

1 **Barry P. Goldberg, Esq. (State Bar No. 115667)**
2 **BARRY P. GOLDBERG,**
3 **A PROFESSIONAL LAW CORPORATION**
4 21650 Oxnard Street, Suite 1960
5 Woodland Hills, CA 91367
6 Telephone: (818) 222-6994
7 Facsimile: (818) 226-9901

8 Attorneys for Plaintiff AZAT VARDERESYAN

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES – CENTRAL JUDICIAL DISTRICT**

11 AZAT VARDERESYAN,

12 Plaintiff,

13 vs.

14 DEPENDABLE HIGHWAY EXPRESS,
15 INC., a California Corporation; and DOES 1
16 through 80, Inclusive,

17 Defendants.

Case No.: BC423132

PLAINTIFF'S MOTION IN LIMINE NO. 4A TO EXCLUDE REFERENCE TO MEDICAL BILL REDUCTION OFFER BY HOSPITAL AS COLLATERAL SOURCE; DECLARATION OF BARRY P. GOLDBERG.

[In place of the original MIL No. 4.]

Trial Date: March 29, 2011

Time: 10:00 a.m.

Dept: 13

FSC: March 24, 2011

Assigned To: Hon. Luis A. Lavin

19 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

20 **PLEASE TAKE NOTICE** that Plaintiff, AZAT VARDERESYAN, by and through his
21 attorneys of record, hereby moves the Court, in limine for an Order excluding any and all
22 evidence, references to evidence, testimony, or argument in any manner whatsoever, either
23 directly or indirectly, about a unilateral reduction offer of a medical bill by White Memorial
24 Hospital, which was probably sent in confusion, was never paid by any party or source, and is
25 subject to the collateral source rule.

26 The Court is further requested to order counsel for all parties to inform each of their
27 witnesses of this Order and of these instructions, to redact any mention of such matters from
28

1 each writing or document in the case, and to direct all witnesses not to make any reference to this
2 subject matter in any fashion.

3 This Motion is made upon the following grounds:

- 4 1. Evidence of insurance and collateral sources is inadmissible;
- 5 2. "The forgiveness of a debt for medical services by a collateral source comes
6 within the scope of the rule; likewise gratuitous medical services do not reduce
7 the amount of plaintiff's recovery."
- 8 3. Evidence of a "non-paid" reduction offer is not evidence of the reasonable value
9 of the medical services provided;
- 10 4. The matters of fact or alleged facts refer to or deal with matters that are not
11 relevant to the litigation and are otherwise objectionable, either under Evidence
12 Code §§ 350, 352, or other provision of law;
- 13 5. If any of the facts referred to in this Motion are brought before or made known to
14 the jury, either directly or indirectly, such facts will be prejudicial to Plaintiff
15 even though the Court sustains an objection and instructs the jury to disregard
16 such matters; and
- 17 6. If the jury is made aware of such facts, either directly or indirectly, it will result in
18 a mistrial of the case and extraordinary delay, expense and inconvenience caused
19 by a retrial, to the Court, the public, and the litigants.

20 Plaintiff has met and conferred before filing this motion as required by the local rules.

21 **WHEREFORE**, Plaintiff AZAT VARDERESYAN prays that the Court enter its Order
22 as requested.

23 DATED: June 9, 2011

BARRY P. GOLDBERG,
A Professional Law Corporation

24
25
26 **BY:** _____
BARRY P. GOLDBERG, Attorney for
27 **Plaintiff AZAT VARDERESYAN**

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **1. PRELIMINARY STATEMENT**

3 Plaintiff Azat Varderesyan was severely injured on August 25, 2009, when an
4 approximate one ton load was dropped from a raised forklift onto his right leg. Azat sustained
5 multiple fractures to his right femur and placement of a permanent titanium intermedullary rod.

6 At the time of the injury, Azat was an independent operator of a bobtail delivery truck for
7 Defendant Dependable Highway Express (“DHE”) accepting his daily delivery load at the Los
8 Angeles DHE warehouse.

