

IN THE SUPREME COURT OF OHIO

LARRY J. MORETZ, et al.,	:	Case No. 2012-0797
	:	
Plaintiffs—Appellees,	:	On Appeal from the Summit County
	:	Court of Appeals,
v.	:	Ninth Appellate District
	:	
KAMEL MUAKKASSA, M.D., et al.,	:	Court of Appeals
	:	Case No. CA-25602
Defendants—Appellants.	:	

**BRIEF OF AMICI CURIAE,
OHIO HOSPITAL ASSOCIATION, OHIO STATE MEDICAL ASSOCIATION,
OHIO OSTEOPATHIC ASSOCIATION, AMERICAN INSURANCE ASSOCIATION,
AND OHIO ALLIANCE FOR CIVIL JUSTICE
IN SUPPORT OF APPELLANT**

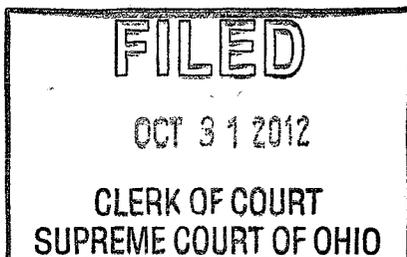
Anne Marie Sferra (0030855)
Keesha Warmby (0087004)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
Telephone: 614-227-2300
Facsimile: 614-227-2390
asferra@bricker.com
kwarmsby@bricker.com

*Counsel for Amici Curiae,
Ohio Hospital Association, Ohio State Medical
Association, Ohio Osteopathic Association,
American Insurance Association, and Ohio
Alliance for Civil Justice*

Mark D. Amaddio (0041276)
Mark D. Amaddio Co., L.P.A.
55 Public Square, Suite 850
Cleveland, Ohio 44113-1901
Telephone: 216-274-0800
Facsimile: 216-522-1150
amaddio@aol.com

David M. Todaro (0075851)
David M. Todaro Co., LPA
126 N. Walnut Street
Wooster, Ohio 44691
Telephone: 330-262-2911
Facsimile: 330-264-2977
davidmtodaro@aol.com

Mark S. Fusco (0040604)
Walter & Haverfield, LLP
1301 E. 9th Street, Suite 3500
Cleveland, Ohio 44114
Telephone: 216-619-7839
Facsimile: 216-916-2394
mfusco@walterhav.com
Counsel for Plaintiffs-Appellees



Douglas G. Leak (0045554)
Roetzel & Andress, LPA
One Cleveland Center, Ninth Floor
1375 East Ninth Street
Cleveland, Ohio 44114
Telephone: 216-623-0150
Facsimile: 216-623-0134
dleak@ralaw.com

Stacy Ragon Delgros (0066923)
Roetzel & Andress, LPA
222 South Main Street
Akron, Ohio 44308
Telephone: 330-376-2700
Facsimile: 330-376-4577
sdelgros@ralaw.com

Counsel for Defendant-Appellant

Jamey T. Pregon (0075262)
Lynette Dinkler (0065455)
Dinkler Pregon, LLC
2625 Commons Blvd., Ste. A
Dayton, Ohio 45431
Telephone: 937-426-4200
Facsimile: 866-831-0904
Jamey@dinklerpregon.com
lynette@dinklerpregon.com

*Counsel for Amicus Curiae,
Ohio Association of Civil Trial Attorneys*

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INTRODUCTION AND STATEMENT OF INTEREST OF AMICI CURIAE

The Ninth District Court of Appeals (“Ninth District”) held that to establish damages in a jury trial expert testimony is required to lay a foundation for the admission of evidence concerning the amount written-off of medical bills or accepted as full payment by the health care provider. But the Court should determine and clarify that this type of evidence is admissible without the need of expert testimony to prove damages under Ohio law, including under this Court’s prior rulings in *Robinson v. Bates* and *Jaques v. Manton*.

The Ohio Hospital Association (“OHA”)¹, Ohio State Medical Association (“OSMA”)², Ohio Osteopathic Association (“OOA”)³, American Insurance Association (“AIA”)⁴, and Ohio

¹ The OHA is a private non-profit trade association comprised of more than 165 private, state, and federal government hospitals. With more than eighteen Ohio-based health systems, it employs over 350,000 people. The membership-driven organization provides proactive leadership that creates an environment in which Ohio hospitals can successfully serve their respective communities. In this regard, the OHA actively supports patient safety initiatives, insurance industry reform, and tort reform measures.

