

## Transcript: A \$229,000 medical bill goes to court

**Dan:** Hey there--

Lisa French was a clerk for a trucking company in Denver. She'd been in a car crash, and her doctor told her that to keep her spine stable, she ought to get surgery.

She asked the folks at the hospital what it was gonna cost her, out of pocket. They ran her insurance and told her: Your end is going to be one thousand, three hundred thirty-six dollars, and ninety cents.

She said, thanks.

Then, she and her husband sat down at their kitchen table and talked it over: They had a rainy-day fund. A thousand dollars they'd socked away, they kept it at home, in cash. Were they ready to spend it all for this?

They decided they were, and Lisa went to the hospital with a thousand dollars cash.

She had the surgery, it went fine. The hospital had been expecting about 55 thousand dollars from Lisa's insurance. They actually got more like 74 thousand.

But they decided that wasn't enough. They decided they wanted their full sticker price: 303 thousand dollars. So they billed Lisa French for the rest: 229 thousand dollars.

And when they didn't get it, they sued her.

Lisa French had her surgery in 2014. The court case finally got resolved last year, in 2022, by the Colorado Supreme Court.

If you've been listening to this show for a while, you probably remember: We have gotten VERY interested in understanding, when we get a wild medical bill, what legal rights do we have? How can we use those rights to fight back? Even on a small scale, like in small claims court?

And even though Lisa French's case is a LONG way from small claims court, it has a LOT to teach us about these questions.

This is An Arm and a Leg, a show about why health care costs so freaking much, and what we can maybe do about it. I'm Dan Weissmann. I'm a reporter, and I like a challenge. So our job on this show is to take one of the most enraging, terrifying, depressing parts of American life, and bring you something entertaining, empowering, and useful.

And I should say upfront: We won't be hearing from Lisa French directly.

Her case made a lot of headlines-- in 2018, when a jury heard it, in YEAR when an appeals court overturned the trial court, and last year when the state supreme court made its ruling.

Not in the kind of detail that we're gonna go into, but come on: Who can resist the headline?

**Male Anchor:** Well, tonight we have a story of David versus Goliath. David being a woman who needed spinal surgery in 2014 Goliath, the hospital that charged her more than \$200,000 to do it.

**Dan:** So over the years, a lot of reporters wanted a sound bite from Lisa French. Her attorney used to let her know when there was an inquiry, and she'd say yes or no.

Eventually, she told her lawyer: Don't even tell me when they call anymore. I just want to live my life.

Fair enough.

So here's who we've got.

**Ted Lavender:** I'm Ted Lavender. I'm an attorney in Atlanta, Georgia. I've been practicing law for 26 years,

**Dan:** And he spent several of those years representing Lisa French.

It's probably worth answering one question up front: If Lisa French had to empty her family's rainy-day fund to pay the hospital a thousand bucks, who's paying the lawyer from Atlanta?

The insurance from her job. Which had played a role in starting the whole mess.

**Ted Lavender:** the company that she worked for had a health benefits plan that was slightly different than what you might call run of the mill health insurance.

**Dan:** It worked this way: They weren't in-network with any hospitals. Instead, they'd just take whatever bill any hospital sent, make their own evaluation of what a fair price would be, and send the hospital a check.

It's a [somewhat unusual model](#)-- [one survey says](#) about 2 percent of employers use a plan like this-- but Ted Lavender says it often works.

**Ted Lavender:** a very large percentage of the time , the hospital would accept the check and no one would hear anything more from the hospital, which in legal parlance would mean acceptance

**Dan:** And as a backstop, in case there was any trouble, the health plan would send a lawyer. That's Ted.

And here's what happened that led to all the trouble in Lisa French's case: Whoever ran her insurance card at the hospital, they didn't read it very carefully.

If they had, they would've seen a little logo under the insurance-company name that said, "provider only" -- that is: This plan only has doctors and nurses and other PROVIDERS in network.

With hospitals, there's no network, no "in-network rate." We'll just send a check for what we think is right.

The same health-benefits company has a different plan, one that does have a hospital network. You know how it is. Insurance companies, a million different plans, every one its own snowflake.

The hospital mistook Lisa French's snowflake for another one, and that's how they came up with that estimate.

**Ted Lavender:** based on their calculation, they expected to collect a total of \$56,000, the 1,336 from Ms. French and the remainder from her health plan.

