CLARIFYING 'KING *ARTHUR'S* COURT:' MAKING SENSE OF THE COLLATERAL SOURCE RULE IN ILLINOIS AFTER *WILLS V. FOSTER*, 892 N.E.2D 1018 (ILL. 2008).

Ben Bridges*

I. INTRODUCTION

As part of the American healthcare system, healthcare providers commonly make arrangements with insurance companies in which the insurer agrees to pay the provider an amount substantially less than the amount originally charged to the patient. After this reduced payment is made, all parties treat the bill as paid in full. The healthcare provider then "writes-off" the difference, absolving both the patient and the insurance carrier from any obligation to pay it. For example, if an insured patient suffered an injury and accrued a $3000 hospital bill for treatment, his insurance carrier would negotiate the price down and may end up settling the bill for only $1000. The remaining $2000 would be "written-off" and neither party would be responsible for paying it. A similar practice exists for Medicaid and Medicare patients as well.

While this system proves to be relatively straightforward in ordinary circumstances, it creates serious complications when the medical treatment is a result of someone's negligence. In such circumstances the injured party is no longer just a patient, but is also a plaintiff looking for reimbursement for his medical expenses. Thus, the parties are left wondering if the plaintiff is entitled to recover the amount of the original bill or only the reduced amount actually paid by the third party. Imagine the above-mentioned patient was injured as a result of someone's negligence. In seeking compensatory damages for his medical treatment, should he be able to ask the court for the original $3000 billed by the hospital or should he be limited to only the $1000 paid by his insurance carrier on his behalf? Further, what if his bill was settled by Medicaid or Medicare? What if he had no insurance coverage at all?

---

* J.D., Southern Illinois University School of Law, 2010. I would like to thank Professor Eugene Basanta for his editorial assistance and for introducing me to this topic. I would also like to thank my wonderful family for their unbelievable support, especially my wife Christina for the lessons she gives in love and priorities. For DRB (May 26, 1929 - Mar. 16, 2010).

The long-standing collateral source rule attempts to answer these questions by providing that the plaintiff's recovery should not be diminished by any benefits or payments conferred on him by a collateral source.[1] Thus an injured plaintiff could seek the total amount billed for medical expenses and would not be limited to the settled amount. As the notion of tort reform and recovery caps has spread throughout Illinois, however, the collateral source rule has come under heavy criticism for allegedly overcompensating tort plaintiffs and allowing them to collect punitive damages in a compensatory-based tort scheme.[2]

Further complicating the scenario is the existence of the Health Care Services Lien Act which gives health care providers a lien on the proceeds of a verdict, judgment, or award paid to an injured person for the provider's reasonable charges for treatment (i.e. subrogation rights).[3] In other words, if the above plaintiff collected the entire $3000 in a tort action for his medical expenses, the hospital could potentially assert a lien on the $2000 difference between his award and the amount it received in settlement of his bill.[4] Medical service providers that settle bills with Medicaid and Medicare, however, are treated a bit differently regarding the availability of subrogation rights. If a medical service provider accepts Medicaid payments in settlement of a patient's bill, the provider is deemed to have accepted the reduced amount as payment in full and therefore cannot later sue the patient for the difference in the amount billed and the amount paid for his treatment.[5] The *government*, however, as payor of the bill, maintains rights to sue the patient for reimbursement.[6]

In Illinois, the criticisms faced by the collateral source rule have been exacerbated by the checkered and unclear history of the doctrine as it relates to plaintiffs with varying levels of healthcare coverage. Until the Illinois Supreme Court decided *Wills v. Foster*[7] (hereinafter, "*Wills II*"), the state had a piecemeal collateral source doctrine that applied the same principles differently to plaintiffs based on whether they had a private insurance plan

---

1. Arthur v. Catour, 833 N.E.2d 847, 851 (Ill. 2005).
2. Robert Hernquist, Note, Arthur v. Catour*: An Examination of the Collateral Source Rule in Illinois*, 38 LOY. U. CHI. L.J. 169, 181–82 (2006).
3. 770 ILL. COMP. STAT. 23/10 (2008).
4. Courts have differed on whether a medical service provider has a claim for the original bill or only for the discounted amount paid by the insurer. *Compare* Rogalla v. Christie Clinic, P.C., 794 N.E.2d 384 (Ill. App. Ct. 2003) *with* N.C. *ex rel.* L.C. v. A.W. *ex rel.* R.W., 713 N.E.2d 775 (Ill. App. Ct. 1999). The amount available in a subrogation action will generally be determined by the wording of the subrogation clause.
5. 305 ILL. COMP. STAT. 5/11-13 (2008) (emphasis added).
6. *Id*. *See also* 42 U.S.C. § 1396a(a)(25)(A)-(B) (2008).
7. Wills v. Foster, 892 N.E.2d 1018 (Ill. 2008).

versus having no insurance or a governmental plan such as Medicaid or Medicare.[8] Prior to *Wills II*, Illinois courts were without guidance in determining whether, pursuant to the collateral source rule, a plaintiff is entitled to recover his or her total billed medical expenses even though the bill was later settled by a third party for a lesser amount.[9] *Wills II* not only provided the courts with a determinative answer to the collateral source rule as it applies to plaintiffs with varying degrees of insurance coverage, but also established that Illinois would take a "reasonable value" approach that would allow all plaintiffs to seek the entire amount of their billed medical expenses, provided such amounts were reasonable.[10]

This Note will examine the history of the collateral source rule in Illinois and how the Illinois Supreme Court's recent decision in *Wills II* effectively changed the state's approach. Specifically, Section II discusses the background of the collateral source rule in Illinois, in addition to the longstanding *Peterson*[11] approach as it relates to plaintiffs seeking damages for free medical services. Section II also examines how the Illinois Supreme Court applied the *Peterson* approach to plaintiffs with private insurance in *Arthur v. Catour*[12] and how the *Arthur* court left many important questions unanswered. Additionally, Section II examines how the deficiencies of *Arthur* yielded different results in *Nickon v. City of Princeton*[13] and the *Wills v. Foster*[14] appellate decision (hereinafter "*Wills I*") when applying the collateral source rule to Medicare/Medicaid patients. Section III recounts the Illinois Supreme Court's decision in *Wills v. Foster*[15] (*Wills II*) and how it answered the questions left by *Arthur*, thereby resolving the confusion that resulted from

---

8. *Compare* Peterson v. Lou Bachrodt Chevrolet Co., 392 N.E.2d 1 (Ill. 1979) (plaintiff who paid nothing for medical services was not entitled to the total amount of medical bill; the court suggested this approach would apply to Medicaid and Medicare patients) *with* Arthur v. Catour, 833 N.E.2d 847, 851 (Ill. 2005) (allowed plaintiff with private insurance to introduce the total amount of her medical bill), Wills v. Foster, 867 N.E.2d 1223 (Ill. App. Ct. 2007) (Medicaid/Medicare patient was not allowed to seek entire amount of medical bill based on *Peterson*), *and* Nickon v. City of Princeton, 877 N.E.2d 776 (Ill. App. Ct. 2007) (disagreed with the *Wills* and *Peterson* courts, held that a Medicaid/Medicare patient could seek total medical bills in personal injury suit).

