

By Mr. Clark of Hamilton, petition of Forrester A. Clark, Jr., relative to the liability of the Massachusetts Bay Transportation Authority. Transportation.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO THE LIABILITY OF THE MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY.

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

1 SECTION 1. Section 21 of Chapter 161A of the General Laws,
2 as appearing in the 1994 Official Edition, is hereby amended by
3 inserting after the word "company" in line 11 the words:— except
4 that the authority shall not be liable for punitive damages.

1 SECTION 2. Said section 21 of said Chapter 161A of the
2 General Laws, as so appearing, is hereby further amended by
3 striking out in lines 12 and 14 the word "two" and inserting in
4 place thereof the word:— three.

1 SECTION 3. Chapter 161A of the General Laws, as so
2 appearing, is hereby amended by inserting after said section 21
3 the following sections:—

4 Section 21A. In every action for personal injury or property
5 damage against the authority, whether the action is tried with or
6 without a jury, if the factfinder awards damages to the plaintiff,
7 the factfinder shall specify the total amount of damages, as well as
8 the elements of special and general damages upon which the
9 award of damages is based and the amount of damages assigned to
10 each element, including, but not limited to:

11 (a) Amounts intended to compensate the plaintiff for reasonable
12 expenses which have been incurred or which will be incurred for

13 necessary medical, surgical, x-ray, dental or rehabilitative
14 services, including prosthetic devices; necessary ambulance,
15 hospital and nursing services; and necessary medications and
16 therapy;

17 (b) Amounts intended to compensate the plaintiff for lost wages
18 or loss of earning capacity which have been incurred or which
19 will be incurred; and

20 (c) Amounts intended to compensate the plaintiff for pain and
21 suffering, loss of consortium and other items of general damages
22 which have been incurred or which will be incurred, including,
23 but not limited to, whether there is permanent loss or impairment
24 of a bodily function or substantial disfigurement.

25 Each element shall be itemized into amounts intended to com-
26 pensate for damages which have been incurred prior to the award
27 of damages and amounts intended to compensate for damages
28 which will be incurred in the future. In itemizing amounts
29 intended to compensate for future damages, the factfinder shall
30 specify the period of weeks, months or years over which such
31 amounts are intended to provide compensation.

32 The court shall apply to each amount compensating for past and
33 future damages all rules of law applicable to the review of awards
34 of damages, including, but not limited to, sufficiency of the evi-
35 dence to support the award of damages, any set-offs or credits and
36 any appropriate additur or remittitur.

37 Section 21B. In every action for personal injury or property
38 damage against the authority in which the plaintiff seeks to
39 recover the reasonable expenses of medical care, lost wages or
40 loss of earning capacity, if the factfinder awards damages and
41 specifies the type and amount of damages as required by section
42 twenty-one A of this chapter, on motion by a defendant, or upon
43 its own motion, the court shall hear evidence of any amount of
44 such damages incurred prior to the award of damages which the
45 defendant claims was replaced, compensated or indemnified pur-
46 suant to the United States Social Security Act, any state or federal
47 income disability or worker's compensation act, any health, sick-
48 ness or income-disability insurance, any accident insurance that
49 provides health benefits or income disability coverage, any corpo-
50 ration, any contract or agreement or any other collateral source of
51 benefits whatsoever, except for gratuitous payments or gifts. The

52 plaintiff may elect to introduce evidence of any amount the plain-
53 tiff paid or contributed to secure his right to the benefits con-
54 cerning which the defendant has introduced evidence.

55 If the court finds that any such expense of medical care, lost
56 wages or loss of earning capacity was replaced, compensated or
57 indemnified from any collateral source, it shall reduce the amount
58 of the award of damages by the amount of such finding, minus an
59 amount equal to the premiums or amounts paid or contributed by
60 the plaintiff for such benefits for the one year period immediately
61 preceding the accrual of such action.

62 Notwithstanding the provisions of section seventy A of chapter
63 one hundred and eleven, no entity which is the source of the col-
64 lateral benefits by which the court has reduced the award of dam-
65 ages shall recover any amount against the plaintiff, nor shall it be
66 subrogated to the rights of the plaintiff against the defendant, nor
67 shall it have a lien against the plaintiff's judgment, on account of
68 its payment of the benefits by which the court has reduced the
69 amount of the award of damages; provided that if the plaintiff has
70 received compensation or indemnification from any collateral
71 source whose right of subrogation is based in any federal law, the
72 court shall not reduce the award of damages by the amount
73 received from such collateral source and such amount may be
74 recovered in accordance with such federal law.

75 During the pendency of any such action, if the plaintiff has a
76 policy of insurance which provides health benefits or income dis-
77 ability coverage and if the plaintiff is unwilling or unable to pay
78 the cost of renewing or continuing said policy in force, the defen-
79 dant may tender to the plaintiff the cost of maintaining said policy
80 in force. Nothing in this subsection shall be construed to compel a
81 plaintiff to renew or maintain any policy of insurance in force
82 prior to receipt of such tender or to interfere in any way with the
83 plaintiff's choice of physician or course of medical treatment.

84 To the extent that the department of public welfare has pro-
85 vided public assistance benefits pursuant to chapter one hundred
86 and seventeen, one hundred and eighteen and one hundred and
87 eighteen E, as a result of an incident of negligence of the
88 authority, nothing in this section shall be construed to affect said
89 department's right of subrogation or right to a lien against any
90 settlement or judgment, nor shall a court reduce an award of

91 damages by the amount of public assistance benefits provided by
92 said department pursuant to said chapters one hundred and seven-
93 teen, one hundred and eighteen and one hundred and eighteen E.

94 Section 21C. Attorney's fees for services rendered on behalf of
95 a plaintiff in an action for personal injury or property damage
96 against the authority shall be fair and reasonable. An attorney rep-
97 resenting a plaintiff may charge a contingent fee which shall be
98 subject to the rules and guidelines of the supreme judicial court.
99 No contingent fee agreement shall be enforced and no attorney
100 shall recover a fee thereunder as a result of services rendered on
101 behalf of a plaintiff in an action for personal injury or property
102 damage against the authority if the court determines that the
103 amount of the recovery paid or to be paid to the plaintiff, after
104 deduction of the attorney's reasonable expenses and disburse-
105 ments for which the plaintiff is liable and the amount of the attor-
106 ney's fee, is less than the total amount of the plaintiff's unpaid
107 past and future medical expenses included in the recovery.