

CHALLENGE COUNTER AFFIDAVITS *AFTER IN RE ALLSTATE*

UT CAR CRASH SEMINAR
AUGUST 27, 2021



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RECOVERING PAST MEDICAL DAMAGES REQUIRES PROVING:

- ☐ The injury being treated was proximately caused by the breach
- ☐ The damage amount claimed was paid or is owed
- ☐ **The amount charged for the medical services is reasonable**
- ☐ **The treatment provided was medically necessary**



CPRC 18.001

Formerly a simple route to proving R &N



REASONABLE

“Reasonable” means the medical expense was comparable to the usual and customary charges for such services at the time and place the service was rendered. *Ibrahim v. Young*, 253 S.W. 3d 790, 808 (Tex. App.—Eastland 2008, pet denied); *Fort Worth v. Barlow*, 313 S.W.2d 906 (Tex. Civ. App.—Fort Worth 1958, writ ref’d n.r.e.). *Haygood v. De Escabedo*, 356 S.W.3d 390, 391 (Tex. 2011).



NECESSARY

“Necessary” means the treatment was required as a result of claimant’s injury. *Dallas Ry. & Terminal Co. v. Gossett*, 294 S.W.2d 377 (Tex. 1956) In addition, Plaintiff must prove that the expenses were incurred or paid by the Plaintiff or on Plaintiff’s behalf. Tex. Civ. Prac & Rem. Code 41.0105; *Haygood v. De Escabedo*, 356 S.W.3d 390, 391 (Tex. 2011). *Dallas Ry. & Terminal Co.*, *supra*.



WHAT IT DOESN'T MEAN:

Opinions:

After careful review of the records provided, I am of the professional opinion, based on a reasonable degree of medical certainty, that the incident of July 1, 2019, **could not have necessitated the treatment** to [REDACTED]'s left foot, nor to the sequela thereafter that occurred due to surgical treatments aimed to correct pre-existing conditions and ultimately complications from the initial surgery.



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First appeared as part of the conference materials for the
2021 The Car Crash Seminar session

"Medical Specials: The Defendant's and Plaintiff's Perspective"