ONCE SIMILAR, NOW DISPARATE: A REASONABLE DEGREE OF POSSIBILITY, THE ILLINOIS SUPREME COURT COULD FOLLOW ITS FUTURE-INJURY TREND FOR FUTURE-MEDICAL

CHRISTIAN KETTER

Address: 333 Pierce Rd. Ste 195
Itasca, Illinois 60143-3156

Email: cketter@hcbattorneys.com

Phone: 773-383-4089

Law School: The John Marshall Law School

Two Sentence Biography: Christian Ketter is an Associate Attorney at Hervas, Condon & Bersani, P.C., an Adjunct Professor of Criminal Procedure at Morton College, a former criminal prosecutor with the Cook County State's Attorney's Office, and a former judicial intern under the Honorable Judge William J. Bauer at the United States Court of Appeals for the Seventh Circuit. He has guest-lectured at Northwestern State University of Louisiana and Morton College respectively on the issues of career risks for performing artists, rules of evidence and criminal law, with work published in *The University of Toledo Law Review*, *Wayne Law Review*, *The Arizona State Sports and Entertainment Law Journal*, *Florida Coastal Law Review*, *UIC John Marshall Law Review*, and *Cleveland State Law Review*.

Law Firm: Hervas, Condon & Bersani, P.C.

Certification: I hereby certify that this article is my own original work and that it has not been previously published.

_/s/ Christian E. Ketter_________
Christian E. Ketter

License agreement attached

ONCE SIMILAR, NOW DISPARATE: A REASONABLE DEGREE OF POSSIBILITY, THE ILLINOIS SUPREME COURT COULD FOLLOW ITS FUTURE-INJURY TREND FOR FUTURE-MEDICAL

CHRISTIAN KETTER*

Courts continue to grapple with the Illinois Supreme Court's changes to well-settled law regarding potential compensation for future injury in tort litigation. What formerly required demonstration of a reasonable degree of medical certainty became something lesser in 2002, when the Illinois Supreme Court changed this doctrine. However, for now, the "reasonable degree of medical certainty" burden remains the case for compensation of potential future medical procedures. Yet, these are different burdens for what once was the same. Thus, there remains a conspicuous potential for the Court to bring future-medical within this same burden.

Contents

INTRODUCTION 2

ANALYSIS 2

I. Future Injury, Future Medical and its Historical Basis "Upon a Reasonable Degree of Medical Certainty:" 2

a. Future Injury Prior to 2002: Pre-*Dillon v. Evanston Hospital* 3

b. Future Medical 4

c. Narrowing Future Injury's Margin in 1998 6

II. The Illinois Supreme Court's changes to Reasonable Certainty in Future Injury, Under Dillon v. Evanston Hospital (2002) 8

a. Resultantly Disparate Analyses: Illinois Jury Pattern Instructions on Future Injury and Future Medical 9

III. In the Wake of *Dillon* 11

CONCLUSION 12

* Christian E. Ketter is an Adjunct Professor of Criminal Procedure at Morton College, an editorial board member for the *DCBA Brief*: the Journal of the DuPage County Bar Association, and an Associate Attorney with Hervas, Condon & Bersani, P.C., practicing federal civil rights litigation and state tort litigation. B.A, Communications & Media Studies, *cum laude*, DePaul University; J.D., *cum laude*, *Dean's Scholar* of The John Marshall Law School. He is a former Assistant State's Attorney in the Cook County State's Attorney's Office's Criminal Prosecutions Bureau. Prior to this Mr. Ketter served in an internship as a judicial clerk at the United States Court of Appeals for the Seventh Circuit under the Honorable Judge William J. Bauer. He has guest-lectured at Northwestern State University of Louisiana and Morton College respectively on the issues of the career risks for performing artists, rules of evidence and criminal law. Mr. Ketter has written on the subject of constitutional law, First Amendment rights, Second Amendment rights, voting rights, administrative law, gun legislation, labor reform, the Roberts Court, and Chief Justice John Marshall. His work has been published in *The University of Toledo Law Review*, *Wayne Law Review*, *The Arizona State Sports and Entertainment Law Journal*, *Florida Coastal Law Review*, *UIC John Marshall Law Review*, and *Cleveland State Law Review*.

