

(Much) More on the Collateral Source Rule

David Schap

and

Andrew Feeley

June 2006

COLLEGE OF THE HOLY CROSS, DEPARTMENT OF ECONOMICS
FACULTY RESEARCH SERIES, PAPER NO. 06-05*



Department of Economics
College of the Holy Cross
Box 45A
Worcester, Massachusetts 01610
(508) 793-3362 (phone)
(508) 793-3708 (fax)

<http://www.holycross.edu/departments/economics/website>

*All papers in the Holy Cross Working Paper Series should be considered draft versions subject to future revision. Comments and suggestions are welcome.

(Much) More on the Collateral Source Rule

By
David Schap[†]
College of the Holy Cross

and

Andrew Feeley^{††}
College of the Holy Cross

June 2006

Abstract

The collateral source rule is a common law norm that permits recovery of accident-related damages from both the victim's insurer and the injurer. Many jurisdictions have modified the rule through statutory reform during the last twenty-five years. Forensic economists in assessing damages need to be aware of the variations in the application of the rule in the jurisdictions in which they practice. The authors present a tabular summary of the statutory variations that exist in the collateral source rule across state jurisdictions and the detailed status of the statutory modifications to the rule for each state.

JEL Classification Codes: K13

Keywords: forensic economics

* The authors gratefully acknowledge the financial support of the May and Stanley Smith Charitable Trust.

[†]David Schap, Department of Economics, Box 88A, College of the Holy Cross, Worcester, MA 01610-2395, 508-793-2688 (phone), 508-793-3708 (fax), dschap@holycross.edu

^{††}Andrew Feeley, Department of Economics, College of the Holy Cross, Worcester, MA 01610-2395

(Much) More* on the Collateral Source Rule

National Association of Forensic Economics Session

Eastern Economic Association Meetings

Philadelphia, February 25, 2006

by

Andrew Feeley and David Schap

College of the Holy Cross

(Class of 2006 and Professor, Department of Economics, respectively)

Worcester, MA 01610

Direct correspondence to: dschap@holycross.edu

*PREFATORY NOTE: At a NAFE session at the 2005 Eastern Economic Association Meetings Matthew McCabe presented a paper entitled "The Economics of the Collateral Source Rule." Among his discussant's remarks for the paper David Schap noted that the work then to date failed to include a complete survey of statutory law in the states concerning the collateral source rule and that accomplishing such a survey would constitute useful additional research. With the approval and cooperation of McCabe, Feeley and Schap undertook the task of such a survey, not initially appreciating the enormity of the task. After many months of gathering and categorizing information the survey is nearing completion. These remarks should help motivate interest in what follows and explain the somewhat peculiar title the paper bears.

I. Introduction

At common law in an action for personal injury or wrongful death, the collateral source rule prohibits courts from considering any payments that a plaintiff has received due to injury or death from any source other than the tortfeasor. For example, consider an accident insurance policy that gives an individual the right to receive \$25,000 for a specific type of accidental injury. If the individual sustains injury in an accident for which the injurer is deemed liable, then the individual (or his or her beneficiaries) can collect \$25,000 from the insurance company in addition to obtaining full damages from the injurer (assuming that the individual did not subrogate his or her tort rights to the insurer). The collateral source rule has been summarized by the New York State Court of Appeals in the case of *Oden v. Chemung County*, 87, N.Y.2d 81, 661 N.E.2d 142, 67 N.Y.S.2d 670 (1995). The *Oden* court notes that, “[u]nder traditional common-law principles, a personal – injury [or wrongful death] award may not be reduced or offset by the amount of any compensation that the injured person may receive from a source other than the tortfeasor.”¹

Richard A. Posner, Judge of the U.S. Court of Appeals for the Seventh Circuit and author of *Economic Analysis of Law*, contends that the collateral source rule ensures that the tortfeasor will bear the full economic cost of the accident. If the tortfeasor does not bear this economic cost, Posner argues that his or her incentive to spend up to the amount of the accident cost, appropriately discounted by the probability of accident occurrence, to prevent a similar accident in the future will be reduced. In other words, the collateral source rule deters future accidents by placing the full expected cost of the accident upon

¹ See *Kish v. Board of Educ. Of City of New York*, 76 N.Y.2d 379, 384; *Healy v. Rennert*, 9 N.Y.2d 202, 206).

the tortfeasor. When a potential injurer faces the entire expected cost of an accident he or she arguably will exercise an efficient level of care to avoid the accident. Although the double recovery may appear as a windfall to the claimant, Posner defends the collateral source rule by noting that the claimant buys the insurance policy at a price equal to the expected cost of the policy plus the cost of writing the policy. He argues that the premium would be lowered if (1) the insurance provider alters the coverage in order to exclude the accident in which the defendant was liable to the plaintiff or (2) the insurance provider is subrogated the rights of the plaintiff against the defendant.²

