



MEMORANDUM IN OPPOSITION

S.5768 (Schneiderman) / A.8646 (Brotsky)

On behalf of **New Yorkers for Lawsuit Reform**, a broad based coalition of business, professional, municipalities, not-for-profits, insurers, and concerned citizens, we are writing in **STRONG OPPOSITION** to the above referenced bill.

Pursuant to federal securities laws (Private Securities Litigation Reform Act) investors aggrieved by improper conduct in the promotion and sale of securities may pursue damage claims in federal court. This legislation would create a new private right of action for mutual funds, pension funds, etc., pursuant to New York State security laws. The legislation, if enacted, would add additional burdensome demands on our overtaxed state court system.

Moreover, the legislation would impose liability for acts of negligence and does not require that the plaintiff show reliance on the defendant's conduct. Pursuant to federal statutes, liability is predicated upon a showing that the defendant acted intentionally or recklessly, and the plaintiff must show reliance on defendant's actions.

New Yorkers for Lawsuit Reform opposes the creation of new causes of action lacking a showing of reliance and predicated upon mere negligent conduct. While some have argued that the facial expansion of the Martin Act to include broadened security law causes of action is preempted by federal securities laws, it is simply unclear whether and to what extent preemption would apply. The legislation is objectionable due to inclusion of a six-year statute of limitations running from the date of discovery. Claims sounding in negligence in New York are generally subject to a three-year statute of limitations. The application of a date of discovery rule could substantially eviscerate the benefit of establishing any fixed period of time for claims to be interposed. The purpose of a statute of limitations is to insure fairness to a defendant faced with effects of the passage of time including; deaths of witnesses, faulty memories and the destruction of evidence (documents, records, files, etc). A date of discovery rule is inherently unfair to defendants and has rare application in New York Law.

Accordingly, for all of the foregoing reasons **New Yorkers for Lawsuit Reform** opposes this legislation.

Respectfully,

Mark C. Kriss
Executive Director
New Yorkers for Lawsuit Reform