IN THE SUPERIOR COURT OF CRISP COUNTY

STATE OF GEORGIA

EDWARD WARE, Plaintiff, v. LEE EDWARDS, Defendant.	Civil Action File No.: 18V-019

ORDER

Union Insurance Company ["Union"], the underinsured motorist carrier for Plaintiff, acting in the name of Defendant Lee Edwards pursuant to O.C.G.A. §33-7-11(d), moved this Court for partial summary judgment as to set off for medical treatment and disability benefits, and in limine with regard to medical bills beyond the workers' compensation schedule prices that were paid. For the reasons set forth below, the motion is GRANTED.

This suit arises out of a motor vehicle collision between Plaintiff and Defendant. The evidence shows that Defendant possessed liability insurance in the amount of $25,000, and the limit was paid to Plaintiff in exchange for a statutory limited release of Defendant.

At the time of the accident, Plaintiff's employer possessed underinsured motorist coverage with Union. Because Plaintiff was driving his employer's vehicle, he was covered under the UM policy, and Plaintiff served Union with a copy of the Complaint in this suit in order to pursue UM coverage under O.C.G.A. § 33-7-11.

A UM policy such as Union's "may contain provisions which exclude any liability of the insurer for . . . bodily injury . . . for which the insured has been . . . compensated pursuant

to workers' compensation laws." O.C.G.A. § 33-7-11(i). Union's policy contained such a provision. (CA 31 37 10 13, §D.2, p. 2/4, Georgia Uninsured Motorist Coverage).

At the time of the accident, Plaintiff was in the scope of employment with his employer, and he submitted a claim for workers' compensation benefits.

Allegedly, as a result of the accident, Plaintiff underwent various medical treatment, including two surgeries on his left shoulder. The workers' compensation carrier has paid or will pay all expenses for all treatment, which allegedly was caused by the accident, under the rate schedules, which were created under Title 34. See O.C.G.A. § 34-9-205; Worker's Comp. Rule 203(a). The evidence shows that, at last account, the amount paid regarding medical treatment was $72,311.83.[1]

Therefore, pursuant to O.C.G.A. § 33-7-11(i), this Court finds that, as a matter of law, Union is entitled to set off all amounts paid by the workers' compensation carrier for Plaintiff's care, currently established at $72,311.83.

However, the inquiry does not stop there, because Plaintiff contends that he is entitled to present medical "bills" to the jury, which contain the providers' highest rates, even though those rates were not applied to Plaintiff's treatment and even though they exceed the charges allowed under the workers' compensation system.

In response, Union contends that Plaintiff should not be allowed to present those figures to the jury, arguing that they misrepresent the actual charges and essentially violate the statutory schedule of charges created under Title 34, citing Dennis v. D&F Equipment

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[1] The evidence also shows that the worker's compensation program paid $1,000 to Dr. T. Scott McGee for an IME and paid $14,848.92 to a medical case manager to assist with the management of Mr. Ware's care; however, Plaintiff has stated that he is not seeking damages for those services, and Union has withdrawn its assertions as to those services and payments.

Sales, Inc., 2016 WL 3753085 (7/11/2016 M.D. GA, unreported). In Dennis, Judge Hugh Lawson held that the plaintiff's receipt of medical treatment through the workers' compensation system prevented him from informing the jury about his medical providers' higher prices. In granting the defendant's motion in limine, Judge Lawson held that, where a plaintiff's treatment was paid under the workers' compensation system, as a matter of law the applicable "reasonable and customary rates" are the amounts, which were due under the workers' compensation schedule.

This Court agrees with Judge Lawson's reasoning. In passing O.C.G.A. § 34-9-205, the Georgia Legislature declared that, where a person has been injured while under the workers' compensation system, there is one reasonable rate for each type of treatment—the price set forth in the statutory medical schedule. Similarly, the administrative rule declares, "Medical expenses shall be limited to the usual, customary and reasonable charges as found by the Board pursuant to O.C.G.A. § 34-9-205." Worker's Comp. Rule 203(a). Because those are the rates, which were applied to and paid as to Plaintiff's treatment, by law those, are the reasonable and customary rates, and Plaintiff cannot deviate upwards by informing the jury about higher "prices" which those providers sometimes submit on patients' bills. This Court has broad discretion to exclude irrelevant evidence, such as those other medical bill amounts. See generally Johnson v. Riverdale Anesthesia Associates, P.C., 275 Ga. 240, 242 (2002).

This Court similarly finds that O.C.G.A. § 33-7-11(i) prevents Plaintiff from attempting to recover the "balance" between the workers' compensation medical payments and the higher price amounts which Plaintiff desires to present to the jury, because Plaintiff has been fully compensated regarding that treatment. That statute and the Union policy "exclude any liability of [Union] for . . . bodily injury . . . for which the insured has been . . .

compensated pursuant to workers' compensation laws." In this instance, the compensation, which Plaintiff received, was all medical treatment relating to the accident. Regardless of the other prices which the providers' state on their bills, versus the amounts which the providers accepted as full payment by the workers' compensation carrier, the compensation was the treatment itself, so Plaintiff cannot recover any amount for that treatment.

