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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. WEINSTEIN, ORTIZ -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, CLARK, COOK, CYMBROWITZ, GLICK, JAFFEE -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules and the surrogate's court procedure act, in relation to addressing delay in payment of a settlement where the settlement requires court approval

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

1 Section 1. Section 1207 of the civil practice law and rules, as
2 amended by chapter 355 of the laws of 1986, is amended to read as
3 follows:
4 S 1207. Settlement of action or claim by infant, judicially declared
5 incompetent or conservatee, by whom motion made; special proceeding;
6 notice; order of settlement. (A) Upon motion of a guardian of the prop-
7 erty or guardian ad litem of an infant or, if there is no such guardian,
8 then of a parent having legal custody of an infant, or if there is no
9 such parent, by another person having legal custody, or if the infant is
10 married, by an adult spouse residing with the infant, or of the commit-
11 tee of the property of a person judicially declared to be incompetent,
12 or of the conservator of the property of a conservatee, the court may
13 order settlement of any action commenced by or on behalf of the infant,
14 incompetent or conservatee. If no action has been commenced, a special
15 proceeding may be commenced upon petition of such a representative for
16 settlement of any claim by the infant, incompetent or conservatee in any
17 court where an action for the amount of the proposed settlement could
18 have been commenced. Unless otherwise provided by rule of the chief
19 administrator of the courts, if no motion term is being held and there
20 is no justice of the supreme court available in a county where the
21 action or an action on the claim is triable, such a motion may be made,
22 or special proceeding may be commenced, in a county court and the county

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

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1 judge shall act with the same power as a justice of the supreme court
2 even though the amount of the settlement may exceed the jurisdictional
3 limits of the county court. Notice of the motion or petition shall be
4 given as directed by the court. An order on such a motion shall have the
5 effect of a judgment. Such order, or the judgment in a special proceed-
6 ing, shall be entered without costs and shall approve the fee for the
7 infant's, incompetent's or conservatee's attorney, if any.

8 (B) SUCH ORDER, OR THE JUDGMENT IN A SPECIAL PROCEEDING, SHALL PROVIDE
9 FOR THE PAYMENT OF INTEREST ON THE SETTLEMENT AMOUNT AT THE STATUTORY
10 INTEREST RATE ON JUDGMENTS, TO BE COMPUTED COMMENCING THE FIFTEENTH DAY,
11 OR WHERE THE SETTLING DEFENDANT IS A MUNICIPAL OR STATE ENTITY AS SET
12 FORTH IN SUBDIVISION (B) OR (C) OF SECTION FIVE THOUSAND THREE-A OF THIS
13 CHAPTER THEN COMMENCING FROM THE SIXTY-FIRST DAY FOLLOWING THE DAY THAT
14 THE PROPOSED SETTLEMENT IS ENTERED INTO AND CONTINUING UNTIL THE DAY
15 THAT THE ORDER OR JUDGMENT IS SIGNED. WHERE THE PROPOSED SETTLEMENT
16 INCLUDES AN ANNUITY TO PROVIDE FOR PERIODIC PAYMENTS, INTEREST SHALL NOT
17 BE COMPUTED ON THE PRESENT VALUE OF THE ANNUITY PROVIDED THAT THE
18 DEFENDANT TIMELY FUNDS THE ANNUITY, BUT INTEREST SHALL ACCRUE ON ANY
19 PERIODIC PAYMENT MADE LATER THAN THE PAYMENT SCHEDULE SET FORTH IN THE
20 PROPOSED SETTLEMENT. THE DATE AND TERMS OF THE PROPOSED SETTLEMENT SHALL
21 BE SET FORTH TO ALL COUNSEL OR PARTIES IN WRITING, OR IN A COURT TRAN-
22 SCRIPT, AND A COPY OF THE WRITING OR TRANSCRIPT SHALL BE PROVIDED TO THE
23 COURT IN ORDER TO CALCULATE THE DAYS OF INTEREST.

24 S 2. Paragraphs 7 and 8 of subdivision (a) of rule 1208 of the civil
25 practice law and rules, paragraph 7 as amended and paragraph 8 as added
26 by chapter 844 of the laws of 1968, are amended and a new paragraph 9 is
27 added to read as follows:

28 7. whether reimbursement for medical or other expenses has been
29 received from any source; [and]

30 8. whether the infant's or incompetent's representative or any member
31 of the infant's or incompetent's family has made a claim for damages
32 alleged to have been suffered as a result of the same occurrence giving
33 rise to the infant's or incompetent's claim and, if so, the amount paid
34 or to be paid in settlement of such claim or if such claim has not been
35 settled the reasons therefor[.]; AND

36 9. THE DAILY RATE OF INTEREST ON THE SETTLEMENT COMPUTED PURSUANT TO
37 SUBDIVISION (B) OF SECTION TWELVE HUNDRED SEVEN OF THIS ARTICLE AND A
38 COPY OF THE COURT TRANSCRIPT OR WRITING SETTING FORTH THE DATE AND TERMS
39 OF THE PROPOSED SETTLEMENT.

