

**RECOVERY OF MEDICAL EXPENSES UNDER SECTION 490.715, RSMO  
DECK V. TEASLEY, 322 S.W.3D 536 (Mo. banc 2010)**

In *Deck v. Teasley*, the Missouri Supreme Court held a plaintiff can recover the “value” of medical expenses, based on the amount billed, even though neither the plaintiff, nor anyone else, paid the full “value” amount or was ever obligated to pay that amount. This is a surprising result for two main reasons: 1) it departs from the Court’s own precedent of tort awards being “compensatory only”; and, 2) ironically, it relies on a statute from Missouri’s 2005 Tort Reform, which was undisputedly intended to limit recoveries and not to expand them.

One of the main issues in *Deck v. Teasley* (decided October 26, 2010) was the measure of recovery of expenses for medical treatment pursuant to § 490.715, RSMo, focusing on subsection 5, which is part of Missouri’s 2005 tort reform. Subsection 5 states there is a rebuttable presumption that the recoverable amount of medical treatment expenses (the “value”) is limited to the dollar amount necessary to “satisfy the financial obligation to the health care provider”. The statute specifically identifies evidence which can be considered, but also allows other evidence on the issue of “value”. The statute also directs the trial court, upon motion, to conduct a pre-trial hearing to determine the proper amount.

Plaintiff Deck sustained injuries in a motor vehicle accident. Her medical bills totaled \$27,991.30. That amount was reduced by write-offs and adjustments down to \$9,904.28, which Medicare paid, leaving an unpaid amount of approximately \$18,087. Before trial, defendant Teasley moved for the court to conduct an evaluation of the medical treatment expenses, pursuant to § 490.715.5. At the pre-trial hearing, defendant presumably presented evidence of the amount paid for the medical treatment. To rebut the presumption, plaintiff Deck offered testimony from witnesses that the total amount of the bills more accurately reflected the value of the medical treatment than did the amount paid. Two of these witnesses were from St. John’s Health Care System and St. John’s Physicians and Clinics. The trial court held that the amount paid for the medical treatment was its value and excluded plaintiff’s evidence to the contrary.

On appeal to the Missouri Supreme Court, plaintiff *Deck* argued, among other things, the trial court erred in excluding her evidence offered to rebut the presumption. The Missouri Supreme Court held: 1) the legislature amended § 490.715 in 2005 to “limit evidence litigants could introduce regarding the value of medical treatment rendered to an injured party.”(Slip Op. at 1); 2) § 490.715.5, created a rebuttable presumption that the dollar amount necessary to satisfy the financial obligation to the health care provider represents the value of the medical treatment rendered; 3) the testimony which plaintiff Deck offered at the pre-trial hearing and at trial, rebutted the statutory presumption because it was “substantial evidence” of the value of the medical treatment expenses; 4) the trial court erred in determining the value of the medical treatment and should have presented all the evidence to the jury for its consideration. The Court reversed the trial court on this issue and remanded the case for trial on damages only. (Slip Op. at 7). (*Continued*)

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Some observations about problems with the Deck decision are: 1) contrary to Missouri Supreme Court precedent, plaintiffs will be allowed to recover for all dollar amounts billed for medical treatment expenses, *including those not paid by anyone*; 2) the Court has construed § 490.715.5, to allow expanded evidence to be considered in determining recovery of medical treatment expenses, even though the Court found the statute was intended to “limit the evidence litigants can introduce regarding the value of medical treatment rendered to a party.”; 3) a departure from Missouri law on the recovery of medical expenses by allowing testimony of its “value” to create a fact question, even though the amount paid or owed for the care was always the limit of that recovery (including in § 490.715.5’s definition of “value”); and, 4) an erroneous construction of § 490.715.5 to create a rebuttable presumption as to whether Missouri’s long standing precedent of “compensation only” measure of recovery for tort victims operates and has construed § 490.715.5 as allowing defendants to be forced to pay more than the compensatory amount to a tort victim, which the Court’s own decisions have held is tantamount to “punishment”, which it would not allow.

In conclusion, the *Deck v. Teasley* decision is a surprising departure from the Supreme Court’s own time-honored precedent of tort victims being entitled to only compensatory damages. Deck allows plaintiffs to recover an amount which no one has lost, owes or has paid. This is clearly a windfall. Missouri courts have uniformly abhorred such recoveries throughout their history, but the Supreme Court has determined the General Assembly intended this result with the “rebuttable presumption” language of § 490.715.5, RSMo.

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