of all medical services he received, while defendants contended that the "collateral source" rule—which says a plaintiff's recovery cannot be reduced by payments or benefits from sources other than the defendant—does not apply where subrogated carriers have made payments for medical expenses. The trial court found for defendants on this point and reduced the damages the jury had awarded.

Reversing, the state high court said that defendants were improperly relying on a precedent in which an insurer had been barred from pursuing its subrogation interest in order to prevent a double recovery. In a case such as this one, where the risk of double recovery by plaintiff does not exist—because the insured is in no way barred from pursuing its subrogation rights—there is no justification for nullifying the collateral source rule, the court said. The payments made on plaintiff's behalf define only the insurer's subrogation interest in the claim. Recoverable medical expense damages may exist in addition to the amount paid by the insurer, and the insured is entitled to pursue those amounts.

Accordingly, the court remanded.

Plaintiff's Counsel

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Amicus Curiae Counsel

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Brian H. Sande, New Richmond, Wis.

Comment: In *Acuar v. Letourneau*, 531 S.E.2d 316 (Va. 2000), 43 ATLA L. Rep. 260 (Sept. 2000), the Virginia Supreme Court held that a plaintiff is entitled to the full amount of medical bills incurred even if the physician accepted a discounted fee. Steven P. Letourneau, Virginia Beach, Va., represented plaintiff.

EMPLOYMENT LAW

Collection agents allegedly improperly classified as exempt from FLSA: Breach of contract: Lost back pay, overtime: Settlement.

Cohn v. Universal Underwriters Acceptance Corp., U.S. Dist. Ct., D. Kan., No. 00-2288-KHV, Mar. 2001.

Twenty-six past and present collection agents for Universal Underwriters Acceptance Corporation filed a consolidated action against Universal Underwriters, alleging that they were improperly classified as being exempt from the overtime provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.* Under the statute, nonexempt employees are entitled to overtime compensation for workweeks greater than 40 hours at a rate of one and one-half times their regular rate of pay.

Plaintiffs claimed that, as nonexempt employees of defendant, they were entitled to overtime compensation for all hours worked in excess of 40 hours per week for the three-year period before the complaint was filed. Plaintiffs also alleged that defendant breached express and implied contracts providing that their compensation would be based on a 37.5 hour workweek. Plaintiffs sought back pay for five years from the date the complaint was filed.

The parties settled for a total of $1.05 million. The individual amounts are confidential.

Plaintiffs' Counsel

*John F. Edgar, Independence, Mo.
*Ralph Phalen, Independence, Mo.
James Kunce, Overland Park, Kan.

Employee harassed because of her religion: Constructive discharge: Religious harassment: Emotional distress: Verdict.

Campos v. City of Blue Springs, U.S. Dist. Ct., W.D. Mo., No. 99-00732-SOW, Apr. 13, 2001.

Campos was a crisis counselor for a city police department's youth outreach unit. She was harassed after her supervisor learned that Campos was not a Christian. Specifically, (1) documents were altered to make it appear as though Campos was tardy more often than other employees and later in completing work assignments, (2) she was not given a promised promotion or pay raise, (3) she was verbally abused at staff meetings, and (4) she was not allowed to use vacation time that she had earned so that she could complete her Ph.D. About 10 months after the harassment began, Campos resigned. She suffered emotional distress.

Campos was earning approximately $33,000 annually and had been promised the opportunity to increase those earnings by as much as $10,000 per year. Approximately one year after she resigned, Campos became self-employed as a psychologist. Since then, her annual earnings have exceeded her salary at the youth outreach unit.

Campos sued the city, alleging that she was constructively discharged because of her religion.

The jury awarded $79,200, including $57,200 for emotional distress.

Plaintiff's psychology expert in this case was Paul Feuer, Kansas City, Mo.

Plaintiff's Counsel

*Arthur Benson, Kansas City, Mo.
Jamie Kathryn Lansford, Kansas City, Mo.

