

# LINCOLN MEMORIAL UNIVERSITY LAW REVIEW

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VOLUME 6 SPRING 2019 ISSUE 1

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## LIMITING PLAINTIFFS DAMAGES: A REVIEW OF SOUTHERN STATES COLLATERAL SOURCE RULE AND CONSTITUTIONAL CHALLENGES TO CAPS ON DAMAGES

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### I. INTRODUCTION

During the 1970s and 1980s, the insurance industry experienced high losses from “deep-pocket defendants” with disproportionately high jury awards.<sup>1</sup> These “deep-pocket defendants” were often medical doctors and big businesses. The industry responded to the losses by increasing premiums or refusing to renew existing high-risk premiums. The industry feared it would go under as a result of closing businesses and the relocation of doctors to areas with lower premiums. In response to this self-labeled “crisis,” laws were implemented which restricted a plaintiff’s rights to a full recovery in hopes of reducing insurance premiums; however, this result has not always been achieved.<sup>2</sup> The enactment of these laws began the wave of what is most commonly referred to as “Tort Reform.”<sup>3</sup>

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<sup>1</sup> Nancy L. Manzer, *1986 Tort Reform Legislation: A Systematic Evaluation of Caps on Damages and Limitations on Joint and Several Liability*, 73 CORNELL L. REV. 628, 647 (1988).

<sup>2</sup> Allyson Fish, *Noneconomic Damage Caps In Medical Malpractice Litigation: Finding A Solution That Satisfies All Affected Parties*, 17 NEXUS: CHAP. J. L. & POL’Y 135, 140 (2012).

<sup>3</sup> Michael P. Allen, *A Survey and Some Commentary on Federal “Tort Reform,”* 39 AKRON L. REV. 909 (2006).

The threat of limitations on a plaintiff's opportunity to be fully compensated for injuries caused through no fault of their own has been widespread over the years.<sup>4</sup> For decades, both state and federal governments have proposed and adopted laws that limit the amount of money a plaintiff can recover.<sup>5</sup> Generally, the caps are placed on noneconomic and punitive damages. Noneconomic damages are those awarded to compensate the plaintiff for damages such as pain and suffering and loss of enjoyment. They are more speculative in nature due to the uncertainty in how they can be calculated. Punitive damages are those awarded to punish a defendant for wrongdoing and deter others from acting in the same manner.

In regards to the caps on noneconomic and punitive damages, states are split not only on what actual cap should be applied but also to the constitutionality of such caps.<sup>6</sup> Section II will discuss how Tennessee, Georgia, and Alabama courts have handled the caps and the challenges that have been made.

Section III will address how the states have attempted to limit economic damages. Economic damages are damages awarded to cover medical bills, lost wages, and other calculatable damages and have not, up to this point, been susceptible to caps. While no statutory caps have been placed on economic damages, proponents for such limitations have attempted to restrict economic damages in other ways. Some states have limited or completely abrogated the Collateral Source Rule, while others have attempted to expand narrowly tailored state laws.<sup>7</sup> The Collateral Source rule prevents evidence of collateral payments from affecting a plaintiff's right to recover damages.<sup>8</sup> Tennessee, Georgia, and Alabama have all

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<sup>4</sup> *Id.*

<sup>5</sup> TENN. CODE ANN. §§ 29-39-101-104 (West, Westlaw through 2018 Second Reg. Session); GA. CODE ANN. §§ 51-12-5.1; 51-13-1 (West, Westlaw through 2018 Reg. and Spec. Session); ALA. CODE § 6-5-544 (2018).

<sup>6</sup> Sue Ganske, *Noneconomic Damages Caps in Wrongful Death Medical Malpractice Cases – Are They Constitutional?*, 14 FLA. ST. U. BUS. REV. 31, 51 (2015).

<sup>7</sup> Danielle A. Daigle, *The Collateral Source Rule in Alabama: A Practical Approach to Future Applications of the Statutes Abrogating the Doctrine*, 53 ALA. L. REV. 1249, 1250 (2002).

<sup>8</sup> 2 STUART M. SPEISER, AMERICAN LAW OF TORTS § 8:16 (Monique C. M. Leahy et al. eds., 2018).

taken different approaches to the collateral source rule, ranging from strict adherence to complete abrogation.

## II. CAPS ON DAMAGES AND CONSTITUTIONALITY OF STATUTES IN TENNESSEE, GEORGIA, AND ALABAMA

Legislative “caps” on damages are statutory limitations on the amount of money a plaintiff may be awarded in a civil suit. Most caps are placed on noneconomic and punitive damages. The trend of implementing statutorily imposed caps on noneconomic damages began with the California Legislature in 1975 when it passed the Medical Injury Compensation Reform Act (MICRA).<sup>9</sup> In response to the rapid state-wide increase in insurance premiums resulting from large malpractice jury awards, MICRA set a \$250,000 cap on noneconomic awards in medical malpractice claims.<sup>10</sup> The maximum amount of noneconomic damages a plaintiff could recover would be \$250,000 regardless of the severity of the negligence or injury. After California’s enactment of MICRA, several states followed suit, and by 2005, over half of the states had implemented legislation creating caps on noneconomic damages in medical malpractice claims.<sup>11</sup>

One argument in favor of the legislatively placed caps refers to the rising insurance premiums due to large malpractice jury awards.<sup>12</sup> It is argued that high insurance premiums place the state in a “malpractice crisis.”<sup>13</sup> Proponents for the caps argue that lower jury awards and lower insurance payouts will result in lower insurance premiums, which would provide relief to the to the state from this “malpractice crisis.”<sup>14</sup> For this theory to be correct, it must be assumed that the liability

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<sup>9</sup> Medical Injury Compensation Reform Act, ch. 1 & 2, 1975 Cal. Stat. 3949-4007.

<sup>10</sup> Fish, *supra* note 2, at 137; CAL. CIV. CODE § 3333.2 (West, Westlaw through Ch. 1016 of 2018 Reg. Session).

<sup>11</sup> Fish, *supra* note 2, at 137 (Alaska, Colorado, Florida, Hawaii, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin).

