

## PROBLEM: ARTIFICIALLY INFLATED MEDICAL BILLS FEED NUCLEAR VERDICTS

**What's happening:** Personal injury lawyers are collaborating with healthcare providers to inflate the medical bills presented to prove an injury and establish damages in lawsuits.

**How it works:** The attorneys have networks of healthcare providers who agree to work on a contingency fee, over-diagnosing, over-treating and over-billing the lawyers' clients with the understanding that they will be paid from the lawsuit's settlement or judgment. The more the providers inflate the value of the case, the more money they make.

- The providers bill tens of thousands for their services at rates far above the market price. Even if the patient has health insurance, the bills are never submitted for payment.
- At the end of the litigation, the plaintiff's lawyer gets his contingency fee, settles up with the healthcare providers in a private transaction, and the client gets the leftovers.

**Why it matters:** In addition to increasing the damages awarded at trial to "reimburse" the plaintiff for healthcare expenses, juries also tend to award more for noneconomic damages—such as pain and suffering and mental anguish—when medical bills are high, further increasing the overall value of the lawsuit.

## SOLUTION: MEDICAL BILL TRANSPARENCY

Juries deserve to know the *true* cost of medical services provided to plaintiffs. Texas should end the practice of inflating medical bills in personal injury cases by:

- Requiring the disclosure of agreements between plaintiff's lawyers and healthcare providers.
- If the medical bills are unpaid, tying the recovery of medical damages to real-world payments made every day in Texas by private insurers—as reflected in the All-Payers Claims Database housed by the University of Texas Health Science Center—so juries aren't misled, and personal injury patients aren't billed at inflated rates compared to those who aren't involved in lawsuits.

## PROBLEM: PLAINTIFF'S LAWYERS REGULARLY ABUSE NONECONOMIC DAMAGES

**What's happening:** Unlike economic damages that can be quantified—like paid medical bills or lost wages—noneconomic damages cannot be quantified, making it easy for plaintiff's lawyers to exploit juries to award massive amounts of noneconomic damages.

**How it works:** Personal injury lawyers do two things to maximize noneconomic damages in lawsuits:

1. Artificially inflate medical bills to convince the jury the plaintiff's injury is more serious than it really is.
2. Use a trial strategy they call the "Reptile Theory" to convince jurors the defendant is a danger to society who deserves to be *punished*.
  - To distract the jury from determining who caused the plaintiff's injury, the plaintiff lawyers focus on irrelevant and prejudicial evidence to paint the defendant as an overall bad actor that deserves to be punished.
  - Because the jurors aren't properly instructed, the lawyer is able to encourage them to award pain and suffering and mental anguish damages as a mechanism to punish the defendant. In other words, they use noneconomic damages, which are meant to be only *compensatory*, to impose punishment, which is properly the function of *punitive* damages.

**Why it matters:** Texas law allows juries to punish bad actors through *punitive damages*, not noneconomic damages, which are compensatory. Because Texas law imposes a higher burden to award punitive damages than compensatory damages, plaintiff's lawyers use of the "reptile theory" to turn noneconomic damages into punitive damages is misleading and takes advantage of jurors.

## SOLUTION: IMPLEMENT A FAIR AND CONSISTENT WAY TO AWARD NONECONOMIC DAMAGES

Texans are entitled to be fully compensated for their injuries, both quantifiable and unquantifiable. Texas can create a consistent mechanism for doing so by:

- Giving jurors understandable definitions of pain and suffering and mental anguish and clear instructions that those damages should be based on the plaintiff's injury—not the defendant's conduct that is unrelated to the incident being litigated—and cannot be used to punish a defendant.
- Requiring unanimous jury decisions about the amount of noneconomic damages.
- Allowing defendants to request a reduction of the jury's award after trial and requiring trial judges to explain unusually high awards.

## **PROBLEM: AMENDMENT TO CMV STATUTE INCONSISTENT WITH LONGSTANDING LAW**

**What's happening:** A late amendment to 2021's HB 19 (the "trucking" bill) diverged from longstanding Texas law, limiting the utility of HB 19.

**Tell me more:** The "Admission Rule" is a decades-old law that allows companies to admit responsibility for their employees' actions in personal injury lawsuits, simplifying the case *and ensuring the plaintiff receives a full recovery*.

- Despite being recognized in the common law by Texas courts for 60 years, the Admission Rule was never codified, and Texas judges began ignoring it.
- **2021's HB 19 sought to codify the Admission Rule, but an amendment made the statute inconsistent with the Admission Rule.**

**How it works:** In litigation, a company can agree to accept liability for its employee's actions that led to an injury and, ultimately, a lawsuit. This does two things:

1. Guarantees a defendant that has the ability to pay a judgment (the company) will be responsible for paying damages related to the plaintiff's injury.
  2. Moots the plaintiff's need to pursue negligent entrustment and similar "direct-negligence claims" against the company to obtain a full recovery.
- The idea is that once a company accepts liability for its employee's actions, the trial should focus on determining the cause of the collision and whether damages should be awarded.
  - If the company does not accept liability for its employee's actions, then the Admission Rule does not apply and the plaintiff may pursue direct-action claims against the deep-pocketed company to ensure a full recovery.

**Why it matters:** Plaintiff's attorneys like to pursue direct-action claims because they distract the jury from who was actually at fault in the lawsuit and because they can be used to paint the company defendant as a bad actor by focusing on things that have nothing to do with how the plaintiff was injured. When judges ignore the Admission Rule, it's both a departure from longstanding Texas law and a distraction for the jury.

## **SOLUTION: REMOVE THE AMENDMENT TO HB 19**

The Legislature can ensure the decades-old Admission Rule is appropriately codified and that HB 19 works as intended by removing the last-minute House floor amendment.