IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. OP 21-0316

BARBARA A. GIBSON, As Personal Representative of the Estate of Johnny G. Gibson, and for herself; JOHN TRAVIS MORGAN GIBSON; DIXIE LEE GIBSON,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

APPELLANTS' REPLY BRIEF

Certified questions from the Ninth Circuit Court of Appeals
Cause No. 20-35333

APPEARANCES:

John M. Morrison
Anne Sherwood
MORRISON, SHERWOOD, WILSON & DEOLA, PLLP
PO Box 557
401 N Last Chance Gulch
Helena MT 59624-0557
Phone: (406) 442-3261
Fax: (406) 443-7294
john@mswdlaw.com
anne@mswdlaw.com

Attorneys for Plaintiff-Appellants

Leif M. Johnson
Acting U.S. Attorney
Victoria L. Francis
Assistant U.S. Attorney
James F. Battin Federal Courthouse
2601 2nd Ave. N., Suite 300
Billings, MT 59101
Phone: (406) 247-4633
victoria.francis@usdoj.gov

Attorney for Defendant-Appellee

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INTRODUCTION

Before he died, Johnny Gibson incurred over $164,000 in medical expenses at St. Vincent Hospital on September 21 and 22, 2015. *Three months later*, following Barbara Gibson's application for financial assistance, St. Vincent Hospital notified Mrs. Gibson that the bill would be forgiven due to the Gibson family's poverty.

The Government agrees that the estate in a wrongful death case is entitled to recover medical expenses that the decedent incurred. Ans. Br. at 12. The Government also agrees that the amount of the St. Vincent bill at issue represented the reasonable value of the medical services rendered to Mr. Gibson. *Id.* at 18, n.8. However, the Government contends that, because Mrs. Gibson was later given the benefit of the hospital's charity program, Gibson was not "responsible for the charges," and so the itemized medical expenses for her late husband's treatment were never incurred. *Id*. at 13.

The Government's position contravenes Montana law in at least four significant ways: First, this Court has held that the word "incur" is "clear and unambiguous" and that "a person incurs medical expenses at the time services are rendered."[1] Second, this Court it has held that medical bills may be introduced in a

[1] W*inter v. State Farm Mut. Auto. Ins. Co.,* 2014 MT 168, 375 Mont. 351, 328 P.3d 665.

wrongful death case as evidence of the reasonable cost of care caused by negligence *including parts of the bills that have been written off*--even when the write-off is prescribed by pre-negotiated discount agreements.[2] Third, this Court has long recognized that a tort victim is entitled to the reasonable value of medical care made necessary by the tort regardless of how the bill is later handled.[3] Fourth, this Court has also clearly held that collateral source reductions are limited to those specified in statute.[4]

The Government's position also rests on newly asserted, inaccurate and/or irrelevant assumptions of fact. The Government argues Gibson was: "never billed, never obligated to pay" and "never liable for the expenses." Ans. Br. at 16, 24. For reasons stated above, these assertions, even if true, would not affect Gibson's right to this category of damages. However, there is no evidence in the record to support any of these new factual contentions, and they are wrong. The itemized bill that was introduced at trial, which the Government included in its appendix, shows that it was provided by St. Vincent Hospital in 2019--during this litigation. (ER 65) A retrospective view of the billing and payment/adjustment process, it also shows that St. Vincent Hospital did not grant the charity benefit to Mrs.

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[2] *Meek v. Mont. Eighth Judicial Dist. Cour*t, 2015 MT 130, 379 Mont. 150, 349 P.3d 493.

[3] *Kuhnke v. Fisher*, 210 Mont. 114, 683 P.2d 916 (1984).

[4] *Schuff v. A.T. Klemens & Son,* 303 Mont. 274, 16 P.3d 1002 (2000).

Gibson until *three months after the bills were incurred*. (ER 77)[5]. The Government also asserts for the first time that, because the hospital is required by state law to maintain "a charity care policy consistent with industry standards," Johnny Gibson somehow never incurred his medical expenses. This claim is logically flawed: the fact that a charity program is required, does not equate to requiring that Gibson's bill be paid. Moreover, the requirement that such a program exist, or even that a particular bill be forgiven, does not alter the fact that the bill was incurred before it was forgiven under the program.

