* The court therefore determined that its interpretation of the Minnesota collateral source statute was supported by other relevant jurisdictions. *Id.*
[59] *Id.* at 276.
[60] *Id.*
[61] *Id.*
[62] *Id.* The court also considered the rationale of other jurisdictions, beyond Florida, in reaching its ruling. *See id.* at 270-71. The court, however, found no overwhelming consensus among the other jurisdictions. *Id.* at 271. For instance, the court cited the District of Columbia courts as an example of one jurisdiction in which a negotiated medical discount is considered a collateral-source benefit. *Id*. at 270 (citing Hardi v. Mezzanotte, 818 A.2d 974, 983-85 (D.C. 2003)). But, because the D.C. courts have retained the common law collateral-source rule, the negotiated medical discount cannot be deducted from a tortfeasor's liability. *Swanson*, 784 N.W.2d at 271. *See also* Leitinger v. DBart, Inc., 736 N.W.2d 1, 18 (Wis. 2007) (finding that a party may not introduce evidence that a plaintiff paid his or her health care provider a lower money amount than the amount billed). Courts in other jurisdictions hold that a plaintiff is entitled to reasonable medical expenses and provide that "[b]oth the original medical bill rendered and the amount accepted as full payment are admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care." *See Swanson*, 784 N.W.2d at 271; Stanley v. Walker, 906 N.E.2d 852, 858 (Ind. 2009); Robinson v. Bates, 857 N.E.2d 1195, 1200 (Ohio 2006). These cases suggest that the jury may reduce the amount owed to the plaintiff to what is a reasonable and necessary charge for the services.
[63] *See Swanson*, 784 N.W.2d at 286.
[64] Foust v. McFarland, 698 N.W.2d 24 (Minn. Ct. App. 2005).
[65] *See id.* at 35-36.
[66] *Id.* at 27.
[67] *See id*.
[68] *Id.* at 35-36.
[69] *See* Tezak v. Bachke, 698 N.W.2d 37 (Minn. Ct. App. 2005).

[70] *Id.* at 41.
[71] *Id.* at 39.
[72] *See id.*
[73] *Id.*
[74] *See id.* at 39-40.
[75] *See id.* at 40.
[76] *See Swanson*, 784 N.W.2d at 276.
[77] *See id.* at 274-75.
[78] *Id.* at 275.
[79] *Id.* In particular the court found that the negotiated discount involved an exchange of things for value because the discount was not gratuitously accepted as full satisfaction of the debt. *Id.* Rather, the court noted, it appears HealthPartners and the medical providers had some type of understanding that in exchange for HealthPartners referring its policyholders to them, they would provide medical services at a discount to these policyholders. *Id.*
[80] *Id*.
[81] *Id.* at 276.
[82] *See id.* at 275-76.
[83] *See id* at 277.
[84] *Id.*
[85] *See* Stout v. AMCO Ins. Co., 645 N.W.2d 108 (Minn. 2002).
[86] *See Swanson*, 784 N.W.2d at 272.
[87] *Id.* at 271 (quoting *Stout*, 645 N.W.2d at 112).
[88] *See Swanson*, 784 N.W.2d at 271.
[89] *Id.* at 272.
[90] *Id.* (quoting *Stout*, 645 N.W.2d at 114).
[91] *See Swanson*, 784 N.W.2d at 272.
[92] *See id.*
[93] *See id.* at 272-73. The No Fault Act uses phrase and words such as "economic loss benefits," "medical expenses" and "incurred" while the collateral source statute uses "collateral source" and "payment." *Id.*
[94] *See id.* at 273.
[95] *Id.*
[96] *Id.*
[97] *See id.*
[98] *See id.* While the decision purports to be based on the plain meaning of the collateral source statute, attorneys involved on both sides of the case say broad issues of jurisprudence and public policy are involved. *See* Barbara L. Johnson, *Minnesota Supreme Court Rules Discounted Medical Bill a Collateral Source*, Minnesota Lawyer, July 2, 2010, *available at* 2010 WLNR 13847584. The attorneys advocating for the defense argue that the Swanson decision merely restores "what the Legislature meant in enacting tort reform in 1986." Johnson, *supra*. Namely, "to prevent double recoveries by plaintiffs… [and] to reject this lottery mentality that has been dragging down the tort system." Johnson, *supra*.The lawyers that advocated for the plaintiff's position view the *Swanson* decision differently: "given the common practice of discounting medical bills, there's always going to be a windfall and the issue is who gets it . . . now it goes to the tortfeasor." Johnson, *supra*. They further argue that the court's decision to give the windfall to the tortfeasor is "very concerning as it could be read as a philosophical change." Johnson, *supra.* The plaintiff's bar also worries that the court may be changing its approach to statutory construction because it analyzed legislative intent even though it purported to reach its decision replying on the plain meaning of the statute. Johnson, *supra.* Justice Dietzen hinted at a similar concern in his concurring opinion: "because the statute is unambiguous, it is neither necessary nor appropriate to go beyond the words of the statute to determine the purpose of the law." *Swanson*, 784 N.W.2d at 289. This dispute over the judicial

