

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

ERNEST A. LONG

Alternative Dispute Resolution

❖ Resolution Arts Building ❖

2630 J Street, Sacramento, CA 95816

ph: (916) 442-6739 • fx: (916) 442-4107

elong@ernestalongadr.com • www.ernestalongadr.com

Dodd v Cruz 2/5/14

Economic Damages; Medical Charges Paid by a Factor; Relevance

Following a motor vehicle accident, Dodd sued Cruz for causing his personal injuries in the event. Dodd claimed a shoulder injury and received treatment at Kaiser. Later, a surgeon at Coast Surgery Center performed a rotator cuff repair surgery for Dodd. Cruz claimed Dodd's attorney referred Dodd to Coast for the surgery, which was undertaken on a lien.

On the same day as surgery, Coast sold its account receivable and lien against Dodd to MedFi, a company that asserts it is in the business of purchasing accounts receivable from businesses, including health providers, "at a discount." MedFi's vice president expected to be paid by Dodd for 100 percent of the "book value" of the health care provider's charges, regardless of what the court or jury decided is the reasonable cost of such care. MedFi concedes that its president is Dodd's attorney. Cruz contends there was an arrangement among MedFi, plaintiff's counsel, and Coast that was rife with the potential for collusion. MedFi and Dodd deny this allegation.

Cruz served MedFi with a deposition subpoena for production of business records, which MedFi refused to honor. The dispute was narrowed to three documents, (1) the contract between Coast and MedFi dated four years before Dodd's surgery, (2) a redacted "Creditor's Assignment of Claim," and (3) MedFi's Open Lien Detail." MedFi conceded the documents related to lien contracts with Coast that included evidence of the amount MedFi paid for its lien on Dodd's recovery, if any, against Cruz. It objected to production on the basis the documents were confidential, proprietary and irrelevant.

Unable to resolve this dispute, MedFi filed a motion to quash Cruz's subpoena. MedFi sought sanctions of \$5,600 against Cruz. The Superior Court entered an order granting MedFi's motion on the ground the information sought by the subpoena is irrelevant. Sanctions in the amount sought by Dodd were granted as well. This appeal followed.

An order granting monetary sanctions is immediately appealable, although a discovery order is ordinarily not separately appealable. The Second District Court of Appeal explained that if a non-appealable substantive ruling on a discovery matter is "inextricably intertwined" with an appealable order directing monetary sanctions, the substantive ruling may be reviewed. (*Mileikowsky v Tenet Healthsystem* (2005) 128 Cal.App.4th 262) Here, the court's ruling granting MedFi's motion to quash was inextricably intertwined with its imposition of sanctions. If the superior court erroneously quashed the subpoena, there was no basis for sanctions. Accordingly, the merits of the court's ruling on the motion to quash may be reviewed on appeal.

The scope of permissible discovery is very broad. Admissibility of the discovery is not the test, but rather the test is whether the information sought might reasonably lead to other, admissible evidence. Any doubts regarding relevance are generally resolved in favor of allowing the discovery. Although the court has discretion in granting or denying discovery motions, it is obligated to construe the discovery statutes liberally in favor of disclosure. (*Emerson Electric Co. v Superior Court* (1997) 16 Cal.4th 1101) The broad scope of permissible discovery under the Civil Discovery Act "is equally applicable to discovery of information from a nonparty as it is to parties in the pending suit." (*Johnson v Superior Court* (2000) 80 Cal.App.4th 1050)

Prior to trial, a party may serve a deposition subpoena for the production of business records on a nonparty. (CCP section 2024.410) The Second DCA evaluated the subpoena to MedFi to determine whether the three documents were discoverable. The parties agreed that economic damages are an issue in the case, and defendant contended the documents are discoverable because they are relevant to the damages, or, at a minimum, the subpoena is reasonably calculated to lead to the discovery of admissible evidence. The Justices turned to the measure of damages for past medical expenses to resolve the issue.

