

## COLLATERAL SOURCE RULE BENCH GUIDE

Collateral Source Rule (CSR) is both a rule of evidence and a rule of damages.

Common Law Evidence CSR is unaffected by Section 768.76, remaining “alive and well in Florida”, and prohibits the introduction of any evidence of collateral-source payments. *Sheffield v. Superior Ins. Co.*, 800 So.2d 197, 200 (Fla. 2001); *Gormley v. GTE Products Corp.*, 587 So.2d 455, 457-59 (Fla. 1991); *Grossman v. Beard*, 410 So.2d 175 (Fla. 2d DCA 1982), approved by, *Gormley v. GTE Products Corp.*, *Supra*. *Nationwide Mut. Fire Ins. Co. v. Harrell*, 53 So.3d 1084, 1086 (Fla. 1<sup>st</sup> DCA 2010).

The CSR evidence rule applies to all collateral-source benefits, including all government/social legislation and charities. *Joerg v. State Farm Mut. Auto. Ins. Co.*, 176 So.3d 1247, 1249 (Fla. 2015).

Exceptions to CSR evidence rule:

PIP Benefits §§627.736 and 768.71(3).

Relevant to another issue (i.e. impeachment subject to undue prejudice 90.401/403 analysis), but consider invited error or collateral issue.

Common Law Damages CSR applies only to economic damages; medical expenses and lost earnings.

§768.78 Statutory Abrogation of Damages Rule applies only to past economic damages.

Future economic damages are not reduced by any anticipated future collateral source payments. §768.76(1); *Allstate Ins. Co. v. Rudnick*, 761 So.2d 289, 293 (Fla. 2000). *Rollins v. Pizzarelli*, 761 So.2d 294, 298 (Fla. 2000), *Bravo v. United States*, 403 F. Supp. 2d 1182, 1199 n. 13 (S.D. Fla. 2005), *White v. Westlund*, 624 So.2d 1148, 1153 (Fla. 4<sup>th</sup> DCA 1993), *Measom v. Rainbow Connection Preschool, Inc.*, 568 So.2d 123, 124 (Fla. 5<sup>th</sup> DCA 1990), *Swamy v. Hodges*, 583 So.2d 1095, 1096-97 (Fla. 1<sup>st</sup> DCA 1991).

§768.76(1): No reductions of past economic damages “for collateral sources for which a subrogation or reimbursement right exists.” (i.e. health insurance, Medicare, Medicaid, Worker’s Compensation).

Calculation of damages CSR post-verdict reduction only applies to past economic damages (medical expenses and lost earnings) for collateral sources paid for which they are no subrogation or reimbursement rights.

When calculating the statutory post-verdict collateral source reduction, §768.76 allows the reduction to be offset by “any amount which has been paid, contributed, or forfeited by, or on behalf of, the claimant or members of the claimant’s immediate family to secure her or his right to any collateral source benefit which the claimant is receiving as a result of her or his injury.”

Collateral Source Reduction must be made to jury’s past economic damages award before the percentage of comparative negligence is applied to reduce the damage award.