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

7930

2013-2014 Regular Sessions

I N A S S E M B L Y

June 11, 2013

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules in relation to asbestos related actions

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

Section 1. The civil practice law and rules is amended by adding a new article 99 to read as follows:

ARTICLE 99

ASBESTOS RELATED ACTIONS

SECTION 9901. DEFINITIONS.
9902. DISCLOSURE OF ASBESTOS TRUST CLAIMS.
9903. ADDITIONAL TRUST CLAIMS BY ORDER TO SHOW CAUSE.
9904. DISCOVERY OF OTHER MATERIALS.
9905. TRUST CLAIMS AND CLAIMS MATERIAL.
9906. BIFURCATION.
9907. PRESUMPTION OF COMPENSATION.
9908. SET-OFFS.
9909. REVERSAL OF SET-OFFS.
9910. CONSOLIDATION OF CLAIMS.
9911. FORUM NON-CONVENIENS.
9912. SANCTIONS FOR NON-COMPLIANCE.

S 9901. DEFINITIONS. AS USED IN THIS ARTICLE:

(1) "ASBESTOS" MEANS CHRYSOTILE, AMOSITE, CROCIDOLITE, TREMOLITE ASBESTOS, ANTHOPHYLLITE ASBESTOS, ACTINOLITE ASBESTOS, ASBESTIFORM WINCHITE, ASBESTIFORM RICHTERITE, ASBESTIFORM AMPHIBOLE MINERALS, AND ANY OF THESE MINERALS THAT HAVE BEEN CHEMICALLY TREATED OR ALTERED, INCLUDING ALL MINERALS DEFINED AS ASBESTOS IN 29 C.F.R. 1910 AT THE TIME AN ASBESTOS CLAIM IS MADE.

(2) "ASBESTOS CLAIM" MEANS ANY CLAIM FOR DAMAGES, LOSSES, INDEMNIFICATION, CONTRIBUTION, RESTITUTION, OR OTHER RELIEF OF WHATEVER NATURE

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

LBD11414-01-3

(INCLUDING PUNITIVE DAMAGES) ARISING OUT OF, BASED ON, OR IN ANY WAY RELATED TO THE ALLEGED HEALTH EFFECTS ASSOCIATED WITH THE INHALATION OR INGESTION OF ASBESTOS, TO THE EXTENT SUCH CLAIMS ARE RECOGNIZED UNDER STATE INHALATION OR INGESTION OF ASBESTOS, TO THE EXTENT SUCH CLAIMS ARE RECOGNIZED UNDER STATE LAW INCLUDING, BUT NOT LIMITED TO:

A. LOSS OF CONSORTIUM;

B. LOSS OF SUPPORT;

C. PERSONAL INJURY OR DEATH;

D. MENTAL OR EMOTIONAL INJURY;

E. RISK OR FEAR OF DISEASE OR OTHER INJURY;

F. THE COSTS OF MEDICAL MONITORING OR SURVEILLANCE; OR

G. ANY CLAIM MADE BY OR ON BEHALF OF ANY PERSON EXPOSED TO ASBESTOS, OR A REPRESENTATIVE, SPOUSE, PARENT, CHILD, OR OTHER RELATIVE OF THE EXPOSED PERSON.

THE TERM "ASBESTOS CLAIM" DOES NOT INCLUDE A CLAIM FOR COMPENSATORY BENEFITS PURSUANT TO A WORKERS' COMPENSATION LAW OR A VETERANS' BENEFITS PROGRAM.

(3) "CLAIMANT" MEANS ANY PARTY ASSERTING AN ASBESTOS CLAIM, INCLUDING A PLAINTIFF, COUNTERCLAIMANT, CROSS-CLAIMANT, OR THIRD-PARTY PLAINTIFF; IF A CLAIM IS BROUGHT THROUGH OR ON BEHALF OF AN ESTATE, THE TERM INCLUDES THE CLAIMANT'S DECEDENT; IF A CLAIM IS BROUGHT THROUGH OR ON BEHALF OF A MINOR OR INCOMPETENT, THE TERM INCLUDES THE CLAIMANT'S PARENT OR GUARDIAN.

