

***Klesowitch v. Smith:***  
**Clarity from Chaos Regarding Introduction of Medical Bills at Trial**

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In the second quarter of 2015, I noted in the *Illinois Association of Defense Trial Counsel Quarterly* that there remained significant confusion among the bench and bar regarding the admission of medical bills into evidence in cases in which the plaintiff's medical bills were settled for less than the billed amount. In that article, I noted that the all-too-common practice of submitting the entire billed amount to the jury, based only on the foundation of partial payment, is a misapplication of the law. The seminal cases on this issue are two Illinois Supreme Court cases: *Arthur v. Catour*, 216 Ill. 2d 72, 74 (2005), and *Wills v. Foster*, 229 Ill. 2d 393 (2008). However, to a large extent a thorough understanding of this evidentiary issue requires a close reading of both *Arthur* and *Wills*, to distinguish the substantive concept that a plaintiff is entitled to enter into evidence the total billed amount from the evidentiary concept of the foundational requirements to do so. Fortunately, the Appellate Court for the First District of Illinois has brought a great deal of clarity to this important trial practice issue.

In *Klesowitch v. Smith*, the defendant asked plaintiff in an interrogatory to state the amount of his medical bills incurred as a result of his personal injuries. 2016 IL App (1st) 150414, ¶ 5. The plaintiff responded with a list of medical providers and attached a "medical specials list." *Id.* However, at trial, the defendant's attorney asserted that the bills he received from plaintiff's counsel did not reflect any specific payment. *Id.*, at ¶ 14. The plaintiff testified that the bills were "paid," and provided documentation demonstrating that the bills were "zeroed out."

Plaintiff sought, *in limine*, to bar all evidence that his hospital bills were paid for by the federal government or that his medical bills or expenses were paid by any collateral source. *Id.*, at ¶ 10. Defendant sought, *in limine*, to bar medical bills without competent medical evidence as to the reasonableness and necessity of said bills. *Id.*, at ¶ 13. In her memorandum of law, the defendant argued that if a plaintiff intends to claim the full amount of bills in excess of what his health insurance actually paid, there must also be a foundation concerning the usual and customary amount. *Id.* Therefore, the defendant requested an order barring the plaintiff from claiming a bill above what was actually paid absent competent testimony as to the usual and customary amount to establish reasonableness. *Id.*

Given the above, the trial court stated that: "if the evidence is that the bills are paid and there are no outstanding balances, that's *prima facie* evidence that the services that were provided were fair and reasonable and the amounts that were billed are fair and reasonable." *Id.*, at ¶ 8. However, as pointed out by the defense attorney, the bills reflected adjustments had been made to the bills, including write-offs by the medical providers. *Id.* The fact that there was no remaining balance on the bill did not itself evidence that the entire billed amount had been affirmatively paid. *Id.* In the absence of evidence of payment, the defendant argued that the plaintiff was required to tender evidence through competent testimony for the foundational requirements as to the balance between the paid amount and billed amount. Nevertheless, the trial court admitted evidence of the total amount of the medical bills over the defendant's objection, even though the bills showed substantial portions had been written off. The plaintiff did not call a witness with the requisite knowledge to testify the total bills were fair and reasonable. *Id.*, at ¶ 47.

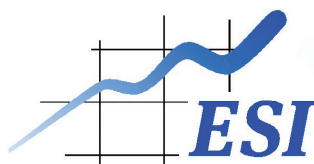
The appellate court, in reviewing the instant matter, relied on the Supreme Court's decisions in *Arthur* and *Wills*. The court reiterated that Illinois follows a "reasonable-value approach," which states that the plaintiff may seek to recover the amount originally billed by the medical provider. *Id.*, at ¶ 44 (citing *Wills*, 229 Ill. 2d. at 410). However, the mere fact that a plaintiff may recover the full billed amount does not relieve that plaintiff of the eviden-

tiary foundational requirements to do so. In Illinois, the plaintiff may place the entire billed amount into evidence, provided that the plaintiff establishes the proper foundational requirements to show the bill's reasonableness. *Arthur*, 216 Ill. 2d at 81-83. When evidence is admitted, through testimony or otherwise, that a medical bill was for treatment rendered and that the bill has been paid, the bill is *prima facie* reasonable. *Id.*, at 82. This statement in *Arthur* alone appears consistent with the statement by the trial judge in *Klesowitch* that: "if the evidence is that the bills are paid and there are no outstanding balances, that's *prima facie* evidence that the services that were provided were fair and reasonable and the amounts that were billed are fair and reasonable." However, there is a subtle, but important distinction made by the Supreme Court. Where, as in *Arthur*, the medical bills are discounted, plaintiff cannot make a *prima facie* case of reasonableness based on the bill alone, because she cannot truthfully testify that the total amount has been paid. Instead she must establish the reasonable cost by other means—just as she would have to do if the services had not yet been rendered, e.g., in the case of required future surgery, or if the bill remained unpaid. *Arthur*, 216 Ill. 2d at 83. Based on this analysis, the appellate court held that the trial court improperly admitted the written-off or settled portions of the plaintiff's medical bills into evidence and the jury awarded damages based on the improperly admitted medical bills. *Klesowitch*, at ¶ 47.

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### Conclusion

Practitioners should be aware of this evidentiary issue, and should be prepared to use that knowledge when strategically appropriate. Strong considerations may militate toward using this case law as a tool at trial. Equally strong considerations may dictate that the practitioner stipulate to the medical bills depending on the factors in the individual case. Nevertheless, this decision makes clear in a concise case what the state of the law has been in Illinois for quite some time. Given the continuing practice of a medical bill being "satisfied" for a small fraction of the total billed amount, the appropriate use of this evidentiary rule can provide significant benefit to the defendant. ■



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