**Dan:** And they presumably would've been happy with 56 thousand. But they got more. They got about 75 thousand dollars.

But once they got it, they wised up to the mistake they had made about Lisa French's insurance. They had no agreement with the insurance plan to accept 56 thousand.

So, they decided: There's no reason for us not to charge our full sticker price here. Three hundred and three thousand dollars.

So Lisa French had been expecting a bill for three hundred thirty-six dollars and ninety cents. That's the difference between what she'd been quoted and the thousand dollars she'd paid in advance. But the bill she got wasn't what she expected.

**Ted Lavender:** it turned out to be a whopper of a bill. We ended up with an itemized bill that showed every line item for every charge that totaled this \$303,000

And then at the bottom was, you know, subtracting the thousand she paid, subtracting the money the insurance paid, leaving a balance of 229,000 and change

**Dan:** Of course, Lisa French did not have 229 thousand dollars, or anything like it.

**Ted Lavender:** Eventually she got a visit from the sheriff who served her with a lawsuit and she was sued for that \$229,000.

**Dan:** And that's where Ted Lavender entered the scene.

The jury trial in 2018 took six days. As Ted Lavender says, it wasn't exactly a splashy murder trial, in terms of drama.

**Ted Lavender:** this was a six day trial involving hospital billing. So, you know, there was no murder weapon. There was no aha, big, gotcha moment that was really exciting.

**Dan:** But Ted Lavender did his best. Like one time, when he got a hospital executive on the witness stand.

To stabilize Lisa French's spine, surgeons had implanted 13 pieces of metal into her body. So Ted Lavender had the hospital executive walk the jury through the price for each of those bits of metal. Or actually, the prices..

**Ted Lavender:** And I first showed him the itemized bill and asked him to identify what they charged for these 13 pieces of hardware .

I had given him sort of an oversized calculator that was sitting there in front of him on the witness stand, admittedly, for some dramatic effect

And through adding these up on the itemized bill, he arrived at the number which was \$197,000.

**Dan:** A hundred and ninety-seven thousand dollars. So that's about two-thirds of the three hundred and three thousand dollars the hospital is trying to charge Lisa French.

And then the next thing I did was I handed in the 13 invoices that we had received from the hospital,

**Dan:** That is, Ted handed the guy the invoices the hospital had received -- and paid -- when it bought those bits of metal..

**Ted Lavender:** and I asked him to add up and tell this jury what did the hospital pay for these 13 pieces of hardware.

He's adding, and he's adding and he's punching in numbers, and he's turning pages and he's adding, and he's adding with each addition, with each plus the jury seemed to ease a little closer up to the front of their chair, and ultimately he arrived at the total, which was \$31,000 and change.

**Dan:** So the hospital's charging like six and a half times what they paid. And that's two thirds of this 300 thousand dollar bill.

**Ted Lavender:** . It just, you know, the jury seemingly did not like that.

**Dan:** So that was a good moment for Lisa French's side. I mean getting the jury mad at the other side, that's a win.

And the big calculator wasn't Ted Lavender's only visual: He also had a giant post-it note, where he wrote down, in magic marker, all the different prices the hospital accepted for the surgery, depending on who was paying.

**Ted Lavender:** and we got these numbers from the hospital, they would've accepted \$146,000 from private insurance.

**Dan:** That's less than half of what they were trying to charge Lisa French. And they accepted less than that -- a LOT less -- from government-funded insurance, like Medicare, Medicaid, or Tricare, which covers folks in the military.

**Ted Lavender:** The average of what they would've accepted for these. Procedures that Ms. French had were \$63,199. Again, Ms. French and her insurance company combined paid almost \$75,000.

**Dan:** You can hear that post-it rustling around. It was a good prop, he's held onto it. So, he'd shown the jury that the hospital charged a HUGE markup, and that what they were suing Lisa French for was way, way more than they charged anybody else.

On the hospital's side, they were like, Yeah, but this is our actual sticker price. And Lisa French signed a piece of paper that said she would pay "all charges of the hospital."

So the hospital was like, yep, and these are our charges. That 303 thousand dollars, it comes from a list we keep. It's called the chargemaster. That's what Lisa French was signing up for.

And this became something the jury had to decide:

When Lisa French signed a piece of paper saying she'd pay "all charges of the hospital" -- was she specifically agreeing to pay what was on the chargemaster?

And here's one thing that might've made jurors a little skeptical on that score: The hospital never showed that chargemaster list to Lisa French. Not before her surgery, not after it. They said it was a trade secret.