Despite such advocacy for adherence to the collateral source rule, this common law norm has been modified substantially in statutory law in response to pressure by medical practitioners and insurers hoping to reduce the cost of litigation. Although Posner contends that the collateral source rule ensures efficient deterrence, opponents of the rule argue that double-compensation to victims under the rule decreases the incentive for potential victims to themselves take efficient levels of care. In addition, although Posner asserts that the issue of double compensation can be mitigated by a right of subrogation, a recent report issued by the Congressional Budget Office (CBO) counters with three reasons why insurers rarely exercise that right: (1) ascertaining whether a specific award covers the same damages as an insurance benefit is arduous, (2) administrative costs are expensive, and (3) exercising subrogation rights may compromise public opinion of an insurer.³

Most state tort reforms focus on the notion that too many tort claims are filed and that excessive damages are often awarded by the court. Basing their argument upon this

² Richard A. Posner, *Economic Analysis of Law*, 6th ed., 2003, p. 200.

³ Elliot, Cary, et al, "The Effects of Tort Reform: Evidence from the States," Congress of the United States, Congressional Budget Office, June 2004, p. 6.

presumption, lobbyists against the collateral source rule maintain that decreasing awards by the amount of payments from third-party sources will decrease the profitability of marginal cases, the number of such cases, and the associated inefficiencies in the tort system. The American Tort Reform Association (ATRA) and the National Association of Mutual Insurance Companies (NAMIC) both advocate for the introduction of evidence of collateral source payments at trial.⁴ NAMIC, for example, asserts, “The Collateral Source Rule bars defendants from introducing evidence to show that a plaintiff has received collateral source benefits and in so doing, it essentially permits a plaintiff to recover damages twice.”⁵ When a plaintiff receives compensation from his or her insurance company and again at trial, NAMIC argues that the proceeds do not represent actual compensation for an individual’s injuries, but rather a source of windfall. Ultimately, NAMIC contends that consumers pay for these windfalls in the form of higher insurance premiums.⁶

ATRA similarly advocates for the admissibility of evidence of collateral source payments at trial and for offsetting awards by the amount paid to plaintiffs by collateral sources, less the amount paid by the plaintiff to secure the benefit.⁷ Since its establishment in 1986 by the American Medical Association and the American Council of Engineering Companies, ATRA has sought reformation in the civil judicial system and has grown into a nationwide network of state-based liability reform coalitions backed by

⁴ American Tort Reform Association, “Collateral Source Rule Reform,” Retrieved January 15, 2005 at: <<http://www.atra.org/issues/index.php?issue=7344>>.

National Association of Mutual Insurance Companies (NAMIC), “Collateral Source Rule Reform,” Retrieved November 27, 2005 at: <<http://www.namic.org/reports/tortReform/CollateralSourceRule.asp>>.

⁵ National Association of Mutual Insurance Companies (NAMIC), “Collateral Source Rule Reform.”

⁶ National Association of Mutual Insurance Companies (NAMIC), “Collateral Source Rule Reform.”

⁷ American Tort Reform Association, “Collateral Source Rule Reform,” Retrieved January 15, 2005 at: <<http://www.atra.org/issues/index.php?issue=7344>>.

135,000 grassroots supporters.⁸ ATRA contends that ambitious personal injury lawyers focus heavily upon certain professions, industries, and companies, which they view as opportune and remunerative. These lawyers, claim ATRA, "...systematically recruit clients who may never have suffered a real illness or injury and use scare tactics, combined with the promise of awards, to bring these people into massive class action suits."⁹ As a result, these personal injury lawyers amass multi-million-dollar punitive damage awards, which in turn raise social costs by raising premiums for medical malpractice insurance and other insurance policies, as well as by compromising access to affordable health care.

In short, because the collateral source rule allows plaintiffs to be compensated twice for the same accident, both the expected award and the number of lawsuit filings increases.¹⁰ In response to the mounting pressure, 39 states and the Virgin Islands have enacted statutes that either modify or eliminate the collateral source rule.¹¹

⁸ American Tort Reform Association (ATRA). "About ATRA." Retrieved January 15, 2005 at: <<http://www.atra.org/issues/index.php?issue=7344>>.

⁹ American Tort Reform Association (ATRA). "About ATRA." Retrieved January 15, 2005 at: <<http://www.atra.org/issues/index.php?issue=7344>>.

¹⁰ Elliot, Cary, et al, "The Effects of Tort Reform: Evidence from the States," Congress of the United States, Congressional Budget Office, June 2004, p. 6.

