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# COLLATERAL SOURCES OF INDEMNITY

ROBERT A. HENDERSON\* & PATRICK F. MARONEY\*\*

MEMBERS of our society strive to financially protect themselves from unforeseen circumstances causing illness or injury through the purchase of adequate insurance coverage. However, where there are multiple payers for the same injury, the question arises as to how one provider of benefits obtains reimbursement from the others. This issue of payments from, and reimbursement by, collateral source providers was addressed by the 1993 Regular Session of the Florida Legislature. After review and analysis, the Legislature chose to revise one and repeal another of Florida's laws addressing collateral sources of indemnity.<sup>1</sup> Committee Substitute for House Bill 975 repealed section 627.7372, *Florida Statutes*, which applied to actions arising out of the operation of a motor vehicle.<sup>2</sup> Section 768.76, *Florida Statutes*, which applies to non-motor vehicle actions arising from tort or contract, was also revised by the same act.<sup>3</sup> In this Article, the authors trace the history of Florida's collateral source laws and discuss the latest enactment.

## I. ORIGIN OF THE COLLATERAL SOURCE DOCTRINE

At common law, the collateral source rule prevented the defendant from introducing into evidence other sources from which the plaintiff had received reimbursement. As defined by one court, "[u]nder the 'collateral source rule,' 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."<sup>4</sup> The common law doctrine was codified in several states as a byproduct of the "tort reform" of the 1980s.<sup>5</sup>

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1. Ch. 93-245, 1993 Fla. Laws 2436.

2. *Id.* § 3, 1993 Fla. Laws at 2439 (repealing FLA. STAT. § 627.7372).

3. *Id.* § 1, 1993 Fla. Laws at 2436 (amending FLA. STAT. § 768.76 (1991)).

4. *Farley v. Engelken*, 740 P.2d 1058, 1059 (Kan. 1987).

5. Specifically, Alabama, Alaska, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New York, North Dakota, Oregon, Rhode Island and Tennessee enacted tort reform measures during the last decade that addressed issues involving the doctrine of collateral sources. See INSURANCE INFO. INST., INSURANCE FACTS, 1987-88 PROPERTY/CASUALTY FACT BOOK 60 (1987-88).

Prior to October 1, 1993, Florida had three distinct statutory provisions that each constituted a collateral source rule.<sup>6</sup> Two of the laws addressed causes of action stemming from motor vehicle accidents,<sup>7</sup> while the third statute applied to other actions for damages arising from tort or contract.<sup>8</sup>

The Florida statutory scheme is somewhat complex and will be examined by reviewing these three distinct statutory provisions that apply to collateral sources of indemnity.

## II. FLORIDA'S COLLATERAL SOURCES OF INDEMNITY LAWS

### A. *The Collateral Source Provisions Applicable to Personal Injury Protection Benefits*

Under Florida's Motor Vehicle No-Fault Law, any owner or operator of a motor vehicle must obtain Personal Injury Protection [PIP] coverage up to \$10,000 for losses sustained as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle.<sup>9</sup> A person injured as a result of a motor vehicle accident is entitled to eight percent of all reasonable expenses for medical bills, sixty percent of any loss of gross income and earning capacity, and death benefits of \$5,000.<sup>10</sup> An injured party who is entitled to bring suit under the No-Fault Law is not entitled to recover any damages for which PIP benefits are paid or payable.<sup>11</sup> Thus, the statute provides that the plaintiff may prove all of his special damages notwithstanding this limitation, but, if such damages are introduced into evidence, the trier of fact, whether judge or jury, cannot award damages for PIP benefits paid or payable.<sup>12</sup> In all cases in which a jury is required to determine the existence of damages, the court must instruct the jury that the plaintiff cannot recover special damages for which PIP benefits have been paid or are payable.<sup>13</sup> This provision, section 627.736(3), *Florida Statutes*, which provides that

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6. FLA. STAT. §§ 627.736(3), .7372, 768.76 (1991 & Supp. 1992).

