

How To Recover Uncontested Medical Expenses In A Motion For Partial Summary Judgment

One of the more vexing problems of a trial lawyer is to have a case of clear liability, significant medical expenses, and substantial damages, but a liability insurer who refuses to offer a reasonable sum to settle the case, a trial date that is many months away, and a client who is unable to work because of their injuries and thus is unable to meet their usual expenses of daily living. Although a six or possibly even seven figure verdict will eventually be forthcoming, a large challenge for the lawyer is how to prevent financial ruin for their disabled client while the case is pending.

In such cases where liability and most if not all of the medical expenses are uncontested, a practical solution is to file a Motion For Partial Summary Judgment on the issue of liability and the reasonableness and necessity of the client's medical expenses. In this method, one can obtain a recovery now of the medical expenses your client has incurred and use these monies to help the client meet their ongoing daily expenses while the case is pending.

Potential problems that may arise from this approach are subrogation carriers who may insist on being reimbursed now rather than later, as well as liability insurers who may be nervous about not including the name of a subrogation lienholder on any check. However, because any monies that are realized from the partial summary judgment are paid into court rather than to the claimant directly, this usually is not an issue. Moreover, if necessary, one can discuss the matter with the subrogation lienholders and usually can obtain their consent to pay them when the case is actually settled or tried and additional monies are obtained.

What follows are a Motion For Partial Summary Judgment, Request For Admissions, Affidavit, and Designation Of Evidence that I used successfully on a previous case.

MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the Plaintiff, by counsel, and pursuant to Indiana Trial Rule 56, respectfully moves this Court for an entry of partial summary judgment in favor of Plaintiff against the Defendant regarding the issue of fault for the occurrence of the automobile collision in which the parties were involved and the issue of medical expenses that have been incurred to date by Plaintiff as a result of the wreck. In support thereof, Plaintiff respectfully submits the following Memorandum of Law.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

On 12/07/01, Plaintiff was involved in a motor vehicle collision with the Defendant. Police Report, Exhibit #1 to Plaintiff's Designation of Evidence In Support of Motion For Partial Summary Judgment; Plaintiff's Complaint, paragraph nos. 1-6. The Defendant has admitted that he is legally responsible for the occurrence of this collision. Plaintiff's Request For Admissions, Request #1, Exhibit #2; Defendant's Response To Request For Admissions, Response #1, Exhibit #3 to Plaintiff's Designation of Evidence.

As to the issue of medical expenses, Plaintiff has the burden of proving that any such expenses were reasonable and were incurred by Plaintiff as a result of the collision in question. Chemco Transport, Inc. v. Conn, 506 N.E. 2d 1111, 1115 (Ind. App. 1987); Indiana Rule of Evidence Rule 413. However, once Plaintiff has established a prima facie case in a summary judgment proceeding, the burden then shifts to the non-moving party to show the existence of a genuine issue of material fact that remains for trial. Miller v. Grand Truck Western Railroad, Inc., 727 N.E. 2d 488 (Ind. Ct. App. 2000). In the present case, Defendant has admitted that the medical expenses the Plaintiff has incurred are reasonable charges for the services that were rendered to her, and that these expenses were necessarily incurred as a result of Plaintiff's injuries that were sustained in the collision with the Defendant. Defendant's Response To Request For Admissions, Response nos. 3, 4, and 6, Exhibit # 3. Under Indiana Trial Rule 36(B), matters that are admitted under this Rule are conclusively established. Therefore, there is no genuine issue of material fact regarding the responsibility of the Defendant for the occurrence of the collision or whether the Plaintiff is legally entitled to recover from the Defendant the substantial medical expenses she has incurred to date.

WHEREFORE, the Plaintiff respectfully prays that this Court grant her partial summary judgment against the Defendant as to the issue of liability for the occurrence of the collision in question, for judgment as to medical expenses that she has incurred to date, and for all further relief that is just and proper.

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Comes now the Plaintiff, by counsel, and having filed her Motion For Partial Summary Judgment, said Motion

appearing in the following words and figures, to-wit:
(H.I.)