INTRODUCTION

As a general premise, "[a] plaintiff is entitled to recover for the pain reasonably certain to be suffered in the future but not for future pain and suffering that are merely likely to occur."[1] Since 2002, however, that general premise is no longer accurate for future injury, and may be subject to change for future medical. In *Dillon v. Evanston Hospital* (2002), the Illinois Supreme Court took a legal metric that previously applied to both future injury and future medical, carving a lesser standard for future injury but not for future medical.[2] In an Illinois doctrinal change that is relatively young, the possibility stands that it may adjust future-medical to follow accordingly.

ANALYSIS

I. Future Injury, Future Medical and its Historical Basis "Upon a Reasonable Degree of Medical Certainty:"

As an initial point of analysis, some jurists may long for a precise definition of the phrase, "based upon a reasonable degree of medical certainty."[3] However, the Fifth District explained that "[t]here is no magic to the phrase itself. The phrase provides legal perspective to medical testimony and signals to the jury that a medical opinion is not based on mere guess or speculation."[4] The district clarified that the omission of these buzz words is not dispositive. "It is of no consequence that a medical expert witness fails to use this phrase if the expert's testimony reveals that his

---

[1] 15 Ill. Law and Prac. Damages § 29.
[2] *Dillon v. Evanston Hosp.*, 199 Ill. 2d 483, 771 N.E.2d 357 (2002).
[3] *Hahn v. Union Pac. R. Co.*, 352 Ill. App. 3d 922, 931, 816 N.E.2d 834, 842 (2004) (in which the Fifth District reviewed whether a doctor's testimony was based upon a reasonable degree of medical certainty, regarding the potential for a recurrence of the Union Pacific Railroad Company employee's disc herniation, arising from a work injury. *Id.* at 926-27, 816 N.E.2d at 838-39).
[4] *Id.*

opinions are based upon specialized knowledge and experience and recognized medical thought."[5] Moreover, "an examination of a plaintiff and a review of his medical history provide a sufficient foundation from which a treating physician may offer opinions on the cause of his injury."[6] Nevertheless, as a matter of logic, under such a burden, the doctor's conclusion must still be capable of being made.

a. Future Injury Prior to 2002: Pre-*Dillon v. Evanston Hospital*

Well-settled Illinois law regarding compensation for future injury was largely abrogated in 2002, in *Dillon*. Nevertheless, the general principles of future medical needs have survived to date. Prior to 2002, it was well established in Illinois that "a mere possibility of future pain or suffering is not sufficient to warrant an assessment of damages."[7] That changed with *Dillon*.

With regard to future injury, historically, the Third District stated that "there must be evidence that such [injury] is reasonably certain to occur in the future, [and] that evidence may be inferred from the nature of the disability."[8] Nevertheless, the district noted that, "[i]f the injury is of an objective nature, the jury may draw their conclusions as to future pain and suffering from that fact alone."[9] Furthermore, it noted that "instruction specifically tells the triers of the facts that" the ultimate issue of "whether 'any' of the elements of damages has been proved is for the jury to

---

[5] *Id.*
[6] *Id.*
[7] *Gray v. Richardson*, 313 Ill. App. 626, 630, 40 N.E.2d 598, 600 (Ill. App. Ct. 1942) (in which the First District found it insufficient to warrant damages for a doctor to merely testify that the plaintiff *may* return for seemingly helpful treatment).
[8] *Burnett v. Caho*, 7 Ill. App. 3d 266, 276, 285 N.E.2d 619, 627 (1972) (citing 25A C.J.S. Damages s 162(9)b and suggesting that the jury instruction, "Your verdict must be based on evidence and not upon speculation, guess or conjecture," serves as a sufficient prophylactic measure that the jury would not be misled in drawing such conclusions).
[9] *Id.* (citing 22 Am.Jur.2d Damages, Sec. 299; Annotation: 115 A.L.R. 1151, 18 A.L.R.3d 10, 39).

decide."[10] The court intended this to "sufficient[ly] safeguard that the amount of damages will be based on the evidence."[11] Moreover, it noted that the jury was instructed that its verdict must be based solely on evidence, and not based "upon speculation, guess or conjecture."[12] The district felt that such an instruction, could not therefore mislead a jury.[13]

b. Future Medical

Three years after *Burnett*, in 1975, the Third District addressed future medical in *Biehler v. White Metal Rolling & Stamping Corp.*, noting that "[t]he generally accepted rule concerning recovery for future medical services is" as follows:

> Where the plaintiff proves *with reasonable certainty* the need for future medical services, he is entitled to compensation for the reasonable value thereof. Expert testimony is . . . required as *evidence of the certainty of the need* and as to the reasonable value of the services to be rendered.[14]

