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Meek v. Montana Eighth Judicial District Court: Determining the Reasonable Value of Medical Expenses in Montana

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MEEK V. MONTANA EIGHTH JUDICIAL DISTRICT COURT: DETERMINING THE REASONABLE VALUE OF MEDICAL EXPENSES IN MONTANA

Carrie Gibadlo

No: OP 14-0786
Montana Supreme Court

Oral Argument: Wednesday, March 11, 2015 at 9:30 AM in the Courtroom of the Montana Supreme Court, Joseph P. Mazurek Justice Building, Helena, Montana.

I. INTRODUCTION

Sharon Meek, Plaintiff, Petitioner and Personal Representative of the Estate of Judy J. Meek, Deceased, (Petitioner) applied for a writ of supervisory control to review an Order by Judge Jon A. Oldenburg of the Montana Eighth Judicial District Court, Cascade County. The Order prohibited the Petitioner from presenting the original charges of Judy M. Meek's (Judy) medical expenses and limited the reasonable value of medical care, and consequently recoverable damages, to the amounts paid by Medicare and Blue Cross/Blue Shield (BCBS). Petitioner presents the following challenges on review:[1] (1) the tortfeasor is responsible for the reasonable value of a tort victim's injuries charged at the time of service regardless of the amount actually paid; and (2) the Order violated Montana's collateral source statute as well as the common law collateral source rule.

II. FACTUAL AND PROCEDURAL BACKGROUND[2]

On November 3, 2011 Judy fell on the business premises of Bennett Motor, Inc. (Defendant Bennett Motors) and Pierce Dodge City, Inc. (Defendant Pierce) (collectively Defendants). After receiving medical treatment for the injuries, Judy was billed $197,154.93. However, the medical providers accepted $70,711.26 to fully satisfy the bill from Judy's insurers—Medicare and BCBS. The discounted amount

[1] This article will not discuss all of the Petitioner's other claims including: (1) the matter is urgent and the normal appeal process is inadequate; (2) the issues raised on review are purely legal; and (3) constitutional issue of state-wide importance are involved.

[2] The facts presented in this section are drawn from two documents: (1) Pet. For Writ of Supervisory Control, *Meek v. Mont. 8th Jud. Dist. Ct.*, http://supremecourtdocket.mt.gov/search/getDocument?documentid=99042 (Mont. Dec. 9, 2014) (No: OP 14-0786) (hereinafter Pet. For Writ); and (2) Response to Pet. For Writ of Supervisory Control, *Meek v. Mont. 8th Jud. Dist. Ct.*, http://supremecourtdocket.mt.gov/search/getDocument?documentid=101197 (Mont. Jan. 14, 2015) (No. OP 14-0786) (hereinafter Response to Pet.).

reflected the federally mandated rates for Medicare and pre-negotiated rates pursuant to BCBS's Preferred Provider Agreement (PPA).

On August 27, 2012, Petitioner filed a wrongful death suit in the Eight Judicial District Court against the Defendants seeking survival and wrongful death damages on behalf of Judy's husband and two sons. On April 10, 2014, Defendant Pierce filed a Motion for Partial Summary Judgment and a Motion in Limine to prevent Petitioner from presenting evidence of the amount originally billed to Judy and limit the evidence and recovery of damages to the amount actually paid. Shortly thereafter, Defendant Bennett Motors joined the motion. Petitioner filed an Answer Brief supported by supplemental authority, and the Defendants filed Responses. On August 11, 2014, the parties presented oral arguments on the matter to Judge Oldenburg who shortly thereafter granted both of the motions in favor of the Defendants. If unchanged, the Order will prevent Petitioner from presenting evidence of the amounts originally billed and will restrict damages to the amount actually paid by Judy's insurers. This case is scheduled to begin trial in the District Court on April 13, 2015. The Petitioner sought and was granted review of the Order by the Montana Supreme Court. This is a case of first impression for the Court.

III. ARGUMENTS FROM THE PARTIES' BRIEFS AND SUPPORTING AMICUS BRIEFS

A. Petitioner's Arguments on Review

According to Montana Pattern Jury Instructions, a tortfeasor is liable for "the reasonable value of necessary care, treatment and services received" and "any reasonable medical charges which were incurred in connection with the death."[3] The reasonable value of care is the amount incurred at the time of service because "a common sense understanding dictates. . . [that the injured party] is responsible for the charges from that moment forward."[4] When an insurer pays medical expenses the victim is simply relieved of previously assumed liability.[5] Therefore, a tortfeasor is liable for the total cost of medical expenses incurred regardless of the amount later paid.[6]

Montana's collateral source statute, like the majority of jurisdictions, prohibits juries from considering collateral benefits when determining an award for reasonable medical expenses.[7] Under Mont. Code Ann. § 27–1–308, a judge can reduce damages after a jury award if the plaintiff has or will receive compensation from a collateral source

