

**IN THE COURT OF APPEALS  
STATE OF GEORGIA**

WELLSTAR KENNESTONE	)	
HOSPITAL,	)	
	)	
Appellant,	)	
	)	Appeal No.
vs.	)	A17A1497
	)	
MARIO MOJICA ROMAN,	)	
	)	
Appellee.	)	

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**MARIO MOJICA ROMAN’S BRIEF IN RESPONSE TO APPELLANT  
WELLSTAR KENNESTONE HOSPITALS INITIAL BRIEF**

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**PART ONE: INACCURACIES AND INCOMPLETENESS OF  
FACTUAL STATEMENTS OF APPELLANT**

**I. SUMMARY OF ARGUMENT**

The entire purpose of the collateral source rule is to prevent a situation where a plaintiff, who has paid for health insurance, recovers less from a tortfeasor than a plaintiff who has not paid for health insurance. This is an evidentiary rule which prohibits, under most circumstances, a jury from hearing evidence that a plaintiff has received a benefit from collateral sources. The collateral source rule was never intended to limit or restrict a defendant from asking questions during discovery which might lead to the discovery of admissible evidence regarding “reasonable and customary” charges. This distinction forms the disconnect between the arguments asserted by Wellstar Kennestone Hospital (“Appellant”) and the legal analysis contained within Judge Darden’s order. There is no question that “reasonable and customary” charges are different than “necessary and reasonable” treatments. How does one determine if a provider’s stated charge is the actual “reasonable and customary” charge? Should a defendant just take the provider’s word for it? That flies in the face of our democratic process, common sense, our system of justice, and O.C.G.A. § 24-9-921, which specifically states that “nothing in this Code Section shall be construed to limit the right of a thorough and sifting

cross-examination as to such items of evidence.” A defendant must be afforded the opportunity, if desired, to ask reasonable questions of providers to determine whether the charges stated on paper are “reasonable and customary” or are simply made up numbers which have nothing to do with what a provider expects to be paid for its services. What if it turns out that a provider is effectively inflating the alleged “reasonable and customary” charges for personal injury claimants compared to other patients? Clearly, if such were the case, discovery on that matter would be allowed. What if it can be shown that a provider never expects to be paid the full extent of its stated charges? That necessarily would imply that the stated charges are not the “reasonable and customary” charges. Clearly, a defendant in a personal injury case is allowed to challenge what constitutes “reasonable and customary” charges.

In order to possibly make such challenge at trial, a defendant first must be able to discover the facts necessary to raise such challenge. It will then be for the trial court to determine whether such challenge is admissible. In this case, at this point, the time to make any decisions regarding the admissibility of evidence has not yet arrived, as Appellant would like this Court to believe. Further, Appellant has failed to cite a single case or statute supporting its position that the collateral source rule shields it from facing *discovery* on the issue of “reasonable and customary” charges.

## II. STATEMENT OF FACTS

This lawsuit arises out of a motor vehicle accident that occurred on February 14, 2015 involving Plaintiff Autumn McKinney and Defendant Mario Roman (“Appellee”). (R. 6, 7). Following the accident, Plaintiff treated in Appellant’s emergency room and was released the same day. (R. 85). Plaintiff received an itemization of services from Appellant for the services provided on February 14, 2015, which totaled \$15,919.00. (R. 85). The itemization includes a \$216 charge for a pregnancy test, a \$3,344 charge for a cervical CT scan, a \$5,726 charge for a CT scan of her abdomen, a \$3,267 charge for a thoracic CT scan, and a \$581 charge for a foot x-ray, among other “charges.” (R. 85). Appellee believes that Plaintiff intends to introduce the itemization of charges as evidence of the reasonable charges incurred for treatment on February 14, 2015 at trial. (R. 36). Appellee contends that \$15,919.00 is not a reasonable charge for the services rendered on that date. (R. 36).

As part of his investigation into the reasonableness of the Appellant’s charges, Appellee retained billing expert, Will Ronning, who opined that the Medicaid allowable charge for these services would be \$1,513.67, as opposed to the \$15,919 listed on the itemization of charges. (R. 86). Similarly, Mr. Ronning identified the Medicare allowable amount for these charges as \$2,325.97, the

average insurance allowable amount as \$2,793.63, and the workers' compensation allowable amount as \$3,122.53. (R. 86). This report demonstrates that the amount Appellant "charged" to Plaintiff exceeds what it typically expects to be paid for the same services by insured individuals by \$13,125.37. (R. 86).