7. *Id.* §§ 627.736(3), .7372 (1991 & Supp. 1992).

8. *Id.* § 768.76 (1991).

9. *Id.* § 627.736(1) (Supp. 1992).

10. *Id.* § 627.736(1)(a)-(c).

11. Further, no insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise for PIP benefits, regardless of whether suit has been filed or settlement has been reached by the parties. *Id.* § 627.736(3).

12. *Id.*

13. *Id.* Allowing the jury to deduct the amount of the award by the amount of PIP benefits paid would serve as a disincentive for the claimant to obtain the required amount of coverage pursuant to the Florida Motor Vehicle No-Fault Law.

PIP benefits cannot be included in an award for negligence, was not amended by the 1993 Legislature.

*B. Collateral Sources of Indemnity Applicable to Motor Vehicle Accidents Other Than PIP Situations*

The second collateral source provision applicable to motor vehicle accidents was found in section 627.7372, *Florida Statutes*. This provision will be referred to hereinafter as the auto rule. Originally enacted in 1977, this collateral sources of indemnity law provided that all specified collateral sources paid to the claimant before trial were admissible into evidence in automobile tort actions.<sup>14</sup>

When enacted, the auto rule provided: "In any action for personal injury or wrongful death arising out of the ownership, operation, use or maintenance of a motor vehicle, the court shall admit into evidence the total amount of all collateral sources which have been paid to the claimant prior to the commencement of the trial."<sup>15</sup> Any amounts paid by the claimant to secure the collateral source were also admissible.<sup>16</sup> Collateral sources were defined as any payments made to the claimant, or on his behalf, pursuant to the United States Social Security Act, any federal, state, or local income disability act, and any other public programs providing medical expenses, disability payments, or other similar benefits.<sup>17</sup> Collateral sources also included any health, sickness or income disability insurance, automobile accident insurance that provided health or disability benefits, except life insurance, any contract of any group or organization to pay for the costs of any health care services, and any contractual or voluntary wage contribution plan provided by employers which provided wages to the claimant during a period of disability.<sup>18</sup>

The auto rule was expanded the following year to require the court to instruct the jury to deduct from its verdict the value of all benefits received by the claimant from any collateral source.<sup>19</sup> This broadening of the law required the court to admit into evidence the total amount of all collateral sources paid to the claimant prior to the commencement of trial.<sup>20</sup> The Legislature also removed the requirement that the

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14. Ch. 77-468, § 34, 1977 Fla. Laws 2057, 2081 (codified at FLA. STAT. § 627.7372 (1977)).

15. *Id.* (codified at FLA. STAT. § 627.7372(1) (1977)).

16. *Id.*

17. *Id.* (codified at FLA. STAT. § 627.7372(2) (1977)).

18. *Id.*

19. Ch. 78-374, § 5, 1978 Fla. Laws 1041, 1043 (amending FLA. STAT. § 627.7372(1)).

20. *Id.* The legislative staff advised that this expansion of the collateral source rule should assist in the reduction of the amount of final verdicts. However, an exact economic impact was not determined as the ultimate savings depended upon the reported frequency and severity of projected accidents. Staff of Fla. S. Comm. on Com., CS for SB 1308 (1978) Staff Analysis 2 (final June 1, 1978) (on file with comm.).

court admit into evidence any amount paid by the claimant to secure the collateral sources.<sup>21</sup>

In 1979, the definition of a collateral source was amended to exclude any benefits received under the Workers' Compensation Act.<sup>22</sup> The effect of the change was to ensure that the claimant would receive full workers' compensation benefits in addition to any amounts recovered from the tortfeasor or his insurer.

