

I.

INTRODUCTION

It is anticipated that the defendants will attempt to present evidence at trial of various services and non-monetary benefits which have been provided to Plaintiff _____ in the past, or may be provided to him in the future, by various “collateral sources,” and that the defense will claim that the “Collateral Source Rule” has been completely abrogated in medical negligence cases by Civil Code section 3333.1. However, as will be shown below, only a limited exception to the Collateral Source Rule is created by Civil Code section 3333.1, and that section is inapplicable to Medi-Cal benefits, RC benefits, CCS benefits, services provided through the public school system, or any other collateral source non specifically identified in section 3333.1.

II.

THE COLLATERAL SOURCE RULE AND CCP § 3333.1

Any reference to the past, present, or future provision of services, without cost, to Plaintiff through Medi-Cal, RC, and/or any other collateral source, should be excluded at the time of trial pursuant to the Collateral Source Rule. This rule provides that “if an injured party received some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the Plaintiff would otherwise collect from the tortfeasor.” *Hrnjak v. Graymar, Inc.* (1971) 4 Cal.3d 725, 729. The California Supreme Court has repeatedly held that California remains a firm proponent of this rule (*Id.* at p. 729; *Acosta v. Southern Cal. Rapid Transit District* (1970) 2 Cal.3d 19; *Helfend v. Southern California Rapid Transit District* (1970) 2 Cal.3d 1). Thus, in the absence of some exception to the Collateral Source Rule, evidence of collateral benefits, such as those provided to Plaintiff _____ through Medi-Cal or RC, may not be introduced at trial.

In medical negligence actions, Civil Code section 3333.1 creates a limited exception to the Collateral Source Rule. It provides, in pertinent part:

- (a) In the event the defendant so elects, in an action for personal injury against a health care provider based upon professional negligence, he may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the personal injury pursuant to the United States Social Security Act, any state or federal income disability or worker’s compensation act, any health, sickness or

income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental or other health care services. . . .

In this case, Plaintiff _____ has never received and will never be eligible to receive any “amounts payable as a benefit” pursuant to any federal income disability or worker’s compensation act, since he has never worked, and all parties agree that this neurologically devastated child will never be able to work. He has never received, and will never be eligible to receive any private income-disability insurance benefits, or benefits through any accident insurance policy that provides health benefits or income-disability coverage. He has never been a party to “any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental or other health care services.” Thus, the only benefits Plaintiff _____ is ever likely to receive to which Civil Code section 3333.1 applies would be social security disability benefits.

III.

JUDICIAL INTERPRETATION OF § 3333.1

More than twenty years ago, *Brown v. Stewart* (1982) 129 Cal.App.3d 331, addressed a number of arguments offered by the defense in hopes of obtaining a determination that Civil Code section 3333.1 applies far more broadly than the literal wording of the statute suggests. The *Brown* court specifically addressed the question of whether Civil Code section 3333.1 is applicable to Medi-Cal benefits, and held that it is not. The same reasoning applies to such “collateral sources” as Medi-Cal benefits, CCS benefits, RC benefits, and services that may be provided by the public school system.

First, the *Brown* defendants contended that Medi-Cal benefits fall within section 3333.1 because they constitute an “amount payable as a benefit to the plaintiff as a result of the personal injury pursuant to the United States Social Security Act.” The *Brown* court rejected that argument, even though it recognized that the Medi-Cal program receives some federal financial support pursuant to Title XIX of the Social Security Act. The *Brown* court explained:

“[P]ayments to recipients under the Medi-Cal program are not ‘any amount payable as a benefit to the plaintiff pursuant to the United States Social Security Act.’ First, the funds provided are paid to the State of California, to be administered as part of its program of providing medical care for the needy. To qualify for such financial assistance, the state must qualify by compliance with requirements of the federal law. Second, Medi-Cal payments are made directly to the medical service providers upon proof of rendition of health care services to an eligible Medi-Cal beneficiary. In a technical sense, a benefit is conferred upon the Medi-Cal recipient by the receipt of medical services but the thrust of the statutory language is directed to sums payable to the plaintiff.

Thus, the *Brown* decision makes it clear that the provisions of Civil Code section 3333.1(a) pertaining to “amounts payable as a benefit to the plaintiff” by Social Security apply only where those benefits are in the form of money paid directly to the recipient. *Id.* at p. 343. Identical considerations apply to the question of whether section 3333.1 is applicable to services provided through RC, CCS services, the public school system, and, indeed, to any collateral source which pays for services, but does not provide monetary benefits. Thus, even though the Security Act may provide funds which are utilized by the CCS and RC programs, the services provided by or through those programs are not “any amount payable as a benefit pursuant to the United States Social Security Act.” The *Brown* defendants argued “that the direct payment to health care providers under Medi-Cal is of no significance as private health care plans such as Blue Cross, Blue Shield, and the Foundation Health Plan of _____ also pay directly according to an agreed upon schedule.” The *Brown* court rejected this argument as well, pointing out that “such private plans are specifically identified in the second contract providers clause of subdivision (a) of section 3333.1.”

Next, the *Brown* defendants argued that the State of California and/or the county constituted “organizations” which make payments to health care providers pursuant to a contract or agreement to provide health care services. Again, the *Brown* court found that the defendants’ “suggested statutory interpretation is unsound.” (*Id.* at p. 339.) The *Brown* court concluded that the term ‘contract’ in section 3333.1 refers to “an express, bilateral contract between the payor and the recipient of services,” and that there is no such contract between State of California and Medi-Cal recipients. Similarly, there is no “express, bilateral contract” between CCS, RC, any

public school system, or any other collateral source which provides or is likely to provide services to Plaintiff _____.

