

**§2906. Collateral sources**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Claimant" means any person who brings a personal injury action and, if such an action is brought through or on behalf of an estate, the term includes the decedent or, if such an action is brought through or on behalf of a minor, the term includes the minor's parent or guardian. [PL 1989, c. 931, §3 (NEW).]

B. "Collateral source" means a benefit paid or payable to the claimant or on the claimant's behalf under, from or pursuant to a contract, agreement or plan executed, renewed or implemented on or after the effective date of this Act, including:

(1) An accident, health or sickness insurance, income or wage replacement insurance, income disability insurance, workers' compensation insurance, casualty or property insurance, including automobile accident and homeowner's insurance benefits, or any other insurance benefits, except life insurance benefits;

(2) A contract or agreement of a group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services or provide similar benefits; or

(3) A contractual or voluntary wage continuation plan or payments made pursuant to such a plan provided by an employer or otherwise or any other system intended to provide wages during a period of disability. [PL 1989, c. 931, §3 (NEW).]

C. "Damages" means economic losses paid or payable by collateral sources for wage losses, medical costs, rehabilitation costs, services and other out-of-pocket costs incurred by or on behalf of a claimant for which that party is claiming recovery through a tort suit. [PL 1989, c. 931, §3 (NEW).]

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**2. Collateral source payment reductions.** In all actions for professional negligence, as defined in section 2502, evidence to establish that the plaintiff's expense of medical care, rehabilitation services, loss of earnings, loss of earning capacity or other economic loss was paid or is payable, in whole or in part, by a collateral source is admissible to the court in which the action is brought after a verdict for the plaintiff and before a judgment is entered on the verdict. After notice and opportunity for an evidentiary hearing, if the court determines that all or part of the plaintiff's expense or loss has been paid or is payable by a collateral source and the collateral source has not exercised its right to subrogation within the time limit set forth in subsection 6, the court shall reduce that portion of the judgment that represents damages paid or payable by a collateral source.

[RR 2015, c. 1, §26 (COR).]

**3. Federal benefits.** The court shall also reduce the judgment by the amount of Medicare, Medicaid or Social Security disability benefits paid or payable to the plaintiff for the plaintiff's expenses or losses, provided that the court enters an order requiring the defendant to indemnify and make whole the plaintiff for any subrogation claim made for those benefits and for the costs, including attorney's fees, for that indemnification claim, as the court finds are reasonably required to enforce this provision. [PL 1989, c. 931, §3 (NEW).]

**4. Offsetting reduction.** The court may reduce the reduction in subsection 2 by an amount equal to:

A. The claimant's payments over the 2-year period immediately predating the personal injury to the collateral source in the form of payroll deductions, insurance premiums or other direct payments

by the claimant, as determined by the court to be appropriate in each case; and [PL 1989, c. 931, §3 (NEW).]

B. The portion of the total costs incurred by the plaintiff in the action, including discovery, witness fees, exhibit expenses and attorney's fees. This reduction is calculated as the amount that is the same percentage of the total costs incurred by the plaintiff in the action as the amount paid or payable by the collateral source is of the total verdict. [PL 1989, c. 931, §3 (NEW).]  
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**5. Limit.** The reduction made under this section may not exceed the amount of the judgment for economic loss or that portion of the verdict that represents damages paid or payable by a collateral source.

[PL 1989, c. 931, §3 (NEW).]

**6. Notice of claim or verdict required.** No later than 10 days after a verdict for the plaintiff, the plaintiff's attorney shall send notice of the claim or verdict by registered mail to all persons known to the attorney who are entitled by contract or law to a lien against the proceeds of the plaintiff's recovery. If a lienholder does not notify the court of the lienholder's right to subrogation within 30 days after receipt of the notice, the lienholder loses the right of subrogation.

[PL 1989, c. 931, §3 (NEW).]

**7. Preexisting obligation required.** For purposes of this section, benefits from a collateral source are not considered payable unless the court makes a determination that there is a previously existing contractual or statutory obligation on the part of the collateral source to pay the benefits.

[PL 1989, c. 931, §3 (NEW).]

#### SECTION HISTORY

PL 1989, c. 931, §3 (NEW). RR 2015, c. 1, §26 (COR).

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