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

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2011-2012 Regular Sessions

I N S E N A T E

March 3, 2011

Introduced by Sens. BONACIC, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to settlements in tort actions; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 15-108 of the general obligations law is REPEALED and a new section 15-108 is added to read as follows:

S 15-108. SETTLEMENTS IN TORT ACTIONS. (A) EFFECT OF SETTLEMENT. (1) A SETTLEMENT REACHED WITH ONE OF TWO OR MORE PERSONS WHO ARE LIABLE OR CLAIMED TO BE LIABLE IN TORT FOR THE SAME INJURY OR WRONGFUL DEATH DOES NOT DISCHARGE ANY OTHER TORTFEASOR FROM LIABILITY UNLESS ITS TERMS EXPRESSLY SO PROVIDE, EXCEPT THAT EACH OF THE REMAINING TORTFEASORS MAY CHOOSE TO REDUCE HIS OR HER LIABILITY TO THE PLAINTIFF OR CLAIMANT BY THE STATED SETTLEMENT AMOUNT, THE CONSIDERATION ACTUALLY PAID, OR THE SETTLING TORTFEASOR'S EQUITABLE SHARE OF THE DAMAGES AS DETERMINED UNDER ARTICLE FOURTEEN OF THE CIVIL PRACTICE LAW AND RULES.

(2) WHEN MORE THAN ONE PERSON SETTLES WITH A PLAINTIFF OR CLAIMANT, EACH OF THE REMAINING TORTFEASORS MAY CHOOSE TO REDUCE HIS OR HER LIABILITY TO THE PLAINTIFF OR CLAIMANT BY THE TOTAL OF ALL STATED SETTLEMENT AMOUNTS, THE TOTAL CONSIDERATION ACTUALLY PAID FOR ALL OF THE SETTLEMENTS, OR THE TOTAL OF THE SETTLING TORTFEASORS' EQUITABLE SHARES OF THE DAMAGES AS DETERMINED UNDER ARTICLE FOURTEEN OF THE CIVIL PRACTICE LAW AND RULES.

(3) THE CHOICE AUTHORIZED BY THIS SUBDIVISION SHALL BE MADE IN OPEN COURT OR IN A WRITING SUBSCRIBED ON BEHALF OF THE PARTY SEEKING TO LIMIT LIABILITY, AND SHALL BE MADE PRIOR TO THE FIRST OPENING STATEMENT OF THE TRIAL UNLESS THE PARTY MAKING THE ELECTION ONLY LATER BECOMES AWARE THAT A SETTLEMENT HAS OCCURRED. IN THE LATTER EVENT, THE ELECTION SHALL BE

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

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MADE AS SOON AS REASONABLY PRACTICABLE AFTER THE PARTY MAKING THE ELECTION IS APPRISED OF THE SETTLEMENT OR SETTLEMENTS IN ISSUE, AND, IF FEASIBLE, PRIOR TO THE RETURN OF A VERDICT. IN THE ABSENCE OF SPECIFIC AND TIMELY ELECTION OTHERWISE, A PARTY LIMITING LIABILITY WILL BE DEEMED TO HAVE ELECTED REDUCTION IN THE TOTAL AMOUNT OF THE EQUITABLE SHARE OR SHARES OF ALL SETTLING TORTFEASORS.

(4) FOR PURPOSES OF CALCULATING THE REDUCTION OF LIABILITY UNDER THIS SUBDIVISION IN A CASE WHERE A REMAINING TORTFEASOR IS SUBJECT TO A PERIODIC PAYMENT JUDGMENT PURSUANT TO ARTICLE FIFTY-A OR ARTICLE FIFTY-B OF THE CIVIL PRACTICE LAW AND RULES, THE MANNER IN WHICH SUCH REDUCTION IS EFFECTED SHALL DEPEND ON THE TYPE OF CREDIT CHOSEN BY THE REMAINING TORTFEASORS.

