



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

DARRIN MERRILL GAMMONS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: CV 2022-901069
	)	
KENAN ADVANTAGE GROUP, INC.;	)	
KENAN TRANSPORT, LLC; MICHAEL	)	
JIMMY MADRILL, JR., et al.,	)	
	)	
Defendants.	)	

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**DEFENDANTS' RESPONSE TO PLAINTIFF'S  
 TRIAL BRIEF IN SUPPORT OF EXCLUDING  
 REFERENCE TO PLAINTIFF'S MEDICAL BILLS AND/OR MEDICAL  
 SUBROGATION**

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Come Now the Defendants in the above styled cause, by and through undersigned counsel and file this response to Plaintiff's Trial Brief in Support of Excluding Reference to Plaintiff's Medical Bills and/or Medical Subrogation. [Doc. 330]. In support of their argument that evidence of Plaintiff's medical bills and/or medical subrogation should be admitted, the Defendants state as follows:

1. The Court has previously ruled on the pending Motions in Limine (Plaintiff's First Motion in Limine, Defendants' Seventh Motion in Limine) filed by both parties, and allowed that evidence of medical bills and/or medical subrogation would be admitted. To the extent necessary to respond to Plaintiff's trial brief, the Defendants specifically adopt and incorporate the arguments made in Defendants' Motion in Limine Number Seven. [Doc. 282].
2. Alabama law is clear that evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ALA. R. EVID. 401; *see generally Wood v. Hayes*, 104 So. 3d 863, 870-71 (Ala. 2012). The measure of damages are a matter of

consequence in every personal injury action. *Crocker v. Grammer*, 87 So. 3d 1190, 1193 (Ala. Civ. App. 2011).

3. One of the main issues in this case is the extent of Plaintiff's injuries from the subject accident. Clearly Plaintiff intends to ask the jury to award damages for "personal injury, permanent injury, physical pain and suffering (past and future), mental and emotional anguish (past and future) and general damages." See *Complaint*, Doc. 2 ¶ 20. Testimony to the type of injuries Plaintiff has suffered, as well as the effect of medical treatment to treat his symptoms, has previously been offered by the Plaintiff and his wife. The testimony of Plaintiff's medical providers regarding his injuries and treatment will be played to the jury during the course of this trial. See Plaintiff's Deposition Designations of Dr. Bendt Petersen, Dr. Abdel Kasmia, and Dr. Kevin Groom, Doc. 258; Defendants' Deposition Designations of Dr. Bendt Petersen, Dr. Abdel Kasmia, and Dr. Kevin Groom, Doc. 252.
4. The determination of the amount of damages to award, if any, is within the exclusive providence of the jury. See *Brannon v. Webster*, 562 So. 2d 1337, 1339 (Ala. Civ. App. 1990) ("Determining damages lies within the discretion of the jury . . . A jury has the exclusive right to weigh evidence, give credibility to witnesses, and draw inferences from the evidence before it."). In this particular case, the jury is going to be asked to evaluate the statements of the witnesses in order to determine the amount of damages to award Plaintiff Darrin Gammons, if any.
5. Evidence of the amount of medical treatment Plaintiff received, through medical and billing records, will as a necessity, assist the jury in evaluating Plaintiff's claim for damages.
6. In his brief, Plaintiff cites caselaw from other jurisdictions to support his contention that evidence of his medical expenses should be excluded. The cited caselaw is inapplicable to the determination of this case.
7. The evidence is intended to be offered to show the extent of medical treatment Plaintiff sought and received as result of the subject motor vehicle accident. Evidence of this type

is relevant as it will help the jury not only evaluate the Plaintiff's claims, but also assist in the determination of the need for any future medical treatment.

