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The Collateral Source Rule: A Rule of Evidence and a Rule of Damages

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Research Guides

The Collateral Source Rule: A Rule of Evidence and a Rule of Damages

Guide Information

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Topic Overview

The collateral source rule is both a rule of evidence and a rule of damages. This common law doctrine states that a defendant cannot reduce the amount of damages owed to the plaintiff in a tort case based on compensation the plaintiff received from a source outside the tort system. Essentially, the defendant is barred from presenting any evidence as to payments of medical, hospital, disability income, or other expenses of tortious injury paid for by plaintiff, governmental entity, or third-party.

About the Author

I am Crystal Ferrier, a third year law student at Georgia State University College of Law. At age 25, I plan to graduate, take the Georgia bar and then practice civil litigation, primarily in the areas of medical malpractice, personal injury, and products liability. I graduated from Auburn University in the Spring of 2001 with a bachelor's degree in Business Management, but I am a native of St. Simons Island, Georgia.

I wrote this Web Resource Guide as an assignment for Professor Nancy Johnson's Advanced Legal Research Course. I chose this topic because of my interest in litigating and because of the current dilemma the collateral source rule is causing in legislatures across the nation. The research for this Guide was completed on April 12, 2004.

If you have any questions concerning this web research guide, please feel free to e-mail me.

Scope

This web resource guide is designed to help legal practitioners, law students, and law professors in determining admissibility of collateral source evidence at trial. The guide is not limited to any particular jurisdiction, but the emphasis will be on Georgia law. This research guide may also serve as a useful guide for practitioners in jurisdictions that have not adopted a statute addressing the admissibility of collateral source evidence.

There are 5 main parts to this guide. Part I provides the reader with an overview of what the "collateral source" rule entails and why there is a lot of controversy surrounding the rule. Parts II & III provide the reader with a comprehensive annotated bibliography of the resources related to the collateral source rule. Some of these resources will be linked directly to the website where it can be found, while other resources will link the reader directly to the source. Part III identifies secondary sources such as law reviews, legal encyclopedias, and treatises that may be helpful in familiarizing yourself with this issue before looking at any of the other sources in this guide. Part IV identifies several online research tools that may be used to find the sources mentioned in this Guide. The author will identify which online tools are free and which ones are not. Finally, parts V and VI provide the reader with associated interest groups and a brief conclusion and the author's opinion with regards to the admissibility of collateral source evidence.

Disclaimer

Bibliographies on this Web site were prepared for educational purposes by law students as part of Nancy P. Johnson's Advanced Legal Research course. The Law Library does not guarantee the accuracy, completeness, or usefulness of any information provided. Thorough legal research requires a researcher to update materials from date of publication; please note the semester and year the bibliography was prepared.

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Primary Sources

Constitutional Provisions

A free annotated version of the Constitution is available through Findlaw. Constitutional provisions are also available for free through Thomas, Cornell University, and Rominger.

Challenges against statutes abrogating the collateral source rule have been primarily based on the due process clause and equal protection clause of the Federal and many state's Constitutions.

- U.S.C.A. Const. Amend. XIV, § 1 - . . .nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Constitution of the State of Georgia can be accessed through Emory's website.

- GA Const. Art. 1, § 1, ¶ II - "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws."

Federal Statutes

Federal Statutes may be found in the bound volumes of the Unites States Code (U.S.C.), the United States Code Annotated (U.S.C.A.), and the United States Code Service (U.S.C.S.). The statutes may also be retrieved via the Internet on free sites such as Findlaw and Cornell's Legal Information Institute. United States Court Rules and Statutes can be found at ILRG as well.

The Federal Statutes and the Federal Rules of Evidence include no specific provisions regarding the collateral benefits rule. Federal courts will apply state law concerning collateral benefits when state law supplies the rules of decision regarding a claim or defense. The statutes and rules below are helpful in understanding the arguments for and against admission of collateral source payments at trial as well as determining when there will be a reduction in damages.

