Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #005

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **24th day of January, 2012**, are as follows:

PER CURIAM:

2011-C -1130 JERRY WAYNE BENOIT v. TURNER INDUSTRIES GROUP, LLC

For the reasons assigned, the judgment of the court of appeal is reversed insofar as it affirms the judgment of the Office of Workers' Compensation awarding claimant total medical expenses in the amount of $625,168.27. As to the remaining assignments of error, the writ is recalled and denied.

JOHNSON, J., dissents in part and assigns reasons.
KNOLL, J., dissents in part and concurs in part and assigns reasons.
WEIMER, J., concurs and assigns reasons.

01/24/12

SUPREME COURT OF LOUISIANA

NO. 2011-C-1130

JERRY WAYNE BENOIT

VERSUS

TURNER INDUSTRIES GROUP, L.L.C.

ON WRIT OF CERTIORARI FROM THE COURT OF APPEAL, THIRD CIRCUIT, OFFICE OF WORKERS' COMPENSATION DISTRICT 03

PER CURIAM

In this workers' compensation matter, we are called upon to decide whether the Office of Workers' Compensation ("OWC") erred in awarding medical expenses to claimant in the amount of $625,168.27. For the reasons that follow, we conclude the OWC erred in awarding medical expenses under the facts of this case.

UNDERLYING FACTS AND PROCEDURAL HISTORY

Claimant, Jerry Wayne Benoit, sought indemnity benefits and medical expenses compensation against his employer, Turner Industries Group, L.L.C. ("Turner").[1] Claimant alleged he developed acute myeloid leukemia ("AML") during his twenty-seven year employment with Turner due to his exposure to chemicals, including benzene. Turner denied the claim, and claimant filed a disputed claim for compensation with the OWC.

After a trial on the merits, the OWC made a factual finding that claimant's AML was related to benzene exposure during his employment at Turner.

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[1] Mr. Benoit died after filing the claim, and his wife was substituted in his place. For purposes of clarity, we will refer to Mr. Benoit as "claimant" throughout this opinion, although we recognize his wife is the true party in interest.

Accordingly, the OWC awarded claimant indemnity benefits, total medical expenses in the amount of $625,168.27, and attorney fees.

Turner appealed. The court of appeal affirmed the OWC judgment in its entirety. *Benoit v. Turner Industries Group, LLC*, 10-1460 (La. App. 3 Cir. 5/4/11), 63 So. 3d 443.

Upon Turner's application, we granted certiorari for the purpose of considering the correctness of the OWC award of medical expenses. *Benoit v. Turner Industries Group, LLC*, 11-1130 (La. 9/23/11), 70 So. 3d 809. Although Turner assigns other errors in its brief, it was not our intent to grant the application as to these issues. Accordingly, as to all assignments of error other than the assignment relating to medical expenses, we will recall and deny the writ. *See Ruiz v. Oniate*, 97-2412, p. 12 (La. 5/19/98), 713 So. 2d 442, 449; *Sanders v. Zeagler*, 96-1170, p. 6 (La. 1/14/97), 686 So. 2d 819, 823; *Ledbetter v. Concord Gen. Corp*., 95-0809, p. 8 (La. 1/6/96), 665 So. 2d 1166, 1171.

The sole issue presented for our consideration is whether the OWC erred in awarding medical expenses to claimant under the facts of this case.

DISCUSSION

At the outset, we note claimant qualified for the Medicaid program. Of the total $625,168.27 charges submitted, Medicaid paid $203,124.68. According to Turner, the remaining $422,043.59 was written off under the Medicaid program. Turner argues claimant is not entitled to recover the $203,124.68 paid by Medicaid, nor the $422,043.59 written off amount. Because Turner makes different arguments with regard to these amounts, we will address them separately.

Medical Expenses Paid by Medicaid

In determining the effect to be given to the $203,124.68 paid by Medicaid, the arguments of the parties focus on the language of La. R.S. 23:1212, which provides:

> A. Except as provided in Subsection B, payment by any person or entity, **other than a direct payment** by the employee, a relative or friend of the employee, or **by Medicaid** or other state medical assistance programs of medical expenses that are owed under this Chapter, **shall extinguish the claim against the employer or insurer for those medical expenses**. …
>
> B. Payments by Medicaid or other state medical assistance programs **shall not extinguish these claims and any payments by such entities shall be subject to recovery by the state** against the employer or insurer. [emphasis added]

Turner relies on Paragraph A of the statute, which it interprets as extinguishing any claim for medical expenses against an employer for medical expenses which have been paid by Medicaid. However, claimant seizes on language in Paragraph B of the statute, which he maintains stands for the proposition that payments by Medicaid do not extinguish his claim for recovery.

To understand the parties' arguments, some background information on the evolution of La. R.S. 23:1212 is helpful. Prior to 1990, the law prohibited an employer from taking an offset for medical expenses paid by a health care insurer. *See Bryant v. New Orleans Public Service, Inc*., 414 So. 2d 322 (La. 1982) (holding a reduction or offset for benefits paid by an insurer "constitutes an indirect employee contribution to the cost of workers' compensation and is prohibited by La.R.S. 23:1163").

Responding to pressure from the business community in 1989, the legislature enacted a new section in the workers' compensation act to permit a medical offset, if the benefits were paid by someone other than a direct payment by the employee, a relative, or friend of the employee. 1 Denis Paul Juge,

Louisiana Workers' Compensation, § 12:7 (2d ed. 2002). As enacted effective January 1, 1990, La. R.S. 23:1212 provided in pertinent part:

> Payment by any person or entity, other than a direct payment by the employee, a relative or friend of the employee, of medical expenses that are owed under this Chapter shall extinguish the claim against the employer or insurer for those medical expenses. This Section shall not be regarded as a violation of La. R.S. 23:1163 … .