[3] Pet. for Writ, *supra* n. 2, at 4–5.
[4] *Id.* at 6 (quoting *Winter v. State Farm*, 351 P.3d 665, 670 (Mont. 2014).
[5] *Id.*
[6] *Id.* at 6.
[7] *Id.* at 5–7.

without subrogation rights.[8] Shielding the jury from the collateral sources prevents prejudice when determining damages and ensures that the victim and tortfeasor are treated fairly.[9]

The Restatement (Second) of Torts § 920A(2) explains that under the collateral source rule "[p]ayments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable."[10] In the majority of U.S. jurisdictions, write-offs and write-downs—the reduction of medical expenses based on lower rates—are collateral benefits. As such, a jury should determine a tortfeasor's liability according to the reasonable value of care—not an amount reduced because of a write-off or write-down.[11]

Montana Trial Lawyers Association supported the Petitioner's claim in an amicus brief and emphasized that under Mont. Code Ann. § 27–1–307(1) collateral source benefits include payments of medical expenses available to the plaintiff from public programs and private health insurance.[12] Furthermore, the legislature's intent and Montana's statutory language prohibit the admission of collateral source benefits until after trial.[13] The Court as well as courts in other states with similar collateral source statutes, like Oregon and Minnesota, have affirmed that assistance in medical payments from insurers is inadmissible because of the prejudicial impact to the tort victim.[14]

Judy incurred $197,154.93 in liability when she was billed by her medical providers because she accepted the terms of service.[15] When her insurers paid a lower amount later they relieved her of that liability.[16] The lower amount paid by her insurers is a collateral benefit, and not credited to the Defendants under Montana's collateral source state.[17] As such, Judy's reasonable value of medical care is $197,154.93.[18] Judge Oldenburg's Order contradicts the Court's decision in *Winter v. State Farm Mutual Auto Insurance Co.* because the Order finds that Judy did not incur liability at the time of service.[19] Contrary to the collateral source rule, the Order allows the tortfeasor to be credited for the reduced amount of medical expenses.[20] If the jury considers the reduced amount,

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[8] *Id.* at 7 (citing Mont. Code. Ann. § 27–1–308(1) (2013)).
[9] Pet. for Writ, *supra* n. 2, at 9.
[10] *Id.* at 5 (citing *Restatement (Second) of Torts* § 920A (2)).
[11] *Id.* at 5–6.
[12] Amicus Curiae Br. of the Mont. Tr. Laws. Assn., *Meek v. Mont. 8th Jud. Dist. Ct.*, http://supremecourtdocket.mt.gov/search/getDocument?documentid=101646 at 4–5 (Mont. Jan. 20, 2015) (No. OP-14-0786).
[13] *Id.* at 7.
[14] *Id.* at 6–8.
[15] Pet. for Writ, *supra* n. 2 at 6.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 4–6.
[19] *Id.* at 6.
[20] *Id.*

instead of the full charges, the Petitoner will suffer a gross injustice because her special and general damages will be lower.[21] Furthermore, a settlement is unlikely if the claim is reduced.[22]

B. Defendants' Argument on Review

Compensatory damages make a plaintiff as whole as possible by redressing concrete loss.[23] However, compensatory damages are not intended to be profitable—they are intended to make the plaintiff whole.[24] When determining the reasonable value of medical care for compensatory damages, numerous courts, including the California Supreme Court, have found that the amounts initially charged by providers are insincere—bills are rarely paid in full, and the inflated rates are often arbitrary.[25] Therefore, reasonable value of medical care is best determined by the amount actually paid which prevents the plaintiff from receiving a profit and a windfall.[26]

Analogous to *Meek* is the Court's decision in *Newbury v. State Farm Fire & Casualty Ins.*[27] In *Newbury*, the Court held that the plaintiff was not entitled to recovery because all of his expenses had already been paid by workers' compensation.[28] The Court expanded on the *Newbury* holding in *Harris v. St. Vincent Healthcare*.[29] The plaintiff in *Harris* was not allowed to recover from the medical provider because the provider did not breach any contracts and the victim's expenses had been fully paid.[30] In both cases, the Court denied damages because they would be profitable and result in a windfall for the plaintiff.[31] Although the Court allowed the plaintiff to recover damages in *Winter*, the facts of the case were distinct from *Meek.*[32] In *Winter*, the insurer defendant denied a claim based on the term 'incur' as it was used in an insurance contract which allowed for double recovery.[33] Because the claim was a contracts claim, not a torts claim, the Court allowed for double recovery.[34] In dicta the *Winter* Court opined that tort claims, like the claim in *Meek*, are subject to different restrictions for damages in order to prevent a windfall for the plaintiff.[35]

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[21] Pet. for Writ, *supra* n. 2, at 9.
[22] *Id.*
[23] Response to Pet., *supra* n. 2, at 3.
[24] *Id.*
[25] *Id.* at 5–6.
[26] *Id.* at 4.
[27] 184 P.3d 1021 (Mont. 2006).
[28] Response to Pet., *supra* n. 2, at 12.
[29] 305 P.3d 852 (Mont. 2013).
[30] Response to Pet., *supra* n. 2, at 11–12.
[31] *Id.* at 12.
[32] *Id.* at 10–11.
[33] *Id.*
[34] *Id.*
[35] *Id.*