<sup>12</sup> *Id.* at 139.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

insurers would take it upon themselves to lower the premiums due to their new protection by the cap. This assumption is far-fetched. If there is any doubt as to whether the courts will uphold the cap, the liability insurers will generally wait for the constitutionality challenge to be resolved before taking any action.<sup>15</sup> This delay creates a very troubling scenario for plaintiffs where their potential recovery has been limited and the proposed purpose of lower insurance premiums has not come to fruition.

Those against the implementation of caps argue that the caps do not lower insurance premiums and point to California's continued increase in premiums despite the passing of MICRA.<sup>16</sup> In fact, the California insurance premiums continued to rise until 1988, and only upon the passing of broader insurance reform legislation did those premiums start to decrease.<sup>17</sup>

Additionally, those opposed to caps often point out the fact that Minnesota has the lowest insurance premiums "despite the fact that the state has no statutory noneconomic damage cap or medical malpractice insurance crisis."<sup>18</sup> This casts doubt on the argument that the limitations are a large factor in reduced insurance premiums. Acknowledging that other factors besides a lack of damage caps in Minnesota likely need to be considered, the fact that no cap exists is a persuasive indication that caps are not required, as argued by some, to lower premium rates.<sup>19</sup>

Opponents most often argue that the caps violate a constitutional right, more specifically, a citizen's right to a jury trial.<sup>20</sup> The Seventh Amendment creates the right to a jury trial in civil suits, specifically stating that "no fact tried by a jury shall be otherwise re-examined in any Court of the United States."<sup>21</sup> The theory is that the limit placed on the award undercuts the jury's ability to make the determination by

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 140.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 138.

<sup>20</sup> J. Chase Bryan, et al., *Are Non-Economic Caps Constitutional?*, 80 DEF. COUNS. J. 154, 154 (2013).

<sup>21</sup> U.S. CONST. amend. VII.

reducing the award, essentially abrogating the advantage of having a neutral body determine damages.<sup>22</sup>

The limits on the caps and the basis and results of the constitutional challenges differ from state to state.<sup>23</sup> As of 2013, twenty-nine states had adopted some form of statutory caps on non-economic damages.<sup>24</sup> Of those twenty-nine states, the constitutionality of those caps has been upheld in seventeen states.<sup>25</sup> The below subsections discuss the statutory caps put in place, the constitutional challenges to the caps, and how the courts have handled those challenges within the Southern states of Tennessee, Georgia, and Alabama.

#### A. TENNESSEE CAPS AND CONSTITUTIONALITY CHALLENGES

Prior to October 1, 2011, a Tennessee plaintiff could recover for an endless amount of both economic and noneconomic damages without being subject to caps on that award.<sup>26</sup> Much changed when the Tennessee Legislature enacted the Tennessee Civil Justice Act in 2011. While economic damages remain recoverable without limitation, statutory caps have been imposed on noneconomic damages in all civil actions, including health care liability claims.<sup>27</sup> The Legislature justified the limits as necessary for Tennessee's economic development.<sup>28</sup> The caps limited recovery of noneconomic damages to seven hundred and fifty thousand dollars (\$750,000) in non-catastrophic situations and one million

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<sup>22</sup> Fish, *supra* note 2, at 145.

<sup>23</sup> Ganske, *supra* note 6, at 51.

<sup>24</sup> Bryan, et al., *supra* note 20, at 157.

<sup>25</sup> *Id.*

<sup>26</sup> John W. Elder & Joshua R. Walker, *The Tennessee Civil Justice Act of 2011*, 47 TENN. B.J. 20, 22 (2011).

<sup>27</sup> TENN. CODE ANN. § 29-39-102 (West, Westlaw through 2018 Second Reg. Session); Healthcare Liability Actions Under the Tennessee Civil Justice Act of 2011, Tenn. Op. Atty. Gen. No. 12-58 (2012).

<sup>28</sup> Clark v. Cain, No. 12C1147, 2015 WL 1137546, at \*1 (Tenn. Cir. Ct. March 9, 2015).

dollars (\$1,000,000) in catastrophic situations.<sup>29</sup>

Many personal injury cases never reach high enough values to be subjected to the caps. However, when a defendant's actions and the resulting injuries are severe enough to warrant such high awards, it begs the question of whether a plaintiff can be fully "made whole" when the amount of damages available is automatically reduced.<sup>30</sup>

Tennessee's 2011 wave of tort reform also created caps on punitive damage awards. In order to prevail on a punitive damage award, the court must first, in a bifurcated trial, determine whether to make an award of compensatory damages and determine whether there is clear and convincing evidence that the defendant "acted maliciously, intentionally, fraudulently, or recklessly."<sup>31</sup> It is also determined whether the defendant's conduct fits one of the statutory exceptions to the caps on punitive damages.<sup>32</sup> If compensatory damages are awarded and the defendant was found to have acted with malice, the court will promptly hold an evidentiary hearing and have the jury determine the amount of punitive damages, if any.<sup>33</sup> Unless one of the statutory exceptions apply, the amount actually awarded to the plaintiff cannot exceed five hundred thousand dollars (\$500,000) or two (2) times the total amount of compensatory damages awarded.<sup>34</sup>

It cannot be argued that caps on punitive damages prevent a plaintiff from being made whole due to the nature of

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<sup>29</sup> § 29-39-102(a)(2) and (c) (Westlaw) (catastrophic is statutorily defined as "(1) spinal cord injury resulting in paraplegia or quadriplegia; (2) amputation of two (2) hands, two (2) feet, or one (1) of each; (3) third degree burns [covering 40% or more of the body or face]; or (4) wrongful death of a parent leaving a [minor surviving child(ren) to whom the parent had lawful rights over]").

<sup>30</sup> Fish, *supra* note 2, at 138.

<sup>31</sup> TENN. CODE ANN. § 29-39-104(a)(2) (West, Westlaw through 2018 Second Reg. Session).

<sup>32</sup> § 29-39-104(a)(7) (Westlaw) (those exceptions include specific intent to inflict serious physical injury; the altering, destroying or concealing of records in an attempt to evade liability; and if the defendant was under the influence of alcohol, drugs or an intoxicant when the injury was caused).

<sup>33</sup> § 29-39-104 (Westlaw).

