SUPREME COURT OF LOUISIANA

NUMBER 2022-CC-1068

WALTER GEORGE AND JANIE GEORGE,
PLAINTIFFS/APPLICANTS

VERSUS

PROGRESSIVE WASTE SOLUTIONS OF LA, INC. AND ABC INSURANCE COMPANY,
DEFENDANTS/RESPONDENTS

ON APPLICATION FOR WRIT OF CERTIORARI OF REVIEW
OF WALTER GEORGE AND JANIE GEORGE
SEEKING REVIEW AND REVERSAL OF THE RULING OF
THE FIRST CIRCUIT COURT OF APPEAL, CASE NO. 2022-CW-0371
REVERSING THE RULING OF THE THIRTY-SECOND JUDICIAL COURT FOR THE PARISH OF TERREBONNE, STATE OF LOUISIANA
SUIT NUMBER 178-204, DIVISION "D", HONORABLE DAVID W. ARCENEAUX, PRESIDING

BRIEF OF THE LOUSIANA ASSOCIATION OF BUSINESS AND INDUSTRY, THE AMERICAN TORT REFORM ASSOCIATION, AND THE LOUISIANA LEGAL REFORM COALITION AS *AMICUS CURIAE* IN SUPPORT OF PROGRESSIVE WASTE SOLUTIONS OF LA, INC.'S OPPOSITION TO PLAINTIFFS/APPLICANTS' APPLICATION FOR WRIT OF CERTIORARI

Respectfully submitted,

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I. INTRODUCTION AND STATEMENT OF INTEREST OF *AMICI CURAE*

The facts of this case perfectly highlight the gamesmanship surrounding the collateral source rule, as plaintiffs in personal injury litigation seek to inflate their recoveries through claims for past medical expenses that are grossly exaggerated. After billing Petitioner Walter George almost two hundred thousand dollars ($200,000) for alleged litigation-related medical care, those very same healthcare providers accepted just forty percent (40%) of the billed amount in full and final satisfaction of the services they previously rendered. The payment to the providers ($76,808) was made by a third-party funding company, Ascendant Healthcare ("Ascendant"). Mr. George's attorney—but not Mr. George himself—personally guaranteed full payment to Ascendant of the original billed amount. Yet now, even though his healthcare providers accepted full and final compensation in an amount far less than what they originally billed, and even though it was the plaintiff's attorney who made the guarantee, Mr. George argues he should be allowed to introduce evidence of the full billed amount. Such a result would be a complete windfall to the plaintiff and trivialize his obligation to mitigate his damages, all at the expense of the defendants and Louisiana citizens, businesses, and industries.

A. Statement of Interest Louisiana Association of Business & Industry

The Louisiana Association of Business & Industry ("LABI") is a non-profit trade association representing over 2,500 business and industry members that, for over forty years, has worked to uphold its mission to foster economic growth by championing the principles of the free enterprise system and to represent the general interest of the business community through active involvement in the legislative, regulatory and judicial process. LABI's membership includes both large and small businesses engaged in all sectors of the economy, all of which are directly and indirectly affected by the unjustified litigation practices outlined below.

At the core of LABI's mission lies the duty to protect the fundamental legal principles that have served as safeguards of the civil justice system, such as those implicated herein. In the present matter, LABI is particularly concerned that any interpretation of the collateral source rule other than as pronounced by the lower courts will improperly facilitate and even promote the recent phenomenon of "phantom damages" — *i.e.*, collection of monetary damages for the portion of an invoice from a medical provider that is discounted and therefore does not reflect pecuniary loss to the plaintiff. LABI respectfully submits that these litigation practices, which, at a minimum,

encourage gamesmanship in medical billing, are inconsistent with the fundamental principles underlying tort law and were never contemplated by or meant to be protected under the guise of the collateral source doctrine. Any other result is fundamentally at odds with the purpose of the trial process, namely, uncovering the truth in a manner that is fair to all litigants.

