IN THE SUPREME COURT OF OHIO

PATRICIA A. MANTON Appellant – v – RICHARD JAQUES Appellee	Case No.: 09-0820 On Appeal from Lucas County Court of Appeals, Sixth Appellate District Court of Appeals Case No. L-08-1096

BRIEF OF AMICUS CURIAE, NICHOLAS J. SCHEPIS, IN SUPPORT OF APPELLEE, RICHARD JAQUES

Nicholas J. Schepis (0001423)
6181 Mayfield Road, Suite 302
Mayfield Heights, OH 44124-3222
Phone: (440) 442-9500
Fax: (440) 449-2515
Email: njschepis@hotmail.com
Amicus Curiae

Alan B. Dills #0016474
Counsel of Record
MARSHALL & MELHORN, LLC
4 Seagate, 8th Floor
Toledo, OH 43604-2638
PHONE: (419) 249-7100
FAX: (419) 249-7151
EMAIL: dills@marshall-melhorn.com

David L. Lester # 0021914
ULMER BERNE, LLP
1660 West 2nd Street, Suite 1100
Cleveland, OH 44113-1448
PHONE: (216) 583-7040
FAX: (216) 583-7041
EMAIL: dlester@ulmer.com

Counsel for Petitioner,

Michael D. Bell # 0071325
Counsel of Record
Russell Gerney # 0080186
Theodore A. Bowman #0009159
Kevin J. Boissoneault # 0040180
GALLON, TAKACS, BOISSONEAULT & SCHAFFER CO. L.P.A.
3516 Granite Circle
Toledo, OH 43617-1172
PHONE: (419) 843-2001
FAX: (419) 843-6665
EMAIL: piattys@gallonlaw.com

Counsel for Respondent Richard Jaques

Patricia A. Manton

Anne Marie Sferra (0030855)
Bridget Purdue Riddell (0082502)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Tel: (614) 227-2300
Fax: (614) 227-2390
Email: asferra@bricker.com
Counsel for Amici Curiae,
Ohio Hospital Association,
Ohio State Medical Association,
and Ohio Osteopathic Association

Martin T. Galvin (0063624)
William A. Meadows (0037243)
Reminger Co., LPA
1400 Midland Building
101 Prospect Ave, West
Cleveland, OH 44115-1093
Phone: (216) 687-1311
Fax: (216) 687-1841
Email: mgalvina reminper.com
Attorneys for Amicus Curiae,
The Academy of Medicine of Cleveland and
Northern Ohio

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STATEMENT OF INTEREST

The undersigned amicus curiae is a private attorney who, among other things, represents injured plaintiffs and claimants. The amicus has taken a special interest in cases affected by this Honorable Court's decision in the case of *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362. The *Robinson* decision affects the practice of the amicus and all tort victims and all attorneys who practice tort litigation. This amicus and his paralegal, Stephen R. Gibson, because of the enormous public interest in this issue and the sideshow it creates in every tort action, have, at their own cost, with the assistance of members of the Ohio Association for Justice, created and maintained, for the benefit of Ohio attorneys, judges, magistrates, and the citizens of this state, an online archive (http://www.schepislaw.com/archive) of as many orders, journal entries, judgment entries, briefs, etc. regarding *Robinson* and related issues as they have found and that have been provided to them. This archive now numbers over 160 documents and demonstrates that the vastly greater weight of authority in this state is against the introduction of write-offs and the amount accepted as payment in full.

With knowledge gleaned from this store of documents and careful study of this Court's decisions in *Robinson* and other cases addressing collateral sources, the amicus hopes to aid this Honorable Court in reaching a just, fair, and equitable decision founded in law and *stare decisis*.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

The Statement of the Case and Statement of Facts in the appeal pending before the Court are set forth in Appellee's Merit Brief. Those statements are adopted by reference and incorporated herein.

LAW AND ARGUMENT

Introduction

The appellant in this case, and her amici, ask this Court to reverse 140 years of Ohio Jurisprudence and revise the law of damages in Ohio. Appellant asks this Court to hold that an injured party's damages are limited to that party's actual out of pocket expenses, irrespective of the amount of harm caused by the tortfeasor. It has been, and remains, the law of this state that an injured party is entitled to recover the reasonable value of necessary services. That value is not necessarily the amount charged for those services, although that amount is prima-facie evidence of reasonableness, pursuant to Ohio Revised Code §2317.421. No Ohio case has ever held that the amount that the injured party actually paid out of pocket is prima-facie evidence of the reasonable value of services.

For well over a hundred years, Ohio courts have held that defendant tortfeasors should not benefit from the fact that an injured plaintiff's expenses were paid by another. *Klein v Thompson* (1869), 19 Ohio St. 569. It matters not whether those payments were received as a matter of law, in the case of workers compensation (*Trumbull Cliff's Furnace Co. v. Shachovsky* (1924), 111 Ohio St. 791), contract, in the case of sick or disability pay, (*Pryor v. Webber* (1970), 23 Ohio St.2d 104, insurance proceeds, or gratuitous contributions. *Fidelholtz v. Peller* (1998), 81 Ohio St.3d 197; *Hutchings v. Childress*, 119 Ohio St.3d 486, 2008-Ohio-4568.

According to the Second Restatement of Torts, "[I]t is the tortfeasor's responsibility to compensate for all harm that he causes, not confined to the net loss that the injured party receives." Restatement of the Law 2d, Torts (1979), Section 924, Comment c. The Restatement further states, "The damages are not reduced by the fact that the plaintiff has suffered no net financial loss as the result of the entire transaction, as when he receives insurance money or an amount equal to his lost wages from his employer or from a friend." Restatement of the Law 2d,

Torts (1979), Section 920A, Comment b. Appellant would have this Court hold that a tortfeasor's responsibility, and an injured party's damages, should be diminished by any assistance the injured party may have received, whether that assistance was statutory, contractual, gratuitous, or charitable. Appellant Manton and her amici seek to do away with the collateral source rule in this state entirely.

If defendants are allowed to introduce the amount paid for services as evidence of the value of those services, providers, friends, family, and spouses, would be dissuaded from offering, and plaintiffs would be dissuaded from accepting discounts and charitable care. For instance, if the defendant in *Hutchings v. Childress*, 119 Ohio St.3d 486, 2008-Ohio-4568, had been allowed to introduce the fact that the husband had not been paid for the services rendered to his plaintiff wife and allowed to argue that his services, therefore, had no value, plaintiff may have been deprived of compensation from the defendant for those services. Likewise, if defendants were allowed to introduce amounts that friends, family, or the community gratuitously contributed to payment of an injured party's medical expenses, and argue that since the injured party did not bear the expense, the defendant is not liable for amounts that did not come out of the injured party's pocket, the injured party would be deprived of compensation from the tortfeasor for the full value of the care, and the tortfeasor would reap the benefits of the kindness given to injured party. It cannot be the policy of this Court and this State to discourage charity.

This was not the intent of the General Assembly in passing Ohio Revised Code §2315.20.

Proposition of Law No. 1

The measure of special damages in the State of Ohio is the reasonable value of replaced property and of services necessary to make the plaintiff whole, irrespective of payments, write-offs, contributions, or other collateral sources received or receivable by the plaintiff.

This amicus asks this Honorable Court to affirm its holdings in *Klein v. Thompson*, *Pryor v. Webber*, and their progeny, and to declare Ohio Revised Code §2315.20 unconstitutional and to overturn this Court's decision in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362.