9. *Compare* Olariu v. Marrero, 549 S.E.2d 121 (Ga. Ct. App. 2001) (plaintiff entitled to the reasonable value of the total medical expenses billed, despite type of insurance) *with* Dyet v. McKinley, 81 P.3d 1236 (Idaho 2003) (limiting plaintiff to recovering only the amount actually paid in full settlement of the bill), *and* Bozeman v. State, 879 So.2d 692 (La. 2004) (plaintiff with private insurance able to collect the total medical bill based on the benefit of purchasing private insurance).

10. *Wills*, 892 N.E.2d 1018.

11. *Peterson*, 392 N.E.2d 1.

12. *Arthur*, 833 N.E.2d 847.

13. *Nickon*, 877 N.E.2d 776.

14. *Wills*, 867 N.E.2d 1223.

15. *Wills*, 892 N.E.2d 1018.

the conflicting decisions in *Nickon* and *Wills I*. Finally, Section IV analyzes and evaluates the Illinois Supreme Court's decision in *Wills II* and explains that, although the court reached the correct solution and provided a sufficiently articulated basis for its decision, it failed to consider and discuss the important role played by a party's subrogation rights in deciding that Medicare/Medicaid payments are protected by the collateral source.

II. BACKGROUND OF THE COLLATERAL SOURCE RULE

Although the collateral source rule is rooted in the English common law, the notion was not applied in the United States until the 1854 United States Supreme Court decision in *The Propeller Monticello v. Mollison*,[16] a case involving a collision between two vessels on Lake Huron.[17] After losing all his cargo, the owner of one of the vessels sued and sought to recover its value despite the fact he had been fully compensated by his insurance provider for the loss.[18] In ruling in favor of the plaintiff, the Court declared that the insurance arrangement was "in the nature of a wager between third parties, with which the trespasser ha[d] no concern."[19] Thus, because the insurer was not in the position of a joint tortfeasor, any payments it made to the plaintiff could not be used to release the defendant from his obligation to indemnify the plaintiff. For the first time the Supreme Court established that a tort plaintiff's damages could not be offset and reduced by insurance payments he or she received. Nearly fifteen years later, in 1870, the Illinois Supreme Court adopted the collateral source rule into its jurisprudence after a railroad passenger sued a negligent rail company and sought to recover the entire amount of his medical expenses notwithstanding payments his insurance company had made on his behalf.[20]

A. Application of the Collateral Source Rule

According to the Restatement (Second) of Torts ("Restatement"), the collateral source rule provides that "[p]ayments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor

16. Propeller Monticello v. Mollison, 58 U.S. 152 (1854).
17. Stephen L. Olson & Pat Wasson, *Is the Collateral Source Rule Applicable to Medicare and Medicaid Write-Offs?*, 71 DEF. COUNS. J. 172, 173 (2004).
18. *Propeller Monticello*, 58 U.S. at 152–54.
19. *Id*. at 155.
20. *See* Pittsburg, Cincinnati, and St Louis Ry. Co. v. Henry R. Thompson, 56 Ill. 138 (1870).

is liable."[21] In Illinois, like most jurisdictions, the rule has both an evidentiary and substantive component.[22] As a substantive rule of damages, the rule "bars a defendant from reducing the plaintiff's compensatory award by the amount the plaintiff received from the collateral source."[23] As an evidentiary rule, the rule operates to prevent the jury from learning anything about any collateral payments whatsoever.[24] The primary justification for the rule in Illinois has been that the tortfeasor should not benefit from a relationship the injured party has with any third parties, such as insurance companies or governmental programs.[25] Because the focus of the analysis has been on the injured plaintiff's expenditures, Illinois courts long refused to extend the collateral source rule to those plaintiffs that expended no money in receiving medical care.[26]

B. The *Peterson* Approach to the Collateral Source Rule in Illinois

In 1979, the Illinois Supreme Court took a step toward limiting the collateral source rule when it decided *Peterson v. Lou Bachrodt Chevrolet Co*.[27] The case involved a plaintiff seeking to recover the reasonable value of medical services provided *free of charge* by the Shriners' Hospital for Crippled Children.[28] The court refused to allow the plaintiff to seek such expenses, holding that "[a]n individual is not entitled to recover for the value of services that he has obtained without expense, obligation, or liability."[29] To hold otherwise would contradict the policy underlying the collateral source rule and would tend to allow the plaintiff to collect punitive damages, a clear violation of the compensatory nature of tort law.[30]

Conversely, some jurisdictions allow full recovery for gratuitous services based on the notion that any windfall should be enjoyed by the plaintiff and not the tortfeasor.[31] The *Peterson* court rejected this notion on the theory that allowing a plaintiff to enjoy a windfall by recovering medical expenses they

21. RESTATEMENT (SECOND) OF TORTS § 920A(2) (1979).
22. Wills v. Foster, 892 N.E.2d 1018, 1022 (Ill. 2008).
23. Arthur v. Catour, 833 N.E.2d 847, 852 (Ill. 2005) (quoting J. FISCHER, UNDERSTANDING REMEDIES § 12(a) (1999)) .
24. *Id.*
25. Wilson v. Hoffman Group, Inc., 546 N.E.2d 524, 530 (Ill. 1989).
26. *See* Peterson v. Lou Bachrodt Chevrolet Co., 392 N.E.2d 1 (Ill. 1979).
27. *Id.*
28. *Id.*
29. *Id*. at 5.
30. *Id.*
31. *See* Grayson v. Williams, 256 F.2d 61, 65 (10th Cir. 1958).

never incurred "borders too closely on approval of unwarranted punitive damages . . . , a view not espoused by [Illinois courts]."[32]

By denying application of the collateral source rule to gratuities, Illinois found itself in the minority on this issue and in clear disagreement with the Restatement's position that "the fact that the doctor did not charge for his services . . . does not prevent [the plaintiff's] recovery for the reasonable value of the services."[33] Despite this disagreement, the ruling stood untouched in Illinois until 2005. In that year the Illinois Supreme Court finally decided whether the collateral source rule exception developed in *Peterson* would extend to plaintiffs with private insurance.

