LOUISIANA COLLATERAL SOURCE RULE

Introduction:

Guy walks into a bar and asks "Why would a mediator be concerned with a substantive subject like collateral source?" Bartender says, "because the participants think mediators should be treated like mushrooms – kept in the dark and fed manure". Ba da boom! From that witticism flows this effort:

Origin

The origin of the Collateral Source Rule dates back more than 150 years to the United States Supreme Court's decision in *The Propeller Monticello v. Mollison*, 58 U.S. 152 (1854). There, a steamship, The Propeller Monticello, was in a shipwreck with a schooner, The Northwestern. Both ships were carrying cargo; the schooner, which was insured, sank. The insurance carrier for the schooner paid for the losses sustained, including its cargo. Later, the schooner filed suit against the steamship, seeking to recover the value of the schooner's cargo. As a defense, the steamship argued that the payment by the private insurer effectively released the steamship from liability as it would be unfair to have the schooner collect twice for its cargo-related damages.

The Supreme Court disagreed and for the first time created the Collateral Source Rule, stating: "The contract with the insurer is in the nature of a wager between third parties, with which the trespasser has no concern. The insurer does not stand in the relation of a joint trespasser, so that satisfaction accepted from him shall be a release of others." 58 U.S. at 155. Ultimately, the Supreme Court concluded that the tortfeasor "is bound to make satisfaction for the injury he has done." Id.

In Louisiana, the seminal case is *Gunter v. Lord*, 140 So. 2d 11 (La. 1962), which established the plaintiff's right to fully receive benefits he has paid for (or those benefits paid for on his behalf) and to fully recover those same amounts from the tortfeasor.

Codification of the Rule

Today, the Collateral Source Rule is codified in both the Louisiana Code of Evidence and the Federal Rules of Evidence.

- **LA. CODE EVID. art. 409** provides in pertinent part that "[i]n a civil case, evidence of furnishing or offering or promising to pay expenses or losses occasioned by an injury to person or damage to property is not admissible to prove liability for the injury or damage nor is it admissible to mitigate, reduce, or avoid liability therefor."
- **FED. R. EVID. Rules 407, 408, and 409** are similar and provide for the same Collateral Source Rule.

Jurisprudential statement of the Rule: Today, the prevailing expression of the Collateral Source Rule, and its meaning, is found in *Bozeman v. State*, 879 So. 2d 692 (La. 2004). There, the Louisiana Supreme Court stated: "Under the collateral source rule, a tortfeasor may not benefit,

and an injured plaintiff's tort recovery may not be reduced, because of monies received by the plaintiff from sources independent of the tortfeasor's procuration or contribution." *Id.* at 693.

Theory and Purpose of the Rule: The Collateral Source Rule is most often placed at issue where insurance payments have been made in relation to a tort victim's damages. However, as discussed below, application of the Rule is not confined to tort cases only.

Still, the theory and purpose behind the Collateral Source Rule is best explained in terms of insurance proceeds or benefits in tort cases. That is, courts applying the Rule have emphasized that a tortfeasor should not be allowed to benefit or gain an advantage from a plaintiff's foresight and prudence in securing insurance and other outside benefits. A tortfeasor should pay an "insured" and an "uninsured" victim the same amounts for the damages resulting from the tortfeasor's actions.

Factors Guiding the Application of the Rule

Two primary considerations guide a court's determination with respect to the Collateral Source Rule:

(1) whether application of the Rule will further the major policy goal of tort deterrence; and

(2) whether the victim, by having a collateral source available as a source of recovery, either paid for such benefit or suffered some diminution in his patrimony because of the availability of the benefit, such that no actual windfall or double recovery would result from application of the Rule.

Contractual adjustments or write-offs: In cases involving contractual adjustments or write-offs, the Supreme Court in *Bozeman* instructed that the proper focus of the inquiry should be on the nature of the write offs vis-à-vis the tortfeasor, rather than vis-à-vis the tort victim. Additionally, courts typically ask whether the tort victim "incurred" the total charged amount for services provided. Stated otherwise, is the tort victim liable or legally obligated to pay for expenses exceeding the contractually adjusted, or written-off, amount?

