Collateral Source Reductions Are Barred If Right of Subrogation Exists in Any Amount

The Connecticut Supreme Court in Marciano v. Jimenez, 324 Conn. 70 (2016) recently clarified the law regarding the availability of a collateral source reduction when a right of subrogation exists. The Court held that when a right of subrogation exists in any amount a trial court cannot make any collateral source reduction for damages.

Marciano involved a plaintiff that was injured in a car accident. At trial, the jury returned a verdict in favor of the plaintiff and awarded $84,283.67 in economic damages and $40,000 in noneconomic damages. The total value of the verdict was $124,283.67. The defendants sought a collateral source reduction for the economic damages because the plaintiff had paid only $1941.49 for his medical expenses. Health insurance covered the rest of the medical expenses, which the plaintiff received from his employer administered through a self-funded ERISA plan.

The court held a hearing on the request for a collateral source reduction. The court reviewed a copy of the health insurance plan, as well as an email from the employer's agent handling the claim stating that employer had an enforceable lien or subrogation rights upon the payment of any judgment. Another letter from the agent showed that the employer, prior to trial, indicated that it would accept $6,940.19 in satisfaction of its right of subrogation in the event of a settlement of the case for $120,000. The defendant argued that the letter extinguished the right of subrogation and that the court should order a collateral source reduction of over $60,000, which represented the difference between the total award of economic damages minus the amount the plaintiff contributed toward his medical expenses and insurance premiums and the amount the employer would accept in satisfaction of its subrogation rights.

The trial court ordered a collateral source reduction of $24,299, which represented the difference between the costs to secure the collateral source benefits from the award of economic damages. The court rendered judgment in favor of the plaintiff in the amount of $99,983.92.

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On appeal, the plaintiff claimed that the trial court improperly ordered a collateral source reduction because the employer's unaccepted offer to settle did not extinguish the right to subrogation. The plaintiff argued that pursuant to the collateral source statute, the fact that a right to subrogation still existed prohibited the trial court from ordering a collateral source reduction in any amount. The Supreme Court agreed.

The Supreme Court's analysis largely focused on the language of the collateral source statute. It noted that the statute states that a trial court "shall reduce the amount of such award which represents economic damages . . . except that there shall be no reduction for . . . a collateral source for which a right of subrogation exists. . ." The Supreme Court concluded that in the phrase "a right of subrogation" the legislature chose to use the expansive term "a", which the Court has commonly interpreted to mean "any." The Court thus held that on the basis of the plain meaning of the statute, if there is any right of subrogation in no matter the amount, a trial court may not order a collateral source reduction.

It likewise concluded that the term in the statute that there "shall be no reduction" is clear in its meaning and that it similarly precludes a trial court from making a reduction in any amount. The Court reasoned that if the legislature had intended for partial reductions, it would have said so in the statute.

The court ultimately was not swayed by the concern that this interpretation may lead to windfalls for plaintiffs, who will potentially recover for expenses that they never actually paid. The court reasoned that the collateral source statute is an "equitable balance" between preventing plaintiffs from obtaining double recovery and preventing defendants from benefitting from reduced judgments paid by collateral sources. The court stated that in view of the history of the collateral source rule and the statute it "cannot conclude that the possibility of a windfall for a plaintiff is a bizarre result."

Medical providers and insurers need to be aware of the impact of this decision and the collateral source statute. If there are substantial amounts of medical bills that are subject to an insurer's right of subrogation, even in a small amount, at trial a plaintiff may recover the entirety of the bills with no collateral source reduction even if the plaintiff has not paid anything. Under Connecticut law, the entire amount of medical bills, and not just the amount the plaintiff paid, is submitted to the jury. See e.g., Pikulski v. Waterbury Hospital Health Center, 269 Conn. 1, 7, 848 A.2d 373 (2004). See also Dunham v. Puorro, Docket No. MMXCV126008276S, 2015 Conn. Super. LEXIS 270, at *3 (Super. Feb. 5, 2015) stating, "Essentially … the whole medical bill will come in at the time of trial … and then, at the time of

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the collateral source hearing the judge will determine what's been paid by health insurance and deduct that and then he'll also determine if there's any write off and he'll consider that a collateral source as well, and that will get deducted." Ordinarily, at a post-trial hearing a judge would consider any "write offs" as collateral sources and the plaintiff's economic damages would be limited to the amount actually paid. Marciano raises the issue for medical providers and insurers that if there is a claim for subrogation in any amount there will be no collateral source reduction.

Contact Us
If you have questions or comments regarding this advisory, please contact Eric J. Stockman at 203.821.2000 or www.npmlaw.com.

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