Civil Justice Reform Act of 2020 and Other Recent Developments in Louisiana Civil Procedure and Evidence

Louisiana Judicial College
Evidence and Procedure Seminar

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Section 6

This Act shall become effective on January 1, 2021, and shall have prospective application only and shall not apply to a cause of action arising or action pending prior to January 1, 2021.

Art. 1733

Demand for a jury trial; bond for costs

A.(1) Except as provided in Subparagraph (2) of this Paragraph, a party may obtain a trial by jury by filing a pleading demanding a trial by jury and a bond in the amount and within the time set by the court pursuant to Article 1734.

Art. 1733

Demand for a jury trial; bond for costs

(2)(a) In a suit for damages arising from a delictual or quasi-delictual action where an individual petitioner stipulates or otherwise judicially admits that his cause of action exceeds ten thousand dollars and is less than fifty thousand dollars, a party may obtain a trial by jury by filing a pleading demanding a trial by jury and providing a cash deposit of five thousand dollars no later than sixty days after filing the request for a trial by jury. Failure to post the cash deposit as required by this Subparagraph shall constitute a waiver of the trial by jury. This cash deposit shall be subject to Article 1734.1(E).

Art. 1733

Demand for a jury trial; bond for costs

(b) When the case is set for trial, the court may additionally provide for a supplemental bond or cash deposit in advance with Article 1734 or 1734.1.

Art. 4873

Transfer to district court: procedure; contest; effect

A party entitled thereto under the provisions of Article 4872 may transfer the action to the district court in the following manner:

(1) Within the delay allow for answer in the trial court of the limited jurisdiction, or within ten days after answer has been filed, he shall file a motion to transfer with the clerk of the court in which the suit is pending. The motion shall include a declaration that the matter is one to which defendant would have been entitled to trial by jury if commenced in district court, and that defendant desires trial by jury. If a party fails to file a motion to transfer within the delays required by this Paragraph, the matter shall not be transferred.

Art. 411

Liability Insurance

A. Although a policy of insurance may be admissible, the amount of coverage under the policy shall not be communicated to the jury unless the amount of the coverage is a disputed issue which the jury will decide.

Art. 411

Liability Insurance

B. The existence of insurance coverage shall not be communicated to the jury unless any of the following apply:

(1) A fatal dispute related to an issue of coverage is an issue which the jury will decide

(2) The existence of insurance coverage would be admissible to attach the credibility of a witness pursuant to Article 607.

(3) The cause of action is brought against the insurer pursuant to R.S. 22:1973 or against the insurer alone pursuant to R.S. 22:1269(B)(1)(a) through (f).

Art. 411

Liability Insurance

C. The identity of the insurer shall not be communicated to the jury unless the identity of the insurer would be admissible to attack the credibility of a witness pursuant to Article 607.

D. In all cases brought against an insurer pursuant to R.S. 22:1269 or 1973, at the opening and closing of the trial, the court shall read instructions to the jury that there is insurance coverage for the damages claimed by the plaintiff.

Section 4. R.S. 9:2800.27 is hereby enacted to read as follows:
D. In all cases brought against an insurer pursuant to R. S. 22:1269 or 1973, at the opening and closing of the trial, the court shall read instructions to the jury that there is insurance coverage for the damages claimed by the plaintiff.

What is the Collateral Source Rule?

"A tortfeasor may not benefit, and an injured plaintiff's tort recovery may not be reduced, because of monies received by the plaintiff from sources independent of the tortfeasor's procuration or contribution."

ropeller Monticello v. Mollison, 58 U.S. 152
1855)

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iled: 1855-01-16 Precedential Status: Precedential Citations: 58 U.S.
52, 17 How. 152 Full description

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58 U.S. 152

17 How. 152

15 L.Ed. 68

THE PROPELLER MONTICELLO, JOHN WILSON, MASTER AND CLAIMANT, APPELLANT, v. GILBERT MOLLISON.

December Term, 1854

THIS was an appeal from the circuit court of the United States for the northern district of New York.

It was a case of collision, in September, 1850, upon Lake Huron, between a propeller called Monticello, and a schooner called The Northwestern, by which the schooner and her cargo were entirely lost.

In April, 1851, Mollison, the owner of the schooner, libelled the propeller, then lying in the port of Buffalo. Wilson, the master and claimant of the propeller, answered the libel, and much testimony was taken on both sides. In May, 1852, the district judge decreed that the libellant should receive the sum of $6,000, as the value of the schooner, and the further sum of $150, as the value of the salt which constituted the cargo. The case being carried, by appeal, to the circuit court, the decree was affirmed in

The Collateral Source Rule is both a rule of evidence and of damages

- Evidence of monies received is inadmissible
- Damages may not be reduced by monies received

The Collateral Source Rule is usually raised by Motion in Limine

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

SUIT NUMBER: 000,000 SECTION: "1"