Beyond these legal and factual errors in its position, the Government disregards the manifest unfairness of denying certain tort victims a whole category of damages afforded to others (contending only that the "field is not clear") and ignores the enumerated list of detriments that tort victims suffer when a medical bill is written off due to their poverty.

ARGUMENT

1. The Government's position contravenes settled Montana law in multiple ways.

A. Medical expenses are incurred when the service is rendered.

[5] In fact, this forgiveness came only after Barbara Gibson applied for and received financial assistance from the hospital. Documents reflecting the application process are not in the record because the claim has never been made—until the now-- that the bills were not incurred in the first place. Because the Government opened this new door in its brief, a letter from St. Vincent Hospital to Mrs. Gibson, confirming her application for financial aid, is appended hereto.

The Government concedes in its brief: "Appellants correctly observe that, in a survival action, they are entitled to recovery of 'medical…expenses incurred by [the decedent]." Ans. Br. at 12, citing *Swanson v. Champion Int'l Corp*., 197 Mont. 509, 515, 646 P.2d 1166 (1982). This Court held in *Winter*, *supra,* n.1*,* that the term "incurred" is "clear and unambiguous" and, "[u]nder general understanding, a person incurs medical expenses at the time services are rendered." *Winter*, ¶ 16. Further, the Court explained: "a common sense understanding dictates that a person incurs medical expenses at the time of service because he is responsible for the charges from that moment forward." *Id*. And, "[i]f a third party, such as an insurer, ultimately pays some or all of those charges, the insurer is merely relieving the person of liability he has already assumed." *Id*.[6]

The Government focuses on the language that "he is responsible for the charges" and "the provider does not agree to hold the patient harmless for services rendered on his behalf." Ans. Br. at 13, citing *Winter*, ¶ 16. But the Court uses this language in the context of State Farm seeking to avoid med pay liability based on previous health insurance payments by Blue Cross. In this case, there is no evidence that the provider agreed at the outset to hold the patient harmless for services rendered on his behalf. Rather, the only evidence is that a decision was

[6] Substitute "the hospital's charity program" for "an insurer," and you have the present *Gibson* case.

made three months after the treatment to cover the cost of care under the hospital's charity program.[7] The hospital's charity program took the place of the insurer.

The Government also argues that the expenses were not incurred because there was "no liability." Ans. Br. at 15. But this position was rejected by the Court in *Winter*:

> The parties … disagree about when an injured person becomes "liable or subject to" medical expenses for purposes of the policy. "Liable" is defined as "obligated according to law or equity" or "responsible." *Merriam-Webster's Collegiate Dictionary* 670. State Farm argues that an insured cannot be liable for expenses that are paid on his behalf by a third party and no amount is owed. Winter argues that an injured person becomes liable for the expenses at the time services are rendered regardless of whether a third party will ultimately pay them on his behalf, and therefore the med pay coverage is triggered.
>
> *Winter*, ¶ 14.

The Court then sided with Winter and found that "a person incurs medical expenses at the time of service because he is responsible for the charges from that moment forward." *Id.* ¶ 16 (underscoring supplied.) Thus, the liability, though it be otherwise paid or forgiven at some later date, occurs and is incurred at the moment the service is rendered.

[7] This decision was undoubtedly made because there was no public or private insurance and the Government had not stepped forward, in this clear liability situation, to cover the costs of care as insurers are required to do in Montana. *See, Ridley v. Guaranty Nat'l Ins. Co.*, 286 Mont. 325, 327, 951 P.2d 987 (1997).

B. Medical bills may be introduced in a wrongful death case as evidence of the reasonable cost of care caused by negligence *including parts of the bills that have been written off*--even when the write-off is prescribed by pre-negotiated discount agreements.

