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December 8 **2012**

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The Role of Medical Expenses in Personal Injury Cases: *Stanley v. Walker*

This week's post is dedicated to a case from a few years back that radically changed the landscape of Indiana personal injury law. The case, *Stanley v. Walker*, may well not seem all that monumental without an in-depth understanding of the interplay between medical expenses and the assessment of damages in personal injury cases. Nevertheless, mention of the case comes up almost every single day when practicing personal injury law in Indiana. Though the holding of the case addresses an issue of admission of evidence of medical bills at trial, the ramifications extend far beyond trial and medical bills. It has completely and illogically altered the settlement negotiations process. Thus, this week we shall endeavor to unravel the importance of *Stanley v. Walker* and shed some light on the interplay between medical expenses for injuries and the assessment of other damages.

I will lead off by acknowledging that this week's post is rather lengthy. While I would love it if everyone were willing to lock in and read this entire post, I realize that it may be too lengthy for many. If that is the case, then that is certainly ok. However, I strongly encourage you to bypass the "Discussion of the Case" section and really focus on the second section, "Application to Settlement Negotiations."

I. Discussion of the Case

At its core, *Stanley v. Walker* is a case that deals with the admissibility of evidence pertaining to medical bills. The plaintiff, Danny Walker, was injured in a car wreck with Brandon Stanley. Mr. Walker was injured in the accident and received medical treatment. In the resulting lawsuit, Mr. Walker sought recovery for his lost wages, pain and suffering, and medical expenses. Prior to trial, defendant, Mr. Stanley, admitted liability. This meant that the only task left for the jury was to determine the extent of damages owed to Mr. Walker.

Stepping away from the case for a moment; it may strike our non-lawyer readers as strange that the defendant would admit to being negligent and that the trial would still go forward. You may either be thinking, "well if you are going to go to trial anyway, why not take your shot at winning the case?" Or, you may be struck by the concept that the jury is required only to determine the amount of damages. As these are both questions I hear from my non-lawyer friends all the time, I feel that it merits some discussion.

In responding to the first point, it is often believed by defense counsel to be a keen strategic move to admit liability. This often occurs on the proverbial eve of trial. My understanding of this method is that defense lawyers believe that their position is strengthened when they are able to go before the jury and characterize the plaintiff as a greedy person who is not willing to settle the case for a reasonable amount. In so doing, defense counsel tries to appear magnanimous as compared to the avaricious plaintiff. In many ways, such a maneuver can be a bit of dirty pool. It creates an inference that defendant has been pouring forth good faith offers to settle from day one. As I noted above, this is often a last minute move done under the specter of trial. What makes this dirty pool, of sorts, is that Indiana Evidence Rule 408 – based upon Federal Rule 408 – generally makes settlement offers and discussions inadmissible at trial. So basically, this maneuver creates an inference in the minds of the jurors about the course of settlement discussions and deprives the plaintiff of an opportunity to rebut this inference. That said, it is a somewhat nice situation to go to trial knowing that your client has already won his or her case before stepping into court.

As to the need for a jury where the only issue is damages. This too ties in a bit with the strategy of admitting liability. Part of defense attorneys opening spiel is to frame the plaintiff as wasting the jurors' time and the court's resources. This is predicated on the fact that many jurors, like my friends, wonder why a jury is needed when the defendant has already admitted liability. I respond to that question with a question. What is liability without damages? Certainly the law does provide mechanisms in which application of the law to an issue can be made

without a determination of damages. This is typically found in the context of declaratory judgments. However, in personal injury context what does it mean to say that a person was negligent and that person's negligence injured another if there is no assessment of damages? It is for that reason that the wisdom of the jury is sought.

Let us return to our discussion of *Stanley v. Walker*. At the trial, Mr. Walker, the injured person, introduced evidence of the medical bills showing what he was charged for his medical care. The bills that Mr. Walker introduced totaled $11,570. Defense counsel did not object to admission of this evidence. Nor should he have. Indiana Evidence Rule 413 reads:

> Statements of charges for medical, hospital or other health care expenses for diagnosis or treatment occasioned by an injury are admissible into evidence. Such statements shall constitute prima facie evidence that the charges are reasonable.

An important note, though Indiana's Evidence Rules are generally modeled after the Federal Rules of Evidence, there is no federal evidentiary rule that corresponds with Indiana's Rule 413.

The defense counsel, though not contesting the use of the $11,570 bills, sought to admit evidence showing that though the billed amount was $11,570, the medical providers were only ever paid $6,820 in full satisfaction of the bills. The reason for this is that insurance companies, like Mr. Walker's provider, negotiate with healthcare providers to pay discounted rates. It was this discounted rate that defendant wanted to put before the jury. Mr. Walker's attorney objected claiming that such use of the bills would violate the "collateral source rule."

