

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that the continued availability and use of structured settle-
3 ment agreements which provide plaintiffs with periodic payments in
4 satisfaction of a tortious claim or worker's compensation claim in lieu
5 of a lump sum payment is of paramount importance to the public policy of
6 this state which recognizes that injured persons have a right to money
7 damages when injured by the negligent acts or statutorily recognized
8 acts of others. It has long been concluded that spreading out large lump
9 sum awards over the life of a claimant and in some cases, his or her
10 dependents, can be in their best interest provided there is full disclo-
11 sure of all the terms of the settlement agreement. By the terms of this
12 act, such public policy will now be enhanced by permitting an objective
13 review of the terms of the funding mechanism by the personal represen-
14 tative of the claimant, a representative who is obligated only to the
15 claimant and his or her best interest. Long standing public policy
16 demands full and proper disclosure to a claimant of the viability and
17 reliability of the party who will actually be making the payments agreed
18 upon, and in the spirit of transparency and full and proper disclosure
19 the legislature recognizes the right of a claimant to the professional
20 services of an agent or broker who represents only his or her best
21 interest, and not the best interest of the insurer. By enactment of the
22 provisions of this act, the legislature believes that the playing field
23 will be now leveled as it applies to a claimant's right to equal repre-
24 sentation and in doing so it recognizes the rights of a claimant with
25 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.

LBD05169-01-1

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

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

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

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

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

21 S 4. The general obligations law is amended by adding a new section
22 5-1702-a to read as follows:

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

32 (B) THE CLAIMANT'S STRUCTURED SETTLEMENT BROKER SHALL REPRESENT THE
33 CLAIMANT IN DETERMINING THE FUNDING MECHANISM TO BE USED IN SUPPORT OF A
34 STRUCTURED SETTLEMENT AGREEMENT, AND WHERE SUCH FUNDING MECHANISM
35 INVOLVES THE ACQUISITION AND USE OF AN ANNUITY POLICY USED TO FUND THE
36 PERIODIC PAYMENTS. NO SUCH FUNDING MECHANISM SHALL BE AGREED UPON AND NO
37 SUCH POLICY SHALL BE APPROVED TO FUND ANY SETTLEMENT AGREEMENT UNLESS
38 THE CLAIMANT'S STRUCTURED SETTLEMENT BROKER HAS BEEN NOTIFIED OF ALL OF
39 THE DETAILS OF THE AGREEMENT, BEEN PROVIDED WITH A COPY OF THE CONTRACT
40 TO BE AGREED TO BY THE CLAIMANT AND THE FUNDING MECHANISM, AND WHERE THE
41 AGREEMENT IS TO BE FUNDED BY AN ANNUITY, A COPY OF THE POLICY, AND THAT
42 THE CLAIMANT'S APPOINTED STRUCTURED SETTLEMENT BROKER HAS APPROVED ALL
43 THE TERMS THEREOF AS BEING IN THE BEST INTEREST OF THE CLAIMANT. ANY
44 SUCH FUNDING MECHANISM OR ANNUITY POLICY MAY BE SECURED FROM ANY QUALI-
45 FIED INSURER WHICH MAY BE RECOMMENDED BY THE CLAIMANT'S STRUCTURED
46 SETTLEMENT BROKER, AND NO SUCH SOURCE OR INSURER SHALL BE DISQUALIFIED
47 SOLELY BECAUSE OF THE RECOMMENDATION SO MADE. WHERE AN AGREEMENT
48 PROVIDING FOR THE SAME CANNOT BE AGREED TO BY THE PARTIES PRIOR TO ITS
49 FINAL APPROVAL OF THE SETTLEMENT AGREEMENT, THE CLAIMANT MAY, THROUGH
50 THE CLAIMANT'S SETTLEMENT BROKER, DESIGNATE A SOURCE OR INSURER OF HIS
51 CHOICE TO SO FUND THE AGREEMENT.

52 (C) THE FEE OR COMMISSION, HOWEVER IDENTIFIED, TO BE PAID TO A CLAIM-
53 ANT'S STRUCTURED SETTLEMENT BROKER SHALL NOT BE A SEPARATE AND ADDI-
54 TIONAL FEE PAID BY THE CLAIMANT FROM ANY PART OF THE AMOUNT OF THE CLAIM
55 SETTLED, BUT SHALL BE PAID FROM THE AMOUNT OF THE FEE OR COMMISSION
56 WHICH WOULD BE PAID BY THE ISSUER OF THE FUNDING MECHANISM OR ANNUITY

1 POLICY. NO DEFENDANT OR ITS INSURER SHALL REFUSE TO ENTER INTO AN AGREE-
2 MENT PROVIDING FOR A STRUCTURED SETTLEMENT WHEREIN A FUNDING MECHANISM
3 OR ANNUITY POLICY WILL BE ISSUED TO FUND THE SETTLEMENT AGREEMENT, SOLE-
4 LY ON THE GROUNDS THAT THE CLAIMANT IS REPRESENTED BY A CLAIMANT'S
5 STRUCTURED SETTLEMENT BROKER. NOTWITHSTANDING ANY OTHER PROVISION OF
6 LAW, A CLAIMANT'S STRUCTURED SETTLEMENT BROKER SHALL BE ENTITLED TO A
7 SHARE OF THE COMMISSION WHICH IS OTHERWISE PAID IN CONNECTION WITH THE
8 ACQUISITION OF A FUNDING MECHANISM OR THE ISSUANCE OF AN ANNUITY POLICY
9 IN AN AMOUNT AGREED TO BETWEEN THE CLAIMANT'S STRUCTURED SETTLEMENT
10 BROKER AND THE BROKER DESIGNATED AS REPRESENTING THE DEFENDANT OR THEIR
11 INSURER IN THE PURCHASE OF A FUNDING MECHANISM OR ANNUITY. IF THERE IS
12 NO SUCH AGREEMENT, THE CLAIMANT'S DESIGNATED STRUCTURED SETTLEMENT
13 BROKER WILL BE ENTITLED TO AN AMOUNT WHICH IS ONE-HALF OF THE TOTAL
14 STATUTORY COMMISSION WHICH WOULD OTHERWISE BE PAID IN CONNECTION WITH
15 SUCH ACQUISITION OR ISSUANCE. IN NO EVENT, SHALL ANY STRUCTURED SETTLE-
16 MENT BROKER LICENSED AND APPOINTED BY AN INSURER OF THIS STATE, ENTER
17 INTO ANY SUPPLEMENTAL AGREEMENT NOT DISCLOSED TO THE CLAIMANT AND THE
18 COURT, WHETHER ORALLY OR IN WRITING, WHICH AGREEMENT PROVIDES FOR THE
19 PAYMENT OF, OR PAYS ANY AMOUNT OR SHARE OF A COMMISSION INCONSISTENT
20 WITH, OR IN DEFERENCE TO, THAT AMOUNT PROVIDED FOR IN THE FOREGOING
21 PROVISIONS OF THIS SUBDIVISION, NOR SHALL ANY FUNDING MECHANISM OR
22 INSURER ISSUING THE ANNUITY PROVIDE ANY ADDITIONAL INCENTIVES, CONTRIB-
23 UTIONS, GIFTS OF MONEY OR IN KIND CONTRIBUTIONS, EITHER PRIOR TO, OR
24 AFTER ENTERING SUCH AGREEMENT AS AN INDUCEMENT TO THE AGREEMENT SO
25 PROVIDED.

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

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