In *Meek, supra,* n. 2, the decedent incurred $197,154.93 in medical expenses for care required by her injuries and rendered before her death. Medicare and Blue Cross Blue Shield ("BCBS") together paid a total of $70,711.26 to her providers and the remainder of the expenses ($126,443.67) were *written off* due to legally prescribed Medicare discount rates and BCBS discount agreements with Benefis hospital and other providers. The district court excluded the medical bills as evidence and granted summary judgment against the estate as to that element of damage because the estate did not have to pay the bills. This Court reversed the evidentiary ruling, holding that the medical bills, *despite having been mostly written off*, were evidence of the reasonable value of the care required. The Court also held that the amounts paid by Medicare and BCBS were inadmissible collateral source evidence.

The Government contends that *Meek* pertained only to the admissibility of evidence. Ans. Br. at 21. However, it fails to rebut the point that the Court in *Meek* also reversed the summary judgment against Meek, allowing the estate to return to trial to recover the reasonable value of the medical care even though most of those expenses had been forgiven (and the rest had been paid by insurance.) Ans. Br. at 18, n. 8. As Justice McKinnon explained at the outset of her dissent:

"The Court allows a person injured by another person's tortious conduct to recover more than the actual amount she paid or for which she incurred liability for past medical care and expenses." *Meek*, ¶ 27 (McKinnon, J. dissenting).

The Government correctly notes that, unlike in *Meek*, "there is no factual dispute about the value of the expenses" in the *Gibson* case. Ans. Br. at 18, n.8. In other words, the Government agrees that the reasonable value of the medical services is the amount stated on the bill. However, the Government then attempts to distinguish *Meek* on grounds that the bills were written off there because of "a contractual agreement between the providers and Medicare and Blue Cross/Blue Shield 'that they would accept the amounts paid as full and final payment.'" *Id*. at 18. This distinction provides no basis for denying the same damages to Johnny Gibson's estate. In fact, the distinction makes Gibson's claim to these incurred medical expenses even stronger than Meek's.

This point is underscored in Justice McKinnon's dissent, where she argued that "Meek did not incur liability for her providers' full bills <u>because at the time the charges were *incurred*, her providers had *already* agreed to accept a certain amount from both Medicare and Blue Cross/Blue Shield in exchange for their services</u>." *Meek*, ¶ 34 (McKinnon, J. dissenting) (emphasis supplied). In contrast, there was no pre-service agreement in this case—only a post-service decision by

the hospital to cover the bill under its charity program after the charges were incurred.

The remainder of Government's response to *Meek* discusses *Conway v. Benefis Health System*, 2013 MT 73, 396 Mont. 309, 297 P.3d 1200; *Newbury v. State Farm*, 2008 MT 156, 343 Mont 279, 184 P.3d 1021; and *Harris v. St. Vincent Healthcare*, 2013 MT 207, 371 Mont. 133, 305 P.3d 852 calling them "even more complex cases." Ans. Br. at 19. The Government also cites the federal court decisions in *Chapman v. Mazda Motor of America*, 7 F. Supp. 2d 1123 (D. Mont. 1998) and *Willink v. Boyne USA, Inc.*, No. CV 12–74–BU–DLC, 2013 WL 5756157, at *1 (D. Mont. Oct. 23, 2013). Ans. Br. at 20-21. But the Government's arguments about these cases were articulated at length by Justice McKinnon in her lone dissent and rejected by the Court. In fact, the *Meek* Court specifically distinguished *Newbury* and *Conway* as relating to contract rights rather than tort liability. *Meek*, ¶ 20. These cases are also addressed and distinguished in Gibson's Opening Brief. Op. Br. at 15.

In summary, *Meek* reaffirms several points that are important here: 1) medical bills may be introduced in a wrongful death case as evidence of the value of the medical services rendered to the decedent prior to death even when those bills have been written off; 2) a plaintiff in a wrongful death case is entitled to the reasonable value of medical expenses incurred for services provided regardless of

whether the plaintiff was required to pay those expenses; 3) this Court unanimously agrees that medical expenses are "incurred" by the patient at the time the service is rendered.

C. A tort victim is entitled to the reasonable value of medical care made necessary by the tort regardless of how the bill is later handled.

