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Tort Damages - Medical Provider's Charges and Range of Payments Accepted for Services Rendered Is Admissible under Section 79G - Law v. Griffith, 930 N.E.2D 126(Mass. 2010)

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**TORT DAMAGES—MEDICAL PROVIDER’S
CHARGES AND RANGE OF PAYMENTS
ACCEPTED FOR SERVICES RENDERED IS
ADMISSIBLE UNDER SECTION 79G—*LAW V.
GRIFFITH*, 930 N.E.2D 126 (MASS. 2010)**

The Massachusetts Legislature enacted Massachusetts General Laws chapter 233, section 79G (“Section 79G”) to address the admissibility of a plaintiff’s medical bills “as evidence of the fair and reasonable charge” for the services provided.¹ When Massachusetts courts examined Section 79G to determine the permitted scope of that evidence, however, they also had to consider the common law collateral source rule, which prevents a defendant from “show[ing] that a plaintiff has received other compensation for his injury from some other source.”² In *Law v. Griffith*,³ the Supreme Judicial Court of Massachusetts (“SJC”) considered the admissibility of the plaintiff’s medical bills under Section 79G and the collateral source rule, where the amounts actually paid by the plaintiff or a collateral source, and accepted by the medical providers, were significantly lower than the amounts that the providers had billed.⁴ The SJC held that pursuant to Section 79G, a medical provider’s bill is admissible on the question of the reasonable value of medical care for the plaintiff’s personal injuries, even though that bill may reflect amounts significantly higher than the amounts actually paid.⁵ In addition, the court held that while evidence of the amounts actually paid to the provider is not admissible, the defendant could introduce evidence of the possibility of payments made by third parties, as

¹ See MASS. GEN. LAWS ch. 233, § 79G (2000) (delineating evidentiary admissibility of medical and hospital services); see also *infra* note 28 (providing relevant statutory language).

² See *Scott v. Garfield*, 912 N.E.2d 1000, 1009 (Mass. 2009) (“The collateral source rule required that the amounts actually paid to the health care providers by the health insurer be redacted on the medical bills admitted in evidence.”); see *infra* notes 18-22 and accompanying text (discussing both traditional and Massachusetts’s collateral source rule). “The rationale behind [the] . . . ‘collateral-source rule’ is that the receipt of such income does not lawfully reduce the plaintiffs’ damages, ‘yet jurors might be led by the irrelevancy to consider plaintiffs’ claims unimportant or trivial or to refuse plaintiffs’ verdicts or reduce them, believing that otherwise there would be unjust double recovery.’” *Corsetti v. Stone Co.*, 483 N.E.2d 793, 802 (Mass. 1985) (quoting *Goldstein v. Gontarz*, 309 N.E.2d 196, 203 (Mass. 1974)).

³ 930 N.E.2d 126 (Mass. 2010).

⁴ *Id.* at 128 (discussing issue before the court).

⁵ See *id.* at 128, 130 (stating statute “unambiguously” permits admission of medical bills to establish reasonable value of services rendered).

well as the range of payments that the provider accepts for the types of services that the plaintiff had received.⁶

In *Law v. Griffith*, the plaintiff, Joanne Law, sustained injuries in an automobile accident when her vehicle was struck by another vehicle driven by the defendant, Daniel Griffith.⁷ Law's injuries required surgery and physical therapy, and she subsequently filed a negligence action against Griffith in the superior court.⁸ Prior to trial and pursuant to Section 79G, Law filed a notice of her intention to submit copies of her medical bills into evidence.⁹ In response, Griffith filed a motion in limine to exclude those medical bills, arguing that Law had not paid the actual amounts expressed on the bills that she sought to admit.¹⁰ The trial court allowed Griffith's motion, concluding that the bills were not relevant in proving the value of the medical services that Law had received.¹¹ Rather, the judge found that the appropriate measure of damages was the amount that Law's insurer had actually paid, as opposed to the amount charged.¹²

At the trial's conclusion, the jury returned a verdict in favor of Law, finding that Griffith was seventy-five percent liable for Law's injuries, awarding her \$48,500.00.¹³ Accounting for Law's twenty-five percent liability, the judge reduced that award by \$12,125.00, and after further reductions for the amount of personal injury benefits that Law had already received, which totaled \$7,818.50, the court entered judgment for Law in the amount of \$28,556.50.¹⁴ Law appealed the jury's award of

⁶ See *id.* at 128, 135 (noting statute does not define permissible scope of testimony or use of medical records).

⁷ *Id.* at 128 (summarizing facts established at trial).

⁸ *Law v. Griffith*, 930 N.E.2d 126, 128 (Mass. 2010) (noting injuries giving rise to suit).

⁹ *Id.* Law's medical bills totaled \$112,269.94 and included medical charge write-offs for which Law would never be required to pay. *Law v. Griffith*, No. 07-P-1972, 2009 WL 652945, at *1 (Mass. App. Ct. Mar. 13, 2009) (noting Griffith's argument that totaled amount was "misleading").

¹⁰ *Griffith*, 930 N.E.2d at 128-29. Law was a participant in MassHealth, which is the Massachusetts Medicaid program. *Id.* at 129. Thus, under the terms of Law's medical providers' agreements with MassHealth, the providers had accepted amounts that were much smaller than the amounts expressed on the bills that Law sought to introduce in evidence. *Id.* The parties stipulated that the amount that had been paid by Law or by collateral sources totaled \$16,387.14. *Id.*

¹¹ *Id.* at 129 (summarizing trial court's findings).

¹² See *Griffith*, 2009 WL 652945, at *1; see *supra* note 9 (noting defendant's argument). It was as a result of this ruling allowing Griffith's motion in limine that the parties stipulated to the \$16,387.14 total for which actual payments had been made. *Griffith*, 2009 WL 652945, at *1 n.4. Thus, because the invoices that Law sought to admit totaled \$112,269.94, the stipulated amount constituted a difference of \$95,822.80. *Id.* at *1.