AND THE COURT having been informed by the parties that Plaintiff is waiving a claim for prejudgment interest on the medical expenses that were referenced in said Motion, and having examined said Motion and the evidence that was designated by the Plaintiff, now finds that PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT as to the issues of liability and the medical expenses which Plaintiff has incurred to date as a result of the 12/7/01 collision should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT as to the issue of liability for the collision of December 7, 2001 and as to the issue of medical expenses that have been incurred to date by Plaintiff as a result of this collision is hereby GRANTED.

This Court having further found no just reason for delay, now expressly enters judgment in favor of the Plaintiff against the Defendant as to the issue of liability for the occurrence of the collision which occurred on December 7, 2001 and in favor of the Plaintiff against the Defendant in the amount of \$28,742.91, which represents medical expenses that have been incurred to date by the Plaintiff as a result of the aforementioned collision. The sole remaining issue of additional damages to be awarded to the Plaintiff shall be decided at the trial that is currently scheduled for 11/16/04.

PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO DEFENDANTS

The Plaintiff, pursuant to Indiana Trial Rule 36, herein respectfully propounds the following Request For Admissions. For purposes of these Request For Admissions, the term "collision" refers to the motor vehicle collision that is described in Plaintiff's Complaint that was filed in this cause.

1. The negligence of the Defendant was the proximate cause of the collision.

RESPONSE:

2. The document that is attached hereto as Exhibit A is a true and accurate copy of the curriculum vitae of Dr. David Porter.

RESPONSE:

3. The medical expenses that are attached hereto as Exhibit B are reasonable charges for the services that were rendered to Plaintiff.

RESPONSE:

4. The medical expenses that are attached hereto as Exhibit B were necessarily incurred as a result of injuries that Plaintiff sustained in the collision.

RESPONSE:

5. As a result of injuries that were sustained in the collision, Plaintiff has lost income of at least \$20,000.

RESPONSE:

6. As a result of the collision, it is the medical opinion of Dr. David Porter that Plaintiff sustained a right Lisfranc dislocation with midfoot collapse.

RESPONSE:

DESIGNATION OF EVIDENCE IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the Plaintiff, by counsel, and pursuant to Indiana Trial Rule 56(C), herein respectfully designates the following evidence in support of said Motion:

1. Official Police Report, Exhibit #1.
2. Plaintiff's First Request For Admissions, Requests nos. 1-6, Exhibit #2.
3. Defendant's Response To Request For Admissions, Requests nos. 1-6, Exhibit #3.
4. Affidavit of Plaintiff, paragraphs 1-5 and attached medical expenses, Exhibit #4.
5. Plaintiff's Complaint, that was filed on 5/13/02, paragraphs 1-7, the original of which is in this Court's file.

AFFIDAVIT

I, [Plaintiff], being first duly sworn upon my oath, do hereby state the following:

1. I am a competent adult over 18 years of age.
2. On 12/07/01 I was involved in a motor vehicle collision with [Defendant].
3. As a result of this motor vehicle collision, I sustained personal injuries, the most significant of which was a Lisfranc dislocation with midfoot collapse of my right foot.
4. Because of this injury, on 6/14/02 I underwent a right first and second tarsometatarsal fusion of my right foot by an orthopaedic surgeon named Dr. David Porter of Methodist Sports Medicine Center.
5. As a result of this injury to my right foot, I have incurred medical expenses in the total amount of \$28,742.91, true and accurate copies of which are attached to this Affidavit.

FURTHER AFFIANT SAYETH NOT.

I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING STATEMENTS ARE BASED UPON MY PERSONAL KNOWLEDGE AND ARE TRUE.

Date

[Plaintiff]

James F. "Jay" Ludlow (Member) born Corydon, Indiana, November 18, 1959; admitted to bar, 1987, Indiana and U.S. District Court, Southern District of Indiana.

Education: Indiana State University (B.S., with honors, 1982; M.B.A., with honors, 1984); Indiana University School of Law (J.D., cum laude, 1987).

Member: Indianapolis, Indiana State and American Bar Associations; Association of Trial

Lawyers of America; Indiana Trial Lawyers Association. **Practice Areas:** Automobile Accidents and Injuries; Catastrophic Injury; Products Liability; Truck Accidents; Explosions; Aviation Accidents; Severe Burns; Wrongful Death.

