

Recent Developments in the Law of Damages

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I. Evidence/Admissibility of Medical Bills

The law in Ohio regarding evidence/admissibility of medical bills at trial has evolved over the course of the last several years through legislation and a recent decision by the Supreme Court of Ohio rendered in December of 2006. The evolution of this law is favorable to defendants and their insurance carriers. The changes in Ohio law should have an impact on reducing settlements and driving down jury verdicts. The following outline discusses the relevant changes in Ohio law regarding evidence/admissibility of medical bills at trial.

A. The Collateral Source Rule (Causes of Action Accruing Before April 7, 2005)

1. A plaintiff's receipt of benefits from sources other than the tortfeasor is deemed irrelevant and immaterial on the issue of damages. Therefore, the jury is prevented from learning about any benefits received by the plaintiff, including but not limited to health insurance benefits.
2. Rationale: The tortfeasor is not to be given the advantage of third-party payments to the plaintiff.
3. As a result of this rule, the only evidence in terms of medical bills which was introduced at trial was the amount of the **original** medical bills. The jury heard no evidence of health insurance payments, write-offs, reductions, etc.

B. ORC §2315.20 (Introduction of Evidence of Collateral Benefits in Tort Actions)(Causes of Action Accruing on or After April 7, 2005)

1. ORC §2315.20 provides, in pertinent part:
 - (A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, except if the source of collateral benefits has a mandatory self-effectuating federal right of

subrogation, a contractual right of subrogation, or a statutory right of subrogation or if the source pays the plaintiff a benefit that is in the form of a life insurance payment or a disability payment. However, evidence of the life insurance payment or disability payment may be introduced if the plaintiff's employer paid for the life insurance or disability policy, and the employer is a defendant in the tort action.

- (B) If the defendant elects to introduce evidence described in division (A) of this section, the plaintiff may introduce evidence of any amount that the plaintiff has paid or contributed to secure the plaintiff's right to receive the benefits of which the defendant has introduced evidence.
- (C) A source of collateral benefits of which evidence is introduced pursuant to division (A) of this section shall not recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant.

2. Does the exception swallow the rule?:

Although this new legislation allows for evidence of collateral benefits, from a practical standpoint in almost every case these benefits are accompanied by either a federal, contractual, or statutory right of subrogation. Consequently, to the extent there are subrogation rights, evidence of the collateral benefit will likely not be admissible.

C. *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362

- 1. Decided December 20, 2006, and applies to all causes of action regardless of accrual date.
- 2. Syllabus of the Court:
 - a. Both an original medical bill rendered and the amount accepted as full payment are admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care. (*Wagner v. McDaniels* (1984), 9 Ohio St.3d 184, 9 OBR 469, 459 N.E.2d 561, followed).

- b. Any difference between an original medical bill and the amount accepted as full payment for the bill is not a “benefit” under the collateral-source rule.

3. The Supreme Court’s Reasoning:

- a. The collateral-source rule does not apply to write-offs of expenses that are never paid. Because nobody pays the write-off, it cannot possibly constitute payment of any benefit from a collateral source. Admitting evidence of write-offs does not violate the purpose behind the collateral-source rule.
- b. The fairest approach is to make the defendant liable for the reasonable value of plaintiff’s medical treatment.
- c. “Due to the realities of today’s insurance and reimbursement system, in any given case, that determination [the reasonable value of the medical treatment] is not necessarily the amount of the original bill or the amount paid. Instead, the reasonable value of medical services is a matter for the jury to determine from all relevant evidence. Both the original medical bill rendered and the amount accepted as full payment are admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care.”

4. Practical Considerations

- a. This decision has the effect of driving down the presentation of medical expenses at trial as much as 40-60%.
- b. From a practical standpoint, the defendant will often have the burden of establishing:
 - (1) The amount of third-party payments for medical bills;
 - (2) The amount of adjustments/write-offs; and
 - (3) Most importantly - the amount that the medical provider has accepted as **payment in full** for its services.
- c. Discovery and Trial Strategies to Help Establish These Elements:
 - (1) Interrogatories, request for production and request for admissions directed to the plaintiff;

- (2) Subpoenas for records and/or depositions directed to the relevant medical providers;
- (3) Subpoenas for records and/or depositions directed to the plaintiff's insurer and/or other third-party benefit provider; and
- (4) Entering into detailed stipulations with plaintiff's counsel before trial.

II. Constitutional Challenges To 2005 Tort Reform Legislation

A. *Arbino v. Johnson & Johnson*, Ohio Sup.Crt. Case No. 2006-1212

- constitutional challenges to tort reform legislation relating to damage caps, introduction of collateral benefits, and bifurcation of punitive damages

B. *Groch v. Gen. Motors Corp.*, Ohio Sup.Crt. Case No. 2006-1914

- constitutional challenges to workers' compensation subrogation statute