Are Reductions for Medicare Adjustments for Past Medical Expenses a Thing of the Past?

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In the Winter 2016 of the KD Quarterly, we reported on the Florida Supreme Court's decision in Joerg v. State Farm Mutual Automobile Insurance Company, 176 So.3d 1247 (Fla 2015) where the Florida Supreme Court held that Defendants may not present evidence of a Claimant's entitlement to future free or low cost benefits, including Medicare, Medicaid and other Social Legislation in an effort to reduce future medical damages. More recently, Plaintiff attorneys have been citing to Joerg to defeat Defense counsel's efforts to limit the presentation of past medical bills to the amount actually reimbursed by Medicare.

In Joerg, the Court held defendants may not present evidence of a claimant's entitlement to future free or low cost benefits including Medicare, Medicaid, and other social legislation in an effort to reduce future medical damages. The lengthy opinion clarifies prior case law on collateral sources and reminds practitioners of the many pitfalls in handling cases involving Medicare beneficiaries.

Typically, Florida's collateral source rule prevents juries from hearing evidence of a claimant's receipt of payments from third-party payers, such as health and disability insurance. However, the Florida Supreme Court in Florida Physician's Insurance Reciprocal v. Stanley, 452 So. 2d 514, 515 (Fla. 1984), held "free or low cost services from governmental or charitable agencies available to anyone with specific disabilities is admissible." This left open the issue of whether it applies to both past and future benefits.

The Florida Supreme Court in Joerg made several statements but its main holding was that future Medicare benefits are too speculative to serve as a basis to reduce a Plaintiff's future medical damages. This clarified its statement in Stanley. Joerg also reiterated public policy consideration against allowing tortfeasors to benefit from the Plaintiff's collateral sources. The Court noted informing a jury the Plaintiff is a beneficiary of government assistance "is highly prejudicial and constitutes reversible error".

While Joerg does not pertain to past medical damages, the opinion reminds us of the importance of pre-trial motions to limit the presentation of past medical damages to the amount Medicare reimbursed. Specifically, Joerg re-affirms Medicare is excluded from Florida's collateral source statute, sec.768.76. Because the collateral source statute does not apply to Medicare benefits, there is no basis for a post verdict set-off for amounts adjusted by medical providers upon acceptance of Medicare benefits. See, Thyssenkrupp v. Lasky, 868 So. 2d 547 (Fla. 4th DCA 2004). Instead, a Plaintiff must be prevented from presenting evidence of the gross, past medical damages beyond the Medicare reimbursement amount accepted by the provider or else the defendant may be responsible for the windfall without any post verdict remedies.
Handling Past Medical Expenses Pretrial

In trials where Medicare has paid some or all of the medical bills, defense counsel typically files a Motion in Limine limiting the presentation of past medical expenses to those actually paid by Medicare, as opposed to what was billed. These motions typically cite since Medicare is not a collateral source, there is no basis to set off any reductions post verdict, rather, the jury should only be presented the amounts actually paid. Although Joerg does not address past medical damages, the opinion reinforces the necessity to file such pre-trial motions to limit the presentation of past medical damages to the amount Medicare reimbursed.

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Recent Court Rulings

More recently, several Circuit Court Judges have ruled against Defense counsel's Motions in Limine to prohibit Plaintiffs from submitting to the jury the actual amount of medical bills incurred. These opinions do not cite any specific reasons but Plaintiffs' counsel has been focusing on the language in Joerg, where the Court noted the inherent prejudice of informing a jury the Plaintiff has obtained government assistance. They argue the jury has to know why or how the bills were reduced if the Court is going to allow only the amounts paid, and this is prejudicial. In cases where the bills are not going to be contested, defense counsel can stipulate to the amounts and thus the need for informing the jury of any cuts is unnecessary and irrelevant. However, if there is a strong causation defense for some or all of the medical treatment and defense counsel has to argue some bills are not related to the accident, it may be difficult to convince a court to only allow the amounts paid to go to the jury.

In a recent trial where our client struck the Plaintiff who was on his motorcycle, we filed a Motion in Limine as the Plaintiff was a Medicare recipient and his total medical bills were over $700,000 but Medicare paid only $120,000. We filed the appropriate Motion in Limine and Plaintiff's counsel used the language in Joerg in an effort to allow him to present to the jury the entire $700,000. In addition, they cited to several Circuit Court decisions, two from the 15th Judicial Circuit (Palm Beach) and one from the 6th Judicial Circuit (Pinellas) where trial judges held Joerg required the jury receive the full medical bills as opposed to the reduced amounts. After briefing on the issue and extensive arguments, the trial court agreed with our position and only allowed the Plaintiff to present to the jury past medical expenses of $120,000.

I do not believe we will see many appellate decisions on this issue, as a ruling either way seems to be harmless error. The appellate courts are likely to find the jury receiving either the full medical bills or the paid amounts to be prejudicial or any other basis for reversal. Thus, we are likely to be bound by the trial court's decision.