"When legislation infringes upon a fundamental constitutional right or the rights of a suspect class, strict scrutiny applies. See *State v. Williams*, 88 Ohio St.3d at 530, 728 N.E.2d 342. If neither a fundamental right nor a suspect class is involved, a rational-basis test is used. See *Menefee v. Queen City Metro* (1990), 49 Ohio St.3d 27, 29, 550 N.E.2d 181." *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948. See also, *Eppley v. Tri-Valley Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 56, 2009-Ohio-1970. For the reasons set forth hereinbelow, Ohio Revised Code §2315.20 and the holding in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362 infringe upon a fundamental right, to wit: equal protection of the laws, U.S. Const. amend. XIV §1 and Ohio Const. art. I §2, and creates suspect classes. Further, for the reasons set forth hereinbelow, the statute and the *Robinson* holding produce unfair and unpredictable results, defeating the purpose of the legislation, to wit: "making certain that Ohio has a fair, predictable system of civil justice that preserves the rights of those who have been harmed by negligent behavior, while curbing the number of frivolous lawsuits, which increases the cost of doing business, threatens Ohio jobs, drives up costs to consumers, and may stifle innovation." 2005 Am.Sub.S.B. No. 80, Section 3(A)(3).

Even under a narrow interpretation, the statute denies equal protection of the laws, as it treats similarly situated tortfeasors, and by extension their insurers, differently depending on the insurance and/or programs from which injured plaintiffs are entitled to benefit. Take, for instance, two tortfeasors. Each causes the same motor vehicle accident. Each causes the same injuries. The injured parties receive the same care from the same providers. The reasonable value

of the services required by each plaintiff is the same. However, plaintiff one is entitled to collateral benefits that are not subrogated; plaintiff two is entitled to collateral benefits that are subrogated or the plaintiff is uninsured. Under the statute, the defendant in the first case would be allowed to introduce evidence of the collateral benefits to which plaintiff is entitled and may have his liability reduced. The defendant in the second case would not. Two tortfeasors have produced exactly the same harm, but one is treated better than the other, having his exposure to liability diminished by the mere happenstance of the party he happened to injure. Applying the statute and Robinson would create two different rules of evidence in these two cases, otherwise identical in facts. This cannot be equal protection of the law, even under a rational basis test.

Under the broad interpretation of the statute proposed by the appellant, this inequity is grossly exaggerated. Under this interpretation, in addition to non-subrogated collateral benefits, the defendants would be allowed to introduce any other reductions of the amount charged to the injured party. Such reductions may be the result of statutes, contract, or the charity and good will of the provider of the services. As a result, a tortfeasor who injures an Anthem Blue Cross Blue Shield insured is treated differently than one who injures a plaintiff insured by United Healthcare. A tortfeasor who injures a Medicaid patient would be at a great advantage over one who injures a party without any insurance. A tortfeasor is treated differently if the injured party treats at a free clinic than if treatment is rendered at a for profit medical center. A tortfeasor who causes someone with disability insurance to lose wages is treated differently than one who causes lost wages for a plaintiff without such insurance. These arbitrary differentiations between tortfeasors, based solely upon the fortuity of who they injure, produces the type of unequal, unfair, unpredictable, unreasonable, and absurd results that the law abhors and which defeats the purpose of the statute.

Further, the same arbitrary, unequal, unfair, unpredictable, unreasonable, and absurd results occur if paragraph 1 of the syllabus in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, is applied. Allowing evidence of the amount accepted as payment in full makes some tortfeasors more liable and some less liable for exactly the same injuries and costs, based solely upon the financial situation of the plaintiffs they injure.

Further, if benefits are introduced pursuant to Ohio Revised Code §2315.20(A), Ohio Revised Code §2315.20(B) allows the plaintiff to "introduce evidence of any amount that the plaintiff has paid or contributed to secure the plaintiff's right to receive the benefits." The statute does not define the period for which those payments are made or what "contributed" means. If the statute contemplates the entire period during which the plaintiff paid premiums, the tortfeasor's liability could be more or less, depending on whether the plaintiff had the policy for a long period or a short one. Does the statute contemplate the entire amount paid for the policy, or just the plaintiff's out of pocket costs? With the majority of healthcare insurance in this state and country being provided by employers, the cost to the plaintiff may be more or less, depending on the policy chosen by the employer, the amount the employer chooses to contribute, and when the policy was purchased. Further, the plaintiff may have accepted payment for healthcare coverage, in whole or in part, in lieu of wage or salary increases, or had that choice made for him by a union or other bargaining agent. Certainly, this would be a contribution on the part of the plaintiff, though not a payment. In any event, these amounts are arbitrary with respect to similarly situated tortfeasors, their liability being dependent upon the choices made by persons who may not even be parties to the action. The evidence of liability and damages is lost in a labyrinth of collateral issues about what insurance the plaintiff had, who paid or contributed to the premiums, and what amounts providers of services were willing or forced to write off.

Compounding this problem is the fact that allowing this evidence inevitably leads a jury to speculate and conclude, by simple arithmetic, that the plaintiff received collateral benefits. The amount billed minus the amount accepted equals the amount of collateral benefits. If any of the benefits inferred by the jury were subrogated, they could not be introduced by the defendant, either under the statute or under common law. Since those benefits could not be directly introduced by the defendant, the plaintiff would not even get the benefit Ohio Revised Code §2315.20(B), allowing for the introduction of amounts paid or contributed for the benefits. In such a case, the tortfeasor escapes liability for himself and imposes uncompensated liability for subrogation on the injured plaintiff. It is easily conceivable that a jury could find in favor of a plaintiff but infer that the plaintiff has been fully compensated for his special damages, awarding no money therefor, but being unaware of the subrogated interest, leave the plaintiff owing his insurers, the State, or the federal government money that would have to be paid out of any general damages awarded.

Further problems arise with regard to future damages. Where Ohio Revised Code §2315.20(B) allows introduction of evidence of "amounts payable" defendants will seek to introduce future collateral benefits and write-offs. Those amounts are wholly speculative. No one can reasonably predict whether an injured person will be insured in the future, whether providers will voluntarily reduce their fees, what reimbursement rates will be dictated under future statutes or insurance contracts, or what amounts the plaintiff will pay or contribute for those benefits. Even at the time of this writing, the United States Congress is struggling to determine what doctors will be paid under Medicare next year. It is unreasonable to allow introduction of speculative future benefits, and it is unfair to treat differently parties whose damages occur primarily in the future differently from those whose damages occur primarily in the past.

The only way to assure that all tortfeasors are given equal treatment in the courts is to require what the law of this state has always required: that tortfeasors pay the cost of reasonable and necessary services required by the injured party, irrespective of whether, or how, those costs are paid by others. To hold otherwise would make tort actions not about the harm caused but about the financial situation and insurance benefits of the injured party.

"It is well-settled in Ohio that a tortfeasor [is] liable for all damages proximately caused by his negligence." *Bendner v. Carr* (1987), 40 Ohio App.3d 149; *Nolan v. Conseco Health Insurance Co.*, 2008-Ohio-3332. A jury is not to consider the ability of a tortfeasor to pay a judgment. Neither should a jury consider the ability of an injured party to pay the costs of care incurred as a result of the tortfeasor's negligence, or to have those costs paid or discounted by others.

It is inevitable that where an injured party has insurance, has providers of services who are willing to compromise their fees, or has friends, family, or a community who are willing to contribute money or services for the plaintiff's care, that there will be a windfall to someone. Such a windfall is largely arbitrary and usually beyond the control of the injured party; it is, most certainly, unpredictable. It is unreasonable and unjust for such windfalls to be delivered to the tortfeasor. It places tortfeasors on unequal footing based on the financial situations of the parties they injure and on the beneficence of the injured parties' providers, family, friends, and community.

