

FUTURE MEDICAL EXPENSES IN AUTO CASES

Although the N.J. Automobile Reparation Reform Act (*N.J.S.A.39:6A-1, et seq.*) makes inadmissible evidence of amounts collectible or paid, it does not preclude testimony as to necessity for future medical treatments necessary to heal a plaintiff and his injury. *Pitti v. Astegher*, 133 N.J. Super. 145 (Law. Div. 1975). The court in *Pitti* stated, “[i]n the event the jury finds from appropriate medical testimony that such future medical and hospital expenses are reasonably required ... it may award damages for future medical and hospital expenses.” *Id.* at 148-49. The standard for determining such future medical expenses is reasonable probability, as enumerated in *Coll v. Sherry*, 29 N.J. 166 (1959). In *Coll*, the court determined that “[i]f the prospective consequences may, in reasonable probability, be expected to flow from the past harm, plaintiff is entitled to be indemnified for them.” *Id.* at 175. A claim for future medical expenses applies in the context of an automobile collision, as the plaintiff in *Coll* suffered personal injury as a result of such a collision. *Id.* at 169. The amount of such a damage award may be determined by a jury based on the evidence presented of the reasonable probability that future treatments may be required. *Pitti, supra* at 149. *See also Munoz v. Langer Transport Corp.*, 2005 WL 2447880 (App. Div. 2005) (holding that future medical expenses recoverable in automobile injury case)

Additionally, there is well-settled case law stating that damages are recoverable for “the prospective consequences of a tortious injury.” *Coll, supra* at 174; *see also Kimble v. Degenring*, 116 N.J.L. 602, 604 (Sup. Ct. 1936). The Appellate Division dealt with this same issue in *Puzio v. Mimms, D.S.*, 2005 WL 3691527 (N.J. Super. A.D.) In *Puzio*, the defendants sought a reduction in a damages award based on the plaintiff’s future entitlement to health insurance and other benefits. The Court in *Puzio* held that “[F]uture collateral benefits are deductible only to the extent that they can be determined with a reasonable degree of certainty.” *Parker v. Esposito*, 291 N.J. Super. 560,

567 (App.Div.) (citations omitted), *certif. denied*, 146 N.J. 566, 683 A.2d 1162 (1996). The Court therefore held:

Judge Dumont denied defendants' request for a hearing because there was no evidence that plaintiffs' medical insurance was reasonably certain to continue because of the "problems with medical insurance, job loss, job change, [and] constant policy changes." As for social security and other governmental benefits, he found that "while it may be more certain that there will be Medicare and SSI in the future, neither one of those is fixed at this point and there's no indication, frankly, when those things will be fixed." Further, any Medicaid benefits may be subject to a lien or repayment.

We agree with the judge's conclusion that Michael's entitlement to future benefits, either from his parents' health insurance coverage or from governmental programs, was not immutable as of the date of judgment in his favor. Because his entitlement to future benefits was not determinable with a reasonable degree of certainty, they do not provide a basis for reduction of the award in this case.

Puzio at 12-13. The Court affirmed the trial judge's conclusion that plaintiff's entitlement to future benefits from health insurance coverage was not fixed as of the date of the judgment. *Id.* at 13. See also *Fayer v. Keene Corp.*, 311 N.J. Super. 200 (App Div. 1998)(only benefits to be paid post-judgment to which plaintiff has established, enforceable legal right when judgment entered and not subject to modification based on future unpredictable events or conditions should be treated as offsets; future collateral benefits are deductible only to extent that they can be determined with reasonable degree of certainty).

In analyzing the case, the Court in *Puzio* referred to *Parker v. Esposito*, 291 N.J. Super. 560 (App. Div. 1996). *Parker* involved a plaintiff pedestrian who was injured when he was struck by side-view mirror of van. The jury verdict included \$550,000 for future lost income, however, the Court gave defendants credit against judgment for future lost income under collateral source statute based on future disability benefits pedestrian would receive. The Appellate Division, in holding that the trial court erred, held that future collateral benefits are deductible under collateral source statute

to extent that they can be determined with reasonable degree of certainty on date of entry of judgment. The Appellate Division in *Parker* found:

Applying these principles we conclude that the statute requires deduction of benefits to be received by a plaintiff after judgment. The statute by its terms requires deduction of benefits a plaintiff “is entitled to receive.” The statute's purpose is to prevent double recovery, thereby giving some relief from the increasing costs of liability insurance. This purpose is furthered by requiring deduction of future benefits. See *Thomas, supra*, 282 N.J.Super. at 569, 660 A.2d 1236; *accord Buchman v. Wayne Trace Local School Dist.*, 73 Ohio St.3d 260, 652 N.E.2d 952, 958, *reconsideration denied*, 74 Ohio St.3d 1410, 655 N.E.2d 188 (1995).

We are persuaded, however, that plaintiff's entitlement to future benefits must be determined and fixed when judgment is entered on the verdict. In the present case, the trial court reduced the award for future loss of income by the amount plaintiff is to receive through December 31, 1997 from his former employer's disability policy. The balance of the award is to be held in escrow until a determination, sometime in 1998, of the future benefits, if any, plaintiff will receive through the disability policy or social security. Presumably, there will be periodic reviews of plaintiff's benefit status thereafter. We conclude that court administration of a plaintiff's award beyond entry of judgment is an impractical and unreasonable construction of the statute, and one not intended by the Legislature.

Of course, determining the statutory deductions when judgment is entered, thereby requiring a look into the future, creates the risk of a wrong decision. Anticipated future benefits may not be realized, thereby depriving the injured party of all or part of the jury's award. We are persuaded, therefore, that the phrase “if a plaintiff ... is entitled to receive benefits” refers only to those benefits to be paid post-judgment to which plaintiff has **an established, enforceable legal right when judgment is entered and which are not subject to modification based on future unpredictable events or conditions.** In other words, future collateral benefits are deductible only to the extent that “they can be determined with a reasonable degree of certainty.” *Buchman, supra*, 652 N.E.2d at 958.

Parker at 566-567. (emphasis added) Similarly here Plaintiff's future health insurance benefits cannot be determined with any degree of certainty. Plaintiff does not today have “an established, enforceable legal right” to any medical benefits years from now. *Parker, supra*, at 567.