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

4306

2011-2012 Regular Sessions

I N S E N A T E

March 28, 2011

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 general obligations law, in relation to structured settlements

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

Section 1. Legislative intent. The legislature hereby finds and declares that the continued availability and use of structured settlement agreements which provide plaintiffs with periodic payments in satisfaction of a tortious claim or worker's compensation claim in lieu of a lump sum payment is of paramount importance to the public policy of this state which recognizes that injured persons have a right to money damages when injured by the negligent acts or statutorily recognized acts of others. It has long been concluded that spreading out large lump sum awards over the life of a claimant and in some cases, his or her dependents, can be in their best interest provided there is full disclosure of all the terms of the settlement agreement. By the terms of this act, such public policy will now be enhanced by permitting an objective review of the terms of the funding mechanism by the personal representative of the claimant, a representative who is obligated only to the claimant and his or her best interest. Long standing public policy demands full and proper disclosure to a claimant of the viability and reliability of the party who will actually be making the payments agreed upon, and in the spirit of transparency and full and proper disclosure the legislature recognizes the right of a claimant to the professional services of an agent or broker who represents only his or her best interest, and not the best interest of the insurer. By enactment of the provisions of this act, the legislature believes that the playing field will be now leveled as it applies to a claimant's right to equal representation and in doing so it recognizes the rights of a claimant with respect to the acquisition of a funding mechanism or issuer of the

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

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pertinent annuity policy are just as important as the rights of the provider of the periodic payments.

S 2. Section 5-1701 of the general obligations law is amended by adding a new subdivision (a-1) to read as follows:

(A-1) "CLAIMANT'S STRUCTURED BROKER" MEANS A PERSON SECURED AND APPOINTED BY THE CLAIMANT, OR BY THE CLAIMANT'S LEGAL REPRESENTATIVE ON BEHALF OF A CLAIMANT, TO REPRESENT SUCH CLAIMANT'S INTERESTS IN THE ACQUISITION OF A FUNDING MECHANISM FOR A STRUCTURED SETTLEMENT, INCLUDING BUT NOT LIMITED TO THE ACQUISITION OF AN ANNUITY POLICY FROM A LIFE INSURER WHICH WILL BE USED TO FUND THE PERIODIC PAYMENTS PROVIDED FOR IN A SETTLEMENT AGREEMENT.

S 3. Subdivision (e) of section 5-1702 of the general obligations law is relettered subdivision (f) and a new subdivision (e) is added to read as follows:

(E) A STATEMENT IN BOLD PRINT THAT THE CLAIMANT IS ENTITLED TO SECURE THE SERVICES OF A CLAIMANT'S STRUCTURED SETTLEMENT BROKER WHO SHALL REPRESENT THE CLAIMANT IN THE ACQUISITION BY THE DEFENDANT OR THE DEFENDANT'S INSURER OF THE FUNDING MECHANISM, INCLUDING BUT NOT LIMITED TO AN ANNUITY POLICY FROM A LIFE INSURER USED TO FUND PERIODIC PAYMENTS PROVIDED FOR IN A SETTLEMENT AGREEMENT; AND

S 4. The general obligations law is amended by adding a new section 5-1702-a to read as follows:

S 5-1702-A. CLAIMANT'S RIGHT TO SECURE THE SERVICES OF A STRUCTURED SETTLEMENT BROKER. (A) IN NEGOTIATING A STRUCTURED SETTLEMENT OF CLAIMS BROUGHT BY OR ON BEHALF OF A CLAIMANT WHO IS DOMICILED IN THIS STATE, THE CLAIMANT SHALL HAVE THE ABSOLUTE RIGHT TO SECURE THE SERVICES OF A CLAIMANT'S STRUCTURED SETTLEMENT BROKER. IT SHALL BE THE DUTY OF THE CLAIMANT'S ATTORNEY AND IF HE/SHE IS NOT REPRESENTED BY AN ATTORNEY, THE COURT APPROVING THE SETTLEMENT, TO ADVISE THE CLAIMANT OF THIS RIGHT AT ANY TIME AN OFFER OF SETTLEMENT IS MADE BY THE DEFENDANT OR ON THE DEFENDANT'S BEHALF WHICH INCLUDES A STRUCTURED SETTLEMENT.

(B) THE CLAIMANT'S STRUCTURED SETTLEMENT BROKER SHALL REPRESENT THE CLAIMANT IN DETERMINING THE FUNDING MECHANISM TO BE USED IN SUPPORT OF A STRUCTURED SETTLEMENT AGREEMENT, AND WHERE SUCH FUNDING MECHANISM INVOLVES THE ACQUISITION AND USE OF AN ANNUITY POLICY USED TO FUND THE PERIODIC PAYMENTS. NO SUCH FUNDING MECHANISM SHALL BE AGREED UPON AND NO SUCH POLICY SHALL BE APPROVED TO FUND ANY SETTLEMENT AGREEMENT UNLESS THE CLAIMANT'S STRUCTURED SETTLEMENT BROKER HAS BEEN NOTIFIED OF ALL OF THE DETAILS OF THE AGREEMENT, BEEN PROVIDED WITH A COPY OF THE CONTRACT TO BE AGREED TO BY THE CLAIMANT AND THE FUNDING MECHANISM, AND WHERE THE AGREEMENT IS TO BE FUNDED BY AN ANNUITY, A COPY OF THE POLICY, AND THAT THE CLAIMANT'S APPOINTED STRUCTURED SETTLEMENT BROKER HAS APPROVED ALL THE TERMS THEREOF AS BEING IN THE BEST INTEREST OF THE CLAIMANT. ANY SUCH FUNDING MECHANISM OR ANNUITY POLICY MAY BE SECURED FROM ANY QUALIFIED INSURER WHICH MAY BE RECOMMENDED BY THE CLAIMANT'S STRUCTURED SETTLEMENT BROKER, AND NO SUCH SOURCE OR INSURER SHALL BE DISQUALIFIED SOLELY BECAUSE OF THE RECOMMENDATION SO MADE. WHERE AN AGREEMENT PROVIDING FOR THE SAME CANNOT BE AGREED TO BY THE PARTIES PRIOR TO ITS FINAL APPROVAL OF THE SETTLEMENT AGREEMENT, THE CLAIMANT MAY, THROUGH THE CLAIMANT'S SETTLEMENT BROKER, DESIGNATE A SOURCE OR INSURER OF HIS CHOICE TO SO FUND THE AGREEMENT.

