

### Amount “Billed” Versus Amount “Paid”

With regard to medical expenses and whether a plaintiff will be allowed to submit to the jury the amount “billed” versus the “amount “paid” (which is usually significantly lower), the first Missouri Appellate Court to consider the issue has ruled that a plaintiff may submit the amount “billed” (the higher amount).

The relevant statute, R.S.Mo. § 490.715.5, provides: (1) Parties may introduce evidence of the value of the medical treatment rendered to a party that was reasonable, necessary, and a proximate result of the negligence of any party. (2) In determining the value of the medical treatment rendered, there shall be a rebuttable presumption that the dollar amount necessary to satisfy the financial obligation to the health care provider represents the value of the medical treatment rendered. Upon motion of any party, the court may determine, outside the hearing of the jury, the value of the medical treatment rendered based upon additional evidence, including but not limited to: (a) *the medical bills incurred by a party*; (b) the amount actually paid for medical treatment rendered to a party; (c) the amount or estimate of the amount of medical bills not paid which such party is obligated to pay to any entity in the event of a recovery. *Emphasis supplied.*

The matter was considered in the unpublished opinion of *James Berra v. Charles E. Danter*, 2009 WL 3444814 (Mo. App. E.D. Oct. 27, 2009), a pedestrian-vehicle accident case from St. Louis. Mr. Berra was hit by a car while crossing the street on foot and sued the driver. The jury found Mr. Berra 15% at fault, the driver 85% at fault, and awarded \$300,000 which, when reduced by the 15% fault attributed to Mr. Berra, netted a \$255,000 recovery.

Before trial, both parties filed a motion to determine what amount of medical expenses would be submitted to the jury. Plaintiff argued that he should be allowed to submit the “medical bills incurred” of \$90,062, considering that he attached affidavits from the various health care providers attesting that the amounts were reasonable and necessary.

Defendant argued that only the “amount paid” of \$28,734 should be submitted to the jury because that was the true amount necessary to satisfy the obligation to the providers. Defendant reasoned that the “amount incurred” was the amount paid, and that plaintiff had not rebutted the presumption.

The trial court, citing 490.715.5, allowed plaintiff to submit to the jury medical expenses in “the amount of medical bills *reflected in plaintiff’s billing statements.*” The court reasoned that the amount shown in the billing statements equates to “the reasonable value of plaintiff’s medical services.”

On appeal, the Missouri Court of Appeals for the Eastern District affirmed the trial court on the issue, opining that “the presumption of value found in section 490. 715.5 can be rebutted by substantial evidence establishing a different value. The ‘additional evidence’ a court may hear includes, but is not limited to, the ‘medical bills incurred by a party.’”

On November 12, 2009, the defendant filed an application for transfer to the Missouri Supreme Court, and therefore the ruling is not final. In the meantime, however, we can assume that the trial courts will apply the *Berra* ruling and allow a plaintiff who has made the appropriate showing to submit the “amount of medical bills reflected in the billing statements.”

For more information about this or other litigation issues, please call Brown & Ruprecht, PC:

**Brown & Ruprecht, PC**  
911 Main Street, Suite 2300  
Kansas City, Missouri 64105  
Phone: (816) 292-7000  
Fax: (816) 292-7050  
www.brlawkc.com

December 2009