¹³ *Griffith*, 930 N.E.2d at 129.

¹⁴ *Id.*

damages, asserting error in the trial judge's exclusion of the medical bills.¹⁵ The Massachusetts Appeals Court concluded that it was error to preclude Law from introducing the medical records that reflected the amount that the providers charged, and the court reversed and remanded the case to the superior court.¹⁶ Griffith then sought further appellate review, and the SJC—agreeing with the appeals court—similarly reversed the judgment of the superior court and remanded the case for a new trial on damages.¹⁷

The Restatement (Second) of Torts § 920A (1979) (“Restatement”) states that the collateral source rule provides that “[p]ayments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable.”¹⁸ Under this rule, “collateral-source benefits” received by a plaintiff do not reduce his or her recovery against the defendant.¹⁹ The rule promotes a theory of tort deterrence by preventing a tortfeasor from benefitting from certain acts of the injured person or a third party.²⁰ Furthermore, the rule protects against the

¹⁵ *Id.* The jury's findings concerning each party's respective liability was not raised on appeal. *Id.* at 129 n.4.

¹⁶ *Griffith*, 2009 WL 652945, at *2.

¹⁷ *Griffith*, 930 N.E.2d at 136.

¹⁸ RESTATEMENT (SECOND) OF TORTS § 920A (1979).

¹⁹ See *id.* cmt. b; see also 22 AM. JUR. 2D *Damages* § 392 (2010) (“[U]nder the collateral-source rule, generally . . . benefits received by the plaintiff from a source wholly independent of and collateral to the wrongdoer do not diminish the damages otherwise recoverable from the wrongdoer.”). A “collateral source” is one that comes from a person or party other than the defendant. See 2 JACOB A. STEIN, *Adjustments and Limitations to Awards*, in STEIN ON PERS. INJURY DAMAGES TREATISE § 13:5 (3d ed. 2010) (“A ‘collateral source’ is usually defined as a payment that is independent of the defendant and one that the defendant played no part in creating.”) (internal citations omitted); see also 22 AM. JUR. 2D *Damages* § 392, *supra* (defining “collateral” as “not lineal, but upon a parallel or diverging line”). The types of benefits expressly covered by the Restatement's collateral source rule include: insurance policies; employment benefits that are either gratuitous or pursuant to an employment contract or worker's compensation; gratuities, which includes cash gratuities or the rendering of services; and social legislation benefits, such as social security, welfare, and pensions. RESTATEMENT (SECOND) OF TORTS § 920A cmt. c (1979). Some jurisdictions draw distinctions as to the type of benefits received, and “in limited instances these benefits may . . . decrease the damages recoverable.” 22 AM. JUR. 2D *Damages* § 392, *supra*. Massachusetts, however, recognizes a broad range of benefits that fall under its collateral source rule, including compensation received from an insurance policy, workman's compensation, an employer, or “other sources.” See sources cited *infra* note 22 (noting benefits protected by the rule).

²⁰ See RESTATEMENT (SECOND) OF TORTS § 920A cmt. b (1979) (“[I]t is the position of the law that a benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor. . . . [I]t is the tortfeasor's responsibility to compensate for all harm that he causes, not confined to the net loss that the injured party receives.”); see also Christopher J. Eaton, Comment, *The Kansas Legislature's Attempt to Abrogate the Collateral Source Rule: Three Strikes and They're Out?*, 42 U. KAN. L. REV. 913, 914 (1994) (“Basic justifications for the

possibility of jury prejudice or confusion, which would likely arise if the judge admitted evidence proving the existence of such collateral sources.²¹ Massachusetts recognizes the collateral source rule, and its courts have generally followed the traditional language of the rule.²²

Nevertheless, as the Restatement points out, the collateral source rule is “of common law origin and can be changed by statute.”²³ Indeed, the majority of states, including Massachusetts, have modified the traditional language of the collateral source rule through legislation.²⁴ For

rule resort to principles of equity . . . and signify a preference for the deterrence purpose of tort law.”). The SJC recognized that one purpose behind the collateral source rule is to deter negligent conduct by placing the full cost of the wrongful conduct on the tortfeasor, stating:

The duty imposed by law upon [the defendant] is to compensate the plaintiff[] for all the damage done by his negligence That obligation is not fulfilled because it happens that the plaintiffs [received a collateral source benefit] Compensation for the defendant’s wrong is not thereby furnished by the defendant. Such payments by the [collateral source] do not concern and should not benefit the defendant. They have no bearing on his liability or upon [sic] the extent of the plaintiffs’ injury

Shea v. Rettie, 192 N.E. 44, 46 (Mass. 1934) (holding insurance payments received by plaintiff properly disregarded by trial judge in determining damages award).

²¹ See *Corsetti v. Stone Co.*, 483 N.E.2d 793, 802, 810 (Mass. 1985). The *Corsetti* court stated that “[t]he rationale behind [the] . . . ‘collateral-source rule’ is that the receipt of such income does not lawfully reduce the plaintiffs’ damages, ‘yet jurors might be led by the irrelevancy to consider plaintiffs’ claims unimportant or trivial or to refuse plaintiffs’ verdicts or reduce them, believing that otherwise there would be unjust double recovery.’” *Id.* at 802 (quoting *Goldstein v. Gontarz*, 309 N.E.2d 196, 203 (Mass. 1974)). The *Corsetti* court also concluded that where the defendant “specifically wished” to influence the jury, it was a proper exercise of the trial judge’s discretion in deciding that admission of collateral source evidence would be confusing to the jury. *Id.* at 810 (stating trial judge “reasonably fear[ed]” such evidence “‘becomes too confusing’”).