¹¹ See Alabama Code §6-5-520; Alaska Statute §09.17.070; Arizona Revised Statutes §12-565; California Code §3333.1; Colorado Revised Statute §13-21-111.6; General Statute of Connecticut §52-225a; Delaware Code §6862; Florida Statute §768.76; Code of Georgia §51-12-1; Hawaii Revised Statute §663-10; Idaho Statute §6-1606; Illinois Statutes §735 ILCS 5/§2-1205 and §735 ILCS 5/§2-1205.1; Indiana Statute §34-44-1; Iowa Code §668.14; Kansas Statute §60-38; Kentucky Revised Statute §411.188; Maine Revised Statute §2906, under Title 24; Courts and Judicial Proceedings Code of Maryland §3-2A-06 and §3-2A-05; Massachusetts General Law Chapter 231, §60G; Michigan Compiled Law §600.6303; Minnesota Statute §548.36; Missouri Revised Statute §490-715; Montana Code §27-1-308; Nebraska Revised Statutes §44-2819; Nevada Revised Statute §42.020; New Hampshire Revised Statute §507-C:7; New Jersey Statute §2A:15-97; New York Consolidated Law §4545; North Dakota Century Code §32-03.2-06; Ohio Revised Code §2323.41; Oklahoma Statute §1-1708.1D; Oregon Revised Statute §31.580; Pennsylvania Statute §1303.508; General Law of Rhode Island §9-19-34.1; South Dakota Statute §21-3-12; Tennessee Code §29-26-119; Utah Code §78-14-4.5; Virgin Islands Code §427; Revised Code of Washington §7.70.080; and West Virginia Code §55-7B-9a. Washington D.C. does not modify the collateral source rule for torts; however, District of Columbia Code §4-507 allows the court to

Utilizing Academic Search Premier, General Reference Center Gold, Lexis-Nexis Academic Universe, and EconLit from FirstSearch, we identified several law review articles and studies that evaluate the implications of collateral source rule reforms. These descriptive reports typically discuss rule reforms only within the context of a single state, judicial circuit, or case and generally lack theoretical focus and empirical testing.¹² Some

decrease compensation for victims of violent crimes by the amount available to the claimant from collateral sources.

- ¹² Becker, Tiffany Gulley. "The Collateral Rule in Missouri: Questioning the 'Double Recovery' Doctrine." *Missouri Law Review* 61:633 (Summer 1996).
- Clark, Lawrence B. "Symposium on Tort Reform: I. Alabama's Collateral Source Rule: A Defense Attorney's Perspective." *Cumberland Law Review* 24:416 (1993).
- Daigle, Danielle A. "The Collateral Source Rule in Alabama: A Practical Approach to Future Applications of the Statutes Abrogating the Doctrine." *Alabama Law Review* 53:1249 (Summer 2002).
- Danzon, Patricia (1982). "The Frequency and Severity of Medical Malpractice Claims." *Rand R-2870-ICJ/HCFA*.
- (1986). "New Evidence on the Frequency and Severity of Medical Malpractice Claims." *Rand-R-3410-ICJ*.
- Eaton, Christopher J. "The Kansas Legislature's Attempt to Abrogate the Collateral Source Rule: Three Strikes and They're Out." *Kansas Law Review* 42:913 (Summer 1994).
- Edwards, David L. "Jurgensen V. Smith: Shutting the Door on Collateral Source Evidence in South Dakota." *South Dakota Law Review* 46:316 (2001).
- Engler Jr., Frederick N. "From the ACBA: Editor-in-Chief's Message: Deconstructing the Collateral Source Rule." *The Lawyers Journal* 2:4 (November 17, 2000).
- Evans, Kamrim. "Settlements with Nonparties: A Closer Look at Colorado's Collateral, Source and Contribution Statutes." *University of Colorado Law Review* 6:195 (Winter 1995).
- "Fantasy billing' and the collateral source rule." *Wisconsin Law Journal* NA (December 14, 2005). Retrieved February 3, 2006 at:
<http://find.galegroup.com/itx/infomark.do?&contentSet=IAC-Documents&type=retrieve&tabID=T002&prodId=GRGM&docId=A139767639&source=gale&userGroupName=mlin_c_collhc&version=1.0>.
- Farrish, Craig L. "Restoration of the Collateral Source Rule in Kentucky: A Review of O'Bryan v. Hedgespeth." *Northern Kentucky Law Review* 23:357 (Spring 1996).
- Fleming, John G. "The Collateral Source Rule and Contract Damages." *California Law Review* 71:1 (January 1983), p. 56.
- Galasso, Michael A. "Commonwealth, Transportation Cabinet, Bureau of Highways v. Roof: When Should There Be a Requirement to Reduce Awards at the Board of Claims for Benefits Received from Collateral Sources?" *Northern Kentucky Law Review* 27:430 (2000).
- Haley, John W. "Symposium on Tort Reform: II. Alabama's Collateral Source Rule: A Plaintiff Attorney's Perspective." *Cumberland Law Review* 24:416 (1993).
- Henderson, Robert A. & Patrick F. Maroney. "Collateral Sources of Indemnity." *Florida State University Law Review*: 21:571 (Fall 1993).
- Howard, Jennifer. "Alabama's New Collateral Source Rule: Observations from the Plaintiff's Perspective." *Cumberland Law Review* 32:573 (2001).
- Lemley, Charles C. "Applying Florida's Collateral Source Rule to Veterans' Benefits." *The Florida Bar Journal* 69:62 (December 1995).

