UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1490

September Term, 2014

MELVUD KIKNADZE

v.

MATTHEW BRIAN SONNEMAN, *et al*.

Reed,
*Hotten,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 12, 2016

*Michele D. Hotten, J., participated in the hearing of this case while still an active member of this Court but did not participate in either the preparation or adoption of this opinion.

This appeal stems from a negligence action filed by Melvud Kiknadze, appellant, in the Circuit Court for Montgomery County on April 22, 2013, for injuries sustained in a car accident with Matthew Sonneman, appellee, two years prior to the lawsuit. Mr. Sonneman, through counsel retained by his primary car insurer, Progressive Insurance Company ("Progressive"), answered and requested a jury trial. After Mr. Sonneman's excess liability insurer, State Farm Mutual Automobile Insurance Company ("State Farm") (together with Mr. Sonneman, "appellees"), received notice that Mr. Kiknadze was "presenting an underinsured motorist claim" ("UIM")[1] against it, State Farm moved to intervene in the case, which was ultimately granted.

After participating in normal pretrial discovery (together with Mr. Sonneman) as a named defendant (and as a result, named appellee), State Farm moved to prohibit the disclosure of its identity to the jury on the first day of trial. Over Mr. Kiknadze's objection, the trial court granted State Farm's motion, and allowed it to amend its answer by replacing its name with that of Mr. Sonneman, by interlineation.[2] On the second day of trial, the trial court precluded one of Mr. Kiknadze's medical experts, Dr. Margaret Graynovsky, from testifying as to the surgical treatment of an extruded spinal disk injury. On the final day of trial, the circuit court declined to give the plaintiff's requested "collateral source rule" instruction to the jury. After the jury returned a verdict in his favor for over $20,000.00, Mr. Kiknadze brought this appeal, challenging those three decisions of the trial court.

[1] As discussed *infra*, Mr. Kiknadze was actually pursuing an excess liability claim against State Farm.

[2] "Interlineation" is defined as "The act of writing something between the lines of an earlier writing." BLACK'S LAW DICTIONARY 889 (9th ed. 2009).

Mr. Kiknadze presents three questions for our review, which we have rephrased[3]:

1. Did the trial court err by granting State Farm's motion to amend its answer to conceal its existence to the jury?
2. Did the trial court err by not accepting Dr. Graynovksy's testimony as an expert in neurology?
3. Did the trial judge err by not propounding the collateral source rule jury instruction as requested by appellant and by allowing appellee's counsel to argue the availability of collateral sources to the jury?

We answer all three questions in the negative, and accordingly affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

On April 16, 2011, Mr. Kiknadze was travelling northbound on Rockville Pike in Montgomery County, Maryland, when he was rear-ended by Mr. Sonneman after a third unidentified driver suddenly switched lanes in front of Mr. Kiknadze and forced him to

[3] Appellant's original questions presented were exactly as follows:

1. Whether the Circuit Court erroneously granted the defendant State Farm's request to exclude itself as a defendant and amend the answer during the trial, in order to conceal from the jury State Farm's identity and existence as a defendant in the case, even though State Farm voluntarily intervened as a defendant in the case, reaped all benefits of being a named party in the case, propounded discoveries, filed motions, presented arguments and, generally, enjoyed the procedural benefits of a named defendant in the case?
2. Whether the Circuit Court erred in precluding the admitted medical expert in physical medicine and rehabilitation, and the admitted expert in spinal cord injury, from testifying as to the options of a surgical treatment for the plaintiff's spinal disk injuries?
3. Whether the Trial Judge erred in rejecting the Plaintiff-Appellant's requested jury instruction MPJI-Cv 10:8 on Collateral Source Rule, which instructs the jury to disregard the availability of collateral sources for calculating the plaintiff's past or future medical expenses, and whether the Trial Judge erred in allowing defense counsel to argue the availability of collateral sources to pay the plaintiff's medical expenses?

apply his brakes. As a result of the accident, Mr. Kiknadze suffered substantial personal injuries and was transported to the hospital.

On April 22, 2013, Mr. Kiknadze filed suit against Mr. Sonneman in the Circuit Court for Montgomery County, alleging a sole count of negligence and seeking $1,500,000.00 in damages, plus costs. Mr. Sonneman, through counsel provided by Progressive, answered and requested a jury trial on June 4, 2013.