Appellee seeks the discovery deposition of Appellant's billing coordinator to investigate the reasonableness of these charges. (R. 18, 19). Appellant objected to answering any questions about the reasonableness of the bill or to allow its agent to testify about the range of charges accepted for the same treatment and filed a motion to modify Appellee's subpoena. (R. 24). The trial court denied that motion, and Appellant appealed. (R. 117).

## **PART TWO:**

### **I. STANDARD OF REVIEW**

Despite Appellant's contention to the contrary, the standard of review for a trial court's ruling on discovery disputes is abuse of discretion. Trial courts have broad discretion to determine what is and what is not discoverable, and this Court has held that it will not interfere with those decisions absent a clear abuse. *Smith v. U-Haul Co. Georgia*, 225 Ga. App. 356, 357 (1997) (citations omitted); *Hendricks v. Southern Bell Tel., etc., Co.*, 193 Ga. App. 264 (1989).

Appellant contends that the correct stand of review is *de novo*. However, the Court of Appeals has applied the abuse of discretion standard in determining

whether trial courts improperly admit collateral source evidence—a conclusion which Appellant incorrectly characterizes as one of law. *See Kelley v. Purcell*, 301 Ga. App. 88, 91 (2009).

## II. ARGUMENT AND CITATION OF AUTHORITIES

The trial court correctly denied Appellant’s motion to modify Appellee’s subpoena. Discoverability and admissibility are judged by different standards. To be discoverable, information sought must only be reasonably calculated to lead to the discovery of admissible evidence. Because the information sought is not barred by the collateral source rule and may be admitted at trial to establish the unreasonableness of Appellant’s charges, it reasonably calculated to lead to the discovery of admissible evidence.

### A. The collateral-source rule is inapplicable in determining whether the information sought by Appellee is discoverable.

Georgia law prohibits presentation to the *jury* of payment of damages by a collateral source. *Olariu v. Marrero*, 248 Ga. App. 824, 825, (2001) (emphasis supplied). The rule generally bars parties from presenting any evidence at trial as to payments of expenses of a tortious injury paid for by a third party and taking any credit toward the defendant's liability and damages for such payments.

*Hoeflick v. Bradley*, 282 Ga. App. 123, 124 (2006).

In the discovery phase of litigation, parties may obtain discovery of any

matter, not privileged, which is relevant to the subject matter involved in the pending action.” OCGA§ 9-11-26. Discovery is not limited to matters which are admissible in evidence at trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence. *International Service Ins. Co. v. Bowen*, 130 Ga. App. 140, 144 (1973). The procedure is to be given a liberal construction in favor of supplying a party with the facts underlying his opponent's case without reference to whether the facts sought on discovery are admissible at trial. *Id.*; see also, *Setzers Super Stores of Ga., Inc. v. Higgins*, 104 Ga. App. 116, 121 (1961) (specifically, the deposition-discovery procedure is to be given a liberal construction without reference to the fact the information sought may be admissible). For example, in *Olariu v. Marrero*, a case directly cited in Appellant’s brief, this Court ruled on the admissibility of evidence already obtained in a non-party deposition which pertained to the amount of a plaintiff’s bill written off by a hospital. *Olariu*, 248 Ga. App. at 825. There, the Court made no determination, and plaintiff presumably raised no argument, that the information obtained in the deposition was undiscoverable. *Id.*

Appellant’s brief refers to the “purpose” for which the evidence is sought and argues that the trial court erred in finding that Appellee sought admissible evidence. Similarly, Appellant argues that allowing Appellee to “present” this testimony would violate the collateral source rule. These arguments may be ripe if

such evidence is proffered at trial, but are inappropriate in determining the issue at hand insofar as they urge the court to focus on admissibility, not discoverability. Inadmissibility of information sought is not grounds for objection so long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Chandler v. Liberty Mut. Fire Ins. Co.*, 333 Ga. App. 595, 598 (2015).

