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## Evidence Of Medical Discounting

*Law360, New York (October 12, 2009)* -- Historically, the collateral source rule has barred the admissibility of evidence at trial to show that a plaintiff's losses have been compensated from other sources, such as the plaintiff's insurance or workers' compensation benefits.

This rule has been extended not only to actual payments by insurance companies or employers, but also to the practice of medical care providers' discounting of bills.

It is often argued that the collateral source evidence rule keeps important information relevant to the determination of damages from reaching the jury, allowing plaintiffs to leave the jury with the false impression that medical providers would be paid in full for their bills, when in fact the bills had been substantially discounted.

Around the country, courts have taken many different approaches. Some states, such as Wisconsin, continue to deprive the defendant of any mention of discounting. *Ellsworth v. Schelbrock*, 611 N.W.2d 764; (Wis. 2000).

States like Virginia limit the mention of discounts depending upon whether the discounting was the result of an insurance policy actually purchased by the claimant. *Acuar v. Letourneau*, 531 S.E.2d 316; (Va.2000).

Other states, such as Louisiana, are allowing jury awards to be offset by the amount paid to plaintiffs by collateral sources, less the amount paid by the plaintiff to secure the benefit. *Griffin v. Louisiana Sheriff's Auto Risk Association*, 801 So. 2d 376; (La. 2001).

Florida and Idaho have held that medical discounts are a collateral source, but that courts are compelled to set off the collateral source amount against an award of compensatory damages under their respective state statutes. *Goble v. Frohman*, 901 So. 2d 830, 832-33 (Fla. 2005); *Slack v. Kelleher*, 104 P.3d 958, 967; (Idaho 2004).

Massachusetts treats benefits that the plaintiff has received from nonparty sources as a windfall, giving no credit to the defendants. *New York, New Haven & Hartford R.R. Co. v. Leary*, 204 F.2d 461 (1st Cir. 1953).

The rule in Massachusetts is based upon the rationale that, if there is to be a windfall, such benefit should accrue to the injured party rather than the wrongdoer. *Jones v. Town of Wayland*, 402 N.E.2d 63; (Mass 1980).

California's treatment of the collateral source evidentiary issue has not been so clear. Although the California Supreme Court stated in *Helfend v. Southern California Rapid Transit District*, "if an injured party receives some compensation for his injuries from a source wholly independent of the [at-fault party], such payment should not be deducted from the damages which the plaintiff would otherwise collect from the [at-fault party]." 465 P.2d 61; (Ca. 1970).

This opinion has experienced some erosion over the years by opinions such as *In Hanif v. Housing Authority of Yolo County*, in which the court held that the plaintiff was only entitled to recover the amount of money actually paid by Medi-Cal (California's Medicaid plan) on the plaintiff's behalf. 200 Cal.App.3d 635 (Ca.1988). As such, it reduced the trial court's award, which exceeded the actual amount paid.

On May 27, 2009, the Indiana Supreme Court addressed the issue in *Stanley v. Walker*, 906 N.E.2d 852, (Ind. Sup. Ct. 2009). In this decision, the court determined that the defendant had the right to admit evidence of the discounted amounts of the plaintiff's damages without reference to insurance or the actual collateral source.

The court reasoned that it was crucial to the jury's determination, which is limited to reasonable medical bills actually incurred. The actual value of medical services is not exclusively based on the actual amount paid or the amount originally billed, though these amounts are evidence as to the reasonable value of medical services.

The Indiana Supreme Court reasoned that it is the jury's task to determine the reasonable amount of medical expenses in each case for which a defendant will be liable. However, determining reasonableness is no easy task.

In fact, the Indiana Supreme Court ultimately stated in *Stanley v. Walker* that it is to aid the jury in this very elusive determination that it has decided to allow the admission of collateral source evidence in instances where the plaintiff's medical expenses had been discounted. *Id* at 861.

In Indiana, evidence regarding the amount of the payments, amounts billed by medical service providers and other relevant evidence may be admitted to assist the jury in its determination of the amount of reasonable medical expenses.

Also, a defendant may cross-examine any witness called by the plaintiff to establish reasonableness. *Id.* Furthermore, the defendant may introduce its own witnesses to testify that the billed amounts do not represent the reasonable value of services.

Additionally, the defendant may introduce the discounted amounts into evidence to rebut the reasonableness of charges introduced by the plaintiff. *Id.*

This ruling in Indiana should be cited and urged upon courts in other jurisdictions in an effort to unblock evidence of actual medical expenses incurred and provide juries with a more realistic picture of plaintiffs' damages.

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