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

3852

2013-2014 Regular Sessions

I N S E N A T E

February 22, 2013

Introduced by Sen. DeFRANCISCO -- 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 pendency of a stay of enforcement of a judgment against a participating or non-participating manufacturer under the master settlement agreement

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

Section 1. This act shall be known and may be cited as "state and local government master settlement agreement proceeds safeguard act."

S 2. Legislative intent. New York state, New York city and county governments throughout the state are the recipients of hundreds of millions of dollars each year under the master settlement agreement. The total of all master settlement payments to these governments over the years has so far exceeded eleven billion dollars. These funds are vitally important and any disruption in these payments would put the recipients at financial risk. The legislature hereby finds that it is in the public interest to enact the "state and local government master settlement agreement proceeds safeguard act" in order to continue the flow of these funds to the state and local governments which depend on this revenue during the appeal of a judgment against master settlement agreement signatories, affiliates, successors and non-participating manufacturers.

S 3. The civil practice law and rules is amended by adding a new section 5519-a to read as follows:

S 5519-A. STAY OF ENFORCEMENT FOR MASTER SETTLEMENT AGREEMENT PARTICIPATING OR NON-PARTICIPATING MANUFACTURERS OR THEIR SUCCESSORS OR AFFILIATES. (A) IN CIVIL LITIGATION UNDER ANY LEGAL THEORY INVOLVING A PARTICIPATING MANUFACTURER OR NON-PARTICIPATING MANUFACTURER, AS THOSE TERMS ARE DEFINED IN THE MASTER SETTLEMENT AGREEMENT, OR ANY OF THEIR SUCCESSORS OR AFFILIATES, THE UNDERTAKING REQUIRED DURING THE PENDENCY

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

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OF ALL APPEALS OR DISCRETIONARY REVIEWS BY ANY APPELLATE COURTS IN ORDER TO STAY THE EXECUTION OF ANY JUDGMENT OR ORDER GRANTING LEGAL, EQUITABLE OR OTHER RELIEF DURING THE ENTIRE COURSE OF APPELLATE REVIEW, INCLUDING REVIEW BY THE UNITED STATES SUPREME COURT, SHALL BE SET PURSUANT TO THE APPLICABLE PROVISIONS OF LAW OR COURT RULES; PROVIDED, HOWEVER, THAT THE TOTAL UNDERTAKING REQUIRED OF ALL APPELLANTS COLLECTIVELY SHALL NOT EXCEED TWO HUNDRED FIFTY MILLION DOLLARS, REGARDLESS OF THE VALUE OF THE JUDGMENT APPEALED. THIS LIMITATION SHALL APPLY ONLY IF APPELLANTS FILE AT LEAST THIRTY PERCENT OF THE TOTAL AMOUNT OF THE UNDERTAKING IN THE FORM OF CASH, A LETTER OF CREDIT, A CERTIFICATE OF DEPOSIT, OR OTHER CASH EQUIVALENT WITH THE COURT. THE CASH OR CASH EQUIVALENT SHALL BE DEPOSITED BY THE CLERK OF THE COURT IN THE ACCOUNT OF THE COURT, AND ANY INTEREST EARNED SHALL BE UTILIZED AS PROVIDED BY LAW.

(B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION, UPON PROOF BY A PREPONDERANCE OF THE EVIDENCE, BY AN APPELLEE, THAT AN APPELLANT IS DISSIPATING ASSETS OUTSIDE THE COURSE OF ORDINARY BUSINESS TO AVOID PAYMENT OF A JUDGMENT, A COURT MAY REQUIRE THE APPELLANT TO POST A BOND IN AN AMOUNT UP TO THE TOTAL AMOUNT OF THE JUDGMENT.

(C) AS USED IN THIS SECTION, "MASTER SETTLEMENT AGREEMENT" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION FIVE OF SECTION THIRTEEN HUNDRED NINETY-NINE-OO OF THE PUBLIC HEALTH LAW.

S 4. This act shall take effect on the thirtieth day after it shall have become a law, and shall apply to any cause of action pending on or filed on or after such effective date.