

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1151

S.P. 434

In Senate, April 12, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

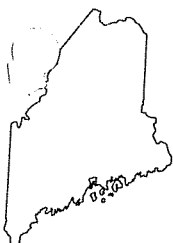
Presented by Senator TWITCHELL of Oxford.

Cosponsored by Representative MacBRIDE of Presque Isle, Representative NUTTING of Leeds and Senator HOLLOWAY of Lincoln.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Amend the Common Law Collateral Source Rule in Medical Professional Liability Cases.



1 **Be it enacted by the People of the State of Maine as follows:**

3 **24 MRSA §2906** is enacted to read:

5 **§2906. Collateral sources**

7 **1. Definitions. As used in this section, unless the**
9 **context indicates otherwise, the following words have the**
11 **following meanings.**

11 **A. "Claimant" means any person who brings a personal**
13 **injury action and, if such an action is brought through**
15 **or on behalf of an estate, the term includes the**
17 **decedent or, if such an action is brought through or on**
19 **behalf of a minor, the term includes the minor's parent**
21 **or guardian.**

17 **B. "Collateral source" means a benefit paid or payable**
19 **to the claimant or on the claimant's behalf under, from**
21 **or pursuant to:**

21 **(1) The United States Social Security Act;**

23 **(2) Any state or federal income replacement,**
25 **disability, workers' compensation or other act**
27 **designed to provide partial or full wage or income**
29 **replacement;**

29 **(3) Any accident, health or sickness, income or**
31 **wage replacement insurance, income disability**
33 **insurance, casualty or property insurance,**
35 **including automobile accident and homeowner's**
37 **insurance benefits, or any other insurance**
39 **benefits, except life insurance benefits;**

35 **(4) Any contract or agreement of any group,**
37 **organization, partnership or corporation to**
39 **provide, pay for or reimburse the cost of medical,**
41 **hospital, dental or other health care services or**
43 **provide similar benefits; or**

41 **(5) Any contractual or voluntary wage**
43 **continuation plan, or payments made pursuant to**
45 **such a plan, provided by an employer or otherwise,**
47 **or any other system intended to provide wages**
49 **during a period of disability.**

47 **C. "Damages" means economic losses paid or payable by**
49 **collateral sources for wage losses, medical costs,**
51 **rehabilitation costs, services and other out-of-pocket**

1 costs incurred by or on behalf of a claimant for which
2 that party is claiming recovery through a tort suit.

3
4 2. Collateral source payment reductions. In all
5 actions for professional negligence, as defined in section
6 2502, evidence to establish that the plaintiff's expense of
7 medical care, rehabilitation services, loss of earnings,
8 loss of earning capacity or other economic loss was paid or
9 is payable, in whole or in part, by a collateral source
10 shall be admissible to the court in which the action is
11 brought after a verdict for the plaintiff and before a
12 judgment is entered on the verdict. Subject to subsection
13 4, if the court determines that all or part of the
14 plaintiff's expense or loss has been paid or is payable by a
15 collateral source, the court shall reduce that portion of
16 the judgment which represents damages paid or payable by a
17 collateral source. This reduction shall not exceed the
18 amount of the judgment for economic loss or that portion of
19 the verdict which represents damages paid or payable by a
20 collateral source.

21
22 3. Notice of verdict required. Within 10 days after a
23 verdict for the plaintiff, the plaintiff's attorney shall
24 send notice of the verdict by registered mail to all persons
25 entitled by contract or law to a lien against the proceeds
26 of the plaintiff's recovery. If a lienholder does not
27 exercise the lienholder's right to subrogation within 20
28 days after receipt of the notice of the verdict, the
29 lienholder shall lose the right of subrogation. This
30 subsection shall only apply to contracts executed or renewed
31 on or after the effective date of this section.

32
33 4. Preexisting obligation required. For purposes of
34 this section, benefits from a collateral source shall not be
35 considered payable or receivable unless the court makes a
36 determination that there is a previously existing
37 contractual or statutory obligation on the part of the
38 collateral source to pay the benefits.

39 STATEMENT OF FACT

40
41
42 Under Maine case law, if a plaintiff is compensated in
43 whole or in part for damages by some source independent of
44 the defendant, the plaintiff is still permitted to recover
45 the same damages against the defendant. Unless a right of
46 subrogation exists on behalf of the person, company or
47 agency making the collateral payment, a double recovery

1 takes place, thereby giving the plaintiff a windfall.
2 Evidence of the collateral source payment is not admissible
3 at trial. Nearly 40 states have chosen to change the
4 common-law rule and either permit the jury to hear evidence
5 of the collateral source payment or require the judge, after
6 verdict, to automatically decrease the verdict by the amount
7 of any collateral source payment. This bill takes the
8 latter approach.

9
10 The bill does not reduce the recovery if a contractual
11 or statutory lien exists on the proceeds, as long as the
12 lien is exercised in a timely fashion. Therefore, the bill
13 effectively only reduces a plaintiff's damages when those
14 damages have already been paid by a 3rd party and when that
15 3rd party is not seeking to recover what was paid.

16
17 Actuaries have predicted a savings in medical
18 malpractice insurance premium costs of 3% to 10% if
19 collateral source reductions are required.