

Memorandum in Support

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

CPLR #5

May 29, 2013

A. 911

By: M. of A. Weprin

Assembly Committee: Judiciary

Effective Date: 90th day after becoming law

AN ACT to amend the civil practice law and rules, relation to bills as *prima facie* proof of damages.

LAW AND SECTIONS REFERRED TO: CPLR 4533-a

THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES SUPPORTS THIS LEGISLATION

CPLR 4533-a was enacted based on the belief that, in small cases, the cost to a plaintiff of proving damages should not exceed the damages themselves. Thus, the rule creates a hearsay exception and self-proving method of authentication for itemized bills for services and repairs that do not exceed \$2,000. Alexander, Vincent C., *McKinney's Practice Commentaries, CPLR 4533-a*. The stated purpose of the bill by the sponsor is to benefit the court system by reducing the time and costs related to court proceedings.

Although widely used in automobile collision cases, the rule is available for use in all civil cases. *Haroche v. Haroche*, 38 A.D.2d 957, 331 N.Y.S.2d 466, 467 (2d Dep't 1972). As discussed in greater detail below, the Committee supports the bill, which would expand use of this rule.

A.911 would amend CPLR 4533-a(a) to increase the maximum amount of certified bills that are admissible from \$2,000 to \$10,000 and adds "supplies" to "services" and "repairs" as acceptable categories for qualified certified bills.

At least one commentator has stated that the increase in the maximum amount of admissible bills under CPLR 4533-a "is long overdue for an upward adjustment." See, Alexander, Vincent C., *McKinney's Practice Commentaries, CPLR 4533-a*. CPLR 4533-a was originally enacted in 1966. Moreover, certified bills for "Supplies" have been accepted by courts as prima facie evidence pursuant to CPLR 4533-a. See *Tanmar Service Corp. v. Yuen*, 187 Misc.2d 763, 765-766, 722 N.Y.S.2d 357, 358-359 (N.Y. Civ. Ct. Kings Co. 2001)(awarding damages for "items", "parts" and "paint" as part of a certified automobile repair estimate).

In addition, this legislation would increase the maximum number of such certified bills from one to two with the second certified bill limited only to “services, supplies or repairs which pertain to such claim, supplemental to the first bill from the same provider, and providing that the sum of both bills does not exceed ten thousand dollars.” The sponsor states that “[l]imiting the number of bills of each provider to one was intended to eliminate many bills at trial, but did not take into account expenses after the bill of particulars, so provision is made for any subsequent bill for continued expenses, the total not to exceed \$10,000.”

The legislation also would add a new subdivision CPLR 4533-a(b) to provide for the admissibility of certified bills for expenses relating to supplies and services of medical facilities and providers paid pursuant to the Workers, Compensation Law, Article 51 of the Insurance Law, and other third party carriers such as Blue Cross, Medicare, and Medicaid without a cap.

Finally, the bill’s sponsor memorandum discusses an increase in the notice time given to opposing counsel from ten to twenty-one days before trial to more adequately allow for checking the bills against discovery information or, if occasionally need be, to subpoena witnesses. However, there is no language in the text of the bill to accomplish this. The Committee believes this change is reasonable and would recommend amending the bill to accomplish this.

The proposed legislation expands the scope of CPLR 4533-a reasonably and it increases the maximum amount in a measured way. The increases in amount and scope of CPLR 4533-a make sense in light of modern realities and serve the underlying purpose of this section to allow litigants to prove modest amounts of damages without expending more than the damages themselves. It should be noted that under CPLR 3120 and 3122-a, a plaintiff can now subpoena the supplier for its business records and seek to introduce those records on a business record certification that the business is required to produce under CPLR 3122-a. These provisions were effective in 2003. However, for amounts under \$10,000, that procedure seems unreasonably complicated given the small amounts involved.

Based on the foregoing, the Committee on Civil Practice Law and Rules **SUPPORTS** this legislation.

The Person Who Prepared the Memorandum: James K. Laudau, Esq.

Chair of the Committee: Robert P. Knapp, III, Esq.