# Update: Appeals Court Reinstates Florida Plaintiffs' Class Claims in Challenge to Unreasonable Hospital Rates

**July 2016 Update:**

In April, the U.S. Court of Appeals for the 11th Circuit overturned the district court's February 2015 decision dismissing the class-wide allegations in this case. The case charges certain Florida medical centers and Nashville, Tenn.-based HCA with billing exorbitant and unreasonable fees for emergency radiological services covered in part by Florida Personal Injury Protection ("PIP") insurance. Under Florida's No Fault Car Insurance Law, drivers are required to have $10,000 in PIP insurance, and the complaint alleges that patients covered by PIP who received radiological services at emergency rooms following motor vehicle accidents were billed far more for those services than other patients receiving the same services, which the plaintiffs claim violates various consumer protection laws. The appellate court's decision reinstating the class claims is here. The case has been proceeding in district court again as of June.

**Earlier Posts on this Case:**

**May 12, 2015**:

Following our last post on this case, the plaintiffs appealed the district court's striking of the class allegations to the Eleventh Circuit Court of Appeals. Such an interlocutory appeal is permissive under Federal Rule of Civil Procedure 23(f). In connection with that appeal, the plaintiffs filed a motion with the district court to stay discovery pending the outcome of the Eleventh Circuit's review. Also during this time, the remaining defendant hospital filed a motion to refer the case to early mediation. This week, the court ruled on both motions. The district court ruled that a stay of discovery was appropriate to avoid waste of resources, but that referral of

the case to mediation at this point, with the interlocutory appeal pending, would be premature.

Thus, we, along with the parties, await the Eleventh Circuit's ruling to see whether this exciting case will proceed!

**Original Post**:

Plaintiffs in Florida are going after multiple HCA-operated hospitals in Tampa for charging excessive rates for emergency radiological services. Four named plaintiffs who received services including CT scans and MRIs following car accidents while they were only covered by personal injury protection ("PIP") insurance, an extension of car insurance that covers medical bills following an accident, filed the suit last summer. The plaintiffs claimed they were forced to sign contracts of adhesion, obligating them to pay the hospitals' chargemaster rates, and then were billed those (high) rates for radiological services beyond what their PIP plans covered. The putative class sued for violation of the Florida Deceptive Unfair Trade Practices Act ("FDUTPA"), breach of contract, and breach if the implied covenant of good faith and fair dealing. On the motion to dismiss, the judge ruled that the suit could not properly proceed as a class, and dismissed all but one of the plaintiffs. In addition, the court dismissed the breach of implied covenant claim. Accordingly, the suit is now proceeding as an individual action for violations of the Florida consumer protection statute and breach of contract.

**Class Allegations**

The named plaintiffs in the case brought suit on behalf of:

> … similarly situated individuals who received PIP-covered emergency care radiological services at HCA-operated facilities in Florida who either (a) were billed by the facility for any portion of the charges for such services; and/or (b) had their $10,000 of PIP coverage prematurely exhausted by the facility's charges for such services, and as a result, were billed for additional medical services rendered by the facility and/or third party providers that would otherwise have been covered under PIP.

The court ruled that a class could not be certified due to predominance issues. Under Federal Rule of Civil Procedure 23(b)(3), for a class to be certified, "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." The court reasoned that the main inquiries in this case, i.e., whether the charges for radiological services were reasonable and, if so, what damages are owed, are highly individualized, and not properly considered on a class-wide basis. Factors that made the case too individualized for class certification include: (1) the reasonableness of prices depending on geographic area|(2) whether plaintiffs' carried co-insurance|(3) whether patient-specific medical care was reasonable and related to a motor vehicle accident covered by PIP|and (3) whether third-party providers' charges were reasonable. The court cited the Court of Appeals for the Eleventh Circuit for the proposition that determinations of breach, materiality and damages that require individualized consideration are not appropriate for class treatment.

