

SUPREME COURT OF WISCONSIN

Leitinger v. DBart, Inc., 2007 WI 84

736 N.W.2d 1 (Wis. 2007) · No. 2005AP2030 · Decided July 3, 2007

SUMMARY

The Supreme Court of Wisconsin held that the collateral source rule bars evidence of the amount actually paid by a plaintiff's health insurer for medical treatment when offered to establish the reasonable value of that treatment in a personal injury action. The court affirmed the court of appeals and remanded for proceedings consistent with its decision and the parties' stipulations. The opinion discusses the measure of medical-expense damages, the collateral source rule as both a damages and evidentiary rule, and related Wisconsin precedent.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Shirley S. Abrahamson, Chief Justice
JURISDICTION	Wisconsin
DECIDED	July 3, 2007
DOCKET	2005AP2030
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendants petitioned for review of a published Wisconsin Court of Appeals decision reversing a Milwaukee County Circuit Court judgment that allowed evidence of the amount paid by the plaintiff's health insurer to prove the reasonable value of medical treatment.
STANDARD OF REVIEW	The admission of evidence is ordinarily reviewed for an erroneous exercise of discretion; the legal interpretation and application of the collateral source rule and the relevance of the evidence are reviewed independently.
PRECEDENTIAL VALUE	published precedential Wisconsin Supreme Court opinion
PARTIES	Joseph Leitinger, Bonnie Leitinger, Services Unlimited v. DBart, Inc., d/b/a Barthenheier Construction, Inc., Heritage Mutual Insurance Company, n/k/a Acuity, a mutual insurance company

TOPICS

evidence

personal injury

damages

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the proper measure of medical-expense damages in a personal injury action is the reasonable value of reasonably necessary medical treatment.
2. Whether the collateral source rule prohibits admission of the amount actually paid by a plaintiff's health insurer to prove the reasonable value of medical treatment.
3. Whether Wisconsin Statute section 893.55(7), as interpreted in *Lagerstrom*, permits admission of collateral-source payment evidence in this non-medical-malpractice personal injury action.

HOLDINGS

1. In a personal injury action, the proper measure of damages for medical treatment is the reasonable value of treatment reasonably required by the injury, not necessarily the amount billed or the amount actually paid.
2. The collateral source rule prohibits parties in a personal injury action from introducing evidence of the amount actually paid by the injured person's health insurer for medical treatment to prove the reasonable value of that treatment.
3. Wisconsin Statute section 893.55(7), which permits collateral-source evidence in medical-malpractice actions, does not make such evidence admissible in this ordinary personal injury action.

KEY QUOTATIONS

"We hold, as did the court of appeals, that the collateral source rule prohibits parties in a personal injury action from introducing evidence of the amount actually paid by a collateral source for medical treatment rendered to prove the reasonable value of the medical treatment." (736 N.W.2d at 18-19)

"The proper measure of damages for medical treatment rendered in a personal injury action is the reasonable value of the medical treatment reasonably required by the injury." (736 N.W.2d at 6)

"The truth-seeking function of a trial is assisted, not perverted, by applying the collateral source rule and excluding the amount actually paid by a collateral source in the present case." (736 N.W.2d at 17)

FACTUAL BACKGROUND

Joseph Leitinger fell approximately 30 feet through a floor at a construction site and sustained serious injuries. His medical providers billed \$154,818.51, but his health insurer paid \$111,394.73 pursuant to negotiated discounts and protected its subrogation rights. The parties disputed whether the amount actually paid by the health insurer could be admitted to establish the reasonable value of the medical treatment.

PROCEDURAL HISTORY

Joseph Leitinger and others brought a personal injury action arising from a construction-site accident. The circuit court admitted evidence of the amount actually paid by Leitinger's health insurer and entered judgment based on that amount. The court of appeals reversed, holding that the collateral source rule barred the evidence. The Wisconsin Supreme Court affirmed the court of appeals and remanded for proceedings consistent with its decision and the parties' stipulations.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remand to the circuit court for proceedings consistent with the Wisconsin Supreme Court's decision and the parties' stipulations, including treatment of the medical-expense award under the collateral source rule.

CASES CITED

- Koffman v. Leichtfuss, 2001 WI 111, 246 Wis. 2d 31, 630 N.W.2d 201
- Ellsworth v. Schelbrock, 2000 WI 63, 235 Wis. 2d 678, 611 N.W.2d 764
- Lagerstrom v. Myrtle Werth Hospital, 2005 WI 124, 285 Wis. 2d 1, 700 N.W.2d 201
- Cunnien v. Superior Iron Works Co., 175 Wis. 172, 184 N.W. 767 (1921)
- Hack v. State Farm Mutual Automobile Insurance Co., 37 Wis. 2d 1, 154 N.W.2d 320 (1967)
- Thoreson v. Milwaukee & Suburban Transp. Corp., 56 Wis. 2d 231, 201 N.W.2d 745 (1972)
- McLaughlin v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co., 31 Wis. 2d 378, 143 N.W.2d 32 (1966)
- Lautenschlager v. Hamburg, 41 Wis. 2d 623, 165 N.W.2d 129 (1969)
- Leitinger v. Van Buren Mgmt., Inc., 2006 WI App 146, 295 Wis. 2d 372, 720 N.W.2d 152
- State v. Muckerheide, 2007 WI 5, 298 Wis. 2d 553, 725 N.W.2d 930
- Kenosha Hosp. & Med. Ctr. v. Garcia, 2004 WI 105, 274 Wis. 2d 338, 683 N.W.2d 425
- Estate of Rille v. Physicians Ins. Co., 2007 WI 36, 300 Wis. 2d 1, 728 N.W.2d 693
- Voge v. Anderson, 181 Wis. 2d 726, 512 N.W.2d 749 (1994)
- Lambert v. Wensch, 135 Wis. 2d 105, 399 N.W.2d 369 (1987)