6 U.S.C.A. § 442 (c) Collateral sources - Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

5 U.S.C.A. § 8132 - Adjustment after recovery from a third person

6 U.S.C.A. § 331 - Treatment of Charitable Trusts for Members of the Armed Forces of the United States and other Governmental Organizations

11 U.S.C.A. § 1114 - Payment of insurance benefits to retired employees

Fed. R. Evid. 403

Fed. R. Evid. 401

Fed. R. Evid. 411

Federal Cases

Federal case law can be found in United States Reports (U.S.), the Supreme Court Reporter (S.Ct.), the United States Supreme Court Reports (L.Ed. and L.Ed.2d), the Federal Reporter (F., F.2d, and F.3d). Full text to all Federal cases may be found on Westlaw or Lexis. Some Federal Circuit Court cases may be found on Findlaw depending on the year of the decision:

> FindLaw's searchable database of the 1st , 8th, and 10th Circuit Court decisions are since November 1995; the 2nd, 4th, and 6th Circuit Court decisions since January 1995; the 3rd Circuit Court decisions since May 1994; the 5th Circuit Court decisions since July 1997; the 7th Circuit Court decisions since June 1995; the 9th Circuit Court decisions since 1996; the 11th Circuit Court decisions since December 1994; the DC Circuit Court decisions since February 1995; the Federal Circuit Court decisions since July 1995.

Bourque v. Diamond M. Drilling Co., 623 F.2d 351 (5th Cir. 1980)	Court held that the collateral benefits doctrine applies in Jones Act cases.
Scheib v. Florida Sanitarium and Benevolent Association, 759 F.2d 859 (11th Cir. 1985)	Federal Tort Claims Act will apply appropriate state limitations on remedies, including collateral benefits.
Anastasia v. Barnes, 487 N.Y.S.2d 628 (1985)	Decedent's estate brought a wrongful death action against a racetrack owner; racetrack owner impleaded decedent's employer for possible indemnification. The court held that the owner could not assert as a set-off the amount received by decedent from a fund created by his employer because there was no allegation that owner and employer were joint tortfeasors.
Matlin v. Langkow, 2003 U.S. App. LEXIS 2168 (3rd. Cir.2003)	The federal court followed state law and according to Florida law, a plaintiff's underinsured motorist benefits were not a collateral source.
Blanke v. Alexander, 152 F.3d 1224 (10th Cir. 1998)	Admissibility of evidence in diversity federal cases is generally governed by federal law, except such rules will not pre-empt state "substantive" rules of evidence, which includes the collateral source rule.
Ferguson v. Garmon, 643 F.Supp. 335 (D. Kan.1986)	Kansas statute which permits health care providers to introduce evidence showing amount of collateral source payments received by medical malpractice plaintiff was rationally

	related to legitimate state purpose of alleviating perceived medical malpractice crisis so that statute did not violate due process under either Federal or Kansas Constitution.
Baker v. Vanderbilt University, 616 F.Supp. 330 (M.D.Tenn.1985)	Tennessee statute § 29-26-119] which abrogates collateral-source rule in medical malpractice case, does not deny equal protection to medical malpractice litigants as compared with victims of other torts.
McLean v. Runyon, 222 F.3d 1150 (C.A.9 Or. 2000)	Court held that the District court was correct in offsetting former employee's front and back pay damages awards by amount of his workers' compensation benefits under the Federal Employees Compensation Act (FECA); FECA workers' compensation benefits were ultimately paid entirely by United States Postal Service (USPS) and, thus, were not derived from a collateral source, and reduced damages award made former employee whole and served purpose of eradicating discrimination.
Fitzgerald v. Expressway Sewerage Construction, Inc., 177 F.3d 71 (1st Cir. 1999)	The Court held that the Mass. collateral source rule must be given full credit in this case as a rule of damages. However, the evidentiary implications flowing from that rule are governed by the Federal Rules of Evidence.

Administrative Law

The Code of Federal Regulations is available for free through Findlaw and through GPO Access. The Federal Register is also available online for free through Findlaw and the Meta-Index. The CFR and the Federal Register are also available through Westlaw and Lexis, as well as LoisLaw. The CFR is also available through VersusLaw, Fastcase, and Rominger.

66 FR 55901 Section 405(b) of the Air Transportation Safety and System Stabilization Act provides that the Special Master shall reduce the amount of compensation by the amount of the collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001.

28 CFR 104.47 - payments that constitute collateral source compensation include life insurance, pension funds, death benefits programs, and payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001.

32 CFR 536.9 - effect on award of other payments to claimant in claims against the United States regarding National Defense matters.

State Statutes

Most state rules and statutes can be accessed through the Internet Legal Resource Guide or on that particular state's government website.

1. Georgia Statutes

Georgia statutes are listed as the Official Code of Georgia Annotated and may be accessed for free at the State of Georgia government site. Contains searchable versions of Georgia's Official Code (unannotated) and Register as well as searchable opinions from the Georgia Supreme Court and Georgia Court of Appeals.