<sup>34</sup> § 29-39-104(a)(5) (Westlaw).

deterrence that embodies punitive damages.<sup>35</sup> Simply put, punitive damages are awarded in addition to compensatory damages in order to punish the defendant for egregious and intentional behavior to the extent that the defendant and others would learn by example and refrain from acting in such ways in the future. These may be awarded only after it has been decided that the plaintiff can be “made whole” with an award of compensatory damages.<sup>36</sup> Lacking the “made whole” defense, proponents against caps on punitive damages needed another way to challenge the validity of the statute.

A stronger alternative argument against caps on damages is one that attacks the constitutionality of the specific statutes. In Tennessee, a few cases have attempted to challenge the Tennessee Civil Justice Act on the grounds that it violates a citizen’s Seventh Amendment right to a jury trial.<sup>37</sup>

Challengers argue that the automatic reduction in awards divests a jury of its power “to decide facts and determine damages thereby denying plaintiff [the]right to a jury trial.”<sup>38</sup> This point was argued in *Clark v. Cain*, a case involving a motor vehicle accident wherein the plaintiff alleged \$22,500,000 in pain and suffering damages.<sup>39</sup> The plaintiff also alleged that any legislative limitation prohibiting the recovery of such an amount was unconstitutional.<sup>40</sup> When the defendants moved for partial summary judgment seeking to cap the award at the statutory amount, they responded to the constitutionality challenge by arguing that the issue was not yet ripe for decision.<sup>41</sup> The defendants urged that the “plaintiffs had not yet been, nor might never be, awarded noneconomic damages that were in excess of the cap,” thus the cap might not

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<sup>35</sup> Andrea Moore Hawkins, *Balancing Act: Public Policy and Punitive Damages Caps*, 49 S.C. L. REV. 293, 296 (1998).

<sup>36</sup> § 29-39-104(a)(2) (Westlaw).

<sup>37</sup> *Clark v. Cain*, No. 12C1147, 2015 WL 1137546, at \*1 (Tenn. Cir. Ct. March 9, 2015); *Lindenberg v. Jackson Nat’l Life Ins. Co.*, 147 F. Supp. 3d 694 (W.D. Tenn. 2015).

<sup>38</sup> Bryan, et al., *supra* note 20, at 155.

<sup>39</sup> *Clark*, 2015 WL 1137546, at \*1.

<sup>40</sup> *Id.* at \*3 (plaintiff alleged the statutory caps violated a citizen’s right to a trial by jury).

<sup>41</sup> *Clark v. Cain*, 479 S.W.3d 830, 831 (Tenn. 2015).

be applicable.<sup>42</sup> Essentially, the defendants were arguing that a plaintiff cannot claim a statute is unconstitutional when it has not yet been determined by a court that the statute would apply to the situation at hand.

The court denied the defendants' motion and disagreed as to the issue of ripeness.<sup>43</sup> In making this determination, the court went through an extensive analysis of construing constitutional issues and determined that the right to a jury trial is a fundamental right; therefore, strict scrutiny applied.<sup>44</sup> In applying the strict scrutiny test, the court found that the State failed to show that the economic development of the State was more important than a citizen's right to a jury trial.<sup>45</sup> In fact, after reviewing the legislative history of the Act, the court found nothing to support the fact that caps on non-economic damages were beneficial for economic development in Tennessee.<sup>46</sup> The opinion centered around the rationale that if the caps fail to further the purpose for which they were implemented, then they should be struck down.

When the court ruled that the right to a jury trial had been violated, it quoted Chief Justice Marshall in the *Marbury v. Madison* opinion where he stated that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury."<sup>47</sup> In applying that protection of the laws to the case at hand, the court concluded that damages were an essential part of a tort action, and as such, any attempt to alter an award that had been determined by a jury would be contradictory to the right to trial by jury.<sup>48</sup>

Unfortunately for the plaintiffs in *Clark*, the defendants filed an appeal alleging that the trial court erred in holding the statute unconstitutional.<sup>49</sup> Both parties agreed that the Tennessee Supreme Court should resolve the constitutionality

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<sup>42</sup> *Id.*

<sup>43</sup> *Clark*, 2015 WL 1137546, at \*4.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at \*7.

<sup>46</sup> *Id.* at \*8.

<sup>47</sup> *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

<sup>48</sup> *Clark*, 2015 WL 1137546, at \*6.

<sup>49</sup> TENN. CODE ANN. § 29-39-102 (West, Westlaw through 2018 Second Reg. Session).



issue surrounding the caps on noneconomic damages; however, the Court disagreed.<sup>50</sup> The Court declined to decide the constitutionality of the statute, holding that the issue was not ripe to be decided at the summary judgment stage.<sup>51</sup> The Court explained that the role of Tennessee courts is to decide issues that actually exist at the time they are being disputed, and because an award of damages in excess of the cap had not yet been awarded, it was unknown as to whether the cap would even apply.<sup>52</sup> The opinion went on to say that because it is still an open issue as to whether the cap will even apply, the trial court “acted prematurely in considering . . . [the] constitutional challenge at this [early] stage of the proceedings.”<sup>53</sup>

Shortly after the Court declined to rule on the constitutionality of the noneconomic caps, a diversity case coming from the Western District of Tennessee, *Lindenberg v. Jackson Nat’l Life Ins. Co.*, presented a similar situation.<sup>54</sup> This case involved a dispute over a life insurance policy payout involving alleged bad faith on the part of the defendant insurance company. After the court ruled that the insurance company owed the plaintiff \$350,000 plus interest in actual damages, a jury found clear and convincing evidence that the defendant acted recklessly and awarded punitive damages in the amount of \$3,000,000.<sup>55</sup>

The defendant had filed a Motion for Judgment as a Matter of Law as to the award of punitive damages.<sup>56</sup> The defendant argued that the Tennessee punitive damages cap applied and that the plaintiff was only entitled to the statutory maximum of \$500,000.<sup>57</sup> The plaintiff responded and alleged that the cap was unconstitutional, but argued that if the statute

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<sup>50</sup> *Clark v. Cain*, 479 S.W.3d 830, 832 (Tenn. 2015).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 831 (quoting *West v. Schofield*, 468 S.W.3d 482, 490 (Tenn. 2015)).

<sup>53</sup> *Clark*, 479 S.W.3d at 832.