Further, public policy would also dictate that tortfeasors be denied any windfall. People do not contract with their insurers to benefit tortfeasors. Providers of services do not discount their fees for the benefit of tortfeasors. Neither do persons who gratuitously provide goods and services to injured victims intend their charity to benefit tortfeasors. If a windfall should occur, it

should inure to the benefit of the person for whom it was intended, the injured party. If the citizens of this State were to know that their damages could be reduced not only by the amount payable but by any amount that might be written off in an agreement between their physicians and their insurance companies, they would be reluctant to purchase medical payments insurance with their automobile casualty policies. If providers of services knew that discounting their fess might result in an injured party not being fully compensated for the services rendered, thereby resulting in an inability to fully pay for those services, providers would be reluctant to discount their fees. If friends, family, and the community at large, were to know that their generosity would directly benefit persons who caused harm and limit the ability of those who are the objects of their generosity to be fully compensated, they would be reluctant to lend their assistance to the person who actually needs it, the injured party. It is in the interest of this State to encourage its citizens to obtain insurance. It is in the interest of this State to encourage providers of services to negotiate and settle debts. It is in the interest of this State to promote, and not discourage, charity. It is not in the interest of this State to treat differently tortfeasors who injure the well-insured and well-connected from those who injured the uninsured and unconnected.

Proposition of Law No. 2

Ohio Revised Code §2315.20 limits, but does not extinguish, the common law collateral source rule.

As this Court pointed out in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, ¶14, the General Assembly, in passing Ohio Revised Code §2315.20, intended to limit the collateral source rule. However, that limitation is not a replacement of the common law. It is extremely narrow and expressly states which collateral sources may be introduced into evidence. The statute states, in pertinent part:

(A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation or if the source pays the plaintiff a benefit that is in the form of a life insurance payment or a disability payment. However, evidence of the life insurance payment or disability payment may be introduced if the plaintiff's employer paid for the life insurance or disability policy, and the employer is a defendant in the tort action.

(B) If the defendant elects to introduce evidence described in division (A) of this section, the plaintiff may introduce evidence of any amount that the plaintiff has paid or contributed to secure the plaintiff's right to receive the benefits of which the defendant has introduced evidence.

(C) A source of collateral benefits of which evidence is introduced pursuant to division (A) of this section shall not recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant.

"Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted." *Sears v. Weimer* (1944), 143 Ohio St. 312, syllabus Paragraph 5. The meaning of Ohio Revised Code §2315.20 is clear. The collateral sources the defendant is permitted to introduce are limited to those amounts payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based. That is, the amounts must come from some source to which the plaintiff is a beneficiary and from which the plaintiff is entitled to recover "as a result of injury, death, or loss to person or property that is the subject of the claim upon which the action is based."

The clear purpose of the statute is to prevent an injured party from recovering monetary compensation from both the tortfeasor and a source from which he could collect as a matter of right pursuant to contract or statute. Likewise, by cutting off any subrogation interests of

collateral sources that are introduced, the statute prevents the injured party from being denied a recovery altogether. This is in partial abrogation of the common law collateral source rule, which has been defined as "'the judicial refusal to credit to the benefit of the wrongdoer money or services received in reparation of the injury caused which emanates from sources other than the wrongdoer.'" *Pryor v. Webber* (1970), 23 Ohio St.2d 104, 107, 52 O.O.2d 395, 263 N.E.2d 235, quoting Maxwell, *The Collateral Source Rule in the American Law of Damages* (1962), 46 Minn.L.Rev. 669, 670-671. See also, *Hutchings v. Childress*, 119 Ohio St.3d 486, 2008-Ohio-4568.

The statute does not permit introduction of collateral sources in which the injured party is not a beneficiary by right and reason of the loss claimed or which is not payable to the plaintiff.

In order to introduce a collateral source, the defendant must show

1. that the amount was payable to the plaintiff, that is, plaintiff did, or could, receive monetary compensation,
2. that the amount was, or could have been, received *as a benefit*, that is as proceeds of some form of coverage,
3. as a result of (triggered by) the
    a. injury,
    b. death, or
    c. loss

    that is the subject of the action.

However, even these limited collateral sources may not be introduced, if it is shown that there is

1. "a mandatory self-effectuating federal right of subrogation,
2. a contractual right of subrogation, or
3. a statutory right of subrogation, or
4. if the source pays the plaintiff a benefit that is in the form of
    a. a life insurance payment or
    b. a disability payment."

An exception to the exceptions allows introduction of life insurance or disability benefits, if

1. the plaintiff's employer paid for the policy *and*
2. the employer is a defendant in the action.

For instance, health insurance payments could be introduced under the statute, because they could be paid to the plaintiff in the form of reimbursement of out of pocket expenses, but only if the insurance contract does not contain a subrogation provision. Introduction of evidence of benefits from government programs is always prohibited, as they have statutory rights of subrogation, e.g. Workers Compensation: Ohio Revised Code §4123.931, Medicaid: Ohio Revised Code §5101.58, Medicare: 42 USC 1395, Veterans Administration benefits: 42 USC 2651-2653 and 38 USC 1729. These amounts do not include those for which the plaintiff did not, and could not have, received in the form of monetary compensation or that which was provided to the plaintiff voluntarily, gratuitously, or charitably.

Those benefits expressed in the statute are the only collateral sources that are permitted to be introduced under the collateral source rule. The General Assembly has defined which collateral sources may be introduced into evidence; all others are barred under the doctrine of *expressio unius est exclusio alterius*.

Proposition of Law No. 3

Allowing the introduction of write-offs and other non-monetary compensation will lead to unreasonable and absurd results and will deny similarly situated injured parties equal protection of the laws.

In *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, syllabus 2, this Court held that "Any difference between an original medical bill and the amount accepted as full payment for the bill is not a "benefit" under the collateral-source rule." It is precisely because that difference is neither a benefit nor payable to the plaintiff that it cannot be introduced into evidence. Allowing the amount accepted as payment in full discloses, and is evidence of, collateral sources

that cannot be introduced under the statute Ohio Revised Code §2315.20, to wit: write-offs and, potentially, subrogated benefits. Allowing the amount accepted as payment in full will permit the jury to assume, by simple mathematic process, that the injured party has insurance or other benefits that would otherwise be inadmissible due to subrogation rights.

This Court concluded that a write-off is not a "benefit" under the collateral-source rule "[b]ecause no one pays the write-off." *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, ¶16. However, while this is true for purposes of Ohio Revised Code §2315.20, which allows introduction of certain benefits that are payable to the plaintiff, it is not a proper conclusion relative to the common law collateral source rule, which excludes evidence of collateral benefits and continues to be upheld in this and lower courts. Collateral sources need not be paid. Care of an injured spouse by uninjured spouse is a collateral source, even though it is not "paid" to the plaintiff. The fact that a service is provided gratuitously, in whole or in part, does not deprive the plaintiff of the right to recover the reasonable value of the service. *Klein v. Thompson*, 19 Ohio St. 569; *Hutchings v. Childress*, 119 Ohio St.3d 486, 2008-Ohio-4568. Likewise, a medical provider provides a collateral source when the provider writes off a portion of a medical bill and the amount accepted as full payment is less than the value of the services rendered. This Court held, in *Hutchings v. Childress*, 119 Ohio St.3d 486, 2008-Ohio-4568, that the appropriate measure of damages is the reasonable value of the care provided.

Further, courts must construe statutes to avoid unreasonable and absurd results. *State, ex rel. Cooper v. Savord* (1950), 153 Ohio St. 367, and it progeny. Allowing introduction of write-offs or the amount accepted as payment in full does not get the trier of fact any closer to determining the reasonable value of the services and can produce such unreasonable and absurd results.

The amount of write-offs can vary greatly for any number of reasons. For any given service, a medical provider may write-off differing amounts depending on the source of payment. Under Ohio Revised Code §1751.60, a provider who contracts with a health insuring corporation is required to accept, as payment in full, the amount paid by the health insuring corporation and any copayments and deductibles. Contracts between health insuring corporations and providers may vary from one company to the next. The amount of copayments and deductibles will vary from one policy to the next. The amount accepted as payment in full will vary depending upon how much of the patient's deductible has been met when the services is rendered. Indeed, the amount accepted as full payment for a particular service may be more at the beginning of treatment than at the end, as the patient's deductible is exhausted.