²² See, e.g., *Scott v. Garfield*, 912 N.E.2d 1000, 1009 (Mass. 2009) (stating defendant may not show plaintiff received compensation for injury from “other source”) (citing *Corsetti*, 483 N.E.2d at 803); *Jones v. Town of Wayland*, 373 N.E.2d 199, 207 (Mass. 1978) (holding liability shall not be reduced by compensation received from insurance policy); *Goldstein*, 309 N.E.2d at 202-03 (“[A] defendant may not show that the plaintiff has received other compensation for his injury, whether from an accident insurance policy, from workmen’s compensation, from an employer, or from other sources.”) (citations omitted). But cf. *infra* notes 25-26 (noting several exceptions to Massachusetts’s application of the collateral source rule).

²³ RESTATEMENT (SECOND) OF TORTS § 920A cmt. d (1979); see also sources cited *infra* notes 24-25 (listing examples of statutory modifications made in various jurisdictions, including Massachusetts).

²⁴ See Bryce Benjet et al., *A Review of State Law Modifying the Collateral Source Rule: Seeking Greater Fairness in Economic Damages Awards*, 76 DEF. COUNS. J. 210, 211, 226 (2009) (finding majority of jurisdictions, including Massachusetts, have enacted statutes restricting collateral source rule); see *infra* note 25 and accompanying text (discussing Massachusetts’s statutory modification to collateral source rule). According to Benjet’s study, “[o]f the fifty States and the District of Columbia, [a total of] forty-two jurisdictions have enacted . . . some form of statute that restricts the collateral source rule[,]” and “where the rule has been

example, the Massachusetts statute creating an exception to the common law collateral source rule provides that, in medical malpractice cases, collateral source benefits may be introduced into evidence when determining awards of medical damages.²⁵ Furthermore, noting a common law exception, the SJC has recognized that “in some circumstances, evidence of collateral source income may be admissible, in the discretion of the trial judge, ‘as probative of a relevant proposition, say . . . credibility of a particular witness.’”²⁶ Notwithstanding the aforementioned exceptions, Massachusetts courts generally apply the common law collateral source rule as it has traditionally been interpreted.²⁷

The Massachusetts Legislature enacted Section 79G in 1958 to codify the admissibility of evidence used to determine the “fair and reasonable” value of medical charges incurred by an injured plaintiff.²⁸

applied generally, collateral source damages are often limited.” Benjet, *supra*, at 211. The purpose of these statutes is to prevent a plaintiff from being over-compensated. *Id.*

²⁵ See MASS. GEN. LAWS ch. 231, § 60G (2000) (allowing reduction of damages award where defendant introduces evidence of insurance payments made to plaintiff). While the statute applies only to liability claims against a healthcare provider, it allows the court in such cases to reduce the damages award by the amount paid by a collateral source. See *id.* at § 60G(b); see also Benjet, *supra* note 24, at 226. Nevertheless, there is an “exception to the exception” in that Section 60G does not allow a judge to reduce a damages award by collateral source benefits that the plaintiff received pursuant to federal law. See ch. 231, § 60G(c); see also Benjet, *supra* note 24, at 226 (noting reduction allowed by statute does not apply where subrogation based in federal law). Additionally, the statute does not apply to amounts paid by the plaintiff for his or her own insurance benefits. See ch. 231, § 60G(b); see also Benjet, *supra* note 24 at 226 (noting statutory language allowing court to offset reduction by payments made by plaintiff). For example, the courts have interpreted Medicaid write-offs to be collateral source payments that reduce the plaintiff’s damages award under Section 60G. See *Sylvestre v. Martin*, No. SUCV2003-05988, 2008 WL 82631, at *4-6 (Mass. Super. Ct. Jan. 4, 2008) (discussing why Medicaid *write-offs* do not fall within Section 60G(c) exemption); cf. *Harlow v. Chin*, 545 N.E.2d 602, 610-11 (Mass. 1989) (concluding Medicaid *payments* fall within reduction exemption because State’s reimbursement plan required by federal law). In *Sylvestre*, the court stated that “although paid Medicaid benefits are a collateral source whose right of subrogation is based in federal law, a Medicaid write[-]off is not an amount received by the plaintiff from a collateral source for purposes of § 60G(c) and therefore may be deducted from a damages award.” 2008 WL 82631, at *4.

²⁶ *Corsetti*, 483 N.E.2d at 802 (quoting *Goldstein*, 309 N.E.2d at 205).

²⁷ See *supra* notes 25-26 and accompanying text (discussing recognized exceptions of common law collateral source rule in Massachusetts). The SJC has noted that it prefers to leave any common law modifications to the legislature, and, therefore, will modify common law principles only when legislative intent is clear. See *Commercial Wharf E. Condo. Ass’n v. Waterfront Parking Corp.*, 552 N.E.2d 66, 71 (Mass. 1990) (“We will not presume that the Legislature intended . . . a radical change in the common law without a clear expression of such intent.”); cf. *Falmouth OB-GYN Assocs. v. Abisla*, 629 N.E.2d 291, 293 (Mass. 1994) (noting court’s interpretation of statute modifying common law should advance purpose of legislature).

