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IN THE SUPREME COURT OF OHIO

Richard Jaques,	)	Case No. 2009-0820
	)	
Appellee,	)	On Appeal from the Lucas County Court
	)	of Appeals, Sixth Appellate District,
v.	)	Court of Appeals Case No. L-08-1096
	)	
Patricia A. Manton,	)	
	)	
Appellant.	)	

MERIT BRIEF OF APPELLANT PATRICIA A. MANTON

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TABLE OF CONTENTS

Supp. Page

TABLE OF AUTHORITIES iii

STATEMENT OF FACTS 1

ARGUMENT 3

Proposition of Law No. 1:

Because no one pays the difference between amounts originally billed and amounts accepted as full payment, those amounts are not "benefits" under the collateral source rule. Hence, evidence of such write-offs is not precluded by R.C. 2315.20, and such evidence is admissible on the issue of reasonableness and necessity of charges for medical treatment and hospital care.

Proposition of Law No. 2:

Even if the court of appeals is correct in ignoring *Robinson*, amounts written off are still entirely admissible under R.C. 2315.20 because no contractual right of subrogation can exist for amounts that have never been paid.

CONCLUSION 14

PROOF OF SERVICE 15

APPENDIX APPENDIX PAGE

NOTICE OF APPEAL TO THE SUPREME COURT (5-4-09) 1

DECISION AND JUDGMENT OF THE SIXTH DISTRICT COURT OF APPEALS, LUCAS COUNTY (3-20-09) 4

ORDER OF LUCAS COUNTY COMMON PLEAS COURT (2-14-08) 8

PARTIAL TRANSCRIPT OF TRIAL PROCEEDINGS OF LUCAS COUNTY COMMON PLEAS COURT (2-21-08) 9

ORDER OF LUCAS COUNTY COMMON PLEAS COURT (3-20-08) 33

STATUTES:

OHIO REVISED CODE SECTION 1751.60.....35

OHIO REVISED CODE SECTION 2305.27 (Since Repealed).....37

OHIO REVISED CODE SECTION 2315.20 38

OHIO REVISED CODE SECTION 2317.421 40

OHIO REVISED CODE SECTION 2323.41.....41

OHIO REVISED CODE SECTION 2744.05.....42

TABLE OF AUTHORITIES

Page

Cases

Cooperative Leasing, Inc. v. Johnson (Fla. App.2004), 872 So.2d 956, 958 ..... 4, 6, 9, 12

Dvet v. McKinley (2003), 139 Idaho 526, 529, 81 P.3d 1236 6

Hanif v. House Auth. Of Yolo Cty. (1988), 200 Cal. App.3d 635, 640,
246 Cal. Rptr.192 6

Holeton v. Crouse Cartage Co. (2001), 92 Ohio St.3d 115, 121, 2001-Ohio-109 11

Koffman v. Leichtfuss (2001), 246 Wis.2d 31, 630 N.W.2d 201, 217-218
(Sykes, J., dissenting) 4

Michigan Millers Mut. Ins. Co. v. Christian (2003), 153 Ohio App.3d 299,
794 N.E. 2d 68, 2003-Ohio-2455 13

Moorhead v. Crozer Chester Medical Center (2001), 564 Pa.156, 765 A.2d 86 ..... 4, 5, 6

Ohio Cas. Ins. Co. v. Baker (2d Dist.1945), 44 Ohio L. Abs. 334, 64 N.E.2d 850 13

Pryor v. Weber (1970), 23 Ohio St.2d 104, 263 N.E.2d 235 (syllabus 1) 4, 10, 11

Robinson v. Bates (2006), 112 Ohio St.3d 17, 2006 Ohio 6362,
857 N.E.2d 1195 ..... 1-3, 5-9, 13, 14

Sorrell v. Thevenir (1994), 69 Ohio St.3d 415, 420-421, 633 N.E.2d 509 11

Stanley v. Walker (Ind. 2009), 906 N.E.2d 852 8

State ex rel. Ohio Academy of Trial Lawyers v. Sheward (1999),
86 Ohio St.3d 451, 715 N.E.2d 1062 11

Travelers Indemnity Company v. Brooks (1977), 60 Ohio App.2d 37,
395 N.E.2d 494 13

Wagner v. McDaniels (1984), 9 Ohio St.3d 184, 9 OBR 469, 459 N.E.2d 561,
(followed) 5

Wentling v. Med. Anesthesia Servs., P.A. (1985), 237 Kan. 503, 515, 701 P.2d 939, quoting 3 Minzer, Nates, Kimball, Axelrod & Goldstein, Damages in Tort Actions (1984) 17-5, Section 17.00 5

Rules

1(B)(2) of the Supreme Court Rules 7

Statutes

R.C. 1751.60 ..... 4, 7

R.C. 2305.27 (Since Repealed) 10

R.C. 2315.20 ..... 1-3, 6, 7, 9-11, 13, 14

R.C. 2317.45 11

R.C. 2323.41 11

R.C. 2744.05 11

Senate Bills

S.B. 80 Section 3(A)(7)(b) 6

STATEMENT OF FACTS

This case arises from an automobile accident that occurred on December 20, 2005, when Defendant/Appellant Patricia Manton failed to yield at a stop sign, and collided with a vehicle occupied by Plaintiff/Appellee Richard Jaques. Liability was admitted, and the sole issues at trial were the proximate cause of any injury and the amount of damages.

With respect to damages, Plaintiff offered medical bills from various providers from December 28, 2005 through February 28, 2007. The charges billed by those providers totaled $21,874.80, but the amount that these medical providers accepted as full payment from Medical Mutual of Ohio totaled a mere $7,483.91. Thus, the providers accepted about one-third of the billed amounts as payment in full. Plaintiff took the position that he was entitled to conceal this large write-off from the jury, and to pretend that his medical expenses were really $21,874.80 instead of the $7483.91 that the providers accepted as full payment. And Plaintiff took this position even though this Court held unequivocally in *Robinson v. Bates (*2006), 112 Ohio St. 3d 17, 2006 Ohio 6362, 857 N.E. 2d 1195, that amounts written off by medical providers are not "collateral benefits," and that the collateral source rule does not preclude admission into evidence of the reduced amount that a provider accepts as full payment.

In furtherance of his objective to overstate the true amount of his medical expenses, Plaintiff filed a Motion In Limine, arguing that Ohio's collateral source rule precludes evidence of amounts written off by Plaintiff's healthcare providers. Plaintiff contended that this Court's decision in *Robinson* did not apply to claims arising after the effective date of R.C. 2315.20 (April 7, 2005), because R.C. 2315.20 precludes evidence of collateral benefits where the source of those benefits has a contractual right of subrogation and Plaintiff's insurer had such a right. In

order to make this argument, Plaintiff had to ignore the principal holding of *Robinson* that amounts written-off by medical providers are not collateral benefits to begin with.

In response, Defendant pointed out that *Robinson* squarely addressed the collateral benefits issue, and permits introductions of both the amounts billed by Plaintiff's medical providers and the amount accepted as full payment. Defendant further pointed out that nothing in R.C. 2315.20 changes this court's fundamental holding in *Robinson* that amounts written off are simply not collateral benefits. Hence, *Robinson* remains good law even under R.C. 2315.20.

The Trial Court granted Plaintiff's Motion In Limine on February 17, 2008, disregarding this Court's decision in *Robinson*, and the matter proceeded to trial on February 20, 2008. During trial, the Trial Court reaffirmed its ruling on Plaintiff's Motion In Limine, and precluded Defendant's proffer of evidence of the significant write-off of Plaintiff's medical bills. The Court permitted the jury to consider only the gross amount of Plaintiff's medical bills, even though this was a make-believe amount, two-thirds of which nobody ever paid. On February 21, 2008, the jury returned its verdict for Plaintiff in the amount of $25,000.00.

On March 10, 2008, Defendant filed a Motion For New Trial to allow evidence on the reasonableness of Plaintiff's medical expenses in accord with *Robinson v. Bates*. The Court denied that Motion on March 19, 2009.

Defendant appealed these evidentiary rulings to the Sixth District Court of Appeals. Without any meaningful analysis, the Court of Appeals affirmed the Trial Court's ruling. The Sixth District held simply that because Plaintiff's medical insurer had a general contractual right of subrogation, and because the case arose after the enactment of R.C. 2315.20, the Trial Court's refusal to allow Defendant to present evidence of the write-offs was proper.