In *Granger v. Nelson Logging*, 96-223, p. 6 (La. App. 3 Cir. 12/4/96), 685 So. 2d 400, 403, the court of appeal, in an opinion by then-Judge Knoll, held that under the 1990 version of the statute, the payment of expenses by Medicare extinguished the obligation of an employer to pay medical expenses, although the court felt this resulted in a windfall to the employer:

> We have serious doubts as to whether it was the intention of the legislature to have payments by Medicare extinguish the obligation of the employer to pay medical expenses under worker's compensation. The statute's operation in the case *sub judice* undermines the basic principle of worker's compensation law, namely, that persons who enjoy the benefit of an employee's labor should be the ones to bear the cost of injuries incident to that labor. **As a result of the application of La. R.S. 23:1212 to the instant case, the State will ultimately bear much of the burden of Mr. Granger's injuries, while C & M, having enjoyed the benefit of Mr. Granger's labor, will receive a windfall.**
>
> Nevertheless, the language of the statute is quite clear. "Payment by *any* person or *entity* … of medical expenses that are owed under this chapter *shall extinguish* the claim against the employer or insurer for those medical expenses." La. R.S.23:1212. **We, therefore, are constrained to hold that the payment of $42,540.00 in medical expenses by Medicare extinguished Mr. Granger's claim for those expenses, but only to the amount paid.** The record reflects that $36,970.11 of Mr. Granger's medical expenses were not paid by Medicare. The hearing officer erred in holding that these expenses had also been extinguished, and C & M remains liable for these expenses.
> [italics in original; boldfacing added]

In La. Acts 2001, No. 1062, which became effective August 15, 2001, the legislature amended La. R.S. 23:1212 to provide that "the medical expenses are not to be extinguished as an employer debt if paid by Medicaid or other state agencies." *Morton v. Wal-Mart Stores, Inc.*, 36,398 (La. App. 2 Cir. 10/25/02), 830 So. 2d 533; *Blair v. Wal-Mart Stores, Inc*., 01-2211 (La. App. 4 Cir. 5/15/02), 818 So. 2d 1042. The amendment also gives Medicaid and the other state agencies the right to recover any payments from the employer. *Juge, supra* at § 12:7.

As seen by this history, it is obvious the 2001 amendment adding the language in Paragraph B was intended to address the dilemma raised in *Granger*. Reading the statute as a whole, it is clear that under La. R.S. 23:1212(A), the payment of medical expenses by Medicaid extinguishes any claim by the employee against the employer for those expenses. La. R.S. 23:1212(B) carves out a narrow exception, whereby the state is granted a right to recover these expenses from the employer.

Applying this reasoning to the case at bar, we find the direct payment of $203,124.68 in medical expenses by Medicaid extinguished any claim the claimant may have had to recover these amounts from Turner. Accordingly, the OWC erred in awarding medical expenses to claimant for the $203,124.68 paid by Medicaid.

Medical Expenses Written Off by Medicaid

Having found claimant is not entitled to recover the $203,124.68 in medical expenses paid by Medicaid, we now turn to the remaining $422,043.59 of the

$625,168.27 medical expense award, which Turner refers to as the written off amount.[2] Turner relies on our opinion in *Bozeman v. State*, 03-1016 (La. 7/2/04), 879 So. 2d 692 for the proposition that claimant may not recover this written off amount.

In *Bozeman*, we addressed the question of whether a plaintiff in a tort action was entitled to recover medical expenses written off pursuant to the Medicaid program. We discussed the nature of the Medicaid write-off process, explaining:

> When an injured plaintiff is a Medicaid recipient, federal and state law require that the health care providers accept as full payment, an amount set by the Medicaid fee schedule, which, invariably, is lower than the amount charged by the health care provider. The difference between what is charged by the health care providers and what is paid by Medicaid is referred to as the "write-off" amount.

After reviewing jurisprudence from around the country, we concluded a plaintiff in a tort action could not recover medical expenses written off under the Medicaid program:

> Care of the nation's poor is an admirable social policy. However, where the plaintiff pays no enrollment fee, has no wages deducted, and otherwise provides no consideration for the collateral source benefits he receives, we hold that the plaintiff is unable to recover the "write-off" amount. This position is consistent with the often-cited statement in *Gordon v. Forsyth County Hospital Authority, Inc.*, 409 F. Supp. 708 (M.D.N.C. 1975), *affirmed in part and vacated in part*, 544 F.2d

[2] Turner has consistently asserted that the portion of the medical expenses not paid by Medicaid was written off. However, a footnote in claimant's brief suggests Turner has not proven that any unpaid medical expenses have been written off, and indicates claimant's counsel "received lien letters from Mr. Benoit's health care providers seeking unpaid balances." Our review of the record indicates none of these purported "lien letters" were introduced into evidence, nor has claimant produced any support for his theory the unpaid medical expenses were not written off, despite being given an opportunity to file a supplemental brief in this court. In the absence of any evidence to the contrary, we accept Turner's contention that the expenses not paid by Medicaid were written off.

> 748 (4th Cir. 1976), that "(i)t would be unconscionable to permit the taxpayers to bear the expense of providing **free medical care** to a person and then allow that person to recover damages for medical expenses from a tort-feasor and pocket the windfall." After careful review, we conclude that Medicaid is a free medical service, and that no consideration is given by a patient to obtain Medicaid benefits. His patrimony is not diminished, and therefore, a plaintiff who is a Medicaid recipient is unable to recover the "write off" amounts. The operative words here are "free medical care," which, again, we hold is applicable to plaintiffs who receive Medicaid, not plaintiffs who receive Medicare or private insurance benefits.
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> *Id*. at pg. 6, 879 So. 2d at 705.