While addressing Florida's mandatory PIP requirement, the 1985 Legislature revised the definition of a motor vehicle to exclude any type of vehicle used as a taxicab or limousine.<sup>23</sup> Owners of these types of vehicles would not be required to maintain PIP coverage.<sup>24</sup> However, the previous all-inclusive definition of a motor vehicle (including taxicabs and limousines) would still be applicable for actions subject to the collateral source rule.<sup>25</sup> Thus, any first-party benefits (other than PIP coverage) provided under an insurance policy covering the occupants of a taxicab or limousine would still be deemed collateral sources for purposes of section 627.7372.

In 1986, the Legislature again revised the definition of collateral sources to specifically exclude benefits received under the Medicaid program of Title XIX of the Social Security Act.<sup>26</sup> Any benefits received from any medical services program administered by the Department of Health and Rehabilitative Services were also carved out of the definition.<sup>27</sup> These changes comported with the 1979 revision excluding workers' compensation benefits from any collateral source offset. The net effect of restricting the collateral source definition was to ensure that those claimants who are entitled to certain first-party governmental health benefits based on their income still would be allowed to collect their full benefits from the government as well as the total amount of damages from the tortfeasor.

The law was next revised in 1989 when the Legislature further amended the definition of collateral sources to exclude benefits received by the claimant under Medicare or any other federal program that provided for a federal government lien on the plaintiff's recov-

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21. Ch. 78-374, § 5, 1978 Fla. Laws 1041, 1043 (amending FLA. STAT. § 627.7372(1)).

22. Ch. 79-40, § 115, 1979 Fla. Laws 215, 301 (codified at FLA. STAT. § 627.7372(3) (1979)).

23. Ch. 85-320, § 1, 1985 Fla. Laws 1937, 1937 (amending FLA. STAT. § 627.732(1)(b)).

24. At the time, common carriers from South Florida contended that the legislation was necessary because private passenger PIP insurers had subrogation rights against the owner or insurer of commercial vehicles, yet the owner or insurer of commercial motor vehicles did not have subrogation rights against insurers of private passenger vehicles. Staff of Fla. S. Comm. on Com., CS for SB 713 (1985) Staff Analysis 3 (rev. June 19, 1985) (on file with comm.).

25. Ch. 85-320, § 1, 1985 Fla. Laws 1937, 1937 (amending FLA. STAT. § 627.732(1)(b)).

26. Ch. 86-220, § 70, 1986 Fla. Laws 1603, 1660 (amending FLA. STAT. 627.7372(3)).

27. *Id.*

ery.<sup>28</sup> Any benefits received under such a program would not be admitted into evidence to reduce the jury awards.

In 1993, the Legislature repealed the auto rule, effective October 1, 1993.<sup>29</sup> After that date, section 768.76, *Florida Statutes*, will be the only collateral source rule in effect besides the provision specific to PIP benefits.

### C. *Collateral Sources of Indemnity Applicable to Tort and Contract Actions*

Section 768.76 was enacted as part of the Tort Reform and Insurance Act of 1986.<sup>30</sup> This collateral source law applies to any action for damages, whether in tort or contract, arising on or after July 1, 1986.<sup>31</sup> However, to the extent it conflicts with any other provision of the *Florida Statutes* (e.g., the PIP collateral source rule), the other law applies.<sup>32</sup> This rule will be referred to hereinafter as the general collateral source rule.

The general collateral source rule was similar to the auto rule in that collateral source payments were to be considered in any action in which damages were awarded in determining the total amount awarded to the claimant. However, whereas the auto rule required the court to instruct the jury to deduct from its verdict the value of all collateral source benefits received by the claimant, under the general rule, the court is to reduce the award by the total amount of the collateral source payments.<sup>33</sup>

The effect of the first-party payor's right to subrogation for any benefits provided to the claimant also differentiates the two rules. The general rule does not allow the claimant's award to be reduced based upon amounts recovered from collateral sources for which a right of subrogation exists.<sup>34</sup> However, the auto rule provided that the proceeds from the collateral source offset the claimant's damages regardless of the existence of the first-party payor's right of subrogation.<sup>35</sup>

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28. Ch. 89-203, § 1, 1989 Fla. Laws 839, 839 (amending FLA. STAT. § 627.7372(3)).