The Court cannot formulate a global rule, because there is no evidence from which the court can determine whether health insurance providers negotiate individual bills, individual procedures, or whether the amounts paid are based on "usual customary rates" or some other factor. There is nothing from which this or any other court can determine that the amount paid for a particular procedure for a particular patient bares any relation to its reasonable value. Further, amounts paid by Medicaid and Medicaid are not the result of negotiations between insurers and medical providers at all but rather are determined by statute and administrative rules. These amounts paid are not determined by the reasonable value of the services rendered but by other public policy considerations, including, but not limited to, state and federal budgets. Medical providers who accept payment from Medicaid are required to accept the amount paid as payment in full without regard to the actual value of the services rendered. Ohio Administrative Code §5101:3-1-17-2(C). Further, providers may write-off portions of their bills as a matter of charity. Indeed, when one considers the multiplicity of reasons that write-offs may occur, one

must inevitably conclude that these amounts are arbitrary and cannot stand as evidence in a court of law.

This leads to absurd results, in violation of public policy, and unequal protection of the law. Judge Kathleen Ann Sutula writes:

> If the court were to allow the introduction of write-offs into evidence, plaintiffs whose insurance companies are able to bargain for write-offs would be subject to smaller awards for the same injuries as plaintiffs who do not have insurance. In addition, tortfeasors and their insurance companies would end up paying more to plaintiffs who do not have insurance and less to plaintiffs who do have insurance, which directly conflicts with Ohio public policy. O.R.C. 2315.20 should be read to avoid such absurdities. Furthermore, the patently unequal awards that would be rendered to different plaintiffs with the same injuries could directly impact juries' calculations of those plaintiffs' non-economic damages. This would conflict with the original purpose behind the collateral-source rule, which was to prevent juries from giving unfair advantages to tortfeasors. (See *Robinson v. Bates* (2006), 112 Ohio St.3d 17, 21, citing *Pryor v. Webber* (1970), 23 Ohio St.2d 104, 108.)

Samano v. Suleiman (September 4, 2008), Cuyahoga County Court of Common Pleas Case No. CV-07-644144.

Indeed, this is the same conclusion reached by the *Robinson* Court of Appeals. "Under the public-policy purposes of the collateral-source rule, defendants should be liable for the full amount of damages caused by their wrongdoing, independent from the financial situation of their victims." *Robinson v. Bates*, 2005-Ohio-1879, 83. By admitting evidence of write-offs, "An insured person would then be seen as less injured than a non-insured. We think they bleed the same." *Id.*, 84. Such unequal treatment, based solely on the on the type, quality or lack of insurance on the part of the injured plaintiff, is a violation of Due Process and a denial of equal protection under the law.

Proposition of Law No. 4

The measure of damages for services rendered to an injured party is the reasonable value of those services. The purpose of Ohio Revised Code §2315.20 is to disclose

that the injured party has, or could have, received monetary compensation for those serves, not to diminish the value of those services.

Paragraph 1 of the syllabus in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, and paragraph 1 of the syllabus in *Wagner v. McDaniels* (1984), 9 Ohio St.3d 184, must be overturned as they relate to amounts paid. The proposition enunciated in *Wagner v. McDaniels*, that the amount paid for medical services is prima-facie evidence of the reasonable of the charges has no basis in case law or statute. In Ohio Revised Code §2317.421, the General Assembly created a rebuttable presumption that a "written bill or statement, or any relevant portion thereof, itemized by date, type of service rendered, and charge" is "prima-facie evidence of the reasonableness of any charges and fees stated therein." The General Assembly could have provided that the amount accepted as full payment is prima-facie evidence of the reasonableness of the charges in addition to, or instead of, the amount charged, but it did not. "In matters of construction, it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used." *Cleveland Elec. Illum. Co. v. Cleveland (1988)*, 37 Ohio.St.3d 50, 524 N.E.2d 441, syllabus 3. See also, *Cline v. Ohio Bur. of Motor Vehicles* (1991), 61 Ohio St.3d 93, *State, ex rel. General Elec. Supply Co., v. Jordano Elec. Co.* (1990), 53 Ohio St.3d 66, 71, 558 N.E.2d 1173, 1177; *State, ex rel. Sears, Roebuck & Co., v. Indus. Comm.* (1990), 52 Ohio St.3d 144, 148, 556 N.E.2d 467, 471; *Columbus-Suburban Coach Lines v. Pub. Util. Comm.* (1969), 20 Ohio St.2d 125, 127, 49 O.O.2d 445, 446, 254 N.E.2d 8, 9. This Court cannot impose upon the province of the legislature and create its own standard of prima-facie evidence, when the General Assembly has spoken.

Without such presumptive weight, the amount accepted as full payment is proof of nothing. Reductions and discounts of fees can occur for any number of reasons, many of which have nothing whatsoever to do with the reasonableness of the charges. The mere showing that the bill

has been reduced is not sufficient. The defense bears the burden to rebut the statutory presumption of reasonableness with evidence, which may come from cross-examination and/or from experts. Indeed, such evidence must almost certainly come from expert witnesses. This Court recognized, in *Wagner v. McDaniels* (1984), 9 Ohio St.3d 184, 186, that "contemporary medical billing practice supports their position, stating that 'the services of many doctors in major facilities are billed through their accounting departments, as was the case in the instant case, leaving the doctor unaware of the specific charges to the family.'"

An extreme example of how the amount accepted is not indicative of the reasonable value of the services can be found in the case of *Laughlin v. Mendez*, Columbiana County Common Pleas, Case No. 07 CV 409, where providers billed approximately 5.8 million dollars and accepted approximately $500,000 as payment in full. It is unreasonable and absurd to conclude that only 10% of the amount billed was reasonable. Allowing evidence of the amount accepted as full payment violates the collateral source rule defined in Ohio Revised Code §2315.20, gives weight to the evidence not found in Ohio Revised Code §2317.421, does not assist the trier of fact in determining the reasonable value of the services rendered, and can lead to unreasonable and absurd results.

It is well worth noting that this Court, in *Robinson*, invited the General Assembly to determine "whether plaintiffs should be allowed to seek recovery for medical expenses as they are originally billed or only for the amount negotiated and paid by insurance." *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, ¶19. Nearly three years have passed since the *Robinson* decision, and the General Assembly has taken no action on this invitation, nor has it taken action to make the amount accepted as full payment prima-facie evidence of the reasonable value of medical services. One can only conclude that the General Assembly is satisfied that the measure

of special damages in tort is the reasonable value of the services rendered and that the only prima-facie evidence of the reasonableness of a medical bill is "a written bill or statement, or any relevant portion thereof, itemized by date, type of service rendered, and charge."

Wherefore, *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, syllabus 1, and *Wagner v. McDaniels* (1984), 9 Ohio St.3d 184, syllabus 1, must be overturned as to the amount paid for services.

CONCLUSION

It is clear that Ohio Revised Code §2315.20 and this Court's decision in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362 create suspect classes of injured parties and tortfeasors. These classes are based upon arbitrary and unpredictable factors, such as contracts between insurers and medical providers to which the injured victim is not a party, the generosity of providers in voluntarily discounting their fees, and the charity of friends, family, and the community. These factors are all beyond the control of the parties in a tort action and should not play a role therein. For this reason and others enumerated hereinabove, this Honorable Court should declare Ohio Revised Code §2315.20 unconstitutional and overturn its decision in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362.

If the Court does not take this action, it must impose a strict interpretation of Ohio Revised Code §2315.20, limiting the introduction of evidence of collateral benefits to that expressed in the statute. That evidence is amount payable as benefits, as a result of the injury or loss that is the subject matter of the action, and which is not subject to subrogation. These amounts are benefits to which the injured party is entitled collect as payments as a matter of right pursuant to contract and statute. They are not amounts that are neither payable nor benefits.