Claimant urges us to distinguish *Bozeman* from the instant case on the ground *Bozeman* arose in the context of a tort action. Claimant points out that an employer has a statutory duty under La. R.S. 23:1203 to furnish medical treatment to an injured employee, and argues he was forced to seek benefits through Medicaid due to Turner's repeated failure to authorize treatment.

Under the workers' compensation law, the employee relinquishes his right to be made whole in a civil suit, while the employer cedes his available tort defenses. *Deshotel v. Guichard Operating Co., Inc.*, 03-3511 (La. 12/17/04), 916 So. 2d 72, 77. Generally speaking, the workers' compensation regime represents a quid pro quo compromise of interests, whereby "the employee receive[s] an absolute right to recover limited benefits in exchange for the employer's tort immunity." *See Harris v. State, Dept. of Public Safety & Corrections*, 05-2647 (La. App. 1 Cir. 11/3/06), 950 So. 2d 795, 799, *writ denied*, 06-2817 (La. 3/9/07), 949 So. 2d 440.

In furtherance of this public policy, La. R.S. 23:1203(B) provides, "[t]he obligation of the employer to furnish such care, services, treatment, drugs, and

supplies … is limited to the reimbursement determined to be the mean of the usual and customary charges for such care, services, treatment, drugs, and supplies, as determined under the reimbursement schedule annually pursuant to R.S. 23:1034.2 or the actual charge made for the service, whichever is less." Similarly, La. R.S. 23:1033 provides, "[n]o contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this Chapter except as herein provided."

We recently interpreted these statutes in *Agilus Health v. Accor Lodging North American*, 10-800 (La. 11/30/10), 52 So.3d 68, wherein a health care provider filed suit against an employer, seeking a determination of the validity of preferred provider organization ("PPO") contracts, whereby an employer pays a health care provider for services rendered to an injured employee at a negotiated amount below that statutorily provided by the reimbursement schedule. We concluded the reduction of the employer's liability for medical expenses below the amount set forth in the reimbursement schedule, pursuant to the rates agreed to by the health care provider in a PPO contract, does not relieve the employer of liability in violation of La. R.S. 23:1033:

> We also note that no part of the employer's liability to "furnish" adequate medical care to the injured employee is relieved by paying a lower agreed upon fee to the health care provider. At issue here is not the employer's obligation to provide benefits or medical care for the injured employee, but simply the amount of the professional fee that was due and payable to the health care provider for services rendered. Liability to the patient is not affected, as the employer is still liable for the fee, whatever it is determined to be. In no way does paying a lesser amount to the health care provider pursuant to a contract relieve any liability to the injured employee under the LWCA. The employer is simply paying what the provider contractual [sic] agreed to charge.

Id. at p. 16, 52 So. 3d at 78-79

We went on to recognize that nothing in the workers' compensation act "prohibits a health care provider from contracting to charge less than the reimbursement schedule whether through a PPO or other agreement." *Id*. at p. 17, 52 So. 3d at 79. Accordingly, we held PPO discount agreements for workers' compensation services did not violate the provisions of the workers' compensation act.

Although the Medicaid write offs at issue are different from the PPO discount agreements in *Agilus Health*, we find there are some clear parallels. Louisiana's Medicaid program operates by the formation of contracts with individual health care providers for medical services. One requirement of the Medicaid program, as provided by 42 C.F.R. § 447.15, is that participation in the Medicaid program is limited to "providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance, or co-payment required by the plan." Louisiana law requires participating health care providers to "comply fully with all federal and state laws and rules pertaining to the medical assistance programs." *See* La. R.S. 46:437.11(B). Under state law, providers are specifically required to accept Medicaid payment as payment in full, and are prohibited from the billing or collecting additional amounts from the recipient or the recipient's responsible party. La. R.S. 46:437.12(A)(10)(a) (*quoting* Frank L. Maraist & Thomas C. Galligan, "The Employer's Tort Immunity: A Case Study in Post-Modern Immunity," 57 La.L.Rev. 467, 473 (1997)).

Applying the reasoning of *Agilus Health*, we conclude the mere fact that the employer may have benefitted from a reduction of expenses through the Medicaid write-off process, does not impermissibly diminish the employer's

liability for medical expenses. As discussed above, the employer remains liable for the reduced amount of medical expenses paid by Medicaid, although by operation of La. R.S. 23:1212, this reimbursement is owed to the state rather than the claimant.

Having found no conflict between the Medicaid write-off process and the workers' compensation law, we find the principles enunciated in *Bozeman* are equally applicable in a workers' compensation context. As we explained in *Bozeman*, Medicaid is a free medical service, and no consideration is given by a patient to obtain Medicaid benefits. As a result, claimant would receive an improper windfall if he was allowed to recover for medical expenses which have been reduced by health care providers as a result of their contractual arrangements with Medicaid. Such double recovery of damages is not permitted under Louisiana law. *See Gagnard v. Baldridge*, 612 So. 2d 732, 736 (La. 1993) ("Double recovery would be in the nature of exemplary or punitive damages which are not allowable under Louisiana law unless expressly provided for by statute"). Accordingly, the portion of the OWC's judgment permitting claimant to recover the written off amount of $422,043.59 is erroneous and must be reversed.[3]

DECREE

For the reasons assigned, the judgment of the court of appeal is reversed insofar as it affirms the judgment of the Office of Workers' Compensation

[3] We acknowledge it is conceivable (although not proven in the instant case) that an unscrupulous employer might intentionally deny benefits in an effort to force the employee to obtain free medical treatment through Medicaid, thereby giving the employer the benefit of any Medicaid write offs in the event the employer is ultimately cast in judgment in medical expenses. Nonetheless, it would be improper for this court to attempt to fashion a penalty for such a perceived evil by awarding a claimant medical expenses to which he is not entitled. If a remedy is necessary, it must be addressed by the legislature, not the courts.

awarding claimant total medical expenses in the amount of $625,168.27. As to the remaining assignments of error, the writ is recalled and denied.

