



# Memo of Opposition

S.5389/A.7891 (Kruger/Towns)

New Yorkers for Lawsuit Reform **OPPOSES** the above-referenced legislation. New Yorkers for Lawsuit Reform is a not-for-profit association of businesses, professionals, municipalities, not-for-profits, and concerned citizens dedicated to reform of the tort system in order to foster a better business climate and address the costs of lawsuits passed on to all New Yorkers. This legislation amends the general obligations law in relation to civil litigation advance contracts.

## What does S.5389/A.7891 Do?

This legislation purportedly regulates lawsuit lenders who front money to private plaintiffs engaged in pending litigation for a percentage of any future recovery plus interest. The legislation's so-called consumer protection provisions are drafted by the very industry that stands to benefit and are being promoted in a number of states. S.5389/A.7891 contains numerous provisions that supposedly protect plaintiffs against deceptive business practices by lawsuit lenders, but while the provisions are being heralded as consumer-friendly measures, they are far from adequate protections. The legislature should scrutinize this legislation closely by first asking itself the threshold question of whether these arrangements at their core are even ethical or appropriate.

## The Reality of Lawsuit Loans

Litigation companies basically do "payday" lending in litigation. They seek out consumers who have filed lawsuits and offer to pay them "up front" money in exchange for a percentage of whatever award they may later receive in their lawsuit – a percentage that increases over time. Litigation companies prey on vulnerable consumers – people who are often injured and unable to work, with no financial support, and desperate for cash. These companies force the consumer to agree to unfair terms that ultimately result in the consumers giving up a big piece (if not all) of any award they may receive for their injuries.

## Why is S.5389/A.7891 Bad for Consumers and for New York?

While S.5389/A.7891 is being touted as a consumer protection bill, its real meaning and effect is the implicit authorization of the emerging problematic practice of lawsuit loans. The lending of money by third parties to a plaintiff to advance litigation has been prohibited since ancient Rome. Lord William Blackstone, the father of the Anglo- American legal system, said buying a stake in a lawsuit was "an offense against public justice, as it keeps alive strife and contention, and perverts the remedial process of the law into an engine of oppression." Instead of legitimizing the practice by adopting so-called consumer safeguards, the legislature should consider the troubling issues raised by the practice and answer the more fundamental question of whether third-party litigation financing is appropriate in-and-of itself.

## Lawsuit Loans Will Inflate Settlement Values and Prolong Litigation

Injecting a third-party lender into a case incentivizes plaintiffs to reject reasonable settlement offers because of their obligations to share their recoveries with the lender. A \$100,000 settlement offer, for example, looks a lot less attractive to a plaintiff if 75% of the proceeds from the litigation are committed to the lender to cover a loan with exorbitantly high interest rates. Similarly, although lenders have no legal right to "control" the litigation, they will be tempted to pressure a borrower to reject a settlement offer that does not reimburse the lender's complete investment. Early settlement and resolution of a lawsuit will be a thing of the past while protracted litigation becomes the norm. To make matters worse, the longer a lawsuit drags on, the more the lender is owed as high interest rates compound monthly on the owed principal.

## Lawsuit Lending Poses Serious Ethical Dilemmas

Interjecting a third-party lender weakens the traditional attorney-client relationship and raises serious questions concerning the lender's place in that relationship. There can be no question that a company with a substantial amount of money invested in a lawsuit will seek to influence strategy and will seek access to confidential information. These motivations raise troubling ethical concerns because, in contrast to lawyers, lenders have no established or enforceable duty to represent their clients zealously or guard their confidences. Indeed, several state bar associations have already explicitly discouraged the use of this lending tool.

For the above reasons, New Yorkers for Lawsuit Reform respectfully urges you to **OPPOSE S.5389/A.7891**.