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<tr><td>Plaintiff-Appellee: RAPHAEL MUKENDI,

v.

Defendant-Appellant: BRADLEY SCHROCK.</td></tr>
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Hon. Randall C. Arp</td></tr>
<tr><td colspan="2">ANSWER BRIEF</td></tr>
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Plaintiff-Appellee Raphael Mukendi ("Plaintiff" or "Mukendi"), by and through his attorneys, Franklin D. Azar & Associates, P.C., and pursuant to Rule 28(b) of the Colorado Appellate Rules ("C.A.R."), hereby submits his Answer Brief in the above-captioned appeal.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief complies with all requirements of C.A.R. 28 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

1. This brief complies with the applicable word limits set forth in C.A.R. 28; it has 9,477 words, which does not exceed the word limit of 9,500.
2. This brief complies with the Standard of Review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b); in response to each issue raised by the Appellant, this brief provides under a separate heading before the discussion of the issue a statement indicating whether Plaintiff-Appellee agrees with Appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1 and C.A.R. 32.

s/ Joseph A. Sirchio
Joseph A. Sirchio, Reg. No. 44675
Counsel for Plaintiff-Appellee

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I. INTRODUCTION.

Mukendi suffered life-threatening injuries when defendant-appellant Bradley Schrock ("Defendant") drove his car across the center line and collided head-on with Mukendi's car at 52 miles-per-hour one early morning. Plaintiff was taken to the nearest Level 1 Trauma emergency room, a choice made by first responders. After three surgeries and six weeks in medical facilities, Mukendi was released but had racked up over $700,000 in medical bills. At trial, Mukendi submitted significant evidence regarding his medical treatment and bills, and the jury returned a verdict in his favor.

Defendant's appeal attempts to undo at least a decade's worth of established precedent regarding the collateral source rule. Defendant seeks to hold insured persons responsible for alleged unfair billing practices by hospitals and other medical providers. The law does not and should not require injured persons to defend a hospital's billing amounts or practices.

II. STATEMENT OF THE CASE.

A. Factual and Procedural Background.

On April 15, 2019, Defendant was driving his 2015 Honda Accord in the wrong lane and collided head-on, at a speed of 52 miles per hour, with Mukendi's 1998 Isuzu Trooper, causing extensive damage to both vehicles. (CF, pp. 138, 142-44.) Defendant was cited as having "Failed to Drive in Designated Lane." (CF, p. 143.) Mukendi was not cited or found at fault by the law enforcement officers who investigated the scene of the collision.

When emergency medical personnel extracted Mukendi from his vehicle, his left femur was protruding through his jeans, with shards of bone hanging on his pants. (CF, p. 137-38.) Mukendi was rushed by ambulance to University of Colorado Hospital ("UCH") and hospitalized there for eleven days. (CF, p. 500.) He suffered fractures of his femur, tibia, sternum, and ribs, as well as a Grade II splenic laceration, and a pressure sore on his nose. (CF, p. 500.) He underwent three surgeries and was then transferred to Swedish Medical Center ("Swedish") on April 26, where he received additional treatment. (CF, p. 500.) On May 1, Plaintiff was transferred to a rehabilitation facility and remained there for another 26 days. (CF, p. 500.) Plaintiff's

medical charges accrued for these treatments and surgeries totaled $712,219.03. (CF, p. 502.)

Mukendi filed suit against Defendant on May 26, 2019, seeking recovery for his past and future medical expenses, lost wages, pain and suffering, and for his permanent injuries resulting from Defendant's negligence. (CF, pp. 3-8, 503.) Plaintiff filed an Amended Complaint on June 17, 2019. (CF, pp. 11-16.) Defendant responded by filing an Answer and Jury Demand on July 1, 2019. (CF, pp. 19-22.)

B. Defendant's Proposed Witnesses and Plaintiff's Pre-Trial Motions.

1. Richard Lacy

Leading up to trial, each party filed motions *in limine* addressing evidentiary issues[1]. On February 10, 2020, Plaintiff filed a motion to exclude the testimony of Richard Lacy ("Lacy"). (CF, pp. 205-09.) Lacy was identified by Defendant as an expert witness on the "market value" of Mukendi's medical bills, and had submitted a report dated January 18, 2020 (the "Lacy Report") reflecting his expected testimony. (CF, pp. 206, 210-13, 602-05.)

1 Plaintiff's motions included a Motion re Plaintiff Testifying to His Own Medical Bills (CF, pp. 181-84) and a Motion to Exclude Evidence or Mention of Collateral Sources, Including Argument About the Reasonableness of Plaintiff's Medical Expenses (CF, pp. 225-30). Neither motion was denied by the trial court. *See* CF, pp. 473-74.

Plaintiff moved to exclude Lacy's testimony on grounds that Lacy's "market value analysis" lacked a credible basis, relied upon assertions that necessarily implicated the introduction of inadmissible collateral source information, "and would be misleading and confusing for the jury." (CF, pp. 205-09.)

Lacy disclosed that he had spent a total of four hours on his four-page Report. (CF, pp. 602-03.) Using a "cost-to-charges ratio" and an (arbitrary) markup he selected, Lacy opined that the "market value" for the $598,286 in total medical bills charged to Mukendi by UCH and Swedish was only $278,520. (CF, p. 602.) Lacy did not offer any opinion as to whether the charges from UCH or Swedish were "reasonable," and did not comment upon or analyze the $113,933 billed to Mukendi by other medical providers.

On September 8, 2020, Plaintiff filed a Motion to Strike Testimony of Defense Expert Richard F. Lacy (the "Lacy Motion") (CF, pp. 591-601), building on the February 10 motion to detail numerous reasons why Lacy's testimony should not be heard at trial. The Lacy Motion used information obtained at Lacy's deposition to demonstrate why his analysis and opinions were unsound and improper under Rules 403 and 702 of the Colorado Rules of Evidence ("C.R.E."), and violated the collateral source rule and the holding

from *Wal-Mart Stores Inc. v. Crossgrove*, 276 P.3d 562, 567 (Colo. 2012). Plaintiff argued that Lacy's "market value" theory was not based upon reliable scientifically accepted methodologies, and was based instead on Lacy's "gut feel" as to "what these services are worth." (CF, pp. 594-95.) In addition, Lacy admitted that certain hospital services or departments have "cost-to-charges ratios" that differ from the ratios for other services provided by the same facility, even though his analysis in the Lacy Report had applied the same flat ratio and markup to all services provided to Mukendi. (CF, pp. 596-97.) Lacy's relevant experience as a contract adjuster did not qualify Lacy to opine as to the "market value" or reasonableness of the hospital charges billed to Mukendi, especially since Lacy admitted that he could not guarantee that either UCH or Swedish would accept as payment-in-full the amounts he declared as the "market value" of the treatment received. (CF, p. 598.) Because of these problems and the necessary implication of collateral sources in Lacy's "market value" and "cost-to-charges" analyses, the Lacy Motion asked the court to preclude Lacy's testimony. (CF, p. 601.)