<sup>54</sup> *Lindenberg v. Jackson Nat’l Life Ins. Co.*, 147 F. Supp. 3d 694 (W.D.Tenn. 2015)

<sup>55</sup> *Id.* at 699.

<sup>56</sup> *Id.*

<sup>57</sup> *Lindenberg*, 147 F. Supp. 3d at 704; TENN. CODE ANN. § 29-39-104 (West, Westlaw through 2018 Second Reg. Session).

was constitutional, they would be entitled to \$700,000.<sup>58</sup> The plaintiff filed a Motion for Certification of Questions to the Tennessee Supreme Court regarding the constitutionality of the statutory caps on punitive damages. After denying the defendant's Motion for Judgment as a Matter of Law and granting the plaintiff's Motion for a Certified Question, the trial court decided not to rule on the amount of punitive damages to be awarded until hearing back from the Tennessee Supreme Court.

Again, the Tennessee Supreme Court declined to answer the certified question as to whether the caps on punitive damages were violative of a citizen's right to a jury trial.<sup>59</sup> The Court stated that the real issue at hand was whether a plaintiff could be awarded a "common law remedy of punitive damages in addition to the statutory remedy of the bad faith penalty," and because such issue had not been certified by the trial court and had not yet been decided, "it would be imprudent for [the Court] to answer the certified questions concerning the constitutionality of the statutory caps on punitive damages in this case in which the question of the availability of those damages in the first instance has not been and cannot be answered by this Court."<sup>60</sup>

Once the Tennessee Supreme Court declined to answer the certified question, the trial court took it upon itself to answer the issue presented by the Court regarding the availability of both statutory bad faith damages and punitive damages.<sup>61</sup> Citing *Riad v. Erie Ins. Exchange*, the court noted that a plaintiff's damages were not limited to the statutory bad faith damages and, acting on precedent, ruled that both remedies were available for the plaintiff.<sup>62</sup>

In analyzing the constitutionality of the punitive damage caps, the court found that the right to a jury trial does not include the right to a specific legal remedy.<sup>63</sup> The court

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Riad v. Erie Ins. Exchange*, 436 S.W.3d 256, 276 (Tenn. Ct. App. 2013).

<sup>63</sup> *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 304 F. Supp. 3d 711, 719 (W.D. Tenn. 2016); *See also Dowlen v. Fitch*, 264 S.W.2d 824, 825

essentially was telling the plaintiff that because the right to punitive damages is not a vested right in a citizen, that it cannot be said that capping the availability of punitive damages can be in violation of a constitutional right.

The court found that the caps were constitutional and as such, awarded the plaintiff punitive damages in the amount of \$700,000, which is reflective of the statutory maximum allowed within the statute.<sup>64</sup>

The Tennessee Supreme Court's lack of decision on the issue along with the lack of existing case law on the subject only furthers the ambiguity as to the constitutionality of the caps on damages. A lack of a decision on the matter essentially equates to a decision upholding the constitutionality, as the caps are still in place. However, this lack of decision also indicates that the Court has left the door open for future challenges.

#### B. GEORGIA CAPS AND CONSTITUTIONALITY CHALLENGES

Similar to the Tennessee Civil Justice Act, Georgia implemented the Georgia Tort Reform Act of 1987 and later amended it in 2005. The Act placed a cap on noneconomic damages in medical malpractice cases at \$350,000.<sup>65</sup> The Act was put in place to help with what the Legislature called a crisis involving reduced access to and increasing cost of liability insurance which resulted in the potential for decreased access to healthcare by Georgia citizens.<sup>66</sup>

In 2010, the cap on noneconomic damages in medical malpractice cases was challenged.<sup>67</sup> In *Atlanta Oculoplastic Surgery P.C. v. Nestlehutt*, the jury awarded the plaintiff \$900,000 in noneconomic damages after having permanent disfigurement resulting from a procedure performed by the

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(Tenn. 1954) (holding that the cases ruling a person has no vested right in a particular remedy are abundant).

<sup>64</sup> TENN. CODE ANN. § 29-39-104(a)(5)(A) (West, Westlaw through 2018 Second Reg. Session).

<sup>65</sup> GA. CODE ANN. § 51-13-1 (West, Westlaw through 2018 Reg. and Spec. Sessions).

<sup>66</sup> 2005 Ga. Laws p. 1.

<sup>67</sup> *Atlanta Oculoplastic Surgery P.C. v. Nestlehutt*, 691 S.E.2d 218 (Ga. 2010).

defendant medical provider.<sup>68</sup> The plaintiff moved to have the cap deemed unconstitutional.<sup>69</sup> The trial court held that the statute violated Georgia's Constitution by encroaching on the right to a jury trial.<sup>70</sup> The Georgia Supreme Court affirmed on the basis that at the time of the adoption of the Georgia Constitution of 1798, medical malpractice and the right to a trial by jury were incorporated into the Georgia Constitution.<sup>71</sup> The Court concluded that the right to have a jury determine a plaintiff's damages is included as a constitutional right, and held that the statute infringed on the right to have the jury determine damages by undermining the very basic function of the jury.<sup>72</sup> "If the legislature may constitutionally cap recovery at \$350,000, there is no discernible reason why it could not cap the recovery at some other figure, perhaps \$50,000, or \$1,000, or \$1."<sup>73</sup> The Georgia Supreme Court ruled the statute unconstitutional with the release of the Atlanta Oculoplastic Surgery opinion which remains good law to date.<sup>74</sup>

The Atlanta Oculoplastic Surgery opinion distinguished caps on noneconomic damages from caps on punitive damages.<sup>75</sup> Punitive damages cannot violate the right to trial by jury because they are "not really facts tried by the jury."<sup>76</sup> Because punitive damages are so deterring and punishing in nature and not used to compensate the plaintiff, a cap cannot be said to be a violation of the Seventh Amendment.<sup>77</sup>

While not violative of the Seventh Amendment, caps on

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<sup>68</sup> *Id.* at 220.

<sup>69</sup> § 51-13-1 (Westlaw 2018).