01/24/12

SUPREME COURT OF LOUISIANA

No. 2011-C-1130

JERRY WAYNE BENOIT

VERSUS

TURNER INDUSTRIES GROUP, LLC

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT,
OFFICE OF WORKERS' COMPENSATION, DISTRICT 03**

JOHNSON, **J**. dissents in part and assigns reasons.

I respectfully dissent from that part of the *per curiam* opinion which reverses the OWC's judgment permitting the claimant to recover $422,043.59 in medical expenses allegedly written off by Medicaid.

The record indicates Mr. Benoit was a faithful and hard-working employee of Turner Industries for over twenty years. Mr. Benoit worked as a laborer primarily at the CITGO refinery in Lake Charles, Louisiana. His work as a laborer required Mr. Benoit to do routine maintenance at the facility, which consisted of the "dirty work" of shoveling and disposing of chemical residue and muck from the sewers, ditches and sump collection points throughout the refinery's processing units. The record further demonstrates, and the lower courts found, Mr. Benoit sufficiently proved through expert testimony that his work exposed him to chemicals, specifically an overexposure to benzene, which caused him to develop acute myeloid leukemia ("AML"), resulting in his death.

Mr. Benoit became disabled and unable to work in July of 2006. In early September of 2006, he was diagnosed with AML. He filed a workers' compensation

petition (Form 1008) on October 2, 2006. For more than two years, Turner continued to deny Mr. Benoit's claim, even after discovery was conducted and Mr. Benoit submitted expert reports and other documents evidencing his exposure to benzene and its causal connection to AML. Mr. Benoit died in November of 2007. It was not until October of 2008 that Turner supplied its own expert reports to attempt to controvert Mr. Benoit's claim.

I find Turner's conduct throughout its handling of Mr. Benoit's workers' compensation claim to be particularly egregious. Turner denied Mr. Benoit's claim from its inception, and continued to deny it for two years despite expert reports provided by the worker, and without any reports of its own to controvert them. Turner actively sought to defeat Mr. Benoit's claim and unduly delayed the proceeding for years by its failure to maintain and/or produce relevant documents. Although Turner eventually hired its own experts to dispute Mr. Benoit's expert reports, the primary underlying basis for its continued denial of his claim was the alleged failure of Mr. Benoit to demonstrate the extent and duration of his exposure to benzene while working for Turner. However, both the workers' compensation hearing officer and the court of appeal found Turner's position to be disingenuous. Turner sought this information from Mr. Benoit, yet failed to produce such records in discovery even though they are mandated. The hearing officer stated:

> But, from all the testimony, apparently, Turner didn't seem to know much more about the extent and duration of the exposure than Mr. Benoit did. It is a genuine puzzlement that a company under federal and state mandate to monitor its workers' exposure to hazardous products such as benzene could show up in court with virtually no monitoring records. None. He worked for Turner and Citgo for almost two decades, yet the company's files were utterly bereft of any medical monitoring records or personal monitoring records regarding this individual. This deceased worker here appears to be "the man who never was."

Further, the court of appeal noted:

> We attribute much of the unconscionable delay to Turner, who was less than forthcoming in providing documentation to which Mr. Benoit was legally entitled to have. Specifically, Turner was inexplicably unable to provide evidence documenting the quantity and duration of the benzene levels to which Mr. Benoit was exposed.

Benoit, 63 So. 2d at 446, n. 3. Despite these obstacles, Mr. Benoit produced sufficient expert testimony to support his claim and demonstrate a causal connection between his exposure to benzene during his Turner employment and AML.

Not only did Turner's actions deny Mr. Benoit payment of workers' compensation benefits, its refusal of the claim and its refusal to pay medical benefits forced Mr. Benoit to seek all of his medical treatment through the charity system. Turner's actions denied Mr. Benoit a right to chose his own doctors, which unquestionably would have provided him with more personal, experienced and specialized treatment for his leukemia.

Now, the majority of this Court is denying Mrs. Benoit an award of medical expenses incurred by Mr. Benoit, but alleged by Turner to have been "written off" by Medicaid. Notably, while Turner argues $422,043.59 of the total $625,168.27 in medical expenses was not actually paid by Medicaid, but instead represents the portion of the medical expenses attributable to the Medicaid write-off, I find nothing in the record to prove that this amount has been written off. Louisiana law does provide that medical providers who participate in the Medicaid program are required to accept Medicaid payment as payment in full and are prohibited from the billing or collecting additional amounts from the recipient or the recipient's responsible party. See La. R.S. 46:437.12(A)(10)(a). However, Mrs. Benoit asserted at oral argument that she has received lien/collection letters from health care providers requesting payment.[1]

[1] This information is not in the record because the alleged lien/collection letters were received subsequent to the trial of this matter.

Additionally, I agree with Mrs. Benoit's argument that the portion of medical expenses that were not paid by Medicaid, and have not been paid by anyone, cannot be extinguished under La. R.S. 23:1212. This statute provides, in pertinent part:

> A. Except as provided in Subsection B, **payment by any person or entity**, **other than** a direct payment by the employee, a relative or friend of the employee, or by **Medicaid** or other state medical assistance programs of medical expenses that are owed under this Chapter, **shall extinguish the claim against the employer** or insurer for those medical expenses.... (Emphasis added)
>
> B. Payments by Medicaid or other state medical assistance programs shall not extinguish these claims and any payments made by such entities shall be subject to recovery by the state against the employer or insurer.

