STATE OF NEW YORK

6781

2017-2018 Regular Sessions

IN SENATE

June 16, 2017

Introduced by Sen. HANNON -- 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 awards of damages in medical, dental and podiatric malpractice causes of action, and future economic and pecuniary damages for birth related neurological injuries; and to repeal subdivision (c) of section 5031 of such law and rules relating to awards of damages for future pain and suffering

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The civil practice law and rules is amended by adding a new article 50-C to read as follows:

ARTICLE 50-C
DAMAGE AWARDS

Section 5051. Definition.
5052. Damage awards.

§ 5051. Definition. As used in this article, "noneconomic damages" means nonpecuniary damages arising from pain and suffering, loss of services, loss of consortium, or other nonpecuniary damages.

§ 5052. Damage awards. In any medical, dental, or podiatric malpractice action, the prevailing plaintiff may be awarded:

(a) economic and pecuniary damages; and

(b) noneconomic damages suffered by the injured plaintiff not to exceed two hundred fifty thousand dollars; provided, however, that such limitation shall be adjusted in accordance with the Consumer Price Index for all Urban Consumers (CPI-U), as published annually by the United States Department of Labor, Bureau of Labor Statistics.

§ 2. Subdivision (c) of section 5031 of the civil practice law and rules is REPEALED and subdivisions (d), (e), (f), (g) and (h) are relettered subdivisions (c), (d), (e), (f) and (g).

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

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§ 3. Subdivisions (c), (d), (e) and (f) of section 5031 of the civil practice law and rules, as added by chapter 86 of the laws of 2003 and as relettered by section two of this act, are amended to read as follows:

(c) The findings of future economic and pecuniary damages except in wrongful death actions **and in actions subject to title four of article twenty-nine-D of the public health law**, shall be used to determine a stream of payments for each such item of damages by applying (i) the growth rate, to the (ii) annual amount in current dollars, for the (iii) period of years, all of such items as determined by the finder of fact for each such item of damages. The court shall determine the present value of the stream of payments for each such item of damages by applying a discount rate to the stream of payments. After determining the present value of the stream of payments for future economic and pecuniary damages, thirty-five percent of that present value shall be paid in a lump sum, and the stream of payments for future economic and pecuniary damages shall be adjusted accordingly by proportionately reducing each item of the remaining stream of payments for future economic and pecuniary damages and paying those amounts over time in the form of an annuity in accordance with the provisions set forth in subdivision [~~(g)~~] **(f)** of this section, subject to the adjustments and deductions specified in subdivision [~~(f)~~]**(e)** of this section.

(d) The discount rate to be used in determining the present value of all streams of payments for periods of up to twenty years shall be the rate in effect for the ten-year United States Treasury Bond on the date of the verdict. As to any streams of payments for which the period of years exceeds twenty years, the discount rate to be used in determining the present value shall be calculated by averaging, on an annual basis, the rate in effect for the ten-year United States Treasury Bond on the date of the verdict for the first twenty years and two percentage points above the rate in effect for the ten-year United States Treasury Bond on the date of the verdict for the years after twenty years.

(e) After making the applicable calculations set forth above:

(1) The court shall apply any set-offs for comparative negligence and settlements by deducting them proportionately from each item of the damages awards, including the lump sum payments specified in subdivisions (b)[~~, (c),~~] and [~~(d)~~] **(c)** of this section, and the present value of the streams of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~]. After such deductions, the streams of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~] and their present value shall be adjusted accordingly.

(2) The court shall then deduct the litigation expenses of the plaintiff's attorney proportionately from each remaining item of the damages awards, including the remaining lump sum payments specified in such subdivisions (b)[~~, (c),~~] and [~~(d)~~] **(c)**, and the present value of the remaining streams of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~], and such expenses shall be paid in a lump sum. After said deductions, the streams of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~] and their present value shall be adjusted accordingly.

(3) The court shall then determine the attorney's fees based upon the remaining damages awards, including the remaining lump sum payments specified in such subdivisions (b)[~~, (c),~~] and [~~(d)~~] **(c)**, and the present value of the remaining streams of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~]. The attorney's fees shall be deducted proportionately from each item of the remaining damages awards,

including the remaining lump sum payments specified in such subdivisions **(b) and** (c)[~~, and (d),~~] and the present value of the remaining streams of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~], and such fees shall be paid in a lump sum. After said deductions, the stream of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~] and their present value shall be adjusted accordingly.

(4) Any liens which are not the subject of a separate award by the finder of fact shall then be deducted proportionately from each item of the remaining damages awards, including the remaining lump sum payments specified in such subdivisions (b)[~~, (c),~~] and [~~(d)~~] **(c)**, and the present value of the remaining streams of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~], and such liens shall be paid in a lump sum. After said deductions, the stream of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~] and their present value shall be adjusted accordingly.

(f) The defendants and their insurance carriers shall be required to offer and to guarantee the purchase and payment of an annuity contract to make annual payments in equal monthly installments of the remaining streams of payments specified in [~~such subdivisions~~] **subdivision** (c) [~~and (d)~~], after making the deductions and adjustments prescribed in subdivision [~~(f)~~] **(e)** of this section. The annuity contract shall provide that the payments shall run from the date of the verdict (unless some other date is specified in the verdict) for the period of years determined by the finder of fact (except the stream of payments for future pain and suffering, which shall not exceed eight years) or the life of the plaintiff, whichever is shorter, except that:

(1) awards for lost earnings shall be paid for the full term of the award determined by the finder of fact; and

(2) awards for any item of economic or pecuniary damages as to which the finder of fact found that the loss or item of damage is permanent, the payments for that item shall continue to run for the entire life of the plaintiff, increasing each year beyond the period of years determined by the finder of fact at the same growth rate as determined by the finder of fact.

§ 4. Section 5034 of the civil practice law and rules, as amended by chapter 446 of the laws of 1999, is amended to read as follows:

§ 5034. Failure to make payment. If at any time following entry of judgment, a judgment debtor fails for any reason to make a payment in a timely fashion according to the terms of this article, the judgment creditor may petition the court which rendered the original judgment for an order requiring payment by the judgment debtor of the outstanding payments in a lump sum. In calculating the amount of the lump sum judgment, the court shall total the remaining periodic payments due and owing to the judgment creditor, as calculated pursuant to subdivision [~~(e)~~] **(d)** of section five thousand thirty-one of this article, and shall not convert these amounts to their present value. The court may also require the payment of interest on the outstanding judgment.

§ 5. This act shall take effect immediately, and shall apply to causes of action and claims accruing on or after such date.