STATE OF MICHIGAN

COURT OF APPEALS

LINDA DETARY and JERRY DETARY,

Plaintiffs-Appellees,

v

ADVANTAGE HEALTH PHYSICIANS, PC,

Defendant-Appellant,

and

STEVEN A. CRANE, MD, PAUL O. FARR, MD, GRAND RIVER GASTROENTEROLOGY, PC, MUMNOON HAIDER, MD, JODY LYN HEILMAN, MD, BAO THIEN HUYHN, MD, NASIR ABBAS KHAN, and TRINITY HEALTH-MICHIGAN,

Defendants.

UNPUBLISHED
November 29, 2012

No. 308179
Kent Circuit Court
LC No. 2008-010179-NH

Before: SERVITTO, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

Defendant, Advantage Health Physicians, PC, appeals as of right the judgment entered in favor of plaintiffs on the jury verdict and the trial court's denial of defendant's motions for directed verdict, judgment notwithstanding the verdict ("JNOV") and remittitur in this medical malpractice action. We affirm.

Plaintiff, Linda Detary, presented at St. Mary's Health Care Emergency Department on April 1, 2006, due to vomiting and severe abdominal pain. Plaintiff[1] described a sharp, burning pain that increased when she ate, and advised that she had a surgical history of a lap band

[1] "Plaintiff" shall be used throughout this opinion in reference to Linda Detary, as plaintiff Jerry Detary's claims are derivative in nature.

procedure.[2] While in the emergency room, plaintiff vomited blood and blood clots. As a result, she was admitted as a patient. Plaintiff was evaluated by various doctors employed by Advantage Health Physicians, PC, over the next few days, and the doctors came up with several potential diagnoses, none of which included potential complication of her lap band. Eventually, one of plaintiff's family members contacted the doctor who performed her lap band surgery, Dr. Bhesania, and he requested that plaintiff be transferred to Port Huron Hospital so that he could assume her care. Upon her arrival, Dr. Bhesania performed an abdominal x-ray, which showed a prolapse[3] of her stomach and a change in orientation of the lap band. It was discovered that part of her stomach had actually suffered from necrosis due to the prolapse and lack of blood flow to the area. Plaintiff underwent surgery to remove a portion of her stomach and, post operatively, developed septic shock, adult respiratory distress syndrome, and hypotension. She remained hospitalized for 48 days and continues to suffer from adult respiratory distress syndrome.

Plaintiff initiated this lawsuit against all of the above named defendants, alleging that their negligence in, among other things, failing to properly and timely diagnose and treat her prolapsed stomach, led to ischemia and necrosis. Plaintiff further alleged that as a natural and probable consequence of the defendants' breach of the applicable standards of care and the ensuing necrosis and complications, plaintiff suffered physical and monetary damages.

During the course of litigation the parties stipulated to the dismissal of all defendants except Advantage Health Physicians, PC. A jury trial proceeded against Advantage Health Physicians, PC (hereafter "defendant"), at the conclusion of which the jury found that defendant was professionally negligent through its physicians. A judgment on the jury verdict was entered on September 29, 2011, in favor of both plaintiffs in the amount of $174,000.00 for medical expenses and $8,000.00[4] in favor of plaintiff for pain and suffering. Defendant thereafter moved for a judgment notwithstanding the verdict, reduction in the verdict, or for reconsideration, which the trial court denied. This appeal followed.

On appeal, defendant first contends that plaintiff presented insufficient evidence at trial to casually connect her medical expenses to the negligence of defendant. Defendant thus contends that the trial court erred in denying its motions for directed verdict and JNOV. We disagree.

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[2] A lap band procedure is a weight loss procedure wherein an adjustable gastric banding device is surgically implanted around the upper part of the stomach to reduce the amount of food the stomach can hold. http://www.lapband.com/

[3] "Prolapse" is defined as "the falling down or slipping of a body part from its usual position or relations." http://www.merriam-webster.com/medline

[4] The jury found that plaintiff's medical expenses were $213,000.00 and awarded her $10,000.00 for pain and suffering, but also found plaintiff 20% at fault. The judgment was thus adjusted to account for plaintiff's 20% comparative fault.