**Ted Lavender:** they went all the way through trial. Never producing it though. We, we, we asked at the very beginning, once the lawsuit was filed, , basically you get to ask questions. Give me this information, give me information that supports your case or helps my case.

And we ask specifically for the charge master and they refuse to produce it on the basis that it was confidential and proprietary.

**Dan:** By withholding that list, the hospital may have helped Ted Lavender make his argument: How could Lisa French have known what she was signing up for, if she couldn't see the prices?

**Ted Lavender:** if we can't get it through our subpoena power, how in the world would Lisa Friendship been able to use it by, had she asked?

And admittedly she didn't ask for it, but if she had, surely they wouldn't have given it to her either.

**Dan:** In the end, the jury agreed: Lisa French had not specifically agreed to pay the hospital's chargemaster prices.

And the only other alternative was: She agreed to pay something reasonable.

The jury decided she owed the hospital seven hundred seventy six dollars and 74 cents

Basically, that's the three hundred and some left over from the original estimate, plus some extra -- because she wound up staying in the hospital one night more than expected: She owed a fee for late check-out.

Of course the hospital did not take that lying down. They appealed the outcome-- and won! Ted Lavender appealed that decision, which is how the case ended up in front of the Colorado Supreme Court.

We've actually got tape of those proceedings. They're kinda juicy. Plus the outcome, and why it matters for the rest of us. That's right after this.

This episode of An Arm and a Leg is produced in partnership with KFF Health News--formerly known as Kaiser Health News.

They're a national newsroom producing in-depth journalism about health care in America. We'll have more information about KFF Health News at the end of this episode.

OK, so Lisa French's case was headed to the Colorado Supreme Court.

And here's the big issue. Remember how the jury found that Lisa French hadn't actually agreed to pay the hospital's chargemaster price, the three hundred and three thousand dollars?

The hospital argued: The jury never should've been asked to consider that question.

The law -- legal precedent -- makes it open and shut: The appeals court had agreed. And it had cited other cases from courts around the country.

So when the hospital's lawyer, Mike McConnell, got up to address the Supreme Court, he led with those citations.

**Mike McConnell:** All of the questions that you have raised have been addressed in more than a dozen cases around the country. carefully and thoroughly.

**Justice Richard L. Gabriel:** Well, let me push back on you. Good morning to you, Mr. McConnell.

**Mike McConnell:** Good morning.

**Dan:** This is Justice Richard L Gabriel, stepping right in. He notes that these dozen other decisions all rest on one original case, from 2008, where a court had said: We can't intervene in health care pricing. Courts shouldn't try. Health care is too complicated.

Justice Gabriel wasn't convinced.

**Justice Richard L. Gabriel:** I guess the question I have is why, you know? I, you know, we may not be the smartest people in the world, but this is a contract and why should the hospital industry— different than any other industry on the planet —have different rules for contract principles?

**Dan:** The hospital lawyer argued that hospitals couldn't predict everything that would happen in a patient's care. In fact, the hospital can't even control it: Only physicians can decide what treatment to order.

**Mike McConnell:** You can, uh, I guess imagine that hospitals ought to be able to predict in advance what a particular physician is going to order for a particular patient. Um, and, uh, perhaps, you know, obviously you feel that is the way it ought to be. It is not the way it is, but now

**Justice Melissa Hart:** Mr. Mr. McConnell, I'm sorry, to interrupt...

**Dan:** Here's justice Melissa Hart breaking in



**Justice Melissa Hart:** ...the hospital did provide an estimate in this case. They did calculate what they thought this was going to cost and tell her that. So it is, it seems false to me that they can't do it. Of course, they can't predict with absolute certainty. In this case, she had the extra night stay in the hospital and she paid for that. But they can predict in a case like this, and they do.

**Dan:** The justices didn't seem super-persuaded by McConnell's response to that.

And that left one more big question in front of the justices.

When Lisa French signed a document promising to pay "all charges," was she definitely agreeing to pay three hundred and three thousand dollars? Or 229 after insurance.

The appeals court found that the chargemaster rate -- the 303 thousand -- had been "incorporated by reference" to the document she'd signed, officially called the "hospital services agreement."

The supreme court wasn't convinced. Here's Justice Richard Gabriel again.

**Justice Richard L. Gabriel:** There's no reference to the charge master on the face of the hospital services agreement.

