S T A T E O F N E W Y O R K

2575

2009-2010 Regular Sessions

I N A S S E M B L Y

January 20, 2009

Introduced by M. of A. WEINSTEIN, LANCMAN -- Multi-Sponsored by -- M. of A. COLTON, GALEF -- read once and referred to the Committee on Judiciary

AN ACT to amend the general municipal law, in relation to establishing criteria for notice of claim to be filed and served when done by electronic means in a city having a population of over one million

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

Section 1. Paragraph (a) of subdivision 3 of section 50-e of the general municipal law, as amended by chapter 745 of the laws of 1976, is amended and a new paragraph (e) is added to read as follows:

(a) The notice shall be served on the public corporation against which the claim is made by delivering a copy thereof personally, or by registered or certified mail, to the person designated by law as one to whom a summons in an action in the supreme court issued against such corporation may be delivered, or to an attorney regularly engaged in representing such public corporation OR, IN A CITY WITH A POPULATION OF OVER ONE MILLION, BY ELECTRONIC MEANS IN A FORM AND MANNER PRESCRIBED BY SUCH CITY.

(E) IF THE NOTICE IS SERVED BY ELECTRONIC MEANS, AS DEFINED IN PARAGRAPH TWO OF SUBDIVISION (F) OF RULE TWENTY-ONE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, IT SHALL CONTAIN THE INFORMATION REQUIRED UNDER THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION. IN ADDITION, SUCH NOTICE SHALL CONTAIN THE FOLLOWING DECLARATION: "I CERTIFY THAT ALL INFORMATION CONTAINED IN THIS NOTICE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT THE WILLFUL MAKING OF ANY FALSE STATEMENT OF MATERIAL FACT HEREIN WILL SUBJECT ME TO CRIMINAL PENALTIES AND CIVIL LIABILITIES." SERVICE OF THE NOTICE SHALL BE COMPLETE UPON SUCCESSFUL TRANSMISSION OF THE NOTICE AS INDICATED BY AN ELECTRONIC RECEIPT PROVIDED BY SUCH CITY, WHICH SHALL TRANSMIT AN ELECTRONIC RECEIPT NUMBER TO THE CLAIMANT FORTHWITH.

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

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S 2. Subdivision 5 of section 50-e of the general municipal law, as amended by chapter 745 of the laws of 1976, is amended to read as follows:

5. Application for leave to serve a late notice.

Upon application, the court, in its discretion, may extend the time to serve a notice of claim specified in paragraph (a) of subdivision one OF THIS SECTION. The extension shall not exceed the time limited for the commencement of an action by the claimant against the public corporation. In determining whether to grant the extension, the court shall consider, in particular, whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one OF THIS SECTION or within a reasonable time thereafter. The court shall also consider all other relevant facts and circumstances, including: whether the claimant was an infant, or mentally or physically incapacitated, or died before the time limited for service of the notice of claim; whether the claimant failed to serve a timely notice of claim by reason of his justifiable reliance upon settlement representations made by an authorized representative of the public corporation or its insurance carrier; whether the claimant in serving a notice of claim made an excusable error concerning the identity of the public corporation against which the claim should be asserted; IF SERVICE OF THE NOTICE OF CLAIM IS ATTEMPTED BY ELECTRONIC MEANS PURSUANT TO PARAGRAPH (E) OF SUBDIVISION THREE OF THIS SECTION, WHETHER THE DELAY IN SERVING THE NOTICE OF CLAIM WAS BASED UPON THE FAILURE OF THE COMPUTER SYSTEM OF THE CITY OR THE CLAIMANT OR THE ATTORNEY REPRESENTING THE CLAIMANT; THAT SUCH CLAIMANT OR ATTORNEY, AS THE CASE MAY BE, SUBMITTED EVIDENCE OR PROOF AS IS REASONABLE SHOWING THAT (I) THE SUBMISSION OF THE CLAIM WAS ATTEMPTED TO BE ELECTRONICALLY MADE IN A TIMELY MANNER AND WOULD HAVE BEEN COMPLETED BUT FOR THE FAILURE OF THE COMPUTER SYSTEM UTILIZED BY THE SENDER OR RECIPIENT, AND (II) THAT UPON BECOMING AWARE OF BOTH THE FAILURE OF SUCH SYSTEM AND THE FAILURE OF THE CITY TO RECEIVE SUCH SUBMISSION, THE CLAIMANT OR ATTORNEY HAD INSUFFICIENT TIME TO MAKE SUCH CLAIM WITHIN THE PERMITTED TIME PERIOD IN A MANNER AS OTHERWISE PRESCRIBED BY LAW; and whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits.

An application for leave to serve a late notice shall not be denied on the ground that it was made after commencement of an action against the public corporation.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.