²⁸ See MASS. GEN. LAWS ch. 233, § 79G (2000). The first sentence of the statute provides, in relevant part:

Notwithstanding Section 79G, Massachusetts courts have long recognized the right of a plaintiff to recover reasonable expenses incurred for medical treatment of injuries caused by a defendant tortfeasor.²⁹ Nevertheless, it was the Massachusetts case *Scott v. Garfield*³⁰ that first demonstrated the potential conflict between the collateral source rule and Section 79G.³¹ In

In any proceeding commenced in any court, commission or agency, an itemized bill and reports, including hospital medical records, relating to medical, dental, hospital services, prescriptions, or orthopedic appliances rendered to or prescribed for a person injured . . . shall be admissible as evidence of the fair and reasonable charge for such services or the necessity of such services or treatments

Id. The second sentence of the statute, which pertains to the summoning of witnesses or records, provides:

Nothing contained in this section shall be construed to limit the right of any party to the action to summon . . . such physician, dentist, pharmacist, retailer of orthopedic appliances or agent of such hospital or health maintenance organization or the records of such hospital or health maintenance organization for the purpose of cross examination with respect to such bill, record and report or to rebut the contents thereof, or for any other purpose, nor to limit the right of any party to the action or proceeding to summon any other person to testify in respect to such bill, record or report or for any other purpose.

Id. The statute creates an exception to the hearsay rule and it permits a party to introduce medical bills for “two distinct purposes.” *Law v. Griffith*, 930 N.E.2d 126, 130 (Mass. 2010). First, in proving damages, a party may introduce medical bills to demonstrate the reasonable value of medical services rendered. *See Victum v. Martin*, 326 N.E.2d 12, 15-16 (Mass. 1975). Second, a party may introduce medical bills to show the necessity of the services that the provider rendered. *See Gompers v. Finnell*, 616 N.E.2d 490, 492-93 (Mass. App. Ct. 1993).

²⁹ *See Rodgers v. Boynton*, 52 N.E.2d 576, 577 (Mass. 1943) (“A plaintiff who has suffered physical injury through the fault of a defendant is entitled to recover for . . . reasonable expenses incurred by him for medical care and nursing in the treatment and cure of his injury”) (citing *Daniels v. Celeste*, 21 N.E.2d 1, 2 (Mass. 1939)) (“It is settled that . . . the reasonable value of necessary medical and surgical care and of nursing is an element of damage”); *see also* 1 MARC G. PERLIN & DAVALENE COOPER, *Medical expenses*, in MASS. PROOF OF CASES CIV. § 14:15 (3d ed. 2010) (noting reasonable value of medical, surgical, and nursing care is element of damage).

³⁰ 912 N.E.2d 1000 (Mass. 2009).

³¹ *See id.* at 1009-10 (noting defendants sought to challenge application of collateral source rule when determining reasonable medical expenses). In *Scott*, the defendants requested that the jury’s consideration of the plaintiff’s reasonable medical expenses be limited to those medical bills that were actually paid to the plaintiff’s health care provider, as opposed to the amounts that were billed. *See id.* at 1009. The SJC held that the trial judge properly denied the motion, stating that “[t]he collateral source rule required that the amounts actually paid to the health care providers by the health insurer be redacted on the medical bills admitted in evidence.” *Id.* The SJC further noted that pursuant to Section 79G, the defendants could have challenged the reasonableness of the medical bills. *See id.* at 1010 n.11 (suggesting defendants challenge “by summoning [plaintiff’s] medical providers for cross-examination with respect to the bills”). The SJC did not, however, consider this argument in deciding *Scott*. *See infra* note 32 and

Scott, however, the SJC simply raised, but did not analyze, this potential conflict because the defendants had “made no evidentiary proffer . . . that would have laid the foundation for such a challenge.”³² Nonetheless, the case recognized the significance of the conflict between the common law collateral source rule and the right of an injured plaintiff to recover his reasonable medical expenses, noting that it was a matter of great concern in many jurisdictions.³³

accompanying text (stating *Scott* court’s suggested argument for defendant was dicta). Justice Cordy, in his concurrence, illustrated the “tension” between the collateral source rule and the defendant’s right to challenge the plaintiff’s medical expenses. *Scott*, 912 N.E.2d at 1011-12 (Cordy, J., concurring) (characterizing issue as “one of considerable controversy” in courts and legislatures nationwide).

³² See *Scott*, 912 N.E.2d at 1009-10 (noting why court did not analyze issue). Similarly, in his concurring opinion, Justice Cordy stated:

Massachusetts appellate courts have not had occasion to decide whether evidence of a discount from the initial charges for medical services is barred by the collateral source rule, or whether the discounted amount paid and accepted in full satisfaction of those charges is relevant and admissible on the issue of the reasonable value of the medical services for which plaintiff is entitled to recover. Because the defendants did not make a sufficient offer of proof to preserve and present the issue in this case, I would hold that for future cases such evidence is not barred by the collateral source rule and may be admitted (together with the initial medical bills) for the jury’s consideration of the reasonable medical expenses incurred by the plaintiff.

Id. at 1011 (Cordy, J., concurring) (citation omitted).

³³ See *id.* at 1011-12 (Cordy, J., concurring). “A majority of the courts that have considered the issue have concluded ‘that plaintiffs are entitled to . . . recover the full amount of reasonable medical expenses charged, based on the reasonable value of medical services rendered, including amounts written off from the bills’” *Id.* (quoting *Lopez v. Safeway Stores, Inc.*, 129 P.3d 487, 495 (Ariz. Ct. App. 2006)). These courts concluded either that a discount on medical charges “is itself a form of benefit . . . provided by a collateral source,” or that admitting evidence of amounts actually paid “would . . . allow in through the back door . . . [evidence] that the bills [had] been paid by a collateral source.” *Id.* at 1012. However, some jurisdictions disagree with the majority view. See *id.* at 1012-13 (adopting minority view). Justice Cordy noted that the Supreme Court of Ohio, for example, held that because “[t]he collateral-source rule does not apply to write-offs of expenses that are never paid[.] . . . admitting evidence of [those] write-offs does not violate the . . . collateral-source rule.” *Id.* at 1013 (first alteration in original) (quoting *Robinson v. Bates*, 857 N.E.2d 1195, 1200 (Ohio 2006)). The Supreme Court of Indiana adopted a similar approach. See *Stanley v. Walker*, 906 N.E.2d 852, 858 (Ind. 2009) (“The collateral source statute does not bar evidence of discounted amounts in order to determine the reasonable value of medical services.”). In reaching its decision, the *Stanley* court considered the structure of the current health care payment system. See *id.* at 857-58 (concluding “health care pricing structures” make determining medical services’ reasonable value more valuable). The court remained “unconvinced that the reasonable value of medical services is necessarily represented by either the amount actually paid or the amount stated in the original medical bill.” *Id.* at 857. The concerns expressed by the *Stanley* court are both well-warranted and well-supported. See Mark A. Hall & Carl E. Schneider, *Patients as Consumers: Courts, Contracts, and the New Medical Marketplace*, 106 MICH. L. REV. 643, 661-66 (2008) (discussing disparity in, and unreasonableness of, prices charged by doctors and hospitals); see James McGrath, *Overcharging*