2. Mike Bishop

Mike Bishop ("Bishop") appeared as the designee for UCH pursuant to C.R.C.P. 30(b)(6), and Defendant sought to introduce his testimony. *See* Opening Brief of Defendant-Appellant Bradley Schrock dated May 23, 2022 (the "Op. Br."), at 5. Defendant deposed Bishop, UCH's director of business services, on March 3, 2021, just weeks before the commencement of trial on March 29. (CF, pp. 801, 921.) Defendant intended to use Bishop at trial to show that "while [UCH] does not provide discounted charges . . ., the amounts it will ultimately accept for services are discounted based on the payor." Op. Br. at 6. According to Defendant's interpretation of Bishop's testimony, UCH's "self-pay discount" would allow an uninsured patient to make a "lump sum payment of cash" at a discount from the full amounts charged for medical treatment in satisfaction of the debt, as low as 45% of the total billed amount. Op. Br. at 7.

Defendant ultimately filed an Offer of Proof of Proposed Testimony attaching the transcript from Bishop's deposition. (CF, pp. 918-42.) During his deposition, Bishop stated that UCH's "prices are reasonable considering the Level 1 Trauma educational group that [UCH] is." (CF., p. 927, Tr. 25:8-25:11.)

Bishop contradicted Lacy's analysis and said that he "would not agree" that "a reasonable price would be a price that is reasonable within the market." (CF., p. 927, Tr. 25:12-25:17.) Bishop also made clear that the "[s]elf-pay discount is for uninsured patients" and would not be available to a patient who intended to use health insurance to help pay for UCH's bills. (CF., p. 931, Tr. 41:25; Tr. 44:15-44:22.)

On March 15, 2021, Plaintiff filed a Motion *In Limine* to Exclude the Testimony of Mike Bishop the C.R.C.P. 30(b)(6) Designee of University of Colorado Hospital (the "Bishop Motion"). (CF, pp. 802-06.) The Bishop Motion sought a ruling precluding Defendant's proposed use of Bishop, because Bishop's testimony regarding the "self-pay discount" for uninsured patients was irrelevant and violated the collateral source rule, among other problems (including the untimeliness of the disclosure of Bishop as a potential defense witness).

C. Decisions under review.

1. <u>The Lacy Order</u>

The trial court issued an Order Re: Plaintiff's Motion to Strike Testimony of Defense Expert Richard F. Lacy (the "Lacy Order") on December 30, 2020,

granting Plaintiff's motion and excluding Lacy's opinions. (CF, pp. 756-59.) The Lacy Order expressed concern "with whether testimony regarding market value of medical services is helpful or an appropriate issue for the jury to consider when determining necessary and reasonable medical expenses." (CF, p. 757.) The court excluded Lacy primarily because his "calculation of the market value of these services is not relevant or helpful for this case," in part because "market value" was of no moment where Mukendi had no choice where he was taken to receive emergency medical services, and no opportunity to comparison shop, and "therefore the best evidence of Plaintiff's medical expenses are the amounts he was billed." (CF, p. 758.)

In rejecting Defendant's arguments, the court also referenced the collateral source rule, noting that even though "Lacy is not opining on collateral sources, he is opining on a lesser value of medical services that the hospitals should charge." (CF, p. 758.) The "lesser value" advocated by Lacy implicates the same potential prejudice to Plaintiff sought to be avoided by the collateral source rule, namely that jurors "will likely infer the existence of a collateral source if presented with evidence of a lower amount paid to satisfy a higher amount billed because, unlike cases involving uninsured

patients, providers routinely accept discounted rates to satisfy insured patients' bills." (CF, p. 757-58 (quoting *Crossgrove*, 276 P.3d 562, 567 (Colo. 2012).)

2. The Bishop Decision

After the court issued the Lacy Order, Defendant deposed Bishop on March 3, 2021 as a potential defense witness, just 26 days before trial. (Tr., 3/24/21, pp. 11:20-12:2.) The Bishop Motion followed on March 15, 2021, and Judge Arp heard argument on the Bishop Motion at a pre-trial conference on March 24, 2021, recognizing that Defendant had not filed a written response and providing a full opportunity to be heard in opposition. (Tr., 3/24/21, pp. 10:5-22:4.)

Defendant's counsel argued his intention for Bishop to testify that UCH "will accept self-pay patients and provide them a 55 percent discount," which Defendant believed "is some evidence of the reasonable value of those services." (Tr., 3/24/21, p. 13:4-13:8.) According to Defendant, this evidence would not implicate the collateral source rule, because Bishop's testimony would involve what might be paid by a hypothetical patient who lacks health insurance altogether. (Tr., 3/24/21, p. 13:8-13:11.) The court, however, as it

had with Lacy, focused on the potential relevance (or lack thereof) of the proposed testimony, ultimately agreeing "with Plaintiff that it has no relevance to the reasonableness of the medical bills in this case because the 55 percent discount doesn't apply in this case." (Tr., 3/24/21, pp. 16:11-18:21.)

Judge Arp struck Bishop's testimony, except for purposes of authenticating and testifying to Mukendi's actual bills. The court excluded evidence regarding a "self-pay discount" because such information is irrelevant to Mukendi, who is not a self-pay individual and has insurance, and because a discount provided to an uninsured, self-pay individual is not determinative of the reasonable value of provided medical services but instead reflects a business decision of the hospital in trying to collect *something* from patients who the hospital might otherwise have difficulty collecting from; "it does not reflect, and there's no evidence before this Court that it actually reflects the reasonable value of those medical services." (Tr., 3/24/21, pp. 20:15-21:12.) Because Mukendi was transferred to UCH via ambulance and "was not allowed to shop for medical services," and because those "services were provided on an emergency basis and then billed to him; [ ] therefore, those are, in fact, his damages . . .." (Tr., 3/24/21, pp. 21:13-21:24.)

The trial court's decisions excluding the testimony of Lacy and Bishop are the subjects of Defendant's instant appeal.

D. The Trial, Verdict, and Judgment

At the jury trial on March 29, 30, and 31 of 2021, Plaintiff testified at length regarding his injuries, hospitalization, medical treatment, and rehabilitation process. (Tr. 3/29/21, pp. 228:16-243:9.) Mukendi also testified to his loss of work, income, and leisure activities, and the billing he received for his medical treatment; he verified that the total charges he incurred amounted to $738,659, and confirmed that Trial Exhibit 31, which was then admitted into evidence, was a true and accurate representation of his medical bills. (Tr. 3/29/21, pp. 243:10-250:18.)