In so holding, the Sixth District disregarded *Robinson* by limiting the decision to cases arising before the effective date of the new statute, R.C. 2315.20, and reduced its inquiry on this complex issue to a single question: Does a contractual right of subrogation exist? Because the health insurer's agreement in this case contained such a provision, the Court simply cited the new statute as a basis to exclude all amounts except the original bill. Thus, the lower courts' rulings prevented Defendant from presenting evidence that is both proper and admissible, as this Court squarely held in *Robinson.*

ARGUMENT

Proposition of Law No. 1

> **Because no one pays the difference between amounts originally billed and amounts accepted as full payment, those amounts are not "benefits" under the collateral source rule. Hence, evidence of such write-offs is not precluded by R.C. 2315.20, and such evidence is admissible on the issue of reasonableness and necessity of charges for medical treatment and hospital care.**

The Trial Court and the Appellate Court below improperly limited the holding of this Court in *Robinson v. Bates* to claims that arose before the effective date of R.C. 2315.20. This case provides an opportunity for this Court to clarify the law on this important evidentiary issue, which is currently vexing courts and litigants throughout this state. The issue is whether, in a personal injury case, both the amounts billed and the amounts accepted as full payment by medical providers are admissible evidence as to the plaintiff's damages.

A. The Purpose of Tort Damages is to Make the Plaintiff Whole, Not to Provide a Windfall

The starting point for any analysis of tort damages is the fundamental principle that "the measure of damages is that which will compensate and make the plaintiff whole." *Pryor v. Weber* (1970), 23 Ohio St.2d 104, 263 N.E. 2d 235 (Syllabus 1). Allowing a plaintiff to recover the amount of "write-offs," *i.e.,* amounts deducted from the initial bills of medical care providers and never actually paid by anybody, violates this fundamental principle without any valid reason for doing so. See, for example, *Moorhead v. Crozer Chester Medical Center* (2001), 564 Pa. 156, 765 A.2d 786, holding that awarding a plaintiff the difference between the amount billed by the hospital and the amount that the hospital accepted as payment in full "will provide [plaintiff] with a windfall that would violate fundamental tenets of just compensation"; and *Cooperative Leasing, Inc. v. Johnson* (Fla. App. 2004), 872 So.2d 956, 958, holding that the plaintiff "was not entitled to recover for medical expenses beyond those paid by Medicare because she never had any liability for those expenses and would have been made whole by an award limited to the amount that Medicare paid to her medical providers." *Accord, Koffman v. Leichtfuss* (2001), 246 Wis.2d 31, 630 N.W.2d 201, 217-218 (Sykes, J., dissenting), stating that it is "inconsistent with the 'make whole' function of compensatory damages to enrich a plaintiff by measuring medical expense damages by reference to their highest retail value rather than what was actually incurred."

Under R.C. 1751.60, a medical provider who has a contract with a health insurer must accept the insurer's payment as payment in full for the billed services. The provider cannot look to the patient to pay the insurer's write-off. The statute provides in pertinent part:

> (A) Except as provided for in divisions (E) and (F) of this section, every provider or health care facility that contracts with a health insuring corporation to provide health care services to the health

> insuring corporation's enrollees or subscribers shall seek compensation for covered services solely from the health insuring corporation and not, under any circumstances, from the enrollees or subscribers, except for approved copayments and deductibles.

Thus, allowing Plaintiff to recover as purported "damages" an amount that neither he nor his insurer will ever pay to anyone is to allow an impermissible windfall.

B. <u>This Court Held in *Robinson* that Write-Offs Are Admissible</u>

In *Robinson v. Bates* (2006), 112 Ohio St. 3d 17, 2006 Ohio 6362, 857 N.E. 2d 1195, this Court squarely refused to approve any such result. This Court held in its syllabus:

> 1. Both an original medical bill rendered and the amount accepted as full payment are admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care. (*Wagner v. McDaniels* (1984), 9 Ohio St.3d 184, 9 OBR 469, 459 N.E.2d 561, followed.)
>
> 2. 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.

This Court further explained in *Robinson* at ¶16 that the collateral source rule does not apply to written-off expenses:

> The collateral-source rule does not apply to write-offs of expenses that are never paid. The written-off amount of a medical bill differs from the receipt of compensation or services addressed in *Pryor*. The collateral-source rule excludes only "'evidence of benefits *paid* by a collateral source.'" (Emphasis added.) *Wentling v. Med. Anesthesia Servs., P.A.* (1985), 237 Kan. 503, 515, 701 P.2d 939, quoting 3 Minzer, Nates, Kimball, Axelrod & Goldstein, Damages in Tort Actions (1984) 17-5, Section 17.00. Because no one pays the write-off, it cannot possibly constitute payment of any benefit from a collateral source. See *Moorhead v. Crozer Chester Med. Ctr.* (2001), 564 Pa. 156, 165, 765 A.2d 786 (collateral-source rule does not apply to amounts written off by the insurer since those amounts are never paid by any collateral source). Because no one pays the negotiated reduction, admitting evidence of write-offs does not violate the purpose behind the collateral-source rule. The tortfeasor does not obtain a credit because of payments made by a third party on behalf of the plaintiff.

In light of this Court's clear holding in *Robinson,* one might be tempted to ask the lower courts in this case, with due deference, "what is it about the Supreme Court's holding that 'the collateral-source rule does not apply to write-offs of expenses that are never paid' that you don't understand?"

In reaching its decision in *Robinson*, this Court examined cases from Idaho, California, Florida and Pennsylvania holding that the amount written off by medical providers is neither a "collateral source" nor a "benefit received," and that evidence of such write-offs is admissible. *See, Moorhead v. Crozer Chester Med. Ctr.* (2001), 564 Pa. 156, 165, 765 A.2d 786; *Hanif v. House Auth. Of Yolo Cty.* (1988), 200 Cal. App. 3d 635, 640, 246 Cal. Rptr. 192; *Dvet v. McKinley* (2003), 139 Idaho 526, 529, 81 P.3d 1236; *Coop. Leasing v. Johnson* (Fla.App.2004), 872 So.2d 956, 960. Consistent with these holdings, both Florida and Idaho have enacted statutes that limit or abolish the collateral source rule, joining 19 other states that have modified or abolished the collateral source rule. S.B. 80 Section 3(A)(7)(b).

Through that analysis, this Court reasoned that the new statute likewise was intended to limit the scope and effect of the collateral source rule, and its decision is entirely consistent with decisions interpreting similar legislation in other jurisdictions. Accordingly, it is clear from the reasoning of this Court, its analysis of R.C. 2315.20, and the General Assembly's opinions cited by the Court with regard to S.B. 80 that both the General Assembly and the Supreme Court of Ohio are of one mind: R.C. 2315.20 should not be interpreted to prohibit the introduction of evidence of illusory "charges" that were never paid, and will never be paid.

The Sixth District in this case disregarded *Robinson* by limiting the decision to cases arising before the effective date of the new statute, R.C. 2315.20. Seemingly free from this Court's holdings, the Sixth District then reduced its inquiry on this complex issue to a single

question: Does a contractual right of subrogation exist? Finding that there was a subrogated interest to the amounts paid, the Court simply cited the new statute as a basis to exclude all amounts except the original bill.

This analysis is wrong for at least three reasons. First, nothing in *Robinson* limits the case to claims arising before the effective date of the statute. It would make no practical sense for this Court to issue an important decision destined to become obsolete within a few months. This Court's syllabus in *Robinson* directly targets the admission of this evidence and is nowhere limited to cases arising before the statute. This Court's syllabus is controlling law on these issues and no authority exists to support the notion that a footnoted reference to the effective date of a statute construed in the body of a Court's opinion somehow vitiates the Court's syllabus. In fact, if there is any "disharmony between the syllabus of an opinion and its text or footnotes, the syllabus controls." See Rule 1(B)(2) of the Supreme Court Rules for the Reporting of Opinions. Moreover, the enactment of R.C. 2315.20 did not change – indeed the statute reinforces – the fundamental concept that the collateral source rule applies only to amounts "payable as a benefit."

Second, the Appellate Court ruling below suggests that this Court in *Robinson* either did not construe the statute or that its opinion would have been different had the statute been in effect when the case was decided. In fact, this Court construed both the new statute and its legislative history, including the General Assembly's express findings that "21 states have modified or abolished the collateral source rule." *Robinson*, at paragraph 14.

Third, and perhaps most important, the Sixth District's decision fails to heed the fundamental point of *Robinson*, which is that write-offs of medical bills are not collateral

benefits to begin with, and that therefore the collateral source rule does not preclude evidence of such write-offs.

