



MEMORANDUM IN OPPOSITION

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

A.9157 (Weinstein) / S.7482 (DeFrancisco) - An Act to amend the general obligation law in relation to settlements in tort actions and to repeal certain provisions of law relating thereto.

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

Under current law, a jury verdict is reduced by the greater of the dollars paid by settling defendants or the share of fault allocated to settling defendants by the jury. Current law recognizes that a plaintiff should not, as a result of settling with some defendants and taking others to trial, recover more than the jury determines is the fair value of his or her claim.

This bill fundamentally departs from these long established principals. It would require that a defendant decide *before trial* whether it wants the eventual jury verdict to be reduced by (1) the settlement dollars paid, (2) the amount stated in settlement releases, or (3) the percentage of liability of all settled parties.

This approach is totally unfair. Since the non-settling defendant does not have to be advised of the terms or amounts of pre-trial settlements, and its choice must be made before the jury reaches a verdict and allocates shares of fault, the "choice" can never be more than a blind guess. If the defendant guesses wrong about the settlement terms, the size of the eventual jury verdict and/or the jury's eventual allocation of fault, it can be severely penalized and the plaintiff can receive an undeserved windfall that exceeds the amount the jury has determined is appropriate.

Our civil justice is straining under the weight of rules which provide for strict liability in specified cases and require parties who are minimally at fault to pay for all economic losses simply because they have deep pockets. Passage of this bill will only exacerbate the burden imposed by an overly generous tort system. Our state, municipalities, schools, not-for-profits and the private sector simply cannot afford this regressive measure. While many of our sister states have enacted comprehensive tort reform thereby attracting business development, New York simply cannot afford to adopt rules which can result in windfall recoveries in tort cases.

Accordingly, for all the foregoing reasons, this bill should be held.

Respectfully submitted,

Mark C. Kriss
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NYTortReformNow.org