



MEMORANDUM IN OPPOSITION

A.7504A (Weinstein) / S.4080A (Schneiderman)

AN ACT to eliminate common law and contractual subrogation rights and to equalize collateral source payments in personal injury and related claims

On behalf of **New Yorkers for Lawsuit Reform**, a broad based coalition of businesses, professionals, municipalities, not-for-profits, insurers and concerned citizens, I am writing in **OPPOSITION** to the above referenced bill, which would prohibit insurers and others (subrogees) from recovering medical and other expenses in the settlement of an action where another party (a tortfeasor or wrongdoer) is liable for the losses.

The bill would destroy substantive contract and common law rights which, together with recently enacted statutory enactments, have worked to insure that a wrongdoer is held accountable for all damages caused by his or her wrongful conduct, while at the same time preventing double recoveries by plaintiffs (subrogors) securing a judgment in negligence or related claims. If insurers and other subrogees are prevented from securing recoveries from wrongdoers, they are forced to increase premiums or the cost of their products and services to account for the shortfall to the detriment of consumers. Health insurers routinely avail themselves of subrogation rights. The number one issue facing both big and small businesses continues to be the ever increasing cost of health insurance and any measure which will adversely impact the cost of health insurance should be carefully scrutinized and rejected in the absence of compelling proof that the legislation is warranted.

In addition to the foregoing it is important to note that according to the Senate Sponsor's Memorandum in first enacting the collateral source rule the Legislature's "intent was not merely that defendants would not have to pay the plaintiff for those losses or expenses (i.e. insured losses and expenses), but rather that the defendants would not have to pay anyone for such already-covered losses or expenses." In fact this statement is lacking an iota of support. According to the unanimous opinion of the Court of Appeals (Fasso v. Doerr 12 NY3rd 80 – Feb. 24, 2009) "the Legislature (in codifying CPLR 4545) did not address the procedures and means of recovery for the equitable subrogation rights of insurersand nothing in the language or legislative history of CPLR 4545 indicates the Legislature intended to alter the established rules of equitable subrogation." (emphasis added) The established rule of equitable subrogation unambiguously permits recovery by an insurer in these circumstances.

While the bill is objectionable for the reasons set forth above, a portion of the legislation pertaining to eliminating the ability of municipal workers to secure double recoveries is sound and should be pursued on a stand alone basis. Specifically, a municipal worker's recovery of

future wage loses, in a negligence or related action against his or her employer, should be reduced by the amount of compensation to be paid in the nature of disability or pension benefits. All other employees are subject to a set-off and there is simply no justification for an exception for municipal employees. In light of the most pressing financial circumstances in decades we simply cannot afford to permit windfall recoveries to anyone.

Accordingly, for all the foregoing reasons NYTRN urges that this legislation be held pending amendment as outlined above.

Respectfully submitted,

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New Yorkers for Lawsuit Reform