In *Law v. Griffith*, the SJC again considered the admissibility of medical bills under Section 79G, but for the first time directly addressed its apparent conflict with the collateral source rule by analyzing the permissible scope of evidence introduced under the statute and used to determine the fair and reasonable value of medical services.³⁴ First, the SJC promptly answered the question concerning a medical bill's general admissibility under the statute, and found that Section 79G required the trial judge to admit the plaintiff's medical bills in evidence.³⁵ The SJC reasoned that the statutory language of Section 79G is "clear," and thus, the statute "must be interpreted according to the ordinary meaning of the language used."³⁶ Accordingly, the SJC noted that "Section 79G states unambiguously that medical bills are admissible to establish the reasonable value of services rendered."³⁷ Thus, the SJC held that it was error for the trial judge to rule that the plaintiff's medical bills were inadmissible.³⁸

The *Griffith* court next addressed the conflict between Section 79G

the Uninsured in Hospitals: Shifting a Greater Share of Uncompensated Medical Care Costs to the Federal Government, 26 QUINNIPIAC L. REV. 173, 183-85 (2007) (alleging medical providers "list price" is inequitable and "meaningless").

³⁴ See *Law v. Griffith*, 930 N.E.2d 126, 128 (Mass. 2010) (summarizing lower court's ruling and noting issue before the SJC). First, the *Griffith* court noted the parties' arguments on appeal and analyzed the general admissibility of medical bills under Section 79G, *id.* at 129-30, and next, stated what evidence could assist the jury in determining "reasonable value" without undermining the collateral source rule, *id.* at 135-36. In this case, the issue concerning the general admissibility of the medical bills was significant because the plaintiff sought to establish the reasonable value of medical services rendered by introducing invoices that showed the total amounts that her medical providers had charged, even though the amounts she actually paid were significantly lower. See *id.* at 128-29.

³⁵ See *id.* at 130; see also *infra* notes 36-37 and accompanying text (discussing interpretation of Section 79G and SJC reasoning).

³⁶ *Griffith*, 930 N.E.2d at 130. The SJC noted for what purposes a party may introduce medical bills under Section 79G. See *supra* note 28 and accompanying text (discussing "two distinct purposes").

³⁷ *Griffith*, 930 N.E.2d at 130. The SJC noted that Law had signed a "routinely required contract" with her medical providers when they rendered medical services. *Id.* Under this agreement, Law was made personally liable for the costs of any treatment regardless of whether her insurer, MassHealth, paid for any part of that treatment. *Id.* Specifically, because Law was a participant in MassHealth, requirements of the program preempted this agreement between herself and her providers. *Id.* Consequently, the SJC stated that although the agreement was ultimately unenforceable, injured parties in other circumstances—for instance, when an enforceable agreement does exist—could be liable under the terms of those agreements. *Id.* Nevertheless, the SJC reasoned that notwithstanding any agreement between a plaintiff and his or her providers, the fact remained that the Massachusetts Legislature enacted Section 79G, which declares that a medical bill is admissible on the question of the reasonable value of medical care, and that the court is "not free to override that lawful determination." *Id.*

³⁸ See *id.* (stating SJC's holding concerning admissibility of medical bills under first sentence of Section 79G).

and the collateral source rule, focusing its analysis on whether evidence of the actual amounts paid to the plaintiff's medical providers was also admissible.³⁹ The SJC first examined the history and purpose of the collateral source rule, declaring that the common law rule has both "substantive" and "evidentiary" components, while its overall purpose is tort deterrence.⁴⁰ Next, in its attempt to balance Section 79G with the collateral source rule, the SJC—addressing the issue first raised by Justice Cordy's concurrence in *Scott*—questioned whether the collateral source rule should limit the types of rebuttal evidence admissible under the statute in light of the substantive, evidentiary, and tort deterrence principles of the traditional common law collateral source rule.⁴¹ The court relied in

³⁹ See *id.* at 131 (introducing second issue before the court). The SJC noted that analysis of this issue requires consideration of Section 79G as well as the Massachusetts common-law collateral source rule. *Id.* It recognized that both sentences of Section 79G addressed evidence used for the purpose of determining the fair and reasonable charge for medical services: language in the first sentence "provid[es] explicitly for the admission [of such] evidence"; the second sentence "clearly bears on the issue . . . as well." *Id.* More specifically, the SJC noted that the second sentence "affirms . . . the right of any party to call witnesses and to summons other medical records for purposes of conducting cross-examination and offering rebuttal evidence with respect to the plaintiff's proffered medical bills." *Id.*

