

YOUR MEDICAL CARE AND YOUR CASE **MITIGATING YOUR DAMAGES**

By Kiersta D. Perlee

Leadfoot has run into you with his truck. Your doctor gives you a prescription for physical therapy. You get on the internet and find that there are two facilities near your house offering physical therapy. Even though Facility A is closer to your house and costs less, you decide to go to Facility B because the hot babe next door works there and you are hoping to finagle a date.

Obviously, you would not be facing this decision but for Leadfoot's negligence. However, the law still requires you to take reasonable steps to avoid as much of the resulting harm as possible. The jury will be instructed not to award you money for harm that you could have avoided. The jury instruction is CACI No. 3930, and it reads:

If you decide defendant is responsible for the original harm, plaintiff is not entitled to recover damages for harm that defendant proves the plaintiff could have avoided with reasonable efforts or expenditures.

You should consider the reasonableness of plaintiff's efforts in light of the circumstances facing him at the time, including his ability to make the efforts or expenditures without undue risk or hardship.

If plaintiff made reasonable efforts to avoid harm, then your award should include reasonable amounts that he spent for this purpose.

Where you could have saved \$500.00 by going to Facility A instead of Facility B, the jury is probably going to reduce your physical therapy bills by \$500.00, even though you paid the full cost of the physical therapy at Facility B and now you are out-of-pocket.

The same applies to all the types of damages you can recover. For instance, Leadfoot will not be liable for your lost income if your job requires use of your hands, and your injury was to your ear lobe. Similarly, if you had the option of going to your physical therapy appointments after work, but you chose to go during the work day and lose an hour of income each time, Leadfoot will probably not be held liable for this lost income.

The windshield in your car was shattered in the collision. The auto glass replacement shop says they will come by your house next week to do the repair. In the meantime, you store the car outside during the rainy season instead of putting it in your empty garage. Leadfoot will not be liable for the water damage to your car.

Not only does the law require you to act reasonably, most jurors with commonsense will expect it of you and if you fail to meet their expectations, they will not look favorably upon any of your claims.