² The OSMA is a non-profit professional association of approximately 20,000 physicians, medical residents, and medical students in the state of Ohio. The OSMA’s membership includes most Ohio physicians engaged in the private practice of medicine in all specialties. The OSMA’s purposes are to improve public health through education, encourage interchange of ideas among members, and maintain and advance the standards of practice by requiring members to adhere to the concepts of professional ethics.

³ The OOA is a non-profit professional association founded in 1898 that advocates for Ohio’s 4,600 licensed physicians (DOs), Ohio health-care facilities accredited by the American Osteopathic Association’s Healthcare Facilities Accreditation Program (HFAP), and the Ohio University College of Osteopathic Medicine in Athens. DOs represent twelve percent of the total physicians practicing in Ohio and twenty-six percent of the state’s family physicians. OOA’s mission includes promoting Ohio’s public health and advancing the distinctive philosophy and practice of osteopathic medicine within the state.

⁴ The AIA is a national trade association that represents major property and casualty insurance writers nationally and globally. It advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the state and federal level.

Alliance for Civil Justice (“OACJ”)⁵ (collectively, “Amici”) urge this Court to reverse the Ninth District’s decision because it convolutes the well-settled law set forth in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, 857 N.E.2d 1195, and *Jaques v. Manton*, 125 Ohio St.3d 342, 2010-Ohio-1838, 928 N.E.2d 434 – that evidence of medical bill write-offs is admissible on the issue of damages, without offering expert testimony. Additionally, the Ninth District’s ruling undermines the purpose of the statute on which it relies, namely R.C. 2317.421.

In *Robinson*, this Court held that evidence of the amount billed by a medical provider and the amount paid by the insurer was sufficient to establish the reasonableness of damages. *Robinson*, 112 Ohio St.3d 17, ¶ 1. Four years later, the *Jaques* ruling provided that proof of the amount paid for medical services or the bill itself can be submitted on the issue of the value of medical services. *Jaques*, 125 Ohio St.3d 342.

The OHA, OSMA, and OOA all appeared as Amici in this Court in *Robinson* and *Jaques* because the medical bill write-off issues raised in those cases were critical to their members. After these decisions, Ohio law regarding the admissibility of evidence of medical bill write-offs appeared to be settled. But the Ninth District’s decision, as well as other lower court decisions,

⁵ The OACJ is a group of over 100 small and large businesses, trade and professional associations, professionals, non-profit organizations, local government associations, and others. It strongly supports laws that provide stability and predictability in the civil justice system so that Ohio’s businesses and professions may know what risks they assume as they carry on commerce in Ohio. OACJ members support a balanced civil justice system that not only awards fair compensation to injured persons, but also imposes safeguards to ensure that defendants are not unjustly penalized, and plaintiffs are not unjustly enriched.

make it clear that it is not. Ohio courts have inconsistently allowed the evidence of medical expenses write-offs, while others have not allowed it all.⁶

The Ohio statute that addresses admissible evidence in an action for damages arising out of a personal injury or wrongful death claim, R.C. 2317.421, unequivocally eliminates the need to call an expert witness for the purpose of proving the reasonableness of charges appearing on medical bills for services rendered. See Legislative Service Commission Analysis of Am. S.B. 352 (1969).⁷

The Ninth District's decision, however, undermines the purpose of R.C. 2417.421 by *requiring* expert testimony for this purpose. If allowed to stand, Ohio law will revert back to where it was before R.C. 2317.421 was adopted in 1970. Prior to the enactment of R.C. 2317.421, plaintiffs were required to call expert witnesses for the purpose of establishing the reasonableness of charges for medical services. But, the General Assembly enacted R.C. 2317.421 to streamline the process of presenting evidence of charges for medical services to the jury and to eliminate the unnecessary burden and expense of calling expert witnesses for this purpose. The Ninth District's decision undermines the very purpose of this statute.