(4) "EXPOSED PERSON" MEANS A PERSON WHOSE CLAIMED EXPOSURE TO ASBESTOS IS THE BASIS FOR AN ASBESTOS CLAIM.

(5) "ASBESTOS ACTION" MEANS ANY CIVIL PROCEEDING SEEKING COMPENSATION DIRECTLY OR DERIVATIVELY AS A RESULT, IN WHOLE OR IN PART, OF EXPOSURE TO ASBESTOS.

(6) "TRUST CLAIMS AND CLAIMS MATERIAL" MEANS ALL DOCUMENTS AND INFORMATION, INCLUDING BUT NOT LIMITED TO CLAIM FORMS AND SUPPLEMENTARY MATERIAL, RELEVANT OR RELATED TO PENDING OR POTENTIAL CLAIMS AGAINST ASBESTOS TRUSTS.

(7) "TRUST GOVERNANCE DOCUMENTS" MEANS DOCUMENTS WHICH DETERMINE ELIGIBILITY AND PAYMENT LEVELS FOR THE ASBESTOS TRUSTS AND INCLUDE TRUST DISTRIBUTION PROCEDURES, PLANS OF REORGANIZATION AND RELATED ORDERS.

(8) "ASBESTOS TRUSTS" MEANS ALL TRUSTS OR CLAIMS FACILITIES, CREATED AS A RESULT OF BANKRUPTCIES OR OTHER SETTLEMENTS, INCLUDING BUT NOT LIMITED TO ALL TRUSTS CREATED PURSUANT TO S 524(G) OF TITLE 11, UNITED STATES CODE, INTENDED TO PROVIDE COMPENSATION TO CLAIMANTS ALLEGING CLAIMS AS A RESULT OF ASBESTOS EXPOSURE.

S 9902. DISCLOSURE OF ASBESTOS TRUST CLAIMS. WITHIN THIRTY DAYS OF COMMENCING AN ASBESTOS ACTION NOT OTHERWISE BARRED OR DEFERRED UNDER STATE LAW, AND IN NO EVENT LESS THAN ONE HUNDRED EIGHTY DAYS PRIOR TO TRIAL OF THAT ACTION, A CLAIMANT SHALL PROVIDE TO ALL PARTIES A STATEMENT OF ANY AND ALL EXISTING OR ANTICIPATED CLAIMS AGAINST ASBESTOS TRUSTS. SUCH STATEMENT SHALL BE IN ADDITION TO ANY EXISTING PRELIMINARY DISCLOSURE REQUIREMENTS OTHERWISE IMPOSED BY EXISTING PRELIMINARY DISCLOSURE REQUIREMENTS OTHERWISE IMPOSED BY LAW OR APPLICABLE AGREEMENT, RULING OR JUDICIAL ORDER. FURTHERMORE, SUCH STATEMENT MUST INCLUDE UNDER PENALTY OF PERJURY AN ATTESTATION BY THE CLAIMANT THAT THE STATEMENT IS BASED ON A GOOD FAITH INVESTIGATION OF ALL POTENTIAL CLAIMS AGAINST ASBESTOS TRUSTS. COUNSEL MUST CERTIFY THAT HE OR SHE HAS CONDUCTED A GOOD FAITH INVESTIGATION OF ALL POTENTIAL CLAIMS AGAINST ASBESTOS TRUSTS. THE STATEMENT SHALL ALSO DISCLOSE WHEN THE CLAIM WAS OR WILL BE MADE AND WHETHER THERE HAS BEEN ANY REQUEST FOR DEFERRAL, DELAY, SUSPENSION OR TOLLING OF THE ASBESTOS TRUST CLAIMS PROCESS. IN THE EVENT

