



Judiciary Committee

March 3, 2021

Written Testimony in Support

HB 6465 AN ACT CONCERNING THE REDUCTION OF ECONOMIC DAMAGES IN A PERSONAL INJURY OR WRONGFUL DEATH ACTION FOR COLLATERAL SOURCE PAYMENTS MADE ON BEHALF OF A CLAIMANT.

The medical specialties organizations of Eye, ENT, Dermatology and Urology in strong support of and to offer language that will strengthen this bill and offer some historical and factual background as to why Connecticut needs tort reform to correct an injustice in the calculation of economic damages by juries in personal injury cases.

Under Connecticut's personal injury law, a plaintiff is entitled to claim, as part of her economic damages, medical bills for the treatment provided as a result of a personal injury. Juries typically award plaintiffs the face value of the submitted medical bills. The Collateral Source statute, General Statutes § 52-225a, requires a court to reduce the jury's award by the amount that the plaintiff did not actually pay toward the medical bills, namely, the amount paid by health insurance.

In 2012, the General Assembly amended the Collateral Source statute to eliminate a loophole in the law that had allowed plaintiffs to obtain compensation for medical bills that they were not required to pay. Health insurance companies typically negotiate favorable rates and pay doctors and hospitals much less than what is actually billed and, as a result, hospitals and doctors write off the remaining balance. Even though plaintiffs were not required to pay the hospitals and doctors the amount written off, they were entitled to recover, as economic damages, the billed amount. This resulted in an unfair windfall to plaintiffs and the General Assembly corrected the problem in 2012.

HB 6465 seeks to eliminate another loophole in the Collateral Source statute that was revealed by the Supreme Court's decision in *Marciano v. Jimenez*, 324 Conn. 70 (2016), in which the jury awarded the plaintiff \$84,283.67 for the medical bills issued for the treatment provided as the result of a car accident. The plaintiff was required to repay his health insurance company from the proceeds of his personal injury suit. The plaintiff only had to repay his insurance company \$6,940.19. Because the health insurance company had a right under federal law to be repaid for the payments it had made, the

Supreme Court ruled that *no reduction* was permitted by the Collateral Source statute. As a result, the plaintiff obtained a windfall of \$77,343.48.

The current language of HB 6065 will eliminate the *Marciano* loophole, but it is not the only loophole remaining. Oftentimes, juries must estimate *future* medical expenses that a plaintiff will incur for necessary medical treatment in deciding how much to award in economic damages. The Collateral Source statute only addresses *past* medical expenses. Because juries are given the medical bills as evidence of the cost of health care, as opposed to evidence regarding what is actually paid for health care, and because estimates regarding future cost is usually based on the amount that health care professionals bill, rather than what they actually collect, juries award inflated amounts for future medical expenses, just as they do for past medical expenses. Since it is not practical to continuously revisit a jury's award to determine if there should be collateral source reductions, it is necessary to change the law to permit parties to present evidence to the jury regarding the out-of-pocket cost that a plaintiff likely will pay, rather than the current system of juries and experts basing future estimates on what health care professionals bill, rather than what they collect, and assuming that it is the plaintiff who will bear the cost, as opposed to a health insurance plan.

To eliminate this current loophole, we propose the following amendment to HB 6065 in which a new subsection (d) is added to the statute that reads:

(d) A plaintiff or defendant may present evidence of collateral source payments to the trier of fact for the purpose of proving the amount of a claimant's economic damages, as defined in subdivision (1) of subsection (a) of section 52-572h, that claimant probably will incur after trial.

In closing, last year HB5053, a bill almost identical to this year's HB 6065 for reducing economic damages did not pass. In light of the many issues facing the medical community including the need for extensive tort reform, this bill would be a welcome beginning to fairness and justice. Thank you for your consideration.