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

4592

2011-2012 Regular Sessions

I N S E N A T E

April 13, 2011

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the time for disclosure of expert witness information; and in relation to broadening expert disclosure in commercial cases

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

Section 1. Paragraph 1 of subdivision (d) of section 3101 of the civil practice law and rules is amended by adding two new subparagraphs (iv) and (v) to read as follows:

(IV) UNLESS OTHERWISE PROVIDED BY A RULE OF THE CHIEF ADMINISTRATOR OF THE COURTS OR BY ORDER OF THE COURT, DISCLOSURE OF EXPERT INFORMATION SHALL BE MADE AS FOLLOWS: THE PARTY WHO HAS THE BURDEN OF PROOF ON A CLAIM, CAUSE OF ACTION, DAMAGE OR DEFENSE SHALL SERVE ITS RESPONSE TO AN EXPERT DEMAND SERVED PURSUANT TO THIS SUBDIVISION ON OR BEFORE SIXTY DAYS BEFORE THE DATE ON WHICH THE TRIAL IS SCHEDULED TO COMMENCE; WITHIN THIRTY DAYS AFTER SERVICE OF SUCH RESPONSE, ANY OPPOSING PARTY SHALL SERVE ITS ANSWERING RESPONSE PURSUANT TO THIS SUBDIVISION; WITHIN FIFTEEN DAYS AFTER SERVICE OF SUCH RESPONSE, ANY PARTY MAY SERVE AN AMENDED OR SUPPLEMENTAL RESPONSE LIMITED TO ISSUES RAISED IN THE ANSWERING RESPONSE. UNLESS THE COURT ORDERS OTHERWISE, A PARTY WHO FAILS TO COMPLY WITH THIS SUBPARAGRAPH SHALL BE PRECLUDED FROM OFFERING THE TESTIMONY AND OPINIONS OF THE EXPERT FOR WHOM A TIMELY RESPONSE HAS NOT BEEN GIVEN. WHERE A PARTY'S TIME TO DISCLOSE EXPERT INFORMATION PURSUANT TO THIS SUBDIVISION HAS NOT YET EXPIRED, THAT PARTY MAY SUBMIT EXPERT TESTIMONY IN SUPPORT OF OR IN OPPOSITION TO A MOTION FOR SUMMARY JUDGMENT.

(V) THE TERM "EXPERT" SHALL INCLUDE ANY PERSON WHO WILL TESTIFY WITH RESPECT TO HIS OR HER QUALIFICATIONS AND GIVE OPINIONS RELATING TO THE ISSUES IN THE CASE THAT COULD NOT BE GIVEN BY A LAYPERSON. HOWEVER, THE

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

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TERM "EXPERT" SHALL NOT INCLUDE A TREATING PHYSICIAN OR OTHER TREATING HEALTH CARE PROVIDER WHOSE RECORDS AND REPORTS HAVE BEEN TIMELY PROVIDED.

S 2. Subparagraph (iii) of paragraph 1 of subdivision (d) of section 3101 of the civil practice law and rules, as amended by chapter 184 of the laws of 1988, is amended to read as follows:

(iii) (A) Further disclosure concerning the expected testimony of any expert may be obtained only by court order upon a showing of special circumstances and subject to SUCH restrictions as to scope and provisions concerning fees and expenses as the court may deem appropriate. However, a party, without court order, may take the testimony of a person authorized to practice medicine, dentistry or podiatry who is the party's treating or retained expert, as described in paragraph three of subdivision (a) of this section, in which event any other party shall be entitled to the full disclosure authorized by this article with respect to that expert without court order.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IN ANY COMMERCIAL ACTION IN WHICH THE AMOUNT IN CONTROVERSY APPEARS TO THE COURT TO BE TWO HUNDRED FIFTY THOUSAND DOLLARS OR MORE, THE COURT, WITHOUT REQUIRING A SHOWING OF SPECIAL CIRCUMSTANCES BUT UPON A SHOWING BY ANY PARTY THAT THE NEED OUTWEIGHS THE RESULTING EXPENSE AND DELAY TO ANY PARTY, MAY AUTHORIZE SUCH FURTHER DISCLOSURE OF AN EXPERT, INCLUDING A DEPOSITION, SUBJECT TO SUCH RESTRICTIONS AS TO SCOPE AND PROVISIONS CONCERNING FEES AND EXPENSES AS THE COURT MAY DEEM APPROPRIATE. FOR PURPOSES OF THIS SUBPARAGRAPH, A "COMMERCIAL ACTION" IS AN ACTION ALLEGING BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY, OR MISREPRESENTATION OR OTHER TORT, ARISING OUT OF, OR RELATING TO, BUSINESS TRANSACTIONS OR THE AFFAIRS OF BUSINESS ORGANIZATIONS; OR INVOLVING OTHER BUSINESS CLAIMS DETERMINED BY THE COURT TO BE COMMERCIAL, BUT SHALL NOT INCLUDE PERSONAL INJURY, WRONGFUL DEATH, MATRIMONIAL, OR FORECLOSURE ACTIONS, OR LANDLORD-TENANT MATTERS NOT INVOLVING BUSINESS LEASES.

S 3. This act shall take effect immediately and shall apply to all rules or orders requiring the service of expert responses issued prior to, on or after such effective date.