C. The *Arthur* Approach–the Collateral Source Rule and Plaintiffs with Private Insurance

The ruling in *Peterson* remained intact until the Illinois Supreme Court decided *Arthur v. Catour* twenty six years later.[34] *Arthur* involved an invitee that was injured by stepping in a hole located on the property of a landowner.[35] The plaintiff sought to recover her total medical expenses, while the defendant attempted to use the *Peterson* doctrine to limit plaintiff's recovery to the discounted amount paid by plaintiff's private health insurance.[36] Ruling purely on the evidentiary question, the court held the plaintiff could seek to recover the full amount of her medical bill and was not limited to presenting the reduced amount paid by her insurance carrier to the jury.[37]

The court limited its ruling, however, by holding that the plaintiff must establish that the charges originally billed were reasonable in the first place.[38] The court further held that, in Illinois, introducing a paid bill establishes prima facie evidence of reasonableness, but a failure to introduce a paid bill is not detrimental to establishing reasonableness.[39] Instead, the plaintiff is free to present other testimony and evidence tending to establish that the bill is reasonable.[40] Reasonableness, the court insisted, is a foundational requirement the plaintiff must prove before introducing any evidence of an unpaid bill.[41]

---

32. *Peterson*, 392 N.E.2d at 5.
33. Wills v. Foster, 892 N.E.2d 1018, 1024 (Ill. 2008) (*quoting* RESTATEMENT (SECOND) OF TORTS § 920A cmt. c(3) (1979)).
34. Arthur v. Catour, 833 N.E.2d 847 (Ill. 2005).
35. *Id.* at 849.
36. *Id*. at 850.
37. *Id*. at 853.
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id*. at 853–54.

The *Arthur* court's discussion of the collateral source rule differed markedly from the discussion in *Peterson*. Unlike *Peterson*, the *Arthur* court relied on section 920(A) of the Restatement and, in direct contradiction to *Peterson*, explicitly acknowledged that if a windfall is to occur, it should accrue to the benefit of the injured party and not the tortfeasor.[42] In coming to this conclusion the court relied primarily on comment *b* to section 920(A) of the Restatement which provides that although "[t]he injured party's net loss may have been reduced correspondingly, and to the extent that the defendant is required to pay the total amount, there may be a double compensation for a part of the plaintiff's injury."[43] This benefit, the comment suggests, should be "directed to the injured party" and not "shifted so as to become a windfall for the [wrongdoer]."[44]

In deciding *Arthur,* the court did not go so far as to overrule *Peterson*. In fact the *Arthur* court failed in several respects to reconcile the two different viewpoints. In the *Arthur* opinion, the *Peterson* case is not distinguished or clarified by the majority. The sole attempt at reconciling the opinions came in a dissent from Chief Justice McMorrow who criticized the *Arthur* majority for ignoring the limited application of the collateral source rule that came from *Peterson*. By discussing the rule in general terms, Chief Justice McMorrow suggested the majority's opinion would provide the courts little or no guidance on how to answer collateral source questions in the future.[45] Her concerns about the gaps in *Arthur* proved to be valid as, over the next few years, Illinois courts struggled to make consistent rulings on very similar questions in *Nickon v. City of Princeton*[46] and *Wills I*.[47]

D. *Nickon v. City of Princeton* and *Wills I*–the Collateral Source Rule: Still a Blur

Following the *Arthur* and *Peterson* rulings, Illinois courts were able to easily apply the collateral source rule to plaintiffs with private insurance and those who received medical services as a gratuity. Beyond that, they were provided very little guidance. This lack of guidance proved harmful when the Illinois Third and Fourth Appellate Districts provided inconsistent rulings on

---

42. *Id.* at 851–52.
43. RESTATEMENT (SECOND) OF TORTS § 920A cmt. b (1979).
44. *Id.*
45. *Arthur*, 833 N.E.2d at 858–60 (McMorrow, C.J., dissenting).
46. Nickon v. City of Princeton, 877 N.E.2d 776 (Ill. App. Ct. 2007).
47. Wills v. Foster, 867 N.E.2d 1223 (Ill. App. Ct. 2007).

the same issue: whether a plaintiff whose medical bills were settled by Medicaid or Medicare was protected by the collateral source rule.

In *Wills I*, the Fourth District ruled that a plaintiff whose bills were settled by Medicaid and Medicare was *not* protected by the collateral source rule and thus could not seek to recover the entire amount of her medical expenses.[48] In so ruling, the court suggested that the collateral source rule would not apply to a plaintiff who did not bargain for the benefits of the collateral source but received them purely because of her status.[49] In essence, the court likened Wills, a Medicaid/Medicare patient, to the plaintiff in *Peterson* who received medical services as a gratuity, neither of whom were protected by the collateral source rule.

Only six months later, the Third District decided a very similar question in *Nickon v. City of Princeton*.[50] *Nickon* involved a plaintiff that was seeking recovery of medical expenses following a fall on a city sidewalk.[51] His medical expenses were settled for a lesser amount by the Medicare program, but the plaintiff sought recovery of his total medical bills.[52] Unlike the Fourth District in *Wills I*, the *Nickon* court allowed the plaintiff to seek his entire medical bill, relying on *Arthur* as the authority for its decision.[53] The court refused to equate services rendered to a Medicare patient with the gratuitous services provided in *Peterson* and determined that application of the collateral source rule should not be affected by *any* relationship the injured party has with an agency paying the bills.[54]

In refusing to add Medicaid/Medicare exceptions to the collateral source rule, the *Nickon* court acknowledged that its decision was contrary to the ruling set forth in *Wills I* but expressed an expectation that the Illinois Supreme Court would soon provide definitive guidance on the issue.[55] As it turned out, the *Nickon* court would only have to wait eight months.

III. EXPOSITION OF *WILLS V. FOSTER*

The Illinois Supreme Court faced two primary issues in *Wills II*. First, the court had to establish a framework to be used by Illinois courts in determining whether, pursuant to the collateral source rule, a plaintiff seeking

48. *Id.* (emphasis added).
49. *Id*. at 1223–25.
50. *Nickon*, 877 N.E.2d 776.
51. *Id.* at 778.
52. *Id*. at 778–79.
53. *Id*. at 779–80.
54. *Id*. at 781–82. (emphasis added).
55. *Id*. at 781 n.1.

to recover medical expenses is entitled to seek the total amount of their medical services. With that framework in place, the court then needed to determine whether payments made in full settlement of medical bills by Medicare and Medicaid would be protected by the collateral source rule.