29. Ch. 93-245, § 3, 1993 Fla. Laws 2436, 2439 (repealing FLA. STAT. § 627.7372).

30. Ch. 86-160, § 55, 1986 Fla. Laws 695, 751 (codified at FLA. STAT. § 768.76 (Supp. 1986)).

31. FLA. STAT. § 768.76 (Supp. 1986).

32. *Id.*

33. The primary distinction between the provisions of the general collateral source rule and the auto rule is that under the general rule, the jury is not informed of payments to the plaintiff from collateral sources and is not instructed to deduct from its verdict (or, alternatively, not award) the value of collateral source benefits received or payable. Under the statutory scheme envisioned by the general rule, the court rather than the jury reduces the verdict by the amounts of collateral sources paid or available, and juries are unaware of the receipt of collateral sources.

34. FLA. STAT. § 768.76(1) (Supp. 1986).

35. *Id.* § 627.7372(1) (1991).

After reducing the award by any collateral source benefits received, the general rule applies an offset to the extent of any amount paid, contributed or forfeited by the claimant or a member of the immediate family to secure the right to any collateral source benefit received.<sup>36</sup> The general rule defines collateral sources as any payments made to the claimant pursuant to the Social Security Act, any federal, state, or local income disability act, any health, sickness or income disability insurance, except life insurance benefits, any contract to provide health care services, and any employee wage continuation plan.<sup>37</sup> The general rule also provides that benefits received under the Medicaid program of Title XIX of the Social Security Act, or from any medical services program administered by the Florida Department of Health and Rehabilitative Services, are not considered a collateral source.<sup>38</sup>

Under the general rule, a claimant's attorney's contingent fee is based on the net amount of the award reduced by the amount of any money received from collateral sources.<sup>39</sup> Additionally, a provider of collateral sources that has a right of subrogation will have a right to be reimbursed by a claimant to whom collateral sources were provided, if the claimant recovered all or part of the collateral sources from a tortfeasor.<sup>40</sup> The provider's right of reimbursement is limited to its pro rata share of collateral sources provided, minus the pro rata share of costs and attorneys' fees incurred by the claimant in recovering amounts from the tortfeasor.<sup>41</sup> In determining the provider's pro rata share of costs and attorneys' fees, the provider must deduct from its recovery that percentage that constitutes the percentage of judgment or settlement for costs and the attorneys' fees.<sup>42</sup>

When the Florida Legislature enacted section 768.76 in 1986, it was aware that a case was pending before the Florida Supreme Court concerning the constitutionality of section 627.7372. In *Blue Cross & Blue Shield v. Matthews*, the plaintiff sued a tortfeasor alleging that the tortfeasor's negligent operation of his vehicle seriously injured the plaintiff.<sup>43</sup> Blue Cross sought to intervene in the suit to recover over \$18,000 it had paid for health care. The trial court denied intervention

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36. *Id.* § 768.76(1) (Supp. 1986).

37. *Id.* § 768.76(2).

38. *Id.*

39. *Id.* § 768.76(3).

40. *Id.* § 768.76(4).

41. *Id.*

42. *Id.*

43. 498 So. 2d 421 (Fla. 1986).

on the basis that, since section 627.7372 barred the plaintiff from recovering these collateral source payments, Blue Cross was also precluded from recovering such amounts.<sup>44</sup> The district court affirmed the trial court, finding that the statute did not deny equal protection and was not preempted by the Employment Retirement Income Security Act.<sup>45</sup>

On appeal, the Florida Supreme Court reversed, holding that the statute did not bar the subrogation rights of the health care insurer.<sup>46</sup> Therefore, the constitutional and preemption issues were obviated.