Gibson's right to the reasonable value of medical services caused by the admitted negligence in this case was stated clearly by this Court 35 years ago in *Kuhnke v. Fisher*, 210 Mont. 114, 683 P.2d 916 (1984). The operative language is quoted in Plaintiffs initial brief at page 9. The rule could not be clearer. Because it is dispositive, it is repeated here:

> [W]hen a person is injured or has suffered … through the wrongful death of another, the incurrence of the medical bills and funeral costs, without more, is sufficient to establish a basis for recovery of damages... No statute and no case law requires the payment of medical bills before payment can be recovered in a wrongful death case.

Kuhnke, 210 Mont. at 124, 683 P.2d at 921.

The Government's only response is that Gibson did not "incur" the itemized expenses for his medical care because he did not ultimately become "obligated to pay a specified amount." Ans. Br. at 16. But this runs headlong against *Kuhnke*, *Winter* and *Meek*, including the dissent of Justice McKinnon in *Meek*. The Government also contends that Kuhnke's bills remained outstanding at the time of trial. *Id.*, n. 7. But the *Kuhnke* Court emphasized: "It was completely irrelevant to

the cause of action being tried that the funeral bill was not paid at the time of trial." *Kuhnke*, 210 Mont. at 124.

D. Collateral source reductions from medical expense damages are limited to those specified in statute.

As noted above, the Government concedes that St. Vincent Hospital's forgiveness of the Gibson medical bill did not fall within the collateral source reduction statute (§ 27-1-308, MCA) prior to its 2021 amendment. The Government fails entirely though to address the fact that forgiveness of a medical bill does constitute "benefits received by a plaintiff from a source wholly independent of and collateral to the wrongdoer..." *Tribby v. Northwestern Bank of Great Falls*, 217 Mont. 196, 209, 704 P.2d 409. Therefore, the common law collateral source rule applies[8] and the forgiveness "will not diminish the damages otherwise recoverable from the wrongdoer." *Id*.

And as discussed in Plaintiffs/Appellants' initial brief, this rule is entirely consistent with the Restatement (Second) of Torts § 920A, which precludes reducing damages based on charitable assistance. It provides, in pertinent part: "… 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

[8] "[A] statute is not presumed to work any change in the rules of the common law beyond what is expressed in its provisions or fairly implied in them in order to give them full operation." *Phipps v. Old Republic Nat'l Title Ins. Co.*, 2021 MT 152, ¶ 20, 404 Mont. 336.

tortfeasor is liable." *Id*. at (2). The comments to the rule state that such benefits specifically include:

> (3) Gratuities. This applies to cash gratuities *and to the rendering of services. Thus, the fact that the doctor did not charge for his services or the plaintiff was treated in a veterans hospital does not prevent his recovery for the reasonable value of the services*.

(italics supplied) The comments further explain that "it is the tortfeasor's responsibility to compensate for all harm that he [or she] causes, not confined to the net loss that the injured party receives." Rst. 2d of Torts § 920A cmt. *b*. Moreover, "[t]he value of medical services made necessary by the tort can ordinarily be recovered although they have created no liability or expense to the injured person, as when a physician donates his services." Rst. 2d of Torts, § 924 cmt. *f*.[9]

This Court held in *Schuff v. A.T. Klemens & Son,* 303 Mont. 274, 16 P.3d 1002 (2000) that § 27-1-307 and 308 must be strictly construed because they limit this remedy that is available at common law. *Id.* ¶ 115. Therefore, "if a potential collateral source is not identified in [§27-1-307(1)], it is not subject to reduction under § 27-1-308, MCA." *Id.* ¶ 114. The Government here seeks to deny Gibsons

[9] As every law student knows, this common law rule stems from the common sense notion that, if someone is to benefit from the generosity of a third party, it should be the innocent tort victim rather than the wrongdoing tortfeasor.

a category of damages based on a benefit that is not only *not identified in the statute for reduction* but is *expressly excluded* by the statute.

