

3766

2011-2012 Regular Sessions

I N S E N A T E

March 3, 2011

Introduced by Sens. BONACIC, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to settlements in tort actions; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 15-108 of the general obligations law is REPEALED
2 and a new section 15-108 is added to read as follows:
3 S 15-108. SETTLEMENTS IN TORT ACTIONS. (A) EFFECT OF SETTLEMENT. (1) A
4 SETTLEMENT REACHED WITH ONE OF TWO OR MORE PERSONS WHO ARE LIABLE OR
5 CLAIMED TO BE LIABLE IN TORT FOR THE SAME INJURY OR WRONGFUL DEATH DOES
6 NOT DISCHARGE ANY OTHER TORTFEASOR FROM LIABILITY UNLESS ITS TERMS
7 EXPRESSLY SO PROVIDE, EXCEPT THAT EACH OF THE REMAINING TORTFEASORS MAY
8 CHOOSE TO REDUCE HIS OR HER LIABILITY TO THE PLAINTIFF OR CLAIMANT BY
9 THE STATED SETTLEMENT AMOUNT, THE CONSIDERATION ACTUALLY PAID, OR THE
10 SETTLING TORTFEASOR'S EQUITABLE SHARE OF THE DAMAGES AS DETERMINED UNDER
11 ARTICLE FOURTEEN OF THE CIVIL PRACTICE LAW AND RULES.
12 (2) WHEN MORE THAN ONE PERSON SETTLES WITH A PLAINTIFF OR CLAIMANT,
13 EACH OF THE REMAINING TORTFEASORS MAY CHOOSE TO REDUCE HIS OR HER
14 LIABILITY TO THE PLAINTIFF OR CLAIMANT BY THE TOTAL OF ALL STATED
15 SETTLEMENT AMOUNTS, THE TOTAL CONSIDERATION ACTUALLY PAID FOR ALL OF THE
16 SETTLEMENTS, OR THE TOTAL OF THE SETTLING TORTFEASORS' EQUITABLE SHARES
17 OF THE DAMAGES AS DETERMINED UNDER ARTICLE FOURTEEN OF THE CIVIL PRAC-
18 TICE LAW AND RULES.
19 (3) THE CHOICE AUTHORIZED BY THIS SUBDIVISION SHALL BE MADE IN OPEN
20 COURT OR IN A WRITING SUBSCRIBED ON BEHALF OF THE PARTY SEEKING TO LIMIT
21 LIABILITY, AND SHALL BE MADE PRIOR TO THE FIRST OPENING STATEMENT OF THE
22 TRIAL UNLESS THE PARTY MAKING THE ELECTION ONLY LATER BECOMES AWARE THAT
23 A SETTLEMENT HAS OCCURRED. IN THE LATTER EVENT, THE ELECTION SHALL BE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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MADE AS SOON AS REASONABLY PRACTICABLE AFTER THE PARTY MAKING THE ELECTION IS APPRISED OF THE SETTLEMENT OR SETTLEMENTS IN ISSUE, AND, IF FEASIBLE, PRIOR TO THE RETURN OF A VERDICT. IN THE ABSENCE OF SPECIFIC AND TIMELY ELECTION OTHERWISE, A PARTY LIMITING LIABILITY WILL BE DEEMED TO HAVE ELECTED REDUCTION IN THE TOTAL AMOUNT OF THE EQUITABLE SHARE OR SHARES OF ALL SETTLING TORTFEASORS.

(4) FOR PURPOSES OF CALCULATING THE REDUCTION OF LIABILITY UNDER THIS SUBDIVISION IN A CASE WHERE A REMAINING TORTFEASOR IS SUBJECT TO A PERIODIC PAYMENT JUDGMENT PURSUANT TO ARTICLE FIFTY-A OR ARTICLE FIFTY-B OF THE CIVIL PRACTICE LAW AND RULES, THE MANNER IN WHICH SUCH REDUCTION IS EFFECTED SHALL DEPEND ON THE TYPE OF CREDIT CHOSEN BY THE REMAINING TORTFEASORS.