In the recent case of *Stanley v. Walker* (Ind. 2009), 906 N.E.2d 852, the Indiana Supreme Court construed Indiana's collateral benefit statute as applied to facts almost identical to those of this case. In *Stanley*, both the Trial Court and the Court of Appeals held that it would have violated Indiana's "collateral source" statute for the defendant to present evidence that the plaintiff's medical providers had accepted as full payment an amount $4,750.00 less than the amount originally billed. The Indiana Supreme Court addressed the question of how to determine the reasonable value of medical services, and reviewed decisions from several other jurisdictions, including this Court's decision in *Robinson v. Bates*. In a well-reasoned decision, the Indiana Supreme Court held that the reasoning and rationale that this Court espoused in *Robinson v. Bates* is the fairest approach, and that the collateral source rule does not bar evidence of discounted amounts in order to determine the reasonable value of medical services. The *Stanley* Court declared (906 N.E.2d at 858):

> The reasonable value of medical services is the measure used to determine damages to an injured party in a personal injury matter. This value is not exclusively based on the actual amount paid or the amount originally billed, though these figures certainly may constitute evidence as to the reasonable value of medical services. A defendant is liable for the reasonable value of the services. We find this to be the fairest approach; to do otherwise would create separate categories of plaintiffs based on the method used to finance medical expenses. See *Robinson, 857 N.E.2d at 1200* (discussing how its rule avoided the creation of separate categories of plaintiffs based on individual insurance coverage).

The same principles and conclusion pertain here.

The amount of any medical bill is subject to reduction, compromise or negotiation, depending upon circumstances. Introduction of the fact that the provider accepted a reduced

amount on the original bill is direct evidence of the reasonableness of the original charge, regardless of the source of payment, and is a valid challenge to the reasonableness that is at issue. The jury need never know who paid the bill. But they certainly ought to know that the plaintiff's medical providers accepted $7,483.91 as full payment of bills totaling $21,874.80 (as occurred here).

At trial in this case, Defendant sought to admit the original amount and the amount the provider in fact accepted to rebut the reasonableness of the bills submitted. The Trial Court was wrong to exclude that evidence, and was wrong to deny Defendant's Motion For New Trial when given a chance to correct its error. Likewise, the Sixth District erred in applying R.C. 2315.20 to bar such evidence, and by ignoring this Court's ruling in *Robinson v. Bates* that written-off amounts are simply not collateral benefits to which the collateral source even applies.

C. R.C. 2315.20 Does Not Affect the *Robinson* Rule of Admissibility of Write-Offs

The accident at issue in *Robinson* took place in 2001, and therefore this Court observed in footnote 1 of the decision that R.C. 2315.20 did not apply to the case because the statute took effect after the accident. The footnote states:

> We note that, effective April 7, 2005, the General Assembly passed R.C. 2315.20, a statute titled "Introduction of collateral benefits in tort actions." The purpose of this statute was to set forth Ohio's statement of law on the collateral-source rule. This new collateral-benefits statute does not apply in this case, however, because it became effective after the cause of action accrued and after the complaint was filed.

After *Robinson*, plaintiffs throughout Ohio have seized upon this innocuous footnote, which simply observes that a then-recently enacted statute does not apply to the case, in an attempt to evade this Court's holding *Robinson*. But nothing in R.C. 2315.20 changes the result

in *Robinson*. Indeed, these plaintiffs are missing the point of the new statute, which is to **allow** evidence of collateral benefits, not to exclude such evidence. The statute provides:

> (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.

Since written-off amounts are not "collateral benefits," the exception to R.C. 2315.20 for "collateral benefits" for which there is a right of subrogation cannot possibly preclude evidence of such write-offs. And this is just as true after the new statute took effect as it was before it took effect.

Moreover, this new statute is entirely consistent with the General Assembly's clear message that Ohio public policy is to limit, not expand, the scope of the collateral source rule. Over the past thirty years, the Ohio General Assembly has repeatedly declared, in statute after statute, that the collateral source rule is at odds with the public policy of this state. Hence, for the Ohio courts now to expand the scope of the collateral source rule so as to allow an injured plaintiff to recover not only the amount that was actually paid by a third party for a plaintiff's medical expense, but also the amount that was "written off" and never paid or incurred by a third party (let alone the plaintiff), would be contrary to public policy.

Thus, in 1975 – just five years after this Court recognized the collateral source rule in *Pryor v. Weber* (1970), 23 Ohio St.2d 104, 263 N.E.2d 235 – the General Assembly enacted R.C. 2305.27, which partially abrogated the collateral source rule in medical malpractice cases. In

1986, the General Assembly enacted R.C. 2744.05, which eliminated the collateral source rule in suits against political subdivisions. In 1987, the General Assembly enacted R.C. 2317.45, a principal purpose of which was to "prevent double recoveries in tort actions" and "to limit the collateral source rule adopted in *Pryor v. Weber* (1970)." *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 420-421, 633 N.E.2d 509. When a majority of this Court held (in *Sorrell*) that R.C. 2317.45 violated certain provisions of the Ohio Constitution, the General Assembly, in 1996, enacted an amended version of that statute, again with the specific intent to "[a]brogate the common law collateral source rule as adopted * * * in *Pryor*." See Sections 5(I)(1)(a) and (b), 146 Ohio Laws, Part II, 4024.

Although amended R.C. 2317.45 was also held to be unconstitutional (*State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 715 N.E.2d 1062), the General Assembly, in 2003, enacted R.C. 2323.41, which allows a medical malpractice defendant to introduce evidence of collateral benefits payable to the plaintiff, such as insurance, unless the source of the collateral benefits has a right of subrogation. Two years later, in 2005, the General Assembly enacted R.C. 2315.20 – the statute at issue here, which allows the defendant in any tort action to introduce evidence of collateral benefits payable to the plaintiff, subject to certain exceptions.

The public policy inherent (and clearly stated) in all of these statutes – that the collateral source rule should be abrogated, or at least limited – is in no way altered by the fact that this Court held the two versions of R.C. 2317.45 to be unconstitutional. In *Holeton v. Crouse Cartage Co.* (2001), 92 Ohio St.3d 115, 121, 2001-Ohio-109, this Court specifically stated that, in "dealing with the constitutionality of various collateral benefits offset statutes * * *, this Court has recognized that **the state has a legitimate interest in preventing double recoveries.**"

Moreover, in those constitutionality cases, this Court acknowledged that such statutes do not violate due process if they are limited to situations in which "the loss for which the collateral benefits compensates is **actually included in the award.**" (*Id.* at 12) If, however, a statute operates "to reduce a plaintiff's tort recovery **irrespective** of whether a double recovery has actually occurred," the statute is unconstitutional. (*Ibid.*)

Given this legislative history, it can hardly be said that an expansion of the scope of the collateral source rule (which is what the Sixth District's decision does), so as to allow an injured plaintiff to be paid money for amounts that were "written off" by medical service providers and never paid or incurred by the plaintiff (or his insurer), would further the public policy of this state. To the contrary, the adoption of a rule **precluding** such recovery would be fully consistent with public policy.

See, in this regard, *Cooperative Leasing, Inc. v. Johnson* (Fla. App. 2004), 872 So.2d 956, 959, holding that limiting compensatory damages to the amount actually paid by the plaintiff's insurer would be "in accord with the policy expressed by the [Florida] legislature" in a statute enacted in 1997 that "abrogated the common law collateral source rule and replaced it with a statutory provision that allows certain payments from collateral sources to be set off from a plaintiff's recovery." The Florida Court concluded that its holding "allows an injured party to receive compensation for medical expenses for which [the injured party has] become liable, but does not permit the plaintiff to receive a windfall by recovering 'phantom damages.'"

To allow plaintiffs to recover such "phantom damages" can only increase the cost of liability insurance – unjustifiably – for all Ohioans. Someone will have to pay for such recoveries. Inevitably, that cost will be borne by defendants' liability insurers and then by the millions of Ohioans who buy such insurance. And all of those additional costs will be incurred

by the citizenry simply to allow injured plaintiffs to receive windfalls through the recovery of illusory "charges" that neither they nor their health insurers ever had to pay. This makes no sense from the standpoint of either logic or public policy.

