

***BERRA V. DANTER*, 29 S.W.3D 690 (MO.APP.E.D. 2009)**

In *Berra v. Danter*, the Missouri Court of Appeals, Eastern District, addressed what has been a disputed issue among litigants: whether the reasonable value of plaintiff's medical services may be determined by looking to the amount of medical expenses "incurred," or only by looking to the amount of medical expenses actually paid. The Eastern District held a trial court can consider the amount "incurred" as reflected in plaintiff's medical bill statements, even where the amount actually paid may be substantially lower due to write-offs.

Plaintiff Berra filed a lawsuit to recover damages for injuries sustained and medical expenses incurred as a result of being struck by a vehicle driven by Danter. The trial court entered a pre-trial order pursuant to section 490.715.5 RSMo. (Cum.Supp. 2008) finding the amount of medical charges incurred, as reflected in plaintiff's billing statements, constituted the reasonable value of plaintiff's medical services that would be submitted to the jury (in this case, about \$90,000). Defendant asserted this was erroneous in that plaintiff failed to rebut the presumption contained in section 490.715.5 that the dollar amount necessary to satisfy the financial obligation to a health care provider represents the value of the medical treatment rendered that can then be submitted to the jury. In other words, defendant contended section 490.715.5 required the trial court to limit its – and the jury's – determination of the value of plaintiff's medical treatment to the amount plaintiff actually paid for medical treatment (about \$29,000).

The Court of Appeals disagreed. Consistent with the language of the statute, a trial court can consider, among other evidence, the amount "incurred" as reflected in plaintiff's medical bill statements in determining the reasonable value of plaintiff's medical treatment. According to the court, the word "incurred" as it appears in the statute does not equate to the word "paid," even though the amount actually paid may be substantially lower.

SUBMITTED BY

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