INFORMATION OBTAINED SUBSEQUENT TO THE SUBMISSION OF THE STATEMENT SUPPORTS THE FILING OF ADDITIONAL CLAIMS AGAINST ASBESTOS TRUSTS, THE CLAIMANT SHALL UPDATE THE STATEMENT BY AMENDMENT FILED AND SERVED WITHIN THIRTY DAYS OF THE RECEIPT OF THE ADDITIONAL INFORMATION. A CLAIMANT SHALL ALSO PRODUCE TO ALL PARTIES WITHIN THE TIME PERIOD SPECIFIED IN THIS SECTION IN SUCH ASBESTOS ACTION THE FOLLOWING ADDITIONAL MATERIALS:

1. AS TO ANY CLAIMS ALREADY ASSERTED AGAINST ASBESTOS TRUSTS, THE CLAIMANT MUST PRODUCE FINAL EXECUTED PROOFS OF CLAIM TOGETHER WITH ANY SUPPORTING MATERIALS USED TO SUPPORT SUCH CLAIM AGAINST THE ASBESTOS TRUSTS. A CLAIMANT MUST ALSO PRODUCE ALL DOCUMENTS OR INFORMATION RELEVANT OR RELATED TO SUCH CLAIMS ASSERTED AGAINST THE ASBESTOS TRUSTS, INCLUDING, BUT NOT LIMITED TO WORK HISTORIES, AFFIDAVITS, DEPOSITIONS AND TRIAL TESTIMONY OF THE CLAIMANT AND OTHERS AS WELL AS ALL MEDICAL DOCUMENTATION (INCLUDING BUT NOT LIMITED TO X-RAYS, TEST RESULTS, DOCTORS' REPORTS AND PATHOLOGY RESULTS).

2. AS TO ANY CLAIMS THAT A CLAIMANT HAS NOT YET ASSERTED AGAINST THE ASBESTOS TRUSTS BUT HAS DISCLOSED PURSUANT TO THE REQUIREMENTS OF THIS REGARDING POTENTIAL CLAIMS, ALL MATERIALS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION SHALL BE PRODUCED, INCLUDING, AT THE TIME OF ITS FILING, THE FINAL EXECUTED PROOF OF CLAIM.

3. CLAIMANT'S ASBESTOS ACTION SHALL BE STAYED IN ITS ENTIRETY UNTIL SUCH TIME AS THE CLAIMANT CERTIFIES THAT ALL ANTICIPATED CLAIMS AGAINST ASBESTOS TRUSTS HAVE BEEN FILED AND THAT THE CLAIMANT HAS SATISFIED THE REQUIREMENTS OF THIS SECTION.

S 9903. ADDITIONAL TRUST CLAIMS BY ORDER TO SHOW CAUSE. 1. ANY DEFENDANT MAY PROCEED BY ORDER TO SHOW CAUSE ("OSC") IN THE COURT HEARING SUCH ASBESTOS ACTION SETTING FORTH THE NAMES OF ADDITIONAL ASBESTOS TRUSTS AGAINST WHICH THE PLAINTIFF HAS NOT MADE, BUT WHICH THE DEFENDANT IN GOOD FAITH BELIEVES THE CLAIMANT CAN MAKE A SUCCESSFUL CLAIM. THE OSC SHALL SET FORTH THE FACTUAL BASIS FOR THE CLAIM DESCRIBING THE EVIDENCE SUFFICIENT TO MEET THE ASBESTOS TRUST DISTRIBUTION PROCEDURE REQUIREMENTS TO FILE VALID CLAIMS AGAINST SUCH ASBESTOS TRUST AND THE AMOUNT OF MONEY THE TRUST SHOULD PAY FOR THE CLAIM. IN RESPONSE, WITHIN TEN DAYS THEREAFTER, THE CLAIMANT SHALL:

A. FILE THE CLAIM WITH THE ASBESTOS TRUST AS SET FORTH BY THE DEFENDANT'S NOTICE WHICH WILL BE DISPOSITIVE AS TO THE OSC AS TO THAT TRUST; OR

