

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KENNETH DRUMMOND and  
TAMMI DRUMMOND,

Plaintiffs,

v.

DELAWARE TRANSIT CORPORATION:  
and UNITED STATES OF AMERICA,

Defendants.

Civil Action No. 02-040-MPT

**MEMORANDUM OPINION**

Frederick S. Freibott, Esquire, The Freibott Law Firm, P.A., 3407 Lancaster Pike, P.O. Box. 30128, Wilmington, DE 19805; counsel for plaintiffs Kenneth Drummond and Tammi Drummond.

Colm F. Connolly, Esquire, United States Attorney, Rudolph Contreas, Esquire, Assistant United States Attorney, 1007 Orange Street, Suite 700, P.O. Box 2046, Wilmington, DE 19899-2046; counsel for defendant United States of America.



Thynge, U.S. Magistrate Judge

## I. INTRODUCTION

Plaintiffs Kenneth Drummond and Tammi Drummond initiated this action on January 15, 2002, asserting personal injury claims under the Federal Torts Claim Act ("FTCA"), 28 U.S.C. § 1346(b), 28 U.S.C. § 2679(B) and 28 U.S.C. §§ 2671-2680, as the result of personal injuries Drummond received from an automobile accident on April 21, 2000 (the "DART bus incident").<sup>1</sup> Mr. Drummond alleged that defendant United States of America was responsible for those injuries. Mrs. Drummond also sought damages for loss of consortium. On October 10, 2003, the parties stipulated that jurisdiction in this matter be conferred to this court, pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and Delaware District Court Local Rule 73.1.<sup>2</sup> On September 8, 2004, a bench trial was held in this matter.

On April 21, 2005, this court issued a Memorandum Opinion<sup>3</sup> and Final Judgment Order<sup>4</sup> entering judgment in favor of plaintiffs and against the United States pursuant to the FTCA. The court awarded plaintiffs a lump-sum of \$288,918.74 for past medical bills, future medical expenses, pain and suffering, and loss of consortium.<sup>5</sup> The court also ordered the United States to pay any amounts plaintiffs are required to reimburse Medicaid in the future for medical expenses incurred up to the time of trial for injuries to Mr. Drummond's knee, neck and shoulder arising from the DART bus

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<sup>1</sup> D.I. 1.

<sup>2</sup> D.I. 59.

<sup>3</sup> *Drummond v. Delaware Transit Corp.*, 365 F. Supp. 2d 581 (D. Del. 2005). The court's Memorandum Opinion includes a recitation of the procedural history of this case and detailed findings of fact, familiarity with which is presumed by the reader.

<sup>4</sup> D.I. 91.

<sup>5</sup> *Drummond*, 365 F. Supp. 2d at 592.

incident.<sup>6</sup>

On May 5, 2005, the United States moved pursuant to Fed. R. Civ. P. 59(e) to alter or amend the judgment in this matter to eliminate the Medicaid reimbursement portion of the court's Final Judgment Order.<sup>7</sup>

## II. POSITIONS OF THE PARTIES

The United States argues that the court should alter or amend its Final Judgment Order to eliminate the award of the amount plaintiffs are required to reimburse Medicaid in the future for medical expenses incurred up to the time of trial for injuries suffered by Mr. Drummond arising from the DART bus incident. The United States argues that plaintiffs' exclusive remedy in this case is pursuant to the FTCA but that the FTCA limits relief available against the United States to "money damages" only. Therefore, the United States argues that District Courts lack subject matter jurisdiction under the FTCA to award equitable relief. The United States also contends that an award of money damages must be made in a lump sum and, consequently, the FTCA does not allow for awards of periodic payments. According to the United States, since the FTCA requires that any award pursuant to that statute must be for a lump-sum monetary amount paid entirely at one point in time after judgment, this court's Final Judgment Order requiring the payment of one lump-sum monetary amount upon judgment, and an additional payment of some unspecified amount in the future for reimbursement to Medicaid, is not authorized under the FTCA. Furthermore, according to the United States, plaintiffs failed to prove at trial the specific amount of money they are required to reimburse

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<sup>6</sup> *Id.*

<sup>7</sup> D.I. 93.

Medicaid. Based on these arguments, the United States maintains that the court should alter or amend its Final Judgment Order to eliminate the portion of the award relating to the future reimbursement to Medicaid.

In opposing the United States' motion, plaintiffs argue that the Medicaid reimbursement amounts are quantified and documented such that they are attributable as lump-sum damages. Plaintiffs point to Joint Exhibit 24 ("JX 24") as documenting that there were \$38,918.74 of outstanding medical expenses at the time of trial with an additional \$31,124.31 of medical bills paid by Medicaid requiring reimbursement. Plaintiffs point out that JX 24 was joint in nature and the amounts included therein were stipulated to by the United States prior to the commencement of trial. Plaintiffs also note that JX 24 was relied upon by the court in its Memorandum Opinion. Plaintiffs contend that the amount in question was necessarily determined and was concrete in nature due to the demarcation that the trial date created. Accordingly, plaintiffs contend that the Medicaid reimbursement amount is calculable and provides direction for a lump-sum award that should be granted and that the court should not eliminate that portion of the award set forth in the Final Judgment Order.