⁴⁰ See *id.* at 132 (introducing justifications for collateral source rule). The *Griffith* court first noted the two operative uses of the collateral source rule, stating that the "substantive aspect . . . relates to the law of damages," and that the "evidentiary component . . . governs what types of evidence may be admitted in evidence at trial." *Id.* The substantive aspect relates to the fact that collateral source compensation to a plaintiff for his or her injury is "legally irrelevant" because the collateral source rule prohibits the defendant's liability from being reduced by "outside source" compensation. See *id.* (quoting *Goldstein v. Gontarz*, 309 N.E.2d 196, 203 (Mass. 1974)). The evidentiary component, on the other hand, is that evidence of collateral source compensation is inadmissible due to the risk of jury confusion or prejudice. See *id.* ("[J]urors might be led by the irrelevancy to reduce or deny recovery.") (quoting *Goldstein*, 309 N.E.2d at 203). The court concluded its discussion of the collateral source rule by affirming that the purpose behind the rule is tort deterrence. See *id.* The court explained the principle of the rule that a tortfeasor must compensate the plaintiff for the harm caused and, therefore, must not benefit from insurance or gifts intended to compensate the plaintiff. See *id.* The SJC further noted the reasoning that "avoiding a windfall to a tortfeasor is preferable even if a plaintiff thereby receives an excessive recovery in some circumstances." *Id.*

⁴¹ See *id.* at 132-33 (recognizing "growing tension" between Section 79G and the collateral source rule). Referring to *Scott v. Garfield*, 912 N.E.2d 1000 (Mass. 2009), the *Griffith* court noted that the *Scott* court stated in dicta that admitting evidence of amounts actually paid would violate the collateral source rule. See *Griffith*, 930 N.E.2d at 132. The *Griffith* court determined that *Scott's* suggestion that "the collateral source rule should limit the types of rebuttal evidence admissible under the second sentence of [Section] 79G is a significant question." *Id.* at 133. Noting the current structure of the health care system, the SJC acknowledged that such a question is an important one because "[a plaintiff's] medical bills admissible under the first sentence of [Section] 79G may bear little relationship to the 'fair and reasonable' value of medical services rendered." *Id.* (citing *Scott*, 912 N.E.2d at 1013 (Cordy, J., concurring)). Concerning medical bills, the court reasoned that the "charge structures" of medical providers and health insurers play a powerful role and likely do not reflect the reasonable value of the medical services rendered to

particular on the second sentence of Section 79G, noting its “general language” authorizing the use of witness testimony or medical records, as opposed to the “very specific . . . directive” framed by the first sentence of the statute.⁴² Ultimately, the SJC held that a reasonable way to apply the statute, without undermining the collateral source rule, is to allow a defendant to introduce evidence of a medical provider’s stated charges, as well as the range of payments that the provider accepts, for the types of services the plaintiff received.⁴³

the patient. *Id.* Moreover, it noted that actual amounts paid by a collateral source, especially an insurer, raise similar concerns because the amounts paid depend on factors such as “the bargaining power of the insurer,” or statutory limits on collateral source compensation. *Id.* at 133-34. Thus, the SJC reasoned that evidence of actual amounts billed and actual amounts paid are subject to many outside factors that “have nothing to do with the tortfeasor.” *Id.* at 134. Accordingly, the court held that admission of actual amounts would violate the collateral source rule because a jury may be led improperly to either award that actual amount, or award nothing at all, believing that the plaintiff did not pay any expenses herself. *Id.* Furthermore, the SJC stated that if actual amounts did not reflect the reasonable value of the medical services rendered, admitting those actual amounts would run counter to common law principles governing medical damages incorporated by Section 79G. *Id.* Finally, the court voiced concern over creating “different classes of plaintiffs” and that “[t]he potential for unequal treatment of [these] classes may be particularly pronounced . . . [where] medical expenses are covered by a federally regulated program such as [MassHealth].” *Id.* at 134 n.11.

⁴² See *Griffith*, 930 N.E.2d at 135. The SJC approached its analysis of the second sentence of Section 79G by first discussing legislative modifications to the collateral source rule. *Id.* at 134-35. The SJC referenced Massachusetts’s modification of its collateral source rule under Massachusetts General Laws chapter 231, section 60G and concluded that such a “narrowly tailored” statutory modification demonstrates “legislative awareness” of the collateral source rule. *Id.* at 134; see also *supra* note 24 and accompanying text (discussing statute and its modification of collateral source rule). Thus, the *Griffith* court reasoned that the collateral source rule “should continue to operate without alteration in connection with awards of medical damages outside of the medical malpractice arena—that is, in the types of cases covered by [Section] 79G.” *Griffith*, 930 N.E.2d at 134. Accordingly, it concluded that further modifications to the collateral source rule should be left to the Massachusetts Legislature. *Id.* Having determined this, the SJC next decided that—considering the “over-all focus” of the statute—it must determine the scope of the second sentence of Section 79G whilst “protect[ing] the core of the collateral source rule.” *Id.* at 135. Specifically, the court stated that “the second sentence uses more general language [than the first], authorizing the summoning of witnesses or records without delineating in any manner the permissible scope of the witnesses’ testimony or the use of the records.” *Id.*; see also *supra* note 28 (providing statutory text of second sentence of Section 79G).

⁴³ See *Griffith*, 930 N.E.2d at 135-36. Specifically, the SJC stated:

[A] reasonable way to implement the second sentence of [Section] 79G is to permit the defendant to call a representative of the particular medical provider whose bill the defendant wishes to challenge, and to elicit evidence concerning the provider’s stated charges and the range of payments that that provider accepts for the particular type or types of services the plaintiff received. In this context, it would appear appropriate for the witness to acknowledge that the range of payments being testified to reflects amounts paid by both individual, self-paying patients and third-party payors But the witness [or any written evidence] would not be permitted to identify the plaintiff’s

In *Law v. Griffith*, the SJC affirmed that a plaintiff's medical bills are admissible in evidence to determine the reasonable value of medical services.⁴⁴ Further, while the actual amounts paid to medical providers is inadmissible, the SJC stated that a defendant is permitted to elicit certain testimony concerning the amounts accepted for the types of services rendered to the plaintiff.⁴⁵ The *Griffith* court correctly analyzed existing statutory and common law principles and properly balanced Massachusetts's collateral source rule against Section 79G.⁴⁶ The SJC's holding neither destroys traditional common law precedent, nor undermines Section 79G or its legislative intent.⁴⁷ Moreover, *Griffith* demonstrates the SJC's ability to consider the realities of the modern healthcare and insurance structure, and the ever-changing relationship between that system's individual, state, and private actors.⁴⁸ Thus, the decision

insurer or third-party payor, or to testify to [or to indicate] the amount actually paid on the plaintiff's behalf.