Write-offs and the amount accepted as payment in full are evidence of collateral benefits which may or may not be subrogated. It is well settled that "No one should be permitted to do indirectly what he may not do directly." *State v. Childers* (1938), 133 Ohio St. 508. Where evidence of collateral benefits is introduced indirectly, the plaintiff is denied the opportunity to introduce evidence of amounts paid for those benefits as provided under the statute. This is grossly unfair and defeats the purpose of the statute.

A jury is not to consider a defendant's ability to pay compensatory damages. Neither should it consider the plaintiff's ability to obtain benefits, write-offs, and gratuitous services from sources other than the defendant. A person who causes harm should be required to pay the value of the harm done, which may be more or less than the actual cost incurred by the injured plaintiff.

This Honorable Court should affirm its holdings in *Klein v. Thompson*, *Pryor v. Webber*, and their progeny, and place all tortfeasors and injured parties on equal footing. The Court should declare that the measure of special damages in tort is the reasonable value of replaced property and the reasonable value of services required by the injured party, irrespective of whether or how those damages are ultimately paid.

Respectfully submitted,

NICHOLAS J. SCHEPIS (0001423)
6181 Mayfield Road, Suite 302
Mayfield Heights, OH 44124
Phone: (440) 442-9500
Fax: (440) 449-2515
Email: njschepis@hotmail.com
Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief of Amicus Curiae, Nicholas J. Schepis, in Support of Appellee, Richard Jaques was served on

Alan B. Dills #0016474
Counsel of Record
MARSHALL & MELHORN, LLC
4 Seagate, 8th Floor
Toledo, OH 43604-2638
Phone: (419) 249-7100
Fax: (419) 249-7151
Email: dills@marshall-melhorn.com

David L. Lester # 0021914
ULMER BERNE, LLP
1660 West 2nd Street, Suite 1100
Cleveland, OH 44113-1448
Phone: (216) 583-7040
Fax: (216) 583-7041
Email: dlester@ulmer.com
Counsel for Petitioner,
Patricia A. Manton

Michael D. Bell # 0071325
Counsel of Record
Russell Gerney # 0080186
Theodore A. Bowman #0009159
Kevin J. Boissoneault # 0040180
GALLON, TAKACS, BOISSONEAULT & SCHAFFER CO. L.P.A.
3516 Granite Circle
Toledo, OH 43617-1172
Phone: (419) 843-2001
Fax: (419) 843-6665
Email: piattys@gallonlaw.com
Counsel for Respondent
Richard Jaques

Anne Marie Sferra (0030855)
Bridget Purdue Riddell (0082502)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Tel: (614) 227-2300
Fax: (614) 227-2390
Email: asferra@bricker.com
Counsel for Amici Curiae,
Ohio Hospital Association,
Ohio State Medical Association,
and Ohio Osteopathic Association

Martin T. Galvin (0063624)
William A. Meadows (0037243)
Reminger Co., LPA
1400 Midland Building
101 Prospect Ave, West
Cleveland, OH 44115-1093
Phone: (216) 687-1311
Fax: (216) 687-1841
Email: mgalvina@reminper.com
Attorneys for Amicus Curiae,
The Academy of Medicine of Cleveland and Northern Ohio

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this 3rd day of December, 2009.

Nicholas J. Schepis

NICHOLAS J. SCHEPIS
Amicus Curiae

APPENDIX

Samano v. Suleiman (September 4, 2008), Cuyahoga County Court of Common Pleas Case No. CV-07-644144, Docket

Laughlin v. Mendez, Columbiana County Common Pleas, Case No. 07 CV 409

Print

DOCKET INFORMATION

Case Number: CV-07-644144

Case Title: LINDA SAMANO vs. HALIMAH A. SULEIMAN, ET AL

Image Viewer: AlternaTIFF

DOCKET INFORMATION

Date	Side	Type	Description	Image
05/26/2009	D2	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF SAMANO/ANGEL/ IN THE AMOUNT OF $30.54	
01/14/2009	D1	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF SULEIMAN/HALIMAH/A. IN THE AMOUNT OF $52.54	
12/09/2008	D3	$$	PAYMENT ON ACCOUNT MADE ON BEHALF OF ERIE INSURANCE COMPANY IN THE AMOUNT OF $20.52	
11/18/2008	N/A	CS	COURT COST ASSESSED LINDA SAMANO BILL AMOUNT 151.1 PAID AMOUNT 100 AMOUNT DUE 51.1 HALIMAH A. SULEIMAN BILL AMOUNT 52.54 PAID AMOUNT 0 AMOUNT DUE 52.54 ANGEL SAMANO BILL AMOUNT 30.54 PAID AMOUNT 0 AMOUNT DUE 30.54 ERIE INSURANCE COMPANY BILL AMOUNT 20.52 PAID AMOUNT 0 AMOUNT DUE 20.52	
10/17/2008	N/A	JE	STIPULATION FOR DISMISSAL AND JUDGMENT ENTRY ENTERED. FINAL. O.S.J. COURT COST ASSESSED AS EACH THEIR OWN. CLCAH 10/17/2008 NOTICE ISSUED	
09/25/2008	N/A	JE	THE MOTION OF DEFENDANT ANGEL SAMANO, JR. TO STAY MATTER PENDING RULING ON DECLARATORY ACTION, FILED ON 9/05/2008, IS DENIED AT THIS TIME. CLDLJ 09/25/2008 NOTICE ISSUED	
09/05/2008	D2	MO	D2 ANGEL SAMANO MOTION TO STAY MATTER PENDING RULING ON DECLARATORY ACTION..... LARRY C GREATHOUSE 0008513 09/25/2008 - DENIED	
09/04/2008	N/A	JE	PLAINTIFF LINDA SAMANO'S MOTION IN LIMINE TO EXCLUDE COLLATERAL SOURCE MATERIAL, FILED ON 7/17/2008 IN CASE CV-07-644144, IS GRANTED. OHIO REVISED CODE SECTION 2315.20 BARS EVIDENCE OF INSURANCE BENEFITS, INCLUDING WRITE-OFFS. WRITE-OFFS ARE CONTRACTUAL ADJUSTMENTS BETWEEN INSURANCE COMPANIES AND MEDICAL PROVIDERS. ALTHOUGH WRITE-OFFS ARE NOT PAID DIRECTLY FROM THE INSURANCE COMPANY TO THE MEDICAL PROVIDER IN THE SAME WAY THAT ALLOWED BENEFITS ARE PAID, THE REALITY IS THAT WRITE-OFFS ARE BARGAINED-FOR ADJUSTMENTS THAT ALLOW INDIRECT BENEFITS THROUGH A SERIES OF BUSINESS TRANSACTIONS. WHEN PLAINTIFFS PURCHASE INSURANCE, THEY PURCHASE BARGAINING POWER. THIS INCLUDES THE INSURANCE COMPANY'S ABILITY TO BARGAIN FOR WRITE-OFFS. BY CHOOSING INSURANCE COMPANIES AND PAYING PREMIUMS, PLAINTIFFS PURCHASE THE BENEFIT OF WRITE-OFFS. SINCE WRITE-OFFS AND DIRECT PAYMENTS SHARE THE SAME BENEFITS FOR PLAINTIFFS, WRITE-	

