



## LITIGATING THE VALUE OF AN ECONOMIC DAMAGE CLAIM IS NECESSARY BUT SLIPPERY: WHAT IS FUNDAMENTALLY FAIR?

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Every first-year law student learns that a valid claim for bodily injury or property damage must include admissible evidence that the claimant has suffered actual damage. That is not as easy as it sounds, and many cases can be dismissed if the claimant does not prove the existence of verifiable damages. One would think that proving a claim for economic loss, i.e., reimbursement of out-of-pocket expense, would be easier to prove, but that is not always true either. The defense is well-advised to analyze the damage component of every such claim very critically as part of the liability assessment.

This rule was emphasized in the recent case of *Children's Hospital Central California v. Blue Cross of California*, 226 Cal.App.4th 1260 (2014). The California Court of Appeal had to decide what amount Blue Cross, as a Medi-Cal managed care organization, is required to reimburse a not-contracted hospital for the expense of emergency medical services that the hospital provides for Medi-Cal patients after they are stabilized.

One might think the actual invoice billed for services rendered would be sufficient evidence to support the hospital's reimbursement claim. Not true. Blue Cross is required under federal and state law to pay a contracted price for those services needed to stabilize a Medi-Cal patient, consistent with the rates paid by the California Department of Health Care Services. But a reimbursement claim for ongoing emergency medical services provided after the patient is stabilized is subject to a "reasonable and customary" standard, i.e., a *quantum meruit* theory of calculation.

Unfortunately, there is no bright-line standard in California for what constitutes a "reasonable and customary" price for professional services. The *Children's Hospital* Court held that it was not exclusively the actual billed amount. Instead, the determination must be based on a factually-specific, case-by-case evaluation that uses a range of factors which can – but are not required to – include: (1) expert testimony on the value of the service, (2) agreements to pay and accept a particular price, and (3) the professional's customary charges.

The *Children's Hospital* case is based on a healthcare claim, but its rationale can be extended to any claim of reimbursement where the value of services must be proven. Because there is no bright-line standard, the defense might not prevail on a Motion for Summary Judgment unless the claimant offers absolutely no evidence for calculating the amount of its claimed damages. If any credible evidence is offered, then the determination will come down to a balancing test on what is fundamentally fair. And that is a slippery slope because what seems fair to one judge or jury may seem otherwise in another forum.

Trying to predict what the judge or jury will do is very difficult to state with certainty. The liability assessment must be as objective as possible, taking into consideration every factor that a particular judge or jury might accept.

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