Id. at 135 (citations omitted). The court continued:

In other words, the witness would be limited to testimony solely about the *amounts* in the range that the provider accepted for the services at issue, with no information relating to what was paid by or on behalf of the plaintiff herself. With its emphasis on range of payments, such evidence could assist the jury in identifying—as [Section] 79G indicates should be done—what might be a fair and reasonable charge for the services at issue. At the same time, the evidence would not undermine the collateral source rule, because it would not touch in any manner on whether, or in what amount, collateral third parties (whether a private insurance company, Medicare, [MassHealth,] or Medicaid) had paid for the medical treatment the plaintiff received.

Id. at 135-36. To establish some parameters provided its holding, the SJC listed several examples of permissible testimony. *See id.* at 136 n.15. For example, a witness may testify about a medical provider's billing and discounting practices or the "general relationship between charges and reasonable value, or discounted payments and reasonable value." *Id.* Finally, the SJC indicated that jury instructions may be modified to address the relevance of a plaintiff's medical insurance: How plaintiff's medical expenses were paid or covered "is not relevant . . . to determine the fair and reasonable value of the . . . medical services . . . provided, as well as . . . any medical services that are likely to be necessary in the future." *Id.* at 136.

⁴⁴ *See id.* at 130; *see also supra* notes 36-37 and accompanying text (discussing SJC's reasoning).

⁴⁵ *See Griffith*, 930 N.E.2d at 135-36; *see also supra* notes 39-43 and accompanying text (analyzing SJC's reasoning concerning second sentence of Section 79G).

⁴⁶ *See Griffith*, 930 N.E.2d at 131-36; *see also* sources cited *supra* notes 40-42 and accompanying text (examining statutory language of Section 79G and interpreting collateral source rule).

⁴⁷ *See supra* notes 18-22 and accompanying text (discussing traditional collateral source rule); *supra* notes 28-33 (describing history and purpose of Section 79G).

⁴⁸ *See Griffith*, 930 N.E.2d at 133-34 (recognizing changes in current healthcare and insurance procedures). The SJC properly considered the arguments raised by Justice Cordy in *Scott v. Garfield*, 912 N.E.2d 1000, 1010-14 (Mass. 2009) (Cordy, J., concurring). *See Griffith*,

successfully incorporates modern policy arguments while safeguarding the collateral source rule's longstanding purposes.⁴⁹

Following obvious precedent, and applying a plain reading to Section 79G, the SJC correctly stated that the “clear” language of the statute requires a court to admit a plaintiff's medical bills to determine the reasonable value of medical services.⁵⁰ The SJC made this initial conclusion with ease, for a decision to the contrary would undoubtedly conflict with legislative intent because the text of the statute plainly permits an “itemized [medical] bill” to be admitted in evidence.⁵¹ Given the clear statutory language available to the SJC for interpretation, as well as recent and relevant precedent, the significance of the *Griffith* decision lies not in the SJC's holding concerning the first sentence of Section 79G, but rather in the SJC's interpretation of the second sentence of the statute.⁵² It was there that the court sought to establish the boundaries of permissible testimony that an opponent would likely seek to elicit when attempting to discredit a plaintiff's portrayal of the “reasonable value” of medical services rendered.⁵³ Nevertheless, these boundaries may prove vaguer than

930 N.E.2d at 133. The SJC recognized the “increasing role” of public and private health insurers and their influence over medical care providers. *Id.* Considering the current state of the healthcare system, the *Griffith* court agreed with Justice Cordy's observation that medical bills may in fact “bear little relationship” to Section 79G's “fair and reasonable charge” for services rendered because of the extent of negotiations that occur between insurers and medical providers. *Id.* at 133.

⁴⁹ See *supra* note 48 (discussing SJC's review of modern healthcare and insurance procedures); *supra* note 43 and accompanying text (noting how to apply Section 79G without undermining collateral source rule).

⁵⁰ See *Griffith*, 930 N.E.2d at 130. In *Griffith*, the SJC affirmed statements that it had previously made in *Scott* concerning a plaintiff's medical bills. *Griffith*, 930 N.E.2d at 129; see also *Scott*, 912 N.E.2d at 1009 (“[Section 79G] provides that bills for medical services ‘shall be admissible as evidence of the fair and reasonable charge for such services.’”) (quoting MASS. GEN. LAWS ch. 233, § 79G (2000)).

⁵¹ See MASS. GEN. LAWS ch. 233, § 79G (2000). The first sentence of Section 79G expressly provides that “an itemized bill and reports . . . shall be admissible as evidence of the fair and reasonable charge for such services.” *Id.* (emphasis added). Use of such evidence is allowed “[i]n any proceeding commenced in any court,” and, in addition to “itemized bills,” the statute permits the introduction of other evidence, including “reports” and other “medical records.” *Id.* Moreover, the *Scott* court addressed this same issue and reached a similar conclusion. See *supra* note 50 (noting *Scott* precedent). Accordingly, the *Griffith* court concluded that the language of Section 79G is clear and must be interpreted plainly. See *supra* notes 27, 36-37 and accompanying text (discussing court's method of interpretation when statutory language is clear).