Proposition of Law No. 2

> **Even if the court of appeals is correct in ignoring *Robinson*, amounts written off are still entirely admissible under R.C. 2315.20 because no contractual right of subrogation can exist for amounts that have never been paid.**

As the Appellate Court noted, R.C. 2315.20 precludes a defendant from introducing evidence of "any amount payable as benefit to the plaintiff" where the source of that benefit has a contractual right of subrogation. See, R.C. 2315.20. Simply put, that statute precludes evidence of collateral benefits payable to the plaintiff that are subject to a contractual right of subrogation. But no right of subrogation attaches to an amount that has never been paid by anyone. Subrogation is the right of an insurer to recover from a tortfeasor amounts that the insurer paid under an insurance policy. *See, e.g., Ohio Cas. Ins. Co. v. Baker* (2d Dist. 1945), 44 Ohio L. Abs. 334, 64 N.E.2d 850; *Travelers Indemnity Company v. Brooks* (1977), 60 Ohio App.2d 37, 395 N.E.2d 494; *Michigan Millers Mut. Ins. Co. v. Christian (*2003) 153 Ohio App.3d 299, 794 N.E. 2d 68, 2003-Ohio-2455. Thus, Plaintiff's medical insurer could not possibly recover in a subrogation action amounts that it never paid. And since that is so, R.C. 2315.20 does not preclude admission of evidence of amounts written-off in any event.

Since no right of subrogation attaches to an amount that has never been paid by anyone, R.C. 2315.20 does not preclude evidence of write-offs. This is an additional reason why the lower courts erred in excluding evidence that two-thirds of Plaintiff's medical expenses were simply written-off. This resulted in the jury awarding about $14,000.00 of phantom damages to Plaintiff.

CONCLUSION

The Trial Court and the Sixth District Court of Appeals erred in applying R.C. 2315.20 to bar rebuttal evidence as to the reasonableness of medical expenses, as this Court authorized in *Robinson v. Bates.* In *Robinson*, this Court recognized that amounts written-off from medical bills are not "collateral benefits," and that the collateral source rule does not preclude evidence of such write-offs. Nothing in R.C. 2315.20 changes the rule set forth in *Robinson.* Moreover, since an insurer has no right of subrogation for amounts that it never paid, R.C. 2315.20 does not apply in any event.

This Court should reaffirm *Robinson v. Bates* and reverse the decision of the Sixth District Court of Appeals, remanding this matter to the Trial Court for further proceedings consistent with *Robinson.*

Respectfully submitted,

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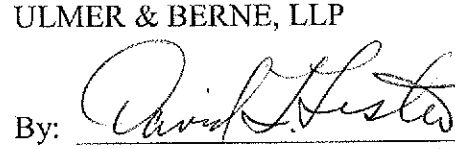

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Merit Brief was sent this 14th day of October, 2009, by ordinary U.S. mail to Michael D. Bell, Esq., Kevin J. Boissoneault, Esq., Theodore Bowman, Esq., and Russell Gerney, Esq., Gallon, Takacs, Boissoneault & Schaffer Co., LPA, Attorneys for Appellee Jaques, 3516 Granite Circle, Toledo, OH 43617-1172.

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APPENDIX

Page

NOTICE OF APPEAL TO SUPREME COURT (5-4-09) 1

DECISION AND JUDGEMENT OF THE SIXTH DISTRICT COURT OF APPEALS, LUCAS COUNTY (3-20-09) 4

ORDER OF LUCAS COUNTY COMMON PLEAS COURT (2-14-08) 8

PARTIAL TRANSCRIPT OF TRIAL PROCEEDING OF LUCAS COUNTY COMMON PLEAS COURT (2-21-08) 9

ORDER OF LUCAS COUNTY COMMON PLEAS COURT (3-20-08) 33

STATUTES

OHIO REVISED CODE SECTION 1751.60 35

OHIO REVISED CODE SECTION 2305.27 (Since Repealed) 37

OHIO REVISED CODE SECTION 2315.20 38

OHIO REVISED CODE SECTION 2317.421 40

OHIO REVISED CODE SECTION 2323.41 41

OHIO REVISED CODE SECTION 2744.05 42

IN THE SUPREME COURT OF OHIO

Richard Jaques,	)	Case No. 09-0820
	)	
Appellee,	)	On Appeal from the Lucas County
	)	Court of Appeals, Sixth Appellate
v.	)	District,
	)	Court of Appeals Case No. L-08-1096
Patricia A. Manton,	)	
	)	
Appellant.	)	

NOTICE OF APPEAL OF APPELLANT PATRICIA A. MANTON

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FILED
MAY 04 2009
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL

Appellant Patricia A Manton hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Appeals, Sixth Appellate District, entered in Court of Appeals Case No. L-08-1096 on March 20, 2009. This Court has discretionary jurisdiction because the case is one of public and great general interest.

Respectfully submitted,

VASSAR, DILLS, DAWSON & BONFIGLIO

By: _____

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice of Appeal was sent this 1st day of May, 2009, by ordinary U.S. Mail to Michael D. Bell, Esq., Attorney for Appellee, 3516 Granite Circle, Toledo, Ohio 43617-1172.

Paul R. Bonfiglio, Counsel of Record
Attorney for Appellant
Patricia A. Manton

FILED
COURT OF APPEALS
2009 MAR 20 A 7:58

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Richard Jaques

Appellee

v.

Patricia A. Manton

Appellant

Court of Appeals No. L-08-1096

Trial Court No. CI-06-7626

DECISION AND JUDGMENT

Decided: MAR 20 2009

* * * * *

Michael D. Bell and Kevin J. Boissoneault, for appellee.

Paul R. Bonfiglio, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, following a jury trial, in which the trial court barred the introduction of evidence as to the reduction of certain medical bills pursuant to R.C. 2315.20. Pursuant to 6th Dist.Loc.App.R. 12(A), we hereby sua sponte transfer this matter to our accelerated docket and render our decision.

E-JOURNALIZED
MAR 20 2009

{¶ 2} This case arose as a personal injury action following a traffic accident. Liability was undisputed at trial; however, appellant, citing *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, sought to introduce evidence that appellee's medical providers accepted reduced payments pursuant to a contract with appellee's insurer, thereby reducing the reasonable value of his medical expenses. The trial court denied appellant's request, citing R.C. 2315.20, Ohio's Collateral Source Rule. The jury awarded appellee damages in an amount less than the total of his medical bills. Nevertheless, appellant filed a motion for a new trial, which the trial court denied. A timely notice of appeal was filed in this court on April 3, 2003.

{¶ 3} On appeal, appellant sets forth the following two assignments of error:

{¶ 4} "1. The trial court erred by precluding [appellant's] proffered evidence challenging the reasonableness of [appellee's] medical bills based on the Supreme Court's decision *Robinson v. Bates* (2006), 112 Ohio St.3d 17.

{¶ 5} "2. The trial court's decision to deny [appellant's] motion for new trial for the reason that *Robinson v. Bates* does not apply to cases arising after the April 7, 2005 effective date of R.C. §2315.20 is erroneous as a matter of law."

{¶ 6} In both of his assignments of error, appellant urges this court to apply the rule stated in *Robinson*, supra. Accordingly, we will address them together.

{¶ 7} In *Robinson*, the Supreme Court of Ohio held that "[b]oth an original medical bill rendered and the amount accepted as full payment are admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care." Id.,

paragraph one of the syllabus. R.C. 2315.20, which became effective after the cause of action in *Robinson* accrued[1], states, in relevant part, that:

{¶ 8} "(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 * * * contractual right of subrogation * * *."

{¶ 9} It is undisputed that this case arose after the enactment of R.C. 2315.20. It is further undisputed that the source of medical payments that appellant attempted to introduce at trial were subject to a contractual right of subrogation. Accordingly, the application of the collateral source rule is controlled by R.C. 2315.20, and not by the rule set forth in *Robinson v. Bates*, supra.

{¶ 10} On consideration, we find that the trial court did not err by refusing to allow appellant to present evidence of the reduced amount accepted as full payment for appellee's medical bills to the jury, or by denying appellant's motion for a new trial on that same basis. Appellant's two assignments of error are not well-taken.

{¶ 11} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for

---

[1]The Ohio Supreme Court recognized that R.C. 2315.20 did not apply in *Robinson*, because the statute became effective "after the cause of action [in that case] accrued and after the complaint was filed." Id., ¶ 10, fn 1.

the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____ JUDGE

Arlene Singer, J. _____ JUDGE

Thomas J. Osowik, J. _____ JUDGE
CONCUR.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.