We review a trial court's decision on a motion for a directed verdict de novo. *Genna v Jackson*, 286 Mich App 413, 416; 781 NW2d 124 (2009). In reviewing the trial court's decision, we view the evidence presented up to the time of the motion in the light most favorable to the nonmoving party. *Smith v Foerster–Bolser Constr, Inc*, 269 Mich App 424, 428; 711 NW2d 421 (2006). We additionally grant the non-moving party every reasonable inference and resolve conflicts in the evidence in that party's favor to determine whether a question of fact existed. *Id.* Directed verdicts are generally viewed with disfavor and it is only where reasonable persons, after reviewing the evidence in the light most favorable to the nonmoving party, could honestly not reach different conclusions about whether the nonmoving party established his or her claim, that a directed verdict should be entered. *Taylor v Kent Radiology, PC*, 286 Mich App 490, 499–500; 780 NW2d 900 (2009).

We also review de novo a trial court's decision on a motion for JNOV. *Prime Financial Services LLC v Vinton*, 279 Mich App 245, 255; 761 NW2d 694 (2008). When deciding a motion for JNOV, the trial court views the evidence and all reasonable inferences in the light most favorable to the nonmoving party and determines whether the facts presented preclude judgment for the nonmoving party. *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 123-124; 680 NW2d 485 (2004). A motion for JNOV should be granted only if the evidence viewed in this light fails to establish a claim as a matter of law. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003).

In an action alleging medical malpractice, the plaintiff must prove that the defendant failed to provide the recognized standard of care and that "he or she suffered an injury that more probably than not was proximately caused by the negligence of the defendant or defendants." MCL 600.2912a(2). "Proximate cause" is a legal term of art that incorporates both cause in fact and legal (or "proximate") cause. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). As explained in *Craig ex rel Craig v Oakwood Hosp*, 471 Mich 67, 86-88; 684 NW2d 296 (2004):

> The cause in fact element generally requires showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred. On the other hand, legal cause or "proximate cause" normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences.
>
> As a matter of logic, a court must find that the defendant's negligence was a cause in fact of the plaintiff's injuries before it can hold that the defendant's negligence was the proximate or legal cause of those injuries.
>
> Generally, an act or omission is a cause in fact of an injury only if the injury could not have occurred without (or "but for") that act or omission. While a plaintiff need not prove that an act or omission was the *sole* catalyst for his injuries, he must introduce evidence permitting the jury to conclude that the act or omission was *a* cause.
>
> It is important to bear in mind that a plaintiff cannot satisfy this burden by showing only that the defendant *may* have caused his injuries. Our case law requires more than a mere possibility or a plausible explanation. Rather, a plaintiff establishes that the defendant's conduct was a cause in fact of his injuries only if he sets forth specific facts that would support a reasonable inference of a

> logical sequence of cause and effect. A valid theory of causation, therefore, must be based on facts in evidence. And while the evidence need not negate all other possible causes, this Court has consistently required that the evidence exclude other reasonable hypotheses with a fair amount of certainty.
> (internal quotation marks omitted).

In a medical malpractice action, damages are divided into categories of economic and noneconomic, both past and future. *Taylor v Kent Radiology*, 286 Mich App 490, 519; 780 NW2d 900 (2009). This Court has turned to the definition provided in MCL 600.2945(c) to determine whether a claim for damages in a medical malpractice action should be characterized as one for economic or noneconomic losses. *Thorn v Mercy Mem Hosp Corp*, 281 Mich App 644, 664–665; 761 NW2d 414 (2008). Under MCL 600.2945(c), economic losses are defined as:

> objectively verifiable pecuniary damages arising from medical expenses or medical care, rehabilitation services, custodial care, loss of wages, loss of future earnings, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, or other objectively verifiable monetary losses.

At issue in the instant matter are plaintiff's medical expenses from her hospitalization at Port Huron Hospital, which are recognized economic losses under MCL 600.2945(c). The parties stipulated that the medical expenses associated with plaintiff's hospitalization were $213,000.00. Defendant, did not, however, stipulate that these expenses were the result of its negligence and the medical bills were not entered as exhibits at trial. According to defendant, plaintiff simply submitted a blanket statement that her medical expenses amounted to $213,000.00 without establishing that the amount related in any way to the injuries that she claimed she suffered as a result of defendant's negligence. However, the evidence at trial was sufficient to connect defendant's negligence to her hospitalization at Port Huron Hospital and, subsequently, her medical expenses from the same.