JOHN SMITH

versus

CASUALTY INSURANCE COMPANY and SCOTT JONES

PLAINTIFF'S MOTION IN LIMINE

NOW INTO COURT, through undersigned counsel, comes plaintiff, John Smith, in the above entitled and numbered cause who, pursuant to Louisiana Code of Evidence article 104 and for the reasons set forth in the accompanying memorandum, respectfully moves to prohibit and prevent any question and any reference whatsoever, orally or written, concerning the following matters during the trial of this case:

1. The existence or identity of third parties who have paid medical bills on behalf of, or provided financial assistance to, John Smith, including Blue Cross, Funding, LLC, and Mr. Smith's attorneys.
2. That damages should be reduced because of money/benefits received by Mr. Smith from collateral sources.
3. Attorney referrals to Mr. Smith's treating physicians.
4. Timing and circumstances of Mr. Smith's retention of counsel.
5. Any prior lawsuits and claims made on behalf of Mr. Smith, and any settlements resulting therefrom.
6. That insurance rates or premiums may or may not increase dependent upon the amount a jury compensates Mr. Smith.
7. The filing of this Motion or any ruling by the Court in response.

WHEREFORE, for the foregoing reasons, plaintiff, John Smith, prays that defendants, Casualty Insurance Company and Scott Jones, be ordered to show cause why Plaintiff's *Motion in Limine* should not be granted.

Public Policy Supports the Collateral Source Rule

- Without the rule, victims would be dissuaded from purchasing insurance or pursuing other forms of available reimbursement
- Tort deterrence
- Compensation to an injured party

The Major Policy Reason for the Rule

Tort Deterrence

1. Legal scholars
2. Jurisprudence
3. Social Science
4. Common Sense

Important Cases

1. Bozeman
2. Bellard
3. Hoffman
4. Simmons

Bozeman held the Collateral Source Rule does not apply to Medicaid benefits

- No diminution of the plaintiff's patrimony
- "Benefit of the bargain" approach

Bellard held the Collateral Source Rule does not apply to a UM insurer

- Applying the rule will not further the goal of tort deterrence
- The plaintiff's patrimony was not diminished by his receipt of workers' compensation benefits
- Principle of solidarity overrides the Collateral Source Rule

Hoffman held the Collateral Source Rule does not apply to attorney-negotiated discounts for medical expenses

- No diminution of patrimony
- Attorney fees are not damages
- Evidentiary and ethical dilemmas

Simmons held the Collateral Source Rule does not apply to past worker's compensation medical payments

- Plaintiff's patrimony was not reduced
- The jury will see the discounted amount

Collateral Sources

- Unemployment Compensation
- Sick Pay
- Vacation Pay
- Disability Insurance
- Social Security
- Pension and Retirement
- Gratuitous Benefits
- Life Insurance

Medical Bills

Medical Bills

Jury Instruction

A plaintiff may recover reasonable medical expenses, both past and future, which he incurs because of the injury. Past medical expenses are those incurred from the date of the incident through the date of trial. Future medical expenses are those that will be incurred after the date of trial. In determining any compensation that you might make for past or future medical expenses, you should consider the evidence, and the opinions of expert witnesses, to decide the reasonable value or expense of medical, nursing, hospital care, and treatment which is reasonable and necessary for plaintiff's condition.

Authority: *Menard v. Lafayette Ins. Co.*, 09-1869 (La. 3/16/10), 31 So. 3d 996, 1006; 18 La. Civ. L. Treatise, Civil Jury Instructions § 18:5 (3d ed.).

Past medical bills can be calculated

Medical Bills

Past Bills Chart

Past Medical Expenses

Healthcare Provider	Dates of Treatment	Charges
Red Stick Emergency Group	07/25/2015	$1,278.00
Baton Rouge General Medical Center	07/25/2015	$679.80
Baton Rouge Radiology Group	07/25/2015	$53.00
Louisiana Neurologic Consultants Charles Kaufman, M.D.	07/30/2015; 09/09/2015; 10/28/2015; 01/27/2016; 04/27/2016; 05/24/2016; 09/13/2016; 01/17/2017	$3,350.00
Imaging Center of Louisiana	07/30/2015; 05/18/2016; 02/22/2017; 03/12/2018	$3,725.00
Bone & Joint Clinic of Baton Rouge Kevin McCarthy, M.D. Gerard Murtagh, M.D.	08/14/2015; 10/28/2015; 12/17/2015; 05/02/2016; 05/26/2016; 10/31/2016; 12/27/2016; 01/04/2017; 02/01/2017; 03/15/2017; 05/04/2017; 07/10/2017; 08/03/2017; 01/25/2018; 03/21/2018; 08/08/2018	$20,209.00
Life Fitness Therapy	08/17/2015; 08/20/2015; 08/25/2015; 08/27/2015; 09/01/2015; 09/03/2015; 09/08/2015; 09/10/2015; 09/14/2015; 10/30/2015; 11/06/2015; 11/13/2015; 11/20/2015; 11/24/2015; 12/04/2015; 12/11/2015; 12/18/2015; 12/23/2015; 12/30/2015; 01/08/2016; 01/22/2016; 02/09/2016	$6,655.00
Orthopedic Surgery Center	12/27/2016	$29,316.63
Diversified Professionals, Inc.	12/27/2016	$2,715.00
CLV Implants	12/27/2016	$4,200.00
Peak Performance Physical Therapy	01/20/2017; 01/23/2017; 01/25/2017; 01/27/2017; 01/30/2017; 02/01/2017; 02/03/2017; 02/06/2017; 02/08/2017; 02/10/2017; 02/13/2017; 02/15/2017; 02/17/2017; 02/20/2017; 02/22/2017; 02/24/2017; 02/27/2017; 03/01/2017; 03/03/2017; 03/06/2017; 03/08/2017; 03/10/2017; 03/13/2017; 03/17/2017; 03/20/2017; 03/22/2017; 03/27/2017; 03/29/2017; 03/31/2017; 04/03/2017; 04/05/2017; 04/07/2017; 04/10/2017; 04/13/2017; 04/17/2017; 04/21/2017; 04/25/2017; 05/01/2017; 05/05/2017; 05/09/2017; 06/05/2017	$12,640.67
Baton Rouge Imaging	07/27/2017	$2,000.00
Walgreens Pharmacy	07/26/2015; 08/06/2015; 09/14/2015; 09/15/2015; 01/13/2016; 01/15/2016; 02/04/2016; 07/21/2016; 12/27/2016; 01/04/2017; 04/26/2017; 05/30/2017	$376.70
TOTAL		**$87,198.80**

