STATE OF NEW YORK

2547

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. WEINSTEIN, WEPRIN, SEAWRIGHT, BRONSON, L. ROSENTHAL, TAYLOR -- Multi-Sponsored by -- M. of A. CYMBROWITZ, GLICK -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules and the surrogate's court procedure act, in relation to addressing delay in payment of a settlement where the settlement requires court approval

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1207 of the civil practice law and rules, as amended by chapter 355 of the laws of 1986, is amended to read as follows:

§ 1207. Settlement of action or claim by infant, judicially declared incompetent or conservatee, by whom motion made; special proceeding; notice; order of settlement. **(a)** Upon motion of a guardian of the property or guardian ad litem of an infant or, if there is no such guardian, then of a parent having legal custody of an infant, or if there is no such parent, by another person having legal custody, or if the infant is married, by an adult spouse residing with the infant, or of the committee of the property of a person judicially declared to be incompetent, or of the conservator of the property of a conservatee, the court may order settlement of any action commenced by or on behalf of the infant, incompetent or conservatee. If no action has been commenced, a special proceeding may be commenced upon petition of such a representative for settlement of any claim by the infant, incompetent or conservatee in any court where an action for the amount of the proposed settlement could have been commenced. Unless otherwise provided by rule of the chief administrator of the courts, if no motion term is being held and there is no justice of the supreme court available in a county where the action or an action on the claim is triable, such a motion may be made, or special proceeding may be commenced, in a county court and the county judge shall act with the same power as a justice of the supreme court

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

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even though the amount of the settlement may exceed the jurisdictional limits of the county court. Notice of the motion or petition shall be given as directed by the court. An order on such a motion shall have the effect of a judgment. Such order, or the judgment in a special proceeding, shall be entered without costs and shall approve the fee for the infant's, incompetent's or conservatee's attorney, if any.

(b) Such order, or the judgment in a special proceeding, shall provide for the payment of interest on the settlement amount at the statutory interest rate on judgments, to be computed commencing the fifteenth day, or where the settling defendant is a municipal or state entity as set forth in subdivision (b) or (c) of section five thousand three-a of this chapter then commencing from the sixty-first day following the day that the proposed settlement is entered into and continuing until the day that the order or judgment is signed. Where the proposed settlement includes an annuity to provide for periodic payments, interest shall not be computed on the present value of the annuity provided that the defendant timely funds the annuity, but interest shall accrue on any periodic payment made later than the payment schedule set forth in the proposed settlement. The date and terms of the proposed settlement shall be set forth to all counsel or parties in writing, or in a court transcript, and a copy of the writing or transcript shall be provided to the court in order to calculate the days of interest.

§ 2. Paragraphs 7 and 8 of subdivision (a) of rule 1208 of the civil practice law and rules, paragraph 7 as amended and paragraph 8 as added by chapter 844 of the laws of 1968, are amended and a new paragraph 9 is added to read as follows:

7. whether reimbursement for medical or other expenses has been received from any source; [~~and~~]

8. whether the infant's or incompetent's representative or any member of the infant's or incompetent's family has made a claim for damages alleged to have been suffered as a result of the same occurrence giving rise to the infant's or incompetent's claim and, if so, the amount paid or to be paid in settlement of such claim or if such claim has not been settled the reasons therefor[~~.~~]**; and**

9. the daily rate of interest on the settlement computed pursuant to subdivision (b) of section twelve hundred seven of this article and a copy of the court transcript or writing setting forth the date and terms of the proposed settlement.

§ 3. Rule 1208 of the civil practice law and rules is amended by adding a new subdivision (g) to read as follows:

(g) Delivery of order. Upon signing the order, or judgment in a special proceeding, the court shall send a copy of the order or judgment to the attorney representing the infant or incompetent, or if there is no attorney, to the representative of the infant or incompetent.

§ 4. Subdivisions (a), (b) and (c) of section 5003-a of the civil practice law and rules, as added by chapter 269 of the laws of 1992, are amended to read as follows:

(a) When an action to recover damages has been settled, any settling defendant, except those defendants to whom subdivisions (b) and (c) of this section apply, shall pay all sums due to any settling plaintiff within twenty-one days**, or if it is an action which requires judicial approval of settlement, within fourteen days** of tender, by the settling plaintiff to the settling defendant, of a duly executed release and a stipulation discontinuing action executed on behalf of the settling plaintiff.

(b) When an action to recover damages has been settled and the settling defendant is a municipality or any subdivision thereof, or any public corporation that is not indemnified by the state, it shall pay all sums due to any settling plaintiff within ninety days**, or if it is an action which requires judicial approval of settlement, within sixty days** of tender, by the settling plaintiff to it, of duly executed release and a stipulation discontinuing action executed on behalf of the settling plaintiff. The provisions of this [~~paragraph~~] **subdivision** shall not inure to the benefit of any insurance carrier for a municipality or any subdivision thereof, or any public corporation that is not indemnified by the state. Any such insurance carrier shall pay all sums due to any settling plaintiff in accordance with the provisions of subdivision (a) of this section.

(c) When an action to recover damages has been settled and the settling defendant is the state, an officer or employee of the state entitled to indemnification pursuant to section seventeen of the public officers law, or a public benefit corporation indemnified by the state, payment of all sums due to any settling plaintiff shall be made within ninety days**, or if it is an action which requires judicial approval of settlement, within sixty days** of the comptroller's determination that all papers required to effectuate the settlement have been received by him **or her**. The provisions of this [~~paragraph~~] **subdivision** shall not inure to the benefit of any insurance carrier for the state, an officer or employee of the state entitled to indemnification pursuant to section seventeen of the public officers law, or a public benefit corporation indemnified by the state. Any such insurance carrier shall pay all sums due to any settling plaintiff in accordance with the provisions of subdivision (a) of this section.

§ 5. Section 2220 of the surrogate's court procedure act is amended by adding a new subdivision 6 to read as follows:

6. The order or decree shall provide for the payment of interest on the settlement amount at the statutory interest rate on judgments, to be computed from the fifteenth day, or where the settling defendant is a municipal or state entity as set forth in subdivision (b) or (c) of section five thousand three-a of the civil practice law and rules, then from the sixty-first day following the day that the proposed settlement is entered into and continuing until the day that the order or judgment is signed. Where the proposed settlement includes an annuity to provide for periodic payment, interest shall not be computed on the present value of the annuity provided that the defendant timely funds the annuity, but interest shall accrue on any periodic payment made later than the payment schedule set forth in the proposed settlement. The date and terms of the proposed settlement shall be set forth to all counsel or parties in writing, or in a court transcript, and a copy of the writing or transcript shall be provided to the court in order to calculate the days of interest.

§ 6. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, and shall apply to all actions settled on or after such effective date.