

STATE OF MICHIGAN
COURT OF APPEALS

MAKENZIE GREER, Minor, KENNETH
GREER, Individually and as Conservator, and
ELIZABETH GREER,

FOR PUBLICATION
May 13, 2014
9:00 a.m.

Plaintiffs-Appellees,

v

ADVANTAGE HEALTH and ANITA R.
AVERY, M.D.,

No. 312655
Kent Circuit Court
LC No. 10-009033-NH

Defendants-Appellants,
and

TRINITY HEALTH MICHIGAN d/b/a ST.
MARY'S HOSPITAL and KRISTINA MIXER,
M.D.

Defendants.

Before: HOEKSTRA, P.J., and MARKEY and KRAUSE, JJ.

MARKEY, J.

In this medical malpractice case, non-settling defendants, Advantage Health and Anita R. Avery, M.D. (defendants), appeal by right the trial court's ruling applying only a portion of the amount a potentially jointly liable codefendant paid to settle plaintiffs' claims as a setoff against a jury award. Defendants also appeal the trial court's failure to reduce the amount of the jury's award for past economic damages by the amount medical bills were reduced pursuant to the providers' agreement with insurance companies (i.e., the insurance discount). We affirm the trial court's collateral source ruling, but we reverse and remand for entry of an amended judgment consistent with this opinion regarding the application of common-law setoff.

I. SUMMARY OF PERTINENT FACTS

This case arises out of the birth of Makenzie Greer. Plaintiffs asserted joint and several claims of negligence against all defendants attending Elizabeth Greer during the delivery of Makenzie Greer, which resulted in injury to both Elizabeth (ruptured uterus) and Makenzie (hypoxic brain injury, respiratory depression, metabolic acidosis, permanent brain damage, and

blindness). Before trial, defendant St. Mary's Hospital settled all plaintiffs' claims for \$600,000.¹ The settlement did not differentiate between plaintiffs' claims for damages that included the personal injuries of Mrs. Greer and Makenzie and Mr. Greer's claims for Makenzie's medical expenses and loss of consortium.

At trial, plaintiffs introduced evidence of medical services invoices for \$425,533.75. Defense counsel acknowledged the accuracy of the medical bills but contended plaintiffs could recover only the amounts the insurance companies actually paid and for which they asserted a lien for reimbursement. The jury returned a verdict in favor of plaintiff Makenzie Greer for past medical care (economic damages) of \$425,533.75, future medical and attendant care (economic damages), and future pain, suffering and disability (non-economic damages); however, it awarded her no damages for past pain and suffering. The jury found no cause of action in respect to the claims asserted by Elizabeth and Kenneth Greer.

Before entry of judgment, defendants moved the trial court to reduce the award of future damages to present value pursuant to MCL 600.6306,² to setoff the entire amount (\$600,000) that St. Mary's Hospital paid to settle plaintiffs' claims, and to reduce the award for past medical expenses to the amounts that insurance actually paid, as opposed to billed, for which there existed a lien for reimbursement. The trial court issued an opinion and order, granting in part and denying in part defendants' motion. The trial court opined, relying on *Zdrojewski v Murphy*, 254 Mich App 50; 657 NW2d 721 (2002), that no reduction of the jury's award for past medical expenses was warranted because the insurance companies that made payments to the medical providers (Aetna and Priority Health) asserted contractual subrogation liens with respect to the proceeds of any judgment plaintiffs might collect.

With respect to the amount St. Mary's Hospital paid to settle plaintiffs' claims, the trial court recognized the common-law rule that "where a negligence action is brought against joint tortfeasors, and one alleged tortfeasor agrees to settle his potential liability by paying a lump sum in exchange for a release, and a judgment is subsequently entered against the non-settling tortfeasor, the judgment is reduced *pro tanto* by the settlement amount." *Thick v Lapeer Metal Products*, 419 Mich 342, 348 n 1; 353 NW2d 464 (1984). But the trial court declined to fully apply common-law setoff. The court reasoned that because the St. Mary's settlement payment was for the claims of all three plaintiffs and because the jury returned a verdict of no cause of action as to Mr. Greer and Mrs. Greer's separate claims which were included in the St. Mary's settlement payment, it would be manifestly unjust to apply the full settlement to offset the jury award for only Makenzie Greer. The court, therefore, ruled it would allow a setoff of "\$162,058.11 or 1/3 of the settlement amount . . . which represents that portion of the settlement paid in exchange for release of liability for Makenzie's injuries."

