

MEDICAL EXPENSES AND THE AFFORDABLE CARE ACT

R. Brent Cooper
R. Douglas Rees
Gordon K. Wright

900 Jackson Street, Suite 100
Dallas, TX 75202
Telephone: 214-712-9500
Telecopy: 214-712-9540
Email: brent.cooper@cooperscully.com
doug.rees@cooperscully.com
gordon.wright@cooperscully.com

Issue Presented --

- What impact does the fact that everyone is guaranteed health insurance have on the recovery of past, but particularly future, medical expenses?

HISTORY OF ISSUE IN TEXAS

- Pre-41.0105
- Enactment of 41.0105
- Interpretations
- Affordable Care Act

PROCEDURAL STEPS TO MAKE ARGUMENT

- PLEADING – *Las Colinas Medical Center v. Bush*
- EXPERT
- EVIDENCE NECESSARY
- JURY QUESTION

LIKELY DEFENSES-

- COLLATERAL SOURCE RULE
- NO PLEADINGS
- NO EVIDENCE
- CAN THE PLAINTIFF OBTAIN COVERAGE
- <https://www.healthcare.gov/coverage/pre-existing-conditions/>
- LIMITS OF COVERAGE UNDER THE POLICY
- <https://www.healthcare.gov/health-care-law-protections/lifetime-and-yearly-limits/>

LIKELY DEFENSES

- OUT OF POCKET EXPENSES-
- <https://www.healthcare.gov/glossary/out-of-pocket-maximum-limit/>
- ACA held to be constitutional:
 - *King v. Burwell*, 14-114 U.S. Sup. Ct. June 25, 2015 (slip opinion)
 - *Nat. Fed. of Independent Business v. Sebelius*, 11-393 U.S. Sup. Ct. June 28, 12 (slip opinion)

TREATMENT BY COURTS- FAVORABLE

- Jones v. Metrohealth Medical Center (Ohio 2015)
- Christy v. Humility of Mary Health Partners (Ohio 2015)
- First Bankers Trust v. Memorial Medical Center (Ill. 2015)
- Cowden v. BNSF Ry. Co. (MO 2013)
- Peralta v. Quintero (S.D. NY 2015)
- Deeds v. University of Pennsylvania Med. Cen. (PA 2014)
- Brewington v. USA (C.D. CA 2015)

TREATMENT BY COURTS- UNFAVORABLE

- *Kirt v. Bozeman Deaconess Health Services* (Mt. 2015)
- *Brewster v. Southern Home Rentals* (M.D. Ala. 2012)
-- Denied but said plaintiff could open door
- *Vasquez-Sierra v. Hennepin Faculty Associates* (Minn. 2012) -- Said issue premature
- *Dohl v. Sunrise Mountainview Hospital* (Nev. 2015)
-- Issue too hypothetical

ISSUE RESERVED UNTIL TRIAL

- Cowden v. BNSF Railway Co. (980 F.SUPP.2D 1106 (E.D.Mo. 2013) -- Issue held in abeyance until trial
- Pannacciulli v. Beloff, Docket No. BER-L-845-12; Supreme Court of New Jersey, Bergen County

POLICY ARGUMENTS --

- Rule is consistent with 41.0105 and similar statutes
- The collateral source rule does not apply because the difference between what was billed and what was paid or incurred is not a collateral source
- The rule would acknowledge the realities of the health care insurance system since the constitutionality of the ACA has been upheld