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JAQUES V. MANTON
Court Settles Longstanding Debate

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One of the benefits of a group insurance plan is the increased negotiating leverage for the pricing of health care services. By virtue of their economic clout, insurers commonly negotiate price discounts with health care providers on behalf of their insureds. Thus, while the "retail" price of an office visit with a physician might be $150, an insurer may pay a "wholesale" price of only $75 in satisfaction of the complete bill with the physician "writing-off" the difference.

These "write-offs" have presented a vexing problem for insurers, employers and attorneys in the context of litigating or settling personal injury, wrongful death and medical malpractice claims. Because injured parties are entitled to compensation for the "reasonable value" of their medical expenses, a vigorous debate developed as to whether the defense is permitted to introduce evidence of the amount written off to mitigate the plaintiff's compensable damages. Proponents of excluding the write-offs argued that a defendant who causes an injury should not benefit from the plaintiff's diligence in securing insurance. Those wanting to admit evidence of a

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write-off argued it was unfair for a plaintiff to recover money for the portion of the medical expenses that were never actually paid.

In an effort to resolve the debate, and as part of Ohio's tort reform, the Ohio General Assembly enacted Ohio Revised Code 2315.20, which addresses the circumstances under which collateral benefits (like insurance payments) are admissible at trial. ORC 2315.20 provides, in relevant part:

> In any tort action, the defendant may introduce evidence of any ***amount payable*** as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of a claim upon which the action is based, except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation * * *. (Emphasis added)

Although the Ohio Supreme Court, in an earlier case, *Robinson v. Bates*, decided that write-offs were admissible under the common law, the Court expressly reserved any comment on whether write-offs were admissible after the adoption of ORC 2315.20. In doing so, the Court triggered renewed debate regarding the admissibility of write-offs in the era of tort reform. The Supreme Court's decision in *Jaques v. Manton* now clarifies the issue, making it consistent with the common law, and allowing juries to understand what exactly was paid on behalf of an injured plaintiff.

Jaques is illustrative of the type of case in which the admissibility of write-offs commonly arises. The plaintiff, Richard Jaques, was injured in an automobile accident caused by defendant Patricia Manton. Jaques was billed approximately $21,000 for medical treatment he received after the accident. His health insurer, Medical Mutual of Ohio, satisfied the debt for approximately $7,000. At trial, Manton, the defendant, wanted to show that $14,000 had been written off, and that only $7,000 was the true value of Jacques' medical expenses. Because Medical Mutual had a contractual right of subrogation, entitling the insurer to recover any amounts it paid, Jaques argued the write-offs should be excluded from evidence on the basis of ORC 2315.20. The trial court ruled in Jaques' favor, allowing the entirety (i.e., $21,000) of the medical bills into evidence, and excluding evidence of the write-offs. The court of appeals affirmed the trial court's ruling. Manton subsequently appealed to the Ohio Supreme Court.

The Ohio Supreme Court reversed the lower courts' rulings. The Court reasoned that ORC 2315.20 expressly stated that amounts payable by a third-party (like medical insurance) are admissible unless the source of the benefits has a right of subrogation. In this instance, the Supreme Court acknowledged, evidence of the amounts paid on Jaques' behalf by his health insurer (which had a right of subrogation) would be inadmissible under the plain language of the statute. However, the Supreme Court determined that evidence of the write-offs should be treated differently. Because no one actually pays the amounts written off by the health care providers, the write-offs, according to the Supreme Court, cannot constitute an amount payable as a benefit to the plaintiff. Accordingly, amounts written off by Jaques' health care providers are not subject to the statute, and thus can be admitted to show that only $7,000 was incurred in actual medical expenses. In other words, the Supreme Court ruled that a defendant can offer proof of a health provider's write-offs in order for a jury to have a full understanding of what was actually paid for a plaintiff's medical care.

Thus, the *Jaques* opinion finally brings clarity to an otherwise unsettled evidentiary issue involving the admissibility of medical bills. Jurors will now be permitted to consider both the "retail" and "wholesale" pricing of medical care in arriving at a figure that will compensate injured parties for the "reasonable value" of their medical expenses.

Should you have any questions regarding this decision, please contact Mr. Peckinpaugh or Mr. Sandretto at our Toledo office (419-241-6000).

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