

# IN BRIEF

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## **An Insurance Industry Newsletter of Recent Issues and Opinions in Virginia Law By**

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### **CAN MEDICAL BILLS THAT HAVE BEEN DISCHARGED IN BANKRUPTCY BE INTRODUCED AT TRIAL?**

If you are reading this newsletter, you must be associated in some way with a “collateral source”. In the case of Sheryl H. Dodd v. Tammy N. Lang (Roanoke City Circuit Court) the plaintiff cites the collateral source rule in an attempt to introduce her medical bills at trial. In this case the plaintiff had declared bankruptcy thus discharging her debts, however, she still wanted to introduce her medical bills at trial in order to establish her monetary obligations, and her pain, suffering and inconvenience. This case explores the issue of whether or not the plaintiff can use the collateral source rule to introduce her medical bills at trial even though those bills have been discharged in bankruptcy.

The collateral source rule states, “compensation or indemnity received by a tort victim from a source collateral to the tortfeasor may not be applied as a credit against the quantum of damages the tortfeasor owes”<sup>1</sup>, therefore, the monetary obligations of the person responsible for a tort are not diminished when the victim of the tort receives payment from a third party associated with the tortfeasor. Dodd not only wanted to be allowed to introduce her medical bills, she requested that the defendant not be allowed to mention the fact that her bills had been discharged in bankruptcy; she claimed that that information could prejudice the jury’s deliberations. The defendant objected to the introduction of the plaintiff’s medical bills arguing that the collateral source rule does not apply since the plaintiff’s debts were discharged and she no longer was liable on those debts. Also, since the health care providers may not be paid by operation of law, the plaintiff may not recover those amounts from the defendant, therefore, the bills should not be introduced.

<sup>1</sup> *Acuar v. Letourneau*, 260 Va. 180, 189 (2000)[quoting *Schickling v. Aspinall*, 235 Va. 472, 474 (1988)]

The case began when the Lang vehicle and the Dodd vehicle were involved in a collision. Both Mr. and Mrs. Dodd sought medical treatment following the accident. Two and a half years after this collision, the Dodds filed a joint voluntary bankruptcy petition seeking relief from their creditors. The Dodds claimed numerous exemptions in their bankruptcy petition, one of which was their personal injury claims from the accident. The Dodds claimed a general homestead exemption of up to \$5,000.00 in assets from inclusion in their bankruptcy estate pursuant to Va. Code § 34-4 and an exemption for their “causes of action for personal injuries ... and the proceeds from court award or settlement ... from creditor process against the injured person” pursuant to Va. Code 34-28.1. The personal injury claim became exempt when no objection to it was raised, however this exemption has a qualification. Pursuant to Code § 8.01-66.2, statutory liens on an award or settlement that are perfected prior to the filing of the bankruptcy petition survive the discharge. Five creditors perfected their claims against the Dodds and their statutory liens survived the bankruptcy discharge and remained outstanding pending the outcome of this case. In addition, Sheryl Dodd executed an assignment of benefits on one of her debts which also survived the discharge.

Two Circuit Courts in Virginia have previously held that the collateral source rule does not apply to debts discharged in bankruptcy on the basis that 1) bankruptcy is initiated by the plaintiff’s own act, 2) the use of the collateral source rule would encourage bankruptcy, 3) bankruptcy is a discharge of debt, not a payment from a collateral source and, therefore is not covered.<sup>2</sup>

In deciding this case, the Roanoke Court attempts to determine the correct “balance between two competing principles of tort law: (1) a plaintiff is entitled to compensation sufficient to make him whole, but no more; and (2) a defendant is liable for all damages that proximately result from his wrong”<sup>3</sup>. The Court does not want to award either party a windfall, however, when the choice is necessarily between “a plaintiff who receives a double recovery for a single tort ... [or] a defendant who escapes, in whole or in part, liability for his own wrong”<sup>4</sup>, the Court finds in favor of the victim rather than the offender. The Roanoke Circuit Court found that a bankruptcy discharge is within the scope of the collateral source rule and addressed the former circuit court rulings as follows:

1. The fact that the plaintiff took the affirmative action to alleviate debt is no reason to deny the collateral source rule. This action is no different from a plaintiff who seeks government benefits or funds from an employer, family member or third party to aid financially after becoming the victim of a tort. All of these latter instances are covered by the collateral source rule.

