NO. 04-06-00345-CV

IN THE COURT OF APPEALS FOR THE FOURTH DISTRICT,
SAN ANTONIO, TEXAS

ALISA MILLS,

APPELLANT,

V.

KEVIN FLETCHER,

APPELLEE.

APPEAL AS OF RIGHT FROM THE COUNTY COURT AT LAW NO. 2
BEXAR COUNTY, TEXAS
CAUSE NO. 296698

BRIEF OF AMICUS CURIAE
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TO THE HONORABLE FOURTH COURT OF APPEALS:

Amicus curiae The Texas Trial Lawyers Association ("TTLA") submits this brief in support of Appellee Kevin Fletcher and urges this court to affirm the judgment of the court below.

INTEREST OF AMICUS CURIAE AND DISCLOSURES PURSUANT TO TEX. R. APP. P. 11

TTLA is a statewide trade association formed to advance the cause of those who are damaged in person and property and who must seek redress therefor at law; to resist the constant efforts that are now being made to curtail the rights of such persons; to encourage cooperation between lawyers engaged in the furtherance of such objectives; and through such cooperation to promote justice and human welfare, and to protect the rights of the citizens of the State of Texas. TTLA is committed to the balanced and impartial administration of justice, and it seeks to ensure that the judicial system produces results that are fair to all parties, not only the plaintiffs. TTLA believes the citizens of Texas are entitled to no less.

No fee was paid or promised in association with the preparation and filing of this brief.

SUMMARY OF ARGUMENT

Section 41.0105 of the Texas Civil Practice & Remedies Code was enacted as part of the "tort reform" legislation known as House Bill 4 ("HB4") to specify what medical expenses a jury may consider when making an award to a plaintiff. The plain meaning of the statute--buttressed by its legislative history, and other legislative enactments using the same terminology--allows a plaintiff to recover medical expenses that she has incurred even though she may not necessarily be personally liable for them. A different reading of the statute allows tortfeasors to reap a windfall, and to avoid responsibility for the damages caused by their misfeasance; it would also abrogate the collateral source rule, which has long been part of Texas law. Further, the record in this case is sketchy, at best--the only evidence of the purported write-offs are statements prepared by the health care providers. There is nothing in the record to show that the providers have affirmatively and inviolably waived the write to collect the purportedly written-off amounts, or that Fletcher will never be liable for them. Such proof is vital to Mills's argument; in its absence, reversing the trial court will only give Mills a windfall.

ARGUMENT AND AUTHORITY

As ably recounted in Fletcher's brief, § 41.0105, as part of HB 4, was the subject of multiple revisions and intense negotiation. *See* Fletcher Br. at 25-28; Jim M. Perdue, Jr., *Maybe It Depends on What your Definition of "OR" IS? A Holistic Approach to Texas Civil Practice & Remedies Code §41.0105, the Collateral Source Rule,*

and Legislative History, 38 TEX. TECH. L. REV. 241, 254-62 (2006). The end result, though its phrasing is less than crystal clear, preserves for plaintiffs rights that have long been protected under Texas law: as part of their damages, they can recover the costs of all medical expenses incurred by them or on their behalf, and the defendant is prohibited from introducing evidence of any collateral sources for payment of those medical expenses. *See* Fletcher Br. at 28-30; Perdue at 243-44, 267-69. That those rights are accorded to plaintiffs is, and always has been, fair on two counts. First, successful plaintiffs are still liable for any statutory liens or other subrogation interests, and, second, defendants, because they cannot take advantage of private health insurance paid for by the plaintiff, are not allowed the windfall of escaping financial liability for the medical expenses occasioned by their own misfeasance. *See* Perdue at 265-67. Appellant Mills, or perhaps more properly Appellant Mills's insurance carrier, now seeks to obtain judicially that which was not granted legislatively.

I. Under § 41.0105, a claimant may recover the amount of medical expenses *incurred*.

Mills asserts that "the trial court's failure to deduct from the jury's award of medical expenses amounts written off by Fletcher's health care providers violated Section 41.0105." Mills Br. at 6. Mills is mistaken.

A. The plain language of the statute allows Fletcher to recover medical expenses he has incurred, even if he may never be personally liable for them.

