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Alan Morse

Prof. Jeffrey Zax

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exclusive. Second, restricting the use of the collateral source rule results in an unfair wealth-transfer from the plaintiff to the tortfeasor. Lastly, this bill would exacerbate a negative externality of negligent conduct that the collateral source rule currently remedies.

Tort reformers like those in favor of SB17-181 often stress that the collateral source rule results in the plaintiff being overcompensated. In many cases, the plaintiff receives benefits in the form of collateral from insurance companies and then again in damages received from the defendant. They believe this to be unfair.

This logic fails to see that there are two transactions occurring independent of one another. The compensation the plaintiff receives from the insurer is the result of a private contract negotiated prior to the incident at hand. The insured agrees to pay for a policy and a reoccurring premium in return for collateral against uncertainty. In addition, the insured incurs an opportunity cost from setting aside funds overtime

negotiations settled inside the courtroom. Allowing the collateral the plaintiff receives to be considered by a jury actually threatens the possibility of the plaintiff being undercompensated.

The plaintiff is likely to see compensation below the total cost incurred from the insurance policy, opportunities forgone, and the damages incurred from the accident. Furthermore, the insurer is inclined to reclaim an additional amount of the benefit from the plaintiff through heightened future premiums. In this case, the plaintiff shares an unfair burden of the cost from the accident where he or she should be the beneficiary.

This contradicts the claim that the collateral source rule results in a misallocation of resources. The rule actually helps to ensure that all parties pay the plaintiff their fair share. In fact, it is restrictions on the collateral source rule that risk allocating resources in the courtroom inefficiently.

The expected outcome of eliminating the collateral source rule is a wealth-transfer from the plaintiff to the defendant. If the plaintiff is unable to recover damages because of their insurance benefits, the tortfeasor pays nothing, and takes all the benefit of the insurance policy (Marshall and Fitzgerald 2005). This happens despite the tortfeasor not paying the premium. Since the victim is the one who has paid, it would be unfair to allow the tortfeasor to recoup the benefit (Kidd and Krauss 2009).

It is easy to see the irony of this situation. Marshall and Fitzgerald note, “only in the absence of the collateral source rule does a windfall inure and it inures to the benefit of the negligent defendant.” (2005). The defendant reaps an unearned discount on damages to be paid at the expense of the victim.

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In essence, the plaintiff subsidizes the damages to be paid by the defendant through their

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