

August 5, 2008

Re: Wills v. Foster Update

We previously wrote to you regarding the Appellate Court case of Wills v. Foster which took up the issue of whether a plaintiff can recover the full amount of the medical bills charged. The Illinois Supreme Court has recently ruled on Wills and held that a plaintiff can seek recovery of the full amount of the medical bills charged, even when Medicare or Medicaid paid only a portion of the total charged.

In Wills, the plaintiff's medical bills arising out of an automobile accident totaled \$80,163.47. These bills were paid by Medicaid and Medicare. The amount actually paid by Medicare and Medicaid, in full settlement of the bills, was \$19,005.50. At trial, the defendant stipulated to the total amount of the bills, and they were admitted into evidence. The jury awarded the plaintiff the full amount of her medical bills.

The defendant brought a post-trial motion asking the court to reduce the amount of the jury's award for medical bills to the amount actually paid by Medicare and Medicaid. The trial court granted the defendant's motion and reduced the jury's award for medical expenses from \$80,163.47 to \$19,005.50. This decision was affirmed by the appellate court.

The issue before the Supreme Court was whether a plaintiff's recovery for medical expenses is limited to the amount actually paid, when the medical bills are paid by Medicare and/or Medicaid at a discounted rate.

The Illinois Supreme Court, in Wills, adopted a "Reasonable Value Approach" to this issue. Under the Reasonable Value Approach the plaintiff is entitled to recover the reasonable value of medical services regardless of the amount actually paid. Therefore, in Illinois, as long as the plaintiff establishes the proper foundational requirements to show the bill's reasonableness, the plaintiff may place the entire billed amount into evidence, even when those bills were paid by Medicare or Medicaid.

The Supreme Court then addressed the specific facts of Wills. In Wills, the court stated that, while the plaintiff did not produce a witness to testify that the billed amount was reasonable, it was not necessary because the defendant stipulated to the admission of the billed amount and neither objected to, nor offered any evidence on the question of their reasonableness. Therefore, the court reasoned, by stipulating to the admission of the billed amounts into evidence and failing to offer any objection, the defendant relieved the plaintiff of the burden of establishing reasonableness.

This holding is obviously problematic for the defense. The Supreme's court decision appears to place the burden on the defendant to disprove the reasonableness of the medical bills. This will require expert testimony. Moreover, although the plaintiff's medical bills were paid at a reduced rate, the plaintiff will be able to recover the full amount of the bills. In cases in which the bills have been paid by Medicare and/or Medicaid, the Court's ruling in Wills, will not only greatly increase the verdict values and the settlement demands, but will tend to make litigation more costly due to the need to retain expert witnesses to render opinions on the reasonable value of medical services.

Should you have any questions, regarding this ruling, please feel free to contact the undersigned.

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