



**TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
JUDICIARY COMMITTEE
Monday, March 18, 2019**

SB 969, An Act Concerning The Reduction Of Economic Damages In A Personal Injury Or Wrongful Death Action For Collateral Source Payments

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **SB 969, An Act Concerning The Reduction Of Economic Damages In A Personal Injury Or Wrongful Death Action For Collateral Source Payments**. CHA supports the bill.

Before commenting on the bill, it is important to point out that Connecticut hospitals and health systems provide high quality care for everyone, regardless of their ability to pay. By investing in the future of Connecticut's hospitals, we will strengthen our healthcare system and our economy, put communities to work, and deliver affordable care that Connecticut families deserve.

SB 969 will correct a technical flaw in § 52-225a of the Connecticut General Statutes regarding the reduction of collateral source payments in personal injury or wrongful death cases when there was right of subrogation but some or all of the subrogation right has been resolved. This legislative correction will restore fundamental fairness to the collateral source payment reduction rules applied by courts.

The mechanics of collateral source payments work this way: current law is designed to allow for a reduction in an amount to be paid to a plaintiff when another party outside of the lawsuit (a "collateral source") has actually paid the damages claimed or listed. The common situation when collateral source comes into play is when insurance covers some or all of a plaintiff's medical bills. For example, a plaintiff had treatment after an accident and the treatment bills totaled \$10,000, of which insurance covered \$9,500. The plaintiff's realized damages were really \$500, but a trier of fact, often a jury, sees only the full \$10,000 amount when examining evidence and determining damages. (Evidence rules are such that the jury does not learn about the insurance coverage and would not know how much the plaintiff paid or had paid by insurance.)

To avoid defendants overpaying for costs and damages that plaintiffs did not actually incur, the collateral source rule as set forth in §52-225a creates a process by which the court can deduct collateral source payments, reducing the total amount a defendant is required to pay a plaintiff. This concept of collateral source reduction promotes fundamental fairness, and is neither controversial nor at issue in SB 969.

SB 969 targets a flaw in one of the more intricate nuances of the collateral source payment law; namely, when there is “a right to subrogation.” A right to subrogation is when a third party (collateral source, such as an insurer) has a right to force the plaintiff to repay that same third party. Section 52-225a seeks to achieve fairness in these circumstances by eliminating the collateral source reduction for amounts that a plaintiff may still need to repay to the third-party source. That is a fair concept and seeks to ensure that plaintiffs are reimbursed for their actual, out-of-pocket losses.

Unfortunately, current law fails to address specifically what happens when the plaintiff and third party have agreed to a smaller amount in settlement of the third party’s subrogation claim. Returning to the example set forth above, assume that the collateral source (insurer) has paid \$9,500 to the plaintiff, and subsequently agreed to accept \$1,000 to satisfy its subrogation claim. Under current law, there can be no reduction (\$0.00) in the amount to be paid by the defendant to the plaintiff under the collateral source rule, even though fairness and logic dictate that the amount should be reduced by the \$8,500 already paid by the insurer to the plaintiff.

This often, if not always, results in a windfall or double recovery for the plaintiff. The plaintiff will incur out-of-pocket expenses totaling \$1,500 (the \$500 they originally paid and the \$1,000 they will pay to the insurer to settle the subrogation claim), but will be allowed to recover a full \$10,000 from the defendant, resulting in a windfall of \$8,500.

This is neither a fair outcome nor a logical result. We do not believe that the interpretation of the law reflects the intentions of the legislature. But, the Connecticut Supreme Court, in *Marciano v. Jiminez*, 324 Conn. 70 (2016), ruled that the legislature should have been more explicit if it wanted courts to apply that level of fairness, and went on to point out that what the legislature intends is of little or no consequence. Rather, the Supreme Court admonished that the exact words of the statute are what count, and that the legislature would have needed to use “restrictive and qualifying language” to have the intended effect. The Court found such language was missing from Section 52-225a. SB 969 contains that missing language.

Passing SB 969 will restore the fundamental fairness that Section 52-225a was originally designed to provide.

Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.