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

3444

2011-2012 Regular Sessions

I N A S S E M B L Y

January 25, 2011

Introduced by M. of A. CALHOUN, CORWIN, HAWLEY -- Multi-Sponsored by -- M. of A. CROUCH -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to setting certain limits on noneconomic damage awards for personal injury and wrongful death actions

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

Section 1. Legislative intent. The legislature of the state of New York finds and declares that noneconomic damage awards for personal injury and wrongful death are often arbitrary and bear little relationship to the severity of the injury for which compensation is sought. The purpose of this act is to set certain limitations on noneconomic damage awards for personal injury and wrongful death actions. These limits would not apply in cases where gross negligence is found by a court or jury.

S 2. The civil practice law and rules is amended by adding a new article 50-C to read as follows:

ARTICLE 50-C

LIMITATION ON DAMAGES, NONECONOMIC DAMAGES

SECTION 5051. DEFINITIONS.

5052. DAMAGE AWARDS.

S 5051. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "NONECONOMIC DAMAGES" MEANS SUBJECTIVE, NONPECUNIARY DAMAGES ARISING FROM PAIN, SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT OR DISFIGUREMENT, MENTAL ANGUISH, EMOTIONAL DISTRESS, LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF CONSORTIUM, INJURY TO REPUTATION, HUMILIATION AND OTHER NONPECUNIARY DAMAGES.

2. "ACTUAL ECONOMIC DAMAGES" MEANS OBJECTIVELY VERIFIABLE PECUNIARY DAMAGES ARISING FROM MEDICAL EXPENSES AND MEDICAL CARE, LOSS OF EARNINGS AND EARNING CAPACITY, BURIAL COSTS, LOSS OF USE OF PROPERTY, COSTS OF

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

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REPAIR OR REPLACEMENT OF PROPERTY, COSTS OF OBTAINING SUBSTITUTE DOMESTIC SERVICES, LOSS OF EMPLOYMENT, LOSS OF BUSINESS OR EMPLOYMENT OPPORTUNITIES, REHABILITATION SERVICES, CUSTODIAL CARE AND OTHER PECUNIARY DAMAGES.

3. "PERSONAL INJURY ACTION" MEANS ANY ACTION, WHETHER IN TORT, CONTRACT, OR OTHERWISE, IN WHICH THE PLAINTIFF SEEKS DAMAGES FOR INJURY TO THE PERSON OR WRONGFUL DEATH.

4. "COMPENSATION" MEANS MONETARY AWARDS.

S 5052. DAMAGE AWARDS. IN ANY PERSONAL INJURY ACTION, THE PREVAILING PLAINTIFF MAY BE AWARDED:

1. COMPENSATION FOR ACTUAL ECONOMIC DAMAGES SUFFERED BY THE INJURED PLAINTIFF; AND

2. COMPENSATION FOR NONECONOMIC DAMAGES SUFFERED BY THE INJURED PLAINTIFF NOT TO EXCEED (A) TWO HUNDRED FIFTY THOUSAND DOLLARS, OR (B) THE AMOUNT AWARDED IN ECONOMIC DAMAGES, OR (C) THE STATE AVERAGE ANNUAL WAGE AS DETERMINED BY THE STATE DEPARTMENT OF TAXATION AND FINANCE, MULTIPLIED BY THE LIFE EXPECTANCY OF THE INJURED PLAINTIFF AS DETERMINED BY THE COURT, MULTIPLIED BY 0.36, WHICHEVER AMOUNT IS GREATEST. THE TWO HUNDRED FIFTY THOUSAND DOLLAR LIMITATION SHALL BE EFFECTIVE IMMEDIATELY AND SHALL BE ADJUSTED ON JANUARY FIRST OF EACH SUBSEQUENT YEAR BY THE INCREASE OR DECREASE IN THE UNITED STATES BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE PRECEDING CALENDAR YEAR. THIS PROVISION SHALL NOT APPLY WHERE A VERDICT OR DECISION OF A COURT INVOLVES A FINDING OF WILLFUL, WANTON OR GROSS NEGLIGENCE AGAINST THE RESPONSIBLE PARTY OR PARTIES.

S 3. This act shall take effect immediately and shall apply to all causes of action which accrue on or after such date.