



## Why Oklahoma Should Retain the Collateral Source Rule

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The collateral source rule prohibits defendants from showing that a plaintiff has been or will be reimbursed by another person or entity for part of their damages. The rule prevents those who have harmed others from escaping full responsibility for their acts. Proposed legislation would abolish the collateral source rule and allow evidence of payments made to the plaintiff by other sources, like the plaintiff's own life insurance, to be admitted at trial and deducted from the plaintiff's recovery.<sup>1</sup>

- **Eliminating the rule allows wrongdoers to escape responsibility for harmful acts.** Without the collateral source rule, losses caused by a wrongdoer would be shifted to the government (e.g., Medicaid or Medicare programs) or to private insurers who made the "collateral source" payment. There is no reason why the government and private insurers should pay for a defendant's mistakes. Such a change would ultimately shift the burden of victim compensation from wrongdoers to taxpayers and insurance consumers.<sup>2</sup>
- **There is generally no double recovery.** Most third party payers, like public and private health insurers, require plaintiffs to repay any benefits they receive from their insurer if the plaintiff also receives damages from a defendant.<sup>3</sup> Consequently, the plaintiff only recovers the amount of their actual damages. Even in cases where there is "a double compensation for a part of the plaintiff's injury... 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 windfall for the [wrongdoer]. If the plaintiff was himself responsible for the benefit, as by maintaining his own insurance or by making advantageous employment arrangements, the law allows him to keep it for himself."<sup>45</sup>
- **Elimination of the rule encourages irresponsible behavior.** We as a society have an interest in encouraging people to obtain insurance. By allowing defendants to give evidence of other sources of payment, we reward those who fail to act responsibly by failing to become insured.<sup>6</sup>
- **The rule is a long-standing and well-established tenant of tort law in Oklahoma,<sup>7</sup> and across the United States.<sup>8</sup>** As such, the collateral source rule is an important tool in the fight for consumer's rights. For the above reasons, oppose the elimination of the collateral source rule.



<sup>1</sup> Public Citizen, *The Collateral Source Rule: Helping to Balance the Scales of Justice*, <http://www.citizen.org/congress/civjus/tort/articles.cfm?ID=831>.

<sup>2</sup> *Id.*

<sup>3</sup> Dag E. Ytreberg, J.D., *Collateral Source Rule: Injured Person's Hospitalization or Medical Insurance as Affecting Damages Recoverable*, 77 A.L.R.3d 415 (1977) (updated 2007).

<sup>4</sup> Restatement (Second) of Torts §920B.

<sup>5</sup> “The Collateral resource rule is designed to strike a balance between two competing principles of tort law: (1) a plaintiff is entitled to compensation to make him whole, but no more; and (2) a defendant is liable for all damages that proximately result from his wrong. A plaintiff who receives a double recovery enjoys a windfall; a defendant who escapes, in whole or part, liability for his wrong enjoys a windfall. The law must choose which windfall to sanction, and favors the victim over the wrongdoer.” Natalie J Kussart, *Paid Bills v. Charged Bills: Insurance And The Collateral Source Rule*, 31S. Ill. U L.J. 151 (2006) (quoting *Acutar v. Letourneau*, 531 S.E.2d 316, 323 (Va. 2000)).

<sup>6</sup> Public Citizen, *The Collateral Source Rule: Helping to Balance the Scales of Justice*, <http://www.citizen.org/congress/civjus/tort/articles.cfm?ID=831>.

<sup>7</sup> See *Chambers v. Walker*, 1982 OK 128, 653 P.2d 931; *Bill Hodges Truck Co., Inc. v. Humphrey*, 1984 OK CIV APP 55, 704 P.2d 94.

<sup>8</sup> The collateral source rule originated in English common law and was first applied by the U.S. Supreme Court in the 1850's (*Monticello v. Mollison*, 58 U.S. 152). Natalie J Kussart, *Paid Bills v. Charged Bills: Insurance And The Collateral Source Rule*, 31S. Ill. U L.J. 151 (2006).