What's more, the Ninth District decision negatively impacts judicial economy. If affirmed the Ninth District's decision will result in: (1) additional expenses to litigants

⁶ As previously asserted in Amici's Memorandum in Support of Jurisdiction, filed on May 7, 2012, the following trial court decisions apply R.C. 2317.421 with inconsistent results. *See, e.g., Moretz v. Muakkassa*, 9th Dist. No. 25602, 2012-Ohio-1177 (requiring expert testimony to admit write-off evidence); *Yeoman v. Clark*, Cuyahoga C.P. No. CV 11-751485 (Feb. 29, 2012) (prohibiting write-off evidence or amount paid in full for medical services rendered); *Jenkins v. DiSabato*, Stark C.P. No. 2011 CV 727 (Dec. 21, 2011) (prohibiting write-off evidence); *Gamble v. Ruby*, Franklin C.P. No. 08CVC-08-12380 (Jan. 29, 2010) (requiring expert testimony to admit write-off evidence); and *Ohlson v. M. Bjorn Peterson Transportation*, Summit C.P. No. CV 2006-05-3285 (April 12, 2007) (requiring expert testimony to admit write-off evidence).

⁷ R.C. 2317.421 was enacted in 1970 by Am. Sub. S.B. 352, and the Legislative Service Commission Analysis referenced was issued at the time the bill was being considered.

(primarily defendants)⁸ in virtually all personal injury cases; (2) additional testimony and issues for juries to consider; and (3) additional challenges for parties to pursue in the appellate courts.

Hence, Amici urge the Court to overturn the Ninth District decision and establish a clear rule for Ohio's lower courts and litigants to follow regarding whether expert testimony is required for evidence of medical bill write-offs to be admissible.

STATEMENT OF THE CASE AND FACTS

Amici defer to the Statement of the Case and the Statement of Facts presented by Appellant.

ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW NO. 4

Proposition of Law No. 4: Requiring That Evidence Of "Write-Offs" Of Medical Bills Be Supported By Expert Testimony Is In Direct Conflict With This Court's Decision In *Jaques v. Manton*, 125 Ohio St.3d 342, And, Consequently, Redefines The Collateral Source Rule As Set Forth By This Court.

In upholding the trial court's decision, the Ninth District allowed Plaintiffs Larry Moretz ("Moretz") and Nicole Moretz (collectively, "Plaintiffs") to submit original medical bills into evidence, without any adjustments for negotiated rates or credits, and considered such medical bills to be *prima facie* evidence, under R.C. 2317.421, of the medical expenses incurred as a result of the injuries sustained. *Moretz v. Muakkassa*, 9th Dist. No. 25602, 2012-Ohio-1177, at ¶ 34. This evidence was buttressed with so-called expert testimony as to their reasonableness. *Id.*, at ¶ 35. This "expert testimony" primarily consisted of Plaintiffs' neurosurgery expert identifying a compilation of Moretz's medical bills with a summary sheet prepared by Moretz's lawyer. *Id.* (noting that the expert witness "relied on the accuracy of the summary sheet

⁸ Because the Ninth District's decision requires only defendants to present expert testimony regarding medical bills for services provided to the plaintiff, defendant will be required to bear this additional expense or risk not having any evidence in the record to rebut the evidence submitted by the plaintiff. *See* Brief, at 14-15, for further discussion.

[prepared by Moretz's counsel] to support his position that the bills reflected reasonable and necessary charges for medical services rendered.”).

The trial court did not allow Defendant Kamel Muakkassa, M.D. (“Dr. Muakkassa”) to present any evidence to rebut Moretz’s medical expense evidence because Dr. Muakkassa’s evidence was not bolstered by expert testimony. The Ninth District affirmed this decision of the trial court. More specifically, the Ninth District held that in the absence of expert testimony to lay a foundation, Dr. Muakkassa could not present rebuttal evidence of the amount written off the medical bill that no one is required to pay, nor introduce the amount paid in full for the medical services provided.

As explained herein, the Ninth District’s decision should be reversed as it is contrary to this Court’s precedent regarding damages in tort actions and the admissibility of medical bill write-off evidence and because it undermines the purpose of R.C. 2317.421.

A. **A Plaintiff Does Not Incur Reasonable Medical Expenses That Have Been Written Off And Are Not Payable By Anyone**

In considering the issue of medical bill write-offs, the Ninth District seemed to lose sight of the big picture and context in which the issue came before it. In this personal injury action alleging medical malpractice, Plaintiffs used Moretz’s medical bills to establish or prove damages. In personal injury cases, this is usually the reason medical bills are presented to the jury – for the purpose of establishing the amount of damages. Simply put, the Ninth District erred when it permitted the submission of Moretz’s medical bills as the only admissible evidence to establish Plaintiffs’ damages.