articles broadly discuss the effects of the collateral source rule reforms and contextualize the modifications in conjunction with other tort reform, such as punitive damage caps, but these reports fail to describe the variations of the collateral source rule reform among all the jurisdictions of the United States.¹³ Online collateral source rule reform reports, established by organizations such as the American Tort Reform Association or the National Association of Mutual Insurance Companies (NAMIC), do list tort reform-related laws that have been enacted in select states.¹⁴ Since these reports are maintained

-
- Passman-Green, Nora J., and Ronald D. Richards Jr. "Who is Winning the Collateral Source Rule War? The Battleground in the Sixth Circuit States." Toledo Law Review 31:425 (Spring 2000).
- Schafer, Julie A. "The Constitutionality of Offsetting Collateral Benefits Under Ohio Revised Code Section 2317.45." Ohio State Law Journal 53:587 (Spring 1992).
- Schwartz, Douglas Hill. "The Tortured Path of Ohio's Collateral Source Rule." University of Cincinnati Law Review 65:643 (Winter 1997).
- Ulicny, James. "Corl v. Huron Castings, Inc.: Wrongful Discharge and the Collateral Source Rule." Detroit College of Law at Michigan State University Law Review 1997:273 (Spring 1997).
- ¹³ Browne, Mark J. & Robert Puelz. "The Effect of Legal Rules on the Value of Economic and Non-economic Damages and the Decision to File." Abstract. Journal of Risk and Uncertainty, 18:2 (August 1999) pp. 189-213.
- Klick, Jonathan & Thomas Stratmann. "Does Medical Malpractice Reform Help States Retain Physicians and Does it Matter?" (November 3, 2005). Available from SSRN.
- Moorhouse, John C, Andrew P. Morriss & Robert Whaples. "Law & Economics and Tort Law: A Survey of Scholarly Opinion." Albany Law Review 62:667 (1998).
- Nockleby, John T. & Shannon Curreri. "Access to Justice: Can Business Co-Exist with the Civil Justice System?: 100 Years of Conflict: The Past and Future of Tort Retrenchment." Loyola of Los Angeles Law Review 38:1021 (Spring 2005).
- Rubin, Paul H. & Joanna M. Shepherd. "Tort Reform and Accidental Deaths." (2005) Available from the SSRN.
- Thorpe, Kenneth E. "The Medical Malpractice 'Crisis': Recent Trends and the Impact of State Tort Reforms." Health Affairs web exclusive (January 21, 2004).
- Saine, Christian D. "Preserving the Collateral Source Rule: Modern Theories of Tort Law and a Proposal for Practical Application." Case Western Reserve University 47:3 (Spring 1997), p. 1075.
- Sloan, Frank, Paula Mergenhagen, & Randall Bovbjerg (1989). "Effects of Tort Reforms on the Value of Closed Medical Malpractice Claims: A Microanalysis." Journal of Health Politics, Policy, and Law 14, pp. 663-698.
- Viscusi, W. Kip. "Product Liability and Regulation: Establishing the Appropriate Institutional Division of Labor." AEA Papers and Proceedings 78:2 (May 1988), p. 301-304.
- . "The Performance of Liability Insurance in States with Different Products-Liability Statutes." Journal of Legal Studies 19:809-836.
- ¹⁴ "Collateral Source Rule Reform." American Tort Reform Association. Retrieved January 15, 2005 at: <<http://www.atra.org/issues/index.php?issue=7344>>.
- "Collateral Source Rule Reform." National Association of Mutual Insurance Companies. Retrieved November 27, 2005 at: <<http://www.namic.org/reports/tortReform/CollateralSourceRule.asp>>.

by special interest groups, however, the information that they contain does not necessarily represent an impartial or complete portrayal of all relevant statutes. Indeed, the NAMIC website explicitly acknowledges as much:

NAMIC does not present the information contained in this report as an exact and absolute portrayal of all tort reform-related laws that have been enacted in every state to date. Rather, it represents a comprehensive listing and summary analysis of the existing laws and recently enacted legislation specifically identified by NAMIC State and Regulatory Affairs staff as generated through its own internal intelligence and legislative and regulatory tracking tools as those which bear direct relevance to the key facets of tort reform NAMIC supports.¹⁵

In part as a response to the inadequacies in the extant literature, this paper addresses the multifaceted statutory (i.e., legislated) reforms to the common law (i.e., judge-made, case developed) collateral source rule. Next follows a description of the categorized results based on our survey of statutory law.

