

4993--B

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 14, 2013

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Introduced by M. of A. FARRELL, ORTIZ, WRIGHT, MAGNARELLI, PEOPLES-STOKES, HOOPER, CLARK -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to the undertaking required during the pendency of a stay of enforcement of a judgment against a participating or non-participating manufacturer under the master settlement agreement

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

1     Section 1. The civil practice law and rules is amended by adding a new  
2     section 5519-a to read as follows:  
3     S 5519-A. STAY OF ENFORCEMENT FOR MASTER SETTLEMENT AGREEMENT PARTIC-  
4     IPATING AND NON-PARTICIPATING MANUFACTURERS OR THEIR SUCCESSORS. (A) IN  
5     CIVIL LITIGATION CONCERNING A THEORY OF LIABILITY RELATING TO THE HEALTH  
6     EFFECTS, DESIGN, OR MARKETING OF, OR REPRESENTATIONS CONCERNING, TOBACCO  
7     PRODUCTS AS DEFINED BY THE MASTER SETTLEMENT AGREEMENT, AND THAT  
8     INVOLVES A PARTICIPATING OR NON-PARTICIPATING MANUFACTURER, AS THOSE  
9     TERMS ARE DEFINED IN THE MASTER SETTLEMENT AGREEMENT, OR ANY OF THEIR  
10    SUCCESSORS, OR PARENT ENTITIES FOUND TO BE LIABLE BY VIRTUE OF THEIR  
11    STATUS AS PARENT TO HAVE CONTROLLED THE CONDUCT OF SUCH MANUFACTURERS OR  
12    THEIR SUCCESSORS, THE UNDERTAKING REQUIRED DURING THE PENDENCY OF ALL  
13    APPEALS OR DISCRETIONARY REVIEWS BY ANY APPELLATE COURTS IN ORDER TO  
14    STAY THE EXECUTION OF ANY JUDGMENT OR ORDER GRANTING LEGAL, EQUITABLE OR  
15    OTHER RELIEF DURING THE ENTIRE COURSE OF APPELLATE REVIEW, INCLUDING  
16    REVIEW BY THE UNITED STATES SUPREME COURT, SHALL BE SET PURSUANT TO THE  
17    APPLICABLE PROVISIONS OF LAW; PROVIDED, HOWEVER, THAT THE COURT OF  
18    ORIGINAL INSTANCE SHALL SET THE TOTAL UNDERTAKING REQUIRED IN AN AMOUNT

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

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1 NOT TO EXCEED TWO HUNDRED FIFTY MILLION DOLLARS, REGARDLESS OF THE VALUE  
2 OF THE JUDGMENT APPEALED. NOTHING HEREIN SHALL AFFECT THE DISCRETION OF  
3 AN APPELLATE COURT PURSUANT TO SUBDIVISION (C) OF SECTION FIFTY-FIVE  
4 HUNDRED NINETEEN OF THIS ARTICLE. WHERE THE COURT SETS THE UNDERTAKING  
5 IN AN AMOUNT LESS THAN THE JUDGMENT, THE APPEAL SHALL BE DILIGENTLY  
6 PROSECUTED IN GOOD FAITH.

7 (B) AS USED IN THIS SECTION, "MASTER SETTLEMENT AGREEMENT" SHALL HAVE  
8 THE SAME MEANING AS SET FORTH IN SUBDIVISION FIVE OF SECTION THIRTEEN  
9 HUNDRED NINETY-NINE-OO OF THE PUBLIC HEALTH LAW.

10 (C) NOTHING CONTAINED IN THIS SECTION SHALL BE READ TO ALLOW: (I)  
11 SUCH PARTICIPATING MANUFACTURER TO CURTAIL ITS FINANCIAL OBLIGATION  
12 UNDER THE MASTER SETTLEMENT AGREEMENT; OR (II) SUCH NON-PARTICIPATING  
13 MANUFACTURER TO CURTAIL ITS OBLIGATION TO PLACE THE AMOUNTS SPECIFIED IN  
14 SUBDIVISION TWO OF SECTION THIRTEEN HUNDRED NINETY-NINE-PP OF THE PUBLIC  
15 HEALTH LAW INTO A QUALIFIED ESCROW FUND AS DEFINED IN SUBDIVISION SIX OF  
16 SECTION THIRTEEN HUNDRED NINETY-NINE-OO OF THE PUBLIC HEALTH LAW.

17 S 2. This act shall take effect on the thirtieth day after it shall  
18 have become a law, and shall apply to any cause of action pending on or  
19 filed on or after such effective date.