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

1558

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:

Section 1. Section 474-a of the judiciary law, as amended by chapter 485 of the laws of 1986, is amended to read as follows:

S 474-a. Contingent fees for attorneys in claims or actions for medical, dental or podiatric malpractice, OR IN ANY CLAIM OR ACTION FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH. 1. For the purpose of this section, the term "contingent fee" shall mean any attorney's fee in any claim or action for medical, dental or podiatric malpractice, OR IN ANY CLAIM OR ACTION FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, whether determined by judgment or settlement, which is dependent in whole or in part upon the success of the prosecution by the attorney of such claim or action, or which is to consist of a percentage of any recovery, or a sum equal to a percentage of any recovery, in such claim or action.

2. Notwithstanding any inconsistent judicial rule, a contingent fee in a medical, dental or podiatric malpractice action, OR IN ANY CLAIM OR ACTION FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, shall not exceed the amount of compensation provided for in the following schedule:

30 percent of the first $250,000 of the sum recovered;
25 percent of the next $250,000 of the sum recovered;
20 percent of the next $500,000 of the sum recovered;
15 percent of the next $250,000 of the sum recovered;
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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3. Such percentages shall be computed on the net sum recovered after deducting from the amount recovered expenses and disbursements for expert testimony and investigative or other services properly chargeable to the enforcement of the claim or prosecution of the action. In computing the fee, the costs as taxed, including interest upon a judgment, shall be deemed part of the amount recovered. For the following or similar items there shall be no deduction in computing such percentages: liens, assignments or claims in favor of hospitals, for medical care, dental care, podiatric care and treatment by doctors and nurses, or of self-insurers or insurance carriers.

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

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

S 2. This act shall take effect immediately.