

**IT IS PERMISSIBLE FOR PLAINTIFF TO INTRODUCE EVIDENCE OF THE TOTAL
AMOUNT OF MEDICAL EXPENSES INCURRED AND EVIDENCE OF ALL
COVERED EXPENSES ARE PRESENTED TO THE COURT FOR PURPOSES OF
POST-VERDICT MODIFICATION AND NOT THE JURY**

The questions of whether it is permissible for a Plaintiff to, for the jury's consideration, present evidence of the total amount of medical bills incurred by said Plaintiff and the manner in which any award would be reduced to avoid a double recovery were addressed by the Appellate Division in its decisions in *Thomas v. Toys "R" Us*, 282, N.J. Super. 569 (App. Div.1995) and *Dias v. A.J. Seabras Supermarket*, 310 N.J. Super. 99 (App. Div. 1998). (*Exhibit A- Thomas v. Toys "R" Us*, *Exhibit B- Dias v. A.J. Seabras Supermarket*).

In *Thomas*, the Court discussed the procedure to be followed when dealing with the collateral source rule as it is codified within the language of *N.J.S.A. 2A:15-97*. Said statute states in pertinent part:

In any civil action brought for personal injury,...if a plaintiff receives or is entitled to receive benefits for the injuries allegedly incurred from any other source other than a joint tortfeasor, the benefits..., shall be disclosed to the court and the amount thereof which duplicates any benefit contained in the award recovered by the plaintiff...for the policy period during which the benefits are payable...

Id.

The Appellate Division in *Thomas*, laid forth the manner in which the amount of duplicate benefits received by Plaintiff should be determined prior to being deducted from the eventual jury award, as is required by *N.J.S.A. 2A:15-97*. Specifically, the Court stated as follows:

In our view, the procedure to be followed should not differ dramatically from a hearing on a motion for summary judgment in the verbal threshold context...

Most, if not all, evidence concerning a plaintiff's benefits can be proven through documents. We expect that proceedings of this nature will rarely require determinations of credibility. Thus, a plenary hearing will be the exception and is warranted only where the plaintiff has fully complied with the good faith disclosure requirements implicated by the statute, but a fact issue remains.

Thomas, 282 N.J. Super. At 586.

In *Dias*, the Appellate Division once again dealt with the requirements of *N.J.S.A. 2A:15-97*. Specifically, the Court was confronted with the question of whether or not it was proper for a trial court to instruct a jury that if it determined that Plaintiff was entitled to an award of damages, it could only consider Plaintiff's medical expenses that were not covered by insurance as opposed to the total amount of Plaintiff's medical expenses. The Appellate Division found this instruction to be in error and stated that the proper method for avoiding a double recovery would have been to engage in post-verdict modification.

The Court stated as follows in reaching its conclusion:

We are satisfied that when the trial court told the jury that the most it could award plaintiffs for [their] medical bills was \$29, 900.63, rather than \$100, 006.67, it erred and that that error had the capacity to prejudice the plaintiffs...

The purpose of [N.J.S.A. 2A:15-97] is clear: to prevent a double recovery in excess of a party's actual loss. (citations omitted.)

We consider the procedure contemplated by the statute to be equally clear. The statute places no restrictions on a party introducing, for the jury's consideration, evidence of the total amount of medical bills incurred. Any required adjustment in a party's ultimate recovery is to be made by the court, after the jury has considered the full amount incurred...

The Legislature chosen when it enacted N.J.S.A. 2A:15-97 to adopt the procedure of post-verdict modification, rather than simply declaring that evidence of such reimbursed expenses would be inadmissible...

Dias, 310 N.J. Super. At 101-102.

It is apparent from the holdings in *Thomas* and *Dias* that a Plaintiff seeking reimbursement of his or her medical expenses must do so by presenting evidence to the jury of all of the expenses incurred and providing documents to the trial judge in support of all duplicate expenses for the purpose of conducting a post-verdict modification. The Appellate Division's holdings in these cases

also demonstrate that any evidence regarding collateral sources must be presented to the judge and dealt with post-verdict as opposed to being presented to the jury during the course of the trial.

In light of the foregoing, it is Plaintiff's position that: (1) he should be allowed to present evidence of the total amount of medical expenses incurred as a result of the incident in question and (2) evidence regarding payment of said expenses by collateral sources is reserved for the consideration of the Court for purposes of post-verdict modification and should not be presented to the jury by way of cross-examination or otherwise.