SUPERIOR COURT OF THE STATE OF DELAWARE

RICHARD F. STOKES

JUDGE

SUSSEX COUNTY COURTHOUSE 1 THE CIRCLE, SUITE 2 GEORGETOWN, DE 19947 TELEPHONE (302) 856-5264

December 13, 2013

Andrea G. Green, Esq. Law Office of Andrea G. Green, LLC 28412 Dupont Blvd., Suite 104 Millsboro, DE 19966 Thomas J. Gerard, Esq. 1220 North Market Street, 5th Floor P.O. Box 8888 Wilmington, DE 19899

RE: Audrey E. Sweiger v. Delaware Park, L.L.C., & Delaware Racing

Association d/b/a Delaware Park,

C.A. No. S11C-10-020 RFS

Date submitted: October 8, 2013

Dear Counsel:

Before the Court is Defendants Delaware Park, L.L.C. and Delaware Racing Association d/b/a Delaware Parks' ("Defendants") Motion *in Limine* to Preclude Plaintiff Audrey E. Sweiger ("Sweiger") from Introducing Medical Expenses Written Off and Not Owed by Plaintiff or Medicare. Defendants' Motion is **DENIED**.

Facts

This Motion stems from an incident which occurred on the evening of January

13, 2010. On that date, Plaintiff, an eighty-one-year-old woman, visited Defendants' establishment and was present in Defendants' casino at about 6:20 p.m. Plaintiff claims that she left the casino area and entered an adjacent glass-enclosed alcove, which Plaintiff believed to be a smoking room. Plaintiff then attempted to re-enter the casino through a different entrance and in doing so, walked into a unmarked glass window and fell to the floor. Plaintiff suffered bodily injuries as a result. Other glass windows within the wall contained decals, but the one into which Plaintiff walked did not.

For her injuries, Plaintiff received \$134,815.71 worth of medical services. Of this amount, Medicare paid \$59,828.03. 42 U.S.C.A. § 1395 permitted the remaining balance of \$74,987.68 to be written off. This written-off balance is the subject of this Motion.

Discussion

Defendants contend that "allowing Plaintiff to recover the written-off amounts would result in a windfall and would violate the fundamental tenets of just compensation." Defendants contend that a split in authority exists on this issue, and urge this Court to follow the reasoning of its decision in *Rice et al. v. The Chimes*,

¹ Defs.' Mot. *in Limine* to Preclude Pl. from Introducing Medical Expenses at 3 (citation omitted).

Inc.,² and not its decision in *Pardee v. Suburban Propane, L.P.*³ Further, Defendants, as contributors to Medicare themselves, contend that the Delaware Supreme Court has never addressed the specific issue of the admissibility of Medicare write-offs, but has only ruled on the admissibility of write-offs in the context of agreements between healthcare providers or individual insureds and private insurers.

Plaintiff contends that all of her medical expenses should be introduced at trial. For support, Plaintiff cites *Pardee*, and distinguishes *Rice* from her case by noting that *Rice*'s reasoning stemmed from federal case law relating to Medicaid, rather than Medicare.⁴ Additionally, Plaintiff asserts that no evidence exists in this case as to how much of her expenses were actually written off, a contention which Defendants flatly deny. Additionally, Plaintiff argues that no split in authority exists as to this issue in this case: the Delaware Supreme Court has firmly held that a plaintiff's total amount of expenses are admissible, regardless of whether certain amounts were

² Rice et al. v. The Chimes, Inc., C.A. No. 01-03-260 CLS, at 3–5 (Del. Super. Mar. 10, 2005).

³ Pardee v. Suburban Propane, L.P., 2003 WL 21213413, at *1–2 (Del. Super. Oct. 4, 2002).

⁴ Furthermore, in this regard, the Court notes the guidance from a well recognized treatise: 2 Stein on Personal Injury Damages Treatise § 13:6 (3d ed. 2013) ("Medicare payments have been held to be within the collateral source rule, and therefore not deductible from the damages awarded, since there is no apparent difference between private health insurance and Medicare except that Medicare is administered by the federal government. This rule has been applied in suits against the United States.").

written off through private agreements between healthcare providers and insurers.⁵

"Under the collateral source rule, a tortfeasor has no right to any mitigation of damages because of payments or compensation received by the injured person from an independent source." The rule stems from "the quasi-punitive nature of tort law liability," and is designed to serve as a solution to the fortunate results which can befall a doubly-recovering plaintiff or an excused defendant, with the end result favoring the former, rather than the latter. A creature of common law, the doctrine "is **firmly embedded** in [Delaware] law, and [is] recognize[d]... to be the law of this State."

