



NEW YORK
CITY BAR

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**REPORT ON LEGISLATION BY THE
COMMITTEE ON TORT LITIGATION**

S.4080-A
A.7504-A

Senator Schneiderman
M. of A. Weinstein

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.

THIS BILL IS APPROVED

Introduction

CPLR 4545, originally enacted in the 1980's, serves to ensure that plaintiffs in personal injury, wrongful death and property damage suits are barred from recovering damages already compensated by another source. This prevents plaintiffs from receiving a double recovery, for example it prohibits injured parties from receiving twice the money to cover medical expenses or lost future earnings by collecting the same amount both from health or disability insurance and an award judgment. The legislative intent was to reduce payouts by defendants, yet still insure that the plaintiffs receive full compensation.

For the most part, the statute works well as written. However, case law has demonstrated errors in drafting that have led to confusion and unjust results in both the settlement context and in suits against public employers. Some decisions have allowed collateral source payors to intervene or sue their insured for part of the recovery after settlement, leading parties to question the benefits of settling. And another decision has created a discrepancy in the treatment of public versus private employers, leaving public employers subject to double liability in terms of future disability payments. S.4080-A/A.7504-A corrects both of these problems, ensuring that settlements are no longer discouraged and employees can expect equal treatment regardless of whether their employer is a public or private entity.

Collateral Sources and Settlements

In most cases CPLR 4545 has worked as intended for suits that proceed all the way to a jury verdict. The plaintiff presents evidence of his or her economic loss for consideration by the jury or other finder of fact. If the plaintiff is awarded any of his or her economic damages, the Court then holds a hearing outside the presence of the jury and hears evidence on which of the plaintiff's economic damages awarded by the jury have already been, or will be with a reasonable degree of certainty, reimbursed by a collateral source, such as health insurance, Social Security, Workers' Compensation, etc. If those collateral sources are entitled to reimbursement,

by either contract or statute, reimbursement must be made from the plaintiff's recovery. If reimbursement is not so required, then the plaintiff's damages award for those items is reduced, or offset, by the amount of the collateral source to avoid a double recovery.

A problem arises, however, when a settlement is reached before a verdict since settlements do not typically allocate how much of the settlement is for pain and suffering and how much is for plaintiff's economic loss. Often, it is the parties' intention to compromise both of these elements of the plaintiff's damages in a settlement. However, a collateral source payor, such as a health insurer, may seek reimbursement of 100% of the health benefits it paid to, or on behalf of, the plaintiff even though the plaintiff did not recover in settlement 100% of that economic loss.

This scenario creates a problem for plaintiffs who may have to reimburse a collateral source payor more than the plaintiff actually collected for that economic loss. This also creates a problem for the defendant/tortfeasor since it may now be exposed to a further claim for damages by the collateral source payor, which could be substantial, and which the defendant/tortfeasor did not contemplate (or possibly even know about) when settling with the plaintiff. This has a chilling effect on all settlements for both plaintiffs and defendants/tortfeasors.

Solution-to Settlement Problem- S.4080-A/A.7504-A

The proposed bill effectively eliminates this problem by exempting all settlements from any such collateral source offsets, with the enactment of a new statute, Section 5-335 of the General Obligations Law. The only exceptions would be for collateral source payors with a statutory right of reimbursement, or lien, such as Workers' Compensation, Medicaid, Medicare, etc. In this way, both the plaintiff and defendant/tortfeasor know in advance exactly who is entitled to reimbursement, and exactly how much, and can structure the settlement accordingly. There would no longer be the risk of the plaintiff having to repay a collateral source payor for an economic loss larger than he actually recovered, or of a defendant/tortfeasor being exposed to a further claim for damages after it already allocated, and/or paid, a settlement to a plaintiff.

Double Compensation in Cases against Public Employers

CPLR 4545 is also flawed in its inability to deduct future disability pension benefits from awards against public employers. Although the statute was amended in 1986 to provide a deduction for past and future disability pension benefits in all personal injury actions, the Legislature neglected to repeal the pre-existing provision that gave public employers an offset only for past disability pension benefits. As a result, government employees now receive double compensation for future economic loss at a substantial cost to the public. The amendment restores the balance and the intention of the 1986 amendment that all plaintiffs be treated equally by providing for the reduction of judgments if a plaintiff will receive payments from a collateral source. It is only fair that all plaintiffs, regardless of who their employer is, be treated equally and not receive a windfall solely because the defendant is a public entity.

Conclusion

Under this legislation, plaintiffs will be able to accept settlements without fear that their insurers will later sue them for economic losses they never recovered, and defendants will be

assured that they will not be open to further liability after already paying out a settlement. The legislation also ensures that public employers will not be forced to pay the same expenses twice because of a costly error in legislative drafting. Because S.4080-A/A.7504-A encourages settlements, ensures the whole and just compensation of plaintiffs, while saving taxpayers' money, the New York City Bar Association is pleased to support it in its entirety.

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