> At common law, the collateral source rule prohibited defendants from introducing evidence of compensation received by plaintiffs from collateral sources, that is, sources other than the defendant, to reduce damage awards. This rule held tortfeasors accountable for the full extent of the consequences of their conduct, regardless of any aid or compensation acquired by plaintiffs through first-party insurance, employment agreements, or gratuitous assistance.

The most typical collateral source is insurance. This doctrine of law has been codified in Indiana for personal injury and wrongful death cases. Indiana Code § 34-44-1-2, known as the collateral benefits statute, bans the admission of evidence of insurance, among other things. Thus, the argument by Mr. Walker's attorney was that showing that Mr. Walker's billed rate was not the full amount paid by his

insurer is the same as admitting evidence to show that his insurer paid part of his bills. The concept being that but for having insurance and the benefits of that relationship, Mr. Walker would have been on the hook for the full amount.

The trial judge agreed with Mr. Walker and denied admission of the discounted rates. After the trial, Mr. Stanley appealed. On appeal, a unanimous panel of the Indiana Court of Appeals affirmed the decision of the trial judge. Mr. Stanley, still dissatisfied, sought and was granted transfer to the Indiana Supreme Court. A split (3-2) court held that Mr. Stanley was correct and the discounted bills ought to have been put before the jury.

Under Indiana law, an injured person is entitled to recovery for the "reasonable value" of medical expenses. The last sentence of Rule 413 provides that evidence of medical bills is *prima facie* evidence of the "reasonable value." What this means is simply that the bills are presumably the reasonable cost, though they can, presumptively, be rebutted. The court majority decided that the defendant is entitled to use the actual cost paid to evidence the "reasonable value." However, a point made crystal clear by Justice Theodore Boehm's concurring opinion, the discounted rate is not conclusively the "reasonable value" it is just another measure from which the jury can decide what the "reasonable value" actually is.

The dissenting opinion, authored by Justice Brent Dickson and joined by Justice Robert Rucker, provided amazing arguments against the adoption of this rule. A few of the highlights. Justice Dickson noted that some poor and unnecessary language in an earlier case, *Shirley v. Russell*, stated that the common law collateral source rule was abrogated – i.e. replaced by – Indiana Code § 34-44-1-2. In his view, this was not the case. As such, mere analysis of the issue under the code section was inappropriate.

Another argument that he advanced, and is the most valuable for our discussion here is that, rightly or wrongly, "the amount of reasonable medical expenses incurred by a plaintiff is an important factor that influences juries in their assessment of additional general damages." In a great observation, Justice Dickson noted that Mr. Stanley all but conceded this point in his brief. Mr. Stanley argued that a new trial was necessary because "it's likely the jury's verdict of $70,000 was influenced by the level of medical expenses it erroneously believed Walker had incurred." The majority, in reversing the trial court, did not order a new trial, just a decrease in the damages to align with the discounted rates.

II. Application to Settlement Negotiations

Now that you understand that *Stanley v. Walker* allows defendants to use evidence of how much was actually paid for medical expenses to determine the "reasonable value" – the measure by which a plaintiff may recover such expenses – we can turn to the practical realities of this decision. The practical realities that Justice Dickson noted are absolutely true. Rightly or wrongly, medical expenses are used by juries in trying to determine the amount of damages to award. It is not the loss of recovery of the billed rates that has drastically changed the landscape, but rather the change of a key factor in trying to determine damages.

When it comes to damages for the pain and the trauma sustained by an injured person it is impossible to apply some mathematical formula to decide that value. There are rules of thumb and concepts of multipliers that many attorneys on both sides utilize to try and assess these damages. According to Mark Guralnick in his book *Formulas for Calculating Damages*:

> At one time, plaintiffs' lawyers and defense insurance carriers recognized a "three times specials" rule, in which the multiplier was informally set at 3. Today, it is probably more common to find insurance carriers offering plaintiffs' attorneys anywhere from 1.1 to 2 times special damages on small cases, and perhaps as high as 4 or 5 times specials on larger claims for pain and suffering.

What this means is that not only have insurance adjusters become more stingy in their negotiation posture, but now they utilize a different factor in their calculations. The *Stanley v. Walker* medical expenses – i.e. the discounted rates – can be a mere fraction of the billed rates. Where insurance adjusters had historically used the billed rates to calculate payment for pain and suffering, they now have decided that because the billed rates are less, so too must a person's pain and suffering be decreased.

