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

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 13, 2009

Introduced by M. of A. SCOZZAFAVA -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law and the civil practice law and rules, in relation to limitations on asbestos-related liabilities relating to certain mergers and consolidations

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

Section 1. The business corporation law is amended by adding a new section 906-a to read as follows:

S 906-A. LIMITATIONS ON ASBESTOS-RELATED LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS.

(A) LIMITATION ON SUCCESSOR ASBESTOS-RELATED LIABILITIES.

(1) EXCEPT AS FURTHER LIMITED IN SUBPARAGRAPH TWO OF THIS PARAGRAPH, THE CUMULATIVE SUCCESSOR ASBESTOS-RELATED LIABILITIES OF A DOMESTIC CORPORATION THAT WAS INCORPORATED IN THIS STATE PRIOR TO MAY FIRST, TWO THOUSAND NINE, SHALL BE LIMITED TO THE FAIR MARKET VALUE OF THE TOTAL ASSETS OF THE TRANSFEROR DETERMINED AS OF THE TIME OF THE MERGER OR CONSOLIDATION AND SUCH CORPORATION SHALL HAVE NO RESPONSIBILITY FOR SUCCESSOR ASBESTOS-RELATED LIABILITIES IN EXCESS OF SUCH LIMITATION.

(2) IF THE TRANSFEROR HAD ASSUMED OR INCURRED SUCCESSOR ASBESTOS-RELATED LIABILITIES IN CONNECTION WITH A PRIOR MERGER OR CONSOLIDATION WITH A PRIOR TRANSFEROR, THEN THE FAIR MARKET VALUE OF THE TOTAL ASSETS OF THE PRIOR TRANSFEROR, DETERMINED AS OF THE TIME OF SUCH EARLIER MERGER OR CONSOLIDATION, SHALL BE SUBSTITUTED FOR THE LIMITATION SET FORTH IN SUBPARAGRAPH ONE OF THIS PARAGRAPH FOR PURPOSES OF DETERMINING THE LIMITATION OF LIABILITY OF A DOMESTIC CORPORATION.

(B) LIMITATION ON TOTAL ASSETS AVAILABLE TO SATISFY SUCCESSOR ASBESTOS-RELATED LIABILITIES.

(1) EXCEPT AS FURTHER LIMITED IN SUBPARAGRAPH TWO OF THIS PARAGRAPH, THE ASSETS OF A DOMESTIC CORPORATION THAT WAS INCORPORATED IN THIS STATE PRIOR TO MAY FIRST, TWO THOUSAND NINE, SHALL BE EXEMPT FROM RESTRAINT, ATTACHMENT OR EXECUTION ON JUDGMENTS RELATED TO CLAIMS FOR SUCCESSOR ASBESTOS-RELATED LIABILITIES IF THE CUMULATIVE AMOUNTS WHICH, AFTER THE TIME OF THE MERGER OR CONSOLIDATION AS TO WHICH THE FAIR MARKET VALUE OF

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

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TOTAL ASSETS IS DETERMINED FOR PURPOSES OF THIS PARAGRAPH AND PARAGRAPH (A) OF THIS SECTION, ARE PAID OR COMMITTED TO BE PAID BY OR ON BEHALF OF THE CORPORATION, OR BY OR ON BEHALF OF A TRANSFEROR, IN CONNECTION WITH SETTLEMENTS, JUDGMENTS OR OTHER DISCHARGES OF CLAIMS OF ASBESTOS-RELATED LIABILITIES, EXCEED THE FAIR MARKET VALUE OF THE TOTAL ASSETS OF THE TRANSFEROR, DETERMINED AS OF THE TIME OF THE MERGER OR CONSOLIDATION.

(2) IF THE TRANSFEROR HAD ASSUMED OR INCURRED SUCCESSOR ASBESTOS-RELATED LIABILITIES IN CONNECTION WITH A PRIOR MERGER OR CONSOLIDATION WITH A PRIOR TRANSFEROR, THEN THE FAIR MARKET VALUE OF THE TOTAL ASSETS OF THE PRIOR TRANSFEROR, DETERMINED AS OF THE TIME OF SUCH EARLIER MERGER OR CONSOLIDATION, SHALL BE SUBSTITUTED FOR THE LIMITATION SET FORTH IN SUBPARAGRAPH ONE OF THIS PARAGRAPH FOR PURPOSES OF DETERMINING THE EXTENT OF THE EXEMPTION OF THE ASSETS OF A DOMESTIC CORPORATION.

(C) FAIR MARKET VALUE OF TOTAL ASSETS.