At trial, plaintiff testified that when she went to St. Mary's Hospital on April 1, 2006, she told staff at the hospital several times that she had undergone lap band surgery several years prior. Plaintiff testified that she was told she was experiencing acid reflux and was going to be sent home, until she threw up blood. Plaintiff and her husband both testified that St. Mary's hospital performed an x-ray of her stomach on April 1, 2006, but told them that the x-ray showed no problems.

Dr. Bhesania testified that he has performed close to 2000 lap band surgeries. He testified that prolapse of the stomach after such surgeries is rare, but if it is sufficiently severe, it can cause vascular compromise to the stomach called ischemia, and the progression of ischemia can lead to necrosis. According to Dr. Bhesania, ischemia is a gradual process, not sudden. Dr. Bhesania testified that prolapse does not always require surgery. He testified that if there is no obstruction, in some cases fluid is removed from the lap band and the patient is watched to see if the prolapse has resolved.

Dr. Bhesania testified that he reviewed the first x-ray taken of plaintiff's stomach on April 1, 2006, at St. Mary's hospital and that the x-ray does not even show the lap band. He

testified that a second x-ray taken at St. Mary's Hospital on April 3, 2006, shows that the lap band is rotated and that the tubing is coming off, thus presenting a suspicion of prolapse. Dr. Bhesania testified that based upon plaintiff's symptoms and the records he has seen, plaintiff had the prolapse before she went to St. Mary's hospital on April 1, 2006. Dr. Bhesania testified that by the time plaintiff came into his care on April 3, 2006, the ischemic and necrotic process had been going on for over 24 hours. He further testified that had plaintiff been in his care 24 to 36 hours prior to April 3, 2006, he quite possibly could have prevented the necrosis. Dr. Bhesania also testified that plaintiff's developing adult respiratory distress syndrome after her surgery to repair the prolapse was related to an infection in her stomach. He testified that if he had been able to intervene in her treatment to prevent the necrosis and infection, more likely than not plaintiff would not have developed the adult respiratory distress syndrome.

Dr. Dennis Smith, a general surgeon, also testified that plaintiff's prolapse developed before she came to St. Mary's Hospital, around the time she started having pain and vomiting. Dr. Smith further testified that it is more probable than not that plaintiff was developing the ischemia when she was in St. Mary's emergency room and was experiencing severe pain and was vomiting blood, and that the condition probably advanced to necrosis early Monday morning, April 3, 2006. Dr. Smith testified that plaintiff developed infectious complications as a result of her stomach being necrotic and that the necrosis and later infectious complications were preventable within a reasonable probability. According to Dr. Smith, if the prolapse was considered as a potential source of her problems initially, it would not have progressed to the necrosis.

Dr. Leonard Milewski, a general surgeon, testified that plaintiff presented at St. Mary's Hospital Saturday, April 1, 2006, with classic symptoms of someone having problems with a gastric lap band, i.e., severe abdominal pain and vomiting. He testified that several physicians at St. Mary's saw her and formulated diagnoses without taking the lap band into consideration at all. Dr. Milewski further testified that there was very poor communication between the persons associated with plaintiff's care, with no one really doing anything for her for the three days she was there. According to Dr. Milewski, the delay led to a segment of her stomach necrosing. Dr. Milewski testified that a surgeon or bariatric surgeon should have been consulted immediately and that if one had, the fluid could have been removed from her lap band, allowing additional blood flow to her stomach so that it would not have suffered necrosis. Dr. Milewski believes that the ischemic process was probably beginning when she was first at the hospital, with the necrotic process beginning late Sunday into early Monday, when her blood pressure began to lower and her pulse began to rise.

Dr. Robert Buynak testified that when a patient with a lap band presents with intestinal issues, one's differential diagnosis must include potential problems with the lap band. Dr. Buynak further testified that a CAT scan or upper GI test allows the best indication of whether the lap band is causing the problem. Dr. Buynak testified that in plaintiff's case, the need was for an urgent evaluation by a surgeon, because her pain was severe enough to require her to remain in the hospital on an IV with narcotic painkillers.

