S T A T E O F N E W Y O R K

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Cal. No. 631

2009-2010 Regular Sessions

I N A S S E M B L Y

April 13, 2009

Introduced by M. of A. WEINSTEIN, RAIA -- Multi-Sponsored by -- M. of A. GORDON -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil practice law and rules, in relation to treating public and private defendants equally when considering the impact of collateral source payments in tort claims for personal injury, property damage or wrongful death; to amend the general obligations law, in relation to protecting parties to the settlement of a tort claim from certain unwarranted lien, reimbursement and subrogation claims; and to repeal certain provisions of the civil practice law and rules relating to collateral source payments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions (a) and (b) of section 4545 of the civil practice law and rules are REPEALED.

S 2. Subdivision (c) of section 4545 of the civil practice law and rules, as added by chapter 220 of the laws of 1986, is amended to read as follows:

[(c)] (A) Actions for personal injury, injury to property or wrongful death. In any action brought to recover damages for personal injury, injury to property or wrongful death, where the plaintiff seeks to recover for the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, evidence shall be admissible for consideration by the court to establish that any such past or future cost or expense was or will, with reasonable certainty, be replaced or indemnified, in whole or in part, from any collateral source [such as insurance (], except for life insurance[), social security (except those benefits provided under title

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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XVIII of the social security act), workers' compensation or employee benefit programs (except such collateral sources entitled by law to liens against any recovery of the plaintiff)] AND THOSE PAYMENTS AS TO WHICH THERE IS A STATUTORY RIGHT OF REIMBURSEMENT. If the court finds that any such cost or expense was or will, with reasonable certainty, be replaced or indemnified from any SUCH collateral source, it shall reduce the amount of the award by such finding, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two-year period immediately preceding the accrual of such action and minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits. In order to find that any future cost or expense will, with reasonable certainty, be replaced or indemnified by the collateral source, the court must find that the plaintiff is legally entitled to the continued receipt of such collateral source, pursuant to a contract or otherwise enforceable agreement, subject only to the continued payment of a premium and such other financial obligations as may be required by such agreement. ANY COLLATERAL SOURCE DEDUCTION REQUIRED BY THIS SUBDIVISION SHALL BE MADE BY THE TRIAL COURT AFTER THE RENDERING OF THE JURY'S VERDICT. THE PLAINTIFF MAY PROVE HIS OR HER LOSSES AND EXPENSES AT THE TRIAL IRRESPECTIVE OF WHETHER SUCH SUMS WILL LATER HAVE TO BE DEDUCTED FROM THE PLAINTIFF'S RECOVERY.

S 3. Subdivision (d) of section 4545 of the civil practice law and rules is relettered subdivision (b).

S 4. Subdivision (e) of rule 4111 of the civil practice law and rules is REPEALED.

S 5. Subdivision (f) of rule 4111 of the civil practice law and rules, as amended by chapter 100 of the laws of 1994, is relettered subdivision (e) and amended to read as follows:

(e) Itemized verdict in certain actions. In an action brought to recover damages for personal injury, injury to property or wrongful death, which is not subject to [subdivisions] SUBDIVISION (d) [and (e)] of this rule, the court shall instruct the jury that if the jury finds a verdict awarding damages, it shall in its verdict specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element including, but not limited to, medical expenses, dental expenses, loss of earnings, impairment of earning ability, and pain and suffering. Each element shall be further itemized into amounts intended to compensate for damages that have been incurred prior to the verdict and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the jury shall set forth the period of years over which such amounts are intended to provide compensation. In actions in which article fifty-A or fifty-B of this chapter applies, in computing said damages, the jury shall be instructed to award the full amount of future damages, as calculated, without reduction to present value.

S 6. Subdivision (b) of section 4213 of the civil practice law and rules, as separately amended by chapters 485 and 682 of the laws of 1986, is amended to read as follows:

(b) Form of decision. The decision of the court may be oral or in writing and shall state the facts it deems essential. In [a medical, dental or podiatric malpractice action or in an action against a public employer or a public employee who is subject to indemnification by a public employer with respect to such action or both, as such terms are defined in subdivision (b) of section forty-five hundred forty-five, for personal injury or wrongful death arising out of an injury sustained by

a public employee while acting within the scope of his public employment or duties, and in] any [other] action brought to recover damages for personal injury, injury to property, or wrongful death, a decision awarding damages shall specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element, including but not limited to medical expenses, dental expenses, podiatric expenses, loss of earnings, impairment of earning ability, and pain and suffering. In a medical, dental or podiatric malpractice action, [and in any other action brought to recover damages for personal injury, injury to property, or wrongful death, each element shall be further itemized into amounts intended to compensate for damages which have been incurred prior to the decision and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the court shall set forth the period of years over which such amounts are intended to provide compensation. In computing said damages, the court shall award the full amount of future damages, as calculated, without reduction to present value] COMMENCED ON OR AFTER JULY TWENTY-SIXTH, TWO THOUSAND THREE, THE COURT'S DECISION AS TO FUTURE DAMAGES SHALL BE ITEMIZED IN ACCORDANCE WITH SUBDIVISION (D) OF RULE FORTY-ONE HUNDRED ELEVEN OF THIS CHAPTER. IN ANY ACTION BROUGHT TO RECOVER DAMAGES FOR PERSONAL INJURY, INJURY TO PROPERTY OR WRONGFUL DEATH, OTHER THAN A MEDICAL, DENTAL OR PODIATRIC MALPRACTICE ACTION COMMENCED ON OR AFTER JULY TWENTY-SIXTH, TWO THOUSAND THREE, THE COURT'S DECISION AS TO FUTURE DAMAGES SHALL BE ITEMIZED IN ACCORDANCE WITH SUBDIVISION (E) OF RULE FORTY-ONE HUNDRED ELEVEN OF THIS CHAPTER.

