

Memorandum in Opposition

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

CPLR #6

May 30, 2013

A. 999

By: M. of A. Weinstein

Assembly Committee: Judiciary

Effective Date: First of January next
succeeding the date on which it
shall have become a law

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.

LAW & SECTION REFERRED TO: CPLR 1207, 1208, 5003-a; SCPA 2220

THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES **OPPOSES THIS LEGISLATION**

The purpose of this legislation is to require the payment of interest on certain settlement claims. Claims of infants and incompetents cannot be compromised without the approval of the Court pursuant to CPLR 1207 and 1208. *See, e.g., Edionwe v. Hussain*, 7 AD3d 751 (2d Dep't 2004). CPLR 5003-a provides a timeframe within which settlement amounts are to be paid. SCPA 2220 contains similar provisions for cases requiring the Surrogate's approval.

The sponsor's justification for this bill is that in cases in which court approval of the settlement is needed, such approval can take weeks or sometimes months. This legislation seeks to impose the burden of that delay on the defendant by requiring the settling party to pay interest on the settlement amount at the statutory rate of interest on a judgment. Contrary to standard practice, such interest would accrue while the application seeking judicial approval is pending, even though defendants have no obligation to make any payment prior to court approval of the settlement. In such cases, the interest would commence to accrue on the fifteenth day after a settlement is entered into (or on the 61st day where the defendant is a municipality or the State).

This legislation also includes amendments to subdivisions (a) through (c) of CPLR 5003-a, reducing the time within which settling defendants are to make payments in those cases in which judicial approval is required. Where that statute now provides for a 21-day period within which private parties should pay the settlement amount, the bill

adds language so that for a claim or in an action requiring judicial approval of a settlement, the settling defendant is to pay all sums due within 14 days of tender by the plaintiff of a duly executed release and stipulation of discontinuance. In cases against municipalities and the State, the otherwise applicable period of 90 days for payment is to be reduced to 60 days whenever the settlement requires judicial approval.

It is the Committee's view that this legislation is ill conceived since it unfairly penalizes defendants, who have little control over the settlement approval process. It is the plaintiffs' counsel who assemble the necessary documents and initiate the application for judicial approval when such approval is required. Providing for the statutory rate of interest to accrue during this process may create a disincentive to prompt filings of this nature, especially when the settlement funds are not immediately needed.

While neither party can control the length of time that judicial approval will take, experienced counsel are familiar with the practice in each court and will take into account the likely delay attributable to the need for court approval when negotiating a settlement amount. Where defendants must seek approval from their carriers or government officials to enter into a settlement, the addition of an uncertain amount of interest to be paid at a future date on top of the negotiated sum will adversely affect the usual settlement procedures. Indeed, it can be expected in all such cases that the base settlement amount agreed upon in negotiations will be reduced if interest will have to be paid thereon.

For the foregoing reasons, the Committee on Civil Practice Law and Rules **OPPOSES** this legislation.

The Person Who Prepared the Memorandum: Ellen B. Fishman, Esq.

Chair of the Committee: Robert P. Knapp, III, Esq.