



## *For the Defense:* **Medical Expense**

*By Douglas B. Marcello, Esq. Marcello & Kivisto, LLC*

Medical bills are like the sticker price on a car—very few people pay the full amount. Yet, when your trucking company is sued, the full price of the medical bill is too often used as a barometer of the case's value.

Plaintiff's attorneys inflate the medical expenses by steering clients to favorable medical providers. Their clients proceed down an assembly line of treatment—initial exam, physical therapy, chiropractor, MRI's, and injections with bills accumulating with each step.

They do it to "blackboard" the expenses at trial. They use these numbers as a starting point for their other damages such as "pain-and-suffering." Plaintiff attorneys also know that insurance companies usually look at the medical expenses as a "given" that will be awarded by the jury.

Medical bills are not a "given". You can fight back.

First, state laws often limit the amount of medical bills recovered, if not totally bar recovery. For example, in Pennsylvania a plaintiff may not recover the amount paid by their PIP carrier or by a health insurer that is not part of an ERISA plan. Other states similarly bar recovery of PIP paid medical bills.

Second, the law in many jurisdictions permit defendants to show the jury the amount actually paid to the medical provider rather than the amount billed. This is usually a substantial difference. The difference is the plaintiff's insurance company's negotiated rates or government programs at a fraction of the charge.

Third, you can fight the reasonableness of the amount of a medical bill. Usually plaintiffs support this evidence at trial by having one of their treating doctors testify that the bills of all of his treaters were "reasonable".

How does that doctor know? What qualifies the doctor to give that opinion? Targeted questioning of the doctor can undermine the doctor's qualifications and knowledge and challenge that evidence.

We can present evidence that the bills are not, in fact, reasonable. We do this with the testimony of a medical economist. This expert possesses real knowledge of medical pricing rather than doctor of one specialty lacking such knowledge.

A medical economist can access billing data bases within specific geographic areas. He can present data as to what the average charges are for specific medical procedures in that area. He can address hospital charges by analyzing data as to their costs and add an average profit margin.

This data-based evidence is stark contrast to the anecdotal testimony of a treating doctor who lacks the overview or information.

Using this methodology, medical economists can reduce amounts of the medical expenses by 40%-60%. This is big where the valuation of cases by plaintiff attorneys, insurers, and juries are driven by the amount of medical expenses.

Medical bills are a key item in personal injury lawsuits. You can—and must—challenge them.



*Douglas B. Marcello is a transportation attorney with Marcello and Kivisto, LLC, Carlisle. Founded in 2005, M&K, LLC is dedicated to and focused upon transportation law and the needs of their transportation clients.*



## Avoiding Liability to Your Shipper/Receiver for Your Driver's Injury

An injury by your driver is a workers' compensation matter. Your driver's recovery is from your comp carrier. The workers' compensation law says that the cannot sue you. Comp is their only recourse against you.

However, that doesn't keep them from suing your shipper or your receiver for injuries they suffer on their premises—a slip and fall, dock injury,.... The question then is whether that shipper or receiver can turn around and sue you based upon your shipping contract.

The answer is a definite "maybe". Hey, I'm a lawyer. There are a number of factors to consider that may protect you from having to compensate your shipper or receiver.

First is the state's anti-indemnification statute. Many states have enacted laws that void indemnification provisions in transportation contracts.

The key is the definition of the types of contracts covered by the anti-indemnification provision. If the state's provision is applicable to your contract, you are protected from the indemnification requirements of the contract.

Second, you may still be protected by the provisions of the workers' compensation act. This was the result in a case in which we recently achieved judgment for the trucking company against a shipper seeking indemnification against the truck driver's slip-and-fall suit.

The driver came to the shipper to pick up a loaded trailer. In the process, he fell from the shipper's trailer.

The driver sued the shipper for his injuries. The shipper joined the trucking company, our client, for indemnification based upon the provision in the shipping contract.

We filed a motion for summary judgment for the trucking company on several grounds. These included the protection of the workers' compensation act.

We argued that while the workers' compensation act said that an employer could expressly waive the protection in a written contract, the language in this shipping contract did not meet the required specificity to do so. The shipper responded that its claim was not based upon the trucking company's negligence. Thus, there was no protection by the workers' compensation act.

