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Casualty Webinar

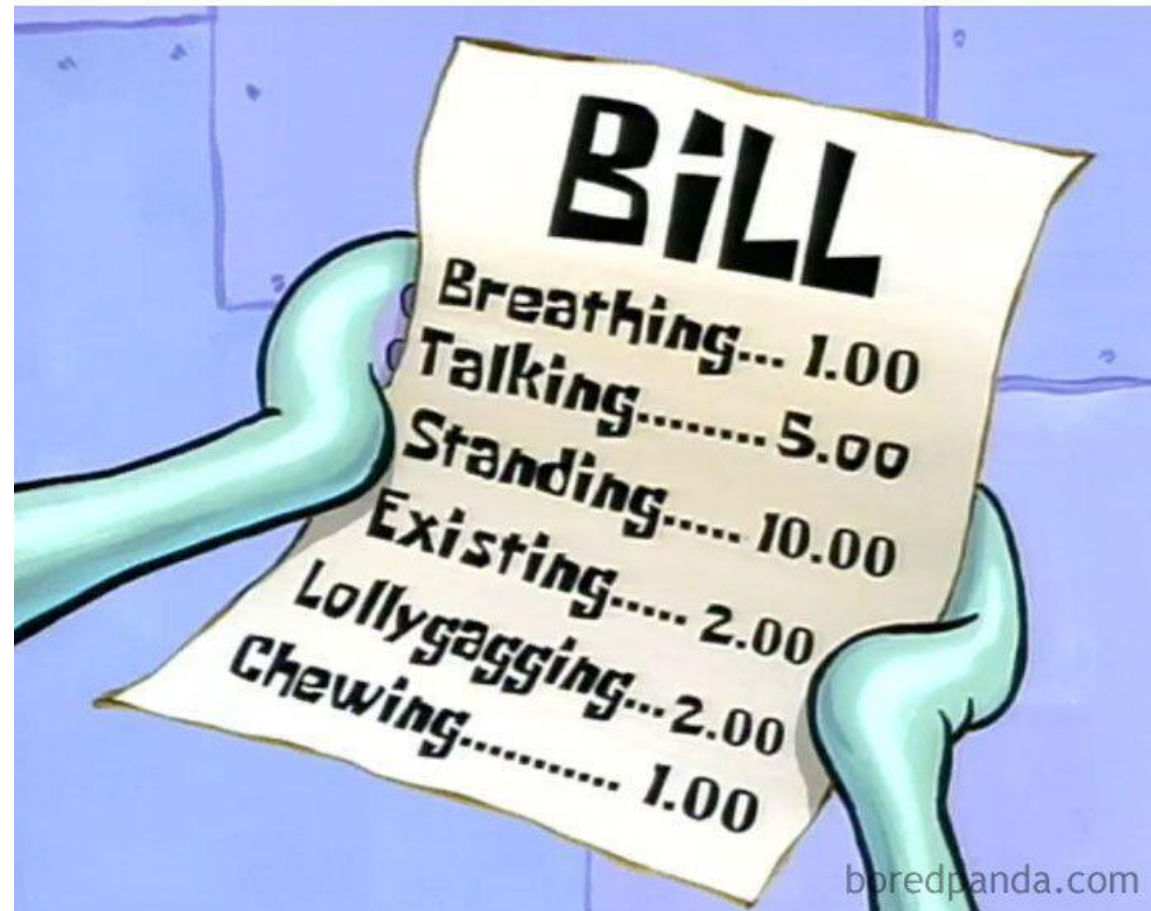
Presented By Blair Cash and Megan Early-Soppa
Moseley Marcinak Law Group, LLP

Topics

- ▶ Excessive Medical Expenses and Discovery Tactics
 - ▶ FMCSA Crash Determination Preventability Program
 - ▶ Hours of Service Final Rule
 - ▶ Case Law Updates
 - ▶ COVID-19 Impact
- 

Challenging Excessive Medical Charges

US medical bills be like



Recent Case: Excessive Medical Charges

- ▶ Can you ask a plaintiff's doctor what percentage of his/her patients are personal injury litigants?
- ▶ The court stated the testimony was relevant because it showed whether the medical bills were "reasonable or necessary."
- ▶ Testimony had a tendency to show bias on the part of Plaintiff's treating physician. In other words, the treating physician was incentivized to give more favorable testimony to Plaintiff because he stood to collect from a successful personal injury action generally and Plaintiff's case in particular.
- ▶ *Ramon Salkic v. Heartland Express, Inc. Robert Walton*, D.C. Docket No. 1:17-cv-03103-ELR (May 12, 2020).


