

4929

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 9, 2011

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Introduced by M. of A. BRENNAN, BENEDETTO, JEFFRIES, MILLMAN, ROSENTHAL, GOTTFRIED, CAHILL, LANCMAN, WRIGHT, TITONE, ORTIZ, ZEBROWSKI, MAISEL, JAFFEE, HOOPER, STEVENSON -- Multi-Sponsored by -- M. of A. BOYLAND, BROOK-KRASNY, CLARK, COOK, DINOWITZ, GABRYSZAK, GLICK, LENTOL, MAGNARELLI, PHEFFER, J. RIVERA, P. RIVERA, ROBINSON, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to offers to compromise and to computation of interest in personal injury actions

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

1     Section 1. Rule 3221 of the civil practice law and rules is amended to  
2     read as follows:  
3     Rule 3221. Offer to compromise. Except in a matrimonial action, at  
4     any time not later than ten days before trial, any party against whom a  
5     claim is asserted, and against whom a separate judgment may be taken,  
6     may serve upon the claimant a written offer to allow judgment to be  
7     taken against [him] THAT PARTY for a sum or property or to the effect  
8     therein specified, with costs then accrued. If within ten days there-  
9     after the claimant serves a written notice [that he accepts] ACCEPTING  
10    the offer, either party may file the summons, complaint and offer, with  
11    proof of acceptance, and thereupon the clerk shall enter judgment  
12    accordingly. If the offer is not accepted and the claimant fails to  
13    obtain a more favorable judgment, [he] THE CLAIMANT shall not recover  
14    costs OR INTEREST from the time of the offer, but shall pay costs from  
15    that time. An offer of judgment shall not be made known to the jury.  
16    S 2. Subdivisions (a) and (b) of section 5001 of the civil practice  
17    law and rules are amended to read as follows:  
18    (a)     Actions in which recoverable. 1. Interest TO VERDICT, REPORT OR  
19    DECISION shall be recovered upon a sum awarded [because of a breach of  
20    performance of a] IN AN ACTION BASED ON PERSONAL INJURY, contract, or

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

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1 [because of] an act or omission depriving or otherwise interfering with  
2 title to, or possession or enjoyment of, property[, except that].

3 2. INTEREST MAY BE AWARDED IN THE COURT'S DISCRETION in an action of  
4 an equitable nature[, interest and the] AT A rate [and date from which  
5 it shall be] computed [shall be] in the court's discretion.

6 (b) Date from which computed; TYPE OF DAMAGE ON WHICH COMPUTED.  
7 Interest RECOVERABLE IN THE ACTIONS SPECIFIED IN SUBDIVISION (A) OF THIS  
8 SECTION SHALL BE COMPUTED AS FOLLOWS:

9 1. IN AN ACTION FOR PERSONAL INJURY, INCLUDING PRODUCTS LIABILITY,  
10 INTEREST SHALL BE COMPUTED FROM THE DATE OF THE COMMENCEMENT OF THE  
11 ACTION OR FROM A DATE ONE YEAR AFTER THE DATE THE CAUSE OF ACTION AROSE,  
12 WHICHEVER IS LATER BUT SHALL BE BASED EXCLUSIVELY ON SPECIAL AND GENERAL  
13 DAMAGES INCURRED TO THE DATE OF SUCH VERDICT, REPORT OR DECISION;

14 2. IN AN ACTION BASED UPON CONTRACT, OR AN ACT OR OMISSION DEPRIVING  
15 OR OTHERWISE INTERFERING WITH TITLE TO, OR POSSESSION OR ENJOYMENT OF,  
16 PROPERTY, INTEREST shall be computed from the earliest ascertainable  
17 date the cause of action existed, except that interest upon damages  
18 incurred thereafter shall be computed from the date incurred. Where  
19 such damages were incurred at various times, interest shall be computed  
20 upon each item from the date it was incurred or upon all of the damages  
21 from a single reasonable intermediate date; AND

22 3. IN AN ACTION OF AN EQUITABLE NATURE, INTEREST SHALL BE COMPUTED  
23 FROM A DATE FIXED IN THE COURT'S DISCRETION.

24 S 3. This act shall take effect on the first of January next succeed-  
25 ing the date on which it shall have become a law, except that: (1)  
26 section one of this act shall apply only to actions in which the offer  
27 to compromise was made on or after such effective date, and (2) section  
28 two of this act shall apply only to actions in which a note of issue or  
29 notice of trial, whichever is appropriate, has been filed on or after  
30 such effective date.