Even in the absence of the *Brown* case, the basic, well-established rules of statutory construction demonstrate that § 3333.1 cannot properly be interpreted as simply abrogating the Collateral Source Rule; it simply does not say that. If there is no ambiguity in the language of the statute, then the courts are to “presume the lawmakers meant what they said, and the plain meaning of the language governs.” (*Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227.) Where the words of a statute are clear, the courts may not add to or alter them to accomplish a purpose that does not appear of the face of the statute or from its legislative history. (*Robert F. Kennedy Medical Center v. Belshee* (1996) 13 Cal.4th 748, 756.) As the California Supreme Court has pointed out, *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, at page 1230, under the maxim of statutory construction *expressio unius est exclusio alterius*, if exceptions to a general rule are specified in a statute, the courts may not imply additional exceptions unless there is a clear legislative intent to the contrary. The interpretation of section 3333.1 urged by the defense abrogates these basic rules.

IV.

EVIDENCE OF MEDI-CAL AND REGIONAL CENTER BENEFITS WOULD RESULT IN A DOUBLE REDUCTION OF PLAINTIFF’S COMPENSATION

In *Brown*, the court pointed out that Welfare & Institutions Code section 14124.71 et seq., specifically authorizes Medi-Cal to recover against third party tortfeasors either by lien or by a direct action. Additionally, the Social Security Act, 42 U.S.C.A. section 1396a(25) also requires states in the Medicaid program to seek reimbursement for Medicaid payments from third party tortfeasors. Thus, a finding that section 3333.1 is applicable to Medi-Cal benefits “would create a direct conflict with the statutory recoupment sections.” (*Id.* at p. 340.)

Precisely the same reasoning applies to RC. RC is statutorily required to undertake funding of benefits only as a funding source of last resort. See Welfare & Institutions Code section 4659. Only very rarely do the Regional Centers wind up actually funding the services they are required to provide by statute. This is because there are almost always either public or private resources that will provide such funding, thereby effectively eliminating the need for RC

funding. One “big ticket” item that the regional center may facilitate is custodial placement in either a group home or a skilled nursing facility. When that occurs, the regional centers customarily obtain the funding for such placements by attaching the beneficiary’s Supplemental Security Income (“SSI”) (if he is receiving it) and by having Medi-Cal pay for whatever the beneficiary’s SSI benefits do not. However, for the reasons set forth in *Brown*, any RC benefits likely to be actually paid by Medi-Cal are inadmissible. Moreover, pursuant to the provisions of California Welfare and Institutions Code section 4659(a)(2), RC is *required* to pursue recovery for benefits it provides from “private entities” to the maximum extent they are allowable for the cost of services, aid, insurance, or medical assistance to the [beneficiary].” The scope of this provision has recently been addressed by an Administrative Law Judge in his decision relating to the issue of whether a special needs trust constitutes such a “private entity” thereby allowing the corpus of the trust to be attacked by the RC to pay for benefits provided to the beneficiary of the trust.

The Administrative Law Judge in *Artopoulos v. Tri-Counties Regional Center* concluded that, even in the case of a special needs trust, the corpus of the trust was a “private entity” within the meaning of section 465(a)(2). Therefore, the regional center was permitted to seek reimbursement from the trust for benefits it provided.

Accordingly, if Medi-Cal benefits or RC benefits were deemed admissible pursuant to Civil Code section 3333.1, a “double-dip” would effectively be taken from Plaintiff’s recovery. The first subtraction would be made by the jury which, upon introduction of the collateral source evidence, would presumably not award those sums as damages to the Plaintiff. See, *American Bank & Trust Co. v. Community Hosp.* (1984) 36 Cal.3d 359, 204 Cal.Rptr. 671, 683 P.2d 670. The second subtraction would occur when Medi-Cal, CCS, and RC subsequently pursued reimbursement. Such a “double-dip” would improperly and unjustly deprive Plaintiff of damages he is legally entitled to recover.

V.

**THE DEFENDANTS SEEK TO HAVE THE TAXPAYERS PAY FOR
THE CONSEQUENCES OF THEIR NEGLIGENT CONDUCT**

When Defendants argue that benefits are available to Plaintiff from various sources “for free,” it should be remembered that the funds expended by Medi-Cal, the Regional Center, the public school systems, and CCS do not come out of thin air; they are tax dollars. In suggesting that section 3333.1 should apply to Medi-Cal benefits and RC benefits, Defendants essentially suggest that the damages suffered by the Plaintiff as the result of the Defendants’ negligence should be paid by the taxpayers rather than by the Defendants. In that regard, the *Brown* court stated that in enacting section 3333.1, “we do not perceive it was the intent of the legislature to bail out doctors and other health providers by the use of public funds.”

VI.

CONCLUSION

Based upon the above, Plaintiffs respectfully request that the Defendants, their attorneys, and all witnesses called by the defense, be prohibited from making any reference to the past or future payment of any of Plaintiff’s expenses by either the California Department of Health Services through the Medi-Cal program, the Regional Center of _____ County, California Children’s Services, the public school system, or any other collateral source not specifically mentioned in Code of Civil Procedure section 3333.1, pursuant to the Collateral Source Rule.

Dated:

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