This change is insane. It is not just ludicrous, but it is actually insane. The logic behind it can only be supported with Orwellian feats of doublethink. It is farcical enough to tie the evaluation of a person's pain and suffering to how much his or her medical procedures cost. But to have used that as a factor prior to *Stanley v. Walker* and then after the case to have not adjusted multipliers to reflect the decreased cost is mindboggling. Let us examine this with an example.

Let us use the medical expenses for Mr. Walker. He was billed expenses of $11,570. His insurance provider paid $6,820 after discount. Let us assume that the insurance adjuster is willing to a use a 2:1 multiplier of medical expenses to pain

and suffering. That means that prior to *Stanley v. Walker*, the insurance adjuster believed that Mr. Walker's pain and suffering, injuries, and medical expenses combined would be worth the billed expenses plus an amount equal to twice the billed expenses. That is: $11,570 + ($11,570 x 2) = $34,710. After *Stanley v. Walker*, the same injury, the same pain and suffering, would be calculated as: $6,820 + ($6,820 x 2) = $20,460. The difference is $14,250.

Think again about what the court held in *Stanley v. Walker*. The court determined that the defendant could admit evidence to a jury of discounted rates to determine how much the plaintiff could be awarded for **medical expenses**. At no point does the court say that magically a person's pain and suffering is now worth less. If we apply common sense and the slightest amount of basic logic to the holding and to the insurance adjusters multipliers then the calculation should be much different. It would look like this: $6,820 + ($11,570 x 2) = $29,960. It would be the discounted medical expenses plus a multiplier times the billed medical expenses. Granted that is less than the pre-*Stanley v. Walker* $34,710. And that makes sense. The court has allowed the defendant to argue that the reasonable medical expenses are actually the discounted rate. But it is $9,500 more than the ludicrous calculus that is now applied.

Where this new post *Stanley v. Walker* reality takes an abhorrent and revolting turn is in the realm of medical providers who provide write-offs. This is something that I see every day in my practice. Using the "billed rates" defense counsel and insurance adjusters attempt to argue that where a person has had the benefit of write-offs from a healthcare provider, those write-offs need to be used to determine the reasonable value and thus the multiplier. For two primary reasons this utterly disgusts me. First, consider the reality that write-offs are used where the provider does not expect to be able to recover payment for the care provided. This means, in almost every conceivable scenario, that the person is one without health insurance and likely indigent to boot. That means that insurance adjusters and defense counsel are using what can be insanely low numbers as their multiplier because various healthcare providers have chosen to not charge the person. The resulting reality is this. Such a person's pain and suffering is considered to be relatively low. What this boils down to is that the pain and suffering of a poor person, who has received a charitable act of righting off his or her bills, is apparently worth less than a person who has health insurance.

The second reason is that no reasonable reading of *Stanley v. Walker* stands for the proposition that a write-off is the "reasonable value" of a medical charge. The concept underlying *Stanley v. Walker* is that medical providers inflate rates so that they can negotiate with insurance providers with lower rates and that this negotiation has produced a reasonable rate. It does not follow, even remotely, that a

generous and benevolent act of charity in writing off or drastically discounting a charge to a person has reached a reasonable value. The act of charity is not rooted in negotiation and market pressures that create a reasonable value. Charity breaks that norm and is rooted in the fundamental good of humanity. To use these charitable acts to punish a person is insane.

Akin to write-offs, but far more prevalent, is the disparity between billed rates and the rates paid by Medicare or Medicaid. Due to the value to healthcare providers of business with Medicare and Medicaid, it is very often the case that the discounted rates paid by Medicare and Medicaid are far less than that paid by a private insurance company. So what does this mean? It means that the paid rates are less for a person with Medicare/Medicaid. The result being that when mixed with a multiplier, insurance adjusters and defense counsel value such a person's pain and suffering as less than a person with private insurance.

As you can see, a case that seemed rather innocuous in deciding that the actual amounts of medical expenses paid could be admitted at trial has had an incalculably large impact upon the entire landscape of personal injury law. It has acted to drastically decrease the amount of recovery that a person can obtain without prolonged litigation. Worst of all, it is based upon an absurd and illogical premise that leads to manifestly unjust outcomes.

Join us again next week for further discussion on developments and complexities in the law.

Sources

- *Stanley v. Walker*, 906 N.E.2d 852 (Ind. 2009).
- *Stanley v. Walker*, 888 N.E.2d 222 (Ind. Ct. App. 2008), *trans. granted*, 898 N.E.2d 1226 (Ind. 2008).
- *Shirley v. Russell*, 663 N.E.2d 532 (Ind. 1996).
- Indiana Code § 34-44-1-2.
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- Indiana Evidence Rule 413.
- Federal Evidence Rule 408.
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