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

9573

I N A S S E M B L Y

March 17, 2016

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 class actions

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

Section 1. Subdivision b of section 901 of the civil practice law and rules, as added by chapter 207 of the laws of 1975, is amended to read as follows:

b. [Unless a statute creating or imposing a penalty, or a minimum measure of recovery specifically authorizes the recovery thereof in a class action, an action to recover a penalty, or minimum measure of recovery created or imposed by statute may not be maintained as a class action] ONCE THE OTHER PREREQUISITES UNDER SUBDIVISION A OF THIS SECTION HAVE BEEN SATISFIED, CLASS CERTIFICATION SHALL NOT BE CONSIDERED AN INFERIOR METHOD FOR FAIR AND EFFICIENT ADJUDICATION ON THE GROUNDS THAT THE ACTION INVOLVES A GOVERNMENTAL PARTY OR GOVERNMENTAL OPERATIONS.

S 2. Section 902 of the civil practice law and rules, as amended by chapter 474 of the laws of 1975, is amended to read as follows:

S 902. Order allowing class action[. Within sixty days after the time to serve a responsive pleading has expired for all persons named as defendants in an action brought as a class action, the plaintiff shall move for an order to determine whether it is to be so maintained] AND APPOINTING CLASS COUNSEL. A. AT AN EARLY PRACTICABLE TIME AFTER A PERSON SUES OR IS SUED AS A CLASS REPRESENTATIVE, THE COURT MUST DETERMINE BY ORDER WHETHER TO CERTIFY THE ACTION AS A CLASS ACTION. An order under this section may be conditional, and may be altered or amended before the decision on the merits on the court's own motion or on motion of the parties. The action may be maintained as a class action only if the court finds that the prerequisites under section 901 have been satisfied. Among the matters which the court shall consider in determining whether the action may proceed as a class action are:

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

LBD14219-02-6

1. the interest of members of the class in individually controlling the prosecution or defense of separate actions;
2. the impracticability or inefficiency of prosecuting or defending separate actions;
3. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
4. the desirability or undesirability of concentrating the litigation of the claim in the particular forum;
5. the difficulties likely to be encountered in the management of a class action.

B. UNLESS A STATUTE PROVIDES OTHERWISE, THE ORDER PERMITTING A CLASS ACTION SHALL APPOINT CLASS COUNSEL. IN APPOINTING CLASS COUNSEL, THE COURT:

1. SHALL CONSIDER:

(I) THE WORK COUNSEL HAS DONE IN IDENTIFYING OR INVESTIGATING POTENTIAL CLAIMS IN THE ACTION;

(II) COUNSEL'S EXPERIENCE IN HANDLING CLASS ACTIONS, OTHER COMPLEX LITIGATION, AND THE TYPES OF CLAIMS ASSERTED IN THE ACTION;

(III) COUNSEL'S KNOWLEDGE OF THE APPLICABLE LAW; AND

(IV) THE RESOURCES THAT COUNSEL WILL COMMIT TO REPRESENTING THE CLASS;

2. MAY CONSIDER ANY OTHER MATTER PERTINENT TO COUNSEL'S ABILITY TO FAIRLY AND ADEQUATELY REPRESENT THE INTERESTS OF THE CLASS;

3. MAY ORDER POTENTIAL CLASS COUNSEL TO PROVIDE INFORMATION ON ANY SUBJECT PERTINENT TO THE APPOINTMENT AND TO PROPOSE TERMS FOR ATTORNEY'S FEES AND NONTAXABLE COSTS;

4. MAY INCLUDE IN THE APPOINTING ORDER PROVISIONS ABOUT THE AWARD OF ATTORNEY'S FEES OR NONTAXABLE COSTS UNDER RULE NINE HUNDRED NINE OF THIS ARTICLE; AND

5. MAY MAKE FURTHER ORDERS IN CONNECTION WITH THE APPOINTMENT.

C. WHEN ONE APPLICANT SEEKS APPOINTMENT AS CLASS COUNSEL, THE COURT MAY APPOINT THAT APPLICANT ONLY IF THE APPLICANT IS ADEQUATE UNDER SUBDIVISIONS B AND E OF THIS SECTION. IF MORE THAN ONE ADEQUATE APPLICANT SEEKS APPOINTMENT, THE COURT MUST APPOINT THE BEST APPLICANT ABLE TO REPRESENT THE INTERESTS OF THE CLASS.