How could she have assented to something she never even knew existed?

**Dan:** And here's how the hospital's lawyer responded.

**Mike McConnell:** When she read the provision, all charges not otherwise paid by insurance. She understood that the hospital charges would, she was responsible for paying the hospital charges that her insurance company did it,

**Justice Richard L. Gabriel:** Whatever it was. They could have charged her a billion dollars and she's your position to be she's bound because she agreed. All charges means all charges.

**Dan:** Huh! There wasn't a real comeback to that.

The Supreme Court ruled against the hospital, unanimously. Specifically, they ruled that the chargemaster-- the 303 thousand dollars-- had not been "incorporated by reference" to the piece of paper Lisa French had signed.

She didn't know those chargemaster list prices even existed. How could she agree to pay them?

So that meant, the court ruled that, quote, "the hospital services agreements left the price term open."

Which is language that may ring a bell, if you've been listening to this show. It's a legal principle -- a bedrock of contract law:

How the law treats an open-price contract -- a contract that doesn't specify a price term.

Here's a refresher on that principle from Ted Lavender.

**Ted Lavender:** if you go to McDonald's and order a, a quarter pounder with cheese and you know, value meal number three, they tell you the price and that is the price that you have to pay. And then they give you your meal.

You enter that contract with an actual price term

**Dan:** But you can also enter an open-price contract -- a contract without a price term.

**Ted Lavender:** if you have a contract without a price term, without a specific price in it, then the law infer into that contract a reasonable price.

**Dan:** In other words, a contract with the price term OPEN is not a blank check. I don't have to pay whatever number the other side makes up.

And that's what the Colorado Supreme Court found here.

They ruled that, quote, "principles of contract law can certainly be applied to hospital-patient contracts." They say, a court may have ruled otherwise in 2008, and other courts may have cited that opinion. We disagree.

The Colorado Supreme Court is saying, even in health care, when no price is specified-- when the price term is open-- you have the right to a reasonable price.

Yes!

And that's why Lisa French's case is so interesting to us, here on this show.

Because we've talked here about using this legal principle to fight back against outrageous bills.

We've heard from one guy, Jeffrey Fox, who actually took a hospital to small claims court to enforce his right to a reasonable price. And won.

We've heard from a listener who tried and failed, but said, more of us should try this.

And this Colorado decision seems like good news for anybody interested in doing something like that.

But honestly, it also raises a few concerns that I had not known about before.

First:

Well, there ARE all those other cases out there, in other states, that follow the 2008 case, the one that says health care is too complicated for courts to get into.

And yeah, here's Colorado saying, "No it isn't."

But courts in other states aren't bound by Colorado's decision. Hm.

And second: there's also something the Colorado court DIDN'T decide:

What if the paper Lisa French signed had specified, "I agree to pay the hospital's CHARGEMASTER rates?" Could she be required to pay them then? Even if they were a billion dollars?

In their decision, The Colorado court wrote that the chargemaster rates are "increasingly arbitrary" and "inflated" and "have lost any direct connection to hospitals actual cost."

So Ted Lavender thinks they might've said, No, we can't be held to a billion dollars, just by adding the word "chargemaster."

**Ted Lavender:** I think they would've answered that. No, but they did not come right out and actually answer that.

**Dan:** Because they didn't HAVE to answer that question.

**Ted Lavender:** Courts routinely, in fact, it's almost an objective of appeals courts. They answer as few a number of questions as possible to get to an answer. ,

**Dan:** So the Colorado court simply ruled that in Lisa French's case, the chargemaster rates weren't "incorporated by reference" into papers she signed.

Those papers didn't didn't mention the chargemaster at all-- and the hospital kept that chargemaster as a trade secret. Open, shut.

But... hospitals aren't supposed to keep those rates secret anymore. For the last couple of years, thanks to an executive order from the Trump administration, federal rules have required them to post their chargemaster to the internet.

And so I had all that in mind when I heard from a listener in Atlanta.

**Cindi Gatton:** my name is Cindy Gatton and I've been an independent patient advocate for 11 years now.

**Dan:** Cindi's job is helping people deal with medical bills, but she had actually written to me about her experience as a patient.

Before a medical appointment, she got the usual forms online, including one for "Patient Financial Agreement and Responsibilities"

**Cindi Gatton:** so I thought, you know what? I'm gonna print it and just see exactly what it says. And I'm reading through the thing it says, patient understands and agrees that he, she will be charge. The Piedmont Healthcare Standard charge master rates for all services not covered by a payer or that are self-pay.

