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

2857

2009-2010 Regular Sessions

I N S E N A T E

March 4, 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

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

Section 1. Subdivision (a) of section 4545 of the civil practice law and rules, as amended by chapter 485 of the laws of 1986, is amended to read as follows:

(a) Action for medical, dental or podiatric malpractice. In any action for medical, dental or podiatric malpractice where the plaintiff seeks to recover for the cost of medical care, dental care, podiatric 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 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

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

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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 2. Paragraph 1 of subdivision (b) of section 4545 of the civil practice law and rules, as added by chapter 701 of the laws of 1984, is amended to read as follows:

1. In any 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 for personal injury or wrongful death arising out of an injury sustained by a public employee while acting within the scope of his OR HER public employment or duties, where the plaintiff seeks to recover for the cost of medical 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 cost or expense was replaced or indemnified, in whole or in part, from a collateral source provided or paid for, in whole or in part, by the public employer[, including but not limited to paid sick leave, medical benefits, death benefits, dependent benefits, a disability retirement allowance and social security (except those benefits provided under title XVIII of the social security act) but shall not include those collateral sources entitled by law to liens against any recovery of the plaintiff] 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 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 contributions of the injured public employee for such benefit. 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 (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) 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 indem-

nified 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 4. Section 4545 of the civil practice law and rules is amended by adding a new subdivision (e) to read as follows:

(E) 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 A SETTLEMENT SHALL BE SUBJECT TO A CLAIM FOR REIMBURSEMENT BY ANY PERSON WHO SUPPLIED THE COLLATERAL SOURCE PAYMENTS.

S 5. This act shall take effect immediately and shall apply to all trials and settlements after such effective date.