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WEAKENING THE COLLATERAL SOURCE RULE – DANGEROUS AND UNWISE

The collateral source rule prevents a wrongdoer from reducing its financial responsibility for the injuries it causes by the amount an injured party receives (or could later receive) from outside sources.

- ❖ Payments from outside sources means those unrelated to the wrongdoer, like health or disability insurance, for which the injured party has already paid premiums or taxes.
- ❖ The collateral source rule also prevents juries from learning about such collateral payments, so as not to unfairly influence with verdict.

Government benefits received by an injured victim should not be manipulated to benefit wrongdoers who produce injury.

- ❖ The rule's premise is that the wrongdoer's liability and obligation to compensate should be measured by the harm done and the extent of the injuries inflicted. In this way, the rule helps promote deterrence of unsafe conduct.

Because it weakens the deterrent potential of the civil justice system, repealing the collateral source rule leads to increased deaths and injuries.

- ❖ According to recent paper presented by the Associate Director of the American Enterprise Institute's Liability Project:

[C]ollateral source reform leads to a statistically significant increase in infant mortality.... For whites, the increase is estimated to be between 10.3 and 14.6 additional deaths per 100,000 births. This represents an increase of about 3 percent. For blacks, the collateral source reversal leads to between 47.6 and 72.6 additional deaths per 100,000 births, a percentage increase between 5 and 8 percent. These results suggest that the level of care provided decreases with the passage of collateral source reform." ...

"The relationships we estimate between reform measures and infant mortality rates appear to be causal.... In summary, these results show that collateral source reform leads to increased infant mortality." Jonathan Klick & Thomas Stratmann, "Does Medical Malpractice Reform Help States Retain Physicians and Does It Matter?" (March 8, 2004), presented at American Enterprise Institute forum, "Is Medical Malpractice Reform Good for Your Health?," Sept. 24, 2003, available at http://www.aei.org/events/eventID.614/event_detail.asp