

The Collateral Source Rule and Personal-Injury Lawsuits

Presenters:

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What is the Collateral Source Rule?

- An evidentiary rule barring a defendant from introducing evidence that a plaintiff has received benefits or payments from a collateral source independent of the tortfeasor's contribution
- La. Code of Evidence article 409 – Payment of medical and similar expenses
 - “In a civil case, evidence of furnishing or offering or promising to pay expenses or losses occasioned by an injury to person or damage to property is not admissible to prove liability for the injury or damage nor is it admissible to mitigate, reduce, or avoid liability therefor. This Article does not require the exclusion of such evidence when it is offered solely for another purpose, such as to enforce a contract for payment”
- Applies to special damages like medical expenses, lost wages, and lost future earnings



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History of the Rule

- Origination in Common Law
 - *The Propeller Monticello v. Mollison*, 58 U.S. 152 (1854)
 - Holding: Victim's payment from his own third-party insurer did not reduce the tortfeasor's liability for damages caused by the tortfeasor
 - Reason: it would be unfair to reduce tortfeasor's liability only because the victim had the foresight to obtain insurance from an independent source
- Louisiana
 - *Gunter v. Lord*, 140 So. 2d 11 (La. 1962)
 - Court recognized the Rule but did not apply it
 - Plaintiff sought medical expenses under a general liability provision of tortfeasor's policy after being paid under medical payments provision of the same policy
 - Distinguished this from payments by plaintiff's own insurance
- La. Code of Evidence article 409 enacted in 1989



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Policy Goals

- Tort deterrence
 - Tortfeasor should not profit from victim's prudence in obtaining insurance or benefitting from other sources
 - Reducing the amount the tortfeasor would have to pay hampers the deterrent effect of the law
- Avoiding double recovery for plaintiff
- Determined on a case-by-case basis in light of these goals, with tort deterrence as the primary goal



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Private Health Insurance

- Most common application
- Evidence of payments by personal health insurer is inadmissible
- Write-offs
 - *Griffin v. La. Sheriff's Auto Risk Ass'n*, 1999-2944 (La. App. 1 Cir. 6/22/01); 802 So. 2d 691.
 - Plaintiff can recover write-off amounts
 - No windfall because plaintiff paid premiums and diminished his patrimony



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Medicaid Write-Offs/Reductions

- *Bozeman v. State*, 879 So. 2d 692 (La. 2004)
 - Facts
 - Widow sued DOTD for husband's death claiming a road was defective
 - Claims submitted to Medicaid for husband's treatment were \$622,086.89
 - Medicaid actually paid \$319,838.46 and denied \$35,368.51
 - Providers wrote-off remaining balance of \$266,879.92
 - Holding
 - Tort victim cannot recover write-off amount because Medicaid is a free medical service for which a person pays no enrollment fee, has no wages deducted, and otherwise provides no consideration for



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Medicare

- La. Supreme Court has not directly addressed this issue
- Split in La. Courts of Appeal
 - *Suhor v. Lagasse*, 2000-1628 (La. App. 4 Cir. 9/13/00); 770 So. 2d 422
 - Plaintiff cannot recover amount of Medicare write-offs
 - Before the La. Supreme Court decided *Bozeman*
 - All other circuits have held that rule applies
 - Medicare is a form of insurance for which the insured pays premiums and his patrimony is diminished
- Plaintiff must reimburse Medicare the expenses paid for treatment (42 U.S.C. 1395y(b))



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Attorney-Negotiated Write-Offs and Discounts

- *Hoffman v. 21st Century N.A. Ins. Co.*, 299 So. 3d 702 (La. 2015)
 - First impression for La. Supreme Court
 - Rear-end accident; Judge found defendant 100% at fault and awarded plaintiff \$4,500 in general damages and \$2,478 in medical expenses
 - Plaintiff appealed the award for medical expenses, arguing that he introduced evidence showing \$4,528 in past medical expenses
 - Medical records showed charges for two MRIs was \$3,000, that plaintiff's attorney paid \$950, and an "adjustment" amount of \$2050
 - Plaintiff did not actually incur the written-off charges and suffered no diminution in his patrimony to obtain write-off, so collateral source rule does not apply
 - Award for medical expenses affirmed



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Plaintiff-Negotiated Discounts

- *Lockett v. UV Ins. Risk Retention Group, Inc.*, 15-166 (La. App. 5 Cir. 11/19/15); 180 So. 3d 557
 - Facts: Medical bills were \$55,146.70, but Plaintiff personally paid only \$13,786.66 and provider wrote-off the balance
 - Holding: a Plaintiff who personally negotiates with a medical provider to reduce his bills diminishes his patrimony and is entitled to the full cost of the medical expenses, including the written-off amount
 - Defendant should not benefit from a plaintiff who bargains with a medical provider