II. Collateral Source Rule Reforms

The statutes of all fifty states, the District of Columbia, Puerto Rico and the Virgin Islands (henceforth herein referred to collectively as "the jurisdictions") were examined so as to identify the myriad forms that the reforms of the collateral source rule have taken. Categorization of the many types of reform was necessary to give a cohesive sense to the substantial amount of information gathered. A side benefit was that upon completion of the categorization process the entire body of information lent itself nicely to a tabular presentation.

¹⁵ "Collateral Source Rule Reform." *National Association of Mutual Insurance Companies*. Retrieved November 27, 2005 at: <http://www.namic.org/reports/tortReform/CollateralSourceRule.asp>.

Our organizing principle in categorizing the information was to create a distinct category whenever a type of reform was observed in at least two jurisdictions, but not otherwise. Singular types of reforms have been duly noted by way of exception, to be handled as notes in an extensive table rather than by establishing additional categories that would be *sui generis* in character. In this paper we present the categories of reform, but without the notes indicating singular instances of reform since the more extensive table is still under construction.

Among the reforms of the collateral source rule are modifications of exceptions to the rule. We have attempted to classify all reforms as either exceptions to (i.e., erosions of) the original rule or as exceptions to the exceptions (i.e., partial returns to) the original rule. These we have identified in the table by way of an intuitive use of minus (-) for erosions of the rule or plus (+) for partial returns to it. Some reforms defy such simple classification, most typically when the reform is procedural, and these are identified by means of a forward slash (/).

Our results appear in what we believe are two rather self-explanatory tables. The first presents the categorical results of our survey. The second makes use of the categorical designations to suggest what the status of the rule is in each jurisdiction with respect to reforms that have appeared in at least two jurisdictions. We emphasize that the second table is not an accurate summary of statutory law in each particular jurisdiction since we have yet to apply to that table the guiding notes that cite singular instances of reform where such appear. Still, the second table gives a sense of how useful our work will be for forensic economics practitioners once the notes have been completed and attached to the finalized table.

We believe the tabled information can serve as the basis for several worthy papers addressing the collateral source rule. First, we envision a largely tabular summary of American law with respect to collateral source rule statutory reform suitable for a law review. Second we wish to fashion a paper containing modified versions of the two tables presented here together with the introduction herein as constituting a study worthy of placement in a journal read by forensic economists. Third, the tables once completed can serve as a basis for a paper discussing the vested interests at work in shaping statutory reform of the collateral source common law norm; indeed, such a paper is scheduled for presentation at the forthcoming meetings of the Public Choice Society in March/April of this year. Lastly (or perhaps not if still other paper topics emerge), the tables can form the foundation for empirical work assessing the comparative influence of special interest groups in either eroding the collateral source rule (insurers and health-care providers) or fighting for its maintenance (the plaintiff bar) in the various jurisdictions.

Works Cited

- Allen, Kathryn G. & Richard J. Hillman. "Medical Malpractice Insurance: Multiple Factors Have Contributed to Premium Increases." United States General Accounting Office. Testimony before the House of Representatives, Committee on Government Reform, Subcommittee on Wellness and Human Rights (October 1st, 2003).
- "About ATRA." *American Tort Reform Association*. Retrieved January 15, 2005 at: <<http://www.atra.org/issues/index.php?issue=7344>>.
- Becker, Tiffany Gulley. "The Collateral Rule in Missouri: Questioning the 'Double Recovery' Doctrine." *Missouri Law Review* 61:633 (Summer 1996).
- Clark, Lawrence B. "Symposium on Tort Reform: I. Alabama's Collateral Source Rule: A Defense Attorney's Perspective." *Cumberland Law Review* 24:416 (1993).
- "Collateral Source Rule Reform." *American Tort Reform Association*. Retrieved January 15, 2005 at: <<http://www.atra.org/issues/index.php?issue=7344>>.
- "Collateral Source Rule Reform." *National Association of Mutual Insurance Companies*. Retrieved November 27, 2005 at: <<http://www.namic.org/reports/tortReform/CollateralSourceRule.asp>>.
- Daigle, Danielle A. "The Collateral Source Rule in Alabama: A Practical Approach to Future Applications of the Statutes Abrogating the Doctrine." *Alabama Law Review* 53:1249 (Summer 2002).
- Danzon, Patricia (1982). "The Frequency and Severity of Medical Malpractice Claims." Rand R-2870-ICJ/HCFA.
- (1986). "New Evidence on the Frequency and Severity of Medical Malpractice Claims." Rand-R-3410-ICJ.
- Eaton, Christopher J. "The Kansas Legislature's Attempt to Abrogate the Collateral Source Rule: Three Strikes and They're Out." *Kansas Law Review* 42:913 (Summer 1994).
- Edwards, David L. "Jurgensen V. Smith: Shutting the Door on Collateral Source Evidence in South Dakota." *South Dakota Law Review* 46:316 (2001).
- Elliot, Cary, et al. "The Effects of Tort Reform: Evidence from the States." Congress of the United States, Congressional Budget Office, June 2004.
- Engler Jr., Frederick N. "From the ACBA: Editor-in-Chief's Message: Deconstructing the Collateral Source Rule." *The Lawyers Journal* 2:4 (November 17, 2000).