A. Facts and Procedural History

Plaintiff Sheila M. Wills brought suit against defendant Inman E. Foster for injuries sustained in an automobile accident.[56] As a result of her injuries, plaintiff incurred medical expenses in the amount of $80,163.47.[57] Her medical bills, however, were settled in full by Medicaid and Medicare for $19,005.50.[58]

At trial, Foster moved *in limine* to prevent Wills from introducing evidence beyond the amount actually paid by Medicaid and Medicare.[59] Wills, on the other hand, moved *in limine* to prevent Foster from introducing any evidence of any payments made by a collateral source (Medicaid and Medicare).[60] The court granted the plaintiff's motion, and evidence of the entire medical bill was introduced to the court.[61] A jury verdict awarded Wills her full medical expenses, plus $7500 for pain and suffering.[62] Following the verdict, the trial court granted a post-trial motion made by Foster to reduce the amount of the jury's award for medical expenses from $80,163.77 to $19,005.50.[63] Wills appealed the reduction to the Fourth District Appellate Court, which affirmed the lower court's decision to reduce plaintiff's recovery to the amount actually paid by Medicaid and Medicare.[64] In that appeal Wills argued that the trial court's decision violated the collateral source rule and was contrary to the Illinois Supreme Court's decision in *Arthur*.[65]

While acknowledging *Arthur*, the appellate court distinguished *Wills I* on the ground that Wills's medical expenses were paid by Medicaid and Medicare and not by a private insurance company like the bills in *Arthur*.[66] The court concluded that the reasoning in *Arthur* would not apply to a plaintiff who did not bargain for her benefits but instead received them free of charge because

56. Wills v. Foster, 892 N.E.2d 1018, 1020 (Ill. 2008).
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
66. Wills v. Foster, 867 N.E.2d 1223, 1226 (Ill. App. Ct. 2007).

of her status.[67] The appellate court instead applied the reasoning in *Peterson*, likening expenses paid by Medicaid and Medicare to those provided for no charge because, in both situations, the plaintiff incurred no expense, obligation, or liability in receiving the services for which compensation was later sought.[68]

In his dissent, Justice Cook suggested that although the *Peterson* logic had not been overruled, it should be limited to situations involving gratuitous medical services.[69] The majority's decision, he felt, provided a benefit for those wrongdoers who committed torts against the poor or elderly.[70] Justice Cook believed the majority improperly relied on *Peterson* and erred in extending its rationale, explaining that "[t]his court should not now extend *Peterson* to further limit the collateral source rule to exclude Medicaid and Medicare recipients."[71]

B. Decision and Rationale

In order to decide whether it is appropriate to apply the collateral source rule to Medicaid and Medicare patients, the Illinois Supreme Court first had to establish a framework for determining whether, pursuant to the collateral source rule, a plaintiff is entitled to recover his full billed medical expenses when the bill was settled for a lesser amount by a third party. In doing so, the court analyzed three different approaches: the actual amount paid approach, the benefit of the bargain approach, and the reasonable value approach.

1. The Actual Amount Paid Approach

The actual amount paid approach to the collateral source rule limits plaintiffs to recovering the amount actually paid in full settlement of the bill and prevents them from seeking recovery of (or introducing evidence of) the original medical bill.[72] The goal of this approach is to make the plaintiff whole by awarding only damages that are purely compensatory.[73] The courts that adopt this approach do not treat the written-off amount as damages incurred

67. *Id.*
68. *Id.* at 1227–28.
69. *Id.* at 1228 (Cook, J., dissenting).
70. *Id.*
71. *Id.* at 1228–29.
72. Wills v. Foster, 892 N.E.2d 1018, 1025 (Ill. 2008).
73. *Id.*

by the plaintiff at all and therefore do not protect such amounts with the collateral source rule.[74]

Critics of this approach claim that it wrongfully focuses on the nature of the write-off in relation to the victim rather than the tortfeasor.[75] The *Wills II* court determined this approach was not appropriate because, instead of focusing on whether a tort victim has received benefits from a collateral source that should not be used to reduce their award, it focuses on whether the injured party has actually incurred certain expenses, thereby misunderstanding the purpose of the rule.[76]

2. The Benefit of the Bargain Approach

The benefit of the bargain approach allows plaintiffs to recover the full value of their medical expenses, so long as the plaintiff has provided some consideration for the benefit of the write-off.[77] Thus, a plaintiff who has bargained for private insurance would be able to reap the benefit of that bargain by recovering the entire amount of the original medical bill.[78] Courts that adopt this approach also allow Medicare patients to seek the entire medical bill, reasoning that Medicare recipients should be treated the same as those with private insurance because Medicare recipients pay for their coverage through compulsory payroll taxes.[79] Courts utilizing this approach do not, however, allow plaintiffs with Medicaid to seek recovery of the total medical bill because Medicaid enrollment is not considered the benefit of any bargain, but rather participation based purely on status.[80]

The *Wills II* court criticized this approach for blatantly discriminating amongst classes of plaintiffs by practically guaranteeing less economic damages for the poor and disabled than those plaintiffs with private insurance or those enrolled in the Medicare program.[81] The court further criticized the

74. *Id.*
75. *Id*. at 1026.
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *See* Bozeman v. State, 879 So.2d 692, 705 (La. 2004). Recipients of Medicare Parts B, C, and D enroll by making some sort of expenditure to obtain coverage. Recipients of Medicare Part A and Medicaid, on the other hand, do not pay or contract for coverage–it is provided free of charge. *See* Centers for Medicare & Medicaid Services, *Medicare and You 2010, available at* http://www.medicare.gov/publications/pubs/pdf/10050.pdf (last visited Apr. 2, 2010).
81. *Wills*, 892 N.E.2d at 1026.

approach for undermining the focus of the collateral source rule by using the plaintiff's relationship with a third party to measure the wrongdoer's liability.[82]

3. The Reasonable Value Approach

The reasonable value framework (the most widely followed approach) allows a plaintiff to recover the reasonable value of medical services–i.e. the total amount billed–and does not distinguish between a plaintiff with private insurance and one covered by any governmental program.[83] Of the courts that utilize this approach, a minority of them hold that the reasonable value of the services is measured by the amount actually paid.[84] While treating plaintiffs with private insurance the same as plaintiffs covered by a governmental program, courts adopting the minority approach limit recovery to the amount actually paid (much like the actual amount paid approach) in an attempt to make the injured party whole by way of purely compensatory damages.[85]

The court in *Wills II* noted several criticisms of this minority approach, including its reliance on comment *h* of section 911 of the Restatement.[86] As the court notes, section 911 is inapplicable in cases like *Wills II* because it only applies to the "recovery of a person *who sues for the value of his services tortuously obtained* or when a plaintiff seeks to recover for expenditures *made or liability incurred to third persons for services rendered*,"[87] neither of which is at issue in *Wills II*.

