Developing Trends in Indiana Personal Injury Law: Plaintiff’s Omitting Past Medical Expenses from Damages

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I. Introduction

A new trend among the plaintiff’s bar is to forgo introducing treatment medical expenses to a jury. The theory behind the tactic is to avoid the possibility that the jury will use the nominal amount of treatment expenses as an “‘anchor’ to lower the value of the case.”¹ This phenomenon has developed across the United States. [Often, judges are willing to defer to plaintiff’s counsel utilizing this tactic.²] This leaves plaintiff’s attorneys with the “freedom to suggest pain and suffering damage amounts to jury which are not tethered to the cost of the actual care received by the plaintiff.”³

The red flags which may tend to indicate that a plaintiff does not intend to introduce treatment medical expenses at trial to prove damages include:

(1) “[I]f the plaintiff indicates in written discovery that plaintiff’s damages do not include medical expenses . . .”⁴;

(2) “[I]f the plaintiff’s counsel seeks stipulation that plaintiff’s damages are in excess of the state’s minimum tort threshold . . .”⁵; or

(3) If the plaintiff is claiming an injury in which the amount demanded is well in excess of the plaintiff’s past medical expenses.

In cases where there is a large verdict potential, defense attorneys may be forced to introduce the plaintiff’s treatment expenses (billed and paid amounts) to give the jury a basis for damage amounts and prevent runaway jury verdicts. The Indiana appellate courts have not yet addressed the relevance of plaintiff’s treatment medical expenses to a plaintiff’s claim of pain and suffering. Several states have tackled the relevance of past medical expenses to damages for pain and suffering in differing ways.


In Barkley, a plaintiff sought to introduce her past medical expenses for purposes of proving pain and suffering. The expenses themselves had been discharged in bankruptcy.⁶ The Virginia Supreme Court was tasked with determining whether the past medical expenses were “admissible to prove the extent of the [plaintiff]’s medical treatment to support non-monetary elements of her compensatory damages

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² Id. at p. 2.
³ Id.
⁴ Id.
⁵ Id.
The court determined that the “medical bills . . . were relevant because they tended to establish the probability of [plaintiff]’s claim that she experienced pain and suffering as a result of the accident.”


In Melaver, a defendant appealed the admission into evidence of a medical bill where the plaintiff was only making a claim for pain and suffering. The court “admitted the bill . . . for the limited purpose of bearing upon pain and suffering as it considered these bills relevant to show not only the amount of medical expenses incurred but the number and duration of plaintiff’s treatment as illustrative of pain allegedly suffered by plaintiff.” The Georgia Court of Appeals determined that past medical expenses were admissible because they were relevant to the plaintiff’s claim of pain and suffering.


The plaintiff in Chenell failed to introduce medical bills or testimony about the bills. The defendants appealed claiming that they were entitled to directed verdict because, under a Massachusetts statute, pain and suffering damages were only available if a plaintiff’s reasonable and necessary medical expenses were in excess of $2,000. The Massachusetts Appeals Court noted that “[w]hile it was not the best practice to fail to offer itemized medical bills, it was not inherently fatal to the plaintiff’s claim in this particular case.” The court particularly noted that the trier of fact may reasonably infer based on the medical records that the plaintiff’s medical expenses were in excess of $2,000.


In Brice, the defendant filed a motion in limine to preclude the plaintiff from introducing evidence of medical expenses incurred by plaintiff and paid on plaintiff’s behalf by defendant. The court determined that the “amount of medical expenses incurred by plaintiff as a result of the incident involved in this case is relevant to the determination of the full extent and nature of plaintiff’s injuries.” The court reasoned that, while the plaintiff may introduce the past medical expenses, the defendant may introduce evidence that demonstrates the extent to which plaintiff’s expenses have been paid.

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7 Id. at 273.
8 Id. at 274.
10 Id.
11 Id.
13 Id. at *2.
14 Id.
15 Id.
17 Id. at 224.
18 Id.

