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

2393

2009-2010 Regular Sessions

I N S E N A T E

February 19, 2009

Introduced by Sens. DeFRANCISCO, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to the impact of collateral source payments upon tort claims for personal injury, property damage or wrongful death, and upon related subrogation claims; and in relation to equalizing the treatment of collateral sources in tort actions; and repealing certain provisions of the civil practice law and rules relating thereto

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 Subdivisions (a) and (b) of section 4545 of the civil practice law and rules are REPEALED.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

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

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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) and a new subdivision (c) is added to read as follows:

(C) NO RIGHT OF REIMBURSEMENT FOR CERTAIN COLLATERAL SOURCE PAYMENTS. A COLLATERAL SOURCE PAYOR WHICH HAS MADE PAYMENT TO A PERSON WHO HAD A CLAIM FOUNDED ON PERSONAL INJURY OR WRONGFUL DEATH SHALL HAVE NO RIGHT TO SEEK REIMBURSEMENT FROM EITHER THE PLAINTIFF OR THE TORTFEASOR UNLESS THE RIGHT TO SEEK SAID REIMBURSEMENT IS SET FORTH BY STATUTE. WHEN AN ACTION WITHIN THE SCOPE OF THIS SECTION SETTLES, IT SHALL BE CONCLUSIVELY PRESUMED THAT THE SETTLEMENT DOES NOT INCLUDE ANY COMPENSATION FOR THOSE LOSSES OR EXPENSES THAT WOULD HAVE BEEN DEDUCTED, PURSUANT TO THIS SECTION, FROM ANY VERDICT THAT THE PLAINTIFF MIGHT HAVE OBTAINED. BY ENTERING INTO A SETTLEMENT AGREEMENT, A PLAINTIFF SHALL NOT BE DEEMED TO HAVE TAKEN AN ACTION IN DEROGATION OF THE NON-STATUTORY RIGHT OF ANY PERSON WHO SUPPLIED THE COLLATERAL SOURCE PAYMENTS; NOR SHALL A PLAINTIFF'S ENTRY INTO SUCH AGREEMENT CONSTITUTE A VIOLATION OF ANY CONTRACT BETWEEN THE PLAINTIFF AND THE PERSON WHO SUPPLIED THE COLLATERAL PAYMENTS. EXCEPT WHERE THERE IS A STATUTORY LIEN OR STATUTORY SUBROGATION RIGHT, NO DEFENDANT ENTERING INTO SUCH SETTLEMENT SHALL BE SUBJECT TO A CLAIM FOR REIMBURSEMENT BY ANY PERSON WHO SUPPLIED THE COLLATERAL SOURCE PAYMENTS.

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] 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.

S 7. This act shall take effect immediately and shall apply to all actions and proceedings commenced on or after such date.