

## **CLIENT ALERT**

May 7, 2010

### **Ohio Supreme Court Holds that a Defendant May Introduce Evidence of a Medical Provider's Discount of the Billed Charge Without Violating Ohio's Collateral Source Statute**

On May 4, 2010, the Ohio Supreme Court ruled in the case *Jaques v. Manton* that the defendant in a personal injury lawsuit is not barred by R.C. 2315.20, Ohio's collateral source statute, from introducing evidence at trial of so-called "write-offs" accepted by medical service providers that reduce the actual cost of the plaintiff's medical treatments to a lower amount than that which was originally billed by the medical provider.

In December of 2005, Richard Jaques was injured in a traffic accident for which the other driver, Patricia Manton, admitted liability. The parties could not agree on the amount of Jaques' damages, however, and a lawsuit ensued. Prior to trial, Jaques had successfully moved to exclude from trial any evidence informing the jury that while Jaques was billed a total of \$21,874.00 for medical treatments arising from the accident, his health care providers had accepted \$7,484.00 as payment in full for those services, having written-off \$14,390.00 from their original bills based on their contractual agreements with Jaques' health insurer, Medical Mutual of Ohio. At trial, the jury awarded \$25,000.00 to Jaques, \$15,500.00 of which was designated for medical expenses.

Manton appealed. The Sixth District Court of Appeals affirmed the trial court's evidentiary ruling that the \$14,390.00 write-off was barred under R.C. 2315.20 because the statute expressly states that evidence of a collateral payment may not be introduced at trial where the source of that collateral payment has a contractual right of subrogation, and it was undisputed that Medical Mutual had a subrogation right pursuant to its contract with Jaques. Manton then sought and was granted a discretionary appeal to the Ohio Supreme Court.

In a similar case in 2006, *Robinson v. Bates*, the Ohio Supreme Court held that the common law collateral source rule in effect prior to the enactment of R.C. 2315.20 does not bar a defendant from introducing evidence of write-offs that reduced the total amount of the plaintiff's medical bills. However, the decision in *Robinson* did not apply to R.C. 2315.20 because the statute was enacted after the cause of action at issue in *Robinson* had accrued. Thus, the pivotal question

before the Court in *Jaques* was whether the legislature's enactment of R.C. 2315.20 in April of 2005 compelled a different conclusion from *Robinson* with regard to the admissibility of write-offs as evidence at trial.

In a five to one decision (one Justice did not participate in the decision), the Court ruled that R.C. 2315.20 does not prohibit evidence of write-offs because the statute generally pertains only to evidence of any amount payable as a benefit to the plaintiff, and write-offs are amounts *not* paid by an insurer or any other collateral source. Thus, the Court concluded that R.C. 2315.20 does not apply to write-offs in the first place, and as a result, overruled the appellate court's decision that the subrogation exception in the statute barred evidence of the write-off by Jaques' medical providers. Accordingly, the Court held that its decision in *Robinson* still controls, meaning that in Ohio, evidence of write-offs by providers is admissible to show the reasonable value of a plaintiff's medical expenses, regardless of whether the cause of action arose after enactment of R.C. 2315.20.

This decision is good news for defendants because almost all health insurance policies (and Medicare) provide a right of subrogation. While a plaintiff may still seek damages in the amount billed for his or her medical treatments, the defendant may introduce evidence of the provider write-off, thus telegraphing to the jury the actual amount paid for the service. It is likely that the jury will only include the net charge for the service in its verdict.

For more information, please contact Eric D. Baker (216) 566-8200, [edbaker@sseg-law.com](mailto:edbaker@sseg-law.com) or [www.sseg-law.com](http://www.sseg-law.com).

The SSEG "Client Alert" is intended to provide current information for our clients and friends regarding important legal developments. The foregoing discussion is general information rather than specific legal advice. Because it is necessary to apply legal principles to specific facts, always consult your legal adviser before using this discussion as a basis for a specific action.