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Legal Fact and Fiction: The Contraction and Expansion of Florida's Collateral-Source Rule

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The Florida Supreme Court recently held that evidence of eligibility for future benefits from Medicare, Medicaid, and other social legislation was inadmissible at trial as these benefits constitute collateral sources, re-expanding the legal fiction that is Florida's collateral-source rule. The court's decision in *Joerg v. State Farm Mutual Automobile Insurance Company*, 176 So. 3d 1247 (Fla. 2015) is one of many that purports to seek justice for tort victims, but in effect allows a jury to consider inflated gross medical costs without ever hearing about deductions or the actual out-of-pocket cost for care. By allowing plaintiffs to present misleading evidence of medical expenses that will never be incurred, the *Joerg* decision appears to erode the foundational principle in Florida tort law that injured persons should only be compensated for damage actually suffered.

The court's 5-2 decision in *Joerg* not only overruled the Second District's decision that unearned governmental benefits should have been admissible at trial, but also receded from its own prior decision in *Florida Physician Insurance Reciprocal v. Stanley*, 452 So. 2d 514 (Fla. 1984). *Stanley* was a landmark decision in that it stressed a simple rule: a plaintiff should not be allowed to present evidence of medical expenses he or she will never incur.

The fatal flaw of *Stanley* was the arbitrary "unearned" standard for inclusion of collateral-source benefits in evidence—not the presentation of true medical costs to the jury. To be sure, *Stanley* created a standard the courts found unworkable, wherein "earned" benefits (*i.e.*, private insurance) were considered traditional collateral sources and barred from evidence, but "unearned" government benefits available to all citizens for little or no cost should be considered by the jury in evaluating an award of future expenses. Courts later recognized that this standard could not be applied easily in every situation. For example, as the *Joerg* Court pointed out, what about those who pay for Medicare, either directly or through a deduction in Social Security benefits? And what of the government's right to reimbursement and subrogation as a secondary payer, potentially exposing the victim to additional liability?

In answering these questions, the court could have looked past the lines it attempted to draw in the sand with *Stanley* and reconsidered the continued viability of the collateral-source rule in the first place. Instead, the *Joerg* decision created an apparent disconnect in Florida's collateral-source rule that may raise even more questions going forward.

The morass of cases currently embodying Florida's collateral-source rule are too numerous and disparate to analyze here in full, but the Florida Supreme Court has come to some consensus as to the

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rule's evolution and purpose. At common law, the collateral-source rule consisted of two parts: evidence and damages. The legislature partially abrogated the damages portion of the rule in enacting § 768.76, which requires courts to reduce awards "by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources . . . ." This statute's purpose was to reduce insurance costs and prevent plaintiffs from receiving windfalls, with some exceptions—such as collateral sources for which a subrogation or reimbursement right exists.

This justification is not as clearly discernible in the evidentiary portion of the collateral-source rule, which bars the admission of evidence as to collateral sources of payment for a tort victim's injuries. Indeed, the *Joerg* court held that tortfeasors are barred from introducing evidence of even unearned governmental benefits that could apply to damage claims for future medical care. *Joerg*, 176 So. 3d at 1256. No court has seriously considered the collateral-source rule as permitting an injured plaintiff to present inflated damages despite never actually incurring the damages alleged. Despite the law in virtually every other context limiting plaintiffs to evidence of actual damages incurred, the collateral-source rule remains the exception.

As the *Joerg* court cited, the "inadmissibility of collateral sources evidence enjoys a long history of legal precedent." *Id.* at 1250. Few, if any, courts in Florida question the continued viability of this precedent based on the reasoning that a tortfeasor should not benefit from the collateral sources available to the plaintiff. Stated differently, the courts tolerate a windfall to plaintiffs to avoid any potential limitation on damages attributable to the tortfeasor, regardless of the degree of fault.

Few courts have addressed the presentation of net medical bills or anticipated net medical bills to the jury without reference to collateral sources at all. No court, barring the now abrogated *Stanley*, has questioned whether it is appropriate for the jury to evaluate the cost of past and future medical care based on gross medical bills that will inevitably be reduced not just by collateral payments, but by negotiated rates and deductions for services. Instead, the collateral-source rule asks the jury to ignore the practical reality of the modern healthcare industry, and instead evaluate a plaintiff's injuries based on the inflated face value of past medical bills and extrapolation of those numbers into the future.

Focusing more on the present state and practical results of the collateral-source rule poses a number of other questions in the wake of the *Joerg* decision. Healthcare reform has been at the forefront of the national consciousness for decades, naturally peaking with the passage of the Affordable Care Act (ACA).* With questions as to ACA's constitutionality dwindling, questions as to the potential prejudice from the introduction of collateral-source evidence should dwindle alongside them. The individual mandate and related penalties directly contradict the court's redoubled efforts to protect or reward insured claimants merely because the tortfeasor's interests are of little to no consequence.

In either form, the collateral-source rule is not leaving Florida's jurisprudence any time soon. Still, the *Joerg* court missed an opportunity to realign the rule with the ever-evolving balance between deterrence and compensation in Florida's tort damages system. Limited abrogation of the rule's application in specific circumstances, such as those discussed in *Joerg* and *Stanley*, could finally serve the laudable goals of decreasing insurance costs and distributing risk as it is actually realized.

* Editor's note: For more information on the impact of ACA on the collateral-source rule, *see* H. Thomas Watson, Robert H. Wright, and Karen M. Bray, *Federal Health Insurance Mandates and the Impending Upheaval of the Collateral-Source Rule*, WLF Contemporary Legal Note, Jan. 2015, available at http://www.wlf.org/upload/legalstudies/contemporarylegalnote/WatsonWrightBrayCLN.pdf.

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