B. SHOW CAUSE BEFORE THE COURT HEARING SUCH ASBESTOS ACTION FOR A DETERMINATION THAT (A) THE PROOF OF CLAIM SHOULD BE MODIFIED AND THEN SUBMITTED, OR (B) THAT THERE IS INSUFFICIENT EVIDENCE TO PERMIT THE CLAIM TO BE FILED IN GOOD FAITH UNDER THE APPLICABLE ASBESTOS TRUST DISTRIBUTION PROCEDURES. THE COURT HEARING THE ASBESTOS ACTION SHALL DECIDE THE ISSUE ON THE BASIS OF DECLARATIONS, DEPOSITION EXCERPTS, INTERROGATORY RESPONSES, AND SUCH OTHER EVIDENCE AS THE COURT DEEMS APPROPRIATE. THE CLAIMANT SHALL HAVE THE BURDEN OF PROVING THAT THE CLAIM SHOULD BE MODIFIED AND THEN SUBMITTED OR SHOULD NOT BE FILED BECAUSE IT DOES NOT MEET THE ASBESTOS TRUST DISTRIBUTION PROCEDURE REQUIREMENTS. IF THE COURT HEARING THE ASBESTOS ACTION DETERMINES THAT THERE IS A GOOD FAITH BASIS FOR FILING THE CLAIM, THE CLAIMANT SHALL PROMPTLY FILE THE CLAIM WITH THE ASBESTOS TRUST AS IT WAS SUBMITTED BY THE DEFENDANT OR AS MODIFIED BY THE COURT HEARING THE ASBESTOS ACTION. THE CLAIMANT'S ASBESTOS ACTION SHALL BE STAYED UNTIL SUCH TIME AS THE CLAIMANT CERTIFIES THAT CLAIMANT HAS COMPLIED WITH THE COURT'S ORDER AND HAS DISCLOSED THE MATERIALS REQUIRED TO BE DISCLOSED BY SECTION NINETY-NINE HUNDRED TWO OF THIS ARTICLE.

2. NOT LATER THAN SIXTY (60) DAYS BEFORE THE SCHEDULED TRIAL DATE OF AN ASBESTOS ACTION, THE COURT HEARING SUCH ASBESTOS ACTION MUST CERTIFY IN WRITING THAT THE DISCOVERY DESCRIBED IN SECTION NINETY-NINE HUNDRED TWO OF THIS ARTICLE IS COMPLETE. FURTHERMORE, NO TRIAL DATE MAY BE ASSIGNED NOR TRIAL COMMENCED ABSENT CERTIFICATION OF THE COMPLETION OF DISCOVERY AND A DETERMINATION THAT ALL ADDITIONAL ASBESTOS TRUST CLAIMS REQUIRED TO BE MADE IN RESPONSE TO AN OSC HAVE BEEN SUBMITTED TO THE RELEVANT ASBESTOS TRUST OR TRUSTS. A SCHEDULE OF ALL ASBESTOS TRUST CLAIMS MADE SHALL BE REFLECTED IN A "TRUST CLAIMS ORDER" WHICH MUST BE ENTERED NO LATER THAN THIRTY (30) DAYS PRIOR TO TRIAL. THE TRUST CLAIMS ORDER SHALL BE DEEMED TO BE A FINAL ORDER AND MAY BE AMENDED ONLY UPON A SHOWING OF MISTAKE, INADVERTENCE, SURPRISE, EXCUSABLE NEGLECT OR FRAUD.

S 9904. DISCOVERY OF OTHER MATERIALS. IN ADDITION TO THE MANDATORY DISCLOSURE REQUIREMENTS OF THIS CHAPTER, ADDITIONAL DISCLOSURE AND DISCOVERY OF INFORMATION RELEVANT TO THE ASBESTOS ACTION MAY BE SOUGHT BY ANY MECHANISM PROVIDED BY THE APPLICABLE RULES OF CIVIL PROCEDURE. DEFENDANTS IN AN ASBESTOS ACTION MAY ALSO SEEK DISCOVERY FROM THE ASBESTOS TRUSTS. THE CLAIMANT SHALL ASSIST IN ANY DISCOVERY FROM THE ASBESTOS TRUSTS AND PROVIDE WHATEVER CONSENT OR EXPRESSION OF PERMISSION AS MAY BE REQUIRED BY THE ASBESTOS TRUSTS FOR RELEASE OF SUCH INFORMATION AND MATERIALS. CLAIMS OF PRIVILEGE AND/OR CONFIDENTIALITY BY CLAIMANTS WILL NOT PRECLUDE DISCOVERY BY DEFENDANTS UNDER THIS CHAPTER.