The Court found for our client, the trucking company. It based its decision on the failure of the language in the contract to expressly waive the employer's protections of the workers' compensation act.

The Court noted that under the Pennsylvania Workers' Compensation Act, "a third party may not seek indemnification from an employer unless the employer and the third party agreed to an express provision for the indemnity in a written contract." It stated that Pennsylvania law required that to be enforceable, the indemnification provision "must clearly and unequivocally express the employer's intent to indemnify against [its] employees' claims."

In other words, the indemnification language in the contract must leave no doubt that you are

agreeing you be responsible for suits by the driver. Anything short of a clear statement of this exposure is not enough. Your company cannot be held liable if the agreement to do so is not express and unequivocal.

The Court looked at the language in the transportation contract between our client and the shipper. It held that the indemnification language that the trucking company would indemnify the shipper from "any and all loss, liability, damages, claims, demands or judgments", was not sufficient to overcome the workers' compensation act.

The Court held that the contractual language did not "clearly and unequivocally" state that

the trucking company agreed to indemnify the shipper for injuries of the trucking company's employees. As a result, judgment was entered in favor of our client and it was dismissed from the case. A copy of the opinion can be found on our website at [www.cdl-law.com](http://www.cdl-law.com).

The key is this—you could be buying into being responsible for a lawsuit by your driver for which you are otherwise protected by the workers' compensation act. Have you "clearly and unequivocally" agreed to indemnify the shipper or receiver for any liability it may have for injuries to your driver? Review your transportation contracts with this in mind.



# TruckPAC Sporting Clays Shoot

Sunday, April 30, 2017

**Carlisle Fish and Game Association**  
1421 W. Trindle Road • Carlisle, PA 17015

50 shots per round • Cash Prize • Lunch  
Gun Raffle - Only 250 tickets will be sold

**\*\*EYE & EAR PROTECTIONS REQUIRED\*\***

- 11:00 AM Open for trap field and wobble
- 11:45 AM Lunch
- 12:45 PM Safety Meeting
- 1:00-2:30 PM Shoot
- 2:30-3:30 PM Reshoot

**Shooter Information: 6 shooters per squad\***

Name #1: \_\_\_\_\_  
 \$75 Entry Fee (includes meal)  \$40 Reshoot  \$20 Skeet  
 \$20 Wobble  \$20 Raffle Ticket Total Cost: \_\_\_\_\_

Name #2: \_\_\_\_\_  
 \$75 Entry Fee (includes meal)  \$40 Reshoot  \$20 Skeet  
 \$20 Wobble  \$20 Raffle Ticket Total Cost: \_\_\_\_\_

Name #3: \_\_\_\_\_  
 \$75 Entry Fee (includes meal)  \$40 Reshoot  \$20 Skeet  
 \$20 Wobble  \$20 Raffle Ticket Total Cost: \_\_\_\_\_

Name #4: \_\_\_\_\_  
 \$75 Entry Fee (includes meal)  \$40 Reshoot  \$20 Skeet  
 \$20 Wobble  \$20 Raffle Ticket Total Cost: \_\_\_\_\_

Name #5: \_\_\_\_\_  
 \$75 Entry Fee (includes meal)  \$40 Reshoot  \$20 Skeet  
 \$20 Wobble  \$20 Raffle Ticket Total Cost: \_\_\_\_\_

Name #6: \_\_\_\_\_  
 \$75 Entry Fee (includes meal)  \$40 Reshoot  \$20 Skeet  
 \$20 Wobble  \$20 Raffle Ticket Total Cost: \_\_\_\_\_

Total Cost for All Shooters: \_\_\_\_\_

**Registrant Information**

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_

Business Name \_\_\_\_\_

Business Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

PAC Contribution Guidelines require the following: Personal checks and checks from unincorporated businesses payable to PA Truck PAC or checks from incorporated businesses payable to PMTA Government Relations. Registrations/Contributions in excess of \$250 require: Full name of individual, personal mailing address; Name and address of employer or principal place of business if self-employed (IRS Form W-9 requested).

\*If you don't have a full squad (6 shooters), we will place you on a team.

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Includes sign, recognition at event and in *Penntrox*

Awards Sponsor: \$250

Includes sign, recognition at event and in *Penntrox*