

January 20, 2011

Federal Court Speaks to Issue of Protection of Medicare's Interest in Liability Cases

On January 5, 2011, a decision was rendered by the United States District Court for the Western District of Louisiana in the case of Big R Towing, v. David Wayne Benoit, et al 2011 U.S. Dist. LEXIS 1392 addressing protection of Medicare's interest in a liability case. By way of background, Benoit, a seaman, sustained injuries from an alleged accident on December 27, 2009 and filed for benefits under the Jones Act. Liability and the need for future medical treatment as noted by the court were vigorously contested.

A settlement conference took place on December 13, 2010 in which Big R agreed to pay a settlement of \$150,000 in exchange for a complete release of all claims. Since Benoit was receiving Social Security Disability benefits the conference included a discussion regarding protection of Medicare's interest under the Medicare Secondary Payor statute, specifically 42 U.S.C. 1395y. Since Benoit was not yet a Medicare recipient, there did not appear to be an issue as to past conditional payments. However, the issue of future medicals still needed to be addressed. To that end, the parties agreed that the court could determine the amount of future medical expenses to be set aside and filed their motion. At the hearing, evidence was presented from the medical providers indicating \$52,500 would be appropriate to cover Benoit's future medical care.

The court ordered Benoit to reimburse Medicare should any conditional payments exist. Further, in reference to consideration of Medicare's interest, the court held that \$52,500 of the settlement was to be set aside for future medical expenses payable by Medicare.

There are three distinct points of interest in this case:

- The court recognized that Medicare does not have a current policy or procedure in place to address the adequacy of future medicals in liability cases.
- The court noted Benoit was not going to be a Medicare beneficiary within thirty months of settlement based upon age, although receiving Social Security disability benefits.



(It should be noted that a “reasonable expectation” would exist based upon receipt of these benefits.)
In essence, this is an example of a liability case partially referencing a workers’ compensation guideline.

- The court considered the medical evidence when arriving at the appropriate amount, not merely a stipulation by the parties.

This case is a good example of how both the parties and the court system are demonstrating a growing awareness about the importance of taking Medicare’s interests into account within this area.

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