In *Biehler*, the doctor testified that Plaintiff "would *need* surgery to fuse . . . joints to reduce the pain and motion while walking. The doctor also stated, 'If [Plaintiff] can continue at a sedentary job he may get along without surgery, but I have a feeling that he will elect surgery.'" *Id.* However, in that case, Plaintiff had declined to undergo the surgery because he could not afford it and worried about the limiting effects that it would have imposed on the job he had at that time. The Court felt that "posed a question of fact for the jury to decide whether the plaintiff was reasonably certain to

---

[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Biehler v. White Metal Rolling & Stamping Corp.*, 30 Ill. App. 3d 435, 445, 333 N.E.2d 716, 724 (1975) (emphasis added) (in which the Third District found it erroneous to exclude the testimony regarding cost and a jury question, after the plaintiff stated he could not afford the surgery, and the doctor's testimony established that the plaintiff may need surgery to reduce pain and improve motion. *Id.* at 445-46, 333 N.E.2d at 724).

have future surgery or not, and, if so, what the reasonable value of future medical services would be."[15] Therefore, the Third District required that future medical services require a showing of need to a reasonable certainty. Thus, the court's analysis of reasonable certainty dictates that if such a showing is made, the compensation is proper. This showing may be made by testimony from the doctor as in *Biehler* or by a jury's inference of need based on the injury from *Burnett*.

The Fifth District, similar to its sister district in *Burnett*, ruled that "[e]vidence that future medical expenses will be incurred can be inferred from the nature of the disability."[16] This is permitted so long as "the elements of damage presented for the jury's consideration are proper under the facts of the case."[17] Accordingly, when the elements are proper, "then the assessment of damages is preeminently for the jury," regardless of whether "reasonable persons could differ as to the amount."[18] With regard to *Biehler* and *Rainey*, while the risk of jury inference could aptly supplant a reluctant doctor's unassured testimony, a jury's inference of the plaintiff's need would nevertheless require a fact upon which it could base such an inference. Otherwise, the inference is both conjectural and speculative.[19] Thus, if a doctor cannot say within a reasonable degree of certainty that a medical procedure is necessary, a jury likely cannot properly make such an

---

[15] *Id.* at 445–46, 333 N.E.2d at 724.
[16] *Rainey v. City of Salem*, 209 Ill. App. 3d 898, 907, 568 N.E.2d 463, 469 (1991) (in which the Fifth District rejected the City's argument that future medical should be denied "because no expert testimony was given as to what the dollar amount of those expenses is likely to be," and reasoning that a lack of direct evidence is not a sufficient argument to overturn the jury's award for future medical. *Id.*).
[17] *Id.*
[18] *Id.*
[19] *See generally Private Bank v. Silver Cross Hosp. & Med. Centers*, 2017 IL App (1st) 161863, ¶ 55, 98 N.E.3d 381, 396 (writing "in the absence of the necessary facts about when the ICU actually contacted the ER and when Dr. Murino was actually informed of the tension pneumothorax, the jury could only engage in pure speculation about whether a delay occurred").

inference. Still, the precedent exists to infer the need for future medical, even when a doctor refuses to make such an assertion.

The Fifth District analyzed the issue of reasonable certainty when the necessity for future medical is conditional upon a predicating factor. In 1992, it noted that "[g]enerally . . . a plaintiff must prove with reasonable certainty the need for future medical services to be awarded compensation for this expense."[20] However, the Fifth District noted that when a doctor qualifies his opinion within a necessity of "if," such an "answer was not speculative or conjectural but was his prognosis of the plaintiff's condition."[21] In *Pry*, "[t]he doctor explained that the plaintiff's osteoarthritis was a progressive condition which was related to the plaintiff's trauma and [surgical] removal of the [knee's] medial meniscus," but the doctor "did not believe that the plaintiff was going to require further [knee] surgery *if* he continued his sedentary lifestyle."[22] Thus, under the future medical doctrine, a conditional factor can bring a necessity of medical treatment within reasonable certainty; even one within Plaintiff's control. Therefore, consistent with *Pry*, a reluctant doctor's opinion could reach the affirmative with a line of questioning as to what lifestyle changes could manifest such a need for future medical.

c. Narrowing Future Injury's Margin in 1998

In 1998, in *LaFever v. Kemlite Co.*, the Illinois Supreme Court noted that an "appellate court vacated [an] award for lack of 'reasonably certain proof' to sustain the claim of lost future earnings," after it had interpreted a standard from *Brown v. Chicago & North Western*