interpretation leaves open the question of how the court will apply this statute in the future. If the goal is, as defense attorneys argue, to avoid windfall recoveries, it arguably has a much broader reach than a plain reading of the statute would.
[99] In charity care situations, a hospital typically assesses a patient's financial position and then charges or writes-off a certain percentage of the medical services it provides to the patient based on this position. In most cases, once the patient has paid whatever it is the hospital has asked him or her to pay, the patient is relieved of any further obligations to pay the hospital. However, some hospitals may contractually provide for retention of their right to recover from the patient any money the patient obtains as a result of his or her injuries. This article assumes that the patient's debt is fully satisfied by the patient's discounted payment and that the hospital does not contractually retain any rights to a patient's future recovery of money for his or her injuries.
[100] *See* Lisa Kinney Helvin, *Caring for the Uninsured: Are Not-For-Profit Hospitals Doing Their Share?*, 8 Yale J. Health Pol'y, L. & Ethics 421, 423 (2008).
[101] *Id*.
[102] *See id*.
[103] *See* United States Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2007* (2008), at 19, *available at* http://www.census.gov/prod/2008pubs/p60-235.pdf (last visited Dec. 21, 2010) [hereinafter 2007 U.S. Census].
[104] *See The USA's Crisis of the Uninsured*, 373 The Lancet 782 (Mar. 7, 2009), *available at* http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(09)60457-8/fulltext.
[105] *See* United States Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2009* (2010), at 22, *available at* http://www.census.gov/prod/2010pubs/p60-238.pdf.
[106] *See id.*
[107] Minn. Dep't of Health, Health Economics Program (June 2010), at 3, *available at* http://www.health.state.mn.us/divs/hpsc/hep/publications/costs/uncompensatedcare.pdf (last visited Dec. 21, 2010) [hereinafter Health Economics Program]; *see also 2007 U.S. Census*.
[108] Health Economics Program, *supra* note 108, at 3*; see also* Minn. Dep't of Health, Minnesota Hospitals: Uncompensated Care, Community Benefits, and the Value of Tax Exemptions (Jan. 2007), at 24, *available at* http://www.health.state.mn.us/divs/hpsc/hep/publications/costs/uc2007report.pdf (last visited Dec. 21, 2010).
[109] Health Economics Program, *supra* note 108, at 3.
[110] Health Economics Program, *supra* note 104, at 4.
[111] *See Swanson*, 784 N.W.2d at 269.
[112] *See id.* at 270.
[113] *Id.* at 280.
[114] *See id.* at 284 (Meyer, J., dissenting).
[115] *Id.*
[116] *Id.* at 274. The court's analysis of this issue is a little ambiguous. The court concluded that the negotiate discount was a 'payment' within the ordinary and plain meaning of that word despite finding that the negotiated discount was not "paid" to the injured's health care providers. *See id.* at 278. However, the analysis directs a conclusion that the term "otherwise available" to the injured party contained in subdivision 2 serves to further define the term "payment". *See id*.
[117] Minn. Stat. § 548.251, subdiv. 1(3) (emphasis added).
[118] *See Swanson,* 784 N.W.2d at 277.
[119] *Id.* at 278 (citing Minn. Stat. § 548.251, subdiv. 1(3)).
[120] *Id.*
[121] *See id.* at 285 (Meyer, J., dissenting).
[122] *See id.* at 285 n.1.
[123] *Id.* at 275.
[124] Lisa Kinney Helvin, *supra* note 101, at 440. Federal policy requires hospitals to provide "community benefits" in order to qualify as tax-exempt nonprofit entities. Community benefits

include the provision of charity care. Interestingly, estimates from 2005 show that non-profit hospitals in Minnesota received $482 million in tax exceptions. Minn. Dep't of Health, *supra* note 109, at 26. Yet, in 2008 Minnesota hospitals incurred only $268.4 million in uncompensated care, of which $117 million were costs associated with charity care. Health Economics Program, *supra* note 108, at 3.

[125] Minn. Dep't of Health, *supra* note 109, at iii.

[126] *Id.*

[127] *See Swanson,* 784 N.W.2d at 280.