Plaintiffs also contend that the United States' assertion that the Medicaid reimbursement amount is not tied to an applicable notion of what constitutes "money damages" as defined by 28 U.S.C.A. § 1346(b). Here, plaintiffs argue, the reimbursement amount is directly correlated with medical care and expenses which are related to the DART bus incident. Therefore, according to plaintiffs, there is a monetary nexus beyond equitable relief since the Medicaid lien was necessitated by the injuries sustained. Additionally, plaintiffs assert that Medicaid reimbursement can be said to

relate directly to money damages due to the fact that expenses were outlaid which need to be recouped via some sort of payment. Therefore, the provision of funds for reimbursement is monetary in nature and seeks to ameliorate damage in a direct manner, beyond equity.

### III. DISCUSSION

The United States is correct that under the FTCA, “a district court should not make other than lump-sum money judgments unless and until Congress shall authorize a different type of award.”<sup>8</sup> This court’s Final Judgment Order awarded particular dollar amounts for Mr. Drummond’s past and future medical expenses, pain and suffering, and Mrs. Drummond’s loss of consortium claim. The United States asserts, however, that the court’s award of past medical expenses is improper in that it includes a purportedly unspecified amount for “any past medical expenses related to the DART bus incident that must be reimbursed to Medicaid for such expenses incurred up to the time of trial.”<sup>9</sup> Particularly, the United States argues that portion of the court’s Order “requiring the payment of a lump sum monetary amount upon judgment, and another payment of some unspecified amount in the future (the Medicaid reimbursement), is not authorized under the FTCA.”<sup>10</sup>

The court agrees that its Final Judgment Order should be modified to provide for a single lump-sum payment of money damages. The court does not agree, however, with the United States’ contention that plaintiffs failed to prove the specific amount of

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<sup>8</sup> *Frankel v. Heym*, 466 F.2d 1226, 1228-29 (3d Cir. 1972).

<sup>9</sup> D.I. 91 at 1.

<sup>10</sup> D.I. 93 at 2.

money plaintiffs are required to reimburse Medicaid.

As noted in the this court's April 21, 2005 Memorandum Opinion, there is evidence that plaintiffs received \$31,124.31 in Medicaid payments for medical expenses related to the injuries sustained by Mr. Drummond in the DART bus incident and that plaintiffs are obligated to reimburse that amount to Medicaid.<sup>11</sup> That dollar amount was stipulated to in JX 24.

As noted by another district court:

The Social Security Act, 42 U.S.C. §§ 1396-1396v, governs Medicaid, a medical assistance program jointly financed by federal and state governments. Under the Act, states must require medical assistance payment recipients to assign to the donor-state any rights they have to reimbursement for medical care from any third parties. *See. id.* § 1396k.<sup>12</sup>

Delaware's Department of Health and Social Services (DHSS) administers Medicaid benefits in this state and, pursuant to statute and regulation, DHSS is entitled to subrogation of the amounts paid by DHSS to Mr. Drummond as a result of the Dart bus incident. Under 31 Del. C. § 522(a):

Subrogation is defined as the doctrine of law which enables insurers to recover payments from any third party who is responsible for an injury. In any claim for benefits by a recipient who receives medical care under this title, where the recipient has a cause of action against any other person, the Department of Health and Social Services shall be subrogated against (substituted for) the recipient to the extent of any payment made by the Department of Health and Social Services on behalf of the recipient receiving medical care, resulting from the occurrence which constituted the basis for the action against the other person.

DHSS regulations are consistent with Del. C. § 522:

Some Medicaid recipients are covered by other medical insurance

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<sup>11</sup> *Drummond*, 365 F. Supp. 2d at 590 n.48.

<sup>12</sup> *Norwest Bank North Dakota, N.A. v. Doth*, 959 F. Supp. 532, 533 (D. Minn. 1997).

plans. . . . When a recipient receives payment from an insurance carrier, *court settlement, etc.* for any medical services paid by Medicaid, the recipient is obligated to reimburse the program for those related services. All such cases must be referred to the Third Party Liability Unit at the Medicaid State Office.<sup>13</sup>

The United States has presented no evidence demonstrating that plaintiffs are not obligated to reimburse Medicaid for past medical expenses received from Medicaid in connection with Mr. Drummond's medical expenses arising from the DART bus incident. Nor does the United States dispute the \$31,124.31 amount received by Mr. Drummond in Medicaid payments. Consequently, the court will modify its Final Judgment Order to provide for a lump-sum award to plaintiffs which includes the acknowledged amount plaintiffs are obligated to reimburse Medicaid for payments received for past medical expenses through the date of trial.

#### **IV CONCLUSION**

Having considered all of the arguments put forth by the parties, and for the reasons stated above, the United States' motion is granted in part and denied in part. The motion is granted to the extent that the court will modify its Final Judgment Order to provide for a single lump-sum award to plaintiffs. The United States' request that the Final Judgment Order exclude an award for Medicaid payments which plaintiffs are obligated to reimburse is denied.

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<sup>13</sup> 6:4 Del. R. 532, Revision 14600 (Oct. 1, 2002) (emphasis added).