---

[20] *Pry v. Alton & S. Ry. Co.*, 233 Ill. App. 3d 197, 217, 598 N.E.2d 484, 498–99 (1992) (citing *Biehler v. White Metal Rolling & Stamping Corp.* (1975), 30 Ill.App.3d 435, 333 N.E.2d 716) (in *Pry* the doctor framed his analysis upon the condition that if the plaintiff's condition worsened, he would need a replacement of his knee joint. *Pry,* at 216-17, 598 N.E.2d at 498).
[21] *Id.*
[22] *Id.*, 598 N.E.2d at 499.

Transportation Co.[23] In *Brown*, the appellate court had previously reviewed whether evidence at trial supported the jury's award.[24] The Supreme Court clarified this confusion by noting then that "[t]he quantum of proof necessary to *prevail* on a claim" differs "from the measure of evidence needed merely to send an issue to the jury."[25] For a claim to reach a jury, "plaintiff need only furnish 'some evidence' probative of his claim to earn a jury instruction on that claim, and neither the trial court nor a court of review must be convinced of the persuasiveness of that evidence before the issue may be submitted to the jury for its deliberations."[26] The Court noted that "damages for lost future income would be awarded only on a showing that the loss was reasonably certain to occur."[27] Moreover, "there must be an evidentiary basis in order for a court to give a jury instruction on future disability and lost wages."[28] It noted finally that "even the *Brown* court recognized, albeit implicitly, the narrower margin of proof required at the instruction conference."[29] *LaFever* likely planted the thought in the Court's mind, that revisions may be appropriate to Illinois precedent regarding future injury.

---

[23] *LaFever v. Kemlite Co., a Div. of Dyrotech Indus.*, 185 Ill. 2d 380, 407, 706 N.E.2d 441, 455 (1998) (citing *Brown v. Chicago & North Western Transportation Co.*162 Ill.App.3d at 927, 114 Ill. Dec. 165, 516 N.E.2d 320 (1987), and noting that the court in *Brown* "recognized, albeit implicitly, the narrower margin of proof required at the instruction conference." *LaFever*, at 407–08, 706 N.E.2d at 455. The Court found it sufficient that the plaintiff "produced at least some evidence of a permanent injury that has prevented him from continuing his prior employment." *Id.* at 414–15, 706 N.E.2d at 459).
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.* (citing *Brown,* 162 Ill.App.3d at 936–37, 114 Ill. Dec. 165, 516 N.E.2d 320),
[28] *Id.* (citing *Brown,* 162 Ill.App.3d at 937, 114 Ill. Dec. 165, 516 N.E.2d 320).
[29] *Id.* at 407–08, 706 N.E.2d 455.

II. The Illinois Supreme Court's changes to Reasonable Certainty in Future Injury, Under Dillon v. Evanston Hospital (2002)

In 2002, the Illinois Supreme Court generated a sea-change to major precedent on the issue of future injury. Acknowledging this change, the Court wrote, "[w]e believe that the split of authority in our appellate court compels us to revisit this issue and reexamine our [previous] holdings . . . ."[30] The Court stated that its "review of cases from other jurisdictions indicate[d] a trend toward allowing compensation for increased risk of future injury as long as it [could] be shown to a reasonable degree of certainty that the defendant's wrongdoing created the increased risk."[31]

However, after its review of the districts, the Illinois Supreme Court changed the aforementioned burden, holding that *"plaintiff[s] can obtain compensation for a future injury that is not reasonably certain to occur, but the compensation would reflect the low probability of occurrence*."[32] Therefore, according to the Court, while the burden of certainty is lower, so too should be the compensation. The Court gave its reasoning, writing that "[t]he primary motivation of the courts for permitting damages for such an injury is fairness."[33] In its pursuit of fairness, it addressed the instances in which a medical procedure later becomes of necessity, writing, "[o]ur

---

[30] *Dillon*, 199 Ill. 2d at 500, 771 N.E.2d at 368; *see also*, (noting the historic rejection of future injury damages *Id.* at 497-98, 771 N.E.2d at 366–67 reviewing former positions in which the Court stated, "[i]t would be plainly unjust to require a defendant to pay damages for results that may or may not ensue and that are merely problematical. To justify a recovery for future damages the law requires proof of a reasonable certainty that they will be endured in the future." *Amann v. Chicago Consolidated Traction Co.*, 243 Ill. 263, 267, 90 N.E. 673 (1909), furthered in *Stevens v. Illinois Central R.R. Co.*, 306 Ill. 370, 377, 137 N.E. 859 (1922)).

