

By Mr. Woodward of Walpole, petition of Francis H. Woodward relative to further regulating the award of damages in certain legal actions. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT FURTHER REGULATING THE AWARD OF DAMAGES IN CERTAIN LEGAL ACTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 231B of the General Laws, as appearing in the 1984
2 Official Edition, is hereby amended by adding the following
3 section: —

4 Section 6J. (a) In every action for negligence, trespass, strict
5 liability, malpractice, error, omission, mistake or the unautho-
6 rized rendering of professional services, or for breach of contract
7 or warranty, whether express or implied, including without
8 limitation actions brought under section two of chapter two
9 hundred and twenty-nine, in which the plaintiff seeks to recover
10 for the costs of medical care, custodial care or rehabilitation
11 services, loss of earnings or other economic loss, if the jury returns
12 a verdict specifying the type and amount of such damages under
13 subsection (a) of section six I of this chapter, or the court finds
14 the type and amount of such damages as required under
15 subsection (b) of section six I of this chapter, on motion by a
16 defendant or upon its own motion, the court shall hear evidence
17 of any amount of such damages incurred prior to the judgment
18 which the defendant or defendants claim was replaced,
19 compensated or indemnified pursuant to the United States Social
20 Security Act, any state or federal income disability or worker's
21 compensation act, any health, sickness or income-disability
22 insurance, any accident insurance that provides health benefits or
23 income disability coverage, any contract or agreement of any

24 group, organization, partnership, or corporation to provide, pay
25 for or reimburse the cost of medical, hospital, dental or other
26 health care services, any contract or agreement to continue to pay,
27 in whole or in part, the plaintiff's wages or income, or any other
28 collateral source of benefits whatsoever, except for gratuitous
29 payments or gifts. If the defendant elects to introduce such
30 evidence, the plaintiff may introduce evidence of any amount the
31 plaintiff himself paid or contributed to secure his right to the
32 benefits concerning which the defendant has introduced evidence.

33 (b) If the court finds that any such cost or expense was replaced,
34 compensated, or indemnified from any collateral source, it shall
35 reduce the amount of the award by such finding, minus an amount
36 equal to the premiums or other amounts paid by the plaintiff for
37 such benefits for the one-year period immediately preceding the
38 accrual of such action. In so doing, the court shall make explicit
39 findings as to the amount(s) by which and to which any such
40 reduction is applied, referring to the applicable elements of special
41 and general damages itemized pursuant to section six I.

42 (c) Notwithstanding the provisions of section seventy A of
43 chapter one hundred and eleven of the General Laws, no entity
44 which is the source of the collateral benefits by which the court
45 has reduced the award to the plaintiff hereunder shall recover any
46 amount against the plaintiff, nor shall it be subrogated to the
47 rights of the plaintiff against the defendant, nor shall it have a
48 lien against the plaintiff's judgment, on account of its payment
49 of the benefits by which the court had reduced the amount of the
50 plaintiff's judgment; provided that, if the plaintiff has received
51 compensation or indemnification from any collateral source
52 whose right of subrogation is based in any federal law, the court
53 shall not reduce the award by the amounts received prior to
54 judgment from collateral source and such amounts may be
55 recovered in accordance with such federal law.

56 (d) During the pendency of any such action, if a plaintiff has
57 a policy of insurance which provides health benefits or income
58 disability coverage, and the plaintiff is unwilling or unable to pay
59 the costs of renaming or continuing that policy of insurance in
60 force, the defendant or defendants may tender to the plaintiff the
61 cost of maintaining the said policy in force. Upon receipt of such

62 tender, the plaintiff shall continue such policy of insurance in
63 force. Nothing in this subsection shall be construed to compel a
64 plaintiff to renew or maintain any policy of insurance in force
65 prior to the receipt of the said tender, or to interfere in any way
66 with the plaintiff's choice of physician or course of medical
67 treatment.