Phantom billing and phantom damages under the guise of collateral source protections ultimately expose defendants to higher litigation costs (in the form of artificially inflated medical expenses) while at the same time providing windfalls to plaintiffs, their attorneys and doctors, and third-party medical funding companies. As such, LABI, on behalf of its many members who are forced to litigate at the mercy of these deceptive practices, has a substantial and legitimate interest in the outcome of this case. The members of LABI, as well as the unique perspectives and risks associated with the issues in this case, will not necessarily be adequately protected nor addressed by Respondent alone.

B. Statement of Interest of the American Tort Reform Association

The American Tort Reform Association ("ATRA") is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. ATRA files amicus curiae briefs in cases involving important liability issues.

C. Statement of Interest of the Louisiana Legal Reform Coalition

The Louisiana Legal Reform Coalition ("LLRC") is a coalition of businesses, corporations, and trade associations doing business in Louisiana with an interest in improving the efficiency and fairness of the civil justice system in the state. LLRC files amicus curiae briefs in cases involving liability issues that are important to its mission.

Mindful of the high duty of this Honorable Court in interpreting and clarifying the rights of both the citizens and legal entities residing in this state under and pursuant to Louisiana law, LABI, ATRA, and LLRC respectfully request this Honorable Court uphold the lower courts' refusal to allow the fruit of this deceptive practice to be submitted to the jury. LABI, ATRA, and LLRC are particularly concerned that a contrary result will improperly generate phantom damages that do not reflect any actual pecuniary loss to the plaintiff. Accordingly, LABI, ATRA, and LLRC respectfully urge this Court to affirm the decision of the lower courts.

II. SUMMARY OF ARGUMENT

First, efforts to manipulate the collateral source rule to generate windfall recoveries for personal injury plaintiffs have a detrimental impact on business, industry, and commerce in the State of Louisiana. Numerous studies at both the national and state level bear out the harm caused by such abusive litigation practices. Personal injury litigation should be about searching for the truth and making injured persons whole, not about gamesmanship.

Second, courts must serve as vigilant gatekeepers against practices that artificially inflate medical expenses to increase recoveries beyond what is needed to make the injured person whole. No amount of creative legal argument by skilled attorneys can change the simple fact that compensating a plaintiff for the list price of grossly-exaggerated medical charges that were never intended to be paid in full amounts to a windfall.

Third, the salient facts of this case highlight why the collateral source rule does not apply and the plaintiff should not be allowed to introduce evidence of the full amount of billed medical charges: there was no diminishment of his patrimony; the plaintiff's attorney, but not the plaintiff himself, guaranteed payment of the full billed amounts; and the healthcare providers have already acknowledged full and final payment in an amount far less than the initial billed charges.

III. ARGUMENT

A. Abusive litigation practices have a detrimental economic impact on Louisiana.

No one in this case disputes that persons injured by the negligence or fault of others are entitled to a remedy that fairly compensates them for their injuries. "The purpose of tort damages is to make the victim whole." *Bellard v. Am. Cent. Ins. Co.*, 2007-1335 (La. 4/18/08), 980 So. 2d 654, 668. Likewise, no one disputes that courts and commentators have recognized that incentivizing safe and responsible conduct among the citizenry while deterring negligent conduct are major policy goals of Louisiana's tort law system. The collateral source rule is an obvious example of this deterrent goal: "Tort deterrence has been an inherent, inseparable, aspect of the collateral source rule since its inception over one hundred years ago." *Bozeman v. State*, 2003-1016 (La. 7/2/04), 879 So. 2d 692, 700.

On the other hand, a system that permits excessive damage awards and excessive numbers of such awards negatively impacts society through the misallocation of scarce economic and other resources. These costs include:

- increased costs and risks of doing business in an area,
- disincentives to innovation that might otherwise promote consumer welfare,
- enhanced incentives to file lawsuits regardless of their merit,
- higher insurance premiums,
- deterrence of economic development and job-creation initiatives, and
- diversion of resources to unproductive and/or meritless litigation-related purposes.