¹ Plaintiffs' claim against Dr. Kristina Mixer, an intern employed by St. Mary's Hospital, was dismissed without prejudice early in the litigation by stipulation of the parties.

² The trial court granted this part of defendants' motion, and it is not at issue on appeal.

Defendants filed a motion for reconsideration, which the trial court denied in an opinion and order. The trial court reaffirmed its ruling regarding past medical expenses, opining that defendants failed to prove this claim. The trial court also reaffirmed its ruling regarding setoff and distinguished the case of *Velez v Tuma*, 492 Mich 1; 821 NW2d 432 (2012), on which defendants relied. The trial court noted that *Velez* involved a single plaintiff whereas the present case concerned a settlement with three plaintiffs. Again, the trial court reasoned that the settlement was for all three plaintiffs, but the jury awarded damages to only one plaintiff. The trial court also speculated that the jury would not have returned a verdict of no cause of action as to Mr. and Mrs. Greer if the case had proceeded to trial against St. Mary's Hospital. The trial court further explained its ruling:

The Court finds, factually, that this settlement allocation was for the three plaintiffs equally and that the only reasonable, rational and record based way to allocate the amount to be set off against the verdict was equally in one-third increments allowing the Defendants first a \$200,000 setoff; which necessarily had to be reduced by the one-third amount of medical expense liens paid out of the settlement amount.

Thereafter, after making calculations regarding the jury verdict consistent with its rulings, the trial court entered judgment in favor of Kenneth Greer as conservator of Makenzie Greer against defendants in the amount of \$1,058,825.56. The court entered a separate order awarding plaintiffs' their costs of \$32,393.80 as prevailing parties. Defendants now appeal by right the trial court's rulings applying only a partial setoff for the St. Mary's Hospital settlement payment and its failing to reduce the jury's award for past economic damages to the amount insurance companies actually paid providers to satisfy plaintiffs' medical bills.

II. ANALYSIS

A. PRESERVATION & STANDARD OF REVIEW

Each issue on appeal has been preserved because it was raised before and decided by the trial court. *Gen Motors Corp v Dep't of Treas*, 290 Mich App 355, 386; 803 NW2d 698 (2010). We review both issues *de novo* as they present questions of law regarding the interpretation of statutes and the application of the common law. *Velez*, 492 Mich at 10-11.

B. COMMON-LAW SETOFF

Under the common-law rule of setoff among jointly liable tort defendants "where a negligence action is brought against joint tortfeasors, and one alleged tortfeasor agrees to settle his potential liability by paying a lump sum in exchange for a release, and a judgment is subsequently entered against the non-settling tortfeasor, the judgment is reduced *pro tanto* by the settlement amount." *Thick*, 419 Mich at 348 n 1; see also *Velez*, 492 Mich at 14 n 27, and *Markley v Oak Health Care Investors of Coldwater, Inc*, 255 Mich App 245, 250; 660 NW2d 344 (2003). We conclude that the trial court erred in applying common-law setoff in the present case because the \$600,000 St. Mary's Hospital paid to *all* plaintiffs to settle *all* plaintiffs' claims arising out of the alleged malpractice of the codefendants attending to the birth of Makenzie Greer must reduce *pro tanto* the amount of the jury verdict, after statutory reductions, *Velez*, 492

Mich at 23, against the jointly liable defendants regarding *all* plaintiffs' identical malpractice claims. Moreover, we can find no basis in the release and settlement agreement between plaintiffs and St. Mary's Hospital or the jury's verdict to allocate any portion of the St. Mary's payment to injuries other than those of Makenzie Greer, nor do we have the ability to alter the settlement agreement, which is, of course, a contract. Consequently, we reverse the trial court's decision regarding setoff and remand for entry of an amended judgment.

