

4224

2009-2010 Regular Sessions

I N S E N A T E

April 17, 2009

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law and the civil practice law and rules, in relation to civil actions brought against certain producers or manufacturers

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

1 Section 1. The general obligations law is amended by adding a new
2 section 11-108 to read as follows:
3 S 11-108. MARKET SHARE LIABILITY IN CIVIL ACTIONS. 1. ANY PERSON SEEK-
4 ING DAMAGES IN A CIVIL ACTION FOR INJURIES SUSTAINED AS A RESULT OF THE
5 PRESENCE, REMOVAL OR ABATEMENT OF OR EXPOSURE TO LEAD-BASED PAINT IN ANY
6 RESIDENTIAL, CHILD-CARE OR INFANT DAY-CARE PREMISES WHO ESTABLISHES:
7 (A) THAT A PRODUCER OR MANUFACTURER OF ANY LEAD CONSTITUENT OF THE
8 PAINT PRESENT IN THE PREMISES CANNOT BE POSITIVELY IDENTIFIED;
9 (B) THAT THE LEAD CONSTITUENT OF SAID PAINT WAS A SUBSTANTIAL CONTRIB-
10 UTING FACTOR IN BRINGING ABOUT THE INJURIES FOR WHICH DAMAGES ARE
11 SOUGHT; AND
12 (C) THAT THE PRODUCERS OR MANUFACTURERS OF THE TYPES OR KINDS OF LEAD
13 CONSTITUENTS FOUND IN SUCH PAINT COMMITTED ACTS OR OMISSIONS BY THEIR
14 PRODUCTION OR MANUFACTURE OF SUCH LEAD CONSTITUENTS AS WOULD SUBJECT
15 THEM TO LIABILITY UNDER THE LAWS OF THE STATE OF NEW YORK FOR THE INJU-
16 RIES COMPLAINED OF IF THE PRODUCER OR MANUFACTURER OF THE LEAD CONSTITU-
17 ENTS IN THE PAINT PRESENT IN THE PREMISES COULD BE IDENTIFIED SHALL BE
18 ENTITLED TO RECOVER ALL DAMAGES SUFFERED FROM ANY PRODUCERS OR MANUFAC-
19 TURERS OF SUCH LEAD CONSTITUENTS WHO ARE JOINED AS PARTIES IN THE CIVIL
20 ACTION.
21 2. ANY DAMAGES AWARDED UNDER SUBDIVISION ONE OF THIS SECTION SHALL BE
22 APPORTIONED IN EQUAL SHARES AMONG THE PRODUCERS OR MANUFACTURERS JOINED
23 IN THE CIVIL ACTION; PROVIDED, HOWEVER, THAT ANY PRODUCER OR MANUFACTUR-
24 ER WHICH ESTABLISHES ITS ACTUAL SHARE OF THE TOTAL AMOUNT OF SUCH LEAD

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

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1 CONSTITUENTS USED IN PAINT PRODUCED OR MANUFACTURED AT THE TIME OF THE
2 PRODUCTION OR MANUFACTURE OF THE LEAD CONSTITUENT FOUND IN THE PAINT IN
3 THE RESIDENTIAL PREMISES WHICH IS THE SUBJECT OF THE CIVIL ACTION, SHALL
4 BE LIABLE ONLY FOR THAT PORTION OF THE TOTAL DAMAGES REPRESENTED BY SUCH
5 SHARE.

6 3. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISIONS ONE AND TWO OF THIS
7 SECTION, NO PRODUCER OR MANUFACTURER SHALL BE LIABLE FOR ANY DAMAGES
8 UNDER THIS SECTION IF IT ESTABLISHES:

9 (A) THAT IT DID NOT PRODUCE OR MANUFACTURE THE LEAD CONSTITUENTS
10 DETERMINED TO HAVE SUBSTANTIALLY CONTRIBUTED TO THE INJURIES FOR WHICH
11 DAMAGES ARE SOUGHT; OR

12 (B) THAT IT DID NOT PRODUCE OR MANUFACTURE THE TYPES OR KINDS OF LEAD
13 CONSTITUENTS FOUND IN THE PAINT IN THE RESIDENTIAL PREMISES WHICH IS THE
14 SUBJECT OF THE CIVIL ACTION DURING THE TIME THAT SAID PAINT WAS PRODUCED
15 OR MANUFACTURED.

