

TORT NOTES

By: James J. Morici, Jr.

COLLATERAL SOURCE RULE: PLAINTIFF'S DAMAGES ARE MEDICAL EXPENSES BILLED NOT LESSER AMOUNTS PAID BY INSURANCE CARRIER PURSUANT TO CONTRACT WITH PROVIDER

The common law doctrine of the Collateral Source Rule has for decades been accepted as law in the State of Illinois. Peterson v. Lou Bachrodt Chevrolet Company, 76 Ill.2d 353, 392 N.E.2d 1 (Ill., 1979) Prior challenges to the Rules' application have usually centered upon a factual situation in which the plaintiff, at the expense of his own paid insurance premiums or as a result of his employment status, has used those means to pay for medical bills incurred as result of a negligently caused injury. The defense argument that is literally decades old is that allowing recovery for expenses so paid permits the plaintiff a double recovery. That argument has historically been rejected holding that the purpose of the collateral source rule is to preclude the jury from considering payment of bills by insurance when it decides the issue of plaintiff's damages. Lange v. Lake Shore Exhibits, Inc., 305 Ill.App.3d 283 711N.E.2d 1124 (1999) holding that a plaintiff's damages should not be decreased because he or she received benefits from a source independent of and collateral to the wrongdoer. See also Smith v. General Casualty Company, 75 Ill.App.3d 971, 394 N.E.2d 804 (1979) and Boden v. Crawford, 196Ill.App.3d 71, 552 N.E.2d 1287 (1990). This line of reasoning was recently affirmed by the First District in the case of Hojek v. Harkness, 314 Ill.App.3d 831, 733 N.E.2d 356 (1st Dist, 2000) and Muranyi v. Turn Verein Frisch-Auf, 308 Ill.App.3d 213, 719 N.E.2d 366 (2nd Dist., 1999).

Despite these rulings the creativity of those trying to attack the collateral source rule has continued. In Arthur v. Catour, 803 N.E.2d 647 (3rd Dist., 2004), a defendant moved to limit the medical expenses incurred by the plaintiff to a discounted amount paid by the plaintiff's insurance company. The injured plaintiff incurred over \$19,000 in medical expenses. She had group health insurance with BlueCross/BlueShield through her husband's employer and because of the insurance company's contractual agreements with the health care providers less than \$14,000 was required to satisfy the medical bills. The defendants filed a motion for partial summary judgment seeking to limit, the Plaintiff's claim for medical expenses to the amount paid rather than the amount billed. The motion was granted by the court which rationalized that allowing the plaintiff to recover the larger amount would only serve to punish the defendants and provide the plaintiff with a windfall. Id. p. 648.

In reversing the lower court's order, the Appellate Court found that two primary themes were presented by the defendant's position. First, that the plaintiff was not entitled to damages greater than the amount she was obligated to pay and that any additional sums would present a windfall and, second, that the difference between the amount charged and the amount paid is "illusory" and is not subject to the Collateral Source Rule. Id. p. 649.

The Appellate Court rejected these arguments and reversed. The court disagreed with the defendant's argument that because plaintiff was never obligated to pay the full amount billed, the amount paid by her insurance company was the true measure of her damages. Noting that it is true that oftentimes medical bills are discounted under practices of modern health care, that that phenomenon results as a consequence of the power wielded by those entities like insurance companies, employers, and governmental bodies who are able to negotiate more favorable rates than those who are uninsured who often are charged the full undiscounted price. The court reasoned that simply because medical bills are often discounted does not mean that the plaintiff is not obligated to pay the billed amount. The amounts billed do not become unreasonable simply because an insurance company was able to negotiate a lesser charge. For the same reason, the plaintiff, in effect, receives no windfall when compensated for those reasonable medical expenses. To the extent that an amount received is greater than that paid in satisfaction of the medical bills is a benefit of the contract with the insurer and not one that is bestowed by the plaintiff upon the defendants. Id. p. 650.

Finally, the court summarized that the portion of the medical expenses in excess of what was paid by the plaintiff's insurance company was not illusory. Holding that the plaintiff was billed for the entire nearly \$19,000 and that but for her insurance company coverage would have been liable for that amount that it would convey an unfair benefit of that coverage to the defendants directly contrary to the Collateral Source Rule's goal of insuring that the wrongdoer not benefit from such circumstances. Id. p. 651. The Arthur case should be extremely helpful to plaintiffs where contractual relations have resulted in a bargained for discount due to insurance company, workers' compensation carrier and/or Medicare contractual relationships with healthcare providers. In addition to upholding the inert fairness of the Collateral Source Rule, the Arthur case also helps avoid the difficulty experienced by plaintiff's lawyers in attempting to sort through often voluminous computer generated medical bills and complex insurance company payment information documents to determine the amounts of discounted payments.

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