(A) IN THOSE INSTANCES IN WHICH THE REMAINING TORTFEASOR HAS ELECTED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION TO RECEIVE A CREDIT EQUIVALENT TO THE AMOUNT OR AMOUNTS WHICH THE PLAINTIFF OR CLAIMANT RECEIVED IN SETTLEMENT, THE CREDIT PROVIDED BY THIS SUBDIVISION SHALL BE RATABLY APPORTIONED BETWEEN THE PAST DAMAGES OF THE PLAINTIFF AND THE FUTURE DAMAGES. THIS SHALL BE DONE BY DETERMINING THE RATIO BETWEEN THE PLAINTIFF'S PAST DAMAGES AND THE PLAINTIFF'S TOTAL DAMAGES, AND THEN APPORTIONING THAT SAME PERCENTAGE OF THE SETTLEMENT TOWARDS PAYMENT OF THE PLAINTIFF'S PAST DAMAGES. THE REMAINDER OF THE SETTLEMENT CREDIT WOULD BE CREDITED TOWARDS, AND WOULD THUS REDUCE, THE PLAINTIFF'S FUTURE DAMAGES.

FOR PURPOSES OF THE APPORTIONMENT OF THE SETTLEMENT CREDIT BETWEEN PAST AND FUTURE DAMAGES, THE RATIO BETWEEN PAST DAMAGES AND TOTAL DAMAGES WILL BE PREMISED UPON THE AMOUNTS OF DAMAGES AWARDED BY THE TRIER OF FACT AFTER ADJUSTMENT HAS ALREADY BEEN MADE FOR ALL OTHER SET-OFFS, CREDITS AND REDUCTIONS OTHERWISE DICTATED BY SUBDIVISION (A) OF SECTION FIVE THOUSAND THIRTY-ONE, OR SUBDIVISION (A) OF SECTION FIVE THOUSAND FORTY-ONE OF THE CIVIL PRACTICE LAW AND RULES, AND BEFORE CONSIDERATION OF ANY OF THE CALCULATIONS DICTATED BY SUBDIVISION (B), (C), (D) OR (E) OF SUCH SECTIONS.

(B) IN THOSE INSTANCES IN WHICH THE REMAINING TORTFEASOR HAS ELECTED PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION TO RECEIVE AN EQUITABLE SHARE CREDIT, EACH OF THE PLAINTIFF'S AWARDS FOR PAST DAMAGES AND FOR FUTURE DAMAGES AS REMAIN AFTER ALL OTHER SET-OFFS, CREDITS AND REDUCTIONS OTHERWISE DICTATED BY SUBDIVISION (A) OF SECTION FIVE THOUSAND THIRTY-ONE OR SUBDIVISION (A) OF SECTION FIVE THOUSAND FORTY-ONE OF THE CIVIL PRACTICE LAW AND RULES SHALL BE REDUCED BY THE SETTLOR'S EQUITABLE SHARE OF THE TOTAL CULPABILITY.

(B) LIABILITY OF SETTLING TORTFEASOR. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (F) OF THIS SECTION, A SETTLEMENT BETWEEN THE PLAINTIFF OR CLAIMANT AND A TORTFEASOR RELIEVES SUCH TORTFEASOR FROM LIABILITY TO ANY OTHER PERSON FOR CONTRIBUTION OR INDEMNIFICATION.

(C) WAIVER OF CONTRIBUTION AND INDEMNIFICATION. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (D) AND (F) OF THIS SECTION, A TORTFEASOR WHO HAS SETTLED WITH THE PLAINTIFF OR CLAIMANT SHALL NOT BE ENTITLED TO CONTRIBUTION OR INDEMNIFICATION FROM ANY OTHER PERSON.

(D) SETTLING TORTFEASOR'S LIMITED RIGHT TO CONTRIBUTION OR INDEMNIFICATION. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (C) OF THIS SECTION, A TORTFEASOR WHO HAS ENTERED INTO A SETTLEMENT WITH A PLAINTIFF OR CLAIMANT MAY SEEK CONTRIBUTION OR INDEMNIFICATION FROM ANY OTHER TORTFEASOR IF, IN CONSIDERATION FOR SUCH SETTLEMENT, THE PLAINTIFF OR CLAIMANT HAS RELEASED FROM LIABILITY THE PERSON OR PERSONS FROM WHOM CONTRIBUTION OR INDEMNIFICATION IS SOUGHT. CONTRIBUTION OR INDEMNIFICATION SHALL BE AVAILABLE PURSUANT TO THIS SUBDIVISION EXCEPT TO THE

EXTENT THAT IT IS ESTABLISHED BY THE PARTY OR PARTIES FROM WHOM CONTRIBUTION OR INDEMNIFICATION IS SOUGHT THAT THE AMOUNT PAID IN SETTLEMENT WAS NOT REASONABLE.