The plaintiff in *McGee* appealed claiming that the trial court erred when it excluded proof of her total medical bills.\(^{19}\) The Mississippi Supreme Court determined that “the entire medical bill may be relevant to aid the jury in assessing the seriousness and extent of the injury . . .”\(^{20}\) The court elaborated that “jurors ‘have a right to know what services and/or goods were provided for the charges made.’”\(^{21}\) The court also noted that this information can “serve as an aid in their deliberations with respect to the seriousness and extent of the injuries complained of.”\(^{22}\)


In *Chapman*, the defendant sought to prevent the plaintiff from introducing charged medical expenses because the health care provider could not be reimbursed for them.\(^{23}\) The court determined that evidence of total medical bills is admissible to show the jury the severity and extent of the plaintiff’s injuries.\(^{24}\) The Montana District Court also noted that the expenses presumably list the medical procedures and treatments dispensed, may bear on the necessity of future needs, and provide a foundation for a life care plan.\(^{25}\)

VIII. Relevant Indiana Law

Under Indiana law, an injured person “is entitled to reasonable compensation.”\(^{26}\) Reasonable compensation is “an amount that would reasonably compensate the plaintiff for bodily injury and for pain and suffering.”\(^{27}\) “It also takes into account past, present, and future expenses reasonably necessary to the plaintiff’s treatment and all financial losses suffered, or to be suffered, as a result of the inability to engage in his or her usual occupation.”\(^{28}\)

Indiana Rule of Evidence 413 provides that “statements of charges for medical, hospital or other health care expenses for diagnosis or treatment occasioned by an injury are admissible into evidence.”\(^{29}\) Medical bills are “prima facie evidence that the charges are reasonable.”\(^{30}\) Evidence of both paid and charged medical expenses are admissible to assist the jury in determining the reasonable value of medical services.\(^{31}\)

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\(^{19}\) *McGee v. River Region Med. Ctr.*, 59 So. 3d 575, 578 (Miss. 2011).

\(^{20}\) Id. at 581.

\(^{21}\) Id.

\(^{22}\) Id. (citing *Jackson v. Brumfield*, 458 So.2d 736, 737 (Miss. 1984)).


\(^{24}\) Id. at 1125.

\(^{25}\) Id.


\(^{27}\) Id.

\(^{28}\) Id.

\(^{29}\) IND. R. EVID. 413.

\(^{30}\) Id.

“Damages for pain and suffering are of necessity a jury question which may not be reduced to fixed rules and mathematical precision.”32 Because pain and suffering damages cannot be calculated with mathematical certainty, “the jury has liberal discretion in assessing damages.”33 Because of the liberal discretion granted to jurors in determining pain and suffering damages, Indiana plaintiff’s attorneys have a motivation to avoid introducing a plaintiff’s nominal medical bills into evidence. This can pose a challenge to defense attorneys in cases where the plaintiffs’ strategy is to ask the jury to determine – “What are my injuries worth?” – rather than introduce the medical bills evidencing the treatment that the plaintiff has actually undergone and monetizing what may be needed in the future.

IX. Conclusion

Indiana plaintiffs’ attorneys may be moving towards this trend in the attempt to persuade the jury that a plaintiff has suffered permanent injuries that should not be quantified by treatment medical expenses. A defense attorney seeking to admit the plaintiff’s past medical expenses should obtain the necessary billing records along with a custodian of records affidavit from each of the plaintiff’s health care providers and be prepared to admit the evidence in its case in chief in the event the plaintiff seeks this innovative trial tactic. Defense counsel should consider filing a pre-trial brief to educate the court on the relevance of the plaintiff’s treatment billing records.

Additionally, counsel for the defendant should also consider obtaining an order from the court with regard to the admissibility of the plaintiff’s medical bills ahead of trial. It may also be necessary for defense counsel to engage a medical expert in order to get the treatment medical expenses admitted into evidence. This could be done through an independent medical examiner’s review of plaintiff’s medical and billing records and testimony at trial.

The attorneys of Lewis Kappes are skilled in all matters involving personal injury litigation. Please contact Kevin A. Morrissey, or call our office at 317.639.1210 to find out how we can assist in your personal injury defense case.

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33 Id. (citing Kavanagh v. Butorac, 221 N.E.2d 824, 828 (Ind. Ct. App. 1966)).