

DAMAGES: JUDICIAL INTERPRETATION
OF ROBINSON V. BATES

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I. A REVIEW OF THE COLLATERAL SOURCE RULE AND THE SUPREME COURT OF OHIO'S DECISION IN *ROBINSON V. BATES*

- A. The Collateral Source Rule-ORC §2315.20-Introduction of Evidence of Collateral Benefits in Tort Actions (Causes of Action Accruing on or After April 7, 2005)

ORC §2315.20 provides, in pertinent part:

- (A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation or if the source pays the plaintiff a benefit that is in the form of a life insurance payment or a disability payment. However, evidence of the life insurance payment or disability payment may be introduced if the plaintiff's employer paid for the life insurance or disability policy, and the employer is a defendant in the tort action.
- (B) If the defendant elects to introduce evidence described in division (A) of this section, the plaintiff may introduce evidence of any amount that the plaintiff has paid or contributed to secure the plaintiff's right to receive the benefits of which the defendant has introduced evidence.
- (C) A source of collateral benefits of which evidence is introduced pursuant to division (A) of this section shall not recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant.

B. Practical Application of ORC §2315.20

Although this new legislation allows for evidence of collateral benefits, from a practical standpoint in almost every case these benefits are accompanied by either a federal, contractual, or statutory right of subrogation. Consequently, to the extent there are subrogation rights, evidence of the collateral benefit will likely not be admissible.

C. *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362

1. Decided December 20, 2006.
2. Syllabus of the Court:
 - a. 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)
 - b. 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.
3. The Supreme Court’s Reasoning:
 - a. The collateral-source rule does not apply to write-offs of expenses that are never paid. Because nobody pays the write-off, it cannot possibly constitute payment of any benefit from a collateral source. Admitting evidence of write-offs does not violate the purpose behind the collateral-source rule.
 - b. The fairest approach is to make the defendant liable for the reasonable value of plaintiff’s medical treatment.
 - c. “Due to the realities of today’s insurance and reimbursement system, in any given case, that determination [the reasonable value of the medical treatment] is not necessarily the amount of the original bill or the amount paid. Instead, the reasonable value of medical services is a matter for the jury to determine from all relevant evidence. Both the 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.”

4. The effects of *Robinson v. Bates*
 - a. The potential presentation of medical expenses to a jury is driven down by as much as 40%-60%.
 - b. Many plaintiff's attorneys are not presenting or arguing original medical bills, for fear of losing credibility with the jury.
 - c. A recent case example:
 - (1) Original medical bills - \$92,230.94
 - (2) Amount accepted as payment in full - \$48,415.84
 - (3) Adjustments/write-offs - \$43,815.10

II. THE APPLICATION OF *ROBINSON V. BATES*: DOES THE SUPREME COURT'S HOLDING APPLY TO CAUSES OF ACTION ACCRUING ON OR AFTER APRIL 7, 2005, THE EFFECTIVE DATE OF ORC §2315.20?

- A. A number of plaintiff's attorneys have argued, and a number of trial court judges have held, that the holding of *Robinson v. Bates* does not apply to cases involving causes of action accruing on or after April 7, 2005. The rationale for the argument, and the corresponding holding, is as follows:
 1. The cause of action which forms the basis for the *Robinson v. Bates* decision occurred on April 21, 2001.
 2. Footnote 1 of the *Robinson* decision, which 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.

3. Some trial courts have interpreted this footnote to mean that the *Robinson* holding does not apply to causes of action governed by R.C. 2315.20, specifically those accruing on or after April 7, 2005.
- B. Courts which have held that *Robinson v. Bates* does not apply to causes of action accruing on or after April 7, 2005 include the following:
1. *Kissinger v. Hollosi*, Lucas County Common Pleas Case No. CI 07 3285, (2007)(Judge James Bates)
 2. *Martin v. Kornowa*, Lucas County Common Pleas Case No. CI 07 1168, (2007)(Judge Gene Zmuda)
 3. *Palm v. Burmeister*, Lucas County Common Pleas Case No. CI 06 3579, (2007)(Judge Denise Ann Dartt)
 4. *Almaguer v. King*, Lucas County Common Pleas Case No. CI 06 5776, (2007)(Judge Frederick McDonald)
 5. *Clausen v. Lester*, Fulton County Common Pleas Case No. 06 CV 268, (2007)(Judge James Barber)
 6. *Gutierrez v. Kure*, Fulton County Common Pleas Case No. 07 CV 123, (2008)(Judge James Barber)
 7. *Hudnall v. Reeves*, Licking County Common Pleas Case No. 06 CV 773, (2008)(Judge Jon Spahr)
- C. A number of courts have held, conversely, that *Robinson v. Bates* does apply to all cases, regardless of when the cause of action accrues. The rationale for those decisions is as follows:
1. Nothing in the *Robinson v. Bates* decision or holding conflicts with the new collateral source statute, R.C. 2315.20;
 2. The collateral source statute does not apply to write-offs of medical expenses that are never paid. The written off amount of a medical bill differs from the receipt of compensation or services from a collateral source.
- D. Courts which have held that *Robinson v. Bates* applies to all cases, regardless of the accrual date, include the following:

1. *Curtis v. Dettloff*, Lucas County Common Pleas Case No. CI 06 5811, (2008)(Judge Ruth Aim Franks)
2. *Thomas v. Singer*, Williams County Common Pleas Case No. 06 CI 21, (2007)(Judge Craig Roth)
3. *Knight v. Hunt*, Stark County Common Pleas Case No. 07 CV 3059, (2007)(Judge Lee Sinclair)
4. *Schlegel v. Li Chen Song*, 493 F.Supp. 2d 918 (N.D. Ohio 2006)(Judge David Katz)
5. *Yoe v. Pro-Kleen Industrial Services, Inc.*, Fairfield County Common Pleas Case No. 05 CV 1064, (2008)(Judge Chris Martin)