FILED
LUCAS COUNTY
2008 FEB 14 P 3: 59
COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Richard Jaques, et al.	*	Case No. CI-06-7626
Plaintiffs,	*	JUDGE JAMES BATES
v.	*	**ORDER**
Patricia Manton,	*	
Defendant.	*	

Plaintiff's Motion in Limine to Exclude Evidence of Collateral Benefits is found well taken.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiffs' motion *in limine* prohibiting Defendant and her counsel from mentioning the source of collateral benefits and amounts written off by Plaintiffs' health care providers is hereby GRANTED.

2/13/08
Date

Hon. James Bates

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FEB 20 2008

1 IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

2 - - -

3 RICHARD JAQUES,)

4 Plaintiff,)

5 v.) Case No. CI06-7626

6 PATRICIA MANTON,) Hon. James D. Bates

7 Defendant.) EXCERPT

COPY

8

9 - - -

10 TRANSCRIPT OF PROCEEDINGS

11 BE IT REMEMBERED, that on the Trial

12 of the above-entitled cause, in the Court of

13 Common Pleas of Lucas County, Ohio, in the January

14 2008 Term of said Court, commencing February 20,

15 2008, before the Honorable James D. Bates, one of

16 the Judges of said Court, and a jury, the

17 following proceedings were had, to-wit:

18 APPEARANCES:

19 MICHAEL D. BELL, Esquire

20 On Behalf of the State of Ohio

21 PAUL R. BONFIGLIO, Esquire

22 On Behalf of the Defendant.

23

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1 (Excerpt from trial proceedings
2 held on February 21, 2008.)
3 - - -
4 THE COURT: Thank you. You
5 may step down, ma'am. Thank you very
6 much for your testimony.
7 Well, let's see here. Does the
8 plaintiff have any additional witnesses at
9 this time?
10 MR. BELL: No, Your Honor.
11 THE COURT: Ladies and
12 gentlemen, we're going to have to go into
13 chambers for a few minutes to deal with
14 some certain motions and some exhibits
15 that may be introduced. So we have to do
16 that outside your presence. So why don't
17 we just take another short ten-minute
18 break? You don't have to remain in the
19 jury box. You can go to the jury room.
20 You can go get a cup of coffee or
21 something, but it's going to be at least
22 ten minutes for us to do that and we'll
23 come back and then we'll be proceeding

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1 with the balance of the trial at that
2 time.
3 Again, during this break, you know
4 it as well as I do, do not discuss the
5 case amongst yourselves or with anyone
6 else. Do not permit anyone to discuss it
7 with you or in your presence. Do not form
8 or express any opinion on the case until
9 it's finally submitted to you. We will be
10 in recess.
11 I'll see counsel in chambers with
12 the court reporter.
13 (Jury excused at 11:13 o'clock a.m.
14 and proceedings commenced in chambers at
15 11:14 o'clock a.m.)
16 THE COURT: You're going to
17 rest? I don't think I have numbers on all
18 of your exhibits. As far as the doctor's,
19 I only have the ones that you marked that
20 were actually in the courtroom.
21 MR. BELL: Okay. And then
22 we've got the ones -- I've got copies of
23 the others out there from the hospital.

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1 The ones that we've submitted pursuant to
2 the statute.
3 THE COURT: So --
4 MR. BELL: Prior to trial.
5 Do you want those numbers?
6 THE COURT: I think we're
7 going to need to do that because we need
8 to put it on the record, but unless you
9 just say you're not objecting to anything?
10 MR. BONFIGLIO: No.
11 (Discussion held, off the record.)
12 THE COURT: But anyway, okay,
13 let's -- how do you have them marked?
14 MR. BELL: I've got number 4
15 as Dr. Montgomery's office chart.
16 THE COURT: Is there any --
17 MR. BELL: You're talking
18 about the records, right? The bills I
19 have separate.
20 THE COURT: I'm just talking
21 about exhibits.
22 MR. BELL: Exhibits. Okay.
23 THE COURT: I want to deal

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1 with exhibits at this point.

2 MR. BELL: Number 1A through

3 M as in Mary are medical bills.

4 THE COURT: Is there any

5 objection to A through M, 1A through M?

6 MR. BONFIGLIO: Where's the

7 therapy bill? Not in here? Oh, there it

8 is. We'd object to defendant's or

9 Plaintiff's 1H.

10 THE COURT: And what's the

11 basis for that?

12 MR. BONFIGLIO: No sponsoring

13 testimony as to the reasonableness of the

14 charges.

15 THE COURT: What charges are

16 those for?

17 MR. BONFIGLIO: Physical therapy.

18 THE COURT: That will be

19 overruled. A through M will be admitted,

20 over objection on H.

21 MR. BELL: Number 2 is the CV

22 of Dr. Bruce Montgomery.

23 THE COURT: Any objection to

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1 that?

2 MR. BONFIGLIO: No.

3 THE COURT: That will be

4 admitted without objection.

5 MR. BELL: Number 4 is the

6 office chart of Dr. Montgomery.

7 THE COURT: Any objection to

8 that?

9 MR. BONFIGLIO: No.

10 THE COURT: That will be

11 admitted without objection.

12 MR. BELL: Number 5 are the

13 medical records from the Toledo Hospital

14 emergency department.

15 MR. BONFIGLIO: No.

16 THE COURT: Any objection?

17 MR. BONFIGLIO: None.

18 THE COURT: Admitted without

19 objection.

20 MR. BELL: Number 6 is the

21 Heartland Rehabilitation Services physical

22 therapy records.

23 THE COURT: Any objection?

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1 MR. BONFIGLIO: No.
2 THE COURT: Be admitted
3 without objection.
4 MR. BELL: Number 9 is the
5 picture of the outside of the vehicle.
6 THE COURT: Any objection?
7 MR. BONFIGLIO: No.
8 THE COURT: Admitted without
9 objection.
10 MR. BELL: Number 10 is the
11 picture of the inside of the vehicle.
12 THE COURT: Any objection?
13 MR. BONFIGLIO: No.
14 THE COURT: Admitted without
15 objection.
16 MR. BELL: Number 11 is the
17 handwritten wage loss sheet by the
18 plaintiff with regards to how many days
19 off he missed.
20 THE COURT: Any objection?
21 MR. BONFIGLIO: No.
22 THE COURT: Admitted without
23 objection.

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1 MR. BELL: Number 12 is
2 the --
3 THE COURT: Physical therapy
4 records.
5 MR. BELL: Is 12?
6 THE COURT: That's what I have
7 it marked as.
8 MR. BELL: I have 6 as the
9 physical therapy records. Let me go grab
10 those.
11 (Discussion held, off the record.)
12 MR. BELL: So 6 is actually
13 the physical therapy record.
14 THE COURT: Six is physical
15 therapy records.
16 MR. BELL: Twelve was not
17 used.
18 THE COURT: It was identified
19 and talked about by Schultz, but it must
20 have been 6 really. It was referred to
21 as 12. Okay. Is there a 12?
22 MR. BELL: There is not.
23 THE COURT: Okay. How about

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1 13?

2 MR. BELL: Is the aerial view

3 of the intersection. I don't really -- we

4 don't need to admit that.

5 THE COURT: I don't think anybody

6 testified to that. So 13 is being

7 withdrawn?

8 MR. BELL: That's right.

9 Fourteen is the diagram of the back

10 and neck muscles. We would seek to have

11 it admitted just because Matt Schultz

12 talked about it.

13 MR. BONFIGLIO: I would object.

14 Nobody sponsored that. Nobody testified

15 where it came from.

16 THE COURT: That will be

17 admitted over objection.

18 Fifteen is a prescription.

19 MR. BELL: Fifteen are three

20 referral forms from Heartland

21 Rehabilitation for physical therapy.

22 THE COURT: And was that

23 referred to at one point as 13?

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1 MR. BELL: It was.
2 THE COURT: All right. Any
3 objection to that?
4 MR. BONFIGLIO: No.
5 THE COURT: Be admitted
6 without objection.
7 THE COURT: Any other exhibits
8 on the plaintiff's side?
9 MR. BELL: Um, I guess -- I
10 would like to, with Your Honor's
11 permission, just give a summary of the
12 medical bills that go with Exhibit No. 1
13 and I think it just might be easier for
14 the jury to take a look at the summary.
15 THE COURT: I think you can
16 put them up on the board. You can do
17 anything you want as far as closing
18 arguments, but that's not an exhibit.
19 MR. BELL: All right.
20 THE COURT: Now, as long as
21 we're in here, I have a lot of defense
22 exhibits.
23 MR. BONFIGLIO: I don't have those

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1 with me.

