

## BILL TEXT:

## STATE OF NEW YORK

5852

2005-2006 Regular Sessions

## IN ASSEMBLY

March 1, 2005

Introduced by M. of A. WEINSTEIN, ORTIZ -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, A. COHEN, COOK, CYMBROWITZ, DINOWITZ, GLICK, HOOPER, JOHN, LAFAYETTE, MAYERSOHN, PERALTA, PHEFFER, SEDDIO -- 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:

1 Section 1. Section 1207 of the civil practice law and rules, as  
2 amended by chapter 355 of the laws of 1986, is amended to read as  
3 follows:  
4 § 1207. Settlement of action or claim by infant, judicially declared  
5 incompetent or conservatee, by whom motion made; special proceeding;  
6 notice; order of settlement. (a) Upon motion of a guardian of the prop-  
7 erty or guardian ad litem of an infant or, if there is no such guardian,  
8 then of a parent having legal custody of an infant, or if there is no  
9 such parent, by another person having legal custody, or if the infant is  
10 married, by an adult spouse residing with the infant, or of the commit-  
11 tee of the property of a person judicially declared to be incompetent,  
12 or of the conservator of the property of a conservatee, the court may  
13 order settlement of any action commenced by or on behalf of the infant,  
14 incompetent or conservatee. If no action has been commenced, a special  
15 proceeding may be commenced upon petition of such a representative for  
16 settlement of any claim by the infant, incompetent or conservatee in any  
17 court where an action for the amount of the proposed settlement could  
18 have been commenced. Unless otherwise provided by rule of the chief  
19 administrator of the courts, if no motion term is being held and there  
20 is no justice of the supreme court available in a county where the  
21 action or an action on the claim is triable, such a motion may be made,  
22 or special proceeding may be commenced, in a county court and the county

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

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1 judge shall act with the same power as a justice of the supreme court  
2 even though the amount of the settlement may exceed the jurisdictional  
3 limits of the county court. Notice of the motion or petition shall be  
4 given as directed by the court. An order on such a motion shall have the  
5 effect of a judgment. Such order, or the judgment in a special proceed-  
6 ing, shall be entered without costs and shall approve the fee for the  
7 infant's, incompetent's or conservatee's attorney, if any.

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

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

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

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

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

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

42 (g) Upon signing the order, or judgment in a special proceeding, the  
43 court shall send a copy of the order or judgment to the attorney repres-  
44 enting the infant or incompetent, or if there is no attorney, to the  
45 representative of the infant or incompetent.

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

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

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1 (b) When an action to recover damages has been settled and the settl-  
2 ing defendant is a municipality or any subdivision thereof, or any  
3 public corporation that is not indemnified by the state, it shall pay  
4 all sums due to any settling plaintiff within ninety days, or if it is  
5 an action which requires judicial approval of settlement, within sixty  
6 days of tender, by the settling plaintiff to it, of duly executed  
7 release and a stipulation discontinuing action executed on behalf of the  
8 settling plaintiff. The provisions of this [~~paragraph~~] subdivision shall  
9 not inure to the benefit of any insurance carrier for a municipality or  
10 any subdivision thereof, or any public corporation that is not indem-  
11 nified by the state. Any such insurance carrier shall pay all sums due  
12 to any settling plaintiff in accordance with the provisions of subdivi-  
13 sion (a) of this section.

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

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

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

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

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**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A5852

**SPONSOR:** Weinstein (MS)

**TITLE OF BILL:** 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

**PURPOSE OF BILL:** This proposal amends the CPLR (§§ 1207, 1208, 5003-a) and the Surrogate's Court Procedure Act (§ 2220) to permit interest to accrue where there is a delay in a proposed settlement of claims by an infant, incompetent, or in a wrongful death action, caused by the need for court approval.

**JUSTIFICATION:** Section 5003-a of the CPLR sets forth times within which a settling defendant must pay all sums due following the tender of a release and stipulation of discontinuance in an action. Difficulties arise, however, with cases involving an infant, an incompetent or the death of a plaintiff, where the release cannot be tendered without prior court approval. Usually it takes at least several weeks (occasionally, several months or longer) between the proposed settlement and court approval. Thus, the anomaly exists that the only litigants who do not receive their settlement monies "promptly" are those who are under the courts' protection.

The interest rate set forth in the proposed amendments is the statutory rate of interest on a judgment. Interest begins to run from the fifteenth day, or in the case of a state or municipal entity from the sixty-first day, following the day that the proposed settlement is entered into and continues to run until the day that the order or judgment is signed. Provision is also made for annuity payments. Once the order or judgment is signed, the defendant then will have 14 days or, in the case of a state or municipal entity, 61 days, to make payment.

The date and terms of the proposed settlement shall be set forth in a writing or court transcript, a copy of which shall be provided to the court in order to calculate the days of interest.

**LEGISLATIVE HISTORY:**

A.10425 - 2000; Passed Assembly  
A.4743 - 2001-02; Passed Assembly  
2004: A7902 - passed Assembly

**FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:** This measure will have a negligible fiscal impact on the State, limited to those instances where the State has entered into a settlement of claims with a minor, an incompetent, or a plaintiff who has died.

**EFFECTIVE DATE:** This act shall take effect on the first of January next succeeding the date on which it shall have become law, and shall apply to all actions settled on or after that date.