The majority of courts that follow the reasonable value approach allow any plaintiff, regardless of their amount of insurance coverage, to seek to recover the amount originally billed by their medical provider, so long as that amount is reasonable.[88] The *Wills II* court noted that this approach is in line with sections 920(A) and 924 of the Restatement and provides the best method for treating all benefits paid to the plaintiff the same, provided such benefits were not paid by the defendant.[89] It therefore becomes "the tortfeasor's responsibility to compensate for all harm that he causes, not confined to the net loss that the injured party receives."[90]

---

82. *Id*. at 1027.
83. *Id.*
84. *Id*. *See also* Coop. Leasing, Inc. v. Johnson, 872 So.2d 956, 958–60 (Fla. Dist. Ct. App. 2004).
85. *Wills*, 892 N.E.2d at 1027.
86. *Id.*
87. Bynum v. Magno, 101 P.3d 1149, 1159 (Haw. 2004) (emphasis in original).
88. *Wills*, 892 N.E.2d at 1028.
89. *Id.*
90. RESTATEMENT (SECOND) OF TORTS § 920A cmt. b (1979).

4. The Rule in Illinois: Benefit of the Bargain or Reasonable Value?

The Illinois Supreme Court was left to decide which of the three approaches best resolved the collateral source rule questions left unanswered in *Arthur*. Foster, the defendant, argued that the *Arthur* decision clearly adopted a benefit of the bargain approach and therefore a plaintiff covered by Medicaid and Medicare should not be entitled to recover their entire medical bill.[91] Wills, the plaintiff, urged the court that *Arthur* did not adopt a benefit of the bargain approach, but instead stood for the reasonable value framework.[92] The Illinois Supreme Court adopted the plaintiff's position, deciding to follow the reasonable value approach for four main reasons.[93]

First, the court noted one of the primary goals of the collateral source rule is to prevent any wrongdoer from benefiting from a relationship or contract the injured party may have with third parties, regardless of whether that third party is a private insurance company, a governmental agency, or even a health care provider who agrees to provide medical treatment at no cost.[94] Because this relationship is solely for the benefit of the injured party and not the tortfeasor, the reasonable value approach must be adopted to maintain one of the primary objectives of the collateral source rule.[95]

Secondly, the court found support for the reasonable value approach in section 920A of the Restatement which provides that *all* injured plaintiffs are entitled to the reasonable value of their medical expenses.[96] Of particular importance, the court noted, is that neither the Restatement nor *Arthur's* discussion thereof distinguishes between those with private health insurance, those with Medicare/Medicaid coverage, or those who received gratuitous medical services.[97]

Third, the court pointed out the obvious deficiencies and inequalities of the benefit of the bargain approach, mainly its inherent discrimination against plaintiffs covered by Medicaid.[98] On a more fundamental basis, the court explained that adopting any framework other than the reasonable value approach inherently undermines the principle of measuring the defendant's liability by the injury to the plaintiff (as opposed to measuring it by a

91. *Wills*, 892 N.E.2d at 1029.
92. *Id.*
93. *Id.* at 1030.
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*

relationship or contract the injured may have with a collateral source).[99] In so doing, these other approaches fail to ensure that similarly situated defendants will face similar liabilities regardless of the manner in which the plaintiff financed their medical expenses.[100]

Finally, the court found comfort in knowing that the reasonable value approach is the most widely adopted view of the collateral source rule as it applies to injured plaintiffs seeking recovery of their medical expenses.[101] The court noted that while a minority of reasonable value jurisdictions use the amount actually paid to measure the reasonable value of expenses, the *Arthur* decision clearly stands for the proposition that Illinois allows plaintiffs to seek the total amount for which they were billed.[102]

Of particular importance to the court's ruling is the absence of any discussion of subrogation rights and the role they play in the application of the collateral source rule. Although *Wills I* discussed the issue, the importance of the matter was apparently lost on the Illinois Supreme Court as it played no major role in the court's decision.[103] Nevertheless, the court adopted the reasonable value approach, thereby overruling the incompatible decision in *Peterson* and clarifying the decision in *Arthur*.[104]

5. Evidentiary Concerns–Who is to Say What is Reasonable?

Following the court's adoption of the reasonable value approach, questions from *Arthur* remained regarding whether a defendant could introduce evidence of the settled bill to help the jury determine the reasonable value of the medical services.[105] The *Arthur* court alluded to an answer when they held defendants were not only free to cross-examine any of plaintiff's evidence tending to demonstrate reasonableness, but were also free to introduce their own evidence on the matter.[106] The problem with this determination, according to Chief Justice McMorrow's dissent, is that the court did not explain whether such evidence included the amount paid by the third party.[107] Some courts, including the Supreme Court of Ohio, have held that both the originally billed amount and the amount actually paid should be

99. *Id*.
100. *Id*.
101. *Id*. at 1031.
102. *Id*.
103. *See* Wills v. Foster, 867 N.E.2d 1223, 1227 (Ill. App. Ct. 2007).
104. *Wills*, 892 N.E.2d at 1031.
105. *Id*.
106. *Id*.
107. Arthur v. Catour, 833 N.E.2d 847, 862–63 (Ill. 2005) (McMorrow, C.J., dissenting).

introduced to the jury, leaving them to determine what is reasonable and what is not.[108] Other jurisdictions have found that the defendant should not be permitted to introduce any evidence whatsoever tending to show any payment made by a collateral source.[109]

Taking into account the varying approaches, the court in *Wills II* determined that the defendant is not permitted to introduce any evidence that the plaintiff's bills were settled for a lesser amount, even if doing so would assist the jury in determining the reasonable value of services rendered.[110] The defendant may, however, establish the reasonable value by cross-examining any of plaintiff's witnesses and by calling any of its own witnesses to testify that the billed amounts do not actually reflect the reasonable value of services.[111]

6. Are Medicaid and Medicare Payments Protected Under the Collateral Source Rule in Illinois?

With the proper analytical framework in place, the court in *Wills II* was still left to decide the case before them and determine whether Sheila Wills, a Medicaid/Medicare recipient, could seek to recover her entire medical expenses. In light of the reasonable value approach, the court determined Wills was entitled to introduce evidence of, and seek to recover, all of her medical expenses, regardless of the method by which the bill was financed.[112] The court required that the expenses be proven to be reasonable through any evidence short of that demonstrating a collateral source payment. In *Wills II*, the defendant stipulated to the admission of the billed amounts into evidence.[113] This, the court determined, effectively relieved the plaintiff of any burden to establish the reasonableness of the expenses and properly gave the jury the task of determining whether to award all, part, or none of the original bill.[114] Without any proper basis for reducing the jury's award, the Illinois Supreme Court ruled that the trial court was mistaken in granting defendant's post-trial motion to reduce the award.[115]

---

108. Robinson v. Bates, 857 N.E.2d 1195 (Ohio 2006).
109. Leitinger v. DBart, Inc., 736 N.W.2d 1 (Wis. 2007).
110. *Wills*, 892 N.E.2d at 1033.
111. *Id*.
112. *Id*.
113. *Id*. at 1034.
114. *Id*.
115. *Id*.