<sup>70</sup> Atlanta Oculoplastic Surgery P.C., 691 S.E.2d at 220 (The trial court also ruled that statute encroached upon the governmental separation of powers and the right to equal protection. The Georgia Supreme Court affirmed based on their finding of an encroachment upon the right to trial by jury).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 222-23 (quoting *Feltner v. Columbia Pictures TV, Inc.*, 523 U.S. 340, 353 (1998)).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> GA. CODE ANN. § 51-12-5.1(c) (West, Westlaw through 2018 Reg. and Spec. Sessions); *See also* *State v. Mosley*, 436 S.E. 2d 632 (Ga. 1993).

punitive damages have been deemed constitutionally invalid under the Equal Protection Clause when it comes to products liability claims.<sup>78</sup> Specifically, the district court in *McBride* ruled that OCGA § 51-12-5.1(e)(1), which limits a plaintiff to a single punitive recovery regardless of the number of causes of actions, was “null and void in that it violates the equal protection and due process clauses of the Georgia and federal constitutions.”<sup>79</sup> The court reasoned that the single award “unconstitutionally discriminate[d] between plaintiffs in products liability actions because it would deny any awards to all but the first plaintiff whose claim arose out a particular act or omission.”<sup>80</sup> Additionally, it would also discriminate between plaintiffs in products liability cases versus plaintiffs in non-products liability cases who are not limited to the single award.<sup>81</sup> The court also ruled that section (e)(2) was also constitutionally invalid under the Takings Clause, as it mandated for 75% of the total recovery in products liability cases to be given to the State.<sup>82</sup>

Interestingly, the Georgia Supreme Court declined to follow *McBride* when it upheld OCGA § 51-12-5.1(e)(2) as completely constitutional.<sup>83</sup> The Court in *Mack Trucks, Inc. v. Conkle* upheld the constitutionality of OCGA § 51-12-5.1(e)(1) and (e)(2) holding that “[a] plaintiff has no vested property right in the amount of punitive damages which can be awarded in any case, and the legislature may lawfully regulate the amount of punitive damages which can be awarded.”<sup>84</sup>

This opinion begs the question of how far the legislature can go when it comes to caps on punitive damages. It has been established that there is no constitutional right to an award of punitive damages, which is what allows case law decisions like *Mack Trucks* and legislatively regulated limitations on

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<sup>78</sup> *McBride v. Gen. Motors Corp.*, 737 F. Supp 1563 (M.D. Ga. 1990).

<sup>79</sup> *Id.* at 1579.

<sup>80</sup> 2 BARRY A. LINDAHL, *MODERN TORT LAW: LIABILITY AND LITIGATION* § 21:14 (2d ed. 2017).

<sup>81</sup> *Id.*

<sup>82</sup> *McBride*, 737 F. Supp. at 1579.

<sup>83</sup> ERIC JAMES HERTZ, MARK D. LINK, *GEORGIA PUNITIVE DAMAGES* § 2-12 (2d. ed. 2017).

<sup>84</sup> *Mack Trucks, Inc. v. Conkle*, 436 S.E.2d 635, 639 (Ga. 1993).

damages.<sup>85</sup> With the free range the Georgia Court has given to the legislature, it begs the question of whether eventually, this could lead to the complete abrogation of punitive damages.

### C. ALABAMA CAPS AND CONSTITUTIONALITY CHALLENGES

Like Tennessee and Georgia, Alabama has adopted a series of tort reform legislation, including a cap of \$400,000 on noneconomic damages in health care liability cases.<sup>86</sup>

In 1991, the \$400,000 cap was challenged as being violative of a citizen's right to a jury trial.<sup>87</sup> The plaintiff was awarded \$600,000 in noneconomic damages arising from a medical malpractice claim.<sup>88</sup> The trial court, pursuant to the statutory cap, reduced the award to the maximum amount allowed of \$400,000. On appeal, the plaintiff challenged the constitutionality of the cap.<sup>89</sup>

When the Alabama Supreme Court ruled the cap unconstitutional, it reiterated the Court's prior rulings, which cautioned against altering a jury's award of damages unless the determination was influenced by "bias, passion, prejudice, corruption, or other improper motive."<sup>90</sup> The Court was influenced by the notion that noneconomic damages are difficult to calculate, and acknowledged that "[t]he jury's role in fixing the amount of damages has been regarded as particularly sacrosanct in cases involving damages not susceptible of precise measurement."<sup>91</sup> Because there was no evidence that the jury's assessment of damages was flawed by bias, prejudice, corruption, or fraud, the Court ruled that a jury's determination of damages is protected by the right to a jury trial, and thus, any statute preventing that jury's award

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<sup>85</sup> *Id.*

<sup>86</sup> Leonard J. Nelson, III, et al., *Medical Malpractice Reform in Three Southern States*, 4 J. HEALTH & BIOMED. L. 69, 114 (2008).

<sup>87</sup> *Moore v. Mobile Infirmary Ass'n*, 592 So.2d 156, 158 (Ala. 1991).

<sup>88</sup> *Id.* at 157.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 161.

<sup>91</sup> *Id.* at 160-61; *See also* *Alabama Power Co. v. Mosley*, 318 So.2d 260, 266 (Ala. 1975); *Austin v. Tennessee Biscuit Co.*, 52 So.2d 190 (Ala. 1951); *Montgomery Light & Traction Co. v. King*, 65 So. 998 (Ala. 1914); *Sheffield Co. v. Harris*, 61 So. 88 (Ala. 1912).

from being given as is offends the Alabama Constitution.<sup>92</sup>

The above discussion regarding the placement of and the constitutional challenges to caps on damages only discusses caps on noneconomic and punitive damages, because the majority of the caps are not applicable to economic damages. One way insurance companies and insurance defense attorneys are attempting to get around the lack of caps on economic damages is by attempting to limit the collateral source rule. The next section discusses what the collateral source rule is and how the insurance industry is attempting to limit the rule both in its application of calculating damages as well as from an evidentiary standpoint.

