

# Client Alert

Business Information for  
Clients and Friends of  
Shumaker, Loop & Kendrick, LLP

February 18, 2019



## Clever Trial Tactic Meets Resistance at the South Carolina Court of Appeals

J. Bennett Crites, III, Partner | [bcrites@slk-law.com](mailto:bcrites@slk-law.com) | 843.996.1911

In a matter of first impression, the South Carolina Court of Appeals recently put the brakes on a successful trial strategy increasingly employed by the plaintiff's bar. In the case of *Gary Nestler and Julie Nestler v. Joseph Fields*, the Court took the opportunity to examine which party, and under what circumstances, can a plaintiff's medical expenses be introduced into evidence at trial.

The facts of the case were simple. Gary Nestler was involved in a motor vehicle accident with Fields, liability was admitted, and the issue at trial was solely on the issue of damages. Julie Nestler brought a claim for loss of consortium, but she withdrew it at trial.

Nestler had medical expenses of \$7,117.50 as a result of the accident. He did not introduce his medical bills into evidence. Instead, he appears to have settled on a trial strategy focused on pain and suffering and permanency. This has increasingly become a trend with my colleagues on the other side, with the argument typically being that medical expenses are a distraction from a plaintiff's real injuries and are not indicative of the true value of an injury. It is argued that this can be especially true in a scenario where the medical expenses claimed are not substantial, and where there is a significant claim for non-economic damages, such as permanent impairment and pain and suffering.

Nestler decided not to submit his medical expenses into evidence. However, they were introduced by Defendant Fields and admitted into evidence, despite Nestler's relevance and prejudicial objections that "his medical expenses bore no relation to the magnitude of his damages, and allowing the jury to learn of the amount of his expenses would mislead them into believing his pain and suffering could not be extensive."

A defendant typically argues that medical bills are relevant and a proper indicator of a plaintiff's alleged damages because the medical expenses incurred show the nature and extent of the treatment received, which arguably show the nature and extent of the alleged injury claimed.

Nestler did however allege a permanent impairment rating of 53 percent for his left upper extremity, which translated to a 32 percent impairment rating for the whole person. Nestler also testified to constant pain, limited range of motion of his left arm, and a substantial loss of enjoyment of life as compared to his pre-accident condition. The Charleston County jury returned a verdict for Nestler in the amount of \$7,117.50, which was the amount of his medical expenses.

In South Carolina, a trial judge's evidentiary rulings will not be disturbed but for an abuse of discretion. The Court of Appeals noted it could find no authority that allowed a plaintiff to prevent an opposing party from introducing the actual medical bills. This lack of precedent, coupled with the appellate court's confidence in the ability of the jury to weigh the evidence accordingly, left it to conclude there was no reversible error by the trial court.

The opinion, which can be read [here](#), also went on to discuss Nestler's objection to a mitigation of damages charge that the jury was given, as well as the trial court's denial of Nestler's motion for a new trial. Both of these grounds for appeal were also affirmed.

Jurisdictions such as California, Pennsylvania, and Missouri have reached conclusions opposite to that of the South Carolina Court of Appeals. However, given the differing rulings at the trial court level across this state, this current guidance is helpful. Stayed tuned to see what, if anything, the South Carolina Supreme Court decides to do. I would venture to guess the Court of Appeals may not have the last word.

[shumaker.com](http://shumaker.com)

