



To: Members of the Judiciary Committee
From: The Connecticut Trial Lawyer's Association (CTLA)
Date: March 21, 2007
Re: **Opposition** to House Bill 1445- An Act Concerning Collateral Source Benefits in a Civil Action

History

Prior to 1987 Connecticut followed common law and the collateral source rule provided that *"if an injured person receives compensation for his injuries from a source wholly independent (collateral) of a tort feaser the payment should not be deducted from damages which he would have otherwise collected from the tortfeasor"* 58 US (17 How.) 152 (1854).

The justification for the collateral source rule

- The wrongdoer tortfeasor should not be allowed to benefit, or be relieved of liability due to the plaintiff's foresight in obtaining insurance.
- If a tort recovery made after insurance benefits are received is considered a windfall to the plaintiff, it is **preferable** to giving the defendant a windfall by relieving him of liability. Since the tortfeasor is the more culpable party and was merely lucky to injure an insured victim the windfall should not go to the tortfeasor.
- Permitting recovery from both the plaintiff's insurer and the defendant is favored. The insurance company and the plaintiff previously contracted for the payment of these benefits. The plaintiff's insurer has a duty to pay the benefits and the plaintiff has a right to the benefits regardless of the plaintiff's ability to recover from a third party. Since the insurance company has already been paid premiums to bear an actual risk, the benefit payments it must make are simply a cost of doing business that has already been contracted and paid for by the plaintiff.
- Lastly, unless the defendant is made to pay for the damages caused, the **determent purposes** of tort liability will be undermined.

Status of the Law Without this Amendment

Connecticut General Statute 52-225a currently provides "...that in civil actions, whether in tort or in contract, where the claimant seeks to recover damages resulting from personal injury or wrongful death...the court shall **reduce** the amount of the award by amounts **paid** by any health or sickness insurance, automobile accident insurance that provides health benefits or any other similar benefits except life insurance benefits..."

Further, our present statute defines that there shall not be a collateral source offset where the provider has a right of subrogation. In cases involving interpretation of the current statute, the courts have strictly construed to statute and the majority have found that economic losses that have been "forgiven" do not fall within the definition of collateral sources to be offset. *Hassett v. City of New Haven*, 91 Conn.App. 245 (2005). The courts seem well equipped to interpret these cases. While on the Superior Court level there is split authority regarding "write off" as not being collateral source, the majority has found in favor of **not expanding** the definition.

Impact of Proposed 1445

The proposed bill **expands** the definition of what has been **paid**, to include "**reduced, forgiven or discharged**". The practical effect of this proposed change adds another layer of litigation turns a collateral source hearing into a dollar for dollar accounting process and erodes the function of the jury to decide damages.

The fundamental policy decision to be considered, if there is any "windfall" from a "reduced, forgiven or discharged" medical bill, who should it go to; the injured plaintiff, or the person who caused the harm. This bill puts that money into the hands of the wrongdoer.

As a side note, the last sentence of the proposed bill is confusing. It states that "collateral sources" does not include *any payments made on behalf of any person other than the claimant*. What does this mean? What public policy is this design to address? In the absence of any additional interpretation it's difficult to comment on the purpose of this provision.

Bottom line

The **expansion** of the definition of collateral sources as proposed by this statute for a defendant, has greater implications than are apparent on its face. It goes to the heart of the collateral source rule and why it was followed under common law. Namely, a defendant should be responsible and held accountable for their acts and should not benefit because of third party contracts. By adopting this language it rewards the least likely party. This amendment would now allow, that in a close call (as to whether an economic loss as determined by the jury falls within the definition of a collateral source), to give it to the wrongdoer. Because it impacts the recovery of the injured person, gives a credit to the wrongdoer and undermines the jury's function in determining economic losses, CTLA **opposes** this bill.

Respectfully submitted,

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3/21/07