IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

KC Plaintiff	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 06 CV XXX
	)	
Defendant Doctor	)	
	)	
Defendant.	)	

PLAINTIFF'S MOTION IN LIMINE REGARDING COLLATERAL SOURCE

COMES NOW Plaintiff and respectfully files this Motion in Limine regarding the collateral source rule. Pursuant to Kansas law, collateral source evidence is generally inadmissible and all attempts by defendant to admit such evidence should be prohibited. Haley v. Brown, M.D., 36 Kan.App.2d 432, 442 (2006).

This is a medical malpractice case where plaintiff alleges that she has received severe and disabling injuries due to the negligence of defendant. Counsel for defendant has attempted to elicit testimony from two of plaintiff's experts, Dr. Kenneth Hubbell (economist) and Dr. Terry Winkler (life care planner), evidence regarding collateral source payments from wholly independent sources. Additionally, Dr. Hubbell included increased cost of health insurance in his economic report. That part of the report will not be submitted to the jury by plaintiff and should not be submitted by defendant. In particular, counsel for defendant quizzed Dr. Hubbell regarding social security disability and increased health insurance costs. Dr. Winkler was asked about health insurance and Medicare.

The Kansas Court of Appeals has recently clarified the following rule on collateral source:

> “ ‘The collateral source rule provides that benefits received by the plaintiff from a source wholly independent of and collateral to the wrongdoer will not diminish the damages otherwise recoverable from the wrongdoer.’ ” Farley v. Engelken, 241 Kan. 663, 666, 740 P.2d 1058 (1987) (quoting Allman v. Holleman, 233 Kan. 781, Syl. ¶ 8, 667 P.2d 296 (1983)). The purpose of the collateral source rule is to prevent the tortfeasor from escaping full liability resulting from his or her actions by requiring the tortfeasor to compensate the injured party for all of the harm, not just the net loss. Rose v. Via Christi Health System, Inc., 276 Kan. 539, 544, 78 P.3d 798 (2003), modified on rehearing 279 Kan. 523, 113 P.3d 241 (2005). “A benefit secured by the injured party either through insurance contracts, advantageous employment arrangements, or gratuity from family or friends should not benefit the tortfeasor by reducing his or her liability for damages. If there is to be a windfall, it should benefit the injured party rather than the tortfeasor.” (Emphasis added.) 276 Kan. at 544, 78 P.3d 798.
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> Zak v. Riffel, M.D., 34 Kan App.2d 93, 105-06 (2005).

The Kansas Supreme Court defines the collateral source rule as “benefits received by the plaintiff from a source *wholly independent of and collateral to the wrongdoer* will not diminish the damages otherwise recoverable from the wrongdoer.” Hays Sight & Sound, Inc. v. Oneok, Inc., 281 Kan. 1287, 1303 (2006)(internal citations omitted). “The injured party, not the wrongdoer, should receive benefit of aid from a collateral source.” Warren v. Heartland Automotive Services, Inc., 36 Kan.App.2d 758, 766 (2006)(internal citations omitted).

Defendant has shown the propensity to inquire into such impressible areas as health insurance, social security disability and Medicare. Defendant, pursuant to Kansas case law, is not allowed to reap a reward for injuring the plaintiff and then not paying the full damages. Collateral source evidence must be kept from the jury.

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