

ADMISSIBILITY OF FULL AMOUNT OF MEDICAL BILLS
By Ted Babbitt

In Durse v. Henn, 36 Fla. L. Weekly D1472 (Fla. 4th DCA, July 6, 2011).

The Fourth District was faced with a number of questions. One dealt with a police officer's ability to testify based, in part, upon information received from one of the drivers in an automobile accident case. The trial court erroneously permitted the testimony and the Fourth District reversed based upon a violation of Florida's accident report privilege, Fla. Stat. 316.066(7). The Court relied on Hammond v. Jim Hinton Oil Co., 530 So. 2d 995 (Fla. 1st DCA 1988) and Dinowitz v. Weinrub, 493 So. 2d 29 (Fla. 4th DCA 1986) to the effect that even if only a portion of the officer's testimony came from information obtained from one of the drivers, that testimony is excluded as privileged under the aforesaid statute.

A second issue related to whether the plaintiff could introduce only the amount of the medical bills which his provider accepted as final satisfaction of his outstanding bills or whether the entire medical bill could go into evidence to be reduced post-judgment in accordance with the collateral source statute. At D1473, the Court cited with authority the following:

The collateral source rule functions as both a rule of damages and a rule of evidence. As a rule of damages, 'the collateral source rule permits an injured party to recover full compensatory damages from a tortfeasor irrespective of the payment of any element of those damages by a source independent of the tortfeasor.' As a rule of evidence, the collateral source rule prohibits the introduction

of any evidence of payments from collateral sources, upon proper objection. In Florida, the damages portion of the rule has been superseded by legislative action. However, the evidentiary portion of the rule remains alive and well in Florida.

The Court distinguished Thyssenkrupp Elevator Corp. v Lasky, 868 So. 2d 547 (Fla. 4th DCA 2003) which held that the defendant was entitled to a post-verdict reduction based upon Medicare payments made. The Thyssenkrupp Court reasoned that Medicare payments, unlike insurance payments, were available to all citizens through the government and failing to reduce the judgment by those “free” payments had the effect of a windfall to the plaintiff. In Durse, the Court adopted the reasoning of the First District in Nationwide Mut. Fire Ins. Co. v. Harrell, 53 So. 3d 1084 (Fla. 1st DCA 2010) which refused to reverse a trial court which had allowed the full amount of the medical bills into evidence despite payment by a private health insurer of a much lesser amount adopting the reasoning of the Florida Supreme Court in Florida Physician’s Insurance Reciprocal v. Stanley, 452 So. 2d 514 (Fla. 1984) which limited the common law collateral source rule to those benefits earned in some way by the plaintiff. The Nationwide Court held:

Here, there is no dispute that appellee paid the premiums for her health insurance. Accordingly, pursuant to the evidentiary portion of the collateral source rule as it currently exists in Florida, we hold that the trial court correctly ruled that appellant was entitled to introduce into evidence (and to request from the jury) the gross amount of her medical bills, rather than the lesser amount paid by appellee’s private health insurer in full settlement of the medical bills.

Interestingly in the case at bar, the plaintiff did not have private health insurance. Rather, he had negotiated with his providers for a lower amount. The Durse Court held, however, that by so negotiating the medical bills, Mr. Durse had “earned in some way” within the meaning of the Nationwide case, a lower bill and the trial court thus erred by excluding the full amount of the medical bills from evidence.

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