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Free Medical Services

- *Johnson v. Neill Corp.*, 15-0430 (La. App. 1 Cir. 12/23/15), 2015 WL 9464625 (unpublished), writs denied, 16-0137, 16-0147 (La. 3/14/16), 189 So.3d 1070.
 - Facts: plaintiff (a medical doctor) was a partner and shareholder of Baton Rouge Clinic and received free medical treatment (billed at \$107,000) at her clinic for the injuries she sustained from a Swedish massage.
 - Plaintiff's Clinic did not charge doctors or their family members for treatment
 - Holding: plaintiff suffered a diminution in her patrimony because she had rendered the same services to other physicians and their families and obligated herself to provide this treatment without payment as part of the prevalent practice in her clinic and within the medical community in Baton Rouge.
 - The First Circuit Court of Appeal affirmed the trial court's ruling that the collateral source rule applied



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Louisiana Insurance Guaranty Association (LIGA)

- *Anderson v. Gutierrez-Cruz*, 2015-00611 (Civil District Court 10/24/18)
 - Tortfeasor was insured by Affirmative Insurance, which was declared insolvent after the accident. LIGA law applied.
 - Plaintiffs did not submit accident-related medical bills to Medicaid
 - LIGA is entitled to a statutory credit against medical expenses for Medicaid-eligible claimants. La. R.S. 22:2062
 - If an expense could be submitted through Medicaid, LIGA law does not permit recovery

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Workers' Compensation

- *Simmons v. Cornerstone Investments, LLC, et al.*, 2018-CC-0735 (La. 5/8/19)
 - Plaintiff injured at work by a defective roll-up bay door and sued the building owner
 - Plaintiff's medical bills totaled \$24,435 but were reduced to \$18,435 under the La. Workers' Compensation Act Medical Reimbursement Schedule - \$6,000 write-off amount at issue
 - Trial court granted Defendant's motion in limine to exclude evidence of write-off amount, and Third Circuit denied writs
 - "The 'written off' amount...is a phantom charge that Plaintiff has not ever paid nor one he will ever be obligated to pay."
 - Plaintiff's patrimony was not diminished when he did not actually incur these fictional expenses
 - Holding: collateral source rule does not apply to write-off amount

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Medical Finance Contracts

- *McCloskey v. Higman Barge Lines, Inc.*, 2018-1008 (La. App. 4 Cir. 4/11/19)
 - Affirmed trial court's conclusion that a Diagnostic Management Affiliates contract with Plaintiff was a collateral source and that Plaintiff could recover the total billed amount of medical expenses
 - According to DMA's website, they provide long-term payment options so attorneys don't have to use their own money – frees up cash flow and allows attorneys to accept more cases
 - No markups, no payments until case settles, interest-free
 - DMA has agreements with radiologists, neurosurgeons, and orthopedists and handles scheduling procedures, notifying client of appointments, and sending medical records to attorney

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Medical Finance Contracts

- *Williams v. IQS Ins. Risk Retention*, 2:18-cv-02472 (USDC-EDLA 2/25/19)
 - *Erie* guess as to whether collateral source rule applies to medical funding companies
 - Plaintiff's attorney contracted with a litigation funding company that engages medical providers to render services as pre-negotiated discount rates to litigants in personal injury lawsuits
 - Plaintiff filed a motion in limine to prevent Defendant from referencing how the medical bills were paid or that any medical charges were not owed
 - Holding: Plaintiff suffered no diminution in patrimony to obtain these discounted payments, so collateral source rule does not apply
 - But evidence of the funding mechanism inadmissible – irrelevant, confusing, and unfairly prejudicial under Fed. R. Evid. 401 -403.

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House Bill No. 372 – Omnibus Premium Reduction Act of 2019 2019 Regular Session

- Goal = “achieve a significant reduction in the premium rate of motor vehicle insurance by legislation in regard not only to specific motor vehicle accidents and insurance suits, but also to civil law issues of general applicability.”
- Among changes to prescriptive period and jury threshold, it sought to prohibit the court from awarding a plaintiff the amount of medical expenses reduced or paid by a collateral source
- “In cases where a plaintiff's medical expenses have been paid by a health insurance company or Medicare, the plaintiff's recovery of medical expenses is limited to the amount actually paid to the healthcare provider by the insurer or Medicare, and not the amount billed.”
- “If plaintiff does not submit bills to an available health insurer or Medicare for payment, recovery is limited to the amount that would have been paid if the bills had been submitted.”
- Passed the House, but failed in Senate Judiciary Committee



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Medicaid Recovery Caseload by Parish

P.O. Box 3558
 Baton Rouge, LA 70821-3558
 Telephone: 225-342-8662
 Main Fax: 225-342-1376
 Tax ID: #72-6011595