D. THE COURT MAY DESIGNATE INTERIM COUNSEL TO ACT ON BEHALF OF A PUTATIVE CLASS BEFORE DETERMINING WHETHER TO CERTIFY THE ACTION AS A CLASS ACTION.

E. CLASS COUNSEL MUST FAIRLY AND ADEQUATELY REPRESENT THE INTERESTS OF THE CLASS.

S 3. Rule 908 of the civil practice law and rules, as added by chapter 207 of the laws of 1975, is amended to read as follows:

Rule 908. Dismissal, discontinuance [or], compromise OR SETTLEMENT. A class action shall not be dismissed, discontinued, [or] compromised, OR SETTLED without the approval of the court. [Notice of the proposed dismissal, discontinuance, or compromise shall be given to all members of the class in such manner as the court directs.] THE FOLLOWING PROCEDURES APPLY TO A PROPOSED DISMISSAL, DISCONTINUANCE, COMPROMISE OR SETTLEMENT:

A. IN CLASS ACTIONS OTHER THAN THOSE ACTIONS DESCRIBED IN SUBDIVISION B OF THIS RULE, NOTICE OF THE PROPOSAL NEED NOT BE GIVEN UNLESS THE COURT FINDS THAT NOTICE IS NECESSARY TO PROTECT THE INTERESTS OF THE REPRESENTED PARTIES.

B. IN ALL ACTIONS WHERE A CLASS HAS BEEN CERTIFIED AND THE ACTION WAS NOT BROUGHT PRIMARILY FOR INJUNCTIVE OR DECLARATORY RELIEF, REASONABLE NOTICE OF THE PROPOSAL SHALL BE GIVEN IN SUCH MANNER AS THE COURT

DIRECTS TO ALL CLASS MEMBERS WHO WOULD BE BOUND BY SUCH RESOLUTION OF THE ACTION.

C. THE CONTENT OF THE NOTICE AND THE EXPENSES OF NOTIFICATION SHALL BE GOVERNED BY SUBDIVISIONS (C) AND (D) OF SECTION NINE HUNDRED FOUR OF THIS ARTICLE.

D. IF THE PROPOSAL WOULD BIND CLASS MEMBERS, THE COURT MAY APPROVE IT ONLY AFTER A HEARING AND ON FINDING THAT IT IS FAIR, REASONABLE, AND ADEQUATE.

E. THE PARTIES SEEKING APPROVAL MUST FILE A STATEMENT IDENTIFYING ANY AGREEMENT MADE IN CONNECTION WITH THE PROPOSAL.

F. IF THE CLASS ACTION WAS NOT BROUGHT PRIMARILY FOR INJUNCTIVE OR DECLARATORY RELIEF, THE COURT MAY REFUSE TO APPROVE A DISMISSAL, DISCONTINUANCE, COMPROMISE, OR SETTLEMENT UNLESS IT AFFORDS A NEW OPPORTUNITY TO REQUEST EXCLUSION FROM THE CLASS TO INDIVIDUAL CLASS MEMBERS WHO HAD AN EARLIER OPPORTUNITY TO REQUEST EXCLUSION BUT DID NOT DO SO.

G. ANY CLASS MEMBER MAY OBJECT TO THE PROPOSAL IF IT REQUIRES COURT APPROVAL UNDER THIS RULE; THE OBJECTION MAY BE WITHDRAWN ONLY WITH THE COURT'S APPROVAL.

S 4. Rule 909 of the civil practice law and rules, as amended by chapter 566 of the laws of 2011, is amended to read as follows:

Rule 909. Attorneys' fees. If a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys' fees to the representatives of the class and/or to any other person that the court finds has acted to benefit the class based on the reasonable value of legal services rendered and if justice requires AND TO THE EXTENT NOT OTHERWISE LIMITED BY LAW, allow recovery of the amount awarded from the opponent of the class.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.