Discovery Examples

- ▶ Non-Party Requests for Production of Documents to Medical Providers
 - Not just records, bills, and films
 - But phone call notes, patient history/information questionnaires, emails, etc.
- ▶ Subpoenas to Funding Companies
 - Not just the agreement, records, and bills
 - But secret, marketing, or “other” files maintained in the regular course of business
 - Not just specific to patient
 - But specific to *all* patient’s *other* providers

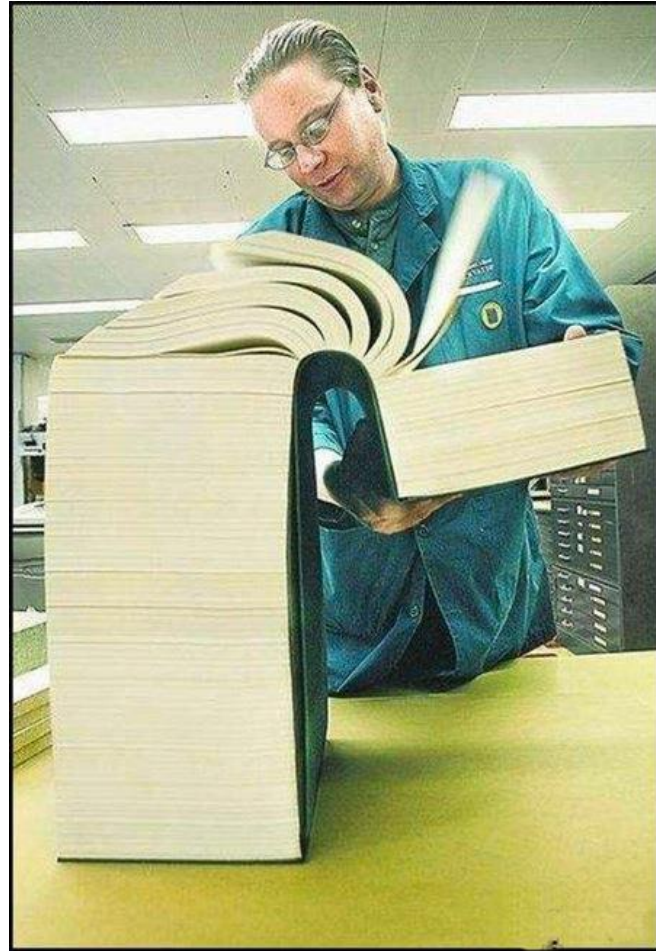
Crash Determination Preventability Program (CPDP)

- ▶ “Non-preventable” accidents
- ▶ Categories of “non-preventable” accidents:
 - Rear End
 - Wrong Direction/Illegal Turns
 - Parked/Legally Stopped
 - Failure of Other Vehicle to Stop
 - Other Vehicle’s Driver Under the Influence
 - Medical Issues with Other Driver
 - Cargo/Equipment/Debris or Infrastructure Failure
 - Animal Strike
 - Suicide
 - Rare or Unusual
- ▶ Requirements to file Request for Data Review (RDR) with FMCSA
 - Police Accident Report
 - If fatal crash, drug and alcohol tests
 - “Compelling evidence”
 - Additional Documentation within 14 days if requested by FMCSA

Hours of Service Final Rule

- ▶ Effective September 29, 2020
 - ▶ 30-minute break rule
 - ▶ Sleeper-berth exception
 - ▶ Extension of time on Adverse Driving Conditions Exception
 - ▶ Short-Haul Exception
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New Case Law Developments



Willingham v. Callaway

- ▶ United States District Court for the Middle District of Florida remanded this case back to state court finding that the Defendant/trucking company did not adequately allege the amount in controversy to satisfy diversity jurisdiction. In this personal injury case, Defendants claimed the amount in controversy exceeded \$75,000 due to the plaintiff's age and her claim of permanent injury. The Court found that Defendants could not remove the case to Federal Court solely based on the vague allegations made in the Complaint. [Willingham v. Callaway](#), 2020 WL 2466191

Estate of McNamara v. Navar

A District Court in Indiana refused to allow a plaintiff to ask hypothetical questions of a driver. The plaintiff could ask the driver questions about his first-hand knowledge of the facts in the case, but the plaintiff could not ask hypothetical questions which are designed to elicit opinions or questions relating to the reasons behind certain regulations for tractor-trailer operation. [Estate of McNamara v. Navar](#), 2020 WL 2214569