"Excess expenditures reduce the competitiveness of American businesses. They also increase corporate incentives to locate factories [as well as offices and other facilities] elsewhere where there are more reasonable tort environments." *Economic Benefits of Tort Reform*, The Perryman Group, at 4-5 (Dec. 2021). Indeed, eighty-nine percent (89%) of respondents to a 2019 survey by the United States Chamber of Commerce indicated that a state's litigation environment is likely to impact their business decisions, including such important and fundamental decisions as where to locate company offices, facilities, and other resources. *2019 Lawsuit Climate Survey, A Survey of the Fairness and Reasonableness of State Liability Systems*, U.S. Chamber, Institute for Legal Reform (Sept. 2019). Disturbingly, that percentage has increased over time, from 75% in 2015 and 85% in 2017. *Id.*

Unfortunately, but with justification, Louisiana is perceived as having an unbalanced tort system that incentivizes litigation (regardless of the merits) at the expense of business, industry, and commerce. In the 2019 survey by the U.S. Chamber referenced above, Louisiana finished next to last in both the overall ranking of state liability systems and in the specific category of damage awards. 2019 Lawsuit Climate Survey, at 2, 19. Louisiana is consistently ranked as one of the worst "judicial hellholes®" nationwide, and the most recent report ranked Louisiana as the third-worst state "judicial hellhole®" and sixth worst overall among all state and local governments. *Judicial Hellholes 2021/22*, American Tort Reform Foundation (2022). And a 2019 report by the Pelican Institute concluded Louisiana had lost more than two thousand (2,000) employees in the oil and gas industry as a result of increased litigation risk, with a concomitant loss of earnings of $70,000,000 annually. *The Cost of Lawsuit Abuse*, Pelican Institute for Public Policy (2019).

B. The courts must serve as gatekeepers against artificially-inflated medical expenses and other abusive litigation practices.

Quantifying the societal impact of abusive litigation practices and what constitutes fair compensation to tort victims is not always easy, particularly when it comes to inherently subjective general damages awards. Past medical expenses and other special damages, on the other hand, seemingly ought to be susceptible to more objective and rigorous measurement. Yet creative attorneys and litigants continue to aggressively press the boundaries of Louisiana tort law to increase damage awards for their clients and contingency fees for themselves.

It is no secret that personal injury plaintiffs can increase their recoveries by exaggerating the amount of their true medical expenses, particularly when they can do so without actually paying the increased costs (*i.e.*, without taking on any additional risk). Non-traditional medical financing arrangements—like the medical factoring agreement at issue—can offer a particularly effective method of inflating medical expenses, as these agreements allow healthcare providers to "bill" amounts that are completely untethered to reality, far beyond what those same providers would bill non-litigation patients, and far beyond what any private insurer or government program would ever pay for the services. Plaintiffs then seek to present these inflated charges to the jury under the guise of the collateral source rule.

As any person who has ever seen a medical bill can attest, the costs charged by medical providers are incomprehensible. Bills typically reflect the "list price" for services. See Leah Snyder Batchis, *Can Lawsuits Help the Uninsured Access Affordable Hospital Care? Potential Theories for Uninsured Patient Plaintiffs*, 78 Temp. L. Rev. 493, 504 (2005). List prices, however, bear almost no relation to the actual cost of the service nor to what the provider actually expects to be paid. See Mark A. Hall & Carl E. Schneider, *Patients As Consumers: Courts, Contracts, and the New Medical Marketplace*, 106 Mich. L. Rev. 643, 665 ("Hospital executives confess that the vast majority of charges have no relation to anything, and certainly not to cost."); James McGrath, *Overcharging the Uninsured in Hospitals: Shifting A Greater Share of Uncompensated Medical Care Costs to the Federal Government*, 26 Quinnipiac L. Rev. 173, 184 (2007) ("Other than acting as a reference for the discounted rates, which make up the bulk of the actual payments to a hospital, these prices do not reflect the reality of what a hospital expects to recover from these over inflated charges."). Instead, these prices are widely recognized as meaningless, fictitious numbers used by

the providers solely to negotiate a higher discounted amount with insurers and Medicare; indeed, by some estimates, the list price is often three or four times the price charged to insurers. Hall & Schneider, *supra*, at 664; James McGrath, *supra*, at 183. The providers are incentivized to exaggerate the list prices because they know if they begin the negotiation with higher numbers, they can ultimately negotiate better deals for themselves with insurers and Medicare. Providers face almost no pushback on the inflated list prices because almost no one pays those prices.