On August 21, 2013, Mr. Kiknadze filed his initial disclosure of expert witnesses. Among them was Dr. Margaret Graynovsky, M.D., whom Mr. Kiknadze identified as one of three medical experts that would testify regarding his injuries.

Two days later, State Farm filed a motion to intervene in the case, after being notified by Mr. Kiknadze that he was "presenting an underinsured motorist claim against [State Farm]." In its motion, State Farm asserted that Mr. Sonneman's liability insurance policy limits through his primary insurer, Progressive, was $50,000.00, and that State Farm insured Mr. Sonneman for excess liability coverage limits of up to $100,000.00. State Farm argued that, because Mr. Kiknadze sought a $1,500,000.00 judgment, far exceeding Mr. Sonneman's Progressive coverage limit, "no existing party ha[d] an interest in defending [Mr. Kiknadze's] action for damages beyond that already offered to [Mr. Kiknadze]" and it should therefore be allowed to intervene to protect its interests in the suit.

On September 24, 2013, in addition to granting State Farm's motion to intervene, the trial court also accepted State Farm's own answer to the complaint, which was filed on Mr. Sonneman's behalf. According to Mr. Kiknadze, State Farm's participation as a party thereafter consisted of (1) filing discovery requests, including interrogatories, requests for

production of documents, and requests for admissions; (2) filing a motion to extend discovery and cancel mediation on December 2, 2013, which the court granted; and (3) two months later, participating in preparing and signing a joint pretrial statement.

Prior to jury selection on the first day of trial, May 27, 2014, State Farm made an oral motion in limine, requesting to conceal its identity as a party in the case from the jury. After hearing extensive arguments from both sides, the trial court, over Mr. Kiknadze's objection, allowed State Farm to amend its answer,[4] by interlineation, rather than conceal its identity; replacing its name on any filings with that of Mr. Sonneman. As a result, State Farm was no longer a party when the case was presented to the jury, and Mr. Sonneman was represented by counsel from both Progressive and State Farm.

The next day, Mr. Kiknadze presented Dr. Graynovsky as his first witness. Dr. Graynovsky testified that, prior to coming to the United States, she worked as a neurologist at a hospital in St. Petersburg, Russia.

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[4] The amendment of pleadings is governed by Md. Rule 2-341, which provides, in pertinent part:

> **(a) Without Leave of Court.** A party may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date . . .
>
> **(b) With Leave of Court.** A party may file an amendment to a pleading after the dates set forth in section (a) of this Rule only with leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

Md. Rule 2-341(a)-(b).

She further testified that, since immigrating to the United States, Dr. Graynovsky has become board-certified in physical medicine and rehabilitation, with a sub-specialty in spinal cord injury. Mr. Kiknadze then proceeded to offer Dr. Graynovsky "as an expert in the field of neurology and physical medicine and rehabilitation as well as a spine and joint care specialist." After her voir dire examination, where Dr. Graynovsky testified that she was not a surgeon, never operated on the spine, and was not board-certified in neurology, appellees objected to Dr. Graynovsky as an expert in the field of neurology. The court initially accepted Dr. Graynovsky as an expert only in the physical medicine and rehabilitation, but also accepted her as an expert in spinal cord injury medicine after Mr. Kiknadze noted that he had also requested that she be qualified in that field as well. Mr. Kiknadze contends this, in effect, precluded Dr. Graynovsky from testifying as to the surgical treatment of extruded spinal disk injury, an injury allegedly sustained by Mr. Kiknadze in the accident.

On the third and final day of trial, during discussions regarding the jury instructions, Mr. Sonneman's counsel objected to the use of Mr. Kiknadze's proposed collateral source rule instruction, Maryland Civil Pattern Jury Instruction 10:8,[5] because she did not believe

[5] Maryland Civil Pattern Jury Instruction ("MPJI-Cv") 10:8 provides:

> In arriving at the amount of damages to be awarded for past and future medical expenses and past loss of earnings, you may not reduce the amount of your award because you believe or infer that the plaintiff has received or will receive reimbursement for or payment of proven medical expenses or lost earnings from persons or entities other than the defendant, such as, for example, sick leave paid by the plaintiff's employer or medical expenses paid by plaintiff's health insurer.

(continued…)

that any evidence regarding collateral sources or insurance had been provided in the case. The trial court agreed, and deleted the instruction from the draft of final instructions ultimately given to the jury. No further discussions took place regarding the instruction.