The suggestion that Fletcher may not recover the amounts he incurred disregards the disjunctive nature of the phrase "paid or incurred," which encompasses two equally viable amounts of recovery. Disregarding the disjunctive nature and effect of this phrase violates a fundamental principle of statutory construction. Because the word "or" is disjunctive, the words "paid" and "incurred" are two different things, both of which are included in the realm of potential recovery. *See Board of Ins. Comm'rs of Tex. v. Guardian Life Ins. Co.*,142 Tex. 630, 635, 180 S.W.2d 906, 908 (Tex. 1944) ("Ordinarily the words 'and' and 'or,' are in no sense interchangeable terms, but, on the contrary, are used in the structure of language for purposes entirely variant, the former being strictly of a conjunctive, the latter, of a disjunctive, nature."). There is no legislative intent suggesting that a plaintiff should recover anything less than amounts paid, incurred, or charged. There is also no legislative history to suggest that a plaintiff should recover the lesser of these amounts, or that a plaintiff's recovery is limited to what was personally paid even if the plaintiff incurred a greater amount in medical bills.

B. The word "incurred" in § 41.0105 means amounts "charged."

Mills's assertion that § 41.0105 allows a claimant to recover only those amounts actually paid is directly contrary to HB 4's actual legislative history, which demonstrates that the term "incurred" is meant to include amounts "charged."

During the Senate's debate of HB4, an exchange between Senators Hinojosa and Ratliff was transcribed for the purpose of establishing certain legislative intent. This exchange specifically concerned § 41.0105:

> Senator Hinojosa: Governor, on page 106, lines 6-8, does this provision mean that a patient can't recover future damages?
>
> Senator Ratliff: No, it just means that economic damages are limited to those actually incurred. [Plaintiffs] can't recover more than [plaintiffs] actually paid or been charged for [their] health care expenses in the past or what the evidence shows [they] will probably be charged in the future.

See S.J. of Tex., 78th Leg., R.S. 5005 (2003), attached as App. A; *cf.* Mills Br. at 23. This exchange is relevant to the issue at hand--even though it is made relative to future medical expenses, it specifically addresses the paid/incurred distinction, which is germane to all medical expenses. Senator Ratliff was the chairman of the State Affairs Committee and was responsible for drafting the committee substitute version of the bill, which was adopted by both houses and signed by the Governor. Based on this explicit legislative history, there is no doubt that the Legislature intended the word "incurred" under § 41.0105 to be synonymous with the word "charged," whether for future or past medical expenses.

1. Mills improperly asks this court to rely on an incomplete legislative history.

Mills seems to be arguing that because the general purpose of HB4 was to limit plaintiffs recoveries as much as possible, each of its provisions must be read--despite its plain language--to limit recoveries. The specific legislative history of §

41.0105, though, tells a different story. The only way Mills can support her incorrect conclusion is by relying on early draft versions of the bill, despite the legislature's specific contemplation and rejection of those versions. Reliance on rejected language--terms not included in the enacted version of the bill--is patently improper. *See, e.g., Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981); *Ortiz v. State Farm Mut. Auto. Ins. Co.*, 955 S.W.2d 353, 357 (Tex. App.--San Antonio 1997, pet. denied).

For instance, the House Research Organization's ("HRO") bill analysis, *see* Mills Br. at 24, which suggests a change in the collateral source rule, relies on language contained in a version of the bill considered in the House of Representatives before consideration and further amendment by the Senate and conference committee. *See* House Research Org. Bill Analysis of HB4, March 25, 2003 at 14, attached as App. B. The Vice Chairman of the HRO has specifically stated that the HRO's bill analysis "does not reflect any subsequent changes or amendments made on the House floor or in the Senate. The analysis made [by the HRO] on March 25, 2003, should not be used as a final analysis of House Bill 4, as changes were made to the legislation subsequent to the original analysis dated March 25, 2003." *See* Aff. of Texas State Rep. David Farabee, attached as App. D. Likewise, the Senate Research Center's bill analysis, which suggests that certain collateral source evidence is admissible, actually relies on language in an earlier draft, version 4, of the bill. *See* Senate Research Center Bill Analysis of C.S.H.B. 4,

May 14, 2003 at 29, attached as App. C; Mills Br. at 22.

Any reliance on sources that cite prior versions of the bill is misplaced and irrelevant to an analysis of the final version of the bill. The final version of the bill, by omission, rejected any language that would have modified the collateral source rule. *See* Fletcher Br. at 25-27.

