

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE**  
**AT KNOXVILLE**

**THOMAS NEELY,**

**Plaintiff,**

**v.**

**No.: 3:05-CV-304**  
**(Guyton)**

**FOX OF OAK RIDGE, INC. and**  
**BENJAMIN H. CURD,**

**Defendants.**

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION IN LIMINE**

Come now the Plaintiff, Thomas Neely, by and through counsel, and respectfully submit this Brief in Support of his Motion in Limine. The Plaintiff would state the following:

**BACKGROUND**

Plaintiff was injured when the Defendant, Fox of Oak Ridge, Inc.'s employee, Benjamin H. Curd, while in the course and scope of his employment, wrecked the Chevrolet Van he was operating into the back of the KIA automobile the Plaintiff was operating.

As a result of the injuries the Plaintiff incurred during this wreck, the Plaintiff's Personal Injury Protection coverage, provided by the Plaintiff's State Farm Insurance automobile coverage, has paid benefits to and on behalf of the Plaintiff. Consequently, the Plaintiff's Personal Injury Protection coverage has paid a portion of the Plaintiff's lost wages, medical bills, and medical expenses. During the course of the Plaintiff's medical treatment a portion of his medical expenses incurred have been paid, discounted, and/or forgiven by his medical care providers.

## LAW AND ARGUMENT

The admissibility of evidence in diversity cases in Federal Court is generally governed by federal law. Blanke v. Alexander, 152 F.3d 1224, 1231 (10<sup>th</sup> Cir. 1998) *citing* Romine v. Parman, 831 F.2d 944 (10<sup>th</sup> Cir. 1997). “Nevertheless, it is well recognized that Congress did not intend the procedural rules to preempt the so-called “substantive” state rules of evidence, such as ...the collateral source rule...;although the application of these rules will affect the admissibility of some evidence, they in reality serve substantive state policies regulating private transactions.” Blanke v. Alexander, 152 F.3d 1224, 1231 (10<sup>th</sup> Cir. 1998) *citing* McInnis v. AMF, Inc., 765 F.2d 240, 245 (1<sup>st</sup> Cir. 1985).

Under the collateral source rule, the fact that the plaintiffs, in an action for damages in tort, have received payments from a collateral source, other than the defendants, is not admissible in evidence and does not reduce or mitigate the defendants’ liability. Eye v. Kennedy, 991 S.W.2d 754, 763 (Tenn. Ct. App. 1998).

Moreover, the Restatement (Second) of Torts (1977) §920A, which Tennessee courts have adopted, states:

### §920A. Effects of Payments Made to Injured Party

\* \* \*

(2) Payments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor’s liability, although they cover all or a part of the harm from which the tortfeasor is liable.

The comments from §920A explain that benefits from collateral sources do not have the effect of reducing the recovery against the defendant.

It is the position of the law that a benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor...If the benefit was a gift to the plaintiff from a third-party or established for him by law, he should not be deprived of the advantage that it confers. The law does not differentiate between the nature of the benefits, so long as they do not come from the defendant or a person acting for him...(emphasis added).

Fye v. Kennedy, 991 S.W.2d 754, 763 (Tenn. Ct. App. 1998) *citing* the Restatement (Second) of Torts (1977) § 920A, Comment *b*.

Additionally, the rule that collateral benefits are not subtracted from the plaintiff's recovery applies to gratuities, which includes cash gratuities and the rendering of services. Therefore, the fact that a doctor does not charge for his services or the plaintiff was treated in a veterans' hospital does not prevent the plaintiff's recovery for the reasonable value of the services. Id. at 764.

The Court in Fye went on to state that, although a defendant is permitted to introduce relevant evidence regarding necessity, reasonableness, and whether a claimed service was actually rendered, the collateral source rule precludes a defendant from attempting to prove that a service has been, or will be, paid by another, or has been forgiven, or that the service has been gratuitously rendered. Id. In applying the collateral source rule and the theory underlying it, there is no reason to differentiate between a payment from a collateral source and a gratuity from a collateral source. In either event, there is a benefit to the injured party that should not be shifted so as to become a windfall for the tortfeasor. Id.

Consequently, the Defendant may not show that the Plaintiff's medical bills have been or will be paid, discounted and/or forgiven by another source. The Defendant is not entitled to a windfall for the Plaintiff's benefits from collateral sources. Therefore, under the collateral source rule, any evidence pertaining to payments for lost wages and for

payments, made, discounted and/or forgiven on behalf of the Plaintiff for medical expenses and/or medical bills should be excluded from the trial on this matter.

**Conclusion**

WHEREFORE, Plaintiff, Thomas Neely, requests an Order precluding the offer and/or the production of evidence, arguments by counsel, testimony by the parties or witnesses, and any references at all to any alleged lost wages paid and medical expenses and/or medical bills, incurred by them, which have been paid, discounted, and/or forgiven on behalf of the them in this matter.

Respectfully submitted this 6<sup>th</sup> day of June, 2006.

s\Michael C. Inman  
Michael C. Inman, TN Bar No.: 022858  
Attorney for Plaintiff  
706 S. Gay Street  
Knoxville, TN 37902  
(865) 546-6500

s\Robert J. English  
Robert J. English, TN Bar No.: 001038  
Attorney for Plaintiff  
706 S. Gay Street  
Knoxville, TN 37902  
(865) 546-6500

**CERTIFICATE OF SERVICE**

I hereby certify that on 6<sup>th</sup> day of June, 2006 a copy of the foregoing Brief in Support of Plaintiff's Motion in Limine was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s\Michael C. Inman  
Michael C. Inman, Attorney for Plaintiff