Tort reform legislation in 1995 replaced joint and several liability among defendants for most torts with several liability on the basis of the proportion of each defendant's fault or "fair share" liability. MCL 600.2956; MCL 600.6304; *Markley*, 255 Mich App at 250, 253; *Smiley v Corrigan*, 248 Mich App 51, 53, 55; 638 NW2d 151 (2001). But the 1995 legislation retained joint and several liability for medical malpractice cases where the plaintiff is without fault. In general, "[i]f an action includes a medical malpractice claim" and "[i]f the plaintiff is determined to be without fault . . . the liability of each defendant is joint and several . . ." MCL 600.6304(6)(a). Here, it is undisputed that all plaintiffs were without fault. The 1995 legislation also repealed the statutory codification of the common-law rule of setoff among jointly liable tortfeasors. See MCL 600.2925d, as amended by 1995 PA 161; see also *Thick*, 419 Mich at 348 n 1; *Markley*, 255 Mich App at 249, 254-255. The Court in *Markley* concluded "that the Legislature did not intend to allow recovery greater than the actual loss in joint and several liability cases when it deleted the relevant portion of § 2925d, but instead intended that common-law principles limiting a recovery to the actual loss would remain intact." *Markley*, 255 Mich App at 257. Thus, the Court held that "the principle of one recovery and the common-law rule of setoff, in the context of joint and several liability cases, continue to be the law in Michigan." *Id.* Our Supreme Court in *Velez*, 492 Mich at 6, agreed that *Marley* was correct and clarified that "where the Legislature has retained principles of joint and several liability, the common-law setoff rule applies." The issue thus becomes the application of common-law setoff to the facts of this case.

This case arises out of medical services provided to Mrs. Greer while giving birth to Makenzie Greer at St. Mary's Hospital. Dr. Mixer, employed by St. Mary's Hospital, and Dr. Avery, employed by Advantage Health, attended the birth. Plaintiffs, Kenneth Greer, individually and as conservator of Makenzie, and Elizabeth Greer, alleged that Makenzie suffered horrific, permanent injuries. Plaintiffs filed their complaint against the doctors alleging various acts of malpractice during the labor and delivery that occurred on September 27-28, 2008, and asserted the corporate defendant employers were vicariously liable. Mrs. Greer asserted a claim for an injury to her uterus, scaring, disfigurement, and lost wages while caring for Makenzie. Mr. Greer claimed damages for his liability to pay past and future medical expenses of Makenzie and loss of consortium with respect to Mrs. Greer. Mr. Greer as conservator of Makenzie asserted claims on her behalf for pain, suffering, mental and physical disability, and for pecuniary damages, including medical expenses, future care, and loss of earning capacity. Thus, all Mr. Greer's claims were derivative of alleged injuries that either Mrs. Greer or Makenzie sustained during a single alleged incident of malpractice. It is undisputed that plaintiffs were not at fault for their claimed injuries and that the liability of all defendants would be joint and several. MCL 600.6304(6)(a); *Velez*, 492 Mich at 12-13.

Before trial, St. Mary's Hospital paid \$600,000 to plaintiffs Elizabeth Greer and Kenneth Greer, individually and as conservator of Makenzie Greer, to settle "any and all claims demands,

damages, actions, causes of action or suits of any kind or nature . . . as a result of an incident which occurred on or about September 28, 2008, including the subsequent medical treatment provided, Makenzie Greer, because of this incident.” The receipt of the payment was a “full accord, satisfaction and settlement of *all claims* arising from the incident.” The settlement agreement did not articulate in any way how the lump sum payment should be assigned to any particular plaintiff or to any particular claim or legal theory. Rather, the settlement payment was for “any and all claims” that all plaintiffs may have arising from the incident that “occurred on or about September 28, 2008” and included “the subsequent medical treatment” of Makenzie. The settlement agreement expressly provided that it was “not to be construed as an admission of liability on the part of” any party covered by the release.³ In sum, the settlement was a lump sum payment by an alleged jointly and severally liable tortfeasor to settle all claims of all plaintiffs arising out of the malpractice incident described in plaintiffs’ complaint.

