WEST VIRGINIA CODE: §55-7B-9A

§55-7B-9a. Reduction in compensatory damages for economic losses for payments from collateral sources for the same injury.

(a) In any action arising after the effective date of this section, a defendant who has been found liable to the plaintiff for damages for medical care, rehabilitation services, lost earnings or other economic losses may present to the court, after the trier of fact has rendered a verdict, but before entry of judgment, evidence of payments the plaintiff has received for the same injury from collateral sources.

(b) In a hearing held pursuant to subsection (a) of this section, the defendant may present evidence of future payments from collateral sources if the court determines that:

(1) There is a preexisting contractual or statutory obligation on the collateral source to pay the benefits;

(2) The benefits, to a reasonable degree of certainty, will be paid to the plaintiff for expenses the trier of fact has determined the plaintiff will incur in the future; and

(3) The amount of the future expenses is readily reducible to a sum certain.

(c) In a hearing held pursuant to subsection (a) of this section, the plaintiff may present evidence of the value of payments or contributions he or she has made to secure the right to the benefits paid by the collateral source.

(d) After hearing the evidence presented by the parties, the court shall make the following findings of fact:

(1) The total amount of damages for economic loss found by the trier of fact;

(2) The total amount of damages for each category of economic loss found by the trier of fact;

(3) The total amount of allowable collateral source payments received or to be received by the plaintiff for the medical injury which was the subject of the verdict in each category of economic loss; and

(4) The total amount of any premiums or contributions paid by the plaintiff in exchange for the collateral source payments in each category of economic loss found by the trier of fact.

(e) The court shall subtract the total premiums the plaintiff was found to have paid in each category of economic loss from the total collateral source benefits the plaintiff received with regard to that category of economic loss to arrive at the net amount of collateral source payments.

WV Legislature

(f) The court shall then subtract the net amount of collateral source payments received or to be received by the plaintiff in each category of economic loss from the total amount of damages awarded the plaintiff by the trier of fact for that category of economic loss to arrive at the adjusted verdict.

(g) The court may not reduce the verdict rendered by the trier of fact in any category of economic loss to reflect:

(1) Amounts paid to or on behalf of the plaintiff which the collateral source has a right to recover from the plaintiff through subrogation, lien or reimbursement;

(2) Amounts in excess of benefits actually paid or to be paid on behalf of the plaintiff by a collateral source in a category of economic loss;

(3) The proceeds of any individual disability or income replacement insurance paid for entirely by the plaintiff;

(4) The assets of the plaintiff or the members of the plaintiff's immediate family; or

(5) A settlement between the plaintiff and another tortfeasor.

(h) After determining the amount of the adjusted verdict, the court shall enter judgment in accordance with the provisions of section nine of this article.

WV Legislature