A plaintiff may recover as economic damages no more than the reasonable value of the medical services rendered and is not entitled to recover the reasonable value if his or her actual loss was less. (Howell v Hamilton Meats & Provisions, Inc. (2011) 52 Cal.4th 541) In other words, damages for past medical expenses are limited to the lesser of (1) the amount paid or incurred for past medical expenses and (2) the reasonable value of the services. (Corenbaum v Lampkin (2013) 215 Cal.App.4th 1308) The amount a health care provider bills a plaintiff for its medical services is not relevant to the amount of the plaintiff's economic damages for past medical services. This is because a medical care provider's billed price for particular services is not necessarily representative of either the cost of providing those services or their market value. (Corenbaum, at p. 1326)

The Howell court concluded that when a medical care provider has, by agreement with the plaintiff's private health insurer, accepted as full payment for the plaintiff's care an amount less than the provider's full bill, evidence of that amount is relevant to prove the plaintiff's damages for past medical expenses and, assuming it satisfies other rules of evidence, is admissible at trial. The holding is consistent with earlier cases that held the amount paid for medical services is some evidence of reasonable value. (Dewhirst v Leopold (1924) 194 Cal. 424)

The Howell opinion expressly distinguished its fact pattern from Katiuzhinsky v Perry (2007) 152 Cal.App.4th 1288) where the plaintiffs remained fully liable to a factor for the amount of the medical provider's charges for care and treatment. The amount paid by a factor for a medical lien may be different than the reasonable value of medical services because when a health care provider sells its lien to a factor, it transfers the expense of collection and the risk of nonpayment onto someone else. (Katiuzhinsky, at p. 1298)

The Justices explained that here, the subpoena is reasonably calculated to lead to the discovery of admissible evidence relating to the reasonable value of Coast's services. The subpoenaed documents, for example, could reveal what Coast believed was the reasonable value of its services, apart from its calculation of the expense and risk of collection. This would be at least some evidence of the

reasonable value of Coast's services. Noting that both sides would submit expert testimony at trial on the reasonable value of medical services, the DCA commented that the materials sought by subpoena, whether or not admissible at trial, could be reasonably relied upon by an expert. Conceivably, defendant's expert could base his or her opinion about the reasonable value of Coast's medical services, at least in part, on the amount Coast accepted from MedFi as full payment for its services.

The subpoena is also calculated to lead to the discovery of admissible evidence relating to the amount of medical expenses Dodd actually incurred. Although MedFi and Dodd contend that Dodd is responsible for 100% of Coast's billed amount, Cruz disputes that contention. The Appellate Court ruled that Cruz is entitled to obtain documents relating to MedFi's collection activity and policies and procedures, because they may support Cruz's position that Dodd is not actually responsible for the full amount billed.

Plaintiff relied on Katiuzhinsky, where a medical finance company (the factor) purchased accounts receivable from the plaintiff's health care providers. At trial, the superior court forbade the plaintiffs from recovering or introducing evidence of medical expenses beyond the discounted rate paid by the factor to the plaintiff's providers. The Court of Appeal reversed, holding that "there was no basis in law to prevent the jurors from receiving evidence of the amounts billed, as they reflected on the nature and extent of plaintiff's injuries and were therefore relevant to their assessment of an overall general damage award." (Katiuzhinsky, at p. 1296)

The current case on appeal is different because it is still in the discovery phase and there is no decision required about admissibility. The Justices indicated that nothing in their opinion prohibits Dodd from arguing and admitting evidence showing that the amount MedFi paid for its lien was less than the reasonable value of Coast's medical services. Katiuzhinsky is distinguishable from this case because it addressed an issue not reached here, whether the amount a factor pays for a medical lien is the maximum amount the plaintiff can recover as economic damages for the associated medical services. Katiuzhinsky does not support respondent's arguments on appeal.

Thus, the Court declined to review the question of admissibility. It found that the documents sought in Cruz's demand were reasonably calculated to lead to the discovery of admissible evidence. The superior court thus abused its discretion in granting MedFi's motion to quash. The order granting MedFi's motion to quash is reversed. Defendant is awarded costs on appeal.

All Case Studies and original Opinions from 2008 through the present are now archived on our Website:

<http://www.ernestalongadr.com/index.php/library.html>

////

This case study is provided in the hope it may prove useful in your practice or in the handling of litigated cases. If you receive a forwarded copy of this message and would like to be added to the mailing list, let me know.

Mediation and Binding Arbitration are economical, private and final. Alternative dispute resolution will allow you to dispose of cases without the undue time consumption, costs and risks of the courtroom. Your inquiries regarding an alternative means to resolve your case are welcome.