

ROBINSON V. BATES UPDATE:
INTERPRETATION AND APPLICATION BY LOWER COURTS

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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 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%, or more.
 - b. If applicable, plaintiff's attorneys may not present or argue original medical bills, for fear of losing credibility with the jury.

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 courts 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 formed the basis for the *Robinson v. Bates* decision accrued 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 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. Trial courts in the following counties have held that *Robinson v. Bates* does not apply to causes of action accruing on or after April 7, 2005:

1. Cuyahoga

2. Lorain
3. Summit
4. Lake
5. Lucas
6. Allen
7. Highland
8. Fairfield
9. Licking
10. Franklin

C. Conversely, trial courts in the following counties have held that *Robinson v. Bates* does apply to all cases, regardless of when the cause of action accrues. Those counties are as follows:

1. Cuyahoga
2. Summit
3. Trumbull
4. Clermont
5. Franklin
6. Licking
7. Fairfield
8. Stark
9. Athens
10. Seneca
11. Hancock
12. Paulding
13. Montgomery
14. Hamilton
15. Lucas¹

D. *Jaques v. Manton*, 6th Dist. No. L-08-1096, 2009-Ohio-1468 (decided March 20, 2009):

1. Case facts and history
 - a. December 20, 2005 admitted liability auto collision
 - b. Original medical bills - \$21,874.80
 - c. Amount accepted as payment in full for the medical bills - \$7,483.91

¹ Neither list is exhaustive, as there are many judges who have issued rulings, without opinion, on this issue.

- d. Trial court judge ruled in pretrial motion practice that the *Robinson v. Bates* numbers (reduced medical bills and/or write-offs) were not admissible.
 - e. Jury verdict in favor of the plaintiff - \$25,000
 - f. The defendant filed a motion for new trial, which was denied.
2. The Sixth Appellate District decision:
 - a. Unanimous 3-0 decision by the Sixth Appellate District
 - b. The Court of Appeals affirmed the judgment of the trial court, and held as follows:

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.

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.

E. *Richard Jaques v. Patricia Manton*, Supreme Court of Ohio Case No. 2009-0820:

1. Discretionary appeal filed on May 4, 2009
2. Appellant seeks Supreme Court jurisdiction of the matter as a "case of public or great general interest."
3. If the Supreme Court accepts jurisdiction, no decision is likely for 8-12 months

III. SHORT TERM STRATEGIES IN HANDLING PRESENTATION OF MEDICAL BILLS

A. Obtain the Information Regarding Reduced Medical Bills/Write-Offs in Discovery:

1. Remains an effective negotiation tool.
2. Some judges allow discovery of reduced medical bills/write-offs, but not admission into evidence.

B. Continue to Argue in Favor of Admitting Reduced Medical Bills and/or Write-Offs:

1. Supreme Court intended its decision to apply to all causes of action, regardless of accrual date.
2. Write-offs do not constitute payment of a benefit from a collateral source.

(a) *Thompson v. Trzcinski*, (May 18, 2009) Lucas C.P. No. CI08-3183, (Judge James Jensen)

- allowed evidence of write-offs
- reasoned that, even in light of the *Jaques* decision, paragraph 1 of the *Robinson* syllabus was superceded by collateral benefits statute, but statute did not supercede paragraph 2 of *Robinson* syllabus

C. Use Pending Supreme Court Appeal As a Negotiation Tool.