

10/25/68

Memorandum 68-85

Subject: Study 52 - Sovereign Immunity (The Collateral Source Rule)

Attached is background material relating to the collateral source rule as applied to recoveries against public entities. The material consists of (1) Memorandum 68-66 and attached "Memorandum on Collateral Source Rule as Applied to Public Entities" (white) and (2) "Application of the Collateral Source Rule to Public Entities and Related Problems" (pink), which was supplied to the Commission by Robert Carlson of the State Department of Public Works.

The following extract from the Minutes of the July 1968 meeting will refresh your memory as to the action taken when this matter was considered at the July meeting;

The Commission considered Memorandum 68-66 relating to the collateral source rule.

The Commission noted that the collateral source rule does not apply to public entities--in other words, the amount received from collateral sources to cover the same injury is to be deducted from the amount the injured person would otherwise be entitled to recover from the public entity.

After considerable discussion, the Commission concluded that the advice of a consultant should be obtained as to whether the study of the collateral source rule should be restricted merely to its application to public entities or whether the study should consider the collateral source rule as applied to all defendants. It was also noted that a comprehensive study of the collateral source rule would perhaps involve a study of the whole question of the adequacy of compensation in tort cases.

The Chairman, after consulting with the Executive Secretary, is to invite a member of a law faculty from a California law school to a future meeting so that this problem may be discussed with the person who may serve as a research consultant in preparing a research study on the topic if the Commission decides to undertake a study of the problem.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

APPLICATION OF THE COLLATERAL SOURCE RULE TO PUBLIC ENTITIES
AND RELATED PROBLEMS

- by -

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REFERENCES

1. Collateral source rule not applicable to public entities: City of Salinas v. Souza & McCue Construction Co., 66 A. C. 210 (but see Lewis v. County of Contra Costa, 130 Cal. App. 2d 176, cited but not expressly overruled in Souza case); cf. 12 A. L. R. 3d 1245 (Federal Tort Claims Act).
2. Direct source rule: Turner v. Mannon, 236 Cal. App. 2d 134, Dodds v. Bucknum, 214 Cal. App. 2d 206, and U. S. v. Brooks, 176 F. 2d 482.
3. Payments by and contribution among joint tort feasons: C. C. P. Sec. 875 to 880; Hanley v. Lund, 218 Cal. App. 2d 633, Magee v. Wyeth Laboratories, Inc., 214 Cal. App. 2d 340, and Steele v. Hash, 212 Cal. App. 2d 1; but see Cseri v. D'Amore, 232 Cal. App. 2d 622.
4. Tort liability under agreements between public entities: G. C. Sec. 895 to 895.8.
5. Mechanics of allowing the credit from collateral source, direct source or payment by joint tort feason: Nixon v. Riverview Hospital, 254 A.C.A. 397; 94 A.L.R. 2d

352 (manner of allowing credit); and see the authorities cited in References 2 and 3.

TYPICAL PROBLEMS

1. P sues state for damages and seeks to recover \$50,000. P has received \$10,000 from collateral sources prior to trial. What should state do, i.e., when and how should the point be raised, and is the issue for the jury or the court?

State would have to produce at trial evidence that P in fact received \$10,000 from a collateral source. The issue could be submitted to the jury with an instruction to deduct the \$10,000 or the court could itself make the deduction after the jury verdict.

2. P sues State and D for damages and seeks to recover \$50,000. P has received \$10,000 from collateral sources and settles with D for another \$10,000 prior to trial. What should State do at the trial?

State should produce evidence to prove the amount of the \$10,000 settlement and receipt by P of the \$10,000 from collateral sources. The deduction would be handled as in #1 above.

3. P sues state and D and recovers \$50,000 against both defendants. P has received \$10,000 from collateral sources prior to trial. What result, i.e., how much does each defendant owe P?

Court must interpret the verdict and should enter judgment as follows:

\$40,000 judgment (joint and several) against state and D.
\$10,000 judgment against D alone.

Using normal rules of contribution, state would pay \$20,000 and D would pay \$30,000.

4. P sues state and D1 and D2 and recovers \$50,000 against all three defendants. P has received \$10,000 from collateral sources before trial plus \$1,000 from D1's insurance carrier under a medical-pay provision in the policy. What result, i.e., how much does each defendant owe P?

\$39,000 judgment (joint and several) against state, D1 and D2.

\$10,000 judgment (joint and several) against D1 and D2

\$1,000 judgment against D2 alone.

D1 is entitled to an offset for the \$1,000 medical payment to P.

Using contribution rules, state would pay \$13,000; D1 would pay \$18,000; D2 would pay \$19,000.

5. P, an off duty city employee, sues State, City, D1, D2 and D3 for damages. The accident occurred on State property which the City was obligated to maintain under an agreement containing an indemnity clause in favor of the State. P has received \$10,000 from collateral sources before trial plus \$1,000 from D1's insurance carrier under a medical-pay provision in the policy. In addition, P received sick leave benefits from the City amounting to \$1,000. During trial, D2 pays P \$2,000 and is dismissed. The jury returns a verdict for P for \$50,000 against the remaining four defendants. What does each defendant owe P?

\$36,000 judgment (joint and several) against State, City, D1, and D3.

\$11,000 judgment (joint and several) against D1 and D3

\$1,000 judgment against D3 alone.

Although verdict is \$50,000, the total judgments are \$48,000 since all defendants can offset the \$2,000 paid by D2.

Using contribution rules, state would pay \$9,000; City would pay \$9,000; D1 would pay \$14,500; and D3 would pay \$15,500.