2. The Government's position rests on newly asserted, irrelevant and/or inaccurate facts.

A. There is no evidence in the record to support the claim that Gibson was never billed; the only evidence is that the bill was not written off by the hospital until three months after it was incurred.

The Government states repeatedly, in various ways throughout its brief, that Gibson was never billed for the services in question.[10] For reasons set forth above, Gibson's right to damages for the value of the medical services caused by the tortfeasor does not turn on the timing or manner of the hospital's billing. Nevertheless, the Court should know that these repeated assertions by the Government find no support in the facts presented to this Court by the Ninth Circuit Court of Appeals (Certif. Order at 4-6), no support in the Findings of Fact by the trial judge (ER 18), and no support in the trial record.

[10] The Government claims, without basis, the Gibson was "never billed," (Ans. Br. at 1), that the bill introduced at the trial was "the providers only bill" (*Id*. at 2) and "the only bill the patient received," (*Id.* at 8) that Gibson's expenses "were written off pre-billing," (*Id.)* that "[n]o effort to collect was ever made," (*Id.* at 6), that "Gibson never had an amount due and owing," (*Id*.) that "there was never any attempt to collect," (*Id*. at 10) that the services were "never billed to him," and he was "never obligated to pay," (*Id*. at 11) that the hospital "inform[ed] Appellants in the initial bill that they were not liable," (*Id*. 13) and that "the only bill here was the one that … entailed no obligation to pay." (*Id*. at 16)

Indeed, the question of whether prior billing occurred, whether Mr. or Mrs. Gibson signed a form on admission agreeing to pay for services (as virtually all patients do), or the process by which Mrs. Gibson qualified for and obtained charitable assistance, was never raised during the trial.[11] What *is* clear from the particular copy of the bill introduced at trial is that it was provided by St. Vincent Hospital in 2019, during the pre-trial stage of this case, three and a half years after Gibson's death. (ER 65). What is also clear from the bill is that it was not forgiven by the hospital until *three months after the charges were incurred*. (ER 77):

Service Date	Revenue Code	Procedure	NDC Code	QTY	Amount
09/22/15	PHARMACY - GENERAL CLASSIFICATION [0250]	731002599-NOREPINEPHRINE 1 MG/ML SOLN	0409-3375-04	2	$150.10
09/22/15	PHARMACY - GENERAL CLASSIFICATION [0250]	731002599-NOREPINEPHRINE 1 MG/ML SOLN	0409-3375-04	2	$150.10
09/22/15	PHARMACY - GENERAL CLASSIFICATION [0250]	731002599-NOREPINEPHRINE 8 MG IN NS 250 ML 8 MG/250 ML (32 MCG/ML) SOLN	61553-120-61	1	$181.85
09/22/15	PHARMACY - IV SOLUTIONS [0258]	731002603-0.9 % SODIUM CHLORIDE (NS) 0.9 % SOLP 100 ML BAG	0264-1800-32	1	$72.50
09/22/15	PHARMACY - IV SOLUTIONS [0258]	731002603-0.9 % SODIUM CHLORIDE (NS) 0.9 % SOLP 250 ML BAG	0264-7800-20	1	$64.25
09/22/15	PHARMACY - IV SOLUTIONS [0258]	731002603-0.9 % SODIUM CHLORIDE (NS) 0.9 % SOLP 150 ML BAG	0409-7983-61	1	$84.25
Total charges:					$164,670.22

Payments and Adjustments

Description	Amount
CHARITY - BELOW FPG - 12/17/15	-$164,670.22
Total payments and adjustments:	-$164,670.22

[11] While it was not part of the trial record, because the issue was not raised at the trial, and because the government has filled its brief with repeated new, unsupported, and inaccurate assertions of fact, Gibsons append hereto just one document evidencing the fact that Mrs. Gibson was required to apply and qualify for assistance from the hospital's charity program.

Therefore, all the Government's arguments regarding the bill being forgiven at the same time it was incurred--even if the timing of the billing and forgiveness mattered, which it does not--are built on a factual foundation that does not exist and is, in fact, inaccurate.

