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

4255--A

2009-2010 Regular Sessions

I N S E N A T E

April 20, 2009

Introduced by Sens. SCHNEIDERMAN, DIAZ, HASSELL-THOMPSON, KRUEGER, PARKER -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to pleading a defense premised upon article 16 of such law and rules and modifying the contents of a bill of particulars to expand the categories of information that may be required

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

Section 1. Section 1603 of the civil practice law and rules, as amended by chapter 635 of the laws of 1996, is amended to read as follows:

S 1603. Burdens of proof. In any action or claim for damages for personal injury a party asserting that the limitations on liability set forth in this article do not apply shall allege and prove by a preponderance of the evidence that one or more of the exemptions set forth in subdivision one of section [sixteen hundred one] 1601 or section [sixteen hundred two] 1602 applies. A party asserting limited liability pursuant to this article shall have the burden of ALLEGING AND proving by a preponderance of the evidence THAT its equitable share of the total liability IS FIFTY PERCENT OR LESS OF THE TOTAL LIABILITY ASSIGNED TO ALL PERSONS LIABLE.

S 2. Subdivision (b) of section 3018 of the civil practice law and rules, as amended by chapter 504 of the laws of 1980, is amended to read as follows:

(b) Affirmative defenses. A party shall plead all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading such as arbitration and award, collateral estoppel, culpable conduct claimed

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

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in diminution of damages as set forth in article fourteen-A, LIMITATION OF LIABILITY PURSUANT TO ARTICLE SIXTEEN, discharge in bankruptcy, facts showing illegality either by statute or common law, fraud, infancy or other disability of the party defending, payment, release, res judicata, statute of frauds, or statute of limitation. The application of this subdivision shall not be confined to the instances enumerated.

S 3. Subdivision (a) of rule 3043 of the civil practice law and rules, paragraph 6 as amended by chapter 805 of the laws of 1984, is amended to read as follows:

(a) Specified particulars. In actions to recover for personal injuries the following particulars may be required:

(1) The date and approximate time of day of the occurrence;

(2) [Its approximate] THE location OF THE OCCURRENCE;

(3) [General] A DETAILED statement of the acts or omissions constituting the negligence claimed;

(4) Where notice of a condition is a prerequisite, whether actual or constructive notice is claimed;

(5) If actual notice is claimed, a statement of when [and] IT WAS GIVEN, to whom it was given, AND THE MEANS BY WHICH IT WAS GIVEN;

(6) Statement of the injuries and description of those claimed to be permanent, and in an action designated in subsection (a) of section five thousand one hundred four of the insurance law, for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, in what respect plaintiff has sustained a serious injury, as defined in subsection (d) of section five thousand one hundred two of the insurance law, or economic loss greater than basic economic loss, as defined in subsection (a) of section five thousand one hundred two of the insurance law;

(7) Length of time confined to bed and to house;

(8) Length of time incapacitated from employment; [and]

(9) Total amounts claimed as special damages for physicians' services and medical supplies; loss of earnings, with name and address of the employer; hospital expenses; nurses' services;

(10) ANY PROVISIONS OF SECTION ONE THOUSAND SIX HUNDRED TWO OF THIS CHAPTER CLAIMED TO BE APPLICABLE;

(11) THE NAME, ADDRESS AND FILE NUMBER OF ANY COLLATERAL SOURCE OF PAYMENTS OF SPECIAL DAMAGES;

(12) ANY LAW, STATUTE, RULE, REGULATION, ORDINANCE, OR INDUSTRIAL OR PROFESSIONAL STANDARD CLAIMED TO HAVE BEEN VIOLATED;

(13) IF A DEFECTIVE CONDITION IS CLAIMED, A DESCRIPTION OF THE ALLEGED CONDITION AND THE DATE AND TIME THE ALLEGED DEFECTIVE CONDITION AROSE; AND

(14) THE PRINCIPAL ADDRESS OF THE PLAINTIFF.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to a bill of particulars where the demand for the bill of particulars was served on or after such effective date and shall apply to an affirmative defense where the action was commenced on or after such effective date.