9 Despite this fact, when Azat was taken to White Memorial Hospital in Los Angeles for
10 emergency treatment and surgery, it was initially (and mistakenly) assumed by the hospital that
11 Azat’s case was a worker’s compensation case given that Azat was injured while he was working
12 as an employee at DHE. Accordingly, following Azat’s hospital stay, surgery, and recovery, the
13 billing department attempted to bill DHE directly for payment of Azat’s medical bills which
14 were approximately \$97,000.00 for the hospital alone. The workers compensation claim was
15 ultimately denied by DHE’s insurer.

16 In January 2010, over one year ago, White Memorial Hospital produced a bill and sent it
17 directly to Defendant DHE for payment. *That bill was not sent to Azat or his counsel.* The bill
18 reflected a *proposed* adjusted balance due to the hospital in an apparent attempt to compromise
19 the bill which was a fraction of the reasonable value of the services rendered. It would appear
20 that the dramatic *proposed* adjustments that were offered by the hospital at that time reflected the
21 equivalent of a worker’s compensation credit, insurance, insurance-like benefits, or otherwise. A
22 copy of the bill is attached as Exhibit “A”.

23 A gratuitous payment or a possible medical bill reduction is subject to the collateral
24 source rule. A tortfeasor has no right to take advantage of the *possible* benefits afforded to a
25 victim. Such benefits are completely “collateral” to the damage caused by the defendant.

26 It is absolutely critical to the analysis of the admissibility of this *proposed settlement*
27 offer by the hospital that *the proposed adjusted bill was never paid by DHE or anyone else.*

1 Evidence of *a paid bill* may be permitted to demonstrate the reasonable medical value of services
2 rendered, in certain instances. Evidence of a proposed adjusted bill, *which was never paid*, is
3 not evidence of anything. No witness could ever find that the reasonable value of Azat's
4 extended hospital stay, MRI's, major surgery, and insertion of a permanent titanium
5 intermedullary rod was the fraction proposed by the hospital as settlement of the bill over one
6 year ago.

7 In fact, defendant's own expert witness testified that the reasonable value for the medical
8 services rendered to plaintiff in this case was around \$100,000. Exhibit "B."

9 If such evidence, or any mention of proposed adjustments similar to worker's
10 compensation credits, insurance, or insurance-like credits, or adjustments or otherwise are
11 introduced or made known to the jury, either directly or indirectly, it could potentially create
12 prejudice and confusion to the jury, and must be excluded.

13 Therefore, Plaintiff requests an Order prohibiting defense counsel and all witnesses from
14 offering any evidence, either directly or indirectly, or making any reference in the presence of
15 jurors or perspective jurors to the fact that Plaintiff has received or may receive in the future,
16 worker's compensation payments or benefits, or other actual or potential insurance benefits, or
17 bill adjustments, all of which constitute collateral sources of recovery. This includes ordering
18 counsel to redact all such references from any report, bill or other writing to be identified or
19 referred to for any purpose in the trial.

20
21 **2. THIS COURT MAY EXCLUDE PREJUDICIAL EVIDENCE IN ADVANCE OF**
22 **TRIAL BY WAY OF AN IN LIMINE MOTION.**

23 The court has the inherent power to grant a motion in limine to exclude "any kind of
24 evidence which could be objected to at trial, either as irrelevant or subject to discretionary
25 exclusion as unduly prejudicial". (*Clemens v. American Warranty Corp.* (1987) 193 Cal.App.3d
26 444; *Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288).

1
2 **3. THIS COURT SHOULD EXCLUDE ANY COLLATERAL EVIDENCE OF THE**
3 **HOSPITAL'S PROPOSED OFFER TO REDUCE ITS MEDICAL BILL WHICH**
4 **WAS NEITHER PAID NOR BEARS ANY RELATION TO THE REASONABLE**
5 **VALUE OF THE SERVICES PROVIDED.**

6 Evidence of an unpaid medical bill is properly excluded. (See, *Calhoun v. Hildebrandt*
7 (1964) 230 Cal.App.2d 70, 73.) Moreover, the courts have regularly held that unpaid bills for
8 hospital services do not prove the reasonable value of such services and are insufficient to
9 support an award. (See, *Linde v. Emmick* (1936) 16 Cal.App.2d 676, 684; compare, *Rodgers v.*
10 *Kemper Const. Co.* (1975) 50 Cal.App.3d 608, 626-27 (Payment of medical bills provides some
11 evidence as to the reasonable value for the services rendered.))