In addition to Mukendi's own testimony, Plaintiff presented as expert witnesses Dr. Jason Stoneback, the chief of orthopedic trauma surgery at UCH who treated Plaintiff at the hospital and discussed Mukendi's numerous injuries and the surgeries, treatments, and medical interventions they required, and testified that "all of the care" that Plaintiff received at UCH was "reasonable, necessary, and related to the injuries he sustained in the car crash" (Tr. 3/30/21, pp. 12:16-37:20); and Dr. David Wiener, an orthopedic

surgeon who also treated Mukendi as an outpatient, who further detailed Mukendi's injuries and treatment and stated that the treatments Mukendi received were "reasonable, necessary, and related to the injuries caused by this car crash" (Tr. 3/31/21 Pt. 1, pp. 9:20-37:2). Plaintiff also called several lay witnesses, who testified regarding the impact that Mukendi's injuries and their lasting effects have had on his life and activities. (Tr. 3/30/21, pp. 91:12-115:11; 154:8-158:21).

The Jury Instructions made clear that Plaintiff "has the burden of proving, by a preponderance of the evidence, the nature and extent of his damages," and that determining the dollar amount of those damages fell to the jury. (CF, p. 964.) The Instructions noted that any damages awarded should consider "[a]ny economic losses which [P]laintiff has had to the present time for reasonable and necessary medical expenses and any loss of earnings to the present time or which [P]laintiff will probably have in the future." (CF, p. 964.) The jury was also instructed to "use your best judgment based on the evidence" in determining the amount to award in damages, if any. (CF, p. 966.)

The jury returned a verdict favoring Plaintiff, finding that Mukendi had "injuries, damages, or losses," that Defendant's negligence caused those injuries, and that Mukendi did not cause the car crash. (CF, pp. 978-79; Tr. 3/31/21 Pt. 2, pp. 2:9-3:3.) The jury awarded economic damages in the amount of $772,480.00, an additional $500,000 in noneconomic damages, and physical impairment damages in the amount of $1,477,520.00. (CF, p. 979; Tr. 3/31/21 Pt. 2, pp. 3:4-3:9.). The court thus entered a judgment against Defendant in the total amount of $2,750,000.00. (CF, p. 988.) Defendant's subsequent attempts to amend or stay the judgment were considered and denied. (CF, pp. 1152-54.) After costs and interest were calculated, an Order of Judgment for $3,160,527.43 issued on September 13, 2021. (CF, pp. 1174-75.) This appeal followed.

III. SUMMARY OF THE ARGUMENT.

The trial court correctly excluded as irrelevant proposed testimony from Lacy and Bishop, and correctly denied Defendant's motion for directed verdict because Plaintiff had submitted sufficient evidence to send the question of "reasonable" medical damages to the jury. The collateral source rule is well-established and wisely considered, and adequately balances

protection of plaintiffs and defendants, but this rule did not form the basis of the trial court's decisions to exclude the irrelevant testimony of Lacy and Bishop, and the Defendant's attempts to turn this case into a left-flank assault on the collateral source rule and the holdings of cases like *Crossgrove* are as misplaced and improper as they are ineffective.

Even though the best evidence of a plaintiff's reasonable and necessary medical expenses is the amounts billed to the plaintiff, for which the plaintiff remains legally liable, the defendant is not foreclosed from submitting its own evidence regarding whether the plaintiff's bills are reasonable. However, any such evidence proposed by either party must still comply with the usual rules of evidence, including those regarding relevance and the reliability of expert opinion testimony, as well as the collateral source rule. In granting the motions to strike Lacy and Bishop as witnesses, the court rightly determined that the testimony they proposed to give, for the purposes articulated by defendant, would be inapplicable and not helpful on any issues in this case.

The trial court did not err or abuse its discretion when it excluded Lacy and Bishop as witnesses. Nor did it commit error when it rightly denied Defendant's motion for directed verdict, because Plaintiff is not required to

affirmatively prove "reasonableness" as an element of damages, and even if such a requirement existed, Plaintiff submitted more than enough evidence for the jury here in the form of Plaintiff's own testimony and the testimony of two treating doctors.

IV. ARGUMENT.

A. The District Court Correctly Excluded Testimony From Lacy and Bishop As Improper Or Irrelevant For The Purposes Proposed By Defendant In This Case.

1. Preservation.

Though Mukendi disputes that the district court's ruling "prevented [Defendant] from presenting *any* evidence demonstrating Plaintiff's damages were unreasonable" (*see* Op. Br. at 13 (emphasis added)), he does not dispute, more broadly, that Defendant properly preserved his objections to the rulings excluding the testimony of Lacy and Bishop.

2. Standard of Review.

A trial court's decision to exclude or prohibit an expert's testimony is reviewed under the "abuse of discretion" standard. *Gonzales v. Windlan*, 2014 COA 176, ¶ 20, 411 P.3d 878, 883. Thus, the decisions precluding Lacy and Bishop are afforded significant deference, and will only be disturbed if they

are "manifestly arbitrary, unreasonable, or unfair." *Id.* Under this standard of review, the appellate court is not required to agree with the lower court's decision; rather, it lets the decision stand as long as it "fell within a range of reasonable options." *E-470 Pub. Highway Auth. v. Revenig*, 140 P.3d 227, 231 (Colo. App. 2006).

Defendant inaccurately claims that a "misapplication of law" also qualifies as an abuse of discretion; the case cited by Defendant on this point indicates that more than a mere "misapplication of law" is required, and that a court abuses its discretion only when it applies a wholly incorrect legal standard. *See Clark v. Farmers Ins. Exch.*, 117 P.3d 26, 29 (Colo. App. 2004); *see also* Op. Br. at 13.

3. Nothing in the Controlling Law or the Trial Court's Decisions Bars Defendants From Presenting "Any" Evidence Demonstrating That Damages Are Not Reasonable.

a. **Colorado's collateral source rule balances the interests of plaintiffs and defendants.**

The collateral source rule, as developed under common law and statute, includes a post-verdict setoff component codified at section 13-21-111.6, C.R.S., and a pre-verdict evidentiary component. *Sunahara v. State Farm Mut.*

Auto. Ins. Co., 2012 CO 30M, ¶ 13, 280 P.3d 649, 654; *Crossgrove*, 2012 CO 31, ¶¶ 9-10. The statutory post-verdict setoff component seeks to mitigate a plaintiff's "double recovery" and allows a trial court to deduct certain forms of collateral source payments from a plaintiff's damages award. *Crossgrove*, 2012 CO 31, ¶¶ 14-15; *see also Volunteers of Am. Colorado Branch v. Gardenswartz*, 242 P.3d 1080, 1082-84 (Colo. 2010). However, the purpose of tort law is to allow injured parties to recover for a tortfeasor's negligence. *See Hodge v. Matrix Grp., Inc.*, 2022 COA 4, ¶ 13, 507 P.3d 1010, 1013. Thus, the pre-verdict component of the rule precludes the admission of any evidence that a plaintiff may have received benefits from a collateral source, in order that the tortfeasor does not benefit from the insurance contract for which that plaintiff had the foresight to pay. *Gardenswartz*, 242 P.3d at 1082-83. As developed, the collateral source rule carefully and fairly balances the interests of both plaintiffs and defendants; despite Defendant's allusions to the contrary, there is no reason to revisit the wisely considered boundaries of the rule.

