STATE OF VERMONT
WINDSOR COUNTY, SS

Lynda Sherman Plaintiff v. John Ducharme Leon W. Benson Defendant	SUPERIOR COURT Docket No. 334-5-08 Wrcv

DECISION ON MOTION TO COMPEL

Defendant Ducharme has filed a Motion to Compel seeking disclosure of the amount of any medical liens by Medicare or others for medical treatment received by Plaintiff arising out of a slip and fall injury. Plaintiff opposes the motion.

Defendant asserts that the discovery of the amount of medical liens does not invoke the collateral source rule. This position is correct in its narrow sense. The collateral source rule prevents a party, often a tortfeasor, from avoiding responsibility for damages due to payment received by the injured party from a collateral source, such as through insurance. The collateral source rule deals with the *admissibility* of collateral source information, not its discovery of the information. Discovery is permitted to obtain non-privileged material that is relevant to the subject matter of the litigation. V.R.C.P. 26(b)(1).

It is not necessary that discoverable evidence be admissible at trial. On the contrary, discovery of inadmissible evidence is permitted so long as such discovery is reasonably calculated to lead to the discovery of admissible evidence. V.R.C.P. 26(b)(1). As a result, discovery of the amount of medical liens would be permissible if reasonably calculated to lead to the discovery of admissible evidence.

At trial, the Plaintiff must establish the reasonableness of the medical bills incurred. *Forcier v. Grand Union Stores*, 128 Vt. 389 (1970); *Kinney v. Cloutier*, 125 Vt. 109 (1965). In the ordinary course, Plaintiff will call a medical expert to testify that the bills were necessary and reasonable in amount based upon knowledge of the charges for such services. Defendant Ducharme argues that the amount paid by Medicare is some evidence of reasonableness and should be discoverable. He further points to a trial court decision allowing discovery of the amount of liens purportedly to aid in settlement or the framing of a V.R.C.P. 68 offer of judgment.

The amount accepted by Medicare, or any other medical provider, in payment is influenced by many factors, including negotiated contracts having nothing to do with the patient receiving the services. Medical providers will sometimes reduce the amount of a

lien on unpaid medical bills, as will medical insurers for bills which have been previously paid. What is or is not paid for the medical services provided is not the measure of damages; the measure is the reasonable value of the services received. For example, if a doctor happened upon the scene of an accident and provided emergency medical services without charge, it can not be gainsaid that the services had value, even though the injured party was not charged. Simply stated, the amount actually paid for medical services, if anything, is much different than the value of those services. Actual payment does not equate with reasonable value and is influenced by many other factors.

While knowledge of the amount of medical liens might help to facilitate settlement, this is not a valid basis for the discovery of the amount of the liens. So too would knowledge of the fee agreement between lawyer and client, the amount expended by the law firm in prosecution of the claim and debt obligations outside of the litigation which the injured party hopes to pay from the settlement proceeds. None of these things are discoverable. While settlement of disputes is favored, the rules of discovery are limited to those things of relevance, i.e. admissible material or those things reasonably calculated to lead to the discovery of admissible material, not discovery of all things which may aid in settlement.

The collateral source rule bars the introduction of the amount received by the injured party from a collateral source not connected with the tortfeasor. This prevents the wrongdoer from benefitting from the foresight of the injured party in buying insurance. *Hall v. Miller*, 143 Vt. 135 (1983). There is no reason why the rule should be any different by the happenstance that the injured party qualifies for Medicare or that the medical provider accepted less than the billed amount due to Medicare restrictions, contracts with medical insurers, benevolence, or any other reason. See also *Northeastern Nash Automobile Company v. Bartlett*, 100 Vt. 246 (1927).

The amount actually paid for medical services is not admissible as evidence of the value of those services. *Leitinger v. DBart, Inc.*, 736 N.W.2d 1, 18 (Wis. 2007). Evidence of value instead comes from the medical expert opinion at trial in the form of opinion as to reasonableness of the medical charges, not the medical payments. As a result, discovery of the amount of payments is not reasonably calculated to lead to the discovery of admissible evidence. Discovery of this information is therefore outside the scope of V.R.C.P. 26.

Defendant's Motion to Compel is **DENIED**. Further, the Court will not allow introduction of the fact, amount, or identity of the party making any medical payment to Plaintiff, or on her behalf, at the time of trial.

Dated at Woodstock this 10th day of November, 2009.

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Harold E. Eaton, Jr.
Superior Court Judge