8. That Plaintiff is not claiming damages for his medical expenses or his medical subrogation does not change the fact that evidence to the existence of medical expenses or medical subrogation is relevant to the jury in their ultimate determination of damages in this case.
9. To the extent that Plaintiff is claiming there is no medical testimony to a reasonable degree of medical certainty that the amount of Plaintiff's medical bills have any correlation to his claims, this does not account for the totality of the testimony from Plaintiff's health care providers. Each of the health care providers who testified stated that within a reasonable degree of medical certainty the treatment provided was reasonable and necessary. See Deposition of Dr. Petersen, p. 26:18-23; Deposition of Dr. Kasmia, p. 26:3-6; Deposition of Dr. Groom, p. 41:15-19, collectively attached hereto as Exhibit A. If the treatment provided was reasonable and necessary, then the billing for that treatment was equally reasonable and necessary. During the deposition of Dr. Petersen, the parties agreed to the necessity and reasonableness of his billing. See Deposition of Dr. Petersen, p. 7:17-22, attached hereto as Exhibit B.

WHEREFORE, premises considered, the Defendants respectfully request the Court, grant Defendants' Motion in Limine Number 7 [Doc. 282] and admit evidence of Plaintiff's medical bills and/or medical subrogation.

Respectfully Submitted,

*/s/ Thomas L. Oliver, II*

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Michael Jimmy Madrill, Jr.

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/s/ E. Glenn Smith, Jr.

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have on May 20, 2024, electronically filed the foregoing with the Clerk of the Court using the AlaFile system, which will send notification of such filing to the following counsel:

Robert L. Mitchell  
Amanda H. Herren  
Cunningham Bounds, LLC  
Post Office Box 66705  
Mobile, Alabama 36660

/s/ E. Glenn Smith, Jr.

OF COUNSEL

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IN THE CIRCUIT COURT FOR THE  
THIRTEENTH JUDICIAL CIRCUIT OF  
ALABAMA, MOBILE COUNTY

\* \* \* \* \*

DARRIN MERRILL GAMMONS, \*

Plaintiff, \*

vs. \*

CIVIL ACTION NO.:  
2022-901069

KENAN ADVANTAGE GROUP, \*  
INC.; KENAN TRANSPORT, \*  
LLC; MICHAEL JIMMY \*  
MADRILL, et al., \*

Defendants.

\* \* \* \* \*

The videotape testimony of BENDT PETERSEN,  
M.D. taken at Petersen Neurospine, 6701  
Airport Boulevard, Suite D-100, Mobile,  
Alabama, on the 14TH day of November, 2023,  
commencing at approximately 1:30 o'clock, p.m.

1 specialist to do it.

2 If you need physical therapy on your spine,  
3 you don't want a general physical therapist -- all  
4 due respect -- to do it. You want a specialist.

5 And there are physical therapists that  
6 specialize in the spine.

7 **Q.** Okay. Do you know if Darrin followed your  
8 advice and he went to that PT?

9 **A.** I don't know.

10 **Q.** Okay. I can show you a record. I think.  
11 No, I can't. Well, he did go to PT. And he  
12 finished his PT.

13 But are you also aware -- or do you know  
14 that he had another epidural on October the 10th  
15 of this year?

16 **A.** He well could have phoned in and requested  
17 an epidural.

18 **Q.** Okay. Do you have an opinion, based on a  
19 reasonable degree of medical certainty, that the  
20 treatment that you and Dr. Bose and the PT that he  
21 has had has been reasonable and necessary as a  
22 result of the crash?

23 **A.** That's the way the record reads, yes, ma'am.

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IN THE CIRCUIT COURT

OF

MOBILE COUNTY, ALABAMA

DARRIN MERRILL GAMMONS,

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CIVIL ACTION NUMBER  
2022-901069

KENAN ADVANTAGE GROUP,  
INC.; KENAN TRANSPORT,  
LLC; MICHAEL JIMMY  
MADRILL, et al.,

Defendants.

The testimony of ABDEL KASMIA, M.D., taken  
at 188 Hospital Drive, Suite 300, Fairhope, Alabama  
36532, on the 7th day of December 2023, commencing at  
approximately 4:57 p.m.