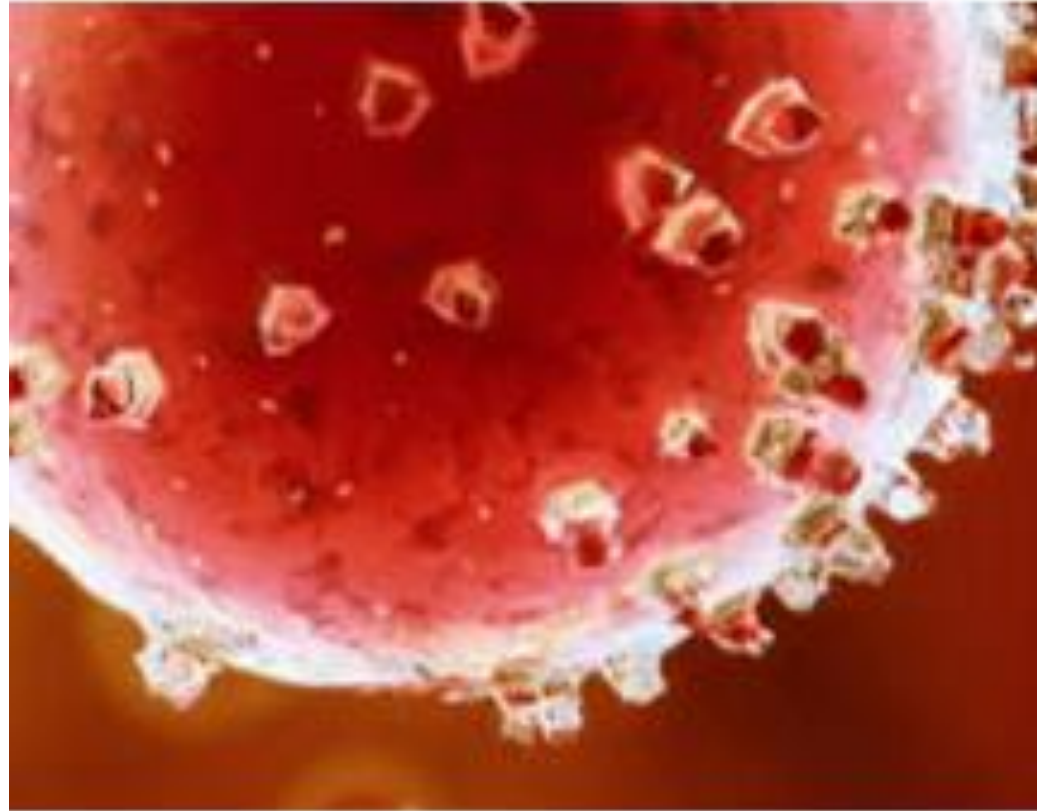
Zamorano v. Zyna, LLC

- ▶ A recent case out of the Texas Western District Court found that personal injury actions made against truck brokers are preempted under Federal Aviation Administration Authorization Act (“FAAAA”). The FAAAA provides that no state may “enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.” The claims against the broker in this case included: “respondeat superior; negligent hiring, entrustment, training and supervision, retention, and failing to ensure driver qualifications; and gross negligence.” These state law claims stemming from the broker’s arrangement of transportation related to the services of the broker, and therefore, were preempted by the FAAAA. [Zamorano v. Zyna, LLC](#), 2020 WL 2316061

Lopez v. Amazon Logistics, Inc.

- ▶ However, the Texas Northern District just remanded a case back to state court where the plaintiff alleged a negligent hiring against a broker. The Court found no FAAAA preemption applied to the negligent hiring claim due to the safety regulation exception in section 14501(c)(2). The Court interpreted the safety regulation exception broadly and refused to limit the exception to only state *regulations* and interpreted the exception to apply to private rights of action related to safety and involving motor vehicles. [Lopez v. Amazon Logistics, Inc.](#) 2020 WL 2065624

COVID-19 Refresher




Accidents While Under Exemptions

- ▶ Exemptions remain in effect until June 14, 2020 or until revocation of National Emergency
- ▶ Hours of Service
- ▶ Drug Testing
- ▶ Commercial Drivers Licenses
- ▶ Crash Reporting if under Exemptions
 - Motor Carrier Must Report Recordable Crash to FMCSA within 5 business days if driver under exemptions. Information Needed:
 - Date of Accident
 - City/Town and State of Accident
 - Driver's Name and License Number
 - Vehicle Number and State license number
 - Injuries and/or Fatalities
 - Police-Reported Cause of Accident
 - Citations or Violations Assigned to Driver

Employment Issues

- Temperature checks – keep in separate medical file, not DQ file
- Drug and Alcohol Screening
 - Pre-employment, Random, and Post-Accident
 - Exposure to COVID-19 during testing process
- What can you ask about?
 - Travel?
 - COVID-19 Testing?
 - Symptoms?
 - Pre-Existing conditions?
 - Family circumstances?
- Employee spouse/children vulnerable to disease
- Families First Coronavirus Response Act

COVID-19 Impact on the Courts

- Virtual depositions
 - Virtual hearings
 - Virtual trials
 - Delays
 - Value of cases
 - Impact on ADR
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COVID-19 Impact on the Courts

- ▶ “We can remind juries that these are the same folks that brought you your groceries” –Rob Moseley
<https://www.ttnews.com/articles/nations-courts-feeling-impact-covid-19-pandemic>
- ▶ Backlog in courts may push plaintiffs to settle in a timely manner

FMCSA Announcement Regarding COVID-19

- ▶ FMCSA's emergency declarations are extended through July 14
 - The emergency declaration provides emergency relief from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations.
- ▶ FMCSA grants a three-month waiver from certain pre-employment testing requirements applicable to employers of drivers subject to 49 CFR part 382.
 - This action responds to the President's Executive Order No. 13924, Regulatory Relief to Support Economic Recovery, issued on May 19, 2020, related to the economic consequences of the COVID-19 public health emergency.
 - This waiver is effective June 5, 2020, and ends on September 30, 2020.

Questions



- Blair Cash and Megan Early-Soppa
- Moseley Marcinak Law Group, LLP
- PO Box 26148
- Greenville, SC 29616
- 864-248-6025
- Blair.Cash@momarlaw.com
- Megan.Early@momarlaw.com



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MARCINAK
LAW GROUP