Here, by assigning one-third of the St. Mary’s settlement to each plaintiff’s claims, the trial court failed to fully apply the principle of setoff that for one injury there may be a single recovery. *Id.; Markley*, 255 Mich App at 251. The trial court distinguished case law involving a single plaintiff, thus justifying parsing the settlement here, because several plaintiffs’ claims were settled. On the facts of this case, this distinction is inapposite.

Plaintiffs brought their complaint against all defendants alleging a single count of malpractice concerning a single discrete incident, the birth of Makenzie. Because any liability of defendants was joint and several, plaintiffs were free to settle with some defendants and proceed to trial against other defendants. *Markley*, 255 Mich App at 251, citing *Verhoeck v Gillivan*, 244 Mich 367, 371; 221 NW 287 (1928). But for a single injury, plaintiffs could have only one recovery. *Id.* Plaintiffs might have been able with St. Mary’s agreement to apportion the settlement among their separate claims. See, e.g., *Markley*, 255 Mich App at 248 (where a joint tortfeasor’s settlement was divided into an amount allocated to wrongful death and an amount allocated to pain and suffering). Plaintiffs here did not do so. Plaintiffs collectively settled *all* their claims against a jointly liable tortfeasor arising out of a single instance of malpractice involving Makenzie’s birth for a single undifferentiated lump sum of \$600,000. After trial against the non-settling defendants on all the same claims, a jury determined the value of all plaintiffs’ claims. To ensure that plaintiffs are fully but not overly compensated for *all* their claims, the entire St. Mary’s settlement must be offset against the amount the jury determined were all plaintiffs’ collective damages. *Markley*, 255 Mich App at 250-251. Where there is a recovery “for an injury identical in nature, time and place, that recovery must be deducted from [the plaintiffs’] other award.” *Great Northern Packaging*, 154 Mich App at 781.

This reasoning is reinforced by our Supreme Court’s decision in *Velez*, 492 Mich at 12, which noted that “[t]he term ‘joint and several’ liability, as used in MCL 600.6304(6)(a), is a technical legal term.” It means when “multiple tortfeasors cause[] a *single or indivisible injury*, the injured party [may] either sue all tortfeasors jointly or he [may] sue any individual tortfeasor

³ It is unclear when plaintiffs dismissed their claims against Dr. Mixer, but as one of St. Mary’s employees, she was covered by the release that St. Mary’s Hospital obtained.

severally, and each individual tortfeasor [is] liable for the entire judgment . . .” *Id.* at 13 (Citation omitted; emphasis added). In the context of the Court’s discussion of the interplay between common-law setoff and statutory limitations on damages in medical malpractices cases, it is clear that the “single or indivisible injury” referred to is the allegation of malpractice. The damages flowing from the single injury—the malpractice—may be economic or noneconomic, past or future. MCL 600.6306; *Velez*, 492 Mich at 18-19. “Inherent in the meaning of joint and several liability is the concept that a plaintiff’s recovery is limited to one compensation for the single injury.” *Velez*, 492 Mich at 13. Because in this case Makenzie Greer had already received partial compensation for her malpractice injury, the “application of the common-law setoff rule requires that codefendants’ settlement be subtracted from the final judgment so that [she] does not receive more than a single recovery for her single injury.” *Id.* at 23.

The *Velez* Court also discouraged what the trial court attempted in this case: apportionment of an indivisible lump sum settlement into partial, severable settlements. The Court observed that when “a judgment contains both economic and noneconomic damages, a circuit court’s applying the setoff to the jury’s verdict *before* application of the collateral source rule would have to determine how to allocate the settlement between economic and noneconomic damages.” *Velez*, 492 Mich at 25. The Court reasoned such a practice could not be condoned because it would be contrary MCL 600.1483, and it would discourage settlements among business-related defendants. *Id.* at 25-26, n 25. The Court further opined:

Additionally, in instances like the present, in which the composition of the settlement is unknown, circuit courts would be left to guess at how a settlement should be allocated. Requiring circuit courts to engage in this guesswork, from which a range of potential outcomes could result, unreasonably burdens them with a determination that they are, in the absence of any statutory guidance, ill-prepared to make. Our holding, on the other hand, that a circuit court must subtract the total settlement from the final judgment, creates no need to allocate the settlement proceeds between economic or noneconomic damages before applying the setoff. Rather, the settlement is treated as an aggregate award to be applied against the plaintiff’s total actual loss, meaning the final judgment after application of the applicable statutory adjustments. [*Id.* at 26.]

