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How Requiring Uninsured Patients to Pay Chargemaster Rates Impacts Personal Injury Cases

This week we revisit our discussion from December 8 on the role of medical expenses in personal injury cases. The rise for this return to our prior discussion so quickly is the Indiana Supreme Court decision this past week in *Allen v. Clarian Health Partners, Inc*. This case has drawn the attention of many attorneys even outside of Indiana. It is, in very many ways, an interesting confluence of divergent interests that helped to facilitate its result. Mind you, I have led off with the fact that *Allen* has induced me to revisit our prior discussion on medical expenses in personal injury cases; however, the case itself has absolutely nothing to do with a personal injury claim. What the court decided in *Allen* is that a patient of Clarian North Hospital who signed an agreement guaranteeing payment of his medical expenses where the agreement did not specify the prices was required to pay the "chargemaster" rates.

The *Allen* case is at its core a breach of contract case. Interestingly, the case is unmistakably a contract case, yet the cause number for the case reveals that it is a much more complex issue than that. For those readers unfamiliar with how Indiana

state court cause numbers work, let me provide a brief, but very useful, explanation. The cause number for the case, before the Supreme Court, was 49S02-1203-CT-140. Under Indiana Administrative Rule 8, when a case is filed the filing party must designate the type of case to be filed. The type of case is a two letter code placed in the third segment of the cause number. Here you see a cause number that lists "CT." CT is the designation used for civil tort claims. A contract claim should bear the designation PL for civil plenary cases.

As I said, the case is fundamentally a breach of contract case. However, it draws its basic arguments from the personal injury case *Stanley v. Walker*, which held that an injured person is entitled to the "reasonable cost of medical expenses." *Allen* was filed as purported class action. Miss Allen and her co-plaintiff Mr. Walter Moore hoped to recover the charges paid by injured persons in excess of the reasonable cost of medical expenses – an amount that he argued was less than the charged amounts.

The case arose from hospital visits made by the uninsured plaintiffs. Neither Mr. Moore nor Miss Allen received Medicare or Medicaid. Upon admission to the hospital, each was handed an agreement that bound them to guaranty "payment of the account." However, the agreement never specified the rates that they were to pay. After receiving the services of the hospital, each patient was charged an amount based upon the "chargemaster rates." "The 'chargemaster,' also referred to as the 'charge description master,' is 'a listing of the amount charged by a hospital for each service, item and procedure: (A) provided by the hospital; and (B) for which a separate charge exists.'" Plaintiffs alleged that these rates are <u>only</u> charged to uninsured patients and are higher than the rates paid by or on behalf of anyone else.

Plaintiffs filed a case claiming that because the agreement did not specifically name the prices for the services to be rendered, they were only required to pay a reasonable rate and that the chargemaster rates were not reasonable. The trial judge disagreed and dismissed the case. On appeal, the Indiana Court of Appeals found that because the contract was silent as to the price, plaintiffs were correct, and a reasonable price is all they were required to pay. Due to the procedural stage of the case, the court of appeals was not able to say whether the chargemaster rates were reasonable or not. The Indiana Supreme Court disagreed with both plaintiffs and the unanimous court of appeals. In a unanimous decision, the court found that the patients were liable for the full amounts of the chargemaster rates.

Now that we know the outcome, let us look at how the court got there. Under Indiana law, "[w]here there is an agreement that compensation is to be paid but the price is not fixed, the party furnishing services and materials in performance of the

contract is entitled to the reasonable value thereof." Thus, the issue was whether the agreement was really silent as to the price. The Supreme Court held that the contract was not actually silent as to the price term.

The court found that a contract is not silent as to the price even though it does not specify a specific dollar amount. This is especially important in the medical services context where, the court noted, "precision concerning price is close to impossible." Citing to a Third Circuit decision, the court found that "the only practical way in which the obligations of the patient to pay can be set forth, given the fact that nobody yet knows just what condition the patient has, and what treatments will be necessary to remedy what ails him or her" is to use a chargemaster rates system. As such, the court was willing to apply the chargemaster rates and enforce the contract under that term.

