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SET OFF OF HMO DISCOUNTED BILLS
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In Goble v. Frohman, 30 Fla. L. Weekly S280 (Fla. April 28, 2005), the Supreme Court was faced with a certified question as to whether it was appropriate to set off under Fla. Stat. 768.76 the portion of the medical bills awarded by the jury which are written off by the medical providers pursuant to their contract with the plaintiff's HMO. That case involved a trial which arose from a motorcycle/vehicle accident in which the plaintiff was severely injured. As a result of the accident, the plaintiff incurred almost \$600,000.00 in medical bills but those bills were paid by plaintiff's HMO after the HMO received a substantial discount from the medical providers. As a result, the HMO paid only \$145,000.00 of those bills and the providers, pursuant to their contract with the HMO, agreed to accept that sum in full payment of their bills.

The jury trial resulted in a verdict which included the full amount of the medical bills and the defendant sought a setoff for the portion of the bills which were reduced pursuant to the discount obtained by the HMO. The HMO had a right of subrogation, but only for the amount actually paid. The trial court granted the motion to reduce the amount of the verdict by the discounted amount and the Second District affirmed.

The definition of collateral sources in Fla. Stat. 768.76 is "collateral sources' means any payments made to the claimant or made on the claimant's behalf, by or pursuant to: (3) any contract agreement of any group, organization,

partnership or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other healthcare services.” Plaintiff argued that the discount was not a “payment” within the meaning of the statute. The Supreme Court rejected that argument in holding that the defendant was entitled to the setoff.

We conclude, as the Second District did, that the contractual discounts fit within the statutory definition of collateral sources. Section 768.76 defines collateral sources as ‘payments made’ on a claimant’s behalf. Virtually all dictionaries include, among the first three definitions of “payment” or “pay,” the concept of discharge of a debt. See, e.g. *Merriam-Webster’s Collegiate Dictionary* 851 (10th ed. 1993) (‘to discharge a debt or obligation’); *Webster’s Third New Int’l Dictionary* 1659 (1981) (‘discharge of a debt or obligation’). In this case, the discounts negotiated by Goble’s HMO fully discharged Goble’s obligation to his medical providers. Because of the medical provider’s contracts with Goble’s HMO, Goble was obligated to pay the claimants \$145,970.76, rather than the billed charges of \$574,554.31. In this light, the discounts negotiated by Goble’s HMO are as much a benefit to Goble as the HMO’s remittance of \$145,970.76 to satisfy the remaining charges on Goble’s medical bills. The contractual discounts, therefore, constitute ‘amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from [a] collateral source[],’: Therefore, under section 768.76, the amount of the contractual discount, for which no right of reimbursement or subrogation exists, is an amount that should be set off against an award of compensatory damages.

Thus, the Supreme Court has held that contractual discounts negotiated by an HMO do come within the statutory definition of collateral sources and the defendant is entitled to a set off for any amounts resulting from that discount.

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