

6004

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sens. SCHNEIDERMAN, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 Subdivisions (a) and (b) of section 4545 of the civil practice law and rules are REPEALED.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 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 recovery
18 of the plaintiff)] AND THOSE PAYMENTS AS TO WHICH THERE IS A STATUTORY
19 RIGHT OF REIMBURSEMENT. If the court finds

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

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

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

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21 is REPEALED.

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

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

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

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

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

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

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

32 S 8. The general obligations law is amended by adding a new section
33 5-335 to read as follows:

34 S 5-335. LIMITATION OF NON-STATUTORY REIMBURSEMENT AND SUBROGATION
35 CLAIMS IN PERSONAL INJURY AND WRONGFUL DEATH ACTIONS. (A) WHEN A PLAIN-
36 TIFF SETTLES WITH ONE OR MORE DEFENDANTS IN AN ACTION FOR PERSONAL INJU-
37 RIES, MEDICAL, DENTAL, OR PODIATRIC MALPRACTICE, OR WRONGFUL DEATH, IT
38 SHALL BE CONCLUSIVELY PRESUMED THAT THE SETTLEMENT DOES NOT INCLUDE ANY
39 COMPENSATION FOR THE COST OF HEALTH CARE SERVICES, LOSS OF EARNINGS OR
40 OTHER ECONOMIC LOSS TO THE EXTENT THOSE LOSSES OR EXPENSES HAVE BEEN OR
41 ARE OBLIGATED TO BE PAID OR REIMBURSED BY A BENEFIT PROVIDER, EXCEPT FOR
42 THOSE PAYMENTS AS TO WHICH THERE IS A STATUTORY RIGHT OF REIMBURSEMENT.
43 BY ENTERING INTO ANY SUCH SETTLEMENT, A PLAINTIFF SHALL NOT BE DEEMED TO
44 HAVE TAKEN AN ACTION IN DEROGATION OF ANY NONSTATUTORY RIGHT OF ANY
45 BENEFIT PROVIDER THAT PAID OR IS OBLIGATED TO PAY THOSE LOSSES OR
46 EXPENSES; NOR SHALL A PLAINTIFF'S ENTRY INTO SUCH SETTLEMENT CONSTITUTE
47 A VIOLATION OF ANY CONTRACT BETWEEN THE PLAINTIFF AND SUCH BENEFIT
48 PROVIDER.

49 EXCEPT WHERE THERE IS A STATUTORY RIGHT OF REIMBURSEMENT, NO PARTY
50 ENTERING INTO SUCH A SETTLEMENT SHALL BE SUBJECT TO A SUBROGATION CLAIM
51 OR CLAIM FOR REIMBURSEMENT BY A BENEFIT PROVIDER AND A BENEFIT PROVIDER
52 SHALL HAVE NO LIEN OR RIGHT OF SUBROGATION OR REIMBURSEMENT AGAINST ANY
53 SUCH SETTLING PARTY, WITH RESPECT TO THOSE LOSSES OR EXPENSES THAT HAVE
54 BEEN OR ARE OBLIGATED TO BE PAID OR REIMBURSED BY SAID BENEFIT PROVIDER.

55 (B) THIS SECTION SHALL NOT APPLY TO A SUBROGATION CLAIM FOR RECOVERY
56 OF ADDITIONAL FIRST-PARTY BENEFITS PROVIDED PURSUANT TO ARTICLE

1 FIFTY-ONE OF THE INSURANCE LAW. THE TERM "ADDITIONAL FIRST-PARTY BENE-
2 FITS", AS USED IN THIS SUBDIVISION, SHALL HAVE THE SAME MEANING GIVEN IT
3 IN SECTION 65-1.3 OF TITLE 11 OF THE CODES, RULES AND REGULATIONS OF THE
4 STATE OF NEW YORK AS OF THE EFFECTIVE DATE OF THIS STATUTE.
5 S 9. This act shall take effect immediately and shall apply to all
6 actions and proceedings commenced on or after such date; provided,
7 however, that sections four through eight of this act shall also apply
8 to any action or proceeding which was commenced prior to such effective
9 date where, as of such date, either (a) a trial of the issues has not
10 yet commenced, or (b) the parties have not yet entered into a stipu-
11 lation of settlement.