La. R.S. 23:1212 (A) provides that the employer's obligation to pay medical expenses is extinguished when a payment has been made by someone *other than* the employee, a relative or friend of the employee, or by *Medicaid* or other state medical assistance programs. Because Medicaid is the only entity that has paid any of the medical expenses, pursuant to the clear language of the statute, Medicaid's payment of Mr. Benoit's medical expenses does not extinguish Turner's responsibility for those medical expenses. Further, the amount of the write-off was not a *payment* made by anyone, and thus is does not fall under La. R.S. 23:1212 (A).

The majority relies on this Court's opinion in *Bozeman v. State*, 03-1016 (La. 7/2/04), 879 So. 2d 692, where we concluded that a plaintiff in a *tort* action could not recover medical expenses written off under the Medicaid program. While the majority finds the principles enunciated in *Bozeman* equally applicable in a workers' compensation context, I disagree.

In *Bozeman*, this Court addressed the application of the collateral source rule to medical expenses written off by Medicaid. After looking at approaches developed by various courts regarding the medical expenses written-off by healthcare providers

pursuant to the Medicaid agreement, we adopted an approach called the "benefit of the bargain," which awards the plaintiff the full value of his medical expenses, including the write-off amount, where the plaintiff has paid some consideration for the benefit of the written-off amount. *Bozeman*, 879 So. 2d at 701, 703. In applying that approach, this Court distinguished Medicaid, a social service health care provider for persons with low income and limited assets, from Medicare, which is healthcare insurance funded by beneficiaries and their employers. *Id.* at 704-05. We articulated that while care of the nation's poor is an admirable social policy, "where the plaintiff pays no enrollment fee, has no wages deducted, and otherwise provides no consideration for the collateral source benefits he receives, we hold that the plaintiff is unable to recover the 'write-off' amount." *Id*. at 705. This Court concluded:

> Medicaid recipients are unable to collect the Medicaid "write-off" amounts as damages because no consideration is provided for the benefit. Thus, plaintiff's recovery is limited to what was paid by Medicaid. However, in those instances, where plaintiff's patrimony has been diminished in some way in order to obtain the collateral source benefits, then plaintiff is entitled to the benefit of the bargain, and may recover the full value of his medical services, including the "write-off" amount.

Id. at 705–06.

In my view, the holding in *Bozeman* cannot be applied to this workers' compensation case. *Bozeman* is premised on the finding that a tort plaintiff pays no consideration for the benefit of receiving Medicaid payments. Unlike tort defendants, a workers' compensation employer has a duty to be proactive and provide its injured employee with medical treatment and directly pay for the employee's medical expenses pursuant to the LWCA. Employers are statutorily obligated under La. R.S. 23:1203[2] to furnish medical treatment to an injured employee. In exchange for tort

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[2] La. R.S. 23:1203 provides, in pertinent part:

A. In every case coming under this Chapter, the employer shall furnish

immunity, the workers' compensation statutes require the employer to pay medical expenses as they accrue. This Court recently explained:

> The LWCA establishes a compromise in which employees and employers surrender certain advantages in exchange for others which are more valuable to both the parties and to society in general. The employer gives up the immunity he otherwise would enjoy in cases where he is not at fault, and the employee surrenders his former right to full damages and accepts a more modest claim for bare essentials, represented by compensation. The LWCA also establishes a duty on employers to furnish all necessary medical and vocational rehabilitation expenses. La. R.S. 23:1203. The Act states, "In every case coming under this Chapter, the employer shall furnish all necessary drugs, supplies, hospital care and services, medical and surgical treatment, and any non-medical treatment recognized by the laws of this state as legal ..." La. R.S. 23:1203(A). Thus, employers have a duty to "furnish" all necessary medical care and treatment for the injured employee.

Agilus Health v. Accor Lodging North America, 2010-0800 (La. 11/30/10), 52 So.3d 68, 74 (internal citations removed). Here, Mr. Benoit was entitled to receive statutorily mandated medical treatment and payment of his medical bills. However, due to Turner's callous denial of his claim, Mr. Benoit was deprived of the benefits of the workers' compensation scheme, and was forced to rely on treatment available to indigents pursuant to the Medicaid program. Mr. Benoit was denied his choice of

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> all necessary drugs, supplies, hospital care and services, medical and surgical treatment, and any nonmedical treatment recognized by the laws of this state as legal, and shall utilize such state, federal, public, or private facilities as will provide the injured employee with such necessary services. Medical care, services, and treatment may be provided by out-of-state providers or at out-of-state facilities when such care, services, and treatment are not reasonably available within the state or when it can be provided for comparable costs.
>
> B. The obligation of the employer to furnish such care, services, treatment, drugs, and supplies, whether in state or out of state, is limited to the reimbursement determined to be the mean of the usual and customary charges for such care, services, treatment, drugs, and supplies, as determined under the reimbursement schedule annually published pursuant to R.S. 23:1034.2 or the actual charge made for the service, whichever is less. Any out-of-state provider is also to be subject to the procedures established under the office of workers' compensation administration utilization review rules.

medical provider and denied his right to seek treatment from a non-Medicaid provider. In addition to being deprived of the right to choose his doctor, Mr. Benoit's patrimony was further diminished because he was forced to travel considerable distances for treatment. These trips were costly, resulting in expenses for gas and lodging. Thus, Medicaid was not a truly free service in Mr. Benoit's case.

Further, in my view, it is poor policy to apply the *Bozeman* rule in a workers' compensation context. Under the workers' compensation scheme, Turner had a statutory duty to provide all necessary medical treatment due to Mr. Benoit's medical condition. Allowing employers to receive the benefit of the Medicaid write-off makes it profitable for employers to deny claims at the outset despite their validity. This results in unnecessary pain and suffering, and sometimes an early death for claimants with limited financial resources, like Mr. Benoit. In such cases, it is financially beneficial for employers to deny these claims, and force the employee to rely on the Medicaid system for treatment. The majority's holding provides that, at most, the employers will have to pay the Medicaid lien, not the full amount of medical bills, thus shifting the real burden of taking care of injured employees to the State.