16 4. THE REMEDY PROVIDED BY THIS SECTION IS NOT EXCLUSIVE AND SUPPLE-
17 MENTS ANY EXISTING STATUTORY OR COMMON LAW CAUSE OF ACTION.

18 5. A PARENT OR GUARDIAN OF A CHILD FOR WHOM AN ACTION HAS BEEN BROUGHT
19 FOR DAMAGES OR INJURIES CAUSED BY EXPOSURE TO DANGEROUS LEVELS OF LEAD
20 IN A RESIDENTIAL PREMISE SHALL NOT BE LIABLE TO ANY OTHER PERSON OR
21 ENTITY FOR CONTRIBUTION PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL PRAC-
22 TICE LAW AND RULES FOR THOSE DAMAGES OR INJURIES.

23 S 2. Section 213 of the civil practice law and rules, the section
24 heading as amended by chapter 43 of the laws of 1975, subdivision 2 as
25 amended by chapter 709 of the laws of 1988, subdivision 6 as amended by
26 chapter 248 of the laws of 1965, subdivision 7 as amended by chapter 532
27 of the laws of 1963 and as renumbered by chapter 43 of the laws of 1975
28 and subdivision 8 as amended by chapter 403 of the laws of 2004, is
29 amended to read as follows:

30 S 213. Actions to be commenced within six years: where not otherwise
31 provided for; on contract; on sealed instrument; on bond or note, and
32 mortgage upon real property; by state based on misappropriation of
33 public property; based on mistake; by corporation against director,
34 officer or stockholder; based on fraud. The following actions must be
35 commenced within six years:

36 1. an action for which no limitation is specifically prescribed by
37 law;

38 2. an action upon a contractual obligation or liability, express or
39 implied, except as provided in section two hundred thirteen-a of this
40 article or article [2] TWO of the uniform commercial code or article
41 [36-B] THIRTY-SIX-B of the general business law;

42 3. an action upon a sealed instrument;

43 4. an action upon a bond or note, the payment of which is secured by a
44 mortgage upon real property, or upon a bond or note and mortgage so
45 secured, or upon a mortgage of real property, or any interest therein;

46 5. an action by the state based upon the spoliation or other misappro-
47 priation of public property; the time within which the action must be
48 commenced shall be computed from discovery by the state of the facts
49 relied upon;

50 6. an action based upon mistake;

51 7. an action by or on behalf of a corporation against a present or
52 former director, officer or stockholder for an accounting, or to procure
53 a judgment on the ground of fraud, or to enforce a liability, penalty or
54 forfeiture, or to recover damages for waste or for an injury to property
55 or for an accounting in conjunction therewith[.];

1 8. an action based upon fraud; the time within which the action must
2 be commenced shall be the greater of six years from the date the cause
3 of action accrued or two years from the time the plaintiff or the person
4 under whom the plaintiff claims discovered the fraud, or could with
5 reasonable diligence have discovered it[.] ;
6 9. AN ACTION BROUGHT BY OR ON BEHALF OF ANY OWNER OF A RESIDENTIAL,
7 CHILD-CARE OR INFANT DAY-CARE PREMISES OR ANY COUNTY, CITY, TOWN,
8 REGIONAL SCHOOL DISTRICT, HOUSING AUTHORITY OR THE STATE OF NEW YORK OR
9 ANY OTHER POLITICAL SUBDIVISION THEREOF TO RECOVER ANY COSTS ASSOCIATED
10 WITH LEAD-BASED PAINT RELATED CORRECTIVE ACTIONS INCLUDING, BUT NOT
11 LIMITED TO, THE REMOVAL OR REPLACEMENT OF LEAD-BASED PAINT AND MATERIALS
12 CONTAINING LEAD-BASED PAINT PURSUANT TO SECTION 11-108 OF THE GENERAL
13 OBLIGATIONS LAW, SHALL BE COMMENCED ONLY WITHIN SIX YEARS NEXT AFTER
14 SUCH OWNER, COUNTY, CITY, TOWN, REGIONAL SCHOOL DISTRICT, HOUSING
15 AUTHORITY OR THE STATE OF NEW YORK OR ANY OTHER POLITICAL SUBDIVISION
16 THEREOF KNEW OF THE PRESENCE OF AND THE HAZARD OF DAMAGE CAUSED BY THE
17 PRESENCE OF SUCH LEAD-BASED PAINT OR MATERIAL CONTAINING LEAD-BASED
18 PAINT WITHIN ITS BUILDINGS.
19 S 3. This act shall take effect immediately.