2. Mills improperly asks this court to rely on a "legislative history" concocted by industry lobbyists.

Mills's reading of the statute is plausible only when its plain language, and the legislative intent behind it, are ignored. Mills supports her interpretation of the statute with a citation to a Texas Tech Law Review article written by industry lobbyists who were influential in spearheading the passage of § 41.0105. Mills Br. at 8-9 (citing Michael S. Hull, *et al.*, *House Bill 4 and Proposition 12: An Analysis with Legislative History*, 36 TEX. TECH. L. REV. 1, 252 (2005)). This article was authored principally by registered lobbyists for proponents of House Bill 4. Of the six authors, four regularly appeared as witnesses on behalf of insurance and medical interests that supported passage of the bill. Guy D. Choate, *Introduction*, 38 TEX. TECH. L. REV. 237 (2006).

Subsequent to the publication of the Hull article, the Dean of the Texas Tech School of Law recognized that the "analysis" by the industry lobbyists merely reflected their own personal views. *See* Letter from Walter B. Huffman, Dean Texas Tech School of Law dated Oct. 17, 2005 at 1, attached at App. E. The industry

lobbyists' positions have never been officially transcribed, nor made part of the record as official legislative history.

The Hull article even goes so far as to discount the official, verifiable legislative history of the statute--the verbatim statements of the bill's Senate sponsors, recorded in the Senate Journal with unanimous Senate concurrence. For instance, at pages 191-193, the industry lobbyists dismiss those statements of Senator Ratliff that are directly contrary to the lobbyists' position. Because the industry lobbyists' opinions do not constitute legislative history, the opinions set forth in the Hull article have no bearing on the interpretation of § 41.0105, particularly in light of the actual legislative history and the statute's plain language.

C. The Legislature's other uses of the terms "paid" and "incurred" support Fletcher's analysis of § 41.0105.

If the court finds § 41.0105 ambiguous or vague, it may look to extratextual sources as interpretive aids. Fletcher has already directed this court to the legislative history and common law usages of the term "incurred." *See* Fletcher Br. at 9-19. The court may also look to other statutes to determine how the Legislature differentiates between expenses that are "paid" and expenses that are "incurred." *See* TEX. GOV'T CODE § 311.023(4) (Vernon 2006) (court may consider laws on the same or similar subjects); *Harrison County Fin. Corp. v. KPMG Peat Marwick, LLP*, 948 S.W.2d 941, 946 (Tex. App.--Texarkana 1997) (court looks at other statutes for meaning of "accrual"), *rev'd on other grounds, KPMG Peat Marwick, LLP v. Harrison County Fin. Corp.*, 988

S.W.2d 746 (Tex. 1999); *Thomas v. State*, 923 S.W.2d 645, 647 (Tex. App.--Houston [1st Dist.] 1995, no pet.) (court looks at other statutes for meaning of "personal injury").

Vernon's is rife with instances in which the Legislature treated "incurred" and "paid" as two distinct acts--roughly, and respectively, as the *creation* of an obligation or debt, and as the *satisfaction* of the obligation or debt. A partial listing includes:

- ". . . (A) any debts incurred shall be paid; . . ." TEX. SPECIAL DISTRICTS CODE §§ 7202.003, 7204.003, 7205.003, 8107.003, etc. (Vernon Supp. 2006).

- "(a) Each debt or obligation shall be paid in the manner provided at the time it was incurred." TEX. WATER CODE § 55.452 (Vernon 2005).

- "The reasonable expenses incurred by members of the board in the discharge of their duties shall be paid from the available university fund." TEX. EDUC. CODE § 65.14 (Vernon 2002).

- "The commission and the department may not incur financial obligations that cannot be paid from tolls or revenues derived from owning or operating toll projects or systems or from money provided by law." TEX. TRANSP. CODE § 228.104 (Vernon Supp. 2006).

- "The expenses incurred by the advisory council are to be paid from the planning fund, the technical assistance fund, or other money available for that purpose." TEX. HEALTH & SAFETY CODE § 363.044 (Vernon 2001).

and so on, in the Education Code, the Finance Code, the Government Code, the Local Government Code, the Natural Resources Code, etc. So this much is clear: that the Legislature understood and intended that an amount "paid" is different from an amount "incurred."

But did the Legislature intend, as Mills argues, that the person incurring an obligation is necessarily the person who is irrevocably obligated to pay it? Again, reference to the Legislature's other uses of the terms is helpful. Two statutes are particularly instructive. The Government Code allows state governmental entities to contract with outside attorneys on a contingent fee basis. The code provides that, only after the funds recovered by the attorneys' efforts have been deposited in the state treasury,

> Litigation and other expenses payable under the contract . . . may be reimbursed only if the state governmental entity and the state auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the state governmental entity, and paid for by the contracting attorney or law firm.

