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## Wisconsin Court of Appeals Clarifies Insurer's Right to Statutory Subrogation for Minnesota PIP Benefits

In an unpublished decision, the Wisconsin Court of Appeals recently addressed the interplay between contractual and statutory subrogation rights in the context of out-of-state personal injury protection benefits. The decision in *Jaster v. Selective Insurance Company of South Carolina* provides important guidance for insurers handling claims involving Minnesota's No-Fault Automobile Insurance Act in Wisconsin.

### Case summary

Stephanie Jaster, a Minnesota resident, was involved in a motor vehicle accident in Eau Claire County, Wisconsin. Her Minnesota-issued auto policy with Selective Insurance provided personal injury protection (PIP) coverage as required under Minnesota law. After the accident, Selective Insurance paid Jaster PIP benefits for her medical expenses and lost income.

Jaster later settled her claims against the other driver and his insurer. The settlement agreement required Jaster to satisfy any subrogation claims, including those from Selective Insurance, out of her settlement proceeds. Selective Insurance then sought to recover the PIP benefits it paid to Jaster, asserting a right to subrogation under the Minnesota No-Fault Act. Jaster argued that Selective Insurance had waived its subrogation rights through the terms of her policy and sought a declaratory judgment that Selective Insurance could not recover.

The circuit court agreed with Jaster that Selective Insurance had waived its *contractual* right to subrogation for PIP benefits under the policy. However,

the court determined that Selective Insurance retained its *statutory* right to subrogation under the Minnesota No-Fault Act. The court further determined that Jaster had been “made whole” by her settlement and awarded Selective \$21,602.99, representing the amount of duplicated PIP benefits.

### **Court of Appeals’ analysis**

On appeal, Jaster renewed her argument that Selective Insurance had waived all subrogation rights, both contractual and statutory. The Court of Appeals rejected Jaster’s argument and affirmed the circuit court’s decision, drawing a clear distinction between contractual and statutory subrogation.

The Court of Appeals agreed that an endorsement in Selective Insurance’s policy explicitly waived its contractual right to subrogation for PIP benefits. However, the court held that this endorsement did not waive Selective Insurance’s separate statutory right to subrogation under Minn. Stat. § 65B.53. The policy stated that PIP benefits would be paid “in accordance with the Minnesota No-Fault Automobile Insurance Act,” which expressly provides for limited subrogation rights when an accident occurs outside Minnesota and the insured’s recovery would otherwise duplicate PIP benefits.

The court emphasized that, under both Minnesota and Wisconsin law, waiver of a statutory right requires a clear and specific renunciation or an express intention to relinquish the right. The absence of a policy provision restating statutory subrogation rights did not amount to an intentional waiver.

### **What this means to you**

This decision offers important guidance for insurance carriers on the distinction between contractual and statutory subrogation rights. Carriers should carefully review their policy forms and claims handling procedures to ensure that subrogation rights provided by statute are preserved, even when contractual subrogation provisions may be limited or waived by endorsement.

### **Contact us**

If you have questions regarding the legal implications of this decision or other questions relating to insurance litigation, please contact Jason Fathallah, Doug Raines, Meghan Villalpando, or your Husch Blackwell attorney.