The incentive to inflate billed charges is even greater in litigation. The healthcare providers benefit by "charging" astronomical prices to litigation patients and then accepting payment of a "discounted" amount from a settlement or third-party funding company that still far exceeds what any private insurance company or government program would pay. The plaintiffs and their attorneys benefit by artificially inflating the value of their litigation claims, potentially leading to higher settlements and jury awards. The process then repeats itself, over and over, as the same attorney sends client after client to the same provider. The only ones who do not benefit from this system are the defendants, their employers, business and industry, and the general public, who ultimately bear the cost of fictitious charges that no person actually paid and no healthcare provider actually received.

Ironically, unchecked medical expenses not only incentivize plaintiffs to inflate their medical expenses, they also trivialize a plaintiff's burden to mitigate his damages. A plaintiff in litigation is allowed (as he should be) to choose his own physician, but he is also required to mitigate his damages. Allowing a plaintiff to present evidence of the full list price of his treatment, regardless of the costs he actually incurred, incentivizes a plaintiff to maximize his special damages rather than mitigate them, despite his legal obligation to mitigate those damages to the best of his ability. This practice also has the bonus consequence of artificially inflating the value of his claim for general damages, as these awards are often based in part on the amount of medical expenses incurred.

Courts in other jurisdictions have recognized the significant public policy consequences of these practices and made efforts to reign them in. For instance, in *Howell v. Hamilton Meats & Provisions, Inc.*, the California Supreme Court held the collateral source rule should not expand the scope of economic damages to include medical expenses the plaintiff never truly incurred. *Howell v. Hamilton Meats & Provisions, Inc.*, 52 Cal. 4th 541, 257 P.3d 1130 (2011). See also

Hoffman v. 21st Century N. Am. Ins. Co., 2014-2279 (La. 10/2/15), 209 So. 3d 702, 707 (citing *Howell* as guidance in applying Louisiana's collateral source rule). In *Howell*, the plaintiff's health care providers waived ~$94,000 of the plaintiff's ~$122,000 medical bill pursuant to an agreement with the plaintiff's insurer. Accordingly, the *Howell* court found that the collateral source rule did not apply, because the plaintiff did not incur the full charges on the medical bill and was not obligated to pay those charges. *Howell*, 257 P.3d at 1143 ("The collateral source rule has no application where the plaintiff has not paid, nor is he obligated to pay, the prediscount amount of his medical bills," and "should not extend so far as to permit recovery for sums neither the plaintiff nor any collateral source will ever be obligated to pay."). In its decision, the court characterized the fictitious nature of medical list prices as "insincere, in the sense that they would yield truly enormous profits if those prices were actually paid." *Id*. at 1142 (emphasis added), citing *The Pricing of U.S. Hospital Services: Chaos Behind a Veil of Secrecy* (2006), 25 Health Affairs, 57, 64. The court therefore reasoned that the negotiated prices that providers accept from insurers might be a far better indication of the value of those services than the list prices, such that a tortfeasor who pays only the discounted, paid amount does not receive a "windfall" that would hinder the deterrent effect of the law. *Howell*, 257 P.3d at 1142. See also *Martinez v. Milburn Enterprises, Inc.*, 290 Kan. 572, 589–90, 233 P.3d 205, 216 (2010) ("permitting Plaintiffs in this case to enter into evidence medical bills for which neither Plaintiffs nor collateral source had any responsibility to pay and allowing Plaintiffs to recover that amount does not further the purpose of the collateral source rule.").

