

## Feature Article

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# Collateral Source Rule Bars Set Off of Underinsured Motorist Benefits

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In *Stanford v. City of Flora*, 2018 IL App (5th) 160115, the Illinois Appellate Court, Fifth District, confirms that defendants in a tort action are not entitled to set off/credit for benefits received by plaintiff from underinsured motorist benefits received from plaintiff's automobile insurance policy.

### Underlying Facts

This lawsuit revolves around a personal injury claim. Plaintiff was participating in an annual Halloween parade organized by the City of Flora. Plaintiff's antique tractor was the last vehicle in the parade. Plaintiff was standing beside his tractor when a vehicle driven by Curt Jordan collided with the rear of the antique tractor. *Stanford v. City of Flora*, 2018 IL App (5th) 160115, ¶ 3.

Jordan was insured by Geico Indemnity Company (Geico). Geico tendered \$20,000 to plaintiff pursuant to a Release and settlement agreement. Plaintiff filed an underinsured motorist claim with State Farm Mutual Automobile Insurance Company (State Farm), his insurer. State Farm tendered \$280,000 to plaintiff pursuant to that claim. *Stanford*, 2018 IL App (5th) 160115, ¶ 3.

Subsequently, plaintiff and his wife filed suit against the City of Flora and the Flora Chamber of Commerce asserting negligence, willful and wanton conduct and loss of consortium. *Id.* at ¶ 4. The City of Flora and the Chamber filed Affirmative Defenses asserting a right of set off of \$311,000 against any judgment the plaintiff might receive based upon plaintiff's receipt of \$20,000 from Geico, \$280,000 from State Farm via the underinsured motorist policy, \$10,000 from State Farm via medical payments made from the automobile policy and based upon plaintiff's alleged receipt of \$1,000 from a victim's advocacy fund. *Id.* ¶ 6.

The Chamber further asserted that the \$311,000 received by plaintiff "is in full satisfaction of any and all claim that [plaintiff has] against [the Chamber], and would act as a set off and bar of any judgment claimed that plaintiff has against this defendant." *Id.*

Plaintiff filed a Motion to Strike the Chamber's Affirmative Defenses and asserted that the collateral source rule prevented benefits received by an injured party from a source wholly independent in collateral to the tortfeasor from diminishing damages otherwise recoverable from the tortfeasor. The trial court denied plaintiff's Motion to Strike the Chamber's Affirmative Defenses regarding set off. *Id.* ¶ 8. Subsequent to a jury verdict being entered, the court granted the Chamber's Motion for Set Off for both the sum of \$20,000 paid by Geico and the sum of \$280,000 paid by State Farm. *Id.* ¶ 11.

## The Collateral Source Rule and its Application

Under the collateral source rule, benefits that an injured party receives from a source completely independent and collateral to the tortfeasor will not diminish damages otherwise recoverable from that tortfeasor. Although these benefits are received by the injured party due to the injury in question, they cannot be credited against a tortfeasor's liability even though they may cover all or part of the harm for which the tortfeasor is liable. *Id.* ¶ 15. The rule denies the tortfeasor any corresponding credit or offset for said benefits. Essentially, the benefits reduce the Plaintiff's loss but do not reduce a Defendant's tort liability. *Id.* ¶ 16.

The collateral source rule has both evidentiary and substantive effects. The rule prevents a jury from learning anything about the collateral source (*i.e.*, extraneous benefits received), thus, providing a rule of evidence at trial. The rule also prohibits a defendant from reducing a plaintiff's compensatory award by the amount the plaintiff received from the collateral source thus providing a substantive rule governing damages. *Id.* ¶ 17.

Illinois law is well settled that damages recovered by a plaintiff from the defendant are not decreased by the amount the plaintiff has received from insurance proceeds (a collateral source) where the defendant did not contribute to the payment of insurance premiums. *Id.* ¶ 18. The underlying justification for this rule is that the wrongdoer should not benefit from the expenditures made by the injured party or take advantage of contracts or other relationships that may exist between injured parties and third persons. *Id.*

In the case at bar, the plaintiff received the benefit of payment under his underinsured motorist policy with State Farm wherein he received \$280,000 due to the accident at issue in the case. The plaintiff received a benefit bargained for and provided by plaintiff for plaintiff's own benefit. The payment was not made by or on behalf of the tortfeasor. Thus, State Farm was a third party source wholly independent and collateral to the tortfeasor and the collateral source rule applied.

Hence, the defendant, the Chamber of Commerce, was not entitled to any corresponding set off or credit for the monies paid to plaintiff via the underinsured motorist policy and those payments cannot be utilized to reduce the Chamber's tort liability to the plaintiff. *Id.* ¶ 19. There was no argument presented regarding the \$20,000 paid by Geico. These monies would have been contributed by a joint tortfeasor and certainly defendant was entitled to set off of these proceeds against the jury verdict.

The appellate court reversed the ruling of the trial, and found that the Chamber of Commerce was not entitled to set off of the \$280,000 from plaintiff's underlying insurance policy.

## Impact of Case

Generally, a plaintiff may only have one satisfaction/recovery for an injury. *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 159 Ill. 2d 137, 172 (1994). In the case at bar, plaintiff certainly seems to be able to pursue double recovery for his injuries; however, the *Stanford* court clearly notes that the collateral source rule is an exception to the policy against double recovery. *Stanford*, 2018 IL App (5th) 160115, ¶ 24.

In cases involving multiple tortfeasors, it will certainly pay to be cognizant of and investigate any and all potential recoveries that the injured party has received or may receive from other sources. Monies paid by a separate tortfeasor



will most certainly allow for set off against any jury verdict rendered in the case. Monies or benefits received by the injured party from insurance proceeds procured by the injured party will not allow for such a set off.

Having a proper understanding of the collateral source rule and its effect on underinsured motorist claims and related benefits received by an injured party will certainly help personal injury plaintiffs, and defense attorneys along with insurance adjusters and claims representatives in accurately evaluating the value of a personal injury claim and exposures at trial.

Claims representatives and defense counsel should certainly investigate any benefits received by plaintiff to determine if there is a plausible basis to pursue set off. This will not only protect the defendant at the close of trial, but also provide a strong bargaining tool during settlement negotiations.

In practice, plaintiff's counsel will often object to production of information pertaining to benefits a plaintiff has received under the collateral source rule. The author believes that the aforementioned case law can be utilized to force plaintiff to produce information regarding any benefits already received regardless of whether the collateral source rule may bar the benefits from reducing any award or from evidence at trial. The argument to present in this case is that the discovery process allows for production of any and all information that may lead to discoverable material. Hence, in Illinois the discoverability of information is much wider than the admissibility of information at trial.

Counsel will need to argue that they are entitled to production of this information to fully evaluate the viability of plaintiff's claim, whether lien/subrogation interests may be applicable to the claim and whether a set off is allowed for benefits received. The assertion will need to be supported by the position that the information may or may not be admissible at trial and that decision can be made by the court at a later date. The defendant is only seeking, at the time of discovery, the right to determine whether the benefits received might be utilized for set off at trial or whether they are, in fact, barred under the collateral source rule.

### About the Author

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