(1) A DOMESTIC CORPORATION MAY ESTABLISH THE FAIR MARKET VALUE OF TOTAL ASSETS THROUGH ANY METHOD REASONABLE UNDER THE CIRCUMSTANCES, INCLUDING BY REFERENCE TO THE GOING CONCERN VALUE OF SUCH ASSETS OR TO THE PURCHASE PRICE ATTRIBUTABLE TO OR PAID FOR SUCH ASSETS IN AN ARM'S LENGTH TRANSACTION, OR, IN THE ABSENCE OF OTHER READILY AVAILABLE INFORMATION FROM WHICH FAIR MARKET VALUE CAN BE DETERMINED, BY REFERENCE TO THE VALUE OF SUCH ASSETS RECORDED ON A BALANCE SHEET. TOTAL ASSETS SHALL INCLUDE INTANGIBLE ASSETS. A SHOWING BY THE DOMESTIC CORPORATION OF A REASONABLE DETERMINATION OF THE FAIR MARKET VALUE OF TOTAL ASSETS SHALL BE PRIMA FACIE EVIDENCE OF THEIR FAIR MARKET VALUE.

(2) ONCE A REASONABLE DETERMINATION OF THE FAIR MARKET VALUE OF TOTAL ASSETS HAS BEEN THUS ESTABLISHED BY A DOMESTIC CORPORATION, A CLAIMANT DISPUTING THAT DETERMINATION OF VALUE SHALL THEN HAVE THE BURDEN OF ESTABLISHING A DIFFERENT FAIR MARKET VALUE OF SUCH ASSETS.

(3) FOR THE PURPOSE OF ADJUSTING THE LIMITATIONS SET FORTH IN PARAGRAPHS (A) AND (B) OF THIS SECTION TO ACCOUNT FOR THE PASSAGE OF TIME, THE FAIR MARKET VALUE OF TOTAL ASSETS AT THE TIME OF A MERGER OR CONSOLIDATION SHALL BE INCREASED ANNUALLY, UNTIL THE EARLIER OF:

(I) THE DATE OF THE SETTLEMENT, JUDGMENT OR OTHER DISCHARGE TO WHICH THE LIMITATIONS IN PARAGRAPH (A) OR (B) OF THIS SECTION ARE BEING APPLIED; OR

(II) THE DATE ON WHICH SUCH ADJUSTED FAIR MARKET VALUE IS FIRST EXCEEDED BY THE CUMULATIVE AMOUNTS PAID OR COMMITTED TO BE PAID BY OR ON BEHALF OF THE CORPORATION, OR BY OR ON BEHALF OF A TRANSFEROR, AFTER THE TIME OF THE MERGER OR CONSOLIDATION AS TO WHICH THE FAIR MARKET VALUE OF TOTAL ASSETS IS DETERMINED FOR PURPOSES OF PARAGRAPHS (A) AND (B) OF THIS SECTION, IN CONNECTION WITH SETTLEMENTS, JUDGMENTS OR OTHER DISCHARGES OF THE SUCCESSOR ASBESTOS-RELATED LIABILITIES, AT THE RATE EQUAL TO THE PRIME RATE AS LISTED IN THE FIRST EDITION OF THE WALL STREET JOURNAL PUBLISHED FOR EACH CALENDAR YEAR SINCE SUCH MERGER OR CONSOLIDATION, PLUS ONE PERCENT NOT COMPOUNDED.

(D) APPLICATION.

(1) THE LIMITATIONS SET FORTH IN PARAGRAPHS (A) AND (B) OF THIS SECTION SHALL APPLY TO MERGERS OR CONSOLIDATIONS EFFECTED UNDER THE LAWS OF THIS STATE OR ANOTHER JURISDICTION CONSUMMATED PRIOR TO MAY FIRST, TWO THOUSAND SEVEN.

(2) THE LIMITATIONS SET FORTH IN PARAGRAPHS (A) AND (B) OF THIS SECTION SHALL APPLY TO ALL ASBESTOS CLAIMS, INCLUDING EXISTING ASBESTOS CLAIMS, AND ALL LITIGATION, INCLUDING EXISTING LITIGATION, AND SHALL APPLY TO SUCCESSORS OF A DOMESTIC CORPORATION TO WHICH THIS SECTION APPLIES.

(3) THE LIMITATIONS SET FORTH IN PARAGRAPHS (A) AND (B) OF THIS SECTION SHALL NOT APPLY TO WORKERS' COMPENSATION BENEFITS PAID BY OR ON BEHALF OF AN EMPLOYER TO AN EMPLOYEE.

(4) THE LIMITATIONS SET FORTH IN PARAGRAPHS (A) AND (B) OF THIS SECTION SHALL NOT APPLY TO ANY CLAIM AGAINST A DOMESTIC CORPORATION THAT DOES NOT CONSTITUTE A SUCCESSOR ASBESTOS-RELATED LIABILITY.