Closing arguments then ensued, wherein appellees' counsel argued, among other things, that despite the fact that Mr. Kiknadze had testified that he was working as a driver at the time of the accident, "the law allows for someone to make a different sort of claim when one is injured on the job. [Mr. Kiknadze] hasn't done that."

Mr. Kiknadze's counsel promptly lodged an objection, arguing that there was "no evidence that there was worker's compensation" introduced at trial, which the trial court immediately overruled.

Following deliberations, the jury returned a verdict in Mr. Kiknadze's favor; awarding him $15,376.75 in past medical expenses, $4,800.00 in future medical expenses, and $1,000.00 in non-economic damages. Mr. Kiknadze filed a motion for a new trial, challenging the same decisions as this appeal, and arguing that because of those decisions, "the jury verdict . . . produced a miscarriage of justice" in the form of "outrageously insufficient" damages. The motion was denied by the trial court on September 9, 2014, and Mr. Kiknadze timely noted this appeal twelve days later.

STANDARD OF REVIEW

All three of Mr. Kiknadze's claims are reviewed under the abuse of discretion standard. *See Robertson v. Davis*, 271 Md. 708, 710 (1974) (amendment of pleadings);

MPJI-Cv 10:8 (4th Ed., 2013 Supp.).

Jacobson v. Julian, 246 Md. 549, 560-61 (1967) (jury instructions and arguments of counsel); *Brown v. Contemporary OB/GYN Associates*, 143 Md. App. 199, 252 (2002) (admissibility of expert testimony).The Court of Appeals has "defined abuse of discretion as 'discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006) (quoting *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003)).

An abuse of discretion may be found "where no reasonable person would share the view taken by the trial judge." *Hous. Auth. of Balitmore City v. Woodland*, 438 Md. 415, 435 (2014) (internal quotations and citations omitted). The Court of Appeals has further "point[ed] out that 'a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling.'" *Bartlett v. Portfolio Recovery Assocs., LLC*, 438 Md. 255, 273 (2014) (quoting *North v. North*, 102 Md. App. 1, 14 (1994). Put another way,

> [q]uestions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred. In sum, to be reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

In re Shirley B., 419 Md. 1, 19 (2011) (internal quotations and citation omitted).

DISCUSSION

I. AMENDED ANSWER

Mr. Kiknadze argues that "[c]oncealing the identity of State Farm as a defendant in the case" was against this Court's holding in *Davis v. Martinez*, 211 Md. App. 591 (2013).

He claims that, by voluntarily intervening in the case and participating in discovery, State Farm "had identified itself as a separate party to the case, benefited [sic] from being a party to the case[,] and under [*Davis*], there was no justification for hiding its identity from the jury." Mr. Kiknadze further argues that the trial judge "departed from a neutral judicial role and acted as an advocate for State Farm [in] exploring the backdoor means to circumvent" *Davis* when he "sympathized" with its position and "allow[ed] State Farm to amend its answer on the day of trial in violation of Md. Rule 2-341." Allowing such a decision, Mr. Kiknadze contends, "opens wide doors for all insurance companies to abuse the litigation process by doing the same." Finally, Mr. Kiknadze argues that pursuant to *Davis*, this decision was not harmless error, but was "per se reversible error."

Appellees first argue that the Maryland Rules allow an amendment to a pleading with the leave of court, and such amendments "should be freely granted." They also argue that, with that in mind, the trial court did not abuse its discretion, because the amendment was timely and caused no prejudice to Mr. Kiknadze because the amendment did not result in any postponement of the trial. Appellees then examine this Court's holding in *Davis* and contend that *Davis* "is not only inapplicable, but it is [also] distinguishable" to this case. They conclude by refuting Mr. Kiknadze's concerns over the future consequences of potentially ratifying State Farm's actions by arguing that "State Farm had a right to retain counsel for [Mr. Sonneman] and a duty to defend him" and "since State Farm provided additional coverage to [Mr. Sonneman], its participation in some capacity was expected and required." We agree with State Farm.

At first glance, Mr. Kiknadze's interpretation of *Davis* appears to be controlling; upon closer inspection, however, it becomes clear that Mr. Kiknadze's argument only skims the surface of the situation in *Davis*, breezing over a nuanced – and critical – distinction between that case and the case at hand. As such, in order to distinguish the two cases, we will (1) explain the differences between an insurance provider's "UIM coverage," like that in *Davis*, and "excess coverage," like that of State Farm in this case, then (2) point out why *Davis* is inapposite here.

