

ADMISSIBILITY OF MEDICAL BILLS

by Ted Babbitt

In Goble v. Frohman, 848 So. 2d 406 (Fla. 2nd DCA 2003), the Second District was faced with the question of whether, after verdict, a defendant was entitled to a setoff for the difference between the amount of the medical bills plaintiff had placed in evidence and the amount those medical providers had accepted in full payment under an HMO contract. The total amount of the medical bills were nearly \$600,000.00 but the medical providers had agreed to accept approximately \$150,000.00, the balance of which was written off by the providers who then, by contract, had no right to seek reimbursement from either the plaintiff or any third parties. The Second District held that the trial court was correct in setting off the contractual discount notwithstanding the common law rule which prohibits either the introduction of evidence of collateral source benefits or it's setoff. See Sheffield v. Superior Ins. Co., 800 So. 2d 197, 200 n. 3 (Fla. 2001). The Court ruled that Fla. Stat. 768.76 changed the common law. That statute states:

768.76 Collateral sources of indemnity

(1) In any action to which this part applies in which liability is admitted or is determined by the trier of fact and in which damages are awarded to compensate the claimant for losses sustained, the court shall reduce the amount of such award by the total of all amounts which have been paid for the benefit of the claimant, . . . from all collateral sources; however, there shall be no reduction for collateral sources for which a subrogation or reimbursement right exists. . .

The Court held that that statute expressed the Legislative intent to allow the plaintiff full compensation while at the same time avoiding payments which amounted to a windfall.

The allowance of a setoff for a contractual discount is also consistent with the legislature's express intent to fully compensate the injured party while simultaneously reducing the litigation costs that arise when insurers are required to pay damages beyond what the injured party actually incurred. Id. at 410.

The Gobel Court held that the collateral source rule prohibited the admission of evidence regarding collateral sources in the liability trial because it would tend to mislead the jury. They, therefore, affirmed the trial judge's order excluding evidence at trial as to the collateral source. In this case, that meant that the HMO contractual discount was not allowed into evidence and the jury was permitted to consider the full amount of the medical bills.

A similar question came before the Fourth District in the case of Thyssenkrupp Elevator Corp. v. Lasky, 868 So. 2d 547 (Fla. 4th DCA 2004). In that case, the Court was faced with the propriety of both a setoff and the admission into evidence of the amount medical providers had agreed to accept as Medicare benefits as contrasted with the full amount of the medical bills. It was agreed that when a medical provider accepts Medicare, they do so under the requirement that that acceptance is in full satisfaction of the total amount charged and that no claim can be made against the plaintiff or any other party for the difference between the amount of the bill and the amount accepted. The Fourth District followed the lead of the Second District in Goble, supra, holding that the

defendants were entitled to a setoff for the difference between the amount of the medical bills and the amount accepted by the medical providers from Medicare.

We therefore conclude that defendant is entitled to have the past medical expenses awarded by the jury reduced – to the extent such amounts are actually included in the past medical expenses awarded – by the difference between the amount charged by the provider and the amounts actually paid that provider by Medicare. Id. at 550.

On the question of whether the full amount of the medical bills should go in evidence, the Fourth District disagreed with the Second District. While the Second District had held that in the similar HMO circumstances, the full bill would go into evidence and the setoff would occur post-verdict, the Fourth District ruled that the amount of the true Medicare payment would go in evidence. The Court held:

Allowing the admission of evidence of the excess discharged by Medicare payment has the effect of ‘providing an undeserved and unnecessary windfall to the plaintiff.’ Id. at 550.

On a petition for rehearing, the Court amended its holding to recede from its finding the defendants would be entitled to a setoff under Fla. Stat. 768.76. The Court agreed that there was a serious issue as to whether Medicare was entitled to subrogation or reimbursement and, thus, the defendants might not be entitled to a setoff under that statute. The Court, however, reaffirmed its position that the acceptance by the provider of the Medicare benefits rendered the admission into evidence of the full amount of the medical bill irrelevant.

Thus the precise objection raised by defendant, which we hold should have been

sustained by the trial judge, is that a plaintiff has suffered no damage from the higher charge by the provider when it later accepts Medicare payment in full satisfaction of the charge. Our reliance on *Florida Physicians Insurance Reciprocal v. Stanley*, 452 So. 2d 514 (Fla. 1984), demonstrates that we saw this as an issue pertaining to the admission of evidence, not really as a setoff. Thus our actual holding should be understood as an evidentiary ruling. When a provider charges for medical service or products and later accepts a lesser sum in full satisfaction by Medicare, the original charge becomes irrelevant because it does not tend to prove that the claimant has suffered any loss by reason of the charge.

It should be noted that the Goble Court certified its holding to the Supreme Court as one of great public interest and the Thyssenkrupp Court certified its conflict between its decision and the Goble case to the Supreme Court. Thus, the final answer to these questions awaits determination by the Supreme Court but, for the time being, in the Fourth District, medical bills in cases in which Medicare has made a payment are admissible only to the extent of the payment made and in the Third District such bills would presumably, along with HMO discounted bills, be admissible in their full amount but the defendants would be entitled to a setoff with respect to the HMO contractual discount.