In *Pardee*, this Court was confronted with the situation in which a healthcare provider was owed a sum for services rendered to the plaintiff, a Medicaid recipient. Medicaid paid a portion of that sum; and the remaining balance was waived. The Court ruled that Medicaid, as "health insurance for the needy," came under the purview of the collateral source rule.⁹ By so ruling, the Court determined that the

⁵ Pl.'s Resp. to Defs.' Mot. *in Limine* to Preclude Pl. from Introducing Medical Expenses at 4 (quoting and citing *Mitchell v. Haldar*, 883 A.2d 32 (Del. 2005)).

⁶ Yarrington v. Thornburg, 205 A.2d 1, 2 (Del. 1964).

⁷ *Mitchell v. Haldar*, 883 A.2d 32, 37–38 (Del. 2005) (citations omitted).

⁸ Yarrington, 205 A.2d at 2 (emphasis added).

⁹ Pardee v. Suburban Propane, L.P., 2003 WL 21213413, at *2 (Del. Super. Oct. 4, 2002) (quoting and citing the North Carolina Supreme Court in *Cates v. Wilson*, 361 S.E.2d 734,

remaining waived balance constituted an admissible collateral benefit.¹⁰ In *Rice*, which succeeded *Pardee*, this Court was confronted with the situation in which two healthcare providers were owed sums for services rendered to the plaintiff, a Medicaid and Medicare recipient. Medicaid paid a portion of one sum to one provider, and Medicare a portion to the other, with the remaining portions of both sums statutorily extinguished.¹¹ The Court considered "the collateral source rule . . . inapplicable to the amounts written-off by [the healthcare providers] because the rule d[id] not apply to write-offs of expenses that [were] never paid."¹² The Court further held that a windfall would result if the plaintiff received more than Medicaid and Medicare actually paid.

For purposes of this Motion, the Court will follow the reasoning of *Pardee*. In *Mitchell v. Haldar*, to which both parties cite, the Delaware Supreme Court stated that the collateral source rule dictates that a "plaintiff's damages may not be reduced because of payments for treatment paid for by medical insurance to which the

^{738 (}N.C. 1987)).

¹⁰ See id. ("Accordingly, Plaintiffs were not limited to recovering only that amount paid by Medicaid on their behalf, as the collateral source rule applied to that amount." (internal quotation marks omitted)).

¹¹ 42 C.F.R. § 447.15 extinguished the remaining portion on the amount paid by Medicaid

¹² *Rice et al. v. The Chimes, Inc.*, C.A. No. 01-03-260 CLS, at 3 (Del. Super. Mar. 10, 2005) (citation omitted) (internal quotation marks omitted).

tortfeasor did not contribute."¹³ The *Mitchell* Court considered the defendant's argument that the plaintiff could only introduce those amounts which the plaintiff's insurer actually paid to constitute "a fundamental misunderstanding of the proper application of the collateral source rule to a tortfeasor's responsibility to pay the full reasonable value of the necessary medical treatment caused by the negligent conduct."¹⁴ "The collateral source rule provides that it is the tortfeasor's responsibility to compensate for the reasonable value of all harm that he or she causes and that responsibility is not confined to the net loss that the injured party receives."¹⁵ Furthermore, one "limited statutory exemption" excluding the admission of write-offs from public sources exists in the context of medical malpractice cases.¹⁶

A reading of *Mitchell* illuminates the Delaware Supreme Court's stance on the collateral source rule as a "firmly embedded" principle. Although the *Mitchell* ruling did not explicitly address the doctrine in relation to Medicare write-offs, this Court interprets the ruling to be all-inclusive, regardless of any potential windfall that might

¹³ Mitchell, 883 A.2d at 38 (citation omitted).

¹⁴ *Id.* at 39.

¹⁵ Id. (quoting and citing another source) (internal quotation marks and brackets omitted).

¹⁶ *Id.* (citing 18 *Del. C.* § 6862). Although *Mitchell* was a medical malpractice case, the Court ruled that this exception did not apply because the statute's language specifically limited itself to *public* sources of compensation which were not present in the case.

result.¹⁷ With only narrowly defined statutory exceptions preventing the admission

of third-party waivers that are not applicable here, Plaintiff may introduce the

\$74,987.68 of Medicare write-offs, consistent with Delaware's long-standing

adherence to the collateral source rule.

Defendants' Motion in Limine to Preclude Plaintiff from Introducing Medical

Expenses Written Off and Not Owed by Plaintiff or Medicare is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Cc: Prothonotary

Judicial Case Manager

¹⁷ See id. at 38 ("[T]he tortfeasor is required to bear the cost for the full value of his or her negligent conduct even if it results in a windfall for the innocent plaintiff." (citation omitted)).

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