



MEMORANDUM IN OPPOSITION

ON ASSEMBLY JUDICIARY COMMITTEE AGENDA A 2874 (WEINSTEIN)

AN ACT to impose 9% interest upon defendants in specified cases.

On behalf of **New Yorkers for Lawsuit Reform (NYLR)**, a broad based coalition of businesses, professionals, municipalities, not-for-profits, insurers and concerned citizens, we are writing in **STRONG OPPOSITION** to this measure. 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 that 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. **The bill should be HELD.**

Pursuant to present law personal injury claims asserted on behalf of an infant or incompetent and wrongful death cases require approval by the Surrogate's 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 Surrogate's Court. The settlement amount is framed in part with reference to this approval process.

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 Surrogate's 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 attorneys 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.

Finally, this legislation would exacerbate the fiscal strains currently being visited upon both the state and local governments insofar as the bill requires the payment of interest on all settlements, including claims against the state or local governments. As we face the worst economic crisis since the Great Depression we cannot impose rules within the civil justice system that are by any measure excessive and place an undue burden on both the state and local governments.

For all the foregoing reasons New Yorkers for Lawsuit Reform.org urges that this bill be held.

Respectfully submitted,

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New Yorkers for Lawsuit Reform