

HOUSE No. 1346

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to Establish a Claimant's 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 The General Laws are hereby amended by inserting after chapter 203D the following
2 chapter:-

3 Chapter 203E

4 SECTION 1. Citation and Purpose

5 This section shall be known as and may be cited as the Massachusetts Claimant's Trust
6 Act. It is the express purpose of this chapter to allow for the use of the "Claimant's Trust" to
7 encourage the early aggregation of Claims arising out of the same transaction, resolution of
8 Claims on a pre-suit basis or through alternative dispute resolution, the efficient litigation and
9 administration of such aggregated Claims, and the sound financial and tax planning and fiscal
10 management of settlement funds for the Beneficiary's benefit.

11 SECTION 2. Definitions

12 For the purposes of this chapter the following words shall have the following meanings
13 unless the context otherwise requires:

“Administrative Trustee”, an institution identified in the Trust Instrument who has executed the Trust Instrument and is approved by the Court to act as the “Administrative Trustee” to manage, invest, and report on the Trust’s assets and income.

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

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

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

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

“Claimant’s Trust”, a Trust approved by the Court under this chapter as having met the statutory requirements for such a Trust.

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

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

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

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

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

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

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

SECTION 3. Probate Court Jurisdiction And Venue

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

63 SECTION 4. Petition For Approval

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

70 SECTION 5. Trust Instrument Requirements

71 The Trust Instrument shall be in writing and contain the following:

- 72 a. The name of the Trust;
- 73 b. The name, address, and signature of the Organizer;

c. A description of the transaction giving rise to the Claim which is the subject matter of the Trust;

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

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

f. The name, address, and signature of the Trustee;

g. If sought, the name, address, and signature of the Administrative Trustee

SECTION 6. Trust Instrument Optional Provisions

The Trust Instrument may provide the following:

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

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

94 SECTION 7. Trustee's Powers

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

102 SECTION 8. Approval Of Settlement And Release Of Claims

103 The Trustee, with the approval of the Court, shall have the power to enter into and
104 execute, in the name of the Trust and on behalf of the Beneficiary or Beneficiaries, a settlement
105 agreement with any Potentially Liable Party and to execute and provide to any Transferor any
106 appropriate release of Claims. The Court in approving any proposed settlement and issuance of
107 release of Claims shall have the authority and shall exercise its power to:

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

112 b. Determine the settlement and release was entered into by the parties in good faith
113 as that term is used GL c. 231B §4 regarding a release or covenant not to sue one or more
114 tortfeasors.

115 SECTION 9. Administrative Trustee's Powers

116 The Administrative Trustee in accordance with the terms of the Trust Instrument as
117 approved by the Court shall have all of the powers and duties necessary to manage, invest, and
118 report on the Trust's assets and income that are attendant to such responsibility as set forth in the
119 Massachusetts Prudent Investor Act G.L. c. 203C including making use, where appropriate, of
120 insurance products and investment vehicles such as are referred to in GL c. 231C regarding
121 Structured Settlement Contracts. In addition, the Administrative Trustee shall be empowered to
122 take all such actions as are necessary to ensure that the Trust is treated as a Designated or
123 Qualified Settlement Fund under the Internal Revenue Code 26 USC §468B and the regulations
124 promulgated pursuant thereto and codified at 26 CFR Section 1.468B-1. It is intended that the
125 Administrative Trustee manage and invest the Trust Corpus to minimize tax consequences to the
126 Trust and Beneficiary. In this regard, the Court shall allow the Trust Instrument to be amended
127 from time to time as is necessary to take into account changes in Federal or State tax laws and
128 regulations that bear on such tax consequences.

129 SECTION 10. Maintenance of Action In Name Of Trust

130 The Trustee may maintain an action in the name of the Trust on behalf of the Beneficiary
131 or Beneficiaries regarding the Claim in any of the Courts of the Commonwealth that the
132 Beneficiary could have maintained such an action.

133 SECTION 11. Distribution And Management Of Funds And Allocation Among Multiple
134 Beneficiaries

135 Any distribution of the Trust Corpus among multiple Beneficiaries whether in accordance
136 with the terms of the Trust, a Benefits Plan, or otherwise shall be made in accordance with

137 principles of fairness and equity. Unless the Trust Instrument, with the approval of the Court,
138 otherwise provides pursuant to a Court approved Benefits Plan, the Trust shall, in accordance
139 with a distribution plan approved by the Court, distribute the Trust Corpus upon the payment into
140 the Trust by a Transferor.

141 SECTION 12. Use of Mediator or Court Appointed Master

142 In the event any dispute arises among or between any of the parties to the Trust
143 Instrument, the Trustee shall have the discretion to engage the services of a recognized mediator
144 or mediation service to aid in the resolution of such dispute. In the event such mediation services
145 are not successful in resolving the dispute, the Trustee may request the Court appoint a Special
146 Master to make findings and propose resolutions to the Trustee for submission to the Court. In
147 any event, the Court shall have ultimate authority to resolve any outstanding dispute regarding
148 the administration of the Trust.