

4306

2011-2012 Regular Sessions

I N   S E N A T E

March 28, 2011

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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.

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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.