Based upon the testimony of the medical experts, but for defendant's failure to diagnose plaintiff's prolapsed stomach, caused by her misplaced lap band, plaintiff would not have suffered ischemia and later necrosis of her stomach. All of the medical experts who gave an

opinion as to when the prolapse occurred agreed that plaintiff presented at St. Mary's Hospital with a prolapse. All who gave opinions also agreed that plaintiff's symptoms were consistent with a prolapse and that when a patient provides a history of lap band surgery and also presents with vomiting blood and severe abdominal pain, the doctor must consider a lap band complication as a part of the differential diagnosis. The majority of the experts also agreed that ischemia is a gradual process that was progressing over the two days that plaintiff was in defendant's care and while they were not considering her lap band or a prolapse as a potential diagnosis, and that the necrosis likely began late Sunday April 2, 2006, to early Monday April 3, 2006. At least one doctor opined that had fluid been removed from her lap band soon after admission at St. Mary's Hospital, the portion of her stomach suffering from necrosis would not have died.

There is no dispute that plaintiff was admitted to Port Huron on April 3, 2006, under the care of Dr. Bhesania and underwent surgery to repair a prolapsed stomach and necrosis of the same on the same day. According to Dr. Bhesania, plaintiff suffered from adult respiratory distress syndrome as a complication of her surgery, related to the infection in her stomach. There is no dispute that the complications plaintiff suffered after surgery required her to remain hospitalized for over one month. Dr. Bhesania testified that had plaintiff been in his care 24 to 36 hours prior to April 3, 2006, he "quite possibly" could have prevented the necrosis and her subsequent adult respiratory distress syndrome. Dr. Smith similarly testified that if defendant's employees had initially considered prolapse as a potential source of plaintiff's problems, it would not have progressed to the necrosis and that both the necrosis and later infectious complications were preventable within a reasonable probability. The above presents sufficient evidence that plaintiff was at Port Huron Hospital solely due to defendant's failure to diagnose and treat her stomach prolapse. Further, while the actual medical bills were not submitted as evidence at trial, some of plaintiff's medical records, detailing her treatment at Port Huron Hospital, were submitted. A reasonable jury could thus conclude that any and all expenses incurred at Port Huron Hospital were attributable to defendant's negligence.

Defendant contends that a lack of evidence concerning economic damages is underscored through the jury's questions presented to the trial court during deliberations. The jury submitted the following two questions to the trial court:

> 1) Regarding economic damages, is there a way to determine Plaintiff's total amount of medical bills incurred?
>
> 2) Can we use the $213,000 figure provided by the plaintiff's attorney in closing argument?

The trial court responded:

> 1) There was a stipulation that the amount was $213,000.00.
>
> 2) Yes.
>
> If there is any other question, or if these answers do not fully address the questions presented, please let me know in writing.

Defendant argues that the answer given by the trial court was an improper interpretation by the trial court of plaintiff's economic damages. However, the jury's specific question was not the total amount of plaintiff's *economic damages*, but rather what was the total amount of plaintiff's *medical bills incurred*.

On the fifth day of trial, plaintiff's counsel stated, "In addition, your Honor, [defense counsel] and I have agreed and stipulated that the medical bills at issue in this case are $213,000 . . ." Defense counsel replied, "Your Honor, I—I do stipulate that that is the amount of the Port Huron Hospital bill correct?" Plaintiff's counsel acknowledged that it was and defense counsel stated, "For the admission of April 3 through May 13. I do not stipulate, however, that those are causally related to any claim of malpractice." Based upon the above stipulation, the trial court properly responded to the jury's question that the parties had stipulated that plaintiff's *medical bills* totaled $213,000.00.

And, contrary to defendant's assertion otherwise, defendant did not expressly state that it did not stipulate the billing amounts were reasonable and necessary. Defendant only stated that it was not stipulating that the expenses were "causally related to any claim of malpractice." Moreover, while defendant contends that plaintiff presented no evidence that the medical expenses were reasonable or necessary, some of plaintiff's inpatient records from Port Huron Hospital were admitted into evidence. The billing notes are also found in the records from Port Huron Hospital. The records and notes, coupled with the testimony of Dr. Bhesania, were sufficient to allow a reasonable jury to conclude that the services rendered to plaintiff were reasonable and necessary. The trial court did nor err in denying defendant's motions for directed verdict or JNOV.