12 The collateral source rule is well-recognized by the courts of this state. A defendant may
13 not mitigate damages from collateral payments where the plaintiff has been compensated by an
14 independent source, such as insurance, pension, continued wages or disability payments.
15 (*Helpend v. So. Cal. Rapid Trans. District* (1970) 2 Cal.3d 1). Recoveries from a source wholly
16 independent of the wrongdoer are therefore inadmissible. (*DeCruz v. Reed* (1968) 69 Cal.2d
17 217; *Acosta v. So. Cal. Rapid. Trans. District* (1970) 2 Cal.3d 19; *Hrnjack v. Graymar, Inc.*
18 (1971) 4 Cal.App.3d 725). This has even held to include past or future Medi-Cal benefits.
19 (*Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635; *Brown v. Stuart* (1982) 29 Cal.App.3d
20 331).

21 Defendant should not be permitted to accomplish by *non-payment* of a bill what
22 defendants are prevented from achieving by payment of a bill by a collateral source. The
23 collateral source rule is (still) the law in California--and, in particular, in this District. (See,
24 *Olsen v. Reid* (2008) 164 Cal.App.4th 200.) Our case does not involve a municipal defendant or
25 medical negligence, and those are the only (statutory) areas where the collateral source rule has
26 been limited in its application.

27 As stated in *Olsen v. Reid, supra*:

1 “Subsequent cases have reaffirmed the continuing vitality of the rule. In
2 *Arambula v. Wells*, (1999) 72 Cal.App.4th 1006, 85 Cal.Rptr.2d 584 (*Arambula*), the
3 plaintiff, who worked for a family-owned company, continued to receive his weekly
4 salary from his brother after a car accident. The plaintiff did not prove at trial that his
5 brother had the right to be reimbursed, and the trial court therefore instructed the jury not
6 to award damages for lost earnings. (*Id.* at pp. 1008-1009, 85 Cal.Rptr.2d 584.)

7 “We found this was error, holding that the collateral source rule allowed the
8 plaintiff to recover despite his receiving compensation from an external source.
9 (*Arambula, supra*, at 72 Cal.App.4th at p. 1009, 85 Cal.Rptr.2d 584.) We held that public
10 policy weighed heavily in favor of applying the collateral source rule to gratuitous
11 payments. (*Id.* at p. 1012, 85 Cal.Rptr.2d 584.) Further, we noted that the “collateral
12 source rule also recognizes the inadequacies of damage awards for personal injuries. That
13 is because ‘[l]egal “compensation” for personal injuries does not actually compensate.
14 Not many people would sell an arm for the average or even the maximum amount that
15 juries award for loss of an arm. Moreover the injured person seldom gets the
16 compensation he “recovers,” for a substantial attorney's fee usually comes out of it. The
17 Rule helps to remedy these problems inherent in compensating the tort victim.’ (Note,
18 *California's Collateral Source Rule and Plaintiff's Receipt of Uninsured Motorist*
19 *Benefits* (1986) 37 Hastings L.J. 667, 672.)” (*Id.* at pp. 1009-1010, fn. 7, 85 Cal.Rptr.2d
20 584.)”

21 A persuasive case comes from outside this jurisdiction on remarkably similar facts. In
22 *Montgomery Ward & Co. v. Anderson* (1998) 976 S.W.2d 382, the Court held that the
23 “forgiveness of a debt for medical services is a collateral source to be sheltered” by the collateral
24 source rule. (*Id.* at pp. 383-85.) (A copy of the *Montgomery Ward* Case is attached hereto as
25 Exhibit “C.”) In that case, the plaintiff had reached an agreement with her healthcare provider
26 that it would discount the bill by 50 percent. (*Id.* at 383.) The court based its holding that the
27
28

1 collateral source rule applied on the policy underlying the collateral source rule. (*Id.* at pp. 384-
2 85.)