I've never seen that before, and it shocked me that there was a reference to charge master rates in the financial disclosure.

**Dan: Dan:** And Cindi has been dealing with medical bills full-time for a decade. She's seen a lot. So when she says it's new, and that it's shocking, that seems worth noting.

**Cindi Gatton:** it just feels wrong to me. It feels really wrong because it, it reminds me of, you know, you, you go to a website and they give you their terms and conditions. Nobody reads those. I don't read them. You click yes so that you can move on with what it is you wanna do, which is to get care, to be seen by the doctor to, you know, have your procedure.

And I don't know this, this feels, um, it feels manipulative to me

**Dan:** Yeah, and to me, it feels ominous. Like lawyers who work for hospitals have been paying attention to the Lisa French decision and thinking:

There's a wedge here maybe we could exploit. Like, if we get you to sign a document that says "chargemaster" on it, we're getting you to sign away your right to a reasonable price. After all, the court in Colorado didn't come out and say that wouldn't be kosher.

So, where I'm landing at the end of this story is: I've got a couple big homework assignments:

First, if I'm interested in seeing how we can use our legal rights to fight back against outrageous, unreasonable bills -- and I am --

I need to learn more about which states recognize our rights to a reasonable price in health care, and which ones ... maybe don't. I'm on it, and if you've got any tips, please bring them.

That's the first assignment, and for the second, I'd love your help: How many hospitals are using this "chargemaster" language these days in those financial responsibility documents they ask us to sign?

Do me a favor: See if you can get a copy of that document from any hospital system or doctor group where you get seen. And send me a copy of it?

Redact anything you need to. And also know: we're not aiming to share this with anybody outside our reporting team.

Here's what happened when I tried this.

A hospital where I get seen uses a portal called MyChart-- a lot of hospitals use it. I just logged on to MyChart there, and I did a little digging around. I found a link to something called "My Documents." And I found a form there called Universal Consent."

It has stuff about financial responsibility.

It doesn't mention chargemaster rates. But it's a year old. It also says it's expired.

And here's an idea I got from Cindi, which I'm gonna try-- and which seems worth passing around.

When Cindi found that chargemaster language in the document from her Hospital, here's what she did. She printed it out and changed it:

**Cindi Gatton:** what I did is instead of the standard charge master rates, I drew a line through it and I wrote in two x Medicare rates.

**Dan:** In other words, instead of saying "I'll pay the chargemaster rates," it says, "I'll pay two times the Medicare rate."

We've heard about this strategy before, from former ProPublica reporter Marshall Allen, who wrote about it in his book, "Never Pay the First Bill."

Here's the rationale. Medicare pays less than most commercial insurance; hospitals say that at least sometimes they lose money on Medicare. Doubling it seems ... generous enough. But it also sets a limit.

So that's what Cindi wrote on her printout.

**Cindi Gatton:** I have been taking it with me when I go to be seen that if they ask me for the document that I can say, you know, here it is.

**Dan:** So far, she says, nobody's asked for it.

And, I don't think anybody will be confused, but just to make sure, I'll say: This isn't legal advice. I'm not a lawyer. Cindi's not a lawyer.

She's just a person going to the doctor, doing her best not to leave too many openings where she could get really screwed. And I'm gonna try following her example.

And I've got another request for you: If you try this trick of printing the thing out, exxing out the chargemaster language and writing 2 x medicare rates-- LET ME KNOW WHAT HAPPENS, OK?

The place to do all this is on our website at arm and a leg show dot com, slash contact. That's arm and a leg show dot com, slash, contact.

You are this show's secret weapon. You're our eyes and ears.

Cindi Gatton's a listener who got in touch.

How did I first learn about Lisa French's case? Email from a listener. [Thank you, Terry N, for that note last year! Took us a minute, but we got to this.]

Thank you for listening. You absolutely rule.

I'll catch you soon.

Till then, take care of yourself.

This episode of An Arm and a Leg was produced by me, Dan Weissmann, with help from Emily Pisacreta, and edited by Afi Yellow-Duke.

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An Arm and a Leg is produced in partnership with KFF Health News--formerly known as Kaiser Health News.

That's a national newsroom producing in-depth journalism about health care in America, and a core program at KFF — an independent source of health policy research, polling, and journalism.

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Thank you!