In *Matthews*, the court addressed whether section 627.7372, which prohibited double recovery by an insured tort victim in a motor vehicle accident, also prohibited recoupment by the health insurer from the tortfeasor.<sup>47</sup> The court found that section 627.7372 did not bar a cause of action by an insured or his insurer.<sup>48</sup> The court also distinguished the effects of the No-Fault Law on liability insurers from the effects on health insurers. The court wrote that liability insurers receive both benefits and detriments:

[I]n other words, losing the right to sue other motor vehicle insurers is washed out by gaining the right not to be sued by other such insurers. This equitable arrangement breaks down, however, if the other insurer is a health insurer. The arrangement becomes a one-way transaction with the health insurers always transferring money to the vehicle insurers. The motor vehicle insurance industry would benefit from transferring part of its claims cost to the health insurance industry which might, conceivably, result in lower vehicle insurance rates. However concerned it was with high motor vehicle insurance rates, we do not believe the legislature intended to disguise the costs of such insurance by transferring part of the burden to the health insurance industry and its customers.<sup>49</sup>

Thus, the court held that section 627.7372 did not bar the health insurer from recovering from the tortfeasor the costs of benefits paid to the insured.<sup>50</sup>

As part of a major legislative enactment on insurance reform, a five-member task force was created in 1986 to study Florida's tort and insurance laws.<sup>51</sup> The Academic Task Force for Review of the Insur-

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44. *Id.* at 422.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* The court also stated: "We see no reason in law or equity why a health insurer should not be entitled to a single recovery of costs caused by the tortfeasor." *Id.* at 423.

49. *Id.*

50. *Id.*

51. Ch. 86-160, § 63, 1986 Fla. Laws 695, 756-59.



ance and Tort Systems was charged with examining Florida law and the possible impact of the tort and insurance law changes contained in the 1986 Act.<sup>52</sup> The task force consisted of the presidents of both state universities that have law schools, the president of a private university that has schools of law and medicine, plus two other members appointed by these three.<sup>53</sup> As part of their review, the task force examined the general collateral source rule and the auto rule, and discussed the elimination of the right of subrogation by the first-party insurer.<sup>54</sup>

The task force found that subrogation by a first-party provider should keep down the cost of first-party insurance.<sup>55</sup> While elimination of the right of subrogation might reduce the cost of liability insurance, such a reduction in third-party coverage would occur only at the expense of increasing first-party coverage.<sup>56</sup> Thus, consumers would realize no additional savings in the cost of insurance if subrogation rights were abolished, except for the elimination of transaction costs incurred in obtaining subrogation.<sup>57</sup>

Based on the above reasoning, the value of subrogation was found to be the equitable reassignment of costs between payers of first-party insurance and payers of liability insurance.<sup>58</sup> Consequently, the task force recommended that the right of subrogation be retained.<sup>59</sup>

The task force also examined whether the collateral source offset calculation should be performed by the judge or jury.<sup>60</sup> In making its decision, the task force referred to a survey of attorneys in which forty-eight percent of those responding thought it made no difference.<sup>61</sup> Upon reviewing responses from defense attorneys, forty per-

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52. *Id.*

53. *Id.* The Task Force members consisted of Marshall Criser, President of the University of Florida; Bernard Sliker, President of the Florida State University; Edward Foote II, President of the University of Miami; Preston Haskell; and P. Scott Linder. See ACADEMIC TASK FORCE FOR REVIEW OF THE INSURANCE AND TORT SYSTEMS, FINAL RECOMMENDATIONS (Mar. 1, 1988) [hereinafter ACADEMIC TASK FORCE].

54. ACADEMIC TASK FORCE, *supra* note 53, at 74.

55. *Id.* at 75.

