



April 26, 2010

On Senate Codes Committee Agenda

S.7035 (Schneiderman) / A.2874 (Weinstein)

MEMORANDUM IN OPPOSITION

On behalf of **New Yorkers For Lawsuit Reform (NYLR)**, a broad based coalition of businesses, professionals, municipalities, not-for-profits, and concerned citizens, we are writing in **OPPOSITION** to this measure.

What would this bill do?

This legislation, if enacted, would for the first time impose interest costs of 9% upon defendants for post settlement delay due solely to conduct beyond the control of the defendant. The bill would add additional costs to a tort system which is rated as one of the worst in the United States. The State, its municipalities, not-for-profits, health providers and businesses simply cannot afford to add costs to a system which in comparison to our sister states is already broken.

Current Law:

Pursuant to present law personal injury claims asserted on behalf of an infant or incompetent and wrongful death cases require approval by the Court. Typically a stipulation of settlement is agreed to by the parties and approved by a presiding judge in an action pending in Supreme Court. Approval by the Surrogate's Court is then pursued by the plaintiff's attorney.

Under present law the plaintiff's attorney has a keen interest in acting expeditiously in securing the approval since the defendant's payment obligation awaits the additional judicial action by Surrogate's Court. At the time of settlement the parties are all fully aware that the case requires this additional step. The parties are also aware that there will typically be a delay of a couple of weeks to secure the review and approval from the Court. The settlement amount is framed in part with reference to this approval process.

Defendant would be penalized for plaintiff's delay:

Nevertheless, this legislation would impose a requirement that the defendant pay additional interest on the settlement amount to reflect the time delay in securing approval from the Court. There is simply no justification for imposing legal interest upon the defendant for this delay which is a function of actions beyond the control of the defendant. Moreover, the rate of interest fixed in the legislation is the legal rate or 9%. This rate of interest is extraordinarily high and there is no justification for fixing the rate at this level, particularly when the delays in securing judicial approval are not due to dilatory conduct on the part of the defendant. Moreover, by virtue of inclusion of an excessive rate of return on the payment amount, the plaintiff's attorney is incentivized to delay the approval process to the detriment of his or her client. Wealthy personal injury trial lawyers receiving 9% on their fee (typically 1/3), plus costs advanced, are in a position to delay payment, while their clients are all too often cannot.

This proposal should be modified to award a treasury yield rate of interest.

To the extent that the plaintiff or the court system, and not the defendant, will be in the driver seat with respect to time period for which interest would accrue, NYLR respectfully suggests that the interest rate be a treasury yield rate of interest for the period in question. To the extent that the members of committee feel strongly that those needing the protection of the courts enjoy interest on judgments post settlement, but prior to their entry, it is submitted that a treasury rate of interest would be the most equitable rate to apply. To apply the statutory rate of 9% where, as here, the defendant clearly will, in no instance be the cause of the delay, would bring about an inequitable result. Therefore, NYLR believes a treasury yield rate of interest should apply.

This bill should be held in the codes committee and modified:

For all the foregoing reasons New Yorkers for Lawsuit Reform respectfully urges that this bill be held in committee. NYLR further submits that it should be amended to apply a treasury yield rate of interest, rather than the statutory rate of 9%.