- Evans, Kamrim. "Settlements with Nonparties: A Closer Look at Colorado's Collateral, Source and Contribution Statutes." University of Colorado Law Review 6:195 (Winter 1995).
- "Fantasy billing' and the collateral source rule." Wisconsin Law Journal NA (December 14, 2005). Retrieved February 3, 2006 at:
 <http://find.galegroup.com/itx/infomark.do?&contentSet=IAC-Documents&type=retrieve&tabID=T002&prodId=GRGM&docId=A139767639&source=gale&userGroupName=mlln_c_collhc&version=1.0>.
- Farrish, Craig L. "Restoration of the Collateral Source Rule in Kentucky: A Review of O'Bryan v. Hedgespeth." Northern Kentucky Law Review 23:357 (Spring 1996).
- Fleming, John G. "The Collateral Source Rule and Contract Damages." California Law Review 71:1 (January 1983), p. 56.
- Galasso, Michael A. "Commonwealth, Transportation Cabinet, Bureau of Highways v. Roof: When Should There Be a Requirement to Reduce Awards at the Board of Claims for Benefits Received from Collateral Sources?" Northern Kentucky Law Review 27:430 (2000).
- Haley, John W. "Symposium on Tort Reform: II. Alabama's Collateral Source Rule: A Plaintiff Attorney's Perspective." Cumberland Law Review 24:416 (1993).
- Henderson, Robert A. & Patrick F. Maroney. "Collateral Sources of Indemnity." Florida State University Law Review: 21:571 (Fall 1993).
- Howard, Jennifer. "Alabama's New Collateral Source Rule: Observations from the Plaintiff's Perspective." Cumberland Law Review 32:573 (2001).
- Klick, Jonathan & Thomas Stratmann. "Does Medical Malpractice Reform Help States Retain Physicians and Does it Matter?" (November 3, 2005). Available from SSRN.
- Lemley, Charles C. "Applying Florida's Collateral Source Rule to Veterans' Benefits." The Florida Bar Journal 69:62 (December 1995).
- Oden v. Chemung County*. 87 N.Y.2d 81, 661 N.E.2d 142, 67 N.Y.S.2d 670 (1995).
- Passman-Green, Nora J., and Ronald D. Richards Jr. "Who is Winning the Collateral Source Rule War? The Battleground in the Sixth Circuit States." Toledo Law Review 31:425 (Spring 2000).
- Posner, Richard A. *Economic Analysis of Law*. 6th Ed. New York: Aspen Publishers, 2003.

- Rubin, Paul H. and Joanna M. Shepherd. "Tort Reform and Accidental Deaths." (2005) available from SSRN.
- Schafer, Julie A. "The Constitutionality of Offsetting Collateral Benefits Under Ohio Revised Code Section 2317.45." *Ohio State Law Journal* 53:587 (Spring 1992).
- Schwartz, Douglas Hill. "The Tortured Path of Ohio's Collateral Source Rule." *University of Cincinnati Law Review* 65:643 (Winter 1997).
- Thorpe, Kenneth E. "The Medical Malpractice 'Crisis': Recent Trends and the Impact of State Tort Reforms." *Health Affairs* web exclusive (January 21, 2004).
- Ulicny, James. "Corl v. Huron Castings, Inc.: Wrongful Discharge and the Collateral Source Rule." *Detroit College of Law at Michigan State University Law Review* 1997: 273 (Spring 1997).
- Viscusi, W. Kip. "The Performance of Liability Insurance in States with Different Products-Liability Statutes." *Journal of Legal Studies* 19:809-836.

Here we present the results of a survey of statutory law concerning the collateral source rule in the fifty states, District of Columbia, Puerto Rico and Virgin Islands.

