

HOUSE No. 02162

The Commonwealth of Massachusetts

PRESENTED BY:

Lori A. Ehrlich and

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to establish a Claimants' Trust Act.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Lori A. Ehrlich

8th Essex

James B. Eldridge

Middlesex and Worcester

Michael D. Brady

9th Plymouth

HOUSE No. 02162

By Ms. Ehrlich of Marblehead and Senator Mr. Eldridge, a joint petition (accompanied by bill, House, No. 2162) of Brady and others relative to claims for damages and establishing a claimants trust law Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 1346 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to establish a Claimants' Trust Act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Chapter 203, as appearing in the official edition, is hereby amended by inserting
- 2 after chapter 203D the following chapter:-
- 3 Chapter 203E
- 4 SECTION 1 . This section shall be known as and may be cited as the Massachusetts Claimant's
- 5 Trust Act. It is the express purpose of this chapter to allow for the use of the "Claimant's Trust"
- 6 to encourage the early aggregation of Claims arising out of the same transaction, resolution of
- 7 Claims on a pre-suit basis or through alternative dispute resolution, the efficient litigation and

8 administration of such aggregated Claims, and the sound financial and tax planning and fiscal
9 management of settlement funds for the Beneficiary's benefit.

10 SECTION 2. For the purposes of this chapter the following words shall have the following
11 meanings unless the context otherwise requires:

12 "Administrative Trustee", an institution identified in the Trust Instrument who has executed the
13 Trust Instrument and is approved by the Court to act as the "Administrative Trustee" to manage,
14 invest, and report on the Trust's assets and income.

15 "Benefits Plan", a plan for the long term management, investment, and distribution of the Trust
16 Corpus approved by the Court.

17 "Beneficiary", a person identified as a "Beneficiary" in the Trust Instrument and who is a
18 Claimant, or in the case of multiple "Beneficiaries" are Claimants whose claims arise out of the
19 same transaction; and who has or have executed the Trust Instrument, complied with its terms,
20 and assigned to the Trust any claims they may have arising out of the allegedly wrongful
21 conduct. The Beneficiary is entitled to and has an interest in the Trust Corpus.

22 "Claim", a claim or potential claim for damages for personal injury or property damage or the
23 claim of an estate of a person or persons that has or may have a claim for wrongful death, arising
24 out of the allegedly wrongful conduct of another or others.

25 "Claimant", a person who has a claim or in the case of multiple Claimants, persons whose claims
26 arise out of the same transaction.

27 "Claimant's Trust", a Trust approved by the Court under this chapter as having met the statutory
28 requirements for such a Trust.

29 “Organizer”, a person or persons who is or are independent from any Transferor or Potentially
30 Liable Party and who has or have executed the Trust Instrument as an “Organizer” and who is or
31 are seeking Court approval of the “Claimant’s Trust”.

32 “Potentially Liable Party”, a person or persons who is or are liable or potentially liable to the
33 Beneficiary for damages for personal injury or property damage resulting from the party’s
34 allegedly wrongful conduct and who is or are identified in the Trust Instrument as a “Potentially
35 Liable Party”.

36 “Transferor”, a Potentially Liable Party who has made a payment to the Trust in exchange for a
37 release of liability.

38 “Trust”, the use of the word Trust in this Act refers to a “Claimant’s Trust” unless the context
39 plainly means otherwise.

40 “Trustee”, a person or persons who is or are independent from any Transferor or Potentially
41 Liable Party, any Organizer, or Beneficiary and who has or have executed the Trust Instrument
42 as a “Trustee” and who is or are approved by the Court to act as the “Trustee” to perform the
43 duties and undertake the responsibilities of a Trustee under the Trust Instrument and the
44 requirements of this chapter.

45 “Trust Corpus”, the assets including any real or personal property; account; money; claim or
46 interest assigned, granted, or belonging to the Trust; and any payments or thing of value made to
47 the Trust by the Transferor in settlement of any claims; and the income arising therefrom, to
48 which the Beneficiary is entitled and has an interest.

49 “Trust Instrument”, the written document containing the terms of the Trust submitted by the
50 Organizer to be approved by the Court.

51 SECTION 3. The Probate Court in the County in which any Beneficiary resides or in the event
52 that no Beneficiary is a Massachusetts resident then in the County in which a Potentially Liable
53 Party resides or has a place of business and if not applicable then any County in which the
54 intended Trustee or Administrative Trustee resides, shall have exclusive jurisdiction to receive
55 an application for approval, approve, supervise, and hear and determine any issue under this
56 chapter relating to the Claimant’s Trust. In the event that more than one petition for approval of
57 a Trust Instrument is filed by an Organizer on behalf of a Claimant or Claimants whose claims
58 arise out of the same transaction, the Chief Judge of the Probate Court shall determine the
59 County which shall have exclusive jurisdiction in the matter.

60 SECTION 4. The Organizer may petition the Probate Court for approval of a Trust Instrument by
61 the filing of a Complaint and motion. The Complaint shall be accompanied by the Trust
62 Instrument executed by the Organizer, intended Trustee, at least one intended Beneficiary, and, if
63 sought, the intended Administrative Trustee. The application shall be heard and ruled on and the
64 Trust approved and supervised on an expedited basis and in a manner intended to carry out the
65 purposes of this chapter.

