

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:

1 Section 1. Subdivisions (a) and (b) of section 4545 of the civil practice law and rules are REPEALED.
2
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 XVIII of the
16 social security act), workers' compensation or employee benefit programs
17 (except such collateral sources entitled by law to liens against any
18 recovery of the plaintiff)], AND EXCEPT FOR THOSE PAYMENTS AS TO WHICH
19 THERE IS A STATUTORY RIGHT OF REIMBURSEMENT. If the court finds that
20 any such cost or expense was or will, with reasonable certainty, be
21 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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1 the amount of the award by such finding, minus an amount equal to the
2 premiums paid by the plaintiff for such benefits for the two-year period
3 immediately preceding the accrual of such action and minus an amount
4 equal to the projected future cost to the plaintiff of maintaining such
5 benefits. In order to find that any future cost or expense will, with
6 reasonable certainty, be replaced or indemnified by the collateral
7 source, the court must find that the plaintiff is legally entitled to
8 the continued receipt of such collateral source, pursuant to a contract
9 or otherwise enforceable agreement, subject only to the continued
10 payment of a premium and such other financial obligations as may be
11 required by such agreement. ANY COLLATERAL SOURCE DEDUCTION REQUIRED BY
12 THIS SUBDIVISION SHALL BE MADE BY THE TRIAL COURT AFTER THE RENDERING OF
13 THE JURY'S VERDICT. THE PLAINTIFF MAY PROVE HIS OR HER LOSSES AND
14 EXPENSES AT THE TRIAL IRRESPECTIVE OF WHETHER SUCH SUMS WILL LATER HAVE
15 TO BE DEDUCTED FROM THE PLAINTIFF'S RECOVERY.

16 S 3. Subdivision (d) of section 4545 of the civil practice law and
17 rules is relettered subdivision (b) and a new subdivision (c) is added
18 to read as follows:

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

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

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

42 (e) Itemized verdict in certain actions. In an action brought to
43 recover damages for personal injury, injury to property or wrongful
44 death, which is not subject to [subdivisions] SUBDIVISION (d) [and (e)]
45 of this rule, the court shall instruct the jury that if the jury finds a
46 verdict awarding damages, it shall in its verdict specify the applicable
47 elements of special and general damages upon which the award is based
48 and the amount assigned to each element including, but not limited to,
49 medical expenses, dental expenses, loss of earnings, impairment of earn-
50 ing ability, and pain and suffering. Each element shall be further item-
51 ized into amounts intended to compensate for damages that have been
52 incurred prior to the verdict and amounts intended to compensate for
53 damages to be incurred in the future. In itemizing amounts intended to
54 compensate for future damages, the jury shall set forth the period of
55 years over which such amounts are intended to provide compensation. In
56 actions in which article fifty-A or fifty-B of this chapter applies, in

1 computing said damages, the jury shall be instructed to award the full
2 amount of future damages, as calculated, without reduction to present
3 value.

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

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

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