O.C.G.A. § 51-12-1(b) - This statute abolished the collateral source rule and is now considered unconstitutional by the Georgia Supreme court.
O.C.G.A. § 24-2-1
O.C.G.A. § 51-12-4 - Damages given as compensation for injury; measure of damages generally; nominal damages

2. Other State Statutes

State Statutes that Modify the Effect of the Collateral Source Rule in All Civil Actions:

Ala. Code Sec. § 12-21-45(1995)
Alaska Stat. § 9.17.070
Minn. Stat. § 548.36
N.D. Cent. Code § 32-03.2-06 (adobe acrobat is needed to view this statute)

State Statutes that Modify the Effect of the Collateral Source Rule in All Personal Injury Actions:

Colo. Rev. Stat. § 13-21-111.6
Conn. Gen. Stat. § 52-225a (have to search the site for the statute)
Fla. Stat. Ann. § 768.76
Idaho Code § 6-1606
Ind. Code § 34-44-1-2
Iowa Code § 668.14 (have to search the site for the statute)
Mich. Comp. Laws § 600.6303
Mont. Code Ann. § 27-1-308
N.J. Stat. Ann. § 39:6A-6 (have to search the site for the statute)
N.Y. C.P.L.R. 4545(c) (have to search the site for the statute)

States that Modify the Effect of the Collateral Source Rule in Medical Malpractice Actions:

Ariz. Rev. Stat. § 12-565
Cal. Civ. Code § 3333.1 (via FTP)
735 Ill. Comp. Stat. 5/2-1205
Me. Rev. Stat. Ann. tit. 24, § 2906
Md. Code Ann., Cts. & Jud. Proc. § 3-2A-06
Mass. Gen. Laws ch. 231 § 60G
Neb. Rev. Stat. § 44-2819

N.Y. C.P.L.R. 4545(a)
S.D. Codified Laws § 21-3-12
Tenn. Code Ann. § 29-26-119
Utah Code Ann. § 78-14-4.5
Wash. Rev. Code. § 7.70.080

State Cases

State court opinions can be found on Findlaw, as well as through LexisOne. Published and unpublished opinions from state courts are available through Westlaw and Lexis, as well as through VersusLaw, Fastcase, Rominger, and LoisLaw. Keep in mind that many of these search engines only provide cases in recent years.

1. Georgia Cases

Georgia Appellate Court Opinions - click on this link and then search for the Ga. App. decision you are looking for.

Denton v. Con-Way Southern Express, 402 S.E.2d 269 (Ga. 1991)	The Supreme Court of Georgia held that O.C.G.A § 51-12-1(b), which abolished the collateral source rule, violated Georgia's Constitution. The Georgia Constitution provides its citizens with greater rights than the Federal Constitution does. The court said that allowing evidence that is inherently prejudicial will mislead the jury and may defeat an injured plaintiff's statutory right to recover damages that result from another person's negligence.
Olariu v. Marrero, 549 S.E.2d 121, 123 (Ga. App. 2001).	The Court held that medical expenses discharged in a plaintiff's bankruptcy action would be credited against her recovery of special damages for medical expenses because debts in bankruptcy are not collateral sources.
Moore v. Price, 281 S.E.2d 269 (Ga. App. 1981).	The fact that a litigant has liability insurance is inadmissible and this principle also applies with regard to no fault coverage.
King Cotton, Ltd. V. Powers, 380 S.E.2d 481 (Ga. App. 1989).	Court held that plaintiffs who settle their claims with some, but not all, defendants would have their jury award reduced by that settlement amount.
Cincinnati Ins. Co. v. Reybitz, 421 S.E.2d 767 (Ga. App. 1992).	Held: evidence that a party does or does not have liability insurance is irrelevant, prejudicial, and thus inadmissible.
Amalgamated Transit Union Local 1324 v. Roberts, 434 S.E.2d 450 (Ga. 1993).	As distinguished from tort cases, the collateral source rule is not applicable in contract cases if the evidence is relevant to "demonstrate the extent of the plaintiff's actual loss that was caused by the breach."
Candler Hosp., Inc. v. Dent, 491 S.E.2d 868 (Ga.App.1997).	Neither party shall divulge to the jury the legal duty of the trial court to set-off against any special award of such special damages for medical expenses in the verdict such specific amount, because such is a legal matter for the trial court, is outside the province of the jury, is irrelevant and immaterial to the determination of damages or any other issue at trial, and would be highly prejudicial to both the plaintiff as a prior recovery of damages.
Chambers v. Gwinnett Community Hospital, Inc., 557 S.E.2d 412 (Ga. App. 2001)	Court said the fact that a witness is insured by the same liability carrier as the defendant is not sufficient to establish bias and thus the defense may not impeach the witness by referring to that fact.
Warren v. Ballard, 467 S.E.2d 891 (Ga. 1996).	The Court said that: "a plaintiff's testimony expressing concern about unpaid medical bills is irrelevant and immaterial in a personal injury case and thus does not 'open the door' to defense rebuttal evidence that the bills in fact were paid by insurance or other collateral sources."
Clemmons v. Smith, 540 S.E.2d 623 (Ga. App. 2000)	Holding that a plaintiff may not offer evidence that insurance has not covered all or part of the plaintiff's medical bills.
Matheson v. Stilkenboom, 555 S.E.2d 73 (Ga. App. 2001)	Where defendant contended that plaintiff was not injured in accident and presented evidence that she did not seek medical attention for several weeks, plaintiff's responses that she could not afford medical care could be rebutted with evidence that she had health insurance.
Bentley v. B.M.W., Inc. 433 S.E.2d 719 (Ga. App. 1993)	Evidence of insurance is admissible when it is relevant to a contested issue in the case, such as proof of ownership, agency, or control, or when a witness's relationship to the liability insurer must be disclosed to reveal the witness's bias.