b. **Plaintiffs are entitled to recover damages from tortfeasors, including the necessary and reasonable value of the medical services rendered.**

The essential goal of the collateral source rule, and of tort law in general, is to ensure that the plaintiff is fully recompensed for injuries and losses caused by a tortfeasor (and that the tortfeasor does not unduly benefit from prior actions of the injured plaintiff). *See Stamp v. Vail Corp.*, 172 P.3d 437, 448 (Colo. 2007) ("Compensatory damages are intended to make the plaintiff whole."); *Van Waters & Rogers, Inc. v. Keelan*, 840 P.2d 1070, 1074-75 (Colo. 1992) (discussing policy goals of collateral source rule); Restatement (Second) of Torts § 920A, Cmt. b (1979) (noting that collateral source rule confirms that "it is the tortfeasor's responsibility to compensate for all harm that he causes, not confined to the net loss that the injured party receives" and that the rule is regarded "as a means of helping to make the compensation more nearly compensatory to the injured party."). Accordingly, injured plaintiffs are entitled to recover for damages they have incurred, including medical bills resulting from the tortfeasor's negligence.

The Colorado Supreme Court has indicated that the way for a jury to *measure* a plaintiff's damages from medical bills "is the necessary and

reasonable value of the services rendered, rather than the amount which may have been paid for such services," though in some cases the amount paid for services can be some evidence of the reasonable value. *Kendall v. Hargrave*, 142 Colo. 120, 123, 349 P.2d 993, 994 (1960). In *Crossgrove* and subsequent decisions, the Court clarified that in collateral source cases, "the pre-verdict component of the collateral source rule controls" over the "reasonable value" principle from *Kendall* and "prohibits the admission of amounts paid evidence in collateral source cases, even for the purpose of determining the reasonable value of medical services rendered." *Sunahara*, 2012 CO 30M, ¶ 15, 280 P.3d 649, 654. Even while acknowledging the fact that there may be significant differences in the amounts charged to plaintiffs by hospitals and the amounts those hospitals actually accept, Colorado courts have continually reaffirmed the primacy of the collateral source rule over attempts to submit evidence regarding what amounts were paid to medical providers from collateral sources. *See Forfar v. Wal-Mart Stores, Inc.*, 2018 COA 125, ¶ 25, 436 P.3d 580, 585.

c. **A plaintiff's damages are reflected in the total amounts billed for medical treatment resulting from the defendant's negligence.**

Defendant's arguments on appeal run counter to the overwhelming weight of jurisprudence conclusively establishing that the primary evidence of the "reasonable and necessary" value of medical treatment is the amount charged for those services. Logically, the total amount *billed* to the plaintiff by medical providers is the best evidence of the reasonable value of the services received by the plaintiff, not what may have or will be *paid* on those bills; indeed, the bills will often be the only indication a plaintiff has of what the reasonable value might be, especially in a situation like Mukendi's where the Plaintiff was rushed to the hospital for emergency services and had no opportunity to decide where he would be treated or to "shop around" to determine what his treatment might cost. Even patients who opt for scheduled elective surgery and might have an opportunity to compare the best value in services (though most patients likely go wherever their doctors tell them to go) operate in a significant vacuum of information, are not always aware of the medical provider's rates, and can be given wildly inaccurate estimates of what the final charges might be. *See French v. Centura Health Corp.*,

2022 CO 20, ¶¶ 9, 14, 42, 509 P.3d 443, 446-477 (explaining, in a case where an elective-surgery patient was ultimately billed nearly $200,000 above the hospital's original estimate, that patients do not have access to, and could not understand, a hospital's "chargemaster" database listing charges for medical services). Patients are not always privy to the contractual rates negotiated by health insurers or other payment sources, and may not even *know* what actually gets *paid* to providers for their treatment.

Forcing plaintiffs to provide any sort of additional analysis or verification as to whether the amounts billed are "reasonable" would require every plaintiff to hire an expert. This requirement would contravene existing law that a plaintiff's evidence regarding medical charges "does not have to be in the form of expert testimony." *Lawson v. Safeway, Inc.*, 878 P.2d 127, 131 (Colo. App. 1994). And "[l]imiting the reasonable value of medical services 'to the pecuniary loss suffered by a plaintiff would mean, for example, that injured plaintiffs who received gratuitous medical services, were treated at a veteran's hospital, or were covered by medical insurance plans such as offered to Kaiser Hospital patients would *not* be entitled to recover any monetary amount from the tortfeasor . . . such an approach is contrary to the great

weight of authority in this country." *Forfar v. Wal-Mart Stores, Inc.*, 2018 COA 125, ¶ 28, 436 P.3d 580, 586 (quoting *Bynum v. Magno*, 101 P.3d 1149, 1162 (Haw. 2004)). Furthermore, limiting a plaintiff's damages to amounts paid on their medical bills would preclude any recovery by an indigent and uninsured patient who has not yet been able to pay anything towards their medical debt prior to trial.

A patient is legally liable to medical providers for the *entire* amount of the bills charged by medical providers, regardless of whether the debt is ultimately satisfied for a lesser amount. "When a hospital treats a patient's injuries, it has an enforceable claim for full payment for its services, regardless of the patient's financial status." *Trevino v. HHL Fin. Servs., Inc.*, 945 P.2d 1345, 1350 (Colo. 1997). And the supreme court has equated "reasonable and necessary charges" with the full amount billed to the patient, noting that Colorado law provides a lien against treated patients "for all reasonable and necessary charges for hospital care" and stating that this language "plainly provides that the lien is in the full amount of the hospital charges." *Id.*

Subsequent decisions have reinforced this principle; for instance, the supreme court based a recent finding that medical financing companies do not

qualify as collateral sources under the rule on reasoning that, while "the pre-verdict component of the rule excluded evidence of collateral sources on the grounds that such evidence may cause jurors to improperly lower damage awards because the injured party has already been compensated by their benefits provider," the plaintiff's contract to receive funding for treatment from Injury Finance did not run the same risk because the plaintiff "remains liable to Injury Finance for the full amount billed by her healthcare providers regardless of the results of any litigation." *Ronquillo v. EcoClean Home Servs., Inc.*, 2021 CO 82, ¶ 27, 500 P.3d 1130, 1137. The law consistently recognizes that the patient remains "on the hook" for the *entire amount billed* to him unless and until the medical provider is satisfied, whether through health insurance or other means. *See Gardenswartz*, 242 P.3d 1080, 1086 (Colo. 2010) ("If [plaintiff] had not had insurance coverage, he would have been liable for the entire amount billed or he may not have been treated at all.").