UIM coverage[6] is treated as "first party coverage," because in a UIM payment, it is the insurer that pays the insured the amount that the third-party tortfeasor normally would have paid, as part of their contractual relationship. *See TravCo Ins. Co. v. Williams*, 430 Md. 396, 403 (2013) ("[UIM] is a form of first-party coverage that allows an insured to collect even when the at-fault tortfeasor has no liability insurance or insufficient insurance funds.")

The Court of Appeals has recently summarized the role of UIM coverage in Maryland:

> The general purpose of Maryland's UIM statutory scheme is to "provide minimum protection for individuals injured by uninsured motorists and should be liberally construed to ensure that innocent victims of motor vehicle collisions are compensated for their injuries." Specifically, Maryland's UIM scheme is designed to "provide an injured insured with resources equal to those which would have been available had the tortfeasor carried liability coverage equal to the amount of uninsured motorist coverage which the injured insured purchased from his own insurance company." Maryland is, accordingly, a "gap theory" state—the injured insureds may recover the difference between their UIM coverage and money received from the tortfeasor. The uninsured motorist statutory scheme and

[6] *See generally* § 19-509 of the Insurance Article (2011 Repl. Vol., 2015 Supp.); § 17-103 of the Transportation Article (2012 Repl. Vol., 2015 Supp.).

> the policy in effect between the parties in this case is consistent with Maryland's identity as a gap theory state.

Connors v. Gov't Emps. Ins. Co., 442 Md. 466, 475 (2015) (citations and footnotes omitted).

Excess coverage, on the other hand, is a form of "other" insurance, "whereby the insurer declares itself liable only for any excess amount of the judgment remaining after the other insurer has paid up to the limit of its policy." *Centennial Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 71 Md. App. 152, 157 (1987). By definition, there must be "primary" coverage to have "excess" coverage:

> 1. *Primary* coverage is insurance coverage whereby, *under the terms of the policy*, liability attaches *immediately* upon the happening of the occurrence that gives rise to liability. Primary insurers generally have the primary duty of defense.
> 2. "*Excess*" or *secondary* coverage is coverage whereby, *under the terms of the policy*, liability attaches only after a predetermined amount of primary coverage has been exhausted. It is not uncommon to have several layers of secondary insurance. Secondary insurance is sometimes referred to as "umbrella" insurance. When secondary insurance is written to be excess to identified policies, it is said to be "specific excess."

U.S. Fire Ins. Co. v. Maryland Cas. Co., 52 Md. App. 269, 272 (1982) (internal citations and footnote omitted) (emphasis in original). Excess coverage, therefore, is merely an *extension* of an insured's primary coverage—which, by its nature, is "third party coverage." *See Reese v. State Farm Mut. Auto. Ins. Co.*, 285 Md. 548, 552 (1979).

Turning now to *Davis*, where Judge Wright, speaking for this Court, summarized the facts as follows:

> On May 25, 2010, Dionne Davis and Darryl Davis . . . filed suit in the Circuit Court for Prince George's County against Tania Nicole Little Martinez . . . for negligently causing an automobile accident. Martinez

> tendered the $20,000 limit of her liability insurance policy but the Davises's underinsured motorist ("UIM") policy carrier, State Farm Mutual Automobile Insurance Company ("State Farm") . . . rejected this offer in order to preserve its subrogation rights. Later, the Davises amended their complaint to include a count against State Farm titled "Breach of Contract and/or Statutory Duty for Failure to Pay Underinsured Motorist Insurance Benefits." State Farm then filed a cross claim against Martinez.
>
> Before trial, Martinez filed a Motion in Limine to preclude any reference to her insurance policy or to State Farm as a defendant. The trial court granted the motion over the Davises' objection. On November 23, 2011, a jury found that Martinez was not negligent by way of a special verdict. The Davises filed a timely motion for a new trial arguing that the trial court erred in precluding identification of State Farm. On January 9, 2012, the trial court denied the motion.

Davis, 211 Md. App. at 592-93 (footnote omitted).

On appeal, the Davises argued that "the trial court abused its discretion when it granted Martinez's motion to hide the existence of State Farm from the jury." *Id*. at 595. We agreed, holding that "[t]he trial court abused its discretion in *excluding UIM coverage* from the jury," for four main reasons. *Id*. at 600 (emphasis added).

