

8.11 DAMAGES CHARGES — GENERAL

A. MEDICAL EXPENSES (NON-AUTO) (Approved 12/96, Revised 09/2021)

A plaintiff who is awarded a verdict is entitled to payment for medical expenses which were reasonably required for the examination, treatment and care of injuries proximately caused by the defendant's negligence (or other wrongdoing).¹ Medical expenses are the costs of doctors' services, hospital services, medicines, medical supplies and medical tests and any other charges for medical services. The amount of payment is the fair and reasonable value of such medical expenses. You have heard testimony on whether these medical expenses were fair and reasonable in amount and whether they were reasonably necessary for the examination, care and treatment of *[plaintiff]*. If you determine that any of these bills were not fair and reasonable to any extent, or that any of these services were not reasonably necessary to any extent, you need not award the full amount claimed. In this case, *[plaintiff]* is seeking the sum of *[dollar amount]* in medical expenses. As a result, the upper limit of the award which you may make for medical expenses is *[dollar amount]*, since you may not award more than *[plaintiff]* is seeking.

¹ *Ayers v. Jackson Tp.*, 106 N.J. 557, 603 (1987); *Schroeder v. Perkel*, 87 N.J. 53, 69 (1981).

NOTE TO JUDGE

Damages may also be awarded for future medical and hospital expenses. *Schroeder v. Perkel*, 87 N.J. 53 at 69-70 (1981). The test to be applied is whether there is a reasonable probability of incurring future medical or hospital expenses to treat or cure the injury sustained in the accident. *Coll v. Sherry*, 29 N.J. 166 (1959); *Work v. Philadelphia Supply Co.*, 95 N.J.L. 193 (E & A 1920). *But see*, N.J.S.A. 2A:15-97, discussed below.

Collateral Sources

At common law, total or partial compensation received by the plaintiff from a collateral source, wholly independent of the wrongdoer, was not applied to reduce the damages recoverable from the wrongdoer, even though the result was that the plaintiff received more than total compensation for his/her injuries. *Long v. Landy*, 35 N.J. 44, 55, 56 (1961) (medical and hospital expenses recoverable although paid by insurance on which defendant had paid the premiums); *Cornish v. North Jersey St. Ry. Co.*, 73 N.J.L. 263 (Sup. Ct. 1906) (medical expenses recoverable although paid by insurance); *State v. Harrison*, 107 N.J.S. 211 (Sup. Ct. 1933) (hospital expenses recoverable although paid by relatives as a gift).

This common law collateral source rule has been severely limited by a number of statutes.

For all personal injury or wrongful death actions arising after December 18, 1987, N.J.S.A. 2A:15-97 requires that medical expense benefits from sources other than joint tortfeasors, workers' compensation carriers or the proceeds from life insurance policies be disclosed to the trial judge and the court must reduce the verdict accordingly. *See Thomas v. Toys 'R' Us, Inc.*, 282 N.J. Super. 569, 660 (App. Div. 1995), *certif. den.* 142 N.J. 574 (1995).

N.J.S.A. 2A:15-97 places no restriction on a party introducing, for the

jury's consideration, evidence of the total amount of medical bills incurred. Any required adjustment in a party's ultimate recovery is to be made by the court, after the jury has considered the full amount incurred. *See Dias v. A.J. Seabra's Supermarket*, 310 N.J. Super. 99 (App. Div. 1998). The methodology set forth in *Thomas v. Toys "R" Us, Inc.*, *supra*, is an example of the correct methodology.

The following is a list of statutes which limit the common law collateral source rule. This list is not intended to be exhaustive:

<i>N.J.S.A.</i> 39:6A-6	(Automobile No-Fault Law)
<i>N.J.S.A.</i> 17:28-1.1e	(Uninsured and Underinsured Motorists)
<i>N.J.S.A.</i> 59:9-2e	(Tort Claims Act)
<i>N.J.S.A.</i> 34:15-40	(Worker's Compensation Act)