Turner, as Mr. Benoit's employer, had a statutory duty to provide Mr. Benoit with all medical care necessary to treat his AML, as well as a duty to pay the related medical expenses. In my view, it is an outrage that an employee injured on the job, such as Mr. Benoit, was forced to turn to Medicaid to pay for his medical treatment. In this case, Mr. Benoit was forced to seek medical treatment through Medicaid due to Turner's repeated failure to authorize treatment. If Turner had paid Mr. Benoit's medical expenses as they accrued, the employer would have expended an amount far exceeding the amount paid by Medicaid. By contrast, Turner paid ***absolutely nothing*** for Mr. Benoit's medical treatment, while the State, through the Medicaid program,

paid at least $203,124.68.

The *per curiam* opinion thus rewards Turner with a windfall, since this company purposefully avoided its responsibility to pay for Mr. Benoit's medical treatment. Turner failed to perform its duties under the workers' compensation scheme by failing to provide and pay for Mr. Benoit's medical treatment. It is thus inherently unfair to reward Turner by allowing it to benefit from the workers' compensation scheme.

The opinion gives Turner, and indeed all employers within the State an incentive to deny claims, deny treatment, and place the burden on the State to take care of these injured employees. This case creates a precedent where there is no real penalty imposed for Turner's behavior. While La. R.S. 23:1201 provides for penalties due to an employer's failure to pay medical expenses or benefits, the total amount of penalties is statutorily capped at $8,000.00.[3] This statutory cap leaves no discretion to the hearing officer or courts to award substantial and meaningful penalties where they are factually justified. In this case, the "penalty" certainly does not punish Turner, nor does it serve to deter egregious conduct.

[3] La. R.S. 23:1201(F).

01/24/12

SUPREME COURT OF LOUISIANA

No. 2011-C-1130

JERRY WAYNE BENOIT

VERSUS

TURNER INDUSTRIES GROUP, LLC

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT, OFFICE OF WORKERS' COMPENSATION, DISTRICT 03

Knoll, J., concurring in part and dissenting in part.

I respectfully dissent from the portion of the *per curiam* holding defendant Turner Industries is not responsible for the $422,043.59 which was written off by the medical care providers. This result does not faithfully apply the relevant statute and leads to a manifestly inequitable outcome. Indeed, the majority rewards Turner for acting in bad faith by refusing to pay the medical bills rightly owed to plaintiff Jerry Wayne Benoit after he suffered catastrophic and terminal cancer. This is not the result required by the statute or intended by the Legislature.[1]

Jerry Benoit worked for Turner Industries for twenty-seven years. For ten of those years he worked as a general laborer for a Lake Charles Citgo refinery, where Turner was contracted to perform general maintenance. Benoit's duties included cleaning chemical discharges and oily waste which collected in the drainage ditches, sewers, and processing units at the refinery. In the course of this work, he was exposed to any number of potentially dangerous or carcinogenic chemicals, including high levels of benzene. As may be imagined, it was unpleasant work, and co-workers and Benoit family members testified as to the "awful" conditions he worked in and his haggard appearance when he returned

[1] I concur with the portion of the *per curiam* reversing the award of $203,124.68 paid by Medicaid, and with the portion recalling the writ as to Turner's remaining assignments of error.

home from work. According to Benoit's wife and daughter, he often came home "covered in oily muck" and complained of headaches, dizziness, and vomiting, all of which are consistent with acute benzene exposure.

In July 2006, Benoit fell ill. He was soon diagnosed with acute myeloid leukemia ("AML"), a cancer known to be linked to high levels of benzene exposure.[2] Despite the medical evidence linking Benoit's cancer to the chemicals he was exposed to at work, his claim for medical benefits was denied. Because his AML required immediate and expensive care beyond their ability to afford, the Benoit family was forced to rely on the state's charity hospital system for treatment. The eventual medical bills totaled over $625,000. Medicaid paid for $203,124.68. The remaining $422,043.59 was "written off" by the medical care providers. Turner paid nothing.

The instant suit was filed in October 2006. Benoit passed away in November 2007, and his wife was substituted as claimant in his place. The case went to trial before a worker's compensation hearing officer, who credited the testimony of Benoit's expert witnesses over the testimony of Turner's expert, and found Turner fully liable for Benoit's medical bills. Benoit's widow was awarded back indemnity from August 2006 through November 2007; death benefits for back indemnity beginning in November 2007; total medical bills in the amount of $625,168.27; attorney fees in the amount of $22,000; statutory penalties in the amount of $8,000; and court costs and expert fees.

This case is about Turner's failure to satisfy its statutory obligations under the Worker's Compensation Act. Under the Act, when an employee "receives

[2] Plaintiffs' experts stated the exposure to benzene was the direct cause of Benoit's cancer, and this testimony was credited by the hearing officer. The link between benzene and AML is also recognized in the jurisprudence. "[B]enzene is a known carcinogen and an established cause of AML." *Sutera v. Perrier Group of America, Inc.*, 986 F. Supp. 655, 659 (D. Mass. 1997). *Accord*, *Wademan v. Concra*, 13 F. Supp. 2d 295, 298 (N.D.N.Y. 1998), *Parker v. Mobil Oil Corp.*, 7 N.Y. 3d 434, 449-450, 857 N.E. 2d 1114 (2006)(the link between benzene and AML is "not in dispute").

personal injury by accident arising out of and in the course of his employment, his employer shall pay compensation." La. Rev. Stat. § 23:1031. This compensation includes, but is not necessarily limited to, "all necessary drugs, supplies, hospital care and services, medical and surgical treatment," La. Rev. Stat. § 23:1203, and payment of medical benefits must be made "within sixty days after the employer or insurer receives written notice thereof." La. Rev. Stat. § 23:1201(E).