IV. ANALYSIS

By ruling that Sheila Wills was entitled to seek the reasonable value of her original medical bill although her expenses were settled for a lesser amount by Medicaid and Medicare, the Illinois Supreme Court in *Wills* II reached the correct solution and provided a sufficiently articulated basis for its decision. The court failed, however, to adequately consider and discuss the important role played by a party's subrogation rights in deciding that Medicare/Medicaid payments are protected by the collateral source.

The decision to apply the collateral source rule to all classes of plaintiffs was the correct decision because it allows all plaintiffs (regardless of insurance coverage) to recover the *reasonable value* of their expenses incurred as a result of injuries suffered at the hands of a wrongdoer. It places all classes of plaintiffs on an equal footing and avoids valuing injuries of the well-to-do more than those of the less privileged.

Although the reasonable value approach does create somewhat of a windfall for plaintiffs by allowing them to recover costs they never actually incurred (in stark contrast to the purely compensatory nature of tort damages), this flaw is offset by the medical service provider's subrogation rights.[116] Further, the compensatory nature of tort damages has long been viewed as conflicting with the basic principles of the collateral source rule.[117]

The reasonable value approach properly protects all plaintiffs, regardless of their economic status or level of insurance coverage, and prevents a defendant from being rewarded for wronging a poor plaintiff. By doing so, the reasonable value approach also protects similarly situated defendants by ensuring defendants charged with similar torts, resulting in similar injuries, will be liable for similar charges regardless of the status of the plaintiff seeking recovery. While the reasonable value approach is not flawless, it achieves the greatest good by protecting both plaintiffs and defendants, regardless of how well-to-do either party happens to be.

A. The Decision in *Wills II*

As previously noted, prior to the Illinois Supreme Court's decision in *Wills II* the state had a piecemeal collateral source rule that applied differently to parties depending on their type and level of health insurance. That all changed, however, when the Illinois Supreme Court determined that *all*

116. 770 ILL. COMP STAT. 23/10 (2008).
117. *See* James L. Branton, *The Collateral Source Rule*, 18 ST. MARY'S L.J. 883 (1987).

plaintiffs may seek the full amount of their medical expenses notwithstanding any payment made in settlement of the bills by a third party.[118] In so deciding, the Illinois Supreme Court enlisted an analytical approach that differs markedly from the approaches utilized by the Illinois courts to that point. Further, the court's articulated decision and reasoning provided sufficient guidance to Illinois courts regarding the collateral source rule in Illinois. The court did, however, fail to take into account the importance of the service provider's subrogation rights.

1. The Correct Approach

In two of the most seminal collateral source rule cases in Illinois, *Peterson* and *Arthur*, the Illinois Supreme Court ruled only on the question before the court.[119] Respectively, each case determined the applicability of the collateral source rule only to those particular plaintiffs. The cases provided no framework or analytical guidance regarding the application of the rule to any future tort plaintiff. The *Wills II* decision, on the other hand, not only answered the question presented as it applied to Sheila Wills but also demonstrated a shift in the paradigm of the state's highest court towards an appropriate analytical framework. The court's decision marked a departure from the ad hoc analysis Illinois had previously utilized and demonstrated the court's recognition and thorough reconciliation of a significant gap in Illinois jurisprudence. The court's decision is therefore correct not only for allowing Wills to recover all of her medical expenses, but for providing the state with the clarity it so desperately needed.

2. The Correct Basis

Not only was The *Wills II* court correct because it properly utilized appropriate legal analysis to clarify the collateral source rule, but also because it based its decision on the proper factors. In meticulously discussing its opinion, the court spent a significant amount of time analyzing how each approach would affect different classes of plaintiffs (as well as similarly situated defendants) and what each approach would mean for future plaintiffs.[120] In so doing, it is clear the court made its decision based on the approach it felt would provide the greatest good for the people of Illinois. The

---

118. *See Wills*, 892 N.E.2d 1018.

119. *See* Peterson v. Lou Bachrodt Chevrolet Co., 392 N.E.2d 1 (Ill. 1979) and Arthur v. Catour, 833 N.E.2d 847 (Ill. 2005).

120. *Wills*, 892 N.E.2d at 1025–30.

court recognized that the reasonable value approach was the most just approach because it provides more equitable treatment not only for similarly situated defendants but also for all classes of plaintiffs, regardless of their financial situation. In so doing, the court also protected the integrity of the historical concepts of the collateral source rule and respected the principles of tort damages outlined in the Restatement, primarily sections 920A and 924.

B. The Possible Approaches–Is 'Reasonable Value' Correct?

While it appears the court did an excellent job of analyzing the question before it and logically reaching a conclusion based on notions of equality and fairness, a question remains regarding how well the reasonable value approach actually furthers those notions.

1. Actual Amount Paid

The court was correct in rejecting the actual amount paid approach because it fails as an appropriate means of determining tort damages. The actual amount paid approach limits plaintiffs to seeking only the amount actually paid in full settlement of the bill and prevents them from asking the court for the amount of the original medical bill.[121] To demonstrate the implications of this approach as it applies to plaintiffs with varying degrees of medical coverage, consider the following hypothetical. Plaintiff, Peter, was in a car accident with a hypothetical defendant, Dan. Following the accident, Peter received medical treatment totaling $100,000 for the injuries he sustained. Shortly thereafter, Peter filed suit against Dan for negligence, seeking, among other things, recovery of his medical expenses. Assume the action is pending in a jurisdiction that adopts the actual amount paid approach.

Since the actual amount paid approach only repays the plaintiff for medical expenses actually paid in settlement of the bill, if Peter's medical expenses are provided as a gratuity or Peter is without means to pay the bill, he recovers zero from Dan for his medical expenses. If, however, Peter has private health insurance that settled his bill for $25,000, Peter will be able to seek damages, not exceeding $25,000, as the amount actually paid in settlement of his bill. This would be the case whether Peter was a Medicaid or Medicare patient, assuming Medicaid and Medicare paid $25,000 in full settlement of Peter's medical expenses. There would be no need for the hospital to invoke any subrogation rights in this scenario because there is no

121. *Id.* at 1025.

difference in the amount of the award ($25,000) and the amount for which the bill was settled ($25,000).

As demonstrated in the hypothetical, the actual amount paid approach has both positive and negative aspects. On the positive side, this approach could potentially lower tort damages, as plaintiffs would be limited in the amount they could seek for medical expenses. But there is no way to know that the written-off portion of the bill (or the entire bill for a plaintiff with no insurance) would not be shifted to a different claim of damages, such as pain and suffering, lost wages, or loss of consortium. While this approach does not discriminate between plaintiffs with private insurance, plaintiffs enrolled in the Medicaid program and those in the Medicare program, it greatly discriminates between plaintiffs with some sort of health care coverage and those with no coverage at all.

