

## **Common Defenses in Personal Injury Cases**

### ***A Report From Your Broward Personal Injury Lawyer***

The District Court for the Middle District of Florida recently decided a court case addressing two common issues in personal injury cases: the collateral source doctrine and comparative negligence. The case, *Hester v. U.S.*, involved Michael Hester, a paraplegic who is confined to a wheelchair, filing a personal injury lawsuit against the U.S. government. The lawsuit arose after the U.S. Department of Veterans Affairs' van in which he was riding suddenly braked in order to avoid an accident. Hester sued the U.S. government under the authority of the Federal Tort Claims Act, which allows private citizens to use the U.S. government if injured by the negligence of a government employee.

### **Collateral Source Doctrine**

The collateral source rule is a doctrine that ensures plaintiffs will be able to recover damages from a defendant despite the fact that a plaintiff has a private insurance policy in place. The purpose of the collateral source rule is to ensure that defendants are not absolved of liability for their wrongdoing simply because a plaintiff has purchased insurance, and to encourage people to purchase insurance since doing so will not jeopardize their right to recover compensation in a personal injury claim.

However, while the collateral source rule generally permits plaintiffs to receive double recovery for damages, a different standard may apply when the government is the defendant in the litigation. This different standard was first identified in a 1949 Supreme Court case indicating in which the court held that the government was not obligated to pay twice for the same injury. Courts, for example have held that military pay can offset a claim for lost wages while government-provided medical care can offset a claim for medical expenses.

In the current *Hester* case, the government argued that since Hester was receiving veterans' benefits, the damages from the personal injury claim should be reduced by the amount of benefits he received. The court rejected the argument, however, because the government could not prove that Hester's monthly veterans' benefits were a collateral source of payment simply because they came from the U.S. Department of Veterans Affairs. As your Broward personal injury lawyer well knows, the application of the collateral source doctrine can be especially complex in claims brought under the Federal Tort Claims Act.

### **Comparative Negligence**

Comparative negligence, another issue raised by the government in the *Hester* case, is a defense that applies in a personal injury lawsuit when the victim of the accident or injuries is at least partially responsible for his or her own injuries. For example, if the victim was 40 percent responsible for the accident, then the monetary damages award would be reduced by 40 percent. In the *Hester* case, however, the court did not allow this defense because there were no facts under which Hester could be responsible for the injuries he sustained from the van suddenly braking.

As your Broward personal injury lawyer can tell you, *Hester v. U.S.* shows that valid defenses to use in a personal injury case cannot be used in all circumstances. Rather, the party using the defense must show that the facts actually support its use.

Accidents can be devastating for all parties involved, and can result in personal injury lawsuits that are quite complex. Do not attempt to handle a complicated personal injury case on your own. Instead, enlist the assistance of a qualified [Broward personal injury lawyer](#) to handle your case. Contact the experienced personal injury attorneys at Reifkind & Thompson, P.L., and allow them to represent your interests in your [Broward personal injury lawsuit](#).