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March 5, 2009

RE: AN ACT to amend the civil practice law and rules, in relation to the impact of collateral source payments upon tort claims for personal injury, property damage or wrongful death, and upon related subrogation claims; and in relation to equalizing the treatment of collateral sources in tort actions; and repealing certain provisions of the civil practice law and rules relating thereto

A.2875 (Weinstein)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York State Conference of Blue Cross and Blue Shield Plans strongly opposes enactment of this Bill, which would prohibit insurers from recovering medical expenses in the settlement of an action where their insured's injuries were caused by another party. Preventing recovery of these costs will force insurers to pass these costs onto consumers in the form of higher insurance premiums.

PROHIBITING INSURERS FROM RECOVERING THE COSTS OF THEIR INSURED'S MEDICAL EXPENSES ALLOWS TORTFEASORS TO PROFIT FROM THEIR OWN MALFEASANCE AT THE EXPENSE OF CONSUMERS.

This proposed Bill would amend CPLR 4545 by explicitly stating that there is no right of subrogation for collateral source payments. Currently, a plaintiff is prevented from seeking payment from a defendant for expenses that were covered by a collateral source. For example, a plaintiff who is injured by a defendant and incurs medical expenses as a result of that injury is prevented from seeking those medical costs in a legal action, to the extent that such expenses were reimbursed by the plaintiff's health insurance. However, the existing statute does not preclude a plaintiff from recovering those losses in a pre-trial settlement. If enacted, this Bill would preclude an insurance company and the injured party from seeking recovery of the costs

of the injured person's medical expenses from a defendant in a settlement. The Bill also proposes, that if a plaintiff enters into a settlement agreement, such settlement does not constitute an action in derogation of the right of subrogation of the entity which supplied collateral sources payments. Consequently, under such circumstances the collateral source payers will not be able to recover their expenses from either the defendant or the plaintiff.

The intent of the current CPLR 4545 is to prevent a plaintiff from obtaining a "double recovery" from a defendant. While this is a reasonable policy, the proposed Bill would have the perverse effect of allowing a defendant to have no financial responsibility for the medical expenses he or she caused. This would let the party responsible for a plaintiff's injury to avoid any liability and transfer this responsibility to another party such as health insurers. This is a thinly veiled attempt by liability insurers to force health insurers to bear the cost of their insured's negligence.

Preventing health insurers from recovering their insured's medical expenses will allow liability insurers to shirk their financial responsibility and receive a financial windfall when the party their client injures has health insurance. This financial windfall for liability insurers will cause financial hardship for consumers as they will be forced to pay higher health insurance premiums to compensate for the unrecovered expenses. Currently, when health insurers recover expenses paid out for an insured's injuries, such funds directly offset increased health care costs, whether be reductions in the community pools or experience rated accounts to keep health insurance premiums more affordable. If health insurers are prevented from recouping their expenses, the cost of health insurance will rise making health insurance unaffordable for consumers.

In order to keep health insurance affordable for all New Yorkers and ensure that responsible parties are accountable for their actions, we strongly oppose the passage of this bill.

Respectfully submitted,

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