In return, the employer is granted immunity from tort claims. This is the *quid pro quo* at the center of the Worker's Compensation Act, "a compromise in which the employer surrenders immunity from liability, which he would otherwise be entitled to in cases wherein he was without fault, and, in return, the employee foregoes his right to full damages for his injury in exchange for limited but certain compensation." *Austin v. Abney Mills, Inc.*, 01-1598 (La. 9/4/02), 824 So. 2d 1137, 1144-45. This compromise is the "quintessential characteristic of the workers' compensation movement." *O'Regan v. Preferred Enterprises, Inc.*, 98-1602 (La. 3/17/00), 758 So. 2d 124, 134.

Turner thus has a statutory duty to promptly provide all necessary medical treatment related to Benoit's AML diagnosis. This duty is enshrined in public policy and is non-waivable: "No contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this Chapter except as herein provided." La. Rev. Stat. § 23:1033. The primary legal question before this Court is whether Medicaid's actions in providing Benoit with medical care thus relieved Turner from its duty to provide such care. La. Rev. Stat. § 23:1212 provides:

> A. Except as provided in Subsection B, *payment by any person or entity*, other than a direct payment by the employee, a relative or friend of the employee, or by Medicaid or other state medical assistance programs of medical expenses that are owed under this Chapter, shall extinguish the claim against the employer or insurer for those medical expenses. This Section shall not be

> regarded as a violation of R.S. 23:1163. If the employee or the employee's spouse actually pays premiums for health insurance, either as direct payments or as itemized deductions from their salaries, then this offset will only apply in the same percentage, if any, that the employer of the employee or the employer of his spouse paid the health insurance premiums.
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> B. Payments by Medicaid or other state medical assistance programs shall not extinguish these claims and any payments made by such entities shall be subject to recovery by the state against the employer or insurer.

(emphasis added).

The statute clearly provides any "payments" for medical care made by Medicaid extinguish any duty on the part of Turner to provide such care. The *per curiam* is therefore correct insofar as it finds the Benoits are not entitled to recover the $203,124.68 which Medicaid actually paid for Benoit's health care; this is settled law. However, the majority errs in also applying this statute to the $422,043.59 subject to Medicare "write-offs."

It is a fundamental precept of Louisiana's civilian legal system that any discussion of an issue must begin with a careful reading of the language of the statute. *In re Succession of Faget*, 10-0188 (La.11/30/10), 53 So.3d 414, 420. Where the statute is clear, unambiguous, and its application does not lead to absurd consequences, no further analysis is necessary and we must apply the statute as written. La. Civ. Code art. 9. At the same time, we are compelled to strictly construe any statute relieving an employer of its obligation to pay medical benefits, as La. Rev. Stat. § 23:1033 sets forth a strong public policy against allowing employers to avoid their statutory liability. Moreover, well-settled canons of construction require worker's compensation statutes to be construed liberally in favor of the employee, not the employer. *Dufrene v. Video Co-Op*, 02-1147 (La. 4/9/03), 843 So. 2d 1066, 1074-75; *Lester v. Southern Casualty Ins. Co.*, 466 So.2d 25, 28 (La. 1985).

Here, La. Rev. Stat. § 23:1212(A) provides a "*payment* by any person or entity" to the medical care provider shall extinguish the employer's obligation to provide medical benefits. Because "payment" is not defined in the Act, we must give it is generally prevailing meaning. La. Civ. Code art. 11. The generally understood meaning of "payment" is to "give money to in return for goods or services rendered." American Heritage Dictionary of the English Language (4th ed. 2000).[3] Write-offs are, by their very definition, not payments, as no money changes hands. Because only a *payment* extinguishes the employer's obligation, under the clear language of the statute, Turner's obligations are not extinguished by the Medicaid write-off, and it is still liable for the full amount of Benoit's medical bills irrespective of any write-off.

The *per curiam* does not perform a statutory analysis of La. Rev. Stat. § 23:1212. Instead it, relies on the cases of *Bozeman v. State*, 03-1016 (La. 7/2/04), 879 So. 2d 692 and *Agilus Health v. Accor Lodging North American*, 10-800 (La. 11/30/10), 52 So. 3d 68. These decisions are inapposite for several reasons.

In *Bozeman v. State*, 03-1016 (La. 7/2/04), 879 So. 2d 692, this Court considered the applicability of the collateral source rule to Medicaid write-offs. The collateral source rule is a common law doctrine, adopted by this Court, under which an "injured plaintiff's tort recovery may not be reduced, because of monies received by the plaintiff from sources independent of the tortfeasor's procuration or contribution." *Id.* at 698 (citing *Louisiana DOTD v. Kansas City Southern Railway*, 02-2349 (La. 5/20/03), 846 So. 2d 734, 739). After carefully considering the history and development of the common law collateral source doctrine, we

[3] *See McPike Drug Co. v. Williams*, 104 Okla. 244, 245 (1924)("The term 'payment' in its legal import, means the satisfaction of a debt, by money or the representative of money, and not by novation, compromise, or accord and satisfaction."); *Cranston v. West Coast Life Ins. Co.*, 63 Ore. 427, 437 (1912)("'Payment' is the discharge of an obligation by the delivery and acceptance of money or of something equivalent to money which is regarded as such at the time by the party to whom the payment is due."); *Indiana Dep't of State Revenue v. Colpaert Realty Corp.*, 231 Ind. 463, 471 (1952)(Payment is the "discharge of an obligation by the delivery and acceptance of money, or of something equivalent to money, which is regarded as such at the time by the person to whom payment is due.")

found it was based on the "benefit of the bargain" theory; that is, where a plaintiff has made a bargain with an outside source (such as an insurance company) to provide for medical care, and has thus diminished his own patrimony, the benefits of this bargain should accrue to the plaintiff, not to the tortfeasor. *Id*. at 704-5. We found, because applying for Medicaid did not diminish the plaintiff's patrimony, the "benefit of the bargain" theory did not apply in *Bozeman* and a plaintiff was not entitled to recover for Medicaid write-offs within the context of a tort suit only. *Id.* I wrote separately to "emphasize the narrowness of our holding," and to note the collateral source rule did not apply in part because write-offs "are *technically not payments* from a collateral source." *Id.* at 706 (Knoll, J., additionally concurring)(emphasis added).

