

2201

2009-2010 Regular Sessions

I N S E N A T E

February 13, 2009

Introduced by Sens. VOLKER, O. JOHNSON, LARKIN, MORAHAN, SEWARD, YOUNG
-- 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 equalizing the treatment of collateral sources in tort actions, to repeal subdivisions (a) and (b) of section 4545 of such law and rules relating to collateral sources in certain tort actions and to repeal subdivisions (d) and (e) of rule 4111 of such law and rules relating to itemized verdicts in certain tort actions

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 Subdivisions (a) and (b) of section 4545 of the civil practice law and rules are REPEALED and subdivisions (c) and (d) are relettered subdivisions (a) and (b).
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4 S 2. Subdivisions (d) and (e) of rule 4111 of the civil practice law and rules are REPEALED.
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6 S 3. Subdivision (f) of rule 4111 of the civil practice law and rules, as amended by chapter 100 of the laws of 1994, is amended to read as follows:
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9 [(f)] (D) Itemized verdict in certain actions. In an action brought to
10 recover damages for personal injury, injury to property or wrongful
11 death, [which is not subject to subdivisions (d) and (e) of this rule,]
12 the court shall instruct the jury that if the jury finds a verdict
13 awarding damages, it shall in its verdict specify the applicable
14 elements of special and general damages upon which the award is based
15 and the amount assigned to each element including, but not limited to,
16 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
17 incurred prior to the verdict and amounts intended to compensate for
18 damages to be incurred in the future. In itemizing amounts intended to
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EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 compensate for future damages, the jury shall set forth the period of
2 years over which such amounts are intended to provide compensation. In
3 actions in which article fifty-A or fifty-B of this chapter applies, in
4 computing said damages, the jury shall be instructed to award the full
5 amount of future damages, as calculated, without reduction to present
6 value.

7 S 4. Subdivision (b) of section 4213 of the civil practice law and
8 rules, as separately amended by chapters 485 and 682 of the laws of
9 1986, is amended to read as follows:

10 (b) Form of decision. The decision of the court may be oral or in
11 writing and shall state the facts it deems essential. In [a medical,
12 dental or podiatric malpractice action or in an action against a public
13 employer or a public employee who is subject to indemnification by a
14 public employer with respect to such action or both, as such terms are
15 defined in subdivision (b) of section forty-five hundred forty-five, for
16 personal injury or wrongful death arising out of an injury sustained by
17 a public employee while acting within the scope of his public employment
18 or duties, and in] any [other] action brought to recover damages for
19 personal injury, injury to property, or wrongful death, a decision
20 awarding damages shall specify the applicable elements of special and
21 general damages upon which the award is based and the amount assigned to
22 each element, including but not limited to medical expenses, dental
23 expenses, podiatric expenses, loss of earnings, impairment of earning
24 ability, and pain and suffering. In [a medical, dental or podiatric
25 malpractice action, and in] any [other] SUCH action [brought to recover
26 damages for personal injury, injury to property, or wrongful death],
27 each element shall be further itemized into amounts intended to compen-
28 sate for damages which have been incurred prior to the decision and
29 amounts intended to compensate for damages to be incurred in the future.
30 In itemizing amounts intended to compensate for future damages, the
31 court shall set forth the period of years over which such amounts are
32 intended to provide compensation. In computing said damages, the court
33 shall award the full amount of future damages, as calculated, without
34 reduction to present value.

35 S 5. This act shall take effect immediately and shall apply to all
36 actions and proceedings pending or commenced on or after such date.