It is well settled that a plaintiff can recover the amount of reasonable expenses incurred for medical care made necessary by his injury as a component of damages. *Basye v. Whitlock*, 10th Dist. No. 81AP-314, 1981 Ohio App. LEXIS 12834, *6 (Nov. 12, 1981) (citing *Gries v.*

Zeck, 24 Ohio St. 329 (1873)). The overarching issue is what reasonable expenses did Plaintiffs incur for medical expenses arising from the injury? Generally, “incur” means “become liable.” See Merriam-Webster’s On-Line Dictionary, <http://merriamwebster.com/dictionary/incur>.

In Ohio, the appropriate measure of damages for economic loss⁹ in a tort action is “that which will compensate and make the plaintiff whole.” *Pryor v. Webber*, 23 Ohio St.2d 104, 263 N.E.2d 235 (1970), paragraph one of the syllabus. Because “[c]ompensatory damages are intended to make whole the plaintiff for the wrong done to him or her by the defendant,” an appropriate calculation of compensatory damages will reflect “the *actual loss*” to the plaintiff. (Emphasis added.) *Fantozzi v. Sandusky Prod. Co.*, 64 Ohio St.3d 601, 612, 597 N.E.2d 474, 482 (1992).

This Court has recognized that damages awarded for medical expenses should reflect the “*direct pecuniary loss*” caused by “hospital and other medical expenses immediately resulting from the injury.” (Emphasis added.) *Id.* As this Court has explained, “elements of damages, such as the costs and expenses of the injury * * * entail only the rudimentary process of accounting to calculate.” *Id.*

⁹ R.C. 2315.18(A)(2) defines “economic loss” in the context of a tort claim as any of the following types of pecuniary harm:

- (a) All wages, salaries or other compensation lost as a result of injury or loss to person or property that is a subject of a tort action;
- (b) All *expenditures* for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations as a result of an injury or loss to person or property that is the subject of a tort action;
- (c) Any other *expenditures incurred* as a result of an injury or loss to person or property that is a subject of a tort action, other than attorney’s fees * * *.

(Emphasis added.) R.C. 2315.18(A)(2). R.C. 2323.43 similarly defines “economic loss” in the context of a “medical, dental, optometric, or chiropractic claim.”

This reasoning is consistent with recent decisions from other jurisdictions that have addressed the issue of whether a plaintiff is entitled to recover written-off medical expenses as damages. Most often, the issue arises in the context of the collateral source rule (as it did in Ohio in *Robinson v. Bates* and *Jacques v. Manton*). Although the collateral source rule is not directly implicated here, the economic loss analysis in some of these cases is analogous and applicable. For instance, the Supreme Court of California recently held that “the plaintiff did not *incur* liability for her providers’ full bills” because the providers and the insurer had already agreed to a different (and lower) charge for the services rendered. (Emphasis added.) *Howell v. Hamilton Meats & Provisions*, 52 Cal. 4th 541, 563 (2011). The court found that because the plaintiff never incurred the full bill for the medical services rendered, the plaintiff was not permitted to recover such amount as damages for economic loss. *Id.* To allow the plaintiff to recover for expenses not incurred is to allow the plaintiff to receive a windfall. *See Howell*, 52 Cal. 4th at 560-561. In reaching its decision, the court reasoned that “[t]he collateral[-]source rule should not extend so far as to permit recovery for sums neither the plaintiff nor any collateral source will ever be obligated to pay.” *Howell*, 52 Cal. 4th at 564 (citing Beard, *The Impact of Changes in Health Care Provider Reimbursement Systems on the Recovery of Damages for Medical Expenses in Personal Injury Suits*, 21 Am. J. Trial Advoc. 453, 489 (1998)). This is the same type of analysis and reasoning as this Court used in *Robinson* and *Jacques*.

Amici urge the Court to continue to adhere to an economic loss analysis under which a plaintiff can recover only for direct pecuniary loss caused by medical expenses resulting from the injury.

Evidence of payment for medical care or treatment is relevant to and often used to establish damages. *See Robinson*, 112 Ohio St.3d 17, 2006-Ohio-6362, 857 N.E.2d 1195 at ¶ 18. It is unnecessary and unreasonable to require an expert to testify as to the amount of payment made or accepted for medical treatment, as the amount of payment made or accepted is not a matter beyond the knowledge or experience possessed by lay persons. *See Evid.R. 702(A)*. All that is needed is simple factual testimony to establish that the plaintiff was charged for the services rendered and payment in the amount of “\$XXX” was made and accepted as full payment.