B. The Government's claim that St. Vincent Hospital was required by law to write off Gibson's bill is both incorrect and irrelevant.

Another new argument launched here by the Government is that St. Vincent Hospital was required by law to maintain a charity care program. Ans. Br. at 4, *citing*, Mont. Code Ann. § 50-5-121(1)(b). The Government then recites various data about St. Vincent Hospital's tax emptions and website information about the qualification threshold for St. Vincent Hospital's charity program. *Id*. The Government acknowledges that this information is "not part of the record" but contends it is "part of the public record." *Id*., n. 2. For several reasons, this information provides no support for the Government's position, and the Court should disregard it.

First, and most importantly, it is irrelevant. If St. Vincent Hospital had a charity policy that allowed Gibsons to qualify for a discount as a result of their poverty, that would not alter the fact that the charges were incurred before they were discounted. Nor would such discounts alter the fact that Gibson was entitled to recover the reasonable value of the medical services and to introduce the

itemized medical bill as evidence of that value. The cases cited above have made these points clear for 35 years.

Second, the Government's reliance on this information is based on flawed logic. The fact that the law requires St. Vincent Hospital to have "a charity care policy consistent with industry standards applicable to the area the facility serves and the tax status of the hospital," does not mean that the law required St. Vincent Hospital to forgive the charges for care provided to Johnny Gibson. Moreover, even if the law did mandate specifically that Johnny Gibson's medical bill be forgiven, the medical expenses still would have been incurred, just as the bills that are mandatorily discounted by Medicare rules or provider network agreements are nonetheless incurred. *See Meek, supra*.

Third, the Court should disregard this information because it is not part of the record, has never been subject to investigation and cross examination, and the veracity and meaning of it is untested and unknown. That is why this court has consistently held that arguments will not be heard for the first time on appeal[12] and evidence outside the record will not be considered.[13] It is also not part of the

[12] *Masters Group Int'l, Inc. v. Comerica Bank*, 2015 MT 192, ¶ 40, 380 Mont. 1, 352 P.3d 1101. ("This Court does not consider arguments raised for the first time on appeal.")

[13] *Nielsen v. Hornsteiner*, 2012 MT 102, ¶ 13, 365 Mont. 64, 277 P.3d 1241. ("Hornsteiner attempts on appeal to offer new evidence, which is included in the

"agreed facts" underlying the action, which are the facts on which this Court decides certified questions.[14]

C. The 2021 amendments to § 27-1-308, MCA are irrelevant to the certified questions.

There is no question that Gibson's claim accrued (and judgment was rendered) before the 2021 amendments to Montana's collateral source statute. While the Government acknowledges that the newly amended law "is not applicable to this case," (Ans. Br. at 9) it nonetheless quotes the law and contends that it "does reflect the legislature's policy determination regarding the suitability of recovery for medical expenses for which the patient was not obligated to pay."

For at least three reasons, this oxymoronic statement provides no help to the Government. First, the statute is not retroactive because it does not purport to be. *See*, § 1-2-109, MCA, and *compare*, § 27-1-308, MCA. Second, this Court and the United States Supreme Court have noted, "the views of a subsequent legislative body form a hazardous basis for inferring the intent of an earlier one." *Ridley v. Guaranty Nat'l Ins. Co*., 286 Mont. 325, 335, 951 P.2d 987 (1997), citing

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appendices to his appellate briefs. However, this evidence was not presented to the District Court and, thus, is not part of the record on appeal.")

[14] *Murray v. BEJ Minerals, LLC*, 2020 MT 131, ¶ 11, 400 Mont. 135, 464 P.3d 80. (Our review of the certified question of law is "purely an interpretation of the law as applied to the agreed facts underlying the action.") *Citing*, *BNSF Ry. Co. v. Feit*, 2012 MT 147, ¶ 6, 365 Mont. 359, 281 P.3d 225 (quoting *State Farm Fire & Cas. Co. v. Bush Hog, LLC*, 2009 MT 349, ¶ 4, 353 Mont. 173, 219 P.3d 1249).