TEX. GOV'T CODE § 2254.108 (Vernon 2006). The attorneys thus incur expenses on behalf of the governmental entity, but the governmental entity is only obligated to pay if certain conditions (first among them prevailing in the litigation) are met. In this provision, as in § 41.0105, "incurred" does not mean to become irrevocably obligated to pay. Rather, the obligation to pay only attaches to the incurred amounts upon the occurrence of certain conditions related to the ability of the person or entity on whose behalf the amounts were incurred to actually pay them. This Government Code section also demonstrates that when the Legislature wants to make recovery of an incurred expense dependent on that expense being "actually paid," it knows how to do so forthrightly and clearly.

A second statute, also dealing with attorney fees, also illustrates the Legislature's understanding of "incurred." The Workers' Compensation portion of the Labor Code provides for fee-shifting if a claimant prevails in an insurance carrier's appeal of the workers' compensation appeals panel's decision to a district court. In such an instance, the carrier ". . . is liable for reasonable and necessary attorney's fees . . . incurred by the claimant as a result of the insurance carrier's appeal . . . ." TEX. LABOR CODE § 408.221(c) (Vernon 2006). Notably, for purposes of this discussion, the statute specifically contemplates contingent attorney's fees. *See id.* at (a). In this statute, the Legislature treats as "incurred by the claimant" an attorney's fee that is a) contingent upon a successful conclusion of the litigation, and b) even then, payable by the insurance carrier, and not out of the claimant's recovery. In other words, the claimant incurs an attorney's fee that it would *never* be obligated to pay. In the same way, under § 41.0105, a plaintiff is entitled to recover as damages those medical expenses he has incurred but, by reason of private or governmental insurance, or balance billing, or whatever, he is not irrevocably obligated to pay.

II. "Incurred" medical expenses include amounts written off by a health care provider.

Although the word "incurred" is not defined in section 41.0105, there is substantial case law defining "incurred" with respect to medical expenses. For instance, the Texas Supreme Court has rejected the argument that payment by

Medicare meant the patient had not actually incurred the hospital charges. *Black v. Am. Bankers Ins. Co.*, 478 S.W.2d 434, 436 (Tex. 1972). Despite the fact that the hospital in *Black* entered into an agreement and was subject to the law that it could not charge an individual for services who is entitled to have payment made under the Medicare Act, the court noted "(1) that a Medicare patient must originally incur the hospital expense and a legal obligation to pay them before the Social Security Administration can pay any portion thereof to the hospital 'on his behalf,' and (2) that any such payment is regarded under the Medicare Act as payment to the individual who is furnished the services by the hospital." *Id.* at 437.

Applying the rule of construction that statutes are to be read in accord with existing case precedent, recovery of charges "incurred by or on behalf of the patient" means the full amount of the hospital charge, even when it is paid by Medicare and regardless of whether the claimant is liable on the amount over and above the amount paid by Medicare. Furthermore, Senator Ratliff's statement, quoted at p. 5 above, where he substituted the phrase "been charged" for the word "incurred" in discussing the meaning of section 41.0105, is consistent with how the Texas Supreme Court has interpreted the word"incurred" in the context of medical expenses.

Likewise, in *Texarkana Mem'l Hosp., Inc. v. Murdock*, 903 S.W.2d 868 (Tex. App.--Texarkana 1995), *rev'd on other grounds*, 946 S.W.2d 836 (Tex. 1997), the Texarkana Court of Appeals was asked to review a $500,000 jury award for medical expenses. The underlying case involved a claim for medical malpractice against a hospital for

an infant that died shortly after birth. *Id*. at 871. The mother brought the claim, and the Arkansas Department of Human Services ("ADHS"), which provided Medicaid benefits to the mother, intervened. *Id.* Much like the Texas Medicaid statute, on any third-party recovery for expenses, there is a statutory assignment of amounts to be paid back to the Medicaid program. *Id*. at 872; *see* TEX. HUM. RES. CODE ANN. § 32.033 (Vernon 2001).

The court of appeals held that the plaintiff "assigned her right to collect medical expenses to ADHS 'to the full extent of any amount which may be paid by Medicaid.'" *Murdock*, 903 S.W.2d at 873. The Medicaid payment was $352,784. *Id.* Nevertheless, "[t]he jury made a determination that Kathy Murdock was entitled to $500,000 for the medical expenses which were incurred because of [the hospital's] negligence." *Id.* The court distinguished between the amount paid by Medicaid and the amount that was determined to be reasonable and necessary medical expenses incurred by Murdock, stating "[t]he assignment, however, applied only to any amount which was paid by Medicaid. Thus, the $352,784 did not cover the entire jury award of $500,000." *Id.* (footnote omitted).