### III. COLLATERAL SOURCE RULE

When injured in tort, a plaintiff may receive collateral payments from third parties, such as insurance companies, who have no connection with the defendant.<sup>93</sup> This often occurs through health insurance companies when they pay for medical services, or auto insurance companies when they pay you for your property damage. Pursuant to the rule, evidence that the plaintiff has received benefits from third parties who have no relation to the defendant will not be used to reduce the total recovery received by the plaintiff.<sup>94</sup> Rules like this have been implemented in every state within the United States.<sup>95</sup>

The collateral source rule is a multipurpose rule that is applicable to both damages and the rules of evidence.<sup>96</sup> Not only does it prohibit reduced recovery by payments from collateral sources, but it also prohibits the introduction of evidence of such payments by barring the

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<sup>92</sup> Moore, 592 So.2d. at 164.

<sup>93</sup> 2 STUART M. SPEISER, AMERICAN LAW OF TORTS § 8:16 (Monique C. M. Leahy et al. eds., 2018).

<sup>94</sup> *Id.*

<sup>95</sup> Bryce Benjet, *A Review of State Law Modifying the Collateral Source Rule: Seeking Greater Fairness in Economic Awards*, 76 DEF. COUNS. J. 210, 210 (2009).

<sup>96</sup> *Id.*

introduction of evidence of collateral source payments made towards any part of a plaintiff's damages.<sup>97</sup>

One argument used to justify the use of the rule is that the payments are often gratuitous in nature or stem from a pre-existing contractual relationship, and a plaintiff should not be penalized for such good fortune.<sup>98</sup> Proponents for the limitation of the rule often argue that allowing recovery of collateral source payments allows the plaintiff to "double recover."<sup>99</sup> Some states have enacted statutes specifically for the purpose of preventing double recovery.<sup>100</sup> Other states acknowledge that double recovery may be a windfall for the plaintiff; however, a defendant who escapes liability, wholly or partially, also enjoys a windfall.<sup>101</sup> Because the law must sanction one windfall and deny the other, these states opt to favor the victim of the wrong as opposed to the wrongdoer.<sup>102</sup> Others have recognized the double recovery as acceptable, so long as the payments are coming from someone who is wholly unconnected to the defendant.<sup>103</sup> The following subsections discuss how Tennessee, Georgia, and Alabama differ in their application of the collateral source rule.

#### A. TENNESSEE COLLATERAL SOURCE

In Tennessee, the collateral source rule was first recognized in 1896, when the Tennessee Supreme Court heard a case regarding damages caused by a fire that started in one business and spread to the adjacent business belonging to the

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<sup>97</sup> Michael Flynn, *Private Medical Insurance and the Collateral Source Rule: A Good Bet?*, 22 U. TOL. L. REV. 39, 42 (1990).

<sup>98</sup> Benjet, *supra* note 95, at 210.

<sup>99</sup> *Id.* at 213.

<sup>100</sup> See IDAHO CODE ANN § 6-1606 (West, Westlaw through 2018 Second Reg. Session).

<sup>101</sup> Mitchell v. Haldar, 883 A.2d 32, 38 (Del. 2005).

<sup>102</sup> *Id.*

<sup>103</sup> See Hayes Sight & Sound, Inc. v. OneOK, Inc., 136 P.3d 428, 440-41 (Kan. 2006).



plaintiff.<sup>104</sup> In the landmark case, *Anderson v. Miller*, the plaintiff, being fully insured, received insurance money to repair the business.<sup>105</sup> The defendants argued that the insurance benefits received by the plaintiff diminished the damages claim against them.<sup>106</sup> They reasoned that the insurance money put the plaintiffs back to the place they had been prior to the fire, and thus there was no reason to recover from the defendants as well.<sup>107</sup> The Court disagreed and held that the insurance benefits obtained by the plaintiff did not affect the defendant's responsibilities to the plaintiff, and such responsibilities would not be taken away or minimized by the fact that the plaintiff received the insurance benefits.<sup>108</sup> This was the beginning of the utilization of the collateral source rule in Tennessee.

After *Anderson*, Tennessee formally adopted the *Restatement's* version of the collateral source rule which, in part, states "[p]ayments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability."<sup>109</sup> Tennessee has continuously upheld the rule even though there has been opposition to its application.<sup>110</sup>

The Court's decision in a 1998 case upholding the rule emphasized Tennessee's requirement that damages must be a reasonable value of necessary services.<sup>111</sup> For a plaintiff to recover for services rendered, they must show that the rendered services were necessary for the treatment of the injury and the

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<sup>104</sup> *Anderson v. Miller*, 33 S.W. 615, 616 (Tenn. 1896).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> RESTATEMENT (SECOND) OF TORTS § 920A(2) (AM. LAW INST. 1979).

<sup>110</sup> See *Hall v. USF Holland*, 152 F. Supp 3d 1037 (W.D. Tenn. 2016); *Dedmon v. Steelman*, 535 S.W.3d 431 (Tenn. 2017); *West v. Shelby County Healthcare Corp.*, 459 S.W.3d 33 (Tenn. 2014); *Fry v. Kennedy*, 991 S.W.2d 754 (Tenn. 1998); *J&M, Inc. v. Cupples, No. E2004-01328-COA-R3-CV*, 2005 WL 1190704, at \*3 (Tenn. Ct. App. 2005) (noting the long adaptation of the collateral source rule in Tennessee); *Simpson v. Allied Van Lines, Inc.*, 612 S.W.2d 172 (Tenn. Ct. App. 1980) (holding a \$10,000 contractual liability payment by US Government could not be used to reduce the amount of damages awarded to the Plaintiff).

<sup>111</sup> *Fry*, 991 S.W.2d at 764.

charges for those services were reasonable.<sup>112</sup> Once proved reasonable and necessary, the defendant is prohibited from attempting to prove that the service rendered has been paid or will be paid by collateral sources.<sup>113</sup>

### 1. WEST AND ITS AFTERMATH

The problem of what is reasonable and necessary arises in situations where the medical providers are paid less than what the services were billed for.<sup>114</sup> This occurs generally due to contractual agreements between health insurance companies and medical providers where the providers will accept a discounted rate, and in return, the insurance companies have the provider listed as an approved provider under an insured's policy.<sup>115</sup> When a service is billed for one amount but is considered paid in full after receiving a lower amount than what was billed, an issue arises as to what is the reasonable charge for the services rendered.<sup>116</sup>

In 2014, the Tennessee Supreme Court reviewed a case which centered around the applicability of the reasonable and necessary requirement when acting pursuant to the Hospital Lien Act.<sup>117</sup> The Hospital Lien Act in part states that when a person is injured and pursues a claim for damages resulting from those injuries, the law requires that the hospital file a lien against the claim for all reasonable and necessary charges for hospital care and treatment.<sup>118</sup>

The plaintiff in *West* was billed \$14,000.00 for hospital and a lien was perfected on the personal injury lawsuit in that amount.<sup>119</sup> The hospital, pursuant to the contractual agreement, only billed the plaintiff's health insurance company for \$3,000.00 which was paid in full.<sup>120</sup> The hospital refused to

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *West*, 459 S.W.3d at 37.

