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IN THE CIRCUIT COURT OF THE 7TH JUDICIAL  
CIRCUIT IN AND FOR FLAGLER COUNTY, FLORIDA

CASE NO. 2017 CA 000203

IMAD MANSOUR and GAIL MANSOUR,

Plaintiffs,

vs.

CAPTAIN'S BAIT, TACKLE & BBQ, LLC and  
COUNTY OF FLAGLER,

Defendants.

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**DEFENDANT CAPTAIN'S BAIT, TACKLE & BBQ'S MOTION IN LIMINE TO  
LIMIT/EXCLUDE EVIDENCE OF PLAINTIFF'S PAST MEDICAL CHARGES**

Defendant, CAPTAIN'S BAIT, TACKLE & BBQ, by and through its undersigned counsel, and pursuant to the Florida Evidence Code, moves this Honorable Court for entry of an Order *in limine* excluding evidence of past medical bills adjusted and/or written off by Medicare, for the reasons set forth below.

1. This case arises from a slip and fall on August 4, 2016 when Plaintiff exited Defendant's restaurant after it had been raining.
2. At the time of this accident, Plaintiff was 68 years of age.
3. At the time of this accident, Plaintiff was a Medicare beneficiary.
4. All past medical care and treatment Plaintiff sought after this accident as damages for past medical treatment for injuries allegedly related to the accident was covered by Medicare. See Plaintiff's Medicare Lien, attached as Exhibit A.
5. These medical expenses or bills paid for by Medicare have been adjusted and/or written-off.

6. The sole issue is whether the Plaintiff can “board” the total billed amount of past medical expenses or may only “board” the amounts paid by Medicare. In the first instance, there will be an adjustment post-trial. In the second instance, the jury hears the true amount of the Plaintiff’s medical expenses, rather than an artificially inflated “billed” amount which the provider knows it will never receive from Medicare because, by accepting Medicare patients, the provider has agreed to accept what Medicare pays.

7. This Honorable Court should apply Thyssenkrupp Elevator Corp. v. Lasky, 868 So. 2d 547, 549 (Fla. 4th DCA 2003) and admit as evidence the amount Plaintiff’s medical providers accepted as payment as it relates to Plaintiff’s past medical expenses.

**MEMORANDUM OF LAW AND ARGUMENT**

This is a personal injury case where Plaintiff, IMAD MANSOUR, is asserting damages for past and future medical expenses as well as pain and suffering. Plaintiff is a Medicare beneficiary. Medicare paid certain medical expenses or bills on behalf of the Plaintiff. These medical expenses or bills paid for by Medicare have been adjusted and/or written-off.

Under Florida law, “it has long been established . . . that the measure of compensatory damages in a tort case is limited to the actual damages sustained by the aggrieved party.” Goble v. Frohman, 901 So. 2d 830, 834 (Fla. 2005) (internal citations omitted). Benefits received under Medicare are not considered a collateral source. §768.76(2), Fla. Stat.

The case of Thyssenkrupp Elevator Corp. v. Lasky, 868 So. 2d 547, 549 (Fla. 4th DCA 2003) is directly on point. In Thyssenkrupp, the Fourth District found that it was error to present to the jury evidence of medical expenses charged instead of the medical

expenses paid by Medicare in full satisfaction of the total charges. In reaching its determination, the Court held:

Allowing the admission of evidence of the excess discharged by Medicare payment has the effect of providing an undeserved and unnecessary windfall to the plaintiff. It would be contrary to public purpose of reducing healthcare costs to allow inflated damage recoveries to stand without reduction. We therefore conclude that defendant is entitled to have the past medical expenses awarded – by the difference between the amounts charged by a provider and the amounts actually paid that provider by Medicare.”

Id. at 550.

On rehearing, the Fourth District in Thyssenkrupp further clarified that: “[w]hen a provider charges for medical service or products and later accepts a lesser sum in full satisfaction by Medicare, **the original charge becomes irrelevant** because it does not tend to prove that the claimant has suffered any loss by reason of the charge. Id. at 551 (emphasis added).

In Boyd v. Nationwide Mutual Fire Ins. Co., 890 So. 2d 1240 (Fla. 4th DCA 20015), the Fourth District again held that medical *bills* amounts adjusted by Medicare should be excluded from evidence.

Based upon the facts in this case as well as the applicable case law cited above, this Honorable Court should enter an Order *in limine* to exclude from evidence, or reference at, trial the amounts of the Plaintiff’s past medical expenses adjusted and/or written-off by Medicare.

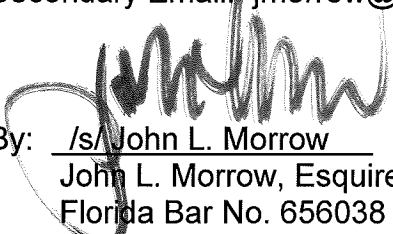
WHEREFORE, the Defendant, CAPTAIN'S BAIT, TACKLE & BBQ, respectfully requests that this Honorable Court grant this Motion *in limine* and order that the Plaintiff

may introduce medical expenses only in the amount paid by Medicare and accepted by the Plaintiff's medical providers.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof has been furnished by service through the eportal to Anna E. Engelman, Esquire, Bell & Roper, P.A., 2816 East Robinson Street, Orlando, Florida 32803, Attorneys for FLAGLER COUNTY, aengelman@bellroperlaw.com, sriddle@bellroperlaw.com; Michael D. Sechrest, Esq., Warner, Sechrest & Butts, P.A., 5200 S.W. 91st Terrace, Suite 101, Gainesville, FL 32608, Attorney for Plaintiffs on this 11 day of May, 2019.

