

BILL TEXT:

STATE OF NEW YORK

3193

2005-2006 Regular Sessions

IN ASSEMBLY

February 1, 2005

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 simplified case resolution; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The civil practice law and rules is amended by adding a new
2 article 30-A to read as follows:

3 ARTICLE 30-A

4 PROCEDURES FOR SIMPLIFIED CASE RESOLUTION

5 3050. Simplified case resolution; where authorized.

6 3051. Commencement of action; pleadings.

7 3052. Preliminary proceedings.

8 3053. Dispositional conferences.

9 3054. Appeal.

10 3055. Waiver of jury trial.

11 3056. Rules.

12 § 3050. Simplified case resolution; where authorized. The procedures
13 authorized by this article shall be available in an action for money
14 only, with the exception of actions to recover damages for personal
15 injury, injury to property or wrongful death, provided:

16 (a) The amount sought to be recovered does not exceed seventy-five
17 thousand dollars, exclusive of interest and costs; and

18 (b) The action is commenced in a county that the chief administrator
19 of the courts, with the advice and consent of the administrative board,
20 has designated as a county in which such procedures may be utilized.

21 § 3051. Commencement of action; pleadings. (a) 1. A plaintiff who
22 elects to use the procedures authorized by this article shall commence
23 an action by filing a summons and complaint in accordance with this
24 section and section three hundred four of this chapter. The summons

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

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1 shall prominently display at the top thereof the words "NOTICE: This
2 action is brought under the New York simplified case resolution proce-
3 dure, as set forth in the civil practice law and rules article thirty-A.
4 If you do not affirmatively exercise your right not to use this proce-
5 dure by serving a "notice of election not to proceed under this article
6 thirty-A" within the time required for you to file your appearance in
7 this action, you will waive your rights to a jury trial, certain pre-
8 trial disclosure of relevant documents and information, and certain
9 rights to present evidence and appeal an adverse determination."

10 2. Within the time required for an appearance, the defendant may serve
11 "notice of election not to proceed under this article thirty-A";
12 provided, however, the time to serve notice of election not to proceed
13 may be extended either by stipulation or upon application to the court
14 upon a showing of reasonable cause for the extension. When a "notice of
15 election not to proceed under this article thirty-A" is served, the case
16 shall proceed under other applicable provisions of this chapter without
17 reference to this article.

18 (b) All pleadings in an action under this article shall have attached
19 thereto available documentary proof in support of the allegations
20 contained therein, and may include affidavits by persons having know-
21 ledge of the material facts, and a statement of the attorney of control-
22 ling legal authority and legal argument that is alleged to be disposi-
23 tive of one or more issues in the action.

24 (c) Pre-answer motions are not permitted, but matters appropriate for
25 such motions may be raised at the preliminary conference.

26 § 3052. Preliminary proceedings. There shall be a preliminary confer-
27 ence in an action not later than ninety days after issue is joined. It
28 shall be scheduled by the court on at least twenty days' notice to the
29 parties and, unless the court directs otherwise, it shall be held by
30 telephone or video conference call. The purposes of the preliminary
31 conference shall include, but not be limited to, encouraging settlement,
32 simplifying or limiting issues, establishing a timetable for the prompt
33 completion of any additional proceedings that are required and, general-
34 ly, to ensuring the just, speedy, and inexpensive determination of the
35 action. In furtherance of these purposes, the court by a judge
36 personally acting, at such preliminary conference or at any time there-
37 after, may:

38 (a) Order or permit any party to serve an additional or amended plead-
39 ing;

40 (b) Direct and, where appropriate, limit pre-trial disclosure author-
41 ized by article thirty-one of this chapter, and the taking of the testi-
42 mony of any person, which may be by video deposition;

43 (c) Direct in an appropriate case the testimony and examination of any
44 person at the dispositional conference;

45 (d) Clarify and define the issues to be determined;

46 (e) Consolidate the action with another action or sever one or more
47 claims in the action, as appropriate, in accordance with article six of
48 this chapter; provided that any party to an action in which there is
49 asserted a counterclaim seeking damages in excess of seventy-five thou-
50 sand dollars, excluding interest and costs, shall be entitled to sever-
51 ance of such counterclaim upon application therefor and no judgment
52 shall be awarded in the action authorized by this article until final
53 resolution of the severed counterclaim;

54 (f) Grant a motion for or render judgment in favor of any party on the
55 basis of the pleadings and proofs presented;

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1 (g) Order that the procedures authorized by this article not be avail-
2 able in the action; and

3 (h) Schedule a dispositional conference to be held in such action not
4 later than nine months from the filing of the complaint.