State and Other Select Jurisdictional (DC, PR, VI) Statutes Addressing the Collateral Source Rule					
(-) Indicates that the sub-variable erodes the collateral source rule (+) Indicates that the sub-variable provides a partial return to the collateral source rule (/) Indicates that the sub-variable is procedural or cannot be classified without error					
Variable Label	Meaning of Variable	Category Label		Meaning of Category	Total Incidence
A	"Collateral Source" Explicitly Defined in Statutory Law				10
B	Status of Collateral Source Rule	Bi	-	Modified	38
		Bii	-	Eliminated	2
		Biii	/	Neither modified nor eliminated	6
		Biv	/	Neither modified nor eliminated, except for crime victim compensation	7
C	Insurance	Ci	-	Insurance payments may be considered	38
		Cii	+	Evidence of the cost of obtaining the collateral source payments may be considered.	29
		Ciii	+	Evidence of life insurance collateral source benefits may not be considered.	23
		Civ	+	Evidence of personally acquired or family provided insurance may not be considered.	14
		Cv	+	Evidence of employer provided insurance may not be considered.	4
		Cvi	-	The plaintiff may not receive compensation more than once for the same medical expenses.	40
		Cvii	+	Gratuitous benefits provided to the plaintiff may not be considered.	5
D	Medical Malpractice	Di	-	Evidence of collateral source benefits may be introduced for medical malpractice.	22
		Dii	-	Evidence of collateral source benefits may be introduced only for medical malpractice.	17
E	When Collateral Source Offsets are Considered	Ei	/	Statute requires consideration of collateral source offsets during the trial.	21
				Statute requires consideration of collateral source offsets after judgment/award.	14
		Eiii	/	Statute requires consideration of collateral source offsets after verdict and prior to judgment.	6
F	Award Reductions	Fi	-	Reduced for collateral source income that has been received prior to the date of the verdict.	12
		Fii	-	Reduced for collateral source income that has been received prior to the date of the verdict and reduced for collateral source income that is likely to be received in the future.	28

Exemption and Modifications of the Collateral Source Rule

Table Continues on Next Page

State and Other Select Jurisdictional (DC, PR, VI) Statutes Addressing the Collateral Source Rule

(+) Indicates that the sub-variable erodes the collateral source rule
 (-) Indicates that the sub-variable provides a partial return to the collateral source rule
 (/) Indicates that the sub-variable is procedural or cannot be classified without error

	Variable Label	Meaning of Variable	Category Label		Meaning of Category	Total Incidence
	Exemptions and Modifications of the Collateral Source Rule	G	Public Sector Collateral Sources	G <i>i</i>	-	Exception to ordinary collateral source rule exists for any federal program (e.g. social security, medicare, medicaid).
G <i>ii</i>				-	Exception to ordinary collateral source rule exists for worker's compensation.	27
G <i>iii</i>				+	If a federal program must by law seek subrogation, then the collateral source benefits from that federal program may not be considered.	18
H		Subrogation and Liens	H <i>i</i>	+	Evidence of collateral benefits may not be introduced if the source of such benefits has a right of subrogation against the proceeds of the plaintiff's recovery.	16
			H <i>ii</i>	+	Evidence of collateral benefits may not be introduced if the source of such benefits has a right to a lien against the proceeds of the plaintiff's recovery.	10
			H <i>iii</i>	+	If collateral source benefits are introduced, then the source of such benefits may neither recover any amount against the plaintiff nor be subrogated the rights of the plaintiff against a defendant.	6
			H <i>iv</i>	+	If collateral source benefits are introduced, then plaintiff may introduce evidence that the source of such benefits has the right of subrogation or the right to a lien against the proceeds of the plaintiff's recovery.	3
			H <i>v</i>	+	Regardless of whether collateral source benefits are introduced, no provider of collateral benefits shall recover any amount against the plaintiff as reimbursement for such benefits nor shall such provider be subrogated the rights of the plaintiff against a defendant, unless otherwise expressly permitted to do so by the statute.	2
			H <i>vi</i>	-	At or before the commencement of an action, the plaintiff must send notice of the pending or potential claim to all persons entitled by contract or by law to either subrogation or a lien against the proceeds of the plaintiff's recovery.	6
			H <i>vii</i>	-	After the verdict, the plaintiff must send notice of the verdict to all persons entitled by contract or by law to either subrogation or a lien against the proceeds of the plaintiff's recovery.	2
I	Miscellaneous	I <i>i</i>	/	Exception to ordinary collateral source rule exists for violent crimes victim compensation (with subrogation rights defined in some cases).	30	