Similarly, in this case, to avoid speculative apportionments of an undifferentiated lump sum settlement paid by a jointly liable codefendant to settle more than one plaintiffs’ claim arising from a single alleged incident of malpractice, the entire settlement must offset the entire jury award to all plaintiffs. Further support of this conclusion is found by analogy to application of the noneconomic cap of MCL 600.1483(1), which provides in part that “the total amount of damages for noneconomic loss recoverable by *all plaintiffs*, resulting from the medical malpractice of *all defendants*, shall not exceed” a specified amount with certain exceptions. (Emphasis added); see also *Velez*, 492 Mich at 17-18 (holding the word “recoverable” in § 1483(1) necessarily “includes recovery through settlements, jury verdicts, or arbitration”).

Finally, any necessary apportionment of the St. Mary’s settlement among the three plaintiffs should be made in accordance with the fact finders’ determination. The jury determined that Mr. Greer and Mrs. Greer’s claims were valued at zero. Accordingly, if it were possible to apportion the undifferentiated lump sum settlement, Mr. and Mrs. Greer’s portion

should be valued at zero. Doing so results in setting off the entire St. Mary's settlement from damages that remain after applying the relevant statutory adjustments to arrive at the final judgment in favor of Makenzie's conservator. *Velez*, 492 Mich at 26.

For the foregoing reasons, we reverse the trial court's ruling regarding setoff and remand for entry of an amended judgment consistent with this opinion.

C. COLLATERAL SOURCE RULE OF MCL 600.6303

Defendants' argument that insurance discounts are collateral source payments under MCL 600.6303 has some merit. Specifically, such a discount falls within the plain meaning of "benefits received or receivable from an insurance policy" in MCL 600.6303(4). Nevertheless, because MCL 600.6303 is in derogation of the common law, it may not be extended beyond the meaning of its plain language. See *Velez*, 492 Mich at 12. Further, the statute must be read as a whole, and the last sentence of MCL 600.6303(4), on which plaintiffs rely, provides in pertinent part, that "[c]ollateral source does not include *benefits paid or payable* by a person . . . or other legal entity entitled by contract to a lien . . . if the contractual lien has been exercised . . ." (Emphasis added). The statute nowhere specifies that this exclusion from the statutory collateral source rule is limited to the amount of the lien exercised or the amount actually paid. In fact, the exclusion applies by its plain terms to all benefits "paid or payable" by a legal entity that timely asserts a contractual lien pursuant to MCL 600.6303(3). Thus, we affirm the trial court on this issue.

Whether a discount on an incurred medical expense negotiated between medical services providers and health care insurers is a "collateral source" that may reduce a jury award for such medical expense presents a question of statutory interpretation of MCL 600.6303. The principles of statutory construction to resolve this question were articulated in *Velez*, 492 Mich at 16-17:

Our function in construing statutory language is to effectuate the Legislature's intent. Plain and clear language is the best indicator of that intent, and such statutory language must be enforced as written. Further, a statute in derogation of the common law will not be construed to abrogate the common law by implication, but if there is any doubt, the statute is to be given the effect that makes the least change in the common law. [Citations omitted.]