2. To deny application of the collateral source rule to bankruptcy merely because there is no collateral payment would favor the tortfeasor in violation of the intent of the rule. The purpose of the rule is that when “the law must sanction one windfall and deny the other, it favors the victim of the wrong rather than the wrongdoer”<sup>5</sup>

3. There are cases, such as this, when the actions of the tortfeasor, and the medical bills ensuing from the injuries, force an otherwise financially solvent plaintiff

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<sup>2</sup> *Choice v. Kruse*, 57 Va. Cir. 13, 14 (Chesterfield County 2001); *Walker v. Long*, 57 Va. Cir. 419, 420 (City of Richmond 1993).

<sup>3</sup> *Acuar*, 260 Va at 193 (quoting *Schickling*, 235 Va. at 474-75).

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

into declaring bankruptcy. The tortfeasor should not gain an advantage at the expense of the plaintiff and the creditors.

4. This Court does not believe that inclusion of bankruptcy within the collateral source rule will increase the number of bankruptcies filed.

Having found that the plaintiff should be allowed to introduce medical bills under the collateral source rule, even though those bills have been discharged in bankruptcy, the Court further states this should not lead to the plaintiff gaining a windfall at the expense of the creditors. The Court places a duty on the plaintiff, or plaintiff's counsel, to forward any amounts awarded by a jury, beyond the amounts of the statutory liens and assignment of benefits, to any unpaid health care providers who treated the plaintiff; this should be done on a *pro rata* basis.

The consequences of this Roanoke Circuit Court ruling have yet to be determined. At least two other Circuit Courts have ruled that the bankrupted bills can only be introduced as evidence of pain and suffering.<sup>6</sup> Therefore, questions remain to be answered. Was the Court correct in predicting that this ruling will have no effect on the number of bankruptcies filed by victims of personal injury? Will it be more difficult for a defendant to discover if a plaintiff has filed bankruptcy? Will a plaintiff's windfall be forwarded to the health care providers even though the plaintiff is under no binding legal obligation to do so? Stay tuned.

**DECISIONS BY THE SUPREME COURT OF VIRGINIA  
REGARDING INSURANCE INDUSTRY ISSUES  
SEPTEMBER 11 – 15, 2006 SESSION**

The following case summaries involve insurance and litigation issues. We have downloaded these summaries directly from the Virginia Supreme Court website. We offer them to you with brief clarifications (in green) where necessary. However, if you would like a more complete legal analysis or the full text of any of these cases, please make your request by return e-mail. If you would like to discuss the ramifications of any of the decisions, please call (804) 378-7600: ext. 3304 for Ray; 3305 for Kevin or 3316 for Mark.

**051825 Herr v. Wheeler** 09/15/2006

The trial court erred in granting a "sudden emergency" instruction in a vehicular accident case where the defendant's vehicle "hydroplaned" on water during a heavy rainstorm. The judgment is reversed and the case is remanded for a new trial.

**052508 Dreher v. Budget Rent-A-Car System, Inc.** 09/15/2006

A New York Vehicle and Traffic Law provision imposing vicarious liability on a vehicle owner for injuries caused by a permissive operator's negligence concerns a matter of contract. Comity principles and Virginia's choice of law rules thus require its application in Virginia litigation arising out of an accident occurring in Virginia involving a vehicle rented under a contract entered in New York. As a result, the circuit court's judgment applying Virginia law to hold that two vehicle rental companies would have no vicarious

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<sup>6</sup> Bryan Y. Wilkerson v. Richard W. Hackett, Jr., Case No. CL05-516-00, (Virginia Beach Circuit Court)(2006); Candyce K. Gibbs v. Jeffrey Smith, Case No. CL05-302, (City of Petersburg Circuit Court) (2006)

liability based on their ownership of the vehicle is reversed. The case is remanded for further proceedings.

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