2. Other State Cases

Marsh v. Green, 782 So.2d 223 (Ala. 2000)	Court held that the Alabama statute abrogating the collateral source rule does not violate the Alabama Constitution.
Corl v. Huron Castings, Inc., 544 N.W.2d 278 (Mich. 1996)	The Michigan Supreme Court decided that it was unnecessary to extend the collateral source rule to actions involving breach of contract. Taken together with the legislature's apparent intent that unemployment compensation be considered a wage replacement device, the court held that the plaintiff's damage award for the breach of his employment contract must be reduced by the amount of unemployment benefits he received after his termination.
Narayen v. Bailey, 747 A.2d 195 (Md.App. 2000)	Following a judgment awarding total damages of about $ 787,600 to appellee in a medical malpractice case, appellant requested a reduction of damages because appellee's medical expenses of about $ 399,500 had been paid by appellee's health insurance carrier.Court said that collateral source evidence is permitted in post-verdict proceedings, and it is within the discretion of the presiding judge or the jury to reduce the damages awarded accordingly.
Warnig v. Atlantic County Special Services, 833 A.2d 1098 (N.J.Super.A.D. 2003)	An insurer who paid benefits to its insured pursuant to the extended medical expense benefit ("med-pay") could not be reimbursed in a workers' compensation proceeding pursuant to the collateral source rule.
Fleming v. Garnett, 646 A.2d 1308 (Conn. 1994)	Statute requiring reduction in damages in personal injury and wrongful death actions for collateral source payments was not vague in denying "reduction for * * * the amount of collateral sources equal to the reduction in the claimant's recoverable damages attributable to his percentage of negligence"; reduction for collateral sources identified in the statute referred to reduction attributable to claimant's negligence that had been applied to the total damages to calculate recoverable damages.
Barme v. Wood, 689 P.2d 446 (Ca. 1984)	The Court held that the California Code section that precludes a "collateral source" which has provided medical expenses or other benefits to a plaintiff in a medical malpractice case from obtaining reimbursement of those expenses from medical malpractice defendant does not violate due process, since said section is rationally related to legitimate public interest in reducing cost of medical malpractice insurance.
Baptist Healthcare System, Inc. v. Miller, 2003 WL 21204472, (Ky.App. 2003)	Court said that it is clear under Kentucky law that the defendant Hospital may not benefit from the fact that plaintiff received payment of her medical expenses from a third party or that her required payment was reduced because of Medicare.

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Secondary Sources

ALRs & Legal Encyclopedias

*ALRs & Legal Encyclopedias are available on Westlaw and Lexis (neither search engine is free).