**Claims**

**FDUTPA**

The plaintiffs allege defendants violated the Florida consumer protection statute by charging unreasonable rates for radiological services to PIP-covered patients, concealing their practice of charging those rates, and by forcing the patients subject to the rates to sign contracts of adhesion that obligated them to pay chargemaster rates without actually disclosing the rates themselves.

The statute is broad, covering "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.204(1). To state a FDUTPA claim, a plaintiff must allege: (1) a deceptive act or unfair practice|(2) causation|and (3) actual damages. The defendants argue that their practice of charging chargemaster rates is not deceptive because those rates are incorporated by reference in the contracts that patients sign. The court expresses doubts about whether this practice rises to the level of an FDUTPA claim, but nonetheless allows the case to proceed, in light of other courts' consideration of similar claims.

**Breach of Contract**

The plaintiffs' breach on contract is based on the incorporation of the PIP statute into the hospitals' contracts. The PIP statute states that hospitals "may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered. . . . such a charge may not exceed the amount the person or institution customarily charges for like services or supplies." The court ultimately agreed with the plaintiffs that the statute's reasonableness requirement was incorporated as an express term of the contract, and that plaintiffs should have the opportunity to prove that the charges were unreasonable. In doing so, the court rejected the defendants' arguments that: (1) the statute only provides a remedy to PIP *insurers* to challenge the charges' reasonableness and (2) the chargemaster rates are reasonable because they are, in fact, the hospitals' usual and customary charges.

The court dismisses the defendants' first argument, explaining that the statute does not preclude a claim by plaintiffs. On second argument as to reasonableness, the court concludes that the fact that the chargemaster rates do not exceed the usual and customary rates does not necessarily make them reasonable. The court adds that a PIP insurer's business decision to pay a percentage of the billed charges does not render the charges reasonable.

What is missing here is a more robust discussion of the differences between the negotiated rates paid by health plans and Medicare/Medicaid and the chargemaster rates. The court cites to defendants' explanation that "[a]ny differential in the charges are due to discounted rates negotiated by private insurance companies or mandated by the government under its Medicaid or Medicare programs." That statement certainly does little to explain how both the (much lower) negotiated rates paid by the majority of patients and the chargemaster rates are both reasonable. The court explains that the PIP statute itself "provides guidance on determining the reasonableness of a specific charge, and includes other factors such as payments accepted by the hospital and charges within the community." But, it does not address the defendants' contention that the rates are reasonable, even in light of the discounted negotiated rates paid by most payers. We expect this issue may be taken up in greater detail later.

The court's discussion of reasonableness reminds us of a California case we wrote about last summer, where an appeals court ruled that, outside a contract, a payer must only pay reasonable and customary rates for hospital services, and defined "reasonable and customary" as "***market***" rates, ***not*** chargemaster rates. In that case, the court relied on the legal concept of *quantum meruit* or "what one has earned," and concluded that the chargemaster rates were only one piece of evidence as to what was reasonable, and, in light of lower negotiated rates, certainly did not qualify as market rates.

**Breach of Implied Covenant of Fair Dealing**

Essentially, the court granted defendants' motion to dismiss this claim because the claim merged with their breach of contract claim.

**Parties**

Currently, this case is proceeding as an individual action with a single plaintiff, as opposed to a multiple plaintiff suit or—as plaintiffs had hoped—a class action. Notwithstanding the plaintiffs' loss on class certification, they managed to succeed in keeping parent company HCA Holdings, Inc. in the case. The court was persuaded that because HCA "is directly involved in setting and enforcing hospital guidelines and is specifically involved in the billing practices of these hospitals," they were properly included in the suit as a defendant.

**Looking Ahead**

The court seemed reluctant to allow this case to proceed, and it will be interesting to see how these issues are taken up on motions for summary judgment and (potentially) beyond. Challenging the reasonableness of hospital pricing under state consumer protection statutes is a litigation strategy that we at The Source are following closely. Please let us know if you are aware of a case in your state we should be covering!