[31] *Id.* (citing *Anderson*, 279 Ill.App.3d at 400, 216 Ill.Dec. 209, 664 N.E.2d 1137; *and United States v. Anderson*, 669 A.2d 73 (Del.1995); 2 *J. Nates, C. Kimball, D. Axelrod & R. Goldstein, Damages in Tort Actions* § 13.02 (2001); *2 G. Boston, Stein on Personal Injury Damages* § 9:16, at 9–30 (3d ed.1997) (writing "Compensation should be given for the fact of increased susceptibility").

[32] *Id.* at 504, 771 N.E.2d at 370 (emphasis in italics).

[33] *Id.* at 500–01, 771 N.E.2d at 368.

legal system provides no opportunity for a second look at a damage award so that it may be revised with the benefit of hindsight."[34] Among the Court's reasoning was its conclusion that medical science has progressed greatly.[35] Nevertheless, *Dillon* addressed only future injury (not future medical) and the Court disclaimed that the plaintiff "had not sought compensation for past or future medical expenses."[36] A question therefore looms as to whether the Court may wish to make such a change to lessen the Plaintiff's burden for future medical.

a. Resultantly Disparate Analyses: Illinois Jury Pattern Instructions on Future Injury and Future Medical

The Jury Pattern instructions for future injury provide the following:

> 30.04.03 Increased Risk of Harm--Measure of Damages The increased risk of future [specific condition] [harm] resulting from the [injury] [injuries] [condition] [conditions].

The instruction's annotations state that *Dillon* "established that a plaintiff could obtain an instruction seeking damages for future harm in some circumstances where the harm is less than 50% likely to occur."[37] However, "[i]n those cases, damages for future harm can be obtained but only to the percentage extent that such harm is likely to occur."[38] *Dillon* "established a formula multiplying the value of the future harm if certain to occur by the percentage likelihood that the future harm will occur . . . That formula is set forth in IPI 30.04.04," provided below:

---

[34] *Id.* at 501, 771 N.E.2d at 368 (quoting *Petriello*, 215 Conn. at 395, 576 A.2d at 483.
[35] *Dillon* at 503, 771 N.E.2d at 370 ("We realize that our decision to recognize damages for the increased risk of future injury is at odds with our previous holdings in *Stevens* and *Amann.* However, we note that those cases are over 80 years old, and that scientific advances now enable the medical community to more accurately determine the probability of future injuries than in the past. The risk therefore of undue speculation is lessened.").
[36] *Id.* at 489, 771 N.E.2d at 362.
[37] IPI 30.04.03.
[38] *Id.*

> 30.04.04 Increased Risk of Harm--Calculation To compute damages for increased risk of future [specific condition] [harm] only, you must multiply the total compensation to which the plaintiff would be entitled if [specific condition] were certain to occur by the proven probability that [specific condition] will in fact occur. [You do not reduce future damages by this formula if those damages are more [likely than not] [probably true than not true] to occur.]

IPI 30.04.04's instructions state, however, that "[n]either [30.04.04] nor IPI 30.04.03 should be given unless the plaintiff claims damages that are less than 50% certain to occur."[39]

In contrast to future injury, with regard to future medical expenses, the IPI jury instructions provide:

> 30.06 Measure of Damages--Medical Expense--Past and Future--Adult Plaintiff, Emancipated Minor, or Minor Whose Parent Has Assigned Claim to Minor The reasonable expense of necessary medical care, treatment, and services received [and the present cash value of the reasonable expenses of medical care, treatment and services reasonably certain to be received in the future].

The notes of 30.06 instruct that "[t]his element is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use."[40] However, to justify "inclusion of the bracketed material relating to future medical expenses, there must be evidence that such expenses are reasonably certain to be incurred."[41] In any case, Plaintiff must nevertheless be able to calculate the costs.

> 34.01 Damages Arising in the Future--Extent and Amount If you find that [a] [the] plaintiff is entitled to damages arising in the future [because of injuries] [or] [because of future (medical) (caretaking) expenses] [or] [because of loss of earnings] [or] [loss of the services of [name of minor child]] [or] [because of (loss of society) (or) (loss of companionship and sexual relations)], you must determine the

---

[39] *Id.* at 30.04.04.
[40] *Id.* at 30.06.
[41] *Id.* at 30.06 notes.

amount of these damages which will arise in the future.