Windfalls or double recovery: The purpose of tort damages is to make the victim whole. This purpose is thwarted, however, when the victim is allowed to recover the same element of damages twice. Nevertheless, the potential for double recovery does not necessarily bar application of the Collateral Source Rule. Thus, where application of the Rule is appropriate, a plaintiff will occasionally have insurance reimbursements for certain elements of damages and recover some of the same elements from the tortfeasor. In such cases, double recovery is justified because the tortfeasor should not receive the benefits of the victim's thrift, employment benefits, or special services rendered by a third party. Rather, in cases where there exists a potential for a double recovery, courts must ensure that the tortfeasor bears only the single burden for his wrong.

The Collateral Source Rule as an Evidentiary Rule

The Collateral Source Rule is not technically an exclusionary rule of evidence. However, where application of the Rule is placed at issue (e.g., whether a jury may be presented evidence of contractual adjustments pursuant to health care insurance), parties typically file a motion in limine regarding introduction of evidence of payments made by the collateral source. *See, e.g., Asbahi v. Beverly Indus., L.L.C.*, 2012 WL 1922300 at *3 (La. App. 1 Cir. 2012) (upholding trial court's exclusion of evidence of amounts written off by health care providers as a result of their contract with tort victim's private medical insurance provider).

The Rule also is incorporated into the Louisiana Code of Evidence as the existence of a source of payment independent of the tortfeasor is not relevant to the question of liability. As stated above, article 409 provides in pertinent part: "[E]vidence of furnishing or offering or

promising to pay expenses or losses occasioned by an injury to person or damage to property is not admissible . . . to mitigate, reduce, or avoid liability therefor." Further, a court may disallow introduction of evidence of collateral benefits because of the resulting prejudice. See, *e.g., Francis v. Brown*, 671 So. 2d 1041, 1046-47 (La. App. 3 Cir. 1996) (holding that trial court erred in allowing plaintiff to be cross-examined as to payment by her counsel of plaintiff's medical costs).

The Collateral Source Rule, as Applied

- **Health care coverage: private insurance, Medicare, and Medicaid**

The Collateral Source Rule is often placed in dispute in cases where a tort victim's medical expenses have been contractually adjusted, or written off, based on the insurer or program's agreement with the participating health care provider. As can be expected, the tort victim typically seeks to recover the full amount of the charged medical expenses, while the tortfeasor seeks a credit for the written-off amounts, arguing that—pursuant to either the provider's contract with the insurer and/or federal or state law—the provider is prohibited from seeking reimbursement of the written-off amount from the tort victim.

On this issue, the Louisiana Supreme Court's 2004 decision in *Bozeman* provides guidance. There, the Court held that a tort victim who is a Medicaid recipient cannot recover Medicaid write-off amounts. However, the holding in *Bozeman* is limited to Medicaid and is not applicable to a plaintiff who receives Medicare or private insurance benefits.

- **Private health insurance**

The Collateral Source Rule applies, and a tortfeasor may not seek a reduction in the damages award for any written-off amounts procured by the tort victim's insurer. See, e.g, *O'Connor v. Litchfield*, 864 So. 2d 234 (La. App. 1 Cir. 2003) (upholding application of Collateral Source Rule where defendant-employer paid plaintiff's entire health care premium as part of plaintiff's employment contract with defendant); *Griffin v. Louisiana Sheriff's Auto Risk Ass'n*, 802 So. 2d 691, 714-15 (La. App. 1 Cir. 2001) (explaining that plaintiff's patrimony was continually diminished to the extent she had to pay premiums in order to secure the benefit of the insurance). Stated otherwise, a tort victim generally is entitled to recover the full amount of his medical expenses. Thus, in *Madrid v. AEP River Operations, LLC*, 151 So. 3d 897, 901-02 (La. App. 4 Cir. 2014), writ granted, 159 So. 3d 1062 (La. 2015), the Fourth Circuit applied the Collateral Source Rule to conclude that the trial court erred when it only held the tortfeasor responsible for the amount of medical expenses paid by the plaintiff's workers' compensation insurer—"a medical benefit personal to the plaintiff"—rather than the full amount of medical expenses incurred by the plaintiff. The appellate court explained that "[s]ources of compensation that have no connection to the tortfeasor are inevitably collateral." See also *Royer v. Louisiana Dept. of Transp. & Dev.*, 210 So. 3d 910, 919-22 (La. App. 3 Cir.) (upholding trial court's denial of DOTD's motion in limine which sought credit for medical bills paid by injured plaintiff's worker's compensation insurer and explaining that the Collateral Source Rule applies to a tortfeasor even if consideration—in the form of policy payments—is non-existent), *writ denied*, 2017 WL 2773876, -- So. 3d -- (La. 2017).

