



**DESPITE HAVING STANDING TO SUE, PLAINTIFFS CANNOT RECOVER DAMAGES FOR MEDICAL BILLS THEY DID NOT PAY AND WERE NOT OBLIGATED TO PAY**

***ROBERTS V. BJC HEALTH SYSTEM, ET AL --- S.W.3D ---, 2013 WL 331589 Mo.*),  
JANUARY 29, 2013; MOTION FOR REHEARING DENIED, MARCH 19, 2013**

The Missouri Supreme Court has held that putative class action plaintiffs claiming injury due to allegedly fraudulent overbilling for medical care cannot recover because they were unable to show they actually suffered any damages in that they neither incurred nor paid the charges at issue.

Multiple plaintiffs brought this action seeking to recover only the alleged fraudulently overbilled amount of certain medical bills. Plaintiffs claimed the physician defendant had overcharged for surgical procedures and that the health care facility defendants either knew or should have known of these overcharges when submitting their own related bills. When plaintiffs first filed the case, they included the insurance companies which had paid the allegedly inflated medical bills. Later, apparently for strategic reasons, plaintiffs decided to remove the insurers as plaintiffs, thereby leaving only individuals as plaintiffs.

In terms of plaintiffs' damages or injury from the alleged overbilling, none had paid any more out of pocket than they would have if the alleged overbilling had not occurred. One family of plaintiffs had private insurance, but paid only their normal co-pay for the charges at issue. Ms. Roberts and Mr. Hales each had workplace injuries covered by workers compensation; under Missouri law, they were insulated from liability for the charges. Plaintiffs did not claim their insurance rates were increased due to the alleged overcharging.

At the conclusion of an agreed-to damages discovery phase, all defendants moved for summary judgment, asserting plaintiffs had failed to demonstrate they had either standing or actually proven any damages. The trial court granted summary judgment to all defendants because plaintiffs had a "failure of proof" in that they did not actually suffer any injury. Plaintiffs appealed. The Missouri Court of Appeals affirmed by order, pursuant to Rule 84.16, finding there was no precedential value to a published opinion.

The Missouri Supreme Court granted plaintiffs' Application to Transfer, but ultimately affirmed the trial court's summary judgment for all defendants. The Court made the following, among other, findings: **1)** plaintiffs had standing, which meant they were able to show they had a "personal stake in the outcome, even if that interest is attenuated, slight, or remote"; **2)** plaintiffs failed, however, to "establish the requisite damages element necessary for their claims to survive summary judgment"; and, **3)** plaintiffs failed in that regard because they sought "to recover monies for alleged overcharges that they did not pay and would not have to pay if Defendants properly charged them".

The Court also stated that it agreed with the circuit court that Plaintiffs cannot proceed with claims to "recover money that incontrovertibly they never lost". In this vein, the Court specifically rejected plaintiffs' argument that they sustained damages merely by entering into an agreement with the hospitals to pay if their insurers did not. It found that in this case, the potential liability of plaintiffs "remained a speculative harm that did not materialize".

A central issue in controversy was whether the collateral source rule applied here to allow plaintiffs to prevent defendants at trial from offering evidence of insurance payments of the medical bills in question. The Court found plaintiffs' argument unpersuasive: "In this case, there was no collateral source of payments to Plaintiffs for their damages, as Plaintiffs did not suffer any damages. The circuit court did not err in determining that the collateral source rule is inapplicable ...as the rule cannot create damages...where none existed."



*(Continued from Page 1)*

One ancillary point was plaintiffs' argument that they had the right to pursue recovery of the amount of the bills because they were subrogees for their respective insurance companies. The Court also quickly rejected that argument: "...Plaintiffs never had legal title to any claims related to their insurers' payments for alleged overcharges. The trial court did not err in finding that the insurers were the 'owners of any claims' in this case."

*Roberts* is significant for at least a few reasons: **1)** it follows traditional Missouri law to the effect that a plaintiff cannot recover for medical bills they never paid and which they were not obligated to pay; **2)** it correctly reaffirms the collateral source rule cannot function where there is no loss to the plaintiff; and, **3)** it supports summary judgment as a viable route of case disposition if the party opposing it cannot show legally recognized damages.

For more on the collateral source rule in Missouri law, see: "*Recovery of Medical Expenses under Section 490.715.5, RSMo: A Closer Look*", Vol. 67 J. of Missouri Bar 32, January/February 2011

*SUBMITTED BY*

*PAUL N. VENKER, PARTNER*

*pvenker@wvslaw.com*

*(314) 345-5001*

DISCLAIMER: Information contained herein is intended for informational purposes only and should not be construed as legal advice. Seek competent counsel for advice on any legal matter.