1. American Law Reports (ALRs):

John F. Wagner Jr., Annotation, *Application of Collateral Source Rule in Actions Under Federal Tort Claims Act (28 U.S.C.A. § 2674)* 104 ALR Fed. 492 (1991).	Analyzes the Federal cases in which the court has determined the applicability of the collateral source rule in actions against the United States under the Federal Tort Claims Act (FTCA).
James J. Watson, Annotation, *Validity and Construction of State Statute Abrogating Collateral Source Rule As To Medical Malpractice Actions* 74 A.L.R. 4th 32 (1989).	Collection and analysis of state and federal cases that discuss the construction and validity of state statutes that abrogate the collateral source rule in medical malpractice lawsuits.
William H. Danne, Jr., Annotation, *Admissiblity of Evidence That Injured Plaintiff Received Benefits From A Collateral Source, On Issue of Malingering or Motivation to Extend Period of Disability* 47 A.L.R.3d 234 (1973).	Discusses the evidentiary effect of collateral source benefits in specific circumstances such as its use to impeach the plaintiff's testimony, in suits arising under the Federal Employer's Liability Act, and in situations where disability, retirement, or worker's compensation benefits have been paid.
Charles W. Davis, J.D., Annotation, *Collateral Source Rule: Admissibility of Evidence of Availability to Plaintiff of Free Public Education On Issue of Amount of Damages Recoverable From Defendant*, 41 A.L.R.5th 771 (1996).	This annotation collects and analyzes all cases in which the court considered the applicability of the collateral source rule to exclude evidence of the availability of free public special education offered by a defendant in mitigation of damages.
David W. Knotts, Annotation, *Valuing Damages in Personal Injury Actions Awarded For Gratuitously Rendered Nursing and Medical Care,* 49 A.L.R. 5th 685 (1997).	This annotation collects and analyzes those cases in which the courts have established criteria for valuing nursing and medical care gratuitously provided by family members and friends as damages in personal injury actions.

2. Legal Encyclopedias:

22 Am. Jur. 2d ***Damages*** § 763 (2000).
Call Number = KF154 .A85 1962v.22

- Discusses the application of the collateral source rule and its proper use in reducing jury awards.

13 Ga. Jur. ***Personal Injury and Torts*** § 11:18 (2003).
Call Number = KFG80 .G45 1999

- Speaks to the Constitutionality of Georgia's 1987 statute abrogating the collateral source rule.

Law Reviews & Journals

Law reviews are a good way to familarize yourself with a topic. The disadvantage is that they are typically long and have too many footnotes.

Law review and journal articles are available through Westlaw and Lexis, as well as through HeinOnline (which is limited to use in the Georgia State University's law library). Infotrac is an index of law review articles; you can search by date or subject and sometimes, you will be linked to the full text of the article. Law reviews are increasingly moving to online publications, so search Google to find the law review's home, or use free directories available through: Catalaw, ILRG, LawSource, or Findlaw. The University Law Review Project also provides access to law review articles and it provides access to The Bluebook: A Uniform System of Citation (15th ed.).

Thomas W. Lee, ***Deducting Unemployment Compensation and Ending Employment Discrimination: Continuing Conflict***, 43 Emory L.J. 325, 326 (1994).

- This article argues that the Federal Courts should adopt a clear and consistent policy of denying reductions of back pay awards by the amount of unemployment compensation received; it discusses the Supreme Court's approach to set-offs against NLRA awards in the *Gullett* case, and analyzes the divergent approaches the circuit courts have taken in subsequent Title VII cases.

Marc T. Treadwell, ***Evidence***, 46 Mercer L. Rev. 233, 243 (1994).

- This law review article discusses the relevance of extrinsic evidence, prior sexual behavior of a victim, collateral source benefits, and settlement discussions as well as many other complicated areas of evidence.

John G. Fleming, ***The Collateral Source Rule & Contract Damages***, 71 Cal. L. Rev. 56 (1983).

- Explains the collateral source rule and its justifications and argues that the difference in the policies underlying contract and tort does not, by itself, justify a different application of the collateral source rule in the two areas.

Danielle A. Daigle, ***The Collateral Source Rule in Alabama: A Practical Approach to Future Application of the Statutes Abrogating the Doctrine***, 53 Ala. L. Rev. 1249 (2002).

- Addresses the inherent ambiguity in statutes abrogating the rule in civil actions, discusses the constructional difficulty posed by the Alabama legislature abrogating the rule, and provides a practical solution to the problems of construction.

James L. Branton, ***The Collateral Source Rule***, 18 St. Mary's L.J. 883 (1987).

