



HALL & EVANS OBTAINS LANDMARK VICTORY IN COLORADO SUPREME COURT OPINION THAT LIMITS WINDFALL CLAIMS BY PLAINTIFFS WHO RECEIVE WORKERS' COMPENSATION BENEFITS

In a sea change for Colorado law, the Colorado Supreme Court in *Gill v. Waltz*, 2021 CO 21, and its companion case, *Delta Air Lines, Inc. v. Scholle*, 2021 CO 20, held a plaintiff cannot recover medical expenses which were paid by the plaintiff's workers' compensation insurance carrier if the defendant already paid for those expenses by settling the carrier's subrogation claim. This is the first holding in decades that narrows the scope of Colorado's strict Collateral Source Rule, which generally permits plaintiffs to recover the "billed" amount of medical expenses, which often is inflated, without regard for amounts actually "paid" by insurance. The Supreme Court held that the collateral source rule does not apply when a defendant has settled a workers' compensation carrier's subrogation claim because the settlement "extinguishes" the plaintiff's "cause of action" to recover the damages paid by insurance.

In *Gill v. Waltz*, Plaintiff received workers' compensation benefits following an automobile accident, including medical expenses totaling \$57,227.13 pursuant to Colorado's statutory fee schedules, which limit the amount medical providers are permitted to charge workers' compensation patients. Nonetheless, Plaintiff's medical providers issued bills totaling \$627,809.76 – far in excess of the statutory limits. Before Plaintiff filed suit, Defendants settled the workers' compensation carrier's subrogation claim. After Plaintiff filed suit, Defendants moved the trial court to preclude evidence of Plaintiff's past medical expenses on the grounds Defendants had already paid those expenses when they settled the workers' compensation subrogation claim. In response, Plaintiff argued he should be permitted to recover the difference between the amount "billed" and the amount "paid" under Colorado's Collateral Source Rule.

In an opinion mirroring the arguments in Hall & Evans' brief, the Colorado Supreme Court accepted Defendants' argument, holding the settlement between Defendants and the workers' compensation carrier "extinguished any claim for damages arising out of the services for which [Defendants] paid." When Defendants settled the subrogation claim, the settlement extinguished Plaintiff's entire cause of action for past medical expenses totaling nearly \$630,000. In so holding, the Colorado Supreme Court overturned a recent Colorado Court of Appeals opinion which reasoned to the contrary, clarifying plaintiffs cannot recover such extinguished amounts.

This landmark holding will limit windfalls while helping to make injured workers whole. The decision should benefit employers and employees alike by encouraging settlement of workers' compensation subrogation claims, helping to minimize workers' compensation premiums while ensuring that employees receive fast and efficient access to medical benefits. The holding should also prevent plaintiffs' attorneys from seeking inflated medical expenses which exceed the reasonable charges established by the State of Colorado in third-party claims on behalf of plaintiffs who received workers' compensation benefits for on-the-job injuries they sustain allegedly at the hands of a third-party tortfeasor.

If you have any questions about this update, please contact Daniel J. Bristol, bristold@hallevans.com.

