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

4763

2013-2014 Regular Sessions

I N S E N A T E

April 23, 2013

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to broadening expert disclosure in commercial cases

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

Section 1. Subparagraph (iii) 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:

(iii) (A) Further disclosure concerning the expected testimony of any expert may be obtained only by court order upon a showing of special circumstances and subject to SUCH restrictions as to scope and provisions concerning fees and expenses as the court may deem appropriate. However, a party, without court order, may take the testimony of a person authorized to practice medicine, dentistry or podiatry who is the party's treating or retained expert, as described in paragraph three of subdivision (a) of this section, in which event any other party shall be entitled to the full disclosure authorized by this article with respect to that expert without court order.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IN ANY COMMERCIAL ACTION IN WHICH THE AMOUNT IN CONTROVERSY APPEARS TO THE COURT TO BE TWO HUNDRED FIFTY THOUSAND DOLLARS OR MORE, THE COURT, WITHOUT REQUIRING A SHOWING OF SPECIAL CIRCUMSTANCES BUT UPON A SHOWING BY ANY PARTY THAT THE NEED OUTWEIGHS THE RESULTING EXPENSE AND DELAY TO ANY PARTY, MAY AUTHORIZE SUCH FURTHER DISCLOSURE OF AN EXPERT, INCLUDING A DEPOSITION, SUBJECT TO SUCH RESTRICTIONS AS TO SCOPE AND PROVISIONS CONCERNING FEES AND EXPENSES AS THE COURT MAY DEEM APPROPRIATE. FOR PURPOSES OF THIS SUBPARAGRAPH, A "COMMERCIAL ACTION" IS AN ACTION ALLEGING BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY, OR MISREPRESENTATION OR OTHER TORT, ARISING OUT OF, OR RELATING TO, BUSINESS TRANSACTIONS OR

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

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THE AFFAIRS OF BUSINESS ORGANIZATIONS; OR INVOLVING OTHER BUSINESS CLAIMS DETERMINED BY THE COURT TO BE COMMERCIAL, BUT SHALL NOT INCLUDE PERSONAL INJURY, WRONGFUL DEATH, MATRIMONIAL, OR FORECLOSURE ACTIONS, OR LANDLORD-TENANT MATTERS NOT INVOLVING BUSINESS LEASES.

S 2. This act shall take effect immediately, and shall apply to all rules or orders requiring the service of expert responses issued prior to, on or after such effective date.