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PETER BILDERBACK;

Plaintiff(s)

vs.

**CHARLES W. WERNER; MARIA G.
WERNER; STAFFORD MEDICAL,
P.A.; WILLIAM HONG; JEFFREY
LIPPER; JOHN DOES 1 - 2; ABC
CORPORATIONS 1 - 4**

DEFENDANT(S)

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN COUNTY**

Docket No. OCN-L-2056-11

Civil Action

COLLATERAL SOURCE RULE DOES NOT APPLY PRE-VERDICT

Dias v. A.J. Seabra's Supermarket, 310 N.J.Super. 99 (App. Div. 1998) - Trial court committed reversible error when it instructed jury that the most it could award personal injury plaintiff, whose medical expenses totaled \$106,006.67, was \$29,900.63, which was the amount not covered by insurance; statute required that adjustment in plaintiff's ultimate recovery be made by court **after** jury had considered the full amount incurred. N.J.S.A. 2A:15-97.

N.J.S.A. 2A:15-97 provides in pertinent part:

In any civil action brought for personal injury ... if a plaintiff receives ... benefits for the injuries ... from any other source other than a joint tortfeasor, the benefits ... shall be disclosed to the court and the amount thereof which duplicates any benefit contained in the award shall be deducted from any award recovered by the

plaintiff....

The purpose of the statute is clear: to prevent a double recovery, in excess of a party's actual loss. *Adamson v. Chiovaro*, 308 N.J.Super. 70, 78-79, 705 A.2d 402 (App.Div.1998); *Thomas v. Toys "R" Us, Inc.*, 282 N.J.Super. 569, 584, 660 A.2d 1236 (App.Div.), certif. denied, 142 N.J. 574, 667 A.2d 191 (1995).

The statute places no restriction on a party introducing, for the jury's consideration, evidence of the total amount of medical bills incurred. Any required adjustment in a party's ultimate recovery is to be made by the court, after the jury has considered the full amount incurred. *Thomas v. Toys "R" Us, Inc.*, *supra*, is an example of the correct methodology. In that case the trial court, after return of the jury's verdict, modified the sums awarded by the jury, which were based on total losses, not just unreimbursed losses.

The Legislature chose when it enacted N.J.S.A. 2A:15-97 to adopt the procedure of **post-verdict modification**, rather than simply declaring that evidence of such reimbursed expenses would be inadmissible, the procedure which it had earlier selected for Personal Injury Protection benefits, N.J.S.A. 39:6A-12. We are not free to disregard the distinction the Legislature has so clearly drawn.