Courts have recognized the seeming disparity between what a patient might be charged for treatment and the amounts actually paid by insurance companies, and have rejected the temptation "to treat the discounted amounts as being a truer reflection of a plaintiff's damages," because the discounted

amounts paid by insurers reflect the leverage and negotiating power of large insurance companies, which individual plaintiffs lack. *Id.* at 1087. "In other words, simply because medical bills are often discounted does not mean that the plaintiff is not obligated to pay the billed amount." *Id.* (quoting *Arthur v. Catour*, 345 Ill.App.3d 804 (2004)).

Allowing plaintiffs to claim the full amount of their bills as the "reasonable" value of treatment, without regard to reduced amounts that might have been paid by insurers, is not only consistent with Colorado law and common-sense policy, but also the vast majority of courts in other jurisdictions. "Unsurprisingly, a majority of courts have concluded that plaintiffs are entitled to claim and recover the full amount of reasonable medical expenses charged, based on the reasonable value of medical services rendered, including amounts written off from the bills pursuant to contractual rate reductions." *Forfar*, 2018 COA 125, ¶ 28 (collecting cases) (internal quotation omitted). Therefore, Mukendi properly claims as damages the full value of the medical bills sent to him because "the reasonable value of [Plaintiff's] medical services was not limited to amounts that [an insurer] paid to his providers." *Id.* at ¶ 30.

d. The trial court's decisions to exclude Lacy and Bishop did not preclude "any" or "all" evidence intended to show that Plaintiff's damages might not be reasonable.

Of course, allowing plaintiffs to claim the full amounts billed as their "reasonable" economic damages does not preclude defendants from submitting their own evidence suggesting that a different amount would be "reasonable." However, any such evidence must not only be admissible under the normal rules of evidence, including those requiring relevance and prohibiting unqualified opinion testimony, but must also comply with the collateral source rule. To be clear, the proper arbiter of the "reasonable" value of medical services is not the hospital or either of the parties, but the jury (or other factfinder). *See French,* 2022 CO 20, ¶ 45 (holding that "the trial court properly tasked the jury with determining the reasonable value of the goods and services that Centura provided to French."); *Gardenswartz*, 242 P.3d 1080, 1087 (Colo. 2010) ("It is unwarranted speculation to substitute Aetna's discounted healthcare provider rates for the jury's determination regarding the reasonable value of the medical services rendered to Tucker."); *Lee's Mobile Wash v. Campbell*, 853 P.2d 1140, 1143 (Colo. 1993) ("In our view, the court of

appeals should not substitute its opinion of what damages are appropriate for that of the jury, except under special circumstances."). Accordingly, any evidence pertaining to these issues must be appropriate for the jury's consumption, with or without regard to the operation of the collateral source rule.

Defendant names the first issue on appeal as "Whether the district court reversibly erred in applying *Wal-Mart Stores, Inc. v. Crossgrove*, 2012 CO 31, to exclude evidence that did not run afoul of the collateral source rule, thereby depriving Defendant of the ability to present any evidence that Plaintiff's claimed medical expenses were unreasonable?". Op. Br. at 1. The foundation for the entire edifice of Defendant's argument on this appeal is irreparably and fatally cracked; Defendant misinterprets and mischaracterizes the trial court's decisions as having somehow applied *Crossgrove* and the collateral source rule to declare that a defendant is precluded from ever submitting any kind of evidence going to the question of the "reasonableness" of a plaintiff's damages. Defendant presents his argument as if the district court ordered that there were no circumstances under which Defendant could submit evidence to the jury regarding whether the damages claimed by Mukendi were

reasonable. In reality, the district court's exclusions of Lacy and Bishop were well-founded, individualized analyses that rightly found the testimony of these particular witnesses improper in the context of this case, and did not rely on *Crossgrove* or any other authority to make any ruling that would have precluded Defendant from asserting relevant and admissible evidence regarding reasonableness through a qualified and appropriate witness. No matter how strongly the Defendant and Amicus might wish to turn this case into a direct assault on *Crossgrove* and the collateral source rule, the plain text of the decisions under challenge in this appeal makes clear that both the Lacy Order and the Bishop Decision relied on grounds other than the collateral source rule, and this appeal can be resolved without revisiting or even applying the rule.

i. The district court's exclusion of Lacy was proper and did not exclude "all" evidence regarding reasonableness.

The Lacy Report set forth Lacy's opinion as to the "market value" of the treatment received by Mukendi at UCH and Swedish. This analysis was based entirely upon Lacy's own calculation of the "cost-to-charges" ratio he believed represented the percentage of the billed amounts that the hospitals actually

expended for care, coupled with an arbitrary "margin" applied by Lacy that was admittedly based upon nothing more than Lacy's own "gut feeling." Using this "formula," Lacy arrived at his estimate of what he expected the "market value" of the medical services to be. Notably, the only medical facilities for which Lacy conducted this analysis were the two hospitals that treated Mukendi—UCH and Swedish—and Lacy did not conduct any sort of market survey or comparison with what other medical facilities would have charged for the same services.

C.R.E. 701 renders inadmissible most forms of opinion testimony. Under C.R.E. 702, a well-qualified expert witness may offer opinion evidence if it "will assist the trier of fact to understand the evidence or to determine a fact at issue." A trial court is given wide latitude and flexibility in considering whether proffered expert testimony should be admitted, but the inquiry focuses on whether the witness is qualified and whether the proposed testimony is reliable, helpful, and relevant. *People v. Shreck*, 22 P.3d 68, 77-78 (Colo. 2001).

All evidence must be relevant to be admissible. C.R.E. 402. When evaluating whether expert testimony is admissible, more than simple

relevance is required; in order to be "helpful" the proffered evidence must "fit" into the case, meaning that it "must be validly and scientifically related to the issues in the case." *People v. Martinez*, 74 P.3d 316, 323 (Colo. 2003). Trial courts have the best opportunity to evaluate a potential expert's qualifications and whether the proffered testimony would be helpful to a jury, and therefore those courts "are vested with broad discretion to determine the admissibility of expert testimony, and the exercise of that discretion will not be overturned unless manifestly erroneous." *Id.* at 322.

