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New limitation applied to recovery of medical payments under Section 8(a)

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I. Introduction

In a case of first impression, the Illinois Appellate Court, in *Tower Automotive v. Illinois Workers Compensation Commission*, 407 Ill. App.3d 427, 943 N.E.2d 153, 347 Ill.Dec. 863, Ill.App 2011 WL 341234 (Ill. App. 1st Dist. Jan. 31, 2011), restricted the amount of recovery that an injured worker can claim for medical bills when those bills are paid by a source, other than the employer or employer's workers' compensation insurance carrier. In Tower Automotive, the wife of the injured worker had group insurance, which was used to pay for the disputed medical bills. The court resolved the vexing issue as to whether recovery is limited to the amount paid by the wife's group insurance, or whether the claimant may recover the full amount of the medical bills. This is an extremely significant case, and will clearly have a significant impact on those claims for medical benefits prior to February 1, 2006, the effective date of the amendment to Section 8(a) in 2005. 820 ILCS 305/8(a).

The appellate court has determined that the collateral source rule is not applicable to the payment of medical bills under the Workers' Compensation Act ("Act"). Future litigation will involve interpreting the holding of the decision to determine whether it is applicable for interpreting key provisions of the amendments to Section 8(a). In essence, future litigation will determine whether the payment of medical bills by a source other than the employer or employer's group insurance will qualify as the "negotiated rate," thereby limiting recovery of medical benefits for those claims for payment of medical bills after February 1, 2006.

II. Background

In *Arthur v. Catour*, 216 Ill.2d 72, 833 N.E.2d 847 (2005), the Illinois Supreme Court addressed the issue of whether a plaintiff at common law could recover the full amount billed by a medical provider or the amount paid by a group insurance carrier. In Arthur, the plaintiff incurred $19,314.07 in medical expenses, but due to a contractual agreement between the plaintiff's healthcare provider and insurance company, the group insurance carrier paid $13,577.97. Id. The court held that the plaintiff could recover the amount billed by the medical provider. Id. The court based its decision on the collateral source rule, which states that "benefits received by the injured party from a source wholly independent of, and collateral to, the tortfeasor will not diminish the damages otherwise recoverable from the tortfeasor." Id. The court in Arthur set forth that the justification for the collateral source rule is that a tortfeasor should not take advantage of the contracts that exist for the benefit of the injured party where the tortfeasor does not contribute to the cost of the contract. 216 Ill.2d 72.

III. Facts

In Tower Automotive, Claimant worked for Employer as a material handler. In May of 2005, he began experiencing tingling in his hands and elbows as a result of a cervical spine injury. He sought medical treatment, which included various diagnostic tests, physical therapy and two (2) surgeries, a C3-C5 cervical fusion and a revision to the original fusion. At the arbitration hearing, Claimant testified that the medical expenses were paid for by the group insurance provided by his wife's employer. The total amount that the medical providers charged was $165,167.54. Of the $165,167.54, Claimant paid $1,183.27 out of pocket, the group insurance carrier paid $52,671.82 and the health care providers wrote off $111,298.35 of their charges.

The Arbitrator awarded Petitioner $165,289.16 in medical expenses, which represented the actual amount charged by the medical providers for medical services rendered. The Commission affirmed and adopted the Arbitrator's decision. The circuit court confirmed the Commission's decision.

IV. Appellate Court Decision

Respondent argued that the maximum that it was required to pay Claimant for the medical bills was the amount actually paid to the medical providers. The appellate court agreed with Respondent and reversed the holding of the circuit court with regard to the payment of the medical bills. The court noted that Section 8(a) requires the employer to "provide and pay" for all necessary medical care related to the work-related accident. (The authors acknowledge that the court also decided the issues of causal connection and whether Claimant's overtime should be included in the calculation of his average weekly wage. These issues will not be discussed in this article).

Claimant relied on the "collateral source rule" to argue that Respondent was required to pay the full amount charged by the medical providers and not the reduced amount that was paid by group insurance. Claimant relied on the Arthur case to support its argument.

The court noted that workers' compensation is a remedial statute and, as a result, must be distinguishable from an action in tort. There is no "wrongdoer" in a workers' compensation claim. With regard to payment of the medical bills, the court noted that the purpose of the Act is to relieve the employee of the costs and burdens on his care. By limiting the amount the employer is required to pay under the Act to the amount actually paid, the purpose of the Act is satisfied. Thus, the court found that the collateral source rule did not apply to the right to recover under the Act. The collateral source rule is confined to the common law case.

The court noted in dicta that the holding "is of limited significance, as the legislature has seen fit to amend section 8(a) of the Act to provide that employers are obligated to provide and pay 'the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered.'" 820 ILCS 305/8(a).

Justice Stewart dissented in part and concurred in part. The dissent would have held that the collateral source rule did apply to workers' compensation claims. Thus, the employer would have been obligated to pay the full amount charged by a medical provider. The dissent noted that when the Act was amended, "no provision was made for a reduction of the amount billed to the amount paid to the medical provider through a third party health insurance contract." The dissent would have held that the employer is obligated to pay the reasonable value of the medical services rendered to the employee. In support of its decision, the dissent relied upon *Hill Freight Lines, Inc. v. Industrial Commission*, 36 Ill.2d 419, 223 N.E.2d 140 (1967).

V. Analyzing the "Dicta"

Tower Automotive resolved the issue of whether an employer's obligation for payment of medical bills is limited to the actual charges for medical services or the amount paid by group insurance for medical services provided before February 1, 2006. However, the definition of negotiated rate and whether group insurance payments are included within the definition of "negotiated rate" remains at issue for post amendment cases. The dicta in the majority opinion creates significant questions as to whether group insurance payments should be considered a negotiated rate under Section 8(a).

What is the meaning of the dicta in Tower Automotive? The dicta may imply that payments made by a group insurance provider would be considered a negotiated rate under Section 8(a).* However, the court does not directly state that group insurance payments are to be considered the negotiated rate. It is also unclear whether the dicta in Tower Automotive applies to all group insurance payments or only those payments made by a spouse's group insurance. These two issues must be decided by a future court. ■

*The dissenting opinion may support this interpretation of the dicta. The dissent expressly noted that in the amended Act "no provision was made for a reduction of the amount billed to the amount paid to the medical provider through a third party health insurance contact." The dissent also expressed concern over the majority's holding based on public policy. It explained that employers may deny claims so that group insurance would pay the medical bill. The employer would receive the benefit of the bargain that the group insurance carrier has with the medical provider. Thus, the concern expressed by the dissent, in light of its comment that the amended Section 8(a) does not specifically include group insurance payments, may imply that the majority would consider payments made by a group insurance carrier a negotiated rate under the amended Act.