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

4929

2011-2012 Regular Sessions

I N A S S E M B L Y

February 9, 2011

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:

Section 1. Rule 3221 of the civil practice law and rules is amended to read as follows:

Rule 3221. Offer to compromise. Except in a matrimonial action, at any time not later than ten days before trial, any party against whom a claim is asserted, and against whom a separate judgment may be taken, may serve upon the claimant a written offer to allow judgment to be taken against [him] THAT PARTY for a sum or property or to the effect therein specified, with costs then accrued. If within ten days thereafter the claimant serves a written notice [that he accepts] ACCEPTING the offer, either party may file the summons, complaint and offer, with proof of acceptance, and thereupon the clerk shall enter judgment accordingly. If the offer is not accepted and the claimant fails to obtain a more favorable judgment, [he] THE CLAIMANT shall not recover costs OR INTEREST from the time of the offer, but shall pay costs from that time. An offer of judgment shall not be made known to the jury.

S 2. Subdivisions (a) and (b) of section 5001 of the civil practice law and rules are amended to read as follows:

(a) Actions in which recoverable. 1. Interest TO VERDICT, REPORT OR DECISION shall be recovered upon a sum awarded [because of a breach of 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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[because of] an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property[, except that].

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

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

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

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

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

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