First, we reiterated our holding in *King v. State Farm Mutual Automobile Insurance Co*., 157 Md. App. 287 (2004), that "the risk of 'adverse economic consequences' to a party is 'insufficient justification' for hiding the identity of a party at trial." *Davis*, 211 Md. App. at 597 (quoting *King*, 157 Md. App. at 296). Second, also relying on *King*, we reiterated that a balance must be struck between the First Amendment interest in ensuring "what transpires in the courtroom is public property with a party's right to privacy," and in applying the facts to *Davis*, State Farm put forth "no argument as to privacy, social stigma, or threat of physical harm," so as to warrant anonymity from the jury. *Davis*, 211 Md. App. at 596-97 (internal quotations and citation omitted). Third, we held that "a party's tort

liability is not determinative of whether the presence of a UIM carrier should be disclosed to a jury at trial." *Id*. at 598. Finally, we held that the decision was not harmless, because the ruling was "one of basic trial procedure," and, "hiding the existence of State Farm created a 'charade' at trial, risking the 'integrity of the jury system.'" *Id*. at 599-600 (citation omitted). The "charade" in that case was the fact that State Farm's attorney was at the trial table and introduced himself as "another lawyer in the case," but never mentioned State Farm's name or that he was defending any particular client—thereby, we believed, leading the jury to speculate as to his true identity. *Id*. at 594, 600.

Here, we agree with appellees that "*Davis v. Martinez* is not only inapplicable, but it is [also] distinguishable" from this case, for three reasons.

First, State Farm's position in this case is an entirely different stance than *Davis*. Here, State Farm was an excess liability insurer, not a UIM insurer. A UIM claim is brought by a plaintiff against his or her *own* first party insurer for a *breach of contract* claim. In his *tort lawsuit*, Mr. Kiknadze had no relationship with State Farm, other than by putting them on notice that he was seeking a judgment that would easily exhaust Progressive's primary insurer limit. State Farm's participation in this case was purely as a third party liability insurer that provided *excess* coverage over that of Progressive's; thus not violating the "clearly established principle that the jury should be made aware of the precise identity of a UIM carrier if it is a party at trial," as we noted in *Davis*, 211 Md. App. at 600.

Second, the "charade" created in *Davis* was that the jury had to speculate as to the identity of a third lawyer in that case—something that was not a concern here. Counsel from Progressive identified herself as being there "on behalf of defendant, Mr. Sonneman,"

and counsel from State Farm identified himself as being there "on behalf of Mr. Sonneman." State Farm's counsel did not claim to be "another lawyer in the case." And through its amended answer, State Farm's interests aligned exactly with that of Progressive's, who each shared their contractual duty to defend Mr. Sonneman. Thus, once the answer was amended, all of the pleadings in the case reflected the parties as presented to the jury.

Third, and finally, allowing State Farm to be a named party in this case "would be tantamount to authorizing direct actions by plaintiffs against defendants' liability insurers. Maryland law generally precludes such direct actions." *Allstate Ins. Co. v. Atwood*, 319 Md. 247, 257 (1990) (citations omitted). In tort cases, "[t]he matter of liability insurance is irrelevant to the issue of the defendant's liability and is highly prejudicial." *Id*. at 258. As such, Mr. Kiknadze should not have been allowed to have a direct action against State Farm, even though it intervened in the case. Again, State Farm had an interest in defending Mr. Sonneman from his potential excess tort liability. Allowing State Farm to amend its answer through interlineation set the parties in the proper trial posture—where it likely should have been from the beginning.

We also briefly note that Mr. Kiknadze's feared potential abuse—*i.e.*, that allowing what transpired would "open[] wide doors for all insurance companies to abuse the litigation process"—lacks merit. Mr. Kiknadze is unable to demonstrate any prejudice suffered as a result, other than State Farm's participation in pre-trial discovery. His unfounded speculation presupposes the idea that a trial judge would be powerless to stop a party from entering the case, participating in pre-trial discovery, and then "disappearing."

This argument is wrong for any number of reasons, not least of which is that is not what happened here. The trial judge exercised his discretion under the Maryland Rules and allowed State Farm to amend its answer, not disappear.