Ultimately, in a larger sense, the need for a showing is purposed to ensure a demonstrable need for compensation, as "compensatory damages are only to make a party whole, and not to enable him to make a profit on the transaction."[42]

III. In the Wake of *Dillon*

Post-*Dillon,* the Fifth District affirmed its decision in *Rainey* and addressed the issue of certainty in *Bruntjen v. Bethalto Pizza*. "Future damages by their nature are always subject to some uncertainties."[43] It elaborated, "[b]ecause of the finality of a verdict, courts allow the trier of fact a degree of latitude in awards for medical expenses shown by the evidence to likely arise in the future but that are not itemized by testimony."[44] Thus, it seems that the Fifth District has tacitly interpreted *Dillon*'s less-than-reasonably-certain burden into a burden of mere likeliness.[45]

Turning back to the current status of future medical, the United States District Court for the Northern District of Illinois Eastern Division cited to *Bruntjen*, in 2018, as its basis in part when ruling that a plaintiff "is entitled to damages for necessary medical expenses . . . 'reasonably certain' to be incurred in the future."[46] However, in denying part of the compensation sought, the District Court reasoned that the plaintiff's procedure was "not reasonably certain that it will be

---

[42] *See generally*, IPI 30.10 (referring to personal property depreciation).
[43] *Bruntjen v. Bethalto Pizza, LLC*, 2014 IL App (5th) 120245, ¶ 106, 18 N.E.3d 215, 244 (in which the Fifth District found that there was support for a reasonable inference that future medical, while not itemized by the testimony, was supported by evidence of the plaintiff's cognitive disability from his brain injury, coupled with evidence that the plaintiff's family would no longer be able to care for him amid his permanent injuries. *Id.* at ¶ 107, 18 N.E.3d at 244–45).
[44] *Id.* at (citing *Richardson,* 175 Ill.2d at 112, 221 Ill.Dec. 818, 676 N.E.2d 621).
[45] This could nevertheless be said to be the district's *obitur dictum*.
[46] *Trcka v. United States*, No. 16 C 1854, 2018 WL 2118205, at *6 (N.D. Ill. May 8, 2018) (citing I.P.I. (Civil), No. 30.06 and *Bruntjen*, 18 N.E.3d at 254 (Ill. App. 2014); and *Poliszczuk v. Winkler*, 899 N.E.2d 1115, 1126 (Ill. App. 2008))

medically necessary."[47] There, the doctor testified that some patients who show a good response to injections will "more likely than not" elect for a spinal procedure because such patients resultantly tire of recurring pain.[48] However, the court noted that the injections were seemingly successful, with no evidence of declined effect. Therefore, the sufficient of treatment on this issue could not support a finding that this was neither reasonably certain nor necessary.

While once the burden was similar for future injury and future medical, the Illinois Supreme Court carved these concepts into two very discrete aspects of analysis. For now, future medical has a higher burden than future injury. However, so long as Illinois courts grapple with balancing whether medical is "necessary" or "reasonably certain," there remains risk for a *Dillon*-like analysis to come from the Illinois Supreme Court.

CONCLUSION

With regard to risks of future injury, the Illinois Supreme Court changed the previous burden of reasonable certainty to what can be characterized best as a probability-based commensurate compensation for procedures that are "not reasonably certain to occur."[49] Given that the Supreme Court overturned cases that preceded 1920, this precedent —at less than twenty years old—is still young. Thus, for the defense bar, it seems fair to characterize this as a decision of which Illinois may have yet to see the negative effects. Similarly, it is young enough for the Court to follow likewise in other similar avenues of the law, such as future medical.

---

[47] *Trcka*, at *7.
[48] *Id.*
[49] *Dillon* at 504, 771 N.E.2d at 370

For future injuries, it has become the burden of the lower courts to interpret *Dillon*. Thus, consistent with *Bruntjen*, after eighteen years, the desires of the *Dillon* Court may have been in the clouds for long enough that it is capable of being brought to accessible ground on the basis of "likeliness" for medical necessity. For now, future medical costs must be capable of reasonable certainty. However, based on precedent, that certainty can be inferred from the nature of the injury or from the conditional need of a Plaintiff's lifestyle changes. Nevertheless, there remains a reasonable degree of possibility for changes to the burden of future medical.