OFFS ARE PART OF THE INSURANCE BENEFITS EXCLUDED BY O.R.C. 2315.20. IF A PORTION OF ONE'S INSURANCE BENEFITS IS EXCLUDED FROM EVIDENCE, THEN THE WHOLE MUST BE EXCLUDED. WRITE-OFFS ARE SUBSETS OF THE TOTAL BENEFIT OF PAYING FOR INSURANCE, SO ANY AMOUNTS USED TO CALCULATE THE AMOUNTS ACTUALLY PAID ARE ALSO EXCLUDED. TO HOLD OTHERWISE WOULD BE TO LET INTO EVIDENCE EXACTLY WHAT THE LEGISLATURE SOUGHT TO PRECLUDE. IF THE COURT WERE TO ALLOW THE INTRODUCTION OF WRITE-OFFS INTO EVIDENCE, PLAINTIFFS WHOSE INSURANCE COMPANIES ARE ABLE TO BARGAIN FOR WRITE-OFFS WOULD BE SUBJECT TO SMALLER AWARDS FOR THE SAME INJURIES AS PLAINTIFFS WHO DO NOT HAVE INSURANCE. IN ADDITION, TORTFEASORS AND THEIR INSURANCE COMPANIES WOULD END UP PAYING MORE TO PLAINTIFFS WHO DO NOT HAVE INSURANCE AND LESS TO PLAINTIFFS WHO DO HAVE INSURANCE, WHICH DIRECTLY CONFLICTS WITH OHIO PUBLIC POLICY. O.R.C. 2315.20 SHOULD BE READ TO AVOID SUCH ABSURDITIES. FURTHERMORE, THE PATENTLY UNEQUAL AWARDS THAT WOULD BE RENDERED TO DIFFERENT PLAINTIFFS WITH THE SAME INJURIES COULD DIRECTLY IMPACT JURIES' CALCULATIONS OF THOSE PLAINTIFFS' NON-ECONOMIC DAMAGES. THIS WOULD CONFLICT WITH THE ORIGINAL PURPOSE BEHIND THE COLLATERAL-SOURCE RULE, WHICH WAS TO PREVENT JURIES FROM GIVING UNFAIR ADVANTAGES TO TORTFEASORS. (SEE ROBINSON V. BATES (2006), 112 OHIO ST.3D 17, 21, CITING PRYOR V. WEBBER (1970), 23 OHIO ST.2D 104, 108.) ANY DOUBTS REGARDING THE INTERPRETATION OF O.R.C. 2315.20 SHOULD BE RESOLVED IN FAVOR OF THE INJURED PARTY. WRITE-OFFS EXIST BECAUSE OF THE PREMIUMS PAID BY PLAINTIFFS, AND TORTFEASORS SHOULD NOT BENEFIT FROM WRITE-OFFS PAID BY PLAINTIFFS' PREMIUMS. ALTHOUGH THE SUPREME COURT'S OPINION IN ROBINSON V. BATES IS INSTRUCTIVE REGARDING THE COMMON LAW COLLATERAL-SOURCE RULE, THE COURT SPECIFICALLY REFUSED TO APPLY O.R.C. 2315.20. (SEE ROBINSON V. BATES (2006), 112 OHIO ST.3D 17, 20, FN.1.) THEREFORE, ROBINSON IS INAPPLICABLE IN THIS INSTANCE. CLDLJ 09/04/2008 NOTICE ISSUED

08/22/2008 D3 OT D3 ERIE INSURANCE COMPANY REPLY TO MOTION IN LIMINE. JOSEPH G RITZLER 0051934

08/13/2008 P1 OT P1 LINDA SAMANO REPLY TO DEFTS ERIE INSURANCE CO'S BRIEF IN OPPOSITION TO PLAINTIFFS MOTION IN LIMINE TO EXCLUDE COLLATERAL SOURCE MATERIAL. MICHAEL A SALTZER 0040284

08/11/2008 D3 BR D3 ERIE INSURANCE COMPANY BRIEF IN OPPOSITION TO PLTF'S MOTION IN LIMINE. JOSEPH G RITZLER 0051934

08/04/2008 P1 OT P1 LINDA SAMANO REPLY TO DEFENDANT HALIMAH SULEIMAN'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE COLLATERAL SOURCE MATERIAL....W.... MICHAEL A SALTZER 0040284

07/29/2008 P1 OT P1 LINDA SAMANO REPLY TO DEFT ANGEL SAMANO' JR'S BRIEF IN OPPOSITION TO PLTF'S MOTION IN LIMINE TO EXCLUDE COLLATERAL SOURCE MATERIAL. MICHAEL A SALTZER 0040284

07/28/2008 D1 BR D1 HALIMAH A. SULEIMAN BRIEF IN OPPOSITION TO PLTF'S MOTION IN LIMINE TO EXCLUDE COLLATERAL SOURCE MATERIAL.

		JENNIFER SARDINA CARLOZZI 0072608
07/23/2008 D2	BR	D2 ANGEL SAMANO BRIEF IN OPPOSITION TO PLTF. LINDA SAMANO'S MOTION IN LIMINE (COLLATERAL BENEFITS)..... LARRY C GREATHOUSE 0008513
07/17/2008 P1	MO	P1 LINDA SAMANO MOTION IN LIMNE TO EXCLUDE COLLATERAL SOURCE MATERIAL.....(W)..... MICHAEL A SALTZER 0040284 09/04/2008 - GRANTED
06/26/2008 N/A	JE	THE COURT NOTES THAT ON 6/17/2008, HALIMAH SULEIMAN FILED A NOTICE OF DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANT PROGRESSIVE DIRECT INSURANCE COMPANY IN CASE CV-07-642148. THEREFORE, HALIMAH SULEIMAN'S CLAIMS AGAINST DEFENDANT PROGRESSIVE DIRECT INSURANCE COMPANY ARE DISMISSED WITHOUT PREJUDICE AS OF 6/17/2008. DEFENDANT PROGRESSIVE DIRECT INSURANCE COMPANY'S CROSS-CLAIM FOR CONTRIBUTION, FILED ON 12/20/2007, IS MOOT. ALL OTHER CLAIMS REMAIN PENDING. PARTIAL. CLRDT 06/26/2008 NOTICE ISSUED
05/23/2008 D3	OT	SCOTT A. DREW, SERVED 5/5/08 PERS., SEE PRIMARY CASE # CV 642148
04/21/2008 D2	AN	D2 ANGEL SAMANO ANSWER OF DEFT TO CROSS CLAIM OF DEFT IN HER ANSWER TO THE SECOND AMENDED COMPLAINT. WITH JURY DEMAND LARRY C GREATHOUSE 0008513
04/17/2008 D1	AN	D1 HALIMAH A. SULEIMAN ANSWER TO CROSS-CLAIM OF ERIE INSURANCE COMPANY AND CROSS-CLAIMS AGAINST ANGEL SAMAMANO,JR. (WITH JURY DEMAND ENDORSED HEREON). JENNIFER SARDINA 0072608
04/11/2008 D3	OT	SUBPOENA FOR: SCOTT A. DREW, SERVED 4/1/08 RESID
04/09/2008 N/A	JE	HALIMAH SULEIMAN'S UNOPPOSED MOTION TO CONSOLIDATE PURSUANT TO CIV. R. 42, FILED ON 3/07/2008 IN CASE CV-07-642148, IS GRANTED. CASE CV-07-642148 IS CONSOLIDATED WITH CASE CV-07-644144. COUNSEL ARE TO NOTE THAT THE COURT IS ENTERING AN AMENDED TRIAL ORDER. COUNSEL ARE TO OBTAIN A COPY OF THE AMENDED TRIAL ORDER FROM THE CLERK'S OFFICE. THE FOLLOWING DATES, IN ADDITION TO THE DATES SET FORTH IN THE AMENDED TRIAL ORDER, APPLY: 1. ALL DISCOVERY TO BE COMPLETED BY 8/30/2008. 2. LINDA SAMANO TO SUBMIT ALL EXPERT REPORTS BY NOT LATER THAN 6/10/2008. 3. ERIE INSURANCE COMPANY TO SUBMIT ALL EXPERT REPORTS BY NOT LATER THAN 8/08/2008. 4. TRIAL SCHEDULED FOR 10/14/2008 AT 9:00 A.M. 5. AMENDED TRIAL ORDER ENTERED. O.S.J. CLMEF 04/09/2008 NOTICE ISSUED
04/08/2008 N/A	SC	TRIAL SET FOR 10/14/2008 AT 09:00 AM. (Notice Sent).
04/07/2008 N/A	JE	THE CAPTIONED CASE IS HEREBY TRANSFERRED TO THE DOCKET OF JUDGE KATHLEEN ANN SUTULA(304) FOR CONSOLIDATION WITH CASE NO. CV-07-642148. CLPAL 04/06/2008 NOTICE ISSUED
03/26/2008 D1	AN	D1 HALIMAH A. SULEIMAN ANSWER TO CROSS-CLAIM OF ERIE INSURANCE COMPANY. WITH JURY DEMAND JENNIFER SARDINA 0072608
03/24/2008 D1	AN	D1 HALIMAH A. SULEIMAN SEPERATE ANSWER TO THE 2ND

