

## New version of IPI 30.06 presents problems

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Twelve years after the Illinois Supreme Court in *Wills v. Foster*, 229 Ill.2d 393 (2008), adopted a radical version of the collateral source rule that allows plaintiffs to recover for medical expenses that they never personally become liable for and in cases where the provider never reasonably expected those bills to be paid at the amount billed, the Supreme Court Committee on Jury Instructions in Civil Cases recently modified IPI 30.06, the Notes on Use, and Comments.

Though reflecting the law and using the language of the applicable decisions from the Illinois Supreme Court, which would often be a virtue, the new portion of the instruction, in quotations below, will be confusing to jurors and ripe for shenanigans both before and during trial and litigation and appeals after it:

“The reasonable expense of necessary medical care, treatment, and services received [and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future].”

*“The reasonable value of necessary medical care, treatment, and services received [and the present cash value of medical care, treatment and services reasonably certain to be received in the future].”*

In *Dillon v. Evanston Hospital*, 199 Ill.2d 483, 507 (2002), the Illinois Supreme Court held that “[i]t must be remembered that juries are composed of laypersons who are not trained to separate issues and to disregard irrelevant matters. That is the purpose of jury instructions. The function of jury instructions is to convey to the jury the correct principles of law applicable to the submitted evidence and, as a result, jury instructions must state the law fairly and distinctly and must not mislead the jury or prejudice a party.”

Applying this principle of law to this new instruction, the questions that must be asked about the meaning of the word “value” include:

What is the value of a surgery that allows a child to walk?

What is the value of medical treatment that eases or eliminates the pain of a plaintiff who previously suffered from chronic pain?

What is the value of a medical treatment that repairs or ameliorates a disfigurement?

When lay jurors, who will universally be unfamiliar with *Wills and Arthur v. Catour*, 216 Ill.2d 72 (2005), hear the word “value” it is not a stretch to think that jurors will believe that they had been instructed to ascertain the non-economic benefits of some medical miracle that has been achieved to remedy the injury to

the plaintiff. The discussion of value in *Wills* was designed to explain the court's reasoning and to provide guidance to trial courts and counsel on what is and what is not admissible on this issue. It was not designed to be used in a jury instruction.

This language of the newly revised instruction is contrary to what IPI 30.06 should be. The instruction should be designed to instruct the jury on purely economic damage: past and future medical expenses. Paid or unpaid, charity or otherwise, the question for the jury in this area should be what were the medical expenses previously incurred by the plaintiff or likely to be incurred in the future as a result of the defendants' conduct. The use of the term "value" in the newly added second alternative, to be used when there is a "dispute regarding the reasonableness of the plaintiff's medical bills or when the plaintiff seeks to recover the reasonable value of free medical services," will lead to confusion by jurors who may interpret value to incorporate the intangible effects of the treatment that have nothing whatever to do with the economics that should be issue.

Admittedly, the instruction uses the word employed by the *Wills* court, but it is a misuse in this context. Even a modifier of "value" such as "monetary" or "economic" is not likely to correct the issue.

Likely unintentional, this instruction will incentivize some plaintiffs to forgo payment of medical bills where they can rely on liens in order to invite the use of the second option of IPI 30.06 so as to argue for the broader meaning of "value" that is likely to be misunderstood by jurors. Closing arguments could be littered with suggestions and arguments about what value means as counsel describes the "value" of the treatment and requests an award for such damages. Subject to those arguments and in the absence of a clearer instruction, jurors are likely to issue past and future medical awards unmoored from the economic evidence that will lead to post-trial litigation and appeals.

Hewing to the language of case law may mean the instruction is legally correct, but it does not mean that the instruction will not mislead the jury and prejudice the defendant. IPI 30.06 should be revised to remove the potential of confusion.