The trial court excluded Lacy's testimony because it "is not relevant or helpful to this case" and would be "more misleading than helpful to the jury to determine the necessary and reasonable value" of the medical services provided to Plaintiff. (CF, p. 758.) Judge Arp made this determination because, while the "market value" of medical services might have some relevance "in a case where the plaintiff searches and shops for medical services," it has no bearing here where Mukendi was treated on an emergency basis and had no choice in where he was taken by ambulance for treatment. *Id*. In other words, calculating what the fair "market value" might be based upon some markup on the actual cost to the hospital does not inform what

Plaintiff's "reasonable" medical expenses are here, where Mukendi had no choice in where he was treated or the services he received, or what he would be charged for them, and he remains legally liable for the entire amount billed to him by the medical providers, regardless of the relationship between those billed charges and the actual cost to the hospital of providing those services to him. Even though the trial court did describe the collateral source rule, it explicitly noted that "Lacy is not opining on collateral sources," but instead was "opining on a lesser value of medical services that the hospitals should charge," and thus the court did not rely upon the collateral source rule in excluding Lacy's testimony and instead granted Plaintiff's motion to strike on grounds of a lack of relevance and helpfulness. (CF, pp. 757-58.) Lacy's testimony was precluded not because of *Crossgrove* or the collateral source rule, but chiefly because there was no proper "fit" between Lacy's calculations and the facts of this case.

The trial court refrained from making any sweeping ruling that might have the effect of preventing Defendant from bringing "any" kind of evidence related to reasonableness. Judge Arp identified that, in the circumstances of this case, the medical billing to Mukendi is "the best evidence of Plaintiff's

medical expenses" but never held that the bills were the *only* admissible evidence, or that Defendant was forbidden from submitting additional evidence that would be relevant and helpful as to reasonableness. *Id.* For example, nothing would have stopped Defendant from submitting an analysis, if a credible one existed, that certain services or treatments received by Mukendi were not related to the injuries he sustained in the crash, or were otherwise "unreasonable" or "unnecessary" for Mukendi's recovery. Nothing in the court's decision would prevent a defendant in a case where the plaintiff had time and opportunity to comparison shop (i.e., a non-emergency medical situation) from submitting an actual market analysis to show what similar facilities in the geographic region would charge for the services received. Defendant's suggestion that the Lacy Order somehow foreclosed him from furnishing *any* testimony whatsoever as to reasonableness is belied by the fact that Defendant indeed tried again to submit evidence, through Bishop, attacking the reasonableness of Plaintiff's medical expenses.

The Lacy Order is correct, well-reasoned, and squarely within the purview of the wide discretion afforded to trial courts in determining whether expert testimony should be admitted before a jury. Moreover, the Lacy Order

is not based chiefly on the collateral source rule or *Crossgrove* despite Defendant's arguments to the contrary; the district court excluded Lacy because his testimony was not relevant or helpful. No reversible error is identified by Defendant, and the Lacy Order certainly does not constitute an abuse of the district court's discretion.

ii. The district court's exclusion of Bishop was proper and did not exclude "all" evidence regarding reasonableness.

During the March 24, 2021 pre-trial conference, the district court entertained a thorough oral argument from counsel with regard to the proposed testimony of Bishop. (Tr., 3/24/21, pp. 10:5-22:4.) In opposing the Bishop Motion, Defendant's counsel indicated that Bishop was presented for two reasons—first, to identify and explain certain charges on Mukendi's UCH bills, and second, to testify "that [UCH] will accept self-pay patients and provide them with a 55 percent discount," which Defendant believed informed the reasonable value of services. (Tr., 3/24/21, pp. 12:20-12:8.) After hearing argument, the court ruled that Bishop was allowed to testify regarding "authenticating and testifying to the actual bills," but otherwise granted the motion to strike Bishop's testimony. (*Id.*, pp. 20:15-20:18.)

As with the Lacy Order, Defendant mischaracterizes the trial court's rationale in excluding Bishop for the issue of the "self-pay discount." Defendant claims that Judge Arp "precluded Mr. Bishop from testifying because his testimony did not account for Plaintiff's collateral source." Op. Br. at 31. The district court's actual ruling excluded Bishop because the proposed testimony would not be relevant to the issues in this case.

Throughout the argument, Defendant repeatedly cited to the principle that "[w]hile the correct measure of compensable damages for medical expenses is the necessary and reasonable value of the services rendered, rather than the amount actually paid for such services, the amount paid is some evidence of their reasonable value" from *Lawson v. Safeway, Inc.*, 878 P.2d 127, 131 (Colo. App. 1994). And even though this "reasonable value" paradigm was indisputably abrogated in *Crossgrove* and declared subordinate to the collateral source rule where the two conflict, Judge Arp did not outright reject Defendant's point; instead, when Defendant's counsel stated that "[t]he case law is that the amount paid is some evidence of the reasonable value of services," the court responded that it was "not disagreeing with [counsel]. But the amount paid in this case is not the 55 percent discount that you want Mr.

Bishop to testify to." (Tr., 3/24/21, pp. 16:9-16:15.) The court explained that the "self-pay discount" offered to uninsured patients "has no actual application to Mr. Mukendi" as an individual *with* health insurance, and thus the court was

> trying to figure out why it would be relevant to the value of services in this case since you have no expectation or reason to believe that Mr. Mukendi is actually going to get that discount. So it's not what was paid. It's not what's going to be paid. Therefore, it's not evidence of the reasonable value even based on your own argument.

(*Id.*, pp. 16:15-16:24.) The court focused on the irrelevance and inapplicability of the proffered evidence to the factual issues of this case when determining whether the jury should hear it.

In response, Defendant's counsel attempted to mold the "self-pay discount" into relevance by referencing the collateral source rule, stating that Mukendi's own insured status did not matter for this inquiry because "the jury doesn't have any evidence whether he's paid or hasn't been paid, whether he's insured or isn't insured." (*Id.*, pp. 17:1-17:2.) Only after further establishing the irrelevance of the "self-pay discount" did the court bring in

Crossgrove to counter the arguments from Defendant's counsel, Mr. Ross-Shannon:

> **THE COURT: All right. So is Mr. Bishop going to testify that the University of Colorado Hospitals for every $100,000 billed in this case that they will accept $45,000 on behalf of Mr. Mukendi as the reasonable value of the services rendered to him? Is that his testimony?**
>
> MR. ROSS-SHANNON: No. He will testify that a self-pay individual they will accept 45 percent of their charges.
>
> **THE COURT: All right. And Mr. Mukendi is not a self-pay individual, is he?**
>
> MR. ROSS-SHANNON: I can't bring that in front of the Court—in front of the jury.
>
> **THE COURT: I know you can't bring it in front of the Court, and that's why I'm saying your argument flies in the face of *Crossgrove* because you can't bring it in the front of the Court because it implicates whether he is or is not a self-pay individual because he's not. He's got insurance, and so this 55 percent discount is not applicable to him. It's not applicable to his bills. It's not applicable to what he has or will be required to pay; and therefore, I'm tending to agree with Plaintiff that it has no relevance to the reasonableness of the medical bills in this case because the 55**

percent discount doesn't apply in this case, right?

(*Id.*, pp. 17:24-18:21.)