Similarly, the amount written off a medical bill does not require expert testimony. The amount written off is usually an undisputed fact and is often reflected on the medical bill itself. Because neither the plaintiff nor anyone else has to pay the amount written off a medical bill, a plaintiff suffers no actual or direct pecuniary loss of this amount. In other words, a plaintiff does not “incur” medical expenses that are written off. Thus, the amount written off is relevant in those instances where a plaintiff is seeking to recover medical expenses for which plaintiff is not liable and no one is required to pay.

Against this as a backdrop, we turn our attention to the Ninth District’s decision as it pertains to medical bill and “write-off” evidence.

B. Ohio Law Does Not Require Expert Testimony To Establish The Reasonableness Of Medical Expenses Incurred

1. R.C. 2317.421 Eliminates The Need For Expert Testimony To Establish The Reasonableness Of Medical Expenses Incurred

For many years, Ohio law provided that a plaintiff seeking to recover medical expenses was barred from establishing the reasonable medical expenses incurred in the absence of expert testimony. *See, e.g., DeTunno v. Shull*, 166 Ohio St. 365, 143 N.E.2d 301 (1957) (holding and reaffirming the general rule [at that time] that expert testimony was required to establish the

reasonable amount of medical expenses incurred). But this changed in 1970 when the General Assembly enacted R.C. 2317.421 which provides:

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 * * * medical [and] hospital * * * services provided * * * provided that such bill or statement shall be prima-facie evidence of reasonableness only if *the party offering it* delivers a copy of it, * * * to the attorney of record for each adverse party not less than five days before trial. (Emphasis added.)

R.C. 2317.421. This statute has not been amended since its adoption in 1970.

The Legislative Service Commission's ("LSC") Analysis of R.C. 2317.421 instructs that the statute was directed at rectifying the cumbersome, expensive, and generally unnecessary process which was required to establish the reasonableness of charges for medical care. See LSC Analysis of Am. S.B. 352 (1969). Before the enactment of R.C. 2317.421, expert testimony was usually required to establish the reasonableness of the charges incurred for medical care. LSC explained that the new statute was intended to change that: "The stated *purpose* of [R.C. 2317.421] *is to obviate the necessity for calling expert witnesses* for the sole purpose of proving that the cost of prosthetics and medicines furnished and the charges for professional services rendered, are reasonable for the time, the place, and the items or services furnished." (Emphasis added.) LSC Analysis of Am. S.B. 352 (1969).

The LSC further explained the process for establishing the reasonableness of medical charges as a component of damages in a personal injury action prior to the adoption of R.C. 2317.421:

[Under current law] [D]octor's bills may be introduced to show that certain services were rendered and certain charges made for them, but they cannot be taken as evidence of the value of such services. For that purpose, it is necessary to bring in collateral evidence – usually the testimony of an expert witness competent to pass upon the reasonableness of charges made for professional services performed.

Legislative Service Commission Analysis of Am. S.B. 352 (1969). But,

[u]nder the bill [enacting R.C. 2317.421], it would be necessary to introduce the bills and statement for expenses involved (assuming they are not objectionable on other grounds), and the reasonableness of the charges stated in them would be presumed.

Id.

Plainly, R.C. 2317.421 was designed to streamline the process related to presenting evidence of damages based on medical services provided. This streamlined process would eliminate the need for expert testimony on the reasonableness of medical charges and, thus, would reduce trial costs to the parties and shorten the length of trial for the parties, jurors, judges, and other court personnel.

2. Since The Enactment Of R.C. 2317.421, This Court Has Consistently Held That Proof Of The Amount Accepted As Payment For Medical Services Is *Prima Facie* Evidence Of The Reasonableness Of The Charges For The Medical Services

Following the passage of R.C. 2317.421, courts have accepted the amount paid as *prima facie* evidence of the reasonableness of the charges for medical services. In *Bayse v. Whitlock*, 10th Dist. No. 81AP-314, 1981 Ohio App. LEXIS 12834, *6 (Nov. 12, 1981), the first case found applying R.C. 2317.421, the Tenth District noted that

[o]rdinarily a jury may not consider as items of damage amounts incurred for hospital and medical services. *DeTunno v. Shull* (1957), 166 Ohio St. 365. Pursuant to a recent enactment of our General Assembly, the reasonableness of the value of services may be established by the introduction of itemized billings for those services. R.C. 2317.421.

Bayse, at *6.

