

Missouri, Illinois Collateral Source Rules Affect Bodily Injury Claims Differently

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The ability to reasonably estimate the amount a plaintiff can recover for medical expenses is a key component in properly evaluating a personal injury claim.

Because negotiations between the payor (the patient, a private insurance carrier, Medicare or Medicaid) and medical provider are common, it is typical for the amount actually paid in satisfaction of outstanding medical expenses to be far less than the total amount billed.

Consequently, the determination of which of these two numbers (amount paid vs. amount billed) will be allowed into evidence is a critical factor in any evaluation.

Illinois and Missouri have each created their own unique approach regarding the necessary proof and ultimate admissibility of medical expenses. The Illinois Rule is one developed by the Courts. The Missouri rule is a creature of statute sympathetic to defendants placed in the unfair position of negotiating against inflated medical bills, of which only a portion is actually collected by the entity providing the health care related services.

Missouri Courts are re-examining the Collateral Source Rule and its effect on the admissibility of medical bills. Adopting the Illinois Rule will increase the value of bodily injury claims in Missouri.

Illinois Law

Under the approach adopted by the Illinois Supreme Court in *Wills v. Foster*, "the plaintiff may seek to recover the amount originally billed by the medical provider." [*Wills v. Foster*, 229 Ill. 2d 393, 410 (2008) (emphasis added). There was a strong dissent in the case authored by Justice Morrow.]

The Court held that payments by third parties fall under the collateral source rule. Under Illinois law, the plaintiff may submit the entire billed amount into evidence regardless of the sum that was actually paid by the plaintiff, his insurance company, Medicare or Medicaid.

In Illinois, the standard of admissibility for medical bills is reasonableness and necessity. Most doctors can testify as to the necessity of the medical treatment. A paid bill constitutes prima facie evidence of reasonableness. [*id.* at 403]

If the plaintiff seeks to admit a bill that has not been paid in full, he/she must produce evidence that the total bill was reasonable as well as necessary. The plaintiff may establish such reasonableness with testimony of a witness having knowledge of the services rendered and the reasonable and customary charges for such services.

The defendant may then challenge plaintiff's proof on cross-examination with opposing evidence. However, the defendant may not introduce evidence of negotiated amounts or amounts actually paid by any third party. [*Wills*, 229 Ill. 2d at 415-16]

The determination of reasonableness is then left up to the jury which, after considering both the reasonableness of the medical bills and the necessity of the treatment, can "award none, part, or the entire bill as damages." [*id.* at 419]

Practical Effect for Illinois Claims

Consequently, in evaluating a personal injury claim in Illinois, it is necessary to consider the billed medical expenses as probable damages even if these bills were satisfied at a significant discount. In summary, under the Illinois Rule, juries may award damages based on the amount billed for the medical services rather than the amount actually paid.

Missouri Law

Missouri law regarding the admissibility of medical bills is currently in a state of flux. Currently, Mo. Rev. Stat. § 490.715.5 and its rebuttal presumption governs, but the constitutionality of this statute has been recently questioned by a St. Louis County Trial Judge. [*Judge Steven H. Goldman of the 21st Judicial Circuit issued an Order on August 13, 2009, holding R.S.Mo. § 490.715.5 unconstitutional for vagueness.*]

Thus, in order to fully understand and properly evaluate personal injury claims under Missouri law, knowledge of what is commonly known as the Missouri Tort Reform Act of 2005 and its background is very helpful.

In 2004, the Missouri legislature lent a sympathetic ear to business groups and insurance companies that were forced to pay more in damages for medical bills than what was actually collected by the medical provider.

This seemingly strange result occurred because of substantial discounts negotiated between the providers and third-party payors. The law in Missouri now holds that it is a rebuttable presumption that "the dollar amount necessary to satisfy the financial obligation to the health care provider represents the value of the medical treatment rendered." [*RSMo. § 490.715.5 (2).*]

The phrase "dollar amount necessary to satisfy" has been interpreted to mean the dollar amount which in fact has satisfied the providers. [*Brown v. City of St. Louis, Circuit 22, No. 0822-CC08325, Memorandum and Order of Honorable Robert H. Dierker (2009), p.10.*]

In other words, the presumptive value of health care services is the total amount of money accepted by the health care provider from any source or combination of sources, in satisfaction of the debt. However, this is only the presumptive value.