Trials should be "less a game between adversaries and more a search for truth and justice." *Hicks v. USAA Gen. Indem. Co.*, 2021-00840 (La. 3/25/22), 339 So. 3d 1106, 1112, reh'g denied, 2021-00840 (La. 5/10/22). As evidentiary gatekeepers in the search for truth, courts are tasked with balancing the probative value of evidence against its danger of unfair prejudice, confusion of the issues, or misleading the jury. *See* La. C.E. art. 403. Courts should employ this gatekeeping analysis when asked to apply the collateral source rule to allow the introduction of such evidence. Evidence of grossly inflated medical charges in a case such as this one cannot be called relevant, as under the subject arrangement, the providers gave a full and final release in exchange for just forty percent (40%) of the "billed" costs, which have not been paid and which would never be billed to a non-litigation patient. To the extent the billed charges have any minimal relevance at

all, it is far outweighed by the dual risks of misleading the jury as to the true nature of the plaintiff's injuries and treatment and generating a windfall for the plaintiff, at the expense of the defendants, businesses, and their insurers forced to pay these unreasonable judgments.

Finally, courts should require the automatic disclosure of third-party litigation funding agreements – to both the court and the opposing parties – at the time such agreements are executed. Such disclosure should include not just the fact of the agreement but copies of the agreement itself and all related documents. In most instances, these agreements are not disclosed and remain hidden, but defendants have a right to know if their efforts to resolve a case are going to be made more difficult by the presence of an entity that is not even in the room. Third-party funding agreements also call into question whether plaintiff attorneys are serving two masters: their clients and the third-party funding source. Requiring plaintiffs to automatically disclose such agreements allows both the court and opposing counsel to evaluate potential conflicts of interest and other factors that could make resolution more difficult. See generally *The Hidden Money Behind the Litigation*, American Tort Reform Association (June 2022).

C. Louisiana courts have adopted and applied a narrowly tailored application of the collateral source rule that properly conforms with the compensatory goal of tort recovery.

Although the collateral source rule originates in common law, it is well established under Louisiana law. Under the collateral source rule, "a tortfeasor may not benefit, and an injured plaintiff's tort recovery may not be reduced, because of monies received by the plaintiff from sources independent of the tortfeasor's procuration or contribution." *Louisiana Dep't of Transp. & Dev. v. Kansas City S. Ry. Co.*, 2002-2349 (La. 5/20/03), 846 So. 2d 734, 739. In other words, any payments received by the plaintiff from an independent source are not deducted from the award that the injured party would otherwise receive from the tortfeasor.

Several public policy principles support application of this rule. The first (and most often cited) is that the tortfeasor should not gain an advantage from outside benefits provided to the victim independently of any act of the tortfeasor. *Id*. In that respect, the rule is intended to promote tort deterrence and to encourage citizens to purchase and maintain insurance. Courts reason that reducing a victim's recovery by the monies paid by a third party (like an insurance company) allows the tortfeasor to profit from the victim's prudence in obtaining insurance. The tortfeasor then avoids paying the full cost of his negligence, which impedes the deterrent effect of tort law

and dissuades tort victims from purchasing insurance or pursuing other forms of reimbursement available to them. See *Bellard v. Am. Cent. Ins. Co.*, 2007-1335 (La. 4/18/08), 980 So. 2d 654, 668.

The facts of the case presently pending before the Court and the nature of the underlying contract at issue overwhelmingly support the trial court's ruling.

1. Plaintiff has suffered no diminution in patrimony.

Since *Bozeman,* courts have continuously recognized that in order to recover the full billed medical charge when the physician accepted a lesser amount as full payment, the plaintiff must have either paid for the benefit or must be able to demonstrate some diminution in his patrimony in order to receive the benefit. The diminution must be more than merely theoretical.

In *Hoffman v. 21st Century N. Am. Ins. Co*., this Court declined to apply the collateral source rule to attorney-negotiated medical discounts obtained through the litigation process and, in doing so, specifically rejected the plaintiff's argument that his obligation to pay attorney fees in the event of recovery constituted a diminution of his patrimony made in exchange for the write-offs. *Hoffman v. 21st Century N. Am. Ins. Co*., 2014-2279 (La. 10/2/15), 209 So. 3d 702. By rejecting this argument, *Hoffman* "makes clear that [the Court] takes a strict view of the requirement for diminishing a plaintiff's patrimony," and "indirect" diminution is not sufficient to satisfy the "stringent definition." See *Simmons v. Cornerstone Invs., LLC*, 2018-0735 (La. 5/8/19), 282 So. 3d 199, 205.

