

# CHAPTER 4: THE COLLATERAL SOURCE RULE

## OVERVIEW OF THE COLLATERAL SOURCE RULE

The collateral source rule prevents defendants in tort cases from introducing evidence that a source independent of the defendant has provided payments or benefits to the injured party. *Taylor v. S. Pac. Transp. Co.*, 130 Ariz. 516, 519, 637 P.2d 726, 729 (1981); RESTATEMENT (SECOND) OF TORTS § 920A(2). This means that the defendant cannot get credit for payments the plaintiff has received from another source (such as an insurer), even if those payments covered all or part of the harm for which the defendant is liable. *Taylor*, 130 Ariz. at 519, 637 P.2d at 729. A defendant cannot argue that a plaintiff has already been made whole for his losses by his own insurance company. *Michael v. Cole*, 122 Ariz. 450, 595 P.2d 995 (1979).

## RATIONALE FOR THE COLLATERAL SOURCE RULE

The reasoning behind the collateral source rule is that a tortfeasor should not escape liability simply because the injured party purchased insurance. *Taylor*, 130 Ariz. at 519, 637 P.2d at 729; *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198, 202, 129 P.3d 487, 491 (Ct. App. 2006).

The collateral source rule addresses the competing goals of ensuring that a tortfeasor pays only that amount to the plaintiff to make him whole, and ensuring that the tortfeasor pays for his wrong and is not advantaged by the happenstance that the plaintiff has another source of reimbursement. The collateral source rule favors the injured party and ensures that the tortfeasor does not escape liability, even if that means the injured party is allowed to recover twice. *Lopez*, 212 Ariz. at 202, 129 P.3d at 491. In other words, when an injured party receives compensation from another source, either the victim or the tortfeasor will receive a windfall, and Arizona law favors providing the victim with that windfall. *Id.*

## APPLICATION OF THE COLLATERAL SOURCE RULE IN ARIZONA

For the collateral source rule to apply, the compensation paid to a plaintiff must be fully independent of the defendant. *Burrington v. Gila County*, 159 Ariz. 320, 325–26, 767 P.2d 43, 48–49 (Ct. App. 1988). The most common application of the collateral source rule occurs when an injured plaintiff recovers insurance benefits for an injury and is also allowed to recover that amount from the tortfeasor who caused the injury. *Taylor*, 130 Ariz. at 519, 637 P.2d at 729. Because the defendant had nothing to do with the plaintiff's decision to purchase insurance, the defendant cannot benefit from that decision and remains liable for the full amount of damages caused by his tortious conduct.

The collateral source rule also prevents a defendant in a wrongful death action from showing that the plaintiff has remarried and that his new spouse is able to make the same contributions to the plaintiff's life as the deceased spouse. *Taylor*, 130 Ariz. at 519, 637 P.2d at 729. The court reasons that allowing evidence of a remarriage might have the undesired effect of discouraging wrongful death plaintiffs from remarrying until after the lawsuit is settled. *Id.*

The collateral source rule allows a plaintiff to claim as damages the full billed amount of the medical services he received, even if his health care provider accepted a reduced amount for those services pursuant to an agreement with the plaintiff's health insurer. **Lopez**, 212 Ariz. at 198, 129 P.3d at 487. The defendant cannot admit evidence that neither the plaintiff nor his health insurer would ever have to pay the full billed amount. This serves the fundamental purpose of the collateral source rule – to prevent a tortfeasor from deriving any benefit from compensation or indemnity that an injured party has received from a collateral source.

The collateral source rule also allows a victim to seek recovery from a tortfeasor for medical expenses that the government has paid. **Sw. Fiduciary, Inc. v. Arizona Health Care Cost Containment Sys. Admin.**, 226 Ariz. 404, 409, 249 P.3d 1104, 1109 (Ct. App. 2011).

In claims for lost wages, the collateral source rule prevents the defendant from showing that the plaintiff has received unemployment compensation and similar benefits. **Fleming v. Pima County**, 141 Ariz. 149, 155, 685 P.2d 1301, 1307 (1984); **Hall v. Olague**, 119 Ariz. 73, 74, 579 P.2d 577, 578 (Ct. App. 1978).

## EXCEPTIONS TO THE COLLATERAL SOURCE RULE

### Contract Claims

The collateral source rule does not apply to “ordinary” breach of contract claims. **Norwest Bank (Minnesota), N.A. v. Symington**, 197 Ariz. 181, 189, 3 P.3d 1101, 1109 (Ct. App. 2000). This is because the law of contracts prevents parties from profiting more from the breach of an obligation than from its full performance. *Id.* Allowing a plaintiff to recover damages from a collateral source and from the defendant would lead to the plaintiff profiting more from the breach than from the contract's full performance. *Id.*

However, in **Munic Enterprises, Inc. v. Laos**, 235 Ariz. 12, 326 P.3d 279 (Ct. App. 2014), the Arizona court of appeals held that the collateral source rule can be applied in contract cases that involve a “willful or tortious character.” In *Munic*, the trial court found that the defendant borrowers intentionally misrepresented the amount and status of their assets offered as collateral for the purpose of obtaining a loan. *Id.* at 20, 326 P.3d at 287. Judgment was entered against them and in favor of the lender. The Court of Appeals upheld the application of the collateral source rule to preclude the borrowers from claiming an offset for money the lender had received in settling a malpractice claim against its lawyer in connection with his work on the loan. *See id.*

### Tortfeasor's Insurer

The defendant's insurance is not a collateral source because it is not fully independent of the defendant; therefore, payments the defendant (through his insurer) made to the plaintiff are admissible. **Bustos v. W.M. Grace Dev.**, 192 Ariz. 396, 399, 966 P.2d 1000, 1003 (Ct. App. 1997).

## Medical Malpractice Claims

The Legislature has created an exception to the collateral source rule for medical malpractice cases. A.R.S. § 12-565 provides that a defendant in a medical malpractice action may introduce evidence of payments the plaintiff has received or will receive from a source independent of the defendant. If a defendant chooses to introduce this evidence, the plaintiff may introduce evidence of any payments plaintiff made to secure his right the payments or benefits. Plaintiff may also show that his tort recovery will be subject to a lien; that the plaintiff is legally obligated to reimburse the provider of the payments; or that the provider of the payments or benefits has a right of subrogation to the rights of the plaintiff in the medical malpractice action.

The purpose of this exception is to help medical professionals obtain insurance coverage at reasonable rates, by eliminating double or triple recovery by medical malpractice plaintiffs. By reducing the amount insurers are required to pay out in lawsuits, the exception allows insurers to provide lower malpractice premiums. *Eastin v. Broomfield*, 116 Ariz. 576, 585, 570 P.2d 744, 753 (1977). In *Eastin*, the Arizona Supreme Court held this exception to the collateral source rule constitutional. *Id.* at 585, 570 P.2d at 753.

---

*If you have questions regarding the information in this chapter, please contact the author or any JSH attorney.*

### CONTRIBUTING AUTHOR:



**DOUGLAS CULLINS, PARTNER** Doug represents all manner of medical service providers in the areas of medical malpractice, nursing home and pharmacy defense, and commercial litigation. [dcullins@jshfirm.com](mailto:dcullins@jshfirm.com) | 602.263.7386 | [jshfirm.com/dcullins](http://jshfirm.com/dcullins)