Ohio Supreme Court Levels the Playing Field in the Admission of Evidence of Medical Bills

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It has been common knowledge that plaintiffs in personal injury and medical malpractice actions can recover the amount of reasonable expenses incurred for medical care made necessary by the alleged negligence. To make a plaintiff whole for the wrong done, the amount of damages should reflect “the actual loss” to the plaintiff. The “make whole” doctrine seeks to make a plaintiff “whole” by reimbursing the plaintiff for all expenses incurred. The “make whole” doctrine does not sanction windfalls for a plaintiff.

For years, plaintiffs were permitted to recover the entire amount of medical bills proven to be causally related to the alleged negligence. All the plaintiff had to do was timely produce the medical bills and then there was a presumption that the medical bills were reasonable and necessary. On the other hand, defendants were prohibited from offering evidence of reduction, or “write-offs,” of medical bills in order to demonstrate that a plaintiff cannot conceivably suffer an “actual loss” for those medical bills that were never actually paid. The prohibition of evidence of “write-offs” turned the “make whole” doctrine upside down because a plaintiff was permitted to recover for all of the medical bills incurred but never actually paid. Consequently, plaintiffs enjoyed a windfall because jurors were not permitted to adjust an award for medical bills with evidence of “write-offs” of medical bills.

Eventually, the Ohio Supreme Court in 2006 recognized that jurors should be permitted to submit evidence of “write-offs” of medical bills in personal injury actions when determining the reasonable value of medical services. The reasoning for allowing the admission of evidence of “write-offs” was that “write-offs” did not reflect the actual loss suffered by a plaintiff and, thus, they did not constitute an expenditure. Simply put, “write-offs” of medical bills are amounts that are not paid and will never be paid and, therefore, the amount of the “write-offs” should not be recoverable by plaintiffs.

Since 2006, the legal battle raged on between plaintiffs and defendants regarding the proper manner in which evidence of “write-offs” of medical bills should be admitted into evidence, if admitted at all. On October 24, 2013, the Ohio Supreme Court issued its decision in Moretz vs. Muakkassa, Slip Opinion No. 2013-Ohio-4656 that has apparently settled this battle and has confirmed that plaintiffs are entitled to admit evidence of all of the medical bills while defendants can simultaneously present evidence of “write-offs” of medical bills.

Prior to the Ohio Supreme Court issuing its decision in Moretz, both the Trial Court and the Court of Appeals in Moretz held that even though a defendant is entitled to present evidence of “write-offs” of medical bills, the defendant had the additional burden of proving those medical “write-offs” with expert testimony. While a plaintiff was not required to produce expert testimony in support of the medical bills because they benefitted from a presumption of the reasonableness of the medical bills, the Trial Court and the Court of Appeals in Moretz treated the defendant disparately by requiring the defendant to retain an expert witness in order to establish the reasonableness of the “write-offs” of the medical bills. In other words, the defendant had the extra burden of proof to lay a foundation for the “write-offs” with expert testimony.

Before The Ohio Supreme Court released the decision in Moretz reversing both the Trial Court and the Court of Appeals’ holdings, the lower courts’ rulings were good law and plaintiffs’ counsel were relying on such rulings to challenge the admission of evidence of “write-offs.” Defendants faced an insurmountable burden of proof as to the admission of evidence of “write-offs” of medical bills as a result of the law set for by the lower courts in the Moretz case. Courts were requiring defendants to retain expert witnesses in order to testify about the reasonableness of the amount of “write-offs” of medicals. Inevitably, this increased litigation costs and expenses for defendants because defendants were now required to pay expert fees and other expenses associated with presenting expert testimony in support of the “write-offs.” While defendants were forced to incur these additional expenses, plaintiffs did not have to incur these same expenses.

The Ohio Supreme Court reversed the lower courts in Moretz and held that expert testimony is not required for the admission of evidence of “write-offs” of medical bills. In its decision, the Ohio Supreme Court has effectively leveled the playing field for plaintiffs and defendants with respect to the admission of both the medical bills and the amount of “write-offs” so reflected in those medical bills. Consequently, the law in Ohio is now well established without any limitations. Defendants can present evidence of “write-offs” of medical bills in the same manner in which plaintiffs present evidence of the medical bills.

It is worth noting that in addition to finally resolving the ongoing battle over the admission of evidence of “write-offs” of medical bills, the Ohio Supreme Court in Moretz also reversed the adverse verdict against a physician who was denied a fair trial as a result of several other errors committed by the lower courts. In reversing the plaintiff’s verdict against the physician and, also, the Court of Appeals’ erroneous decision that upheld the plaintiff’s verdict, the Ohio Supreme Court remanded the case for a completely new trial. So, not only is the decision of the Ohio Supreme Court in Moretz especially important because it resolved the longstanding debate over the admission of evidence of “write-offs” of medical bills, the physician will now be able to defend himself at trial free of any prejudicial errors. As a result of the Moretz decision, The Ohio Supreme Court has set forth several holdings that will be invaluable to the defense of medical malpractice cases, as well as other civil lawsuits.

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