**State and Other Select Jurisdictional (DC, PR, VI) Statutes
Addressing the Collateral Source Rule**

State	A					B							C					D	
	A	Bi	Bii	Biii	Biv	Ci	Cii	Ciii	Civ	Cv	Cvi	Cvii	Di	Dii					
Alabama	1	1				1	1				1								
Alaska		1				1	1	1			1	1	1						
Arizona		1				1	1	1			1			1					
Arkansas	1				1														
California		1				1	1				1			1					
Colorado		1				1			1		1		1						
Connecticut		1				1	1	1			1		1						
Delaware		1				1		1	1		1			1					
District of Columbia	1				1														
Florida	1	1				1	1	1			1		1						
Georgia		1				1	1	1			1		1						
Hawaii		1				1		1			1		1						
Idaho	1	1				1		1			1		1						
Illinois		1				1	1				1		1						
Indiana		1				1	1	1	1	1	1		1						
Iowa		1				1	1		1		1		1						
Kansas		1				1	1	1			1	1	1						
Kentucky		1				1	1	1			1		1						
Louisiana	1				1														
Maine	1	1				1	1	1			1			1					
Maryland		1				1	1	1		1	1			1					
Massachusetts		1				1	1				1	1		1					
Michigan		1				1	1	1	1	1	1		1						
Minnesota	1	1				1	1	1	1		1		1						
Mississippi					1														
Missouri		1				1	1				1		1						
Montana		1				1	1	1	1		1	1	1						
Nebraska		1				1	1				1			1					
Nevada		1				1					1			1					
New Hampshire			1			1	1				1			1					
New Jersey		1				1	1	1			1		1						
New Mexico					1														
New York		1				1	1	1	1		1		1						
North Carolina					1														
North Dakota	1	1				1		1	1		1		1						
Ohio		1				1	1				1			1					
Oklahoma		1				1					1			1					
Oregon		1				1	1	1	1		1		1						
Pennsylvania		1				1		1			1		1						
Puerto Rico					1														
Rhode Island		1				1	1				1			1					
South Carolina					1														
South Dakota		1				1			1		1			1					
Tennessee		1				1			1		1			1					
Texas					1														
Utah	1	1				1	1	1			1	1		1					
Vermont					1														
Virgin Islands					1						1		1						
Virginia					1														
Washington		1					1		1		1			1					
West Virginia		1				1	1	1	1	1	1			1					
Wisconsin					1														
Wyoming					1														
State Total (including Washington D.C.)	10	38	1	5	7	38	29	23	14	4	39	5	21	17					
Territory Total	0	0	1	1	0	0	0	0	0	0	1	0	1	0					
Grand Total	10	38	2	6	7	38	29	23	14	4	40	5	22	17					

Table Continues on Next Page

**State and Other Select Jurisdictional (DC, PR, VI) Statutes
Addressing the Collateral Source Rule**

State	E			F		G			H							I
	Ei	Eii	Eiii	Fi	Fii	Gi	Gii	Giii	Hi	Hii	Hiii	Hiv	Hv	Hvi	Hvii	Ii
Alabama	1				1	1	1									1
Alaska		1			1	1	1	1	1							1
Arizona	1				1	1	1					1	1			
Arkansas																1
California	1				1	1	1				1					1
Colorado		1			1											
Connecticut		1		1		1	1	1	1				1			
Delaware	1				1											1
District of Columbia																1
Florida		1		1	1	1		1	1					1		1
Georgia	1				1	1	1									
Hawaii	1			1										1		1
Idaho		1		1		1	1	1	1							1
Illinois		1			1	1	1	1	1	1						
Indiana	1			1		1	1									1
Iowa	1	1			1	1		1								1
Kansas	1				1			1	1	1						1
Kentucky	1											1		1		
Louisiana																1
Maine			1		1		1								1	1
Maryland		1			1			1			1					
Massachusetts		1		1		1	1	1			1					
Michigan			1		1	1	1			1					1	
Minnesota		1		1		1	1		1					1		1
Mississippi																1
Missouri	1			1												
Montana		1			1	1	1	1	1		1					1
Nebraska		1			1											
Nevada			1	1		1	1		1	1				1		
New Hampshire	1				1	1	1									
New Jersey	1				1											
New Mexico																1
New York	1				1	1	1	1		1						
North Carolina																1
North Dakota		1			1	1	1	1								1
Ohio	1				1	1	1	1	1		1					1
Oklahoma	1			1				1	1							1
Oregon			1		1	1	1		1	1						
Pennsylvania	1			1		1	1	1	1	1						1
Puerto Rico																
Rhode Island	1				1	1	1	1			1					1
South Carolina																
South Dakota	1				1	1	1	1	1							1
Tennessee			1		1	1										
Texas																1
Utah		1			1	1	1	1	1					1		1
Vermont																
Virgin Islands	1				1	1	1			1						1
Virginia																
Washington	1			1		1	1				1					1
West Virginia			1		1	1	1		1	1						1
Wisconsin																
Wyoming																
State Total (including Washington D.C.)	20	14	6	12	27	28	26	18	16	9	6	3	2	6	2	29
Territory Total	1	0	0	0	1	1	1	0	0	1	0	0	0	0	0	1
Grand Total	21	14	6	12	28	29	27	18	16	10	6	3	2	6	2	30