56. *Id.*

57. *Id.* The task force concluded that such transaction costs would be insignificant compared to overall system costs because the right of subrogation is perfected only after the higher costs of establishing third party liability have been determined. *Id.*

58. *Id.* at 76. The task force also found that if first party insurers do not consistently exercise their right of subrogation in actions in which damages are awarded, the plaintiff will receive a windfall. Any moneys not recovered by the first party insurer are costs incurred by such provider. *Id.* at 75.

59. *Id.* at 76.

60. *Id.* Again, the task force operated from a lack of empirical data as to which approach would hold down the cost of liability insurance. *Id.*

61. *Id.*

cent thought that having juries make the offset would reduce costs, while thirty-eight percent thought that having judges make the offset would reduce costs.<sup>62</sup> As to plaintiffs' attorneys, four times as many respondents thought that having judges make the offset would reduce costs.<sup>63</sup>

The task force noted that having a uniform procedure for both the general and auto collateral source statutes would reduce the number of jury instructions and thus the possibility for confusion and mistake.<sup>64</sup> However, since the statutes employed different procedures, a comparative study may be helpful to determine the optimum approach.<sup>65</sup>

The task force concluded that neither the auto collateral source rule nor the general collateral source rule should be changed as to who ultimately should make the offset of collateral source payments.<sup>66</sup>

### III. 1993 REVISIONS TO FLORIDA'S COLLATERAL SOURCE LAWS

The most recent revision to the general collateral source rule occurred in 1993 when the Legislature restricted the type of payments that qualify as collateral sources, expanded the exemption for calculating the offset, and established requirements for recovering benefits paid by a collateral source provider.<sup>67</sup>

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62. *Id.*

63. *Id.* at 76-77.

64. *Id.* at 77. The Motor Vehicle Insurance Task Force of 1989 shared this concern with the task force. See MOTOR VEHICLE INSURANCE TASK FORCE OF 1989, REPORT 35 (Mar. 30, 1990).

65. While it can be argued that a jury, unaware of the collateral sources paid to a claimant, is more inclined to return a higher verdict than one aware of such collateral sources, such a result will not necessarily occur. An empirical study that used mock juries tested the hypothesis that jury verdicts would be reduced if juries were instructed not to award for, or to decrease the judgment by, collateral sources of recovery. Some believe that juries will reduce the overall amount awarded just because they are aware that the plaintiff has already received compensation for out-of-pocket expenses. The study found that juries did not respond to changes in the treatment of collateral source recovery by the plaintiff in the manner anticipated. The hypotheses that informing the jury of the plaintiff's recovery from collateral sources and instructing it to deduct that recovery from the award would result in lower jury verdicts was not supported by the data. However, the degree of injury and the amounts of collateral sources provided may have affected the result. Patrick F. Maroney, Jack M. Nelson & Pamela L. Perrewé, *Modification of the Collateral Source Rule*, 8 J. INS. REG. 408, 415-21 (June 1990).

66. ACADEMIC TASK FORCE, *supra* note 53, at 77.

67. Ch. 93-245, § 1, 1993 Fla. Laws 2436, 2436 (amending FLA. STAT. § 768.76). Committee Substitute for House Bill 975 amended section 768.76, *Florida Statutes*, which applied to collateral sources of indemnity in situations other than motor vehicle accidents. However, it would appear that effective October 1, 1993, this general collateral source rule will apply to collateral sources in motor vehicle accident situations as well. The statutory law for PIP benefits, section 627.736(3), *Florida Statutes*, will continue to apply as well since it was not addressed by the Legislature in 1993.

