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5108

2011-2012 Regular Sessions

I N   S E N A T E

May 3, 2011
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Introduced by Sen. JOHNSON -- 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 the
  undertaking required during the stay of enforcement of the tobacco
  product master settlement agreement

  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 section 5519-a to read as follows:
 3   S 5519-A.   STAY OF ENFORCEMENT FOR TOBACCO PRODUCT MASTER SETTLEMENT
 4 AGREEMENT OR AN AFFILIATE OF SUCH A PARTICIPATING OR NON-PARTICIPATING
 5 MANUFACTURER. (A) IN CIVIL LITIGATION UNDER ANY LEGAL THEORY INVOLVING A
 6 PARTICIPATING MANUFACTURER OR A NON-PARTICIPATING MANUFACTURER, AS THOSE
 7 TERMS ARE DEFINED IN THE MASTER SETTLEMENT AGREEMENT, OR ANY OF THEIR
 8 SUCCESSORS OR AFFILIATES, THE UNDERTAKING REQUIRED DURING THE PENDENCY
 9 OF ALL APPEALS OR DISCRETIONARY REVIEWS BY ANY APPELLATE COURTS IN ORDER
10 TO STAY THE EXECUTION OF ANY JUDGMENT OR ORDER GRANTING LEGAL, EQUITABLE
11 OR OTHER RELIEF DURING THE ENTIRE COURSE OF APPELLATE REVIEW SHALL BE
12 SET PURSUANT TO THE APPLICABLE PROVISIONS OF LAW OR COURT RULES;
13 PROVIDED, HOWEVER THAT THE TOTAL UNDERTAKING REQUIRED OF ALL APPELLANTS
14 COLLECTIVELY SHALL NOT EXCEED ONE HUNDRED MILLION DOLLARS, REGARDLESS OF
15 THE VALUE OF THE JUDGMENT APPEALED.
16   (B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION,
17 UPON PROOF BY A PREPONDERANCE OF THE EVIDENCE, BY AN APPELLEE, THAT AN
18 APPELLANT IS DISSIPATING ASSETS OUTSIDE THE COURSE OF ORDINARY BUSINESS
19 TO AVOID PAYMENT OF A JUDGMENT, A COURT MAY REQUIRE THE APPELLANT TO
20 POST A BOND IN AN AMOUNT UP TO THE TOTAL AMOUNT OF THE JUDGMENT.
21   S 2. This act shall take effect on the thirtieth day after it shall
22 have become a law, and shall apply to any cause of action pending on or
23 filed on or after such effective date.

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