3 Accordingly, this court must conclude that the common law collateral source rule is not
4 limited to protecting merely the cash amounts paid to providers for services rendered; rather, the
5 rule is broad enough to encompass the amount by which a medical provider's bill may or may not
6 be discounted pursuant to a contractual arrangement between the provider and third-party payor
7 or otherwise. (*Accord, Montgomery Ward & Co. v. Anderson*, 976 S.W.2d 382, 383-85 (Ark.
8 1998) ("gratuitous or discounted medical services are a collateral source not to be considered in
9 assessing the damages due a personal-injury plaintiff")(Exhibit "C"); See, also, *Olsen v. Reid*
10 (2008) 164 Cal.App.4th 200, (The argument that the plaintiff's recovery was limited to the
11 amount paid by his insurance reflects a fundamental misunderstanding of the proper application
12 of the collateral source rule to a tortfeasor's responsibility to pay the full reasonable value of the
13 necessary medical treatment caused by the negligent conduct.).

14 The fact that Plaintiff may receive worker's compensation-like benefits, or insurance or
15 insurance-like benefits, credits, or adjustments, if known to jurors either directly or indirectly,
16 will mislead them, confuse the issues, create prejudice, and require additional witnesses and
17 undue consumption of time to explain. An equally dangerous alternative is that jurors will
18 reduce the legal recovery rights of Plaintiff by the amount of the *potential* insurance, *potential*
19 insurance-like benefits, *potential* credits or *potential* adjustments.

20 As such, the prejudice is obvious and even if the evidence were not barred by the
21 collateral source doctrine, *Evidence Code* § 352 would nonetheless require its exclusion.

22 Traditional evidentiary policy has long excluded from evidentiary consideration the fact
23 that a party is insured. For instance, *Evidence Code* § 1155 expressly makes inadmissible the
24 existence of liability insurance. Similarly, *Evidence Code* § 1152 expressly makes inadmissible
25 any offer of payment in settlement. There is no rational distinction between excluding the fact of
26 liability insurance or even an offer to make a settlement payment, and not exclude evidence of
27 actual or *potential* benefits from a source wholly independent of the wrongdoer. One can
28

1 imagine the mischief possible if such insurance-like coverage or medical benefits information is
2 leaked to jurors. Allowing such evidence would require that Plaintiff call many additional
3 witnesses to explain the hospital's billing methods, offers to settle, and allowable adjustments or
4 credits, all of which would serve only to highlight and focus the juror's attention on the collateral
5 source, instead of eliminating the prejudicial effect of its admission in the first place.

6 Since there can be no probative value to such evidence, especially when weighed in
7 comparison to the serious, obvious prejudice and confusion such evidence will create if known to
8 jurors, it must be excluded.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: June 9, 2011

**BARRY P. GOLDBERG,
A Professional Law Corporation**

**BY: _____
BARRY P. GOLDBERG, Attorney for
Plaintiff AZAT VARDERESYAN**

DECLARATION OF BARRY P. GOLDBERG

I, BARRY P. GOLDBERG, declare:

1. I am an attorney at law licensed to practice before the Courts of the State of California and am the principal in the law firm of Barry P. Goldberg, A Professional Law Corporation. As such, I am the attorney of record for Plaintiff AZAT VARDERESYAN. I have personal knowledge of the following facts and if called upon to testify, I could and would competently testify to those facts.

2. I make this Declaration in support of Plaintiff's Motion in Limine No. 4 to Exclude Reference to Medical Bill Reduction Offer by White Memorial Hospital.

3. On or about December 27, 2010, I faxed and mailed a meet and confer letter to Defendant DHE's counsel, David Phillips, Esq., concerning certain motions Plaintiff intended to bring to exclude certain evidence at trial.