NOTE: Where medical expenses are paid through worker's compensation insurance provided by employer pursuant to Longshore and Harbor Workers' Compensation Act, an injured plaintiff may not recover from third-party tortfeasor for full amount of medical expenses billed but not paid. *Deperrodil v. Bozivic Marine, Inc.*, 842 F.3d 352 (2016).

- **Medicare insurance coverage**

The Louisiana Supreme Court has not squarely addressed the issue whether the Collateral Source Rule applies where a tort victim is insured through Medicare. Following *Bozeman*, the answer is likely: Yes, the Rule applies because Medicare is a form of insurance for which the

insured pays premiums, thereby diminishing the insured's patrimony. Nevertheless, the Louisiana Courts of Appeal are split on the issue.

i. First, Second, Third, and Fifth Circuits – The Rule applies.

- *Ketchum v. Roberts*, 2014 WL 3510694 (La. App. 1 Cir. 2014).
- *Johnson v. CLD, Inc.*, 179 So. 3d 695 (La. App. 2 Cir. 2015).
- *Niles v. American Bankers Ins. Co*., 229 So. 2d 435 (La. App. 3 Cir. 1969).
- *Kozina v. Zeagler*, 646 So. 2d 1217 (La. App. 5 Cir. 1994).

NOTE: The *Kozina* ruling was based on a compromise settlement in which the tortfeasor defendant agreed to pay the plaintiff victim the full amount of medical bills, specifically including the difference between the total medical expenses billed and the amount paid by Medicare. Thus, the Fifth Circuit emphasized that the compromise agreement was the law between the parties. The Fourth Circuit has distinguished *Kozina* on this basis.

ii. Fourth Circuit – The Rule does not apply.

NOTE: These decisions pre-date *Bozeman*.

Suhor v. Lagasse, 770 So. 2d 422 (La. App. 4 Cir. 2000) (holding that Collateral Source Rule did not give a tort victim the right to recover medical expenses extinguished by operation of federal law governing Medicare); *Boutte v. Kelly*, 863 So. 2d 530 (La. App. 4 Cir. 2003) (following the reasoning in *Suhor*). In *Suhor*, the court agreed with the Second Circuit's holding in *Terrell*, infra, that no natural obligation exists for a patient to pay a health care provider amounts written off as a result of the provider's agreement with Medicaid or Medicare. Additionally, the court explained that the plaintiff was not required to diminish her patrimony in order to secure the benefits of the written-off amounts and that instead she was the beneficiary of a mass government benefit. Nevertheless, the plaintiff could recover any co-payments or deductibles.

NOTE: Tort victims must reimburse the Medicare Trust Fund to the extent they are awarded damages for the medical expenses paid by Medicare. 42 U.S.C. § 1395y(b).

- **Medicaid program** ("free medical care")

The Collateral Source Rule does not apply and a tort victim who is a Medicaid recipient may not recover medical expenses that were written off by a health care provider pursuant to the Medicaid program. *Bozeman*, 879 So. 2d 692; *see also Benoit v. Turner Indus. Group, L.L.C.*, 85 So. 3d 629 (La. 2012) (workers' compensation).

In *Bozeman,* the Louisiana Supreme Court discussed the nature of the Medicaid write-off process, explaining: "When an injured plaintiff is a Medicaid recipient, federal and state law require that the health care providers accept as full payment, an amount set by the Medicaid fee schedule, which, invariably, is lower than the amount charged by the health care provider." The Court then concluded that a plaintiff in a tort action could not recover as damages those medical expenses written off under the Medicaid program, explaining: "Care of the nation's poor is an admirable social policy. However, where the plaintiff pays no enrollment fee, has no wages deducted, and otherwise provides no consideration for the collateral source benefits he receives, we hold that the plaintiff is unable to recover the "write-off" amount. This position is consistent with the often-cited statement . . . that "(i)t would be unconscionable to permit the taxpayers to bear the expense of providing free medical care to a person and then allow that person to recover damages for medical expenses from a tort-feasor and pocket the windfall." After careful review, we conclude that Medicaid is a free medical service, and that no consideration is given by a patient to obtain Medicaid benefits. His patrimony is not diminished, and therefore, a plaintiff who is a Medicaid recipient is unable to recover the "write off" amounts. The operative words here are "free medical care," which, again, we hold is applicable to plaintiffs who receive Medicaid, not plaintiffs who receive Medicare or private insurance benefits." 879 So. 2d at 705.