1 traumatic. To say whether they are directly related  
2 to it, I can say maybe. That's all I can say.

3 Q Okay. And was all the treatment that you  
4 have given to Darrin necessary and reasonable, in  
5 your medical opinion?

6 A Yes, ma'am.

7 MS. HERREN: I'll pass the witness.

8 EXAMINATION

9 BY MR. SMITH:

10 Q Doctor, you talked about that you were going  
11 to get some testing done to figure out what was  
12 causing the headaches. Did you ever get that done?

13 A We did an MRI scan and it was okay.

14 Q So as far as the objective findings or the  
15 objective imaging that you've done, you're saying  
16 that the imaging is okay, correct?

17 A The images were normal, yes, sir.

18 Q And so these -- you would agree with me that  
19 the complaints that Mr. Gammons is giving now are  
20 subjective complaints that really you can't tell one  
21 way or the other if he's actually suffering from them  
22 or not, right?

23 A Those are -- yes, sir. Those are objective



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IN THE CIRCUIT COURT OF MOBILE COUNTY  
STATE OF ALABAMA

DARRIN MERRIL GAMMONS, \*

Plaintiff, \*

VS. \*

KENAN ADVANTAGE GROUP, \*

INC.; KENAN TRANSPORT, \*

LLC; MICHAEL JIMMY \*

MADRILL, JR., et al., \*

Defendants. \*

CASE NUMBER  
CV-2022-901069

The video deposition of KEVIN GROOM, PhD,  
was taken before Kylie Hobson, CCR, as  
Commissioner, on February 5th, 2024,  
commencing at approximately 4:00 p.m. in the  
office of The Anchor Clinic, at 890 South  
Palafox Street, Suite 300, Pensacola, Florida,  
32503, pursuant to the stipulations set forth  
herein.

1 be, I would be thinking, three or four years  
2 at least, maybe longer. That's -- that's a  
3 hard one to -- to know. You know, if the meds  
4 work, then, you know, you may want to keep  
5 seeing that doctor for quite a while so that  
6 you can keep them optimized.

7 And neurology, same thing. If -- if -- if  
8 they find him a combination of medications  
9 that work, that help manage, you know, his  
10 headaches or even -- there are some meds for  
11 memory as well. So if they tried something  
12 like that, then you're going to want to see  
13 the neurologist for -- for quite a while if --  
14 if the meds are helping.

15 Q. Okay. Are all of the opinions and --  
16 that you have given us here today been based  
17 on a reasonable degree of psychiatric  
18 certainty?

19 A. They have.

20 Q. Okay. Thank you, Dr. Groom.

21 MS. HERREN: I don't have any  
22 other questions.

23 MR. SMITH: Dr. Groom, I just have

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Airport Boulevard, Suite D-100, Mobile,  
Alabama, on the 14TH day of November, 2023,  
commencing at approximately 1:30 o'clock, p.m.

1 Q. And, Dr. Petersen, what do you do for a  
2 living?

3 A. I'm a spine surgeon.

4 Q. All right. Can you briefly explain to the  
5 jury, please, what a spine surgeon does and type  
6 of injuries that you treat?

7 A. I operate on all pathology involving the  
8 cervical, thoracic and lumbar spine with  
9 appropriate remedies thereof.

10 Q. Okay. Can you tell us, please, about your  
11 educational background?

12 A. Medical school in Birmingham. Followed by a  
13 residency in orthopedic surgery, fellowship in  
14 orthopedic and neurosurgical spine at Harvard.  
15 And then private practice of spine surgery since.

16 Q. All right.

17 MR. SMITH: Amanda, we'll certainly  
18 stipulate to his expertise in neurosurgery, spinal  
19 orthopedics; that the billings are necessary and  
20 proper in the venue and the geographical area, if  
21 that will save some time.

22 MS. HERREN: Excellent.

23 BY MS. HERREN: