NY CLS CPLR § 4545

Current through 2025 released Chapters 1-207

New York

Consolidated Laws Service **>**

Civil Practice Law And Rules (Arts. 1 — 100) **>**

Article 45 Evidence (§§ 4501 — 4551)

§ 4545. Admissibility of collateral source of payment

(a) 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, except for life insurance and 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 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.

(b) Voluntary Charitable Contributions Excluded as a Collateral Source of Payment. Voluntary charitable contributions received by an injured party shall not be considered to be a collateral source of payment that is admissible in evidence to reduce the amount of any award, judgment or settlement.

(c), (d) [Redesignated]

History

Add, L 1984, ch 701, § 2, eff Oct 1, 1984; amd, of L 1986, ch 682; L 1985, ch 294, § 8; L 1985, ch 760, § 7; L 1986, ch 220, § 36, eff June 28, 1986; L 1986, ch 485, § 9, eff July 21, 1986; L 2002, ch 672, § 1, eff Dec 9, 2002; L 2009, ch 494, §§ 1-3 (Part F), eff Nov 12, 2009.

Annotations

Notes

Editor's Notes:

Laws 2009, ch 494, § 9 (Part F), eff Nov12, 2009, provides as follows:

§ 9. This act shall take effect immediately and shall apply to all actions and proceedings commenced on or after such date; provided, however, that sections four through eight of this act shall also apply to any action or proceeding which was commenced prior to such effective date where, as of such date, either (a) a trial of the issues has not yet commenced, or (b) the parties have not yet entered into a stipulation of settlement Revision Notes:

[1984] Section four thousand ten of the civil practice law and rules, repealed by section one of this act, related to collateral source evidence in medical malpractice actions. The substance of

such section is reenacted in section forty-five hundred forty-five, added by section two of this act.

Amendment Notes:

2009. Chapter 494, § 2 (part f) amended:

Sub (a), by deleting “such as insurance (” and “), 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)”.

Notes to Decisions

I.Under CPLR

1.Generally

2.Application to particular parties

3.—Insurers

4.Application to property damage claims

5.Application to settlements

6.Discovery of collateral source information

7.Particular payments or benefits

8.—Workers’ compensation benefits

9.—Pension or retirement benefits

10.—Motivation for retirement as factor

11.Calculation of damages

I. Under CPLR

1. Generally

CLS CPLR § 4545(c) did not impliedly repeal CLS CPLR § 4545(b) inasmuch as all 3 subdivisions of CLS CPLR § 4545 can easily be read together so that all are given effect; although (c) purports to apply in “any action,” when read in tandem with (a) and (b) it is clear that (c) was meant to complement (a) and (b) and not to replace them. Rule disfavoring repeal by implication applied with peculiar force in that legislature amended CLS CPLR § 4545(a) in same session as it adopted CLS CPLR § 4545(c). Iazzetti v City of New York, 94 N.Y.2d 183, 701 N.Y.S.2d 332, 723 N.E.2d 81, 1999 N.Y. LEXIS 3750 (N.Y. 1999).

Common law collateral source rule did not apply so as to preclude reduction of damages awarded to landlord for tenant’s breach of lease covenant to obtain liability insurance for landlord’s benefit, as common-law collateral source rule is “inherently a tort concept” and its punitive dimension does not comport with contract law. Inchaustegui v 666 5th Ave. Ltd. P'ship, 96 N.Y.2d 111, 725 N.Y.S.2d 627, 749 N.E.2d 196, 2001 N.Y. LEXIS 1050 (N.Y. 2001).

Claimants precluded from commencing actions prior to October 1, 1984, effective date of CPLR 4545, by operation of Gen Mun Law §§ 50-h, 50-i, are subject to provisions of CPLR 4545. Alford v New York, 115 A.D.2d 420, 496 N.Y.S.2d 224, 1985 N.Y. App. Div. LEXIS 54806 (N.Y. App. Div. 1st Dep't 1985), aff'd in part, 67 N.Y.2d 1019, 503 N.Y.S.2d 324, 494 N.E.2d 455, 1986 N.Y. LEXIS 18633 (N.Y. 1986).

Patient’s complaint for damages due to injuries sustained in hospital fall sounded in medical malpractice rather than simple negligence, and thus required amendment to omit specific monetary demand for damages and to provide details as to collateral source payments, insofar as patient raised issue of staff response time as measured against standard of care customarily exercised by hospitals in community, which would require production of expert testimony; where lack of due care may be discerned by trier of fact on basis of common knowledge, action sounds in simple negligence, while if professional skill and judgment are involved, more particularized theory of medical malpractice applies. Zellar v Tompkins Community Hospital, Inc., 124 A.D.2d 287, 508 N.Y.S.2d 84, 1986 N.Y. App. Div. LEXIS 61327 (N.Y. App. Div. 3d Dep't 1986).

Collateral source rule under CLS CPLR § 4545(c) should not be applied retroactively. Horstmann v Nicholas J. Grasso, P. C., 210 A.D.2d 671, 619 N.Y.S.2d 848, 1994 N.Y. App. Div. LEXIS 12464 (N.Y. App. Div. 3d Dep't 1994).

Trial court, in construing defendant’s burden of proof for purpose of establishing collateral sources under CLS CPLR § 4545(a), erred by concluding that “reasonable certainty” standard (for determining whether economic cost or expense was or would be replaced or indemnified) was equivalent of “preponderance of the evidence” standard; term “reasonable certainty” is synonymous with term “clear and convincing proof” in light of fact that statute is in derogation of common law and results in diminution of jury verdict. Sternfeld v Forcier, 248 A.D.2d 14, 679 N.Y.S.2d 219, 1998 N.Y. App. Div. LEXIS 11705 (N.Y. App. Div. 3d Dep't 1998), app. dismissed, 92 N.Y.2d 1045, 685 N.Y.S.2d 419, 708 N.E.2d 176, 1999 N.Y. LEXIS 2008 (N.Y. 1999).

In action arising from motor vehicle collision, judgment for plaintiff would be modified by deleting award of damages for medical expenses where those expenses were paid from collateral sources. Porcano v Lehman, 255 A.D.2d 430, 680 N.Y.S.2d 590, 1998 N.Y. App. Div. LEXIS 12390 (N.Y. App. Div. 2d Dep't 1998).

Defendants’ failure to make timely request for collateral source hearing constituted waiver of their right to seek offset for collateral source payments. Ventriglio v Active Airport Serv. Inc., 257 A.D.2d 657, 682 N.Y.S.2d 915, 1999 N.Y. App. Div. LEXIS 609 (N.Y. App. Div. 2d Dep't 1999).

“Reasonable certainty” under CLS CPLR § 4545(c) means clear and convincing proof, such that defendant seeking to offset personal injury award by collateral source payment bears burden of showing that it is highly probable that plaintiff will continue to be eligible for benefits in question; mere possibility that disabled plaintiff’s condition may improve or that administrative criteria for receipt of benefits may change is too speculative to preclude application of collateral source rule. Young v Knickerbocker Arena, 281 A.D.2d 761, 722 N.Y.S.2d 596, 2001 N.Y. App. Div. LEXIS 2510 (N.Y. App. Div. 3d Dep't 2001).

Court properly denied defendants’ motion under CLS CPLR § 4545(c) to reduce future loss of earning and benefits award by amount of Social Security disability benefits to which plaintiff might be entitled, but for which he had not yet applied; having never applied for Social Security benefits, plaintiff was not “legally entitled to their continued receipt.” Young v Tops Mkts., Inc., 283 A.D.2d 923, 725 N.Y.S.2d 489, 2001 N.Y. App. Div. LEXIS 4433 (N.Y. App. Div. 4th Dep't 2001).

The trial court properly applied N.Y. C.P.L.R. 4545(b) to deny defendants’, a bus authority and others, request for a collateral source offset of future damages in a personal injury action, because pursuant to the indemnification provisions of N.Y. Gen. Mun. Law § 50-b, the bus company was deemed an employee of the county and was entitled to indemnification therefrom. Hothan v Metro. Suburban Bus Auth., 289 A.D.2d 448, 734 N.Y.S.2d 632, 2001 N.Y. App. Div. LEXIS 12948 (N.Y. App. Div. 2d Dep't 2001), app. denied, 98 N.Y.2d 671, 746 N.Y.S.2d 459, 774 N.E.2d 224, 2002 N.Y. LEXIS 1633 (N.Y. 2002).

In a personal injury action, while defendants are required to prove entitlement to a collateral source set-off by a reasonable certainty under N.Y. C.P.L.R. § 4545(c), the standard for defendants to seek the conduct of a post-trial collateral source hearing is that some competent evidence has to be presented that the plaintiff’s economic losses may in the past have been, or may in the future be, replaced, or the plaintiff indemnified, from collateral sources. Firmes v Chase Manhattan Automotive Fin. Corp., 50 A.D.3d 18, 852 N.Y.S.2d 148, 2008 N.Y. App. Div.

LEXIS 450 (N.Y. App. Div. 2d Dep't), app. denied, 11 N.Y.3d 705, 866 N.Y.S.2d 608, 896 N.E.2d 94, 2008 N.Y. LEXIS 2613 (N.Y. 2008).

In a personal injury action, a collateral source hearing under N.Y. C.P.L.R. § 4545(c) was improperly denied as such offsets had to be made before calculating the structured judgment required by N.Y. C.P.L.R. § 5041(a) in the instant case and the application for the hearing was timely made before the judgment was entered; plaintiff motorcyclist, who had had a leg amputated, never denied the receipt of collateral source payments and had admitted that his attorney had filed an application on his behalf for Social Security disability benefits, so defendants, a driver and a vehicle owner, had met their burden of proof for entitlement to a hearing. Firmes v Chase Manhattan Automotive Fin. Corp., 50 A.D.3d 18, 852 N.Y.S.2d 148, 2008 N.Y. App. Div. LEXIS 450 (N.Y. App. Div. 2d Dep't), app. denied, 11 N.Y.3d 705, 866 N.Y.S.2d 608, 896 N.E.2d 94, 2008 N.Y. LEXIS 2613 (N.Y. 2008).

In view of the fact that CPLR § 4545, which modifies the traditional collateral source rule of damages in actions against public employers in which such collateral source payments as paid sick leave and medical benefits have been made to or on behalf of the claimant by the public employer, applies to all actions brought on or after its effective date, rather than to claims that accrue on or after that date, 13 prospective claimants who had served notices of claim upon New York City, but who were otherwise barred from initiating an action against the city prior to the effective date of § 4545 in that the examinations of the claimants demanded by the city had been scheduled after such effective date pursuant to Gen Mun Law § 50-h(5), would be granted leave to initiate actions against the city prior to the effective date and prior to the holding of such hearings, since the law looks with disfavor on allowing one party, by its unilateral act, to deprive another of either a contractual or common law right, and it would be inequitable and unjust to allow the city to deprive the claimants of collateral source damages simply through its choice of a hearing date. Alford v New York, 125 Misc. 2d 623, 481 N.Y.S.2d 574, 1984 N.Y. Misc. LEXIS 3461 (N.Y. Sup. Ct. 1984).

Any application for setoff utilizing collateral source of payments must be either requested verbally immediately after jury renders verdict that includes loss of earnings, or as part of written single posttrial motion contemplated by CLS CPLR § 4406, which must be made within 15 days of jury verdict (CLS CPLR § 4405). Bongiovanni v Staten Island Med Group, PC, 188 Misc. 2d 362, 728 N.Y.S.2d 345, 2001 N.Y. Misc. LEXIS 179 (N.Y. Sup. Ct. 2001).

Focus and emphasis by those evaluating subrogation provisions and N.Y. C.P.L.R 4545 issues seems to be upon the necessity to put in place a regulatory scheme to prevent double recovery by the injured plaintiff/insured and, to a lesser degree, the question of who should bear the cost of paying once for the injured plaintiff's medical costs. Excellus Health Plan, Inc. v Federal Express Corp., 784 N.Y.S.2d 284, 5 Misc. 3d 727, 2003 N.Y. Misc. LEXIS 1961 (N.Y. Sup. Ct. 2003), aff'd, 11 A.D.3d 948, 782 N.Y.S.2d 219, 2004 N.Y. App. Div. LEXIS 11271 (N.Y. App. Div. 4th Dep't 2004).

Motions for a collateral source hearing, reduction of the verdict, and for a stay of enforcement of the judgment following a summary jury trial were denied because the insurance carrier had denied the benefits of the proposed collateral source and the verdict would not have been replaced or indemnified from any collateral source pursuant to N.Y. C.P.L.R. 4545(c). Griffin v Yonkers, 891 N.Y.S.2d 896, 26 Misc. 3d 917, 243 N.Y.L.J. 2, 2009 N.Y. Misc. LEXIS 3439 (N.Y. Sup. Ct. 2009).

In products liability action, defendant waived its right to set off disability payments received by plaintiff by not inquiring into existence of collateral source payments in pretrial discovery and not requesting post-trial hearing, at which it would have borne burden of establishing that such payments should be set off from jury's award. Damiano v Exide Corp., 970 F. Supp. 222, 1997 U.S. Dist. LEXIS 8830 (S.D.N.Y. 1997).

2. Application to particular parties

CLS CPLR § 4545(b) survived enactment of CLS CPLR § 4545(c) and governed availability of collateral source reductions in personal injury action brought by public employee against his

employer. Provisions of CLS CPLR § 4545(c) encompass personal injury suits against New York City. Iazzetti v City of New York, 216 A.D.2d 214, 628 N.Y.S.2d 112, 1995 N.Y. App. Div. LEXIS 7145 (N.Y. App. Div. 1st Dep't 1995), aff'd, 256 A.D.2d 140, 681 N.Y.S.2d 507, 1998 N.Y. App. Div. LEXIS 13695 (N.Y. App. Div. 1st Dep't 1998).

Plaintiffs in personal injury action arising from motor vehicle accident were not required to exhaust collateral resources, such as insurance, before bringing action against owner and driver of second vehicle involved in accident. Greenberg v Parbury, 251 A.D.2d 454, 673 N.Y.S.2d 333, 1998 N.Y. App. Div. LEXIS 6873 (N.Y. App. Div. 2d Dep't 1998).

City was properly permitted to file a late notice against the State in a city police officer’s personal injury action because the State’s rights to reimbursement under N.Y. Gen Mun. Law § 207-c(6) would not be thwarted as the collateral source rule in N.Y. C.P.L.R. 4545 did not bar such a cause of action. Burlingame v State of New York, 42 A.D.3d 923, 839 N.Y.S.2d 889, 2007 N.Y. App. Div. LEXIS 8348 (N.Y. App. Div. 4th Dep't 2007).

Public employer’s entitlement to collateral source offset was applicable despite employer’s status as third-party defendant rather than direct defendant. Rodd v Luxfer USA Ltd., 187 Misc. 2d 341, 723 N.Y.S.2d 308, 2000 N.Y. Misc. LEXIS 586 (N.Y. Sup. Ct. 2000).

Trial court erred in granting plaintiffs’ motion to strike attorneys’ collateral source rule defense, N.Y. C.P.L.R. 4545(c), in an action alleging legal malpractice and other claims, as the attorneys were entitled to argue that any damages would be reduced under the rule; the trial court properly denied summary judgment to plaintiffs on the issue of liability pursuant to N.Y. C.P.L.R. 3212, as plaintiffs failed to demonstrate a prima face case that, but for the negligence of the attorneys, they would have prevailed in an underlying tort action against a resort. Stein v Levine, 8 A.D.3d 652, 779 N.Y.S.2d 556, 2004 N.Y. App. Div. LEXIS 9160 (N.Y. App. Div. 2d Dep't 2004).

Physician, as third-party defendant in seaman’s personal injury action against tugboat owner, was not entitled to setoff from judgment entered against him in favor of owner for maintenance

and cure payments and social security benefits that seaman had received or would receive, despite owner's assertion of medical malpractice and injury by physician, since owner was neither plaintiff in malpractice action within meaning of CLS CPLR § 4545(a), nor plaintiff in personal injury action within meaning of CLS CPLR § 4545(c). Staffer v Bouchard Transp. Co., 878 F.2d 638, 1989 U.S. App. LEXIS 9561 (2d Cir. N.Y. 1989)).

Collateral source rule prevented an ERISA covered employee from recovering from tortfeasors expenses that which she already recovered from a collateral source, such as medical insurance, thus, if the employee prevailed in her state court action, any judgment she received would be reduced by the amount awarded to her under the ERISA plan, consequently, no part of such a judgment would constitute covered expenses recoverable by the assignee of the ERISA plan. Primax Recoveries, Inc. v Carey, 247 F. Supp. 2d 337, 2002 U.S. Dist. LEXIS 15818 (S.D.N.Y. 2002).

3. —Insurers

Insurer, which had "the right to a refund" if insured were repaid for all or some of its medical expenses by another source, could properly intervene in personal injury action, settled in insured's favor, to permit insurer to show its contractual right to reimbursement of any medical expenses actually included in settlement since insurer's claim for refund could be adversely affected if intervention were not allowed, there were common questions of law and fact, and no prejudice was shown; moreover, collateral source payment rule under CLS CPLR § 4545(a) did not compel conclusion that medical expenses were necessarily excluded from settlement so as to support denial of intervention by insurer. Teichman by Teichman v Community Hosp., 87 N.Y.2d 514, 640 N.Y.S.2d 472, 663 N.E.2d 628, 1996 N.Y. LEXIS 71 (N.Y. 1996).

Plaintiff's health insurance carrier was not entitled to intervene in plaintiff's personal injury action under CLS CPLR §§ 1012 or 1013 where insurance policy limited its right to recover from third parties to amounts paid to insured through settlements or satisfied judgments, which specifically identified amounts paid for health care services; intervention of medical providers could unduly

complicate and delay determination of personal injury actions, and submission of issues to jury relating to plaintiff's compensation from collateral sources could prejudice plaintiff's case. Humbach v Goldstein, 229 A.D.2d 64, 653 N.Y.S.2d 950, 1997 N.Y. App. Div. LEXIS 1603 (N.Y. App. Div. 2d Dep't 1997), app. dismissed, 91 N.Y.2d 921, 669 N.Y.S.2d 263, 692 N.E.2d 132, 1998 N.Y. LEXIS 149 (N.Y. 1998).

CLS CPLR § 4545(c), requiring reduction in plaintiff's award for collateral source payments "such as insurance," applies only to plaintiffs compensated by collateral source, and does not apply in subrogation actions so as to require that award insurer receives be reduced by amount insurer paid to its insured. Kelly v Seager, 144 Misc. 2d 458, 545 N.Y.S.2d 261, 1989 N.Y. Misc. LEXIS 533 (N.Y. Sup. Ct. 1989), aff'd, 163 A.D.2d 877, 558 N.Y.S.2d 403, 1990 N.Y. App. Div. LEXIS 9577 (N.Y. App. Div. 4th Dep't 1990).

Health insurer that paid medical benefits to injured plaintiff under her father's group health insurance plan, for injuries sustained in accident allegedly caused by defendants, was not entitled to intervene in personal injury action against defendants for purpose of pursuing its equitable subrogation rights to recoup covered medical expenses awarded by jury, because plaintiffs would be precluded under CLS CPLR § 4545 from recovering from defendants any medical benefits previously provided to injured plaintiff from collateral sources; however, insurer would be allowed to intervene for limited purpose of asserting its equitable subrogation rights as to covered medical expenses, if any, included in terms of any settlement, and would have concomitant right to appear and be heard on proceeding brought to obtain court approval of any settlement. Niemann v Luca, 168 Misc. 2d 1023, 645 N.Y.S.2d 401, 1996 N.Y. Misc. LEXIS 218 (N.Y. Sup. Ct.), amended, 168 Misc. 2d 1023 (N.Y. Sup. Ct. 1996).

Health insurer's claim against tortfeasor is not barred by CLS CPLR § 4545, and health insurer that paid for personal injury plaintiff's medical expenses was entitled to intervene in plaintiff's litigation against tortfeasor either under CLS CPLR § 1012 or CLS CPLR § 1013; however, participation of intervenor's counsel would be limited to avoid complications and delay.

Nossoughi v Federated Dep't Stores, 175 Misc. 2d 585, 669 N.Y.S.2d 479, 1998 N.Y. Misc. LEXIS 27 (N.Y. Sup. Ct. 1998).

Because N.Y. C.P.L.R. § 4545(c) did not bar recovery of an insured's medical expenses paid by the insurer, the insured's motion to extinguish an agent's purported liens and/or subrogation rights in connection with an underlying personal injury incident was denied. Principe v City of New York, 813 N.Y.S.2d 872, 11 Misc. 3d 879, 235 N.Y.L.J. 29, 2006 N.Y. Misc. LEXIS 345 (N.Y. Sup. Ct. 2006).

Trial court properly granted motion of an insurer of plaintiff for permission to intervene, pursuant to N.Y. C.P.L.R. § 1013, for the purpose of asserting an equitable subrogation claim in plaintiff's personal injury action brought against a property owner for damages for injuries sustained by plaintiff when he slipped and fell on the owner's property because the insurer's assertion of an equitable subrogation claim in the action in which it sought reimbursement of medical expenses it paid with respect to plaintiff's injuries both prevented a potential double recovery by plaintiff, as proscribed by N.Y. C.P.L.R. § 4545, and assured that the tortfeasor (the owner in the instant case), not ratepayers, ultimately bore the expense. Omiatek v Marine Midland Bank, N.A., 9 A.D.3d 831, 781 N.Y.S.2d 389, 2004 N.Y. App. Div. LEXIS 9462 (N.Y. App. Div. 4th Dep't), app. dismissed, 3 N.Y.3d 738, 786 N.Y.S.2d 816, 820 N.E.2d 295, 2004 N.Y. LEXIS 2490 (N.Y. 2004).

N.Y. C.P.L.R. 4545 was not a bar to an insurer's contractual subrogation action against defendants, a tortfeasor and his employer, to the extent that such action alleged that defendants were the responsible parties and sought to recover the cost of medical expenses it paid on behalf of its insured. Excellus Health Plan, Inc. v Federal Express Corp., 784 N.Y.S.2d 284, 5 Misc. 3d 727, 2003 N.Y. Misc. LEXIS 1961 (N.Y. Sup. Ct. 2003), aff'd, 11 A.D.3d 948, 782 N.Y.S.2d 219, 2004 N.Y. App. Div. LEXIS 11271 (N.Y. App. Div. 4th Dep't 2004).

Unpublished decision: On remand in an insurance subrogation dispute, when the insureds' legally recoverable tort damages were compared with the insurance settlement, the former was to be determined without any collateral offset, as such would thwart the policies' goal of ensuring

that the insureds received at least some subrogation proceeds so long as they were not fully compensated for the tort-defined losses. World Trade Ctr. Props. LLC v QBE Int'l Ins. Ltd., 627 Fed. Appx. 10, 2015 U.S. App. LEXIS 16553 (2d Cir. 2015), dismissed, 328 F. Supp. 3d 178, 2018 U.S. Dist. LEXIS 130025 (S.D.N.Y. 2018).

4. Application to property damage claims

After a house fire, the collateral source insurance payment received by the homeowners from their insurer corresponded to damages payable by defendants so as to require setoff from a later negligence judgment. Fisher v Qualico Contr. Corp., 98 N.Y.2d 534, 749 N.Y.S.2d 467, 779 N.E.2d 178, 2002 N.Y. LEXIS 3370 (N.Y. 2002).

Collateral source rule set forth in CLS CPLR § 4545(c) does not apply to subrogation actions seeking to recover moneys paid by insurer on fire loss. Kelly v Seager, 163 A.D.2d 877, 558 N.Y.S.2d 403, 1990 N.Y. App. Div. LEXIS 9577 (N.Y. App. Div. 4th Dep't 1990).

In action by landowners for property damage arising from excavation work on adjoining lot, court committed reversible error in permitting jury to hear evidence of plaintiff’s insurance coverage where defendant general contractor introduced no direct evidence to refute combination of expert testimony and documents demonstrating substantial value lost in plaintiffs’ building, personal property, and rental income, relying almost exclusively on its cross-examination regarding insurance benefits paid to plaintiffs. Sobie v Katz Constr. Corp., 189 A.D.2d 49, 595 N.Y.S.2d 750, 1993 N.Y. App. Div. LEXIS 2693 (N.Y. App. Div. 1st Dep't 1993).

In prosecution for operating motor vehicle while under influence of alcohol in violation of CLS Veh & Tr § 1192 resulting in property damage to another vehicle, proper amount of restitution defendant would be required to make to owner of other vehicle was sum which, when added to amount owner of damaged vehicle received from defendant’s insurance carrier, would equal defendant’s proportional liability for damage, since CLS Penal § 60.27 directs that restitution be ordered in amount representing loss or damage caused by defendant’s offense, and payment from defendant’s insurance carrier was not “collateral source” to be barred from use in mitigation

of damages. People v Crossley, 134 Misc. 2d 742, 512 N.Y.S.2d 756, 1987 N.Y. Misc. LEXIS 2098 (N.Y. Dist. Ct. 1987).

It was necessary, under N.Y. C.P.L.R. 4545, to reduce the lessees' tort damages by the amount of their insurance recoveries where the district court properly allocated lessees' insurance recoveries to replacement costs and business interruption losses and properly concluded that those insurance reimbursements corresponded to the same category of loss as the lessees' potential tort recoveries due to a destroyed building. World Trade Center Props. LLC v American Airlines, Inc. (In re September 11 Litig.), 802 F.3d 314, 2015 U.S. App. LEXIS 16619 (2d Cir. 2015).

N.Y. C.P.L.R. 4545(c), which abrogated the collateral source rule by offsetting damage recoveries of insureds by the insurance proceeds the insureds received, did not bar the insureds' subrogated insurers from trying to recover from alleged tortfeasors the insurance proceeds paid, even though the proceeds paid to the insureds exceeded the sum that was determined to be the amount of the insureds' loss, barring the insureds from seeking further recovery, because the statute's plain language did not affect the insurers' equitable subrogation rights. In re September 11 Litig., 649 F. Supp. 2d 171, 2009 U.S. Dist. LEXIS 73223 (S.D.N.Y. 2009).

5. Application to settlements

In medical malpractice action on behalf of infant that was settled before trial with no mention in infant's compromise that it included any compensation for medical expenses, collateral source payment rule under CLS CPLR § 4545(a) could not be presumed to have reduced pretrial settlement by amount of past and future medical expenses since statute applies to admissibility of evidence at trial and to judgments, statute is silent as to pretrial settlements, and nothing in rules governing settlement of infant's claim indicated that such settlements must be reduced by collateral source payments (CLS CPLR §§ 1206, 1207 and 1208). Teichman by Teichman v

Community Hosp., 87 N.Y.2d 514, 640 N.Y.S.2d 472, 663 N.E.2d 628, 1996 N.Y. LEXIS 71 (N.Y. 1996).

6. Discovery of collateral source information

In wrongful death action based on alleged medical malpractice, commenced by plaintiff as administratrix of her husband's estate, defendants were entitled under CLS CPLR § 4545(c) to discovery of income received by plaintiff from collateral sources as result of her husband's death; however, demand for "any and all" death benefit and insurance information was overbroad and defendants were not entitled to information not specifically covered in statute. Scalone v Phelps Memorial Hosp. Center, 184 A.D.2d 65, 591 N.Y.S.2d 419, 1992 N.Y. App. Div. LEXIS 13639 (N.Y. App. Div. 2d Dep't 1992).

In personal injury action, collateral source hearing was required to explore whether plaintiffs would be able to maintain their health insurance coverage past husband's retirement and whether physical therapy would be covered over duration of award. Sternfeld v Forcier, 248 A.D.2d 14, 679 N.Y.S.2d 219, 1998 N.Y. App. Div. LEXIS 11705 (N.Y. App. Div. 3d Dep't 1998), app. dismissed, 92 N.Y.2d 1045, 685 N.Y.S.2d 419, 708 N.E.2d 176, 1999 N.Y. LEXIS 2008 (N.Y. 1999).

In an action to recover damages for personal injuries suffered by a decedent, the trial court should have granted plaintiff a protective order denying defendants' requests for collateral source information, as plaintiff did not seek to recover the costs of any medical care, custodial care, or rehabilitation services, loss of earnings, or other economic loss. Carboni v N.Y. Med. College, 290 A.D.2d 473, 736 N.Y.S.2d 250, 2002 N.Y. App. Div. LEXIS 588 (N.Y. App. Div. 2d Dep't 2002).

In a personal injury action, because plaintiff motorcyclist had not updated his initial collateral source disclosure, which stated in 2003, inter alia, that the motorcyclist had applied for Social Security disability benefits but no hearing had been held, the trial court was required to determine if the motorcyclist failed to comply with the requirements of N.Y. C.P.L.R. §§ 4545

and 3101(h) to amend or supplement his initial collateral source disclosure. Firmes v Chase Manhattan Automotive Fin. Corp., 50 A.D.3d 18, 852 N.Y.S.2d 148, 2008 N.Y. App. Div. LEXIS 450 (N.Y. App. Div. 2d Dep't), app. denied, 11 N.Y.3d 705, 866 N.Y.S.2d 608, 896 N.E.2d 94, 2008 N.Y. LEXIS 2613 (N.Y. 2008).

In personal injury action based on violation of CLS Labor §§ 200 and 240, plaintiff would be required to produce at examination before trial all post-verdict collateral source reduction information as to reimbursements for expenses for medical care and workers' compensation benefits (CLS CPLR § 4545(c)) since (1) such information should be discoverable in like manner as all other matters material and necessary to defense of action, (2) permitting delay in obtaining discovery as to collateral source reimbursements would impede prospective settlement discussions in personal injury cases and would delay whatever proceedings or hearing might be necessary following verdict in order to permit court to make its collateral source finding and verdict reduction, and (3) no prejudice to plaintiff was shown or asserted. Fleming v Bernauer, 138 Misc. 2d 267, 524 N.Y.S.2d 143, 1987 N.Y. Misc. LEXIS 2795 (N.Y. Sup. Ct. 1987).

In personal injury actions, plaintiff would be required under CLS CPLR § 4545 to execute authorizations to allow defendant to inspect workers' compensation and no-fault insurance files to extent that, as result of accident or incident complained of, plaintiff applied for and collected benefits from such sources, but defendant would be required to supply copies of such records to plaintiff. Eaton v Chahal, 146 Misc. 2d 977, 553 N.Y.S.2d 642, 1990 N.Y. Misc. LEXIS 118 (N.Y. Sup. Ct. 1990).

In personal injury action, defendants were entitled to post-verdict disclosure pertaining to plaintiff's receiving social security disability payments, where plaintiff was found totally disabled and entitled to disability benefits after filing of note of issue but prior to trial; however, defendants were not entitled to post-verdict discovery concerning earnings, no-fault, or workers' compensation benefits where plaintiff had submitted to oral deposition and provided authorizations to no-fault carrier and Workers' Compensation Board prior to filing of note of issue. Hoffmann v S.J. Hawk, Inc., 177 Misc. 2d 305, 676 N.Y.S.2d 448, 1998 N.Y. Misc. LEXIS

295 (N.Y. Sup. Ct. 1998), aff'd, 273 A.D.2d 200, 709 N.Y.S.2d 448, 2000 N.Y. App. Div. LEXIS 6226 (N.Y. App. Div. 2d Dep't 2000).

Fact that the defendant tortfeasor escaped some liability in damages because of optional basic economic loss coverage, if unfair, was an unfairness which was dismissed by the enactment of N.Y. C.P.L.R. § 4545 in favor of avoiding the possibility of a double recovery for the same items of economic loss. Condon v Hathaway, 191 Misc. 2d 235, 740 N.Y.S.2d 600, 2002 N.Y. Misc. LEXIS 197 (N.Y. Sup. Ct. 2002).

Personal injury defendant was entitled to a post-verdict hearing to prove the existence of collateral sources of income to the injured plaintiff, pursuant to N.Y. C.P.L.R. 4545, but not to further discovery on the issue; the court applied the federal post-judgment interest rate of 28 U.S.C.S. § 1961 (a). Underwood v B-E Holdings, Inc., 269 F. Supp. 2d 125, 2003 U.S. Dist. LEXIS 9970 (W.D.N.Y. 2003).

7. Particular payments or benefits

Use of past tense in phrase “was replaced or indemnified” in CLS CPL § 4545(b)(1) indicates legislative intent to permit public employer, as defendant in action for work-related injuries, to offset collateral source reimbursements only for pre-verdict losses, and thus in police officer’s action for injuries sustained in course of employment, city was not entitled to reduction of damages by income officer expected to receive from collateral sources in reimbursement of future losses. Ryan v New York, 79 N.Y.2d 792, 579 N.Y.S.2d 634, 587 N.E.2d 272, 1991 N.Y. LEXIS 5129 (N.Y. 1991), limited, Iazzetti v City of New York, 216 A.D.2d 214, 628 N.Y.S.2d 112, 1995 N.Y. App. Div. LEXIS 7145 (N.Y. App. Div. 1st Dep't 1995).

In wrongful death action based on allegations of medical malpractice, plaintiff’s recovery for loss of his mother’s future earnings was offset by social security survivor benefits under 42 USCS § 402(d)(1), which are intended to compensate for lost economic support of deceased parent. Under CLS CPLR § 4545, only benefits under Social Security Act, Title XVIII, cannot be used to offset damages award; thus, where trial court and Appellate Division erroneously ruled as matter

of law that social security benefits could not offset plaintiff's future lost earnings award, matter was remitted to trial court to resolve fact questions bearing on issue. Bryant v New York City Health & Hosps. Corp., 93 N.Y.2d 592, 695 N.Y.S.2d 39, 716 N.E.2d 1084, 1999 N.Y. LEXIS 1423 (N.Y. 1999).

In wrongful death action, $2,000 in no-fault insurance death benefits received by plaintiff under CLS Ins § 5103 was proper offset against jury's verdict, and should be reflected in final award, since it was paid to compensate plaintiff's loss. Hosmer v Distler, 150 A.D.2d 974, 541 N.Y.S.2d 650, 1989 N.Y. App. Div. LEXIS 7005 (N.Y. App. Div. 3d Dep't 1989).

Award for damages or destroyed artwork should have been reduced by amount concededly received by plaintiff as insurance payment for portion of same economic loss awarded as damages at trial, where plaintiff's insurance carrier did not have lien on proceeds and was not otherwise entitled to assignment of her recovery (as opposed to her "rights of recovery") and statute of limitations had run on its right to sue in subrogation. Lowit v Consolidated Edison Co., 234 A.D.2d 2, 650 N.Y.S.2d 152, 1996 N.Y. App. Div. LEXIS 12268 (N.Y. App. Div. 1st Dep't 1996).

In action under Dram Shop Act (CLS Gen Oblig § 11-101) and for wrongful death based on police officer's death, court properly refused to reduce verdict by 3 collateral sources under CLS CPLR § 4545(c) where death benefits paid under 42 USCS § 3796 and death benefits paid under collective bargaining agreement were in nature of life insurance, and third benefit paid under CLS Retire & S S 361 and 361-a was explicitly excluded as collateral source by statute; moreover, defendant failed to match collateral sources to items of loss in verdict. Adamy v Ziriakus, 231 A.D.2d 80, 659 N.Y.S.2d 623, 1997 N.Y. App. Div. LEXIS 6271 (N.Y. App. Div. 4th Dep't 1997).

Social Security disability benefits received by plaintiff in personal injury action were collateral source payments by which his damages had to be reduced where those benefits corresponded to lost earnings for which he was awarded damages. Manfredi v Preston, 246 A.D.2d 580, 667 N.Y.S.2d 288, 1998 N.Y. App. Div. LEXIS 434 (N.Y. App. Div. 2d Dep't 1998).

Wrongful death defendants were not entitled to reduce economic loss portion of damage award by amount of Social Security widow's insurance benefits plaintiff was expected to receive over 9-year period since those benefits, denominated by Social Security Administration as "'Life Insurance' from Social Security," were paid to surviving spouse regardless of whether decedent was employed at time of death, and thus they had no correspondence to lost earnings component of damage award. Krum v Green Island Constr. Co., 249 A.D.2d 730, 671 N.Y.S.2d 563, 1998 N.Y. App. Div. LEXIS 4115 (N.Y. App. Div. 3d Dep't 1998).

Court of Claims erred in deducting from damage award medical expenses paid for by claimant's insurance coverage since there was limited evidence set forth at trial in regard thereto, and court failed to hold hearing on matter. Faas v State, 249 A.D.2d 731, 672 N.Y.S.2d 145, 1998 N.Y. App. Div. LEXIS 4092 (N.Y. App. Div. 3d Dep't 1998).

Future lost earnings award would not be reduced by Social Security Survival Benefits received by decedent's child because those benefits did not duplicate or correspond to what decedent would have earned had she lived. Bryant v New York City Health & Hosps. Corp., 250 A.D.2d 797, 673 N.Y.S.2d 471, 1998 N.Y. App. Div. LEXIS 5983 (N.Y. App. Div. 2d Dep't 1998), modified, 93 N.Y.2d 592, 695 N.Y.S.2d 39, 716 N.E.2d 1084, 1999 N.Y. LEXIS 1423 (N.Y. 1999).

Hearing was required to determine amount of collateral source set-off for past and future psychiatric expenses where plaintiff conceded that, during pendency of action, her heath insurance plan was modified to cover 30 visits each year for psychiatric treatment, with $10 co-payment. Brewster v Prince Apts., Inc., 264 A.D.2d 611, 695 N.Y.S.2d 315, 1999 N.Y. App. Div. LEXIS 9096 (N.Y. App. Div. 1st Dep't 1999), app. dismissed, 94 N.Y.2d 875, 705 N.Y.S.2d 6, 726 N.E.2d 483, 2000 N.Y. LEXIS 9 (N.Y. 2000), app. denied, 94 N.Y.2d 762, 708 N.Y.S.2d 51, 729 N.E.2d 708, 2000 N.Y. LEXIS 531 (N.Y. 2000).

Plaintiff, who was required to pay defendant cooperative association's legal costs, would not be permitted to benefit from circumstance that cooperative had insurance policy to cover its legal costs, and thus was not entitled to credit in amount of payment made to cooperative by insurer

pursuant to collateral source rule. Isaacs v Jefferson Tenants Corp., 270 A.D.2d 95, 704 N.Y.S.2d 71, 2000 N.Y. App. Div. LEXIS 2828 (N.Y. App. Div. 1st Dep't 2000).

In personal injury action, defendants did not meet their burden, under CLS CPLR § 4545(c), of proving injured plaintiff's continued eligibility for Social Security and disability benefits, and thus defendants were not entitled to offset those benefits against jury's award for future lost earnings, where injured plaintiff, although still partially disabled, had shown some improvement and was capable of performing limited sedentary work. Also, defendants were not entitled to offset, against jury's award for past lost earnings, amount of Social Security benefits paid to injured plaintiff's minor children where entitlement to such payments belonged to children, not to plaintiff. Young v Knickerbocker Arena, 281 A.D.2d 761, 722 N.Y.S.2d 596, 2001 N.Y. App. Div. LEXIS 2510 (N.Y. App. Div. 3d Dep't 2001).

Denial of the collateral source reduction under N.Y. C.P.L.R. 4545(c) requested by a county in a personal injury action, where it was found to be 87% at fault, was proper based on five factors: first, there was a lack of reasonable certainty that an injured passenger's husband would remain for 46 years with his current employer, through whom his health insurance was obtained; second, it was uncertain whether the health benefits would, in fact, indefinitely cover any portion of the wife's medications; third, there was no guarantee that the marriage would continue; fourth, no evidence was adduced at the hearing as to the husband's life expectancy or work-life expectancy, upon which the healthcare coverage was dependent, and fifth, the wife was otherwise uninsurable. Kihl v Pfeffer, 47 A.D.3d 154, 848 N.Y.S.2d 200, 2007 N.Y. App. Div. LEXIS 12119 (N.Y. App. Div. 2d Dep't 2007).

In a personal injury action, a collateral source offset under N.Y. C.P.L.R. § 4545(c) for future medical expenses was appropriate as first plaintiff had been paid by her no-fault carrier for her medical expenses and still had benefits available for reimbursement of medical expenses found to be medically necessary and causally related to the motor vehicle accident at issue. Lahren v Boehmer Transp. Corp., 49 A.D.3d 1186, 856 N.Y.S.2d 363, 2008 N.Y. App. Div. LEXIS 2378 (N.Y. App. Div. 4th Dep't 2008).

Because a passenger sustained permanent, painful injuries to the passenger's pelvic bone after an automobile accident, and because no reasonable view of the evidence showed that the vehicle was confronted with an emergency, pursuant to N.Y. C.P.L.R. 4545(c), the collateral source was offset by the amount paid by Medicaid for basic economic loss. Pryce v Gilchrist, 51 A.D.3d 425, 857 N.Y.S.2d 528, 2008 N.Y. App. Div. LEXIS 3805 (N.Y. App. Div. 1st Dep't), app. denied, 11 N.Y.3d 710, 872 N.Y.S.2d 72, 900 N.E.2d 555, 2008 N.Y. LEXIS 3417 (N.Y. 2008).

Trial court properly determined that N.Y. C.P.L.R. 4545(b) rather than N.Y. C.P.L.R. 4545(c) applied in a principal's personal injury case against a city; the city was a public employer within the meaning of N.Y. C.P.L.R. 4545(b)(2) and the principal was a public employee of the city, through its school district, and, thus, N.Y. C.P.L.R. 4545(b) applied because the city "provided or paid for" the medical benefits received by the principal, for which the city sought a collateral source offset. However, the city was not entitled to a collateral source offset for future medical expenses pursuant to N.Y. C.P.L.R. 4545(b). Doyle v City of Buffalo, 56 A.D.3d 1134, 867 N.Y.S.2d 614, 2008 N.Y. App. Div. LEXIS 8852 (N.Y. App. Div. 4th Dep't 2008), app. denied, amended, 59 A.D.3d 1107, 872 N.Y.S.2d 301, 2009 N.Y. App. Div. LEXIS 865 (N.Y. App. Div. 4th Dep't 2009), app. denied, 12 N.Y.3d 709, 881 N.Y.S.2d 18, 908 N.E.2d 926, 2009 N.Y. LEXIS 938 (N.Y. 2009).

Trial court erred in failing to grant a collateral source offset for past medical expenses pursuant to N.Y. C.P.L.R. 4545(b) in a principal's personal injury case against a city; pursuant to the terms of the principal's health care policy, the health insurer was entitled to reimbursement for past medical benefits paid from a judgment the principal received from the party responsible for the principal's injury, but in this case, the collateral offset provision of N.Y. C.P.L.R. 4545(b)(1) precluded the principal from recovering medical benefits previously provided by the city. Therefore, the city was entitled to an offset in the amount of $5,744 for past medical expenses paid by principal's health insurer, minus the amount equal to the contributions of the principal for the health care coverage. Doyle v City of Buffalo, 56 A.D.3d 1134, 867 N.Y.S.2d 614, 2008 N.Y. App. Div. LEXIS 8852 (N.Y. App. Div. 4th Dep't 2008), app. denied, amended, 59 A.D.3d 1107,

872 N.Y.S.2d 301, 2009 N.Y. App. Div. LEXIS 865 (N.Y. App. Div. 4th Dep't 2009), app. denied, 12 N.Y.3d 709, 881 N.Y.S.2d 18, 908 N.E.2d 926, 2009 N.Y. LEXIS 938 (N.Y. 2009).

Since defendant offered competent evidence showing its entitlement to a collateral source hearing pursuant to this provision on the issue of future medical expenses, the Supreme Court erred in denying that branch of defendant’s motion which was for such a hearing. Liciaga v New York City Tr. Auth., 231 A.D.3d 250, 218 N.Y.S.3d 359, 2024 N.Y. App. Div. LEXIS 4433 (N.Y. App. Div. 2d Dep't 2024).

Defendant in wrongful death action was not entitled to reduction of jury awards by amount of Social Security benefits received and to be received by decedent’s next of kin since legislature’s failure to include wrongful death in CLS CPLR § 4545(a), while including wrongful death in CLS CPLR § 4545(c), should be construed as indication that its exclusion in former subsection was intended; moreover, Social Security benefits are analogous to life insurance benefits which, had decedent had life insurance policy payable to recipients, could not be used to offset jury award. Decoste v Champlain Valley Physicians Hospital, 139 Misc. 2d 145, 527 N.Y.S.2d 149, 1988 N.Y. Misc. LEXIS 95 (N.Y. Sup. Ct. 1988), aff'd, 147 A.D.2d 793, 537 N.Y.S.2d 665, 1989 N.Y. App. Div. LEXIS 1127 (N.Y. App. Div. 3d Dep't 1989).

In medical malpractice action, court would reject defendant’s claim that jury award to infant plaintiff for future therapy should be eliminated or substantially reduced because of plaintiff’s entitlement to therapy as part of his public school education, since no proof was offered that plaintiff was legally entitled to continued receipt of such collateral source benefits pursuant to contract or agreement, as required by CLS CPLR § 4545(a). Ursini v Sussman, 143 Misc. 2d 727, 541 N.Y.S.2d 916, 1989 N.Y. Misc. LEXIS 295 (N.Y. Sup. Ct. 1989)).

Confidential settlement agreements entered into between plaintiffs and codefendants did not constitute collateral source within meaning of CLS CPLR § 4545(c). Hulse v A.B. Dick Co. (In re

New York County Data Entry Worker Prod. Liab. Litig.), 162 Misc. 2d 263, 616 N.Y.S.2d 424, 1994 N.Y. Misc. LEXIS 389 (N.Y. Sup. Ct. 1994), aff'd, 222 A.D.2d 381, 635 N.Y.S.2d 641, 1995 N.Y. App. Div. LEXIS 13733 (N.Y. App. Div. 1st Dep't 1995).

In wrongful death action, court was able to offset jury verdict award with Social Security payments received by decedent's wife as collateral source payments under CLS CPLR § 4545, even though jury verdict sheet did not separately itemize damages suffered before and after verdict (which allegedly made it difficult to prove specifically which item of pecuniary loss such payments replaced), as Social Security payments replace lost wages, which was basis for wife's award. And, proceeds of life insurance policy were not collateral source offsets to be deducted from jury award, although premiums were paid by decedent's employer, as CLS CPLR § 4545 specifically exempts life insurance; also, payment of life insurance proceeds are based on death of contract holder, not on lost wages. Shue v Red Creek Cent. Sch. Dist., 177 Misc. 2d 743, 676 N.Y.S.2d 742, 1998 N.Y. Misc. LEXIS 351 (N.Y. Sup. Ct. 1998).

Defendant in personal injury action was entitled to credit for future Social Security and union payments which plaintiff would, with reasonable certainty, receive; while court found insufficient data to project increase in union benefits, it was safe to predict that political pressures and lobbying effectiveness of increasing group of Social Security recipients would result in annual cost of living adjustment increases of approximately 2 percent. Flynn v GMAC, 179 Misc. 2d 555, 688 N.Y.S.2d 374, 1998 N.Y. Misc. LEXIS 658 (N.Y. Sup. Ct. 1998).

In personal injury action, defendants were not entitled to reduction of jury's verdict on ground that cost of infant plaintiff's medical and nursing care was being paid in large part by mother's health insurance coverage, because treating mother's employee health insurance as collateral source would require her to work in order to provide her child with care he required, which jury already found defendants obligated to provide. Also, court rejected defendants' suggestion that infant plaintiff purchase his own health insurance to provide them with collateral source offset, where testimony of defendants' rehabilitation expert concerning amount that health insurance policy would actually pay out was vague and speculative. Personal injury defendants were not

entitled to collateral source offset for special education and related services which would be provided to infant plaintiff pursuant to federal Individuals with Disabilities Education Act (IDEA) because whatever services school might provide under IDEA was irrelevant where jury made no award for special education or related services. Giventer v Rementeria, 184 Misc. 2d 744, 705 N.Y.S.2d 863, 2000 N.Y. Misc. LEXIS 64 (N.Y. Sup. Ct. 2000).

Third-party defendant fire district was entitled to collateral source offset against wrongful death damages payable to employee's widow in amount of life insurance proceeds paid to her where premiums for policy had been fully paid by fire district. Rodd v Luxfer USA Ltd., 187 Misc. 2d 341, 723 N.Y.S.2d 308, 2000 N.Y. Misc. LEXIS 586 (N.Y. Sup. Ct. 2000).

Trial court erred in subtracting the $34,203 that plaintiff received in Social Security benefits both from the judgment in consolidated cases against the owner in a premises liability claim and that against the driver in a traffic accident pursuant to former N.Y. C. P.L.R. 4545(c) because plaintiff was undercompensated inasmuch as the sum of $68,406 was subtracted from her total recovery despite the fact that she received only $34,203 in Social Security benefits; thus, the trial court should have prorated the single collateral source offset between the owner and the driver and the owner's pro rata share of the total award of $129,000 for past economic loss was 45 percent. Thus, the owner was entitled to deduct only $15,391 from the award for past economic loss. Maurer v Tops Mkts., LLC, 70 A.D.3d 1504, 895 N.Y.S.2d 617, 2010 N.Y. App. Div. LEXIS 1162 (N.Y. App. Div. 4th Dep't 2010).

Where plaintiff prevailed on his medical malpractice claim against the Veterans Administration (VA), the district court abused its discretion by offsetting his award for future medical care by the services the VA could provide him for free; former N.Y. C.P.L.R. § 4545 did not require a veteran injured by the VA's malpractice be forced to continue under VA care for lack of financial resources and be subject to a concomitant offset, because the government could not show that, under the circumstances, plaintiff's future medical care costs "will, with reasonable certainty, be replaced or indemnified from any collateral source." Malmberg v United States, 816 F.3d 185, 2016 U.S. App. LEXIS 4106 (2d Cir. 2016).

Where plaintiff prevailed on his medical malpractice claim against the Veterans Administration (VA), the district court did not abuse its discretion by failing to make an offset for VA-provided home health services because the government failed to show, with reasonable certainty, that home health services would continue to be funded by the VA, as plaintiff's court-endorsed life care plan called for 21 hours per week of such services while the VA's standard policy provided only 14 hours per week of care. Malmberg v United States, 816 F.3d 185, 2016 U.S. App. LEXIS 4106 (2d Cir. 2016).

Payments from employee benefit plan would not be included as a collateral source, where defendants against whom a verdict was rendered in a wrongful death action contended that $26,000 paid to decedent's wife from his employee benefits plan should be considered a collateral source pursuant to CLS CPLR 4545(c), because defendant did not identify that portion of the benefits which constitutes decedent's employer's contribution. Frey v Chester E. Smith & Sons, Inc., 751 F. Supp. 1052, 1990 U.S. Dist. LEXIS 16104 (N.D.N.Y. 1990).

8. —Workers' compensation benefits

Defendant in motor vehicle personal injury action was entitled to have verdict reduced by amount plaintiff received in workers' compensation benefits for lost wages and medical expenses since those payments were in lieu of first party benefits and did not give rise to lien in favor of compensation carrier. Nitzke v Loveland, 188 A.D.2d 1058, 592 N.Y.S.2d 165, 1992 N.Y. App. Div. LEXIS 14932 (N.Y. App. Div. 4th Dep't 1992).

Payments a decedent's distributees received from the Armed Services Survivor Benefit Plan were collateral sources because the Plan was not life insurance but was defined as an annuity; since the Legislature limited the exclusion only to "life insurance," those payments or benefits that are "like" life insurance are not excluded. Gardner v State of New York, 978 N.Y.S.2d 736, 43 Misc. 3d 211, 2013 N.Y. Misc. LEXIS 6286 (N.Y. Ct. Cl. 2013).

Because the State sought an order affecting the amount of damages it had to pay out on an award, the setoff was authorized and was in no way prohibited by 10 U.S.C.S. § 1450(i).

Gardner v State of New York, 978 N.Y.S.2d 736, 43 Misc. 3d 211, 2013 N.Y. Misc. LEXIS 6286 (N.Y. Ct. Cl. 2013).

Since the Armed Services Survivor Benefit was intended to replace a portion of the decedent's retired pay from the Air Force, it corresponded to the loss of support award, and the State was entitled to a deduction for those benefit payments; the amount of the State's reduction was also offset by the amount the decedent paid for the benefit for the two-year period before his death. Gardner v State of New York, 978 N.Y.S.2d 736, 43 Misc. 3d 211, 2013 N.Y. Misc. LEXIS 6286 (N.Y. Ct. Cl. 2013).

Because a lump sum death benefit payment correlated to the award for loss of support, it had to be an offset against the award to a decedent's distributee for his past loss of support; the lump sum death benefit was calculated based upon the decedent's earnings up to the maximum award, and the payment was contingent upon establishing a dependency requirement and was grounded in the same purpose as the monthly benefit. Gardner v State of New York, 978 N.Y.S.2d 736, 43 Misc. 3d 211, 2013 N.Y. Misc. LEXIS 6286 (N.Y. Ct. Cl. 2013).

Lump sum workers' compensation award given injured telephone cable splicer is not damages in worker's federal tort claim, because existence of award, and employer's lien stemming from award, is not admissible under New York collateral source rule, CLS CPLR § 4545(c), which simply does not provide for offensive use of liens and workers' compensation awards to drive up damages in personal injury action. Evidence of Worker's Compensation payments made to plaintiff for non-economic loss or potential future lost earnings, part of which were subject to lien by plaintiff's employer, was not admissible under collateral source rule (CLS CPLR § 4545(c)), and would not be considered when calculating damage award in plaintiff's action against tortfeasor. Battista v United States, 889 F. Supp. 716, 1995 U.S. Dist. LEXIS 7505 (S.D.N.Y. 1995).

In applying New York law to the issues of liability and damages on an employee's claims against the government under the Federal Tort Claims Act, 28 U.S.C.S. § 1346(b) and 28 U.S.C.S. § 2671 et seq., for injuries he suffered in a slip and fall while working for a cafeteria services

contractor at a postal services facility, a federal district court found that the amount of damages sought by the employee as economic loss for permanency of loss of use of spine was the same amount as the workers' compensation net settlement amount paid to him as full and final compensation for all past, present, and future lost earnings, and for future medical expenses. Thus, because an award by the court of that amount would be duplicative of the workers' compensation award, it was not recoverable as economic loss, and the existence of the workers' compensation award was not admissible under New York's collateral source rule, N.Y. C.P.L.R. § 4545(c). Robinson v United States, 330 F. Supp. 2d 261, 2004 U.S. Dist. LEXIS 15945 (W.D.N.Y. 2004).

9. —Pension or retirement benefits

In personal injury case involving claim of lost past or future earnings resulting from alleged permanent disability from work, evidence that plaintiff voluntarily chose to retire is often so prejudicial as to be inadmissible; however, such evidence may be allowed in court's discretion in limited circumstances where it has significant probative value with respect to validly raised question about plaintiff's malingering or motivation for not working, and, if admitted, court should caution jury that there is no evidence of any retirement benefits and that jury must not speculate as to possibility of plaintiff's receipt of such benefits. Kish v Board of Educ., 76 N.Y.2d 379, 559 N.Y.S.2d 687, 558 N.E.2d 1159, 1990 N.Y. LEXIS 1439 (N.Y. 1990).

Trial court erred in denying the defendants' motion to offset a jury award because an injured police officer's accident disability retirement benefits replaced future lost earnings inasmuch as it worked as earnings and then as a pension, which loss corresponded to a category of loss for which the jury awarded damages. Andino v Mills, 31 N.Y.3d 553, 106 N.E.3d 714, 81 N.Y.S.3d 331, 2018 N.Y. LEXIS 1450 (N.Y. 2018).

Lump-sum payment plaintiff received from New York State Teamsters Conference Pension and Retirement Fund was collateral source, in that it "replaced or indemnified" his past lost earnings where (1) plaintiff would not have received such payment unless he was unable to work and was

recipient of Social Security disability pension, and (2) no additional contributions were required to be made to plan on his behalf for him to receive benefit payment which did not reduce amounts of his retirement pension. Abar v Freightliner Corp., 208 A.D.2d 999, 617 N.Y.S.2d 209, 1994 N.Y. App. Div. LEXIS 9680 (N.Y. App. Div. 3d Dep't 1994).

Court properly reduced jury award for loss of pension benefits by amount of value of plaintiff's vested disability retirement benefits since such benefits constituted collateral source under CLS CPLR § 4545(c). Oden v Chemung County Indus. Dev. Agency, 211 A.D.2d 997, 621 N.Y.S.2d 744, 1995 N.Y. App. Div. LEXIS 562 (N.Y. App. Div. 3d Dep't), aff'd, 87 N.Y.2d 81, 637 N.Y.S.2d 670, 661 N.E.2d 142, 1995 N.Y. LEXIS 4432 (N.Y. 1995).

In personal injury action against New York City, accident disability pension awarded to plaintiff, and guaranteed to him by law, should have been offset against his recovery for post-verdict loss of earnings. Iazzetti v City of New York, 216 A.D.2d 214, 628 N.Y.S.2d 112, 1995 N.Y. App. Div. LEXIS 7145 (N.Y. App. Div. 1st Dep't 1995), aff'd, 256 A.D.2d 140, 681 N.Y.S.2d 507, 1998 N.Y. App. Div. LEXIS 13695 (N.Y. App. Div. 1st Dep't 1998).

Court did not err in declining to reduce personal injury award by amount of plaintiff's disability pension, where plaintiff was awarded damages for loss of future "earnings and benefits" but was not awarded damages specifically for future lost pension benefits, and appellant failed to establish specific amount of lost pension benefits that allegedly should have been offset. Boshnakov v Board of Educ., 277 A.D.2d 996, 716 N.Y.S.2d 520, 2000 N.Y. App. Div. LEXIS 11422 (N.Y. App. Div. 4th Dep't 2000), app. denied, 96 N.Y.2d 703, 723 N.Y.S.2d 130, 746 N.E.2d 185, 2001 N.Y. LEXIS 221 (N.Y. 2001).

Defendant New York City Transit Authority established by clear and convincing evidence that plaintiff firefighter's pension payments corresponded directly with a jury award for future lost wages and that the firefighter had a legal right to receive such payments continuously and that it was highly probable that the firefighter would continue to be eligible for his pension. Thus, the Authority established that the firefighter's disability retirement pension was a collateral source within the meaning of N.Y. C.P.L.R. 4545(c) that had to be set off against the amount of the

verdict. Terranova v New York City Tr. Auth., 49 A.D.3d 10, 850 N.Y.S.2d 123, 2007 N.Y. App. Div. LEXIS 12901 (N.Y. App. Div. 2d Dep't 2007), app. denied, 11 N.Y.3d 708, 868 N.Y.S.2d 600, 897 N.E.2d 1084, 2008 N.Y. LEXIS 3263 (N.Y. 2008).

In medical malpractice action wherein plaintiff was awarded lost earnings to date of verdict and future lost earnings representing compensation for 4 years from date of verdict, defendants were not entitled to setoff under CLS CPLR § 4545(a) for plaintiff's Social Security retirement benefits, retirement benefits received by her husband from his former employer, or Social Security retirement benefits received by plaintiff as her husband's spouse. Schmidt v Buffalo Gen. Hosp., 183 Misc. 2d 32, 701 N.Y.S.2d 244, 1999 N.Y. Misc. LEXIS 564 (N.Y. Sup. Ct. 1999).

After an injured fireman was granted damages on his N.Y. Gen. Mun. Law § 205-a claim, the employer's formal omnibus post-trial motion filed under N.Y. C.P.L.R. 4404(a) seeking to offset a portion of the lost earnings awarded against the three-quarters accident disability pension provided to the fireman in accordance with New York State Retirement and Social Security Law and the New York City Administrative Code was denied, as it failed in its burden of showing by clear and convincing evidence its entitlement to the same by showing a direct correspondence between the pension and the injury. Terranova v New York City Tr. Auth., 805 N.Y.S.2d 518, 11 Misc. 3d 214, 234 N.Y.L.J. 119, 2005 N.Y. Misc. LEXIS 2807 (N.Y. Sup. Ct. 2005), modified, 49 A.D.3d 10, 850 N.Y.S.2d 123, 2007 N.Y. App. Div. LEXIS 12901 (N.Y. App. Div. 2d Dep't 2007).

Trial court correctly found that a transit authority did not meet its burden under N.Y. C.P.L.R. 4545(a) of showing that a jury's loss of earnings award to a police officer should have been offset by the amount of the injured police officer's accidental disability retirement pension, as there was insufficient evidence to show that the pension was meant to replace the officer's lost earnings. Johnson v New York City Tr. Auth., 88 A.D.3d 321, 929 N.Y.S.2d 215, 2011 N.Y. App. Div. LEXIS 6273 (N.Y. App. Div. 1st Dep't 2011).

State was not entitled to an offset for retirement account distributions because it failed to establish a direct correlation between those distributions and the loss of inheritance award or

any other portion of the award. Gardner v State of New York, 978 N.Y.S.2d 736, 43 Misc. 3d 211, 2013 N.Y. Misc. LEXIS 6286 (N.Y. Ct. Cl. 2013).

10. —Motivation for retirement as factor

Teacher's motivation in deciding to take retirement status was highly relevant in her personal injury action against school board, and thus evidence of such motivation did not require exclusion under collateral source rule, where there was serious dispute as to whether her injury was as serious as she claimed and whether she had stopped working because of disability from injury or because she simply wished to retire. Theory underlying collateral source rule is that negligent defendant should not, in fairness, be permitted to reduce its liability in damages by showing that plaintiff is already entitled by contract or employment right to reimbursement for such items as medical expenses and lost wages; rule is not necessarily violated where proof is offered showing that plaintiff is not permanently disabled and has stopped working solely for non-injury- related reason. Court properly permitted proof of plaintiff's retirement in personal injury action, despite its potential for prejudice, where her motivation in not resuming her work as teacher was made central issue throughout trial, defense counsel challenged seriousness of her knee injury and whether injury and its emotional consequences had in fact disabled her from work, substantial evidence was adduced to effect that suitable work was available and that adjustments could be made to accommodate her physical condition, and, in its final instructions to jury, court stated that there was no evidence that plaintiff was receiving any money from any outside source. Kish v Board of Educ., 76 N.Y.2d 379, 559 N.Y.S.2d 687, 558 N.E.2d 1159, 1990 N.Y. LEXIS 1439 (N.Y. 1990).

11. Calculation of damages

In determining credit due to plaintiffs under CLS CPLR § 4545(c) for cost of health insurance coverage, trial court properly considered out-of-pocket premiums paid by plaintiffs, not including employer-paid portion. Sternfeld v Forcier, 248 A.D.2d 14, 679 N.Y.S.2d 219, 1998 N.Y. App.

Div. LEXIS 11705 (N.Y. App. Div. 3d Dep't 1998), app. dismissed, 92 N.Y.2d 1045, 685 N.Y.S.2d 419, 708 N.E.2d 176, 1999 N.Y. LEXIS 2008 (N.Y. 1999).

CLS CPLR § 4545(c) provided no grounds for reducing verdict in automobile negligence case by amount of plaintiff's past medical expenses where verdict did not include award for such expenses. Austin v Meade, 257 A.D.2d 844, 685 N.Y.S.2d 308, 1999 N.Y. App. Div. LEXIS 280 (N.Y. App. Div. 3d Dep't 1999).

Court could arrive at calculations required by CLS CPLR § 5041 and CLS EPTL § 5-4.3 for purpose of applying necessary CLS CPLR § 4545 collateral offset reductions to jury verdict in wrongful death action, although verdict sheet did not separately itemize damages suffered before and after verdict under CLS CPLR § 4111(f), where jury had determined number of years over which future damages would be paid; to compute past damages, court divided number of years over which future damages would be paid by total award for each recipient, and multiplied resulting figure by number of years from date of death to date of verdict. Shue v Red Creek Cent. Sch. Dist., 177 Misc. 2d 743, 676 N.Y.S.2d 742, 1998 N.Y. Misc. LEXIS 351 (N.Y. Sup. Ct. 1998).

To maintain intent of jury's verdict against multiple defendants, and to comply with legislative purpose and mandate of CLS CPLR § 4545(b), judgment would be entered as if public employer (third-party defendant) were direct defendant, with its proportionate payment to plaintiff reduced by collateral source offset to which it was entitled. Rodd v Luxfer USA Ltd., 187 Misc. 2d 341, 723 N.Y.S.2d 308, 2000 N.Y. Misc. LEXIS 586 (N.Y. Sup. Ct. 2000).

No collateral source reduction under CLS CPLR § 4545 is appropriate in damage award to survivors of asbestos victim, where court charged jury to compute what victim would have earned without illness and subtract from that what was earned in view of condition, because jury has already reduced award to account for disability benefits and monthly state pension evidenced at damages phase of trial. In re Joint E. & S. Dist. Asbestos Litig., 798 F. Supp. 940, 1992 U.S. Dist. LEXIS 12264 (E.D.N.Y. 1992), rev'd, 995 F.2d 343, 1993 U.S. App. LEXIS

12328 (2d Cir. N.Y. 1993), rev'd, 995 F.2d 346, 1993 U.S. App. LEXIS 12437 (2d Cir. N.Y. 1993).

12. —As affected by categories of collateral sources

Under CLS CPLR § 4545(c), award for economic loss should be broken down into categories, and reductions for collateral source payments should then be made only in those categories that correspond to analogous collateral source categories; § 4545(c) was enacted in derogation of common law and is to be strictly construed in narrowest sense that its words and underlying purposes permit. In personal injury action in which injured plaintiff was awarded $146,000 for future economic loss ($66,000 for lost pension benefits and $80,000 for future lost earnings and benefits), operation of CLS CPLR § 4545(c) was properly limited by applying plaintiff's anticipated disability pension benefits of $141,330 to reduce (to zero) $66,000 awarded for lost ordinary pension benefits, leaving $80,000 future lost earnings award intact; defendant was not entitled to have total award for future economic loss reduced by anticipated disability pension benefits, which were was paid to plaintiff in lieu of ordinary pension benefits and did not necessarily correspond to any future earning capacity he might have had. Jury award for future loss of earnings and health and welfare benefits should not have been reduced by excess of value of plaintiff's disability pension benefits over jury award for loss of pension benefits; where jury award for discrete category of economic loss is wholly satisfied and in fact is exceeded by collateral source of same category, CLS CPLR § 4545(c) operates only to eliminate jury award for that category. Oden v Chemung County Indus. Dev. Agency, 211 A.D.2d 997, 621 N.Y.S.2d 744, 1995 N.Y. App. Div. LEXIS 562 (N.Y. App. Div. 3d Dep't), aff'd, 87 N.Y.2d 81, 637 N.Y.S.2d 670, 661 N.E.2d 142, 1995 N.Y. LEXIS 4432 (N.Y. 1995).

Court erred in failing to reduce verdict by amount paid by private health insurer for plaintiff's back treatment since it was not shown that health insurance benefits would be covered by Workers' Compensation insurance and thus would be subject to lien and not subject to offset.

Panattoni v Inducon Park Assocs., 247 A.D.2d 823, 668 N.Y.S.2d 840, 1998 N.Y. App. Div. LEXIS 1114 (N.Y. App. Div. 4th Dep't 1998).

Court properly reduced jury's awards to plaintiff for future lost earnings and future lost pension benefits by amount plaintiff would receive from his accident disability retirement pension, which provided ¾ salary benefits tax free, commenced when plaintiff was removed from city payroll, and would continue for 21 years that he would have earned salary on job but for accident and for expected 10 years that he would have received ordinary pension on retirement. Iazzetti v City of New York, 256 A.D.2d 140, 681 N.Y.S.2d 507, 1998 N.Y. App. Div. LEXIS 13695 (N.Y. App. Div. 1st Dep't 1998), rev'd, 94 N.Y.2d 183, 701 N.Y.S.2d 332, 723 N.E.2d 81, 1999 N.Y. LEXIS 3750 (N.Y. 1999).

Judgment on jury verdict awarding damages for wrongful death would be modified by restoring amounts deducted for Social Security survivor benefits payable to decedent's wife and children, and case would be remitted for recalculation of amount of award, where (1) Social Security survivor benefits are intended to compensate for decedent's lost earnings, (2) damages awarded for economic loss compensated wife and children not only for lost earnings but also for loss of household services and parental guidance, and (3) absent itemized verdict specifying amount assigned to each element of loss, there was no direct correspondence between award for economic loss and Social Security survivor benefits to which decedent's wife and children were entitled. Shue v Red Creek Cent. Sch. Dist., 266 A.D.2d 899, 697 N.Y.S.2d 437, 1999 N.Y. App. Div. LEXIS 11806 (N.Y. App. Div. 4th Dep't 1999).

While services provided under the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400 et seq. may not have given rise to lien, they did not preclude parents' wrongful birth claim because, under N.Y. C.P.L.R. 4545(a), issues of whether and to what extent they constituted an offset were not determined until after trial. Foote v Albany Med. Ctr. Hosp., 71 A.D.3d 25, 892 N.Y.S.2d 203, 2009 N.Y. App. Div. LEXIS 8775 (N.Y. App. Div. 3d Dep't 2009), aff'd, 16 N.Y.3d 211, 919 N.Y.S.2d 472, 944 N.E.2d 1111, 2011 N.Y. LEXIS 248 (N.Y. 2011).

In a medical malpractice action arising from a birthing injury in which successive settlements with insurers had been reached, allocation was required between New York Medical Indemnity Fund and Non Fund damages because the child had been accepted into the fund with the first settlement, and recognition of counsel's efforts in securing the child's enrollment into the Fund should recognized. However, where a prior partial settlement was approved and resulted in the child being accepted into the Fund, there is no requirement for any further application to secure or continue coverage under the Fund. S.D. v St. Luke's Cornwall Hosp., 63 Misc. 3d 384, 96 N.Y.S.3d 467, 2019 N.Y. Misc. LEXIS 111 (N.Y. Sup. Ct. 2019).

Airlines were not entitled to credit insurance recoveries received by the purchasers of long-term leases to the World Trade Center Buildings against potential tort recoveries under N.Y. C.P.L.R. § 4545 on summary disposition. Any correspondence between the damages suffered by the purchasers and the insurance recoveries presented issues of complexity and nuance requiring a trial. World Trade Ctr. Props. LLC v United Airlines, Inc. (In re September 11 Litig.), 889 F. Supp. 2d 616, 2012 U.S. Dist. LEXIS 125606 (S.D.N.Y. 2012).

Defendant aviation companies' summary judgment motion on the basis of collateral setoff pursuant to the 2008 version of N.Y. C.P.L.R. § 4545(c), alleging that plaintiff leaseholder's insurance recovery fully compensated it for any possible tort recovery against defendants, was denied because collateral setoff required correspondence between categories of insurance recovery and categories of tort damage, and the correspondence presented issues of material fact requiring trial. World Trade Ctr. Props., LLC v Am. Airlines, Inc. (In re September 11 Litig.), 908 F. Supp. 2d 442, 2012 U.S. Dist. LEXIS 172016 (S.D.N.Y. 2012).

II. Under Former § 4010

13. Generally

Where a psychiatric hospital patient with a history of instability communicated to a hospital staff member her plan to commit suicide at a certain location outside the hospital premises, the staff

member’s failure to transmit such information to the hospital staff psychiatrist who controlled the patient’s leave privileges constituted a breach of duty rendering the hospital liable for negligence when the patient subsequently left the hospital premises, unsupervised, and jumped from the roof of a nearby parking garage: such liability is unaffected by CPLR § 4010, which limits the application of the collateral source rule in medical malpractice actions, since the statute has no application to the liability of a hospital for common-law negligence. The Court of Claims erred in reducing a claimant’s special damages pursuant to CPLR § 4010 by the amount of payments she received from collateral sources, since this rule was intended to be restricted to findings of medical malpractice against licensed physicians and hospitals and was not meant to apply to a judgment of common-law negligence as was present in this case. Huntley v State, 96 A.D.2d 724, 465 N.Y.S.2d 87, 1983 N.Y. App. Div. LEXIS 19298 (N.Y. App. Div. 4th Dep't 1983), aff'd, 62 N.Y.2d 134, 476 N.Y.S.2d 99, 464 N.E.2d 467, 1984 N.Y. LEXIS 4249 (N.Y. 1984).

In wrongful death action arising from decedent’s fatal cardiopulmonary arrest shortly following treatment in hospital emergency room, award would not be reduced by amount of social security benefits received by decedent’s estate and his beneficiaries since (1) CLS CPLR § 4545 did not become effective until after commencement of action and was not retroactive, end (2) collateral source rule in effect at time of commencement of action applied only to pure medical malpractice cases, and fact that tort underlying wrongful death action was occasioned by medical malpractice was irrelevant. De Coste v Champlain Valley Physicians Hosp., 147 A.D.2d 793, 537 N.Y.S.2d 665, 1989 N.Y. App. Div. LEXIS 1127 (N.Y. App. Div. 3d Dep't), app. denied, 74 N.Y.2d 604, 543 N.Y.S.2d 397, 541 N.E.2d 426, 1989 N.Y. LEXIS 723 (N.Y. 1989).

Inasmuch as CPLR § 4010, a “special benefit” piece of legislation that was enacted at the behest of the medical profession, does not indicate within its body whether it should be applied to causes of action that arose prior to July 1, 1975, its effective date, and which are tried on or after July 1, 1975, it was not the intent of the Legislature to give the defendant in a medical malpractice suit the benefit of this statute applied retroactively, nor would defendant be entitled to introduce evidence of collateral source benefits to plaintiff for the period commencing on July

1, 1975 and thereafter since, had the Legislature intended that application in a situation where the course of treatment and the alleged malpractice arose prior to July 1, 1975 and continued beyond that date, then the Legislature could have so stated specifically. Fasano v Goldman, 113 Misc. 2d 215, 448 N.Y.S.2d 937, 1982 N.Y. Misc. LEXIS 3277 (N.Y. Sup. Ct. 1982).

14. Discovery of collateral source information

Evidence of collateral source payments received by a plaintiff in a malpractice action in replacement or indemnification of the special damages or other economic loss claimed is discoverable pretrial since CPLR 4010, a rule of evidence which only makes such evidence admissible upon trial for consideration by the trier of facts and does not create an independent and separate procedural demand before trial for a pleading response in the nature of evidentiary particulars covering the matters of collateral source payments, nevertheless, brings such matters within the scope of CPLR 3101 (subd [a]) which requires full disclosure, before trial, of all evidence material and necessary in the prosecution or defense of an action. Accordingly, the proper procedure to obtain collateral source payments relevant to the medical malpractice action is via the prescribed disclosure methods set out in CPLR 3102 which may include a demand for a bill of particulars. Corter v Luck, 96 Misc. 2d 960, 410 N.Y.S.2d 249, 1978 N.Y. Misc. LEXIS 2712 (N.Y. Sup. Ct. 1978).

In an action for conscious pain and suffering and wrongful death arising out of alleged medical malpractice, the defendant may not, in its demand for a bill of particulars, request information concerning whether the plaintiff has received reimbursement for economic loss from any collateral sources, since although evidence that the plaintiff in a malpractice action has been compensated in whole or in part for economic loss from sources such as insurance is admissible upon trial (CPLR 4010), such evidence is offered by the defendant for the purpose of mitigating damages, and a party may not demand particulars concerning matters upon which it possesses the burden of proof. Kupferberg v State, 97 Misc. 2d 519, 411 N.Y.S.2d 790, 1978 N.Y. Misc. LEXIS 2829 (N.Y. Ct. Cl. 1978).

Opinion Notes

Agency Opinions

1. Generally

Assuming that group master policy was subject to approval by New York State Insurance Department, no applicable New York Insurance statute or regulation would prohibit inclusion, in accident and health insurance policy, of provision whereby insurer had right to recover amounts paid to or on behalf of injured party, either from third party tortfeasor or directly from insured, to extent that such amounts were recovered by insured from another source; however, CLS CPLR § 4545 could affect insurer's right to recover in those instances where injured party has had verdict awarding damages for injuries covered under insurance policy. Insurance Department, Opinions of General Counsel, Opinion Number 02-09-07, 2002 NY Insurance GC Opinions LEXIS 342.

3. —Insurers

Right of Health Maintenance Organization to recoup payments it has made to insureds from tort recoveries, either by way of verdict or settlements, depends on contract it has made with its subscriber and is not governed by New York Insurance Law. Insurance Department, Opinions of General Counsel, Opinion Number 03-04-08, 2003 NY Insurance GC Opinions LEXIS 27.

Research References & Practice Aids

Cross References:

This section referred to in 4111., 4213.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4545, Admissibility of Collateral Source of Payment.

3 Rohan, New York Civil Practice: EPTL P 5-4.2, 5-4.3.

5 Cox, Arenson, Medina, New York Civil Practice: SCPA P 2203.03, 2204.07.

Matthew Bender’s New York CPLR Manual:

CPLR Manual § 23.03. Trial by jury.

CPLR Manual § 24.01-a. Collateral source payments in personal injury, property damage and wrongful death actions.

Matthew Bender’s New York AnswerGuides:

LexisNexis AnswerGuide New York Civil Litigation § 9.18. Meeting Additional Requirements for Jury Verdicts in Certain Actions.

LexisNexis AnswerGuide New York Civil Litigation § 10.11. Using Collateral Source Payments to Offset Damage Claims.

LexisNexis AnswerGuide New York Negligence § 5.23. Evaluating Damages.

LexisNexis AnswerGuide New York Negligence § 7.33. Examining Defendant’s Disclosure Demands.

Matthew Bender’s New York Evidence:

1 Bender's New York Evidence § 107.04, Preservation.

1 Bender's New York Evidence § 105.09. Meeting Burden of Persuasion.

4 Bender's New York Evidence § 177.05. Damages in Personal Injury and Wrongful Death Actions.

Annotations:

Validity and construction of state statute abrogating collateral source rule as to medical malpractice actions. 74 ALR4th 32.

Matthew Bender's New York Checklists:

Checklist for Introducing Documents and Information into Evidence LexisNexis AnswerGuide New York Civil Litigation § 10.05.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 4545:1 et seq.

LexisNexis Forms FORM 75-CPLR 4545:1.— Demand for Collateral Source Information.

LexisNexis Forms FORM 75-CPLR 4545:2.— Demand for Collateral Sources of Payment.

LexisNexis Forms FORM 75-CPLR 4545:3.— Answer Asserting Affirmative Defense of Collateral Sources of Payment.

LexisNexis Forms FORM 1434-19229.— CPLR 4545(c): Demand for Collateral Source Information.

Texts:

NY Pattern Jury Instructions 3d, PJI 2:51B., 2:300.

Hierarchy Notes:

NY CLS CPLR, Art. 45