In the Event of a First Party Payment After a Loss, the "Collateral Source" Rule Works Most of the Time to Permit the Subrogated Insurer to Sue for the Full Amount of the Loss – But Not Always.

The collateral source rule applies so that if a plaintiff has recovered for a loss from his or her own insurer, that recovery is a "collateral source," and does not let the tortfeasor off the hook. A defendant cannot offset his or her liability by the amount covered by the plaintiff's insurer. But, sometimes an insurance recovery by the plaintiff is not a "collateral source" and so it can be offset, and under the odd facts of *Bunker Hill Insurance Company v. G.A. Williams & Sons, Inc.,* decided by the Mass Appeals Court in December of 2018, that is what happened.

In this case, a homeowner suffered a property loss as a result of an oil spill caused by the defendant oil company. When the homeowner's insurer paid the loss, it brought a subrogation claim against the oil company, which turned to its insurer, Hanover. The Hanover policy covered not only the oil company, but also covered the homeowner as an insured. That created an odd circumstance where a plaintiff was also an insured under the tortfeasor's policy. When Hanover, the homeowner's insurer, covered the entire loss, and asserted its subrogation rights, the oil company's insurer reimbursed 50%, but refused to pay more based upon its position regarding the other insurance clauses in the two policies. The homeowner's insurer argued that it was entitled to the other 50% from the oil company's insurer based upon the collateral source rule. The appeals court held that the oil company's insurer's payment was not a collateral source since that policy was contracted for by the oil company, which was the tortfeasor, and protected the oil company (even if it also protected the homeowner as an insured). The reason the policy did not apply is that it extinguished the liability of the tortfeasor, which means that payment to the homeowner's insurer was not from a "collateral source".

The case provides an excellent discussion of the collateral source rule.