S 9905. TRUST CLAIMS AND CLAIMS MATERIAL. TRUST CLAIMS AND CLAIMS MATERIAL (AS WELL AS RELATED DISCOVERY MATERIALS) ARE PRESUMPTIVELY RELEVANT TO AND DISCOVERABLE IN AN ASBESTOS ACTION AND SHALL BE PRESUMED BY THE COURT TO BE AUTHENTIC. NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR AGREEMENT, NO CLAIMS OF PRIVILEGE SHALL APPLY TO TRUST CLAIMS AND CLAIMS MATERIALS, AND SUCH TRUST CLAIMS AND CLAIMS MATERIALS MAY BE USED BY THE PARTIES IN THE ASBESTOS ACTION TO PROVE, WITHOUT LIMITATION, ALTERNATIVE CAUSATION FOR THE CLAIMANT'S ASBESTOS EXPOSURE AS WELL AS SERVE AS A BASIS TO ALLOCATE RESPONSIBILITY FOR THE CLAIMANT'S CLAIM.

S 9906. BIFURCATION. IN AN ASBESTOS ACTION, UNLESS AGREED UPON BY ALL COUNSEL INVOLVED, THE LIABILITY PHASE OF A TRIAL SHALL ALWAYS BE DETERMINED PRIOR TO THE DETERMINATION OF RELATED DAMAGES, IF ANY.

S 9907. PRESUMPTION OF COMPENSATION. IN THE EVENT A MATTER PROCEEDS TO TRIAL BEFORE THE CLAIMANT HAS RECEIVED A DECISION FROM AN ASBESTOS TRUST OR TRUSTS, AS TO EACH SUCH CLAIM, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT THE CLAIMANT WILL RECEIVE THE COMPENSATION SPECIFIED FOR HIS OR HER CLAIMED DISEASE OR INJURY IN THE RELEVANT TRUST GOVERNANCE DOCUMENTS. THE COURT SHALL TAKE JUDICIAL NOTICE OF THESE DOCUMENTS AND THE PAYMENT AMOUNTS SPECIFIED THEREIN. FOR EACH SUCH PENDING CLAIM, THE COURT SHALL ESTABLISH AN ATTRIBUTED VALUE THAT WILL BE USED FOR PURPOSES OF CALCULATION OF VERDICT OR SETTLEMENT SET-OFFS OR CREDITS, SUBJECT TO THE ADJUSTMENT SPECIFIED IN SECTION 9908 OF THIS ARTICLE.

S 9908. SET-OFFS. THE DEFENDANTS WILL BE ENTITLED TO SET-OFFS OR CREDITS OF THE FULL VALUE OF THE TRUST CLAIMS AGAINST ANY JUDGMENT RENDERED AGAINST THEM IN THE ASBESTOS ACTION. IN THE EVENT THAT A CO-DEFENDANT SETTLES OR OTHERWISE RESOLVES THE ASBESTOS CLAIMS AGAINST IT PRIOR TO VERDICT, IF A RELEASE OR RELEASES ARE OBTAINED FOR THE BENEFIT OF ASBESTOS TRUSTS THE DEFENDANTS REMAINING IN THE ASBESTOS ACTION MAY PURSUE THOSE CLAIMS BY ASSIGNMENT ACCORDING TO WHATEVER RIGHTS WERE HELD BY CLAIMANTS. TO THE EXTENT THAT ANY APPLICABLE LAW PROVIDES BROADER RELIEF TO THE DEFENDANTS THAN IS SET FORTH HEREIN, NOTHING IN THIS PROVISION SHALL PROHIBIT ANY DEFENDANT FROM PURSUING SUCH BROADER RELIEF.