Ultimately, Judge Arp precluded Bishop from testifying as to the "self-pay discount," finding that this evidence "first of all [ ] is not relevant because Mr. Mukendi is not a self-pay individual." (Tr., 3/24/21, pp. 20:20-20:21.) Even if the jury would never *hear* that Mukendi was insured and not a self-pay individual, the very mention of "self-pay" could allow the jury to infer either that Mukendi was uninsured (to Mukendi's prejudice applying the discount) or that he was insured and had received insurance benefits (in violation of the collateral source rule). (*Id.*, pp. 20:22-21:2.) The court also found that a discount on medical services to the uninsured "has no reflection on the reasonable value of those medical services," and instead might simply reflect the hospital's business decision in trying to get *something* rather than nothing out of a patient who might otherwise be difficult to collect from[2]. (*Id.*, pp. 21:3-21:12.) In addition, because Mukendi had no opportunity to shop

2 Recent judicial findings also suggest that hospitals charge a higher overall "chargemaster" rate to uninsured patients than the contractual rates charged to insured patients, so it is possible that the "self-pay discount" mentioned by Bishop would be applied to higher total amounts of bills than the totals billed to patients with insurance such as Plaintiff. *See French v. Centura Health Corp.*, 2022 CO 20, ¶¶ 6-9.

around for medical treatment, the fact that a hypothetical uninsured patient might receive a 55 percent discount has no impact on what Plaintiff actually paid or what was paid on his behalf, and is, "therefore, not relevant to the jury's determination" of reasonable value. (*Id.*, pp. 21:13-21:24.) Thus, to the extent that the court applied the collateral source rule in excluding Bishop, that rule formed the partial basis for just one of four reasons the court provided for striking the testimony; the court first and foremost found that Bishop's testimony would be completely irrelevant to this case.

Again, nothing in the court's exclusion of Bishop precluded or foreclosed Defendant's submission of potential evidence on the issue or reasonable value where such evidence was relevant, helpful, and otherwise admissible, and did not run afoul of the collateral source rule. Here, Judge Arp appropriately determined that, in *this* case and in *these* circumstances, the testimony proposed for Lacy and Bishop for the purposes articulated by Defendant were not relevant or helpful *to this case*. Judge Arp did not rule that such evidence could never be admissible in any case or under any circumstances. The trial court committed no error and acted appropriately and within the bounds of its discretion when it excluded the proposed

testimony of both Bishop and Lacy due to their lack of relevance to the issues in this case.

4. Defendant is Not Entitled To A Reduction in Damages Because Plaintiff Did Not "Fail To Demonstrate That His Past Medical Expenses Were Reasonable."

a. Preservation.

Plaintiff agrees that Defendant partially preserved this issue by making a motion for directed verdict, but notes that Defendant improperly raises arguments and case law on appeal that he did not present before the trial court on the original motion under review. *See* Op. Br., pp. 35-37; 3/30/2021 Conf. Tr. pp. 5:1-10:2.

b. Standard of Review.

A motion for directed verdict is reviewed *de novo*, while viewing the evidence in the light most favorable to the non-moving party. *Tisch v. Tisch*, 2019 COA 41, ¶ 34, 439 P.3d 89, 100. "Such a motion can be granted only if the evidence compels the conclusion that reasonable jurors could not disagree because no evidence received at trial, or inference therefrom, could sustain a verdict against the moving party." *Id.*

c. "Reasonableness" is not a required element that a plaintiff must prove in order to recover damages.

As the Colorado Supreme Court has noted, the proper way to *measure* a plaintiff's medical damages is the "necessary and reasonable value" of the services provided to the plaintiff. *See Crossgrove*, 2012 CO 31, ¶ 19. Though the supreme court makes clear that this is the rubric by which juries can determine the appropriate *amount* of damages, Defendant argues as if "reasonableness" is a separate *element* that a plaintiff has the burden to prove. Defendant does not (and cannot) point to a single case from a Colorado court that explicitly requires plaintiffs to prove the "reasonableness" of medical charges, beyond presenting the billing itself, in order to proceed to the jury for its resolution, in part because the determination of the amount of damages adequately proven by the plaintiff is a question properly to be decided by the jury. *See* Section IV.A.3.d., *supra*.

In moving for a directed verdict prior to the close of evidence at trial, Defendant relied upon *Jorgensen v. Heinz*, 847 P.2d 181 (Colo. App. 1992) (*see* 3/30/2021 Conf. Tr. pp. 6:11-6:21), which was decided under Colorado's defunct no-fault paradigm, where the no-fault statute expressly required

plaintiffs to show both a "reasonable need" and a "reasonable value" for their medical services in order to recover in tort. 847 P.2d at 183. In that case, the court of appeals found no error in a trial court's finding that a plaintiff, whose only evidence of medical damages was her own testimony as to the total amount of the bills, had not met her statutory burden to establish a "reasonable need" for her treatment. *Id.* However, the *Jorgensen* Court did explain that the plaintiff's testimony alone "may have been sufficient to show a reasonable *value* of the medical services rendered." *Id.* (emphasis in original). Thus, to the extent that a case decided under the no-fault statute is instructive after Colorado changed to an at-fault system in 2003, *Jorgensen* directly contradicts Defendant's argument and shows that "reasonable value" *can* be established by a plaintiff's conclusory testimony alone, even if "reasonableness" was still a required element for recovery.

Defendant cited two other cases in support of his motion for directed verdict; both cases were mischaracterized by Defendant and are inapposite to the issues under review. First, Defendant claimed that *Melville v. Southward*, 791 P.2d 383, 387 (Colo. 1990) suggests that a plaintiff must use expert testimony to make a *prima facie* case as to matters of medical diagnosis and

treatment. (3/30/2021 Conf. Tr. pp. 6:3-6:10.) *Melville* dealt with the standards of care in a medical malpractice claim—not the amount of medical damages suffered by the plaintiff—and the decision held that expert opinion testimony would be required in most medical malpractice cases because such claims necessarily "involve a level of technical knowledge and skill beyond the realm of lay knowledge and experience." 791 P.2d at 387. No similar specialized knowledge is required in a case, like this one, where the best evidence of the amount of a plaintiff's medical damages is simply the amount he was billed, and is legally liable for, from his medical providers.