In this case, Mr. George has not suffered any diminution in his patrimony that would justify his recovery of the full $192,020.14 billed by his medical providers when those providers accepted only $76,808.06 as full and final payment. He did not pay insurance premiums or make any other form of payment to obtain this discount. See, e.g., *Griffin v. Louisiana Sheriff's Auto Risk Ass'n*, 1999-2944 (La. App. 1 Cir. 6/22/01), 802 So. 2d 691, writ denied, 2001-2117 (La. 11/9/01), 801 So. 2d 376 (explaining that plaintiff's patrimony was continually diminished to the extent she had to pay premiums in order to secure the benefit of the insurance). To allow Mr. George to submit evidence of the full billed amount when he paid absolutely no consideration for the benefit of the reduced paid amount would grant him a windfall of $115,212.08 and further perpetuate this practice at the expense of the business community forced to pay these unsupported judgments.

This is the exact type of unjustified double recovery that this Court sought to avoid by adopting the "Benefit of the Bargain" approach in *Bozeman*.[1]

2. <u>The plaintiff's attorney, but not the plaintiff himself, guaranteed payment of the full billed amount to Ascendant.</u>

Mr. George's former counsel executed a Letter of Guaranty and Protection by which he (the attorney) personally guaranteed full payment of the amounts owed to Ascendant. This agreement was <u>solely</u> between Mr. George's attorney and Ascendant. Mr. George did not sign the contract between his attorney and Ascendant.

The lack of evidence of any personal obligation of Mr. George to repay Ascendant is determinative to the application of the collateral source rule, because without any such obligation, Mr. George did not diminish his patrimony to obtain the benefit of the reduced price. This principle is illustrated in *Williams v. IQS Insurance Risk Retention*, No. CV 18-2472, 2019 WL 937848 (E.D. La. Feb. 26, 2019). There, the Eastern District of Louisiana considered a similar contract between a medical financing company and the plaintiff's attorney and held that the collateral source rule did not apply to the difference between the medical bill charges and the amount that the providers accepted from a medical financing company as full payment. The court emphasized that the plaintiffs were not parties to the agreement and had not agreed to be responsible to anyone for any medical bills or for the difference between the charged amount and the paid amount should their recovery at trial fall short. Accordingly, the court reasoned, even if the plaintiffs had agreed with their attorney that the difference must come out of their recovery as a cost of litigation, the plaintiffs had not suffered a diminution in patrimony that would trigger application of the collateral source rule. *Id*. at*3 (citing *Hoffman* for the principle that this type of contractual obligation to an

[1] In *Bozeman*, this Court categorized three approaches courts use to determine whether, pursuant to the collateral source rule, a plaintiff is entitled to recover his full medical expenses when the bill was settled by a third party for a lesser amount: (1) Reasonable Value of Services; (2) Actual Amount Paid; and (3) Benefit of the Bargain. The Reasonable Value of Services approach allows a plaintiff to recover the entire amount of medical expenses billed, regardless of the amounts paid. *Bozeman*, 879 So. 2d at 701. The Actual Amount Paid approach seeks to prevent an impermissible windfall to a plaintiff by limiting recovery of medical expenses to the amount that the plaintiff or his insurer actually paid for the treatment. *Id*. at 702. The Benefit of the Bargain approach represents a middle ground, wherein a plaintiff may be awarded the full value of his medical expenses, including any write-offs, when the plaintiff has paid some consideration for the benefit of the write-off. *Id*. at 703. In those instances, the Court explained, because the plaintiff has diminished his patrimony to secure the write-off, the write-off is not a windfall but a benefit of the plaintiff's contractual bargain with his insurance provider. *Id*. at 704.

attorney does not "constitute the type of payment or diminution in patrimony necessary to recover undiscounted medical expenses that were never incurred").

