



**Raised Bill 5053**

**Public Hearing: February 21, 2020**

TO: MEMBERS OF JUDICIARY COMMITTEE  
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)  
DATE: FEBRUARY 21, 2020

**RE: OPPOSITION TO RAISED BILL 5053, AAC THE REDUCTION OF  
ECONOMIC DAMAGES IN A PERSONAL INJURY OR WRONGFUL  
DEATH ACTION FOR COLLATERAL SOURCE PAYMENTS MADE ON  
BEHALF OF A CLAIMANT**

CTLA strongly opposes RB 5053, which proposes changes by the insurance industry to the collateral source statute. The proposed language is an attempt to legislatively reverse a unanimous decision of the Connecticut Supreme Court, *Marciano v. Jimenez*, 324 Conn. 70 (2016), which simply applied the plain meaning rule for statutory interpretation in holding that the legislature meant what it said: “there shall be no reduction for collateral sources where a right of subrogation exists.” The proposed changes here would expand tort reform and effectively wipe-out the traditional collateral source rule.

The collateral source statutes, § 52-225a through 52-225c were one part of Public Act 86-338, also known as Tort Reform I. This was an intensive and heavily negotiated endeavor to reverse longstanding rights of injured victims in favor of the liability insurance industry and tortfeasors. Before 1986, defendants were “not entitled to be relieved from paying any part of the compensation due for injuries proximately resulting from his act where payment comes from a collateral source, wholly independent of him.” *Lashin v. Corcoran*, 146 Conn. 512, 515, 152 A.2d 639 (1959). The collateral source statute, § 52-225a *et seq.* reversed this common law rule and established a formula providing that when a jury finds a tortfeasor liable for reasonable and necessary health care expenses at trial, the court is to reduce the recovery by the amount of any health insurance payments, and then add back in the premium costs to secure the insurance benefits. The statute is limited in application to health insurance payments for medical expenses by private health insurers and specifically limits these calculations to health benefit payments and not to other types of collateral source payments such as disability insurance for lost wages. The 1986 statute also disallowed health insurers from asserting a right of subrogation for medical expenses they paid (CGS §52-225c). The statute’s language also made clear that for other providers of health benefits that had a right of reimbursement out of the judgment -- workers’ compensation insurers, self-insured ERISA health plans, Medicare, Medicaid -- this reduction would not be applied.

As the Supreme Court stated in *Marciano* and many times before, “in enacting § 52-225a, [the legislature] sought to achieve an ‘equitable balance ... between barring plaintiffs from recovering twice for the same loss, on the one hand, and preventing defendants from benefiting

from reduced judgments due to collateral source payments, on the other.”” The proposed RB 5053 would disrupt this equitable balance by turning upside down the balance of equities struck by the tort reform acts from 1986 and 1987, for no justifiable reason. The proposed RB 5053 would allow the person or entity who caused harm to receive the full benefit of the insured’s efforts both in obtaining health insurance in the first place and in attempting to negotiate a lien down from its full amount. In short, the proposed RB 5053 would destroy the critical “balance” of equities previously established by this legislature and our Supreme Court, entirely in favor of the tortfeasor who causes harm. This change might line the pockets of tortfeasors and insurance companies, but it would be bad policy that reverses long held Connecticut law.

As the *Marciano* decision makes clear, the calculations contained in the existing collateral source statute simply were never intended to apply to health benefit payments with rights of subrogation. Section 52-225a(c) requires that any reduction for collateral source payments be offset by the cost of securing a health benefit and is easily calculated in the world of private insurance. Premiums are readily determinable and applied against any reduction caused by the health insurer payment. However, in the universe of health benefits with rights of subrogation, calculating those figures would be practically impossible. Self-funded ERISA plans do not involve premium payments and are often created from pooled employee and employer resources. The cost of Medicare and Medicaid payments over a lifetime and the subsidized payments from the government would also belong in these calculations, but it would be difficult or impossible to calculate these amounts. These are additional reasons the current proposals were not incorporated into Connecticut’s existing collateral source statute.

The post-trial calculations have always been limited to health insurance payments where there is no right of reimbursement. Insurers and wrongdoers are not entitled to further expansion of the tort reforms that already exist.

**WE URGE YOU TO OPPOSE RAISED BILL 5053.**

**THANK YOU.**

**Testimony  
available for  
public review in**

**Judiciary Committee  
Room 2500**