Prior to *Bozeman*, the Second Circuit had similarly concluded that the Collateral Source Rule does not allow recovery of medical expenses in excess of Medicaid payments. *Terrell v. Nanda*, 759 So. 2d 1026 (La. App. 2 Cir. 2000). The *Terrell* court reasoned that plaintiff had no liability to the provider for expenses above those paid by Medicaid, and thus, no "natural obligation" existed. Additionally, the court observed that plaintiff was not billed any amount and that plaintiff knew he would incur no expenses or liability for the treatment at issue.

NOTE: A tortfeasor is liable to the State for the reduced amount of medical expenses paid by Medicaid. *See Benoit*, 85 So. 3d 629; *Terry v. Simmons*, 215 So. 3d 410, 425 n.10 (La. App. 2 Cir. 2017).

Property damage and other damage claims paid by a collateral source: Application of the Collateral Source Rule is not limited to personal injury claims in tort cases. Nevertheless, courts applying the Rule with respect to other types of damage claims have drawn parallels between the policy concerns at issue in conventional tort cases and elsewhere. Additionally, a factor that courts have looked to when deciding whether to apply the Rule is whether the collateral source has a right to seek reimbursement (via conventional subrogation or otherwise) from the aggrieved party.

- **Environmental property damages; federal agency as collateral source**:

In *Louisiana Dept. of Transp. and Development v. Kansas City Southern Ry. Co*., 846 So. 2d 734 (La. 2003), the Supreme Court held that "the collateral source rule applied in cases arising under the [Louisiana Environmental Quality Act (LEQA)], at least where a damaged party is seeking reimbursement only for remediation expenses." Thus, former property owner could not seek a reduction in liability for amount of environmental cleanup paid to plaintiff DOTD by Federal Highway Administration (FHWA). The Court explained that its holding was "commanded by the paramount public interest in ensuring that those persons or entities responsible for harming our environment and the welfare of our citizens be held fully responsible for the consequences of their actions, and deterred from committing future violations of the LEQA." There, the defendant-railway's actions had caused the pollution, which was discovered during an interstate construction project; the FHWA had reimbursed DOTD 90 per cent of the clean-up costs incurred by DOTD.

- **Property damages (hurricane); recovery-authority grant funds**:

In *Metoyer v. Auto Club Family Ins. Co.*, 536 F. Supp.2d 664 (E.D. La. 2008), the federal district court granted a motion in limine filed by plaintiff property owner in action seeking enforcement of insurance contract for losses sustained as a result of Hurricane Katrina; the motion sought to exclude evidence of Louisiana Recovery Authority (LRA) funds the plaintiff had received to rebuild his home. In finding that the Collateral Source Rule applied to the LRA funds, the district court explained that there was no danger of a double recovery or windfall as the LRA required that when it awards a grant (which was funded through a federal agency), it will be subrogated to the rights of the homeowner with regards to insurance payments.

- **Property damages (construction defect):**

In an indemnity action concerning a construction project, the federal district court concluded that the Collateral Source Rule precluded the defendant-architect's attempt to rely on payments made by the plaintiff-subcontractor's insurer to decrease the damages that the architect may owe to the subcontractor. *AFC, Inc. v. Mathes Brierre Architects*, 2017 WL 2731028 (E.D. La. 2017). There, a prior arbitration proceeding ended after the subcontractor paid the project's contractor to settle the arbitration; some of the settlement payments came from the subcontractor's insurer. Based on the foregoing, the architect sought a summary judgment ruling that the amounts paid by the subcontractor's insurer were not recoverable because they did not constitute actual losses to the

subcontractor. The district court disagreed, explaining that in Louisiana a wrongdoer may not "benefit from the victim's foresight in purchasing insurance and other benefits."