40 S 3. Rule 1208 of the civil practice law and rules is amended by
41 adding a new subdivision (g) to read as follows:

42 (G) DELIVERY OF ORDER. UPON SIGNING THE ORDER, OR JUDGMENT IN A
43 SPECIAL PROCEEDING, THE COURT SHALL SEND A COPY OF THE ORDER OR JUDGMENT
44 TO THE ATTORNEY REPRESENTING THE INFANT OR INCOMPETENT, OR IF THERE IS
45 NO ATTORNEY, TO THE REPRESENTATIVE OF THE INFANT OR INCOMPETENT.

46 S 4. Subdivisions (a), (b) and (c) of section 5003-a of the civil
47 practice law and rules, as added by chapter 269 of the laws of 1992, are
48 amended to read as follows:

49 (a) When an action to recover damages has been settled, any settling
50 defendant, except those defendants to whom subdivisions (b) and (c) of
51 this section apply, shall pay all sums due to any settling plaintiff
52 within twenty-one days, OR IF IT IS AN ACTION WHICH REQUIRES JUDICIAL
53 APPROVAL OF SETTLEMENT, WITHIN FOURTEEN DAYS of tender, by the settling
54 plaintiff to the settling defendant, of a duly executed release and a
55 stipulation discontinuing action executed on behalf of the settling
56 plaintiff.

1 (b) When an action to recover damages has been settled and the settl-
2 ing defendant is a municipality or any subdivision thereof, or any
3 public corporation that is not indemnified by the state, it shall pay
4 all sums due to any settling plaintiff within ninety days, OR IF IT IS
5 AN ACTION WHICH REQUIRES JUDICIAL APPROVAL OF SETTLEMENT, WITHIN SIXTY
6 DAYS of tender, by the settling plaintiff to it, of duly executed
7 release and a stipulation discontinuing action executed on behalf of the
8 settling plaintiff. The provisions of this [paragraph] SUBDIVISION shall
9 not inure to the benefit of any insurance carrier for a municipality or
10 any subdivision thereof, or any public corporation that is not indem-
11 nified by the state. Any such insurance carrier shall pay all sums due
12 to any settling plaintiff in accordance with the provisions of subdivi-
13 sion (a) of this section.

14 (c) When an action to recover damages has been settled and the settl-
15 ing defendant is the state, an officer or employee of the state entitled
16 to indemnification pursuant to section seventeen of the public officers
17 law, or a public benefit corporation indemnified by the state, payment
18 of all sums due to any settling plaintiff shall be made within ninety
19 days, OR IF IT IS AN ACTION WHICH REQUIRES JUDICIAL APPROVAL OF SETTLE-
20 MENT, WITHIN SIXTY DAYS of the comptroller's determination that all
21 papers required to effectuate the settlement have been received by him
22 OR HER. The provisions of this [paragraph] SUBDIVISION shall not inure
23 to the benefit of any insurance carrier for the state, an officer or
24 employee of the state entitled to indemnification pursuant to section
25 seventeen of the public officers law, or a public benefit corporation
26 indemnified by the state. Any such insurance carrier shall pay all sums
27 due to any settling plaintiff in accordance with the provisions of
28 subdivision (a) of this section.

29 S 5. Section 2220 of the surrogate's court procedure act is amended by
30 adding a new subdivision 6 to read as follows:

31 6. THE ORDER OR DECREE SHALL PROVIDE FOR THE PAYMENT OF INTEREST ON
32 THE SETTLEMENT AMOUNT AT THE STATUTORY INTEREST ON JUDGMENT RATE PER
33 ANNUM, TO BE COMPUTED FROM THE FIFTEENTH DAY, OR WHERE THE SETTLING
34 DEFENDANT IS A MUNICIPAL OR STATE ENTITY AS SET FORTH IN SUBDIVISION (B)
35 OR (C) OF SECTION FIVE THOUSAND THREE-A OF THE CIVIL PRACTICE LAW AND
36 RULES, THEN FROM THE SIXTY-FIRST DAY FOLLOWING THE DAY THAT THE PROPOSED
37 SETTLEMENT IS ENTERED INTO AND CONTINUING UNTIL THE DAY THAT THE ORDER
38 OR JUDGMENT IS SIGNED. WHERE THE PROPOSED SETTLEMENT INCLUDES AN ANNUITY
39 TO PROVIDE FOR PERIODIC PAYMENT, INTEREST SHALL NOT BE COMPUTED ON THE
40 PRESENT VALUE OF THE ANNUITY PROVIDED THAT THE DEFENDANT TIMELY FUNDS
41 THE ANNUITY, BUT INTEREST SHALL ACCRUE ON ANY PERIODIC PAYMENT MADE
42 LATER THAN THE PAYMENT SCHEDULE SET FORTH IN THE PROPOSED SETTLEMENT.
43 THE DATE AND TERMS OF THE PROPOSED SETTLEMENT SHALL BE SET FORTH TO ALL
44 COUNSEL OR PARTIES IN WRITING, OR IN A COURT TRANSCRIPT, AND A COPY OF
45 THE WRITING OR TRANSCRIPT SHALL BE PROVIDED TO THE COURT IN ORDER TO
46 CALCULATE THE DAYS OF INTEREST.

47 S 6. This act shall take effect on the first of January next succeed-
48 ing the date on which it shall have become a law, and shall apply to all
49 actions settled on or after such effective date.