[128] This conclusion is supported by the fact that hundreds of cases filed alleging that health care providers violated their charitable obligations as tax-exempt organizations by aggressively billing and collecting from uninsured patients were dismissed on the pleadings. *See* Lisa Kinney Helvin, *supra* note 101, at 433-39.

[129] *Swanson,* 784 N.W.2d at 284.

[130] Health Economics Program, *supra* note 108, at 4. This agreement, which was initially entered into in 2005 was renewed in 2007 for an additional five years. *Id.*at n.6. The agreement specifically provides: The hospital will not charge a patient whose annual household income is less than $125,000 for any uninsured treatment in an amount greater than the amount the provider would be reimbursed for that service or treatment from the insurance company which provided that hospital with the most revenue for its services in the previous calendar year. Press Release, Minnesota Attorney General, Agreement Between Attorney General and Minnesota Hospitals Will Provide Fair Pricing to Uninsured Patients, Establish Code of Conduct for Debt Collection Practices (May 5, 2005). This requirement is mirrored in the new federal legislation, Patient Protection and Affordable Care Act, which will require non-profit hospitals to limit charges to those who qualify for financial assistance to the lowest amount charged to insured patients. Health Economics Program, *supra* note 108, at n.6. (citing Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 9007, 26 USCA § 501 (2010)).

[131] *Swanson*, 784 N.W.2d at 275-77.

[132] *See id.* at 268-82.

[133] Minn. Stat. § 548.251, subdiv. 1(3).

[134] *See Swanson,* 784 N.W.2d at 279.

[135] *See* Jonathan Edelheit, *Employers Guide to Self Funding Healthcare Part 1*, Self Funding Magazine.com 2 (Jan. 5, 2010), *available at* http://www.selffundingmagazine.com/article-detail.php?issue=Issue%202&article=employers-guide-to-self-funding.

[136] *See id.*

[137] *See id.*

[138] *See id.*

[139] *Swanson,* 784 N.W.2d at 275-76. Recall that *Swanson* defined "payment" in the context of a negotiated medical discount between an insurance company and a medical provider under the collateral source statute as:(1) involving the exchange of things of value to discharge a plaintiff's medical bill obligation, (2) related to a plaintiff's injury or disability, and (3) made on the plaintiff's behalf pursuant to a health insurance policy. *Id.* at 274.

[140] *See id.* at 275-76.

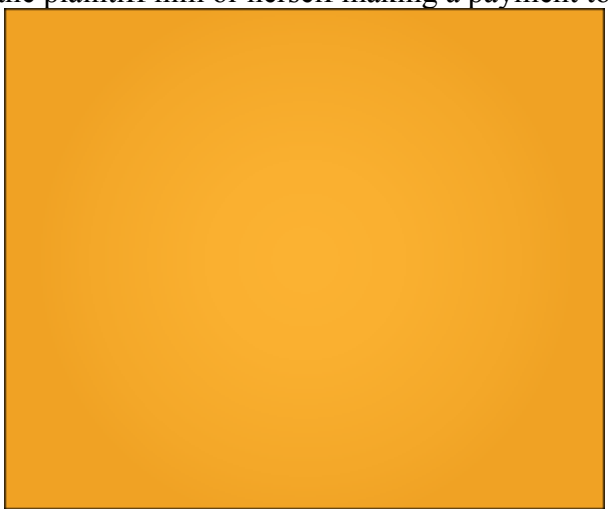
[141] *See id.* at 275.

[142] *See id.*

[143] *See id.* at 276.

[144] *See id.* An argument could be made that the definition of insurance: "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 payment" may encompass a self-insured retention, and thereby, deemed a health insurance policy under the collateral source statute. *See* Minn. Stat. § 548.251, subdiv. 1(2) (2010).

If it is proper to classify the benefits in this manner, then it should be deducted from a plaintiff's jury award. On the other, if it is not proper to classify the benefits in this manner, the self-insured retention should not be deducted from a plaintiff's jury award. While this issue is intellectually interesting, the collateral source statute seems to provide a more straight forward analysis to conclude that a self-insured retention, paid by a third-party is a collateral source under the statute.
[145] *See Swanson,* 784 N.W.2d at 275 (citing Minn. Stat. § 548.251, subdiv. 1).
[146] *See id.* at 278.
[147] *See* Minn. Stat. § 548.251, subdiv. 3 (stating that "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.").
[148] *See id.*
[149] *Swanson,* 784 N.W.2d at 280. In a situation in which the injured party has his or her own self-insured retention, any payment made to satisfy this obligation would not result in a collateral source deduction because it would not be a payment made by a third-party to discharge the plaintiff's medical expenses but rather, the plaintiff him or herself making a payment to discharge a debt.



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