S 9909. REVERSAL OF SET-OFFS. IN THE EVENT THAT DEFENDANTS OBTAIN A CREDIT OR REDUCTION IN A VERDICT BECAUSE OF THE ATTRIBUTED VALUE OF A CLAIM PENDING BUT NOT YET PAID AGAINST AN ASBESTOS TRUST, AND THE CLAIM GIVING RISE TO THAT ATTRIBUTED VALUE IS REJECTED IN WHOLE OR IN PART BY THE RELEVANT ASBESTOS TRUST OR TRUSTS, THOSE DEFENDANTS SHALL PAY TO THE CLAIMANT, ON A SEVERAL BASIS, THEIR RESPECTIVE SHARE OF THE DISCOUNT. THE DEFENDANTS SHALL MAKE PAYMENT WITHIN ONE HUNDRED EIGHTY DAYS OF SERVICE OF EVIDENCE OF REJECTION OR REDUCTION OF THE CLAIM.

S 9910. CONSOLIDATION OF CLAIMS. 1. A COURT MAY CONSOLIDATE FOR TRIAL ANY NUMBER AND TYPE OF ASBESTOS CLAIMS WITH THE CONSENT OF ALL THE PARTIES. IN THE ABSENCE OF SUCH CONSENT, THE COURT MAY CONSOLIDATE FOR TRIAL ONLY ASBESTOS CLAIMS RELATING TO THE EXPOSED PERSON AND MEMBERS OF HIS OR HER HOUSEHOLD.

2. NO CLASS ACTION OR ANY OTHER FORM OF MASS AGGREGATION CLAIM FILING RELATING TO MORE THAN ONE EXPOSED PERSON, EXCEPT CLAIMS RELATING TO THE EXPOSED PERSON AND MEMBERS OF HIS OR HER HOUSEHOLD, SHALL BE PERMITTED FOR ASBESTOS CLAIMS.

3. THE PROVISIONS OF THIS SECTION DO NOT PRECLUDE CONSOLIDATION OF CASES BY COURT ORDER FOR PRETRIAL OR DISCOVERY PURPOSES.

S 9911. FORUM NON-CONVENIENS. AS TO ANY ASBESTOS CLAIM FILED ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE, OR THAT IS PENDING ON THE EFFECTIVE DATE OF THIS ARTICLE BUT THAT HAS NOT COMMENCED TRIAL OR ANY NEW TRIAL OR RETRIAL FOLLOWING MOTION, APPEAL, OR OTHERWISE WITH THE PRESENTATION OF EVIDENCE TO THE TRIER OF FACT PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE, IF THE COURT IN WHICH THE ASBESTOS CLAIM IS PENDING, ON WRITTEN MOTION OF A PARTY, FINDS THAT IN THE INTEREST OF JUSTICE AND FOR THE CONVENIENCE OF THE PARTIES A CLAIM OR ACTION TO WHICH THIS ARTICLE APPLIES WOULD BE MORE PROPERLY HEARD IN A FORUM OUTSIDE NEW YORK, THE COURT SHALL DECLINE TO EXERCISE JURISDICTION UNDER THE DOCTRINE OF FORUM NON-CONVENIENS AND SHALL STAY OR DISMISS THE CLAIM OR ACTION. IN DETERMINING WHETHER TO GRANT A MOTION TO STAY OR DISMISS AN ACTION UNDER THE DOCTRINE OF A FORUM NON-CONVENIENS, THE COURT SHALL CONSIDER WHETHER:

1. AN ALTERNATE FORUM EXISTS IN WHICH THE CLAIM OR ACTION MAY BE TRIED;

2. THE ALTERNATE FORUM PROVIDES AN ADEQUATE REMEDY;

3. MAINTENANCE OF THE CLAIM OR ACTION IN THE COURTS OF THIS STATE WOULD WORK A SUBSTANTIAL INJUSTICE TO THE MOVING PARTY;

