



## **MEMORANDUM IN OPPOSITION**

On Assembly Judiciary Committee  
April 15, 2008 10:00 A.M.  
LOB Room 832

**A.6310 (Weinstein) / S.2065 (DeFrancisco) - An Act permitting an injured employee to recover tort damages directly from an employer for work related injuries in specified cases.**

On behalf of **NYTortReformNow.org**, a broad based coalition of businesses, professionals, municipalities, not-for-profits and concerned citizens, I am writing in **STRONG OPPOSITION** to the above referenced bill.

This bill would create direct liability against employers / co-employees for personal injury and wrongful death damages in violation of the exclusive remedy doctrine otherwise applicable to work related injuries as embodied in New York's Workers' Compensation Law. The proposal would reverse Court of Appeals precedent barring recovery against an employer in the absence of an economic injury suffered by a primary defendant.

The Court of Appeals in Dole v. Dow and related cases has held that an employer, as a third party defendant, is liable for economic damages incurred as a consequence of its wrongful acts in instances where a primary defendant pays money damages arising out of an injury or death of an employee. If a defendant does not suffer money damages due to insolvency or otherwise no action lies against an employer. Despite some creative attempts to create an economic injury via the use of a loan assignment transaction the Court of Appeals has rejected recovery against an employer in the absence of economic loss. (See Reich v. Manhattan Boiler 91 NY2d 772 (1998)).

This bill would obviate the need for economic loss by permitting a direct recovery from an employer when a primary defendant is insolvent. While recovery is still predicated on the existence of a "grave injury" consistent with the 1996 partial repeal of Dole v. Dow, the proposal would significantly expand employer liability beyond current law.

Despite the partial repeal of Dole v. Dow, New York remains the only State in the country which imposes unlimited liability on employers for work related accidents for any class of injuries. This legislation would only broaden the frequency of claims against New York employers and further erode the workers' compensation exclusive remedy doctrine. New York's Workers' Compensation Law for nearly one hundred years has barred a direct action against an employer. This bill will for the first time permit direct recovery against an employer.

In recent years many of our sister states have enacted comprehensive tort reform thereby attracting business development. New York simply cannot afford to adopt rules which stifle business development by imposing substantial additional costs on businesses not imposed in other states.

**There is simply no sound public policy basis to require employers to pay direct tort damages in select cases. The bill should be held.**

Respectfully submitted,

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