Bozeman was correctly decided, but its holding is unique to tort law and does not extend to actions under the Worker's Compensation Act. As noted, *Bozeman* is a decision based on common law or jurisprudential authority, as there is no statute setting forth a collateral source rule within tort law. Worker's compensation law, unlike tort law, is governed by a comprehensive statutory scheme, and it is the duty of this Court to apply those statutes faithfully, not to set them aside in order to apply a judge-made common law doctrine as we did in *Bozeman*. When drafting the Worker's Compensation Act, the Legislature clearly considered the application of the collateral source rule, and codified a limited version of the rule as La. Rev. Stat. § 23:1212. It is La. Rev. Stat. § 23:1212, and not *Bozeman*, which controls this case.

Moreover, the policy considerations underlying worker's compensation law are entirely different from those underlying tort law. The tortfeasor in *Bozeman* had no duty to pay for the plaintiff's medical bills in the absence of a court judgment against him. This is not so under the Worker's Compensation Act. As Benoit's employer, Turner had an immediate and non-waivable duty to provide

Benoit with any and all medical care necessary to treat his illness. Indeed, no employee injured on the job should ever have to turn to Medicaid for his medical treatment, as it is solely the employer's duty to pay.

The *per curiam* also relies on *Agilus Health v. Accord Lodging North American*, 10-800 (La. 11/30/10), 52 So. 3d 68, a lawsuit brought by a health services provider against an insurance company. In *Agilus*, it was undisputed that the defendant met its duty to furnish adequate medical treatment to its employees. The only question was whether the defendant was statutorily required to pay the hospital the full amount set forth in the worker's compensation fee reimbursement schedule, as opposed to the lesser figure set forth in the parties' contract. *Id.* at 75-76. This was effectively a contractual dispute between an insurer and the hospital, and the issues presented were not similar to those in the case at bar. Certainly, our decision in *Agilus* does not control this case and cannot overrule the express language of La. Rev. Stat. § 23:1212.

As a result of the *per curiam* judgment, the Benoits' sole remaining remedy against Turner is an award of penalties under La. Rev. Stat. § 23:1201(F). However, these penalties are limited by statute to only $8,000. Compared to the over $625,000 Turner saved by denying Benoit's claim for benefits and foisting the bill upon the taxpayers, [4] this sum is a pittance and wholly inadequate to deter this kind of behavior from employers in the future.

As a result, this majority opinion creates a strong incentive for Turner, and employers like it, to deny *all* worker's compensation claims for catastrophic and terminal illnesses when potential liability is measured in the hundreds of thousands of dollars. While an $8,000 penalty may be sufficient to deter employers from denying coverage for everyday injuries such as broken bones and strained backs, it

[4] Under La. Rev. Stat. § 23:1212, Medicaid is entitled to file a claim against Turner to recover this money. For reasons not disclosed in the record, it has not done so.

is entirely insufficient where over $625,000 is at issue in medical bills alone.

The *per curiam* suggests the Benoits will receive an "improper windfall" if Turner were required to pay for the full amount of his medical care. This is backwards. The Benoits received no windfall; as a direct result of the chemicals he was exposed to while working at Turner, Jerry Benoit suffered from catastrophic and terminal cancer which took his life within a year of the diagnosis. The only party who is receiving a windfall is Turner. By arbitrarily denying Benoit's claim for benefits and shirking its duties under the Worker's Compensation Act, Turner profited in an amount over $625,000. This holding rewards Turner for its an undisputed violation of its statutory duties under the Act and creates a perverse incentive for other companies to do the same.[5]

This result is in direct contradiction to the guiding principles of the Worker's Compensation Act and the clear statutory language of La. Rev. Stat. § 23:1033 and § 23:1212. As I stated in a similar context in *Granger v. Nelson Logging*, 96-223 (La. App. 3 Cir. 12/4/96), 685 So. 2d 400, 403, "The statute's operation in the case *sub judice* undermines the basic principle of worker's compensation law, namely, that persons who enjoy the benefit of an employee's labor should be the ones to bear the cost of injuries incident to that labor." In response to the *Granger* opinion, the Legislature amended La. Rev. Stat. § 23:1212 to avoid the inequitable result reached in that case. Given the results of today's opinion, the Legislature should again address this inequitable result that fosters perverse incentives by unscrupulous employers.

[5] Indeed, the *per curiam* recognizes it has encouraged an "unscrupulous employer" to "intentionally deny benefits in an effort to force the employee to obtain free medical treatment through Medicaid, thereby giving the employer the benefit of any Medicaid writeoffs." (Opinion at 10, fn. 3).

01/24/12

SUPREME COURT OF LOUISIANA

No. 11-C-1130

JERRY WAYNE BENOIT

v.

TURNER INDUSTRIES GROUP, L.L.C.

On Writ of Certiorari to the Court of Appeal, Third Circuit
Office of Workers' Compensation, District 3

WEIMER, J., concurring.

I concur. The employer's writ application was granted to address the award of medical expenses in this matter. Rather than recalling and denying the writ with respect to the employer's assignments of error that were not addressed in the opinion, I think it is more appropriate to simply pretermit those issues.