(A) IN THOSE INSTANCES IN WHICH THE REMAINING TORTFEASOR HAS ELECTED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION TO RECEIVE A CREDIT EQUIVALENT TO THE AMOUNT OR AMOUNTS WHICH THE PLAINTIFF OR CLAIMANT RECEIVED IN SETTLEMENT, THE CREDIT PROVIDED BY THIS SUBDIVISION SHALL BE RATABLY APPORTIONED BETWEEN THE PAST DAMAGES OF THE PLAINTIFF AND THE FUTURE DAMAGES. THIS SHALL BE DONE BY DETERMINING THE RATIO BETWEEN THE PLAINTIFF'S PAST DAMAGES AND THE PLAINTIFF'S TOTAL DAMAGES, AND THEN APPORTIONING THAT SAME PERCENTAGE OF THE SETTLEMENT TOWARDS PAYMENT OF THE PLAINTIFF'S PAST DAMAGES. THE REMAINDER OF THE SETTLEMENT CREDIT WOULD BE CREDITED TOWARDS, AND WOULD THUS REDUCE, THE PLAINTIFF'S FUTURE DAMAGES.

FOR PURPOSES OF THE APPORTIONMENT OF THE SETTLEMENT CREDIT BETWEEN PAST AND FUTURE DAMAGES, THE RATIO BETWEEN PAST DAMAGES AND TOTAL DAMAGES WILL BE PREMISED UPON THE AMOUNTS OF DAMAGES AWARDED BY THE TRIER OF FACT AFTER ADJUSTMENT HAS ALREADY BEEN MADE FOR ALL OTHER SET-OFFS, CREDITS AND REDUCTIONS OTHERWISE DICTATED BY SUBDIVISION (A) OF SECTION FIVE THOUSAND THIRTY-ONE, OR SUBDIVISION (A) OF SECTION FIVE THOUSAND FORTY-ONE OF THE CIVIL PRACTICE LAW AND RULES, AND BEFORE CONSIDERATION OF ANY OF THE CALCULATIONS DICTATED BY SUBDIVISION (B), (C), (D) OR (E) OF SUCH SECTIONS.

(B) IN THOSE INSTANCES IN WHICH THE REMAINING TORTFEASOR HAS ELECTED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION TO RECEIVE AN EQUITABLE SHARE CREDIT, EACH OF THE PLAINTIFF'S AWARDS FOR PAST DAMAGES AND FOR FUTURE DAMAGES AS REMAIN AFTER ALL OTHER SET-OFFS, CREDITS AND REDUCTIONS OTHERWISE DICTATED BY SUBDIVISION (A) OF SECTION FIVE THOUSAND THIRTY-ONE OR SUBDIVISION (A) OF SECTION FIVE THOUSAND FORTY-ONE OF THE CIVIL PRACTICE LAW AND RULES SHALL BE REDUCED BY THE SETTLOR'S EQUITABLE SHARE OF THE TOTAL CULPABILITY.

(B) LIABILITY OF SETTLING TORTFEASOR. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (F) OF THIS SECTION, A SETTLEMENT BETWEEN THE PLAINTIFF OR CLAIMANT AND A TORTFEASOR RELIEVES SUCH TORTFEASOR FROM LIABILITY TO ANY OTHER PERSON FOR CONTRIBUTION OR INDEMNIFICATION.

(C) WAIVER OF CONTRIBUTION AND INDEMNIFICATION. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (D) AND (F) OF THIS SECTION, A TORTFEASOR WHO HAS SETTLED WITH THE PLAINTIFF OR CLAIMANT SHALL NOT BE ENTITLED TO CONTRIBUTION OR INDEMNIFICATION FROM ANY OTHER PERSON.

(D) SETTLING TORTFEASOR'S LIMITED RIGHT TO CONTRIBUTION OR INDEMNIFICATION. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (C) OF THIS SECTION, A TORTFEASOR WHO HAS ENTERED INTO A SETTLEMENT WITH A PLAINTIFF OR CLAIMANT MAY SEEK CONTRIBUTION OR INDEMNIFICATION FROM ANY OTHER TORTFEASOR IF, IN CONSIDERATION FOR SUCH SETTLEMENT, THE PLAINTIFF OR CLAIMANT HAS RELEASED FROM LIABILITY THE PERSON OR PERSONS FROM WHOM CONTRIBUTION OR INDEMNIFICATION IS SOUGHT. CONTRIBUTION OR INDEMNIFICATION SHALL BE AVAILABLE PURSUANT TO THIS SUBDIVISION EXCEPT TO THE

1 EXTENT THAT IT IS ESTABLISHED BY THE PARTY OR PARTIES FROM WHOM CONTRIB-
2 UTION OR INDEMNIFICATION IS SOUGHT THAT THE AMOUNT PAID IN SETTLEMENT
3 WAS NOT REASONABLE.