Defendant next contends that the jury's award should have been set off by the amount negotiated as a discount by plaintiff's insurance company pursuant to MCL 600.6303. On reconsideration, defendant argued to the trial court that while plaintiff's medical bills were, indeed $213,000, her health care insurer, Blue Cross and Blue Shield, negotiated a payment in full for far less, which was accepted as full payment for the services rendered by her health care providers. Defendant reasserts on appeal that payment of the medical bills in full by plaintiff's health care insurer requires setting off the judgment pursuant to the collateral source payment statute, MCL 600.6303, to the amount actually paid by the insurer, adjusted for comparative negligence. We disagree.

Issues of statutory interpretation are questions of law that this Court reviews de novo. *Spectrum Health Hospitals v Farm Bureau Mutual Insurance Company of Michigan*, 492 Mich 503, 506; ___NW2d ___ (2012). This Court interprets and applies statutes to give effect to the plain meaning of their text. *Ligons v Crittenton Hosp*, 490 Mich 61, 70; 803 NW2d 271 (2011). Thus, if the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and we apply the statute as written. *Rose Hill Ctr, Inc v Holly Twp*, 224 Mich App 28, 32; 568 NW2d 332 (1997).

MCL 600.6303 provides:

> (1) In a personal injury action in which the plaintiff seeks to recover for the expense of medical care, rehabilitation services, loss of earnings, loss of earning

capacity, or other economic loss, evidence to establish that the expense or loss was paid or is payable, in whole or in part, by a collateral source shall be admissible to the court in which the action was brought after a verdict for the plaintiff and before a judgment is entered on the verdict. Subject to subsection (5), if the court determines that all or part of the plaintiff's expense or loss has been paid or is payable by a collateral source, the court shall reduce that portion of the judgment which represents damages paid or payable by a collateral source by an amount equal to the sum determined pursuant to subsection (2). This reduction shall not exceed the amount of the judgment for economic loss or that portion of the verdict which represents damages paid or payable by a collateral source.

(2) The court shall determine the amount of the plaintiff's expense or loss which has been paid or is payable by a collateral source. Except for premiums on insurance which is required by law, that amount shall then be reduced by a sum equal to the premiums, or that portion of the premiums paid for the particular benefit by the plaintiff or the plaintiff's family or incurred by the plaintiff's employer on behalf of the plaintiff in securing the benefits received or receivable from the collateral source.

(3) Within 10 days after a verdict for the plaintiff, plaintiff's attorney shall send notice of the verdict by registered mail to all persons entitled by contract to a lien against the proceeds of plaintiff's recovery. If a contractual lien holder does not exercise the lien holder's right of subrogation within 20 days after receipt of the notice of the verdict, the lien holder shall lose the right of subrogation. This subsection shall only apply to contracts executed or renewed on or after the effective date of this section.

(4) As used in this section, “collateral source” means benefits received or receivable from an insurance policy; benefits payable pursuant to a contract with a health care corporation, dental care corporation, or health maintenance organization; employee benefits; social security benefits; worker's compensation benefits; or medicare benefits. Collateral source does not include life insurance benefits or benefits paid by a person, partnership, association, corporation, or other legal entity entitled by law to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages. Collateral source does not include benefits paid or payable by a person, partnership, association, corporation, or other legal entity entitled by contract to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages, if the contractual lien has been exercised pursuant to subsection (3).

(5) For purposes of this section, benefits from a collateral source shall not be considered payable or receivable unless the court makes a determination that there is a previously existing contractual or statutory obligation on the part of the collateral source to pay the benefits.

The collateral source rule, MCL 600.6303, prevents a plaintiff from recovering the same expenses from both a defendant and a collateral source. *Haberkorn v Chrysler Corp (Two Cases*), 210 Mich App 354, 374; 533 NW2d 373 (1995).