This Court also finds that O.C.G.A. § 33-7-11(i) entitles Union to set off the various indemnity payments which were made to Plaintiff and to his attorney. Temporary Total Disability and Temporary Partial Disability benefits that were paid on Plaintiff's behalf amounted to $6,196.731.[2] Because those indemnity benefits were provided by Title 34 as a means of compensating Plaintiff for his lost wages, that amount is to be set off from any lost wages awarded by the jury.

Similarly, Plaintiff is entitled to $11,047.95 in Permanent Partial Disability benefits under the workers' compensation system. Plaintiff has alleged that, as an element of his general damages, he is entitled to recover for his partial disability. Because the PPD benefits have compensated him for that element of damages, Union is entitled to set off from the Plaintiff's lost wages the full amount paid in PPD benefits.

Plaintiff's reliance upon Mabry v. State Farm Mutual Auto. Ins. Co., 334 Ga. App. 785 (2016) is misplaced. In that case, the UM carrier essentially was attempting to reduce its' UM limits by setting off payments; it contended that it was impossible for there to be any UM exposure because the workers' compensation payments exceeded the UM limits. That is quite different from Union getting set offs for specific damage while still providing its full

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[2] Some of those benefits were paid directly to Plaintiff's attorney under their contingency fee arrangement, but the amounts which were paid to the attorney were part of the benefits to which Mr. Ware was entitled under the worker's compensation program, and therefore the entire amount is to be set off.

limits in the event of a judgment which reaches that level. Moreover, in Mabry no set off was available because the categories of damages sought by the plaintiff differed from the types of damages which the workers' compensation carrier had paid. Here, Union is seeking to set off benefits for medical treatment, lost income, and disability from those same items of damages sought by Plaintiff.

Likewise, Georgia Farm Bureau Mut. Ins. Co. v. Rockefeller, 343 Ga. App. 36 (2018) does not prevent Union from obtaining set off under these facts. In Rockefeller, the UM carrier had sought to defeat coverage by simply comparing the total amount of workers' compensation benefits paid to the amount of UM limits, without attempting to set off specific elements of damages. Again, Union is not seeking to reduce its limits or to obtain "apples-to-oranges" set offs.

Hammond v. Lee, 244 Ga. App. 865 (2000) does not prevent full set off, either. That case does not involve the statutory provision which allows a UM carrier to avoid paying for damages which were compensated through another source. Instead, that case involved a workers' compensation carrier which was suing the employee for reimbursement of the benefits which had been paid.

Wherefore, partial summary judgment is hereby GRANTED to Union as stated herein, and Plaintiff further is prohibited from introducing evidence of higher medical bills.

So ordered this 2nd day of August, 2019.

THE HONORABLE DENISE D. FACHINI

CERTIFICATE OF SERVICE

I have this day served the following parties with a copy of the foregoing Order by placing the same in the U.S. Mail, with sufficient postage thereon or by transmitting via electronic service, to:

Kermit S. Dorough, Jr.
Attorney at Law
P.O. Box 383
Albany, GA 31702
BODOROUGH@ATT.NET

William Shelton
Worsham, Corsi, Scott & Dobur
P.O.B ox 674027
Marietta, GA 30006
WILLIAM_R_SHELTON@PROGRESSIVE.COM

Peter Muller
Attorney at Law
532 STEPHENSON AVENUE
Suite 200
Savannah, GA 31405
PMULLER@GMLJ.COM

This 2nd day of August, 2019.

DENISE D. FACHINI
JUDGE OF SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT

SUPERIOR COURTS
CORDELE JUDICIAL CIRCUIT
BEN HILL, CRISP, DOOLY & WILCOX COUNTIES

JUDGE T. CHRISTOPHER HUGHES
P.O. BOX 5149
FITZGERALD, GA 31750
PHONE 229-426-5638
FAX 229-426-5639

JUDGE DENISE D. FACHINI
P.O. BOX 5025
CORDELE, GA 31010
PHONE 229-271-4722
FAX 229-271-4714

CHIEF JUDGE ROBERT W. CHASTEEN, JR.
P.O. BOX 448
FITZGERALD, GA 31750
PHONE 229-426-5139
FAX 229-426-5733

August 2, 2019

Mrs. Jean Rogers
Clerk of Crisp County Superior Court
P. O. Box 747
Cordele, GA 31010

RE: Ware v. Edwards
Superior Court of Crisp County
Civil Action File No. 18V-019

Dear Mrs. Rogers:

Please file the enclosed Order in the above-referenced civil action file.

Thank you.

Yours very truly,

Denise D. Fachini

DDF:khp
Encl.
cc w/copy of Encl. Kermit S. Dorough, Jr.
William Shelton
Peter Muller