

TORT NOTES
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WILLS V. FOSTER; ILLINOIS SUPREME COURT CLEARS THE AIR
REGARDING THE COLLATERAL SOURCE RULE

In Wills v. Foster, (Ill., 2008), the Illinois Supreme Court held that a Plaintiff seeking to recover medical expenses was not limited to the amount actually paid by Medicare and Medicaid but could recover the full amount of her billed medical expenses, notwithstanding any discounts given to the governmental program. The Supreme Court stated that in addressing the issue, unresolved questions about the operation of the Collateral Source Rule in light of the Court's decision in Arthur v. Catour, 216 Ill.2d 72 (2005) would be answered.

The Plaintiff in Wills was injured in a motor vehicle collision and sustained medical expenses of approximately \$80,000. The amount actually paid by Medicare and Medicaid on Plaintiff's behalf in full settlement of the bills was approximately \$19,000. After the jury awarded the full amount of the medical expenses plus a nominal amount for pain and suffering, the Defendant moved the court to reduce the amount of the jury's award for medical expenses from the \$80,000 to \$19,000. The motion was granted, the Plaintiff appealed and the Fourth District affirmed, relying on Peterson v. Lou Bachrodt Cheverolet Company, 76 Ill.2d 353 (1979). Peterson had held that a Plaintiff could not recover for the value of free medical services provided by Shriner's Hospital for Crippled Children stating that the policies underlying the Collateral Source Rule did not apply when the Plaintiff incurred no expense, obligation or liability.

In addressing the various approaches used by other courts the Court adopted the "reasonable value approach." Id. p. 16. That approach, followed by most courts, provides that a Plaintiff is entitled to recover the reasonable value of medical services irrespective of whether or not the Plaintiff has private insurance or is covered by a governmental program.

The court stated that in keeping with the traditional application of the Collateral Source Rule "A benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor." Wills, 16. The court held that a relationship between the Plaintiff and a third-party could include a governmental entity which allows payment of medical expenses because of age or income level. Id. "Under the reasonable value approach that we have adopted, the fact that the collateral source was the government instead of a private insurance company is a distinction without a difference." Id. p. 21

The court overruled Peterson holding that it was incompatible with the reasonable value approach. Resolving a further disagreement in light of Arthur, the court held that while Defendants are free to challenge a Plaintiff's proof of reasonableness of the medical bills on cross examination, and to introduce their own evidence of reasonableness, that the defense is prohibited from introducing evidence of the amounts actually paid by any third party. Id. p. 18. Noting that Arthur made clear that the Collateral Source Rule operates to prevent the jury from learning anything about collateral income and that the evidentiary component of the collateral source analysis prevents defendants from introducing evidence that Plaintiff's losses have been compensated for, even in part, by insurance. Id. p. 20.

Practice note: The Wills court wrote that a “paid bill constitutes prime fascia evidence of reasonableness.” Id. p. 8, and that in a case where the Plaintiff seeks to admit a bill that has not been paid in whole or in part, he or she must establish reasonableness by other means such as by testimony of someone having knowledge of the services rendered and the reasonable and customary charge for such services.

Accordingly, in a courtroom setting a Plaintiff would testify, when shown a compilation of medical expenses, that those bills have been paid. This, however, would satisfy the foundational requirement only as to the amounts paid. In order for the total amount of the billed medical expenses to be before the jury, the record must contain evidence, presumably coming from one of Plaintiff’s health care providers, or an expert, that the original billed amount was reasonable.

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