

## Appeals Court Untangles Dispute Over Insurance for Home Heating Oil Spill

Decision Addresses Nature and Purpose of Collateral Source Rule.



Happily, in this case there was plenty of insurance coverage for the remediation of a home heating oil spill. But it took two lawsuits and an appeal to figure out who would pay, and how much.

The homeowner's insurer paid for the full remediation under a reservation of rights. The company that installed and serviced the oil tank had an insurance policy that provided remediation coverage and included the homeowner's property as an insured location, and also provided liability coverage for the company. The homeowner's insurer brought a declaratory judgment action against the company's insurer. The court determined that the two policies' remediation coverages had conflicting "other insurance" clauses and ordered the insurers to divide the cost of remediation equally between them.

Not content with this partial victory, the homeowner's insurer, stepping into the shoes of the homeowner, filed a subrogation action against the oil company alleging negligence, breach of contract and violation of Massachusetts General Laws Chapter 21E, a state environmental protection statute. A jury rendered a negligence verdict against the oil company for the full amount of the remediation, and the company moved to offset from the judgment the half of the cost its insurer already had paid under the remediation coverage.

The homeowner's insurer objected, arguing that because the homeowner was also an insured under the company's remediation coverage, the collateral source rule, which provides that a payment to an injured party from a source independent of the tortfeasor should not be deducted from the damages, precluded an offset. The trial judge agreed with the homeowner's insurer and denied the motion for an offset. The Appeals Court reversed, in a decision that sheds light on the purpose and operation of the collateral source rule.

The rule, the Appeals Court stated, has both a substantive and an evidentiary component. That is, the rule provides that payments from a collateral source are not admissible (the Appeals Court noted that the trial court properly kept the information regarding the insurance from the jury), and that payments from collateral source, such as a plaintiff's insurance coverage, will not offset or reduce a plaintiff's damages. The rule ensures that a plaintiff will get the benefit of its bargain when it has the foresight to insure against the risk of loss. The rule also ensures that tort law will have its full deterrent effect, and prevents a defendant from benefiting unfairly from the happenstance that the plaintiff it harmed had another source of compensation for its damages.

Here, however, while the oil company's remediation coverage protected the homeowner, it was paid for by the oil company. Therefore, the court held, it was a payment from the same source as the tortfeasor, not a collateral source. The oil company was entitled to offset the payment from the remediation portion of its policy against the judgment.

As a result, the oil company and its insurer paid the full cost of the remediation, but no more, and the homeowner's insurer (who had argued that as the subrogee it and not the homeowner was entitled to the 50% surplus) was reimbursed for the full cost of the remediation, but no more.

The case is [Bunker Hill Ins. Co. v. G.A. Williams & Sons, Inc.](#), 94 Mass. App. Ct. 572 (2018).