(C) THE FEE OR COMMISSION, HOWEVER IDENTIFIED, TO BE PAID TO A CLAIMANT'S STRUCTURED SETTLEMENT BROKER SHALL NOT BE A SEPARATE AND ADDITIONAL FEE PAID BY THE CLAIMANT FROM ANY PART OF THE AMOUNT OF THE CLAIM SETTLED, BUT SHALL BE PAID FROM THE AMOUNT OF THE FEE OR COMMISSION WHICH WOULD BE PAID BY THE ISSUER OF THE FUNDING MECHANISM OR ANNUITY

POLICY. NO DEFENDANT OR ITS INSURER SHALL REFUSE TO ENTER INTO AN AGREEMENT PROVIDING FOR A STRUCTURED SETTLEMENT WHEREIN A FUNDING MECHANISM OR ANNUITY POLICY WILL BE ISSUED TO FUND THE SETTLEMENT AGREEMENT, SOLELY ON THE GROUNDS THAT THE CLAIMANT IS REPRESENTED BY A CLAIMANT'S STRUCTURED SETTLEMENT BROKER. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CLAIMANT'S STRUCTURED SETTLEMENT BROKER SHALL BE ENTITLED TO A SHARE OF THE COMMISSION WHICH IS OTHERWISE PAID IN CONNECTION WITH THE ACQUISITION OF A FUNDING MECHANISM OR THE ISSUANCE OF AN ANNUITY POLICY IN AN AMOUNT AGREED TO BETWEEN THE CLAIMANT'S STRUCTURED SETTLEMENT BROKER AND THE BROKER DESIGNATED AS REPRESENTING THE DEFENDANT OR THEIR INSURER IN THE PURCHASE OF A FUNDING MECHANISM OR ANNUITY. IF THERE IS NO SUCH AGREEMENT, THE CLAIMANT'S DESIGNATED STRUCTURED SETTLEMENT BROKER WILL BE ENTITLED TO AN AMOUNT WHICH IS ONE-HALF OF THE TOTAL STATUTORY COMMISSION WHICH WOULD OTHERWISE BE PAID IN CONNECTION WITH SUCH ACQUISITION OR ISSUANCE. IN NO EVENT, SHALL ANY STRUCTURED SETTLEMENT BROKER LICENSED AND APPOINTED BY AN INSURER OF THIS STATE, ENTER INTO ANY SUPPLEMENTAL AGREEMENT NOT DISCLOSED TO THE CLAIMANT AND THE COURT, WHETHER ORALLY OR IN WRITING, WHICH AGREEMENT PROVIDES FOR THE PAYMENT OF, OR PAYS ANY AMOUNT OR SHARE OF A COMMISSION INCONSISTENT WITH, OR IN DEFERENCE TO, THAT AMOUNT PROVIDED FOR IN THE FOREGOING PROVISIONS OF THIS SUBDIVISION, NOR SHALL ANY FUNDING MECHANISM OR INSURER ISSUING THE ANNUITY PROVIDE ANY ADDITIONAL INCENTIVES, CONTRIBUTIONS, GIFTS OF MONEY OR IN KIND CONTRIBUTIONS, EITHER PRIOR TO, OR AFTER ENTERING SUCH AGREEMENT AS AN INDUCEMENT TO THE AGREEMENT SO PROVIDED.

(D) NOTHING IN THIS SECTION SHALL IN ANY WAY BE DEEMED OR INTERPRETED AS TRANSFERRING AN OWNERSHIP RIGHT IN THE ANNUITY POLICY TO A CLAIMANT, AND ANY ADVANTAGES OR CONSIDERATIONS WITH RESPECT TO THE TAXABILITY OF PERIODIC PAYMENTS PURSUANT TO STATE OR FEDERAL LAW SHALL NOT BE ALTERED OR AFFECTED BY THE PROVISIONS OF THIS SECTION. ANY TAX BENEFITS EXISTING ON THE EFFECTIVE DATE OF THIS SECTION SHALL BE CONTINUED IN FULL FORCE AND EFFECT AS IF THE PROVISIONS OF THIS SECTION HAD NOT BEEN ENACTED.

S 5. This act shall take effect on the thirtieth day after it shall have become a law and shall apply to structured settlement agreements entered into on and after such date.