Waterman S.S. Corp. v. United States, 381 U.S. 252, 268 (1965). Third, if anything, the enactment of the amendments by the 2021 legislature, which facially seemed to target *Meek*, reflect that the legislature believed the law was as Gibson argues it was: allowing recovery at trial of medical expenses based on the reasonable value of the services without regard to how the bills for those services were subsequently handled.

3. The Government ignores the list of policy considerations that weigh against depriving certain tort victims of the reasonable value of medical services caused by the tortfeasor's negligence and the detriments suffered by those who must rely on charity care.

A. Denying tort victims who receive charity care the same remedy that insured tort victims get is manifestly unfair.

Gibsons' initial brief sets forth a list of reasons why it would be patently unfair to deny certain tort victims their recovery—and absolve the tortfeasor of responsibility—simply because charitable care was given to the injured person. Op. Br. at 29-33. The Government does not address these points but responds that they should be rejected because "the field is not clear." Ans. Br. at 23. The most important of the policy considerations is that an insured tort victim, under the made-whole doctrine, could avoid an offset by showing that s/he was not "made whole." See, *Swanson v. Hartford Ins. Co*., 2002 MT 81, ¶ 15, 309 Mont. 269, 46 P.3d 584 (citing *Skauge v. Mt. States Tel. and Tel. Co*., 172 Mont. 521, 565 P.2d 628 (1977). In this case, Gibsons were not made whole; their recovery was

reduced because of the $250,000 cap on the total aggregate recovery for non-economic damages. Certif. Order at 5, n. 1. A publicly or privately insured tort victim could ask that the benefit conferred by the hospital not reduce their recovery because--due to the cap--they were not made-whole by the judgment. Under the Government's view, the uninsured tort victim is denied the protection of the made whole doctrine. But the Government's position also means that the tort victim who receives services from a family member, good Samaritan, or at a charitable or government hospital deserves a lesser remedy than tort victims who are treated by commercial providers—and the tortfeasor enjoys the benefit of the charity or public care.

B. Tort victims who must rely on charity care suffer a host of detriments.

Finally, the Government argues that Gibson "experienced no detriment" (Ans. Br. at 16) and repeats this refrain in various ways throughout its brief. This claim ignores the effect that non-payment of a bill has on the credit profile and patient profile of the tort victim who fails to pay their bill. See, Op. Br. at 34. It also ignores the weight this charity may place on the conscience of the innocent tort victim and deprives them of the ability to repay the hospital for its charity. And where liability is clear, as it is here, it allows the tortfeasor, despite the duties recognized in *Ridley*, to reap the entire benefit of its failure to pay the medical expenses as they are incurred.

CONCLUSION

For these reasons and others set forth above and in prior briefing, the Gibson family respectfully urges this Court to answer the Question 1 "Yes": a plaintiff in a survival action may recover the reasonable value of medical care and related services when the costs of such care or services are written-off under the provider's charitable care program. The Gibson family further asks this Court to answer Question 2: "No," while explaining that charitable write-offs are not subject to reduction under the pre-2021 statute because they are not "payments" and because they, in any event, are "gifts or gratuitous contributions" within the meaning of that statutory exception.

Dated this 17th day of September 2021.

/s/ John M. Morrison
John M. Morrison
Anne Sherwood
MORRISON, SHERWOOD, WILSON & DEOLA, PLLP
Attorneys for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(d), I certify that *APPELLANTS' REPLY BRIEF* is printed with proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count, calculated by Microsoft Word 2016, is not more than 5,000 words, excluding this Certificate of Compliance and the Table of Contents and Table of Authorities.

Dated this 17th day of September 2021.

/s/ John M. Morrison
John M. Morrison
Anne Sherwood
MORRISON, SHERWOOD, WILSON & DEOLA, PLLP
Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I, John Martin Morrison, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 09-17-2021:

Victoria Laeder Francis (Attorney)
Office of the U.S. Attorney, 2601 2nd Ave. N. Suite 3200
Billings MT 59101
Representing: United States of America
Service Method: eService

Electronically Signed By: John Martin Morrison
Dated: 09-17-2021