Another positive aspect of the actual amount paid approach is that it strictly abides by the compensatory nature of tort damages by allowing the plaintiff to recover only the costs he or she actually incurred. As previously suggested, however, the collateral source rule has never been in harmony with the compensatory nature of tort damages. Further, a strict adherence to compensatory standards provides the wrongdoer with a benefit instead of the injured party. Consider the Peter v. Dan hypothetical above. If we apply the actual amount paid approach to Peter, Dan has received a $75,000 benefit if Peter has some sort of health care coverage and a $100,000 benefit if Peter has no insurance. This notion of providing the wrongdoer with a benefit is clearly not the purpose of the collateral source rule. The actual amount paid approach is therefore in absolute contradiction to the spirit of the rule and is completely contrary to the notions of equality and fairness to both plaintiffs and defendants. As the court accurately determined, the actual amount paid approach therefore is not the correct approach to the collateral source rule.

2. Benefit of the Bargain

The court also correctly rejected the benefit of the bargain approach because it clearly does not serve the best interests of the state. This approach openly discriminates against the elderly and the poor by preventing Medicaid patients and those without insurance from recovering their full medical bills. The approach allows only those plaintiffs that have provided some consideration for the benefit of the write-off to recover the full value of their medical expenses.[122] Courts that adopt this approach also allow Medicare

122. *Id*. at 1026.

patients to seek their total medical bill, reasoning that Medicare recipients should be treated the same as those with private insurance because Medicare recipients pay for their coverage through compulsory payroll taxes.[123] Courts adopting this approach do not, however, allow plaintiffs with Medicaid to seek recovery of their total medical bill.[124] Clearly this policy does not further the factors the court considered in making their decision, nor does it comport with the notions of equitable justice.

To illustrate this approach, consider the consequences of the Peter v. Dan hypothetical if the suit was brought in a jurisdiction adopting the benefit of the bargain approach. Again, if Peter received his medical services as a gratuity or had no health care coverage whatsoever, he would not be entitled to recover any damages for medical expenses because he did not provide any consideration for the value of any negotiated settlement or write-off. If, however, Peter had private insurance that settled his bill for $25,000, Peter would be entitled to seek the entire $100,000 that he was originally billed. His entitlement to the full recovery is viewed as the benefit of his decision to enroll in a private health insurance program. Peter would also be able to seek the full $100,000 if he is enrolled in the Medicare program, which is viewed as an insurance program paid through payroll taxes. But, if Peter is instead enrolled in the Medicaid program, he will only be entitled to seek $25,000.

The inequities of this approach are numerous and obvious, further supporting the conclusion that the court was right to discard the benefit of the bargain approach. To begin with, it clearly discriminates between classes of plaintiffs, entitling the poor to less recovery than the well-to-do. This suggests that injuries to someone on Medicaid, or to someone who has no coverage whatsoever, are less valuable than injuries sustained by someone with private insurance or someone on the Medicare program. This notion certainly would excite the tortfeasor who learns that the individual he has injured is poor. Further, by treating Medicare plaintiffs differently than Medicaid plaintiffs, the benefit of the bargain approach is clearly inconsistent with the Restatement, primarily comments (b) and (c) to section 920A. Comment (b) explains that "the law does not differentiate between the nature of the benefits, so long as they did not come from the defendant . . . ."[125] Comment (c) goes on to list the types of benefits that are to be covered by the collateral source rule, and includes insurance policies, employment benefits, gratuities, and "*social legislation benefits.*"[126] The language in the Restatement clearly does not

123. *Id.*
124. *Id.*
125. RESTATEMENT (SECOND) OF TORTS § 920A cmt. b (1979).
126. *Id.* cmt. c (emphasis added).

differentiate Medicaid plaintiffs from Medicare plaintiffs, and any attempt to do so by the court is ill-placed. Further, by not allowing Medicaid plaintiffs to seek their total medical expenses, the benefit of the bargain approach directly contradicts the spirit of the collateral source rule because it allows the defendant to off-set damages for medical expenses by an amount paid by a third party–exactly the activity the collateral source rule is intended to prohibit. The court was therefore correct in its decision to reject the benefit of the bargain approach and instead apply the reasonable value approach.

3. Reasonable Value

The reasonable value approach provides the best framework for furthering the state's interest in fair, equitable treatment and clear expectations. The reasonable value framework allows a plaintiff to recover the reasonable value of his or her medical services–i.e. the total amount originally billed–and does not distinguish between a plaintiff with private insurance and one covered by any governmental program.[127] As previously discussed, of the jurisdictions that adopt the reasonable value approach, a minority of them hold that the reasonable value of services is equal to the amount actually paid in full settlement of the bills. In terms of consequences to plaintiffs and defendants, this minority approach is essentially the same as the actual amount paid approach and suffers the same deficiencies. The majority view of the reasonable value approach, however, allows *any* plaintiff to seek the reasonable value of their medical so long as those amounts are proven to be reasonable.[128] Applying the Peter v. Dan hypothetical shows the consequences of adopting the majority reasonable value approach. In such a case Peter, regardless of whether he had private insurance, no insurance or was enrolled in either Medicare or Medicaid, would be entitled to ask the jury for the entire $100,000 from Dan for his medical expenses.

The primary advantages of this approach are twofold: first, it treats all plaintiffs equally notwithstanding their financial situation; second, it treats all similarly situated defendants the same. This approach therefore clearly addresses the most glaring inequalities of the two prior approaches. Therefore, someone in Peter's position would not face a limited recovery because of their lack of insurance. Furthermore, someone in Dan's position would face the same liability as if similar injuries were inflicted in similar circumstances against someone with no insurance and someone with private insurance. Thus all parties are treated equally without regard to the plaintiff's wealth.

---

127. *Wills*, 892 N.E.2d at 1027.
128. *Id.* at 1028 (emphasis added).

The reasonable value approach is not without its criticisms. To begin with, this approach theoretically allows the plaintiff to enjoy a windfall by recovering more than he was required to pay for his medical services. For example, Peter would be entitled to collect $100,000 for his medical expenses even though it is likely he expended far less than $100,000 in securing those services. But as we have seen, the collateral source rule often leads to a windfall for one party or the other. Certainly, if anyone should receive the benefits of a windfall, it should be the injured party and not the tortfeasor. Further, the requirement that the medical expenses be "reasonable" prevents abuses and glaring windfall recoveries for the plaintiff. Although the collateral source rule would prohibit the introduction of the plaintiff's settled bills to establish the reasonable value, it does not prohibit either party from introducing evidence or witnesses tending to demonstrate the reasonable value of services rendered.[129] Further, defendants are also entitled to cross-examine any witness the plaintiff uses to establish reasonableness.[130] Therefore, a defendant worried about paying extraordinarily high medical expenses can introduce his own evidence and witnesses suggesting that the amount billed was not reasonable, as well as cross-examine any of the plaintiff's witnesses. Ultimately, the amount he will be required to pay will be determined by the jury, based on its concept of reasonableness. This mechanism sufficiently prohibits the plaintiff from recovering a large windfall and protects the defendant from paying an exorbitant amount of damages.

