

3852--A

Cal. No. 1190

2013-2014 Regular Sessions

I N   S E N A T E

February 22, 2013

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Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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. Legislative intent. The legislature hereby finds that this  
2     amendment of the laws governing the security necessary to stay enforce-  
3     ment of a judgment while on appeal is necessary to preserve the revenue  
4     stream to the state provided under the master settlement agreement.  
5     S 2. The civil practice law and rules is amended by adding a new  
6     section 5519-a to read as follows:  
7     S 5519-A. STAY OF ENFORCEMENT FOR MASTER SETTLEMENT AGREEMENT PARTIC-  
8     IPATING AND NON-PARTICIPATING MANUFACTURERS OR THEIR SUCCESSORS. (A) IN  
9     CIVIL LITIGATION UNDER ANY LEGAL THEORY THAT INVOLVES A PARTICIPATING OR  
10    NON-PARTICIPATING MANUFACTURER, AS THOSE TERMS ARE DEFINED IN THE MASTER  
11    SETTLEMENT AGREEMENT, OR ANY OF THEIR PARENTS OR SUCCESSORS, THE UNDER-  
12    TAKING REQUIRED DURING THE PENDENCY OF ALL APPEALS OR DISCRETIONARY  
13    REVIEWS BY ANY APPELLATE COURTS IN ORDER TO STAY THE EXECUTION OF ANY  
14    JUDGMENT OR ORDER GRANTING LEGAL, EQUITABLE OR OTHER RELIEF DURING THE  
15    ENTIRE COURSE OF APPELLATE REVIEW, INCLUDING REVIEW BY THE UNITED STATES  
16    SUPREME COURT, SHALL BE SET PURSUANT TO THE APPLICABLE PROVISIONS OF LAW  
17    OR COURT RULES; PROVIDED, HOWEVER, THAT THE TOTAL UNDERTAKING REQUIRED  
18    OF ALL APPELLANTS COLLECTIVELY SHALL NOT EXCEED TWO HUNDRED FIFTY  
19    MILLION DOLLARS, REGARDLESS OF THE VALUE OF THE JUDGMENT APPEALED.  
20    WHERE THE COURT SETS THE UNDERTAKING IN AN AMOUNT LESS THAN THE JUDG-

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

LBD08897-02-3

MENT, THE APPEAL SHALL BE DILIGENTLY PROSECUTED IN GOOD FAITH. IF THE APPEAL IS NOT DILIGENTLY PROSECUTED IN GOOD FAITH, THE COURT MAY LIFT THE STAY OF ENFORCEMENT. IN ADDITION, IF A DEFENDANT FAILS TO MAKE ANY PAYMENTS TO THE STATE OR ITS POLITICAL SUBDIVISIONS AS MAY BE REQUIRED UNDER THE MASTER SETTLEMENT AGREEMENT, EXCEPT FOR PAYMENTS THAT ARE DISPUTED IN GOOD FAITH, THE COURT SHALL HAVE DISCRETION TO LIFT THE STAY OF ENFORCEMENT.

(B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION, UPON A FINDING BY THE COURT THAT AN APPELLANT IS DISSIPATING ASSETS OUTSIDE THE COURSE OF ORDINARY BUSINESS TO AVOID PAYMENT OF A JUDGMENT, THE COURT MAY LIFT THE STAY OF ENFORCEMENT OR REQUIRE THE APPELLANT TO POST A BOND IN AN AMOUNT UP TO THE TOTAL AMOUNT OF THE JUDGMENT.

(C) UPON A SHOWING OF GOOD CAUSE THAT THE APPELLANT IS NOT DILIGENTLY PROSECUTING THE APPEAL IN GOOD FAITH AS SET FORTH IN SUBDIVISION (A) OF THIS SECTION OR IS DISSIPATING ASSETS AS SET FORTH IN SUBDIVISION (B) OF THIS SECTION, AN APPELLATE COURT MAY LIFT THE STAY OF ENFORCEMENT OR REQUIRE APPELLANT TO POST A BOND IN AN AMOUNT UP TO THE TOTAL AMOUNT OF THE JUDGMENT.

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

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

S 3. This act shall take effect on the thirtieth day after it shall have become a law, and shall apply to any cause of action pending on or filed on or after such effective date.