MCL 600.6303 is in partial derogation of the common-law collateral source rule that has both an evidentiary component—it "bars evidence of other insurance coverage when introduced for the purpose of mitigating damages," *Nasser v Auto Club Ins Ass'n*, 435 Mich 33, 58; 457 NW2d 637 (1990)—and a substantive component—it "provides that the recovery of damages from a tortfeasor is not reduced by the plaintiff's receipt of money in compensation for his injuries from other sources." *Tebo v Havlik*, 418 Mich 350, 366; 343 NW2d 181 (1984). MCL 600.6303(1) modifies the common-law collateral source rule by permitting the presentation of evidence to a trial court after a verdict but before judgment to show that a plaintiff's claimed "expense or loss was paid or is payable, in whole or in part, by a collateral source," and, if so,

requires the trial court to “reduce that portion of the judgment which represents damages paid or payable by a collateral source by an amount equal to the sum determined pursuant to subsection (2).”⁴ MCL 600.6303(3) provides that after a favorable verdict, a plaintiff or the plaintiff’s attorney must notify potential lien claimants who then have 20 days to assert their contractual right of subrogation. The heart of the issue centers on the definition of “collateral source” found in MCL 600.6304(4), which provides:

As used in this section, “collateral source” means *benefits received or receivable from an insurance policy*; benefits payable pursuant to a contract with a health care corporation, dental care corporation, or health maintenance organization; employee benefits; social security benefits; worker’s compensation benefits; or medicare benefits. Collateral source does not include life insurance benefits or benefits paid by a person, partnership, association, corporation, or other legal entity entitled by law to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages. Collateral source *does not include benefits paid or payable by a person, partnership, association, corporation, or other legal entity entitled by contract to a lien* against the proceeds of a recovery by a plaintiff in a civil action for damages, *if the contractual lien has been exercised* pursuant to subsection (3). [Emphasis added.]

The trial court initially ruled that because each of the health care insurers that paid medical expenses asserted a lien in accordance with § 6303(3), it was

satisfied that the collateral source rule does not encompass a situation, such as is found in the instant case, in which a lien holder exercises a lien. All payments statutory collateral source set off rule no longer applies to this case and no reduction in the Jury award is warranted.

Although the trial court relied on *Zdrojewski*, we find that case is not dispositive of the issue presented here. Although the *Zdrojewski* Court held that when health care insurers asserted liens for less than the amount of what they actually paid, the latter amount determined the exclusion as a collateral source under § 6303(4). The Court noted that “the statute does not make any provision for a situation where a lien has been exercised, but for an amount less than the lienholder would be legally entitled to recover.” *Zdrojewski*, 254 Mich App at 70. The Court concluded that “[b]ecause the statute clearly states that benefits subject to an exercised lien do not qualify as a collateral source, and BCBSM and Medicare exercised their liens, health insurance benefits provided by BCBSM and Medicare to plaintiff do not constitute a collateral source under MCL 600.6303(4).” *Id.* While this ruling supports plaintiffs’ position that the assertion of a lien as to a portion of a medical expense payable by an entity, it also supports defendants’ position that only payments an entity actually makes and may assert a lien for—and no lien may be asserted for insurance discounts—are excluded under § 6303(4).

⁴ Subsection (2) permits a deduction from the amount of collateral source payments by the amount paid for insurance premiums. MCL 600.6303(2).

In denying defendants' motion for reconsideration on this issue, the trial court asserted an alternative basis for its ruling. Specifically, the court found that defendants did not prove the amount of the discount or that the insurance companies would not assert a lien in the future. This reasoning does not appear to have merit. From the arguments of the parties, it does not appear that there is any dispute as to amount of the insurance discount or that an additional lien would be asserted in the future. Indeed, § 6303(3) sets a strict time limit for the assertion of a lien after a plaintiff gives notice of a favorable verdict: "If a contractual lien holder does not exercise the lien holder's right of subrogation within 20 days after receipt of the notice of the verdict, the lien holder shall lose the right of subrogation." Consequently, we conclude that the trial court's supplemental reason does not support its ruling.