In sum, we hold that the trial court did not abuse its discretion in allowing State Farm to amend its answer prior to trial. State Farm's position as an excess liability insurer meant they had an interest in defending Mr. Sonneman, and by amending its answer, it was set in the trial position it likely should have been from the beginning.

II. EXPERT TESTIMONY

Mr. Kiknadze argues that Dr. Graynovsky was precluded from testifying about surgical options, despite the fact that she was admitted as an expert in physical injury and rehabilitation, and is board certified in the areas of physical injury and spinal cord injury, "simply because Dr. Graynovsky does not perform fusion surgeries." He believes the "lack of testimony by Dr. Graynovsky in support of the benefits of fusion surgery affected the jury's decision," and that if she was allowed to testify about them, "the jury would have been more convinced that [Mr. Kiknadze] likely needed this extremely invasive, painful, and dangerous surgery and the jury would have awarded higher non-economic damages."

Appellees counter that "Dr. Graynovsky testified that she was not a surgeon, that she had never operated on the spine, and that she was not board-certified in neurology." They also argue that, while Mr. Kiknadze notes that no pre-trial objection was made despite being notified of her testimony, nothing in their pre-trial disclosures note that she would have been testifying about future surgery or the field of neurology. Appellees conclude by pointing out that Dr. Graynovsky gave an opinion about future surgery during cross-

examination, but Mr. Kiknadze did not question her about it during redirect examination, and that her treating physician did testify that Mr. Kiknadze would benefit from the surgery, so any error was harmless.

The admissibility of expert testimony is governed by Md. Rule 5-702. That rule requires the trial court to "determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony." *Id.* Accordingly, "the admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute a ground for reversal." *Bryant v. State*, 393 Md. 196, 203 (2006) (internal quotations and citations omitted).

With that backdrop in mind, we cannot say that the trial judge abused its discretion here. As appellees point out, Dr. Graynovsky testified that she was not a surgeon, had never operated on the spine, and was not board-certified in neurology. The court clearly based its decision on that testimony. Futhermore, when the court accepted her as an expert in the field of physical medicine and rehabilitation, the court added – at Mr. Kiknadze's urging – the field of spinal cord injury and medicine. Such an exercise of discretion cannot be regarded as a ground for reversal.

Furthermore, Mr. Kiknadze is only able to speculate, once again, that the jury would have been "more convinced" and "would have awarded higher non-economic damages" had Dr. Graynovsky testified about the surgery, and that the jury "relied on the defense expert's assertions that the surgery would not benefit" him. We see no merit to this

contention. The record reflects that each expert witness was subject to rigorous direct and cross-examination, from both sides—not to mention testimony from Mr. Kiknadze's actual treating physician, regarding the benefits, and his recommendation, of the surgery. We decline to substitute our judgment for the jury's and speculate how they would have come out otherwise, especially when the jury returned a verdict in his favor in the first place.

III. Collateral Sources

a. Jury Instruction

Both parties spend a large portion of their discussion of this issue on *Sergeant Co. v. Pickett*, 283 Md. 284 (1978), and whether the trial court's refusal to propound the collateral source rule jury instruction to the jury was preserved for our review. Mr. Kiknadze concedes that no objection was lodged but argues it was still preserved for three reasons: (1) his proposed instructions were submitted in writing prior to trial, (2) he "further orally requested all his proposed jury instructions be admitted and the [t]rial [j]udge specifically addressed those that were not admitted," and (3) the instruction was "initially accepted but then rejected." Any objection, Mr. Kiknadze contends, would have been "futile and useless."

Appellees contend that Mr. Kiknadze failed to comply with the requirements of Md. Rule 2-520(e) by not responding to appellee's objection to the instruction being included and by not presenting any argument after the court had finished giving the instructions. Appellees further argue that the Court of Appeals' holding in *Sergeant* is not analogous to this case, and that he "gave the trial court no opportunity to correct any inadvertent error

or omission with respect to its ruling on the collateral source instruction," citing generally *Sergeant*. We agree, and hold that it was not preserved for review.

Md. Rule 2-520(e) provides:

> No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury.

In *Sergeant*, after the trial judge refused to propound an "unavoidable consequences" instruction to the jury, a bench conference ensued after the jury was charged, wherein "counsel for appellants noted several exceptions to the court's failure to include certain of the prayers which had been previously submitted." 283 Md. at 286. This Court held that it was not sufficiently preserved, but the Court of Appeals reversed, stating that "[c]ounsel mentioned 'unavoidable (sic) consequences,' which, when coupled with a mere cursory reading of the proffered instruction, was sufficient to identify for the trial judge the nature and ground of the objection." *Id*. at 289.

