

**(Stokes v. Muschinske (Mar. 14, 2019, No. B280116) Cal.App.5th [2019 Cal. App. LEXIS 320].)
There was no violation of the collateral source rule when testimony is made to provide a reasonable value of damages and helps the jury with context and background of the issues.**

FACTS/PROCEDURE

On March 28, 2013, Martin Muschinske (Muschinske) was driving a pickup truck towing a horse trailer loaded with equipment when he rear-ended James Stokes (Stokes) and his wife Patricia Stokes (Patricia). Prior to trial, Muschinske stipulated to liability for the accident but disputed the causation, nature, and extent of Stokes's injuries and damages.

Before trial, Stokes filed a motion in limine to preclude any use at trial of the names "Kaiser" and "Kaiser Permanente." He feared the vast majority of potential jurors know the nature of the Kaiser business model and it would reveal that he had medical insurance in derogation of the collateral source rule. Muschinske opposed, arguing that they should be allowed to discuss where he received his treatment, especially with those instances where he was examined, and no injury was found. The court tentatively denied the motion and allowed the use of "Kaiser" but directed parties not to refer to "Kaiser Insurance."

The issue of future Medicare coverage came up during cross-examination of Stokes's life-care planner who testified as an expert on costs of his future care. Stokes objected on the basis of the collateral source rule but was overruled. Medicare and Social Security were also mentioned during testimony from Muschinske's expert rehabilitation consultant, who testified to his opinions on Stokes's future care needs.

After a lengthy trial consisting largely of testimony on causation and damages from numerous medical and other experts, the parties proposed two vastly different damage awards. Stokes argued his total damages were over \$23.5 million and asked the jury to award an additional \$4 million for Patricia's loss of consortium claim. Muschinske argued for damages totaling less than \$500,000, with an additional \$25,000 for Patricia. The jury awarded Stokes \$560, 537.51 in damages.

DISCUSSION

Affirmed. On appeal, Stokes contends the trial court allowed Muschinske to violate the collateral source rule multiple times during trial through references to Stokes's past treatment at Kaiser Permanente, Kaiser medical insurance, as well as references to Medicare and Social Security disability benefits in relation to future medical expenses. Stokes argues that these mere references led the jury to infer that he either had received collateral payments in the past or would receive collateral payments in the future, thereby prompting the jury to reduce his damages.

The court found that the references merely provided context and background information on his past treatment at Kaiser and on some aspects of Muschinske's experts' calculation of past and future reasonable medical expenses. Additionally, the court found that they helped the jury's understanding of the issues with Medicare and Social Security disability benefits. The court accepted the fact that lay jurors in Southern California may have inferred Stokes had Kaiser insurance that might have covered his past treatment. Ultimately there was no evidence of specific insurance payments or that the jury reduced his awarded because of it.

Further, the court finds no evidence that the Medicare references were attributable to deductions for specific future Medicare payments, and nothing suggests the jury subtracted unidentified future Medicare coverage in assessing future medical expenses. Lastly, with regard to Social Security, the single reference by Muschinske's expert rehabilitation consultant could not have affected the jury's verdict. A single reference could not have allowed a jury to infer he would receive Social Security payments in the future. Even if the jury could infer, there was no basis for the jury to quantify those payments.