CONROY SIMBERG  
Attorney for Defendant Captain's Bait, Tackle & BBQ,  
LLC  
Two South Orange Avenue, Suite 300  
Orlando, FL 32801  
Telephone: (407) 649-9797  
Facsimile: (407) 649-1968  
Primary Email: eserviceorl@conroysimberg.com  
Secondary Email: jmorrow@conroysimberg.com

By:  /s/ John L. Morrow  
John L. Morrow, Esquire  
Florida Bar No. 656038  
Sarah May Swartz, Esquire  
Florida Bar No. 99654

**Med Payment Summary**

Claimant: MANSOUR, IMAD M  
 Date of Incident: 08/04/2016  
 Last Update: 06/22/2017  
 File Number: 30217808  
 Analyst: Thomas Propper

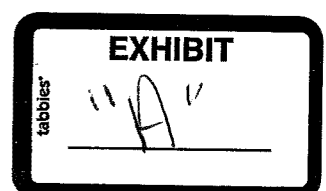
Please send all payments to:

Optum  
 75 Remittance Drive  
 Suite 6019  
 Chicago, IL 60675-6019

Total Billed: \$38,960.20  
 Total Paid: \$12,561.42  
 Remaining Balance: \$12,561.42  
 Created On: 11/14/2018



First Date of Claim Number	Provider	Amount Billed	Amount Paid	Paid Date	Capitated*	Diagnosis Codes
08/04/2016	000795073100	\$153.51	\$52.85	09/09/2016	No	M54.6, M54.6
08/04/2016	000812846200	\$1,293.00	\$118.30	09/13/2016	No	S22.000A, M54.9, S22.000A
08/04/2016	0009664763600	\$4,113.80	\$349.01	09/09/2016	No	S22.009A, S22.009A
08/15/2016	000793622200	\$269.00	\$67.64	09/09/2016	No	S22.000A, S22.000A
08/17/2016	000806003000	\$1,379.00	\$137.95	09/13/2016	No	M54.6, M54.6
08/17/2016	000819662000	\$104.00	\$24.04	09/16/2016	No	M54.6, M54.6, M54.5
08/18/2016	000827497700	\$111.14	\$16.01	09/16/2016	No	M48.55XA
08/24/2016	005771774000	\$28,836.75	\$11,280.97	12/29/2016	No	M80.88XA, Z79.01
08/24/2016	005771774001	\$48.00	\$4.47	12/29/2016	No	M80.88XA, Z79.01
09/06/2016	000888484600	\$286.00	\$21.55	09/30/2016	No	M54.6, M54.6
09/08/2016	000922572200	\$1,204.00	\$179.87	10/12/2016	No	M54.6, M54.6
09/08/2016	000922607600	\$102.00	\$50.33	10/12/2016	No	S22.079A, S22.079A, M47.814, M51.84
09/13/2016	000919746300	\$110.00	\$22.29	10/07/2016	No	S22.000D, M54.6, S22.000D
11/02/2016	005636112900	\$110.00	\$22.29	11/29/2016	No	M54.6, M54.6
11/15/2016	005692104500	\$230.00	\$92.40	12/12/2016	No	M54.6, M54.6
11/17/2016	005701345300	\$130.00	\$26.30	12/14/2016	No	M54.6, M54.6
12/06/2016	005774919300	\$90.00	\$16.25	12/30/2016	No	M54.6, M54.6
12/08/2016	005785716600	\$130.00	\$26.30	01/04/2017	No	M54.6, M54.6
12/12/2016	005798907600	\$130.00	\$26.30	01/06/2017	No	M54.6, M54.6
12/21/2016	005847211400	\$130.00	\$26.30	01/18/2017	No	M54.6, M54.6
		Subtotals:	\$38,960.20			\$12,561.42





**OPTUM®**

11000 Optum Circle  
MN102-0300  
Eden Prairie, MN 55344



962-1-5  
Marc D Warner  
Warner Sechrest & Butts Pa  
5200 SW 91st Ter Ste 101  
Gainesville FL 32608-0600

November 14, 2018

**RE: Injured Party: Imad M Mansour**  
**Date of Injury: 8/4/2016**  
**Group: AARP MCARECOMPL CHOICE PLAN 2, #RAM082075**  
**File #: 30217808**

Dear Marc Warner,

UnitedHealthcare has retained Optum to recover medical expenses paid on behalf of Imad M Mansour for treatment of injuries sustained on 8/4/2016.

Please be advised that UnitedHealthcare is a Medicare Advantage organization. See 42 U.S.C.S. §§ 1395w-21 et seq. Medicare Advantage ("MA") organizations have the same rights to recover as the Secretary of Health and Human Services exercises under the Medicare Secondary Payer laws and regulations. See 42 C.F.R. § 422.108(f). Those rights include (1) subrogation and the right to intervene in the underlying liability action, and (2) the right to bring an action to recover conditional payments from any entity that is required or responsible to make payment and any entity that has received payment from a primary plan. See 42 C.F.R. §§ 411.24 and .26. Further, state laws purporting to limit the recovery rights of MA plans are preempted. See 42 C.F.R. § 422.108(f).

Based on the foregoing, please contact us prior to any settlement negotiations to obtain an update of the amount of paid medical expenses for which UnitedHealthcare is to be reimbursed.

Sincerely,

Thomas Propper, Analyst  
Phone: 844.709.6877 Fax: 800.842.8810  
E-mail: Thomas.Propper@Optum.com

