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February 4, 2009

## **MEMORANDUM IN SUPPORT**

### **Governor Paterson Budget Proposal – State and Municipal Liability**

#### **Article VII - Part HH Public Protection and General Government Section 13 Collateral Source Section 17-20 Interest on Judgments**

On behalf of **New Yorkers for Lawsuit Reform (NYLR)**, a broad based coalition of businesses, professionals, municipalities, not-for-profits, insurers and concerned citizens, we are writing in **STRONG SUPPORT** of two modest governmental liability reform provisions incorporated within Governor Paterson's Budget proposal.

The first measure would prevent double recoveries presently available to municipal employees with respect to lost earnings. The specifics are detailed below. The second measure applicable to claims against the State, as well as municipalities, provides for a floating interest rate on judgments in lieu of current 9% fixed rate. The 9% rate has proven over the past twenty five-years to over-compensate plaintiffs to the detriment of state and municipal taxpayers, as well as other defendants. (In fact, NYTRN supports the use of a floating rate for all claims regardless of the identity of the defendant.) A floating rate is employed in many sister states and insures that parties are neither over-compensated nor under-compensated as is the case during periods of significant inflation.

Under current law, injured employees are entitled to secure recovery against a wrongdoer, including an employer, which includes compensation for future economic harm such as lost wages. In the event that the element of loss is in fact not truly suffered by the employee because of the availability of insurance against the loss, such as payments pursuant to a disability policy, the claim for damages is adjusted downward to reflect the future disability payments. However, due to an anomaly in the present law pertaining to municipal employers, the set off is not available and an injured governmental employee suing his or her employer receives a double recovery.

New York State is one of the highest taxed states in the nation and our economy for decades has suffered anemic growth in comparison to many of our sister states. These modest reforms will reduce liability costs to both the state and local governments. The savings are predicated upon the elimination of the above discussed double recovery not available to private sector employees and the adjustment in the rate of interest payable on judgments.

Our civil justice system is straining under the weight of rules which provide for strict liability in specified cases and require parties who are minimally at fault to pay for all economic losses simply because they have deep pockets. Passage of this bill will help reduce the burden imposed by an overly generous tort system. Many of our sister states have enacted comprehensive tort reform thereby attracting business development and New York simply cannot afford to retain rules which result in windfall recoveries in tort cases. As we face the worst economic crisis since the Great Depression we cannot retain rules within the civil justice system which are by any measure excessive and place an undue burden on both the state and local governments.

For all the foregoing reasons New Yorkers for Lawsuit Reform urges approval of these measures.

Respectfully submitted,

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Executive Director  
**New Yorkers for Lawsuit Reform**