- Discusses the history of the collateral source rule in our legal system and how state statutes abrogating the rule have confused courts with regard to the effect of the collateral rule as a rule of damages versus a rule of evidence.

Calvin R. Wright, ***The Collateral Source Rule in Georgia: A New Method of Equal Protection Analysis Brings A Return To the Old Common Law Rule***, 8 Ga. St. U.L. Rev. 835 (1992).

- This article discusses the history of the collateral source rule in Georgia and the reasons why legal scholars have disagreed on the application of this rule in Georgia. It also discusses the current state of the rule in Georgia and the likelihood of future changes or limitations on the rule.

Who is Winning the Collateral Source Rule War? The Battle Ground in the Sixth Circuit States, 31 U. Tol. L. Rev. 425 (2000).

- This article examines the common law collateral source rule's history, policy justifications, and benefactors. It also examines recent challenges to the common law collateral source rule within the Sixth Circuit states, and the rationales behind such challenges as well as the current state of the law in the Sixth Circuit states.

Private Medical Insurance and the Collateral Source Rule: A Good Bet?, 22 U. Tol. L. Rev. 39 (1990).

- This article examines the Collateral Source Rule and how it relates to private medical insurance coverage. It examines the arguments, pro and con, regarding its use and also shows how various states have responded to efforts to eliminate the Collateral Source Rule. This article concludes by suggesting that abrogation of the Rule is unfair to the purchaser of private medical insurance.

Treatises & Restatements

Text of treatises are available through Westlaw and Lexis, as well as Indexmaster.

Robert E. Cleary, Jr., ***Eldridge's Georgia Wrongful Death Actions with Forms***, 3rd ed. (1998)
Call number = KFG197 .D25 E4 1998

- This treatise explains the effect of collateral source payments in wrongful death actions in Georgia. It points out that life insurance proceeds are collateral benefits and therefore, will not reduce the jury award.

Paul S. Milich,, Georgia Rules of Evidence § 9.3 (2d ed. Supp. 2003)
Call number = KFG540 .M54 2002 C.2

- Discusses the admissibility of evidence concerning the financial status of parties in tort cases including any evidence pertaining to settlement.

Paul S. Milich, ***Courtroom Handbook on Georgia Evidence***, p. 107 (2003 ed.)

Call number = KFG540 .M542 C.1

- This treatise provides the reader with practical considerations and illustrations on the Georgia Rules of Evidence; it also includes the relevant text to the Federal Rules of Evidence and makes a comparison between the Georgia rules and the Federal rules on evidence.

Hiers and Potter, ***Georgia Workers' Compensation: Law & Practice*** § 17-7 (4th ed. Harrison) (2002 Supp.)
Call Number = KFG 342 .K57 2001

- Discusses whether the receipt of unemployment, disability, and/or worker's compensation benefits by the injured employee will be credited against the weekly payments due to the employee.

Michael E. McLaughlin, ***Admissibility of Evidence in Civil Cases: A Manual for Georgia Trial Lawyers*** (4th ed. 2004 Supp.)
Call number = KFG540.A59H47

- This treatise provides the reader with a brief overview of holdings from cases in Georgia that have addressed this issue regarding collateral source payments. The treatise provides a quick and easy way for trial lawyers to see if their collateral source evidence is admissible, and if so, to what extent.

Restatement (Second) of Torts § 920A (2000)
Call number = KF1312 .R469 2000

- Provides that payments made by a tortfeasor to the injured party is credited against his tort liability while payments made from other sources are not. This section gives great comments and illustrations that clearly explain the collateral source rule.

Richard C. Ruskell, ***Davis and Shulman's Georgia Practice and Procedure*** § 1-11 (2003 ed.)
Call number = KFG 530 .S54

- Discusses several pieces of Tort Reform enacted by the Georgia General Assembly in 1987, including the reform measure to abolish the collateral source rule.

Alexander Scherr, ***Green Georgia Law of Evidence*** § 73.1 (5th ed. Supp. 2003)
Call number = KFG 540 .G7

- Explains what are considered collateral sources in Georgia.

News Articles

Collateral Source Burden Awarded To The Defendant, Connecticut Law Tribune, January 12, 2004.

Disability Benefits Not Excluded Under the Collateral Source Rule, Metropolitan News-Enterprise, Jan. 13, 2003.

Moffat Thomas, The Idaho Tort and Insurance Deskbook (2d. 1999)

Social Security Disability Benefits Are Deemed 'Collateral Source Payments' to Injured Plaintiff, New York Law Journal, July 2, 2002.