Effective August 24, 2018
****All Estate Recovery and Recipient Recovery Requests should be sent to Gwendolyn Jonisz.****
 (Messages in RED)

Parish	Case Manager	Parish	Case Manager
1 Acadia	Brittany Jackson	34 Morehouse	Joyce Kelly
2 Allen	Joyce Kelly	35 Natchitoches	Joyce Kelly
3 Assumption	Brittany Jackson	36 Orleans	Brittany Jackson
4 Assumption	Brittany Jackson	37 Ouachita	Joyce Kelly
5 Avoyelles	Joyce Kelly	38 Plaquemines	Anne Watson
6 Beauregard	Brittany Jackson	39 St. John	Brittany Jackson
7 Bienville	Brittany Jackson	40 Rapides	Brittany Jackson
8 Bossier	Joyce Kelly	41 Red River	Anne Watson
9 Calcasieu	Joyce Kelly	42 Richland	Joyce Kelly
10 Calcasieu	Anne Watson	43 Sabine	Joyce Kelly
11 Caldwell	Joyce Kelly	44 St. Bernard	Brittany Jackson
12 Cameron	Brittany Jackson	45 St. Charles	Brittany Jackson
13 Canhaoula	Brittany Jackson	46 St. Helena	Brittany Jackson
14 Calumet	Brittany Jackson	47 St. James	Joyce Kelly
15 Concordia	Joyce Kelly	48 St. John	Anne Watson
16 DeCade	Joyce Kelly	49 St. Landry	Stacey Jackson
17 East Baton Rouge	Stacey Jackson	50 St. Martin	Joyce Kelly
18 East Carroll	Joyce Kelly	51 St. Mary	Joyce Kelly
19 East Feliciana	Anne Watson	52 St. Tammany	Anne Watson
20 Evangeline	Joyce Kelly	53 Tangipahoa	Stacey Jackson
21 Franklin	Brittany Jackson	54 Terrestre	Brittany Jackson
22 Grant	Joyce Kelly	55 Terrebonne	Anne Watson
23 Iberia	Brittany Jackson	56 Union	Joyce Kelly
24 Iberia	Joyce Kelly	57 Vermilion	Anne Watson
25 Jackson	Brittany Jackson	58 W. Jefferson	Joyce Kelly
26 West Jefferson	Joyce Kelly	59 Washington	Joyce Kelly
27 Jefferson Davis	Joyce Kelly	60 Westmoreland	Anne Watson
28 Lafayette	Anne Watson	61 West Baton Rouge	Joyce Kelly
29 Lafourche	Brittany Jackson	62 West Carroll	Brittany Jackson
30 LaSalle	Joyce Kelly	63 West Feliciana	Brittany Jackson
31 Lincoln	Joyce Kelly	64 Winn	Joyce Kelly
32 Livingston	Joyce Kelly	65 East Jefferson	Brittany Jackson
33 Madison	Brittany Jackson	66 Natchitoches	Brittany Jackson

Phone/Fax	E-mail Address
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Anne Watson 342-4870/340-2769	anne.watson@lsr.state.la.gov

9/19/2018

HEALTHY LOUISIANA (N/A BAYOU HEALTH)—Contact Information—TPL Requests

Plan Name	Contact	Address	Telephone	Fax	Email
Aetna Better Health of Louisiana	First Recovery Group	26209 Northwestern Hwy, Ste. 250, Southfield, MI 48033	855-606-0626	248-443-4804	tblrcrb@firstrecovery.com tblrcrb@firstrecovery.com (only if sent via a secure email)
Healthy Blue	Healthy Blue	P.O. Box 13216, Green Bay, WI 54307	888-332-8887	888-363-0717 Dedicated to Louisiana Claims OR 920-662-8340 you must identify this is a "Louisiana Claim"	tblrcrb@healthyblue.com (only if sent via a secure email)
Amerihealth Caritas Louisiana	Discovery Health Partners	Two France Place, Suite 1800, Itasca, IL 60143	866-401-6061	866-297-1112	tblrcrb@discoveryhealthpartners.com
Louisiana Healthcare Connections	The Rawlings Group, Subrogation Division	P.O. Box 2000 LaGrange, KY 40031-2000	CALL CENTER: 888-285-1278	503-753-7084 ATTEN: Manual File Coordinator	tblrcrb@rawlings.com (only if sent via a secure email)
United Healthcare of Louisiana	OPTUM	11020 Optum Circle, Eden Prairie, MN 55344	800-655-4021	800-842-8810	tblrcrb@ncefrca@optum.com

Revised:
 06/10/2018 Healthy Louisiana
 06/10/2018 Louisiana Healthcare Connections
 11/07/2018 Louisiana Healthcare Connections
 06/10/2017 Groupwise name changed to Health Blue

Medicare Website:
<https://www.cob.cms.hhs.gov/MSPRP/>