The trial court in *Murdock* granted a judgment notwithstanding the verdict that Murdock take nothing, but awarded Medicaid $352,784. *Id.* at 874. Thus, the balance of $147,216 was erased from the jury verdict by the trial court. *Id.* The court of appeals reversed the j.n.o.v. and held that Murdock was entitled to the $147,216 "not assigned to [Medicaid], being the balance of the amount found by the jury."

Id. The defendant argued that the j.n.o.v. was granted because "Murdock was not personally liable." *Id.* But the court of appeals pointed out that while Medicaid had not paid the expenses, the plaintiff "would be liable for all necessary medical expenses incurred by her child." *Id.*

In light of the holdings in both *Black* and *Murdock*, it is apparent that the write-offs that Medicare or Medicaid may garner through regulatory arrangements with health care providers do not mean that medical expenses are not incurred. *See Black*, 478 S.W.2d at 437-38; *Murdock*, 903 S.W.2d at 874. Otherwise, the *Black* and *Murdock* courts could never have concluded that the plaintiffs were entitled to recover the balance of the charges found by the jury. *See Black*, 478 S.W.2d at 438; *Murdock*, 903 S.W.2d at 874. Additionally, the Austin Court of Appeals has rejected the argument that reduced Medicare and Medicaid payments are admissible in light of the collateral source rule. *See Wong v. Graham*, No. 03-00-00440-CV, 2001 WL 123932, *11 (Tex. App.—Austin Feb. 15, 2001, no pet.) (not designated for publication).

There is no legislative history to suggest that § 41.0105 was intended to overrule any of these cases. Therefore, consistent with *Black* and *Murdock*, where certain medical expenses have been written off by a health care provider pursuant to contractual arrangements or regulations, such amounts written off are still recoverable by the claimant as a collateral source.

While Mills goes to some length in an attempt to define the word "incurred" based on citations to various dictionaries, *see* Mills Br. at 11, she disregards a

fundamental rule of statutory construction. When "[w]ords or phrases . . . have acquired a technical or particular meaning, whether by legislative definition or otherwise, [such words or phrases] shall be construed accordingly." TEX. GOV'T CODE ANN. § 311.011 (Vernon 2005). Further, the Legislature is presumed to act with the knowledge of Texas common law. *Phillips v. Beaber*, 995 S.W.2d 655, 658 (Tex. 1999). In the context of recoverable medical expenses, for many years Texas courts have assigned meaning to the word "incurred." And because the legislature is presumed to enact legislation with complete knowledge of the existing law and with reference to it, the meaning of "incurred" in § 41.0105 must be taken from the meaning assigned by the cases previously interpreting the word "incurred" in the context of medical expenses. Reliance on common dictionaries is not an appropriate means of ascertaining the meaning of the word "incurred" because the term already has an assigned legal meaning. Thus, Mills's assertion that the word "incurred" is only implicated if someone remains liable on a bill is inconsistent with how "incurred" has been interpreted by Texas courts in the context of medical expenses. *See Black*, 478 S.W.2d at 438; *Murdock*, 903 S.W.2d at 874.

1. The collateral source rule prohibits offsets to recovery based on write offs.

Mills claims that in order to avoid harm to the collateral source rule, a trial court may merely apply § 41.0105 to the jury's verdict and deduct the written off amounts in preparing the final judgment in the case. *See* Mills Br. at 6, 8-15. Mills

fails to recognize that the collateral source rule is more than just an evidentiary rule; the collateral source rule prevents offsets of collateral source amounts. *See Taylor v. American Fabritech*, 132 S.W.3d 613, 626 (Tex. App.--Houston [14th Dist.] 2004, pet. denied) ("In other words, the defendant is not entitled to present evidence of, or obtain an offset for, funds received from a collateral source."); Fletcher Br. at 30-35; Perdue at 247-48.

Mills compares this case's facts to other cases in which the trial court made a post-verdict adjustment to the plaintiff's recovery, such as adjustments based on the proportionate responsibility statute, adjustments to punitive damages or adjustments based on certain credits. Mills Br. at 16. The fundamental distinction between the cases upon which Mills relies and the case at bar is that the post-verdict adjustments referenced by the Mills are *not* subject to the collateral source rule, while medical expenses distinctly are. Mills's sundry examples of post-verdict reduction are thus of no moment in determining whether the recovery of medical expenses can be reduced by the trial court in light of the collateral source rule.

