

5978

2015-2016 Regular Sessions

I N A S S E M B L Y

March 9, 2015

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

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

3 ARTICLE 99

4 ASBESTOS RELATED ACTIONS

5 SECTION 9901. DEFINITIONS.

6 9902. DISCLOSURE OF ASBESTOS TRUST CLAIMS.

7 9903. ADDITIONAL TRUST CLAIMS BY ORDER TO SHOW CAUSE.

8 9904. DISCOVERY OF OTHER MATERIALS.

9 9905. TRUST CLAIMS AND CLAIMS MATERIAL.

10 9906. BIFURCATION.

11 9907. PRESUMPTION OF COMPENSATION.

12 9908. SET-OFFS.

13 9909. REVERSAL OF SET-OFFS.

14 9910. CONSOLIDATION OF CLAIMS.

15 9911. FORUM NON-CONVENIENS.

16 9912. SANCTIONS FOR NON-COMPLIANCE.

17 S 9901. DEFINITIONS. AS USED IN THIS ARTICLE:

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

24 (2) "ASBESTOS CLAIM" MEANS ANY CLAIM FOR DAMAGES, LOSSES, INDEMNIFICA-
25 TION, CONTRIBUTION, RESTITUTION, OR OTHER RELIEF OF WHATEVER NATURE

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

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

6 A. LOSS OF CONSORTIUM;

7 B. LOSS OF SUPPORT;

8 C. PERSONAL INJURY OR DEATH;

9 D. MENTAL OR EMOTIONAL INJURY;

10 E. RISK OR FEAR OF DISEASE OR OTHER INJURY;

11 F. THE COSTS OF MEDICAL MONITORING OR SURVEILLANCE; OR

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

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

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

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

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

29 (6) "TRUST CLAIMS AND CLAIMS MATERIAL" MEANS ALL DOCUMENTS AND INFOR-
30 MATION, INCLUDING BUT NOT LIMITED TO CLAIM FORMS AND SUPPLEMENTARY MATE-
31 RIAL, RELEVANT OR RELATED TO PENDING OR POTENTIAL CLAIMS AGAINST ASBES-
32 TOS TRUSTS.

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

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

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

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

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

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

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

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

35 A. FILE THE CLAIM WITH THE ASBESTOS TRUST AS SET FORTH BY THE DEFEND-
36 ANT'S NOTICE WHICH WILL BE DISPOSITIVE AS TO THE OSC AS TO THAT TRUST;
37 OR

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

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

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

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

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

35 S 9907. PRESUMPTION OF COMPENSATION. IN THE EVENT A MATTER PROCEEDS TO
36 TRIAL BEFORE THE CLAIMANT HAS RECEIVED A DECISION FROM AN ASBESTOS TRUST
37 OR TRUSTS, AS TO EACH SUCH CLAIM, THERE SHALL BE A REBUTTABLE PRESUMP-
38 TION THAT THE CLAIMANT WILL RECEIVE THE COMPENSATION SPECIFIED FOR HIS
39 OR HER CLAIMED DISEASE OR INJURY IN THE RELEVANT TRUST GOVERNANCE DOCU-
40 MENTS. THE COURT SHALL TAKE JUDICIAL NOTICE OF THESE DOCUMENTS AND THE
41 PAYMENT AMOUNTS SPECIFIED THEREIN. FOR EACH SUCH PENDING CLAIM, THE
42 COURT SHALL ESTABLISH AN ATTRIBUTED VALUE THAT WILL BE USED FOR PURPOSES
43 OF CALCULATION OF VERDICT OR SETTLEMENT SET-OFFS OR CREDITS, SUBJECT TO
44 THE ADJUSTMENT SPECIFIED IN SECTION NINETY-NINE HUNDRED EIGHT OF THIS
45 ARTICLE.

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

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

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

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

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

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

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

36 2. THE ALTERNATE FORUM PROVIDES AN ADEQUATE REMEDY;

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

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

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

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

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

53 S 2. Subparagraph (i) of paragraph 1 of subdivision (d) of section
54 3101 of the civil practice law and rules, as amended by chapter 184 of
55 the laws of 1988, is amended to read as follows:

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

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