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2011-2012 Regular Sessions

I N A S S E M B L Y

January 10, 2011

Introduced by M. of A. ORTIZ, CASTRO -- Multi-Sponsored by -- M. of A. HIKIND, REILLY, ROBINSON -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law in relation to contingent fees for attorneys

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

- 1 Section 1. Section 474-a of the judiciary law, as amended by chapter
2 485 of the laws of 1986, is amended to read as follows:
3 S 474-a. Contingent fees for attorneys in claims or actions for
4 medical, dental or podiatric malpractice, OR IN ANY CLAIM OR ACTION FOR
5 PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH. 1. For the purpose
6 of this section, the term "contingent fee" shall mean any attorney's fee
7 in any claim or action for medical, dental or podiatric malpractice, OR
8 IN ANY CLAIM OR ACTION FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING
9 DEATH, whether determined by judgment or settlement, which is dependent
10 in whole or in part upon the success of the prosecution by the attorney
11 of such claim or action, or which is to consist of a percentage of any
12 recovery, or a sum equal to a percentage of any recovery, in such claim
13 or action.
14 2. Notwithstanding any inconsistent judicial rule, a contingent fee in
15 a medical, dental or podiatric malpractice action, OR IN ANY CLAIM OR
16 ACTION FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, shall
17 not exceed the amount of compensation provided for in the following
18 schedule:
- 19 30 percent of the first \$250,000 of the sum recovered;
20 25 percent of the next \$250,000 of the sum recovered;
21 20 percent of the next \$500,000 of the sum recovered;
22 15 percent of the next \$250,000 of the sum recovered;
23 10 percent of any amount over \$1,250,000 of the sum recovered.

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

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1 3. Such percentages shall be computed on the net sum recovered after
2 deducting from the amount recovered expenses and disbursements for
3 expert testimony and investigative or other services properly chargeable
4 to the enforcement of the claim or prosecution of the action. In comput-
5 ing the fee, the costs as taxed, including interest upon a judgment,
6 shall be deemed part of the amount recovered. For the following or
7 similar items there shall be no deduction in computing such percentages:
8 liens, assignments or claims in favor of hospitals, for medical care,
9 dental care, podiatric care and treatment by doctors and nurses, or of
10 self-insurers or insurance carriers.

11 4. In the event that claimant's or plaintiff's attorney believes in
12 good faith that the fee schedule set forth in subdivision two of this
13 section, because of extraordinary circumstances, will not give him
14 adequate compensation, application for greater compensation may be made
15 upon affidavit with written notice and an opportunity to be heard to the
16 claimant or plaintiff and other persons holding liens or assignments on
17 the recovery. Such application shall be made to the justice of the trial
18 part to which the action had been sent for trial; or, if it had not been
19 sent to a part for trial, then to the justice presiding at the trial
20 term calendar part of the court in which the action had been instituted;
21 or, if no action had been instituted, then to the justice presiding at
22 the trial term calendar part of the Supreme Court for the county in the
23 judicial department in which the attorney has an office. Upon such
24 application, the justice, in his discretion, if extraordinary circum-
25 stances are found to be present, and without regard to the claimant's or
26 plaintiff's consent, may fix as reasonable compensation for legal
27 services rendered an amount greater than that specified in the schedule
28 set forth in subdivision two of this section, provided, however, that
29 such greater amount shall not exceed the fee fixed pursuant to the
30 contractual arrangement, if any, between the claimant or plaintiff and
31 the attorney. If the application is granted, the justice shall make a
32 written order accordingly, briefly stating the reasons for granting the
33 greater compensation; and a copy of such order shall be served on all
34 persons entitled to receive notice of the application.

35 5. Any contingent fee in a claim or action for medical, dental or
36 podiatric malpractice, OR IN ANY CLAIM OR ACTION FOR PROPERTY DAMAGE OR
37 PERSONAL INJURY, INCLUDING DEATH, brought on behalf of an infant shall
38 continue to be subject to the provisions of section four hundred seven-
39 ty-four of this chapter.

40 S 2. This act shall take effect immediately.