The other case invoked on the motion for directed verdict was *Mullins v. Med. Lien Mgmt., Inc.*, 2013 COA 134, which, according to Defendant, creates an "inference" that opinion evidence is required regarding the reasonableness of medical bills. (3/30/2021 Conf. Tr. pp. 7:5-8:6.) That case was a contract action between a patient and a medical lien company, and the only witness for the company, who had no role in the plaintiff's injury or treatment, described his business experience and then opined that he believed that the plaintiff's medical bills were reasonable and necessary. 2013 COA 134, ¶¶45-47. On appeal Mullins claimed that the court had erred in allowing that witness to

give his opinion regarding the bills, because the company had not sought to qualify him as an expert; the court of appeals found no error because "an ordinary citizen without specialized training or experience" would be able to use the same reasoning and reach the same conclusion, and thus could validly provide a layperson's opinion on the subject. *Id.*, at ¶¶ 48-50. Nothing in the *Mullins* Decision even vaguely suggests that expert or opinion evidence is *required* from plaintiffs in all cases involving medical bills; the issue in that case was whether the opinion evidence from a witness *who was not the plaintiff* was properly admitted at trial. If anything, *Mullins* shows that specialized or expert evidence is not required to establish the "reasonableness" of a total amount of medical bills.

As Defendant acknowledged when arguing the motion, his reading of the case law directly contradicts the plain statement from *Lawson* that evidence establishing that medical expenses were reasonable and necessary "does not have to be in the form of expert testimony." 878 P.2d at 131. And again, the proper entity to decide questions of whether claimed amounts have been shown to be "reasonable and necessary" is the jury.

In his Opening Brief, Defendant seemingly abandons *Jorgensen*, *Melville*, and *Mullins*, and instead tries to shoehorn a requirement to prove "reasonableness" into *Crossgrove*, and, puzzlingly, *Lawson*, using arguments that were not presented before the trial court on the original motion.

Reading into law an affirmative burden that a plaintiff must prove the "reasonableness" of his medical bills as a threshold element of his claim, as requested by Defendant in this appeal, would result in unfavorable consequences and go against established policies. First, it would take the determination of "reasonableness" and the proper amount of damages out of the hands of the jury, where it has been wisely entrusted for decades. Or it would force plaintiffs to hire expensive expert witnesses in every single trial, which would be cost-prohibitive for plaintiffs in lower-value cases and would needlessly prolong discovery and trial proceedings. Moreover, mandating that a plaintiff do more than submit his medical bills and/or testify that he incurred those bills as a result of a defendant's negligence would create the bizarre scenario of forcing a plaintiff to defend as "reasonable" the full amount of medical bills for which he alone is legally liable, even though the plaintiff has no role in what the providers charge him for services, has no

specialized knowledge in the health industry that would allow him to credibly testify as to what bills are "reasonable and necessary," and likely wishes that the provider had indeed charged him a far lower amount. A plaintiff would need to do so as a lay opinion, according to Defendant's reading of *Mullins*, but all this would mean in practice is that plaintiffs would be sure to say the "magic words" that their bills were "reasonable and necessary" while on the stand, without adding any actual substance or credibility to the evidence for the jury; this would be a new formal requirement without any corresponding benefit to factfinders. This measure would be particularly draconian if, as Defendant suggests, hospital bills are divorced from any semblance of cost-based reality, and yet plaintiffs who have no power over the prices charged would need to defend the entire amounts of their own debts in these allegedly overinflated charges.

To the extent that charges for medical services are unfair, imposing a "reasonableness" element on plaintiffs, who remain legally indebted for the full amounts billed, is not the way to fix the problem; any change required for medical billing practices should come from the legislature or other government regulators with the power to oversee the health care industry.

The onus and burden of justifying medical charges should rightly fall onto medical providers, not their injured patients. If Defendant believes that Plaintiff was overcharged by UCH and Swedish, Defendant's fight is with those hospitals, not Mukendi. Courts should not substitute their own feelings about the fairness of medical billing practices for the sound judgment of juries, and should certainly not do so by punishing plaintiffs for the potential wrongdoing of the medical services industry.

As Judge Arp explained in denying the motion for directed verdict, "[t]he fact that the defense or even the Court might believe that those expenses are somewhat outrageous just by the total amount charged does not change the fact that it is a measure of the actual damages incurred by plaintiff in this case. And there's nothing to indicate that he's not obligated to pay those expenses either individually or through a collateral source, which, again, the jury cannot and will not use to reduce his damages." (3/30/2021 Conf. Tr. pp. 15:8-15:15.) And the trial court is not alone in this ruling; in *Walters v. Bollinger*, No. 17CV33744, 2020 WL 5985142, at *1 (Colo.Dist.Ct. Feb. 14, 2020), the court explained that "[a]lthough it is true that no medical bills were introduced into evidence, that no provider testified about the value of its

services, and that no one from the estates testified about amounts they were billed or paid for those medical services, the law does not require this kind of direct evidence of value. It requires only that sufficient evidence of medical services be presented so that jurors can determine the reasonable value of those services." In this wrongful death case, the court found that testimony from a family member of the deceased regarding the efforts of emergency medical personnel to save the victims' lives, along with a document showing the total amounts billed by the medical services providers, was "more than enough to support the jury's verdict on this damage item," and thus the court denied defendant's motion for judgment notwithstanding the verdict.

d. Plaintiff Submitted Significant Evidence That Enabled the Jury to Determine the Reasonable and Necessary Value of Plaintiff's Medical Treatment.

While a requirement that plaintiffs prove and defend the "reasonableness" of medical bills as an element of their claim does not, and should not, exist, Defendant's arguments would still fail in this case even if such a requirement were imposed because Mukendi submitted ample evidence of his medical bills and their "reasonableness" at trial. Mukendi himself testified in depth about his numerous injuries from the collision, the

myriad medical interventions he received to treat those injuries, and the effects those treatments had on him; Plaintiff also testified to the amounts of his medical bills. (Tr. 3/29/21, pp. 228:16-250:18.) Trial Exhibit 31 detailed the amounts of the medical bills issued to Mukendi. And two physicians who had personally treated Mukendi, Dr. Stoneback and Dr. Wiener, testified that the services provided to Mukendi were "reasonable, necessary, and related to the injuries he sustained in the car crash." (Tr. 3/30/21, pp. 12:16-37:20 (Dr. Stoneback); Tr. 3/31/21 Pt. 1, pp. 9:20-37:2 (Dr. Wiener).) By any reading of the controlling legal standards, this was more than enough evidence to justify sending the issue to the jury and to support the jury's eventual verdict in favor of Plaintiff.

The trial court correctly denied Defendant's motion for a directed verdict, as there was no reason to prevent the jury from deciding the issue of Plaintiff's reasonable damages and Plaintiff had submitted sufficient evidence of those damages. Defendant's arguments requesting a new trial or a reduction in damages are unfounded and should not be endorsed by this Court.

V. CONCLUSION.

For the reasons set forth herein, this Court should affirm the district court's decisions and the jury's verdict; deny defendant a new trial, a reduction of damages, or any other relief; and grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 27th day of June, 2022,

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CERTIFICATE OF E-FILING

I hereby certify that on this 27th day of June, 2022, a true and correct copy of the above and foregoing **ANSWER BRIEF** was e-filed and thus served on the following parties via CCEF, properly addressed as follows:

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