CASENOTE

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CASENOTE UPDATES

1. PLAINTIFF MAY RECOVER GRATUITOUS WRITE-OFFS BY DOCTOR

The Court has published that portion of the recent case of addressing the issue of "gratuitous write-offs" of a medical by a doctor. The appellate court held that such amounts which were "gratuitously written off" are in fact recoverable by a plaintiff and the jury may be told the amount.

CERTIFIED FOR PARTIAL PUBLICATION**Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of part II. of **Discussion**.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ROSA ELIA SANCHEZ et al., Plaintiffs and Appellants, v. RANDALL ALAN STRICKLAND et al., Defendants and Respondents; RAFAEL MADRIZ, Plaintiff and Respondent.	F060582 (Super. Ct. No. CV53193)

JESUS BAUTISTA et al., Plaintiffs and Respondents, v. RANDALL ALAN STRICKLAND et al., Defendants and Respondents.	(Super. Ct. No. CV53202) **OPINION**

[Portion of case that is now published and may be cited]:

III. Gratuitous Write-Offs by a Medical Provider

A. Facts

The last issue in this case concerns $7,020 gratuitously written off by Vibra Healthcare for services provided to Pedro Hueso at Kentfield Rehabilitation & Specialty Hospital. A declaration of Vibra Healthcare's operations manager indicates that it (1) charged $113,988.58 for the treatment provided to Pedro Hueso, (2) billed Medicare as the primary payor, and (3) received $66,704 from Medicare as payment with a $40,264.58 contract allowance. The declaration also states that Vibra Healthcare "billed the remaining $7,020.00 to Medi-Cal, but wrote off that amount, as we were not contracted with Medi-Cal."

B. Rule of Law and Its Application

In *Howell*, the California Supreme Court stated that the Restatement Second of Torts reflects the widely held view that the collateral source rule applies to gratuitous payments and services, but that California law was less clear on the point. (*Howell*, *supra*, 52 Cal.4th at pp. 557-558; see Rest.2d Torts, § 920A, com. c, subd. (3), p. 515.) The court also stated that the case presented did not require it to decide the question concerning gratuitous write-offs. Nevertheless, the court discussed whether its holding was inconsistent with a rule of law that would allow a plaintiff to recover the reasonable value of service rendered gratuitously and stated:

> "We see no anomaly, even assuming we would recognize the gratuitous-services exception to the rule limiting recovery to the plaintiff's economic loss. The rationale for that exception—an incentive to charitable aid (*Arambula v. Wells*[(1999)] 72 Cal.App.4th [1006,] 1013)—has, as just explained, no application to commercially negotiated price agreements like those between medical providers and health insurers. Nor, as discussed below, does the tort law policy of avoiding a windfall to the tortfeasor suggest the necessity of treating the negotiated rate differential as if it were a gratuitous payment by the medical provider." (*Howell*, *supra*, 52 Cal.4th at p. 559.)

In *Hanif*, the court quoted a comment to the version of BAJI No. 14.10 then in effect for the proposition that the reasonable value of medical care may be recovered even though rendered gratuitously. (*Hanif*, *supra*, 200 Cal.App.3d at p. 641.) The court regarded the comment as restating the collateral source rule and indicated the particular issue presented to it concerned the "reasonable value" of past medical services, which was distinct from the issue regarding gratuitously rendered services. (*Ibid*.) Thus, the court in *Hanif* recognized the existence of a rule of law that allowed the recovery of the value of gratuitously provided medical services, but that rule of law was not employed by the court in reaching its decision.

In contrast to *Hanif*, the court in *Arambula v. Wells*, *supra*, 72 Cal.App.4th 1006 (*Arambula*) was required to determine how the collateral source rule applied to gratuitous payments received by a plaintiff. In *Arambula*, the plaintiff was injured in an automobile accident caused by the defendant and was unable to work.

The plaintiff's employer was a corporation in which his brother owned 70 percent of the stock, his parents owned 15 percent, and the plaintiff owned 15 percent. (*Id*. at p. 1008.) The employer continued to pay the plaintiff's salary even though he was not able to work. (*Ibid*.) In the personal injury lawsuit against the other driver, the plaintiff sought to recover lost earnings. The trial court instructed the jury not to award damages for lost earnings because the plaintiff's employer paid him for the time he was off work. (*Id*. at p. 1009.) The appellate court disagreed with the trial court's ruling and remanded for a limited new trial to determine the amount of damages for lost wages. (*Id*. at p. 1016.) The appellate court determined that allowing the recovery of gratuitous payments and services was consistent with the majority view of the collateral source rule and furthered the policy of encouraging charitable action. (*Id*. at p. 1013.)

Based on the discussion of gratuitous payments and services in *Howell*, *Hanif*, and *Arambula* as well as the view contained in the Restatement Second of Torts, we adopt the following rule of law: Where a medical provider has (1) rendered medical services to a plaintiff, (2) issued a bill for those services, and (3) subsequently written off a portion of the bill gratuitously, the amount written off constitutes a benefit that may be recovered by the plaintiff under the collateral source rule.

Under this rule of law, the $7,020 written off by Vibra Healthcare for medical services provided to Pedro Hueso at Kentfield Rehabilitation & Specialty Hospital is recoverable as damages because that amount was included in the past medical expenses awarded by the jury. Pedro Hueso's recovery related to the write-off must be reduced by the 30 percent of the fault apportioned to him. Accordingly, we will modify the amended judgment so that the award of $169,862.55 in damages to Pedro Hueso is increased by $4,914 (i.e., $7,020 × 70%) and becomes $174,776.55.

2. AMENDED VOIR DIRE PROCEDURE:

The Governor has signed AB 1403 amending the voir dire procedures set forth in C.C.P. 222.5. A trial court "should allow a brief opening statement by counsel for each party prior to the commencement of the oral questioning phase of the voir dire process" and that "unreasonably or arbitrary time limits shall not be imposed in any case". Further, if the prospective jurors are provided with a questionnaire, the attorneys shall have a reasonable time to review the juror's responses before oral questioning.

3. RENTAL CAR SERVICE OF PROCESS:

AB 621 provides that until January 1, 2015, if a rental car company issues liability insurance to a foreign renter, the rental car company must accept service of process on behalf of the renter so long as the plaintiff agrees to limit his or her recovery to the limits of the policy. Within 30 days of acceptance of service of process, the rental company shall provide a copy of the summons and complaint and any other documents served to the foreign renter by first-class mail, return receipt requested. See C.C.P. section 1936(v)(2), as amended by AB 621.