A few years after *Bayse*, the Ohio Supreme Court modified its decision in *DeTunno*, thereby making it consistent with R.C. 2317.421. See *Wagner v. McDaniel*, 9 Ohio St.3d 184, 459 N.E.2d 561 (1984). In *Wagner*, this Court held:

Proof of the amount paid or the amount of the bill rendered and of the nature of the services performed constitutes prima facie evidence of the necessity and reasonableness of the charges for medical and hospital services. (*DeTunno v. Shull*, 166 Ohio St. 365 [2 O.O.2d 281], modified.)

(Emphasis added.) *Id.*, paragraph one, syllabus. In reaching its decision in *Wagner*, this Court rejected the need for expert testimony as required by the court below to establish the reasonableness of the charges. *Wagner*, 9 Ohio St.3d at 185-186.

The Tenth District explained the Court's decision in *Wagner* as follows:

Thus, *Wagner* eliminated the *DeTunno* requirement that testimony as to necessity and reasonableness be introduced to lay a proper foundation for admission into evidence of medical bills. * * * [T]he *Wagner* court explained that contemporary medical billing practices leave many physicians unaware of specific charges billed through their accounting departments. ***In an apparent effort to streamline some evidentiary issues in personal injury litigation, similar to that underlying R.C. 2317.142, Wagner explained the practical effect of eliminating the testimony requirement * * * .***

(Emphasis added.) *Coleman v. Drayton*, 10th Dist. No. 93APE10-1402, 1994 Ohio App. LEXIS 1202, *5-6 (March 24, 1994).

The *Coleman* Court further explained that under *Wagner*, "testimony on the issues of reasonableness * * * is not a precondition for admission of medical bills into evidence." *Id.* at *7. Rather, *Wagner* merely requires proof of the amount paid or the amount of the bill rendered to establish *prima facie* evidence of reasonableness, and compliance with R.C. 2317.421 "constitutes sufficient 'proof' for purposes of satisfying the *Wagner* standard." *Id.*

In *Robinson v. Bates*, this Court cited and applied this same principle from *Wagner*, stating:

In *Wagner*, we held that '***[p]roof of the amount paid*** or the amount of the bill rendered and the nature of the services performed ***constitutes prima facie evidence*** of the necessity and reasonableness of the charges for medical and hospital services.' Thus, either the bill itself or the amount actually paid can be submitted to prove the value of medical services. (Internal citations omitted.)

(Emphasis added). *Robinson*, 112 Ohio St.3d 17, at ¶7 (citing *Wagner v. McDaniels*, 9 Ohio St.3d 184 (1984) and *DeTurno v. Shull*, 166 Ohio St. 365 (1957)). In *Jaques*, this Court again approved this holding and reasoning, stating that “either the bill itself or the amount actually paid can be submitted to prove the value of medical services.” *Jaques*, 125 Ohio St.3d 342, at ¶5.

For more than two decades, this Court has repeatedly held that proof of the amount paid for medical services constitutes *prima facie* evidence of the reasonableness of charges for medical and hospital services. And, during this time, this Court did not require expert testimony to establish either the amount paid for medical services or the amount written off (and not required to be paid by anyone). During this entire time, R.C. 2317.142 existed and eliminated the pre-1970 practice of requiring expert testimony to establish the reasonableness of the charges on medical bills. There is no reason to now revert back to the old cumbersome process that existed prior to 1970. Doing so would not only burden litigants with added trial expenses (including additional expert witness and attorney fees), it would also result in longer and more costly trials for the parties, the jury, the judge, and other court personnel. And this added time and expense would not result in any better information being available to the jury than is available today under current law. If the Ninth District’s decision on medical bill write-off evidence is allowed to stand, Ohio litigants and courts can expect more burdensome and costly trials, with no commensurate benefit to the juries, the judicial process, or the parties.

Instead of a streamlined process for the submission of evidence, a battle of the experts will ensue: plaintiff’s expert will testify that the amount reflected on the original bill without any adjustment is a reasonable amount to be considered by the jury, and the defendant’s expert will testify that the amount accepted as payment in full is a reasonable amount to be considered by the jury. The jury will be faced with the same decision it is now – whether to include the higher

amount, the lower amount, or an amount in-between. If the Ninth District decision stands, juries will be in no better position than they are today under established Ohio law, including *Jaques*, to resolve the issue. But, the parties and the judicial system will be forced to expend additional time, effort, and money.

