

Memorandum in Opposition COMMITTEE ON THE TORT SYTEM

TORT #1

June 18, 2010

S. 5389
A. 7891-B

By: Senator Kruger

By: M of A Towns

Senate Committee: Judiciary

Assembly Committee: Judiciary

Effective Date: 90 days after
enactment

AN ACT to amend the general obligations law, in relation to the regulation of non-recourse civil litigation advance contracts

LAW REFERRED TO: Article 5 Title 8 of the General Obligations Law

The New York State Bar Association Committee on the Tort System **OPPOSES** the enactment of this legislation.

This bill would amend Article 5 of the General Obligations Law by adding a new Title 8 to regulate non-recourse civil litigation advance contracts. Non-recourse civil litigation advance contracts (contract), sometimes called lawsuit loans, are offered to plaintiffs by cash advance companies and are required to be paid back only if the plaintiff is successful at trial or favorably settles the law suit.

While the Committee on the Tort System takes no position with respect to the advisability of the use of non-recourse civil litigation advances; however, we are troubled by what appears to be an effort to require an attorney to engage in activity beyond the scope of services that the attorney was retained to provide.

In particular, §5-801(2)(f) is objectionable because it would impose upon an attorney the requirement to certify in writing that he or she has received the contract and explained its terms to the consumer, including the annualized rate of return applied to calculate the amount to be paid by the consumer.

Whether or not explicit in the bill, this arrangement would, in effect, place the plaintiff's attorney squarely in the middle of the lending transaction between the plaintiff and the lender. This is a position that opens up plaintiffs' attorneys to potential liability. In the view of the Committee this is an unwelcome and unworkable arrangement.

Moreover, legislation regulating of these types of lending arrangements would be incomplete without addressing the often usurious rates that some of these lending

institutions charge to consumers.

Based on the foregoing, the New York State Bar Association Committee on the Tort System OPPOSES the enactment of this legislation.

Section Co-Chairs: Margaret C. Lynch, Esq.
A. Craig Purcell, Esq.