**B. The information sought by Appellee relating to the amount Appellant is willing to write off its itemization of services is discoverable as the information requested is reasonably calculated to lead to the discovery of admissible evidence.**

The information sought is reasonably calculated to lead to the admissibility of discoverable evidence regarding the reasonableness of the charges for Plaintiff's treatment. In every personal injury case, "[t]he law requires proof that the medical expenses arose from the injuries sustained, and that they are reasonable and necessary before they are recoverable." *Allen v. Spiker*, 301 Ga. App. 893, 896 (2009) (quoting *Barnes v. Cornett*, 134 Ga. App. 120, 121 (1975)). It is no longer necessary that a plaintiff produce expert testimony to introduce medical bills. O.C.G.A. § 24-9-921. Instead, plaintiffs must establish that such expenses were incurred in connection with the treatment of the injury involved in the subject of litigation and that the bills were received from an approved provider. *Id.* What the

statute does specifically allow, however, is the right of an opposing party to “a thorough and sifting cross-examination as to such items of evidence.” *Id.*

Absent the ability of a defendant to obtain information in discovery regarding the reasonableness of such charges from the provider itself, there would be essentially no way to cross examine the evidence, considering the lack of relevant knowledge on the part of a plaintiff. The alternative, argued by Appellant, is to allow defendants only to argue that certain treatment on a bill was not reasonable or necessary in addressing the injury caused by defendant’s negligence. This hardly allows for a thorough and sifting cross-examination and would ultimately only allow a defendant to challenge causation, and not the reasonableness of the charges.

If the Court were to accept Appellant’s argument that “all” evidence relating the amounts providers expect to be paid for their services constitutes inadmissible, collateral source information, it would necessarily lead to the absurd conclusion that any amount a provider decided to list on an itemization of services would be presumptively reasonable and immune from attack. This would deprive litigants of to the right to cross examine the reasonableness of charges as permitted by O.C.G.A. § 24-9-921. Further, providers, knowing that they would not be subject to examination, or even discovery, on the amounts charged, would be further incentivized to inflate charges for litigant-patients.

Appellee concedes that evidence related to the amount of money Appellant was willing to write off *Plaintiff's bill*, if attempted to be offered at trial, could, depending on the circumstances, be barred as collateral source evidence. However, as previously discussed, Appellee is merely attempting to discover evidence of the medical rates and charges relevant to *third parties* that are not involved in this case in order to explore the reasonableness of Plaintiff's claimed medical expenses. (R. 36, 38). Case law cited by Appellant, on the other hand, involves situations in which evidence of write-offs applied to a *plaintiff's bills* were barred by the collateral source rule. *See Olariu v. Marrero*, 248 Ga. App. 824, 826 (2001); *Candler Hosp., Inc. v. Dent*, 228 Ga. App. 421, 421 (1997). That is simply not the case here.

Further, in *Olariu v. Marrero*, this Court was charged with the question of whether or not medical expenses discharged in bankruptcy should be treated as a collateral source payment. *Olariu*, 248 Ga. App. at 826. The Court held that the discharge of medical expenses in bankruptcy does not constitute a "collateral source" at all, because there is no "third party acting as an additional source of recovery." *Id.* Using the same reasoning, the trial court in this case correctly found that the collateral source law does not bar the discovery of medical rates and charges of *third parties* that are not involved in the case. The rule, which bars defendants from presenting evidence that the *claimant* received payment from a

third party, is inapplicable in this instance. *Wardlaw v. Ivey*, 297 Ga. App. 240, 244, 676 S.E.2d 858, 863 (2009) (emphasis added).

While Appellee contends that the trial court was correct in denying Appellant's motion, Appellee also contends that the trial court erred in finding a recent Georgia Supreme Court Case, *Bowden v. The Med. Ctr., Inc.*, distinguishable from the case at bar. 297 Ga. 285 (2015). In that case, the Supreme Court held:

[W]here the **subject matter** of a lawsuit includes the validity and amount of a hospital lien for the **reasonable charges** for a patient's care, how much the hospital charged other patients, insured or uninsured, for the same type of care during the same time period is relevant for discovery purposes. *Id.* at 286 (emphasis supplied).

