

6697

2011-2012 Regular Sessions

I N   A S S E M B L Y

March 24, 2011

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Introduced by M. of A. WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to apportionment of liability for non-economic loss in personal injury actions

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

1     Section 1. Subdivision 1 of section 1601 of the civil practice law and  
2 rules, as amended by chapter 635 of the laws of 1996, is amended to read  
3 as follows:  
4     1. Notwithstanding any other provision of law, when a verdict or  
5 decision in an action or claim for personal injury is determined in  
6 favor of a claimant in an action involving two or more tortfeasors  
7 jointly liable or in a claim against the state and the liability of a  
8 defendant is found to be fifty percent or less of the total [liability  
9 assigned to all persons liable] CULPABILITY OF ALL PERSONS DEEMED CULPA-  
10 BLE, the liability of such defendant to the claimant for non-economic  
11 loss shall not exceed that defendant's equitable share determined in  
12 accordance with the relative culpability of each person causing or  
13 contributing to the total [liability] CULPABILITY for non-economic loss;  
14 provided, however that the culpable conduct of any person not a party to  
15 the action shall not be considered in determining any equitable share  
16 herein if the claimant proves that with due diligence he or she was  
17 unable to obtain jurisdiction over such person in said action (or in a  
18 claim against the state, in a court of this state); and further provided  
19 that the culpable conduct of any person shall not be considered in  
20 determining any equitable share herein to the extent that action against  
21 such person is barred because the claimant has not sustained a "grave  
22 injury" as defined in section eleven of the workers' compensation law.  
23     S 2. Section 1603 of the civil practice law and rules, as amended by  
24 chapter 635 of the laws of 1996, is amended to read as follows:

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

LBD09308-01-1

1 S 1603. Burdens of proof. In any action or claim for damages for  
2 personal injury a party asserting that the limitations on liability set  
3 forth in this article do not apply shall allege and prove by a prepon-  
4 derance of the evidence that one or more of the exemptions set forth in  
5 subdivision one of section sixteen hundred one or section sixteen  
6 hundred two applies. A party asserting limited liability pursuant to  
7 this article shall have the burden of ALLEGING AND proving by a prepon-  
8 derance of the evidence THAT its equitable share of the total [liabil-  
9 ity] CULPABILITY IS FIFTY PERCENT OR LESS OF THE TOTAL CULPABILITY.

10 S 3. Subdivision (b) of section 3018 of the civil practice law and  
11 rules, as amended by chapter 504 of the laws of 1980, is amended to read  
12 as follows:

13 (b) Affirmative defenses. A party shall plead all matters which if not  
14 pleaded would be likely to take the adverse party by surprise or would  
15 raise issues of fact not appearing on the face of a prior pleading such  
16 as arbitration and award, collateral estoppel, culpable conduct claimed  
17 in diminution of damages as set forth in article fourteen-A, LIMITATION  
18 OF LIABILITY PURSUANT TO ARTICLE SIXTEEN, discharge in bankruptcy, facts  
19 showing illegality either by statute or common law, fraud, infancy or  
20 other disability of the party defending, payment, release, res judicata,  
21 statute of frauds, or statute of limitation. The application of this  
22 subdivision shall not be confined to the instances enumerated.

23 S 4. This act shall take effect on the first of January next succeed-  
24 ing the date on which it shall have become a law and shall apply to all  
25 actions commenced on or after such effective date and to all pending  
26 actions in which trial has not yet commenced.