2 THE COURT: I know the ones

3 that have been referred to. A is the

4 ambulance report.

5 MR. BONFIGLIO: Yeah. Yeah.

6 THE COURT: Any objection?

7 MR. BELL: No.

8 THE COURT: Admitted without

9 objection.

10 B is a copy of the ER report.

11 Jaques testified to that. Any objection?

12 MR. BELL: I think we've

13 already admitted it in our side, but I

14 don't have any objection to it.

15 THE COURT: You want it in?

16 MR. BONFIGLIO: Yes.

17 THE COURT: B will be

18 admitted.

19 Okay. C is Dr. Montgomery's report

20 of January 3rd. Any objection?

21 MR. BELL: No.

22 THE COURT: D is Dr.

23 Montgomery's report of January 6.

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1 MR. BELL: No.
2 THE COURT: That will be
3 admitted.
4 THE COURT: E is Dr.
5 Montgomery's report of January 9.
6 MR. BELL: No objection.
7 THE COURT: Now, I have a
8 break down to M. Is a physical therapy
9 report. Any objection to that?
10 MR. BELL: No.
11 THE COURT: N is another
12 physical therapy report?
13 MR. BELL: No objection.
14 THE COURT: Okay. M, N, I
15 don't have an O, but I have a P.
16 MR. BONFIGLIO: Yeah. You're
17 right.
18 THE COURT: See, this is what
19 happens when you mark them yourself.
20 Court reporter would have had them in
21 order.
22 P are interrogatories that were
23 asked.

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1 MR. BELL: I would object.
2 THE COURT: That will be
3 admitted over the objection, P. Now --
4 MR. BELL: Your Honor, may I
5 ask for point of clarification? It's just
6 that one particular question that's going
7 to be admitted or is it going to be the
8 whole set of interrogatories?
9 THE COURT: Well, I've just
10 admitted the whole set of interrogatories.
11 I assume there's no other inconsistencies.
12 MR. BELL: My only concern is
13 there may be some evidence of some
14 collateral sources in those
15 interrogatories.
16 THE COURT: Then that should
17 be redacted or any questions, if there are
18 any questions asked of Mrs. --
19 MR. BONFIGLIO: Sure. We'll take
20 a look at that. I know we can come to an
21 agreement.
22 THE COURT: Maybe you just
23 want to do the one question.

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1 MR. BONFIGLIO: Cover page, that
2 question and the signature. Would that
3 work?
4 MR. BELL: Yeah. That's
5 good.
6 THE COURT: Now, Q is Kuhlman,
7 maybe. Or is it U, I think? U is
8 Kuhlman, Mr. Ferry. Testimony about the
9 wage loss.
10 MR. BELL: I don't have any
11 objection.
12 THE COURT: That will be
13 admitted the without objection.
14 MR. BELL: With the exception of
15 the collateral source.
16 THE COURT: He established the
17 wage loss better than you did on your
18 direct.
19 MR. BELL: With the exception
20 of the collateral source information.
21 THE COURT: Is there any
22 collateral source?
23 MR. BELL: The last question

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1 deals with disability benefits and I
2 actually have a redacted copy.
3 MR. BONFIGLIO: Then we'll just do
4 that.
5 THE COURT: Make sure it's
6 cleaned up before it's given to the jury.
7 And then V, some shoulder codes.
8 ICB9 codes. I have no clue what they are
9 but --
10 MR. BELL: I object based on
11 relevance. ICD9 codes.
12 THE COURT: Is that part of
13 the billing statement?
14 MR. BONFIGLIO: Yes.
15 THE COURT: And W are
16 different ICB-9 codes, so I'll admit both
17 V and W over objection of counsel.
18 So now that I've sufficiently made
19 both of you guys mad, are we ready to go?
20 We can go off the record.
21 (Discussion held, off the record.)
22 THE COURT: Let's let you rest
23 in front of the jury. Do you want to make

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1 any motions?
2 MR. BONFIGLIO: I move for
3 directed verdict on the future damages
4 based on insufficient testimony in the
5 record under Darnell. Montgomery's only
6 statement to that is on his deposition,
7 page 43 when he says: Do you have an
8 opinion as to how long this occasional
9 pain may continue? Answer: Depending on
10 the patient, the severity of the injury
11 itself which no one can fully objectify,
12 patients may recover from these types of
13 injuries in a matter of weeks, months.
14 Sometimes they may also have a residue.
15 He never relates it to Mr. Jaques and he
16 never gives anything approaching
17 reasonable certainty standard.
18 MR. BELL: Your Honor, he
19 does note in his deposition that the pain,
20 particularly the left shoulder pain, is
21 chronic in nature and calls it chronic
22 shoulder pain syndrome.
23 MR. BONFIGLIO: And I'd respond he

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1 needs to put that question to a reasonable
2 degree of medical certainty.
3 MR. BELL: That answer was in
4 response to what in your opinion are the
5 damages that Rick Jaques received in this
6 collision. And his answer was -- at the
7 end of the answer it was chronic left
8 shoulder syndrome.
9 THE COURT: I am going to
10 exclude from the jury's consideration any
11 future expenses as it relates to any
12 permanency because there is no testimony
13 in the record of any expenses. There is
14 testimony in the record of future pain.
15 So I'm going to leave that in for the
16 jury. And I have to change something
17 here. But that won't take long.
18 And what else?
19 MR. BONFIGLIO: Second would be
20 reiterating there's no testimony on the
21 physician, the reasonableness of the
22 charges of the physical therapist and we'd
23 move for directed verdict on that. The

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1 Dr. Montgomery expressly said I can't talk
2 about it. The physical therapist was in.
3 He didn't talk about it. And so we'd
4 move for directed verdict on that issue.
5 MR. BELL: In response I
6 would refer to the statute which clearly
7 allows as prima facie evidence of proof of
8 the reasonableness of the bills, that they
9 were submitted to counsel five days prior
10 to trial. The case law holds that there
11 need not be testimony on every bill, that
12 it is reasonable and customary.
13 THE COURT: The motion --
14 MR. BELL: There has been no
15 evidence --
16 THE COURT: Motion will be
17 denied. I will allow that. Kind of
18 surprised that you didn't ask the physical
19 therapist when he was physically here, but
20 I'll allow it be considered by the jury.
21 Next.
22 MR. BONFIGLIO: Then we have the
23 issues on Robinson v. Bates. Mr. Bell

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1 and I both presented that in the pre-trial
2 motion and the judge granted it. And
3 excluding me from offering or commenting
4 on the fact that a significant amount of
5 the bills was written off and a smaller
6 figure was accepted as full payment. We
7 would proffer as evidence Defendant's
8 Exhibit J and reiterate the arguments
9 raised in our motion that we believe that
10 amounts written off are not collateral
11 benefits under Robinson v. Bates and we'd
12 submit, proffer Defendant's Exhibit J.
13 THE COURT: What are the
14 numbers? Just so he can write those
15 down.
16 MR. BONFIGLIO: Page 1 of
17 Defendant's Exhibit J. Actually page 2
18 from ACS Recovery Services, claim amount
19 is $21,874.80. And the benefit amount is
20 $7,483.91. And then Mike, I'm not sure
21 what this is.
22 MR. BELL: This is from Blue
23 Cross/Blue Shield.

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1 MR. BONFIGLIO: Okay. Thank you.
2 And then there's one and it's attached
3 Exhibit J from Blue Cross Blue Shield.
4 The charge amounts are --
5 MR. BELL: Those amounts,
6 don't have it totalled.
7 MR. BONFIGLIO: There's seven
8 items charged and then there's seven items
9 paid and we do not have the calculations
10 yet on that page.
11 THE COURT: Is it able to be
12 calculated if you had like a --
13 MR. BONFIGLIO: Yes.
14 MR. BELL: Calculator.
15 THE COURT: Well, while the
16 jury's out I'll allow you to supplement
17 this by adding up the numbers. The key
18 numbers are the 21,874.80 and whatever was
19 accepted in full payment of those total --
20 MR. BONFIGLIO: Another one,
21 judge, ACS Recovery Services. I'm sorry.
22 That's Robin Jaques.
23 That's it, judge.