The court also rejected the plaintiffs' reliance upon *Stanley v. Walker*. The court determined that *Stanley v. Walker* applies only to personal injury cases and has no impact upon a breach of contract case. Moreover, *Stanley v. Walker* focused upon admission of evidence. As such, the court gave it no value in determining the breach of contract claim before it in *Allen*.

Impact of *Allen* on Personal Injury Cases

We have discussed heavily that *Allen* is a breach of contract case and not a personal injury case. So, if you've been following along, you are probably wondering what this has to do with personal injury cases. Recall from our December 8 discussion that medical expenses have a major impact in personal injury cases. It does this because: (A) insurance companies and defense attorneys often use medical expenses as a factor in a multiplier to evaluate pain and suffering for settlement purposes; and (B) in Indiana, a plaintiff is only entitled to the reasonable cost of medical expenses.

This case has created a very perplexing result. It inherently recognizes that uninsured patients get the shaft when it comes to medical treatment. The chargemaster rates are set for several reasons – the least of which being that they provide a negotiation point which providers can reduce in negotiations with Medicare, Medicaid, and private insurers. Heck, Indiana Code section 11-10-3-6(d)(1) provides that the state of Indiana only pays 65% of the chargemaster rates for treatment of inmates. More importantly, however, is that it has created a potentially ludicrous result for uninsured personal injury plaintiffs. A medical provider can seek full payment of the chargemaster rates, yet the injured person is only entitled to recover the "reasonable costs of medical expenses."

What this means is that if Miss Allen and Mr. Moore are correct and the chargemaster rates are not reasonable, then an injured plaintiff is not entitled to recover the full chargemaster rate. This means that if the plaintiff makes a recovery, he would actually have to pay a hospital more money than the jury awarded him for his medical costs. Kid you not, that is the absurd result that was created by this ruling. If this ridiculous result is to be avoided, a court must actually recognize that the chargemaster rates are the reasonable rate for an uninsured person. Mind you, this is logically absurd. However, I believe it is exactly what we will see as a practical matter. It is almost required out of necessity.

Recall that I said earlier that this case is the result of a confluence of divergent interests. What I mean by that is the case fell into a peculiar scenario in which personal injury attorneys and defense attorneys would benefit from the same outcome but for drastically different reasons. With this decision, personal injury attorneys are able to use the chargemaster rates in negotiating settlements for their uninsured clients. This allows for a higher valued factor in application of the multipliers used by insurance companies and defense counsel. Defense attorneys, on the other hand, were able to survive any refinement to *Stanley v. Walker* that would unsettle the power it gave them in the settlement realm. The ultimate victim? The uninsured individuals in Indiana.

The *Allen* decision is absolutely a mixed bag. It is a major benefit for negotiating a settlement for an uninsured personal injury client. However, it serves a ridiculous injustice upon the uninsured persons of the state who do not benefit from Medicare or Medicaid. Ultimately, the answer to this problem must come from the healthcare industry. There must be some recognition of the barbaric injustice that charging the chargemaster rates serves upon the uninsured.

Join us again next time for further discussion of developments in the law.

Sources

- *Allen v. Clarian Health Partners, Inc.*, 980 N.E.2d 306 (Ind. 2012).
- *Allen v. Clarian Health Partners, Inc.*, 955 N.E.2d 804 (Ind. Ct. App. 2011), *trans. granted*, 963 N.E.2d 1120 (Ind. 2012).
- *Stanley v. Walker*, 906 N.E.2d 852 (Ind. 2009).
- *DiCarlo v. St. Mary Hosp.*, 530 F.3d 255 (3d Cir. 2008).

- King & Spalding, *Upcoming Indiana Case Will Rule on Hospital Billing of Uninsured Patients*, JDSupra.com (May 10, 2012).

- Indiana Code section 11-10-3-6(b)(1) – defining "charge description master."

- Indiana Code section 11-10-3-6(d)(1) – providing discount to state for medical treatment of inmates.

- Indiana Administrative Rule 8

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