As in *Bowden*, a central issue in this case is whether the charges Plaintiff received are reasonable. As previously discussed, the law in this State requires proof that the medical expenses arose from the injuries sustained and that they are *reasonable* and *necessary* before they are recoverable. See O.C.G.A. 51-12-7; *Allen*, 301 Ga. App. at 896. Thus, the information sought by Appellee is calculated to lead to admissible evidence because "how much other patients are charged for the same services in the same market is relevant to the issue of reasonableness." *Bowden* at 296.

Although Appellant contends that the Supreme Court's holding was limited

to hospital lien cases, the United States District Court for the Northern District of Georgia has interpreted the holding as also applying to typical bodily injury cases. *Houston v. Publix Supermarkets, Inc.*, No. 1:13-CV-206-TWT, 2015 WL 4581541, at \*1 (N.D. Ga. July 29, 2015). In *Houston*, the defendant sought to introduce evidence of a litigation funding company's payment of some of the plaintiff's medical bills as it related to the reasonable value of plaintiff's medical expenses. *Id.* The plaintiff argued that any information regarding the agreement between the funding company and the healthcare provider was irrelevant insofar as it related to collateral source information. *Id.* The Court determined that the information was not barred by the collateral source doctrine as the defendant did not to offer the evidence in order to reduce its liability, but rather to attack the credibility of the plaintiff's experts and the reasonable value of medical services. *Id.* at \*2. Specifically, the Court found that the evidence was relevant to issue of the reasonableness of the plaintiff's medical bills, considering the fact that the litigation funding company purchased those bills at a discounted rate from the plaintiff's providers. *Id.* The Court specifically noted that "the Georgia Supreme Court recently noted that a fair-minded juror can consider the difference between the price charged to insured and uninsured customers when determining the reasonable value of medical bills." *Id.* (citing *Bowden* at 292.)

The United States District Court for the Western District of Texas, in the

case *C.R. of Galaviz v. England*, faced a similar question. 2012 WL 1313301 (2012). There, the defendant sought the production of documents from a funding company, Key Health, to determine the reasonableness of healthcare expenses in a tort case. *Id.* at \*1. Specifically, the defendant sought the amounts initially charged by the healthcare provider, the amounts paid by Key Health to the healthcare provider, and the amounts not being requested by Key Health after the purchase of the healthcare provider's accounts receivable. *Id.* Key Health and the plaintiff objected to the request. *Id.* at 2. While admittedly persuasive authority, the Court determined that the request was “relevant to a determination of whether amounts paid for medical and healthcare expenses were reasonable and necessary regarding damages. . . .” *Id.* at 3. Accordingly, the District Court overruled the plaintiff and Key Health’s objection to the request and denied the motions for protective order filed in response to the request. *Id.*

Appellee similarly seeks to discover evidence of Appellee’s billing practices, not to reduce its liability because of a collateral source payment, but rather to challenge the reasonable value of medical services rendered. Therefore, the information sought is reasonably calculated to lead to the discovery of evidence relevant to a determination of whether amounts paid for medical and healthcare expenses were reasonable and necessary.

### III. CONCLUSION

The trial court was correct in denying Appellant's motion to modify the subpoena for the deposition of Appellant's representative. All that is required at this juncture is that the evidence sought be reasonably calculated to lead to the discovery of admissible evidence. Any argument as to the ultimate admissibility of evidence obtained in the deposition and to the applicability of the collateral source rule is premature. Appellee has shown that the information sought is reasonably calculated to lead to admissible evidence insofar as Appellee has the right to conduct a discovery deposition to determine his potential defenses as to the reasonableness of Appellant's charges in this action. Otherwise, acceptance of Appellant's argument, that such evidence is undiscoverable because it is inadmissible collateral source evidence, would lead to the absurd conclusion that any amount a provider lists on an itemization of services is presumptively reasonable and immune from attack. Accordingly, Appellee respectfully requests that this Court affirm the rulings and judgment of the trial court.

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted, this 31<sup>st</sup> day of May, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically filed **Mario Mojica Roman's Brief in Response to Appellant Wellstar Kennestone Hospitals Initial Brief** on the Court of Appeals' Efast System, and served the following attorneys of record with a copy by depositing in the United States Mail with adequate postage thereon, addressed as follows:

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