Evidence - Admissibility Violations of collateral source rule by introducing Social Security benefits prompts new trial, Pennsylvania Discovery and Evidence Reporter, June 27, 2002.

Looseleaf Services

Looseleafs are mainly published to provide current awareness on a specific topic. They are very expensive and hard to maintain, but they can be useful if you have access to them.

LawTRIO allows you to search a database with over 7,500 looseleaf publications, newsletters, and CD-ROMs (this service is not free).
A search on LawTRIO for publications on the subject of the collateral source rule produced the following results:

Jacob Stein, ***Stein on Personal Injury Damages 3d*** (West) (1997).
Call number = KF446 .S7 1991

- This comprehensive multi-volume set is uniquely divided into two main parts that can be used either as a quick-answer resource or an in-depth case-finder and analyst. The first part (text) offers the most thorough, current treatment available of all personal injury damages issues, saving you hours of research. The second part (service)contains the leading or benchmark cases from each jurisdiction concerning particular damages issued to support legal theories, streamlining research by giving you only those cases which have created legal precedent. Chapter 13 discusses the Collateral Source rule.

Louis R. Frumer et al., ***Personal Injury - Actions, Defenses, Damages*** (LexisNexis Matthew Bender) (1957).
Call Number = KF8925 .P4P38

- The largest and most comprehensive case law compendium in legal literature provides encyclopedic treatment of the personal injury law of every American jurisdiction. Gives you over 200 "fact situation" titles under which all cases are classified. Each title provides coverage of theories of recovery, elements of cause of action and necessary allegations, defenses and damages. (updated 4 times a year).

Books

Relevant books on this topic may be found by searching Georgia State University's law library GIL catalog - key words damages and evidence.

Gerald A. McHugh -- Elimination of collateral source benefits already paid - an analysis of Section 508: reprinted from PaTLA book no. 262-2002

Andrew L. Reisman & Thomas Ulen, The Efficiency of the Collateral Source Rule : A Case Study of Its Application in Torts Involving Uninsured Motorists (Institute of Government and Public Affairs) (1995).

John G. Fleming, The Collateral Source Rule and Loss Allocation in Tort Law (1966).

** The books below may be purchased on Amazon.com:

Ronald M. Andersen, Thomas H. Rice & Gerald F. Kominski, Changing the U.S. Health Care System : Key Issues in Health Services Policy and Management (Second Edition)

- Speaks about the continuing issue of medical malpractice liability and joing and several liability and also discusses the collateral source rule in relation to these issues.

Joseph Matthews, How to Win Your Personal Injury Claim (Nolo 4th Ed.)

- Within this book, there is a section explaining how damages are calculated and whether or not insurance proceeds will be set-off from that damage award.

Robert W. Schachner & Marvin Quittner, How and When to Be Your Own Lawyer (Second Edition)

- This book explains the collateral source rule and has reference points for what to do if the issue comes up when a lay person is acting as his own lawyer.

Other Sources

1. Legal Dictionaries can be found on law.com and lawguru.com

2. Pleadings Forms - can be found at Findlaw.com, Freelegalforms.net, and U.S.Court forms.com

3. Continuing Legal Education (CLE) Materials - usually only a good resource if you attended the seminar. Sometimes these materials can be found on Westlaw, Lexis, or Findlaw.

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Online Sources

Westlaw

1. What is Westlaw?

Westlaw is a huge research database. Even though the website is very user friendly, subscribers also have access to live technical and research support. Westlaw provides access to just about anything related to a legal matter that you can imagine. The downside is that Westlaw is very expensive to use. Contact a representative or visit their website to inquire about subscribing.

You need a user identification number and a password to use Westlaw. Once you have obtained your password and user I.D. through your law school or from subscribing, go to the start page and log in to get started on researching. From the welcome page you can search by citation, area of law, jurisdiction, key number, or just by using key words in a natural language or terms and connectors search. Some of the search terms/phrases I used when working on this research guide included: "collateral source," admissibility of evidence, testimony regarding damages, insurance payments, and defendant's ability to introduce payments made to plaintiff from an outside source.