- **Application of the Rule by other states**:

In *Kansas City Southern Ry.*, the Supreme Court noted that the Collateral Source Rule is a doctrine of common law origin, jurisprudentially imported into the law of Louisiana. As a result, the Court found "persuasive" other jurisdictions' application and interpretation and application of the Rule. 846 So. 2d at 742-43; *see also Gatlin v. Methodist Med. Ctr.*, 772 So. 2d 1023, 1032-33 (Miss. 2000) (applying Rule to funeral payments made by a victim's rights fund, which were obtained through no effort of plaintiff); *Wheatland Irrigation Dist. v. McGuire*, 562 P.2d 287, 302 (Wyo. 1977) (applying Rule to funds that plaintiff property owners received from federal government's flood relief program for flood damage to their property caused by the rupture of defendant irrigation district's dam).

- **Legal loan broker:**

Magee v. ENSCO Offshore Co., 2013 WL 2389910 (E.D. La. 2013). This suit arose out of maintenance and cure and unseaworthiness claims brought under the Jones Act and general maritime law against two defendants: the plaintiff's employer and the owner/operator of the vessel on which plaintiff was injured. After the parties negotiated a settlement of the case, a dispute arose between the plaintiff and his employer about the payment of certain medical bills incurred by plaintiff and paid for by Diagnostic Management Affiliates (DMA). DMA, through various agreements it had with certain medical providers, was able to obtain medical services pertaining to plaintiff's back injuries at a discounted rate.

In opposing the plaintiff's motion to enforce settlement agreement, his employer argued that, under the terms of the settlement, it should only have to reimburse the actual sums that DMA paid to the medical providers, not the full amount due (approximately $76,000). The employer claimed that it should not have to pay the additional amount that was billed because such amount merely represented a profit for DMA, not a "reasonable" medical expense.

The federal district court disagreed. Noting that the settlement agreement's plain language provided that the employer would "assume responsibility for all low back related cure," the district court found the disputed medical bills constituted "necessary medical expenses" and thus "cure." In reaching this determination, the court deemed significant the fact that plaintiff was only able to obtain the disputed medical services by contracting with DMA for their payment. The district court explained that the plaintiff's employer had refused to pay for his medical care; as a result, plaintiff entered into an agreement with DMA by which DMA would provide plaintiff with the necessary medical care, and plaintiff in turn would repay the costs associated with testing and surgery to DMA. Accordingly, the district court concluded that the full amount charged by DMA was the reasonable and necessary amount of cure and was covered by the settlement agreement.

- *Whitley v. Pinnacle Entertainment Inc. of Delaware*, 2017 WL 1051188 (M.D. La. 2017) (denying defendants' motion in limine, which sought to exclude as irrelevant the total amount that plaintiff—who contracted with Bayou Medical Management (BMM) following accident—was billed for medical expenses). The district court distinguished *Hoffman*, *infra*, as the cost that plaintiff *would actually incur* (i.e., the amount she was contractually obligated to pay BMM) was the "full and customary" amount for the medical services prior to any discounts BMM might negotiate with the provider for the services.

- *Howard v. Offshore Liftboats, LLC*, 2016 WL 232252 (E.D. La. 2016) (ruling that defendant-employer was obligated to pay cure in the full amount that injured Jones Act seaman was obligated to pay DMA, not the reduced amount for which DMA was able to satisfy the medical charges).

- *Green v. Hollywood Trucks, LLC*, No. 2015-C-0765 (La. App. 4 Cir. July 24, 2015) (reversing trial court's actual grant of defendants motion in limine and ruling that plaintiff—who contracted with DMA following accident—was entitled to present evidence of the full amount of medical expenses incurred, including the write-off amounts).

Attorney-related payments: *Hoffman v. 21st Century N. Am. Ins. Co*., 299 So. 3d 702 (La. 2015) (holding that Collateral Source Rule does not apply to attorney-negotiated medical write-offs or discounts obtained through the litigation process). In adopting this "bright line rule," the Supreme Court explained: First, allowing the plaintiff to recover expenses he has not actually incurred himself, and for which he has no obligation to pay, is at cross purposes with the basic principles of tort recovery under Louisiana law. Second, plaintiff's argument that consideration is given for attorney-negotiated medical discounts by virtue of the contractual obligation of the plaintiff to pay attorney fees is based on the incorrect assumption that payment of an attorney fee is an additional damage suffered by the tort victim. Lastly, to hold that attorney-negotiated discounts fall within the ambit of the Collateral Source Rule would invite a variety of evidentiary and ethical dilemmas for counsel.

- *Jones v. Progressive Sec. Ins. Co.*, 209 So. 3d 912 (La. App. 3 Cir. 2016) (citing *Hoffman* and stating in dicta that any medical costs which were not actually paid by injured plaintiff due to an attorney-negotiated reduction are not recoverable).