In requiring expert testimony as a precondition to admission of the amount of the medical bill write-offs or the amount paid in full for the medical services rendered to Moretz, the Ninth District's decision is contrary to this Court's well-established precedent and undermines the purpose of R.C. 2317.421.

3. The "Short-Cut" Available Under R.C. 2317.421 Is Not Limited To Plaintiffs

In reaching its conclusion that expert testimony is a precondition to medical bill write-off evidence, the Ninth District mistakenly reasoned that the "short-cut" under R.C. 2317.421, which alleviates the need for expert testimony regarding medical expenses, only applies to plaintiffs. Plaintiffs asserted a similar argument in their Response to Appellant's Memorandum in Support of Jurisdiction. They argued that R.C. 2317.421 only provides a presumption of the reasonableness of charges, not the reasonableness of insurance payments or write-offs. (Response to Appellant's Memorandum in Support of Jurisdiction, pp. 11-13.) The Ninth District and Plaintiffs have misinterpreted the statute.

The express language of R.C. 2317.421 applies to *the party offering* medical bill evidence. It is not limited to a plaintiff offering medical bill evidence. The Ninth District and Plaintiffs overlook this critical language. Under R.C. 2317.421, a defendant's submission of a medical bill into evidence that reflects the amount accepted as payment in full or written off and not payable by anyone constitutes *prima facie* evidence of reasonableness.

Often, the medical bills expressly reflect the amount written off or the amount accepted as full payment for the medical services provided to the plaintiff. And that appears to be the case

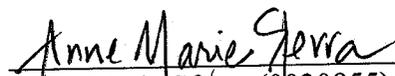
here. *See* Brief of Appellant Muakkassa filed in Ninth District, at 24 (“Plaintiffs should not have had the benefit of presenting to the jury evidence of the medical bills that they claimed were reasonable while Dr. Muakkassa was prohibited from presenting evidence of “write-offs” of those same medical bills.”) Such evidence demonstrates (or is at least relevant to) the amount incurred for medical services provided. Thus, this evidence of “write-offs” should be treated no differently than the medical bill evidence submitted by Moretz.

The Ninth District’s conclusion that Dr. Muakkassa could not offer the medical bills themselves as evidence of the amount accepted as payment for the medical services rendered, or as the amount written off, without expert testimony is contrary to the express language of R.C. 2317.421.

CONCLUSION

For all of the reasons set forth herein, Amici urge the Court to reverse the Ninth District’s decision and to instruct Ohio’s lower courts that expert testimony is not required as a precondition to the admissibility of “write-offs” or the amount accepted as full payment for medical services rendered.

Respectfully submitted,



Anne Marie Sferra (0030855)

Keesha Warmby (0087004)

Bricker & Eckler LLP

100 South Third Street

Columbus, OH 43215

Tel: 614-227-2300

Fax: 614-227-2390

asferra@bricker.com

Counsel for Amici Curiae, Ohio Hospital Association, Ohio State Medical Association, Ohio Osteopathic Association, American Insurance Association, and Ohio Alliance for Civil Justice

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Amici Curiae, Ohio Hospital Association, Ohio State Medical Association, Ohio Osteopathic Association, American Insurance Association, and Ohio Alliance for Civil Justice has been served upon the following by U.S. Mail, postage prepaid, this 31st day of October, 2012:

Mark D. Amaddio
Mark D. Amaddio Co., L.P.A.
55 Public Square, Suite 850
Cleveland, Ohio 44114

David M. Todaro
David M. Todaro Co., LPA
126 N. Walnut Street
Wooster, Ohio 44691

Mark S. Fusco
Walter & Haverfield, LLP
1301 E. 9th Street, Suite 3500
Cleveland, Ohio 44114

Counsel for Plaintiffs-Appellees

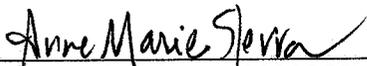
Douglas G. Leak
Roetzel & Andress, LPA
One Cleveland Center, Ninth Floor
1375 East Ninth Street
Cleveland, OH 44114

Stacy Delgros
Roetzel & Andress, LPA
222 South Main Street
Akron, Ohio 44308

Counsel for Defendant-Appellant

Jamey T. Pregon
Lynette Dinkler
Dinkler Pregon, LLC
2625 Commons Blvd., Ste. A
Dayton, Ohio 45431

*Counsel for Amicus Curiae,
Ohio Association of Civil Trial Attorneys*



Anne Marie Sferra (0030855)