(5) THE LIMITATIONS SET FORTH IN PARAGRAPHS (A) AND (B) OF THIS SECTION SHALL NOT APPLY TO ANY OBLIGATION ARISING UNDER THE NATIONAL LABOR RELATIONS ACT (49 STAT. 449, 29 U.S.C. S 151 ET SEQ.), OR UNDER ANY COLLECTIVE BARGAINING AGREEMENT.

(E) DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE FOLLOWING MEANINGS:

(1) "ASBESTOS CLAIM" SHALL MEAN ANY CLAIM, WHEREVER OR WHENEVER MADE, FOR DAMAGES, LOSSES, INDEMNIFICATION, CONTRIBUTION OR OTHER RELIEF, ARISING OUT OF, BASED ON OR IN ANY WAY RELATED TO ASBESTOS, INCLUDING PROPERTY DAMAGE CAUSED BY THE INSTALLATION, PRESENCE OR REMOVAL OF ASBESTOS, THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS, INCLUDING ANY CLAIM FOR PERSONAL INJURY, DEATH, MENTAL OR EMOTIONAL INJURY, RISK OF DISEASE OR OTHER INJURY OR THE COSTS OF MEDICAL MONITORING OR SURVEILLANCE. THE TERM SHALL ALSO INCLUDE ANY CLAIM MADE BY OR ON BEHALF OF ANY PERSON EXPOSED TO ASBESTOS OR ANY REPRESENTATIVE, SPOUSE, PARENT, CHILD OR OTHER RELATIVE OF ANY SUCH PERSON.

(2) "SUCCESSOR ASBESTOS-RELATED LIABILITIES" SHALL MEAN ANY LIABILITIES, WHETHER KNOWN OR UNKNOWN, ASSERTED OR UNASSERTED, ABSOLUTE OR CONTINGENT, ACCRUED OR UNACCRUED, LIQUIDATED OR UNLIQUIDATED OR DUE OR TO BECOME DUE, RELATED IN ANY WAY TO ASBESTOS CLAIMS, THAT WERE ASSUMED OR INCURRED BY A DOMESTIC CORPORATION OR FOREIGN CORPORATION AS A RESULT OF OR IN CONNECTION WITH A MERGER OR CONSOLIDATION, OR THE PLAN OF MERGER OR CONSOLIDATION RELATED THERETO, WITH OR INTO ANOTHER DOMESTIC CORPORATION OR FOREIGN CORPORATION EFFECTED UNDER THE LAWS OF THIS STATE OR ANOTHER JURISDICTION OR WHICH ARE RELATED IN ANY WAY TO ASBESTOS CLAIMS BASED ON THE EXERCISE OF CONTROL OR THE OWNERSHIP OF STOCK OF SUCH CORPORATION PRIOR TO SUCH MERGER OR CONSOLIDATION. THE TERM SHALL ALSO INCLUDE LIABILITIES WHICH, AFTER THE TIME OF THE MERGER OR CONSOLIDATION AS TO WHICH THE FAIR MARKET VALUE OF TOTAL ASSETS IS DETERMINED FOR PURPOSES OF PARAGRAPHS (A) AND (B) OF THIS SECTION, WERE OR ARE PAID OR OTHERWISE DISCHARGED, OR COMMITTED TO BE PAID OR OTHERWISE DISCHARGED, BY OR ON BEHALF OF THE CORPORATION, OR BY OR ON BEHALF OF A TRANSFEROR, IN CONNECTION WITH SETTLEMENTS, JUDGEMENTS OR OTHER DISCHARGES IN THIS STATE OR ANOTHER JURISDICTION.

(3) "TRANSFEROR" SHALL MEAN A DOMESTIC CORPORATION OR FOREIGN CORPORATION FROM WHICH SUCCESSOR ASBESTOS-RELATED LIABILITIES ARE ASSUMED OR INCURRED.

S 2. The civil practice law and rules is amended by adding a new section 214-f to read as follows:

S 214-F. TWO YEAR LIMITATION; EXPOSURE TO ASBESTOS. THE FOLLOWING ACTIONS AND PROCEEDINGS SHALL BE COMMENCED WITHIN TWO YEARS:

AN ACTION TO RECOVER DAMAGES FOR INJURY TO A PERSON OR FOR THE DEATH OF A PERSON CAUSED BY EXPOSURE TO ASBESTOS SHALL BE COMMENCED WITHIN TWO YEARS FROM THE DATE ON WHICH THE PERSON IS INFORMED BY A LICENSED PHYSICIAN THAT THE PERSON HAS BEEN INJURED BY SUCH EXPOSURE, OR UPON THE DATE ON WHICH THE PERSON KNEW, OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE KNOWN, THAT THE PERSON HAD AN INJURY WHICH WAS CAUSED BY SUCH EXPOSURE, WHICHEVER DATE OCCURS FIRST.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.