2. West Key Numbers & Digest System:

The West Digest system is a valuable way to find cases on a particular subject area. Recommended topic and key numbers for this subject are listed below:

Damages - key - 59,182
Westlaw key number searches - 115k5; 115k8; 115k14
Trial - key number 127

Lexis

Lexis is very similar to Westlaw - it is another huge research database that legal professionals and law students use to access legal information. Ask if you can try out both databases for free before deciding which one to subscribe too. You may find one easier to navigate than the other.LexisOne. You must register before you can start researching. This cite provides free access to U.S. Supreme Court cases from 1790 to present, as well as federal and state cases decided after January 1, 1999.

Lexis has a site where you can find case law for free - it is called

Findlaw

The best thing about findlaw is that it is FREE! This huge database/search engine contains numerous cases and statutes at both the federal and state level. It also contains news articles and standardized legal forms. The drawback is that it doesn't have all case opinions.

Loislaw

This database costs money, but not nearly as much as Westlaw or Lexis. Because this research tool is cheaper, the user does not get as much functionality as he or she would get using Westlaw or Lexis. The interface is very user friendly is a great reference tool for finding primary resources.

Internet

Google
Go to google and type in “collateral source rule” as your keywords. This search engine will provide you with thousands of articles, websites, etc. that this issue is discussed. To narrow your search, type in a state name, which will limit the search to that particular jurisdiction.

NOLO
Website of the Nolo Press that publishes self-help books for legal issues. It provides legal encyclopedias, legal dictionaries, legal updates, and a legal research center where you can research the area of law you are interested in.

U.S. Government Printing Office provides information on laws made by legislative, executive, and judiciary branches of the United States government.

LLRX.com is a unique, free Web journal dedicated to providing legal, library, IT/IS, marketing and administrative professionals with the most up-to-date information on a wide range of Internet research and technology-related issues, applications, resources and tools, since 1996.

CataLaw is the catalog of catalogs of worldwide law on the Internet. It aids legal research by arranging all indexes of law and government into a uniform, universal and unique metaindex.

LawSource - the home of American Law Sources On-line. It provides a comprehensive, uniform, and useful compilation of links to freely accessible on-line sources of law for the United States and Canada. The site also contains additional links to sources of commentary and practice aids that are available without charge.

Virtualchase - Has a search engine guide that offers basic information about the tools needed to conduct research on the Web. It does not attempt to link to every search engine or other finding aid. Instead, it strives to inform researchers about the more useful tools available.

Updating Research

Legal research must be updated frequently because the may change, new laws may be passed, and/or old law may be overruled. In Westlaw, "keycite" updates a case or statute and also gives you citing references. In Lexis, "shepardizing" is the same as updating. Shepardizing gives you the list of citing cases and tells you whether cases discussing your case have overruled your case, supported your case, or whether it has just cited your case and given it negative or positive treatment. If you are using the books, always be sure to check the pocket parts!

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Important Interest Groups/Associations

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A. Medical Association of Georgia - at this site, go to "legal issues," then click on "action alert" to see information regarding the collateral source rule in medical malpractice cases.

B. Georgia Trial Lawyers Association - protects consumers rights; opposes tort reform and is in favor of the collateral source rule

C. American Medical Association - The AMA oppose the collateral source rule because they feel that it drives up healthcare costs by allowing the plaintiff double recovery. For readers who want to see the reasons for opposing the rule and found out more about tort reform efforts being taken to abolish this rule, visit the AMA’s website.

D. State Bar of Georgia Response to Senate Bill 133 - analyzes the proposed tort reform bill and gives an explanation of why it this Bill denies public access to a fair and efficient system of justice.

E. National Association of Mutual Insurance Companies - this links to an article on NAMIC' view on the collateral source rule and why they think it should be abolished.

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Conclusion

Conclusion

The courts in Georgia should continue to apply the collateral source rule and other state courts should follow. A collateral source payment originates from a source wholly independent of the tortfeasor. Without this rule, injured plaintiffs would be left with little or no recovery just because they had generous relatives or they had insurance coverage. The so-called “windfall” would be given to the defendant - his liability would be diminished and nothing would prevent him from repeating such careless conduct in the future. This rule does not allow the plaintiff to recover twice for the same losses - if the defendant has already paid money to the plaintiff, the damage award will be reduced by that amount. One goal of our tort system is to compensate the injured person, but the other and primary goal of our tort system is to deter this negligent behavior in the future.

The bottom line is that evidence of collateral sources is irrelevant and immaterial to the issue of liability. Furthermore, collateral source evidence is highly prejudicial and carries no probative value whatsoever in regards to a defendant's liability.

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