- *Kie v. Williams*, 2016 WL 6208692 (W.D. La. 2016) (granting plaintiff's motion in limine to the extent injured plaintiff sought to exclude, as irrelevant, evidence of payments made by plaintiff's counsel for medical expenses).

- *Francis v. Brown*, 671 So. 2d 1041 (La. App. 3 Cir. 1996) (applying Collateral Source Rule to $500 medical bill paid by attorney on behalf of his client, an uninsured tort victim).

- *Woodard v. Andrus*, 2007 WL 855360 (W.D. La. 2007) (applying Collateral Source Rule, in civil rights action that alleged state court clerks were overcharging filing fees, as to filing fee assessed against plaintiff and paid by plaintiff's counsel; noting that issue of reimbursement was a matter to be worked out between plaintiff and his attorneys).

Reduced payments negotiated by the victim: *Lockett v. UV Ins. Risk Retention Group, Inc*., 180 So. 3d 557 (La. App. 5 Cir. 2015) (distinguishing *Hoffman* on the facts and applying Collateral Source Rule to medical expenses for which the insured tort victim negotiated a reduction without the involvement of her attorney). In *Lockett*, the plaintiff, a nurse at EJGH, incurred a total of approximately $55,000 in medical expenses for treatment at Ochsner. Although she had health insurance available, plaintiff opted not to file an insurance claim; instead, during the pendency of the litigation, she personally negotiated with Ochsner for a significant reduction of her bills in exchange for immediate payment of the reduced amount (a lump sum of $13,786). In affirming the trial court's award of the full amount of the Ochsner bill, the appellate court found that the plaintiff's payment of her own funds to Ochsner "clearly diminished her patrimony," and "thus, she was entitled to recover the full cost of her medical expenses, including the reduced or 'written-off' amount." Further, the court explained, "it would be contrary to the purpose of the collateral source rule to allow Defendants to benefit from Plaintiff's bargain with Ochsner, which consisted of an early payment with no contribution by Defendants, that Plaintiff personally negotiated and paid for."

- *Jones*, 209 So. 3d 912 (noting that under Collateral Source Rule, defendants do not enjoy the benefits of reductions in plaintiff's medical costs which were the result of plaintiff's discount due to self-pay at a surgical hospital).

Gratuitous services: *Tanner v. Fireman's Fund Ins. Cos.*, 589 So. 2d 507 (La. App. 1 Cir. 1991) (upholding award of hourly rate of sitting services rendered gratuitously by non-professional family and friends of tort victim who required 24-hour attention).

- *Johnson v. Neill Corp.*, 2015 WL 9464625 (La. App. 1 Cir. 2015) (upholding award which included expenses for medical services rendered to tort victim—an internist at the medical clinic where she received the treatment—as a "professional courtesy"), *writ denied*, 189 So. 3d 1068 (La. 2016).

- *Asbahi v. Beverly Indus., L.L.C.*, 2012 WL 1922300 (La. App. 1 Cir. 2012) (addressing, in dicta, Collateral Source Rule as applied to "professional courtesy" services rendered gratuitously by a fellow physician).

- *Spizer v. Dixie Brewing Co.*, 210 So. 2d 528 (La. App. 4 Cir. 1968) (upholding award of amount of services rendered by plastic surgeon which were provided as a "professional courtesy" to tort victim—whose father was a physician—and for which there was no intention of receiving payment for same).

Footnotes

The collateral source rule has proven "fertile ground" for some contentious discussions in mediation, bench conferences and settlement discussions.

The smoke has somewhat cleared recently regarding issues of Plaintiffs' use of "funding agents" post-accident to secure medical treatment so that the bulk of authority is that the gross billing of such entities will be approved as a collateral source notwithstanding the funding agents payment of discounted amounts to discharge the billing.

Also, just about any type of insurance or benefit for which a litigant "pays" will also be seen as a collateral source, e.g. medical insurance, Medicare, worker's compensation.

Finally, if a litigant is so well positioned to receive gratuitous services or grants of assistance the tortfeasor cannot assert the value of these services as a credit against their damage exposure.

What clearly seems to be "out of bounds" as a collateral source are Medicaid covered gross billing expenses, LHWCA gross billing expenses and medical bills discounted by a provider based upon a discount arrangement with the claimant's attorney.

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