		AMENDED COMPLAINT. WITH JURY DEMAND JENNIFER SARDINA 0072608
03/21/2008 D2	AN	D2 ANGEL SAMANO ANSWER TO AMENDED CROSS-CLAIM OF DEFENDANT ERIE INSURANCE COMPANY. LARRY C GREATHOUSE 0008513
03/18/2008 P1	AC	P1 LINDA SAMANO SECOND AMENDED COMPLAINT IN FORCLOSURE ; PERSONAL INJURY, UNINSURED/UNDERINSURED MOTORIST. WITH JURY DEMAND MICHAEL A SALTZER 0040284
03/17/2008 D2	AN	D2 ANGEL SAMANO ANSWER. WITH JURY DEMAND LARRY C GREATHOUSE 0008513
03/17/2008 D3	AN	D3 ERIE INSURANCE COMPANY ANSWER AND CROSS CLAIMS OF ERIE INSURANCE CO TO PLTFS SECOND AMENDED COMPLAINT. WITH JURY DEMAND JOSEPH G RITZLER 0051934
03/14/2008 N/A	JE	STIPULATION FOR AMENDMENT OF THE COMPLAINT...OSJ....NOTICE ISSUED.
03/12/2008 D2	AN	D2 ANGEL SAMANO ANSWER TO CROSS-CLAIM..... WITH JURY DEMAND LARRY C GREATHOUSE 0008513
03/12/2008 D2	AN	D2 ANGEL SAMANO ANSWER TO CROSS-CLAIM OF DEFT. ERIE INSURANCE CO..... WITH JURY DEMAND LARRY C GREATHOUSE 0008513
03/10/2008 D1	MO	D1 HALIMAH A. SULEIMAN UNOPPOSED MOTION TO CONSOLIDATE (CASE 642148) PURSUANT TO CIV.R.42 DAVID J FAGNILLI 0032930 04/09/2008 - GRANTED
03/07/2008 N/A	JE	CMC HELD AND PARTIES APPEARED. AS THE PARTIES ADVISED THE COURT THAT A MOTION TO CONSOLIDATE MAY SHORTLY BE FILED, A STATUS CONFERENCE IS SCHEDULED FOR 4/24/08 AT 1:00 PM. PLAINTIFF TO INITIATE THE CONFERENCE CALL WITH ALL PARTIES AND THEN CONTACT THE COURT'S STAFF ATTORNEY, AMANDA PINNEY, AT 216-443-8674. CLTMP 03/07/2008 NOTICE ISSUED
03/07/2008 D1	MO	D1 HALIMAH A. SULEIMAN UNOPPOSED MOTION TO CONSOLIDATE PURSUANT TO CIV.R.42 DAVID J FAGNILLI 0032930 04/09/2008 - GRANTED
03/07/2008 N/A	SC	CMC BY PHONE SET FOR 04/24/2008 AT 01:00 PM. (Notice Sent).
03/06/2008 N/A	OT	STIPULATION AND ORDER FOR LEAVE TO AMEND THE COMPLAINT OF LINDA SAMANO.....W.....
03/06/2008 P1	OT	P1 LINDA SAMANO RESPONSE TO THE DEFT ERIE'S REQUEST FOR SPECIFIC DEMAND.....W..... MICHAEL A SALTZER 0040284
03/05/2008 N/A	JE	D2 ANGEL SAMANO MOTION FOR LEAVE TO FILE ANSWER INSTANTER..... LARRY C GREATHOUSE 0008513, FILED 02/14/2008, IS UNOPPOSED AND GRANTED. CLPAL 03/04/2008 NOTICE ISSUED
02/28/2008 D3	AN	D3 ERIE INSURANCE COMPANY ANSWER AND CROSS-CLAIM TO PLTFS. FIRST AMENDED COMPLAINT. WITH JURY DEMAND JOSEPH G RITZLER 0051934

02/28/2008 D3	RE	D3 ERIE INSURANCE COMPANY REQUEST FOR SPECIFIC AMT OF DAMAGES JOSEPH G RITZLER 0051934
02/14/2008 D2	AN	D2 ANGEL SAMANO ANSWER (JURY TRIAL DEMANDED) ..... LARRY C GREATHOUSE 0008513
02/14/2008 D2	MO	D2 ANGEL SAMANO MOTION FOR LEAVE TO FILE ANSWER INSTANTER..... LARRY C GREATHOUSE 0008513 03/05/2008 - UNOPPOSED AND GRANTED
02/14/2008 N/A	JE	DEFENDANT ERIE INSURANCE COMPANY ONLY GRANTED LEAVE TO PLEAD BY 3/7/08....OSJ...NOTICE ISSUED.
02/13/2008 D1	AN	D1 HALIMAH A. SULEIMAN SEPARATE ANSWER OF HALIMAH A SULEIMAN TO THE FIRST AMENDED COMPLAINT WITH CROSS-CLAIM AGAINST ANGEL SAMANO JR (WITH JURY DEMAND ENDORSED HEREON). DAVID J FAGNILLI 0032930
02/09/2008 N/A	SR	SCHEDULE ATTORNEY NOTICE. NOTICE GENERATED FOR SAMANO/ANGEL/ ON 02/09/2008 17:04:58
02/09/2008 N/A	SR	SCHEDULE ATTORNEY NOTICE. NOTICE GENERATED FOR RITZLER/JOSEPH/G ON 02/09/2008 17:04:58
02/09/2008 N/A	SR	SCHEDULE ATTORNEY NOTICE. NOTICE GENERATED FOR FAGNILLI/DAVID/J ON 02/09/2008 17:04:58
02/09/2008 N/A	SR	SCHEDULE ATTORNEY NOTICE. NOTICE GENERATED FOR SALTZER/MICHAEL/A ON 02/09/2008 17:04:58
02/09/2008 N/A	SC	CASE MGMNT CONFERENCE SET FOR 03/06/2008 AT 01:50 PM.
02/06/2008 D3	OT	D3 ERIE INSURANCE COMPANY STIPULATION FOR LEAVE TO PLEAD UNTIL MARCH 7 2008. JOSEPH G RITZLER 0051934
01/24/2008 D	JE	DEFT HALIMAH SULEIMAN FOR 30 DAYS OR UNTIL 02/14/08 IS GRANTED...NOTICE ISSUED
01/16/2008 D1	OT	D1 HALIMAH A. SULEIMAN STIPULATION FOR LEAVE TO PLEAD AND JOURNAL ENTRY..... DAVID J FAGNILLI 0032930
01/02/2008 D3	SR	CERTIFIED MAIL RECEIPT NO. 11266078 RETURNED BY U.S. MAIL DEPARTMENT 01/02/2008 ERIE INSURANCE COMPANY MAIL RECEIVED AT ADDRESS 12/28/2007 SIGNED BY OTHER.
01/02/2008 D1	SR	CERTIFIED MAIL RECEIPT NO. 11266080 RETURNED BY U.S. MAIL DEPARTMENT 12/31/2007 SULEIMAN/HALIMAH/A. MAIL RECEIVED AT ADDRESS 12/28/2007 SIGNED BY OTHER.
12/28/2007 D2	SR	CERTIFIED MAIL RECEIPT NO. 11266079 RETURNED BY U.S. MAIL DEPARTMENT 12/28/2007 SAMANO JR/ANGEL/ MAIL RECEIVED AT ADDRESS 12/27/2007 SIGNED BY OTHER.
12/26/2007 D1	SR	SUMS AMENDED COMPLNT(11266080) SENT BY CERTIFIED MAIL. TO: HALIMAH A. SULEIMAN 1485 ROBINWOOD LAKEWOOD, OH 44107-0000
12/26/2007 D2	SR	SUMS AMENDED COMPLNT(11266079) SENT BY CERTIFIED MAIL. TO: ANGEL SAMANO JR 3510 WEST 120TH ST CLEVELAND, OH 44111-0000