In the instant matter, documents in the record indicate that plaintiff's health care insurer, Blue Cross Blue Shield, made payments to Port Huron Hospital and its staff for plaintiff's medical care. These would initially qualify as "collateral source" under MCL 600.6303(4). However, MCL 600.6303(4) also states that, "collateral source does not include . . . benefits paid by a person, partnership, association, corporation, or other legal entity entitled by law to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages," and that "collateral source does not include benefits paid or payable by a person, partnership, association, corporation, or other legal entity entitled by contract to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages, if the contractual lien has been exercised pursuant to subsection (3)." Here, the record reflects that Blue Cross Blue Shield ("BCBS") exercised its right to a lien on plaintiff's verdict.

Prior to the verdict, counsel for plaintiff's insurer advised that BCBS had paid benefits in the amount of $120,948.75 on plaintiff's behalf and that plaintiff would be obligated to reimburse BCBS for the same out of any settlement or damages received at trial. The jury verdict in favor of plaintiff for medical expenses was entered on August 17, 2011. On August 31, 2011, counsel for plaintiff's insurer wrote a letter to plaintiff's counsel indicating his understanding that plaintiff had received a favorable verdict in which medical damages were included. Counsel indicated in the letter that its client had an equitable lien right on plaintiff's recovery and requested that plaintiff hold the recovery funds in trust until the matter of how much BCBS is to be repaid is determined through either settlement or a court order.

Because BCBS properly exercised its lien rights, those benefits actually paid or payable by BCBS are not a collateral source pursuant to MCL 600.6303(4). See, *Zdrojewski v Murphy*, 254 Mich App 50, 70; 657 NW2d 721(2002)("[T]he statute clearly states that benefits subject to an exercised lien do not qualify as a collateral source . . ."). Defendant acknowledges the same but contends that those amounts "written off" by plaintiff's health care providers and not subject to any lien by BCBS present an entirely different scenario.

Plaintiff's health care providers "wrote off" over $100,000 in medical expenses for which BCBS was initially charged. Defendant contends that any amount awarded to plaintiff for medical expenses above and beyond the amount actually paid by BCBS (i.e., the amount written off) is a "collateral source" and that the verdict should be set off by the same. Defendant is incorrect.

The plain language of MCL 600.6303(1) states that "if the court determines that all or part of the plaintiff's expense or loss has been paid or is payable by a collateral source, the court shall reduce that portion of the judgment which represents damages paid or payable by a collateral source by an amount equal to the sum determined pursuant to subsection (2)." In its simplest terms, the trial court may reduce the plaintiff's judgment only by the amount by which plaintiff's loss *has been paid or is payable*. An amount that has been written off has not been paid, nor is it payable, such that it is not a collateral source.

Defendant classifies the write offs as "benefits" plaintiff has received from her health care providers, contending that such classification places the write offs within the meaning of a collateral source. "Collateral source" means "benefits received or receivable from an insurance policy; benefits payable pursuant to a contract with a health care corporation, dental care corporation, or health maintenance organization; employee benefits; social security benefits; worker's compensation benefits; or medicare benefits." MCL 600.6303(4). If, as defendant asserts, the write off was a benefit plaintiff received from her health care providers, it is not a benefit received or receivable from an insurance policy, nor is it a benefit payable pursuant to a contract with a health care corporation. Any "benefit" plaintiff received from the write offs thus does not fall within the statutory definition of "collateral source."

Finally, defendant focuses heavily on the supposed windfall that would be bestowed upon plaintiff if collateral source setoff were not imposed in this matter. First, where BCBS was a paid insurer, if BCBS was able to negotiate a reduced medical payment, it could be argued that plaintiff is nevertheless still entitled to the full value of the medical services rendered on her behalf. See, e.g., *Bozeman v State*, 879 So2d 692, 705-706 (2004). Second, defendant ignores that a jury found it negligent and causing plaintiff's damages. Had plaintiff been wholly uninsured, defendant would be liable for every penny of her medical expenses. Because plaintiff's medical care providers elected to absorb some of the cost of her care does not make defendant any less negligent, nor does the fact that she was insured. Should a windfall arise due to the action of an outside party (here, the "write off" by a medical provider), that would be a function of the statute, and we do not venture into that area of public policy..

Affirmed.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Christopher M. Murray