S 7. Section 5-101 of the general obligations law is amended by adding a new subdivision 4 to read as follows:

4. AS USED IN SECTION 5-335 OF THIS ARTICLE, THE TERM "BENEFIT PROVIDER" MEANS ANY INSURER, HEALTH MAINTENANCE ORGANIZATION, HEALTH BENEFIT PLAN, PREFERRED PROVIDER ORGANIZATION, EMPLOYEE BENEFIT PLAN OR OTHER ENTITY WHICH PROVIDES FOR PAYMENT OR REIMBURSEMENT OF HEALTH CARE EXPENSES, HEALTH CARE SERVICES, DISABILITY PAYMENTS, LOST WAGE PAYMENTS OR ANY OTHER BENEFITS UNDER A POLICY OF INSURANCE OR CONTRACT WITH AN INDIVIDUAL OR GROUP.

S 8. The general obligations law is amended by adding a new section 5-335 to read as follows:

S 5-335. LIMITATION OF NON-STATUTORY REIMBURSEMENT AND SUBROGATION CLAIMS IN PERSONAL INJURY AND WRONGFUL DEATH ACTIONS. (A) WHEN A PLAINTIFF SETTLES WITH ONE OR MORE DEFENDANTS IN AN ACTION FOR PERSONAL INJURIES, MEDICAL, DENTAL, OR PODIATRIC MALPRACTICE, OR WRONGFUL DEATH, IT SHALL BE CONCLUSIVELY PRESUMED THAT THE SETTLEMENT DOES NOT INCLUDE ANY COMPENSATION FOR THE COST OF HEALTH CARE SERVICES, LOSS OF EARNINGS OR OTHER ECONOMIC LOSS TO THE EXTENT THOSE LOSSES OR EXPENSES HAVE BEEN OR ARE OBLIGATED TO BE PAID OR REIMBURSED BY A BENEFIT PROVIDER, EXCEPT FOR THOSE PAYMENTS AS TO WHICH THERE IS A STATUTORY RIGHT OF REIMBURSEMENT. BY ENTERING INTO ANY SUCH SETTLEMENT, A PLAINTIFF SHALL NOT BE DEEMED TO HAVE TAKEN AN ACTION IN DEROGATION OF ANY NONSTATUTORY RIGHT OF ANY BENEFIT PROVIDER THAT PAID OR IS OBLIGATED TO PAY THOSE LOSSES OR EXPENSES; NOR SHALL A PLAINTIFF'S ENTRY INTO SUCH SETTLEMENT CONSTITUTE A VIOLATION OF ANY CONTRACT BETWEEN THE PLAINTIFF AND SUCH BENEFIT PROVIDER.

EXCEPT WHERE THERE IS A STATUTORY RIGHT OF REIMBURSEMENT, NO PARTY ENTERING INTO SUCH A SETTLEMENT SHALL BE SUBJECT TO A SUBROGATION CLAIM OR CLAIM FOR REIMBURSEMENT BY A BENEFIT PROVIDER AND A BENEFIT PROVIDER SHALL HAVE NO LIEN OR RIGHT OF SUBROGATION OR REIMBURSEMENT AGAINST ANY

SUCH SETTLING PARTY, WITH RESPECT TO THOSE LOSSES OR EXPENSES THAT HAVE BEEN OR ARE OBLIGATED TO BE PAID OR REIMBURSED BY SAID BENEFIT PROVIDER.

(B) THIS SECTION SHALL NOT APPLY TO A SUBROGATION CLAIM FOR RECOVERY OF ADDITIONAL FIRST-PARTY BENEFITS PROVIDED PURSUANT TO ARTICLE FIFTY-ONE OF THE INSURANCE LAW. THE TERM "ADDITIONAL FIRST-PARTY BENEFITS", AS USED IN THIS SUBDIVISION, SHALL HAVE THE SAME MEANING GIVEN IT IN SECTION 65-1.3 OF TITLE 11 OF THE CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK AS OF THE EFFECTIVE DATE OF THIS STATUTE.

S 9. This act shall take effect immediately and shall apply to all actions and proceedings commenced on or after such date; provided, however, that sections four through eight of this act shall also apply to any action or proceeding which was commenced prior to such effective date where, as of such date, either (a) a trial of the issues has not yet commenced, or (b) the parties have not yet entered into a stipulation of settlement.