

S T A T E   O F   N E W   Y O R K

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4080--A

2009-2010 Regular Sessions

I N   S E N A T E

April 9, 2009

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Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1     Section 1. Subdivisions (a) and (b) of section 4545 of the civil practice law and rules are REPEALED.  
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3     S 2. Subdivision (c) of section 4545 of the civil practice law and  
4 rules, as added by chapter 220 of the laws of 1986, is amended to read  
5 as follows:  
6     [(c)] (A) Actions for personal injury, injury to property or wrongful  
7 death. In any action brought to recover damages for personal injury,  
8 injury to property or wrongful death, where the plaintiff seeks to  
9 recover for the cost of medical care, dental care, custodial care or  
10 rehabilitation services, loss of earnings or other economic loss,  
11 evidence shall be admissible for consideration by the court to establish  
12 that any such past or future cost or expense was or will, with reasonable  
13 certainty, be replaced or indemnified, in whole or in part, from  
14 any collateral source [such as insurance (], except for life insurance[)],  
15 social security (except those benefits provided under title  
16 XVIII of the social security act), workers' compensation or employee  
17 benefit programs (except such collateral sources entitled by law to

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

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

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

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

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

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

45 S 6. Subdivision (b) of section 4213 of the civil practice law and  
46 rules, as separately amended by chapters 485 and 682 of the laws of  
47 1986, is amended to read as follows:

48 (b) Form of decision. The decision of the court may be oral or in  
49 writing and shall state the facts it deems essential. In [a medical,  
50 dental or podiatric malpractice action or in an action against a public  
51 employer or a public employee who is subject to indemnification by a  
52 public employer with respect to such action or both, as such terms are  
53 defined in subdivision (b) of section forty-five hundred forty-five, for  
54 personal injury or wrongful death arising out of an injury sustained by  
55 a public employee while acting within the scope of his public employment  
56 or duties, and in] any [other] action brought to recover damages for

1 personal injury, injury to property, or wrongful death, a decision  
2 awarding damages shall specify the applicable elements of special and  
3 general damages upon which the award is based and the amount assigned to  
4 each element, including but not limited to medical expenses, dental  
5 expenses, podiatric expenses, loss of earnings, impairment of earning  
6 ability, and pain and suffering. In a medical, dental or podiatric malp-  
7 ractice action, [and in any other action brought to recover damages for  
8 personal injury, injury to property, or wrongful death, each element  
9 shall be further itemized into amounts intended to compensate for  
10 damages which have been incurred prior to the decision and amounts  
11 intended to compensate for damages to be incurred in the future. In  
12 itemizing amounts intended to compensate for future damages, the court  
13 shall set forth the period of years over which such amounts are intended  
14 to provide compensation. In computing said damages, the court shall  
15 award the full amount of future damages, as calculated, without  
16 reduction to present value] COMMENCED ON OR AFTER JULY TWENTY-SIXTH, TWO  
17 THOUSAND THREE, THE COURT'S DECISION AS TO FUTURE DAMAGES SHALL BE ITEM-  
18 IZED IN ACCORDANCE WITH SUBDIVISION (D) OF RULE FORTY-ONE HUNDRED ELEVEN  
19 OF THIS CHAPTER. IN ANY ACTION BROUGHT TO RECOVER DAMAGES FOR PERSONAL  
20 INJURY, INJURY TO PROPERTY OR WRONGFUL DEATH, OTHER THAN A MEDICAL,  
21 DENTAL OR PODIATRIC MALPRACTICE ACTION COMMENCED ON OR AFTER JULY TWEN-  
22 TY-SIXTH, TWO THOUSAND THREE, THE COURT'S DECISION AS TO FUTURE DAMAGES  
23 SHALL BE ITEMIZED IN ACCORDANCE WITH SUBDIVISION (E) OF RULE FORTY-ONE  
24 HUNDRED ELEVEN OF THIS CHAPTER.

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

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

34 S 8. The general obligations law is amended by adding a new section  
35 5-335 to read as follows:

36 S 5-335. LIMITATION OF NON-STATUTORY REIMBURSEMENT AND SUBROGATION  
37 CLAIMS IN PERSONAL INJURY AND WRONGFUL DEATH ACTIONS. WHEN A PLAINTIFF  
38 SETTLES WITH ONE OR MORE DEFENDANTS IN AN ACTION FOR PERSONAL INJURY,  
39 MEDICAL, DENTAL OR PODIATRIC MALPRACTICE, OR WRONGFUL DEATH, IT SHALL BE  
40 CONCLUSIVELY PRESUMED THAT THE SETTLEMENT DOES NOT INCLUDE ANY COMPEN-  
41 SATION FOR THE COST OF HEALTH CARE SERVICES, LOSS OF EARNINGS OR OTHER  
42 ECONOMIC LOSS TO THE EXTENT THOSE LOSSES OR EXPENSES HAVE BEEN OR ARE  
43 OBLIGATED TO BE PAID OR REIMBURSED BY A BENEFIT PROVIDER, EXCEPT FOR  
44 THOSE PAYMENTS AS TO WHICH THERE IS A STATUTORY RIGHT OF REIMBURSEMENT.  
45 BY ENTERING INTO ANY SUCH SETTLEMENT, A PLAINTIFF SHALL NOT BE DEEMED TO  
46 HAVE TAKEN AN ACTION IN DEROGATION OF ANY NON-STATUTORY RIGHT OF ANY  
47 BENEFIT PROVIDER THAT PAID OR IS OBLIGATED TO PAY THOSE LOSSES OR  
48 EXPENSES; NOR SHALL A PLAINTIFF'S ENTRY INTO SUCH SETTLEMENT CONSTITUTE  
49 A VIOLATION OF ANY CONTRACT BETWEEN THE PLAINTIFF AND SUCH BENEFIT  
50 PROVIDER. EXCEPT WHERE THERE IS A STATUTORY RIGHT OF REIMBURSEMENT, NO  
51 PARTY ENTERING INTO SUCH A SETTLEMENT SHALL BE SUBJECT TO A SUBROGATION  
52 CLAIM OR CLAIM FOR REIMBURSEMENT BY A BENEFIT PROVIDER, AND A BENEFIT  
53 PROVIDER SHALL HAVE NO LIEN OR RIGHT OF SUBROGATION OR REIMBURSEMENT  
54 AGAINST SUCH SETTLING PARTY, WITH RESPECT TO THOSE LOSSES OR EXPENSES  
55 THAT HAVE BEEN OR ARE OBLIGATED TO BE PAID OR REIMBURSED BY SAID BENEFIT  
56 PROVIDER.

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