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• MEDICAL MALPRACTICE DEFENSE IN KANSAS AND MISSOURI •

LEGAL UPDATE

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Value of Medical Treatment in Missouri Post-Tort Reform: Amount Billed vs. Amount Paid

Value of medical treatment: post Missouri tort reform.

One of the Missouri tort reform statutes applying to all causes of action filed after August 28, 2005 pertains to the value of medical expenses that may be submitted to the jury. Generally, the rule provides that the "amount paid" is to be considered the fair amount for medical treatment, rather than the "amount billed." For example, if a hospital bills $100,000 and Medicare pays $40,000 to satisfy the obligation and writes off $60,000, only the $40,000 amount *can* be submitted to the jury—or so it seemed.

The relevant statute provides that "[p]arties may introduce evidence of the value of the medical treatment rendered to a party that was reasonable, necessary, and a proximate result of the negligence of any party." R.S.Mo. § 490.715.5 (1). Subsection (2) of the statute provides that, "[i]n determining the value of the medical treatment rendered, there shall be 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." However, any party may move for a determination by the court that the value of medical treatment be based upon additional evidence, including but not limited to: (a) the medical bills incurred by a party, (b) the amount actually paid for medical treatment rendered to a party, or (c) the amount or estimate of the amount of medical bills not paid which such party is obligated to pay to any entity in the event of a recovery.

We find plaintiffs' counsel filing pretrial motions asking that the courts determine that the value of the medical services is equal to the "amount billed" rather than the "amount paid." They argue, for example: (1) that the presumption is "rebutted" by showing (e.g., through affidavits of the provider or through live expert testimony) that the amount "billed" was "reasonable and necessary," (2) that the statute invades the province of the jury and unconstitutionally invades their right to a jury determination of damages, (3) that the amount "paid" is not a fair reflection of the value of the medical services, and (4) that the entirety of House Bill 393 violates the "one subject" rule and is therefore unconstitutional.

Judges in the same venue have ruled on both sides. For example:

Judge Messina, Jackson County at Kansas City, ruled on June 2, 2008 in *Bryant v. Penaloza*, 0616-CV32072 that the plaintiff could submit the amount billed. She reasoned, in part, that "[i]t seems to me that if the care provider does not determine what the value of his or her own services are, what we do is we leave it up to the insurance company to decide what those values are. And I don't know that that is appropriate," and, "… because it is the plaintiff who would otherwise be at risk for having to pay those services if there weren't a collateral source…"

On October 8, 2008, Judge Messina ruled consistently in *Rhonda S. Wesley, et al. v. Fayjay, Inc., et al.*, Case No. 0616-CV35944.

Visiting Judge Syler, Jackson County at Kansas City, ruled in favor of the defense on the issue, reducing medical expenses pursuant to R.S.Mo. § 490.715. *Moses v. Doerhoff*, 0716-CV21557, July 2008.

Judge Grate, Jackson County at Independence, ruled in favor of the defense on the issue, reducing the medical expenses pursuant to R.S.Mo. § 490.715. *Rucker v. Alcorn*, 0716-

CV16379, September 2008.

The issue has not yet been determined by an appellate court, but a case from St. Louis County may be the first. On July 30, 2008, a jury in St. Louis County Circuit Court, in the case of *James Klotz et al. v. St. Anthony's Medical Center*, Case No. 2106CC-04826, rendered a plaintiff's verdict for $2.58 Million in a MRSA case, which included approximately $900,000 in special damages related to medical expenses. Defendants' counsel indicated that they would appeal the verdict on the grounds, in part, that the value of medical expenses submitted should have been the amount necessary to satisfy the financial obligation (i.e., the amount paid by insurance), versus the amount billed.

The *Klotz* case currently remains in the trial court, where, on November 10, 2008, the parties are scheduled to argue the issues raised by defendants' JNOV motion, and by plaintiffs' brief arguing that the damage cap is unconstitutional.

We will continue to track these cases and provide an update on material rulings.

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