Pre-negotiated terms are not a collateral source benefits and should be admitted into evidence.[36] Mont. Code Ann. § 27-1-307 defines a collateral source as "a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff for medical expenses."[37] However, the difference in the amount billed and the amount paid is: (1) not a payment, (2) not otherwise recoverable, and (3) not a benefit provided for the plaintiff to compensate for his or her injuries.[38] According to common law, "a discounted price is not a payment…Nor has the value of damages the plaintiff avoided ever been the measure of tort recovery."[39] Therefore, any recovery resulting from the difference in the pre-negotiated medical expenses and the billed amount are damages the plaintiff would recover in the first instance from the tortfeasor.[40] Furthermore, the California Supreme Court, after interpreting a statute similar to Montana's collateral source statute, found that reduced medical costs are not a benefit to the plaintiff to compensate for their injuries.[41] The cost reduction is a strategic business decision between the insurers and providers for their own benefit.[42] Because the difference in cost is not a payment, otherwise collectible, or a benefit, it is not subject to Mont. Code Ann. § 27–1–308 nor the common law collateral source rule.[43]

IV. ANALYSIS

The *Meek* Court's holding will significantly impact Montana litigation because the amount plaintiffs can recover for medical expenses may be substantially limited by the ruling. The most important issues in this case include: (1) did Judy incur liability at the time of service; (2) what is the reasonable value of medical care; and (3) does the collateral source rule limit evidence of and damages for the differences in the amount of medical expenses charged compared to the Medicare and BCBS rates.

To determine if Judy incurred liability the Court must first define "incur" in the context of this case. In Montana, the most persuasive authority the Court can consider seems to be Justice Rice's opinion in *Winter*. Although the Respondents correctly distinguish that *Meek* is a torts claim while *Winter* presented a contracts claim, several U.S. jurisdictions have found that the "common sense" definition of incur

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[36] Response to Pet., *supra* n. 2, at 6–7.
[37] Mont Code Ann. § 27–1–307.
[38] Response to Pet., *supra* n. 2, at 5–7.
[39] *Id.* at 8 (citing *Howell v. Hamilton Meats & Provisions*, 257 P.3d 1130, 1143–1144 (Cal. 2011)).
[40] *Id.* at 8.
[41] *Id.*
[42] *Id.*
[43] *Id.* at 6–9.

applies to both types of cases.[44] Although Justice Rice wrote in dicta that damages must be different in torts and contracts cases, the definition of incur does not necessarily determine the amount of permissible damages.

If the Court finds that Judy incurred liability of the amount billed she is not guaranteed damages for that amount. Under Montana law, the Court would still need to determine if the amount billed is reasonable. The Respondent presents a compelling argument that the amount billed is arbitrarily determined and the amount actually paid is the reasonable value. The Respondent's argument is supported by both the Restatement (Second) of Torts and the California Supreme Court.[45] Furthermore, the Court has consistently ruled that if a plaintiff has been relieved of all liability they are not entitled to additional recovery which supports the Respondent's claim that compensatory damages should not be profitable.[46] The Court could find that Judy incurred liability at the time of services, but the amount charged would allow the jury to impose unreasonable damages. If the Court rules this way, the collateral source rule would necessarily need to apply so the judge can limit damages after the jury award.

The collateral source rule will only limit damages if the difference in the amount billed and the pre-negotiated terms constitute a payment, a benefit, and would otherwise be recoverable by the plaintiff—all three qualifications must be met. Again, these qualification are dependent on whether or not Judy incurred liability. For example, if she incurred liability at the time of service the tortfeasor would be liable for the full amount (even if the amount is unreasonable) so the amount would be "otherwise recoverable."

Lastly, Judge Oldenburg's Order prohibited the Petitioner from presenting evidence of the amounts billed by Judy's medical providers—an evidentiary exclusion other courts have either denied[47] or chosen not to comment on.[48] The limitation seems unprecedented and can only be upheld if Judy did not incur liability at the time of services. If she did incur liability, then presumably the amount is recoverable even if it must be later reduced by the judge to be reasonable.

Because the application of the collateral source rule in this case depends on the definition of incur, it is important that the Court ask and answer this question clearly. Any ambiguities could lead to future discrepancies in Montana district courts' interpretation of the holding.

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[44] *See Worsham v. Greenfield*, 78 A.3d 358 (Md. 2013); *W. Va. v. McGraw*, 760 S.E.2d 590 (W. Va. 2014).
[45] *See Howell*, 257 P.3d at 1138.
[46] Response to Pet., *supra* n. 2, at 11–13.
[47] *Chapman v. Mazda Motor of Am.*, 7 F.Supp.2d 1123, 1125 (Mont. 1998).
[48] *Howell*, 257 P.3d at 1146.