4 (E) RELATIONSHIP WITH ARTICLE SIXTEEN OF THE CIVIL PRACTICE LAW AND
5 RULES. IF A PERSON SEEKS TO LIMIT LIABILITY PURSUANT TO BOTH SUBDIVISION
6 (A) OF THIS SECTION AND ARTICLE SIXTEEN OF THE CIVIL PRACTICE LAW AND
7 RULES, THE LIMITATION SHALL BE MADE BY DETERMINING THE PERCENTAGE THAT
8 THE PLAINTIFF'S OR CLAIMANT'S NON-ECONOMIC LOSS BEARS TO SUCH PERSON'S
9 TOTAL LOSS, AND THEN APPLYING THE SAME PERCENTAGE OF THE SETTLEMENT
10 CREDIT TO THE PLAINTIFF'S OR CLAIMANT'S NON-ECONOMIC LOSS. A PERSON
11 WHOSE LIABILITY IS REDUCED UNDER THIS SECTION SHALL BE ENTITLED TO AN
12 ADDITIONAL REDUCTION OF LIABILITY PURSUANT TO ARTICLE SIXTEEN OF THE
13 CIVIL PRACTICE LAW AND RULES, BUT ONLY TO THE EXTENT THAT SUCH PERSON'S
14 REMAINING LIABILITY FOR NON-ECONOMIC LOSS EXCEEDS THE LIMITATION OF
15 LIABILITY, IF ANY, ESTABLISHED BY SUCH ARTICLE.

16 (F) EXEMPTIONS. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED
17 TO AFFECT OR IMPAIR:

18 (1) ANY CLAIM FOR INDEMNIFICATION IF, PRIOR TO THE ACCIDENT OR OCCUR-
19 RENCE ON WHICH THE CLAIM IS BASED, THE PARTY SEEKING INDEMNIFICATION AND
20 THE PARTY FROM WHOM INDEMNIFICATION IS SOUGHT HAD ENTERED INTO A WRITTEN
21 CONTRACT IN WHICH THE LATTER HAD EXPRESSLY AGREED TO INDEMNIFY THE
22 FORMER FOR THE TYPE OF LOSS SUFFERED; OR

23 (2) A CLAIM FOR INDEMNIFICATION BY A PUBLIC EMPLOYEE, INCLUDING INDEM-
24 NIFICATION PURSUANT TO SECTION FIFTY-K OF THE GENERAL MUNICIPAL LAW OR
25 SECTION SEVENTEEN OR SECTION EIGHTEEN OF THE PUBLIC OFFICERS LAW.

26 (G) SETTLEMENTS WITHIN THE SCOPE OF THIS SECTION. AN AGREEMENT BETWEEN
27 A PLAINTIFF OR CLAIMANT AND A PERSON WHO IS LIABLE OR CLAIMED TO BE
28 LIABLE IN TORT SHALL BE DEEMED A SETTLEMENT FOR THE PURPOSES OF THIS
29 SECTION ONLY IF:

30 (1) THE AGREEMENT COMPLETELY OR SUBSTANTIALLY TERMINATES THE DISPUTE
31 BETWEEN THOSE PARTIES;

32 (2) THE PLAINTIFF OR CLAIMANT RECEIVES, AS PART OF THE AGREEMENT,
33 MONETARY CONSIDERATION GREATER THAN ONE DOLLAR; AND

34 (3) SUCH SETTLEMENT OCCURS PRIOR TO ENTRY OF A JUDGMENT.

35 (H) VALUATION OF STRUCTURED SETTLEMENTS. WHERE THE MONETARY CONSIDER-
36 ATION FOR A SETTLEMENT INCLUDES ONE OR MORE PAYMENTS WHICH ARE TO BE
37 MADE MORE THAN ONE YEAR AFTER THE DATE OF THE SETTLEMENT, THE VALUE OF
38 SUCH FUTURE PAYMENTS SHALL, FOR PURPOSES OF SUBDIVISION (A) OF THIS
39 SECTION, BE DEEMED TO BE THE SETTLING TORTFEASOR'S COST IN PROVIDING
40 SUCH PAYMENTS.

41 S 2. This act shall take effect on the thirty-first of January next
42 succeeding the date on which it shall have become a law, and shall be
43 applicable to any action commenced on or after such effective date.