Benefits paid pursuant to Title XVIII and Title XIX of the Social Security Act are excluded from the statutory definition and are not deemed to be collateral sources.<sup>68</sup> Payments prohibited by federal law and those expressly excluded by law as collateral sources are also not included in the definition.<sup>69</sup> Additionally, benefits received under Medicare, or any other federal program providing for a federal government lien on the plaintiff's recovery, as well as the workers' compensation law, are not considered collateral sources.<sup>70</sup>

The law also expands the exception to the collateral source offset for which a right of subrogation exists to sources which have a right of reimbursement.<sup>71</sup> Additionally, the provider's right of reimbursement will be limited to the actual amount of collateral sources recovered by the claimant, less its pro rata share of costs and attorney's fees incurred by the claimant in recovering damages from the tortfeasor.<sup>72</sup> Any disputes between the claimant and the provider as to amounts recovered by the claimant from the tortfeasor will be subject to court determination.<sup>73</sup> In determining the amount of collateral sources recovered by the claimant, the court must consider offsetting the amount of settlement or judgment for any comparative negligence of the claimant, amount of liability insurance available to the tortfeasor, or any other factors which the court deems appropriate.<sup>74</sup>

The law imposes new requirements on both parties regarding the collection of benefits from the claimant by the collateral source provider. First, the claimant must send the collateral source provider, by certified or registered mail, notification of the claimant's intent to claim damages from the tortfeasor.<sup>75</sup> Additionally, the notice must include a statement that the provider of collateral source benefits will waive any right to subrogation or reimbursement unless it provides a statement, in which it asserts payment of benefits and right of subro-

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68. *Id.* (amending FLA. STAT. § 768.76(2)(a)1.).

69. *Id.*

70. *Id.* (amending FLA. STAT. § 768.76(2)(b)).

71. *Id.* (amending FLA. STAT. § 768.76(1), (4)). Committee Substitute for House Bill 975 also amended section 641.31, pertaining to health maintenance contracts. The bill provided that a health maintenance organization providing benefits or payments to a subscriber who suffers illness or injury by virtue of the negligent act of a third party is entitled to reimbursement from the subscriber in accordance with section 768.76(4). *Id.* § 2, 1993 Fla. Laws at 2438 (amending FLA. STAT. § 641.31(8)).

72. *Id.* § 1, 1993 Fla. Laws at 2436 (amending FLA. STAT. § 768.76(4)).

73. *Id.* (amending FLA. STAT. § 768.76, to be codified at FLA. STAT. § 768.76(5)).

74. *Id.*

75. *Id.* (amending FLA. STAT. § 768.76, to be codified at FLA. STAT. § 768.76(6)). If suit has been filed by the claimant at the time notice is sent, a copy of the complaint against the tortfeasor must be sent with the notice. *Id.*

gation, within thirty days following receipt of the claimant's notice.<sup>76</sup> Further, a provider will have no right of subrogation or reimbursement for collateral source payments made after the date of waiver, settlement or judgment.<sup>77</sup>

Finally, a collateral source provider claiming a right of subrogation or reimbursement must cooperate with the claimant.<sup>78</sup> A court may consider failure to cooperate in determining the right to, or amount of, reimbursement.<sup>79</sup>

#### IV. LEGISLATIVE HISTORY OF THE 1993 LAW

House Bill 975 was sponsored by Representative Tracy Stafford<sup>80</sup> and introduced in the Florida House of Representatives on February 9, 1993.<sup>81</sup> Upon introduction, the bill was referred to the Committees on Judiciary and Appropriations.<sup>82</sup> On February 11, 1993, the bill was referred to the Subcommittee on Court Systems, Probate and Consumer Law where it was placed on the Subcommittee's agenda for February 15, 1993.<sup>83</sup> At the Subcommittee meeting, the bill was favorably reported and was placed on the February 17, 1993, agenda of the House Committee on Judiciary.<sup>84</sup>

At the meeting of the Committee on Judiciary, the bill was amended to remove the provision that insurers and health maintenance organizations have no right to subrogation or reimbursement unless they can establish that monetary returns on subrogation claims have been factored into the insurance premiums charged.<sup>85</sup> Following the adoption of the amendment, the Committee adopted a Committee Substitute for House Bill 975.<sup>86</sup> Committee Substitute for House Bill 975 was then placed on the House Calendar and read for the first time on March 2, 1993.<sup>87</sup> The bill was read on the House floor a second

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76. *Id.*

77. *Id.* (amending FLA. STAT. § 768.76, to be codified at FLA. STAT. § 768.76(8)).