12/26/2007 D3	SR	SUMS AMENDED COMPLNT(11266078) SENT BY CERTIFIED MAIL. TO: ERIE INSURANCE COMPANY 100 ERIE INSURANCE PLACE ERIE, PA 16530-0000
12/21/2007 D1	CS	WRIT FEE
12/21/2007 D2	CS	WRIT FEE
12/21/2007 D3	CS	WRIT FEE
12/18/2007 D2	SR	CERTIFIED MAIL RECEIPT NO. 11217287 RETURNED BY U.S. MAIL DEPARTMENT 12/18/2007 SAMANO JR/ANGEL/ MAIL RECEIVED AT ADDRESS 12/17/2007 SIGNED BY OTHER.
12/18/2007 D1	SR	CERTIFIED MAIL RECEIPT NO. 11217286 RETURNED BY U.S. MAIL DEPARTMENT 12/17/2007 SULEIMAN/HALIMAH/A. MAIL RECEIVED AT ADDRESS 12/15/2007 SIGNED BY OTHER.
12/17/2007 D1	SR	INSTRUCTION FOR SERVICE ON AMENDED COMPLAINT SENT BY CERTIFIED MAIL TO HALIMAH A.SULEIMAN,ANGEL SAMANO JR.AND ERIE INSURANCE CO. FILED.
12/17/2007 P1	CO	P1 LINDA SAMANO FIRST AMENDED COMPLAINT. WITH JURY DEMAND MICHAEL A SALTZER 0040284
12/14/2007 D2	SR	SUMS COMPLAINT(11217287) SENT BY CERTIFIED MAIL. TO: ANGEL SAMANO JR 3510 WEST 120TH ST CLEVELAND, OH 44111-0000
12/14/2007 D1	SR	SUMS COMPLAINT(11217286) SENT BY CERTIFIED MAIL. TO: HALIMAH A. SULEIMAN 1485 ROBINWOOD LAKEWOOD, OH 44107-0000
12/12/2007 D2	CS	WRIT FEE
12/12/2007 D1	CS	WRIT FEE
12/10/2007 N/A	SF	JUDGE HOLLIE L GALLAGHER ASSIGNED (RANDOM)
12/10/2007 P1	SF	LEGAL RESEARCH
12/10/2007 P1	SF	LEGAL NEWS
12/10/2007 P1	SF	LEGAL AID
12/10/2007 P1	SF	COMPUTER FEE
12/10/2007 P1	SF	CLERK'S FEE
12/10/2007 P1	SF	DEPOSIT AMOUNT PAID DENNIS SEAMAN & ASSOCIATES CO., L.P.A.
12/10/2007 N/A	SF	CASE FILED
12/10/2007 P1	SR	COMPLAINT WITH JURY DEMAND FILED. SERVICE REQUEST - SUMMONS BY CERTIFIED MAIL TO THE DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO
CASE NO. 07 CV 409

GUY M. LAUGHLIN
PLAINTIFF

VS.

ZORAIDA MENDEZ, M.D., ET AL
DEFENDANT(S)

JUDGE DAVID TOBIN

JUDGMENT ENTRY

Before the Court is the plaintiff's motion for an order in limine barring evidence that his providers of medical care accepted less than the full amount of their billings for his medical care. Responses were filed by all defendants and sur responses by both the plaintiff and the defendants was filed.

For the reasons stated below the plaintiff's motion is granted.

The parties have framed the issue before the court in terms of Robinson v. Bates issue and R. C. 2323.44.

Clearly Robinson v. Bates 112 Ohio St. 3d 17, 2006-Ohio-6362 allows the plaintiff to introduce original medical bills to prove the reasonable and necessary medical expenses. The decision allows defendant to introduce evidence of "actual payments in rebuttal despite the collateral source rule. The Supreme Court also recognized that in addressing public policy issues that the Court was not going to create separate categories of plaintiffs based on individual insurance coverage and declined to adopt a categorical rule It recognized the realities of insurance and reimbursement systems and that the reasonable cost of medical expenses is not necessarily the amount of the original bill or the amount actually paid. In doing so the court obviously recognized that reimbursement in each individual case might be different.

The Supreme Court clearly stated that write off amounts are not benefits to a plaintiff and therefore the collateral source rule does not apply. The Court knew that the general assembly had just enacted R.C. 2315.20. This court can assumes that the Supreme Court was aware of R.C. 2323.41. There certainly is an argument that Robinson survives the enactment of 2315.20. There is also an argument that Robinson would affect 2323.41 in the same way that it would affect 2315.20.

Regardless, the issue in this case is one of relevancy and whether even if it is relevant whether it should be denied admission because its probative value is outweighed by its prejudicial effect.

In Robinson the Court was dealing with a case in which the difference between the billed amount and the actual paid amount was only $600.00. In the instant case the difference is approximately 4.5 million dollars. The providers accepted approximately $.10 on the dollar of the amounts actually billed.

Let us be realistic. The plaintiff wants to introduce the original bills to show the extent of his injuries, to show reasonable necessary medical expenses, and to inflate damages even if he is not responsible or does not have to pay for amounts not paid in by his insurance. Robinson allows the defendant to introduce the amount actually paid solely on the question of whether the medical expenses were reasonable or not. But of course the defendant really wants to introduce that amount to show that there is insurance and that this insurance paid part of the plaintiff's bills.

That said, it is hard for this Court to believe that the defendants here are going to produce a medical provider who will testify that of the 5.8 million dollar bill only approximately $500,000.00 was really reasonable. Such testimony would be incredible

clearly there are reasons other than what the value of the services is that reduced the payments. If such evidence would be admitted, the court would be hard pressed not to allow the plaintiff to bring in someone from the insurance company to show how the bill was negotiated down or an expert to talk about reimbursement between insurance companies and providers'. All this would lead to collateral issues not relevant to the issue of reasonable medical expenses.

The defendant even without the amount paid evidence, can bring an expert in to testify that the 5.8 million dollars was unreasonable and opine on what is reasonable.

To allow the amount paid to be introduced, certainly is not probative of the issue of reasonable medical expenses and is unduly prejudicial, in this case.

For these reasons the plaintiff's motion is granted. The defendants will not be permitted to introduce or mention any evidence of the actual amount accepted by plaintiff's health care providers for payment of expenses incurred. Plaintiff will be permitted to introduce the billings as allowed by R. C. 2317.421. Defendant will certainly be entitled to offer testimony to rebut the reasonableness and necessary amount of this bill without reference to any amounts that were actually paid.

DAVID TOBIN, JUDGE

Dated: August 18th, 2009

cc: David Pontius
John Zoller
Dirk E. Riemenschneider
Thomas Treadon
Stacy Ragon