



Raised Bill 482
Public Hearing: 3/24/2010

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION
DATE: MARCH 24, 2010

**RE: RAISED BILL NO. 482; AN ACT CONCERNING COLLATERAL
SOURCE BENEFITS IN CIVIL ACTIONS**

The Connecticut Trial Lawyers Association *partially endorses* this act (only that section regarding the definition of "collateral sources" more fully explained further on) and strongly recommends the other suggested changes regarding reduced, forgiven or discharged medical benefits **not be adopted**.

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 tortfeasor the payment should not be deducted from damages which he would have otherwise collected from the tortfeasor"* 58 US (17 How.) 152 (1854).

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 haven 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 LEGISLATION:

Part of the proposed bill defines 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.

PART OF THE BILL THAT'S ENDORSED BY CTLA:

"The last sentence of the proposed bill reads as follows":

"Collateral sources" do not include amounts received by a claimants as a settlement or any economic damages that have been forgiven, discharged or reduced.

BOTTOM LINE:

The provisions of the proposed statute that CTLA **does not endorse** expand the definition of collateral sources and this 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 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 and CTLA opposes that part that reduced, forgiven or discharged medical expenses are not collateral sources. CTLA, however, strongly endorses the last sentence which clarifies the definition of collateral sources.

Joseph R. Mirrione
Past President