<sup>116</sup> *Id.*

<sup>117</sup> TENN. CODE ANN. §§ 29-22-101 to 107 (West, Westlaw through 2018 Second Reg. Session).

<sup>118</sup> § 29-22-101(a) (Westlaw).

<sup>119</sup> *West*, 459 S.W.3d at 38.

<sup>120</sup> *Id.*

extinguish the lien, reasoning they were waiting to see whether they could recover the non-discounted price from the defendants in the case.<sup>121</sup> When the plaintiff sued to have the lien extinguished, the Court had to determine which amount was reasonable; the amount billed to the plaintiff or the amount billed to the insurance company.<sup>122</sup>

The Court determined that, under the statute, “reasonable” was the amount of charges agreed upon by the insurance company and the hospital, and not the non-discounted amount for which the patient would have been originally billed.<sup>123</sup> The plaintiff’s lien was extinguished due to payment in full of the reasonable and necessary charges by her insurance company.<sup>124</sup> The Court specified that this definition of “reasonable” was limited in application to the Hospital Lien Act.<sup>125</sup>

After *West* was decided, defense attorneys across the state began arguing for an extension of the *West* decision to the definition of “reasonable” in all personal injury cases.<sup>126</sup> The defendants argued that the plaintiff’s recoverable damages should be limited to the benefits actually paid by the insurer.<sup>127</sup> In stark contrast, the plaintiffs sought to recover the full amount of their damages, arguing that any reduction in recovery resulting from insurance benefits received would be violative of the collateral source rule.<sup>128</sup>

## 2. TENNESSEE SUPREME COURT UPHOLDS THE COLLATERAL SOURCE RULE

In its decision in *Dedmon v. Steelman*, the Tennessee Supreme Court clarified that the “holding in *West* was not intended to apply in personal injury cases.”<sup>129</sup> The defendant wished to limit the plaintiff’s introduction of, and possible

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 44.

<sup>123</sup> *Id.* at 46.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 44.

<sup>126</sup> *DEDMOND V. STEELMAN*, 535 S.W.3D 431, 446 (TENN. 2017).

<sup>127</sup> *Hall v. USF Holland*, 152 F. Supp 3d 1037, 1038 (W.D. Tenn. 2016).

<sup>128</sup> *Id.*

<sup>129</sup> *Dedmond*, 535 S.W.3d at 450 (emphasis added).

recovery of, medical bills to the discounted price paid by the plaintiff's health insurance company, arguing that the decision in *West* should be extended.<sup>130</sup> In ruling that *West* did not extend to personal injury cases, the Court outlined the long-standing existence and enforcement of the collateral source rule in Tennessee and emphasized the strong public policy rooted in maintaining a defendant's responsibility for any harm caused despite the plaintiff's receiving collateral benefits.<sup>131</sup>

Even though Tennessee upheld the existence of the collateral source rule in personal injury cases, the rule has been abrogated in regard to medical malpractice claims where the costs for the collateral benefits have been or will be paid by sources other than the plaintiff, in whole or in part.<sup>132</sup> The Court has noted that because this collateral source exception is in direct conflict with the rule that has long been upheld in Tennessee, "it must be strictly construed."<sup>133</sup> The Court applied this strict construction of the statute in a case where a plaintiff had contributed to an insurance plan through his employer and those contributions had been used partially to cover the plaintiff's insurance plan through the employer.<sup>134</sup> It was held that the medical malpractice exception did not apply here because the plaintiff partially contributed to the costs of the reasonable and necessary medical services by contributing to the insurance plan.<sup>135</sup>

Absent the medical malpractice exception to the collateral source rule, Tennessee has not altered its version of the rule and, similar to Georgia, continues to uphold the

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<sup>130</sup> *Id.* at 435.

<sup>131</sup> *Id.* at 451.

<sup>132</sup> The collateral source rule has been abrogated in regard to medical malpractice claims where the collateral benefits will have been paid for by governmental or private employers, social security benefits, service benefit programs, unemployment benefits, or any other source except the assets of the claimants. TENN. CODE ANN. § 29-26-119 (West, Westlaw through 2018 Second Reg. Session).

<sup>133</sup> *Hunter v. Ura*, 163 S.W.3d 686, 711 (Tenn. 2005).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

collateral payment protections.

## B. GEORGIA COLLATERAL SOURCE RULE

While Tennessee strays slightly from the full application of the collateral source rule, Georgia strictly adheres to it; however, this has not always been the case. During an early movement of tort reform, a law was passed by the Georgia legislature which allowed the admission of evidence of collateral sources at trial.<sup>136</sup> This was eventually challenged and deemed unconstitutional by the Georgia Supreme Court.<sup>137</sup> The Court invalidated the statute, noting that collateral source evidence is not only irrelevant but has a strong likelihood of being prejudicial.<sup>138</sup>

With the statute allowing evidence of collateral sources no longer in play, Georgia retracted back to its days of strict adherence and continued to uphold the application of the rule in tort cases; however, the court refused to apply it in contract cases.<sup>139</sup> Additionally, the Georgia Court of Appeals ruled that a plaintiff may not recover for medical bills that had previously been discharged through bankruptcy.<sup>140</sup> The court reasoned that discharge through bankruptcy is not a “collateral source” at all, as “[t]here is no third party acting as an additional source of recovery.”<sup>141</sup> It was also mentioned that if allowed, it might encourage bankruptcy, which would be against public policy.<sup>142</sup> With the minor exception for bankruptcy, Georgia still follows the common law rule that no collateral source evidence will be admissible at trial in an attempt to reduce the

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<sup>136</sup> GA. CODE ANN. § 51-12-1(b) (West, Westlaw through 2018 Reg. and Spec. Sessions).