We conclude that the two insurers in this case, Aetna and Priority Health, or the payments they made to plaintiffs' health care providers are "collateral sources" within the plain meaning of § 6303(1) because both insurers "paid . . . in whole or in part" "the expense of medical care" that plaintiffs sought in a personal injury action and for which plaintiffs obtained a jury verdict in their favor. Furthermore, the insurance discounts that reduced the amount of the medical expenses that plaintiffs would otherwise have been responsible to pay must also plainly be "benefits received or receivable from an insurance policy" and, therefore, a "collateral source" within the meaning of the first sentence of MCL 600.6303(4). Although this reading of the first sentence of § 6303(4) is consistent with common sense and economic reality, it is also consistent with how a dictionary defines "benefit" as being "something that is advantageous or good; an advantage" or "a payment made to help someone or given by a benefit society, insurance company, or public agency." *Random House Webster's College Dictionary* (1997).⁵

Additionally, treating insurance discounts as a collateral source under § 6303 would be consistent with the Legislature's purpose of precluding a plaintiff from receiving a double recovery for a single loss. See *Heinz v Chicago Rd Inv Co*, 216 Mich App 289, 301; 549 NW2d 47 (1996). But because § 6303 is in derogation of the common law that permits a plaintiff's double recovery where a loss was also paid by insurance, *Nasser*, 435 Mich at 58, the statute must be construed consistent with its plain terms to make "the least change in the common law." *Velez*, 492 Mich at 16-17. Assuming that insurance discounts are "benefits received or receivable from an insurance company" within the plain meaning of the first sentence of § 6303(4), we must conclude that the insurance discounts are also "benefits paid or payable" within the plain and ordinary meaning of the last sentence of § 6303(4). The words "paid or payable" are both derived from the word "pay," which is defined as "to discharge or settle (a debt, obligation, etc.), as by transferring money or goods, or by doing something." *Random House Webster's College Dictionary* (1997). There appears to be no dispute that the insurance discounts here, along with cash payments, discharged or settled plaintiffs' debt or obligation to their health care providers. So, assuming that an insurance discount is a "benefit paid or payable" within the meaning of both § 6303(1) and § 6303(4), then the last sentence of subsection (4) would read: "Collateral source does not include [an insurance discount used to

⁵ Where statutory words are undefined, a dictionary may be consulted to confirm their plain and ordinary meaning. *McLean v McElhaney*, 289 Mich App 592, 602; 798 NW2d 29 (2010).

settle or discharge a debt of the plaintiff for medical expenses provided] by [an insurance company] entitled by contract to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages, if the contractual lien has been exercised pursuant to subsection (3).”

When we apply the above analysis of the statute to the undisputed facts of this case, we must affirm the trial court. It is undisputed that each insurance company that discharged plaintiffs’ medical expenses, in part by cash payment and in part by an insurance discount, also was “entitled by contract to a lien against the proceeds” of plaintiffs’ civil action and “exercised [the lien] pursuant to subsection (3).” MCL 600.6303(4). Thus, applying the plain terms of the last sentence of § 6303(4), compels the conclusion that both the cash payments and discount, i.e., the “benefits received or receivable from an insurance policy,” are excluded as statutory collateral source benefits. This reading of the statute’s plain terms makes “the least change in the common law.” *Velez*, 492 Mich at 16-17. The Legislature could have, but did not, write the statute to say that the § 6303(4) collateral source exclusion is limited to the “amount of” a validly exercised lien. The intent of the Legislature to so limit the statutory exclusion cannot be derived from the language of the statute itself. *Mich Ed Ass’n v Secretary of State (On Rehearing)*, 489 Mich 194, 218; 801 NW2d 35 (2011). Finally, although not directly on point, this reading of the statute is also consistent with this Court’s holding in *Zdrojewski*, 254 Mich App at 70.

In sum, we affirm the trial court’s ruling regarding collateral source payments under MCL 600.6303. Although we find that an insurance discount is a “collateral source” by which plaintiffs’ medical expenses were “paid or payable” and that such a discount is a benefit “received or receivable from an insurance policy,” the plain terms of the exclusion from the statutory collateral source rule of § 6303(4) when a contractual lien is exercised is not limited to the amount of the lien; it applies to all benefits the “legal entity entitled to the lien” provides.

We affirm the trial court’s collateral source ruling, but we reverse and remand for entry of an amended judgment regarding the application of common-law setoff consistent with this opinion. We do not retain jurisdiction. Because neither party prevailed in full and because questions of public policy are involved, we award no taxable costs under MCR 7.219.

/s/ Jane E. Markey
/s/ Joel P. Hoekstra