The circumstances in *Williams* are identical to the circumstances in the instant case. Mr. George did not personally obligate himself to pay Ascendant for his medical bills, and as such, he is not entitled to recover the difference between the amount his providers billed and the amount they accepted as full payment, nor should the Defendant herein be responsible for paying such a judgment. Any other result perpetuates and encourages medical billing arrangements that bear no semblance to reality, leaving defendants and businesses across the state to foot astronomical payouts for medical expenses which no one is actually owed or paid.

3. <u>The healthcare providers have already received full and final payment.</u>

The agreement between Ascendant and Mr. George's healthcare providers provided that the healthcare providers would <u>invoice</u> Ascendant at 100% of their "usual and customary billed charges," but <u>accept</u> 40% of the bill charges **"as full and final reimbursement for services rendered under this agreement."** Pursuant to that agreement, the healthcare providers billed $192,020.14 for Mr. George's medical treatment but accepted Ascendant's payment of $76,808.06 (*i.e.*, 40% of the billed charges) as full and final payment for Mr. George's medical treatment. That is the entirety of what any defendant should be held responsible for under the circumstances.

The purpose of tort recovery is to make a plaintiff whole. *Simmons v. Cornerstone Invs., LLC,* 2018-0735 (La. 5/8/19), 282 So. 3d 199. The amount actually paid for Mr. George's treatment is a far more realistic indication of the amount necessary to make him whole than the fictitious charges billed to Ascendant, which no person ever paid and which the provider will never receive. To hold a business, a defendant, or an insurance company responsible for anything more than what the plaintiff is actually responsible for results in a windfall to which no one is entitled and is an expense neither defendants nor the business community should be forced to bear. See *Stanley v. Walker*, 906 N.E.2d 852, 860 (Ind. 2009) ("if we were to choose between the sticker price that most people do not pay and the discounted price that most people do pay, we should hold that the sticker price is to be excluded from evidence as the less realistic evidence of the reasonable value of these services that the real market for them reflects.") (Boehm, J., concurring). Presenting evidence of those phantom charges serves no purpose other than to confuse the jury and to distort the "search for truth and justice" that a trial is intended to be. See *Hicks v. USAA*

Gen. Indem. Co., 2021-00840 (La. 3/25/22), 339 So. 3d 1106, 1112, reh'g denied, 2021-00840 (La. 5/10/22).

IV. CONCLUSION

A state's litigation environment directly impacts business and industry decision-making, and a litigation environment that emphasizes maximization of damage awards over seeking the truth and making injured persons whole significantly increases the risk and cost of doing business in that state. Furthermore, no amount of creative legal argument can change the simple fact that compensating a plaintiff for the list price of grossly-exaggerated medical charges untethered to reality amounts to a windfall for the plaintiff. Louisiana courts must remain vigilant in their gatekeeping role to guard against such practices. The ruling of the trial court should be affirmed.

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Respectfully submitted,

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By: /s/ John P. Murrill

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AFFIDAVIT OF VERIFICATION AND CERTIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

JOHN P. MURRILL

who stated that he is counsel of record for Amicus Curiae, The Louisiana Association of Business and Industry, The American Tort Reform Association, and The Louisiana Legal Reform Coalition in this matter; that all of the allegations in the foregoing AMICI BRIEF are true and correct; that attached herewith is a list of the parties to this action; that copies of the foregoing AMICI BRIEF have been mailed to the Honorable David W. Arceneaux, Thirty-Second Judicial District Court for the Parish of Terrebonne, State of Louisiana, to the Louisiana First Circuit Court of Appeal, and to all opposing counsel and parties to the following listed addresses:

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Baton Rouge, Louisiana, this 19th day of September, 2022.

John P. Murrill

SWORN TO AND SUBSCRIBED before me, this 19 day of September, 2022.

Vicki M. Crochet, Louisiana Bar No. 04614
My Commission Expires At Death