



Memorandum in Opposition

S.5374 Klein

AN ACT to permit Medical Malpractice Insurers to engage cash flow underwriting

On behalf of **New Yorkers for Lawsuit Reform (NYLR)**, a broad based coalition of businesses, professionals, health providers, municipalities, not-for-profits, insurers and concerned citizens', we are writing to urge that this bill be HELD.

This legislation threatens to undermine New York's medical liability insurance system. The bill will permit medical malpractice insurers to abandon the traditional insurance pricing model which requires premiums to be determined based on future exposures and the building up of reserves. The legislation will permit medical malpractice insurers to engage in cash flow underwriting, an insurance mechanism which time and again has failed.

The most recent example of cash flow underwriting in New York is the debacle visited upon companies participating in various underfunded group self-insured workers' compensation trusts. As a result of the failure to collect adequate premiums (and the payment of outrageous administrative costs) over a number of years, group participants are being assessed hundreds of millions of dollars to pay for claims not support by adequate reserves. To the extent that members of the trusts are unable to pay their appropriate share of these deficiencies, other solvent group participants are forced to pay.

The instant legislation is likely to produce a similar or analogous result. If this legislation is enacted, a number of aggressive, handsomely compensated, malpractice insurer executives will be permitted to grow market share potentially at the expense of soundly managed competitors and those left to pay the bill. Proper reserving for insurance risks should not be abandoned in New York. As so well stated by Edmund Burke, (philosopher and historian) "(t)hose who fail to learn from history are destined to repeat it."

For all the forgoing reasons this legislation should be held.

Respectfully submitted,

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New Yorkers for Lawsuit Reform