Documents in *Campos v. City of Blue Springs* are available through the Litigation Resources section in the back of this issue, courtesy of Ms. Lansford.

City employees fired for supporting candidate: First Amendment violations: Back pay, lost benefits: Verdict: Punitive damages.

Edwards v. Henry, U.S. Dist. Ct., N.D. Ind., No. 1:00CV0038, June 28, 2001.

Edwards, Enyeart, Mowery, and Shanks were city employees who supported the mayor in his unsuccessful bid for re-election. Approximately a month after the election, Henry, the mayor-elect, notified each of these employees that his or her employment would not continue once the new administration took office.

The employees suffered emotional distress due to their terminations.

Edwards, Enyeart, Mowery, and Shanks sued Henry, alleging violation of their First Amendment rights to free speech, political belief, and association. Plaintiffs claimed defendant fired them in retaliation for supporting his political opponent. During trial, city supervisors testified that defendant had not consulted with them or considered plaintiffs' job performance before firing them.

The jury awarded each plaintiff $10,000 for emotional distress and $15,000 punitive damages. In addition, the jury awarded Edwards about $28,900, Enyeart approximately $13,400, Mowery about $2,000, and Shanks approximately $7,200.

Plaintiffs' Counsel

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Melanie L. Farr, Fort Wayne, Ind.

Documents in this case are available through the Litigation Resources section in the back of this issue, courtesy of Ms. Farr.

Exclusion of prescription contraceptives from employer's health benefit coverage violates Title VII.

Erickson v. Bartell Drug Co., 141 F. Supp. 2d 1266 (W.D. Wash. 2001).

A U.S. district court held that an employer's exclusion of prescription contraceptives from coverage under a generally comprehensive health benefit plan violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended by the Pregnancy Discrimination Act (PDA), 42 U.S.C. § 2000e(k). Title VII prohibits employment discrimination based on sex and the PDA provides that discrimination because of pregnancy, childbirth, or related medical conditions is sex discrimination.

Here, Bartell Drug Company provided its employees a prescription benefit plan that did not cover prescription contraceptives. Erickson and other female employees of Bartell sued the company, alleging that its decision not to cover prescription contraceptives violates Title VII, as amended by the PDA. Both sides moved for summary judgment.

Granting plaintiffs' motion, the court noted the PDA was enacted in response to *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976). There, the U.S. Supreme Court held that an otherwise comprehensive short-term disability policy that excluded pregnancy-related disabilities from coverage did not discriminate on the basis of sex because (1) pregnancy discrimination is not gender discrimination in that it does not adversely impact all women and (2) disability insurance that covers the same illnesses and conditions for both men and women is equal coverage.

In enacting the PDA, the court said, Congress embraced the *Gilbert* dissent's broader interpretation of Title VII, which required employers to provide women-only benefits or otherwise incur additional expenses on behalf of women to treat the sexes the same. By legislatively reversing *Gilbert*, the court explained, Congress intended to show that mere facial parity of coverage does not justify an exclusion that carves out benefits that are uniquely designed for women.

Further, the court said, although Title VII does not require employers to offer any particular type of benefit, when an employer does offer a prescription plan, it must provide equally comprehensive coverage for both sexes. The exclusion of women-only benefits from a generally comprehensive prescription plan is sex discrimination under Title VII, the court found. In light of the fact that prescription contraceptives are used only by women, the court reasoned, defendant's decision to exclude that particular benefit from its generally applicable benefit plan is discriminatory.

Plaintiffs' Counsel

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*Lynn Lincoln Sarko, Seattle, Wash.
Eve C. Gartner, New York, N.Y.
Donna Lee, New York, N.Y.

EVIDENCE

Expert testimony on "toxic mold" was properly admitted.

New Haverford P'ship v. Stroot, 772 A.2d 792 (Del. 2001).

The Delaware Supreme Court held that a trial court properly admitted expert testimony on whether tenants' health problems were caused by mold in their apartments.

Here, two tenants suffered continuing health problems while living in apartments with water leaks and mold in-