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OHIO SUPREME COURT ISSUES IMPORTANT DECISION ON COLLATERAL SOURCE RULE, AFFIRMING *ROBINSON V. BATES*

By: Martin T. Galvin

On May 4, 2009 the Ohio Supreme Court issued an Opinion the case of *Jaques v. Manton*, 2010-Ohio-1838, and in so doing reaffirmed the viability of *Robinson v. Bates*, 2006-Ohio-6362. The essence of the Court's decision is that, at trial, where damages for personal injury are sought, evidence may be admitted of both the amount billed to a plaintiff in medical charges and the amount actually paid. A plaintiff may still present evidence of the face amount of their medical bills, but defendants, in turn, may tell the jury what portion of the medical bills were written off by the health care provider. The Ohio Supreme Court stated that this result was mandated both by the common law collateral source rule, and by R.C. 2315.20, which was enacted after the cause of action in *Jaques* accrued. Two lower courts had held both that R.C. 2315.20 superseded *Robinson v. Bates*, and that this statute prohibited juries from being informed that portions of medical bills introduced into evidence had been written off.

Reminger was privileged to have participated in this case. Marty Galvin and Bill Meadows authored an Amicus Brief urging reversal for the Academy of Medicine of Northern Ohio.

The issue of whether write downs of medical bills are admissible comes down to a dispute over the meaning of “reasonable value of medical care required to treat an injury.” It is well-settled that in personal injury cases, an injured party is entitled to recover “necessary and reasonable expenses” arising from the injury. The question answered in *Robinson*, which was revisited, and ultimately re-affirmed in *Jaques*, is how to determine the reasonable value of the medical care. The first option is to only admit evidence of the amount paid in settlement of the bills. The second option is to only admit evidence of the face value of the bills. The third option is to admit evidence of both the amount paid and the face value of medical bills, and then let juries sort it out. *Robinson*, and now *Jaques,* require application of the third option.

Generally, under the common law collateral source rule, a jury may not learn about a plaintiff’s receipt of payment from a source other than the tortfeasor, so that a tortfeasor is not given an advantage from third party payments to the plaintiff. For example, if a person is injured in an accident and incurs $1,000 in medical bills, which bills are covered by insurance, the collateral-source rule provides that the wrongdoer does not get the benefit of payment. The question answered by the Ohio Supreme Court concerns how to handle situations where a portion of the medical bills are not actually paid, usually because of a discount negotiated by a health care insurer.

After the *Robinson* decision was released, most observers considered this issue settled. Nevertheless, some trial lawyers soon began advancing an argument that the *Robinson* decision was flawed, and that it contained a fatal loophole which prevented it from being applied to all but a small number of cases. This argument suggested that because the statute governing the collateral source rule, R.C. 2315.20, was amended after the *Robinson* decision was released, the decision would have no forward going effect. This argument, which was essentially a distortion of an innocuous footnote contained in the *Robinson* opinion, had been accepted by numerous trial courts across the state.

The *Jaques* Court reasoned that "because different insurance arrangements exist, the fairest approach is to make the defendant liable for the reasonable value of the plaintiff's medical treatment. Due to the realities of today's insurance and reimbursement system, in any given case, that determination is not necessarily the amount of the original bill or the amount paid."

The practical effect of this decision is that the Court has reaffirmed the viability of its prior ruling in *Robinson*, which should eliminate the problem of inconsistent application of the collateral source rule by trial courts.

In another development, there is a bill pending in the State Legislature which could effectively override the Court’s decision in *Jaques*.

On November 10, 2009, House Bill 361 was introduced.

H.B. 361, as written, would make inadmissible in any personal injury or wrongful death action evidence that a medical provider did any of the following:

1) accepted an amount that was different from the amount of the charges and fees stated in the written bill, as payment in full;

2) agreed to waive any right to payment of the charges or fees;

3) agreed to provide medical services free of charge.

Thus, under H.B. 361, if it eventually becomes law, evidence of write downs will again become inadmissible. H.B. 361 would also operate to extend this presumption of reasonableness to "any relevant portion" of a written bill or statement. On February 10, 2010, H.B. 361 was reported on by House Commercial and Civil Law Committee.

If you have any questions with respect to the measure of damages recoverable in a personal injury action, including "damage caps", please contact any one of our General Casualty Insurance Practice Group Attorneys.

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