

# How Write-offs Affect Jury Awards: Fourth Circuit Decision Creates the Ultimate Paradox

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A recent Illinois Appellate Court decision held that a jury award cannot be reduced by the amount of medical bills a provider or entity writes off. Because a plaintiff has no obligation to pay those bills that were written off and an insurer or Medicaid did not pay on the plaintiff's behalf, a health care provider cannot seek to reduce the award.

In a recent case captioned *Miller v. Sarah Bush Lincoln Health Center and Curtis Green, D.O.*, the Fourth Circuit took up the issue of the proper interpretation of Section 2-1205 of the Code of Civil Procedure, particularly whether Section 2-1205 allows verdicts to be reduced by the amount of medical bills written off by health care providers. Section 2-1205 provides, in pertinent part, that amounts recovered by a plaintiff by way of verdict or judgment can be reduced by up to 100% of benefits provided for medical, hospital, nursing, or caretaking charges which have either already been paid or which have become payable to a plaintiff.

On Defendant's motion, the trial court originally reduced the amount of award to the Plaintiff by the amount the health care provider had written off because no party had the right to recoup the written-off portion of the medical expenses. However, on appeal, the Fourth District held that medical expenses that are written off by providers cannot be used to set-off a verdict. Specifically, the Court held that Section 2-1205 "does not allow a verdict to be reduced by the amount of the bills which have been satisfied or the value of the benefit to the Plaintiff."

SmithAmundsen partner, Michael L. Resis, quoted in the Law Bulletin, said the *Miller* decision creates a direct conflict with the decision of *Perkey v. Portes-Jarol*, in which the Second District permitted a reduction in judgment based upon the amount written off by the health care provider. Resis believes that "since *Miller* reached the diametrically opposite result, the Supreme Court may need to accept the case for review to eliminate the conflict *Miller* has created."

What remains after the *Miller* decision is a paradox, one that according to Resis will likely have to be resolved by the Illinois Supreme Court. Can an award to a Plaintiff be reduced by the amount a medical provider writes off? The Fourth

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Circuit says no; the Second Circuit says yes. Where other Circuits lie and what the Supreme Court will ultimately decide will shape the outcome of medical negligence cases for years to come.

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