⁵² See *supra* note 51 and accompanying text (discussing plain meaning of first sentence of Section 79G); see *infra* note 53 (considering implications of SJC's holding concerning second sentence of Section 79G).

⁵³ See *Griffith*, 930 N.E.2d at 131-36 (dedicating majority of opinion to analysis of collateral source rule and second sentence of Section 79G).

the *Griffith* court intended, and the opinion is not without potential flaws.⁵⁴

In an attempt to explain the limits of the *Griffith* holding, the SJC provided several examples of both permissible and impermissible testimony concerning a plaintiff's medical bills and the reasonable cost of services rendered.⁵⁵ Nevertheless, practitioners may attempt to expand the SJC's holding by broadly comparing the type of testimony the SJC has explicitly *prohibited*, versus the type of testimony it merely suggested is *permissible*.⁵⁶ Thus, in attempting to establish certain parameters for courtroom litigators, the SJC may in fact have sown the seeds of future confusion concerning evidentiary issues.⁵⁷ *Griffith* may also fail to protect against potential issues of jury prejudice that may arise when a jury hears testimony concerning a medical provider's range of payments that it accepts for the types of services rendered to the plaintiff.⁵⁸

⁵⁴ See *id.* at 136-37 (Cowan, J., concurring) ("[The majority] employs . . . a policy-laden, murky construction that will be difficult, time-consuming, and expensive to apply, and that well may lead to inaccurate verdicts."); see *infra* text accompanying notes 55-58 (discussing *Griffith*'s guidance and potential issues arising therefrom).

⁵⁵ See generally *Griffith*, 930 N.E.2d at 135-36.

⁵⁶ See *id.* at 134-35. The SJC stated that the second sentence of Section 79G uses "more general language" than the first sentence of the statute, and that it does not "delineat[e] in any manner the permissible scope of the witnesses' testimony or the use of the records." *Id.* at 135. The opinion offers the types of evidence that are not permitted: testimony or other evidence that identifies the plaintiff's insurer or other collateral source, or any type of evidence indicating the amounts actually paid. See *id.* The opinion also suggests, however, some forms of permissible testimony: examination concerning the provider's stated charges, the range of payments a provider accepts for those services, and how those ranges reflect amounts actually paid by an individual or collateral source. See *id.* Thus, although the SJC provided some guidance concerning permissible testimony, the fact that the court noted the "general" nature of the second sentence may lead some legal practitioners to journey outside of *Griffith*'s suggested parameters. See *id.* at 136-37 (Cowan, J., concurring) (expressing unease with majority's characterization of second sentence as "general").

⁵⁷ See *supra* note 56 (discussing potential issues with *Griffith*'s holding). It may not be clear, for example, to what extent evidence of "the range of payments that [the] provider accepts for the particular type or types of services the plaintiff received" falls within *Griffith*'s permissible scope of testimony. See *Griffith*, 930 N.E.2d at 135; see also *supra* note 56 (indicating concern over *Griffith*'s classification of second sentence of Section 79G as "general" in nature) (quoting MASS. GEN. LAWS ch. 233, § 79G (2000)). In attempting to follow *Griffith*'s directives, it may prove difficult for defendants to elicit testimony that does not identify exact amounts actually paid, while still providing the defendant a fair chance to challenge a plaintiff's bills. See *supra* note 56 (discussing potential issues with *Griffith*'s holding).

⁵⁸ See *Griffith*, 930 N.E.2d at 134 & n.11 (addressing issue of potential misuse of evidence by the jury). Although the court recognized the potential for jury prejudice, and thus noted the importance behind the collateral source rule, its holding in *Griffith* may not protect against the potential risk of juror prejudice. See *id.* at 134. The *Griffith* court stated:

[A]dmission of [actual] amounts [paid], precisely because they reflect what was paid and accepted by the plaintiff's medical providers for the services rendered, may well

In *Law v. Griffith*, the SJC addressed not only the general admissibility of a plaintiff's medical bills under Section 79G, but also the permissible scope of evidence concerning those bills and their use in determining the fair and reasonable value of medical services rendered to the plaintiff. Relying on the common law collateral source rule and the plain language of Section 79G, the *Griffith* court decided that a plaintiff's medical bills are admissible under the first sentence of the statute. More significantly, however, the SJC further concluded that while amounts actually paid by the plaintiff or a collateral source are inadmissible, a defendant may introduce evidence concerning a medical provider's stated charges and the range of payments that the provider accepts for the types of services billed. Thus, although a defendant challenging the reasonableness of charges on a plaintiff's medical bills may not introduce evidence of what was actually paid on the plaintiff's behalf, the defendant is provided a considerable opportunity to elicit other testimony concerning those charges and the potential payments accepted. In its interpretation of Section 79G, the SJC produced a well-reasoned and well-supported opinion that considers longstanding principles of the collateral source rule, while incorporating the modern realities of the healthcare and insurance system. Although lower courts dealing with similar cases in the future may struggle to prevent jury prejudice and confusion arising out of *Griffith*'s directives, vigilant oversight of attorney examination, followed by thorough jury instruction, should limit these potential issues.

Matthew Blum

lead a jury to award the plaintiff exactly that amount for medical damages or, perhaps, no medical damages at all in the belief that the plaintiff did not pay the expenses herself but relied on insurance or another third party to do so. Such a result would run counter to the collateral source rule.

Id. But see *id.* at 138-39 (Cowin, J., concurring) (dismissing majority's concerns of potential juror prejudice). Similarly, if a jury is to hear the "range of payments" that a provider accepts—i.e., "actual" payments that it *does* accept for those types of services—the result may very well be the same. See *id.* at 134 (majority opinion) ("[Admitting actual amounts paid by an insurer] would run counter to the collateral source rule [And, it] would also contravene our established common-law rule of medical damages that has been adopted by and codified in [Section] 79G.").