78. *Id.* (amending FLA. STAT. § 768.76, to be codified at FLA. STAT. § 768.76(9)). Such cooperation includes producing information necessary for the claimant to prove the nature and extent of the value of the collateral sources provided.

79. *Id.*

80. Dem., Wilton Manors.

81. See FLA. H.R. JOUR. 89 (Reg. Sess. Feb. 9, 1993).

82. *Id.*

83. FLA. LEGIS., FINAL LEGISLATIVE BILL INFORMATION, 1993 REGULAR SESSION, HISTORY OF HOUSE BILLS at 236, CS for HB 975 [hereinafter HISTORY OF HOUSE BILLS].

84. *Id.*

85. Staff of Fla. H.R. Comm. on Judiciary, CS for HB 975 (1993) Staff Analysis 5 (final June 8, 1993) (on file with comm.).

86. HISTORY OF HOUSE BILLS, *supra* note 83, at 236.

87. FLA. H.R. JOUR. 307 (Reg. Sess. Mar. 2, 1993).

time on March 30, 1993, where it was amended to require that any notice from the claimant to the collateral source provider of the claimant's intent to seek damages from the tortfeasor must include a statement that the provider will waive any right to subrogation, unless it provides the claimant with a statement asserting payment of benefits and the right of subrogation within thirty days.<sup>88</sup> The same day, the bill passed the House by a vote of eighty-three to thirty-two and was sent to the Florida Senate.<sup>89</sup> In the Senate, Committee Substitute for House Bill 975 was referred to the Committees on Judiciary, Health Care and Commerce.<sup>90</sup> On April 2, 1993, the bill was withdrawn from all three committees, and substituted for Committee Substitute for Senate Bill 1590.<sup>91</sup> At that time, on the Senate floor, an amendment was offered to the House bill to expand the definition of collateral sources to include uninsured motorist benefits.<sup>92</sup> The amendment failed and Committee Substitute for House Bill 975 passed the Senate by a vote of thirty-three to zero.<sup>93</sup> On April 29, 1993, the bill was signed by the Senate President and the Speaker of the House and presented to the Governor.<sup>94</sup> The Governor allowed the bill to become law on May 15, 1993, without his signature.<sup>95</sup>

## V. CONCLUSION

Florida's new collateral source law will have a widespread effect on all actions involving damages recovered by a claimant who is entitled to multiple sources of benefits. Providers of collateral sources must carefully adhere to procedural deadlines or waive their right to subrogation or reimbursement. Additionally, except where PIP benefits apply, causes of action stemming from motor vehicle accidents will no longer be treated differently than any other tort or contract matter involving a collateral source provider. Thus, the rule now provides that when a collateral source carrier has a right of subrogation or reimbursement, the judge will not reduce the amount of the award by the total amount that was paid for the benefit of the claimant from collateral sources.

Although one uniform law may simplify compliance with the statutory requirements for seeking recovery of amounts paid to a claimant

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88. *Id.* at 993 (Reg. Sess. Mar. 30, 1993).

89. *Id.* at 994.

90. FLA. S. JOUR. 943 (Reg. Sess. Apr. 1, 1993).

91. *Id.* at 1119 (Reg. Sess. Apr. 2, 1993).

92. *Id.* Senator John Grant, Republican, Tampa, offered the amendment. *Id.*

93. *Id.*

94. HISTORY OF HOUSE BILLS, *supra* note 83, at 236.

95. Ch. 93-245, § 4, 1993 Fla. Laws 2436, 2439.

for damages caused by a third party, it will be interesting to examine the future effect of the new collateral source law on the cost of motor vehicle and health insurance in Florida.