We believe *Sergeant* is inapposite. First, this case is readily distinguishable from *Sergeant*, in that at no point did counsel for Mr. Kiknadze make anything resembling an exception to the ruling; neither before, nor after, it was given—even when explicitly given an opportunity to do so after the jury was charged. Second, the proposed instruction was never "accepted" by the trial court. After discussing other "special" instructions, the following exchange took place:

THE COURT: . . . Anything else on jury instructions?

[Counsel for Mr. Kiknadze]: No, Your Honor.

[Counsel for Progressive]:	No, Your Honor.
THE COURT:	All right.
[Counsel for Progressive]:	Oh, Your Honor, I don't believe that there has been any evidence of any type of collateral source or insurance or anything that's been - -
THE COURT:	Oh, you're right.
[Counsel for Progressive]:	- - provided in this case.
THE COURT:	Okay.
[Counsel for Progressive]:	So I'm going to delete that.
THE COURT:	I'll take that out . . . .

We disagree that such a brief exchange during a fluid discussion of jury instructions as a whole constitutes an "acceptance" of the instructions. Counsel for Mr. Kiknadze could have objected at any point up until the jury reentered the courtroom, and then was given an opportunity after they were charged. We hold that Mr. Kiknadze's counsel did not comply with Rule 2-520(e), and thus, this issue was not preserved for appeal.

b. Closing Argument

Mr. Kiknadze argues that the trial court erred in allowing Mr. Sonneman's counsel to argue "availability of insurances, third party liability, and worker's compensation claims to pay for [Mr. Kiknadze's] medical expenses" over his objection, in spite of the fact that his proposed collateral source jury instruction was denied because there was no evidence introduced at trial. Appellees counter that (1) the terms "liability insurance" and "worker's compensation" were not used, and (2) Mr. Kiknadze opened the door for such an argument

when he testified that "he did not seek medical treatment for over two years because of his inability to pay."

We find *Farley v. Allstate Insurance Co.*, 355 Md. 34 (1999) instructive. There, Allstate's counsel stated the following during his closing argument:

> We admit that this gentleman has incurred these medical bills and that [they were] incurred in a quick nine-month period and to then come in here, though, and embellish upon that which is plainfully [sic] before this jury by several hundred thousand dollars. That, to me, is abuse of the system. It's an abuse of common sense . . . .
> * * *
> I have to say that the medicals are a little overreaching and I don't know that all $12,000 worth of medical bills are fair and reasonable, but they certainly were incurred a long time before I came along . . . and there's nothing I can do now that they [are] incurred. They're there. You know, there's $12,000. Is there any past lost wages? He was injured on the job. Did he miss two weeks of work? Yes. I don't know what you get for two weeks of work with the postal service, but I don't think it's the $7,000 or $8,000 [he's] asking for. I think he's overreached there . . . .

Id. at 55-56 (alterations in original). The Farleys argued that the "closing arguments made by Allstate's counsel were improper and prejudicial, resulting in an inadequate damage award" and that "Allstate argued facts not in evidence, in violation of" the trial judge's admonishment against considering facts not in evidence. *Id*. at 56. The Court held that the remarks were not prejudicial, because (1) the trial judge had instructed the jury to not consider closing arguments as evidence, and (2) because "it was perfectly appropriate in closing arguments for Allstate's counsel to cast doubt upon the reasonableness and necessity of Mr. Farley's medical bills, treatment, and lost wages," based on pieces of evidence that were adduced at trial. *Id*. at 56.

Although we admit the remark in this case certainly pushed the boundaries of proper argument compared to that of *Farley*, we cannot say that the trial court abused its discretion here. While Mr. Kiknadze is correct in asserting that no evidence of worker's compensation was admitted at trial, appellees' counsel made the remark in response to Mr. Kiknadze's claim that he had not sought medical treatment in the two years following the accident, but could not afford it. This argument was not evidence, and "[t]here is a presumption that jurors understand and follow the court's instructions." *Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 769 (2007). Moreover, counsel for Mr. Kiknadze could have requested a curative instruction—namely, the collateral source rule—but did not. As such, we perceive no abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.