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67 SECTION 5. The Trust Instrument shall be in writing and contain the following:

68

69 (a) The name of the Trust;

70 (b) The name, address, and signature of the Organizer;

71 (c) A description of the transaction giving rise to the Claim which is the subject matter of the
72 Trust;

73 (d) The name, address, and signature of the Beneficiary or Beneficiaries identified on an
74 attached "Beneficiary Schedule". In the event the Organizer intends to include as a Beneficiary
75 an additional Claimant or Claimants not named on the Schedule whose claims arise out of the
76 same transaction then the Instrument shall so indicate;

77 (e) The Assignment of the Beneficiary's Claim(s) to the Trust;

78 (f) The name, address, and signature of the Trustee;

79 (g) If sought, the name, address, and signature of the Administrative Trustee

80 SECTION 6. The Trust Instrument may provide the following:

81 (a) The Trust may be administered and the funds managed, invested, and distributed in
82 accordance with a Benefits Plan approved by the Court for the benefit of the Beneficiary during
83 their lifetime or any part thereof and, if provided in the Instrument, the lifetime or any part
84 thereof of their offspring;

85 (b) The Trust Instrument may allow, with the Court's approval, for a formal method
86 whereby the Beneficiary may indicate, on an advisory basis, their views to the Trustee regarding
87 certain specified major decisions affecting the Trust prior to the decision taking place while at
88 the same time reserving for the Trustee ultimate decision making authority under the supervision
89 of the Court.

90 SECTION 7. Unless the Trust Instrument, with the approval of the Court, provides for more
91 limited powers, the Trustee shall have all of the powers normally attendant to such a position
92 except the powers to manage, invest, and report on the Trust's assets and income that are the
93 responsibility of the Administrative Trustee, if an Administrative Trustee is sought to be
94 appointed or the Court determines is required. The Trustee shall, in addition, have the powers
95 described in Section 8 regarding the settlement of claims with Potentially Liable Parties and the
96 issuance of appropriate release of claims to Transferors.

97 SECTION 8. The Trustee, with the approval of the Court, shall have the power to enter into and
98 execute, in the name of the Trust and on behalf of the Beneficiary or Beneficiaries, a settlement
99 agreement with any Potentially Liable Party and to execute and provide to any Transferor any
100 appropriate release of Claims. The Court in approving any proposed settlement and issuance of
101 release of Claims shall have the authority and shall exercise its power to:

102 (a) Determine the settlement and release is in the best interests of the Beneficiary or
103 Beneficiaries including any minor Beneficiary. In the case of a Beneficiary who is a minor, such
104 finding shall be accorded the same respect as a finding made by a court approving a settlement
105 respecting a minor under GL c. 231 §140C 1/2;

106 (b) Determine the settlement and release was entered into by the parties in good faith as that
107 terms used GL c. 231B §4 regarding a release or covenant not to sue one or more tort feasers.

108 SECTION 9. The Administrative Trustee in accordance with the terms of the Trust Instrument as
109 approved by the Court shall have all of the powers and duties necessary to manage, invest, and
110 report on the Trust's assets and income that are attendant to such responsibility as set forth in the
111 Massachusetts Prudent Investor Act G.L. c. 203C including making use, where appropriate, of

112 insurance products and investment vehicles such as are referred to in GL c. 231C regarding
113 Structured Settlement Contracts. In addition, the Administrative Trustee shall be empowered to
114 take all such actions as are necessary to ensure that the Trust is treated as a Designated or
115 Qualified Settlement Fund under the Internal Revenue Code 26 USC §468B and the regulations
116 promulgated pursuant thereto and codified at 26 CFR Section 1.468B-1. It is intended that the
117 Administrative Trustee manage and invest the Trust Corpus to minimize tax consequences to the
118 Trust and Beneficiary. In this regard, the Court shall allow the Trust Instrument to be amended
119 from time to time as is necessary to take into account changes in Federal or State tax laws and
120 regulations that bear on such tax consequences.

121 SECTION 10. The Trustee may maintain an action in the name of the Trust on behalf of the
122 Beneficiary or Beneficiaries regarding the Claim in any of the Courts of the Commonwealth that
123 the Beneficiary could have maintained such an action.

124 SECTION 11. Any distribution of the Trust Corpus among multiple Beneficiaries whether in
125 accordance with the terms of the Trust, a Benefits Plan, or otherwise shall be made in accordance
126 with principles of fairness and equity. Unless the Trust Instrument, with the approval of the
127 Court, otherwise provides pursuant to a Court approved Benefits Plan, the Trust shall, in
128 accordance with a distribution plan approved by the Court, distribute the Trust Corpus upon the
129 payment into the Trust by a Transferor.

130 SECTION 12. In the event any dispute arises among or between any of the parties to the Trust
131 Instrument, the Trustee shall have the discretion to engage the services of a recognized mediator
132 or mediation service to aid in the resolution of such dispute. In the event such mediation services
133 are not successful in resolving the dispute, the Trustee may request the Court appoint a Special

134 Master to make findings and propose resolutions to the Trustee for submission to the Court. In
135 any event, the Court shall have ultimate authority to resolve any outstanding dispute regarding
136 the administration of the Trust.