An opposing party may rebut this presumption by offering additional evidence including, but not limited to the bills, amounts paid, and the unpaid contingent obligations. [*RSMo. § 490.715.5(2).*] Under Missouri law, a plaintiff can introduce this evidence by way of an affidavit establishing reasonableness and necessity of the services rendered (and ultimately the amount charged). [*RSMo. § 490.525.*]

This affidavit need not be issued by an expert, as Missouri law requires only that the affiant be the person providing the service (i.e. a treating physician) or that person's designee.

If the plaintiff does provide such an affidavit, then the defendant may provide opposing evidence contesting the necessity of the services and reasonableness of the bill.

Unlike the plaintiff's affidavit, the defendant's evidence must come from a qualified expert; however, once the defendant produces expert testimony that the amount paid is the reasonable value of the medical bill, this evidence should trump the evidence propounded by the Plaintiff, at least to the extent the spirit of the Missouri Tort Reform Act is followed.

Although the Missouri statute does not necessarily require a pretrial ruling by the Court, it does create a mechanism under which the court may make such a determination on the motion of either party. [See *supra* note 7, p. 3.] Utilizing this mechanism enables the defendant to keep evidence of additional, unpaid expenses "outside the hearing of the jury." [*RSMo. § 490.715.5(2).*]

Practical Effect and Note of Caution for Missouri Claims

Unfortunately, Circuit Courts around the State of Missouri have not applied the law regarding the admissibility of medical bills in a uniform manner. In many cases, courts have allowed plaintiffs to submit the full value of the medical bills despite the legislative presumption that is supposed to favor defendants.

More and more trial courts are ruling that as long as the plaintiff provides an affidavit, there is sufficient evidence to rebut the initial presumption that the amount paid is the fair and reasonable value of the medical services, even if contrary evidence is presented by the defendants.

As mentioned above, Mo. Rev. Stat. § 490.715.5 has recently been ruled unconstitutional by a St. Louis County trial judge. [See *supra* note 5.] Therefore, it is expected that as a result of this ruling, the Missouri Supreme Court will be forced to delve into this issue and provide necessary guidance to trial courts in determining how the respective presumptions are established and/or rebutted. In the meantime, defendants and adjusters should be ready to make the argument that the amount paid is the sole damage amount that should be submitted to the jury.

When evaluating a claim in Missouri, it is essential to obtain all available information regarding medical bills, including the amounts billed, the amount actually paid, discounts given to the payer, and bills outstanding. Moreover, an expert should be identified who can testify that the amount paid and not the amount charged is the fair and reasonable amount.

Hypothetical Illustrating the Difference Between Illinois and Missouri Law

The differences between Illinois and Missouri law can be illustrated as follows:

Ex: Plaintiff has incurred \$50,000.00 in medical bills; the medical provider has accepted \$15,000 as a negotiated payment from Insurance Company X as complete payment for the services provided.

Illinois: Plaintiff provides medical testimony that the \$50,000.00 in medical bills and the services provided are fair and reasonable.

Defendant cannot inform the jury that only \$15,000.00 was paid and that the additional \$35,000.00 will not be collected.

Unless the physician provides an "about-face" on cross-examination, a jury will most likely take into account the full value of the bill.

Missouri: Plaintiff provides an affidavit or deposition testimony from a Custodian of Records or medical provider that the \$50,000.00 billed for the services provided is fair and reasonable.

The defendant must then submit expert testimony that the "amount paid" is what is fair and reasonable for the services provided. If the Defendant does this, then it can submit to the jury that only \$15,000.00 was paid and that this amount was accepted by the provider as payment in full. As long as the defendant's attorney lays the appropriate foundation, it is possible for only the amount paid to be submitted.

Unlike the Illinois application, Missouri's approach would permit evidence of the amount paid to show the fair and reasonable value of medical services.

*David J. Deterding is an attorney and Bharat Varadachari is a partner in the law firm of HeplerBroom LLC.
www.heplerbroom.com*

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