Additionally, the presence of subrogation rights lessens the impact of the plaintiff's potential windfall. As previously mentioned, health care providers may assert a lien on the proceeds of a verdict, judgment, or award to an injured person for the provider's reasonable charges for treatment.[131] Therefore, although Peter could potentially collect up to $100,000 for his medical expenses, even though the bill was settled for a much lower amount (or not paid at all, depending on the circumstances of Peter's care), the hospital could assert subrogation rights against him and attempt to make itself whole. This would result in a suit being filed by the hospital against Peter for the difference between his award ($100,000) and the amount for which his bill was settled. This mechanism would therefore prevent Peter from enjoying the windfall that is seen as a colossal weakness in the reasonable value approach.

Although it is clear subrogation rights mitigate any potential windfall for many plaintiffs (those with private insurance or those whose medical services were provided as a gratuity), it is conceivable this mechanism does not prevent

129. *Id.* at 1032–33.
130. *Id.*
131. 770 ILL. COMP. STAT. 23/10 (2008).

a windfall for the Medicare/Medicaid patient because the hospital has no subrogation rights when it accepts payment from either program. As mentioned previously, if a medical service provider accepts Medicaid payments in settlement of a patient's bill, the provider is deemed to have accepted the reduced amount as *payment in full*, and therefore cannot later sue the patient for the difference in the amount billed and the amount paid for his treatment.[132] Therefore, if Peter's bill was settled by Medicare/Medicaid for an amount much less than the $100,000 he was awarded, the hospital could not later assert a subrogation claim against him to collect the difference. The *government*, however, as payor of the bill, maintains the right to sue the newly-solvent patient for reimbursement.[133] Thus, the Medicare/Medicaid plaintiff, just like the one with private insurance or no insurance at all, is not able to enjoy any true windfall at all.

This Note does not suggest offering subrogation rights to medical service providers against Medicare/Medicaid patients. While this would seemingly allow the service provider to be made whole, it would, in effect, make Medicare/Medicaid an insurance program for service providers looking to have their cake and eat it too. If given this right, medical service providers could simply accept a reduced payment from the government, wait until the injured and indigent patient recovers damages in a court of law, and then decide they would rather sue the newly well-to-do patient to collect the reasonable value of their services.

Another major criticism of the reasonable value approach is its seeming incompatibility with the compensatory nature of tort damages. In essence, the approach allows a plaintiff to be compensated for expenditures he never made. Thus, Peter is awarded $100,000 to reimburse him for costs he was never liable for in the first place. While facially a good argument against the approach, the *Wills II* court correctly addressed this concern by relying heavily on the Restatement and prior case law. As the Restatement makes clear, the reasonable medical expenses the plaintiff is entitled to are a recovery of the *value* of the services, even if there is no liability or expense to the injured person.[134] In other words, even though the plaintiff himself incurred no liability or expense in securing the medical services, they nevertheless have value; and that value should not fall to the tortfeasor.

Further, viewing the reasonable value approach as being in contradiction with compensatory damages misses the fundamental purpose of the collateral source rule altogether–to prevent a tortfeasor from benefitting from any

132. 305 ILL. COMP. STAT. 5/11-13 (2008) (emphasis added).
133. *Id*. *See also* 42 U.S.C. § 1396a(a)(25)(A)-(B) (2008).
134. RESTATEMENT (SECOND) OF TORTS § 924 cmt. f (1979).

relationship an injured party may have with a collateral source. Specifically, as the Virginia Supreme Court put it in *Acuar v. Letourneau*, "the focal point of the [rule] is not whether an injured party has *incurred* certain medical expenses. Rather, it is whether a tort victim has received benefits from a collateral source that cannot be used to reduce the amount of damages owed by a tortfeasor."[135] It is clear from the Restatement, the Virginia Supreme Court's language in *Acuar*, and *Wills II*'s reliance thereon that the collateral source rule is not meant to be applied in concert with compensatory principles. The rule's focus is not on refilling the plaintiff's wallet with the amount he expended on medical services but rather on preventing the wrongdoer from redeeming a coupon that was never intended for him in the first place.

While the reasonable value approach is not flawless, it is clearly superior to the other two approaches. Of the three, the reasonable value approach is most congruent with the Restatement, the traditional tenets of the collateral source rule, and the notions of equality and fairness to both plaintiff and defendant. The reasonable value approach not only protects these interests but also provides every potential plaintiff and every potential defendant with a clear expectation of how the collateral source rule may apply to their case. With the ruling in *Wills II*, the state of Illinois has a definitive approach to a difficult question. Although it may not be perfect, at least it is perfectly clear.

V. CONCLUSION

Prior to the Illinois Supreme Court's decision in *Wills II*, the state had a piecemeal collateral source rule that applied differently to parties depending on their type and level of health insurance. That all changed, however, when the Illinois Supreme Court adopted the reasonable value approach and effectively determined that *all* plaintiffs may seek to recover the reasonable value of their medical expenses, notwithstanding any payment made in settlement of the bills by a collateral third party. In so deciding, the Illinois Supreme Court enlisted an analytical approach that differs markedly from the approaches used in Illinois to that point. Not only did the court correctly adopt the reasonable value approach, it appropriately applied it to Medicare/Medicaid patients and established that they are protected by the collateral source rule. Unfortunately, the court neglected to discuss the

135. Acuar v. Letourneau, 531 S.E.2d 316, 322 (Va. 2000) (emphasis added).

importance of subrogation rights and how they alter the collateral source rule analysis.

The inequities perpetuated by the actual amount paid and benefit of the bargain approaches clearly make them less than ideal for Illinois. They not only frustrate the purpose of the collateral source rule, but unjustly discriminate against classes of plaintiffs as well as failing to treat similarly situated defendants in a similar manner. The reasonable value approach is preferable because it is most congruent with (1) the Restatement, (2) the traditional tenets of the collateral source rule, and (3) the notions of equality and fairness to both plaintiff and defendant. In addition to protecting these interests, it also gives every potential plaintiff and every potential defendant a clear expectation of how the collateral source rule may apply to any given situation. Although this approach is not without its flaws, the presence of subrogation rights for both medical service providers and the government help mitigate these shortcomings.