2. The collateral source rule prohibits the admission of evidence of write offs.

Mills asserts that trial courts can apply § 41.0105 in accord with the collateral source rule by "admitting medical expense evidence that shows discounts or write-offs without showing actual payments by collateral sources." Mills Br. at 17. This tactic directly controvenes the collateral source rule. As previously mentioned, the

collateral source rule is a historic recognition that a tortfeasor should not have the benefit of any reduction in a claimant's medical expenses based on some payment or benefit provided by a collateral source. *Murdock*, 903 S.W.2d at 874. Because the collateral source rule prevents not only the admission of collateral source evidence but also offsets to a plaintiff's recovery based on collateral source benefits, Mills's proposed interpretation of the statute would take the direct opposite approach. Such problems cannot be cured by a limiting instruction to the jury as Mills suggests, Mills Br. at 18, as it is not only possible but quite likely that the plaintiff would be unfairly prejudiced and the jury would be confused regarding the proper measure of damages.

III. This court should not allow Mills, as the tortfeasor, to reap a windfall especially given the sketchy state of the record on appeal.

Mills asks this court to paint with a dangerously broad brush. Mills argues that certain portions of the medical bills were "written off." *See* Mills Br. at 4-6. Mills's sole evidentiary proof of any "write off" is the health care provider's actual bill, showing the amount charged and the amount paid. *Id.* at 4. But this evidence tells the court nothing about the extant legal rights to the full amount charged. The record contains no release, no affidavit from the provider forever waiving the right to recover the full billed amount, nothing to establish, as Mills asserts, that Fletcher will never be liable for the ostensibly written-off amounts. Mills's policy argument is based entirely on the mere assumption that Fletcher will never be asked to pay

those amounts, but the record is devoid of any indication that assumption is justified. Mills simply ignores the legal avenues available to these, or other, Texas health care providers, to seek the unpaid balance of a bill from Fletcher or another Texas patient. *See* TEX. CIV. PRAC. & REM. CODE § 146.001, *et seq.* (health care service providers are prohibited from seeking the balance of unpaid bills from the patient only if the original charges are made under any health benefits plan's contractual terms, and within eleven months from date of service); TEX. PROP. CODE § 55.001, *et seq.* (for emergency medical services, hospitals may perfect a lien "for the amount of the hospital's charges for services provided to the individual during the first 100 days . . . ," § 55.004(b)). In the instance of a statutory hospital lien, there is no discount or waiver of the hospital's right to the full amount of "charges" regardless of a health insurance plan's reimbursement, or the patient's direct payment, of some lower amount.

In the absence of any evidence showing that the write-downs are permanent or inviolable, and that they were not made in exchange for any other consideration, such as prompt payment, this court should not give Mills, the tortfeasor, an undeserved windfall. *See* RESTATEMENT (SECOND) OF TORTS § 920A cmt. b (1979) ("it is the position of the law that a benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor."). An interpretation of the law resulting in a windfall to the tortfeasor would indeed be a perverse result and against public policy. A result unsupported in the record and based on a naked

assumption is all the more dangerous, not only to this court's jurisprudence but also for the host of health care providers who seek unpaid balances on medical bills, and the patients potentially subject to such efforts.

CONCLUSION

In light of the foregoing, amicus curiae The Texas Trial Lawyers Association urges this court to affirm the judgment of the court below, in consonance with both the plain language of § 41.0105 and the provision's legislative history. Such a result advances the public policy interests of the State of Texas by holding tortfeasors responsible for the damages they cause, and allowing tort victims full compensation for their injuries.

Respectfully submitted,

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I certify that on this _____ day of January, 2007, I mailed a true and correct copy of *Brief of Amicus Curiae Texas Trial Lawyers Association* by first class U.S. Mail to the following counsel of record:

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APPENDIX

Document **Tab**

S.J. of Tex., 78th Leg., R.S. 5005 (2003) . . . . . A

House Research Org. Bill Analysis of HB4, March 25, 2003 . . . . . B

Senate Research Center Bill Analysis of C.S.H.B. 4, May 14, 2003 C

Aff. of Texas State Rep. David Farabee . . . . . D

Letter from Walter B. Huffman, Dean Texas Tech School of Law, dated Oct. 17, 2005 . . . . . E