(E) RELATIONSHIP WITH ARTICLE SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES. IF A PERSON SEEKS TO LIMIT LIABILITY PURSUANT TO BOTH SUBDIVISION (A) OF THIS SECTION AND ARTICLE SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES, THE LIMITATION SHALL BE MADE BY DETERMINING THE PERCENTAGE THAT THE PLAINTIFF'S OR CLAIMANT'S NON-ECONOMIC LOSS BEARS TO SUCH PERSON'S TOTAL LOSS, AND THEN APPLYING THE SAME PERCENTAGE OF THE SETTLEMENT CREDIT TO THE PLAINTIFF'S OR CLAIMANT'S NON-ECONOMIC LOSS. A PERSON WHOSE LIABILITY IS REDUCED UNDER THIS SECTION SHALL BE ENTITLED TO AN ADDITIONAL REDUCTION OF LIABILITY PURSUANT TO ARTICLE SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES, BUT ONLY TO THE EXTENT THAT SUCH PERSON'S REMAINING LIABILITY FOR NON-ECONOMIC LOSS EXCEEDS THE LIMITATION OF LIABILITY, IF ANY, ESTABLISHED BY SUCH ARTICLE.

(F) EXEMPTIONS. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO AFFECT OR IMPAIR:

(1) ANY CLAIM FOR INDEMNIFICATION IF, PRIOR TO THE ACCIDENT OR OCCURRENCE ON WHICH THE CLAIM IS BASED, THE PARTY SEEKING INDEMNIFICATION AND THE PARTY FROM WHOM INDEMNIFICATION IS SOUGHT HAD ENTERED INTO A WRITTEN CONTRACT IN WHICH THE LATTER HAD EXPRESSLY AGREED TO INDEMNIFY THE FORMER FOR THE TYPE OF LOSS SUFFERED; OR

(2) A CLAIM FOR INDEMNIFICATION BY A PUBLIC EMPLOYEE, INCLUDING INDEMNIFICATION PURSUANT TO SECTION FIFTY-K OF THE GENERAL MUNICIPAL LAW OR SECTION SEVENTEEN OR SECTION EIGHTEEN OF THE PUBLIC OFFICERS LAW.

(G) SETTLEMENTS WITHIN THE SCOPE OF THIS SECTION. AN AGREEMENT BETWEEN A PLAINTIFF OR CLAIMANT AND A PERSON WHO IS LIABLE OR CLAIMED TO BE LIABLE IN TORT SHALL BE DEEMED A SETTLEMENT FOR THE PURPOSES OF THIS SECTION ONLY IF:

(1) THE AGREEMENT COMPLETELY OR SUBSTANTIALLY TERMINATES THE DISPUTE BETWEEN THOSE PARTIES;

(2) THE PLAINTIFF OR CLAIMANT RECEIVES, AS PART OF THE AGREEMENT, MONETARY CONSIDERATION GREATER THAN ONE DOLLAR; AND

(3) SUCH SETTLEMENT OCCURS PRIOR TO ENTRY OF A JUDGMENT.

(H) VALUATION OF STRUCTURED SETTLEMENTS. WHERE THE MONETARY CONSIDERATION FOR A SETTLEMENT INCLUDES ONE OR MORE PAYMENTS WHICH ARE TO BE MADE MORE THAN ONE YEAR AFTER THE DATE OF THE SETTLEMENT, THE VALUE OF SUCH FUTURE PAYMENTS SHALL, FOR PURPOSES OF SUBDIVISION (A) OF THIS SECTION, BE DEEMED TO BE THE SETTLING TORTFEASOR'S COST IN PROVIDING SUCH PAYMENTS.

S 2. This act shall take effect on the thirty-first of January next succeeding the date on which it shall have become a law, and shall be applicable to any action commenced on or after such effective date.