La. R.S. § 9:2800.27

- Recoverable past medical expenses
- Collateral sources
- Limitations
- Evidence

Health Insurance Issuer

“Health insurance issuer” means any health insurance coverage through a policy or certificate of insurance subject to regulation of insurance under state law, a health maintenance organization, an employer-sponsored health plan, the Office of Group Benefits, or an equivalent federal or state health plan.

Medical Provider

“Medical provider” means any healthcare provider, hospital, ambulance service, or their heirs or assignees.

Cost Sharing

“Cost sharing” means copayments, coinsurance, deductibles, and any other amounts which have been paid or are owed by the claimant to a medical provider.

Contracted Medical Provider

“Contracted medical provider” means any in-network medical provider that has entered into a contract or agreement directly with a health insurance issuer or with a health insurance issuer through a network of providers for the provision of covered healthcare services at a pre-negotiated rate, or any medical provider that has billed and received payment for covered healthcare services from Medicare when the provider is a participating provider in those programs.

Cost of Procurement

“Cost of procurement” means the cost paid by or on behalf of the claimant to procure the benefit paid by a health insurance issuer or Medicare and the cost of procurement of the award of medical expenses, including but not limited to contracted attorney fees and health insurance premiums paid.

§2800.27(B)

In cases where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer or Medicare to a contracted medical provider, the claimant's recovery of medical expenses is limited to the amount actually paid to the contracted medical provider by the health insurance issuer or Medicare, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

§2800.27(B)

The court shall award to the claimant forty percent of the difference between the amount billed and the amount actually paid to the contracted medical provider by a health insurance issuer or Medicare in consideration of the claimant's cost of procurement, provided that this amount shall be reduced if the defendant proves that the recovery of the costs of procurement would make the award unreasonable.

§2800.27(B)

The determination of this award shall be made only in accordance with the provisions of Subsection F of this Section.

§2800.27(C)

In cases where a claimant's medical expenses have been paid, in whole or in part, by Medicaid to a medical provider, the claimant's recovery of medical expenses actually paid by Medicaid is limited to the amount actually paid to the medical provider by Medicaid, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

§2800.27(D)

The recovery of past medical expenses other than those provided by Subsection B or C of this Section shall be limited to amounts paid to a medical provider by or on behalf of the claimant, and amounts remaining owed to a medical provider, including medical expenses secured by a contractual or statutory privilege, lien, or guarantee.

§2800.27(D)

The determination of this award shall be made only in accordance with Subsection F of this Section.

§2800.27(E)

In cases where a claimant's medical expenses are paid pursuant to the Louisiana Workers' Compensation Law as provided in R.S. 23:1020.1 et seq., a claimant's recovery of medical expenses is limited to the amount paid under the medical payment fee schedule of the Louisiana Workers' Compensation Law.

§2800.27(F)

In a jury trial, only after a jury verdict is rendered may the court receive evidence related to the limitations of recoverable past medical expenses provided by Subsection B or D of this Section.

§2800.27(F)

The jury shall be informed only of the amount billed by a medical provider for medical treatment.

§2800.27(F)

Whether any person, health insurance issuer, or Medicare has paid or has agreed to pay, in whole or in part, any of a claimant's medical expenses, shall not be disclosed to the jury.

§2800.27(F)

In trial to the court alone, the court may consider such evidence.

§2800.27(G)

This Section shall not apply in cases brought pursuant to R.S. 40:1231.1 et seq., R.S. 40:1237.1 et seq., or R.S. 13:5101 et seq.

Example:

In-network doctor charges $200 for an office visit. Patient pays $50 copay. Medicare or private health insurer pays $25 contracted rate. Remainder is written off. Plaintiff's recovery = 50 + 25 + .4(200 - 25). The recoverable bill is $145.