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1 MR. BELL: Let me make a
2 point of clarification. This I believe
3 is older, Paul. It's an updated, it was
4 $21,070. And I will get that to you.
5 MR. BONFIGLIO: What did you take
6 out?
7 MR. BELL: Some of these
8 aren't related. A couple of them.
9 THE COURT: So the total
10 figure is $21,074.80?
11 MR. BELL: I think it's
12 $21,070.
13 THE COURT: Even?
14 MR. BELL: That's right.
15 MR. BONFIGLIO: And the paid
16 amount?
17 THE COURT: The paid amount,
18 we'll supplement that, at least 21,074.81,
19 plus whatever that Blue Cross number adds
20 up to.
21 MR. BONFIGLIO: That's correct.
22 And just to further that, if need be we
23 would have brought in sponsoring testimony

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1 to talk, to confirm that if the charges
2 were challenged on authenticity basis.
3 And we would bring that evidence in as a
4 rebuttal to the reasonableness of the
5 charges on the Robinson v. Bates.
6 THE COURT: I would just
7 indicate for the record that this was
8 discussed before the commencement of the
9 trial and I advised Mr. Bonfiglio I would
10 not allow him to during the trial bring up
11 these numbers, but I would allow him to
12 put it in the record for purposes of
13 appeal as to whether the statute or
14 whether Robinson applies to collisions
15 that occurred after the implementation of
16 the statutes.
17 So, that -- I think maybe that will
18 be marked as Defendant's Exhibit J, but it
19 will not be submitted to the jury. It
20 will just be for purposes of appeal.
21 What else do you want to do?
22 MR. BONFIGLIO: This last, in
23 light of these discussions I had requested

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1 that the jury interrogatory actually list
2 each of the medical bills so we can track
3 the amount that was in fact ordered paid
4 by the jury. And I understand that has
5 been ruled on already.
6 THE COURT: That's going to be
7 denied. There is a place for medical
8 bills and they will insert the total
9 amount of medical bills that they find are
10 proximately caused by the negligence of
11 the defendant.
12 Okay. Anything else?
13 MR. BONFIGLIO: Just my apology
14 for marking my own exhibits is on the
15 record, correct. That's all.
16 (Proceedings in chambers concluded
17 at 11:32 o'clock a.m. and proceedings
18 resumed in open court at 11:38 o'clock
19 a.m.)
20 THE COURT: Thanks. Be
21 seated, please.
22 The plaintiff have any additional
23 witnesses to call at this time?

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1 MR. BELL: No, Your Honor.
2 The plaintiff rests.
3 THE COURT: Does the defense
4 wish to call any witnesses?
5 MR. BONFIGLIO: No, Your Honor.
6 Defense rests, subject to the discussions
7 in chambers.
8 (End of Excerpt.)
9 - - -
10 C E R T I F I C A T E
11 I, THE UNDERSIGNED, HEREBY CERTIFY THAT
12 THE ABOVE AND FOREGOING IS A TRUE AND COMPLETE
13 TRANSCRIPT OF THE PROCEEDINGS HELD IN THE HEARING
14 OF THE ABOVE-ENTITLED CAUSE.
15
16 Karen A. Lemle
17 Karen A. Lemle, RMR
Official Court Reporter
18
19
20
21
22
23

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FILED
LUCAS COUNTY
2008 MAR 20 P 3: 28
COMM PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

RICHARD JAQUES Plaintiff,	* * *	Case No. G-4801-CI-200607626-000
vs.	* *	
PATRICIA A MANTON Defendant.	* * * * * *	**ORDER** JUDGE JAMES D. BATES

This matter came on to be heard upon the Motion for Pre-Judgment Interest filed by the Plaintiff on March 4, 2008 and the Motion for New Trial filed by the Defendant on March 10, 2008.

I. Motion for New Trial

The Motion for a New Trial deals with an evidentiary ruling made by the Court during trial. The Court found that the rationale set forth in Robinson v. Bates (2006) 1120.St. 3d 17 was not applicable due to the enaction of R.C. 2315.20. This cause of action arose after the statute and, therefore, Robinson supra did not apply. Thus, the Motion for a New Trial is DENIED.

II. Prejudgment Interest

The jury verdict in this case was rendered on February 25, 2008, in the sum of $25,000. This amount was allocated in Interrogatory B:

1. Medical Bills	$15,000
2. Loss Wages	4,500
3. Pain & Suffering	5,000
Total -	$25,000

The Plaintiff filed the Motion for Pre-Judgment Interest and the Defendant filed his memorandum in opposition. The matter is ripe for decision.

The Plaintiff had basically $21,000 in medical bills. The Robinson, supra numbers would be around $8,000. The jury awarded $15,500, which was not the full amount set forth by the Plaintiff. The Plaintiff's final demand was $60,000 and the Defendant's last offer was $11,000 plus $3,500 for loss wages.

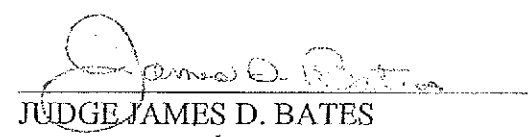
The Court cannot conclude, based upon the Robinson, supra issue and the low verdict, that the Defendant "failed to make a good faith offer to settle." Therefore, the Motion for Pre-Judgment Interest must be DENIED.

Judgment Entry

It is therefore ORDERED, ADJUDGED and DECREED that the Motion for New Trial is found not well taken and DENIED.

It is further ORDERED, ADJUDGED and DECREED the Motion for Pre-Judgment Interest is found not well taken and DENIED.

March 18, 2008



JUDGE JAMES D. BATES

cc: MICHAEL BELL
PAUL R. BONFIGLIO

Baldwin's Ohio Revised Code Annotated Currentness
Title XVII. Corporations--Partnerships
Chapter 1751. Health Insuring Corporations
1751.60 Enrollees and subscribers not liable to providers or facilities

(A) Except as provided for in divisions (E) and (F) of this section, every provider or health care facility that contracts with a health insuring corporation to provide health care services to the health insuring corporation's enrollees or subscribers shall seek compensation for covered services solely from the health insuring corporation and not, under any circumstances, from the enrollees or subscribers, except for approved copayments and deductibles.

(B) No subscriber or enrollee of a health insuring corporation is liable to any contracting provider or health care facility for the cost of any covered health care services, if the subscriber or enrollee has acted in accordance with the evidence of coverage.

(C) Except as provided for in divisions (E) and (F) of this section, every contract between a health insuring corporation and provider or health care facility shall contain a provision approved by the superintendent of insurance requiring the provider or health care facility to seek compensation solely from the health insuring corporation and not, under any circumstances, from the subscriber or enrollee, except for approved copayments and deductibles.

(D) Nothing in this section shall be construed as preventing a provider or health care facility from billing the enrollee or subscriber of a health insuring corporation for noncovered services.

(E) Upon application by a health insuring corporation and a provider or health care facility, the superintendent may waive the requirements of divisions (A) and (C) of this section when, in addition to the reserve requirements contained in section 1751.28 of the Revised Code, the health insuring corporation provides sufficient assurances to the superintendent that the provider or health care facility has been provided with financial guarantees. No waiver of the requirements of divisions (A) and (C) of this section is effective as to enrollees or subscribers for whom the health insuring corporation is compensated under a provider agreement or risk contract entered into pursuant to Chapter 5111. or 5115. of the Revised Code or under the children's buy-in program.

(F) The requirements of divisions (A) to (C) of this section apply only to health care services provided to an enrollee or subscriber prior to the effective date of a termination of a contract between the health insuring corporation and the provider or health care facility.

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CREDIT(S)

(2008 H 562, eff. 9-23-08; 2003 H 95, eff. 9-26-03; 1998 H 698, eff. 3-22-99; 1997 S 67, eff. 6-4-97)

LIBRARY REFERENCES

Insurance ⚷ 2501, 2523.
Westlaw Topic No. 217.
C.J.S. Insurance §§ 53, 924, 1122.

RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Hosp. & Related Facil.; Hlth. Care Pro. § 194, Subscriber or Enrollee Liability for Cost of Covered Benefits.