4. THE ALTERNATE FORUM, AS A RESULT OF THE SUBMISSION OF THE PARTIES OR OTHERWISE, CAN EXERCISE JURISDICTION OVER ALL THE DEFENDANTS PROPERLY JOINED TO THE PLAINTIFF'S CLAIM;

5. THE BALANCE OF THE PRIVATE INTERESTS OF THE PARTIES AND THE PUBLIC INTEREST OF THE STATE PREDOMINATE IN FAVOR OF THE CLAIM OR ACTION BEING BROUGHT IN AN ALTERNATE FORUM; AND

6. THE STAY OR DISMISSAL WOULD NOT RESULT IN UNREASONABLE DUPLICATION OR PROLIFERATION OF LITIGATION.

S 9912. SANCTIONS FOR NON-COMPLIANCE. FAILURE BY A CLAIMANT TO COMPLY WITH THE DISCOVERY REQUIREMENTS OUTLINED IN THIS CHAPTER SHALL BE A BASIS FOR SANCTIONS AGAINST THE CLAIMANT, INCLUDING, AT THE DISCRETION OF THE COURT, UPON A FINDING THAT THE CLAIMANT WILLFULLY FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER, DISMISSAL OF THE ASBESTOS ACTION WITH PREJUDICE.

S 2. Subparagraph (i) of paragraph 1 of subdivision (d) of section 3101 of the civil practice law and rules, as amended by chapter 184 of the laws of 1988, is amended to read as follows:

(i) Upon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. A PARTY WHO HAS THE BURDEN OF PROOF ON A CLAIM, CAUSE OF ACTION, DAMAGE OR DEFENSE SHALL SERVE ITS RESPONSE TO AN EXPERT DEMAND PURSUANT TO THIS SECTION ON OR BEFORE THE FILING OF THE NOTE OF ISSUE. SUCH PARTY HAS UNTIL THE FILING OF THE NOTE OF ISSUE TO SERVE SUCH RESPONSE REGARDLESS OF HOW EARLY THE DEMAND IS MADE. ANY OPPOSING PARTY SHALL SERVE ITS ANSWERING RESPONSE PURSUANT TO THIS SECTION NO LATER THAN SIXTY DAYS AFTER THE FILING OF THE NOTE OF ISSUE. ANY AMENDED OR SUPPLEMENTAL EXPERT DISCLOSURE SHALL BE ALLOWED ONLY WITH THE PERMISSION OF THE COURT. A PARTY WHO FAILS TO COMPLY WITH THIS RULE IS PRECLUDED FROM OFFERING THE TESTIMONY AND OPINIONS OF THE EXPERT FOR WHOM A TIMELY RESPONSE HAS NOT BEEN GIVEN. THE STATUTORY STAY FOR DISCLOSURE PURSUANT TO SUBDIVISION (B) OF RULE THIRTY-TWO HUNDRED FOURTEEN OF THIS CHAPTER UPON THE SERVICE OF A DISPOSITIVE MOTION UNDER RULE THIRTY-TWO HUNDRED ELEVEN OF THIS CHAPTER SHALL NOT APPLY TO THE SERVICE OF THESE EXPERT RESPONSES. ANY MOTION BY A PARTY TO PRECLUDE, OR LIMIT EXPERT TESTIMONY PURSUANT TO THIS SECTION, MUST BE MADE AS SOON AS PRACTICABLE BUT NO LATER THAN FORTY-FIVE DAYS AFTER THE PARTY'S RECEIPT OF THE EXPERT DISCLOSURE OR THE MOTION WILL BE WAIVED. However, where a party for good cause shown retains an expert an insufficient period of time before the commencement of trial to give appropriate notice thereof, the party shall not thereupon be precluded from introducing the expert's testimony at the trial solely on grounds of noncompliance with this paragraph. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. In an action for medical, dental or podiatric malpractice, a party, in responding to a request, may omit the names of medical, dental or podiatric experts but shall be required to disclose all other information concerning such experts otherwise required by this paragraph.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.