5 § 3053. Dispositional conferences. (a) At least seven, but not more
6 than fourteen days prior to the date of the dispositional conference,
7 each party shall file a written submission reciting the party's final
8 offer of settlement or disposition and a brief statement of the reasons
9 why settlement or disposition of the action in accordance with the terms
10 of such offer would be just.

11 (b) At the dispositional conference, the court by a judge personally
12 shall hear argument, render a decision in writing or on the record, and
13 award judgment in accordance with the rules and principles of substan-
14 tive law. Such award may include interest and costs, as appropriate.

15 (c) Any award of judgment made by a court in accordance with this
16 section shall promptly be served upon the parties. It shall constitute a
17 judgment for all purposes under this chapter.

18 § 3054. Appeal. Except for an appeal to the court of appeals as may be
19 authorized by law, there shall be no appeal from any order or judgment
20 in an action subject to the procedures authorized by this article,
21 except that a party may take an appeal in accordance with the provisions
22 of this chapter:

23 (a) As of right from an order granting a motion for judgment or
24 dismissal of the action or any award of final judgment following the
25 dispositional conference, on the sole grounds that: the disposition
26 either lacks a rational foundation so as to be arbitrary and capricious
27 or is the result of a mistake of law; the judge's failure to follow the
28 procedures authorized by this article materially prejudiced a substan-
29 tial right of a party, or

30 (b) By permission of the court from or to which such appeal is taken,
31 in any other case.

32 § 3055. Waiver of jury trial. Any party to an action which is heard
33 and determined in accordance with the procedures authorized by this
34 article shall be deemed to have waived a trial by jury of any and all
35 claims asserted in such action.

36 § 3056. Rules. The chief administrator of the courts, with the advice
37 and consent of the administrative board of the courts, may promulgate
38 such rules, not inconsistent with this article, as may be necessary for
39 the effective implementation of this article.

40 § 2. This act shall take effect on the first of January next succeed-
41 ing the date on which it shall have become a law and shall apply to
42 actions commenced on or after such date until December 31 of the third
43 calendar year following the effective date when, upon such date the
44 provisions of this act shall be deemed repealed, but it shall apply to
45 any proceedings commenced by filing a summons and complaint on or before
46 such date.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A3193

SPONSOR: Schimminger

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to simplified case resolution; and providing for the repeal of

such provisions upon expiration thereof

PURPOSE OF THE BILL: Allows for simplified case resolution, where authorized. This option is available in an action for money damages only.

SUMMARY OF SPECIFIC PROVISIONS:

§ 1-Article 30-a is added to the Civil Practice Law and rules to provide for simplified case resolution. Sections are added to provide procedures for simplified case resolution commencement of action, preliminary proceedings, dispositional conferences, appeals, waiver of jury trials and additional rules.

§ 2- Effective date.

JUSTIFICATION: Middle income consumers in New York sometimes have legal problems that go unresolved because of economic considerations related to the litigation. This legislation would help in cases involving amounts under \$75,000. It would provide an alternative procedure in appropriate cases to keep dispute resolution within the court system and encourage the pursuit of claims which might not otherwise be adjudicated through ordinary litigation or arbitration procedures.

PRIOR LEGISLATIVE HISTORY: 2003-2004: A2930/S1183, 2001-2002: A.1007-A/S. 1082-A, 1999-2000: A.9897/S.6870.

EFFECTIVE DATE: This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to actions commenced on or after such date until December 31 of the third calendar year following the effective date when, upon such date the provisions of this act shall be deemed repealed, but it shall apply to any proceedings commenced by filing a summons and complaint on or before such date.
