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CASE LAW UPDATE

Minnesota Supreme Court holds that heads of households do not need to replace services to recover replacement service loss benefits under the Minnesota No-Fault Act.

On June 17, 2015, the Minnesota Supreme Court held in Schroeder v. W. Nat. Mut. Ins. Co., A13-2289, 2015 WL 3739535, that an injured person who provides care and maintenance of a home as a full-time responsibility may recover no-fault replacement service loss benefits, regardless of whether the services were actually replaced.

The Claimant, a 59 year-old single woman, was injured in a motor vehicle accident in May 2012 that left her totally disabled for five months. During the period of her disability, she continued to own and maintain her home but was unable to perform certain duties such as vacuuming, laundry and yard work. She did not purchase replacement home care services and no one volunteered to perform the services for her.

In July 2012, Schroeder filed a claim for $3,400 in replacement service loss benefits with her No-Fault insurer. The Claimant asserted she was entitled to the "reasonable value" of the home care and maintenance services she was unable to perform because she was the head of household and had been unable to perform her household duties until her period of disability ended. The insurer denied the claim, reasoning that it would not reimburse her for services that were not replaced in some way.

An arbitrator awarded the full $3,400 to the Claimant, and as discussed in our Case Law Update from July 15, 2014, the court of appeals affirmed. Last fall, the Minnesota Supreme Court granted further review to determine whether the applicable statute allows a person injured in an automobile accident to recover the reasonable value of household services if those services were not replaced or performed during the period of disability.

The Court analyzed the replacement service loss benefits provision—Minn. Stat. § 56B.44, subd. 5—of the No-Fault Act:

> Replacement service loss benefits shall reimburse all expenses reasonably incurred by or on behalf of the nonfatally injured person in obtaining usual and necessary substitute services in lieu of those that, had the injured person not been injured, the injured person would have performed not for income but for direct personal benefit or for the benefit of the injured person's household; if the nonfatally injured person normally, as a full-time responsibility, provides care and maintenance of a home with or without children, the benefit to be provided under this subdivision shall be the reasonable value of such care and maintenance or the reasonable expenses

incurred in obtaining usual and necessary substitute care and maintenance of the home, whichever is greater.

The second clause was not part of the Uniform Motor Vehicle Accident Reparations Act considered by the Legislature when Minnesota enacted its own version of the No-Fault Act in 1974. It is this second clause of subdivision 5 that was at issue in Schroeder.

Nearly a year after the court of appeals issued its opinion, the supreme court affirmed in a brief nine-page opinion. The supreme court rejected the insurer's threshold argument that the Claimant was not entitled to replacement service loss benefits because she did not suffer a "loss," which is defined under Minn. Stat. § 65B.43, subd. 7 as "economic detriment." The court ruled that if an injured person satisfies one of the six categories of "loss" articulated in the statute, including "replacement services loss," then the person has suffered "economic detriment," regardless of whether or not the person or the person's family—as in Rindahl v. Nat'l Farmers Union Ins. Cos., 373 N.W.2d 294 (Minn. 1985)—incurred time or expense. According to the supreme court, recovery of replacement service loss benefits is not contingent on an independent showing of "economic detriment."

The supreme court next rejected the insurer's argument that the Claimant was not entitled to replacement service loss benefits because she did not actually replace the services. The court ruled the plain text of section 65B.44, subd. 5 demonstrates that recovery is not contingent on replacing household services if the injured person is primarily responsible for household maintenance. Rather, subdivision 5 allows a head of household who has not had the services replaced to recover *either* the reasonable value of the unreplaced care and maintenance *or* the reasonable expenses incurred in replacing the care or maintenance. According to the court, the difference between Rindahl—in which the injured person's family "took up the slack"—and Schroeder—in which the services went unperformed—is a distinction without a difference.

The supreme court's interpretation of the statutory language as unambiguous rejected arguments that the grammatical complexities of the statute required the court to interpret the provision in light of various public policy and statutory interpretation considerations. As a result, the decision expands the historical interpretation of the Rindahl holding. While it is true no expense was incurred in Rindahl, the services were actually performed by other members of the injured person's family. With this ruling, the supreme court determines a person need not *replace* services to qualify for "*replacement* service loss benefits."

Minnesota No-Fault insurers will continue to see an influx of reopened claims for replacement service loss benefits from heads of households, regardless of whether or not the services for which benefits are being sought were actually performed. Under the No-Fault Act, an injured person may be eligible to recover up to $200 per week for non-replaced services. However, claimants will be required to submit evidence of the services and extent of services performed prior to the accident, proof the person was physically unable to perform the services, and the reasonable value of the cost to replace the services, in order to establish prima facie proof of entitlement to benefits.

Amici The Insurance Federation of Minnesota and The Property Casualty Insurers Association of America were represented before the supreme court by Mike Skram, Dale Thornsjo and Lance D.

Meyer from this office. While the court acknowledged that Western National and Amici expressed several policy concerns—including the concern that the very conclusion reached by the Court will increase the risk of fraud in the no-fault system—the court declined to consider these concerns in this case, reasoning that the plain and unambiguous language prohibits the court from considering these arguments in this situation. Instead, the court inferred such policy concerns are a matter for the Legislature.

We are always available to discuss this decision or any other aspect of the Minnesota No-Fault Automobile Insurance Act. This and other court opinion updates are available in .pdf form on the Firm's News and Resources page: www.olwklaw.com.

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