NOTES OF DECISIONS

Procedural issues 2
Waiver of rights 1

1. Waiver of rights

Patient waived rights under both statute imposing a mandatory requirement on health care providers to seek compensation solely from health insuring corporation, and contract, by instructing chiropractic clinic not to bill her insurer in order to increase her settlement amount in related tort action. Parmatown Spinal & Rehabilitation Center, Inc. v. Lewis (Ohio App. 8 Dist., Cuyahoga, 09-25-2003) No. 81996, 2003-Ohio-5069, 2003 WL 22208786, Unreported. Health ⚷ 953

2. Procedural issues

Magistrate's finding that patient testified that chiropractor was not provider in network under contract with patient's health insurer was fundamental factual error, and the trial court should have addressed the finding and should not have adopted magistrate's decision in ruling on patient's objections in chiropractor's collection action; the finding was contrary to transcript, and patient's objections raised the issue. McArthur v. Randall (Ohio App. 2 Dist., 02-17-2006) 166 Ohio App.3d 546, 852 N.E.2d 198, 2006-Ohio-777. Health ⚷ 956; Justices Of The Peace ⚷ 185(1)

R.C. § 1751.60, OH ST § 1751.60
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Title XXIII. Courts--Common Pleas
Chapter 2305. Jurisdiction; Limitation of Actions (Refs & Annos)
Miscellaneous Provisions
2305. 27 Medical claim not to be reduced by receipt of certain other benefits--Repealed

CREDIT(S)

(2002 S 281, eff. 4-11-03; 2001 S 108, § 2.01, eff. 7-6-01; 2001 S 108, § 2.02, eff. 7-6-01; 1996 H 350, eff. 1-27-97 (*State, ex rel. Ohio Academy of Trial Lawyers, v. Sheward* (1999)); 1976 H 1426, eff. 7-1-76; 1975 H 682)

HISTORICAL AND STATUTORY NOTES

Ed. Note: 1996 H 350, eff. 1-27-97. See Notes of Decisions, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

Ed. Note: The repeal of this section by 1996 H 350, eff. 1-27-97, was rescinded by 2001 S 108, § 2.02, eff. 7-6-01. See *Baldwin's Ohio Legislative Service Annotated*, 1996, page 10/L-3465, and 2001, page 6/L-1441, or the OH-LEGIS or OH-LEGIS-OLD database on Westlaw, for original versions of these Acts.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

1996 H 350, which amended more than 100 statutes and a variety of rules relating to tort and other civil actions, and which was an attempt to reenact provisions of law previously held unconstitutional by the Supreme Court of Ohio, is an act of usurpation of judicial power in violation of the doctrine of separation of powers; for that reason, and because of violation of the one-subject rule of the Ohio Constitution, 1996 H 350 is unconstitutional. State ex rel. Ohio Academy of Trial Lawyers v. Sheward (Ohio, 08-16-1999) 86 Ohio St.3d 451, 715 N.E.2d 1062, 1999-Ohio-123, reconsideration denied 87 Ohio St.3d 1409, 716 N.E.2d 1170.

R.C. § 2305. 27, OH ST § 2305. 27

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXIII. Courts--Common Pleas
Chapter 2315. Trial Procedure (Refs & Annos)
Determination of Amount of Recovery; Contributory Negligence and Assumption of Risk; Damages
2315.20 Collateral benefits

(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.

(D) As used in this section:

(1) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a civil action upon a product liability claim and an asbestos claim. "Tort action" does not include a civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim or a civil action for damages for a breach of contract or another agreement between persons.

(2) "Medical claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in section 2305.113 of the Revised Code.

(3) "Product liability claim" has the same meaning as in section 2307.71 of the Revised Code.

(4) "Asbestos claim" has the same meaning as in section 2307.91 of the Revised Code.

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(2004 S 80, eff. 4-7-05)

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXIII. Courts--Common Pleas
Chapter 2317. Evidence (Refs & Annos)
Documentary Evidence
2317.421 Admissibility of medical or funeral bills as prima-facie evidence of reasonableness

In an action for damages arising from personal injury or wrongful death, a written bill or statement, or any relevant portion thereof, itemized by date, type of service rendered, and charge, shall, if otherwise admissible, be prima-facie evidence of the reasonableness of any charges and fees stated therein for medication and prosthetic devices furnished, or medical, dental, hospital, and funeral services rendered by the person, firm, or corporation issuing such bill or statement, provided, that such bill or statement shall be prima-facie evidence of reasonableness only if the party offering it delivers a copy of it, or the relevant portion thereof, to the attorney of record for each adverse party not less than five days before trial.

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(1970 S 352, eff. 6-1-70)

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Baldwin's Ohio Revised Code Annotated Currentness
Title XXIII. Courts--Common Pleas
Chapter 2323. Judgment (Refs & Annos)
Miscellaneous Provisions
2323.41 Collateral benefits

(A) In any civil action upon a medical, dental, optometric, or chiropractic claim, 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, 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.

(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.

(D) As used in this section, "medical claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in section 2305.113 of the Revised Code.

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(2002 S 281, eff. 4-11-03)

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Title XXVII. Courts--General Provisions--Special Remedies
Chapter 2744. Political Subdivision Tort Liability (Refs & Annos)
2744.05 Damages

Notwithstanding any other provisions of the Revised Code or rules of a court to the contrary, in an action against a political subdivision to recover damages for injury, death, or loss to person or property caused by an act or omission in connection with a governmental or proprietary function:

(A) Punitive or exemplary damages shall not be awarded.

(B)(1) If a claimant receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against a political subdivision recovered by that claimant. No insurer or other person is entitled to bring an action under a subrogation provision in an insurance or other contract against a political subdivision with respect to those benefits.

The amount of the benefits shall be deducted from an award against a political subdivision under division (B)(1) of this section regardless of whether the claimant may be under an obligation to pay back the benefits upon recovery, in whole or in part, for the claim. A claimant whose benefits have been deducted from an award under division (B)(1) of this section is not considered fully compensated and shall not be required to reimburse a subrogated claim for benefits deducted from an award pursuant to division (B)(1) of this section.

(2) Nothing in division (B)(1) of this section shall be construed to do either of the following:

(a) Limit the rights of a beneficiary under a life insurance policy or the rights of sureties under fidelity or surety bonds;

(b) Prohibit the department of job and family services from recovering from the political subdivision, pursuant to section 5101.58 of the Revised Code, the cost of medical assistance benefits provided under sections 5101.5211 to 5101.5216 or Chapter 5107., 5111., or 5115. of the Revised Code.

(C)(1) There shall not be any limitation on compensatory damages that represent the actual loss of the person who is awarded the damages. However, except in wrongful death actions brought pursuant to Chapter 2125. of the Revised Code, damages that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences and that do not represent the actual loss of the person who is awarded the damages

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shall not exceed two hundred fifty thousand dollars in favor of any one person. The limitation on damages that do not represent the actual loss of the person who is awarded the damages provided in this division does not apply to court costs that are awarded to a plaintiff, or to interest on a judgment rendered in favor of a plaintiff, in an action against a political subdivision.

(2) As used in this division, "the actual loss of the person who is awarded the damages" includes all of the following:

(a) All wages, salaries, or other compensation lost by the person injured as a result of the injury, including wages, salaries, or other compensation lost as of the date of a judgment and future expected lost earnings of the person injured;

(b) All expenditures of the person injured or another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that were necessary because of the injury;

(c) All expenditures to be incurred in the future, as determined by the court, by the person injured or another person on behalf of the person injured for medical care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations that will be necessary because of the injury;

(d) All expenditures of a person whose property was injured or destroyed or of another person on behalf of the person whose property was injured or destroyed in order to repair or replace the property that was injured or destroyed;

(e) All expenditures of the person injured or of the person whose property was injured or destroyed or of another person on behalf of the person injured or of the person whose property was injured or destroyed in relation to the actual preparation or presentation of the claim involved;

(f) Any other expenditures of the person injured or of the person whose property was injured or destroyed or of another person on behalf of the person injured or of the person whose property was injured or destroyed that the court determines represent an actual loss experienced because of the personal or property injury or property loss.

"The actual loss of the person who is awarded the damages" does not include any fees paid or owed to an attorney for any services rendered in relation to a personal or property injury or property loss, and does not include any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of the person injured, for mental anguish, or for any other intangible loss.

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(2008 H 562, eff. 9-23-08; 2002 S 106, eff. 4-9-03; 2001 S 108, § 2.01, eff. 7-6-01; 1999 H 471, eff. 7-1-00; 1997 H 215, eff. 9-29-97; 1996 H 350, eff. 1-27-97 (*State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (Ohio 1999)); 1985 H 176, eff. 11-20-85)

CONSTITUTIONALITY

"Ohio Revised Code § 2744" was held on 12-16-2003 to violate the right to trial by jury, under Ohio Constitution Article 1, § 5, and the right to a remedy, under Ohio Constitution Article 1, § 16. The ruling was by the U.S. District Court for the Southern District of Ohio, deciding as it believes the Supreme Court of Ohio would have, in the case of Kammeyer v City of Sharonville, 311 F.Supp.2d 653 (SD Ohio 2003). The Court also observed that the state is sovereign but political subdivisions are not.

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