4. Mr. Phillips has both indicated that he oppose and he filed an opposition to the initial Motion in Limine No. 4 on this subject. The Court should note that this Motion in Limine has been substantially augmented and is therefore designated MIL 4A, rather than MIL 4.

5. At the time of the injury, Azat was an independent operator of a bobtail delivery truck for Defendant Dependable Highway Express ("DHE") accepting his daily delivery load at the Los Angeles DHE warehouse.

6. Despite this fact, when Azat was taken to White Memorial Hospital in Los Angeles for emergency treatment and surgery, it was initially (and mistakenly) assumed by the hospital that Azat's case was a worker's compensation case given that Azat was injured while he was working as an employee at DHE. Accordingly, following Azat's hospital stay, surgery, and recovery, the billing department attempted to bill DHE directly for payment of Azat's medical bills which were almost \$97,000.00 for the hospital alone. The workers compensation claim was ultimately denied by DHE's insurer.

7. In January 2010, over one year ago, White Memorial Hospital produced a bill and sent it directly to Defendant DHE for payment. ***That bill was not sent to Azat or to my office at***

1 **any time**. The bill reflected a **proposed** adjusted balance due to the hospital in an apparent
2 attempt to compromise the bill which was a fraction of the reasonable value of the services
3 rendered. It would appear that the dramatic **proposed** adjustments that were offered by the
4 hospital at that time reflected the equivalent of a worker's compensation credit, insurance,
5 insurance-like benefits, or otherwise. A true and correct copy of the purported bill is attached as
6 Exhibit "A".

7 8. Defendant has indicated and affirmatively represented that it intends to offer the
8 reduction amount as evidence of the value of services rendered to Plaintiff.

9 9. It is absolutely critical to the analysis of the admissibility of this **proposed**
10 **settlement** offer by the hospital that **the proposed adjusted bill was never paid by DHE or**
11 **anyone else**. Although evidence of **a paid bill** may be permitted, in certain instances, evidence of
12 a proposed adjusted bill **which was never paid**, is not evidence of anything. No witness could
13 ever find that the reasonable value of Azat's extended hospital stay, MRI's, major surgery, and
14 insertion of a permanent titanium intermedullary rod was the fraction proposed by the hospital as
15 settlement of the bill over one year ago. **In fact, defendant's own orthopedic surgeon,**
16 **Geoffrey Miller, M.D., testified at his deposition that the reasonable value for the medical**
17 **services rendered was around \$100,000.** Excerpts from Dr. Miller's deposition are attached
18 hereto as Exhibit "B."

19 10. If such evidence, or any mention of proposed adjustments similar to worker's
20 compensation credits, insurance, or insurance-like credits, or adjustments or otherwise are
21 introduced or made known to the jury, either directly or indirectly, it could potentially create
22 prejudice and confusion to the jury, and must be excluded.

23 11. Plaintiff requests an Order prohibiting defense counsel and all witnesses from
24 offering any evidence, either directly or indirectly, or making any reference in the presence of
25 jurors or perspective jurors to the fact that Plaintiff has received or may receive in the future,
26 worker's compensation payments or benefits, or other actual or potential insurance benefits, or
27 bill adjustments, all of which constitute collateral sources of recovery. This includes ordering
28

1 counsel to redact all such references from any report, bill or other writing to be identified or
2 referred to for any purpose in the trial.

3 12. A persuasive case comes from outside this jurisdiction on remarkably similar
4 facts. In *Montgomery Ward & Co. v. Anderson* (1998) 976 S.W.2d 382, the Court held that the
5 “forgiveness of a debt for medical services is a collateral source to be sheltered” by the collateral
6 source rule. (*Id.* at pp. 383-85.) A true copy of the *Montgomery Ward* Case is attached hereto as
7 Exhibit “C.”

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11 Executed this __, day of March, 2010 at Woodland Hills, California.

12
13
14 _____
15 Barry P. Goldberg

16
17
18
19
20
21
22
23
24
25
26
27
28

