SUPERIOR COURT

OF THE

STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Re: *Thomas Pardee et al. v. Suburban Propane, L.P. et al.*
C.A. No. 98C-12-206 RRC

Submitted: September 17, 2002
Decided: October 4, 2002
Opinion Issued: May 22, 2003[1]

Upon Defendants' "Motion [in Limine] to Exclude Medical Expenses Which the Plaintiffs Are No Longer Required to Repay." DENIED.

[1] Subsequent to an October 4, 2002 Bench Ruling substantially conforming to this written decision, Plaintiffs in this personal injury case settled with defendant Walt's Pest Control, Inc. and proceeded to trial against remaining defendant Allen's Hatchery, Inc. alone. The jury rendered its verdict on November 14, 2002. Neither party subsequently filed any post-trial motions, nor took an appeal; all claims (including cross-claims) against Suburban Propane, L.P. and Walt's Pest Control, Inc. were thereafter dismissed by agreement. Even though the litigation has now concluded, this Court has thought it advisable to reduce its October 4, 2002 ruling to writing, since the issue appears to be of first impression in this State.

Dear Counsel:

Defendant Allen's Hatchery, Inc. filed a "Motion [in Limine] to Exclude Medical Expenses Which the Plaintiffs Are No Longer Required to Repay" in which defendant Walt's Pest Control, Inc. joined (collectively "Defendants"). Because the Court concluded that the "collateral source" rule applied to certain medical expenses paid by Medicaid on Plaintiffs' behalf so that Plaintiffs were potentially able to recover the full amount of medical expenses they incurred (rather than the amount of the medical expenses paid), Defendants' motion was **DENIED**.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff Thomas Pardee was seriously burned and disfigured in June 1997 when he was engulfed in a propane "fireball" while inside of a chicken house he maintained on his premises for commercial purposes. In connection with his subsequent treatment, Mr. Pardee incurred medical bills in excess of $700,000. Of that amount, $564,875.63 was owed to Crozer Chester Medical Center. Medicaid paid $243,656.75 of the amount owed to the medical center; Mr. Pardee was statutorily obligated to repay Medicaid in that amount.[2]

[2] See DEL. CODE ANN. tit. 31, § 522(b) (1997) (providing that after deduction of attorneys' fees and litigation costs, "any funds received [from a tortfeasor] by an individual who has received medical care under…[the State Public Assistance Code]…shall be held for the benefit of the Department of Health and Social Services to the extent…[of any payment made by the department]").

The parties concurred that under Medicaid, health care providers accepting payments from that program agree to waive any remaining balance for services rendered.[3] In the instant motion, Defendants moved to limit the introduction of Plaintiffs' medical bills to the $243,656.75 paid by Medicaid and not the actual amount owed, $564,875.63. Plaintiffs, however, contended that the jury should not be informed of the payments made by Medicaid, nor of the statutory waiver that occurs when health care providers accept such payments.

CONTENTIONS OF THE PARTIES

The issue presented was whether the measure of plaintiffs' damages based on medical services should have been limited to the amount actually paid for the medical services through Medicaid. Defendants argued that "[t]o the extent any healthcare provider has made such agreement, the amount entered into evidence by the [P]laintiffs should [have] be[en] only for the lien repayable to Medicaid and not for the gross amount of the expense charged by [any] such healthcare provider."[4] Plaintiffs responded that Medicaid's payments to Crozer Chester Medical Center were "'public collateral source' payments, and the waiver of the unpaid balance [wa]s akin

[3] See 42 C.F.R. § 447.15 (2002) (stating that a state "must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the [Medicaid] agency…").

[4] Def.'s Mot. ¶ 4.

to a collateral source benefit."[5] Plaintiffs therefore argued that, despite the waiver of that part of the medical bill balance not paid by Medicaid, the measure of their damages should not have been limited to the amount actually paid.

DISCUSSION

The "collateral source" rule was recognized as "firmly embedded" in Delaware law in Yarrington v. Thornburg.[6] Under that rule, "a tortfeasor has no right to any mitigation of damages because of payments or compensation received by the injured person from an independent source[ ][.]"[7] The rule affects the introduction of evidence at trial because under it a tortfeasor "is not entitled to have the damages to which he is liable reduced by proving that plaintiff has received…compensation or indemnity for the loss from…[the] collateral source."[8]

Medicaid is a federal act providing for the appropriation of money as grants to the states for medical assistance programs.[9] It has been defined as "a form of insurance paid for by taxes collected from society in general,"

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[5] Pls.' Resp. at 4.

[6] 205 A.2d 1 (Del. 1964).

[7] Yarrington, 205 A.2d at 2.

[8] Id.

[9] 79 Am.Jur.2d, Welfare Laws, § 38 (2002). In Delaware, the medical assistance program to which Medicaid grants are directed is codified as the State Public Assistance Code. See DEL. CODE ANN. tit. 31, § § 501-522 (1997).

and as "the equivalent of health insurance for the needy" that "just as any other insurance form…[may be] an acceptable collateral source."[10] At least one treatise has stated that "gratuitous public benefits," including Medicaid, should be within the collateral source rule because:

> (1) forcing a plaintiff to depend on public coffers is incompatible with the compensatory goal underlying our tort system; (2) the continued availability of such benefits is uncertain, depending on the will of the legislature; (3) utilization of many public benefits hinges on a plaintiff's continued indigency, and even a modest recovery by the plaintiff may preclude eligibility for such benefits; and (4) as between defendants who tortiously inflict injury and innocent taxpayers who fund public benefits, the loss should fall on the tortfeasor.[11]

A holding that the collateral source rule applies to such benefits (with the result that a tortfeasor cannot introduce evidence of their existence) has been described as the "majority rule."[12]

In Cates v. Wilson,[13] the Supreme Court of North Carolina recognized that Medicaid payments should be within the scope of the "collateral source" rule because of its equivalency to "health insurance for the needy."[14] Furthermore, because North Carolina law permitted the state full reimbursement for any Medicaid payments made on a plaintiff's behalf if the

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[10] Cates v. Wilson, 361 S.E.2d 734, 737-738 (N.C. 1987).

[11] 2 JACOB A. STEIN, STEIN ON PERSONAL INJURY DAMAGES § 13:6 (3d ed. 2002).

[12] Id.

[13] 361 S.E.2d 734 (N.C. 1987).

[14] Cates, 361 S.E.2d at 738.

plaintiff later recovered an award for damages (a subrogation statute in favor of the state), any concern of a plaintiff's "double recovery" was statutorily alleviated.[15]

The reasoning behind the quoted treatise and the North Carolina Supreme Court's decision in Cates persuaded the Court here. Delaware has a subrogation statute very similar to the one referenced by the Court in the Cates case, as both statutes entitle the state to be subrogated to any cause of action by a Medicaid recipient having received a damages award against a negligent tortfeasor.[16] Thus Defendants' concern over a gratuitous double recovery by Plaintiffs is negated. Accordingly, Plaintiffs were not limited to recovering only that amount paid by Medicaid on their behalf, as the "collateral source" rule applied to that amount. Plaintiffs were therefore permitted to potentially recover the full amount of the Crozer Chester Medical Center bill, $564,875.63.

CONCLUSION

For all of the above reasons, Allen's motion in limine was **DENIED**.

Very truly yours,

oc: Prothonotary

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[15] Id.

[16] See DEL. CODE ANN. tit. 31, § 522(b) (1997).