

HOUSE No. 1271

The Commonwealth of Massachusetts

PRESENTED BY:

Lori A. Ehrlich

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 adoption of the accompanying bill:

An Act to establish a Claimants' Trust Act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/14/2015</i>

HOUSE No. 1271

By Ms. Ehrlich of Marblehead, a petition (accompanied by bill, House, No. 1271) of Lori A. Ehrlich relative to claims for damages and establishing a claimants trust law. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1304 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 MGL c. 203E

2 “Claimants’ Trust Act”

3 § 1 Citation And Purpose

4 This section shall be known as and may be cited as the Massachusetts Claimants’ Trust
5 Act. It is the express purpose of this chapter to allow for the use of the “Claimants’ Trust” to
6 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 Claimant Beneficiaries’ benefit.

10 § 2 Definitions

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

13 “Administrative Trustee”, a duly licensed trust institution identified in the Trust
14 Instrument that has executed the Trust Instrument and is approved by the Court to act as the
15 “Administrative Trustee” to manage, invest, and report on the Trust’s assets and income.

16 “Beneficiary”, a person identified as a “Beneficiary” in the Trust Instrument and who is a
17 Claimant whose claims arise out of the transaction that is the subject of the Trust; and who is
18 either a person who has: executed the Trust Instrument as a Beneficiary; or, is a named Plaintiff
19 in or a member of a class that is or is sought to be approved in a filed state or federal action that
20 is the subject of the Trust.

21 “Claim”, a claim or potential claim for damages for personal injury or property damage
22 or the claim of an estate of a person or persons that has or may have a claim for wrongful death,
23 arising out of the allegedly wrongful conduct of a potentially liable party.

24 “Claimant”, a person who has a claim arising out of a transaction involving the allegedly
25 wrongful conduct of a potentially liable party.

26 “Claimants’ Trust”, a Trust for two or more Claimant Beneficiaries that is approved by
27 the Court under this chapter as having met the statutory requirements for such a Trust.

28 “Organizer”, a person or persons who has or have executed the Trust Instrument as an
29 “Organizer” and who is or are seeking Court approval of the “Claimants’ Trust”.

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

34 “Transferor”, a Potentially Liable Party who has transferred any money or interest in
35 property to a Claimants’ Trust, the purpose of which is to extinguish liability to a Claimant.

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

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

43 “Trust Corpus”, the assets including any money or property belonging to the Trust; or
44 transferred to the Trust by a Transferor; and the income arising therefrom.

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

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48

49 § 3 Probate Court Jurisdiction And Venue

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

59 § 4 Petition For Approval

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

65 § 5 Trust Instrument Requirements

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

- 67 a. The name of the Trust;
- 68 b. The name, address, and signature of the Organizer;
- 69 c. A description of the transaction giving rise to the Claim which is the subject
70 matter of the Trust and the liability sought to be extinguished by the Trust;

71 d. Identification of the two or more Claimants who are the intended Beneficiaries on
72 an attached “Beneficiary Schedule” either bearing the signature of the Beneficiaries or their legal
73 representative or, if the intended Beneficiaries are Plaintiffs in, or members of a class approved
74 or sought to be approved by, a state or federal action, then identification of the action and the
75 Plaintiffs or class. In the event the Organizer intends to include as a Beneficiary an additional
76 Claimant or Claimants not named on the Schedule whose claims arise out of the same transaction
77 then the Instrument shall so indicate;

78 e. Identification of the Potentially Liable Party or Parties;

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

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

81 § 6 Trustee’s Powers

82 Unless otherwise limited by the Trust as approved by the Court, the Trustee shall have all
83 of the powers reasonable and necessary to carry out its fiduciary obligations to administer the
84 Trust. In the event the appointment of an Administrative Trustee is not required by the terms of
85 the Trust or the Court, than the Trustee’s powers and obligations shall also include those powers
86 and obligations of an Administrative Trustee detailed in Section 8. The Trustee shall, in
87 addition, have the powers described in Section 7 regarding the settlement of claims with
88 Potentially Liable Parties and the issuance of appropriate release of claims to Transferors.

89

90 § 7 Approval Of Settlement And Release Of Claims

91 The Trustee, with the approval of the Court, shall have the power to enter into and
92 execute, in the name of the Trust and on behalf of the Beneficiaries, a settlement agreement with
93 any Potentially Liable Party and to execute and provide to any Transferor any appropriate release
94 of Claims. The Court in approving any proposed settlement and issuance of release of Claims
95 shall have the authority and shall exercise its power to:

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

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

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104 § 8 Administrative Trustee's Powers

105 The Administrative Trustee unless otherwise limited by the terms of the Trust as
106 approved by the Court shall have all of the powers reasonable and necessary to carry out its
107 fiduciary obligations to manage, invest, and report on the Trust's assets and income. These
108 obligations shall be consistent with the requirements of the Massachusetts Prudent Investor Act
109 G.L. c. 203C. In addition, the Administrative Trustee shall be empowered to take all such
110 actions as are reasonable and necessary to ensure that the Trust is treated as a Designated or
111 Qualified Settlement Fund under the Internal Revenue Code 26 USC §468B and the regulations
112 promulgated pursuant thereto and codified at 26 CFR Section 1.468B-1. The Court shall allow

113 the Trust Instrument to be amended from time to time as is necessary to take into account
114 changes in Federal or State tax laws and regulations that bear on such designation or
115 qualification.

116

117 § 9 Maintenance of Action In Name Of Trust

118 The Trustee may maintain an action in the name of the Trust on behalf of the
119 Beneficiaries regarding the Claim in any of the Courts of the Commonwealth that the
120 Beneficiaries could have maintained such an action in their name.

121 § 10 Distribution And Management Of Funds And Allocation Among Multiple

122 Beneficiaries

123 Any distribution of the Trust Corpus among multiple Beneficiaries shall be made in
124 accordance with principles of fairness and equity. The Trust shall distribute the Trust Corpus to
125 the Beneficiaries in accordance with the terms of the Trust as approved by the Court or a
126 distribution plan subsequently approved by the Court.

127 § 11 Dispute Resolution/Use of Mediator or Court Appointed Master

128 In the event any dispute arises among or between any of the parties to the Trust
129 Instrument, their counsel, or any person asserting an interest in the Trust Corpus or entitlement
130 of a Beneficiary or Beneficiaries, the Trustee shall have the power to resolve the dispute by
131 agreement of the parties or, if necessary, engage the services of a recognized mediator or
132 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 recommendation(s) to the Trustee regarding resolving the dispute
135 which shall be submitted to the Court, with the Trustee's recommendation(s), for the Court's
136 approval. In any event, the Court shall have ultimate authority to resolve any outstanding
137 dispute regarding the administration of the Trust.