<sup>137</sup> *Denton v. Con-Way Southern Exp.*, 402 S.E.2d 269 (Ga. 1991).

<sup>138</sup> *Id.* at 273.

<sup>139</sup> *Amalgamated Transit Union Local 1324 v. Roberts*, 434 S.E.2d 450, 452, (Ga. 1993) (holding that the collateral source rule does not apply in contract cases because collateral source evidence can be admitted if it is relevant to demonstrate the extent of the plaintiff's actual loss that was caused by the breach); *See also Olariu v. Marrero*, 549 S.E.2d 121 (Ga. Ct. App. 2001); *McDonald v. Simmons*, 428 S.E.2d 690 (Ga. Ct. App. 1993).

<sup>140</sup> *Olariu*, 549 S.E.2d 121.

<sup>141</sup> *Id.* at 124.

<sup>142</sup> *Id.* at 125.

plaintiff's recoverable damages.

### C. ALABAMA COLLATERAL SOURCE RULE

In stark contrast to both Tennessee and Georgia, Alabama has completely gotten rid of the collateral source rule in all civil actions which seek damages.<sup>143</sup> This abrogation means the defendant can present the discounted bills as a defense to the plaintiff's medical bills being reasonable and necessary, which would allow for a reduced recovery.

Before abolishing the law in 1979, Alabama followed an articulated rule that had been set out by the Alabama Supreme Court since 1910, which in part stated "[t]he mere fact that the insurer has paid the insured cannot affect the action against the wrongdoer who has destroyed or injured the property, the subject of the insurance."<sup>144</sup> The Alabama Supreme Court upheld this rule in *Carlisle v. Miller*, where the Court held that any recovery by a plaintiff from an insurer shall not "affect his measure of recovery, and such evidence is not admissible in the trial of such cause."<sup>145</sup>

The first piece of legislation abrogating the rule in Alabama applied to products liability cases.<sup>146</sup> The law provided that evidence of the plaintiff's medical expenses that may have been or might have been paid by health insurance would be admissible in trial for the purpose of mitigating any medical expense damages.<sup>147</sup>

Another wave of tort reform came through Alabama in the late 1980s, and newly enacted statutes abrogated the collateral source rule in medical malpractice cases and in all personal injury cases seeking damages for medical expenses.<sup>148</sup>

The constitutionality of the statute abrogating the rule

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<sup>143</sup> Danielle A. Daigle, *The Collateral Source Rule in Alabama: A Practical Approach to Future Applications of the Statutes Abrogating the Doctrine*, 53 ALA. L. REV. 1249, 1250 (2002).

<sup>144</sup> *Long v. Kansas City, M. & B.R. Co.*, 54 So. 62, 64 (Ala. 1910).

<sup>145</sup> *Carlisle v. Miller*, 155 So. 2d 689, 691 (Ala. 1963); *See also Vest v. Gay*, 154 So. 2d 297, 300 (Ala. 1963) (holding that the jurisdictional rule prevented admission of collateral source evidence).

<sup>146</sup> ALA. CODE § 6-5-522 (2018).

<sup>147</sup> *Id.*

<sup>148</sup> ALA. CODE § 6-5-545 (1993); ALA. CODE § 12-21-45 (1995).

in personal injury cases was challenged and deemed unconstitutional in 1996.<sup>149</sup> The Court noted that the legislature failed to provide any support or reasoning for why evidence of collateral source payments should now be admitted.<sup>150</sup>

Approximately four years later, the Alabama Supreme Court found itself reevaluating the constitutionality of the statute which abrogated the rule in personal injury cases.<sup>151</sup> In determining that the statute was constitutional, the court explained that “[the reasons we previously held the statute to be unconstitutional] deal with the wisdom of legislative policy rather than constitutional issues....Matters of policy are for the legislature and, whether wise or unwise, legislative policies are of no concern to the courts.”<sup>152</sup> The Court essentially said that the courts have no business making decisions that should be made by the state legislature. The Court reversed its prior decision that the statute relating to personal injury claims was unconstitutional because the legislature had not deemed the statute to be unconstitutional.

The repeal of the collateral source rule in Alabama continues today, providing for any evidence of collateral source payments to be admissible in trial. However, the problem lies in the fact that “[t]he statutes on their faces make evidence of collateral source payments admissible without providing what the effect on the law of damages will be.”<sup>153</sup> In other words, the statute only addresses the rule of evidence concerning the admission of medical bills and fails to provide any instruction for the jury on how they are to handle the admission of collateral source payments in conjunction with the damages calculation.

As seen in the analysis of Tennessee, Georgia, and Alabama, each jurisdiction has different rules regarding the application of the collateral source rule. A state can have a complete abrogation of the rule like Alabama has done, or a state could be on the opposite side of the spectrum like Georgia

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<sup>149</sup> American Legion Post No. 57 v. Leahey, 681 So. 2d 1337 (Ala. 1996).

<sup>150</sup> *Id.* at 1340.

<sup>151</sup> Marsh v. Green, 782 So.2d 223 (Ala. 2000).

<sup>152</sup> *Id.* at 231.

<sup>153</sup> Daigle, *supra* note 143.

and can choose to fully adhere to the rule. The fairest application seems to be Georgia's method of full adherence, which allows a plaintiff to receive collateral payments without the fear of having her damages reduced by the amount of the collateral payments.

#### IV. CONCLUSION

This analysis of tort reform across the states of Tennessee, Georgia, and Alabama reveals a wide range of decisions that have been made regarding the placement and constitutionality of caps on damages as well as the utilization of the collateral source rule. An analysis of these decisions uncovers the severe injustice that these limitations create, especially in states that lack any evidence or support that the limitations are actually furthering their stated purpose of helping lower insurance premiums or improving the state's economic development. As seen in both Tennessee and Georgia, the collateral source rule has been deeply rooted in both the federal and state justice systems. As is the right to a trial by jury. Issues such as these, which are embedded within the very basis of our justice system cannot continue to be limited and abrogated like they have been in Alabama. The personal injury attorneys and trial lawyers associations as well as our legislature, regardless of which political party is represented, need to form together and continue to lobby against these limitations on a plaintiff's recovery.