NEWS & INSIGHTS

# Denuclearization Part 4: Phantom Damages

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*Note: This is the fourth part of a series on denuclearization of trucking accident verdicts. You can read Part 1 here, Part 2 here or Part 3 here.*

What if…a plaintiff is awarded $2 million for medical expenses? And what if the insurer negotiated the actual bill down to $190,000? The carrier pays the $2 million. The additional $1.81 million? It was never owed. It was never paid. In most states, it was never real, and juries never know.

This is the phantom damages problem. It sits at the intersection of the collateral source rule, letters of protection,

and inflated medical billing. And it is one of the most significant, least-discussed drivers of nuclear verdicts in trucking litigation today.

The U.S. Chamber of Commerce Institute for Legal Reform has explicitly called on legislatures to require that medical damages be limited to reasonable and customary amounts actually paid, not inflated amounts billed. Several states have listened. Many have not.

## *Why It Matters*

Phantom damages are not a rounding error.

They are a structural mechanism that systematically inflates the economic component of verdicts, and then anchors the noneconomic damages conversation to a number that was inflated from the start.

When a plaintiff's attorney presents a $2 million medical bill to a jury, jurors anchor their pain-and-suffering calculation to that figure. The actual cost of care is irrelevant to them. The result is a verdict built on a foundation of numbers that no one ever paid, and no provider may ever receive.

For carriers, this is not an abstract litigation concern. It is a direct driver of insurance premiums, settlement leverage, and verdict exposure in every single case involving serious injury.  As a legislative priority across dozens of states because the industry has recognized that you cannot denuclearize verdicts without addressing how medical damages are calculated in the first place.

## *The Details*

**How It Works:** Healthcare providers routinely bill at rates far above what insurers actually pay. A negotiated rate between a provider and a major insurer might be 80% lower than the "sticker price" on the bill. Same with Medicare or Medicaid.  Under the traditional collateral source rule, defendants cannot tell the jury that the insurer negotiated the bill down. The jury sees only the inflated number.

**Letters of Protection:** The problem is compounded when plaintiff attorneys arrange treatment through letters of protection — agreements where a provider defers billing until the case settles. Because no insurer is involved in negotiating the bill down, providers can charge whatever the case may bear. The "medical expense" becomes a litigation artifact rather than an actual cost of care.

**The Anchoring Effect:** Once a jury hears $2 million in medical expenses, noneconomic damages flow from that anchor. A $4 million or $6 million pain-and-suffering award feels proportionate when the economic damages appear massive. Remove the phantom, and the entire damages structure contracts.

## *What to Watch: State Reform Momentum*

The legislative map is moving — but unevenly.

States that have not yet acted remain the most dangerous jurisdictions for carriers. The gap between billed and paid is widest in those markets — and plaintiff attorneys know it.

If you have any questions about phantom judgments or what can be done about nuclear verdicts, please reach out to me at any time.

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